

Water Rights Case Heads Texas Supreme Court Docket

by Andrew P. Johnson, III

A case of the little guy vs. the big guy corporation has attracted a lot of attention in the water world. At issue in a case recently argued before the Texas Supreme Court, styled Bart Sipriano, et al. v. Great Spring Waters of America Inc., a/k/a Ozarka Natural Spring Water Co., et. al., is whether a property owner can mine water under his or her land even if it damages the property of a neighbor.

In this case, two rural families contend that Ozarka's irresponsible use of its water well caused damage to the families' water wells. The families are seeking damages from Ozarka.

This issue is among the biggest issues remaining in regards to water law. At stake is the current rule known as the English rule, or rule of capture, which has been firmly established in Texas since 1904.

The rule of capture could also be described as the "he who has the biggest straw wins" rule. According to this rule, a property owner has absolute control over any and all water he or she can pump onto his or her land, even if the water originates beneath a neighbor's property and damages the neighbor's well.

Ozarka argues that the supreme court should choose to leave the issue up to the state legislature, since the ensuing litigation storm would be a retirement plan for plaintiff's attorneys. The plaintiffs argue that landowners should be required to use water reasonably and not to harm their neighbors.

Most states have abandoned the English rule in favor of regulation. In fact, Texas regulates its surface water with a permitting system similar to the systems other states use to regulate groundwater.

However, if Texas decides to change its rules now, dramatic consequences will result for large users such as cities, water districts and industry.

If the supreme court and the state legislature do not choose to intervene, landowners can avail themselves of the protection of locally formed groundwater conservation districts such as the Harris-Galveston Coastal Subsidence District or the Edwards Aquifer Authority.

In areas where these districts are not in place and protection is needed, the Texas Water Code governs their creation, which can be accomplished through the Texas Natural Resource Conservation Commission. In certain circumstances, the State Legislature can be used to create districts.

Contact Andrew P. Johnson or Alan P. Petrov for more information on this subject.