Application of Oil and Gas Principles to Groundwater Law

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THE APPLICATION OF OIL AND GAS LAW TO GROUNDWATER: ANALYZING CORRELATIVE RIGHTS AND SO-CALLED “USER-BASED RULES”

PREPARED BY THE GROUNDWATER COMMITTEE OF THE TEXAS WATER CONSERVATION ASSOCIATION

*Copy available on the Texas Water Conservation Association’s Website
EVOLUTION OF GROUNDWATER LAW PARALLEL TO OIL AND GAS LAW

- Early 1900s – Texas courts apply **rule of capture** to both groundwater and oil and gas
- 1917 – Conservation Amendment
- Historically . . . Increased litigation in oil and gas industry compared to groundwater
- Mid 1900s - law on oil and gas, including liability under the rule of capture, ownership, and regulation, was already well settled
INSTANCES WHERE TEXAS COURTS HAVE APPLIED OIL AND GAS LAW TO GROUNDWATER: ownership and relationships between severed estates

- *Del Rio v. Clayton Sam Colt Hamilton Trust*, 269 S.S.3d 613 (Tex. App.–San Antonio 2008, pet denied) - the groundwater estate, like in oil and gas, can be severed from the surface estate and sold as a real property right
INSTANCES WHERE TEXAS COURTS HAVE APPLIED OIL AND GAS LAW TO GROUNDATER: ownership and relationships between severed estates

• *Edwards Aquifer Authority v. Day*, 369 S.W.3d 814 (Tex. 2012) - groundwater, like oil and gas, is owned in place
INSTANCES WHERE TEXAS COURTS HAVE APPLIED OIL AND GAS LAW TO GROUNDWATER: ownership and relationships between severed estates

- *Coyote Lake Ranch, LLC v. City of Lubbock*, No. 15-0572, 2016 WL3176683 (Tex. May 27, 2016) – severed groundwater estate is the dominate estate and accommodation doctrine applies
INSTANCES WHERE OIL AND GAS IS DIFFERENTIABLE FROM GROUNDWATER: management and regulation

- Differences in the nature of the resources
- Differences in goals for regulating production
- Differences in how the resources are regulated
“correlative rights between the various landowners over a common reservoir of oil or gas have been recognized through state regulation of oil and gas production that affords each landowner the opportunity to produce his fair share of the recoverable oil and gas beneath his land. . . . [s]imilarly, one purpose of [GW regulation] is to afford landowners their fair share of the groundwater beneath their property.”
CORRELATIVE RIGHTS IN GROUNDWATER

◆ “regulation that affords an owner a fair share of subsurface water must take into account factors other than surface area”
◆ landowners’ ability to recover their reasonable investment-backed expectations
◆ historic use
◆ future needs, including relative importance of various uses
◆ concerns unrelated to use, such as environmental impacts and subsidence
CORRELATIVE RIGHTS & “USER-BASED RULES”

WHITE PAPER: Ultimately, to the extent that factors other than surface acreage ownership are allowed to be taken into consideration in order to afford landowners their “fair share,” as prescribed by the court in Edwards Aquifer Authority v. Day, correlative rights and so-called “user-based rules” should not necessarily be mutually exclusive concepts in terms of permissible groundwater regulation.
Questions?