No. 08-0964

In the Supreme Court of Texas

THE EDWARDS AQUIFER AUTHORITY AND THE STATE OF TEXAS,
Petitioners,

v.

BURRELL DAY AND JOEL MCDANIEL,
Respondents.

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

PETITION FOR REVIEW

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

JAMES C. HO
Solicitor General

KRISTOFER S. MONSON
State Bar No. 24037129
Assistant Solicitor General

PETER HANSEN
Attorney

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
[Tel.] (512) 936-1820
[Fax] (512) 469-3180

COUNSEL FOR PETITIONER
STATE OF TEXAS

IDENTITY OF PARTIES AND COUNSEL

***Petitioners*:**
State of Texas and Edwards Aquifer Authority

***Counsel for Petitioner State of Texas*:**

Supreme Court Counsel:
Kristofer S. Monson
Assistant Solicitor General
Peter Hansen
Attorney
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548

Trial and Court of Appeals Counsel:
Brian E. Berwick
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 015)
Austin, Texas 78711-2548

***Counsel for Petitioner Edwards Aquifer Authority*:**

Trial and Appellate Counsel:
Andrew S. (Drew) Miller
Darcy Alan Frownfelter
Hunter Wyatt Burkhalter
KEMP SMITH, LLP
816 Congress Avenue, Suite 1150
Austin, Texas 78701

***Respondents*:**

Burrell Day and Joel McDaniel

***Counsel for Respondents*:**

Thomas E. Joseph
Attorney at Law
Alamo Tower East
909 NE Loop 410, Suite 600
San Antonio, Texas 78209-1309

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STATEMENT OF THE CASE

Nature of the Case:	This appeal involves constitutional claims raised by plaintiffs in a suit for judicial review of the Edwards Aquifer Authority's order granting them a historical-use permit.
Trial Court:	218th Judicial District Court, Atascosa County, The Honorable Donna S. Rayes, presiding.
Trial Court Disposition:	The trial court denied plaintiffs' takings claim on motion for summary judgment. 1.CR.245 (Tab A).[1]
Parties in Court of Appeals:	Burrell Day and Joseph McDaniel, Appellants The Edwards Aquifer Authority, The State of Texas, Appellees.
Court of Appeals:	Fourth Court of Appeals at San Antonio, Texas.
Court of Appeals's Disposition:	The court of appeals reversed the trial court's judgment in part, affirming the administrative order granting the reduced groundwater amount but reversed the denial of plaintiffs' takings claim. *Edwards Aquifer Auth. v. Day*, No. 04-07-00103-CV, 2008 WL 4056321 (Tex. App.—San Antonio Aug. 29, 2008, pet. filed) (Hilbig, J., joined by Angelini, J., and Speedlin, J.) (Tab B).

1. Record citations appear as "__.CR.__", with the first numeral indicating the volume and the second the page number. Citations to the supplemental clerk's record appear as "__.SCR.__."

STATEMENT OF JURISDICTION

There is jurisdiction over the final judgment in this case because the constitutional nature of groundwater rights is an issue of paramount importance to the jurisprudence of the State and involves an issue of statutory construction. *See* TEX. GOV'T CODE §22.001(a)(3), (6).

ISSUES PRESENTED

Plaintiffs sought a permit from the Edwards Aquifer Authority to withdraw water from the aquifer based on alleged historical use, but received a permit for a smaller amount than they requested. They sued the Authority, alleging, in part, that it committed a compensible taking by limiting the amount of water they could use and that the Edwards Aquifer Authority Act and Water Code effect a regulatory taking by limiting groundwater production at all. The Authority impleaded the State of Texas as a third-party defendant.

1. Does the act of limiting groundwater production constitute a compensable taking? Can plaintiffs assert a compensable taking based on the denial of their historical use permit in this case?

2. Does the plaintiffs' live petition otherwise state a waiver of the State's sovereign immunity from suit?

3. Can the State be impleaded as a third party in this lawsuit? [UNBRIEFED]

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PETITION FOR REVIEW

TO THE HONORABLE SUPREME COURT OF TEXAS:

Do limits on groundwater pumping effect a constitutional taking? This pure legal question has enormous practical implications for the State's coffers. An answer of "yes" could well make groundwater regulation completely impractical. The Court should not recognize a taking in this context because landowners have no realistic expectation of harvesting, and profiting from, an unlimited amount of water from the aquifer. Drainage by neighbors and drought already make them subject to reductions in the amount of water they can produce. Regulatory reductions are no different—a contingent property interest cannot be taken by regulation. The Court should grant the petition.

STATEMENT OF FACTS

I. THE EDWARDS AQUIFER AUTHORITY ACT

The Edwards Aquifer Authority Act,[2] enacted in 1993, created the Edwards Aquifer Authority and gave it the power to regulate withdrawals of groundwater by well from the Edwards Aquifer. *Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 625 (Tex. 1996). Under the Act, applicants can seek initial regular use permits for withdrawals by showing "beneficial use" of Edwards groundwater during the "historical period" between 1972 and 1993. 14.SCR.3512, 3532-33.

Implementation, however, was delayed. First, the Department of Justice refused to preclear the Act under the federal Voting Rights Act. *Barshop*, 925 S.W.2d at 625. Then, plaintiffs unsuccessfully challenged the facial constitutionality of the act. *Id.* at 638. The Act was implemented by the end of 1996.

II. THE PERMIT APPLICATION

Plaintiffs purchased the parcel involved in this dispute in September of 1994, after the Act was passed, but before it was implemented. 1.CR.163. During the historical period, the parcel had been used for grazing cattle. 6.SCR.2003. Plaintiffs now want to use the parcel

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2. The Act is contained in a number of general-law enactments. Act of May 30, 1993, 73d Leg., R.S., ch. 626, 1993 Tex. Gen. Laws 2350; as amended by Act of May 16, 1995, 74th Leg., R.S., ch. 524, 1995 Tex. Gen. Laws 3280; Act of May 29, 1995, 74th Leg., R.S., ch. 261, 1995 Tex. Gen. Laws 2505; Act of May 6, 1999, 76th Leg., R.S., ch. 163, 1999 Tex. Gen. Laws 634; Act of May 25, 2001, 77th Leg., R.S., ch. 1192, 2001 Tex. Gen. Laws 2696; Act of May 28, 2001, 77th Leg., R.S., ch. 966, §§ 2.60-.62 and 6.01-.05, 2001 Tex. Gen. Laws 1991, 2021-22 and 2075-76; Act of June 1, 2003, 78th Leg., R.S., ch. 1112, § 6.01(4), 2003 Tex. Gen. Laws 3188, 3193; Act of May 28, 2007, 80th Leg., R.S., ch. 1351, §§ 2.01-.12 , 2007 Tex. Gen. Laws 4612, 4627; and Act of May 28, 2007, 80th Leg., R.S., ch. 1430, §§ 12.01-.12, 2007 Tex. Gen. Laws 4612, 4627. Relevant excerpts are attached as an appendix to this brief, at Tabs C and D.

to grow oats and peanuts. 6.SCR.1867. In December of 1996, they applied to the Authority for a permit to withdraw 700 acre feet of water. 1.CR.140, 142. The Authority gave preliminary approval, but then determined that there had been less beneficial use during the historical period than plaintiffs claimed. 6.SCR.1878; 7.SCR.2196; 11.SCR.2878-80.

Plaintiffs requested a contested case hearing. 1.SCR.714. The Administrative Law Judge found that, except for five to seven acres, plaintiffs' predecessor-in-interest had irrigated with state surface water from a lake, and not Edwards groundwater. 1.CR.52, 58. The Authority adopted the Administrative Law Judge's recommendation and granted plaintiffs a permit to withdraw fourteen acre-feet of groundwater per year. 2.CR.316, 353.

III. PROCEDURAL HISTORY

Plaintiffs sought review in district court, adding a takings claim, and the Authority brought a third-party action against the State for indemnification and contribution on the takings claim. 1.CR.1,227-28. Plaintiffs claimed deprivation of a property right in groundwater without compensation, 1.CR.13, and the district court granted the Authority summary judgment on the ground that there was no property right. 1.CR.245. The court of appeals reversed,[3] reasoning that plaintiffs have a vested right in the groundwater beneath their property because they have "some ownership rights in the groundwater" and remanded for further proceedings. *Edwards Aquifer Auth. v. Day*, No. 04-07-00103-CV, 2008 WL 4056321, at *9 (Tex. App.—San Antonio Aug. 29, 2008, pet. filed).

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3. The court of appeals correctly stated the nature of the case, to the extent of the issues before it.

SUMMARY OF THE ARGUMENT

The Legislature has, pursuant to the Constitution, acted decisively to preserve Texas aquifers while providing local control over the process. Continuing population expansion makes groundwater conservation critical—without a clear view of the implications of such regulation, it will be impossible for landowners or the government to make meaningful plans. Uncertainty on this issue risks Texas's future. The Court should grant the petition because the issues presented are vital to Texas citizens' future health, safety, and prosperity.

The Court need not reach the broader questions implicated in the court of appeals's opinion, which focused on whether property owners have an ownership interest in groundwater as an absolute matter. There is a jurisdictional defect in this case that precedes any inquiry into the ultimate issues of groundwater ownership. The State has been impleaded into this case as a defendant in an Article I, §17 claim. It has sovereign immunity from suit for improperly pleaded Article I, §17 claims. Sovereign immunity is jurisdictional and can be raised at any time. Thus, if plaintiffs' live petition affirmatively negates the existence of a valid takings claim, the claims against the State must be dismissed in this appeal.

The alleged facts do not describe a "taking" as a matter of law for three reasons. *First*, regardless of the scope of any property right landowners may have in ground water, because the Edwards Aquifer Act and Water Code provisions at issue were enacted under the Conservation Amendment, they are not "takings" and do not implicate the takings clause. *Second*, by operation of the "rule of capture"—the common law rule on which plaintiffs

rely—capping production from a well cannot, as a matter of law, be a taking. *Third*, any cap on production merely changes the background common-law rule of ownership, and the Legislature can change common-law rules governing ownership of property without committing a compensable taking.

Moreover, there is no need to develop a further record to determine whether the allegations in this case constitute a taking. This is a suit for judicial review of an administrative proceeding. Plaintiffs allege a taking based on proceedings—and a record—that have already been completed. The thrust of plaintiffs' claim is that the historic-use determination is constitutionally infirm because it did not allow them to establish historic use with the evidence available to them and therefore they were deprived of future use groundwater production. But there is no Texas law to support this supposed prospective right. Indeed, Texas law actually *prohibits* such recovery between private plaintiffs. The parameters of a property owner's interest in groundwater have never been tested in this context, the Court should hold that the loss of future groundwater production is contingent on future events and, therefore, does not constitute a currently-vested property right.

ARGUMENT

I. WHETHER THE ISSUANCE OF A GROUNDWATER PERMIT FOR LESS WATER THAN THE APPLICANT REQUESTED CONSTITUTES A TAKING—AN ISSUE THE COURT RESERVED IN *BARSHOP*—IS AN EXTREMELY IMPORTANT LEGAL QUESTION.

Does the Edwards Aquifer Authority commit a compensable taking when it partially denies a permit to an applicant who claims to be a historical user, but cannot meet the

Authority's standards for establishing all of his historic use? Does regulation of groundwater give rise to condemnation damages whenever pumping limits are imposed? Because the Authority's actions with regard to plaintiffs can never, as a matter of law, constitute a regulatory taking of their asserted property rights, the Court should grant the petition and resolve this issue now.

A. Groundwater Regulation Has Always Been Important to Texas Law.

The conservation of groundwater is so important that the people amended the Texas Constitution—in response to the Court's recognition of the rule of capture and following a disastrous drought—to *require* the Legislature to conserve the State's natural resources. TEX. CONST. art. XVI, §59 ("the Conservation Amendment"); *see Barshop v. Medina County Underground Water Conservation Dist.*, 925 S.W.2d 618, 623 & 616 (Tex. 1996). "Conservation of water has always been a paramount concern in Texas . . . ." *Id.* at 626 (discussing *In re Adjudication of the Water Rights of Upper Guadalupe Segment of Guadalupe River Basin*, 642 S.W.2d 438, 441 (Tex. 1982)). The Legislature's creation of groundwater districts is underpinned by its recognition that regulation of such aquifers preserves a common resource. *E.g.*, EDWARDS AQUIFER ACT §1.01 (regulation will "protect terrestrial and aquatic life, domestic and municipal water supplies, the operation of existing industries, and the economic development of the State."). This issue directly impacts groundwater regulation. *Sipriano v. Great Spring Waters of Am., Inc.*, 1 S.W.3d 75, 79 (Tex. 1999).

B. Whether Government Regulation of Groundwater Effects a Compensable Taking Is a Question of First Impression.

No Texas court has directly addressed the question whether government limitations on groundwater production trigger liability under Article I, §17 of the Texas Constitution. The Court has concluded that the "law of capture" governs when one landowner, through non-wasteful pumping, dries up his neighbor's well. *See Houston & T.C. Ry. Co. v. East*, 98 Tex. 146, 149, 81 S.W. 279, 280 (1904) (recognizing that there are no correlative rights in water absent "positive authorized legislation"); *see also Sipriano*, 1 S.W.3d at 79. But the common law rule for such disputes between neighbors does not address whether a landowner's interest in groundwater can be constitutionally "taken" by governmental action restricting the amount of water pumped. *Cf. Domel v. City of Georgetown*, 6 S.W.3d 349, 357-58 (Tex. App.—Austin 1999, pet. denied) (declining to impose takings liability for surface water regulation). Rather, the rule-of-capture cases—which were decided without any contrary statutory scheme establishing the scope of property rights—focused primarily on whether a landowner should bear the risk of damaging his neighbor's property in producing from a well on his own. The scope of a property owner's rights to groundwater as against government regulation was reserved on ripeness grounds in *Barshop*, 925 S.W.3d at 630-31, and has never been fully addressed by the Court.

C. Holding that Groundwater Regulation Effects a Taking Would Harm the Public and Expose the State to Litigation Expense and Potential Liability in Multiple Pending Lawsuits.

Apart from the technical and legal concerns this case raises regarding the regulation of groundwater, this lawsuit implicates practical concerns: money and public health and safety. The Authority encompasses 1.7 million people in an area 180 miles long, covering parts of eight counties.[4] *See* EDWARDS AQUIFER ACT §1.04. Plaintiffs claim that each acre foot of water is worth $2,500 and seek approximately $5 million in damages. 1.CR.15. Applicants for Edwards groundwater have asked to pump 792,000 acre feet annually.[5] This is 220,000 acre feet more than the current legislatively-mandated cap on Edwards groundwater pumping. EDWARDS AQUIFER ACT §1.14(c). If plaintiffs' theory is correct, this difference would result in liability of $550,000,000. The Edwards Aquifer represents approximately four percent of the groundwater used in Texas.[6] Expanding on that number, the impact on the public fisc would be more than $10 billion. By way of comparison, that amount would constitute more than more than 12% of the State's available budget for 2010-11. Comptroller's Budget Estimate, TEX. COMPTROLLER OF PUB. ACCOUNTS, BIENNIAL REVENUE ESTIMATE FOR 2010-2011 BIENNIUM (2009).[7]

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4. The Authority's website provides information regarding the physical scope of the aquifer and the nature of the Authority's regulatory activities. *See* http://www.edwardsaquifer.org.

5. Surface Water: Lifeline for San Marcos, http://www.ci.san-marcos.tx.us/departments/WWW/Water_Surface_Series.htm.

6. Groundwater Pumpage Estimates, http://www.twdb.state.tx.us/wushistorical/.

7. available at http://www.window.state.tx.us/taxbud/bre2010/96-402_BRE_2010-11.pdf.

Further, an important purpose of groundwater regulation is to ensure that there is enough water for Texas citizens to keep themselves alive and run their businesses. "The story of water law in Texas is also the story of its droughts." *In re Upper Guadalupe*, 642 S.W.2d at 441. Placing the burden of takings damages on actions to curb the effects of drought would impair the public good unacceptably.

This lawsuit is not an isolated occurrence. Three similar lawsuits are pending against the Authority in which the Authority has impleaded the State.[8] Given the huge amount of money at stake, the court of appeals's judgment could well encourage even more plaintiffs to challenge groundwater regulation on takings grounds unless the Court intervenes.

II. IF PLAINTIFFS' PETITION AFFIRMATIVELY NEGATES JURISDICTION BY PRECLUDING ANY POTENTIAL TAKINGS CLAIM, THERE IS NO JURISDICTION OVER THE CLAIM AGAINST THE STATE.

The State of Texas is currently a defendant in this takings lawsuit. Although article I, §17 of the Texas Constitution effects a waiver of the immunity from suit, *City of Beaumont v. Bouillion*, 896 S.W.2d 143, 149 (Tex. 1995), improperly pleaded takings claims fail to invoke that waiver of immunity and must be dismissed, *State v. Holland*, 221 S.W.3d 639, 642-43 (Tex. 2007). Thus, the issue in this case— whether plaintiffs' petition states a valid takings claim—is jurisdictional and properly before the Court even though it was not raised

8. These cases are *Chemical Lime v. Edwards Aquifer Authority*, No. 2004-0115A, in Comal County, which has been severed from a case currently on submission before the court, No. 06-0911; *Willoughby v. Edwards Aquifer Authority*, No. 07-03-25, in Uvalde County, which has been abated pending the outcome of the portion of Chemical Lime currently before the Court; and *Bragg v. Edwards Aquifer Authority*, No. 06-11-18170-CV1, in Medina County.

in the summary-judgment proceedings below. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445 (Tex.1993). Because plaintiffs' petition does not describe a taking as a matter of law, their suit must be dismissed.

III. THE AUTHORITY DID NOT EFFECT A CONSTITUTIONAL TAKING BY PERMITTING PLAINTIFFS TO PRODUCE LESS WATER THAN THEY ASKED FOR, AND REGULATION OF GROUNDWATER DOES NOT AUTOMATICALLY CONSTITUTE A COMPENSABLE TAKING.

The court of appeals concluded that the rule of capture creates at least some degree of property right that can serve as the basis of a regulatory takings claim. But the Court need not address that issue because the nature of a property owner's right to pump groundwater precludes the Authority's limits on groundwater production from being compensable takings.

A. Whether Government Action Constitutes a Regulatory Taking Depends On the Nature and Extent of the Government's Interference With Vested Property Rights.

Not every regulation that interferes with a property owner's use or enjoyment of property rises to the level of a taking. If that were the case, every government regulation could be construed as a taking. *See City of College Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 804 (Tex. 1984). Under either the federal or the Texas Constitution, a regulatory taking must destroy or impair a property's value. *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 538 (2005); *Hallco Tex., Inc. v. McMullen Co.*, 221 S.W.3d 50, 56 (Tex. 2006). Whether the regulation actually effects a taking is an *ad hoc* determination. While the extent of the taking—*i.e.*, the amount of damages—may be a question for the trier of fact, whether a set of facts constitutes a taking is a question of law. *Hallco*, 221 S.W.3d at 56.

B. Regulation Capping the Amount of Groundwater Pumped from a Well Does Not Effect a Taking.

Plaintiffs allege that the Authority's issuance of an existing-user permit allowing them to take a smaller amount of water than they requested constitutes a compensable taking. In essence, plaintiffs (1) challenge the government's authority to limit groundwater production and (2) argue that they are entitled to compensation for the loss of ability to take as much groundwater as they want in the future. These allegations do not describe a regulatory taking as a matter of law.

1. The Conservation Amendment requires the Legislature to limit access to a shared public resource.

The Conservation Amendment changed the nature of the Legislature's control over property rights related to shared resources governed by the rule of capture. *See Sipriano*, 1 S.W.3d at 79; *Corzelius v. Harrell*, 143 Tex. 509, 513, 186 S.W.2d 961, 964 (1945).[9] While there are some differences in the rules governing groundwater and hydrocarbons, at heart both are governed by the same fundamental principle: each represents a shared resource that *must* be conserved under the Constitution.

This is not to say that the Legislature and administrative agencies have unbridled power to reallocate rights in shared natural resources: the various constitutional protections governing individual rights allow landowners to enjoin irrational, arbitrary orders. *E.g.*, *Marrs v. RR Comm'n*, 142 Tex. 293, 304-05, 177 S.W.2d 941, 949 (1944). But the State is

9. Mere regulation and the imposition of limitations on pumping oil and gas are not considered constitutional takings in oil and gas cases. *See Seagull Energy E&P, Inc. v. RR Comm'n*, 226 S.W.3d 383, 389 (2007).

aware of no case in which a Texas court has awarded takings damages based on a reasonale limitation of the use of a shared natural resource. *Cf. Domel*, 6 S.W.3d at 357 (Conservation Amendment impacts analysis whether government action impacts property right).

The Conservation Amendment itself offers one basis for this consistent practice. It interacts with Article I, §17 to prevent regulation of shared natural resources from constituting a per se taking. Article I, §17 is a limitation on the sovereign's superior right to property, and it requires the government to take into account the impact of its discretionary decisions in exercising that superior title. *McInnis v. Brown County Water Improvement Dist. No. 1*, 41 S.W.2d 741, 744 (Tex. App.—Austin 1931, writ ref'd); *see also Lingle*, 544 U.S. at 536-37. But in the context of groundwater conservation, the Legislature is not making a sovereign decision—the *people* have already decided, as expressed in the Conservation Amendment, that preservation of the common good supersedes other competing interests.

Put another way, the takings clause requires the government to take individual property rights into account in making discretionary decisions by preventing private property owners from bearing by themselves the burden of a public good. *Tarrant Reg'l Water Dist. v. Gragg*, 151 S.W.3d 546, 554 (Tex. 2004). But conservation is mandatory on the Legislature, not discretionary. Therefore, legislation limiting access to public resources for the purpose of preserving those resources can be enjoined—when it in fact violates due process—but it cannot be the basis for damages against the government.

2. A limitation on pumping cannot be a taking by operation of the rule of capture.

The touchstone of a regulatory taking is whether the regulation is functionally similar to a physical appropriation of property. *See Lingle*, 544 U.S. at 539. Plaintiffs' allegations cannot meet this core test. Under the rule of capture, a landowner is entitled to sink a well and produce water from his property (non-wastefully) without regard to the impact that the well will have on his neighbor—but likewise he cannot sue his neighbor for building a bigger well and draining his water. *E.g.*, *Sipriano*, 1 S.W.3d at 81-82. Thus, a property owner's use of water can always be limited by the actions of his neighbors, without legal recourse. If a property owner's access to groundwater can be limited by his neighbors without tort liability, it can likewise be limited by the government without takings liability.

Moreover, there is no taking in this instance because landowners have no certainty that they will be able to produce groundwater in the future. Regulatory takings, as a general matter, result in compensation only for confirmed property rights with established values, not hypothetical future income. *Cf. City of Austin v. Teague*, 570 S.W.2d 389, 395 (Tex. 1978) (measure of condemnation damages excludes speculative value of property). So should it be with future use of groundwater. *See Coastal Oil & Gas Corp. v. Garza Energy Trust*, 268 S.W.3d 1, 16 (Tex. 2008) (recognizing that the rule of capture is one reason State protection of correlative rights in hydrocarbons is not a taking).

3. The Legislature can change non-vested common law property rights without incurring takings liability.

To be vested for takings purposes, a property right must be more than a mere expectation of future value—at the very least the interest must be reasonable and backed by investor expectation. *E.g.*, *Hallco*, 221 S.W.3d at 76-77. Legislative changes to background common law rules of property ownership do not constitute a taking unless they implicate such established interests. *See Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 88 n. 32 (1978). And the court has always recognized that the Legislature might adjust the parameters of groundwater ownership. *E.g.*, *East*, 81 S.W. at 280. Because plaintiffs' petition describes no reasonable, investor-backed interest in future water production, there is no interference with a vested property right.

IV. THE RECORD IN THIS CASE IS FULLY DEVELOPED, AND THE LACK OF A JUDICIAL STANDARD FOR DETERMINING THE EXTENT OF PLAINTIFFS' CLAIMED PROPERTY RIGHT UNDERLINES THE IMPORTANCE OF RESOLVING THIS ISSUE NOW.

As filed, this case sought review of the Authority's treatment of water that traveled in a streambed above ground, becoming mingled with state-owned surface water, and, in the alternative, sought monetary damages for the loss of the continuous production of groundwater over an infinite time span. The crux of plaintiffs' lawsuit has always been that they should not be required to prove ownership of groundwater under the standards promulgated by the Authority pursuant to the Act. But plaintiffs have made no attempt to affirmatively prove either their ownership over the groundwater or a reasonable, investment-backed expectation that they would continue to have access to the groundwater. Given that

the administrative record is closed, plaintiffs' complaints present a pure question of law based on an already-complete record. They just want a different outcome.

That this is a suit for review of an administrative determination underscores the broader implications of the underlying legal question: can a plaintiff adequately describe a regulatory taking if the law has never guaranteed future enjoyment of unlimited groundwater use? As the State has explained, the Conservation Amendment, the rule of capture, and the Legislature's authority to change common law all operate to undermine any claimed prospective property right. If the Court were, in this case of first impression, to recognize a takings cause of action based on groundwater regulation, it would have to establish evidentiary standards for determining how much water was taken and how much the property owner might otherwise have lost to drought or to drainage by his neighbors. Thus, even if the Court believes that such a private property right exists and can be "taken" by regulation, it should nonetheless grant the petition and establish the parameters by which a plaintiff can establish the deprivation of future groundwater use.

PRAYER

The Court should grant the petition and render judgment dismissing the State from this case.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

JAMES C. HO
Solicitor General

KRISTOFER S. MONSON
Assistant Solicitor General
State Bar No. 24037129

PETER HANSEN
Attorney

OFFICE OF THE ATTORNEY GENERAL
P. O. Box 12548 (MC 059)
Austin, Texas 78711-2548
[Tel.] (512) 936-1820
[Fax] (512) 469-3180

COUNSEL FOR PETITIONER STATE OF TEXAS

CERTIFICATE OF SERVICE

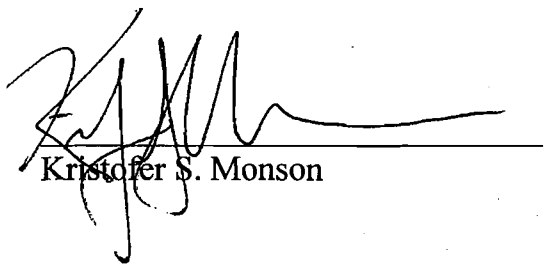
I certify that on February 2, 2009, a true and correct copy of this Petition for Review was served by certified U.S. mail, return receipt requested, on all appellate counsel of record in this proceeding as listed below:

Thomas E. Joseph
Attorney at Law
Alamo Tower East
909 NE Loop 410, Suite 600
San Antonio, Texas 78209-1309

COUNSEL FOR RESPONDENTS

Andrew S. (Drew) Miller
Darcy Alan Frownfelter
Hunter Wyatt Burkhalter
KEMP SMITH, LLP
816 Congress Avenue, Suite 1150
Austin, Texas 78701

COUNSEL FOR PETITIONER
EDWARDS AQUIFER AUTHORITY



Kristofer S. Monson