

TEXAS WATER: KNOW YOUR RIGHTS

You may have heard the old saying, “Whiskey is for drinking, but water is for fighting.” This might be especially true in Texas, where determining who has rights to water can seem complicated and as murky as the Brazos River after a heavy rain.

Water rights law in Texas is based on a mix of Spanish law dating back some 200 years to the colonial period, English common law and more recent homegrown innovations.

Your rights can vary depending on where you live, when you applied for those rights, how you plan to use the water and other factors. This may not be an issue for you if all your water comes through a tap and is purchased from your local utility or water supply organization. But if you require larger amounts of water for your ranch, farm, business, community or many other uses, here’s a primer on water rights.

Water rights law differs depending whether you want access to surface water, including some special cases, or if you want to use groundwater.



Surface water

Overall, surface water in Texas is owned by the state, for use by residents. If you want to use surface water, in most cases you must apply for approval from the state. The agency tasked with overseeing water rights is the Texas Commission on Environmental Quality (TCEQ). To learn more about applying with TCEQ for water, please [click here](#) to go to the agency’s Website.

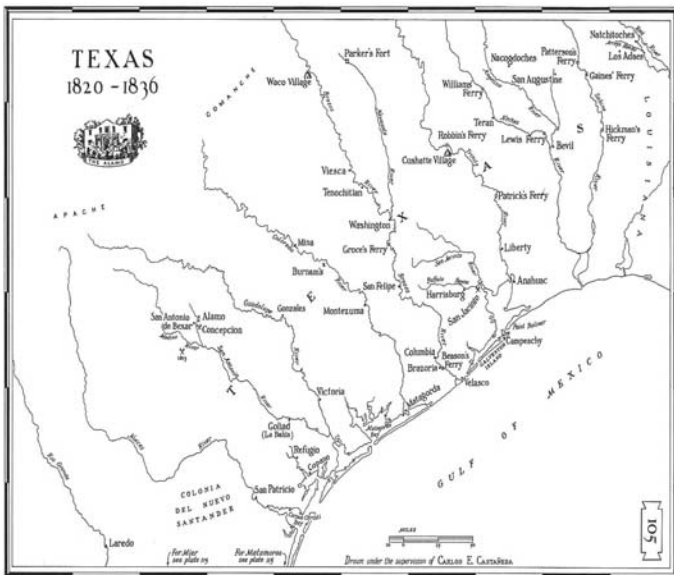
The Brazos River Authority long ago obtained permits for surface water and participated in reservoir construction within the Brazos river basin. The Authority contracts with individuals, municipalities, industry, and others to use this water. If you would like to learn more about Authority water contracts, please [click here](#).

Water rights define the terms and conditions under which water may be used. They can be rights to

impound water, meaning store it in a reservoir, or rights to divert water from a river at an established location. Long term rights can be bought, sold or leased.

Generally, perpetual surface water rights are based on the date they were established. That “priority date” determines your place in line to use the water. Normally, priority dates have little effect on the ability to obtain water; however, during drought and other periods of shortage, one’s priority date become’s very important. The rights do not guarantee water will always be available.

For instance, during times of drought a permit holder downriver with an earlier priority date, known as a senior right, can insist that their rights are fulfilled. During such times, all water right holders with priority dates more



recent (junior) than the senior right holder cannot use water under their rights until the needs of the senior right holder are met.

Special cases

Among the things the Spanish colonials and later English common law brought to Texas was the riparian doctrine. Under this concept, property owners have a right to draw water from a stream or water body that crosses or borders their land. They are allowed to take water for a reasonable use and are protected against unreasonable use by others. These rights allow only for smaller-scale use on the property, such as irrigation, and the water is not to be transferred to land that is not adjacent to the stream.

The Republic of Texas adopted the riparian doctrine in the mid-1800s, though within a few decades the Texas

state legislature endorsed a competing system where people could appropriate water rights from the state, much like our current permitting system. These competing approaches coexisted for more than 100 years, until they were combined into one system.

Today the vestiges of riparian doctrine can be seen in some exceptions to the priority date system for domestic or livestock use. Those living along a river or stream do not need a permit to draw water for livestock, garden or yard and other domestic uses. This does not include livestock or gardening for commercial purposes, which do require a permit from the state. Additionally, impoundments for domestic and livestock use that hold less than 200 acre-feet of water are exempt from permitting requirements. An acre-foot is enough water to cover one acre of land with one foot of water. It equals 325,851 gallons.

Texas law also has established exemptions for emergency and wildlife management uses. All of these exempt uses come first even before those with senior priority dates.

Groundwater

Texas treatment of groundwater rights has its roots in English common law in a doctrine known as the “rule of capture.” This policy mostly gave landowners a free hand in use of water beneath their property. A landowner could draw as much water as wanted, with little consideration of other groundwater users, as long as the water isn’t purposefully wasted and the withdrawal doesn’t cause subsidence, or sinking, of nearby land.



However, additional controls were placed on groundwater use in the late 1940s when the Texas Legislature authorized the creation of groundwater conservation districts. These locally governed entities have limited power over groundwater, primarily in the spacing of wells, education and planning, prohibiting waste and permitting well drilling. Texas Senate Bill 1, passed in 1997, labeled these districts as the preferred way of managing Texas groundwater.

According to the Texas Water Development Board, as of 2011, Texas has 96 groundwater districts approved by voters and one waiting for a vote. To learn more about groundwater conservation districts and whether you are within one, please click here.

As Texas population continues to grow, access to the state’s finite amount of water will become more and more critical. Understanding your rights is a good first step to knowing how you can get access to water when you need it. 