


The Role of Groundwater Conservation Districts In Sales and Exports

Presented by
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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**


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Restrictions on the Rule of Capture

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


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Determining GCDs Powers & Duties



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

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Regulation of the Export of Groundwater

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



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**


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Texas Water Code § 36.122

- ❖ **Primary provision related to regulation of export of groundwater out of a district**
- ❖ **Short, but not very clear**


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36.122 Requirements

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


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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**

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36.122 “Fairness” Requirements

- ❖ **Permit conditions not more restrictive than for in-District use**
- ❖ **Application fee and process same as in-District permits**


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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**

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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


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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¢


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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


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36.122 Summary

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


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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

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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.

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Highlights of How GCDs are Dealing with Export

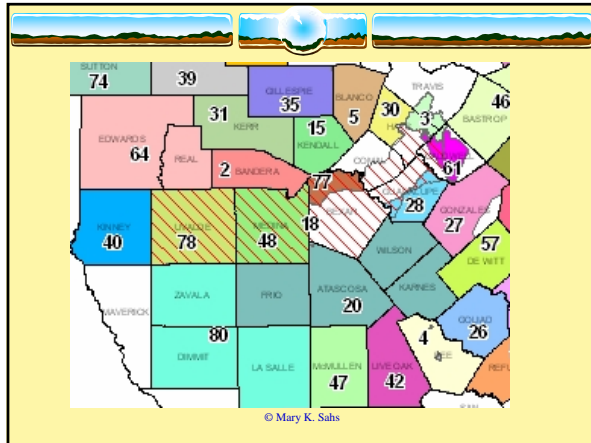
- ❖ At least 11 that require an export permit, do not follow §36.122 regarding the duration of the permit.
- ❖ At least 5 that require an export permit, do not follow §36.122 regarding export fees.

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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

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Regulation of Groundwater Production

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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

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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

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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

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Any Questions?

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