TEXAS ALLIANCE OF GROUNDWATER DISTRICTS

TEXAS GROUNDWATER SUMMIT

Texas Case Law Update

presented by

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San Antonio, Texas
August 22, 2019

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*)

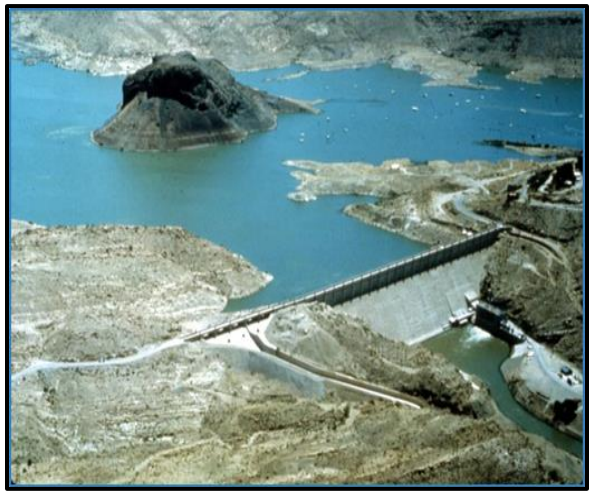
GROUNDWATER-SURFACE WATER INTERACTION AND CONJUNCTIVE MANAGEMENT AND USE

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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August 22, 2019