



APPLICATION OF ACCOMMODATION DOCTRINE TO GROUNDWATER RIGHTS IN TEXAS

In *Coyote Lake Ranch, LLC v. The City of Lubbock*, slip op. (Tex. May. 27. 2016), available [here](#), the Texas Supreme Court held that the accommodation doctrine applies to the resolution of conflicts between a severed groundwater estate and the surface estate, when such conflicts are not governed by the express terms of an agreement binding the parties. The accommodation doctrine in Texas has been applied in the context of a severed mineral estate, and such doctrine provides, in part, that “[a]bsent an agreement to the contrary, an oil and gas lessee [or mineral owner] has an implied right to use the land as reasonably necessary to produce and remove the minerals but must exercise that right with due regard for the landowner’s rights.” (*Coyote Lake Ranch*, citing as authority, *Getty Oil Co. v. Jones*, 470 S.W.2d 618, 621 (Tex 1971)). Unlike the mineral estate, which once severed is considered to be a separate estate from the surface estate, groundwater rights are generally considered to be part of the rights associated with the surface estate. This can create issues between the owner of the surface, who may have desires to use the surface for matters unrelated to groundwater extraction, and the owner of the groundwater rights, who will typically need to use some portion of the surface in order to extract the groundwater. The primary issue presented for the *Coyote Lake Ranch* Court’s determination was whether the accommodation doctrine should be extended and applied to the relationship between a landowner and the owner of an interest in the groundwater, and the *Coyote Lake Ranch* Court held that the accommodation doctrine should be applied.

The surface of Coyote Lake Ranch is primarily used for agriculture, raising cattle, and recreational hunting. In 1953, the City of Lubbock bought the Ranch’s groundwater to help its residents and residents of other towns deal with a severe drought at that time. The Ranch conveyed the groundwater rights to the City in a deed. The deed also contained detailed provisions for the City’s rights to use the surface in connection with such groundwater rights granted (including such rights of ingress, egress and use that may be “necessary or incidental” to producing, treating, or transmission of water).

In 2012, the City announced its plans to drill as many as 20 test wells and 60 new wells, in order to increase its water extraction efforts from the Ranch. The Ranch objected, stating that the drilling would unnecessarily damage the surface and increase erosion. The City, moving forward with its plans, claimed that the drilling was well within its expressed rights under the deed. The Ranch then sued to enjoin the City from proceeding.

The Ranch argued that the City had a contractual responsibility, as well as a common law duty, to conduct its operations with due regard for the rights of the surface owner. In turn, the City argued that the deed gave it all the rights it needed to proceed with its plans, and that the breadth of the deed essentially allowed the City to drill wherever it chose, even if its drilling operations would damage the surface. Much of the argument between the parties centered around how broadly or narrowly the phrase “necessary and incidental” should be applied with regard to the City’s rights. The *Coyote Lake Ranch*

Court determined that the deed, itself, did not fully resolve this issue, and disagreed with the City on this point. Next, the *Coyote Lake Ranch* Court turned to the question of whether the accommodation doctrine should be applied to resolve disputes not resolved by the deed.

In reviewing the application of the accommodation doctrine to severed mineral estate situations, the *Coyote Lake Ranch* Court noted that the mineral estate is often referred to as the “dominant” estate (and that the surface estate is often referred to as “servient”), not because the mineral estate is superior to the surface estate, but because in order to enjoy the benefits of its mineral estate and extract the minerals, the mineral estate owner is the beneficiary of certain implied rights to use the surface for such purposes. However, a mineral estate owner’s implied rights are not absolute, and a mineral estate owner must exercise these implied rights with due regard for the rights of the surface owner, particularly where there is an existing use being made of the surface. After summarizing a number of cases where the accommodation doctrine was applied, the *Coyote Lake Ranch* Court noted that the accommodation doctrine previously has only been applied when mineral interests are involved in a given controversy. Nonetheless, because of the similarities between mineral estates and groundwater estates (including, among others, that both minerals and groundwater are found in subterranean reservoirs, both mineral interests and groundwater interests can be severed from the surface rights, and both mineral rights and groundwater rights are subject to the rule of capture), the *Coyote Lake Ranch* Court extended the application of the accommodation doctrine and stated that “[a] severed groundwater estate has the same right to use the surface that a severed mineral estate does.”

Further, the *Coyote Lake Ranch* Court held that the accommodation doctrine applies to the resolution of conflicts between a severed groundwater estate and the surface estate, when such conflicts are not governed by the express terms of an agreement binding on the parties. Finally, the Court remanded the case to the trial court for further proceedings consistent with its opinion.

If you have questions about the information contained in this Client Alert, please contact the attorneys listed below or the Thompson & Knight attorney with whom you regularly work.

CONTACTS:

Hunter H. White
713.951.5840
Hunter.White@tklaw.com

Richard B. Hemingway, Jr.
713.653.8640
Richard.Hemingway@tklaw.com

Bill McDonald
713.951.5832
Bill.McDonald@tklaw.com

Debra J. Villarreal
214.969.1544
Debra.Villarreal@tklaw.com

David W. Cias
713.217.2884
David.Cias@tklaw.com

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