

MATTERS TO COME BEFORE THE BOARD OF DIRECTORS OF
TARRANT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER ONE
HELD IN THE DISTRICT OFFICE AT FORT WORTH, TEXAS, ON
THE 14TH DAY OF MARCH, 1957, AT 1:30 P. M.

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The call of the roll disclosed the presence or absence
of Directors as follows:

<u>PRESENT</u>	<u>ABSENT</u>
Joe B. Hogsett	Houston Hill
Lacy Boggess	A. T. Seymour, Jr.
W. L. Pier	

Also present were Messrs. Sidney L. Samuels and A. H. Herman, General Counsel for the District and Ben F. Hickey, General Manager of the District.

Director Hogsett acted in his capacity as President, and Director Boggess acted in his capacity as Secretary, whereupon proceedings were had and done as follows:

1.

On motion duly made and seconded, the minutes of the meeting held March 1, 1957 were read and approved by the Directors and it was accordingly so ordered.

2.

President Hogsett presented to the Directors the monthly report of February, 1957, from the Auditor of the District, regarding receipts and disbursements, which was ordered accepted and placed on file in District records.

3.

President Hogsett presented to each Director, a copy of the Audit Report for the year 1956, as prepared by the County Auditor, in compliance with the Revised Civil Statutes of the State of Texas, and proposed that the Audit be accepted for further study, with one copy to be filed in District Office. This being the unanimous opinion of the Directors present, it was so ordered.

4.

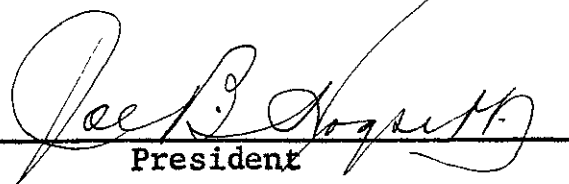
President Hogsett presented to the Directors, the agreement, as requested by the Directors at the meeting of the Board held March 1, 1957; wherein the Commissioners Court of Tarrant County, upon payment of \$45,535.00 by Tarrant County Water Control and Improvement District Number One for full payment, satisfaction and compromise of any sum payable as damages to Tarrant County by reason of the construction of the Marine Creek Reservoir and the inundation of a portion of the Ten Mile Bridge Road, agrees, under the Constitution and laws of the State of Texas, to provide the necessary traffic routes and roads to serve the public interest and to maintain such roads, and the agreement especially pointed out that the public access to the Marine Creek Reservoir for recreation and other purposes was necessary in order that the public funds expended upon the reservoir may result in the maximum of public usage and that the reservoir should not become, by reason of difficulty of access, a private lake or one that may not be available to the public in general. To that

end it was resolved that the maintenance of the road ends of the Ten Mile Bridge Road from Marine Creek Reservoir to their junctions with the alternate routes, is in the public interest and that it is the responsibility of Tarrant County, acting through its Commissioners Court, to maintain same in accordance with the duties of Commissioners Court under such circumstances.

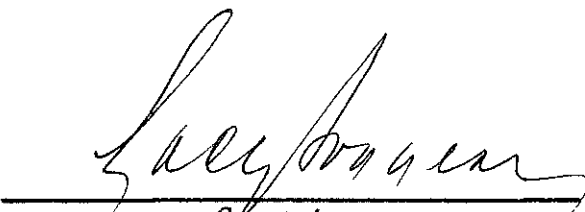
After a general discussion it was brought out that in as much as the Directors, by letters attached to these minutes and signed by Mr. John Scott, Mr. Sidney L. Samuels and Mr. Marvin C. Nichols, professional men employed by the District to give advice in such matters, had followed their advice, as outlined in attached letters, as a fair settlement of the issue involved; whereupon Director Pier made the motion that the agreement as exhibited by President Hogsett and prepared by the Attorneys for the District, be executed by the District, with a voucher-check in the amount of \$45,535.00 as full and complete payment to Tarrant County of all claims and damages growing out of the premises. This motion was seconded by Director Boggess with all Directors present voting aye thereon.

5.

There being no further business before the Board of Directors, the meeting adjourned.



President



Secretary

SIDNEY L. SAMUELS
JESSE M. BROWN
A. M. HERMAN
WILLIAM M. BROWN
JOHN M. SCOTT
ARDELL M. YOUNG
RICHARD E. MILES
LOUIS M. SUITER

SAMUELS, BROWN, HERMAN & SCOTT

ATTORNEYS AND COUNSELORS AT LAW
12TH FLOOR ELECTRIC BUILDING
FORT WORTH 2, TEXAS

TELEPHONE
EDISON 2-1248

March 13th, 1957.

To the President and Members of the Board of
Directors of Tarrant County Water Control and
Improvement District No. One,
Danciger Building,
Fort Worth, Texas.

Gentlemen of the Board:

In response to your request that we give you our viewpoint on the question of remuneration to Tarrant County, and the measure of same, growing out of the construction by the District of the detention dam and reservoir on Marine Creek, and the inundation of the Ten Mile Bridge Road which was established by the Commissioners of Tarrant County with funds belonging to the County, I beg leave to say:

It appears that the submergence of the road by waters of the District issuing from the dam or reservoir of Marine Creek, will embrace or cover the entire road except for the two ends thereof - a situation mapped out and charted by the engineers of the District and exhibited to the members of the Board. The construction of such dam is an indispensable part of the public improvement for the protection of life and property following the freshet and flood waters of the West Fork of the Trinity River in the month of May, 1949, and authorized by the qualified voters of the District.

The Ten Mile Bridge Road above mentioned is an aid to public travel and its submergence necessitates the construction of a like road in a different locality.

The inquiry before me virtually turns upon the value of the two ends of the road which will not be submerged by the waters of the reservoir, and since these two ends will not be so submerged, is there a damage or payment required to Tarrant County where in a physical sense the two ends are not appropriated, or in the language of the Court "taken". If such ends are not taken by the District, then in measuring the amount of land so taken under the circumstances, is compensation to be paid to the County for the value of the two ends which are not submerged.

We are not without legal guide in determining the answer. The Board and the members thereof, will recall the suit that was instituted in the District Court of Wise County, Texas, in Decatur, in which the District sued the Chicago, Rock Island and Gulf Railway Company to condemn a segment of its railway track in Wise County. This case is reported in 73 SW 2d page 55, et seq., and dealt with the question

of how far could compensation extend to the railroad company in submerging a part of its track to enable the District to construct Eagle Mountain Lake and Lake Bridgeport. Inasmuch as the waters growing out of this public improvement would inundate only a part of the railway track, the matter of full compensation to the railroad company to a great degree depended on whether the two ends of the track which were not submerged, should be valued and paid for as part of the compensation to be paid.

It will be observed that the analogy between that situation and the one that confronts us in the matter of the Ten Mile Bridge Road is perfect, and presents almost an identical question for determination. The trial court in the Rock Island case, in fixing the amount of damage or compensation to which the railroad should be entitled confined the recovery to the actual mileage under water and refused to include the dead ends of the track which were not so submerged. Thereupon the Railroad Company appealed the case to the Court of Civil Appeals in Fort Worth, which Court certified the question to the Supreme Court of Texas for decision. (See 73 SW 2d, page 71). The Supreme Court, in an elaborate review of the questions certified, and in determining when property is "taken" or appropriated under the law of eminent domain, reversed the trial court's ruling and held that to "take" the citizens property in the exercise of eminent domain, it is not essential that physical appropriation should occur, but if a part of the property is seized for a public purpose leaving the remainder useless to the owner, such part should be included in reckoning the amount which the condemnor should pay to the owner. To illustrate the trend of the decision we shall now quote that part of the Court's decision which intrinsically illustrates the point and leaves no room for doubt or skepticism:

"Exhibits A and B in the record, reproduced herein, show those portions of the appellant's right of way and road which will be actually submerged by the construction of the lake, which apparently extends from Berkshire levee on the east to Station 503-21 on the west, a distance of 3.9791 miles. In addition, however, the railroad company, as a practical question, will be compelled to abandon those sections of its track lying between the station of Vineyard and the west shore line of Lake Bridgeport, and between the Berkshire levee and a point some three-fourths of a mile east thereof. The number of miles of railway between the points named, including those portions actually submerged, and the dead ends which the company will be compelled to abandon, aggregate 9.54 miles, of the agreed value of \$243,000. It is true that only a portion of this line will be submerged by the lake, but we think the value of the remaining portion between the points named and its actual physical use will be as effectively destroyed as if covered by the water and therefore

as effectively taken under the Constitution as if it was physically destroyed by the improvements of the district. Therefore we conclude that the effect of the construction by the appellee is to destroy appellant's property for its accustomed use, and therefore 'to take' the roadbed of appellant for a distance of 9.54 miles of an agreed value under the statement of facts of \$243,000. This is the rule under the decisions of the Supreme Court of the United States and is a correct rule, we have no doubt, under the Constitution of Texas. Cooley's Const. Lim. (8th Ed) vol. 2, p. 1158; 10 Texas Jur. p. 868, par. 219; Fort Worth Imp. Dist. No. 1 vs. City of Fort Worth, 106 Tex. 148, 158 SW 164, 48 L. R. A. (N. S. 994; 20 Corpus Juris, p. 671, par. 139, and notes."

The writer of this communication to this Honorable Board, tried and briefed the case in all its stages from the beginning in the District Court of Wise County to the Supreme Court of Texas, and even followed its course to the Supreme Court of the United States where writ of certiorari on the part of the Railroad was denied.

In conclusion the writer expresses the opinion to this Honorable Board, that under the doctrine of the quoted decision, the County is entitled to recover for the value of the "dead ends" of the Ten Mile Bridge Road no less than the other portion of that highway where the inundation occurs.

Very sincerely,



SIDNEY L. SAMUELS.

SLS:OC

SIDNEY L. SAMUELS
JESSE M. BROWN
A. M. HERMAN
WILLIAM M. BROWN
JOHN M. SCOTT
ARDELL M. YOUNG
RICHARD E. MILES
LOUIS M. SUITER

SAMUELS, BROWN, HERMAN & SCOTT

ATTORNEYS AND COUNSELORS AT LAW

12TH FLOOR ELECTRIC BUILDING

FORT WORTH 2, TEXAS

February 21, 1957

TELEPHONE
EDISON 2-1248

Tarrant County Water Control and
Improvement District No. One
Fort Worth, Texas

**TO BE ATTACHED TO THE MINUTES
OF A MEETING OF THE BOARD OF
DIRECTORS HELD FEBRUARY 21,
1957 AT 1:30 P. M.**

Gentlemen:

At the last meeting of the Board it was requested that our firm advise the Board concerning its liability in law to Tarrant County resulting from the inundation of certain roads in the Marine Creek project, and particularly with respect to the compromise settlement recommended by Freese and Nichols, engineers for the Board.

Mr. William M. Brown and the writer have jointly studied the matter and we recommend the settlement based upon the governing law, in the field of eminent domain.

The condemnation of property is authorized in the Constitution of Texas and the public body making condemnation must pay the value of the property actually taken, and in general all damages suffered by the condemnee in the nature of consequential damages. Thus, if a part of a piece of property is taken, and the remainder is damaged by the taking, the condemnee recovers the market value of the property taken and also the damage resulting to that not taken occasioned by the taking.

If this rule is literally applied, the Board would be obligated to pay to the County the value of the roads which were inundated, the value of the segments of road rendered useless by the taking, and the cost of reconstructing or relocating the road.

In Chicago, Rock Island v. Tarrant County Water Control District No. One, 73 SW 2d 55, the Supreme Court discussed the general rules we set forth above in the light of the taking of a portion of the railroad track of the railway company in connection with the construction of Lake Bridgeport.

That case is not exactly like the present controversy with the County. In the first place the railroad was not in as favorable a position as the County is, in that the Supreme Court held that the right of the railroad to build its lines along or across navigable streams was expressly by statute made subject to the right of the public to improve the streams.

Thus the railroad privilege was conditional, whereas the

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County is not under the same inhibition which applied to railroads by reason of Article 6320 as construed by the Supreme Court. Secondly, Marine Creek is not a navigable stream in law and the restrictions created on the railroad by reason of that fact would not apply in a controversy arising out of the Marine Creek project.

Nevertheless the Rock Island case held that the railroad was entitled to recover from the Board "the value of that portion of its property which will be submerged by Bridgeport Lake and the dead ends of its property rendered useless and valueless.....". It is our opinion that this measure of damage clearly and without question applies to the controversy with the County, and you are therefore advised that the County is entitled to recover the value of its submerged roads and of the segments of its roads rendered useless by the inundation.

The question of whether the County is entitled to recover, also, the cost of constructing a road around the project is not as clear. In the Rock Island case the court held that the Board was "not liable for the cost of raising appellant's railway line and bridges above the flood lines of Bridgeport Lake, nor for the cost of relocating and rebuilding the railroad around the Lake.....". However, the court placed this ruling entirely upon the limitation first adverted to in this opinion, that is, that the railroad must bear the cost of relocating its line where it had exercised the privilege given it by statute of crossing a navigable stream. Before reaching the conclusion that the railroad must bear such cost, the Supreme Court used language which would imply that the County, or a private citizen, would not be required to bear such cost. The court said, for example,

"It is true that under our constitutional provision..... we do permit recoveries by the citizens for damages consequent upon changing street and highway grades (citing authority)."

The court also said,

"The Constitution and statutes have been construed generally to authorize the recovery of compensation not only for property actually taken under power of eminent domain but consequential damages as well."

We are of the opinion that in a condemnation suit, the County could recover the cost of relocating its roads, in addition to the direct recovery we have specified above. Our conclusion, however, on this last item, the cost of relocating

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the roads, is arrived at by a process of reasoning applied to the opinions of the courts and is not based upon any decision exactly like the present controversy. We consider that the probabilities, however, preponderate in favor of the County with respect to that item of damage.

Therefore, after carefully studying the letter of recommendation written by the engineers of the District, we are of the opinion that their recommendation as to a settlement of the controversy is advantageous to the Board and should be adopted by the Board. We believe that the amount recommended by the engineers is fair to both public bodies concerned and is considerably less than the probable recovery of the County against the Board if the matter is taken to litigation.

Yours very truly,

John M. Scott

for SAMUELS, BROWN, HERMAN & SCOTT

JMS ec

S. W. FREESE
M. C. NICHOLS
S. G. ENDRESS

FREESE AND NICHOLS
CONSULTING ENGINEERS
407 DANCIGER BUILDING
FORT WORTH 2, TEXAS

TELEPHONE
EDISON 2-4364

February 5, 1957

Mr. Joe B. Hogsett, President,
Board of Directors
Tarrant County Water Control
and Improvement District No. 1
506 Danciger Building
Fort Worth, Texas

Dear Mr. Hogsett:

Re: Settlement with Tarrant County
Ten Mile Bridge Road
Marine Creek

We have reviewed the statement submitted September 5, 1956 by Tarrant County as a basis for the settlement with the County made necessary by the closing of a portion of Ten Mile Bridge Road by the construction of Marine Creek Detention Dam. This statement is attached hereto.

The County feels that a substitute route must be maintained around the detention basin in order that traffic can move directly from North Fort Worth to Eagle Mountain Lake Area. The substitute route proposed by the County is briefly described as follows:

North on Old Decatur Road from its intersection with Ten Mile Bridge Road 2.7 miles, thence west 1.7 miles, thence south 1.3 miles to the Ten Mile Bridge Road at the Seth Barwise property. Total length of substitute route 5.7 miles. Length of present road between the above points of take-off and return 13,432 feet - 2.54 miles. The substitute route will be approximately 3.2 miles longer than the present route.

The statement submitted by the County was based on the value of the present road between the points of take-off and return. This has been the usual basis for settlements between the District and private utilities. In this particular case, however, the District desires that the present road be left open and maintained except for 3,700 feet actually subject to submergence by the Lake.

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We submit for your consideration the following three estimates which are based on different approaches to the problem:

1. Value Present Roadway: Old Decatur Road to Seth Barwise Corner - 13,432'.

13,432' of roadway @ \$3.00	\$40,296.00
Structure No. 1	10,153.00
Structure No. 2	6,420.00
Structure No. 3	1,129.00
Structure No. 4	699.00
Total	\$58,697.00
Salvage - I Beam Structure No. 1	1,000.00
Net Total	\$57,697.00

(This is the basis submitted by County. Distance used by County 14,256')

2. Value Present Roadway: Subject to Submergence in Marine Detention Basin - 3,700'.

3,700' of roadway @ \$3.00	\$11,100.00
Structure No. 1	10,153.00
Structure No. 2	6,420.00
Total	\$27,673.00
Salvage - I Beam Structure No. 1	1,000.00
Net Total	\$26,673.00

ROW made available to District by County as Access Road
 (13,432' - 3700') x 60'

43,560	
13.4 acres @ \$500.00	6,700.00
Total	\$33,373.00

3. Cost to County Construct Substitute Route

15,840' of roadway : \$3.00	\$47,520.00
Culvert over Marine Creek (Estimated as Structure No. 2)	6,420.00
Other drainage structures	1,000.00
Right of Way <u>1.7 miles x 5,280' x (60'-40')</u>	
43,560	
4.1 acres at \$500.00	2,050.00
Total	\$56,990.00

(Assumed no expenditure on old Decatur Road - 2.7 miles)

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Mr. Joe B. Hoggsett

2/5/57

It is our opinion that a minimum settlement could not be justified in an amount less than \$33,373.00 (Estimate No. 2). We also believe there is reasonable basis for a settlement in the amount of \$57,697.00 (Estimate No. 1). It is our opinion that the County can provide the substitute route at a cost not in excess of \$56,990.00.

Negotiations have been under way for some time between Mr. Hickey for the District and County Engineer Champeaux for the County. The road is physically closed at the present time. It would appear that a settlement should be effected at as early a date as possible in order that the County can proceed with the construction of the substitute route.

All factors considered, we recommend a compromise settlement determined as follows:

Estimate No. 2	\$33,373.00
Estimate No. 1	<u>57,697.00</u>
	\$91,070.00
Average	\$45,535.00

In our Report on Program B, dated August 1950, we estimated \$47,000.00 for this settlement.

Respectfully submitted,

FREESE AND NICHOLS

By *Marvin C. Nichols*
Marvin C. Nichols
District Engineer

MCN:lk