



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

Page 1 of 2
June 30, 2014

Fifth Circuit Reverses District Court's Decision on Whooping Cranes

For more information

LaMarriol Smith, Guadalupe-Blanco River Authority, (830) 379-5822, lsmith@gbra.org

NEW ORLEANS — The United States Court of Appeals for the Fifth Circuit on Monday, June 30, reversed the judgment of the U.S. District Court for the Southern District of Texas in *The Aransas Project v. Shaw*. The Fifth Circuit agreed with the defendants that the plaintiff failed to prove its case that diversions of water for use by Texans had led to multiple deaths of federally protected whooping cranes in the winter of 2008.

A lawsuit against the Texas Commission on Environmental Quality (TCEQ) initiated by a group wielding the federal Endangered Species Act (ESA) to bring a halt to water permitting on the Guadalupe and San Antonio rivers by alleging multiple deaths of the endangered whooping cranes that winter on the Texas coast led the Guadalupe-Blanco River Authority (GBRA) to intervene as a defendant. With only two whooping crane carcasses and two partial carcasses found during 2008-2009, no evidence supported the double-digit losses claimed by the plaintiffs.

Yet, on March 11, 2013, federal district court Judge Janis Graham Jack “adopted verbatim TAP’s proposed findings of fact” and held that the TCEQ caused the deaths of the whooping cranes by issuing water permits that resulted in diverting water from the cranes and ordered TCEQ to immediately stop issuing water permits on the Guadalupe and San Antonio rivers. The judge also ordered a costly planning process that is duplicative of current state programs.

During the Fifth Circuit hearing, GBRA’s appellate attorney Aaron Streett of the firm Baker Botts LLP argued that TAP failed to prove proximate cause as a matter of law because the chain of causation from permit holder to alleged harm to the cranes was too attenuated to constitute proximate cause. The Fifth Circuit agreed finding “Nowhere does the court [District Court] explain why the remote connection between water licensing, decisions to draw river water by hundreds of users, whooping crane habitat, and crane deaths that occurred during a year of extraordinary drought compels ESA liability...the court’s ambiguous conclusion cannot be sustained.”

The Fifth Circuit panel that consisted of judges Edith Jones, Jerry Smith and Emilio Garza agreed, “We conclude that the district court’s opinion misapplies proximate cause analysis and further, even if proximate cause had been proven, the injunction is an abuse of discretion. The judgment is reversed.”

“This ruling shows that the panel scrutinized the causation argument and recognized the flaws that were ignored by the lower court,” Bill West, Jr., GBRA’s general manager said.

Because of today’s ruling, the district court’s injunction stopping the State of Texas from issuing water permits for the affected basins cannot be enforced. West said that GBRA is confident that none of its responsible water projects, which are essential to ensuring adequate water for a growing population, have any negative consequences on the whooping-crane flock that visits Texas each winter, and is at the forefront of ensuring a healthy habitat for the whooping cranes. “This judgment removes a cloud over our water resource projects, and we will be working with our partners and the state to bring those projects to fruition,” he added.

The Fifth Circuit’s judgment means the state of Texas will be able to continue to issue responsible permits for water projects, Streett said, explaining, “Plaintiffs will not be permitted to use the ESA to blame the state or water users for alleged harms caused by weather conditions such as drought.”

The Fifth Circuit panel also noted that the whooping crane population continues to increase right along with the state’s growing human population and its increasing water usage. According to U.S. Fish and Wildlife Service information on its Aransas National Wildlife Refuge website (dated Feb. 15, 2013), the 2012-2013 winter whooping crane survey indicated analyses of data showed 257 whooping cranes inhabited the primary wintering grounds and 22 more outside of the primary grounds. The



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

Page 2 of 2
June 30, 2014

site (dated March 17, 2014) further indicated that the winter 2013-2014 whooping crane survey analyses estimated 304 whooping cranes inhabited the survey area.

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. GBRA provides services that include hydroelectric generation; water and wastewater treatment; municipal, industrial, and agricultural raw water supply; and recreational operations.