Item 6 – Board Positions on 85th Legislative Session Bills

There have been only a handful of bills filed this session concerning groundwater. We will discuss each bill and develop a position (For, Against, Neutral). This will guide staff during the session as these bills are moved and need to be addressed.

HB 180 by Lucio III - Relating to the review of groundwater conservation districts by the state auditor.

HB 645 by Lucio III - Relating to regulation of production of wells for retail public utilities by a groundwater conservation district.

HB 1318 by Lucio III - Relating to regulation of production of wells for retail public utilities by a groundwater conservation district.

SB 189 by Uresti - Relating to notice of an application for a permit to drill certain injection wells within a certain distance of a groundwater conservation district.

The full text of each of the above bills follows.
A BILL TO BE ENTITLED
AN ACT
relating to the review of groundwater conservation districts by the state auditor.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 35.018(b), Water Code, is amended to read as follows:

(b) The report must include:

(1) the names and locations of all priority groundwater management areas and districts created or attempted to be created on or after November 5, 1985, the effective date of Chapter 133 (H.B. No. 2), Acts of the 69th Legislature, Regular Session, 1985;

(2) the authority under which each priority groundwater management area and district was proposed for creation;

(3) a detailed analysis of each election held to confirm the creation of a district, including analysis of election results, possible reasons for the success or failure to confirm the creation of a district, and the possibility for future voter approval of districts in areas in which attempts to create districts failed;

(4) a detailed analysis of the activities of each district created, including those districts which are implementing management plans certified under Section 36.1072;

(5) a report on...
Section 36.302 and remedial actions taken under Section 36.303;
(6) recommendations for changes in this chapter and
Chapter 36 that will facilitate the creation of priority
groundwater management areas and the creation and operation of
districts;
(7) a report on educational efforts in newly
designated priority groundwater management areas; and
(8) any other information and recommendations that the
commission considers relevant.

SECTION 2. Section 36.061(b), Water Code, is amended to
read as follows:
(b) The state auditor may conduct a financial audit of the
records of any district if the state auditor determines that the
audit is necessary.

SECTION 3. Section 36.1072(f), Water Code, is amended to
read as follows:
(f) If the executive administrator does not approve the
district's management plan, the executive administrator shall
provide to the district, in writing, the reasons for the
action. Not later than the 180th day after the date a district
receives notice that its management plan has not been approved, the
district may submit a revised management plan for review and
approval. The executive administrator's decision may be appealed
to the development board. If the development board decides not to
approve the district's management plan on appeal, the district may
request that the conflict be mediated. The district and the board
may seek the assistance of the Center for Public Policy Dispute
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Resolution at The University of Texas School of Law or an alternative dispute resolution system established under Chapter 152, Civil Practice and Remedies Code, in obtaining a qualified impartial third party to mediate the conflict. The cost of the mediator services must be specified in the agreement between the parties and the Center for Public Policy Dispute Resolution or the alternative dispute resolution system. If the parties do not resolve the conflict through mediation, the decision of the development board not to approve the district's management plan may be appealed to a district court in Travis County. Costs for the appeal shall be set by the court hearing the appeal. An appeal under this subsection is by trial de novo. The commission shall not take enforcement action against a district under Subchapter I until the latest of the expiration of the 180-day period, the date the development board has taken final action withholding approval of a revised management plan, the date the mediation is completed, or the date a final judgment upholding the board's decision is entered by a district court. An enforcement action may not be taken against a district by the commission [or the state auditor] under Subchapter I because the district's management plan and the approved regional water plan are in conflict while the parties are attempting to resolve the conflict before the development board, in mediation, or in court. Rules of the district continue in full force and effect until all appeals under this subsection have been exhausted and the final judgment is adverse to the district.

SECTION 4. Section 36.303(a), Water Code, is amended to read as follows:
(a) If Section 36.301 or [7] 36.3011[,] or 36.302(f),

applies, the commission, after notice and hearing in accordance
with Chapter 2001, Government Code, shall take action the
commission considers appropriate, including:

(1) issuing an order requiring the district to take
certain actions or to refrain from taking certain actions;

(2) dissolving the board in accordance with Sections
36.305 and 36.307 and calling an election for the purpose of
electing a new board;

(3) requesting the attorney general to bring suit for
the appointment of a receiver to collect the assets and carry on the
business of the groundwater conservation district; or

(4) dissolving the district in accordance with
Sections 36.304, 36.305, and 36.308.

SECTION 5. Section 36.302, Water Code, is repealed.

SECTION 6. This Act takes effect immediately if it receives
a vote of two-thirds of all the members elected to each house, as
provided by Section 39, Article III, Texas Constitution. If this
Act does not receive the vote necessary for immediate effect, this
Act takes effect September 1, 2017.
A BILL TO BE ENTITLED
AN ACT
relating to regulation of production of wells for retail public utilities by a groundwater conservation district.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
SECTION 1. Section 36.116(c), Water Code, is amended to read as follows:
(c) In regulating the production of groundwater based on tract size or acreage, a district shall [may] consider the service needs or service area of the [a] retail public utility that serves the territory where production is regulated by the district. For the purposes of this subsection, "retail public utility" has [shall have] the meaning assigned [provided] by Section 13.002. A district may determine whether it is appropriate to base the production amount on a retail public utility's service needs or service area under this subsection.
SECTION 2. This Act takes effect September 1, 2017.
By: Lucio III

A BILL TO BE ENTITLED

AN ACT

relating to regulation of production of wells for retail public utilities by a groundwater conservation district.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 36.116(c), Water Code, is amended to read as follows:

(c) In regulating the production of groundwater based on tract size or acreage, a district shall [may] consider the aggregate acreage owned by the retail public utility and the retail public utility's customers inside the district and may subtract permitted wells from that acreage [service needs or service area of a retail public utility]. For the purposes of this subsection, "retail public utility" has [shall have] the meaning assigned [provided] by Section 13.002.

SECTION 2. This Act takes effect September 1, 2017.
A BILL TO BE ENTITLED
AN ACT
relating to notice of an application for a permit to drill certain
injection wells within a certain distance of a groundwater
conservation district.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 27.017, Water Code, is
amended to read as follows:

Sec. 27.017. NOTICE TO AND RECOMMENDATIONS FROM OTHER
ENTITIES REGARDING APPLICATIONS.

SECTION 2. Section 27.017(b), Water Code, is amended to
read as follows:

(b) This subsection does not apply to an application for a
permit for an ASR injection well under Subchapter G. If an
application is received in proper form for a permit for an injection
well under the jurisdiction of the commission under this chapter
[to dispose of industrial and municipal waste] and the proposed
location of the injection well is in the territory of or within 10
miles of the boundaries of a groundwater conservation district, the
executive director shall submit a copy of the application to the
governing body of each such [the] groundwater conservation
district. Notice received under this subsection does not grant a
groundwater conservation district standing as an affected person in
a protest or hearing before the commission.

SECTION 3. Section 27.018(e), Water Code, is amended to
read as follows:

(e) This subsection does not apply to an application for a permit for an ASR injection well under Subchapter C. In addition to the requirements of Subsection (c), before any testimony is heard in a contested case regarding an application for a permit for an injection well under the jurisdiction of the commission under this chapter to dispose of industrial and municipal waste] that is proposed to be located in the territory of or within 10 miles of the boundaries of a groundwater conservation district, the record of the proceeding must include evidence that:

(1) a copy of each draft permit proposed by the executive director was provided to the governing body of each such [the] groundwater conservation district; and

(2) notice of the contested case hearing was mailed to the governing body of each such [the] groundwater conservation district.

SECTION 4. Subchapter C, Chapter 27, Water Code, is amended by adding Section 27.0322 to read as follows:

Sec. 27.0322. NOTICE TO GROUNDWATER CONSERVATION DISTRICT. (a) A person making application to the railroad commission for a permit for an injection well to which this subchapter applies the proposed location of which is in the territory of or within 10 miles of the boundaries of a groundwater conservation district shall:

(1) submit a copy of the application to the governing body of each such groundwater conservation district; and

(2) submit with the application evidence showing that
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the applicant has complied with Subdivision (1).

(b) Notice received under this section does not grant a groundwater conservation district standing as an affected person in a protest or hearing before the railroad commission.

SECTION 5. Subchapter C-1, Chapter 27, Water Code, is amended by adding Section 27.0441 to read as follows:

Sec. 27.0441. NOTICE TO GROUNDWATER CONSERVATION DISTRICTs. (a) A person making application to the railroad commission for a permit for an injection well to which this subchapter applies the proposed location of which is in the territory of or within 10 miles of the boundaries of a groundwater conservation district shall:

(1) submit a copy of the application to the governing body of each such groundwater conservation district; and

(2) submit with the application evidence showing that the applicant has complied with Subdivision (1).

(b) Notice received under this section does not grant a groundwater conservation district standing as an affected person in a protest or hearing before the railroad commission.

SECTION 6. (a) Not later than March 1, 2018, the Texas Commission on Environmental Quality and the Railroad Commission of Texas shall adopt rules as necessary to implement the change in law made by this Act to Chapter 27, Water Code.

(b) The change in law made by this Act to Chapter 27, Water Code, applies only to a permit application submitted to the Texas Commission on Environmental Quality or the Railroad Commission of Texas on or after the effective date of the applicable rules adopted
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1 under Subsection (a) of this section. A permit application
2 submitted before the effective date of the applicable rules adopted
3 under Subsection (a) of this section is governed by the law in
4 effect when the permit application was submitted, and the former
5 law is continued in effect for that purpose.
6 SECTION 7. This Act takes effect September 1, 2017.