

May 2020 Legislative Report from Robert Howard

Elections

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.

I am keeping up with several run-offs in other areas, particularly rural-based ones, so that we will have good allies this session.

Senators Zaffirini and Hinojosa and Rep. Guillen all face general election opponents. J.M. Lozano had neither a primary nor general election opponent.

Interim Charges

As I have mentioned previously, a joint hearing of Senate committees was held at the end of January to examine groundwater ownership and regulation.

https://tlcsenate.granicus.com/MediaPlayer.php?view_id=46&clip_id=14994

A second Senate committee hearing that was scheduled for the end of April has been postponed indefinitely. I have attempted to contact the directors of both the House and Senate water regulation committees, but they are not responding as yet, which indicates more delays in hearings.

As I have also mentioned, the first Senate hearing demonstrated the tension between landowner groups and groundwater conservation districts, groups that should be working together to ensure continued local control of regulation as Texas becomes more urbanized. I am still working to help bridge that communication gap between the Farm Bureau and the Texas Alliance of Groundwater Districts.

I have listed the Farm Bureau's main policy positions that they presented at the first Senate hearing:

Texas Farm Bureau Groundwater Regulation Positions

- 1. There should be local control of groundwater regulation**
- 2. Groundwater is private property**
- 3. Shouldn't allow historical users to take other people's water during curtailments**
- 4. Cities shouldn't use population or investment considerations to supersede private ownership**

5. **Rule of capture doesn't allow drainage of other people's water. (Oil and gas can't be taken from other people under rule of capture)**
6. **Takings clause applies to both rural and urban areas need acreage to produce water. Landowners must be compensated.**
7. **Oil and gas companies send out land agents to lease land. Water users can do the same.**
8. **Landowners should be able to petition GCDs to adopt or change rules.**
9. **Landowners should be notified if someone makes and permit application that could affect them.**
10. **Attorneys' fees-GCDs are the only agency of the state where plaintiffs have to pay if they lose. GCDs do not have to pay if they lose. (In 2012, TFB sued TCEQ for senior surface water rights and won. TFB would not have filed the suit if they had been in jeopardy of having to pay if they had lost.)**
11. **Local people formed GCDs and the GCDs need to be held accountable to them.**

I have spoken at length about this list with Gary Westbrook, general manager of the Post Oak Savannah GCD, because he is very close friends with both Billy Howe, the TFB's water lobbyist, and Leah Martinsson, the executive director of TAGD. He has agreed to help my cause by being the diplomatic ambassador to try to get as much cooperation and consensus between Leah and Billy as possible (neither have ever had a face-to-face conversation with each other). We hope to schedule some kind of meeting with them ASAP.

Gary said that the main sticking point with the TFB's list, as we all suspected, is the "loser pays" legislation the TFB is pushing. The historical use position is also a problem, but easier to work out. Hopefully we can agree to disagree at worst and get TFB to back off on those provisions at best.

As I've mentioned before, one of our greatest fears needs to be the lessening influence of rural areas because of redistricting after the 2020 census. That's why landowner groups and GCDs need to be better allies to fight for local control through GCDs. I'm afraid the urban people will be all too happy to get control of our water.

Preparation for the 2021 Legislative Session

It's hard to imagine, but the next legislative session will be here before we know it and now is the time to get serious about preparing for it. I am representing BCGCD on all three of the Legislative Committee's subcommittees. The committee on Produced Water has had one meeting and the Joint

Planning committee held its second meeting on May 14th, and has already scheduled a third for June 11th (fortunately, Bill is participating on this committee, too). The Brackish Committee has yet to set its first meeting.

At the May 14th meeting, the Joint Planning Sub-Committee discussed 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 in meeting their DFCs for the previous five years. They are also considering how to propose handling the inclusion of brackish water in the TERS (Total Estimated Recoverable Storage) in the DFC planning process. Both topics will continue to be studied by the sub-committee and associated attorneys. They also approved a proposal to make public notices less difficult using electronic communications, particularly websites. (Bill is much better qualified to explain this proposal.)

I would also like to discuss with the board, counsel, and managers the possibility of getting one of our elected representatives to request 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.

Brackish Rules

James' presentation was very interesting and informative at our last board meeting. I would like to get more information from him about ways to determine the recharge rate of the brackish aquifers and the nature of possible future permit applicants.