



August 20, 2020

The Honorable Ken Paxton
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Dear General Paxton,

Please accept this letter as a formal request for an Attorney General opinion concerning the boundary line between the High Plains Underground Water District ("HPWD") and the Panhandle Groundwater Conservation District ("PGCD") in Potter County. I appreciate the opportunity to receive insight and clarity on this issue.

As Chairman of the Senate Committee on Water & Rural Affairs, I oversee water resources in Texas, which include both surface and groundwater management. I am writing to request clarity on a boundary issue that has arisen concerning the boundary between HPWD and PGCD in Potter County. The specific question I am seeking to have answered is to what boundary line the HPWD, and PGCD are required to recognize as the boundary between the two water districts in Potter County?

I. The High Plains Underground Water Conservation District was created by the Legislature with the stated boundary "along the meanders of the caprock" of the High Plains Escarpment.

The HPWD was the first groundwater conservation district created in the State of Texas. On March 6, 1951, the Board of Water Engineers designated the aquifer-based boundaries of the underground water reservoir in the Ogallala formation south of the Canadian River in North Texas.¹ On September 29, 1951, an election was held for the creation of the HPWD. The Petition for Organization of High Plains Underground Water Conservation District No. 1 stated the area boundaries of the new HPWD.²

In 1953, the 53rd Texas Legislature passed SB 30, which is the enabling legislation creating HPWD. The legislation charged HPWD with managing the area within "Subdivision No. One of the Underground Water Reservoir, High Plains Area, Ogallala Formation, South of Canadian

¹ EXHIBIT A: Underground Water Reservoir Designation Order, Office of the Board of Water Engineers, March 26, 1951.

² EXHIBIT B: Petition for Organization of High Plains Underground Water Conservation District No. 1.

River” confirmed by election as the legal boundary of HPWD.³ The Legislature set the legal boundary of HPWD by expressly incorporating the metes and bounds description of the boundary from the Resolution Canvassing Returns and Declaring Results of Confirmation Election dated October 11, 1951, recorded in Volume 149, Page 158 of the Deed Records of Lamb County.⁴ In relevant part, the metes and bounds description reads: “...Thence along the west [Amarillo] city limit to the caprock of the High Plains Escarpment; Thence, west *along the meanders of the caprock* to the Potter-Oldham County line....” This established boundary along the “meanders of the caprock” was designed by the Board of Water Engineers to correspond with the underlying Ogallala Aquifer.⁵ The Board of Water Engineers designated the district/aquifer boundary based upon geologic formations that are present along the caprock boundaries using the best available science at the time. The boundaries of the caprock were historically drawn following the caliche layer of the geologic formation known as the Llano Estacado.⁶

II. The Panhandle Groundwater Conservation District was created in 1955, and subsequently expanded up to the boundary of HPWD in Potter County in 2000.

The PGCD was created by the Legislature in 1955 and began operating in 1956 in Gray, Carson, Armstrong, and a portion of Potter Counties. The boundary of PGCD has since been extended through elections, the most recent of which took place in 2000. The 2000 election extended the border of PGCD to include all land in Potter County that was not within the bounds of HPWD. The signed petition states, “[t]he territory which it is hereby petitioned to add to and become a part of Panhandle Groundwater Conservation District is that part of the County of Potter, State of Texas, *not currently within the bounds of High Plains Underground Water Conservation district No. 1....*”⁷ Furthermore, the petition states for a second time, “[t]he territory which it is hereby petitioned to add to and become part of (PGCD) is that part of the County of Potter, State of Texas, *not currently within the bounds of the High Plains Underground Water Conservation District No. 1....*”⁸

³ EXHIBIT C: SB 30, 53R.

⁴ EXHIBIT D: Resolution Canvassing Returns and Declaring Results of Confirmation Election, October 11, 1951.

⁵ EXHIBIT A: Underground Water Reservoir Designation Order, Office of the Board of Water Engineers, March 26, 1951.

⁶ **CAPROCK.** The cap, or hard layer, underlying the [Llano Estacado](#) is a major geological feature known to Texans as the Caprock. It is not a rock layer in the usual sense of the term but is more technically a "hard-pan" layer that developed a few feet below the ground as highly mineral subsoil particles cemented themselves together to form a rock-like layer that resists erosion. Although the name Caprock technically applies only to the formation itself, the expression is often loosely used to mean the whole Llano Estacado. The Caprock escarpment was formed by erosion about one million to two million years ago. Prehistoric nomadic hunters, Plains Apaches, and Comanches lived in the region. The Spanish explorer Vázquez de Coronado⁹ traveled the area in 1541. The Caprock escarpment forms a natural boundary line between the High Plains and the lower rolling plains of West Texas. It stretches from the [Panhandle](#) into Central Texas and can be seen most prominently in Briscoe, Floyd, Motley, Dickens, Crosby, Garza, and Borden counties, where it reaches its highest elevations, rising abruptly above the plains at 200, 500, or as much as 1,000 feet. The east-facing wall is often cut by rivers, forming canyons such as [Palo Duro Canyon](#). (Source; <https://tshaonline.org/handbook/online/articles/rxc01>)

⁷ EXHIBIT E: Petition for Organization of PGCD, June 14, 2000.

⁸ *Id.*

III. The Potter-Randall County Appraisal District currently utilizes a boundary that does not follow the boundary currently recognized by the Panhandle Groundwater Conservation District nor the High Plains Water District.

The PRAD currently utilizes a boundary line that does not follow the “meanders of the caprock,” which the Legislature designated as the governing HPWD boundary line or the boundary used by PGCD. Instead, PRAD currently uses the boundary line that follows along section boundaries of tracts of land that has not been utilized by either groundwater conservation district. When HPWD was established in 1951, cost effective technology did not exist to accurately map the “meanders of the caprock.” District records show that this boundary was created prior to 2009 and maintained following a series of meetings in 2010, 2011, and 2012 with PRAD, HPWD, and PGCD.⁹

IV. The Potter-Randall County Appraisal District seeks an accurate representation of the "meanders of the caprock" boundary line.

In 2018, PRAD requested that HPWD confirm the location of its boundary. PRAD clarified in an email from its Chief Appraiser that “[i]t is our opinion that the appraisal district records *should be corrected to reflect the boundary as stated in the original order.*” PRAD’s Chief Appraiser further clarified that it is not attempting to change the boundary, but update its records with new technology “to reflect the original boundary as stated in the original documentation.”¹⁰ HPWD now utilizes the latest in Geographic Information Systems (GIS) technology to precisely map the “meanders of the caprock” in Potter County and has provided this information to PRAD.

The GIS mapping technology currently presents the most accurate method to track the “meanders of the caprock” boundary that is required to be followed by statute. As technology has continued to progress, HPWD believes so should the boundaries in order to most accurately follow statute using the best available science. At the time the boundaries were drawn, the current level of GIS mapping technology was not available. This GIS boundary is different from the current boundary line utilized by PRAD that follows broad section lines of tracts in the general area as created by PRAD. It is also different from the description in PGCD’s election petition which states the line in which the metes and bounds “follows approximately”. The three boundaries presented in this request are reflected in Exhibit F. Furthermore, PRAD continues to assess Potter County residents based off of their current interpretation of the boundary as indicated in Exhibit F.

⁹ EXHIBIT F: Map showing the three different boundaries: (1) the GIS delineation of the “meanders of the caprock” (the boundary of the HPWD as established by the Texas Board of Water Engineers in 1951 and confirmed by election and enabling legislation); (2) PRAD assessment/taxation boundary between HPWD and PGCD; and (3) the PGCD metes and bounds boundary as described in the 2000 election petition to annex portions of Potter County into PGCD outside the bounds of HPWD.

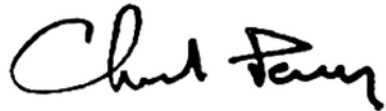
¹⁰ EXHIBIT G: Email from PRAD Chief Appraiser Jeff Dagley, June 14, 2018.

Based on the information and specified law, I would like to request an Attorney General opinion in order to clarify this issue on:

- **What boundary line Potter-Randall County Appraisal District, High Plains Underground Water Conservation District No. 1, and Panhandle Groundwater Conservation District are all required to recognize for purposes of property tax collection and groundwater management in Potter County?**

Thank you for the opportunity to discuss this issue. As always, I am committed to protecting our state's water resources and finding common sense solutions to maintaining Texas' infrastructure.

Thank you,

A handwritten signature in black ink that reads "Charles Perry". The signature is written in a cursive, slightly slanted style.

Charles Perry
Chair, Senate Committee on Water and Rural Affairs

CC: Office of the Attorney General: Opinion Committee