

# **Bond Case Briefs**

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## **EMINENT DOMAIN - TEXAS**

### **Hidalgo County Water Improvement District No. 3 v. Hidalgo County Water Irrigation District No. 1**

**Court of Appeals of Texas, Corpus Christi-Edinburg - May 27, 2021 - S.W.3d - 2021 WL 2149828**

Water improvement district filed condemnation proceeding against water irrigation district to obtain permanent subterranean easement to install water pipeline through irrigation district's property.

The County Court at Law granted irrigation district's plea to the jurisdiction and dismissed for want of subject matter jurisdiction based on governmental immunity. Improvement district appealed.

The Court of Appeals held that:

- As matter of first impression, governmental immunity applied in condemnation proceeding, and
- Legislature did not waive irrigation district's immunity by granting power to improvement district to condemn "any land."

Condemnation proceeding's status as quasi in rem action did not deprive water irrigation district of governmental immunity from suit in water improvement district's action seeking permanent subterranean easement to install water pipeline on irrigation district's property, even though governmental immunity did not apply to in rem actions under Expedited Declaratory Judgment Act (EDJA); condemnation proceeding, unlike an EDJA action, involved forced transfer of property interest, allowing suit would threaten separation-of-powers principles that underlie immunity by giving trial court control over irrigation district's choice not to allow improvement district to build pipeline, and governmental entities were immune from a "suit for land," a class of suits that included condemnation actions.

Statute that granted power to water improvement district to acquire "any land" by condemnation did not clearly and unambiguously waive governmental immunity of irrigation district that owned land over which the improvement district sought, through condemnation action, to obtain permanent subterranean easement to install water pipeline; reference to acquiring "any land" was at most ambiguous, as it could be interpreted, with respect to public land, as general grant of power to condemn such land in the event that a specific waiver of governmental immunity existed, rather than as being a waiver of governmental immunity, statute made sense without finding waiver, and all ambiguities had to be resolved in favor of retaining immunity.