

O:Fax COMPANY:

Vinson & Elkins

Paulina Williams pwilliams@velaw.com
Tel 512.542.8518 Fax 512.236.3231

July 23, 2009

Ms. LaDonna Castanuela
Chief Clerk, TCEQ
12100 Park 35 Circle, Bldg. A
Austin, TX 78753
P. O. Box 130807, MC-105
Austin, Texas 78711-3087

2009 JUL 23 PM 1:41:2
CHIEF CLERKS OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Application of Lower Neches Valley Authority to Amend Certificate of adjudication
No. 06-4411-F, TCEQ Docket No. 2009-0168-WR

Dear Ms. Castanuela:

Enclosed is Cherokee County's Conditional Withdrawal of Request for Contested Case Hearing in the above referenced matter, which they requested we file with the TCEQ on their behalf. We would appreciate if you would file stamp the enclosed additional copy and return it in the envelope provided.

Thank you for your assistance with this matter.

Sincerely,

Paulina Williams

cc: Attached Notice List

O:Fax COMPANY:

**NOTICE LIST
LOWER NECHES VALLEY AUTHORITY
DOCKET NO. 2009-0168-WR; PERMIT NO. ADJ 4411F**

FOR THE EXECUTIVE DIRECTOR:

William Todd Galiga, Senior Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
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Iliana Delgado, Team Leader
Texas Commission on Environmental Quality
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Esteban Ramos, Technical Staff
Texas Commission on Environmental Quality
Water Supply Division, MC-160
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FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
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FOR 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
Tel: (512) 239-4000
Fax: (512) 239-4007

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
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
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Tel: (512) 239-3300
Fax: (512) 239-3311

REQUESTER(S):

Marvin J. Angle
P.O. Box 1870
Jacksonville, Texas 75766-1870

George Campbell
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101 W. Main St. Ste. 170
Nacogdoches, Texas 75961-4807

Brad B. Castleberry
Lloyd Gosselink
816 Congress Ave. Ste. 1900
Austin, Texas 78701-2442

Chris Davis, Judge
Cherokee County
135 S. Main St.
Rusk, Texas 75785-1351

Ronny Fite
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Whitehouse, Texas 75791-0776

O:Fax COMPANY:

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Jim Jeffers
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Matthews & Freeland, LLP
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Gregory M. Morgan, P.E.
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

Monty P. Shank
General Manager
Upper Neches River Municipal Water Authority
P.O. Box 1965
Palestine, Texas 75802

John D. Stover
P.O. Box 1728
Lufkin, Texas 75902-1728

Gwendolyn Hill Webb, Attorney
Webb & Webb
P.O. Box 1329
Austin, Texas 78767-1329

Jody Puckett, P.E.
Dallas City Hall, Room 4AN
1500 Marilla Street
Dallas, Texas 75201

INTERESTED PERSON(S):

Ronald J. Freeman
Freeman & Corbett, LLP
8500 Bluffstone Cv. Ste B104
Austin, Texas 78759-7811

O:Fax COMPANY:

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 JUL 23 PM 1:42

**BEFORE THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY**

CHIEF CLERKS OFFICE

**APPLICATION OF LOWER NECHES §
VALLEY AUTHORITY §
TO AMEND CERTIFICATE §
OF ADJUDICATION # 06-4411-F §**

DOCKET NO. 2009-0168-WR

**CONDITIONAL WITHDRAWAL OF REQUEST
FOR CONTESTED CASE HEARING
CHEROKEE COUNTY, TEXAS**

TO THE HONORABLE COMMISSIONER:

The Lower Neches Valley Authority ("LNVA") has submitted an Application to Amend Special Condition 5.C and 5.D in the above referenced Certificate of Adjudication (the "LNVA Certificate"). By letter dated on or about October 24, 2007, the County of Cherokee, Texas protested the granting of the Application of LNVA and stated its concerns about the Application, and its potential impact on the development of Lake Columbia.

I.

After the submission of the above referenced protest it has become apparent to the County of Cherokee that the amended request on the part of LNVA to modify Certificate of Adjudication No. 06-4411 (now numbered 06-4411-F) would not affect the development of Lake Columbia and in particular the senior water rights held by the Angelina Neches River Authority permit to appropriate State Water No. 4228, as set forth in draft amendment to Certificate of Adjudication produced by the staff of the Texas Commission on Environmental Quality, a copy of said draft being attached hereto and made a part hereof and labeled Exhibit "A".

O:Fax COMPANY:

II.

The County of Cherokee conditionally withdraws its opposition to the petition of LNVA to modify Certificate of Adjudication No. 06-4411 provided that the Texas Commission on Environmental Quality grant such application of LNVA in the form and wording of the draft attached hereto and made a part hereof and labeled Exhibit "A". If, however, the Commission does not approve the staff draft amendment attached hereto as worded and grants a contested case hearing as requested by other protestants, the County of Cherokee renews its request to be made a party to the contested case proceeding.

III.

The County of Cherokee, by this submission, does not withdraw its request to be given notice of all actions and decisions relating to the LNVA Application to Modify Certificate of Adjudication No. 06-4411. This conditional withdrawal of protest does not waive the County of Cherokee, Texas' right to seek to be admitted as a party under 30 Tex. Admin. Code Section 80-109 if a hearing request is granted on said LNVA Application.

Respectfully Submitted,

By:



Chris Davis
Cherokee County Judge

O:Fax COMPANY:

EXHIBIT "A"

AMENDMENT TO A
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 06-4411F

TYPE: 11.122

Owner: Lower Neches Valley Authority

Address: P.O. Box 5117
Beaumont, TX 77706-5117

Filed: January 3, 2008

Granted:

Purpose: Agricultural, Industrial, and
Municipal

County: Jasper, Sabine, San Augustine,
Angelina, Nacogdoches, Tyler,
Hardin, Jefferson, Orange,
Liberty, and Chambers

Watercourse: Angelina River,
tributary of the Neches River

Watershed: Neches River Basin

WHEREAS, Certificate of Adjudication No. 06-4411 authorizes the Lower Neches Valley Authority (LNVA), part owner, to impound water in two reservoirs (owned by the United States and operated by the U.S. Army Corps of Engineers) being Lake Sam Rayburn, located on the Angelina River in Jasper, Sabine, San Augustine, Angelina, and Nacogdoches Counties, and B.A. Steinhagen Lake, located on the Neches River in Hardin and Jasper Counties; and

WHEREAS, the certificate also authorizes LNVA to divert and use not to exceed 381,876 acre-feet of water per year from Pine Island Bayou and the Neches River and 792,000 acre-feet of water per year from Lake Sam Rayburn and B.A. Steinhagen Lake at various rates for agricultural (irrigation), municipal, and industrial purposes within LNVA's service area in Jefferson, Orange, Hardin, Tyler, Liberty, Chambers, and Jasper Counties; and

WHEREAS, the Certificate contains various priority dates and special conditions; and

WHEREAS, Special Condition S.C. states: "Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any present or future domestic and/or municipal water needs or requirements"; and

WHEREAS, Special Condition S.D states: "Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to any rights hereafter granted by the Commission for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River"; and

O:Fax COMPANY:

WHEREAS, Applicant seeks to amend Certificate of Adjudication No. 06-4411 to modify Special Conditions 5.C. and 5.D. to limit subordination of this water right to existing water rights in the Neches River Basin and to read as follows:

Special Condition 5.C. Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any existing municipal water rights granted by the Commission with a priority date between November 13, 1963 and December 19, 2007.

Special Condition 5.D. Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to all existing rights granted by the Commission with a priority date between November 13, 1963 and December 19, 2007 for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River, and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, nine requests for a contested case hearing were received; and

WHEREAS, the Executive Director recommends modification of the Applicant's proposed Special Conditions to reflect the filing date of the application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 06-4411, designated as Certificate of Adjudication No. 06-4411F, is issued to the Lower Neches River Authority, subject to the following terms and conditions:

CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

O:Fax COMPANY:

2. SPECIAL CONDITIONS

In lieu of Special Conditions 5.C. and 5.D., Special Condition 5.C. now reads:

5.C. Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any existing municipal water rights granted by the Commission with a priority date between November 13, 1963 and January 3, 2008.

Special Condition 5.D now reads:

5.D. Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to all existing rights granted by the Commission with a priority date between November 13, 1963 and January 3, 2008 for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 06-4411, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Neches River Basin.

Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of state water resources exercised by the Commission.

For the Commission

Date Issued:

O:Fax COMPANY:

Vinson & Elkins

Facsimile

CHIEF CLERKS OFFICE
2009 JUL 23 PM 1:42

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

FAX FILING

From:	Date:	Client/Matter No.:
Molly Cagle	July 23, 2009	LOW320.81001
Regarding:	Number of Pages	Hard Copy Follows
TCEQ Docket No. 2009-0168-WR	9	As noted below

Conditional Withdrawal of Request for Contested Case
Hearing Cherokee County, Texas

To:	Fax:	Phone:
La Donna Castañuela TCEQ Chief Clerk	512.239.3311 & <i>Via Hand-Delivery</i>	512.239.3300
William Todd Galiga TCEQ Senior Attorney	512.239.0606	512.239.0600
Iliana Delgado TCEQ Team Leader	512.239.2214	512.239.3678
Esteban Ramos TCEQ Technical Staff	512.239.2214	512.239.6538
Blas Coy TCEQ Public Interest Counsel	512.239.6377	512.239.6363
Bridget Bohac TCEQ Office of Public Assistance Director	512.239.4007	512.239.4000
Kyle Lucas TCEQ Alternative Dispute Resolution	512.239.4015	512.239.4010

Message:

Confidentiality Notice: The information contained in this FAX may be confidential and/or privileged. This FAX is intended to be reviewed initially by only the individual named above. If the reader of this TRANSMITTAL PAGE is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this FAX or the information contained herein is prohibited. If you have received this FAX in error, please immediately notify the sender by telephone and return this FAX to the sender at the below address. Thank you.

The Norman Law Firm

Marvin J. Angle
Steven R. Guy
D. Brett Brewer

Summers A. Norman
(1905-1986)

June 16, 2009

Ms. LaDonna Castanuela
Chief Clerk
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 JUN 18 AM 11:01
CHIEF CLERKS OFFICE

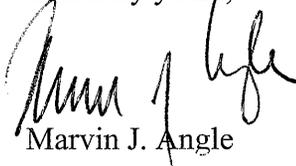
RE: Docket No. 2009-0168-WR; Application of Lower Neches Valley Authority to Amend Certificate of Adjudication No. 06-4411

Dear Ms. Castanuela:

Enclosed you will find the original and one copy of the Amended Conditional Withdrawal of Request for Contested Case Hearing, City of Jacksonville, Texas. Please file the original of this document in the above referenced matter and return the copy of same with your file mark placed thereon to this office. We are enclosing a self-addressed stamped envelope for your convenience.

Should you need anything further, please do not hesitate to contact me

Sincerely yours,



Marvin J. Angle

MJA/ds
Enclosures
cc: Attached mailing list

Est. 1898

**BEFORE THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY**

2009 JUN 18 AM 11: 01

**APPLICATION OF LOWER NECHES §
VALLEY AUTHORITY §
TO AMEND CERTIFICATE §
OF ADJUDICATION # 06-4411-F §**

DOCKET NO. 2009-0168-WR CHIEF CLERKS OFFICE

**AMENDED
CONDITIONAL WITHDRAWAL OF REQUEST
FOR CONTESTED CASE HEARING
CITY OF JACKSONVILLE, TEXAS**

TO THE HONORABLE COMMISSIONER:

The Lower Neches Valley Authority ("LNVA") has submitted an Application to Amend Special Condition 5.C and 5.D in the above referenced Certificate of Adjudication (the "LNVA Certificate"). By letter dated October 24, 2007, the City of Jacksonville, Texas protested the granting of the Application of LNVA and stated its concerns about the Application, and its potential impact on the development of Lake Columbia.

I.

After the submission of the above referenced protest it has become apparent to the City of Jacksonville that the amended request on the part of LNVA to modify Certificate of Adjudication No. 06-4411 (now numbered 06-4411-F) would not affect the development of Lake Columbia and in particular the senior water rights held by the Angelina Neches River Authority permit to appropriate State Water No. 4228, as set forth in draft amendment to Certificate of Adjudication produced by the staff of the Texas Commission on Environmental Quality, a copy of said draft being attached hereto and made a part hereof and labeled Exhibit "A".

II.

The City of Jacksonville conditionally withdraws its opposition to the petition of LNVA to modify Certificate of Adjudication No. 06-4411 provided that the Texas Commission on Environmental Quality grant such application of LNVA in the form and wording of the draft attached hereto and made a part hereof and labeled Exhibit "A". If, however, the Commission does not approve the staff draft amendment attached hereto as worded and grants a contested case hearing as requested by other protestants, the City of Jacksonville renews its request to be made a party to the contested case proceeding.

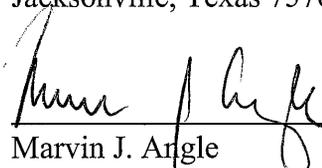
III.

The City of Jacksonville, by this submission, does not withdraw its request to be given notice of all actions and decisions relating to the LNVA Application to Modify Certificate of Adjudication No. 06-4411. This conditional withdrawal of protest does not waive the City of Jacksonville, Texas' right to seek to be admitted as a party under 30 Tex. Admin. Code Section 80-109 if a hearing request is granted on said LNVA Application.

Respectfully Submitted,

THE NORMAN LAW FIRM
215 E. Commerce
P.O. Box 1870
Jacksonville, Texas 75766

By:


Marvin J. Argle
State Bar No. 01260500

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was served or delivered on the ____ day of June, 2009, to the following:

FOR THE APPLICANT:

Molly Cagle
Vinson & Elkins, LLP
2801 Via Fortuna Ste 100
Austin, Texas 78746-7567
Tel: (512) 542-8400
Fax: (512)542-8612

Iliana Delgado, Team Leader
TCEQ
Water Supply Division, MC-160
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3678
Fax: (512) 239-2214

FOR ALTERNATIVE DISPUTE
RESOLUTION:

Mr. Kyle Lucas
TCEQ
Alternative Dispute Resolution
P.O. Box 13087 MC-222
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

Esteban Ramos, Technical Staff
TCEQ
Water Supply Division, MC-160
P.O. Box 13087
Tel: (512) 239-6538
Fax: (512) 239-2214

Scott Hall, P.E.
Lower Neches Valley Authority
P.O. Box 5117
Beaumont, Texas 77726-5117
Tel: (409) 892-4011
Fax: (409) 898-2468

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney
TCEQ
Public Interest Counsel, MC-103
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Tel: (512) 239-6363
Fax: (512)239-6377

FOR THE EXECUTIVE DIRECTOR:

William Todd Galifa,
Senior Attorney, TCEQ
Environmental Law Division
P.O. Box 13087 MC-173
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Tel: (512) 239-0600
Fax: (512) 239-2214

FOR OFFICE OF PUBLIC
ASSISTANCE:

Ms. Bridget Bohac, Director
TCEQ
Office Of Public Assistance
P.O. Box 13087 MC-108
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007

FOR THE CHIEF CLERK:

Ms. LaDonna Castanuela
TCEQ
Office Of Chief Clerk, MC-105
P.O. Box 13087
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Tel: (512)239-3300
Fax: (512) 239-3311

REQUESTER(S):

George Campbell
Nacogdoches County
101 W. Main St. Ste. 170
Nacogdoches, Texas 75961-4807

Brad B. Castleberry
Lloyd Gosselink
816 Congress Ave. Ste. 1900
Austin, Texas 78701-2442

Chris Davis, Judge
Cherokee County
135 S. Main St.
Rusk, Texas 75785-1351

Ronny Fite
P.O. Box 776
Whitehouse, Texas 75791-0776

Joe Freeland
Matthews & Freeland, LLP
P.O. Box 1568
Austin, Texas 78768-1568

Jim Jeffers
P.O. Box 635030
Nacogdoches, Texas 75963-5030

Jim Matthews, Attorney
Matthews & Freeland, LLP
P.O. Box 1568
Austin, Texas 78768-1568

Gregory M. Morgan, P.E.
City of Tyler
P.O. Box 2039
Tyler, Texas 75710

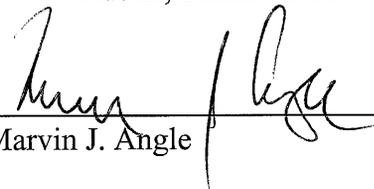
Monty P. Shank
General Manager
Upper Neches River Municipal
Water Authority
P.O. Box 1965
Austin, Texas 75802

Gwendolyn Hill Webb, Attorney
Webb & Webb
P.O. Box 1329
Austin, Texas 78767-1329

Jody Puckett, P.E.
Dallas City Hall, Room 4AN
1500 Marilla Street
Dallas, Texas 75201

INTERESTED PERSON (S)

Ronald J. Freeman
Freeman & Corbett, LLP
8500 Bluffstone Cv.
Ste B104
Austin, Texas 78759-7814


Marvin J. Angle

CHIEF CLERK'S OFFICE
2009 JUN 18 AM 11:01
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

EXHIBIT "A"

AMENDMENT TO A
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 06-4411F

TYPE: 11.122

Owner: Lower Neches Valley Authority

Address: P.O. Box 5117
Beaumont, TX 77706-5117

Filed: January 3, 2008

Granted:

Purpose: Agricultural, Industrial, and
Municipal

County: Jasper, Sabine, San Augustine,
Angelina, Nacogdoches, Tyler,
Hardin, Jefferson, Orange,
Liberty, and Chambers

Watercourse: Angelina River,
tributary of the Neches River

Watershed: Neches River Basin

WHEREAS, Certificate of Adjudication No. 06-4411 authorizes the Lower Neches Valley Authority (LNVA), part owner, to impound water in two reservoirs (owned by the United States and operated by the U.S. Army Corps of Engineers) being Lake Sam Rayburn, located on the Angelina River in Jasper, Sabine, San Augustine, Angelina, and Nacogdoches Counties, and B.A. Steinhagen Lake, located on the Neches River in Tyler and Jasper Counties; and

WHEREAS, the Certificate also authorizes LNVA to divert and use not to exceed 381,876 acre-feet of water per year from Pine Island Bayou and the Neches River and 792,000 acre-feet of water per year from Lake Sam Rayburn and B.A. Steinhagen Lake at various rates for agricultural (irrigation), municipal, and industrial purposes within LNVA's service area in Jefferson, Orange, Hardin, Tyler, Liberty, Chambers, and Jasper Counties; and

WHEREAS, the Certificate contains various priority dates and special conditions; and

WHEREAS, Special Condition 5.C. states: "Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any present or future domestic and/or municipal water needs or requirements"; and

WHEREAS, Special Condition 5.D states: "Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to any rights hereafter granted by the Commission for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River"; and

WHEREAS, Applicant seeks to amend Certificate of Adjudication No. 06-4411 to modify Special Conditions 5.C. and 5.D. to limit subordination of this water right to existing water rights in the Neches River Basin and to read as follows:

Special Condition 5.C. Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any existing municipal water rights granted by the Commission with a priority date between November 13, 1963 and December 19, 2007.

Special Condition 5.D. Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to all existing rights granted by the Commission with a priority date between November 13, 1963 and December 19, 2007 for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River, and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, nine requests for a contested case hearing were received; and

WHEREAS, the Executive Director recommends modification of the Applicant's proposed Special Conditions to reflect the filing date of the application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 06-4411, designated as Certificate of Adjudication No. 06-4411F, is issued to the Lower Neches River Authority, subject to the following terms and conditions:

CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal; that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

2. SPECIAL CONDITIONS

In lieu of Special Conditions 5.C. and 5.D., Special Condition 5.C. now reads:

5.C. Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any existing municipal water rights granted by the Commission with a priority date between November 13, 1963 and January 3, 2008.

Special Condition 5.D now reads:

5.D. Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to all existing rights granted by the Commission with a priority date between November 13, 1963 and January 3, 2008 for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 06-4411, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Neches River Basin.

Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of state water resources exercised by the Commission.

For the Commission

Date Issued:

The Norman Law Firm

Marvin J. Angle
Steven R. Guy
D. Brett Brewer

Summers A. Norman
(1905-1986)

June 11, 2009

CMRRR7007 2680 0003 0268 5345

Ms. LaDonna Castanuela
Chief Clerk
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

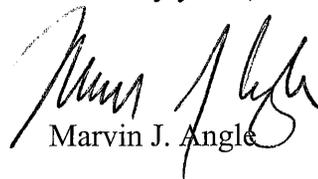
RE: Docket No. 2009-0168-WR; Application of Lower Neches Valley Authority to Amend
Certificate of Adjudication No. 06-4411E

Dear Ms. Castanuela:

Enclosed you will find the original and one copy of Conditional Withdrawal of Request for
Contested Case Hearing, City of Jacksonville, Texas. Please file the original of this document in
the above referenced matter and return the copy of same with your file mark placed thereon to
this office. We are enclosing a self-addressed stamped envelope for your convenience.

Should you need anything further, please do not hesitate to contact me

Sincerely yours,



Marvin J. Angle

MJA/ds
Enclosures
cc: Attached mailing list

2009 JUN 15 PM 3:19
CHIEF CLERKS OFFICE
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Est. 1898

FOR THE APPLICANT:

Molly Cagle
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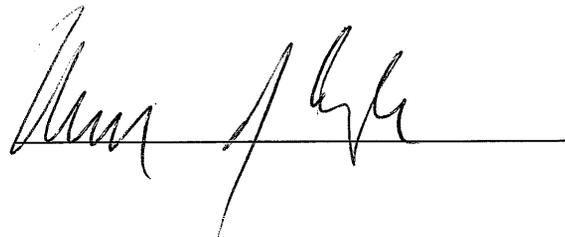
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Ste B104
Austin, Texas 78759-7811



A handwritten signature in black ink, appearing to read "Jim Jeffers", is written over a horizontal line.

BEFORE THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

2009 JUN 15 PM 3: 19

APPLICATION OF LOWER NECHES §
VALLEY AUTHORITY §
TO AMEND CERTIFICATE §
OF ADJUDICATION # 06-4411-E §

CHIEF CLERKS OFFICE
DOCKET NO. 2009-0168-WR

CONDITIONAL WITHDRAWAL OF REQUEST
FOR CONTESTED CASE HEARING
CITY OF JACKSONVILLE, TEXAS

TO THE HONORABLE COMMISSIONER:

The Lower Neches Valley Authority ("LNVA") has submitted an Application to Amend Special Condition 5.C and 5.D in the above referenced Certificate of Adjudication (the "LNVA Certificate"). By letter dated October 24, 2007, the City of Jacksonville, Texas protested the granting of the Application of LNVA and stated its concerns about the Application, and its potential impact on the development of Lake Columbia.

I.

After the submission of the above referenced protest it has become apparent to the City of Jacksonville that the amended request on the part of LNVA to modify Certificate of Adjudication No. 06-4411-E would not affect the development of Lake Columbia and in particular the senior water rights held by the Angelina Neches River Authority permit to appropriate State Water No. 4228, as set forth in draft amendment to Certificate of Adjudication produced by the staff of the Texas Commission on Environmental Quality, a copy of said draft being attached hereto and made a part hereof and labeled Exhibit "A".

II.

The City of Jacksonville conditionally withdraws its opposition to the petition of LNVA to modify Certificate of Adjudication No. 06-4411-E provided that the Texas Commission on Environmental Quality grant such application of LNVA in the form and wording of the draft attached hereto and made a part hereof and labeled Exhibit "A". If, however, the Commission does not approve the staff draft amendment attached hereto as worded and grants a contested case hearing as requested by other protestants, the City of Jacksonville renews its request to be made a party to the contested case proceeding.

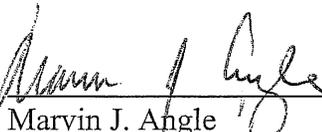
III.

The City of Jacksonville, by this submission, does not withdraw its request to be given notice of all actions and decisions relating to the LNVA Application to Modify Certificate of Adjudication N. 06-4411-E. This conditional withdrawal of protest does not waive the City of Jacksonville, Texas' right to seek to be admitted as a party under 30 Tex. Admin. Code Section 80-109 if a hearing request is granted on said LNVA Application.

Respectfully Submitted,

THE NORMAN LAW FIRM
215 E. Commerce
P.O. Box 1870
Jacksonville, Texas 75766

By:


Marvin J. Angle
State Bar No. 01260500

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument was served or delivered on the 11th day of June, 2009, to the following:

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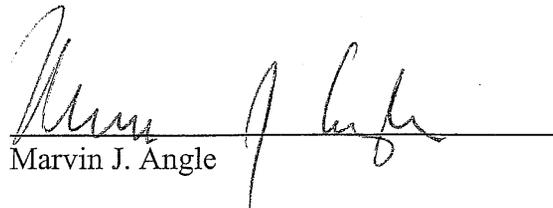

Marvin J. Angle

EXHIBIT "A"

AMENDMENT TO A
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 06-4411F

TYPE: 11.122

Owner: Lower Neches Valley Authority

Address: P.O. Box 5117
Beaumont, TX 77726-5117

Filed: January 3, 2008

Granted:

Purpose: Agricultural, Industrial, and
Municipal

County: Jasper, Sabine, San Augustine,
Angelina, Nacogdoches, Tyler,
Hardin, Jefferson, Orange,
Liberty, and Chambers

Watercourse: Angelina River,
tributary of the Neches River

Watershed: Neches River Basin

WHEREAS, Certificate of Adjudication No. 06-4411 authorizes the Lower Neches Valley Authority (LNVA), part owner, to impound water in two reservoirs (owned by the United States and operated by the U.S. Army Corps of Engineers) being Lake Sam Rayburn, located on the Angelina River in Jasper, Sabine, San Augustine, Angelina, and Nacogdoches Counties, and B.A. Steinhagen Lake, located on the Neches River in Tyler and Jasper Counties; and

WHEREAS, the Certificate also authorizes LNVA to divert and use not to exceed 381,876 acre-feet of water per year from Pine Island Bayou and the Neches River and 792,000 acre-feet of water per year from Lake Sam Rayburn and B.A. Steinhagen Lake at various rates for agricultural (irrigation), municipal, and industrial purposes within LNVA's service area in Jefferson, Orange, Hardin, Tyler, Liberty, Chambers, and Jasper Counties; and

WHEREAS, the Certificate contains various priority dates and special conditions; and

WHEREAS, Special Condition 5.C. states: "Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any present or future domestic and/or municipal water needs or requirements"; and

WHEREAS, Special Condition 5.D states: "Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to any rights hereafter granted by the Commission for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River"; and

WHEREAS, Applicant seeks to amend Certificate of Adjudication No. 06-4411 to modify Special Conditions 5.C. and 5.D. to limit subordination of this water right to existing water rights in the Neches River Basin and to read as follows:

Special Condition 5.C. Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any existing municipal water rights granted by the Commission with a priority date between November 13, 1963 and December 19, 2007.

Special Condition 5.D. Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to all existing rights granted by the Commission with a priority date between November 13, 1963 and December 19, 2007 for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, nine requests for a contested case hearing were received; and

WHEREAS, the Executive Director recommends modification of the Applicant's proposed Special Conditions to reflect the filing date of the application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 06-4411, designated as Certificate of Adjudication No. 06-4411F, is issued to the Lower Neches River Authority, subject to the following terms and conditions:

CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal; that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

2. SPECIAL CONDITIONS

In lieu of Special Conditions 5.C. and 5.D., Special Condition 5.C. now reads:

5.C. Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any existing municipal water rights granted by the Commission with a priority date between November 13, 1963 and January 3, 2008.

Special Condition 5.D now reads:

5.D. Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to all existing rights granted by the Commission with a priority date between November 13, 1963 and January 3, 2008 for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 06-4411, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Neches River Basin.

Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of state water resources exercised by the Commission.

For the Commission

Date Issued: