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Bragg v. Edwards Aquifer Auth., No. 00-0436, 2002 Tex. LEXIS 13 (Tex. February 14, 2002)

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nor riparian owners can interfere with their use. When the United States does not hold title to land upon which navigable waters lie, ownership determination of the navigable waters and the soil beneath them lies with states.

The court stated that the district court correctly identified the elements of the test for navigability: "a navigable waterway of the United States must (1) be or have been; (2) used to susceptible of use; (3) in the customary modes of trade and travel on water; (4) as a highway for interstate commerce."

Due to the lack of evidence on the navigability of the West Fork of the Stones River, aside from the notice by the Corps, the court reversed the ruling of the trial court and remanded for determination by the trier of fact based on evidence relevant to that determination.

The court stated if the West Fork of the Stones River was determined navigable, the riverbed was not subject to private ownership. As a result, Hardy would not be entitled to compensation of the condemned land below the low-water mark. In Tennessee, grants of land along navigable streams extend to the low-water mark only, and title to the streambed remains with the state. If the waterway is navigable, the soil covered by water and the use of the stream belongs to the public. Therefore, any deed Hardy had only conveyed property extending to the low-water mark.

Rachel M. Sobrero

TEXAS

Bragg v. Edwards Aquifer Auth., No. 00-0436, 2002 Tex. LEXIS 13 (Tex. February 14, 2002) (holding that the Edwards Aquifer Authority's adoption of well-permitting rules falls within the exception to the Property Rights Act for actions taken under a political subdivision's statutory authority to prevent waste or protect rights of owners of interest in groundwater).

Upon being denied a permit application for one of their two pecan orchards, Glenn and JoLynn Bragg ("Braggs") brought suit against the Edwards Aquifer Authority ("Authority") and its general manager.

The Edwards Aquifer Act ("EAA") created the Authority to manage groundwater withdrawals from the aquifer through a permit system. The EAA charged the Authority with carrying out the state legislature's mandate of conservation. The legislature anticipated that an increased withdrawal of water from the aquifer could cause a drought with potentially devastating effects.

The issue in the case hinged on the Authority's adoption of rules governing the issuance of well permits. The permit system gave preference to "existing users," which the EAA defined as people who withdrew and beneficially used the aquifer on or before June 1, 1993. The Braggs only accessed the aquifer by means of a well on one of

their orchards, Home Place, prior to 1993; they did not drill a well for the other orchard, D'Hanis, until 1995. Based upon the fact that the Braggs did not qualify as existing users for the D'Hanis orchard, their permit application was denied. The Braggs brought suit because they could not grow pecans in commercial quantities with the single permit granted for Home Place.

The Property Rights Act ("PRA") provided for a cause of action for real property owners if there was governmental action taken without preparing a takings impact assessment ("TIA"). The Braggs argued that pursuant to the PRA, the Authority was required to prepare a TIA before promulgating rules governing aquifer permits, and before applying those rules to the Braggs' pending application.

Since the PRA applied to "governmental entities," including political subdivisions, and the Authority was considered a political subdivision, the Braggs maintained that the Authority's promulgation of rules constituted a government action that was subject to the PRA. The trial court found the Authority's well-permitting rules and the proposed actions on the Braggs' permit application were void because the Authority did not prepare a TIA. The court of appeals vacated in part and reversed in part. The Supreme Court of Texas affirmed.

The Supreme Court concluded that based upon the EAA, the Authority was not required to prepare a TIA. The Court recognized that the PRA applies to governmental entities when they make rules, but exempts these entities from the requirement of a TIA when the entity acts pursuant to its enabling statute in preventing waste or protecting the owner's rights of interest in groundwater. Since the Authority adopted well-permitting rules pursuant to the EAA, an enabling act that gave the Authority all of the powers, rights and privileges necessary to manage, conserve, preserve and protect the aquifer and to prevent the waste or pollution of water in the aquifer the PRA did not apply.

Melissa L. Gordon

VERMONT

Cnty. Nat'l Bank v. State, 782 A.2d 1195 (Vt. 2001) (holding an interest in condominium property constructed on lake landfill is subject to Vermont's public trust doctrine).

Community National Bank and Newport Harbor Club Condominium Association (collectively "National Bank") appealed a superior court judgment in favor of the State of Vermont ("Vermont"). The superior court concluded National Bank held the condominium property subject to the Vermont's public trust interest, and the property's diminution in value was insufficient to estop Vermont's interest.

In 1986, National Bank constructed condominiums on filled lands