

Controversy still flows on capture rule

**By Monica Wolfson / Scripps Howard Austin Bureau
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AUSTIN - The rule of capture, which affects who controls groundwater, celebrates its 100th anniversary this year. And it appears to be as controversial as the day it was created.

At a symposium Tuesday, water-rights lawyers supplied mixed views about the future of the rule of capture and groundwater regulation in Texas.

While all surface water is owned by the state, the rule of capture was adopted in a 1904 Texas Supreme Court decision that allowed the unfettered pumping of water beneath a landowners' property.

In later court rulings, the Supreme Court made it clear the Legislature can change the rule of capture or get rid of it.

Lawmakers are currently examining water-rights issues, including the rule of capture and groundwater management, in preparation for the next regular legislative session, which begins in January.

After 100 years, some Texans are increasingly dissatisfied with the rule of capture, said Corwin Johnson, a law professor at the University of Texas at Austin. It threatens the groundwater supply in Texas and deprives landowners of legal remedies when their wells are "dewatered" by their neighbors, he said.

Johnson said the Legislature could ignore the rule of capture and instead institute pumping limits via permits for groundwater - much like surface-water permits are approved by the Texas Commission on Environmental Quality.

The Legislature has already done this with the Edwards Aquifer Authority, an aquifer that runs under Austin and San Antonio. The Edwards Aquifer Authority gives out permits for water use and has capped withdrawals from the aquifer.

Texas has 87 locally controlled groundwater conservation districts that cover 50 percent of the state. The districts regulate drilling of wells and pumping limits of groundwater.

Lawyer Michael Booth said he was especially concerned about limiting pumping in low-recharge aquifers.

"(Groundwater districts) could keep the authority to regulate production, but recognize they have a lot of challenges," Booth said.

But Austin attorney Douglas Caroom said the rule of capture is working pretty well. Caroom said there are few cases of wells going dry because of neighbor over-pumping, although he admitted there are neighbor disputes.

"Ninety percent of Texas groundwater is not subject to the rule of capture, so that's why I think the fight over the rule of capture is a tempest in a teapot," Caroom said.

Lawmakers should focus on tightening groundwater district management and establish scientific oversight over aquifer decisions, Caroom said.

"Local bias is a mixed blessing; it's good and bad," Caroom said. "You end up with five farmers on the district board who all irrigate and they aren't usually willing to make irrigation restrictions. They aren't looking at the aquifer objectively, but usually looking at it from a local interest."

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