

Groundwater conservation districts have broad authority

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Parker County relies on subsurface aquifers to provide most of its drinking water. The water sometimes comes through a municipal well and is piped to individual homes. Other homes have their own well and are free to pump as much water as they like.

In Texas, the rule of capture stipulates any land owner with intact water rights may pump as much water as he or she likes, and use it for any legal purpose, including sale as a commodity.

As population thickened in urban areas of Texas and more stress was placed on the water table, occurrences like the Ozarka bottling plant court case became more common. Ozarka was selling millions of gallons of groundwater, depleting the aquifer, and causing nearby domestic use water wells to dry up.

A similar case occurred when the owner of a catfish farm began pumping millions of gallons a day out of the ground. If one well is deeper than another, the shallow well goes dry first.

In Parker County, especially the eastern portion, water wells are reportedly going dry at an alarming rate. Vast estates contained within subdivisions are using alarming amounts of water for landscaping and irrigation purposes. Natural gas drilling operators are also using massive quantities of water to produce newly accessible minerals in the Barnett Shale.

As the drought continues and more people settle in the area, some Parker County residents are calling for a groundwater conservation district (GCD). GCDs are the state's answer to protecting and limiting groundwater usage, while allowing the rule of capture to remain on the books and applicable in parts of the state which are not yet faced with groundwater supply issues. Groundwater conservation districts are political subdivisions of the state with broad authority. The powers and limitations of GCDs are spelled out in Chapter 36 of the Texas Water Code.

GCDs are generally designed to prevent a disproportionate or wasteful groundwater user from depleting aquifers that serve an entire area. The special districts have the power to limit domestic water well production and regulate well spacing.

GCDs can include all or part of one or more counties, cities, districts and other political subdivisions. A temporary board of five district directors are appointed by the county commissioners court, and serve until formal elections to approve the district and active directors can be held.

Before a district can be approved by the Texas Commission on Environmental Quality, it must submit financial information, including the projected maintenance tax or production fee rate and a proposed budget of revenues and expenses for the district.

The primary methods used by districts to finance their operations include property taxes, well production fees, and administrative fees for well permits and export permits. By statute, most districts may levy taxes if the tax is approved by majority vote at an election in the district held for that purpose.

Each district's specific funding mechanics are different.

In Brewster County, the district does not levy a tax and operates on a \$10,000 annual budget, according to a recent study produced by Environmental Defense. In Hudspeth County however, the tax rate is \$0.26 per hundred dollars of valuation, with a \$65,000 budget.

Under Texas Water Code Section 36.020, the general ad valorem tax rate may not exceed \$0.50 on each \$100 of assessed property valuation. Depending on a district's specific enabling legislation, tax caps can be put in place, or a district can be created with no ad valorem tax authority at all.

But districts are mandated to produce groundwater usage information and statistics, which can be costly. In addition, the water code gives district board members the right to purchase all materials, supplies, equipment, vehicles, and machinery needed by the district to perform its purposes.

Districts are also empowered to make drastic changes in the water system within their boundaries. GCDs can acquire land to erect dams or to drain lakes, draws and depressions.

Taxpayers within a district could potentially be responsible for a district's legal errors as well. According to the water code, any court in the state rendering judgment for debt against a district may order the board to levy, assess, and collect taxes or assessments to pay the judgment.

At a glance, GCDs are generally created by the state legislature. Local officials identify a need among their constituency for such a district, and the enabling legislation follows.

Though the process is tedious, private citizens can also create a district. If the Texas Commission on Environmental Quality identifies the need for a district and local lawmakers don't act quickly enough, the state organization is empowered to create a district on its own.

In a recent meeting of the Parker County Commissioners Court, Robert Mace of the Texas Water Development Board indicated TCEQ is already considering action toward some type of district in the area.

Bill Mullican, deputy executive administrator of the Texas Water Development Board, explained the enabling legislation for a GCD can vary considerably depending on the specific needs of a certain area and the stakeholders involved in its creation.

“Sometimes when a district is created through the Legislature, there might be some kind of provision that the locals don't want to have the power to do,” he explained. “If they don't feel like they can get the district confirmed, they might not want to do eminent domain power, for example. So they might have that power taken out in their enabling legislation.”

Parker County Judge Mark Riley and Precinct 2 Commissioner Joe Brinkley urged city officials and private citizens alike to provide input on any potential GCD.

Representative Phil King (R-Weatherford) is considering legislative action “to help get the county off of groundwater and on to surface water.” King is expected to meet with city and county officials that could be affected by the creation of a new district in November.

To date the state legislature has approved 89 GCDs, covering roughly 60 percent of the state. Very few GCDs are in place in north central and northeast Texas. The Middle Trinity GCD is the closest to Parker County and encompasses Erath and Comanche Counties.

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