

TENNESSEE FARM BUREAU FEDERATION

2018 Policy Development



Water

Issue

Governor Bill Haslam and the Tennessee Department of Environment and Conservation (TDEC) have established an effort to develop a water plan for the state. This initiative is known as TN H2O and is being coordinated by an appointed steering committee of leaders from federal, state and local governments, industry, academia, environmental advocacy groups and public utilities to develop a statewide plan for future water availability in Tennessee. Jeff Aiken, President of TFBF, serves on this steering committee. The TN H2O steering committee, which was established in January 2018, is charged with submitting the report to the governor by October 2018. A major concern voiced in many discussions around the TN H2O meetings has been that agriculture is not required to report water usage in Tennessee law. Often in water cases, historical usage is the key to the court allotting future usage of water between the parties. Because the state does not require water reporting for agriculture, a historical usage precedent is not available. Farm Bureau policy supports continuing the exemption of water reporting for agriculture.

Background

Tennessee's population is estimated to double in the next 50 years according to TDEC. This estimated growth and other concerns prompted leaders within TDEC to initiate a process to develop a water plan for the state. Tennessee does not currently have a water plan, and of the states that immediately adjoin the state, all but Mississippi have a water plan. A state water plan assesses current water resources and makes recommendations to state leaders regarding the needs of the population, natural resources, industry, and agriculture. TN H2O aims to encompass surface and groundwater resources, water and wastewater infrastructure, water reuse and land conservation, as well as institutional and legal frameworks.

Along with increased population growth, other concerns highlight the need for a state water plan. Among those concerns are droughts that have impacted numerous Tennessee communities, failures of aging drinking water and wastewater infrastructure, utilization of the Memphis Sands Aquifer, and interstate battles over water rights.

In 2016, a drought forced water utility districts in various parts of the state to implement forced or urged conservation efforts. This resulted in approximately a dozen water districts executing certain restrictions such as bans on washing cars and watering lawns. Many water districts looked for backup water supplies and alternate distribution models in times of drought.

In 2018, the Georgia General Assembly passed a resolution that would form a delegation to negotiate the border with Tennessee for the sole purpose of accessing water in Nickajack Lake, a part of the Tennessee River system. According to Georgia's claim, the border between the two states was misdrawn in 1818 when surveyors established the border about one mile south of the 35th parallel, where Congress intended the border to be when Tennessee joined the Union in 1796. By moving the border north, Georgia could access water from the Tennessee River to meet ever growing demand in and around Atlanta. The Georgia General Assembly has passed several resolutions in history to renegotiate the border which all have gone unreciprocated by Tennessee. Georgia would actually have to take Tennessee to the US Supreme Court to officially dispute the claim.

The state of Mississippi has filed a lawsuit against the state of Tennessee over the matter of water usage. The water use in the city of Memphis, Tennessee is the motivation of the Mississippi and Tennessee lawsuit. The Memphis Sands Aquifer serves as the main source of drinking water for many residents of Memphis. The state of Mississippi claims 30% of water being pumped from the aquifer resides under their state. They believe Mississippi should hold rights to the water. Because

of this, Memphis and the state of Tennessee are at risk of losing several hundred million dollars in damages to Mississippi. This case is currently pending consideration under the US Supreme Court of the United States. It is up to the Supreme Court to determine if the aquifer is or is not an interstate resource. If the aquifer is interpreted as an interstate resource, Mississippi would be entitled compensation for the damages caused by the city of Memphis. However, this monetary amount could not be awarded to the state of Mississippi until there has been a proper apportionment between the two states involved.

The Memphis Sands Aquifer has also been the center of a controversy within the state's borders as well. The Tennessee Valley Authority (TVA) made plans to use water from the Memphis Sands Aquifer to cool a new natural gas plant in the city of Memphis. After public outcry, TVA scrapped the plan to drill into the aquifer and instead use water from Memphis Light, Gas and Water. This public outcry also brought new found interest in regulating water use from the Memphis Sands Aquifer. In 2017, two bills were filed regarding the Memphis Sand Aquifer. One bill would have established a Memphis Sands Aquifer Regional Management Board to govern water use in the Aquifer. The other would have required any person in Tennessee who intends to drill a well to provide at least 14 days' notice to TDEC and that information be published on the internet. Farm Bureau opposed both pieces of legislation and no final action was taken on either.

Tennessee's law addresses waters of the state in six key areas: 1.) The Water Resources Act of 1957 directs the Commissioner of TDEC with responsibility of protecting, conserving, and developing water resources of the state. All provisions of this act have never been fully implemented due to funding limitations. 2.) The Water Quality Control Act (WQCA) of 1977 gives TDEC broad power over waters of the state. TDEC enforces measures of the WQCA by administering different permits, such as the Aquatic Resource Alteration Permits, National Pollutant Discharge Elimination System permits, and other state operating permits like concentrated animal feeding operations (CAFO). Agriculture is largely exempt from WQCA, other than CAFOs which are considered point sources by federal law. 3.) In 2002 the General Assembly passed the Tennessee Water Resources Information Act (WRIA) which developed a registration system for water withdrawals in the state. WRIA states that; "no person shall withdraw ten thousand or more gallons of water per day from a surface water or a groundwater source unless the withdrawal is currently registered with the commissioner." This law excludes withdrawing water for agricultural uses. The state has historical records of water withdrawal amounts for all types of water usage except agriculture. 4.) The Inter-Basin Water Transfer Act (IBWTA), passed in 2000, established ten separate water basins in the state and developed the process for which a person or entity would want to move water from one basin to another. 5.) the Tennessee Safe Drinking Water Act (SDWA) governs the construction and operation of public water supply systems. SDWA also provides regulatory authority to TDEC to protect aquifers and surface water bodies used as a water supply source. 6.) The Tennessee Water Well Act of 1963 requires all persons drilling a well for beneficial use to obtain a license from TDEC.

Tennessee law also allows for the development of watershed districts. Watershed districts, if established by local property owners, can be used to conserve soil and water resources within the district. The district could do this by constructing drainage, reservoirs, or other improvements that control water. The leadership of watershed districts would be made of property owners, elected democratically, within the district. The district could attain and distribute water for irrigation or other purposes within the district.

A major concern voiced in many of discussions around the TN H2O meetings have been that agriculture is not required to report water usage in WRIA. Much of the impetus of the WRIA in 2002 was for the state to establish historical water usage in the event the state was ever taken to court. Often in court cases over water, historical usage is the key to the court allotting future usage of water between the parties in the case. Because the state does not require water reporting for agriculture, the historical precedent for water usage for agriculture is not available. Farm Bureau policy is supportive of continuing this exemption of water reporting for agriculture.

Questions

1. Is there knowledge of the state's effort to develop a water plan, also known as the TN H2O initiative?
2. Have droughts impacted drinking water supplies in your area?
3. Has agriculture irrigation usage increase in your area?
4. Farm Bureau is opposed to mandatory agriculture water usage reporting. Is this still the correct policy?

Farm Bureau Policy

Water (partial)

Water is one of Tennessee's most valuable natural resources. In the future, many decisions will be made to protect this resource.

We support the English doctrine of riparian water rights to surface and groundwater. We support the right of farmers to irrigate from streams and wells. Actions by state government to regulate water usage should recognize that crop irrigation and livestock watering is critical to maintain a stable food supply. We urge public water suppliers to offer discounted agricultural rates on water in production agriculture. Availability of water for human consumption, sanitation and production agriculture should supersede all other uses. Farmers should not be charged fees or required to receive permits for surface or groundwater withdrawals for purposes of maintaining a water budget in a basin or watershed. Any efforts to quantify water usage for agricultural purposes should be on a voluntary basis without mandatory reporting to state agencies. Farm Bureau should stay current on water issues and be involved in the decision-making process. Tennessee farmers have increased their use of irrigation on a wide range of commodities. Irrigation is a major benefit to the agricultural economy and is a critical component in our ability to produce food and fiber. We believe the Tennessee Farm Bureau should identify potential issues that may affect irrigation and find long term solutions to protect and enhance our ability to use irrigation.