2016 Water Law Case Update

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Bragg v. Edwards Aquifer Authority

- Braggs purchased 2 pecan orchards in Medina County (Home Place→1979; D'Hanis→1983)
- Home Place well was drilled after purchase
- D'Hanis had only shallow wells; new well drilled in 1995
- EAA Act enacted by Texas Legislature in 1993
- Established regulatory scheme that grants IRPs to existing users (max annual ben. use 6/1/72 to 5/31/1993)

Bragg v. Edwards Aquifer Authority

- Braggs filed 2 applications for an IRP
- Braggs' applications specified use in 1996
- EAA denied D'Hanis IRP → No reported use
- EAA granted Home Place IRP → 120.2 a-f/y

Bragg v. Edwards Aquifer Authority (regulatory takings)

- *Bragg v. Edwards Aquifer Auth.*, No. 06-11-18170-CV (38th Dist. Ct., Medina County, May 7, 2010)
- $134,918.40 compensation for D'Hanis taking (value of the farm with and without irrigation rights)
- $597,575.00 compensation for Home Place taking (market value of the water [$5,500/a-f] * amount of water requested but denied)
- Both parties appealed

Bragg v. Edwards Aquifer Authority (regulatory takings)

- *Day & McDaniel* decided Feb. 2012
- *Edwards Aquifer Auth. v. Bragg*, 421 S.W.3d 118 (Tex. App.—San Antonio 2013, pet. denied)
  - The court analyzed the case using the *Penn Central* factors
  - Court held the EAA Act resulted in a regulatory taking of both properties
  - Court remanded the case for the trial court to recalculate compensation owed based on the value of the property (as a pecan orchard) with unlimited access to water v. limited/no access to water

Bragg v. Edwards Aquifer Authority (remand to decide compensation)

- *Bragg v. Edwards Aquifer Auth.*, No. 06-11-18170-CV (38th Dist. Ct., Medina County, Feb. 22, 2016)
- D'Hanis taking → $1.18 million compensation
- Home Place →$1.37 million compensation
- $4 million when factoring in pre-judgment interest

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