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## City of Shoreacres v. Tex. Comm'n on Env'tl. Quality, 166 S.W.3d 825 (Tex. App. 2005)

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permit to Endeavor to operate a saltwater disposal well. Grimes appealed the district court's decision to the Texas Court of Appeals.

Grimes asserted that the Commission's decision to grant the permit to operate the saltwater disposal well was arbitrary and capricious and, therefore, the court must overturn it. He claimed that there was not substantial evidence to support the Commission's decision because it failed to take into account the public interest requirement of the permitting process under the water code.

The crux of the substantial evidence analysis is whether the agency's factual findings are reasonable in light of the evidence from which they were purportedly inferred. In this case, the court had to consider whether the Commission's factual findings supported its decision in light of the public interest requirement process under the water code.

The court determined there is no controlling precedent interpreting what considerations the Commission may weigh when deciding whether granting a disposal well operating permit is in the public interest. However, the Commission's purpose includes preventing waste, conserving natural resources, and preventing pollution. The Commission considered these issues in reaching its decision and determined that the disposal operations, if conducted under certain conditions specified in the permit, would not endanger certain natural resource or cause pollution of the fresh water stratum.

The court found the Commission's determination that the well would help conserve some natural resources and prevent pollution of the stratum satisfied the Commission's public interest requirement under the water code. Therefore, the court affirmed the trial court's holding that the Commission's decision was reasonable in light of the evidence and not arbitrary or capricious.

*Robert Stevens*

**City of Shoreacres v. Tex. Comm'n on Env'tl. Quality, 166 S.W.3d 825 (Tex. App. 2005)** (holding city of Shoreacres' claims were moot because the Port of Houston Authority was not required to obtain state authorization from the Texas Commission on Environmental Quality independent of the federal dredge-and-fill permit it received from the Army Corps of Engineers).

The Port of Houston Authority ("Port") sought to obtain a federal Clean Water Act dredge-and-fill permit ("404 permit") from the Army Corps of Engineers ("Corps") and a section 401 certification from the Texas Commission on Environmental Quality ("Commission") in relation to the construction of a cargo and cruise ship terminal complex called the Bayport Project. 401 certification requires a project to meet state water quality standards and be consistent with state coastal management. On December 16, 2005, the Commission issued the 401 cer-

tification to the Port. The following day, the cities of Shoreacres, Taylor Lake Village, Seabrook, and the Galveston Bay Conservation and Preservation Association (collectively "Cities") filed an administrative appeal seeking reversal of the 401 certification and remand to the Commission, claiming that issuance of a 401 certification was not a final action and the Corps could not rely upon it in granting a 404 permit. The Corps issued the Port a 404 permit on January 5, 2005, and the Port began construction thereafter. On April 29, 2005, the Port filed a motion for summary judgment stating the Cities' claim was moot because the Corps issued a 404 permit in reliance on the 401 certification and revocation of the 401 certification would not affect the validity of the 404 permit. The Travis County District Court granted the Port's motion on May 28, 2005.

The court examined Texas' statutory scheme regarding dredge-and-fill permits and the Clean Water Act. The Texas Water Code expressly forbids the Commission from issuing dredge-and-fill permits. However, under the Clean Water Act, the Commission is capable of vetoing the issuance of the 404 permit by denying the 401 certification because a 404 permit is contingent upon issuance of 401 certification. The Commission chose to grant the 401 certification. As a result, the issuance of 401 certification terminated the Commission's veto power.

The court reasoned that federal permit rather than state certification authorized the Bayport Project's progress. Therefore, the court affirmed the trial court and concluded the Cities' claim was moot because a state court's ruling on the validity of the Commission's 401 certification could have no legal effect on the project. In sum, by choosing to grant 401 certification, the Commission lost its veto power, rendering the Cities' claim moot.

*Nathan Whitney*

**Ward County Irrigation Dist. No. 1 v. Red Bluff Water Power Control Dist., 08-04000322-CV, 2005 Tex. App. LEXIS 5063 (Tex. App. Jun. 30, 2005)** (holding membership in power control districts is not limited to improvement districts, but may also include irrigation districts).

Red Bluff District is a power control district, whose members consist of seven improvement districts including Ward County Irrigation District No. 1 ("Ward District 1") and Ward County Irrigation District No. 3 ("Ward District 3"). In 1977, the Texas legislature adopted Chapter 58 to the Texas Water Code, which provided that any improvement district or control and improvement district could convert into an irrigation district. In 2001 and 2003, respectively, Ward District 1 and Ward District 3 converted under this provision.

Following their conversion, Ward District 1 and Ward District 3 sent representatives to sit on the Red Bluff District Board of Directors ("the Board"). Red Bluff District, however, refused to seat the two rep-