

SUMMARY COMPARISON OF METHODS TO ENSURE ENVIRONMENTAL FLOWS IN TEXAS

Page 1 of 2

TYPE OF APPROACH	SHORT EXPLANATION	CURRENTLY AVAILABLE?	STRENGTHS	WEAKNESSES	OTHER STATES? EXAMPLES	GENERAL COMMENTS
Conditions on new permits	When issuing permits for new water rights for other uses, TNRCC can include conditions to protect environmental flows	Yes, existing law is clear	Commonly accepted	Can't address current problems; Piecemeal approach; Subject to existing rights	Common	The best that can be hoped for is to minimize the extent to which new permits make things worse. Enforcement can be a problem.
New permits for environmental flows	An actual water right would be issued for the specific purpose of ensuring flows	Yes, but there is still uncertainty because of lack of precedent	Gives most certainty; Creates an enforceable right	Has junior priority date; Must have unappropriated water available; Requires an applicant who can pay costs	Alaska, Arizona, Colorado (state), Idaho (state, public can initiate), Nebraska (state), Nevada, Oregon (state), Washington (state), Wyoming (state)	Some have criticized this approach as tying up water needed for future growth.
Reservations of water from appropriation	TNRCC could set aside certain amounts of flow for which permits would not be issued	Probably, but no formal structure in place	Agency could act on its own	Has junior priority date; Must have unappropriated water available; Enforcement unclear	Alaska, Kansas (legislative action) , Montana (any agency can initiate), Utah	TNRCC has not shown an inclination to implement this approach and enforcement mechanism needed.
Cancellation of unused rights	Water right is just a right to use water. Current law provides for cancellation of existing rights that aren't being used	Yes, but numerous exceptions	Can address senior rights	Agency generally unwilling to pursue; water may go to existing rights; Requires second step; Fairly controversial	Alaska (5 yrs) Arizona (5 yrs), California (5 yrs) Kansas (5 yrs), Montana (10 yrs)	May be perceived as interfering with property rights or discouraging conservation.



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Page 2 of 2

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Acquisition of existing water rights	Existing water rights would be purchased, or possibly donated, and converted to a water right to protect flows	Yes, the legal structure already exists (Texas Water Trust); there is no funding structure	Gives great certainty; Senior rights could be obtained	Adequate funding is lacking as, apparently, are adequate incentives to donate; Rights probably would be most expensive where most needed	Arizona (funding source), California, Colorado (must convey to state), Kansas (state only) Montana (term), Nevada, Oregon (must convey to state), Utah, Washington (must convey to state), Wyoming (state only)	To be viable, a secure and adequate funding source would be needed. Also, need an enforcement mechanism.
Conservation measures with conserved water dedicated to environmental flows	Public funds could be provided on favorable terms in return for having the conserved water put aside for environmental flows	Existing law would allow for this, but funding sources are not available	Encourages both water conservation and protection of flows	May be expensive; May be hard to administer and enforce; Not clear how much water would be available	Montana, Oregon, Washington	State Water Plan recommends this for consideration. A steady funding source would be needed.
Conditions placed on existing water rights	The government does have authority to place some new conditions on existing water rights; might require a "Mono Lake" case to get it started	Never done in Texas as condition on water right to protect flows; no Texas court cases directly supporting or rejecting.	Requires holders of existing rights to share the burden with newer rights	Highly uncertain; Piecemeal approach; Extremely controversial	California	This approach undoubtedly would result in years of litigation.

