



# Wastewater Wars: Water Reuse Projects in Texas

Association of Water Board Directors  
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Presented by:

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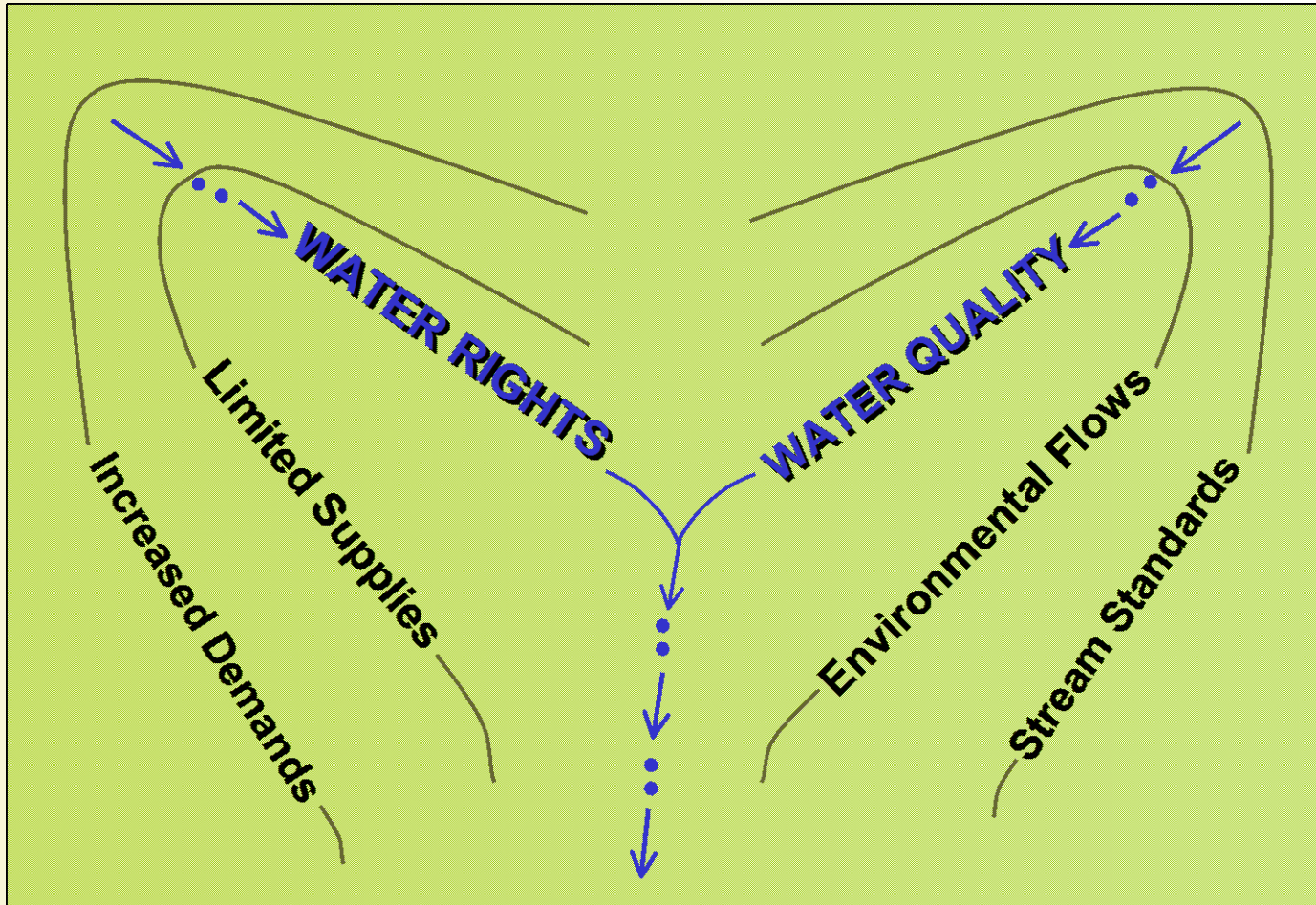
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“The good news is that soon we will all be drinking treated wastewater. The bad news is there won’t be enough to go around.”

-Buck Wynne, Former TWC Chairman



- Direct Reuse

- Water Code 11.046(c) – Water appropriated may be beneficially used and reused
- Treated effluent never reaches a state watercourse (i.e. flange-to-flange)
- Quality regulated by Water Code Chapter 26 and 30 TAC Chapter 210
- Primarily used for agriculture or landscape irrigation or for industrial supplies

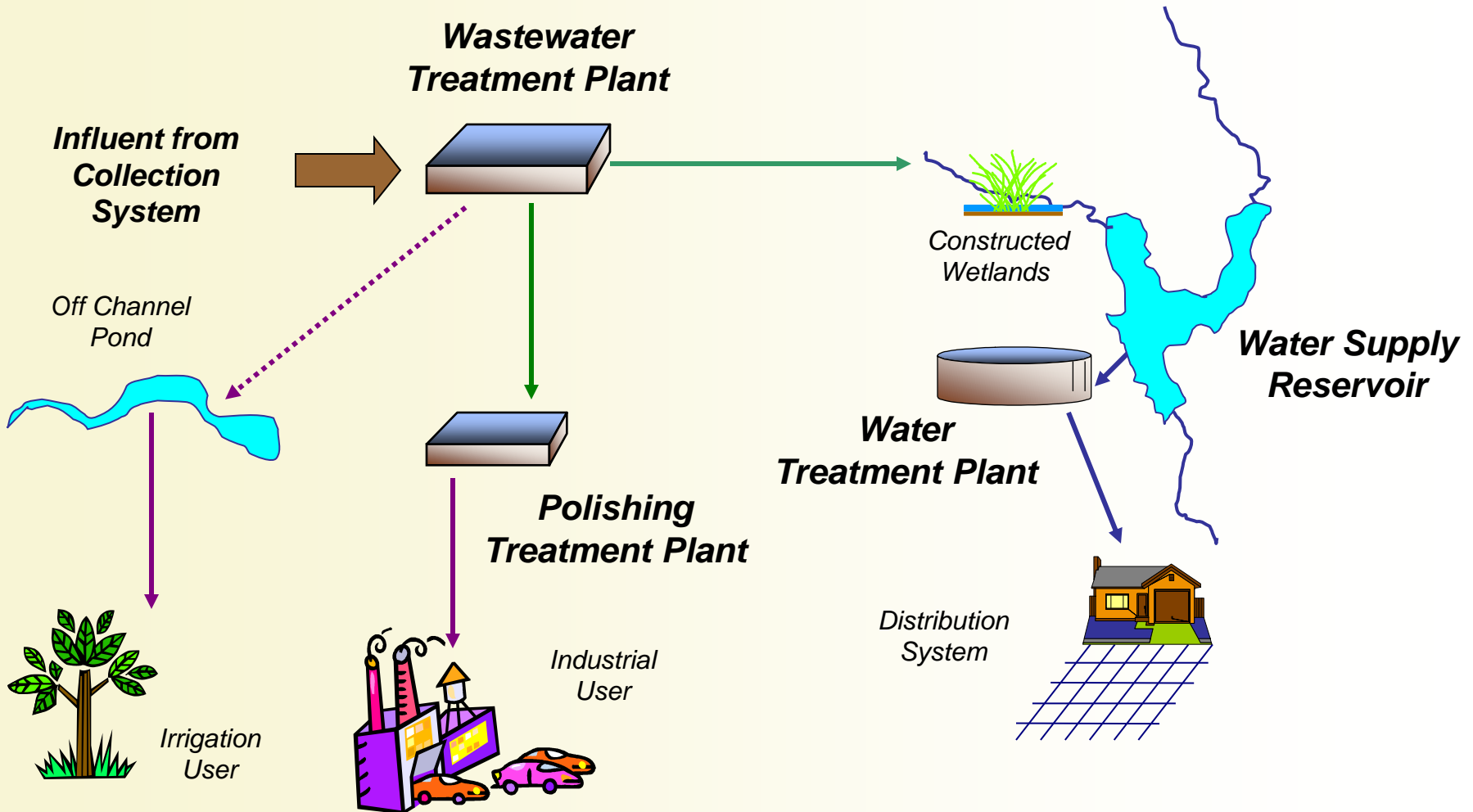
- Indirect Reuse

- Effluent is discharged into a state watercourse pursuant to NPDES or TPDES permit and diverted downstream for use
- Quantity regulated by Water Code Chapter 11 and 30 TAC Chapters 295 and 297
- Developed water-based return flows vs. surface water-based return flows
- Historical return flows vs. future return flows

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- Current Reuse Debate
  - Should there be a distinction between surface water-based effluent and groundwater-based effluent?
  - Should there be a distinction between historical return flows and future return flows?
  - Is a bed-and-banks authorization a new appropriation subject to priority and other full water rights permitting conditions?
  - Who can (or should be able to) apply for reuse permits?
  - What level of notice and opportunity for hearing is appropriate for reuse applications?



- Water Law 101
  - Prior appropriations system in Texas and the issuance of a water right.
    - Priority date
    - Water availability
    - Beneficial use
    - Existing water rights
    - Environmental impacts
    - Consistency with the Regional and State Water Plans
    - Notice within the basin

- Surface Water-Based Return Flows
  - Water Code 11.046(c)
    - Water diverted under “a permit, certified filing, or certificate of adjudication”
    - Returned to a state watercourse
    - Such returned water is considered “surplus water” available for the environment or subject “to appropriation by others”
  - No distinction between historical return flows and future return flows

- **Surface Water-Based Return Flows (con't)**
  - New appropriation under Water Code 11.121 or amendment under Water Code 11.122(a)
    - Anyone can apply (but discharges/diversions are not guaranteed)
    - Priority date assigned
    - Full notice issued
    - Water availability analysis
    - Environmental flow limitation
    - Beneficial use necessary
    - Consistency with the Regional and State Water Plans

- Surface Water-Based Return Flows (con't)
  - Necessity of a bed and banks transfer pursuant to Water Code 11.042(c)?
    - The conveyance and diversion of “water” (i.e. transfers of in-basin surface water, groundwater, imported surface water)
    - Does not include stored water (11.042(a)) or groundwater-based effluent (11.042(b))
    - Carriage losses utilized
    - Environmental concerns and senior water rights protected with low flow conditions
    - Additional notice not necessary

- Groundwater-Based Return Flows
  - May include "developed water-based" return flows
  - Water Code 11.042(b)
    - Discharge and diversion of return flows “derived from privately owned groundwater”
    - Distinguishes between “existing” discharges (i.e. historical discharges) and “future” discharges.
    - Reuse by the “discharger”
    - Requires a bed and banks “authorization”
    - No requirement for a new appropriation
  - No longer defined as “surplus water” under Water Code 11.046(c)

- Groundwater-Based Return Flows (con't)
  - Bed and Banks Authorization
    - Carriage losses utilized
    - Low flow conditions may be utilized to protect the environment
    - For historical discharges, low flow conditions may be utilized to protect existing water rights
    - For future discharges, discharger must obtain authorization from TCEQ before increasing reuse
    - Notice pursuant to 30 TAC 295.161

- TWCA Position
  - Recognize past and pending projects
  - Treat direct and indirect reuse the same
  - Honor return flow conditions in existing permits, including WAM assumptions
  - Exclude future developed water-based return flows from environmental flow considerations
  - Address title in contracts

- Recent TCEQ Actions Regarding Reuse:
  - February/August 2005 Commission Agendas
  - Applications filed before February 25, 2005
  - Current staff practice vs. potential policy shift
  - Outstanding issues waiting for clarification



- Issues needing clarification:
  - Are bed and banks authorizations new appropriations?
  - When does reuse require a WAM assessment?
  - Who can apply for reuse authorization?
  - To what extent is notice required for reuse applications?
  - How does reuse fit within Texas' prior appropriation system?
  - When are bed and banks authorizations necessary for reuse authorization?

- The City of Irving Two-Step Approach:
  - Commission action on Nov. 30, 2005
  - Granted the authority to reuse effluent from Lake Chapman (IBT to the Trinity River)
  - Did not include a bed and banks authorization (Irving must re-apply for such authorization)
  - Full injury analysis for water rights and the environment will be done with a bed and banks authorization

Questions?



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