

TCEQ Interoffice Memorandum

To: Commissioners

Thru: Laurie Gharis, Chief Clerk

TB Toby Baker, Executive Director

EL Earl Lott, Director, Office of Water

CP Craig Pritzlaff, Director, Office of Compliance and Enforcement

From: Kim Nygren, Deputy Director, Water Availability Division



Date: July 27, 2021

Subject: Evaluation of whether a Watermaster Program should be appointed in the following basins: Cypress Creek and Sulphur River Basins

The Texas Commission on Environmental Quality (TCEQ) currently has four watermaster programs in 10 of Texas' 23 river basins¹ that actively manage water.² The Executive Director (ED) is required by statute³ to evaluate basins without a watermaster at least every five years⁴ to determine if a watermaster should be appointed. The ED's evaluation is based on the criteria and risk factors determined by the Commission.⁵ The ED is required to report the findings of that evaluation and make recommendations to the Commission.⁶ The Commission then includes those evaluation findings in the TCEQ's biennial report to the Texas Legislature.⁷

2021 Basin Evaluations

In 2021, the ED evaluated the Cypress Creek and Sulphur River Basins for the five-year period of Fiscal Years (FY) 2016-2020. The total estimated cost for the ED's 2021

¹ See Appendix A: Watermaster Programs.

² See Appendix B: Current Water Rights Management.

³ Texas Water Code (TWC) § 11.326.

⁴ TWC § 11.326(g)(1); *see also* Appendix C: Basin Evaluation Schedule.

⁵ TWC § 11.326(h)(1).

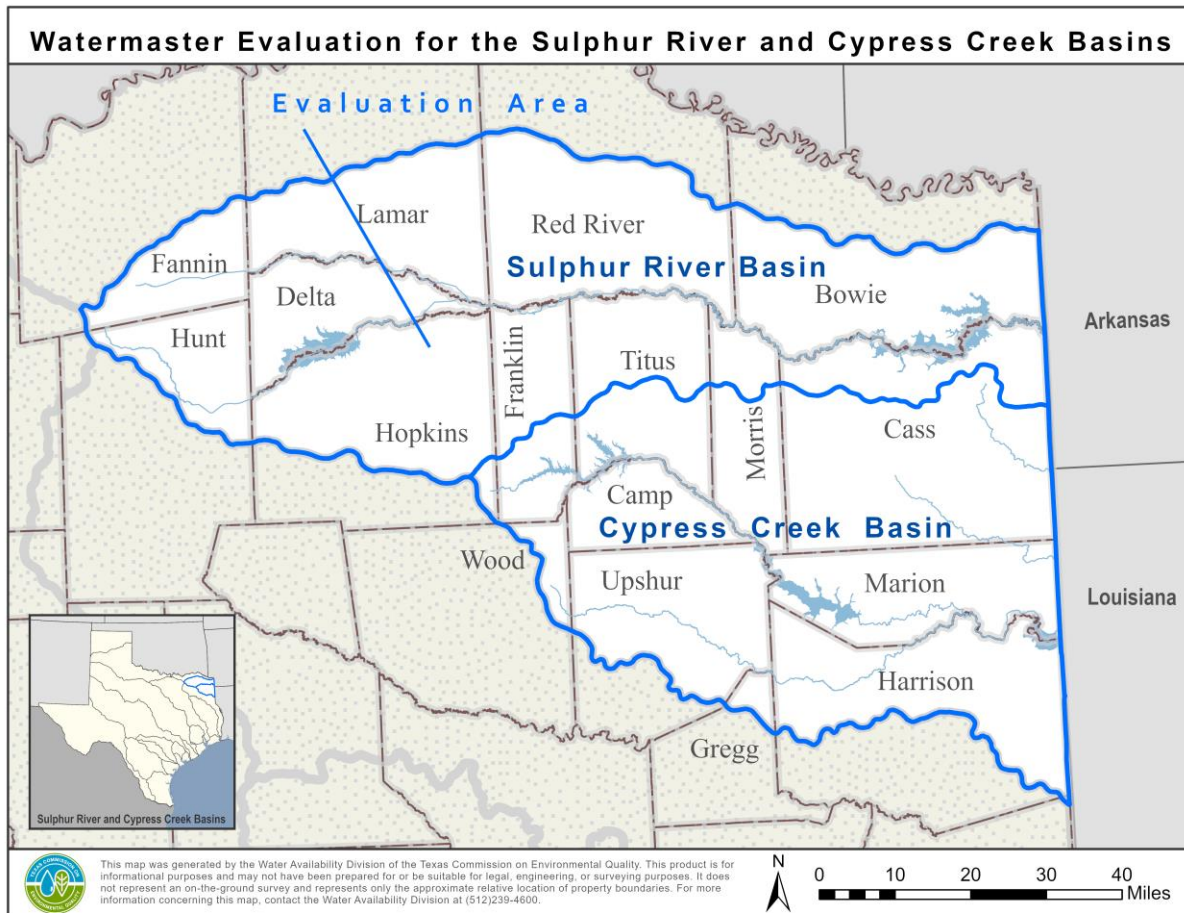
⁶ TWC § 11.326(g)(2).

⁷ TWC § 11.326(h)(2).

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evaluation activities is \$57,316.29.⁸ This is the second evaluation of these basins by the ED. The previous evaluation of these basins occurred in 2016. This memorandum begins with a general discussion of the evaluation criteria and the evaluation process followed by the evaluations of the specific basins.

Figure 1. Map of the Cypress Creek and Sulphur River Basins



⁸ See Appendix D: 2021 Watermaster Evaluation Costs (including the total costs of the 2021 evaluation for the following basins: Cypress Creek and Sulphur River Basins).

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Evaluation Criteria

The Commission outlined the following evaluation criteria in the Commission's September 28, 2011 Work Session:

1. *Is there a court order to create a watermaster?*
2. *Has a petition been received requesting a watermaster?*
3. *Have senior water rights been threatened, based on:*
 - a. *Either the history of senior calls or water shortages within the basin or*
 - b. *The number of water right complaints received on an annual basis in each basin?*

A brief discussion of each evaluation criterion follows.

Is There a Court Order to Create a Watermaster?

Court orders to create a watermaster are considered in the evaluation.

Has a Petition Been Received Requesting a Watermaster?

In evaluating this criterion, the ED considers petitions that meet statutory and rule requirements. Twenty-five or more holders of water rights in a river basin or segment of a river basin may submit a petition to TCEQ requesting that a watermaster be appointed.⁹

Who may Petition the Commission Requesting a Watermaster?

Determined and adjudicated water rights holders may petition for the creation of a watermaster, whereas domestic and livestock users (D&L) may not. D&Ls are individuals that "directly divert and use water from a stream or watercourse for domestic and livestock purposes . . . without obtaining a permit."¹⁰ While D&Ls are protected in watermaster areas because they are considered to be superior to appropriated water rights, they are not required to register with the Commission and are not assessed a watermaster fee.¹¹ Only holders of water rights that have been

⁹ TWC § 11.451.

¹⁰ 30 Tex. Admin. Code (TAC) § 297.21(a).

¹¹ See TWC § 11.329(a); see also 30 TAC § 297.21(a).

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“determined or adjudicated and are to be administered by the watermaster” are required to reimburse the Commission for the compensation and expenses of a watermaster - and D&Ls are not “determined or adjudicated” rights.¹²

How are Undivided Water Rights Considered?

The term “water right holder” is defined as “[a] person or entity that owns a water right. In the case of divided interests, this term will apply to each separate owner.”¹³ Accordingly, for undivided water rights, the term “water right holder” does not grant a right separately to each owner. Therefore, each owner of an undivided water right should not be counted as a separate petitioner. For example, a married couple who owns an undivided water right should be counted as one water right holder, not as two separate water right holders.

Have Senior Water Rights Been Threatened?

Definition of a Threatened Water Right

A definition for “threat” is required in order to evaluate whether senior water rights have been threatened. During the September 14, 2012 Commission work session discussing the watermaster evaluation process, the Commission directed the ED to utilize the definition of “threatened water right” from a 2004 Commission Order appointing a watermaster for the Concho River.¹⁴ The 2004 Commission Order was issued in response to petitions for the appointment of a watermaster in the Concho River watershed. The Commission officially approved use of the definition in the ED’s evaluations at the Commission’s October 31, 2012 agenda. The definition adopted by the Commission is as follows:

“Threat” to the rights of senior water rights holders as used in Chapter 11, Subchapter I, of the Water Code implies a set of circumstances creating the possibility that senior water rights holders may be unable to fully exercise their rights - not confined to situations in which other people or groups convey an

¹² TWC § 11.329(a).

¹³ 30 TAC § 304.3(18).

¹⁴ Order Appointing a Watermaster for the Concho River Segment, TCEQ Docket No. 2000-0344-WR, Aug. 17, 2004.

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*actual intent to harm such rights. Specifically, in time of water shortage, the rights of senior water rights holders in the basin are threatened by the situation of less available water than appropriated water rights; the disregard of prior appropriation by junior water rights holders; the storage of water; and the diversion, taking, or use of water in excess of the quantities to which other holders of water rights are lawfully entitled.*¹⁵

Evaluation Process

As part of the evaluation process, the Commission directed the ED to develop information (in addition to the evaluation criteria) to support implementation considerations during the September 28, 2011 Work Session. The Commission also directed the ED to involve stakeholders in the evaluation process. An explanation of the implementation considerations and stakeholder involvement follows.

Implementation Considerations

The Commission identified specific implementation considerations at the September 28, 2011 Work Session. These considerations include river compacts, environmental flows, the geographic reach of river basins, the number of permitted water rights within the basin, and cost factors for both current water management and potential watermaster programs. Implementation considerations specific to the basins in this evaluation are discussed in detail in later sections below. In this section, the development of the implementation criteria is discussed more generally.

There are five interstate river compacts: Canadian River Compact; Pecos River Compact; Red River Compact; Sabine River Compact; and Rio Grande Compact. The Red River Compact is the interstate compact that applies to the basins considered in this evaluation and will be further discussed later.

TCEQ's adopted environmental flow standards apply to new appropriations of water.¹⁶ Water rights for new appropriations of water in the basins covered in this evaluation will include appropriate permit special conditions that are adequate to protect any adopted standards. A watermaster in basins with environmental flow standards

¹⁵ *Id.*

¹⁶ 30 TAC § 298.10.

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administers permits with special conditions to protect environmental flow standards in the same manner as water rights are administered in non-watermaster basins. TCEQ does not have authority to restrict diversions by water right holders to protect streamflow solely for the environment unless the water right includes such a requirement.

The remaining implementation considerations: the geographic reach of river basins, the number of permitted water rights within the basin, and cost factors for both current water management and potential watermaster programs, are fully discussed later in this memorandum.

Stakeholder Involvement

The ED's evaluation included a robust stakeholder process consistent with Commission direction. Stakeholders included:

- All water right holders in the basins evaluated (including river authorities, cities, agricultural interests, and industries);
- County judges;
- County extension agents; and
- Other interested parties in the basin (including environmental interests and D&L users that requested to participate in the evaluation).

The ED facilitated stakeholder activities and involvement with the following:

- **Webpage:** The ED maintained a public webpage exclusively dedicated to the watermaster evaluation process. The webpage provided information about watermaster programs, the evaluation process, stakeholder letters, and other information developed during the evaluation.
- **Email Notifications:** Stakeholders were provided the opportunity to sign-up to receive automated updates by email. These notifications included any updates to evaluation webpages, notices, and any other communications.

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- **Outreach Letters:** Initial outreach letters were sent to all stakeholders providing information about the evaluation process and seeking initial comments.¹⁷
- **Stakeholder Meetings:** Stakeholder meetings were held virtually. Notification of stakeholder meetings were posted on the evaluation webpage and mailed to all stakeholders.¹⁸ At stakeholder meetings, staff from the Office of Water presented information about water management practices, evaluation requirements, the evaluation process, the processes for establishing watermaster programs, the functions of a watermaster, and evaluation options considered. Additionally, staff addressed stakeholder questions.
- **Public Comments:** Stakeholders were provided with the opportunity to provide comments at stakeholder meetings or to submit comments in writing (including via email) during the public comment period. The public comment period opened with the mailing of initial outreach letters on March 8, 2021. The comment period for this evaluation closed on June 30, 2021.

Evaluation of the Cypress Creek and Sulphur River Basins

The ED's evaluation findings for the Cypress Creek and Sulphur River Basins are discussed below, including the criteria established by the Commission, the implementation considerations, and a discussion of stakeholder involvement.

History of Court Orders to Create a Watermaster

Currently, there are no court orders to create a watermaster program within the basins under consideration.

History of Petitions Requesting a Watermaster

Currently, there are no active or approved petitions to create a watermaster program within the basins under consideration.

¹⁷ See Appendix F: TCEQ Letters to Stakeholders.

¹⁸ Id.

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Have Senior Water Rights been Threatened?

History of Priority Calls or Water Shortages

There were no priority calls received from FY 2016 to FY 2020.

History of Complaints

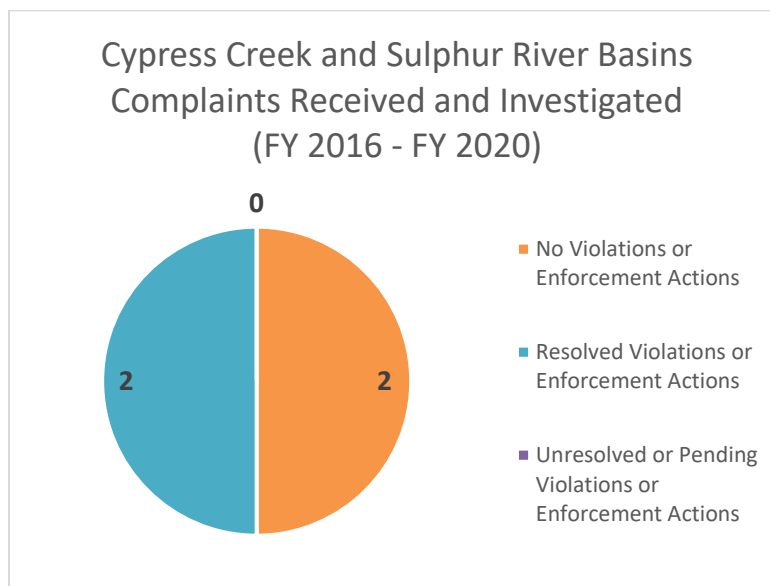
See the following table for a summary of complaints by year.

Table 1. Summary of Complaints from FY 2016 to FY 2020

Basin	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Total
Cypress Creek	0	1	0	0	1	2
Sulphur River	0	0	1	1	0	2

From FY 2016 to FY 2020, the TCEQ Regional Offices received and investigated a total of two water rights complaints in the Cypress Creek Basin and two water rights complaints in the Sulphur River Basin. The two complaints in the Cypress Creek Basin resulted in two resolved violations. The two complaints in the Sulphur River Basin resulted in no violations. The graph below summarizes complaints in the Cypress Creek and Sulphur River Basins.

Figure 2. Graph of Complaints Investigated in the Cypress Creek and Sulphur River Basins



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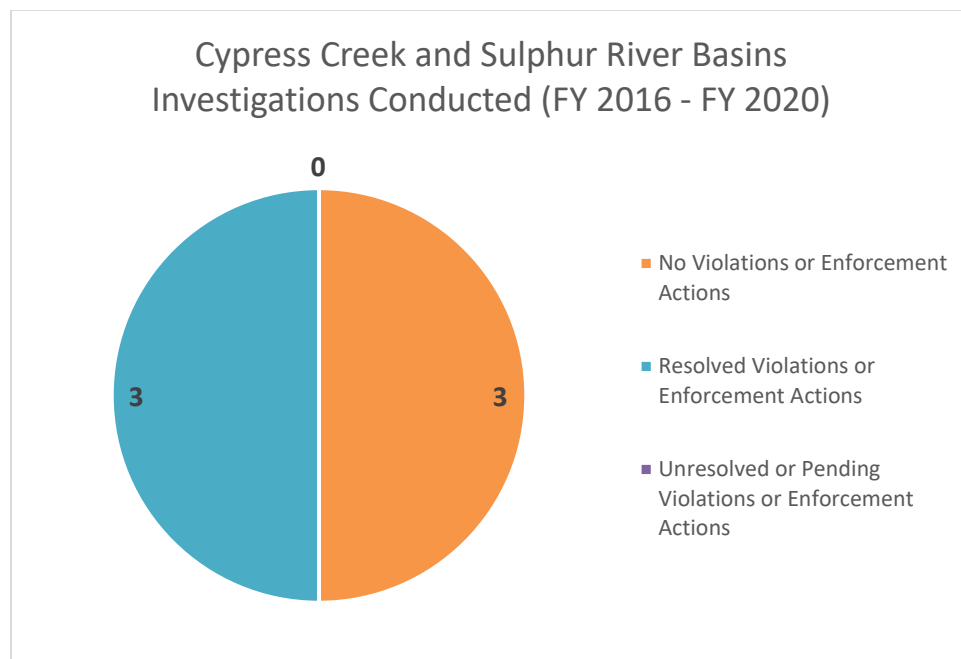
Table 2. Summary of Investigations* from FY 2016 to FY 2020

Basin	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Total
Cypress Creek	0	2	0	0	1	3
Sulphur River	0	0	2	1	0	3

*Investigation types do not include temporary permits.

From FY 2016 to FY 2020, the TCEQ Regional Offices conducted a total of three water-rights related investigation in the Cypress Creek Basin and three water-rights related investigations in the Sulphur River Basin. Of the six investigations in the Cypress Creek and Sulphur River Basins, three resulted in no violations or enforcement actions. The remaining three resulted in violations or enforcement actions that have since been resolved. The graph below summarizes investigations conducted in the Cypress Creek and the Sulphur River Basins. Although the numbers are not included in Table 2 or Figure 3, in both the Cypress Creek and Sulphur River Basins there were no investigations conducted for temporary permits.

Figure 3. Graph of Investigations Conducted in the Cypress Creek and Sulphur River Basins



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Implementation Considerations

A summary of implementation considerations is provided below.¹⁹

Geographic Reach of the Basin and Water Right Information

The Cypress Creek Basin includes all or a portion of 11 counties with 90 water rights. The Sulphur River Basin includes all or a portion of 11 counties with 66 water rights.

Existence of River Compacts

The State of Texas is a member of the Red River Interstate Compact, which includes the Cypress Creek and Sulphur River basins. The interstate river compact commission has been established to administer the compact. The primary function of the compact commission is to ensure that each member state receives its equitable share of the waters, as allocated by the applicable interstate compact. The TCEQ is responsible for administering water rights to ensure the provisions of the Red River Compact is met.

Environmental Flows

TCEQ has not adopted environmental flow standards specifically for the Cypress Creek and Sulphur River Basins.²⁰

Cost Factors

The total estimated costs for the ED to manage water rights for FY's 2016 – 2020 in the Cypress Creek Basin was \$1,939 while the Sulphur River Basin was \$2,417.

The ED considered two options when evaluating potential watermaster program costs for the Cypress Creek and Sulphur River Basins. These options were presented to stakeholders at meetings held virtually. A more detailed discussion of costs is included in Appendix D.

¹⁹ See Appendix E: Implementation Considerations for the Cypress Creek and Sulphur River Basins.

²⁰ See *generally* 30 TAC Chapter 298 (omitting the Cypress Creek and Sulphur River Basins from the rule implementing environmental flow standards).

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Option 1: No watermaster recommended for the Cypress Creek and Sulphur River Basins.

Option 2: Create a Watermaster Program encompassing the Cypress Creek and Sulphur River Basins. Year 1 has an estimated cost of \$375,558 with a cost of \$325,836 for subsequent years.

Stakeholder Involvement

On March 8, 2021 the initial outreach letter was mailed to stakeholders initiating the comment period for the evaluation. On May 14, 2021, a letter announcing stakeholder meetings was mailed to the stakeholders. Due to COVID concerns, stakeholder meetings were conducted virtually on June 1 and June 3, 2021. Written comments were received during the evaluation period. All comments opposed implementing a watermaster program; comments primarily focused on the lack of need and the additional expense of a watermaster program.

Table 3. Summary of Written Comments for Cypress Creek and Sulphur River Basins

Basin	Comments Received				
	Total	In Favor		Opposed	
		Water Right Holders	Other	Water Right Holders	Other
Cypress Creek	4	0	0	4	0
Sulphur	5	0	0	5	0

Executive Director's Recommendation

The ED considered the evaluation criteria outlined by the Commission in the September 28, 2011 work session and addressed implementation considerations for the establishment of a watermaster. For the evaluated basins, there were no court orders to create a watermaster and no petitions from water right holders requesting a watermaster. There were no priority calls in the Cypress Creek or Sulphur River

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Basins. Complaints and investigations in both basins were few, and half of the complaints and investigations resulted in violations or enforcement actions.

The Executive Director does not believe that the criteria for recommending the creation of a watermaster have been met. Accordingly, the ED does not recommend that the Commission move forward on its own motion with the creation of a watermaster program for the Cypress Creek and Sulphur River Basins.

Twenty-five or more holders of water rights in a river basin or segment of a river basin may petition the Commission to appoint a watermaster. The Commission may refer a valid petition to the State Office of Administrative Hearings for a complete administrative hearing and recommendation to the Commissioners for consideration.

While the statute requires the ED to evaluate the need for a watermaster at least every five years; there is no prohibition against evaluating a basin sooner, on an as needed basis, if threats to senior water rights occur. The ED can also consider stakeholder input, and the ED is always open to additional information from stakeholders. It is important to have stakeholder support in articulating the threat and the need to establish a new program as water right holders will be responsible for paying a new fee to support the new regulatory program.

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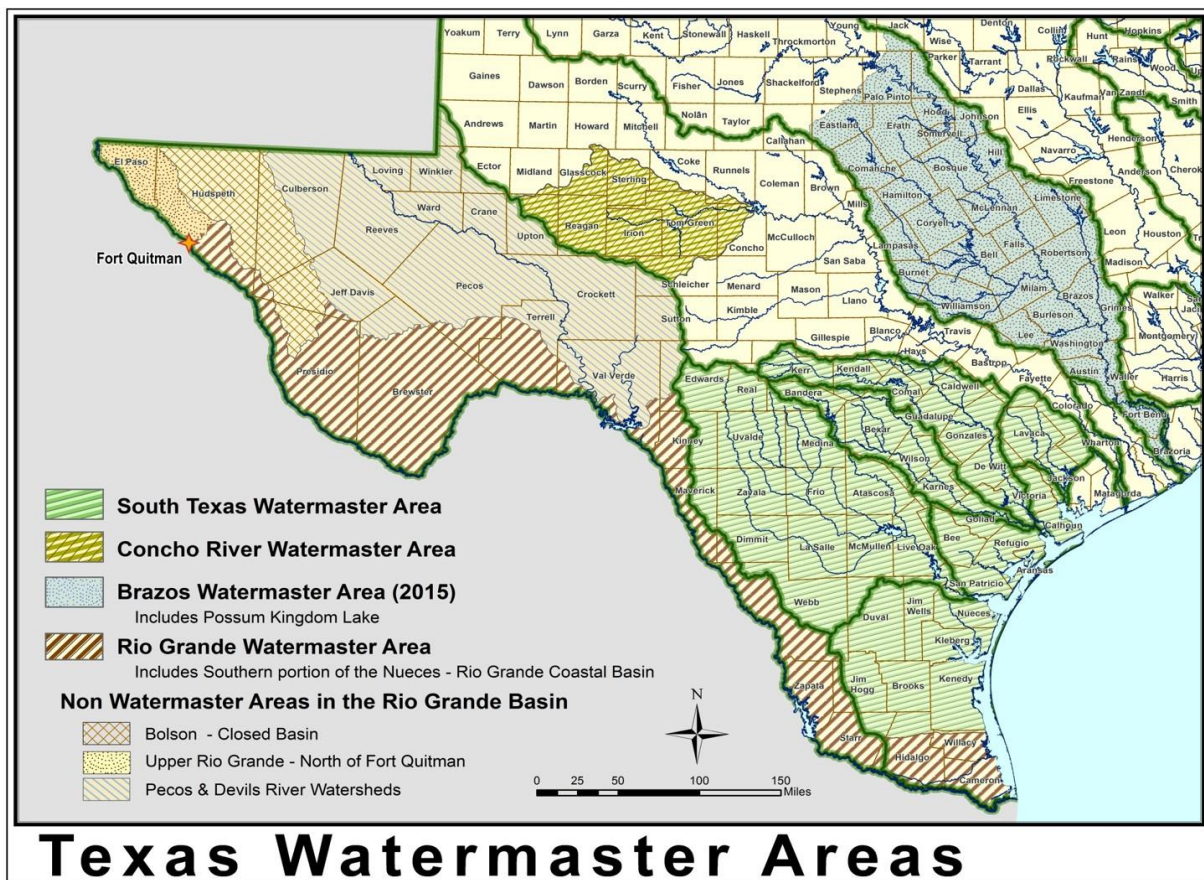
List of Appendices

- Appendix A: Watermaster Programs
- Appendix B: Current Water Rights Management
- Appendix C: Basin Evaluation Schedule
- Appendix D: 2021 Watermaster Evaluation Costs
- Appendix E: Implementation Considerations
- Appendix F: TCEQ Letters to Stakeholders

Appendix A: Watermaster Programs

There are four watermaster programs in Texas:

1. **Rio Grande**, which serves the Rio Grande Basin below Fort Quitman, Texas (excluding the Pecos and Devils Rivers),
2. **South Texas**, which serves the Nueces, San Antonio, Lavaca, and Guadalupe River Basins, as well as the adjoining coastal basins,
3. **Concho River**, currently a division of the South Texas Watermaster, which serves the Concho River segment of the Colorado River Basin, and
4. **Brazos**, which serves the Brazos River Basin, downstream of Possum Kingdom reservoir, including said reservoir.



Appendix B: Current Water Rights Management

Surface water rights are managed by the TCEQ either through an established watermaster program or through one of the 16 Regional Offices in non-watermaster areas. TCEQ is responsible for the protection of senior water rights regardless of whether a watermaster program has been established in the affected area.

Day-to-day Water Rights Management

Watermaster Areas

Watermasters proactively manage water rights in their areas and allocate available water according to water right priorities on a real-time operational basis. In a watermaster area, a water rights holder must notify the watermaster of how much water they plan to divert, before the water right holder diverts authorized water. After receiving a declaration of intent (DOI) to divert water, the watermaster determines whether a diversion will remove water that rightfully belongs to another user. As needed, the watermaster will notify any users with more junior priority dates to reduce pumping or to stop pumping altogether if necessary.

Day-to-day activities performed by watermaster staff include monitoring rivers, taking stream flow measurements, setting stream flow markers, meeting with water right holders and other interested persons, investigating complaints, writing notices of violations and in some cases notices of enforcement, collecting water use data, and recording their daily investigation activities.

Watermasters can respond quickly to identify and to stop unauthorized diversions because of their real-time monitoring of local streamflow conditions. Also, because watermasters have information on which water is being diverted under a water right at any given time, they are able to better anticipate a shortage before it reaches a critical situation, thus enabling the watermaster and local users to work together to develop a strategy that will best meet everyone's water needs.

Appendix B: Current Water Rights Management

Non-Watermaster Areas

TCEQ regional offices conduct active water management activities in areas of the state outside the jurisdiction of a watermaster program to increase agency awareness of potential impacts to surface water and to provide information critical for the agency's evaluation and determination of priority calls for surface water. This water management includes monitoring United States Geological Survey (USGS) gages, using flow data from applicable TCEQ Surface Water Quality Monitoring sites, and coordinating with and reaching out to other TCEQ program areas and outside stakeholders.

The regional offices conduct water rights-related initiatives (including flow monitoring, stream assessments, and on-site investigations) when necessary. Other than these initiatives, water rights investigations are complaint driven, unless conducted to ensure compliance with a priority call.

Water Rights Management during Senior or Priority Calls

Watermaster Areas

When stream flows diminish, a watermaster allocates available water among the users according to priority dates, consistent with TWC §11.027. For domestic and livestock users (D&Ls), the watermaster will respond to a priority call or complaint. If a water right holder does not comply with the water right or with TCEQ rules, the Executive Director may direct a watermaster to adjust the water right holder's control works, including pumps, to prevent them from diverting, taking, storing, or distributing water until they comply.

Non-Watermaster Areas

In order to provide the best possible response to drought conditions and facilitate response to water right priority calls, the agency created the Drought Response Task Force. The Task Force includes staff with water rights expertise from multiple offices and is focused on responding to priority calls. The Task Force coordinates TCEQ response to priority calls and may recommend that water rights be suspended in response to a call.

Appendix B: Current Water Rights Management

Handling Unauthorized Diversions

Watermaster areas

Watermaster staff work in the field on a day-to-day basis checking on authorized diversions. This consistent presence enables the watermaster office to quickly identify potential unauthorized diversions. If found, watermaster offices handle unauthorized diversions by issuing field citations or notices of violation or by referring the matter directly to enforcement based on the nature of the violation(s).

Non-Watermaster areas

Investigations of possible unauthorized diversions within non-watermaster areas occur most often as a result of complaints. Suspected unauthorized water diversions outside watermaster areas are currently addressed by the Office of Compliance and Enforcement (OCE) based on one of the following two scenarios:

1. **Normal Conditions** – No Suspension in Effect: Water diversions outside watermaster areas are currently addressed by regional field staff on a complaint response basis. No daily information on diversions are currently received or reviewed by OCE field staff. Investigations of water right holders are currently non-routine and are initiated only in response to reported conditions.
2. **Priority Call Conditions** – Suspension in Effect in Response to a Priority Call: Tools used by OCE during times of curtailment in response to a priority call include frequent tracking of available flow gages, observations by flyovers and “boots on the ground” to monitor river conditions, and coordination with sister agencies to obtain and to track information. OCE tracks flow gages during these priority call conditions using the “follow the water” concept and is able to identify specific segments of a river to more closely monitor for potentially unauthorized diversions. In doing so, staff may perform investigations of water right holders as well as non-permitted persons.

Whether in normal conditions or in priority call conditions, OCE addresses potentially unauthorized diversions and may issue field citations or notices of violation and/or enforcement based on the nature of the violation(s).

Appendix C: Basin Evaluation Schedule

Texas Water Code (TWC) §11.326(g)(1) requires the Executive Director to evaluate basins without a watermaster at least every five years to determine if a watermaster should be appointed. The Executive Director conducted the first cycle of evaluations from 2012 through 2016. The second cycle of evaluations began in 2017 and will end in 2021. The third cycle of evaluations will begin in 2022 and will run through 2026.

Cycle 1

Year	Basin
2012	Brazos River Basin Brazos-Colorado Coastal Basin Colorado River Basin Colorado-Lavaca Coastal Basin
2013	Trinity River Basin Trinity-San Jacinto Coastal Basin San Jacinto River Basin San Jacinto-Brazos Coastal Basin
2014	Sabine River Basin Neches River Basin Neches-Trinity Coastal Basin
2015	Canadian River Basin Red River Basin
2016	Cypress Creek Basin Sulphur River Basin

Cycle 2

Year	Basin
2017	Brazos River Basin (Upper Only) San Jacinto-Brazos Coastal Basin Brazos-Colorado Coastal Basin Colorado River Basin Colorado-Lavaca Coastal Basin
2018	Trinity River Basin San Jacinto River Basin Trinity-San Jacinto Coastal Basin Neches-Trinity Coastal Basin
2019	Sabine River Basin Neches River Basin
2020	Canadian River Basin Red River Basin
2021	Cypress Creek Basin Sulphur River Basin

Appendix C: Basin Evaluation Schedule

Cycle 3

Year	Basin
2022	Brazos River Basin (Upper Only) San Jacinto-Brazos Coastal Basin Brazos-Colorado Coastal Basin Colorado River Basin Colorado-Lavaca Coastal Basin
2023	Trinity River Basin San Jacinto River Basin Trinity-San Jacinto Coastal Basin Neches-Trinity Coastal Basin
2024	Sabine River Basin Neches River Basin
2025	Canadian River Basin Red River Basin
2026	Cypress Creek Basin Sulphur River Basin

Appendix D: 2021 Watermaster Evaluation Costs

The costs for the Executive Director's evaluation of the Cypress Creek and Sulphur River Basins are summarized below.

Costs Associated to the Evaluation

Total Estimated Costs for TCEQ Evaluation Activity: \$57,316.29

Office of Water Costs

- OW Staff time: \$56,835
 - Multiple staff participated in this evaluation for a portion of their time, equating to .5 full time equivalents for the duration of the project.
 - Calculated salaries for 1.0 FTEs from February 2021 through August 2021 (8 months).
 - Assumed level B17 with approximately 1 year of experience.
 - Fringe (32% of base salary)
- Postage: \$198
- Travel: \$0
- Total: \$57,033

Office of Legal Services Costs

- OLS staff time: \$27.88 (hourly rate for Attorney I)
 - Calculated staff attorney review time of 5 hours
 - Assumed mid-point for level B25
 - Fringe (32% of base salary)
- Total: \$139.40

Office of Compliance and Enforcement Costs

- OCE staff time: \$143.89
 - Time spent preparing information for the evaluation as well as reviewing the final document (calculated using regular labor): 4.5 hours
 - Assumed mid-level B19

Appendix D: 2021 Watermaster Evaluation Costs

- Fringe (32% of base salary)
- State equipment use (vehicle): \$0
- Total: \$143.89

Other Agency Programs

Other agency staff were provided an opportunity to participate, but no significant costs were associated with their involvement.

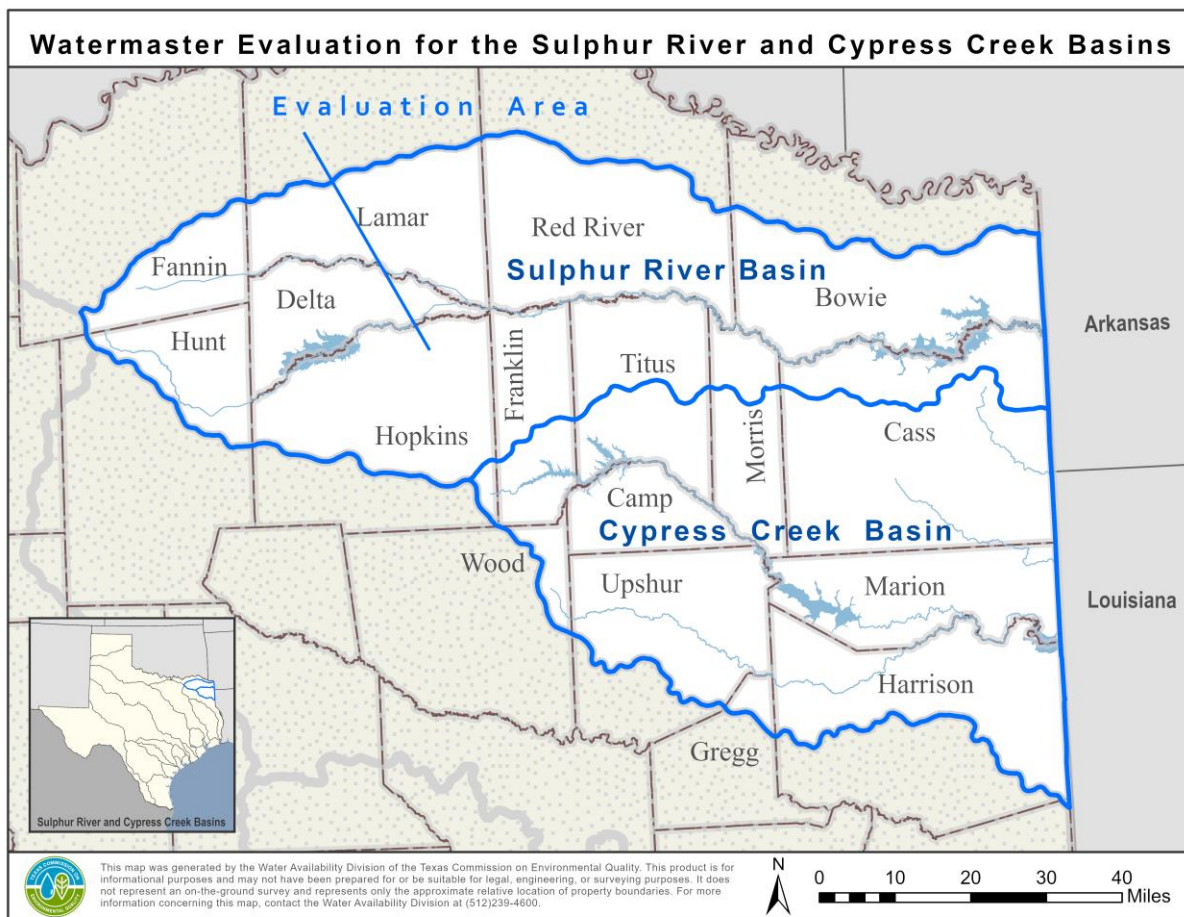
The cost of the evaluation was significantly reduced because the public meetings were held virtually instead of in person due to the COVID-19 pandemic.

Appendix E: Implementation Considerations for the Cypress Creek and Sulphur River Basins

Geographic Reach of the Basins and Water Right Information

The Cypress Creek and Sulphur River Basins are in the northeastern part of the state (Figure 1). The Cypress Creek Basin includes all or a portion of 11 counties and 90 water rights, and the Sulphur River Basin includes all or a portion of 11 counties and 66 water rights (Table 1). The number of total water rights compared to the water rights by county may differ slightly as some water rights are authorized in multiple counties.

Figure 1. Cypress Creek and Sulphur River Basins



Appendix E: Implementation Considerations for the Cypress Creek and Sulphur River Basins

Table 1. Number of Permitted Water Rights by Basin and County

Sulphur		Cypress Creek	
County	No. of Water Rights	County	No. of Water Rights
Bowie	10	Camp	9
Cass*	3	Cass*	7
Delta	7	Franklin*	4
Fannin	2	Gregg	3
Franklin*	7	Harrison	15
Hopkins*	11	Hopkins*	0
Hunt	2	Marion	13
Lamar	3	Morris*	8
Morris*	2	Titus*	18
Red River	9	Upshur	11
Titus*	10	Wood	2

*Counties with an asterisk are in multiple basins.

Watermaster Program Options and Costs

The ED considered two options (numbered 1 and 2 below) when evaluating watermaster program costs for the Cypress Creek and Sulphur River Basins. These options were presented to stakeholders at electronic meetings in June 2021.

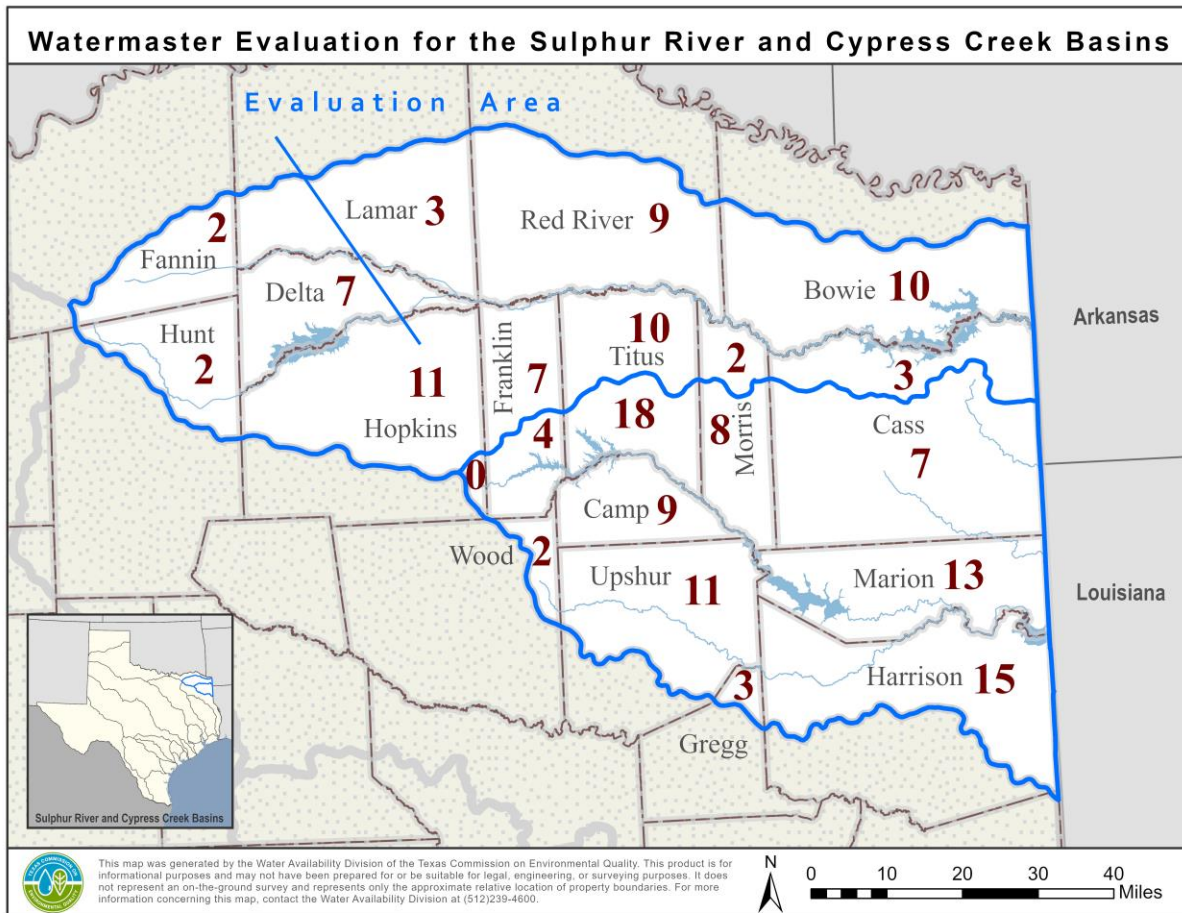
Option 1: *No watermaster recommended for the Cypress Creek and Sulphur River Basins*

Option 2: *Create a Watermaster Program encompassing the Cypress Creek and Sulphur River Basins (Figure 2)*

Number of permitted water rights: 156 (Table 2)
Counties: 17

Appendix E: Implementation Considerations for the Cypress Creek and Sulphur River Basins

Figure 2. Watermaster Program for the Cypress Creek and Sulphur River Basins (Option 2)



Appendix E: Implementation Considerations for the Cypress Creek and Sulphur River Basins

Table 2. Number of Permitted Water Rights by County (Option 2)

County	No. of Water Rights
Bowie	10
Camp	9
Cass*	10
Delta	7
Fannin	2
Franklin*	11
Gregg	3
Harrison	15
Hopkins*	11
Hunt	2
Lamar	3
Marion	13
Morris*	8
Red River	9
Titus*	28
Upshur	11
Wood	2

* The number of water rights compared to the water rights by county may differ slightly as some water rights are authorized in multiple counties. Counties with an asterisk are in multiple basins.

Year 1 has an estimated cost of \$375,558, with a cost of \$325,836 for each subsequent year. Actual assessments would vary based on the estimated expected return rate. Table 3 summarizes expected expenditures for Option 2.

Costs include:

- Watermaster, one administrative assistant and one watermaster specialist/field deputy located in the TCEQ Tyler Office.

Appendix E: Implementation Considerations for the Cypress Creek and Sulphur River Basins

Table 3. Cost Estimate (Option 2)

	Year 1	Year 2	Assumptions
Salaries			
Watermaster	\$69,000	\$71,346	1 Watermaster (Program Supervisor VI, B23 with 3.4% increase by year 2)
Administrative Assistant	\$33,660	\$34,804	1 Administrative Assistant IV, A15 (\$33,660/year with 3.4% increase by year 2)
Watermaster Specialist IV	\$48,278	\$49,919	1 Watermaster Specialist IV, B21 (\$48,278,158/ year with a 3.4% increase by year 2)
Watermaster Liaison	\$20,400	\$21,094	Liaison Salary proportionally composed by percentage of water rights among all watermaster programs.
Total Salaries	\$171,338	\$177,163	
Fringe	\$56,542	\$58,464	FY21 expected cost is 33% of Salaries
SORM fee	\$800	\$800	\$100/person. Based on average from current watermaster programs
SWCAP fee	\$1,000	\$1,000	\$600/person. Based on average from current watermaster programs
Professional/Temp Services	\$6,000	\$6,000	Higher in first two years to implement new accounting system for program
Travel In-State	\$6,500	\$6,500	Based on current watermaster programs
Training	\$2,000	\$2,000	\$1,000 per employee
Rent - Building	\$11,000	\$11,000	WM, WMS IV, and Admin in Tyler
Postage	\$650	\$650	Based on current watermaster programs
Phone/Utilities	\$2,500	\$2,500	Based on current watermaster programs
Supplies - Consumables	\$400	\$400	Based on current watermaster programs
Other Operating Expenses	\$8,567	\$8,858	Based on Agency Standard FTE Costs (5% of base salary)
Fuels/Lubricants	\$5,500	\$5,500	Estimated based on 16000 miles/year
Rent - Machine & Other	\$1,000	\$1,000	
Facilities, Furniture, and Equipment	\$15,895	\$5,000	Equipment, Maintenance, Office Furniture, PPE
Capital Equipment - IT	\$7,867	\$0	3 computers at \$1,200, 6 monitors, and 1 printer
Capital - Vehicles	\$78,000	\$39,000	2 vehicles at \$39,000 1sy year, 1 vehicle 2nd year
Total	\$375,558	\$325,836	

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 8, 2021

Re: Watermaster Evaluation for the Cypress Creek and Sulphur River Basins

Dear Stakeholder:

The Texas Commission on Environmental Quality (TCEQ) is currently evaluating the Cypress Creek and Sulphur River Basins to determine whether a watermaster should be appointed. The purpose of this letter is to notify you and to seek written input on the process, which will help the agency to identify information that should be considered during our evaluation.

According to Subsections 11.326(g) and (h) of the Texas Water Code, the Executive Director (ED) must evaluate all river basins at least once every five years, which do not currently have a watermaster to determine whether a watermaster should be appointed. The ED must report the findings from the evaluation and make recommendations to the TCEQ Commissioners. The Commissioners may direct the ED to move forward with the recommendation, revise the recommendation, or take no action on the recommendation. The evaluation findings and recommendations are to be included in the agency's Biennial Report to the Legislature.

To include the public and to develop the best recommendations, we are soliciting input from stakeholders, including water right holders, domestic and livestock users, river authorities, agricultural, industrial and environmental organizations, the general public, and other interested parties. As part of the evaluation, we plan to mail notifications of stakeholder meetings, which are expected to be held in June, to all stakeholders within these basins. The input received from stakeholders will be discussed at the TCEQ Commissioners' Agenda tentatively scheduled for late summer.

We will consider the following criteria when evaluating a basin:

- (1) *Has there been a court order to create a watermaster?*
- (2) *Has TCEQ received a petition requesting a watermaster?*
- (3) *Have senior water rights been threatened, based on either the history of senior calls or water shortages within the basin or the number of water right complaints received on an annual basis in each basin?*

If the establishment of a watermaster is recommended and approved, a budget would be established each year, and the watermaster program would be administered using fees collected from water right holders in the watermaster area.

The enclosed fact sheet includes general information about the watermaster programs including the fees associated to a program. TCEQ requests and appreciates your input on this evaluation. We ask that you provide written input regarding the possible threat to senior water rights (item 3 above) as well as proposals for implementing a possible watermaster program.

Please include the following information in your letter:

1. The river or waterbody which you are discussing
2. Your affiliation (for example, a water right holder with a water right permit - including number if known, a domestic and livestock user, an adjacent landowner, an interested party, or environmental organization)

As a stakeholder in these basins, you are being contacted during this initial outreach. If you are aware of any other person who might be interested but did not receive this initial outreach letter, please forward this information to them.

This request for written input is your first opportunity to participate in this process. Although comments will be accepted through the end of June, please consider sending written comments by April 14, 2021 to help us plan for our June stakeholder meetings. Comments should be sent to: Daniel Schroeder, Watermasters Section Liaison, Water Availability Division, TCEQ, MC-160, P.O. Box 13087, Austin, Texas 78711-3087 or by email to watermaster@tceq.texas.gov if you choose to contact us electronically.

If you have any questions or additional comments, please feel free to contact Daniel Schroeder directly at (512) 239-0067.

Information on the evaluation process is available on TCEQ's website:
www.tceq.texas.gov/goto/watermaster

We value your comments on the evaluation process, including the criteria being used, as well as any information you provide to assist the agency in its evaluation of your basin. Thank you for your participation.

Sincerely,



Jose A. Davila
Section Manager
Watermasters Section
Water Availability Division
Texas Commission on Environmental Quality

Enclosure

Watermaster Evaluation Fact Sheet - 2021

Background

On May 28, 2011, the Texas Legislature adopted the Texas Commission on Environmental Quality (TCEQ) Sunset legislation, HB 2694, which includes a requirement for the TCEQ to evaluate and to issue a report for all river and coastal basins that do not have a watermaster. The report assesses whether or not a watermaster should be appointed and is required at least once every five years for every basin. The TCEQ developed a schedule to consider several basins each year, resulting in the creation of a five-year cycle. The first cycle began in 2012 and was completed in 2016. In that five-year time, all basins that did not have a watermaster program were evaluated. The second cycle began in 2017. This year, the TCEQ will evaluate the Cypress Creek and Sulphur River Basins.

What is a Watermaster Program?

Watermaster programs operate from field offices within their designated basin(s) and perform the following functions:

- A watermaster continuously monitors streamflow, reservoir levels, and water use within a basin.
- As needed, holders of impoundment rights may notify the watermaster when they plan to release stored water. The watermaster can then monitor usage downstream to ensure that the released water reaches the buyer.
- Before starting their pumps, opening their sluice gates, or starting to divert water in any way, all water right holders must notify the watermaster through a declaration of intent and state how much water they plan to divert and for how long.
- The watermaster determines whether a declaration of intent will divert water that rightfully belongs to another user and, if needed, notifies a user with more junior water rights to reduce or to stop pumping.
- When streamflow diminishes, the watermaster allocates available water among the water right holders according to each user's priority date.
- If a water-right holder does not comply with their water right or with TCEQ rules, the executive director may direct a watermaster to adjust the control works, including pumps, to prevent the owner from diverting, taking, storing, or distributing water, until the water right holder complies.

There are currently four watermaster programs in Texas:

- The Rio Grande Watermaster covers the Rio Grande River segment from Fort Quitman to the Gulf of Mexico in the Rio Grande River Basin (excluding the Pecos and Devils Rivers).
- The South Texas Watermaster covers the Nueces, San Antonio, Guadalupe, and Lavaca river basins, as well as the adjacent coastal basins.
- The Concho Watermaster, currently a division of the South Texas Watermaster, covers the Concho River segment of the Colorado River Basin.

- The Brazos Watermaster covers Possum Kingdom reservoir and areas downstream of the reservoir in the Brazos River Basin.

Advantages of a Watermaster Program

In addition to their monitoring of river conditions, TCEQ watermasters can provide valuable services to the water users in the basins they oversee:

- Watermasters can coordinate diversions in the basin, better ensuring that all water users get the best overall value from the water available to them.
- With their real-time monitoring of local streamflow, watermasters can quickly identify and stop illegal diversions.
- Watermasters may be able to anticipate a water shortage before it reaches the crisis point, thus enabling local users to work together to develop a strategy that will meet the users' most basic needs.
- When disputes arise among water users, the watermaster can often help the users settle the matter, thereby avoiding costly litigation.
- Watermasters can provide valuable technical assistance.
- A watermaster program affords a long-term solution for managing water rights in a river basin.

Program Costs and Fees

According to state law, water-right holders in a watermaster area must pay the costs associated with a watermaster program through an annual fee. Certain domestic and livestock uses are exempted from water rights permitting and any fees associated with the watermaster program.

The total amount assessed per water right holder is comprised of a \$50 per account base fee and an annual use fee that is based on the volume of water that may be diverted for each authorized use. The use fee is calculated each year and is based on the proposed operating budget for each watermaster program.

In addition, users will be required to install a fairly accurate meter on their diversion facilities or pumps. Users are solely responsible for the costs associated with the meter purchase, installation and maintenance. Meters may represent a significant expense that varies with their technology and pump size. However, by using a meter, the user may be able to increase efficiencies, which may lead to water savings.

Participating in the Process

We encourage your input in this process. If you are interested in the evaluation of the Cypress Creek or Sulphur River Basins or if you have any questions on this process, please contact:

By Letter: Daniel Schroeder, Watermasters Section Liaison, Water Availability Division, TCEQ, MC-160, P.O. Box 13087, Austin, Texas 78711-3087

By Email: watermaster@tceq.texas.gov

By Phone: Call the Watermaster Program Liaison, Daniel Schroeder, at (512) 239-0067

Web Site: www.tceq.texas.gov/goto/watermaster

P.O. Box 13087 • Austin, Texas 78711-3087 • 512-239-1000 • tceq.texas.gov

Jon Niermann, *Chairman*
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Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 14, 2021

Re: Stakeholder Meetings: Watermaster Evaluation for the Cypress Creek and Sulphur River Basins

Dear Stakeholder:

The Texas Commission on Environmental Quality (TCEQ) is currently evaluating the Cypress Creek and Sulphur River Basins to determine whether a watermaster should be appointed. More information on the evaluation process and watermaster programs can be found on the TCEQ's website at: www.tceq.texas.gov/goto/watermaster. Stakeholder input is an important part of this process.

Stakeholder Meetings

TCEQ will hold two stakeholder meetings to provide information about the evaluation process, answer questions, and take public comment. The stakeholder meetings will be held virtually in Microsoft Teams.

Tuesday, June 1, 2021 from 6-7 PM

Teams Link: <https://bit.ly/3aJBCOe>

Thursday, June 3, 2021 from 6-7 PM

Teams Link: <https://bit.ly/32NexpC>

You can join these meetings using a desktop, laptop, tablet, or smartphone. You can also use any type of phone to call into the meeting, please note that this is a toll phone number. Instructions on how to join the meetings can be found on the reverse. *Please try to join the meeting 10 minutes before the start time.*

Public Comment

You can also submit comments without attending the stakeholder meetings. The TCEQ will be taking public comment through **June 30, 2021**. Please email your comments to watermaster@tceq.texas.gov. You can also mail your comments to Daniel Schroeder, Watermasters Section Liaison, MC 160, P.O. Box 13087, Austin, Texas 78711-3087.

Questions

If you have any questions about the process, stakeholder meetings, or submitting comments, please contact Daniel Schroeder at watermaster@tceq.texas.gov or (512) 239-0067.

Thank you for your participation in this important process.

Sincerely,

A handwritten signature in cursive script that reads "Jose A. Davila".

Jose A. Davila, Manager
Watermasters Section, Water Availability Division
Texas Commission on Environmental Quality

How to Join a Microsoft Teams Meeting

You can join a Microsoft Teams meeting from your desktop, laptop, tablet or smart phone. You can also use your phone to call into a Microsoft Teams meeting.

Desktop or Laptop (PC or Mac)

- Ensure that your device has a microphone, speakers, and a camera to fully participate (participating on camera is optional).
- The recommended Internet browser app for Microsoft Teams Meetings is either Google Chrome or Microsoft Edge (PC only).
- Open Google Chrome or Microsoft Edge and type the meeting link (see reverse) and hit “Enter.”
 - If you have Microsoft Teams on your desktop/laptop, select “Open Microsoft Teams” or “Open Teams” in the browser window so that the meeting will open in the app. Allow the app to use your microphone and camera.
 - If you do not have Microsoft Teams on your desktop/laptop, select “Continue on this browser” or “Join on the web instead” in the browser window so that the meeting will open in a browser tab. Enter your name to be displayed in the Participant list and allow the browser to use your microphone and camera.

Tablet or Smart Phone

- You will need to download the Microsoft Teams app. Make sure you set up your profile in Microsoft Teams after downloading the app. There is no cost to download the app or use it for these meetings.
- Open your internet browser and type in meeting link (see reverse) and hit “Enter.” You will be prompted with “Open this page in ‘Teams’”. Click “Open.” The app on your tablet or phone will open. Click the blue, “Join Now” button.

Phone

An audio-only toll phone number is available for this meeting. Please see the call-in information below.

Tuesday, June 1, 2021 from 6-7 PM

Phone Number: [+1 512-826-8070](tel:+15128268070)

Phone Conference ID: 321 980 254#

Thursday, June 3, 2021 from 6-7 PM

Phone Number: [+1 512-826-8070](tel:+15128268070)

Phone Conference ID: 950 593 806#

Although registration is not required, individuals interested in attending are requested to submit a registration form, which can be found on TCEQ’s website under the “Which Basins are Being Evaluated Now?” section:

www.tceq.texas.gov/goto/watermaster