

Suit could affect groundwater regulations
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WHITE DEER -- A ruling by a Dumas judge could have far reaching effect on groundwater regulations, although the general manager of the Panhandle Groundwater Conservation District doesn't think it will.

The City of Amarillo is suing Premium Standard Farms over the company's pumping of groundwater in Hartley County. A technical interpretation of a section of the Texas Water Code, however, is in an appeals court before the trial even begins.

C.E. Williams, general manager of the Panhandle Groundwater Conservation District, which includes Pampa and Gray County, said he doesn't think the issue will balloon into a major problem for water conservation districts and enforcement of their rules.

The Panhandle Groundwater Conservation District, however, is filing a brief with the appeals court in support of Amarillo.

Last May, Amarillo officials became aware that Premium Standard Farms swine and farming operation south of Dalhart was pumping more groundwater than allowed by the North Plains Groundwater Conservation District, the governing body for groundwater in the northern and western Texas Panhandle.

Under the North Plains Groundwater Conservation District rules, property owners can pump up to two acre-feet per acre of water rights annually. The City of Amarillo in their lawsuit accuses Premium Standard Farms of pumping as much as 3,300 acre-feet of water per year from a half section, 320 acres, south of Dalhart. The groundwater district rules, Amarillo said, would normally limit the pumping to 640 acre-feet a year.

The water is apparently being used to irrigate corn, according to court documents. There is no pollution problem, Amarillo officials said.

In September, Amarillo appealed to the North Plains Groundwater Conservation District board to enforce their rules more aggressively, but the district took no action.

The city filed their lawsuit against Premium Standard Farms Oct. 24, asking for unspecified damages and a temporary injunction to stop the company from continuing to pump water, pending a trial on the merits of the case and a requested permanent injunction.

Following a November hearing, 69th District Judge Ron Enns issued a narrow ruling concerning the measurement of water production and denied Amarillo's request for a temporary injunction shutting down Premium Standard Farms' wells.

The city appealed the judge's ruling to the Seventh Court of Appeals and hopes for a decision from them this month.

At issue is the wording surrounding the rate of production in Section 36.119 of the Texas Water Code.

Texas water law is based on the rule of capture, which gives a landowner the right to pump as much water from beneath his land as he wants so long as he does not waste it or pump it maliciously in order to harm his neighbor.

The Texas Legislature, however, has modified that rule through the establishment water conservation districts to protect water resources around the state. In the case of the North Plains Groundwater Conservation District, initially established in 1955, it covers all or part of eight counties, Sherman, Hansford, Ochiltree, Lipscomb, Dallam, Hartley, Moore and Hutchison counties.

Amarillo has about 114,000 acres of water rights in Hartley County that they initially purchased in 1954, but interspersed within those holdings is a half section where Premium Standard Farms has six wells. The wells were permitted when they were drilled in the 1970s for 1,250 gallons per minute, although they can't produce that much today.

Over the years as water tables have changed, the rules of area groundwater districts have also changed and the Texas Water Code has been amended.

While part of the water code, Section 36.116, which deals with permitting, was changed to reflect different methods of measuring water production, Section 36.119, the section that creates private cause action, or a lawsuit, for injunctive relief and damages, was not. It still refers to water production in terms of gallons per minute for specific wells.

Premium Standard Farms argues that Section 36.119 only applies to operating a well at a higher rate of production than the rate approved, and that a 'rate of production' is limited to only a gallons per minute basis. Amarillo responds that 'rate of production' means a ratio of production and that a violation in acre-feet per acre is just a different and equivalent unit of measuring production.

Michael Booth, an Austin attorney specializing in water law and Amarillo's lead lawyer in the case, argues that simple conversion factors from common engineering tables show that water discharges measured in gallons per minute can easily be converted to acre-feet per day.

Booth, who helped most of the area groundwater districts write their rules over the past decade, also argues that Section 36.116, the section of the water code dealing with the permitting process, was rewritten in 2001 so that groundwater districts could regulate production on either a gallon per minute basis or an acre-feet per acre basis. It would be unreasonable, he said, that the Legislature did not intend Section 36.119 to recognize all those methods of regulating production when empowering a groundwater owner to file

suit for violation of the district's briefs.

While Judge Enns admitted that it was a close call, he denied the city's request for a temporary injunction to prevent Premium Standard Farms from pumping from the Ogallala Aquifer.

Amarillo officials claim the ruling denies owners of groundwater rights the protection that Section 36.119 is intended to provide.

Amarillo Assistant City Manager Jarrett Atkinson said it could also lead to questions in the application of groundwater district rules that regulate production through anything other than gallons per minute.

He said that unless the argument is accepted, then Section 36.119 of the Texas Water Code does not entitle a property or groundwater rights owner to legal protection and recovery, unless the relevant groundwater conservation district regulates production solely on a gallons per minute well basis.

“We believe that property owners, groundwater rights owners, groundwater conservation districts and other persons with an interest in the preservation and conservation of water will be irreparably harmed unless the appeal shows that the phrase ‘rate of production’ clearly has the meaning ascribed in the Texas Water Code Section 36.116,” Atkinson says.

Williams said he thinks the issue surrounding the measurement of water production will be worked out. The Panhandle Groundwater Conservation District, along with several other water conservation districts, is filing an amicus curiae, or friend of the court brief, with the Seventh Court of Appeals in support of Amarillo's position.

In addition to the judicial appeal, steps are now being taken to present new wording for Section 36.119 of the Texas Water Code to the Texas Legislature when it convenes later this month.