

GROUNDWATER MANAGEMENT AND THE DFC PROCESS

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THE CHALLENGE FOR THE DFC PROCESS

- GCDs are using “geographic area” language of Section 36.108(d) to subvert joint planning as intended by the Legislature
- Instead of jointly planning, GCDs have used district boundaries and county lines to set DFCs based on local political considerations
- Aquifer management has become lost in the process

SECTION 36.108(D)

- “(d) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall establish desired future conditions for the relevant aquifers within the management area. **In establishing the desired future conditions of the aquifers under this section, the districts shall consider uses or conditions of an aquifer within the management area that differ substantially from one geographic area to another.”**

SECTION 36.108(D)

- “The districts may establish different desired future conditions for:
 - (1) Each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or
 - (2) Each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.”

SECTION 36.108(D)

- “Geographic area” is not a defined term
- Presents challenges:
 - From a statutory interpretation standpoint
 - From a hydrological standpoint
 - From a legal standpoint

FROM A STATUTORY STANDPOINT

- “Political subdivision” is a defined term, but is not used in 36.108
- Therefore, political subdivision lines are not contemplated as a basis for different DFCs
- TWDB agrees: political subdivision cannot be the sole basis for differentiating DFCs

FROM A HYDROLOGICAL STANDPOINT

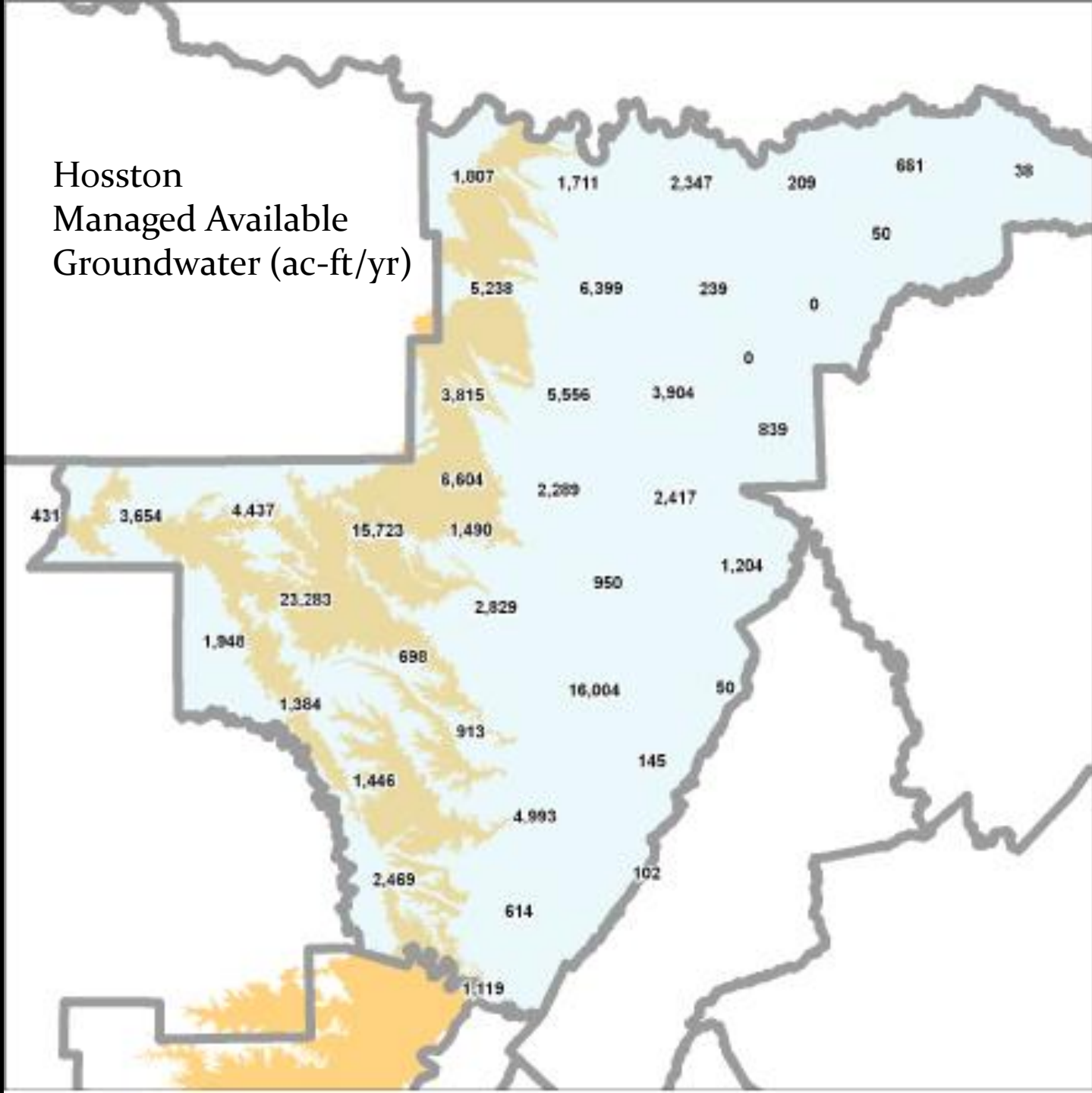
- 1925: Water control and improvement districts based on reservoirs and subdivisions of reservoirs
- 1971: Section 52.001 carried forward the reservoir and subdivision of reservoir concepts
- Idea: districts had to be coterminous with a reservoir boundary
- Should not draw a management line where production on one side can affect water on the other
- GMAs were established based on aquifer boundaries

FROM A LEGAL STANDPOINT

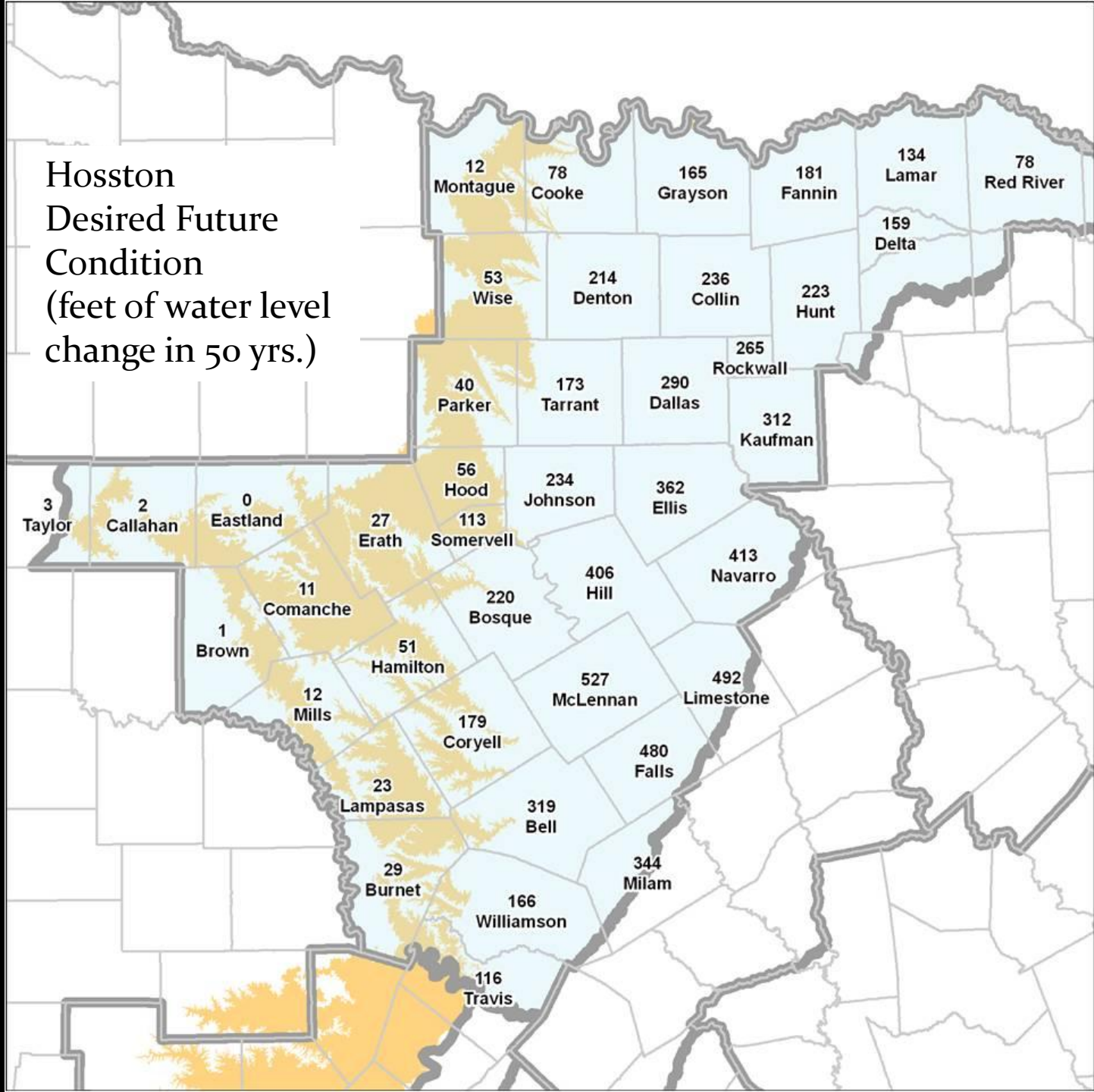
- *Marrs v. Railroad Commission* – Texas Supreme Court 1944
- “This Court has many times said that the Railroad Commission cannot indulge in unjust, unreasonable, or arbitrary discrimination between different oil fields, or between different owners in the same field.”
- RRC can’t allow a different amount of production in one area of a field than allowed across an “artificial” line in a different area of the same field because fluids will flow across the line in response to the allowed production.
- “It is the taking of one man's property and the giving it to another.”

An Example: GMA 8

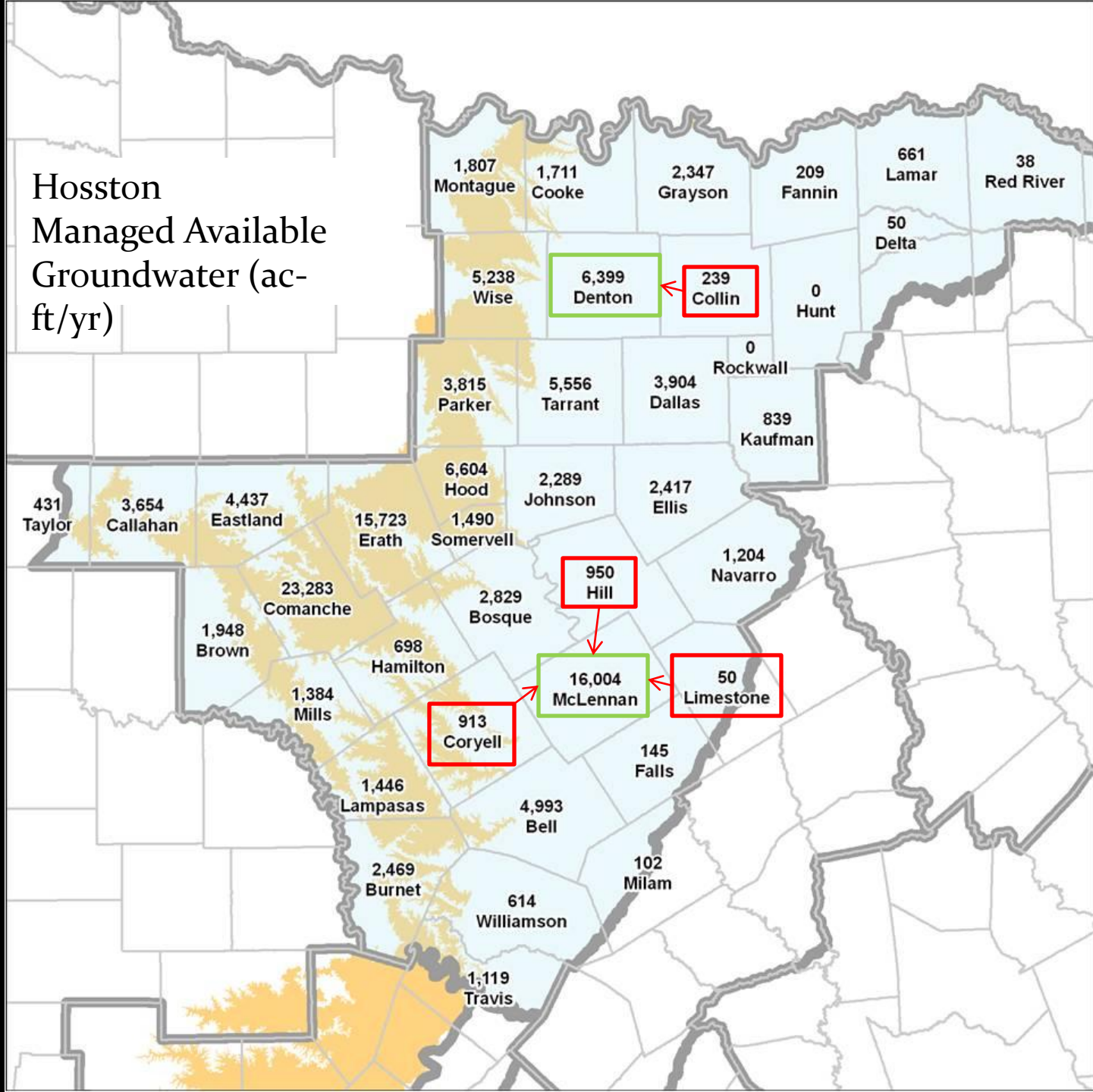
Hosston
Managed Available
Groundwater (ac-ft/yr)



Hosston
Desired Future
Condition
(feet of water level
change in 50 yrs.)



Hosston Managed Available Groundwater (ac- ft/yr)



McLennan



Hill

GMA 1 COMMENT

- “The argument that DFCs should be continuous across county lines is a moot point in my opinion. There are already examples of approved DFC conditions in other GMAs with differences on either side of a county line in the same aquifer, specifically GMA-8, Lampasas and Burnet County.”
 - --Ray Brady, witness for Hemphill County UWCD, November 11, 2009

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- “I think it’s clear that we all, or many of us think that this whole process is fundamentally flawed, and that the legislature needs to change some of the rules.”
- “...the ability to politically control the movement of ground water and/or surface water for that matter based on (unknown) local conditions will hurt the State...”
 - --Jack Hunt

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- “I think the system that we’ve been given to manage groundwater in the State of Texas is basically flawed, and I think that this [joint planning] exercise is an attempt to correct that, and I, you know, the jury’s out on the decisions that have been reached, that will be reached, because most of these GMA, DFCs are in process.”
- “I’m not so sure that’s what we have is the right answer, but I’m going to vote for it, acknowledging what I think might be the ultimate answer, that the legislature is going to have to take some serious, a serious look at this issue in the future.”
 - --Weir LaBatt

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- “I think you all in the audience can get the sense that we’re all trapped here...”
 - --James Herring

RECOMMENDATION

- *Amend Section 36.108(d) as follows:*
- (d) Not later than September 1, 2010, and every five years thereafter, the districts shall consider groundwater availability models and other data or information for the management area and shall establish desired future conditions for the relevant aquifers within the management area. ~~In establishing the desired future conditions of the aquifers under this section, the districts shall consider uses or conditions of an aquifer within the management area that differ substantially from one geographic area to another.~~
- The districts may establish different desired future conditions for:
 - (1) Each aquifer, subdivision of an aquifer, or geologic strata located in whole or in part within the boundaries of the management area; or
 - ~~(2) Each geographic area overlying an aquifer in whole or in part or subdivision of an aquifer within the boundaries of the management area.~~

RATIONALE

- Require joint planning as intended—based on aquifers and not political units
- Preserve local control without allowing local politics to render the state water plan moot
- Protect private property rights by eliminating situations where rules or production limits on one side of a county line differ from those on the other