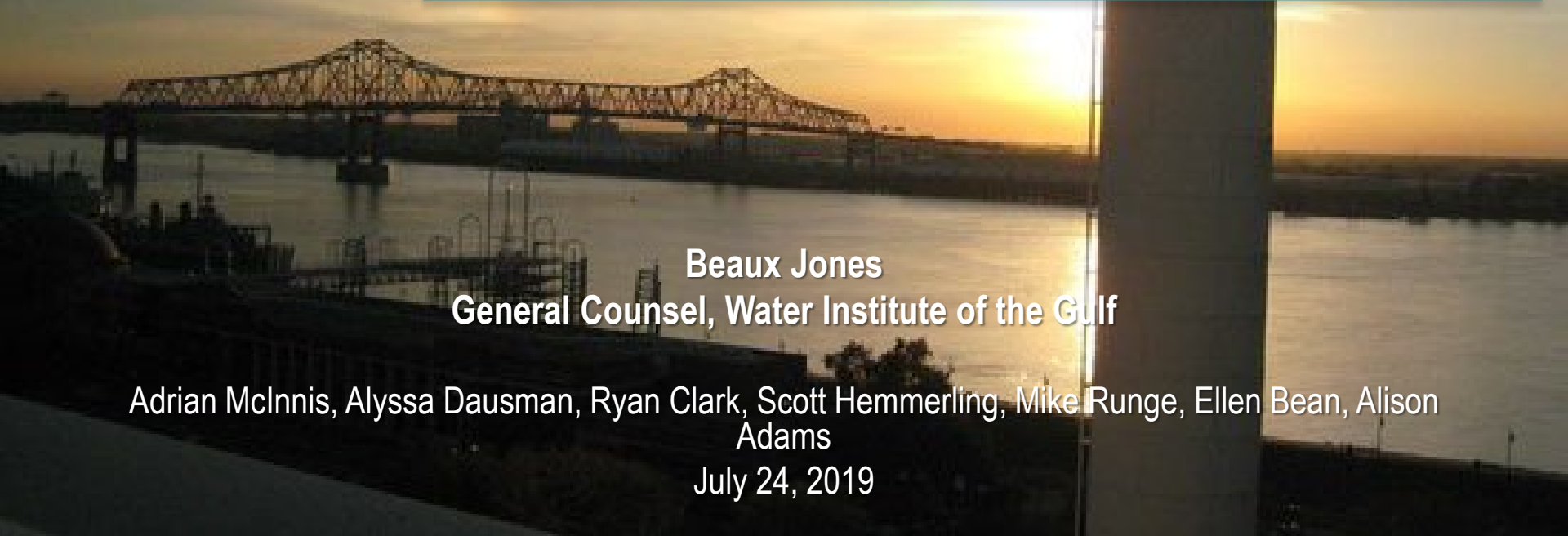


# **WATER RESOURCES IN THE BATON ROUGE AREA AND THE SOUTHERN HILLS AQUIFER: AN OVERVIEW**

## ***PART 2 OF 5: LEGAL FRAMEWORK FOR DECISION-MAKING***



**Beaux Jones**  
**General Counsel, Water Institute of the Gulf**

**Adrian McInnis, Alyssa Dausman, Ryan Clark, Scott Hemmerling, Mike Runge, Ellen Bean, Alison Adams**

**July 24, 2019**



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# ACKNOWLEDGEMENTS

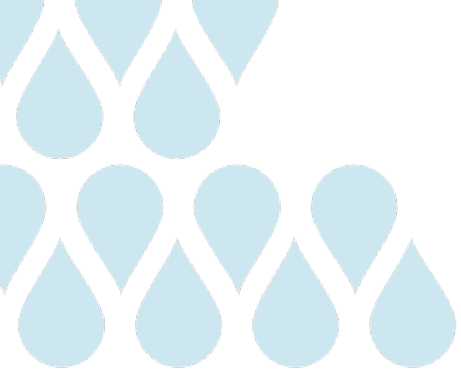
- Capital Area Groundwater Conservation Commission
- LA Coastal Protection & Restoration Authority
- LSU
  - Frank Tsai
- USGS
  - Lower Mississippi Gulf Water Science Center
- Technical Team
  - Mike Runge, USGS
  - Ellen Bean
  - Alison Adams, INTERA
  - Alyssa Dausman
  - Adrian McInnis
  - Ryan Clark
  - Beaux Jones
  - Scott Hemmerling



# OVERVIEW

- *Legal Framework for Decision Making*
- Water Resources Demand in the Capital Area
- Aquifer Dynamics & Water Supply
- The Southern Hills Aquifer System





# LEGAL FRAMEWORK FOR DECISION MAKING

Beaux Jones



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# GROUNDWATER LAW IN LOUISIANA

- Considered analogous to oil & gas
  - *Rule of Capture*- any landowner has the right to remove that which they can capture from the groundwater
  - "The nature of oil and gas as fugitive substances and as minerals likened to 'ferae naturae' [wild by nature] is too well established by the jurisprudence of our state to require citation or necessitate comment. Water is a liquid mineral..." *Adams v. Grigsby*, 152 So.2d 619 (La. App., 1963)



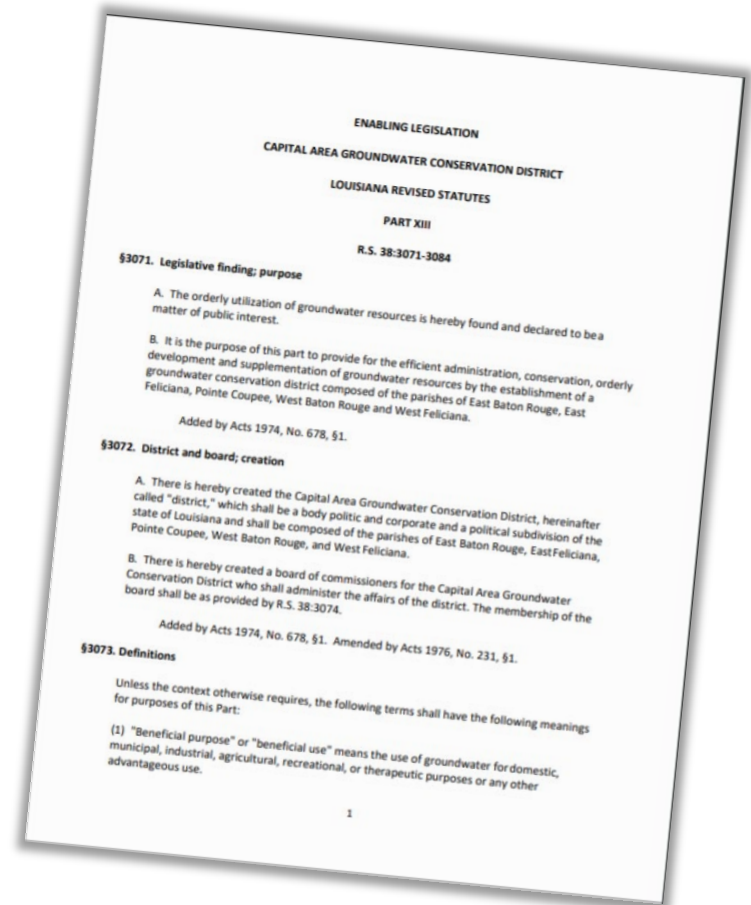
# NOT WITHOUT LIMITS

- “Under the law and jurisprudence of this state the regulation of the amount of oil and gas withdrawn from a well was not regulated by our courts, **but was only established and controlled by enactment by the Legislature of statutory conservation measures.**” Adams v. Grigsby, 152 So.2d 619 (La. App., 1963)
- **In the absence of statutory regulation**, apportionment or allocation of the amount of water which may be withdrawn from a common reservoir, **we conclude that courts are without authority to establish such nature of regulation by judicial pronouncement.** It follows that the coincidental damages suffered by plaintiffs must be regarded as [loss without damage.] Adams v. Grigsby, 152 So.2d 619 (La. App., 1963)



# CAGWCC STATUTES

- La. R.S. 38:3701-3084
- Unlike the dispute in *Adams*, the legislature has specifically addressed the rights of the CAGWCC



# CONSTITUTIONAL PUBLIC TRUST

- La. Const. Art. IX, Sec. 1
- The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment **shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.** The legislature shall enact laws to implement this policy.





# **WHAT AUTHORITY EXISTS IN THE STATUTES?**



# § 3071 LEGISLATIVE PURPOSE

- A. The **orderly utilization of groundwater** resources is hereby found and declared to be a matter of public interest.
- B. It is the purpose of this part to provide for the **efficient administration, conservation, orderly development** and supplementation of groundwater resources..." La. Sec. 38:3071 Legislative finding; purpose (Louisiana Revised Statutes (2018 Edition))



# § 3076 POWERS OF THE BOARD

- A. The board shall work with the commissioner of conservation in his responsibilities **to do all things necessary to prevent waste of groundwater resources**, and to prevent or alleviate damaging or potentially damaging subsidence of the land surface caused by withdrawal of groundwater within the district. In conjunction with the commissioner of conservation, the board shall have authority to do, as required, the following



# § 3076 POWERS OF THE BOARD

- 24 enumerated powers
- (1) to require permits
- (4) to **require** that all **users** of groundwater **register** with board. **The board shall classify** each user as an industrial user or as a commercial, rural or municipal user of groundwater upon the basis of such information. The board shall have authority in its discretion to require periodical renewals of registrations to determine alterations in uses of water within the district.



# § 3076 POWERS OF THE BOARD

- (6) To **specify spacing of wells** drilled after the effective date of this part in limited areas upon a showing that the water quality, quantity of withdrawal or subsidence in such area threatens the public interest.
- (8) To collect data; to make investigations and inspections; to examine properties, papers, books, and records relevant to groundwater use or conservation; to examine, survey, check test, and gauge all water wells within the district; to require well owners who are users or well owners providing water to other users, at their own expense, to meter wells to permit accurate determination of rates of use.



# § 3076 POWERS OF THE BOARD

- (10) To establish standards for the control of existing and future flowing wells and the sealing of abandoned wells.
- (12) To establish **groundwater use priorities, under conditions supported by research data, which indicate depletion of water** subject to this Part.



# § 3076 POWERS OF THE BOARD

- (18) **To take all necessary steps to prevent intrusion of salt water or any other form of pollutant into any aquifer or aquifers, including the powers to operate withdrawal wells for the extraction of salt water or water affected by any pollutant and to dispose of such water by injection or otherwise; to operate injection wells to create freshwater barriers against salt water intrusion or the intrusion of any other pollutant; and to control pumping rates by users in any area threatened by intrusion of salt water or other form of pollutant.**
- (19) Within affected areas, **to limit rates of production of water from any aquifer or aquifers, after detailed research, considering both recharge and withdrawal data, when the quality or quantity of the supply of water afforded by such aquifer or aquifers is in danger for any reason or where the danger of damaging subsidence exists.**



# EXPLICIT LIMITS ON AUTHORITY

- B. No order limiting rates of production as authorized in Subsection A of this section shall have the effect of in any way denying to any owner of the land or any other person holding rights to water derivative from any landowner a reasonable opportunity to produce and beneficially use his **just and equitable share** of the groundwater supply affected by an order limiting rates of production...
- C. [Does not override Conservation's jurisdiction in O&G formations]
- D. [Cannot assess pumping charges on wells >400ft, agricultural, domestic >50,000 gallons per day]





# JUST AND EQUITABLE SHARE

- "Just and equitable share" of the groundwater underlying a tract within an area subject to an order limiting pumping rates means that portion of the recoverable groundwater within an aquifer which is to be apportioned to such tract on the basis of demonstrable geologic and hydrologic data taking into consideration the **volume of groundwater in storage**, the **maximum perennial recharge potential**, and **any groundwater use priorities established** by the board.



# EXPLICIT LIMITS ON AUTHORITY

- 38:3078-Any order limiting rates of production of groundwater, except emergency orders issued as hereinafter provided, shall be issued only after sixty days notice and a public hearing. The board shall give notice by registered mail to all users of groundwater reasonably known to it within the district within which pumping is to be limited. In addition, the board may give notice to such other individual landowners and well owners as it deems appropriate. However, the board shall also give notice by publication as hereinafter provided of the hearing on the prospective order.



# CAGWCC OVERLAP WITH GROUNDWATER LAW 38:3097

- 30:3097.3-A. The commissioner, through the office of conservation, is empowered and responsible for the administration of all matters related to the management of the state's groundwater resources by providing for the most advantageous use of the resource consistent with the protection, conservation, and replenishment thereof. **The commissioner shall perform these functions to the extent such functions are not specifically within the jurisdiction of other state departments or agencies.** The commissioner shall seek the advice and consultation of local governmental entities on any actions or decisions which may have an impact upon those entities or residents within the entities' respective jurisdictions.



# OFFICE OF CONSERVATION'S AUTHORITY

- 38:3097.3 (C)(1) Do all things necessary to prevent waste of water resources.
- (2) Prevent or alleviate damaging or potentially damaging salt water movement or water level decline and loss of sustainability in the state's aquifers...
- 38:3097.6-Designate an area of groundwater concern



# CAGWCC CHARGE TO COOPERATE

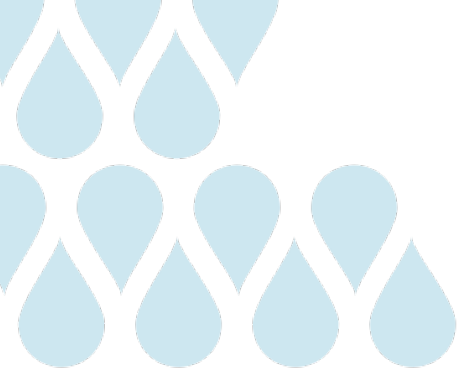
- All powers enumerated in 38:3076 A are under the caveat:
  - “In conjunction with the commissioner of conservation, the board shall have authority to do, as required, the following...”
- 38:3076(A)
  - (15) To cooperate with and enter into contracts or cooperative agreements with other governmental units and agencies of this state, ...for the achievement of the purposes of this part.
  - (24) To advise and consult with the commissioner of conservation and the Water Resources Commission on matters that impact water resources within the board's jurisdiction.



# **AUTHORITY TO PROMULGATE REGULATIONS**

- E. The board shall have authority to make, after notice and hearing and to enforce **reasonable** rules, regulations, or orders necessary from time to time to **achieve the purposes and powers as outlined in this Part**, and such rules, regulations and orders shall be effective and enforceable immediately upon promulgation in the official journal of each parish affected. La. Sec. 38:3076





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**THANK YOU**

Please contact Beaux Jones at [bjones@thewaterinstitute.org](mailto:bjones@thewaterinstitute.org)

1110 RIVER ROAD SOUTH, SUITE 200  
BATON ROUGE, LA 70802

(225) 448-2813

**WWW.THEWATERINSTITUTE.ORG**

