

HIGH COURT GRANTS \$33M TO LARGEST ET RANCH

By: CASEY KNAUPP, Staff Writer

June 25, 2004

The Texas Supreme Court issued a unanimous decision Friday, granting more than \$33 million to the largest cattle ranch in East Texas - years after its three founders died.

The court sided with the more than 12,000-acre Gragg Ranch, which was condemned more than a decade ago by floodwaters released from the Tarrant Regional Water District.

The Gragg family is elated the suit is finally over, said their attorney, Glenn Sodd of the Dawson and Sodd law firm in Corsicana.

"One of the greatest tragedies of all this is it took so long," he said in a telephone interview Friday. "The family feels so vindicated - it's been a struggle."

The court ruled the evidence presented was legally sufficient to support the trial court's determination that construction and operation of the Tarrant Regional Water District's Richland Chambers Reservoir caused a significant change in flooding characteristics that damaged the Gragg Ranch so much it was no longer usable for its intended purpose. The ranch was also found to be "taken" - the Texas Constitution provides that "no property should be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person."

The judges also held that the trial court did not abuse its discretion by refusing to order separate trials on the questions of inverse condemnation and compensation; and the original compensation of more than \$14 million awarded by a jury is not reversible.

In 1990, the Tarrant Regional Water District began releasing water from the Richland-Chambers Reservoir on the Trinity River; about eight river miles upstream from the 12,516-acre Gragg Ranch.

The ranch lies in both Anderson and Freestone counties and has about 17 miles of river frontage. The property consists of 1,722 upland acres and 10,794 acres of bottomland within the Trinity River flood plains where cattle normally graze, the decision states.

"Because the ranch's acreage is contiguous and the bottomlands' fertility produced a steady natural food supply, a very small staff could conduct a large-scale, highly profitable cattle-ranching operation," it states.

The owners of the ranch, O.L. Gragg, Eugene Schwertner and Redge Priest, have died since the lawsuit began in 1992. Gragg's son, Billy Harden Gragg, took over the case as plaintiff, but died about a year ago, Sodd said.

The trial was postponed five times and in 1998, 77th Judicial District Judge Dick Black of Fairfield sided with the ranch.

The TRWD is a water-control and improvement district created under the Texas Constitution and functions to provide for the control, storage, preservation, distribution, conservation and reclamation of water.

The 44,000-acre reservoir impounds the waters of Richland and Chambers creeks, two tributaries of the Trinity River.

In March 1990, heavy rains caused extensive flooding throughout the Trinity Basin and the district released water through the reservoir floodgates for the first time. For the first time in its history, the Gragg Ranch suffered extensive flood damage, the opinion states. It gouged large sections of land out of the ranch's bottomlands.

O.L. Gragg and the Schwertner-Priest Partnership and its partners sued the district, alleging the reservoir condemned their property. The district denied liability, but asserted a counterclaim asking the trial court to award it fee simple title or a permanent and perpetual flowage easement over any property the court might find it has inversely condemned, it states.

The case was tried in 1998, by which time the ranch experienced at least 10 similar floods. After a 15-day trial, the court held that the district had inversely condemned a flood easement on the ranch and submitted the case to the jury to determine compensation.

The jury found the difference between the market value of Gragg's fee simple interest immediately before and immediately after condemnation to be more than \$10 million and the before-and-after value of the Schwertner-Priest Partnership's leasehold to be more than \$4 million. The trial court rendered judgment on that verdict and also awarded the district a permanent and perpetual flowage easement over the property, the decision states.

Sodd said interest added to the awarded damages has increased the more than \$14 million to more than \$33 million.

It has finally paid off but it would have been easy for the families to give up during the "long, hard struggle," he said.

Since some employees of the TRWD testified to the flooding, Sodd could not fathom why the district never attempted to settle the case and why it drug it out in court for so long.

Texas' 10th Court of Appeals affirmed the trial court's judgment in 2002.

"It was a long, hard, expensive struggle that should not have happened," Sodd said. "The family was relieved to hear today of the unanimous opinion."

Casey Knaupp covers state and federal courts. She can be reached at 903.596.6289. e-mail: news@tylerpaper.com

©Tyler Morning Telegraph 2004