East Texas Water Rights

East Texas Water Rights were presented to the Tyler County Forest Landowner Association at the Extension Office in Woodville, Texas on April 2, 2011

Dr. Matthew McBroom explains Texas Water Ownership and the WET Center

Dr. Matthew McBroom, Assistant Professor of Forest Hydrology at Stephen F. Austin University, explained that water is becoming an increasingly valued resource. As the state's population doubles from 2000 to 2060, the demand for water across the state is expected to increase by 27%. The growth in water consumption assumes a reduced demand for agricultural irrigation, better municipal water conservation and drinking recycled waste water.

Water Ownership. Ownership of water falls into three categories – diffuse water, surface water and groundwater. Diffuse water is rainwater not in a river, stream, lake, or other convergence and is the property of the landowner. Texas law provides that diffused surface water can be impounded in tanks by the landowner on his own property without a permit, so long as the reservoir does not exceed 200 acre-feet in storage capacity and the water is used only for domestic and livestock purposes. A permit is required if the reservoir exceeds the storage limits, if a dam is built on a stream, or if the water is to be used for other purposes.

Surface water, which is water in rivers, streams, lakes and even ponds, is owned by the state. Surface water rights are disconnected from land ownership by the complex "prior-appropriation water rights system." While the system incorporates provisions for landowner use of surface water, Dr. McBroom cited a wildfire emergency situation in which water was lifted by helicopter from the pond of a defiant landowner.

Groundwater, which is the water under the surface, is historically governed by the "right of capture." A landowner can capture and beneficially use water under his or her land. This has resulted in instances where one landowner's bigger well has depleted a neighbor's well. While the current Texas legislature is considering legislation that strengthens landowners' rights, it has been charged by the courts to address problems associated with groundwater over pumping.

Groundwater conservation districts have been formed by many Texas counties to address well permitting and registration and prevention of water pollution. Prior to drilling a water well in Tyler County, the landowner or the drilling company must contact the Southeast Texas Groundwater Conservation District. The Southeast Texas Groundwater Conservation District covers Tyler, Jasper, Newton and Hardin Counties. See http://setgcd.org/ for details.

For more information, access "Who Owns the Water?" in the July 2005 Texas Parks and Wildlife Magazine http://www.tpwmagazine.com/archive/2005/jul/ed_2/.

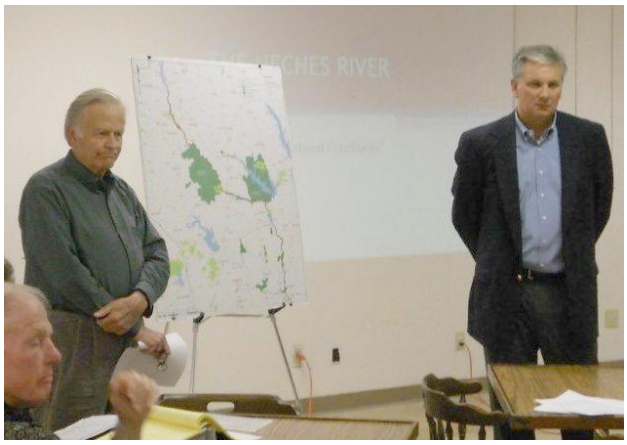
For more information about the evolution of Texas Water Rights, access "Water Law" on the Texas State Historical Association site http://www.tshaonline.org/handbook/online/articles/gyw01.

Waters of East Texas (WET) Center. Stephen F. Austin University's Waters of East Texas Center (WET Center) conducts research and assessment projects on water related resources, ecosystems, and issues in the East Texas region. The East Texas terrain is sensitive to erosion because of lack of rock armoring on the soil and in stream channels, rolling topography, and intense storm events like tropical storms. Clear cut harvesting of a timber crop has the potential for creating erosion for the first year if it is a rainy year. However, a 1980-2000 research study has demonstrated that using Texas Forestry Best Management Practices (BMP's) for streamside management, which provide buffers along streams, limits erosion and creates minimal impact on water quality. A year after the harvest, underbrush (particularly that annoying yaupon) returns to mitigate any further erosion. Forest landowners in East Texas typically require loggers to use BMP's when harvesting the timber crops. For a copy of Texas Forestry Best Management Practices, access http://txforestservice.tamu.edu/uploadedfiles/sustainable/bmp/bmpbookindd.pdf.

The impact of logging roads is still an issue and the Ninth Circuit Court of Appeals ruled in the Northwest Environmental Defense Center v. Brown case that logging roads require an EPA permit. For more information about this case, access http://wflc.org/cases/docket/nedcvbrown. This decision only applies to states in the jurisdiction of the Ninth Circuit at this time and does not directly affect Texas landowners. However, this case bears watching because it may set a precedent for further legal challenges in other jurisdictions and if the US Supreme Court were to hear this case and let it stand then it could have nationwide impacts.

The impact of biomass is the next area of study for the WET Center. Included in the study will be the effect of removing the biomass from the tree farm rather than leaving it on the ground where it can be an erosion barrier and return nutrients to the soil. Dr. McBroom is quite interested in the emerging mobile biogassification units which convert biomass to bio-diesel at the tree farm site and mitigate the negative impact of removing all biomass from the tree farm and reduce the inefficiency of trucking biomass to centralized plants due to the 30-50% moisture content of logging debris.

For more information about the WET Center, access http://environmental.sfasu.edu/index.php?option=com_content&view=category&id=8%3Awet-center&Itemid=17



Richard Clower and Scott Hall present opposing approaches for managing the Neches River.

Proposed Scenic River Designation of Neches River. The Neches River, which begins and ends in East Texas, is one of our surface waters. A coalition is proposing that the Neches River be designated as a Scenic River, as defined by the Federal Wild and Scenic River Act. Richard Clower of the Texas Conservation Alliance explained that the designation would protect the river from dams, support nature tourism and protect critical bottomland and wildlife habitats. The first step would be initiation of a 2 to 3 year study. The Texas Conservation Alliance is pursuing one or more of the five congressional representatives with districts located within the Neches River Valley to file a study initiation bill in the US Congress. If the Neches River qualifies per the findings of the study, the final step would be US Congressional enactment of a bill with specific details regarding the designation. For more information about the Texas Conservation Alliance, access http://www.tcatexas.org/.

Scott Hall and Hubert Oxford of the Lower Neches Valley Authority (LNVA) are opposed to the Federal Scenic River designation. LNVA's primary purpose is to provide a dependable water supply in East Texas and it is opposed to transferring water out of the Neches Basin. More information is available at http://www.lnva.dst.tx.us/. Scott explained that 84% of the Neches River and surrounding lands are already protected by National Forests, the Neches River National Wildlife Refuge and the Big Thicket National Preserve, each of which create legal obstacles for any new dams on the river. The State Water Plan identifies the Rockland Reservoir site for possible development beyond the 50-year planning horizon. While there is no current plan to build the reservoir, the option would remain open for future generations. Mr. Oxford cited provisions in the Wild and Scenic River Act that impose restrictions on the river and surrounding lands even during the study phase.

The depth of the intrusion of the restrictions imposed on land and water within the scope of the Federal Wild and Scenic River Act seem to be in the eye of the beholder. You can behold them yourself by reading the act at http://www.rivers.gov/publications/wsr-act.pdf.

Your opinion regarding designation of the Neches River as a Federal Scenic River should be directed to your Governor, state representatives and US Congress members.