



**End the Urban v. Rural Water Wars!  
Vote No on Constitutional Amendment 6  
Independent Texans  
September 2013**

## **Vote No on Constitutional Amendment 6 End the Urban vs. Rural Water Wars!**

**Proposition 6 as it will appear on the November 5 ballot:** “Creating funds to assist in the financing of priority projects in the state water plan.”

**Proposition 6 as it should appear on the November 5 ballot:** “Providing an endowment for an estimated \$30 billion of cash subsidies for water borrowers, by diverting an initial \$2 billion from the State’s Rainy Day Fund into the State’s already generous water lending program, to offset the cost of up to 526 state water plan projects, which will be prioritized by the Governor-appointed employees on the Texas Water Development Board and financed without constitutional debt limitations.”

**Opponents:** A cross-partisan, grassroots coalition from across Texas, from tea party to greens, from rural and urban Texas, who share these common concerns: assuring an affordable and sustainable water supply; making growth pay for itself in the face of rising unaffordability in urban areas; prioritizing conservation first (before we move groundwater, deplete aquifers, and build reservoirs); and truth-telling by our government. This growing coalition meets in Bastrop, ground zero for aquifer protection on Saturday, September 21<sup>st</sup> to attend a debate on Prop 6, after which a straw poll will be taken.

**Proponents:** Water Texas, PAC, established by the Speaker of the House, Joe Straus (R-San Antonio) and H2o4TEXAS Coalition (H2o4TEXAS). A strong majority of Texas legislators have joined with Water Texas, PAC. H2o4TEXAS has grown from the coalition of the same name that backed Proposition 2 in 2011, to now include an abundance of water marketers, major industries, cities, lawyers, consultants, and oil and gas companies as sponsors. Although they have not joined the ranks of H2o4TEXAS, some environmental groups such as the Sierra Club have endorsed Prop 6.

### Summary

Texas officials and proponents of Prop 6 seek to capitalize on our rising and justifiable fear of drought to convince us that the projects in the state water plan must be aggressively pursued (we might add, without serious scrutiny). Alas, they tell us, there is not enough money available to build them before the state’s population almost doubles by 2060. They argue the funding emergency will only be satisfied by making Prop 6’s “fiscally disciplined investment in our water future”. The initial \$2B of seed money, when leveraged into the expected \$30B, will coincidentally be just enough to pay the “State’s portion” of the estimated \$53B cost. (They do not bother to tell us exactly how the taxpayer’s portion, aka the State’s portion, is determined, nor have they told us how \$2B grows to \$30B, if it is repeatedly loaned out for expensive projects with deferred repayment terms.)

A reorganized Texas Water Development Board (TWDB), as the State’s water financing agency, will ultimately determine who gets the money, for what projects and when. Although Prop 6 has garnered support from some in the environmental community, any honest environmentalist will acknowledge that critically needed rural and conservation projects are not guaranteed priority under Prop 6.

Texas does have a water crisis due to many competing interests, many reasons to use water, and less water to be used. Drought has become an all too familiar component of our way of life. Texans are divided over what to do about it, just as they are divided over whether the projected state population of 42 million by 2050 is realistic, given the current constraints of drought on the water supply. A conversation about water and growth would be timely in the face of today’s bleak Texas landscape, *before* the Speaker of the House and his hand-picked leaders force yet another constitutional amendment on us. We were assured Proposition 2 was the answer to our water finance problems only two short years ago. Prop 2 gave TWDB \$6B of revolving debt authority, also free of constitutional debt limitations.

The “growth lobby” has indeed capitalized on our water woes to short-circuit any conversation about growth versus water. The Legislature has enabled them to fabricate a funding crisis, to assure there is money set aside, now, to fuel their profits from growth. The supporters of Prop 6 have engaged in the reverse engineering that is inherent in the state water plan --- exponential growth is simply assumed, and projects that will “develop” the state’s finite water supply are designed to meet that growth. Their leader, Governor Perry, defies Mother Nature with his claims to be luring 1,000 people per day to Texas. The problem for the Governor and his allies is that money cannot make it rain.

Some of the projects in the state water plan, such as reuse or desalination of brackish groundwater, may make sense after further scrutiny. However, rural Texans believe the plan puts their groundwater and their land squarely in the sights of special interests, who plan to move water to urban growth corridors. Cities should allow the natural water market (i.e., local availability) to select population growth. Instead, groundwater that depends on rain for recharge, and surface water reservoirs created by flooding agricultural land will be piped away to serve urban populations. We fear making in-migration a first priority will also lead to priority for unwise and hugely expensive water projects, creating winners and losers in the process. Most Texans we know do not trust Rick Perry and his cronies at TWDB to choose for them.

Instead of a fiscally disciplined investment, Prop 6 is a \$2B-plus slush fund of incentives, up for grabs at the front end by the growth lobby. Instead of solving the water crisis, the hidden costs of Prop 6 will be further unaffordability in urban areas, the dewatering of aquifers (and the rivers, streams, bays and estuaries they feed) and prioritization of water projects for the wrong reasons.

Prop 6 further fails to capitalize on the realization by rural and urban Texans that *conservation* of our finite water supply, and the funding of both urban and agricultural conservation projects, are key elements of insuring a sustainable water supply for the future. Prop 6 lacks a bona fide commitment to either.

Water borrowers have not utilized their access to the cheapest capital in Texas, including Prop 2, which was narrowly approved by voters in 2011. The Governor’s allies are now back at the trough, seeking subsidies for more favorable financing and prioritization of questionable water projects. The best that can be said for Democrats is that they acquiesced in a political deal to win education funding concessions. The result: A diversion of \$2B of taxpayer money from the Rainy Day Fund, risking depletion of the State’s emergency readiness and jeopardizing the State’s AAA credit rating, without assuring either the sustainability or affordability of water in the future.

Prop 6 is not a solution. It compounds the problem. A “No” vote on Prop 6 is a vote for conservation—conservation of our state coffers and conservation of our water.

### **Introduction**

The Texas water wars are undeniably fueled by exponential urban growth and those who profit from it. As one example, residents of Lee and Bastrop counties, just to the east of Austin, continue to fight repeated attempts by water marketers, river authorities and governmental entities to move groundwater to water-hungry growth corridors. As a result, areas like the Lee and Bastrop portion of the Carrizo-Wilcox Aquifer have long been their target. Permits to transfer water have burgeoned in surrounding counties that lie over the same aquifer, which depends on rainfall for its recharge. *Unlike many groundwater districts in the state, the Lost Pines Groundwater Conservation District (Bastrop and Lee counties) has risen to the challenge of their legislative charge to protect our Texas aquifers.*

It is likely that Lost Pines GCD will be sued by Forestar Real Estate Group, a Temple Inland offshoot with extensive real estate, oil and gas, and water assets. Forestar seeks to sell water from Lee County to users in the I-35 corridor, where local supplies will not support population projections. Lost Pines GCD reduced Forestar’s permit request from 45,000 acre-feet per year (AFY) to 12,000 AFY. (One acre-foot of water is equal to 326,000 gallons.) Former Williamson County Commissioner and water speculator Frankie Limmer’s End Op, L.P. is seeking to pump 56,000 AFY from the same aquifer formation, also for transfer away from these counties. Forestar and End Op have

the financial resources to outspend Lost Pines GCD and take their cases all the way through the courts, risking the solvency of the groundwater district in the process. These and other speculators use the rule of capture to leverage the water rights sold to them by a few landowners, into mega-permits that will rely on the *involuntary* removal of their neighbors' water as well.

If allowed, these projects will overdraft an aquifer that is slow to recharge. They also involve important and complicated issues of Texas water law. Unfortunately, they pit neighbors against one another, giving rise to a call for policy solutions, instead of litigation, by conservation-minded rural and urban Texans. In the Bastrop/Lee County-based House District 17, many residents appeared before Lost Pines GCD and their local County Commissioners Courts to voice their concerns that over-pumping will irreparably harm the local water supply and the local economy. In response, their courts passed resolutions encouraging the groundwater district to conserve and protect local aquifers, and the groundwater district listened. However, those residents feel their voice in the Legislature has been silenced by their own State Representative, Tim Kleinschmidt (R-Lexington). Rep. Kleinschmidt apparently chose self-interest over effective representation of his constituents by selling his family's water rights to the Forestar project.

On the other end of the intended Lee-Bastrop water grab, the search for more equitable solutions seems to fall on equally deaf ears in Hays County, where the Commissioners Court has joined the Forestar water grab. The court is seeking 25,000 to 50,000 AFY, solely from the Lee-Bastrop aquifer, and is poised to execute a contract with Forestar to reserve an undisclosed amount of water from that source. They seem unconcerned about Lee and Bastrop counties, when they listen to Forestar supporters tell them "the [water] train is leaving the station, you had better get on". Unfortunately, this is the message routinely delivered by water marketers to create a sense of urgency in urban water consumers. Prop 6 supporters seek to create a similar urgency in the minds of voters.

Prop 6 is a disingenuous attempt to further manipulate Texas water policy for urban gain at the expense of rural Texas, and for private profit at the expense of ratepayers and taxpayers. Those who see through the false promises of Prop 6, also realize the necessity of defeating it as the first step in de-escalating the water grab in favor of seeking more equitable solutions.

### **Background**

The state water plan is a compilation of water plans and projects developed every five years by sixteen regional water planning groups. The plan makes policy recommendations to the Legislature that the Texas Water Development Board (TWDB) considers "needed and desirable to facilitate voluntary water transfers", in order to meet water supply needs during drought of record conditions. The wisdom and feasibility of the projects and recommendations in the water plan, and how they are to be implemented and paid for, divides Texans. Rural and urban Texans alike seek to conserve and protect the sustainability of our water supply. Their efforts have largely been ignored or thwarted by a system that caters to those who have the funds to hire a lobbyist, or more accurately, a herd of lobbyists.

Water shortages currently exist and will continue to exist in Texas, irrespective of how many people move here. Small towns all over Texas are running out of water, and water wars throughout the state are beginning to crop up. Meanwhile, the Governor is running ads in Illinois, California and New York, encouraging more in-migration. But regardless of the Governor's follies, the goal remains two-fold --- to supply, and pay for, clean water for all Texans on a sustainable and affordable basis, whatever the population.

Historically, the legislative plan for state assistance in financing water projects has been biased in favor of debt-financing, outside of constitutional debt limits. The constitutional "pay as you go" debt limits designed to balance the state's budget generally do not apply to water. Many believe it is a bad idea to use constitutional amendments, such as Prop 2 in 2011 and the proposed Prop 6, to escape the constitutional debt limitations.



In any event, the current availability of debt financing for water is a reality. An examination of that underlying fact is beyond the scope of this paper, which is limited to exposing the folly, *at this time*, of amending the State Constitution to divert \$2B from the Rainy Day Fund, in order to provide water borrowers more generous access to capital than already exists.

### Analysis

#### **Prop 6 Does Not Solve the Problems of Sustainability and Affordability**

Prop 6 was designed by the growth lobby to steer new residents to pre-determined growth corridors by affording opportunities to influence the prioritization of urban projects. Creation of an emergency mentality is integral to successfully promoting projects that serve urban populations, which comprise the majority of voters. In actual fact, Prop 6 addresses an urgent financial problem that does not exist. We set out below why good intentions to secure a sustainable and affordable water supply for all Texans will not be satisfied by Prop 6.

Those who realize the phrase “new water” is misleading, understand the priority of conservation and the use of other measures to preserve the finite supply of water. They are at odds with the growth lobby, which we define to include the marketers of land, large-scale developers, large consumers and purveyors of water, such as municipalities, river authorities and water marketers, and their attendant consultants, experts and attorneys --- in short, cities and river authorities that need water to feed growth and economic development, speculators<sup>1</sup> who want to profit from both growth and water, and their servants. The Texas Legislature is their enabler. We do not automatically assign bad motives to true public servants who fall within the universe of this growth lobby. Clearly, there are those who work tirelessly and honestly on water issues for the common good. But it is also a fact that aggressive promotion of private business interests can and does infect the water planning process in Texas.

As opponents of Prop 6, we are not anti-growth, as proponents may paint us. We fully understand and accept that we cannot stop growth. We are simply saying we reject the premise that landowners, taxpayers and ratepayers must subsidize the public infrastructure growth requires, while speculators profit and walk away. This, like some of the issues that surround water in Texas, is a complex subject that cannot be fully addressed here. We would refer those who want to understand the real cost of growth, and its implications for Texas, to CostofGrowth.com, a site commissioned by central Texas real estate investor and whistle-blower, Brian Rodgers. In any event, Prop 6 is a perfect example of the perversion of good intentions by postponing hard decisions about sustainability and affordability of our water supply, in order to further postpone payment of the cost of growth.

Our overriding premise in opposing Prop 6 is simply stated. *There is no financial emergency that compels adding a cash subsidy fund of any size to the existing options for financing water projects.* Instead, we believe the proposed removal of this fund from taxpayer oversight is another attempt to permanently off-load the water cost of growth on to taxpayers and ratepayers. Supporters of Prop 6 and Prop 2 now say Prop 2’s \$6B of evergreen bonding authority for TWDB is deficient and must be “permanently funded”. This is misleading. Bottom line, neither the Legislature nor the supporters of Prop 6 have made their case to the citizens of Texas. We do not say that the case for additional water funding cannot be made in future.

#### **Prop 6 is the New Cash Cow**

TWDB is authorized to sell bonds in the capital markets, and lend the proceeds to qualified water borrowers under the Prop 2 program. The program allows very favorable loan terms and requires no infusion of cash from Prop 6. TWDB could continue issuing bonds over and over, so long as no more than \$6B in bonds is outstanding at one time.

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1 “Speculator” in the business context may be defined as a futures market participant who attempts to gain from anticipated change in prices of commodities or financial instruments. Speculators aim primarily at quick profit from a short-term acquisition of assets. We all know speculation in the context of real estate; now scarce water creates an investment opportunity, producing speculation in water, which has been described as the “ultimate commodity.”

A revolving bond program like Prop 2 is capable, and *was capable as soon as Prop 2 was passed*, of financing many water projects. It is also true that a large number of potential water borrowers currently have access to favorable credit, on their own, to finance water projects they deem necessary and in whatever order of priority they determine.

Texas voters passed Prop 2 in 2011, with a narrow 1.5% margin. At the time, voters were assured by Prop 2 supporters, like the Texas Association of Realtors and H2o4TEXAS, that the \$6B evergreen bonding authority would build critical local water supply projects, create jobs and protect us from drought and wildfire without taxpayer contribution. *Yet, the \$6B bond program has yet to be tapped.* The same supporters now say we must “act in concert” with the Prop 2 bonding authority by infusing \$2B of seed money to make the 2011 program work.

H2o4TEXAS told voters in 2011, “This [\$6B bonding authority for TWDB] does not cost state taxpayers any money. Yes, that’s right, Prop 2 advances critical, job-creating local water projects at no cost to state taxpayers”. Just two short years later, the 2011 program remains untouched by borrowers, and is now described as deficient and unworkable, because it has “no source of funding”. The Legislature, and potential big borrowers, aka the growth lobby, claim \$2B of “cash” (to be loaned out over and over, while allegedly growing to \$30B over time) must be fed into the 2011 program to avoid more taxes and fees. Why were voters not privy to the need for this seed money in 2011 when they made the difficult decision to support Prop 2? And isn’t money in the Rainy Day Fund essentially state taxpayer money? How is it that Prop 2 supporters told us Prop 2 would not cost state taxpayers any money, but failed to tell us it would not work without funding *from taxpayer money*?

Rep. Van Taylor (R-Plano), who holds an MBA from Harvard University, was rebuffed by his House colleagues when he questioned how there can be a “water funding crisis” if \$6B of bonding authority has not been touched. He offered a simple analogy that any college student would understand--- it is like giving someone a credit card with \$6B of credit, only to have them ask for another \$2B before charging anything. Truth be told, the opportunity to use someone else’s money, indefinitely and without voter oversight, is too good to pass up by the growth lobby. If, however, the \$2B is left to grow in the Rainy Day Fund, it would still be available for true emergencies, including when and if taxpayers are convinced that (pay as you go) general revenue and existing debt-financing tools are insufficient or should not be used. In the meantime, let the Legislature, TWDB and the growth lobby remain accountable to us to prove the true cost of mega-projects, and how they will actually solve the real water crisis of affordability and sustainability.

The Texas regime for financing water projects already provides the best access to capital of all government functions in Texas. The only purpose for infusing more State money, *from any source*, into the lending program is to assure enormously expensive projects are built quickly, with the least amount of taxpayer oversight and the most amount of special interest profits.

To argue that the \$6B bonding program has become entangled in bureaucratic restrictions is a red herring. We are convinced the program has not been accessed because it does not provide enough so-called “critical loan enhancements,” including even lower interest rates than currently available and deferral of loan repayments until projects are up and running. That is, proponents urge that there is a further need for the State to bear the burden of bridging the gap between project implementation and the day customers begin to pay for services, aka the “State portion” of funding the water plan. This is code for “not enough postponement of the costs of growth”.

As many as 75% of the projects in the state water plan have strong enough credit to borrow on their own, and otherwise have adequate access to the State’s credit. However, they have not done so, in large part because the special interests that profit from these projects simply want the use of virtually “free” money. In short, they seek to increase profits and reduce risk. Large cities may not have a profit motive, but they do see the value of using someone else’s cash whenever possible to avoid upfront costs --- even if they could afford to finance or pay for the entire project. And they do see the advantages to their coffers of entering into public-private partnerships, but the private side of the equation rarely enters any such partnership that does not both maximize profits and minimize risk to the private entity.

We urge that the risk of funding bad projects simply because an astronomical sum is lying around for the taking is an intolerably high risk. On the front end, the massive transfers and stockpiles of water contemplated to access the free money (i.e. projects to serve “major populations”, like Forestar and End Op envision) will irreparably alter the *sustainability* of the donor communities’ water supply and agricultural contributions to the state economy. Meanwhile, the “can” of actually paying the true cost of these projects is kicked down the road onto the backs of ratepayers and taxpayers, with no guarantee citizens on either end of the pipeline will be able to *afford* the water they need for survival. There is no legitimate reason why self-supporting bonds, and even non-self-supporting bonds<sup>2</sup> cannot be issued *today* under the \$6B bonding authority. Entities who could borrow simply refuse to borrow until the pot is sweetened with more up-front subsidies --- interest rate reductions, bond enhancements, deferred interest payments --- that in turn may disguise just how costly, and ultimately unaffordable, the projects may be for taxpayers and ratepayers. The danger of future unaffordability is inherent in any debt-financed regime, a concept most ordinary homeowners as well as most taxpayers understand today.

Then Chairman of the Senate Finance Committee, Steve Ogden (R-Bryan) had doubts about the wisdom of giving TWDB \$6B evergreen bonding authority in 2011. He described the program as way too complicated for him (or taxpayers) to understand. We believe the now retired Senator would have to agree the fog has thickened. What we *do* understand is that we are being manipulated into a false emergency to assure that many multiples of \$2B, infused into many multiples of the \$6B bonding authority, will be rendered outside the reach of voters over time. The growth lobby further expects this deception will suppress the conversation about whether the water supply will actually support a doubling of the population.

The speculators’ mantra has changed from “we have to get the water before somebody else does” to “we have to get the water *and the money* before somebody else does.” The rest of us will get to pay off their loans, and then some --- the “then some” being the future market price of water, over which we will have little or no control. To boot, the sustainability of our supply of water, and the food and fiber it produces for all Texans, may be compromised.

### **“Prioritization” Feeds the Cow**

The Legislature has determined that the projects in the state water plan must be prioritized. While it may be true that a more formal prioritization regime is needed to replace the current “first come, first served” process, we are concerned that the growth lobby’s desire to move to the head of the line will prevail. The wish list that comprises the water projects in the state water plan is littered with hugely expensive and ill-conceived projects, many of which simply favor one segment of the population over another and endanger the quality of rural life.

The enabling legislation for Prop 6 streamlines the structure of TWDB and changes it to a salaried, Governor-appointed board. The newly appointed Board is comprised of a lawyer from his own staff and two former Perry appointees, including the former Chairwoman of the Texas Lottery Commission, Mary Ann Williamson (Ric Williamson’s widow), whose term runs until 2019. Not to speak ill of the deceased, but it is difficult to forget Ric Williamson’s role as the Transportation Commission chair in his relentless attempts to ram the Trans-Texas Corridor on rural Texans and independent farmers.

Like other agencies that have become the Governor’s “stacked decks”, we fear the new TWDB will likewise be subject to manipulation, in both determining and applying the rules for prioritization. The result may be outrageously expensive and unaffordable delivery and distribution projects (e.g. water transfers and pipelines that strip rural areas), not to mention, in the longer term, water-wasting reservoirs that flood critical agricultural land and fly in the face of conservation.

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<sup>2</sup> Self-supporting bonds are generally described as bonds (loans) that are repaid by residents of the communities that benefit from them. Non-self-supporting bonds, which are also permitted under the 2011 legislation but which were swept under the rug in the propaganda supporting the \$6B program, may, but do not necessarily, require an appropriation of general revenue to assist repayment. The Legislature must specifically authorize non-self-supporting bonds.

There are those that argue prioritization of projects is a good thing and should work well to weed out unworthy projects. They urge citizens to simply get involved in the regional water planning process to effect honest oversight of projects (including in particular, conservation projects), instead of worrying about the \$2B fund. We agree that prioritization is preferable to “wish lists”; however, we have done our homework and due diligence, and we have witnessed, repeatedly, the propensity of public and private special interests to dominate the process at the regional planning level.

### **Prop 6 Gives NO Guarantees to Rural and Conservation Projects**

Prop 6 essentially claims to guarantee that at least 10% and 20%, respectively, of the endowment fund will be used for rural Texas projects and conservation programs. If we were confident of this guarantee, we might have entertained supporting the amendment. However, the tricky language in the House’s enabling legislation for Prop 6, and the tenor of the debate over HB 4, concerns us enough to deny our support. Some of our environmental friends are supporting Prop 6, much to our regret. We believe they have made an honest, but grave, mistake.

The language in HB4 that *supposedly* dedicates 10% of the fund to rural projects, which may include agricultural conservation, and 20% of the fund to conservation and re-use in each five-year planning period, is ambiguous. Ambiguity could have been avoided if the phrase “*shall apply* not less than” such percentages had been substituted for the phrase “*shall undertake to apply* not less than”. Specifically, we ask what is the purpose of saying “*shall undertake to apply*” other than to avoid the consequence of putting the words “*shall*” and “*apply*” together?

The floor debate in the House just before the vote did not allay our concerns that consensus was reached on the priority of conservation set asides. Rambling arguments explored such fundamental questions as how “conservation” would be defined and whether conservation “mandates” would result. We hope there is universal agreement that conservation (and rural projects) must be prioritized, but we are concerned that the House did not actually reach consensus before the debate was cut off by Chairman Ritter.

On balance, the set asides are not reason enough to support an ill-advised and ill-timed expenditure of state funds. Instead, we would borrow from Rep. Taylor’s astute reasoning that “if funding water projects is that important it should come from the General Fund.” We would extend that reasoning to conservation and rural projects; we do not need Prop 6 to assign the appropriate priority to these projects.

### **Prop 6 Endangers the Rainy Day Fund and Risks Texas’ AAA Credit Rating**

As noted, Rep. Taylor gave voice to taxpayers, who are too smart to fall for raiding the Rainy Day Fund for a non-emergency. Rather, as he argued, perhaps water should receive the same treatment as other regular, but critical, state spending needs, such as education and healthcare, which depend on general revenue. Following this reasoning, placing TWDB’s borrowing authority outside constitutional debt limits does not necessarily mean taxpayers should also relinquish oversight over cash subsidies for water borrowers.

The Comptroller argues that severance taxes on the oil and gas industry, as the Rainy Day Fund’s primary source of funding, virtually guarantee the health of this emergency fund. This argument not only overlooks the cyclical and volatile nature of the industry, but also ignores the Comptroller’s track record for such predictions. Her estimate that the Rainy Day Fund will reach \$11.8B by the end of fiscal year 2015 must be scrutinized against her office’s previous estimates of Fund balances ----off by at least 23% each year and by an overall average of 166% over the last seven years. Preservation of the Rainy Day Fund as the backstop for a revenue shortfall or a natural disaster should not be left to chance.

We further agree with Rep. Taylor who argued in March to preserve the Rainy Day Fund not only as a true emergency fund, but also as a fundamental component of the State’s superior credit rating. Little did he know the third special session on transportation would also target the Rainy Day Fund, for *roads*. If the Legislature determines the Fund is “full” in a particular year, half of its funding from the oil and gas severance tax will be skimmed “off the top”. Voters in the 2014 general election will be asked to approve this plan with yet another constitutional amendment.



We urge that at least 7 to 7.5% of the State's biannual General Revenues be kept in our Rainy Day Fund as an important component of the State's AAA bond rating (a current "rating minimum" of approximately \$7B). The loss of even one "A" could increase State borrowing costs by \$50 million. Rating agencies look at many indicators of credit strength to determine credit ratings, but immediately available funds in reserve is certainly a major factor. (At least one rating agency would require an even higher percentage of ready reserves to award AAA status.)

Robbing the Fund to finance water (not to mention roads) is unnecessary and unwise. In the case of water financing, the Fund is just too good to pass up as a source of ready cash to make the water wish list come true and finance the stampede to "develop" water. Withdrawals of these magnitudes from the Rainy Day Fund set a dangerous precedent for the integrity of the Fund's purpose. Prop 6 will open Pandora's Box.

### Conclusion

Today, Texas is somewhere in between water as a natural resource, and water as a commodity. Some favor a publicly-owned water supply, others favor privatization or public-private partnerships. The Texas Constitution describes water as a natural resource, but the Texas Supreme Court and state law tell us that landowners own the water beneath their land. Landowners (and water speculators) may argue this vested property right negates the status of water as a natural resource. However, the Supreme Court has also affirmed the Legislature's constitutional authority to impose limitations on overpumping of aquifers (expressed through the creation of groundwater conservation districts), to preserve and conserve water as a natural resource for all Texans. Nevertheless, in most cases, the rule of capture gives landowners (and speculators who buy or lease landowner water rights) the right to "capture" as much of their water, *and their neighbors' water*, as possible --- which plays into the commoditization of water.

Most landowners are stewards of the land and the water beneath it. However, a water marketer may end up controlling thousands of acres of water rights. Groundwater conservation districts, if any are present in a particular area, have the authority to regulate spacing and production of wells, but as a practical matter, a handful of "landowners" may still control all of the "available" groundwater.<sup>3</sup> Not surprisingly, water speculators who seek to exploit water resources for profit, also seek to whittle away at conservation districts' legislative authority to regulate production. Those who would speculate in water as a commodity want to short-circuit the discussion of how production and development of water should be regulated. They also want to short-circuit the growth versus water conversation, in order to assure the priority and funding of their projects before the public actually knows what happened.

Our view is that picking winners (water speculators and urbanized areas) and losers (rural and those who produce our food) in the competition for a finite water supply is not an option. Also not an option is fabrication of an emergency in order to fund questionable projects, free of constitutional limits on State debt, with billions of dollars of State reserves ---reserves that many view as taxpayer money rather than State money. We are concerned water funding also will be free of further public debate.

A cooperative and deliberative process for finding solutions to protect a resource necessary for survival, including the survival of Texas' vital agriculture industry, is really the only option. We believe the case has not been made to warrant short-circuiting that process with Prop 6. Our task, throughout each step of this process, will be to assess if the balance has tipped because of a burgeoning population. Will our water actually stretch as far as our leaders say it will, no matter how many projects we build and how many aquifers we drain? And does there come a point when fewer than all will be able to afford to drink it? Water is necessary for our survival – do we want to find out we entrusted our water supply, and wrote a blank check for \$2B (or \$30B), to people who did not deserve our trust?

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<sup>3</sup> In the absence of a groundwater district, groundwater "availability" in an area may simply be the amount of water that physically may be withdrawn from an aquifer, down to the last drop. In contrast, "regulatory availability" may be defined as the amount of water that can be withdrawn while still meeting the regulator's (i.e. the groundwater conservation district's) limits on drawdowns caused by pumping. A five-gallon bucket of water is fully available, while regulatory availability of the bucket may be only one or two gallons if it is determined a greater withdrawal will result in unacceptable "overdrafting" of stored water.

Rejecting Prop 6 will be an easy “NO” vote for those voters who believe in “pay as you go” for all state spending, instead of debt-financing for special needs like water. A “NO” vote should likewise be easy for those who either tolerate or prefer debt financing. The adequacy of existing access to capital for water borrowers supports either group’s rejection of Prop 6.

If you do not understand what the \$6B constitutional amendment was for, and you do not understand the “emergency” that now requires the dedication of an extra \$2B-\$30B endowment fund for projects that have yet to be identified and prioritized, the solution is simple ---vote NO on Prop 6. Let the Legislature explain to us what went wrong in 2011 that we need to fix in 2013. Let them take input on what the voters want, rather than give us what the lobbyists want.

Voters are going to have to choose the priorities of this State FOR the Legislature (remember, they are supposed to work for their constituents). We should begin with protecting our water supply and agricultural land, and putting our state leadership on notice they will be “out of business”, if they fail to recognize their primary responsibility is to serve *all* citizens of Texas.

Defeating Prop 6 is a good start.

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This paper is the result of a collaborative process, and was written for a growing movement of Texans who are working together from across the political and ideological spectrum. Because we share a common concern about the political corruption that has overtaken our state policy making, we are coming together to defeat Constitutional Amendment 6. The defeat of Prop 6 will be our message to state leadership that, when it comes to something as critical as water policy, we can no longer afford to keep getting it wrong.

### **A special note from Independent Texans**

*Independent Texans is a citizens general purpose PAC established in 2001, following the disbanding of the Reform Party of Texas. Though not a political party per se, Independent Texans believes there must be a third force that works inside and outside all political parties to bring citizens together across the partisan divide. Independent Texans is holding its first-ever state convention in Bastrop on September 21<sup>st</sup> at the Bastrop Convention Center. Media is invited.*

### **Sources\***

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