

2016

TEXAS WATER LAW INSTITUTE



FUNDAMENTALS
November 2, 2016

INSTITUTE
November 3–4, 2016

Radisson Hotel and Suites Downtown ■ Austin, Texas

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

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Fundamentals—Earn up to 3.00 Hours of Credit
Institute— Earn up to 14.75 Hours of Credit Including 2.00 Hours of Ethics Credit
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2016

WATER LAW FUNDAMENTALS

November 2, 2016 ■ Radisson Hotel and Suites Downtown ■ Austin, Texas

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TX Legal Specialization Credit Approved for Administrative Law and Real Estate Law

Credit for TX Professional Engineers Available

WEDNESDAY AFTERNOON, NOV. 2, 2016

Presiding Officers:

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

Jim Mathews, Mathews & Freeland LLP, Austin, TX

12:30 p.m. Registration Opens

Includes light refreshments.

1:20 p.m. Welcoming Remarks

1:30 p.m. 1.00 hr

Groundwater Issues

Explore issues unique to groundwater, including regulation basics, planning considerations, and other essentials.

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

2:30 p.m. 1.00 hr

Surface Water Issues

Explore issues unique to surface water, including regulation basics, planning considerations, and other essentials.

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

3:30 p.m. Break

3:45 p.m. 1.00 hr

Who's Who When it Comes to Water

Get the basics on who handles what when it comes to water in Texas.

Lyn E. Clancy, Lower Colorado River Authority, Austin, TX

4:45 p.m. Adjourn

FUNDAMENTALS MCLE

This course has been approved for Minimum Continuing Legal Education credit by the State Bar of Texas Committee on MCLE in the amount of 3.00 hours. 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).

REASONS TO ATTEND WATER LAW FUNDAMENTALS

The ideal introduction for new entrants to the field or a refresher for seasoned practitioners, as well as non-lawyers, governmental officials, and engineers, **Water Law Fundamentals** provides an overview of Texas water law statutes, regulations, and cases, including vocabulary and acronyms necessary to understanding Texas water law.

INSTRUCTORS:

Doug Caroom is a partner with Bickerstaff Heath Delgado Acosta LLP and is certified by the Texas Board of Legal Specializations for Administrative Law. With more than 40 years of experience in Texas, Doug practices in the areas of water and environmental law, administrative law, and public law. He assists municipalities, river authorities, and water districts in all phases of regulation and is an adjunct professor of Water Law at The University of Texas School of Law.

Lyn Clancy is a Senior Water Policy Advisor and the Managing Associate General Counsel with the Lower Colorado River Authority and is the Editor-in-Chief of the Texas Environmental Law Journal. With 15 years of experience in water rights and water policy in Texas, Lyn also serves on the Board of Directors for the Texas Water Conservation Association.

Jim Mathews is a founding partner of Mathews & Freeland, LLP, and has been practicing law in Texas since 1973. Jim has extensive experience with water rights and water quality matters, and served as an Assistant Attorney General and the Chief of the Environmental Protection Division of the Texas Attorney General's Office prior to entering private practice.

FUNDAMENTALS FACULTY AND PLANNING COMMITTEE

Doug Caroom*—CO-CHAIR
Bickerstaff Heath Delgado Acosta LLP
Austin, TX

JIM MATHEWS*—CO-CHAIR
Mathews & Freeland LLP
Austin, TX

LYN E. CLANCY
Lower Colorado River Authority
Austin, TX

DEBORAH SALZBERG*
The University of Texas School of Law
Austin, TX

*Planning Committee member

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

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

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

Good structure and format of the program. The speakers are good and provide different sides of the issues.

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

All aspects of the program are well done.

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

2016

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Credit for TX Professional Engineers Available

THURSDAY MORNING, NOV. 3, 2016

Presiding Officer:

**Jim Mathews, Mathews & Freeland LLP,
Austin, TX**

7:30 a.m. Registration Opens

Includes continental breakfast.

8:20 a.m. Welcoming Remarks

8:30 a.m. 1.00 hr | .25 hr ethics

Unbundling Water Rights: Piloting Efforts to Apply the Australian Experience in the American West

Explore the efforts to alter the system of water rights in the American West, and by focusing on pilot approaches proposed in Nevada and California, learn how these efforts create markets in shares of a water system, as well as in periodic allocations of quantities of water.

Timothy H. Profeta, Nicholas Institute for
Environmental Policy Solutions, Duke University,
Durham, NC

9:30 a.m. .50 hr

Valuation of Water Rights

Credible fair market valuation of water rights is a major challenge in Texas. Explore a thorough and reliable model for determining the fair market value of water rights not only in Texas, but elsewhere around the globe.

Charles R. Porter Jr., St. Edward's University, Austin, TX

10:00 a.m. .50 hr

Marketing Groundwater Rights

An overview of issues facing landowners and groundwater project developers, including: "grass roots politics", market conditions, pricing concerns, transport considerations, permitting hurdles, and coordination with local groundwater districts.

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

10:30 a.m. Break

INSTITUTE MCLE

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10:45 a.m. .50 hr

Marketing Surface Water Rights

In pursuing the purchase of a water right, a buyer has to consider a number of regulatory steps in order to make the purchased water right beneficially useful. Just what are those steps?

James Kowis, James Kowis Consulting, Austin, TX

11:15 a.m. 1.00 hr

The Prior Appropriation Doctrine: Still Appropriate for Texas?

In *TCEQv. Texas Farm Bureau*, the Texas Commission for Environmental Equality (TCEQ) stated it needed the authority to amend the "first in time is first in right" rule, in order to protect public health and welfare. This position garnered numerous support from the *amici*. Hear experienced practitioners weigh in on the statement, and what it might mean for surface water rights in Texas.

Moderator:

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

Panelists:

John W. Fainter Jr., The Association of Electric
Companies of Texas, Inc. (AECT), Austin, TX
R. Glenn Jarvis, Law Offices of Glenn Jarvis,
McAllen, TX
Carlos Rubinstein, RSAH2O, LLC and Former
Chairman, Texas Water Development Board,
Austin, TX

12:15 p.m. Pick Up Lunch

Included in registration.

THURSDAY AFTERNOON

Presiding Officer:

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

LUNCHEON PRESENTATION

12:35 p.m. .50 hr

The Texas Water Development Board SWIFT Program and Its Role in Implementing the Texas State Water Plan

Survey the highlights of the 2017 Texas State Water Plan and recent SWIFT program financing.

Bech Bruun, Chairman, Texas Water Development
Board, Austin, TX

1:05 p.m. Break

1:20 p.m. 1.00 hr

Bush School Capstone Report: Reorganizing Groundwater Regulation in Texas

Review the regulatory practices of the local groundwater conservation districts, which concludes that Texas has a regulation-induced shortage of groundwater. Learn the four alternative regulatory options—based on four metrics—and find that substantial improvements are possible.

James M. Griffin, The Bush School of Government
and Public Service, Texas A&M University,
College Station, TX

2:20 p.m. .75 hr

Indirect Reuse of Water

Examine historically disputed issues regarding indirect reuse and learn some of the existing indirect reuse permits. Discuss more recent directions and questions regarding indirect reuse coming from the Brazos River Authority System Operation permit hearing.

Colette Barron Bradsby, Texas Parks & Wildlife
Department, Austin, TX
Lyn E. Clancy, Lower Colorado River Authority,
Austin, TX

3:05 p.m. Break

3:15 p.m. .75 hr

Direct Potable Reuse

Explore the technical, social, and regulatory issues associated with the implementation of direct potable reuse in Texas, including a discussion of several case studies.

Ellen T. McDonald, Alan Plummer Associates, Inc.,
Fort Worth, TX
Bill Riley, San Angelo Water Utilities Department,
San Angelo, TX
L'Oreal W. Stepney, P.E., Texas Commission on
Environmental Quality, Austin, TX

4:00 p.m. .50 hr

Legal Issues with Permitting Amenity Ponds

Amenity ponds are often constructed in new subdivisions for aesthetic, recreational, drainage, and irrigation purposes. Depending on the location and source of water for the pond, such as state-owned surface water, groundwater, storm water, or reclaimed water, the permitting requirements can vary greatly. Review the various permitting requirements and the legal hurdles associated with these ponds.

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

4:30 p.m. .75 hr ethics

Here but For the Grace of God Go You: Why the Texas Lawyers Creed Matters to You
Learn how to be the opposing counsel your profession needs without compromising your ethical duties to your client—an autobiography of four family deaths in eleven months.
Mark McPherson, Attorney at Law, Dallas, TX

5:15 p.m. Adjourn

FRIDAY MORNING, NOV. 4, 2016

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

7:30 a.m. Conference Room Opens
Includes continental breakfast.

8:30 a.m. .50 hr

Texas Case Law Update
Listen to an update on cases dealing with water-related issues in Texas.
Trey Nesloney, Booth, Ahrens & Werkenthin, P.C., Austin, TX

9:00 a.m. .50 hr

TCEQ: Regulatory Update
Explore the recent rule-makings, actions, and decisions of the Texas Commission for Environmental Quality relating to Water Law.
Ross Henderson, Texas Commission on Environmental Quality, Austin, TX

9:30 a.m. .50 hr

PUC Update
The PUC assumed jurisdiction over water and sewer utility rates and CCNs two years ago. Has the change had the desired impact? Hear a summary of some important updates you will want to know about when managing rate applications, rate appeals, and CCN issues before the PUC.
John J. Carlton, The Carlton Law Firm PLLC, Austin, TX

10:00 a.m. Break

10:15 a.m. 1.00 hr

Texas Legislature: Water Issues in the 85th
Hear a preview of water politics and policy for the 85th Texas Legislature.
Eduardo A. "Eddie" Lucio III, Texas House of Representatives, Brownsville, TX
Charles Perry, Texas Senate, Lubbock, TX

11:15 a.m. .50 hr

Federal Case Law Update
The federal courts have seen significant developments in the water arena, from the U.S. Supreme Court on down this year. Review the latest updates on major federal decisions and litigation, including the status of the Waters of the U.S. litigation, cross-border disputes, and more.
Paulina Williams, Baker Botts, Austin, TX

11:45 a.m. .75 hr ethics

Communication and the Electronic Age
Considering what we know about government surveillance, can an attorney ethically use electronic communication to discuss confidential client information? Examine legislative responses to the Edward Snowden disclosures and discuss appropriate lawyer communication in the electronic age.
Thomas A. Gwosdz, City of Victoria, Victoria, TX

12:30 p.m. Pick Up Lunch

Included in registration.

FRIDAY AFTERNOON

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

LUNCHEON PRESENTATION

12:50 p.m. .50 hr | .25 hr ethics

A Change in Perspective: When the Lawyer Becomes the Client
The Commissioner discusses his experiences in transitioning from representing the Texas Commission on Environmental Quality to being the client of the Office of the Attorney General, including observations on the Open Meetings Act and *ex parte* issues.
Jonathan K. Niermann, Commissioner, Texas Commission on Environmental Quality, Austin, TX

1:20 p.m. Break

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1:35 p.m. 1.00 hr

Desired Future Conditions: Will Process Changes Increase Accountability?
Through SB 660 (2011) and HB 200 (2015), the Legislature imposed new requirements for developing desired future conditions, including a best available science standard, and created an appeal process utilizing the state office of administrative hearings. Explore how these changes may affect groundwater conservation districts and their DFC decisions.

Moderator:
Jim Mathews, Mathews & Freeland LLP, Austin, TX

Panelists:
James A. Beach, LBG-Guyton Associates, Austin, TX
Marvin W. "Marty" Jones, Sprouse Shrader Smith PLLC, Amarillo, TX
Robert E. Mace, Ph.D., P.G., Texas Water Development Board, Austin, TX

2:35 p.m. .50 hr

State Water Plan Update
Take a look ahead to the fifth cycle of regional and state water planning.
Matt Nelson, Texas Water Development Board, Austin, TX

3:05 p.m. Break

3:15 p.m. .50 hr

Governmental Immunity: Implications of the Wasson and Wheelabrator Cases
The Supreme Court of Texas issued opinions earlier this year that resolved a split among appellate courts and declared that the proprietary-governmental dichotomy found in the Texas Tort Claims Act applies to waiver of immunity claims in the contract setting. Examine these decisions and their impact on water contracts with governmental entities.
Heather Mahurin Lockhart, Texas Municipal League, Austin, TX

3:45 p.m. .75 hr

Application of Governmental Law Requirement to Public-Private Partnership Projects
What responsibilities and attributes of the government, such as obligations of openness and transparency, does a private business assume when it partners with the government on a project?
C. Robert Heath, Bickerstaff Heath Delgado Acosta LLP, Austin, TX

4:30 p.m. Adjourn

REGISTRATION FORM

WLF16/WL16

Register:
www.utcle.org/conferences/WLF16
www.utcle.org/conferences/WL16

Mail:
The University of Texas 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*

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REGISTRATION

FUNDAMENTALS—WLF16

Includes electronic course materials

1. Select Registration Type

- Individual registration by Wednesday, Oct. 26. \$115
- Individual registration after Wednesday, Oct. 26. \$165
- TX Alliance of Groundwater Districts Member registration by Oct. 26. \$115
- TX Alliance of Groundwater Districts Member registration after Oct. 26. \$165
- State Employee registration by Oct. 26. \$115
- State Employee registration after Oct. 26. \$165

2. Select Course Materials Format

- Electronic Course Binder Download (PDF) ONLY
- PURCHASE: Printed Course Binder (available through October 26). \$27.06
Price of binder includes 8.25% sales tax
- Printed Binder for Tax Exempt Registrants (government, nonprofit, etc.) \$25

Fundamentals Registration Total. \$ _____

INSTITUTE—WL16

Includes electronic course materials and Thursday and Friday luncheon presentations

1. Select Registration Type

- Individual registration by Wednesday, Oct. 26. \$550
- Individual registration after Wednesday, Oct. 26. \$600
- TX Alliance of Groundwater Districts Member registration by Oct. 26. \$375
- TX Alliance of Groundwater Districts Member registration after Oct. 26. \$425
- State Employee registration by Oct. 26. \$375
- State Employee registration after Oct. 26. \$425

2. Select Course Materials Format

- Electronic Course Binder Download (PDF) ONLY
- PURCHASE: Printed Course Binder (available through October 26). \$27.06
Price of binder includes 8.25% sales tax
- Printed Binder for Tax Exempt Registrants (government, nonprofit, etc.) \$25

Institute Registration Total. \$ _____

REGISTRATION SUBTOTAL \$ _____

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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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- In-House CLE for 2 \$250
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INSTITUTE—WL16

- In-House CLE for 2 \$850
- _____ Additional participant(s) for \$275 each \$ _____

Institute In-House Total. \$ _____

IN-HOUSE SUBTOTAL \$ _____

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- Printed Binder \$135
- Audio Download (MP3) \$75
- Audio CD Set \$125

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Sales tax will be invoiced separately on taxable materials orders for which payment does not include tax.

INSTITUTE—WL16

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

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AUSTIN

November 2–4, 2016

CONFERENCE LOCATION



Radisson Hotel and Suites Downtown

111 E. Cesar Chavez Street
Austin, TX
512.478.9611 (reservations)

Special Room Rate: \$195
good through October 3, 2016
(subject to availability)

Parking:

\$6 daily self-parking; \$10 overnight self-parking
\$26 valet parking

KEY DATES

October 26, 2016

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

October 28, 2016

last day for cancellation (full refund)

October 31, 2016

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

November 2, 2016, 1:20 p.m.

Fundamentals begins

November 3, 2016, 8:20 a.m.

Institute begins

INSTITUTE FACULTY AND PLANNING COMMITTEE

DOUG CAROOM*—CO-CHAIR
Bickerstaff Heath Delgado Acosta LLP
Austin, TX

JIM MATHEWS*—CO-CHAIR
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Austin, TX

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LBG-Guyton Associates
Austin, TX

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Guadalupe-Blanco River Authority
Seguin, TX

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*Planning Committee member