

# Memorandum

**To:** Mayor and Members of the City Council

**From:** Charles Cunningham, Assistant City Manager

**Cc:** Frank Salvato, City Manager  
Ted Hejl, City Attorney

**Date:** November 17, 2004

**Re:** Recommendation For or Against Establishment of a Williamson County Groundwater Conservation District

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Subsequent to the initial discussion by the Council at its November 11<sup>th</sup> meeting, I attended the meeting of "stakeholders" that was held on November 15<sup>th</sup> in Georgetown regarding the creation of a Groundwater Conservation District for Williamson County. Approximately 50 people were in attendance representing local government agencies, affected businesses and private citizens.

The purpose of the meeting was to solicit input from affected parties as to their support or opposition to formation of such a District. The Williamson County Commissioner's Court is acting as a clearing house for collecting and forwarding recommendations that it receives, to TCEQ. Frankie Limmer stated that this issue will be placed on the November 30<sup>th</sup> agenda of the Commissioner's Court for discussion and final recommendation, so any recommendations or actions taken by any jurisdiction relative to this needs to be forwarded to his office before then.

Based on the arguments advanced from participants in the meeting on both sides, the issue boils down to the perception of whether or not the benefits of establishing a local government entity to control groundwater within the boundaries of the District, outweigh the costs. The costs being the fact that the District would have power to impose a district-wide property tax to generate revenue for its operation (up to \$.50/\$100 Assessed Valuation). In addition, the District could limit rights of property owners to drill for or draw water from private wells. It was pointed out however that wells with a designed capacity to draw less than 25,000 gallons a day would be exempt from whatever rules might be imposed by the Conservation District.

Representatives from Burnet County indicated that they were in the process of taking the steps necessary to establish a Conservation District to ensure that in the future they would not be thrown in with a single District covering Burnet, Williamson and part of Travis County. They had concluded that they probably would not receive proportional representation if they were included in a tri-county District. There also have been cases where companies had taken advantage of the lack of control over ground water to draw excessive amounts of water in a particular area that had dried up some private wells in the vicinity of their operations. By establishing a District, they felt like they would have more control over potential abuses.

Finally, they expected that if the TCEQ determined that a region was not taking appropriate steps to control its groundwater, it might mandate that a District be formed. To date all Districts that have been formed have done so voluntarily.

Those speaking against formation of a District cited the lack of need in Williamson County on the basis that a) only a very small percentage of the area's total water needs were being met by groundwater sources located in Williamson County, b) the danger of creating another layer of government with taxing authority and a broad range of powers and responsibilities and c) the primacy of individual property rights regarding groundwater.

The following attachment is a pamphlet that provides additional information on Groundwater Conservation Districts.

If the Council is desirous of taking action to support or oppose the creation of a Williamson County Groundwater Conservation District, this information will be transmitted to Commissioner Limmer on the day following Council action.



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# Groundwater Conservation Districts

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Guy Fipps\*

**T**exas is blessed with extensive groundwater resources. Most areas of the state are underlain by one or more of nine major aquifers and 20 minor aquifers. As a result, approximately 57 percent of fresh water use and nearly 80 percent of agricultural water use in Texas come from groundwater supplies.

Proper management and protection of the quality of this groundwater resource are widely recognized as being vital to Texas' economy and growth, human health and well being, and preservation of ecosystems. To help protect and manage the groundwater resources, the Texas Legislature has established a process for local management through groundwater conservation districts.

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## Texas Water Law

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Texas law distinguishes between surface water and groundwater. All surface water, including streams, rivers and lakes, belongs to the state. The only exception is diffused water, such as storm water runoff, which belongs to the landowner. Surface waters are "held in trust" by the state and appropriated to users through permits or "water rights."

In sharp contrast to surface water, groundwater law is based on the English common law doctrine. This doctrine and its interpretation through case law provide that the landowner may withdraw groundwater without limitations and without being liable to neighboring landowners for any harmful effects resulting from the withdrawal. This is commonly referred to as the "right of capture." The right of landowners to capture and make "non-wasteful" use of groundwater has been upheld by Texas courts over the years with only a few exceptions.

Texas groundwater law has often been called the "law of the biggest pump"; the deepest, largest well and most powerful pump gets the water. Texas has established local groundwater conservation districts (GCDs) to manage groundwater through a number of powers they can invoke. Landowners outside of conservation districts have little recourse in protecting local groundwater or in limiting groundwater pumping impacts by neighbors.

### GCDs

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The Texas Legislature first provided for the voluntary creation of groundwater conservation districts in 1949. These conservation districts could be

created over any groundwater reservoir designated by the state.

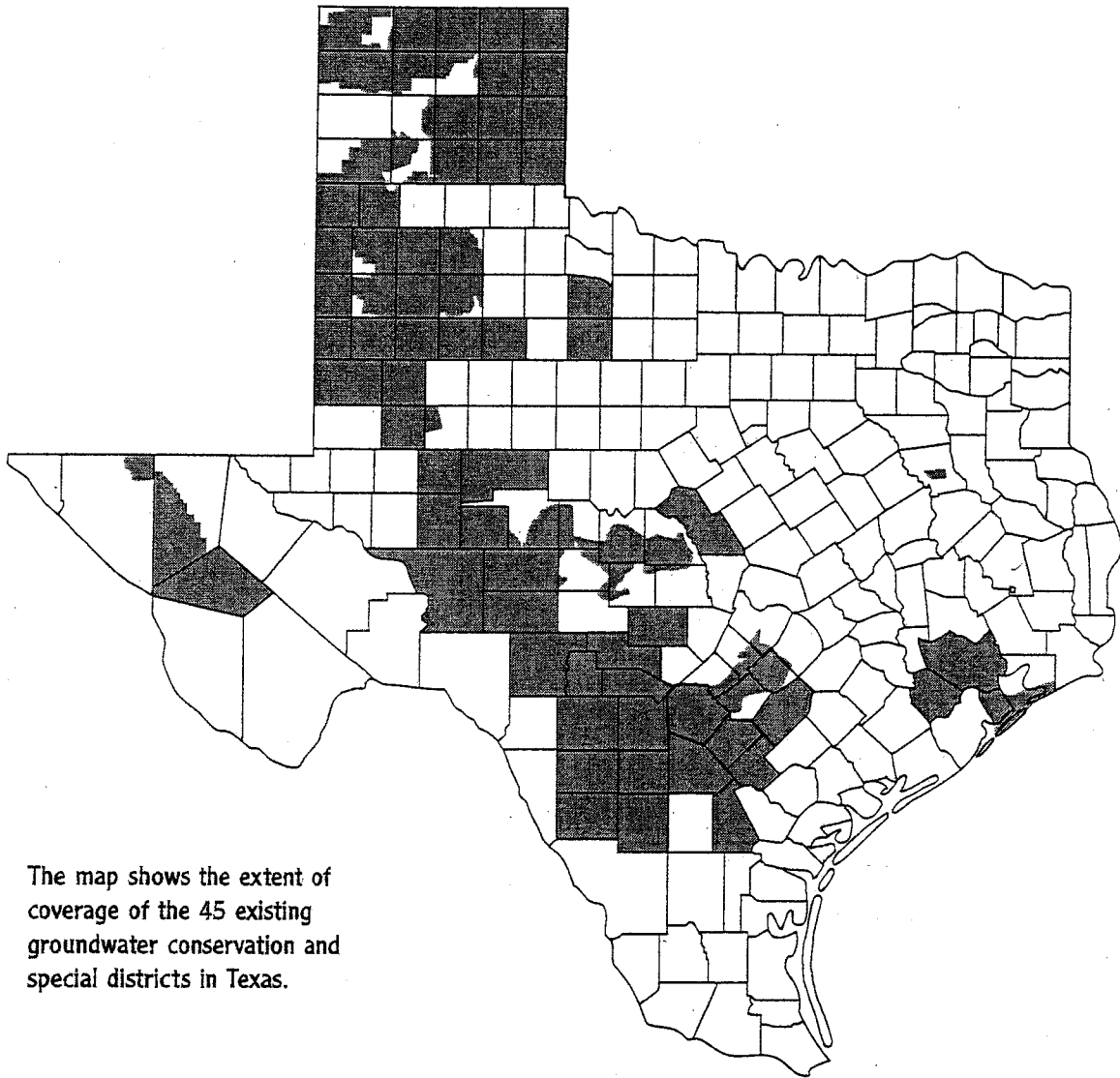
The Texas Legislature, while continuing to acknowledge the "right of capture" of groundwater by landowners, passed additional legislation in 1985 and 1997 to encourage the establishment of groundwater conservation districts and, in limited cases, to allow for the creation of districts by state initiative. This legislation confirmed that locally controlled groundwater conservation districts are the state's preferred method of managing groundwater resources. The legislation also stressed the importance and responsibility of GCDs in developing and implementing comprehensive management plans to conserve and protect groundwater resources.

As of January 1999, 45 groundwater districts exist in Texas. The rationale supporting the local creation and control of groundwater districts is related to the large diversity of climatic conditions, water use patterns, growth projections and aquifer characteristics across the state. This diversity would make it difficult to formulate and administer uniform laws and regulations to govern the development and use of groundwater statewide. Locally controlled groundwater conservation districts, with rules, programs and activities specifically addressing the local problems and opportunities, is perceived as the preferred method in Texas.

### Priority Groundwater Management Areas

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The 1985 legislation, House Bill 2, contained provisions for the Texas Water Commission (TWC, the predecessor to the Texas Natural Resource Conservation Commission) to identify



The map shows the extent of coverage of the 45 existing groundwater conservation and special districts in Texas.

areas of the state that have critical groundwater problems. Such problems include aquifer depletion, water quality contamination, land subsidence or shortage of water supply. Accordingly, beginning in 1986, the TWC and the Texas Water Development Board identified possible critical areas and conducted further studies.

In 1997, the Texas Legislature enacted Senate Bill 1, a major water planning and management bill that, among other provisions, required regional water planning and development of a state plan. The bill also reconfirmed and strengthened provisions for the creation of groundwater conservation districts by state initiative in priority

groundwater management areas (PGMAs).

PGMAs may be designated by the TNRCC in regions that are experiencing or that are expected to experience, within the next 25 years, critical groundwater problems such as shortages of surface water or groundwater, land subsidence and contamination of groundwater. A detailed study is conducted before a "study area" is declared a PGMA. To the extent possible, PGMAs are to coincide with the boundaries of groundwater formations. To date, 16 PGMA studies have been completed, and four study areas have been designated as PGMAs.

## **GCD Powers and Responsibilities**

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Groundwater conservation districts are charged to manage groundwater by providing for the conservation, preservation, protection, recharging and prevention of waste of the groundwater resources within their jurisdictions. Groundwater conservation districts have required duties that must be performed, as well as a number of authorized powers that may be invoked.

Some of the required duties of groundwater conservation districts are to:

- Develop and adopt a comprehensive management plan for the most efficient use of groundwater, for controlling and preventing waste of groundwater, and for controlling and preventing land subsidence.
- Require permits for drilling, equipping or completing wells that produce more than 25,000 gallons per day or for alterations

to well size or well pumps. (All wells producing at least 25,000 gallons per day in existence prior to the district's creation must automatically be granted a permit.)

Regulations also specify requirements on the organization and operation of a groundwater conservation district, such as operating on the basis of a fiscal year, holding regular board meetings, etc.

Authorized powers and optional duties of groundwater conservation districts include:

- Adopt rules to conserve, preserve, protect, recharge and prevent waste of groundwater and control land subsidence.
- Provide for the spacing of water wells and regulate the production of wells.
- Acquire land to erect dams or to drain lakes, draws and depressions; construct dams; and establish sites for groundwater recharge.
- Purchase, sell, transport and distribute surface water or groundwater for any purpose.
- Carry out research projects and collect information regarding the use of groundwater, water conservation and the practicability of recharging a groundwater reservoir.
- Promulgate rules to require permits for transferring groundwater out of the district.

## **Creating GCDs**

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Groundwater conservation districts can be created by one of four procedures: legislative action, petition by

landowners, state action through the PGMA process, or adding territory to an existing district. Most districts have been created through the Legislature, where the local senator or representative often introduces and carries the bill on the district.

All GCD creations with authority to levy ad valorem (property) taxes are subject to a confirmation election by voters within the proposed district. Voters also elect directors and approve the ad valorem tax rate to finance the district.

### **More Information**

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The powers and responsibilities of groundwater conservation districts, the processes involved in creating districts, the PGMA process and an overview of the issues related to groundwater districts are covered in publication B-1612, "Managing Texas' Groundwater Resources through Groundwater Conservation Districts." Copies are available from county offices of the Texas Agricultural Extension Service or via the Internet at <http://agpublications.tamu.edu/pubs/eenviro>.

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