

Archive Search

Groundwater deregulation eyed here

By Bob Beal, water correspondent | Posted: Wednesday, September 28, 2016 2:13 pm

The Texas House Subcommittee on Special Water Districts convened a hearing in Fort Stockton Tuesday, Sept. 20, on “property rights and groundwater management.”

Subcommittee chairman Lyle Larson (R-San Antonio) repeated his assertions that groundwater conservation districts are “impeding and blocking” the ability of growing Texas cities to access water from rural areas. Larsen said that GCDs should no longer be considered “the state's preferred method of management in order to protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater,” as stated in the Texas Water Code. One hearing participant said our local Middle Pecos Groundwater Conservation District “is a high-functioning district with a big target on its back.”



Groundwater deregulation eyed here

First on the hearing agenda was the director of the groundwater division of the Texas Water Development Board, Larry French. He briefed the subcommittee on the hydrogeologic complexity of Pecos County. He described the region’s two major aquifers and three minor aquifers. Later in the hearing, a sixth water-bearing formation was discussed. French emphasized there are interconnections among various aquifers and salt-bearing formations. He said some parts of the hydrogeologic system are better understood than others.

One initiative from the last legislative session is to study the potential for decreeing brackish water production zones not subject to regulation by groundwater districts. That bill was not discussed at the Fort Stockton hearing, but MPGCD staff have testified in Austin that brackish water is central to overall management of this region’s groundwater and local control would be more effective and efficient.

French also mentioned the region’s springs, including the now essentially dry Comanche Springs, once the state’s third largest and the original reason for Fort Stockton’s existence. Starting largely after World War II, agriculture in Belding, by “rule of capture,” diverted the underground flow from the springs.

Fort Stockton’s water blues

Next on the agenda were the City of Fort Stockton city manager and mayor, Raul Rodriguez and Chris Alexander. Both provided history on the city’s attempts to increase reliability of its water supply and emphasized that the municipal water system is never far from failure. They pointed to not having back-up power for the municipal well field and being 20 years behind on replacing the main water supply pipeline.

The city officials told the subcommittee the city hired “water attorney” Mark Harral to assess the city’s water properties, saying they didn’t even know what they had.

Under Harral's direction, the city has sued MPGCD for purported violations of the state open meetings law. Last Tuesday, MPCGD filed a public records request asking for records on deliberations among city officials and water marketing companies such as Republic Water Company of Texas, which also was on the subcommittee hearing agenda.

At the subcommittee hearing, Rodriguez and Alexander portrayed MPGCD's regulatory process as arbitrary and inconsistent, focusing on a permit application that the city withdrew. When the city eventually resubmitted, the MPGCD approved the application.

The city officials also told the panel they didn't know about the state's SWIFT program to fund local water systems until MPGCD staff told them about it. This district's state representative Poncho Nevárez (D-Eagle Pass) said the city was the poster child for the program, which passed by the legislature four years ago. MPGCD has no role in infrastructure funding.

Subcommittee member Tracy King said, "You never know what's going to happen with locally elected bodies," including city councils. Regarding groundwater districts, King said "sometimes you can't get anybody to serve, and then you wonder about the ones that do." In the upcoming election, there are nine candidates for seats on the MPGCD board, including four incumbents, two of whom have served since the inception of the district.

The city officials also read the subcommittee a letter from outgoing MPGCD board member Terry Whigham citing a "travesty" in which the district denied the extension of a prove-up timeframe for a permit to export fracking water. The board brought the permit to several votes; only the last vote garnered the six votes necessary for the mandated majority of the 11-member board. Not all board members may be present at a given meeting.

The MPGCD board was facing a deadline on the permit extension decision, and some board members in favor of it instead voted against it to avoid violating the deadline. Whigham had left in the middle of a previous board meeting in which he could have cast the sixth vote to grant an extension of the permit. The water marketing company has since run a fast line out of the county as a means of complying with its permit requirement to begin selling water via a pipeline.

At the end of the city's testimony, Chairman Larsen bemoaned what he characterized as MPGCD's "focus on limiting [groundwater] use." The city has never used more than half of its already permitted groundwater.

Odessa's hunt for water

Odessa City Manager Richard Morton, next on the agenda, told the panel his city "is obliged to take every drop of water that the Colorado River Municipal Water District can supply." He also noted there is an amendment in their contract allowing Odessa to seek alternative water sources when restricted by the CRMWD. Morton cited cutbacks of 15 to 26 percent during 2012-2014 due to low levels in surface water reservoirs.

"I can't say we have water for 50 years," Morton said, adding, "We want CRWMD to be a partner and have CRWMD play a role."

Odessa has been a target customer for three different water marketing companies seeking to export Pecos County groundwater there. CRWMD has not been party to any of those proposed arrangements.

Property rights take center stage

Next up was a panel comprised of Republic Water Company and MPGCD. Ty Edwards, MPGCD assistant general manager, told the subcommittee that the district comprises nearly half a million square miles, with about 200,000 acre-feet per year groundwater production. Edwards said the district maintains about 100 monitor wells and has spent approximately \$1 million on hydrogeologic studies.

Republic partner Jimmie Perkins, told the subcommittee there was an “unwritten rule: water will not leave the county.”

MPGCD attorney Mike Gershon told the subcommittee five permits include export out of the district.

Perkins portrayed his company’s experience with MPGCD as “delay is deny.”

Edwards had told the subcommittee the district has granted 253 permits, a number of which have been contested, and denied one, which is currently under appeal.

Also Edwards said the district has been sued by only one landowner but has been sued four times by Fort Stockton Holdings (Clayton Williams Farms) and Republic, the latter suing the district for \$400 million 35 days after having submitted a permit application. The district has prevailed in every court ruling to date.

GCDs’ performance and accountability

Texas Alliance of Groundwater Districts was not on the hearing agenda, and the TAGD represents 80 of the 100 GCDs in the state. Executive Director Sarah Rountree Schlessinger’s testimony was limited to a few minutes, but it gave her time to bring up several pertinent facts.

Schlessinger’s key points were that half of all GCDs have granted export permits and that only 25 percent of all permit applications arrive administratively complete. She also told the subcommittee that TAGD measures GCD performance in terms of statutory requirements, and supports GCDs exceeding those requirements. In summary, Schlessinger said GCD performance was not at issue in the discussion of property rights and groundwater management but some parties were displeased with the system of local control.