

Key ruling stands in aquifer lawsuit

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The Texas Supreme Court let stand a ground-breaking decision in favor of a Medina County pecan grower who objected to the Edwards Aquifer Authority's limits on water pumping permits.

Paul Terrill, an attorney for Glenn and JoLynn Bragg, owners of two pecan orchards, said he was "very gratified" by the court's decision to leave untouched an earlier appellate court's opinion that the EAA committed a "taking" of private property. The couple, who have legally challenged the agency almost since it was created by the Legislature in 1993, filed [the lawsuit](#) in 2006, claiming the EAA overstepped its bounds.

"This is the first time a landowner in Texas had a judgment that groundwater rights were taken by a groundwater conservation district," Terrill said. "This has been a long road for the Braggs. Justice has not been swift, but it has been sure."

A district court had awarded damages totaling \$732,493.40 to be paid by the EAA to the Braggs. Terrill said final damages, to be set by the trial court under formulas of the Fourth Court of Appeals in San Antonio, could be higher.

"Remember that the Braggs invested over \$2 million and countless hours of labor in their pecan orchards, and neither is commercially viable because of the water rights that were taken by the EAA," he said.

Many who follow Texas water law have monitored the case, concerned about the implications for the EAA and the specter of other landowners suing for damages, possibly resulting in higher permit fees that could lead to rate increases for water customers.

The state's high court denied petitions for review on May 1 filed by both the EAA, which sought a reversal, and the Braggs, who wanted more in damages.

EAA General Manager Roland Ruiz was uncertain about the future impact of the case. The agency's board of directors was briefed on the case in an executive session Tuesday.

"The Edwards Aquifer Authority is disappointed that an opportunity to further clarify groundwater law in Texas has been missed," Ruiz said. "As to the impact of the Bragg decision to current management of the Edwards Aquifer, there is no impact to day-to-day operations. However, the long-term impact will depend upon future court decisions."

The San Antonio Water System had filed a brief in support of the EAA. Steve Kosub, water resources counsel for SAWS, said the case has "limited implications." A 10-year statute of limitations has expired since many permit applications were acted on by the EAA board in 2004 and 2005, he said.

Kosub said the Fourth Court applied a lower threshold than other courts in determining that a regulation caused enough adverse impact to constitute a taking. Damage to the Braggs' property was assessed at about 10 percent, a lower standard than in similar cases, he said.

“We still feel like it was the wrong analysis,” Kosub said.

The case involves the Home Place Orchard, where the Braggs live near Hondo and began irrigating with Edwards water shortly after purchasing it in 1979, according to court documents.

In 1983, the couple bought an orchard near D’Hanis, irrigating it with non-Edwards water from wells that later “became inadequate.” A permitted Edwards well was completed there in 1995.

The Braggs, who have sold pecans, candy and other products under their Bragg Pecans label, applied for an EAA permit with a maximum beneficial use of 228.5 acre-feet annually — about 75 millions gallons — for the Home Place Orchard, and 193.12 acre-feet for their D’Hanis Orchard.

The EAA, acting on historical use from 1972 to 1993, granted a permit for 120.2 acre-feet for the Home Place Orchard, and denied a permit for the other site.

In a 2013 opinion, the Fourth Court upheld the district court’s ruling that the EAA should compensate the Braggs for limiting their access to groundwater. Justice Sandee Bryan Marion wrote that “just compensation should be determined by reference to the highest and best use of the properties, which here are as commercial pecan orchards.”

The Braggs had earlier sued the EAA in 1996, alleging its permitting process denied them water they needed for their orchards. [That lawsuit](#) reached the state Supreme Court, which upheld the EAA’s ability to regulate groundwater.

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