

# Staying With the Current: Key Texas Water Decisions in 2025

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In 2025, the Texas Supreme Court issued several decisions with meaningful implications for Texas water law. The decisions provide guidance on ownership of produced water, agency discretion during wastewater permitting and appellate jurisdiction for river authorities. The decisions are particularly relevant for oil and gas operators, water utilities, developers, industrial and manufacturing facilities, landowners, agricultural producers and other entities navigating Texas water law.

## **Produced Water**

In *Cactus Water Services, LLC v. COG Operating, LLC*,<sup>1</sup> the Court addressed ownership of produced water that was generated incidental to oil and gas production. The Court held that a mineral lease granting the right to produce oil and gas also conveys the produced water necessarily generated by those operations unless there is an express reservation in the conveyance document.

The Court's decision affirms traditional oil and gas principles recognizing that a mineral lease includes rights necessarily incidental to production, including possession and control over waste byproducts. In reaching this conclusion, the Court emphasized that changes in technology or the potential future value of produced water do not alter the parties' intent at the time the mineral rights were conveyed. The Court also took care to frame its holding narrowly, noting that the dispute before it concerned only produced water and that it expressed no view regarding the ownership of nonhydrocarbon minerals that were in the produced water.

The decision is significant both for what it resolves and what it leaves unresolved. As a result, oil and gas lease language, surface-use agreements and produced-water contracts will likely remain central to future disputes, particularly as technological advances increase opportunities for water reuse and mineral recovery.

## **TCEQ Permitting**

In *Save Our Springs Alliance, Inc. v. Texas Commission on Environmental Quality (TCEQ)*,<sup>2</sup> the Court addressed how TCEQ must apply its antidegradation rules when issuing wastewater discharge permits. The Court rejected arguments that TCEQ is required to evaluate each water-quality parameter independently or apply rigid numerical thresholds. Instead, the Court held that TCEQ may evaluate the proposed discharge's overall effect on water quality and exercise informed judgment based on the full administrative record.

The Court emphasized that the antidegradation rules focus on whether a discharge results in a lowering of water quality as a whole, not whether any individual parameter changes in isolation. The Court also deferred to TCEQ's resolution of conflicting modeling evidence and declined to require the agency to rely on worst-case modeling scenarios.

The decision reinforces the deferential standard applied to agency permitting decisions and confirms that TCEQ retains discretion to apply its technical judgment when evaluating antidegradation impacts.

## **Fifteenth Court of Appeals**

In *Baumgardner v. Brazos River Authority*,<sup>3</sup> the Court clarified that river authorities are political subdivisions of the state, rather than agencies of the executive branch, for purposes of appellate jurisdiction. As a result, civil cases brought by or against river authorities do not fall within the exclusive jurisdiction of the Fifteenth Court of Appeals and instead must proceed through the traditional appellate framework.

The Court focused on the statutory framework governing river authorities, noting that they are created and regulated as special districts with geographically limited jurisdiction, taxing authority and funding derived primarily from water sales rather than state appropriations. Although river authority board members are appointed by the governor, the Court reaffirmed its prior characterization of river authorities as political subdivisions rather than executive-branch agencies.

For parties litigating disputes involving river authorities, the decision has practical and procedural implications. Appeals involving river authorities should not be directed toward the Fifteenth Court, and attorneys may wish to consider the broader implications of the Court's decision when representing other political subdivisions of the state. More broadly, the decision signals that the Court will not expand the Fifteenth Court's jurisdiction beyond what the Legislature has expressly provided.

As demand for water across the state continues to grow, the Court's decisions affecting this vital resource take on increased importance. Issues involving water use, rights and access are likely to remain the subject of continued regulatory scrutiny and litigation. For more information regarding these decisions or assistance with other water-related matters, please contact one of the attorneys listed at the bottom of this webpage.

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<sup>1</sup> *Cactus Water Servs., LLC v. COG Operating, LLC*, 718 S.W.3d (Tex. 2025).

<sup>2</sup> *Save Our Springs All., Inc. v. Tex. Comm'n. on Env't Quality*, 713 S.W.3d 308 (Tex. 2025).

<sup>3</sup> *Baumgardner v. Brazos River Auth.*, 714 S.W.3d 597 (Tex. 2025).