

Water in Texas – Who Owns It?

Water is one of our state's most valuable natural resources, and 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. To protect both an 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.

By far, most water comes from either groundwater or surface water, but there is some water that comes from the reuse of reclaimed wastewater. Surface water is found in ponds, rivers, streams, lakes, and bays. Groundwater filters down from the earth's surface and accumulates underground in aquifers. On average, about 75% of all groundwater used in Texas is used for irrigating crops. Most surface water is typically used 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. A landowner who wishes to use the surface water for other sources such as irrigation, manufacturing, or power generation, must obtain approval 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" which allows landowners to build up to a 200-acre-foot reservoir on their property without receiving authorization 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 stormwater, 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" discussed above does not apply to diffused surface water, which means that a landowner may harvest the rainwater into the soil or capture and store drainage water if 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 their property. A landowner may also sell, lease, and move the water pumped from their property to a neighbor, corporation, or city.

Historically, groundwater has been governed by "the rule of capture," commonly called the law of the biggest pump, which allows a person who owns the groundwater to

pump as much groundwater that is available, regardless of the effects that pumping may have on neighboring water wells. However, Texas courts have limited the “rule of capture” 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.
- Drilling a slant well that crosses the adjoining property line.

Three major restrictions that prevent unlimited pumping of groundwater can be found in the Texas Water Code. These restrictions govern:

- Pumping water from the underflow of a river.
- Pumping groundwater from an aquifer within the authority of a Groundwater Conservation District (GCD).
- Pumping groundwater from the Edwards Aquifer within the authority of the Edwards Aquifer Authority.

GCDs are the state’s preferred method of groundwater management through rules developed, adopted, and published by a district following the requirements 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 considered necessary to conserve, preserve, protect, recharge, prevent waste of groundwater, and to control subsidence.

Resources and Useful Links

- Texas Water Development Board (TWDB), “Historical Water Use Summary and Data Dashboard” webpage, <https://www.twdb.texas.gov/waterplanning/waterusesurvey/dashboard/index.asp>.
- TWDB, *2022 State Water Plan*, <https://www.twdb.texas.gov/waterplanning/swp/index.asp>.
- Texas Commission on Environmental Quality website, <https://www.tceq.texas.gov/>.
- Texas A&M AgriLife Extension Service website, <https://texaswater.tamu.edu/>.
- Texas Water Code, <https://statutes.capitol.texas.gov/>.
- Texas Alliance of Groundwater Districts website, <https://texasgroundwater.org/>.

Other Frequently Asked Questions (FAQs)

To find additional FAQs visit the Texas Groundwater Protection Committee's FAQ webpage at <https://tgpc.texas.gov/frequently-asked-questions-faqs>.