

Texas Groundwater Protection Committee (TGPC)

LEGISLATIVE REPORT SUBCOMMITTEE

Fiscal Year 2014

Monday, July 16, 2014

**Texas Commission on Environmental Quality Campus
Building F, Room 2210, 12100 Park 35 Circle, Austin, TX 78753**

9:00 a.m.

A G E N D A

1. Call to Order and Introductions
2. Review Process and Timeline for Completion of Draft *Activities and Recommendations of the Texas Groundwater Protection Committee: Report to the 84th Legislature* (“*Legislative Report*”)
3. Discussion and Editing of Draft *Legislative Report*
4. Discussion of the Completion of the Draft *Legislative Report* and Presentation to the TGPC
5. Set Future Meeting Date
6. Announcements
7. Public Comment
8. Adjourn

MEETING ATTENDANCE

Subcommittee Members

Cary Betz (Chair)
Peggy Hunka
Al Cherepon
Bryan Anderson
Chris Moore
David Villarreal
Kristine Ulman
TJ Helton
Kevin Wagner

Affiliation

TX Commission on Environmental Quality (TCEQ)
TCEQ
TCEQ
Texas Water Development Board
Railroad Commission of Texas
Texas Department of Agriculture
Bureau of Economic Geology
Texas State Soil Conservation Board
Texas AgriLife

TAGD DSHS and TDLR are not in attendance.

MEETING HANDOUTS

1. July 16, 2014 Legislative Report Subcommittee Meeting Agenda
2. *DRAFT Activities and Recommendations of the Texas Groundwater Protection Committee: Report to the 84th Legislature*, TCEQ SFR-047

MEETING RECORD OF July 16, 2014

CALL TO ORDER AND INTRODUCTIONS

Cary Betz (TCEQ), Chair of the Texas Groundwater Protection Committee (TGPC) Legislative Report Subcommittee, called the meeting to order at 09:14

REVIEW PROCESS AND TIMELINE FOR COMPLETION OF DRAFT LEGISLATIVE RECOMMENDATIONS AND OTHER SECTIONS OF *ACTIVITIES AND RECOMMENDATIONS OF THE TEXAS GROUNDWATER PROTECTION COMMITTEE: REPORT TO THE 82nd LEGISLATURE ("LEGISLATIVE REPORT")*

No discussion

DISCUSSION AND EDITING OF DRAFT LEGISLATIVE RECOMMENDATIONS

Cary Betz (TCEQ) reviewed changes that have already been made in the Draft report:

- Changed 83rd to 84th
- Changed dates
- No cover so far
- On page ii there is a blurb that gets put in there
- Table of contents – we will run a new table of contents
- Executive Summary has been largely fixed, but we are still working on some of the numbers. As far as notices for groundwater contamination we get fiscal year information on that and will be inserted in September.
- Beginning on page 3 - this is the 13th report. The acronym RCT was globally changed to RRC
- We still reserve the right to make any grammatical changes.
- Reviewed the changes that were made in the last meeting of this subcommittee.

The Recommendations in in the Draft report to the 84th Legislature with changes highlighted in yellow:

§26.401, Legislative Findings

The groundwater protection goal and policy of the state has stood without change since enacted in 1989. The TGPC affirms these findings remain as valid now as they did in 1989, and notes an emphasis on groundwater quality protection. The legislative findings are silent on groundwater quantity and groundwater conservation issues, however a requirement to include guidelines for groundwater conservation in the state's groundwater protection strategy appears in §26.405. This requirement is

discussed in the following review of that section. The TGPC believes that a statement from the legislature clarifying the Committee's intended role in groundwater conservation and quantity management, if any, would be appropriate.

§26.403, Creation and Membership of TGPC

The TGPC was created largely in response to myriad of federal regulations for environmental protection that were originally passed in the 1970s and 1980s. State responsibilities to implement the federal programs were spread among numerous state agencies, and the Texas Legislature responded in 1989 by creating the TGPC to coordinate the state's groundwater protection activities. At its inception, the TGPC was composed of the chief executives of the Texas Water Commission (predecessor to the TCEQ), TWDB, RRC, Texas Department of Health (now DSHS), and TSSWCB, as well as the Deputy Commissioner of TDA, and a representative selected by the Texas Groundwater Conservation Districts Association (now TAGD). All of these agencies except the latter, are subject to the legislative sunset review process and have undergone multiple reviews since 1989.

In 1993, the Texas Legislature consolidated most of the state's environmental protection activities and programs into the Texas Natural Resources Conservation Commission – the predecessor of the TCEQ. TGPC was expanded by the Legislature to include research organization members from BEG and TAR in 1993, and TDLR was added in 1999 after the Water Well Drillers and Pump Installers Program was transferred to that agency.

Legislative findings in §26.401(b) include: “the legislature determines that, consistent with . . . the propagation and protection of terrestrial and aquatic life, . . . it is the goal of groundwater policy in this state that the existing quality of groundwater not be degraded.” **Because of the Texas Parks and Wildlife Department's responsibilities and expertise for the propagation and protection of terrestrial and aquatic life, the TGPC recommends that the Legislature expand committee membership to include this agency.**

Similarly, the roles of various member agencies have evolved since the creation of the TGPC in 1989. The Texas Department of Health (now the Department of State Health Services) was named as one of the original members of the TGPC as the agency overseeing Public Drinking Water, Municipal Solid Waste, and Radiation Control programs. These programs are among those consolidated into the Texas Natural Resource Conservation Commission and subsequently the TCEQ, leaving the DSHS with only auxiliary groundwater responsibilities. **While the DSHS will continue to be asked to provide valuable health related information to the TGPC, the Committee recommends that the Legislature remove the DSHS from the responsibility of formal membership in the Committee.**

§26.405, Powers and Duties of TGPC

As noted previously, most of the powers and duties of the TGPC outlined in the Texas Water Code have remained unchanged since enacted in 1989. In §26.405 (2), there is no timetable for the development and maintenance of the required groundwater protection strategy.

In the most recent version of the Texas Groundwater Protection Strategy, the TGPC listed as a goal the review of the strategy every six years. On this timetable, the first review of the strategy coincided with a legislative session and the lead up to “sunset” review of several key committee member agencies. As a result, this goal of the strategy was not met.

The TGPC is developing a new Groundwater Protection Strategy as this biennial report is being prepared. The TGPC has developed a new timetable for the revision of the strategy that is synchronized with the State Water Plan.

This same subsection of the statute includes a provision for the strategy to contain guidelines “for the conservation of groundwater.” This provision is outside of the findings set forth in §26.401, and outside of the realm of groundwater quality protection.

Recognizing the importance of conservation in meeting our future demand, the 80th Regular Session of the Texas Legislature (2007) via the passage of Senate Bill 3 and House Bill 4, created the Water Conservation Advisory Council (WCAC). The WCAC was created to provide the Governor, Lieutenant Governor, Speaker of the House of Representatives, Legislature, Texas Water Development Board, Texas Commission on Environmental Quality, political subdivisions, and the public with the resource of a select council with expertise in water conservation.

The TGPC respectfully requests clarification of how conservation should be addressed in the Texas Groundwater Protection Strategy, and how the TGPC is to interact and coordinate with the WCAC. If the Legislature determines that conservation guidelines from the TGPC are no longer necessary, the TGPC recommends that the provision for the strategy to include conservation guidelines be removed from the statute, in deference to the activities of the more recently created WCAC.

§26.406, Groundwater Contamination Information and Reports; Rules

*When this statute was crafted, the Legislature required that the TGPC “publish, not later than April 1 of each year, a joint groundwater monitoring and contamination report covering the activities and findings of the committee made during the previous calendar year.” Because of the inter-agency coordination required to compile the information for this report, and the amount of data manipulation and editing necessary to publish the report, the April 1 deadline has been consistently difficult to achieve. The Committee has contemplated establishing an electronic database, shared by member agencies, to track groundwater contamination case information; however, no member agency has the resources to develop such a database alone. **The TGPC recommends that the Legislature provide support for the creation of an electronic groundwater contamination database, capable of trend and geospatial analysis, in order to better fulfill the requirements of this section of the statute. If the Legislature prefers not to fund such a database, the TGPC respectfully requests that the deadline be moved back to June 1 of each year.***

§26.407, Protection and Enhancement Plans

This statute was intended to address the plans for pesticide protection issues (State Management Plan or Pesticide Management Plan for the prevention of pesticide

contamination of groundwater.) The TGPC performed commendably in the creation and updates of the state's SMP through the actions of its Agricultural Chemicals Subcommittee, but the final federal rules for such management plans never fully materialized. While the TGPC and the TCEQ maintain the plans that were developed and continues a monitoring program for pesticides in groundwater, there is no federal or state "driver" behind this mandate.

The TGPC recommends that the statute be amended as follows:

"Sec. 26.407. PROTECTION AND ENHANCEMENT PLANS. (a) The commission, with the advice of the committee, [shall] may develop plans, except for those plans required by Section 201.026, Agriculture Code, for the protection and enhancement of water quality pursuant to federal statute, regulation, or policy, including management plans for the prevention of water pollution by agricultural chemicals and agents.

Abandoned Water Well Plugging and Education

The TGPC has recognized for 20 years that abandoned domestic, municipal, industrial, irrigation, and livestock wells, and unplugged test-holes are the most significant threat to groundwater quality in the state. Abandoned water wells not only serve as conduits or channels for contamination to reach groundwater, but large diameter wells can also be a hazard to human and animal life. Abandoned and deteriorated water wells exist in every county in the state and are at the top of the list of potential groundwater contamination sources that landowners can identify and eliminate.

State law requires landowners or other persons who possess an abandoned and/or deteriorated well to have the well plugged or capped under standards and procedures adopted by the TDLR. State law also authorizes the TDLR to assess administrative and civil penalties against persons who do not comply. However, these provisions represent a financial burden and provide little incentive for owners of abandoned wells to voluntarily plug them. Educational efforts, such as the TGPC's Landowner's Guide to Plugging Abandoned Water Wells and the associated video, may initiate some abandoned well plugging. While some groundwater conservation districts (GCDs) make match-funding available to landowners, a state funding source to assist landowners with abandoned well plugging efforts would result in an increase in the number of wells plugged and thus decrease the threats to groundwater quality.

The TGPC recommends the legislature provide positive incentives for landowner-initiated closure of abandoned and/or deteriorated water wells through the establishment of an abandoned well-plugging fund. Fund disbursement could be contingent upon prioritization of potential groundwater quality impacts, hazards, and the landowner's assets. Further, the plugging fund program should be administered by the TDLR, the agency currently responsible for the oversight of water well drillers, well drilling, and well plugging. TDLR should work cooperatively with local GCDs to disburse monies for the plugging of abandoned and/or deteriorated water wells located within GCD jurisdiction. Furthermore, the funds could be disbursed on a regional geographic model based on the areas of selection for member appointment to the Water Well Driller Advisory Council. Because of the number of abandoned wells and the ability to "scale" the program, a cost estimate cannot be provided and has not been submitted by any member agency in a Legislative Appropriation Request.

To support the abandoned well plugging program, the TGPC recommends that an outreach program be carried out by Texas A&M AgriLife Extension in coordination with the Texas Water Resources Institute. This program would provide educational publications, websites, and other resources that could be used by county extension agents and other local and regional agencies in workshops and field days to teach the public how to properly plug and manage abandoned water wells.

Support of Agency Programs

The state agency members of TGPC have submitted their appropriation requests to the Legislature that would provide funds necessary to carry out existing groundwater protection programs. State funding may allow an agency to leverage the monies with additional federal funding from the U.S. Geological Survey, U.S. Environmental Protection Agency, or other federal agencies to implement these activities.

Support, through legislative appropriations, programs which enable the TGPC member agencies to:

- **Conduct applied research on conjunctive use and its risks and rewards, the implications of aquifer storage and recovery on water quality and evaluation of potential issues, and the characterization of surface water and groundwater interaction**
- **Validate and verify the technical and economic feasibility of desalination of moderately saline (brackish) groundwater in Texas and better characterize salinity levels of groundwater sources throughout the state**
- **Provide tools, educational programs, and assistance for landowners, citizens, local governments, and others to facilitate efforts such as the Water Supply Enhancement Program to increase groundwater yield, the Texas Well Owner Network Program, and the Texas High Plains Evapotranspiration Network**
- **Protect groundwater quality through technology transfer, educational programming, quantification monitoring, and regulatory protection.**
- **More research and emphasis needs to be geared toward the presence of biological and chemical contamination in groundwater other than nutrients and pesticides. Pharmaceuticals, personal care products, viruses, and other harmful microorganisms will continue to increase in concern and as emerging contaminants.**
- **Endangered species and water are intricately linked and will pervade water use issues for decades to come. More research and information is needed as to the relationship between groundwater quality, quantity, and location as concerning current endangered species and those that are proposed to be added to the federal protected list.**

- **Trans-boundary issues, especially with Mexico, and a greater delineation of shared aquifers and water supplies, needs to be addressed now before critical limitations on groundwater resources occur.**

Rewritten after lengthy discussion.

- **Evaluate the implications to groundwater regulation and management, of redefining “Waters of the United States” as proposed by USEPA and the US Corps of Engineers.**

There was a discussion on changing the wording of this recommendation.

Decided to rewrite as follows: Evaluate the implications to groundwater regulation and management of redefining the “Waters of the United States” as proposed by USEPA and US Corps of Engineers.

Activities

- This section will be updated with data that was gathered during FY 2013 and 2014.
- Changes to the Strategy will be included after the meeting this afternoon.
- No changes to the groundwater classification system.
- Look at Appendix 1 and check all information.

DISCUSSION OF THE COMPLETION OF THE DRAFT LEGISLATIVE RECOMMENDATIONS AND THE PRESENTATION OF THEM TO THE TGPC

David Villarreal made the motion that we approve this report as presented to the subcommittee. The motion was seconded by Kevin Wagner.

SET FUTURE MEETING DATE

Another meeting will be held on the morning of September 16 if needed.

ANNOUNCEMENTS

There were no announcements.

PUBLIC COMMENT

Lynn Falquist – said she had 2 documents for the committee’s use.

ADJOURN

Cary Betz adjourned the meeting at 10:25 PM.