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**OPINION COMMITTEE**



**The Senate of The State of Texas**

Senator Craig Estes

District 30

October 10, 2013

The Honorable Greg Abbott  
Attorney General  
Office of the Attorney General  
PO Box 12548  
Austin, TX 78711-2548

FILE # ML-47408-13

I.D. # 47408

RQ-1155-GA

Re: Whether county approval is necessary for any purchase of groundwater by the Red River Authority in a county not in the jurisdiction of a groundwater conservation district

Dear General Abbott:

Pursuant to the authority to issue advisory opinion granted to the Attorney General in § 22 of Article IV of the Texas Constitution and § 402.041, et seq. of the Texas Government Code, this letter is being submitted to you to request an opinion regarding whether county approval is needed for all groundwater transactions taken by the Red River Authority in a county not in the jurisdiction of a groundwater conservation district.

**BACKGROUND AND FACTS**

The Red River Authority (the RRA or Authority) was created in 1959 by the 56<sup>th</sup> Texas Legislature, and its enabling legislation is found in Article 8280-228, Vernon's Annotated Texas Civil Statutes. Its territorial jurisdiction encompasses all or part of 43 Texas Counties lying within the watershed of the Red River and its tributaries upstream. Its mission is the orderly conservation, reclamation, protection and development of the water resources throughout the Red River Basin for the benefit of the public. The Authority provides potable drinking water for approximately 10,000 people in 15 counties.

Developing groundwater is a common trend for river authorities. The conjunctive use of surface and groundwater is one of the strategies of water supply management which has to be considered to optimize the water resources within the RRA's basin. Part of the Authority's mission is to build up new water resources and because there is no surface water left to develop within the rural areas of the authority, the RRA sought to change its enabling legislation which expressly prohibited the development of underground water rights.

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I authored and passed Senate Bill 281, which among other things allows the RRA to purchase groundwater rights. The legislation became effective September 1, 2013. During negotiations with Wilbarger County and the City of Vernon, which are in the RRA's jurisdiction, a stipulation was placed on the RRA's authority to purchase groundwater rights. In pertinent part, the enrolled version of SB 281 provides:

The Authority may purchase groundwater rights in a county in the Authority's territory only if: (1) there is a groundwater conservation district that has jurisdiction over water wells located in the county; or (2) in the case where a county is not in the jurisdiction of a groundwater conservation district, the commissioners court of the county approves the purchase of groundwater rights by the Authority in the county.

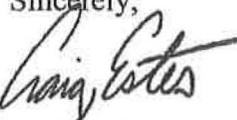
Currently, the Authority owns no groundwater rights in Wilbarger County but it does purchase potable groundwater from the City of Vernon to supply the Lockett, Box and Hinds Water Systems which provides domestic water to approximately 390 households in Wilbarger County. In addition, the Authority holds a Water Purchase Agreement with Gerald & Sue Ann Haselhoff from which it has pumped groundwater for use in the Lockett Water System. However, the Lockett wells went dry around 1996, and the RRA has purchased 100% of the water for the Lockett Water System from the City of Vernon since that time.

There exists no groundwater conservation district in Wilbarger County, and on August 30, 2013, the Wilbarger County Attorney wrote the RRA stating that he read the legislation to mean that the Wilbarger County Commissioners Court must approve any sale to or development of underground water to the RRA. It is Wilbarger County's position that any existing development, use or purchase of underground water in Wilbarger County must be approved by the Commissioners Court, effective September 1, 2013. The RRA takes the position that the county's reading of the legislation is too broad since the legislation applies to acquisition of groundwater rights, not groundwater in water supply contracts.

#### **QUESTION PRESENTED**

In a county without a groundwater conservation district, must the Red River Authority obtain approval of the county commissioners court for water supply contracts based upon groundwater supplies, or only for the acquisition of groundwater rights?

Thank you for your attention to this matter. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,  
  
Senator Craig Estes