

Recent Trends in Texas Water Policy

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Innovation in Soil, Water and Environmental Management Since 1938



20th Century Water Policies: Kansas vs. Texas



Groundwater Conservation District Act (1949)

- Mandates to GCD:
 - Established mechanism by which GCD could be formed
 - Permit wells
 - Including spacing between wells
 - Develop management plan
 - Implement rules related to the management plan

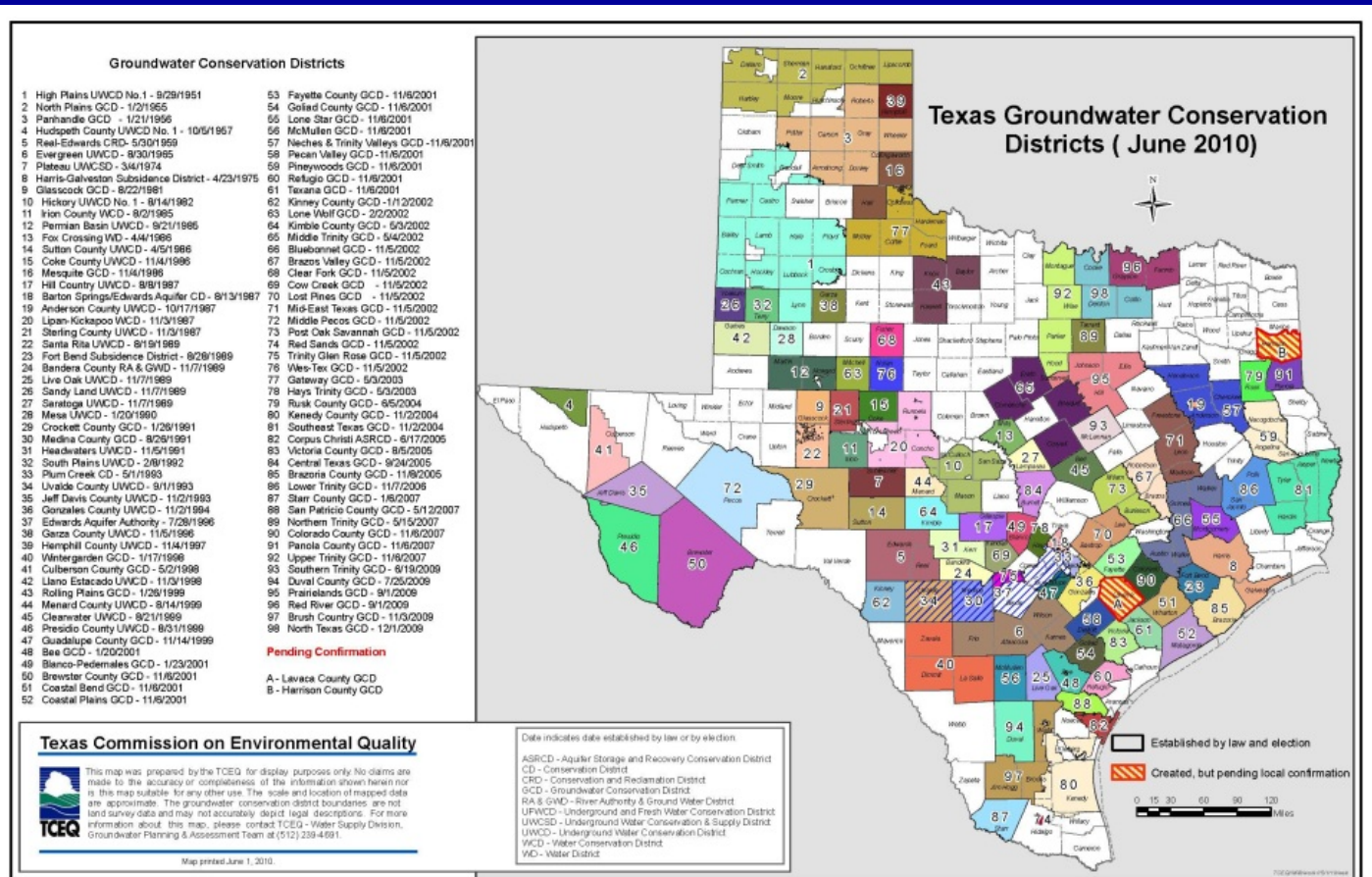
Groundwater Conservation District Act (1949)

- Reactions
 - 1940's : “I favor no control, but if we must have it, Let it be local”
 - 1960's: “Water district was not created to do away with the rights of the individual but rather to maintain those rights”
 - 2014: “HPWD strongly supports the protection of private resources by locally elected officials of groundwater conservation districts”

HB1763 (2005)- Desired Future Conditions (DFC)

- Water plans to establish DFC for all major aquifers
- DFC-Goal for an aquifer 50 years into the future
- Establishment of DFC must have public input and consider economic impacts
- September 2010 deadline for first DFC
- GCDs to make rules to achieve DFC

Texas GCDs: Can they provide conservation leadership?



2012 Rules for High Plains Water District to Meet DFC of 50%

- Metering and Reporting of Wells
- Allowable production rates (APR)

YEAR	ALLOWABLE PRODUCTION RATE
2012 & 2013	1.75 Acre-Feet Per Contiguous Acre Per Year
2014 & 2015	1.5 Acre-Feet Per Contiguous Acre Per Year
2016 & Beyond	1.25 Acre-Feet Per Contiguous Acre Per Year

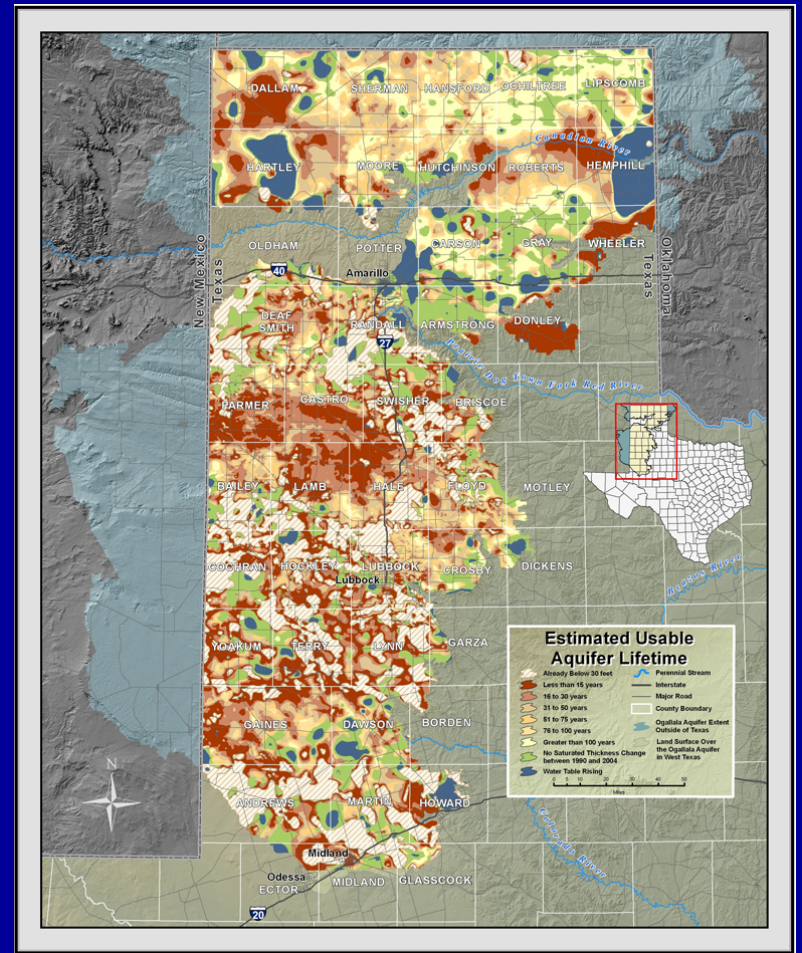
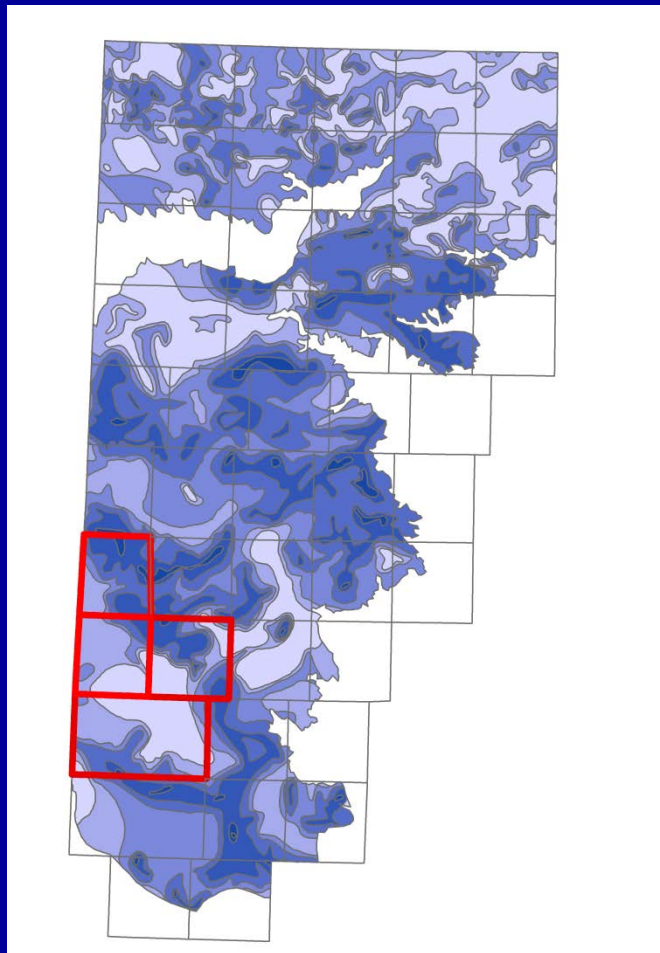
So has happened since 2012?

- Enforcement was delayed by the board that enacted the rules
- New Board and New General Manager
- New rules adopted in August 2014:
 - Reporting of water use only if double-cropping
 - 18 inches / acre limit
 - If reporting, start 6" reserve and can add to it
 - Voluntary pump testing reinstated
 - Permitting exempt wells

NASS 2012 data Peanuts!!

Location	Acres	Irrigated	Pounds
USA	1,621,631	521,673	6,660,492,000
Texas	148,795	125,850	547,106,000
Gaines	42,951	38,725	163, 255,00
Yoakum	17,028	16,502	70,790,000
Terry	13,678	11,469	51,268,000
Cochran	12,440	9,745	43,267,00

Peanut counties overlay with Ogallala Aquifer



County, Water Districts, & DFC

Location	Acres	Groundwater District	Desired Future Condition 2060	Ave Sat Thick 2008
Gaines	42,951	Llano Estacado	70 feet decline in depth to water	77 feet
Yoakum	17,028	Sandy Land	18 feet decline in depth to water	54 feet
Terry	13,678	South Plains	42 feet decline in depth to water	47 feet
Cochran	12,440	High Plains #1	50% of 2010 water remaining in 2060	34 feet

Edwards Aquifer Authority vs Day (2012)

- EAA Act (1993)
 - to adopt regulations and issue permits to limit groundwater production
 - to prevent federal intervention to protect aquatic habitat dependent on Edwards Aquifer
- Land use prior to McDaniel and Day Purchase in 1994
 - 1953 to 1983, property had irrigation well
 - From 1983, water leaked from well to a pond

Edwards Aquifer Authority vs Day (2012)

- Day and McDaniel purchased 700 acres in 1994
 - Owners wanted to irrigated pecans and crops
 - Filed permit for 700 acre feet/ year
 - Conditionally granted
 - Spent \$95,000 for irrigation well
- Permit Denied
 - Administrative appeal- 14 acre feet permit

Edwards Aquifer Authority vs Day

- Texas Supreme Court Ruling (2012)
 - Onset “whether land ownership includes an interest in groundwater in place that cannot be taken for public use with adequate compensation”
 - Ruled: “each owner of land owns separately, distinctly and exclusively all the groundwater under his land”
 - Expressed doubt the EAA’s action had denied Day all beneficial use of the property

Edwards Aquifer Authority vs Day (2012)

- Case was referred back to lower courts and then settled out of court
- Is Day vs EAA Significant?
 - Yes; establish ownership of groundwater in place
 - No: EAA taking of Day's property was extreme. Day had monetary damage.
- Maybe the issue will be clearer someday

Resources

- Drommond, D.O. 2014. Texas Water Journal 5:59-94.
- Peck, J.C. 1995. Kansas Law review 43:#735. Available at ssrn.com/abstract/217074.