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January 29, 2026

Senator Cameron Henry  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

**RE: SENATE RESOLUTION NO. 171 OF THE 2014 REGULAR SESSION**

Dear Mr. President:

The Louisiana State Law Institute respectfully submits its annual report to the legislature relative to developing a comprehensive Water Code.

Sincerely,

A handwritten signature in blue ink that appears to read "Guy Holdridge".  
Guy Holdridge  
Director

GH/pc

Enclosure

email cc: David R. Poynter Legislative Research Library  
[drpliblary@legis.la.gov](mailto:drpliblary@legis.la.gov)

Secretary of State, Ms. Nancy Landry  
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**LOUISIANA STATE LAW INSTITUTE  
WATER CODE COMMITTEE**

**2026 ANNUAL REPORT TO THE LEGISLATURE  
IN RESPONSE TO SR NO. 171 OF THE 2014 REGULAR SESSION**

**Relative to the development of a comprehensive Water Code**

Prepared for the  
Louisiana Legislature on

**January 29, 2026**

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE  
WATER CODE COMMITTEE**

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SENATE RESOLUTION NO. 171

BY SENATOR CLAITOR

A RESOLUTION

To urge and request the Louisiana State Law Institute to create a Water Code Committee.

WHEREAS, Senate Concurrent Resolution No. 53 of the 2012 Regular Session of the Legislature requested the Louisiana State Law Institute to conduct a study on surface water and groundwater law in Louisiana; and

WHEREAS, on April 4, 2014, the Louisiana State Law Institute submitted its report to the Legislature in response to Senate Concurrent Resolution No. 53; and

WHEREAS, such report discusses at length the issues, problems, and questions arising from the present state of Louisiana law concerning surface water and groundwater, and concludes by stating:

"The time has come for water law reform in Louisiana. It is recommended that a Louisiana State Law Institute Water Code Committee be created and invested with the responsibility of continuing to study Louisiana's current treatment of running surface water and groundwater, with a view towards the development of a comprehensive Water Code that integrates all of Louisiana's water resources.

The Louisiana State Law Institute recommends that the proposed Water Code Committee be an interdisciplinary committee, composed of academicians, practitioners, scientists with expertise in hydrology, and government representatives with expertise in Louisiana's water resources and the state's existing administrative system of water management.

Current Louisiana law provides insufficient guidance on the rules that govern the nature and scope of riparian and groundwater rights. Louisiana needs a Water Code that integrates all of its water resources, a Water Code that will enable Louisiana to successfully manage and conserve its water resources as it prepares to face the inevitable challenges that lie ahead. Therefore, it is recommended that the legislature implement the foregoing recommendations and that it entrust this important project to the Louisiana State Law Institute."

THEREFORE, BE IT RESOLVED that, in accordance with the above recommendation, the Senate of the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to create a Water Code Committee in order to develop proposed legislation establishing a comprehensive Water Code that integrates all of Louisiana's water resources.

BE IT FURTHER RESOLVED that such Water Code Committee shall be an interdisciplinary committee and shall include academicians, practitioners, landowners, scientists with expertise in hydrology, and government representatives with expertise in

Louisiana's water resources and the state's existing administrative system of water management.

BE IT FURTHER RESOLVED that such Water Code Committee shall provide annual reports to the Legislature not later than February first of each year indicating its status in developing a comprehensive Water Code for Louisiana, and including as appropriate, specific recommendations in the form of proposed legislation to achieve establishment of a comprehensive Water Code that integrates all of Louisiana's water resources.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

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PRESIDENT OF THE SENATE

January 29, 2026

To: Senator Cameron Henry  
President of the Senate  
P.O. Box 94183  
Baton Rouge, Louisiana 70804

**ANNUAL REPORT TO THE LEGISLATURE IN RESPONSE TO  
SENATE RESOLUTION NO. 171 OF THE 2014 REGULAR SESSION**

Senate Resolution No. 171 of the 2014 Regular Session, attached, urges and requests the Louisiana State Law Institute “to create a Water Code Committee in order to develop proposed legislation establishing a comprehensive Water Code that integrates all of Louisiana’s water resources.” The resolution further dictates that the Committee “shall be an interdisciplinary committee and shall include academicians, practitioners, landowners, scientists with expertise in hydrology, and government representatives with expertise in Louisiana’s water resources and the state’s existing administrative system of water management.” In fulfillment of this request, the Law Institute created a Water Code Committee and placed it under the supervision of Reporter Mark S. Davis, at the time the Director of the Tulane Institute on Water Resources Law and Policy and currently an affiliated faculty member at the Institute. Members of the Committee include professors and other academicians who both teach and study water law, practitioners in the area of water law, government representatives with expertise in Louisiana’s water resources and existing system of water management, and others.

Senate Resolution No. 171 also asks that the Committee “provide annual reports to the Legislature not later than February first of each year indicating its status in developing a comprehensive Water Code for Louisiana, and including as appropriate, specific recommendations in the form of proposed legislation to achieve establishment of a comprehensive Water Code that integrates all of Louisiana’s water resources.” To this end, the Committee submits the present report, noting that it has conducted extensive background research and outreach—identifying states with water “situations” similar to Louisiana, studying the approaches to water management taken by these states, and gauging the effectiveness, practicality, and successes and failures of these approaches, with an eye toward achieving desirable outcomes through efficient administration and use of resources. Guided by the Committee’s findings in these regards, the Committee leadership has crafted an initial Water Code draft that seeks to apply this working knowledge to model statutory outlines to create a water-management framework that is simultaneously robust and centralized yet susceptible to flexible administration. The specific efforts undertaken in service of this goal are described below.

**Background and Vision**

Rising seas, collapsing coasts, and ever-evolving demands on water resources for energy development, coastal restoration, healthy coastal ecosystems, increasing human consumption, and myriad other uses are forcing Louisiana to reassess its relationship with water and to revisit the legal and policy architecture of water management. Through the efforts of entities such as the

Louisiana Water Resources Commission (LWRC), the Coastal Protection and Restoration Authority (CPRA), the New Orleans Sewerage and Water Board, and the Louisiana State Law Institute (LSLI), great strides have been made in understanding and explaining the vital role that water plays in the ecologic, cultural, and economic vitality of the state and the nation. Bold plans and programs have been developed to sustainably promote that vitality, but those plans and programs all depend on the availability and management of water resources whose legal status is nebulous at best. The need to clarify the legal status of water and its uses has been recognized in recent reports by the LWRC (2012 and 2013) and the LSLI (2014). Most recently, the Louisiana Legislature called for the LSLI to develop a “Water Code” for Louisiana (SR 171 (2014)). This Water Code Committee was formed in response to that call.

This Committee is charged with developing a comprehensive Water Code for the state of Louisiana that is both grounded in traditional water rights and responsibilities (public and private) and responsive to the evolving dynamics of water supplies and water uses. To the extent practicable, we will approach water comprehensively, recognizing that groundwater, surface water, and diffuse water are related. Doing this requires not only an appreciation of traditional water law and emerging trends but also a respect for the hydrologic and ecologic aspects of our water resources. For these reasons, the Committee’s work must be multifaceted and multidisciplinary. In short, the Committee seeks to develop a Water Code that is purpose-driven, scientifically informed, and legally comprehensive.

Fortunately, the Committee has access to resources and technical expertise in the public, academic, and private sectors that it has drawn and will continue to draw on over the course of the project to most effectively carry out its work.

### **Guiding Principles**

Experience teaches that the complex task of developing a Water Code is far more manageable if guided by a number of core understandings and principles, particularly those which are already features of state or federal law. With that in mind, the Committee’s work has been and will continue to be informed by these guiding principles:

1. Management of Louisiana’s waters is at a point of decision. Only a concerted effort will stem the degradation of Louisiana’s coast and position the state as a whole to benefit from its most abundant resource.
2. Appreciation of the increasing dynamism of the hydrologic system is integral to legal and planning infrastructure.
3. Natural processes must be hewed to as closely as possible, and natural cycles and processes should be maximized to aid operations and maintenance of infrastructure.
4. Acknowledgment of the limited availability of water as a potential constraint on system management and rehabilitation is imperative.

5. The Code will seek to achieve ecological sustainability and diversity while providing interchange and linkages within the hydrologic system.

6. Rising sea levels and climate changes must be acknowledged and accounted for.

7. Displacement and dislocation of resources, infrastructure, and possibly communities may be avoidable under some scenarios. In the course of restoring a sustainable balance to Louisiana, sensitivity must be shown to those who may be adversely affected by the implementation of the Code. Careful consideration must also be paid to existing water-related rights, uses, and duties.

8. The rehabilitation of the Louisiana hydrologic system will be an ongoing and evolving process.

9. Coordination with other states and federal interests is essential to ensure that the Code will be most conducive to maximizing effectiveness.

### **Overview of the Committee's Task and Progress**

The Reporter and the Committee have been working with a constant eye on emerging water trends both within and outside the state. In setting the Committee on its task, the Legislature wisely foresaw the rapidly approaching time when Louisiana's water resources will be envied and coveted. In recent years, multiple proposals have surfaced that seek to divert water from Louisiana via the Mississippi, Atchafalaya, and Sabine Rivers to supplement or substitute for the dwindling water supplies in the Southwest. The states seeking to divert water clearly see the value of the waters with which we are blessed, and the Committee urges the Legislature to keep this value in mind. Water has been and remains Louisiana's greatest natural resource, though it has not always been treated with respect. As America—indeed the world—enters a time in which access to water will, for all purposes, determine which persons and places prosper, Louisiana will be faced with water-management opportunities and challenges unlike any it has faced before. Accordingly, the Committee intends for its work to position the state as advantageously as possible with respect to the management of its waters, in hopes that its most prosperous days may yet be ahead.

To this end, the Committee acknowledges that this project is multidisciplinary and multi-institutional and must reflect a range of local, national, and relevant international experience and expertise. Since the Committee's initial point of departure—the 2014 Report of the LSLI Water Law Committee and the 2012 and 2013 reports of the LWRC—the Committee has coordinated closely with LWRC's ongoing work to draw from its efforts (such as commissioning a framework for developing a water budget for the state) and to gain perspective from the Commission's diverse membership. The Committee has also endeavored to coordinate closely with the CPRA, in recognition of the fact that the 2017 Master Plan is fundamentally a water-management plan with the force of law. To facilitate this coordination, Committee Reporter Mark Davis was appointed to the CPRA Master Plan Steering Committee on behalf of the LSLI. The Reporter has also been a member of the LWRC—affording a vehicle of coordination between the Committee and the LWRC—and has served on the Governor's Advisory Commission on Coastal Protection, Restoration and Conservation.

The Reporter and his supporting team from the Tulane Institute on Water Resources Law and Policy have met several times with senior staff from the Governor's Office of Coastal Activities to discuss water law issues and the Committee's progress. The Committee has also included the General Counsel of the Capital Area Ground Water Conservation Commission and the Legislative Auditor's Office in its work. On the legislative side, the Committee has consistently endeavored to keep legislative legal counselors abreast of our work, including by extending invitations to join in both Committee meetings and external meetings with Louisiana's water-management agencies and water managers in Arkansas, Mississippi, Minnesota, and Virginia.

More recently, the Committee and its members have remained mindful that new high-value, high-volume water users are emerging in Louisiana and will need to be accounted for. Facilities such as data centers, crypto centers, and chip-manufacturing plants—which are proving to be economic-development priorities for the state—are expected to be significant users and consumers of water. Given the extensive demand that corresponds with these activities, the Committee urges that water supply and availability within the state should be considered more general and immediate concerns.

As for the primary advancement of the Committee's legislative directive, the Reporter has worked closely with Law Institute staff to synthesize the experience and knowledge gained from the Committee leadership's various fact-finding efforts, ultimately applying them to Louisiana's water needs and water-law traditions to assemble the outlines of an initial draft Code. At the outset of this process, the Committee used the Regulated Riparian Model Water Code—developed by the American Society of Civil Engineers—as a starting point. Law Institute staff conducted extensive review and analysis of the Model Code, evaluating its strengths and shortcomings and comparing it to the existing water-law paradigms of both Louisiana and neighboring states. This analysis was memorialized in the form of a detailed memorandum, from which the Committee launched its discussions regarding the ideal contents, structure, substance, and administration of its eventual Code.

These discussions continued over the course of 2023 and into the first parts of 2024 and guided the Committee leadership's initial statutory drafting efforts, which took place over the course of 2024 and culminated in the production of a first, partial draft in early 2025.

### **Action Over the Past Year**

#### **I. Administrative Reorganization—Accommodation, Coordination, and Outreach**

The most significant development related to the Committee's work over the past year was the extensive administrative restructuring resulting from the 2025 Regular Session. Because unified governance of water resources has been among the primary objectives underlying the Committee's work from its outset, the centralization of authority effected by Act 458, in particular, has major implications for the Committee's work going forward. Accordingly, the Committee leadership and Law Institute staff monitored the legislative process closely and have since dedicated significant time and attention to understanding and accommodating the resulting organizational changes to the administrative apparatus. Having previously taken steps to (a) catalogue all existing statutory grants of authority related to water management, and (b) identify

overlaps and redundancies that might be susceptible of elimination under the Committee’s eventual Code, Law Institute staff has now begun a similar process with respect to the restructured authority. In particular, staff has undertaken a comprehensive review of all relocations of authority and responsibility effected by Act 458, for the purpose of again cataloguing them and, now, cross-checking them against any other unaffected grants of authority. Given the nature of the revisions enacted by Act 458—often substituting one general term (e.g., “the commissioner”) for another general term (e.g., “the secretary”), with specific identification being incorporated by way of separate, statutorily localized definitions Sections, necessitating specific review of each individual appearance of the relevant terms in context—this task has proven time-intensive and remains ongoing.

In addition to this drafting-related task, the Committee leadership has also remained active in outreach and coordination with the relevant parties. The Reporter continues to monitor organizational, policy, and staffing developments with an eye toward ensuring that all stakeholders are involved in the Committee’s ongoing work. At present, the Committee is still evaluating the specific effects of the reorganization on its work; it will continue to do so going forward.

## **II. Drafting—High-Level Substantive Issues**

As outlined in the Committee’s 2025 Annual Report, the statutory drafting process produced two primary developments beyond the draft itself: First, it prompted the Committee—in the interest of maximizing the practical usefulness of its ultimate work product—to alter course with respect to a small handful of principles and objectives that had, to that point, guided its efforts; these substantive shifts are described in greater detail in the Committee’s 2025 Report. Second, the drafting process revealed several remaining high-level substantive questions requiring answers as preconditions to the Committee’s eventual completion of its project. Over the course of 2025, these questions have been among the Committee’s primary focuses. These questions, and the Committee’s efforts to answer them, are detailed in this Section.

### 1. Constitutionality under the Dormant Commerce Clause

Consistent with the aim of protecting and preserving water as a resource vital to the interests of the state of Louisiana, the Committee’s early drafting efforts contemplated some elevated standard for the grant of a permit authorizing water withdrawn in Louisiana to be transported and used outside of the state. However, a rule that treats uses disparately on the basis of their location in a particular state is suspect under the “dormant” commerce clause of the U.S. Constitution, which invalidates state laws that place “undue burden” on interstate commerce. For instance, in *Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941 (1982), the U.S. Supreme Court struck down a Nebraska statute that prohibited interstate transfers of water to any state that did not allow reciprocal transfers to Nebraska. In light of this decision, which recognized water as an article of commerce, any provision in the Committee’s Code that purports or otherwise seeks to limit interstate transfers of water must comply with the dormant commerce clause and the principles espoused by the Court in *Sporhase*.

Importantly, the provision held unconstitutional in *Sporhase* was *facially* discriminatory—that is, it provided explicitly, by its plain text, for disparate treatment of certain states. In other words, *Sporhase* did not foreclose the possibility that disparate treatment of interstate transfers could pass constitutional muster in cases where the disparate treatment is *not* facially discriminatory: So long as the criterion or criteria forming the basis of the disparate treatment are neutral and the burden on interstate commerce is not “undue”, the statute should be constitutional. Whether a burden is, in fact, “undue” is a determination made by balancing the burden itself and the underlying interest served by the rule.

After discussing the topic and conducting a review of related jurisprudence and state statutory law, the Committee leadership concluded that its desired outcome could be effectively achieved without drawing any distinction on the basis of state lines through the application of elevated standards to proposed *interbasin* transfers. Given the interconnectivity of the water supply, such a rule still protects against the depletion of Louisiana sources, but is more narrowly tailored to that purpose, given its use of hydrological science in lieu of state boundaries to draw its distinctions. The Committee leadership has revised its initial draft Code in accordance with these principles. However, while the Committee agrees on the prudence of this course of action from both a policy and constitutional perspective, it should nevertheless be noted that the theory underlying both its constitutionality and practical application presupposes the availability of data sufficiently detailed to support the purported benefits of such a rule. Absent such data, the rule may present a slight risk of unconstitutionality.

## 2. Constitutionality under Article VII, Section 14 of the Constitution of Louisiana

Article VII, Section 14 of the Constitution of Louisiana prohibits the donation of public property. Given R.S. 9:1101’s statement that “[t]he waters of [the state]...are declared to be the property of the state[,]” the aforementioned constitutional prohibition called into question—at least as applied to non-riparian use—the validity of a provision of the Committee’s initial draft Code that sought to prohibit the assessment of a monetary charge for the use or withdrawal of water. The potentially problematic nature of this provision is underscored by at least four Attorney General Opinions analyzing the issue, all of which conclude that Article VII, Section 14 does in fact apply to withdrawals of surface water, and that, as such, the authorization of withdrawals without compensation to the state constitutes a prohibited donation of public property. By contrast, however, R.S. 9:1101 itself goes on to provide that “[t]here shall never be any charge assessed against any person for the use of the waters of the state for municipal, industrial, agricultural or domestic purposes.” In light of this seemingly conflicting guidance, the Committee leadership resolved to research the issue further.

The resulting research was voluminous in nature and eventually came to implicate a number of sub-issues, all either complex or uncertain in their own right. These sub-issues include: (1) whether and to what extent the nature of the state’s

interest in water is in fact an “ownership” interest of the sort that would subject water to the strictures of Article VII, Section 14, as opposed to an interest merely as a steward and guardian of the public interest; (2) whether and to what extent the law recognizes a distinction between withdrawals of water and uses of water that do not contemplate withdrawal, as well as the legal significance of this potential distinction as it pertains to the constitutional prohibition on donations of public property; (3) whether and to what extent the distinction between riparian and non-riparian uses of water affects the application of the constitutional prohibition on donations of public property; (4) whether and to what extent the public interest served by a particular use of water can itself constitute “compensation” to the state for the purposes of Article VII, Section 14; (5) whether and to what extent current and prior Louisiana law and practice, including but not limited to the cooperative endeavor agreement system, authorize withdrawals of water without compensation to the state or, alternatively, prohibit the assessment of charges for water use; and (6) whether and to what extent the difficulty of assigning a “fair market value” to water affects the applicability of, or alternatively the ease or difficulty of adhering to, the constitutional prohibition on donations of public property.

While the Committee reached a general consensus that the draft Code’s prohibition on the assessment of a monetary charge for water likely would *not* run afoul of Article VII, Section 14, it nevertheless found the issue sufficiently uncertain as to justify taking action to protect against the risk of unconstitutionality. To this end, the Committee drafted and has preliminarily considered statutory language seeking to clarify the nature of the state’s interest in water as one of mere public trust, as opposed to ownership of the sort contemplated by Article VII, Section 14. The Committee has further discussed the alternative prospect of a constitutional amendment to Article VII, Section 14 that would clarify or otherwise provide for its inapplicability to water. Given the complexity of this issue and its interconnectivity with other issues and aspects of the draft Water Code, the Committee has not yet made a conclusive determination of whether and how it should be addressed.

### 3. Integration of Groundwater Governance into Code

Throughout the Committee’s work on the present project, it has sought to bring all Louisiana water-management rules, including those applicable to groundwater, within the confines of a single overarching statutory scheme. As outlined in the Committee’s 2025 Report, the fulfillment of this objective—that is, the fulfillment of the Committee’s legislative directive to develop a *comprehensive* Water Code—requires that the Committee determine precisely which rules of present-day groundwater management it wishes to retain, and which it wishes to revise or repeal. Given groundwater’s current governance under the Mineral Code, this task requires the Committee to consider, one by one, the provisions of the Mineral Code, so as to identify any potential problems associated with their abrogation and thereby ensure that the Water Code’s removal of water governance from the Mineral Code does not prove problematic, constitutionally or otherwise.

While the Committee does not intend to abrogate *every* principle applicable to groundwater under current law, this task nevertheless demands close consideration of and extensive research regarding a fairly robust body of law, and the Committee's work in this regard is still ongoing.

To this point, the Committee leadership has (1) compiled a broad list of the various provisions affecting groundwater, (2) undertaken a preliminary review of this list to identify provisions likely to be retained (in substance) and provisions likely to be discarded (as applicable to groundwater), and (3) compiled a secondary list of provisions whose abrogation may prove, at least, legally complicated. From here, the Committee must (1) review the preliminary lists to make a final determination of which principles ought be retained, which ought be revised, and which ought be repealed (as applied to groundwater); (2) conduct more detailed research regarding the various issues identified in relation to Item (3) and determine how best to address these issues; and (3) undertake the drafting needed to address these issues and otherwise incorporate and adapt the relevant Mineral Code principles into the Water Code. These tasks represent a major portion of the Committee's remaining work.

### **III. Drafting—Granular Issues**

In addition to its efforts to address the broad substantive issues outlined above, the Committee leadership has also worked to address any granular issues that persist in its draft. This work has taken the form of a continuous review of the draft for clarity, consistency, style, syntax, organizational structure, and the like, with Law Institute staff and the Committee leadership consulting periodically to discuss whether and how the various issues might be resolved prior to Committee review. Law Institute staff has further compiled an extensive list of the various issues that were unable to be resolved in this manner, annotated with the details of each issue and potential solutions where appropriate. This document has been and will continue to be updated regularly in the hopes that it will facilitate a more efficient process of review and adoption of the proposed statutory text by the Committee.

Finally, over the past year, the Committee leadership continued its drafting efforts with respect to as yet incomplete portions of its draft Code, as permitted by its resolution of the various substantive issues described in the preceding section. This drafting took place intermittently over the course of the preceding year and will continue similarly, as the Committee achieves greater clarity on the necessary issues.

### **IV. Drafting—Next Steps**

In light of the Committee's progress over the past year, its next steps will be as follows:

1. The Committee will determine the best course of action, if any, to address the potential issue outlined above related to the constitutional prohibition on donations of public property. As necessary, the Committee leadership will undertake any drafting contemplated by the agreed-upon course of action.

2. Law Institute staff and eventually the Committee itself will continue to work through the various issues related to the removal of groundwater governance from the Mineral Code and its corresponding incorporation into the Committee's Water Code. The Committee leadership will again undertake the drafting required to accommodate the Committee's decisions in this regard and to fill any related gaps in the Committee's draft.
3. The Committee will conduct a detailed, section-by-section review of its draft. Over the course of this review, the Committee will seek to eliminate all inconsistencies, ambiguities, and imprecisions of language and will ultimately adopt a final text for presentation to the Law Institute's Council.

Notably, these remaining tasks are susceptible of being undertaken simultaneously or in any order. Accordingly, the Committee can, and in all likelihood will, begin its detailed review of the current draft language while Law Institute staff and the Committee leadership continue working towards completion of the additional tasks "behind the scenes."

### **Conclusion and Acknowledgments**

Upon completing the steps outlined above, the Committee will present its final recommendations to the Law Institute's Council for approval and subsequent proposal as legislation. The Committee hopes to begin presenting its recommendations to the Council in the coming year. Until it receives the Council's final approval of its proposed Water Code legislation, the Committee will continue to report to the Legislature annually regarding the status of the project.

Finally, the Committee and the Reporter would like to acknowledge and thank the Baton Rouge Area Foundation, the Greater New Orleans Foundation, the Walton Family Foundation, the Louisiana Sea Grant Program, the McKnight Foundation, Tulane Law School and the Tulane Institute on Water Resources Law and Policy, and the staff of the Louisiana State Law Institute for their assistance. It has made a huge difference.