

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. 2009-0886-WR, Application No. 14-1325A to Amend COA No. 14-1325;** In the matter of an amendment to a water right by the **City of San Angelo.**

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 black ink that reads "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/mc

**MAILING LIST
CITY OF SAN ANGELO
TCEQ DOCKET NO. 2009-0886-WR**

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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: The City of San Angelo
Docket No. 2009-0886-WR
Application No. 14-1325A to Amend Certificate of Adjudication No. 14-1325
South Concho River, Colorado River Basin
Tom Green 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 include changes in use, changes in place of use, or non-substantive changes 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 the City of San Angelo in light of agency rules and the *Marshall* decision.

Current Permit and Application for Amendment

Certificate of Adjudication No. 14-1325 authorizes the City of San Angelo (City) to maintain an existing dam and reservoir (Lone Wolf Reservoir) on the South Concho River, Colorado River Basin, and impound therein not to exceed 300 acre-feet of water. The City is authorized to divert and use not to exceed 1,534 acre-feet of water from two diversion points within the reservoir for municipal and industrial purposes with a time priority of May 16, 1914. The maximum combined diversion rate is 6.22 cfs (2,800 gpm).

The City seeks to amend Certificate of Adjudication No. 14-1325 to add agricultural purposes of use and to add the City's Service Area as an additional place of use for the agricultural water. The City also seeks authorization to use the bed and banks of the South Concho River to convey water from Lone Wolf Reservoir to a proposed diversion point on Bell Street Reservoir. The City of San Angelo maintains an accounting plan for their water rights, including water authorized by this certificate. This accounting plan will be modified to reflect the bed and banks authorization.

Rules Related to Notice

Addition of a Bed and Banks Authorization

The Commission has rules concerning what notice is required for applications to convey stored water in 30 Texas Administrative Code (TAC) §295.160. Requests to use the bed and banks of a watercourse to convey stored water are governed by a specific rule that requires mailed notice to each diverter of record on the watercourse between the origin and terminus of the transit. This rule will be applied to the request for a bed and banks authorization, therefore mailed notice will be provided to the interjacent water right holders of record between the origin located at Lone Wolf Dam and the terminus, located at Bell Street Dam. Because there is a specific rule that addresses a request to use the bed and banks of a watercourse to convey stored water, the request to convey stored water in the bed and banks of a watercourse is not governed by the *City of Marshall* case. Therefore, if there are no interjacent water rights or the interjacent water rights consent to the application, no notice is required for that portion of the amendment. In this application there were no interjacent water rights between the origin and terminus of the transit.

Addition of a Purpose of Use

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

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provide notice for changes in use. 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 addition of a purpose of use for the reasons set out below.

Addition of the Place of Use

Changes in place of use are not covered by a rule requiring specific notice. Under subsection (c), no notice is required to change a place of use 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. Also, §295.158(c)(2)(C) provides that no notice will be required to change the place of use when there will be no increased use of state water and the change will not operate to the injury of any other lawful user of state water. If a water right is owned by more than one party, all other parties will be notified of the proposed changes by certified mail and given two weeks to protest. If no protest is received, further notice will not be required. Since the City is the sole owner of Certificate of Adjudication No. 14-1325, this notice requirement does not apply. The notice recommendation for the City's request to add a new place of use for the authorized water will be discussed 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 their application, the City is not asking for either an increase in the amount of water authorized for diversion, or an increase in the rate of diversion. 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 must meet, "*all other applicable requirements,*" of Chapter 11 of the Water Code. 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 or 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, the addition of agricultural (irrigation) use and a new place of use can have no greater impact on other water right holders or the environment than the impacts to those interests under the existing certificate because the amount of water to be diverted is the same. Both before and after the amendment, the City will only be able to take 1,534 acre-feet of water per year from the Concho River. The City, under the existing permit and the proposed amended permit, could take all of that water in the first part of the year, or take all of that water in later parts of the year, subject to a combined maximum diversion rate of 6.22 cfs (2,800 gpm). In other words, there are no special conditions in the permit that restrict the water right holder to a particular pattern of use, or that spreads out the diversion of 1,534 acre-feet to specific amounts over the course of the year. Because there is no specific pattern of use in the permit, the full use assumption requires the Commission to consider the existing permit and the proposed amended permit as potentially exercised under all lawful patterns of use.

It makes no difference to other water right holders or the environment, whether the water right holder is using their 1,534 acre-feet for municipal and industrial purposes, or for agricultural purposes at the proposed place of use. The effect on streamflow, and therefore water available for downstream water right holders or the downstream aquatic environment will be the same: there will be 1,534 acre-feet per year less after the diversion. Therefore with the full use assumption, the proposed amendment will not cause adverse impact to other water right holders or the environment.

Concerning whether there are impacts to water rights or the environment beyond the full use assumption, the Executive Director believes that there are none for the change in purpose of use and place of use. This amendment is to add agricultural (irrigation) use to the existing municipal and industrial use and to add a new place of use. This application does not change a non-consumptive use to a consumptive use. Also, there is no specific pattern of use required in the existing certificate that will be changed. Unless the existing permit requires a specific pattern of use, the Executive Director does not believe that this is a proper factor because patterns of use change due to weather, time of use, and needs of the City. A specific pattern of use cannot be specifically determined ahead of time.

Another issue is whether the Executive Director should consider is the City is using all of the authorized water authorized in the existing water right. The Executive Director does not believe that this is a proper factor to consider because it would discourage conservation and future water planning, especially for municipalities.

Other Applicable Requirements

Under §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.

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Administrative Requirements

Staff has reviewed the application and has found that it meets all administrative requirements of the TWC Chapter 11. Because the Executive Director recommends that no notice be required, notice fees have not been requested or paid. Staff declared the application administratively complete and accepted it for filing with the Chief Clerk on July 13, 2007. In the event the Commission recommends that notice is required, notice fees will be requested at that time.

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 City has asked that agricultural use be added to their authorized use in the certificate and indicates it will continue to use a portion of the water for municipal and industrial purposes as currently authorized and, upon authorization of the amendment, a portion of the water will be conveyed to Bell Street Reservoir on the South Concho and Concho Rivers, then diverted and used for watering of public parks adjacent to the Concho River during times of inadequate rainfall. Agricultural use is recognized as a beneficial use by TWC §11.023(a)(2).

One question to consider is whether an applicant should only be allowed to add the purpose of use and change a place of use for water that is being used. The Executive Director believes that limiting the change or additional use or place of use to the amount of water currently being used is inappropriate. The fact that the City may not be using all of their appropriated water does not mean that there has not been or will not be a beneficial use for the water. In addition, this factor would discourage conservation and future water planning. The Executive Director is aware of no other facts that would make these additional uses non-beneficial.

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. The application seeks to add a new purpose of use, place of use, and a bed and banks authorization for the authorized water. This type of multi-use certificate is authorized by TWC § 11.023(e). A multi-

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use certificate in this situation would allow the City to continue to provide municipal and industrial water. At the same time, that water will be available for agricultural use.

The purpose of the proposed amendment is to use untreated water rather than treated potable water for the irrigation of the City's public parks. The City indicates that use of raw water will decrease the cost for maintenance of the parks, reduce water demands on the City's potable water system and not result in any additional use of water from the Concho River system. There are no specific facts known to the Executive Director that would indicate that this use is not in the public welfare.

The Executive Director believes that limiting the change or additional use or place of use to the amount of water currently being used is inappropriate and not detrimental to the public welfare for the reasons stated above.

Another issue is whether the City should show that the additional use is as beneficial as some other use of the water. The Executive Director believes that this is inappropriate because TWC §11.024, which provides for a preference of use, only applies when there are two pending applications for the same water.² If the TCEQ is to weigh uses in granting permits and deny permits that it does not think are the best use of the water, this would be a major change in TCEQ policy.

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

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 the expert engineering contractors hired by the Commission to develop the WAMs.

² Although there are no cases directly in point on this issue, *see*, City of San Antonio v. Texas Water Commission, 407 S.W.2d 752, 764 (Tex. 1966) (discussing preferences of use in the context of competing water rights). *See also*, Tex. Water Code Section 11.147(c)(6), which provides that a factor for determining beneficial inflow requirements in an application is "the declarations as to preferences for competing uses of water as found in Sections 11.024 (<http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW8.11&ifm=NotSet&fn=top&sv=Split&tc=-1&docname=TXWAS11.024&ordoc=1034726&findtype=L&db=1000186&vr=2.0&r p=%2ffind%2fdefault.wl&mt=Texas>).

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The Colorado/Brazos-Colorado WAM includes the segment of the Concho River where the diversions under this permit occur. The Colorado/Brazos-Colorado WAM includes channel loss factors associated with the Concho River at the requested diversion point. The Water Availability Report for the Colorado/Brazos-Colorado River Basin indicates that losses in the segment of the Concho River where the diversion point is located are approximately 0.16% per river mile.³ These losses are attributable to evapotranspiration by salt cedars.

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.⁴ The GAMs are regional in nature and are not able to simulate groundwater-surface water interaction in detail.⁵ 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.⁶ 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 and groundwater at discrete points. The area of Tom Green County where the diversion point is located is in the Lipan-Kickapoo Water Conservation District.⁷ The District indicates no issues with groundwater or groundwater recharge in the area of the application.⁸ The Region F Regional Water Plan does not indicate issues with groundwater in the area of the application.⁹

The amount of water diverted by the owner will be the same (1,534 acre-feet per year) whether that water is drawn from the Concho River at the existing location and used there or conveyed to the new location. Thus, the diversion of this volume of water for agricultural (irrigation) use will have no greater effect on groundwater resources or groundwater recharge if the water is

³ Water Availability Modeling for the Colorado/Brazos-Colorado River Basin. Chapter 3, Table 3.2 Determination of Salt Cedar Streamflow Loss Factors. Prepared by R. J. Brandes Company and others for the Texas Natural Resource Conservation Commission. December 2001.

⁴ Bureau of Economic Geology. 2005. Groundwater-Surface Water Interactions in Texas. August 2005.

⁵ 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.

⁶ Scanlon, B., Dutton, A. and M. Sophocleous. 2002. Groundwater Recharge in Texas. Water Research Fund Grant Contract No. 2000-483-340

⁷ http://www.twdb.state.tx.us/mapping/maps/pdf/gcd_only_8x11.pdf

⁸ The Management Plan for the District is available at <http://www.lipan-kickapoo.org/mgmtplan.html>

⁹ Region F Regional Water Plan. Volume 1. Prepared by Freese and Nichols, Inc. and others for the Region F Water Planning Group. January 2006.

diverted and used at the existing place of use or conveyed to the new diversion point for use at the proposed place of use. 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. However, the approved Region F plan specifically considers this certificate in meeting the water needs of the region. Therefore, the Executive Director concludes that the requested amendment is consistent with the relevant regional water plan and the state water plan. 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). The City is not increasing the amount of the appropriation. The City is adding a new purpose of use and place of use for the authorized water. The City has submitted a water conservation plan, which has been reviewed for administrative sufficiency for agricultural (irrigation) use. The City indicates the proposed amendment will provide for increased efficiency in delivery of the water to the point of use on the park lands. Staff finds that the City can achieve water conservation and avoid waste.

Conclusion

The request in this application to add authorization to use the bed and banks of the South Concho and the Concho Rivers to convey stored water requires mailed notice to interjacent water right holders of record pursuant to Commission rules. No water right holders of record were found between the origin and the terminus of the conveyance, therefore notice will not be issued.

The request in this application to add agricultural use does not seek an increase in either the amount of water diverted or the rate of diversion. 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,

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groundwater effects, consistency with the state and regional water plans, compliance with administrative requirements, or avoidance of waste and achievement of water conservation. Commission rules, statutes, and case law allow this request to be processed without notice.

The request in this application to add a new place of use requires mailed notice to the Certificate co-owners pursuant to Commission rules. The request does not seek to increase either the amount of water diverted or the rate of diversion. Under the full use assumption, this request 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. Adding a new place of use 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, or avoidance of waste and achievement of water conservation. As such, Commission rules, statutes, and case law allow the request for a new place of use to be processed with notice given only to the co-owner of the certificate and in this case there is none.

Therefore, the Executive Director recommends that no notice be issued for this application.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Office of the Chief Clerk
Texas Commission on Environmental Quality

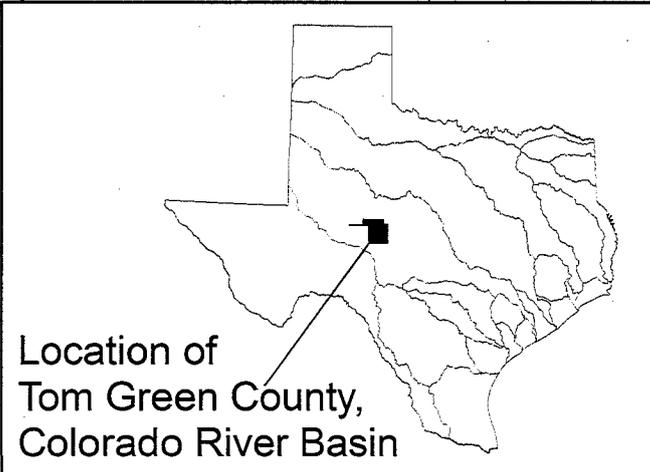
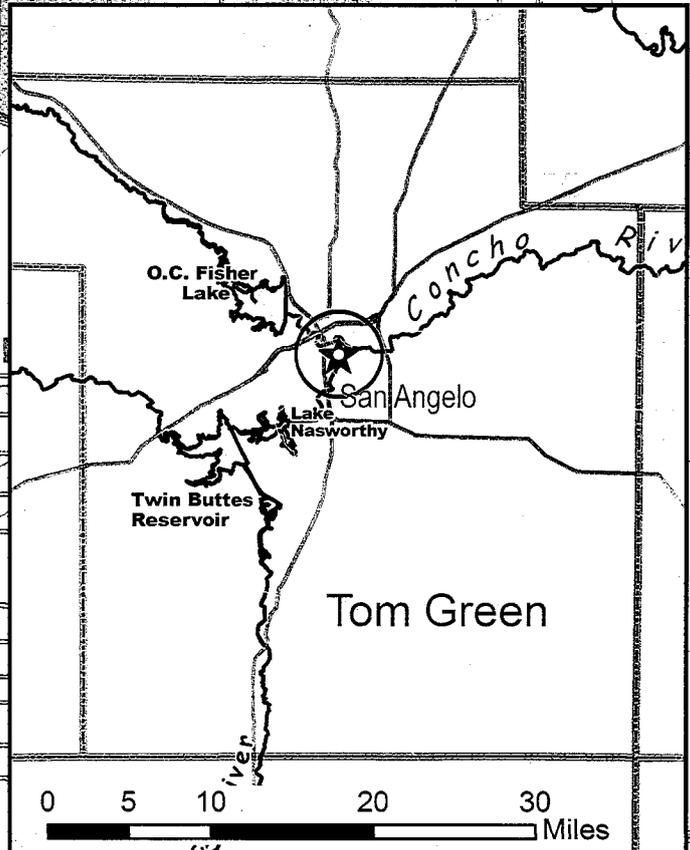
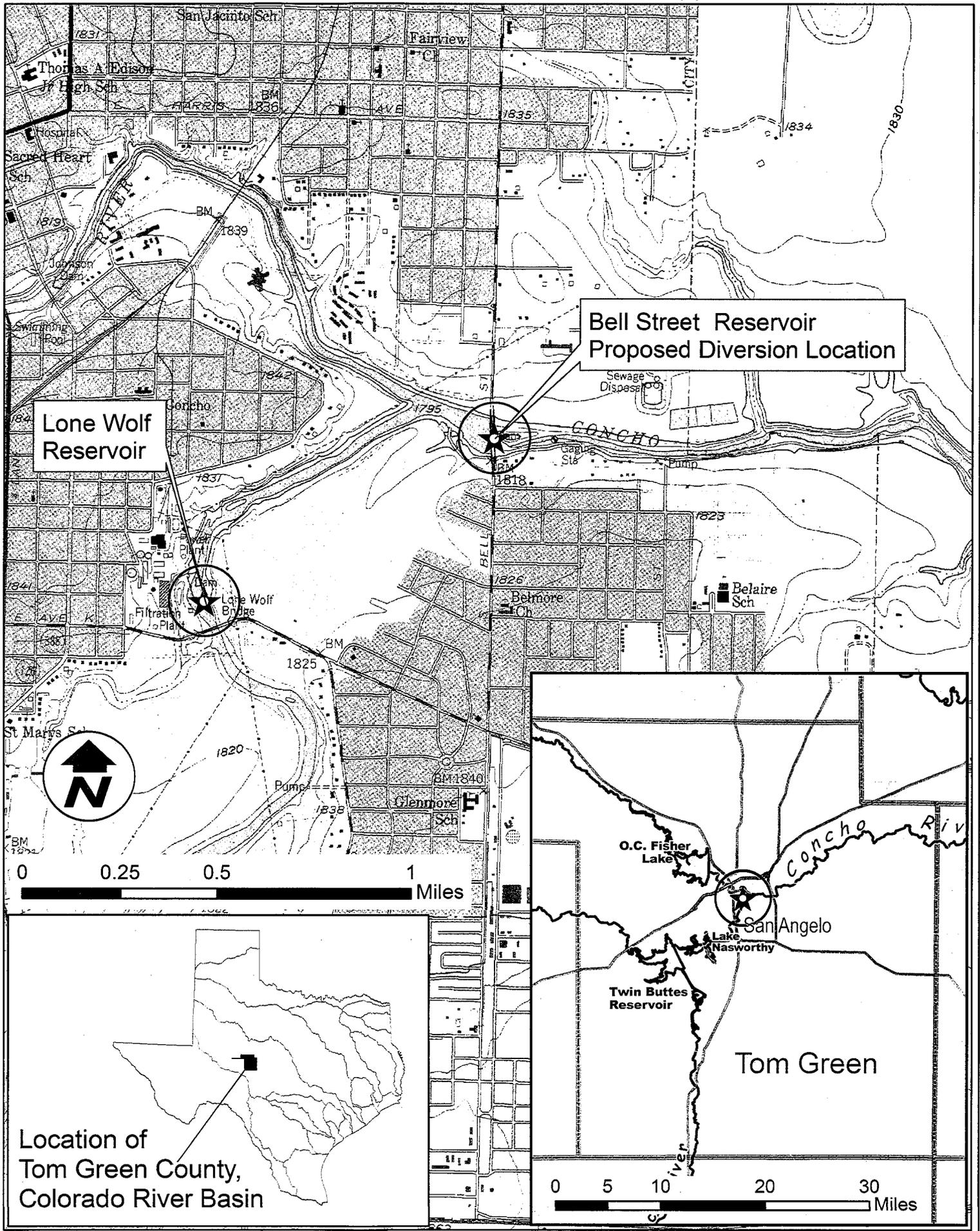
DATE: June 24, 2009

FROM: Craig Mikes, Project Manager
Water Rights Permitting Team

SUBJECT: City of San Angelo
ADJ 1325
Docket No. 2009-0886-WR
CN600251615, RN105169353
Application No. 14-1325A to Amend Certificate of Adjudication No. 14-1325
TWC §11.122
South Concho River, Colorado River Basin
Tom Green County

Below is the caption for this application:

Consideration of the notice required for the City of San Angelo's application to amend its Certificate of Adjudication No. 14-1325 to add agricultural purpose of use and to add the City of San Angelo Service Area as an additional place of use for the agricultural water. Applicant also requests a bed and banks authorization to convey the water from Lone Wolf Reservoir into the South Concho to a proposed diversion point on Bell Street Reservoir. Certificate of Adjudication No. 14-1325 currently authorizes the City of San Angelo to maintain an existing dam and reservoir (Lone Wolf Reservoir) on the South Concho River, Colorado River Basin, and impound therein not to exceed 300 acre-feet of water. San Angelo is authorized to divert and use not to exceed 1,534 acre-feet of water from two diversion points within the reservoir for municipal and industrial purposes. The Executive Director has prepared a memorandum recommending that no notice be required for the change in use and the place of use. (Craig Mikes, Robin Smith)



Love V. Holt

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 14-1325

OWNER: City of San Angelo
P. O. Box 1751
San Angelo, TX 76901

COUNTY: Tom Green

PRIORITY DATE: May 16, 1914

WATERCOURSE: South Concho River

BASIN: Colorado River

WHEREAS, by final decree of the 51st District Court of Tom Green County, in Cause No. 44,900-A, In Re: The Adjudication of Water Rights in the Concho River Segment of the Colorado River Basin, dated June 14, 1979, a right was recognized under Certified Filing 155 authorizing the City of San Angelo to appropriate waters of the State of Texas as set forth below;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Colorado River Basin is issued to the City of San Angelo, subject to the following terms and conditions:

1. IMPOUNDMENT

Owner is authorized to maintain an existing dam and reservoir on the South Concho River and impound therein not to exceed 300 acre-feet of water. Point on the dam at the center of the stream is S 88°E, 1700 feet from the northeast corner of the Emil Hermes Survey 174, Abstract 349, Tom Green County, Texas.

2. USE

Owner is authorized to divert and use not to exceed 1534 acre-feet of water per annum from the aforesaid reservoir on the South Concho River for municipal and industrial purposes.

3. DIVERSION

A. Location:

(1) At a point on the west bank of the South Concho River which is S 85°E, 1700 feet from the northeast corner of the Emil Hermes Survey 174, Abstract 349, Tom Green County, Texas.

(2) At a point on the west bank of the South Concho River which is N 78°E, 1645 feet from the northeast corner of the Emil Hermes Survey 174, Abstract 349, Tom Green County, Texas.

B. Rate:

Maximum Combined Diversion Rate: 6.22 cfs (2800 gpm).

4. PRIORITY

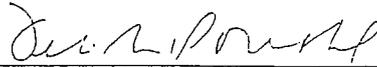
The time priority of owner's right is May 16, 1914.

The locations of pertinent features related to this certificate are shown on Page 9 of the Concho River 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 provided for in the final decree of the 51st District Court of Tom Green County, in Cause No. 44,900-A, In Re: The Adjudication of Water Rights in the Concho River Segment of the Colorado River Basin, dated June 14, 1979, and supersedes all rights of the owner asserted in that cause.

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.

TEXAS WATER COMMISSION

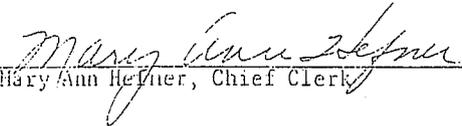


Felix McDonald, Chairman

DATE ISSUED:

March 12, 1980

ATTEST:



Mary Ann Heiner, Chief Clerk

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. Box 13088, MC-160
Austin, Texas 78711-3088
Telephone No. (512) 239-4601 FAX (512) 239-4770

RECEIVED
TCEQ WATER SUPPLY

APPLICATION FOR AMENDMENT TO A WATER RIGHT

2007 JUN 22 PM 3: 03

- REQUIRING MAILED AND PUBLISHED NOTICE; or
 - NOT REQUIRING MAILED AND PUBLISHED NOTICE
- Reference Texas Administrative Code Section 295.158(b) or ©

Customer Reference Number (if Issued): CN 600251615

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: City of San Angelo
Address: P.O. Box 1751 San Angelo, TX 76902
Email Address: will.wilde@sanangelotexas.us
2. G Permit G Certified Filing or G Adjudication Cert. No. 14-1325
Stream: South Concho Watershed Colorado
Reservoir (present condition, if one exists): Good
County: Tom Green

CHIEF CLERK'S OFFICE

JUN 13 11:10:06

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

3. Proposed changes to Water Right Authorizations:

Add a diversion point described as follows.

At a point on the northeast shore of Bell Street Lake which is located S0° 50' 47"W 12,024 feet from the northeast corner of the Robert Gerlands Survey 325, Abstract 237, Tom Green County, Texas. Latitude 31°27'15"N, Longitude 100°24' 48"W.

The diversion rate at the proposed new point shall be a maximum of 1,000 gpm and when combined with the diversion rate at the existing authorized diversion points shall not exceed 6.22 cfs (2800 gpm).

The proposed diversion point is located 1.6 miles east southeast from the County Courthouse.

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

4. I understand that the Agency may require additional information in regard to the Requested amendment before considering my application
5. I have submitted the required fees herewith. (Sections 295.131-295.139)

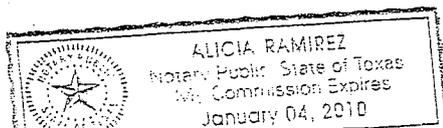
Name (sign) _____

Name (sign) Joseph W. Lowen

Name (print) _____

Name (print) Joseph W. Lowen, Mayor

Subscribed and sworn to me as being true and correct before me this 5th day of June, 2007



Alicia Ramirez
Notary Public, State of Texas

Supplemental Discharge Point Information Sheet

Discharge Point No. or name: Lone Wolf Reservoir

1) Select the appropriate box for the source of water being discharged:

- Treated effluent
 Groundwater
 Other Surface Water

2) Location of discharge point will be/is at Latitude 31° 26' 45" N, Longitude 100° 25' 33" W, also bearing S56° 25' W, 4625 feet from the Northeast corner of the Robert Gerland Original Survey No. 325, Abstract No. 237, in Tom Green County, Texas. What method was used to determine the Latitude and Longitude for the discharge point? (i.e. GPS Unit, USGS 7.5 Topographic Map, etc...) USGS maps

3) Location from County Seat: 1.32 miles in a southeast direction from the City of San Angelo, Tom Green County, Texas. Located from a nearby town (other than County Seat): _____ miles in a _____ direction from _____, a nearby town shown on County highway map.

4) Water will be discharged into Bell Street Reservoir ~~stream~~/reservoir, (tributaries) South Concho River, Colorado River Basin.

5) Water will be discharged at a maximum rate of 2.22 cfs (1,000 gpm).

6) The amount of water that will be discharged is 300 acre-feet per year.

7) The purpose of use for the water being discharged will be agriculture (IRRIGATION)

8) Additional information required:

For groundwater

- Provide water quality analysis and 24 hour pump test for the well if one has been conducted.
- Locate and label the groundwater well (s) on a USGS 7.5 Topographic Map
- Provide a copy of the groundwater well permit if it is located in a Groundwater Conservation District.
- What aquifer the water is being pumped from?

For treated effluent

- What is the TPDES Permit No.?
- Provide the monthly discharges data for the pass 5 years.
- What % of treated water was groundwater, surface water?

Craig Mikes - RE: City of San Angelo 14-1325A

From: "Wilde, Will" <will.wilde@sanangelotexas.us>
To: Kathy Alexander <KALEXAND@tceq.state.tx.us>
Date: 6/22/2009 10:48 AM
Subject: RE: City of San Angelo 14-1325A

Kathy-This is to confirm that the summary below correctly describes what the city is requesting in the permit amendment.

Will Wilde

From: Kathy Alexander [mailto:KALEXAND@tceq.state.tx.us]
Sent: Monday, June 22, 2009 9:46 AM
To: Wilde, Will
Subject: City of San Angelo 14-1325A

Will

Confirm that the application requests only to:

1. add agricultural (irrigation) use as a purpose the use for the authorized water
2. add a place of use being the City's service area
3. to use the bed and banks of the South Concho, North Concho and Concho Rivers to convey water from Lone Wolf Reservoir to Bell Street Reservoir with the terminus of the transport identified as a point on the northeast shore of Bell Street Reservoir.

Kathy

This message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is non-public, proprietary, privileged, confidential, and may constitute attorney work product or be exempt from disclosure under one or more of the following sections of the Texas Public Information Act: SECS. 552.101, 552.103 or 552.107. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, notify us immediately by telephone and (i) destroy this message if a facsimile or (ii) delete this message immediately if this is an electronic communication. Thank you.

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 29, 2008

Mr. W. H. Wilde
Water Utilities Director
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

ELECTRONIC AND
CERTIFIED MAIL

RE: City of San Angelo
ADJ 1325
CN600251615 RN105169353
TWC §11.122 - Application No. 14-1325A to Amend Certificate of Adjudication No. 14-1325
North and South Concho Rivers, Colorado River Basin
Tom Green County

Dear Mr. Wilde:

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.

Therefore, staff is requesting responses to Items 1-7 below. In lieu of providing responses, you may agree to the issuance of full basin mailed and published notice.

If you elect to proceed without agreeing to full basin mailed and published notice, additional information is required.

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.

Mr. Will Wilde
Application No. 14-1325A
February 29, 2008
Page 2 of 2

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 the Executive Director's 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 responding to Items 1-7 above, you may agree to full basin mailed and published notice.

If you elect to proceed with full basin mailed and published notice for the Colorado River Basin, please remit fees in the amount of \$1,161.84, described below.

Filing Fee	\$ 100.00
Recording Fee	\$ 1.25
Notice Fee (Full Colorado River Basin)	<u>\$ 1161.84</u>
TOTAL FEES DUE	\$ 1263.09
FEES PAID	\$ 101.25
BALANCE DUE	\$ 1161.84

Please provide the information requested above or the notice fees by March 31, 2008, or the application may be returned pursuant to 30 Texas Administrative Code §281.19.

If you have any questions concerning this application, please contact David Koinm at (512) 239-0047 or by email at dkoinm@tceq.state.tx.us.

Sincerely,



David Koinm, Project Manager, Mail Code 160
Water Rights Permitting Team
Water Rights Permitting & Availability Section



The City Of
San Angelo, Texas

P.O. Box 1751 - Zip 76902

March 3, 2008

Texas Commission on Environmental Quality
Mr. David Koinm
P.O. Box 13087, MC-160
Austin, TX 78711-3087

Re: Application to amend Certificate of Adjudication 14-1325, Application No. 14-1325A

RECEIVED
TCEQ
WATER SUPPLY DIV.
2008 MAR 6 PM 2 06

Dear Mr. Koinm:

In response to your letter of February 29, 2008, the following information is provided on each item in the letter.

1. To the best of my knowledge, the City has provided the information required in the above-referenced water right permit amendment application and meets the requirements for an amendment to a water use permit.
2. The proposed amendment would add a diversion point and add irrigation as an authorized use to the permit.

The proposed use of the water that would be designated for irrigation in the permit will be for the watering of public parks adjacent to the Concho River in San Angelo. The water would be diverted from a new intake pump station to be located on the Concho River at Bell Street Lake.

Water is currently being diverted under this permit; treated to potable water standards; pumped through the City of San Angelo's water distribution system; and used to water the same public parks proposed to be watered with untreated water under this proposed permit amendment.

The water used in irrigation of the public park lands is to supplement the water needs of the plants, trees, and grasses in the park during times of inadequate rainfall.

3. The proposed amendment will allow the use of untreated water rather than treated potable water for the irrigation of public parks. As such the public parks will continue to be maintained in a manner that makes the lands

attractive for public use. Use of raw water will decrease the cost for maintenance of the parks, reduce water demands on the City's potable water system and not result in any additional use of water from the Concho River system.

4. There are no anticipated effects on groundwater or groundwater recharge by this proposed amendment.
5. The City of San Angelo and the location of the water right permit are in Region F Water Planning area. Water conservation is one of the strategies identified for addressing water supply needs of the region. The proposed amendment will provide for increased efficiency in delivery of the water to the point of use on the park lands. Currently, about 3% of the water diverted for potable use is required for in-plant treatment of the raw water. Additionally, about 10% is lost in delivering to the point of use through the water distribution system.

By utilizing raw water instead of treated water, there should be a 10-13% reduction in demand and a higher efficiency for diverted water reaching the point of use.

6. A water conservation plan for use of the raw water in the parks has been submitted with the proposed amendment.
7. The water right is located in the Concho River segment of the Colorado River Basin and is part of the Concho Watermaster Program. The Watermaster will monitor diversions under the proposed amendment to ensure that there are no impacts to senior or superior water rights; or environmental/in-stream uses.

If there are any questions or additional information that is needed, please contact me at 325-657-4209.

Sincerely,



W.H. Wilde
Water Utilities Director

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 28, 2007

Mr. W. H. Wilde
Water Utilities Director
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

**FACSIMILE AND
CERTIFIED MAIL**

Re: City of San Angelo
ADJ 1325
CN600251615, RN105169353
Application No. 14-1325A to Amend Certificate of Adjudication No. 14-1325
TWC §11.122, Requiring Mailed or Published Notice
North and South Concho Rivers, Colorado River Basin
Tom Green County

Dear Mr. Wilde:

The Texas Supreme Court, in an opinion concerning the City of Marshall, addressed what type of notice is required for different types of amendments to water rights. The court sent the case back to the Commission to decide if notice was required, based on their guidelines, for the City's amendment. At a Commission work session on September 7, 2007, the commissioners decided to appoint an Advisory Committee to make recommendations on notice requirements for different types of amendments. The commissioners also directed the Executive Director to issue full basin mailed and published notice for amendments until the Commission makes a decision on notice for amendments after considering the Advisory Committee's recommendations.

Applicant may elect to proceed with full basin mailed and published notice, or to keep the application pending until the Commission makes a decision on notice for amendments.

If the City of San Angelo elects to proceed with full basin mailed and published notice for the Colorado River Basin, please remit fees in the amount of \$1,461.84, described below.

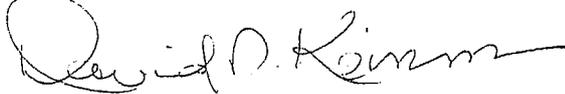
Filing Fee	\$ 100.00
Recording Fee	\$ 1.25
<u>Notice Fee (Full Colorado River Basin)</u>	<u>\$ 1,461.84</u>
TOTAL FEES DUE	\$ 1,563.09
LESS FEES PAID	(\$ 101.25)
BALANCE DUE	\$ 1,461.84

W. H. Wilde
Application No. 14-1325
September 28, 2007
Page 2 of 2

Please provide the requested fees or notification of Applicant's desire to keep the application pending no later than October 31, 2007, or the application may be returned pursuant to 30 TAC § 281.19. If the information is not provided in a timely manner, you have the option of having the question of sufficiency of the necessary requested data referred to the Commission for a decision instead of having the application returned.

If you have any questions or comments, please contact me by telephone at (512) 239-0047 or by e-mail at dkoinm@tceq.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "David N. Koinm". The signature is written in a cursive style with a large initial "D".

David N. Koinm, Project Manager, MC 160
Water Rights Permitting Team
Water Rights Permitting & Availability Section

David Koinm - Application 14-1325A Notice Fees

From: "Wilde, Will" <will.wilde@sanangelotexas.us>
To: "David Koinm" <DKOINM@tceq.state.tx.us>
Date: 9/28/07 3:16 PM
Subject: Application 14-1325A Notice Fees

David-The city requests at this time that the application be held pending the commission's decision on notice requirements

This message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is non-public, proprietary, privileged, confidential, and may constitute attorney work product or be exempt from disclosure under one or more of the following sections of the Texas Public Information Act: SECS. 552.101, 552.103 or 552.107. If you are not the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, notify us immediately by telephone and (i) destroy this message if a facsimile or (ii) delete this message immediately if this is an electronic communication. Thank you.

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 26, 2007

Mr. W. H. Wilde
Water Utilities Director
City of San Angelo
P.O. Box 1751
San Angelo, Texas 76902

FACSIMILE AND
CERTIFIED MAIL

Re: City of San Angelo
ADJ 1325
CN600251615 RN105169353
Application No. 14-1325A to Amend Certificate of Adjudication No. 14-1325
TWC §11.122, Not Requiring Mailed or Published Notice
North and South Concho Rivers, Colorado River Basin
Tom Green County

Dear Mr. Wilde:

This acknowledges receipt, on February 1, 2007, of the referenced application and fees. By this application the City of San Angelo (City) requests an amendment to Certificate of Adjudication No. 14-1325 to add a diversion point on Bell Street Reservoir and to divert a maximum of 1,000 acre-feet of previously authorized water per year at a combined rate not to exceed 6.22 cfs (2,800 gpm) for agricultural (irrigation) purposes within the City's service area.

Before the application can be declared administratively complete, please provide the following:

1. Clarification of the application to amend Certificate of Adjudication 14-1325.

Certificate of Adjudication No. 14-1325 authorizes the maintenance of Lone Wolf Reservoir and the diversion and use of 1,534 acre-feet of water per year at a maximum combined rate of 6.22 cfs (2,800 gpm) for municipal and industrial purposes. The Certificate does not contain authorization to divert water for agricultural (irrigation) purposes.

The City of San Angelo should amend the application to amend Certificate of Adjudication No. 14-1325 to request authorization to:

- Add agricultural (irrigation) as a purpose of use to the water authorized for diversion from Lone Wolf Reservoir,

- Add a diversion point on the perimeter of Bell Street Reservoir to divert water conveyed from Lone Wolf Reservoir for agricultural (irrigation) purposes,
 - Request the use the bed and banks of Bell Street Reservoir to convey water from the discharge point on Lone Wolf Reservoir to the requested diversion point on Bell Street Reservoir and an estimate of the conveyance loss between the two points, and
 - Designate the place of use for the agricultural (irrigation) water as the service area of the City of San Angelo.
2. A *Completed Supplemental Discharge Point Sheet* (enclosed) to identify the discharge point from Lone Wolf Reservoir to bell Street Reservoir.
 3. Complete a *Water Conservation Plan for Individually-Operated Irrigation Systems* that complies with 30 Texas Administrative Code § 288.4. (enclosed)
 4. On-ground color photographs of the proposed diversion point on the Bell Street Reservoir.
 5. Brief description of the intake structure including approximate depth of water intake and mesh size and surface area of any protective screens to be utilized. Staff recommends the use of 0.25 inch mesh and enough surface area to allow for 0.5 feet per second flow-through velocity.
 6. Evidence that W.H. Wilde has the authority to sign the amendment application for the City of San Angelo pursuant to Title 30 Texas Administrative Code §295.14(5).

Pursuant to 30 TAC §281.18, please provide the requested information by May 31, 2007, or the application may be returned.

If you have any questions or comments, please contact me by telephone at (512) 239-0047 or by e-mail at dkoinm@tceq.state.tx.us.

Sincerely,



David N. Koinm, Project-Manager, MC 160
Water Rights Permitting Team
Water Rights Permitting & Availability Section

Enclosures



The City of

San Angelo, Texas

P.O. Box 1751 • Zip 76902

June 18, 2007

Mr. David Koinm, Project Manager
Water Rights Permitting & Availability Section, MC 160
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, TX 78711-3088

Re: Application to Amend Water Right 14-1325

Dear Mr. Koinm:

In response to your letter of April 27, 2007, the City of San Angelo hereby amends its application to amend the water right 14-1325 and provides the following information.

1. A. Add agricultural (IRRIGATION) as an authorized use of the water authorized for diversion.
 - B. Add a diversion point on Bell Street Reservoir to divert water for multiple use at the location as described in the original application to amend the permit.
 - C. Request the use of the bed and banks of Bell Street Reservoir to convey water from Lone Wolf Reservoir to the requested diversion point on Bell Street Reservoir. The back waters of Bell Street Reservoir extend to and upon the base of Lone Wolf Reservoir. Since the water will be conveyed directly from one reservoir into another, conveyance losses are minimal to non-existent.
 - D. Place of use for the agricultural water that would be diverted at Bell Street is the City of San Angelo Service area.
2. Supplemental Discharge Point Information Sheet attached.
 3. Water Conservation Plan attached.
 4. Photos of proposed diversion point on Bell Street attached.

2007 JUN 22 PM 3:06

RECEIVED
TCEQ WATER SUPPLY

5. The intake structure will consist of a wet well for the pump suction that will be located on the land at least 10 feet from the shoreline. A minimum 16" diameter suction pipe will extend from the wet well into the lake at a depth of about five feet. Screening will be provided over the end of the pipe consisting of 0.25 inch mesh.
6. A revised application forum that has been signed by the City of San Angelo Mayor, J.W. Lown is enclosed.

If there are any questions, please contact me at 325-657-4209.

Sincerely,

A handwritten signature in black ink, appearing to read 'W.H. Wilde', written in a cursive style.

W.H. Wilde
Water Utilities Director