



House Natural Resources

CANYON (6/5/18, 10:00 AM)

The House Committee on Natural Resources met to hear invited and public testimony at the Mack Dick Pavilion at Palo Duro Canyon State Park in Canyon, TX on Interim Charge 3: Evaluate the status of groundwater policy in Texas, including the following issues:

The hearing was directed by Chairman Lyle Larson, who opened the hearing at 10:00 AM with progress and challenges.

Sarah Schlessinger of the Texas Alliance of Groundwater Districts (TAGD), a non-profit educational resource created in 1988, representing 85 of the 98 groundwater conservation districts (GCDs): TAGD collects demographic information on groundwater districts, and it offers a physical place for officials to come together to have "the kind of difficult discussions we're having today." Schlessinger said TAGD has been holding statewide regional public panels with GCDs across the state to discuss inconsistencies in the regulatory frameworks over aquifers and how they can become more collaborative. Some improvements include making terminology more clear and consistent, sharing similar application forms in the permitting process, and determining template language in procedural rules.

Marty Jones, attorney, City of Conroe Utility said he agrees with the Panhandle districts objective of keeping the rules simple. The DFC ("desired future conditions") process takes too long, and by the time a decision is finalized the Groundwater Management Area (GMA) is into the next five-year cycle, so there is no point in filing an appeal. He discussed this matter in depth with Rep Price. Rep Nevarez argued that permitting is as streamlined as it can be, and doing what it needs to do. "That's why we don't see many frivolous lawsuits in groundwater districts." The DFC litigation question would come back again throughout the day.

Kody Bessent, Plains Cotton Growers, representing 65% of cotton production said just as Committee members legislate in accordance with their specific district needs, local management of groundwater resources makes sense from the GMA planning aspect.

Shauna Fitzsimmons Sledge, Partner at Sledge Law Group, testified about two matters: the Texas Water Conservation Association's (TWCA) paper on oil & gas principles to groundwater; and the ongoing litigation between the Lonestar Groundwater Conservation District and the City of Conroe, plus several other utilities in Montgomery County, and the city's appeal of the district's DFCs.

Roland Ruiz, General Manager, Edwards Aquifer Authority, gave an update on two pieces of litigation. One filed in 2012 by LULAC and SAWS challenging the

constitutionality of the Board governance under the one- person-one-vote principle. The judge has issued a stay in the case and has indicated that EAA can expect a ruling in the near future. If the judge rules in favor of the plaintiffs, the issue will most likely head to the Legislature for resolution, since it is the Legislature that set up that government structure, said Ruiz. In the second case, the Uvalde County Underground Water Conservation District filed a lawsuit against the EAA regarding the way it administers historical irrigation rights. They need to know if the Board acted within legal authority in developing its rules. Negotiations are continuing in an attempt to reach a settlement in that case.

Greg Ellis, Attorney who represents GCDs around the state testified about the Attorney General request filed in April 2017 concerning the right of landowners to sell and transfer the groundwater below the surface of their land: Guitar Holding Company v. Hudspeth County Underground Water Conservation District. <https://caselaw.findlaw.com/tx-court-of-appeals/1578765.html>

Hope Wells, San Antonio Water System (SAWS) reviewed last sessions Legislative initiatives and contemplated what more can be accomplished when greater gains are made in the city and state. Reducing uncertainty in permitting is of vital importance because it is impeding project development and economic growth. More certainty in groundwater regulation will help GCD owners meet their mandate to conserve and protect the resource.

Russ Johnson, Law Partner, McGinnis Lochridge, has been involved in water issues for thirty years, and represented the Guitar family in the aforementioned case. His policy recommendations included problems associated with modeled available groundwater, regulation by the aquifer and not by the local district, the elimination of one-sided attorney fees, mandatory new management goals, and the elimination of the requirement for export permits. During discussion Johnson suggested a default authorization permitting plan should be considered, subject to modification, for every aquifer in the State. The default would apply unless the State finds special circumstances to change the authorization.

Sarah Schlessinger of TAGD said they supported House and Senate legislation last session to streamline the permitting process, and have formed a subcommittee to look at all the issues covered and their impact on GCD operations. A white paper is being written and she is looking forward to sharing it with the Committee when the time comes.

Larry French, director of Groundwater Resources, Texas Water Development Board provided an overview of desalination projects in the State, beginning with the 2014 Legislature. He described the evaluation brackish groundwater resources, particularly the identification of brackish groundwater production zones, and their estimated yields, which will reduce the demand for freshwater resources.

Lynn Tate, High Plains Watering Board, oversees three aquifers serving 16 Counties, in the oldest and largest water district. His testimony centered on the Dockum Aquifer, the primary water source for four municipalities. He does not believe it should be declared a production zone. the government should partner with them on the research toward finding and developing brackish water for the growing population, and just as with freshwater, Tate said he believes the discovery of brack will belong to the landowner and not the State.

Hope Wells, San Antonio Water System said in their effort of serving San Antonio's growing population of 1.7 million people, SAWS has undertaken a number of strategies to diversify water resources in Bexar County. 12 million gallons of finished water can be produced from brackish water per day and distributed to 53,000 households. She encouraged significant building on current legislation and continued identification of zones more suitable for water development to take the pressure off of fresh water.

Sarah Schlessinger of TAGD said the conversation with the Desalination Association is underway; stakeholders held a 2-day workshop about relationship-building to understand both the industry and regulatory perspective as they get these projects off the ground.

Rick Kellison, Texas Life for Water Conservation, said producers are using 90% of the water from aquifers. Cotton is the major crop, in unrelenting demand, and producers have been forced to deficit-irrigate. He discussed a yield data research project encompassing 6,000 acres at 29 sites, led by growers in partnership with agribusiness and academia funded by the Texas Water Development Board. Its mission is to test various new technologies, tools, and outcomes to increase profitability, sustainability and to prepare crop producers for drought conditions. Sara Schlessinger, said that TAGD is participating in a project called the Texas Water Data Initiative, as they reflect on the most pressing groundwater and science needs to present to the State. The project is hosted by the Mitchell Foundation which has awarded TAGD a grant to further the study of groundwater districts and groundwater use.

Larry French, Texas Water Development Board, provided an overview of the GAM Program - Groundwater Availability Models, which has been in place for two decades, with 34 current models, and, he said is the envy of the state of California. During those 20 years, 57 research projects have been completed, totaling \$19 million dollars. Beyond developing models, GAM has expanded into helping other projects and districts, he said, since "groundwater data collection is a team sport." After the data is collected the models are updated, once funding is secured. The His next subject covered the ability to analyze trends via the Real Time Recorder Well Network; a statewide program in which 200 wells are equipped with automatic data recorders linked to the agency website. He concluded with information about data access, including impressive numbers of daily website hits by the general public seeking information about water data and the advanced interactive technology available for realtors, stakeholders, and government agencies.

Public Testimony

Todd Lovett, Member, Panhandle Producers & Royalty Association, representing 540 oil and gas producers, about 25% of whom are ranchers and farmers that "wish to use or export their water as they see fit, in accordance with sound environmental and conservation principles." They ask that any legislation passed next session not infringe on that right. Judy Stark, President, Panhandle Producers & Royalty Association, wanted the Committee to know that her organization has a history of being proactive in environmental stewardship in its oil and gas production. Given no further testimony, the Committee on Natural Resources adjourned, subject to the call of the Chair.