

# Lindheimer Chapter 2019 TEXAS WATER SPECIALIST CERTIFICATION CLASSES

Chapter 9: Texas Water Law

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Certified Texas Waters Specialist*



# 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

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. The shapes are primarily triangles and polygons, creating a dynamic, layered effect. The text is centered in the white space between these shapes.

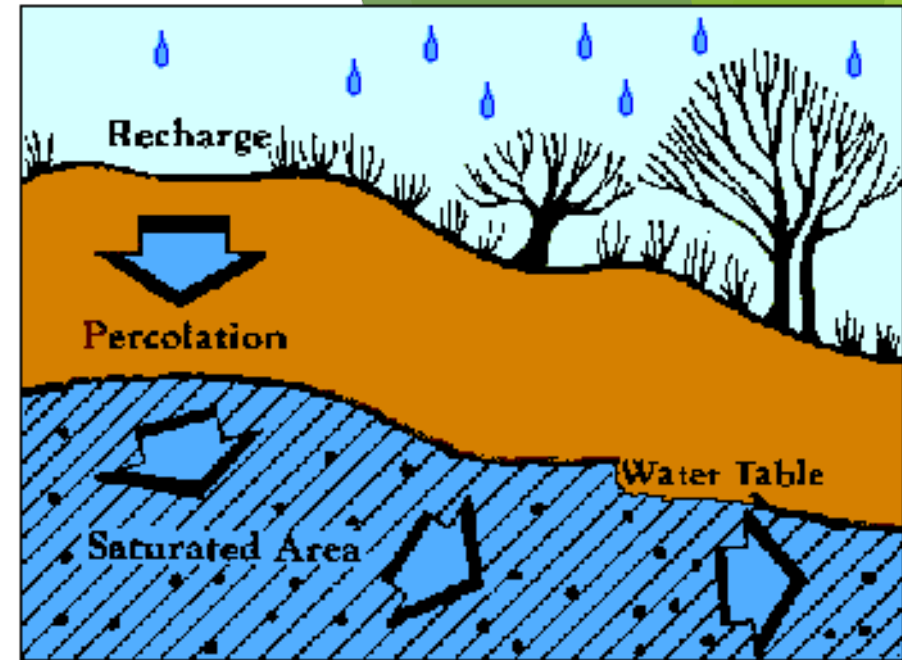
Texas Water Rights  
are fairly straightforward until  
a Texas landowner feels wronged.

# Groundwater, Surface Water & Diffused Water

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

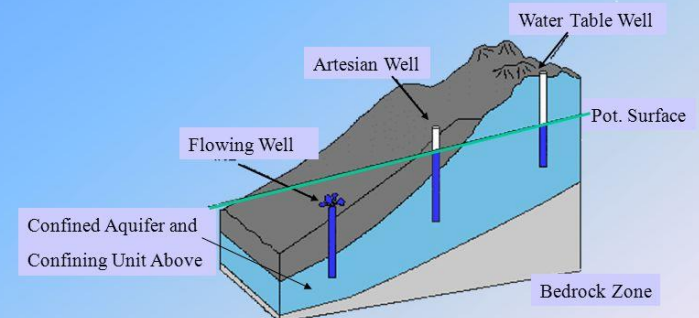
# Groundwater - Definition

- ▶ 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 owners of the land above it.
- ▶ **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.

## 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

- ▶ <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=478b575733ca4662a1441f93c9b973f5>

# 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

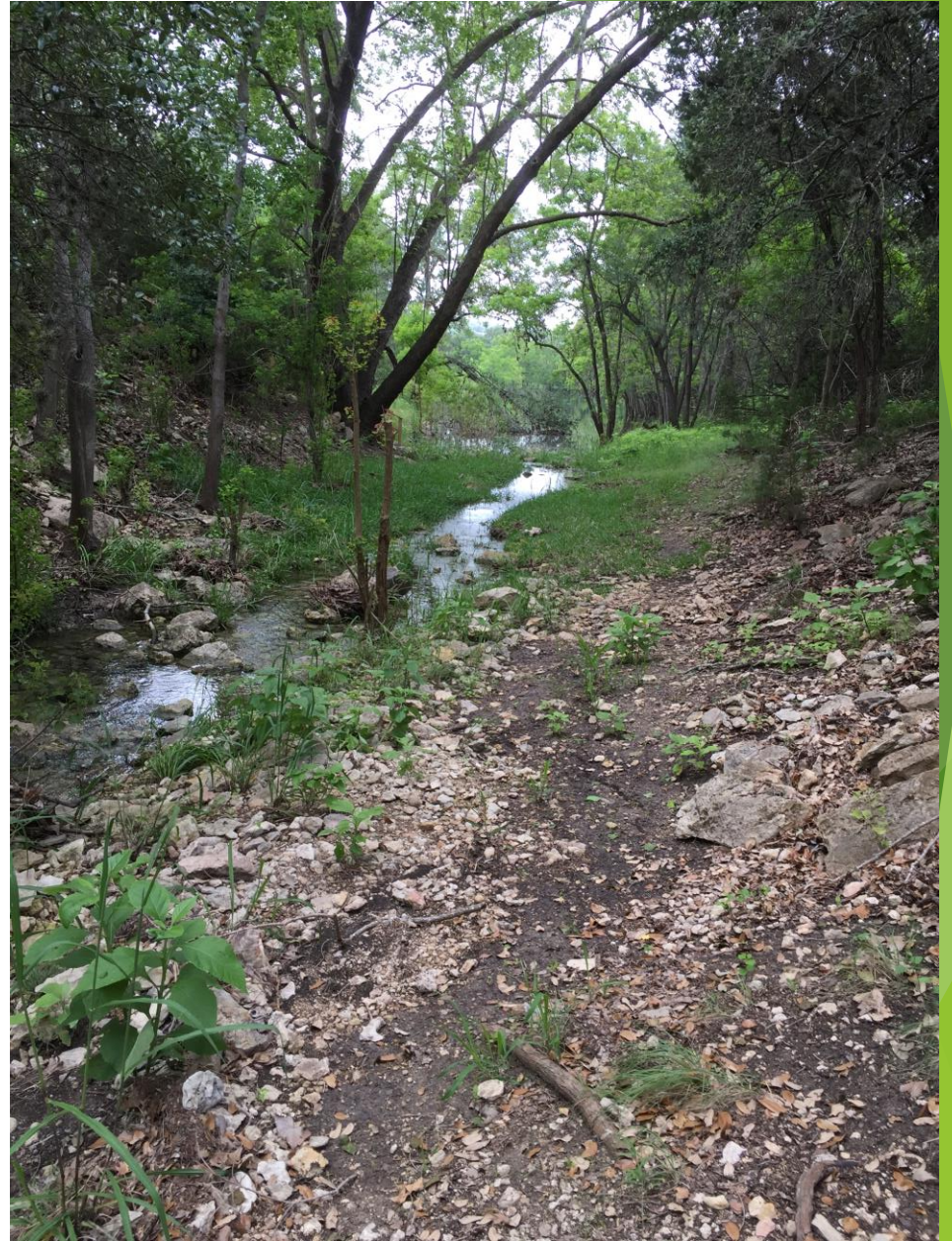
- ▶ **Common Enemy Rule:** When drainage water is regarded as an enemy common to all landowners and landowner can take any measure to protect property, regardless of consequences to other neighbors
- ▶ **Natural Flow or Civil Law Rule:** Each landowner is entitled to rely upon continuation of natural 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.



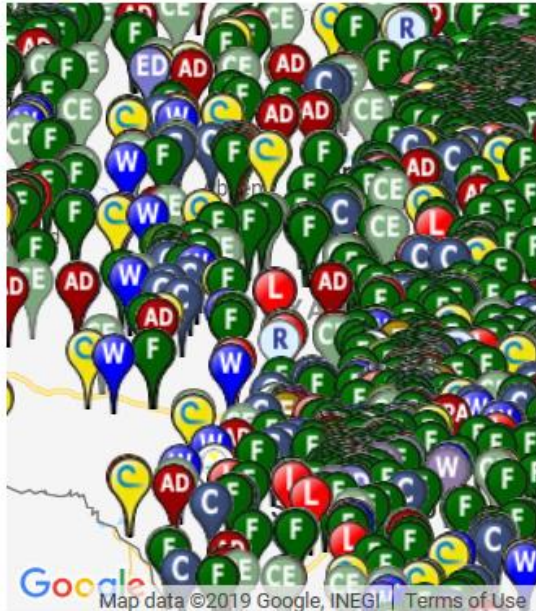


# Challenges

- ▶ 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.
  - ▶ Next plan is due 2021

## 2. What conservation measures are taking place?

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



Larger Map

### 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->

3. Who supplies your household water & where is its origin?

Canyon Lake Water Service Company

4. Track your water consumption and water conservation.

See the bill.



**Canyon Lake Water Service Company**

P.O. Box 1687  
 Canyon Lake, Texas 78133  
 Phone: 830-312-4600 Toll Free: 888-964-2166  
 Fax: 830-964-2779

Office Hours: 8:00 a.m. - 4:30 p.m.  
 Monday - Friday / Except Holidays

**WWW.CLWSC.COM**

*pd 5/12*

ACCOUNT NUMBER	CUSTOMER NAME		DATE BILL MAILED	DUE DATE
00012282	MARILYN J. MCFARLAND		04/29/19	05/15/19
RATE CLASS	SERVICE LOCATION		SERVICE PERIOD	CURRENT CHARGES
R1-5/8"	1496 CANYON LAKE DR		03/15/19 - 04/15/19	47.14
METER NUMBER	PREVIOUS READING	CURRENT READING	# OF DAYS	GALLONS USED
70911957	224200	225500	31	1300
DESCRIPTION				AMOUNT DUE
PREVIOUS BALANCE				45.93
PAYMENT AS OF 04/12/19				(45.93)
BALANCE FORWARD				0.00
WATER				48.29
FED TAX CHNG CREDIT				(2.98)
TCEQ				0.46
WATER PASS THROUGH				1.37
CURRENT CHARGES:				47.14

**MESSAGES:**

To ensure prompt payment processing, please use the enclosed envelope and coupon with your payment. Mailing your payment to the Canyon Lake office may delay your payment processing.

Monitoring your water bill for unusually high usage and frequently checking the water meter can be helpful tools for discovering leaks.

AFTER DUE DATE	BY DUE DATE
51.81	47.14

**DISCONNECT DATE**      5/26/2019

Payments received after 4:30 p.m. will post the next day!

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. These shapes are primarily located on the left and right sides of the frame, creating a modern, layered effect. The central area is a plain white space where the text is located.

# Real Life Texas Water Situations

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 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.