

IN THE SUPREME COURT OF TEXAS

No. 06-0904

GUITAR HOLDING COMPANY, L.P., PETITIONER,

v.

HUDSPETH COUNTY UNDERGROUND WATER
CONSERVATION DISTRICT NO. 1, ET AL., RESPONDENTS

ON MOTION FOR REHEARING

On rehearing, the District points out that the court of appeals decided several issues that were not included in the appeal to this Court. In addition to the transfer rules at issue here, Guitar Holding complained in the court of appeals about the District's permitting scheme and its application to Guitar Holding's particular circumstances. Also in the court of appeals, the District obtained a remand for the determination of certain fees and costs denied it in the trial court. *See* TEX. WATER CODE § 36.066(g) (granting district, as prevailing party, its "attorney's fees, costs for expert witnesses, and other costs").

After the court of appeals' decision in the District's favor, Guitar Holding narrowed its appeal to focus on the transfer rules. The District submits that Guitar Holding thereby abandoned these other issues but fears that our opinion and judgment may be misunderstood on this point. The District accordingly requests that we clarify that the court of appeals' judgment has been reversed only in part.

We, of course, agree that issues not presented in the petition for review and brief on the

merits are waived. TEX. R. APP. P 53.2(f); TEX. R. APP. P 55.2(f); *Ramos v. Richardson*, 228 S.W.3d 671, 673 (Tex. 2007) (per curiam). We also agree that Guitar Holding abandoned some issues in its appeal to this Court and that the court of appeals' judgment remains in effect as to these abandoned issues. Accordingly, we grant the District's motion for rehearing to clarify that the court of appeals' judgment is reversed only as to that part upholding the validity of the District's transfer rules and related permits. The case is remanded to the trial court for further proceedings consistent with our opinion.

Opinion delivered: August 29, 2008