



Texas Supreme Court Rules For Landowners in Water Case

by [Kate Galbraith](#)

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In a case with potentially vast implications for groundwater rules in Texas, the Texas Supreme Court has unanimously ruled in favor of two farmers in the San Antonio area who challenged the local aquifer authority's sharp restrictions on their use of a water well on their land.

The much-anticipated [ruling](#) is "going to make life much more complicated for groundwater districts," said Gregory Ellis, an attorney and the former general manager of the Edwards Aquifer Authority (EAA).

Texans wanting to put a well on their land generally must go to their local groundwater conservation district for permission to withdraw a certain amount of water, as part of an effort to keep aquifers healthy.

The case involved a challenge to the Edwards Aquifer Authority by two farmers, Burrell Day (who has since passed away) and Joel McDaniel, who had sought a permit to pump from the Edwards Aquifer in 1996 to grow crops on their 350-acre ranch in Van Ormy, just south of San Antonio. They figured they had rights to the water because their ranch sits right on top of it, within the boundaries of the aquifer.

But because they were unable to prove "historical use" — the method by which the EAA allocates water — of the full 700 acre-feet of water they wanted, the authority granted them a permit for only 14 acre-feet. Their subsequent "takings claim" alleged the EAA had violated their constitutional rights by depriving them of their property without compensation.

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The Supreme Court, which took the case after an appellate court ruling, sent the case back to district court to determine the details of whether or not the farmers have a "takings" claim and whether the Edwards Aquifer Authority must pay a penalty.

"The aquifer authority's permitting based on historical use is a policy departure from the Texas Water Code's permitting factors without justification," a summary of Friday's opinion, which was written by Justice Nathan Hecht, stated.

The ruling added, "The Court reasons that groundwater in place is owned by the landowner on the basis of oil and gas law."

Landowner groups were happy with the ruling, which they said balances private property rights with reasonable regulation. "We're pretty pleased," said Billy Howe, a representative of the Texas Farm Bureau.

But environmental groups are concerned. The ruling "injects huge uncertainty" into a recovery program in the Edwards Aquifer Area, aimed at maintaining certain levels of spring flows and helping endangered species, said Myron Hess of the National Wildlife Federation.

Tom Mason, of the Austin law firm Graves, Dougherty, Hearon & Moody, said the ruling was likely to lead to more litigation.

"Landowners with wells may be encouraged by this and want to challenge groundwater district regulations, particularly in the Edwards Aquifer Authority," he said. Meanwhile, as the courts consider the implications of the ruling, groundwater districts "may be a little less inclined to regulate as vigorously as before," Mason said.

Russell Johnson, a water law attorney in Austin with McGinnis, Lochridge, & Kilgore, said that the decision is a victory for landowners.

"It's kind of like zoning ordinances, and what the court is saying is — you can zone people's property, but it has to be reasonable," he said.

Johnson, who is currently attending a water law conference in San Antonio, said the news was groundbreaking.

"Talk about a bomb being dropped at a water law conference," he said.

Morgan Smith contributed reporting.

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