

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. 2008-1617-WR

Dear Ms. Castañuela:

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

Sincerely,

A handwritten signature in black ink that reads "Robin Smith".

Robin Smith  
Attorney  
Environmental Division

cc: Mailing List

**DOCKET NO. 2008-1617-WR**

<b>APPLICATION NO.1318C</b>	§	<b>BEFORE THE</b>
<b>OF THE CITY OF SAN ANGELO</b>	§	
<b>WATER SUPPLY CORPORATION</b>	§	<b>TEXAS COMMISSION</b>
<b>APPLICATION TO AMEND</b>	§	
<b>CERTIFICATION OF</b>	§	
<b>ADJUDICATION NO. 14-1318B</b>	§	<b>ON ENVIRONMENTAL QUALITY</b>

**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. 14-1318C to amend its Certificate of Adjudication No. 14-1318B. Thirty-two individual or couple hearing requests were filed, and the Executive Director recommends that all but five of those be granted. One hearing requestor asked for a hearing for 19 other water rights, some of which have multiple owners. The Executive Director recommends that 16 persons from that group be additionally granted as hearing requestors.

**BACKGROUND**

San Angelo Water Supply Corporation owns Certificate of Adjudication No. 14-1318, as amended, which authorizes it to impound 170,000 acre feet and to 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 states that a conduit should be constructed in the dam "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 state that "Certificate Holder shall permit and provide for the free passage of inflows to Twin Buttes Reservoir through the conduit in amounts to which lower appropriators are entitled as determined by the Watermaster or the commission based on streamflow gages located on upstream watercourse that the Watermaster or the commission considers appropriate for making such determination."

Notice was mailed to all downstream water rights holders. The comment period ended on October 3, 2005 and May 30, 2006 (revised notice). All hearing requests are timely.

## PROCEDURAL HISTORY

The application was received on March 30, 2005. It was declared administratively complete on July 12, 2005. Notice was mailed to all water right holders downstream of Nasworthy Dam in the Concho River Basin on August 25, 2005. Notice was again issued on May 30, 2006, after the applicant amended its application. The notice decision for this application was made prior to the final decision by the Texas Supreme Court in the *Marshall* case. Fifty-three hearing requests were received. All hearing requests were timely.

This application, along with four other San Angelo applications, were filed in 2005. (Although the Executive Director requested that all five items be set, one pending amendment for Certificate of Adjudication No. 14-1348B, was not set on the August 26, 2009, agenda.) 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. Many of the hearing requestors have formed a group that has filed petitions asking the Executive Director amend 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 has filed an action in court, which is pending, 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 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. All the hearing requests are timely.

Carol Blacklock owns Certificate of Adjudication No. 14-1399, 20 miles downstream of Twin Buttes dam.

Lewis Buck owns Certificate of Adjudication No. 14-1363, 21 miles downstream.

Lonnie Buck owns Certificate of Adjudication No. 14-1363, 21 miles downstream.

Van Carson owns Certificate of Adjudication No. 14-1338, three to five miles downstream.

City of Paint Rock owns Certificate of Adjudication No. 14-1388 approximately 50 miles downstream.

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

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

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

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

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

Hudson Management owns Certificate of Adjudication No. 14-1340, 19 miles downstream.

Douglas John owns Certificate of Adjudication No. 14-1372, 25 miles downstream.

A. J. Jones owns Certificate of Adjudication No. 14-1397, 25 miles downstream.

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

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

Kevin and Monico Noland own Certificate of Adjudication No.14-1344, 24 miles downstream.

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

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

Kenneth Swartz owns Certificates of Adjudication Nos. 14-1351, 1354, 26 miles downstream.

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

Todd Schwertner owns Certificate of Adjudication No. 14-1370, 20 miles downstream.

Gordon Snodgrass owns Certificate Of Adjudication No. 14-1328, 9 miles downstream.

Vinson Ranch owns Certificate of Adjudication No.14-1385, no location given.  
However, staff has determined that the water right would be within 45 miles downstream.

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

Edward Werner owns Certificate of Adjudication No.4-1352, 27 miles downstream.

Kenneth Windham and his wife own Certificate of Adjudication No.14- 1368, 27 miles downstream.

Milburn Wright states that he owns Certificate of Adjudication No.14-1360, no location

given. However, staff has determined that the water right would be within 45 miles downstream. According to staff records, Mr. Wright no longer owns this water right.

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

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

Jennifer and Steven Hoelscher state that they own 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.

M.C. Vinson states that he owns Certificate of Adjudication No.14-3612, no location given. Staff has determined that he does not own a water right, except as Vinson Ranch.

Owners of Certificates of Adjudication Nos. 14-1338, 1339, 1340, 1341, 1345, 1346, 1351, 1353, 1354, 1360, 1362, 1363, 1368, 1369, 1371, 1372, 1373, 1384, 1388 are all represented by A.J. Jones on behalf of the Concho 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

Joyce Ann Moore, and Jerrilyn Jones, Certificate of Adjudication No. 14-1360

Lonnie Buck, Certificate of Adjudication No. 14-1362

W. G. and Wanda Dishroom, Certificate of Adjudication No. 14-1362

Kenneth and George Windham, Certificate of Adjudication No. 14-1368

Lewis Buck and his wife, Certificate of Adjudication No. 14-1363

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

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

Ben and Wilma Willberg, Certificate of Adjudication No. 14-1384

City of Paint Rock, Certificate of Adjudication No. 14-1388

Fred Campbell, is a domestic and livestock user, but does not provide his location.

Ben Simms is a domestic and livestock user, but does not provide his location.

Steven Hoelscher, is a domestic and livestock user, but does not provide his location.

Recommendation: The Executive Director believes that the certificate water right holders downstream of the location are potentially affected persons. However, several persons did not meet the requirements of Section 55.251(b) and (c) because they did not provide their phone numbers. Also, as stated above, a few did not provide their locations. The Executive Director recommends that these requests be granted, however, except for Jennifer Hoelscher, who is not listed as an owner on the claimed water right. The Executive Director also recommends that the hearing requests for the three persons who are domestic and livestock users but did not provide their locations be denied.

The Certificate owners represented by A. J. Jones did not provide their names or locations. The Executive Director also recommends that the requests be granted, however, as well as the request of the Concho River Basin Conservation Association.

### CONCLUSION

Therefore, the Executive Director recommends that the following hearing requests be granted: Carol Blacklock, Lewis Buck and his wife, Lonnie Buck, Van Carson, City of Paint Rock, Gina Day, W. G. and Wanda Dishroom, Thomas Evridge, Samie Ewald, Leonard Grantham Jr., Wilburn Bailey Estate, Billy Helwig, Hudson Management, Douglas John, A. J. Jones, Concho River Basin Water Conservancy Association, John Ketzler, Bernie and Lucie Mika, Kevin and Monico Noland, Darrell Rushing, Schneeman Investment Corporation, Kenneth Swartz, Kent Swartz, Todd Schwertner, Gordon Snodgrass, Vinson Ranch, Clyde Watkins, Edward Werner, Wilburn Baily Estate, Kenneth Windham and his wife, Ben Willberg.

The following are additional names that are on A. J. Jones' letter: Wilma Willberg, Mrs. Gladys M. Lewis, Wilma Crownover, Bernice Schwartz, Ronnie and Martha Briley, George Windham, Elizabeth Rushing, Betty John, Carol Blacklock's husband, Ezequiel Tapia and wife, Joyce Ann Moore, Jerrilyn Jones, and Lewis Roach and wife.

Respectfully submitted,

TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Mark Vickery, P. G.  
Executive Director

Robert Martinez,  
Division Director  
Environmental Law Division

Robin Smith

Robin Smith, Attorney  
State Bar No. 18645600  
Environmental Law Division  
Texas Commission on  
Environmental Quality  
P.O. Box 13087, MC-173  
Austin, Texas 78711-3087  
(512)239-0463  
(512)239-0606 (FAX)

**CERTIFICATE OF SERVICE**

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



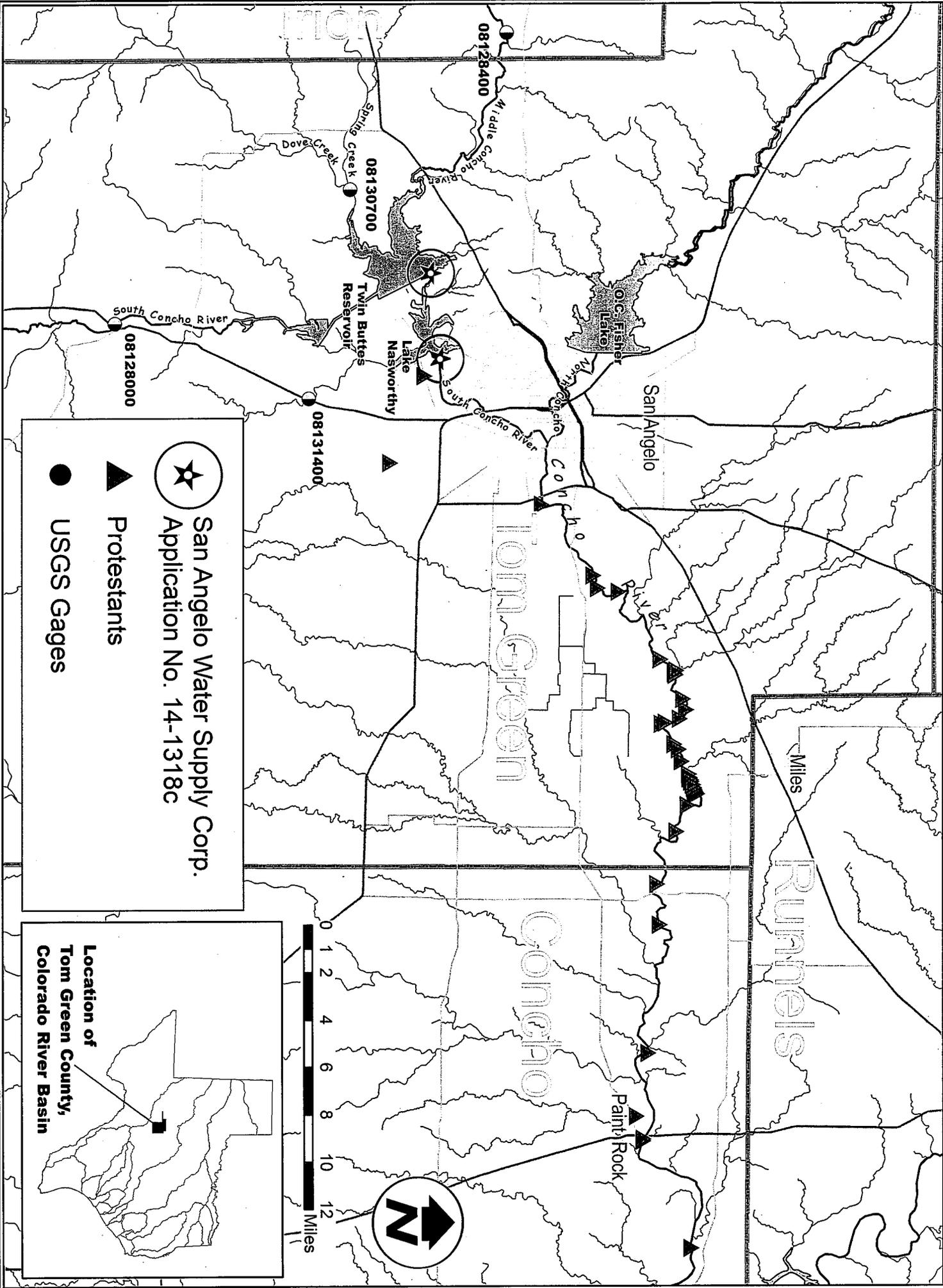
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Robin Smith

Attorney

Environmental Law Division

Bar No. 18645600



**MAILING LIST**  
**SAN ANGELO WATER SUPPLY CORPORATION**  
**DOCKET NO. 2009-1617-WR; PERMIT NO. ADJ 1318C**

FOR THE APPLICANT:

Will Wilde  
City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902-1751

FOR THE EXECUTIVE DIRECTOR:

Todd Galiga, Senior Attorney  
Texas Commission on Environmental  
Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Craig Mikes, Technical Staff  
Texas Commission on Environmental  
Quality  
Water Supply Division, MC-160  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL

Mr. Blas Coy, Jr., Attorney  
Texas Commission on Environmental  
Quality  
Public Interest Counsel, MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE OFFICE OF PUBLIC  
ASSISTANCE

Ms. Bridget Bohac, Director  
Texas Commission on Environmental  
Quality  
Office of Public Assistance, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

FOR ALTERNATIVE DISPUTE  
RESOLUTION:

Mr. Kyle Lucas  
Texas Commission on Environmental  
Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087

REQUESTER(S)

Willburn Bailey  
P.O. Box 66  
Lowake, Texas 76855-0066

Carroll D. Blacklock  
1906 Coke St.  
San Angelo, Texas 76905-6223

Lewis J. Buck  
15793 My Road  
Miles, Texas 76861

Lonnie L. Buck III  
1412 S. Van Buren St.  
San Angelo, Texas 76901-4356

Fred R. Campbell  
P.O. Box 186  
Paint Rock, Texas 76866-0186

**Mailing List**

**Page 2**

Van W. Carson  
17 S. Chadbourne St., Ste. 509  
San Angelo, Texas 76903-5862

Concerned Citizen  
Public Works Director  
P.O. Box 157  
Paint Rock, Texas 76866-0157

Gena M. Day  
P.O. Box 143  
Terral, OK 73569-0143

Mr. Dwayne Dishroon  
P.O. Box 374  
Miles, Texas 76861-0374

Wanda & WG Dishroon  
P.O. Box 374  
Miles, Texas 76861-0374

Thomas L. Evridge  
16185 My Road  
Miles, Texas 76861-5200

Samie Ewald  
226 W. Twohig Ave.  
San Angelo, Texas 76903-6439

Leonard Grantham  
15273 McMillan Road  
Miles, Texas 76861-0070

Letha & Todd Schwertner  
P.O. Box 70  
Miles, Texas 76861-0070

August F. Haechten, IV  
P.O. Box 66  
Miles, Texas 76855-0066

Bill Hellwig  
5130 N. Helwig Road  
Miles, Texas 76861-5214

Jennifer Ann Hoelscher  
2261 Country Club Road  
San Angelo, Texas 76904-9351

Steven Hoelscher  
2261 Country Club Road  
San Angelo, Texas 76904-9351

Wanda Hudson  
8193 Thompson Road  
Miles, Texas 76861

Douglas John  
16293 My Road  
Miles, Texas 76861-5228

AJ Jones  
15957 My Road  
Miles, Texas 76861-5228

John C. Ketzler  
7253 Jackson Lane  
Miles, Texas 76861-5222

Bernie & Lucy Mika  
P.O. Box 643  
Miles, Texas 76861-0643

Kevin L. Noland  
11097 S. Douglas Loop  
Miles, Texas 76861-4717

Darrell Rushing  
16269 My Road  
Miles, Texas 76861-5217

Bill Schneemann  
Schneemann Investment Corp.  
1005 N. Plaza Ave.  
Big Lake, Texas 76932-3217

Kenneth Schwartz  
7118 S. Fairview School Road  
San Angelo, Texas 76904-4124

**Mailing List**

**Page 3**

Kent C. Schwartz  
10480 Robby Jones Road  
San Angelo, Texas 76904-4134

Ben O. Sims  
425 N. Crozier Ave.  
Paint Rock, Texas 76866-3103

Ben O. Sims  
RR 1, Box 4  
Paint Rock, Texas 76866-9401

Gordon P&N Snodgrass  
4218 Homestead Circle  
San Angelo, Texas 76905-7309

David Vinson  
20001 Private Road  
Rowena, Texas 76875

M. C. Vinson  
20001 Private Road  
Rowena, Texas 76875-6225

Clyde Watkins  
101 Penrose  
San Angelo, Texas 76903-8635

Edward E. Werner  
P.O. Box 58  
Miles, Texas 76861-0058

Ben A. Willberg  
9990 FM 380  
Paint Rock, Texas 76866-3602

Kenneth R. Windham  
16125 My Road  
Miles, Texas 76861-5200

Milburn Wright  
P.O. Box 7074  
Miles, Texas 76861

INTERESTED PERSON(S)

Lyn Clancy  
Associate General Counsel, LCRA  
P.O. Box 220 H424  
Austin, Texas 76767-0220

Yantis Green  
P.O. Box 488  
Veribest, Texas 76886-0488

Mr. Glenn Jarvis  
Attorney at Law  
1801 S. 2<sup>nd</sup> Street, Ste. 550  
International Bank Bldg.  
McCallen, Texas 78503-1353

Mark A. Trevino  
Area Manager  
5316 W. Highway 290, Ste. 510  
Austin, Texas 78735-8931