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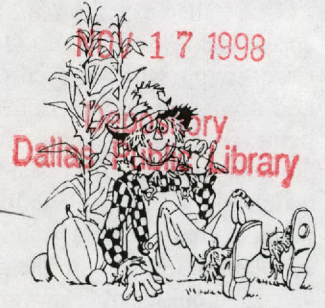
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Panhandle Water News



October 1998

MEET OUR NEW STAFF MEMBERS

The District is happy to introduce the two new members of our staff.

Bart Wyatt, a graduate of West Texas A&M University, joined the District in April. Bart's Agricultural Business & Economics degree makes him especially well suited to the duties he will be performing for the District. He will serve as field/laboratory technician, and will assist with public education and information.

Bart was raised on a cattle ranch near Lipscomb, Texas, where his parents still live, and graduated from Higgins High School. While attending WTA&M, he served one year as Student Body President and a year as Vice-President. He was also a member of several organizations, including Student Senate, Ag Wranglers, Police Advisory Board, Ag Executive Council, Buff Branding, and Campus Services.

Bart is making his home in White Deer.

Raymond Brady was employed as the District's geologist/engineer in May.

Originally from Crystal City, Texas, Ray is now residing in Panhandle. He served as an engineer officer in the U.S. Army, retiring in 1988. He is a graduate of U.S. Army Engineer School and Texas Tech University, where he received a Bachelor of Science degree in geology. In addition, he has had instruction in groundwater modeling and G.I.S. mapping. He was employed at the D.O.E. Pantex plant, near Amarillo, as engineer, project engineer, and senior project engineer, from 1991 to 1996.

Ray's training and experience have already proved very valuable to the District, and he is continuing to expand the mapping and hydrology programs.

DISTRICT MANAGEMENT PLAN CERTIFIED BY T.W.D.B.

Senate Bill 1 required groundwater conservation districts to submit a comprehensive Management Plan to the Board of Directors of the Texas Water Development Board, by September 1, 1998. These management plans had to meet certain criteria and coordinate with surface water management entities in the region.

The District held several workshops, which included representatives from Canadian River Municipal Water Authority, the city of Amarillo, the city of Pampa, Greenbelt Municipal & Industrial Water Authority, and interested landowners. After a hearing on the proposed Management Plan, and adoption by the Board, it was forwarded to Austin, where it was reviewed by TWDB authorities and ruled administratively complete. The final step was completed on July 16, when the Texas Water Development Board's directors certified it.

The main goals of the Management Plan are to better understand groundwater conditions, to encourage the most efficient use of the groundwater, to conserve and improve groundwater quality, to improve the recharge of the aquifer, to increase public awareness and education, and to monitor legislative activities and rules and orders of state agencies that might affect private groundwater property rights.

ARKANSAS RIVER SHINER

Last month, officials in the U.S. Fish and Wildlife Service's Tulsa field office, which has authority over the Texas Panhandle, forwarded a recommendation that the Arkansas River Shiner be placed on a list of "threatened" rather than "endangered" species.

In 1994, at the urging of agency geologists who have been tracking the animal's population, the USFW proposed listing the shiner as endangered. Because the shiner is only prevalent in one river, wildlife officials argued, it needed as much protection as possible, since a large-scale toxic spill or disease could wipe out the entire population.

Landowners and agricultural interests disagreed from the start. Fearing that an endangered listing would trigger restrictions on water pumping from the Ogallala Aquifer, they crowded public hearings and submitted boxloads of testimony to the Fish and Wildlife officials pleading against "endangered" status.

The proposal to list the shiner as threatened has infuriated environmental groups, who threaten to sue if the designation is adopted and broad exemptions are put in place. They insist that the rapid decline of the shiner over the past century is evidence enough to declare the shiner as ~~endangered~~.

To force a decision, the Sierra Club and the Southwest Center for Biological Diversity, of Tucson, Arizona, filed a lawsuit in U.S. District Court in Albuquerque in March, demanding an immediate decision on how the fish would be listed.

Meanwhile, Fish and Wildlife biologists say new evidence shows that a "threatened" listing is more appropriate. Data provided by the Texas Water Development Board indicate that the Ogallala Aquifer doesn't contribute as much water to the Canadian River as previously believed, reducing the risk posed to shiner habitats, if water levels drop in the aquifer. And department officials say they have more closely examined another body of water, the Cimarron River, where small numbers of shiner are found and concluded that there are enough fish there to re-start the species if catastrophe wipes out the shiner in the Canadian River.

In the Panhandle, a "threatened" listing would enable the federal wildlife agency to go forward with an agreement, reached last year with the Texas Parks and Wildlife Department and the Oklahoma Department of Wildlife Conservation, in which the Service promised not to "restrict or regulate groundwater use from the Ogallala Aquifer or to adopt conservation measures that would adversely affect existing agricultural and land-management activities in the region."

The plan still must be approved by a regional Fish and Wildlife office in Albuquerque, N.M., and by the department's director, Jamie Clark, in Washington. "If we've done our homework, [the proposal] shouldn't be changed, and in this case, I think we have," says Jerry Brabander, a field supervisor in the wildlife service's Tulsa field office, which was given the responsibility of reviewing public arguments in the matter.

TEXAS SUPREME COURT TO HEAR "OZARKA" CASE

The Texas Supreme Court has agreed to hear an appeal of a lawsuit against Ozarka Natural Spring Water Co. of Irving, which is accused of lowering aquifer levels and drying up the wells of landowners near its bottling plant. By taking the case, the court has set the stage to bring the state's controversial "rule of capture" water law, which allows virtually unlimited pumping of groundwater, in areas where a groundwater district has not been established, in line with the rest of the country.

Longstanding laws aren't easy to overturn, as the rule of capture, established in Texas by the state Supreme Court in 1904, already has proved. The rule has withstood several legal and legislative challenges over the years. Yet some legal scholars and the lawyer for the plaintiffs in the case suggest that the court would be standing on solid legal ground if it decides to overturn.

In the case before the court, Bart Sipriano and Harold and Doris Fain, three rural landowners near Ozarka's bottling plant, sued the company, alleging that its 24-hour pumping operation was lowering water levels in their wells and in some cases causing the wells to dry up entirely. Ozarka countered that dry weather and total local use, not the company, were lowering the Carrizo aquifer. The company obtained a letter from the Texas Water Development Board backing up its claims. In December 1996, a Henderson County judge tossed the lawsuit out, saying the rule of capture barred the claim. The landowners then appealed, but the 12th Court of Appeals in Tyler affirmed the lower court early this year. Now, after agreeing to review the appeals court's decision, the state Supreme Court has scheduled oral arguments for November.

Past Texas supreme courts have not been willing to modify the rule of capture. In 1978, the court reviewed a class-action lawsuit by a group of landowners in the Clear Lake area accusing a local development company of pumping so much water that it caused neighboring properties to sink, a phenomenon known as subsidence.

The court ruled that the rule of capture prevented it from finding the development company liable for the damages caused by over-pumping. But the court also found that public policy demanded some modification of the rule and said that in future subsidence cases, those guilty of negligent over-pumping would be held liable for damages. It didn't, however, give policy makers the power to establish pumping limits or otherwise prevent subsidence from occurring.

In 1949, lawmakers designed a mechanism for local residents to petition the Legislature to create groundwater conservation districts with the power to regulate water rights over a given water source. The first groundwater district, High Plains Underground Water

Conservation District, was established in 1951. Currently, there are approximately forty groundwater conservation districts who have the powers and duties to manage groundwater as defined in Chapter 36 of the Texas Water Code.

Groundwater districts can be affected by federal laws as well, as in the instance of the Edwards Aquifer Authority, where an endangered-species court decision forced the Legislature to mandate that the district issue permanent water-use permits for property using the aquifer.

The Texas Farm Bureau, which supports the rule of capture and intends to file arguments on behalf of the rule in the Ozarka case, argues that because the groundwater conservation districts give landowners a way to address over-pumping problems, the court shouldn't abolish the rule of capture.

While Ozarka is basing its defense at this stage on the rule of capture, the company isn't relying entirely on the rule's survival. The company claims the law could change and not affect its ability to pump as much as it has been. Ozarka says it believes that it would still be grandfathered in as a prior user, and that its use would be deemed "reasonable".

PWPG UPDATE

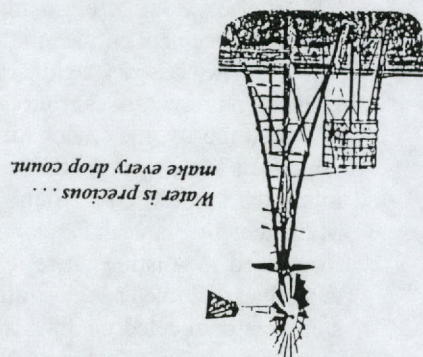
At their meeting on June 22, the Panhandle Water Planning Group named Camp Dresser and McKee as the consulting contractor to assist in the preparation of its scope of work. The purpose of the scope of work is to accomplish regional water planning for the Panhandle Region. The scope, which was submitted to the Texas Water Development Board on August 28, includes tasks, schedule, and budget as delineated in TWDB's instruction sheet. Action should be taken on the scope, by the TWDB's board, on October 15.

The following tasks are required to be undertaken and completed during the regional planning effort:

1. Description of Area
2. Presentation of population and water demands
3. Evaluation of adequacy of current water supplies which includes construction of groundwater flow models
4. Water demand and supply comparison - identify surplus and needs for all water users
5. Develop plans to be used during drought of record and flows at 50% and 75% of normal to meet needs identified in step 4 above.
6. Identify ecologically unique stream segments and reservoir sites
7. Policy recommendations

The original budget, submitted in the scope of work was \$1,642,563. This has since been revised and currently is \$1,542, 563.

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