Greater Edwards Aquifer Alliance

Member Organizations

Act Now Comal
Alamo, Austin, and Lone Star chapters of the Sierra Club
Bexar Audubon Society
Bexar and Travis-Austin Green Parties
Bexar Grotto
Boerne Together
Bulverde Neighborhood Alliance
Bulverde Neighborhoods for Clean Water
Cibolo Center for Conservation
Citizens for the Protection of Cibolo Creek
Comal Conservation
Comfort Neighbors
Congregation of Divine Providence
Environment Texas
First Universalist Unitarian Church of SA
Fitzhugh Neighbors
Friends of Canyon Lake
Friends of Castroville Regional Park
Friends of Dry Comal Creek
Friends of Government Canyon
Fuerza Unida
Green Society of UTSA
Guadalupe Riverkeepers
Guadalupe River Road Alliance
Guardians of Lick Creek
Hays Residents for Land & Water Protection
Headwaters at Incarnate Word
Helotes Heritage Association
Hill Country Alliance
Kerr County Water Alliance
Kendall County Well Owners Association
Las Moras Springs Association
Leon Springs Business Association
Llano River Watershed Alliance
Native Plant Society of Texas -- NB
Native Plant Society of Texas – SA
Northwest Interstate Coalition of Neighborhoods
Pedernales River Alliance – Gillespie Co.
Preserve Castroville
Preserve Lake Dunlop Association
Preserve Our Hill Country Environment
River Aid San Antonio
San Antonio Audubon Society
San Antonio Conservation Society
San Marcos Greenbelt Alliance
San Marcos River Foundation
Save Barton Creek Association
Save Our Springs Alliance
Scenic Loop/Boerne Stage Alliance
Securing a Future Environment (SAFE)
SEED Coalition
Signal Hill Area Alliance
Solar San Antonio
Texans for Environmental Awareness
Texas Cave Management Association
Trinity Edwards Spring Protection Assoc.
Water Aid – Texas State University Watershed Association
Wildlife Rescue & Rehabilitation

PO Box 15618
San Antonio, Texas 78212

May 19, 2025

The Honorable Brian Birdwell, Chair
The Honorable Judith Zaffirini, Vice-Chair
The Honorable Members Alvarado, Blanco, Flores, Hancock, Hughes, Parker, and Sparks
Senate Committee on Natural Resources

Re: House Bill 49, An Act Relating to the Treatment and Beneficial Use of Fluid Oil and Gas Waste and Related Material, Including a Limitation on Liability for that Treatment or Use

The Greater Edwards Aquifer Alliance (GEAA) appreciates the opportunity to submit these comments on behalf of our sixty-two member groups that are allied in advocacy for the preservation of our ground and surface water resources in twenty-one counties within Central and South Texas. While we understand and appreciate the pressing challenges facing Texas' water supplies, GEAA is deeply concerned about the impact HB 49 will have on the health and safety of Texas' water supplies and land and on the Texans who depend on these resources.

We strongly oppose House Bill 49. Recycled produced water is not ready to be used outside of the oil and gas drilling and fracking process. Four components of the bill are the most concerning in regards to the state's ability to ensure Texans' health and safety.

First, HB 49 grants immunity from tort liability for a consequence of using treated fluid oil and gas waste (recycled produced water) to a person who takes possession of fluid oil and gas waste (produced water) for treatment, generates recycled produced water from that waste, and either puts the recycled produced water to a beneficial use or transfers the recycled produced water to another person with the contractual understanding that it will be put to beneficial use.

Second, HB 49 also exempts from tort liability the person who produces the waste or who supplies or conveys the waste to a treatment facility for the purpose of generating recycled produced water, if the tort is a result of a consequence of the subsequent treatment of the waste to generate recycled produced water; the subsequent use of the recycled water by any person; or exposure to any component of the waste or any byproduct of the treatment process.

Third, HB 49 further exempts the owner of the property on or under which the produced water is produced, conveyed, transported, or treated by others from liability in an action for damages for personal injury, death, or property damage arising from exposure to produced water, recycled produced water, or a byproduct of a process used to generate the recycled produced water. And fourth, the bill eliminates a claimant's ability to be awarded exemplary damages – a bad precedent to set in an incipient industry where there are many unknowns.

Produced water can be seven times as salty as seawater and is full of proprietary drilling chemicals, hydrocarbons, ammonia, radioactive elements, carcinogenic and toxic forever chemicals like per- and polyfluoroalkyls (PFAS), and naturally occurring hazardous compounds like arsenic and benzene, which is a carcinogen. Many produced water components are not covered by existing state and federal water quality standards and many

have limited toxicity data associated with them.[1] In Texas, companies are required to disclose which chemicals they use, but they are not required to provide the concentrations of those chemicals, limiting the understanding of the toxicity of produced water.

More than 1,100 chemical compounds are potentially present in produced water. Only 25% of these chemicals have approved methods available to establish treatment standards, and only 14% have toxicity values available in order for regulators to develop risk assessments.[2] Even if TCEQ does develop rules to govern the treatment and beneficial use of produced water, it will be severely hampered in its efforts by the lack of data and treatment standards associated with produced water chemicals. In order for the rules to even begin to be effective, TCEQ should require the disclosure of all chemicals used in the oil and gas drilling and fracking process by each operator *along with their concentrations*.

Other similarly situated states have determined that the reuse of produced water is not safe. After a lengthy rule-making process, New Mexico determined there is insufficient data on produced water and its treatment methods. They determined there is no way to discharge untreated or treated produced water into the environment safely in compliance with water quality standards and in a manner sufficiently protective of drinking water, agriculture, aquatic life, recreation, and wildlife.[3]

It is because of the variety in number and concentration of chemicals and in their toxicity that the second identified provision of this bill is perhaps even more concerning to us than the first, third, or fourth identified provision, though all four provisions are still highly concerning. Many of the chemicals used in the drilling process do not have an associated approved treatment method or the appropriate data available to form a risk assessment. Accordingly, much more of the burden and risk of damages should fall on the operator who generates the produced water or who supplies that waste to a treatment facility to generate recycled produced water. While it is, of course, the responsibility of the operator of the treatment facility to ensure their product is safe and meets all standards and permit requirements, they are operating at a distinct disadvantage due to the number of unknowns in this field.

We appreciate that the bill requires the Texas Commission on Environmental Quality (TCEQ) to adopt rules for the treatment and use of produced water, and does not completely rollback liability in all instances. For example, HB 49 does not affect the liability for damages for personal injury, death, or property damage arising from exposure to produced water, recycled produced water, or a byproduct if the exposure occurred due to gross negligence or intentional, wrongful act of omission or due to negligence and failure to comply with state rules, a Texas Pollutant Elimination Discharge System (TPDES) permit, or other TCEQ permit and does require the TCEQ to adopt rules to govern the treatment and beneficial use of fluid oil and gas waste, treated waste, and any byproduct of a process used to generate treated waste.

But given the limited data on the effect of produced water on land, livestock, agriculture, water supplies, and human health and the potential for serious detrimental impacts on these end users and the environment, we do not believe recycled produced water should be reused outside of the oil and gas drilling and fracking process, at least until much more data is available. At the very least, operators who generate produced water or treat produced water should not face limited tort liability, and the bill should include financial mechanisms for the industry to cover and respond to environmental problems, ensuring burdens are not shifted to the Texan taxpayer.

In considering this bill, we would urge this committee to consider a similar issue facing Texans: the unintended consequences of forever chemicals, or PFAS, present in water supplies and biosolid fertilizers. Texans and their

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[1] https://insideclimatenews.org/news/24032025/texas-oilfield-wastewater-treatment-small-nuclear-reactors/; https://www.texastribune.org/2023/10/31/texas-oil-gas-fracking-wastewater-spills-railroad-commission/; https://www.texastribune.org/2024/04/29/texas-treated-produced-water-disposal-discharge-rivers/

[2] https://texaslivingwaters.org/wp-content/uploads/TLW-EDF_Oil-and-Gas-Produced-Water-in-Texas_March-2025_Final-for-web.pdf

[3] https://westernlaw.org/nmproducedwaterrulefaqs/

livestock are facing the serious health impacts arising from high levels of PFAS present in specific situations and are likely facing lower but more widespread risks from PFAS present in smaller concentrations in our water supplies. Just because TCEQ has permitted an action does not necessarily mean those actions are safe. The high levels of PFAS causing untold harm in Johnson County are perfectly legal; the applicant had met all permit obligations under the law.[4] The prospect of a similar situation involving insufficiently treated produced water causing harm when used as potable or non-potable water supplies could be a recipe for disaster, especially if there is limited legal recourse to correct or compensate the injured parties for damages.

The legislature should not embark upon shielding additional operators and suppliers from their products' potentially harmful impacts to Texans' health and safety, especially considering lawmakers have made little effort this session to advance any of the bills filed to respond to the situation in Johnson County or to the threat forever chemicals pose to water supplies.

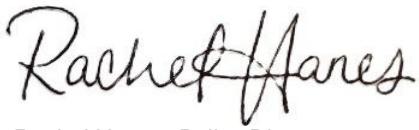
It is admirable that this legislature is working to increase water supplies in Texas, and many good bills that do so responsibly have been discussed and advanced during this session. GEAA recognizes that this bill is intended in part to help boost the state's water supplies. And it is true that produced water can help ease the pressures on Texas' water supplies – just in a stricter manner than what is potentially intended by this bill's authors and supporters.

Treated produced water should be recycled for use in fracking oil and gas wells and should replace fresh and brackish water supplies for fracking and drilling to the greatest degree possible. Between 2021 and 2024, in the Eagle Ford Shale, drillers used more than 10 billion gallons of Rio Grande surface water for drilling and fracking operations – enough water to meet the needs of 113,500 Texas households for an entire year. One company alone used enough Pecos and Rio Grande water over four years to supply the equivalent of the annual water use of more than 100,000 Texas households. Between 2009 and 2023, annual surface water use for mining, including oil and gas operations, averaged about 13 billion gallons, or the equivalent of 146,400 households every year. While it is true that the share of recycled water used in drilling and fracking is increasing, so too is the freshwater used.[5] At the same time, injection disposal restrictions are tightening.[6] Instead of looking for other alternative methods for disposal of produced water and continuing to increase surface water use, operators should maximize the recycling of produced water for drilling and fracking purposes. g

If we are so uncertain about the risks and impacts of reusing produced water that we feel the need to preemptively shield those who generate, treat, or supply it, we are not ready to reuse produced water outside of the oil and gas drilling and fracking process. Please vote no on House Bill 49.

Thank you for your consideration. Please consider GEAA as a resource that is at your disposal. We look forward to working with you on this issue.

Annalisa Peace, Executive Director
Greater Edwards Aquifer Alliance



Rachel Hanes, Policy Director
Greater Edwards Aquifer Alliance

[4] https://www.wfaa.com/article/news/local/texas/johnson-county-issues-disaster-declaration-pfas-forever-chemicals-contamination-agricultural-land/287-4bdab474-ec77-4e8b-b4be-82090e6b1c54
[5] https://insideclimatenews.org/news/13052025/texas-rio-grande-pecos-river-fracking/
[6] https://www.texastribune.org/2024/04/29/texas-treated-produced-water-disposal-discharge-rivers/