

Buddy Garcia, *Chairman*  
Larry R. Soward, *Commissioner*  
Bryan W. Shaw, Ph.D., *Commissioner*  
Mark R. Vickery, P.G., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

August 3, 2009

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

Re: City of San Angelo; TCEQ Docket No. 2009-0185-WR

Dear Ms. Castañuela:

Please find enclosed the Executive Director's Response to Hearing Requests regarding City of San Angelo's Application for Amendment to Certification of Adjudication No. 14-1298B. If you have any questions, please do not hesitate to contact me at (512) 239-0463. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Robin Smith".

Robin Smith  
Attorney  
Environmental Division

cc: Mailing List

DOCKET NO. 2009-0185-WR

<b>CITY OF SAN ANGELO'S</b>	§	<b>BEFORE THE</b>
<b>APPLICATION FOR</b>	§	
<b>AMENDMENT TO</b>	§	<b>TEXAS COMMISSION</b>
<b>CERTIFICATION OF</b>	§	
<b>ADJUDICATION NO. 14-1298B</b>	§	<b>ON ENVIRONMENTAL QUALITY</b>

**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 on the City of San Angelo's (City or San Angelo) amendment to Certificate of Adjudication No. 14-1298. Fourteen requests for a hearing were filed. (One hearing requestor names 43 water right holders.) The Executive Director recommends that all hearing requests be denied.

**BACKGROUND**

The City of San Angelo (City) owns a portion of Certificate of Adjudication 14-1298, which authorizes diversion and use of not to exceed 128.1 acre feet of water per year with a priority date of July 29, 1914 from a 50-acre-foot capacity reservoir on the South Concho River, tributary of the Concho River, tributary of the Colorado River, Colorado River Basin and 124 acre-feet of water per year with a priority date of October 8, 1931 from two points on the South Concho River for agriculture and municipal purposes. The owner must establish a place of use before diverting the water. The City has applied for an amendment to the Certificate to add a downstream diversion point on the west bank of the South Concho River, Colorado River Basin, to authorize the diversion of the entire authorized amount of 252.1 acre-feet, and to add a place of use, being the City's service area in Tom Green County.

**PROCEDURAL HISTORY**

This application was received October 3, 2005. The application was declared administratively complete on June 7, 2006. Notice for this amendment application was mailed to the interjacent water right holders between the furthest upstream diversion point and the proposed diversion point on July 31, 2006, as required by TCEQ rules. Fourteen hearing requests were received. All of the hearing requests were timely filed.

The watermaster and permitting staff have been meeting regularly over the course of processing these applications with the applicant and protestants in an effort to come to agreement on these permits. This has been at the request of the applicant and the protestants. These meetings have included the development of an accounting plan for the applicant's various permits to provide detailed information on releases and diversions.

The downstream water right holders want the proposed accounting plan to require the passage of stored water. Many of the hearing requestors have formed a group, the Concho River Basin Conservancy Association that has filed petitions asking the Executive Director to "correct" the City's Certificate of Adjudication No. 14-1318 to require the passage of stored water in Twin Buttes Reservoir to downstream water right holders. The Executive Director denied the request and the Commission allowed the groups' motion to overturn to be overruled by operation of law. The group filed an action in court on April 9, 2009, which is pending, for the same relief.

### LEGAL AUTHORITY

The application is subject to the procedures for evaluating hearing requests on applications declared administratively complete on or after September 1, 1999 in 30 Texas Administrative Code, Chapter 55, Subchapter G (Sections 55.250-55.256).

Title 30, Sections 55.251 (b) and (c) of the Texas Administrative Code specify that a hearing request must:

- (1) be in writing and be filed with the Office of the Chief Clerk during the public comment period;
- (2) give the name, address, and daytime telephone number of the person who files the request;
- (3) identify the person's personal justiciable interest affected by the application including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public; and
- (4) request a contested case hearing.

A hearing request must comply with requirement (1) above and must "substantially comply" with requirements (2) through (4). 30 TEX. ADMIN. CODE § 55.251(c).

A request for a contested case hearing must be granted if the request is made by an affected person and the request:

- (A) complies with the requirements of 30 TEX. ADMIN. CODE § 55.251;
- (B) is timely filed; and
- (C) is pursuant to a right to hearing authorized by law.

30 TEX. ADMIN. CODE § 55.255(b)(2).

An "affected person" is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to the general public does not constitute a justiciable interest. 30 TEX. ADMIN. CODE § 55.256(a).

For a group or an association, the hearing request may be granted if the group shows that one or more of the members would have standing to be a party in his or her own right, the interests the

group seeks to protect are germane to the group's purpose, and the claim asserted would not require the presence of the individual members. 30 TEX. ADMIN. CODE § 55.252(a).

To determine whether a person is an affected person, all relevant factors must be considered, including but not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) the likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) the likely impact of the regulated activity on the use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE § 55.256(c).

## **HEARING REQUESTS**

### Hearing Requests:

1. Carroll Blacklock states that she owns Certificate of Adjudication No. 14-1399, which is located on the Concho River approximately 35 miles downstream from the proposed diversion point, and that the proposed amendment will impact his water right.
2. Van Carson and Sandra Carson Birnie, dba Carson Farms, state that they own Certificate of Adjudication No. 14-1338, which is located on the Concho River approximately 15 miles downstream from the proposed diversion point, and that the proposed amendment will impact their water right.
3. Todd Schwertner and Letha Green state that they own Certificate of Adjudication No. 14-1370, which is located on the Concho River approximately 20 miles downstream from the proposed diversion point, and that the proposed amendment will impact their water right.
4. Hudson Management LTD states that it owns Certificate of Adjudication No. 14-1340, which is located on the Concho River approximately six miles downstream from the proposed diversion point, and that the proposed amendment will impact its water right.
5. Douglas John states that he owns of Certificate of Adjudication No. 14-1372, which is located on the Concho River approximately 20 miles downstream from the proposed diversion point, and that the proposed amendment will impact his water right.

6. A. J. Jones states that he owns Certificate of Adjudication No. 14-1397, which is located on the Concho River approximately 20 miles downstream from the proposed diversion point, and that the proposed amendment will impact his water right.

7. John Ketzler states that he owns Certificate of Adjudication No. 14-1376, which is located on the Concho River approximately 21 miles downstream from the proposed diversion point, and that the proposed amendment will impact his water right.

8. Kevin Noland states that he owns Certificate of Adjudication No. 14-1344, which is located on the Concho River approximately 36 miles downstream from the proposed diversion point, and that the proposed amendment will impact his water right.

9. Darrell Rushing states that he owns Certificate of Adjudication No. 14-1371, which is located on the Concho River approximately 20 miles downstream from the proposed diversion point, and that the proposed amendment will impact his water right.

10. Kenneth R. Windham states that he owns Certificate of Adjudication No. 14-1368, which is located on the Concho River approximately 20 miles downstream from the proposed diversion point, and that the proposed amendment will impact his water right.

11. Kenneth Schwartz states that he owns Certificate of Adjudication No. 14-1351, which is located an unspecified distance downstream from the proposed diversion point, and that the proposed amendment will impact his water right.

12. The South Concho Irrigation Company states that it represents various permit numbers at unspecified locations and that its water rights may be adversely affected by the proposed amendment. Water Rights Permitting staff analysis of the permit numbers provided by the South Concho Irrigation Company indicates that all of the Association's water rights interests are located upstream from the proposed diversion point and in between the two currently existing diversion points or on the most upstream reservoir authorized under Certificate No. 14-1298.

13. South Concho Irrigation Company requested a hearing but did not indicate ownership of a water right and did not describe a location. The requestor states that its water rights, and those of its members, may be adversely affected by the proposed amendment.

14. Bobby R. and Carol Turner requested a hearing but did not indicate ownership of a water right and did not describe a location. The requestors state that their water rights may be adversely affected by the proposed amendment.

Executive Director's Recommendation. Deny all the requests. San Angelo is requesting an additional diversion point on the South Concho River downstream from its two currently existing diversion points under this certificate. The proposal does not increase the overall volume or diversion rate of water to be diverted from South Concho River, and no water right owners

located between the most downstream diversion point and the proposed diversion point voiced any concern regarding potential impacts resulting from the proposed amendment. Owners of water rights downstream from the proposed diversion point will not be impacted because no additional water is being diverted from the stream.

Hearing requestors that are co-owners of the most upstream reservoir (South Concho Irrigation Company) and that have diversion points between the two currently existing diversion points authorized under Certificate No. 14-1298 could be impacted because San Angelo will now be able to call on them for the full amount of the diversion at the new downstream diversion point. However, the Executive Director will require a junior priority date on the new diversion point, resulting in San Angelo's inability to call on these intervening water rights. The Executive Director will also limit the amount diverted at the new diversion point to not exceed the amount available at the upstream diversion point and will require maintenance of an accounting plan demonstrating this. If the Commission believes that these hearing requests should be granted, those individuals are listed on a spreadsheet attached to this response. There are 43 requests. South Concho Irrigation Company itself does not have a water right, according to Commission files.

**CONCLUSION**

For the reasons stated above, the Executive Director respectfully recommends that all of the submitted hearing requests be denied.

Respectfully submitted,



Robin Smith, Attorney  
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Environmental Law Division  
Texas Commission on  
Environmental Quality  
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(512)239-0463  
(512)239-0606 (FAX)

REPRESENTING THE EXECUTIVE  
DIRECTOR OF THE TEXAS  
COMMISSION ON ENVIRONMENTAL  
QUALITY

**CERTIFICATE OF SERVICE**

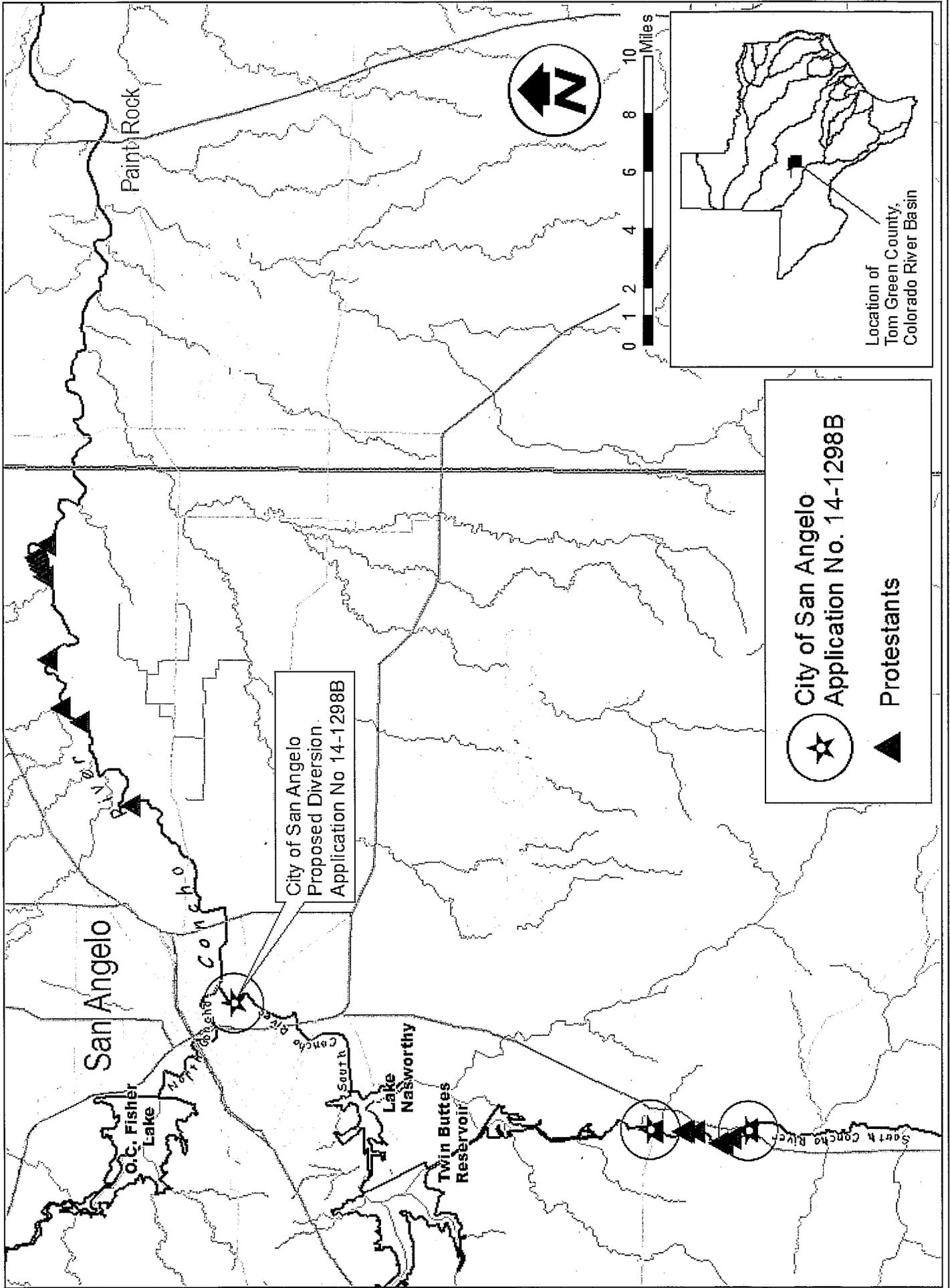
I hereby certificate that the Executive Director's Response to hearing requests in the City of San Angelo's Application for Amendment to Certification of Adjudication No. 14-1298B matter were filed with the Chief Clerk, faxed to the persons with fax numbers, and mailed to the persons on the attached Mailing List on this 3<sup>rd</sup> day of August, 2009.

*Robin Smith*

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Robin Smith  
Attorney  
Environmental Law Division  
Bar No. 18645600

WRNO	WRTYPE	OwnerName	PriorityDate	AddressDetail1	AddressDetail2	StreetAddress	CityName	StateName	ZipMain	ZipPlus4
1257	6	WILLIAM H ARMSTRONG II TRUSTEE	3/31/1925	THE BRYANT FAMILY TRUST		PO BOX 3277	SAN ANGELO	TX	76902	3277
1280	6	LEWIS B BURLESON FAMILY TRUST	12/31/1951	STEPHEN BURLESON TRUSTEE		PO BOX 2479	MIDLAND	TX	79702	2479
1280	6	LEWIS B BURLESON FAMILY TRUST	7/29/1914	STEPHEN BURLESON TRUSTEE		PO BOX 2479	MIDLAND	TX	79702	2479
1281	6	DEL DUANE BRITTON ET UX	7/29/1914	(AMY R BRITTON)		4645 W MOORE RD	CHRISTOVAL	TX	76935	3313
1282	6	GERRY LANE DUPREE ET AL	7/29/1914	(KAREN R DUPREE)	19193 HIGHWAY 2775	PO BOX 137	CHRISTOVAL	TX	76935	0137
1282	6	CHARLOTTE MCNEIL ET AL	12/31/1964	(F A MORRISON SR, R V MORRISON)		5070 CEMETERY ROAD	CHRISTOVAL	TX	76935	4361
1283	6	LOUIS JAMES ET UX	7/29/1914	(J K JAMES)		19195 US HIGHWAY 277 S	CHRISTOVAL	TX	76935	4241
1284	6	NANCY SALMON JAMES	7/29/1914			2544 LINDENWOOD DR	SAN ANGELO	TX	76904	6758
1286	6	BILLY LOUIS SAWYER ET AL	7/29/1914	C/O JIMMY HARRIS		850 ALISON'S WAY	ABILENE	TX	79602	3151
1286	6	BOBBY RANDALL TURNER ET UX	7/29/1914	(CAROL C TURNER)		PO BOX 428	CHRISTOVAL	TX	76935	0428
1287	6	JOHN S BALLARD III ET UX	7/29/1914	(PATRICIA D BALLARD)		PO BOX 31	CHRISTOVAL	TX	76935	0031
1288	6	WILLIAM CODY ELLIOTT ET UX	1/18/1962	(ASHLEY BROOK ELLIOTT)		PO BOX 542	CHRISTOVAL	TX	76935	0542
1288	6	JOE MCGUFFIN ET UX	7/29/1914	(LUCY MCGUFFIN)		PO BOX 117	SONORA	TX	76850	0117
1289	6	HERBERT J UNTERMEYER ET UX	1/31/1965			18485 US HIGHWAY 277 S	CHRISTOVAL	TX	76935	3200
1289	6	HERBERT J UNTERMEYER ET UX	7/29/1914			18485 US HIGHWAY 277 S	CHRISTOVAL	TX	76935	3200
1290	6	CHRISTOVA ISD	7/29/1914			PO BOX 162	CHRISTOVAL	TX	76935	0162
1290	6	JONATHAN REID STULTZ ET UX	3/12/1964	(KELLY DEE STULTZ)		17995 US HIGHWAY 277 S	CHRISTOVAL	TX	76935	2241
1290	6	JONATHAN REID STULTZ ET UX	7/29/1914	(KELLY DEE STULTZ)		17995 US HIGHWAY 277 S	CHRISTOVAL	TX	76935	2241
1292	6	LOUIS JONES JR ET AL	7/29/1914			PO BOX 125	KNICKERBOCKER	TX	76939	0125
1293	6	DAVID DARNELL	7/29/1914			17595 US HIGHWAY 277 S	CHRISTOVAL	TX	76935	3215
1293	6	KENNETH V HUSEMAN	7/29/1914			3900 BAYBROOK CT	MIDLAND	TX	79707	1431
1293	6	KENNETH V HUSEMAN ET UX	7/29/1914	(JAYE M HUSEMAN)		3900 BAYBROOK CT	MIDLAND	TX	79707	1431
1293	6	SHAWN C SEIDEL ET UX	7/29/1914	(LEESHA E SEIDEL)		17613 US HIGHWAY 277 S	CHRISTOVAL	TX	76935	3219
1293	6	STUART W SEIDEL ET UX	7/29/1914	(CLAUDIA ANN SEIDEL)		17591 S US HIGHWAY 277	CHRISTOVAL	TX	76935	3215
1294	6	L KENNETH & JEANNE C CLEVELAND	7/29/1914			4014 MOORE RD	CHRISTOVAL	TX	76935	3310
1295	6	JASON E FELGER MD ET UX	7/29/1914	(SUZANNE M FELGER)		5000 CRALLE RD	CHRISTOVAL	TX	76935	3303
1295	6	FRED GAUNITT	7/29/1914			4261 W FM 2335	CHRISTOVAL	TX	76935	3303
1299	6	KEN TOUNGET ET UX	7/29/1914	(JOYCE TOUNGET)		PO BOX 151	CHRISTOVAL	TX	76935	0151
1300	6	JOHN T GANDY	12/31/1966			17005 S US HWY 277	CHRISTOVAL	TX	76935	3209
1300	6	JOHN T GANDY	7/29/1914	(RITA J KOTHMANN)		17005 S US HWY 277	CHRISTOVAL	TX	76935	3209
1301	6	DONALD L KOTHMANN ET UX	7/29/1914			16753 HIGHWAY 277 S	CHRISTOVAL	TX	76935	3207
1301	6	TEXAS DEPT OF TRANSPORTATION	7/29/1914			4502 KNICKERBOCKER RD	SAN ANGELO	TX	76904	4109
1302	6	DENNY BROWN ET AL	7/29/1914			6941 SOUTH US HIGHWAY	SAN ANGELO	TX	76904	4109
1314	6	ROBERT M WEATHERFORD ET AL	7/29/1914	(S E HODGES, S S PATE, C W CRALLE JONES)		10212 RANCH ROAD 965	FREDERICKSBURG	TX	78624	6861
1403	6	WILSON T CORLEY	7/29/1914			222 WINDMILL OAKS DR	WIMBERLEY	TX	78676	6196
1403	6	BEVERLY JOLENE WYATT	7/29/1914			17289 US HIGHWAY 277 S	CHRISTOVAL	TX	76935	3213
1404	6	DAVID DARNELL ET AL	7/29/1914	(KATHY SEIDEL BLANEK)		17595 US HIGHWAY 277 S	CHRISTOVAL	TX	76935	3215
1404	6	V DAVID DARNELL ET UX	7/29/1914	(MELINDA K DARNELL)		17595 US HIGHWAY 277 S	CHRISTOVAL	TX	76935	3215
1404	6	KENNETH S GUNTER	7/29/1914	THE KENNETH S GUNTER REVOCABLE TRUST		26 W CONCHO AVE	SAN ANGELO	TX	76903	6414
1404	6	BRYAN KIRK	7/29/1914			PO BOX 251	CHRISTOVAL	TX	76935	0251
1404	6	ROY HURD MANAHAN	7/29/1914			PO BOX 408	CHRISTOVAL	TX	76935	0408
1404	6	LORI PENNINGTON	7/29/1914			PO BOX 35	CHRISTOVAL	TX	76935	0035
1404	6	STUART WILLIAM SEIDEL ET AL	7/29/1914	(KATHY JUNE BLANEK)		17591 S US HIGHWAY 277	CHRISTOVAL	TX	76935	3215



City of San Angelo  
Proposed Diversion  
Application No 14-1298B

City of San Angelo  
Application No. 14-1298B

★ Protestants

**MAILING LIST  
CITY OF SAN ANGELO  
DOCKET NO. 2009-0185-WR; PERMIT NO. ADJ 1298B**

FOR THE APPLICANT:

Will Wilde  
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San Angelo, Texas 76902-1751

FOR THE EXECUTIVE DIRECTOR:

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FOR PUBLIC INTEREST COUNSEL

Mr. Blas Coy, Jr., Attorney  
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FOR THE OFFICE OF PUBLIC  
ASSISTANCE

Ms. Bridget Bohac, Director  
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Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

FOR ALTERNATIVE DISPUTE  
RESOLUTION:

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

REQUESTER(S)

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Miles, Texas 76861

Douglas John  
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Miles, Texas 76861-5217

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**Page 2**

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Kevin L. Noland  
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Miles, Texas 76861-4717

Darrell Rushing  
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Miles, Texas 76861-5217

Kenneth Schwartz  
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San Angelo, Texas 76904-5553

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INTERESTED PERSON(S)

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