

Texas Supreme Court: Courts, Not TCEQ, Determine Water Rights Ownership in Texas

Posted on [May 23, 2022](#) by [tiffany.dowell](#)

The Texas Supreme Court issued its decision in *Pape Partners, Ltd. v. DRR Family Properties*, and in doing so, answered the question of whether it is the courts or the TCEQ that has jurisdiction over water rights ownership disputes in Texas.



Background

Lola Robinson owned two pieces of property in McLennan County, the farm and an adjacent 250-acre tract of land. In 1986, she obtained two water rights permits from the TCEQ to irrigate from the Brazos River for one of the farms. The permits did not cover the adjacent tract of land. In 1997, the TCEQ replaced the two 1986 permits with a single amended permit. This amended permit granted Robinson the authority to water both the farm and the adjacent tract of land from diversion points

located on the farm. Pape claims that in 1997, Robinson failed to inform the TCEQ that she no longer owned the adjacent tract, The adjacent tract changed hands several more times and in 2012 was conveyed to DRR Family Properties. In 2014, Pape Partners purchased the farm from Lola Robinson.

Pape submitted its ownership documentation to the TCEQ to change the ownership of the water rights to its name. In doing so, the TCEQ found that DRR was the owner of the adjacent tract of land which was included in the amended permit. TCEQ invited DRR to submit its own change-of-ownership application. Several other adjacent landowners, including Robinson also filed an ownership application.

The TCEQ Director found the rights recorded in the amended permit were owned proportionally by Pape, DRR, and Robinson. This reduced the amount of land that Pape was authorized to irrigate by approximately 265 acres.

Pape filed a motion to overturn the TCEQ Director's decision. The TCEQ denied the motion, saying that the Director's action was purely ministerial, and that there was no right to a contested case hearing or further review by the TCEQ.

Lawsuit

Pape filed a lawsuit seeking a declaration that it is the sole owner of water rights appurtenant to the farm and that none of the defendants possess any water rights recognized by the 1997 permit. With regard to the adjacent land, Pape claims that because Robinson did not own the land when the amendment permit was granted, that right was personal to her and did not pass with the subsequent conveyances of the land.

DRR moved to dismiss Pape's claims for lack of subject-matter jurisdiction, arguing that it is the TCEQ that has exclusive jurisdiction to determine water-ownership rights, rather than the courts. Additionally, DRR argued that Pape failed to file its suit within 30 days as required by the TCEQ enabling statute.

The trial court granted DRR's motion to dismiss. The Waco Court of Appeals affirmed holding that the Legislature intended that jurisdiction over surface water permits was vested in TCEQ."

Pape filed a petition for review to the Texas Supreme Court, which was supported by amicus submissions from the TCEQ, Texas & Southwestern Cattle Raisers Association, Texas Farm Bureau, and the Texas Water Conservation Association. The Court granted the Petition and heard oral arguments in March 2022.

Texas Supreme Court Opinion

The Texas Supreme Court reversed. [Read Opinion [here](#).]

First, the Court set forth the basic constitutional rule that a district court has subject-matter jurisdiction to resolve a dispute unless the Legislature divests the court of that jurisdiction. There is a presumption that a district court has subject-matter jurisdiction to resolve a claim. By contrast, there is no such presumption that administrative agencies like the TCEQ have the jurisdiction to resolve disputes. Instead, such jurisdiction for an agency exists only when the Legislature grants such powers in clear and express statutory language. DRR argues this grant of power is found in the Texas Water Code Section 5.013(a), which states that the TCEQ has general jurisdiction over “water and water rights including the issuance of water rights permits, *water rights adjudication*, cancellation of water rights, and enforcement of water rights.” (Emphasis added.) The statute also provides that “a person affected by a ruling, order, decision, or other act of the commission may, within 30 days, file a suit for judicial review in Travis County District Court.”

With this in mind, the Court turned to the statutory language. Chapter 5 of the Water Code does not define the meaning of “water rights adjudication.” Chapter 11, however, is dedicated to water rights and their adjudication. Subchapter G expressly codifies the Water Rights Adjudication Act, explaining the administrative process that must be followed for water rights adjudication. The Court found that these provisions, read together, indicate that the Legislature used the term “water rights adjudication” as a term of art to refer to the TCEQ’s process of allocating water rights permits in a particular stream or segment. Thus, the Court found the TCEQ’s jurisdiction over “water rights adjudication” was a specific reference to the Water Rights Adjudication Act in Chapter 11, rather than a grant of broader authority to decide conflicting claims of water rights acquired with the title to land. The TCEQ agrees with the Court’s analysis, indicating in its amicus brief that it serves merely an “administrative record-keeping function.”

Thus, the Texas Supreme Court held that the TCEQ lacks jurisdiction to decide conflicting claims of ownership to surface-water rights. Thus, the case was reversed and remanded to the trial court for further proceedings.