

Law Offices  
of

**GLENN JARVIS**

Telephone (956) 682-2660

Telefax (956) 618-2660

Inter National Bank Building  
1801 South Second Street, Suite 550  
McAllen, Texas 78503  
[www.GlennJarvis.com](http://www.GlennJarvis.com)

August 14, 2009

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 AUG 17 AM 10:41  
CHIEF CLERKS OFFICE

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

**VIA OVERNITE DELIVERY**

RE: Application of the City of San Angelo for Amendment to Certificate of Adjudication No. 14-1348  
Docket No. 2009-0186-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:lhc  
Encl.

xc: Mailing List

**Mailing List**  
**San Angelo Water Supply Corporation**  
**Docket No. 2009-0186-WR; Permit No. Adj 1348A**

FOR APPLICANT:

Will Wilde  
City of San Angelo  
P.O. Box 1751  
San Angelo, TX 76902-1751

FOR THE EXECUTIVE DIRECTOR:

Todd Galiga, Senior Atty., MC-173  
Texas Comm. on Environmental Qual.  
Environmental Law Division  
P.O. Box 13087  
Austin, TX 78711-3087

Ron Ellis, Technical Staff, MC-160  
Texas Comm, on Environmental Qual.  
Water Supply Division  
P.O. Box 13087  
Austin, TX 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas Coy, Jr., Atty, MC-103  
Texas Commission on Environmental Qual.  
Public Interest Counsel  
P.O. Box 13087  
Austin, TX 78711-3087

FOR THE OFFICE OF PUBLIC

ASSISTANCE:

Ms. Bridget Bohac, Director, MC-108  
Texas Commission on Environmental Qual.  
Office of Public Assistance  
P.O. Box 13087  
Austin, TX 78711-3087

FOR CHIEF CLERK:

Ms. LaDonna Castañuela, MC-105  
Texas Commission on Environmental Qual.  
Office of Chief Clerk, MC-105  
12100 Park 35 Circle - Bldg. F, 1st Flr  
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FOR ALTERNATIVE DISPUTE RESOLUTION:

Mr. Kyle Lucas, MC-222  
Texas Commission on Environmental Qual.  
Alternative Dispute Resolution  
P.O. Box 13087  
Austin, TX 78711-3087

REQUESTER(s):

Fred Ball  
2819 Chatterton Dr.  
San Angelo, TX 76904-6155

Becky Bookter  
2819 Chatterton Dr.  
San Angelo, TX 76904-6155

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

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

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

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

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

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

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

DOCKET NO. 2009-0186-WR

2009 AUG 17 AM 10:42

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

§  
§  
§  
§

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 and including the Hearing Requesters identified below<sup>1</sup> 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 Executive Director's Response to the Hearing Requests, states that the amendment  
requests:

The City of San Angelo (City) owns Certificate of Adjudication No. 14-1348, which  
authorizes a one-third interest in maintaining a dam and reservoir impounding 55  
acre feet of water on the Concho River, tributary of the Colorado River, Colorado  
River Basin. The City may divert and use 135 acre feet of water from two points on  
that reservoir for agricultural purposes to irrigate 160 acres of land in Tom Green  
County. The City has filed an amendment to the Certificate to add municipal use to  
the authorized agricultural use for the 135 acre feet of water from the reservoir on  
Concho River and to add a place of use in Tom Green County.

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<sup>1</sup>Sandra Carson (Certificate No. 1338), Van Carson (Certificate No. 1338), A. J. Jones, Jr. (Certificate No. 1397 and domestic & livestock ), Wanda Hudson (Certificate No. 14-1340, 14-5600 and domestic & livestock ), Jennifer A. Hoelscher (Certificate No. 14-1384), Steven H. Hoelscher (Certificate No. 14-1384 and domestic & livestock), Bill Schneemann (Certificate No. 14-1349), Douglas John (Certificate No.14-1372 and domestic & livestock ), Todd Schwertner (Certificate No. 14-1370), Dwayne Dishroon (Certificate No. 14-1364 and domestic & livestock), Darrell Rushing (Certificate No. 14-1371) Clyde Watkins (Certificate No. 14-1336), Lewis J. Buck (Certificate No. 14-4990), Kevin L. Noland (Certificate No. 14-1344 and domestic & livestock), by and through the Concho River Basin Water Conservancy Association.

On the other hand, the Applicant's statement of the Amendment requested, it is stated as follows:

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>2</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 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.

Based upon the attachment to the Executive Director's Response, but not referred to in the Response itself, is a map which shows that the point of diversion of these water rights is on the Concho River approximately 10 miles downstream of the confluence of the North Concho River and the South Concho River below Twin Buttes Reservoir.

If these two statements of the requested Amendment are compared, it is immediately noted that there is some conflict (1) the Executive Director indicates that the Applicant owns the Certificate which authorizes 1/3 interest in maintaining a dam and reservoir impounding 55 acre feet of water on the Concho River. In contrast, the Applicant states that the Certificate authorizes the Applicant to maintain two existing on-channel dam and reservoirs impacting a total of 122 acre feet of water from the Concho River (referencing that the Applicant shows an interest in these two dams and reservoirs with respect to two other owners of interest claiming water rights under Certificate of Adjudication No. 14-1347, 14-1350. The Executive Director did not refer to these other ownership interest in how the Executive Director describes the Amendment as being a right to impound 55 acre

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<sup>2</sup>Certificate of Adjudication Nos. 14-1347, 14-1350.

feet of water. The Applicant, on the other hand, refers to two existing on-channel reservoirs authorized to impound a total of 122 acre feet of water from the Concho River; (2) the Executive Director describes the Applicant's right to divert and use 135 acre feet from two points on the dam and reservoirs impounding 55 acre feet for agricultural purposes to irrigate 106 acres of land in Tom Green County. On the other hand, the Applicant describes the Amendment that Certificate of Adjudication No. 14-1348 gives the Applicant the right and use not to exceed 135 feet of water annually from two diversion points on two dams and reservoirs as opposed to the dam and reservoirs impounding 55 acre feet of water described by the Executive Director, for agricultural purposes; (3) both, the Applicant and Executive Director state that the Applicant has a right to use 135 acre feet for agricultural purposes and Applicant identifies that this use is to irrigate a certain 106 acres in Tom Green County at a maximum combined diversion rate of 3.33 cfs.

The Office of Public Interest Counsel (OPIC) describes the requesting amendment in a similar fashion as the Executive Director. However, adds that the proposed new place of use is the City of San Angelo Municipal Water System Service Area in Tom Green County, and that the water diverted will be transported by pipeline from the authorized existing diversion points to the City of San Angelo Water Treatment Plant.

It may be that some of the confusion arises because the amendment was treated by Commission staff as one not requiring public notice and that notice is required only pursuant to 30 TAC 295.158(c)(2)(C) resulting in notice only being given to the owners of record of Certificate of Adjudication No. 14-1347 and Certificate of Adjudication No. 14-1350 when it may be that other rights under Certificate Nos. 14-1349, 14-1343 and 14-1344 may be involved.

## DISCUSSION

The requested amendment does contemplate that the resulting water right owned by Applicant will have multiple uses of agricultural use and municipal use and two places of use, that is, the certain 106 acres in Tom Green County referred to by the Applicant and the treated water service area of the Applicant.

It is unclear from the Responses as to whether the Applicant acquired the 106 acres of land at the existing place of use together with a 1/3 undivided interest in the dam(s) and reservoir(s) or whether Applicant acquired only the water right involved. This can be clarified, as well as the other matters described above. However, it raises issues of appurtenancy of the water right when used for irrigation purposes. If Applicant acquired the land at the current place of use, then it could use the water diverted to irrigate that land. On the other hand, if the City only acquired the water right severed from the 106 acre tract, then a similar irrigation tract needs to be defined to which the irrigation rights will be appurtenant, which is owned by the Applicant and irrigated by Applicant, or the new place of use would be the Applicant's irrigation service area if Applicant has a raw water system for the delivery of irrigation use water.

This raises questions pertaining to whether proper notice was given to all water rights holders involved in the dam(s) and reservoir(s), and whether the intention is that the water will actually be used for municipal purposes being diverted at the existing diversion point(s), and as indicated transported by pipeline from the current diversion point(s) to the Applicant's water treatment plant for municipal purpose and/or irrigation purposes.

For water accounting purposes and for purposes of administration by the (TCEQ) Watermaster, there should be required a water diversion operational agreement between the

Applicant and the other undivided owners of the water rights to which it shares diversion point(s) and reservoir(s). This plan or agreement should contain provisions as to how and when each of the water right holders will divert water from the dam(s) and reservoir(s) which is authorized by the Certificate. This will prevent future disputes between the parties, and be less disruptive and assist in the administration of the water rights by the (TCEQ) Watermaster.

The water accounting plan proposed in the currently pending Amendment cases being considered by the Commission dealing with Certificates of Adjudication Nos. 14-1318B and 14-1318C is also proposed for this requested Amendment. A proper water accounting plan is appropriate and necessary for the operation and water accounting covering the Applicant's Twin Buttes, Nasworthy and other water facilities as well as this Amendment. For the sake of brevity, we would respectfully refer the Commission to the Replies of Hearing Requestors being filed with the Commission in connection with requested amendments to Certificate Nos. 14-1318B, 14-1318C and 14-1298 in this regard since the Commission is considering those cases at the same public meeting.

Once the matters discussed above are clarified, considered, and acted upon, it is possible that issues may be resolved subject to a proper Water Accounting Plan, which are involved in the other pending Amendments before the Commission involving Certificate Nos. 14-1318B, 14-1318C and 14-1298.

### **HEARING REQUESTS**

The Executive Director notes in his Response that: "The protestants are unhappy with the proposed accounting plan because it does not require the passage of stored water. Many of the hearing requestors have formed a group that has filed petitions asking the Executive Director amend 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 has filed an action in court, which is pending, for the same relief."

The Executive Director is correct because the Requestors involved in this case, are concerned with the proper Water Accounting Plan discussed in more detail with respect to other contemporaneous pending cases before the Commission dealing with Amendment to Certificate Nos. 13-1318B, 14-1318C, and 14-1298B, and the court case mentioned by the Executive Director.

We agree with the Office of Public Interest Counsel ("OPIC") in recommending that the Commission grant the contested case hearing request of Lewis Buck, Kevin Noland, Fred Bell, Betty Bookter and Wanda Hudson, and its recommendation that this case be referred to the State Office of Administrative Hearing for a contested case hearing. We would note that Kevin Noland who owns Certificate No. 14-1344, shares in possibly one of the dam(s) and reservoir(s) that could be involved in this case and is participating herein.

We disagree with the Executive Director and Applicant that A. J. Jones, who owns rights under Certificate of Adjudication No. 14-1397 downstream of Certificate No. 14-1348; Van W. Carson, who is the owner of Certificate No. 14-1338, whose diversion point is above Certificate No. 14-1348, have water rights which are impacted by this Amendment depending upon the Water Accounting Plan finally approved by the Commission in the other Amendment cases previously mentioned above, and who are active members of the Association in working toward achieving the purposes of the Association.

OPIC requested information regarding the status of the Concho River Basin Water Conservancy Association (Association). It is a non-profit corporation having filed its Articles of

Incorporation with the Secretary to State and was issued Charter No. -1580772-01 dated May 2, 2000 issued 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 on behalf of its members in other cases before the Commission involving the Concho River Basin and Watershed, and is authorized to represent those 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, on the contrary, one or more of those identified in footnote 1 above are participating through the Association.

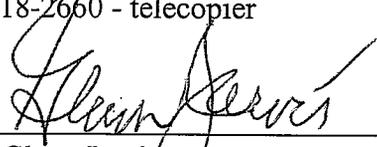
### **CONCLUSION**

We respectfully assert that proper notice has not been sent to all water right holders required by rules, and those of the public who are interested in this Amendment. Alternatively, we request that the Association and the individual Requestors named above in footnote 1 and any others recommended by the Executive Director and/or OPIC, be declared affected persons and that a contested case hearing be ordered by the Commission.

Respectfully submitted,

LAW OFFICES OF GLENN JARVIS  
Inter National Bank Building  
1801 South Second Street, Ste. 550  
McAllen, Texas 78503  
(956) 682-2660 - telephone  
(956) 618-2660 - telecopier

BY:

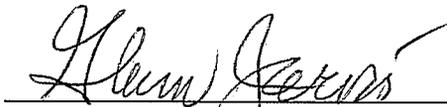


Glenn Jarvis  
State Bar No.: 10588000

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 17<sup>th</sup> day of August, 2009.

  
Glenn Jarvis

CHIEF CLERKS OFFICE

2009 AUG 17 AM 10:42

TEXAS  
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**Mailing List**  
**San Angelo Water Supply Corporation**  
**Docket No. 2009-0186-WR; Permit No. Adj 1348A**

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**FOR THE EXECUTIVE DIRECTOR:**

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Texas Comm. on Environmental Qual.  
Environmental Law Division  
P.O. Box 13087  
Austin, TX 78711-3087

Ron Ellis, Technical Staff, MC-160  
Texas Comm, on Environmental Qual.  
Water Supply Division  
P.O. Box 13087  
Austin, TX 78711-3087

**FOR PUBLIC INTEREST COUNSEL:**

Mr. Blas Coy, Jr., Atty, MC-103  
Texas Commission on Environmental Qual.  
Public Interest Counsel  
P.O. Box 13087  
Austin, TX 78711-3087

**FOR THE OFFICE OF PUBLIC ASSISTANCE:**

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Texas Commission on Environmental Qual.  
Office of Public Assistance  
P.O. Box 13087  
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**FOR CHIEF CLERK:**

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Office of Chief Clerk, MC-105  
12100 Park 35 Circle - Bldg. F, 1st Flr  
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Thomas L. Evridge  
16185 My Road  
Miles, TX 76861-5200

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

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

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

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