

# Chapter 6

## Rule of Capture: The Future

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As we look to the future of Texas' Rule of Capture, I would suggest that the 100-year old doctrine governing groundwater is better than any alternative proposed so far. The Rule is effectively counter-balanced by groundwater conservation districts, through authority given in Chapter 36 of the Water Code and Senate Bills 1 and 2, and should only be modified if benefits are clearly understood.

Local groundwater districts and the pair of senate bills should be given time to prove their effectiveness. Districts throughout the state are only now updating their operating rules to reflect the stronger mandate given them in Senate Bill 2 that was passed in 2001.

The real challenges to groundwater conservation districts are gathering sufficient science and having the intestinal fortitude to make the difficult decisions that must be made. Due to districts' unique hydrology, geology and economy these locally elected or appointed boards of directors must set some precedents with their rules and policies. In some cases no useful precedents exist.

At the turn of the last century, groundwater was said to be "mysterious and occult" because of lack of knowledge about the various aquifers' geology and hydrology. Certainly, we have learned a great deal about some of the state's aquifers, such as the Ogallala. However, in other areas of the state much less is known, adding to the regulators' dilemma.

District boards must constantly balance science and policy. It is difficult to know precisely how much information is needed to make good decisions on the allocation and regulation of various aquifers. Too little information usually leads to poor decisions.

Too much information costs money, time and resources – of staff and consultants. Even for districts with better funding it is not feasible or practical to collect every piece of information before making management decisions.

Fortunately, resources are available. They include the Texas Water Development Board, Texas Commission on Environmental Quality, Texas Railroad Commission, Texas Water Well Drillers Board, local drillers, other Districts in the region and professional consultants.

I would suggest that the issue most in need of attention today is whether a remedy should exist for damages inflicted on a neighbor by excessive well pumping in a common area. At the moment the only remedy is to drill another well and compete for the water.

Over the past few years the issue has come to the forefront as water marketers have stepped up efforts to transfer water from one area to another. In many parts of the state the real or perceived threat is that water resources will fail to meet both the long-term needs of the exporting area and the short-term needs of the receiving area.

Balancing these competing demands could require major changes in the Rule of Capture or perhaps simply minor changes to the authority of groundwater districts.

In the Panhandle Groundwater Conservation District we balance these competing demands with a Depletion Rule that identifies wells which are excessively pulling down the aquifer level. If the decline persists, we can set production caps, limit additional drilling, require well meters and require implementation of water conservation and drought contingency plans.

It has taken the Panhandle District 48 years to develop the appropriate rules and science to deal with the unique Ogallala Aquifer underlying our region. I feel that we have most of the tools needed to do a good job of conserving and regulating water for our people in the Texas Panhandle.

Younger districts can learn from the experience of their elders. Cooperation among districts can help newer ones assemble the right tools and become fully functional.

Texas water law, in general, has been reviewed every session of the Legislature since I have been involved with groundwater districts. In my crystal ball, I see some possible changes to The Rule of Capture. It most likely will be reviewed by the Legislature in the 2005 session.

I expect questions about whether our methods of regulating water are adequate for today and the future. Are groundwater districts fulfilling their mandate and is there a better method for Texas?

I believe that our system of groundwater management has worked as well as most others in the western United States. That success is all the more remarkable given Texas' vast diversity in geography, hydrology, climate and population as well as sheer size.

During the 14 years that I've worked in water resources management I've met countless counterparts and had a chance to evaluate various methods of groundwater management and allocation. All seek to balance the competing demands for an ever scarcer natural resource, regardless of what method is used.

In any case, we must ensure that the cure is better than the disease. I believe that the cure may already be in place, with only minor changes needed.