

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 13-40317

THE ARANSAS PROJECT,

Plaintiff - Appellee

v.

BRYAN SHAW, in his official capacity as Chairman of the Texas Commission on Environmental Quality; BUDDY GARCIA, in his official capacity as Commissioner of the Texas Commission on Environmental Quality; CARLOS RUBINSTEIN, in his official capacity as Commissioner of the Texas Commission on Environmental Quality; MARK VICKERY, in his official capacity as Executive Director of the Texas Commission on Environmental Quality; AL SEGOVIA, in his official capacity as South Texas Watermaster,

Defendants - Appellants

GUADALUPE-BLANCO RIVER AUTHORITY

Intervenor Defendant - Appellant

Appeals from the United States District Court for the
Southern District of Texas, Corpus Christi

Before KING, CLEMENT, and HIGGINSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the motions of defendants-appellants and intervenor defendant-appellant to stay the district court's judgment pending appeal are GRANTED; and

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IT IS FURTHER ORDERED that appellee's motion to expedite the appeal is GRANTED. The Clerk is ORDERED to place the case on the August oral argument calendar and to establish a briefing schedule that will result in the final reply briefs being filed by mid-June.

HIGGINSON, Circuit Judge, specially concurring.

I concur in the court's stay and especially in the court's order expediting this appeal. I write separately to clarify that my concurrence in the stay order rests on appellants' showing of likely success on the merits, *Nken v. Holder*, 556 U.S. 418, 426 (2009); *see id.* at 434 (noting that the movant must show "[m]ore than a mere possibility of relief"); *AT&T Commc'ns of the Sw., Inc. v. City of Dallas*, 243 F.3d 928, 930 (5th Cir. 2001), as to the affirmative obligation the permanent injunction imposes to seek an Incidental Take Permit within 30 days. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 73 (1996); *New York v. United States*, 505 U.S. 144, 161, 179 (1992). *But see Strahan v. Coxe*, 127 F.3d 155, 167–70 (1st Cir. 1997).

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

March 26, 2013


MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 13-40317 Aransas Project v. Bryan Shaw, et al
USDC No. 2:10-CV-75

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
James deMontluzin, Deputy Clerk
504-310-7679

P.S. to Counsel: In light of the attached order, an expedited briefing schedule will be issued under separate cover.

Mr. James B. Blackburn Jr.
Mr. David J. Bradley
Ms. Mary B. Conner
Mr. Edward F. Fernandes
Mr. Charles William Irvine
Mr. David Alfred Kahne
Mr. Jonathan F. Mitchell
Mr. John Jeffery Mundy
Ms. Kathy E.B. Robb
Ms. Kathryn Smyth Snapka
Mr. Aaron Michael Streett
Mr. James Patrick Sullivan
Mr. Charles Patrick Waites
Mr. Bruce Wasinger
Mr. Evan A. Young