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| Livestock Weekly Internet Edition July 2, 2009 | News | Lawrence Hall Chevrolet Abilene, Texas 800-568-7158 • 325-695-8800 |  |
| Columnists | <h2>Hemphill County Rancher Begins Effort To Challenge Water Rules</h2> | | |
| Markets | By David Bowser | | |
| Hindsight | <p>AMARILLO — A Hemphill County rancher is starting down a road that may lead to a lawsuit over the amount of groundwater that may be stored beneath the Texas Panhandle.</p> | | |
| Weather | <p>George W. Arrington sold part of his water beneath a Hemphill County ranch to Mesa Water, a water marketing group organized by Dallas businessman and Roberts County rancher T. Boone Pickens, but Arrington's local water district says he can pump only 20 percent of the water beneath his land over the next 50 years and must leave 80 percent in storage. By comparison, ranchers in adjoining water districts can pump 50 percent of their water over 50 years, leaving 50 percent in storage.</p> | | |
| Cartoon | <p>Arrington insists that would allow landowners in surrounding counties to drain water from beneath his ranch and leave him with no recourse, an assertion backed up by Texas Water Development Board research.</p> | | |
| Buyer's Dir. | <p>As part of the state's water planning mechanism, the local groundwater management area approved the restrictions on pumping by Arrington's groundwater district, but they also approved different restrictions on pumping and storage from the same aquifer in other parts of the management area.</p> | | |
| Hotlinks | <p>Arrington's lawyer, Marvin "Marty" Jones, with the Sprouse, Smith and Schrader law firm of Amarillo, says the goals of the Hemphill County Underground Water Conservation District treat Arrington unfairly and put him at a disadvantage to ranchers in neighboring counties.</p> | | |
| Archives | <p>Consequently, Jones notified Groundwater Management Area 1, which covers the Texas Panhandle, and the four water conservation districts that make up the management area, that he is appealing their decision to keep different amounts of water in storage in the ground, depending upon the district involved.</p> | | |
| Classifieds | <p>Jones says he intends to file the petition with the Texas Water Development Board, which oversees the state's water planning process, this month.</p> | | |
| Advertise | <p>Depending upon the decision by the water development board, Arrington's next step could be state district court, and Jones has raised some Constitutional questions in the case.</p> | | |
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Water officials say it will likely take two years to move through the administrative process of the Texas Water Development Board, but that a lawsuit is a possibility if the board upholds the groundwater management area's decision.

The Texas Water Development Board, after investigation and hearings, could uphold the groundwater management area's decision to have several different storage goals, or desired future conditions, for water in the giant Ogallala Aquifer beneath the Panhandle, or it could send the case back to the groundwater management area with recommendations for altering those goals.

In the meantime, Arrington has served notice that he is holding not only the Hemphill County Underground Water Conservation District, his local water district, responsible for what he contends are overly restrictive goals, but he is also holding the three other water conservation districts that make up the groundwater management area responsible because they approved the Hemphill County district's goals when they adopted areawide desired future conditions for the Ogallala Aquifer in the Panhandle.

In the 1990s, with the water level dropping in Lake Meredith, the region's major reservoir and water supply for 11 cities and towns in the Texas Panhandle and South Plains, the Canadian River Municipal Water Authority, which oversees the lake's water system, started buying rights to groundwater in nearby Roberts County. The City of Amarillo, which is one of CRMWA's member cities, also started buying additional water rights in Roberts County to insure its future water supply.

Those water rights approached the Mesa Verde Ranch on the south side of the Canadian River that belongs to T. Boone Pickens.

Saying that he feared CRMWA and Amarillo would suck all the groundwater from beneath his ranch, Pickens organized Mesa Water with the expressed purpose of selling its water to thirsty urban areas downstate, including Dallas, San Antonio or El Paso.

Pickens said the only way he and his neighbors could realize the value of their groundwater was to pump it under the rule of capture and sell it to the highest bidder.

Under the rule of capture, one of the basic principles of Texas water case law, as long as a landowner doesn't waste it or pump in manner to intentionally harm his neighbor, he can pump as much water as he wants. His neighbor's only recourse is to pump his water or lose it to surrounding production.

That begs the larger question raised by Hemphill County

rancher Jim Haley, who is on the Hemphill County Underground Water Conservation District board of directors, of where is the conservation?

The Texas Legislature, noting that water resources vary widely in the state, created groundwater districts to regulate those resources.

In 2005, the Legislature also created 16 groundwater management areas, or GMAs, across the state in an effort to get adjoining groundwater districts, particularly new ones, to coordinate their conservation efforts, their rules and their regulations.

GMA1, which covers the Texas Panhandle to just south of Amarillo, includes three of the oldest groundwater districts in the state — the Lubbock-based High Plains Underground Water Conservation District (a majority of the High Plains district is in GMA2 to the south, but a portion of the district remains in GMA1), Dumas-based North Plains Groundwater Conservation District, and White Deer-based Panhandle Groundwater Conservation District. All cover multiple counties and are more than 50 years old.

GMA1 also includes the Canadian-based Hemphill County Underground Water Conservation District, a single-county district organized in the 1990s.

When the state mandated that groundwater management areas would determine the desired future condition of each aquifer in their areas, C.E. Williams, the general manager of the Panhandle Groundwater Conservation District and head of the Region 1 or Panhandle Regional Water Planning Group, said he figured the four districts that make up GMA1 would get together and adopt the 50-50 goal that the regional planning group had already adopted.

The 50-50 goal, initially adopted by the Panhandle district following some heated exchanges, lawsuits and threatened lawsuits among the district, Mesa and CRMWA, calls for 50 percent of the water in the aquifer to remain in storage at the end of 50 years.

The water planning region, Williams reasoned, covered about the same area as GMA1, and basically the same people were involved.

He was wrong.

The North Plains district stretches east and west across the north tip of the Panhandle. The central and western counties in the district are heavily irrigated, the eastern counties mostly

rolling rangeland. Water table projections by the Texas Water Development Board show dropping groundwater levels in the western counties of the North Plains district, but the eastern counties of grassland and windmills have plenty of water.

North Plains initially pushed for a desired future condition of 40 percent in the western counties of the district and a 60 percent desired future condition in the eastern counties. The average, they argued, would be a 50 percent average rate across the district.

They settled on a 40 percent desired future condition for the western counties and a 50 percent rate for the eastern counties after a rancher in one of their eastern counties, who had sold part of his water to Mesa, sued the district, saying the farmers in the western counties could pump more water and therefore had an unfair advantage over the ranchers in the eastern counties of the district.

The Hemphill County district initially pushed for a 90 percent desired future condition, but following a Texas Water Development Board study that indicated that would prevent any new production in the county, they opted to hold 80 percent of their water in storage, producing only 20 percent over the next 50 years.

The Panhandle district voted to keep their 50-50 goal as a desired future condition.

The High Plains district hesitated at first because of the heavy irrigation in other parts of their district, but eventually agreed to the 50-50 goal in the GMA1 portion of the district.

Under the state mandate, groundwater management areas are allowed to have differing desired future conditions, which is what GMA1 adopted in May.

Jones, however, argues that it is unfair to have different goals in one common aquifer. That allows some landowners to produce more and restricts other landowners, even though the water is coming from the same reservoir.

He cites oil and gas law that sets up field rules and allowables for producers drilling in the same oil and gas reservoirs or fields. That system was developed through court battles over the past century.

To treat groundwater differently, he says, would be unfair.

In his 57-page petition appealing GMA1's desired future conditions, Jones says the districts have not adopted reasonable desired future conditions. He says groundwater in Texas is a vested property right and is entitled to Constitutional protection.

Not to allow a landowner to produce the same amount of water as his neighbor across the county line, Jones says, is a violation of the Texas and U.S. constitutions.

"A district may not take private property without compensation to the owner, whether the taking is for public or private use," he argues. "A district may not engage in actions that result in direct or inverse condemnation of private property without compensating its owner."

He says action by a groundwater district that diminishes or destroys a fundamental real property right constitutes a "taking." A district that imposes substantial and significant limitations on real property use constitutes a taking, as does district action that deprives an owner of economically viable use of his property.

While Mesa continues to talk with municipal water authorities downstate, it has also offered some 170,000 acres of water rights across three counties to CRMWA.

Kent Satterwhite, the general manager of the Canadian River Municipal Water Authority, says CRMWA is interested in most of the water rights in Roberts County because they adjoin or are nearby water rights already owned by the water authority, but he says CRMWA isn't interested in the water rights in Lipscomb County to the north because they are too far away.

Satterwhite also says CRMWA isn't interested in the water rights in Hemphill County because of the production restrictions imposed by the Hemphill County Underground Water Conservation District.

Arrington says that makes his water worthless.

Jones says the Hemphill County district is violating equal rights and equal protection principles of the Constitution by exercising its police power in an arbitrary and capricious manner, and the other three groundwater districts are allowing the Hemphill County district to do so.

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