



Issue: Surface and Groundwater Policy Integration

Photo by: Lois Schubert

I'M FOR THE
Hill Country

HCA is a passionate community caring for the unique features, spring-fed streams, heritage ranch lands, spectacular beauty and culture of the Texas Hill Country for the benefit of future generations.

The Mission of the Hill Country Alliance is to bring together an ever-expanding alliance of groups throughout a multi-county region of Central Texas with the long-term objective of preserving open spaces, water supply, water quality and the unique character of the Texas Hill Country.

In Texas, water law and regulatory policy treat groundwater differently, and for the most part, separately from surface water.

Surface water in its natural beds and banks is owned by the state and is apportioned through a permit system based on priority rights, popularly known as *first in time, first in right*. Groundwater, by contrast, is considered to be private property owned by the surface landowner. More than 100 years ago the Texas Supreme Court adopted the *rule of capture* which allows surface landowners to pump as much groundwater as they want from beneath their property with little regard to the effects on neighboring wells or surface water.

In many subsequent decisions the Court made clear that it is up to the State Legislature to act to preserve the natural resources of Texas, including groundwater. The legislature has responded in part by authorizing groundwater conservation districts, and nearly 100 have now been created through local elections. Pumping from most major groundwater wells in such districts can be managed through reasonable regulations. Just this year the Texas Supreme Court reiterated in *EAA v. Day* that the rule of capture is not absolute, and the Legislature has the right to manage groundwater by regulation.

"There is no new water. All water is serving a useful purpose in its place. Changing its use, or the location of its use, always has social and environmental consequences that must be understood." ~Con Mims, Nueces River Authority



Photo by: Henry Smith



hill country alliance

This 'separatist' approach to surface water and groundwater in Texas has confounded hydrologists and geo-hydrologists who have built a substantial database documenting the interchanges of surface and groundwater throughout the State. Professor Robert Glennon states in his 2002 book *Water Follies*, "Groundwater and surface water are not separate categories of water any more than liquid water and ice are truly separate. The designations "groundwater" and "surface water" merely describe the *physical* location of the water in the hydrologic cycle." Indeed, in 1976 the U.S. Supreme Court recognized in *Cappaert v. United States* that "groundwater and surface water are physically interrelated as integral parts of the hydrologic cycle."

In many areas of Texas, it is the flow from groundwater aquifers into springs that sustains surface water flows. If too much groundwater is pumped, especially during times of drought, the spring flows and consequently stream flows are greatly decreased. This affects cities, industries, farmers, ranchers and others that rely on surface water rights, and it harms fish, wildlife, recreation and even the value of streamside property. The interconnection goes the other way also as healthy flows in rivers and streams are needed to recharge many of the state's aquifers.

As the population of Texas is expected to significantly increase in the future, careful conservation and management of our limited water supplies will become even more important. In some places it is likely our existing water supplies will have to be expanded and new ones developed.

The impact of historic and current severe drought on our water supplies underscores that the State of Texas needs a water policy that recognizes the inseparable connection between groundwater and surface water. Groundwater conservation districts could protect spring flows and legal rights to surface waters that result, but have not been given a clear directive to do so. Texas state agencies are able to do little to balance ground and surface water rights or protect spring flows. These problems can be fixed if the legislature would enact an integrated management policy that treats these water resources as two parts of a whole, not as two separate resources. With policy integration we can coordinate our existing regulatory systems and protect our most valuable asset for future generations.

"The water in our rivers and lakes is thought to be a property of the state, and it is allocated by permits by the state. That is completely inconsistent with the notion that the water underground, which is the same water, belongs to private citizens. The state simply can't have it both ways." ~ Andy Sansom, Rivers Systems Institute



Guadalupe River, Comal County



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HCA Water Resource web pages are informative and current, learn more:
<http://www.hillcountryalliance.org/HCA/WaterResources>

15315 Highway 71 West,
Bee Cave, TX 78738
512-263-9147
info@hillcountryalliance.org
www.hillcountryalliance.org

