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

August 3, 2009

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

Re: San Angelo Water Supply Corp.; TCEQ Docket No. 2008-1616-WR

Dear Ms. Castañuela:

Please find enclosed the Executive Director's Response to Hearing Requests regarding the Application No. 1318B of the City of San Angelo Water Supply Corporation Application to Amend Certification of Adjudication No. 14-1318A. If you have any questions, please do not hesitate to contact me at (512) 239-0463. Thank you.

Sincerely,

Robin Smith

Robin Smith
Attorney
Environmental Division

cc: Mailing List

DOCKET NO. 2008-1616-WR

APPLICATION NO.1318B	§	**BEFORE THE**
OF THE CITY OF SAN ANGELO	§	
WATER SUPPLY CORPORATION	§	**TEXAS COMMISSION**
APPLICATION TO AMEND	§	
CERTIFICATION OF	§	
ADJUDICATION NO. 14-1318A	§	**ON ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director files this response to hearing requests for San Angelo's Water Supply Corporation's Application No. 14-1318B to amend its Certificate of Adjudication No. 14-1318A. Sixteen timely individual or couple hearing requests were filed. The Executive Director recommends that the timely requests for the twelve certificate holders be granted, and that one timely request that claims a water right she does not own, and three domestic and livestock users that provide no location, be denied. One timely requestor also requested a hearing for 19 water rights, some of which have multiple owners. The Executive Director recommends that 22 additional hearing requestors from that group of water rights be granted.

BACKGROUND

San Angelo Water Supply Corporation owns Certificate of Adjudication No. 14-1318, as amended, which authorizes it to impound 170,000 acre feet of water and divert and use not to exceed 25,000 acre feet of water per year from Twin Buttes Reservoir on the Middle Concho River, Spring Creek, and South Concho River for agricultural purposes to irrigate 15,000 acres of land within the boundaries of Tom Green County Water Control and Improvement District No. 1, and to divert and use not to exceed 29,000 acre feet of water per year from Twin Buttes Reservoir for municipal purposes.

Special Condition 5.C reads "a conduit shall be constructed in the aforementioned dam with the inlet at elevation 1883.5 feet above mean sea level, having an opening of not less than five feet in diameter and equipped with a regulating gate for the purpose of permitting the free passage of the normal flow through the dam at all times and the passage of those waters to which the Commission may determine lower appropriators are entitled."

San Angelo requests to amend this condition to change the elevation referenced in the inlet to the conduit through the dam from 1,883.5 feet above mean sea level to the actual built elevation level of 1,885 feet above sea level.

PROCEDURAL HISTORY

This application was declared administratively complete on April 19, 2005. Notice was mailed to all water right holders downstream of Nasworthy Dam in the Concho River Basin on June 21,

2005. The comment period was over on July 27, 2005. The notice decision for this application was made prior to the final decision by the Texas Supreme Court in the *Marshall* case. Forty-nine hearing requests were received.

Four other hearing requests applications involving the City of San Angelo are pending. The watermaster and permitting staff have been meeting regularly over the course of processing these applications with the applicant and protestants in an effort to come to agreement on these permits. This has been at the request of the applicant and the protestants. These meetings have included the development of an accounting plan for the applicant's various permits to provide detailed information on releases and diversions.

The downstream water right holders want the proposed accounting plan to require the passage of stored water. Many of the hearing requestors have formed a group that has filed petitions asking the Executive Director to "correct" the City's Certificate of Adjudication No. 14-1318 to require the passage of stored water in Twin Buttes Reservoir to downstream water right holders. The Executive Director denied the request and the Commission allowed the groups' motion to overturn to be overruled by operation of law. The group filed an action in court on April 9, 2009, which is pending, appealing these decisions and asking for the same relief.

Another important fact is that while the water right for Lake Nasworthy, immediately downstream of Twin Buttes Reservoir, does not require the passthrough of any water for downstream water rights, the City has agreed to pass the water required to be passed through Twin Buttes under this application through Lake Nasworthy.

LEGAL AUTHORITY

The application is subject to the procedures for evaluating hearing requests on applications declared administratively complete on or after September 1, 1999 in 30 Texas Administrative Code, Chapter 55, Subchapter G (Sections 55.250-55.256).

Title 30, Sections 55.251 (b) and (c) of the Texas Administrative Code specify that a hearing request must:

(1) be in writing and be filed with the Office of the Chief Clerk during the public comment period;
(2) give the name, address, and daytime telephone number of the person who files the request;
(3) identify the person's personal justiciable interest affected by the application including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public; and
(4) request a contested case hearing.

A hearing request must comply with requirement (1) above and must "substantially comply" with requirements (2) through (4). 30 TEX. ADMIN. CODE § 55.251(c).

A request for a contested case hearing must be granted if the request is made by an affected person and the request:

(A) complies with the requirements of 30 TEX. ADMIN. CODE § 55.251;
(B) is timely filed; and
(C) is pursuant to a right to hearing authorized by law.

30 TEX. ADMIN. CODE § 55.255(b)(2).

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. An interest common to the general public does not constitute a justiciable interest. 30 TEX. ADMIN. CODE § 55.256(a).
For a group or an association, the hearing request may be granted if the group shows that one or more of the members would have standing to be a party in his or her own right, the interests the group seeks to protect are germane to the group's purpose, and the claim asserted would not require the presence of the individual members. 30 TEX. ADMIN. CODE § 55.252(a).

To determine whether a person is an affected person, all relevant factors must be considered, including but not limited to:

(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;
(5) the likely impact of the regulated activity on the use of the impacted natural resource by the person; and
(6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE § 55.256(c).

HEARING REQUESTS

All the hearing requestors basically say that the application will impact, threaten, and harm their senior water rights. A few do not specifically state that they will be harmed, but because these were form letters from persons sent about the same time, the Executive Director believes that it should be inferred that they are all saying that their water right

could be harmed. Also, none of the requestors but A.J. Jones provide their phone number.

1. Timely hearing requestors:

W. G. and Wanda Dishroom own Certificate of Adjudication No. 14-1364, 25 miles downstream of Twin Buttes dam.

Thomas Evridge owns Certificate of Adjudication No. 14-1369, 25 miles downstream.

A. J. Jones owns Certificate of Adjudication No. 14-1397, 25 miles downstream. He also seeks a hearing for the Concho River Basin Water Conservancy Association.

John Ketzler owns Certificate of Adjudication No. 14-1376, 25 miles downstream.

Darrell Rushing owns Certificate of Adjudication No. 14-1371, 25 miles downstream.

Kenneth and Bernice Schwartz own Certificate of Adjudication Nos. 14-1351 and 1354, 26 miles downstream.

Kent Schwartz owns Certificate of Adjudication No. 14-1357, 18 miles downstream.

Clyde and Cynthia Watkins own Certificate of Adjudication No.14-1335, 12 - 15 miles downstream.

Edward Werner owns Certificate of Adjudication No. 14-1352, 27 miles downstream.

Ben Willberg owns Certificate of Adjudication No.14-1384, 35 miles downstream.

Kenneth Windham owns Certificate of Adjudication No. 14- 1368, 27 miles downstream.

Douglas John, does not say he owns a water right, and does not give his location. He does own Certificate of Adjudication No. 14-1372.

Jennifer Hoelscher states that she owns Certificate of Adjudication No.14-1384, 25 miles downstream. However, according to TCEQ records, her name is not listed as an owner of this water right.

Owners of Certificates of Adjudication Nos. 14-1338, 1339, 1340, 1341, 1345, 1346, 1351, 1353, 1354, 1360, 1362, 1363, 1364, 1368, 1369, 1371, 1372, 1373, 1384, 1388 are all represented by A.J. Jones on behalf of the Concho River Basin Water Conservancy Association. However, no names are given and no location for these requests are given. Staff has determined that these hearing requestors are all 10 to 50 miles downstream. They are:
Van Carson, Certificate of Adjudication No. 14-1338
Lewis C. Roach, Certificate of Adjudication No. 14-1339

Hudson Management Ltd., Certificate of Adjudication No. 14-1340
Mrs. Gladys M. Lewis, Certificate of Adjudication No. 14-1341
Ezequiel A. Tapia and wife, Certificate of Adjudication No. 14-1345
Wilma Crownover, Certificate of Adjudication No. 14-1346
Kenneth and Bernice Schwartz, Certificates of Adjudication Nos. 14 - 1351 and 1354
Ronnie and Martha Briley, Certificate of Adjudication No. 1353
Milburn Wright, Joyce Ann Moore, and Jerrilyn Jones, Certificate of Adjudication No. 14-1360
Lonnie Buck, Certificate of Adjudication No. 14-1362
Lewis Buck, Certificate of Adjudication No. 14-1363
W. G. and Wanda Dishroom own Certificate of Adjudication No. 14-1364,
Kenneth and George Windham, Certificate of Adjudication No. 14-1368
Thomas Evridge, Certificate of Adjudication No. 14-1369
Darrell and Elizabeth Rushing, Certificate of Adjudication No. 14-1371
Douglas and Betty John, Certificate of Adjudication No. 14-1372
Carroll Blacklock and husband, Certificate of Adjudication No. 14-1373
Ben and Wilma Willberg, Certificate of Adjudication No. 14-1384
City of Paint Rock, Certificate of Adjudication No. 14-1388

Timely requests from domestic and livestock users downstream of Twin Buttes, no location given:
Fred Mueller
Steven Hoelscher
Douglas John

2. Late hearing requestors:

Carroll Blacklock owns Certificate of Adjudication No. 14-1399, 20 miles downstream of Twin Buttes Dam." She and her husband have a timely request under A.J. Jones' letter.

City of Paint Rock owns Certificate of Adjudication No. 14-1388 50 miles downstream. The City has a timely request under A. J. Jones' letter.

Wilburn Bailey Estate, Certificate of Adjudication No. 14-1382, 20 miles downstream.

Hudson Management owns Certificate of Adjudication No. 14-1340, 19 miles downstream. Hudson Management Company has a timely request under A. J. Jones' letter.

Milburn Wright owns Certificate of Adjudication No.14-1360, no location given. Staff has determined that this water right is within 50 miles downstream. He has a timely request under A. J. Jones' letter.

Bernie and Lucie Mika own Certificate of Adjudication No. 14-1379, 30 miles downstream.

Schneeman Investment Corporation, Certificate of Adjudication No. 14-1349, 24 miles downstream.

Todd Schwertner owns Certificate of Adjudication No. 14-1349, 20 miles downstream.

Gena Day owns Certificate of Adjudication No. 14-1358, 20 miles downstream.

Samie Ewald owns Certificate of Adjudication No. 14-1392, 30 miles downstream.

Leonard Grantham Jr. owns Certificate of Adjudication No. 14-1361, 7 miles downstream.

Billy Helwig owns Certificate of Ajudication No. 14-1380, 25 miles downstream.

M. C. Vinson, Certificate of Adjudication No. 14-3612. No location given.

Vinson Ranch owns Certificate of Adjudication No.14-1385, no location given. Staff has determined that the Ranch's water right is within 50 miles downstream.

Late hearing requests from domestic and livestock users downstream of Twin Buttes, N:
Ben Simms
Fred Campbell

Recommendation: The Executive Director believes that the timely hearing requestors other than Jennifer and Steven Hoelscher and the domestic and livestock users that do not provide their location are potentially affected persons. These persons have shown that they own water rights that could possibly be impacted by changes to the conduit level. The Concho River Basin Water Conservancy Association has shown at least one affected person as a member, A. J. Jones.

The persons represented by A.J. Jones did not supply their names and addresses, as required by Tex. Admin. Code § 55.251(b) and (c), and could be denied for that reason. However, the Executive Director recommends that the requests be granted based on staff's confirmation of names and water rights.

CONCLUSION

Therefore the Executive Director recommends that the following hearing requests be granted:

Concho River Basin Water Conservancy Association, Carroll Blacklock, W. G. and Wanda Dishroom, Thomas Evridge, A. J. Jones, John Ketzler, Darrell Rushing, Douglas John, Kenneth and Bernice Schwartz, Kent Schwartz, Clyde and Cynthia Watkins, Edward Werner, Ben Willberg, and Kenneth Windham.

The owners represented by A.J. Jones, are, in addition to the timely requestors listed above: Van Carson, Mrs. Gladys M. Lewis, Ezequiel Tapia and wife, Wilma Crownover, Bernice Schwartz, Ronnie and Martha Briley, Milburn Wright, Lonnie Buck, Lewis Buck, George Wildham, Elizabeth Rushing, Douglas and Betty John, Carroll Blacklock's husband, Wilma Willberg, the City of Paint Rock, Joyce Ann Moore, Jerrilyn Jones, and Lewis Roach and wife.

Respectfully submitted,

TEXAS COMMISSION
ON ENVIORNMENTAL
QUALITY

Mark Vickery, P. G.
Executive Director

Robert Martinez,
Division Director
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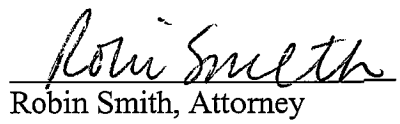

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CERTIFICATE OF SERVICE

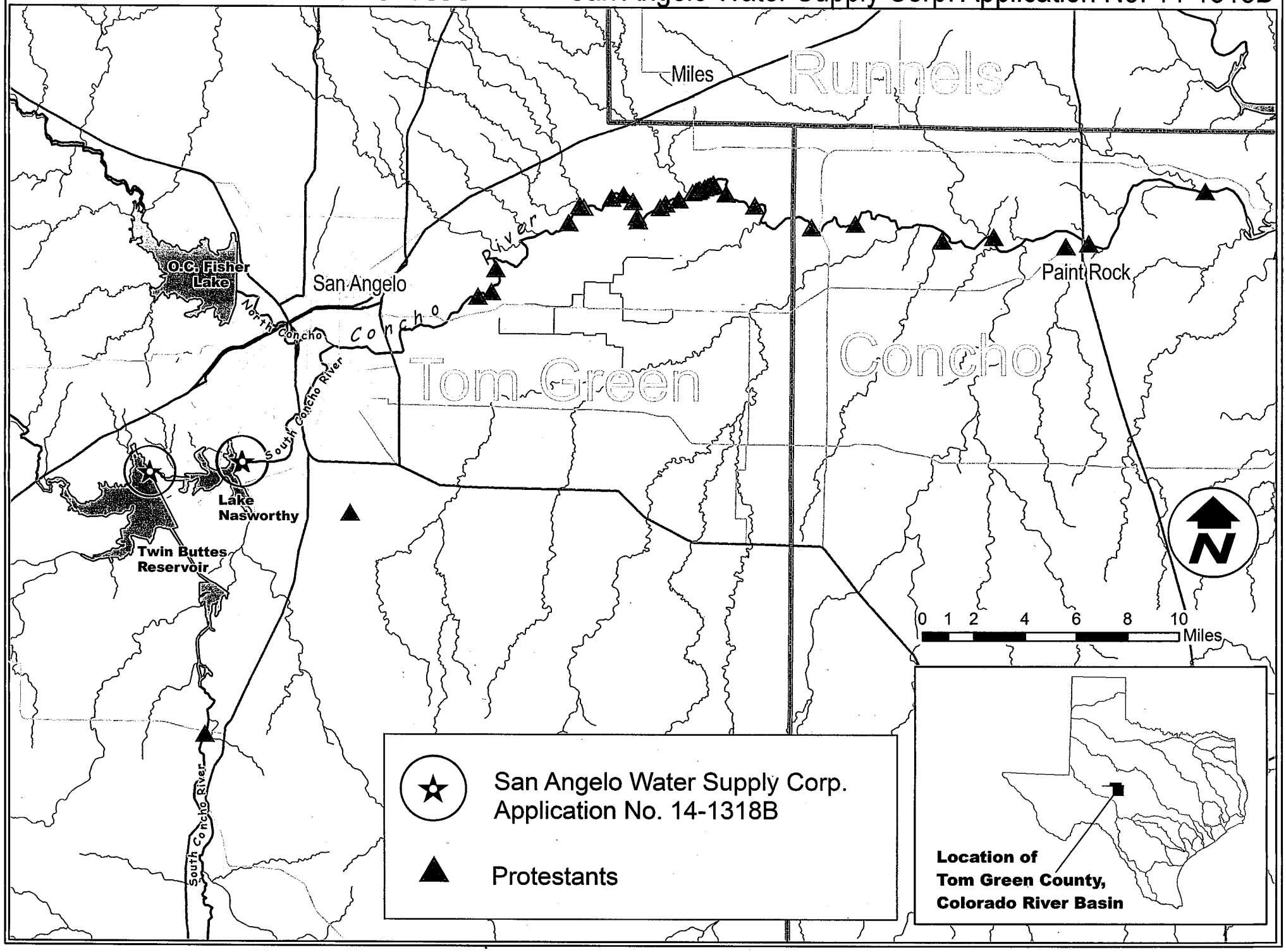
I hereby certificate that the Executive Director's Response to hearing requests in the Application No. 1318B of the City of San Angelo Water Supply Corporation Application to Amend Certification of Adjudication No. 14-1318A matter were filed with the Chief Clerk, faxed to the persons with fax numbers, and mailed to the persons on the attached Mailing List on this 3rd day of August, 2009.

Robin Smith

Robin Smith
Attorney
Environmental Law Division
Bar No. 18645600

Docket No. 2008-1616-WR

San Angelo Water Supply Corp. Application No. 14-1318B



MAILING LIST
SAN ANGELO WATER SUPPLY CORPORATION
DOCKET NO. 2009-1616-WR; PERMIT NO. ADJ 1318B

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