



936-206-7172 x 101
www.LakeConroeCN.com
Info@LakeConroeCN.com

LCCN Presentation

Monthly Meeting of the Montgomery County Commissioners Court

March 22, 2016

My name is Michael Massey. Thank you for honoring our request for an official agenda item engagement with the Court this morning. I and my fellow LCCN officers/board members are here to present and discuss LCCN's 2015 Petition Drive and its overall findings.

Unprecedented Community Petition Participation

An unprecedented 3,100+ members of the Montgomery County community signed an LCCN Petition (copy attached here; signature records available at LCCN) which sought to:

- Suspend restrictive 2016 groundwater use regulations that are driving complete dependence on alternative, and very expensive, water for most existing and virtually all new water county demand
- Re-assess the health, environmental and economically practical capacity of Lake Conroe -- a surface water source that is incredibly a key factor in the viability of the Lone Star groundwater regulatory plan -- this time with the real and complete participation of the local community.

The community at large neither embraces Lone Star's basis nor accepts its actions to restrict groundwater use in the county. Furthermore, the community rejects Lone Star's reliance on a set of "alternative water" resources and scenarios for their supply which devastate all traditional aspects of the county's water resource management system and severely threaten the health and economic development potential of the county and the region. Lone Star's regulations:

- Force the establishment of Lake Conroe as the first/primary source of alternative water – with a clearly stated policy to destructively consume the entire permitted withdrawal rate of 100,000 ac-ft/yr on an annual basis.
- De facto establish SJRA as the monopoly controller of all water resources in the county – both current and future:
 - Surface water -- for which it has at least some basis and accountability under its 1937 state chartered mission "to develop, conserve, and protect the water resources of the San Jacinto River basin" -- and
 - Groundwater -- which has no basis and no accountability as it is totally outside the scope of its state chartered mission. This is unacceptable mission creep even for a governmental agency.

In repeated testimony in 2015, LCCN made clear to Lone Star that any action to carry through with regulations would produce the above effects AND would result in illegal regulatory structures that would not survive challenge. Since then, the City of Conroe and a set of private water producers have sued Lone Star (August 30, 2015) challenging the legality of the foundation and structure of the regulations. While Lone Star has so far sought to block the movement of that suit at every turn, the Court/Judge are now in place and will soon begin hearing Plaintiffs' Motion for Summary Judgment.

Full prosecution of the lawsuit is in the BEST INTERESTS of all in Montgomery County, not simply Conroe. When fully prosecuted, Conroe believes the lawsuit will put an end to Lone Star's 2016 regulations on purely legal grounds. Regardless of the outcome, it will establish the legal framework for all groundwater regulatory development in the county going forward. Beyond such precedent setting legal clarity, there will, however, remain a longstanding set of critical issues that finally must be faced up to, addressed and resolved before new plans for regulatory development can be framed and developed. LCCN refers The Commissioners Court to its presentation to Lone Star on March 8th for a complete discussion.

The remainder of LCCN's remarks here focus specifically on matters LCCN believes are directly within the purview of the County Commissioners Court.

Framework for LCCN's Court Focused Discussions

COURT ROLE IN COUNTY ECONOMIC HEALTH AND DEVELOPMENT

1. Commissioners Court IS the de facto leader – in spite of limited explicit statutory authorities
2. Sea change underway that must be managed boldly and creatively to be successful
3. Court leadership and engagement of the community are necessary at every level of this sea change – including and particularly where it currently lacks statutory authority.

UNIQUE QUALITY OF LIFE FACTORS

Montgomery County has unique quality of life factors that discriminate it from the other counties competing for Greater Houston's businesses, workforce and infrastructure:

1. Trees
2. Lake Conroe Reservoir
3. Sam Houston National Forest

Greater Houston is competing nationally as never before for highly skilled and educated young professionals who have options for employment all over the country. This segment of the workforce values quality of life factors enough that Montgomery County offers unique leverage to corporations in their efforts to attract and win the national competition for these young workers of the future.

The Commissioners Court must exert leadership over the protection, proper handling and development of these unique factors if metro-wide economic development expectations for the county are to be met.

WATER RESOURCE MANAGEMENT

Proper handling of all dimensions of water resources is central to the county and its ability to achieve and sustain its growth:

4. Groundwater
5. Surface water: Lake Conroe Reservoir

As the sole elected body that spans countywide interests, the Commissioners Court must be actively involved and championing the County's rights and interests in each of these water resource assets.

GROUNDATER MANAGEMENT:

Court Authority/Responsibility/Accountability

SUMMARY:

1. Court has the authority – the Court holds two seats (one the Chair) and the swing, controlling votes on the 9 member Lone Star Board. The Court's appointees work for the Court and are accountable to the community through the Court.
2. Court must lead through its appointees – the most basic ethical traditions in government demand that the Court recognize and do all that can within the Lone Star Board as constituted by the legislature to deal with obvious, irreconcilable conflicts of interest in Lone Star's board's composition. The first step is seek and establish transparency norms for the conduct of Lone Star business -- those on the board with conflicts abstain from those discussions and votes that in any way can be perceived as having and engaging those conflicts.
3. Court must accept responsibility for decision making of its appointees -- by directing its appointees to recognize/resolve any indefensible rulemaking that does NOT protect the county, rather exposes it to chaos, destroys local control and replaces it with monopoly control by forces completely outside of the county's jurisdiction
4. Court must embrace ethical accountability – by calling for and supporting efforts by the county's five state legislators to amend Lone Star's enabling legislative guidance on board seat appointments in the 2017 Legislature. Any implication that the Legislature condones institutional conflicts of interests in the appointment of Lone Star Board members must be removed. Organizations given the authority the legislature to appoint members of the Lone Star Board must themselves have and then their appointees a firewall of separation between their personal and business interests and their groundwater management actions on the Lone Star Board.

SJRA'S MULTIPLE, IRRECONCILABLE CONFLICTS OF INTEREST

Actions by Lone Star fundamentally impact the economics of two SJRA divisions (and the Woodlands Joint Powers Agency) -- both of which would suffer major financial setbacks should Lone Star decide to alter the path of groundwater rules it has maintained since 2009:

1. **“GRP Division Mission:** Located at the Lake Conroe Dam, the Groundwater Reduction Plan Division is responsible for implementing a countywide program that will meet the requirements of the Lone Star Groundwater Conservation District to substantially reduce future groundwater usage from the Gulf Coast Aquifer by ensuring a reliable, long-term diversified portfolio of alternative water supply sources for all of Montgomery County – Source: SJRA website.” [financial exposure already exceeds \$1 billion and will grow dramatically over time]
2. **“SJRA Woodlands Utility Division Mission:** Since 1975 the Woodlands Division has served as the wholesaler to the 12 municipal utility districts that provide retail services within The Woodlands – Source: SJRA website.” [LCCN notes that ONLY the Woodlands has ever claimed a groundwater crisis and the need for “alternative water” that triggered Lone Star rulemaking and the \$1 billion Lake Conroe drinking water project.]

COUNTY'S SWING VOTE CONTROL OF BOARD BEHAVIOR

1. Appointees to three board seats have fundamentally opposed the direction of regulatory development and the conflicts of interest behavior of the board for years now
 - a. Seat representing Conroe
 - b. Seat representing cities other than Conroe
 - c. Seat representing MUD's west of I-45 – basically all of whom opposed the SJRA GRP in 2009/10 and continue to avoid joining it
2. Appointees to four board seats have fundamentally aligned for years to drive Lone Star regulatory development, consistently supporting rather than challenging inherent conflicts of interest and their cumulative destructive impacts on the county
 - a. Seat representing SJRA -- which effectively has become the SJRA GRP Division
 - b. Seat representing the Woodlands Joint Powers Agency – which for practical purposes is the SJRA Woodlands Utility Division
 - c. Seat representing the MUD's east of I-45 – all of whom signed up and have been captive to the SJRA GRP Division since 2009/10
 - d. Seat representing the Montgomery County Soil and Water Conservation District
3. Commissioners Court's two appointees to the Lone Star Board have long controlled behavior and decision making
 - a. Board's Officer Positions -- Until 2016, both appointees served as the controlling officers of the Board (President and Vice President); one remains President in 2016 (VP is now held by the representative appointed by the Woodlands Joint Powers Agency, an extension of the SRJA Utility Division)

- b. The Court's appointees hold the power to establish that board members abstain from participating and voting where conflict is perceived to exist.
- c. The Court's two seats and their votes tip the balance [5 to 4 vs 6 to 3] regarding the entire direction of the Lone Star Board, the behavior of its operations management, and its core decision making on rules.

ELECTED COURT'S INHERENT ACCOUNTABILITY

1. The Legislature gave the Court the responsibility for representing the at-large community in matters of Lone Star.
2. The Court cannot delegate that responsibility away
 - a. Court appointed representatives to the Lone Star Board can at most stand in for the Court and its responsibility to the community interest
 - b. The Court remains responsible/accountable for whether the actions of its appointees reflect the best interests of the at-large community
3. The Court's current efforts to finalize a Code of Ethics across Montgomery County will no doubt make such implied responsibility/accountability explicitly clear.

SURFACE WATER MANAGEMENT:

Facts, Damage, Immediate Corrective Actions, Long Term Management Needs

SUMMARY:

History

1. Lake Conroe Reservoir was never designed as a primary drinking water source – and Houston's rights have not been invoked for drinking water
2. Until SJRA's launch in 2009 of its "alternative water" campaign, Lake Conroe Reservoir had a consistent 35 year record of fulfilling its core mission successfully
3. SJRA's imposed new mission and its unilateral version of an "options contract" with the City of Houston over water rights (1) "privatize" the public's rights and interests in Lake Conroe water and (2) greatly expand the pressure on and ultimately DESTABILIZE the lake and the economy of the entire region – all at dramatically increased costs to the community for water.

Modern Era Realities

1. By 2030, county population will be 1 million and Lake Conroe Reservoir will be surrounded by nearly 500,000 people. [When originally planned in 1950, the whole county was only 25,000]
2. With the completion of long pending Houston permits from the State to use Lake Livingston water, Houston's narrow and limited needs/usefulness of water rights in Lake Conroe reservoir will cease.

- a. Commissioners Court must lead and take charge of the county's interests in Lake Conroe Reservoir water going forward – first discarding SJRA's damaging and costly options contract with Houston.
3. Sedimentation is a critical long term threat to the economic value and viability of the lake, it preferentially attacks the lake's shallow perimeter areas of highest economic value, and it remains totally unmanaged.
4. The lake's capacity to absorb water diversions – most notably 100,000 ac-ft/yr for drinking -- depends entirely on rainfall capture by Lake Conroe Reservoir's watershed
 - a. Average lake evaporation rates now exceed rainfall rates and the gap is growing.
 - b. The lake's watershed is small (440 sq-mi), very rural and its average rainfall rates are suspect relative to larger, better known areas closer to the coast.
 - c. Despite its importance, simplicity and low cost, SJRA has never established any watershed rainfall monitoring program.

Real Mission Going Forward for Lake Conroe Reservoir

1. Stable Lake
 - a. +/- 2 ft of pool (201 ft);
 - b. Optimize the use of current Phase I (25,000 ac-ft/yr), but suspend plans for Phases II-IV of the JSRA 100,000 ac-ft/yr drinking water withdrawal program
 - c. Arrest/reverse and avoid future damage from sedimentation
2. In droughts, transfers of water from Lake Livingston will be necessary as will a suspension of lake water withdrawals for use as drinking water (in favor of increased groundwater use)
3. In El Nino, every effort needs to be made to maximize the capture of excess lake water for drinking water use (cutbacks in groundwater use)

HISTORICAL MISSION/PURPOSE OF LAKE CONROE RESERVOIR

1. The Lake Conroe Reservoir harnesses only 440 sq-mi of the San Jacinto Watershed -- <8% of the 5,600 sq-mi of San Jacinto Watershed, itself among the smallest in Texas.
 - a. By comparison, 2,800 sq-mi of the San Jacinto watershed supports the Lake Houston Reservoir.
2. Its primary purpose was storage of water for emergency recharge of Lake Houston in severe drought – Lake Houston functions as the first stage of the Houston water treatment system.
3. Its secondary purpose was to function as a natural resource for the many quality of life pleasures of “hundreds of thousands” of community residents.
4. Its secondary purpose was also means for controlled supply to: municipal, business, industry.

**Lake Conroe Dedication By W. E. Tinsley:
Founding Member, Texas Water Development Board
November 10, 1969**

“Consider for a moment the complexities of this project. To begin with, it is a multi-purpose project: municipal supply, industrial supply, irrigation supply, *and then let us not overlook the hundreds of thousands who will enjoy its recreational advantages.*”

“The true conservationist feels a responsibility for that portion of God's creation which has been committed to his charge, *a responsibility to leave it for the benefit of future generations in a condition better than that in which it came under his charge.* A properly conceived and soundly constructed reservoir falls, without question, in this category. The structure to be erected on this spot will *grace this stretch of the San Jacinto River with a shimmering lake which will add enrichment to the lives of hundreds of thousands of Texans for decades to come.* It represents the conservationist's offering~ the discharge of his obligation, and it is fitting that in this ceremony we dedicate it to that purpose.”

HISTORICAL PERFORMANCE: 1973 THRU 2015 (>40 YRS):

1. There has been only one Houston call on its water rights – Aug 14 thru Nov 2011 – focused entirely on refilling Lake Houston, NOT on supplying drinking water to Houston
2. In that short span of 3-1/2 months, Houston's total water withdrawal was 51,000+ ac-ft -- >75% of its annual water rights – and total Lake Conroe water level fell 4 ft.

RECENT SJRA REWRITING OF MISSION:

1. Phased annual removal of 100,000 ac-ft of water for drinking water
2. 2009 “Option Contract” with Houston for acquisition of Houston's share of water rights:
 - a. Houston water rights accessed incrementally, ONLY for use by members of the “private” SJRA GRP Division and ONLY with annual upfront commitments and payment of raw water fees [~60 cents/1,000 gal in 2011].
 - b. Houston remains in control of any of its water rights not committed and paid for by SJRA – leaving it available to Houston for same drought calls as 2011.
3. Net result:
 - a. Lake Conroe Reservoir remains totally subject to deep drought Houston calls for water for decades
 - b. SJRA steadily increases its ANNUAL call for drinking water, adding further to community water costs [likely another \$1/1,000 gal or more in the future] AND ultimately ANNUALLY exceeding Houston's rare and dramatic calls for water by a factor of 2.

CAPACITY/STABILITY OF LAKE CONROE RESERVOIR

1. BOTH withdrawals of water and sediment buildup disproportionately strike the high valued but shallow perimeter areas of the lake
 - a. Fully 25% of the total volume of the lake (100,000 ac-ft) occupies the first 6 ft of the 50+ ft deep lake – viz., lake level of 195 ft [TWDB measured data]
 - b. Allowing a minimum lake water depth of 3 ft for economically functional use of perimeter areas, only those areas with lake bottoms below 192 ft are reliably functional for primary economic use.
 - c. Aggravating the above -- sedimentation rates (TWDB measured 600+ ac-ft/yr) disproportionately raise the lake floor in already naturally shallow perimeter areas. Accumulations to date already exceed 2 ft in some areas
2. Natural forces working for and against lake level at SJRA planned annual withdrawals:
 - a. Negative – annual evaporation rates are currently 4-1/2 ft and rising
 - b. Positive
 - i. #1 -- Rainfall to lake (50 sq-mi) – currently ~4 ft but continuing to fall
 - ii. #2 – Rainfall to watershed (440 sq-mi) – currently unknown – though totally measurable; suspected to be erratic and less to substantially less than lake rainfall
 - c. NET – ability to consistently recover from 100,000 ac-ft annual withdrawals **DEPENDS COMPLETELY** on the rainfall capture performance of the watershed.
 - i. **CRITICAL NEED – Comprehensive Lake Conroe Reservoir watershed rainfall monitoring program**
 - ii. Despite obvious need and low cost involved, SJRA has never committed to monitoring