

Services

Energy Regulation

Mining & Minerals

Texas Supreme Court Extends Accommodation Doctrine to Groundwater

On May 27, 2016, the Supreme Court of Texas issued an opinion extending the accommodation doctrine to groundwater owners. This opinion could have significant impacts for groundwater owners that must access their groundwater through a severed surface interest, as well as for surface owners.

The Background

The accommodation doctrine was established to balance the rights of a mineral owner versus a surface owner when those interests have been severed. The severed mineral estate has the implied right to use as much of the surface as is “reasonably necessary” to produce and remove minerals, as the mineral interest would be worthless if the mineral owner could not enter the surface to extract the minerals. The accommodation doctrine recognizes this implied right but holds that the mineral owner must show due regard for the surface owner’s rights.

To enjoin a mineral owner’s surface activities under the accommodation doctrine, the surface owner must show that the mineral owner’s use “completely precludes or substantially impairs” the existing surface use and that no “reasonable alternative method” is available to the surface owner to continue the existing use. The surface owner must then prove that there are “alternative reasonable, customary, and industry-accepted methods” available to the mineral owner that would allow for both recovery of the minerals and continuation of the existing surface use.

Coyote Lake Ranch, LLC v. City of Lubbock

In *Coyote Lake Ranch, LLC v. City of Lubbock*, the Court considered whether to extend the accommodation doctrine for the first time to groundwater owners.

The plaintiff, Coyote Lake Ranch, LLC (the Ranch), had deeded its groundwater to the City of Lubbock (the City) in 1953, subject to certain reservations for domestic use, ranching operations, oil and gas production, and agricultural irrigation. The deed granted the City the right to use all the part of the surface necessary or incidental to the taking, production, treating, transmission and delivery of water, as well as the right to “construct certain specified facilities, including water lines, fuel lines, power lines, communication lines, barricades, and access roads ‘on, over and under said lands necessary or incidental to any of said operations.’”

The City initially drilled seven wells on the northern edge of the Ranch. But in 2012, the City announced plans to drill as many as 20 test wells in the middle of the Ranch, install 60 additional wells across the Ranch, mow paths through grass to access prospective drill sites, and erect power lines to provide electrical service to proposed well fields. The Ranch objected on the grounds that the extensive mowing and access road construction would increase erosion and unnecessarily damage the surface, and that the power line construction would allow hawks to roost and prey on species with habitat on the Ranch.

The Ranch sued to enjoin further surface activities by the City, arguing that the City has a “duty to conduct its operations with due regard for the rights of the surface owner.” The City disagreed, arguing that the law does not impose the same duty of accommodation on groundwater owners that it does on mineral owners. The trial court granted a temporary injunction in favor of the Ranch. The Court of Appeals reversed the injunction on the grounds that the deed expressly gave the City the right to conduct the proposed activities and that the accommodation doctrine does not apply.

The Supreme Court Decision

The Supreme Court held that the deed does not resolve whether the City can drill wherever it chooses rather than only where the Ranch allows as long as full access to the groundwater is not impaired. In addition, it held that the deed’s “necessary and incidental” language does not resolve whether certain proposed activities such as erection of overhead power lines are authorized because what is “necessary and incidental” is a function of the parties’ competing concerns (i.e., cost versus environmental protection).

It also held that the accommodation doctrine does require accommodation of a surface owner’s rights in the context of groundwater extraction. It reasoned that although the Court has applied the doctrine only where mineral interests are involved, sufficient similarities between mineral and groundwater estates exist to warrant extending the doctrine to require groundwater owners to accommodate a surface owner’s use.

However, the Court also held that the temporary injunction's prohibition on all mowing, blading, or destroying grass acted as a *de facto* moratorium on any surface activity by the City; that the Ranch had not established that the prohibition on erection of any power lines was necessary to protect species; and that an injunction requiring consultation with the Ranch regarding well placement was not justified by the record. In other words, the Court found that although accommodation of the surface owner's rights was necessary, accommodation pursuant to the specific prohibitions of the temporary injunction was not.

What This Means to You

The Court's decision in *Coyote Ranch* could have significant impacts for groundwater owners. Application of the accommodation doctrine will require groundwater owners who access their groundwater through a severed surface interest to ensure that their proposed surface activities do not completely preclude or substantially impair the existing surface use when there is no reasonable alternative method by which the surface owner can continue its use. This could require groundwater owners to redesign a well field to limit mowing and road construction, or to incur additional engineering or construction costs associated with changing the placement of surface facilities or installing subsurface facilities instead. Depending on the surface use and the extent to which that use must be accommodated, it could make developing a groundwater right less economical. The Court's decision could also have significant impacts for surface owners, as application of the accommodation doctrine will provide surface owners with some protection for existing uses.

The trial court's decision on remand could provide guidance regarding what surface activities will be considered "reasonably necessary" (and, in turn, what accommodation will be considered reasonable) going forward.

Contact Us

For additional information on how the Court's decision might impact your business or your clients, please contact John Crossley at 816.983.8339 or Ali Nelson at 303.749.7263, both members of Husch Blackwell's Energy & Natural Resources team.