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**THE HISTORY OF W.A. EAST V. HOUSTON AND  
TEXAS CENTRAL RAILWAY COMPANY, 1904:  
ESTABLISHMENT OF THE RULE OF CAPTURE IN  
TEXAS WATER LAW OR "HE WHO HAS THE BIGGEST  
PUMP GETS THE WATER"**

by Charles R. Porter, Jr.

As Texas enters the new millennium, of its many challenges an adequate amount of fresh water may be its greatest. Water is life for people, animals, and plants. As Nelson M. Blake, chairman of the history department of Syracuse University said of water and cities in 1956, "Without it, cities simply could not exist."<sup>1</sup> Texas has endured recurring periods of drought throughout its history, droughts which surely will continue to happen. Most of Texas is semi-arid and as Michael C. Meyer said, "water is the only strategic weapon to use against aridity."<sup>2</sup> How we Texans make decisions on the best way to manage and conserve this vital resource is tantamount to a bright future for our state. The history of any issue helps inform us of the path to hopefully avoid mistakes in the future, so grasping the history of our basic legal concepts about water in Texas is an integral part in the process of prudent future planning.

All the growth predictions agree on one significant point: the people of Texas will use increasingly larger amounts of water in their daily lives based upon anticipated population increases alone. Potable water, therefore, is the critical issue of our times, as it has been so many times in our past. Like all issues, when rain falls and the springs run, all is well and complacency sets in; human nature moves on to meet more immediate problems. When rains cease and the springs are dry, people suffer and cry out, physically and economically. Water availability is a problem that must be addressed on a long-term basis as sixty per cent of water in Texas comes from underground sources which do not refill or "recharge" overnight.<sup>3</sup>

Many Texans remember living through the great drought of the 1950's and its pain and suffering statewide. The 1950's drought changed the face of Texas as it dried up age-old springs, killed livestock, and caused families to lose ranches and farms, results that forever changed traditional ways of

life. Another severe drought touched central and south Texas just two years ago, and just recently visited again. Anyone who has observed the upper reaches of giant Lake Travis in the last year has found this large and important lake all but dried up north of Point Venture.

Who would have ever known that an obscure lawsuit over rights to underground water, contested in a small town in north Texas at the start of the 20th century, would begin a cascade of events which is still unfolding today in the courts, state government, and in daily life? The ultimate ruling of the lawsuit, which did not merit even a single word in the local newspaper,<sup>4</sup> is infamously known as the “rule of capture,” or “he who has the biggest pump gets the most or all of the water.”

The roots of the “rule of capture” are found in the ancient idea that the ownership of wild game could not be claimed until possession was actually taken.<sup>5</sup> “The rule of capture” is one of the most confusing, and for many, the most reviled concepts in Texas water law. An infamous example of public revulsion began quietly in 1991 when two men who owned eighty-five southern Bexar County acres opened Living Waters Artesian Springs catfish farm. Their artesian water well was capable of producing 43,000,000 gallons per day, enough water to support 250,000 people, an amount equivalent to twenty-five per cent San Antonio’s population.<sup>6</sup> Under the “rule of capture” the farm was free to take as much water from the Edwards Aquifer as it could put to beneficial use.<sup>7</sup> Nine years of controversy later, on December 5, 2000, the San Antonio Water System purchased most of the “catfish farmers” water rights for \$9.0 million. Eventually, the city had to buy the balance of the rights in August, 2002 for an additional undisclosed amount generally understood to be in the millions.<sup>8</sup> Even though the public’s awareness of the “rule of capture” was finally brought to a crescendo by this infamous catfish farm water well, few outside the professionals who dealt with water issues daily understood the legal concept behind it or its historical origin in Texas law.

In Texas, water is classified generally as either surface water or groundwater. Surface water is any water that runs in a channelized flow. It is owned by the state for the benefit of the people. Groundwater is underground water and it is generally owned by the surface land owner. The “rule of capture” as it pertains to groundwater states that a land owner who drills water wells on his or her land can pump all the water from underground that can be “captured” without any liability for damage to any neighboring property owner. If the land owner does not waste the water from the well, dig the

water well to intentionally harm a neighbor, or cause subsidence, even if the neighbor's water well dries up completely as a result, the neighbor has no claim for compensation or damages against the land owner.

The "rule of capture" does not recognize correlative rights (or to have a mutual or reciprocal relation, in such sense that the existence of one necessarily implies the existence of the other)<sup>9</sup> between landowners in pumping groundwater, and while Texas courts have consistently upheld this rule for over a hundred years, a dissenting justice wrote in 1955:

In the field of water law there is no consolation in the rule of capture. . . If the law of capture has any true application to underground water, it is an extremely limited one. No one can live in a vacuum. Therefore, all property rights are to a certain extent correlative.<sup>10</sup>

The perplexing question is, why are ground water rights not considered correlative in Texas?

The citizen on the street, when asked about the origin of the "rule of capture," will usually respond that its roots are found in the oil and gas industry. Rarely does anyone answer that the rule stemmed from a water dispute. Even rarer does anyone answer that the rule originated as a ruling in a lawsuit in Denison, Texas at the beginning of the 20th century between a local property owner and a major railroad.

Laid out in the summer of 1872 seven miles north of Sherman, Texas, founders William Munson and R.S. Stevens began Denison specifically with the Missouri, Kansas and Texas (KATY) Railroad in mind. They even named it for George Denison, the railroad's vice president.<sup>11</sup> The first train arrived in the new town on Christmas Eve, 1872, and by 1873 the city could boast of 3,000 residents. Dwight Eisenhower, the 34th president of the United States, was born there in 1890 when the city had grown to 10,000 inhabitants.<sup>12</sup> At least ten railroads stopped there by 1901, making it a "bustling" business center.<sup>13</sup> The *Sunday Gazetteer*, a local newspaper, contained a weekly "Railroad Roundup Column." Indicative of the deference shown the railroad industry by the people of Denison was an entry in the *Gazetteer's* Railroad Roundup Column on October 2, 1904:

The railroads are making unusually low homeseeker's rates to Texas, and within the next thirty (30) days thou-

sands of people will come from the North and East to this state. The railway companies are doing their share, and if the citizens of Texas will do one-half as much, Texas will grow this coming year as it never has.<sup>14</sup>

The KATY railway advertised itself as the Gateway to Texas, and Denison was its first stop in the state.<sup>15</sup> Joining George Denison in the KATY railway company were such notable investors as John D. Rockefeller and J. Pierpont Morgan, among others.<sup>16</sup> Eventually notorious financier and speculator Jay Gould acquired the KATY.<sup>17</sup> The Texas legislature also showed favoritism toward the KATY when it gave the railroad the same rights as a Texas corporation for almost twenty years before it officially incorporated in Austin.<sup>18</sup> The KATY owned and operated 1,119 miles of track in Texas by the beginning of 1904.<sup>19</sup> It was the first continuous railroad to St. Louis from Texas, and through its linkage with the Houston and Texas Central Railway was a key connector to Houston and Austin. Through acquisitions it would also connect with New Orleans.<sup>20</sup> The two railroad companies—KATY and H & TC—would ultimately become intertwined, with Denison as the key point of connection. The H & TC owned 115 locomotives and 2,271 cars in 1892, which generated passenger earnings of a million dollars and freight earnings of two and a half million. The KATY, by comparison, had passenger earnings of \$1.2 million and freight earnings of three million in 1895, and owned 133 locomotives and 163 cars.<sup>21</sup> When the two railways met in Denison the city grew quickly, and the two companies heavily influenced the economy and citizenry.

Steam-powered locomotives use water and lots of it so when The H & TC Railway decided to build a maintenance yard for their locomotives in Denison,<sup>22</sup> its representatives asked their immediately adjacent neighbors about the water table and their water wells.<sup>23</sup> A representative of the company visited W. A. East, whose homestead comprised several lots of land, the nearest of which was inside a hundred feet from the railroad land.<sup>24</sup> Mr. East, more than likely a Denison policeman,<sup>25</sup> showed the railroad man the wells on his property, which were around thirty-three feet deep and five feet wide.<sup>26</sup> Mr. East's well captured his water for household use only, and had been in use for a number of years prior to the railroad investigation.<sup>27</sup>

The railroad dug a well on their property shortly thereafter which was sixty-six feet deep and twenty feet wide.<sup>28</sup> When the diggers completed the

well in August, 1901, they installed a steam pump "of sufficient strength to supply a three inch pipe."<sup>29</sup> The railroad began pumping 25,000 gallons a day. Within a few months, Mr. East's water well went dry as did several of his neighbors.<sup>30</sup> Mr. East and the neighbors sued the railroad company.

Odd decisions became the norm in this lawsuit from the very beginning. Presently, a plaintiff who was a local homestead owner would more than likely ask a jury of his peers to judge his case against a large company such as the railroad; it was his unilateral and unquestionable decision then for a trivial fee to ask for a jury trial. Even today the election to have a jury trial still costs only five dollars. However, even though Mr. East was represented by well-qualified local counsel, Moseley & Eppstein, he chose to try his case with the judge only.<sup>31</sup> Perhaps the railroad was so beloved by the people of Denison or employed so many local citizens that Mr. East and his attorneys felt their best chance to prevail was outside the peer review of the citizens of Denison. Whatever the reason, no jury was called, which left the decision to District Judge Rice Maxey.<sup>32</sup>

In Mr. East's First Amended Original Petition, he claimed the water in his well was "inexhaustible . . . pure, soft water of a kind that it was almost impossible to secure in the markets," that the water was "supplied by a subterranean stream" or if incorrect, the water was "fed by percolations of water through his land." He further claimed that the railroad well's "powerful pumps and engines . . . drew all the water from under his land as well as that of all of the other surrounding land owners for a very large territory." He claimed the water taken from the railroad well was "an unreasonable and unnatural supply of water out of all proportion to any reasonable or legitimate use of the said land as land." He further claimed the railroad "uses the water in supplying a vast number of engines with water and for all other purposes necessary and usual in conducting a large system of railroad extending over several hundred miles."<sup>33</sup>

Mr. East's attorneys set up their claim in the classic terms of the "little man" against the big railroad company. They claimed the "reasonable use" doctrine, known as the "American rule" that limits the amount of water one can withdraw from underneath his or her own property to be what is "reasonably" necessary for the beneficial use of the surface estate.<sup>34</sup> Their claim was that the water from the railroad "well was not taken for the purposes of developing or using this land for any useful, profitable or pleasurable purpose . . ."<sup>35</sup> The East attorneys made a strong case, and claimed damages in the amount of \$1,100, but Judge Maxey on December 28, 1902

disagreed with the East claims.

Judge Maxey found all the facts true as stated in the petition by the plaintiff, found that the damages were in the total amount of \$206.25 per well dried up, and found that “the use to which the defendant puts its well was not a reasonable use of their property as land, but was an artificial use of their property.”<sup>36</sup> He added, though, “and, if the doctrine of reasonable use is applicable to defined streams applies to such cases, this was unreasonable.”<sup>37</sup>

His subsequent conclusion was another oddity of this case. While his findings so far appeared to be in favor of Mr. East, his final conclusion was “under the foregoing facts no cause of action is shown in behalf of the plaintiffs in any sum whatsoever, because I do not believe any correlative rights exist between the parties as to the underground, percolating waters which do not run in any defined channel. I therefore find for the defendant.”<sup>38</sup> Without any evidence to the contrary, the judge assumed the water underground was “percolating” water and therefore even though the use by the railroad was deemed unreasonable, and he agreed Mr. East was damaged, he ruled correctly, according to the Texas Supreme Court two years later, that the plaintiffs could not recover any remedy for their damages from the railroad. Judge Maxey did not refer to any other cases such as the 1843 English case, *Acton v. Blundell*,<sup>39</sup> that the Texas Supreme Court would eventually cite. It is unknown if Judge Maxey had the English case in mind, but his declaration that the parties’ rights to the water were not “correlative” was a bold judicial statement.

Judge Maxey carefully worded his decision; he recognized the tension of the industrial age, man versus machine, and was sympathetic to his fellow citizen, Mr. East. One unknown fact was the source of the water underground; was it a pool resulting from “percolating water” from East’s surface or from an “underground” stream? Mr. East’s lawyers did not know, hence the wording in their petition. The decision hinged precisely on this fact. Since, technology was not in place to actually determine the source of the water, Judge Maxey chose to base his decision assuming “percolating water” as the source.

As anticipated, East appealed the decision. The railroad, at the appellate level and beyond, was represented by one of the strongest and most famous law firms in Texas—Baker, Botts, Baker, and Lovett—along with the original attorneys for the railroad, Head & Dillard. The appellate court reversed Maxey’s original decision, and awarded the plaintiffs \$1,100 and

court costs.<sup>40</sup>

Appellate Justice Bookout ruled that based upon a New Hampshire case the rights of the adjoining landowners were correlative and he was of the opinion that under the facts of the case, East and the other plaintiffs were entitled to recover the \$206.25 mentioned in Judge Maxey's trial court opinion. Judge Bookout also used a New York case to back up his decision, which used the following phrase to decide for the damaged landowner in similar circumstances "unreasonable as to the plaintiff and the others whose lands are thus clandestinely sapped, and their value impaired." Judge Bookout mentioned the railroad's plea of the English case *Acton v. Blundell* in 1843, which ruled "If a man digs a well on his own field and thereby drains his neighbor's he may do so unless he does it maliciously," but he disagreed with its application. The Baker, Botts attorneys were astute in their research. On the basis of the English case, the railroad appealed the appellate court decision to the Texas Supreme Court.

Another oddity of the case is why Baker, Botts ignored the concept of underground water ownership, which exists in Spanish water law and was time and again recognized in Texas law. In the words of Spanish water rights law expert Michael C. Meyer:

Water that originated on a piece of land, that ran solely within its confines, or that lay *under* [emphasis added] it was automatically alienated from state ownership with the sale or grant of the land. It was appurtenant to land-ownership. No special water right or additional permission was required to use it, and no limits were set on the amounts that might be used. . .<sup>41</sup> The Siete Partidas, in fact, specified it was an obligation of all inhabitants to make their land productive, and it further indicated that 'man has the power to do as he sees fit with those things that belong to him according to the laws of God and man. . .<sup>42</sup> Hispanic groundwater law was designed to protect individual rights, to encourage private initiative and entrepreneurship, to stimulate economic development, and even to accumulate personal wealth.<sup>43</sup>

Meyer went on to sum up that "It [Spanish water law] combined the reasonableness of private property with the justice of serving the common

good.”<sup>44</sup> For whatever reason, the courts ignored the much older more appropriate, and actually at that time, more recognized law in Texas, that of Spanish water law. The Texas Supreme Court on June 13, 1904 reversed the decision of the appellate court and affirmed Judge Maxey’s original decision.

In upholding the original decision, the Texas Supreme Court relied primarily upon two cases, the English case *Acton v. Blundell*,<sup>45</sup> and a case decided by the Supreme Court of Ohio, *Frazier v. Brown*<sup>46</sup> which held that,

In the absence of express contract and a positive authorized legislation, as between proprietors of adjoining land, the law recognizes no correlative rights in respect to underground waters percolating, oozing, or filtering through the earth; and this mainly from considerations of public policy: (1) Because the existence, origin, movement, and course of such waters, and the causes which govern and direct their movements, are so secret, occult and concealed that an attempt to administer any set of legal rules in respect to them would be involved in hopeless uncertainty, and would be practically be impossible. (2) Because any such recognition of correlative rights would interfere, to the material detriment of the commonwealth, with the drainage of agriculture, mining, the construction of highways and railroads, with sanitary regulations, building, and the general progress of improvement in works of embellishment and utility.<sup>47</sup>

By upholding the district court decision and reversing the appellate court decision, the justices of the Texas Supreme Court effectively discarded the “American rule of reasonable use” and chose the “rule of capture” as the law in Texas, beginning a journey through decades of law suits and rulings consistently in favor of the landowner with the “larger pump.”

Fresh water is critical to life in Texas and has been from the beginning. The Spanish chose San Antonio’s location specifically due to the copious amount of water flowing from its numerous springs. “Respect for water is bred in the bone of the Spaniard”<sup>48</sup> aptly described the Spanish settler anywhere in the New World. All who live in Texas for any time at all gain the same respect for water.

The East case caused an amendment to the Texas Constitution in 1917 that authorized the legislature to pass all appropriate laws to preserve and conserve natural resources. The amendment said:

The conservation and development of all of the natural resources of this State . . . and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.<sup>49</sup>

From that amendment, groundwater conservation districts have developed and been approved in the state. Yet, to date, the Legislature has failed to adopt a clear law which makes the “rule of capture” a dead concept of past history. Time and again the courts have “called upon the Legislature to exercise its proper role in regulating and managing groundwater withdrawals in the State of Texas.”<sup>50</sup> In 1973, the Texas Supreme Court wrote:

The need for additional legislation for creation of districts to cover unregulated groundwater reservoirs and to solve other conflicts which may arise in this area of water law and subsidence seems to be inevitable. Providing policy and regulatory procedures in this field is a *legislative* [emphasis added] function. It is well that the Legislature has assumed its proper role, because our courts are not equipped to regulate groundwater uses and subsidence on a case by case basis.<sup>51</sup>

In 1999, the Texas Supreme Court similarly expressed its frustration with the Legislature’s inaction in a case in which they upheld the “rule of capture” that was all but exactly like the East case. A large company, Ozarka, which pumped huge amounts of groundwater from wells on their property for bottling and sale to consumers caused the water well of a neighbor, Bart Sipriano, to dry up completely. The court ruled in favor of the large company, but with wording which included a less than subtle warning to the Legislature:

For over ninety years, this Court has adhered to the

common-law rule of capture in allocating the respective rights and liabilities of neighboring landowners for use of groundwater flowing beneath their property. The rule of capture essentially allows, with some limited exceptions, a landowner to pump as much groundwater as the landowner chooses, without liability to neighbors who claim that the pumping has depleted their wells. We are asked today whether Texas should abandon this rule for the rule of reasonable use . . . Because we conclude the sweeping change to Texas groundwater law Sipriano [the plaintiff in the case] urges this Court to make is not appropriate *at this time* [emphasis added], we affirm the Court of Appeal's judgment.<sup>52</sup>

The most infamous result of the "rule of capture" is the drying of the treasured Comanche Springs in Fort Stockton during the 1950's drought. Today, these natural wonder springs that emerged from the underground Trinity sands and once flowed into the now dry Comanche Creek, only run when the land owners "up dip" of the springs turn off their deep water well pumps in times of plentiful rain, which rarely happens in arid Fort Stockton.<sup>53</sup> The "rule of capture" in 1954 was cited by the courts in the lawsuit that resulted from the drying of the springs and its creek to state that even though the springs were dependent upon the water from the sands, the ranchers and farmers had the right to pump all the water they needed without limit for their chosen beneficial use without malice to others. The water emerging from the springs, while dependent upon the downstream irrigators from the resulting creek, did not become surface flowing water owned by the State until it surfaced on earth.<sup>54</sup>

But there is hope for groundwater conservation in Texas. The legislature, while continuing to be reluctant to specifically address the "rule of capture," has supported the formation of groundwater conservation districts around the state which have the authority to exercise some control over how much water is pumped from underground sources. An editorial in the *Dallas Morning News* on October 22, 2007 pleaded with the citizens of north Texas to encourage area legislators to get approval for one or more conservation districts recommended by the Texas Commission on Environmental Quality. The controversy created by the obscure *East* case from a long ago time when railroads "ruled the roost" in most of the country's

economy is still alive and remains a throbbing pain to many in our state. The sure-to-occur droughts married with the expected population growth in Texas over the next century will put pressure on our fresh water resources as never before in our history. The leaders of Texas will be well-served to seek historical studies as sources to inform them in their decision-making process by understanding the foundations of how doctrines of law in our state were formed.

## NOTES

<sup>1</sup>Nelson M. Blake. *Water for the Cities*. (Syracuse: Syracuse University Press, 1956) 2.

<sup>2</sup>Michael C. Meyer. *Water in the Hispanic Southwest*, (Tucson: The University of Arizona Press, 1984) 6.

<sup>3</sup>Ronald Kaiser. "Who Owns the Water" *Texas Parks and Wildlife* magazine, July, 2005, 12.

<sup>4</sup>Search of the newspaper files held at the Center for American History at the University of Texas at Austin found no mention of the case in the local newspapers in Denison.

<sup>5</sup>Russell S. Johnson. "Texas Water Law: The Next Century." Text of a speech delivered September 1, 2001 at the 14th Annual Legal Seminar on Ad Valorem Taxation, San Antonio, published by the Real Estate Center at Texas A & M University and referred to as Technical Report 1469. p.6.

<sup>6</sup>William E. Kendall. "A Look at the Fundamentals of Groundwater Law, the Rule of Capture, and How the Law is Affected by the Pressures of Society and the Influences of Technology." A paper given at The Changing Face of Water Rights in Texas 2003. (Austin: State Bar of Texas, February, 2003) p. 14-15.

<sup>7</sup>*Ibid.*

<sup>8</sup>*Ibid.*

<sup>9</sup>Black's Law Dictionary. (St. Paul, West Publishing Company: 1990) 344.

<sup>10</sup>Johnson. 9.

<sup>11</sup>*Handbook of Texas Online*, s.v. ""; [http://www.tsha.utexas.edu/handbook/online/articles/DD/hed4\\_print.html](http://www.tsha.utexas.edu/handbook/online/articles/DD/hed4_print.html), accessed 10/21/2007.

<sup>12</sup>*Ibid.*

<sup>13</sup>*Ibid.*

<sup>14</sup>*The Sunday Gazetteer*. October 2, 1904.

<sup>15</sup>*Handbook of Texas Online*, s.v. “”; [http://www.tsha.utexas.edu/handbook/online/articles/MM/eqm8\\_print.html](http://www.tsha.utexas.edu/handbook/online/articles/MM/eqm8_print.html), accessed 10/21/2007.

<sup>16</sup>*Ibid.*

<sup>17</sup>*Ibid.*

<sup>18</sup>*Ibid.*

<sup>19</sup>*Ibid.*

<sup>20</sup>*Handbook of Texas Online*, s.v. “”; [http://www.tsha.utexas.edu/handbook/online/articles/HH/eqh9\\_print.html](http://www.tsha.utexas.edu/handbook/online/articles/HH/eqh9_print.html), accessed 10/21/2007.

<sup>21</sup>*Ibid.*

<sup>22</sup>William F. Mullican, III and Suzanne Schwartz. “100 Years of Rule of Capture: From East to Groundwater Management.” Texas Water Development Board, Report 361. June, 2004. 63.

<sup>23</sup>Plaintiff’s First Amended Original Petition, *W. A. East vs. Houston & Texas Central Railroad Company*.

<sup>24</sup>Mullican. 73.

<sup>25</sup>Daniel M. Liebowitz telephone communication with librarian at the Denison Public Library.

<sup>26</sup>Plaintiff’s First Amended Original Petition.

<sup>27</sup>*Ibid.*

<sup>28</sup>*Ibid.*

<sup>29</sup>*Ibid.*

<sup>30</sup>*Ibid.*

<sup>31</sup>*East v. Houston & Texas Central Railroad Company*. 77 SW 647 (Civ. App. Dallas, 1903).

<sup>32</sup>*Ibid.* 646.

<sup>33</sup>Plaintiff’s First Amended Original Petition.

<sup>34</sup>*Ibid.*

<sup>35</sup>*Ibid.*

<sup>36</sup>Findings of Fact and Conclusions of Law. *W.A. East vs. Houston & Texas Central Railroad Company*. December 25, 1902.

<sup>37</sup>*Ibid.*

<sup>38</sup>*Ibid.*

<sup>39</sup>Eric Opelia. "The Rule of Capture in Texas: An Outdated Principle Beyond its Time." 6 University of Denver Water Law Review. Fall 2002, 104.

<sup>40</sup>East v. Houston & Texas Central Railroad Company.77 SW 646 (Civ. App. Dallas, 1903).

<sup>41</sup>Meyer. 178.

<sup>42</sup>*Ibid.* Siete Partidas, Partida 3, Titulo 28, Ley 1.

<sup>43</sup>Meyer. 179.

<sup>44</sup>*Ibid.* 180.

<sup>45</sup>Opelia. 104.

<sup>46</sup>Houston & Texas Central Railroad Company v. W. A. East. 98 Texas Reports, 146. June 13, 1904.

<sup>47</sup>*Ibid.*

<sup>48</sup>Edwin P. Arneson. "Early Irrigation in Texas" Vol. 25, No. 2, Southwestern Historical Quarterly Online. [http://www.tsha.utexas.edu/publications/journals/shq/online/v025/n2/contrib\\_DIVL1538\\_print.html](http://www.tsha.utexas.edu/publications/journals/shq/online/v025/n2/contrib_DIVL1538_print.html). (acc. June 1, 2006).

<sup>49</sup>Mullican. 2.

<sup>50</sup>Johnson. 12.

<sup>51</sup>*Ibid.*

<sup>52</sup>Johnson. 13.

<sup>53</sup>Interview conducted by Charles Porter with "Clemente," a county worker on site at Comanche Springs, Fort Stockton, Texas, September 7, 2007.

<sup>54</sup>Pecos County Water Control and Improvement District No. 1 v. Clayton Williams, et al.271 SW2d 503 (1954).