Lloyd Gosselink
ATTORNEYS AT LAW

TCAA South Padre Conference

June 2010

Developments at the PUC, RRC, and TWDB

Presented by:

Thomas Brocato,
Georgia Crump and
Brad Castleberry

816 Congress Avenue
Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 Fax
www.lglawfirm.com

Lloyd Gosselink
ATTORNEYS AT LAW

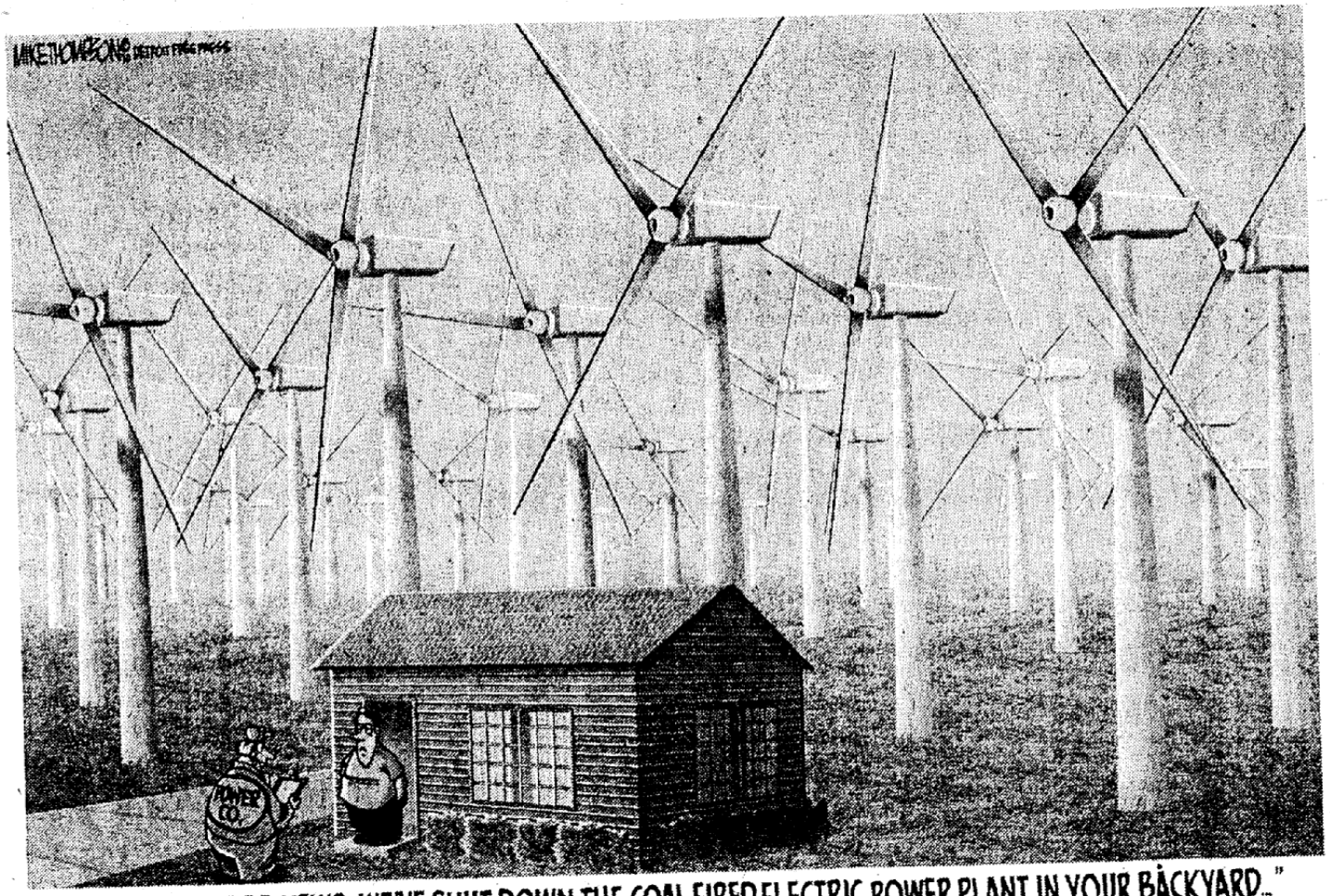
Public Utility Commission Update

by: *Thomas Brocato*

ISSUES

1. Competitive Renewable Energy Zones (“CREZ”).
2. Advanced Metering.
3. Franchise Issues.

MIKE THOMPSON ■ DETROIT FREE PRESS



"FIRST, THE GOOD NEWS: WE'VE SHUT DOWN THE COAL-FIRED ELECTRIC POWER PLANT IN YOUR BACKYARD..."

What is a CREZ?

A PUC-defined region that has suitable conditions for renewable energy production, and to which transmission lines will be **proactively** built.

CREZs are legislatively mandated:

- In 2005, the 79th Legislature passed Senate Bill 20; requires the PUC to establish CREZs and a transmission plan to serve them.
- In 2008, the PUC issued an order in Docket No. 33672 establishing five CREZs and creating the transmission plan to serve them.
- In 2009, the PUC selected entities to build the lines.

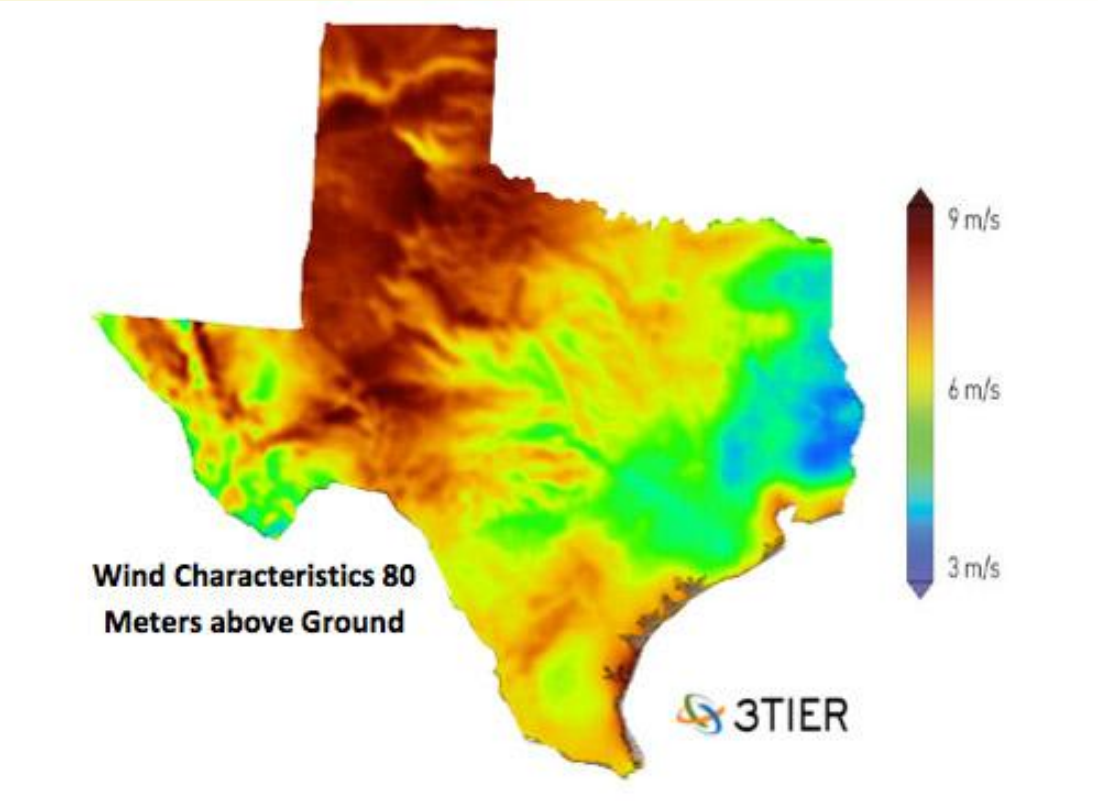
PURA Section 39.904 (g) states:

(g) The (Public Utility) commission, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization:

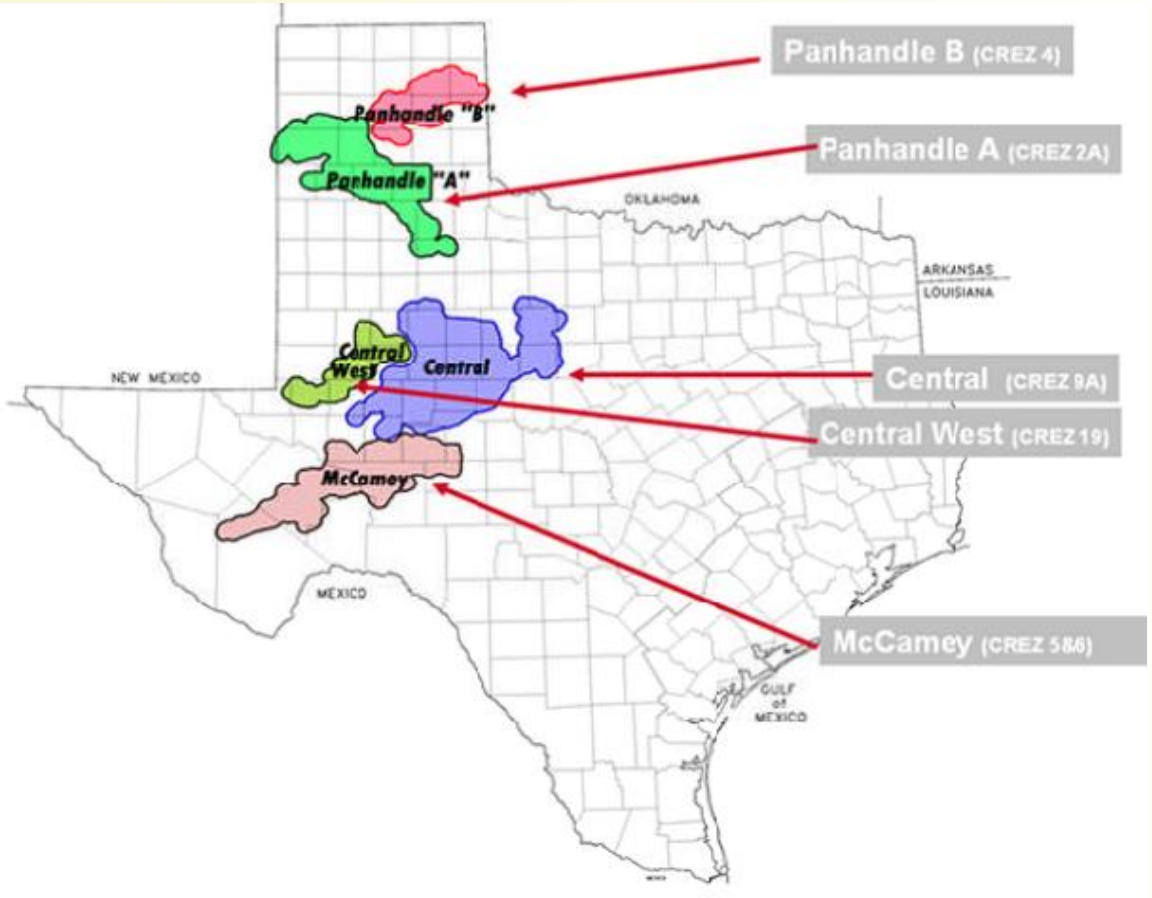
(1) shall designate competitive renewable energy zones throughout this state in areas in which renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;

(2) shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the competitive renewable energy zones.

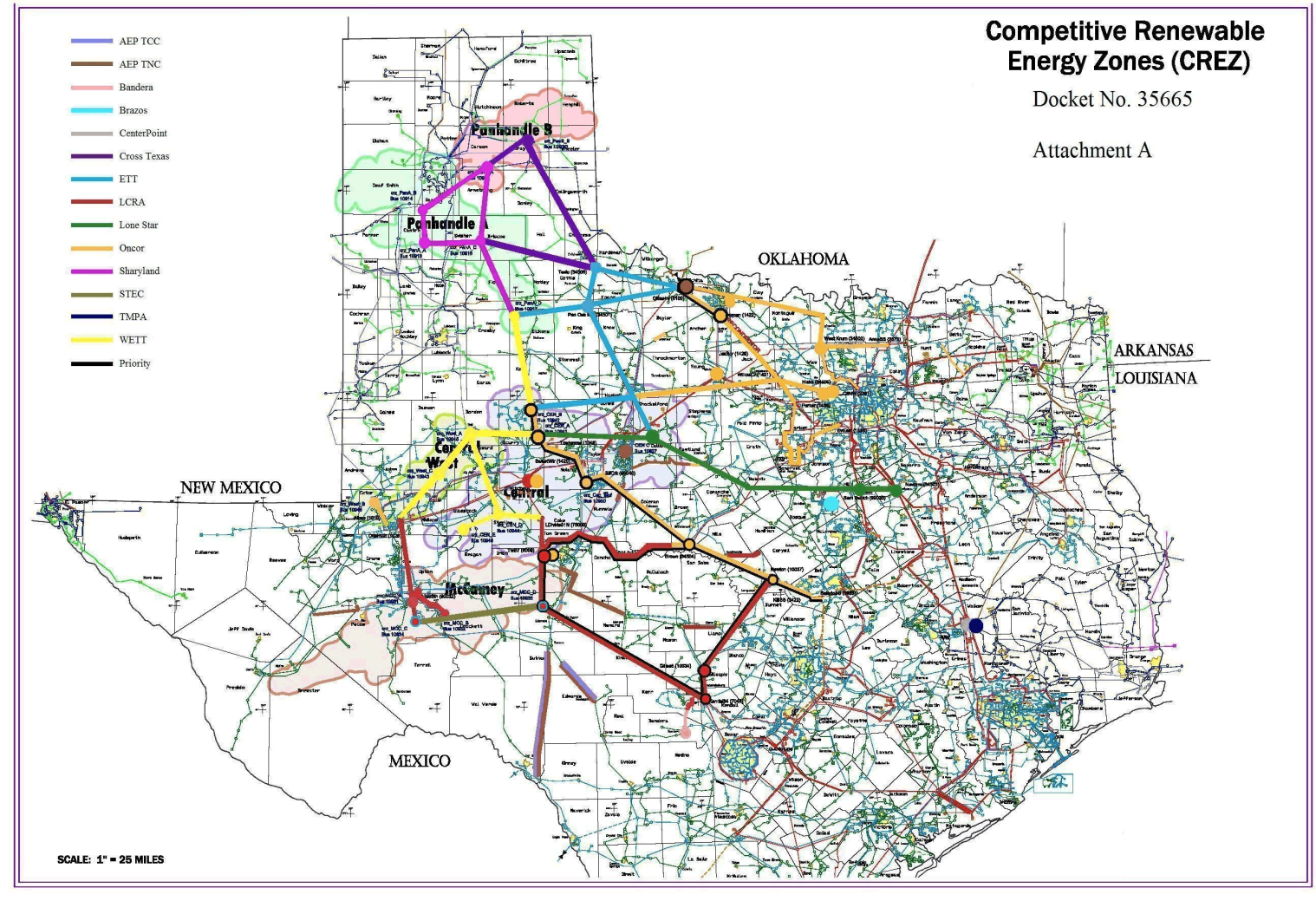
Where is the best wind potential in Texas?



Step 1 : Determine which areas to certify as CREZs.



Step 2: Develop plan to deliver power from CREZs to load/select entities to build the lines.



*The CREZ transmission build-out is **ENORMOUS!***

- PUC estimate: $4.93 billion…too low?
- The resulting CREZ system will accommodate 18,456 MW of wind power.
- The current total as of April: approximately 9,100 MW.

Coming Soon – Advanced Metering

Sec. 39.107. METERING AND BILLING SERVICES.

h) The commission shall establish a nonbypassable surcharge for an electric utility or transmission and distribution utility to use to recover reasonable and necessary costs incurred in deploying advanced metering and meter information networks to residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter. The commission shall ensure that the nonbypassable surcharge reflects a deployment of advanced meters that is no more than one-third of the utility's total meters over each calendar year and shall ensure that the nonbypassable surcharge does not result in the utility recovering more than its actual, fully allocated meter and meter information network costs. The expenses must be allocated to the customer classes receiving the services, based on the electric utility's most recently approved tariffs.

(i) Subject to the restrictions in Subsection (h), **it is the intent of the legislature that net metering and advanced meter information networks be deployed as rapidly as possible to allow customers to better manage energy use and control costs, and to facilitate demand response initiatives**. (*as added by HB 3693*)

Oncor

- August 29, 2008 – PUC Approves Plan
- Deployment: 2008 – 2012
- 3,400,000+ Meters
- Surcharge of $1 Billion
- 11 year Monthly Surcharge
- $2.21 for Residential Customers
- $3.79 Average Surcharge for Non-Residential Customers
- Status – 911,000 installed through April
- 40,000 Meters in 2008; 650,000 in 2009; 900,000 in each year 2010-2012

CenterPoint

- December 22, 2008 – PUC Approves Plan
- Deployment: 2009 – 2013
- 2,340,000 Meters
- Surcharge of $961,604,475
- 12 year Monthly Surcharge
- $3.24 per month for first two years for Residential Customers
- $3.05 per month for remaining 10 years for Residential Customers
- Status – 341,779 installed through April
- 280,000 Meters in 2009; 530,000 per year thereafter

AEP – TCC / TNC

- December 17, 2009 – PUC Approves Plan
- Deployment : 2009 – 2012
- 900,000 Meters
- Surcharge of $429 Million
- 11 year Monthly Surcharge
- $3.15 per month for the first two years
- $2.89 per month for TCC customers and $2.77 per month for TNC customers for the next two years
- $2.26 for TCC customers and $2.35 for TNC customers for final seven years
- Status – 2,695 installed through April

Austin

- Installed Without Surcharge

TNMP

- Deployment Plan Expected to be Filed Summer of 2010

ISSUES

1. Functionality
2. Security
3. Accuracy
4. Usefulness

Functionality

- **Minimum of 15 minutes interval data**
- **Communication pathway for REP**
  - **Use of TDU networks to send commands (pricing signals, pre-pay information, load control)**
  - **Home Area Network (HAN) communication (ZigBee, Home Plug, etc.) in meter to communicate to in-home devices**
- **Access to meter data by customer and REP**
- **ANSI standards compliant**

Security

- **ANSI Standards.**
- **PUC Rule.**
- **Project No. 37944 - Electric Industry Cyber Security**
  - **May 5, 2010, PUC Staff held workshop to discuss the level of security in the Smart Grid and the new advanced meters being installed by the utilities.**
- **The National Institute of Standards and Technology ("NIST") is currently putting together standards for Advanced Metering Infrastructure ("AMI") security requirements.**

Accuracy

- February - Widespread consumer complaints over Oncor's new smart meters.
- March - PUC directed Oncor to begin testing of meters to confirm accuracy.
- March – PUC sets up Project No. 38053 - Monitoring and Evaluation of Deployment of Advanced Meters.
- March - Navigant Consulting hired to do independent testing of the meters.
- April 1 - Navigant report indicating that in side-by-side comparisons with traditional meters, they were finding "very little difference" and that the mechanical meters can actually turn out higher readings than the smart meters.
- May 14 – 2,500 meters tested by Navigant. All meters have conformed to ANSI standards.
- May 17 – Testing begins on 1,000 meters in each of CenterPoint's and Oncor's service territories.

So far, all meters tested have been found to be accurate…..

Franchise Fees

- PUC Docket No. 35717: Oncor Rate Case

  -The law sets out the formula for the payment of franchise fees (PURA § 33.008(b)).

  -The law also says that a city and a utility may agree to a different (i.e. higher) amount of fees.

- PURA § 33.008(f): Notwithstanding any other provision of this section, on the expiration of a franchise agreement existing on September 1, 1999, an electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative and a municipality may mutually agree to a different level of compensation or to a different method for determining the amount the municipality may charge for the use of a municipal street, alley, or public way in connection with the delivery of electricity at retail within the municipality.

Franchise Fees (con't)

-The law says that if a city and a utility agree to a higher level than the formula that the utility may collect those fees from ratepayers.

- PURA § 33.008(c): The municipal franchise charges authorized by this section shall be considered a reasonable and necessary operating expense of each electric utility, transmission and distribution utility, municipally owned utility, or electric cooperative that is subject to a charge under this section.

Franchise Fees (con't)

-On July 30, 2009 the PUC rejected prior decisions and denied recovery of the amounts in excess of the statutory formula.

- PUC Order:

  - No substantive explanation for why such fees are unreasonable.

  - Only comment is a "concern over allowing ratepayers who reside outside of the Cities' jurisdiction to pay for franchise fees calculated in an agreement to which their city or municipality was not a party." The issue is not who pays the fees but, rather, whether the fees are recoverable at all.

  -February 11: Appeal filed in District Court.

  -October 19: Hearing in District Court.

Lloyd Gosselink
ATTORNEYS AT LAW

Developments at the Railroad Commission of Texas

by: *Georgia Crump*

GRIP, RRM, COSA, Rates

GRIP = Gas Reliability Improvement Program

Creature of statute: Tex. Util. Code § 104.301

Who has filed?

- Atmos Mid-Tex
- Atmos West Texas
- Atmos Pipeline
- Texas Gas Services

The Cities of Allen, et. al, v. Railroad Commission of Texas, No.03-06-00691-CV, 2010 Tex. App. WL 392158 (Tex. App.—Austin, Feb. 5, 2010, no pet. h.).

- Challenge to RRC GRIP rules
- Court: RRC review is purely ministerial; no role for cities

RRM = Rate Review Mechanism

- "Experimental" process started in 2008, as result of agreement with Atmos Mid-Tex and cities.
- Allows rate adjustments without a full-blown rate case.

How is it different from GRIP?

- Cities exercise full original jurisdiction over rate adjustments – not merely ministerial approval of a filing.
- Covers more than just capital investment.
- Caps on annual adjustments and increases to O&M and net plant.
- Rate case expenses.
- True “appeal” to RRC.

COSA = Cost of Service Adjustment

- Allow for interim rate adjustments by utilities.
- Been in place for a number of years, mostly in CenterPoint Entex, and Texas Gas Service areas.

- Same general concept as RRM:
  - ✓ Cities have original jurisdiction
  - ✓ Cities can grant or deny
- Appeal is to RRC.

Texas Coast Utilities Coalition v. Railroad Commission of Texas, 345th District Court, Travis County.

February 2010 – District court:

- RRC exceeded its authority in imposing a COSA in areas within the original jurisdictions of the cities.

March 2010 – District court amended order:

- RRC exceeded its authority in imposing a COSA in areas within the original jurisdiction of the RRC.

RATES

GUD No. 9902- *CenterPoint Gas- Houston Division*

- July 2009, CenterPoint Gas, Houston Division, requested a rate increase of $25 million.
- RRC awarded rate increase of $5 million in its Final Order of February 23, 2010.
- No COSA authorized.

ISSUE: allocation of franchise fee expenses.

- RRC allocated the franchise fee expenses only to customers in the City of Houston.
- Motions for rehearing on this issue.

More Rate Cases:

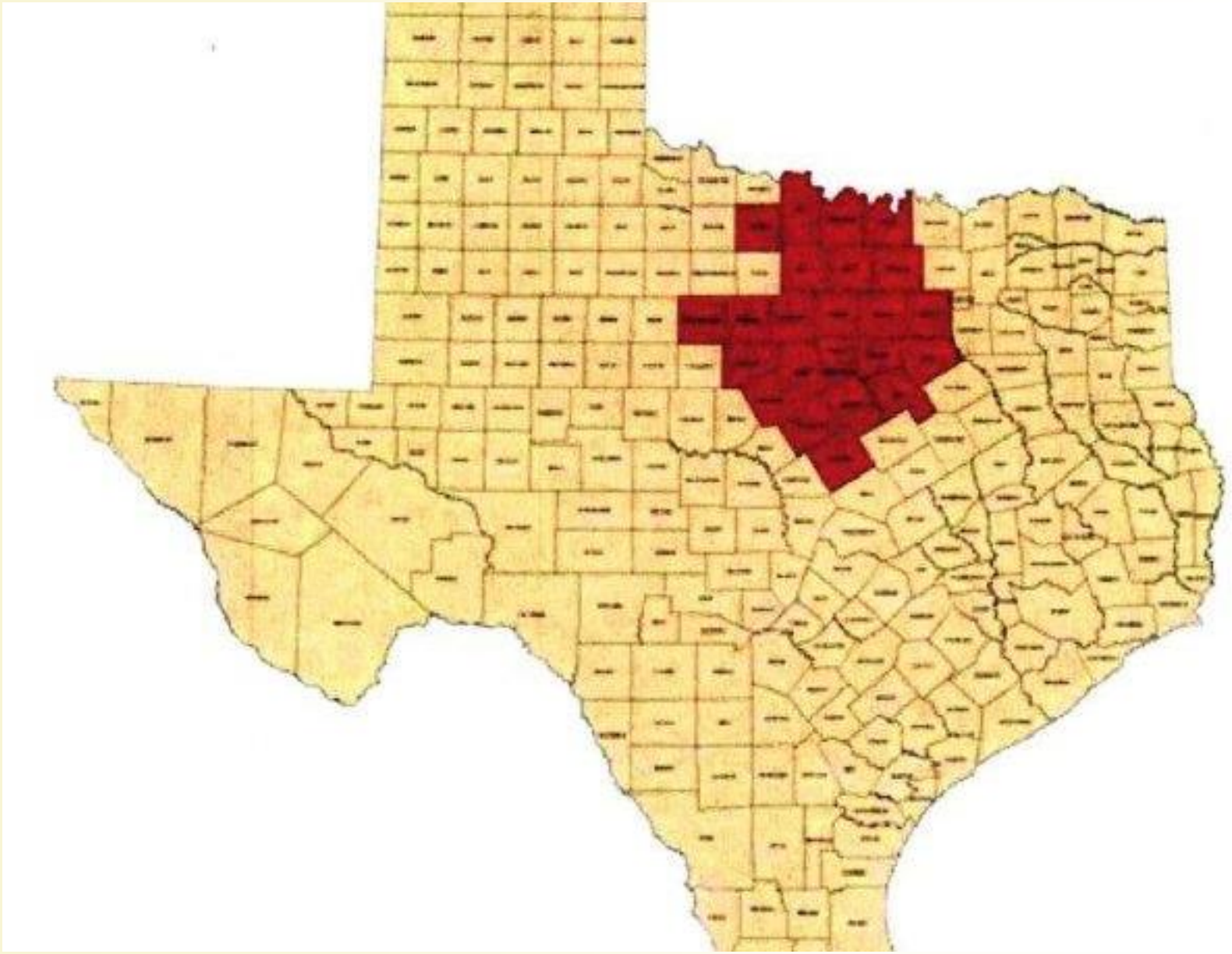
Atmos Pipeline due to file rate case in September – required under GRIP statute.

- Cities' petition for "involuntary" rate case due to over-earnings.
- RRC took no action on the petition for many months, then denied – too close to mandatory filing under GRIP.

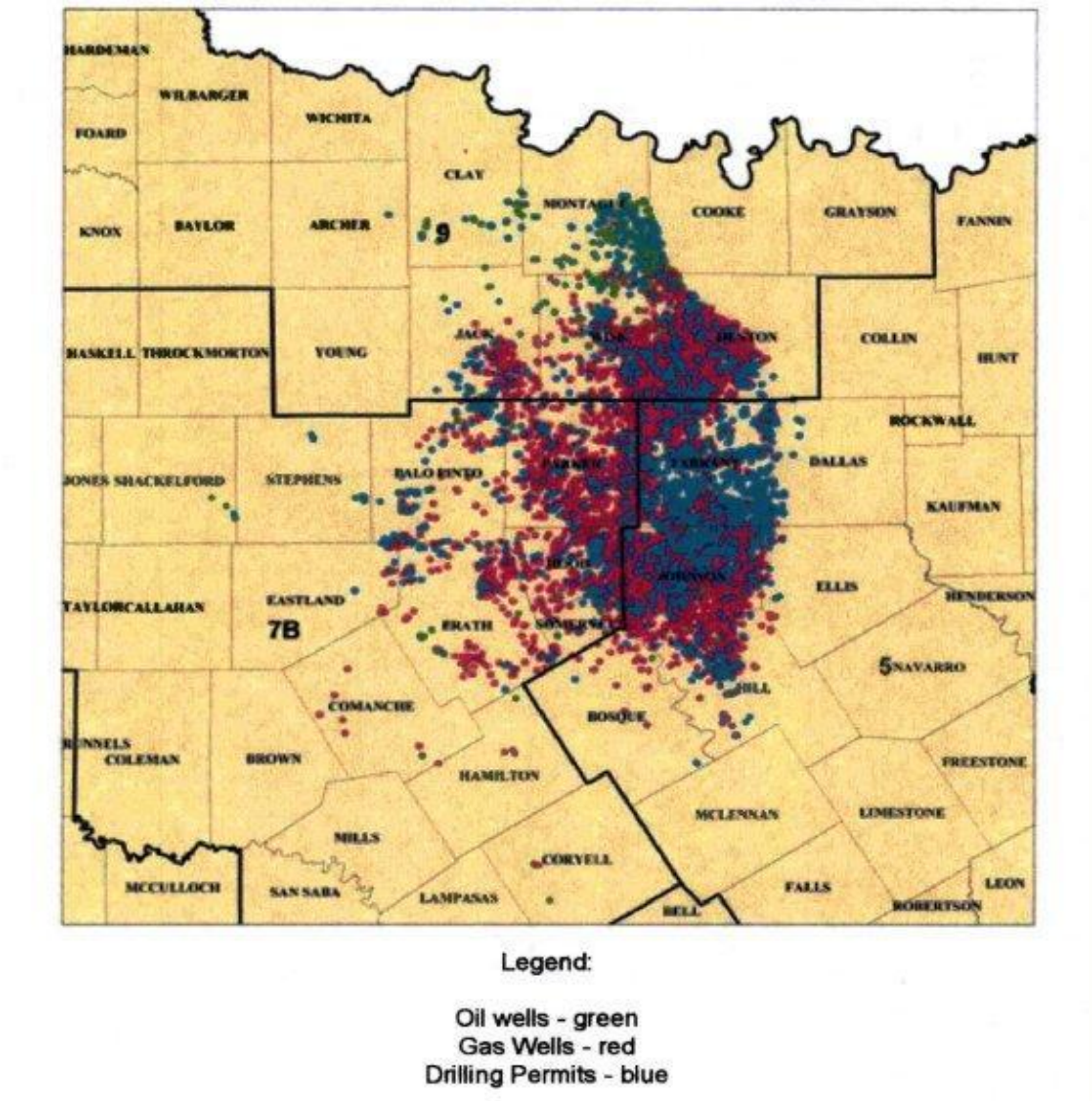
New COSA Filings:

- CP-TX Coast – May 1, 2010
- TSG – Rio Grande Valley – May 2010

Barnett Shale Update

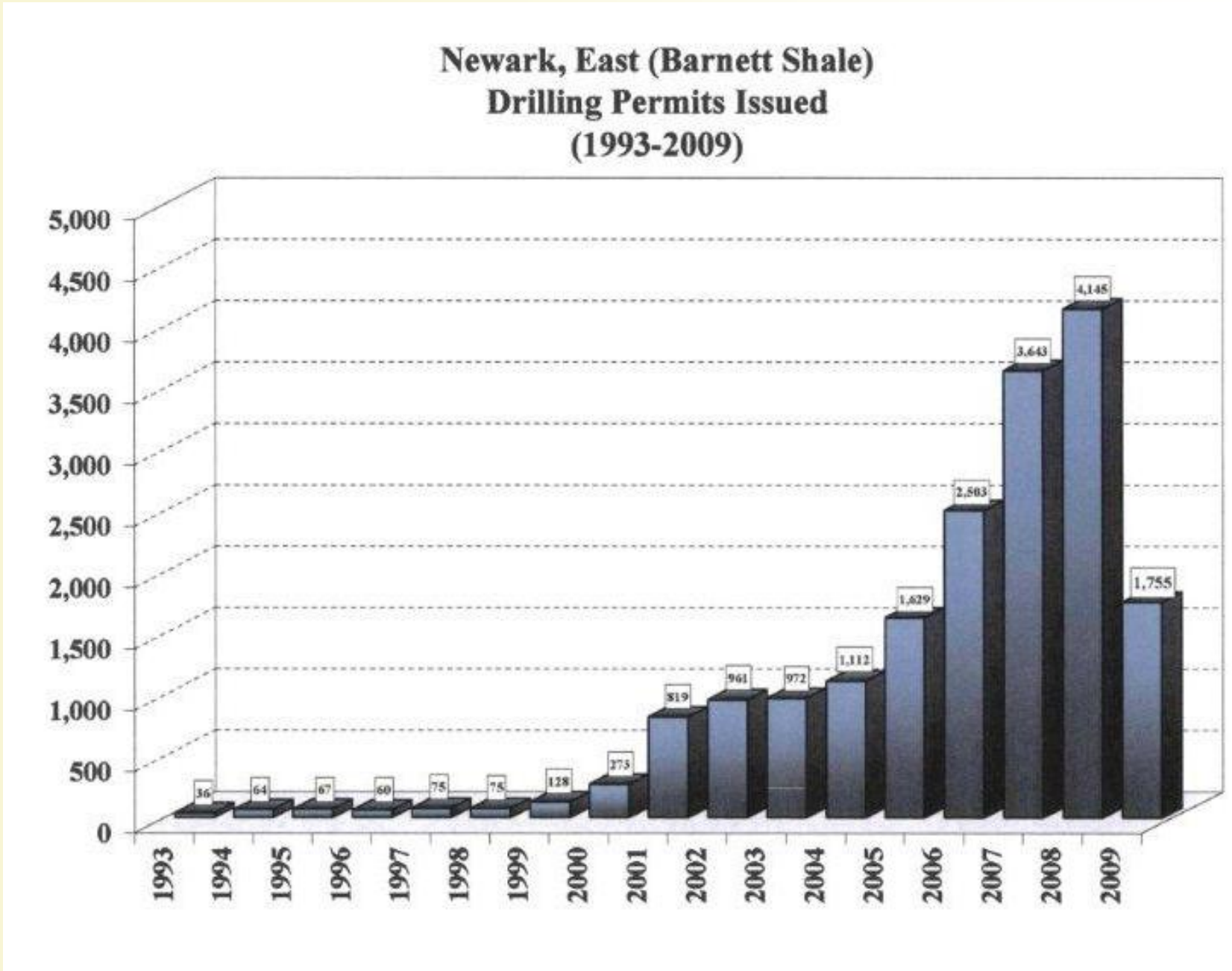


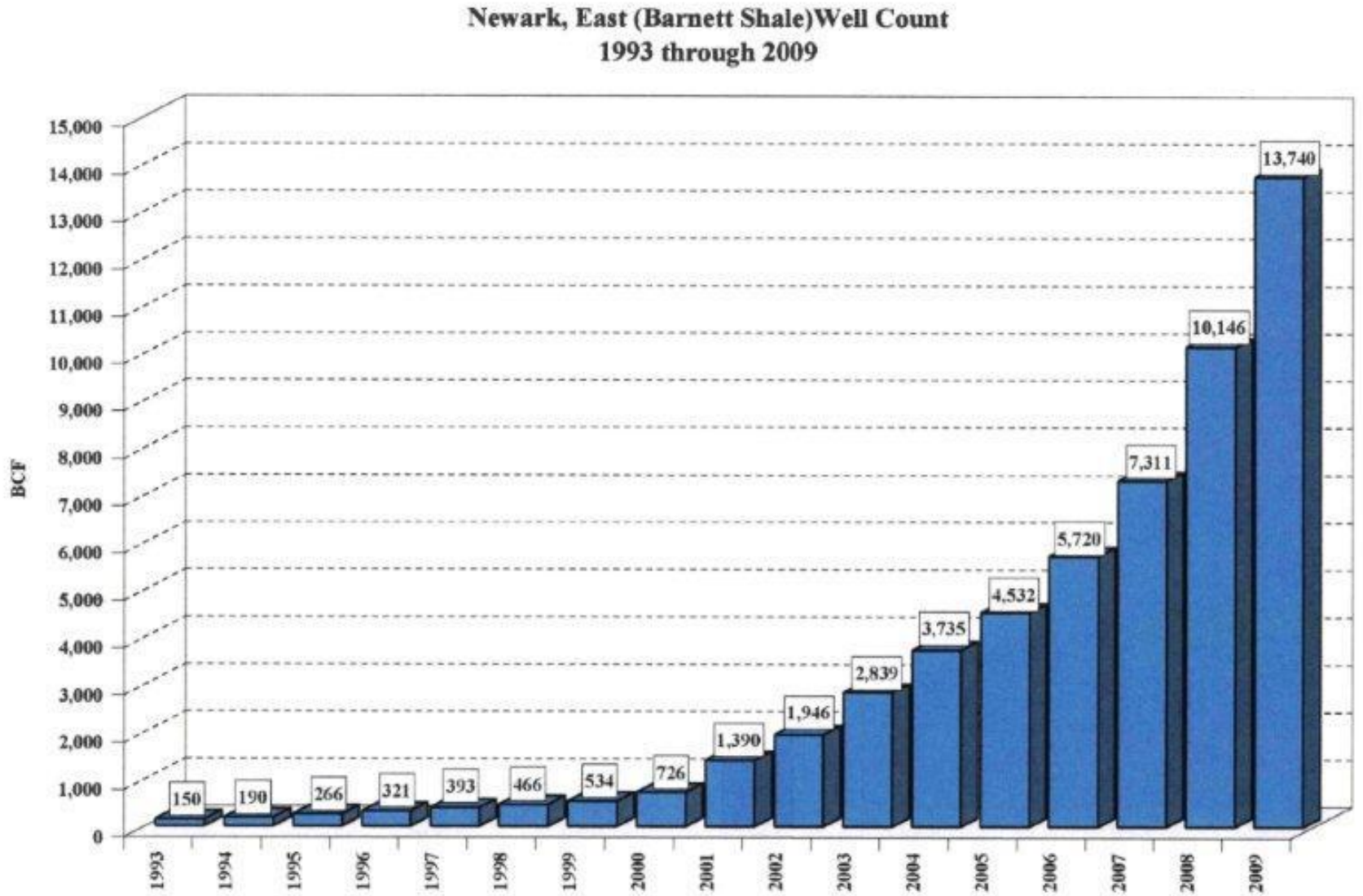
Wells and Permits

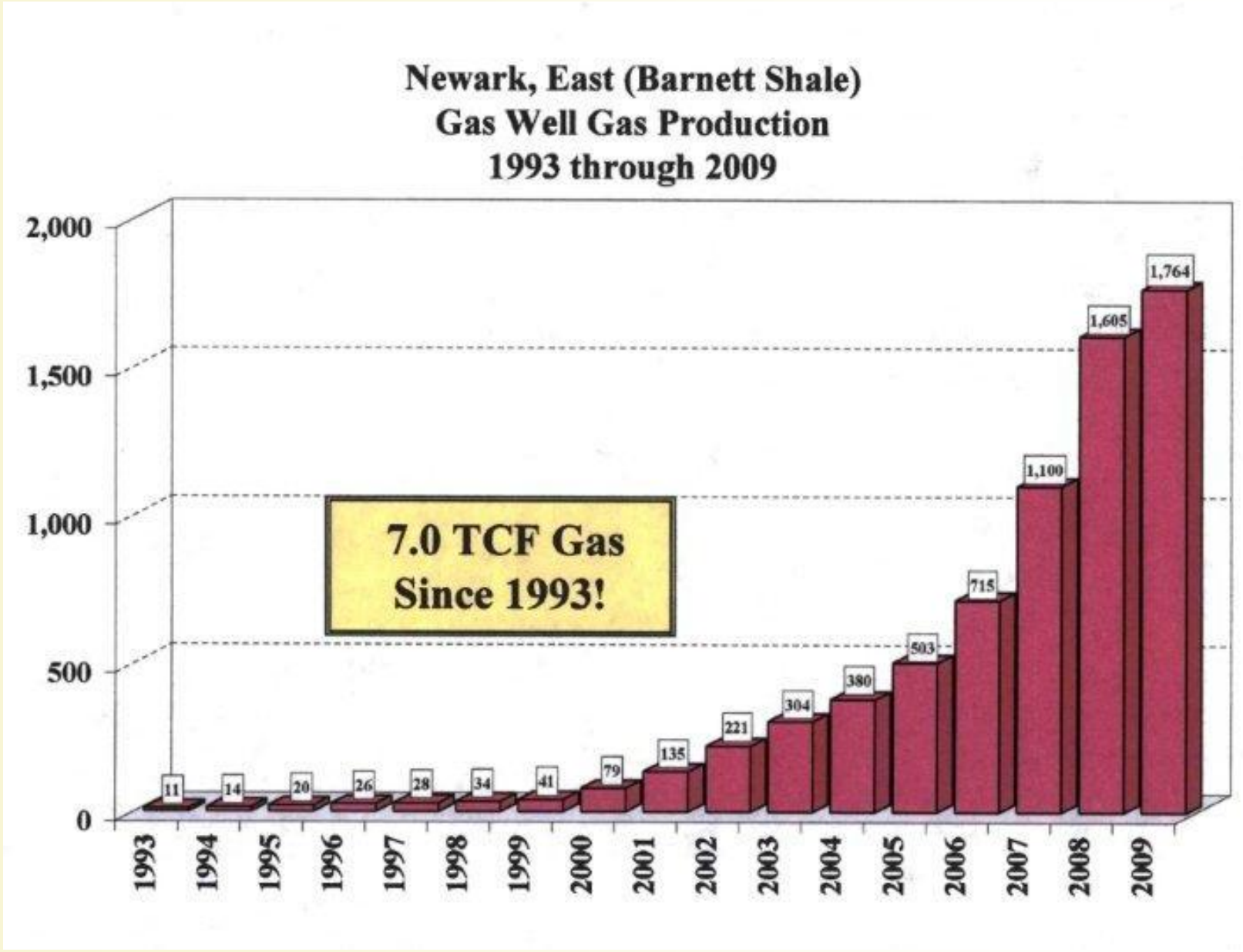


Legend:

Oil wells - green
Gas Wells - red
Drilling Permits - blue







Earthquakes - Fracking

- Cleburne – 2008 and 2009
- North Texas – 3.3
- Flower Mound - petitioned RRC for a moratorium on drilling in the Barnett Shale.
- May 10, 2010, City placed an administrative moratorium on permits for centralized wastewater collection, gas lift, and compression facilities, including pipelines related to those gas operations. The moratorium is set to expire June 8.

Jurisdiction of RRC over drilling activities:

- Preventing waste of resources.
- Protection of surface and subsurface water.
- Ensuring that all mineral interest owners have an opportunity to develop their fair share of the minerals under their property.

What does the RRC *NOT* have jurisdiction over?

- Roads and traffic – cities, counties and TxDoT.
- Noise and nuisance – cities.
- Odors – cities.
- Zoning – cities.
- Air Quality – TCEQ.

WHAT HAVE CITIES REGULATED?

- ✓ Setbacks – minimum distance of wellbore from habitable structure;
- ✓ Sound – maximum decibel levels at certain distances;
- ✓ Road Maintenance – agreements to cover maintenance and repairs;
- ✓ Landscaping and Screening – fencing, walls, plant varieties;
- ✓ Saltwater Disposal;
- ✓ Drilling Mud Systems;
- ✓ Drilling in Floodplains;
- ✓ Zoning;
- ✓ Permit Fees.

- Information on the Barnett Shale and contact information for the RRC at: http://www.rrc.state.tx.us/barnettshale/index.php

- TCEQ information on air quality issues arising from drilling activities at: http://www.tceq.state.tx.us/implementation/barnettshale

Atmos Pipeline Replacement Program

- Explosions related to gas leaks in late 2009 in Metroplex area.
- RRC instituted a new GUD No. 9948.
- RRC report issued May 12, 2010: Atmos failed to meet minimum safety regulations in four areas in connection with a home explosion in Mesquite in November 2009 – intention to impose fine of $190,000.

- RRC to Atmos Energy's Mid-Tex Division: "Begin replacing your older steel pipelines throughout the state." 7 years? 5 years?
- 800,000 steel service lines to be replaced.
- Atmos proposal: thread new pipe inside corroded pipe to minimize disruption to streets and private property.
- Substantial excavation of roads, yards and other private property during the replacement program.

- Atmos expects to have 50 work crews in place by June 2010.
- City representatives have held discussions with Atmos and RRC to minimize disruption of city streets and ROW.
- Program will have a direct impact on Atmos' ratepayers, perhaps as much as $7.00/month, in addition to GRIP, RRM, and rate cases.
- May 2010, RRC: "Move faster or face enforcement action."

Sunset Review

- RCT filed its Self-Evaluation Report in September 2009.

- Identified its 4 key functions as:
  1. Ensure effective use of the state's energy resources. Accomplish through the regulation of "almost all" phases of oil and gas exploration and production industry, by ensuring fair gas utility rates, and by promoting research and education on the use of alternative fuels.

2. Oversee state network of pipelines that gather, transport, and deliver oil and natural gas. Ensure that pipeline systems are designed, constructed, operated, and maintained safely. Regulate the safe transport, storage, distribution, and use of LP-gas (propane), compressed natural gas (CNG), and liquefied natural gas (LNG).
3. Provide environmental regulation to prevent degradation of land and water resources by oil and gas industry. Also administers surface coal mining regulatory program of federal Surface Mining Control and Reclamation Act of 1977.
4. Provide public access to information.

RRC policy suggestions:

1. Consolidate state energy programs at RRC. Currently spread out:
   a. State Energy Conservation Office ("SECO") – within Comptroller Office. Focuses on reduction of energy costs and maximization of energy efficiency. State's primary liaison with U.S. D.O.E.
   b. GLO: programs promoting natural gas as vehicle fuel. RRC has similar program for use of propane.
   c. Regulation of geologic sequestration of CO_2 in conjunction with current regulation by RRC of CO_2 for enhanced oil recovery.

2. Revise funding structure of RRC.

3. Change name to Texas Energy Commission.

4. Reduce membership from three to one.
   Benefits:
   a. Streamline decision-making process;
   b. Create more efficient and clearer policy making environment;
   c. Increase decision making accountability.

5. Give RRC authority to enforce damage prevention measures (prohibitions against removal of earth near pipelines) for all pipelines. Currently has authority to enforce only with regard to intrastate pipelines.

Updates/Revisions to Memorandum of Understanding with TCEQ

- MOU currently in effect was last updated in May 1998. 16 T.A.C. § 3.30 addresses areas where jurisdictions of TCEQ and RRC overlap /intersect.
- RRC in process of revising 16 T.A.C. § 3.30. TCEQ will make similar revisions to 30 T.A.C. §7.117. Comments being received until May 17, 2010.

Areas and activities impacted by MOU:

1. Radioactive materials and sources of radiation
2. Surface water and groundwater protection
3. Geologic storage and associated injections of carbon dioxide
4. Solid waste
5. Injection wells – disposal wells, enhanced recovery wells, brine mining, hydrocarbon storage, geothermal energy, in situ tar sands

6. Oil and gas waste – hazardous and nonhazardous
7. Transportation of crude oil or natural gas. RRC has jurisdiction over:
   (a) pipeline safety for all pipelines in Texas that transport hazardous materials;
   (b) spill response and remediation of releases from pipelines transporting crude oil, natural gas, and condensate.

8. Mobile Offshore Drilling Units (MODU)

   (a) "vessels capable of engaging in drilling operations for exploring or exploiting subsea oil, gas, or mineral resources."

   (b) RRC, EPA, U.S. Coast Guard, or GLO, has jurisdiction over discharges from an MODU when the unit is being used in connection with activities associated with the exploration, development, or production of oil or gas or geothermal resources.

(c) TCEQ, EPA, U.S. Coast Guard, or GLO has jurisdiction over discharges from MODU when unit is being serviced at a maintenance facility. During transportation of MODU from shore to site, between sites, and to maintenance facility, jurisdiction is held by EPA, U.S. Coast Guard, or GLO.

Chairman Carrillo Loses Primary Election

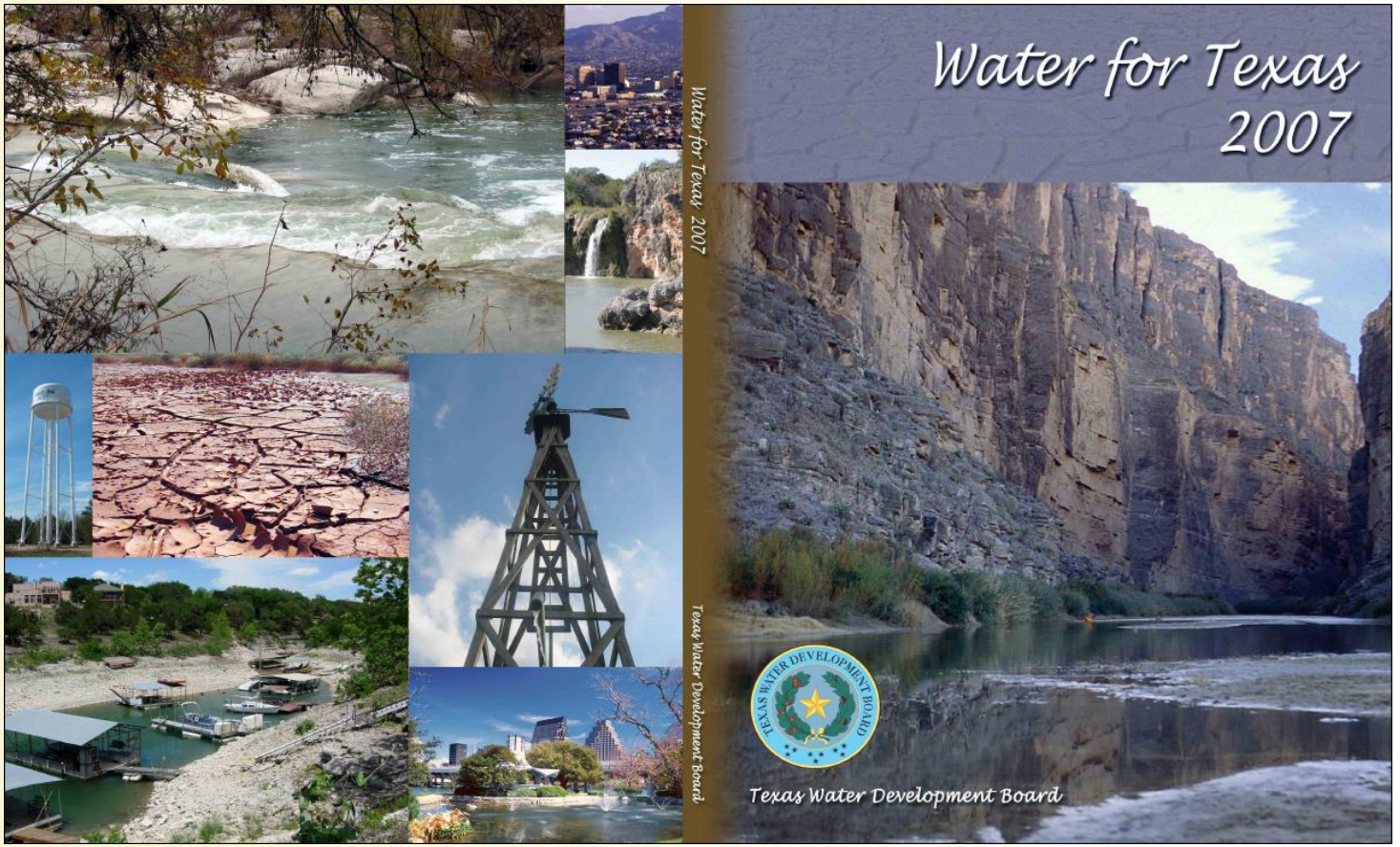
- March 2010, incumbent Chairman Victor Carrillo lost his primary election to political newcomer David Porter.
- Porter is an accountant from Giddings, Texas.
- Democratic opponent: Jeff Weems, an attorney from Houston.

Propane Vehicle Campaign

- RRC received $15.7 million in stimulus grants from the U.S. DOE and State Energy Conservation Office.
- Will provide 800 propane-fueled vehicles to grant partners such as school districts and cities.
- Details are available on the Commission's propane fleet blog: http://blogs.rrc.state.tx.us/TPF/.

Lloyd Gosselink
ATTORNEYS AT LAW

Developments at the TWDB
by: Brad Castleberry



What Do They Do?

TWDB Programs

State & Regional Water Planning

- Population forecasting
- Water demand projections
- Identify water supply projects

Flood Mitigation Planning

- Administer National Flood Insurance Program

Water/Wastewater Facility Funding

- SRF Funds, Grants, ARRA
- Green project initiative
- Upcoming funding survey

Desired Future Conditions

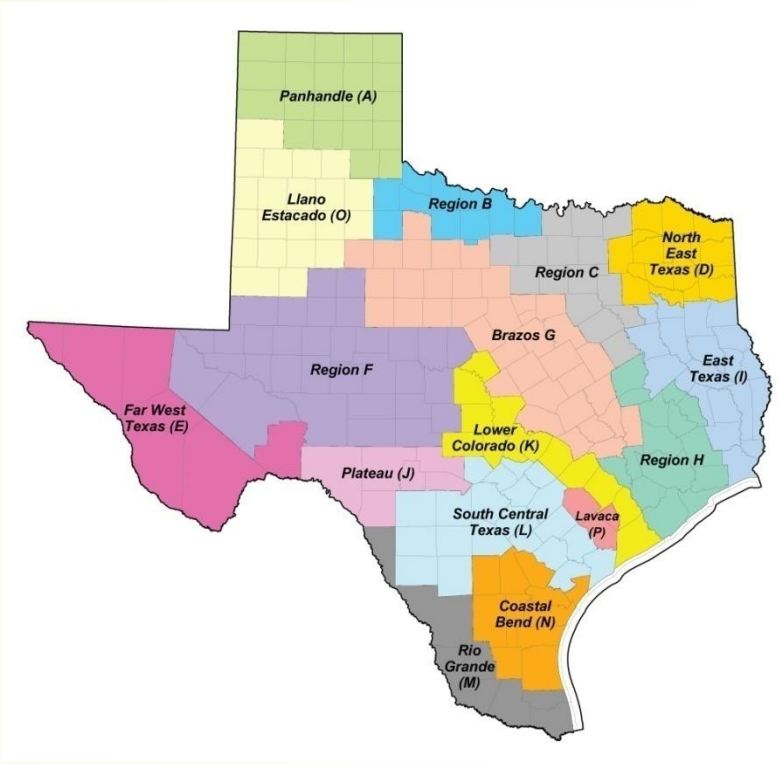
- Groundwater management
- Groundwater modeling

State & Regional Water Planning

- **50-year planning period**
- **Project population/water demands**
- **Determine existing supplies; determine future surplus or needs**
- **Evaluate/select water management strategies**

TWDB:

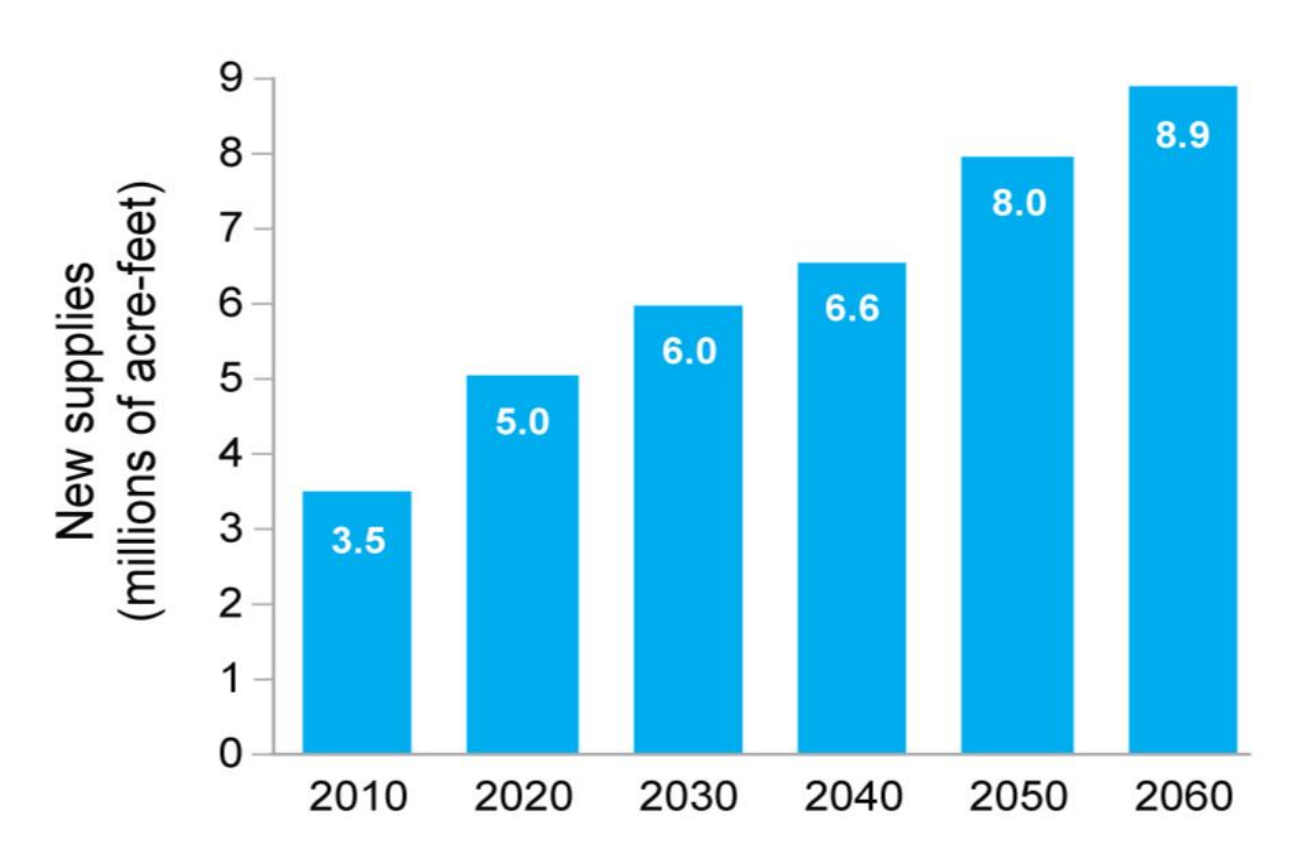
- **resolves interregional conflicts**
- **approves regional water plans**
- **develops/adopts State Water Plan**



Water Supply Needs

- Texas does not have enough water today to meet future demand during times of drought

Water Volume from Recommended Water Management Strategies



Total capital costs: $30.7 billion

Costs of Not Implementing Plan

- Businesses and workers: $9.1 billion in 2010, $98.4 billion in 2060
- Lost local and state taxes: $466 million in 2010, $5.4 billion in 2060
- ***About 85 percent of the state's population will not have enough water by 2060 in drought of record***

To Obtain TWDB Funding (why planning is important)

$ $ $ $ $ $ $ $ $

To obtain TWDB funding, a project must be considered consistent with the Regional Water Plan by:

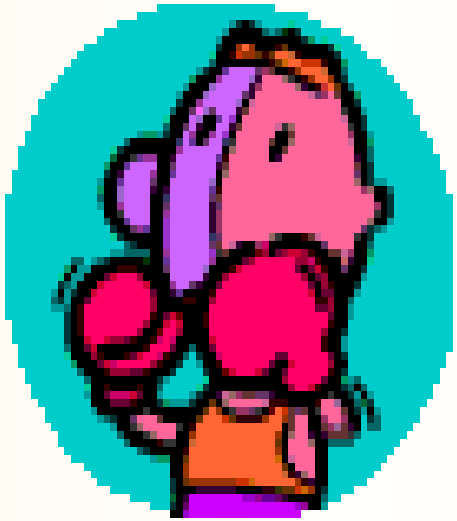
- Being an enhancement of a current water supply
- Meeting a water need in a manner consistent with the regional and state water plans

To obtain funding from the Water Infrastructure Fund, projects must be recommended water management strategies in the state and regional water plans.

Texas Groundwater Districts & Regulatory Structure

Texas Groundwater law: rule of capture – modified by district rules where groundwater districts (GCD) exist

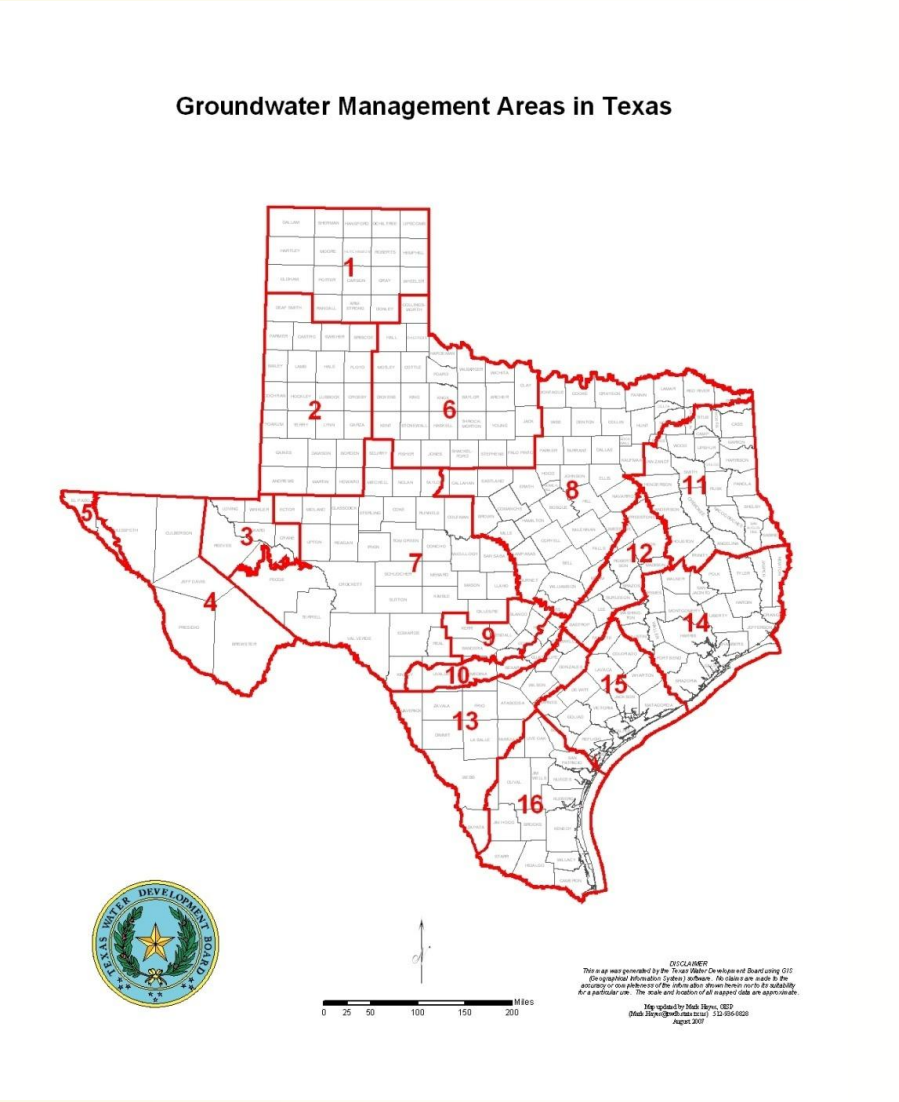
16 Groundwater Management Areas (GMA) – designated to provide most suitable areas for management of groundwater (Sec 59, Art XVI, Tx Constitution)



GMA Map

Desired future conditions (DFC) – districts within GMA determine conditions to reflect management goals that determine aquifer condition in 50 years

A **policy** decision by the GMA on how they want to manage aquifers within the management areas



Alphabet Soup…

Managed available groundwater (MAG) – amount of pumping allowed to reach the DFC

MAG is derived by Groundwater Availability Model (GAM), which is run by the TWDB

MAG is provided to GMA, which then decides whether to adopt and implement

This could spell:

(T-R-O-U-B-L-E)