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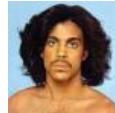
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Schutze

U.S. Supreme Court Drowns City of Dallas's Hopes for Taking Water From Neches River

By Jim Schutze, Mon., Feb. 22 2010 @ 12:00PM

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The U.S. Supreme Court today has ruled against the city of Dallas in its lawsuit over the proposed Neches River Reservoir -- an 11th hour reprieve for the state's last wild river. It's a two-word ruling - "certiorari denied" - but it means the city is out of luck on its plan to dam the Neches.



Schutze, unlike the city, is not up the Neches River without a paddle.

With this ruling, the Supreme Court refuses to hear an appeal of lower court rulings that went against the city.

East Texas opponents of the reservoir plan and Texas conservationists are already hailing the decision as a huge victory for the environment. (As in: "There is enough water in existing reservoirs for Dallas to have all the water it needs for future growth.") It may be all of that, but it's also a sign of tougher times ahead for water-hungry urban areas in Texas.

The country folk have wised up. Telling them they can run their bass boats on the reservoir when it's finished is not enough any more. In this case, local opposition had to do with anger over eminent domain and the prospect of what is now considered an urban land-use - recreational lakes with drunks on them.

I have a call in to First Assistant City Attorney Chris Bowers and have been talking to the enviros. More forthcoming. The dam has burst.

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Jim S 11 months ago

Janice Bezanson, executive director of the Texas Conservation Alliance, says today's ruling should mean the proposed Fastrill reservoir on the Neches is dead. There's nowhere else for the lawsuit to go.

Bezanson argues that this ruling should have no effect on the amount of water available to Dallas. First of all, she points out, Fastrill would have been a relatively small reservoir, added fairly recently to Dallas's wish list for new reservoirs.

But Bezanson says we don't need any new reservoirs anyway. Fortunately there is plenty of water in existing reservoirs, she says, that could be tapped for water supply--enough to meet all the demands that are anticipated for Dallas and Fort Worth future growth.

She said her statement is based on a simply reasonable expected level of conservation. It doesn't assume anything that's onerous.

Even if there weren't any additional conservation, there is enough water in existing reservoirs that could be tapped for water supply.

There have to be some changes in how reservoirs are operated, she says. Water that's now currently for flood storage will have to be reallocated to water supply. But there is plenty there.


No one is saying they don't want Dallas to grow. No one is saying they don't want Dallas to have water.

Meanwhile, I am waiting for the City Attorney's office to weigh in.



Michael 11 months ago

"...it's also a sign of tougher times ahead for water-hungry urban areas in Texas".

Think it's also a sign that the city/state governments/agencies should start worrying more about the quality of water they currently manage? Nah, me either.


Heywood U. Buzzoff 11 months ago

Isn't *no one is saying they don't want Dallas to grow. No one is saying they don't want Dallas to have water.* Dallas lawyer legal verbiage for "You all need to buy some stock in bottled water companies!"?


Heywood U. Buzzoff 11 months ago

T. Boone Pickens is jumping for joy.


Jim S 11 months ago



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THE DALLAS OBSERVER
SUPER FOOTBALL WEEK GUIDE

COMING JANUARY 27TH
& FEBRUARY 3RD

Aaron: I thought he switched strategies and is trying now to corner the market on sunlight.

Montemalone 11 months ago

Dam(n) the Trinity!
We can have drunks bass-boating right up to the new Omni hotel!
And who wouldn't enjoy an ice cold glass of Trinity River?

anon 11 months ago

This ruling means that in 35 years Dallas will have the density of a real city.

Steve T 11 months ago

What was the legal ruling left standing by the High Court's refusal to hear the case--what did the 5th Circuit (I presume) rule and why?

JimS 11 months ago

Steve T:
Here is the best explanation I could find, written by one of my own favorite all-time journalists and wordsmiths:

<http://www.dallasobserver.com/...>

Dallas has included a possible Neches reservoir on its list of future projects since 1961, but has taken no steps toward acquiring land. On January 10, 2007, the city filed a federal lawsuit in the Northern District of Texas, asking the court to enjoin the USFWS from proceeding with the refuge, claiming the USFWS had short-circuited a legal process by failing to obtain an environmental impact statement. The USFWS claimed no impact statement was required, since a refuge will not change the land in question but preserve it.

In the summer of 2008, U.S. District Judge Jorge Solis ruled for the USFWS, and last March 12, his ruling was upheld by a panel of the 5th U.S. Circuit Court of Appeals. In making its case for the reservoir, Dallas commissioned a study to show there were better places along the Neches to create a refuge than the 25,281 acres on the upper river that USFWS had set out. Dallas demonstrated it could build a 23,000-acre reservoir and, using money required by law for environmental mitigation, still help create a refuge on the middle Neches, downstream from the dam.

Mitigation land is an area several times the size of the reservoir itself that Dallas would be legally obligated to buy in compensation for the natural area destroyed by the reservoir. Using the mitigation land, Dallas could create a refuge three times the rare bottomland hardwood forest and six times the grassland that would be included in the proposed USFWS site on the upper Neches.

Dallas also cited recent research by the Texas Parks and Wildlife Department showing that the picture painted by USFWS for its proposed site was perhaps a bit rosy. The USFWS data, based on research that is almost a quarter-century old, showed the USFWS site at 71 percent rare hardwood bottomland.

Dallas presented newer TPWD data, which showed that probably as a result of logging, the USFWS site is only 31 percent hardwood bottomland. The refuge Dallas is willing to create would have about 29 percent hardwood bottomland, but because the Dallas refuge would be three times the total size of the USFWS refuge, Dallas would wind up saving much more total hardwood bottomland.

A three-judge panel of the 5th Circuit did not buy Dallas' arguments. The panel ruled that USFWS had made a reasonable attempt to get the best data it could and had followed the proper process for creating a refuge.

East Texas P1 11 months ago



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Landowners need to be justly compensated for their land by paying royalties for the use of water stored on (above) their property.



 **Steve T** 11 months ago

Thanks, Jim. So it appears the ruling was that the USFWS did enough in its research on the potential wildlife refuge, city arguments to the contrary. That is a fairly narrow ruling that probably won't help most other areas being considered by Big D for reservoirs.



 **Jim S** 11 months ago

Chief Assistant City Attorney Chris Bowers just called. He said of today's decision: It is the end of the litigation. We have not succeeded in our efforts to invalidate the designation of the wildlife refuge. I asked if he could say anything about why it went this way. Bowers said, Federal courts give a lot of deference to decisions made by federal agents. Sometimes the city enjoys similar deference when it makes decisions. So I have told people I now know the difference between a 900 pound gorilla and an 800 pound gorilla. I made a mistake earlier in calling this a City of Dallas lawsuit only. Actually there were two lawsuits, one brought by the city and argued by the city attorney and a second brought by the Texas Water Development Board and argued by the Texas Attorney General. The Supreme Court denied certiorari to both today. Bowers said it wasn't a total loss: We have earned some valuable lessons about how to approach these projects, he said. We are disappointed in the outcome. We will work with our partners, the Texas Water Development Board and others, to make sure we can obtain more water supplies to meet the growing demand in the Dallas area.



 **cas127** 11 months ago

Jim,
I may have missed the explanation - but why haven't you been in the print edition for the last few weeks?



 **Jim S** 11 months ago

I spoke disrespectfully to my superior and failed to clean up my work station at the end of the day. I have been in time-out.



 **JF** 11 months ago

I'm glad that the lesson Dallas takes from this case is how to properly craft lawsuits in the future as it attempts to create more reservoirs. Maybe the better near-term solution would be to establish policies that begin to conserve water.



 **John Greenan** 11 months ago

Coincidentally or not, as of today you can also carry loaded shotguns and rifles (but not of course to "hunt") in wildlife refuges and National Parks.



 **Some Plano Guy** 11 months ago

How the hell am I supposed to keep my St Augustine lawn in pristine "Get off my lawn!" condition if I can't pump in as much water as the pipes can handle?

Screw East Texas and all their "trees." and "nature" and stuff.

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There better be more #superbowl commercials with Cuba Gooding Jr. 8 minutes ago

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Kirby Schlegel lives in a freaking ridiculous house and other Super Tales <http://bit.ly/ieL2zu> about an hour ago

RT @JRalat: There's still time to hit Dallas #Taco Trail before the #SuperBowl. <http://bit.ly/epFkdq> about 2 hours ago

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Tim Covington 11 months ago

Well, Some Plano Guy, after living in East Texas for many years, I have to agree with you.



Publius 2010 11 months ago

Jim, Janice Beszanson is dead wrong. Water planners do not have a few years to plan for future supplies and simply rely on current supplies in the interim. The planning horizon for reservoirs and other water supplies has become anywhere from 40 to 60 years. You can't check the rain gauge, stick your finger up to the wind and hope. It is a long and dynamic planning process, especially in light of existing environmental requirements. If you do not stay ahead of the curve in regard to future supplies, you face the future in crisis.

Ms. Beszanson's statements are at best disingenous. At worst, they are an indication of Dark Ages ideological thinking, in which human needs are shunted aside in the name of some phony idea of pristine nature.

Nobody enjoys wildlife habitat more than I do. But the truth is that Fastrill is not the best site for a hardwood habitat, either. That is the big lie that is being ignored by the media in this area. But FWS, in bad faith, ignored Dallas's request to consider what they thought was a reasonable alternative. And the U.S. Supreme Court allowed them to get away with it. Not exactly good news for federalism or constitutional government.



Publius 2010 11 months ago

Now that I've read your take on Chris Bowers's comments, I have another observation. Because of the nature of administrative determinations, it is quite true that courts give great deference to those determinations. But as environmental issues become increasingly political and less scientific (and yes, science in this country is becoming more politicized by the day) and start intruding more deeply into our economic and personal lives, it becomes more important for the Congress to take greater control of this situation and to prevent Federal agencies from acting in bad faith, and to prevent the executive branch from making its own special type of "law" - a "law" that in this instance was promoted by a host of special interests to the detriment of the public at large. I know that it doesn't seem that way to those who can't see the forest for the trees. But those of us who see the big picture know the truth.



JimS 11 months ago

Dear Publius:
Believing that we should plow on into the future with today's water consumption and settlement patterns is not seeing the big picture.



FMJCB 11 months ago

So much for State's rights. Let the Feds tell us how to conduct our business.



cp 11 months ago

@ Publius- exactly what "special interests are you talking about? The landowners who'd like to keep their land?

I'm really getting sick people who like to say things like "special interests" in the hopes of inciting some sort of outrage.



Thelisma Partridge 11 months ago

"I spoke disrespectfully to my superior and failed to clean up my work station at the end of the day."

That might explain the last three weeks - but not the last three years... :)



JimS 11 months ago

Thelisma:
I can't explain a lot longer than that.



matilda of Tuscany 11 months ago

If the metroplex would start being a little more concerned about conservation of water resources, it would be a good thing. right now, we have the highest per-capita consumption in the state: And we want to take land from others, rather than curb consumption? <http://www.texaswatermatters.o...> personally, i am darn tired of seeing sprinklers on in the rain, the day after inches of rain, etc. Get real, get tough, at least tougher than we have been.

Also, it shouldn't be the undeniable right of every over-saturated with water and chemicals household to have a pool either--many times in new subdivisions with a community pool? We need some moratoriums on this insanity AND SOON.



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