

9-1-2003

## Watts v. State, No. 14-99-00811-CR, 2003 Tex. App. LEXIS 6396 (Tex. App. July 24, 2003)

Holly Shook

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

---

### Custom Citation

Holly Shook, Court Report, Watts v. State, No. 14-99-00811-CR, 2003 Tex. App. LEXIS 6396 (Tex. App. July 24, 2003), 7 U. Denv. Water L. Rev. 212 (2003).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

---

Watts v. State, No. 14-99-00811-CR, 2003 Tex. App. LEXIS 6396 (Tex. App. July 24, 2003)

Because the effluent was not fungible with the river water, the court reversed the district court's conclusion, holding that the effluent became state water once discharged into the San Marcos River. Unless the owner of the effluent can identify the effluent in the watercourse and divert it before it commingles with the state water, the water is presumed to become the watercourse. Therefore the court found if the City wishes to reuse water, it must do so within the framework of Senate Bill 1.

*Aimee Wagstaff*

**Watts v. State, No. 14-99-00811-CR, 2003 Tex. App. LEXIS 6396 (Tex. App. July 24, 2003)** (holding trial court's improper instruction and taking of judicial notice as to whether waters in drainage ditch were waters of the State constituted harmless error where jury could not reasonably reach a different conclusion than the instruction).

The State of Texas charged John Watts with water pollution, a misdemeanor. A jury sitting for the Fifteenth County Criminal Court in Harris County found Watts guilty. The Fourteenth District Court of Appeals affirmed Watt's conviction. However, the Texas Court of Criminal Appeals reversed the conviction based on a jury instruction given by the trial judge. The appellate court then remanded the case to the intermediate court of appeals to apply the harmless error rule to the trial judge's instruction. The Court of Appeals for the Fourteenth District then found the Judge's instruction harmless beyond a reasonable doubt.

The State prosecuted Watts for discharging sewage within 150 feet of a drainage ditch. The Texas criminal water pollution statute provided that knowing discharges into or adjacent to "waters in the state" constituted a misdemeanor offense. Therefore, the critical issue regarding Watts' guilt was whether water in the drainage ditch constituted "waters in the state." The trial court took judicial notice of *American Plant Food*, a past Texas Court of Appeals case, and instructed the jury that water in a drainage ditch was "waters in the state." On appeal, Watts argued this instruction deprived him of his right to a jury trial regarding an essential question of fact.

The court reviewed the instruction and held beyond a reasonable doubt that the instruction did not contribute to the conviction. The court reasoned that the instruction was harmless error because no juror could have reasonably interpreted the water pollution statute so that the broad and inclusive term, "waters in the state," would not include water in a drainage ditch located in the state. The court also rejected Watts' argument that the trial judge's instruction that the drainage ditch was a type of surface water the legislature meant to protect under the statute prejudiced Watts because the instruction should have regarded water in the drainage ditch and not the drainage ditch itself. The court reasoned that water must be in the ditch by

implication because a dry ditch could not reasonably be encompassed within the term “waters of the state.” Therefore, the court held the improper instruction constituted harmless error and affirmed the judgment of the trial court.

*Holly Shook*

## VIRGINIA

**Jenkins v. Bay House Assocs., 581 S.E.2d 510 (Va. 2003)** (holding failure of pleadings to put ownership of pond’s waters in issue precluded circuit court from considering the issue as within general prayer for relief).

This case involved a dispute regarding ownership of Gaskins Pond, including the bed and water within the pond. Bay House Associates (“Bay House”) owned the pond bed in fee simple. Formerly, a small strip of land separated the pond from Chesapeake Bay. In recent years, a small opening within the pond bottom created an outlet allowing the waters to flow freely between Gaskin Pond and Chesapeake Bay. As the opening of the pond grew bigger, many of the neighboring landowners constructed piers grounded in, and extending into, the once isolated pond. Claiming these piers trespassed onto its land, Bay House sent letters to its neighbors requesting immediate removal of the piers. The neighbors did not comply; thus, Bay House sued seeking injunctive relief in the Circuit Court of Northumberland County.

Although Bay House only sought injunctive relief to force removal of the base of the piers from the pond bed, the circuit court granted unrequested relief by finding Bay House to own in fee simple the pond bed *and* the waters of the pond. The issue on appeal to the Virginia Supreme Court was whether the circuit court had authority to grant unrequested relief. The court held a litigant’s pleadings are essential as his or her proof, and a court may not award particular relief unless it is substantially in accord with the case asserted in the pleadings. Furthermore, every litigant is entitled to be told by her adversary in plain and explicit language the grounds of complaint or defense, especially when the respondent has the burden of proof involved in an affirmative defense, such as the case here. Here, the court noted that Bay House requested both specific and general prayers for relief, and further asserted that enjoining the neighbors from using the water of Gaskins Pond was not inconsistent with the specific prayer request regarding land ownership; therefore, the injunction should be upheld. However, a general prayer will support relief only for those matters placed in controversy by the pleadings and, thus, any relief granted must be supported by allegations of material facts in the pleadings that will sustain such relief. Therefore, because Bay House’s request for