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Finding the ways that work

TEXAS WATER PROGRAM

Legislative Priorities

Background

Groundwater is the most important water supply in Texas. It provides over 60% of our overall water supply and sustains 30% of the water flowing in our rivers statewide and much more in many individual rivers. In rural communities, aquifers are critical water infrastructure, providing the sole source of water for residents and agriculture. Wildlife, hunters, fisherman, landowners, and urban Texans all depend on the flows in Texas rivers and streams that groundwater sustains.

Texas' water resilience, economy and culture depend on groundwater resources existing in the future. In 50 years, Texas' population is expected to grow by 70%. That's 20 million more Texans who will need water in a state that has repeatedly faced drought-induced water shortages and will likely suffer more intense droughts in the future. With increased drought and population growth, it is extremely important that groundwater be managed in a balanced, proactive, and sustainable way so that it continues to be a source of water for rural Texas. Yet, across most of Texas, groundwater is being managed in a way that allows for its eventual depletion. This puts landowners, communities, rivers and streams, and the ecosystems that depend on groundwater at risk.

Invest in science to inform effective groundwater management

While Texas has a solid framework for managing groundwater premised on local management, the state is not providing adequate resources to local groundwater conservation districts to effectively manage this important resource. Texas has invested billions of dollars in water infrastructure, but the state provides little funding for groundwater conservation districts to develop local models or local data, such as installation of groundwater monitoring wells, to help them understand how to manage unique hydrogeologic conditions or address local impacts from the development of water infrastructure projects.

The Texas Water Development Board's entire 2021-2022 biennium budget for the Technical Assistance and Modeling Program (which includes groundwater modeling) is only approximately $6 million. While groundwater is, appropriately, managed at the local level, this does not obviate the state's responsibility to ensure that groundwater conservation districts have technical resources and data to effectively manage it.

EDF recommends that the Legislature establish a grant program at TWDB for groundwater conservation districts and counties where groundwater districts do not exist to develop local data and science.

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Support effective groundwater planning

For Texas' water planning process to be meaningful, it must be informed by robust groundwater planning. Groundwater availability in the state water plan is heavily influenced by the long-term management goals or desired future conditions (DFCs) that groundwater conservation districts adopt through a process called joint planning. This process is time consuming and should be informed by scientifically rigorous data. However, unlike the regional and flood planning process, the state has not provided groundwater conservation districts with resources to support the joint planning process and development of DFCs even though the DFCs are critical to informing groundwater availability in the state water plan.

Although the Texas Water Development Board provides groundwater conservation districts with regional groundwater availability models, TWDB does not assist groundwater conservation districts with analysis of data that is relevant to groundwater planning. If the DFC process is not sound, then groundwater availability in the state water plan will not be reliable and communities' water supply will be at risk.

EDF recommends that the Legislature increase funding and add full-time staff for TWDB to support groundwater conservation districts throughout the development of desired future conditions in a manner similar to the regional water planning and flood planning process.

Protect landowners' groundwater wells

When issuing new permits for wells, groundwater conservation districts are currently required to consider impacts to other permit holders. However, they are not required to consider impacts to smaller, exempt wells that rural landowners depend on for their daily water needs. In Texas, exempt wells are domestic and livestock wells and are primarily located where centralized water infrastructure does not exist, serving as the sole source of water for rural communities across the state. As groundwater levels decline, these rural wells are increasingly threatened by large groundwater production permits.

EDF recommends that the Legislature require groundwater conservation districts to consider impacts to smaller well owners when issuing permits (see HB 3619, 87th Legislative Session).

Improve understanding of groundwater-surface water connections

Distinct water allocation and management systems govern groundwater and surface water in Texas. The absence of a more comprehensive and holistic framework for managing groundwater and surface water may adversely affect both water resources, as increased groundwater pumping can reduce springflow and baseflow in creeks and rivers and ultimately reduce the reliability of the surface water rights of downstream permit holders.

EDF recommends that the Legislature create an advisory board composed of diverse stakeholders, such as technical experts, local water managers, regulatory interests, and environmental and wildlife interests, to study and develop approaches feasible within Texas' current regulatory framework to address challenges related to groundwater and surface water interactions in Texas.

Develop policies to conserve groundwater in place

The Texas Supreme Court and the Texas Legislature have clearly ruled that groundwater is owned by the overlying landowner. To enjoy the full value of their property rights, landowners may want to conserve groundwater for a future use. If enough landowners are in this position — or even offered incentives to conserve — they can help maintain aquifer levels and make it easier to sustainably manage groundwater. In other cases, the groundwater may be contributing to ecologically valuable springs or streams on the landowner's property or nearby. Protecting the groundwater in place can help sustain the springs and streams and the fish and wildlife that depend upon them and ensure local communities are resilient during drought.

Ensuring that groundwater can be conserved in place means that there must be mechanisms for the overlying landowner to legally protect that water from being pumped by other users. It also means that conserving that groundwater must be recognized as a beneficial use that has value, just as pumping and using the groundwater is recognized as a beneficial use that has value. Securing these mechanisms could also open avenues for landowners to access monetary incentives for conserving groundwater, such as forbearance payments, leases or longer-term conservation easement arrangements.

EDF is convening roundtable discussions about how to advance protection for conservation of groundwater in place. We are working with policymakers and stakeholders to explore:

- *The potential benefits of conservation in place for protecting property rights and the environment.*
- *Options for groundwater districts to advance conservation in place under existing law and regulations.*
- *Opportunities to offer incentives to landowners for conservation in place.*
- *Whether Texas law needs to be clarified to ensure conservation in place is a viable strategy for willing landowners.*