

2016 Texas Water Law Institute
November 3-4, 2016 • Radisson Hotel and Suites, Austin-Downtown • Austin, TX

Thursday Morning, Nov. 3, 2016

Presiding Officer:

Jim Mathews, Mathews & Freeland LLP - Austin, TX

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| 7:30 am | Registration Opens Includes continental breakfast. |
| 8:20 am | Welcoming Remarks |
| 8:30 am 1.00 hr 0.25 hr ethics | Unbundling Water Rights: Piloting Efforts to Apply the Australian Experience in the American West Explore the efforts to alter the system of water rights in the American West, and by focusing on pilot approaches proposed in Nevada and California, learn how these efforts create markets in shares of a water system, as well as in periodic allocations of quantities of water. Mark Squillace, University of Colorado Law School - Boulder, CO |
| 9:30 am 0.50 hr | Valuation of Water Rights Credible fair market valuation of water rights is a major challenge in Texas. Explore a thorough and reliable model for determining the fair market value of water rights not only in Texas, but elsewhere around the globe. Charles R. Porter Jr., St. Edward's University - Austin, TX |
| 10:00 am 0.50 hr | Marketing Groundwater Rights An overview of issues facing landowners and groundwater project developers, including: "grass roots politics", market conditions, pricing concerns, transport considerations, permitting hurdles, and coordination with local groundwater districts. Ed McCarthy, Jackson, Sjoberg, McCarthy & Townsend, L.L.P. - Austin, TX |
| 10:30 am | Break |
| 10:45 am 0.50 hr | Marketing Surface Water Rights In pursuing the purchase of a water right, a buyer has to consider a number of regulatory steps in order to make the purchased water right beneficially useful. Just what are those steps? James Kowis, James Kowis Consulting - Austin, TX |

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| 11:15 am 1.00 hr | <p>The Prior Appropriation Doctrine: Still Appropriate for Texas?</p> <p>In <i>TCEQ v. Texas Farm Bureau</i>, the Texas Commission for Environmental Equality (TCEQ) stated it needed the authority to amend the "first in time is first in right" rule, in order to protect public health and welfare. This position garnered numerous support from the <i>amici</i>. Hear experienced practitioners weigh in on the statement, and what it might mean for surface water rights in Texas.</p> <p>Moderator: Doug Caroom, Bickerstaff Heath Delgado Acosta LLP - Austin, TX</p> <p>Panelists: John W. Fainter Jr., The Association of Electric Companies of Texas, Inc. (AECT) - Austin, TX R. Glenn Jarvis, Law Offices of Glenn Jarvis - McAllen, TX Carlos Rubinstein, RSAH2O, LLC and Former Chairman, Texas Water Development Board - Austin, TX</p> |
| 12:15 pm | <p>Pick Up Lunch</p> <p>Included in registration.</p> |

Thursday Afternoon, Nov. 3, 2016

Presiding Officer:

Doug Caroom, Bickerstaff Heath Delgado Acosta LLP - Austin, TX

LUNCHEON PRESENTATION

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| 12:35 pm 0.50 hr | <p>The Texas Water Development Board SWIFT Program and Its Role in Implementing the Texas State Water Plan</p> <p>Survey the highlights of the 2017 Texas State Water Plan and recent SWIFT program financing.</p> <p>Bech Bruun, Chairman, Texas Water Development Board - Austin, TX</p> |
| 1:05 pm | <p>Break</p> |
| 1:20 pm 1.00 hr | <p>Bush School Capstone Report: Reorganizing Groundwater Regulation in Texas</p> <p>Review the regulatory practices of the local groundwater conservation districts, which concludes that Texas has a regulation-induced shortage of groundwater. Learn the four alternative regulatory options—based on four metrics—and find that substantial improvements are possible.</p> <p>James M. Griffin, The Bush School of Government and Public Service, Texas A&M University - College Station, TX</p> |
| 2:20 pm 0.75 hr | <p>Indirect Reuse of Water</p> <p>Examine historically disputed issues regarding indirect reuse and learn some of the existing indirect reuse permits. Discuss more recent directions and questions regarding indirect reuse coming from the Brazos River Authority System Operation permit hearing.</p> <p>Colette Barron Bradsby, Texas Parks & Wildlife Department - Austin, TX Lyn E. Clancy, Lower Colorado River Authority - Austin, TX</p> |
| 3:05 pm | <p>Break</p> |

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| 3:15 pm 0.75 hr | <p>Direct Potable Reuse</p> <p>Explore the technical, social, and regulatory issues associated with the implementation of direct potable reuse in Texas, including a discussion of several case studies.</p> <p>Ellen T. McDonald, Alan Plummer Associates, Inc. - Fort Worth, TX L'Oreal W. Stepney, P.E., Texas Commission on Environmental Quality - Austin, TX</p> |
| 4:00 pm 0.50 hr | <p>Legal Issues with Permitting Amenity Ponds</p> <p>Amenity ponds are often constructed in new subdivisions for aesthetic, recreational, drainage, and irrigation purposes. Depending on the location and source of water for the pond, such as state-owned surface water, groundwater, storm water, or reclaimed water, the permitting requirements can vary greatly. Review the various permitting requirements and the legal hurdles associated with these ponds.</p> <p>Emily Willms Rogers, Bickerstaff Heath Delgado Acosta LLP - Austin, TX</p> |
| 4:30 pm 0.75 hr ethics | <p>Here But For the Grace of God Go You: Why the Texas Lawyers Creed Matters to You</p> <p>Learn how to be the opposing counsel your profession needs without compromising your ethical duties to your client—an autobiography of four family deaths in eleven months.</p> <p>Mark McPherson, Attorney at Law - Dallas, TX</p> |
| 5:15 pm | <p>Adjourn</p> |

Friday Morning, Nov. 4, 2016

Presiding Officer:

Doug Caroom, Bickerstaff Heath Delgado Acosta LLP - Austin, TX

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| 7:30 am | <p>Conference Room Opens</p> <p>Includes continental breakfast.</p> |
| 8:30 am 0.50 hr | <p>Texas Case Law Update</p> <p>Listen to an update on cases dealing with water-related issues in Texas.</p> <p>Trey Nesloney, Booth, Ahrens & Werkenthin, P.C. - Austin, TX</p> |
| 9:00 am 0.50 hr | <p>TCEQ: Regulatory Update</p> <p>Explore the recent rule-makings, actions, and decisions of the Texas Commission for Environmental Quality relating to Water Law.</p> <p>Ross Henderson, Texas Commission on Environmental Quality - Austin, TX</p> |

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| 9:30 am 0.50 hr | <p>PUC Update</p> <p>The PUC assumed jurisdiction over water and sewer utility rates and CCNs two years ago. Has the change had the desired impact? Hear a summary of some important updates you will want to know about when managing rate applications, rate appeals, and CCN issues before the PUC.</p> <p>John J. Carlton, The Carlton Law Firm PLLC - Austin, TX</p> |
| 10:00 am | <p>Break</p> |
| 10:15 am 1.00 hr | <p>Texas Legislature: Water Issues in the 85th</p> <p>A preview of water politics and policy for the 85th Texas Legislature.</p> <p>Charles Perry, Texas Senate - Lubbock, TX</p> |
| 11:15 am 0.50 hr | <p>Federal Case Law Update</p> <p>The federal courts have seen significant developments in the water arena, from the U.S. Supreme Court on down this year. Review the latest updates on major federal decisions and litigation, including the status of the Waters of the U.S. litigation, cross-border disputes, and more.</p> <p>Paulina Williams, Baker Botts - Austin, TX</p> |
| 11:45 am 0.75 hr ethics | <p>Communication and the Electronic Age</p> <p>Considering what we know about government surveillance, can an attorney ethically use electronic communication to discuss confidential client information? Examine legislative responses to the Edward Snowden disclosures and discuss appropriate lawyer communication in the electronic age.</p> <p>Thomas A. Gwosdz, City of Victoria - Victoria, TX</p> |
| 12:30 pm | <p>Pick Up Lunch</p> <p>Included in registration.</p> |

Friday Afternoon, Nov. 4, 2016

Presiding Officer:

Jim Mathews, Mathews & Freeland LLP - Austin, TX

LUNCHEON PRESENTATION

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| 12:50 pm 0.50 hr 0.25 hr ethics | <p>A Change in Perspective: When the Lawyer Becomes the Client</p> <p>The Commissioner discusses his experiences in transitioning from representing the Texas Commission on Environmental Quality to being the client of the Office of the Attorney General, including observations on the Open Meetings Act and <i>ex parte</i> issues.</p> <p>Jonathan K. Niermann, Commissioner, Texas Commission on Environmental Quality - Austin, TX</p> |
| 1:20 pm | <p>Break</p> |

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| 1:35 pm 1.00 hr | <p>Desired Future Conditions: Will Process Changes Increase Accountability?</p> <p>Through SB 660 (2011) and HB 200 (2015), the Legislature imposed new requirements for developing desired future conditions, including a best available science standard, and created an appeal process utilizing the state office of administrative hearings. Explore how these changes may affect groundwater conservation districts and their DFC decisions.</p> <p>Moderator: Jim Mathews, Mathews & Freeland LLP - Austin, TX</p> <p>Panelists: James A. Beach, LBG-Guyton Associates - Austin, TX Marvin W. "Marty" Jones, Sprouse Shrader Smith PLLC - Amarillo, TX Robert E. Mace, Ph.D., P.G., Texas Water Development Board - Austin, TX</p> |
| 2:35 pm 0.50 hr | <p>State Water Plan Update</p> <p>Take a look ahead to the fifth cycle of regional and state water planning.</p> <p>Matt Nelson, Texas Water Development Board - Austin, TX</p> |
| 3:05 pm | <p>Break</p> |
| 3:15 pm 0.50 hr | <p>Governmental Immunity: Implications of the <i>Wasson</i> and <i>Wheelabrator</i> Cases</p> <p>The Supreme Court of Texas issued opinions earlier this year that resolved a split among appellate courts and declared that the proprietary-governmental dichotomy found in the Texas Tort Claims Act applies to waiver of immunity claims in the contract setting. Examine these decisions and their impact on water contracts with governmental entities.</p> <p>Heather Mahurin Lockhart, Texas Municipal League - Austin, TX</p> |
| 3:45 pm 0.75 hr | <p>Application of Governmental Law Requirement to Public-Private Partnership Projects</p> <p>What responsibilities and attributes of the government, such as obligations of openness and transparency, does a private business assume when it partners with the government on a project?</p> <p>C. Robert Heath, Bickerstaff Heath Delgado Acosta LLP - Austin, TX</p> |
| 4:30 pm | <p>Adjourn</p> |