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Judgment in flooding suit upheld

Appeals court orders water district to pay three families \$18.5

million
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A Waco appeals court has ordered the Tarrant Regional Water District to pay three families more than \$18 million for flood damage to their ranch land, but water district officials said Wednesday that they will appeal the decision because it could set a costly precedent.

The suit, filed in 1992, accused the district of repeatedly flooding portions of 13,000 acres of ranch land about five miles downstream of Richland-Chambers Reservoir in Freestone and Anderson counties. Three plaintiffs said the flooding washed out levees, roads and a privately owned bridge over the Trinity River, making the property unusable for running cattle.

The damaged area had always been flood plain, but before 1989, when there was no lake, flooding never permanently harmed the ranch, said Corsicana attorney Glenn **Sodd**, who represented heirs of the three original plaintiffs.

The water district replaced miles of winding creeks with a straight chute that keeps the water confined to a narrow channel, **Sodd** said.

"It was the same as ... putting your finger over a water hose and making the opening smaller and the water come out harder,"

But water district officials blamed the flooding on a decade of heavy rains in the region. District experts argued that 83 percent of the water flooding the area came from Trinity River runoff, and 13 percent came from the reservoir. The lake actually held back water, district General Manager James M. Oliver said.

The decision "has horrible implications for every major reservoir owner in Texas," Oliver said. It means every time flooding occurs downstream from a lake, the lake owner may be forced to buy flood easements on property clear to the Gulf of Mexico, he said.

But **Sodd** said the case is not precedent-setting and follows other court rulings in which lake owners were held accountable for improper handling of lake water discharge.

Sodd argued that the water district should have paid the families for a flood easement on the property before any flood gates were opened. The water district bought similar easements downstream from Cedar Creek Reservoir, he said, including on a piece of **Sodd's** property.

The reservoir is a major water source for the water district, which serves more than 95 percent of Tarrant County and portions of 10 other counties. Cedar Creek is a Tarrant Regional Water District lake just north of Richland-Chambers Reservoir.

The Trinity River flows through the ranch, which is about five miles downstream from the

dam.

The lawsuit was originally filed by property owner O.L. Gragg and lessees Eugene Schwertner and Reginald Priest, all now deceased.

The Court of Appeals issued its ruling March 21, upholding a 1998 decision in District Judge Dick Black's court in Freestone County. Almost half of the \$18.48 million judgment is interest.

The issue will have to be decided by the Supreme Court, water district attorney George Christie said. The court must decide what standard of proof is required when deciding what caused the flooding - rainfall or lake releases, Christie said.

Some question also arose over whether the owners kept levees in good repair, he said. Engineers told the district that flood easements were not necessary on Richland-Chambers Reservoir because conditions would not cause increased flooding, he said.

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MAP(S): Locating O.L. Gragg property

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