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## City of San Angelo v. Texas Natural Res. Conservation Com'n, 92 S.W.3d 624 (Tex. App. 2002)

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claim of intent against the Authority because the Authority's release of less water than had entered the reservoir through rainfall negated an inference of intent. Additionally, the Sabine River merged with the Toro Bayou. The court found that the merging of the two rivers combined with the additional reservoir drainage caused the flooding of the Sabine River onto Hughes' land. Thus, the court held the flooding was unintentional on the part of the Authority, and entered summary judgment against Hughes, reversing the trial court's judgment.

*Holly Shook*

**City of San Angelo v. Texas Natural Res. Conservation Comm'n, 92 S.W.3d 624 (Tex. App. 2002)** (holding under the Open Meetings Act commission did not have to include additional language in its published agenda indicating that it might act on issues under consideration at open meeting; agenda items were sufficiently descriptive to inform reader of the broad topics addressed at the meeting; and commission was not precluded from finding petitions were insufficient because of referral to State Office of Administrative Hearings).

The City of San Angelo ("City") petitioned the Texas Natural Resources Conservation Commission ("TNRCC") requesting the appointment of watermasters for the San Saba River and the Concho River Basin to enforce water rights. TNRCC addressed the petition in an open meeting to determine whether the domestic and livestock water users on the Concho River Basin were water right holders. TNRCC published the agenda for the open meeting in the November 26, 2001 Texas Register to give the general public notice it would consider four specific legal issues regarding the rights holders. After the December 5, 2001 open meeting, TNRCC issued an interim order on December 10, 2001 finding that domestic and livestock water users were right holders but referred the petition to the State Office of Administrative Hearings ("SOAH") to determine whether the rights holders were threatened. The City sued TNRCC seeking mandamus relief and an injunction in Travis County District Court claiming the interim order violated the Open Meetings Act ("Act") because the published agenda failed to give sufficient notice that TNRCC would take action. Holding the notice satisfied the Act, the district court denied the City's requested relief. The City appealed the decision to Third District Texas Court of Appeals claiming that notice was inadequate when read in light of the interim order. TNRCC asserted that the notice given was sufficient under the Act.

On appeal, the court first stated that determining adequacy of notice is a question of law. Under this standard, in reviewing notices under the Act, the inquiry is whether the notice was sufficiently

specific to alert the general public to the topic to be considered. The court addressed the City's argument that because the word "consideration" does not mean "action" the agenda items did not give notice of the possibility that the TNRCC would take action. The court stated the Act requires that the TNRCC give "written notice of the date, hour, place, and subject of each meeting held." When the notice specifically discloses the subject to be considered at the upcoming meeting, the notice requirement is met. The court also relied on *Texas Turnpike Auth. v. City of Fort Worth*, in which the Texas Supreme Court held it unnecessary to state all consequences which may necessarily flow from the consideration of the subject stated. Furthermore, the court interpreted "consideration" as necessarily encompassing "action." Applying these principles, the court held that the TNRCC did not have to include additional language in its public notice indicating it might act on issues under consideration.

The court also addressed the City's argument that TNRCC gave a narrow and restricted notice limited to consideration of specific legal issues, while acting on more general issues outside the scope of the agenda. The court stated that in order to satisfy the Act's intent of giving the public opportunity to inform itself of the topic of each given meeting under the Act, the notice must be sufficiently descriptive to alert readers to the particular issue the governing body will address. Looking at the agenda in its entirety, the court held the agenda items were sufficiently descriptive to inform a reader of the broad topics to be addressed at the meeting and that it was not necessary for the agenda to enumerate the specific legal issues.

Finally, the court dismissed the City's claim that TNRCC's referral of the petitions to SOAH precluded TNRCC from finding the petitions were insufficient to warrant appointment of a watermaster. The court found that in referral, TNRCC actually afforded the City's interests greater procedural protection, and the referral did not preclude TNRCC from action. Thus, the court affirmed the trial court's judgment.

*Jared B. Briant*

**Herrmann v. Lindsey, No. 04-02-00184-CV, 2003 Tex. App. LEXIS 1498 (Tex. App. Feb. 19, 2003)** (holding the grantor of a warranty deed had no right to rescission based on an illegal reservation of base irrigation groundwater rights).

In 1996 E.J. Hendrix filed an application for an initial regular permit with the Edwards Aquifer Authority ("Authority") to irrigate 500 acres of land in Medina County. Hendrix then sold his land and water rights to Ronald and Karen Herrmann ("Herrmanns"). On August 1, 1998, the Herrmanns transferred a one-half interest in the permit consisting of unrestricted groundwater to Columbia Realty ("Columbia"). On August 5, 1998, the Herrmanns transferred the