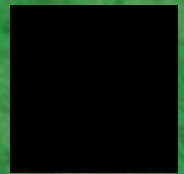




PROPERTY --- TAXES



New Rules Affecting Wildlife Management



Judon Fambrough
attorney at law

TECHNICAL REPORT

1 6 0 7

JULY 2010

TR

Property Taxes: New Rules Affecting Wildlife Management

Judon Fambrough
Attorney at Law



Texas A&M University

March 2003
Revised July 2010

© 2010, Real Estate Center. All rights reserved.

Property Taxes: New Rules Affecting Wildlife Management

Recreational property fuels the rural Texas land market. Fortunately for recreationally motivated buyers, it is no longer necessary to demonstrate a legitimate farming or ranching practice to get a property tax break on rural land.

In 1995, Texas voters approved a constitutional amendment recognizing wildlife management for open space appraisal. Statutory changes in 2001 added additional guidelines. If the land being purchased is classified as “open space” for appraisal purposes, converting it to wildlife management use can maintain that status and the favorable property tax treatment that goes with it.

What is Open Space Appraisal?

Rural landowners can receive substantial tax savings through either an agricultural use appraisal or an open space appraisal. Under agricultural use, the landowner must qualify based on his or her primary occupation and sources of income (Sections 23.41 through 23.47). For an open space appraisal, the land, not the landowner, must qualify based on its current and past usage (Sections 23.51 through 23.59). Rural land purchased by urban landowners is more apt to qualify for open space appraisal than agricultural use appraisal.

To qualify for **open space appraisal** (better known as 1-d-1), the land must be currently devoted principally to an agricultural use to the degree of intensity generally accepted in the area. And for five of the preceding seven years, it must have been used principally for agricultural purposes or for the production of timber or forest products. The owner must file a prescribed application form with the chief appraiser of the local appraisal district providing all necessary information before May 1.

Land uses that qualify for open space appraisal status fall into five categories: planting and producing crops; raising or keeping livestock or exotic animals; devoting land to floriculture, viticulture and horticulture; producing or harvesting logs and posts for agricultural improvements; and wildlife management (Section 23.521). The last category allows recreational landowners to qualify for open space appraisal without actively participating in a farming and ranching operation.

For more information on agricultural use and open space appraisals, see Center publication 1361, “Ag-Use Exemption: Fact or Fiction?” The publication is available free at <http://recenter.tamu.edu/pdf/1361.pdf>.

Requirements for Wildlife Management

In 2001, Texas legislators added Section 23.251 to provide guidelines for qualifying land for wildlife management use. The statute requires the Texas Parks and Wildlife Department (TPWD), with the assistance of the Texas Comptroller of Public Accounts, to develop standards for determining when land qualifies for wildlife management. Texas Cooperative Extension

will assist in developing the standards when asked. The Comptroller must adopt the standards and then distribute the rules to each appraisal district.

The adopted standards require tracts to be a minimum size to qualify for wildlife management status. The minimum size depends on the species being managed, the region and other factors TPWD deems relevant. The chief appraiser and the appraisal review board must follow the standards.

According to the statute, wildlife management status requires the following.

- The land must qualify for open space appraisal when the application for wildlife management is filed. (Effective Jan. 1, 2010, land that qualifies as timberland under the Tax Code is also eligible for wildlife management.)
- The land must be used primarily for the management of one or more indigenous wild animals (targeted or managed species), not farming or ranching.
- The targeted species must be used for human consumption, medicine or recreation.
- The land must be managed “to the degree of intensity typical for the area” and must properly sustain the targeted species.

At the time the landowner applies for wildlife management status, at least three of the following seven management practices must be in use to sustain a breeding, migrating or wintering population of indigenous wild animals.

- (1) **Habitat control (habitat management).** Using the land to create or promote an environment beneficial to wildlife. This includes any beneficial manipulation of plants, ground cover or shelter for the managed species.
- (2) **Erosion control.** Employing practices that attempt to reduce or keep soil erosion to a minimum for the benefit of wildlife.
- (3) **Predator control.** Engaging in practices designed to manage predators. This is necessary only when the number of predators is harmful to the managed species.
- (4) **Providing supplemental supplies of water.** Supplying water in addition to natural water sources.
- (5) **Providing supplemental supplies of food.** Supplying food or nutrition in addition to that produced by the land.
- (6) **Providing shelter.** Creating or maintaining vegetation or artificial structures that shelter the targeted species during nesting and breeding and protect them from the weather and predators.
- (7) **Making census counts to determine population.** Taking periodic surveys and inventories to determine the number, composition and other relevant information about the targeted wildlife population to see if the objectives of the management practices are being met.

Qualifying Standards

Comptroller's Office guidelines clarify, to some degree, the some statutory requirements. For example, the statute states that land must qualify for open space appraisal or as qualified timberland appraisal before the landowner applies for wildlife management status.

The guidelines, however, state that the land must qualify for open space appraisal or as qualified timberland appraisal **the year before** the application is filed.

The targeted species must be indigenous to Texas. The guidelines define indigenous animals as those that originated in or naturally migrate through an area and are capable of living in that area naturally. Animals such as hummingbirds or waterfowl that live in an area seasonally qualify. Fish, whether indigenous or not, never do. The species cannot be imported or introduced to an area by man. Exotics, feral hogs or emus are among those that do not qualify.

The mere presence of an indigenous species is not sufficient to qualify land for wildlife management status. There must be a sufficient number of animals, including an adequate breeding population, to ensure a viable group for several generations. Does this rule disqualify land managed for an indigenous species such as bobwhite quail, which are steadily declining in some areas, or black bear and bison, which have practically vanished from Texas?

Beyrl Armstrong, a property tax consultant with Plateau Integrated Land & Wildlife Management, Inc., and a member of the committee that developed the standards for the TPWD, says that managing land for a declining population of northern bobwhite by eliminating predators, improving food sources and providing cover should qualify. This should be true even if the population decreases for reasons beyond the control of the land manager, such as a prolonged drought.

According to Armstrong, "If the habitat exists, there will be a place for the population to recover and sustain itself. However, if the population decline is due to inappropriate land management practices, then either the plan needs to be changed or a different species targeted."

The statute states the targeted indigenous species must be managed for human food, medicine or recreation. The guidelines provide that the first two (food and medicine) require active management, while the third (recreation) can be either active or passive. Bird watching, hiking, hunting, photography and other hobby-type activities qualify as recreational. The owner's mere enjoyment in owning and managing the land for wildlife fulfills the test.

The statute requires wildlife management to be the primary use of the property. Land devoted to wildlife management may be used for other purposes, but those uses must be subordinate to wildlife management. The chief appraiser gathers and considers all the relevant facts to determine the land's primary use.

2002 Guidelines

Guidelines issued in July 2002 offer information to assist tax appraisers in determining when property qualifies for wildlife management status. Four qualifications were added. These include a written wildlife management plan, implementation of the plan, accomplishment of certain practices annually and

the dedication of a minimum percentage of the land to wildlife management.

A written wildlife management plan must be submitted to the chief appraiser on a TPWD-supplied form before May 1. Described activities and practices must be consistent with TPWD recommendations for the region where the property is located. The plan must describe:

- the ownership of the tract and its past and current uses,
- the targeted indigenous animal(s),
- the goals for the property and
- the wildlife and habitat management activities and practices that support the targeted species.

The wildlife management plan must be implemented at the time the application is submitted, and a minimum of three of the seven management practices described earlier must be carried out annually.

A minimum percentage of the acreage within a tract must be dedicated to wildlife management if the tract was part of a larger tract that qualified for either ag use, open space or wildlife management appraisal the prior year. The minimum percentages, which translate into minimum required acres, vary depending in which of the 12 regions of the state the tract lies and the entity applying for the wildlife management status.

Statewide, minimum sizes range from 12.5 acres in East Texas to 100 acres in the Trans Pecos. The appraisal district board of directors for each county makes the determination of the exact acreage needed within the statutory guidelines.

Pooling Land to Form Associations

The guidelines permit landowners to pool lands to form wildlife management property associations (WMPA). To qualify for wildlife management status, the acreage within the association must be contiguous, but tracts separated by public roads or bodies of water still qualify. In addition, the association must have a written agreement legally binding each owner to perform activities described in the management plan.

The association must meet the same requirements as other landowners except that the minimum percentage (or number) of acres within the association that must be dedicated to wildlife management is slightly less than for individual owners.

To learn more about forming an association, see the online publication "Wildlife Management Associations and Co-ops" at http://tpwd.state.tx.us/publications/pwdpubs/media/pwd_bkw7000_0336.pdf.

2008 Texas Administration Code Rules and Standards

Effective December 11, 2008, the Comptroller of Public Accounts published comprehensive rules for qualifying and appraising land for Wildlife Management Use. These appear in Title 34, Chapter 9, Subchapter G, in rules 9.2001 through 9.2005 of the TAC. These rules must be scrutinized by any landowner contemplating switching to wildlife management use. Here is a summary of the rules. They can be accessed online at http://tpwd.state.tx.us/landwater/land/private/agricultural_land/.

Rule 9.2001 Purpose and Definitions. The purpose of the rules is to implement TAC Sections 23.51(1) and (7), and also

Section 23.251. Among other things, the rules create definitive standards for tax appraisers to follow in determining the qualification of property for appraisal for wildlife management use. This section specifically references three publications for further explanation and details of the rules:

- *Manual for the Appraisal of Agricultural Land* published by the Comptroller of Public Accounts. It can be obtained by contacting the comptroller's office or accessing it online at www.window.state.tx.us.
- *Guidelines for Qualification of Agricultural Land in Wildlife Management Use*, again published by the comptroller and accessible from the comptroller's office or online.
- *Comprehensive Wildlife Management Planning Guidelines* published by the TPWD. This document can be obtained by contacting the TPWD or getting it online at www.tpwd.state.tx.us.

The rules define critical terms such as (1) wildlife management practices, (2) wildlife management activities, (3) tract of land, (4) wildlife management property associations, (5) indigenous wildlife, (6) breeding population, (7) migrating population, (8) wintering population, (9) human use, (10) recreation and (11) wildlife use requirements.

Rule 9.2002 Wildlife Use Appraisal Regions. This section divides the state into 12 appraisal regions as designated by the TPWD. Each region includes the following counties. Each region is depicted separately in the map at the end of this article.

- (1) **Trans Pecos Region (TP)**—Brewster, Crane, Culberson, El Paso, Hudspeth, Jeff Davis, Loving, Pecos, Presidio, Reeves, Terrell, Ward and Winkler.
- (2) **High Plains Region (HP)**—Andrews, Armstrong, Bailey, Carson, Castro, Cochran, Crosby, Dallam, Dawson, Deaf Smith, Ector, Floyd, Gaines, Glasscock, Hale, Hansford, Hartley, Howard, Hutchinson, Hockley, Lamb, Lubbock, Lynn, Martin, Midland, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Sherman, Swisher, Terry, Upton and Yoakum.
- (3) **Rolling Plains Region (RP)**—Archer, Baylor, Borden, Briscoe, Callahan, Childress, Clay, Coke, Coleman, Collingsworth, Concho, Cottle, Dickens, Donley, Fisher, Foard, Garza, Gray, Hall, Hardeman, Haskell, Hemphill, Jones, Kent, King, Knox, Lipscomb, McCulloch, Mitchell, Motley, Nolan, Roberts, Runnels, Scurry, Shackelford, Stonewall, Taylor, Throckmorton, Tom Green, Wheeler, Wichita and Wilbarger.
- (4) **Edwards Plateau (Western) Region (EPW)**—Crockett, Edwards, Irion, Kimble, Menard, Reagan, Real, Schleicher, Sterling, Sutton and Val Verde.
- (5) **Edwards Plateau (Eastern) Region (EPE)**—Bandera, Bexar, Blanco, Burnet, Comal, Gillespie, Hays, Kendall, Kerr, Llano, Mason, San Saba, Travis and Williamson.
- (6) **Cross Timbers and Prairies Region (XT)**—Bell, Bosque, Brown, Comanche, Cooke, Coryell, Denton, Eastland, Erath, Hamilton, Hood, Jack, Johnson, Lampasas, Mills, Montague, Palo Pinto, Parker, Somervell, Stephens, Tarrant, Wise and Young.

(7) **Gulf Prairies and Marshes Region (Upper Coast) (UG)**—Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Harris, Jackson, Jefferson, Matagorda, Orange, Victoria, Waller and Wharton.

(8) **Gulf Prairies and Marshes Region (Lower Coast) (LG)**—Aransas, Brooks, Cameron, Hidalgo, Jim Wells, Kenedy, Kleberg, Nueces, Refugio, San Patricio and Willacy.

(9) **Post Oak Savannah Region (POS)**—Bastrop, Bee, Brazos, Burleson, Caldwell, Dewitt, Fayette, Franklin, Freestone, Goliad, Gonzales, Grimes, Guadalupe, Henderson, Hopkins, Karnes, Lavaca, Lee, Leon, Madison, Rains, Red River, Robertson, Titus, Van Zandt, Washington and Wilson.

(10) **Blackland Prairie Region (BP)**—Collin, Dallas, Delta, Ellis, Falls, Fannin, Grayson, Hill, Hunt, Kaufman, Lamar, Limestone, McLennan, Milam, Navarro and Rockwall.

(11) **Pineywoods Region (PW)**—Anderson, Angelina, Bowie, Camp, Cass, Cherokee, Gregg, Hardin, Harrison, Houston, Jasper, Liberty, Marion, Montgomery, Morris, Nacogdoches, Newton, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Trinity, Tyler, Upshur, Walker and Wood.

(12) **South Texas Plains Region (STX)**—Atascosa, Dimmit, Duval, Frio, Kinney, LaSalle, Live Oak, Jim Hogg, McMullen, Maverick, Medina, Starr, Uvalde, Webb, Zavala and Zapata.

9.2003 Wildlife Management Plan. This section basically explains what the wildlife management plan filed with the chief appraiser must contain. Among other things, it must detail the management practices and activities the landowner plan to implement. The plan must identify the targeted species.

The section discusses the specific nature of plans submitted by wildlife management property associations, referred to as WMPAs on the map at the end of this report. Likewise, it discusses what the plan must include when the land provides habitat for federally listed species of endangered or threatened species or candidates for listing as endangered or threatened. (These are referred to as ESs on the map.)

9.2004 Qualification for Agricultural Appraisal Based on Wildlife Management Use. This section reiterates all the qualifications discussed earlier in this report for qualifying and appraising land for wildlife management use starting with the first year and for each year thereafter.

9.2005 Wildlife Use Requirement. This section details the minimum number of acres required for each of the 12 regions. The amount (or percentage) of land required varies whenever an individual or a wildlife management property association submits the plan. Likewise, it varies whenever the land has been designated as habitat for endangered species, threatened species or candidate species for listing as endangered or threatened.

The minimum percentage required for wildlife management in each of the 12 regions is depicted in the map. The map was designed by Gregg Collum with Collum Enterprises using material from the TPWD website. Collum is a Realtor and MCE instructor.

The TAC describes two situations where these minimum percentages do not apply. The first is when:

- (1) the tract has continuously and without interruption qualified for agricultural appraisal based on wildlife management use beginning with the tax year 2002 and
- (2) the size of the tract, measured in acres, is equal to or greater than, the size of the tract on January 1, 2009.

The second exception applies to land located in Clay, McCulloch or Terrell County that qualified for agricultural appraisal based on wildlife management use in the tax year that began on January 1, 2008, if the present size of the tract, measured in acres, is equal to or greater than the size of the tract on January 1, 2008.

Plan, Implement, Document

Landowners and chief appraisers alike are perplexed by the statute's requirement that land granted wildlife management status be managed "to the degree of intensity typical for the area." How can this be measured? Because wildlife management is relatively new, there is little data to measure compliance. For this reason, the TPWD divided the state into 12 ecological areas and developed wildlife management guidelines and practices for each. Landowners may access these regional planning recommendations and other pertinent documents at the TPWD's website http://www.window.state.tx.us/taxinfo/proptax/agrland/agrland_2.html.

Armstrong considers these regional guidelines indispensable in preparing a written plan. The guidelines help the landowner select management practices appropriate for the region and applicable to the targeted species.

According to Armstrong, the key factors in getting the application for wildlife management accepted are:

- carefully crafting a plan based on the regional guidelines,
- designating the required minimum number of acres for the region and
- presenting the plan to the chief appraiser in a timely, orderly fashion.

Once the application is accepted, minimum levels of intensity for each practice outlined in the guidelines are necessary to maintain the land's wildlife management tax status. The appraisal district requires periodic inspections and reports to document compliance. Reports may include photographs, receipts, aerial pictures, surveys and other data evidencing compliance. Landowners should maintain good communications with the appraisal district and promptly supply all required information.

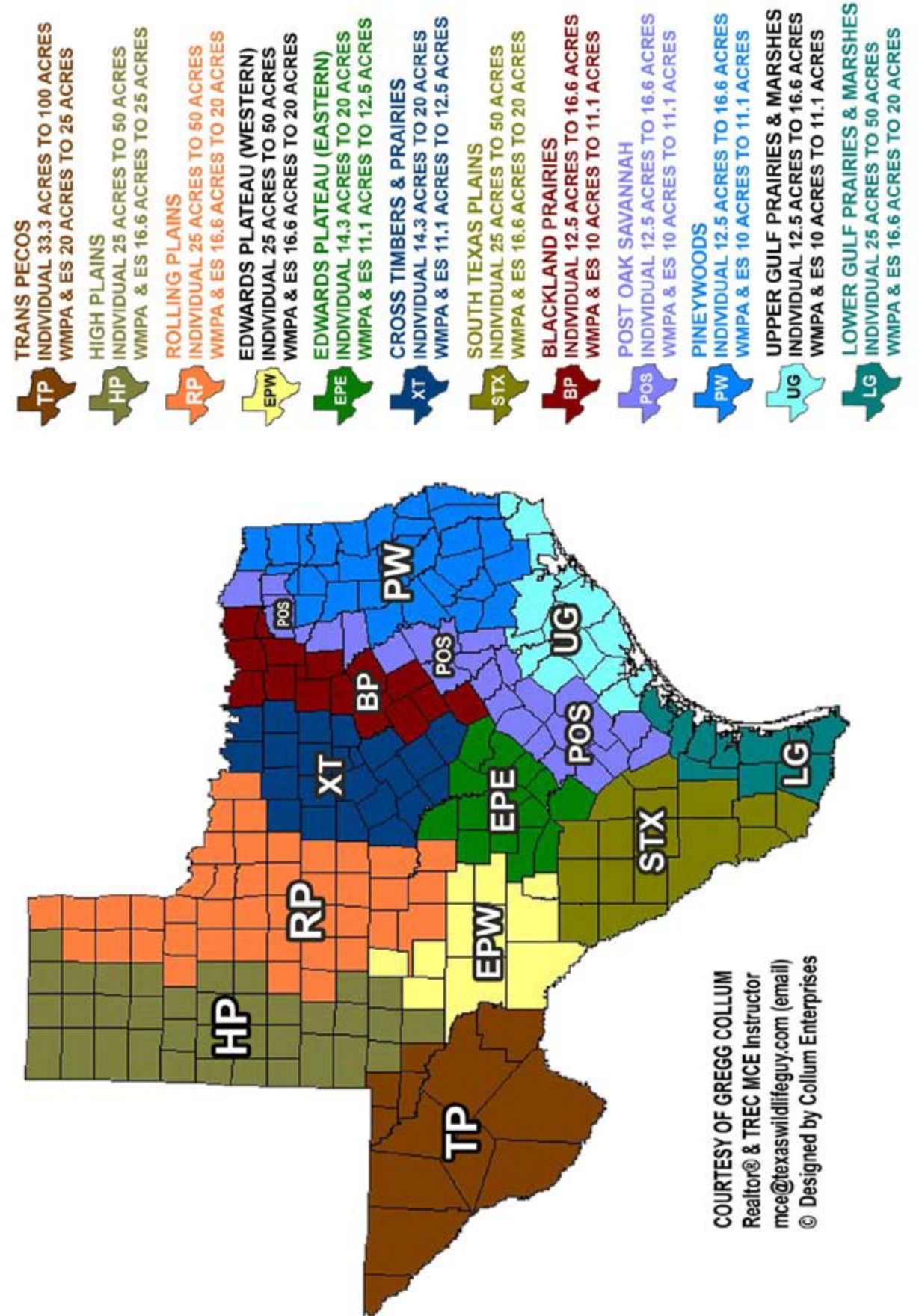
Tax Neutral Status

Because land must be appraised as open space or qualified timberland before it can be converted to wildlife management use, neither landowners nor appraisal districts achieve any additional tax benefit from the conversion. In this respect, wildlife management status is tax neutral.

Those who benefit from a wildlife management classification are landowners who no longer want to use their land primarily for agriculture or new landowners who have no agricultural intentions or skills. Some ranchers, for example, have discovered they can make more money from deer leases than from cattle. These people are freed from the burden of engaging in farming or ranching for tax purposes only.

NEW WILDLIFE USE APPRAISAL REGIONS & WILDLIFE MINIMUM ACREAGES

Located in the Texas Administrative Code -- RULES §9.2002 and §9.2005
EFFECTIVE DECEMBER 11, 2008



COURTESY OF GREGG COLLUM
Realtor® & TREC MCE Instructor
mce@texaswildlifeguy.com (email)
© Designed by Collum Enterprises



MAYS BUSINESS SCHOOL

Texas A&M University
2115 TAMU
College Station, TX 77843-2115

<http://recenter.tamu.edu>
979-845-2031
800-244-2144 orders only

DIRECTOR

DR. R. MALCOLM RICHARDS

ADVISORY COMMITTEE

CELIA GOODE-HADDOCK, CHAIRMAN College Station	NICK NICHOLAS, VICE CHAIRMAN Dallas
JOSEPH A. ADAME Corpus Christi	CATHERINE MILLER Fort Worth
DAVID E. DALZELL Abilene	JERRY L. SCHAFFNER Dallas
TOM H. GANN Lufkin	DOUGLAS A. SCHWARTZ El Paso
JOE BOB McCARTT Amarillo	LARRY JOKL, EX-OFFICIO Brownsville