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August 14, 2009

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 AUG 17 AM 10:40
CHIEF CLERKS OFFICE

VIA OVERNITE DELIVERY

Ms. LaDonna Castañuela, MC-105
Office of Chief Clerk
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
12100 Park 35 Circle - Bldg. F , 1st Flr
Austin, TX 78753

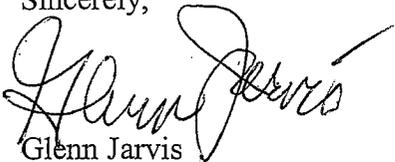
RE: City of San Angelo's Application for Amendment to Certification of Adjudication No1298B
Docket No. 2009-0185-WR

Dear Ms. Castañuela:

Enclosed for filing is original and 8 copies of Hearing Requesters Reply to Responses to Hearing Requests in the above-referenced matter Please file stamp the extra copy and return to me.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Glenn Jarvis

GJ:llc
Encl.

xc: Mailing List

Mailing List
San Angelo Water Supply Corporation
Docket No. 2009-0185-WR; Permit No. Adj 1298B

FOR APPLICANT:

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FOR ALTERNATIVE DISPUTE RESOLUTION:

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DOCKET NO. 2009-0185-WR

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CITY OF SAN ANGELO'S §
APPLICATION FOR §
AMENDMENT TO §
CERTIFICATION OF §
ADJUDICATION NO. 14-1298B §

BEFORE THE
TEXAS COMMISSION
CHIEF CLERKS OFFICE

ON ENVIRONMENTAL QUALITY

**HEARING REQUESTERS REPLY TO RESPONSES
TO HEARING REQUESTS**

CONCHO RIVER BASIN WATER CONSERVANCY ASSOCIATION ("Association"), on behalf of its members, including the Hearing Requesters identified below,¹ and on their behalf by and through the Association file their Reply to the Responses filed by the Executive Director, Applicant and Public Interest Counsel in the above captioned matter.

AMENDMENT REQUESTED

The Applicant represents that it acquired ownership of Certificate of Adjudication No. 14-1298 in 2003. This Certificate authorizes the diversion and use for irrigation purposes not to exceed 252.1 acre feet of water per year from the South Concho River upstream of Twin Buttes Dam and Reservoir. More particularly, this water right authorizes the right to divert 128.1 acre feet from one diversion point with a maximum diversion rate of 15.11 cfs with a priority date of July 19, 1914, and the right to divert 124 acre feet per annum from two (2) other diversion points with a maximum diversion rate of 1 cfs and 2.67 cfs, with a priority date of October 8, 1931. This water right shares, with other water rights holders, a diversion point on the South Concho River approximately 21 miles

¹Sandra Carson (Certificate No. 14-1338), Van Carson (Certificate No. 14-1338), A. J. Jones, Jr. (Certificate No. 14-1397 and domestic & livestock), Wanda Hudson (Certificate No. 14-1340, 14-5600 and domestic & livestock), Todd Schwertner (Certificate No. 14-1370), Douglas John (Certificate No. 14-1372 and domestic & livestock), Darrell Rushing (Certificate No. 14-1371), Kenneth Schwartz (Certificate No. 14-1351, 14-1354), and Kevin L. Noland (Certificate No. 14-1344), through the Concho River Basin Water Conservancy Association.

upstream of Twin Buttes Reservoir. The existing diversion point where water is diverted is now conveyed through a community ditch (a/k/a South Concho Irrigation Co., Concho Valley Watershed Association) from which water is taken by the numerous other water right holders, including Certificate No. 14-1298.²

When Applicant acquired this water right, it owned no land to which the water right was appurtenant to so water could not be beneficially used pursuant to the Certificate.

In 2004, the Commission authorized an Amendment to add municipal use to the Certificate (Certificate No. 14-1298A) without providing any means by which this water right could be used for municipal use and for beneficial use purposes. Since the Applicant does not own any land to which it could be beneficially use these water rights, apparently no beneficial use has been made of this Certificate under its current status. No use has apparently occurred since the Applicant allegedly acquired ownership of the Certificate in 2003.

Now, Applicant seeks to amend the Certificate so as to add an additional diversion point downstream of Twin Buttes Dam and Reservoir at its Water Treatment Plant on the South Concho River. This is about 21 miles upstream of the existing diversion point and about 0.81 miles above the confluence of the North Concho River with the Concho River. In other words, water that was once diverted approximately 21 miles upstream on the South Concho River has to flow through either Twin Buttes Reservoir or bypass and flow through Lake Nasworthy prior to reaching the new place of use, a distance of 21 miles and passing through several dams and reservoirs and the diversion point of numerous water rights holders along the way.

²The other water rights holders have rights under the following Certificates: Certificate of Adjudication Nos. 14-1299, 14-1300, 14-1384, 14-1302, 14-1303, 14-1314, 14-1403 and 14-1404

To properly protect the other water right holders on the mutually used ditch and diversion point, an agreement or some kind of water accounting plan between them, is necessary and proper accounting is required because this water will physically no longer pass through the community ditch and possibly back into the South Concho River but will flow downstream through Applicant's system. This is especially required since the diversion right has different priority dates at different diversion points. If not, it would be disruptive of the exercise of rights by other water right holders sharing this diversion point and in the administration of the rights on the Concho Basin by the TCEQ and Watermaster.

Proper provisions should be accounted for providing for conveyance losses between the original place of use (the South Concho Irrigation Co./Concho Valley Watershed Association) and the proposed new place of use. This water accounting should also be coordinated with the Water Accounting Plan pertaining to the maintenance and operation of Twin Buttes Dam and Reservoir and Lake Nasworthy, which is currently involved with this amendment and other amendment cases presently before the Commission (Certificate Nos. 14-1318B, 14-1318C, and 14-1348) being considered by the Commission at the public meeting on August 26, 2009.

The Applicant seeks to add a new diversion point at its Water Treatment Plant. It is not clear whether this is a current authorized diversion point of the Applicant or a new diversion point. This issue must be clarified, evaluated by the parties, and properly set out in the Proposed Amendment.

If these measures are not taken, then the other water rights holders sharing the original diversion point, as well as all downstream water right holders, will be impaired. The amended right may be junior in priority to intervening water rights holders as indicated by the Executive Director, however, a current accounting between the existing water rights holders on the ditch and downstream

is necessary for the future administration of the rights by the Watermaster, and consideration of the issues presented above is necessary.

A question is raised by the Office of Public Interest Counsel regarding the status of the Concho River Basin Water Conservancy Association. It is a non-profit corporation having filed its Articles of Incorporation and was issued Charter No. 01580772-01 on May 2, 2000 by the Secretary of State of Texas. Article Four (4) of its Articles of Incorporation, provides that its purpose is:

“The purposes for which the corporation is organized are: (1) to protect and conserve private property rights of landowners and water right holders in the Concho River Basin; (2) to promote water conservation; (3) to promote and encourage cooperation between water users, so as to enable members to work together as a unit in matters of mutual concern; (4) to promote management practices conducive to more economical operation of the Concho River Basin and monitoring of the flow of the Concho River Basin and its tributaries; (5) to concern itself with matters of interest to the association which may be before any legislative bodies, courts or agencies, or which may affect the interest of the members; and (6) to disburse information and other action deemed appropriate to carry out these purposes.”

The Association has appeared in other cases involving the Concho River Basin and Watershed, and is authorized to represent those members and Hearing Requesters identified in footnote 1 above. The Association meets the requirements under 30 TAC § 55.252(a) in that (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right; (2) the interests the group or association seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case because one or more of those identified in footnote 1 above are participating through the Association.

We agree with Public Interest Counsel recommendations, and having provided the information requested regarding the Association, request reconsideration in this respect. We disagree with the Executive Director’s analysis of the status of the Hearing Requestors in the case because unless their requests for a contested case hearing is granted, they will have no voice or

involvement in the amendment that is ultimately issued in this case assuring that water rights holders, domestic and livestock users, and the environment are protected. They must be assured that their water rights are not impaired by the amendment that may be granted in this case, and the condition of the watershed is protected as much as is possible.

We also disagree with the Applicant's analysis of the status of the Hearing Requestors because all of them have an interest in this proceeding as water right holders downstream or upstream of where this amendment may affect. Many of them are members of the Association and share the community ditch from which this water right is being moved, and others having water rights upstream or downstream in the Concho Basin. All of their water rights could be adversely impacted, whether they be water rights holders or domestic and livestock users.

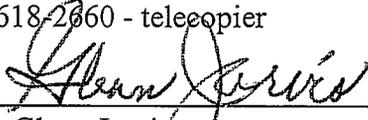
HEARING REQUESTS

We believe that this Amendment can be granted, but it must contain the necessary protection discussed above to other water rights holders and domestic and livestock users affected in the Concho River Basin.

On this basis, the hearing requestors should be involved in the actual amendment issued. All of the hearing requestors who have water rights that could be impaired by this Amendment should be granted in order to assure that their water rights will not be impaired by the issuance of this Amendment, and if necessary, a contested case hearing be ordered by the Commission.

Respectfully submitted,

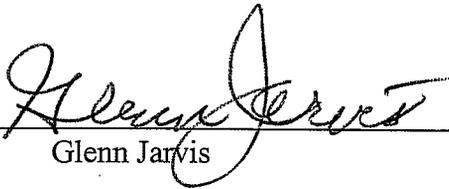
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BY: 
Glenn Jarvis
State Bar No. 10588000

ATTORNEY FOR CONCHO RIVER BASIN WATER
CONSERVANCY ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Hearing Requesters Reply to Responses to Hearing Requests, has been sent via first-class mail, to the persons on the attached Mailing List on this 17th day of August, 2009.



Glenn Jarvis

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