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EDEN, CONCHO COUNTY, TEXAS

## Fight Over Hickory Water Moves to Appellate Courts

The complicated legal battles between the Hickory Underground Water Conservation District # 1, the City of San Angelo and the City of Brady moved beyond the district court level earlier this month as two senior district judges in two separate courts made opposite rulings in the matter. The dispute will now continue at the appellate court level and may yet move on to the Texas Supreme Court before the outcome is settled.

At issue is the city of San Angelo's proposal to operate its well field in the Hickory Aquifer at a rate of 15,011 acre feet or 4.9 billion gallons per year, which would approximately double the amount of water currently being pumped by all other users, including Eden, Brady, Millersview-Doole, and many others in the area. San Angelo acquired water rights in the general area of the Concho, McCulloch and Menard county lines in the early 1970s and drilled nine wells, but never developed a collection system or pipeline to transfer the water from the aquifer to the city. Those wells are presently capped.

Because the Hickory is the only reliable source of water for most of the area it serves, concerns grew that San Angelo might pump enough water out of the aquifer to put the other users in jeopardy. In order to try to protect the area's water resource, the Hickory Underground Water Conservation District #1 (HUWCD) was formed in 1982. In 1986, the city of San Angelo filed a lawsuit against the HUWCD in the 119th District Court in Concho County, claiming that the district had no rights to regulate Angelo's use of the Hickory.

and '50s state law began to change, allowing the creation of water districts to manage ground water.

The first legal battle between San Angelo and the HUWCD was concluded in April, 1991. 119th Senior District Judge, Curt Steib ruled. "Within and subject to the provisions of V.T.C.A Water Code, Chapter 52... the District, its establishment, and operation are subject and subordinate to the City's use and enjoyment of its water rights." The judge further ruled that the HUWCD could not take into account San Angelo's alternate sources of water (primarily five area lakes) when considering the city's permit applications and that the district could make no restrictions prohibiting San Angelo from selling Hickory water to someone else. (Although Angelo's city manager has said they have no plans to sell the water, the city's lawyers adamantly refuse to be denied that option.)

The ruling granted limited recognition to the HUWCD's right to manage the Hickory Aquifer, including the right to request information from San Angelo and the right to regulate the well placement to minimize interference between the wells. The water district did not appeal Judge Steib's ruling, but rather heated correspondence between the district's lawyers and the judge and Angelo's lawyers at the time indicated very strong disagreement on the HUWCD's part.

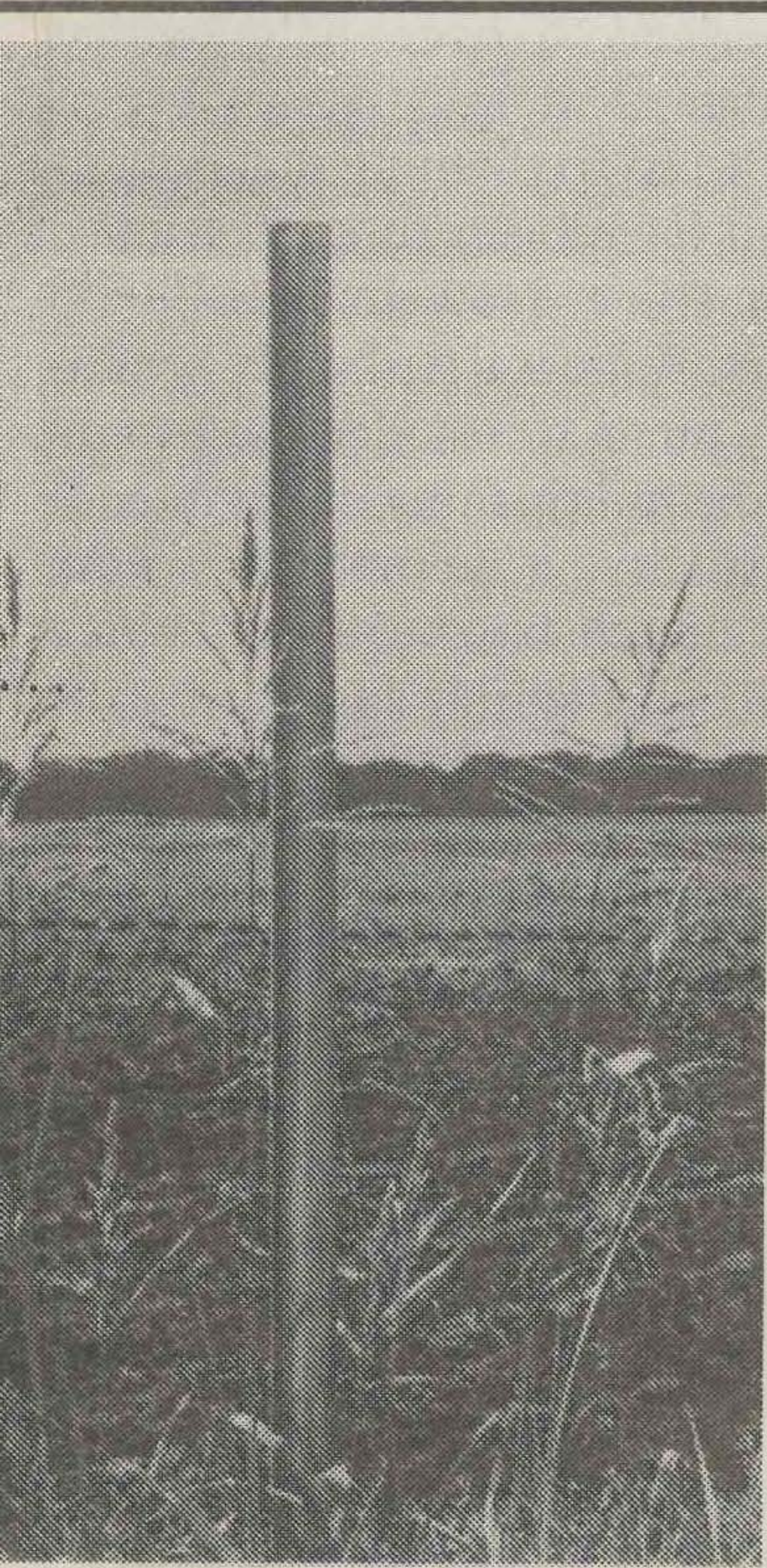
At the time of the first lawsuit, San Angelo had no permit applications before the district, although the findings of fact which accompanied the judgement in the case said, "On or before 1972 the City had in place a comprehensive plan for the development of a well field consisting of thirty wells."

\$800,000 each. In addition, expensive new treatment equipment would be necessary because the Hickory contains a boundary, known as the 1000 TDS (Total Dissolved Solids) Line. Water to the west of this line, which lies just west of Eden is of unacceptable quality for public consumption. The enormous volume San Angelo's wells would pump would have the effect of pulling the 1000 TDS line toward the city's well field and it would pass under Eden's wells in just a few years.

Taking this evidence into account, the HUWCD met on March 14, 1996 and granted San Angelo a permit for far less than it requested. The district agreed to allow San Angelo pump 2,750 acre feet per year from the aquifer with several conditions. According to the district's order, Angelo would have to show that the water would be put to beneficial use and not wasted. To that end the order said, "The City, so as not to negligently injure the lands of others in the District, shall use renewable sources of water, to the extent reasonably feasible, prior to producing Hickory aquifer water." The order further required San Angelo to undertake a study to determine the effects of their pumpage on the other users of the aquifer. The study is to be completed before Angelo can produce any water or drill any additional wells.

The City of Brady filed suit against the water district in the 198th District Court in McCulloch County the same day of the water district's ruling, stating that San Angelo's use of the aquifer would be highly detrimental to Brady's only reliable source of water. Brady is supported in the lawsuit

Texas is one of the few states with a "right to capture" law which says that if a landowner drills a water well, he has the right to use as much water as he desires. The concept dates back to the Republic era, before the complex hydrology of anything like a large aquifer had been studied. In the 1940s



end—have not been reversed. Over Concho County, causing to replace the missing markers. s seem to hold for vandals. The ecting to avoid the problem of ne along a lonely country road. scheme designed to aid emer- e to go up and stay up—or be led to make replacements. The me of the signs. County Judge uth porch of the courthouse or 5 p.m. July 31. After that, theft in his or her possession.

held consisting of many wells. In January of 1995, Angelo submitted permit requests to the (HUWCD) for nine wells to pump a total of 7,250 acre feet per year. Two months later, the city filed a motion with Judge Steib to enforce his 1991 judgement. The district filed a plea in abatement, saying that it had not violated the judgement because it had not had time to act on Angelo's permit request. The judge ordered mediation between the two parties in November of last year. It was unsuccessful.

In January of this year, Angelo withdrew its permit application for nine wells and 7,250 acre/feet per year and submitted a new request to drill an additional thirteen wells for a total of 22 and to pump 15,011 acre/feet of water per year from the aquifer. Two days of public hearings were held in February, during which, hydrologists for both the HUWCD and the City of Brady presented evidence to show that granting San Angelo's full request would have severely detrimental effects on the aquifer and its current users. According to the evidence presented, 20 years of pumpage at 15,011 acre feet per year in Angelo's well field would leave the water table roughly 185 feet lower under the City of Brady's wells, with 60% of that drawdown occurring within the first five years. The City of Eden would face an almost identical situation as far as drawdown beneath its two Hickory wells according to the hydrologist's models.

Because of the way Eden's wells are cased, the pumps can not be lowered to the depth of the water. New wells would have to be drilled at a cost of approximately

by several other entities, including McCulloch County, Concho County and the City of Eden.

Angelo attorneys, on the other hand, sought to keep the battle in their home court by completely rewriting the motion they had filed in the 119th District Court in March of 1995, asking for enforcement of the 1991 ruling.

By filing a new motion under the old cause number, San Angelo's attorneys argued that the city already had a lawsuit pending before the 119th District Court and therefore, that court had jurisdiction. In addition to keeping the dispute in a familiar court, Angelo's lawyers also sought to continue to operate under the old Chapter 52 of the Water Code, instead of Chapter 36, which replaced 52 in September, 1995 and which is less favorable to San Angelo's claims, according to Brady's lawyer.

Judge Steib held a pre-trial hearing for Angelo's case in the 119th District Court on May 31 in San Angelo and ruled June 7 for the city. Angelo alleged that the district's order violated the 1991 ruling by including requirements that San Angelo use renewable sources of water before tapping the Hickory. Judge Steib upheld Angelo's allegations and ruled that the 119th court had jurisdiction in the case, despite arguments from both Brady and the water district that the court's jurisdiction in the matter expired after the 1991 ruling.

Brady and the water district both filed a petition June 18, 1996 in the Third Court of Appeals for a writ of mandamus against the judge for his decision. They asked

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the appeals court to deny jurisdiction to the San Angelo court, saying that the district court had failed to analyze and apply the law correctly in the case.

In the meantime, the case of Brady v. the Hickory Underground Water Conservation District #1 proceeded in the 198th District Court, Senior District Judge Charles Sherrill of Kerville presid-

ing. A hearing was held June 18 in Brady, after which, Judge Sherrill ruled that proper jurisdiction belonged in the 198th court and denied San Angelo's motion to dismiss the case. He offered Angelo the chance to file a writ of mandamus against him, thus sending the matter to the appellate courts to be decided at a future date.