

Texas Appellate Court Rules No Accommodation Doctrine for Groundwater

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Yesterday, the Amarillo Court of Appeals issued an important decision regarding Texas groundwater law. In *City of Lubbock v. Coyote Lake Ranch, LLC*, the court considered whether the accommodation doctrine applies to groundwater under Texas law. The court refused to extend the oil and gas law-based doctrine to groundwater, but indicated that this issue may be properly decided by the Texas Supreme Court or the Texas Legislature.

Background

In 1953, the owners of the land at issue conveyed the groundwater rights associated with such land to the City of Lubbock. The deed specifically conveyed "all of the percolating and underground water in, under, and that may be produced from" the property together with the exclusive right to take water from the land for disposition to cities and towns located in Bailey, Cochran, Hockley, Lamb, and Lubbock counties. The deed also gave the City of Lubbock the right to ingress and egress over the land, the right to drill water wells and test wells on the land, the right to lay necessary pipelines and facilities if necessary as necessary or incidental to taking the percolating and underground water associated with the land.

Coyote Lake Ranch purchased the property from the owners after the groundwater was conveyed to the City of Lubbock. Thus, Coyote Lake Ranch essentially owns the surface of the land, but not the groundwater rights.

In 2012, Lubbock proposed a well field on the property and began testing and development. Coyote Lake Ranch filed suit against Lubbock, seeking an injunction preventing the city from going forward with its planned well field. Coyote Lake Ranch's argument centered on the concept that the well field would interfere with its existing surface uses of the land. The trial court, relying upon the application of the accommodation doctrine, granted a temporary injunction in favor of Coyote Lake Ranch that essentially prevented Lubbock from moving forward with the project.

Not surprisingly, Lubbock filed an interlocutory appeal of this decision, arguing that the trial court erred in applying the accommodation doctrine in a case involving groundwater rights.

The Accommodation Doctrine

The accommodation doctrine is a well-settled and important part of Texas oil and gas law. The accommodation doctrine serves as a protection for a surface owner where a mineral owner, having the dominant estate, is granted the right to use as much of the surface as reasonably necessary to produce the mineral estate. Under the accommodation doctrine, a mineral owner must accommodate existing surface uses to the extent that the minerals can still be produced with alternative methods.

The Parties' Arguments

Coyote Lake Ranch argued that the accommodation doctrine should apply to instances where groundwater ownership is severed from ownership of the remaining surface estate, just as it applies where the mineral estate is severed from the surface estate. In support of this argument, Coyote Ranch relied upon Texas Supreme Court language in the *Edwards Aquifer Authority v. Day* case, likening groundwater rights to oil and gas rights. In *Day*, the Court analogized the ownership rights to groundwater to the ownership rights of oil and gas. Thus, Coyote Lake Ranch argues, the accommodation doctrine should equally apply to groundwater cases.

Lubbock, conversely, argues that the accommodation simply does not apply to the groundwater context because neither the groundwater owner nor the surface owner enjoys the dominant estate status as occurs in the oil and gas context. In the absence of there being a dominant estate, Lubbock argues, there are simply no implied rights for the groundwater owner to use the surface estate to produce the groundwater beyond those included in the deed. In light of this, Lubbock believes that the accommodation's purpose--balancing the rights of the dominant mineral estate and the servient surface estate--is simply inapplicable to groundwater cases.

Appellate Court Decision

The Amarillo Court of appeals sided with Lubbock, holding that the accommodation doctrine should not extend to groundwater cases. "Our research has yielded no case in which a Texas court has applied the accommodation doctrine to the groundwater context." The court distinguished the situation at issue in *Day*, reasoning that in that case, the issue was simply whether the landowner had a property interest in the groundwater in place. "Nowhere in *Day*, however, does the court speak to the implied rights of a severed groundwater estate owner to use the surface in production of groundwater. nor does it define and delineate the rights and duties as between owners of the severed groundwater estate and the surface estate. The dynamics and rights between the parties before us are different than the rights of the parties addressed in *Day*."

Thus, the court held that it does "not read *Day* to support an extension of the accommodation doctrine to the groundwater context presented in the instant case." However, the court did not stop there. It went on to state that if *Day* is to be extended to the groundwater context, "then this Court respectfully defers to the Texas Supreme Court to recognize and pronounce such an extension, especially in light of the dramatic implications it could have in the area of water law in Texas. Generally, changes in the law should be left to the Texas Supreme Court or the Texas Legislature."

Therefore, the temporary injunction was dissolved and the case remanded to the trial court. Coyote Lake Ranch has not announced whether it will seek review of this decision by the Texas Supreme Court.

Why Does This Matter?

This case illustrates the important issues related to severed groundwater rights in Texas.

First, when groundwater rights are severed and sold to another person (or reserved by an earlier owner), this will likely have major impacts on subsequent surface owners going forward. Any person purchasing property in Texas should take care to determine whether the groundwater rights have been severed and, if so, consider the impacts of that severance, including the fact that a groundwater owner may interfere with the surface use. At least for now, it appears that Texas has never recognized the application of the accommodation doctrine to protect surface owners against the use of property by a groundwater owner, and landowners should not rely upon this protection.

Second, a person seeing to reserve or purchase groundwater rights should ensure that he or she also obtains the right to use the surface estate as necessary to produce the groundwater. Unlike oil and gas, the dominant estate right to use as much of the surface as reasonably necessary likely does not apply to a groundwater owner seeking to pump water from the land.