

# Panhandle Water News

December 2004

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## GROUNDWATER DEPLETION RULE FINALLY APPROVED

The Directors of Panhandle Groundwater Conservation District unanimously approved the District's aquifer depletion rule. The rule has been under consideration for a decade from conception to approval. It has been a real struggle to devise a rule that was fair to everyone and would still meet the 50/50 Management Standard. The District Board and Staff have spent untold hours developing this rule.

The District needed a Depletion rule to focus on pumping in only areas showing excessive depletion. The District had the Bureau of Economic Geology perform a study showing the impact of such a rule if it had been in effect 50 years ago. The study showed that only 17% of the District would have shown areas of concern. Critics of this rule say that all producers should have meters and be subject to an allowable production rate. Throughout this process, the Board has stood fast in its support of the rule.

The rule process begins with District employees taking annual aquifer measurements on some 900 wells in the District. The District has been using the same procedure to measure wells for almost 50 years. Annual decline maps are drawn from these measurements. Areas showing in excess of 1.25% annual decline will be designated as Study Areas after notice and public meeting. At the public meeting, decline map results will be given to the Board and general public. The District will install meters or measuring devices on as many wells as the Board deems necessary to fully study the area. If decline is still occurring

after one year, the Board will hold a hearing and MAY designate a Conservation Area. The first year in a Conservation Area, all producers must have a meter and comply with the one acre foot per acre per year production allowable. If the area continues to decline, the District may restrict pumping to 0.9 acre foot per acre per year. This allowable will be in affect for the subsequent two year period. If compliance is achieved, the allowable may remain at this level or may be increased by 0.1 acre foot per acre per year as approved by the Board. If compliance is not achieved then the allowable may be lowered by 0.1 acre foot per acre per year every two years until compliance is achieved or the floor rate is reached. Floor rates are the minimum production rate the District may impose on the producers of a sub-area.

The brilliance of this rule is that it gives every producer time and options to achieve compliance. A city may want to purchase additional water rights, a farmer may want to adjust the amount of irrigated acres, change crops, or sell or lease his water rights to a city. There are numerous options for compliance besides a reduction in water use.

We believe this rule gives the framework to encourage voluntary compliance and innovative ways to achieve goals that will balance the needs of today with conservation for the generations of tomorrow.



Charles Bowers,  
President of PGCD  
Board of Directors



## 2004 FIRST PLACE WINNING ESSAY

By: *Jennifer Hutchinson, Miami High School*

Water is the most precious commodity on this planet. Every organism must have water to survive. Water is important in our diet, for our livestock, food resources, cleaning, and recreation. Limited amount of fresh water, inconsistency of annual rainfall, and our non-replenishing underground lakes create a grave concern over controlling the water in our great state of Texas. Should the local government have control over the underground water level or the state government?

Local control is the most important way landowners can retain a voice in the way their water is taken from their own land. Landowners in the Texas Panhandle must pump water from the Ogallala Aquifer under their property to fill their water tanks. Cattle, horses, and other livestock must have a large quantity of water to survive. Ranching and agriculture are the main sources of income for this area. Water will determine if this area will continue to be productive and a place suitable for living.

There is an increase of demand for water all over the state. Populace areas such as Dallas, Houston, San Antonio, and Austin are looking for new water resources. If the state is in control of regulating water, the voters in these areas will vote for what they need. The large population centers will vote to regulate our water to meet their demands. Our small population will be out-voted. The local people will have no voice in where, when, or how much water will be pumped out from underneath their own land. The state should not be in control of water underneath our land.

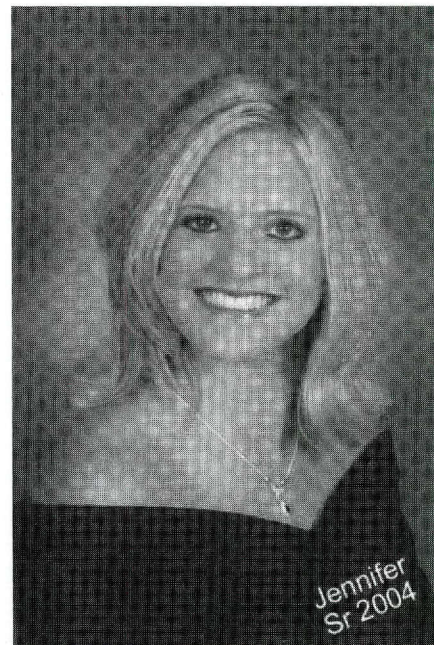
People should learn from the past to avoid future mistakes. The Robin Hood bill for education is a prime example of how the entire state handles issues that doesn't affect them directly. The state governing body wants the Texas Panhandle's money, but it really isn't concerned how it will affect our area. Small communities will close down and students will spend hours riding school buses if the rural schools close because of lack of funding due to the Robin Hood bill. Similarly, the state governing body will want the Texas Panhandle resource—our water—but will not be concerned how it will affect our area. This area will be a desert and uninhabitable if our underground water is depleted.

The Edwards Aquifer that is located in South Texas replenishes itself quickly. Citizens in this populated part of the state do not realize that the Ogallala Aquifer does not replenish itself. When it is depleted, it will cease to exist. What a tragedy to

deplete this valuable and life sustaining resource forever!

However, the regulation of water is now in the hands of local government. This local governing body has set a target of pumping out 50% of the water in the Aquifer over the next fifty years. This is being irresponsible to our children and grandchildren. My father's windmills are 250 feet below the ground surface. At the present time, there is 600 feet of water in the Ogallala Aquifer. In fifty years, when my children and I are operating the family ranch, the water will be depleted to 300 feet. No windmill or submersible is capable of getting water from this great depth. Hopefully, modern technology will be able to invent a method for retrieving water at this level. The water will not be as pure. Mineral, salt, and other contaminates will increase as the water level drops. The only mistake we can make in solving this complex issue is rushing into forever depleting this precious water source for a quick buck. The good news is that there is still time for us all to work at the local level in order to stop the depletion of the Ogallala Aquifer.

God has provided this part of the country with beautiful sunrises, majestic sunsets, and pure, sparkling water from the Ogallala Aquifer. Local citizens need to take care of this precious commodity. Our children, grandchildren, and future generations will be able to enjoy the quiet, solitude of the Texas Panhandle, if intelligent, responsible citizens with foresight are elected to the local governing body.



2004 1st Place Essay Winner  
Jennifer Hutchinson, Miami High School

## **THE SYSTEM WORKS \***

*By C.E. Williams, General Manager PGCD*

As the 79th legislative session approaches, the rule of capture is likely to come under growing attack. Critics of the 100-year-old law governing groundwater in Texas argue that it fails to fairly protect our dwindling resource and should be altered. Opponents are urging the Senate Select Committee on Water Policy to do just that.

I contend that the rule of capture operates sufficiently because it is subject to reasonable governance by groundwater conservation districts. These locally elected government entities provide an effective balance to the statewide law.

In 1997, the Legislature designated groundwater districts as the state's preferred method of groundwater management. Districts originally were created in 1949 and some, such as the Panhandle District, have been in operation for almost 50 years. They were mandated to conserve, preserve, protect and manage this valuable resource and should be given time to prove themselves.

High-profile plans to market water have focused attention as never before on the state's 80 or so groundwater districts.

Intensifying competition for water highlights the need for reasonable and methodical decisions that balance all interests in allocating it. Here's how groundwater districts are taking that approach:

- **Updating Management Plans**

Virtually all districts, including ours, have updated or are in the process of updating their plans and rules, since Senate Bills 1 and 2 granted new powers in 1997 and 2001, respectively. Districts are addressing well permit criteria, well spacing, aquifer depletion, production allocations, property rights, the environment and current and future water needs.

- **Building Science**

Districts such as the Panhandle GCD have spent 50 years collecting data and creating databases that reflect their individual hydrology, geology, and climate. This carefully assembled body of science underpins our rules and management plans.

- **Making Hard Decisions**

Locally elected boards balance the competing needs of all water users: rural vs. urban, current vs. future, development vs. conservation, private property rights vs. the collective good. Board members often have a wealth of institutional knowledge, historical information and experience built over decades of hands-on work in water issues. Most importantly, they must abide by the same regulations they promulgate.

- **Pioneering the Way**

Groundwater conservation districts are pioneering the way in groundwater management. The Panhandle GCD, for example, is planning to adopt a depletion rule that sets an acceptable decline rate for our water table. The Ogallala Aquifer is almost non-rechargeable, so our water table falls continuously. The only question is how fast. We've established a 50/50 management standard that says at least 50 percent of the aquifer must be left in 50 years, starting in 1998. The 50/50 standard underpins the management plans of both the district and the Panhandle water planning area. I realize that some districts' rules may be contested in the courts. We accept that risk as part of sensible groundwater management.

- **Regionalization**

Many districts recognize the need to coordinate on a regional level. Cooperation with neighboring districts and regional water planning groups is growing. Such collaboration can only strengthen the decentralized approach to groundwater management. A statewide water czar is unlikely to work in Texas. The state's history favors a decentralized approach to government.

Local control is the brilliance of the system for managing groundwater, given Texas' diversity of hydrology, geology, geography, ecology, and climate. Wide variations can only be accommodated at the local and regional levels. Altering the rule of capture won't automatically guarantee a fair sharing-out of groundwater. Locally controlled groundwater districts are likelier to achieve that mission. Rule of capture critics may have a point in areas of the state *not* covered by a groundwater conservation district. Still, 85 percent of the groundwater produced in Texas is covered by a district. If you don't have a groundwater district, get one. Keep the current system. It works.

*\*This opinion piece was published  
in the Dallas Morning News on Nov 14.*

## **SENATE SELECT COMMITTEE HOLDS FINAL HEARING**

The Senate Select Committee on Water Policy met in Austin on November 3, 2004. The following are excerpts from the testimony given by C. E. Williams, General Manager, Panhandle Ground Water Conservation District; Jace Houston, General Council, Harris-Galveston Coastal Subsidence District; and Mike Mahoney, General Manager, Evergreen Underground Water Conservation District.

### **Site-Specific Conflicts Driving State Policy**

In each of the last three sessions since the passage of the junior water rights provision on interbasin transfers of surface water, Texas' groundwater policy in general and groundwater districts in particular have come under increasing legislative scrutiny, which has generally resulted from persistent lobbying by entities who are seeking to use groundwater and who believe their interests are being unreasonably hindered by a local groundwater district. Whether the issue is over an export project, a per-acre pumping limit, a district's method of implementing historic use, or a district's chosen level of availability for an aquifer, one common theme persists: when a site-specific conflict arises, many of the parties involved are seeking legislative remedies that impact statewide policy.

Even the entities involved in a site-specific conflict will generally admit that 99 percent of the districts in the state are managing in a reasonable manner. However, many of the remedies they promote would usurp local authority for all districts.

This is not to say that the legislature is an inappropriate forum for aggrieved individuals to plead their case. However, the remedies considered by the legislature should be tailored to the specific problem and not at districts in general.

### **Groundwater Districts Oversight versus Local Control**

The whole concept of local control is based on the premise that those who govern the individual, personal rights of citizens should be

held closely accountable to those who are being governed, and very few individual rights are considered more personal and important than a citizen's access to the groundwater under their property. For this and other reasons, groundwater has traditionally been regulated by a locally elected or appointed board. We believe strongly that the system should be preserved.

### **Rule of Capture**

The rule of capture is a judicial doctrine that simply states that a landowner is not legally liable for any damage his pumping may cause to a neighbor's well; in other words, it is a statement by the courts that they will not settle disputes between landowners related to damages caused by the use of groundwater.

In recent years, the rule of capture has been increasingly criticized as being the root cause of numerous groundwater management problems across the state. Such criticisms are based on a lack of understanding of the rule of capture. The rule of capture is not related to groundwater management at all; it is simply a statement by the courts that the legislature is the appropriate forum for implementing groundwater management.

A legislative change to the rule of capture would mean that the legislature wants the courts to begin settling individual disputes between landowners related to groundwater pumping. Each of the judicial doctrines that are alternatives to the rule of capture are simply different theories of liability that the courts can use to assess damages in disputes between individual landowners.

Changing the rule of capture in favor of one of the alternative liability theories is certainly an option the legislature can consider for providing landowners with a possible judicial remedy for damages they believe they have suffered due to a neighboring well, but none of the alternative theories is without its drawbacks and limitations, and such a change should be cautiously considered.

### **Due Process and Consistent Procedures**

Chapter 36 provides only very basic notice and hearing requirements for districts when they are considering rulemakings, orders, resolutions, or permitting decisions. Additional guidance related to notice, hearings, and procedures could provide consistency among districts and ensure adequate



public input into the decision-making process of districts.

### **Joint Planning and Regional Management of Aquifers**

With the recent delineation of groundwater management areas by the Texas Water Development Board, groundwater districts across the state have increased their already significant efforts to coordinate their management with neighboring districts. For many years groundwater districts have used shared staff, regional alliances, joint meetings, regional aquifer studies, and other means to ensure consistent management over common aquifers. Charges that district rules or procedures are unreasonably inconsistent among neighboring districts are often a red herring argument proffered by individuals who are simply dissatisfied with a position taken by a district.

Any proposed improvements in the area of joint planning should respect the local authority of elected and appointed boards.

### **Consistent Groundwater Definitions and Terms**

Groundwater obviously plays a key role in the long term water planning of this state, but provisions in Senate Bills 1 and 2 regarding groundwater management planning are relatively new, and already certain terms are creating some confusion and inconsistency among local, regional, and state planning entities. It is extremely important that key groundwater management terms be clearly and accurately defined so that planners at all levels can effectively communicate and planning decisions can be made on an apples to apples basis.

### **Sale of Groundwater from State-Owned Lands**

The sale of groundwater from underneath state-owned lands could be a reasonable and effective means of meeting critical water supply needs while financially benefiting all the citizens of Texas. However, it would be a great disaster to harm one area of the state by irresponsibly withdrawing water from that area for the benefit

considering any proposed groundwater project involving state-owned lands and should ensure that the state is first and foremost a good neighbor to surrounding citizens before it endeavors to sell water to other areas.

### **C.E. Williams Recipient of Friend of Extension Award - 2002**

Bart Wyatt, Director of Education/Information, attended the District 1 Texas Cooperative Extension Awards Luncheon for C.E., who was in San Antonio attending the Texas Water Conservation Association Fall Meeting. On C.E.'s behalf, Bart accepted the State Epsilon Sigma Phi Friend of Extension Award - 2002, in recognition of outstanding public service and support of the Cooperative Extension Service and its educational programs.

Congratulations C.E.!



**Felix Wilson Ryals, Sr.**

**Oct 21, 1914  
Aug 27, 2004**

Felix Wilson Ryals, Sr., 89, was the General Manager of Panhandle Groundwater Conservation District from 1955 - 1979. He was an alumni of Lyon College. He was preceded in death by his first wife, Carolyn Ruth Seamens Ryals.

He is survived by his wife Opal M. Ryals; sons; Wilson and James; daughters, Carolyn Armogida, Mary Hart, and Janice Rogers; 15 grandchildren; five great grandchildren.



# TEXAS SENATE SUBCOMMITTEE ON THE LEASE OF STATE WATER RIGHTS RELEASES INTERIM REPORT

Texas Senate Subcommittee on the Lease of State Water Rights submitted the following report to the Senate Select Committee on Water Policy.

The subcommittee's mission was to study proposals to lease Permanent School Fund and Permanent University Fund lands and their water rights for the purposes of developing and marketing water.

The subcommittee was comprised of Senators Frank Madla, Robert Duncan, Troy Fraser, Eddie Lucio, Jr., and Eliot Shapleigh.

The subcommittee's work involved the following:

- Analyzing present and future effects of such proposals on local aquifers, historic stream flows, local underground water conservation districts and other public and private water interests.
- Studying the process by which the General Land Office considers proposals to lease state water rights, including methodology for holding open meetings, obtaining public input, meeting competitive bidding requirements and coordination with TCEQ and other governmental units with possible regulatory oversight.
- Studying and evaluating the current and future value of water rights that may be leased to private entities, including the value to state, residential and commercial interests.

The subcommittee's findings and recommendations are as follows:

**Recommendation 1.1:** Amend the Natural Resources Code to require School Land Board approval of all leases of land or granting of other interest in real property that is part of the Permanent School Fund which have a primary term, or a primary and extended term, that will exceed ten years.

**Recommendation 1.2:** Amend the Natural Resources Code to require the School Land Board to adopt a clear set of rules for the leasing of groundwater from Permanent School Fund lands.

**Recommendation 1.3:** Amend the Natural Resources Code to require that groundwater sale or lease proposals from Permanent School Fund and Permanent University Fund lands meet all competitive bidding requirements, unless:

- the contract is between the state and another agency or political subdivision of the state;
- the contract is between the state and an end user of the water; or
- the contract is for the supply of water of less than 125,000 gallons per day.

**Recommendation 1.4:** Amend the Natural Resources Code to increase the number of members of the School Land Board from three to five.

**Recommendation 1.5:** Amend the Natural Resources Code to prohibit out-of-state exportation of groundwater from state-owned lands.

**Recommendation 1.6:** Require regional water planning groups, which include Permanent University Fund lands, to appoint the Executive Director of University Lands as a non-voting member.

**Recommendation 1.7:** Amend the Water Code to allow proposals to produce or transport groundwater from Permanent School Fund and Permanent University Fund lands to be included as a recommended water management strategy in regional or state water plans or as amendments and updates to regional or state water plans.

**Recommendation 1.8:** Amend the Natural Resources Code to require that all buyers or lessees of Permanent School Fund and Permanent University Fund lands, located within a groundwater district, be subject to all rules and regulations of the groundwater conservation district.

**Recommendation 1.9:** Repeal Section 11.3271, Water Code.

**Recommendation 1.10:** Advise the 79th Legislature to continue to study the ability and advisability of all state agencies to lease groundwater from their own lands.

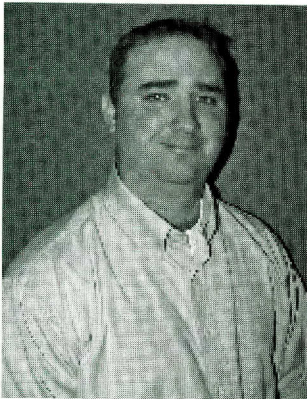
The following section of the same report identifies concerns expressed to the Subcommittee which, although relevant, are beyond the scope of the Subcommittee's specific charge. Therefore, the Subcommittee identifies the following issues for



consideration by the Senate Select Committee on Water Policy:

- Creation of a statewide groundwater conservation district - administered by existing state agencies - to govern lands not included in a local groundwater conservation district;
- Feasibility of requiring municipalities, prior to receiving groundwater from other areas of the state, to adopt and implement a water conservation plan;
- Effects of the transportation of groundwater from one region to another on the environment and local communities and economies;
- Ability of groundwater conservation districts to obtain the necessary science and data in order to best manage their water resources;
- Role and authority of regional water planning groups in the water planning process;
- Historic use; and
- Rule of capture.

### MEET DEVIN



Panhandle native, Devin Sinclair, son of Erskine and Frances Sinclair, joined the District in August 2004.

Devin, a May 2002 graduate of Texas Tech University received a degree in Agriculture/Applied Economics. Upon graduation, Devin spent five months in Australia interning with Cargill Beef.

Devin married Mandy Sinclair, a Kindergarten teacher at Forest Hill Elementary in Amarillo. They are expecting their first child in January 2005.

In his spare time Devin enjoys hunting and is an avid Texas Tech football fan.

His duties with the District include field work, water analysis, and well spacing.

## WATER CONSERVATION IMPLEMENTATION TASK FORCE RELEASES REPORT TO THE 79TH TEXAS LEGISLATURE

This report by the Water Conservation Implementation Task Force (Task Force) is a strong endorsement of the proposition that effective and efficient utilization of voluntary water conservation, including water reuse, will be critical if the water-supply needs of future generations of Texans are to be met.

According to the 2002 State Water Plan, the inability of current water sources to meet demands for water during drought conditions will increase from 2.4 million acre-feet per year (AFY) in 2000 to an estimated 7.5 million AFY in 2050. In 2003, the 78th Texas Legislature considered a broad spectrum of issues related to water conservation and established the Water Conservation Implementation Task Force via passage of Senate Bill (SB) 1094.

The challenge before the Task Force was to develop recommendations that would facilitate and encourage, to the greatest extent practicable, the implementation of appropriate water conservation measures by municipalities, industry, and agricultural interests.

The Task Force was directed in SB 1094 to review, evaluate, and recommend optimum levels of water-use efficiency and conservation for Texas and to concentrate on issues related to:

- (1) best management practices,
- (2) implementation of conservation strategies contained in regional water plans,
- (3) a statewide public-awareness program,
- (4) state funding of incentive programs,
- (5) goals and targets for per-capita water use considering climatic and demographic differences, and
- (6) evaluation of state oversight and support of conservation.

The Task Force made a number of recommendations that it believed will greatly enhance the ability and desire of Texans to implement water conservation strategies to meet their water-supply needs.



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## PGCD PRESENTS WATER MODEL AT WHEELER AG DAY

The Panhandle Groundwater Conservation District was recently invited to speak at the Wheeler Ag Day. Kenny Brdecko, Wheeler County Extension Agent, and Karen Tellman, Family and Consumer Sciences Specialist, played an instrumental role in putting this project together. A number of students from Ft. Elliott, Kelton, Shamrock, and Wheeler attended the afternoon seminar. In all, 440 students were given the opportunity to see different kinds of crops and their uses. Students also got a first-hand look at calves, pigs, and lambs. Not to be left out, Todd Griffin, with Southwest Dairy Farmers, brought a mobile dairy classroom unit. While showing the milking process, he explained to the students the importance of dairy cattle. Bart Wyatt, Director of Education/Information with the PGCD, gave the students an opportunity to see how water moves under the ground with the district groundwater flowmodel. Along with explaining the model, he imparted numerous ways to conserve groundwater.

The day was a huge success, and we look forward to helping at future events!

### Ag Loan Money Available!

- Interest Rate 3.15%

Call or come by the office to pick up an application

Our Annual Report for 2003-2004 is currently being compiled and should be ready around December 1st, 2004. If you would like a copy of this report you can access the website at [www.panhandlegroundwater.org](http://www.panhandlegroundwater.org) or call our office at (806)883-2501.

We will be happy to mail a copy to you.

### **Use Water Wisely Tip:**

#### Use hot water efficiently.

Letting water run from the faucet until it heats up is a waste. Instead of sending it down the drain, capture clean water for other uses. Insulate hot water pipes to save energy.