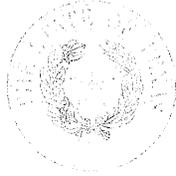


Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 4, 2009

TO: All Persons on Mailing List

RE: **TCEQ Docket No. 2009-0803-WR, Application No. 08-2370B to Amend COA No. 08-2370; In the matter of an amendment to a water right by Dallas County Utility and Reclamation District.**

The above-referenced matter is scheduled to be considered by the Texas Commission on Environmental Quality on **September 23, 2009 at 9:30 A.M.** in Room 201S, Building E, 12100 Park 35 Circle, Austin, Texas. The Commission will consider whether notice is required for this application, and if so, what type of notice will be required. The Executive Director's memorandum and recommendation and other documents related to this matter may be found at http://www.tceq.state.tx.us/permitting/water_supply/water_rights/wran.html.

Should you need any additional information, please contact Melissa Chao at the Texas Commission on Environmental Quality, Office of the Chief Clerk, (512) 239-3300.

Sincerely,

A handwritten signature in cursive script, appearing to read "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/mc

MAILING LIST
DALLAS COUNTY UTILITY AND RECLAMATION DISTRICT
TCEQ DOCKET NO. 2009-0803-WR

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FOR ALTERNATIVE DISPUTE
RESOLUTION:

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FOR THE CHIEF CLERK:

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2009 SEP -3 PM 4: 29

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

CHIEF CLERKS OFFICE

TO: Commissioners DATE: June 24, 2009

THRU: Todd Chenoweth, Director
Water Supply Division

FROM: Kellye Rila, Section Manager
Water Rights Permitting & Availability Section

Robin Smith, Attorney
Environmental Law Division

SUBJECT: Dallas County Utility and Reclamation District
Docket # 2009-0803-WR
Application No. 08-2370B to Amend Certificate of Adjudication No. 08-2370
Unnamed tributaries of the Elm Fork Trinity River and Elm Fork Trinity River,
Trinity River Basin
Dallas County

On June 9, 2006 the Texas Supreme Court issued an opinion in the case of *Marshall v Uncertain*.¹ The Supreme Court in that opinion considered the Commission's practices regarding notice and hearing for applications to amend a water right under Texas Water Code (TWC) § 11.122(b). The Court held that it could not determine under the record in that case whether notice and a hearing would be required. The Court remanded the case to the Commission.

The court in *Marshall* held that when reviewing the type of notice required for an amendment to a water right, the Commission must determine whether there could be an adverse impact from the application on other water rights or the environment beyond or irrespective of the full use assumption, explained below. The court also held that the Commission must determine if the application could have an adverse impact on the public interest criteria: beneficial use, public welfare, groundwater effects, consistency with the state and regional water plan, compliance with administrative requirements, and conservation.

The types of amendments that come within the *Marshall* decision are those amendments that do not already have a specific notice requirement in a rule for that type of amendment, and that do not change the amount of water to be taken or the diversion rate. These amendments are changes in use, changes in place of use, or changes in non-substantive conditions in a water right.

¹ City of Marshall et. al. v. City of Uncertain et. al., No. 03-1111 (Tx. June 9, 2006).

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The purpose of this memo is to discuss the public notice that should be given in the above referenced application by Dallas County Utility and Reclamation District in light of agency rules and the Court's decision in the case of *Marshall*.

Current Authorization and Application for Amendment

Dallas County Utility and Reclamation District (DCURD) currently owns Certificate of Adjudication No. 08-2370. The Certificate authorizes DCURD to maintain an existing reservoir (Lake Carolyn), located on unnamed tributaries of the Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin, Dallas County and impound therein not to exceed 2,527 acre-feet of water for recreation use and to divert and use not to exceed 1,100 acre-feet of water per year from four points on the reservoir at a maximum combined diversion rate of 12.48 cfs (5,600 gpm) for agricultural purposes to irrigate a maximum of 460 acres of land in any area within the boundaries of the District. DCURD is also authorized to divert water from a point on the Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin, Dallas County at a maximum diversion rate of 7.13 cfs (3200 gpm) for maintenance of the reservoir. The time priority of DCURD's right is February 20, 1973. Multiple special conditions apply.

Use paragraph 2.C of the certificate authorizes DCURD to divert water from the Elm Fork Trinity River for maintenance of the reservoir level at elevation 418.0 feet above mean sea level.

Special Condition 5.B of the certificate limits diversion of water from the Elm Fork Trinity River to those times when water is flowing over Frazier Dam at an elevation above 407 feet mean sea level.

Frazier Dam is located downstream of the diversion point on the Trinity River. The City of Dallas, owner of Certificate of Adjudication No. 08-2457 which authorizes Frazier Dam, raised the operating level of Frazier Dam from 407 feet above mean sea level to 409 feet above mean sea level.

The applicant (DCURD) requests an amendment to raise the operating level of Lake Carolyn to 419.0 feet above mean sea level. DCURD also requests that Special Condition 5.B. be modified to eliminate the reference to 407 feet above mean sea level for Frazier Dam. Diversions would still be limited to those times when water is flowing over Frazier Dam.

Rules Related to Notice

The Commission has rules concerning what notice is required for applications to amend a water right in 30 Texas Administrative Code (TAC) §295.158. There are no rules that specifically provide notice for modifying a reservoir operating level, when the amount impounded in the

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reservoir does not change. There are also no rules that specifically provide notice for the request to delete a reservoir operating level from a Special Condition when that request does not change the limitations imposed by the Special Condition. Under 30 TAC § 295.158, in subsection (c), no notice is required if no additional consumptive use is contemplated, no increase in diversion rate or period will be granted, and in the judgment of the Commission there is no potential for harming another water right. This application falls under this rule and does not require notice for the reasons set out below.

Texas Water Code

This application for an amendment to an existing water right is governed by TWC §11.122. Subsection (a) requires a water right holder, except as discussed above, to obtain a water right amendment if the holder is going to change the purpose of use or "otherwise alter a water right."

Subsection (b) of §11.122 sets out the scope of the Commission's authority in reviewing applications to amend a water right. Staff notes that in its application DCURD is not asking for either an increase in the amount of water stored in Lake Carolyn in excess of the authorized amount of storage, or an increase in the amount of water diverted, the rate of diversion or the limitations on diversions from the Elm Fork Trinity River. With that understanding of the application, it then becomes a duty of the Commission to approve the application "*if the requested change will not cause adverse impact on other water right holders or the environment on the stream of greater magnitude than under circumstances in which the permit . . . that is sought to be amended was fully exercised according to its terms and conditions as they existed before the requested amendment,*" and the application meets, "*all other applicable requirements,*" of TWC Chapter 11. The clause that requires the Commission to compare the requested amendment to the existing permit as if the existing permit was fully exercised is often referred to as the "full use assumption."

Adverse Impact on Water Right Holders and the Environment

Under the *City of Marshall* opinion, the Commission must evaluate whether an amendment can adversely impair other water rights or the environment beyond the full use assumption. Under the full use assumption, neither the modification of an authorized reservoir elevation, when the amount authorized for impoundment in the reservoir does not change, nor the deletion of a reservoir elevation from a Special Condition when that request does not change the limitations imposed by the Special Condition can have any greater impact on other water right holders or the environment than the impacts to those interests under the existing permit. The amount of water to be stored in Lake Carolyn at the new operating level does not exceed the amount of storage authorized in the Certificate and the limitations imposed by the Special Condition are unchanged. Both before and after the amendment, the water right holder will only be able to impound not to exceed 2,527 acre-feet of water in Lake Carolyn and divert water from the Elm Fork Trinity

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River, subject to a Special Condition limiting diversions to those times that water is flowing over Frazier Dam.

It makes no difference to other water right holders or the environment whether the operating level of the reservoir is at 418 feet above mean sea level or at 419 feet above mean sea level. The effect on streamflow, and therefore water available for downstream water right holders or the downstream aquatic environment will be the same, the reservoir can still only impound up to 2,527 acre-feet of water. Also, modification of Special Condition 5.B to delete the reference to the reservoir elevation at Frazier Dam will have no effect on flows available for downstream water rights or the downstream aquatic environment. Diversions can still only occur when water is flowing over Frazier Dam. The amount authorized for storage in Lake Carolyn will not be changed and no changes in diversion rates, amounts, or restrictions for the diversion point on the Elm Fork Trinity River are contemplated by this amendment.

Concerning whether there are impacts to water rights or the environment beyond the full use assumption, the Executive Director believes there are none. This amendment requests authorization to increase the operating level of the reservoir by one foot, and also modify a Special Condition to delete the reference to the reservoir elevation at Frazier Dam. This application does not change a diversion point or change a non-consumptive use to a consumptive use. Also, there is no specific pattern of use required in the Certificate that will be changed.

Other Applicable Requirements

Under TWC § 11.122(b) the proposed amendment must also satisfy all other applicable requirements of TWC Chapter 11. The Supreme Court in the *Marshall* case itemized those other requirements which are discussed below.

Administrative Requirements

Staff has reviewed the application and has found that it meets all administrative requirements of the TWC Chapter 11. Notice fees have not been requested or paid. Therefore, this application has not been declared administratively complete. In the event the Commission recommends that notice is required, appropriate notice fees will be requested at that time and upon payment of notice fees the application will be declared administratively complete and accepted for filing with the Chief Clerk.

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Beneficial Use

Proposed appropriations of state water must be for a beneficial use. Beneficial use is defined in TWC § 11.002(4) as “the use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose and shall include conserved water.” The authorized uses in the permit are agricultural (irrigation) and recreation, which are recognized as beneficial uses by Water Code 11.023(a)(2) and 11.023(a)(6) and were already found to be a beneficial use when the Commission issued the permit.

According to DCURD, the application does not contemplate a change of use or an increase in the amount of water currently authorized for impoundment or diversion. The application seeks to continue to beneficially use the water already authorized for impoundment for recreation and agricultural purposes of use.

We will consider whether the use is non-wasteful under “Avoidance of Waste and Achievement of Water Conservation” below.

Protection of Public Welfare

A proposed appropriation of state water must not be detrimental to the public welfare. No definition of “detriment to public welfare” is provided in the law. Therefore, the commission has wide discretion in determining benefits or detriments to the public welfare. DCURD seeks to increase the operating level of Lake Carolyn from 418 feet above msl to 419 feet above msl and modify Special Condition 5.B to remove a reference to a reservoir elevation where the limitation imposed by the Special Condition is unchanged. DCURD asserts that the proposed amendment will not be detrimental to the public welfare because raising the operating level of Lake Carolyn will improve the aesthetic quality of the lake, make the lake more accessible for community attraction, increase business development around the lake, improve safety for the public at the lake, and improve the structural integrity of the vertical walls that surround the lake. In addition, DCURD states that, with respect to Special Condition 5.B, the public welfare cannot be negatively impacted as Dallas County Utility and Reclamation District is unable under Certificate of Adjudication 08-2370 to divert water unless it flows over Frazier Dam, regardless of the operating level of that reservoir.

The Executive Director’s opinion is that there is no detriment to the public welfare by granting this application.

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Groundwater Effects

A proposed appropriation of state water must consider effects of the proposed permit on groundwater or groundwater recharge. The Commission's Water Availability Model (WAM) is used to evaluate the availability of unappropriated water for new appropriations and takes into account both contributions to river flow caused by groundwater coming to the surface in the river (springs) and decreases in river flow caused by the river flowing over recharge features and losing surface water to groundwater recharge. The WAM contains channel loss factors that account for the gain or loss of river flow. These channel loss factors were developed by expert engineering contractors hired by the Commission to develop the WAMs.

The Trinity WAM includes the segment of the Elm Fork Trinity River at which diversion under this permit occurs. The Trinity WAM does not have channel loss factors associated with the Elm Fork Trinity River at the permitted diversion point. The Water Availability report for the Trinity Basin does not include specific information regarding groundwater/surface water interaction at the location of DCURD's diversion point.²

Concerning use of the Texas Water Development Board Groundwater Availability Models (GAMs) and information from the University of Texas Bureau of Economic Geology to assess groundwater impact, predictive simulations using the GAMs do not account for streamflow changes associated with permitted surface water withdrawals or return flows. GAMs were not originally designed to address groundwater-surface water interactions and there are issues with using these models for that purpose.³ The GAMs are regional in nature and are not able to simulate groundwater-surface water interactions in detail.⁴ Both the WAMs and the GAMs have issues related to quantifying groundwater-surface water interaction; however, the WAMs were developed as a tool for surface water permitting.

The Bureau of Economic Geology provides information about aquifer recharge rates.⁵ In general, these rates, where quantified, are applicable to aquifers or portions of aquifers. As such, they do not provide sufficient detail to determine interaction between surface water and groundwater at discrete points. There is no groundwater conservation district in Dallas County.⁶ The 2006 Region C Water Plan did not contain additional information related to effects on groundwater or groundwater recharge.

² Water Availability Models for the Trinity, Trinity-San Jacinto, and Neches-Trinity Basins. Prepared by Espey Consultants, Inc. and others for the Texas Natural Resource Conservation Commission. December 2001.

³ Bureau of Economic Geology. 2005. Groundwater-Surface Water Interactions in Texas. August, 2005.

⁴ Mace, R., Austin, B. Angle, E. and R. Batchelder. 2007. Surface Water and Groundwater Together Again. Paper presented at State Bar of Texas 8th Annual Changing Face of Water Rights in Texas. San Antonio, Texas.

⁵ Scanlon, B., Dutton, A., and M. Sophocleous. 2002. Groundwater Recharge in Texas. Water Research Fund Grant Contract No. 2000-483-340.

⁶ http://www.twdb.state.tx.us/mapping/maps/pdf/gcd_only_8x11.pdf

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This application does not propose to increase the amount of water impounded in Lake Carolyn beyond the amount authorized for impoundment, or increase the amount or rate of water diverted from the Elm Fork Trinity River. Diversions from the Elm Fork will still be limited to those times that Frazier Dam is spilling. Changing the reservoir operating level and removing the reference to the elevation of Frazier Dam from the Special Condition will have no greater effect on groundwater resources or groundwater recharge than would occur without the amendment. Therefore, the Executive Director concludes that there is no potential groundwater issue involved with this application.

Consistency with Regional and State Plans

Water right applications are only granted if the application addresses a water supply need in a manner that is consistent with the state water plan and the relevant regional water plan, unless the Commission determines that conditions warrant a waiver of this requirement. The purpose of the state and regional water plans is to assess the likely future use of water and to develop strategies for meeting water supply shortfalls. The state and regional water plans generally do not address every possible change in individual water rights. The application is consistent with the approved state and regional water plans because the plans do not address this amendment, and because there is nothing in the plans that conflicts with issuing this amendment. If the Commission determines that the amendment is not consistent with the relevant regional water plan and the state water plan, the Executive Director believes that it would warrant a waiver of the consistency requirement.

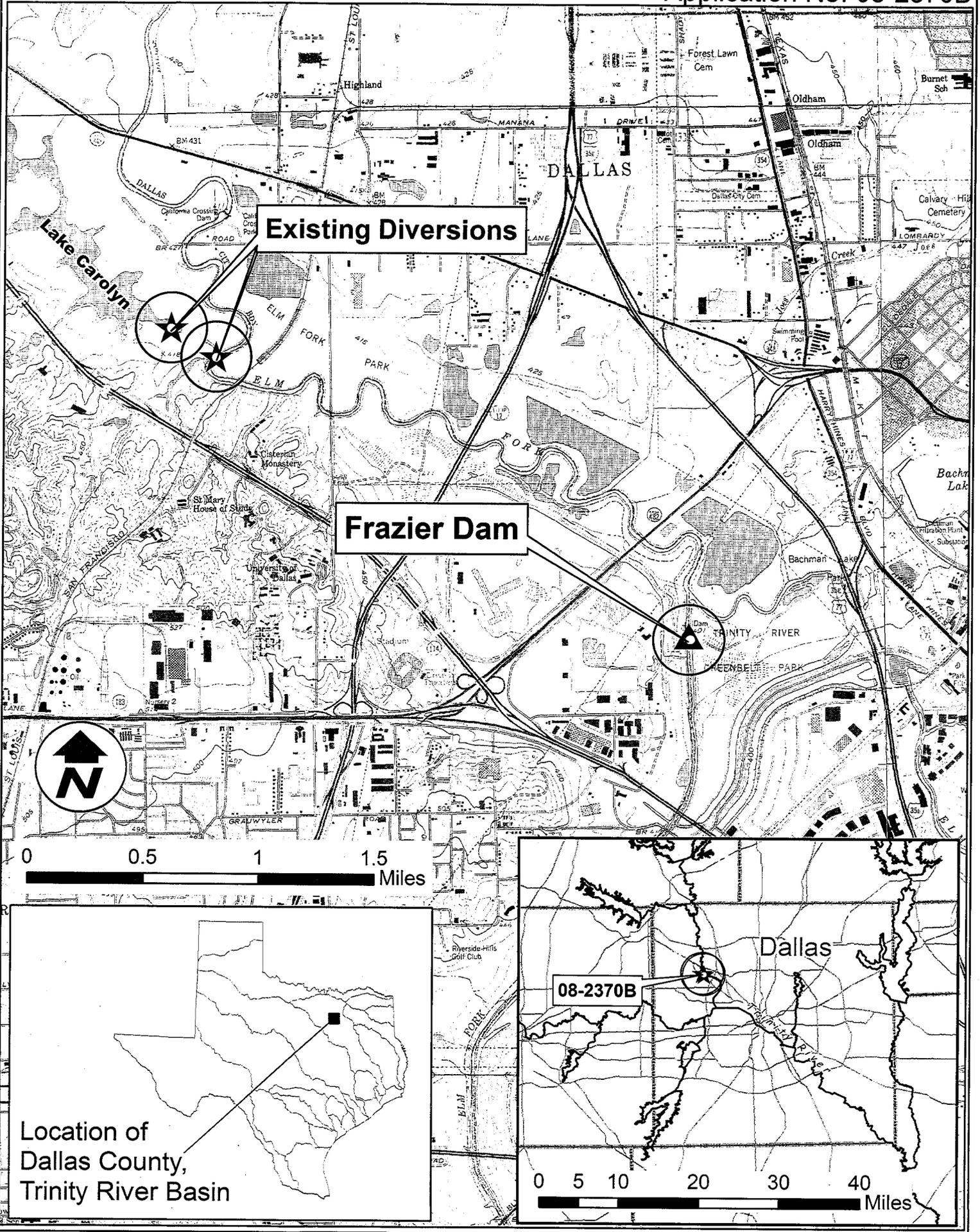
Avoidance of Waste and Achievement of Water Conservation

The Commission has adopted rules to specify the type of water conservation plans that will be required for amendments to existing water rights in 30 TAC §295.9(4). DCURD is not increasing the amount of the appropriation. This amendment requests authorization to increase the reservoir operating level by one foot, and to delete the reference to the elevation of Frazier Dam in Special Condition 5.B. DCURD has submitted a water conservation plan, which has been reviewed for administrative sufficiency for agricultural (irrigation) use. Staff finds that DCURD can achieve water conservation and avoid waste.

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Conclusion

This application seeks an amendment to increase the operating level of Lake Carolyn specified in Use paragraph 2.C, and to modify Special Condition 5.B to delete the reference to the elevation of Frazier Dam, which will not change the diversion limitation in that Special Condition. The application does not seek an increase in the amount authorized for impoundment in Lake Carolyn, or to change the limitation on diversions from the Elm Fork Trinity River. Under the full use assumption, the amendment will not have an adverse impact on other water right holders or the environment, and there are no negative impacts to other water rights and the environment beyond the full use assumption. The application does not raise any issues of beneficial use, detriment to the public welfare, groundwater effects, consistency with the state and regional water plans, compliance with administrative requirements (except any required notice fees, if applicable), or avoidance of waste and achievement of water conservation. Commission rules, statutes, and case law allow this application to be processed without notice. Therefore, the Executive Director recommends that no notice be issued for this application.



3. DIVERSION

A. Location:

At four points on the aforesaid reservoir and one point on Elm Fork Trinity River in the Elizabeth Crockett Survey, Abstract 217, the J. McCants Survey, Abstract 934, the McKinney & Williams Survey, Abstract 1056, and the William Sprowls Survey, Abstract 1369, Dallas County, Texas.

B. Maximum Combined Rate: 12.48 cfs (5600 gpm) from the aforesaid reservoir for irrigation and 7.13 cfs (3200 gpm) from Elm Fork Trinity River for reservoir maintenance.

4. PRIORITY

The time priority of owner's right is February 20, 1973.

5. SPECIAL CONDITIONS

A. All rights authorized under this Certificate of Adjudication to divert water from Elm Fork Trinity River shall be subordinate to the rights recognized for Aubrey Reservoir.

B. Diversion of water from Elm Fork Trinity River shall be made only when water is flowing over Frazier Dam above elevation 407 feet mean sea level.

C. Owner shall maintain a continuous measuring and recording device on the Elm Fork Trinity River pumping facility which will measure and record water diverted to within five percent of accuracy and which can be connected to the city of Dallas' telemetering system and shall allow the city of Dallas to connect its telemetering system to the measuring and recording device at the city of Dallas' expense.

The locations of pertinent features related to this certificate are shown on Page 15 of the Upper Trinity River Segment Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Department of Water Resources and the office of the County Clerk.

This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 160th Judicial District Court of Dallas County, Texas, in Cause No. 81-6589-H, In Re: The Adjudication of Water Rights in the Upper Trinity River Segment of the Trinity River Basin, dated October 29, 1981, and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to senior and superior water rights in the Trinity River Basin.

This certificate of adjudication is issued subject to the Rules of the Texas Department of Water Resources and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.

This water right is appurtenant to the above-described land within which irrigation is authorized unless and until severed from the land. A transfer of any portion of the above-described land includes, unless otherwise

specified, that portion of the water right which is appurtenant to the transferred land at the time of the transaction.

TEXAS WATER COMMISSION

/s/ Felix McDonald
Felix McDonald, Chairman

DATE ISSUED:

JUL 22 1983

ATTEST:

/s/ Mary Ann Hefner
Mary Ann Hefner, Chief Clerk

AMENDMENT TO
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 08-2370A

TYPE: AMENDMENT

Name: Dallas County Utility
& Reclamation District

Address: P.O. Box 160035
Irving, Texas 75016

Filed: August 11, 1987

Granted: August 11, 1987

Purpose: Irrigation

County: Dallas

Watercourse: Unnamed tributaries
of Elm Fork Trinity
River and Elm Fork
Trinity River, tributary
of the Trinity River

Watershed: Trinity River Basin

WHEREAS, Certificate of Adjudication No. 08-2370 was issued to Dallas County Utility & Reclamation District on July 22, 1983, and authorizes certificate owner to maintain Lake Carolyn on unnamed tributaries of Elm Fork Trinity River, approximately 10 miles due west from the Dallas County Courthouse. Certificate owner is authorized to divert and use water from the aforesaid reservoir for irrigation purposes and to use the reservoir for recreational purposes. Certificate owner is also authorized to divert water from the Elm Fork Trinity River for maintenance of the reservoir; and

WHEREAS, in 1983 the Dallas County Municipal Utility District No. 1 reorganized and became Dallas County Utility & Reclamation District No. 1; and

WHEREAS, Dallas County Utility & Reclamation District has requested an amendment to Certificate No. 08-2370 to authorize a change in the authorized area within which water may be used; and

WHEREAS, the Texas Water Commission finds that jurisdiction over the application is established; and

WHEREAS, no person protested the granting of this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Water Commission in issuing this amendment.

NOW, THEREFORE, this amendment to Certificate No. 08-2370 is issued to Dallas County Utility & Reclamation District as follows:

USE

In lieu of the area stated in Paragraph 2.A. of Certificate No. 08-2370, within which irrigation may be accomplished, certificate owner is authorized to irrigate a maximum of 460 acres of land in any area within the boundaries of the District and any areas outside the District which it owns or within which it otherwise has the right to use water as delineated on a district plat submitted with the application for this amendment.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 08-2370, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Trinity River Basin.

Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Water Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS WATER COMMISSION

DATE ISSUED:

August 31, 1987

ATTEST:

/s/ Mary Ann Hefner
Mary Ann Hefner, Chief Clerk

/s/ Paul Hopkins
Paul Hopkins, Chairman

/s/ Ralph Roming
Ralph Roming, Commissioner

/s/ John O. Houchins
John O. Houchins, Commissioner



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

P.O. Box 13088, MC-160
Austin, Texas 78711-3088
Telephone No.:(512) 239-4691 FAX (512) 239-4770

APPLICATION FOR AMENDMENT TO A WATER RIGHT

REQUIRING MAILED AND PUBLISHED NOTICE
NOT REQUIRING MAILED AND PUBLISHED NOTICE
Reference Texas Administrative Code § 295.158(b) or (c)

Notice: This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.

Customer Reference Number (if issued): CN 600687693

Note: If you do not have a Customer Reference Number, complete Section II of the Core Data Form (TCEQ-10400) and submit it with this application.

1. Name: Dallas County Utility and Reclamation District
Address: P.O. Box 140035
Irving, TX 75014
Email Address: jknox@dcurd.org Fax: (972) 869-4459

2. Applicant owes fees or penalties?
Yes No
If yes, provide the amount and the nature of the fee or penalty as well as any identifying number:

3. Permit No. Certificate of Adjudication No. 08-2370

Stream: Unnamed tributaries of Elm Fork Trinity River and Elm Fork Trinity River, tributary of Trinity River
Watershed: Trinity River Basin
Reservoir (present condition, if one exists): Lake Carolyn
County: Dallas

4. Proposed Changes To Water Right Authorizations:
See Attachment A

(ATTACH ADDITIONAL PAGE AS NECESSARY, ATTACH MAP/PLAT DEPICTING PROJECT LOCATION, DIVERSION POINT, PLACE OF USE AND OTHER PERTINENT DATA)

5. I understand the Agency may require additional information in regard to the requested amendment before considering this application.

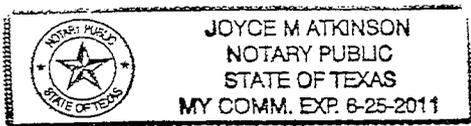
6. I have submitted the required fees herewith. (Sections 295.131-295.139)

Handwritten signature of Jacky Knox

Jacky Knox
Name (print)

Name (sign)
Name (print)

Subscribed and sworn to me as being true and correct before me this 7th day of August, 2008.



Handwritten signature of Joyce M. Atkinson
Notary Public, State of Texas

ATTACHMENT A

SUPPLEMENT TO DALLAS COUNTY UTILITY AND RECLAMATION DISTRICT'S APPLICATION TO AMEND CERTIFICATE OF ADJUDICATION NO. 08-2370

The Dallas County Utility and Reclamation District ("DCURD") provides this attachment to supplement its application to amend Certificate of Adjudication ("COA") No. 08-2370, as amended (the "Application"). This supplement describes DCURD's proposed changes to its water right, as requested by the Texas Commission on Environmental Quality (the "Commission") Application Form "TCEQ 10201." Additionally, this attachment contains additional information regarding DCURD's Texas Water Code ("TWC") § 11.122(b) application.

I. PROPOSED AMENDMENTS TO COA NO. 08-2370

DCURD's Application to amend COA 08-2370 includes two modifications related to its request to raise the operating level of Lake Carolyn (the "Lake") by one foot, from 418.0 to 419.0 feet above mean sea level ("msl"). However, these modifications do not contemplate an additional appropriation of state water or an increase in the rate of diversion authorized by COA 08-2370.

The Lake is an on-channel reservoir, located on unnamed tributaries of Elm Fork Trinity River in the corporate limits of the city of Irving, Dallas County, Texas.¹ While the Lake is authorized under COA 08-2370 to impound 2,527 acre-feet of water, the Lake has lost some of its storage capacity due to sedimentation accumulating over the past 35 years. By maintaining the Lake at an elevation of 419.0 feet above msl, DCURD could recover some of the lost storage capacity. To this end, the Application amends COA 08-2370 Use Section 2.C. so that DCURD can divert water from the Elm Fork Trinity River for maintenance of the Lake at an elevation of 419.0 feet above msl. Further, DCURD seeks to update Special Condition 5.B. so that it can divert water from the Elm Fork Trinity River when water is flowing over Frazier Dam, regardless of the actual elevation of Frazier Dam. This additional modification would make COA 08-2370 consistent with the current physical configuration of Frazier Dam.

A. Amendment to COA 08-2370 Section 2.C

DCURD's proposed amendment to COA 08-2370 Section 2.C would enable it to continue diverting state water already authorized under this water right so as to maintain the Lake at an elevation of 419.0 feet above msl. Specifically, DCURD proposes to modify Section 2.C. as follows:

¹ Attached to this Application as Attachment "B" is a copy of DCURD's COA 08-2370 and COA 08-2370A.

“C. Owner is authorized to divert water from Elm Fork Trinity River for maintenance of the aforesaid reservoir level at elevation 419.0 ~~418.0~~ feet above mean sea level.”

While this amendment increases the amount of water impounded in the Lake, it does not contemplate an additional appropriation of state water. Due to sedimentation occurring in the Lake over the past 35 years, DCURD has lost some of its storage capacity in the Lake, and the additional water impounded in the Lake with this amendment would not exceed the amount of water that could DCURD can impound under COA 08-2370.

COA 08-2370, as amended, currently authorizes DCURD to impound 2,527 acre-feet of water at the Lake. However, in November 2007, DCURD’s engineers performed a certain “Water and Sedimentation Survey of Lake Carolyn,” attached hereto as Attachment “C,” which determined that 343.9 acre-feet of sedimentation has accumulated in the Lake.² This survey further found that DCURD can only physically impound 2,134.7 acre-feet of water at the Lake when the operating level of the Lake is at 418.0 feet above msl.³

By operating the Lake at 419.0 feet above msl, DCURD would be recovering some of this lost storage capacity. Specifically, since the surface area of the Lake is 111.1 acres at either elevation of 418.0 or 419.0 feet above msl, DCURD can recover 111.1 acre-feet of storage capacity in the Lake by raising the operating level of the Lake by one foot to 419.0 ft above msl.⁴ Impounding this additional water only accounts for nearly 1/3 of the total storage capacity lost (111.1 acre-feet / 343.9 acre-feet). Consequently, with this amendment to Section 2.C, DCURD would be capable of storing 2,245.8 acre-feet of water, which is still below the 2,527 acre-feet of storage capacity for the Lake as authorized in COA 08-2370 Section 2.A.

B. Amendment to COA 08-2370 Section 5.B

To better clarify DCURD’s ability to divert water from the Elm Fork Trinity River for maintenance of the Lake, DCURD also seeks to amend Special Condition 5.B. to reflect the current physical configuration and operating conditions at the impoundment formed by Frazier Dam and to be more flexible to future changes at that lake. DCURD’s proposed amendment to COA 08-2370 Special Condition 5.B, is as follows:

“Diversion of water from Elm Fork Trinity River shall be made only when water is flowing over Frazier Dam ~~above elevation 407 feet above mean sea level.~~”

As currently authorized, Special Condition 5.B only allows DCURD to divert water from the Elm Fork Trinity River when water is flowing over Frazier Dam above an elevation

² Attachment C, p. 7.

³ *Id.*

⁴ *Id.* Increasing the operating level of a 111 acre tract by one foot would result in the impoundment of an additional 111 acre-feet of water. (111 acres x 1 foot=111 acre-feet).

of 407 feet msl. However, this Special Condition is an outdated term because the City of Dallas raised the operating level of the lake formed by Frazier Dam by raising the height of Frazier Dam to 409.0 feet above msl. This change was completed after COA 08-2370 was issued.

Specifically, in the fall of 2000, the City of Dallas (the "City") and the Texas Natural Resources Conservation Commission ("TNRCC") addressed whether the City would need to amend COA 08-2457,⁵ the Frazier Dam water right,⁶ to raise the operating level of that lake by two feet to offset loss of storage due to sedimentation. In that matter, the TNRCC correctly determined that the City did not need to amend COA 08-2457 to raise the operating level of the lake formed by Frazier Dam, and consequently the City raised the level of Frazier Dam by two feet, to 409.0 ft. above msl. Thus, DCURD proposes to delete the phrase "above elevation 407 feet above mean sea level," from COA 08-2370 Special Condition 5.B so that its ability to divert state water from the Elm Fork Trinity River for maintenance of the Lake is based upon whether water is flowing over Frazier Dam, regardless of the elevation of that dam.

II. ADDITIONAL INFORMATION

A. The Full-Use Assumption

Pursuant to the "full use assumption" of TWC § 11.122(b), raising the operating level of the Lake by one foot to 419.0 feet above mean sea level and deleting a portion of an outdated special condition will not cause an adverse impact on other water rights holders or the on-stream environment of greater magnitude than if the DCURD fully exercised its rights as currently authorized in COA 08-2370.

As discussed in Section I.A., above, COA 08-2370 currently authorizes DCURD to impound 2,527 acre-feet of water at the Lake. By operating the Lake at 419.0 feet above mean sea level, DCURD would be impounding 2,245.8 acre-feet of water, which is still more than 250 acre-feet below the currently authorized storage capacity of the Lake. Clearly, DCURD's proposed amendments to COA 08-2370 do not seek to impound more water in the Lake than is already authorized under this water right, and since the surface area of the Lake at elevations 418.0 and 419.0 feet above mean sea level is the same, DCURD will not need to divert more water from the Elm Fork Trinity River than it is currently authorized to divert in order to maintain the Lake at the higher elevation. As such, DCURD's Application would not cause an adverse impact on other water rights holders or the on-stream environment in any manner different than it would if DCURD fully exercised its rights as currently authorized in COA 08-2370.

Modifying Special Condition 5.B. to remove the "above elevation 407 feet mean sea level." phrase (the "Phrase") would not adversely impact other water rights holders or

⁵ This is the City of Dallas' water right for Lake Frazier. See Attachment "D."

⁶ For a copy of this correspondence, see Attachment "E." In this correspondence, the TNRCC stated that no water right amendment was necessary to raise the operating level of Lake Frazier by two feet due to the effects of sedimentation in the lake.

the on-stream environment in a manner greater than if DCURD exercised its rights under 08-2370 as authorized today. Due to the City's decision to raise the height of Frazier Dam and to impound water up to an elevation of 409 feet above msl, water now only flows over Frazier Dam at an elevation of 409.0 feet above msl. Regardless of maintaining or removing the Phrase, DCURD would still be limited to diverting water from the Elm Fork Trinity River when Lake Frazier is spilling water, which is now at a higher elevation than currently contemplated by COA 08-2370 Section 5.B. Further, DCURD is still restricted in the amount, location, and rate that it diverts water from Elm Fork Trinity River by other limitations in COA 08-2370. The proposed amendment to delete the Phrase merely brings COA 08-2370 up to date with the current physical configuration and conditions of the lake formed by Frazier Dam, and by employing the TWC's "full use assumption," in the event that this proposed amendment is granted, there is no circumstance by deleting the Phrase which could harm downstream water rights or the environment to a greater magnitude than if DCURD fully exercises its water right as currently authorized.

B. Impacts "Beyond or Irrespective" of the Full-Use Assumption

In *City of Marshall v. City of Uncertain*, 206 S.W.3d 97, 105 (Tex. 2006), the Texas Supreme Court suggested that the agency may evaluate whether a proposed water right amendment application will affect other water-rights holders or the on-stream environment "beyond or irrespective" of the full-use assumption. The Court provided that such an affect may occur with applications seeking to move the point of diversion "upstream above a senior right holder," or seeking to change the purpose of use from a "nonconsumptive use to a consumptive one." Here, DCURD's Application does not request either of these types of amendments nor any other amendment that would harm other water right holders or the environment beyond or irrespective of the legislatively-mandated full-use assumption.

C. Supplemental Information Related to the Limited Public Interest Criteria

This supplement to the Application includes additional information, explanation, and data regarding certain "limited public interest criteria" contemplated by the Texas Supreme Court pursuant to the *City of Marshall* decision. Specifically, this Section provides additional information relating to the following:

- 1) whether the application conforms with the agency's administrative requirements;
- 2) whether the amendment is intended for a beneficial use;
- 3) whether the amendment is not detrimental to the public welfare;
- 4) the effects, if any, of the application on groundwater or groundwater recharge;
- 5) whether the amendment is consistent with the state water plan and regional water plan; and

- 6) whether the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation.

1. The Application Meets the Commission's Administrative Requirements

The Application provides the relevant information to meet the Commission's administrative requirements for an application to amend a water right, including, but not limited to, 30 Texas Administrative Code ("TAC"), Chapters 281, 295, and 297 and the requirements of TWC, Chapter 11. The Application provides the Commission with DCURD's general contact information, identifies the water right to be modified, and describes the nature of the amendment requested. Additionally, DCURD has provided the Commission with payment of \$100.00 as set forth in 30 TAC § 295.132(a)(1)(C). With the submission of this Application, DCURD requests a determination from the Commission of any additional information or fees that may be required. Upon receipt of such determination, DCURD will forward such additional information and fees to the Commission, as may be requested.

2. The Application Seeks a Beneficial Use of Surface Water

TWC § 11.134(b)(3)(A) requires that proposed appropriations of water be intended for a beneficial use. The "beneficial use" of water is defined in TWC § 11.002(4) and Title 30 TAC § 297.1(8) as the use of water "which is economically necessary for a purpose authorized by [Chapter 11 of the TWC]." The Application does not contemplate a change of use or an increase in the amount of water currently authorized for impoundment or diversion. The Application seeks to continue to beneficially use the water already authorized for impoundment in COA 08-2370, as amended, for recreational purposes.

3. The Application Is Not Detrimental to the Public Welfare

DCURD's proposed amendments to COA 08-2370 are not detrimental to the public welfare, as contemplated by TWC § 11.134(b)(3)(C). Rather, DCURD's application would benefit the public welfare because raising the operating level of the Lake by one foot would accomplish the following:

- 1) improve the aesthetic quality of the Lake; by adjusting the water surface to closer proximity to the top of the vertical wall that circumvents the lake;
- 2) facilitate the use of the Lake for recreational purposes, making it a more appealing and accessible community attraction;
- 3) increase business development surrounding the Lake;
- 4) improve the safety for the public at the Lake, in the event people and or pets fall into the Lake, and
- 5) improve the structural integrity of the vertical walls that surround the Lake.

(4) Applications to amend existing water rights. An application to amend an existing water right for any of the following reasons must be accompanied by water conservation and drought contingency plans in accordance with the applicable provisions of this section:

(A) to increase the amount of the appropriation;

(B) to extend the term of the appropriation;

(C) to change the place of use, unless the request is to expand the amount of acreage to be irrigated adjacent to the existing, authorized irrigated tract without an increase in the appropriation; or

(D) to change the purpose or use of the appropriation (a conservation plan to change the purpose or use of an appropriation need only address the proposed change in purpose or use; however, the executive director may require an applicant to submit a water conservation plan which addresses the applicant's entire water uses and/or appropriations).⁹

Here, DCURD's request to raise the operating level of the Lake by one foot and to modify Special Condition 5.B does not qualify under any of the four classes of amendment applications that require the submission of water conservation and drought contingency plans. Further, COA 08-2370 does not grant DCURD with surface water diversion rights that meet the Commission's requirements for filing a water conservation plan pursuant to Title 30 Texas Administrative Code § 288.30.

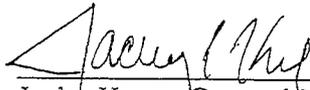
Regardless, DCURD intends to continue to exercise reasonable diligence to avoid waste and achieve water conservation. As defined in both 30 TAC § 295.9 and Texas Water Code § 11.002(8), "conservation" means those practices that will "reduce the consumption of water, reduce the loss or waste of water, *improve the efficiency in the use of water*, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses." [Emphasis added]. DCURD has an acute awareness of the need to conserve its water supplies. With these modifications to COA 08-2370 raising the operating level of the Lake by one foot without additional appropriation of state water, DCURD will continue to operate the Lake in an efficient manner, and such efficiency will allow DCURD to continue to avoid waste and achieve water conservation. DCURD also has employed since the early 1980's a major water conservation endeavor in that it has annually purchased up to 8,000 acre feet of reclaimed water from the Trinity River Authority of Texas Central Regional Wastewater System to be used for irrigation and maintenance of lake levels in the DCURD system. This conservation measure has obviated the need to purchase raw or treated water from municipal water supplies.

III. ADDITIONAL INFORMATION

To the extent additional information regarding DCURD's proposed amendment to COA 08-2370 is required, please contact DCURD's water rights attorneys, Martin Rochelle (512-322-5810) or David Klein (512-322-5818). Also, attached hereto as Attachment "F" is a copy of the resolution from the DCURD Board of Directors authorizing the filing of this Application.

⁹ 30 Tex. Admin. Code § 295.9.

Witness my hand in Irving, Texas, this the 7TH day of August, 2008.



Jacky Knox, General Manager
Dallas County Utility and Reclamation District

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



91 7108 2133 3934 5804 5222

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 14, 2008

Mr. Martin Rochelle
Lloyd, Gosselink, Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, TX 78701

CERTIFIED MAIL

RE: Dallas County Utility and Reclamation District
ADJ 2370
CN600687693, RN105626733, RN105626758, RN105626766, RN105626782, RN105626808
Application No. 08-2370B to Amend Certificate of Adjudication No. 08-2370
TWC§11.122
Lake Carolyn and Elm Fork Trinity River, Trinity River Basin
Dallas County

Dear Mr. Rochelle:

This acknowledges receipt, on August 18, 2008, of the referenced application and fees in the amount of \$100.00 (Receipt No. R849384, enclosed).

The Commission is reviewing notice requirements for water right amendment applications pursuant to Texas Water Code (TWC) §11.122(b). On Friday, January 18, 2008, the Commission decided that in order to determine if an amendment application requires notice, staff must consider how an application addresses the relevant public interest criteria described in TWC §11.134 and outlined by the Texas Supreme Court in the case of *Marshall v. Uncertain* as well as how the proposed amendment will impact water right holders or the environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

Staff acknowledges that the applicant has addressed or partially addressed Items 1-7 below in the August 18, 2008, submittal. Please confirm whether the applicant chooses to supplement its previous response.

1. Confirm whether this application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) §§ 281, 295, and 297. An amendment application should include, but is not limited to, a sworn application, maps, completed conservation plan, fees, etc.
2. Discuss how the proposed amendment is a beneficial use of the water right as defined in TWC §11.002 and listed in TWC §11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.

3. Explain how the proposed amendment is not detrimental to the public welfare. Consider any public welfare matters you think might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.
4. Discuss the effects, if any, of the proposed amendment on groundwater or groundwater recharge.
5. Describe how the proposed amendment addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement. The state and regional water plans are available for download at this website: http://www.twdb.state.tx.us/RWPG/planning_page.asp.
6. Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC §11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC §288.
7. Explain how the proposed amendment will or will not impact water right holders or the environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

The responses will be reviewed by staff to make a determination of the application's notice requirement. The staff-recommended notice determination will then be set on Commissioner's Agenda for consideration.

In lieu of supplementing the previous responses to Items 1-7 above, the applicant may agree to published notice and mailed notice to the water rights holders in the Trinity River Basin.

If the applicant elects to proceed with published and mailed notice, please remit fees in the amount of \$476.89, described below.

| | |
|----------------------------|--------------------|
| Filing Fee | \$ 100.00 |
| Application Fee | \$ 1.25 |
| Trinity River Basin Notice | \$ 475.64 |
| TOTAL FEES DUE | \$ 576.89 |
| FEES PAID | - \$ 100.00 |
| BALANCE DUE | \$ 476.89 |

*If the applicant elects to provide responses to items 1-7 above instead of agreeing to published and mailed notice, any additional fees, or refunds will be determined at a later date.

In addition to the information and fees requested above, the following information is required before the application can be declared administratively complete.

1. Provide a *System Inventory and Water Conservation Plan for Individually-Operated Irrigation Systems* (enclosed).
2. Explain the impact of raising the water level on the dam/levee for this project.

Mr. Martin Rochelle
November 14, 2008
Page 3 of 3

3. Describe how the water level will be raised and the modifications to the dam that will be required.
4. Indicate when the work on modifications to the dam will begin.
5. Indicate when the water level will be raised.

Please submit the requested information and fees by December 18, 2008, or the application may be returned pursuant to 30 TAC §281.18.

If you have any questions concerning this matter, please contact me at (512) 239-0083 or by e-mail at tdonnell@tceq.state.tx.us.

Sincerely,



Tracie Donnelly, Project Manager
Mail Code 160
Water Rights Permitting Team
Water Rights Permitting & Availability Section

Enclosures

Mr. Rochelle's Direct Line: (512) 322-5810
mrochelle@iglawfirm.com

December 17, 2008

Ms. Tracie Donnelly (MC 160)
Water Rights Permitting & Availability Section
Texas Commission on Environmental Quality
Bldg. F, Room 3101
Austin, Texas 78711-3087

VIA HAND DELIVERY

Re: Dallas County Utility and Reclamation District
ADJ 2370
CN 600687693, RN105626733, RN105626758, RN105626766, RN105626782,
RN105626808
Application No. 08-2370B to Amend Certificate of Adjudication No. 08-2370
TWC§11.122
Lake Carolyn and Elm Fork Trinity River, Trinity River Basin
Dallas County (419-13)

RECEIVED
TCEQ
WATER RIGHTS DIV.
2008 DEC 17 PM 4

Dear Ms. Donnelly:

This letter is submitted on behalf of my client, the Dallas County Utility and Reclamation District (the "District"), in response to your Request for Information ("RFI") dated November 14, 2008 and in connection with the above-referenced amendment application (the "Application"). The following responses are numbered in accordance with the RFI inquiries included in your November 14, 2008 letter.

REQUEST FOR CONFIRMATION NO. 1:

Confirm whether the applicant chooses to supplement its application filed on August 18, 2008 to address the relevant public interest criteria described in TWC § 11.134 and outlined by the Texas Supreme Court in the case of Marshall v. Uncertain.

RESPONSE:

The District has reviewed its Application, TWC §§ 11.122 and 11.134, and the Texas Supreme Court's Opinion in the *City of Marshall v. City of Uncertain* case, and it has determined that it does not need to supplement its Application at this time. It is the District's expectation that the Application, as supplemented, and attachments thereto, adequately address these statutory requirements, as interpreted by the Texas Supreme Court. In preparing its Application to amend Certificate of Adjudication ("COA") No. 08-2370, the District provided information to address the "public interest criteria" that are listed as Items 1-7 of your RFI. For your convenience, this additional information was provided in Attachment A, Section II.C. (page 4) of the Application.

REQUEST FOR INFORMATION NO. 1:

Provide a "System Inventory and Water Conservation Plan for Individually-Operated Irrigation Systems.

RESPONSE:

The District is not required to provide a water conservation plan with its Application. As discussed in Section II.C.6 of Attachment "A" to the Application, a water conservation plan is not required for this type of amendment application. Commission Rule § 295.9(4) provides when a water conservation plan is required for a water right amendment application:

(4) Applications to amend existing water rights. An application to amend an existing water right for any of the following reasons must be accompanied by water conservation and drought contingency plans in accordance with the applicable provisions of this section:

(A) to increase the amount of the appropriation;

(B) to extend the term of the appropriation;

(C) to change the place of use, unless the request is to expand the amount of acreage to be irrigated adjacent to the existing, authorized irrigated tract without an increase in the appropriation; or

(D) to change the purpose or use of the appropriation (a conservation plan to change the purpose or use of an appropriation need only address the proposed change in purpose or use; however, the executive director may require an applicant to submit a water conservation plan which addresses the applicant's entire water uses and/or appropriations).does not believe that does not wish to supplement its previous response submitted on August 18, 2008.¹

Here, the District's Application seeks to raise the operating level of Lake Carolyn (the "Lake") by one foot, thereby recovering lost storage capacity in the Lake, and to update a special condition. None of these changes constitute the "reasons" listed in subsections (4) (A) through (D), above.

Nevertheless, in the spirit of cooperation with the Commission, the District has prepared a water conservation plan, attached hereto as Attachment "1."

REQUEST FOR INFORMATION NO. 2:

Explain the impact of raising the water level on the dam/levee for this project.

¹ 30 Tex. Admin. Code § 295.9(4) (2008).

RESPONSE:

Aside from the physical aspect of raising the operating level of the Lake by one foot, there are additional beneficial impacts to the District and the general public by this proposed amendment to the District's water right. As also discussed in Attachment "A" to the Application, the amendment authorizing the District to divert water from the Elm Fork Trinity River for maintenance of the Lake at an elevation of 419.0 feet above mean sea level ("msl") will enhance the use of the Lake for recreational purposes. In short, raising the operating level of the Lake by one foot will make the Lake a more appealing and accessible community attraction, improve the safety for the public that visit and use the Lake, especially in the event people or pets fall into the Lake, and improve the aesthetic quality of the Lake. Making the Lake safer and more accessible to the public should also increase business development in and around the area surrounding the Lake. Additionally, the amendment will make an already secure reservoir even safer because raising the surface level of the Lake by one foot will improve the structural integrity of the vertical walls that surround the Lake. The vertical walls that circumvent the lake are short vertical walls resting on a continuous spread footing. Raising the water level one foot will increase the hydrostatic resistance to overturning of the wall.

From a water rights perspective, there are no negative impacts resulting from this proposed amendment. This Application does not contemplate an increased diversion amount or an increased diversion rate. Also, pursuant to the "full use assumption" of TWC § 11.122(b), raising the operating level of the Lake to 419.0 feet above msl will not cause an adverse impact on other water rights holders or the on-stream environment of greater magnitude than if DCURD fully exercised its rights as currently authorized in COA 08-2370. As reported by the District's engineers in the "Water and Sedimentation Survey of Lake Carolyn," attached to the Application as Attachment "C," approximately 343.9 acre-feet of sedimentation has accumulated in the Lake over the past 35 years.² Thus, the District can only impound 2,134.7 acre-feet of water at the Lake when the operating level of the Lake is at 418.0 feet above msl.³ By operating the Lake at 419.0 feet above msl, the District will be capable of storing 2,245.8 acre-feet of water, which is still within the 2,527 acre-feet of storage capacity currently authorized in COA 08-2370 Section 2.A.

REQUEST FOR INFORMATION NO. 3:

Describe how the water level will be raised and the modifications to the dam that will be required.

² Application Attachment C. p. 7.

³ *Id.*

RESPONSE:

The District will initially raise the surface level of the Lake from 418.0 to 419.0 feet above msl with stormwater runoff within the watershed surrounding the Lake and/or surplus water released from Lake Remle, a nearby lake whereby the District is authorized to impound water under Permit No. 4051. The only modification to the dam needed to raise the operating level by one foot is to raise the height of the spillway gate by one foot. Lake Carolyn is different than the typical lake in Texas. Its main body was formed by excavating the soil from below the invert of the stream section; therefore, no dam was necessary to form an impoundment. A concrete channel connects the upper few feet of the lake to the Elm Fork. A gated spillway structure in that concrete channel controls the elevation in Lake Carolyn.

REQUEST FOR INFORMATION NO. 4:

Indicate when the work on modifications to the dam will begin.

RESPONSE:

The District intends to wait until its Application is approved by the Commission before it makes this modification.

REQUEST FOR INFORMATION NO. 5:

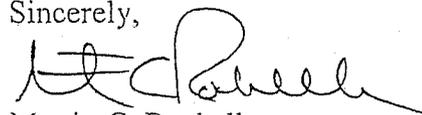
Indicate when the water level will be raised.

RESPONSE:

The District intends to wait until its Application is approved by the Commission before it raises the surface level of the Lake to the 419.0 feet above msl.

Following your review of the Application as submitted, and this supplemental information, please feel free to call me or David Klein (512.322.5818) if you have further questions or need additional information concerning this matter.

Sincerely,



Martin C. Rochelle

MCR/ldp
419\13\tr081217mcr
ENCLOSURE

cc: Mr. Jacky Knox
Mr. Chuck Tracy
Mr. Tim Noack
Mr. David Klein