

Law & Industry Daily

Texas Landowners Prevail in Water Case

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AUSTIN, Texas, Feb. 24 (LID) – Texas landowners could be entitled to compensation if regulatory barriers limit access to their land’s underground water supplies, the state Supreme Court unanimously ruled Friday.

The high court held that property owners have ownership interest in water beneath their land, but found that regulations are needed to protect and preserve what can be a very scarce resource at times.

Justice Nathan Hecht, writing for the court, said the takings provision in the Texas Constitution that requires adequate compensation for private property taken for public use applies to underground water supplies (TEX. CONST. art. I, § 17(a)).

“The Takings Clause ensures that the problems of a limited public resource — the water supply — are shared by the public, not foisted onto a few,” Hecht wrote in a 49-page slip opinion.

The case before the justices involved ranch owners Burrell Day and Joel McDaniel, who sued after the Edwards Aquifer Authority (EAA) limited the amount of underground water that could be used, limiting their usage rights to 14 acre-feet a year.

Hecht noted that underground water supplies provide some 60 percent of all water used in the state.

“Unquestionably, the state is empowered to regulate groundwater production,” he wrote. “In many areas of the state, and certainly in the Edwards Aquifer, demand exceeds supply.”

The EAA argued that a financial and legal crisis would result if landowners had to be compensated for limiting access to underground water on their property.

“We cannot know, of course, the extent to which the authority’s fears will yet materialize, but the burden of the takings clause on government is no reason to excuse its applicability,” Hecht wrote.

Environmental groups decried the high court’s decision, warning that the ruling could result in a flood of litigation as local officials try to manage water supplies.

At trial in Atascosa County District Court, Judge Donna Rayes ruled in favor of the plaintiffs, finding that they were entitled to pump 300 acre-feet of water per year. No monetary damages were awarded.

The ranchers and EAA appealed to the Fourth Court of Appeals. There, EAA’s decision was reinstated, allowing annual pumping totaling 14 acre-feet of water.

Again, both parties in the case sought review by the Supreme Court.

The high court’s ruling remanded the case back to the Atascosa County trial court, where plaintiffs can pursue their takings claim.

The case is *Edwards Aquifer Authority and the State of Texas v. Burrell Day and Joel McDaniel*, No. 08-096, Texas Supreme Court. The case was argued Feb. 17, 2010.