

For years, Quadvest, along with several other private utility companies and municipalities, such as the Cities of Conroe and Magnolia, have been involved in contentious litigation with the San Jacinto River Authority (SJRA), challenging the groundwater usage restrictions and increasing water rates imposed on Montgomery County residents. With multiple lawsuits being argued in federal and state courts across Texas, we recognize how challenging it can be to keep track of the various cases being adjudicated, even for those who have been following these disputes closely.

To eliminate confusion for our customers, we have prepared an updated history of the water-related litigation that has taken place in recent years, as well as a detailed summary of, and our current standing in, each lawsuit. This is merely an abridged version of a lengthy seven-year legal battle, but we hope that it answers any questions you may have relating to the ongoing water wars in our community.

SUMMARY OF LITIGATION

LSGCD Rules Case (2015) – OUADVEST WON

Litigation first began in 2015, when Large Volume Groundwater Users ("LGVUs"), including the City of Conroe, Quadvest, and several other private utility companies, filed suit against the Lone Star Groundwater Conservation District in Montgomery County, challenging the validity of Lone Star's Groundwater Reduction Rules, which required LGVUs to drastically curtail their yearly groundwater production by 30%, or otherwise face steep fines of up to \$10,000 per day. The LGVUs argued that the Groundwater Reduction Rules-which ultimately forced water providers to enter into long-term contracts with the San Jacinto River Authority ("SJRA")-were invalid, as they were overly restrictive and exceeded the scope of Lone Star's statutory authority.

In 2018, the district court sided in favor of the LGVUs, ruling that the Groundwater Reduction Rules were "void *ab initio*" (*i.e.*, from the beginning), and therefore, unenforceable. Lone Star filed an interlocutory appeal, challenging the district court's decision. However, shortly thereafter, Lone Star's previously appointed Board of Directors was replaced under the Legislature by an elected board. In an effort to right the wrongs of its former board members and restore honesty and accountability to the governing body, the new Lone Star Board withdrew its appeal. As a result, on May 17, 2019, the 284th District Court of Montgomery County entered a final judgment in the case, declaring that the Groundwater Reduction Rules had been adopted by Lone Star without legal authority and were thereby unlawful, void, and unenforceable. Lone Star's District Rules were adjusted accordingly in 2020 to remove the Groundwater Reduction Rules in their entirety.

EDJA Case (2016) – OUADVEST WON

One year into the water fight with Lone Star, legal battles with SJRA ensued. As an alleged mechanism for complying with Lone Star's now void Groundwater Reduction Rules, SJRA established a Groundwater Reduction Plan ("GRP") and GRP Contracts. Under the GRP contracts, high population areas in Montgomery County, such as the City of Conroe and the Woodlands, would convert to surface water, purchasable exclusively from SJRA. To accomplish this, SJRA would construct and operate a massive \$500 million surface water treatment plant that would be used to draw surface water from Lake Conroe, treat the water, and sell it to the converting municipalities. However, to fund the project, SJRA would force LGVUs who wished to continue utilizing groundwater from their own wells, to enter into GRP Contracts as well. The GRP Contracts, which provided the only safe harbor against Lone Star's merciless \$10,000 daily fines, required LGVUs to pay monthly fees to SJRA for the privilege of pumping their own groundwater. The GRP Contracts contemplated that the groundwater pumpage fees set by SJRA were calculated and assessed so as to equalize the cost of surface water, and that all revenue generated from the groundwater fees would be used by SJRA to pay down the bonds it used to

finance the surface water treatment plant.

In 2010, SJRA entered into roughly 80 GRP contracts with various water-system operators in Montgomery County, including the Cities of Conroe and Magnolia, and Quadvest. With each year that passed, SJRA continued to increase surface water and groundwater rates, in violation of the Contracts. As a result, Montgomery County residents saw their water bills skyrocket. In August 2016, the City of Conroe took a stance against SJRA by passing a resolution in which it vowed to stop paying the increased water rates, pledging instead to place the additional fees into an escrow fund, in hopes of returning the money to local ratepayers. The City of Magnolia followed suit the next month by passing a similar resolution of its own. In response to the Cities' accusations and protests against the rate increases, SJRA filed a lawsuit against the Cities of Conroe, Magnolia, and Splendora in Travis County, Texas, under an obscure legal statute known as the Expedited Declaratory Judgment Act (EDJA).

The EDJA is a legal mechanism utilized by issuers of public securities to resolve disputes regarding the legality and validity of their bonds and related public security authorizations, on a final, binding, and expedited basis. The SJRA attempted to use the EDJA to seek a declaration from the court that the GRP Contracts and rate increases were legal, valid and "incontestable", and that the Cities' refusal to pay the rate increases were a breach of the GRP Contracts. Quadvest, along with several other private utility companies opted into the lawsuit as interested parties, and together with the Cities, filed similar motions to transfer venue to Montgomery County and pleas to the jurisdiction, arguing that the court lacked authority to adjudicate SJRA's claims under the EDJA. The Cities and Utilities contended that SJRA was not seeking declarations as to the legality and validity of a public security authorization, but instead, was attempting to litigate a contractual issue to determine whether SJRA's rates had been set in compliance with the GRP Contracts, which lie outside of the statute. Furthermore, the Cities asserted governmental immunity as an independent jurisdictional bar.

After the trial court denied their pleas to the jurisdiction, the Cities and Utilities jointly filed an interlocutory appeal. In August 2018, the Texas Court of Appeals, Third District, in Austin, dismissed SJRA's breach of contract claim on grounds that it was outside of the EDJA's statutory authority; however, it allowed the remaining claims to endure. The Cities and Utilities filed a petition to have the appellate court's decision reviewed by the Texas Supreme Court. On March 27, 2020, the Supreme Court issued an opinion in the case, ruling in favor of the Cities and Utilities. The Supreme Court held that the EDJA could not be used to validate rates established by the SJRA under its GRP Contracts. Instead, the EDJA suit could proceed in Travis County only for the limited purposes of seeking a declaration that the GRP Contract were validly executed by SJRA- which to date, has never been contested. Attempting to ignore the Supreme Court's decision, SJRA filed a motion for summary judgment in the district court, asserting that, as a matter of law, it was entitled to a declaration that the GRP Contracts were legally and validly executed, and that SJRA has contractual authority under the GRP Contracts to issue rate orders that comply with the Contracts. While the district court initially granted SJRA's motion, the decision was appealed by the Cities and Utilities, and on July 22, 2022, a decision was once again issued against SJRA. The Austin Court of Appeals ruled that only SJRA's execution of the GRP Contract was valid, and as a result, the EDJA cannot be used as a tool for adjudicating the validity of the water taxes and rate increases associated with the GRP Contracts. This ruling sets the stage for a trial in Montgomery County on whether the SJRA committed fraud in forcing water providers to sign GRP Contracts, and whether SJRA breached the Contracts by failing to charge reasonable groundwater pumpage fees.

Quadvest Over-Charge/Fraud Case (2019) - ONGOING

In September 2019, Quadvest and several other private utility companies filed a separate lawsuit against SJRA in Montgomery County, alleging that SJRA breached the GRP Contracts by charging

excessive groundwater pumpage fees in violation of the Contracts, which specifically require groundwater pumpage fees to be set at a rate that neither benefits nor punishes the consumer. The Utilities later amended the lawsuit to include additional claims that the GRP Contracts are void because SJRA committed fraud to induce the Utilities' to participate in the Contracts, and further, that the Contracts have failed due to mutual mistake, frustration of purpose, and lack of consideration. The case took a big turn on March 27, 2020-the same day that the Texas Supreme Court issued its opinion against SJRA in the EDJA suit. Frustrated by the Supreme Court's ruling, litigious SJRA filed an Original Counterclaim and Cross-Claim in the suit, in which it attempted to retaliate against the Cities of Conroe, Magnolia, and Splendora by dragging them into the litigation on a breach of contract claim for failure to timely pay SJRA's increased rates due under the GRP Contracts. After the City of Splendora was removed from the case, the remaining two Cities filed pleas to the jurisdiction, contending that SJRA's claims against them were barred on the basis of governmental immunity. The district court granted the Cities' plea to the jurisdiction and dismissed SJRA's case against them. Following an appeal by SJRA, on April 21, 2022, the Ninth District Court of Appeals in Beaumont affirmed the lower court's decision and dismissed the Cities of Conroe and Magnolia from the case once again. SJRA now seeks to appeal the decision to the Texas Supreme Court. As such, all remaining claims in this case are stayed.

Anti-Trust Case (2019) - ONGOING

In November 2019, Quadvest and Woodland Oaks Utility, L.P., filed a federal anti-trust lawsuit against SJRA in the United States District Court for the Southern District of Texas. The Utilities argued that SJRA was monopolizing and fixing the price of water in Montgomery County at the expense of residents, in violation of Sections I and II of the Sherman Act. SJRA filed a motion to dismiss the case, alleging that the Utilities' lawsuit was time barred by the statute of limitations and the laches doctrine, that SJRA was entitled to state action immunity, and that the Utilities failed to state a valid claim under the Sherman Act. On August 14, 2020, the district court issued a huge ruling against SJRA, denying its motion for summary judgment on all grounds. U.S. District Judge Vanessa D. Gilmore held that SJRA could not provide any proof that the Texas legislature authorized SJRA to violate federal antitrust law by destroying groundwater competition and monopolizing surface water in Montgomery County, and thus, the suit should proceed. Naturally, just six days after Judge Gilmore's ruling, SJRA filed an interlocutory appeal challenging the court's denial of its state action immunity defense. Roughly a year later, on August 3, 2021, the United States Fifth Circuit Court of Appeals in New Orleans, denied SJRA's appeal, holding that SJRA is not entitled to state action immunity. The case has now progressed to the early stages of discovery, with trial set in late 2024.

SJRA Non-Payment Suit (2020) - ONGOING

Despite courts across Texas issuing handing loss after loss to SJRA in multiple lawsuits, SJRA continued to raise its groundwater and surface water rates in violation of the GRP Contracts. Fed up with our customers' mounting water bills, Quadvest decided to take matters into our own hands. On July 14, 2020, Quadvest issued a press release announcing that it would no longer pay SJRA's fees. Instead, all SJRA fees paid by our customers would be held in an escrow account and refunded to our customers following a favorable final verdict in our litigation with SJRA. Ten days later, Woodland Oaks Utility also expressed the same intention. In response, SJRA filed a new lawsuit against Quadvest and Woodland Oaks, alleging breach of contract for failure to pay fees and rates due under the GRP Contracts. Due to the similarities between the issues being argued in both cases in Montgomery County, the Utilities filed a plea to have the case consolidated into one. The district court denied the Utilities request. Quadvest and Woodland Oaks asked the Beaumont Court of Appeals to reverse that ruling. That Court had just issued its opinion against SJRA in the Overcharge/Fraud Case, and wasted no time handing down an opinion stating that the trial court should not conduct a trial in the Non-Payment Suit until all the dust had settled in the Overcharge/Fraud Case because they involved the same basic issues. Given that ruling, it is possible to conduct discovery in the Non-Payment Suit, but not to actually go to trial until the SJRA appeals in the other case have run their course.

FINAL THOUGHTS

As our litigation with SJRA plays out, we are more encouraged than ever that a final verdict will be reached in our favor, and all overcharged fees paid to SJRA will be recovered and returned to our customers. In the meantime, we appreciate your patience and continued support, as Quadvest and others continue to fight on behalf of the residents of Montgomery County and hold SJRA accountable for its unlawful water tax and rate increases. As always, Quadvest is committed to providing you with litigation updates as they become available.