


# ASFPM – LOWER RIO GRAND VALLEY

## FLOODING PROPERTY RIGHTS DRAINAGE

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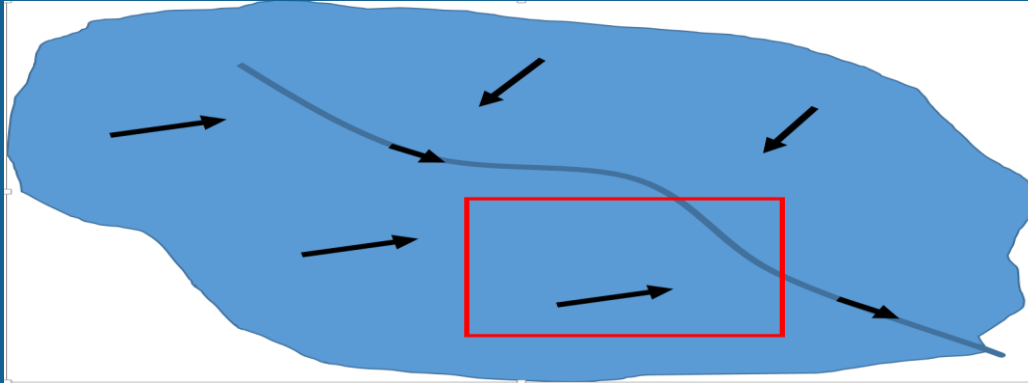
# OVERVIEW OF PRESENTATION

- Texas **Water** Law vs Texas **Drainage** Law
  - Who owns the water – **State** vs **Landowner**
  - How can the water be diverted, impounded or used
  - Drainage water/storm water/surface runoff
  - Flood water/streamflow/state water
  - Regulating land use
  - Questions
- 
- A series of three parallel white diagonal lines extending from the bottom right towards the center of the slide.

# TEXAS WATER LAW VS TEXAS DRAINAGE LAW

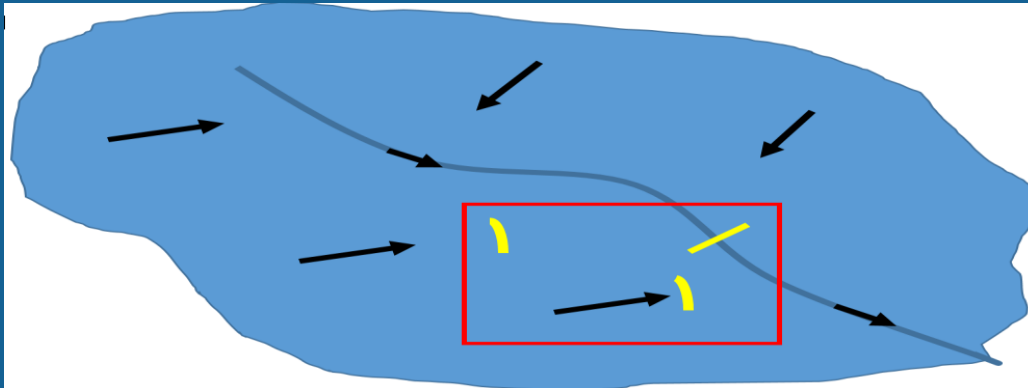
Texas **Water** Law –

- Who owns the water and how can it be used



Texas **Drainage** Law –

- How can one alter water flowing across his land



# WHO OWNS THE WATER – STATE VS LANDOWNER

## State owns it (per statute)

### SUBCHAPTER B. RIGHTS IN STATE WATER

Sec. 11.021. STATE WATER. (a) The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state is the property of the state.

## Landowner owns it (per caselaw)

Surface runoff/storm water/drainage water becomes the property of the state **once it enters a watercourse**; prior to that, landowners own it and may divert, impound and use it, so long as they don't damage the property of another.

# TAC DEFINITIONS - STATE WATER; SURFACE WATER

(52) State water--The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the stormwater, floodwater, and rainwater of every river, natural stream, and watercourse in the state. State water also includes water which is imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state. State water does not include percolating groundwater; nor does it include diffuse surface rainfall runoff, groundwater seepage, or springwater before it reaches a watercourse.

(53) Stormwater or floodwater--Water flowing in a watercourse as the result of recent rainfall.

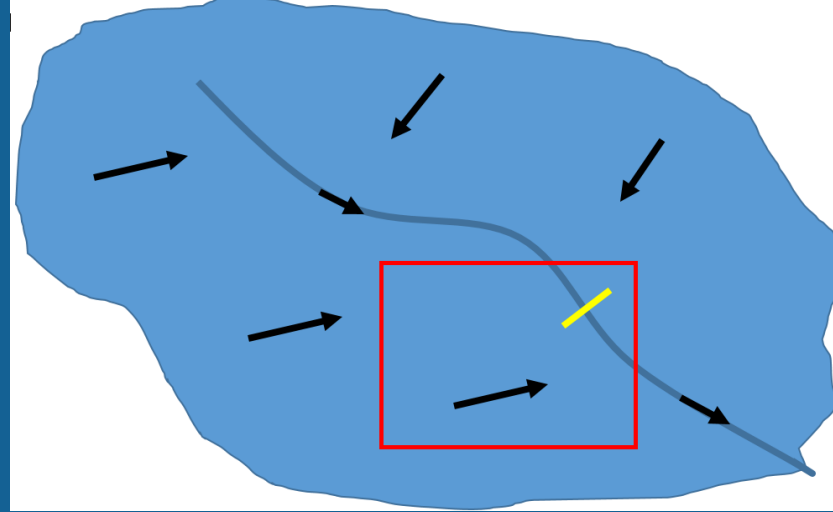
(54) Streamflow--The water flowing within a watercourse.

(16) Dam--Any artificial structure, together with any appurtenant works, which impounds or stores water. All structures which are necessary to impound a single body of water shall be considered as one dam. A structure used only for diverting water from a watercourse by gravity is a diversion dam.

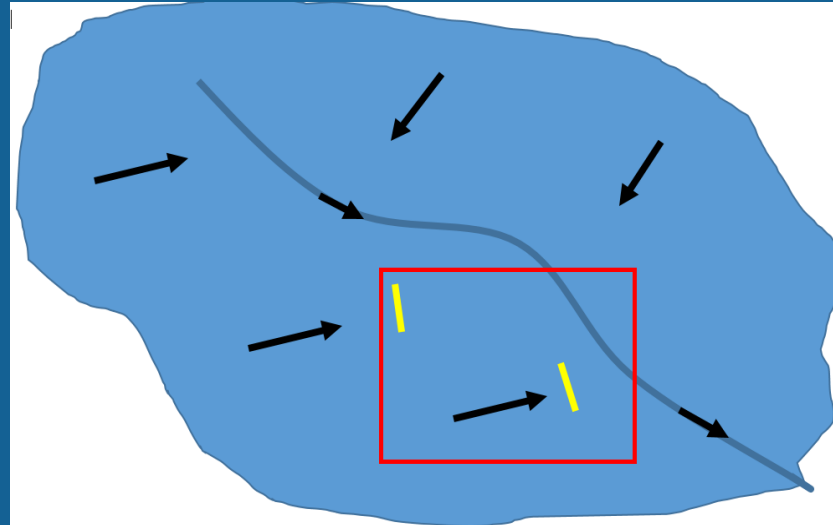
(17) Diffused surface water--Water on the surface of the land in places other than watercourses. Diffused water may flow vagrantly over broad areas coming to rest in natural depressions, playa lakes, bogs, or marshes. (An essential characteristic of diffused water is that its flow is short-lived.)

# HOW CAN THE WATER BE DIVERTED, IMPOUNDED OR USED

If **STATE** water –  
with a permit  
unless exempt



If **LANDOWNER** water –  
don't harm  
your neighbor



# DRAINAGE WATER/STORM WATER/SURFACE RUNOFF

Sec. 11.086. OVERFLOW CAUSED BY DIVERSION OF WATER. (a) No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.

(b) A person whose property is injured by an overflow of water caused by an unlawful diversion or impounding has remedies at law and in equity and may recover damages occasioned by the overflow.

(c) The prohibition of Subsection (a) of this section does not in any way affect the construction and maintenance of levees and other improvements to control floods, overflows, and freshets in rivers, creeks, and streams or the construction of canals for conveying water for irrigation or other purposes authorized by this code. However, this subsection does not authorize any person to construct a canal, lateral canal, or ditch that obstructs a river, creek, bayou, gully, slough, ditch, or other well-defined natural drainage.

# FLOOD WATER/STREAMFLOW/STATE WATER

Sec. 16.236. CONSTRUCTION OF LEVEE WITHOUT APPROVAL OF PLANS; LEVEE SAFETY. (a) No person may construct, attempt to construct, cause to be constructed, maintain, or cause to be maintained any levee or other such improvement on, along, or near any stream of this state that is subject to floods, freshets, or overflows so as to control, regulate, or otherwise change the floodwater of the stream without first obtaining approval of the plans by the commission.

## EXEMPTIONS

(h) Subsection (a) of this section does not apply to:

(1) any dam, reservoir, or canal system associated with a water right issued or recognized by the commission;

(2) dams authorized by Section 11.142 of this code;

(3) a levee or other improvement within the corporate limits of a city or town provided: (a) plans for the construction or maintenance or both must be approved by the city or town as a condition precedent to starting the project and (b) the city or town requires that such plans be in substantial compliance with rules and standards adopted by the commission;

(4) a levee or other improvement within the boundaries of any political subdivision which has qualified for the National Flood Insurance Program as authorized by the National Flood Insurance Act of 1968 (Title 42, U.S.C., Sections 4001-4127) provided: (a) plans for the construction or maintenance or both must be approved by the political subdivision which is participating in the national flood insurance program as a condition precedent to starting the project and (b) the political subdivision requires that such plans be in substantial compliance with rules and standards adopted by the commission;

(5) projects implementing soil and water conservation practices set forth in a conservation plan with a landowner or operator and approved by the governing board of a soil and water conservation district organized under the State Soil Conservation Law, as amended (Article 165a-4, Vernon's Texas Civil Statutes), provided that the governing board finds the practices do not significantly affect stream flooding conditions on, along, or near a state stream; or

(6) any levee or other improvement constructed outside of the 100-year floodway. For the purposes of this section, "100-year floodway" is defined as the channel of a stream and the adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot above the 100-year flood elevation prior to encroachment.



# TWC SECTION 11.142 – PERMIT EXEMPTIONS

Sec. 11.142. PERMIT EXEMPTIONS. (a) Without obtaining a permit, a person may construct on the person's own property a dam or reservoir with normal storage of not more than 200 acre-feet of water for domestic and livestock purposes. A person who temporarily stores more than 200 acre-feet of water in a dam or reservoir described by this subsection is not required to obtain a permit for the dam or reservoir if the person can demonstrate that the person has not stored in the dam or reservoir more than 200 acre-feet of water on average in any 12-month period. This exemption does not apply to a commercial operation.

Text of subsec. (b) as amended by Acts 2001, 77th Leg., ch. 966, Sec. 2.09

(b) Without obtaining a permit, a person may construct on the person's property a dam or reservoir with normal storage of not more than 200 acre-feet of water for fish and wildlife purposes if the property on which the dam or reservoir will be constructed is qualified open-space land, as defined by Section 23.51, Tax Code. This exemption does not apply to a commercial operation.

Text of subsec. (b) as amended by Acts 2001, 77th Leg., ch. 1427, Sec. 1

(b) Without obtaining a permit, a person may construct on the person's property in an unincorporated area a dam or reservoir with normal storage of not more than 200 acre-feet of water for commercial or noncommercial wildlife management, including fishing, but not including fish farming.

# REGULATING LAND USE

Sec. 16.315. POLITICAL SUBDIVISIONS; COMPLIANCE WITH FEDERAL REQUIREMENTS. All political subdivisions are hereby authorized to take all necessary and reasonable actions that are not less stringent than the requirements and criteria of the National Flood Insurance Program, including but not limited to:

- (1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;
- (2) guiding the development of proposed future construction, where practicable, away from a location which is threatened by flood hazards;
- (3) assisting in minimizing damage caused by floods;
- (4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on

land use requirements;

(5) engaging in floodplain management, adopting and enforcing permanent land use and control measures that are not less stringent than those established under the National Flood Insurance Act, and providing for the imposition of penalties on landowners who violate this subchapter or rules adopted or orders issued under this subchapter;

(6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the director, or whomever the director designates, of such property;

(7) consulting with, giving information to, and entering into agreements with the Federal Emergency Management Agency for the purpose of:

(A) identifying and publishing information with respect to all flood areas, including coastal areas; and

(B) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;

(8) cooperating with the director's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(9) taking steps, using regional, watershed, and multi-objective approaches, to improve the long-range management and use of flood-prone areas;

(10) purchasing, leasing, and receiving property from the director when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Federal Emergency Management Agency or other appropriate legal representative of the United States Government;

(11) requesting aid pursuant to the entire authorization from the board;

(12) satisfying criteria adopted and promulgated by the board pursuant to the National Flood Insurance Program;

(13) adopting permanent land use and control measures with enforcement provisions that are not less stringent than the criteria for land management and use adopted by the director;

(14) adopting more comprehensive floodplain management rules that the political subdivision determines are necessary for planning and appropriate to protect public health and safety;

(15) participating in floodplain management and mitigation initiatives such as the National Flood Insurance Program's Community Rating System, Project Impact, or other initiatives developed by federal, state, or local government; and

(16) collecting reasonable fees to cover the cost of administering a local floodplain management program.

# QUESTIONS?

