



Ground Water Legislation in the 82nd Texas Legislature

Summary: National Wildlife Federation and the Lone Star Chapter of the Sierra Club support sustainable management of ground water resources and accountable local control of those resources through sufficiently empowered ground water management districts. We welcome a healthy debate and discussion of the ground water rights issue, but we oppose efforts to expand the current ground water ownership doctrine. The proposed expansion would cause great regulatory uncertainty and expensive litigation. It would also prejudice and disrupt existing investments—investments which have relied on the current, long-standing common law interpretations, overlain by a balanced regulatory approach grounded in the 1917 Conservation Amendment to the Texas Constitution.

Background:

- The state’s responsibility to manage and conserve ground water is recognized in the Texas Constitution, via the 1917 Conservation Amendment (Article 16, Sec. 59 (a)). To accomplish this, Texas relies on local control, through ground water districts with elected board members. The legislature authorized the creation of ground water districts in 1949, and the first district was created in 1951. There are now 96 ground water districts in Texas. Many of these districts have been in place for decades, but others have only recently been established, as suburban population growth puts pressure on aquifers that generally supported only traditional farm and ranch needs.
- The current Texas approach seeks to balance the historical private right to pump and “capture” ground water with the modern needs to provide reasonable water management for a growing state.
- Under current law, ground water districts can, in general, require that all wells be registered and, where necessary, require well spacing, permits for existing and new wells and apply pumping limits to larger wells. The purpose of the districts is to ensure that water use is balanced between users and that the future of the aquifer as a reliable source of water is protected. Simply stated, ground water districts generally try to prevent the aquifer from being drained faster than it can be replenished by rainfall.

Protecting aquifers from being drained too fast is essential to Texas’ environmental and economic future. It protects water supply for future generations and it helps maintain the spring flows that sustain our streams and rivers, flows that are critical to fish and wildlife, property values and quality of life

throughout the state. This approach also protects existing users whose wells depend on maintaining water levels in the aquifer.

Current Challenges: There are many ground water management challenges currently facing the state, including:

- Proposals to develop and export large amounts of ground water from rural areas to growing cities;
- Litigation (*Edwards Aquifer Authority v. Day*), currently before the Texas Supreme Court, seeking to expand the right of ground water ownership to include a vested right of ownership of ground water in place;
- Implementation of the 2005 legislative directive to develop “desired future conditions (DFCs)” for aquifers, grouped by ground water management areas (GMAs) and the interaction of the GMA process with regional water planning.
- A delicate balancing act for newer ground water management districts that are trying to assemble the science on water availability at the same time they are dealing with high pressure requests from private water marketers seeking to export large amounts of ground water to cities.

Read more about these challenges, and others, at <http://www.texaswatermatters.org/groundwater.htm>.

Responding to the Challenges

The National Wildlife Federation and the Lone Star Chapter of the Sierra Club do not believe that the legislature needs to make major changes in the current ground water regulatory framework at this time. We believe:

- **The current ownership doctrine should not be legislatively expanded to establish a statutory right of vested ownership of ground water in place.** Such an expansion is unnecessary, as the current common law and statutory recognition of landowner rights fairly protect and balance the need to manage ground water for the future. Expansion of ownership rights will lead to excessive regulatory confusion, litigation, and the undermining of investments made in reliance on the current system.
- **The DFC/GMA process should be allowed to proceed,** though clarification of DFC appeal procedures at the Texas Water Development Board may be necessary.
- **Ground water management districts, especially new districts with few resources, should be provided with greater state support for aquifer assessment, modeling, and other activities.**
- **Legislators must carefully balance the interests of rural areas highly dependent on ground water against pressure from private marketers and growing cities.** While some cities may need to import modest amounts of ground water from nearby rural areas, many current proposals to export massive amounts of ground water from rural areas are extremely expensive and unrealistic and would cause undue damage to the environment and economies in the targeted source area.

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