

Water Planning Made More Rational

The firm recently scored a win for its clients, Ward Timber and a number of landowners in Northeast Texas, in the 11th Circuit Texas Court of Appeals. Ward Timber and the other clients were concerned about a decision of the Texas Water Development Board that left a threat to their lands and natural resources.

Once every five years, each of sixteen regions in Texas is required to develop and submit regional water plans to the Board (“TWDB”). These sixteen regional plans, once approved by the TWDB, are compiled into a comprehensive state water plan. Sometimes, however, there can be “interregional conflicts.” In the case of such a conflict, the TWDB is required to seek a resolution of the conflict by the regions involved. If they cannot resolve the conflict, the TWDB must resolve it.

The 2011 regional water plan for the North Central Texas Regional Planning Area (Region C) included a proposed Marvin Nichols Reservoir in the Sulphur River Basin of the North East Texas Regional Planning Area (Region D) as a future source of water for Region C, which includes Fort Worth and Dallas. However, Region D’s 2011 water plan included the statement that any proposal for a Marvin Nichols Reservoir would conflict with Region D’s need to protect its timber, agricultural, environmental, and other natural resources. Nevertheless, the Board approved the Region C plan, finding no interregional conflict.

Ward Timber, et al., appealed that approval. The trial court reversed the TWDB’s decision to approve the Region C plan. The TWDB appealed. The appellate court affirmed the judgment of the district court that overturned the TWDB’s decision on the Region C plan. Dr. Ken Kramer, a long-time water authority and past Chapter Director with the Sierra Club in Texas, welcomed the court’s decision. “The [TWDB] was given the directive by the Legislature to resolve interregional conflicts in the water planning process, and the courts are right in saying that the agency needs to live up to that responsibility,” he said in an email. “This will be even more important now as the board is being given new legislative direction on prioritizing water projects for possible state financial assistance.”

Upon remand of the case to the TWDB, the agency encouraged Regions C and D to mediate a solution. They could not. TWDB then resolved the conflict in favor of Region C, allowing that Region to retain the Marvin Nichols Reservoir in its regional plan. Region D, however, has continued to oppose that reservoir in its 2016 draft regional water plan.

The courts’ decision has broader implications than the future of the Marvin Nichols reservoir. First, the courts had to determine if decisions of TWDB to approve regional plan could be appealed to court. TWDB argued that, as planning decisions, the approvals of regional plans were not appealable. The courts held that those decisions can be appealed. That holding means that TWDB’s rules for water planning are not just guidelines but are actual requirements that TWDB must apply in evaluating regional plans. Thus, the courts’ rulings make it clear that TWDB is not limited to compiling the 16 regional plans, it can and has set out standards for those plans that the regions must meet in their plans.