

A Brief History of Water Law in Texas: From Viceroys to GCDs and the TCEQ

*“Water is Life” Conference
Sonora, Texas 2013*

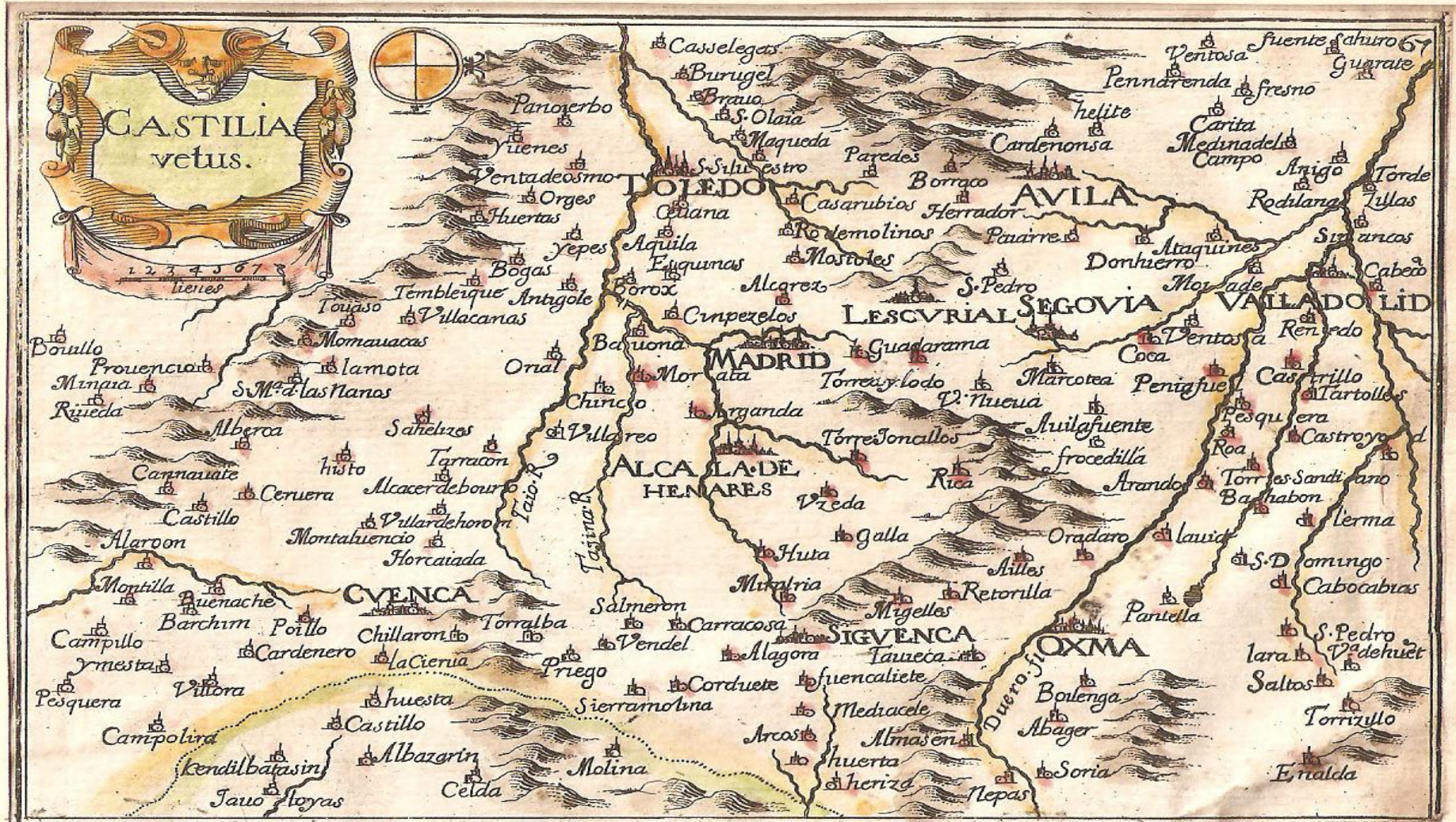
By: Charles Porter, Assistant Professor of History
St. Edward's University
charlp@stedwards.edu
www.charlesporter.com

“Water doesn’t run downhill . . . it runs
towards money.”

Dr. David Weber, SMU, 1976

Spain by Ortelius in 1588 - "La Mancha" or "The Blot"

"Respect for water was bred in the bone of the Spaniard."





Isidro Felix de Espinosa, O.F.M. - 1709 -
the water here can support a ciudad.

V. R. D. N. V.
P. Fr. Isidro Feliz
de Espinosa, Pre-
dicador App. Guar-
dian y Chronista de este
Colegio de la S. Cruz de
O. Secretario: Calificador del
S. Oficio de la Uniq. Fue
Religioso de exemplares
Virtudes y solidos conse-
jos. Murió de edad de 76 años
A devocion del M. Ill.
S. D. Sebastian de Vrutia
y Aldama Marques del
Villar del Acuña Ca-
vallerio del Ord. de
Alcantara.

Spanish Law Roots – Surface Water

Spain:

Surface water is held in trust by the King for the people.

Texas:

Surface water is held in trust for the people.

Texas Water Code Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE. (a) The waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.

Spanish Law Roots – Groundwater

Spain:

Groundwater was owned by the surface owner.

Texas:

Groundwater is owned by the surface owner. (SB 332, 82nd
Texas Legislature, 2011)

1840 – Texas Adopted English Common Law

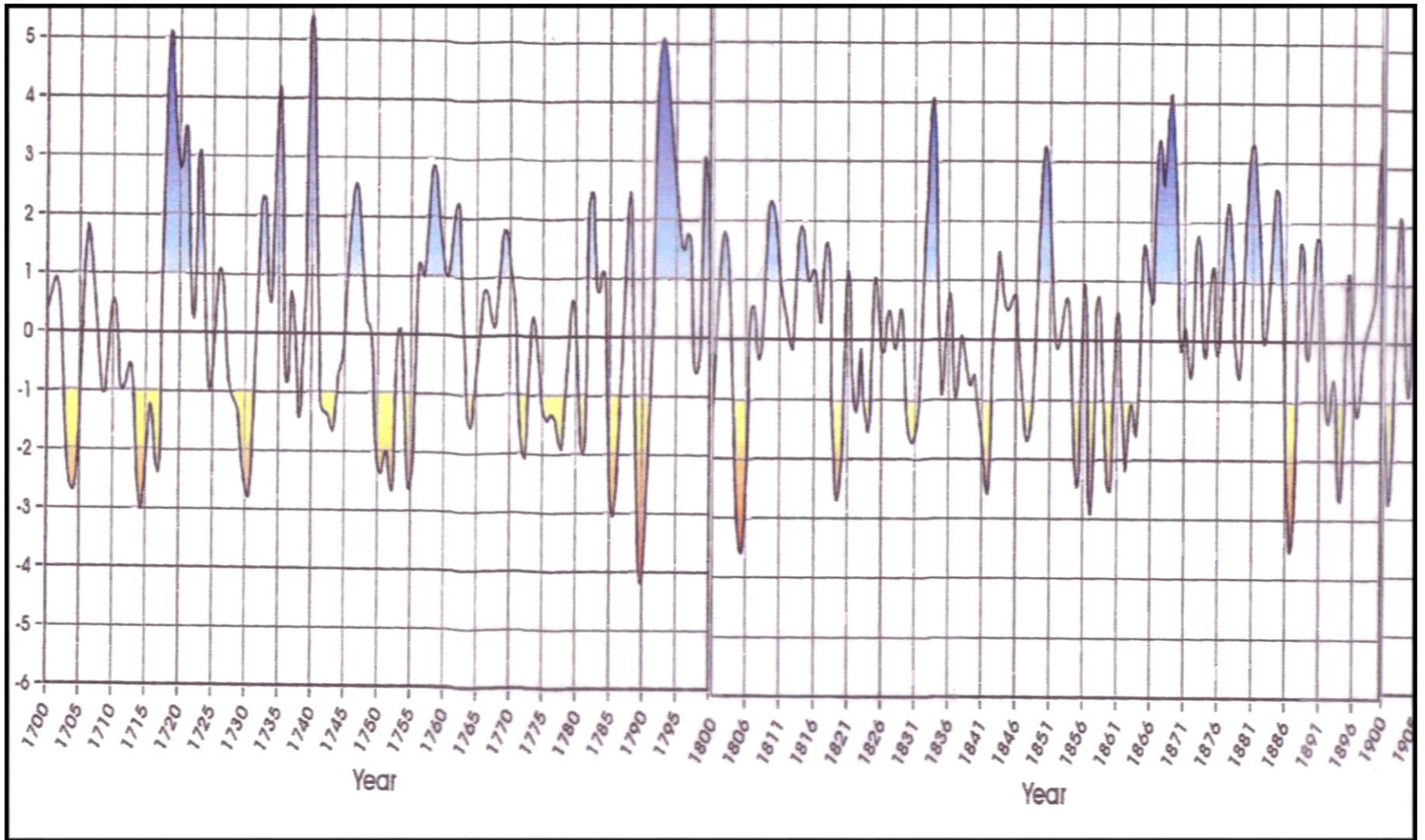
But we honored Spanish and Republic of Mexico water and land grants (Spanish Civil Law based).

English – generally riparian rights to surface water

Spanish – appropriative rights to surface water

Texas today – prior appropriative rights to surface water –
first in time, first in right

1967 – The Water Rights Adjudication Act



**Droughts and Deluges in San Antonio
1700 - 1900**

1891 Water Wells at site of today's Arneson River Theatre on the Riverwalk

Drilled by M.C. Judson for
Brackenridge's Water Works
Company - 3,000,000 gpd artesian.

Brack had little choice - had to find
a "pure" source of water in "the
amount the City of San Antonio"
required or default on the contract.

Unintended Consequence?

Brack's homestead spring, San
Antonio Spring, dried up. Brack
sold his homestead to the Sisters of
Charity of the Incarnate Word.

By 1920, over 100 deep wells drilled
into the aquifer in Bexar County.



ARTESIAN WELLS AT CITY WATERWORKS, SAN ANTONIO.

No. No 1333, 5th Dist
No 1333

W. A. East
Appellant's Plaintiff in Error

N. I. C. R. R. Co.
Appellee's Defendants in Error

From the District Court of Grayson Co.

Applied for by Mesley & Epstein Attorneys of
for Appellant on the 12th day of January
1903 and delivered to Mesley & Epstein
on the 30th day of January 1903

C. Arnold
Clerk District Court Grayson County

Filed in Court of Civil Appeals, at Dallas
the 2nd day of April 1903

Yumbler Clerk

Attorneys for Appellant.
P. O. Address.
Attorneys for Appellee.
P. O. Address.

5th Dist

No 1333

Filed in Supreme Court

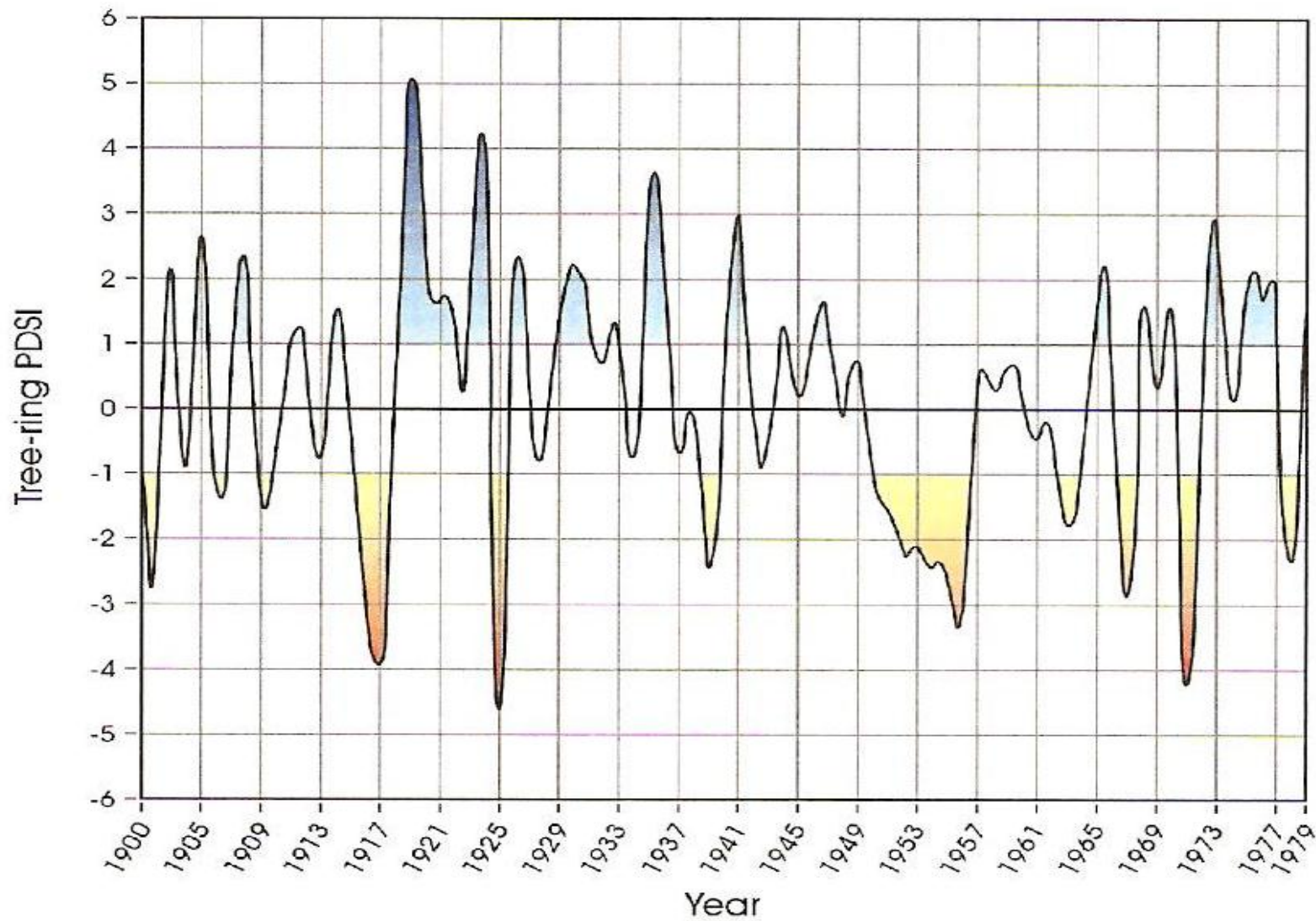
May 18 1904

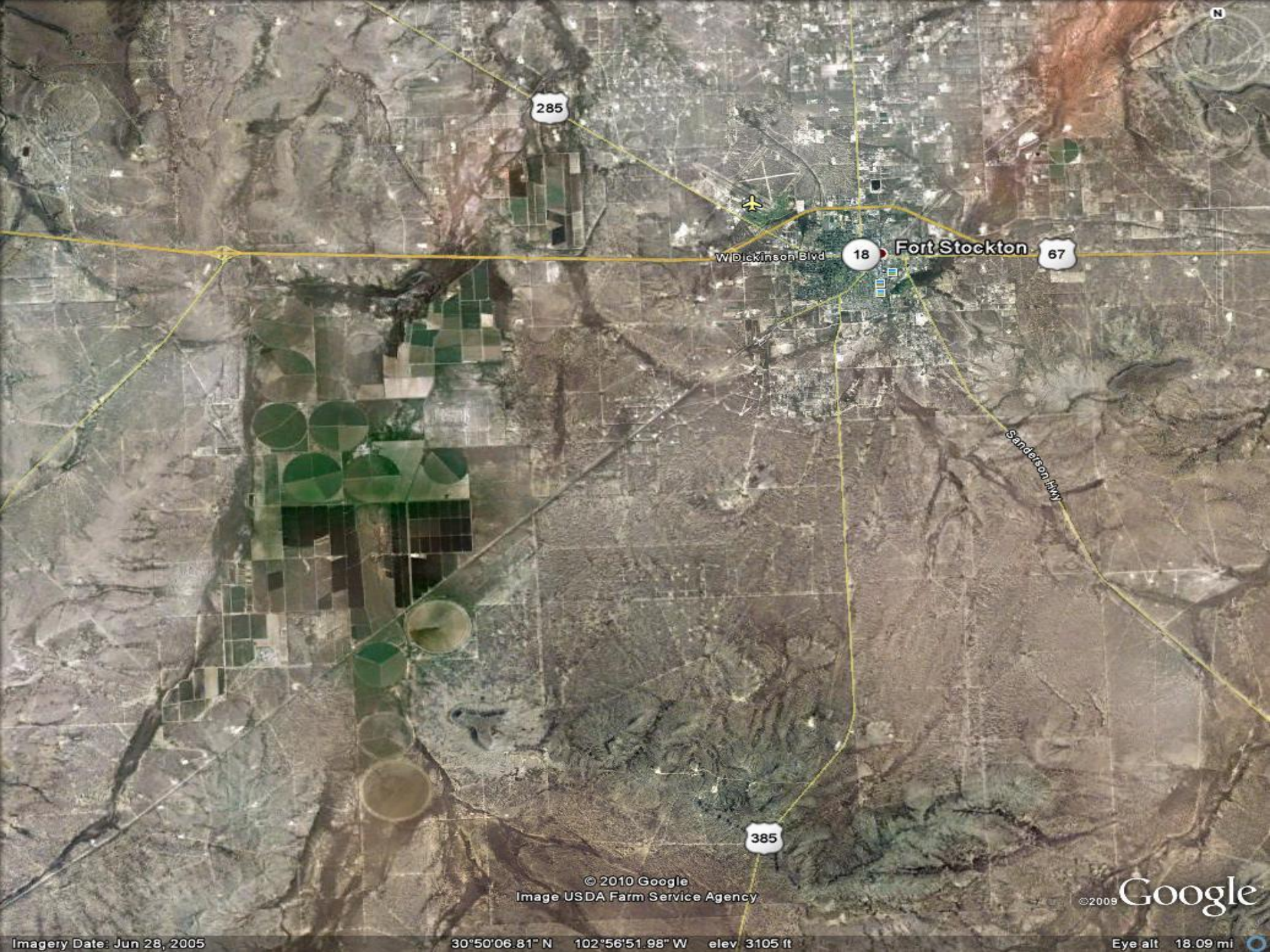
F. S. Edwards, Clerk

By J. Bellmick Deputy

Appeals removed
District Court of Grayson
June 13 1904

1900 - 1979 Drought in Texas





285

W Dickinson Blvd

18

Fort Stockton

67

Sanderson Hwy

385

© 2010 Google
Image USDA Farm Service Agency

©2009 Google

Pucek/Blumberg Catfish Farm



Del Rio Case a Mile of New Water Line? or Just a Test Well?



The “cat” case: one with nine lives.

Glenn and Jo Lynn Bragg v. EAA

Retired District Judge Thomas Lee, Hondo, Texas – May 7, 2010 finding

I believe that this is as much about the taking away of a lifestyle as it is about the decrease in the value of land. The Braggs invested their lives, labor and money in a good family farm . . . That life plan has been undermined, and their investment severely devalued.

Compensation: \$134,918.40 - difference between dry land farm and irrigated farm PLUS \$5,500 an acre-foot for the water which was taken or \$597,575 for a grand total of \$732,493.40.

Consequences to Consider

Bragg v. EAA 2010

Judge Tom Lee's ruling - damages -

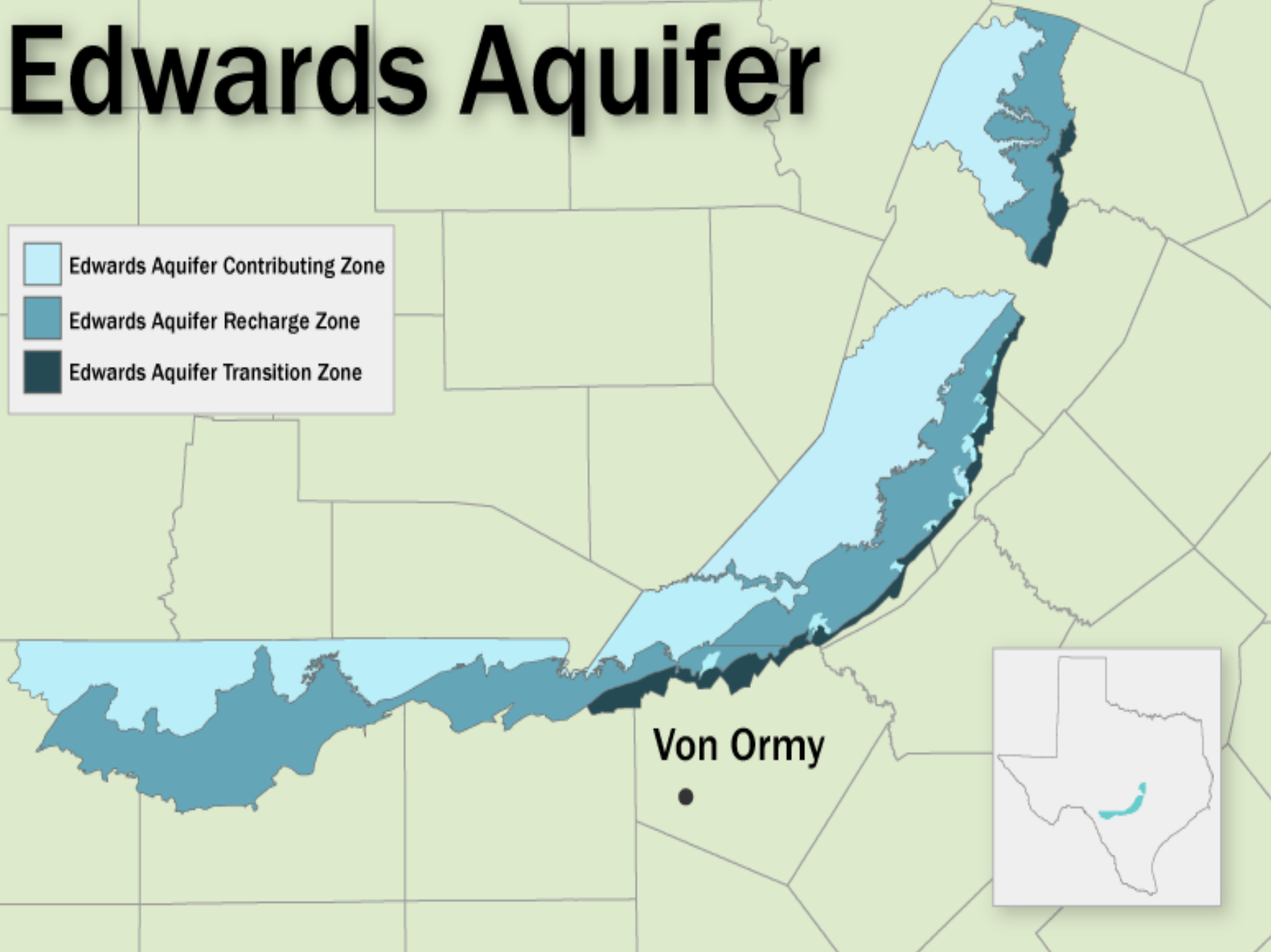
Market Value Declarations:

- Irrigated farm v. non-irrigated \$3,200 per acre premium
- Water at \$5,500 per acre-foot
- Most recent pleadings ask for \$7,500 per acre-foot

It should awaken (scare) everyone, including landowners.

Edwards Aquifer

- Edwards Aquifer Contributing Zone
- Edwards Aquifer Recharge Zone
- Edwards Aquifer Transition Zone



How much groundwater regulation is too much?

Day McDaniel v. EAA

Let's apply Judge Lee's finding to Day McDaniel:

\$3,200 per acre X appx. 382 acres = \$1,222,400

(irrigated farm versus dryland farm)

\$5,500 per acre-foot on 686 acre-feet = \$3,773,000

(value of an acre-foot of water)

Grand Total Compensation ?

\$4,995,400 or \$13,076/acre

(\$7,500 per acre-ft = \$5,145,000) + \$1,222,400 = \$6,367,400)



50 Acre-foot tanks (387,918 bbl) at \$.42 to \$.80/bbl =
\$162,926 to \$310,334



Hard Choice Between Urban & Rural

The problem - everyone is right, everyone has rights, and everyone is doing their duty!





The Federal Government

Supra-legal authority over Texas water law?

See the whooping crane lawsuit

Possible fresh water mollusk lawsuit

Other endangered aquatic species lawsuits

Increased flow mandates from Comal and San Marcos Springs? Consequences to the 7th largest city in the US?

. . . but at the core, the fundamental issue is that in our state there simply is not enough firm-yield water to support the existing population and growth that is already occurring.

Kirk Holland, P.G., General Manager,
Barton Springs Edwards Aquifer Conservation District

New Publications - Porter

Sharing the Common Pool: Water Rights in the Everyday Lives of Texans - Summer/Fall, 2013, Texas A & M University Press

"Financing Groundwater Conservation Districts in Texas: Results of a Preliminary Study" *Texas Water Journal* - April/May, 2013

"The History of W. A. East v. Houston and Texas Central Railway Company, 1904: Establishment of the Rule of Capture in Texas Water Law or 'He Who Has the Biggest Pump Gets the Water'" *East Texas Historical Journal* 50th Anniversary Edition, Vol. 2, 2012