

OP-ED IN SUPPORT OF SB 332-GROUNDWATER OWNERSHIP

Word Count: 677

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As associations representing more than 400,000 Texans who own millions of acres of private property, we want to stress the importance of SB 332.

For over a century, groundwater ownership in Texas has seemed clear--landowners own the groundwater beneath their land.

In the 1904 Texas Supreme Court case of *Houston & TC Railway Company v. East*, the court said, "The owner of land is the absolute owner of the soil and of percolating water, which is a part of, and not different from, the soil."

Unfortunately opponents, including some groundwater conservation districts (GCDs), are trying to muddy the water. These opponents believe that landowners do not own the groundwater below their land. They've taken this to court and the legislature. If they succeed there is nothing preventing government from owning groundwater.

SB 332, introduced by Senator Troy Fraser and sponsored by Representative Allan Ritter, would reaffirm that landowners own the groundwater beneath their land and are entitled to a fair chance to produce it.

During committee meetings in both the Senate and the House, opponents to SB 332 spoke about the fear of GCDs losing authority and of takings lawsuits against GCDs. Both of these claims are false, and here's why.

Every property right can be regulated. Groundwater is no different. In fact, state law and the Texas Constitution specifically require groundwater to be managed and protected. This is largely accomplished by GCDs. SB 332 doesn't change this. To be certain that SB 332 does not impact GCDs, their current authority to issue permits to drill wells, enforce the spacing of wells, and limit the amount of groundwater that can be produced from each well is restated in SB 332.

Contrary to what opponents of SB 332 argue, GCDs can still regulate without the fear of losing takings lawsuits. If GCDs are following the law and their rules, they shouldn't be afraid of takings lawsuits. Cities and other government entities regulate property rights every day without the fear of being sued by landowners. Why would GCDs be any different? Furthermore, a well established set of legal factors are used by a court to determine what constitutes a taking. SB 332 does not change those factors.

Current Texas law goes even further to protect the interests of GCDs should a takings lawsuit be brought against them. GCDs have a protection under the law that other government entities don't. If a landowner sues them and loses, they pay the attorney fees of the GCD. That is a one-way protection. If the landowner wins, the GCD doesn't pay their fees.

It is expensive to sue the government, especially a GCD. That is why there is no "flood" of takings lawsuits. This won't change if SB 332 becomes law.

In most cases landowners lose, but, still, it is the only defense they have when government goes too far. If a landowner does not own the groundwater below their land, as the opponents to SB 332 argue, a landowner can't contest, let alone defend, a taking of their property because they have nothing to protect.

SB 332 will ensure landowners' ownership interest in groundwater is protected so if government does try to take it, landowners at least have a fighting chance to stop them.

Landowners across the state want their ownership in groundwater below their land protected. They want to conserve their groundwater for future generations, but how can they conserve this precious resource if it is owned and controlled by someone else?

The Senate has passed SB 332 and now it is in the House. It is crucial that every landowner call their state representative and ask them to protect their ownership in groundwater below the land by supporting SB 332.

- Texas Farm Bureau
- Texas and Southwestern Cattle Raisers Association
- Texas Wildlife Association
- Association of Texas Soil and Water Conservation Districts
- Exotic Wildlife Association
- Riverside and Landowners Protection Coalition
- South Texans' Property Rights Association
- Texas Association of Dairymen
- Texas Cattle Feeders Association
- Texas Forestry Association
- Texas Land and Mineral Owners Association
- Texas Poultry Federation
- Texas Sheep and Goat Raisers Association

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