



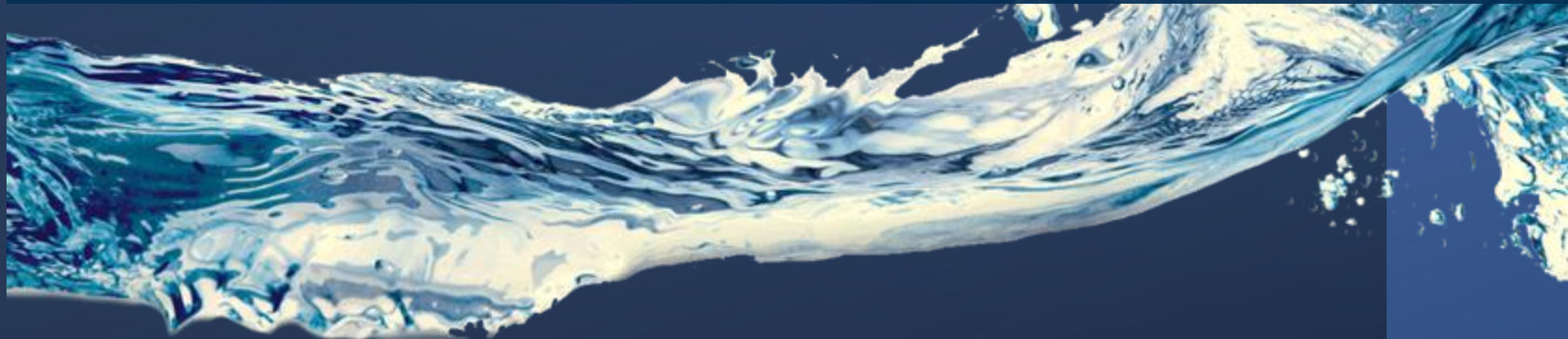
# 2024 Case Law Update

TWCA 80<sup>th</sup> Annual Convention

March 8, 2024

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# Big Picture Overview

- **Federal Law**
- **Groundwater**
- **Surface Water**

# Federal Law and Other Original Actions

## *Texas v. New Mexico*

- **Original Jurisdiction, No. 141:** Suit filed by Texas in 2014 against New Mexico, in which the United States intervened.
- **Issue:** Texas alleged that New Mexico exceeded its allotment of Rio Grande Compact water by allowing people and entities to pump water that is hydrologically connected to Rio Grande in violation of the Compact.
- **Recent Updates:** Upcoming arguments on March 20, 2024.

## *Sackett v. EPA*

- **Facts:** The Sacketts began adding fill to a lot in order to prepare it for construction. The EPA halted the work, claiming the property contained federally protected wetlands and that the backfilling violated the Clean Water Act (CWA).
- **Issue:** What is the proper test for determining whether wetlands are “waters of the United States” (WOTUS) under the CWA?
- **Held:** The CWA only applies to wetlands with a continuous surface connection to WOTUS.

## *Sackett v. EPA*

### Rule Challenge Timeline

- **1/18/2023** – “Revised Definition of Waters of the United States” rule published in Texas Register (January Rule)
- **3/19/2023** – Southern District of Texas issues an order preliminarily enjoining the January Rule in Idaho and Texas
- **3/20/2023** – January Rule takes effect
- **4/12/2023** – North Dakota District Court issues order preliminarily enjoining January Rule in 24 states
- **5/10/2023** – U.S. Court of Appeals for the Sixth Circuit issued an order granting motions for an injunction pending appeal of the district court’s decision.

## *Sackett v. EPA*

### Rule Challenge Timeline

- **5/25/2023** – SCOTUS issues Sackett opinion
- **8/29/2023** – EPA and USACE issue a final rule to amend the January Rule (Amended Rule) to conform to Sackett’s definition of WOTUS
- **9/8/2023** – Amended Rule applies in 23 states, D.C., and U.S. Territories; Pre-2015 Regulatory Regime for the other 27 states

## *Sheetz v. El Dorado County*

- **Facts:** Landowner George Sheetz alleges that El Dorado County, California, illegally seized his property when it imposed a more than \$20,000 traffic impact fee as a condition of a permit to build a small modular home, which amounted to a taking.
- **Issue:** Whether California courts wrongfully refused to examine Sheetz's challenge at all because the fee against him was authorized by legislation.
- **Potential effect:** This is a case to watch regarding whether this decision could affect municipal water agencies' assessment of customer impact fees.



## *Loper Bright Enterprises Inc. v. Raimondo*

- **Facts:** The NOAA has construed the Magnuson Stevens Act (MSA) to require certain fishing vessels to pay for federal observers. The MSA explicitly requires certain classes of fishing boats to pay for their own observers, but it is silent on herring boats.
- **Issue:** Did NOAA have authority to construe the MSA in this way? Is Chevron still the correct standard to apply?
- **Recent Update:** Oral argument occurred on January 17, 2024
- **Potential Effect:** This case could be a massive disruption to the Chevron doctrine that has dictated agency deference for the last 4 decades.

# Groundwater

## *Cactus Water v. COG*

- **Facts:** COG owned O&G leases, which granted them the right to produce oil, gas, and other hydrocarbons. Cactus Water later bought the water rights from the surface owners. COG filed a declaratory judgment, seeking a determination that it had ownership of the produced water from its fracking operation.
- **Held:** Court held that COG already had the exclusive right to that water, and it could not be conveyed again to Cactus.
- **Takeaway:** “Produced water” only recently became valuable, and older O&G leases often do not explicitly account for its ownership, leading to disputes.

## *Gatehouse Water LLC v Lost Pines GCD*

- **Facts:** Gatehouse had operating permits for 28,500 acre ft per year. Special Condition required Gatehouse to have a contract in place to provide at least 12,000 acre ft of water to an End User. Gatehouse provided Lost Pines GCD (LP GCD) with a contract that it asserted satisfied this condition. LP GCD found the contract did not satisfy the special condition and reduced Gatehouse's permitted groundwater production authorization to zero acre ft per year.
- **Issue:** Did LP GCD have the authority to determine the validity of the contract?
- **Held:** Gatehouse's MSJ denied – case settled in October 2023

## *Cockrell Investment Partners, L.P. v. Middle Pecos GCD*

- **Facts:** Cockrell owns a pecan orchard, which neighbors land owned by FSH, and sought party status for two permits sought by FSH from the Middle Pecos GCD. FSH was at the settlement stage with the GCD, and the GCD argued Cockrell tried to get involved too late in the process.
- **Held:** There are several iterations of this case, but ultimately the Courts agreed with the District that Cockrell lacked standing to pursue a complaint on the GCD's denial of party status because it failed to exhaust its administrative remedies.
- **Takeaway:** Neighbors need to stay apprised of permits in their GCD and protest during the designated times in order to exhaust administrative remedies.

## *SJRA v. City of Conroe, Magnolia and Splendora*

- **Facts:** Groundwater Reduction Plan Contract between SJRA and the cities of Conroe, Splendora, & Magnolia (Cities) required mediation before filing a lawsuit. SJRA filed a breach of contract suit over failure to pay increased groundwater rates without mediating first. The Cities filed pleas to the jurisdiction, claiming that because SJRA did not engage in mandatory mediation before filing suit, governmental immunity was not waived.
- **Issue:** Did the Contract Claims Act waive the Cities' governmental immunity?
- **Held:** The Contract Claims Act provides a limited waiver of immunity, subject to the requirements of Local Gov. Code Ch. 271. SJRA failed to comply with the requirements, so immunity was not waived.
- **Recent Update:** Oral argument before SCOTX on January 9, 2024

# Surface Water

## *City of Lake Jackson v. Adaway*

- **Facts:** Property owners sued the city and a drainage district alleging that they took flood mitigation actions that damaged their property and resulted in a takings and negligence claims. The gov't entities filed PTJs on basis they are immune, which were denied and appealed.
- **Held:** The court affirmed the taking claim can go forward, but granted the PTJ on the negligence claims because the mitigation actions fell within the entities' governmental functions for which they are immune.
- **Effect:** Flooding cases and liability continue to evolve.



## *TCEQ v. SOS and Dripping Springs*

- **Facts:** City of Dripping Springs applied for TPDES permit to discharge treated wastewater into Onion Creek. Save Our Springs Alliance, Inc. (SOS) claimed the permit violated Tier 1 and Tier 2 standards and public notice did not comply with federal and state regulations.
- **Issue:** Was TCEQ's decision to grant the permit arbitrary and capricious?
- **Procedural History:** District Court ruled in favor of SOS; Court of Appeals reversed; pending review by SCOTX
- **Recent Update:** Briefing on the merits requested on September 9, 2023

## *Travis County MUD No. 10 v. Waterford Lago Vista*

- **Facts:** A developer and a MUD entered into an agreement for the design and construction of facilities to serve the developer's property within the MUD. The developer defaulted and the contract was assigned, when the assignee sought payment, the MUD declined. Upon suit, the MUD filed a PTJ, which was denied and appealed.
- **Held:** On appeal, the court found that the MUD waived its gov't immunity to suit by entering into a contract for services.
- **Effect/Recent Update:** Court looked at the meaning of "services," stating it is a broad term that includes many activities, even if not primary purpose of agreement.

## *Hidalgo County Water Improvement District No. 3 v. Hidalgo County Water Irrigation District No. 1*

- **Facts:** Hidalgo County Water Improvement District No. 3 (Improvement Dist.) instigated a condemnation suit against the Hidalgo County Water Irrigation District No. 1 (Irrigation Dist.). After objecting to the Special Commissioner's award, the Irrigation Dist. filed a plea to the jurisdiction, arguing it had governmental immunity from the condemnation suit.
- **Issue:** Does governmental immunity apply in the context of eminent domain?
- **Held:** Governmental immunity does not apply in the eminent domain context – the Improvement Dist. was not immune from the Improvement Dist.'s condemnation suit



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## QUESTIONS?

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