

MEETING SUMMARY

Committee: Texas Water Advisory Council

Date of Hearing: June 7, 2004

Hearing Topic: Council charge relating to regional water planning
Council charge relating to federal drinking water standards

Members Present: Chairman Duncan, Senator Averitt, Representatives Campbell, R. Cook and Puente, TDA Commissioner Combs, GLO Commissioner Patterson, TCEQ Chairman White, TPWD Commissioner Fitzsimons, TWDB Member Hunt, Box and Schiermeyer were in attendance.

TCEQ Testimony:

Tony Bennett, Water Supply Division, provided invited testimony on the Council charge relating to federal drinking water standards. Chairman Duncan praised the written report provided to the Council.

Commissioner Combs asked if there was any money from the SRF to bail out small water systems with the radionuclide problem. The TCEQ is not a funding agency, however we can assist water systems looking at options. There is no bailout, we can assist in water systems obtaining low interest loans and grants.

Commissioner Combs asked if there is a level of pico curies that we encounter without getting it from the water supply, specifically food. Yes, small levels of exposure take place from water, air, diet and sunlight.
Commissioner Combs asked if the toxicological group at TCEQ had looked at diet and radionuclides. No. Tony noted that drinking water standards are based on oral consumption studies.*

Commissioner Combs asked what options are available other than a rate hike. There is technical assistance and TCEQ is piloting a process to develop preliminary engineering reports to assist small water systems.

Commissioner Combs asked what happens when a town can't comply with the rules. They should notify the customers, agree to a compliance agreement which calls for an affordability analysis. If not affordable, will have to reassess in 3 years.

Commissioner Combs asked what if the local area wants to assume the risk, what will the Feds do? State would lose primacy.
Chairman White discussed the issue of fluoride in Andrews and the interim measures used to reduce contaminants and bottle water. The standards for radionuclides, arsenic and fluoride are based on oral consumption and not total body exposure.

The TCEQ has been monitoring the radionuclide issue for several years. There are only 125 water systems in violation of all chemical MCLs combined. The radionuclide and arsenic rules would add up to an additional 300 systems in violations. The TCEQ initiated a program 5 years ago to let water systems know about the upcoming rules. The TCEQ plans to handle violations first by getting compliance agreements which require public notification and feasibility studies on a 3 year review process. There is

some controversy regarding the science with the radionuclide rule, the Texas Radiation Advisory Council objects to the standard. The state made comments prior to the adoption of the rule and now is faced with the possibility of adopting the federal standards or giving up primacy of the federal drinking water program.

Summary of Other Significant Invited Testimony:

Senator Averitt asked why the Council charge was limited to naturally occurring materials as drinking water contaminants. The Chairman was not advised.

Tom Poeten, US EPA provided invited testimony on the Council's charge relating to federal drinking water standards, radionuclides and arsenic. The federal rules have to be adopted by the state to retain primacy. The Safe Drinking Water Act passed in 1974 had a provision called primacy which allows delegation to the state, which Texas has had since 1978. The state rules have to be as stringent as the federal rules. There is a new standard for uranium as part of the radionuclide rule. The arsenic rules have been controversial, lowered from 50 to 10 ppb and reviewed by the National Academy of Science. The arsenic standard becomes effective January 2006. The EPA is working with the TCEQ on rules, the EPA has jurisdiction on the radionuclide rule until the TCEQ adopts state rules. The EPA provides \$6 million a year to the TCEQ and \$60 million a year to the TWDB. There is not much flexibility in the primacy review process. There is more flexibility in implementation where states can work with water systems under compliance agreements. Exemptions are more complicated and allow for a specific time to comply. Small water systems can get up to 9 years to comply. Texas gets \$60 million a year for the SRF a portion of that money can be set-aside for use at the state's discretion for primacy programs and to assist water systems in gaining FMT capacity. Texas will lose \$66 million if delegation of the drinking water program is lost.

Commissioner Combs asked if there was any SRF to bail out small water systems with radionuclide problems. Petersen states one of their members are applying for a loan, no bail out.

Commissioner Combs stated small towns are going broke. She asked Petersen for a comparison between the cost of 5,000 gallons of water in rural Texas and Austin. The rural cost is more than twice Austin's cost. Commissioner Combs expressed concern that the poverty rate in rural Texas limits their ability to pay the increased cost of water.

Commissioner Combs asked what would the federal do if the state didn't enforce. There would be enforcement at federal level and a loss of primacy.

The radionuclide rule is already in place. There are funding sources available to rural utilities. There is research and development by EPA which is seeking to place demonstration treatment technologies at 30 different water systems, Wellman WSC and Oak Manor MUD, in Texas being 2 of the candidates.

Ken Petersen, TRWA provided invited testimony on Council charge relating to federal drinking water standards, radionuclides and arsenic. Petersen thanked Chairman White for the additional time to adopt the rules. There are 2284 water systems that serve 500 customers or less. The rules are a challenge for small systems. The Wellman WSC is working on an SRF loan. The Live Oak Mobile Home Park does not have blending options and is not close enough to another source of supply.

Chairman White discussed the extension on adopting these standards and we now we will have to decide if we will adopt very soon. The rules raise existing standards and are very controversial. Waste disposal is

also an issue. The Commission voted to decline to adopt the standards and requested more time (December 2004). The expected cost to implement is \$35 million for the radionuclide and \$425 million for the arsenic standard. Losing primacy could cost the state \$66 million. Chairman Duncan asked what are the positives of returning primacy. Chairman White states there are none. The state can implement the rules in a better way than the federal government.

Representative R. Cook asked about the training and waste disposal. Tony Bennett stated that the TCEQ has been looking at waste disposal ideas, septic, sewage, discharge limits and having materials disposed of out of state. There are health and safety issues with RO and the cost of specialized training is a vendor issue. There is one pilot in Texas and the vendor is responsible for the waste.

Chairman Duncan states that Texas needs to retain primacy and adopt the rules. How do we deal with these rules? Funding appears to be the issue. Is the Texas Congressional Delegation aware of the Domenici bill? Are we tracking the federal legislation? Chairman White responded in the affirmative and included that numerous state legislators had signed a letter of support to the Texas' federal delegation.

Hunt stated it would be good to know the impacts, list of communities affected, cost of compliance and other relevant information.

Schirmeyer wanted to know how many systems face bankruptcy in the implementation of the rules. Chairman White requested information on what New Mexico is doing to comply with the rules.

Genora Young, City of Eden provided invited testimony on the Council's charge relating to federal drinking water standards, radionuclides and arsenic. The town has a population of 2,561 including 1,370 federal inmates. The community's economy is primarily agricultural and tourism based. The math in the standard have not been validated. The Texas Radiation Advisory Board believes the rule is not supported by science. Water short communities can't afford to treat the water. There is no economically feasible alternative water supply. She recommends no rules be adopted until the TWDB can provide the money to make the required improvements, no rule can be enacted that fails to identify both the means and costs associated with handling and disposal of waste materials that arise as a result of the rule's implementation and no rule relating to naturally occurring constituents in drinking water supplies can be adopted without the state agency having identified and insured that there are reasonable and cost-effective strategies for compliance with rule mandates (a compliance strategy as part of the rule package).

Kay Snyder, City of Midland provided invited testimony on the Council's charge relating to federal drinking water standards, radionuclides and arsenic. The City of Midland use both groundwater and surface water. The city hired a consultant to study 5 different water treatment options and none of them worked very well. The cost to comply is expected to be \$3.8 million for blending. Commissioner Patterson asked if the City of Midland's groundwater wells are from the University of Texas, yes.

Tommy Phillips, City of Seminole provided invited testimony on the Council's charge relating to federal drinking water standards, radionuclides and arsenic. The labs that test for arsenic can't accurately measure arsenic below 1.0ppb. A compliance agreement may offer help to cities trying to meet the challenge. He appreciates the state pledge to work with them, however a staff person at TCEQ suggested enforcement when the rule becomes effective. Chairman White pledged to work with them in dealing with the issue.

Larry Fleming, City of Andrews provided invited testimony on the Council's charge relating to federal drinking water standards, radionuclides and arsenic. It will cost the city \$2 million in capital expenses and \$200,000 to \$500,000 in operation and maintenance expenses annually to comply with the standards. They have provided the consumer confidence report to their customers with arsenic at 35ppb. The RO

system creates an additional waste stream. The alternative water supplies are just as contaminated as theirs. They are between Midland and Seminole.

Bill Mulligan, TWDB provided invited testimony on the Council charge relating to regional water planning. Chairman Duncan expressed that planning is one thing and implementation is another and there may need to be legislation for funding to meet the future water infrastructure needs in the state. Bill stressed the goal of implementation of plans and increased public awareness. He discussed the 50 year planning requirements, 7 ½ million af in needs by 2050. In 2000, there were 438 water user groups with needs for additional supply. By 2010, there will be 613 water user groups that have needs for additional supply. There are several strategies in the regional plans to meet the future needs, surface water, groundwater, conservation, water marketing and reuse. Surface water projects represent 66% of the plans to provide for needs of which - is from existing supply and groundwater represents 10%. Implementation of surface water will provide 4.8 million af of water on an annual basis. There are some high profile projects moving forward like the SAWS/ LCRA project which are in feasibility studies. There were changes to operating rules in the Rio Grande. The Kerr McGee pipeline is moving. There are 8 reservoirs in the plan and 3 are moving toward implementation. Water conservation is a part of the strategy of 149 water user groups, we surveyed 51 having activities savings of 1,000 af of water per year and 46 of the 51 has made progress.

Senator Duncan asked where are we on the Water Conservation Task Force— making progress. Very significant progress is being made. The Task Force has developed recommendations for 5 of the 6 areas. The Draft Report is expected to be available on the first of August for public comment. There are 50 BMPs for Agricultural, Municipal and Industrial water users.

Box provided information on districts having done studies and seeing lots of reuse in planned communities which will provide significant water savings.

Chairman Puente asked about the cost of water conservation to small communities. The BMPs are voluntary.

Representative R. Cook asked about the options to pay for conservation measures and is there a need for state funded incentives. The Task Force has not developed a recommendation on funding. Chairman White states targets are not mandatory. Chairman Duncan states the Task Force plan doesn't deal with those that want to implement conservation measures and can't afford them. Incentives are still being formulated.

Fitzsimons asked about the status of watershed management plan in the Task Force. Brush control and land use are part of the BMPs.

Hunt asked how does an entity get credit for conserving water from Brush Control or a land practice. That is part of the Texas A & M study.

Groundwater needs are expected to be 750,000 af per year, with 600,000 new well fields and require a more efficient use of water. The TWDB has funded 15 groundwater projects.

There are 10 regional water plans that have reuse strategies, 300,000 af. There are 48 water user groups with reuse strategies surveyed 42 and 35 have begun implementation.

Chairman Duncan suggested the regional water groups could be policy groups on groundwater transfers. He asked if the regional water planning groups are set up to review the large transfers of groundwater and

how do we regulate. The Panhandle RWP/G addressed the issue by adopting a policy of 50% of the water available in 1998 will be there in 50 years.

Commissioner Combs asked what effect the policy has on projects outside a GCD for limiting supplies for any use. Who enforces the policy outside GCD? If there is no application for a TWDB loan, there is no enforcement. There was expressed concern that numerous counties are within one aquifer and for water poor counties 50% can harm or be cost prohibitive. It could be costly to replace the lost water in the future. Studies should identify aquifers as a whole for complete review.

Commissioner Patterson asked if there were depletion limits on the Canadian Municipal Water District's groundwater permit. Not specifically but, GCD believes they can limit all users.

Chairman Duncan expressed an interest in having a more detail discussion on Charge 1 with information and suggestions to him. Chairman White welcomed the opportunity to provide the Chairman with her input from an agency that makes permitting decisions on surface water. Chairman White stated that she looked forward to the legislature considering the kind of disconnect between the Regional Water Planning and permitting decisions under the Water Code at the Commission. Chairman White highlighted the future surface water needs suggested by Bill, 66% of total new water is to meet future demand is from surface water. Which would typically be an amendment to a water right, a voluntary redistribution of existing supplies. If someone comes to the Commission and wants to change the use or add a use as we understand it, SB 1, \$11.122(b), the Commission will expedite, (4 Corners Doctrine). The statute said the Commission shall issue. The court is disagreeing with the Commission. The City of Uncertain is facing the issue now the Commission decision was reversed at the District Court and Appellate Court and the issue is now at the Texas Supreme Court. If the Supreme Court upholds the lower courts' decision the Commission will not be able to efficiently redistribute water supplies. Last year the Commission received applications for 12 million af of water for pure instream use that would have been competitive with many strategies in the Regional Plans. Chairman White welcomed legislative review of these issues.

Hunt stated that the Junior Water Rights provision has put pressure on the groundwater planning process. Local involvement is vital and he hopes the local expertise is not lost. Chairman Duncan said no one wants Austin telling them what to do. How do you solve the Junior Water Rights issue?

Desalination plans are reviewed and amended every 5 years due to new technology. The Governor's Charge to the TWDB on desalination has led to projects on the Texas Coast. There are 3 projects with \$500,000 per study. There are efforts for seawater and brackish groundwater. The impediments are funding \$17.95 billion and uncertainty in permitting.

Chairman Duncan asked about the cost of funding the regional planning groups. They are funded from GR. There was a slight change the second round with the state picking up some of the administrative cost.

Roger Noack, provided public testimony on the Council's charge relating to federal drinking water standards, radionuclides and arsenic. He believes the cost of complying to be \$1 to 2 million per system. He suggested the exposure to arsenic in the U.S. may not be as high as EPA has modeled. Customers, faced with expensive cost at the Black Canyon Water System due to requirement, de-annexed and drilled their own wells to avoid the rules. Groundwater systems are effected by the rules and disposal will be an issue.

Carole Bake, HGSD, Conservation Task Force provided public testimony letting the Council know of the Task Force recommendation for a public awareness campaign to the legislature.

\$150,000 has been raised in private funds to develop a program on the level of the "Don't Mess with Texas" campaign and will be asking for money to implement. The program will allow small water systems to tie in to promotional efforts.

TCEQ Follow-Up Required:

Chairman to send letter to Chairman Duncan on issues the TWAC should consider under their charges.
Provide information on how New Mexico is dealing with the rules.
Provide cost of compliance for water systems implementing the rules.
Provide list of communities affected by the rules.
Examine issues related to diet and radionuclide exposure.
Continue tracking federal legislation.

Next Hearing Scheduled: TBA

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