

Case Summaries: September 2017 Executive Committee Closed Session Agenda

Style of Case in Trial Court:	<i>League of United Latin Am. Citizens v. Edwards Aquifer Auth.</i> , No. 5:12-CV-00620 (W.D. Tex. filed June 21, 2012)
Style of Case on Appeal:	
EAA Status in Case:	Party
Nature of Case:	Equal Protection (one-person, one-vote) and Voting Rights Act suit
Date Filed:	June 21, 2012
Summary of Causes of Action:	LULAC and three individuals sued the EAA and the Texas Secretary of State asserting claims for declaratory and injunctive relief to enforce the Equal Protection Clause of the U.S. Constitution and the Voting Rights Act due to the unequal populations comprising the EAA's single-member districts and the underrepresentation of minority-majority EAA districts. Another claim challenged the EAA's alleged failure to seek preclearance approval of its 2012 Redistricting Plan prior to its Nov. 2012 election. After the EAA received preclearance on Nov. 27, 2012, LULAC dropped this claim. SAWS intervened as a plaintiff on the one-person, one-vote Equal Protection claim. The City of San Marcos, the County of Uvalde, the City of Uvalde, New Braunfels Utilities and the Guadalupe-Blanco River Authority intervened as defendant-intervenors. The City of Victoria and current and former EAA directors filed an amicus brief supporting the EAA.
Date of Final Disposition in Trial Court:	
Summary of Trial Court Disposition:	
Date Appeal Filed:	
Summary of Issues on Appeal:	
Date of Final Disposition in Appeals Court:	
Summary of Appellate Court Disposition:	
Case Status:	Pending

Style of Case in Trial Court:	<i>Edwards Aquifer Auth. v. Barnard</i> , No. 10-1845 (274 th Dist. Ct., Hays Cty., Tex. filed Oct. 6, 2010)
Style of Case on Appeal:	
EAA Status in Case:	Party
Nature of Case:	Enforcement action
Date Filed:	Jan. 21, 2010 in Bexar County; venue changed to Hays County on Oct. 6, 2010
Summary of Causes of Action:	The EAA seeks civil penalties and permanent injunctive relief for unauthorized withdrawals, failure to install a meter and failure to pay aquifer management fees.
Date of Final Disposition in Trial Court:	
Summary of Trial Court Disposition:	
Date Appeal Filed:	
Summary of Issues on Appeal:	
Date of Final Disposition in Appeals Court:	
Summary of Appellate Court Disposition:	
Case Status:	Pending

Style of Case in Trial Court:	<i>Klamath Irrigation Dist. v. United States</i> , No. 1-591L (consolidated case), 2016 WL 7385039 (Fed. Cl. Dec. 21, 2016)
Style of Case on Appeal:	<i>Klamath Irrigation Dist. v. United States</i> , 635 F.3d 505 (Fed. Cir. 2011), <i>inter alia</i>
EAA Status in Case:	Monitoring
Nature of Case:	Takings claim and breach of contract claim for reduction of irrigation water deliveries by the Bureau of Reclamation
Date Filed:	Oct. 11, 2001
Summary of Causes of Action:	Plaintiffs, irrigation users in the Klamath River Basin in Oregon, sought just compensation under the Fifth Amendment of the U.S. Constitution and damages for breach of contract under state law due to temporary reductions by the Bureau of Reclamation in the amount of water available for irrigation.
Date of Final Disposition in Trial Court:	N/A
Summary of Trial Court Disposition:	After appeals, certified questions to the Oregon Supreme Court and remand, the contract claims were dismissed by agreement. Prior to a scheduled trial, the trial court ruled that plaintiffs' takings claim should be analyzed as a physical taking because the diversion by the federal government of upstream water for the protection of endangered species was a government use that involved physical diversion, consistent with the analysis in <i>Casitas</i> .
Date Appeal Filed:	May 4, 2007, <i>inter alia</i>
Summary of Issues on Appeal:	Appeals were filed to request guidance be provided to the lower court in adjudicating the claims.
Date of Final Disposition in Appeals Court:	Feb. 17, 2011
Summary of Appellate Court Disposition:	The court of appeals has remanded to the trial court directing that it determine whether plaintiffs have asserted cognizable property interests and whether a taking has occurred.
Case Status:	Pending

Style of Case in Trial Court:	<i>Perez v. Abbott</i> , No. 11-CV-360 (W.D. Tex. filed May 9, 2011)
Style of Case on Appeal:	<i>Perry v. Perez</i> , 565 U.S. 1090 (2011) and <i>Davis v. Abbott</i> , 781 F.3d 207 (5 th Cir. 2015), inter alia
EAA Status in Case:	Monitoring
Nature of Case:	Challenge to Texas' federal congressional and state legislative and Board of Education districts under U.S. Constitutional and Voting Rights Act
Date Filed:	May 9, 2011
Summary of Causes of Action:	Voters and legislators seek to invalidate Texas electoral districts on the basis of racial gerrymandering and vote dilution and to have court adopt new electoral districts.
Date of Final Disposition in Trial Court:	
Summary of Trial Court Disposition:	Interim redistricting plan for congressional and state house elections and state senate elections issued and later vacated. Court ultimately found three U.S. Congressional districts were unconstitutional.
Date Appeal Filed:	Nov. 27, 2011 (inter alia)
Summary of Issues on Appeal:	Challenge to district court decisions.
Date of Final Disposition in Supreme Court:	December 9, 2011 (inter alia)
Summary of Supreme Court Disposition:	Supreme Court vacated the trial court's orders and remanded.
Case Status:	Pending

Style of Case in Trial Court:	<i>Fort Stockton Holdings, L.P. v. Middle Pecos Groundwater Conservation Dist.</i> , No. 7047 (83 rd Dist. Ct., Pecos Cty., Tex. Nov. 12, 2015)
Style of Case on Appeal:	<i>Fort Stockton Holdings, L.P. v. Middle Pecos Groundwater Conservation Dist.</i> , No. 08-15-382-CV, 2017 WL 2570934 (Tex. App.—El Paso appeal dismissed June 14, 2017) (first appeal styled <i>Middle Pecos Groundwater Conservation Dist. v. Fort Stockton Holdings, L.P.</i> , 457 S.W.3d 451 (Tex. App.—El Paso 2014, no pet.))
EAA Status in Case:	Monitoring
Nature of Case:	Administrative appeal of denial of production permit application for transport from district and statutory and constitutional claims
Date Filed:	Dec. 27, 2011
Summary of Causes of Action:	Landowners seek to reverse district's denial of permit application on the grounds that the district incorrectly relied on the <i>Guitar</i> opinion, the decision is not supported by substantial evidence, the district improperly granted party status to the Brewster County Groundwater Conservation District and to Pecos County, the district relied on amended rules in violation of Chapter 245, Local Government Code, the district violated constitutional and statutory provisions and the denial constitutes a taking.
Date of Final Disposition in Trial Court:	Nov. 12, 2015
Summary of Trial Court Disposition:	The trial court signed a final judgment that: (1) affirms the district's decision to deny the permit application; (2) grants permit applicant's motion to strike the intervenors from the case; and grants the district costs and attorney's fees. The court severed permit applicant's remaining claim that the district's denial constitutes a taking and the district's request for attorney's fees associated with that claim from this case.
Date Appeal Filed:	Nov. 9, 2012 (first appeal); Dec. 29, 2015 (current appeal)
Summary of Issues on Appeal:	In first appeal, the defendants appealed the trial court's denial of their pleas to the jurisdiction. In current appeal, plaintiffs and intervenor-defendants and plaintiffs have appealed. Plaintiffs appeal the trial court's judgment on the merits. Intervenor-defendants appeal the trial court's ruling on their pleas in intervention.
Date of Final Disposition in Appeals Court:	June 14, 2017
Summary of Appellate Court Disposition:	In first appeal, the court of appeals affirmed the judgment of the trial court denying the pleas to the jurisdiction. In second appeal, the appeal was dismissed due to a settlement agreement between the landowners and the Middle Pecos Groundwater Conservation District and case was remanded.
Case Status:	Pending

Style of Case on Appeal:	<i>United States Fish & Wildlife Serv. v. People for the Ethical Treatment of Property Owners</i> , Nos. 14-4165 and 1404151, 852 F.3d 990 (10th Cir. 2017)
Style of Case in Trial Court:	<i>People for the Ethical Treatment of Property Owners v. United States Fish & Wildlife Serv.</i> , No. 2:13-CV-00278, 2014 WL 5743294 (D. Utah Nov. 5, 2014)
EAA Status in Case:	Monitoring
Nature of Case:	ESA Commerce Clause challenge to federal rule
Date Filed:	Apr. 18, 2013
Summary of Causes of Action:	Property owners' group challenged the authority of the federal government to regulate the take of the Utah prairie dog under the ESA on non-federal lands due to the fact that the take of that species does not have a substantial effect on interstate commerce.
Date of Final Disposition in Trial Court:	Nov. 5, 2014
Summary of Trial Court Disposition:	District court found that the take of the Utah prairie dog does not have a substantial effect on interstate commerce and could not be regulated under the ESA on non-federal lands.
Date Appeal Filed:	Nov. 26 and Dec. 31, 2014
Summary of Issues on Appeal:	Appellants have asked the court of appeals to determine whether plaintiff group meets the redressability requirement for standing to challenge the rule, whether the rule is part of a comprehensive scheme under the Endangered Species Act to regulate endangered and threatened species that has a substantial relation to interstate commerce and whether the listing of the Utah prairie dog as a threatened species under the Endangered Species Act have a substantial relationship to interstate commerce.
Date of Final Disposition in Appeals Court:	Mar. 29, 2017
Summary of Appellate Court Disposition:	Court of appeals reversed the district court's decision and held that take of the Utah prairie dog, an intrastate species, could be regulated on non-federal land under the ESA as Congress has authority under the Commerce Clause to regulate and authorize FWS to regulate the take of the Utah prairie dog. The court determined that the comprehensive regulatory scheme of the ESA substantially affects interstate commerce and the regulation of purely intrastate species such as the Utah prairie dog is a necessary part of that scheme.
Case Status:	Pending (remanded with instructions to enter judgment)

Style of Case in Trial Court:	<i>City of Conroe v. Tramm</i> , No. 15-08-08942 (284 th Dist. Ct., Montgomery Cty., Tex. Aug. 31, 2015)
Style of Case on Appeal:	<i>Lone Star Groundwater Conservation Dist. v. City of Conroe</i> , No. 09-16-201-CV (Tex. App.—Beaumont 2017)
EAA Status in Case:	Monitoring
Nature of Case:	City of Conroe and water utilities filed a declaratory suit against a groundwater conservation district and its individual directors challenging the district's regulatory plan, DFCs and rules as ultra vires and a taking
Date Filed:	Aug. 31, 2015
Summary of Causes of Action:	Plaintiffs seek a declaration that the district's regulatory plan and rules are ultra vires because they regulate withdrawals per user and were not adopted in accordance with Ch. 36 of the Water Code and they challenge the validity of the district's plan and rules as constituting a taking and they seek their invalidation.
Date of Final Disposition in Trial Court:	May 24, 2016 (interlocutory order)
Summary of Trial Court Disposition:	The trial court denied the District's plea to the jurisdiction.
Date Appeal Filed:	June 6, 2016 (interlocutory)
Summary of Issues on Appeal:	District and directors raised issues of whether District has immunity from ultra vires claims not against individuals, UDJA allows challenge to District rules, and redundant remedies doctrine bars claim for attorney's fees for claims brought under both Water Code and UDJA.
Date of Final Disposition in Appeals Court:	Feb. 2, 2017 (interlocutory)
Summary of Appellate Court Disposition:	The court held that although the City of Conroe could file suit under both Sec. 36.251 of the Water Code and the UDJA, the UDJA does not waive the GCD's immunity from suit for attorney's fees, so the City's claim for attorney's fees was dismissed with prejudice. The court also ruled that Sec. 36.066(g), Water Code, provides directors with immunity from suit except for the three named exceptions (conflicts of interest, abuse of office and constitutional requirements) and because the City didn't claim any of those exceptions, their suit against the directors was dismissed with prejudice. The UDJA claim and attack on the validity of the GCD's rules under Sec. 36.251 will proceed but the opinion indicates that UDJA claim is essentially the same as the claim filed under Sec. 36.251, Water Code.
Case Status:	Pending

Style of Case at SOAH/District:	<i>In re permits of Flying "L" Guest Ranch, Ltd.</i> , No. 955-16-2056 (SOAH ALJ remanded to board Feb. 23, 2017)
Style of Case in Trial Court:	
EAA Status in Case:	Monitoring
Nature of Case:	Contested case hearing on permit amendments
Date Referred to SOAH:	Oct. 8, 2015
Summary of Causes of Action:	Permittee requested contested case hearing on administrative amendments to permits and request for a variance.
Date of Final Disposition at SOAH:	Feb. 23, 2017
Summary of Disposition at SOAH:	PFD recommends granting permit for less than the up to 2,096 acre-feet FLGR requested and more than the 240 acre-feet that the GM issued.
Date of District action:	June 29, 2017
Summary of District action:	The board adopted the PFD with modifications, authorizing FLGR to pump 201 acre-feet per year based on acreage owned and granting the request for a variance to authorize FLGR to pump an additional 26 acre-feet per year and granting conditional variances of up to an additional 134 acre-feet per year for golf course expansion, 90 acre-feet per year for water park expansion, and 184 acre-feet per year for 100 acre/190 to subdivision tract for water supply agreement with 7-11 Ranch LLC.
Date Filed in Trial Court:	
Date of Final Disposition in Trial Court:	
Summary of Trial Court Disposition:	
Date Appeal Filed:	
Summary of Issues on Appeal:	
Date of Final Disposition in Appeals Court:	
Summary of Appellate Court Disposition:	
Case Status:	Pending

Style of Case on Appeal:	<i>Tex. Comm'n on Env'tl. Quality v. Graham</i> , No. 3-17-00153-CV (Tex. App.—Austin notice of appeal Mar. 1, 2017)
Style of Case in Trial Court:	<i>Graham v. Tex. Comm'n on Env'tl. Quality</i> , No. D-1-GN-15-005510 (53 rd Dist. Ct. Travis Cty. final judgment Jan. 30, 2017)
EAA Status in Case:	Monitoring
Nature of Case:	Appeal of TCEQ decision to amend a Texas Land Application permit to authorize discharge of treated effluent from a wastewater treatment plant
Date Filed:	Dec. 2, 2015
Summary of Causes of Action:	Nearby landowner plaintiffs appeal the TCEQ's granting of a wastewater discharge permit as arbitrary and capricious, an abuse of discretion and in violation of their due process rights. Among other things, the plaintiffs argue that the discharge is not into a state watercourse and that the permit violates TCEQ's Edwards Aquifer rules.
Date of Final Disposition in Trial Court:	June 30, 2017
Summary of Trial Court Disposition:	Trial court reversed the TCEQ's decision to issue a wastewater discharge permit and remanded the matter back to the TCEQ for reconsideration.
Date Appeal Filed:	Mar. 1, 2017
Summary of Issues on Appeal:	TCEQ appealed the district court's decision.
Date of Final Disposition in Appeals Court:	June 29, 2017
Summary of Appellate Court Disposition:	Court vacated trial court's judgment and dismissed case based on joint motion due to settlement.
Case Status:	Closed

Style of Case in Trial Court:	<i>WildEarth Guardians v. Jewell</i> , No. 1:15-CV-02173 (D.D.C. Dec. 14, 2015)
Style of Case on Appeal:	
EAA Status in Case:	Monitoring
Nature of Case:	Suit under the Endangered Species Act and the Administrative Procedure Act seeking to have 69 species listed as threatened or endangered
Date Filed:	Dec. 14, 2015
Summary of Causes of Action:	Plaintiffs bring suit under the Endangered Species Act and the Administrative Procedure Act to make findings related to petitions to list species.
Date of Final Disposition in Trial Court:	
Summary of Trial Court Disposition:	
Date Appeal Filed:	
Summary of Issues on Appeal:	
Date of Final Disposition in Appeals Court:	
Summary of Appellate Court Disposition:	
Case Status:	Pending

Style of Case in Trial Court:	<i>In re Estate of Watts</i> , No. 2016PC0277 (Prob. Ct. No. 1, Bexar Cty. Jan. 27, 2016)
Style of Case on Appeal:	
EAA Status in Case:	Monitoring
Nature of Case:	Probate action
Date Filed:	Jan. 27, 2016
Summary of Causes of Action:	Edwards permitted rights are sought to be partitioned in probate matter.
Date of Final Disposition in Trial Court:	
Summary of Trial Court Disposition:	
Date Appeal Filed:	
Summary of Issues on Appeal:	
Date of Final Disposition in Appeals Court:	
Summary of Appellate Court Disposition:	
Case Status:	Pending

Style of Case at SOAH:	<i>In re permit application of New Braunfels Utils.</i> , No. 582-16-6164 (SOAH referred Aug. 19, 2016)
Style of Case in Trial Court:	
EAA Status in Case:	Monitoring
Nature of Case:	Contested case hearing on permit application
Date Referred to SOAH:	Aug. 19, 2016
Summary of Causes of Action:	GBRA and Carowest Land, Ltd. requested a contested case hearing on a permit application filed by NBU to divert and reuse wastewater effluent return flows derived, in part, originally from the Edwards Aquifer. The City of Victoria and Canyon Regional Water Authority were also granted party status. The requests for party status filed by the Lower Colorado River Authority and the San Antonio Water System and the San Antonio River Authority in a limited capacity were denied.
Date of Final Disposition by SOAH:	
Summary of Disposition by SOAH:	
Date Filed:	
Date of Final Disposition in Trial Court:	
Summary of Trial Court Disposition:	
Date Appeal Filed:	
Summary of Issues on Appeal:	
Date of Final Disposition in Appeals Court:	
Summary of Appellate Court Disposition:	
Case Status:	Pending

Style of Case in Trial Court:	<i>Republic Water Co. of Tex., LLC v. Blackwelder</i> , No. P-11956-112-CV (83 rd Dist. Ct., Pecos Cty., Tex. Oct. 27, 2016)
Style of Case on Appeal:	
EAA Status in Case:	Monitoring
Nature of Case:	Mandamus action
Date Filed:	May 10, 2016
Summary of Causes of Action:	Plaintiff seeks the issuance of a writ of mandamus pursuant to Section 36.114(e) of the Water Code to compel the board of directors of the Middle Pecos Groundwater Conservation District to process Plaintiff's abated application for a production permit and transport permit.
Date of Final Disposition in Trial Court:	Oct. 27, 2016
Summary of Trial Court Disposition:	The court granted District's plea to the jurisdiction and attorney's fees for the District.
Date Appeal Filed:	
Summary of Issues on Appeal:	
Date of Final Disposition in Appeals Court:	
Summary of Appellate Court Disposition:	
Case Status:	Pending