The Role of Groundwater Conservation Districts In Sales and Exports

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GCDs Play an Important Role

- Most usable groundwater resources in the State are located within a GCD
- GCDs have wide-reaching regulatory powers

Restrictions on the Rule of Capture

- Restrictions on the rule of capture that impact groundwater sales and exports:
  - export regulations
  - production regulations

Determining GCDs Powers & Duties

- Consult their “enabling act”
- Consult Texas Water Code Chapter 36

Regulation of the Export of Groundwater

Most groundwater marketing involves purchasing or leasing groundwater in a rural area and transporting it to an urban center

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Chapter 36 Protects Groundwater Marketing:
- GCDs cannot prohibit export outside the District
- Exporters must be treated fairly
- Export fees must be reasonable
- Permit terms must be sufficiently long to enable the water to be marketed

Texas Water Code § 36.122
- Primary provision related to regulation of export of groundwater out of a district
- Short, but not very clear

36.122 Requirements
A district may not “expressly prohibit” the export of groundwater

36.122 “Fairness” Requirements
- GCDs may limit production based on:
  - Water available in District and receiving area
  - Effect of production on aquifer and users
  - Regional water plan and district management plan

36.122 “Fairness” Requirements
- Permit conditions not more restrictive than for in-District use
- Application fee and process same as in-District permits

36.122 Permit Term Requirements
- Permit duration:
  - 3 years if construction of a conveyance system not started prior to getting permit
  - 30 years if construction has started
  - If construction begins during the initial 3-year term of the permit, the term must be extended to 30 years
36.122 Permit Term Requirements
- May periodically review amount of water authorized and limit it due to conditions in the District
  - Must consider “fairness factors”
  - If production is limited, must be limited for all permits
  - Cannot review transporters more often than in-District permits

36.122 Export Fee Requirements
- Reasonable export fees:
  - Negotiated fee
  - Rate no higher than equivalent of tax rate per $100 valuation/1,000 gallons
  - 2.5¢ /1,000 gals if tax rate less than 2.5¢

36.122 Export Fee Requirements
- Fee-based: 50% export surcharge in addition to fee charged for the production permit
- Even wells exempt from permitting and regulation must pay production and export fees if water used outside of District

36.122 Summary
- Complicated
- Provisions overlap
- Provisions inconsistent
- GCDs use and interpretation further complicate the issue

Highlights of How GCDs are Dealing with Export
- More than 20 do not require permits for export
- At least 2 of these assess an additional export fee above what is charged to permittees using the water in-District

Highlights of How GCDs are Dealing with Export
- More than 29 require some type of export permit if an applicant intends to produce water in-District for use outside the District.
Highlights of How GCDs are Dealing with Export

- At least 11 that require an export permit, do not follow §36.122 regarding the duration of the permit.
- At least 5 that require an export permit, do not follow §36.122 regarding export fees.

GCDs Surrounding San Antonio

- Bandera CRAGD
- Barton Springs/Edwards Aquifer CD
- Bee GCD
- Blanco-Pedernales GCD
- Cow Creek GCD
- Edwards Aquifer Auth.
- Evergreen UWCD
- Goliad County GCD
- Gonzales County GCD
- Guadalupe County GCD
- Hays Trinity GCD
- Headwaters GCD
- Hill Country UWCD
- Llano Estacado UWCD
- McMullen GCD
- Medina County GCD
- Pecan Valley GCD
- Plum Creek CD
- Trinity Glen Rose GCD
- Uvalde County UWCD
- Wintergarden GCD

Regulation of Groundwater Production

Authority to Regulate Production

- Limit production based on tract size or spacing of wells
- Require production permit to control rate and amount of withdrawal
- Regulate spacing of wells relative to property lines or adjoining wells
- Regulate based on combination of the above

Production Regulation Methods Being Used by GCDs

- Permitting without spacing or production limits
- Well spacing only
- Correlative rights – limits based on acreage or tract size
- Proportionate reduction

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Production Regulation Methods Being Used by GCDs

- “First in time, first in right”
- Protect historic use
- Tailored to specific geologic strata or geographic areas
- Prioritizing type of use

GCD Regulation of Export Is in Flux

- Many Districts are amending rules to address export
- Interim Legislative Committees:
  - Senate Select Committee on Water Policy
  - Subcommittee on the Lease of State Water Rights

Any Questions?

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