

MINUTES OF A MEETING OF THE BOARD OF DIRECTORS OF  
TARRANT COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER ONE  
HELD IN THE DISTRICT OFFICE IN FORT WORTH, TEXAS, ON  
THE 3RD DAY OF FEBRUARY, 1953, AT 7:30 P.M.

-----

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

PRESENT

Joe B. Hogsett  
Dan H. Priest  
W. L. Pier  
A. T. Seymour, Jr.

ABSENT

Houston Hill

Also present were Mr. Sidney L. Samuels, General Counsel, and C.L.  
McNair, General Manager of the District.

Director Hogsett acted in his capacity as President, and  
Director Priest acted in his capacity as Secretary, whereupon pro-  
ceedings were had and done, as follows:

1.

Mr. Hogsett, as President of the Board, announced that  
this particular meeting was held for the purpose of discussing  
and reviewing the situation in the flood prevention scheme as this  
scheme was affected by the presence of what is known as the Nutt  
Dam, which impounds water from the West Fork of the Trinity River  
in the vicinity of the Paddock Viaduct where Main Street extends  
over such viaduct into what is generally known as North Fort Worth.  
Mr. Hogsett asked the General Counsel, Sidney L. Samuels, in the  
light of an interview with Mr. Robert K. Hanger, attorney for the  
Texas Electric Service Company, to give an outline to the Board  
what had taken place between the Counsel for the Board, (Sidney  
L. Samuels) and Mr. Hanger, as the legal representative of the Texas

Electric Service Company.

Thereupon, in response to this announcement or statement by Mr. Hogsett, the Board invited Mr. Samuels briefly to give a synopsis of the interview. Mr. Samuels then proceeded to give a summary: He stated that Mr. Hanger had come to the office of Samuels, Brown, Herman and Scott, in the Electric Building, and had indicated that he was there to take up the subject of the removal of the Nutt Dam inasmuch as the Federal Army Engineers had declared that the dam was an obstruction in the channel of the river at that point. Mr. Hanger stated that he recognized the fact that the structure of the dam was the property of the City of Fort Worth, and that the Texas Electric Service Company asserted no ownership thereof, but that the electric company had been given certain water rights in the stream, growing out of the construction of the dam, and that the dismantling of the structure would take from the electric company its right to use the water at that point, and that this right so to use the water for its purposes, such as cooling of its machinery, was a valuable property right and that the electric company was entitled to compensation therefor--in other words, that the right to use the water was a vested right, and that there should be an adjustment of compensation concerning the right.

Mr. Hanger further stated that the decision of the Supreme Court of Texas in the Rock Island Railroad Company case (which case is published in the 73rd S.W. 2d, p ) opinion by Cureton, Chief Justice, was applicable, and in that case the court

had held that while the Rock Island Railroad was entitled to compensation under the Constitution of Texas for the property which would be submerged by the lake, it was not entitled to recover damage, that is to say, it was not entitled to the expense of relocating the track so submerged and in addition thereto the cost of rebuilding it at another location. Mr. Samuels further stated that in response to the argument of Mr. Hanger, he, Mr. Samuels, had urged that the District was not taking the water rights from the electric company, that the water was still there, but nevertheless, Mr. Hanger was invited to submit authorities on the subject wherein the immediate point had been discussed and decided by courts of last resort, and that he, Mr. Samuels, would be glad to read and consider such cases, and would welcome light on the subject from any adjudicated cases which dealt with the subject.

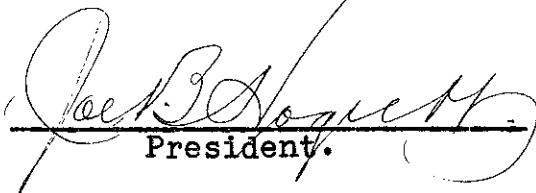
In that connection, however, the Counsel for the District had observed to Mr. Hanger that the City Government of Fort Worth at the time when the arrangement was made with Mr. Nutt had sought to grant to Mr. Nutt and his assigns a right in perpetuity to the use of the water in the channel of the river, and that a perpetual use was one concerning which, he, Counsel for the District, had grave doubts concerning its validity. In other words, that in advancing the money to the City Government for the construction of the dam Mr. Nutt, for himself and his principals, reserved no right in the structure except to use the water, and that Counsel for the District was unable to discover just what right was enjoyed by the City by which it could barter away rights in water forming a part

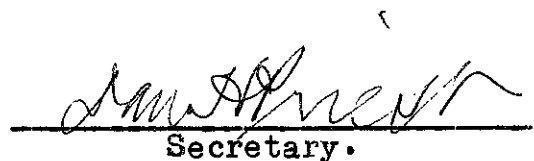
of a navigable stream, which belonged to the State of Texas. Counsel for the District further stated that during this interview with Mr. Hanger, the latter did not seek to challenge the application of the doctrine to consequential damages announced by Chief Justice Cureton in the Rock Island case.

Following this brief outline by Counsel for the District, discussion ensued between and among the members of the Board, who were present, on how far the District had gone in embodying an estimate of the cost of restoring the dam elsewhere as a part of the flood prevention scheme. However, at a previous meeting, Mr. Marvin Nichols, the Engineer, had stated that the inclusion of that feature was purely an estimate and not intended as an agreement so to do, or that such cost was to be regarded as a mandatory pledge or promise by the District.

Counsel for the District interposed by saying that in the proclamation for the election wherein the matter of issuing bonds was submitted to the voters, no express mention was made of this feature, but that there was reference to Program B, which had been formulated by the engineers and adopted by the Board of Directors.

The question was left open for future action by the Board and the meeting thereupon adjourned.

  
\_\_\_\_\_  
President.

  
\_\_\_\_\_  
Secretary.