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## **INVERSE CONDEMNATION - TEXAS**

### **Edwards Aquifer Authority v. Bragg**

**Court of Appeals of Texas, San Antonio - November 13, 2013 - S.W.3d - 2013 WL 5989430**

Commercial pecan growers filed action against Edwards Aquifer Authority (EAA) for an alleged taking of growers' property, and for alleged violations of growers' federal civil rights, as result of decisions denying one water permit application and partially denying another. Lawsuit was removed to federal court, which dismissed civil rights claims and remanded takings claims back to state court. The district court granted partial summary judgment on liability for takings claim and, following bench trial, awarded compensation. Both parties appealed.

On denial of motion for rehearing, the Court of Appeals held that:

- As a matter of apparent first impression, EAA is a proper party to a takings lawsuit instituted under the Edwards Aquifer Authority Act (EAAA), even though actions of EAA giving rise to suit may not have been discretionary, and even if the state might be a proper party;
- EAA was not judicially estopped, based on successful arguments in federal court regarding accrual of growers' § 1983 claims, from subsequently arguing an earlier accrual date for growers' takings claim;
- Ten-year statute of limitations for an adverse possession claim applies where a regulatory taking results from an unreasonable interference with the landowner's right to use and enjoy the property;
- Growers' regulatory-takings claims did not accrue for limitations purposes until EAA made its final decisions regarding application of EAAA to growers' permit applications;
- Permitting system under EAAA that dictated the decisions on growers' applications resulted in compensable "regulatory taking" of two orchards;
- Proper time for determining the value of groundwater rights subjected to regulatory taking was the time at which time at which the statutory provisions that dictated those decisions were applied to the properties in question; and
- Just compensation would be determined by reference to the best and highest use of the two properties at issue, i.e., as commercial pecan orchards, and by valuing the orchards immediately before and immediately after the EAAA was applied to the orchards.

"Based on our discussion above, we conclude the trial court erred in calculating the compensation owed for the takings of the two orchards. Therefore, we remand this cause for the trial court to calculate the compensation owed on the Home Place Orchard as the difference between the value of the land as a commercial-grade pecan orchard with unlimited access to Edwards Aquifer water immediately before implementation of the Act in 2005 and the value of the land as a commercial-grade pecan orchard with access to Edwards Aquifer water limited to 120.2 acre-feet of water immediately after implementation of the Act in 2005. We also remand this cause for the trial court to calculate the compensation owed on the D'Hanis Orchard as the difference between the value of the land as a commercial-grade pecan orchard with unlimited access to Edwards Aquifer water immediately before implementation of the Act in 2004 and the value of the land as a commercial-grade pecan orchard with no access to Edwards Aquifer water immediately after implementation of

the Act in 2004.”

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