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August 3, 2009

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

VIA HAND DELIVERY

Re: In the Matter of Application No. 14-1298B by the San Angelo Water Supply Corporation For Amendment to Certificate of Adjudication No. 14-1298
TCEQ Docket No. 2009-0185-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,

Martin C. Rochelle

MCR/ldp
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ENCLOSURE

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

DOCKET NO. 2009-0185-WR

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APPLICATION NO. 14-1298B BY THE
CITY OF SAN ANGELO FOR
AMENDMENT TO CERTIFICATE OF
ADJUDICATION NO. 14-1298

§ BEFORE THE TEXAS COMMISSION
§
§ ON
§
§ ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

**RESPONSE TO REQUESTS FOR
CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS:

The City of San Angelo (herein referenced interchangeably 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

In 2003, San Angelo acquired Certificate of Adjudication No. 14-1298, granting certain run of river rights to divert and use for agricultural irrigation purposes not to exceed 252.1 acre feet per year from three authorized points of diversion along the Concho River Segment of the Colorado River (“COA 14-1298”). The authorized diversions were not appurtenant to any land controlled by San Angelo. Thus, COA 14-1298 required that San Angelo obtain an amendment to the certificate prior to making any diversions. In 2004, TCEQ authorized an amendment that added municipal use to the water that was otherwise authorized for agricultural irrigation use under COA 14-1298 (“COA 14-1298A”). The application for Amendment A to COA 14-1298 was approved without protest. Without further amendment to COA 14-1298A specifying a place of use, however, San Angelo remains without any present ability to make beneficial use of the water authorized for diversion.

Accordingly, to make meaningful use of the water authorized for diversion under COA 14-1298A for municipal purposes, the certificate requires amendment to specify the San Angelo municipal water supply system service area as the place of use. In addition, the certificate will require amendment to allow San Angelo to make diversions of the authorized water at the San Angelo Water Treatment Plant.

II. PROCEDURAL HISTORY

On October 3, 2005, San Angelo filed Application No. 14-1298B with the TCEQ, so as to amend COA 14-1298A to authorize an additional point of diversion on the South Concho River at the San Angelo Water Treatment Plant (the “Application” or “Application 14-1298B”).

On February 22, 2006, San Angelo amended the Application to include the San Angelo municipal water supply system service area as a place of use. TCEQ staff declared the Application to be administratively complete on June 7, 2006. Because San Angelo did not seek in the Application any change to the rate or amount of diversion authorized under COA 14-1298A, TCEQ staff concluded that, pursuant to Title 30, Section 295.158(c)(2)(D) of the Texas Administrative Code, only mailed notice to the interjacent water rights holders of record between the existing and proposed points of diversion within the Colorado River Basin was required. A total of 21.03 river miles separates the existing Diversion Point No. 1 authorized in COA 14-1298A and the downstream diversion point proposed in the Application.

Notice of the Application appears to have been mailed to interjacent water rights holders on July 31, 2006. Requests for a contested case hearing on the Application were due to the TCEQ Chief Clerk's office no later than August 21, 2006. A number of hearing requests were filed, as noted below.

On January 3, 2007, TCEQ staff concluded that the changes proposed in Application 14-1298B had no practical impact on the reliability of other water rights within the Colorado River Basin. On May 17, 2007, TCEQ staff issued a draft permit amending COA 14-1298A (the "Draft Permit").

On July 24, 2009, San Angelo received notice that the above-referenced matter would be considered by the Commission at the August 26, 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".¹ 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.² An interest common to members of the general public does not qualify as a personal justiciable interest.³ 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.⁴ 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.⁵

¹ 30 TEX. ADMIN. CODE § 55.251(a) (2009).

² *Id.* § 55.103.

³ *Id.*

⁴ *Id.* § 55.251(c)(2).

⁵ *Id.*

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”.⁶ 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 notice of the Application was mailed to interjacent water rights holders. Notice was mailed on July 31, 2006. Thus, all timely hearing requests must have been received by the Chief Clerk by August 21, 2006.⁷ All such requests not filed within this period are not timely and thus cannot be processed by the Chief Clerk.⁸

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.⁹

IV. EVALUATION OF HEARING REQUESTS FOR APPLICATION 14-1298B

1. Hudson Management, Ltd.

Wanda Hudson submitted a request for a contested case hearing on Application 14-1298B purportedly on behalf of Hudson Management, Ltd. It is appropriate that Ms. Hudson be required to demonstrate that, in fact, she has the legal authority to act, or speak, on behalf of Hudson Management, Ltd. TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1340—is held in the name of Hudson Management, Ltd., not Wanda Hudson. Accordingly, it is not clear that the interests of Hudson Management, Ltd. have been properly, or accurately, presented in the hearing request.

Hudson Management, Ltd. submitted two requests for a contested case hearing on Application 14-1298B. One request was received by the Chief Clerk on August 24, 2006. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by August 21, 2006. Accordingly, this request is untimely.

The second request filed by Hudson Management, Ltd. was received by the Chief Clerk on August 21, 2006. While this request appears to have been timely submitted, it, along

⁶ *Id.* §§ 55.251(b), (d), .254(a).

⁷ *Id.* §§ 55.251(b), (d).

⁸ *Id.* §§ 55.251(f)(1), .254(a).

⁹ *Id.* § 55.256(c).

with the untimely submitted August 24, 2006 request, 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. 14-1340—the certificate referenced in the request as being the affected water right.

It does not appear that Hudson Management, Ltd.'s water right provides for a use that is interjacent between the current diversion point authorized in COA 14-1298A and the diversion point proposed in Application 14-1298B. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon Hudson Management, Ltd. to identify with some specificity how and why its water rights will be impaired by the changes proposed in the Application.

Neither request identifies 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.

Hudson Management, Ltd.'s requests should not be granted.

2. Douglas John

Douglas John submitted two requests for a contested case hearing on Application 14-1298B. One request was received by the Chief Clerk on August 24, 2006. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by August 21, 2006. Accordingly, this request is untimely.

The second request filed by Douglas John was received by the Chief Clerk on August 21, 2006. While this request appears to have been timely submitted, it, along with the untimely submitted August 24, 2006 request, 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 his request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1372—the water right that would purportedly be impacted by the changes proposed in the Application.

It does not appear that Douglas John's water right provides for a use that is interjacent between the current diversion point authorized in COA 14-1298A and the diversion point proposed in Application 14-1298B. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon Mr.

John to identify with some specificity how and why his water rights will be impaired by the changes proposed in the Application.

In fact, Mr. John identifies no justiciable interest that will be 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.

Douglas John's requests should not be granted.

3. A. J. Jones, Jr.

A. J. Jones, Jr. submitted two requests for a contested case hearing on Application 14-1298B. While both requests appear to have been timely submitted, they nevertheless fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, Mr. Jones fails to comply with 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 him. Nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1397.

It does not appear that A. J. Jones, Jr.'s water right provides for a use that is interjacent between the current diversion point authorized in COA 14-1298A and the diversion point proposed in Application 14-1298B. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon Mr. Jones to identify with some specificity how and why his water rights will be impaired by the changes proposed in the Application.

Mr. Jones has simply failed to describe 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.

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

4. John C. Ketzler

John C. Ketzler submitted one request for a contested case hearing on Application 14-1298B. It was received by the Chief Clerk on August 24, 2006. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by August 21, 2006. Accordingly, Mr. Ketzler's request is untimely.

Regardless of Mr. Ketzler's lack of timeliness, his request 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. 14-1376—the certificate referenced in the request as being the affected water right.

Mr. Ketzler's request identifies no 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.

John C. Ketzler's requests should not be granted.

5. Donald Kothman¹⁰

Donald Kothman submitted a request for a contested case hearing on Application 14-1298B purportedly on behalf of the owners of 22 certificates of adjudication. However, he provides no indication that he has any authority to speak on behalf of any one of the owners of the 22 water rights listed in his request. TCEQ records indicate that Donald Kothman does not have any ownership interest in any of the water rights he references. Accordingly, it is not clear that the interests of any of the water rights have been properly, or accurately, presented in the hearing request.

In addition to this substantive defect in Mr. Kothman's request, he also fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code for other reasons. Specifically, Mr. Kothman fails to comply with 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 him. He even fails to provide any description of his location and distance relative to the diversion point proposed in the Application. Nothing in his request gives any indication of how, or why, the Application will affect any justiciable interest he may have.

Mr. Kothman cites an inadequate understanding of the changes proposed in the Application as the basis for his hearing request. However, the TCEQ rules create some level of responsibility on his part to develop at least a basic understanding of the changes sought in the Application—which can be developed by a review of the available public records relevant to the Application through the TCEQ—and then articulate some description of the anticipated impacts that the Application poses to his interests. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon Mr. Kothman to identify and articulate with

¹⁰ It is not clear whether Donald Kothman's hearing request submission was made on behalf of his personal interests in addition to those of the South Texas Irrigation Company. Accordingly, San Angelo will respond to the South Texas Irrigation Company's request separately below.

some specificity how and why any justiciable interest he may have will be impaired by the changes proposed in the Application.

Mr. Kothman has not described 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.

Donald Kothman's requests should not be granted.

6. Kevin L. Noland

Kevin L. Noland submitted a request for a contested case hearing on Application 14-1298B that fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, Mr. Noland fails to comply with 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 him. Nothing in his request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1344.

It does not appear that Kevin L. Noland's water right provides for a use that is interjacent between the current diversion point authorized in COA 14-1298A and the diversion point proposed in Application 14-1298B. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon Mr. Noland to identify with some specificity how and why his water rights will be impaired by the changes proposed in the Application.

Mr. Noland has not described 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.

Kevin L. Noland's requests should not be granted.

7. Darrell Rushing

Darrell Rushing submitted two requests for a contested case hearing on Application 14-1298B. One request was received by the Chief Clerk on August 24, 2006. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by August 21, 2006. Accordingly, Mr. Rushing's request is untimely.

While it appears that Mr. Rushing's second request was timely submitted to the Chief Clerk, the request fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, Mr. Rushing fails to comply with 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 him. Nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1371.

It does not appear that Darrell Rushing's water right provides for a use that is interjacent between the current diversion point authorized in COA 14-1298A and the diversion point proposed in Application 14-1298B. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon Mr. Rushing to identify with some specificity how and why his water rights will be impaired by the changes proposed in the Application.

Mr. Rushing has in fact failed to describe 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.

Darrell Rushing's requests should not be granted.

8. Kenneth C. Schwartz

Kenneth C. Schwartz submitted a request for a contested case hearing on Application 14-1298B that fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, Mr. Schwartz fails to comply with 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 him. He even fails to provide any description of his location and distance relative to the diversion point proposed in the Application. Nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1351.

It does not appear that Kenneth Schwartz's water right provides for a use that is interjacent between the current diversion point authorized in COA 14-1298A and the diversion point proposed in Application 14-1298B. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon Mr. Schwartz to identify with some specificity how and why his water rights will be impaired by the changes proposed in the Application.

Mr. Schwartz has described no 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.

Kenneth C. Schwartz's requests should not be granted.

9. Todd Schwertner and Letha Green

Todd Schwertner and Letha Green submitted two requests for a contested case hearing on Application 14-1298B. One request was received by the Chief Clerk on August 24, 2006. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by August 21, 2006. Accordingly, this request is untimely.

The second request filed by Todd Schwertner and Letha Green was received by the Chief Clerk on August 21, 2006. While this request appears to have been timely submitted, it, along with the untimely submitted August 24, 2006 request, 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 his request gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1370—the water right that would purportedly be impacted by the changes proposed in the Application.

It does not appear that Todd Schwertner and Letha Green's water right provides for a use that is interjacent between the current diversion point authorized in COA 14-1298A and the diversion point proposed in Application 14-1298B. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon them to identify with some specificity how and why their water rights will be impaired by the changes proposed in the Application.

In fact, they identify no justiciable interest that will be affected by the Application. As a consequence, it is impossible to determine that these requestors are affected persons using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Todd Schwertner and Letha Green's requests should not be granted.

10. Bobby R. Turner¹¹

Bobby R. Turner submitted a request for a contested case hearing on Application 14-1298B purportedly on behalf of the Concho Valley Watershed Association / Concho Valley Water Association (referred to interchangeably as the “CVWA”). However, he provides no indication that he has any authority to speak on behalf of the CVWA or any of its purported members. Accordingly, it is not clear that the interests of the CVWA or any of its purported members have been properly, or accurately, presented in the hearing request.

In addition to this substantive defect in Mr. Turner’s request, he also fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code for other reasons. Specifically, Mr. Turner fails to comply with 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 him. He even fails to provide any description of his location and distance relative to the diversion point proposed in the Application. Nothing in his request gives any indication of how, or why, the Application will affect any justiciable interest he may have.

Mr. Turner cites an inadequate understanding of the changes proposed in the Application as the basis for his hearing request. However, the TCEQ rules create some level of responsibility on his part to develop at least a basic understanding of the changes sought in the Application—which can be developed by a review of the available public records relevant to the Application through the TCEQ—and then articulate some description of the anticipated impacts that the Application poses to his interests. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon Mr. Turner to identify and articulate with some specificity how and why any justiciable interest he may have will be impaired by the changes proposed in the Application.

Mr. Turner has not described 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.

Bobby R. Turner’s request should not be granted.

¹¹ It is not clear whether Bobby Turner’s hearing request submission was made on behalf of his personal interests in addition to those of the Concho Valley Watershed Association / Concho Valley Water Association. Accordingly, San Angelo will respond to the Concho Valley Watershed Association / Concho Valley Water Association’s request separately below.

11. Carol and Bobby R. Turner

Carol and Bobby R. Turner submitted two requests for a contested case hearing on Application 14-1298B. While both requests appear to have been timely submitted, they nevertheless fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, the Turners have failed to comply with 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 them. Nothing in their requests gives any indication of how, or why, the Application will affect any justiciable interest they may have.

Without any indication of where the Turners claim to have an interest with respect to its proximity to the diversion point proposed in the Application, it is not clear that they have any water right that provides for a use interjacent between the current diversion point authorized in COA 14-1298A and the diversion point proposed in Application 14-1298B. The Turners cite an inadequate understanding of the changes proposed in the Application as the basis for their hearing request. However, the TCEQ rules create a minimal obligation on the Turners to develop at least a basic understanding of the changes sought in the Application. Such an understanding can be developed by a review of the public records relevant to the Application that are available through the TCEQ. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon the Turners to identify and articulate with some specificity how and why their water rights will be impaired by the changes proposed in the Application.

The Turners have not described any justiciable interest affected by the Application, which is required of them by TCEQ rule in order to request a contested case hearing. 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.

Carol and Bobby R. Turner's requests should not be granted.

12. Kenneth Windham

Kenneth Windham submitted two requests for a contested case hearing on Application 14-1298B. One request was received by the Chief Clerk on August 24, 2006. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by August 21, 2006. Accordingly, this request is untimely.

While it appears that Mr. Windham's second request was timely submitted to the Chief Clerk, the request fails to substantially comply with Title 30, Section 55.251(c) of the

Texas Administrative Code. Specifically, Mr. Windham fails to comply with 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 him. Nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1368.

It does not appear that Kenneth Windham's water right provides for a use that is interjacent between the current diversion point authorized in COA 14-1298A and the diversion point proposed in Application 14-1298B. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon Mr. Windham to identify with some specificity how and why his water rights will be impaired by the changes proposed in the Application.

Mr. Windham has in fact failed to describe 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.

Kenneth Windham's requests should not be granted.

13. South Concho Irrigation Company

Donald Kothman submitted a request for a contested case hearing on Application 14-1298B purportedly on behalf of the South Concho Irrigation Company (the "SCIC"). While Mr. Kothman describes himself as a representative of the SCIC, he provides no indication that any principal / agent relationship he may have with SCIC gives him the authority to act, or speak, on behalf of the SCIC in this context. Accordingly, it is not clear that the interests of the SCIC have been properly, or accurately, presented in the hearing request.

Similarly, SCIC lists 22 certificate of adjudication numbers, but it provides no demonstration that it is authorized to act, or speak, on behalf of those water right owners. None of the 22 certificates of adjudication appear to be held in the name of the SCIC, according to TCEQ records. Accordingly, it is not clear that the interests of these water right owners have been properly, or accurately, presented in the hearing request.

Furthermore, SCIC provides no indication that it is, in fact, a legitimate organization with any justiciable interest potentially impacted by the changes proposed in the Application. It is important to understand what type of organization SCIC is, and whether, in fact, it was authorized to stand in the place of the owners of those 22 water rights in its request for a contested case hearing. If SCIC has no independent justiciable interest that it claims is affected by the Application, then it must meet the associational standing requirements in order to submit a valid request for a contested case hearing.

Specifically, TCEQ rules provide that an association like SCIC may request a contested case hearing only if it meets the requirements set forth in Title 30, Section 55.252 of the Texas Administrative Code. Section 55.252(a) requires that, for SCIC to have associational standing to request a contested case hearing, it must be comprised of members that otherwise have standing on their own right to request such a hearing.¹² Of the 22 distinct certificates of adjudication in the Concho River Basin that SCIC claims it speaks on behalf of, only one certificate owner—Bobby Randal Turner—appears to be represented in the independent requests submitted by others requesting a contested case hearing on Application 14-1298B. Therefore, there is no indication at all that the owners of Certificates of Adjudication No. 14-1280, 14-1281, 14-1282, 14-1283, 14-1284, 14-1287, 14-1288, 14-1289, 14-1290, 14-1292, 14-1293, 14-1294, 14-1295, 14-1297, 14-1299, 14-1300, 14-1301, 14-1302, 14-1314, 14-1403 and 14-1404 are, in fact, members of SCIC and would otherwise have standing to request a hearing on their own right, as required by TCEQ rules.¹³ Thus, with respect to the purported members of SCIC that hold these water rights, they can serve as no basis for the Association's standing to make its request. With respect to Mr. Turner, his request fails to meet the substantive requirements of Title 30, Section 55.250 of the Texas Administrative Code.

As a consequence, because SCIC has failed to demonstrate that any of its purported members—or those it speaks on behalf of—would otherwise have standing to request a hearing on Application 14-1298B in their own right, it has no standing under Title 30, Section 55.252(a)(1) of the Texas Administrative Code to request a hearing on the Application.

Section 55.252(a) also requires SCIC to demonstrate that the interests it seeks to protect in its requests are germane to its organizational purpose.¹⁴ SCIC has made no such demonstration. In addition to its substantive failures in establishing standing discussed above, SCIC also has no standing under Title 30, Section 55.252(a)(2) of the Texas Administrative Code to request a hearing on the Application.

The third requirement that SCIC must meet to demonstrate the requisite standing to make its hearing request is that neither the claim it asserts, nor the relief it requests, requires the participation of the owners of the 22 water rights it purportedly speaks on behalf of.¹⁵ SCIC has made no such demonstration. Because SCIC is unable to demonstrate that neither the claim it asserts nor the relief it seeks requires the participation of any of its purported individual members, it also has no standing under Title 30, Section 55.252(a)(3) of the Texas Administrative Code to request a hearing on the Application.

¹² 30 TEX. ADMIN. CODE § 55.252(a)(1) (2009).

¹³ *Id.*

¹⁴ *Id.* § 55.252(a)(2).

¹⁵ *Id.* § 55.252(a)(3).

Since it is not entirely clear which issues Don Kothman raised on his own behalf, if any at all, and those he raised on behalf of SCIC, San Angelo will treat each issue raised by Mr. Kothman as purported basis for a contested case hearing as issues raised by SCIC, as well.

Accordingly, SCIC fails in its request to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code for other reasons. Specifically, it fails to comply with 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 it. SCIC even fails to provide any description of its location and distance relative to the diversion point proposed in the Application. Nothing in SCIC's request gives any indication of how, or why, the Application will affect it, or any of the certificates of adjudication that it lists.

SCIC cites an inadequate understanding of the changes proposed in the Application as the basis for its hearing request. However, the TCEQ rules create some level of responsibility on the part of SCIC to develop at least a basic understanding of the changes sought in the Application—which can be developed by a review of the available public records relevant to the Application through the TCEQ—and then articulate some description of the anticipated impacts that the Application poses to its interests. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon SCIC to identify and articulate with some specificity how and why any justiciable interest it may have will be impaired by the changes proposed in the Application.

In fact, SCIC has not described 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.

The South Concho River Irrigation Company's requests should not be granted.

14. Concho Valley Watershed Association / Concho Valley Water Association

Bobby R. Turner submitted a request for a contested case hearing on Application 14-1298B purportedly on behalf of the Concho Valley Watershed Association / Concho Valley Water Association (referred to interchangeably as the "CVWA"). While Mr. Turner describes himself as a representative of the CVWA, he provides no indication that any principal / agent relationship he may have with CVWA gives him the authority to act, or speak, on behalf of the CVWA in this context. Accordingly, it is not clear that the interests of the CVWA have been properly, or accurately, presented in the hearing request.

As an initial matter, the CVWA has not provided any demonstration that it is, in fact, a legitimate organization comprised of any members, and particularly those unnamed or

identified members it purports to speak on behalf of in its hearing request. It is important to understand whether, in fact, any of its purported members are indeed members of the CVWA, and most importantly, were members at the time that the CVWA submitted its hearing request.

Specifically, TCEQ rules provide that an association may request a contested case hearing only if it meets the requirements set forth in Title 30, Section 55.252 of the Texas Administrative Code. Section 55.252(a) requires that, for CVWA to have associational standing to request a contested case hearing, it must be comprised of members that otherwise have standing on their own right to request such a hearing.¹⁶ CVWA lists or otherwise identifies no members of its organization, except for the reference that it has members along the South Concho River. The only person who could be presumed to be a member of the CVWA is Mr. Turner himself. Even if this is the same Bobby Turner that submitted a separate request for hearing on Application 14-1298B, he has failed to meet the substantive requirements of Title 30, Section 55.250 of the Texas Administrative Code. As a consequence, CVWA has not demonstrated that any of its purported members would otherwise have standing to request a hearing on Application 14-1298B on their own right. It, therefore, has no standing under Title 30, Section 55.252(a)(1) of the Texas Administrative Code to request a hearing on the Application.¹⁷

Section 55.252(a) also requires CVWA to demonstrate that the interests it seeks to protect in its requests are germane to its organizational purpose.¹⁸ CVWA has made no such demonstration. In addition to its substantive failures in establishing standing discussed above, it also has no standing under Title 30, Section 55.252(a)(2) of the Texas Administrative Code to request a hearing on the Application.

The third requirement that CVWA must meet to demonstrate the requisite standing to make its hearing request is that neither the claim it asserts, nor the relief it requests, requires the participation of any of its individual members.¹⁹ CVWA has made no such demonstration. Because CVWA is unable to demonstrate that neither the claim it asserts nor the relief it seeks requires the participation of any of its purported individual members, it also has no standing under Title 30, Section 55.252(a)(3) of the Texas Administrative Code to request a hearing on the Application.

Since it is not entirely clear which issues Bobby R. Turner raised on his own behalf, if any at all, and those he raised on behalf of CVWA, San Angelo will treat each issue raised by Mr. Turner as his purported basis for a contested case hearing as issues raised by CVWA, as well.

¹⁶ 30 TEX. ADMIN. CODE § 55.252(a)(1) (2009).

¹⁷ *Id.*

¹⁸ *Id.* § 55.252(a)(2).

¹⁹ *Id.* § 55.252(a)(3).

Accordingly, CVWA fails in its request to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code for other reasons. Specifically, it fails to comply with 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 it. CVWA even fails to provide any description of its location and distance relative to the diversion point proposed in the Application. Nothing in CVWA's request gives any indication of how, or why, the Application will affect it, or any of its purported members.

CVWA cites an inadequate understanding of the changes proposed in the Application as the basis for its hearing request. However, the TCEQ rules create some level of responsibility on the part of CVWA to develop at least a basic understanding of the changes sought in the Application—which can be developed by a review of the available public records relevant to the Application through the TCEQ—and then articulate some description of the anticipated impacts that the Application poses to its interests. Given the fact that TCEQ staff have determined that the changes proposed in the Application would have no practical impact on water rights within the Colorado River Basin, it would appear to be particularly incumbent upon CVWA to identify and articulate with some specificity how and why any justiciable interest it may have will be impaired by the changes proposed in the Application.

CVWA has not described 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.

The Concho Valley Watershed Association / Concho Valley Water Association's request should not be granted.

V. CONCLUSION

San Angelo submitted Application 14-1298B in an effort to make use of water that it otherwise cannot divert for beneficial purposes. It proposes only an amendment to the authorized place of use and point of diversion. It seeks no change whatsoever to the rate or amount of diversion presently authorized under COA 14-1298A.

Nevertheless, TCEQ was inundated with last-minute protests of the Application, with most of them timely only because they were submitted by facsimile on the last day. Yet out of all the flurry of requests, not one single requestor was able to articulate how or why the changes proposed in Application 14-1298B would affect any justiciable interest they may have. This should not be a surprise, as TCEQ staff anticipates that the changes proposed in the Application will have no practical effect on Colorado River Basin water rights.

Because no single requestor was able to identify a justiciable interest that would be impacted by the change proposed in Application 14-1298B, 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.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd 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:

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