



18th Annual Bell County Water Symposium

***Water for Texas:
Sharing the Pool***

November 15, 2018

Charles Porter, PhD

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"An intelligent, elegant call to action in the defense of fresh water."—Kirkus Review

CHARLES R. PORTER

Sharing the Common Pool

WATER RIGHTS IN THE
~~~~~  
EVERYDAY LIVES OF  
~~~~~  
TEXANS



If every individual and every entity or municipality in the state of Texas chose to exercise water rights at the same time, there would not be enough water to satisfy all claims, no matter how legitimate.

Texas water law, which contains elements of Spanish, English, and Republic heritages, originally defined water by where it sits, flows, or falls and assigned ownership accordingly. This seemingly logical line of reasoning, however, has since evolved into a tortuous amalgamation of laws, permits, and governing authorities that currently face the onslaught of population growth and competing interests—all with insatiable thirsts.

Water rights expert Charles R. Porter explains who has rights to water in Texas, who determines who has those rights, and who benefits or suffers because of it. Covering ownership, use, regulation, real estate, and policy, Porter lays out how we manage (and mismanage) water in Texas, what legal cases have guided the debate, and where the future might take us as old rivalries, new demands, and innovative technologies—such as hydraulic fracturing of oil shale formations (“fracking”)—help redefine water policy.

CHARLES R. PORTER is assistant professor of history at St. Edward's University in Austin and a licensed real estate agent and broker. He has been a presenter and panel moderator for the Texas legislature, at the Texas Groundwater Summit, and at a joint conference of the Texas Rural Water Association and Texas Water Conservation Association.

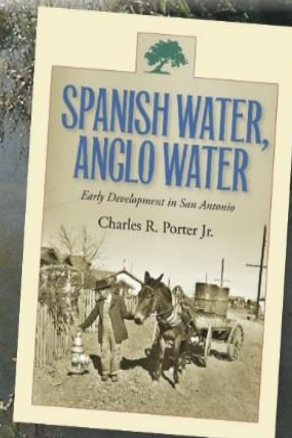
240 pp. 40 color illus. 10 maps. 5 figs. Table. 3 appendixes. Flexbound \$24.95. Publication: Spring 2014.

Also By CHARLES R. PORTER

**SPANISH WATER, ANGLO WATER:
EARLY DEVELOPMENT IN SAN ANTONIO**

*WINNER 2011 San Antonio Conservation Society Publication Award,
presented by the San Antonio Conservation Society*

*WINNER 2011 Texas Old Missions and Forts Restoration Association
Book Award, presented by the Texas Catholic Historical Society*



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Although water is nature's most important molecule, its regulation and management are the most challenging public policy issues for any society. Water is the common denominator of all life on earth. Public water policies thus become the fundamental foundations of community formation anywhere. Cities exist in their current locations based on the local access to adequate amounts of fresh water. Without a fair, workable, and transparent public water policy, any society is threatened with social-economic destruction, especially in the arid areas living under severe drought and the threat of warming trends worldwide.

Public Water Policies: The Ultimate Weapons of Social Control

- Provides an interdisciplinary view of water policies worldwide
- Critically analyzes the consequences of water policies around the world including many that are not only overlooked but also have never been considered
- Analyzes the conflicts in social values of any society that determine hard choices between population growth, economic growth, and the environment
- Provides a new perspective on the overall long-reaching economic consequences of water policy
- Offers four new terms to describe public water policies in relation to social control: true process social control, despotic social control, diplomatic social control, and destructive social control
- Compares and contrasts water policies in key places in the world using the new terms of social control to enlighten the public and especially those water policymakers worldwide

CHARLES R. PORTER JR. is a water rights expert worldwide. He teaches, analyzes, and publishes peer-reviewed academic work on water policy. He also authors and organizes legislation on water policies in Texas. Dr. Porter testifies as an expert on water valuations, water policy formation, and the consequences of failed water policies. He has been named a *most notable expert* in more than 500 lawsuits across the United States since 1987 and has spoken more than 200 times as an invited guest speaker across the world on water policies since 2012 alone. His website is at www.charlesporter.com.

CHARLES R. PORTER, JR., PH.D.

PORTER

PUBLIC WATER POLICIES

PUBLIC WATER POLICIES

THE ULTIMATE WEAPONS OF SOCIAL CONTROL

Bernard Porter
An imprint of
Rowman & Littlefield
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Cover image courtesy of the author
Cover design by Sarah Martin

Bernard Porter

My Perspective of the Status of the Pool

Areas of comment today:

- Groundwater Conservation Districts – most still woefully short of funding ... for over 70 years since HB 162 in 1949.
- Results of HB 1221 effective Jan 2016 – the revision of the Seller's Disclosure Notice.
- The future of our Texas water “pool” is **groundwater**.
- Water markets do not exist in Texas ... yet ... ever?

Groundwater Conservation Districts – most still
woefully short of funding ... for over 70 years
since HB 162 in 1949.

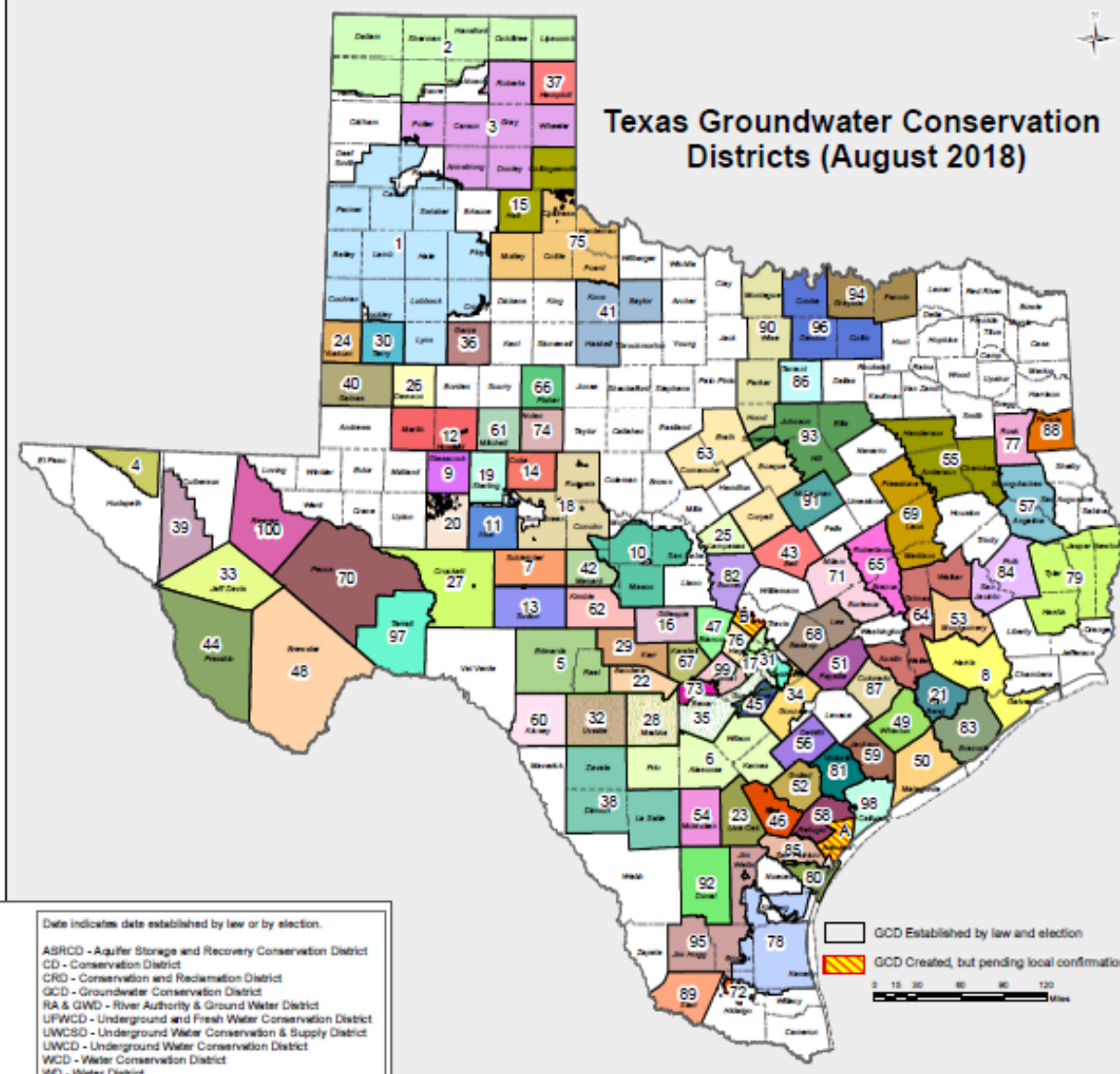
Groundwater Conservation Districts

- 1 High Plains UWCD No. 1 - 9/29/1951
- 2 North Plains GCD - 1/2/1955
- 3 Panhandle GCD - 1/2/1955
- 4 Hudspeth County UWCD No. 1 - 10/5/1957
- 5 Real-Edwards C and R District - 5/30/1959
- 6 Evergreen UWCD - 8/30/1965
- 7 Plateau UWC and Supply District - 3/4/1974
- 8 Harris-Galveston Subsidence District - 4/23/1975
- 9 Glasscock GCD - 8/22/1981
- 10 Hickory UWCD No. 1 - 8/14/1982
- 11 Iron County WCD - 8/2/1985
- 12 Permian Basin UWCD - 9/2/1985
- 13 Sutton County UWCD - 4/5/1986
- 14 Coke County UWCD - 11/4/1986
- 15 Mesquite GCD - 11/4/1986
- 16 Hill Country UWCD - 8/8/1987
- 17 Barton Springs/Edwards Aquifer CD - 8/13/1987
- 18 Upan-Kickapoo WCD - 11/3/1987
- 19 Sterling County UWCD - 11/3/1987
- 20 Santa Rita UWCD - 8/19/1989
- 21 Fort Bend Subsidence District - 8/28/1989
- 22 Bandera County RA & GWD - 11/7/1989
- 23 Live Oak UWCD - 11/7/1989
- 24 Sandy Land UWCD - 11/7/1989
- 25 Saratoga UWCD - 11/7/1989
- 26 Mesa UWCD - 1/20/1990
- 27 Crockett County GCD - 1/25/1991
- 28 Medina County GCD - 8/26/1991
- 29 Headwaters UWCD - 11/5/1991
- 30 South Plains UWCD - 2/8/1992
- 31 Plum Creek CD - 5/1/1993
- 32 Uvalde County UWCD - 9/1/1993
- 33 Jeff Davis County UWCD - 11/2/1993
- 34 Gonzales County UWCD - 11/2/1994
- 35 Edwards Aquifer Authority - 7/28/1996
- 36 Garza County UWCD - 11/5/1996
- 37 Hemphill County UWCD - 11/4/1997
- 38 Wintergarden GCD - 1/17/1998
- 39 Culberson County GCD - 5/2/1998
- 40 Llano Estacado UWCD - 11/3/1998
- 41 Rolling Plains GCD - 1/25/1999
- 42 Menard County UWCD - 8/14/1999
- 43 Clearwater UWCD - 8/21/1999
- 44 Presidio County UWCD - 8/31/1999
- 45 Guadalupe County GCD - 11/14/1999
- 46 Bee GCD - 1/20/2001
- 47 Blanco-Pedernales GCD - 1/23/2001
- 48 Brewster County GCD - 11/6/2001
- 49 Coastal Bend GCD - 11/6/2001
- 50 Coastal Plains GCD - 11/6/2001
- 51 Fayette County GCD - 11/6/2001
- 52 Goliad County GCD - 11/6/2001
- 53 Lone Star GCD - 11/6/2001
- 54 McMullen GCD - 11/6/2001
- 55 Neches & Trinity Valleys GCD - 11/6/2001
- 56 Pecan Valley GCD - 11/6/2001
- 57 Pineywoods GCD - 11/6/2001
- 58 Refugio GCD - 11/6/2001
- 59 Texana GCD - 11/6/2001
- 60 Kinney County GCD - 1/12/2002
- 61 Lone Wolf GCD - 2/2/2002
- 62 Kimble County GCD - 5/3/2002
- 63 Middle Trinity GCD - 5/4/2002
- 64 Bluebonnet GCD - 11/5/2002
- 65 Brazos Valley GCD - 11/5/2002
- 66 Clear Fork GCD - 11/5/2002
- 67 Cow Creek GCD - 11/5/2002
- 68 Lost Pines GCD - 11/5/2002
- 69 Mid-East Texas GCD - 11/5/2002
- 70 Middle Pecos GCD - 11/5/2002
- 71 Post Oak Savannah GCD - 11/5/2002
- 72 Red Sands GCD - 11/5/2002
- 73 Trinity Glen Rose GCD - 11/5/2002
- 74 West-Tex GCD - 11/5/2002
- 75 Gateway GCD - 5/3/2003
- 76 Hays Trinity GCD - 5/3/2003
- 77 Rusk County GCD - 5/5/2004
- 78 Kennedy County GCD - 11/2/2004
- 79 Southeast Texas GCD - 11/2/2004
- 80 Corpus Christi ASRCD - 6/17/2005
- 81 Victoria County GCD - 8/5/2005
- 82 Central Texas GCD - 9/24/2005
- 83 Brazoria County GCD - 11/8/2005
- 84 Lower Trinity GCD - 11/7/2006
- 85 San Patricio County GCD - 5/12/2007
- 86 Northern Trinity GCD - 5/15/2007
- 87 Colorado County GCD - 11/6/2007
- 88 Panola County GCD - 11/6/2007
- 89 Starr County GCD - 11/6/2007
- 90 Upper Trinity GCD - 11/6/2007
- 91 Southern Trinity GCD - 5/19/2009
- 92 Duval County GCD - 7/25/2009
- 93 Prairielands GCD - 9/1/2009
- 94 Red River GCD - 9/1/2009
- 95 Brush County GCD - 11/3/2009
- 96 North Texas GCD - 12/1/2009
- 97 Terrell County GCD - 11/6/2012
- 98 Calhoun County GCD - 11/4/2014
- 99 Comal Trinity GCD - 6/17/2015
- 100 Reeves County GCD - 11/3/2015

Pending Confirmation

- A- Aransas County GCD
- B- Southwestern Travis County GCD

Texas Groundwater Conservation Districts (August 2018)



Texas Commission on Environmental Quality



This map was generated by the Water Availability Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Water Availability Division at (512) 239-4891.

Map printed August 1, 2018.

Date indicates date established by law or by election.

ASRCD - Aquifer Storage and Recovery Conservation District
 CD - Conservation District
 CRD - Conservation and Reclamation District
 GCD - Groundwater Conservation District
 RA & GWD - River Authority & Ground Water District
 UPWCD - Underground and Fresh Water Conservation District
 UWCD - Underground Water Conservation & Supply District
 UWCD - Underground Water Conservation District
 WCD - Water Conservation District
 WD - Water District

Texas Water Journal
May, 2013, Vol. 4, No. 1

“Groundwater Conservation District Finance in Texas:
Results of a Preliminary Study”

By: Charles Porter, PhD

<http://journals.tdl.org/twj/index.php/twj/issue/archive>



SOUTHWEST TRAVIS COUNTY GCD

**A GROUNDWATER CONSERVATION
DISTRICT CREATED BY THE TEXAS
LEGISLATURE**

Groundwater district looks ahead

By Leslee Bassman

Lake Travis View contributing writer

A representative of the Travis County Groundwater Conservation District addressed the Bee Cave City Council during its March 13 meeting about new efforts from the district that includes the cities of Bee Cave, Lakeway and West Lake Hills as well as unincorporated portions of the county.

The update was presented by district president Rick Scadden, who has served on the Bee Cave Planning and Zoning Commission.

The district, created by House Bill 4345 during the 2017 Texas legislative session, is charged with developing aquifer storage and recovery projects along the southwestern corner of Travis County, including the Barton Springs/Edwards Aquifer Conservation District, the bill states.

The district's temporary board voted unanimously March 2 to cancel its May election that would have confirmed the creation of the district and appoint its seven-member board consisting of one representative each from Bee Cave, Lakeway and West Lake Hills and four representatives from the unincorporated

areas of Travis County, Scadden told the council.

The legislation passed last year directed the election to be held in May, Scadden said. However, the cost of a May election was calculated by Travis County officials, who manage the election, to be \$150,000 to \$200,000 because the district would be "one of the major participants in the election based on the number of potential voters within their jurisdiction," he said.

"As a new entity that just started in late-January, and having no funds, we really had a hard time with that (May election cost)," Scadden said. "It's kind of an unfunded mandate from the Legislature in a sense."

"We will pursue looking at trying to start the administrative portion and collecting fees for registered wells and do some of the functions to see if we can't generate some revenue as well as look at potential grants and startup money that might be available from the Texas Water Development Board or the Texas Commission on Environmental Quality," he said.

Scadden said most residential wells will be exempt from fees if the water use is less than 10,000 gallons daily,

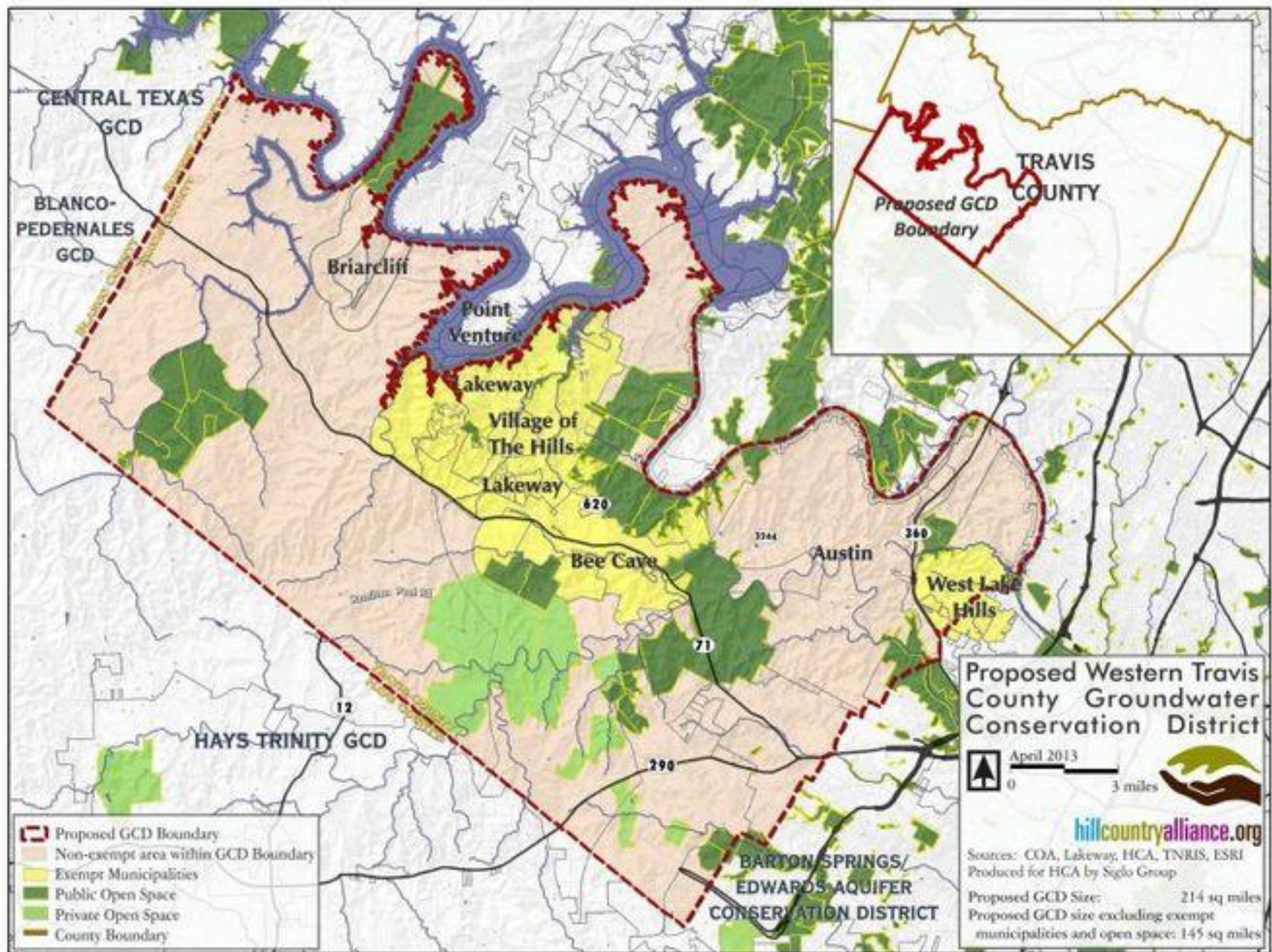
other than a maximum \$40 annual registration fee that will be required of all well owners in order to establish a well's water flow as a baseline for future studies.

However, the city of West Lake Hills takes exception to being included in the new groundwater district, West Lake Hills Mayor Linda Anthony said.

"We opposed the creation of the district," she said. "We opposed being included in it because we don't use groundwater; we use surface water. There are very, very few personal wells in West Lake Hills. I'm not sure there is even a dozen of them. So it didn't seem reasonable to include us in a district that was going to regulate groundwater when we weren't going to use it."

Travis County recently approved \$5,000 to the district in startup money, Scadden said.

Hamilton Pool Road Matters, a non-profit corporation focused on protecting the natural environment in the Hamilton Pool Road area, including the region's surface and groundwater, donated \$3,000 to the district in February, the group's spokesperson Jim Koerner said.



DONATIONS
[NOV 10, 2018 WEBSITE]

THE SW TRAVIS COUNTY GCD ***DOES NOT LEVY TAXES*** AND IS PRESENTLY FINANCIALLY SUPPORTED ONLY BY GRANTS AND DONATIONS FROM INDIVIDUALS AND ORGANIZATIONS. IF YOU OR YOUR ORGANIZATION WISHES TO MAKE A DONATION TO THE OPERATION OF THIS GCD, PLEASE MAKE OUT YOUR CHECK TO SW TRAVIS COUNTY GCD AND MAIL IT TO:

P.O. BOX 340595

AUSTIN, TX

Results of HB 1221 effective Jan 2016 – the
revision of the
Seller's Disclosure Notice.

Jan 2016	17,238
Feb 2016	20,604
Mar 2016	27,359
Apr 2016	27,772
May 2016	30,773
Jun 2016	33,262
Jul 2016	30,202
Aug 2016	32,660
Sep 2016	28,361
Oct 2016	25,358
Nov 2016	23,922
Dec 2016	26,150

Jan 2017	18,101
Feb 2017	21,127
Mar 2017	29,407
Apr 2017	27,880
May 2017	33,966
Jun 2017	35,673
Jul 2017	31,704
Aug 2017	31,016
Sep 2017	28,455
Oct 2017	27,106
Nov 2017	25,856
Dec 2017	27,845

Jan 2018	19,023
Feb 2018	22,129
Mar 2018	29,055
Apr 2018	30,030
May 2018	34,702
Jun 2018	35,386
Jul 2018	33,774
Aug 2018	34,181
Sep 2018	26,768

2016 323,679

2017 338,136

2018 265,048

926,863

House sales in Texas since the statutory
mandatory Seller's Disclosure Notice
added GCD question

Source: Texas Real Estate Center at Texas A & M University



Completed Legislative Action

Spectrum: Bipartisan Bill

Status: Passed on June 16 2015 - 100% progression

Action: 2015-06-16 - Effective on 1/1/16

Summary:

Relating to seller's disclosures in connection with residential real property subject to groundwater regulation.

6. Are you (Seller) aware of any of the following? Write Yes (Y) if you are aware, write No (N) if you are not aware.

___ Any portion of the property that is located in a groundwater conservation district or a subsidence district.

If the answer to any of the above is yes, explain. (Attach additional sheets if necessary):

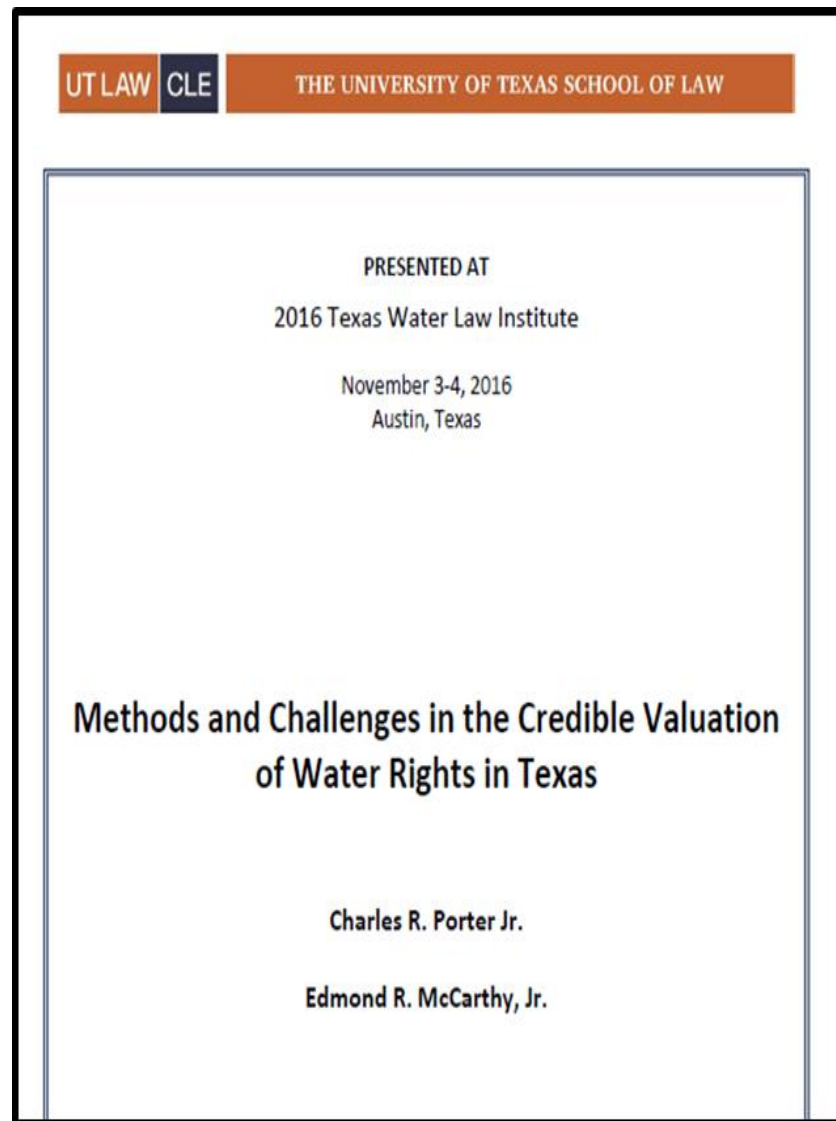
What has been the impact of 2015's HB 1221 – the Seller's Disclosure Notice question on knowledge of GCDs?

- Through September, 2018, at least 2,780,00 buyers/sellers have had the opportunity to read the question.
- Add the fact that 87% of homes are sold via MLS, then at least 3 people in each transaction had the opportunity to read the question or 3,700,000 folks.
- Add the fact that often there are 2 agents involved the number increases to 4,125,000 folks.
- Average 125,000 per month for 10 years or 15,000,000 folks by the end of 2025.

At a cost to the State of Texas of ... \$0.

The future of our Texas water “pool” is
groundwater.

Water markets do not exist in Texas ... yet ... ever?





NAVIGATING SELLER'S DISCLOSURE AFTER HARVEY

by Charles Porter, Ph.D.,
and Gary L. Pate

In the aftermath of Harvey, many are wondering about the duties of disclosure real estate agents owe to buyers and sellers.

The Texas Real Estate License Act (Chapter 1101, Texas Occupations Code) lists a number of ways in which real estate agents' behavior could result in suspension or revocation of licensure. Among others, Sections 1101.652 (b) (1-4) are germane to agents' behavior related to the disclosure of flooding. Specifically, agents are required to disclose to a potential buyer "a significant defect, including a latent structural defect, known to the license holder that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property."

As to flooding of real property, there is no doubt this condition is a *significant defect* that must be disclosed to a potential buyer if *actually known* to the agent. Although the License Act only requires disclosure of what is *actually known*, it is possible a court could impose a broader standard of "ought to have known" on license holders. As a fiduciary, license holders must represent the interest of their clients and perform services with the necessary levels of integrity and competency. After Hurricane Harvey flooding in Houston and the massive publicity worldwide, it seems improbable that any real estate

agent in the southeast Texas area did not know about the event. An agent's fiduciary duty may require a license holder to investigate for their clients whether a property in the Houston area actually flooded.

Do's and don'ts for disclosure about flooding

Do ask questions about flooding events. You may need to contact FEMA or local authorities to dig deeper into the flooding event and what, if anything, governmental authorities had done to remedy future flooding. TREC rules also indicate that if an agent doesn't ask these kinds of questions, the agent could be guilty of an act of omission if the agent chooses not to make further inquiries.

Do advise clients to inquire about the flood zone. Buyer's agents should have their clients determine if the property is situated in a flood zone and to check on the availability of flood insurance. You may want to provide this information to your buyers in writing.

Don't offer legal or engineering advice. This is only appropriate if you hold licenses in those professions. Tell your client to instead seek the assistance of an attorney, civil engineer, or other appropriate professional so he or she can understand the risks involved in a property that has flooded or could flood in the future.

Do carefully consider what you disclose. In the event a homeowner whose property flooded seeks legal action against you for flood-related disclosures, attorneys will question

- What did you actually know about prior flooding of the property in question or about the property's location inside a FEMA-designated flood zone?
- What did you tell potential buyers or sellers of your actual knowledge?
- When did you tell potential buyers or sellers of your actual knowledge of the property's flooding issues?

Will there be court rulings in future lawsuits involving real estate agents in the aftermath of Hurricane Harvey's flooding that clarify the duties agents owe clients and customers? Perhaps, but there is no doubt you already must disclose your actual knowledge about flooding events to any purchaser. ♦

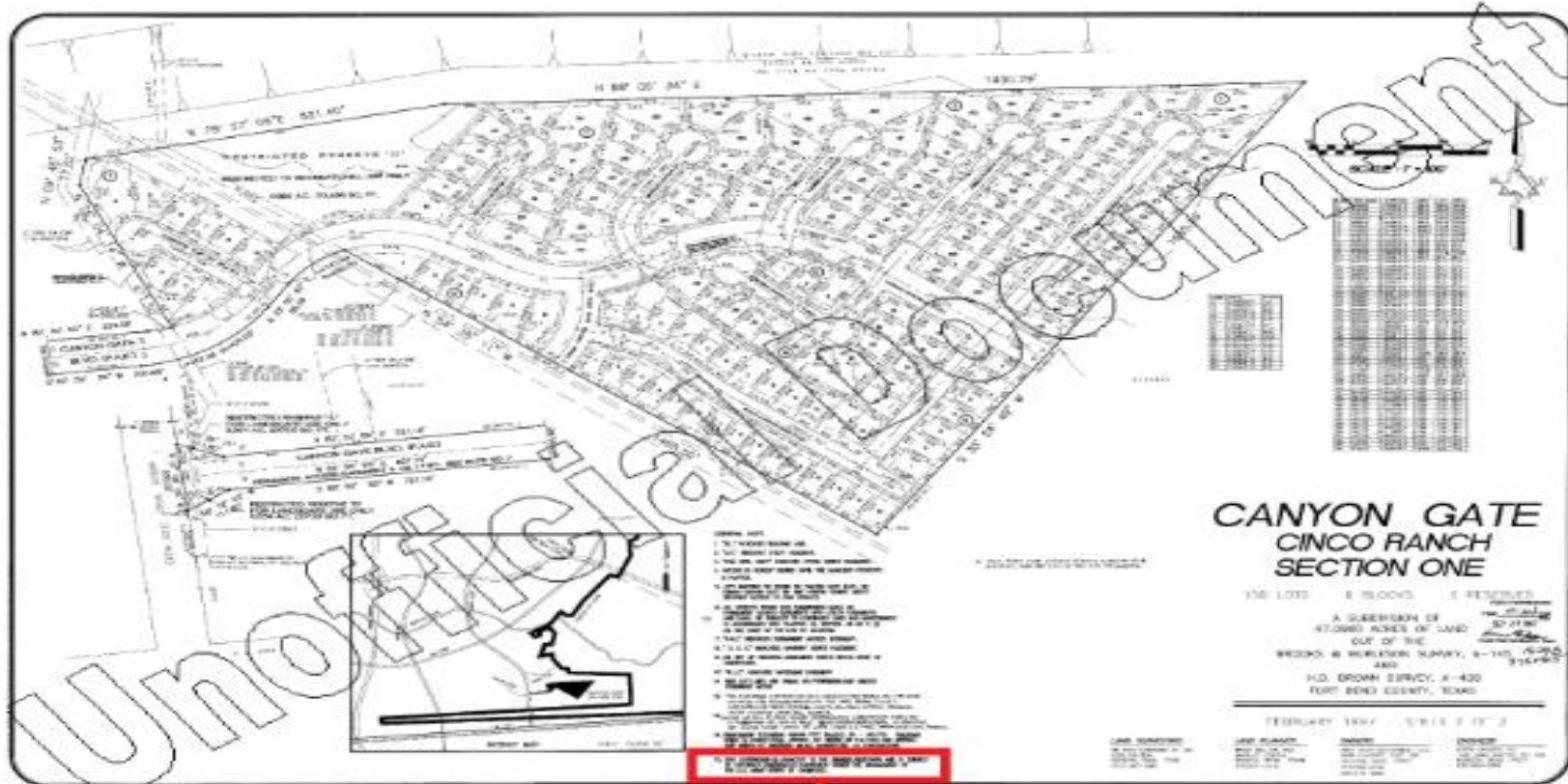
DR. CHARLES PORTER is an author, teacher, Texas real estate broker, and testifying water rights and real estate expert named in over 600 cases. He is a visiting professor in the College of Arts and Humanities-University Studies at St. Edward's University in Austin.

GARY L. PATE is a partner with Martin, Disiere, Jefferson & Wisdom, L.L.P. in Houston and is co-chair of the commercial and residential real estate section of the firm.

The seller's disclosure notice is not the real estate agent's disclosure but the *seller's* disclosure. While you may provide the form and answer questions about it, you should not complete the form for a seller. Stress to sellers the importance of answering the questions honestly and thoroughly. It is hard to imagine a seller harmed by over-disclosure.

Members of the Texas Association of REALTORS® have exclusive access to the *Seller's Disclosure Notice* (TAR 1406), which has options to disclose information about a property's flooding history, including whether there has been flooding and if there is present flood insurance coverage.

In 1997, Fort Bend County issued a warning — over the objections of developers — that the federal government could flood the planned subdivisions in case of a storm. But many homeowners never saw the obscure land document, called a plat, where the warning was printed.



15. THIS SUBDIVISION IS ADJACENT TO THE BARKER RESERVOIR AND IS SUBJECT TO EXTENDED CONTROLLED INUNDATION UNDER THE MANAGEMENT OF THE U.S. ARMY CORPS OF ENGINEERS.



Courtesy Southwest Travis County GCD