

TCEQ grants permit to take land for private developer despite judge's ruling

By Terri Hall

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The Graham family can never seem to cut a break from big government. The Texas Commission on Environmental Quality (TCEQ), the state agency that grants wastewater permits, approved a permit for the neighboring developer of Johnson Ranch in spite of the fact that Administrative Law Judge Sarah Ramos, who heard the Graham's case in a contested case hearing, ruled that the permit should be denied. Allowing the developer to dump its treated sewage onto the Graham's property means they'll lose that land under the 'waters of the state' claimed by the state of Texas, even though the area is a dry creek bed and unnamed tributary of the Cibolo Creek. It's a backhanded way for a developer to exploit the power of government for its own private gain.

The TCEQ interprets the Texas water code to consider all water that drains or collects in a channel as belonging to the state. The Graham-Lux family ranch has a dry creek bed that only flows when it floods, but the state considers it a creek that belongs to them, and therefore they can discharge effluent into it (to benefit a single, private developer).

Terrell and Pat Graham have been fighting to keep their land from this private developer who seeks their land to dump its treated sewage. The Johnson Ranch developer, or David Hill Johnson Brothers (DHJB), initially applied to handle its own wastewater within the confines of its own property at an approximate volume of 75,000 gallons per day. But in 2013, DHJB sought to amend it to dump up to 350,000 gallons of treated effluent onto the Graham's property. This would make their dry creek bed continuously wet and adversely affect their cattle that routinely graze there.

Eminent domain for private gain

When it became clear the Grahams were going to fight back, DHJB then decided to employ a dormant wastewater improvement district (WCID) by turning it into a Municipal Utility District (MUD) to confiscate the Graham's property using eminent domain. The developer even had the name changed from Comal County WCID #1 to Johnson Ranch MUD in 2009. DHJB went from seeking a wastewater permit to turning the project into a stormwater project so it could utilize eminent domain and directly possess the Graham's property without contest.

The Johnson Ranch MUD just informed the Grahams that it will begin a stormwater project on their property. It's not even clear that a MUD has control over storm water. Typically their jurisdiction involves drinking water and sewage only. To add insult to injury, the MUD lacks any floodplain permit from the county as well as lacks an Edwards Aquifer Protection Plan (EAPP) that must be submitted to and approved by the TCEQ. Both are required before work can begin.

Despite repeated appeals to the county and TCEQ, the Grahams have had no help from either governmental entity to enforce the law much less protect the interests of innocent landowners. The Grahams have already incurred tremendously burdensome legal costs just to contest the wastewater permit through the contested case hearing process where they prevailed with the judge, only to have TCEQ approve the permit. Now they have to contend with this Johnson Ranch MUD,

too, which is one in the same with the developer.

While the Grahams appeal the TCEQ permit, they'll incur yet more legal costs to get an injunction to halt the MUD's stormwater project that will do irreparable harm to their land if they cannot get the county or TCEQ to enforce the legal requirements for such projects. What is the point of creating and funding these bureaucracies if they fail to do their job and protect property rights, not to mention fail to mitigate the hazards of 350,000 gallons of treated sewage flowing into the sole source of drinking water for 1.4 million people in San Antonio and the Hill Country?

Victory against the feds

With the recent news that a Texas landowner, Tommy Henderson, finally **won his 30-year battle** with the federal Bureau of Land Management (BLM) to retain his property along the Red River claiming his property as 'waters of the United States,' it defies reason that a similar land grab is happening in the Hill Country town of Bulverde by the state of Texas.

Elected officials, including both U.S. Senators John Cornyn and Ted Cruz, and Congressman Mac Thornberry as well as state officials, like then Governor Rick Perry, Attorney General Greg Abbott, Lt. Governor David Dewhurst, and General Land Office Commissioner Jerry Patterson, came out of the woodwork to defend Henderson from federal overreach, yet there's silence from the state's highest officials as a private developer steals private property from a fellow Texan for its own private profit using 'waters of the state' and eminent domain. Only State Senator Donna Campbell has sent a letter to TCEQ on behalf of the Grahams asking TCEQ to deny the permit.

Campbell along with State Representative Jason Isaac recently passed a bill to strip a similar MUD established by and for a developer in Wimberley of its eminent domain authority. It's apparent Campbell needs to do the same thing with the Johnson Ranch MUD, however, the legislature doesn't convene again until 2017, which is likely too late to help the Grahams.

Wrongful confiscation of private property is an abuse of our fundamental property rights, regardless of whether its taken by federal or state government, or even worse, by a private developer exploiting government power. Without the protection of property rights, there is no true prosperity. Our founders knew it, which is why they fought and died to protect it. Americans shouldn't have to undergo another revolution to preserve it.

To help contribute to the Grahams' legal fees, please donate here: Greater Edwards Aquifer Alliance (GEAA) at PO Box 15618, San Antonio, Texas 78212, or contribute online [here](#). Be sure to write "Contested Discharge Permit" in the memo line on the check. Their fight is on behalf of all Texans' property rights.