

Editor,

I must respond to the comments of Joshua Grimes on the position of Texas Farm Bureau regarding property rights of landowners in groundwater.

The Rule of Capture is more than a law protecting a landowner from being sued for draining his neighbor's well. The rule is a property right to drill and produce groundwater. The Texas Supreme Court established this rule in 1904, and said "*...the owner of land is the absolute owner of the soil and of percolating water, which is a part of, and not different from, the soil.*" Most members of the Texas Farm Bureau believe that landowners have had a property right in the groundwater beneath their land for over 100 years. In December, delegates from across the state voted overwhelmingly to support this property right at the Texas Farm Bureau Annual Meeting. As a TFB member, Mr. Grimes is in a small minority.

Landowners in this area have not been denied permits because there is still surplus water. That is changing fast. All districts here have now established a state mandated pumping cap called "Managed Available Groundwater." State law requires these districts to manage and permit groundwater based on this cap. It's certain that some groundwater districts are planning to deny permits when pumping reaches these caps.

Landowners voted to create groundwater conservation districts to protect their right to groundwater. Without these rights, districts can permit water utilities and water marketers and deny the right of other landowners once they reach the cap.

The rules of the Lost Pines Groundwater Conservation District are the real "Trojan Horse." Under these rules, someone can buy a ten-acre tract of land and drill a big well without having to lease or buy groundwater rights from surrounding landowners. Once that well is drilled, neighboring landowners can't drill a similar well. Spacing requirements won't allow it. Water marketers can drill next to you and pump the groundwater from under your land. You won't get any compensation or the right to drill your own well. The Post Oak Savannah Groundwater Conservation District requires water marketers to actually lease or buy groundwater rights from neighboring landowners to get a permit.

A vested right in the groundwater does not prevent a district from protecting the aquifer. It doesn't mean that a district must compensate landowners when they deny a permit. The law gives districts the authority to require permits, establish well spacing, and restrict pumping. These are all the tools needed to manage and protect the aquifer. Vesting these rights simply requires the district to treat landowners fairly. They must legally justify the restrictions placed on property owners to protect the aquifer, including denying a permit. Without a vested right, the landowner has no legal right to challenge the district.

Mr. Grimes claims that a vested right to the groundwater may lead to the condemnation or taxation of groundwater. This is nonsense. Land is already being condemned for groundwater. It's already taxed as part of your land, just like limestone, sand and gravel deposits.

Without a vested right, you cannot be compensated if your land is condemned for the groundwater. Under the Constitution, government does not have to pay for what you don't own. Without the property right, your land can be condemned for a well field and you will not receive a dime for the groundwater.

Anyone who would like to know more about this issue and see the answer to these and other issues that have been raised can visit www.groundwaterownership.com .

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