

Case Summaries: November 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. 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. 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>Baley v. United States</i> (formerly <i>Klamath Irrigation v. U.S.</i>) No. 1-591L (consolidated case), 2017 WL 4342771, __ Fed. Cl. __ (Fed. Cl. Oct. 24, 2017)
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:	Oct. 24, 2017
Summary of Trial Court Disposition:	After multiple appeals, certified questions to the Oregon Supreme Court and remand, the contract claims were dismissed by agreement. At one point, 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> . The court, held that, because tribes held water rights to Klamath Project water that were senior to those held by all remaining plaintiff class members, and because the tribes' water rights were at least co-extensive to the amount of water that was required by defendant to satisfy its obligations under the ESA concerning the Lost River and shortnose suckers and the coho salmon in 2001, plaintiffs had no entitlement to receive any water before the government had satisfied what it determined to be its obligations under the ESA and its Tribal Trust responsibilities. The court concluded that the government's decision in 2001 to withhold water from plaintiffs in order to satisfy its ESA and Tribal Trust obligations did not constitute an improper taking of plaintiffs' water rights or an impairment of plaintiffs' water rights because plaintiffs' junior water rights did not entitle them to receive any Klamath Project water in 2001 and did not improperly impair plaintiffs' right to Klamath Project water in violation of the Klamath Compact.
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 filing of notice of appeal

Style of Case in Trial Court:	<i>Perez v. Abbott</i> , No. 11-CV-360 (W.D. Tex. 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 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 filing of petition for certiorari

Style of Case in Trial Court:	<i>Meyer v. Lost Pines Groundwater Conservation Dist.</i> , No. 29,696 (21st Dist. Ct., Bastrop Cty., Tex. 2014)
Style of Case on Appeal:	
EAA Status in Case:	Monitoring
Nature of Case:	Challenge to contested case hearing on permit application
Date Filed:	Nov. 7, 2014
Summary of Causes of Action:	Four plaintiff landowners' and Environmental Stewardship appeal their denial of party status in a contested case hearing on End Op's permit granted in 2016, and, if so, whether the district needs to allow a new CCH to go forward which would include these plaintiff landowners and Environmental Stewardship.
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>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 in Trial Court:	<i>WildEarth Guardians v. Zinke</i> , No. 1:15-CV-02173 (D.D.C. July 31, 2017)
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, 3 of which are Edwards related and included in the HCP (Comal Springs salamander, Texas troglobitic water slater, and Edwards Aquifer diving beetle), and another 3 of which are in the Edwards Aquifer within the EAA's jurisdiction but not in the HCP (Texas salamander, Comal blind salamander and toothless blindcat)
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:	July 31, 2017
Summary of Trial Court Disposition:	Court entered order granting stipulated settlement agreement, which among other things, requires parties to confer annually for the next five years regarding the status of the petitioned species and the Service's actions under the National Listing Workplan, and dismissed claims.
Date Appeal Filed:	
Summary of Issues on Appeal:	
Date of Final Disposition in Appeals Court:	
Summary of Appellate Court Disposition:	
Case Status:	Closed

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