



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

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June 22, 2015

## U.S. Supreme Court Denies Review in Whooping Crane Case

### For more information

LaMarriol Smith, (830) 379-5822, lsmith@gbra.org

WASHINGTON, D.C. — The United States Supreme Court on Monday, June 22, 2015, denied review in *The Aransas Project (TAP) v. Shaw*, No. 14-1138. The Supreme Court denial came in response to petition by attorneys for TAP after the U.S. Court of Appeals for the Fifth Circuit denied a Petition for Rehearing En Banc last December, following a three-judge panel of the Fifth Circuit's reversal of a judgment of the U.S. District Court for the Southern District of Texas.

In a June 30, 2014 decision, the Fifth Circuit panel agreed with 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 federal planning process that is duplicative of current state programs.

"This case, which essentially boiled down to defending the state's system of water rights and fending off federal intervention, cost ratepayers and taxpayers more than \$7 million," Bill West, GBRA general manager said, adding, "We worked to challenge and dispel what we believed to be a seriously flawed chain of causation theory and an even more flawed methodology for counting whooping crane populations that allowed for the species to be counted as dead if it was missing in more than one aerial flyover."

In 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 the State to the permit holder to the alleged harm to the cranes was too attenuated and unforeseeable to constitute proximate cause. In the revised panel opinion released in December, the panel made minor clarifications to its proximate-cause analysis but reconfirmed its reversal of the district court.

The Fifth Circuit panel that consisted of judges Edith Jones, Jerry Smith and Emilio Garza 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 panel concluded that the district court's opinion misapplies proximate cause analysis and further, even if proximate cause had been proven, the injunction stopping the State of Texas from issuing water permits for the Guadalupe River and San Antonio River basins was an abuse of discretion.

West said the Supreme Court's denial of review allows TCEQ to go forward with its job administering the State's surface water resources and GBRA to continue its mission of environmental stewardship of the resources of the Guadalupe River Basin. We all should work on developing a meaningful plan to address the needs of the flock and work toward growing the flock to a sustainable level. A long-term project that could benefit both whooping cranes and citizens is a proposed integrated water power project (IWPP) to provide desalinated seawater from the Gulf of Mexico to constituents in the designated region.



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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.