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THE TEXAS WATER JOURNAL is an online, peer-reviewed journal devoted to the timely consideration of Texas water resources management, research and policy issues. The journal provides in-depth analysis of Texas water resources management and policies from a multidisciplinary perspective that integrates science, engineering, law, planning, and other disciplines. It also provides updates on key state legislation and policy changes by Texas administrative agencies.

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Cover photo: Anzalduas Dam in Hidalgo County. Photo courtesy of the Texas Water Development Board.

Book review:
**Sharing the common pool: water rights in the everyday
lives of Texans**

Porter CR. 2014. Sharing the common pool: water rights in the everyday lives of Texans. College Station (Texas): Texas A&M University Press. ISBN 978-1-62349-137-6. 240 pp.

Reviewed by Robert E. Mace^{1, 2, *}

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²This review does not necessarily reflect official Texas Water Development Board positions.

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Capturing the backstories, complexities, and potential pitfalls of Texas water law in a single, readable book is a daunting task, but Charles R. Porter braves the challenge and, for the most part, succeeds in delivering a good overview in *Sharing the Common Pool: Water Rights in the Everyday Lives of Texans*. Written primarily for landowners and real estate agents, Porter, who is himself a real estate agent and broker, delivers a fairly comprehensive view of how water intersects with our lives and properties. As Porter notes, “Water is the ultimate zero sum game...”, and it behooves landowners to be aware of water and their rights. However, there are some missed opportunities in the book, and given the complexity and nuances of the topic, there are plenty of details to quibble about. Nonetheless, despite its 240 pages, the book’s conversational style goes down delightfully easy. (I was able to read it during an afternoon plane ride.) Porter appropriately hedges his writing by mentioning numerous times that one should consult a water attorney when getting down to the nitty-gritty of property and water.

A primary driver for the book is that as water becomes more important in our growing state, it becomes more important in our real estate transactions. In Porter’s own words, “A major message of this book is that cities are desperate now and will be more desperate in the future for water resources; they are rightly and diligently trying to fulfill their duties to their citizens. Landowners should be aware that their individual interests in groundwater rights should no longer be taken for granted.” Although with regard to water supply Porter leans toward the private property rights perspective, he provides a reasonably balanced view of water law and regulation in Texas and the policy issues entwined with those topics.

The book is organized into 5 parts: (1) an introduction to water and water rights, (2) ownership of water, (3) how we use water and who regulates that use, (4) water in real estate transactions, and (5) water policy. The outline works well, although topics unavoidably seep into each other. Porter includes an appendix where he provides detailed descriptions of key legal cases. The book also includes a reference list, endnotes, a glossary, and an index.

Where appropriate, Porter helpfully provides examples of broader concepts and thoughts. For instance, it would be mind-numbing to present rule summaries of the nearly 100 groundwater conservation districts in the state, but Porter includes details of how a specific district’s rules might impact a landowner. Nonetheless, Porter misses several chances to amplify his points.

Porter notes how ownership of a water molecule can change depending on which “geologic bucket” that water molecule is in. It’s private property when it’s overland flow, public property when it reaches a state watercourse, private property when it seeps into the ground, and then public property again when

it discharges to a state watercourse from a spring. Soon after, Porter refers to the Texas Supreme Court decision on *Edwards Aquifer Authority v. Day and McDaniel*. While he appropriately focuses on the takings implications of this decision, the brutally short summary of the case (Landowners apply for 700 acre-feet per year; Edwards Aquifer Authority gives them 14 acre-feet per year.) misses a fascinating intersection of groundwater and surface water law that serves as an important lesson for landowners. (Landowners apply for 700 acre-feet per year, and based on the reported irrigated acreage of 300 acres, Edwards Aquifer Authority staff initially recommend a permit for 600 acre-feet per year [2 acre-feet per year per acre]. After a site visit, Edwards Aquifer Authority staff note that groundwater discharging from the well is entering a state watercourse in an uncontrolled manner and collecting behind an on-channel dam from which it is then diverted for irrigation. Because well water becomes state water after it enters a state watercourse in an uncontrolled manner, authority staff changes its recommendation from 600 acre-feet per year to 0 acre-feet per year. Landowners challenge the recommendation and seek a contested case hearing. During the hearing, it is learned that 7 acres are irrigated directly from the well head with the rest irrigated from behind the dam, resulting in a permit recommendation from the administrative law judge of 14 acre-feet per year; Edwards Aquifer Authority gives the landowners 14 acre-feet per year.)

With the drought and the issues it has caused landowners and water managers, it would also have been helpful for Porter to include a discussion on lakefront property (the certainty of lake levels and littoral rights). A discussion of superior rights and how to value water would have also been useful inclusions.

Writing a non-fiction book requires a monumental effort. I know, because I’ve been failing at it for the past 10 years. Each minor and major topic is a potential black hole of side stories and fact checking, which is further complicated when you find out that the facts you are fact checking are not, in fact, facts. If your goal is to be 100% accurate, your goal is to not finish your book (Porter 2; Mace 0). We can’t all be Robert Caro, dedicating 10 years of full attention to each book.

So inevitably, there are inaccuracies and misstatements in the book:

- All surface water rights have been granted. (This is perhaps true for some very senior run-of-river rights, but there are high-flow events available for permitting, not to mention temporary permits.)
- Landowners have a right to divert 200 acre-feet without a permit. (This is debatable among legal scholars.)
- The state has 23 minor aquifers. (There are 21.)
- The recharge zones of most of our major aquifers are environmentally protected. (Nope.)
- Rice farmers have a senior right but the Lower Colorado

River Authority has the right to curtail that right.

(Nope.)

- The Texas Water Development Board should create a groundwater conservation district in Val Verde County.

(The Board doesn't have the authority to do this.)

Descriptions of the desired future condition process and groundwater desalination at El Paso are hopelessly mangled.

Nonetheless, despite being a failed writer and a grumpy technocrat, I found a lot to like in the book. I loved reading Porter's take on the East case, Del Rio water issues, metering, opinions by the attorney general, and how people really need to pay attention to water when making property disclosures. This is also a good-looking book. Published by Texas A&M University Press, the book is a strongly bound softcover, in color, and beautifully formatted and copy-edited.

Water policy changes quickly, especially in this drouthy and post-Day and McDaniel world. Hopefully, a revised edition is planned for the future to include new developments and to address the concerns mentioned above. And always remember to make sure you talk to your favorite water attorney before you do anything with water and your property.