No. 08-0964

IN THE SUPREME COURT OF TEXAS

THE EDWARDS AQUIFER AUTHORITY & THE STATE OF TEXAS,

Petitioners,

v.

BURRELL DAY & JOSEPH MCDANIEL,

Respondents.

POST-SUBMISSION AMICUS BRIEF OF THE TEXAS ALLIANCE OF GROUNDWATER DISTRICTS

On Petition for Review from the Fourth Court of Appeals at San Antonio, Texas

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The Texas Alliance of Groundwater Districts ("the Alliance"), formerly known as the Texas Groundwater Conservation Districts Association, is a non-profit organization made up of groundwater conservation districts that manage groundwater under Chapter 36 of the Texas Water Code.[1] There are ninety-eight groundwater conservation districts in Texas, four of which have yet to be confirmed by the voters.[2] Seventy-three of those districts are members of the Alliance, including Petitioner Edwards Aquifer Authority.[3]

The purpose of groundwater conservation districts is set forth in Section 36.0015 of the Texas Water Code:

> In order to provide for the conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and to control subsidence caused by withdrawal of water from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution, groundwater conservation districts may be created as provided by this chapter.

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[1] TEX. ALLIANCE OF GROUNDWATER DISTS., *available at* http://www.texasgroundwater.org/.

[2] *See GCD Facts*, TEX. WATER DEV. BD., *available at* http://www.twdb.state.tx.us/GwRD/GCD/facts.htm.

[3] *See Member Districts List*, TEX. ALLIANCE OF GROUNDWATER DISTS., *available at* http://www.texasgroundwater.org/Membership%20list.pdf.

TEX. WATER CODE § 36.0015.

The Alliance was formed to assist groundwater conservation districts in fulfilling this statutory and constitutional role. Among other activities, the Alliance provides its member districts with information, ideas, and programs essential to the conservation and protection of groundwater resources.[4] The Alliance also functions as a clearinghouse where districts exchange information concerning rules, procedures, programs, and practices involved in the operation of successful groundwater conservation districts.[5]

Having been tasked by the Texas Legislature with regulating and preserving groundwater, the members of the Alliance will be directly impacted by the Court's decision in this case. The Alliance is paying the fee for the preparation of this amicus brief, *see* TEX. R. APP. P. 11(c), because the court of appeals' decision to recognize "vested property rights" in the groundwater beneath Respondents' property undermines the ability of groundwater conservation districts to manage, protect, and preserve the State's groundwater as mandated by the Texas Legislature and the Texas Constitution. *See* TEX. CONST. art. XVI, § 59(a); TEX. WATER CODE § 36.0015.

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[4] *See* Article 2.0, *Bylaws*, TEX. ALLIANCE OF GROUNDWATER DISTS., *available at* http://www.texasgroundwater.org/rulesregs/Final%20Bylaws%20November%202008.pdf.

[5] *Id.*

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INTRODUCTION

The Alliance files this amicus brief in support of the Petitioners to emphasize that the Fourth Court of Appeals' opinion—recognizing a landowner's "vested property right" in the groundwater beneath his land—subverts the Legislature's comprehensive scheme for managing groundwater set forth in Chapter 36 of the Texas Water Code.[6] By subjecting groundwater conservation districts to potential takings claims whenever a district denies a landowner's permit to pump groundwater or limits the amount of groundwater to be pumped by a landowner in any given year, the court of appeals has effectively divested groundwater conservation districts of the ability to manage groundwater use.

This is not a suit about whether a landowner may sell groundwater once produced—it is well-settled law that he may. This suit simply challenges the power of the Legislature and groundwater conservation districts to enact regulations to conserve groundwater—as required by the Texas Constitution—without subjecting themselves to regulatory or physical takings claims. The opinion of the court of appeals effectively adopts a correlative rights theory of groundwater management for the State of Texas—*i.e.*, that each landowner has absolute ownership rights in, and the absolute right to drill a well to produce, the groundwater beneath his property. If this theory were to prevail in this Court, groundwater conservation in Texas would be finished. For the reasons set forth below, the Alliance urges this Court to reverse the court of appeals' ill-conceived decision in this case.

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[6] This is the second case in which the Fourth Court of Appeals has recognized a landowner's absolute ownership rights in the groundwater beneath his property. *See City of Del Rio v. Clayton Sam Colt Hamilton Trust*, 269 S.W.3d 613, 617-18 (Tex. App.—San Antonio 2008, pet. denied).

ARGUMENT

I. THE LEGISLATURE'S COMPREHENSIVE SCHEME FOR REGULATING GROUNDWATER IS ENFORCED BY GROUNDWATER CONSERVATION DISTRICTS AND IS PREMISED UPON THE COURT'S CONTINUED RECOGNITION OF THE COMMON-LAW RULE OF CAPTURE.

In 1917, the citizens of Texas enacted Article 16, Section 59 of the Texas Constitution —the "Conservation Amendment"—and tasked the State with conserving Texas's natural resources:

> The conservation and development of all of the natural resources of this State . . . and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

TEX. CONST. art. XVI, § 59(a). The "responsibility for the regulation of natural resources, including groundwater, rests in the hands of the Legislature." *Sipriano v. Great Spring Waters of Am., Inc.*, 1 S.W.3d 75, 77 (Tex. 1999); *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 626 (Tex. 1996) ("Water regulation is essentially a legislative function.").

The Legislature, in turn, delegated this regulatory responsibility to groundwater conservation districts. *See* TEX. WATER CODE § 36.0015 (designating conservation districts as "the state's preferred method of groundwater management"); *Guitar Holding Co. v. Hudspeth County Underground Water Conservation Dist. No. 1*, 263 S.W.3d 910, 912 (Tex. 2008). The Legislature specifically authorized districts to enact rules for the conservation of groundwater, including rules capping groundwater production. *See, e.g.*, TEX. WATER

CODE § 36.101(a) ("A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for the conserving, preserving, protecting, and recharging of the groundwater . . . ."). Indeed, in 2005, the Legislature enacted joint planning requirements that effectively make annual groundwater production caps mandatory for each groundwater conservation district in the State. *See* Act of May 24, 2005, 79th Leg., R.S., ch. 970, 2005 Tex. Gen. Laws 3247 (now codified at TEX. WATER CODE § 36.108).

Groundwater conservation districts may enact any of the following types of rules to meet these legislatively-mandated groundwater production caps:

- rules setting spacing and production limits on wells;
- rules limiting the amount of water produced based on acreage or tract size;
- rules limiting the amount of water that may be produced from a defined number of acres assigned to an authorized well site;
- rules limiting the maximum amount of water that may be produced on the basis of acre-feet per acre or gallons per minute per well site per acre;
- managed depletion rules; or
- any combination of the methods listed above.

TEX. WATER CODE § 36.116(a)(2)(A)-(F). These rules are designed to "prevent[] waste," promote the "efficient use of groundwater," and permit groundwater conservation districts to achieve "the desired future conditions of the groundwater resources" in their districts. *See, e.g.*, TEX. WATER CODE § 36.1071(a)(1), (2), (8); 31 TEX. ADMIN. CODE § 356.2(8).

Groundwater conservation districts also may enact rules that preserve a landowner's "historic or existing use" of groundwater to the "maximum extent practicable consistent with the district's comprehensive management plan." TEX. WATER CODE § 36.116(b). Such rules are critical tools in a groundwater conservation district's ability to manage groundwater use. A brief survey by the Alliance in December 2007 revealed that approximately half of its responding member districts have enacted rules preserving "historic or existing use"[7] as part of their regulatory framework for managing groundwater.[8] The rules challenged in this case were enacted by the Legislature to protect the "historic or existing use" of groundwater in the Edwards Aquifer. *See* Act of May 30, 1993, 73rd Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350.[9]

One purpose behind rules preserving the historic or existing use of groundwater is to protect a landowner's "reasonable investment-backed expectation." *See Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 937-38 (Tex. 1998) ("Historical uses of the property are critically important when determining the reasonable investment-backed expectation of the landowner."). For example, a landowner who has been issued a permit to drill a water well

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[7] Some districts passed rules that require the issuance of permits based on historic use during a specific historic period, similar to the Edwards Aquifer Authority regulatory system created by the Legislature; other districts simply "grandfathered" existing wells without issuing permits.

[8] *See* Post-Submission Letter Brief filed by Amicus Curiae Texas Alliance of Groundwater Conservation Districts (Dec. 7, 2007), *Guitar Holding Co. v. Hudspeth County Underground Water Conservation Dist. No. 1*, Cause No. 06-0904.

[9] The Edwards Aquifer Authority Act rules have survived previous constitutional challenges and have been approved by this Court as a legitimate exercise of the State's police power. *See Barshop*, 925 S.W.2d at 632.

on his property and has invested money to drill the well to irrigate his land with groundwater possesses a legitimate expectation that he will be permitted to use groundwater in similar quantities to irrigate his land at least for the term of the permit. A landowner who has not previously invested in the production of the groundwater flowing beneath his property has no such expectations. This type of investment-backed expectation is protected by historic use rules to the "maximum extent practicable" consistent with a conservation district's duty to conserve and ensure the efficient use of groundwater. *See* TEX. WATER CODE § 36.116(b).[10]

This protection afforded a landowner's reasonable investment-backed expectation is premised on the application of the rule of capture—*i.e.*, that landowners may take all the water that they can capture under their land without liability "even if in so doing they deprive their neighbors of the water's use." *Sipriano*, 1 S.W.3d at 76; *see Houston & Tex. Cent. Ry. v. East*, 81 S.W. 279, 280 (Tex. 1904). The rule of capture does not, however, create any vested property rights in groundwater beneath a landowner's property. The rule of capture is not a rule of absolute ownership of groundwater in place. Rather, the rule of capture "is based on the concept that ownership of a migratory resource occurs when one exerts control over it and reduces it to possession." *City of San Marcos v. Tex. Comm'n on Envtl. Quality*,

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[10] It is ironic that Respondents contend that the application of the Edwards Aquifer Authority Act's rules preserving a landowner's right to historic use of groundwater constitutes a taking; under Texas and federal law, the opposite is true. A regulation may constitute a taking if, among other factors, "the regulation has *interfered* with distinct investment-backed expectations." *Sheffield Dev. Co. v. City of Glenn Heights*, 140 S.W.3d 660, 672 (Tex. 2004) (emphasis added); *see Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978); *City of Dallas v. VRC LLC*, 260 S.W.3d 60, 66-67 (Tex. App.—Dallas 2008, no pet.).

128 S.W.3d 264, 271 (Tex. App.—Austin 2004, pet. denied); *see Elliff v. Texon Drilling Co.*, 210 S.W.2d 558, 561 (Tex. 1948). In contrast, under the "correlative rights" theory adopted by the court of appeals and urged by Respondents, each landowner would have a vested ownership interest in the actual groundwater beneath his property—*i.e.*, each landowner would have a legally protected right to the groundwater measured beneath the metes and bounds of his property.[11] The adoption of this theory would result in a zero-sum game, with landowners who had no historical use as the clear winners and the Legislature's regulatory scheme as the clear loser, because a conservation district could not impose any restriction on a landowner's production of "his groundwater" without subjecting itself to potential regulatory or physical takings claims. The recognition of correlative rights represents the antithesis of protecting historic rights and investment-backed expectations by favoring persons with lots of property and little demand for water equally to those with existing and historic usage, including municipal providers, farmers, and industries, whose historic use was not based on number of acres but need.

The court of appeals in this case appears to have abandoned the rule of capture in favor of the "correlative rights" theory—*i.e.*, the court found that the landowner had a vested property right in the groundwater flowing beneath his property and that the application of the Edwards Aquifer Authority's rules limiting production of that groundwater supported his

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[11] The Court should note that the term "correlative rights" as used in the groundwater context differs from the concept of correlative rights as used in oil and gas cases, which effectively grants a mineral interest owner a right to drill an offset well to produce the oil and gas reserves beneath his property and protect against drainage by neighboring landowners. *See Coastal Oil & Gas Corp. v. Garza Energy Trust*, 268 S.W.3d 1, 14 (Tex. 2008).

takings claim. *See Edwards Aquifer Authority v. Day*, 274 S.W.3d 742, 756, 759 (Tex. App. —San Antonio 2008, pet. granted). If this Court were to affirm the court of appeals' decision and abandon the rule of capture in favor of a correlative-rights theory of ownership in groundwater, then groundwater conservation districts would be subject to potential takings claims for enforcing "historic or existing use" rules or any other conservation rules that limit a landowner's production of groundwater. The court of appeals' decision, if allowed to stand, effectively renders useless the tools created by the Legislature to meet its constitutional mandate to conserve Texas groundwater. *See* TEX. CONST. art. XVI, § 59(a). This Court should not permit the court of appeals to dismantle the Legislature's scheme for regulating groundwater by judicial fiat.

II. THE COURT SHOULD REVERSE THE COURT OF APPEALS' DECISION TO ABANDON THE COMMON-LAW RULE OF CAPTURE IN FAVOR OF A CORRELATIVE-RIGHTS THEORY OF GROUNDWATER OWNERSHIP IN TEXAS.

In *Barshop v. Medina County Underground Water Conservation District*, 925 S.W.2d 618, 623 (Tex. 1996), this Court reiterated that landowners have property rights in the water beneath their land. Similarly, in Section 36.002 of the Texas Water Code, the Legislature recognizes that landowners have rights in subsurface groundwater for purposes of a takings claim. *See* TEX. WATER CODE § 36.002 ("The ownership and rights of the owners of land . . . in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners . . . of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district."). But neither this Court nor the Legislature has ever stated that a landowner has a vested interest, or correlative right, in

subsurface groundwater. *See Barshop*, 925 S.W.2d at 625-26; *see also Seagull Energy E&P, Inc. v. R.R. Comm'n of Tex.*, 226 S.W.3d 383, 388-89 (Tex. 2007) ("Although a mineral owner has a right to its fair share of the minerals on and under its property, this right does not extend to specific oil and gas beneath the property."); *Coastal Oil & Gas Corp. v. Garza Energy Trust*, 268 S.W.3d 1, 15 (Tex. 2008) ("While a mineral rights owner has a real interest in oil and gas in place, 'this right does not extend to specific oil and gas beneath the property'; ownership must be 'considered in connection with the law of capture, which is recognized as a property right' as well."). Rather, for over a hundred years, this Court has recognized the common-law rule of capture with respect to the rights of landowners to use groundwater. *East*, 81 S.W. at 280; *Sipriano*, 1 S.W.3d at 76-77. Despite repeated judicial challenges to this common-law rule, this Court has refused to abandon the common-law rule of capture in favor of a correlative-rights theory of absolute ownership in groundwater.[12]

The Court most recently rejected a challenge to the common-law rule of capture in 1999 in *Sipriano v. Great Spring Waters of America, Inc.*, 1 S.W.3d 75 (Tex. 1999). In that case, the petitioner urged the Court to abandon the common-law rule of capture of groundwater in favor of the rule of "reasonable use." *Id.* at 75. The Court, recognizing that groundwater management was a legislative function, refused to do so, especially given the

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[12] When this Court was recently urged to abandon the common-law rule of capture in favor of a correlative rights theory of groundwater ownership by an amicus party, the Court declined the invitation without discussion. *Guitar Holding Co. v. Hudspeth Underground Water Conservation Dist. No. 1*, 263 S.W.3d 910 (Tex. 2008) (Mesa Water, Inc.'s Amicus Brief urging the Court to abandon the rule of capture in favor of correlative ownership rights in groundwater), *available at* http://www.supreme.courts.state.tx.us/ebriefs/06/06090403.pdf.

"sweeping changes" in the law enacted by the Legislature in 1997:

> It would be improper for courts to intercede at this time by changing the common-law framework within which the Legislature has attempted to craft regulations to meet this state's groundwater-conservation needs. Given the legislature's recent actions to improve Texas's groundwater management, we are reluctant to make so drastic a change as abandoning our rule of capture and moving into the arena of water-use regulation by judicial fiat. It is more prudent to wait and see if [the legislative reforms] will have its desired effect, and to save for another day the determination of whether further revising the common law is an appropriate prerequisite to preserve Texas's natural resources and protect property owners' interests.

Sipriano, 1 S.W.3d at 80. *Sipriano* was a 9-0 decision.

Two justices, however, were not totally convinced that the Court should wait for the Legislature indefinitely. In a concurring opinion, Justice Hecht, joined by Justice O'Neill, expressed his frustration with the slow pace of groundwater management and hinted at his willingness to abandon the common-law rule of capture unless groundwater management improved in Texas:

> Actually, such [groundwater conservation] districts are not just the preferred method of groundwater management, they are the only method presently available. Yet in the fifty years since the Legislature first authorized the creation of groundwater conservation districts, the record in this case shows that only some forty-two such districts have been created, covering a small fraction of the State. Not much groundwater management is going on.

Id. at 81 (Hecht, J., concurring). Nevertheless, Justice Hecht ultimately agreed with the majority of the Court that "it would be inappropriate to disrupt the processes created and encouraged by the 1997 legislation before they have had a chance to work." *Id.* at 83.

Today, a little more than ten years later, the arguments in favor of preserving the common-law rule of capture are even stronger than they were in *Sipriano* given the

Legislature's comprehensive scheme for groundwater management and conservation set forth in Chapter 36 of the Texas Water Code. Groundwater conservation districts are now required to adopt groundwater management plans that must be approved by the Texas Water Development Board. *See* TEX. WATER CODE § 36.1071(a)(1)-(8); *id.* § 36.1072 ("Texas Water Development Board Review and Approval of Management Plan").[13] Groundwater conservation districts must coordinate planning efforts with other districts located in sixteen "groundwater management areas" to facilitate cohesive, overall planning for the State's aquifers. *See* TEX. WATER CODE § 35.001; *id.* § 36.108 ("Joint Planning in Management Area").[14] The Texas Water Development Board—the state agency that is primarily responsible for water planning, TEX. WATER CODE § 6.011—then incorporates the groundwater management decisions made by the districts in the sixteen groundwater management areas into regional and statewide water planning efforts. *See* TEX. WATER CODE § 6.012(a); *id.* § 36.108; *id.* § 16.053(e).[15]

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[13] *See also Groundwater Conservation Districts*, TEX. WATER DEV. BD., *available at* http://www.twdb.state.tx.us/GwRD/GCD/gcdhome.htm.

[14] *See also Groundwater Management Areas*, TEX. WATER DEV. BD., *available at* http://www.twdb.state.tx.us/GwRD/GMA/gmahome.htm.

[15] *See Water for Texas 2007*, Chapter 7, Groundwater Resources, TEX. WATER DEV. BD., *available at* http://www.twdb.state.tx.us/publications/reports/State_Water_Plan/2007/2007StateWaterPlan; *see General History of the Texas Water Development Board*, TEX. WATER DEV. BD., *available at* http://www.twdb.state.tx.us/about/history.asp.

Since 1999, groundwater management in Texas has matured rapidly. The number of groundwater conservation districts has more than doubled,[16] and roughly 90 percent of the reported groundwater usage in Texas in the year 2000 was regulated by a groundwater conservation district. Groundwater management in Texas today is, in short, comprehensive. The regulatory scheme for managing groundwater enacted by the Legislature works, and there is no reason for this Court to abandon the rule of capture.

Given the numerous restrictions on groundwater production enacted by groundwater conservation districts, few landowners have the right to take all the water they can produce under the common-law rule of capture. *East*, 81 S.W. at 280. Nevertheless, the Legislature's regulatory scheme and groundwater conservation district rules are premised on the existence and application of the rule of capture. If the Court were to abandon the common-law rule of capture and recognize correlative rights in groundwater, the Court's ruling would effectively dismantle the comprehensive groundwater regulatory scheme enacted by the Legislature. As the Court has repeatedly stated, groundwater management is a legislative function. *See Sipriano*, 1 S.W.3d at 77; *Barshop*, 925 S.W.2d at 626. Given the Legislature's efforts to create a comprehensive scheme for groundwater management, a decision by this Court to disrupt this scheme would be "inappropriate" and "improper." *Sipriano*, 1 S.W.3d at 80; *id.* at 83 (Hecht, J., concurring).

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[16] *Compare GCD Facts*, TEX. WATER DEV. BD., *available at* http://www.twdb.state.tx.us/gwrd/gcd/facts.htm ("There are 95 groundwater conservation districts in Texas . . . . ") *with Sipriano*, 1 S.W.3d at 75 ("[T]he record in this case shows that only some forty-two such districts have been created, covering a small fraction of the State.").

III. THE COURT OF APPEALS' DECISION TO RECOGNIZE VESTED PROPERTY RIGHTS IN GROUNDWATER WOULD MEAN THAT GROUNDWATER CONSERVATION DISTRICTS COULD NOT ENFORCE CONSERVATION RULES AGAINST LANDOWNERS WITHOUT VIOLATING THE CONSTITUTION.

Groundwater supplies in Texas are "expected to fall significantly" in the very near future—*i.e.*, by 32% in the next 50 years.[17] Thus, groundwater conservation efforts in Texas are critical and will only increase in importance with the passage of time. Chapter 36 effectively requires all groundwater conservation districts to adopt rules limiting annual groundwater production. If, however, a landowner owns fee simple title to the groundwater beneath his property (as the court of appeals has determined in this case), then the landowner could file suit arguing that he has a right to produce all the groundwater beneath his property without any interference by the State. If a groundwater conservation district were to adopt rules limiting groundwater production and deny that landowner the right to produce any amount of groundwater beneath his property in any given year, then the district would be subject to a regulatory or physical takings claim by the landowner for the value of his groundwater.[18] As counsel for Respondents conceded during oral argument, Respondents contend that if "a landowner cannot access his own groundwater . . . the State has to buy it."[19]

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[17] From approximately "8.5 million acre-feet/year in 2010 to about 5.8 million acre-feet/year by 2060." *See Water for Texas 2007*, Chapter 7, at 176.

[18] Taxpayers and fee payers in the groundwater conservation district would end up having to pay damages to the parties that would harm the aquifer by violating spacing and production limits.

[19] Indeed, in response to questioning from Justice Hecht, counsel for Respondents stated that if a groundwater conservation district were to determine that a landowner "can't drill a well, it's a physical taking because access to your property is denied." At oral argument, Respondents would not concede that groundwater was subject to any regulation given their position that the landowner owns groundwater in place. *See also* Pacific Legal Found. Amicus Br. at 4 ("[T]he government's

Groundwater conservation districts would be left without any options. If a district issued a permit to a landowner to completely drain the groundwater flowing beneath his land, then the landowner would necessarily drain groundwater from neighboring property. His neighbor could (and likely would) sue the district for allowing the drainage by the landowner with the permit. Thus, the Fourth Court of Appeals' opinion would allow the neighbor to sue the district for drainage damages that he would not be able to recover from the landowner under the rule of capture. Groundwater conservation district would be sued whether they granted permit applications or denied them.

As Justice Medina observed during oral argument, Respondents' position, if adopted by the Court, would open the floodgates of litigation. If a groundwater conservation district enacted and enforced limits on groundwater production as required by the Texas Water Code, and Respondents' position prevails, then the district (or the State)[20] would be required to pay landowners to defer production of the groundwater beneath their property. At a minimum, groundwater conservation districts would be burdened by the time and expense of defending against the regulatory or physical takings claims filed by every landowner who is not permitted to produce the groundwater underlying his property. Such a holding would prevent groundwater conservation districts from enforcing any meaningful limits on groundwater

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act of putting off-limits some of the property owner's available groundwater amounts to a per se, physical taking. It matters not that the water denial restricted only a portion of the [water owner's] available water; 'in the physical taking jurisprudence any impairment is sufficient.'").

[20] The State of Texas is a petitioner in this case because the challenged regulations enforced by the Edwards Aquifer Authority were enacted by the Legislature. Thus, the State would be obliged to pay any damages for the alleged regulatory or physical taking of groundwater.

production or, alternatively, bankrupt the districts. Thus, the adoption of Respondents's position by this Court would effectively dismantle the Legislature's comprehensive approach for managing and conserving groundwater. If a district is unable to say "no" to any landowner's permit for groundwater production without facing a regulatory or physical takings claim, groundwater conservation in Texas is dead.

PRAYER

For these reasons, the Court should reverse the decision of the court of appeals.

Respectfully submitted,

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