Groundwater Wars Brewing in Austin's Suburbs

by Neena Satija Jan. 23, 2015
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WIMBERLEY — In a classic example of the gaps in Texas' patchwork approach to regulating groundwater, an unprecedented amount of water may soon be pumped from underneath already-parched Hays County with virtually no oversight.

Houston-based Electro Purification hopes to eventually pump 5 million gallons of water daily from the Trinity Aquifer, and sell it to some of Austin's fastest-growing Hill Country suburbs, including the town of Buda and a new subdivision planned near Kyle.

It's by far the biggest commercial pumping project in the area, but it won't be subject to any regulation because the well fields are in a regulatory "no-man's land," as some lawyers like to call it.

About 100 groundwater conservation districts across Texas limit how much water users can pump from aquifers in an effort to protect the resource.

But Electro Purification's well fields are in an area where no district governs the Trinity Aquifer. The wells are located in the Edwards Aquifer Authority's jurisdiction — but the authority doesn't oversee the Trinity, which is a groundwater formation that lies under the Edwards in Hays County.

Since it's not operating within a groundwater conservation district, Electro Purification is subject only to the century-plus-old "rule of capture" — which basically allows it to pump as much water as it wants with no liability on how that affects neighbors.
The company only needed to lease the land for its well fields, secure water rights from the landowners, and get a permit to drill through the Edwards Aquifer to the underlying Trinity. It is not required to report its pumping activities to any authority.

"That just really seems like it goes beyond the good will intention of the law," said state Rep. Jason Isaac, R-Dripping Springs, who represents Hays County. "To find this area that’s just right outside of a district, that really concerns me."

Electro Purification did not respond to requests for comment but the company has disputed that its pumping will affect anyone, and Buda has promised that a mitigation plan will be in place for anyone impacted. But local residents and hydrologists are deeply worried. Shallow residential wells — which provide water for most people in this exploding suburban county outside Austin — have already gone dry during the ongoing drought, and they fear a huge amount of pumping in a focused area will only make things worse.

"My district and others, and you all, I gather, are concerned," said Brian Hunt at a packed meeting of over 200 people at the Wimberley Community Center Wednesday night, just a few miles from the well fields. "This is a real conundrum for us."

Hunt is a hydrologist for the Barton Springs/Edwards Aquifer Conservation District, which manages the Trinity and Edwards aquifers in some parts of Hays and Travis County. And he was speaking at a meeting of the Hays-Trinity Groundwater Conservation District, which governs the Trinity Aquifer in western Hays County. Electro Purification's well fields are located just outside both districts' boundaries.

Hunt said such a huge amount of groundwater withdrawal in one area could cause the water table in hundreds of nearby residential wells to drop more than 50 feet in just one year. That would force people to spend tens of thousands of dollars
lowering their pumps. Some nearby residents have designed bumper stickers that read, "Buda sucks us dry."

"I don't have money to dig a deeper well," pleaded Janice Rogers, one of several Hays County residents who spoke at the meeting. "All I have is the little house I live in." She added that she doesn't have the money to install a rainwater collection system, either, which many of her neighbors have done in order to bypass issues with groundwater availability.

Hydrologists across Central Texas are still collecting data on what effects Electro Purification's pumping might have. But Hunt and Raymond Slade, an Austin-based hydrologist who is retired from the U.S. Geological Survey, said that the Trinity Aquifer can sustain far less pumping than other aquifers, like the Edwards.

"The holes are much smaller" in the rocks where Trinity water moves through, Slade said. "They don't have caves." If someone pumps a lot of water from the Trinity, "a lot of [new] water can't move in quickly to fill in gaps." That affects nearby pumpers, who have to look farther underground for water.

The project has businesses and schools worried, too. Many attending the meeting said they'd heard about it because St. Stephen's Episcopal School in Wimberley, which relies on water from the Trinity, had sent a note to students.

But there's little anyone can do to stop Electro Purification.

The Hays-Trinity Groundwater Conservation District could try to annex the unregulated portion of the Trinity, but that's not an easy process and may require the Legislature to act. And even if that is successful, the district is basically broke. It has no taxing authority or even the ability to charge groundwater production fees. Only the Legislature can change that.

Isaac, the local state representative, said he's not yet sure what is
doable. “At this point, I’m trying to study the issues and learn more about it before we decide to change the Texas Constitution and take the rule of capture away from everybody,” he said in a phone interview Wednesday. He added that legislators are unlikely to agree to give the Hays-Trinity district taxing authority in this political environment.

But a local lawmaker could easily give his own constituents’ groundwater conservation district the authority to charge more fees, and no one would challenge him, said Greg Ellis, the district’s general counsel.

“It’s almost unheard of in the Senate for an outside senator to interfere with a local bill,” Ellis said. “It’s almost the same in the House.”

Isaac said his real priority is addressing the patchwork system of groundwater regulation in Texas, where districts are drawn on county lines — not aquifer lines. That especially affects the huge Trinity Aquifer, which stretches across such a huge portion of the state. Unregulated pumping in the Trinity is also happening in Comal and western Travis County, he noted.

"We can't monitor that activity. We don't know what's going on, and it's the exact same aquifer," Isaac said. “Clearly, there are some gaps in maintaining and managing the aquifer that we need to address this session."