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RECEIVED

AUG 26 2009

OPINION COMMITTEE

FILE # ML-46152-09
I.D. # 46152

August 19, 2009

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0817-GA

Dear General Abbott:

As chairman of the Senate Committee on Natural Resources, I am submitting the enclosed request for an Attorney General's opinion on behalf of Senator Carlos Uresti. Senator Uresti, who is a member of the Senate Committee on Natural Resources, was approached by a constituent regarding this inquiry. The request relates to jurisdiction of groundwater conservation districts.

Thank you for your consideration of this request. If you have questions or if I may be of any assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Kip Averitt".

Kip Averitt

Enclosures

cc: The Honorable Carlos Uresti
Ms. Janet Adams

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P.O. Box 12068
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AUSTIN, TEXAS 78711
(512) 463-0119
FAX: (512) 463-1017
DIAL 711 FOR RELAY CALLS

The Senate of The State of Texas



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MAVERICK COUNTY COURTHOUSE
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Senator Carlos Hresti District 19

PECOS DISTRICT OFFICE
REEVES COUNTY COURTHOUSE
100 EAST 4TH STREET, SUITE 100
PECOS, TEXAS 79772
(432) 447-0270

August 10, 2009

The Honorable Greg Abbott
Attorney General of Texas
209 W. 14th Street
Austin TX 78701

Dear Attorney General Abbott:

This letter is to request an Attorney General opinion on the status of land annexed into a groundwater conservation district and later included in the territory of a new groundwater conservation district. Groundwater Conservation Districts may add territory either by petition of the owner of the land to be added (Sec. 36.321, Water Code) or by petition of the lesser of 50 landowners or a majority of landowners in the territory to be added (Sec. 36.325, Water Code). Territory may also be added by action of the legislature, or the legislature may create a new district over territory already included in an existing district. See Act of May 24, 1989, 71st Leg., R.S., ch. 653, § 3, 1989 Tex. Sess. Law Serv. 2753 (creating the Santa Rita Underground Water Conservation District, but excluding territory already annexed into the Glasscock Underground Water Conservation District) and Act of May 8, 1995, 74th Leg., R.S., ch. 157, 1995 Tex. Sess. Law Serv. _____ [H.B. No. 1499] creating the Sherman County Underground Water Conservation District without mentioning territory already annexed into the Panhandle Groundwater Conservation District. Section 36.326, Water Code, requires an annexation to be ratified by a majority vote of the voters in the territory to be added.

This situation has occurred in several areas of the state, specifically the following instances:

- Territory in Brewster County and Pecos County was added to the Jeff Davis Underground Water Conservation District through a petition by the landowner, and then the legislature created the Brewster County Groundwater Conservation District covering all of Brewster County and the Middle Pecos Groundwater Conservation District covering all of Pecos County.

¹ Groundwater conservation districts have not required elections in cases where a single landowner petitions to join the district, presumably because there is no reason to hold an election where only one landowner filed a petition. However, it is possible that other voters who have an interest in adding that territory to a district, such as tenant farmers, may reside on property owned by the petitioner, and therefore may desire that an election be held even in the case of a single landowner petition.



CARLOS URESTI
TEXAS STATE SENATOR
DISTRICT 19

- Territory in Presidio County was added to the Jeff Davis Underground Water Conservation District through a petition by the landowner, and then the legislature created the Presidio County Groundwater Conservation District covering all of Presidio County
- Territory in Hemphill County was added to the Panhandle Groundwater Conservation District through a petition by the landowner, and then the legislature created the Hemphill Groundwater Conservation District covering all of Hemphill County.
- Ninety-six landowners petitioned to add territory in Caldwell County to the Gonzales County Underground Water Conservation District, and soon after individual landowners within that territory petitioned to join the Plum Creek Conservation District; both districts approved the respective petitions and the Gonzales County Underground Water Conservation District conducted an election on May 10, 2008 where the voters approved adding the territory to their district.

There are essentially three possible outcomes for each affected property: 1) the property is in the original district; 2) the property is in the new district; or 3) the property is in both districts. There are both legal and policy arguments for each of the three outcomes, or the outcomes may be different for each situation based on the facts of that situation. This letter is not advocating any particular result, but is simply seeking your opinion.

Sincerely,


CARLOS I. URESTI

