

Melder's water plea: Stop government overreach

Posted: Saturday, August 6, 2016 8:03 pm

Editor's Note: The Courier is publishing former Conroe Mayor Webb Melder's testimony to the Senate Committee on Agriculture, Water and Rural Affairs during a July 25 hearing as a guest column.

Good day Chairman Perry and committee members.

On behalf of Texas Association of Groundwater Owners and Producers, and all the citizens of Texas, thank you for the opportunity to address you today.

My name is Webb Melder, former councilman and mayor of Conroe, Texas, now president of TAGOP. I am honored to be here today to share with you my personal groundwater experience.

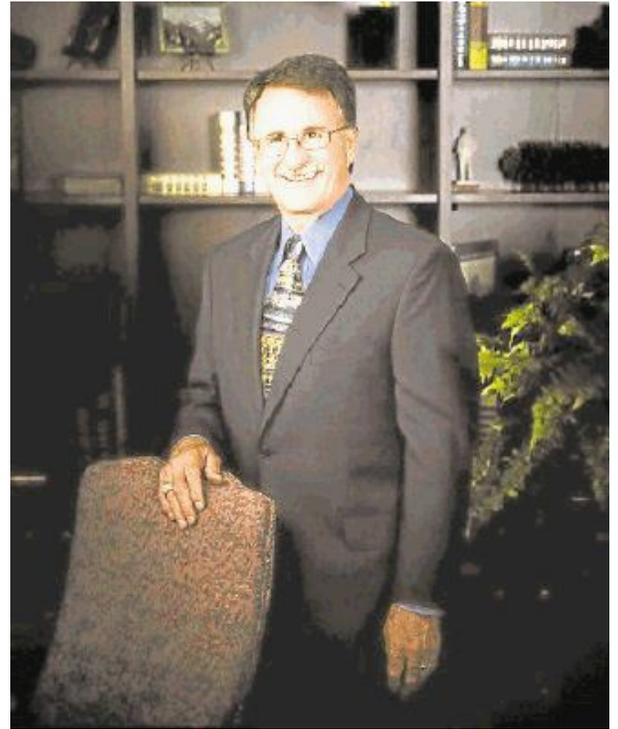
It started in 2008 when I was elected to my first term as mayor. Unfortunately, the greatest mistake I made as mayor is I trusted two state agencies: the SJRA (San Jacinto River Authority) and the LSGCD (Lone Star Groundwater Conservation District).

Shortly after I was elected mayor, a 30 percent groundwater pumpage reduction was forced upon the good citizens of Conroe and Montgomery County which involved these two state agencies to create a surface-water conversion program at the cost of \$1 billion.

Included in the initial terms of this, "have we got a deal for you," was a provision requiring Conroe to forfeit their legal rights. It's hard to imagine a state agency asking a city to forfeit their legal rights.

Therein began my eight-year groundwater science and law education, which has provided me a clear understanding of the following:

1. The decision on how to provide water and public services to their citizens is a local governance responsibility reserved for cities and their councils.
2. Groundwater is a private property right, protected by the laws of the state. It is not owned by the state, not river authorities, not GCDs, not their attorneys or their consultants.
3. Aquifers do not recognize county lines.
4. Aquifers and hydrological zones are separate and distinct. The management standard for each aquifer or any common subsurface reservoir should be separate and distinct.



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Around the state, various GCDs' current policies ignore this. Their rules are unfair, arbitrary, capricious and many believe illegal.

In Montgomery County, we are told by the LSGCD that policy is the guiding directive. Policy has been espoused by TWDB staff as being the most important consideration for setting groundwater availability ... more important than honest science, or law; law being private property rights.

We should be able to agree this policy approach is wrong simply because discrimination in the regulation of private property rights is illegal.

I recently asked one of the TWDB employees: "How would you explain your DFC (desired future conditions) policy and how it relates to private property rights to the Texas Supreme Court?"

After a moment of silence, he replied, "I hope I never have to."

The TWDB political policy directive has led to a political management terminology called "reversed engineering." First, politically decide how much groundwater you want in your county, then work backward to set a DFC to try and enforce county by county.

This approach has driven GCD's to usurp the groundwater rights of Texas landowners.

For over 100 years, the Texas Supreme Court has clearly defined groundwater as a private property right; and regulations are to be applied fairly and equally to each landowner overlying a common subsurface reservoir so as to provide each land owner their legal opportunity called "Fair Share".

Today we respectfully submit the following for your consideration:

1. Our current groundwater regulations as defined in Chapter 36 must be revised and clarified to align with the rulings and law as defined by our Texas Supreme Court, our state and federal constitutions.
2. Limit the actions of GCDs to clearly authorized statutory authority.
3. Completely separate surface water from groundwater
4. Prohibit river authorities and their consultants from serving on a GCD board; protect the public from conflicts of interest
5. GCD's rules and policies shall not deny landowners their groundwater private property rights in whole, or in part.
6. We need consistent and unbiased management and monitoring across the entire boundaries of a common subsurface reservoir
7. Texas needs to meet their responsibility to provide freedom of choice to use, or not to use, one's private property according to the regulations that apply to all landowners of a common subsurface reservoir. This is a legal right of the landowner, not a right of the GCDs, not the TWDB, and not a right of the state water plan.

I'd like to share three statements from the TAGOP board:

1. Any rule, policy or plan, current or future, that does not properly address the legal rulings of the Texas Supreme Court is a bad plan, and bad policy ... both of which fail the legal and constitutional test.
2. You can't illegally plan and enforce the use of, or nonuse of, groundwater ownership because it is private property, not public property.
3. As humans, when we disagree, it is generally because our views do not share a common starting point. To clean up the current groundwater planning and regulatory system, we must all share a clear and common understanding, that groundwater is private property, and therefore has unique legal rights and protection under both the state and U.S. Constitutions.

Thank you again for the opportunity to speak today, and TAGOP is ready to assist in these and other necessary changes given the opportunity.

Webb Melder is president of the Texas Association of Groundwater Owners and Producers (TAGOP), as well as a former mayor and city councilman for Conroe (2004-2016).