Texas Case Law Update

presented by

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San Antonio, Texas
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Texas Case Law Update

KEY ISSUES:

- Contested permit applications (*party status, hearing procedure, SOAH, administrative record*)
- District and director liability (*immunity, source of funds for takings judgment, risk management/litigation budget, attorney/expert fees awards*)
- Fair share groundwater allocation and Regulatory takings
- Groundwater/surface water interaction and Conjunctive management
CONTESTED CASE HEARINGS
(on groundwater drilling or production permit applications)

Issues:
- Party Status / Standing
- Venue
- Procedure
- Decisions made by GCD and decisions made by ALJ
- Remedies

Relevant Cases:
- Lost Pines GCD v. Meyer
- Fort Stockton Holdings v. Middle Pecos GCD/Cockrell
  Investment Partners v. Middle Pecos GCD
- Boulware v. Kinney County GCD
DISTRICT AND DIRECTOR LIABILITY

**Issues:**
- Official vs. Individual Capacity
- Immunity
- Source of funds to pay judgment (taxes, fees, assessment, State?)

**Relevant Cases:**
- Conroe v. Lone Star GCD
- BMA WCID No. 1 v. Bandera County River Auth. and Groundwater Dist.
- Fazzino v. Brazos Valley GCD
“FAIR SHARE” GROUNDWATER ALLOCATION AND TAKINGS LAW

**Issues:**

- What did Texas Supreme Court intend by fair share? Compare TWC 36.002(d)(3)
- Can a landowner claim “fair share” for conservation?
- Difference between physical taking and regulatory taking
- Can there be a taking and no damages?

**Relevant Cases:**

- End Op v. Meyer
- TESPA v. Electropurification
- Fazzino v. Brazos Valley GCD
  (recall Day/McDaniel v. EAA)
GROUNDWATER-SURFACE WATER INTERACTION AND CONJUNCTIVE MANAGEMENT AND USE

**Issues:**

- Clarity in the law? Agency regulations?
- Benefits of conjunctive management/use to address drought, efficient and flexible use of water
- Stakeholder concerns with conjunctive use

**Relevant Cases:**

- *Texas v. New Mexico*
- *BMA WCID No. 1 v. BCRAGD*
- *Conroe v. Lone Star GCD*
- *TCEQ investigations (e.g., Rio Grande, Nueces, San Saba)*
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