

Lindheimer Chapter 2025 TEXAS WATER SPECIALIST CERTIFICATION CLASSES Chapter 9



Chapter 9: Texas Water Law (OMG)

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Objectives

- ▶ Define groundwater, surface water and groundwater and diffused water
- ▶ What is the “Rule of Capture”?
- ▶ Review the Riparian Doctrine, the Prior Appropriations Doctrine and the Water Rights Act of 1967

“Whisky is for drinking;
water is for fighting over.”

-Mark Twain

Texas Water Rights
are fairly straightforward until
a Texas landowner feels wronged.

Main Water Organizations in Texas

Texas Water Development Board (TWDB)

The mission of the Texas Water Development Board (TWDB) is **to lead the state's efforts in ensuring a secure water future for Texas.**

Our mission is a vital part of Texas' overall vision and the state's mission and goals that relate to maintaining the viability of the state's natural resources, health, and economic development. The TWDB's main responsibilities are threefold:

- collecting and disseminating water-related data;
- assisting with regional water supply and flood planning that contributes to preparing the state water plan and state flood plan;
- administering cost-effective financial programs for constructing water supply, wastewater treatment, flood control, and agricultural water conservation projects.

[About TWDB | Texas Water Development Board](#)

Texas Commission on Environmental Quality (TCEQ)

The Texas Commission on Environmental Quality strives to protect our state's public health and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste.

To accomplish our mission, we will:

- base decisions on the law, common sense, sound science, and fiscal responsibility;
- ensure that regulations are necessary, effective, and current;
- apply regulations clearly and consistently; ensure consistent, just, and timely enforcement when environmental laws are violated;
- ensure meaningful public participation in the decision-making process;
- promote and foster voluntary compliance with environmental laws and provide flexibility in achieving environmental goals;
- and hire, develop, and retain a high-quality, diverse workforce.

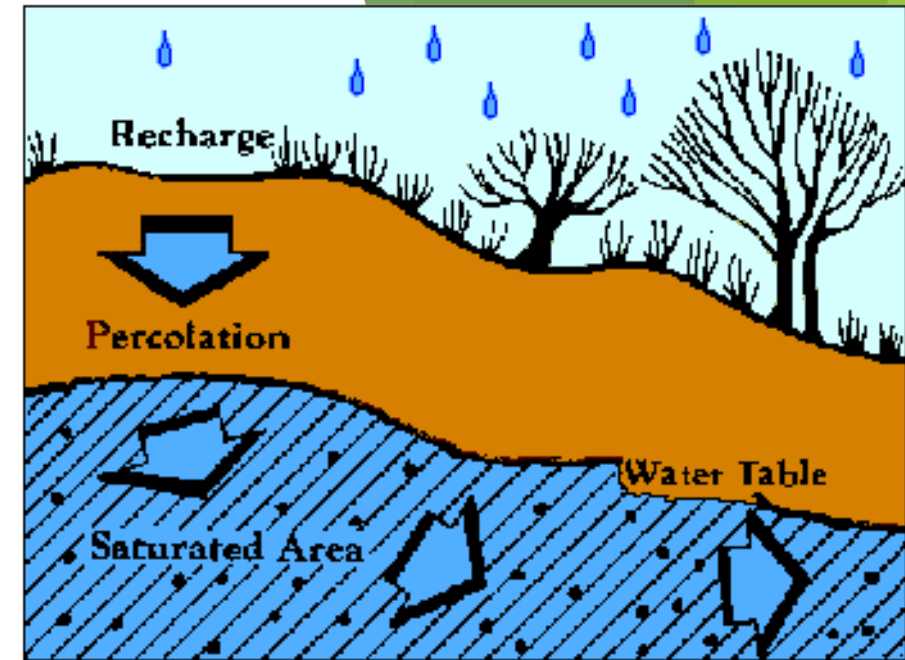
[Homepage - Texas Commission on Environmental Quality - **www.tceq.texas.gov**](#)

Groundwater, Surface Water & Diffused Water

Here's a great site to read about Texas Water Law
<https://texaswater.tamu.edu/water-law>

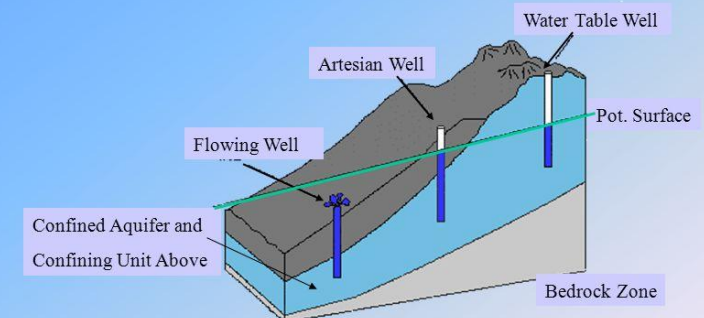
Groundwater - Definition

- ▶ Water found below the earth's surface in crevices of soil and rocks is called *percolating water*, or more commonly groundwater.
- ▶ Artesian water is a confined natural underground reservoir containing water under positive pressure.
- ▶ Excludes “subterranean” rivers.
 - ▶ Because no subterranean river has been identified in Texas, the legal presumption in Texas is that ALL sources of groundwater are percolating waters until proven to be a subterranean river.
 - ▶ Status of Texas law with respect to ownership of subterranean rivers is not settled.
 - ▶ Both stream underflow & subterranean rivers have been purposefully excluded from the definition of underground water in the Texas Water Code



Artesian Wells

- A well whose source of water is a confined aquifer
- The water level in artesian wells is at some height above the water table due to the pressure of the aquifer



Groundwater - Laws

“Law of the Biggest Pump”

- ▶ Texas groundwater law is judge-made law, derived from the English common law rule of “absolute ownership.”
- ▶ Groundwater, percolating or artesian, belongs to the landowners above it. This does not include subterranean rivers.
- ▶ **Rule of Capture:** Landowner may take for use or sale all the water that can be captured beneath owned property, regardless of effect on adjoining properties, including depriving adjoining properties of water. Texas courts have adopted, and the legislature has not modified, the Rule of Capture.
- ▶ [General Groundwater and Private Water Well FAQ | Texas Water Development Board](#)
- ▶ [Texas Constitution and Statutes - Home](#)
- ▶ [Texas Water Code Section 36.119 - Illegal Drilling and Operation of Well; Citizen Suit](#)

Rule of Capture

Rule of Capture is a legal doctrine established under common law that gives landowners the right to pump and use any groundwater found beneath their land—even if that water extends under neighboring properties. In essence, once water is pumped from the aquifer, it becomes the property of the person who extracted it. This means that Texas landowners are generally free to tap into groundwater resources without facing liability for depleting the aquifer available to others on adjacent land.

How Does It Work in Texas?

Under this rule, the act of “capturing” water is paramount. Unlike surface water, which is strictly regulated by state permitting and water allocation systems, groundwater has historically been subject to a more lenient regulatory framework in Texas. This has led to situations where aggressive pumping—sometimes called the “law of the biggest pump”—can result in neighbors experiencing lower water levels, even though each landowner is legally entitled to extract their share of groundwater.

[Understanding the Rule of Capture in Texas Water Rights - The Texas Land Agent](#)

Water Code Section 36.123

Right to Enter Land

- ▶ (a)
- ▶ The directors, engineers, attorneys, agents, operators, and employees of a district or water supply corporation may go on any land to inspect, make surveys, or perform tests to determine the condition, value, and usability of the property, with reference to the proposed location of works, improvements, plants, facilities, equipment, or appliances. The cost of restoration shall be borne by the district or the water supply corporation.
- ▶ (b)
- ▶ District employees and agents are entitled to enter any public or private property within the boundaries of the district or adjacent to any reservoir or other property owned by the district at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit, or other order of the district. District employees or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

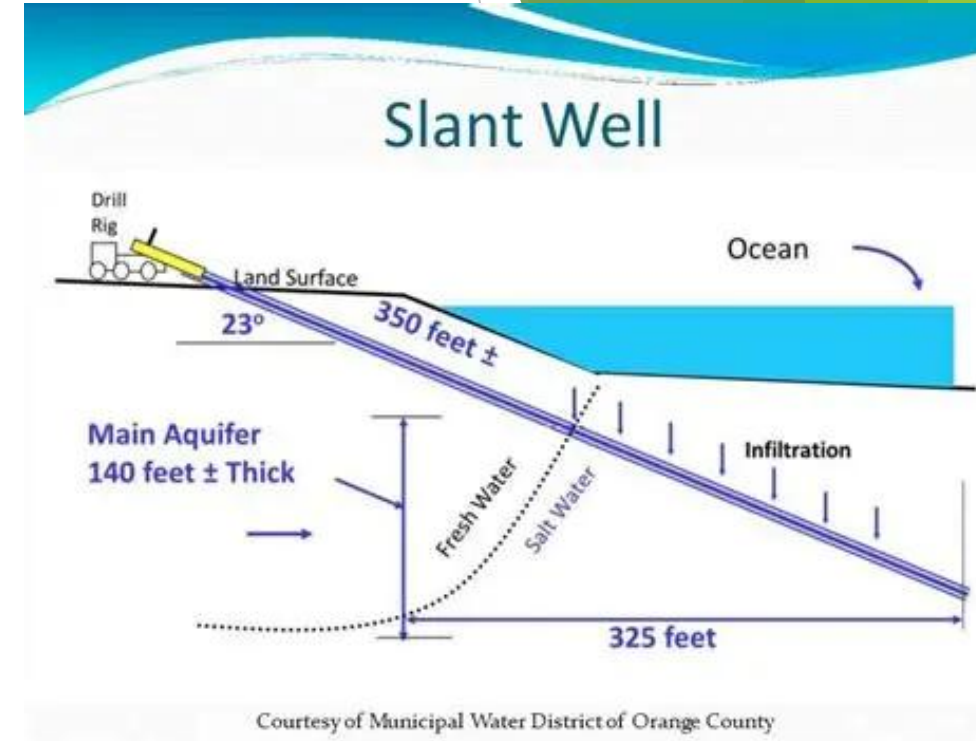
States with a Rule of Capture

► Texas, Arkansas, Arizona, California, Florida, Kansas, Michigan, Nebraska, New Hampshire, Ohio, and Oklahoma.

The Texas Supreme Court first adopted the rule of capture for groundwater in the landmark 1904 decision *Houston & Texas Central Railroad Co. v. East*.

Five Exceptions to Absolute Owner Rule when legal action is allowed:

- ▶ If an adjoining neighbor trespasses on the land to remove water either by drilling a well directly on the landowner's property or by drilling a "slant" well on adjoining property so that it crosses the subterranean property line, the injured landowner can sue for trespass.
- ▶ If there is malicious or wanton conduct in pumping water for the sole purpose of injuring an adjoining landowner.
- ▶ If landowners waste artesian well water by allowing it to run off their land or to percolate back into the water table.
- ▶ If land subsidence and surface injury result from negligent overpumping from adjoining lands.
- ▶ If there is contamination of water in a landowner's well. No one is allowed to unlawfully pollute groundwater.

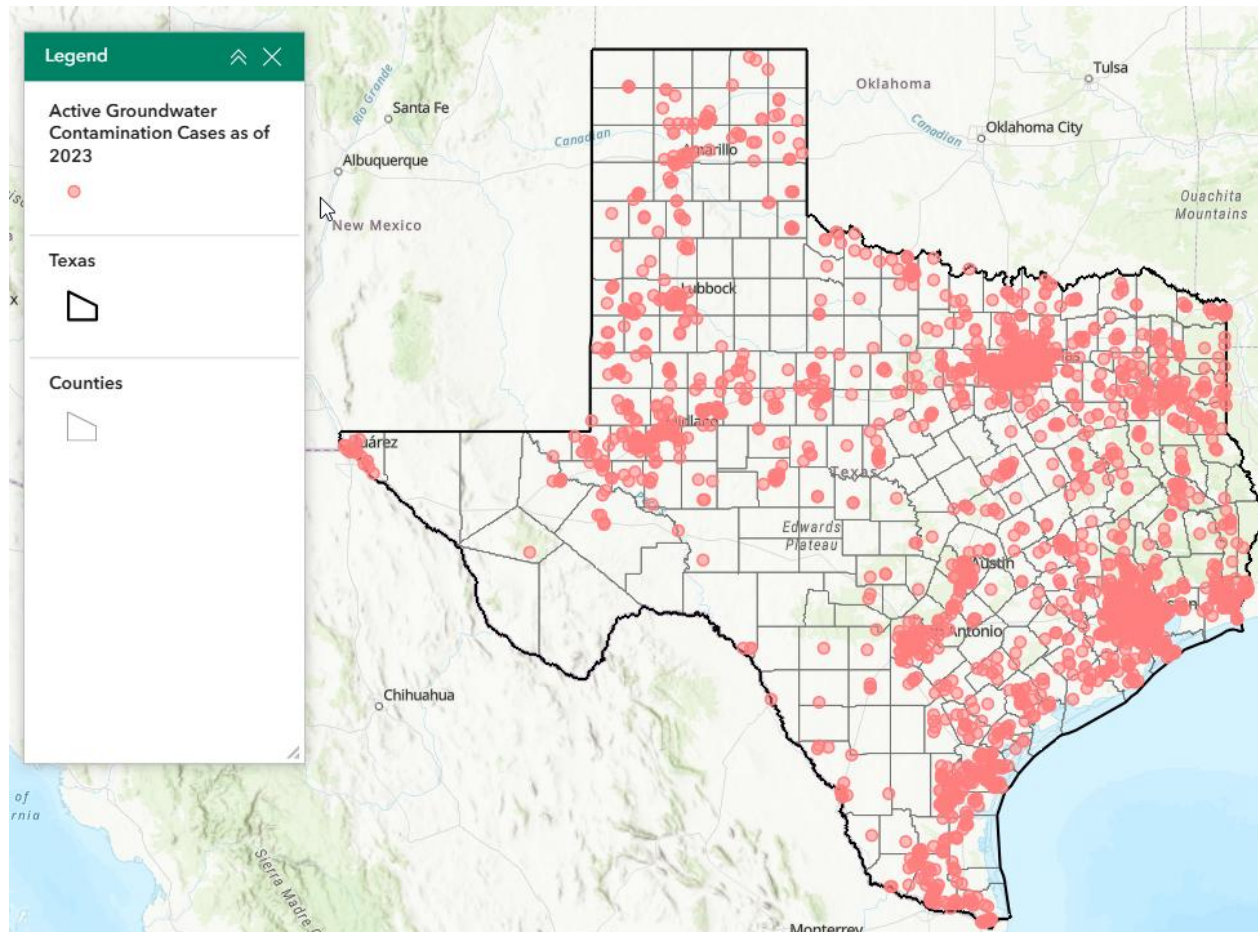




TCEQ

Groundwater Contamination Viewer

[TCEQ Groundwater Contamination Viewer](#)



Texas Supreme Court Case

Sipriano v. Great Spring Waters of America

- ▶ Some 95 years after the *East* decision, the Texas Supreme Court reviewed the rule in *Sipriano v. Great Spring Waters of America, et al.*, 1 SW3d 75 (Texas 1999) [Ozarka]. The Ozarka case involved a claim by a domestic well owner that Ozarka's nearby pumping had dried up his well.
- ▶ The landowner asked the court to protect his private-property interest in groundwater by imposing liability on Ozarka.
- ▶ Many observers thought that the Texas Supreme court would modify the capture rule to protect rural homeowners and domestic users of water. They were wrong. The court unanimously affirmed the rule of capture. However, it suggested that it might change the rule in the future if the Texas Legislature did not adequately address groundwater overpumping.
- ▶ The Legislature's response was to strengthen the laws enabling citizens to manage this problem locally through **groundwater conservation districts**.

Surface Water - Definition

Surface water includes all of the

- ▶ Water under ordinary flow, underflow and tides of every flowing river, natural stream, lake, bay, arm of the Gulf of Mexico, and
- ▶ Stormwater, floodwater or rain water of every river, natural stream, canyon, ravine, depression, and watershed in the state

Surface Water - Laws

Riparian Doctrine

- ▶ Based on English common law. These court-developed rules are used in deciding cases that involve water use conflicts.
- ▶ The basic concept is that private water rights are tied to the ownership of land bordering a natural river or stream. Thus, water rights are controlled by land ownership.
- ▶ Riparian landowners have a right to use the water, provided that the use is reasonable in relation to the needs of all other riparian owners.
- ▶ Riparian owners retain the right to use water so long as they own the land adjacent to the water.

Prior Appropriation Doctrine

- ▶ Controlled by statute
- ▶ Applied in the western states, prior appropriation is not related to land ownership; instead water rights are acquired by compliance with statutory requirements. While the principles of riparian rights were appropriate in areas of England and the United States where rainfall averages 30 inches or more a year, these rights were not suited to the arid West.
- ▶ During their early development, western states failed to control rivers and streams, and water was treated as though it belonged to no one. In the absence of any rules, people simply took water from streams and used it; that is, they appropriated it.
- ▶ When this practice became legalized, it became known as the Doctrine of Prior Appropriation.

Water Rights Adjudication Act

- ▶ In 1967 the Texas Legislature merged the riparian rights system into the prior appropriation system with passage of the Water Rights Adjudication Act.
 - ▶ The act required any person claiming a riparian water right to file a claim for the right by 1969 with the Texas Water Commission.
- ▶ With passage of the 1967 act, Texas consolidated the allocation of surface water into a unified water permit system.
 - ▶ Anyone wishing to use surface water (exclusive of drainage water) must receive permission from the state in the form of a "water right."
- ▶ Awarding permits for these "water rights" is a task of the Texas Commission on Environmental Quality.

Diffused or Drainage Water

(it's still surface water!)

- ▶ Occurs after rainfall/snowmelt & flows across public or private land from high elevations to lower elevations
- ▶ Called stormwater, drainage water or surface runoff
- ▶ Landowner does not own this water but may “capture” or use drainage water on property
- ▶ May NOT interfere with natural flow of drainage water by capturing & holding the flow or by diverting or increasing it

Three Rules of Law for Diffused Water

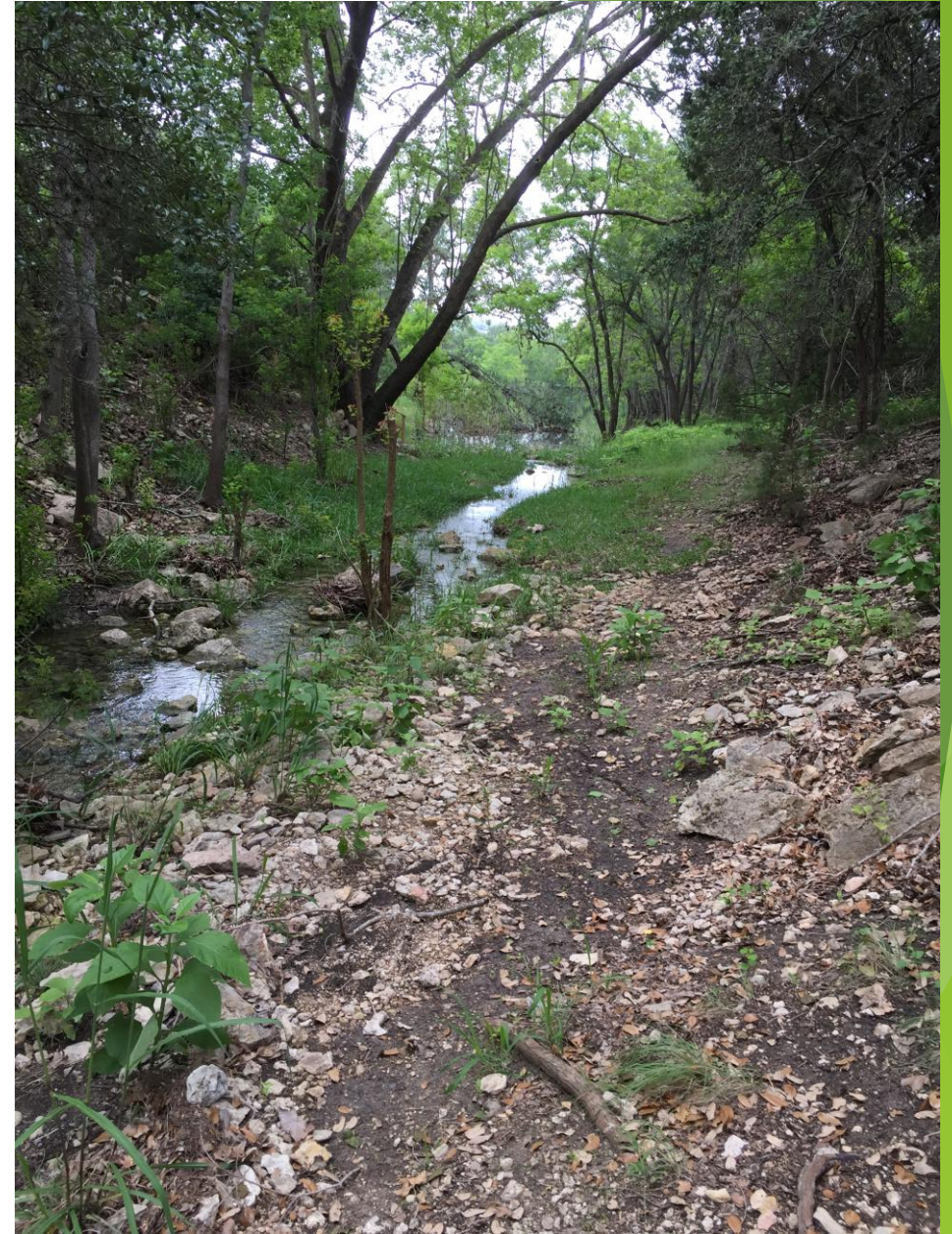
- ▶ **Common Enemy Rule:** When drainage water is regarded as an enemy common to all landowners a landowner can take any measure to protect property, regardless of consequences to other neighbors
- ▶ **Natural Flow or Civil Law Rule:** Each landowner is entitled to rely upon continuation of natural flow; a landowner who increases runoff, causing flooding to neighbors, is liable for damages
- ▶ **Reasonable Flow Rule:** Allows landowners to divert or change drainage water, even to the extent of harming adjoining neighbors as long as the diverter's actions are reasonable considering all circumstances

What type of water is this?



Seeps are typically springs where groundwater reaches the surface over a dispersed area and where the discharge rates typically are not large enough to form a distinct channelized flow.





Challenges

- ▶ 1. Determine which regional water planning group covers your area. <http://www.regionltexas.org/>
 - ▶ The South Central Texas Regional Water Planning Area, Region L, consists of Atascosa, Bexar, Caldwell, Calhoun, **Comal**, DeWitt, Dimmit, Frio, Goliad, Gonzales, Guadalupe, Karnes, Kendall, La Salle, Medina, Refugio, Uvalde, Victoria, Wilson, Zavala, and part of Hays Counties.
 - ▶ The South Central Texas Regional Water Planning Group (SCTRWPG), Region L, is one of 16 Texas water-planning groups established by the Texas Water Development Board (TWDB) to develop regional water plans as required by Senate Bill 1 of the 75th Legislative Session. The SCTRWPG is composed of planning group members representing various interest groups. It is guided by the Texas Water Development Board, led by an Executive Committee, governed by by-laws, and supported by the San Antonio River Authority and a team of technical consultants
 - ▶ [State Water Plan | Texas Water Development Board](#) (2022)
 - ▶ [Region L Texas](#)
 - ▶ [RegionL_2021RWP_V1.pdf](#)

2. What conservation measures are taking place?

<https://www.landcan.org/state-resources/Texas>



 **6713 Conservation Resources / Service Providers were Found Serving Texas**

Expand All

Groups and Associations (1149) ▾

Home Professionals (45) ▾


Land Professionals (1397) ▾

Law, Tax, Estate (454) ▾

Products and Services (3299) ▾

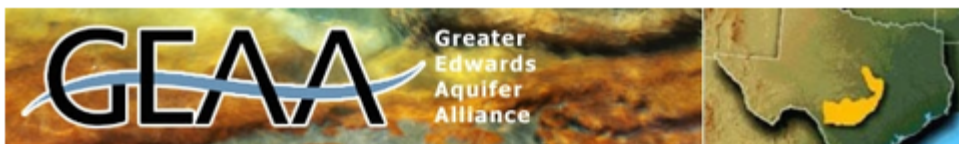
Programs (369) ▾

<https://youtu.be/obEex9EFP4?list=PL1ZWdZgiscCqCNXtaMAHKf8fYynIU0ZH->

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- The background features abstract, overlapping green geometric shapes in various shades of green, primarily on the right side of the slide. A thin, light gray line runs diagonally across the lower right portion of the slide.
- ▶ Texas, Arkansas, Arizona, California, Florida, Kansas, Michigan, Nebraska, New Hampshire, Ohio, and Oklahoma.

I

If you have trouble reading this email [click here](#).



Dear Comal County GEAA members and friends,

Next Thursday on **October 23, 2025** the Comal County Commissioners will take a historic vote regarding the Texas Water Development Board's (TWDB) Clean Water State Revolving Fund. See agenda [here](#).

If this vote passes, the county will submit its application to the TWDB for \$30,000,000 in state funding to preserve critical working lands over the recharge zones of the Edwards and Trinity Aquifers. It is hard to put into words just how significant this step is for Comal County and for our karst water supplies.

The \$30 million dollars could be used to purchase conservation easements and park land. Since properties in Comal County are being developed at breakneck speed, permanent protection of lands that provide ecosystem services (recharging the Edwards and Trinity aquifers and prevent flooding) is something we need to do while we still can.

Thanks to the efforts of GEAA member group, Comal Conservation, and to Comal County for adopting a Parks, Open Space, and Natural Area Master Plan, TWDB has pretty much assured funding for Comal's application.

The funding breaks down roughly into a \$4.5 million grant and \$25.5 million low interest loan (paid over 30 years). This is the type of public investment in conservation that GEAA would truly celebrate. We are so grateful that the court is considering this opportunity now.

STATE REVOLVING FUND FACT SHEET

Here is how you can help:

- Write your commissioner and Judge Krause. Thank them for their commitment to preserving and protecting our county's water supplies and the rivers that make our county so unique. Encourage them to approve the application for this funding opportunity and to support the conservation of our county's land, water, and wildlife. A map of Comal County precincts can be found [here](#).

Sherman Krause, [County Judge](#)

Doug Leacock, [Commissioner Precinct 1](#)

Scott Haag, [Commissioner, Precinct 2](#)

Kevin Webb, [Commissioner Precinct 3](#)

Jen Crownover, [Commissioner, Precinct 4](#)

You can also join your neighbors to:

- Sign up below to speak at the County Commissioners meeting on October 23rd or
- Sign up below to simply attend the meeting on October 23rd (**Wear Green to Show Support**)

Let Us Know if You Plan to Speak or Attend

Our rivers, lakes, open spaces, and dark skies need our protection now more than ever. The Clean Water State Revolving Fund represents more than just dollars for conservation work. This application is a chance for Comal County to take action to protect the land, water, and wildlife that we all care about so much. The work we do today will ensure that our kids and grandkids inherit a Texas Hill Country that is as wild and rugged as the one we inherited. I urge you to be at the [Comal County Courthouse](#) on **October 23, 2025** and encourage Comal County Commissioners to invest in our quality of life.

In conclusion, I can't express how happy the prospect of \$30 million dedicated to preserving land and open spaces in Comal County makes me.

Cheers and – have a wonderful weekend!

Annalisa Peace

Annalisa Peace, Executive Director, [Greater Edwards Aquifer Alliance](#)

Real Life Texas Water Situations

Acre

Acre-foot amount of water

- ▶ Amount of water needed to cover an acre of land 1 foot deep
- ▶ 1 acre = 43,560 gallons
- ▶ [Convert Acre-foot to Gallon \(US\)](#)

Water Fights in Hill Country

- ▶ [Ruling from State's Public Utility Commission Advances Community's Fight Against Aqua Texas' Over Pumping and Wasting of Hill Country Water - The Watershed Association](#)
- ▶ [Federal judge grants Wimberley environmental group right to intervene in groundwater pumping lawsuit | KXAN Austin](#)
- ▶ [AQUA Texas files federal lawsuit against the Hays Trinity Groundwater Conservation District in 2024 | Hill Country Alliance](#)
- ▶ [Federal Court Ruling Results in Significant Wins for Texans Relying on Groundwater and District Established to Protect its Use | The People vs Aqua Texas](#)
- ▶ [Texas residents fighting to keep treated wastewater out of lakes | kvue.com](#)
- ▶ [Texas' MOST INFAMOUS Groundwater Lawsuits - Texas Water Resources Institute](#)

This property owner dug a large 10 ft deep hole on his property on a slope to capture the runoff water that was flowing downhill toward the North Prong of the Atascosa River.

Do you think he was in violation of diffused water rules?



Boatman vs Lite

- ▶ Original Suit by the Lites: The Lites and the Boatmans owned adjoining property in Chandler, Texas.
- ▶ The Lites maintained that the Boatmans negligently diverted the natural flow of water from their land onto the Lites' land by the use of "berms." As a consequence of this diversion, the Lites' land eroded where the water flowed into the creek which bordered both parties' property.
- ▶ They went to court. The Lites requested a "declaratory judgment" declaring their rights, status and legal remedies pertaining to their property deeds and their property, and their rights under Chapter 11 of the Texas Water Code, including, but not limited to §11.086. They also sought temporary and permanent injunctions, actual and punitive damages, and attorney's fees.

- ▶ The trial court declared that the Lites owned a certain piece of property in Henderson County, Texas, and that the Boatmans violated § 11.086 of the Texas Water Code by diverting surface water onto that property.
- ▶ The trial court further held that the Lites' property would continue to be damaged unless the Boatmans were enjoined from diverting the natural flow of the surface waters on the Lites' property; therefore, the Boatmans were permanently enjoined from doing so.
- ▶ The court awarded the Lites \$2,352 in actual damages; \$3,800 in punitive damages; and \$12,500 in attorney's fees (\$18,652).
- ▶ The Boatmans appealed the jury verdict & declaratory judgment stating: 1) Trial court erred in awarding attorneys' fees; 2) when it overruled their motions for directed verdict and 3) when it overruled their objections to certain questions.

The Boatmans appeal the trial verdict.

- ▶ 1) Attorney's fees: The appellate court agreed with the Boatmans because the Texas Declaratory Judgments Act was not applicable to the Lites' causes of action. *In Texas a declaratory judgment may not be used solely as a vehicle to obtain attorney's fees (trial court abused its discretion).*
- ▶ 2) Trial court overruled their objections to certain jury questions.
 - ▶ Questions asked of the jury:
 - ▶ Do you find that "defendants diverted the natural flow of surface waters which ...caused damage?" Jury said yes.
 - ▶ Do you find that "...damage will occur in the future to the Plaintiffs property?" Jury said yes.

The appellate court disagreed with the Boatmans, because it felt the evidence presented at the trial court by the Lites was sufficient for the jury to determine the answers to the above questions.

- ▶ 3) Trial court erred in submitting questions and rendering judgment awarding exemplary damages because there was no or insufficient evidence to support gross negligence. The appellate court disagreed with the Boatmans based on the Boatmans' actions (ignoring letter, spreading dirt, continuing to allow damage to occur).

Lawsuit in the making?



9 hrs · 

Anyone up on building standards out here? Ive always heard that a neighbor could not built a structure (driveway) That will shed water onto another property.The driveway was put in exactly on the property line.And he had to fill in on my sde changing the way my property sheds water.Thus causing my garage to flood..I already had drainage problems and the builder was aware of them.

Mathis v. Barnes

- ▶ Dr. Roy Lee Mathis and H.E. “Buster” Barnes own adjoining property in Anderson County. Lake Creek runs through both tracts, and Mathis’s 1,254 acre property is located upstream from Barnes’s.
- ▶ Mathis was attempting to maintain a pristine wetlands complex on much of his land, which attracted beavers, waterfowl, and other wildlife. Due to multiple beaver dams, Mathis’ property was full of water year round.
- ▶ Barnes’s tract was used predominantly as a pasture. In September 2006, Barnes constructed an earthen road across the creek to more easily access his back pasture. To accommodate water flow in the creek, Barnes installed two twenty-eight-inch culverts, or drainage pipes, into the structure.
- ▶ In October 2006, Mathis noticed an elevated water level in the creek, which he suspected was caused by Barnes’s road. By November, Mathis noticed that creek water encroached onto his property, and he asked Barnes to modify the road. Barnes later installed an additional culvert into the structure.
- ▶ In December 2006, Mathis returned to his property after a twelve-day absence to discover that Barnes’s road was washed away. The flooding—and subsequent drainage—also affected over four hundred acres of Mathis’s property, **damaging beaver dams**, affecting the wildlife population, and draining the wetlands.
- ▶ Long story short: Ultimately, the jury found that Barnes was not liable for nuisance, trespass, negligence, or gross negligence. Thereafter, the trial court entered a take nothing judgment against Mathis. Mathis filed a motion for new trial, which the trial court denied.