

Brackish Groundwater Rights Legal Perspective September 13, 2018

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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

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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**
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Practice regulatory vigilance

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

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