

Groundwater Law, Property Rights and the Rule of Capture

Milam and Burleson Counties

Groundwater Summit

August 15, 2018

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www.charlesporter.com
By Charles Porter, PhD

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

David Weber, PhD
SMU, 1976

Money has been mentioned:

What's the “fair market value” of *groundwater*?

1. Would you add the “value” of your *groundwater* to the asking price of your land?
2. Would your ability to transfer/deliver that water to the buyer become a factor in the “fair market value” of that *groundwater*?
3. What is the value of the *groundwater* if you “use” the water for a corn crop, other crops, bottled water plant, industrial use?
4. If the public will is against transfer of *groundwater* out of district, what's the fair market value then?

What about “right of way” acquisition?

Porter's Four Periods of Texas Water Policy

First Period – Surface Water 1709 – 1891

1891 the year Brackenridge is forced to drill for *groundwater* in San Antonio

Second Period – *Groundwater* emerges 1891-1949

Groundwater creates modern agribusiness

Third Period – Post-War water policies 1949-1967

1949 - *Groundwater* Conservation Act and 1967 - Water Rights Adjudication Act

Fourth Period – *Groundwater* at the center 1967 on

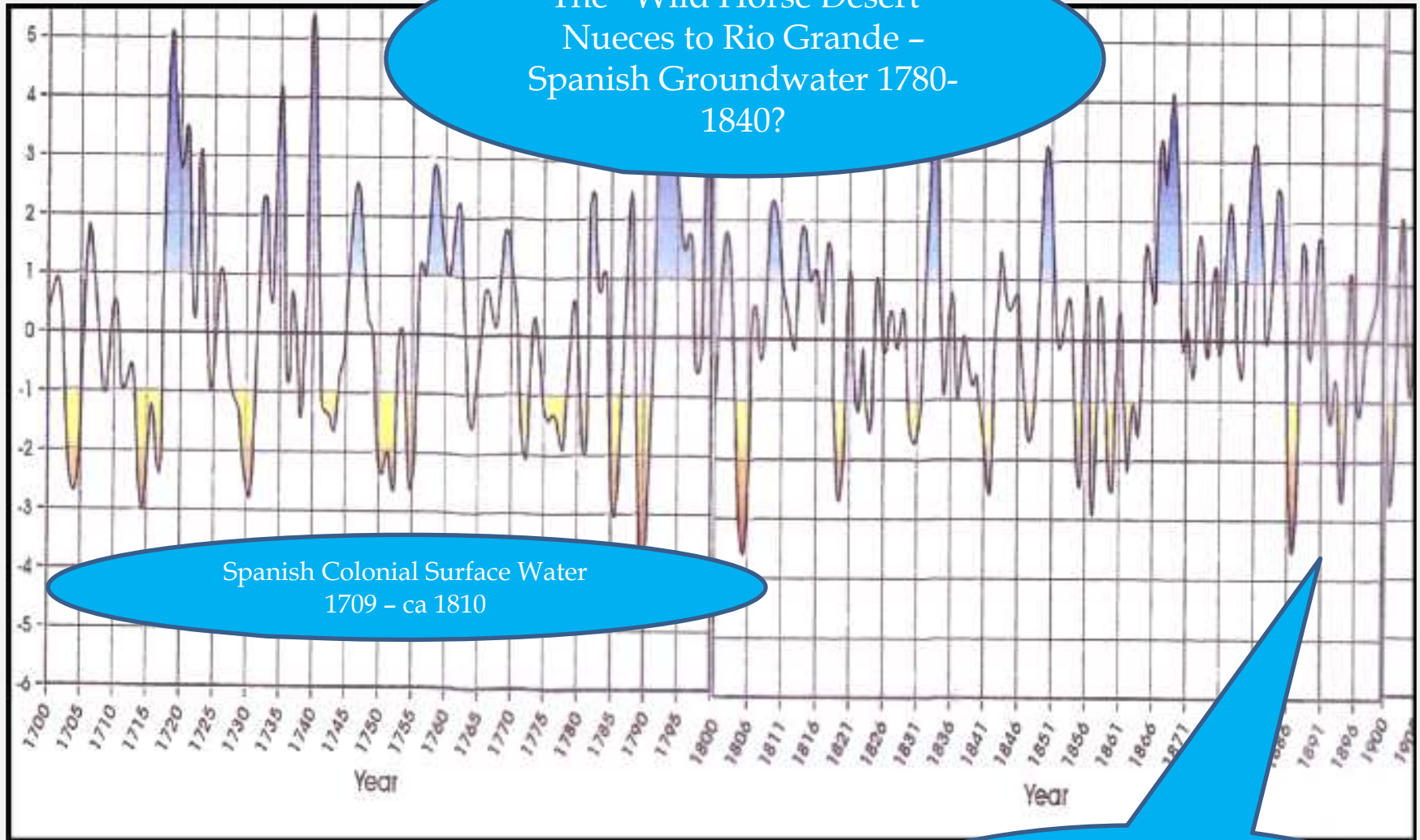
Cities acquire and will acquire *groundwater*

The "Wild Horse Desert"
Nueces to Rio Grande -
Spanish Groundwater 1780-
1840?

Spanish Colonial Surface Water
1709 - ca 1810

**First Period - Surface Water Era
1709 - 1891**

Brackenridge
drills 1891





For eons the land between San Pedro Creek and the San Antonio River was a sponge.

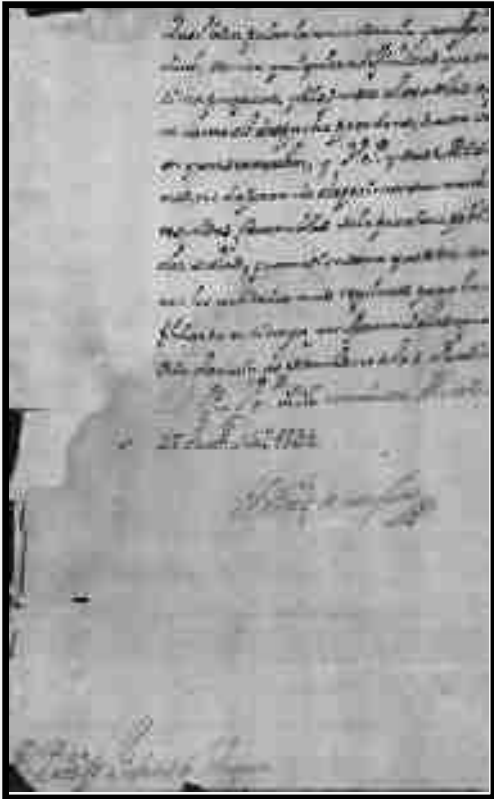
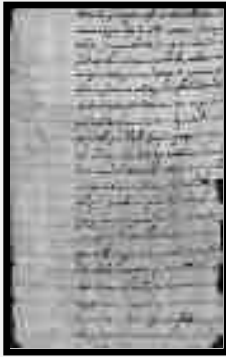
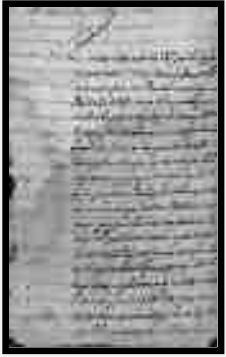
“This valley probably had as many springs as any place in the world.” sourced by ...

groundwater.

Del Weniger, 1984

The Explorers' Texas: The Lands and the Waters

The First Water Management Policy in Texas - 1731



The Viceroy wrote to Father Vergara:

... shall divide and distribute the water, giving both the missions and the Islander families a share of it ...

...the [water] is sufficient for the use and benefit of all, it is just that its usefulness should be in common...

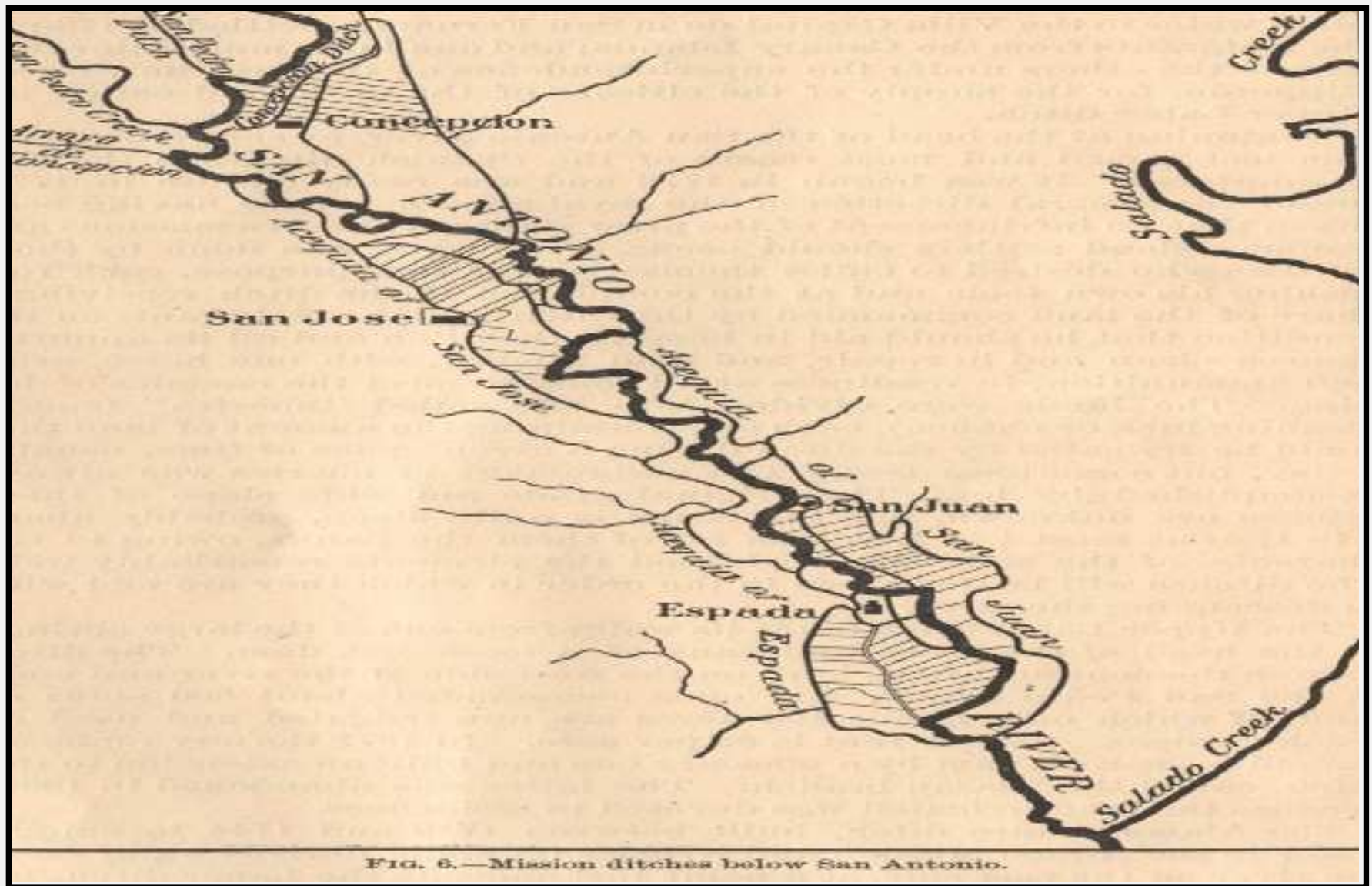
By rotating the apportionment of, every interested party being assigned his days ...

...there will be cooperation and conservation ...

**Bexar Archives, Series 1,
General Manuscripts 1717-1789
December 25, 1731.**

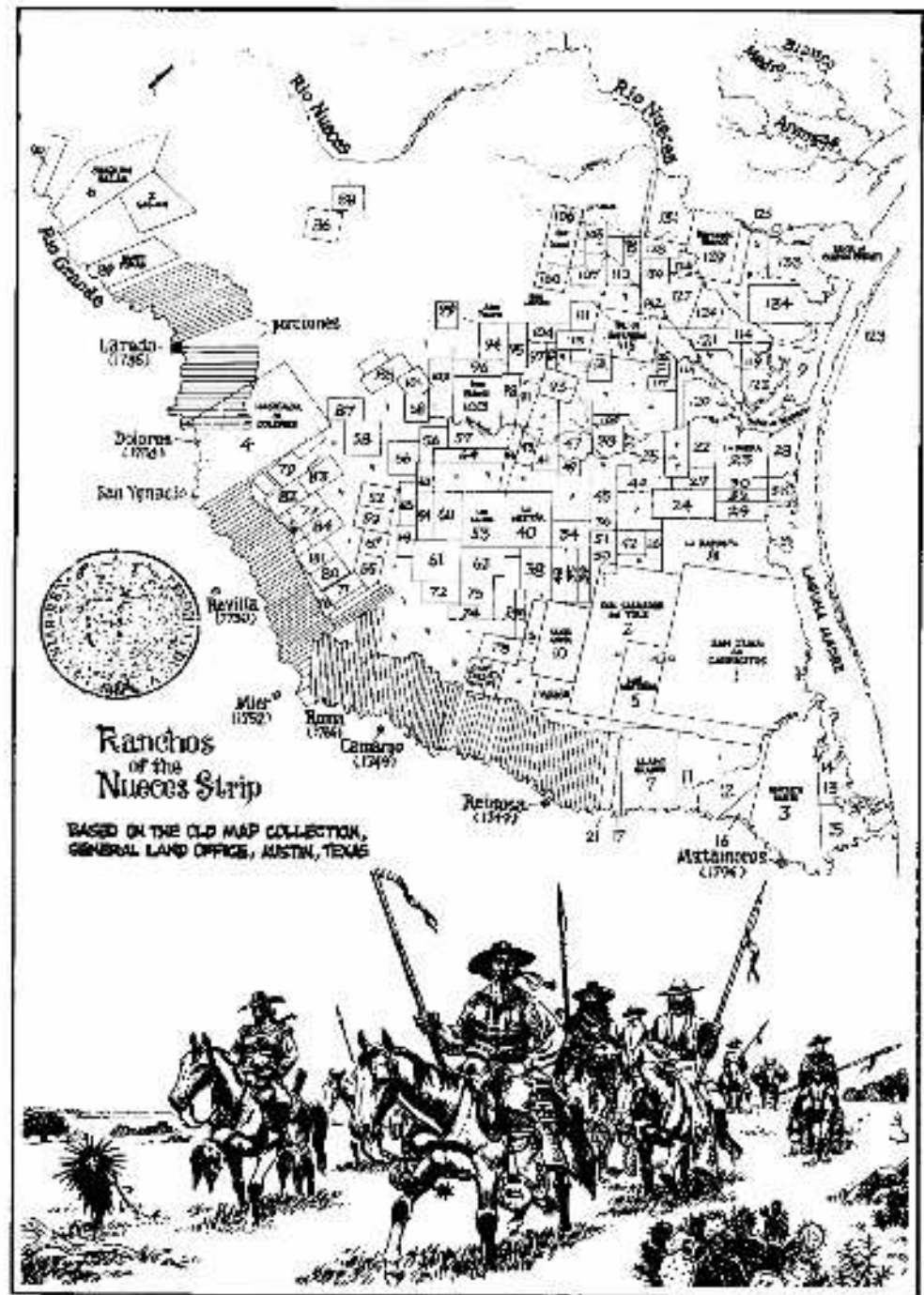


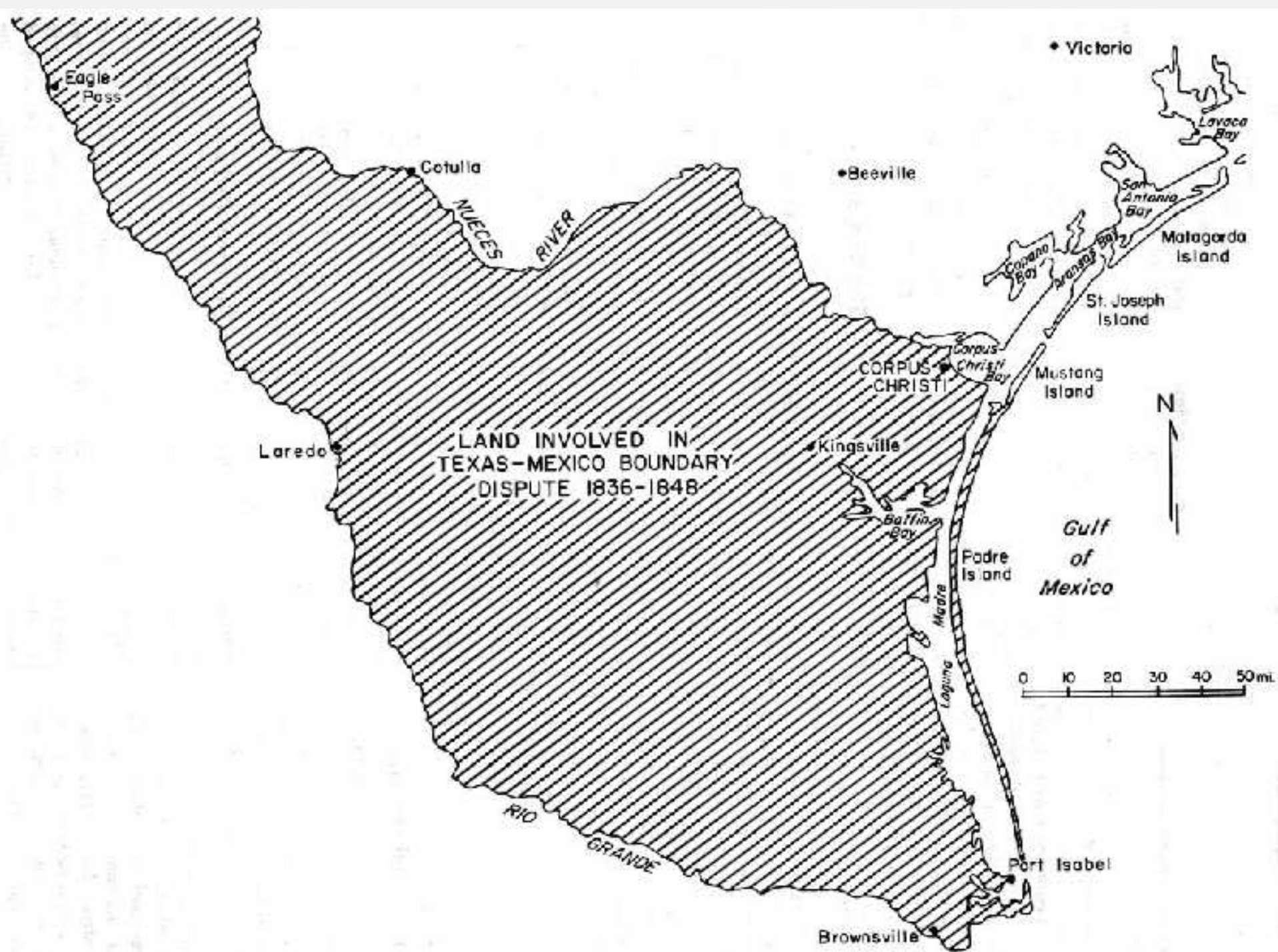
Water Shaped(s) our Space





groundwater.







Google earth











Spanish Colonial and Texas Water Law - Ownership

Spain:



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

Groundwater was owned by the surface landowner.

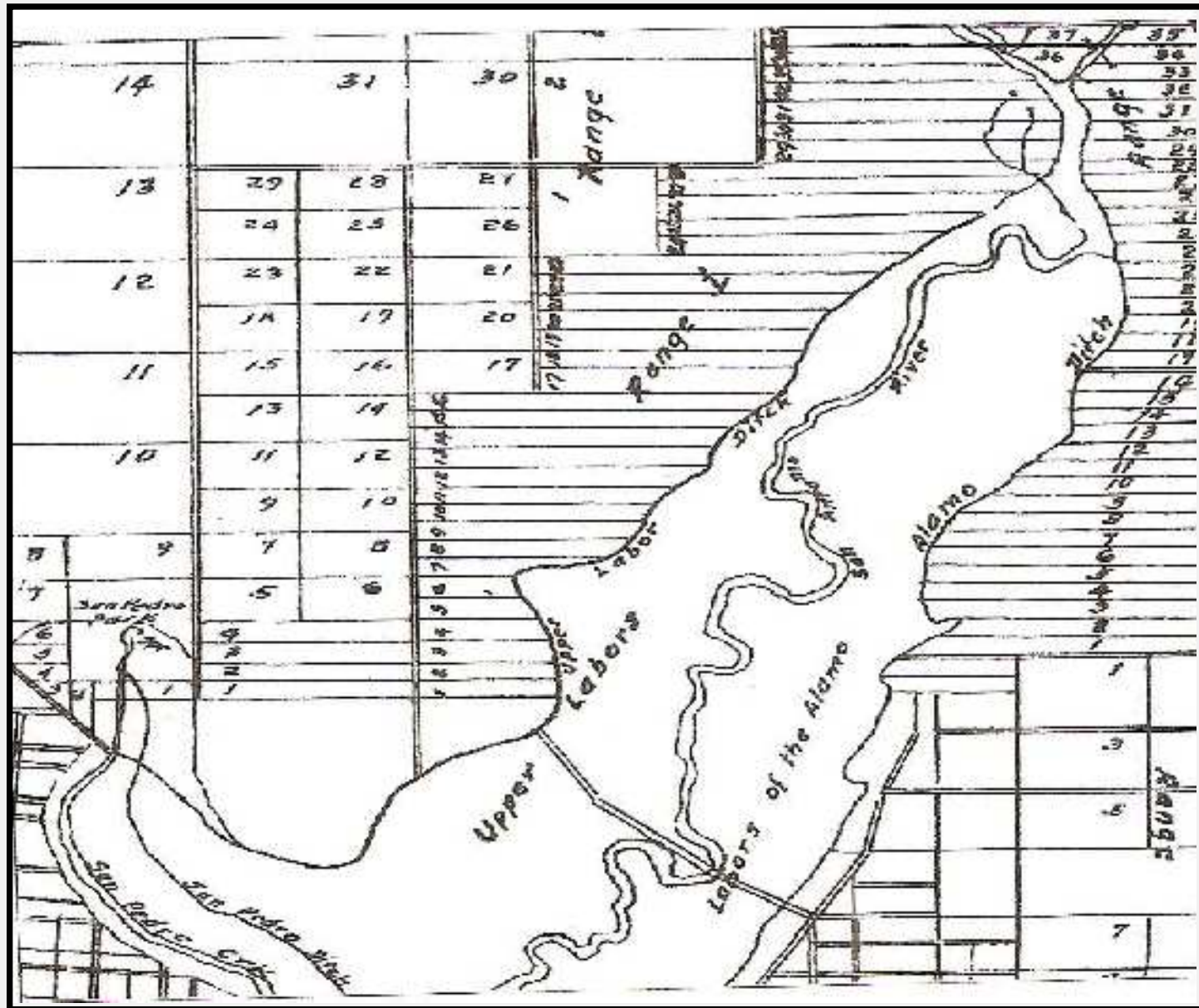
Texas:



Surface water is owned by the state and held in trust for the people.

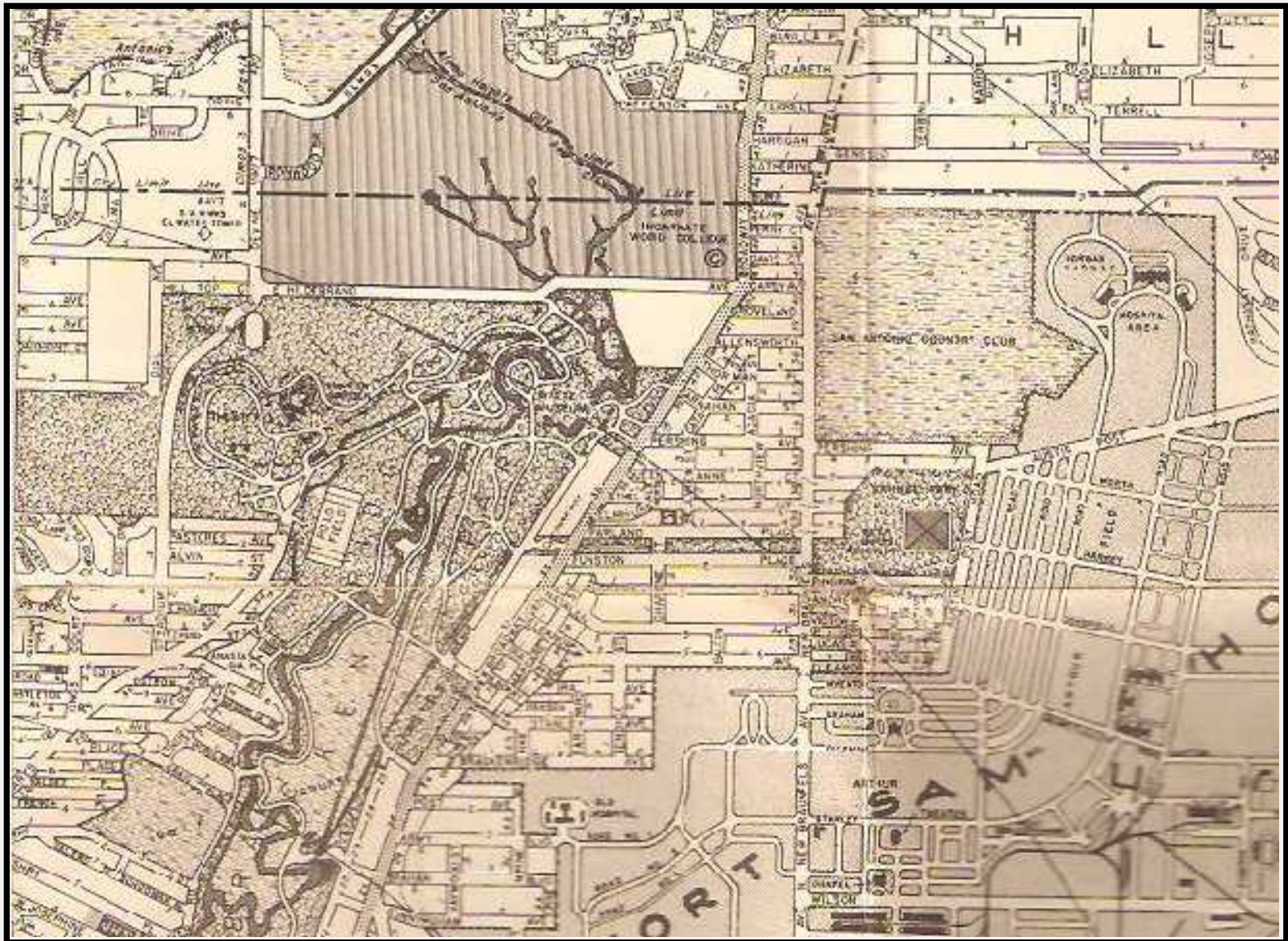
Groundwater is owned by the surface landowner. (SB 332, 82nd Texas Legislature, 2011)

1852 First Survey of San Antonio



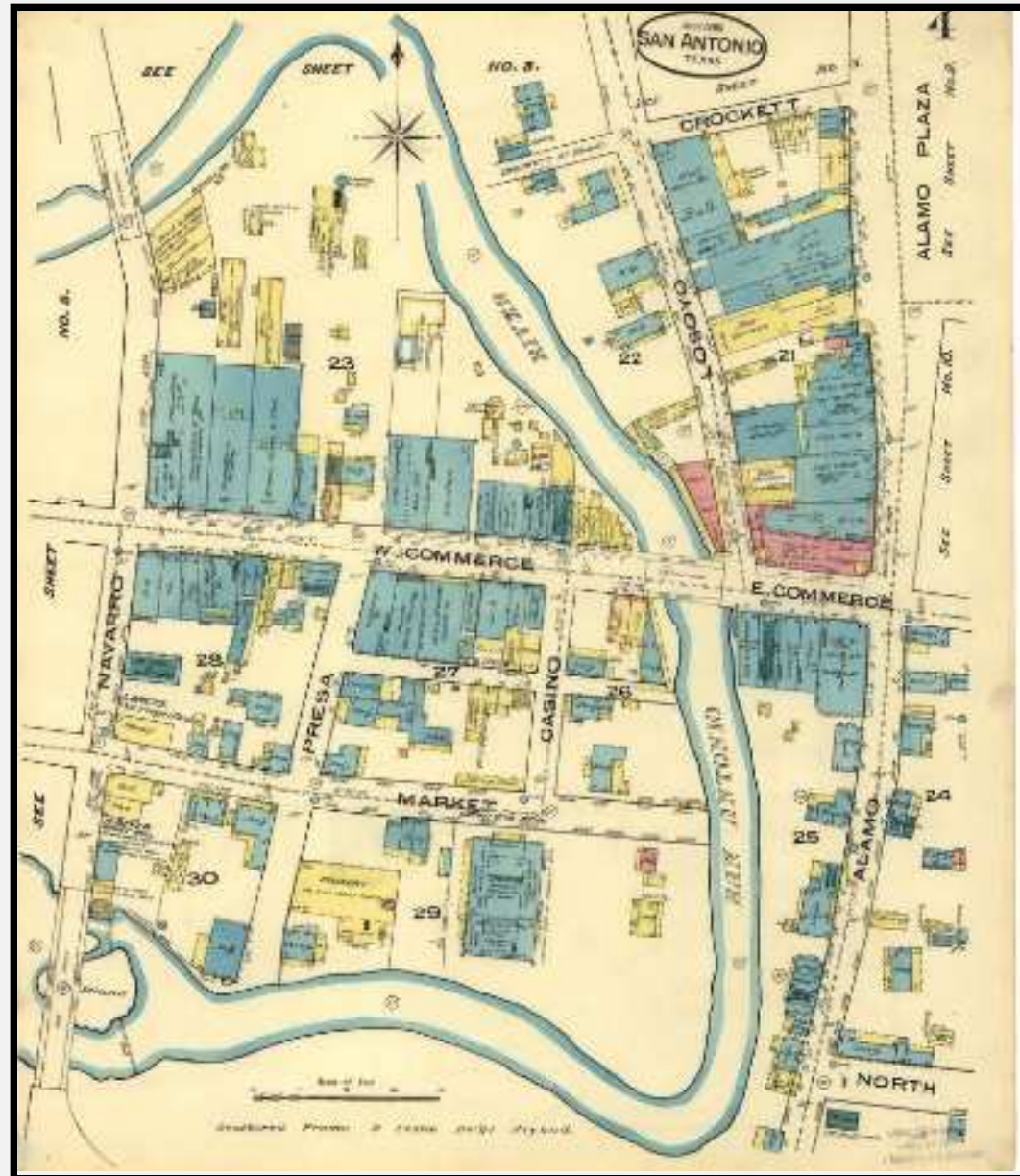


The San Antonio Water Works Company 1879

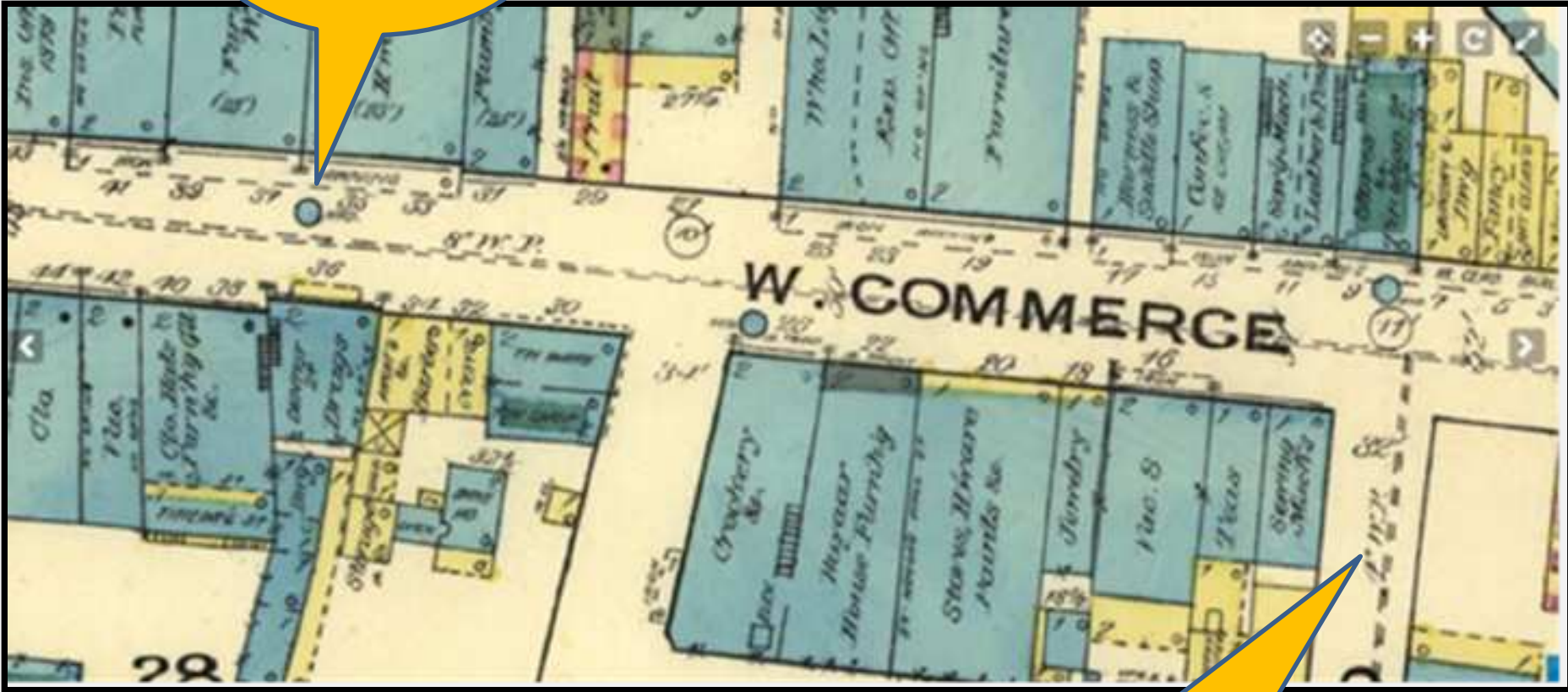




*Sanborn Insurance Maps –
indicates why San Antonio needed
a municipal water system ...
for fire insurance coverage.*



Fire Hydrant



Water Line Size
and Location

The San Antonio Water Works Company

Reservoir and Water-Driven Pump House

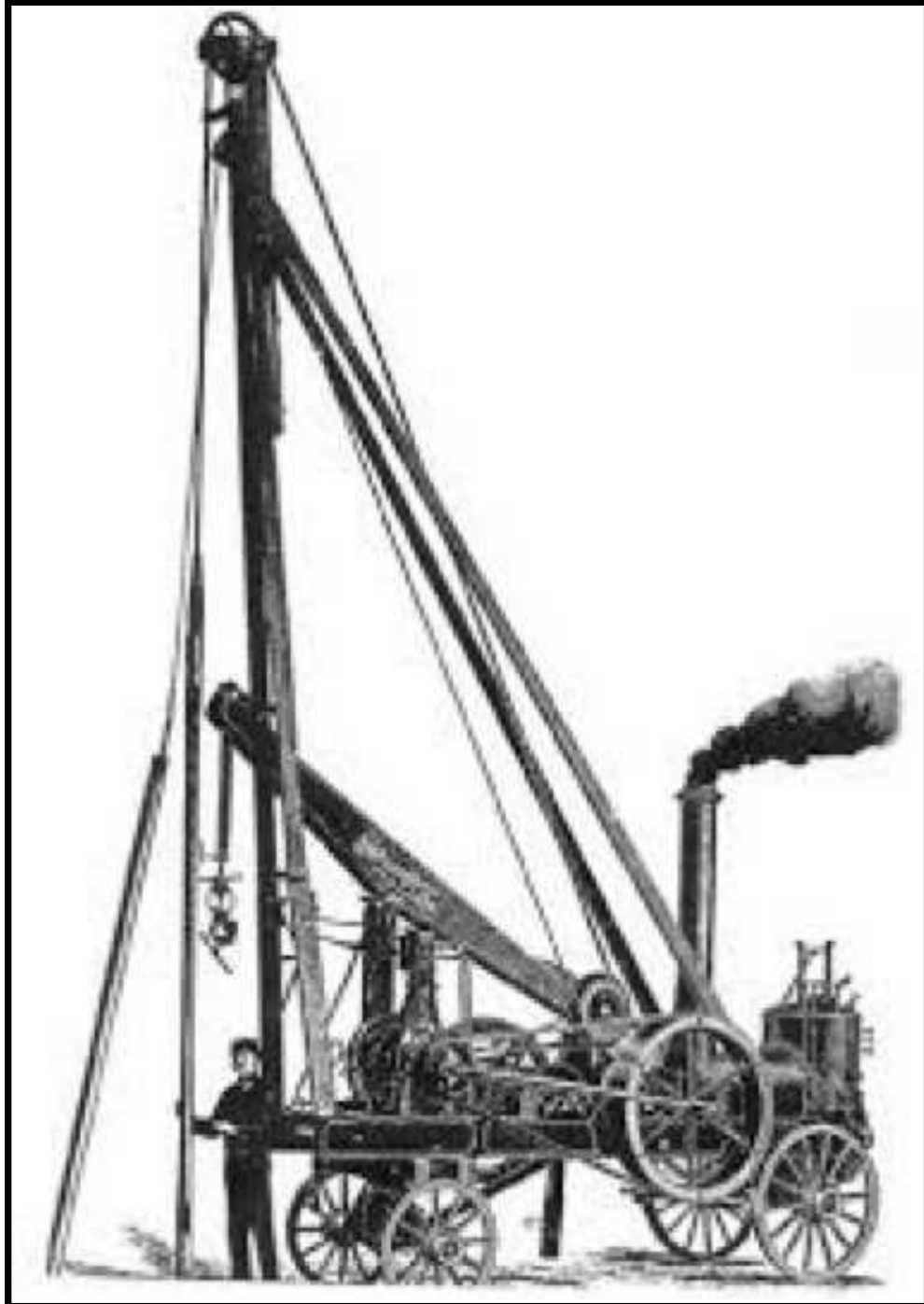


NTY, TO

JUNE TERM, A. D. 1880

for trial. No jury being demanded by either party, the issues of law as well as of fact were submitted to the Court upon an agreed statement of facts.

After hearing the evidence and arguments of Counsel, it is ordered, adjudged and decreed by the Court that the Plaintiff, the San Antonio Water Works Company, do have and recover from the defendant, the City of San Antonio, the sum of four thousand three hundred and eighty four Dollars and forty nine cents, with interest thereon until paid, as well as all costs in this behalf expended, all of which shall be paid and collected in accordance with the law in such case made and provided and the act incorporating the said City of San Antonio.



What came first ...
the chicken or the egg?

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

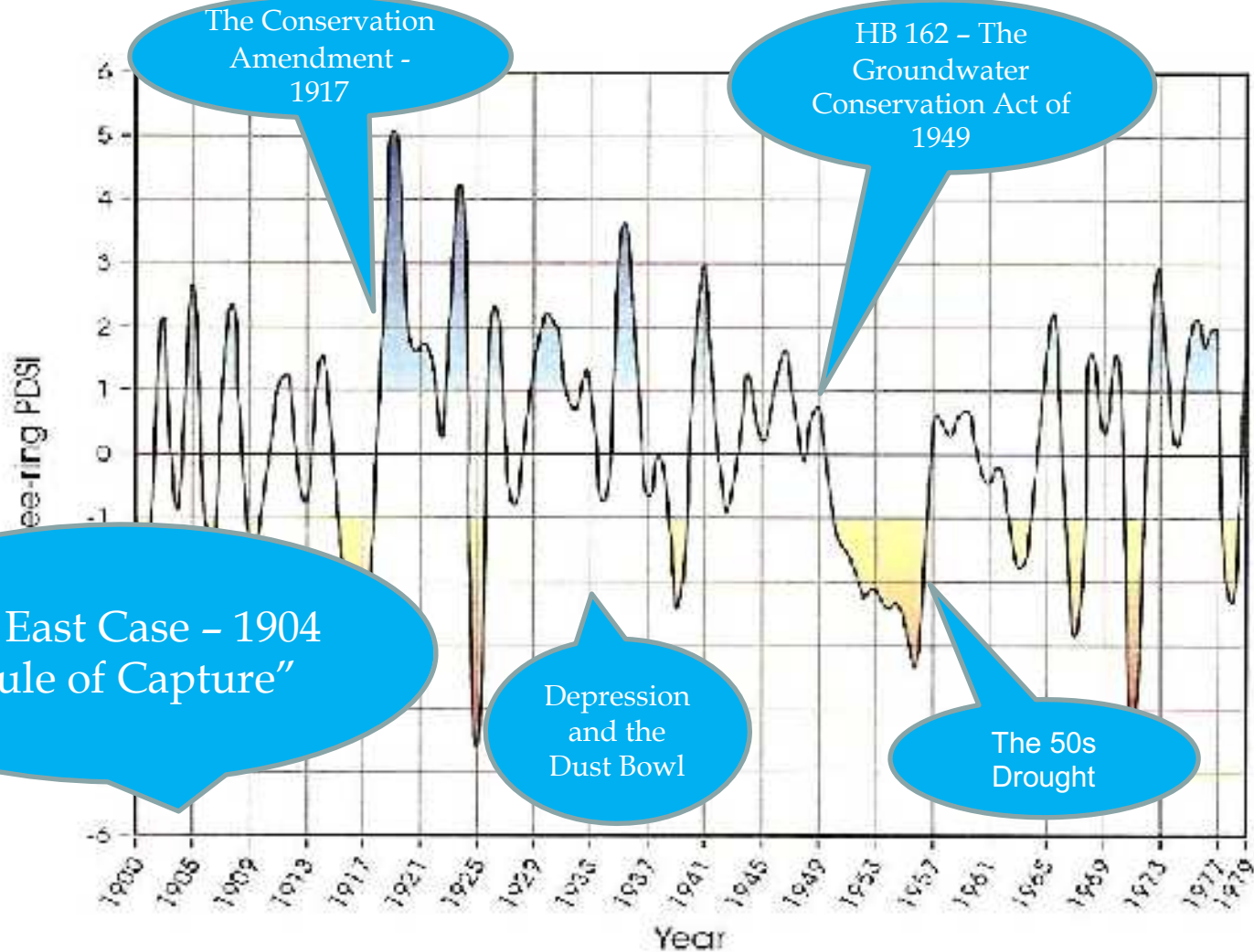
These wells were supposedly drilled by M.C. Judson for Brackenridge's Water Works Company – 3,000,000 gallons per day from ...

groundwater.

By 1920, 120+ deep wells drilled into the aquifer in Bexar County.



Second Period – *Groundwater* emerges and creates modern agribusiness 1891-1949



What does Wigan, England have to do with Texas groundwater law?



1843 - Liverpool Spring Assizes (periodic courts) in Wigan, England

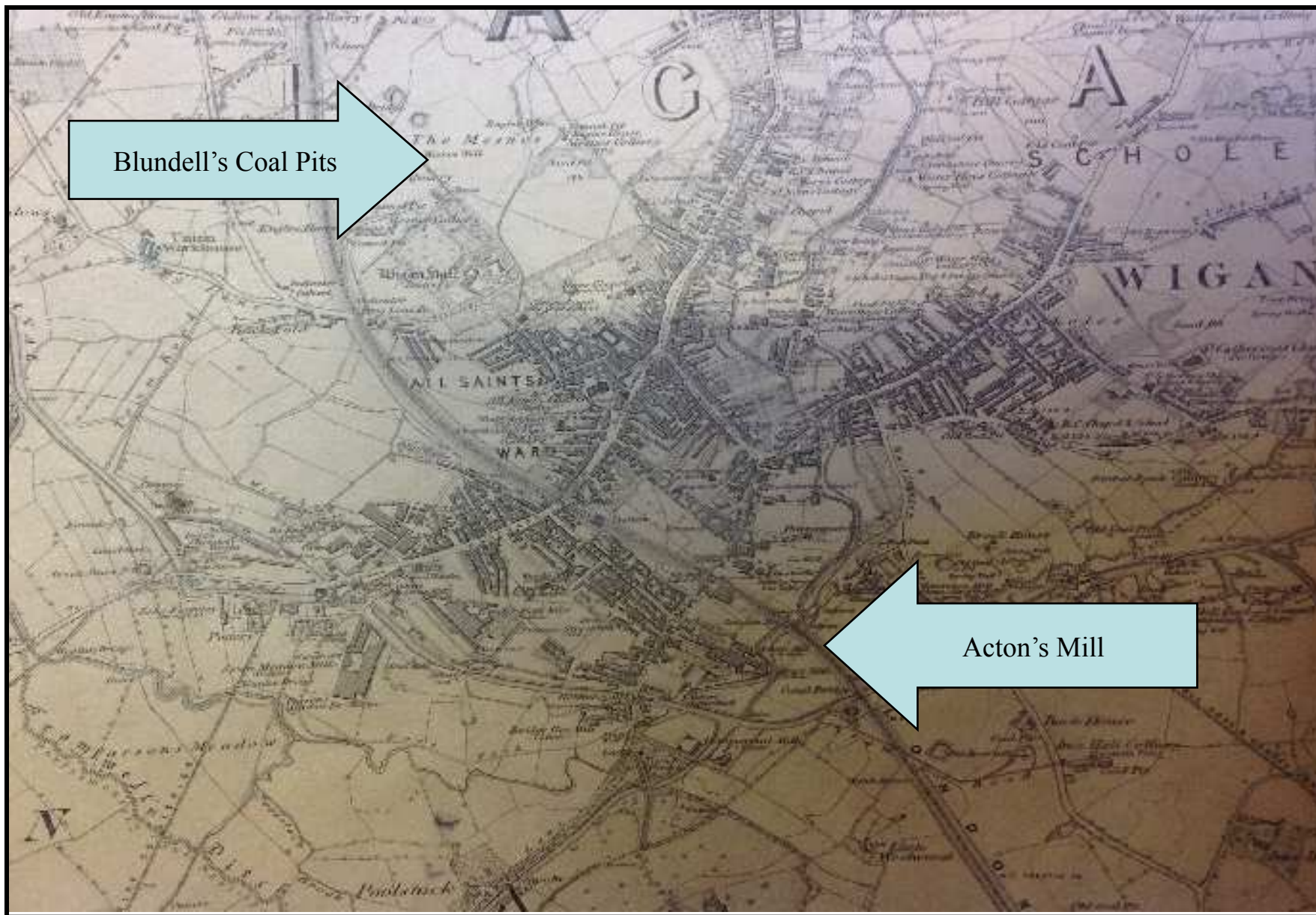
Acton v. Blundell, 1843

Acton was a “cotton-spinner” - one of 625+ in Wigan.

Blundell a coal miner - 738,000 tons of coal production and slave trader.

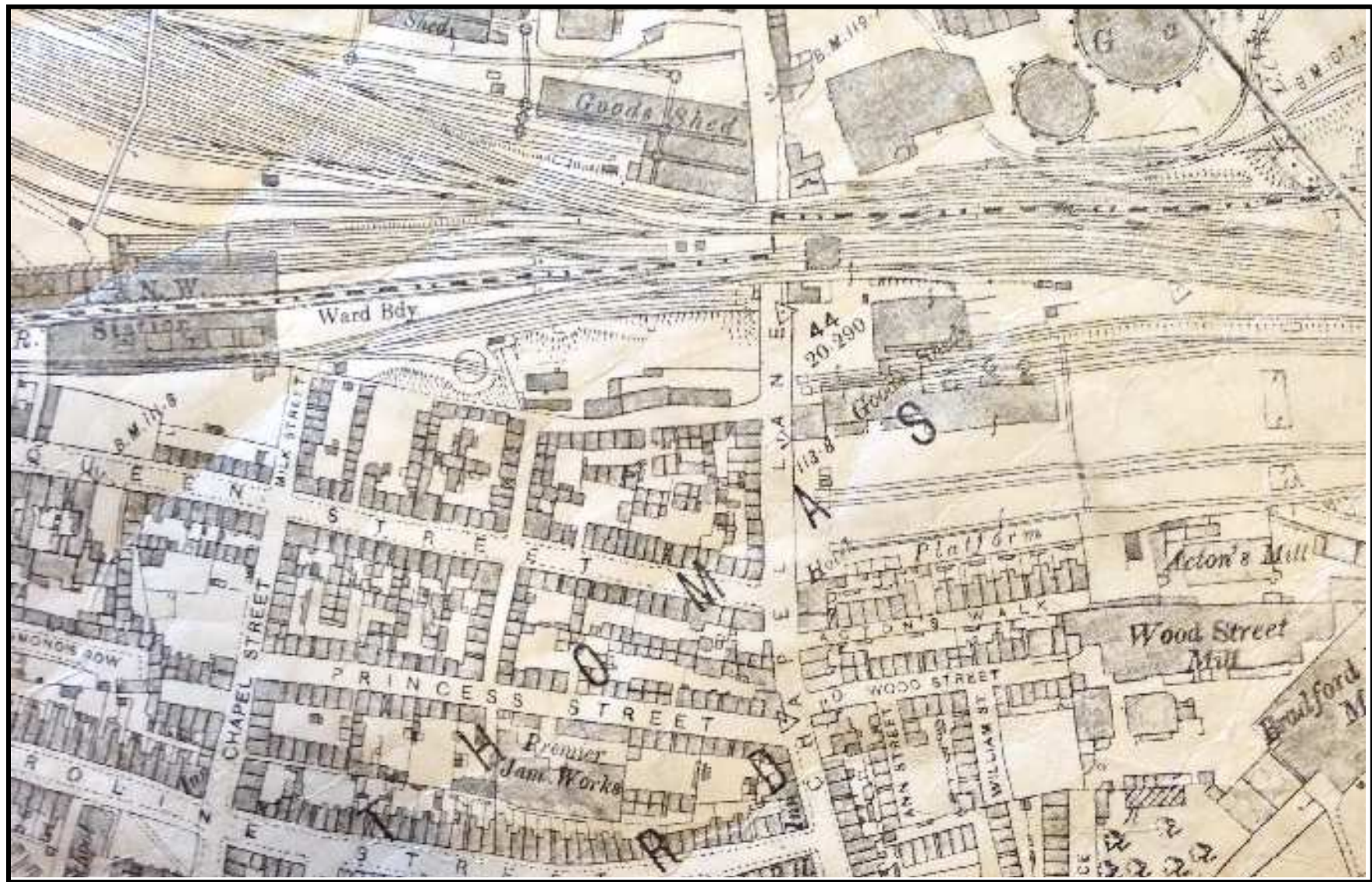
This case became the early precedent in the 1904 East v. Houston and Texas Central Railroad Company ...

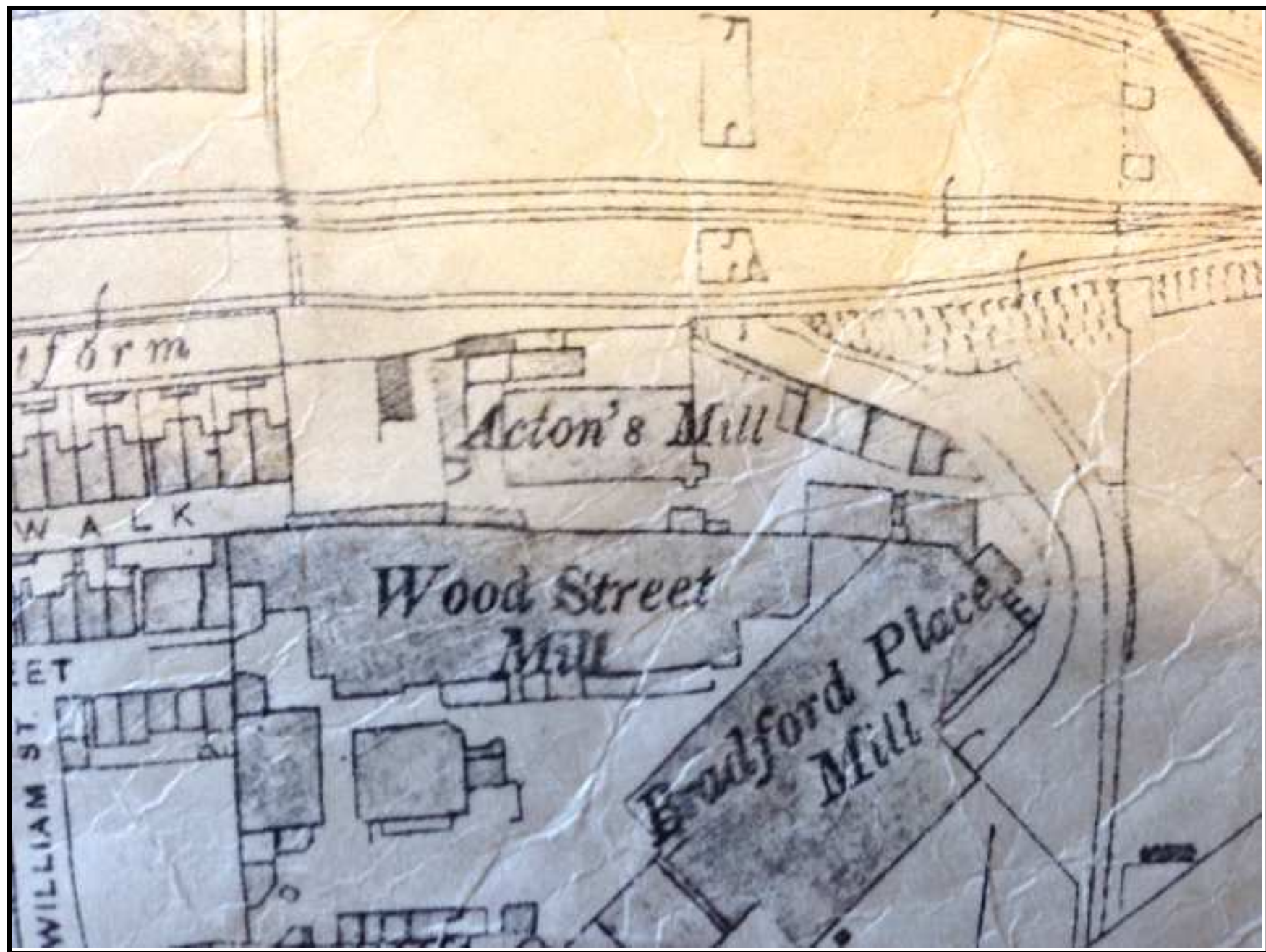
“the rule of capture” is born in Texas.



Blundell's Coal Pits

Acton's Mill









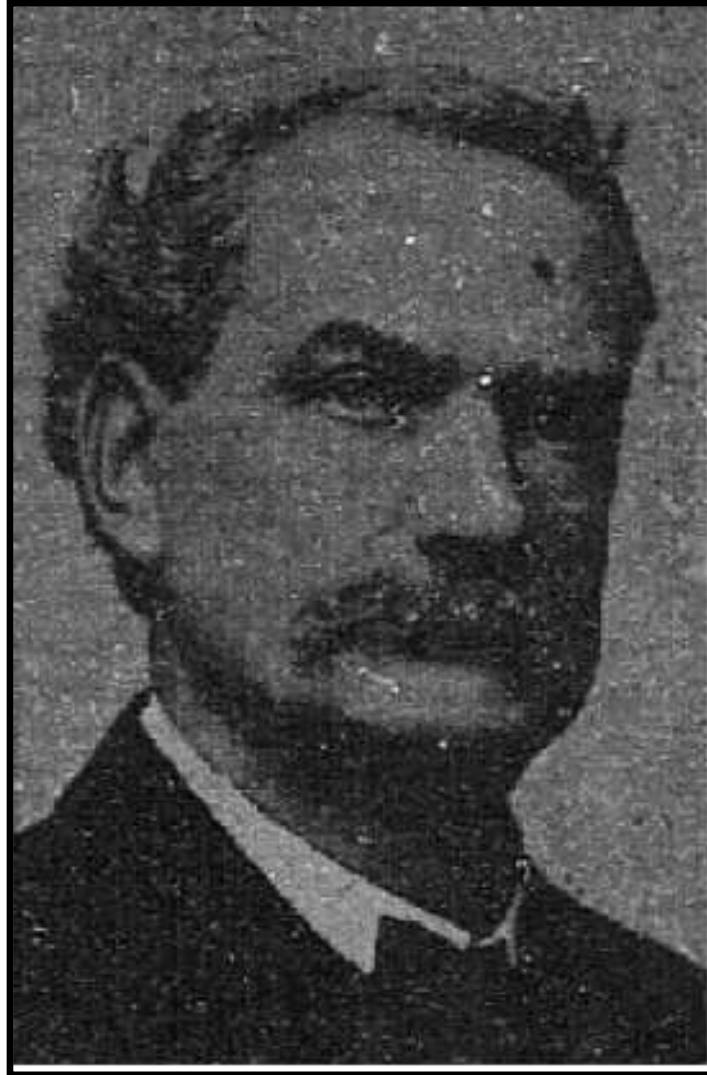


The conclusion of the ruling by C. J. Tindal.

It is scarcely necessary to say, that we intimate no opinion whatever as to what *might* be the rule of law, if there had been an uninterrupted user of the right for *more* than the last twenty years; but, confining ourselves strictly to the facts stated *in the* bill of exceptions, we think the present case, for the reasons above given, is not *to be* governed by the law which applies to rivers and flowing [354] streams, but that *it* rather falls within that principle, which gives to the owner of the soil all that lies *beneath* his surface; that the land immediately below is his property, whether it is *solid* rock, or porous ground, or venous earth, or part soil, part water; that the person *who* owns the surface may dig therein, and apply all that is there found to his own *purposes* at his free will and pleasure; and that if, in the exercise of such right, he *intercepts* or drains off the water collected from underground springs in his *neighbour's* well, this inconvenience to his neighbour falls within the description of *damnum absque injuriâ*, which cannot become the ground of an action.

damnum absque injuria - "loss without injury"

Judge John Bookhout 5th District Court of Civil Appeals, Dallas, Texas



Source – www.findagrave.com

Judge John Bookhout's Ruling

“It is by reason of the rule laid down by Acton v. Blundell that the appellee claim immunity from liability in this case.

To apply that rule under the facts here shown would shock our sense of justice.”

The Texas Supreme Court 1904

Nothing owed East by the railroad – was also based upon *Frazier v. Brown*, Ohio, 1861.

*“Judge Brinkerhoff left no doubt as to the basis for his opinion, upholding the absolute rule... Because of the existence, origin, movement and course of such waters, and the causes which govern and direct their movements, are so **secret, occult and concealed**, that an attempt to administer any set of legal rules in respect to them would be involved in hopeless uncertainty and would be therefore, practically impossible.”*

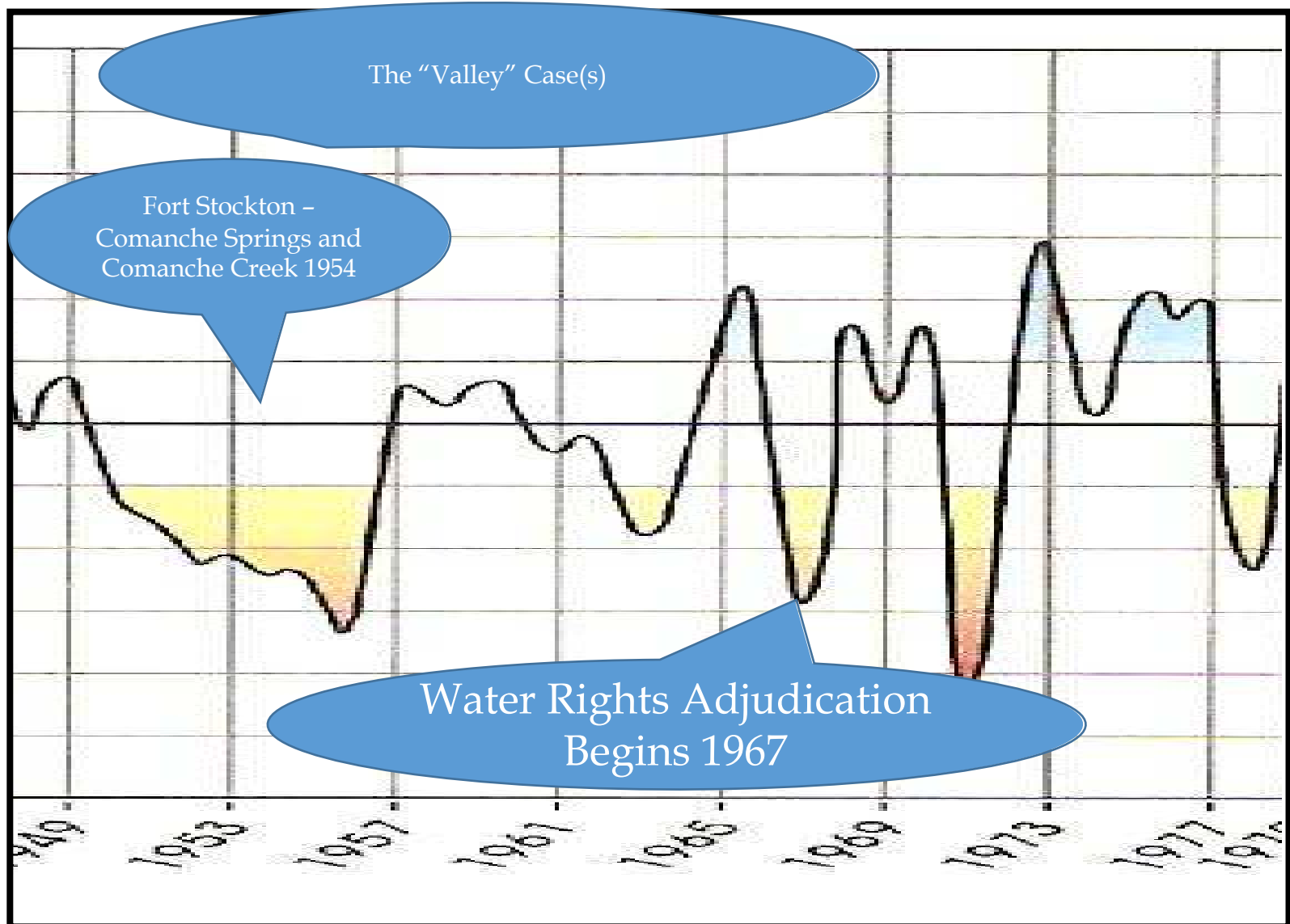
ALAN H. COOGAN, PROBLEMS OF GROUNDWATER RIGHTS IN OHIO.
Akron Law Review, Vol 9:1 Summer 1975.



**Interesting link to the Rule of Capture –
Colonel Edward M. House
with (President Woodrow Wilson)**

Third Period – Post War Water Policies Take Over

1949 - *Groundwater* Conservation Act 1967 - Water Rights Adjudication Act



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EXCURSION**

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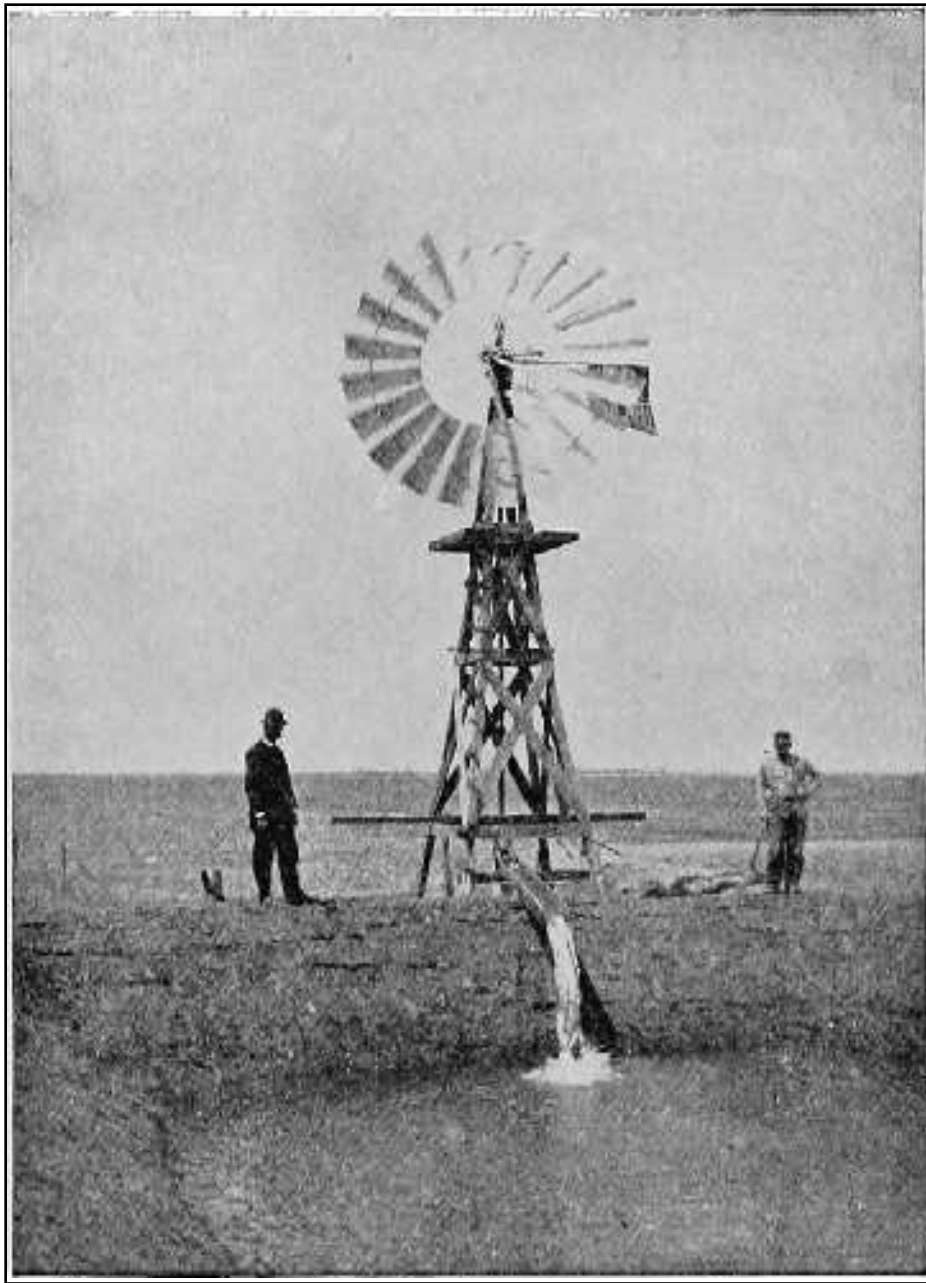
RAWLINGS-KNAPP REALTY COMPANY

419 Commerce Building

GENERAL AGENTS

KANSAS CITY, MISSOURI

ARTHUR P. DUGGAN, Sales Manager



Soash's and Littlefield's outrageous claims were based on ...

groundwater.

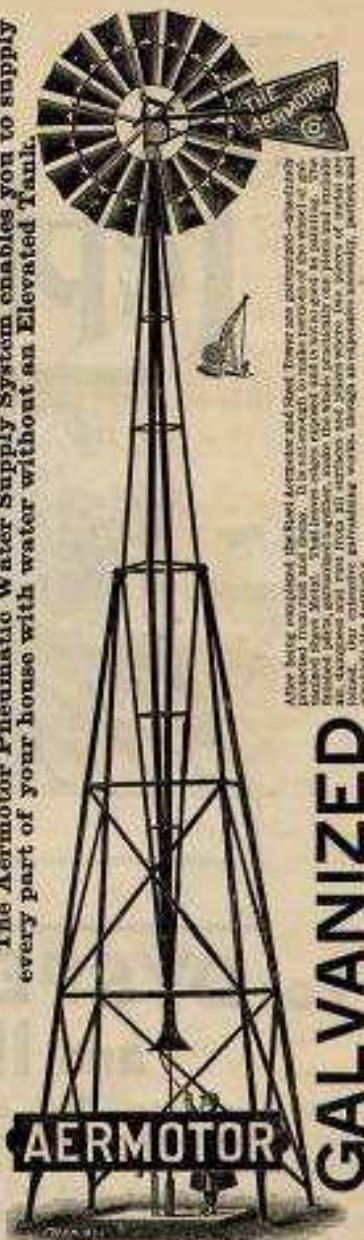
—A complete Steel Windmill and complete Steel Tower every 3 minutes during the working day. These figures tell the story of the ever-growing, ever-going, everlasting STEEL AERMOTOR. Where one goes others follow, and "we take the country."

Are you curious to know how the Armstrong Company in the fourth year of its existence, came to make many times as many windmills as all other factories combined? How it came to originate the Steel Wind, the Steel Fixed Tower, the Steel Tilted Tower, how it has been possible to do so many original things and make a success absolutely unprecedented in the history of the United States? unprecedented success in invention and manufacture?

21. To the fact that before constructing the architecture, extensive aetiological investigations and experiments were made by a skilled mechanical engineer, in which over 5,000 projections of the wheel were made, and the most convenient and most profitable by analysis and therefore, the one which was used was selected definitely many months before the proper size of wheel, the best form, angle, curvature and amount of all surface, the resistance of air to the movement in the wheel, the shape of the spokes, the distribution of the weight, the resistance to the motion fall, and numerous other more abstruse, though not less important questions. These investigations proved that the wheel was the best form, and the most useful, and the ARMOTORS, also constructed, the best form.

[illegible]

The Aermotor Pneumatic Water Supply System enables you to supply every part of your house with water without an Elevated Tank.

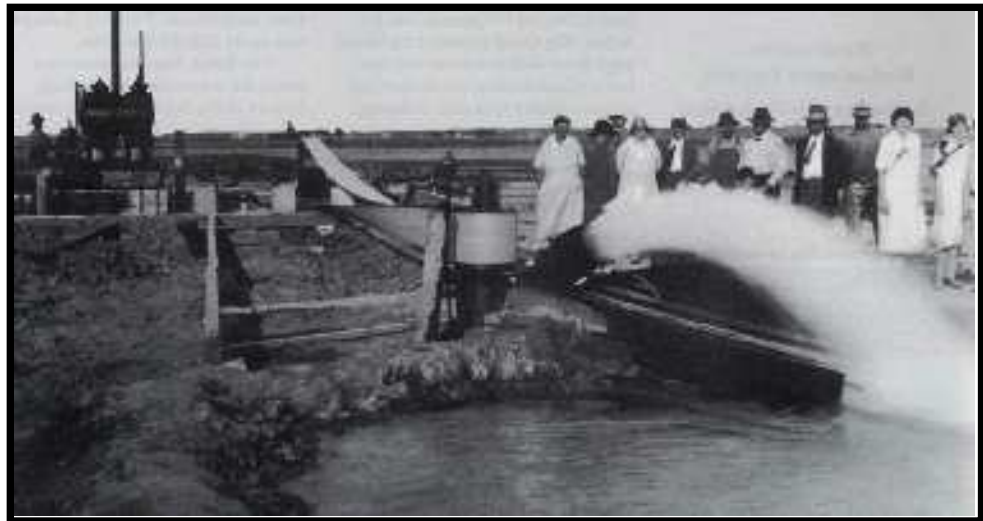
[illegible]

GALVANIZED

THE STEEL TILTING TOWER.

What came first ...
the chicken or the egg?

"Pumps came along... and the rest was history."



Artemus “Artie” Baker banker from Lockney – mastermind and financier of pumping on the High Plains - 1934.

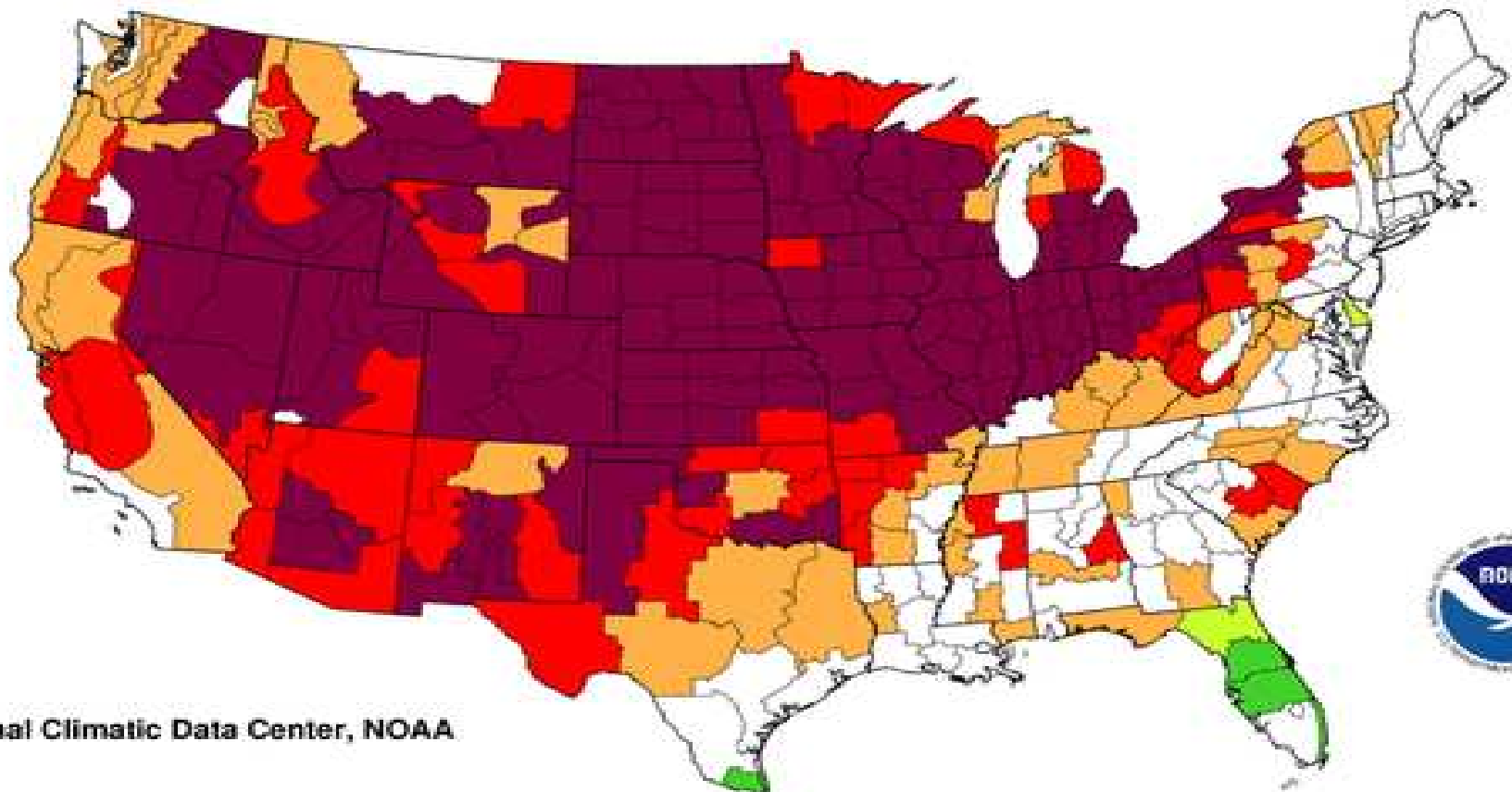


From: Donald E. Green's classic - *Land of the Underground Rain*
University of Texas Press, 1973.

Palmer Hydrological Drought Index Long-Term (Hydrological) Conditions



July 1934



National Climatic Data Center, NOAA

extreme
drought



-4.00
and
below

severe
drought



-3.00
to
-3.99

moderate
drought



-2.00
to
-2.99

mid-
range



-1.99
to
+1.99

moderately
moist



+2.00
to
+2.99

very
moist



+3.00
to
+3.99

extremely
moist



+4.00
and
above

“The Dust Bowl” on the heels of the “Great Depression” made Texans, especially “the city boys” think.



Urban Interests in Texas Legislatures 1930s,
AG Gerald Mann 1940,
Governor Beauford Jester and AG Price Daniel 1947

- Reports on the serious decline in the Ogallala in the 1930s by Walter N. White, Senior Hydrolic Engineer, USGS.
- Legislative sessions in the 1930s discuss groundwater ownership or at least, control, by the *state*.
- Assistant Attorney General Hugh Q. “Quality” Buck’s August 22, 1940 Opinion letter (O-2402) with a Walter N. White Report as an attachment – stratum groundwater is public water.
- House Bill 606 by Jameson of El Paso 1947 – “underground... artesian basins, reservoirs, or lakes” belong to the public.
- Governor Jester and AG Price Daniel commit “*the full power of their offices to recodify the water laws of the State of Texas.*”



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MAHER
ATTORNEY GENERAL

Dr. George W. Cox
State Health Officer
Austin, Texas

Dear Sir:

Opinion No. O-3408
Re: Article 4444, R. C. S.,
1925, does embrace
Underground waters

We acknowledge receipt of your letter of May 21, 1940, requesting an opinion of this department regarding the applicability of Article 4444, Revised Civil Statutes, 1925, to underground waters of this State. You ask whether the City of Temple has violated the provisions of this statute. The pertinent part of Article 4444 to which you refer is as follows:

"No person, firm, corporation, private or municipal shall pollute any water source or other public body of water by throwing, casting, or depositing or causing to be thrown, cast or deposited any oxide petroleum, oil or other like substance therein, or pollute any water source or other public body of water from which water is taken for the uses of farm livestock, drinking and domestic purposes in this state, by the discharge directly or indirectly of any sewage or unclean water or unclean or polluted matter or thing therein, or in such proximity thereto, that it will probably reach and pollute the waters of such water source or other public body of water from which water is taken for said uses. . . ."

The statute refers simply to any water source or public body of water without distinction between surface and sub-surface waters. If underground waters may constitute public waters, then we deem them undoubtedly to have been included by the Legislature, because the statute embraces all public waters without exception. Underground waters have been generally classed as either (a) underground streams with a current of flow

Dr. George W. Cox, page 5

included within the purview of Article 4444. If such waters are found to be mere diffused percolating waters and therefore subject to private ownership it follows that the public would have no property interest in them and the parties would be relegated to a private suit for damages, or injunction for the prevention of the nuisance.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By (Signed) Hugh Q. Bush
Hugh Q. Bush
Assistant

HEB:GB

APPROVED AUG 22, 1940

(Signed) Grover Sellers

FIRST ASSISTANT
ATTORNEY GENERAL

APPROVED OPINION COMMITTEE

By HEB
Chairman

THIS OPINION CONSIDERED AND
APPROVED IN LIMITED CONFERENCE

and in which there is more or less movement, both perpendicular and horizontal, through the earth and rock."

and at page 834, in Corpus Juris, Vol. 67, it is said:

"Where a subterranean stream flows in a distinct, permanent, well known and defined channel, it is governed by the same rules as applied to a natural water course on the surface, and the owners of land beneath which it flows have the same right with respect to it as riparian proprietors have with respect to a stream on the surface, conditioned on the water coming to his land in a natural flow, regardless of whether or not it is under pressure. Also the rules as to riparian rights of owners on a natural water course on the surface extends . . . to large bodies of underground water located in well defined strata. . . ."

In the case of the City of Los Angeles vs. Hunter, 105 Pac. 757; 156 Cal. 603, we find that:

"'Percolating waters', in the common law sense of the term, are those that are vagrant, wandering drops, moving by gravity in any and every direction along the line of least resistance. The term does not include waters percolating only in the sense that they form a vast mass of water confined in a basin filled with detritus, always slowly moving downward to the outlet in conformity with the physical law to attain a uniform level."

reflected by our search of the cases and then list and compare with them the characteristics of stratum water, showing that the latter more nearly conform to watercourses and should be treated as such.

Here diffused percolating waters:

- (a) they percolate;
- (b) in any and all directions by gravity alone;
- (c) moving along the line of least resistance other than in confined channels with sides, ceiling and bottom.

Underground streams of watercourses:

- (a) flow by force of gravity and by force of an even constant waterhead;
- (b) in a single definite direction;
- (c) within confined limits or channel;
- (d) in currents.

Underground stratum waters:

- (a) they percolate;
- (b) by force of gravity and uniform head of water;
- (c) in a given direction;
- (d) within confined limits, between impervious upper and lower strata of earth with banks confining the water between the strata.

In comparison we see that the stratum waters bear all of the characteristics of underground watercourses except that the waters do not flow in currents, but by percolation. Aside from a comparison of physical characteristics reflecting more similarity with watercourses than strictly percolating waters, there are considerations of public welfare and use which impel the conclusion that regardless of where the ownership may rest, the public at large has more need for the use of large underground reservoirs of water contained within strata than even of its surface streams.

surface indications. With the development of scientific methods an application of the same reasoning would direct that underground strata of water be treated in the same manner as underground stream or surface streams. As reservoirs for public use their importance is even greater than surface streams. The storage is permanent and of capacities far greater than the average artificial storage. We are unable to attribute any reason originally impelling the courts to declare surface and subsurface streams to be of public character, that do not presently give weight to the conclusion that when the issue is squarely put to our Texas courts, strata of water should also be declared to be of a public nature. Emphasizing this point we attach hereto excerpts from a written statement on "The Movement of Underground Water" prepared by Honorable Walter N. White, Senior Hydrolic Engineer with the United States Geological Survey. This statement shows the similarity of stratum water with streams and emphasizes the great use of such waters by the public in Texas.

In answer to your inquiry, therefore, underground water courses and bodies of water, including strata, but not mere percolating waters, are public waters within the purview of Article 4444, Revised Civil Statutes, 1925. As to whether the particular waters affected by the sewer system of the City of Temple, constitute a water course or a body of water, are questions of fact which we cannot answer.

“Urge your support...650,000 acres under irrigation,
only source is ground water”

by I. B. Holt in 1947

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SERIAL	DEFERRED
NIGHT LETTER	NIGHT LETTER

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1213

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ACCOUNTING INFORMATION
TIME FILED

JOSEPH L. EGAN
PRESIDENT

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MAY 14, 19 47

Street and No. MEMBER OF CONGRESS

Place WASHINGTON, D. C.

URGE YOUR SUPPORT FOR REINSTATEMENT OF APPROPRIATION FOR
STUDY OF GROUND WATER BY U.S. GEOLOGICAL SURVEY. HIGH PLAINS
OF TEXAS HAS SIX HUNDRED FIFTY THOUSAND ACRES UNDER IRRIGATION,
ONLY SOURCE IS GROUND WATER.

I. B. HOLT

House Member William S. Jameson of El Paso

HB 606, 1947



A BILL
TO BE ENTITLED

AN ACT declaring the waters of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries, to belong to the public, to be subject to appropriation for beneficial use, to be a natural resource subject to and requiring conservation, development and regulation in the manner and for the uses named in the Act; vesting the State Board of Water Engineers with jurisdiction in the administration of the provisions of the Act; declaring beneficial use to be the basis, the measure and limit to the right to the use of the waters described in the Act; exempting water for the irrigation of certain lawns and gardens, for the watering of livestock and for domestic household use from the provisions of the Act; providing for application to the Board of Water Engineers for permits by persons, association of persons, corporations, cities, towns, legal subdivisions and water improvement districts; providing for hearing of such application and prescribing manner of filing and publication, and cost of publishing and posting; providing for the place of such hearing, the transcription of proceedings, the manner of rendering decisions by the Board, the issuing and filing of permits and the manner of appeal from the decision of the Board; prohibiting the changing of the location and use of the water right issued under a permit; providing that every permit granted and every water right acquired under the provisions of the Act shall be contingent upon continued use of such water for a beneficial use; providing for a hearing upon whether or not permit or water right has been abandoned and for recording the Board's findings; providing that as between appropriators, the first in time shall be the first in right and that all appropriations or allotments of water hereafter made for any purpose other than municipal shall be granted subject to the right of any city or town or municipality to make further appropriations of said water thereafter for domestic and municipal purposes; recognizing and protecting existing rights, providing for the filing and recording of declaration of existing rights, prescribing how the location of wells or the use to which water is put may be changed; providing penalties for violation of the provisions of the Act; defining waste and prescribing a penalty therefor; and declaring an emergency.

FILED: MAR 11 1947

MAR 12 1947 READ 1ST TIME
AND REFERRED TO COMMITTEE ON

APR 1 1947 REPORTED UNFAVORABLY.

APR 2 1947 Dead Box

Governor Beauford Jester of Corsicana and Attorney General Price Daniel, Sr. of Liberty



High Plains Texans gather and pledge to fight any change in ownership or control of groundwater.



ARTHUR P. DUGGAN JR.,

BBA '32, LLB '35

Place 12, Position 1—3 yr. term

After graduating from The University, **Arthur Duggan** practiced law in Austin until moving to **Littlefield** in 1946, where he now resides. He belongs to Texas and American Bar Associations.

House Member Ivey Blanton “Doc” Holt of Olton Sponsor of HB 162, 1949



I.B. Holt – “Represents the early rising farmers...”

OVER LIBILITY BILL KILLED

Early Rising 'Farmers' Catch City Boys Asleep

Justin American Capitol Staff

Representative J. K. Aynesworth
aco bitterly admitted Thurs-
light that the Senate-approved
rs' responsibility bill was

he added that the death blow
administered by foul means.
nesworth was victimized by a
tional coup, which he charg-

most of the opponents got up earlier
than the city boys comprising the
bulk of the proponents.

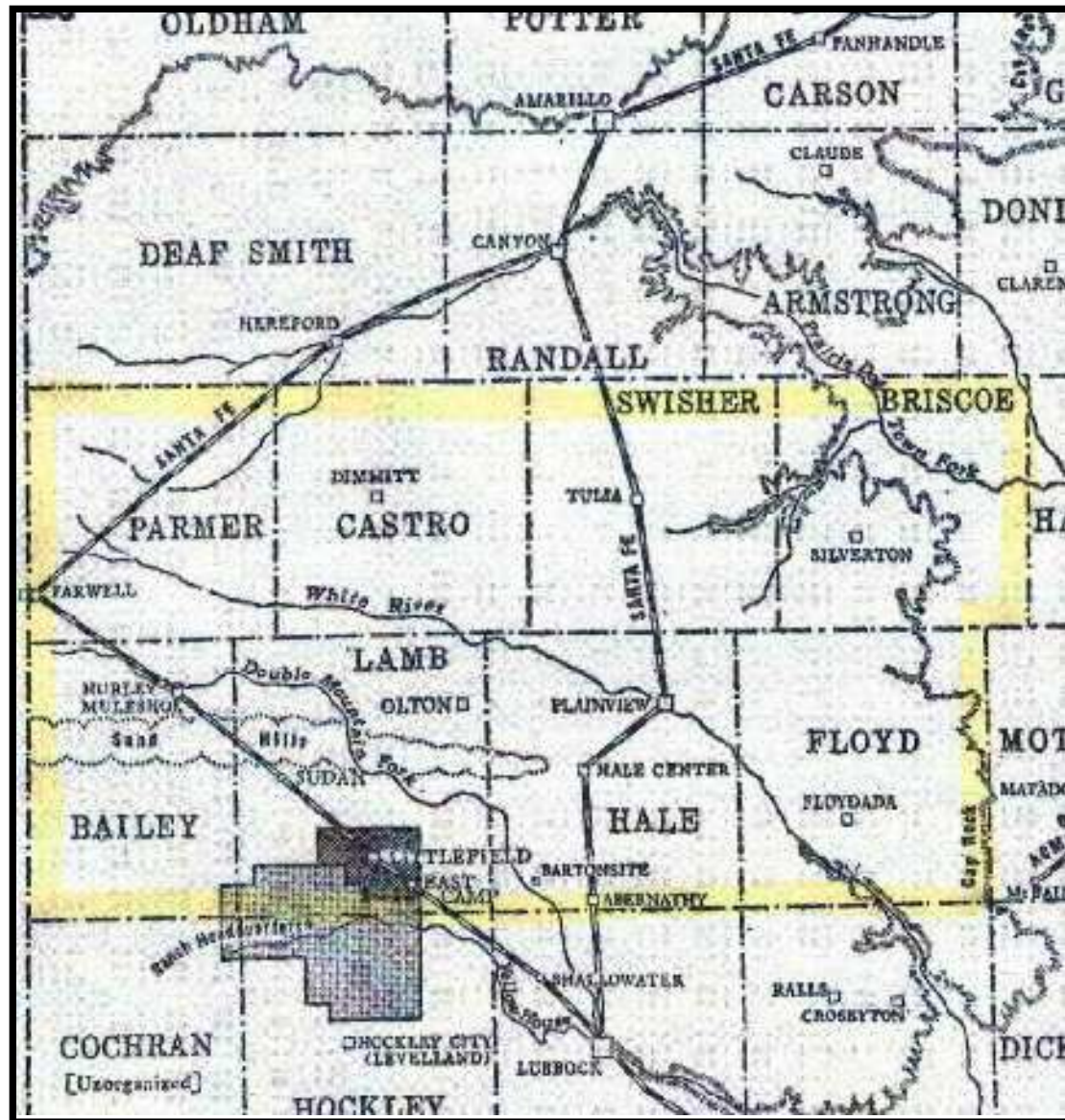
At any rate, right after the
chaplain's prayer, or at about 9:30
a.m., the opponents moved to re-
commit to committee the bill which
had been advanced to second read-
ing after a series of narrow escapes
Wednesday.

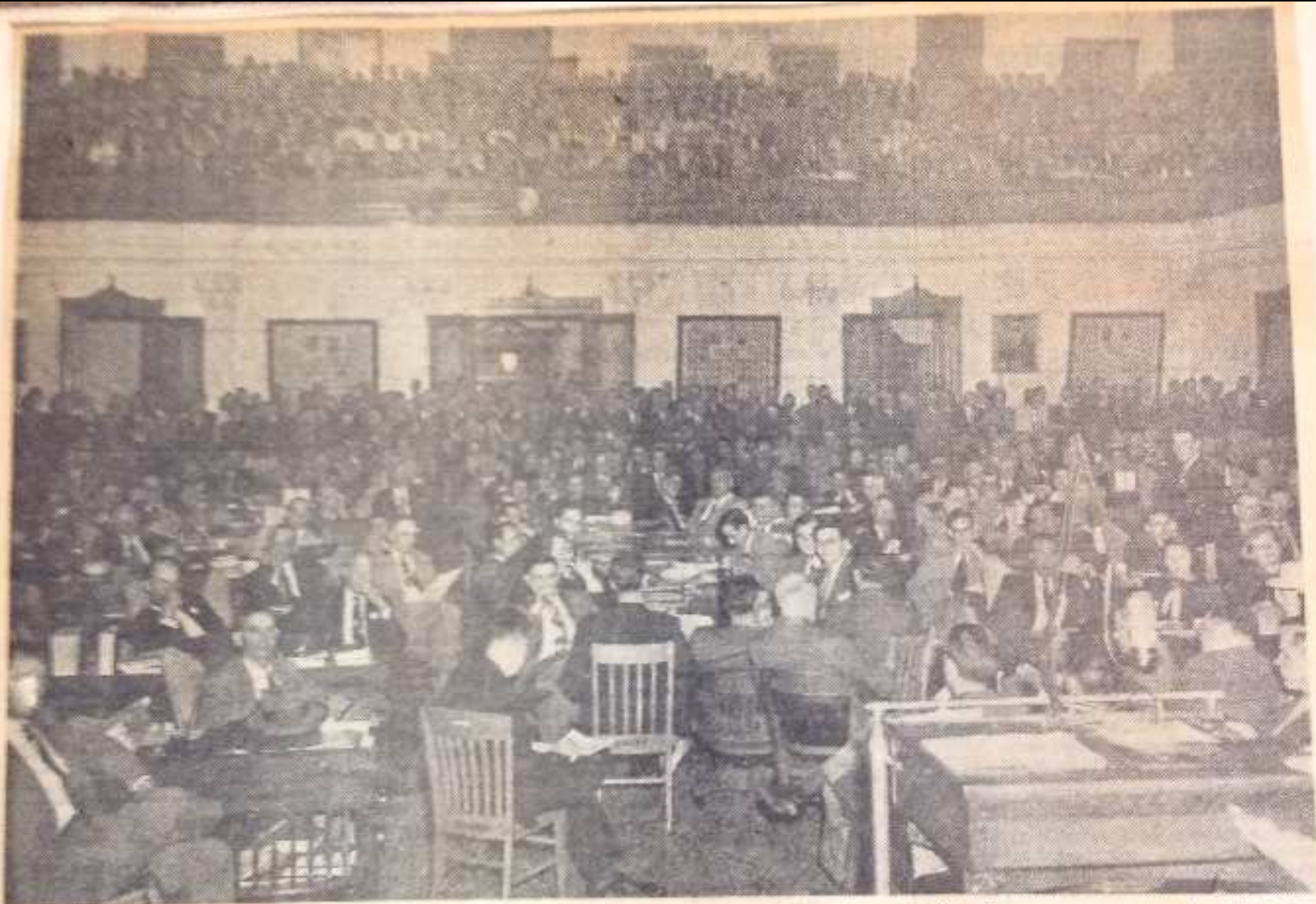
Aynesworth and a few of his

Aynesworth on a personal privilege
request. So the House buried the
bill in the highways and roads com-
mittee. Seventeen of the 21 mem-
bers of that committee are against
the plan.

Chairman I. B. Holt of Olon,
who also opposed the measure, said
he would be willing to give the
bill a hearing when the committee
meets next Tuesday.

I.B. Holt's House District 120 -1949 – 51st Session





TEXAS' BIGGEST—Part of the more than 3,000 persons, biggest delegation in Texas legislative history, are shown here jammed into the House of Representatives Monday night. Mostly county officials and farmers, they favored a \$30,000,000

rural road financing bill. The House revenue and taxation committee, watched by 6,000 eyes, voted 16 to 4 in favor of the bill at 1:29 a. m. Tuesday.—(Neal Douglass Photo).

1949's New House Member *Dolph Briscoe, Jr.*

"My campaign platform was pretty safe...We were going to take action to help conserve our water, but I was against any legislation that would take control away from individual property owners..."

I was not going to let the state tell a farmer how much water he could pump out of the ground."

groundwater.



Dolph Briscoe: My Life in Texas Ranching and Politics – As Told to Don Carleton

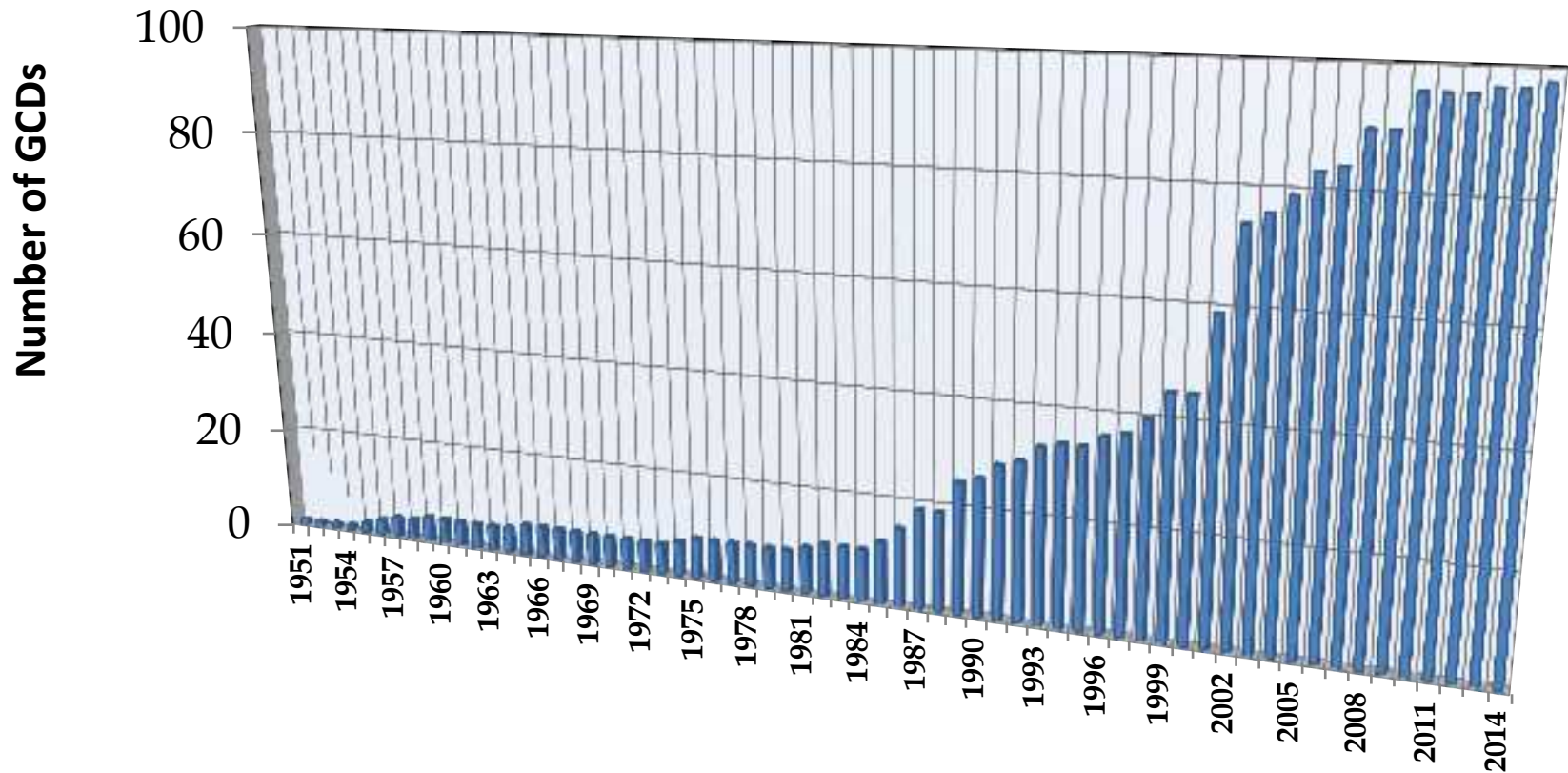
(Austin: Center for American History, 2008) 71.



WATER CONTROL BILL BECOMES LAW—Gov. Jester is signing into law the optional underground water control bill (HB 162) as Rep. I. B. (Doc) Holt of Olton, sponsor of the measure in the Legislature, looks over the chief executive's shoulder. Pictured, left to right, are Meade Griffin of Plainview, recently appointed an associate justice of the Supreme Court; Rep. Louis L. Ivey of El Paso, who represents a heavily-irrigated belt; John Bell of Cuero, who steered the bill through the Senate; Holt; Rep. Durwood Manford of Smiley, Speaker of the House; and Dolph Briscoe, jr., of Uvalde, who represents the Winter Garden underground water irrigation area.

GCD Formation 1949 – 2014

Groundwater becomes our focal point.



LYNDON B. JOHNSON
TEXAS

United States Senate
Office of the Democratic Leader
Washington, D. C.
July 28, 1958

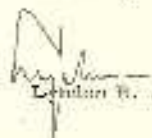
Dear Senator:

Under another cover I am forwarding to you a copy of the report on Texas Water Problems.

This report offers a basis for an over-all program to solve our water problem. It will require the cooperation of the federal and state governments. I have said that water has become more important to Texas than oil.

I appreciate your kind assistance in my activities in behalf of a better TX.

Sincerely,

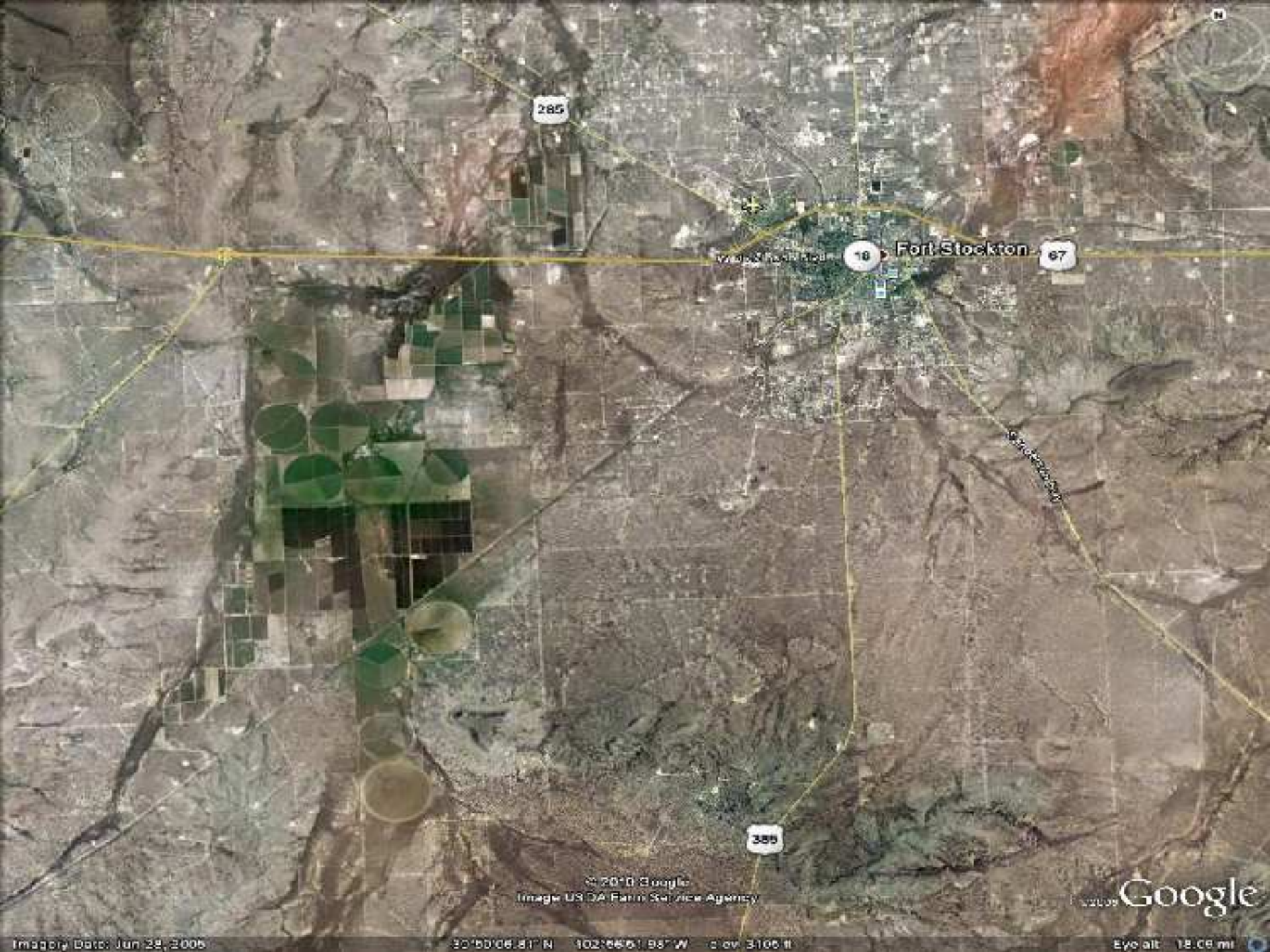


Lyndon B. Johnson

Honorable Earl of Sandahl, Jr.
Purcell-Bondes Building
Austin, Texas

Fort Stockton's Comanche Springs





285

W. of N. 10th St.

18

Fort Stockton

67

State Route 385

385

© 2010 Google
Image US/DA Farm Service Agency

Google

Imagery Date: Jun 28, 2005

30°55'06.81" N 102°56'51.95" W elev. 3100 ft

Eye alt: 18.09 mi

Closer Up Outflow of Comanche Springs



Fourth Period – *Groundwater* - 1967 on
Cities acquire and will acquire *groundwater*

Senate Bill 1 Buster Brown

[illegible]

Vista Ridge

Bragg and Day/McDaniel - the Edwards Aquifer Authority Cases

Other Key Groundwater Cases

- Pleasanton v. Corpus Christi – 1955 – waste and transport.
- Smith Southwest Industries v. Friendswood – 1978 - subsidence.
- Sipriano v. Great Spring Waters – 1996 - rule of capture.
- Samuel Colt Hamilton Trust v. Del Rio – 2010 - reservation of groundwater rights

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WESTERN TRAVIS COUNTY

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.

GCD funding needs help especially if they are “our preferred method of *groundwater* management.”

Texas Water Journal

May, 2013, Vol. 4, No. 1

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

Charles R Porter, Jr.

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





Panhandle-Plains Historical Review LXXXVIII 2017

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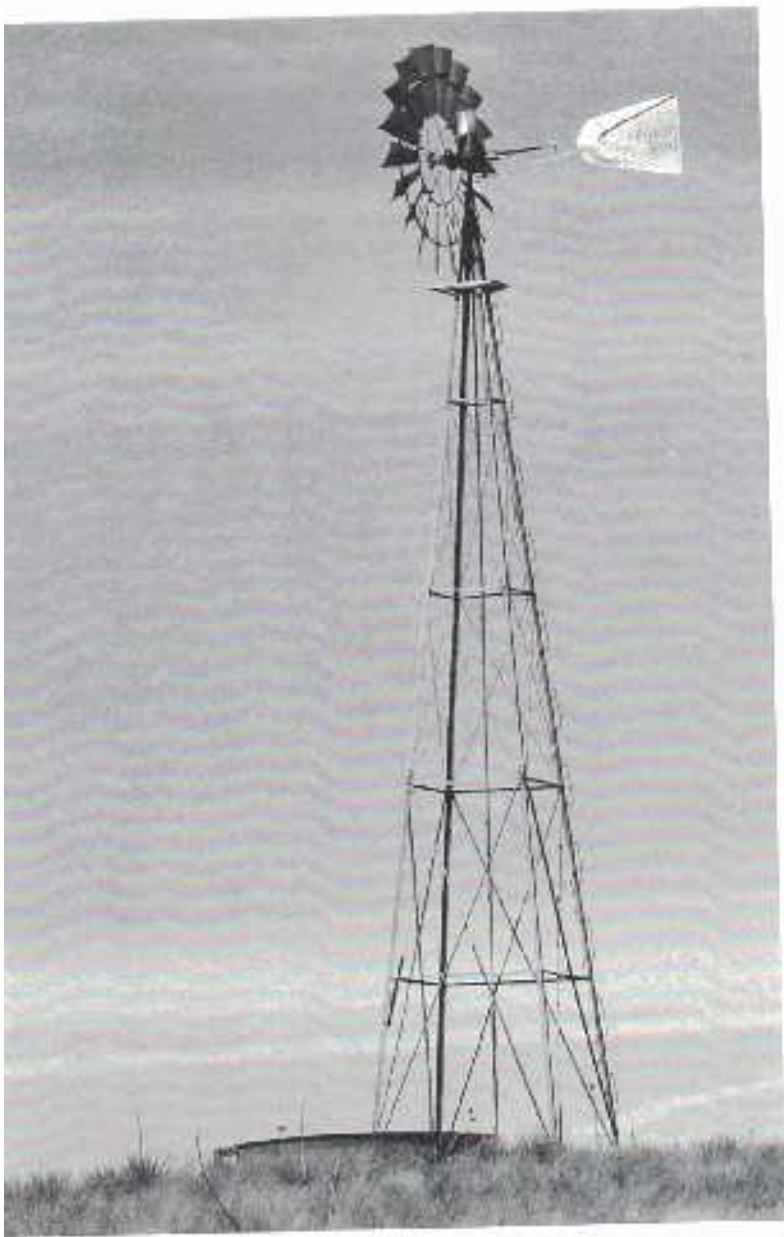


Photo courtesy of AJ McCormick.

"Of Urgent Concern": What Prompted House Bill 162, the Groundwater Conservation Act of 1949

Charles Porter*

"My campaign platform was pretty safe [...] We were going to take action to help conserve our water, but I was against any legislation that would take control away from individual property owners [...] I was not going to let the state tell a farmer how much water he could pump out of the ground."

Dolph Briscoe, Jr.

Dolph Briscoe, Jr., Governor of Texas from 1973-1979, clearly remembered, even in his mid-80s, that one of the key motivations for his entrance into politics in 1949 was to keep the control of groundwater in the hands of the farmer-landowner. Briscoe's position, typical of most farmers' positions both then and today in Texas, demonstrated the absolute necessity of groundwater to the farmers' business, culture, and overall way of life. Surface water is seen, flows in a watercourse across the land, and is owned by the state of Texas. But groundwater is hidden underground and owned by the landowner. How is the elusive, always moving groundwater defined under Texas law? According to water law attorneys Douglas G. Caronin and Susan M. Maxwell, "Groundwater or underground water is water occurring under the surface of the land. The term 'groundwater' can include percolating water or artesian water, but not the underflow of a surface water river or stream or the underground flow of water in confined channels. Groundwater is presumed to be percolating, unless proven otherwise." "Groundwater" in Texas is presumed to be "percolating" as well per the Texas Water Code and case law. The Texas Water Development Board claims "Groundwater is a major source of water in Texas, providing about 60 percent of the 16.1 million acre-feet of water used in the state." "The vast majority of the total groundwater used in Texas, some 60-70 percent, is used for agricultural irrigation; without groundwater, few crops can be produced west of the Interstate 35 corridor, which runs in a roughly north-south direction, beginning at the Rio Grande River in Laredo through San Antonio, Austin, Waco, Dallas, and entering Oklahoma at Sherman, Texas on its way to Minnesota. One thing is certain in Texas life throughout history—farmers and ranchers want ownership and control of their groundwater.

*Charles Porter, Ph. D., is a testified water rights expert and Visiting Professor at St. Edward's University. He is the author of *Sharing the Common Pool: Water Rights in the Everyday Lives of Texans* (Texas A&M Press, 2014) and *Spanish Water/Anglo Water* (Texas A&M Press, 2009).

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 socio-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 demands 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: due process social control, deceptive 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 real estate expert in more than 600 lawsuits across the United States since 1987 and has spoken more than 250 times as an invited guest speaker across the world on water policies since 2012 alone. His website is at www.charlesporter.com.

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Cover design by Sarah Marton

PORTER

PUBLIC WATER POLICIES

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



PUBLIC WATER POLICIES

THE ULTIMATE WEAPONS OF
SOCIAL CONTROL

Groundwater policy must be the focal point of public water policy in Texas. The GCDs are on the front line of the ongoing and upcoming urban vs. rural skirmishes. It's high time we recognize this – we owe the GCDs respect and ... funding.

Thank you all.

Charles Porter, PhD
www.charlesporter.com
512-627-3793