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BY KY

816 Congress Avenue, Suite 1900
Austin, Texas 78701
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Facsimile: (512) 472-0532

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Mr. Castleberry's Direct Line: (512) 322-5856
Email: bcastleberry@lglawfirm.com

October 31, 2008

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

**VIA FACSIMILE AND
FIRST-CLASS MAIL**

Re: Application to Amend Certificate of Adjudication No. 06-4411H

Dear Ms. Castañuela:

This letter is submitted on behalf of Nacogdoches County (the "County") in response to the above-referenced application (the "Application"). This letter is submitted to request to be named a party and request a contested case hearing regarding the Application, as filed by the City of Lufkin (the "Applicant"). Based on the notice of Application No. 06-4411H issued by the Texas Commission on Environmental Quality (the "Commission"), the County hereby submits the following information in support of its request for party status and for a contested case hearing:

Name and Contact Information for Requesting Party:

George Campbell
Land and Special Projects Agent
Nacogdoches County
101 West Main Street
Nacogdoches, Texas 75961
Phone: 936-560-6772
Facsimile: 936-560-7846

Brad B. Castleberry
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Phone: 512-322-5856
Facsimile: 512-472-0532

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 NOV -3 AM 10:55
CHIEF CLERKS OFFICE

The County is a governmental agency of the State of Texas with matters of interest pertaining to the Application.

MW

The County is the owner of Water Use Permit No. 5585 (the "Permit"). The Permit authorized the impoundment of water in MPS Site 23A, Attoyac Bayou Watershed Project, located on the Naconiche Creek in the Neches River Basin. If granted, the Applicant's application may impact the County's ability to impound state water and comply with the conditions of the Permit.

Since the release of the Attoyac Bayou Project Work Plan in 1964, the Commissioners Court of the County has recognized that the reservoir would have the potential for supplying a dependable source of water to water systems in the region. The planning, financial commitments, long-term environmental, archeological and other studies, and construction of the reservoir were completed with a future water supply source in mind. Lake Naconiche is also included in the State Water Plan as a potential future source of water for the County's residents.

Effect of Proposed Water Right

Applicant has applied for an amendment of its portion of Certificate of Adjudication 06-4411 (the "Certificate") to modify Special Conditions 5.C and 5.D. The Certificate authorizes the impoundment and diversion of state water from Lake Sam Rayburn on the Angelina River, tributary of the Neches River, Neches River Basin in Jasper, Sabine, San Augustine, Angelina and Nacogdoches Counties.

Special Condition 5.C. currently states: "Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any present or future domestic and/or municipal water needs or requirements." Applicant is seeking to modify this condition.

Special Condition 5.D. currently states: "Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to any rights hereafter granted by the Commission for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River." Applicant is seeking to modify this condition.

If granted, the amendment sought by the Application could impair the County's use of water associated with the Permit and further impair the County's ability to address future municipal and domestic needs of its residents.

Request for Contested Case Hearing:

The County requests a contested case hearing on the Application because the County is an upstream water rights holder and an affected party whose rights and interests in Neches River Basin water rights as described above are potentially impaired by granting the Application.

Ms. LaDonna Castañuela

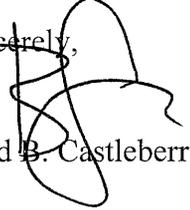
October 31, 2008

Page 3

Conclusion

The County should be named a party to any and all further proceedings concerning the Application. Additionally, all correspondence, including copies of all proposed permits, technical memoranda, and any other evaluations and/or notices proposed, promulgated, or published by the Commission or the Executive Director's staff related to the Application, should be directed to the County at the addresses above.

Sincerely,


Brad B. Castleberry

BBC/jg

2733\00\ltr081024bbc2

cc: Mr. George Campbell



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ADJ
6/4/08

October 31, 2008

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 OCT 31 1:06
CHIEF CLERK'S OFFICE
VIA FACSIMILE AND FIRST-CLASS MAIL

Re: Application to Amend Certificate of Adjudication No. 06-4411H

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101 West Main Street
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The County is a governmental agency of the State of Texas with matters of interest pertaining to the Application.

MW

Ms. LaDonna Castañuela
October 31, 2008
Page 2

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Since the release of the Attoyac Bayou Project Work Plan in 1964, the Commissioners Court of the County has recognized that the reservoir would have the potential for supplying a dependable source of water to water systems in the region. The planning, financial commitments, long-term environmental, archeological and other studies, and construction of the reservoir were completed with a future water supply source in mind. Lake Naconiche is also included in the State Water Plan as a potential future source of water for the County's residents.

Effect of Proposed Water Right

Applicant has applied for an amendment of its portion of Certificate of Adjudication 06-4411 (the "Certificate") to modify Special Conditions 5.C and 5.D. The Certificate authorizes the impoundment and diversion of state water from Lake Sam Rayburn on the Angelina River, tributary of the Neches River, Neches River Basin in Jasper, Sabine, San Augustine, Angelina and Nacogdoches Counties.

Special Condition 5.C. currently states: "Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any present or future domestic and/or municipal water needs or requirements." Applicant is seeking to modify this condition.

Special Condition 5.D. currently states: "Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to any rights hereafter granted by the Commission for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River." Applicant is seeking to modify this condition.

If granted, the amendment sought by the Application could impair the County's use of water associated with the Permit and further impair the County's ability to address future municipal and domestic needs of its residents.

Request for Contested Case Hearing:

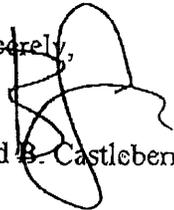
The County requests a contested case hearing on the Application because the County is an upstream water rights holder and an affected party whose rights and interests in Neches River Basin water rights as described above are potentially impaired by granting the Application.

Ms. LaDonna Castañuela
October 31, 2008
Page 3

Conclusion

The County should be named a party to any and all further proceedings concerning the Application. Additionally, all correspondence, including copies of all proposed permits, technical memoranda, and any other evaluations and/or notices proposed, promulgated, or published by the Commission or the Executive Director's staff related to the Application, should be directed to the County at the addresses above.

Sincerely,


Brad B. Castleberry

BBC/jg
2733\00\tr081024bbc2

cc: Mr. George Campbell



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Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532

www.lglawfirm.com

TELECOPIER COVER SHEET

October 31, 2008

PLEASE DELIVER THE FOLLOWING PAGES:

To: Ms. LaDonna Castañuela (MC 105)	Firm: TCEQ
Verification Phone No.: 239-3300	Telecopy No.: 239-3311
To: Mr. George Campbell	Firm: County of Nacogdoches
Verification Phone No.: 936-569-6772	Telecopy No.: 936-560-7846
Client No.: 2733-0	No. Pages: 3
Documents transmitted: Letter from Brad Castleberry to Chief Clerk	
From: Brad B. Castleberry	
Comments:	

2008 OCT 31 PM 1:05
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. THE REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION TO ANYONE OTHER THAN THE INTENDED ADDRESSEE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US AS SOON AS POSSIBLE AT (512) 322-5800.



WR
64660 H OPA
NOV 04 2008
BY *KY*

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Email: bcastleberry@lglawfirm.com

October 31, 2008

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

**VIA FACSIMILE AND
FIRST-CLASS MAIL**

Re: Application to Amend Certificate of Adjudication No. 06-4411H

Dear Ms. Castañuela:

This letter is submitted on behalf of the Upper Neches River Municipal Water Authority ("UNRMWA") in response to the above-referenced application (the "Application"). This letter is submitted to request a contested case hearing regarding the Application, as filed by the City of Lufkin (the "Applicant"). Based on the notice of Application No. 06-4411H issued by the Texas Commission on Environmental Quality (the "Commission"), UNRMWA hereby submits the following information in support of its request for party status and for a contested case hearing:

Name and Contact Information for Requesting Party:

Monty D. Shank
General Manager
Upper Neches River Municipal Water Authority
P.O. Box 1965
Palestine, Texas 75802
Phone: 903-876-2237
Facsimile: 903-876-5200

Brad B. Castleberry
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Phone: 512-322-5856
Facsimile: 512-472-0532

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 NOV -3 AM 10:55
CHIEF CLERKS OFFICE

UNRMWA is a conservation and reclamation district, authorized pursuant to Art XVI §59 of the Texas Constitution and established pursuant to TEX. REV. CIV. STATS. ANN. art 8280-157. UNRMWA is a governmental agency of the State of Texas with matters of interest pertaining to the Application. UNRMWA is the owner of Certificate of Adjudication No. 06-3254, as amended, authorizing the impoundment of state waters of the Neches River in Lake

MW

Palestine and a small reservoir created by the Downstream Diversion Dam at Rocky Point and diversion and use of up to 238,100 acre-feet of water per year for domestic, municipal, industrial, irrigation, mining and recreation purposes subject to a range of priority dates. Blackburn Crossing Dam, which forms Lake Palestine, is located in Anderson and Cherokee Counties and is upstream of the impoundment that is the subject of the Application. UNRMWA has constructed, operates, and maintains facilities necessary to store and divert water under the Certificate and has entered into numerous contracts to supply water made available under this right.

Effect of Proposed Water Right

Applicant has applied for an amendment to its portion of Certificate of Adjudication 06-4411 (the "Certificate") to modify Special Conditions 5.C and 5.D. The Certificate authorizes the impoundment and diversion of state water from Lake Sam Rayburn on the Angelina River, tributary of the Neches River, Neches River Basin in Jasper, Sabine, San Augustine, Angelina and Nacogdoches Counties.

Special Condition 5.C. of the Certificate currently states: "Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any present or future domestic and/or municipal water needs or requirements." Applicant is seeking to modify this condition.

Special Condition 5.D. of the Certificate currently states: "Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to any rights hereafter granted by the Commission for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River." Applicant is seeking to modify this condition.

The changes sought in the Application are in conflict with the approved regional water plan and they may impact current supplies authorized to UNRMWA. Pursuant to its statutory powers, rights, privileges and functions, UNRMWA expects to apply for additional water use permits in portions of the Neches River Basin at or above the Weches Dam site, and intends to construct additional facilities as necessary to satisfy the growing demands of its present and future water supply customers. Such facilities include Fastrill Dam and Reservoir, a water management strategy recommended to meet projected needs in the 2006 Region C Water Plan, the 2006 East Texas (Region I) Regional Water Plan, and the 2007 State Water Plan. Senate Bill 3, passed by the 80th Texas Legislature and signed into law by the Governor, designates the Fastrill Reservoir site as being of unique value for the construction of a reservoir.

Request for Contested Case Hearing:

UNRMWA requests a contested case hearing on the Application because UNRMWA is an upstream water rights holder and an affected party whose rights and interests in Neches River Basin water rights as described above are potentially impaired by granting the Application.

Ms. LaDonna Castañuela

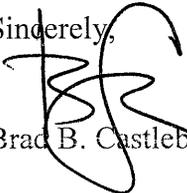
October 31, 2008

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Sincerely,



Brad B. Castleberry

BBC/jg

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cc: Mr. Monty Shank



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OCT 31 2008
BY QUB

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October 31, 2008

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CHIEF CLERKS OFFICE
OCT 31 PM

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

VIA FACSIMILE AND
FIRST-CLASS MAIL

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

Re: Application to Amend Certificate of Adjudication No. 06-4411H

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Ms. LaDonna Castañuela
October 31, 2008
Page 2

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Effect of Proposed Water Right

Applicant has applied for an amendment to its portion of Certificate of Adjudication 06-4411 (the "Certificate") to modify Special Conditions 5.C and 5.D. The Certificate authorizes the impoundment and diversion of state water from Lake Sam Rayburn on the Angelina River, tributary of the Neches River, Neches River Basin in Jasper, Sabine, San Augustine, Angelina and Nacogdoches Counties.

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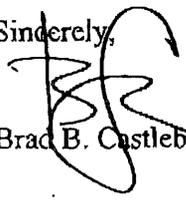
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Ms. LaDonna Castañuela
October 31, 2008
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Sincerely,



Brad B. Castleberry

BBC/jg

2694\00\ltr081024bbc

cc: Mr. Monty Shank



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Telephone: (512) 322-5800
Facsimile: (512) 472-0532
www.lglawfirm.com

2008 OCT 31 PM 1:05
 CHIEF CLERKS OFFICE

TEXAS
 COMMISSION
 ON ENVIRONMENTAL
 QUALITY

TELECOPIER COVER SHEET

October 31, 2008

PLEASE DELIVER THE FOLLOWING PAGES:

To: Ms. LaDonna Castañuela (MC 105)	Firm: TCEQ
Verification Phone No.: 239-3300	Telecopy No.: 239-3311
To: Mr. Monty Shank	Firm: Upper Neches River Municipal Water Authority
Verification Phone No.: 903/876-2237	Telecopy No.: 903/876-5200
Client No.: 2694-0	No. Pages: 3
Documents transmitted: Letter from Brad Castleberry to Chief Clerk	
From: Brad B. Castleberry	
Comments:	

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Office of the Chief Clerk
November 3, 2008
Page 2

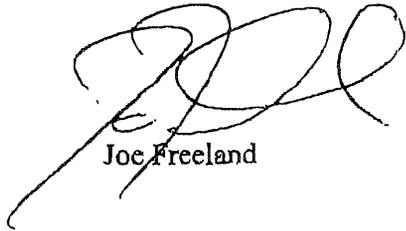
With regards to this matter, Tyler's contact information is:

Gregory M. Morgan, P.E.
Director of Utilities & Public Works
City of Tyler
P.O. Box 2039
Tyler, Texas 75710
903.531.1234 (office)
903.531.1259 (fax)

Mr. Joe Freeland
Mathews & Freeland, LLP
327 Congress
Austin, Texas 78768
512.404.7800 (office)
512.703.8275 (fax)
jfreeland@mandf.com

Thank you for your consideration. Please do not hesitate to contact me regarding this matter.

Sincerely



Joe Freeland

c: Greg Morgan

MATHEWS & FREELAND, L.L.P.

JIM MATHEWS
JOE FREELAND

WR
64660

ATTORNEYS AT LAW
P.O. BOX 1568
AUSTIN, TEXAS 78768-1568

(512) 404-7800
FAX: (512) 703-2785

November 3, 2008

Via Fax & Mail

Office of the Chief Clerk, MC 105
TCEQ
P.O. Box 13087
Austin, Texas 78711-3087

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NOV 04 2008
RJ

2008 NOV - 3 PM 2: 28
CHIEF CLERKS OFFICE
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

RE: Application No. 06-4411H, City of Lufkin Application to Amend Certificate of Adjudication

Attention Chief Clerk:

This letter is submitted on behalf of the City of Tyler, Texas, and Tyler Water Utilities ("Tyler"). Tyler requests a contested case hearing on, Application No. 06-4411H as filed by the City of Lufkin (Lufkin).

The City of Tyler owns water rights and is party to water contracts that could be adversely affected if the referenced application is granted. These rights and contracts include Certificate of Adjudications Nos. 06-3254 (Lake Palestine), 06-4853 (Lake Tyler) and 06-3237 (Lake Bellwood). Tyler's rights and contracts are upstream of the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River, and could be adversely affected if Special Conditions 5.C. and 5.D. are modified as proposed. Such action would have a detrimental effect on the citizens of Tyler.

Additionally, Tyler is the largest municipality in the Neches River Basin above the proposed Ponta Dam and the proposed Weches Dam and has a significant interest in ensuring that an adequate supply of water remains available for appropriation in the Upper Neches River Basin. The provisions that Lufkin seeks to amend were placed in the water right to allow for the full development of surface water in the Upper Neches River Basin, and changes to these provisions could impair this development. Changes to this allocation of water between the Upper and Lower Neches will significantly affect a large portion of the basin and should be addressed in the regional planning process prior to being reflected in a water right amendment.

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Office of the Chief Clerk
November 3, 2008
Page 2

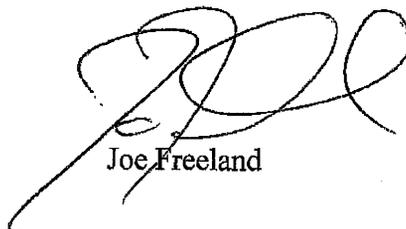
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Gregory M. Morgan, P.E.
Director of Utilities & Public Works
City of Tyler
P.O. Box 2039
Tyler, Texas 75710
903.531.1234 (office)
903.531.1259 (fax)

Mr. Joe Freeland
Mathews & Freeland, LLP
327 Congress
Austin, Texas 78768
512.404.7800 (office)
512.703.8275 (fax)
jfreeland@mandf.com

Thank you for your consideration. Please do not hesitate to contact me regarding this matter.

Sincerely



Joe Freeland

c: Greg Morgan

MATHEWS & FREELAND, LLP L.L.P.

ATTORNEYS AT LAW

P.O. Box 1568
Austin, Texas 78767-1568

Jim Mathews
Joe Freeland

(512) 404-7800
FAX: (512) 703-2785

CHIEF CLERKS OFFICE
2008 NOV - 3 PM 2: 28
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

Fax

To:	Company	Fax	Phone
Gregory Morgan	City of Tyler	(903) 531-1259	(903) 531-1234
Chief Clerk	TCEQ	(512) 239-3311	

From:	Fax	Phone
Joe Freeland	512/703-2785	512/404-7800

Number of Pages (including this one): 4 **Date:** 11/3/2008
To confirm receipt, or if you do not receive all pages, please call: Nina Hawkins

Reference: Application No. 06-4411H, City of Lufkin Application to Amend Certificate of Adjudication

- Urgent** **For Review** **Please Comment** **Please Reply** **Please Recycle**

MATHEWS & FREELAND, L.L.P.

JIM MATHEWS
JOE FREELAND

ADJ

64660

ATTORNEYS AT LAW
P.O. Box 1568
AUSTIN, TEXAS 78768-1568

(512) 404-7800
FAX: (512) 703-2785

November 25, 2008

Via Telecopy 512/239-3311 and US Mail

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

OPA
H
BY EB

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 DEC - 1 AM 11:23
CHIEF CLERKS OFFICE

Re: Application to Amend Certificate of Adjudication No. 06-4411

Dear Ms. Castañuela:

Our firm represents the City of Nacogdoches ("City") concerning the above referenced matter. On behalf of the City we request a contested case hearing regarding the referenced application filed by the City of Lufkin ("Lufkin"). The City's contact person for purposes of this request is Jim Mathews, Mathews & Freeland, 327 Congress Ave. Ste. 300, Austin, Texas 78701, 404-7800. The City is an "affected person" as described below.

The City is a home rule city that provides water utility service to approximately 16,000 retail customers and to a number of wholesale customers. The City presently has authorization to divert and use water from Lake Nacogdoches under water right number 2560. The City also relies on groundwater supplies from the Carrizo-Wilcox Aquifer. The City has plans to develop additional supplies of surface water upstream from the proposed Ponta Dam on the Angelina River and has an ongoing interest in ensuring that adequate supplies of water will be available to the City to meet the water supply needs of its customers.

Presently, there are two special conditions in Lufkin's Certificate of Adjudication that subordinate certain of Lufkin's water rights to other water rights. If Lufkin's application is granted, Lufkin's water rights will no longer be subordinate to any water right the City may hereafter need to acquire in order to meet projected demand for water from its customers.

Special Condition 5C

Under Special Condition 5C, Lufkin's 1963 right to divert and use water from Lake Sam Rayburn and B.A. Steinhagen Lake for industrial purposes is subordinate "to

mw

any present or *future* domestic and/or municipal water needs or requirements.” Emphasis added. When the TCEQ’s predecessor agency issued Lufkin’s 1963 water rights it did so in a manner that protected all future domestic and/or municipal water rights regardless of when those rights are obtained. Lufkin proposes to revise that Special Condition so that its 1963 industrial water rights are subordinate to only those existing municipal water rights with a priority date between November 13, 1963 and April, 2008 rather than subordinate to *any* future municipal water right as is the case under the existing Special Condition.

If Lufkin’s proposed revisions to Special Condition 5C are approved, any water right the City hereafter obtains to divert water for municipal purposes would be junior to Lufkin’s 1963 industrial water rights in Lake Sam Rayburn and B.A. Steinhagen Lake. Granting Lufkin’s application would remove the protections currently found in Lufkin’s 1963 water right in favor of all of those who obtain a municipal water right after Lufkin’s 1963 water right was issued.

The City provides water to its customers for municipal purposes and, as such, is a member of the class of entities whose rights are protected under Lufkin’s 1963 water right. If Lufkin’s application is granted, the protection afforded the City under Lufkin’s 1963 water right will be removed and the City will be adversely affected in a manner not common to the general public.

Special Condition 5D

Under Special Condition 5D Lufkin’s 1963 municipal, and industrial water rights are subordinate “to *any* rights hereafter granted by the Commission for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River.” Emphasis added. When the TCEQ’s predecessor agency issued Lufkin’s 1963 water rights it did so in a manner that protected all future water supply projects to be located upstream of those two proposed dams. Lufkin proposes to revise Special Condition 5D so that its 1963 water rights are subordinate to only those water rights with a priority date between November 13, 1963 and April, 2008 that are associated with water supply projects located upstream from the proposed dams.

The proposed revision to Special Condition 5D would adversely affect the City by limiting its ability to develop new water supplies upstream of the proposed Ponta Dam on the Angelina River in order to meet the needs of the City’s water customers. . If the City were to obtain a water right to divert water from a location upstream of the proposed Ponta Dam, its water right will be junior to Lufkin’s 1963 water rights if Lufkin’s application is granted. Accordingly, granting Lufkin’s application would remove the protections currently found in Lufkin’s 1963 water right in favor of those who obtain supplies upstream from the proposed Ponta Dam.

The City maintains an interest in using water from sources located upstream of the proposed Ponta Dam and, as such, is a member of the class of entities whose rights are protected under Lufkin’s 1963 water right. If Lufkin’s application is granted, the

protection afforded the City under Lufkin's 1963 water right will be removed and the City will be adversely affected in a manner not common to the general public.

Proposed Conditions

The City would be prepared to withdraw its request for a contested case hearing if Lufkin were to revise its application in a manner that affords the City the same protection it has under the current version of Special Conditions 5C and 5D.

Please let me know if you have any questions regarding this request for a contested case hearing.

Respectfully submitted,

Mathews & Freeland, L.L.P.
327 Congress Ave., Ste. 300
Austin, Texas 78701
Telephone (512) 404-7800
Facsimile (512) 703-2785

By:



Jim Mathews
TBN: 13188700
email: jmathews@mandf.com

ATTORNEYS FOR CITY OF NACOGDOCHES

cc: Jim Jeffers

MATHEWS & FREELAND, L.L.P.

ATTORNEYS AT LAW

P.O. Box 1568
AUSTIN, TEXAS 78768-1568

JIM MATHEWS
JOE FREELAND

ADJ
64660
(512) 404-7800
FAX: (512) 3-2785

November 25, 2008

Via Telecopy 512/239-3311 and US Mail

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

H
OPA
BY EB

CHIEF CLERKS OFFICE
NOV 25 PM 4:32

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Application to Amend Certificate of Adjudication No. 06-4411

Dear Ms. Castañuela:

Our firm represents the City of Nacogdoches ("City") concerning the above referenced matter. On behalf of the City we request a contested case hearing regarding the referenced application filed by the City of Lufkin ("Lufkin"). The City's contact person for purposes of this request is Jim Mathews, Mathews & Freeland, 327 Congress Ave. Ste. 300, Austin, Texas 78701, 404-7800. The City is an "affected person" as described below.

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Presently, there are two special conditions in Lufkin's Certificate of Adjudication that subordinate certain of Lufkin's water rights to other water rights. If Lufkin's application is granted, Lufkin's water rights will no longer be subordinate to any water right the City may hereafter need to acquire in order to meet projected demand for water from its customers.

Special Condition 5C

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Handwritten signature/initials

any present or future domestic and/or municipal water needs or requirements.” Emphasis added. When the TCEQ’s predecessor agency issued Lufkin’s 1963 water rights it did so in a manner that protected all future domestic and/or municipal water rights regardless of when those rights are obtained. Lufkin proposes to revise that Special Condition so that its 1963 industrial water rights are subordinate to only those existing municipal water rights with a priority date between November 13, 1963 and April, 2008 rather than subordinate to any future municipal water right as is the case under the existing Special Condition.

If Lufkin’s proposed revisions to Special Condition 5C are approved, any water right the City hereafter obtains to divert water for municipal purposes would be junior to Lufkin’s 1963 industrial water rights in Lake Sam Rayburn and B.A. Steinhagen Lake. Granting Lufkin’s application would remove the protections currently found in Lufkin’s 1963 water right in favor of all of those who obtain a municipal water right after Lufkin’s 1963 water right was issued.

The City provides water to its customers for municipal purposes and, as such, is a member of the class of entities whose rights are protected under Lufkin’s 1963 water right. If Lufkin’s application is granted, the protection afforded the City under Lufkin’s 1963 water right will be removed and the City will be adversely affected in a manner not common to the general public.

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The proposed revision to Special Condition 5D would adversely affect the City by limiting its ability to develop new water supplies upstream of the proposed Ponta Dam on an the Angelina River in order to meet the needs of the City’s water customers. . If the City were to obtain a water right to divert water from a location upstream of the proposed Ponta Dam, its water right will be junior to Lufkin’s 1963 water rights if Lufkin’s application is granted. Accordingly, granting Lufkin’s application would remove the protections currently found in Lufkin’s 1963 water right in favor of those who obtain supplies upstream from the proposed Ponta Dam.

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protection afforded the City under Lufkin's 1963 water right will be removed and the City will be adversely affected in a manner not common to the general public.

Proposed Conditions

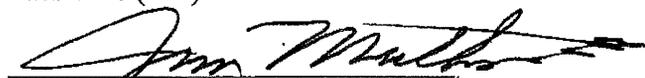
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Please let me know if you have any questions regarding this request for a contested case hearing.

Respectfully submitted,

Mathews & Freeland, L.L.P.
327 Congress Ave., Ste. 300
Austin, Texas 78701
Telephone (512) 404-7800
Facsimile (512) 703-2785

By:



Jim Mathews
TBN: 13188700
email: jmathews@mandf.com

ATTORNEYS FOR CITY OF NACOGDOCHES

cc: Jim Jeffers

MATHEWS & FREELAND, L.L.P.

ATTORNEYS AT LAW
P.O. Box 1568
Austin, Texas 78767-1568

Jim Mathews
Joe Freeland

(512) 404-7800
FAX: (512) 703-2785

2008 NOV 25 PM 4: 32
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

FACSIMILE TRANSMITTAL SHEET

TO: LaDonna Castañuela	FROM: Jim Mathews
COMPANY: TCEQ, Chief Clerk's Office	DATE: 11.25.08
FAX NUMBER: 512/239-3311	TOTAL NO. OF PAGES INCLUDING COVER:
PHONE NUMBER:	SENDER'S REFERENCE NUMBER: 1566.00; 12.1
RE: Application to Amend Certificate of Adjudication No. 06-4411	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Law Offices of

John D. Stover

P.O. Box 154540

Lufkin, Texas 75915

Telephone (936) 632-3130

Telecopier (936) 632-6545

OPA

H NOV 24 2008

BY BP

ADJ
64660

Timothy J. Karczewski
Of Counsel

November 21, 2008

VIA CMRRR NO. 7006 0100 0006 7378 3561

Ms. LaDonna Castanuela
Chief Clerk, TCEQ
MC-105
Building F
1210 Park 35 Circle
Austin, Texas 78753

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 NOV 24 PM 2:48
CHIEF CLERKS OFFICE

In re: Application No. 06-4411H, City of Lufkin

Dear Ms. Castanuela:

This letter is submitted to you on behalf of the Angelina and Neches River Authority ("ANRA") which requests a contested case hearing on Application 06-4411H, filed by the City of Lufkin.

NAME OF CONTESTING PARTY:

Angelina and Neches River Authority
P.O. Box 387
Lufkin, Texas 75902
(936) 632-7795
(936) 632-2564 Fax

COUNSEL OF RECORD:

John D. Stover
P.O. Box 154540
Lufkin, Texas 75915
(936) 632-3130
(936) 632-6545 Fax

APPLICANT'S NAME AND PERMIT NO.:

City of Lufkin
Application No. 06-4411H to Amend Certificate of
Adjudication

me

Ms. Castanuela
November 21, 2008
Page Two

BRIEF AND SPECIFIC DESCRIPTION OF HOW ANRA WOULD BE EFFECTED THE APPLICATION:

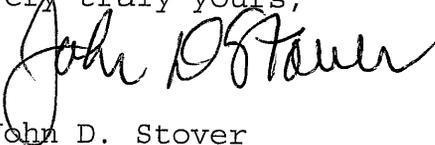
The Angelina and Neches River Authority is a conservation and reclamation district created by the State of Texas with the powers to conserve, store, control, preserve, use, and distribute the storm and flood water of the Neches River and its tributaries. The Act creating ANRA can now be found in the Texas Special District Local Laws Code Chapter 8501. The Application involves state water stored in Sam Rayburn Reservoir which lies within the territory of ANRA.

ANRA holds Permit to Appropriate State Water No. 4228 which authorizes the construction and operation of reservoir on Mud Creek, a tributary of Angelina River which is upstream of Lake Sam Rayburn.

The Application raises questions as to factors listed in Texas Water Code Section 11.134. Prior to granting the Application, the Commission must conclude, among other things, that the Application "...addresses a water supply need in a manner that is consistent with the state water plan and an approved regional water plan..." It must also conclude "...the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation..." ANRA is concerned about the Application meeting those criteria as well as environmental flow standards.

For the reasons briefly stated above, ANRA respectfully requests that a contested case hearing be held on the Application and that ANRA be named a party to it.

Very truly yours,



John D. Stover

JDS/rc

C:\My Documents\Anra\Ltr to TCEQ re City of Lufkin App.wpd

cc: Mr. Hubert Oxford, III
Ms. Molly Cagle
Mr. Jim Matthews
Mr. Joe Freeland
Mr. Brad Castleberry
Mr. Ken Reneau
Mr. Ron Freeman

WEBB & WEBB
ATTORNEYS AT LAW

1270 BANK OF AMERICA CENTER, 515 CONGRESS AVENUE
P.O. DRAWER 1329
AUSTIN, TEXAS 78701-1329

HR OPA

NOV 12 2008

BY *HW*

STEPHEN P. WEBB
GWENDOLYN HILL WEBB

TELEPHONE: 512/ 472-9990
FACSIMILE: 512/ 472-3183

WR
64660

November 7, 2008

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

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 NOV 10 AM 11: 09
CHIEF CLERKS OFFICE

**RE: Application No. 06-4411H by City of Lufkin
Request for Contested Case Hearing by the City of Dallas**

Dear Ms. Castañuela:

The City of Dallas ("Dallas") requests to be named a party and requests a contested case hearing in Application No. 06-4411H by City of Lufkin, hereinafter referred to as "Applicant" or "Lufkin." Based on the notice of Application No. 06-4411H issued by the Texas Commission on Environmental Quality ("Commission") on October 9, 2008, Dallas protests the issuance of an amendment to Certificate of Adjudication No. ("CoA") 06-4411H as proposed by Applicant.

Request for Contested Case Hearing

Dallas requests a contested case hearing and submits the following information in support of its protest, request for party status, and request for a contested case hearing.

Name and Contact Information for Requesting Party:

City of Dallas - Dallas Water Utilities
Jo M. "Jody" Puckett, P. E., Director
Dallas City Hall, Room 4AN
1500 Marilla Street
Dallas, Texas 75201
Phone: 214-670-3144
Fax: 214-670-3154

Gwendolyn Hill Webb
Webb & Webb, Attorneys
515 Congress Avenue, Suite 1270
P. O. Box 1239
Austin, TX 78767
Phone: 512-472-9990
Fax: 512-472-3183

HW

Dallas is a home rule city, surface water rights holder and regional water supplier in Texas water planning Region C. Dallas' water supply needs and water management planning are set forth in the 2006 Region C Water Plan (approved by the Texas Water Development Board ["the Board"] on April 18, 2006.) Fastrill Reservoir is a recommended water management strategy to meet projected needs for Dallas as well as water user groups in Anderson, Cherokee, Henderson, and Smith Counties in Region I. Further, Dallas has entered into a long term contract with the Upper Neches River Municipal Water Authority ("UNRMWA") for water from Lake Palestine and the Downstream Diversion Dam authorized under CoA 06-3254 and located upstream of the water B. A. Steinhagen Lake authorized by CoA 06-4411, as amended.

Effect of Proposed Water Right:

According to the October 9, 2008 Commission Notice, Lufkin is authorized to divert and use 28,000 acre-feet per year for municipal and industrial purposes from Lake Sam Rayburn under CoA No. 06-4411. Under Application No. 06-4411H, Applicant seeks to Amend Special Conditions 5.C. and 5.D. included in Certificate of Adjudication No. 06-4411, which currently state:

Special Condition 5.C. states: Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any present or future domestic and/or municipal water needs or requirements.

Special Condition 5.D. states: Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to any rights hereafter granted by the Commission for storage and/or use of waters in and above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River.

Applicant requests an amendment so that Special Conditions 5.C. and 5.D. will read as follows:

Special Condition 5.C. Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any existing municipal water rights granted by the Commission with a priority date of November 13, 1963 and April, 2008.

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Fastrill Reservoir is a proposed reservoir in the Neches River Basin with a proposed dam location upstream of the Weches Dam site listed in Special Condition 5.D. Senate Bill 3, passed by the 80th Texas Legislature, designates the Fastrill Reservoir site as one of 19 reservoir sites of unique value

for the construction of a reservoir. Dallas has an interest in the development of Fastrill Reservoir as a water supply reservoir to meet projected demands within Dallas' service area. Under the Board approved Water Plan for Texas, 2007, Fastrill Reservoir is part of the plan for water resources to be developed to meet Dallas' water supply needs. Amendment of Certificate of Adjudication No. ("CoA") 06-4411H, as proposed by Applicant, will significantly reduce the yield of Fastrill Reservoir as determined in the Reservoir Site Protection Study performed by HDR Engineering, Inc., Freese & Nichols, Inc., and R.J. Brandes Company on behalf of the Board. This study analyzed the yield available from Fastrill Reservoir based on studies performed on behalf of Upper Neches River Municipal Water Authority (UNRMWA) and Dallas (HDR September 2006).

The Board and Dallas moved to protect their interests in the Fastrill Reservoir site in two separate lawsuits: Civil Action No. 6:07-CV-10, *The Texas Water Development Board vs. The United States Department of the Interior; Dirk Kempthorne, Secretary of the Interior; the United States Fish and Wildlife Service; and H. Dale Hall, Director of the U.S. Fish and Wildlife Service*, and in a separate cause, *City of Dallas, Texas vs. H. Dale Hall, in his official capacity as Director of the United States Fish and Wildlife Service; Dirk Kempthorne, in his official capacity as Secretary of the United States Department of Interior; Benjamin N. Tuggle, in his official capacity as Regional Director of the Southwest Region 2 of the United States Fish and Wildlife Service; and United States Department of the Interior*. The Texas Water Development Board lawsuit was consolidated with Dallas', and the consolidated case is styled *City of Dallas, Texas v. H. Dale Hall, Director of the United States Fish and Wildlife Service, et al., Cause Nos. 3:07-CV-0060 and 3:07-CV-02113-P*. The consolidated lawsuits are ongoing. The parties' disputes were not resolved by the June 30, 2008 Memorandum Opinion and Order by the Federal District Court for the Northern District of Texas, Dallas Division. Dallas and the Board have both appealed the Federal District Court's June rulings to the United States Fifth Circuit Court of Appeals. Additionally, the Federal District Court entered an injunction against the U.S. Fish and Wildlife Service ("USFWS"), prohibiting USFWS from taking any steps to develop a wildlife refuge within the site where Lake Fastrill is planned to be located until the appeal is resolved. The appeal has been assigned No. 08-10890. The Fifth Circuit granted the parties' agreed motion for an expedited briefing schedule and oral argument, and has scheduled oral argument for the first week of January 2009.

Applicant's proposed amendment of Special Conditions 5.C. and 5.D. would decrease the feasibility of the proposed Fastrill reservoir as a water supply to meet the needs of Dallas and Region I entities in both the Region C Plan and the 2007 Texas Water Plan approved by the Board. Accordingly, Dallas believes that no amendment should be granted to Applicant as proposed, because the amendment does not meet Texas Water Code §11.134(b) criteria in that removal of the Special Conditions would harm Dallas in its plans for future water supply to meet its customer's needs. Consequently, amendment of the Special Conditions would be detrimental to the public welfare, and would not address a water supply need in a manner that is consistent with the State water plan. The Special Conditions Applicant seeks to amend are the very Special Conditions which made Sam Rayburn Reservoir and B.A. Steinhagen Lake consistent with the public welfare and to statewide water development plans.

Finally, to the extent that Lufkin's Application No. 06-4411H adversely impacts the development of Fastrill Reservoir, it does not address a water supply need in a manner that is consistent with the State Water Plan and an approved regional water plan. The Water for Texas, 2007 plan states as to the Region I Plan:

Ongoing Issues

The U.S. Fish and Wildlife Service has designated the North Neches National Wildlife Refuge, which is located in the footprint of Lake Fastrill recommended by Region C for Dallas Water Utilities. The reservoir is not recommended in the East Texas Regional Water Plan to meet a need but is included as an alternate strategy. **In addition, the region has surplus water available beyond its projected demands.** As demand surpasses supply in other areas of the state, there will be increased pressure to transfer surplus water out of the East Texas Region. [Emphasis supplied. See, page 64, *Water for Texas, 2007*)

Accordingly, data supporting the 2007 State Water Plan show that Lufkin has existing supplies, without the requested amendment, and the potential water management strategies evaluated for Lufkin in the 2006 East Texas Regional Water Plan do not include the changes to CoA 06-4411 sought in this application.

Request for Party Status and Correspondence:

Dallas should be named a party to further proceedings concerning Application No. 06-4411H on the basis of this letter. Additionally, all correspondence, including copies of all proposed amendments, technical memoranda, and any other evaluations and/or notices proposed, promulgated, or published by the Commission or the Executive Director's staff related to this application should be directed to Dallas at the addresses shown above.

Conclusion:

Dallas requests a contested case hearing on Application No. 06-4411H, because Dallas is an affected party under the Texas Water Plan 2007 whose rights and interests described above are potentially impaired by the issuance of a water rights permit to Applicant, pursuant to Application No. 06-4411H. Dallas wishes to remain a party to this proceeding until all matters resolving the potential impact on Dallas' water rights and public interests are resolved. Dallas will keep the Commission advised of the status of this protest and request for contested case hearing.

Sincerely,



Gwendolyn Hill Webb
ATTORNEY FOR THE CITY OF DALLAS

cc: City of Lufkin
P.O. Drawer 190
Lufkin, Texas 75902

Jo M. "Jody" Puckett, P. E., Director
Dallas Water Utilities
Dallas City Hall, Room 4AN
1500 Marilla Street
Dallas, Texas 75201

WEBB & WEBB
ATTORNEYS AT LAW

1270 BANK OF AMERICA CENTER, 515 CONGRESS AVENUE
P.O. DRAWER 1329
AUSTIN, TEXAS 78701-1329

HR
OPA

NOV 12 2008

BY *JM*

CHIEF CLERK OF

2008 NOV -7 AM 9:31

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TELEPHONE: 512/472-9990
FACSIMILE: 512/472-3183

STEPHEN P. WEBB
GWENDOLYN HILL WEBB

November 7, 2008

WR
64660

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

**RE: Application No. 06-4411H by City of Lufkin
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Fax: 214-670-3154

Gwendolyn Hill Webb
Webb & Webb, Attorneys
515 Congress Avenue, Suite 1270
P. O. Box 1239
Austin, TX 78767
Phone: 512-472-9990
Fax: 512-472-3183

WR

**REQUEST FOR CONTESTED CASE HEARING BY THE CITY OF DALLAS ON
APPLICATION No. 06-4411H BY CITY OF LUFKIN
NOVEMBER 7, 2008**

PAGE 2

Dallas is a home rule city, surface water rights holder and regional water supplier in Texas water planning Region C. Dallas' water supply needs and water management planning are set forth in the 2006 Region C Water Plan (approved by the Texas Water Development Board ["the Board"] on April 18, 2006.) Fastrill Reservoir is a recommended water management strategy to meet projected needs for Dallas as well as water user groups in Anderson, Cherokee, Henderson, and Smith Counties in Region I. Further, Dallas has entered into a long term contract with the Upper Neches River Municipal Water Authority ("UNRMWA") for water from Lake Palestine and the Downstream Diversion Dam authorized under CoA 06-3254 and located upstream of the water B. A. Steinhagen Lake authorized by CoA 06-4411, as amended.

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**REQUEST FOR CONTESTED CASE HEARING BY THE CITY OF DALLAS ON
 APPLICATION NO. 06-4411H BY CITY OF LUFKIN
 NOVEMBER 7, 2008**

PAGE 3

for the construction of a reservoir. Dallas has an interest in the development of Fastrill Reservoir as a water supply reservoir to meet projected demands within Dallas' service area. Under the Board approved Water Plan for Texas, 2007, Fastrill Reservoir is part of the plan for water resources to be developed to meet Dallas' water supply needs. Amendment of Certificate of Adjudication No. ("CoA") 06-4411H, as proposed by Applicant, will significantly reduce the yield of Fastrill Reservoir as determined in the Reservoir Site Protection Study performed by HDR Engineering, Inc., Freese & Nichols, Inc., and R.J. Brandes Company on behalf of the Board. This study analyzed the yield available from Fastrill Reservoir based on studies performed on behalf of Upper Neches River Municipal Water Authority (UNRMWA) and Dallas (HDR September 2006).

The Board and Dallas moved to protect their interests in the Fastrill Reservoir site in two separate lawsuits: Civil Action No. 6:07-CV-10, *The Texas Water Development Board vs. The United States Department of the Interior; Dirk Kempthorne, Secretary of the Interior; the United States Fish and Wildlife Service; and H. Dale Hall, Director of the U.S. Fish and Wildlife Service*, and in a separate cause, *City of Dallas, Texas vs. H. Dale Hall, in his official capacity as Director of the United States Fish and Wildlife Service; Dirk Kempthorne, in his official capacity as Secretary of the United States Department of Interior; Benjamin N. Tuggle, in his official capacity as Regional Director of the Southwest Region 2 of the United States Fish and Wildlife Service; and United States Department of the Interior*. The Texas Water Development Board lawsuit was consolidated with Dallas', and the consolidated case is styled *City of Dallas, Texas v. H. Dale Hall, Director of the United States Fish and Wildlife Service, et al., Cause Nos. 3:07-CV-0060 and 3:07-CV-02113-P*. The consolidated lawsuits are ongoing. The parties' disputes were not resolved by the June 30, 2008 Memorandum Opinion and Order by the Federal District Court for the Northern District of Texas, Dallas Division. Dallas and the Board have both appealed the Federal District Court's June rulings to the United States Fifth Circuit Court of Appeals. Additionally, the Federal District Court entered an injunction against the U.S. Fish and Wildlife Service ("USFWS"), prohibiting USFWS from taking any steps to develop a wildlife refuge within the site where Lake Fastrill is planned to be located until the appeal is resolved. The appeal has been assigned No. 08-10890. The Fifth Circuit granted the parties' agreed motion for an expedited briefing schedule and oral argument, and has scheduled oral argument for the first week of January 2009.

Applicant's proposed amendment of Special Conditions 5.C. and 5.D. would decrease the feasibility of the proposed Fastrill reservoir as a water supply to meet the needs of Dallas and Region I entities in both the Region C Plan and the 2007 Texas Water Plan approved by the Board. Accordingly, Dallas believes that no amendment should be granted to Applicant as proposed, because the amendment does not meet Texas Water Code §11.134(b) criteria in that removal of the Special Conditions would harm Dallas in its plans for future water supply to meet its customer's needs. Consequently, amendment of the Special Conditions would be detrimental to the public welfare, and would not address a water supply need in a manner that is consistent with the State water plan. The Special Conditions Applicant seeks to amend are the very Special Conditions which made Sam Rayburn Reservoir and B.A. Steinhagen Lake consistent with the public welfare and to statewide water development plans.

Finally, to the extent that Lufkin's Application No. 06-4411H adversely impacts the development of Fastrill Reservoir, it does not address a water supply need in a manner that is consistent with the State Water Plan and an approved regional water plan. The Water for Texas, 2007 plan states as to the Region I Plan:

REQUEST FOR CONTESTED CASE HEARING BY THE CITY OF DALLAS ON APPLICATION No. 06-4411H BY CITY OF LUFKIN NOVEMBER 7, 2008

Ongoing Issues

The U.S. Fish and Wildlife Service has designated the North Neches National Wildlife Refuge, which is located in the footprint of Lake Fastrill recommended by Region C for Dallas Water Utilities. The reservoir is not recommended in the East Texas Regional Water Plan to meet a need but is included as an alternate strategy. **In addition, the region has surplus water available beyond its projected demands.** As demand surpasses supply in other areas of the state, there will be increased pressure to transfer surplus water out of the East Texas Region. [Emphasis supplied. See, page 64, *Water for Texas, 2007*]

Accordingly, data supporting the 2007 State Water Plan show that Lufkin has existing supplies, without the requested amendment, and the potential water management strategies evaluated for Lufkin in the 2006 East Texas Regional Water Plan do not include the changes to CoA 06-4411 sought in this application.

Request for Party Status and Correspondence:

Dallas should be named a party to further proceedings concerning Application No. 06-4411H on the basis of this letter. Additionally, all correspondence, including copies of all proposed amendments, technical memoranda, and any other evaluations and/or notices proposed, promulgated, or published by the Commission or the Executive Director's staff related to this application should be directed to Dallas at the addresses shown above.

Conclusion:

Dallas requests a contested case hearing on Application No. 06-4411H, because Dallas is an affected party under the Texas Water Plan 2007 whose rights and interests described above are potentially impaired by the issuance of a water rights permit to Applicant, pursuant to Application No. 06-4411H. Dallas wishes to remain a party to this proceeding until all matters resolving the potential impact on Dallas' water rights and public interests are resolved. Dallas will keep the Commission advised of the status of this protest and request for contested case hearing.

Sincerely,



Gwendolyn Hill Webb
ATTORNEY FOR THE CITY OF DALLAS

**REQUEST FOR CONTESTED CASE HEARING BY THE CITY OF DALLAS ON
APPLICATION NO. 08-4411H BY CITY OF LUFKIN
NOVEMBER 7, 2008**

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cc: City of Lufkin
P.O. Drawer 190
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TELECOPIER COVER SHEET

Please deliver the following facsimile pages to:

NAME: LaDonna Castañuela, Chief Clerk **Fax:** 512/239-3311
FIRM: Texas Commission on Environmental Quality

NAME: Jo M. "Jody" Puckett, P. E., Director **Fax:** 214-670-3154
FIRM: City of Dallas - Dallas Water Utilities

FROM: Gwendolyn Hill Webb

DATE: November 7, 2008

2 pages including cover page

Application No. 06-4411H by the City of Lufkin
City of Dallas requests a contested case hearing on the above referenced matter. A copy of this letter will be sent via mail to the Applicant.

- Please Note:** The original of this document will be sent via:
- First Class Mail
 - Certified Mail, Return Receipt Requested
 - Overnight Mail/Federal Express
 - Courier
 - This will be the only form of delivery of this document

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