

See You in Court! TWA Active in Legal Arena

article by **Gary Joiner**

The work is detailed, and the outcome and impact of the work may not be known for months.

Such is the case of legal advocacy. For the Texas Wildlife Association, a committed legal effort is essential as the organization seeks to protect and promote the policy interests of TWA and the rights of its members.

TWA filed *amicus curiae* briefs to the Texas Supreme Court recently in three cases determined to be of statewide significance and of high policy value to TWA. *Amicus curiae*

is a legal Latin term that means "friend of the court," and it refers to someone, not a party to a case, who volunteers to offer information on a point of law or some other aspect of the case to assist the court in deciding a matter before it.

TWA filed *amicus* briefs in the following cases to protect private property rights in Texas:

- *Edwards Aquifer Authority v. Burrell Day and Joel McDaniel* (ownership of groundwater beneath the surface)

- *Severance v. Patterson* (extent of public beachfront property on Texas gulf beaches)

- *Guitar Holding Company, L.P. v. Hudspeth County Underground Water Conservation District* (regulation of groundwater usage)

What was particularly important about these cases? The attorneys advocating TWA's position provide details and their own perspective.

Russell S. Johnson of Austin prepared the legal brief for

TWA in the *Edwards Aquifer Authority v. Burrell Day and Joel McDaniel* case. He writes in the brief:

"TWA believes secure property rights assure conservation and stewardship of all resources, including groundwater. Groundwater is an integral part of the land, and Texas law has supported its private ownership and management for over 100 years. Like other private property in Texas, groundwater is subject to reasonable regulation. TWA supports the state's preferred method of using local groundwater conservation districts (GCDs) to reasonably regulate this privately owned property. When dealing with private property and local concerns, it is more effective for landowners to work with their neighbors than a distant state agency. However, for GCDs to function as they were intended, they must recognize that groundwater is the private property of landowners and use sound scientific principles to develop reasonable regulations that ultimately ensure beneficial use of groundwater. Reaffirming groundwater in place as a vested property right is in the best interest of Texas' citizens and its system of groundwater regulation.

"Reaffirming vested property rights in groundwater is not only required by the history of groundwater law in Texas, but it is appropriate from a modern policy perspective. Private ownership of

TWA Director James Barrow of San Antonio prepared the organization's legal brief in the *Severance v. Patterson* case.



groundwater encourages good stewardship and promotes accountability. As the demand for groundwater in Texas increases, private ownership in a market-based system will encourage close analysis of the quantity and quality of a landowner's groundwater. Private ownership of groundwater provides certainty and balance in water planning, allowing planners to concentrate on how best to use groundwater to meet the state's critical needs. It affords the ability to achieve a balance between rural water-producing areas and urban water-consuming areas, without jeopardizing potential growth in any area of the state. Private ownership of groundwater supports free enterprise, allowing the continued, reasonable development of a market for water within the regulatory limits established by the legislature. Thus, TWA believes the preservation of landowners' vested property rights in groundwater is critically important to the management and conservation of the state's groundwater resources."

The Supreme Court has yet to issue a ruling in the case after hearing arguments in February.

James Barrow of San Antonio, a TWA Director, prepared the legal brief for TWA in the *Severance v. Patterson* case.

"As a lawyer specializing in land, this case was very interesting to me, and I was pleased to help TWA. The question in the case is the extent of public beachfront property on Texas gulf beaches. There is not much

question as to the existence of a public beach on Texas' barrier islands, which is bordered by private lands behind the dune line. However, Hurricane Ike had the extraordinary effect of suddenly moving that dune line (as well as the gulf beach) landward by several hundred



TWA Secretary Glen Webb of Abilene

feet, and thereafter, the State of Texas believed that its public beach moved right along with it, causing the loss of private owner's property and houses.

"We argued that any taking of the private lands must be compensated for because, among other reasons, there is no "hurricane exception" to the constitutional requirement of just compensation. If the State wants a beach there, they should pay for it. There were a lot of other issues involved relating to Spanish law and precedent of other cases, but in its simplest form, that's what the case was about. It's not a question of whether there should be public beaches, but that there should be just compensation to private landowners. You have to draw the line right

here. In Texas, the Supreme Court does not have to accept every appeal, so the cases they accept are always razor-thin with great arguments on both sides. I am confident we have given it our best shot."

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Russell S. Johnson of Austin

TWA Secretary Glen Webb of Abilene prepared the legal brief in the *Guitar* case for TWA.

"I feel so strongly that Texas ranchers and landowners provide the best stewardship of water resources in the state. When you look out on a pasture in West Texas and see brush management and abundant native grasses, you know the rest of Texas is benefiting from that stewardship through the increase in groundwater. Furthermore, I believe Texas, as Sovereign, granted Texas landowners vested property rights, including groundwater, from the beginning of our state.

"I feel strongly those landowners have been good stewards of those resources

and to suddenly change policy or "take" those rights now due to changing demographics or the changing politics of our state is fundamentally unfair and I believe contrary to the United States Constitution. Yet, that is exactly what was happening in the *Guitar* case."

The Supreme Court ruled in May 2008 in favor of the position advocated by TWA.

"The issues surrounding property rights and stewardship of natural resources are the overwhelming driver for TWA members, in my opinion," said Webb. "If TWA is not fighting for those members at the court regarding fundamental issues of state policy, I know of no group that will."

Barrow hopes more TWA members participate in the TWA advocacy effort.

"I see no reason why TWA should not become more involved in advocacy at the courthouse. I would not want to lose our emphasis on the legislative arena, especially at the state level, and frankly wonder sometimes if we have lost focus on political affairs. I believe we have built a strong team in advocacy and should capitalize on its strengths," Barrow said. "I encourage everyone to participate in the process at whatever level they can, whether by donating their time and talent or otherwise. There is a place for everyone in this organization." 🌱