A Reprint from *Tierra Grande*, the Real Estate Center Journal

Liability for Flooding Neighbor's Property

By Judon Fambrough

The related article discusses rules governing construction of ponds and impoundments for the storage of water. Depending on the circumstances, a permit may be needed. However, even with a permit, a landowner cannot back water across neighboring property without permission. Failure to get permission could make the landowner liable as pointed out in the case of *Tarrant Regional Water Dist. v. Gragg, No. 10-98-244-CV, 3/14/2001.*

The Tarrant Regional Water District manages the Richland Chambers Reservoir. The district allowed reservoir water to inundate the plaintiff's property repeatedly. The plaintiff, a local rancher, successfully sued for damages and inverse condemnation. The verdict exceeded $10 million. The district appealed.

For the defendant to be liable in such instances, the jury must render an affirmative answer to the following two-part test established in *State v. Hale, 146 S.W.2d 73 (Tex. 1941).*

First, did the district intentionally exercise its authority to construct and operate the reservoir for public use in a way that resulted in the taking or damaging of the plaintiff's property?

Second, were the district's acts the proximate cause of the "taking" or damages?

The district pointed out that the rancher's property was subject to flooding prior to construction of the reservoir. Consequently, a taking would occur only if the reservoir caused greater inundation than the property experienced previously. Isolated instances of increased flooding do not constitute a taking, but repeated instances of flooding do.

The appellate court held that the district's actions resulted in repeated increase in flooding and satisfied both part of the *State v. Hale* test. It affirmed the verdict in excess of $10 million.

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Tierra Grande (ISSN 1070-0234), formerly *Real Estate Center Journal*, is published quarterly by the Real Estate Center at Texas A&M University, College Station, Texas 77843-2115. Subscriptions are free to Texas real estate licensees. Other subscribers, $20 per year.