

Landowners lose groundwater fight

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AUSTIN — In a closely watched property rights case, the Texas Supreme Court said Thursday that a groundwater district did not have to consider the adverse effects on the owners of a pecan tree farm before limiting the aquifer water they could pump.

In a unanimous opinion, the court found that the Edwards Aquifer Authority was not required to prepare a "takings impact assessment" under the 1995 Property Rights Act.

Justice Deborah Hankinson relied on an exception to the Property Rights Act for actions taken by a political subdivision to protect groundwater from being wasted.

Greg Ellis, general manager of the San Antonio-based Edwards Aquifer Authority, said the ruling will allow the authority to carry

Court deals blow to property rights, saying study of effects unnecessary

out its legislative mandate to protect water quality and "keep one neighbor from causing harm to another neighbor."

"This ruling has saved us millions of dollars in costs of having to do takings impact assessments on every single permit application," said Ellis.

Paul Terrill, the lawyer for orchard owners Glenn and Jolynn Bragg of Medina County, said his clients could be forced out of business.

"This ruling will have a long-term detrimental effect on landowners' property rights in general and water rights in specific," said Terrill.

The case was the first major test of the state's Property Rights Act, which the Legislature enacted in response to an aggres-

sive push by property-rights advocates.

The act requires government entities to analyze whether a proposed regulation would harm landowners and take steps to mitigate the harm.

"When the Legislature passed the Property Rights Act and Gov. (George W.) Bush signed it into law in 1995, they intended to put real protection into place for landowners. They specifically said they were protecting groundwater rights," said Terrill.

"A good argument can be made that the Supreme Court gutted the Property Rights Act today."

Terrill said the Braggs will receive no water for one orchard and water will be cut in half for the other orchard.

The Legislature enacted the

Edwards Aquifer Authority Act in 1993, in response to a federal judge's threat to impose pumping limits on the Edwards, a massive aquifer that provides water for San Antonio and South Texas.

A severe drought in the early 1990s threatened endangered species living in springs fed by the aquifer.

The Sierra Club filed a lawsuit seeking controls on the unlimited pumping of the aquifer.

The Legislature put a cap on the amount of water that could be drawn from the Edwards and gave a preference to existing pumpers. One of the Bragg's wells was not drilled until after 1993.

Texas has been reluctant to regulate groundwater.

It is one of the few states that still follows the "rule of capture," which allows unlimited pumping of groundwater regardless of the harm it might cause neighboring landowners.