

TEXAS GROUNDWATER PROTECTION COMMITTEE

RECORD OF MEETING

Fourth Quarter Meeting, FY 95

Meeting Date: July 27, 1995

Place: Building B, TNRCC, Park 35 Room: 201A

Meeting No.: 23

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COMMITTEE HANDOUTS

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3. Copy of the EPA State Management Plan Draft Proposed Rules
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5. 1996 Consensus State Water Plan Population and Consumptive Water Demand Forecast
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7. Summary of the Texas "Takings" Bill, from the Texas Center for Policy Studies
8. Draft Texas Ground-Water Program Directory
9. Texas Water Savers
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MEETING ATTENDANCE

Committee Members Affiliation

Mary Ambrose, Chair	TNRCC
Phil Nordstrom	TWDB
Alan Dutton	BEG
Donnie Dipple, Alternate	TDA
Beade Northcut	TSSWCB
Richard Ginn	RCT
Wayne Jordan	TAES

Guest Speakers

David Messey, Texas Water Development Board
 David Duncan, Texas Natural Resource Conservation Commission
 Ken Kramer, Lone Star Chapter, Sierra Club

Agency Staff	Affiliation	Program
Cary Betz	TNRCC	WP&A Div/Ground Water Assmt.
Chris Drewy	TNRCC	WP&A Div/Ground-Water Assmt.
Kelly Mills	TNRCC	WP&A Div/Ground-Water Assmt.
Steve Musick	TNRCC	WP&A Div/Ground-Water Assmt.
Kitty Malus	TNRCC	WP&A Div/Ground-Water Assmt.
Anne Miller	TNRCC	PST Division
Richard Anderson	TNRCC	IHW Division
Margaret Hoffman	TNRCC	Legal Services Division
Cecily Warren	TNRCC	Field Offices Division
Bruce Lesikar	TAEX	
Ambrose Charles	TDA	

Interested Parties Affiliation

Lloyd Woosley	USGS
Jerry Collins	EPA, Region 6
Keith & Dee Pate Evergreen	UWCD
Denise Rhodes	Consultant, Austin
Kim Montgomery	Baker and Botts
Lauren Ross	League of Women Voters
Michael Brown	Vinson and Elkins

MINUTES OF JULY 27, 1995

ITEM I. Call to Order and Introductions

The Chairman called the FY 95, Fourth Quarter meeting of the Texas Groundwater Protection Committee to order at 2:10 pm in Room 201A, Building B, Park 35 Austin Campus, TNRCC. The Texas Alliance of Groundwater Districts and the Texas Department of Health were not represented. Donnie Dipple represented the Texas Department of Agriculture. The members were supplied with a copy of the minutes from the FY 95 third quarter meeting of 5/11/95 (Handout 1), a copy of the Agricultural Chemicals Subcommittee's Education Brochure (Handout 2), and a copy of the EPA State Management Plan Draft Proposed Rules (Handout 3).

ITEM II. Subcommittee Reports

Agricultural Chemicals

The Chairman called on Steve Musick, TNRCC, Chairman of the Agricultural Chemicals Subcommittee, to present the subcommittee's report. Mr. Musick reported the Subcommittee met for its fourth quarter meeting prior to the Committee's meeting today. Mr. Musick noted the Committee heard status reports from the Site Selection, Education, Atrazine BMP, and State Management Plan (SMP) Task Forces, and that the Texas Department of Agriculture gave a presentation discussing proposed SMP legislation which failed in the 74th Legislature.

The SMP Task Force reported that it was slightly behind schedule in updating the Generic SMP, but was very close to having the final draft compiled. The final draft of the Generic SMP will be submitted for review/approval at the Committee's first quarter meeting for FY 96.

The Education Task Force distributed published copies of the education brochure Texas State Management Plan - For Prevention of Pesticide Contamination of Groundwater.

Data Management

The Chairman called on Mr. Musick to represent Bob Blodgett, TNRCC, Chairman of the Data Management Subcommittee. Mr. Musick reported that editing of the Committee's approved final draft of the Texas Ground-Water Data Dictionary was continuing. The Data Dictionary is over 220 pages in length and has 188 tables. Ground-Water Assessment Section staff are working on the final format for the tables.

In addition, Mr. Musick reported on measures being taken to address the backlog of unfiled water well reports (driller reports). He briefly outlined the new filing process (filed geographically from well location maps submitted by the drillers) implemented by the Water Well Drillers Team and being conducted by TNRCC/Records Services. He reported that the TNRCC/Ground-Water Assessment Section has hired temporary staff to address the five-year backlog of unfiled reports. To date, 50% of the backlog has been addressed, and the entire backlog should be eliminated by the end of the calendar year.

Nonpoint Source

The Chair called on Margaret Hart, Chair of the Nonpoint Source Subcommittee. Ms. Hart provided a Ground-Water Nonpoint Source Workgroup - Update (Handout 4) to the Committee. Four nonpoint source issues were addressed.

The annual effectiveness report is due to EPA on November 1, 1995. EPA has not sent format guidance for the report to date. Ms. Hart will send a letter to the participating agencies in August describing the report requirements as defined by EPA. Input should be returned to Ms. Hart by September 28, 1995.

The 319(h) grant cycle/process is underway. A total of 22 proposals were submitted to TNRCC for submission as the TNRCC draft workplan. A draft workplan, with approximately 20 proposals, was also submitted by the Texas State Soil and Water Conservation Board. Essentially there is a 50/50 split between the two agencies. The proposals will be forwarded to EPA by August 1, 1995, where the review process will begin in earnest. Final workplans are due to EPA in December, and funds should be awarded in February 1996.

Ms. Hart is working with Nonpoint Source Team members to better define the coordination of the update of the Nonpoint Source Assessment Report and the Nonpoint Source Management Plan. A meeting is scheduled for August 4 at TNRCC to determine the schedule for revising these documents. Brad Lamb, EPA, has requested that these two documents be submitted as one.

TNRCC/Ground-Water Nonpoint Team staff recently completed a statewide nitrate assessment and a map report is available through the TNRCC/Publications Section. The report (map) was produced using the Arc/Info Geographic Information System and represents an analysis of over 80,000 records. The publication number of the report (map) is AS-58.

ITEM III. Presentations

David Meesey, TWDB - Consensus State Water Plan

David Meesey, TWDB, gave a presentation on the preparation of the Consensus State Water Plan. The Texas Water Plan, scheduled for publication in 1996, will represent the consensus development process between the TWDB, TNRCC, and the Texas Parks and Wildlife Department (TPWD). In the consensus process, the TWDB is addressing water from a financial, ground water, surface water, and long-range planning perspective; the TNRCC is addressing water policies based on program and regulatory needs; and the TPWD is addressing water

protection and conservation for ecosystems in streams, bays, and estuaries. An issue involved in the preparation of the consensus plan was to enhance public involvement and coordination at all levels. The entities involved provide for a wide involvement of opinion and thus, the coordination provides for a clearer perspective of the state's long-term water needs.

The consensus plan does not distinguish between surface water and ground water, and includes sections detailing water quality, water policy, environmental water needs, and in-stream flow needs. Mr. Meesey provided Handout 5, 1996 Consensus State Water Plan Population and Consumptive Water Demand Forecast, which illustrated trend analyses, projected out 50 years, for population and use trends.

Recommendations are a main component of the Consensus State Water Plan. Draft recommendations have been initiated by the Technical Advisory Committee and include both administrative and legislative recommendations. A few draft recommendations for the legislature include: making changes in the law (Water Code); needed laws to address abandoned and deteriorated water wells; the need to establish a well plugging fund; the continuation of water well driller education; and the need to fund the critical area program.

Steve Musick asked what the timeframe was for the final draft. Mr. Meesey said the final draft should be ready for review by next summer. He also said the entire plan contents, leading to the final draft, will be made available for review.

David Duncan, TNRCC - Legislative Update for TNRCC

David Duncan, Director of the Intergovernmental Relations Division of the TNRCC, provided Handout 6 (Legislation of Interest to the TNRCC, 74th Legislature, Regular Session) and briefed the Committee on the following legislation:

- House Bill (HB) 0001 - Appropriations Act. The fiscal year (FY) 1996 appropriations level of \$429 million represents a \$79 million increase over the agency's FY '95 budgeting level. However, the vast majority of the increase results from additional funding in the Waste Tire Recycling and Petroleum Storage Tank programs. These additional funds must be paid out to participants in those programs and cannot be used to fund agency operations. Actual funding available to the agency for its operating budget will be approximately \$20 million less for the coming fiscal year than for the current year. This is due to a number of cuts in operational funding including a \$7 million decrease in Municipal Solid Waste funding for agency operations and a 1.2% across-the-board funding cut required of all state agencies by Article 9.
- HB 1989 - Relating to the underground storage of appropriated water incidental to a beneficial use. Authorizes the storage of state water in aquifers. Will require rulemaking.
- HB 2015 - Relating to statutory changes to obtain delegation to Texas of the National Pollution Discharge Elimination System (NPDES). Addresses two issues relating to EPA's delegation to the TNRCC of the NPDES under the Clean Water Act. The first issue relates to the eligibility requirement for serving as a commissioner. The second

issue relates to citizen comment on enforcement of NPDES permits. Will require rulemaking.

- HB 2294 -Relating to the regulation of ground water; granting the power of eminent domain. Provides for a recodification of state law relating to ground-water regulation. The bill moves Chapter 52, Water Code, into new Chapters 35 and 36, Water Code. Portions of Chapter 52 that addressed ground-water management areas and critical areas are transferred into Chapter 35 (Groundwater Studies). Portions of Chapter 52 that addressed ground-water conservation districts are transferred to Chapter 36 (Groundwater Conservation Districts).
- Senate Bill (SB) 0626 - Recodification Bill, relating to certain laws governing water districts and nonprofit water or sewer service corporations. Combines most of the administrative provisions of the Water Code relating to water districts (Chapters 50-66, except Navigation District chapters) into new Chapter 49. Will require rulemaking.

Mr. Duncan, upon questioning, very briefly discussed the following legislation: HB 2296 (voluntary cleanup), HB 2587 (PST program), HB 3189 (Edwards Aquifer Authority board of directors), SB 942 (On-Site Water Treatment Council), SB 1619 (access to remediation sites), HB 3226 (coastal resources protection), SB 0647 (water well pump installers), and SB 0675 (water well drillers).

Ken Kramer, Lone Star Chapter, Sierra Club - Overview of Legislative Session

Ken Kramer, Director of the Lone Star Chapter of the Sierra Club, briefly presented his observations of the 74th Legislature to the Committee. He addressed general observations of the session, observations relating to the environmental regulatory agencies, and specific legislation.

His overall perspective of the legislative session was that it was not a good session for the environment; but it could have been much worse. He noted the Sierra Club was working on a newsletter, to be released next week, giving an overview of anti-environmental legislation which passed. Mr. Kramer stressed that many bills were introduced to restrain citizens from the pollution control permitting process. He emphasized that many bills the Sierra Club felt were anti-environmental did not pass, that many went to the wire, many will be back next session, and that the fight was not over.

In general, Mr. Kramer said the environmental regulatory agencies did well in their budget appropriations, however, appropriations were generally too small. He pointed out that taking care of the environment was not getting any cheaper and the budgets which were allocated are not keeping up with growth. In addition, he said funding for several programs were in question.

Specific legislation Mr. Kramer addressed included:

- HB 2473 - Relating to audits to determine compliance with certain laws, rules, and regulations; providing penalties. HB 2473 created the "Texas Environmental, Health, and Safety Audit Privilege Act" to encourage voluntary compliance with environmental and

occupational health and safety laws. Mr. Kramer noted that audit reports will now be privileged and cannot be used as evidence in civil actions or criminal or administrative proceedings, except in certain situations; the law gives limited immunity to companies for voluntary reporting of noncompliance; and that this legislation is destined to be hammered out in the courts in the future.

- SB 0014 - Protecting private real property rights from certain actions of this state or a political subdivision of this state. The legislation, known as the "Private Real Property Rights Preservation Act" subjects a huge range of governmental actions to legal challenges from private property owners. The law allows property owners to bring a variety of legal actions to halt or invalidate governmental actions claimed to cause a "taking", which is defined as a 25% or greater reduction in property value. If the government wants to carry out actions that result in a "taking", as defined by the terms of this law, they will have to first pay compensation to landowners who challenge the action.

The legislation has two main components:

- 1) allowing landowners to sue to stop or invalidate government action that results in a "taking" as defined by the legislation and
- 2) requiring that "takings impact assessments" be performed by government entities before they take action, with an option for landowners to sue to stop the action if the governmental entity does not prepare the impact assessment.

In addition, there are important provisions of the legislation setting out which governmental entities are covered by the new provisions, which types of actions are exempt from the bill, the effect of takings claims on property values, and the effective dates of the new law. Mr. Kramer provided Handout 7 (Summary of the Texas "Takings" Bill, from the Texas Center for Policy Studies) to accompany his discussion of the bill.

David Meeseey, TWDB, asked Mr. Kramer what his "gut-reaction" was on the ability of the opposing sides to compromise and find middle ground on this issue. Mr. Kramer said attitude shifts are polarizing viewpoints, which would hurt the chances to reach a rational outcome.

The Chair asked if Mr. Kramer was aware of any unfunded-mandates legislation coming out of the legislative session. Mr. Kramer replied none was passed in the state, but some have been passed by the U.S. Congress.

Richard Ginn, RCT, asked about the provision in HB 2473 for remediation within "a reasonable amount of time". Mr. Kramer responded the provision was too ambiguous.

Steve Musick, TNRCC, asked about changes in the coastal resources bill (HB 3226). Mr. Kramer said there was a significant amount of change chiefly restricting what the Coastal Coordination Committee (CCC) could do in reviewing permits (removal of authority to reverse and remand agency actions). In addition, if an agency action is found to be inconsistent with the

CCC's Coastal Management Plan, the CCC may request the agency to reconsider the action, and, if necessary, the CCC may request an opinion from the Attorney General and request to seek injunctive relief in state district court.

ITEM IV. Information Exchange for Ground-Water Related Activities

Legislative Update by Agency

Richard Ginn, RCT, reported on HB 2473, concerning environmental audits. The RCT is working on centralizing locations of information where environmental audits are being conducted. HB 1404 addresses hazardous liquid pipeline facilities and worst-case scenario pipeline spill contingency. Technology bill allows for nonproductive well-bores to be used for research.

Steve Musick, TNRCC, reported on three ground-water conservation district creation bills which passed. HB 846 created the Garza County Underground and Fresh Water Conservation District covering all of Garza County. HB 1493 created the Hemphill County Underground Water Conservation District (UWCD) in all of Hemphill County. SB 1714 created the Oldham County UWCD in all of Oldham County. Each district will be actually created upon holding successful confirmation elections. Mr. Musick also briefed the Committee on HB 2294 which, effective September 1, recodifies Texas Water Code, Chapter 52 (Underground Water Conservation Districts) into new Chapter 35 (Groundwater Studies) and Chapter 36 (Groundwater Conservation Districts). Keith Pate added that SB 1693, concerning the membership/structure of the board of directors of the Gonzales County UWCD, will become effective September 1.

Donnie Dipple, TDA, discussed the legislation which failed seeking money for the SMP. The failure basically represented as a misunderstanding of the issues and he said TDA would try again next session. He also reported on the re-established responsibilities of the ARPA, chiefly the elimination of appellate powers.

Phil Nordstrom, TWDB, provided insight to the funding appropriated to the TWDB and briefly discussed legislation on aquifer storage and artificial recharge.

Wayne Jordan, TAES, reported a 5% reduction in funds. Money was allocated for a new project addressing animal waste management and possible contamination to ground water in the Ogallala aquifer in the High Plains.

Comprehensive State Ground-Water Protection Program

The Chair called on Steve Musick to update the Committee on the status of the CSGWPP. Mr. Musick reported he and the Chair met with EPA Region 6 in June to discuss inadequacies in the core assessment submitted to EPA in August 1993 (EPA provided comments in February 1995). The inadequacies should be addressed in a draft form by the end of fiscal year 1995 (August 31). The Committee will need to consider CSGWPP during the first two quarters of fiscal year 1996. He also briefly discussed some of the benefits, citing New Hampshire, that EPA will negotiate with states with approved CSGWPPs.

SFIREG Meeting Report

The Chair updated the Committee on SFIREG related activities as follows.

Update on the State Management Plan (SMP) Proposed Rule - A briefing for Deputy Administrator Fred Hansen was held May 3 on the proposed rule and EPA's approach to ground-water protection. Hansen supported the current approach and promulgating the rule ASAP. The current draft tones down the previous request in the preamble for comments on a more stringent approach to ground-water protection. The next steps are for the rule's working groups to do another review, followed by closure in the work group offices. The document will then go to OMB, with concurrent review by USDA and Congress. The schedule calls for publication by October 1995, with either a 60 or 90 day comment period. The final rule is scheduled for June 1996, with a period of 21 months to be allowed for state implementation, i.e., March 1998. After this date, no chemicals listed in the rule could be used in any state which does not have a chemical specific SMP in place. EPA expects close scrutiny from OMB because of the unfunded-mandates issue, but does not anticipate a serious problem in obtaining concurrence.

Status of Amber Registration Decision - OPP has removed the condition of the Amber registration for use on wheat and barley.

Good Laboratory Practices Issue - The manpower problem, particularly for small states, presented by the GLP requirement is mandatory according to EPA's Office of General Counsel. State resources should be spent on management of ground-water protection problems, and not on data support for registration.

The GLP regulation requires that a study submitted pursuant to it must meet one of the following criteria: 1) the submitter certifies that the study meets the GLP standard; 2) the submitter certifies that the study does not meet the GLP standard; 3) the submitter states he does not know if the study meets the GLP standard. A question exists of whether data submitted pursuant to SMP requirements fall under registration requirements (and thus GLPs) or not. With EPA saying that certain product registrations will be cancelled unless approved SMPs are in place, the high standards inherent in the GLP requirements will provide assurance that the data submitted by a state pursuant to its SMP has integrity.

The key issue is why the data are being collected. It was noted that if the public were to claim ground water was not being protected, EPA, in its periodic evaluations, could show more easily that the SMP program was protecting ground water if the data met the GLP standards.

EPA has total control; there was no question that if the registrant were involved and data submitted were met without question. If data were to be submitted voluntarily, and were not intended to meet registration requirements, then there was no need for GLPs. If a state were taking regulatory action based on its own data, then GLPs would not be necessary. Essential differences between QA/QC and GLPs deal with chain-of-custody and record keeping are not required by anyone. The SMP rule asks for comments on the GLP issue.

Outreach Efforts - Abandoned Well Closure Educational Initiative

The Chair called on Steve Musick to address this issue. Mr. Musick reported he was working on establishing a work group which still needs to establish a charter. Mr. Musick said he would be contacting individuals for membership to the work group in the near future.

ITEM V. Business - Discussion and Possible Action

Draft Texas Ground-Water Program Directory

The Chair called on Mr. Musick to discuss the draft Texas Ground-Water Program Directory. A copy of the draft directory was provided as Handout 8. Mr. Musick discussed the major sections of the draft directory which include; the table of contents, an introduction, a section on ground-water hydrology and terminology (taken from TWC Report 89-01), a ground-water subject oriented yellow-pages, program descriptions (abbreviated from the Joint Report), and the supporting appendices.

Mr. Musick asked the Committee agencies to review the directory in general and to provide input and comments. He asked specifically for the agencies to review the directory for format, focus, accuracy in program descriptions, agency program phone numbers, and also for additional subheadings needed for the yellow-pages. In addition, he also invited those in the audience to take copies of the directory which were made available and provide input and comments on the usefulness of the directory. He asked the Committee and the public to provide comments for improvements by mid-September. A goal was established to have a solid final draft ready for the Committee's first quarter meeting for fiscal year 1996.

Draft Texas State Management Plan for Prevention of Pesticide Contamination of Ground Water

The Chair called on Mr. Musick to report on the draft Texas SMP for prevention of pesticide contamination of ground water. Mr. Musick reported the Agricultural Chemicals Subcommittee was finalizing their efforts to finish the updated report. Discussion was postponed until the next meeting of the Committee.

ITEM VI. Announcements

The Chair announced the 10th Annual Ground Water Protection Seminar to be held on August 29 in San Antonio. The seminar is sponsored by the TNRCC and funded by a grant from EPA Region 6. Flyers for the seminar were available for the audience.

The Chair announced the annual meeting of the Ground Water Protection Council is to be held in Kansas City from October 8 to 11.

Steve Musick announced copies of the Agricultural Chemicals Subcommittee's educational brochure were available for the audience and by contacting the Ground-Water Assessment Section.

Mr. Musick announced a conference entitled Innovations and New Horizons in Livestock and Poultry Manure Management, sponsored by the Texas Agricultural Extension Service and others. The conference will be held in Austin on September 6 and 7.

Wayne Jordan announced and provided as handouts two newsletters produced by the Texas Water Resources Institute. Texas Water Savers (Handout 9) focuses on water conservation and reuse activities occurring in Texas. Texas On-Site Insights (Handout 10) addresses issues concerning on-site wastewater and treatment.

Richard Ginn announced a technical conference addressing underground injection control to be held in conjunction with the annual meeting of the Ground Water Protection Council. Portions of this conference will address the suitability of solution mines for the disposal of petroleum wastes.

ITEM VII. Public Comment

There were comments from the audience.

ITEM VIII. Adjourn

There being no other business or discussion, the Chair adjourned the meeting at 3:30 p.m.

Compiled by Steve Musick/Kelly Mills, Ground-Water Assessment Section, TNRCC.