Brackish Groundwater Rights
Legal Perspective
September 13, 2018

Carolyn Ahrens, Of Counsel
Booth, Ahrens & Werkenthin, P.C.
Carolyn @ baw.com / 512.472.3263
Reliability
Risk is . . . Relative
Managing Risk:

• Secure the right to produce
Secure the right to produce

• Title and “the estates”
• Addressing the relationship

*formations
*domestic wells
*well location
*livestock/gates
*mitigation
*surface damage
*non-disturb areas
*abandoned facilities
*use of water off property
*info-sharing
*sanitary control
*use of surface for collection and storage
*royalties, shut-in and pooling (including adding acreage)
*intersection with groundwater district requirements
*the list goes on ...........
Managing Risk:

- Secure the right to produce
- **Consider the rule of capture**
Managing Risk:

• Secure the right to produce
• Consider the rule of capture
• Practice regulatory vigilance
Practice regulatory vigilance

• Water Code Chapter 36
• GMA’s, DFC’s, and MAG
• State/regional planning
• Rulemaking
• Litigation
Managing Risk:

• Secure the right to produce
• Consider the rule of capture
• Practice regulatory vigilance
• **Participate in evolving policy**
Participate in evolving policy

• State’s overall water portfolio
• Brackish groundwater
  * Identify resources  * Define the supply  * Incent use
  * Remove from GCD regulation  * Streamline permitting
  * Fewer transport restrictions  * TWDB involvement
  * Inhibit limitations on production
  * Longer permit terms consistent with financing
  * Support research and development
  * Compromises to protect GCD’s
Texas Supreme Court (1904):

- Groundwater too secret and occult to regulate
- Regulatory scheme should not “work to the material detriment of the commonwealth and the general progress of improvement in works of embellishment and utility”
Managing Risk:

• Secure the right to produce
• Consider the rule of capture
• Practice regulatory vigilance
• Participate in evolving policy
• Engage the public
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