



RECEIVED

JUL 17 2009

OPINION COMMITTEE

COMMITTEES:  
HUMAN SERVICES, CHAIR  
HIGHER EDUCATION

Patrick M. Rose  
TEXAS STATE REPRESENTATIVE  
DISTRICT 45

COUNTIES:  
BLANCO  
CALDWELL  
HAYS

July 16, 2009

FILE # ML-46120-09

I.D. # 46120

The Honorable Greg Abbott  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711

RQ-0812-GA

RE: Request for Attorney General's Opinion

Dear General Abbott:

My legislative district is fortunate to be located in a part of our state that has grown tremendously over the last decade. With this economic and population boom, many of our communities are increasingly aware of the need to manage groundwater as a critical resource. The following issue in eastern Caldwell County illustrates a difficult tension that can occur as result of this growth.

When I was elected in 2002, a substantial portion of eastern Caldwell County was outside the jurisdiction of the Plum Creek Conservation District (PCCD), or any other authority that regulates groundwater. In 2005 and again in 2007, I carried legislation at the request of local elected officials and constituents that would have extended the jurisdiction of the PCCD to this unregulated area. Our concern was in response to ongoing efforts that would have, in an unregulated environment, led to the over-pumping of the aquifer. Unfortunately, my office was unsuccessful on both occasions.

After the 2007 Regular Session, landowners petitioned the Gonzales County Underground Water Conservation District (GCUWCD) to annex all 77,440 acres of territory in eastern Caldwell County that was not within PCCD's jurisdiction. A sufficient number of contiguous landowners are permitted to do so under Section 36.325 of the Texas Water Code, subject to a confirmation election within the affected territory. This 77,440 acre territory was contiguous to the GCUWCD and, at the time the petition was presented in October 2007, not within the jurisdiction of the PCCD or any other groundwater conservation district. The GCUWCD Board of Directors voted to approve this petition at their December 2007 board meeting, and voters in the affected territory approved the annexation in a May 2008 election.

Honorable Greg Abbott  
July 16, 2009  
Page 2

After the petition/annexation process had already begun with GCUWCD, but before the May 2008 election, 13 separate petitions were presented to the PCCD by individual landowners in the unregulated territory requesting annexation of their individual properties by the PCCD. These petitions were presented in February 2008 and March 2008 and included a total of 14,202 acres. No confirmation election is required by statute in this circumstance, and the PCCD Board of Directors approved all 13 petitions.

The entirety of these 14,202 acres, newly annexed by petition into the PCCD in February/March 2008, was included in the 77,440 acres previously scheduled, and subsequently approved, in the May 2008 confirmation election. Both districts now assert jurisdiction over the dually-annexed 14,202 acres, both districts claim to have authority to regulate the properties for purposes of groundwater conservation, and both districts intend to levy taxes on the property.

It has come to my attention that a group of landowners within the dually-annexed area recently filed an application with PCCD for water well permits to withdraw up to 15,000 acre feet of water per year. These landowners have not filed a similar application with GCUWCD, despite the results of the May 2008 annexation election.

I am pleased that this previously unregulated, water-rich area of District 45 is now protected. Groundwater regulation is beneficial for all landowners, as managing this resource will be of increasing importance to them, and for the sustainability of communities along the IH-35 and SH 130 corridors. The problem, however, is that the 14,202 acres are doubly regulated.

I was asked by District 45 constituents and the GCUWCD to make this request because of their desire to avoid expensive litigation as both districts endeavor to set a course for the future of this dually-annexed territory. I would like to request an Attorney General's Opinion regarding the following two questions:

**If land is approved for annexation via petition under Section 36.325 of the Texas Water Code by one groundwater conservation district's board of directors and subsequently approved by the affected voters, but a portion of the same land is also annexed through individual petitions by a separate, contiguous groundwater conservation district after the original annexation petition was approved by the district's board, but before it was approved in the confirmation election, do both districts have concurrent jurisdiction?**

**If only one district can properly exercise jurisdiction, which district has jurisdiction over the dually-annexed land?**

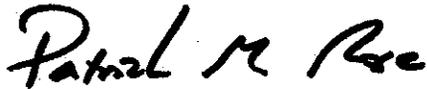
Honorable Greg Abbott

July 16, 2009

Page 3

Thank you for your attention to this matter. Please let me know if I can be of further assistance.

Sincerely,



Patrick M. Rose

cc: Mr. Johnie Halliburton, Executive Manager, Plum Creek Conservation District  
The Honorable Glenn Hegar, Texas Senate  
The Honorable Edmund Kuempel, Texas House of Representatives  
The Honorable Allan Ritter, Texas House of Representatives  
Mr. Greg Singleton, General Manager, Gonzales County Underground Water  
Conservation District  
The Honorable Jeff Wentworth, Texas Senate  
The Honorable H.T. Wright, Caldwell County Judge