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BOOK NOTES

Charles R. Porter, Jr., *Sharing the Common Pool: Water Rights in the Everyday Lives of Texans*, Texas A&M Univ. Press, College Station, Tex. (2014); 240 pp; ISBN 978-1-62349-137-6.

Charles Porter is an assistant professor of history at Saint Edward's University in Austin, Texas, as well as a licensed real estate agent and broker. He has previously written on the development of water rights in central Texas. In addition, Mr. Porter has presented to the Texas legislature and other conferences, including the Texas Water Law Conference, where he conducted continuing legal education. *Sharing the Common Pool* draws on Porter's history and real estate knowledge, combined with his lifetime of experience as a water user in drought-prone Texas, to illustrate the increasing importance of water to the general population.

Broadly speaking, Porter's goals for *Sharing the Common Pool* are to (i) describe the development of water rights in Texas in an approachable manner, (ii) highlight the important relationship between water rights and property values, and (iii) suggest individual changes in water usage to better utilize this essential resource. The book is divided into five parts: Part One summarizes the hydrologic cycles and introduces basic water law principles; Part Two discusses ownership of water and water rights in Texas; Part Three addresses supply and demand in the water context, focusing on water use and regulation; Part Four analyzes the role of water rights in real estate transactions; and Part Five examines past and current water policy debates.

Part One (chapters 1-2) begins with an introduction to the hydrologic cycle, emphasizing water's ability to move among different geological "containers." By this, Porter means that the same drop of water can, over time, become surface water, diffuse water, and groundwater. Additionally, Part One discusses the general principles of riparian rights and prior appropriation, and how the interplay between English common law and Spanish legal principles led to the current state of appropriative water rights in Texas.

Part Two (chapters 3-5) examines who owns the water that exists in each of the geological containers described in Part One: surface water, diffuse water, and groundwater. Surface water, consisting of water in rivers or creeks, is owned by the State of Texas and held in trust for the people of the state. Although surface water is state-owned, landowners adjacent to surface water sources may divert or capture this water subject to permitting rules. Conversely, water existing in the geological containers, known as diffuse water and groundwater, may be privately owned. Diffuse water is the runoff from precipitation that is on a landowner's property but has not yet entered a watercourse. By contrast, underground pores and aquifers contain groundwater. Owners of the surface have

the right to use the groundwater held beneath their land as they choose, including the ability to sever the water rights from the land. In addition, the rule of capture permits a landowner to extract groundwater from a neighboring tract as long as such extraction is not done with malice or waste. Lastly, Part Two addresses shared surface water—that is, water that Texas owns along with either Mexico or another state.

Part Three (chapters 6–8), which comprises the largest portion of Porter’s book, focuses on the use and regulation of water throughout Texas. Part Three begins by discussing supply and demand as it exists in Texas today and how it will change with increasing population across the state. It also outlines the Texas State Water Plan and other mechanisms in place to address the sustainability of Texas’s water supply. Part Three next discusses the myriad uses of water throughout Texas, including domestic, livestock, agricultural, municipal, industrial, oil and gas, and environmental flows. Porter defines each of these uses and describes how they interact with one another. He also notes how the Texas Water Code protects each of these respective uses. The final portion of Part Three identifies and explains the entities that regulate water use. Among the regulating entities in Texas are groundwater conservation districts, watermasters, and river authorities. Groundwater conservation districts, where they exist, are political subdivisions that manage groundwater for many Texan counties to protect against over-exploitation. Watermasters help to account for and allocate surface water. The seventeen river authorities throughout the state manage water resources within their geographic areas and ensure the public benefits from these resources.

Part Four (chapter 9) discusses the significant implications that water rights can have on real estate values and transactions. The discussion addresses how water availability can change the value of land and how the value of land impacts services like schools and health services that receive funding from ad valorem tax revenue. When land values decrease, as they do when water rights are unavailable, the tax revenue decreases as well. In addition, Porter calls attention to the various disclosure requirements incumbent on real estate agents and anyone attempting to sell land. For example, in the case of a plot of land supplied by well water, a seller must disclose any information relevant to the water’s availability or quality. Part Four also illustrates the various forms water rights transfers may take.

Part Five (chapters 10–11) ties the previous chapters together by engaging the issue of water policy, both historically and looking forward. This section examines three significant cases in Texas water jurisprudence and how they have shaped water policy: *Houston & Texas Central Railroad Co. v. W.A. East*; *Pecos WCID No. 1 v. Williams*; and *City of Del Rio v. Clayton Samuel Colt Hamilton Trust*. The cases highlight the rule of capture and the competing interests of water users, ranging from private investment to municipalities. Porter also discusses the controversy surrounding Living Waters Artesian Springs, where the rule of capture allowed private landowners to draw significant amounts of water from the Edwards Aquifer. The private landowners created a catfish farm in order to avoid wasting the water and held out until the San Antonio Water System paid nearly \$40 million for the water rights. A large portion of Part Five explores alternative methods of meeting the high demand

for water, such as desalinization plants and effective use of reclaimed water.

Overall, *Sharing the Common Pool* provides a basic framework for understanding water rights in Texas, including how those rights are determined and the significance of those rights for Texans. While Porter's book is geared toward those in the Lone Star State, certain aspects—such as the competing private and public demands on water resources and the importance of water to real estate transactions—are universally applicable to other states with scarce water resources. The book's discussion of legal principles and case law is somewhat vague, though this may be a result of Porter's targeting non-attorneys as his primary audience. Porter tempers this discussion by drawing attention to the importance of legal counsel in land transactions, particularly when water rights are uncertain. *Sharing the Common Pool* serves as a good primer for lawyers and non-lawyers alike who are interested in learning about Texas water rights.

Rafael Mendez

James Salzman, *Drinking Water: A History*, Overlook Duckforth Publishers, New York (2012); 320 pp; ISBN 978-1468307115.

James Salzman is the Samuel Fox Mordecai Professor of Law and the Nicholas Institute Professor of Environmental Policy at Duke University. Despite this legal background, his book, *Drinking Water: A History*, takes a historical, sociological, and political approach to analyzing humankind's relationship with drinking water. Salzman explores the human use and conception of drinking water from biblical times through the present in order to explain how society arrived at its current understanding of one of our most valuable natural resources. The book takes a worldwide perspective, exploring the politics of water from the United States to France to Bangladesh, and everywhere between. Through this framework, Salzman seeks to examine one fundamental issue with innumerable facets: our relationship with drinking water.

In the first chapter, "The Fountain of Youth," Salzman examines the mythical role that water has historically played in world history and mythology. Using Juan Ponce de León's mythical search for the Fountain of Youth as his first example, the author explores the various mythical and religious qualities attributed to water throughout the centuries. He notes that the first myth surrounding water, the goddess Ishtar's journey to the Underworld, dates back five thousand years to ancient Mesopotamia. The English knight John Mandeville also told stories of waters in China that could cure anyone of "any malady he has." In addition, Salzman discusses myths imparting water's supernatural qualities from the Middle East, Norway, Finland, China, Greece, India, and North America. He concludes the chapter by describing Bernadette Soubirous's discovery of waters in Lourdes, France, to which the Catholic Church ascribed miraculous qualities. Throughout human history, water has played a role that transcends mere sustenance.

Salzman's second chapter addresses access to drinking water throughout world history. The chapter begins by introducing a debate that courses through the rest of the book: Should drinking water be treated as a human right or as a