

HOLLIDAY ENERGY LAW GROUP

**Another Estate for the Accommodation
Doctrine – Coyote Lake Ranch vs.
City of Lubbock**

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Review of the Accommodation Doctrine

- *Getty Oil Co. v. Jones* (1971), created the accommodation doctrine, which affords the surface owner protection from severed mineral owners operating on the land.
- The doctrine is meant to balance the rights of the dominant estate owner and the servient estate owner and has typically been upheld to require a mineral owner to exercise its rights to develop the minerals with “due regard” to the rights of the surface owner in an existing surface use.
- In *Merriman v. XTO* (2013) the Court set forth what a surface owner must prove
 - The lessee’s use of surface completely precludes or substantially impairs existing use,
 - The surface owner has no available, reasonable alternative to continue existing use, and
 - Given the particular circumstances, the lessee has a reasonable, customary, and industry-accepted alternative available to access resources and allow continuation of the surface owner’s existing use.

Location of Coyote Lake Ranch

- Coyote Lake Ranch comprises 26,600 acres in Bailey County, Texas (West of Muleshoe).
- Mainly used for agriculture – cattle, irrigated cropland, hunting

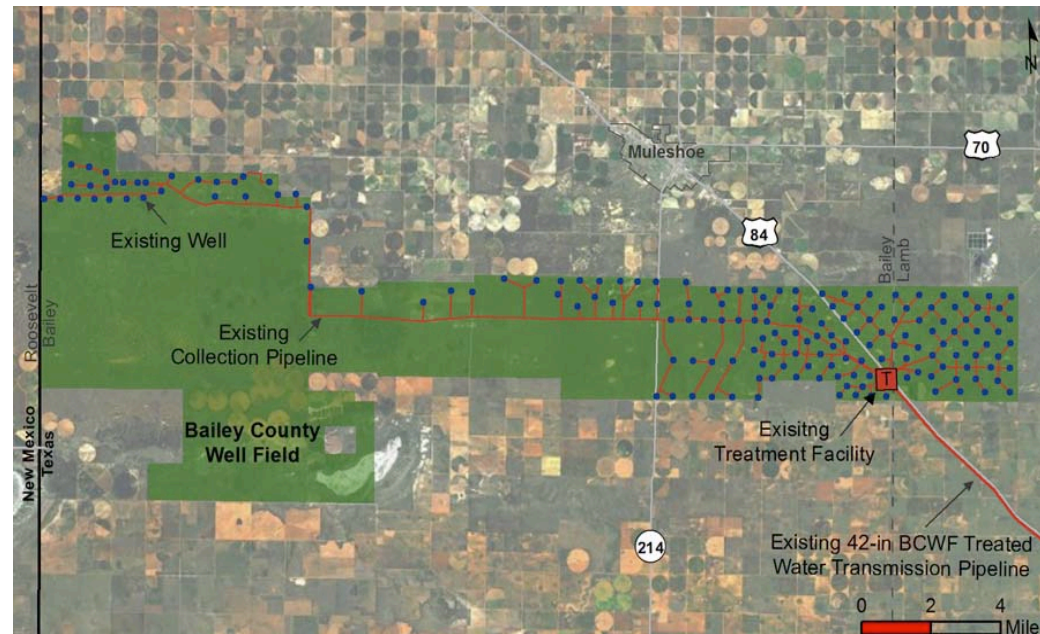


1953 Deed Conveying the Groundwater

- 1953: The Purtell family, predecessors to the Ranch, conveyed groundwater rights to the City of Lubbock.
 - Very broad in the rights granted, but very specific in some of the details.
 - Allowed drilling wells for investigating, exploring, producing and accessing percolating and underground water at any time and any location”.
 - Per the Deed, the City had the right to use all of the Ranch “necessary and incidental to the taking of . . . underground water.”

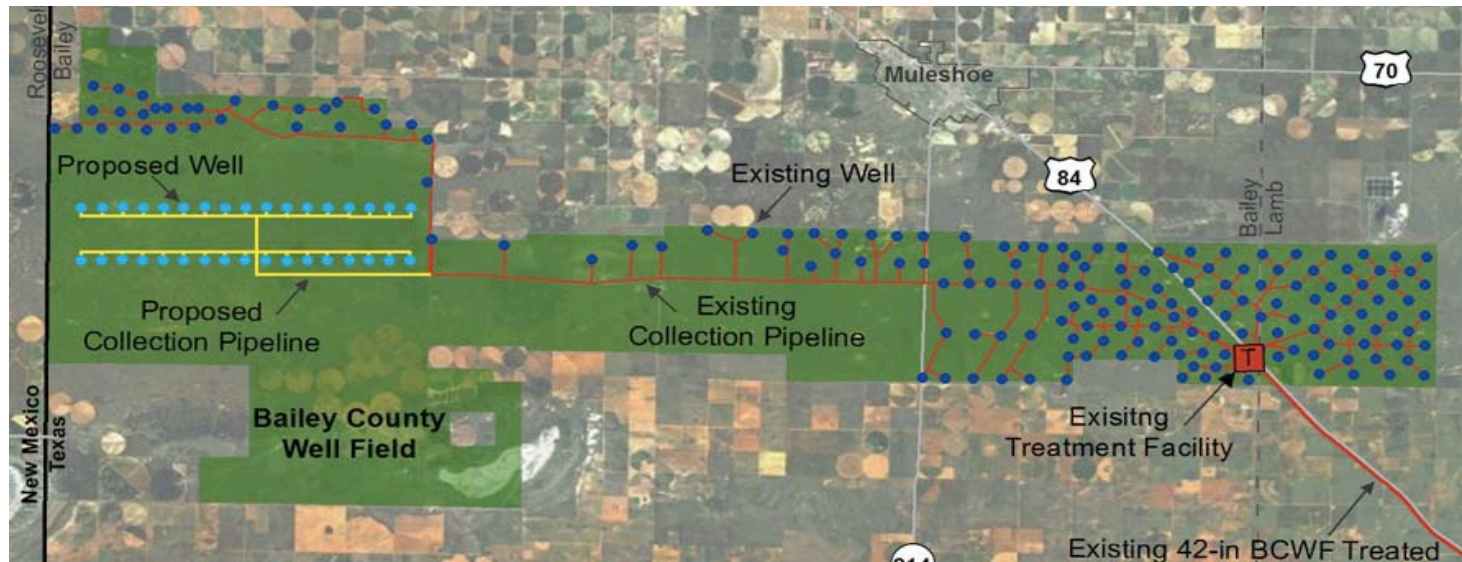
1953 through 2012 Water Development

- To date 18 wells drilled for irrigation and domestic use (by surface owner) and 7 wells drilled by City on northern edge of Ranch



2012-2013 City of Lubbock Water Supply Plan

- In 2012-2013, the City of Lubbock published its Water Supply Plan which included a plan to increase its water extraction efforts, including adding a large number of additional wells on the Ranch.



Coyote Lake Ranch, LLC v. The City of Lubbock

- The City began clearing lands for several test wells.
- The Ranch sued to enjoin the City from proceeding, claiming that the City had a duty to accommodate the surface owner.
 - Ranch sued under causes of action for inverse condemnation, breach of contract, negligence, and declaratory judgment.
 - Ranch stated that proposed drilling plan would increase erosion and injure the surface unnecessarily.
 - Mowing areas allotted for test wells had already begun, and “blowouts” (dirt blown off the land) had occurred, resulting in a loss of that land for cattle grazing.

TRIAL COURT: Coyote Lake Ranch, LLC v. The City of Lubbock

- Trial court granted a temporary injunction, enjoining the City from (i) mowing, blading or otherwise destroying grass, (ii) proceeding with any test hole drilling or water well drilling without consulting the Ranch regarding impact to the land, and (iii) erecting power lines to the proposed field.
- While not specifically addressing the causes of action asserted by the Ranch, the court concluded that the Water Supply Plan already caused damage to the Ranch, would further damage the Ranch, and that the City likely had reasonable alternative means that did not interfere with the Ranch's current uses.

APPEAL: Coyote Lake Ranch, LLC v. The City of Lubbock

- The City appealed, arguing (1) it had the right to carry out its operations under the Deed, and (2) the accommodation doctrine did not apply to groundwater estates as the doctrine only required mineral owners to accommodate the surface estate.
- The Ranch argued that according to *Edwards Aquifer Authority vs. Day*, the accommodation doctrine applied.
 - Groundwater is similar to mineral estate because it is owned in place by the landowner.

APPEAL: Coyote Lake Ranch, LLC v. The City of Lubbock

- The Court of Appeals declined to extend the accommodation doctrine to groundwater and reversed the temporary injunction against the City, as the terms were too broad.
 - The court reasoned that groundwater was part of surface estate and therefore not dominant to the surface estate and that any expansion of the accommodation doctrine should come from the Supreme Court or Legislature.
- The Ranch appealed, and the Supreme Court of Texas heard oral arguments on October 14, 2015.

SUPREME COURT: Coyote Lake Ranch, LLC v. The City of Lubbock

- Issue to the Supreme Court of Texas: Does the accommodation doctrine apply as between a landowner and the owner of a severed groundwater estate?
- YES. The Supreme Court of Texas held that a severed groundwater estate is considered a dominant estate and is governed by the accommodation doctrine when not governed by express terms of an agreement between the parties.
 - NOTE: the ruling remanded the case back to the trial court

Thought Process of the Court

- The Court looked at the similarities between a severed mineral estate and a severed groundwater estate, including their conflicts with the surface estate.
 - Both are subterranean interests.
 - Both are subject to rule of capture.
 - Both are protected from waste.
 - Like a severed mineral estate, a severed groundwater estate would be basically worthless if you could not enter upon the land to develop.
- Looked at the provisions in the 1953 Deed.
 - Provided for well locations.
 - Allowed surface use.
 - Specified terms for surface use, including rent, damages, roads, gates/cattle guards.

Summary

- Applying the Accommodation Doctrine to groundwater really isn't that surprising of a ruling.
 - The accommodation doctrine is seemingly more about protecting the existing use by a surface owner from the severed sub-surface owner.
 - The Court indicated that it was reluctant to search for a new approach to resolving disputes over a severed estate's implied right to reasonable use of the surface.
- The intriguing thing about the expansion of the Accommodation Doctrine is the potential effect it may have on existing groundwater contracts.

QUESTIONS?

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