

2015

# TEXAS WATER LAW INSTITUTE



Lake Travis, August 2015. Photo courtesy of Victor Tran, LCRA.

October 28\*, 29–30, 2015

\*Wednesday Evening Texas Water Law Overview

Radisson Hotel and Suites Downtown

Austin, Texas

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Special \$375 Registration Fee for State Employees and  
Texas Alliance of Groundwater Districts Members

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Earn up to 15.50 Hours of Credit Including 2.00 Hours of Ethics Credit  
TX Legal Specialization Credit Approved for Administrative Law and Real Estate Law  
Credit for TX Professional Engineers Available

2015

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October 28\*, 29–30, 2015 ■ Radisson Hotel and Suites Downtown ■ Austin, Texas

Earn up to 15.50 Hours of Credit Including 2.00 Hours of Ethics Credit  
TX Legal Specialization Credit Approved for Administrative Law and Real Estate Law  
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## WEDNESDAY EVENING, OCT. 28, 2015

5:30 p.m. Registration Opens

**\*Texas Water Law Overview**  
Included in conference registration.

6:00 p.m. 1.50 hrs

### 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, OCT. 29, 2015

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

8:00 a.m. Registration Opens

Includes continental breakfast.

8:50 a.m. Welcoming Remarks

9:00 a.m. 1.00 hr

### Waters of the U.S.: Current Developments

Even before the new definition for “Waters of the United States” proposed by the Environmental Protection Agency and the United States Army Corps of Engineer could become effective on August 28, 2015, more than 80 individual plaintiffs sued the two agencies over the regulation. Representing a variety of interests that challenge or defend the controversial new definition, hear from Clean Water Act experts about what’s wrong with the new definition, or right about it, the key challenges raised in the district and appellate court proceedings, and predictions on the potential outcome of the lawsuits.

**Moderator:**  
Molly Cagle, Baker Botts, Austin, TX

**Panelists:**  
Jay Bragg, Texas Farm Bureau, Waco, TX  
Natural Resources Defense Council Panelist TDB  
U.S. Environmental Protection Agency, Region VI  
Panelist TBD

10:00 a.m. .75 hr

### PUC Update on CCN Decertifications

The transfer of retail water and wastewater utility regulation from TCEQ to the PUCT occurred a little more than a year ago. Hear from all sides—landowners, agency, and CCN holders—about the latest issues involving CCN applications and decertifications.

Leonard H. Dougal, Jackson Walker L.L.P., Austin, TX  
C. Joe Freeland, Mathews & Freeland LLP, Austin, TX  
Margaret Uhlig Pemberton, Public Utility Commission, Austin, TX

10:45 a.m. Break

11:00 a.m. 1.00 hr

### Water Conservation Considerations for Water Rights Permitting and Water Supply Planning

Review recent developments related to water conservation in Texas, with a focus on what is already being done, unrealized potential, and challenges along the way.

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

**Panelists:**  
Tom McLemore, Harlingen Irrigation District, Harlingen, TX  
Jeremy Rice, Freese and Nichols, Fort Worth, TX

12:00 p.m. .75 hr

### Impacts of Regional Planning Decisions on Permitting and Financing (Whom Do You Sue?)

Explore how desired future conditions (DFC) and water management strategy decisions by regional planning groups affect water project permitting and financing, and consider possible remedies.

Trish Erlinger Carls, Carls, McDonald & Dalrymple, LLP, Austin, TX

**Co-Author:**  
Mark B. Taylor, Attorney at Law, San Marcos, TX

12:45 p.m. Pick Up Lunch

Included in registration.

## THURSDAY AFTERNOON

**Presiding Officer:**  
**Doug Caroom, Bickerstaff Heath**  
**Delgado Acosta LLP, Austin, TX**

### LUNCHEON PRESENTATION

1:05 p.m. .50 hr

### The Texas Water Development Board: Past, Present, and Future

A look back at the history of water resource development in Texas, an update on current developments at the Board, and a few opinions on the future from the former Chairman of the Texas Water Development Board.

Carlos Rubinstein, Austin, TX

1:35 p.m. Break

1:50 p.m. .75 hr

### Takings: Overview and Recent Litigation

Lynn E. Blais, Co-Director of the Supreme Court Clinic, The University of Texas School of Law, Austin, TX  
Paul M. Terrill III, The Terrill Firm, P.C., Austin, TX

2:35 p.m. 1.00 hr

### Groundwater Regulation in Light of Recent Takings Litigation

Recent appellate court decisions have prompted strident advocacy about groundwater regulation and property rights. Has rhetoric outpaced the law? Does all regulation require compensation? When does groundwater regulation go too far?

**Moderator:**  
Steve Kosub, San Antonio Water System, San Antonio, TX

**Panelists:**  
Gregory M. Ellis, Attorney at Law, League City, TX  
Billy Howe, Texas Farm Bureau, Waco, TX  
Christopher S. Kulander, South Texas College of Law and Of Counsel, Haynes and Boone, LLP, Houston, TX

3:35 p.m. Break

3:45 p.m. .75 hr

**Groundwater–Surface Water Interaction: Implications for Groundwater Planning and Management**

Groundwater pumping generally results in decreased groundwater storage, induced recharge to the area, and decreased spring flow and stream flow. The nature and timing of these three impacts are dependent on many factors, and require an understanding of local conditions. Explore how groundwater–surface water interaction affects groundwater planning and management.

William R. Hutchison, Independent Groundwater Consultant, Austin, TX

4:30 p.m. .50 hr

**Environmental Flows and Senate Bill 3: Lessons Learned**

Bob Brandes, Robert J. Brandes Consulting, Austin, TX

5:00 p.m. .50 hr

**The Road beyond Denton: A Current Look at Hydraulic Fracturing Regulation in Texas**

One of the most hotly contested topics in the 84<sup>th</sup> Legislature was HB 40—the response to the City of Denton banning hydraulic fracturing. Final legislation reversed the ban, but also significantly altered municipal regulation of oil and gas production in Texas. Explore the background of urban regulation of drilling activities, the Denton ban, and the effect of HB 40, and consider emerging topics regarding water regulation and induced seismicity events associated with fluid waste disposal.

James D. Bradbury, James D. Bradbury PLLC, Fort Worth, TX

5:30 p.m. Adjourn

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This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 15.50 hours, of which 2.00 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).

**FRIDAY MORNING, OCT. 30, 2015**

**Presiding Officer:**  
Doug Caroom, Bickerstaff Heath Delgado Acosta LLP, Austin, TX

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

8:30 a.m. .50 hr

**Texas Water Law: A Policy Perspective**

An inside look at the policy rationale and legislative intent of several pieces of water-related legislation enacted by the 84<sup>th</sup> Texas Legislature.

Sen. Charles Perry, Chairman of the Senate Committee on Agriculture, Water, & Rural Affairs, Texas Senate, Lubbock, TX

9:00 a.m. .50 hr

**Texas Legislative Update**

An overview of water legislation in the 84<sup>th</sup> Session, including discussion of what passed and what did not.

Hope E. Wells, San Antonio Water System, Austin and San Antonio, TX

9:30 a.m. .75 hr

**Case Law Update**

Evaluate recent groundwater, surface water, and utility cases and their implications.

Emily Willms Rogers, Bickerstaff Heath Delgado Acosta LLP, Austin, TX

10:15 a.m. Break

10:30 a.m. .75 hr

**The Role of Groundwater Conservation Districts in Water Quality Protection**

A discussion of the authority and activities of groundwater conservation districts in the regulation of groundwater quality, including district participation in RRC and TCEQ waste management proceedings.

Eric M. Allmon, Frederick, Perales, Allmon & Rockwell, P.C., Austin, TX  
John J. Vay, Enoch Keever PLLC, Austin, TX

11:15 a.m. .50 hr

**Threshold for Challenges to Water Quality and Water Rights Permits: Who's "Affected?"**

Examine water quality and water rights permitting actions, as well as the legal standard and procedures that govern the threshold question of whether a hearing requestor is an affected person in light of recent litigation and legislation.

Paulina Olin Williams, Baker Botts, Austin, TX

11:45 a.m. Pick Up Lunch

Included in registration.

**FRIDAY AFTERNOON**

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

**LUNCHEON PRESENTATION**

12:05 p.m. .75 hr

**Climate Change and Its Impact on Water Planning and Management**

Climate change will affect the use and distribution of Texas water. Surface water availability could be more limited than the 1950s' drought of record, placing greater stress on groundwater resources. Learn how water infrastructure investments and strategies can and should take climate change scenarios into consideration.

Ronald A. Kaiser, Professor and Chair, Graduate Water Program, Texas A&M University, College Station, TX

12:50 p.m. Break

1:05 p.m. .75 hr

**There's No Accounting for Water**

Review the basics of accounting plans used in water rights permitting and gain insight into recent developments and issues.

Kathy Alexander, Texas Commission on Environmental Quality, Austin, TX  
Tom Gooch, Freese and Nichols, Fort Worth, TX

1:50 p.m. 1.00 hr ethics

**Ethical Issues in Environmental Law—It's Not Easy Being Green**

Using a series of hypotheticals, explore a number of ethical issues that are especially pertinent to water law practitioners—including who is the client, the duty to disclose, and conflicts—with lessons on how clients and their counsel can minimize ethical, as well as legal, risks.

Jeff Civins, Haynes and Boone, LLP, Austin, TX  
Suzanne Beaudette Murray, Haynes and Boone, LLP, Dallas, TX

2:50 p.m. 1.00 hr ethics

**The Devil in the Details: An Ethical Journey toward Governmental Approvals**

Uncover ethical issues related to the regulatory world of water law, including advocacy in and around agencies, representing or speaking to public officials and board members, advocacy on and for both sides, financing and its role in deals or permits, and what to do when it's such a small, small world.

Barbara A. Boulware-Wells, Knight & Partners, Austin, TX

3:50 p.m. Adjourn

## INSTITUTE FACULTY

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KATHY ALEXANDER Texas Commission on Environmental Quality Austin, TX	DOUG CAROOM Bickerstaff Heath Delgado Acosta LLP Austin, TX	RONALD A. KAISER Texas A&M University College Station, TX	EMILY WILLMS ROGERS Bickerstaff Heath Delgado Acosta LLP Austin, TX
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TRISH ERLINGER CARLS Carls, McDonald & Dalrymple, LLP Austin, TX	WILLIAM R. HUTCHISON Independent Groundwater Consultant Austin, TX	JEREMY RICE Freese and Nichols Fort Worth, TX	

## PLANNING COMMITTEE

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TODD D. CHENOWETH Texas Water Development Board Austin, TX	KATHLEEN LIGON Texas Water Development Board Austin, TX		

## HOW TO REGISTER

**Online:**  
www.utcle.org/conferences/WL15

**Mail:**  
The University of Texas  
School of Law  
Attn. CLE  
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 (TX, CA) you may have missed at the conference. Available in *Your Briefcase* 6–8 weeks after the conference.

**TX MCLE Credit Reporting:** UT Law CLE can report credit on your behalf directly to the State Bar of Texas. Track your Texas MCLE credit claimed and reported through UT Law CLE in *Your Account*.

**Your Account:** Activate *Your Account* online at www.utcle.org. Your UT Law CLE Account is created for you as a first-time conference registrant (mail and fax registrations) with the email address you provide.

## IN-HOUSE AND CONFERENCECOMPLETE MATERIALS

### In-House

Bring Texas Water Law Institute 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.

### ConferenceComplete Materials

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

## REGISTRATION FORM

PLEASE PRINT CLEARLY

WL15  
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### REGISTRATION—Includes Course Materials and Thursday and Friday Luncheon Presentations

Special group registration rates available. Call 512.475.6700.

#### 1. Select Registration Type

##### Individual

- Registration by Wednesday, October 21 . . . . . \$550  
 Registration after Wednesday, October 21 . . . . . \$600

##### Texas Alliance of Groundwater Districts Member

- Registration by Wednesday, October 21 . . . . . \$375  
 Registration after Wednesday, October 21 . . . . . \$425

##### State Employee

- Registration by Wednesday, October 21 . . . . . \$375  
 Registration after Wednesday, October 21 . . . . . \$425

#### 2. Select Course Materials Format

- Electronic Course Binder Download (PDF) ONLY  
 Printed Course Binder ONLY (available through October 21)

#### IN-HOUSE—For Texas MCLE Credit

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.

- In-House for 2 . . . . . \$850  
 \_\_\_\_\_ Additional participant(s) for \$275 each . . . . . \$ \_\_\_\_\_

#### CONFERENCECOMPLETE MATERIALS<sup>†</sup>—For Research and Self-Study

Comprehensive Binder and Audio products from the live conference. Available for delivery 3–5 weeks after conference date. Shipping included.

- eBinder Download (PDF) . . . . . \$225  
 Printed Binder . . . . . \$275  
 Audio Download (MP3) . . . . . \$175  
 Audio CD Set . . . . . \$225

<sup>†</sup>Texas customers—add 8.25% sales tax or include an Exemption Certificate . . . . . \$ \_\_\_\_\_  
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**AUSTIN**

**October 28\*, 29–30, 2015**

**CONFERENCE LOCATION**



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

**Special Room Rate: \$184**  
 good through September 28, 2015  
 reference "UT Law Water Law "  
 (subject to availability)

**Parking:**  
 \$4 dilly self-parking; \$25 valet  
 \$10 overnight self-parking  
 (subject to change)

**KEY DATES**

- October 21, 2015**  
*last day for early registration*  
 add \$50 for registrations  
 received after this time
- October 23, 2015**  
*last day for cancellation (full refund)*
- October 26, 2015**  
*last day for cancellation (partial refund)*  
 \$50 processing fee applied
- October 28, 2015, 6:00 p.m.**  
*\*Wednesday Evening Overview begins*
- October 29, 2015, 8:50 a.m.**  
*Institute begins*

**ABOUT THE COVER: LAKE TRAVIS – AUSTIN, TEXAS**

Beautiful Lake Travis is the largest of the six Highland Lakes along the lower Colorado River in Texas. At more than 63 miles long, the lake winds its way through the picturesque Hill Country, ending at Mansfield Dam northwest of Austin. Though Lake Travis offers excellent recreational opportunities for boating, swimming and fishing, its purpose is to capture and store water for the region's water supply. It also is the only one of the Highland Lakes built to store floodwaters. The Lower Colorado River Authority manages the lakes through a system of dams that also are used to create hydroelectricity. Together, the Highland Lakes provide water for more than a million people, for businesses and industries, the environment, and agriculture. When this photo was taken in late August, Lake Travis had not fully recovered from a multiyear historic drought. This photo was taken above Lake Travis near The OASIS restaurant on Lake Travis by Victor Tran of the Lower Colorado River Authority.



**2015 TEXAS WATER LAW INSTITUTE HIGHLIGHTS**

- **Texas State Senator (District 28), Charles Perry**, provides his inside perspective on the policy rationale and legislative intent behind recent water-related legislation enacted by the 84<sup>th</sup> Legislature
- Current developments around the rule defining "waters of the U.S."
- A review of recent taking litigation and analysis of its impact on groundwater regulation
- A look at the past, present and future of the Texas Water Development Board by Former Chairman, **Carlos Rubinstein**
- Discussion on select water rights permitting issues—water conservation considerations; plus impacts of regional planning decisions on permitting and financing
- Tips for developing accounting plans, including guidance from the TCEQ
- An analysis of the impact of climate change on water planning and management, with **Ronald A. Kaiser**, Chair of the Texas A&M University Water Program
- Case law updates highlighting key surface water and groundwater cases; as well as additional legislative developments addressing water issues
- Wednesday evening's Texas Water Law Overview with **Jim Mathews** and **Doug Caroom**
- Earn up to 15.50 hours CLE credit including 2.00 hours ethics credit