

# Star-Telegram

## Texas farmers, ranchers worry about erosion of groundwater rights

Posted Sunday, Oct. 24, 2010

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BOWIE -- The rule of capture has been just as much a part of Texas lore as cowboys and cattle.

Under that concept, landowners have had the right to pump an unlimited amount of water from beneath their land.

But rancher J.K. "Rooter" Brite Jr. is worried -- worried that the courts, legislators or groundwater districts might take that water right away.

Brite, 58, isn't opposed to all regulation -- he doesn't approve of water marketers like billionaire Boone Pickens sucking aquifers dry, and he believes that groundwater districts can provide some protection from the oil and gas industry -- but he said strict groundwater-use regulations could cripple his ranching operation during a drought.

"If that right doesn't belong to me, and I do benefit because I know it's in reserve, then what incentive do I have to care for this land?" Brite said as he drove his pickup through tall stands of native grasses on his 3,400-acre ranch outside Bowie.

Restricting access to groundwater would discourage good range management practices that lead to less silt downstream in the Trinity River as it flows into Lake Bridgeport and Eagle Mountain Lake, he said.

"I guarantee you this soil will move if you don't protect it," said Brite, who serves as vice chairman of an agricultural research committee for the Texas and Southwestern Cattle Raisers Association.

The cattle raisers, the Texas Farm Bureau, the Texas Wildlife Association and a host of other organizations have created a website ([www.groundwaterownership.com](http://www.groundwaterownership.com)) warning ranchers that their water rights could be in jeopardy. They have been holding meetings across the state, including one this month in Cleburne, to raise awareness on the issue.

"We're concerned if we just do nothing at this point we're going to wake up and learn that landowners don't have any rights to groundwater," said Jason Skaggs, executive director of government and public affairs for the cattle raisers who held a meeting this month in Cleburne.

### Court cases could affect water rights

Two court cases have drawn the attention of farmers and ranchers.

A pending case, Edwards Aquifer Authority v. Burrell Day and Joel McDaniel, has been going on for over a decade and wrestles with the issue of who owns the groundwater underneath land.

The case has been heard by the Texas Supreme Court and may eventually affect the state's interpretation of groundwater rights.

A brief by Austin attorney Paul Terrill on behalf of a Medina County client, who also has a claim against the aquifer authority, argued that the Supreme Court "should reaffirm the clear principle that landowners have vested property rights in groundwater and reject [the aquifer authority] and the State's attempt to reverse a century of precedent and make it so that no government is ever required to pay just compensation for taking groundwater from a landowner."

Another case that concerns landowners is State of Texas v. 7KX Investments, in which land was condemned for a Texas Department of Transportation rest stop along I-35 south of Salado. The owners of the property argued that there was a vested groundwater right with the property and a jury agreed, saying it was worth \$5 million.

The state has appealed, and Attorney General Greg Abbott argued in his appellate brief that under Texas' rule of capture law "a landowner does not have a vested and constitutionally protected interest in groundwater."

Any legislative action is unlikely until the Supreme Court rules on the Edwards Aquifer Authority case.

"I think everybody sees this as the big one; it's been before the Supreme Court and everybody has been waiting for a decision from the Supreme Court for months now," said Ken Kramer, executive director of the Lone Star Chapter of the Sierra Club.

For environmental groups like the Sierra Club, the state's joint groundwater management plan is an effective tool, though it has proved unpopular in many areas.

"I think from the perspective of the Sierra Club, ultimately the best system is groundwater management and regulation where actual folks are allocated a certain amount of groundwater so that everybody knows the actual groundwater they have the right to pump," Kramer said. "In some cases it does seem to be working ... in others it does not."

Locally, groundwater districts became a political issue this year in the Republican primary race for Parker County judge, when challenger Cary McKay accused County Judge Mark Riley of bringing unwanted regulation to the county with the Upper Trinity Groundwater Conservation District.

At the time the Upper Trinity district was formed, Parker County officials said the state was forcing them to join a groundwater district and the formation of Upper Trinity was viewed as better than being placed in a district with Dallas and Tarrant counties, where they felt their concerns would be lost to the bigger cities.

But Brite feels the same way about Upper Trinity, which stretches all the way north to include Montague County, where his ranch is located. He believes Montague County's groundwater planning has little in common with Parker and Wise counties, which have become more suburban over the last decade.

"They are dealing with the urban/rural interface while we are dealing with more rural and agricultural issues," Brite said. "I would have no problem being in a groundwater district if it was with Clay or Jack counties. We just have different issues than those counties to the south of us that are seeing such rapid growth."

## **Water marketing**

### **is here to stay**

One question remains: whether many landowners want to keep the water rights for their own use, or to sell them to a water marketer or a thirsty city.

Some farmers and ranchers in the Panhandle and some in South Texas have already sold groundwater rights and, in some cases, the sale could prove more valuable than any farming and ranching operation. But selling water rights could damage agricultural uses in the long term.

Texas agricultural and ranching groups sent letters last week to all of the state's groundwater districts urging them to draft ordinances recognizing landowners' vested water rights. Skaggs concedes that many of those districts may not be willing to recognize that right.

There is also a fear that agricultural users who have a long record of pumping water to irrigate cropland might get permits based on historical use, while others who haven't would be left high and dry. It is a big issue in the Panhandle and the San Antonio area, where many cities rely more on groundwater.

"We think getting this ownership issue clarified will ease the minds of landowners who otherwise might feel pressure to drill a well to try and get a place in line," Skaggs said. "The water marketing situation is going to happen no matter what we do."

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