



TEXAS GROUNDWATER LAW

A BRIEF HISTORY

Information

GAM Lyrs_6-8_ - Wilcox
Group_Gen175Shape2

Attributes

CellColumn	94
CellRow	30
County	Bastrop
DEM (Average Surface Elevation)	498
Layer 5 Bottom	Does not exist
Layer 5 Thickness	Does not exist
Layer 5 Top	Does not exist
Layers (6-8) Bottom	-840
Layers (6-8) Thickness	1338
Layers (6-8) Top	498
Model Cell Id	1030094

History

- In 1904, before the existence of any Texas statutes governing oil and gas or groundwater, the Texas Supreme Court adopted the English common law “rule of capture” as the law for groundwater in Texas.
- By the mid-1900s , due to litigation occurring in the oil and gas industry, the parameters of the rule of capture became established.
- In contrast, after 1904, and for the next 100 years, there were few groundwater cases litigated. It was not until 2008 that Texas courts began to turn to oil and gas law as a guidepost in order to settle disputes dealing with groundwater.
- In 2012, the Texas Supreme Court held that groundwater, like oil and gas, is owned in place. The “Day” case: Landowners own the water under their land (unless they’ve sold their water rights). The Texas Water Code also confirms that landowners own the water under their land.

Two Laws in Conflict

- Rule of capture may conflict with another landowner's groundwater ownership.
 - If a neighbor captures all of the common water, then there is nothing left to own.
- To reconcile this conflict there is the concept in oil of "fair share," or correlative rights.
 - Correlative rights afford each landowner the reasonable opportunity to produce his fair share of the recoverable oil and gas beneath his land.
 - Owners have a duty "not to exercise [their] privilege of taking so as to injure the common source of supply."
- Regulation defines "fair share." For oil, the Railroad Commission dictates the distance between oil wells. Your neighbor can't build a well next to yours that would lower the pressure in your well and not allow that oil reserve to be fully captured.
- For oil, years of litigation have created correlative rights regulation. For water, correlative rights regulations are not in place. There are no laws or regulations to define fair share for water.

Legislature

- “Correlative rights” has been commonly used in the context of groundwater to describe a type of regulatory approach to limit groundwater production based on the amount of surface acreage owned.
- House Bill 3028 on groundwater rights – April, 2017 Legislation – Tabled in Natural Resources subcommittee. Permits based upon acreage.
- Some stakeholders have advocated for the statewide application of a strict “correlative rights” approach to groundwater regulation; in other words, rules that limit groundwater production based on the amount of surface acreage owned over an aquifer. Other stakeholders have advocated for a “hybrid approach” that considers surface acres owned along with other factors.
- For example, there is legislation under consideration that would define fair share using “Service Area” rather than “Surface Area.”

Conclusion

- Meeting all of the diverse needs of property owners over each of the aquifers across Texas is exceedingly complex and may require multiple, hybrid systems of regulation.
- Let your state representatives and County Judge know about how you feel about this topic. Contact Representative Chairman Larson, who is leading House Bill 3028 in the Natural Resources House subcommittee to define fair share.
- Most of these proposed House Bills are not retroactive and would grandfather in existing well permits.

Reference: THE APPLICATION OF OIL AND GAS LAW TO GROUNDWATER: ANALYZING CORRELATIVE RIGHTS AND SO-CALLED “USER-BASED RULES”

PREPARED BY THE TEXAS WATER CONSERVATION ASSOCIATION