

EVOLUTION OF WATER RESOURCE MANAGEMENT IN TEXAS

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TABLE OF CONTENTS

I. INTRODUCTION..... 2

II. WATER DISTRICTS AND RIVER AUTHORITIES..... 2

III. THE CONSERVATION AMENDMENT..... 2

IV. DISTRICTS AND AUTHORITIES AFTER THE CONSERVATION AMENDMENT 3

V. CONCLUSION 6

I. INTRODUCTION

The Legislature recognized at an early date the need for water resource management managing water supply and use as necessary to develop the State's water resources to encourage population growth and economic development in the State. As early as 1852, the Legislature realized the need to develop a legal system to acquire and develop surface water rights. This effort began first in the arid portion of the State and later was extended to the entire State. *See, Glenn Jarvis, Historical Development of Texas Surface Water Law – Background of the Appropriation and Permitting System, II C.3. Special Laws Creating Private Irrigation Companies, Pg 7.* The early efforts to develop water resources through private irrigation companies and privately financed projects proved less successful than was anticipated. Over 50 years later, it was decided that more legislation would be needed with more authority granted by the people to provide public financing of water projects. The response was a Constitutional Amendment adopted November 8, 1904. *See, Vernon's Ann. Tex. Const. Art. 3 § 52, Interpretive Commentary (2007).*

II. WATER DISTRICTS AND RIVER AUTHORITIES

The 1904 Constitutional Amendment authorized the Legislature to establish political subdivisions and districts, which could issue bonds for improvement of watercourses and for the construction and maintenance of works for irrigation, drainage, navigation, and roads. *Vernon's Ann. Tex. Const., Art 3, § 52 (2007).*

This amendment, enacted during a period of public concern about higher taxes, contained limitations that hampered its effectiveness. For example, it required a two-thirds majority vote of resident property owners to authorize a bond issue; prevented taxation where cities were included within the boundaries of a district; and limited the amount of bonds issued.

Based on the new authority granted in the 1904 Constitutional Amendment, the Legislature passed a statute authorizing the creation of irrigation districts. *Tex. Gen. Laws 1905, Ch 122 p. 235.* The Legislature also passed statutes providing for the creation of drainage and levee improvement districts. A few irrigation districts were formed pursuant to these new laws and the statutes were declared constitutional. *See, e.g., Barstow, et. al. v. Ward County Irrigation District No. 1, 177 S.W. 563 (Tex.Civ.App. – El Paso 1951, reh. denied).* *See, also, White v. Fabring, 212 S.W. 193 (Tex.Civ.App. – Galveston 1919).* However, the limitations imposed by the 1904 Constitutional Amendment restricted irrigation development, which they were intended to encourage. This continued to be the situation until the Legislature responded in the 1913, and later in the 1917-1918 Acts, pursuant to the 1917 Conservation Amendment.

III. THE CONSERVATION AMENDMENT

The 1913 Act, in addition to being a comprehensive water statute relating to surface water law, also authorized the creation of "irrigation districts." *Chapter 172, General Laws, 33rd*

Legislature, page 380. Questions were raised at the time whether the Legislature, under the 1904 Amendment, had sufficient authority to create water districts with the powers necessary to fully develop the State's water resources.

The 1917 Act provided for the creation of "water improvement districts." *See, Chapter 87, page 172, General Laws of the 35th Legislature.* The same Legislature passed a Joint Resolution to submit to the voters of the State another and more liberal Constitutional Amendment with respect to, among other things, financing the operations and projects of water districts and river authorities.

The 1917 Conservation Amendment, approved by the State's electorate on August 21, 1917, Vernon's Ann. Tex. Const. Article XVI, § 59(b) (2007), authorized the Legislature to establish water districts or governmental authorities having more operational and financial flexibility than those authorized under the earlier amendment. Specifically, it authorized the creation of "conservation and reclamation" districts and eliminated the financing restrictions and limitations contained in 1904 Amendment (Article III, § 52), *See, Interpretive Commentary, Tex. Const. Ann. Art. XVI, § 59 (Vernon 1993), Hutchins, Wells "The Texas Law of Water Rights" p. 12 (1961).*

It is noted that many of the statutes passed by the Legislature during this time dealt with irrigation development which was the focus of "economic development" at the time, since 90 percent or more of available water supply was used for irrigation purposes. The 1913 Act was entitled the "Irrigation Act," and sometimes it was referred to at the time as the "Glasscock Act." It had a broader scope, however, as noted by one of its active sponsors of the Act, Rep. D.W. Glasscock, who stated in addressing the House on behalf of the Act:

[W]hile known as the 'Irrigation Bill', it is in fact much more extensive in scope than this term would indicate, and is an effort to form a comprehensive system of statutory 'Water Law' for this State. It deals, not only with the important question of irrigation, in which millions of capital is now invested in this State, and upon which many thousands of people are dependent; but also with every right to use the water; from the Primary use for drinking and domestic purposes, the supply of cities and towns, the natural use for stock raising, the use for mining, the development power, and other purposes; up to the problem of conservation of this great natural resource, and its control application and use, to the benefit of all people of this State.

House Journal, 1913, pages 949-950. *See, Texas Water Rights Commission, et. al. v. City of Dallas, 591 S.W.2d 609 at 613 (Tex.Civ.App. – Dallas, 1979).*

IV. DISTRICTS AND AUTHORITIES AFTER THE CONSERVATION AMENDMENT

The Conservation Amendment was not self-enacting. By its terms, the legislature had the duty to implement the public policy expressed in the amendment. *See, Corpus Christi v. City of*

Pleasanton, 154 Tex. 289, 295-296, 276 S.W.2d 798 (1955). At a called session of the same 35th Legislature, held in 1918, legislation was passed for the purpose of implementing the Conservation Amendment. *Chapter 25, page 40, 4th Called Session, 35th Legislature*. The 1918 Act, in addition to confirming provisions in the 1913 and 1917 Acts, provided for the creation of conservation and reclamation districts with the powers of water improvement districts. It also authorized existing water improvement districts and earlier irrigation districts to convert to conservation and reclamation districts having the powers of such districts without any change in name. While the 1918 Act removed the limitations with regard to taxation, the process for converting to a conservation and reclamation district remained an impediment to development and use of the State's surface water at that time. The process required a petition signed by a relatively large percentage of the owners of land in the district, confirmed by an election held in the district.

The Court, in *Trimmier, et. al. v. Carlton*, 264 S.W. 253 (Tex.Civ.App. – 1924, rehearing denied), discussed the background of these statutes and stated, *without holding*, that the 1917 Act dealing with water improvement districts was intended to supersede the 1913 Act as it covered the same general subject, and in many respects the two statutes were identical. However, the two statutes remained within statutory law. See *Trimmier v. Carlton, supra*, at page 258. The court on motion for rehearing, held that the Conservation Amendment did not supersede the 1904 Amendment. To avoid the limitations imposed by the 1918 Act, special enabling legislation would be required to create a conservation and reclamation district. *Trimmier v. Carlton, supra*, at page 262; *see; also; Arneson, et. al. v. Shary, et. al.*, 32 S.W.2d 907 (Tex.Civ.App. – San Antonio 1930, jurisdiction declined for lack of federal question, 284 U.S. 592) (which addressed the relationship between previous early irrigation canal companies and later created water districts).

The Legislature in 1925 passed legislation providing for the organization of water control and improvement districts, which were conservation and reclamation districts without the limitations created by the 1918 Act as noted in *Trimmier. Acts 1925, 39th Leg., ch. 25 p. 86, et sec.* (which became Tex.Rev.Civ.Stat. art. 7880-1, *et sec.* (Vernon 1954), and was later codified in Chapter 51, Texas Water Code). Because of the uncertainty caused by the *Trimmier* decision and the subsequent 1925 Act, numerous special bills were passed to validate existing districts, convert existing district into conservation and reclamation districts, and create new districts and river authorities. See Tex.Civ.Stat. art. 8280 - 2, *et sec.* (Vernon 1954), Water Auxiliary Laws, Vernon 2004-2005. The Legislature is in the process of codifying these special enabling statutes. See Tex. Special District, Local Laws Code (Vernon 2004).

The 1925 Legislature authorized the conversion of any existing water improvement district or irrigation district into a water control and improvement district by action of its board of directors. See current provisions §§ 51.040 - 51.044 relating to water control and improvement districts. The authority to convert to a water control and improvement district was extended in 1929 to levy improvement districts or any other existing conservation and reclamation districts. Tex.Rev.Civ.Stat. art. 7880-143 and 7880-143a (Vernon 1954), now included in Chapter 51. While the 1925 Act, *39th Leg., ch. 25, p. 133, § 144*, later Tex.Rev.Civ.Stat. art. 7880-144 (Vernon 1954) appeared to validate that all existing water

improvement districts and irrigation districts were operating under the Conservation Amendment, this issue remained uncertain with regard to existing and possible future districts and river authorities in their efforts to manage water sources within their respective jurisdictional boundaries.

The Legislature also provided for other special purpose districts, such as fresh water supply districts, Acts 1919, 36th Leg., 2nd C.S. ch. 48; municipal utility districts, Acts 1971, 62nd Leg., p. 774 ch. 84; and drainage districts, Acts 1907, p. 78, §1, Acts 1911, 32nd Leg., p. 245 ch. 118. Many other types of districts and river authorities were created in specific watersheds, for example, the Brazos River Authority, Acts 1929, 41st Leg. 2nd C.S., Sp.L., p. 22, ch. 13; Guadalupe - Blanco River Authority, Acts 1933, 42nd Leg. 1 C.S., p. 198, ch. 75; and Lower Colorado River Authority, Acts 1934, 43rd Leg. 4th C.S., p. 19, ch. 7.

In 1971, the Legislature codified most all water law and water district statutes. In general, it was intended that the Texas Water Code include all general water laws of the State, as well as amendments made to such laws. However, many of the general water district laws were not codified. *See*, Water Auxiliary Laws, Vernon 2004-2005. Most of the provisions of the 1917, 1918, and 1925 Acts were codified, including those dealing with water improvement districts, water control and improvement districts, fresh water supply districts and, drainage districts. For example, the 1925 Act providing for water control and improvement districts is now found in Chapter 51 and the statutes dealing with water improvement districts, which govern early irrigation districts under the 1905 statute, are found in Chapter 55.

Significantly, in 1971 the question of the status of irrigation districts organized under the early laws pursuant to the 1904 Constitutional Amendment was resolved with adoption of Texas Water Code § 55.050. Under this provision, those early irrigation districts are governed by the provisions of Chapter 55 and are allowed to change their name if they desire. §§ 55.050 - 55.051. This is consistent with *dicta* in the *Trimmier v. Carlton* case *supra*, at page 258.

In 1977, the Legislature approved legislation establishing a new type of district called an “*irrigation district*” as a district separate and apart from other existing earlier water districts and irrigation water districts. *Acts 1977, 65th Leg., pg. 1537, Ch. 627 § 1 effective August 29, 1977.* This Legislation was added as Chapter 58 of the Texas Water Code. A Chapter 58 irrigation district is a conservation and reclamation district pursuant to the Conservation Amendment, Article XVI, § 59 of the Texas Constitution. The specific purposes of these new “*irrigation districts*” is to deliver water for irrigation, provide for drainage, and delivery of untreated water to municipal suppliers. They are authorized to perform, in addition to the delivery of irrigation water, other incidental functions and may contract with municipalities, political subdivision, water supply corporations, or other water users for the delivery of untreated water. *See*, § 58.121, *et seq.*, and a unique system of voting by landowners instead of residents of a district, *See* § 58.221, *et seq.*

As mentioned above, the 1925 Act authorized all existing water districts to convert to water control and improvement districts having the additional powers authorized by the Act. Similarly, Chapter 58 authorizes any water improvement district (including an earlier created

irrigation district operating as a water improvement district) or water control and improvement district, whose purposes were to furnish water for irrigation and delivery of untreated water, to convert to a Chapter 58 irrigation district. *See*, §§ 58.038 - 58.042.

In 1995, uniform provisions dealing with water districts were enacted in Chapter 49 of the Water Code. It applies to all districts with certain exceptions for “special water authorities.” *Acts 1995, 74th Leg., p. 3755, ch. 715 eff. September 1, 1995, codified at Texas Water Code, Chapter 49.* According to the Legislature, this step was needed due to the “lack of procedural uniformity between the different types of local water districts” and “inconsistencies [that] lead to confusion among citizens, district board members, and state agency personnel.” *Session Laws – Acts 1995, 74th Leg., p. 3755, ch. 715, Bill Analysis, Senate Bill 626, House Natural Resources Committee.* For a review of some water district organizational and operation issues, *see, Ward County Irrigation District No. 1, et. al. v. Red Bluff Water Power Control District*, 170 S.W.3d 696 (Tex.Civ.App. – El Paso, 2005).

V. CONCLUSION

The evolution of the management of water rights and their use has been an interesting one based upon experience and Legislative trial and error. From the early Legislative authorization to individuals and private companies to use water and construct distribution and water delivery systems to more modern day appropriation and permitting law system and broader public entity water management districts and river authorities covering developed areas and/or watersheds. While, at the same time, providing for private water rights ownership, use, and management.

When dealing with legal issues involving privately owned and managed water rights and use, the individually owned Certificate(s) of Adjudication or Permits(s) is controlling.

In dealing with legal issues involving water districts and authorities, it is necessary to consider the non-codified special and general laws authorizing and governing a district or, if codified, the Chapter of the Texas Water Code covering the particular district, as well as Chapter 49, of the Texas Water Code. Chapter 49 generally applies to water districts and river authorities when not in conflict with specific Texas Water Code provisions applicable to individual water districts or the enabling special laws applicable to districts and river authorities.