

TEXAS WATER LAW.

R. Jay Reining
First Assistant City Attorney
City of Corpus Christi

jayr@cctexas.com

361 826-3360

TEXAS WATER LAW.

Types of Water.

Diffused surface water – prior to a watercourse, lake, or pond.

Surface water – also called public or state water.

Groundwater.

Diffused Surface Water.

Upper property owner has the right to have diffused water flow naturally from his land onto that of lower property owner.

Lower property owner may not obstruct and cast naturally flowing water back on land above.

Lower property owner, while required to accept the natural flow, is not obligated to receive the artificial (unnatural) flow, and may construct reasonable barriers to repel the artificial flow.

A landowner may artificially concentrate and discharge waters into a natural watercourse on own land that runs across a neighbors tract provided the total discharge is not

beyond the natural capacity of the watercourse.

Can seek damages for injury caused by overflow.

Surface Water.

Watercourse.

Stream of water in a well developed channel with well defined bed and banks.

Can be intermittent or irregular flows.

Prior to 1837 only applied to perennial streams. (Non-perennial streams were part of land grant.).

After 1837 based upon measurement criteria (navigable stream).

Maintain an average width of 30 feet from mouth up stream.

Measure using Stiles Gradient
Boundary Theory used by U. S.
Supreme Court in
Texas/Oklahoma boundary
dispute.

Midway between lower level of
flowing water and just reaches
the cut bank, but does not over
flow.

Perennial vs. Intermittent vs. Ephemeral Streams.

Perennial stream -- a stream or river (channel) that has continuous flow in parts of its bed all year round during years of normal rainfall. But during unusually dry years, a normally perennial stream may cease flowing, becoming intermittent for days, weeks, or

months depending on severity of the drought.

Intermittent stream normally ceases flowing for weeks or months each year.

Ephemeral stream or channel that flows only for hours or days following rainfall.

Spanish/Mexican Era -- appropriation.

Water in perennial streams
belonged to sovereign.

Specific grant to use water, not
normally tied to a land grant.

Irrigation – included a grant of
water.

Dry land farming.

Pasture land.

Texas did not recognize Pueblo water rights.

Republic of Texas to Today.

1840 adoption of common law.

Riparian rights.

Land abutting the stream.

Lose right with separate land
from stream.

Could use but not diminish or
alter – reasonable use.

Cannot transfer to other land.

Can be lost to upstream user by prescription.

Cannot store water.

Actual use not required.

No time priority.

Do not apply to waters above highest ordinary flow.

Appropriation.

Doctrine of priority or seniority.

Based on a beneficial use.

Becomes a vested property right.

1870's Grants to canal and
irrigation companies.

1889 Irrigation Law.

All unappropriated water in arid parts of state are public property.

Water may be acquired for appropriation by filing an affidavit with county clerk.

1913 Burgess-Glasscock Act.

Set up Board of Water
Engineers and permit system.

Applied statewide.

1917 Canales Act tried to convert
riparian rights to permit system.
Declared unconstitutional.

1953 statute attempted to modify riparian rights by authorizing cancellation proceedings.
Declared unconstitutional.

Water Rights Adjudication Act of 1968.

Established adjudication process.

Required adjudication of permits by river segments.

Required documentation of riparian water rights based on prior four years of beneficial use—after that time riparian rights extinguished.

Non-permitted water rights converted into "Certificates of Adjudication".

Constitutionality of act upheld in 1982.

1997 – S.B. 1

Allowed an administrative amendment is no enlargement of a water right.

Regulated interbasin transfers.

Current System Regulating Surface Water Rights – Prior Appropriation System.

Texas Commission on Environmental Quality (TCEQ), formerly Texas Water Commission and Texas Natural Resources Conservation Commission (TNRCC).

Issues and monitors permits.

Enforces permit conditions.

Conducts cancellation proceedings.

Approves permit transfers.

Basic tenets of Prior Appropriation System.

Permits required to use State water.

What is state water.

Lakes, rivers, streams.

Springs.

Groundwater.

Types of permits.

Regular.

Seasonal.

Term.

Emergency.

Bed & Banks.

Exemptions to Permits.

Stock tanks.

200 acre feet.

On own land.

Used for livestock and
domestic use.

Mariculture operations using salt
water.

Oil & gas development
production along Texas coast.

Application Process.

Application.

Review of application by TCEQ staff.

Technical completeness and adequacy.

Action on application by TCEQ Executive Director.

Action by Commission.

Without hearing.
Notice & public hearing.
SOAH Proceedings.

Appropriation Requirements.

Unappropriated water available.

Water used for beneficial purposes.

Existing rights not impaired.

Reasonable diligence to avoid waste and to achieve conservation.

Quantified amount and flow of water.

Time priority rule based on date of filing application — First in Time, First in Right.

Statutory priority for certain uses.

Specified point of diversion and return.

Loss of Water Rights.

Common law abandonment —
intent and relinquishment.

Statutory forfeiture.

Willful abandonment (intent &
relinquishment).

Three (3) successive years.

Statutory cancellation.

1. Non-use for 10 years.
2. Total or partial cancellation.
3. Initiated by TCEQ—notice & hearings.
4. Findings by TCEQ.
5. Effect of Lower Colorado River Authority v. TX.

Department of Water Resources (1984).

Transfer of Waters & Water Rights.

Interbasin transfers of water.

Transfers to other uses and users.

Recapture and Reuse of Appropriated Waters.

Return flows.

Developed and salvaged waters.

Conserved waters.

Municipal Priority--Wagstaff Act.

Groundwater.

Types of Groundwater.

Percolating Water.

Underground Streams – treated as surface water.

Percolating Water.

Secret, occult, and concealed.

Ground water percolating, oozing, or filtering through the earth because the existence, origin, movement, and course of the waters, and cause that government and direct its movement are so secret, occult, and concealed that the

administration of any set of legal rules is practically impossible.

American Rule (reasonable use or correlative rights).

A legal doctrine limiting the rights of landowners to a common source of groundwater (such as an aquifer) to a reasonable share, typically based on the amount of land owned by each on the surface above.

English Rule (rule of capture).

Allows landowner to capture ALL water beneath their property.

No intentional waste or malicious injury.

Corpus Christi vs. Pleasanton
– OK if used for a purpose.

May be liable for subsidence cause by negligent or malicious pumping.

Current regulation of groundwater.

Subsidence issues.

Edwards Aquifer.

Ozarka (Sipriano) case.

Conservation Amendment.

Underground water
conservation districts.

Water Law Agencies/Authorities.

International.

1944 Rio Grande Treaty.

Interstate water compacts.

Rio Grande w/ CO & NM.

Pecos w/ NM.

Canadian w/ NM & OK.

Sabine w/ LA.

Red w/ AR, LA, & OK
Federal Authority.
USACOE.
Bureau of Reclamation.
State Authority.
TCEQ.
TWDB.

Special and local districts.

General law districts.

WCID.

Navigation.

Levee.

Drainage.

MUD.

Special law districts.

CCASRCD.

NRA.

Current Issues.

Appropriations vs. Environmental Considerations.

In stream and needs of bays and estuaries.

Appropriations vs. return flows.

Developed water exception.