

## Rule of Capture

The common law rule with regard to groundwater in Texas, called the “rule of capture” or “English Rule” allows landowners to withdraw water under their property with little regard to other groundwater users, as long as the water is beneficially used and isn’t intentionally wasted or negligently result in the subsidence of neighboring lands.

The Texas Supreme Court explicitly adopted the rule of capture in 1904 in *Houston Texas & Central Railway Co. v. East*. Subsequently, in 1955, the Texas Supreme Court affirmed the rule of capture and in its decision stated that, “percolating waters are regarded as the property of the owner of the surface who may, ‘in the absence of malice,’ intercept, impede, and appropriate such waters while they are on their premises, and make whatever use of them they please, regardless of the fact that use cuts off the flow of such waters to adjoining land, and deprives the adjoining owner of their use.”

In its rulings relevant to the rule of capture, the Texas Supreme Court has stated that the legislature has the authority to regulate groundwater if it chooses to do so. In 1949 the Texas Legislature passed the Texas Groundwater Act, which authorized the formation of groundwater districts with limited power to regulate withdrawals. Since 1949, the Texas Legislature has significantly expanded the powers of groundwater districts, particularly in the late 1990s. Senate Bill 1, enacted in 1997, explicitly recognizes groundwater districts as the state’s preferred method for managing groundwater resources in Texas.

By 2001, 87 Texas groundwater districts covered roughly half the state’s land area and regulated a great percentage of water withdrawn from Texas’ nine major and 20 minor aquifers. The powers exercised by these districts vary, but in general, consist of regulations to prevent the depletion of water tables, the loss of artesian pressure, waste, and subsidence. These regulations often take the form of rules that may restrict pumping, require permits for wells, delineate well spacing, establish maximum rates of water use, and define out-of-district export requirements.

For additional information, please see *A New Chapter for Texas; The Rule of Capture, Groundwater Conservation Districts*, and *Sipriano v. Great Spring Waters of Texas*, Texas Senate Research Center; March 1999.

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