



**DATA SHEET**  
**Agenda Item No. 15.**

Meeting Date: February 2, 2012

**Agenda Item:**

Review progress of litigation being conducted by Tarrant Regional Water District and City of Irving concerning water from Oklahoma, and take appropriate action.

<b>Placement:</b>	<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Individual Consideration	<input type="checkbox"/> Executive Session
<b>Vote:</b>	<input checked="" type="checkbox"/> Non-Weighted	<input type="checkbox"/> Regular Weighted Capital	<input type="checkbox"/> Special Weighted Capital
<b>Recommending Department:</b> Administration			

**Background:**

Both the Tarrant Regional Water District and the City of Irving have been conducting litigation concerning proposed acquisition of water from Oklahoma. In Executive Session, staff will provide information about the status of litigation and potential next steps.

The District has an interest in such litigation and the outcome thereof, in that potential water from Oklahoma is one of the alternative long-range strategies for Upper Trinity as listed in the Texas Water Plan.

**Recommendation:**

After discussion in Executive Session, the Board may want to consider whether the District should take any action related to the on-going litigation by Tarrant Regional Water District and the City of Irving.

**Enclosures:**

Attached is a copy of a recent news article.

Submitted By:   
Thomas E. Taylor, Executive Director

Date: January 27, 2012

# Fight over water goes to the Supreme Court

■ The Tarrant Regional Water District continues its five-year quest to get water from Oklahoma.

By Bill Hanna  
billhanna@star-telegram.com

North Texas' quest to get water from Oklahoma isn't over.

In the latest twist in its five-year legal battle, the Tarrant Regional Water District on Thursday asked the U.S. Supreme Court to hear its lawsuit against Oklahoma. There are no guarantees that the justices will hear the case, but the water district still believes that it is sound despite recent legal setbacks.

"We have a responsibility to our constituencies in North Central Texas to pursue every opportunity to increase our water supply to meet future demands," water district General Manager Jim Oliver said in a statement. "The filing today makes certain our legal options remain open but does not change our preference to negotiate an agreement, rather than litigate."

The water district sued Oklahoma in January 2007 to capture water from three river basins in south-central and southeastern Oklahoma. It wanted to divert more than 130 billion gallons from river basins just north of the Red River.

At the same time, the district sued the Oklahoma Water Resources Board and the Oklahoma Water Conservation Storage Commission to keep its permit applications from being dismissed while the matter was in court.

In July 2010, an Oklahoma federal judge dismissed the lawsuit, and the district appealed the case to the 10th Circuit. During the litigation, Oklahoma legislators passed a bill in 2009 to clarify that the water was not available to other states without approval from the Oklahoma Legislature.

In September 2011, a three-judge panel upheld a lower court's dismissal of the 2007 lawsuit. That was followed in October by the 10th Circuit denying a request for rehearing before the full court.

## Negotiated sale

North Texas officials have also held out hope of hammering out a negotiated sale with Oklahoma.

One of the key issues in the lawsuit has been interpreting the little-known Red River Compact.

The compact — an agreement among Texas, Oklahoma, Arkansas and Louisiana approved by Congress — gives the states the right to discriminate against interstate commerce rules. The water district argues that Texas has a right to a portion of the water that flows into the Red River since the compact gives each state an apportioned share.

In September, the 10th Circuit's three-judge panel said "we hold that the Red River Compact insulates Oklahoma water statutes" from a legal challenge.

---

**"The filing today makes certain our legal options remain open but does not change our preference to negotiate an agreement, rather than litigate."**

**Jim Oliver**, general manager,  
Tarrant Regional Water District

---

## Public vote

The latest round comes as two opponents of selling Oklahoma's water to Texas announced plans to file legislation requiring a public vote on such a transaction. State Sen. Jerry Ellis, D-Valliant, and state Rep. Eric Proctor, D-Tulsa, plan to co-sponsor "The People's Water Act."

"The decision will impact every generation of Oklahomans who follows after us," Ellis said Tuesday. "The water belongs to the people of Oklahoma, not to any high-paid corporate lobbyist or to any legislature. The future of Oklahoma water should not be bargained away in backroom meetings between politicians and Texans or in midnight sessions of the Legislature."

Ellis, whose district includes water-rich southeastern Oklahoma, has been an outspoken critic of water sales to Texas.

But North Texans see it differently.

"The overwhelming evidence shows Oklahoma has excess water it could sell to fund the more than \$81 billion in water infrastructure needs outlined by the Oklahoma Water Resources Board," Oliver said.

---

Bill Hanna, 817-390-7698  
Twitter: @fwhanna