



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2021

The Honorable Charles Perry
Chair, Committee on Water & Rural Affairs
Texas State Senate
Post Office Box 12068
Austin, Texas 78711-2068

Opinion No. KP-0356

Re: Boundary line between the High Plains Underground Water Conservation District and the Panhandle Groundwater Conservation District (RQ-0375-KP)

Dear Senator Perry:

You ask us to determine the boundary line between the High Plains Underground Water Conservation District and the Panhandle Groundwater Conservation District.¹ You tell us about three potential boundary lines between these two water districts: one used by the High Plains Underground Water Conservation District (“High Plains District”); one used by the Panhandle Groundwater Conservation District (“Panhandle District”); and one used by the Potter-Randall County Appraisal District (“Appraisal District”). Request Letter at 1–3; Exhibit F (map showing three boundary lines). At issue is the portion of the boundary in Potter County involving the “meanders of the caprock.” Request Letter at 3.

You tell us the Legislature passed enabling legislation for the High Plains District in 1953. *See id.* at 1–2. You state that the legislation incorporated a previous metes and bounds description corresponding to the underlying Ogallala Aquifer that described the boundary in Potter County to fall “west along the meanders of the caprock to the Potter-Oldham County line.” *Id.* at 2 (citing Tex. S.B. 30, 53d Leg., R.S. (1953)).² You also tell us that shortly thereafter the Legislature created the Panhandle District to operate in several counties, including Potter County. *Id.* You explain that the Panhandle District subsequently extended its boundaries several times through

¹*See* Letter & Exhibits from Honorable Charles Perry, Chair, Senate Comm. on Water & Rural Affairs, to Honorable Ken Paxton, Tex. Att’y Gen. at 1 (Aug. 20, 2020), <https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2020/pdf/RQ0375KP.pdf> (“Request Letter” and “Exhibits”) (Exhibits on file with the Op. Comm.).

²You attach a copy of Senate Bill 30 from 1953 showing the ratification of the High Plains District, but the Legislative Reference Library shows it was the companion bill, House Bill 56, that ultimately advanced. *See* Act of Feb. 11, 1953, 53d Leg., R.S., ch. 10, 1953 Tex. Gen. Laws 17–20.

elections, with the most recent election occurring in 2000. *Id.* That election extended the Panhandle District’s Potter County boundary to include all the land in Potter County that was “not currently within the bounds of” the High Plains District. *Id.*; *see also id.* at 2 n.7 (citing Exhibit E, Panhandle District 2000 annexation petition).

In describing the origin of the current dispute, which arose in 2018, and the three potential boundary lines, you indicate that the Appraisal District sought to confirm the location of the boundary. *Id.* at 3. You explain that the High Plains District responded by providing a boundary line that precisely maps the meanders of the caprock³ using the latest Geographic Information Systems (“GIS”) mapping technology. *See id.* You state that the line the High Plains District submitted differs from its current boundary line and it differs from the “the description in [the Panhandle District’s] election petition.” *Id.*; *see also infra* note 4. You describe the GIS mapping technology as “the most accurate method to track the ‘meanders of the caprock’ boundary that is required to be followed by statute.” Request Letter at 3. You note that “[a]s technology has continued to progress, [High Plains District] believes so should the boundaries in order to most accurately follow statute using the best available science. At the time the boundaries were drawn, the current level of GIS mapping technology was not available.”⁴ *Id.* However, the Panhandle District asserts that the statutorily required legal description of the boundary in its annexation order should govern.⁵ Panhandle Brief at 2. The Appraisal District uses a boundary line that does not follow either the meanders of the caprock or the boundary used by the Panhandle District but that

³A surveyor’s process for a meander line has been described as follows:

A surveyor usually cannot go into a stream to make a corner, so he makes a corner on the bank in order to identify the place where he stopped—the rule being an exception to the one which requires following the footsteps of the surveyor. From this corner, the surveyor may run a meander line, a series of course and distance calls which follow the river or other natural object or monument as closely as is practically possible for purposes of calculating the amount of land conveyed. When a meander line is used, however, the natural object or monument (e.g., a river, the seashore, or an identifiable terrain feature) will control over the specific calls for course and distance.

State v. Brazos River Harbor Nav. Dist., 831 S.W.2d 539, 542 (Tex. App.—Corpus Christi-Edinburg 1992, writ denied) (citations omitted).

⁴The Panhandle District informs us that the shifting of the boundary line would transfer 1336.73 acres from one district to the other. *See* Letter & Brief from C.E. Williams, Gen. Mgr., Panhandle Groundwater Conservation Dist. & Monique M. Norman, Att’y at Law, to Honorable Ken Paxton, Tex. Att’y Gen. at 3 (Sept. 21, 2020) (“Panhandle Brief”) (on file with the Op. Comm.).

⁵The Panhandle District submits that it “clarified the legal description of the . . . boundary in its 2000 election . . . by converting [High Plains District’s] own map to the statutorily required modern legal description.” Panhandle Brief at 2 (citing TEX. WATER CODE § 36.325(c) requiring an annexation petition to “describe the land by legal description or by metes and bounds or by lot and block number if there is a recorded plat of the area to be included in the district”).

“follows along section boundaries of tracts of land that has not been utilized by either . . . district.” Request Letter at 3.

As an initial matter, this office previously concluded that an appraisal district has no authority to determine or correct the boundaries of a taxing unit. *See* Tex. Att’y Gen. Op. No. KP-0175 (2017) at 3. Thus, the Appraisal District is not authorized to proffer its own boundary line. *But see* Request Letter at 3 (stating that the Appraisal District “is not attempting to change the boundary, but updat[ing] its records with new technology ‘to reflect the original boundary as stated in the original documentation’”). With respect to the potential boundaries presented by the two water districts, the determination of the exact boundary line will involve the resolution of fact issues and is outside the purview of an attorney general opinion.⁶ *See Mid-Kansas Oil & Gas Co. v. Burton*, 87 S.W.2d 338, 340 (Tex. App.—Texarkana 1935, writ dism’d by agr.) (recognizing the location of disputed boundary line is a fact question); *Farley v. Deslonde*, 58 Tex. 588, 591 (Tex. 1883) (stating that “as to where the boundaries are upon the ground, is a question of fact”); Tex. Att’y Gen. Op. No. KP-0057 (2016) at 3, n.12 (noting that attorney general opinions do not resolve disputed fact questions). Thus, we cannot determine as a matter of law which line is the proper boundary.

We can, however, advise that in disputed boundary matters, the Texas Supreme Court has previously looked for the lines as originally run by the surveyors. *Luckett v. Scruggs*, 73 Tex. 519, 520–21 (Tex. 1889); *see Thomas Jordan, Inc. v. Skelly Oil Co.*, 296 S.W.2d 279, 290 (Tex. App.—Texarkana 1956, writ ref’d n.r.e.) (stating that “in relocating old grants the important thing is to follow the footsteps of the original surveyor”). But when survey calls cannot be found or are inconsistent, the Court looks to its established rules of law to consider the “character and weight of the evidence to be considered . . . in . . . establishing the true boundaries of the survey.” *Stafford v. King*, 30 Tex. 257, 271 (Tex. 1867); *see also Newsom v. Pryor’s Lessee*, 20 U.S. (7 Wheat.) 10 (1822) (“[T]he most material and most certain calls shall control those which are less material, and less certain. A call for a natural object, as a river, a known stream, a spring, or even a marked tree, shall control both course and distance.”). In the context of a river or stream as a boundary, Texas law is clear that “meander lines . . . adjacent to or bounding upon a stream are not to be considered as boundaries, but they are to follow the general course of the stream, which in itself constitutes the real boundary.” *Stover v. Gilbert*, 247 S.W. 841, 843 (Tex. 1923); *Brazos River Harbor Nav. Dist.*, 831 S.W.2d at 542. Yet, these rules are not rigid and are designed to determine and carry out the original intent for the location of the boundary, “which intention is to be ascertained upon the face of the grant, read in the light of the surrounding facts and circumstances.” *Thomas Jordan, Inc.*, 296 S.W.2d at 291; *see also Silver Oil & Gas, Inc. v. EOG Res., Inc.*, 246 S.W.3d 197, 204 (Tex. App.—San Antonio 2007, no pet.) (“However, if the location of the actual footsteps of the surveyor cannot be established with reasonable certainty, all the surrounding facts and circumstances should be considered in order to arrive at the purpose and intent of the surveyor who made the original survey.”). Thus, we can only generally advise that in recreating the initial meander line in order to determine its location and to consider all subsequent events to determine

⁶The Panhandle District argues its 2000 annexation election changed the common boundary. Panhandle Brief at 2–3. Yet the Panhandle District does not indicate whether the voters of the High Plains District participated in that election to effectuate a boundary change of the High Plains District. *See id.*

the current boundary, a court would likely look for the original intent with respect to the meaning of “meanders of the caprock” and establish the meander line consistent with that intent.

S U M M A R Y

An appraisal district may not determine or correct the boundaries of a taxing unit.

With respect to the potential boundaries presented by the High Plains Underground Water Conservation District and the Panhandle Groundwater Conservation District, the determination of the exact boundary line between them in Potter County will involve the resolution of fact issues and is outside the purview of an attorney general opinion. We can only generally advise that in recreating the initial meander line in order to determine its location and to consider all subsequent events to determine the current boundary, a court would likely look for the original intent with respect to the meaning of “meanders of the caprock” and establish the meander line consistent with that intent.

Very truly yours,

A handwritten signature in black ink that reads "Ken Paxton". The signature is written in a cursive, flowing style.

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