NO. 08-0964

IN THE SUPREME COURT OF TEXAS

AUSTIN, TEXAS

EDWARDS AQUIFER AUTHORITY and
STATE OF TEXAS
Petitioners/Cross-Respondents

v.

BURRELL DAY and JOEL McDANIEL
Respondent/Cross-Petitioners

BURRELL DAY AND JOEL MCDANIEL'S RESPONSE TO PETITION FOR REVIEW OF EDWARDS AQUIFER AUTHORITY

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EDWARDS AQUIFER ACT

STATEMENT OF THE CASE

Nature of the Case:	Burrell Day and Joel McDaniel (Day/McDaniel) filed suit for judicial review of an Edwards Aquifer Authority (EAA) permitting decision, which granted Day/McDaniel an initial regular permit to pump fourteen acre-feet of water from the Edwards Aquifer, and alternatively, for damages arising from an unconstitutional taking of property without compensation. CR 1-16.
Trial Court:	Hon. Donna Rayes, 218th Judicial District Court, Atascosa County, Texas.
Disposition by Trial Court:	Granted Day/McDaniel's motion for summary judgment, holding that as a matter of law, substantial evidence did not support the EAA's conclusion that the water in question was state water rather than groundwater. Granted EAA's motion for summary judgment on Day/McDaniel's constitutional claims. CR 483-485.
Parties in the Court of Appeals:	Edwards Aquifer Authority, Appellant/Cross-Appellee; Day/McDaniel, Appellees/Cross-Appellants; State of Texas, Appellee.
Court of Appeals:	Fourth Court of Appeals District, San Antonio, Texas. Opinion by Justice Steven C. Hilbig, joined by Justice Karen Angelini and Justice Phylis Speedlin. *Edwards Aquifer Auth. v. Day*, 274 S.W.3d 742, 2008 WL 4056321 (Tex.App. – San Antonio Aug. 28, 2009, pet. filed).
Court of Appeals Disposition:	Trial court's judgment reversing EAA's final order reversed and judgment rendered affirming final order; judgment that Day/McDaniel take nothing on their unconstitutional taking claim reversed; cause remanded for consideration of EAA's request for attorney's fees and further proceedings on Day/McDaniel's unconstitutional taking claim.

ISSUES PRESENTED

The EAA argues the Court of Appeals erred in concluding Day/McDaniel had a vested property right in their ownership of groundwater beneath the surface of their land. In support of this argument the EAA asserts:

I. The "rule of capture" cannot establish absolute ownership in the landowner because:

- A. Water is ferae naturae, and as such may be captured by ones neighbor without liability for damages to the landowner.
- B. Groundwater is a common law right only and may be abolished by the Legislature.
- C. It must be regulated by the Legislature.
- D. Only 800 landowners received an IRP when perhaps thousands even millions will have no access to their water at all. It would cost billions to regulate the Aquifer if the landowner has ownership of groundwater.

II. Courts have caused confusion about "takings" and the "rule of capture" and have caused illogical interpretations of the "*East*" case.

- E. The *East* case contradicts itself.
- F. *Corpus* and *Sipriano* cases contradict each other.
- G. Soil is water but not treated the same.
- H. *Bartley v Sone* contradicts *Garza Energy Trust*.

III. The Court of Appeals erred in holding the rule of capture vested in Day/McDaniel a protected ownership right in their groundwater.

D. Day/McDaniel assert a "regulatory takings claim pursuant to the rule of capture".

E. The Court of Appeals wrongly held the rule of capture vested Day/McDaniel with vested rights.

F. The rule of capture is one of tort liability and therefore the landowner does not own the groundwater.

IV. The Edwards Aquifer Act overrides the rule of capture.

A. No vested interest in a rule of common law. Other states, Arizona, Nebraska, Kansas, California, Nevada, and Florida agree.

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TO THE HONORABLE JUSTICE OF THE SUPREME COURT:

This Court, in short, is being asked by the State and by the Edwards Aquifer Authority to dispense with the constitutionally guaranteed right of and to private property in favor of public expediency. The legitimacy of their request is sought to be established by a consistent, repeated statement that the "rule of capture" spawns the right of groundwater ownership and therefore its elimination by the Edwards Aquifer Act abolishes the right to private property and its protection by the Constitution. The only way this can be accomplished is to misread the wealth of clear and unambiguous decisions of our state courts, ignore express provisions of laws of our State and contend

that the practicality of the situation should eliminate any constitutional concerns this Court might have.

STATEMENT OF FACTS

Petitioners, Day/McDaniel disagree with the recitation of facts in the Court of Appeals decision in the following particulars:

Page 2 of the Opinion. The Court is incorrect in asserting there was no pumping of groundwater during the historic period. The Trial Court was presented with evidence that during 1972, the well in question pumped 39 million gallons and in 1973, 13.1 million gallons, CR001504-1505, and the Court of Appeals received the same evidence by way of Day/McDaniel's, Cross Appellant's Appendix 1 at Tab 26. Both years were in the historic period. The evidence was established by a federal governmental agency, the United States Geological Survey Department.

Page 2. Proof of the amount of pumpage in support of an application was not mandatory. Section 1.16(e) of the Act authorized the Authority to calculate usage of water in the event an entire year's usage had not been measured, or if the Applicant was an irrigator, two acre feet would be awarded as a minimum. Plaintiffs' Original Petition was attached to Petition for Review at Apx. 2, tab 1, CR 000001-16.

The Opinion of the Court of Appeals completely ignored a most salient fact. The water in question was used entirely on the landowner's property on which the well was located, on which the ditches existed, on which the reservoir was constructed, and on which land the water was used to irrigate. The water never left the control of the landowner, and the landowner made no claims of ownership of groundwater after it left

the property. (CR 000002-000005)

RESPONSE TO ISSUES PRESENTED

All authority, common law, statutory case law, and the Constitution impeach the issues raised by the Edwards Aquifer Authority.

The EAA is confused. There are two distinct laws involved in this issue: The "absolute ownership of groundwater by the landowner" and the "Rule of Capture".

The EAA's confusion arises from an unsupported attempt to establish only one law in regard to this issue, the "rule of capture." In doing so, its argument is bereft of any legal authority which states the rule of capture spawns the absolute ownership of groundwater by the surface owner. There is a total failure of the EAA to read the numerous opinions cited by Day/McDaniel and the EAA's own briefs for what they plainly say: The landowner has absolute ownership of groundwater beneath such land. The adjacent landowner has absolute ownership of groundwater beneath the adjacent land. Neither party can claim ownership of the groundwater under the other's land. Indeed, the rule of capture as a common law rule of tort liability (EAA Petition for review p. 10), insulates adjacent landowners against a claim of wrongfully accessing one another's groundwater so long as one does so on one's own land. Groundwater ownership is absolute. The rule of capture protects such right for each landowner.

SUMMARY OF THE ARGUMENT

While the EAA argues the landowner does not own the groundwater, this court, its subordinate courts, the common law, the Legislature and the Texas Constitution disagree, beginning with *Houston & T.C. Ry. v. East*, 98 Tex. 146, 81 S.W. 279, 280-81 (Tex.

1904), through various Legislative Acts (and opportunities to change such *East* opinion) to the clear meaning of the Texas Constitution and its function to protect private property against expediency.

Day/McDaniel have no unique position in claiming their private property estate of groundwater since it is bottomed on the same principle on which the mineral estate belongs to the landowner. *Brown v. Humble Oil & Refining Co.*, 83 S.W.2d 935, 940 (Tex. 1935).

ARGUMENT AND AUTHORITIES

I. The Groundwater beneath the surface of the land is part of the fee simple estate and is owned by the owner of such fee and land.

This axiom of property rights in Texas has been established by Common Law, Statutory Law, and Constitutional Law.

In 1904, the Common Law which recognized the landowner's ownership of the groundwater, was formalized in *Houston & T.C. Ry. v. East*, 98 Tex. 146, 149, 81 S.W. 279, 280, 281 (Tex. 1904), which affirmed the Common Law rule of groundwater ownership:

> "Since the decision in the case of *Acton v. Blundell*, 12 M&W. 324, 152 E.R. 1223 (Ex. 1843) the law as therein laid down, so far as it controls this case, has been recognized and followed in the Courts of England, and probably by all the Courts of last resort in this country, before which the question has come, except the Supreme Court of New Hampshire.

Bassett v. Salisbury Mfg. Co., 43 N.H. 569, 82 Am. Dec. 179; *Swett v. Cutts*, 50 N.H. 439, 9 Am. Rep. 276, 279 (N.H. 1870).

That doctrine is thus stated:

> 'That the person who owns the surface may dig therein and apply all that is there found to his own purposes, at his free will and pleasure, and that if, in the exercise of such rights, he intercepts or drains off the water collected from the underground springs in his neighbor's well, this inconvenience to this neighbor falls within the description of damnum absque injuria, which cannot become the ground of an action.'

So the Authorities generally state that the use of the water for manufacturing, brewing, and like purposes is within the right of the owner of the soil, whatever may be its effect upon his neighbor's wells and springs." (Emphasis added)

Thus began a series of Court proclamations that the owner of the land owned the water beneath its surface: In *Bartley v. Sone*, 527 S.W. 2d, 754, 759, 760 (Tex.Civ.App-San Antonio 1975, writ ref'd n.r.e.) the court stated:

> "The owner of the land, 'owns also all ordinary springs and waters arising thereon.' *Toyaho Creek Irrigation Co. v. Hutchins*, 21 Tex.Civ.App. 274, 52 S.W. 101, 105 (Tex.Civ.App.-Fort Worth 1899, writ ref'd). This rule relating to the ownership of water flowing from springs stems from the rule that the owner of land owns the water under the surface, generally referred to by hydrologists as 'ground water.' Our statutory law recognizes this principle, although the legislature uses the term 'underground water,' rather than 'ground water.' Our statutes define 'underground water,' as 'water percolating below the surface of the earth and that is suitable for agricultural gardening, domestic or stock raising purposes, but does not include defined subterranean streams or the underflow of rivers. Tex. Water Code Ann. § 52.001(3) (Vernon 1972). The Water Code expressly recognizes 'the ownership and rights of the owner of the land ... in underground water..' Tex. Water Code Ann. § 52.002 (Vernon 1972). These statutory provisions are but the embodiment of well settled rules relating to the ownership of percolating waters. *Houston & T.C. Ry. v. East*, 98 Tex. 146, 81 S.W. 279 (Tex. 1904); Anno.: 55 A.L.R. 1385, 1390-95 (1928). (Emphasis added).

Notably, the *Bartley* Court did not mention the rule of capture as essential to absolute ownership.

In *South Plains Lamesa R.R., Ltd. and Kitten Family Living Trust v. High Plains*

Underground Water Conservation Dist. No. 1, 52 S.W.3d 770, 776 (Tex.App.-Amarillo 2001, No Pet.), the following is found:

> "After defining certain terms and stating the purpose of groundwater districts, in Section 36.002, the Legislature confirmed ownership rights of groundwater. That section provides: The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, subject to rules promulgated by a district. (Emphasis added). By using the term code and not chapter, this section applied to groundwater – notwithstanding any provision to the contrary in any other chapter of the Water Code."

Again, absolute ownership is not made to be dependent on any condition other than surface ownership.

II. The Legislature has refused to change the ownership of groundwater by the landowner.

Historically, the Legislature has addressed the concept of groundwater ownership in the context of groundwater regulations, in 1925, 39th Leg. p. 87, ch. 25 § 3c, subsection d; 1949, 51st Leg., p. 559, ch. 306 § 1. Vernon's Ann. Civ. St. act 7880-3c, subsection D; Acts 1971, 62nd Leg., p. 110, ch. 58 § 1. Acts 1985, 69th Leg., ch. 133 § 5.01. V.T.C.A., Water Code § 52.002. Acts 1995, 74th Leg., ch. 933 § 2. Acts 2001, 77th Leg., ch. 966, § 2.31. Acts 2005, 79th Leg., ch. 1116 § 2. (V.T.C.A., Water Code § 36.002 Historical and Summary Notes). The Legislature has never changed the law of landowner ownership of groundwater in spite of its numerous visits to the subject matter.

As this court stated in *Acker v. Texas Water Commission*, 790 S.W.2d 299, 301 (Tex. 1990)

> 'A statute is presumed to have been enacted by the legislature with

complete knowledge of the existing law and with reference to it.'

In the numerous times the Legislature has visited the subject and in view of the many Texas Court decisions enunciating these principles clearly and unequivocally, (*Sipriano* as an example) the Legislature, which is the embodiment of the People has refused to alter the principle. After all of such opportunities article 36.002 of the Water Code remains as follows:

> "The ownership and rights of the owners of the land and their lessees and assigns in groundwater are hereby recognized, and nothing in this code shall be construed as depriving or divesting the owners or their lessees and assigns of the ownership or rights, except as those rights may be limited or altered by rules promulgated by a district. A rule promulgated by a district may not discriminate between owners of land that is irrigated for production and owners of land or their lessees and assigns whose land that was irrigated for production is enrolled or participating in a federal conservation program." (Emphasis added).

Likewise, does the Edwards Aquifer Act so read:

> 1.07 Ownership of Groundwater.
>
> The ownership and rights of the owner of the land ... in underground water ... are recognized .... . The Legislature intends that just compensation be paid if implementation of this article causes a taking of private property ... in contravention of the Texas or Federal Constitution. *Edwards Aquifer Act*, S.B. No. 1477, 73rd Legislature, RS, 1993.

The Legislature again in 2003 identified the landowner's ownership of groundwater when it enacted V.T.C.A. Property Code § 21.0421 which established the landowner's right of ownership in determining the "value of a groundwater right."

It is easily seen the Legislature considers the groundwater to be the property of the landowner as have the Courts.

As was stated by the Supreme Court in *Grapevine Excavation, Inc., v. Maryland*

Lloyds, 35 S.W.3d 1, 5 (Tex. 2000):

> "It is a firmly established statutory construction rule that once appellate courts construe a statute and the Legislature re-enacts or codifies that statute without substantial change, we presume that the Legislature had adopted the judicial interpretation. See *Ector County v. Stringer*, 843 S.W.2d 477, 479-80 (Tex. 1992): *Robinson v. Central Tex. MHMR Ctr.*, 780 S.W.2d 169, 171 (Tex. 1989); *First Employees Ins. Co., v. Skinner*, 646 S.W.2d 170, 172 (Tex. 1983).

III. The Common Law and the Statutory Law have recognized the property ownership rights of the landowner and such right is therefore protected by the Constitution.

With such property right firmly established, Day/McDaniel are entitled to an affirmance of the opinion of the Court of Appeals and the protections afforded them by Article 1 § 17 of the Texas Constitution:

> **Taking, damaging or destroying property for public use; special privileges and immunities; control of privileges and franchises:**
>
> Sec. 17: No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grants of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

Numerous cases of this Court and inferior courts have announced the same principles:

Houston & T.C. Ry., p. 279, 281; *Pecos County Water Control & Imp. Dist. No. 1 v. Williams*, 271 S.W.2d 503, 505 (Tex.Civ.App. 1954, writ ref.d n.r.e.); *City of Altus v. Carr*, 255 F. Supp. 828, 833 (W.D. Tex. 1966), aff'd. mem. *Carr v. City of Altus*, 385 U.S. 35, 87 S.Ct. 240, 17 L. Ed. 2d 34 (1966); *U.S. v. Shurbet*, 347 F.2d 103, 106 (5th Cir.

1965); *Friendswood Development Co. v. Smith – Southwest Industries*, 576 S.W.2d 21, 26, dissent – 31 (Tex. 1978); *Texas Co. v. Burkett*, 296 S.W. 273, 278 (Tex. 1927); *Dyegard Land Partnership v. Hoover*, 39 S.W.3d 300, 311 (Tex.App.-Fort Worth 2001); *Bartley v. Sone*, 527 S.W.2d 754, 759-60 (Tex.Civ.App. 1975); *Fleming Foundation v. Texaco, Inc.*, 337 S.W.2d 846, 850 (Tex.App.- Amarillo 1960); *Barshop v. Medina Underground Water Conservation Dist.*, 925 S.W.2d 618 (Tex. 1996); *City of Corpus Christi v. City of Pleasanton*, 276 S.W.2d 798, 800 (1955); *City of Del Rio v. Clayton Sam Colt Hamilton Trust*, 269 S.W.3d 613, 617-18 (Tex.App.- San Antonio 2008, pet. Filed); *City of Sherman v. Public Utility Commission*, 643 S.W.2d 681, 686 (Tex. 1983).

There is no confusion on this issue. It is clear and unambiguous. The landowner owns the groundwater and it is a vested right.[1]

IV. Juxtaposing the Day/McDaniel Constitutional Claim.

Day/McDaniel have been incorrectly cast into a contention that regulation of their groundwater ownership is a "taking". Rather the complaint of Day/McDaniel is the degree to which and the manner in which their groundwater has been taken. At no time have Day/McDaniel contended regulation of groundwater was illegal or unconstitutional. The contentions of the EAA that the landowner does not own the groundwater is fallacious, clashes with all established law and was the seminal cause of this litigation. (CR. 2119, appendix to Day/McDaniel Petition tab 12, Deposition of Greg Ellis). The EAA embarked upon eviscerating perhaps "millions" of landowners who were denied

[1] The EAA argues it is a mere Common Law right which the Legislature may abrogate at any time. (p. 11). While Day/McDaniel do not agree with this statement, it is clear that even if such were true, the Legislature has doggedly refused to abrogate it.

access to their groundwater, (EAA's Petition p. 7), with such misguided concept.

Indeed, the issue before this Court is as this Court has already determined:

> "While our prior decisions recognize both the property ownership rights of landowners in underground water and the need for legislative regulation of water, we have not previously considered the point at which water regulation unconstitutionally invades the property rights of landowners." (Emphasis added).

Barshop v. Medina County Underground Water Conservation Dist., 925 S.W.2d 618, 629 (Tex. 1996).

V. It is expected this Court will not revisit whether the landowner's ownership of groundwater is valid law but whether in the process of exercising the powers granted the EAA, groundwater ownership has been taken without compensation.[2]

If, in fact, the EAA is correct in asserting that hundreds of thousands (perhaps millions) of landowners have been denied access to their groundwater and 800 landowners have been granted access to their groundwater, is true, then it staggers the memory to recall when the Constitutional rights of Texan-Americans have been assaulted with a more egregious act of their Legislature. In making this assertion, the EAA contends all of these landowners would be entitled to litigate their common law rights to the water beneath their property. Nowhere in its Petition does the EAA point to the repeal of such common law right by the Legislature (which it is claimed the Legislature has the power to do) nor what it is about the language found in the Act itself, which clearly states the Legislature confirms the ownership of groundwater (section 1.07), that is

[2] It is to be noted the EAA has made no provision to implement section 1.07 of the Act which created it and has allocated no funds for compensation, nor has it ever taken the position that the landowner owns the groundwater as the Act states. (sec. 1.07) The EAA claim being made in this cause is completely without authority of the Act and in contradiction with sec. 1.07 of the Act.

inapplicable. The EAA has no foundation for its argument. Regardless of the power of the Legislature to repeal the "common law right" of groundwater ownership, IT HAS NOT.

The Court of Appeals below was absolutely correct in holding the landowner has a constitutionally protected right in ownership of groundwater.

VI. The burden upon the EAA in this cause is to prove that the Edwards Aquifer Act abolishes the landowner's ownership of groundwater.

No court opinion, state law, or constitutional provision supports the EAA's position in this litigation. It's Petition does not deal with the express will of the Legislature as stated in the Act which created the EAA. (Sec. 1.07). Instead, it chooses to attempt to absorb the independent right of "absolute ownership" as defined in the *East* opinion into the concept of tort liability as defined therein as well.[3]

This attempt seemingly relies upon *City of San Marcos v. Texas Commission on Environmental Quality*, 128 S.W.3d 264, 270 (Tex.App.- Austin 2004) as support for such argument. (p. 15) However, that Court clearly took the case out of any fact similarity with the case at bar when it determined the water made the subject of the litigation was not groundwater:

> "In this case, however, the City is seeking to transport its effluent, which is foreign to the water found in the waterway. Although the effluent is groundwater-derived, it is no longer groundwater."

If The EAA is successful in persuading this Court the rule of capture and absolute

[3] The EAA wrongly argues the *East* case holds that "A" can use the groundwater below the surface of A's land but because "A" can't sue the neighbor if the neighbor uses the groundwater beneath the surface of the neighbors land, "A" doesn't own the groundwater beneath A's land. That's not correct. The *East* case holds "A" owns the groundwater below A's land absolutely, irrespective of what the adjacent landowner does. One is reminded of "Hey, you gotta light?" "Sorry, I don't drink."

ownership are one and the same, then it need only convince this Court the rule of capture has been abolished by the Legislature and thus the Constitutional right of groundwater ownership will evaporate. No case or statute supports this amalgamation. Only the EAA seems confused about the plain statement of "absolute ownership" found in the numerous cases cited in the respective briefs before the Court.

VII. Powers of the Edwards Aquifer Act.

The Act itself empowers the authority to regulate the use of groundwater under Art. XVI § 59 of the Texas Constitution. Edwards Aquifer Act § 1.08(a). At no point does the Act deny the concept of absolute ownership of groundwater, as it must do if it is to be so interpreted. Acts of the Legislature must clearly state they are abolishing common law rights. Our Courts have held, in construing statutes, the purpose is to give effect to the Legislative intent. *Union Banker Ins. Co. v. Shelton*, 889 S.W.2d 278, 280 (Tex. 1994), stated:

> to do so we consider the statutes language, history, and progress and the consequences of alternate construction.[4] A statute that deprives a person of a common law right "will not be extended beyond its plain meaning or applied to cases not clearly within its purview." *Satterfield v. Satterfield*, 448 S.W.2d 456, 459 (Tex. 1969).

For a collation of these and other cases see *Cash America Intern. Inc., v. Bennett*, 35 S.W.3d 12, 16 (Tex. 2000).

In short, the Act by its terms, seeks to protect the ownership rights in groundwater while achieving conservation of groundwater. Conservation of groundwater, cannot under its terms deny the Constitutional guaranty of groundwater ownership. The act must

[4] Is not section 1.07 of the act a clear statement of the protection of groundwater ownership?

be construed accordingly. *Cash America Intem, Id.*

The rule of construction, when implementing Legislative objectives in balance with the preservation of constitutional protection of private property, is, as is stated in *Mayhew v. Town of Sunnyvale*, 774 S.W.2d 284, 289 (Tex.Civ.App.- Dallas 1989):

> While property may be regulated to a certain extent, if regulation goes too far, it will be recognized as a taking. "*We are in danger of forgetting that a strong public desire to improve the public conditions is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.*" (Emphasis in the original).

VIII. "Public Need" Argument

The argument regarding the "public needs" for the elimination of groundwater ownership (EAA p. 11, State's p. 8) falls upon deaf ears. For what purpose does the Constitution exist? As to the Texas Constitution only Texas law should be relevant in the answer to this question. It is a restraint upon the Legislature. *Satterfield v. Crown Cork & Seal Company, Inc.*, at p. 205 "to guard against transgression of the high powers' delegated to the State government by the Texas Constitution." (Questioning as well whether the "police power" can override a personal right protected under the Bill of Rights of the Texas Constitution). Again as stated in *Ex Parte Woods*, 108 S.W. 1171, 1175-76 (Tex.Crim.App. 1908):

> "A Constitution is not to be made to mean one thing at one time, and another at some subsequent time, when the circumstances may have so changed as perhaps to make a different rule in the case seem desirable. A principal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as to bend to circumstances or be modified by public opinion. It is with special reference to the varying moods of public opinion, and with a view to putting the fundamentals of government beyond their control, that these instruments are framed; and there can be no such steady and imperceptible change in

> their rules as inheres in the principles of the common law. Those beneficent maxims of the common law which guard person and property have grown and expanded until they mean vastly more to us than they did to our ancestors, and are more minute, particular, and pervading in their protections; and we may confidently look forward in the future to still further modifications in the direction of improvement. Public sentiment and action effect such changes, and the courts recognize them; but a court or Legislature which should allow a change in public sentiment to influence it in the intention of its founders would be justly chargeable with reckless disregard of official oath and public duty, and, if its course could become a precedent, these instruments would be of little avail. The violence of public passion is quite as likely to be in the direction of oppression as in any other; and the necessity for Bills of Rights in our fundamental laws lies mainly in the danger that the Legislature will be influenced, by temporary excitements, and passions among the people, to adopt oppressive enactments."

The *Woods* Court further stated an act should be construed "in the light of the entire act, taking every part of it into consideration, the language is clear, the meaning obvious, and an exception is made in precise terms, we are neither required nor permitted to speculate as to what the Legislature meant where such meaning does not appear in the language used, nor are we at liberty to search for a meaning not apparent on the face of the act to be construed."

Should this Court hold the landowner does not own the groundwater it will render meaningless section 1.07 of the act which clearly and unambiguously declares the contrary. Likewise, shall the Constitutional guaranty of protection of private property be rendered effete.

PRAYER

Day/McDaniel move the Court to affirm the landowner's ownership of groundwater should it accept Jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, TOM JOSEPH, hereby certify that a true and correct copy of the foregoing Response to Petitions for Review has been served by certified mail-return receipt requested, or regular mail, on counsel of record/interested parties as shown below on the 5th day of May, 2009.

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