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Of Counsel

April 30, 2009

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VIA CMRRR NO. 7007 1490 0000 5682 7666  
 Ms. LaDonna Castanuela  
 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  
 2009 MAY -4 PM 3: 27  
 CHIEF CLERKS OFFICE

In re: Docket No. 2009-0168-WR; Application of the City of Lufkin, Texas to Amend Certificate of Adjudication No. 06-4411E

Dear Ms. Castanuela:

Enclosed is the Conditional Withdrawal of Request for Contested Case Hearing of Angelina and Neches River Authority in regard to the above referenced matter. Please file stamp the enclosed additional copy and return it in the envelope provided.

Thank you for your assistance with this matter.

Very truly yours,  


John D. Stover

JDS/rc  
@PPDeekt0p\1:02MA/PCDOCS/DOCS1/307482/1

Enclosures

cc: Attached mailing list

- 
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BEFORE THE TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

2009 MAY -4 PM 3: 28

APPLICATION OF THE CITY §  
LUFKIN, TEXAS TO §  
AMEND CERTIFICATE OF §  
ADJUDICATION NO. 06-4411E §

CHIEF CLERKS OFFICE  
DOCKET NO. 2009-0168-WR

**CONDITIONAL WITHDRAWAL OF REQUEST  
FOR CONTESTED CASE HEARING  
ANGELINA AND NECHES RIVER AUTHORITY**

TO THE HONORABLE COMMISSIONER:

The CITY OF LUFKIN, TEX ("CITY") has submitted an application to amend Special Condition 5.C. and 5.D. in the above referenced Certificate of Adjudication (the "CITY Certificate"). By letter dated November 21, 2008, ANRA stated its concerns about the above application and requested to be named a party to a contested case hearing. ANRA submitted its letter because of its concern that the amendment sought by CITY could be issued with terms and conditions which could affect Permit to Appropriate State Water No. 4228 held by ANRA for its Lake Columbia Regional Water Supply Project ("ANRA Permit").

1.

Subsequently, the Commission staff has evaluated the application and issued memoranda with their findings along with a draft of the amendments to the CITY Certificate, a copy of which is attached ("Staff Draft Amendment"). ANRA concurs with the

staff findings that the Staff Draft Amendment will not affect senior water rights and particularly, the ANRA Permit. The CITY has also submitted a letter to ANRA dated April 27, 2009 affirming that the water rights represented by the ANRA Permit remains senior to the CITY water rights charned by the Staff Draft Amendment.

2.

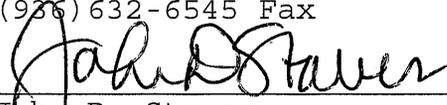
ANRA supports the issuance of the Staff Draft Amendment as it is currently worded and asks the Commission to issue it without a contested case hearing. If, however, the Commission does not approve the Staff Draft Amendment as worded and grants a contested case hearing as requested by other protestants, ANRA renews its requests to be made a party to the contested case proceeding.

3.

ANRA, by this submission, does not withdraw its request to be given notice of all actions and decisions relating to the CITY Certificate. Furthermore, this Conditional Withdrawal of Protest does not waive ANRA's right to seek to be admitted as a party under 30 Tex. Admin. Code Section 80.109 if a hearing request is granted on the CITY application.

Respectfully submitted,

Law Offices of  
**JOHN D. STOVER**  
P.O. Box 154540  
Lufkin, Texas 75915-4540  
(936) 632-3130  
(936) 632-6545 Fax

By:   
John D. Stover  
State Bar No. 19349000

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing instrument was served or delivered on the 30th day of April, 2009, to the following:

FOR THE CHIEF CLERK:

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

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TEXAS  
COMMISSION  
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QUALITY  
2009 MAY -4 PM 3: 28  
CHIEF CLERKS OFFICE

AMENDMENT TO A  
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 06-4411H

TYPE: F1.122

Owner: City of Lufkin

Address: P.O. Drawer 190  
300 E. Sheperd  
Lufkin, Texas 75902

Filed: August 14, 2008

Granted:

Purpose: Municipal and Industrial

Counties: Jasper, Sabine, San Augustine,  
Angelina, Nacogdoches, Tyler,  
Hardin, Jefferson, Liberty, and  
Chambers

Watercourse: Angelina River, tributary of the  
Neches River

Watershed: Neches River Basin

WHEREAS, Certificate of Adjudication No. 06-4411 authorizes the City of Lufkin, part owner, to impound water in Lake Sam Rayburn (owned by the United States and operated by the U.S. Army Corps of Engineers) located on the Angelina River in Jasper, Sabine, San Augustine, Angelina, and Nacogdoches Counties; and

WHEREAS, the Certificate also authorizes the City of Lufkin to divert and use not to exceed 28,000 acre-feet of water per year from Lake Sam Rayburn at various rates for municipal and industrial purposes within Tyler, Hardin, Liberty, Chambers, and Jefferson Counties; and

WHEREAS, the priority date for the City of Lufkin's portion is November 12, 1963; and

WHEREAS, the Certificate contains multiple special conditions; and

WHEREAS, 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"; and

WHEREAS, 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"; and

WHEREAS, Applicant seeks to amend Certificate of Adjudication No. 06-4411 to modify Special Conditions 5.C. and 5.D. to limit subordination of this water right to existing water rights in the Neches River Basin and to 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 between November 13, 1963 and April, 2008.

Special Condition 5.D. Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to all existing rights granted by the Commission with a priority date between November 13, 1963 and April, 2008 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; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, six requests for a contested case hearing were received; and

WHEREAS, the Executive Director recommends modification of the Applicant's proposed Special Conditions to reflect the filing date of the application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 06-4411, designated Certificate of Adjudication No. 06-4411H, is issued to the City of Lufkin, subject to the following terms and conditions:

1. CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

2. SPECIAL CONDITIONS

In lieu of Special Conditions 5.C. and 5.D., Special Condition 5.C. now reads:

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 between November 13, 1963 and August 14, 2008.

Special Condition 5.D now reads:

5.D. Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to all existing rights granted by the Commission with a priority date between November 13, 1963 and August 14, 2008 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.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 06-4411, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Neches River Basin.

Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of state water resources exercised by the Commission.

\_\_\_\_\_  
For the Commission

Date Issued: