

*REGIONAL WATER  
PLANNING 101*

**SURFACE WATER LAW/  
PERMITTING BASICS**

# TEXAS WATER

Whiskey is for drinking  
and  
Water is for fighting



Austin History Center, Austin Public Library PICB 04262

# TEXAS WATER

## Surface Water



## Groundwater



Workers with the Steingard & Schmidt Irrigation Well Co. rig, York County, NE.

# **SURFACE WATER LAW**

- **Water owned by state (in trust for public)**
- **Regulated by state (TCEQ)**
- **Chapter 11, Texas Water Code**

# DEFINITION OF SURFACE WATER

**The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state is the property of the state.**

# HISTORY OF SURFACE WATER RIGHTS

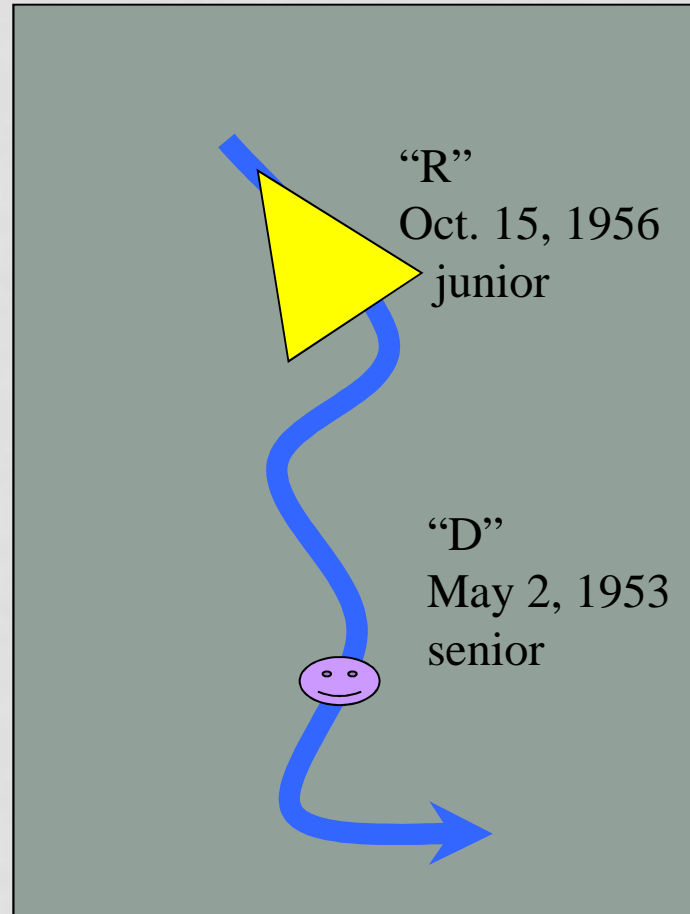
- Spanish & Mexican Law
  - Roman civil law
  - Granted specific use to water
- Republic of Texas
  - English common law adopted in 1840- where “riparian right” came from
- State of Texas
  - Appropriation doctrine adopted in 1895
    - Filings with counties
  - Board of Water Engineers formed in 1913
    - Certified Filings & Permits- filed with state
  - Attempt at adjudication of water rights in 1917
  - Adjudication Act of 1967
    - Certificates of Adjudication

# SOME BASIC TENANTS

- No person may appropriate, store, take or divert state water without a water right (certain exemptions).
- Prior appropriation doctrine: “***First in time is first in right***”
  - Common system across western US
  - All water rights now issued with priority date(s)
  - “Priority dates” used to allocate water between right holders



# WHAT IS MEANT BY: “FIRST IN TIME, FIRST IN RIGHT”





# IS THERE A PRIORITY OF USE?

- Simple answer: “NO”- exception: main stem of Rio Grande below Amistad
- Section 11.024 Preferences....the public policy of this state that in appropriating state water preference shall be given to the following uses in the order named:
  1. Domestic and municipal;
  2. Agricultural and industrial;
  3. Mining and recovery of minerals;
  4. Hydroelectric power;
  5. Navigation;
  6. Recreation and pleasure; and
  7. Other beneficial uses.

# FINER POINTS

- Surface Water
- Underflow?
- Rerouting of a stream/watercourse
  - Regulated by TCEQ
- Diffused surface water
  - Not in a watercourse- sheet flow
  - Considered private water
  - Not regulated by TCEQ

# FINER POINTS

- Water rights can be:
  - Bought/sold (rights are considered a property right)
    - May require amendment to change place/purpose of use
  - Amended
  - Cancelled (TCEQ has limited ability to cancel)
- ASR (Aquifer storage and retrieval)
- Enforcement (Watermaster and Exec. Director)

# PERMITTING

- Permitting Process
- Water availability
  - WAM
    - Municipal/industrial standard (firm yield)
    - Irrigation standard- 75/75 rule
    - Supplemental supplies
    - Storage
    - Term vs perpetual
- Water Conservation
  - Save water on long term basis
- Drought Contingency Plans
  - Save water during short term (*drought periods*)

# PERMITTING

- Assess effects on existing instream uses and water quality- *may include special conditions on water right*
- Projects > 5000 acre-feet/year (afy)- assess effects of issuance on fish and wildlife habitats- *may require mitigation of adverse impacts*
- Assess effects on groundwater and groundwater recharge

# PERMITTING

- TCEQ shall grant application only if:
  1. Filed a completed application and paid fees;
  2. Unappropriated water is available;
  3. The proposed application:
    - a. Intended for beneficial use;
    - b. Not impair existing water rights;
    - c. Not detrimental to public welfare;
    - d. Considers environmental assessments performed under §§11.147, 11.150, 11.151 & 11.152;
    - e. Addresses water supply need consistent with State Water Plan and approved regional plan (*TCEQ may grant waiver, if conditions warrant*)
  4. Applicant provided evidence to avoid waste and achieve water conservation.

# PERMITTING

- Permit exemptions (*application not required*):
  1.  $\leq 200$  acre-feet (af) reservoir on own property for:
    - Domestic and livestock use only;
    - Non-commercial fish & wildlife purposes (*qualified open-space land only*);
    - Commercial or noncommercial wildlife management, including fishing, but not fish farming;
- Petroleum operations in Gulf of Mexico- not exceeding one af/day;
- Surface coal mining sediment control reservoirs;
- Mariculture operations; and
- Irrigation of 100 year old cemetery adjacent to river (*cannot exceed 200 afy*).



# PERMITTING

- Return flows
- Some water rights require permittee to return all or a percentage of water diverted
- Reuse of wastewater effluent discharges
  - Direct reuse
    - Permittee may reuse 100% of effluent if captured and reused within places and purposes of use and other provisions of water right.
  - Indirect reuse

# INTERBASIN TRANSFERS “IBTS”

- Significant amendments to §11.085, TWC by SB-1 (1997)
- Any new or amended application including an IBT must include:
  - Contract price for water;
  - Description of proposed uses and users;
  - Cost of diverting, conveying, distributing, supplying & treating water; and
  - Projected effect on user rates and fees for each class of ratepayer.

# INTERBASIN TRANSFERS “IBTS”

- TCEQ shall:
  - Notify all:
    - water right holders in basin of origin;
    - county judges, mayors of a city >1000 population and groundwater conservation district in the basin of origin; and
    - state legislators in receiving basin and basin of origin.
  - Conduct public comment meetings in receiving basin and basin of origin.
  - Publish notice twice in newspaper of general circulation in both basins.

# INTERBASIN TRANSFERS “IBTS”

- Commission shall:
  - Request review and comment from each county judge in basin of origin;
    - Give consideration to such review and comment
  - Weigh the effects of the proposed transfer:
    - Need for water;
    - Availability of feasible and practicable alternative supplies;
    - Amount and purpose of use in receiving basin;
    - Proposed methods and efforts to avoid waste and implement water conservation and drought contingency measures;
    - Proposed methods and efforts to put water to beneficial use;
    - Projected economic impacts to occur in each basin;

# INTERBASIN TRANSFERS “IBTS”

- Commission shall:
  - Weigh the effects of the proposed transfer:
    - Projected impacts on existing water rights, instream uses, water quality, aquatic and riparian habitat and bays and estuaries (*based on historic use of water right*);
    - Proposed mitigation and compensation;
    - Continued need to use water for the purposes under the existing water right; and
    - Any other information submitted by the applicant.
- Commission may grant in whole or in part only if:
  - Detriment to the basin of origin are less than the benefits to the receiving basin; and
  - Applicant has a DCP and implement a water conservation plan that will result in highest practicable levels of conservation and efficiency achievable within jurisdiction of applicant.

# INTERBASIN TRANSFERS “IBTS”

- Other requirements:
  - Transfer cannot be for a term greater than the contract term;
  - Each county judge may provide input on the appropriate level of compensation or mitigation;
  - Portion of water right used for the IBT is junior in priority to water rights granted before the transfer.
  - Municipality in basin of origin may be a party to the hearing on the application.
- Exceptions
  - Proposed transfer in combination with existing transfer total < 3000 afy from the same water right;

# INTERBASIN TRANSFERS “IBTS”

- Exceptions
  - Request for emergency transfer of water;
  - Proposed transfer from the geographic area of a county, municipality or retail public utility that is within the basin of origin for use by the county or municipality or the contiguous part of the utility not within the basin of origin; or
  - Proposed transfer of water imported from a source located wholly outside the state (except for water imported from Mexico), for use in the state and transported via a natural stream in the state.



# REGION K IBT POLICY STATEMENT

- Adopted with first regional plan
- Policy Summary
  - Cooperative regional water solution shall benefit both regions;
  - Region K's water shortages shall be substantially reduced if there is an exchange with another region;
  - A proposed IBT shall have minimal detrimental water quality, environmental, social, economic and cultural impacts;
  - Exports shall provide for improvement of lake recreation and tourism in this basin;
  - Each region shall determine its own water management strategies to meet its own needs; and
  - Solutions shall consider alternatives to resolve conflicts over groundwater availability

# QUESTIONS

