

1934 ..... 25 Years ..... 2009

Mr. Rochelle's Direct Line: (512) 322-5810  
Email: mrochelle@lglawfirm.com

August 3, 2009

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

**VIA HAND DELIVERY**

Re: In the Matter of Application No. 14-1348A by the San Angelo Water Supply Corporation For Amendment to Certificate of Adjudication No. 14-1348 TCEQ Docket No. 2009-0186-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

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 AUG -3 PM 4:30  
CHIEF CLERKS OFFICE

MCR/ldp  
1168\07\1298\ltr090803mcr4  
ENCLOSURE

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

DOCKET NO. 2009-0186-WR

2009 AUG -3 PM 4:30

APPLICATION NO. 14-1348A BY THE  
CITY OF SAN ANGELO FOR  
AMENDMENT TO CERTIFICATE OF  
ADJUDICATION NO. 14-1348

§  
§  
§  
§  
§

BEFORE THE TEXAS COMMISSION

ON CHIEF CLERKS OFFICE

ENVIRONMENTAL QUALITY

**RESPONSE TO REQUESTS FOR  
CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS:

The City of San Angelo (herein referenced 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**

Certificate of Adjudication No. 14-1348 ("COA 14-1348") currently authorizes the maintenance of two existing on-channel dams and reservoirs impounding a total of 122 acre-feet of water from the Concho River Segment of the Colorado River. Through COA 14-1348, San Angelo shares an interest in these two dams and reservoirs with two other owners of record.<sup>1</sup> COA 14-1348 also gives San Angelo the right to divert and use not to exceed 135 acre-feet of water annually from two diversion points on the Concho River for agricultural irrigation purposes. The certificate presently specifies that San Angelo can use the authorized diversions to irrigate a certain 106 acres in Tom Green County at a maximum combined diversion rate of 3.33 cfs.

**II. PROCEDURAL HISTORY**

On August 8, 2005, San Angelo filed Application No. 14-1348A with the TCEQ so as to amend COA 14-1348 to authorize municipal use as an additional purpose of use and to authorize the San Angelo Municipal Water Supply System service area as an additional place of use (the "Application" or "Application 14-1348A"). The Application proposes no new diversion points nor any change in the volume, or rate, of diversions presently authorized in COA 14-1348. On March 3, 2006, San Angelo submitted a revised water conservation plan, and asked that the Application be considered for final approval. TCEQ staff determined that the Application proposed only an additional purpose of use and a change in place of use with no increased appropriation of State water. They concluded there would be no injury to any other lawful user

<sup>1</sup> See Certificate of Adjudication Nos. 14-1347, 14-1350.

of State water. Accordingly, notice of the application was provided only pursuant to Title 30, Section 295.158(c)(2)(C) of the Texas Administrative Code and only to the owners of record of Certificate of Adjudication No. 14-1347 and Certificate of Adjudication No. 14-1350.

On May 22, 2006, TCEQ staff declared the Application to be administratively complete. The Chief Clerk sent notice of the Application to the owners of record of Certificates of Adjudication Nos. 14-1347 and 14-1350 by certified mail on June 30, 2006, and signed proof of receipt was returned to TCEQ. The deadline for submission of requests for contested case hearing was July 20, 2006. Neither owner of record of Certificates of Adjudication Nos. 14-1347 and 14-1350, nor anyone authorized to act on their behalf, submitted a request for a contested case hearing. Several other persons submitted requests for contested case hearing, however, as noted below.

On January 9, 2007, TCEQ staff again concluded that no existing water rights would be affected by Application 14-1348A. On May 17, 2007, TCEQ staff issued a draft permit amending COA 14-1348 (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".<sup>2</sup> 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.<sup>3</sup> An interest common to members of the general public does not qualify as a personal justiciable interest.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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".<sup>7</sup> For purposes of the

---

<sup>2</sup> 30 TEX. ADMIN. CODE § 55.251(a) (2009).

<sup>3</sup> *Id.* § 55.103.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* § 55.251(c)(2).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* §§ 55.251(b), (d), .254(a).

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 that notice was mailed to the owners of record of Certificate of Adjudication Nos. 14-1347 and 14-1350. The Chief Clerk mailed the notice on June 30, 2006. Thus, all timely hearing requests must have been received by the Chief Clerk by July 20, 2006.<sup>8</sup> All such requests not filed within this period are not timely and thus cannot be processed by the Chief Clerk.<sup>9</sup>

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.<sup>10</sup>

#### IV. EVALUATION OF HEARING REQUESTS FOR APPLICATION 14-1348A

##### 1. Fred Ball

Fred Ball submitted a request for a contested case hearing on Application 14-1348A that was received by the Chief Clerk on July 20, 2006. As an initial matter, Mr. Ball’s hearing request is based on a water right for which he has no ascertainable interest. His request is based on purported affects to Certificate of Adjudication No. 14-1253. However, TCEQ records indicate that Certificate of Adjudication No. 14-1253 is owned by Irion County Farms, LLC. Nothing in Mr. Ball’s hearing request demonstrates that he has any authority to speak on behalf of Irion County Farms, LLC, or to otherwise claim an interest in Certificate of Adjudication No. 14-1253.

This substantive defect in Mr. Ball’s request notwithstanding, he fails in other respects 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 changes 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. 14-1253, or any justiciable interest he may have. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Ball to identify with some specificity how and why his interests, or even Certificate of Adjudication No. 14-1253, will be impaired by Application 14-1348A.

---

<sup>8</sup> *Id.* §§ 55.251(b), (d).

<sup>9</sup> *Id.* §§ 55.251(f)(1), .254(a).

<sup>10</sup> *Id.* § 55.256(c).

Mr. Ball does not even attempt to provide any indication of how, or why, the Application will affect any interest, including Certificate of Adjudication No. 13-1253. He has failed to identify any justiciable interest that is 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.

Fred Ball's request should not be granted.

2. Louis (Lewis) J. Buck

Louis (Lewis) J. Buck submitted a request for a contested case hearing on the Application that 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. 14-1363—the water right Mr. Buck asserts will purportedly be impaired by the changes proposed in the Application—or any domestic and livestock riparian right he may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Buck to identify with some specificity how and why Certificate of Adjudication No. 14-1363—a junior right to COA 14-1348—or any domestic and livestock riparian right he may have, will be impaired by Application 14-1348A.

Mr. Buck has failed to identify any justiciable interest that is 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.

Louis (Lewis) J. Buck's request should not be granted.

3. Van Carson and Sandra Carson Bernie

Van Carson and Sandra Carson Bernie submitted two requests for a contested case hearing on the Application that each fail 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 changes proposed in the Application will affect the requestors, nothing in their requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1338—the water right they assert will purportedly be impaired by the changes proposed in the Application—or any domestic and livestock riparian right they may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be

particularly incumbent upon Mr. Carson and Ms. Bernie to identify with some specificity how and why Certificate of Adjudication No. 14-1338, or any domestic and livestock riparian right they may have, will be impaired by Application 14-1348A.

These requestors have not identified any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that they are affected persons using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Van W. Carson and Sandra Carson Bernie's requests should not be granted.

4. John Cmerek

John Cmerek submitted a request for a contested case hearing on the Application that 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 changes proposed in the Application will affect the requestor, nothing in his request gives any indication of how, or why, the Application will affect any domestic and livestock riparian right he may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Cmerek to identify with some specificity how and why his domestic and livestock riparian rights will be impaired by Application 14-1348A.

In fact, Mr. Cmerek has identified no justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that he is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

John Cmerek's request should not be granted.

5. D. Dishroon

D. Dishroon submitted a request for a contested case hearing on the Application that 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 changes proposed in the Application will affect the requestor, nothing in his request gives any indication of how, or why, the Application will affect any domestic and livestock riparian right that D. Dishroon may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon this requestor to identify with some specificity how and why any domestic and livestock riparian right this person may enjoy will be impaired by Application 14-1348A.

D. Dishroon has not identified any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that he is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

D. Dishroon's request should not be granted.

6. Dwayne Dishroon

Dwayne Dishroon submitted a request for a contested case hearing on Application 14-1348A. As an initial matter, Dwayne Dishroon's hearing request is based on a water right for which he has no ascertainable interest. His request is based on purported affects to Certificate of Adjudication No. 14-1364. However, TCEQ records indicate that Certificate of Adjudication No. 14-1364 is owned by W. G. and Wanda M. Dishroon, not Dwayne Dishroon. Nothing in Dwayne Dishroon's hearing request demonstrates that he has any authority to speak on behalf of W. G. and Wanda M. Dishroon, or to otherwise claim any interest in Certificate of Adjudication No. 14-1364.

This substantive defect in Dwayne Dishroon's request notwithstanding, he fails in other respects 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 changes 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. 14-1364, or any justiciable interest he may have. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Dwayne Dishroon to identify with some specificity how and why his interests, or even Certificate of Adjudication No. 14-1364, will be impaired by Application 14-1348A.

Mr. Dishroon does not even attempt in his request to describe how, or why, the Application will affect any justiciable interest he may have. 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.

Dwayne Dishroon's request should not be granted.

7. Wanda and W.G. Dishroon

Dwayne Dishroon submitted a request for a contested case hearing on Application 14-1348A, purportedly on behalf of Wanda and W. G. Dishroon. Nothing in the requests, however, shows that Dwayne Dishroon is authorized to act, or speak, on behalf of Wanda

and W. G. Dishroon Estate. TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1364—is held in the name of W. G. and Wanda Dishroon, not Dwayne Dishroon. Accordingly, it is not clear that the interests of W. G. and Wanda Dishroon have been properly, or accurately, presented in the hearing requests.

Nevertheless, the request does not 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 changes proposed in the Application will affect the requestors, nothing in this request gives any indication of how, or why, the Application will affect the rights provided by Certificate of Adjudication No. 14-1364. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon the Dishroons to identify with some specificity how and why Certificate of Adjudication No. 14-1364 will be impaired by Application 14-1348A.

The Dishroon's request identifies no justiciable interest 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.

W. G. and Wanda Dishroon's request should not be granted.

8. Thomas L. Evridge

Thomas L. Evridge submitted two requests for a contested case hearing on the Application. Both requests fail 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 changes proposed in the Application will affect the requestor, nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1369—the water right he asserts will purportedly be impaired by the changes proposed in the Application—or any domestic and livestock riparian right he may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Evridge to identify with some specificity how and why Certificate of Adjudication No. 14-1369, or any domestic and livestock riparian right he may have, will be impaired by Application 14-1348A.

Mr. Evridge has not identified any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that he is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Thomas L. Evridge's requests should not be granted.

9. Jennifer Ann Hoelscher

Jennifer Ann Hoelscher submitted two requests for a contested case hearing on the Application. As an initial matter, Ms. Hoelscher's hearing request is based in part on a water right for which she has no ascertainable interest. Her request is based on purported affects to Certificate of Adjudication No. 14-1384. However, TCEQ records indicate that Certificate of Adjudication No. 14-1384 is owned by Ben A. Willberg, not Jennifer Ann Hoelscher. Nothing in Ms. Hoelscher's hearing request demonstrates that she can claim any interest in Certificate of Adjudication No. 14-1384.

In addition to this substantive defect, Ms. Hoelscher's requests fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code, on other grounds, as well. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the changes proposed in the Application will affect the requestor, nothing in her requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1384 or any domestic and livestock riparian right she may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Ms. Hoelscher to identify with some specificity how and why Certificate of Adjudication No. 14-1384, or any domestic and livestock riparian right she may have, will be impaired by Application 14-1348A.

Ms. Hoelscher simply has not identified any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that she is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Jennifer Ann Hoelscher's requests should not be granted.

10. Steven H. Hoelscher

Steven H. Hoelscher submitted a request for a contested case hearing on Application 14-1348A that 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 changes proposed in the Application will affect the requestor, nothing in his request gives any indication of how, or why, the Application will affect any domestic and livestock riparian right he may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Hoelscher to identify with some specificity how and why his domestic and livestock riparian rights will be impaired by Application 14-1348A.

Mr. Hoelscher has identified no justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that he is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Steven H. Hoelscher's request should not be granted.

11. Hudson Management

Wanda Hudson submitted two requests for a contested case hearing on Application 14-1348A purportedly on behalf of Hudson Management. It is appropriate that Ms. Hudson be required demonstrate that, in fact, she has the legal authority to act, or speak, on behalf of Hudson Management. Ms. Hudson references two distinct certificates of adjudication as bases for her request—Certificate of Adjudication Nos. 14-1340 and 14-1342. TCEQ records indicate that Certificate of Adjudication No. 14-1340 is held in the name of Hudson Management, Ltd. The same records indicate that Certificate of Adjudication No. 14-1342 is held in the name of Don Ferguson. It is not clear that Ms. Hudson has the authority to speak on behalf of Hudson Management or Hudson Management, Ltd. It certainly does not appear that Ms. Hudson or Hudson Management can claim any interest in Certificate of Adjudication No. 14-1342. Accordingly, it is not clear that these interests have been properly, or accurately, presented in the hearing request.

Hudson Management's requests nevertheless fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code on other grounds, as well. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the changes 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 Nos. 14-1340 or 14-1342, or any domestic and livestock riparian right it may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon this requestor to identify with some specificity how and why Certificate of Adjudication Nos. 14-1340, 14-1342, or any domestic and livestock riparian right will be impaired by Application 14-1348A.

Hudson Management's requests 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.

Hudson Management's requests should not be granted.

12. Irion County Farms, LLC

Becky Bookter submitted a request for a contested case hearing on the Application purportedly on behalf of Irion County Farms, LLC. However, nothing in Ms. Bookter's submission indicates that she has any authority to act on behalf of Irion County Farms, LLC. It is thus only appropriate that Ms. Bookter be required demonstrate that she, in fact, has the legal authority to act, or speak, on behalf of Irion County Farms, LLC. TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1253—is held in the name of Irion County Farms, LLC, not Becky Bookter. Accordingly, it is not clear that the interests of Irion County Farms, LLC have been properly, or accurately, presented in the hearing requests.

Notwithstanding this substantive defect, the Irion County Farms, LLC request fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code on other grounds, as well. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the changes 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. 14-1253. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon this requestor to identify with some specificity how and why Certificate of Adjudication No. 14-1253 will be impaired by Application 14-1348A.

The Irion County Farms, LLC 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.

Irion County Farms, LLC's request should not be granted.

13. Betty and Douglas John

Betty and Douglas John submitted two requests for a contested case hearing on the Application that each fail 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 changes proposed in the Application will affect the requestors, nothing in their requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1372—the water right they assert will purportedly be impaired by the changes proposed in the Application—or any domestic and livestock riparian right they may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon the Johns to identify with some specificity how and why Certificate of Adjudication No.

14-1372, or any domestic and livestock riparian right they may have, will be impaired by Application 14-1348A.

These requestors have not identified any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that they are affected persons using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Betty and Douglas John's requests should not be granted.

14. A. J. Jones, Jr.

A. J. Jones, Jr. submitted two requests for a contested case hearing on the Application. Both requests fail 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 changes proposed in the Application will affect the requestor, nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1397—the water right he asserts will purportedly be impaired by the changes proposed in the Application—or any domestic and livestock riparian right he may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Jones to identify with some specificity how and why Certificate of Adjudication No. 14-1369, or any domestic and livestock riparian right he may have, will be impaired by Application 14-1348A.

Mr. Jones has not identified any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that he 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.

15. John C. Ketzler

John C. Ketzler submitted two requests for a contested case hearing on the Application. Both requests fail 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 changes proposed in the Application will affect the requestor, nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1376—the water right he asserts will purportedly be impaired by the changes proposed in the Application—or any domestic and livestock riparian right he may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the

changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Ketzler to identify with some specificity how and why Certificate of Adjudication No. 14-1376, or any domestic and livestock riparian right he may have, will be impaired by Application 14-1348A.

Mr. Ketzler has not identified any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that he 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.

16. Kevin L. Noland

Kevin L. Noland submitted a request for a contested case hearing on Application 14-1348A that 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 changes 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. 14-1344—the water right Mr. Noland asserts will purportedly be impaired by the changes proposed in the Application. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Noland to identify with some specificity how and why Certificate of Adjudication No. 14-1344 will be impaired by Application 14-1348A, particularly since, as noted by Mr. Noland in his request, his water right is upstream and junior in priority to COA 14-1348.

Mr. Noland has failed to identify any justiciable interest that is 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 request should not be granted.

17. Darrell Rushing

Darrell Rushing submitted two requests for a contested case hearing on the Application. Both requests fail 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 changes proposed in the Application will affect the requestor, nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1371—the water right he asserts will purportedly be impaired by the changes proposed in the Application—or any domestic and livestock riparian right he may enjoy. Given the fact

that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Rushing to identify with some specificity how and why Certificate of Adjudication No. 14-1371, or any domestic and livestock riparian right he may have, will be impaired by Application 14-1348A.

Mr. Rushing has not identified any justiciable interest that is affected by the Application. As a consequence, it is impossible to determine that he 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.

18. Todd Schwertner

Todd Schwertner submitted two requests for a contested case hearing on the Application. Both requests fail 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 changes proposed in the Application will affect the requestor, nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1370—the water right he asserts will purportedly be impaired by the changes proposed in the Application—or any domestic and livestock riparian right he may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Schwertner to identify with some specificity how and why Certificate of Adjudication No. 14-1370, or any domestic and livestock riparian right he may have, will be impaired by Application 14-1348A.

Mr. Schwertner fails to identify any justiciable interest that is affected by Application 14-1348A. As a consequence, it is impossible to determine that he is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Todd Schwertner's requests should not be granted.

19. Clyde C. Watkins

Clyde C. Watkins submitted a request for a contested case hearing on Application 14-1348A that was received by the Chief Clerk on July 21, 2006. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the Chief Clerk by July 20, 2006. Accordingly, this request is untimely.

In addition to Mr. Watkins' lack of timeliness in submitting his request, it fails to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code on other grounds, as well. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the changes 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. 14-1336—the water right he asserts will purportedly be impaired by the changes proposed in the Application. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Watkins to identify with some specificity how and why Certificate of Adjudication No. 14-1336 will be impaired by Application 14-1348A, particularly since, as noted by Mr. Watkins in his untimely request, his water right is upstream and junior in priority to COA 14-1348.

Mr. Watkins has failed to identify any justiciable interest that is affected by Application 14-1348A. As a consequence, it is impossible to determine that he is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Clyde C. Watkins's request should not be granted.

20. Edward E. Werner

Edward E. Werner submitted a request for a contested case hearing on Application 14-1348A that 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 changes 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. 14-1352—the water right he asserts will purportedly be impaired by the changes proposed in the Application. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Werner to identify with some specificity how and why Certificate of Adjudication No. 14-1352 will be impaired by Application 14-1348A.

Mr. Werner fails to identify any justiciable interest that is affected by Application 14-1348A. As a consequence, it is impossible to determine that he is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Edward E. Werner's request should not be granted.

21. Ben A. Willberg

Jennifer Ann Hoelscher submitted a request for a contested case hearing on Application 14-1348A, purportedly on behalf of Ben A. Willberg. Nothing in the requests, however, demonstrates that Jennifer Ann Hoelscher has the legal authority to act, or speak, on behalf of Ben A. Willberg in this context. TCEQ records indicate that the purportedly impacted water right referenced in the request—Certificate of Adjudication No. 14-1384—is held in the name of Ben A. Willberg, not Jennifer Ann Hoelscher. Accordingly, it is not clear that Ben A. Willberg has been properly represented in this particular hearing request.

Ben A. Willberg submitted two requests himself for a contested case hearing on the Application. Notwithstanding the defects in the request submitted by Jennifer Ann Hoelscher discussed above, all three requests fail 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 changes 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. 14-1384 or any domestic and livestock riparian right that Mr. Willberg may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Willberg to identify with some specificity how and why Certificate of Adjudication No. 14-1384, and any domestic and livestock riparian right he may have to beneficially use water in the Concho River, will be impaired by Application 14-1348A.

Mr. Willberg's requests identify 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.

Ben A. Willberg's requests should not be granted.

22. Kenneth R. Windham

Kenneth R. Windham submitted two requests for a contested case hearing on the Application. Both requests fail 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 changes proposed in the Application will affect the requestor, nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1368—the water right he asserts will purportedly be impaired by the changes proposed in the Application—or any domestic and livestock riparian right he may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be

particularly incumbent upon Mr. Windham to identify with some specificity how and why Certificate of Adjudication No. 14-1368, or any domestic and livestock riparian right he may have, will be impaired by Application 14-1348A.

Mr. Windham fails to identify any justiciable interest that is affected by Application 14-1348A. As a consequence, it is impossible to determine that he is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Kenneth R. Windham's requests should not be granted.

23. Milburn Wright

Milburn Wright submitted two requests for a contested case hearing on the Application. As an initial matter, one of Mr. Wright's hearing requests is based on a water right for which he has no ascertainable interest—Certificate of Adjudication No. 14-1360. TCEQ records indicate that Certificate of Adjudication No. 14-1360 is owned by Jerrilyn W. Jones and Joyce Ann Moore. Nothing in Milburn Wright's hearing requests indicates any authority to speak on behalf of Jerrilyn W. Jones or Joyce Ann Moore, or to otherwise claim an interest in Certificate of Adjudication No. 14-1360.

Notwithstanding this substantive defect, Mr. Wright's requests fail to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code on other grounds. Specifically, despite the clear requirements of Section 55.251(c)(2) to briefly, but specifically, describe how and why the changes proposed in the Application will affect the requestor, nothing in his requests gives any indication of how, or why, the Application will affect Certificate of Adjudication No. 14-1360 or any domestic and livestock riparian right he may enjoy. Given the fact that TCEQ staff have determined that no existing water rights will be affected by the changes proposed in the Application, it would appear to be particularly incumbent upon Mr. Wright to identify with some specificity how and why his domestic and livestock riparian rights, or any other justiciable interest he may have, will be impaired by Application 14-1348A.

Mr. Wright in fact fails to identify any justiciable interest that is affected by Application 14-1348A. As a consequence, it is impossible to determine that he is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Milburn Wright's requests should not be granted.

## V. CONCLUSION

San Angelo submitted Application 14-1348A in an effort to use its existing appropriation for municipal purposes within the San Angelo Municipal Water Supply System service area. It asks for no change in the quantity of water to be diverted, the diversion rate, or any diversion point presently authorized by COA 14-1348. TCEQ staff have determined that San Angelo's request in Application 14-1348A will impair no existing water right holders. In fact, TCEQ staff required that notice of the Application be submitted to only two persons—neither of whom sought a request for a contested case hearing.

Instead, TCEQ received dozens of hearing requests from 22 requestors that failed to identify a single justiciable interest among any of them that would be affected by the changes proposed in the Application.

Because no single requestor was able to identify a justiciable interest that would be impacted by the changes proposed in Application 14-1348A, 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.

Respectfully submitted,

**LLOYD GOSSELINK**  
**ROCHELLE & TOWNSEND, P.C.**  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
TELEPHONE: (512) 322-5810  
FAX: (512) 472-0532

By: 

MARTIN C. ROCHELLE  
State Bar No. 17126500  
JASON HILL  
State Bar No. 24046075  
TOM MASSEY  
State Bar No. 13172000  
TIM BROWN  
State Bar No. 03176000

**ATTORNEYS FOR APPLICANT**  
**CITY OF SAN ANGELO**

1168\07\1348\pld090803jth

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 3<sup>rd</sup> 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:

**FOR THE EXECUTIVE DIRECTOR:**

Todd Galiga, Senior Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division (MC 173)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-0600  
Fax: (512) 239-0606

**FOR PUBLIC INTEREST COUNSEL:**

Mr. Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel (MC 103)  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 239-6363  
Fax: 239-6377

**FOR THE CHIEF CLERK:**

Ms. LaDonna Castañuela  
Office of the Chief Clerk (MC-105)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: (512) 239-3300  
Fax: (512) 239-3311

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 AUG -3 PM 4:30  
CHIEF CLERKS OFFICE

  
\_\_\_\_\_  
MARTIN C. ROCHELLE

## REQUESTOR(S)

Fred Ball  
2819 Chatterton Drive  
San Angelo, Texas 76904-6155

Becky Bookter  
2819 Chatterton Drive  
San Angelo, Texas 76904-6155

Lewis J. Buck  
15793 My Road  
Miles, Texas 76861-5210

Van W. Carson  
CPA  
17 S. Chadbourne Street, Suite 509  
San Angelo, Texas 76903-5862

John Cmerek  
6834 N. FM 1692  
Miles, Texas 76861-5225

Dwayne Dishroon  
P.O. Box 374  
Miles, Texas 76861-0374

Wanda & WG Dishroon  
P.O. Box 374  
Miles, Texas 76861-0374

Thomas L. Evridge  
16185 My Road  
Miles, Texas 76861-5200

Letha & Todd Schwertner  
P.O. Box 70  
Miles, Texas 76861-0070

Jennifer Ann Hoelscher  
2261 Country Club Road  
San Angelo, Texas 76904-9351

Steven Hoelscher  
2261 Country Club Road  
San Angelo, Texas 76904-9351

Wanda Hudson  
8193 Thompson Road  
Miles, Texas 76861

Betty & Douglas John  
16293 My Road  
Miles, Texas 76861-5217

A. J. Jones, UCRA  
15957 My Road  
Miles, Texas 76861-5228

John C. Ketzler  
7253 Jackson Lane  
Miles, Texas 76861-5222

Kevin L. Noland  
11097 S. Douglas Loop  
Miles, Texas 76861-4717

Darrell Rushing  
16269 My Road  
Miles, Texas 76861-5217

Todd Schwertner  
16205 My Road  
Miles, Texas 76861-5217

Clyde Watkins  
101 Penrose Street  
San Angelo, Texas 76903-8635

Edward E. Werner  
P.O. Box 58  
Miles, Texas 76861-0058

Ben A. Willberg  
9990 FM 380  
Paint Rock, Texas 76866-3602

Kenneth R. Windham  
16125 My Road  
Miles, Texas 76861-5200

Milburn Wright  
P.O. Box 7074  
Miles, Texas 76861

**INTERESTED PERSON(S)**

Lyn Clancy  
LCRA  
P.O. Box 220 (H424)  
Austin, Texas 78767-0220