



Guadalupe-Blanco River Authority
933 E. Court Street, Seguin TX 78155
www.gbra.org

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Appeals Court Hears Arguments on Whooping Cranes

State of Texas, GBRA Defend against The Aransas Project Accusations

For more information

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NEW ORLEANS, LOUISIANA – In a highly anticipated hearing before the U.S. Court of Appeals for the Fifth Circuit in New Orleans Thursday, a three-judge panel heard arguments from The Aransas Project (TAP), the State of Texas and the Guadalupe-Blanco River Authority (GBRA) regarding a lower court decision that temporarily halted water permitting in a significant part of the state.

TAP filed a complaint in March 2010 in U.S. District Court, Southern District of Texas, Corpus Christi division, against officials of the Texas Commission on Environmental Quality (TCEQ). The suit (commonly referred to as “TAP v. Shaw”) alleged “illegal harm and harassment of whooping cranes at and adjacent to Aransas National Wildlife Refuge in violation of the Endangered Species Act” caused by the TCEQ’s issuance of water permits on the Guadalupe and San Antonio rivers .

After a three-year litigation process and millions of dollars in legal fees, U.S. Judge Janis Jack of Corpus Christi ruled March 11, 2013, in favor of TAP. Her ruling prohibited TCEQ from issuing new water permits on the Guadalupe and San Antonio rivers and ordered Texas to develop a plan to ensure fresh water for the cranes’ habitat . On March 15, Texas Attorney General Greg Abbott and GBRA moved that the federal district court stay its order . The motions were denied. Abbott and GBRA appealed on an emergency basis. On March 26, the appeals court granted a stay on Judge Jack’s ruling . With the stay in place, Texas officials are able to issue water permits .

During the hearing the judges honed in on several elements of the arguments presented by the respective interests in the case. One issue was whether TAP proved that Texans’ water usage , as opposed to record drought conditions and other factors, caused the deaths of whooping cranes in the winter of 2008-2009. The judges asked multiple questions to test whether TAP’s assertions that the whooping cranes actually died , and that any deaths were the result of a long chain of events beginning with the issuance of water permits, were or were not based on reliable science. The panel noted the whooping crane population has increased steadily, notwithstanding significant increases in state human population over the same period of time. Another issue was Burford abstention, which is a principle that federal courts should decline to hear a case where doing so would interfere with a state’s regulation of a vital natural resource , but instead allow the complaint to go through state administrative processes. A third issue was the Texas Attorney General’s position that state officials cannot be held liable under the ESA for issuing water permits.

“Unless Judge Jack’s decision is reversed , more than 100 years of precedent for how rivers are managed in Texas and the state’s right to manage them could be tossed aside . Essentially, TAP has misused the ESA in an attempt to put the state’s management of surface water under federal control,” Bill West, GBRA’s general manager said.

About the Guadalupe-Blanco River Authority

The GBRA was established by the Texas Legislature in 1933 as a water conservation and reclamation district. GBRA provides stewardship for the water resources in its 10-county statutory district, which begins near the headwaters of the Guadalupe and Blanco rivers, ends at San Antonio Bay, and includes Kendall, Comal, Hays, Caldwell, Guadalupe, Gonzales, DeWitt, Victoria, Calhoun, and Refugio counties.



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