

Fort Worth Star-Telegram (TX)

June 26, 2004
Section: Metro
Edition: FINAL
Page: 1B

Water district loses battle

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In a ruling that critics say could cost water customers millions of dollars across the state, the Texas Supreme Court ruled Friday that the Tarrant Regional Water District must pay ranchers \$33.5 million for damages for flooding downstream from the Richland-Chambers Reservoir.

The Supreme Court said the release of water from the reservoir causes recurrent flooding that washes out levees, roads and a privately owned bridge, making 11,000 acres of the Gragg Ranch downstream useless.

The high court upheld a 1998 jury verdict for the O.L. Gragg family and two other families. The jury awarded the ranchers about \$18 million, but \$9,000-a-day interest has boosted the total to \$33.5 million, an attorney said.

"We are flying pretty high today. Champagne is on the way," said Glenn Sodd, the Corsicana attorney representing the ranchers. He filed the lawsuit in 1992 for Gragg and two ranchers who leased the land.

"They knew they [water district] were causing this damage. All you have to do is drive out there and look at this ranch and see that it's been devastated," he said.

Jim Oliver, the regional water district's general manager, blasted the Supreme Court's ruling, saying that the court didn't understand the case and that "there is no scientific basis for that decision."

"There is no way that reservoir we constructed could have caused the damage to that ranch," Oliver said. "That is flat ridiculous."

Oliver said the water district will use contingency funds to try to pay out the judgment, if it holds. The district will look to see if it can challenge the case in federal court.

The district serves about 60 cities including Fort Worth.

The case has been closely watched by water suppliers statewide. The cities of Houston and Dallas and the Brazos and Trinity river authorities filed court papers expressing concern that they could be held accountable for such flooding.

Danny Vance, general manager of the Trinity River Authority, which is based in Arlington, said the ruling raises the possibility that the operators could be sued by anyone downstream from one of their dams.

"Any dam operator in the state of Texas would have to be concerned about this case and what its potential implications could be," Vance said. "That is a significant award, and I'm not just talking dollars."

The Tarrant water district completed the 44,000-acre Richland Chambers Reservoir in 1987 to supply water to Tarrant County and nearby areas. It was not built to contain floodwaters.

The reservoir traps water from Richland and Chambers creeks, two tributaries of the Trinity River. Their watersheds are along an 80-mile stretch of the river near Corsicana, Athens and Palestine.

Consistent with its intended function, the district keeps the reservoir as full as possible, within 2 feet of the top of the dam, according to the Supreme Court opinion.

O.L. Gragg, who cleared the timber from his ranch in the 1940s by dragging a battleship chain behind two Army surplus bulldozers, always feared that water released from the dam could wash away his hard work.

His 12,500-acre ranch, one of the largest in East Texas, is about eight miles downstream from the reservoir. It has 17 miles of river frontage and 11,000 acres of bottomland where cattle normally grazed.

In 1990, Gragg's predictions came true, when water was released from Richland-Chambers' floodgates for the first time after extremely heavy rains throughout the Trinity River basin.

The Gragg Ranch had been inundated before with less damaging floods that left behind fertile silt, but the 1990 flood breached levee roads and gouged large sections out of the ranch's bottomland, the ruling said.

During a 15-day trial, water district records were produced to show that there were hundreds of releases large enough to cause flooding at the Gragg Ranch even if the Trinity had been bone-dry, the court ruled.

"It completely gutted the ranch," **Sodd** said.

The jury awarded \$18.48 million in damages and interest to Gragg and two men who leased land from him, Eugene Schwertner and Reginald Priest. Since the lawsuit began, all three men have died.

But Oliver said the Fairfield jury, the Waco appeals court and now the Texas Supreme Court don't understand how the state's water system works. He said **Sodd** and the Supreme Court have "misinterpreted" their records.

To hold the water district responsible for all the damages because of the reservoir, which contributes only 17 percent of the water flow in the river, is unfair, Oliver said.

"We didn't let any more water out of the lake than what flowed in naturally. You can't manufacture water," Oliver said. "When you get floods like we had in the '90s, there's not much you can do about it."

He said there were similar floods near Lake Conroe and along the Guadalupe. Oliver said Eagle Mountain Lake could have filled up eight times after those torrential rainfalls. People sued, but other courts tossed out the lawsuits.

"We hit the wrong trial court and the wrong appeals court and we don't know what happened in the Supreme Court," he said.

He also agreed with Vance that the court's opinion could set a "horrible precedent" that could prove costly across Texas. One option for water suppliers would be to buy out affected property owners downstream, he said.

"Everybody is going to blame the reservoir operators every time their land floods," Oliver said. "It could cost ratepayers across Texas millions and millions of dollars."

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