

The background of the cover is a composite of two images. The top image shows a wide river or floodplain with a long, arched metal bridge spanning across it. The water is a muddy brown color, and there are green trees and bushes scattered throughout the landscape. In the distance, some residential buildings are visible. The bottom image shows a flooded street with several cars and a large truck partially submerged. People are using small boats and inflatable rafts to navigate the water. A sign for 'TideWell' is visible on the right side of the street.

TEXAS DISASTER LAW GUIDE

LEGAL CONSIDERATIONS
FOR EMERGENCY RESPONDERS
AND MANAGERS

ALFONSO LÓPEZ DE LA OSA ESCRIBANO | BRYAN SKY-EAGLE | TRACY HESTER



TEXAS DISASTER LAW GUIDE

**Legal Considerations for
Emergency Responders and
Managers**

**Edited by Alfonso López de la Osa Escribano,
Tracy Hester and Bryan Sky-Eagle**



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Recovering the past, creating the future

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FOREWORD

The significance and complexity of disasters, as well as the urgency of building resilience to those disasters, cannot be overstated. As I write this in the United States in Fall 2020, the COVID-19 pandemic continues to devastate communities as a health and economic crisis, wildfires are scorching land and cities in the west with a mounting death toll, western Louisiana is only beginning to think about rebuilding after clearing out the destruction caused by Hurricane Laura, Hurricane Sally formed and is headed to northern Gulf shores, and for only the second time in history there are five active tropical cyclones in the Atlantic.

Yet, as we strive to confront the challenges of today, so too must we continue to address remaining and systemic challenges from our past that continue to obfuscate our ability to derive solutions. With winds in excess of 130 mph, Hurricane Harvey made landfall in Rockport and Fulton, South Texas as a Category 4 storm on August 25, 2017. In the initial impact and torrential rain of the ensuing days, Harvey caused widespread destruction along the Texas coast, resulting in 103 confirmed US deaths and an estimated \$125 billion in damages—the second costliest hurricane ever, following Katrina. Three years later, Texas communities are still struggling to build back stronger, more resilient communities along the coast—communities that can better withstand the impacts of future events, and that are positioned to make a ‘developmental leap’ by mitigating risk while aligning growth with recovery efforts, all while simultaneously striving, against great adversity, to meet the demands of today.

The framework offered herein provides a beacon of light in a key but oft-obscured area of resilience, the legal considerations emergency responders and managers face when dealing with natural disasters. As we learned in Hurricane Harvey, it is vital that our first responders have crystal clear understanding and guidance on the extent of their authority to protect life and property. However, every disaster is unique, and too often our first line of defense—the very people we rely on to keep us safe in times of crisis—themselves are left to clarify complex legal concepts in urgent situations. From which rules or laws are suspended in times of disaster, to who may request and provide mutual aid assistance, to risk and liability in an emer-

gency response and more, Texas first responders need answers. This framework, crafted carefully with input from local emergency personnel as well as the Texas Division of Emergency Management, makes great strides toward enhancing the understanding needed to make tough calls in seemingly impossible times.

Notably, this project was supported by the Texas OneGulf Center of Excellence, a RESTORE Act funded consortium of nine top state institutions led by the Harte Research Institute (HRI) for Gulf of Mexico Studies at Texas A&M University-Corpus Christi with wide-ranging expertise in the environment, the economy and human health. The interdisciplinary project sought to better understand and offer recommendations on how Texas can help its environment, communities and social systems better rebound from Harvey. We are encouraged to offer this important work as a practical asset to Texas communities in strengthening their response and recovery frameworks, and look forward to continuing our partnerships to build a resilient Texas and Gulf.

Dr. Katya Wowk
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PREFACE

Natural disasters seem to be increasing nowadays on the planet. Texas is well situated to talk about it due to the number of hurricanes that recurrently impact the Lone Star state. The approach from decision-makers, first responders and the community has moved from real-time reactions to try to cope with the situation in the best way possible, towards prevention and preparedness, improving actions to face disasters by conceiving different possible scenarios and solutions in advance.

One might use different terms to denominate this new field of law that deals with disasters response and prevention: *Disasters Law*, *Disasters Recovery Law*, *Disasters Risk Reduction*, *Disasters and Resilience Law*, *Natural Disasters Management and Resilience Law*, among others. All of them want to witness the relevance of the law in dealing with understanding how to mitigate what traditionally has been called *Acts of God*, where communities were driven back to a stoic *fatum* resignation. The need to structure into a legal framework the capacity communities have to respond to natural or human-made disasters is critical today. The law regulates society. The law structures and responds to society's needs and fulfills the gaps existing. Not only do we have to resist, we also need to cope with the situation and be well prepared. We need to be resilient.

Through resilience we understand the human capacity to adapt with extreme flexibility to situations in order to overcome them. From an even more human psychological dimension, we may add too, the way traumatic situations make someone stronger. Resilience implies we rethink positions to imagine new solutions, to be prepared for similar scenarios in the future. Due to the intensity of climate disasters we unfortunately know in advance that those situations will happen again. Not only are resilient communities ready to overcome adversity, but disaster makes them grow stronger and reach their maximum resilient potential, as would a reborn Ave Phoenix. We never choose a natural catastrophe, but our self-determination to overcome it is critical. The impact caused by a natural disaster such as Hurricane Harvey in Texas, is tough to live through; it is traumatic from a human perspective. A resilient community empathetically and positively looks ahead while minimizing the real-time cost of human suffering, trying to get back to everyday life when possible, the sooner the better. Beneath Disasters Risk or Natural

Disasters and Response Law lies the humanistic dimension of the law, its inherent principle of protecting human lives and our community. Without this dimension, the law becomes null.

When setting a common legal framework for Disaster Risk Management, it is necessary to identify standard rules and see how the existing mechanisms can be improved where deficiencies exist. Without any doubt, the law has become a tool for disaster mitigation; moreover, when we need to manage society and the materialization and manifestation of natural disasters, their risks become a more recurrent matter.

The reflection on the research performed for this book has been very stimulating. The purpose of this handbook is to provide answers about the legal considerations emergency responders and managers should face when dealing with natural disasters and by analogy, to catastrophic situations.

We hope readers will find the answers they are looking for. From the Center for US and Mexican Law at the University of Houston Law Center and as part of the Texas One Gulf Consortium, we would like to bring our perspective to the discussion. It is essential to shed light on many of the legal circumstances that may turn up when seeking solutions and making decisions in real-time disasters response.

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