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Court links water rights to land

By Colin McDonald

In a ruling with possible wide-ranging effects on water regulation, the Texas Supreme Court sided Friday with two Von Ormy landowners who objected to the Edwards Aquifer Authority's power to limit the pumping of groundwater on their ranch.

"The water underneath your property belongs to you," Joel McDaniel, who brought the lawsuit more than 10 years ago, said about the ruling. "This changes everything for everyone who owns a well."

In a unanimous opinion written by Justice Nathan Hecht, the court ruled ownership of groundwater should be considered no differently than that of oil and gas.

"We held long ago that oil and gas are owned in place, and we find no reason to treat groundwater differently," Hecht wrote.

While ownership rights are the same, regulation of water should not be, the court found.

"Unquestionably, the state is empowered to regulate groundwater production," the opinion states. "In many areas of the state, and certainly in the Edwards Aquifer, demand exceeds supply."

But the court found that if the regulation of water is thought to be unreasonable, the landowner can seek redress in the courts.

It wasn't immediately known how the ruling would affect San Antonio's water supply, which depends on the Edwards and is controlled by EAA's regulation.

"We got an answer from the Supreme Court, but unfortunately now we have a lot more questions that need to be answered," said Luana Buckner, chairwoman of the EAA board of directors.

For her, it was important to note the Supreme Court affirmed that procedurally the EAA followed the letter of the law as prescribed by the Edwards Aquifer Authority Act.

But the opinion leaves unresolved the question of whether properly following the EAA Act, and limiting pumping, resulted in the EAA having to compensate property owners for limiting their pumping rights, she said.

In 1996, Burrell Day and McDaniel requested a permit to pump 700 acre-feet of water to run a peanut and oat farm on the 350-acre ranch they had recently purchased.

Under its own rules, the EAA granted Day and McDaniel the right to pump up to 14 acre-feet a year, about 4.5 million gallons, because the two could not show historical use of pumping from the Edwards.

The Supreme Court left it to a trial court decide whether McDaniel is due compensation. Day died in 2009.

For supporters of McDaniel and Day, forcing underground water districts like the EAA to justify their regulation in courts is a good thing.

"Ownership does not prevent regulation for conservation purposes," said Billy Howe, state legislative director for the Texas Farm Bureau, which supports the decision. "They are basically going to have to make the decision that any government agency has to decide: Is this a reasonable regulation or does it go to far?"

But water districts are concerned that they will now be inundated with lawsuits from landowners who are not allowed to pump all the water they want whenever they want.

"I'm disappointed that they have determined that there is a vested property right in an unknown amount of groundwater," said Greg Elliott, former director of the EAA, who now represents groundwater districts across the state. "I think it is likely going to lead to more litigation against groundwater districts, especially the EAA."

[Supreme Court Opinion](#)