

Methods and Challenges in the Credible Valuation of Water Rights in Texas

University of Texas School of Law

Austin, Texas, November 3 and 4, 2016

By: Charles Porter, Visiting Professor of University Studies, College of Education
St. Edward's University
www.charlesporter.com (512) 627-3793

and

Edmond J. McCarthy, Jr.
Jackson, Sjoberg, McCarthy and Townsend, L.L.P.

All Rights Reserved

Use prohibited without prior approval by Charles Porter and Ed McCarthy



George Washington Brackenridge, 1879
“Water renders the land its value.”

What is our purpose today?

... to discuss the challenges and our suggested methodology to determine the practical, credible, and defensible “fair market value” of a water right in Texas.

“Fair Market Value” Historical Definition

The price the property would bring when offered for sale by a seller desiring to sell, but not obliged to do so, and bought by a purchaser desiring to buy, but under no necessity of doing so.

– or shorter version -

The price a willing buyer and willing seller, neither being under any duress, will agree to in order to transfer title.

Fair Market Value in Texas now adds ...

... as modified by evidence § 51.003(b) authorizes the trial court to consider in its discretion, to the extent such evidence is not subsumed* in the historical definition.

*Included or absorbed (something) in something else

Plains Capital Bank v. William Martin. No. 13-0337, ___ S.W.3d ___ (Tex. March 27, 2015) [emphasis added]; *see* Tex. Prop. Code §51.003.

From Hirsch Westheimer, Michael D. Conner, April 9, 2015.

<http://www.hirschwest.com/fair-market-value-under-texas-property-code-section-51-003/>

Best Fair Market Value Definition for Water – by Bruggeman and Fisher – direct quote below.

“Market value is a key consideration when *financing or investing* [emphasis added] in income-producing properties. It is defined as follows:

The *most probable price* [emphasis added] which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller acting prudently and knowledgably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:...

Find the full text of this and thousands of other resources from leading experts in over 30 legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Methods and Challenges in the Credible Valuation of Water Rights in Texas

First appeared as part of the conference materials for the
2016 Texas Water Law Institute session
"Valuation of Water Rights"