

NORTH TEXAS NEWS

International Right of Way Association, Dallas-Forth Worth

JANUARY 2023

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JANUARY LUNCHEON

Speaker(s): MEDC

Join us for our January Monthly Meeting as the City of Mckinney Economic Development Committee comes to speak to us about ongoing projects and what is in store for the future!



Tuesday, January 10th, 2023

11:30 AM - 1:00 PM

Texas Star Golf Course

1400 Texas Star Pkwy.

Eules, TX 76040

Member - \$20

Non-Member - \$25

First-Time Guest - Free!

Register at

www.irwachapter36.org

Walk-ins Welcome - \$25 (walk-in spaces are limited)

Registration will be cut off at Noon on Friday, January 6th

January Luncheon Menu

The menu at the Texas Star Golf Course will be chicken piccata, wild rice, veggies, garden salad, and cheese-cake.

President	Michael Hale, SRWA, R/W-URAC, R/W-NAC, R/W-RAC
Vice-President	Will Snider, MAI, RWA, RW-AC
Secretary	Leighton Gambill
Treasurer	Matt Lance, SRWA, R/W-RAC, R/W-URAC
PDC Chair	Tommy Matthews, SRWA, R/W-AC
PDC - 2 Year	Gina Phalen, RW-AC
PDC - 3 Year	Clara Castañeda, R/W-RAC
Director - 1 Year	Dalton Vann, MAI, RWA, R/W-AC
Director - 2 Year	Sarah Riebe, SRWA, R/W-NAC

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YP Holiday Event

Thank you to everyone who came out to support the December Young Professionals event, it was a great turn out!




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NORTH TEXAS NEWS

President’s Message

Happy New Year! I hope everyone had a wonderful holiday season. We are ready to get 2023 kicked off and have some great chapter meetings coming up this year.



Michael Hale

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Our chapter VP, Will Snider, is planning our spring seminar and it is going to be a good one. Please save the date of April 20th for the golf tournament and the 21st for the Seminar. With the new year beginning, I would like to encourage those who do have not yet achieved an IRWA designation/certification to strongly consider getting that journey started and/or completed. The IRWA designation/certification program is highly respected by our industry colleagues and clients. It is a program that will further your educational goals and will move your career forward in a positive way. To help you along that journey, Chapter 36 has instituted the Greg Cook Memorial Scholarship. This scholarship is only for Chapter 36 Members. There’s \$5,000 available and no limit on how many members can apply. See the Chapter 36 Website for information and application. I look forward to seeing every one at the meeting January 10th.

-Michael Hale



Ask the Attorney

By: R. Scott Moran, Jordan A. Miller and Charlie Wilson

Question: What is the latest on inverse condemnation law as it pertains to cases arising from flooding?

Answer: Despite numerous cases being brought, there have been minimal changes over the past two to

three years to inverse condemnation law as it pertains to allegations that a governmental action has caused a property to flood. Over the past fifteen years, flooding claims have been the subject of several Texas Supreme Court opinions. Two of the most cited opinions are *City of Dallas v. Jennings* and *Harris Cnty. Flood Control Dist. v. Kerr*.

In *City of Dallas v. Jennings*, 142 S.W.3d 310, 314 (Tex. 2004), the Court held that the requisite intent for an inverse condemnation is present when a governmental entity knows that a specific act is causing identifiable harm or knows that the harm is substantially certain to result. Applying this standard to the City of Dallas’s actions that caused sewage to flood the Jennings’s home, the Court refused to hold City of Dallas liable for flooding damage where it did not know that flooding would result from the unclogging of a sewer line. *Id.* at 315.

In *Harris Cnty. Flood Control Dist. v. Kerr*, 499 S.W.3d 793, 795 (Tex. 2016), there were inverse condemnation claims brought by 400 property owners whose homes had flooded based on the government’s approval of private development without fully implementing a previously approved flood control plan. *Id.* at 795. The Court found the property owners had not alleged a valid inverse condemnation claim because (1) the failure to implement a flood control plan did not constitute affirmative conduct by the government; (2) the approval of private development did not establish the public use element of an inverse claim; and (3) there was no evidence the government knew the homeowners’ particular properties would flood if the government approved new housing developments. *Id.* at 799–807.

The most recent cases that have made their way up to Texas court of appeals are the San Jacinto River Authority cases¹. The majority of these cases have gone up to the court of appeals for determinations on 91a motions to dismiss asserting immunity and pleas to the jurisdiction. Below are a few key holdings from the San Jacinto River Authority cases.

The Court of Appeals in *San Jacinto River Authority v. Ogletree*, 594 S.W.3d 833 (Tex. App.—Houston [14th Dist.] 2020, no pet.) held that Harris County Courts at Law have exclusive jurisdiction over inverse condemnation claims. This ruling caused a chain reaction in most of the other San Jacinto River Authority cases causing them to be dismissed for lack of jurisdiction.

¹*San Jacinto River Authority v. Brocker*, No. 14-18-00517-CV, 2021 WL 5117889 (Tex. App.—Houston [14th Dist.] Nov. 4, 2021, no pet.); *San Jacinto River Authority v. Dennis*, No. 14-18-00174-CV, 2021 WL 4270030 (Tex. App.—Houston [14th Dist.] Sept. 21, 2021, no pet.); *San Jacinto River Authority v. Guajardo*, No. 01-20-00662-CV, 2021 WL 1878377 (Tex. App.—Houston [1st Dist.] May 11, 2021, no pet.); *San Jacinto River Authority v. Lewis*, 629 S.W.3d 768 (Tex. App.—Houston [14th Dist.] 2021, no pet.); *San Jacinto River Authority v. Ogletree*, 594 S.W.3d 833 (Tex. App.—Houston [14th Dist.] 2020, no pet.); *San Jacinto River Authority v. Ray*, No. 14-19-00095-CV, 2021 WL 2154081 (Tex. App.—Houston [14th Dist.] May 27, 2021, no pet.).



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Ask the Attorney

By: R. Scott Moran, Jordan A. Miller and Charlie Wilson

In *San Jacinto River Authority v. Gonzalez*, No. 14-20-00414-CV, 2022 WL 5237106 (Tex. App.—Houston [14th Dist.] Oct. 6, 2021, no pet. h.), the court of appeals held plaintiffs could not provide the Authority’s release of water was a proximate cause of any taking because the evidence proved as a matter of law that flooding would have occurred without the release; thus, claims against the Authority were barred by immunity.

In *San Jacinto River Authority v. Brocker*, No. 14-18-00517-CV, 2021 WL 5117889 (Tex. App. Houston [14th Dist.] Nov. 4, 2021, no pet.), the landowner filed a claim under Ch. 2007 of the Texas Government Code. The Authority filed a 91a motion to dismiss, which the trial court denied. The court of appeals concluded that while the district court lacks jurisdiction over the inverse condemnation claim, Brocker’s pleadings were sufficient to overcome the Authority’s motion to dismiss on the statutory claims. Additionally, the court held Brocker sufficiently raised evidence of causation to withstand dismissal. It also held that there was sufficient evidence of public use based on the Authority choosing to sacrifice downstream properties to protect the integrity of Lake Conroe.

This is an area of law we will keep our eyes on over the next couple years.

The views, thoughts, and opinions expressed in this article belong solely to the author(s) and not necessarily to the author’s law firm or its clients, or any organization, committee, or other group of which the author is a member.



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NORTH TEXAS NEWS

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Professional Development Committee News

By: Tommy Matthews, PDC Chair

Hope everyone had a wonderful holiday that was spent with family, friends, and loved ones. Unfortunately, now it's time to take down the lights and get back to work. Those pesky bills don't stop. While I know it might be painful for some, let's root for TCU as they get ready for the National Championship Game. Go Frogs.

The Professional Development Committee is available to help you reach your right-of-way goals. Our success and the Chapter's success are not only measured by the sheer number of members we attract, but also by the professional advancement our organization can offer.



Tommy Matthews

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Congratulations to the following Chapter 36 members for achieving their recent designations.

Generalist Certification

- Darlene Snow, SR/WA (HDR)

Specialist Certification

- Joanna Alvarez, R/W-RAC (Stateside ROW)

Industry Generalist Certification

- Kristen Shollar, RWA (Oncor)
- Matt Yager, RWA (City of Plano)

For any questions on obtaining a certification or if you have any other questions regarding your Professional Development goals, please contact the PDC Committee.

PDC Committee Members:

Tommy Matthews - SR/WA, R/W-AC – PDC Chair

Gina Phalen – R/W-AC - PDC Committee (2 Yr.)

Clara Castaneda – R/W-RAC - PDC Committee (3 Yr.)





Education Committee News

By: Lauren McCarthy, Education Committee Chair

Lauren McCarthy

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Happy New Year Chapter 36 Members!

Hello and Happy New Year, everyone! The education committee is focused on scheduling courses that are most beneficial for you to attend in-person, while also being cognizant of what other chapters are hosting and when. We are happy to announce that a great slate of courses have been scheduled for the spring, and you'll be excited to get back to in-person learning!

Coming up first are Courses 801 and 802, which have not been offered in-person in several years. They will both be held at Half Associates in Richardson later this month. Spots are filling up, so register soon if you'd like to attend!

Thanks to everyone who has reached out and offered to host a course. If you would like to host a class please let someone on the committee know—we are always looking for great spaces around the DFW area to host a class.

Likewise, if your company would like to host a private course, we will be happy to work with you on scheduling the instructor and help coordinate the class. Just send us an email. <https://irwachapter36.org/Education> This would be especially helpful if you have a group of new employees you are looking to bring up to speed on all things right of way.

If you don't see the class you need, headquarters has a calendar of virtual classes that are coming up. They are located at [IRWA Virtual Classes Calendar](#).

If time is not on your side and you cannot wait for a scheduled class or if a class has reached full capacity prior to your registration, then there are several courses that can be taken on demand. They can be accessed by going to [IRWA U](#).

Chapter 36 In-Person Education Schedule 2023

Course	Date	Location	Instructor
801 – US Land Titles	Jan. 18-19	Half Associates – Richardson	Sejin Brooks, Mark Janicki
802 - Legal Aspects of Easements	Jan. 20	Half Associates – Richardson	Sejin Brooks, Mark Janicki
102 – Elevating Your Ethical Awareness	April 20	The Marq – Southlake	Lora Gunter
SR/WA Review & Exam	TBD		

Which Courses Do I Need?

Our PDC and the credentialing concierge can tell you which classes you need to complete the education requirements for the designation and certification. If you are planning to get certified in any discipline the IRWA offers, the list of courses you need to complete your credentialing are located at www.irwaonline.org. Just visit the "Credentialing" tab.



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