

June 2020 Legislative Report
Robert Howard

Elections

As a reminder, none of the state elected officials in our immediate area are on the July 14th run-off ballot. The main run-off event in South Texas is Senator Eddie Lucio from Brownsville, who faces a serious run-off challenge. There is also a contested race in the Republican primary to challenge incumbent Congressman Vicente Gonzalez. State-wide, there is a run-off in the Democratic Party for the right to challenge incumbent U.S. Senator John Cornyn in November.

Early voting is available from June 29th to July 10th. Absentee voting by mail continues to be litigated in the courts. Despite the lawsuits, if a voter requests a mail ballot and asserts it is because of a disability, county clerks lack a procedure to reject the voters' request. July 2nd is the deadline for requesting a mail ballot. Being over age 65 is an automatic qualification. (I have yet to receive my ballot in Travis County after two weeks.)

Interim Charges

I had the opportunity to finally visit in person with the House Natural Resources Committee director (Lyle Larson, chairman). She said that she still doesn't know the next steps for hearings, especially since there has been a small COVID outbreak at the Capitol. I still expect to see some sort of movement in that direction after the run-off, possibly at least postings sometime in August. I have still received no word back from the Senate Water Committee director.

Preparation for the 2021 Legislative Session

As a reminder, I am representing BCGCD on all three of the Legislative Committee's subcommittees of the Texas Alliance of Groundwater Districts. The committee on Produced Water has held meetings, but interest in that topic has ebbed until more oil field activity resumes. The Joint Planning committee held its third meeting on June 11th, but I was unable to attend. Perhaps Bill attended and can give an update, but I assume there was further discussion about proposing legislation to add a sixth requirement to the explanatory report which is part of the DFC five-year planning cycle. The requirement would be flexible language that asks the GMAs to explain their accomplishments it meeting their DFCs for the previous five years. They were also considering how to propose handling the inclusion of brackish water in the TERS (Total Estimated Recoverable Storage) in the DFC planning process. I believe our consensus at BCGCD is that we do not want it included. They also favor a proposal to make public notices less difficult using electronic communications, particularly websites, as Bill discussed at our last meeting.

As I mentioned at our last meeting, I am interested in exploring the idea requesting an AG's opinion about whether or not it would be legal to change the authority our district had, and still has, to regulate groundwater when the proposal was placed on the ballot for our creation. As you may recall, we and one other district have greater authority than other districts and Lyle Larson unsuccessfully tried to strip that away in the last session. I spoke with J.M. Lozano's chief of staff, Matt Lamon, recently and he reminded me that a committee chair, which Rep. Lozano is, can request an opinion. However, he suggested that I do some research first to see if such an opinion or court case has already occurred. I will seek Bill's guidance, but plan to spend some time doing that research.

Brackish Rules

I enjoyed our recent staff video conference with James and Rohit to flesh out the questions and directions we want to pursue in formulating proposed rules based on scientific guidance.

Recent Court Decision

Fortunately, a recent federal appellate court ruling shouldn't have any immediate impact on us, but the court sided with the plaintiff landowner who is trying to prevent the city of Bryan from pumping massive amounts of water on three acres next to his property. The court ruled that groundwater districts are not agents of the state and therefore are not immune from being sued for takings claims. It will be interesting to see if the case goes to the Supreme Court.

<https://tscra.org/fifth-circuit-court-of-appeals-decision-is-a-victory-for-landowners/>

Agenda Item #14