

Dewhurst names special water committee

State leases, rule of capture on the agenda

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Spurred by growing controversy over for-profit water deals and concern about the state law that allows unlimited pumping of groundwater, Lt. Gov. David Dewhurst on Wednesday asked senators to examine water policy in Texas.

Dewhurst named 11 senators to a Select Committee on Water Policy, signaling a new round of debate over Texas water laws just four years after lawmakers completed their most recent overhaul.

Dewhurst said he established the panel for two main reasons: aggressive water marketing efforts by private businesses in parts of the state, and "a strong interest among a number of our senators to look at moving away from" Texas' nearly century-old rule of capture, a cornerstone of the state's commitment to private property rights.

The rule, established in 1904, allows landowners to pump as much water beneath their land as they want without regard for the impact on neighboring landowners whose wells, for example, may run dry as a result.

The rule of capture is sure to be a flashpoint for the committee. As recently as 1999, the Texas Supreme Court declined to tamper with the rule, saying its fate should be decided in the Legislature.

As groundwater has become a more valuable commodity in a drought-stricken state with a fast-growing population, some ranching and farming interests have begun to call for the rule's repeal -- something that would have been considered heresy a generation ago.

But the rule of capture is increasingly in conflict with the state's groundwater districts, which the Legislature has charged with regulating such things as pumping limits and well spacing within their boundaries. While districts can limit pumping, they can't regulate wells that are outside their jurisdiction, even though the wells may affect the availability of water within their boundaries. Districts also cannot prohibit the export of groundwater outside their boundaries.

"As a longtime rancher myself, I've been supportive of the rule of capture," Dewhurst said. "But I'm sensing that agriculture is increasingly willing to look at it."

The new committee, chaired by Sen. Ken Armbrister, D-Victoria, will issue a report before the next regular legislative session convenes in January 2005. A legislative committee is already examining another contentious issue -- how to ensure that rivers maintain enough "instream flow" to support fish and wildlife and, downriver, bays and estuaries.

Combining that issue with the wide-open nature of the select committee's charge "sets up 2005 as a big water session," said Mary Kelly, a lawyer with the Austin office of Environmental Defense.

The committee's agenda includes virtually every aspect of state water policy, including further examination of the Edwards Aquifer Authority in San Antonio. Dewhurst noted that the authority is once again struggling to balance the demands for water against permits by municipalities and farmers that, when totaled, would exceed a state-mandated limit on pumping.

Dewhurst named a subcommittee to examine one particular issue: leasing water rights on state land. Sen. Frank Madla, D-San Antonio, will chair the subcommittee. Madla has questioned Land Commissioner Jerry Patterson's proposal to lease state lands to private companies for groundwater pumping and sales. Patterson sees such deals as a way to raise more money for public education funds.

The General Land Office is negotiating with Rio Nuevo, a Midland-based partnership, which wants to lease about 500,000 acres of state land in six far West Texas counties, pump the underground water and sell it, probably to cities.

Madla is among a number of state officials skeptical of the potential deal.

"I think before we start leasing and selling water that belongs to the people of Texas, we need to make absolutely certain that the impact for future generations isn't going to be negative," he said Wednesday.

Madla said the data on how much water can be safely removed from aquifers in West Texas "is simply inconclusive" at this point.

Jim Suydam, press secretary for Patterson, said the committee will sharpen the state's role in water deals. The fate of the Rio Nuevo deal, Suydam said, "is irrelevant to the overall plan to investigate how private enterprise can help make a profit from state lands for public education."

Although Dewhurst noted legislators' concern over water-development companies, he said private-sector dollars will have to help build the state's water infrastructure.

"Given the financial restraints on the state, it's not practical to believe the state's going to invest millions of at-risk dollars to develop water" in West Texas and other parts of the state.

Lynn Sherman, the president of WaterTexas, an Austin-based development company, welcomed the new committee. He said Texas needs to come up with new ways to meet its water needs at a time when neither the state nor the federal government is developing more resources.

"The fact is, all our water-development efforts ended when the dam-building era ended in the mid-1980s," he said.

Advocates for groundwater districts said the committee could help districts, many of which are new, handle the financial and legal issues presented by the struggle for groundwater rights.

"At the same time these new districts are being created, there's pressure put on them, and the people of the district, by water marketers," said Harvey Everhart, district manager of the Mesa Underground Water Conservation District in Lamesa.

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