



LEGISLATIVE UPDATE

**Texas Alliance of Groundwater Districts
Groundwater Summit
August 25, 2015 – Embassy Suites
San Marcos, Texas**

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Overview of 84th Regular Session

- Tax Relief – Franchise / Sales / Property Taxes
- Open Carry / Campus Carry
- Border Security
- Transportation – Proposition No. 7
- Governmental Transparency
- New faces;
 - **Senate** – 9 Freshmen / 5 Sophomores
 - **House** – 25 Freshmen / 19 Sophomores
- New leadership – Governor, Lt. Governor, & Committee Chairpersons

House Bill 200 (Keffer) – DFC Appeals

- Added new provisions to Chapter 36 of the Texas Water Code for appealing the desired future conditions (DFCs) of aquifers adopted by GCDs.
- An affected person may file a petition with a GCD for a contested case hearing (CCH) on the reasonableness of an adopted DFC. The GCD will then contract with the State Office of Administrative Hearings (SOAH) to conduct a hearing on the petition and issue findings of fact and conclusions of law in its proposal for decision (PFD) to the GCD.
- GCD must also forward a copy of the petition to TWDB, who will conduct an administrative review of the petition and a technical analysis of the DFCs.
- GCD will then issue a final order in light of SOAH's PFD.

House Bill 200 (Keffer) – DFC Appeals

- Authorizes a judicial appeal of a GCD's final order on the adopted DFCs to be filed in a state district court with jurisdiction over any part of the GCD's territory.
- In a judicial appeal of DFCs, the court is required to award attorney's fees and costs only for those issues in which the GCD prevails.
- If the reviewing court in a judicial appeal determines that an adopted DFC is unreasonable, the GCDs in the applicable Groundwater Management Area must reconvene to revise the DFC within 60 days following the court's order. This bill only applies to DFCs adopted on or after September 1, 2015.

House Bill 655 (Larson) – Aquifer Storage and Recovery (ASR)

- Establishes a comprehensive framework for the permitting of Aquifer Storage and Recovery projects by the TCEQ.
- Basic Framework:
 - Injection Well Permit from TCEQ (Water Code Ch. 27) is required.
 - Authorization from a Groundwater Conservation District under Water Code Ch. 36 IS NOT required unless the amount of water recovered exceeds the amount that TCEQ authorizes to be recovered.

House Bill 655 (Larson) – Aquifer Storage and Recovery (ASR)

- Monthly reports on water injected and water recovered must be sent to TCEQ (and to any GCD in which wells are located).
- Annual water quality sampling of the aquifer and reports on sampling must be sent to TCEQ (and to any GCD in which wells are located).
- New provisions were added to Water Code Ch. 27 establishing criteria TCEQ must consider in granting authorization for an ASR injection well...including water quality criteria, feasibility of recovery of injected water, impact on native water and other wells. (Water Code §27.153).

House Bill 30 (Larson) – Brackish Groundwater Production Zones

- Addresses the development and production of brackish groundwater resources in Texas.
- Imposes requirements on Regional Water Planning Groups (RWPGs) and the Texas Water Development Board (TWDB) to investigate and report on opportunities for the development of brackish groundwater (including desalination projects).
- Requires TWDB to identify and designate local or regional brackish groundwater production zones using specific criteria in its biennial report to the Texas Legislature.
- Requires TWDB to include in its biennial report to Texas Legislature that is due by December 1, 2016 an identification and designation of brackish groundwater production zones for: (1) the portion of the Carrizo-Wilcox Aquifer located between the Colorado and Rio Grande Rivers; (2) the Gulf Coast Aquifer and sediments bordering it; (3) the Blaine Aquifer; and (4) the Rustler Aquifer.

Senate Bill 854 (Zaffirini) – Permit Renewals with GCDS

- Added new Section 36.1145 to the TWC which establishes that a GCD **must** renew a permit *without a hearing* provided that the permit holder is not requesting a change to the permit.
- A GCD would not be required to renew a permit if the applicant is delinquent in paying any fees, if the applicant is subject to an unsettled or pending enforcement action initiated by the GCD, or if the applicant has not complied with any final order issued in relation to a violation of GCD rules.



House Bill 3163 (Cyrier) – GCD Board Member Liability

- Amended the provisions of the Texas Water Code to address the filing of suits against board members of Groundwater Conservation Districts.
- HB 3163 provides that for liability purposes only, a director is considered a district employee under Chapter 101, Civil Practice and Remedies Code.
- Most substantially, the bill amends Subsection (a) of § 36.066 of the TWC to specifically state that any board member, acting in his individual capacity, is immune from suit and liability for official votes and official actions (to the extent an official vote or official action conforms to laws relating to conflicts of interest, abuse of office, or constitutional obligations).

House Bill 930 (Miller) – Water Well Driller and Pump Installer Apprentices Program

- Amended the Texas Occupations Code to reestablish the water well driller and pump installer apprentice programs.
- The Texas Department of Licensing and Regulation (TDLR) will propose and adopt rules by December 1, 2015 to govern the apprentice programs for water well drillers and pump installers.
- Allows well logs to be submitted electronically to TDLR, TCEQ and owner of the well or the person for whom the well is drilled.

House Bill 1221 (Lucio) – Disclosure of GCD by Seller of Property

- Amended the Texas Property Code to require sellers of residential real property to disclosure include information about the existence of a GCD if any portion of a property is located within a GCD or a subsidence district on the disclosure form provided to potential residential real property purchasers.

House Bill 2179 (Lucio) – GCD Permitting Decisions and Contested Cases

- Amended Chapter 36 of the TWC as it relates to the hearing process involved with groundwater permit applications.
- Clarified and established differences between the different hearings that may occur before a GCD such as public, preliminary, evidentiary, or final hearings.
- Section 36.4051 is added to address requests for contested case hearings, and specifically mandating that the board of directors of a GCD hold a "preliminary" hearing on a request for a contested case hearing to determine if the requestor has the requisite standing and justiciable interest to file for a contested case hearing on the permit application.
- Language was added in Section 36.406(d) that would allow the presiding officer of a hearing to determine how costs related to a contested case hearing will be apportioned between the parties involved.
- Added language that established specific criteria for a GCD Board to be able to modify or vacate and order, or to alter a finding of fact or conclusion of law issued by an administrative law judge (ALJ).

House Bill 2767 (Keffer) – Chapter 36 Clean-Up

- Made many non-substantive language changes to "clean up" different sections of Chapter 36.
- Added provisions to Section 36.153 of the TWC relating to financial audits of GCDs. The bill requires that audits and district financial statements are to be prepared according to the standards of the American Institute for Certified Public Accountants.

House Bill 1232 (Lucio) – TWDB Aquifer Mapping

- Requires TWDB to conduct a study on the “hydrology and geology of the confined and unconfined aquifers” in Texas.
- TWDB must produce a map showing the area and water quality of aquifers.
- TWDB must report results to Texas Legislature by December 31, 2016.

House Bill 4112 (Burns) – Ownership of Groundwater

- Codifies in Chapter 36 of the Water Code that property owners would be entitled to whatever groundwater rights they are entitled to under Texas common / case law.
- Filed version of bill stated groundwater ownership and rights included the right to produce or save a fair share of groundwater.

Senate Bill 1101 (Eltife) – Determining Groundwater Supply in Non-GCD Areas

- Amended Chapter 16 of the Water Code regarding the authority of a Regional Water Planning Group (RWPG) when the RWPG is developing the regional water plan.
- In areas within a RWPG where no GCD exists, the RWPG may determine the supply of groundwater available for regional planning purposes.
- TWDB is required review and approve, prior to inclusion in the regional water plan, that the groundwater supply for the regional planning group without a groundwater conservation district in its area is physically compatible, using the TWDB's groundwater availability models, with the applicable DFCs.



Senate Bill 1336 (Perry) – GCD Enabling Act Clean-Up

- Amended the enabling acts of several GCDs and sections of the Texas Special Districts Local Laws Code to “clean-up” matters identified by the Texas Legislative Council.
- Specifically, in the case of for certain GCDs that have powers and duties under both Chapters 36 and 49 of the Texas Water Code, SB 1336 establishes that Chapter 36 prevails in the event of a conflict.
- Amended the directors election date for several GCDs.

GCD Creation and Boundary Expansion Bills

- HB 2407 (Miller) – Created the Comal Trinity GCD in Comal County.
- HB 4207 (Morrison) – Created the Aransas County GCD.
- HB 3405 (Isaac) – Boundary Expansion for Barton Springs / Edwards Aquifer Conservation District

Governmental Transparency Legislation

- HB 1387 (Flynn) – Publication of Financial Information of Governmental Entity
 - Requires political subdivisions to prepare an annual financial report that includes debt obligations, credit rating, and sources of payment for the different types of debt.
- HB 23 (Davis) - Local Government Conflict Disclosure Requirements.
 - Reduces the trigger amount under which a local government officer must file a conflicts disclosure statement from \$250 to \$100 .

House Bill 2647 (Ashby) – Power Generation Permitting Exception * **VETOED** *

- Amended Chapter 36 of the Water Code to provide a permitting exemption for a well that produces groundwater used to support the operation of a power generation facility or a mine that provides fuel to a power generation facility, including production for boiler makeup water, fire suppression, dewatering, potable water, and depressurization.
- The owner/operator of such a well could petition a GCD for a delay in the effective date of any GCD action that would reduce or curtail the production amount or rate of withdrawal from the well.
- Vetoed by Governor Abbott on June 20th. In his veto statement, Governor Abbott stated that GCDs have the ability to implement specific management strategies and that groundwater management should be based on sound science and public input at the local level, not on one size-fits-all state mandates.

SB 611 (Perry) – Well Info Confidentiality

- Would have amended Chapter 36 of the TWC to provide that groundwater withdrawal reports submitted by the owner of a privately-owned well would not be subject to public disclosure under the Texas Public Information Act.
- Was not voted out of the House.

House Bill 950 (Lucio III) – State Auditor Review of GCDs

- Would have focused audits of GCDs conducted by the State Auditors Office to financial matters.
- Would have removed the SAO's audits of the operational activities of GCDs, such as GCD management plans.
- Was not passed out of the Senate.

Questions?

- Any questions?
- Thank you.