

Overview of Groundwater Regulation in Texas

Basic Oklahoma Water Law Seminar
Moore-Norman Technology Center
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presented by
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EDUCATION

- B.A. with Honors in Economics, University of Texas at Austin – 1988
- J.D., University of Texas at Austin – 1992
- Admitted to the Texas Bar – November 1992

EMPLOYMENT

- Kemp Smith LLP (September 1992 – present)
- Partner in Kemp Smith's Environmental, Administrative and Public Law Department. Responsibilities include counseling and defending both public sector and private sector clients on a wide array of issues, including groundwater and surface water regulation, solid waste, permitting, open records and open meetings issues, governmental contracting and procurement, legislative affairs, desalination, dam safety, utilization of reclaimed water, Endangered Species Act compliance and habitat conservation plan development, elections law, weather modification, APA rulemaking, and state and federal hazardous substance regulation.

THE RULE OF CAPTURE

- Pursuant to the rule of capture, a landowner:
 - need not obtain a permit or other permission to drill and pump groundwater;
 - may pump as much water as he can beneficially use;
 - may even pump so much water that it causes his neighbor's wells to go dry;
 - may use or sell the water produced for use anywhere feasible (transfers).
 - Landowner “owns” the water beneath his land?

GROUNDWATER CONSERVATION DISTRICTS

➤ **Tex. Water Code § 36.0015. Purpose:**

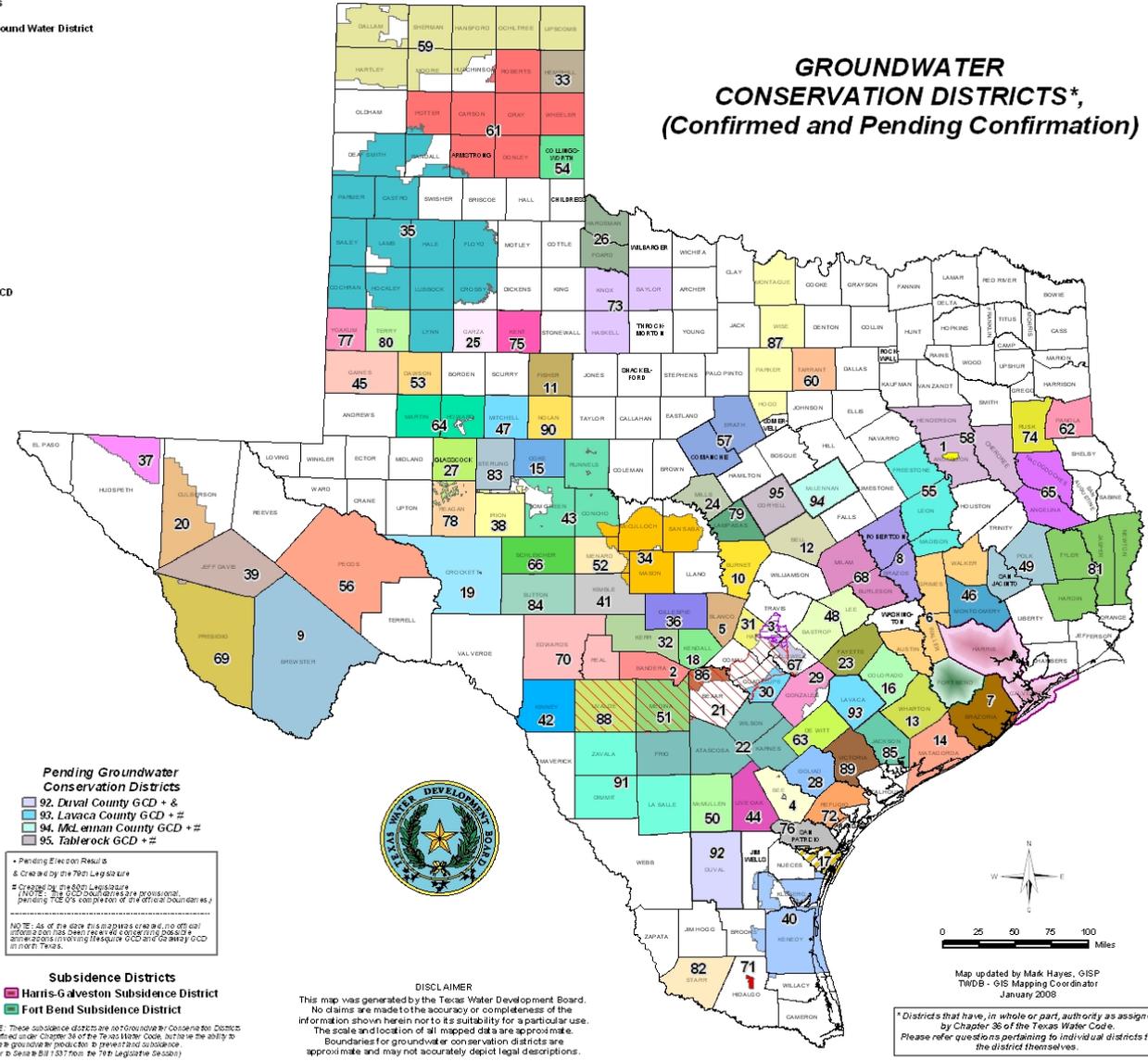
**“Groundwater conservation districts . . .
. are the state’s preferred method of
groundwater management . . .”**

Groundwater Districts are empowered to:

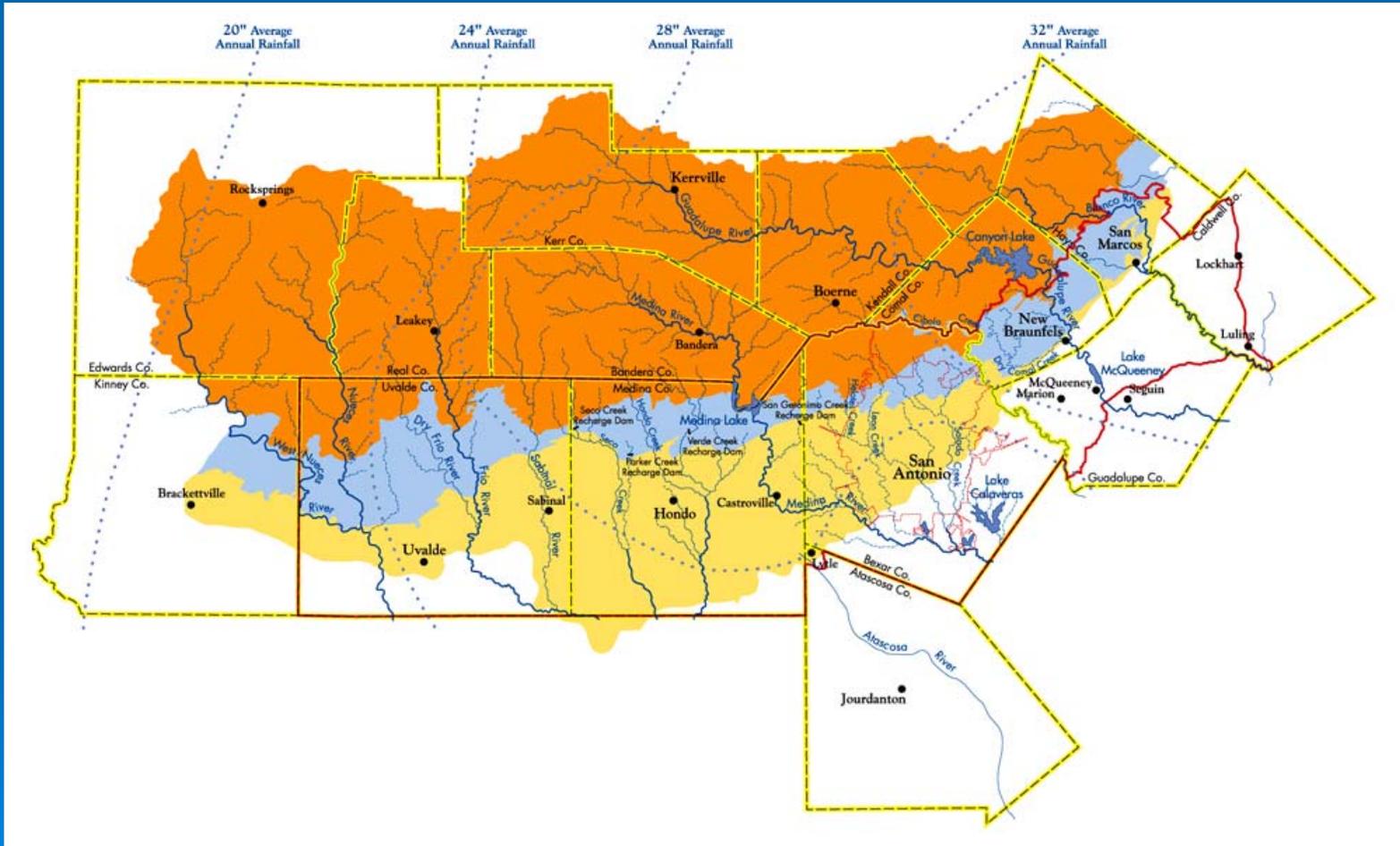
- **make and enforce rules to conserve, protect, preserve and prevent the waste of groundwater;**
- **regulate the spacing of wells;**
- **regulate the amount of production from wells;**
- **require permits for drilling, equipping or completing wells (certain wells are exempt); and**
- **require permits for transferring (exporting) water out of the district.**

- Confirmed Groundwater Conservation Districts**
1. Anderson County UWCD
 2. Bandera County River Authority & Ground Water District
 3. Barton Springs Edwards Aquifer CD
 4. Bee GCD
 5. Blanco-Pedernales GCD
 6. Bluebonnet GCD
 7. Brazoria County GCD
 8. Brazos Valley GCD
 9. Brewster County GCD
 10. Central Texas GCD
 11. Clear Fork GCD
 12. Clearwater UWCD
 13. Coastal Bend GCD
 14. Coastal Plains GCD
 15. Coke County UWCD
 16. Colorado County GCD
 17. Corpus Christi ASRCD
 18. Cow Creek GCD
 19. Crockett County GCD
 20. Culberson County GCD
 21. Edwards Aquifer Authority
 22. Evergreen UWCD
 23. Fayette County GCD
 24. Fox Crossing Water District
 25. Garza County Underground and FWCD
 26. Gateway GCD
 27. Glasscock GCD
 28. Goliad County GCD
 29. Gonzales County UWCD
 30. Guadalupe County GCD
 31. Hays Trinity GCD
 32. Headwaters GCD
 33. Hemphill County UWCD
 34. Hickory UWCD No.1
 35. High Plains UWCD No.1
 36. Hill Country UWCD
 37. Hudspeth County UWCD No.1
 38. Irion County WCD
 39. Jeff Davis County UWCD
 40. Kennedy County GCD
 41. Kinble County GCD
 42. Kinney County GCD
 43. Lipan-Kickapoo WCD
 44. Live Oak UWCD
 45. Llano Estacado UWCD
 46. Lone Star GCD
 47. Lone Wolf GCD
 48. Lost Pines GCD
 49. Lower Trinity GCD
 50. McMullen GCD
 51. Medina County GCD
 52. Menard County UWCD
 53. Mesa UWCD
 54. Mesquite GCD
 55. Mid-East Texas GCD
 56. Middle Pecos GCD
 57. Middle Trinity GCD
 58. Heches & Trinity Valleys GCD
 59. North Plains GCD
 60. Northern Trinity GCD
 61. Panhandle GCD
 62. Panola County GCD
 63. Pecan Valley GCD
 64. Permian Basin UWCD
 65. Pineywoods GCD
 66. Plateau UWCD and Supply District
 67. Plum Creek CD
 68. Post Oak Savannah GCD
 69. Presidio County UWCD
 70. Real-Edwards C and R District
 71. Red Sands GCD
 72. Refugio GCD
 73. Rolling Plains GCD
 74. Rusk County GCD
 75. Salt Fork UWCD
 76. San Patricio County GCD
 77. Sandy Land UWCD
 78. Santa Rita UWCD
 79. Saratoga UWCD
 80. South Plains UWCD
 81. Southeast Texas GCD
 82. Starr County GCD
 83. Sterling County UWCD
 84. Sutton County UWCD
 85. Texana GCD
 86. Trinity Glen Rose GCD
 87. Upper Trinity GCD
 88. Uvalde County UWCD
 89. Victoria County GCD
 90. Wes-Tex GCD
 91. Wintergarden GCD
- Pending Groundwater Conservation Districts**
- 92. Duval County GCD + #
 - 93. Lavaca County GCD + #
 - 94. McLennan County GCD + #
 - 95. Taylor County GCD + #
- Subsidence Districts**
- Harris-Galveston Subsidence District
 - Fort Bend Subsidence District
- NOTE: These subsidence districts are not controlled by Conservation Districts as defined under Chapter 36 of the Texas Water Code, but do have the ability to require groundwater production to prevent subsidence. (Public Law 103-77 from the 79th Legislature Session)

GROUNDWATER CONSERVATION DISTRICTS*, (Confirmed and Pending Confirmation)



EAA Boundaries



ESA Litigation

- *Sierra Club v. Lujan* (1991)- minimum springflows
- *Sierra Club v. Glickman* (1995) – USDA programs
- *Sierra Club v. Babbitt* (1996) – fish hatchery
- *Sierra Club v. San Antonio* (1996) – takings by pumpers
- *Shields v. Babbitt* (1998) – Commerce Clause ESA challenge
- *Center for Biological Diversity v. Norton* (2003) – critical habitat

EAA Act Groundwater Rights

- Pre-June 28, 1996 - Rule of Capture
- Post-June 28, 1996 – Statutory-Based Permit System

Major Objectives of the EAA Act

- Transition from the common law
- Provide for regulation/management, incl. drought mgmt
- Require groundwater rights to be “adjudicated”
- Diversify water supplies; create a water market
- Assign ESA compliance responsibility to the EAA
- Result in a level of protection for surface water systems
- Prohibit transfers (export) of Aquifer water

EAA Act Litigation

- *Medina Cty UWCD v. Barshop* (1995) – facial challenge
- *Wells v. EAA* (1997) - APA rules challenge
- *Living Waters v. EAA* (1998) - APA rules challenge
- *Bragg v. EAA* (1998) – property rights challenge
- *Dorazio v. EAA* (1999) – exempt well takings challenge
- *Herrmann v. Lindsey* (1999) – irrigation rights transfer
- *Chemical Lime v. EAA* (2002) – late filer; takings

EAA Act Litigation

- *Day v. EAA* (fed) (2003) – kitchen sink; takings
- *Day v. EAA* (state) (2004) – kitchen sink; takings
- *In re SCTWAC* (TCEQ) (2004) – junior/senior rights
- *Elm Creek Homeowners v. EAA* (2004) – late filer
- *Peavy Ranch v. EAA* (2004) – due process challenge
- *777 Operating Co. v. EAA* (2005) – no historical use
- *Sanchez v. Brown* (2005) – transfer
- *In re EAA* (2006) – standard of review on appeal

Questions?

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