

2014

TEXAS WATER LAW INSTITUTE



© Steven Loesch, Chick Bend River Rocks, The John Graves Scenic Riverway, Brazos River.

November 19*, 20–21, 2014

*Wednesday Evening Texas Water Law Overview

Radisson Hotel and Suites Downtown
Austin, Texas

Special \$350 Registration Fee for State Employees and
Texas Alliance of Groundwater Districts Members

Earn up to 15.75 Hours of Credit Including 1.50 Hours of Ethics Credit
TX Legal Specialization Credit Approved for Administrative Law and Real Estate Law
Credit for TX Professional Engineers Available

2014

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WEDNESDAY EVENING, NOV. 19, 2014

5:30 p.m. Registration Opens

*Texas Water Law Overview

Included in conference registration.

6:00 p.m. 1.50 hr

Texas Water Law Overview

An overview of Texas water law cases, statutes and regulations, including vocabulary and acronyms necessary to understanding Texas water law—designed for practitioners unfamiliar with the subject area, as well as non-lawyers, governmental officials and engineers.

Doug Caroom, Bickerstaff Heath Delgado Acosta LLP, Austin, TX
Jim Mathews, Mathews & Freeland LLP, Austin, TX

7:30 p.m. Adjourn

THURSDAY MORNING, NOV. 20, 2014

Presiding Officer:

Doug Caroom, Bickerstaff Heath Delgado Acosta LLP, Austin, TX

8:00 a.m. Registration Opens

Includes continental breakfast.

8:50 a.m. Welcoming Remarks

9:00 a.m. .50 hr

Legislative Update:

A Look Back and a Look Ahead

Given that Texas is suffering through one of the worst droughts in its history, the legislature needs to be proactive on water issues. Take a look at what is on the horizon this coming session to address these issues and the future well-being of our state's economy.

Doug Miller, Texas House of Representatives, New Braunfels, TX

9:30 a.m. .50 hr

Brackish Groundwater: Legislation and Regulation

Current law related to brackish groundwater regulation, methods of management by GCDs and legislative efforts related to streamlining regulation.

Stacey Allison-Steinbach, Texas Alliance of Groundwater Districts, Austin, TX

10:00 a.m. .75 hr

Brackish Groundwater Desalination and the San Antonio Water System

A discussion of the development and ongoing implementation of San Antonio's brackish groundwater project, including a review of the technical and engineering, as well as the legal and regulatory aspects of the project.

Robert R. Puente, San Antonio Water System, San Antonio, TX
Bill Davis, Black & Veatch, Dallas, TX
Hope E. Wells, San Antonio Water System, Austin and San Antonio, TX

10:45 a.m. Break

11:00 a.m. 1.00 hr

Water Conservation: Implementation Challenges in Texas and around the Nation

An overview of general implementation issues and the barriers to achieving more effective water conservation, including the perception among many water utility managers that maximizing water conservation means sacrificing financial stability. Examine the recent tools developed by the Alliance for Water Efficiency to address those barriers, as well as recent research by Ceres with bond counsel and the UT School of Law Energy Center on the legality of using enterprise revenue bonds to fund conservation/efficiency projects on private property.

Moderator:
Myron J. Hess, National Wildlife Federation, Austin, TX

Panelists:
Mary Ann Dickinson, Alliance for Water Efficiency, Chicago, IL
Sharlene Leurig, Ceres, Austin, TX

12:00 p.m. Pick Up Lunch

Included in registration.

THURSDAY AFTERNOON

Presiding Officer:

Jim Mathews, Mathews & Freeland LLP, Austin, TX

LUNCHEON PRESENTATION

12:20 p.m. .50 hr

Update on the New TWDB and Financing the State Water Plan

An update on the changes made over the past year by the new TWDB, its efforts to enhance customer service and an overview of the implementation of HB-4 for financing the State Water Plan.

Carlos Rubinstein, Chairman, Texas Water Development Board, Austin, TX

12:50 p.m. Break

1:05 p.m. .50 hr

New Texas Water Development Board Financial Rules

An in-depth look at the proposed rules for the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT).

Todd D. Chenoweth, Texas Water Development Board, Austin, TX

1:35 p.m. 1.00 hr

Developing the State Water Plan: Balancing Regional and State Interests

Developing the State Water Plan requires the individual and collective efforts of 16 regional water planning groups across the state, each with unique needs and perspectives. Success in equitable and long-term planning requires the use of consistent and science-based standards, and appropriate processes for resolving disputes as they may arise.

Mary Elizabeth Kelly, Parula LLC, Austin, TX
Les Trobman, Texas Water Development Board, Austin, TX

2:35 p.m. .50 hr

Current Issues with the Corps of Engineers and Corps Reservoirs

A brief survey of the changes that affect Corps reservoirs and much of the water in the state, and how the Corps is responding to changing and competing demands for water from their reservoirs.

Donald L. Howell, Of Counsel, Andrews Kurth LLP, Houston, TX

3:05 p.m. Break

3:15 p.m. .50 hr

Redefining Agency Jurisdiction under the Clean Water Act

A review of the draft USACE/EPA rule defining "waters of the U.S.," the Connectivity Study on which it is based, and new case law.

Mark McPherson, Attorney at Law, Dallas, TX

3:45 p.m. 1.00 hr

The Impact of Endangered Species on Water Rights in Texas

A brief overview of the Endangered Species Act with discussion and analysis of whether listed species affect (or could affect) the state's administration of water permits and groundwater management.

Moderator:
Molly Cagle, Baker Botts, Austin, TX

Panelists:
Melinda E. Taylor, The University of Texas School of Law, Austin, TX
Kathleen Hartnett White, Texas Public Policy Foundation, Austin, TX

4:45 p.m. .75 hr ethics

Conflicts of Interest for Water Lawyers

The complexities and possible conflicts of interest in water transactions are magnified when counsel is asked to represent both the seller and buyer or lessor and lessee in the resulting permitting matters before groundwater districts. In addition, *ex parte* communication and the bygone days of discussing your project with the permitting authority, even before the application is filed, has become a minefield.

Ed McCarthy, Jackson, Sjoberg, McCarthy & Townsend, L.L.P., Austin, TX

5:30 p.m. Adjourn

FRIDAY MORNING, NOV. 21, 2014

Presiding Officer:
Jim Mathews, Mathews & Freeland LLP, Austin, TX

8:00 a.m. Conference Room Opens
Includes continental breakfast.

8:30 a.m. .50 hr

Historical Looks at Water Law Cases: Where the Courts Got It Wrong

A review of important Texas water law cases where the courts failed to envision the problems to be occasioned by their decisions.

Timothy L. Brown, Attorney at Law, Austin, TX

9:00 a.m. .50 hr

Surface Water Case Law Update

Update on significant recent surface water cases including *Texas Farm Bureau v. TCEQ* and *City of Waco v. TCEQ*.

Joshua D. Katz, Bickerstaff Heath Delgado Acosta LLP, Austin, TX

9:30 a.m. .50 hr

Groundwater Case Law Update

Update on significant recent cases involving groundwater conservation districts and groundwater generally.

Gregory M. Ellis, Attorney at Law, League City, TX

10:00 a.m. Break

10:15 a.m. 1.00 hr

Groundwater Conservation Districts: Between a Rock and a Hard Place

With the conflicting demands of the *Day* and *Bragg* cases and the potential limitations imposed by Desired Future Conditions and Managed Available Groundwater, what's a GCD to do?

Moderator:
Doug Caroom, Bickerstaff Heath Delgado Acosta LLP, Austin, TX

Panelists:
Robin A. Melvin, Graves, Dougherty, Hearon & Moody, Austin, TX
Steven D. Walthour, North Plains Groundwater Conservation District, Dumas, TX
Gary Westbrook, Post Oak Savannah Groundwater Conservation District, Milano, TX

11:15 a.m. .75 hr

Issues in Implementing Watermaster Administrations

Based on a petition of water right holders, the TCEQ is establishing a watermaster for the Brazos River Basin except for the portion of the basin above Possum Kingdom Reservoir. Hear a summary of the hearing and the issues to be addressed in implementing TCEQ's order.

Kellye Rila, Texas Commission on Environmental Quality, Austin, TX
Fred B. Werkenthin Jr., Booth, Ahrens & Werkenthin, P.C., Austin, TX

12:00 p.m. .50 hr

Changes for Water Utilities at the PUC

Hear how the rate and CCN regulation of water and wastewater utilities is expected to change as a result of the transfer of these programs from TCEQ to the PUC effective September 1, 2014.

Thomas S. Hunter, Public Utility Commission of Texas, Austin, TX

12:30 p.m. Pick Up Lunch

Included in registration.

“ Relevant topics covered by experts with hands-on experience.

Although this is a law conference, there is enough practical and technical information for engineering types.

Very well put together. Good balance of all views. Speakers are engaging and helpful.

Perfect mix of private practice attorneys, agency attorneys and elected officials.

All aspects of the program are well done.

Topics are extremely relevant and interesting. It adds a lot to the conference to hear from TCEQ, TWDB and Groundwater Alliance representatives.

FRIDAY AFTERNOON

Presiding Officer:

Doug Caroom, Bickerstaff Heath Delgado Acosta LLP, Austin, TX

LUNCHEON PRESENTATION

12:50 p.m. .75 hr

The Texas Drought: Lessons Learned and TCEQ's Response

Since 2009, Texas has been in a state of near-constant severe drought. The TCEQ, as the state agency charged with regulating the withdrawal and use of surface water throughout the state, has addressed the myriad challenges arising from the shortage of such a precious resource with innovation and practicality.

Bryan W. Shaw, Ph.D., P.E., Chairman,
Texas Commission on Environmental Quality,
Austin, TX

1:35 p.m. Break

1:50 p.m. 1.00 hr

Energy-Water Nexus

A look at the current policies, initiatives and challenges in dealing with the co-dependent link between the energy and water sectors.

Michael J. Nasi, Jackson Walker L.L.P., Austin, TX
Michael E. Webber, Ph.D., The University of Texas
Mechanical Engineering Department, Austin, TX

2:50 p.m. .50 hr

Water Issues for Fracking

Explore concerns regarding the potential impacts of hydraulic fracturing on water quality and supply and the technical measures that can be employed to monitor and prevent these impacts.

John A. Connor, GSI Environmental Inc., Houston, TX

3:20 p.m. .75 hr ethics

Let It Snowden!

In January 2014, Edward Snowden made the claim that the NSA does not limit data collection to just national security issues. In light of these disclosures, attorneys must balance their professional responsibilities to protect client information against their need to communicate that information in a digital age.

Thomas A. Gwosdz, City of Victoria, Victoria, TX

4:05 p.m. Adjourn

**M
C
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E**

This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 15.75 hours, of which 1.50 credit hours will apply to legal ethics/professional responsibility credit. The University of Texas School of Law is a State Bar of California approved MCLE provider (#1944), and an Oklahoma Bar Association MCLE presumptively-approved provider (#169).

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DONALD L. HOWELL
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Public Utility Commission of Texas
Austin, TX

JOANNA JEFFERSON*
The University of Texas School of Law
Austin, TX

JOSHUA D. KATZ
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MICHAEL J. NASI
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Austin, TX

HON. JAN P. PATTERSON*
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Waco, TX

ROBERT R. PUENTE
San Antonio Water System
San Antonio, TX

KELLYE RILA
Texas Commission on
Environmental Quality
Austin, TX

EMILY WILLMS ROGERS*
Bickerstaff Heath Delgado Acosta LLP
Austin, TX

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Chairman, Texas Water
Development Board
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SUZANNE SCHWARTZ*
The University of Texas School of Law
Austin, TX

BRYAN W. SHAW, PH.D., P.E.
Chairman, Texas Commission on
Environmental Quality
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ROBIN SMITH*
Texas Commission on
Environmental Quality
Austin, TX

MELINDA E. TAYLOR
The University of Texas School of Law
Austin, TX

LES TROBMAN
Texas Water Development Board
Austin, TX

STEVEN D. WALTHOUR
North Plains Groundwater
Conservation District
Dumas, TX

MICHAEL E. WEBBER, PH.D.
The University of Texas Mechanical
Engineering Department
Austin, TX

HOPE E. WELLS*
San Antonio Water System
Austin and San Antonio, TX

FRED B. WERKENTHIN JR.*
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Austin, TX

GARY WESTBROOK
Post Oak Savannah Groundwater
Conservation District
Milano, TX

KATHLEEN HARTNETT WHITE
Texas Public Policy Foundation
Austin, TX

*Planning Committee member

HOW TO REGISTER

Online:
www.utcle.org/conferences/WL14

Mail:
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School of Law
Attn. Registration
PO Box 7759
Austin, TX 78713-7759

Fax:
512.475.6876

Questions? 512.475.6700

*Dietary requirements or Accessibility needs?
Call 512.475.6700 or email service@utcle.org*

REGISTRATION BENEFITS

Before the Conference: Access course materials—downloadable PDFs of papers and slides—and speaker and attendee roster in *Your Briefcase* 48 hours before the conference.

After the Conference: Unlimited access to final, complete course materials—downloadable PDFs of papers and slides—in *Your Briefcase*.

Bonus eCourses: Complimentary 180-day access to Bonus eCourses—with papers, slides, and audio—for CLE credit you may have missed at the conference. Available in *Your Briefcase* 6–8 weeks after the conference.

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IN-HOUSE AND CONFERENCECOMPLETE MATERIALS

In-House

Bring Texas Water Law in-house. Audio presentations and written materials for learning with your colleagues—for Texas MCLE credit. We manage the accreditation process from approval to reporting. Custom packages available.

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Comprehensive Binder and Audio products from the live conference—for research and self-study. Available for download and shipping.

REGISTRATION FORM

PLEASE PRINT CLEARLY

WL14

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Registrant's Email (required) _____

Assistant's Email (optional) _____

Invoices, confirmations and receipts are emailed to these addresses.

REGISTRATION—Includes Course Materials, Wednesday Evening Texas Water Law Overview and Thursday and Friday Luncheon Presentations

Special group registration rates available. Call 512.475.6700.

1. Select Registration Type

Individual

- Registration by Wednesday, November 12 \$525
 Registration after Wednesday, November 12 \$575

Texas Alliance of Groundwater Districts Member

- Registration by Wednesday, November 12 \$350
 Registration after Wednesday, November 12 \$400

State Employee

- Registration by Wednesday, November 12 \$350
 Registration after Wednesday, November 12 \$400

2. Select Course Materials Format

- Electronic Course Binder on USB Key ONLY
 Printed Course Binder ONLY

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ConferenceComplete package includes Audio CD Set plus a Printed Binder and MCLE Reporting Form for each participant. Available for delivery 3–5 weeks after conference date. Shipping included.

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AUSTIN

November 19*, 20–21, 2014

CONFERENCE LOCATION



Radisson Hotel and Suites Downtown
 111 E. Cesar Chavez Street
 Austin, Texas
 512.478.9611

Special Room Rate: \$184
 good through October 20, 2014
 (subject to availability)

Parking:
 \$3 daily self-parking; \$24 valet
 \$8 overnight self-parking
 (subject to change)

KEY DATES

November 12, 2014

last day for early registration
 add \$50 for registrations
 received after this time

November 14, 2014

last day for cancellation (full refund)

November 17, 2014

last day for cancellation (partial refund)
 \$50 processing fee applied

November 19, 2014, 6:00 p.m.

**Wednesday Evening Overview begins*

November 20, 2014, 8:50 a.m.

Institute begins

ABOUT THE COVER



Chick Bend River Rocks, The John Graves Scenic Riverway, Brazos River,
 © Steven Loesch.

Steven Loesch is a landscape photographer in North Texas and has been photographing this area since 1997. Many photographs from his collection, "Brazos River – John Graves Scenic Riverway Portfolio," have appeared in *American Rivers* calendars, *Texas Highways Magazine*, and the Kiernan Gallery in Lexington, Virginia. To view his work, visit www.stevenloeschphotography.com.

The John Graves Scenic Riverway

Created in 2005 by the 79th Texas Legislature, The John Graves Scenic Riverway is a 113-mile stretch of the Brazos River that runs through Palo Pinto and Parker Counties, between lakes Possum Kingdom and Granbury in North Texas. Here the Brazos flows through the Palo Pinto Mountains and is a pristine example of untouched Texas landscape. The most popular stretch is completely primitive and runs 20 miles from Texas Hwy 16 down to near Palo Pinto at Texas Hwy 4.

John Graves

John Graves, considered by many to be one of Texas' best and best-loved writers, is a Texas literary legend who wrote four notable Texas books, *Goodbye to a River*, *Hard Scrabble*, *From a Limestone Ledge*, and *Myself and Strangers*. He also was a contributor to *Texas Monthly*.

In the 1950s, the U.S. government had a plan (later abandoned) to build five dams along the Brazos River from Possum Kingdom to Whitney, turning that stretch of the river into a string of lakes. To say farewell to the stream which he had known intimately as a youth, Graves took a three-week canoe trip of about 175 miles along the winding Brazos River.

Goodbye to a River presents both the author's account of the trip itself and numerous stories about the history and settlement of the area around the river and of North Central Texas. As he braves rapids and fatigue and the fickle autumn weather, he muses upon old blood feuds of the region and violent skirmishes with native tribes, and retells wild stories of courage and cowardice and deceit that shaped both the river's people and the land during frontier times and later.

2014 TEXAS WATER LAW INSTITUTE HIGHLIGHTS

- Chairman Carlos Rubinstein provides an update on the new Texas Water Development Board and implementation of HB-4 for financing the State Water Plan
- Chairman Bryan Shaw discusses the TCEQ's response to the challenges posed by the Texas drought
- A look at water conservation and implementation challenges in Texas and across the nation
- An overview of current brackish groundwater regulations, with focused attention on the development and ongoing implementation of San Antonio's brackish groundwater project
- A review of Day and Bragg and the implications for Groundwater Conservation Districts
- An exploration of the concerns surrounding the potential impacts of hydraulic fracturing on water supply and quality
- A discussion of the draft USACE/EPA rule defining "waters of the U.S."
- Expected changes resulting from transfer of water utility regulation to the Public Utility Commission of Texas
- Case law updates highlighting key surface water and groundwater cases; as well as a look at what's ahead this legislative session to address water issues
- Conflicts of interest for water lawyers
- Wednesday evening's Texas Water Law Overview