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Collective Defense Against Rule-of-Capture Abuse:

A Landowner Groundwater Co-op Framework for Texas

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This framework document is offered as a public resource for affected landowners, legislators, conservation organizations, agricultural lenders, and legal practitioners navigating Texas groundwater law. It does not constitute legal advice.

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Executive Summary

Texas groundwater law operates under a 121-year-old doctrine – the Rule of Capture – that grants landowners the unrestricted right to pump groundwater beneath their own property, regardless of the impact on neighbors. Originally calibrated for a world of shallow domestic wells and small-scale agricultural draw, the doctrine now faces exploitation by well-capitalized investors assembling large tracts specifically to extract and export water at industrial scale. The resulting asymmetry – one party with concentrated capital and legal counsel against dozens of rural landowners with neither – is not a market failure but a structural one, embedded in law and compounded by the slow pace of legislative reform.

This paper proposes a replicable co-operative framework – the Landowner Groundwater Co-operative (LGC) – that converts the Rule of Capture's symmetry from a threat into a defensive instrument. Because the doctrine does not discriminate between extractors, a well-organized co-operative with sufficient collective capital can legally outpump, out-document, and ultimately outmaneuver a single large-scale commercial extractor – while simultaneously building the scientific and legal record that future legislative reform will require.

The framework operates across four integrated mechanisms: (1) a collective pumping and storage operation that establishes prior beneficial use and defensively captures water before it can be coned away; (2) a conservation easement pool that permanently encumbers member properties against high-volume commercial extraction, foreclosing future land assembly by extractors; (3) a formal groundwater conservation district petition or expansion strategy that converts GCD regulatory authority into a structural shield; and (4) a water supply commercialization model that generates ongoing revenue – transforming the co-operative from a purely defensive cost center into a self-sustaining enterprise competitive with the very extractors it opposes.

The defining architectural feature – deed covenants that bind membership obligations to the land itself, not to individual owners – ensures the co-operative's defensive perimeter cannot be eroded by property sales or generational transfer. Combined with an oil-and-gas-style unitization agreement governing pro-rata capital contributions and water allocation, this structure is legally robust, financially coherent, and immediately actionable under current Texas law.

The framework is designed for replication. While the immediate context is the Carrizo-Wilcox Aquifer in East Texas – where a single investor's permit applications for 49,000 acre-feet annually have triggered legislative intervention – the underlying legal mechanics apply to any Texas aquifer threatened by concentrated extraction. Every GCD boundary, every unprotected rural county, every aging agricultural community sitting above a productive aquifer is a candidate for this structure.

Key Finding: Under pure Rule of Capture logic, capital parity or superiority wins. A co-operative that collectively deploys greater pump capacity than a commercial extractor is not blocking that extractor – it is exercising the same legal right, at scale, in defense of its members' existing property interests. The doctrine that handed railroads victory over individual farmers in 1904 is symmetrical. A well-capitalized co-operative is the biggest pump.

I. The Structural Problem

A. The Rule of Capture at Industrial Scale

The Texas Supreme Court established the Rule of Capture in *Houston & Texas Central Railway Co. v. East* (1904), finding that a landowner had no legal remedy when a railroad drilled a larger, deeper well that drained his neighbor's supply. The court's logic was explicit: the remedy is to drill a bigger well. For most of the twentieth century, this framing was tolerable because the parties to any aquifer were broadly symmetric – farmers and ranchers drawing comparable volumes for comparable purposes.

That symmetry has collapsed. Institutional capital has identified Texas groundwater as an underpriced asset, and the Rule of Capture as the mechanism for monetizing it. The structure is straightforward: acquire large tracts above productive aquifers, apply for high-volume extraction permits from local Groundwater Conservation Districts (GCDs), and sell the water to water-scarce municipalities at a substantial margin. The 2012 Texas Supreme Court ruling in *Edwards Aquifer Authority v. Day* further entrenched the position by affirming that landowners hold a real-property interest in groundwater in place – analogous to oil and gas mineral rights – meaning excessive GCD regulation may constitute a compensable taking.

The practical result is that GCDs, the state's preferred management mechanism, face legal exposure if they regulate too aggressively. Landowners surrounding a large-scale extractor face aquifer depletion, deepening well costs, and potential total loss of domestic water supply – with no direct legal remedy under current doctrine.

B. The East Texas Case Study

The Carrizo-Wilcox Aquifer – a 23-million-acre formation spanning 66 Texas counties – is currently the locus of the state's most consequential groundwater conflict. Conservation Equity Management (CEM), led by Dallas hedge fund manager Kyle Bass, has applied for permits from the Neches & Trinity Valleys Groundwater Conservation District to drill 43 high-capacity wells on two East Texas ranches totaling approximately 11,200 acres. The proposed production volume – roughly 49,000 acre-feet per year – exceeds the modeled available groundwater (MAG) for the Carrizo-Wilcox in Anderson County by 123% and in Henderson County by 142%, before accounting for existing users.

The legislative response has been significant: Governor Abbott added groundwater study legislation to the special session agenda; Rep. Cody Harris (R-Palestine) secured passage of HB 27, imposing a permit moratorium through October 2027 and mandating TWDB aquifer studies. A coalition of agricultural businesses, municipalities, and rural landowners intervened in the SOAH permit hearing process. CEM responded by filing suit against the GCD for procedural delay and threatening federal takings litigation against legislators.

HB 27 is a holding action, not a solution. The moratorium expires in 2027; the underlying doctrine remains intact; and the precedent, once established, will attract replication across every

productive aquifer in the state. The window for structural intervention – legal, organizational, and commercial – is now.

C. Why Individual Landowners Cannot Win Alone

The asymmetry is not merely financial, though it is that. A single hedge fund with dedicated legal counsel, hydrological consultants, and an investor mandate can sustain years of administrative and judicial proceedings. Individual rural landowners cannot. Beyond capital, the Rule of Capture's logic actively punishes individual defensive pumping: a landowner who drills a deeper well to capture water ahead of an extractor bears that cost alone, with no mechanism to share it across the community of affected neighbors who benefit equally from the defense.

Collective action is not merely preferable here – it is the only mechanism that restores parity. And it is the mechanism the law already supports, through co-operative structures that Texas courts and the Legislature have consistently recognized.

II. The Landowner Groundwater Co-operative: Architecture

A. Entity Structure

The recommended primary entity is a Texas nonprofit corporation organized under Texas Business Organizations Code Chapter 22, operating as a member-benefit co-operative. Nonprofit status confers several strategic advantages: it signals community purpose rather than commercial competition (relevant for public and legislative relations); it enables tax-deductible contributions from allied organizations and municipalities; and it is compatible with grant funding from conservation programs including NRCS/EQIP.

A parallel for-profit subsidiary – structured as a Texas LLC with co-operative membership interests – handles the commercial water supply operations described in Section II.D. Revenue flows upward to the nonprofit parent under an intercompany services agreement, preserving the nonprofit's exempt status while enabling commercial activity. This two-entity stack is standard in conservation finance and well-precedented in Texas.

Governance: A board of directors elected by member landowners on a one-member-one-vote basis for core governance decisions, with acreage-weighted votes for capital calls and water allocation decisions. This dual-track voting structure balances democratic legitimacy with the economic reality that larger landowners bear proportionally greater capital exposure.

B. The Deed Covenant Mechanism

The most architecturally significant feature of this framework – and its most durable defensive element – is the binding of co-operative membership to the land itself, not to individual owners. This is accomplished through a real property covenant recorded against each member parcel in the county deed records.

The covenant runs with the land under Texas Property Code principles governing restrictive covenants appurtenant to real property. It specifies: (1) mandatory co-operative membership for any owner of the burdened parcel; (2) pro-rata capital contribution obligations tied to acreage; (3) prohibition on conveying, leasing, or encumbering groundwater extraction rights separately from the surface estate except through the co-operative; and (4) right of first refusal for the co-operative on any sale of the burdened parcel.

The right of first refusal is the anti-assembly provision. It prevents an extractor from acquiring member properties piecemeal to build a contiguous pumping footprint. Combined with the extraction restriction, it forecloses the land assembly strategy entirely: any parcel encumbered by the covenant is, from an extractor's perspective, worthless as a pumping platform.

Legal Note: Texas courts have consistently enforced restrictive covenants that burden real property when they are clearly stated, properly recorded, and serve a legitimate purpose. The covenant's groundwater provisions should be drafted by Texas water and real property counsel to ensure enforceability, particularly with respect to the extraction restriction's

interaction with the Day holding on groundwater as private property. The co-operative's interest in the covenant as an appurtenant benefit provides standing to enforce.

C. Collective Pumping: The Defensive Extraction Strategy

Under the Rule of Capture, the co-operative's most immediate legal lever is collective pumping. Member landowners pool capital to fund well installation and storage infrastructure on member properties distributed across the threatened aquifer zone. The co-operative operates these wells as a unified system – the functional equivalent of oil and gas unitization, applied to groundwater.

The unitization model is the correct template. When Spindletop produced the chaotic spectacle of competing oil wells drilled on adjacent lots, the industry ultimately developed pooling and unitization agreements that allocated production rights proportionally, eliminated wasteful competitive drilling, and enabled rational field management. Texas water law has not yet compelled this rationalization – but a co-operative can implement it voluntarily, immediately, and to its members' substantial advantage.

Unitization Agreement Terms:

- Pro-rata water allocation based on contributed acreage, adjusted for well productivity on each member's parcel
- Shared capital call structure: infrastructure costs allocated by acreage, operational costs by actual water drawn
- Centralized metering and reporting to satisfy GCD historic-use documentation requirements
- Shared legal fund for permit hearings, GCD proceedings, and any litigation defense

Historic Beneficial Use Documentation:

This is the co-operative's most important early deliverable. GCDs are required to consider historic beneficial use when allocating permits. A co-operative that aggregates and formally documents each member's historical pumping volume – even modest domestic and agricultural use – creates a prior-use record that must be weighed against any new large-volume applicant. Filing this documentation proactively, before a contested permit hearing, is significantly more powerful than introducing it reactively.

Pump-and-Hold Operations:

Where aquifer modeling indicates that a commercial extractor's proposed wells would create a hydraulic cone of depression affecting member properties, the co-operative implements coordinated pump-and-hold operations: withdrawing water into permitted surface impoundments or lined storage ponds on member properties. This is legally unimpeachable – members are capturing water they own, on their own land. The stored water has immediate commercial value (see Section II.D) and simultaneously reduces the volume available for the extractor's wells to capture.

D. Conservation Easement Pool

Parallel to the defensive pumping operation, the co-operative facilitates a pooled conservation easement program that permanently encumbers member properties. Conservation easements are voluntary legal agreements – well-established in Texas through the Edwards Aquifer model and the Texas Land Conservancy's statewide 'Land for Water' program – that restrict specified land uses in perpetuity while leaving ownership and traditional operations (ranching, farming, hunting) intact.

The co-operative's easements are drafted to include explicit groundwater provisions: restrictions on high-volume commercial extraction and export, limitations on well density, and requirements for recharge-protective land management practices. These provisions complement the deed covenant's extraction restrictions with a separately enforceable legal instrument held by a qualified land trust.

Tax Leverage:

Donated conservation easements generate federal charitable deductions under IRC Section 170(h) based on the diminution in fair market value. In a context where groundwater export rights represent a significant component of land value – which the Bass situation has made explicit – the deduction can be substantial. This converts a defensive cost into a financial benefit, improving member economics and broadening participation incentives.

The co-operative should establish a formal partnership with an established Texas land trust (Texas Land Conservancy, The Nature Conservancy Texas, or a purpose-built vehicle) to serve as easement holder, providing the institutional credibility and monitoring capacity that IRS requirements mandate.

E. GCD Strategy: Petition and Engagement

Groundwater Conservation Districts are the state's preferred management mechanism, and GCDs operating within their statutory authority represent the most durable regulatory protection available short of legislative reform. The co-operative's GCD strategy has two tracks depending on whether affected member properties are within or outside an existing GCD boundary.

Within Existing GCD:

The co-operative participates actively in GCD proceedings as a consolidated party – far more effective than individual landowner protests. It funds technical expertise (hydrogeologists, water rights attorneys) to participate in permit hearings, challenge applicant data, and develop competing aquifer models. It formally petitions the GCD to adopt desired future conditions (DFCs) that reflect the aquifer's actual sustainable yield, reducing the headroom available for large new permit grants. It supports the GCD's defense against takings claims by documenting the scientific basis for any production limits imposed.

Outside GCD Boundaries:

A majority of landowners can petition TCEQ to create a new GCD, or request PGMA (Priority Groundwater Management Area) designation – which triggers mandatory GCD formation. The

co-operative provides the organizational infrastructure for this petition: member lists, acreage documentation, and technical evidence of groundwater stress. New GCD formation takes time, but the PGMA petition can trigger interim protections while the process proceeds.

F. Water Supply Commercialization

The co-operative's commercial subsidiary markets co-operatively captured water to municipal buyers, industrial users, and agricultural operators. This is the strategic inversion that transforms the LGC from a defensive cost center into a competitive enterprise.

Bass's commercial thesis depends on being the dominant organized water supplier in a water-scarce region. The co-operative eliminates that monopoly position. It holds two structural advantages CEM cannot replicate: distributed surface ownership across the aquifer zone (reducing single-point legal and hydrological vulnerability) and the demonstrated community trust of the landowners whose aquifer it is protecting. Municipal buyers under political pressure to avoid the CEM controversy – and there is substantial political pressure, given the legislative battle – have a compelling reason to contract with a landowner co-operative instead.

Market Segment	LGC Advantage	Pricing Basis
Municipal Supply (DFW / Houston corridor)	Political neutrality; community goodwill; no extractor controversy	Long-term take-or-pay contracts; \$0.50–\$2.00/1,000 gal wholesale
Agricultural Lease / Irrigation	Existing member relationships; short transport distance	Seasonal contracts; volume-based pricing
Recharge Credit Programs	Land management practices already compatible with conservation easements	Federal EQIP / NRCS program payments
Mitigation Credit Markets	Conservation easements qualify for wetland / habitat credit generation	Market rate; growing demand from developer offset requirements

III. Leadership Team: Composition and Sequencing

The co-operative's leadership requirements are distinct from a conventional nonprofit or agricultural co-op. The threat environment demands immediate legal and technical competence; the commercial ambition requires business development capability; the community context requires deep local trust. These do not often coexist in a single founding team and should not be expected to. The recommended approach is a phased leadership build.

Phase 1: Founding Core (Months 1–3)

Organizing Landowner Committee (3–5 members):

Elected from among the largest affected landowners by acreage. These are not passive board members – they are the co-operative's public face and its primary source of community legitimacy. Selection criteria: significant landholding within the threatened zone, existing relationships with neighbors, credibility with local agricultural and business communities, and willingness to commit personal capital to the initial organizational phase. Agricultural family dynasties, established ranchers, and multi-generational landowners are preferable to recent acquisitions.

Texas Water Law Counsel (retained firm, not in-house):

Non-negotiable from Day 1. The co-operative's every action – deed covenant drafting, GCD filings, historic-use documentation, permit hearing participation – has legal dimension. The firm retained should have active GCD and SOAH practice, familiarity with the Day and Sipriano precedents, and ideally existing relationships with the relevant GCD board. Austin-based firms with dedicated water practices (including those already active in the East Texas proceedings) are the appropriate starting point.

Hydrogeologist / Aquifer Scientist (retained consultant):

The co-operative's scientific credibility is its most durable asset in permit proceedings and legislative testimony. The retained hydrogeologist should have specific Carrizo-Wilcox expertise, peer-reviewed publication record, and willingness to serve as an expert witness. Texas A&M's Texas Water Resources Institute and the Bureau of Economic Geology at UT Austin are the appropriate networks for identification.

Phase 2: Operational Build (Months 4–12)

Executive Director:

Hired once initial membership and funding are secured. Profile: operational competence over subject matter expertise – the attorney and hydrogeologist provide the latter. Background in co-operative management, agricultural finance, or rural community development. Responsible for member relations, capital call administration, well operations management, and commercial water marketing.

Agricultural Lender Relationship (Farm Credit / AgTexas):

Agricultural lenders carry enormous balance sheet exposure to aquifer depletion – member farms and ranches are their collateral. An ag lender's institutional support (financing co-op infrastructure, participating in organizational meetings, potentially serving on an advisory board) provides both capital access and credibility signals to hesitant landowners. This relationship should be cultivated in Phase 1 and formalized in Phase 2.

Land Trust Partner:

Texas Land Conservancy or equivalent, engaged to hold conservation easements and provide IRS-compliant easement monitoring. TLC's existing 'Land for Water' focus areas and East Texas Pineywoods work make them a natural partner. Formalize the relationship before the easement pool launches.

Phase 3: Scale and Influence (Year 2+)**Legislative Liaison:**

As the co-operative accumulates scientific data, legal precedent, and operational track record, it becomes a primary resource for legislators drafting groundwater reform. A dedicated legislative liaison – or a retained Austin lobbying firm with natural resources practice – ensures the co-operative's framework informs rather than merely reacts to legislation.

Commercial Water Marketing Director:

Once supply contracts are feasible, a dedicated commercial director manages municipal and industrial buyer relationships, contract negotiation, and the pricing strategy that positions the co-operative as the preferred community-aligned supplier in the region.

IV. Implementation Roadmap

Phase 1: Organize and Establish Legal Standing (Months 1–6)

1. Convene founding landowner committee; execute confidentiality agreement among participants pending formal entity formation.
2. Retain Texas water law firm; conduct legal audit of each member parcel's GCD status, existing well permits, and title chain to identify any prior encumbrances on groundwater rights.
3. File nonprofit incorporation documents with Texas Secretary of State; draft and adopt bylaws with co-operative membership structure and dual-track voting provisions.
4. Draft and record deed covenants on all founding member parcels; establish right-of-first-refusal registry.
5. Engage hydrogeologist to compile existing aquifer data; initiate historic beneficial use documentation for all member wells.
6. File consolidated notice of intervention in any pending SOAH or GCD permit proceedings affecting the threatened aquifer zone.
7. Open institutional bank account; issue initial capital call based on founding member acreage.

Phase 2: Build Defensive Infrastructure (Months 6–18)

1. Commission aquifer cone-of-depression modeling to identify highest-priority locations for defensive well installation.
2. Obtain GCD permits for co-operative wells (or document exempt status); begin well installation on priority member parcels.
3. Construct or permit surface water storage impoundments on appropriate member properties; begin pump-and-hold operations where hydrologically indicated.
4. Launch conservation easement program: appraisals, easement negotiations, land trust partnership formalization, IRS documentation.
5. If applicable, file PGMA petition with TCEQ or initiate GCD boundary expansion petition.
6. Hire Executive Director; establish operational management systems for well monitoring, metering, and member reporting.

Phase 3: Commercialize and Sustain (Months 18–36)

1. Execute initial water supply contracts with municipal or agricultural buyers; establish pricing and delivery infrastructure.
2. Apply for NRCS/EQIP funding for recharge-compatible land management practices on member properties.
3. Engage mitigation credit broker to assess co-operative's easement portfolio for credit generation potential.
4. Compile and publish first annual aquifer monitoring report using co-operative well network data; submit to TWDB and relevant GCD.

5. Expand membership to adjacent landowners; extend deed covenant recording to new member parcels.
6. Engage legislative liaison; begin formal participation in interim committee hearings on groundwater reform.

V. Financial Architecture

The co-operative's financial model is designed for self-sufficiency within 36 months of operational launch. The initial capital requirement is significant but distributable across a large membership base.

Cost Category	Estimated Range	Funding Source
Legal counsel (Year 1)	\$150K–\$300K	Member capital calls
Hydrogeological studies and modeling	\$75K–\$200K	Member calls + grants
Well installation (per well, 5–10 wells Phase 1)	\$50K–\$150K ea.	Member calls + ag lending
Storage infrastructure	\$100K–\$500K	Ag lending + USDA programs
Conservation easement appraisals	\$25K–\$75K	NRCS/EQIP + donations
Operations (Year 1 staffing + admin)	\$200K–\$350K	Member dues + water revenue
Total Phase 1–2 Estimated Capital Requirement	\$1.2M–\$3.5M	Mixed (see above)

Distributed across 50 landowners with an average of 500 acres each (25,000 total acres), the Phase 1–2 capital requirement represents \$48–\$140 per acre – a fraction of the per-acre land value in a productive aquifer zone, and a defensible insurance premium against losing domestic and agricultural water supply entirely.

Revenue from water supply contracts at conservative wholesale pricing (\$0.75/1,000 gal on 5,000 acre-feet/year) generates approximately \$1.2M annually at steady state – sufficient to cover operations and service the infrastructure debt within three years.

VI. Legislative Interface

The co-operative is not a lobbying vehicle, but it is inevitably a legislative resource. The scientific data it generates – systematic aquifer monitoring, historic use documentation, cone-of-depression modeling – is precisely what HB 27 mandates TWDB to collect and what future reform legislation will require to survive judicial scrutiny.

Rep. Harris's proposed HB 215 would end the Rule of Capture for high-capacity wells exceeding 25,000 gallons per day and impose neighbor-harm liability; HB 216 would cap any single permit at 5% of district MAG; HB 218 would require multi-district approval for export permits. Each of these proposals benefits from the operational track record and data that a functioning co-operative produces. The co-operative's aggregate historic-use record provides the baseline against which any new allocation regime must be calibrated; its aquifer monitoring network provides the ongoing data that enforcement requires.

The most strategically valuable contribution the co-operative can make to the legislative process is demonstrating that the private-sector, community-organized solution works – reducing the political resistance from property rights absolutists who would oppose any public regulatory expansion. A co-operative that has successfully defended an aquifer through voluntary organization is a more persuasive argument for rational reform than any amount of legislative testimony about the dangers of the Rule of Capture in the abstract.

VII. Replication and Broader Application

The Carrizo-Wilcox situation is the current flashpoint, but it is not unique. Texas has nine major aquifers and twenty-one minor aquifers. Institutional capital that has identified groundwater as an underpriced asset is not confining its attention to Anderson and Henderson counties. The Ogallala – already in severe depletion across the Panhandle – faces a different but related dynamic: decades of over-extraction by individual agricultural users rather than a single institutional actor, but the same absence of collective management mechanisms.

The LGC framework is aquifer-agnostic. The deed covenant mechanism, the unitization structure, the GCD engagement strategy, and the conservation easement pool are all portable to any Texas aquifer community facing concentrated extraction pressure. The primary adaptation required is jurisdictional: GCD rules, existing permit allocations, and local real property recording requirements vary by county.

A statewide network of LGCs – sharing legal templates, scientific methodology, and legislative advocacy – would constitute a structural counterweight to institutional water extraction that no single community can sustain alone. That network is a second-order objective for any organization with the capacity to architect and support it.

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- Sipriano v. Great Spring Waters of Am., Inc., 1 S.W.3d 75 (Tex. 1999) – Rule of Capture affirmation
- Texas Water Code Chapter 36 – Groundwater Conservation Districts: authority, permitting, DFCs
- Texas Property Code § 202 – Restrictive covenants appurtenant to real property
- IRC § 170(h) – Qualified conservation contributions (easement deductions)
- Texas HB 27 (Special Session 2025) – Permit moratorium and TWDB aquifer study mandate
- Texas HB 215, 216, 218 (Harris, 2025) – Proposed Rule of Capture reform bills
- Texas Living Waters Project – Groundwater Law Primer (texaslivingwaters.org)
- Texas A&M AgriLife Extension – Managing Texas Groundwater Resources Through GCDs (B-1612)