

Whose water?

A proposal to sell underground water rights to a private company has West Texans worried

By Bill Hanna

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VALENTINE - As Albert Miller stands next to a stock tank on his ranch outside this far West Texas town, he can't help but feel a vague sense of unease.

The tank still holds water from a recent rain, and the springs that seep out of the nearby mountains and canyons continue to feed the ranch its much-needed water supply.

But in a region that views water as a precious resource, especially in the midst of a decadelong drought, Miller and his neighbors say they are worried that the next threat could come not from Mother Nature but from the state of Texas.

State Land Commissioner Jerry Patterson is negotiating with private investors for the sale of underground water rights on state-owned lands, a move that could affect up to 350,000 acres in as many as five West Texas counties. Nearby El Paso is considered a possible customer.

The negotiations with Rio Nuevo Ltd. of Midland could be just the first instance of a state agency becoming a water broker. There has been speculation that the land office could become involved in water deals in Central Texas. And a host of private companies -- from Austin-based WaterTexas to Boone Pickens, who owns water rights in the Texas Panhandle -- are all trying to profit by quenching Texas' growing thirst.

The negotiations have sparked outrage among West Texans, spurred the formation of a special Senate subcommittee to study statewide water issues and led to a rare public split between two top Republicans.

In the starkest terms, West Texans worry that they could be sucked dry.

"There may not be a whole lot of us out here, but we kind of like it here. We would kind of like to stay," Miller said.

"We realize we may not be able to keep all of the water for ourselves, but we want enough to be able do our business. We don't want to be pumped dry," he said.

If the negotiations are successful, water could be taken from the West Texas aquifers and shipped through pipelines to cities hundreds of miles away, at a cost of millions of dollars.

Roger Abel, Rio Nuevo's acting president, said the water belongs to everyone.

"People who live in Fort Worth have as much right to the benefits as those people in West Texas," Abel said. "It's the state's land. It's for all of the people of Texas, not just those who live out there."

Lobbying, suspicion

Intense lobbying and much suspicion about the deal continue to swirl.

Rio Nuevo, which is made up primarily of oil and gas investors, wants to extract water from state land in Hudspeth, Culberson, Presidio, Jeff Davis and El Paso counties.

At least 70 percent of the targeted land is in Hudspeth County, southeast of El Paso, where residents successfully fought an attempt to have a low-level radioactive waste dump placed near Sierra Blanca. The Texas Natural Resource Conservation Commission rejected the request for the nuclear waste dump in 1998.

State Agriculture Commissioner Susan Combs, whose family has ranched in neighboring Brewster County for 100 years, has publicly questioned the secrecy of the water negotiations and why Patterson hasn't sought other bids.

She said the methods used by the General Land Office have fueled suspicion in West Texas.

"There is a feeling in a lot of rural Texas that their voting strength is pretty small," Combs said recently. "They wonder if they can be run over. And they have some pretty good reasons for feeling that way."

Austin lawyer Greg Hudson, who has done legal work for Brewster County, said he is considering filing a complaint with the Travis County district attorney's office against Patterson's office.

The land office has provided limited paperwork in response to a request for public documents made under the state's public information laws, Hudson said.

Patterson appears unruffled by the threats and criticism.

"I don't think I'm going to be wearing stripes any time soon," Patterson said.

Estimated costs

An agreement could be reached between the state and Rio Nuevo in the next 30 to 60 days, Patterson said.

The agreement would technically be handled by the School Land Board, a division of the General Land Office that oversees holdings for the Permanent School Fund.

Patterson has touted the deal as one that would ultimately benefit Texas' schoolchildren by generating income for the fund.

Even if a contract is signed, it could take four or five years before any drilling might begin. The first step would be to explore whether water could be extracted from underground aquifers without harming local water supplies, officials said.

At that point, Rio Nuevo could begin pumping water from the sites to sell elsewhere.

On March 10, Patterson sent a letter to Rio Nuevo laying out conditions the company must meet to proceed with negotiations.

The letter said the company should meet with local water groups that could be affected, including the Far West Texas Regional Water Planning Group, an umbrella group for area water districts and counties.

It also asks the company to specify the total acreage of any private deals it may have made and the estimated price range for providing the water.

Tom Beard, chairman of the Far West Texas Regional Water Planning Group and a vocal critic of the Rio Nuevo plan, was skeptical about the letter's effect.

"I take it to mean you dot your 'i' and cross your 't' and say you've done that," Beard said. "The whole requirement issue is really slippery."

Critics also question the costs associated with properly studying the effect of the drilling on the West Texas aquifers. Some estimates put the cost as high as \$25 million or possibly more, but Patterson has said it could be done for far less.

"I think a lot can be done for \$5 million," he said. "A lot of information can be garnered for \$5 million -- and it may be that \$5 million is spent to say we're not going to spend any more because we can't take any out of the ground."

Beard said he believes all of the attention generated by Patterson's proposal could eventually work in West Texas' favor.

He notes that the grass-roots opposition to the radioactive waste dump in Sierra Blanca could serve as a model for communities fighting Rio Nuevo.

Furthermore, he said he's hopeful the Senate Subcommittee on the Lease of State Water Rights, which was formed in the wake of the controversy, gives legislators a forum to address water issues for the entire state.

Among discussions would likely be Texas' arcane "rule of capture" law that allows landowners to pump an unlimited amount of water from underneath their land regardless of the implications for their neighbors.

Patterson has said he will not wait for the subcommittee to finish studying the water issues, however, before proceeding with plans.

Lack of interest

Rio Nuevo has identified El Paso as its most likely customer for any water that it might pump from the West Texas counties.

El Paso Water Utilities officials, however, say they're not interested.

This month, El Paso officials announced that they were negotiating to buy the water rights to about 40 percent of the farmland around Dell City east of El Paso.

The utility district is negotiating with two key players in the emerging private water industry in Texas: Woody Hunt, chairman of Hunt Building Co. in El Paso, and Denver billionaire Philip Anschutz.

The proposed deal, which is far from final, could eventually cost El Paso close to \$100 million a year. But it would help guarantee the city's water needs for the next century and could serve as a model for other private water deals across Texas, officials say.

Still, Rio Nuevo officials say their offer to El Paso would eventually make more sense than the Dell City deal.

"We think we can do it cheaper," Abel said. "If we can do it more cheaply, don't you think they're going to want to talk to us?"

However, Ed Archuleta, general manager of the El Paso Water Utilities Public Service Board, said he does not believe a private entity should be profiting from state-owned lands.

"I can tell you, we're not going to go with Rio Nuevo," he said. "We're just not interested."

For Miller, the brewing dispute hits close to home.

Some of the state lands that could be part of the Rio Nuevo deal are not far away, and El Paso Water Utilities already owns a ranch south of the Miller family holdings.

The Miller ranch has been in his family for more than 75 years and includes a home and a cavalry post, now abandoned, that was built -- but never occupied -- to fight Mexican bandit Pancho Villa.

"There's state land around here," said Miller, who also is a member of the Jeff Davis County groundwater water district. "Just down the road is the ranch where El Paso's water district owns the rights to the underground water, so I guess I'm surrounded."

"I don't know what it all means, but I think there needs to be some studies done before they start taking water out of the ground."