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## Heldermon v. Wright, 2006 OK 86 (Okla. 2006)

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ily required when government regulations “prohibit a property owner from making certain uses of her private property.” The court determined that if the “means adopted . . . tend toward the preservation of public welfare, health, safety, or morals,” the legislation was a proper act of the legislature’s police power and fell under the Supreme Court’s ruling.

Jacobs’ final argument concerned whether the law caused “disparate treatment of landowners,” violating their rights under the equal protection clauses of both state and federal constitutions. Because the complaint was not based on race or any other fundamental constitutional right, the court used a relaxed standard of review. The court held the legislature may draw lines that create distinctions as long as they relate to the task and do not infringe upon a constitutionally protected right.

Justice Opala dissented on two bases: standing and judicial expansion of the legislation. Specifically, Justice Opala argued the legislation did not apply statewide as the court found, but only to the Arbuckle-Simpson Groundwater Basin.

The court affirmed the district court’s decision in favor of the state.

*Zackary Smith*

**Heldermon v. Wright, 2006 OK 86 (Okla. 2006)** (holding that the trial court cannot determine the rights of parties without proof that the Oklahoma Water Resources Board received notice of the suit).

Danny Wright, an upstream riparian property owner, began construction of a dam on an unnamed stream that ran through the property. Teddy Neal Heldermon, a downstream riparian landowner, brought an action against Wright in Caddo County District Court seeking a determination of competing rights to the stream’s water. Neither party had permits from the Oklahoma Water Resources Board (“OWRB”) to appropriate waters of the stream, so both parties asserted riparian rights to the waters. Heldermon did not notify the OWRB about the pending lawsuit.

The trial court granted Heldermon a temporary injunction until Wright obtained an OWRB permit. During Wright’s effort to obtain an OWRB permit, the trial court held that Wright must release enough water so that downstream users had enough water for domestic use. Oklahoma law requires a riparian without an OWRB appropriation to store a maximum of a two-year domestic supply of water and requires the riparian collecting the water for domestic use to provide for the continued natural flow of the stream. Both parties appealed to the Supreme Court of Oklahoma, where the central issue was whether the OWRB needed notification of pending water right lawsuits.

The Oklahoma legislature intended that a party seeking to adjudicate its rights to stream water give the OWRB notice of the suit. The

OWRB is then responsible for determining if the Attorney General's intervention in the suit would best serve the public interest; the Attorney General must intervene on behalf of the state when the OWRB decides that it would be in the public interest. The court held that the trial court erred when it proceeded to determine the rights of the parties without proof that the OWRB received notice of the pending suit and, thus, depriving the public from the Attorney General's representation.

On remand, both notification of the lawsuit to the OWRB and the Attorney General's opportunity to intervene must occur.

*Michael S. Samelson*

## TEXAS

**Hix v. Robertson, No. 10-05-00214-CV, 2006 Tex. App. LEXIS 10292 (Tex. App. Nov. 29, 2006)** (holding that the district court properly granted summary judgment and declared a creek to be statutory navigable water where the plaintiffs had standing to sue, the creek and lake at issue met the relevant statutory definitions, and the engineers measured the creek correctly).

William Hix and William and Lester Robertson own neighboring land in Texas, through which Hog Creek runs. After the government dammed the creek, a 100 acre lake formed, 90 acres of which lie on Hix's land and the remainder on the Robertsons' land. Hix blocked the Robertsons' use of the lake by constructing a fence across the lake. The Robertsons sued Hix for access, seeking a declaratory judgment that Hog Creek was a statutory navigable stream and, as such, the lake is owned by the State for the benefit of the public for fishing, boating, and recreational purposes. The 52<sup>nd</sup> District Court Coryell County, Texas granted the Robertsons' motion for summary judgment and enjoined Hix from interfering with the Robertsons' access, use, and enjoyment of the water on Hix's land. Hix appealed on five issues.

First, Hix argued that the Robertsons did not have standing to litigate whether Hog Creek is a statutory navigable stream. Hix traced his title to an 1837 Republic of Texas land patent and relied on *Bradford v. State* to argue that only the State has standing to litigate ownership of a streambed conveyed by patent. The Court of Appeals of Texas, Tenth Circuit, Waco disagreed and held that the Robertsons, regardless of title, had a right to use and enjoy the waters of a navigable stream. The court pointed to the "Small Bill" statute that granted title to beds of navigable streams to the riparian owner, but reserved the public's rights to the waters of navigable streams. As such, the Robertsons had standing to bring suit and have the part of Hog Creek at issue declared a statutory navigable stream.

Hix also appealed the trial court's ruling that the section of Hog Creek in question was a statutory navigable stream. The court struck