

Water Grand Challenges: Water Conservation

Surface Water Rights in Texas

Background –Water law has changed multiple times over the years since Texas became a state, which has led to numerous conflicts between the competing legal systems and approaches across the United States. Two legal doctrines of surface water law are recognized in Texas today, the riparian doctrine and the prior appropriation doctrine. The riparian doctrine is based on English common law and ties the rights to use surface water to land ownership. Riparian owners may use the water as long as they own the land adjacent to the water. The prior appropriation doctrine is controlled by statute and is more often recognized in the western states. In this doctrine, surface water use is not tied to land ownership, but can only be used by complying with statutory requirements.¹

The Texas Legislature merged the riparian rights into the prior appropriation doctrine in 1967 with the passage of the Water Rights Adjudication Act. This required anyone seeking riparian ownership of surface water to apply for it before 1969 or it would be converted to prior appropriation. This consolidation requires permission from the state to utilize surface water even on your own property in the form of a water right. These rights are given out in the form of permits and are reviewed by the Texas Commission on Environmental Quality (TCEQ). The state owns all surface water, including every river, natural stream, lake, bay, and the arm of the Gulf of Mexico.²

Water Rights – The right to use state surface water is acquired through TCEQ in order to maintain appropriate use of this limited resource. Once water rights are received it can be lawfully acquired, allocated, or used, even if it diverts the flow from its natural channels. Surface water rights can be given out in either a perpetual manner, meaning the use has no time limit, or a limited-term right, which includes seasonal or temporary usage. Generally speaking, all surface water use requires permission in order to use it, except in very specific circumstances.³

The exempt uses, according to the Texas Water Code, include four categories. First, domestic and livestock use, which includes irrigation and watering livestock, is acceptable without state permission as long as it utilizes 200 acre-feet or less of water in a consecutive twelve-month period. Secondly, wildlife management programs can take surface water for use in a dam or reservoir for the purposes of wildlife betterment, as long as it does not exceed 200 acre-feet of water. Thirdly, emergency use is permitted for fire-departments to utilize the water during wildfires or a similar event. Lastly, there are many items which fall under specified uses, such as water in fish or shrimp farming or retaining water with spreader dams or terraced contours.

Water Rights Enforcement – Texas’ waters are protected in two different ways; the honor system and via the TCEQ watermaster program. The honor system is simply the viewpoint that individuals with surface water on their property will appropriately govern themselves and apply for/honor the TCEQ requirements. This is advantageous because it does not require constant vigilance on the part of the state, which reduces costs and paperwork. Typically, in areas or times of the year when water is plentiful, the honor system seems to be adequate for most parties involved. The most obvious and challenging disadvantage to this system are the individuals who abuse and misuse their water without seeking out permission from the state and those that violate the permits already obtained through overuse or diversion of flows. This is especially pronounced in drier areas or during drought. The honor system can end up costing the state and other users access to precious surface water.⁴

A watermaster is an officer appointed by TCEQ and is responsible for monitoring water usage. Continuous monitoring of stream flows and reservoir levels in a river basin allows for an accurate assessment of water use. This approach is used less often than the honor system, but has been employed in several specific locations. The main advantage of this system is better assurance of state law compliance, as well as the data retrieved through monitoring. During droughts the watermaster may be able to alert officials about water loss before it becomes a serious problem. It also affords a long-term solution for managing water. The major areas of contention arise around the costs associated with a watermaster; by law the water-right holders in the area served by the watermaster pay for this service through a fee. Some argue that this affects the autonomy of an operation and contributes unduly to paperwork and expenses.⁵

¹ Kaiser, Ronald. *Handbook of Texas Water Laws*. Texas Water Texas A&M University. 2005

² Ibid

³ *Water Rights Permits: Getting Permission to use Surface Water*. Texas Commission on Environmental Quality, 2012

⁴ Water for Texas. 2012 State Water Plan

⁵ Cambell, Augustus. *Texas Watermasters: A legal history and analysis of surface water rights*. Texas Administrative Law, 2006.