



1984 ——— 25 Years ——— 2009

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August 31, 2009

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

VIA E-FILING AND U.S. MAIL

Re: In the Matter of Application No. 14-1348B by the San Angelo Water Supply Corporation For Amendment to Certificate of Adjudication No. 14-1348 TCEQ Docket No. 2009-0101-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,

A handwritten signature in black ink, appearing to read "M. Rochelle".

Martin C. Rochelle

MCR/ldp
1168\07\1348B\Response\ltr090831mcr
ENCLOSURE

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

DOCKET NO. 2009-0101-WR

**APPLICATION NO. 14-1348B BY THE § BEFORE THE TEXAS COMMISSION
CITY OF SAN ANGELO FOR §
AMENDMENT TO CERTIFICATE OF § ON
ADJUDICATION NO. 14-1348 §
§ ENVIRONMENTAL QUALITY**

**RESPONSE TO REQUESTS FOR
CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS:

The City of San Angelo (herein referenced 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

Certificate of Adjudication No. 14-1348 (“COA 14-1348”) currently authorizes the maintenance of two existing on-channel dams and reservoirs impounding a total of 122 acre-feet of water from the Concho River Segment of the Colorado River. Through COA 14-1348, San Angelo shares an interest in these two dams and reservoirs with two other owners of record. COA 14-1348 also gives San Angelo the right to divert and use not to exceed 135 acre-feet of water annually from two diversion points on the Concho River for agricultural irrigation purposes. The certificate presently specifies that San Angelo can use the authorized diversions to irrigate a certain 106 acres in Tom Green County at a maximum combined diversion rate of 3.33 cfs. On August 26, 2009, TCEQ Commissioners approved a separate application by San Angelo to amend COA 14-1348 to authorize municipal use as an additional purpose of use and to authorize the San Angelo Municipal Water Supply System service area as an additional place of use (“COA 14-1348A”). The amendments sought by San Angelo in Application 14-1348B would be in addition to the amendments reflected in COA 14-1348A.

II. PROCEDURAL HISTORY

On July 25, 2007, San Angelo filed Application No. 14-1348B with the TCEQ to amend COA 14-1348 to add an additional diversion point 0.71 stream miles downstream to the diversion point that is currently authorized in COA 14-1348 (the “Application” or “Application No. 14-1348B”). The Application proposes no change in the volume, or rate, of diversions presently authorized in COA 14-1348. On November 27, 2007, TCEQ staff declared the Application to be administratively complete. TCEQ staff determined that the proposed change in the Application would have no practical impact on any other water right holder in the Colorado

River Basin. Accordingly, only mailed notice to interjacent water rights holders of record between the existing and proposed diversion points was required, pursuant to Title 30, Section 295.158(c)(2)(D) of the Texas Administrative Code.

Notice of the Application was mailed to interjacent water rights holders on March 14, 2008. Requests for a contested case hearing on the Application were due to the TCEQ Chief Clerk's office no later than April 4, 2008. Two requests for a contested case hearing were filed, as noted below, but neither of these hearing requestors are interjacent water rights holders who received mailed notice of the Application.

On February 24, 2009, TCEQ staff issued a draft permit amending COA 14-1348 pursuant to the Application (the "Draft Permit"). On August 20, 2009, San Angelo received notice that the above-referenced matter would be considered by the Commission at the September 23, 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." 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 members of the general public does not qualify as a personal justiciable interest. 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. 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 briefly, but specifically, how and why he or she will be affected by the change proposed in the Application.

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." 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 20-day period following the date that notice of the Application was mailed to interjacent water rights holders. The Chief Clerk mailed the notice on March 14, 2008. Thus, all timely hearing requests must have been received by the Chief Clerk no later than April 4, 2008.

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.

IV. EVALUATION OF HEARING REQUESTS FOR APPLICATION 14-1348B

1. Wilma Crownover

Georgia C. Edwards submitted a request for a contested case hearing on Application 14-1348B, purportedly on behalf of Wilma Crownover. Nothing in the request, however, indicates that Georgia C. Edwards is authorized to act, or speak, on behalf of Wilma Crownover. TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1346—is held in the name of Wilma Crownover, not Georgia C. Edwards. Accordingly, it is not clear that the interests of Wilma Crownover have been properly, or accurately, presented in this hearing request.

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, 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. 14-1346. This substantive deficiency in the request is particularly glaring given the fact that Certificate of Adjudication No. 14-1346 is not an interjacent right between COA 14-1348 and the additional diversion point requested in the Application. In fact, the water rights authorized by Ms. Crownover's certificate are upstream of COA 14-1348. Based on this recognition alone, it is far from clear how Certificate of Adjudication No. 14-1346 could be impacted by the change sought in the Application. Certainly, the hearing request contains no description of any kind of any such impact, as is required by TCEQ rules.

In addition, TCEQ staff have determined that the change requested in the Application would have no practical effect on this water right. Given this fact, it would appear to be particularly incumbent upon Ms. Crownover, or Ms. Edwards for that matter, to identify with some specificity how and why Certificate of Adjudication No. 14-1346 will be impaired by Application 14-1348B. Unfortunately, the request does neither.

Accordingly, this request fails 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.

Wilma Crownover's request should not be granted.

2. A. J. Jones

A. J. Jones, Jr. submitted a request for a contested case hearing on the Application that fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the changes proposed in the Application will affect him, nothing in Mr. Jones' request gives any indication of how, or

why, the changes sought in the Application will affect Certificate of Adjudication No. 14-1397—the water right he asserts will purportedly be impaired by the changes proposed in the Application. Similar to the request discussed above, this deficiency is only amplified by the fact that Certificate of Adjudication No. 14-1397 is not an interjacent right between COA 14-1348 and the additional diversion point requested in the Application. It simply is not clear from Mr. Jones' request how Certificate of Adjudication No. 14-1397 could be impacted by the change sought in the Application.

TCEQ staff have determined that the change requested in the Application would have no practical effect on Mr. Jones' water right. Given this fact, it would appear to be particularly incumbent upon Mr. Jones to identify with some specificity how and why Certificate of Adjudication No. 14-1397 will be impaired by Application 14-1348B.

Mr. Jones has not identified any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that he is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

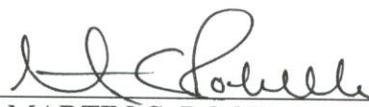
A. J. Jones, Jr.'s requests should not be granted.

V. CONCLUSION

Because none of the two requestors were able to identify a justiciable interest that would be impacted by the changes proposed in Application 14-1348B, Commission rules do not support declaring any one of them to be an "affected person." Therefore, 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.

Respectfully submitted,

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By: 
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**ATTORNEYS FOR APPLICANT
CITY OF SAN ANGELO**

CERTIFICATE OF SERVICE

I hereby certify that on this the 31st 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:

FOR THE EXECUTIVE DIRECTOR:

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FOR THE CHIEF CLERK:

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MARTIN C. ROCHELLE