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State Regulatory Environment: The Latest Developments and the Impact on Projects & Plans

Texas Water Summit
November 14, 2013 - Austin

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Recent Texas Water Legislation

- Senate Bill 1 – 1997
- Senate Bill 2 – 2001
- Senate Bill 3 – 2007
- House Bill 4, HB 1025, and SJR 1 – 2013

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Prop 6 – Approval of SWIFT by Texas Voters on November 5

- Voters of Texas approved Proposition 6 to amend the Texas Constitution to create the SWIFT.
- Proposition 6 approved by 73.37% of the voters.
- 836,424 voters voted in favor of Prop. 6
- 303,547 voters voted against Prop. 6

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HB 4 (Ritter/Fraser) – SWIFT, SWIRFT, and TWDB Re-Organization

- Provides for framework and administration of SWIFT and SWIRFT.
- Re-organized several aspects of TWDB, including the leadership structure.
- TWDB will now have 3 full-time board members instead of 6 part-time board members.
- An advisory committee for the SWIFT is established which is comprised of the Comptroller and members appointed by Speaker and Lt. Governor. The advisory committee must make recommendations to the TWDB regarding the use of money in the SWIFT.
- Requires prioritization of projects by RWPGs and TWDB.
- TWDB must create a point system for prioritization of projects.

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HB 4 (Ritter/Fraser) – Timelines for Action

- Sept. 1 = Board members appointed by Governor Perry begin terms.
- Nov. 5 = Voters approved Proposition 6
- ASAP after Nov. 5 = Advisory Committee members appt.
- Dec. 1 = RWPG stakeholder committee submits project prioritization standards to TWDB and TWDB must approve.
- Sept. 1, 2014 = RWPGs submit final prioritization of projects from 2011 RWPGs.
- March 1, 2015 = Deadline for TWDB adoption of rules.

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TWDB Board Members Appointed by Governor Perry

- On August 16, 2013, Governor Perry appointed 3 board members to the TWDB pursuant to HB 4.
- Carlos Rubinstein, Bech Brunn, and Mary Ann Williamson will serve full-time effective September 1, 2013.
- Rubinstein will serve as chair of the board for a term to expire at the pleasure of the governor.

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New TWDB Board Member - Carlos Rubinstein

- Former Commissioner at TCEQ – a position he held since August 2009
- Member of numerous water-oriented committees and councils
- Former Rio Grande Watermaster
- Former City Manager for the City of Brownsville
- Term as board member to expire February 1, 2017

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New TWDB Board Member – Bech Bruun

- Former Director of Governmental Appointments for the Office of Governor
- Former Government and Customer Relations Manager for Brazos River Authority
- Former Chief of Staff for State Rep. Todd Hunter
- Term as board member to expire February 1, 2015

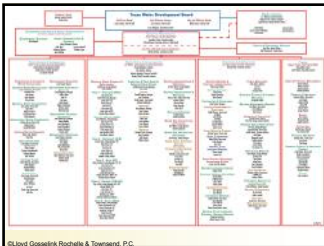
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New TWDB Board Member – Mary Ann Williamson

- Owner of MKS Natural Gas Company
- Board Member and Current Chair of Texas Lottery Commission
- Member of Texas Society of Certified Public Accountants
- Term as board member to expire February 1, 2019

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New TWDB Organizational Chart

- 3 Commissioners
- Executive Administrator – Kevin Patteson
 - Special to EA – Jonathan Stinson
- Divisions
 - Water Science & Conservation
 - Water Supply & Infrastructure – includes Regional Water Planning and Development
 - Operations & Administration
 - Finance
 - General Counsel
 - Governmental Relations & Agency Communications

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Texas Groundwater Management / Law

- Exciting time to be involved with water issues in Texas
- Water management and Texas law governing water is evolving and organic
- 1997 – 38 GCDs in existence
- 2013 – 99 GCDs with 4 GCDs awaiting confirmation elections

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Texas Groundwater Management / Law

- Increased level of knowledge about groundwater resources and management but much more is needed
 - Ex. Middle Trinity GCD
- Science, science, science

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Texas Groundwater Management / Law

- Brackish groundwater / water quality
- Estimated that Texas has 2.7 billion acre-feet of brackish groundwater according to 2003 LBG-Guyton and Assoc. study.
- Brackish Groundwater Manual for RWPGs - 2003
- Brackish Resources Aquifer Characterization System (BRACS) – created with funding from Legislature in 2009
- BRACS designed to map and characterize the brackish aquifers of Texas in greater detail.

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GCD Management of Brackish Groundwater

- No statutory definition of "brackish groundwater"
- Some want to define as groundwater that contains a total dissolved solids (TDS) concentration of more than 1,000 milligrams per liter.
- Some want to define as groundwater that contains a total TDS concentration of more than 10,000 milligrams per liter.

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GCD Management of Brackish Groundwater

- Production of brackish groundwater is being permitted by GCDs today
- No differentiation in most GCDs' rules between potable groundwater and brackish groundwater
- Vast majority of Desired Future Conditions (DFCs) and Modeled Available Groundwater (MAG) don't differentiate between potable groundwater and brackish groundwater

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GCD Management of Brackish Groundwater

- Do GCDs want to encourage the production and use of brackish groundwater?
- Yes. GCDs understand that growing communities and businesses need more water supplies but not at the expense of the groundwater resources within GCDs' boundaries and, particularly, potable groundwater resources

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GCD Management of Brackish Groundwater

- Can GCDs encourage the production brackish groundwater under existing Texas law and within their existing regulatory frameworks?
- Yes. GCDs can authorize the production of brackish groundwater in greater amounts as part of well permitting process.
- Chapter 36 enables GCDs to adopt different DFCs related to brackish groundwater production and to establish management zones from which brackish groundwater can be produced.

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Section 36.108(d-1) – Different DFCs

- The districts may establish different desired future conditions for:
 - each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or
 - each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.

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Section 36.116(d) – Management Zones

- For better management of the groundwater resources located in a district or if a district determines that conditions in or use of an aquifer differ substantially from one geographic area of the district to another, the district may adopt different rules for:
 - (1) each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the district;
or
 - (2) each geographic area overlying an aquifer or subdivision of an aquifer located in whole or in part within the boundaries of the district.

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Barton Springs/Edwards Aquifer Conservation District – Saline Edwards Aquifer

- BSEACD has designated a management zone known as the Saline Edwards Management Zone
- BSEACD has worked with GMA 10 to determine a DFC for Saline Edwards MZ
- BSEACD rules treat non-exempt wells located within SEMZ differently. Certain curtailments of production of wells do not apply.

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HB 2578 (Larson) / HB 2334 (Callegari) SB 1760 (Uresti) / SB 1284 (Schwertner)

- Desalination / Brackish Groundwater legislation
- Amended Chapters 11 and 36 of the Water Code.
- Defined "brackish water" and "marine water"
- "Brackish water" means water that contains a total dissolved solids concentration of more than 1,000 milligrams per liter.
- "Marine water" means water that contains TDS concentration of more than 10,000 milligrams per liter and is derived from Gulf of Mexico or adjacent bay, estuary, or arm of Gulf.

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**HB 2578 (Larson) / HB 2334 (Callegari)
SB 1760 (Uresti) / SB 1284 (Schwertner)**

- Attempted to streamline regulatory process for desalination projects.
- Desalination of marine seawater projects would have been exempt from TCEQ permitting regulations.
- Desalination of brackish groundwater projects would need to be located in production zones designated by the TWDB.

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Legislative Interim / 84th Legislature

- Stakeholder groups working on brackish groundwater issues
- Interim Legislative Committees will study topics of interest and provide recommendations for 84th Texas Legislature

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Brazos River Watermaster Process

- SOAH Hearing on September 25
- Proposal for Decision expected from SOAH Judge in December 2013
- Potential answer from SOAH Judge on extent of jurisdiction of BR Watermaster
 - Entire river basin or below Possum Kingdom

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Legislation/TCEQ Rules – Interbasin Transfers

- HB 3233 (Rep. Ritter / Sen. Fraser)
 - Revises Interbasin Transfer permitting requirements
 - Effectively reduces burden for Interbasin Transfer permit applicant
- TCEQ Rules – targeted completion of Sept. 2014

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Drought Legislation – WCPs and DCPs

- HBs 3604 and 3605 (Rep. Burnam / Sen. Hegar)
 - Requires Water Conservation Plans and Drought Contingency Plans to be implemented upon notice of emergency drought conditions
 - Requires retail public utilities that seek TWDB financial assistance to comply with Best Management Practices
 - Plans require a P.E. stamp with plans and specs

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Legislation Related to Surface Water – Water Reports and Cancellation

- HB 2615 (Rep. Johnson / Sen. Fraser)
 - Increases penalties for failure to file a water use report with TCEQ
 - Pre-9/1/13 penalty = \$25 + \$1 per day thereafter
 - New penalty = \$100 for those with $\leq 5,000$ acre feet; \$500 for those with $> 5,000$ acre feet
 - Provides that a water right cannot be cancelled (for non-use) because of a restriction in the use of the water or inability to use the water due to drought

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HB 1600 (Cook / Nichols) – PUC Sunset
SB 567 (Watson / Geren) – Utility Ratemaking

- Second round for PUC Sunset legislation.
- Continues the PUC until 2023.
- Both bills transfer the water and wastewater utility certificate of convenience and necessity (CCN) and ratemaking functions from the TCEQ to the PUC.
- Gives Office of Public Utility Counsel authority to intervene in water rate cases on behalf of residential and small commercial customers.
- Establishes classifications for Investor Owned Utilities based on number of connections.

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HB 1600 (Cook / Nichols) – PUC Sunset
SB 567 (Watson / Geren) – Utility Ratemaking

- Sept. 1, 2013 = Effective date of both bills.
- On or after Sept. 1 = OPUC may initiate or intervene in a contested case before the TCEQ.
- On or after Sept. 1 = TCEQ and PUC are required to appoint a transition team to establish guidelines on multiple topics that will expedite and streamline the transition of personnel from TCEQ to PUC.

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HB 1600 (Cook / Nichols) – PUC Sunset
SB 567 (Watson / Geren) – Utility Ratemaking

- Nov. 1, 2013 = PUC is expected to adopt TCEQ's rules as its own rules with the expectation that additional rulemakings will occur at the PUC to implement the transfer and new responsibilities.
- August 1, 2014 = Deadline for TCEQ and PUC to enter into an MOU to provides the transition plan.
- Sept. 1, 2014 = Transfer date from TCEQ to PUC.
- For 84th Texas Legislature in 2015, PUC is required to conduct an analysis to determine any legislative revisions that are needed.

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HB 1600 (Cook / Nichols) – PUC Sunset
SB 567 (Watson / Geren) – Utility Ratemaking

- Defines different classes of utility that determine the level of regulatory review and type of hearing that is required as part of the rate-making process.
- Class A utility = 10,000 or more taps or connections
- Class B utility = 500 to fewer than 10,000 taps or connections
- Class C utility = Fewer than 500 taps or connections.

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Questions?

- Any questions?
- Thank you.