

THE METROPLEX IS AT ITS WATER'S EDGE: NOW WHAT?

The Metroplex's expanding population is increasing pressure on our surface and groundwater resources. At the same time, laws passed in the last few legislative sessions regulating water are now taking effect. As the combination of new regulation and faster depletion affect this resource, Metroplex lawyers will be called on more often to identify rights and resolve conflicts over water.

Texas is divided into 16 water planning Regions. A 1997 law requires each Region to plan how to provide water supplies to meet its population's demands. The plans are updated every 5 years and Texas is now in the third 5-year planning cycle.

OUR WATER NEEDS

Planning Region C includes the Metroplex and it dominates Region C's population statistics and water demands. In 2000 Region C was the most populous region in Texas by around 400,000 people, with a population of 5,254,722. By 2060, Region C is projected to be home to over 13 million individuals, an increase of 149.1%. This is the highest

growth rate in Texas, both in terms of percentage growth and actual numbers of new residents.

SURFACE WATER

Reservoirs supply over 90% of water use in Region C. In 2000, the three largest wholesale water suppliers in Region C provided 75% of all water used in Region C, and this is expected to continue. These are (1) Dallas Water Utilities; (2) Tarrant Regional Water District; and (3) North Texas Municipal Water District (the Big 3).

Historically reservoirs were constructed years before they were needed. But the Big 3 are now connecting the last of these supplies to their delivery systems, and environmental laws are making the last round of reservoirs infinitely more difficult to build.

In fact, in mid-July a U.S. District Judge in Dallas issued a ruling that, unless overturned, will effectively kill one of four reservoirs intended for the Metroplex. These are the last new reservoirs planned for this area, ever.

Since each municipal water supplier has a different

volume of water supply available to supply to its customers, and each provider has a different number of customers, our clients may need to begin considering the ability of a specific water supplier to meet its needs when locating their businesses or new developments.

GROUNDWATER

Today, the Metroplex's groundwater problems may exceed its surface water problems. Over the next 50 years, we are projected to experience the worst groundwater loss in the state. Historically we have ignored these problems because groundwater production was completely unregulated. But those days are quickly coming to an end. Metroplex area groundwater production will soon be regulated, limited, and in some areas, taxed.

Groundwater produces 7.4% of overall water use in the area. The primary users of groundwater include remote rural waters suppliers, individual businesses, industries, rural landowners, small municipalities and Barnett Shale mineral

developers. It supports rural area development in areas around the fringes of the Metroplex that are still beyond the reach of municipal water suppliers.

Texas is divided into 16 groundwater planning areas (GMAs). The Metroplex is in GMA 8. Until the area is covered by GCDs, GMA 8 is responsible for planning how much water it wants the area aquifers to hold in 50 years. These are called "Defined Future Conditions" (DFCs). The Texas Water Development Board (TWDB) computes the maximum volume of groundwater that the aquifer can produce each year to meet that DFC. This is called Managed Available Groundwater (MAG).

GCDs restrict water production to the MAG. Once this area has its own GCDs, they will adopt the DFCs. This third 5 year planning cycle is the first to use these DFC and MAG limits.

The Texas Commission on Environmental Quality (TCEQ) has concluded that this area should be designated a "Priority Groundwater Management Area" because we are expected to experience critical

groundwater problems, including shortages of surface water or groundwater, land subsidence resulting from groundwater withdrawal, and contamination of groundwater supplies. The TCEQ filed its report in June, 2007, and the contested case hearing was on May 13, 2008. The proposal for decision is imminent.

The goal is to cause the

formation of groundwater conservation districts (GCDs) to regulate and restrict groundwater use. The TCEQ estimates that area GCDs could raise \$740,000 in tax revenue to support their operations. The tax would be levied either on groundwater production or on all property in the GCD. This impending designation has already spawned two GCDs in the area within the

past 12 months (one for Tarrant County, and one for Montague, Wise, Parker and Hood Counties). More GCDs will likely be formed in the 81st Legislature's Regular Session next year.

WHAT IT MEANS

Statistically speaking, one out of every one humans requires water for survival. This is why water's for fightin', while

whiskey is merely for drinking. In Texas, water use is subject to water planning. Our clients can affect both planning and use, and the coming storm of increased regulation and decreased supply will generate more disputes over water. So as inspired by that philosophical band The Beastie Boys, never forget that "you gotta fight, for your right, to wah-ter."