

Li'l Echoes

by Rob Amos

The saga continues in the fight between the City of San Angelo and the other folks with wells in the Hickory Aquifer. Earlier this year, the Hickory Underground Water Conservation District #1 board of directors held two days of hearings to review evidence concerning Angelo's applications to drill thirteen new wells in addition to the nine they already have in the Hickory and pump all 22 of them for a total of 15,011 acre feet or roughly 4.89 billion gallons per year. That amount would basically double the amount everybody else is currently pumping from the aquifer and would put the water supplies for the cities of Eden and Brady and numerous other, smaller users, in severe jeopardy.

On March 14, the water district board granted San Angelo permits to pump its nine existing wells for a total of 2,750 acre feet per year—an amount comparable to what the largest user of the Hickory, the City of Brady currently takes.

Brady immediately filed suit in the 198th District Court in McCulloch County to stop San Angelo from getting a toehold in the aquifer. The trial starts June 18 in Brady.

San Angelo, on the other hand, is seeking an entirely different legal remedy that is pretty darned complicated. They claim the issue is one of property rights—a hot topic these days. They say they purchased the water rights of several parcels of land located over the Hickory Aquifer and they should have the right to pump water out of there to their heart's delight whether or not they need it or will ever even use it. And apparently with no regard to the rights of the rest of us.

Now ordinarily, I'm real big on property rights. I believe a landowner should be able to do pretty much whatever he wants to on his own place. If he wants to cut down a mesquite tree near the windmill and plant a pecan near the house, not only will I support him, I might even go so far as to lend him an ax and a shovel. If he wants to drill for oil, more power to him. If he wants to stock his fish pond one year and drain it completely the next, he ought to be able to do it without the government coming in and declaring his man-made tank to be a wetland.

When what you do on your property starts to overlap and affect a whole bunch of other folks' property, however, there are other things

that need to be considered. Let's try a little science experiment. Take a glass of water and stick a straw into it. Now suck some of the water through the straw and you can see that you're not just affecting the water under the straw, you're affecting the whole glass. An aquifer is a self-contained body of water a lot like the glass in that example. To prevent one person or group from sucking it dry, there is a system in place to regulate its use.

In the case of the Hickory, the people who use the water elect a board of directors to oversee the use of the water. It's actually a very Jeffersonian solution—a government instituted among men, deriving its just powers from the consent of the governed, to secure our rights of life, liberty and the pursuit of happiness. This is not Washington or Austin dictating to us—this is us. The board is made up of our own people who are right here in our part of the world. Rest assured that Austin is going to get involved with the issue sooner or later, but hopefully when that happens our own people will be a part of the process and we'll have some input. But that's another column. Let's get back to a little history lesson.

In the early 1970's it looked like San Angelo was fixing to be hurting for water. They had been given Laugh-In's "Flying Fickle Finger of Fate Award" for building a pipeline to a dry lake and the Texas Legislature gave them special permission to build a pipeline to the moon if water were ever discovered there. So they bought water rights from a couple of estates located near the Concho, McCulloch, Menard county lines and drilled nine wells into the Hickory Aquifer. They never developed a collection system for the water or made plans to build a pipeline.

As the years progressed, Angelo's water prospects improved. Among other things, the Stacy Dam project was forcibly untangled from 60 years of red tape, giving the city access to a total of five area lakes. However, San Angelo decided that it needed to recoup its investment in the Hickory somehow.

Throughout all the hearings that have taken place so far, Angelo's attorneys have time and again come back to the point that the city spent a lot of money for their water rights. Now here's where we get down to the real issue: The only way San Angelo can get anything for that investment is to pump the water. The only way they can pump the water is to build a pipeline. The only way they can justify the expense of the pipeline to their taxpayers is to pump 15,000 acre feet per year out of the Hickory. The only way they can do that is if the water district grants their permits—which ain't likely.

San Angelo can't afford to build a pipeline for what the district can give them and the district can't give them enough water to justify the pipeline because it will have an overwhelmingly adverse effect on the

rest of us in the district.

If you're wondering why the City of San Angelo doesn't just jump off this merry-go-round, you're not alone. As one rancher at the hearings last February put it, "We've all made some bad investments in our lives and San Angelo's made one here. It's time for them to cut their losses and move on."

No such luck. Now stay with me here, because what San Angelo's attorneys did was some pretty tricky legal maneuvering.

In 1991, a San Angelo court ruled that for the Hickory water district to keep San Angelo from pumping water out of the aquifer amounted to an unconstitutional "taking" of the city's rights without compensation. (The rest of us would say that's what they're trying to do to us—if they were allowed to pump what they've asked for, our wells would become useless.) In the Spring of 1995, Angelo filed a motion to enforce that decision and asked for declaratory judgements on three new issues. In September, 1995, the Texas Water Code was revamped. The old chapter 52 was out and the new chapter 36 was in. The Hickory Water District adopted a new set of rules to comply with the new law in December of last year.

Early this year, Angelo filed its applications with the water district for 15,011 acre feet per year. The district held hearings, granted 2,750 acre feet and Brady sued, hoping to get the matter out of San Angelo's home court. Some time later, Angelo strolled into its own court and "amended" its petition from a year ago. The new petition doesn't even come close to resembling the old one, but it has the same docket number at the top of it. Now Angelo claims that last year's petition amounted to a new lawsuit and that by filing under the old number, they get to go by the old rules.

In plain English, when San Angelo filed its petition in March of 1995, it was in essence saying, "This action will hold our place in this court, under the old laws until we can think of a complaint." What it all boils down to is an attempt by the city of San Angelo to pencil in a few additions to the court's final judgement in 1991.

Legal counsel for Angelo, Brady and the water district met in court in San Angelo last Friday to try to straighten this mess out. The judge did not make any ruling and might not do so before the trial starts in Brady on the 18th. He did say that he was not inclined to prevent the trial in Brady from taking place, which means that the issue of how much water San Angelo will get from the Hickory may well be addressed in two district courts at the same time and then the appeals courts will have to sort it all out.

I told you this was a complicated issue and would take a lot of time. The next chapter in this ongoing saga will begin June 18 in Brady. I'll keep you posted.