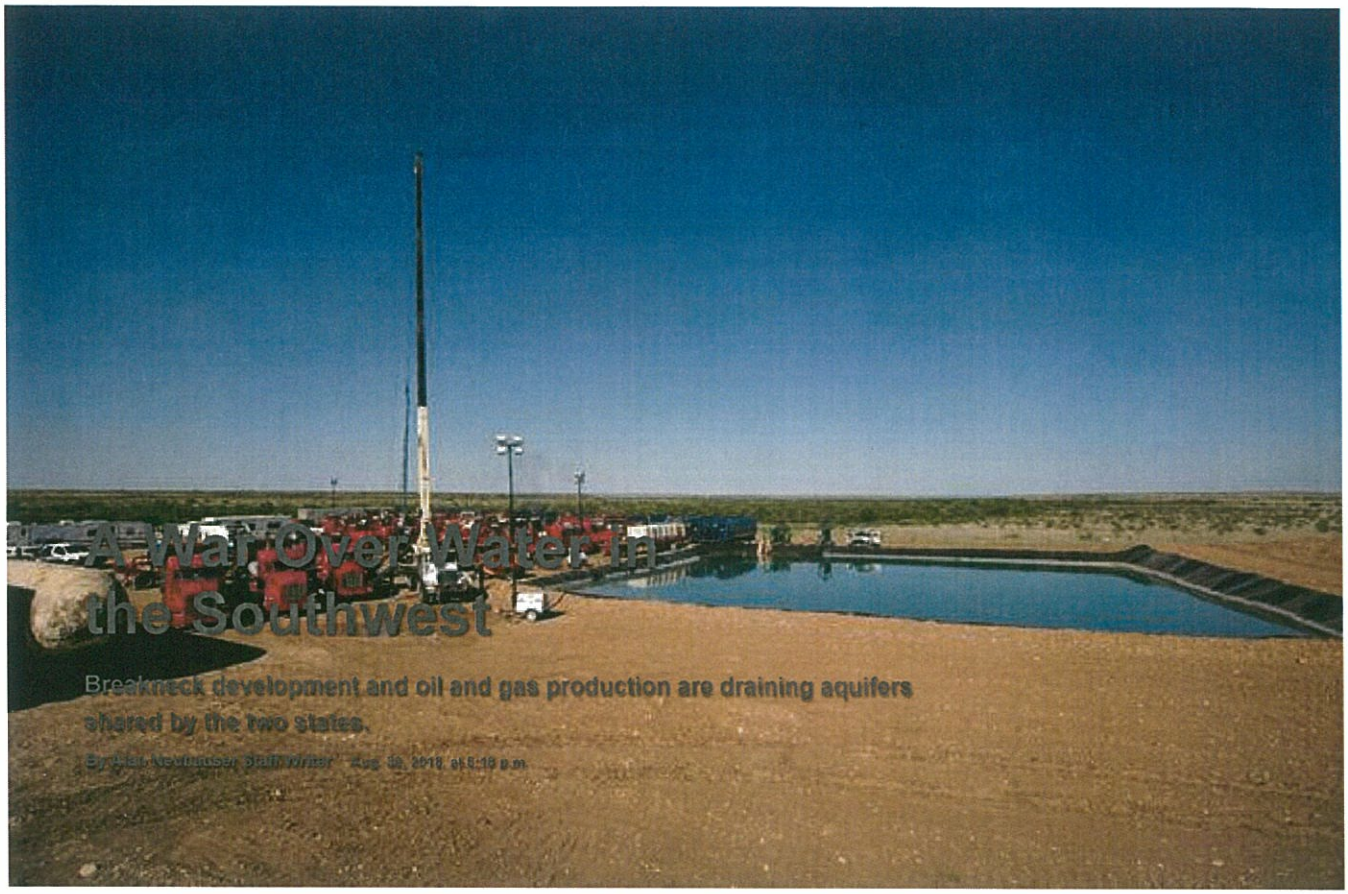

Halliburton Company equipment sits at a natural gas well site in eastern New Mexico, in 2007. ROBERT NICKELSBERG/GETTY IMAGES

FEW LAWS EMBODY THE frontier spirit – the mythos of rugged individualism and government non-intervention – quite like the Texas "rule of capture."

Any landowner in the Lone Star State, the measure declares, can use or sell as much oil, gas, water or other resource that lies beneath his or her land – regardless how the deposit might spread across property lines.

It's a law that has some in neighboring New Mexico seething.

Like lakes and rivers, underground springs and aquifers don't respect politically imposed borders and boundaries – the same body might lie beneath not only neighboring landowners but neighboring states, supplying water to both.

One such underground source of water, the Pecos Valley Aquifer, is at issue in New Mexico:

Oil and gas companies are drawing water from the aquifer for hydraulic fracturing – or fracking – to develop wells in eastern New Mexico. The operations use huge volumes of water to blast oil and gas from porous rock and bring the fuels to the surface.

New Mexico, however, has struggled to manage a dwindling supply of water. It has strict laws limiting how much can be used to feed the water-intensive process. Texas, with its rule of capture, does not.

As a result, instead of complying with New Mexico's water laws, some companies that have fracking operations in eastern New Mexico are simply

running long lines of hose across the state border, connecting them to water wells on property they've leased from ranchers in Texas and pumping as much water as they can – tax- and regulation-free.

The issue is that, despite the state border, they're still drawing water from the same aquifer. And the practice is stoking fears from New Mexico landowners – and New Mexico Land Commissioner Aubrey Dunn in particular – that a crucial source of water for rural landowners and farmers in New Mexico will soon run dry.

Dunn says he's found at least seven hoses on public lands draped across state lines, carrying potentially millions of gallons of water a day from an underground aquifer to oil and gas operations. More are believed to be on private land outside Dunn's jurisdiction.

"You can throw a rock from the border where these wells are," Dunn says "The usage of this freshwater for fracking is just unbelievable how much they're using."

One hose running from New Mexico to Texas, for example, was drawing water from Loving County, which is on a list of counties seeking federal drought assistance.

According to officials in Texas, more than 80 percent of the water that's pumped from the aquifer goes toward agriculture, the rest toward supplying homeowners, industry, municipal uses and power generation. It's a more complicated question where oil and gas operations fit into that equation, since the amount of water that's being pumped across state lines isn't included in the tally.

Lone Star State landowners and some policy experts see little reason to make a change. Gabriel Collins, an attorney and professor at the Baker Institute for Public Policy's Center for Energy Studies at Rice University, has contended that oil and gas companies aren't stealing New Mexico's water. On the contrary, he wrote in an op-ed this month, New Mexico is benefiting from the arrangement:

"Oilfield water imported from Texas supports New Mexico's state budget by allowing more and bigger fracs – and thus higher levels of oil and gas production – than would be possible with local water supplies alone," Collins wrote in the Midland Reporter-Telegram. "The state of New Mexico reaped more than $1.7 billion in fees, royalties, and taxes from oil and gas activity in fiscal year 2017, enough funds to cover about 30 percent of the state's operating budget during that period."

There's enough water in the Pecos Valley Aquifer to cover 323 million acres in a foot of water, according to Texas water officials – smaller than Lake Erie, which holds 393 million acre-feet of water but larger than the next-largest lake by volume in the U.S., Lake Tahoe.

Texas officials estimate that about 420,500 acre-feet can responsibly be pumped each year. However, given the varying topography of the underground water body, with portions that are shallower and deeper,

longtime residents of New Mexico remain concerned that the oil and gas operations could soon cause their wells to run dry. Running out of water is no mere abstraction, especially as water levels drop across the Southwest, a consequence of droughts made longer and more severe by climate change and economic development that's continued to strain what water resources are left.

In 17 states across the West, including New Mexico, one in 30 wells has run dry, according to a study published last year in the journal Environmental Research Letters. The Ogallala Aquifer, which runs through eight states and abuts the Pecos Valley Aquifer, has seen its water levels fall especially quickly. In 2013, warnings went out to nearly 300 drinking water systems in New Mexico that were deemed vulnerable to running dry.

And it's not the only place where the rule of capture is grating on residents.

Dunn, a Republican-turned-Libertarian whose bio photo shows him wearing a cowboy hat and bolo tie, has made common cause with a diverse coalition of landowners, activists, lawyers and local politicians across the state border and 400 miles away in the vacation town of Wimberley in Central Texas, where local water resources are also under threat.

There, locals contend that their town faces perhaps an existential threat from a proposed project put forth by a pumping company called Electro Purification, which initially sought to withdraw and sell as much as 5 million gallons a day from the region's aquifer to support new housing developments in eastern Texas.

The Wimberley region is home to watering holes that attract tourists from across the state, and local business owners, politicians and green activists fear that Electro Purification plans will ultimately dry up these natural attractions, erasing a central industry and environmental treasures.

"We just don't believe that our resources right now can handle the type of pumping that's proposed with this one project," says Lon Shell, a Republican commissioner in Hays County, which includes Wimberley. "That's what scares us: We're going to be back in a drought one way or another, and our resources are maxed out. We're one of the fastest growing areas in the country with a lot of demand on all our resources. We just want to protect our water resource, because if it's gone, we know we'll never get it back."

Water disputes are hardly new to the Southwest or Texas in particular. There was Comanche Springs in Fort Stockton, for example, which dried up in the 1950s after farmers pumped too much water from the aquifer that supplied the waterway.

The chances of a political solution – on either side of the border – are slim at best. The rule of capture is settled law that neither Democrats nor Republicans in Austin seem interested in revisiting.

Even among some Texans who support reforms to the system, the prodding from across the border in New Mexico comes off as hypocritical.

Ironically, New Mexico is fending off a mirror image of the dispute, with Texas having sued New Mexico and accusing farmers there of using too much water from the Rio Grande River. New Mexico contends that an 80-year-old compact governing how states use the Rio Grande River never explicitly stated just how much water they could use – creating, in effect, another rule of capture, with farmers entitled to take as much as they'd like.

"To have a commissioner from a neighboring state who's arguing against the same principles and the same laws that are allowing ranchers from Texas take essentially New Mexico's water, at the same time that Texas is suing New Mexico over the Rio Grande water use," says John Brown, a documentary filmmaker and local activist in Wimberley, "the hypocrisy is beyond comparison."

The residents and politicians in Wimberley managed to convince Electro Purification to begin drawing water in phases, monitoring each step of way to ensure that the local aquifer doesn't sink too low. But they remain wary that the agreement still won't effectively protect the region's water resources.

"In the Hill Country, it's less about how much water is in the aquifer and more about how much you can pump before the pressure is reduced, because once that happens then the springs stop flowing," says Vanessa Puig Williams, executive director and general counsel for the Trinity Edwards Springs Protection Association, which has been working to limit Electro Purification development plans.

They also persuaded the state legislature to expand the bounds of a nearby groundwater conservation district, a regulatory body that oversees local underground water resources. The rezoning has granted them at least a measure of control over how much water Electro Purification can pump from the reservoir. The company has since agreed to roll back its plans, phasing in its operations to 0.5 million gallons per day and ramping up to 2.5 million gallons per day.

Even if Dunn could rally support for such an arrangement in the West Texas region where wells are feeding New Mexico fracking operations, it would likely be for naught. In Texas, oil and gas operations are exempt from local oversight by groundwater conservation districts.

That has left Dunn with few options.

While it wouldn't stop oil producers from drawing on wells across state lines, his office tried to limit the drain on water resources by compelling the state's Office of the Engineer, which oversees water use in the state, to stop issuing new permits for wells that draw small amounts of water. That would address another issue in which oil and gas firms, exploiting a loophole, had been obtaining multiple such permits that allowed them to drill a number of small wells while skirting regulations and fees associated with drilling a single large well.

But even that effort failed, with a state court stating it will quash Dunn's request.

"We lost," Lisa Henne, the attorney for the New Mexico State Lands Office, put it simply.

In calling attention to the issue – and pointing the finger at oil and gas, one of New Mexico's most powerful lobbying groups – Dunn says he's found himself politically isolated. Elected as a Republican in 2014, he switched to the Libertarian party this year, which he says he did after coming under fire from GOP lawmakers.

He launched an ill-fated bid for Senate, ultimately stepping aside to make way for Libertarian mainstay Gary Johnson.

"I was attacked by the Republican legislature for this issue," Dunn says. His goal, he insists, wasn't to quash the oil and gas industry – the fees that his office collects for oil and gas operations on public lands, he points out, are a crucial source of funding for the state's education budget. "One of my jobs is to create income for the schools, and 94 percent of our income comes from oil and gas. So we need to do it responsibly, we need to produce income for schools, but the Republican Party as a whole went after me for this issue."

But more urgently, he says, the water supply needs to be preserved or the people of his state will suffer.

"Even on my ranch, I could end up losing my wells," Dunn says. "Hopefully I can drill them deeper. But if I can't, I lose the ability to run cattle on the ranch. So if the aquifers are depleted, the people will no longer be able to stay there."

Alan Neuhauser, Staff Writer

Alan Neuhauser covers law enforcement and criminal justice for U.S. News & World Report. He als... **READ MORE »**

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