The Legal Framework for Produced Water: Ownership, Rights, and Regulations (Part 2)

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As discussed in part one of this series, produced water has become increasingly important in discussions surrounding water scarcity, energy production, and long-term resource management across the Southwest.

As interest in recycling and reuse grows, legal questions have moved to the forefront. Before produced water can be treated, transferred, commercialized, or reused at scale, stakeholders must first determine who owns it and who regulates it.

The answers are not always straightforward.

Ownership and Rights

Legal ownership of produced water has emerged as one of the most closely watched issues in the Southwest, particularly in Texas, where commercial interest in recycling, beneficial reuse, and mineral recovery has grown rapidly.

Historically, produced water disposal was primarily an operational and regulatory issue. Operators needed to manage, transport, and dispose of produced water, often through underground injection. As treatment technologies improved and freshwater scarcity intensified, however, the possibility of utilizing produced water raised a new question: who actually owns it?

In 2025, the Texas Supreme Court addressed that issue in *Cactus Water Services, LLC v. COG Operating, LLC*. The court held that, absent contrary contractual language, produced water belongs to the mineral lessee rather than the surface estate because it is a byproduct of hydrocarbon production managed within the oil-and-gas regulatory system.

The holding in *Cactus Water Services* matters beyond abstract property doctrine. It gives operators stronger legal footing to contract for recycling, transportation, treatment, and potentially

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downstream commercialization of produced water.

The ruling also reinforces the idea that produced water, while water-based, is not simply "water" in the ordinary groundwater sense, but a distinct byproduct associated with the mineral estate and regulated through the oil-and-gas framework administered by the Railroad Commission of Texas and the Texas Commission on Environmental Quality (TCEQ).

Important questions nevertheless remain unresolved. Uncertainty continues regarding how contracts may allocate value from treated water, how extracted byproducts such as lithium should be characterized, and whether future disputes may arise over royalties, avoided disposal costs, or profits associated with reuse.

Outside Texas, the legal landscape remains fragmented. Produced water ownership and regulatory structures vary by state, and the broader U.S. framework remains inconsistent. That fragmentation complicates regional development because cross-border infrastructure and investment decisions often depend on predictable legal rights.

Legal and Regulatory Pathways and Challenges

Produced water governance is divided across federal and state authorities, and that fragmentation is especially important in the Southwest.

At the federal level, the Bureau of Land Management's 2026 Instruction Memorandum encourages reuse and recycling of produced water from oil and gas production on public lands and directs field offices to identify beneficial reuse opportunities while remaining consistent with existing state and federal requirements.

The policy is notable because it reflects federal support for moving beyond disposal where reuse may help conserve freshwater resources.

Federal environmental law also remains important. In 2025, the Environmental Protection Agency announced its intention to revise produced-water discharge regulations to provide greater flexibility, including possible expansion of where treated oilfield byproducts

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may be discharged.

That potential shift underscores the degree to which regulatory policy — not just technology — will shape the future of produced water reuse.

In Texas, the regulatory structure is divided principally between the Railroad Commission of Texas, which regulates oil and gas operations and much oilfield water handling, and the TCEQ, which oversees broader environmental permitting and surface-water regulation.

That split structure can complicate beneficial reuse pathways because different intended uses trigger different regulators, permits, and evidentiary requirements.

Texas has gradually moved beyond pilot-stage experimentation toward a more formalized reuse framework. While the Railroad Commission initially established pilot programs to evaluate treatment effectiveness and limit early-stage risk, more recent legislative and regulatory developments signal a broader policy shift.

Those developments include liability protections for reuse activities and the TCEQ's ongoing development of permitting and water-quality standards. Texas remains cautious with respect to large-scale, non-oilfield applications, but the state is increasingly positioning produced water as a viable supplemental water source rather than a purely experimental concept.

Texas also finalized significant oilfield waste-rule changes in 2025, implementing the first major overhaul of its commercial oilfield waste disposal and recycling framework in decades and modernizing requirements applicable to produced-water handling and reuse.

At the same time, standards governing discharge of treated produced water into rivers and creeks remain unsettled. Regulators have begun evaluating — and in some cases issuing — permits for surface-water discharges in regions such as the Permian Basin and Eagle Ford. Questions nevertheless remain regarding water-quality standards, monitoring requirements, and long-term environmental

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impacts.

New Mexico has taken a more cautious approach. In 2025, the state adopted rules prohibiting discharge of treated produced water from oil and gas extraction to both ground and surface waters.

That prohibition reflects ongoing concern surrounding unresolved scientific and treatment uncertainties. Although the rules remain subject to future reconsideration and ongoing rulemaking proceedings, the divergence between neighboring Southwest states illustrates how fragmented regional policy may complicate broader commercialization efforts.

Key Takeaway

The legal framework governing produced water continues to evolve rapidly. Ownership disputes, regulatory standards, environmental concerns, and commercialization efforts are all shaping the future of produced water reuse across the Southwest.

Texas has emerged as the leading testing ground because of its production volumes, infrastructure, legal developments, and increasingly active regulatory environment. But many questions remain unsettled.

The third article in this series examines the operational realities of produced water reuse, including disposal, recycling, treatment technologies, and the practical barriers that continue to complicate broader implementation. If you have questions about or comments on this article, please contact the authors or any attorney with FBT Gibbons' Oil, Gas and Minerals team.

Produced Water Series

- **Part 1 — Can Produced Water from Energy Production Offset Water Scarcity in the Southwest?**
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Part 2 — The Legal Framework for Produced Water: Ownership, Rights, and Regulations

- **Part 3 — Reuse in Practice: Produced Water Disposal, Recycling, Treatment, and Commercial Hurdles**

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