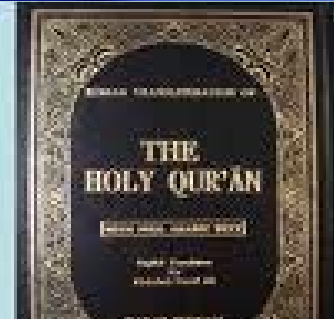
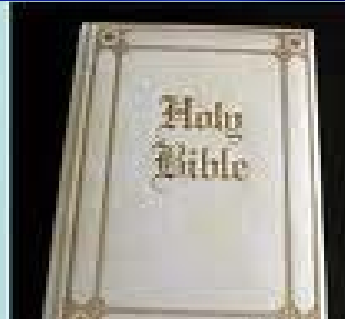
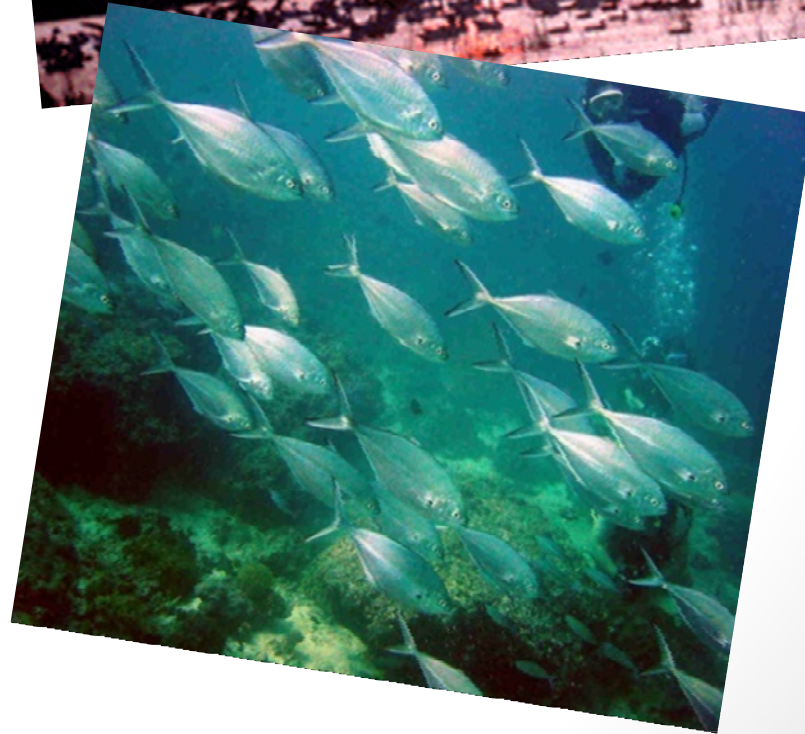


# The Role of Ethics in Your Environmental Practice

Amy Hardberger  
Assistant Professor  
St. Mary's School of Law

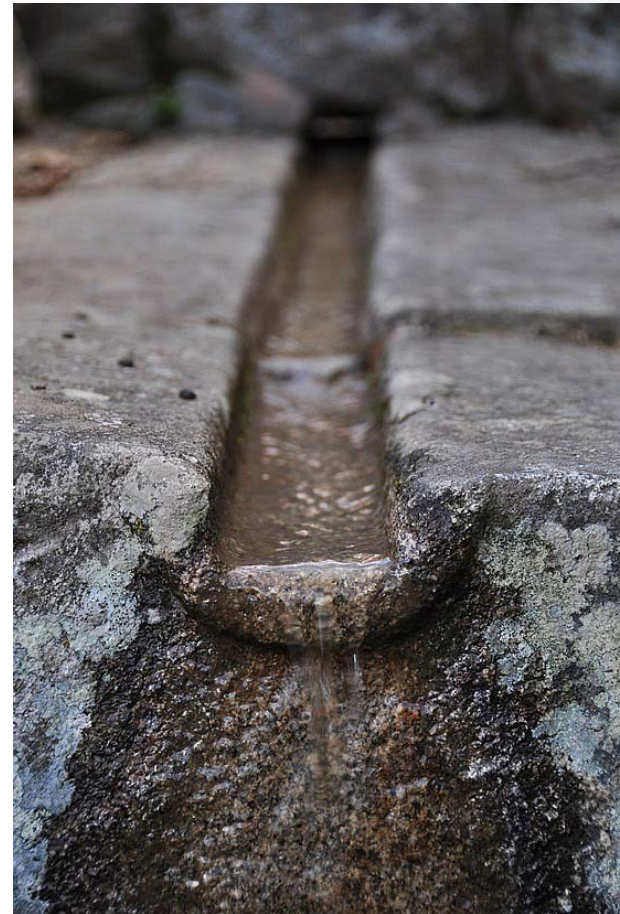


# Water = Life



The waters in the sky, the waters of rivers, and water in the well whose source is the ocean, may all these sacred waters protect me.

water prayer from the Hindu Rigveda



# Public Trust Doctrine

“It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing” free from obstruction or interference from private parties.

-Illinois Central R.R. Co. v Illinois, 146 U.S. 387 (1892).



# Precautionary Principle

The incorporation of a margin a safety when heath and safety of people or the environment can be affected by the outcome.

If an action or policy has a suspected risk of causing harm to the public or to the environment, in the absence of scientific consensus that the action or policy is harmful, the burden of proof that it is not harmful falls on those taking an action.



“For the most part, the principal threat to animals stems from the destruction of their habitat. The destruction may be intentional, . . . , or it may be unintentional . . . . Whether it is intentional or not, however, the result is unfortunate for the species of animals that depend on that habitat, most of whom are already living on the edge of survival.” – Rep. Sullivan



Purpose: “to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved . . . .” ESA

“The plain intent of Congress in enacting” the ESA “was to halt and reverse the trend toward species extinction, whatever the cost.” – *TVA v Hill*, 437 U.S. 153, 184 (1978).

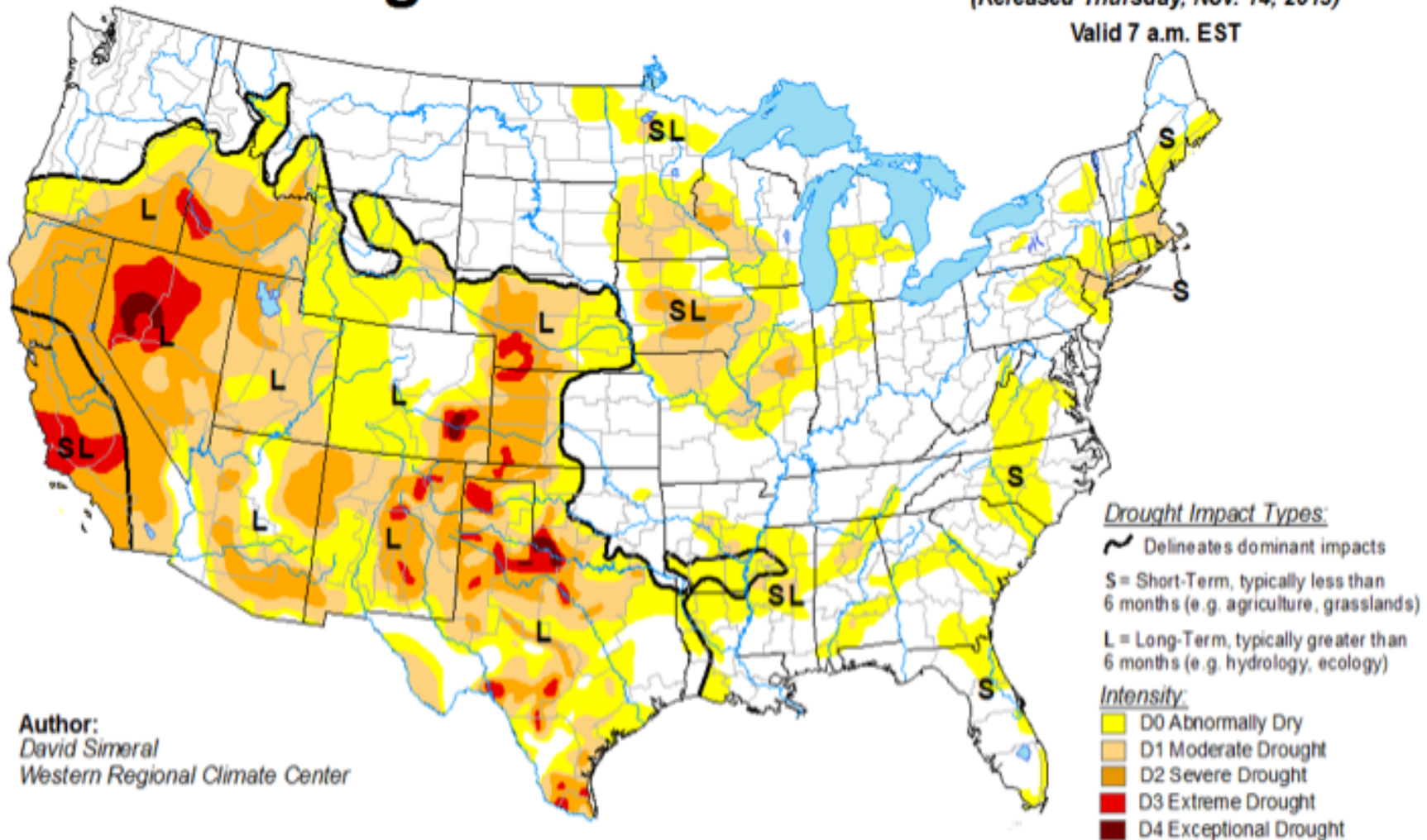


*Water, water everywhere,  
no'r a drop to drink*

Samuel Taylor Coleridge

# U.S. Drought Monitor

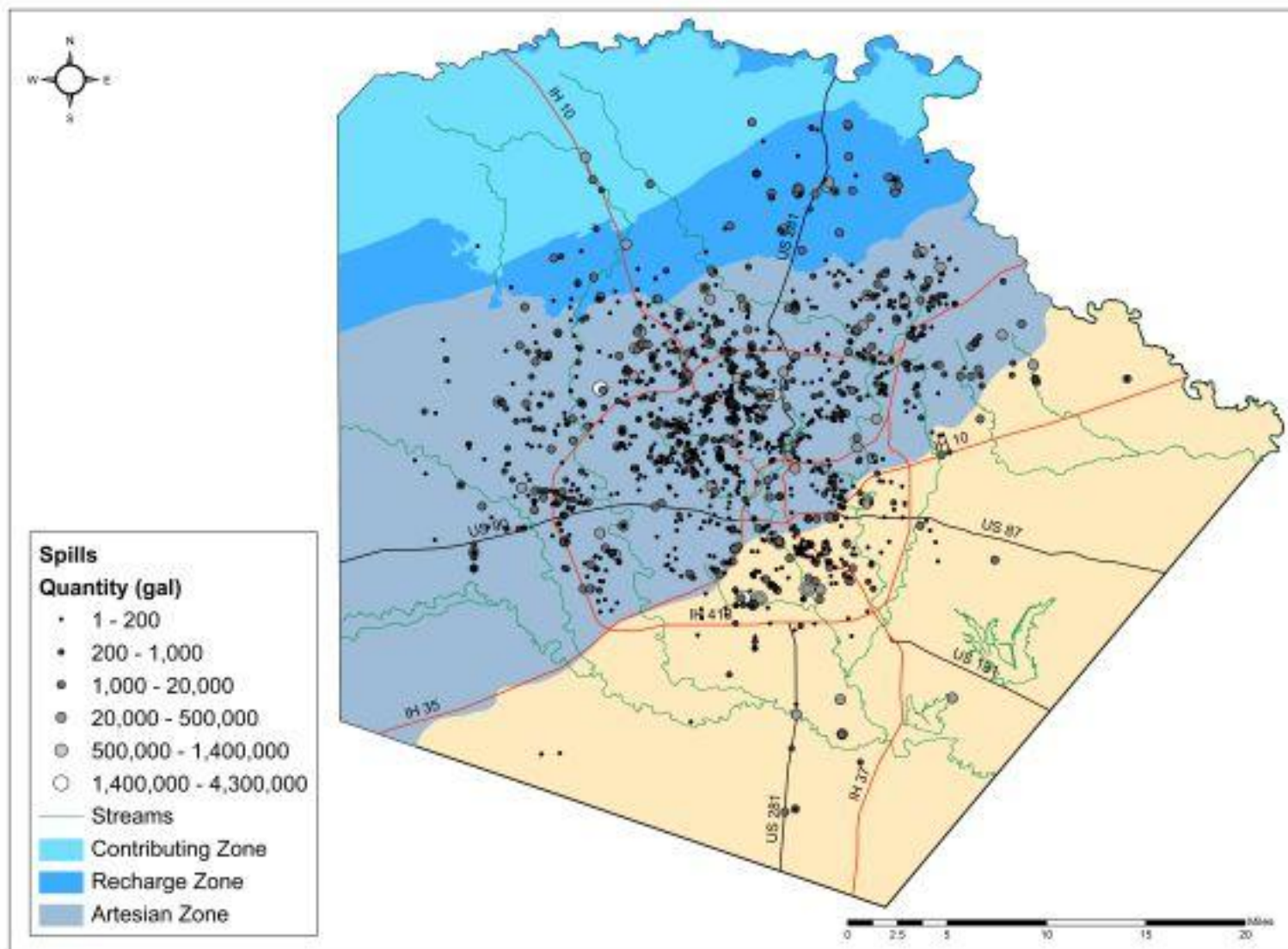
November 12, 2013  
(Released Thursday, Nov. 14, 2013)  
Valid 7 a.m. EST



Author:  
David Simeral  
Western Regional Climate Center



## WASTERWATER SPILLS WITHIN BEXAR COUNTY SAN ANTONIO REGION



Created by: GeoTex Environmental Solutions  
Projection: GCS\_North\_American\_1983





“[a]ll ethics rest upon a single premise: that the individual is a member of a community of interdependent parts”

Aldo Leopold, A Sand County Almanac

“The need for additional guidance relating to the rules of legal ethics seems particularly strong in the environmental arena, in part because public safety is often an issue underlying environmental laws.”

- Irma S. Russell, ISSUES OF LEGAL ETHICS IN THE PRACTICE OF ENVIRONMENTAL LAW, 327 (ABA Publishing 2003).

# ABA Model Rules of Professional Conduct Preamble

2) As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and **explains their practical implications** . . . As negotiator, a lawyer seeks a result advantageous to the client **but consistent with requirements of honest dealings with others** . . . .

9) In the nature of law practice, however, **conflicting responsibilities are encountered**. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living.

# ABA Model Rules of Professional Conduct Rule 1.1: Competence

A lawyer shall provide competent representation to a client. Competent representation requires the **legal knowledge, skill, thoroughness** and preparation reasonably necessary for the representation.

# ABA Model Rules of Professional Conduct Rule 2.1: Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

# ABA Model Rules of Professional Conduct

## Rule 3.3: Candor toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; . . .

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. . . .

# Duty of Candor to Nonclients?

“The environmental lawyer’s duty of candor is tested frequently, and the test is not one that the lawyer can ‘pass’ simply by being open and straightforward about everything . . . The lawyer has a duty of candor toward the court, or tribunal, toward opposing parties and opposing counsel, and to others.”

- Irma S. Russell, ISSUES OF LEGAL ETHICS IN THE PRACTICE OF ENVIRONMENTAL LAW, 327 (ABA Publishing 2003).

“The lawyer’s duty to nonclients can be particularly troubling in the environmental area when an environmental condition creates a risk of harm. It is troubling because of the harm itself and, secondarily, because of the potential risk of tort liability to the environmental lawyer if someone is harmed by the client’s actions.” - *Id.* at 333.

# ABA Model Rules of Professional Conduct Rule 4.4: Respect For Rights Of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.”

ABA Model Rules of Professional Conduct  
Preamble, ¶16

## Water/Env. Ethics

- Participation
- Equality
- Common Good
- Stewardship



Thank you  
ahardberger@stmarytx.edu  
[www.texaslivingwaters.org/texaswatersolutions](http://www.texaslivingwaters.org/texaswatersolutions)

ST. MARY'S UNIVERSITY



School of Law