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August 3, 2009

Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
Bldg. F, 3rd Floor
Austin, Texas 78711-3087

VIA HAND DELIVERY

Re: In the Matter of Application No. 14-1318B by the San Angelo Water Supply Corporation For Amendment to Certificate of Adjudication No. 14-1318 TCEQ Docket No. 2008-1616-WR

Dear Ms. Castañuela:

Enclosed for filing on behalf of my client, the City of San Angelo, please find the original and eight (8) copies of Response To Requests For Contested Case Hearing in the above-referenced matter. Please file stamp one copy and return it to me via my messenger.

If you have any questions, please do not hesitate to contact me at (512) 322-5810.

Sincerely,


Martin C. Rochelle

2009 AUG - 3 PM 4: 31
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

MCR/ldp
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ENCLOSURE

cc: Service List
Mr. Will Wilde
Mr. Tom Massey
Mr. Tim Brown
Mr. Robert J. Brandes

DOCKET NO. 2008-1616-WR

2009 AUG -3 PM 4: 31

APPLICATION NO. 14-1318B BY SAN ANGELO WATER SUPPLY CORPORATION FOR AMENDMENT TO CERTIFICATE OF ADJUDICATION NO. 14-1318 § BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

**RESPONSE TO REQUESTS FOR
CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS:

On behalf of the San Angelo Water Supply Corporation, the City of San Angelo (herein referenced interchangeably as "San Angelo" or the "Applicant") submits this response to requests made to the Texas Commission on Environmental Quality (the "TCEQ") for a contested case hearing on the above-referenced application, and would respectfully show the Commissioners the following:

I. BACKGROUND

On February 3, 1960, the Board of Water Engineers granted San Angelo a permit¹ to impound not to exceed 170,000 acre-feet in an on-channel, 600,000 acre-foot capacity reservoir to be constructed by the United States Department of the Interior, Bureau of Reclamation ("BuREC").² This reservoir was to be known as the Twin Buttes Reservoir. BuREC opened bids for construction of the Twin Buttes Reservoir dam on March 17, 1960.³ Construction of the dam began on May 6, 1960, and was completed on February 13, 1963.⁴

Permit No. 1949 included a provision that required the Twin Buttes Reservoir dam to be constructed with an inlet placed at an elevation of 1,883.5 feet above mean sea level. Records published by BuREC indicate, however, that the inlet for Twin Buttes Reservoir dam was actually constructed at 1,885.00 feet above mean sea level.⁵ BuREC explains that the elevation for the intake structure was selected to match the calculated elevation that accumulated sediment would reach against the dam over the course of 100 years of operation.⁶ A December 18, 1962

¹ Permit No. 1949.

² The United States Congress authorized construction of the BuREC project in August, 1957. U. S. DEPT. OF THE INTERIOR, BUREAU OF RECLAMATION, *Twin Buttes Reservoir dam Technical Record of Design and Construction* at 6 (1964).

³ *Id.* at 119.

⁴ *Id.*

⁵ *Id.* at 53.

⁶ *Id.*

memorandum to the Commissioners of the Texas Water Commission (the "TWC") by the TWC Engineering Review Section, Surface Water Division, reflects that the TWC was aware that the inlet structure had been set at 1,885.0 feet above mean sea level.⁷

Despite the passage of at least 10 years between the completion of the Twin Buttes Reservoir dam and the initiation of adjudication proceedings for water claims in the Concho River Segment of the Colorado River, the discrepancy over the elevation of the intake structure between Permit No. 1949 and that which BuREC actually designed and ultimately constructed apparently failed to garner notice. Following the adjudication of Permit No. 1949, as well as all other claims to waters in the Concho River Segment that were not claims based on domestic and livestock uses,⁸ the Texas Water Rights Commission ("TWRC") issued to San Angelo Certificate of Adjudication No. 14-1318 ("COA 14-1318"). The 1,883.5 feet requirement for the inlet on Twin Buttes Reservoir dam carried over into COA 14-1318 as Special Condition 5.C.

It seems clear from agency records that the TWC was well aware, at least as late as 1962,⁹ of the inlet elevation set by BuREC for the Twin Buttes Reservoir dam. Nevertheless, TCEQ initiated an enforcement action against San Angelo in 2005 based on the discrepancy between the as-built elevation of the inlet structure and the requirements provided in COA 14-1318 Special Condition 5.C.—some 42 years after BuREC completed construction on the dam. As part of a resolution to the enforcement matter, San Angelo agreed to seek an amendment to COA 14-1318 to change the inlet structure elevation reference from 1,883.5 feet above mean sea level to the actual elevation, 1,885.00 feet above mean sea level.

II. PROCEDURAL HISTORY

On November 29, 2004, San Angelo filed Application No. 14-1318B with the TCEQ, so as to amend Special Condition 5.C. to revise the referenced elevation of the conduit inlet on the Twin Buttes Reservoir dam from 1,883.5 feet above mean sea level to 1,885 feet above mean sea level—the actual height at which the inlet was set by BuREC in its design and construction of the project (the "Application" or "Application 14-1318B"). On March 22, 2005, San Angelo submitted an amendment to the Application to include a request for an additional diversion point and a bed and banks authorization. TCEQ staff declared the Application to be administratively complete on April 19, 2005. While the staff determined initially that no notice was required for the requested change, on July 26, 2005, staff informed San Angelo that both published and

⁷ Texas Water Commission, Surface Water Division, Engineering Review Section, *Report to the Commission 1* (Dec. 18, 1962) (Reporting the results of a "[f]ield inspection of Twin Buttes Reservoir dam crossing the South Concho, Spring Creek and Middle Concho Valleys, approximately 9 miles southwest of San Angelo in Tom Green County" and noting that "[t]his dam was inspected by the writer [Matthew J. Timm, Head of the Engineering Review Section] on December 6, 1962").

⁸ Texas Water Rights Comm'n, *In re Adjudication of the Concho River Segment of the Colorado River Basin* (Mar. 1, 1976) (final determination of claims of water rights) (the "Commission Order on Concho River Claims").

⁹ Texas Water Commission, Surface Water Division, Engineering Review Section, *Report to the Commission 1* (Dec. 18, 1962)

mailed notice to downstream water rights holders within the Colorado River Basin would be required for the Application.

Notice of the Application was mailed on June 21, 2005, and notice of the same was published on June 28, 2005. Accordingly, requests for a contested case hearing on the Application were due to the TCEQ Chief Clerk's office no later than July 28, 2005. A number of hearing requests were filed, as noted below.

On September 28, 2005, San Angelo submitted a withdrawal of its amendments to the Application. Thus, the only change to COA 14-1318 that San Angelo seeks by Application 14-1318B is the revision of the referenced elevation of the conduit inlet on the Twin Buttes Reservoir dam, as same was designed and constructed by the federal agency that developed this project. On April 20, 2006, TCEQ staff issued a draft permit amending Special Condition 5.C. to reflect the as-built elevation of the conduit inlet on the Twin Buttes Reservoir dam (the "Draft Permit"). On June 8, 2007, TCEQ staff informed San Angelo that it was recommending a special condition be included in the Draft Permit to require the development of an accounting plan (the "San Angelo Water Rights Accounting Plan"). On January 17, 2008, TCEQ staff informed San Angelo that the proposed San Angelo Water Rights Accounting Plan was approved. On June 25, 2008, TCEQ staff requested that San Angelo make certain revisions to the San Angelo Water Rights Accounting Plan. San Angelo responded with revisions to same, and on July 22, 2008, TCEQ staff again informed San Angelo that the proposed San Angelo Water Rights Accounting Plan was acceptable.

On July 24, 2009, San Angelo received notice that the above-referenced matter would be considered by the Commission at the August 26, 2009 agenda. San Angelo hereby submits this response to requests made to the TCEQ for a contested case hearing on the Application, pursuant to Title 30, Section 55.254 of the Texas Administrative Code.

III. DETERMINATION OF AFFECTED PERSONS

TCEQ rules make clear that a contested case hearing can only be requested by 1) the TCEQ Commissioners, 2) the TCEQ Executive Director, 3) the Applicant, and 4) any "affected person".¹⁰ An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the Application.¹¹ An interest common to members of the general public does not qualify as a personal justiciable interest.¹² Accordingly, a request for a contested case hearing must include a brief, but specific, description of the person's location and distance relative to the activity that is the subject of the Application.¹³ In addition, the person must do more than just provide a conclusory statement in the request that he or she will be harmed by the proposed change. The person must describe

¹⁰ 30 TEX. ADMIN. CODE § 55.251(a) (2009).

¹¹ *Id.* § 55.103.

¹² *Id.*

¹³ *Id.* § 55.251(c)(2).

briefly, but specifically, how and why he or she will be affected by the change proposed in the Application.¹⁴

Persons claiming to be affected persons must also submit their hearing requests in writing to the Chief Clerk “within the time period specified in the notice”.¹⁵ For purposes of the Application, the notice directed all potential requestors to submit their requests for a contested case hearing on the matter to the Chief Clerk within the 30-day period following the publication date. Notice was published on June 28, 2005. Thus, all timely hearing requests must have been received by the Chief Clerk by July 28, 2005.¹⁶ All such requests not filed within this period are not timely and thus cannot be processed by the Chief Clerk.¹⁷

When determining whether an individual or entity is an “affected person,” all relevant factors are considered by the Commission, including: 1) whether the interest claimed is one protected by the law under which the application will be considered; 2) distance restrictions or other limitations imposed by law on the affected interest; 3) whether a reasonable relationship exists between the interest claimed and the activity regulated; 4) the likely impact of the regulated activity on the health, safety, and use of property of the person; and 5) the likely impact of the regulated activity on use of the impacted natural resource by the person.¹⁸

IV. EVALUATION OF HEARING REQUESTS FOR APPLICATION 14-1318B

1. Wilburn Bailey Estate

August F. Haechten submitted a request for a contested case hearing on Application 14-1318B purportedly on behalf of the Wilburn Bailey Estate. Nothing in the request, however, indicates that August F. Haechten is authorized to act, or speak, on behalf of the Wilburn Bailey Estate. TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1382—is held in the name of the Wilburn Bailey Estate, not August F. Haechten. Accordingly, it is not clear that the interests of the Wilburn Bailey Estate have been properly, or accurately, presented in the hearing request.

Additionally, the request was received by the Chief Clerk on September 28, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

Finally, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number

¹⁴ *Id.*

¹⁵ *Id.* §§ 55.251(b), (d), .254(a).

¹⁶ *Id.* §§ 55.251(b), (d).

¹⁷ *Id.* §§ 55.251(f)(1), .254(a).

¹⁸ *Id.* § 55.256(c).

provided for the Wilburn Bailey Estate in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1382. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The Wilburn Bailey Estate request should not be granted.

2. Carol D. Blacklock

Carol D. Blacklock submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on October 3, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

In addition, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Carol D. Blacklock in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1399—the certificate referenced in the request as being the affected water right. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Carol D. Blacklock's request should not be granted.

3. Fred Campbell

Fred Campbell submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on October 3, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

In addition, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Fred Campbell in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why

the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect Mr. Campbell's purported domestic and livestock riparian rights. Furthermore, Mr. Campbell provides no indication in his request that would indicate his location and distance relative to the Twin Buttes Reservoir dam. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Fred Campbell's request should not be granted.

4. Gena M. Reichert Day Estate

Greg Schwertner submitted a request for a contested case hearing on Application 14-1318B purportedly on behalf of the Gena M. Reichert Day Estate. Nothing in the request, however, indicates that Greg Schwertner is authorized to act, or speak, on behalf of the Gena M. Reichert Day Estate. In fact, Mr. Schwertner identifies himself as a "tenant," and a representative of the "Gena Day Estate." TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1358—is held in the name of Gena M. Reichert Day, not Greg Schwertner. Accordingly, it is not clear that the interests of the Gena M. Reichert Day Estate have been properly, or accurately, presented in the hearing request.

Mr. Schwertner's request for a contested case hearing on Application 14-1318B was received by the Chief Clerk on October 3, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

In addition, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for the Gena M. Reichert Day Estate in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1358. This request is devoid of any articulated justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The Gena M. Reichert Day Estate's request should not be granted.

5. Wanda & W. G. Dishroon Estate

Dwayne Dishroon submitted two requests for a contested case hearing on Application 14-1318B, purportedly on behalf of the Wanda & W. G. Dishroon Estate. Nothing in the requests, however, shows that Dwayne Dishroon is authorized to act, or speak, on behalf of the Wanda & W. G. Dishroon Estate. TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1364—is held in the name of Wanda & W. G. Dishroon, not Dwayne Dishroon. Accordingly, it is not clear that the interests of the Wanda & W. G. Dishroon Estate have been properly, or accurately, presented in the hearing requests.

One of the requests was received by the Chief Clerk on October 3, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, this request is untimely.

The second request filed by the Wanda & W. G. Dishroon Estate was received by the Chief Clerk on July 20, 2005. While this request appears to have been timely submitted, it, along with the untimely submitted October 3, 2005 request, nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, no daytime telephone number is provided for the Wanda & W. G. Dishroon Estate in either request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1364—the certificate referenced in the request as being the affected water right. Neither request identifies any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The Wanda & W. G. Dishroon Estate requests should not be granted.

6. Thomas L. Evridge

Thomas L. Evridge submitted two requests for a contested case hearing on Application 14-1318B. One request was received by the Chief Clerk on October 3, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, this request is untimely.

The second request filed by Thomas L. Evridge was received by the Chief Clerk on July 20, 2005. While this request appears to have been timely submitted, it, along with the untimely submitted October 3, 2005 request, nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, no daytime telephone number is provided for Thomas L. Evridge in either request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but

specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1369—the certificate referenced in the request as being the affected water right. Neither request identifies any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Thomas L. Evridge's requests should not be granted.

7. Samie L. Ewald

Samie L. Ewald submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on September 30, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

In addition, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Samie L. Ewald in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1392—the certificate referenced in the request as being the affected water right. Mr. Ewald simply has identified no justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Samie L. Ewald's request should not be granted.

8. Leonard Grantham, Jr.

Leonard Grantham, Jr. submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on October 4, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

In addition, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Leonard Grantham, Jr. in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by

Certificate of Adjudication No. 14-1361—the certificate referenced in the request as being the affected water right. Mr. Grantham simply has identified no justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Leonard Grantham, Jr.'s request should not be granted.

9. Billy J. Helwig

Billy J. Helwig submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on October 4, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

In addition, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Billy J. Helwig in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1380—the certificate referenced in the request as being the affected water right. Mr. Helwig simply has identified no justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Billy J. Helwig's request should not be granted.

10. Jennifer A. Willberg Hoelscher

Jennifer A. Willberg Hoelscher submitted two requests for a contested case hearing on Application 14-1318B. She indicates in her requests that she is a percent owner in Certificate of Adjudication No. 14-1384—the water right that is purportedly affected by the change requested in Application 14-1318B—but she provides no other demonstration that she holds any interest in the referenced water right or the referenced domestic and livestock riparian rights. TCEQ records indicate that Certificate of Adjudication No. 14-1384 is held in the name of Ben A. Willberg, not Ms. Hoelscher. Nothing in the requests shows that she is authorized to act, or speak, on behalf of Ben A. Willberg.

One of the requests was received by the Chief Clerk on September 29, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, this request is untimely.

The second request filed by Jennifer A. Willberg Hoelscher was received by the Chief Clerk on July 20, 2005. While this request appears to have been timely submitted, it, along with the untimely submitted September 29, 2005 request, nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, no daytime telephone number is provided for Jennifer A. Willberg Hoelscher in either request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestors, nothing in these requests gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1384—the certificate referenced in the request as being the affected water right—or the referenced domestic and livestock riparian rights. Furthermore, the Ms. Hoelscher provides no indication in her July 20, 2005 request that would indicate her location and distance relative to the Twin Buttes Reservoir dam. Simply stated, neither request succeeds in identifying any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Jennifer A. Willberg Hoelscher's requests should not be granted.

11. Steven H. Hoelscher

Steven H. Hoelscher submitted two requests for a contested case hearing on Application 14-1318B. He indicates in his requests that he is a percent owner in Certificate of Adjudication No. 14-1384—the water right that is purportedly affected by the change requested in Application 14-1318B—but he provides no other demonstration that he holds any interest in the referenced water right or the referenced domestic and livestock riparian rights. TCEQ records indicate that Certificate of Adjudication No. 14-1384 is held in the name of Ben A. Willberg, not Steven H. Hoelscher. Nothing in the requests shows that Mr. Hoelscher is authorized to act, or speak, on behalf of Ben A. Willberg.

One of the requests was received by the Chief Clerk on September 29, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, this request is untimely.

The second request filed by the Mr. Hoelscher was received by the Chief Clerk on July 20, 2005. While this request appears to have been timely submitted, it, along with the untimely submitted September 29, 2005 request, nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, no daytime telephone number is provided for Steven H. Hoelscher in either request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestors, nothing in these requests gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1384—the certificate referenced in the request as being the affected water right—or the

referenced domestic and livestock riparian rights. Furthermore, Mr. Hoelscher provides no indication in the July 20, 2005 request that would indicate his location and distance relative to the Twin Buttes Reservoir dam. Simply stated, neither request succeeds in identifying any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected persons using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Steven H. Hoelscher's requests should not be granted.

12. Hudson Management, Ltd.

Hudson Management, Ltd. submitted two requests for a contested case hearing on Application 14-1318B. One request was received by the Chief Clerk on September 23, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, this request is untimely.

The second request filed by Hudson Management, Ltd. was received by the Chief Clerk on July 20, 2005. While this request appears to have been timely submitted, it, along with the untimely submitted September 23, 2005 request, nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, no daytime telephone number is provided for Hudson Management, Ltd. in either request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1340—the certificate referenced in the request as being the affected water right. Neither request identifies any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Hudson Management, Ltd.'s requests should not be granted.

13. Douglas John

Douglas John submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on July 20, 2005. While this request appears to have been timely submitted, it nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code.

Specifically, Mr. John provides no daytime telephone number in his request. Furthermore, despite the clear requirements of Section 55.251(c)(2) to briefly, but

specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in his request gives any indication of how, or why, the Application will affect any of his rights. Mr. John does not identify any water right or certificate of adjudication in which he holds any interest that may be affected by the Application. Mr. John does not even identify his location and distance relative to the Twin Buttes Reservoir dam. He identifies no justiciable interest at all, and certainly identifies no interest that will be affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Douglas John's request should not be granted.

14. A. J. Jones, Jr.¹⁹

A. J. Jones, Jr. submitted eight requests for a contested case hearing on Application 14-1318B. Of these, three requests were submitted prematurely. The first request was received by the Chief Clerk on May 6, 2005. The second request was received by OPA on May 10, 2005. There is no clear indication on the request itself when, or whether, this request was received by the Chief Clerk, but it presumably would have been received somewhere between May 7, 2005 and May 9, 2005. The third request was received by the Chief Clerk on May 10, 2005. A. J. Jones also sent two subsequent requests for a contested case hearing on Application 14-1318B that were each received by the Chief Clerk on September 12, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, these five particular requests must have been received by the Chief Clerk after the notice was issued by the Chief Clerk and not later than July 28, 2005. Accordingly, they each are untimely.

Mr. Jones also sent requests for a hearing on Application 14-1318B that were received by the Chief Clerk on July 5, 2005, July 7, 2005, and July 11, 2005, respectively. While these three requests appear to have been timely submitted, they each nevertheless fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code.

Specifically, Mr. Jones raises five distinct issues in his July 5, 2005, July 7, 2005, and July 11, 2005 requests. Mr. Jones first takes issue with the use of the word "storage" in the Draft Permit. He suggests that the word "impoundment" should be used instead, because, he believes, his downstream senior water right gives him a right to the impounded waters in Twin Buttes Reservoir. Mr. Jones' issue here is wholly irrelevant to the change proposed in Application 14-1318B for several reasons. First, the Application seeks only to change the referenced elevation of the inlet structure on Twin Buttes

¹⁹ A. J. Jones, Jr.'s hearing request submission was made on behalf of his personal interests and on behalf of the Concho River Basin Water Conservancy Association. Since Mr. Jones distinguishes these two interests in his request, San Angelo will respond to the Concho River Basin Water Conservancy Association's requests separately below.

Reservoir dam to reflect the actual elevation set by BuREC. The Application proposes no other changes, and it certainly does not propose any change that would alter the classification of waters rightfully diverted and stored in the reservoir pursuant to the rights provided in COA 14-1318. Second, Mr. Jones has apparently been misinformed about his purported right, as a downstream senior appropriator, to water stored—or impounded—in Twin Buttes Reservoir. Nothing in Mr. Jones' water right, Certificate of Adjudication No. 14-1397, gives him a right to water rightfully diverted and stored in Twin Buttes Reservoir. Absent any such clear, expressly granted right in either Certificate of Adjudication No. 14-1397, or COA 14-1318, Mr. Jones has no right under Texas law to the water rightfully diverted and stored by San Angelo in Twin Buttes Reservoir. Finally, COA 14-1318 does, in fact, give San Angelo the right to “impound” up to 170,000 acre-feet of water in Twin Buttes Reservoir. Mr. Jones has articulated no justiciable interest in this point that is affected by the Application.

Mr. Jones next complains about the storage of released water from Twin Buttes Reservoir into Lake Nasworthy Reservoir. Nothing in Application 14-1318B proposes any alteration of San Angelo's legal rights or obligations relating to released water from Twin Buttes Reservoir. Mr. Jones has articulated no justiciable interest in this point that is affected by the Application.

Mr. Jones' third point again is merely a grievance relating to the management of water impounded in Lake Nasworthy Reservoir. San Angelo seeks only to change the referenced elevation of the inlet structure on Twin Buttes Reservoir dam to reflect the actual elevation set by BuREC in the Application. No other changes are proposed in the Application, and it certainly does not propose any change that would alter how diverted and impounded water is managed in Lake Nasworthy Reservoir. Mr. Jones has failed to articulate any justiciable interest here that is affected by the Application.

Mr. Jones, in his fourth point, finally addresses the matter of changing the inlet structure elevation referenced in COA 14-1318. He complains, however, that the change will affect his and other downstream senior and superior water rights holders, but he gives no explanation how the requested change on paper (correcting the inlet structure elevation in COA 14-1318 to reflect the as-built elevation) will translate into any change for Mr. Jones. The inlet structure elevation has been the same for at least 46 years, and nothing in the Application proposes to change that fact. Additionally, Mr. Jones wholly ignores the role that the Watermaster plays in ensuring that his and other downstream senior and superior water right holders' ability is protected to beneficially use water to which they are each entitled. Given the important role of the Watermaster on the Concho River, and the fact that the Application seeks a conforming change on paper to reflect what has been the case for almost one-half century, it is far from clear how Mr. Jones has any right that is affected by the Application. Accordingly, Mr. Jones here, too, has failed to articulate any justiciable interest here that is affected by the Application.

Mr. Jones' fifth concern is moot. The requested additional diversion point was withdrawn from the Application. Mr. Jones' suggestion that an intake structure through Twin Buttes Reservoir dam be installed at 1,883.5 feet reflects a lack of understanding of

the design and construction of Twin Buttes Reservoir dam, as well as any appreciation of the practical impossibility of such a modification. It additionally reflects a failure to recognize that the United States government owns Twin Buttes Reservoir dam, and San Angelo is without any legal authority whatsoever to compel any such change. Mr. Jones' concerns in this point appear to be without any relevance to the change proposed in the Application. He has articulated no justiciable interest that is affected by the Application.

Mr. Jones has provided no daytime telephone number in any of his requests. In addition, in none of his requests has he briefly or specifically described how and why the change proposed in the Application will affect Certificate of Adjudication No. 14-1397, as is clearly required of him in Title 30, Section 55.251(c)(2) of the Texas Administrative Code. His requests fail to identify any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

A. J. Jones, Jr.'s requests should not be granted.

15. John C. Ketzler

John C. Ketzler submitted two requests for a contested case hearing on Application 14-1318B. One request was received by the Chief Clerk on September 29, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, this request is untimely.

The second request filed by John C. Ketzler was received by the Chief Clerk on July 20, 2005. While this request appears to have been timely submitted, it, along with the untimely submitted September 29, 2005 request, nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, no daytime telephone number is provided for John C. Ketzler in either request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1376—the certificate referenced in the request as being the affected water right. Mr. Ketzler provides no indication in his July 20, 2005 request of his location and distance relative to the Twin Buttes Reservoir dam. Neither request identifies any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

John C. Ketzler's requests should not be granted.

16. Lucy & Bernie Mika

Lee Ann Mika Mendez submitted a request for a contested case hearing on Application 14-1318B purportedly on behalf of Lucy & Bernie Mika. Ms. Mendez signed the request with the notation "POA." It is not clear what Ms. Mendez intended by this notation. In the event that Ms. Mendez has a power of attorney for Lucy & Bernie Mika, she should be required to demonstrate that, in fact, she has the legal authority to act on behalf of the Mika's on this matter. Otherwise, nothing in the request indicates that Lee Ann Mika Mendez is authorized to act, or speak, on behalf of Lucy & Bernie Mika. TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1379—is held in the name of Lucy & Bernie Mika, not Lee Ann Mika Mendez. Accordingly, it is not clear that the interests of Lucy & Bernie Mika have been properly, or accurately, presented in the hearing request.

The request for a contested case hearing on Application 14-1318B was received by the Chief Clerk on October 3, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

In addition, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Lucy & Bernie Mika in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1379. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Lucy & Bernie Mika's request should not be granted.

17. Fred Mueller

Fred Mueller submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on July 15, 2005. While this request appears to have been timely submitted, it nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code.

Furthermore, Mr. Mueller's request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, he provides no daytime telephone number, as is specifically required by Subsection (c)(1). More significantly, however, Mr. Mueller fails to comply with the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Nothing in this request gives any indication

of how, or why, the Application will affect Mr. Mueller's domestic and livestock riparian rights. Such an explanation would be particularly helpful given Mr. Mueller's stated concern for water rights *upstream* of the Twin Buttes Reservoir dam. He has failed to describe any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Fred Mueller's request should not be granted.

18. City of Paint Rock

The City of Paint Rock submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on October 5, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

Furthermore, the City's request fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. No daytime telephone number is provided in the request, as is specifically required by Subsection (c)(1). More significantly, however, the City fails to comply with the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Nothing in this request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1388, particularly given the noted distance of 50 miles that separate the City's location relative to the Twin Buttes Reservoir dam. The City of Paint Rock has not described any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The City of Paint Rock's request should not be granted.

19. Darrell Rushing

Darrell Rushing submitted two requests for a contested case hearing on Application 14-1318B. One request was received by the Chief Clerk on September 29, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, this request is untimely.

It is not clear whether Darrell Rushing's second request was received by the Chief Clerk between June 28, 2005 and July 28, 2005. Given the noted receipt date by OPA on July 22, 2005, it might be reasonable to assume that the request was received by the Chief Clerk between June 28, 2005 and July 28, 2005. However, before timeliness can be

conclusively determined, Mr. Rushing should be required to demonstrate that his request was, in fact, received by the Chief Clerk within the time provided in the notice.

Nevertheless, neither request substantially complies with Title 30, Section 55.251(c) of the Texas Administrative Code. Mr. Rushing provides no daytime telephone number in either request. In addition, he fails to comply with the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1371. Mr. Rushing has failed to describe any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Darrell Rushing's requests should not be granted.

20. Schneeman Investment Corp.

The Schneeman Investment Corp. submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on September 28, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

Furthermore, the Schneeman Investment Corp.'s request fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. No daytime telephone number is provided in the request, as is specifically required by Subsection (c)(1). More significantly, however, the Schneeman Investment Corp. fails to comply with the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect it or its stated interest in Certificate of Adjudication No. 14-1349. The Schneeman Investment Corp. has not described any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The Schneeman Investment Corp.'s request should not be granted.

21. Kenneth Schwartz

Kenneth Schwartz filed two requests for a contested case hearing on Application 14-1318B. Neither request substantially complies with Title 30, Section 55.251(c) of the Texas Administrative Code. Mr. Schwartz provides no daytime telephone number in either request, as is required by Subsection (c)(1). In addition, he fails to comply with the

clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Nothing in his requests gives any indication of how, or why, the Application will affect Certificates of Adjudication No. 14-1351 and 14-1354. He even fails to provide any description of his location and distance relative to the Twin Buttes Reservoir dam. Mr. Schwartz has failed to describe any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Kenneth Schwartz's requests should not be granted.

22. Kent C. Schwartz

Kent C. Schwartz submitted three requests for a contested case hearing on Application 14-1318B. One of the requests was received by the Chief Clerk on October 5, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, they each are untimely.

Mr. Schwartz submitted two additional requests for a hearing on Application 14-1318B that were each apparently received on July 20, 2005, respectively. While these two requests appear to have been timely submitted, they each nevertheless fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. As an initial matter, Mr. Schwartz submitted hearing requests based on water rights for which he has no ascertainable interest. Specifically, one July 20, 2005 request is based on purported affects to Certificate of Adjudication No. 14-1354. TCEQ records indicate that Kenneth Schwartz, not Kent C. Schwartz, holds Certificate of Adjudication No. 14-1354. Similarly, in his October 5, 2005 request, Mr. Schwartz alludes to an interest in Certificate of Adjudication No. 14-1351. Again, this water right is held in the name of Kenneth Schwartz, not Kent Schwartz. Based on the requests submitted under each name, it appears that Kent C. Schwartz and Kenneth Schwartz are not the same person. Accordingly, it is apparent that Kent C. Schwartz has no justiciable interest in Certificates of Adjudication No. 14-1351 and 14-1354 that are affected by the Application.

With respect to all requests submitted by Kent C. Schwartz, none substantially complies with Title 30, Section 55.251(c) of the Texas Administrative Code. Mr. Schwartz provides no daytime telephone number in any request, as is required by Subsection (c)(1). For the two requests discussed above, he fails to comply with the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Similarly, with respect to the other July 20, 2005 hearing request, he provides no indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1313—the only water right of the three that TCEQ records indicate are held in his name. He even fails to provide any description of

his location and distance relative to the Twin Buttes Reservoir dam. Mr. Schwartz has failed to describe any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Kent C. Schwartz's requests should not be granted.

23. Todd Schwertner

Todd Schwertner submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on September 29, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

In addition, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Todd Schwertner in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1370. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Todd Schwertner's request should not be granted.

24. Ben O. Sims

Ben O. Sims submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on October 5, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

Furthermore, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, Mr. Sims provides no daytime telephone number in his request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect Mr. Sims' domestic and livestock riparian rights. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is

an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Ben O. Sims' request should not be granted.

25. M. C. Vinson Trust

David Vinson submitted a request for a contested case hearing on Application 14-1318B purportedly on behalf of the M. C. Vinson Trust. Nothing in the request, however, indicates that David Vinson is authorized to act, or speak, on behalf of the M. C. Vinson Trust. Furthermore, the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-3612—is not a valid Concho Segment certificate of adjudication number. It is simply unclear what, if any, interests David Vinson can speak to, regardless of whether he is authorized to speak on behalf of the M. C. Vinson Trust.

Furthermore, the request for a contested case hearing on Application 14-1318B was received by the Chief Clerk on October 3, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk between June 28, 2005 and July 28, 2005. Accordingly, the request is untimely.

This request fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code for other reasons. As noted above, it contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The M. C. Vinson Trust's request should not be granted.

26. Vinson Ranch, Ltd.

Vinson Ranch, Ltd. submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on October 3, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk between June 28, 2005 and July 28, 2005. Accordingly, the request is untimely.

In addition, this request also fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, there is no daytime telephone number provided for Vinson Ranch, Ltd. in the request. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1385. This request contains no identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that

this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Vinson Ranch, Ltd.'s request should not be granted.

27. Clyde C. Watkins

Clyde C. Watkins submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on July 15, 2005. While this request appears to have been timely submitted, it nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code.

As an initial matter, Mr. Watkins submitted hearing requests based on a water right for which he has no ascertainable interest. Specifically, his request is based on purported impacts to Certificates of Adjudication No. 14-1336 and 14-1357. Certificate of Adjudication No. 14-1357, however, is owned by the City of San Angelo. Mr. Watkins simply has no interest in Certificate of Adjudication No. 14-1357.

Furthermore, Mr. Watkins provided no daytime telephone number in his request, as is required by the rules. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect the water right referenced in his request, Certificate of Adjudication No. 14-1336. Mr. Watkins includes no location and distance relative to the Twin Buttes Reservoir dam, nor does he provide any explanation of why he believes the change proposed in the Application will affect water rights *upstream* of the Twin Buttes Reservoir. This request is devoid of any identification of any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Clyde C. Watkins' request should not be granted.

28. Edward E. Werner

Edward E. Werner submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on July 18, 2005. While this request appears to have been timely submitted, it nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code.

Specifically, Mr. Werner's hearing request is based on water rights for which he has no ascertainable interest. His request is based on purported affects to Certificate of Adjudication No. 14-1352. However, TCEQ records indicate that Certificate of Adjudication No. 14-1352 is owned by Ricky Dale Werner. Nothing in Edward E.

Werner's hearing request indicates any authority to speak on behalf of Ricky Dale Werner or otherwise claim an interest in Certificate of Adjudication No. 14-1352.

Furthermore, Mr. Werner fails to comply with the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect him. Nothing in this request gives any indication of how, or why, the Application will affect any interest owned by Mr. Werner, particularly given his stated concern for water rights *upstream* of the Twin Buttes Reservoir dam. He has failed to describe any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Edward E. Werner's request should not be granted.

29. Ben A. Willberg

Jennifer A. & Steven H. Hoelscher submitted two requests for a contested case hearing on Application 14-1318B, purportedly on behalf of Ben A. Willberg. One request was received by the Chief Clerk on July 20, 2005, and the other was received on September 29, 2005. Nothing in the requests, however, indicates that Jennifer Hoelscher or Steven Hoelscher are authorized to act, or speak, on behalf of Ben A. Willberg. TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1384—is held in the name of Ben A. Willberg, not Jennifer Hoelscher or Steven Hoelscher. Accordingly, it is not clear that either has the appropriate capacity to submit a request for a contested case hearing on behalf of Ben A. Willberg. Furthermore, with respect to the request submitted on September 29, 2005, pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

Ben A. Willberg, himself, submitted three requests for a contested case hearing on Application 14-1318B. Two requests were each received by the Chief Clerk on September 29, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, these two requests must have been received by the Chief Clerk by July 28, 2005. Accordingly, they each are untimely.

Mr. Willberg submitted one additional request for a hearing on Application 14-1318B that was apparently received by the Chief Clerk on July 20, 2005. While this request appears to have been timely submitted, all three requests nevertheless fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code.

Specifically, Mr. Willberg has provided no daytime telephone number in his requests. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application

will affect Certificate of Adjudication No. 14-1384. His requests fail to identify any justiciable interest affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Ben A. Willberg's requests should not be granted.

30. Kenneth Windham

Kenneth Windham submitted two requests for a contested case hearing on Application 14-1318B. One request was received by the Chief Clerk on September 29, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, this request is untimely.

The other request filed by Kenneth Windham was apparently received by the Chief Clerk on July 20, 2005. While this request appears to have been timely submitted, it nevertheless fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code.

Specifically, the request contains no daytime telephone number for Kenneth Windham. More significantly, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the change proposed in the Application will affect the requestor, nothing in this request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1368. Mr. Windham has failed to identify any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Kenneth Windham's requests should not be granted.

31. Milburn Wright

It is not clear whether Milburn Wright's request for a contested case hearing on Application 14-1318B was received by the Chief Clerk between June 28, 2005 and July 28, 2005. Given the noted receipt date by OPA on July 22, 2005, it might be reasonable to assume that the request was received by the Chief Clerk between June 28, 2005 and July 28, 2005. However, before timeliness can be conclusively determined, Mr. Wright should be required to demonstrate that his request was, in fact, received by the Chief Clerk within the time provided in the notice.

Furthermore, Mr. Wright's hearing request is based on a water right for which he has no ascertainable interest. His request is based on purported impacts to Certificate of

Adjudication No. 14-1360. However, TCEQ records indicate that Certificate of Adjudication No. 14-1360 is owned by Jerrilyn W. Jones and Joyce Ann Moore. Nothing in Milburn Wright's hearing request indicates any authority to speak on behalf of Jerrilyn W. Jones or Joyce Ann Moore, or to otherwise claim an interest in Certificate of Adjudication No. 14-1360.

Irrespective of this significant fact, Mr. Wright does not even attempt to provide any indication of how, or why, the Application will affect any interest, including Certificate of Adjudication No. 13-1360. Mr. Wright has failed to identify any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Milburn Wright's request should not be granted.

32. Melburne Wright, Sr.

Melburne Wright, Sr. submitted a request for a contested case hearing on Application 14-1318B that was received by the Chief Clerk on September 29, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 28, 2005. Accordingly, the request is untimely.

As was the case with Wilburn Wright's hearing request, Melburne Wright, Sr.'s hearing request is also based on purported affects to Certificate of Adjudication No. 14-1360—a right that TCEQ records indicate is owned by Jerrilyn W. Jones and Joyce Ann Moore. Nothing in Melburne Wright, Sr.'s hearing request indicates any authority to speak on behalf of Jerrilyn W. Jones or Joyce Ann Moore, or to otherwise claim an interest in Certificate of Adjudication No. 14-1360.

Furthermore, Melburne Wright, Sr.'s hearing request otherwise fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. The request contains no indication of how, or why, the Application will affect any interest of Mr. Wright's. He simply has failed to identify any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that this requestor is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Melburne Wright, Sr.'s request should not be granted.

33. Concho River Basin Water Conservancy Association

The Concho River Basin Water Conservancy Association (the "Association"), through A. J. Jones, Jr., submitted eight requests for a contested case hearing on Application 14-1318B. As an initial matter, the Association has not provided any demonstration that it

is, in fact, a legitimate organization comprised of any members, and particularly those members it purports to speak on behalf of in its hearing request. It is important to understand whether, in fact, any of its purported members are in fact members of the Association, and most importantly, were in fact members at the time that the Association submitted its hearing requests.

Additionally, an association may request a contested case hearing only if it meets the requirements set forth in Title 30, Section 55.252 of the Texas Administrative Code. Section 55.252(a) requires that, for the Association to have standing to request a contested case hearing, one or more of its members must otherwise have standing to request such a hearing on their own right.²⁰ The Association lists 21 distinct certificates of adjudication in the Concho River Basin that it claims are rights held by its members, who thus have justiciable interests that are purportedly affected by the Application. Of this group, only 13 certificates of adjudication are represented in the independent requests submitted by others seeking a contested case hearing on Application 14-1318B. Therefore, there is no indication at all that the owners of Certificates of Adjudication No. 14-1338, 14-1339, 14-1341, 14-1345, 14-1346, 14-1353, 14-1362 or 14-1363 are, in fact, members of the Association and would otherwise have standing to request a hearing on their own right, as required by TCEQ rules.²¹ Thus, with respect to the purported members of the Association that hold these water rights, they can serve as no basis for the Association's standing to make its request.

With respect to the holders of the 13 remaining water rights that are represented by requests independently submitted on the Application, not one of those requests meets the substantive requirements of Title 30, Section 55.250 of the Texas Administrative Code. To be clear, not one single requestor who claimed an interest in any of the 21 certificates of adjudication listed by the Association was able to show a justiciable interest affected by the Application. As a consequence, because the Association has failed to demonstrate that any of its purported members would otherwise have standing to request a hearing on Application 14-1318B in their own right, it has no standing under Title 30, Section 55.252(a)(1) of the Texas Administrative Code to request a hearing on the Application.

Section 55.252(a) also requires that the Association demonstrate that the interests it seeks to protect in its requests are germane to the organization's purpose.²² The Association has made no such demonstration. In addition to its substantive failures in establishing standing discussed above, it also has no standing under Title 30, Section 55.252(a)(2) of the Texas Administrative Code to request a hearing on the Application.

The third requirement that the Association must meet to demonstrate the requisite standing to make its hearing requests is that neither the claim it asserts, nor the relief it

²⁰ 30 TEX. ADMIN. CODE § 55.252(a)(1) (2009).

²¹ *Id.*

²² *Id.* § 55.252(a)(2).

requests, requires the participation of its purported individual members listed.²³ The Association has made no such demonstration. In fact, the statements made in the hearing requests submitted by its purported members belie any argument that the Association may make that it does not need to prove the individual circumstances of its members to obtain the relief it seeks in the requested hearing.²⁴ Because the Association is unable to demonstrate that neither the claim it asserts nor the relief it seeks requires the participation of any of its purported individual members, it also has no standing under Title 30, Section 55.252(a)(3) of the Texas Administrative Code to request a hearing on the Application.

With respect to the Association's hearing requests, of the eight requests submitted, the first request was received by the Chief Clerk on May 6, 2005. The second request was received by OPA on May 10, 2005. There is no clear indication on the request itself when, or whether, this request was received by the Chief Clerk, but it presumably would have been received somewhere between May 7, 2005 and May 9, 2005. The third request was received by the Chief Clerk on May 10, 2005. The Association also sent two subsequent requests for a contested case hearing on Application 14-1318B that were each received by the Chief Clerk on September 12, 2005. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, these five particular requests must have been received by the Chief Clerk after the notice was issued by the Chief Clerk and not later than July 28, 2005. Accordingly, they each are untimely.

The Association also sent requests for a hearing on Application 14-1318B that were received by the Chief Clerk on July 5, 2005, July 7, 2005, and July 11, 2005, respectively. While these three requests appear to have been timely submitted, they each nevertheless fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code.

Since it is not entirely clear which issues A. J. Jones, Jr. raised on his own behalf, and those he raised on behalf of the Association, San Angelo will treat each issue raised by Mr. Jones as an alleged basis for a contested case hearing as issues raised by the Association, as well. Accordingly, the Association raises five distinct issues in its July 5, 2005, July 7, 2005, and July 11, 2005 requests. It first takes issue with the use of the word "storage" in the Draft Permit. The Association suggests that the word "impoundment" should be used instead, because, it claims, the downstream senior water rights held by its members gives them a right to the impounded waters in Twin Buttes Reservoir. The Association's issue here is wholly irrelevant to the change proposed in Application 14-1318B, for several reasons. First, the Application seeks only to change the referenced elevation of the inlet structure on Twin Buttes Reservoir dam to reflect the

²³ *Id.* § 55.252(a)(3).

²⁴ *See Tex. Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 448 (Tex. 1993) (recognizing that the third prong of the associational standing requirement is met only where the association seeks "prospective relief, raises only issues of law," and is without the need to "prove the individual circumstances [of its members] to obtain relief").

actual elevation set by BuREC when that federal agency designed and constructed the project. The Application proposes no other changes, and it certainly does not propose any change that would alter the classification of waters rightfully diverted and stored in the Reservoir pursuant to the rights provided in COA 14-1318. Second, members of the Association have apparently been misinformed about how Texas water law views properly impounded water, *i.e.*, the legal, and exclusive, right San Angelo has to water properly stored in Twin Buttes Reservoir. Nothing in the Association's members' water rights gives any of its members a right to water lawfully diverted and stored in Twin Buttes Reservoir. Absent any such clear, expressly granted right to such stored water, the members of the Association have no right under Texas law to the water rightfully diverted and stored by San Angelo in Twin Buttes Reservoir. Finally, COA 14-1318 does, in fact, give San Angelo the right to "impound" up to 170,000 acre-feet of water in Twin Buttes Reservoir. The Association has articulated no justiciable interest in this point that is affected by the Application, and thus has not met the requirement of the Commission's rules related to hearing requests.²⁵

The Association next complains about the storage of released water from Twin Buttes Reservoir into Lake Nasworthy Reservoir, also owned by San Angelo. Nothing in Application 14-1318B proposes any alteration of San Angelo's legal rights or obligations relating to released water from Twin Buttes Reservoir. The Association has articulated no justiciable interest in this point that is affected by the Application.²⁶

The Association's third point again is merely a grievance relating to the management of water impounded in Lake Nasworthy Reservoir. San Angelo seeks only to change the referenced elevation of the inlet structure on Twin Buttes Reservoir dam to reflect the actual elevation set by BuREC in the Application. No other changes are proposed in the Application, and it certainly does not propose any change that would alter how diverted and impounded water is managed in Lake Nasworthy Reservoir. The Association has failed to articulate any justiciable interest here that is affected by the Application.²⁷

In its fourth point, the Association finally addresses the matter of changing the inlet structure elevation referenced in COA 14-1318, as proposed in the Application. While it complains that the proposed change will affect its members and other downstream senior and superior water rights holders, it provides no explanation of how or why its members will be affected by the requested change on paper (correcting the inlet structure elevation in COA 14-1318 to reflect the as-built elevation). The inlet structure elevation has been at the same elevation as requested in the Application for at least 46 years, and nothing in the Application proposes to change that fact. Additionally, the Association wholly ignores the role that the Watermaster plays in ensuring that its members and other downstream senior and superior water right holders' ability to beneficially use water to which they are entitled is protected. Given the important role of the Watermaster on the

²⁵ 30 TEX. ADMIN. CODE § 55.251(c)(2) (2009).

²⁶ *Id.*

²⁷ *Id.*

Concho River, and the fact that the Application seeks a conforming change on paper to reflect what has been the case for almost one-half century, it is far from clear how the Association's members have any right that is affected by the Application. Accordingly, the Association has failed to articulate with this point any justiciable interest that is affected by the Application.²⁸

The Association's fifth concern is moot. The requested additional diversion point was withdrawn from the Application. The Association's suggestion that an intake structure through Twin Buttes Reservoir dam be installed at 1,883.5 feet reflects a lack of understanding of the design and construction of Twin Buttes Reservoir dam, as well as any appreciation of the practical impossibility of such a modification. It additionally reflects a failure to recognize that the United States government owns Twin Buttes Reservoir and dam, and that San Angelo is without any legal authority to compel any such change on BuREC. The Association's concerns in this point appear to be without any relevance to the change proposed in the Application. It has articulated no justiciable interest that is affected by the Application.²⁹

The Association has provided no daytime telephone number in any of its requests. In addition, in none of its requests did it briefly or specifically describe how and why the change proposed in the Application will affect a justiciable interest, as it was clearly required to do by Title 30, Section 55.251(c)(2) of the Texas Administrative Code. The Association's requests fail to identify any justiciable interest affected by the Application.³⁰ As a consequence, it is impossible to determine that it is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

The Concho River Basin Water Conservancy Association's requests should not be granted.

V. CONCLUSION

Each request for a contested case hearing submitted on Application 14-1318B would object to making the requested conforming change to COA 14-1318 to reflect the as-built elevation of the inlet installed in Twin Buttes Reservoir dam almost 50 years ago. None of the requests acknowledge the Federal government's role in the design and construction of the dam then, nor do they acknowledge the Federal government's ownership of the dam today. More importantly, however, not one single request—by the most objective of standards—has articulated a justiciable interest that would be impacted by changing COA 14-1318 to reflect what has been the case since 1963. Commission rules do not support declaring any of the requestors to be an “affected person.”

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

Pursuant to Title 30, Section 55.255(a)(1) of the Texas Administrative Code, because none of the requestors have demonstrated that they are "affected persons" under the standards articulated in Subchapter G, San Angelo respectfully requests that their hearing requests each be denied and that the Application be granted.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of August, 2009, a true and correct copy of the foregoing was sent via first-class mail, electronic mail, facsimile, or hand-delivery to the following persons, including the persons on the attached Requestors list:

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