

Texas Commission on Environmental Quality
Water Rights Advisory Work Group
June 8, 2009
Building E, Room 201S
TCEQ Agenda Room
10:00 AM

Minutes

Welcome/Introductions

Steve Ramos

Amenity Lakes/Ponds

Robin Smith

- Any pond that is on a watercourse and is not for domestic, livestock, wildlife management, or sediment control at a mining operation, must have a permit. Therefore, ponds that are for aesthetic purposes require a permit, defined as recreation pursuant to 30 TAC §297.1.
- If a person with an amenity pond wants a permit and there is no surface water available, then they must find an alternative source such as purchased water or ground water to keep the reservoir full or have a means to pass all inflows. This is necessary to ensure that surface water is not being impounded.
- TCEQ does not regulate groundwater quantity. If the amenity pond is in a Groundwater Conservation District, the GCD can refuse to allow the use of groundwater for the maintenance of the pond.
- Chapter 36 defines waste to include willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the Commission under Chapter 26.

Surface Water and Waste

Robin Smith

- Section 11.092 applies to a person who owns or has a possessory right to land contiguous to a canal or irrigation system.
- Section 11.093 applies to a person who permits an unreasonable loss of water through faulty design or negligent operation of any waterworks using water for a purpose under the code.
- “Water conservation plan” is defined in Chapter 297 in part as including a strategy for preventing or reducing the loss of waste of water. A conservation plan for any additional or new appropriation must evaluate any other feasible alternative to new water development including, but not limited to, waste prevention. The rules provide that an application for a water right will be denied unless there is a sufficient amount of unappropriated water available for a sufficient amount of the time to make the proposed project viable and ensure the beneficial use of water without waste.
- The interbasin transfer statute provides that the Commission must consider the applicant’s efforts to avoid waste in the receiving basin.

- The watermaster may regulate water works to prevent waste of water.
- Rule 297.1 defines waste as the diversion of water if the water is not used for a beneficial purpose; the use of that amount of water in excess of that which is economically reasonable for an authorized purpose when reasonable intelligence and reasonable diligence are use in applying the water to that purpose.
- Determining whether groundwater may actually be surface water is often difficult to determine and costly.

Legislative Update

Dean Robbins

Bills that Passed

- HB 865 - Relating to the establishment of the Texas Invasive Species Coordinating Committee.
- HB 1174 – Relating to payment by a municipality for certain damages arising from the municipality’s operation of its sanitary sewer system.
- HB 1433 – Relating to amount of the annual water quality fee imposed on holders of wastewater discharge permits and on users of water.
- HB 2063 – Relating to the enforcement of rules by a groundwater conservation district.
- HB3391 – Relating to the Sunset Review for Texas Parks and Wildlife Department.
- HB 4231 – chapter 11, Water Code, is amended to authorize the use of the bed and banks of any natural stream to transport water under contract imported from out of state (except water imported from Mexico). Water imported from out of state and transported using the bed and banks is exempted from IBT requirements.
- HB 4409 – Relating to emergency preparation and management (windstorm insurance).
- SB 1693 – Relating to the regulation of poultry facilities and poultry litter.
- SB 1711 – Chapter 11, Water Code, is amended to authorize a person, without obtaining a permit, to construct a reservoir as part of a surface coal mining operation under Chapter 134, Natural Resources Code, for sediment control or regulations relating to fire or dust suppression.

Conveyances

Iliana Delgado

The rules do not specify who may submit the change of ownership. The following must be submitted along with the change of ownership application:

- A complete chain of title from the permitted owner to the current owner.
- \$100 application fee.
- Conveyance documents. These must be recorded in the county where the water right is located.

Sometimes the water right must be amended after the change of ownership is complete if the water right was severed from the land to which it was appurtenant.

Section Update

Iliana Delgado

- The rule package for SM 1711 is on the fast track and must be completed by January 1, 2010.
- One vacancy in Section which is due to close on Friday, June 12, 2009.

- The next group of notice recommendation memos that are going to agenda will be ready for agenda by the end of this month.

Commission Actions

Robin Smith

- Five Marshall type applications (notice recommendation applications) went before the Commission. Additional guidance regarding public notice was given.
- Dalam County Groundwater Conservation District – preliminary hearing in a few months.

Closing/Comments

Steve Ramos

- Next meeting
September 14, 2009
- Topics
No topics were suggested