

**TEXAS WATER ISSUES:  
GROUNDWATER CONSERVATION DISTRICTS' RULES  
AND REGULATIONS AND OTHER LEGAL OBSTACLES  
AWAITING UNSUSPECTING LANDOWNERS**

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## ★ Profile

**Legislative Representation:** Claudia Russell is a seasoned attorney and government relations expert with a background that includes employment in all three branches of government and an extensive network of key legislators, decision makers, and lobbyists in Texas. Her fourteen year career associated with the Texas Legislature includes work for both Republican and Democrat legislators in both the House and Senate. She is skilled at devising strategies that help clients successfully navigate challenging political situations.

Ms. Russell works with clients to develop plans to prioritize contacts with legislative leadership, individual legislators, and agency executives. She assists clients with the development of strategic positions and arguments related to the specific issues they face. She works in concert with other interests and lobbyists to achieve a coordinated and more effective effort on her clients' behalf. Ms. Russell drafts statutory changes, crafts legislative agendas, and attends and testifies at committee hearings.

## ★ Career Highlights, Honors and Appointments

Former Staff Attorney, Texas Commission on Environmental Quality

Former General Counsel to Senator Judith Zaffirini, Texas Senate

Former Chief of Staff to Representative Tommy Merritt, Texas House of Representatives

Former Legislative Aide to Speaker James E. "Pete" Laney, Texas House of Representatives

Former Law Clerk to Chief Judge Glen H. Davidson, United States District Court, Northern District of Mississippi

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Former Staff Attorney, Office of the Mississippi State Auditor

Former Law Clerk, Supreme Court of Mississippi

## ★ Educational and Professional Background

Mississippi State University (B.A., *Magna Cum Laude*)

University of Mississippi (J.D.) - Member, Mississippi Law Journal

Admitted to Texas Bar, 2004

Admitted to Mississippi Bar, 1993

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# TEXAS WATER ISSUES: GROUNDWATER CONSERVATION DISTRICTS' RULES AND REGULATIONS AND OTHER LEGAL OBSTACLES AWAITING UNSUSPECTING LANDOWNERS

## I. INTRODUCTION

Everything is bigger in Texas and that includes the thirst for water. More and more farmers, industries, cities, and water marketers are looking to groundwater to assist with the state's recent drought and growing water deficit. This thirst will soon grow even bigger because Texas is one of the fastest growing states in the nation. The Texas Data Center and the Office of the State Demographer project that the state's population will increase by 71.5 percent between 2000 and 2040, from 20.9 million to 35.8 million. Unlike surface water which belongs to and is allocated by the state, groundwater belongs to the landowner, and this valuable commodity is regulated by many groundwater conservation districts across Texas, each with their own set of rules. Groundwater conservation districts are the "state's preferred method of groundwater management through rules developed, adopted, and promulgated by a district" in accordance with Chapter 36 of the Texas Water Code. *See* Texas Water Code § 36.0015.

At the same time, protection of private property rights is a paramount sentiment felt all across Texas. Recent court opinions and legislation confirm that groundwater is a property right of the landowner. "The legislature recognizes that a landowner owns the groundwater below the surface of the landowner's land as real property." Tex. Water Code § 36.002(a). However, the same statute provides that this statement does not "affect the ability of a district to regulate groundwater production" as authorized by law. Tex. Water Code § 36.002(d)(2). A groundwater conservation district's job of managing a resource and a landowner's right to that groundwater often times clash. This paper will explore that situation as well as provide background information on groundwater districts, how they are formed, how they operate with a focus on how these districts and other legal obstacles transect with rural landowners, and what lies ahead for groundwater districts.

## II. GROUNDWATER CONSERVATION DISTRICT INTERESTING FACTS

These interesting facts were found on the Texas Water Development Board website. There exist 100 groundwater conservation districts in Texas: 97 are confirmed or were created without confirmation requirements and three have yet to be confirmed by

voters through local elections. The first district in Texas, the High Plains Underground Water Conservation District No. 1, was created in 1951 in the Texas Panhandle and the last district, the Reeves County Groundwater District, was created in 2013 by the 83<sup>rd</sup> Texas Legislature, subject to voter confirmation. District areas differ: the Red Sands Groundwater Conservation District in Hidalgo County, Texas is the smallest district containing 31 square miles, and the High Plains Underground Water Conservation District No. 1 is the largest district covering approximately 12,000 square miles. A total of 174 Texas counties are either fully or partially located within a GCD. There are 62 single-county districts and 37 that contain more than one county. A copy of existing groundwater districts is provided in the Appendix.

The Texas Association of Groundwater Districts serves as a great resource for those wanting to know more about these districts in Texas. The association's website has a database with a listing of each existing groundwater district by:

- Name
- Location of enabling legislation
- Name of counties within its boundaries
- Population
- Community type
- Largest use (i.e., agriculture, public water supply, oil & gas, or domestic and livestock)
- Income source (tax or production fees)
- Well spacing requirements
- Number of board members and method of selection.

See <http://www.texasgroundwater.org>.

## III. GROUNDWATER CONSERVATION DISTRICT AUTHORITY

Groundwater conservation districts (GCDs or districts) are political subdivisions of the State of Texas, created pursuant to Article XVI, section 59 of the Texas Constitution. Specifically section (b) provides:

There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and

functions concerning the subject matter of this amendment as may be conferred by law.

Tex. Const. art. XVI, § 59(b). A groundwater district has the authority to regulate the spacing of water wells and/or the production from water wells. They also have general authority to regulate the transportation of groundwater within their boundaries. They do not provide municipal water nor do they treat water or wastewater. Although not the only place to find laws applicable to districts, Chapter 36 of the Texas Water Code houses details as to the powers, duties, funding, and administration of these types of districts. Texas Water Code § 36.0015 states that a groundwater conservation district is a local, regulatory agency created “to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivision, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions.” Texas. Water Code § 36.0015.

In order to have a complete understanding of a district’s powers and duties, one must also look to other chapters of the Water Code<sup>1</sup>, the special laws creating the district, the district’s management plan and rules, as well as the administrative rules of the Texas Water Development Board (TWDB) and the administrative rules of the Texas Commission on Environmental Quality.

#### IV. GROUNDWATER CONSERVATION DISTRICT CREATION

GCDs can be established through the action of the Texas Legislature. Typical legislation follows a consistent framework for authorizing district powers and duties, appointing temporary directors and establishing procedure for confirmation and subsequent directors’ elections. Although most GCDs are created by special acts of the Texas Legislature, they can also be created by landowner petition to the Texas Commission on Environmental Commission (TCEQ). *See generally* Tex. Water Code §§ 36.013-.019. A third way is by the TCEQ itself through its priority groundwater management area process, although to date this has never been done. *See generally* Chapter 35 of the Texas Water Code.

A district’s boundaries can also change. Territory can be added to an existing GCD through landowner petition. *See generally* Tex. Water Code §§ 36.321-.331. For larger areas, groups of landowners or entire counties can petition a GCD’s board for inclusion. There must be a finding by the district that the addition of the land would benefit the district and the territory

to be added. Tex. Water Code § 36.327. Addition of territory by landowner petition is not final until ratified by a majority vote of the voters in the territory to be annexed. Tex. Water Code § 36.328(a). Territory can also be added to an existing district by TCEQ itself through its priority groundwater management area process. Tex. Water Code § 35.013<sup>2</sup>.

Almost all the GCDs created by the legislature include a confirmation election. Although not required, most legislators prefer to allow their voters to decide whether to add an additional layer of regulation to their lives. The specifics of the legislation vary in each creation. Not all districts are alike so as stated earlier, it is imperative to also read and comprehend not only Chapter 36 but the individual special laws that created them. These special laws creating GCDs are currently being codified in the Texas Special District Local Laws Code. For example, it is currently popular when legislatively creating a district to prohibit districts from using the power of eminent domain although Texas Water Code § 36.105(a) provides that a GCD can exercise the power of eminent domain on property located inside the district if the property interest is necessary for conservation purposes. Tex. Water Code § 36.105(a). Similarly, sometimes the special law that creates a district provides that directors shall not receive any compensation for service although Texas Water Code § 36.060 allows a director to receive fees for each day of service.<sup>3</sup>

#### V. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES

GCDs have powers and duties that enable them to manage groundwater resources. The principle powers that a GCD has to prevent waste of groundwater are to require that all wells, with certain exceptions, be registered and permitted and to develop a comprehensive management plan.

##### A. Well Regulation

###### 1. Spacing

Districts have the power to regulate the spacing of wells pursuant to Tex. Water Code § 36.116. They can regulate well spacing by (1) “requiring all water wells to be spaced a certain distance from property lines or adjoining wells”; (2) “requiring wells with certain production capacity, pump size, or other characteristic related to the construction or operation of and

<sup>2</sup> On August 7, 2012, the TCEQ issued an order adding priority groundwater management areas in Dallam County to the North Plains GCD.

<sup>3</sup> In 2013, the Texas Legislature amended the section and increased the fees of a director of a groundwater district from \$150 per day to \$250 per day for each day of service. *See* House Bill 1563, 83<sup>rd</sup> Regular Session.

<sup>1</sup> Chapter 49 of the Texas Water Code is applicable to all water districts, including groundwater conservation districts.

production from a well to be spaced a certain distance from property lines or adjoining wells”; or (3) “imposing spacing requirements adopted by the board.” Tex. Water Code § 36.116(a)(1). Districts vary in these requirements. Some districts’ spacing is determined by pumping capacity. Some districts require wells to be 100 feet from a property line while some districts require wells to be certain distances from other wells or septic systems. *See database at <http://www.texasgroundwater.org>.*

## 2. Production

Districts also have the power to regulate the production of groundwater pursuant to Tex. Water Code § 36.116. They can regulate production by:

- a) setting production limits on wells;
- b) limiting the amount of water produced based on acreage or tract size;
- c) limiting the amount of water that may be produced from a defined number of acres assigned to an authorized well site;
- d) limiting the maximum amount of water that may be produced on the basis of acre-feet per acre or gallons per minute per well site per acre;
- e) managed depletion or
- f) any combination of the above listed methods.

Tex. Water Code § 36.116(a)(2). Some districts have limits of one acre/foot, per acre of land a year. Some districts base production by reasonable use. For some districts, groundwater availability is determined by the district at the time of application. Some districts have no limitations. *See database at <http://www.texasgroundwater.org>.*

## 3. Permits and Exceptions

The Texas Water Code provides that a district shall require a permit for the “drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps.” Tex. Water Code § 36.113(a). “A district may require that a change in the withdrawal or use of groundwater during the term of a permit issued by the district may not be made unless the district has first approved a permit amendment authorizing the change.” Tex. Water Code § 36.113(a).<sup>4</sup>

A district is required to address in its own rules, which activity will require a permit or permit

amendment and whether a hearing on the permit or permit amendment is required. *See* Tex. Water Code § 36.114(a)&(b). For applications for which a hearing is not required, a district must act promptly. If within 60 days after application is submitted and not acted upon, the applicant can petition a local district court to compel the district to act. Tex. Water Code § 36.114(d)&(e). For applications requiring a hearing, “the initial hearing shall be held within 35 days after the setting of the date and the district shall act on the application within 60 days after the date the final hearing on the application is concluded.” Tex. Water Code § 36.114(f).

The hearing process is very specific and is detailed in Chapter 36, subchapter M of the Texas Water Code. *See generally* Tex. Water Code §§ 36.401-419. Texas law provides that before granting or denying a permit or permit amendment, the district shall consider whether:

- a) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fees;
- b) the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders;
- c) the proposed use of water is dedicated to any beneficial use;
- d) the proposed use of water is consistent with the district's approved management plan;
- e) the applicant has agreed to avoid waste and achieve water conservation; and
- f) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure.

Tex. Water Code § 36.113(d). Texas law also provides that “a district, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108.” Tex. Water Code § 36.1132(a).

Of course, there are exceptions to the rule. Pursuant to Tex. Water Code § 36.117, a district must provide an exemption from the permit requirement if the well is used solely for domestic use or for providing water for livestock or poultry if the well is located on a tract of land larger than 10 acres and if it is incapable of producing more than 25,000 gallons of groundwater a day. Tex. Water Code § 36.117(b)(1). That same section also exempts from a permit the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas and the drilling of a

<sup>4</sup> A district’s authority to issue permits is limited until the TWDB approves the district’s management plan, discussed later in this paper. *See* Tex. Water Code § 36.1071(f).

water well authorized by the Railroad Commission for mining activities. This oil and gas exemption is applicable provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig. Tex. Water Code § 36.117(b)(2).<sup>5</sup>

#### 4. Transportation of Water Out of the District

Texas law provides that if an application for a permit or a permit amendment proposes to export water outside the district, the district may consider the provisions found in Texas Water Code § 36.122 in determining whether to grant or deny the permit or permit amendment. This practice has been upheld in *Guitar v. Hudspeth County Underground Water Conservation District No. 1*, 263 S.W.3d 910 (Tex. 2008).<sup>6</sup> The law provides that but for one exception found in Tex. Water Code § 36.122(e), a “district may not impose more restrictive permit conditions on transporters than the district imposes on existing in-district users.” Tex. Water Code § 36.122(c). The exception is that a district may impose a reasonable fee or surcharge for an export fee. Tex. Water Code § 36.122(e). Although a district cannot deny a permit or amendment because the applicant seeks to transport the water outside district boundaries, the law provides in reviewing a proposed transfer of groundwater out of the district, the district “shall consider:

- a) the availability of water in the district and in the proposed receiving area during the period for which the water supply is requested;
- b) the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the district; and
- c) the approved regional water plan and approved district management plan.”

Tex. Water Code § 36.122(f). This section of the Water Code also sets limits on permit terms and fees. If construction of a conveyance system has not begun before the issuance of the permit, the term must be at least three years. If construction has begun, the term

must be for at least 30 years. Tex. Water Code §36.122(i).

This area of the law concerns entities trying to shore up water supplies because districts retain the ability to grant short term permits for production. Interested parties note that certainty is needed and the development of a major groundwater supply project requires long-term financing and that is made difficult when predicated on short-term withdrawal permits. From a GCD perspective, aquifer conditions may change which requires reconsideration and not having the ability to alter a production permit for thirty years defeats its duty to manage groundwater resources. Legislation was filed in the 2013 legislative session which would have amended this section and will be discussed further in the section of this paper relating to what lies ahead for GCDs.

#### **B. Management Plan**

In addition to having the authority to regulate the spacing of water wells and the production from the water wells, districts are required to develop a groundwater management plan to be submitted to the Texas Water Development Board.<sup>7</sup> The management plan must be declared administratively complete within three years of forming the district.<sup>8</sup> Such a plan describes a district’s groundwater management goals and the steps necessary to achieve the goals. Chapter 31, Texas Administrative Code §356.52 provides the requirements of the plan which include:

- 1) providing the most efficient use of groundwater;
- 2) controlling and preventing waste of groundwater;
- 3) controlling and preventing subsidence;
- 4) addressing conjunctive surface water management issues;
- 5) addressing natural resources issues;
- 6) addressing drought conditions;
- 7) addressing conservation, recharge enhancement, rainwater harvesting, precipitation enhancement or brush control; and

<sup>5</sup> It should be noted that some districts require exempt wells to be registered regardless of their exempt nature. The High Plains Water District requires meters on all wells by 2016.

<sup>6</sup> In the *Guitar* case, the Texas Supreme Court reviewed a GCD’s rules regarding a transfer permit and held that a GCD may not allow a historic use to convert to a new use without complying with the limitations applicable to all other new uses.

<sup>7</sup> A GCD may review its management plan annually and must review and readopt a management plan (either with revisions or not) every five years. See Tex. Water Code § 36.1072(e).

<sup>8</sup> GCDs can get financial assistance through the Texas Water Development Board (TWDB) to collect initial data and develop a groundwater management plan. In addition to TWDB funds, districts can seek assistance from the Parks and Wildlife Department, and the Texas Agricultural Extension Service.

- 8) addressing desired future aquifer conditions adopted by the district under Section 36.108.

See 31 Tex. Admin. Code § 356.52; see also Tex. Water Code § 36.1071. The plan must also include estimates of the modeled available groundwater in the district based on the desired future conditions, the amount of groundwater used on an annual basis within the district, the annual amount of recharge from precipitation, annual volume of water that discharges from the aquifer to springs and surface water bodies, the projected surface water supply in the district and the project total demand for water in the district. Tex. Water Code § 36.1071(e)(3).

If the Executive Director of the Texas Water Development Board does not approve the management plan, he or she must provide in writing the reasons for the denial. The district then has 180 days to submit a revised plan for approval. If it is still not approved, a district can request mediation, and if mediation does not resolve the impasse, the district can appeal the TWDB decision to a district court in Travis County. Tex. Water Code § 36.1072(f).

#### 1. Joint Planning

In 2005, the Texas Legislature addressed the situation where numerous GCDs overlay the same aquifer and passed House Bill 1763. This legislation created Groundwater Management Areas (GMAs) which encompass entire aquifer areas. Through GMA meetings and oversight, area groundwater conservation districts within each GMA work together and produce desired future conditions, a 50-year goal for groundwater levels, for each aquifer.

Each GCD located in the GMA must file their management plan with other GCDs within the GMA for consideration in the regional water planning process. Tex. Water Code § 36.108(b). The law also provides that by September 1, 2010 and every five years after, GCDs within the same GMS must “consider groundwater availability models and other data or information for the management area and shall propose for adoption desired future conditions for the relevant aquifers within the management area.” Tex. Water Code § 36.108(d). Once the adoption of the desired future conditions occurs, they are submitted to the TWDB and the TWDB calculates estimates of modeled available groundwater. The law defines modeled available groundwater as “the amount of water that the executive administrator determines may be produced on an average annual basis to achieve a desired future condition established under Section 36.108” of the Texas Water Code. Tex. Water Code § 36.001(25).

## VI. FUNDING

GCDs are primarily funded in two ways: through ad valorem taxes and/or through production fees. Chapter 36, subchapter G, of the Texas Water Code grants a district the authority to levy taxes and set fees. However, this authority is not always used. Many districts’ special legislation do not allow for the district to levy taxes but instead impose production fees. Some districts allow taxes but not production fees. If a district levies taxes to pay for the maintenance and operation of the district, the law provides that the rate must not exceed 50 cents on every \$100 of assessed valuation. Tex. Water Code § 36.201(b). And, before a tax is imposed, the tax must be approved by a majority of voters. Tex. Water Code § 36.201(c). Often times, a district may access a tax but for a rate less than 50 cents on every \$100 of assessed value. If a district is funded through production fees, the fee can be based on the amount of water authorized to be withdrawn from a well by the permit or the actual withdrawn amount. Tex. Water Code § 36.205.

Funding varies with each district. Some GCDs run multimillion-dollar operations with hydrologists and other scientists on staff. In other cases, some GCDs operate on very limited budgets.

## VII. GCDs AND LANDOWNERS

### A. Apparent Conflict Between GCDs and Landowners

GCDs were created to ensure that users pumping from aquifers follow rules that protect the environment and that there is managed depletion of the aquifers; yet, Texas law applies the “rule of capture,” meaning landowners own the water beneath their land and can pump as much as they wish if it is for beneficial use.<sup>9</sup> The recent case of *EAA v. Bragg*<sup>10</sup> illustrates the difficulty of balancing these two rights. Established jurisprudence provides that property owners are expected to bear the burden of reasonable regulations on the use of their property.<sup>11</sup> It is when the economic burden of the regulation is so great that it becomes unacceptable and a “takings” has occurred.<sup>12</sup>

<sup>9</sup> The rule of capture for groundwater was first adopted by the Texas Supreme Court at the turn of last century. See *Houston & Texas Central Ry. Co. v. East*, 98 Tex. 146, 81 S.W. 279 (1904).

<sup>10</sup> *EAA v. Bragg*, \_\_\_ S.W.3d \_\_ 2013 WL 4535935.

<sup>11</sup> See *Hallco Tex., Inc. v. McMullen County*, 221 S.W.3d 50, 56 (Tex. 2006).

<sup>12</sup> Black’s Law Dictionary defines taking as “There is a ‘taking’ of property when government action directly interferes with or substantially disturbs the owner’s use and enjoyment of the property.” See *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 933-35 (Tex. 1998).



In the *Bragg* case, the Texas 4<sup>th</sup> Court of Appeals upheld the trial court and ruled in favor of a couple who had filed suit against one of the state's largest GCDs alleging that it disallowed them to pump enough water to irrigate two commercial-grade pecan orchards, resulting in a taking of their property. The appeals court remanded the case to trial court for a determination of damages due to the taking, but the case is currently expected to be appealed to the Texas Supreme Court.

Because of this ruling, GCDs have concerns that landowners and water marketers will use this opinion to threaten legal action if a GCD restricts any amount of water which can be pumped. GCDs argue that they must have the ability to regulate this valuable resource without exhausting public coffers. However, the timeline is critical to the court's analysis in *Bragg* and may differentiate it from other takings cases. In the *Bragg* case, the landowner purchased the properties before the Edward Aquifer Authority was created so much of the case turned on the landowners' investment-backed expectations. At the time of the land purchase, the authority was not in existence, had not adopted any groundwater production restrictions so the landowner had no expectation of regulation. Because of the number of GCDs in Texas, not many landowners would be similarly situated today. *Bragg* is an important case for groundwater takings litigation, but its ramifications for property owners and groundwater conservation districts have yet to be determined.

## B. Other Obstacles

Texas is growing. In 2040, Texas is projected to have 35.8 million residents. That is a 150 percent increase from 1980. Because of the influx of people, Texas's population is shifting from rural to urban and this presents challenges and opportunities for both areas. Many people choose to reside in rural subdivisions located miles away from their work. This growth pattern can readily be seen in many counties adjacent to the metropolitan areas in Texas.

As urbanites move to the rural lands adjoining metropolitan areas, they typically want the orderly development found in municipalities. Many times the orderly development of subdivisions contains restrictive covenants, a contractual arrangement in a deed to real property that limits what the owner of the land can do with the property. Land developers use restrictive covenants when they subdivide property for residential developments. After platting the subdivision into lots, blocks and streets, a developer will often impose certain limitations on the use of the lots. These covenants are filed with the approved plat.

Typical restrictive covenants are specifications that the dwellings are to be built a certain distance from the street, that the dwellings be single-family

residences, that the dwellings be a certain square footage or any other way the development looks and is maintained. These restrictive covenants most often run with the land, meaning that any new property owner takes the property subject to the restrictive covenants.

Landowners sometimes fail to understand the distinction between restrictive covenants and governmental regulations. Restrictive covenants operate independently of governmental regulations. Restrictive covenants are private covenants undertaken by landowners irrespective of any GCD regulation. The stricter provision generally controls when restrictions and laws conflict.

A typical covenant pertaining to water supply often prohibits an individual water supply system on the property. In other words, some subdivisions prohibit property owners from drilling or operating a well. This contradicts the Texas Water Code that allows for the exception from obtaining a permit from a groundwater district for a domestic or livestock well that is on 10 acres or more and produces less than 25,000 gallons a day. Tex. Water Code §36.117(b)(1). A GCD cannot prevent a landowner from drilling a domestic well subject to the aforementioned limitations, but a restrictive covenant can. And in the example of a landowner who has less than 10 acres and wishes to drill a well, if he or she were not subject to a restrictive covenant prohibiting a well, he or she could apply for a permit. A GCD cannot arbitrarily deny a permit. Texas Water Code provides that districts, "to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108." Texas Water Code § 36.1132.

Another example of a restrictive covenant that transects GCDs is one where no oil and mining operations is permitted. While Tex. Water Code § 36.117(b)(2)&(3) exempts water wells engaged in drilling or exploration operations for oil and gas and for mining operations from obtaining a permit, a restrictive covenant can prohibit any oil and mining activity all together.

Restrictions can substantially limit the use of property so buyers should carefully investigate any applicable restrictions before committing to the purchase of the land.

## VIII. WHAT LIES AHEAD FOR GCDs?

Although currently GCDs are the "state's preferred method of groundwater management through rules developed, adopted, and promulgated by a district," there is a movement pushing for the realization that this valuable groundwater does not follow political boundaries. With the state having 9 major aquifers and 21 minor aquifers, challenging issues arise when more than one GCD is charged with

managing the same aquifer with very different ideas of how to accomplish that management. Some make the argument that a more collective set of rules for GCDs should be established; while others make the argument that groundwater decisions must stay locally controlled to protect individual private property rights. Even a statewide GCD has been recommended to better reflect hydrogeologic boundaries and to include areas that are not within an existing district. To date, this recommendation has not been implemented. So while there is growing sentiment that there needs to be uniform rules to operate under, it falls short of having a system of state control.

During this past legislative session, bills were filed that sought to change how GCDs operate. For example, House Bill 1796 by Representative Jason Isaac, R- Dripping Springs, sought to amend the permit renewal practice by adding new subsections Tex. Water Code §§ 36.1145 and 36.1146, which would have allowed a renewal of a permit without a district hearing if it was timely submitted and the application is for the same point of groundwater withdrawal and purpose. And the amount and rate withdrawn could not be more than the amount and rate allowed by the original permit. See House Bill 1796. The bill also sought to authorize a district, after notice and hearing, to amend an operating permit to adjust the rate or amount of permitted groundwater withdrawals only to the extent necessary to respond to significant changes in the aquifer and or increased demand on an aquifer than impacts the district's ability to meet a desired future condition of the aquifer.

Representative Trey Martinez Fischer, D-San Antonio, filed House Bill 2739 which sought to change the provisions relating to permitting requirements of GCDs. His legislation sought to amend Tex. Water Code §36.122 to do away with separate permits of withdrawal and transfer and to create one permit for which water may be produced and transferred.

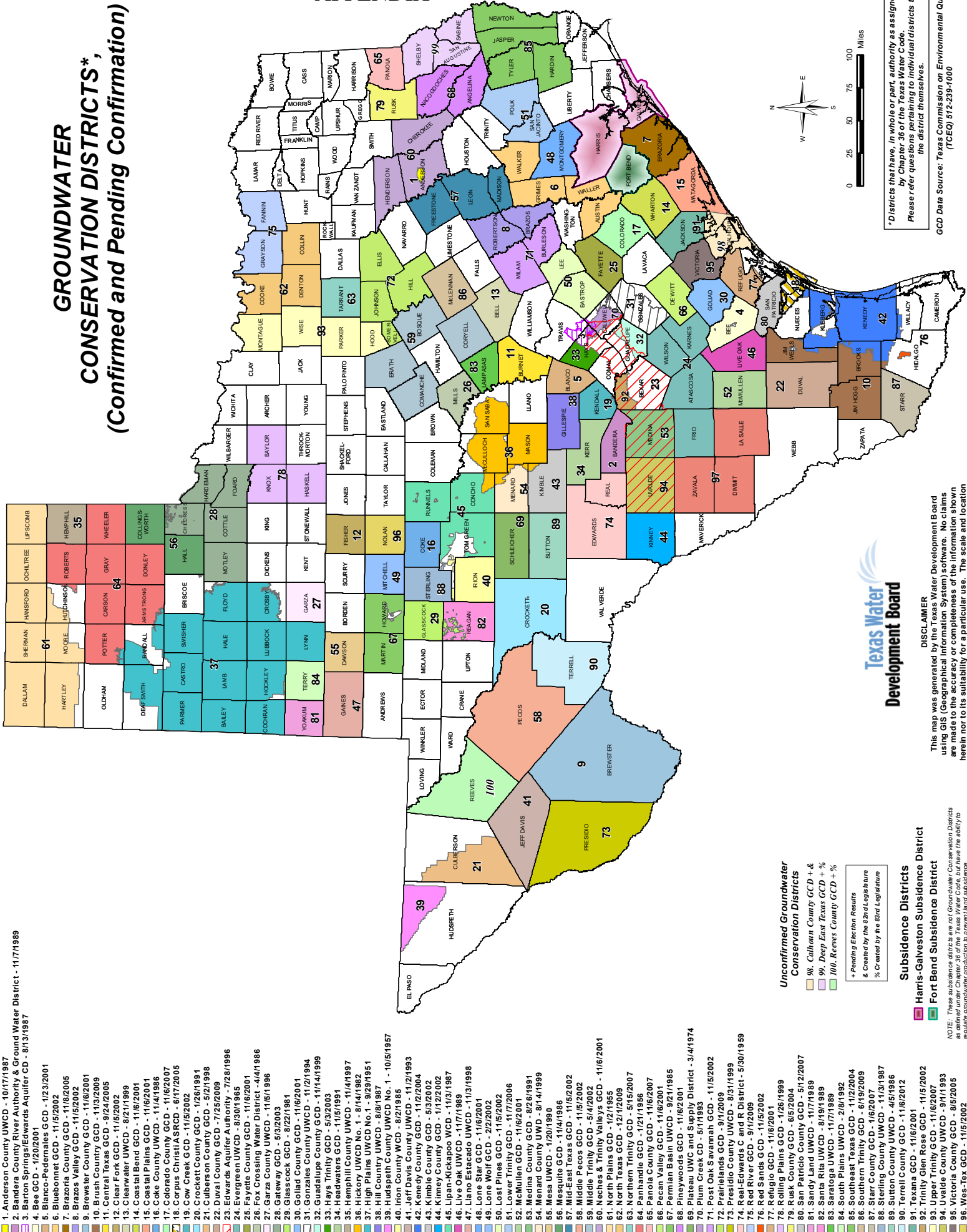
Neither bill passed the 83<sup>rd</sup> Legislature but be rest assured that similar bills will be filed in the 84<sup>th</sup> Legislature.

## **IX. CONCLUSION**

These are challenging times for groundwater districts. Texas is at a crossroads with protecting individual property rights and managing a finite resource which its scarcity can impede our economic growth. As the state grows and water becomes even a more valued commodity, understanding water issues should become increasingly important to everyone.

APPENDIX

GROUNDWATER CONSERVATION DISTRICTS\* (Confirmed and Pending Confirmation)



\*Districts that have, in whole or part, authority as assigned by Chapter 36 of the Texas Water Code. Please refer questions pertaining to individual districts to the district themselves.

GCD Data Source: Texas Commission on Environmental Quality (TCEQ) 512-239-1000

Map updated: September 2013



DISCLAIMER This map was generated by the Texas Water Development Board using GIS (Geographical Information System) software. No claims are made to the accuracy or completeness of the information shown herein nor to its suitability for a particular use. The scale and location of all mapped data are approximate.

- Confirmed Groundwater Conservation Districts
1. Anderson County UWCD - 10/17/1987
2. Bandera County River Authority & Ground Water District - 11/17/1989
3. Barton Springs/Edwards Aquifer CD - 8/13/1987
4. Bee GCD - 1/20/2001
5. Blanco-Federmates GCD - 1/23/2001
6. Bluebonnet GCD - 11/5/2002
7. Brazoria County GCD - 11/8/2005
8. Brazos Valley GCD - 11/5/2002
9. Brewster County GCD - 11/6/2001
10. Brush County GCD - 11/3/2009
11. Central Texas GCD - 9/24/2005
12. Clear Fork GCD - 11/5/2002
13. Clearwater UWCD - 8/21/1999
14. Coastal Bend GCD - 11/6/2001
15. Coastal Plains GCD - 11/6/2001
16. Coke County UWCD - 11/4/1986
17. Colorado County GCD - 11/6/2007
18. Corpus Christi ASRCD - 6/17/2005
19. Cow Creek GCD - 11/5/2002
20. Crockett County GCD - 1/26/1991
21. Culberson County GCD - 5/2/1998
22. Duval County GCD - 7/25/2009
23. Edwards Aquifer Authority - 7/28/1996
24. Evergreen UWCD - 8/30/1965
25. Fayette County GCD - 11/6/2001
26. Fox Crossing Water District - 4/4/1988
27. Garza County UWCD - 11/5/1996
28. Gateway GCD - 5/3/2003
29. Glasscock GCD - 8/22/1981
30. Goliad County GCD - 11/6/2001
31. Gonzales County UWCD - 11/21/1994
32. Guadalupe County GCD - 11/14/1999
33. Guadalupe Valley GCD - 5/3/2003
34. Headwaters GCD - 11/5/1991
35. Hemphill County UWCD - 11/4/1997
36. Hickory UWCD No. 1 - 8/14/1982
37. High Plains UWCD No. 1 - 9/29/1951
38. Hill Country UWCD - 8/8/1987
39. Hillspeth County UWCD No. 1 - 10/5/1957
40. Irion County UWCD - 8/2/1985
41. Jeff Davis County UWCD - 11/2/1993
42. Kenedy County GCD - 11/2/2004
43. Kimble County GCD - 5/3/2002
44. Kinney County GCD - 11/2/2002
45. Lipan-Kickapoo WCD - 11/3/1987
46. Live Oak UWCD - 11/7/1989
47. Llano Estacado UWCD - 11/3/1998
48. Lona Star GCD - 11/6/2001
49. Lott GCD - 2/2/2002
50. Lost Pines GCD - 11/6/2002
51. Lower Trinity GCD - 11/7/2006
52. McMullen County GCD - 11/6/2001
53. Medina County GCD - 8/25/1991
54. Menard County UWCD - 8/14/1999
55. Mesa UWCD - 1/20/1990
56. Mesa Verde GCD - 11/4/1986
57. Mid-East Texas GCD - 11/5/2002
58. Middle Pecos GCD - 11/6/2002
59. Middle Trinity GCD - 8/4/2002
60. Neches & Trinity valleys GCD - 11/6/2001
61. North Plains GCD - 12/1/2005
62. North Texas GCD - 12/1/2005
63. Northern Trinity GCD - 8/15/2007
64. Panhandle GCD - 11/2/1996
65. Pecos County GCD - 11/6/2007
66. Pecos Valley GCD - 11/6/2007
67. Permian Basin UWCD - 9/21/1985
68. Pineywoods GCD - 11/6/2001
69. Plateau UWCD and Supply District - 3/4/1974
70. Plum Creek CD - 9/1/1993
71. Post Oak Savannah GCD - 11/5/2002
72. Prairielands GCD - 9/1/2009
73. Presidio County UWCD - 8/31/1999
74. Real-Edwards C and R District - 5/30/1989
75. Red River GCD - 9/1/2009
76. Red Sands GCD - 11/5/2002
77. Religio GCD - 11/6/2001
78. Rolling Plains GCD - 1/28/1999
79. Rusk County GCD - 6/5/2004
80. San Patricio County GCD - 5/12/2007
81. Sandy Land UWCD - 11/7/1989
82. Santa Rita UWCD - 8/19/1989
83. Saratoga UWCD - 11/7/1989
84. South Plains UWCD - 2/8/1992
85. Southeast Texas GCD - 11/2/2004
86. Southern Trinity GCD - 6/19/2009
87. Starr County GCD - 11/6/2007
88. Sterling County UWCD - 11/31/1997
89. Sutton County GCD - 4/5/1996
90. Terrell County GCD - 11/6/2002
91. Texana GCD - 11/6/2001
92. Trinity Glen Rose GCD - 11/5/2002
93. Upper Trinity GCD - 11/6/2007
94. Uvalde County UWCD - 9/1/1993
95. Victoria County GCD - 8/5/2005
96. West-Tex GCD - 11/6/2002
97. Wintergarden GCD - 11/7/1998

Unconfirmed Groundwater Conservation Districts
98. Callahan County GCD + %
99. Deep East Texas GCD + %
100. Reeves County GCD + %
\* Pending Election Results
\* Created by the 82nd Legislature
% Created by the 83rd Legislature

Subsidence Districts
Harris-Galveston Subsidence District
Fort Bend Subsidence District

NOTE: These subsidence districts are not Groundwater Conservation Districts as defined in Chapter 36 of the Texas Water Code. The information shown regarding groundwater production to prevent land subsidence. Refer to Senate Bill 1537 from the 79th Legislative Session.