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“Of Urgent Concern”: What Prompted House Bill 162, the Groundwater Conservation Act of 1949

Charles Porter*

“My campaign platform was pretty safe... We were going to take action to help conserve our water, but I was against any legislation that would take control away from individual property owners... I was not going to let the state tell a farmer how much water he could pump out of the ground.”

Dolph Briscoe, Jr.

Dolph Briscoe, Jr., Governor of Texas from 1973-1979, clearly remembered, even in his mid-80s, that one of the key motivations for his entrance into politics in 1949 was to keep the control of groundwater in the hands of the farmer-landowner. Briscoe’s position, typical of most farmers’ positions then and today in Texas, demonstrated the absolute necessity of groundwater to the farmers’ business, culture, and overall way of life. Surface water is seen, flows in a watercourse across the land, and is owned by the state of Texas. But groundwater is hidden underground and owned by the landowner. How is the illusive always-moving groundwater defined under Texas law? According to water law attorneys Douglas G. Caroom and Susan M. Maxwell, “Groundwater or underground water is water occurring under the surface of the land. The term “groundwater” can include percolating water or artesian water, but not the underflow of a surface water river or stream or the underground flow of water in confined channels. Groundwater is presumed to be percolating, unless proven otherwise.” “Groundwater” in Texas is presumed to be “percolating” as well per the Texas Water Code and case law. The Texas Water Development Board claims “Groundwater is a major source of water in Texas, providing about 60 percent of the 16.1 million acre-feet of water used in the state.” The vast majority of the total groundwater used in Texas, some 60-70 percent, is used for agricultural irrigation; without groundwater few crops can be produced west of the IH35 corridor which roughly runs in a northerly direction, beginning at the Rio Grande River in Laredo through San Antonio, Austin, Waco, Dallas, and entering Oklahoma at Sherman, Texas on its way to Minnesota. One thing is certain in Texas life throughout our history—farmers and ranchers want ownership and control of their groundwater.

In keeping with that feeling, a most common and reliably universal comment that is consistently heard in rural Texas is “Keep the state out

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of my business [especially when it comes to *my* water].” The argument over who owned groundwater in Texas continued for over 170 years in some circles until Senator Troy Fraser authored Senate Bill 332 in 2011 that once and for all (for the time being) clarified that groundwater is owned by the surface landowner. Yet, water experts and professionals still await clear directions and rulings from important and highly significant groundwater cases pending, amazingly, since the late 1990s. Groundwater policy remains the central issue in water debates across Texas today. One of the more prominent examples this year can be found in sleepy, Wimberley, Texas. A private provider, Electro Purification, Inc., leased millions of gallons of groundwater owned by landowners in the area and proposed to sell and deliver the water to the thirsty City of Buda and the Goforth Special Utility District in Kyle. The other landowners in Wimberley not included in the proposed transaction expressed serious concerns that their water wells would be depleted by the private transaction. Anyone who observed the public reaction to the groundwater disputes in Wimberley could not help but notice the overt enthusiasm of the general public, their loudly voiced concerns, and the astounding public turnout for “town hall” meetings on the matter.

Seventy years has passed since the 1949 Groundwater Conservation Act authorized the formation of local “regulatory” agencies to manage groundwater. Yet the early development of groundwater policy in Texas remains not only interesting to examine, but also highly significant to twenty-first century citizens as some of the key issues remain in debate, at times in hot debate. The Texas Legislature created the opportunity for local formation of Groundwater Conservation Districts (GCDs) in 1949 and successive legislatures have continued to confirm locally managed GCDs as the preferred method of groundwater management in the state. Groundwater in some areas in Texas today is managed by locally formed GCDs. Yet, only one hundred GCDs exist today while many areas of the state have chosen to remain without any groundwater regulations.

But in the 1930s and 1940s an idea was growing in Austin to take ownership of groundwater from the private landowner and give it to the state government. The idea of state ownership of groundwater scared the irrigators across the state, especially those based in the Panhandle. A grassroots movement of Panhandle farmers generated the 1949 Groundwater Conservation Act known also as House Bill (HB) 162. Whose idea was it to propose HB 162 in 1949? Who wrote the initial version of the bill? Did an event or change in public attitude prompt the new policy?

A historical perspective informs today’s public policymakers by revealing the sometimes lost-to-time progression and evolution of current policy. The Spanish first established water policy in Texas in the early eighteenth century in Villa San Fernando, today’s San Antonio. Respect for water was bred into the bone of the Spaniard. In Spanish Colonial Texas, surface water was owned by the King of Spain and held in trust for the people.
The Texas Water Code today follows almost identical language; surface water is owned by the state and held in trust for its people. Groundwater in Spanish Colonial Texas was owned by the landowner as it is in Texas today. However, in the Spanish Colonial days of the late seventeenth century to the early nineteenth century, there were so few settlers in Texas that groundwater management was never an issue; with the exception of the Wild Horse Desert region between the Nueces River and the Rio Grande, there was generally adequate surface water where the settlers lived and farmed. Spanish water law policies had developed over hundreds of years and incorporated parts of Roman law and Moorish law along with lessons learned on the dry Iberian Peninsula. As the Spanish in Texas were replaced by the Republic of Mexico followed by the Republic of Texas and eventually the United States of America, each successive government built their water law on Spanish roots and officially honored the existing water rights of each prior group of people. For example, in 1840 when the Republic of Texas wrote its constitution, all prior water rights held in Texas under Spanish and Republic of Mexico rule were protected. The same occurred again when Texas joined the United States in 1845 and again in 1849 in the Treaty of Guadalupe Hidalgo resulting from the Mexican War. Following the history of water policy development in Texas continues to underlie many of the state’s court and public policy decisions.

Reference is still made in the courts and law schools of Texas to historians on water such as ancient Rome’s Frontius, to the writings of water historian/scholars such as Henry Philip Farnham’s 1904 three volume water law textbook *The Law of Waters and Water Rights*, and Michael C. Meyer’s 1996 *Water in the Hispanic Southwest*, among others. The historiography of water is much the tale of people struggling to find the best choice in water policies for their culture at a specific point in time. The process of making water policy has changed little today—it is still a product of choices made by people.

Current public policy ideally should reflect the will of the people of Texas, yet that will changes from time to time as we all well know. Current policy concepts are first realized through someone’s idea, then put into the form of a proposal, officially proposed, then debated, enacted, adjudicated, adjusted, sometimes adjudicated again, and finally adapted over time to fit the “changing face” of the issues, the needs, and the political will of each generation. Ultimately the story of the beginning of any policy comes down to one or a handful of people, their concerns sometimes to the level of fears, and human relationships.

Many experts feel Texas today has an antiquated groundwater law and that private ownership of groundwater by the landowner is a system doomed to failure. But since the earliest beginnings of Texas, groundwater has been owned by the surface landowner. The ownership of groundwater by the surface landowner in Texas became regular law with the passage of SB 332 in 2011, and was further confirmed by the Texas Supreme Court.
in 2012 in the case of *The Edwards Aquifer Authority and the State of Texas v. Burrell Day and Joel McDaniel.* In the first sentence of the *Day* ruling, Texas Supreme Court Justice Nathan Hecht wrote, “We decide in this case whether land ownership includes an interest in groundwater in place that cannot be taken for public use without adequate compensation guaranteed by article 1, section 17 (a) of the Texas Constitution. We hold that it does.” The reason most pointed to that Texas groundwater law is outdated is due to the “rule of capture” or the idea in Texas water law that allows a neighbor to withdraw unlimited groundwater from a common pool shared by his neighbor without any liability. The “rule of capture” entered Texas water law in the 1904 Texas Supreme Court case *Houston & Texas Central Railway Co. v. East.* The railroad opened a repair yard around the corner from Mr. East’s home in Denison, Texas, drilled a sixty foot deep water well, and began to pump 25,000 gallons of water a day. Consequently, Mr. East’s thirty foot deep well dried up, but the court ruled the railroad owed Mr. East nothing in damages and the legal concept of “the rule of capture” began its long life in Texas water law. Based upon this controversial ruling, Texas has followed the concept of the rule of capture for groundwater, or “he who has the biggest pump gets the water,” confirmed yet again by the Texas Supreme Court in the 1996 case *Sipriano v. Great Spring Waters of America [Ozarka].* The court ruled in favor of the large company, but with wording that included a less than subtle warning to the Legislature: “we conclude the sweeping change to Texas groundwater law Sipriano [the plaintiff in the case] urges this Court to make is not appropriate at this time [emphasis added], we affirm the Court of Appeal’s judgment.”

The controversy created by the obscure East case from a time when railroads “ruled the roost” in most of the country’s economy is still alive and remains a throbbing pain to many in our state. The rule of capture still threatens landowners in areas of Texas in which no GCD exists. The rule of capture is subject to four limitations today. The four limitations to the landowners’ right to pump an unlimited amount of groundwater under the rule of capture are that “A landowner’s pumping of groundwater cannot maliciously be done to harm a neighbor; […] cannot be done in a wasteful manner; […] cannot be done in a negligent manner which is the proximate cause of a neighboring property’s subsidence,” and cannot violate “the rules and regulations of a GCD with jurisdiction over the land in question if a district exists in the area.”

Another aspect leading to the thought that Texas’ water law system is antiquated is the lack of integrated water management by the state agencies. Surface water in Texas is owned by the state and regulated by the Texas Commission on Environmental Quality (TCEQ). Groundwater is owned by the landowner and is regulated by the local groundwater conservation districts, in areas where one exists. Still today groundwater in almost 30 percent of the state is not under the regulatory authority of a GCD. The TCEQ has no jurisdiction over groundwater in Texas, and the existing
local districts have no state oversight; they act independently. Although surface and groundwater relate conjunctively, or joined together, combined so that changes in one directly results in changes to the other, Texas water management policies ignore nature’s hydrological cycle.  

There has been little political movement in recent times to change the groundwater management policies in Texas to any great extent and no support at all for the state to take ownership of groundwater out of the private domain. But in the 1930s and 1940s before HB 162 was enacted in 1949, there were a number of efforts made to bring groundwater under the ownership and complete regulation of the state.

**A World War II Era Movement to Declare State Ownership of Groundwater**

A plethora of reports in the 1930s warned of the ongoing and predicted severe decline in groundwater supplies in the High Plains of Texas. The Senior Hydraulic Engineer of the U.S. Geological Survey Walter N. White, reported to Austin in 1938 that “Practically everywhere that large supplies of water can be obtained from wells the popular belief has developed that the water is inexhaustible. This belief in many parts of the United States has led to disastrous over-development.” White further observed that “in parts of the High Plains the wells are spaced too closely and the present pumpage probably exceeds the limits of safety.”

The suffering endured by the people of north Texas during the events of the Great Depression and the Dust Bowl era was a catalyst to thinking about conservation of water resources. Due to the heavy concentration of irrigation wells in areas of the High Plains throughout the 1930s and 1940s, many experts noted that the declines in groundwater levels were “astounding.” John T. Thompson found that “Bills to regulate that resource [groundwater] were introduced in 1937, 1939, 1941, and 1947.” It is fair to say that most Texans at the time felt water underground was their private property and were completely uninterested in any regulations. According to a court ruling in *Texas Co. v. Burkett*, 117 Tex. 16, 296 S.W. 273 (1927), if the groundwater in question was “percolating” then it was the “exclusive property of the owner of the surface.” A judicial presumption today that has existed since this 1927 ruling is that “all [emphasis added] water under the ground is percolating.”

In June of 1938, The Texas Planning Board published a strong report prepared by a sub-committee of the Texas Planning Board’s Water Resources Committee titled “The Need for Administrative Control over Ground Water in Texas.” The introduction indicates the State of Texas’ growing concern for groundwater overdevelopment. The committee recognized that in many areas the ground water supply had been “overtaxed” and that there was an “urgent need […] to protect the supply from further withdrawals.” Other parts of the state had not yet “overtaxed” their ground
Groundwater Conservation Act

water supplies but needed to “protect against lowering water tables, which is the inevitable consequence of overdevelopment.” Over the next decade, urban interests across Texas, especially in the High Plains, called more and more for legislation out of Austin “to protect, control, and allocate the withdrawal of ground water.” The handwriting was beginning to show on the wall—groundwater regulation was coming in Texas and likely would be administered in Austin. By 1940, the movement for state control of groundwater was beginning to gain traction and momentum. The political implications were obvious for farmers across the state—powerful growing cities sought groundwater from their rural neighbors. The Panhandle agribusiness interests especially felt threatened as they were all but wholly dependent upon groundwater for irrigation—without irrigation cotton farming would be doomed. If the state owned the groundwater, urban interests thought the considerable and patient clout held by major cities could be exercised to gain an edge in acquisition of water over rural interests. Today the battle over water between urban and rural interests continues to grow with intensity as indicated in several groundwater disputes around the state, in Fort Stockton (Jeff Williams, rancher, trying to transfer his groundwater to Midland/Odessa), in Wimberley (Électro Purification Inc. trying to transfer leased groundwater to the City of Buda), and with the San Antonio Water System’s Vista Ridge Pipeline project to acquire groundwater from Burleson and Lee Counties.

An example of the gathering winds of change in groundwater control around World War II can be found in an obscure and unheralded response to an inquiry made to Texas Attorney General Gerald Mann on May 21, 1940, by state health officer Dr. George W. Cox. It focuses on the City of Temple’s possible violation of pollution of sanitary sewage into underground waters and includes a startling yet thought-provoking opinion by the Attorney General, likely written by young Assistant Attorney General Hugh Q. Buck. According to one of the “Deans” of Texas water history, Attorney Timothy L. Brown, “[Texas] Attorney General Gerald Mann took the position that all groundwater in known sands or reservoirs belongs to the State and is not susceptible of private ownership.” General Mann’s August 22, 1940, nine-page opinion letter is known as Attorney General Opinion No. 0-2402. General Mann attached another Walter N. White July 23, 1940, report titled “The Movement of Underground Water in Texas” in support of his position. According to Brown, “The Attorney General opined: ‘...we find the public need for reliance upon stratum water in Texas is so great, as to impel, we believe, the courts to declare it to bear a public interest not subject to private ownership any more than our surface or subsurface streams [...]. In answer to your inquiry, therefore, underground water courses and bodies of water, including strata, but not mere percolating waters, are public bodies of water [emphasis added].” The opinion ended with a thought-provoking sentence, “If such waters are found to be diffused percolating waters and therefore subject to private
ownership it would follow that the public would have no property interest in them.” How many farmers, ranchers, and citizens in Texas (other than attorneys paying very close attention to attorney general opinions) knew and became alarmed about this letter is unknown and likely could prove to be few. However, the letter is an indication that at least some powerful leaders in Texas may have felt that groundwater was or should be owned by the state according to legal theory, possibly personal wishes, and/or other unknown agendas.

Regardless of whether or not most Texans knew about this 1940 Attorney General’s opinion, there can be no doubt many people and groups knew and were concerned about a bill filed in 1947 by a freshman member of the House of Representatives from El Paso, William S. Jameson. Jameson was elected to two terms in the House of Representatives, serving in the 50th and 51st sessions, resigning after the 51st session on September 19, 1949. He introduced House Bill 606 on March 11, 1947, in the 50th session. The bill began with this phrase, likely highly alarming to some:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: SECTION 1. The waters of underground, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries are hereby declared to be public waters [emphasis added], to belong to the public and to be subject to appropriation for beneficial use, and to be a natural resource subject to and requiring conservation and development in accordance with the provisions of Section 59a of Article XVI of the Constitution of Texas.

Rural newspapers picked up this story almost as soon as it was filed, especially those in communities dependent upon irrigation to grow cotton or other crops. For example, the Hereford Brand, a newspaper in Hereford, Texas, then in its 47th year, on Thursday, March 13, 1947, scarcely one day after the bill’s filing, displayed in the middle of the front page under the headline “New Irrigation Bill is Introduced.” The article announced that the bill to “put all underground water in Texas under state control” would face opposition “from High Plains irrigation interests.” These interests had waged a “powerful protest” the month before to kill a similar proposal. South Plains legislators declared their intention to “defeat any such bill which may be introduced to the Legislature.”

Jameson’s bill was referred to the House State Affairs Committee. By April 1, the bill was reported unfavorably and on April 2, the bill was sent to the “Dead Box,” having survived for less than a month, in fact only a scant twenty days. Sadly, the minutes of the committee have been lost to time not being in either the Legislative Reference Library or the State Archives. On August 29, 1947, after the 50th legislative session ended, Governor Beauford Jester of Corsicana, Texas, elected in 1946 and reelected again in 1948,
spoke at a meeting held by the water laws committee of the Texas Water Conservation Association (TWCA) in Austin. Governor Jester was quoted in the Dallas Morning News on August 30, 1947, as telling the audience:

Texas has only recently awakened to the necessity and importance of conserving its water supply. Not only are rural areas finding that their water table is constantly lowering, but cities have found that industry cannot locate in their communities, due to a lack of a plentiful supply of water. Our water laws are not only inadequate, but are conflicting and I pledge the full power of the Governor’s office in a campaign to guarantee a good supply of water.16

The purpose of the TWCA conference was to make plans to recodify the state water laws and offer them to the next Legislature for passage. According to Dallas Morning News reporter Ray Osborne, the TWCA would raise a fund of $25,000 to retain the services of attorneys to rewrite the laws. Osborne went on to say that both Governor Jester and his Attorney General, Price Daniel (future governor of Texas), had pledged the “power and support” of their offices, arguably the center of political power in Texas government at the time, in the campaign for re-codifying the water laws.

The article continued on with some prescient comments from other stakeholders. John W. Carpenter, organizer and president of the Trinity River Conservation Association, “declared Texas has sufficient water, if properly handled, to take care of the needs of not the nearly 7,000,000 people now living in the state, but 50,000,000.”17 Carpenter continued, “We have plenty of water available for industry and agriculture, but most of it runs off into the Gulf. I personally know of a great number of industries which wanted to locate in Texas but which were prevented from doing so because they could not get water.”18 The “great number” was not enumerated by Carpenter, but the apparent overall feeling of this TWCA conference seems to be that water policies and laws were inadequate enough that the industrial growth of Texas was suffering. Thus, the irrigators of the High Plains of Texas along with other statewide farm and ranch interests felt threatened not only by Jameson’s idea of groundwater ownership entering into the public domain, but also by a “pledge” made by two of the state’s most powerful leaders, Jester and Daniel, to re-codify the water laws.

The state continued to study the issue to meet Governor Jester’s public announcements, and according to Green, “A report issued by the Texas Board of Water Engineers in 1949 warned that ‘if present trends of pumping and water-level decline continue, those areas [under pump irrigation] and other parts of the irrigated region will be seriously affected within 5 to 10 years.’”19 Something was bound to happen soon on groundwater regulatory control—and maybe even ownership.

Irrigation interests began to organize at the county level in opposition to state control of groundwater. Green wrote, “The Lamb County Wa-
ter Conservation Association was formed on November 21[,] 1946 […] A regional meeting composed of delegates from about fourteen county organizations met at Plainview on December 28, 1946, and organized the High Plains Water Conservation and Users Association.” 40 From this point forward for many years, attorney Arthur P. Duggan, Jr. and others from Lamb County41 would be influential in Texas groundwater issues and regulation, while at all times, protecting ownership of groundwater by the surface landowner and making sure regulatory management of groundwater remained at the local level only.42 By 1946 regulation and ownership of groundwater had become a priority target for urban and conservation groups. One of the arguments used in favor of state control was the amount of waste in the High Plains’ irrigation systems. Long time General Manager of the Mesa Underground Water Conservation District Harvey Everheart shared his remembrances of a key argument for regulatory control over groundwater in the late 1940s alleged “waste” of water in irrigation systems. According to Everheart, “The saying was that you could paddle a canoe in the overflow water in the irrigation ditches from Amarillo all the way down to Lubbock.”43

Copious amounts of water running in ditches alongside the road adjacent to irrigation operations would be obvious to any traveler and photos thereof would make a strong case for “waste.” According to Green, “By the summer of 1948 the Texas Water Conservation Association had drawn up a lengthy bill of some thirty-three typed sheets of legal-size paper. The bill would have placed ground water under the doctrine of correlative rights rather than absolute ownership.”44 An even more controversial provision of the TWCA bill would require farmers “to make application for all new irrigation wells through the office of the state engineer who could grant or deny the applications. Moreover, the bill established priority of water rights in favor of municipal and manufacturers’ needs. Irrigation was placed at the bottom of the priority list.”45 It’s not hard to imagine how the irrigators and other farmers and ranchers responded to the TWCA proposal—they were strongly against it.

Arthur P. Duggan, Jr. represented the pro-irrigation High Plains Water Conservation and Users Association and eventually helped work out a compromise bill with the TWCA. In 1949, House Bill 162, sponsored by Representative I. B. Holt, a member of the House from Olton, Texas and former judge from Lamb County, was filed for consideration in the 51st Legislative session.

Duggan had seen the value of irrigation in his youth. His father, Arthur P. Duggan, Sr., served as sales manager for Littlefield Lands, which was owned by Major George W. Littlefield. Duggan, Sr., sold lands to settlers, developed the town of Littlefield where he served as president of the city’s school board, the first bank, and the chamber of commerce.46 As Littlefield expanded his holdings, his vision became apparent.

In a series of interviews in 1887 in the Dallas News, Littlefield said,
“Here in Texas we have the agricultural lands in abundance and grass lands right alongside them […]. Many of our ranchmen have good lands that will produce rich feed for cattle. Hold it for the day when thrifty, wide awake ranchers will see the necessity of growing on it such crops as will help to keep and fatten his stock.” The only real thing needed to make this happen was water, and soon the engine-driven water well drilling machine would arrive along with strong submersible pumps to glean water from depths in the Ogallala Aquifer in ways Littlefield in 1887 could only dream of. Littlefield Lands changed the use of the land from open range to farmland, eventually to become, with the addition of irrigation water, one of the most prolific cotton producing areas in the United States. Extraction of groundwater was the catalyst of business decision-based planned land use change.

I. B. “Doc” Holt, known as Judge Holt from his service as County Judge of Lamb County, surely was close to the powerful Arthur Duggan, Jr. Little is known of Judge Holt in Austin but more should be shared because of his significance in authoring and negotiating the passage of the bill that has been the base policy for groundwater management in Texas for over seventy-five years; the Legislative Reference Library to this day has only his birthdate, May, 4, 1900—they do not have the date of his death. As chosen author of the HB 162, Judge Holt clearly had to be a respected leader of a significant area of the Panhandle, the eight counties of Parmer, Castro, Swisher, Briscoe, Bailey, Lamb, Hale, and Floyd. These counties represented irrigation interests.

Duggan Jr. along with Representative Holt drafted the original HB 162. The bill was filed February 3, 1949. HB 162 reflected the majority political will of the people of Texas in 1949, that is, to give local people, not the state government in Austin, the right to choose regulation of their groundwater. This political will remains unchanged in 2017 even though thirty-four regular and numerous special sessions of the Texas Legislature have passed by. The final legislatively endorsed version of the bill set up the broad framework of local option for the creation and organization of underground water conservation districts to provide for the conservation, preservation, protection, recharging and the prevention of waste of underground water. The bill outlined the authorized powers, functions and limitations of such districts giving each individual district the choice to fund its operations to either limited ad valorem taxation or fees or both. The bill also defined the local choices of the standards of governance such as the organizational structure of the district and the ways in which districts’ boards of directors were elected or appointed. Additionally, the bill allowed the districts to determine their own well spacing guidelines, permitting processes and conservation plane. Above all, the bill strongly recognized individual private property ownership of underground water. The first version had not mentioned ownership of groundwater by the landowner. But the first version amended by Holt himself added, “The ownership and rights of the
owner of the land, his lessees and assigns, in underground water are hereby recognized, and nothing in this Section 3c shall be construed as depriving or divesting such owner, his assigns or lessees, of such ownership or rights, subject, however to the rules and regulations promulgated to this Section 3c.” Holt also amended the enactment clause to add “recognizing individual ownership of underground water.” New House member Dolph Briscoe amended Section 1 by adding a definition of “grazing land” among other language. The amendment exempted grazing land from any taxation by a GCD.

The bill was referred to the House Committee on Conservation and Reclamation and to the Senate Water Rights, Irrigation & Drainage. Sadly again, after searching the records in the Legislative Reference Library and the State of Texas Archives, none of the committee minutes have survived from either of these committees. The Senate added a committee amendment that survives today on May 19, 1949: “No district created under this Section 3c shall have the power to levy or collect a tax for any purposes to exceed fifty cents on the one hundred dollars assessed valuation on property in the district subject to taxation.” One other item of interest showing the nature of statewide interest is a Senate amendment drafted in the hand of state legislator Searcy Bracewell of Houston and passed. His amendment spoke to dissolved districts and the continued payment of outstanding bonds at the dissolution. Why? Certainly many investors in the contemplated bonds could come from Houston, and Bracewell was astute in not only protecting future investors but also in making the bonds more marketable. The final bill passed the Senate on May 19, 1949 by a vote of 27 to 1 and passed the House on May 23, 1949, by a vote of 117 to 0. It became effective June 2, 1949. Some sixty-eight years later, Chapter 36 of the Texas Water Code continues to reflect, with only minor strengthening revisions, the full content and intent of the 1949 bill.

Shortly thereafter, on June 30, 1949, I. B. Holt resigned his seat in the House to become Postmaster of Olton, Texas. The House passed a resolution of praise for him: “Judge I. B. Holt has been a quiet but determined leader in all important legislation during his two terms of office, and his leadership and counsel will be sorely missed.”

The Texas Legislature continues to consistently support the idea of local control of groundwater in the state through GCDs as founded in HB 162 of 1949. There were only five GCDs formed in the 1950s, High Plains UWCD No. 1—9/29/1951, North Plains GCD—1/2/1955, Panhandle GCD—1/21/1956, Hudspeth County UWCD No. 1—10/5/1957, and Real-Edwards C and R District—5/30/1959. Only one GCD was formed in the 1960s, Evergreen UWCD (Floresville area where my farm is on Cibolo Creek), two in the 1970s, Plateau UWC and Supply District—3/4/1974, and the Harris-Galveston Subsidence District—4/23/1975. In the first twenty-five years of GCD authority, only eight areas of Texas elected to form a GCD. Today we have one hundred districts not yet covering the
entire state, with many important areas yet to choose to form a GCD to meet the “preferred method” of groundwater management. Places such as Travis County (other than a strip in the southern portion of the county covered by the Barton Springs Edwards Aquifer Conservation District), Williamson County, Washington County, and Val Verde County are examples of areas which have so far chosen not to participate; the rule of capture runs in these areas all but fully unhindered.

Today the battle over water between urban and rural interests continues to grow with intensity as indicated in several groundwater disputes around the state. Examples of these conflicts are occurring in Fort Stockton (Jeff Williams, rancher, trying to transfer his groundwater to Midland/Odessa),\textsuperscript{57} in Wimberly (Electro Purification, Inc. trying to transfer leased groundwater to the City of Buda),\textsuperscript{58} and with the San Antonio Water System’s Vista Ridge Pipeline.\textsuperscript{59}

Neighboring states have different groundwater laws, some considered superior to Texas groundwater law. Groundwater is owned by the landowner in Louisiana similarly to Texas, but in Louisiana there is no groundwater permitting required at all. Of course, Louisiana being east of Texas has tremendous surface water resources and enjoys lots of rain. In Arkansas, groundwater is owned by the landowner but is subject to the reasonable use\textsuperscript{60} and correlative rights\textsuperscript{61} doctrines requiring proof of reasonable use in the comprehensive permitting process. In Nebraska, the landowner owns the groundwater but is limited to reasonable and beneficial use of the water under the landowner’s land. In times of shortage, that groundwater right is correlative. Permits for groundwater use may or not be required for in Nebraska dependent upon the control or management areas, but wells other than domestic and livestock wells must be registered. In Oklahoma, groundwater is owned by the state and reasonable use along with correlative rights prevail in permitting. In New Mexico and Kansas, groundwater is owned by the state as well and use follows the prior appropriation doctrine requiring permits to pump.\textsuperscript{62}

Texans cherish local control of their groundwater, which complicates water policy. With one hundred different GCDs regulating Texas groundwater under different sets of rules yet within the framework of the Texas Water Code Chapter 36, farmers with land straddling several district boundaries can face complex and conflicting groundwater permitting processes.\textsuperscript{63} Most of the Texas GCD’s boundaries follow county political lines ignoring the boundaries of the groundwater pools and aquifers.\textsuperscript{64} But water ignores political boundaries. Especially frustrating for some GCD managers whose districts lie next to a county that has not yet chosen to form GCD is the simple fact they share the same groundwater and manage it to the best of their ability yet the non-regulated area can pull all the water they want out of the ground. Dirk Aaron, General Manager of the Clearwater Underground Water Conservation District in Bell County expressed frustration to the author in 2012. Aaron mentioned that the Bell
County GCD did a good, fair, and reasonable job serving their district but that Williamson County, which shares Clearwater's southern boundary and groundwater, had not chosen to form a GCD, and remained wide open to the “rule of capture.” Thus, Clearwater's groundwater is left open to unknown and unregulated drainage risks. Similar situations occur across Texas.

One basic advantage the neighboring states have over Texas in groundwater policy is that acquisition of a groundwater permit requires the farmer to work with only one state agency that promulgates one set of rules. Since Texas groundwater law does not follow reasonable use concepts nor follow the correlative rights doctrine, neighboring states could be said to have a more fair-to-all system. Of the states neighboring Texas only Louisiana follows the “rule of capture” concept. Are any of the neighboring states’ groundwater laws superior to Texas? Unfortunately, there is a wide variety of opinion and no easy answer. Judging by the simple fact that the Texas Legislature continues to consider GCDs as the preferred method of groundwater management in Texas and has done so since HB 162 in 1949 in the face of periodic hot debate, it appears that at least today, a majority of elected leaders of Texas continue to feel their groundwater law is preferable to the laws in the nearby states.

I.B. Holt’s and Arthur P. Duggan’s HB 162 morphed into Chapter 36 of the Texas Water Code with much of their originally negotiated compromise terms remaining intact today. Emerging from a land use change decision by a handful of people to make ranch land into farm land beginning in Lamb County, using groundwater as the catalyst to build farm communities and agri-business, the Panhandle Texas farmer led the state into an irrigated agriculture economy. Thousands of jobs, millions of dollars in tax revenue, and a proud culture of modern farmers resulted from the work of the people of this region. Groundwater was precious to them, as precious as was their independence. To protect their farming interests the people gathered together, created political and trade associations, and fought powerful urban interests to find a way to manage groundwater fairly, responsibly, and locally. The idea of locally controlled groundwater management generated by Panhandle Texans and expressed in HB 162 enters its sixty-eighth year vibrant and alive.

ENDNOTES


5. For example, Bragg v. EAA, an important “ takings” in groundwater case, has moved up and down through Texas courts since 1996 with no final resolution. Several other cases are following a similar track without resolution.

6. SB 332 by Senator Troy Fraser became law in 2011 and for once and for all made it absolutely clear in Texas that groundwater was owned by the surface landowner above.

7. A public official shared with a group of water experts recently his eyewitness story of an early town hall meeting in Wimberley over the Electro Purification plan to move leased/purchased groundwater across Hays County to the City of Buda. “The meeting was being held in a room limited to around 300 people. Not only was the room filled to capacity, but I estimate 3,000 more people were outside on the grounds and in the parking lot.” Another well-known water attorney present that evening was quoted in the Austin American Statesman - some of the attendees were “bat crazy” over the controversy.


9. Ibid.

10. Works by Frontius include the two volume De aquaeductu a report to Emperor Nerva based upon Frontius’ duties as Water Commissioner for Rome.


13. SB 232, by Senator Troy Fraser and signed into law by Governor Perry confirmed that groundwater was owned by the private landowner in Texas subject to the regulations of the local GCD.

14. The Edwards Aquifer Authority and the State of Texas, Petitioners, v. Burrell Day and Joel McDaniel Respondents In the Supreme Court of Texas No. 08-904.

15. Ibid. Page 1.


18. Ibid.

19. According to the United States Geological Survey, the hydrological cycle is defined as:
“Earth’s water is always in movement, and the natural water cycle, also known as the hydrologic cycle, describes the continuous movement of water on, above, and below the surface of the Earth. Water is always changing states between liquid, vapor, and ice, with these processes happening in the blink of an eye and over millions of years.”


21. Ibid. 170.

22. John T. Thompson. “Responses to Challenges of Water Resources.” *Southwestern Quarterly, Vol. 70,* page 58. The *Southwestern Quarterly* is the academic journal of the Texas State Historical Association. A similar comment can also be found in Donald E. Green’s *Land of the Underground Rain: Irrigation on the Texas High Plains* (Austin: University of Texas Press, 1973) p. 172 but with a slightly different take: “But bills dealing with ground-water control introduced into the Texas Legislature in 1937, 1941, and 1947 were defeated.” My research at the Legislative Research Library could not confirm the total veracity of either author’s statements. Thompson offered no direct reference; Green’s footnote referred back to Thompson’s.


24. Ibid.

25. Ibid. 173.


27. http://tespatexas.org/blog. Also, https://www.texasobserver.org/hill-country-water-torture/. Also see Dr. Patrick Cox’s texaswaterpolicy.org article “Our Water and the Threat to the Heart of our Existence.”


29. It is an interesting historical note that the Assistant Attorney General at the time who signed the letter was Hugh Q. “Quality” Buck, the eventual managing partner of Fulbright and Jaworski and a long time, highly respected leader in the state and in the Houston area in particular. It is my sole opinion that Buck did write the opinion, certainly with the approval of Attorney General Mann. A further analysis of the letter shows the depth of the young author’s understanding of the law and all the legal permutations that should be considered in the matter. No wonder Buck became one of the premier legal minds of Texas throughout his storied career.

30. Brown. Ibid.


32. Walter N. White was the Senior Hydraulic Engineer of the United States Geological Survey in Austin at the time.

33. Brown. Ibid.

36. “Recently,” a relative term, is a stretch in my opinion. Texans in 1917 had amended the Texas Constitution to add the conservation amendment making conservation of our natural resources the duty of the legislature … not a privilege or choice, but an obligation. Many areas of Texas were in one of our most severe short term droughts in 1917 and the amendment passed handily when put to the people. In 1925, the legislature began to make an effort to conserve water resources, another severe drought year. Governor Jester died in office of a heart attack in 1949, still the only presiding Texas governor who died while in office. Jester was responsible for his family’s farm holdings in the Corsicana area so he would not be considered someone solely interested in urban interests.
38. Ibid.
39. Ibid.
40. Ibid.
41. In fact, Lamb County delivered other strong water policy leaders in our state including I. B. Holt of Olton, sponsor of the HB 162 in 1949 and Judge Otha F. Dent of Littlefield who, appointed by Governor Price Daniel in 1959, served as Commissioner and eventually as Chairman of the Texas Water Commission.
42. Interview with Timothy L. Brown, September 1, 2015. Tim said Arthur Duggan was a pleasant man who never was seen without a smile or grin on his face.
43. Table discussion with Harvey Everheart, August 31, 2015 at a dinner with Texas A & M’s George Bush School of Public Affairs.
44. Green. 175.
45. Ibid.
46. Alice Duggan Gracy, “DUGGAN, ARTHUR POPE.” *Handbook of Texas Online*.
47. Ibid. 198.
48. Bailey, Lamb, Hale, and Floyd counties are today considered by geographers as “just outside the Panhandle,” however the people I interviewed in those counties are not aware of it—they are Panhandle folks all the way.
50. Ibid., 560-564.
51. Ibid., 563.
52. Ibid., 560.
53. Ibid., 562.
54. From the Legislative Reference Library loose files.
55. Ibid.
56. Joseph Searcy Bracewell, brother of Fentress Bracewell of the Bracewell Patterson law firm in Houston. Searcy served in the Texas House in the 50th session, 1947 – 1949 and then served four terms in the Texas Senate, the 51st, 52nd, 53rd, and 55th. In the 53rd Senate he was Senate President Pro Tempore. I am proud to say that Fentress was a dear friend of mine as is his son, Brad, himself an attorney and banker of note. They all three were close friends and colleagues of Hugh Q. Buck.
57. *Fort Stockton Holdings, L.P., Pecos County, City of Fort Stockton, Pecos County Water Con-
trol and Improvement District No. 1, and Brewster County Groundwater Conservation District Appellants v. Middle Pecos Groundwater Conservation District, Appellee, Court of Appeals of Texas, Eighth District, El Paso, April 4, 2016.

58. http://tespatexas.org/blog. Also https://www.texasobserver.org/hill-country-water-torture/. Also see Dr. Patrick Cox’s texaswaterpolicy.org article “Our Water and the Threat to the Heart of our Existence.”


60. “Reasonable use” is the concept that the landowner’s rights to use groundwater is reasonable, or will not harm neighbors.

61. The correlative rights doctrine is a legal doctrine limiting the rights of landowners to a common source of groundwater (such as an aquifer) to a reasonable share, typically based on the amount of land owned by each on the surface above.


63. Charles Porter. “Groundwater Conservation District Finance in Texas: Results of a Preliminary Study.” Texas Water Journal, Vol. 4, No. 1. The Texas Water Journal is published in cooperation with the Texas Water Resources Institute, part of Texas A&M AgriLife Research, the Texas A&M AgriLife Extension Service, and the College of Agriculture and Life Sciences at Texas A&M University.

64. Ibid.