Water in Texas – Who Owns It ?

Since water is one of our state's most valuable natural resources, it continues to be a highly political and sensitive issue. However, there are many misconceptions and differences that are unique to water ownership compared to many of our state's other natural resources.

Because supplies are limited in many areas of the state, competition for water is rising among groups and individuals in Texas. In order to protect both the individual's own interests as well as those of the state, Texas residents need to be informed on exactly what their water ownership rights entail.

Water comes from either groundwater or surface water. Surface water is found in ponds, lakes, rivers, streams, and bays. Groundwater filters down from the earth's surface and accumulates underground in aquifers. On average, about 80 percent of all groundwater used in Texas is utilized for irrigating crops. Conversely, the majority of surface water is confined to use within cities and industry.

In Texas, water rights depend on whether the water is surface water or groundwater. Surface water is publicly owned and governed by the State of Texas. Without a permit from the Texas Commission on Environmental Quality (TCEQ), landowners may only use surface water for domestic and livestock purposes. If a landowner wishes to use the surface water for other sources such as irrigation, manufacturing, or power generation, he or she must obtain consent from the state in the form of a permit. Some landowners may have concerns about whether the state requires them to obtain a permit to build a reservoir on their property for the use of a stock tank. This falls into the "stock tank exception" that allows landowners to build up to a 200-acre-foot reservoir on their property without receiving permission from the state. An acre-foot is the amount of water that will cover an acre of land one foot deep (over 325,850 gallons).

Some concerns arise on the ownership of diffused surface water, which is surface water, in its natural state, that occurs after a rainfall or snowmelt, and runs off a roof or flows across the land in an unpatterned way. Diffused surface water is commonly referred to as storm water, drainage water, or surface runoff. Texas law states that diffused surface water is the property of the landowner until it enters a natural watercourse. Once this water enters a natural watercourse it becomes property of the state. The "stock tank exception" as discussed above does not apply to diffused surface water. This means that a landowner may harvest the rainwater into the soil, or capture and store drainage water, as long as the water is captured before it reaches a natural water course.

Unlike surface water, groundwater is the property of the landowner, which allows a landowner the right to capture the water beneath his or her property, and sell, lease, and move the water pumped from his or her property to a neighbor, corporation, or city. Historically, groundwater has been governed by "the rule of capture," or the law of the biggest pump, which allows a person, with legal right to the groundwater, the right to pump whatever groundwater is available, regardless of the effects that pumping may have

on neighboring water wells. Texas courts have limited the rule of capture in order to prohibit a landowner from:

- Pumping water for the purpose of maliciously harming an adjoining neighbor;
- Pumping water for a wasteful purpose;
- Causing land subsidence (sinking) on adjoining land from negligent pumping; and,
- Drilling a slant well that crosses the adjoining property line.

State of Texas legislators have passed several laws that curtail groundwater pumping. Three major restrictions which have been imposed to prevent unlimited pumping of groundwater can be found in the Texas Water Code. These restrictions govern:

- Pumping water that comes from the underflow of a river;
- Pumping groundwater from an aquifer within the jurisdiction of a Groundwater Conservation District (GCD); and,
- Pumping groundwater from the Edwards Aquifer within the jurisdiction of the Edwards Aquifer Authority.

GCDs are the state's preferred method of groundwater management through rules developed, adopted, and promulgated by a district in accordance with the provisions of the Texas Water Code and their enabling legislation. Texas law authorizes GCDs to modify the rule of capture by regulating groundwater production through permitting of non-exempt water wells, well spacing requirements, and through other rules as deemed necessary to conserve, preserve, protect, recharge, prevent waste of groundwater, and to control subsidence.

Additional information concerning landowners' water rights may be obtained from the Texas Commission on Environmental Quality at http://www.tceq.texas.gov, the Texas A&M AgriLife Extension Service at http://texaswater.tamu.edu, the Texas Water Code at http://www.statutes.legis.state.tx.us/?link=WA, or the Texas Alliance of Groundwater Districts at http://www.texasgroundwater.org/.

For additional Frequently Asked Questions (FAQs) related to groundwater quantity, groundwater quality, septic systems, water wells, administrative entities, and publications, visit the Texas Groundwater Protection Committee's FAQ webpage at http://tgpc.state.tx.us/frequently-asked-questions-faqs/.