

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 31, 2009

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

Re: TCEQ Docket No. 2009-0101-WR
Certificate of Adjudication No. 14-1348
Application by City of San Angelo to amend water right

Dear Ms. Castañuela:

Enclosed for filing, please find an original and 7 copies of the *Executive Director's Response to Hearing Request*.

Please file stamp these documents and return a file-stamped copy to James Aldredge, Staff Attorney, Environmental Law Division, MC 173.

If you have any questions, please do not hesitate to contact me at (512) 239-2496.

Sincerely,

A handwritten signature in black ink, appearing to read "James Aldredge", with a long horizontal flourish extending to the right.

James Aldredge
Staff Attorney
Environmental Law Division

CC: Mailing List

Enclosure

TCEQ DOCKET NO. 2009-0101-WR

Application by	§	Before the
THE CITY OF SAN ANGELO	§	
to amend	§	TEXAS COMMISSION ON
CERTIFICATE OF ADJUDICATION	§	
NO. 14-1348	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or commission) files this response to the hearing requests filed in this matter. Two hearing requests were received. The Executive Director recommends that the hearing requests be denied.

I. Background

The City of San Angelo (City) owns Certificate of Adjudication No. 14-1348, as amended, which authorizes a one-third interest in maintaining a dam and reservoir impounding 55 acre feet of water on the Concho River, tributary of the Colorado River, Colorado River Basin. The City may divert and use 135 acre feet of water from two points on that reservoir for agricultural purposes to irrigate 160 acres of land in Tom Green County. The City has filed an amendment to the Certificate to add a diversion point for the 135 acre feet of water from the Concho River approximately five miles downstream from the currently authorized diversion point.

II. Procedural History

This application was received July 25, 2007. The application was declared administratively complete on November 28, 2007. Notice for this amendment application was mailed to the two other water right holders on the reservoir on March 14, 2008. The comment period ended on April 14, 2008. Two hearing requests were received.

Following the Texas Supreme Court decision in *City of Marshall v. City of Uncertain*, the Commission issued guidance on new standards for notice determinations in water availability matters in a work session on January 18, 2008. This application was received subsequent to the *Marshall* decision, but prior to the issuance of guidance for notice determinations. Consequently, this matter was not presented to the Commission for notice decision.

This application was filed in 2007 and is in conjunction with four other permits considered at 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.

III. 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).

A hearing request is considered timely if it is submitted to the Commission within 30 days after the publication of the notice of application if the Commission has not extended the period for hearing requests. 30 TEX. ADMIN. CODE § 295.171.

IV. Hearing Requests

A. J. Jones, Jr. timely filed a hearing request stating that he owns Certificate of Adjudication No. 14-1397 two miles downstream from the proposed diversion point. He states that granting the application could affect his irrigation right.

Georgia C. Edwards timely filed a hearing request stating that granting the application could affect her irrigation right. Ms. Edwards did not indicate that she owns a water right in the Colorado River Basin. The hearing request states that Ms. Edwards is "adjoining this location" and that she could be affected. The request provides no other information regarding any personal justiciable interest Ms. Edwards may have in this matter. In the signature block of Ms. Edwards' hearing request, she states that she is writing for Wilma Crownover who owns Certificate of Adjudication No. 14-1346. No other information concerning Ms. Crownover was provided.

V. Executive Director's Recommendation

The Executive Director respectfully recommends that the Commission deny all of the hearing requests. The hearing requestors failed to demonstrate that a likely impact on their use of the water in the area impacted by this application would result from granting the amendment. *See* 30 TEX. ADMIN. CODE 55.256(c)(5).

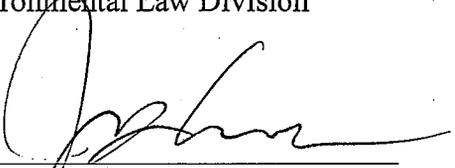
This is an application to add a diversion point downstream of the currently authorized diversion point. Staff in the Water Supply Division ran a water availability model for the Colorado River Basin, which includes water availability at the proposed diversion point and the currently authorized diversion point. The model considers factors including channel losses and drainage area differences between the existing diversion point and the proposed additional diversion point. The model run indicated that adding an additional diversion point to this water right would not have any effect on other water rights within the river basin.

Additionally, the hearing request filed by Georgia Edwards does not articulate a personal justiciable interest for Ms. Edwards. The Executive Director respectfully recommends that the Commission find that Ms. Edwards is not an affected person in this matter. Also, any attempt by Wilma Crownover to request a hearing in this matter has not substantially complied with requirements (2) through (4) of 30 TAC 55.251(c) as outlined above. The Executive Director respectfully recommends that the Commission find that no hearing request was received from Wilma Crownover.

Respectfully submitted,
Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By 
James Aldredge, Staff Attorney
Environmental Law Division
State Bar No. 24058514
P.O. Box 13087, MC 173
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(512) 239-2496
Representing the Executive Director of the
Texas Commission on Environmental Quality

CERTIFICATE OF SERVICE

I certify that on August 31, 2009, an original and seven copies of the "Executive Director's Response to Hearing Requests" relating to the application of the City of San Angelo, Certificate of Adjudication No. 14-1348 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was transmitted by mail, facsimile, or hand-delivery to all persons on the attached mailing list.



James Aldredge, Staff Attorney
Environmental Law Division
State Bar No. 24058514

MAILING LIST
CITY OF SAN ANGELO
DOCKET NO. 2009-0101-WR; CERTIFICATE OF ADJUDICATION NO. 14-1348

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FOR ALTERNATIVE DISPUTE

RESOLUTION:

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FOR THE CHIEF CLERK:

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