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January 30, 2012

Ms. Bridget Bohac (MC 105)
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA HAND DELIVERY

Re: Application No. 5821 by the Upper Trinity Regional Water District
for Water Use Permit No. 5821
TCEQ Docket No. 2012-0065-WR

Dear Ms. Bohac:

Enclosed for filing on behalf of my client, the Upper Trinity Regional Water District, 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

MCR/ldp
1790610
ENCLOSURES

cc: Service List
Mr. Larry Patterson
Mr. Ed Motley
Dr. Robert J. Brandes
Ms. Loretta Mokry
Mr. Brad B. Castleberry
Mr. Jason T. Hill

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2012 JAN 30 PM 2:41
CHIEF CLERKS OFFICE

TCEQ DOCKET NO. 2012-0065-WR

APPLICATION NO. 5821 BY THE UPPER TRINITY REGIONAL WATER DISTRICT FOR WATER USE PERMIT NO. 5821	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

2012 JAN 30 PM 2: 42
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

RESPONSE TO REQUESTS FOR
CONTESTED CASE HEARING

TO THE HONORABLE COMMISSIONERS:

The Upper Trinity Regional Water District (referred to interchangeably herein as the "District" 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 (the "Application"), and would respectfully show the Commissioners the following:

I. BACKGROUND

The District has applied to TCEQ for a water use permit to construct and maintain a dam and reservoir to be known as Lake Ralph Hall ("LRH"), having a maximum impoundment capacity of 180,000 acre-feet of water and an approximate surface area of 8,500 acres. LRH is proposed to be located in Fannin County, Texas on the North Sulphur River, tributary to the Sulphur River, in the Sulphur River Basin. It is proposed to be used for in-place recreation purposes and to divert and use not to exceed 45,000 acre-feet of water per year therefrom at a maximum diversion rate of 205 cubic feet per second ("cfs") (92,000 gpm) for municipal, industrial and agricultural purposes. The Applicant requests to use the water in Collin, Cooke, Dallas, Denton, Fannin, Grayson and Wise Counties within the Sulphur River and Trinity River Basins. Accordingly, the Application also contains a request for an interbasin transfer of water from the Sulphur River Basin to the Trinity River basin. Additionally, the District has requested in the Application the authorization to overdraft LRH as part of a system operation with existing District surface water supplies.

II. PROCEDURAL HISTORY

The District filed Application No. 5821 with TCEQ on September 2, 2003. Following requests by TCEQ staff, the District provided additional fees and information on May 3, 2004, July 7, 2004, July 19, 2004, and August 6, 2004. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 13, 2004.

Mailed notice was issued on February 8, 2006, and notice of the application and public meeting was published in the *Dallas Morning News*, a newspaper of general circulation in Anderson, Archer, Clay, Collin, Cooke, Dallas, Denton, Ellis, Fannin, Franklin, Freestone, Grayson, Henderson, Hill, Hood, Hopkins, Houston, Hunt, Jack, Johnson, Kaufman, Leon, Limestone, Madison, Montague, Navarro, Parker, Rockwall, Tarrant, Van Zandt, Walker, and Wise Counties, on February 13 and February 20, 2006. Similarly, notice of the application and public meeting was published in the *Beaumont Enterprise*, a newspaper of general circulation in Hardin County and Jefferson County, on February 13 and February 20, 2006. In addition, notice of the application and public meeting was published in the *Houston Chronicle*, a newspaper of general circulation in Chambers, Grimes, Harris, Liberty, Polk, San Jacinto, and Trinity Counties, on February 13 and February 20, 2006. Furthermore, notice of the application and public meeting was published in the *Paris News*, a newspaper of general circulation in Delta, Fannin, Lamar, and Red River Counties, on February 13 and February 20, 2006. Additionally, notice of the application and public meeting was published in the *Texarkana Gazette*, a newspaper of general circulation in Bowie, Cass, Morris and Titus Counties, on February 13 and February 20, 2006. The notice of the application and public meeting was also published in the *Wichita Falls Times Record News*, a newspaper of general circulation in Wichita County and Young County, on February 13 and February 20, 2006.

Public meetings were held in the Sulphur River Basin in Ladonia, Texas, and in the Trinity River Basin in Lewisville, Texas on March 27, 2006, and March 28, 2006, respectively. A number of hearing requests were filed, as noted below. On May 26, 2009, the Executive Director filed responses to the timely submitted written comments as well as those made at the public meetings. Additional information was provided to TCEQ staff on February 26, 2008, July 11, 2008, December 5, 2008, March 2, 2010, April 5, 2010, and September 9, 2010. The additional information included an accounting plan and a mitigation plan. On June 17, 2011, TCEQ staff issued draft water use permit 5821 (the "Draft Permit").

On January 18, 2012, the District received notice that the above-referenced matter would be considered by the Commission at the February 22, 2012 agenda. The District 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".[1] The Texas Administrative Code defines an "affected person" as one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the Application.[2] An interest that is common to members of the general public does

[1] 30 TEX. ADMIN. CODE § 55.251(a).

[2] *Id.* § 55.103.

not qualify as a personal justiciable interest.[3] 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.[4] 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.[5]

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.[6]

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".[7] For purposes of this 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 30-day period following the date notice of the Application was published. Notice of Application and Notice of Public Meeting were published together on February 2, 2006 and February 20, 2006. Thus, all timely hearing requests must have been received by the TCEQ Office of Chief Clerk no later than March 22, 2006.[8] All such requests not filed within this period are not timely and thus cannot be processed by the Chief Clerk.[9]

Under Section 55.254(f) of the TCEQ rules, a person who filed a hearing request may submit a reply to the following responses no later than nine days before the schedule TCEQ Commissioners agenda wherein the hearing requests will be considered.[10] Under Section 55.254(f), such a reply may contain additional information responsive to the information contained in the correspondence issued by the Office of the Chief Clerk pursuant to Section 55.254(d).

Given the inadequacies of the hearing requests submitted on the Application, as discussed in more detail below, it is anticipated that some hearing requestors may attempt to use Section

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3 *Id.*

4 *Id.* § 55.251(c)(2).

5 *Id.*

6 *Id.* § 55.256(c).

7 *Id.* §§ 55.251(b), (d), .254(a).

8 *Id.* §§ 55.251(b), (d).

9 *Id.* §§ 55.251(f)(1), .254(a).

10 *Id.* § 55.254(f).

55.254(f) as a means of curing the substantive defects of their original hearing request by discussing additional issues in an effort to influence the determination of their affected person status. Such a result, if allowed, would effectively neuter the requirement for submitting hearing requests by the time specified in Section 55.251(d).

Indeed, the only reasonable interpretation of Section 55.254(f) in the context of Section 55.251(d) is that the former provides requestors with the opportunity to round-out, or clarify, the information originally contained in their timely filed requests—*e.g.*, providing a more detailed location of property specified in the original request. The latter, however, precludes the requestors from incorporating newly articulated impacts attributable to the Application, or including other additional substantive components, to their hearing requests—*e.g.*, new claimed water rights, new uses of State water, or new impacted persons.

IV. EVALUATION OF HEARING REQUESTS FOR WATER USE PERMIT 5821

1. John Adams

John Adams submitted one request for a contested case hearing on the Application. In Mr. Adam's hearing request, he identifies multiple reasons for his protest of the Application. Specifically, he describes his concerns about the potential acquisition of all or parts of his property by the District if the requests made in the Application are granted. He also describes his concerns regarding the potential increase in property taxes on his property that he attributes to the development of LRH, as proposed in the Application.

Irrespective of whether the requests made in the Application, if granted, would in fact lead to the District's acquisition of all or parts of Mr. Adams' property, or would in fact influence his property tax liability, none of these issues fall within the scope of the TCEQ's review of the Application or are otherwise within the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects these interests at all, Mr. Adams' interests are addressed by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition to the issues identified above, Mr. Adams also describes his general concerns about noise, pollution, and traffic that he contends are attributable to the requests made in the Application. Furthermore, Mr. Adams describes his concern with the absence of benefit to Fannin County from the development of LRH as proposed in the Application. However, Mr. Adams provides no explanation regarding why he believes that these interests will be affected by the requests made in the Application, if granted, in a manner not common to members of the general public or how they even fall within the agency's jurisdiction to consider.

Mr. Adams has not identified any water right or vested riparian right that he is concerned will be affected by the requests made in the Application, if approved. In addition, he has failed to describe in his hearing request how and why he believes he will be affected in a manner not common to members of the general public. Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by John Adams should not be granted.

2. Leslie Adams

Leslie Adams submitted one request for a contested case hearing on the Application. In her hearing request, Ms. Adams explains that she is concerned about losing all or part of her property due to the inundation created by the impoundment requested in the Application.

Irrespective of whether the requests made in the Application, if granted, would in fact lead to the District acquisition of all or a portion of Ms. Adams' property, this is an issue that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Ms. Adams' property as she describes, her interests are addressed by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

Ms. Adams has not identified any water right or vested riparian right that she is concerned will be affected by the requests made in the Application, if approved. Beyond the concerns addressed above, she has failed to describe how and why she believes she will be affected by the Application in a manner not common to members of the general public. Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Leslie Adams should not be granted.

3. Jeff Barnett

Jeff Barnett submitted one request for a contested case hearing on the Application. In his request for a contested case hearing, Mr. Barnett fails to comply with the clear requirements of Title 30, Section 55.251(c)(2) of the Texas Administrative Code, which requires him to have briefly, but specifically, described how and why the requests made

in the Application will affect him. While he indicates that his property is in the vicinity of the dam proposed in the Application, nothing in his request gives any indication of how, or why, the Application will affect any justiciable interest that he may have. To the extent that Mr. Barnett can be understood as describing concerns about losing property because of the development of LRH, as proposed in the Application, such an issue falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate.

Mr. Barnett has not identified any water right or vested riparian right that he is concerned will be affected by the requests made in the Application, if approved. In addition, he has failed to describe in his hearing request how and why he believes he will be affected in a manner not common to members of the general public. Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Jeff Barnett should not be granted.

4. Eddie Belcher

Eddie Belcher submitted a request for a contested case hearing on the Application as part of a request by several other self-described Citizens of Cuthand Community.[11] In the request, Mr. Belcher describes various concerns he has with the development of LRH, as proposed in the Application. Specifically, he references wildlife mitigation, jobs, and impacts he relates to the development of projects that are unrelated to the requests made in the Application. None of these issues, however, reflect any anticipated impacts to what would qualify as Mr. Belcher's personal justiciable interests. Instead, as he has described them, his concerns are each clearly related to interests common to members of the general public—if they are attributable to the Application at all.

Furthermore, Mr. Belcher describes his property as being located approximately 40 miles east of the impoundment proposed in the Application, without identifying any water right or vested riparian right that will be affected by the requests made in the Application, if approved.

Mr. Belcher has failed to describe in his hearing request how and why he believes he will be affected in a manner not common to members of the general public. Because his request does not identify any personal justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using any relevant

[11] It is not clear whether Mr. Belcher's hearing request was made in his individual capacity, or as a member of an association. Accordingly, the District will respond to the other persons listed on the request submitted by the Citizens of Cuthand Community individually, and as an association, below.

factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Therefore, the hearing request submitted by Eddie Belcher should not be granted.

5. Linda Belcher

Linda Belcher submitted a request for a contested case hearing on the Application as part of a request by several other self-described Citizens of Cuthand Community. In the request, Ms. Belcher describes various concerns she has with the development of LRH, as proposed in the Application. Specifically, she references wildlife mitigation, jobs, and impacts she relates to the development of projects that are unrelated to the requests made in the Application. None of these issues, however, reflect any anticipated impacts to what would qualify as Ms. Belcher's personal justiciable interests. Instead, as she has described them, her concerns are each clearly related to interests common to members of the general public—if they are attributable to the Application at all.

Furthermore, Ms. Belcher describes her property as being located approximately 40 miles east of the impoundment proposed in the Application, without identifying any water right or vested riparian right that will be affected by the requests made in the Application, if approved.

Ms. Belcher has failed to describe in her hearing request how and why she believes she will be affected in a manner not common to members of the general public. Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Linda Belcher should not be granted.

6. Peggy Belcher

Peggy Belcher submitted a request for a contested case hearing on the Application as part of a request by several other self-described Citizens of Cuthand Community. In the request, Ms. Belcher describes various concerns she has with the development of LRH, as proposed in the Application. Specifically, she references wildlife mitigation, jobs, and impacts she relates to the development of projects that are unrelated to the requests made in the Application. None of these issues, however, reflect any anticipated impacts to what would qualify as Ms. Belcher's personal justiciable interests. Instead, as she has described them, her concerns are each clearly related to interests common to members of the general public—if they are attributable to the Application at all.

Furthermore, Ms. Belcher describes her property as being located approximately 40 miles east of the impoundment proposed in the Application, without identifying any water right or vested riparian right that will be affected by the requests made in the Application, if approved.

Ms. Belcher has failed to describe in her hearing request how and why she believes she will be affected in a manner not common to members of the general public. Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Peggy Belcher should not be granted.

7. Pete Belcher

Pete Belcher submitted a request for a contested case hearing on the Application as part of a request by several other self-described Citizens of Cuthand Community. In the request, Mr. Belcher describes various concerns he has with the development of LRH, as proposed in the Application. Specifically, he references wildlife mitigation, jobs, and impacts he relates to the development of projects that are unrelated to the requests made in the Application. None of these issues, however, reflect any anticipated impacts to what would qualify as Mr. Belcher's personal justiciable interests. Instead, as he has described them, his concerns are each clearly related to interests common to members of the general public—if they are attributable to the Application at all.

Furthermore, Mr. Belcher describes his property as being located approximately 40 miles east of the impoundment proposed in the Application, without identifying any water right or vested riparian right that will be affected by the requests made in the Application, if approved.

Mr. Belcher has failed to describe in his hearing request how and why he believes he will be affected in a manner not common to members of the general public. Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Pete Belcher should not be granted.

8. Janice Benzenly

The name of Janice Benzenly was included in a request for a contested case hearing on the Application submitted by William McKinney. To the extent the correspondence is interpreted as a request by Ms. Benzenly for a contested case hearing on the Application, the request fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, the request contains no address or related information specific to Ms. Benzenly. More significantly, the request contains no description of Ms. Benzenly's personal justiciable interests, nor any description of how or why she believes the requests made in the Application might affect those interests.

Because her request does not identify any personal justiciable interest affected by the Application, 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.

To the extent that Janice Benzenly has attempted to request a contested case hearing through the referenced correspondence, her request should not be granted.

9. Gail Brown

Gail Brown submitted a request for a contested case hearing on the Application. In her request, Ms. Brown describes her concerns about the potential loss of all or portions of her property should the Application ultimately be approved. Irrespective of whether the requests made in the Application would, if granted, lead to the District's acquisition of all or a portion of Ms. Brown's property, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Ms. Brown's property as she describes, her interests are addressed by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

Ms. Brown identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application. Instead, Ms. Brown describes her general concerns with silt infiltration and considerations of other water supply sources, without providing any explanation regarding how or why she believes the Application affects these interests in a manner not common to members of the general public.

Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Gail Brown should not be granted.

10. Tommy Brown

Tommy Brown submitted a request for a contested case hearing on the Application. The request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. More specifically, Mr. Brown describes in his request his concerns about the potential loss of all or portions of his property should the Application ultimately be approved. Irrespective of whether the requests made in the Application would, if granted, lead to the District's acquisition of all or a portion of Mr. Brown's property, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Mr. Brown's property as he describes, his interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

Furthermore, Mr. Brown identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application. Instead, Mr. Brown describes his general concerns with silt infiltration and considerations of other water supply sources. He provides no explanation regarding how or why he believes the Application affects these interests in a manner not common to members of the general public.

Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Tommy Brown should not be granted.

11. Mary Call

The name Mary Call appears on a petition opposing the reservoir proposed in the Application. The petition, however, does not request a contested case hearing on the Application. Similarly, the petition fails to comply with the clear requirements of Title 30, Section 55.251(c)(2) of the Texas Administrative Code to briefly, but specifically, describe how and why the requests made in the Application will affect her personal justiciable interests. Ms. Call identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application.

To the extent that the petition containing Ms. Call's name is considered to be an attempt to request a hearing, it includes no information describing how or why she believes the interests described in the petition will be affected by the requests made in the Application

in a manner not common to members of the general public. 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.

The petition containing Mary Call's name should not be recognized as a request for a contested case hearing on the Application. To the extent that it is, however, her request should not be granted.

12. Leah Colley

Leah Colley submitted a request for a contested case hearing on the Application, but her request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. Specifically, Ms. Colley describes her concerns regarding the potential loss of all or portions of her property should the Application be granted. However, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Ms. Colley's property as she describes, her interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Ms. Colley describes the location of her property as 10 miles removed from the Sulphur River, with indications that it might be located in the watershed of the South Sulphur River. Furthermore, she describes no water rights, vested riparian rights, or other personal justiciable interests that she is concerned would be affected by the requests made in the Application. Instead, she describes general concerns about impacts on wildlife without describing how or why her interests would be affected in a manner not common to members of the general public.

Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Leah Colley should not be granted.

13. Steve Colley

Steve Colley submitted a request for a contested case hearing on the Application, but his request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. Specifically, Mr. Colley describes his concerns regarding the

potential loss of all or portions of his property should the Application be granted. However, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Mr. Colley's property as he describes, his interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Mr. Colley describes the location of his property as 10 miles removed from the Sulphur River, with indications that it might be located in the watershed of the South Sulphur River. Furthermore, he describes no water rights, vested riparian rights, or other personal justiciable interests that he is concerned would be affected by the requests made in the Application. Instead, he describes general concerns about impacts on wildlife without describing how or why his interests would be affected in a manner not common to members of the general public.

Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Steve Colley should not be granted.

14. Crystal Cooper-Smith

Crystal Cooper-Smith submitted a request for a contested case hearing on the Application, but her request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. In her request, Ms. Cooper-Smith describes her concerns regarding the potential acquisition by the District of all or a portion of her property should the Application be granted. Similarly, she describes her concerns regarding the potential relocation of a local cemetery and church should the Application be approved. However, each of these issues are ones that fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Ms. Cooper-Smith's property, the local cemetery, or local church, as she describes, those interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application.

Additionally, Ms. Cooper-Smith identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application, nor any explanation regarding how or why she believes the Application affects her interests in a manner not common to members of the general public.

Because Ms. Cooper-Smith's request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Crystal Cooper-Smith should not be granted.

15. Chester Debord

Chester Debord submitted a request for a contested case hearing on the Application, but his request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. In his request, Mr. Debord describes his concerns regarding the potential acquisition by the District of all or a portion of his property should the Application be granted. However, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Mr. Debord's property as he describes, his interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

Additionally, Mr. Debord identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application, nor any explanation regarding how or why he believes the Application affects his interests in a manner not common to members of the general public.

Because Mr. Debord's request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Chester Debord should not be granted.

16. Donna Scott Dockery

Donna Scott Dockery submitted correspondence indicating her opposition to the Application that was received in the Chief Clerk's office on March 3, 2006. In addition, Ms. Dockery's name appears on a petition opposing the reservoir proposed in the Application that was received by the TCEQ Office of Chief Clerk on March 10, 2006. Neither correspondence satisfies the requirements of Title 30, Section 55.251 of the Texas Administrative Code.

With respect to Ms. Dockery's March 3, 2006 correspondence, she describes her concerns regarding the potential loss of all or a portion of her parents property through the District's acquisition efforts, should the Application be granted. Similarly, she describes her concerns regarding the potential loss of a local cemetery should the Application be approved. However, each of these issues are ones that fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. Notwithstanding the fact that Ms. Dockery has claimed no personal ownership interest in her parents property, to the extent that the Application would affect the property, or the local cemetery, as she describes, such interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application. Furthermore, the correspondence does not include a request for a contested case hearing.

With respect to the March 10, 2006 petition containing Ms. Dockery's name, the petition, also did not request a contested case hearing on the Application. The petition additionally fails to comply with the clear requirements of Title 30, Section 55.251 of the Texas Administrative Code to briefly, but specifically, describe how and why the requests made in the Application will affect her personal justiciable interests.

With respect to both correspondences, Ms. Dockery identifies no water rights, vested riparian rights, or any other personal justiciable interests 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.

Neither correspondence from Donna Scott Dockery should be recognized as a request for a contested case hearing on the Application. To the extent that either one of them is, however, her request should not be granted.

17. Michelle Dowell

Michelle Dowell submitted a request for a contested case hearing on the Application, but her request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. Specifically, Ms. Dowell describes her concerns regarding the potential loss of all or portions of her property to the District's acquisition efforts should the Application be granted. However, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Ms. Dowell's property as she describes, her interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Ms. Dowell describes no water rights, vested riparian rights, or other personal justiciable interests that would be affected by the requests made in the Application. Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Michelle Dowell should not be granted.

18. Mike Flesher

Mike Flesher submitted two correspondences to the TCEQ regarding the Application, one that was received by the TCEQ Office of Chief Clerk on March 3, 2006, and one that was received on March 6, 2006. The March 3, 2006 correspondence was submitted as a public comment on the Application, not a request for a contested case hearing.

The correspondence received by the TCEQ Office of Chief Clerk on March 6, 2006 included a request for a contested case hearing. However, Mr. Flesher describes his basis for requesting a hearing on the Application as being concerns regarding the potential acquisition of all or portions of his property by the District, and issues related to being relocated, should the Application be granted. However, such issues are ones that fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Mr. Flesher's property as he describes, his interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Mr. Flesher describes no water rights, vested riparian rights, or other personal justiciable interests that he is concerned would be affected by the requests made in the Application. Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Mike Flesher should not be granted.

19. Mary Harris

The name of Mary Harris appears on a petition opposing the reservoir proposed in the Application. The petition, however, does not request a contested case hearing on the Application. Similarly, the petition fails to comply with the clear requirements of Title 30, Section 55.251(c)(2) of the Texas Administrative Code to briefly, but specifically,

describe how and why the requests made in the Application will affect her personal justiciable interests. Ms. Harris identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application.

To the extent that the petition containing Ms. Harris' name is considered to be an attempt to request a hearing, it includes no information describing how or why she believes the interests described in the petition will be affected by the requests made in the Application in a manner not common to members of the general public. 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.

The petition containing Mary Harris' name should not be recognized as a request for a contested case hearing on the Application. To the extent that it is, however, her request should not be granted.

20. Sarah Hembree-Ashcraft Petersen

Sarah Hembree-Ashcraft Petersen, president and owner of the Hembree Farm and Ranch Corporation, submitted one request for a contested case hearing on the Application. In her request, Ms. Petersen explains that her property is located within the footprint of LRH, as it is proposed in the Application. She describes her concerns with the potential loss of that property and related improvements if the requests made in the Application are granted. Such issues are ones that fall outside the scope of the TCEQ's review of the Application, however, and are otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Ms. Petersen's property as she describes, her interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

Ms. Petersen describes no water rights, vested riparian rights, or other personal justiciable interests that she is concerned would be affected by the requests made in the Application. Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Sarah Hembree-Ashcraft Petersen should not be granted.

21. Nina Holt

Nina Holt submitted a request for a contested case hearing on the Application as part of a request by several other self-described Citizens of Cuthand Community. In the request, Ms. Holt describes various concerns she has with the development of LRH, as proposed in the Application. Specifically, she references wildlife mitigation, jobs, and impacts she relates to the development of projects that are unrelated to the requests made in the Application. None of these issues, however, reflect any anticipated impacts to what would qualify as Ms. Holt's personal justiciable interests. Instead, as she describes them, her concerns are each clearly related to interests common to members of the general public—if they are attributable to the Application at all.

Furthermore, Ms. Holt describes her property as being located approximately 40 miles east of the impoundment proposed in the Application, without identifying any water right or vested riparian right that will be affected by the requests made in the Application, if approved. Ms. Holt has failed to describe in her hearing request how and why she believes she will be affected in a manner not common to members of the general public. Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Nina Holt should not be granted.

22. Robert Holt

Robert Holt submitted a request for a contested case hearing on the Application as part of a request by several other self-described Citizens of Cuthand Community. In the request, Mr. Holt describes various concerns he has with the development of LRH, as proposed in the Application. Specifically, he references wildlife mitigation, jobs, and impacts he relates to the development of projects that are unrelated to the requests made in the Application. None of these issues, however, reflect any anticipated impacts to what would qualify as Mr. Holt's personal justiciable interests. Instead, as he has described them, his concerns are each clearly related to interests common to members of the general public—if they are attributable to the Application at all.

Furthermore, Mr. Holt describes his property as being located approximately 40 miles east of the impoundment proposed in the Application, without identifying any water right or vested riparian right that will be affected by the requests made in the Application, if approved. Mr. Holt has failed to describe in his hearing request how and why he believes he will be affected in a manner not common to members of the general public. Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Robert Holt should not be granted.

23. Debbie Kennemer

Debbie Kennemer submitted a request for a contested case hearing on the Application, but her request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. Specifically, Ms. Kennemer describes her concerns regarding the potential loss of all or portions of her property should the Application be granted. However, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Ms. Kennemer's property as she describes, her interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Ms. Kennemer describes the location of her property as 10 miles removed from the Sulphur River, with indications that it might be located in the watershed of the South Sulphur River. Furthermore, she describes no water rights, vested riparian rights, or other personal justiciable interests that she is concerned would be affected by the requests made in the Application. Instead, she describes general concerns about impacts on wildlife without describing how or why her interests would be affected in a manner not common to members of the general public.

Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Debbie Kennemer should not be granted.

24. Ronal Kennemer

Ronal Kennemer submitted a request for a contested case hearing on the Application, but his request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. Specifically, Mr. Kennemer describes his concerns regarding the potential loss of all or portions of his property should the Application be granted. However, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Mr. Kennemer's property as he describes, his

interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Mr. Kennemer describes the location of his property as 10 miles removed from the Sulphur River, with indications that it might be located in the watershed of the South Sulphur River. Furthermore, he describes no water rights, vested riparian rights, or other personal justiciable interests that he is concerned would be affected by the requests made in the Application. Instead, he describes general concerns about impacts on wildlife without describing how or why his interests would be affected in a manner not common to members of the general public.

Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Ronal Kennemer should not be granted.

25. John McConnell

John McConnell submitted a request for a contested case hearing on the Application as a representative of the McCrury community.[12] In the request, Mr. McConnell describes various concerns he has with land mitigation associated with the development of LRH, as proposed in the Application. Mr. McConnell's description of the issue, however, does not reflect any anticipated impacts to what would qualify as his personal justiciable interests. Instead, as he has described them, his concerns are each clearly related to interests common to members of the general public—if they are attributable to the Application at all.

Furthermore, Mr. McConnell describes his property as being located approximately 40 miles east of the impoundment proposed in the Application, without identifying any water right or vested riparian right that will be affected by the requests made in the Application, if approved. Mr. McConnell has failed to describe in his hearing request how and why he believes he will be affected in a manner not common to members of the general public. Because his request does not identify any personal justiciable interest affected by the Application, 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.

[12] It is not clear whether Mr. McConnell's hearing request was made in his individual capacity, or as a member of an association. Accordingly, to the extent that the McCrury community seeks associational standing, the District will respond to the request accordingly below.

Therefore, the hearing request by John McConnell should not be granted.

26. Joe McKelvey

Joe McKelvey submitted a request for a contested case hearing on the Application that was received in the TCEQ Office of Chief Clerk on March 9, 2006. In correspondence received by the Chief Clerk on November 7, 2011, Mr. McKelvey withdrew his request for such a hearing.

Mr. McKelvey's withdrawal of his request for a contested case hearing on the Application should be recognized, and his initial request should not be granted, accordingly.

27. Patricia McKelvey

Patricia McKelvey submitted a request for a contested case hearing on the Application that was received in the TCEQ Office of Chief Clerk on March 9, 2006. In correspondence received by the Chief Clerk on November 7, 2011, Mr. McKelvey withdrew his request for such a hearing.

Ms. McKelvey's withdrawal of her request for a contested case hearing on the Application should be recognized, and her initial request should not be granted, accordingly.

28. William McKinney

William McKinney submitted a request for a contested case hearing on the Application that also included the name of Janice Benzenly. The District has addressed the request with respect to Ms. Benzenly above. With respect to Mr. McKinney, his request fails to substantially comply with Title 30, Section 55.251(c) of the Texas Administrative Code. Specifically, the request contains no description of Mr. McKinney's personal justiciable interests—*e.g.*, no identified water rights, vested riparian rights, or other personal justiciable interests that he is concerned would be affected by the requests made in the Application. Accordingly, his request provides no description of how or why he believes the requests made in the Application might affect his personal justiciable interests.

Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request by William McKinney should not be granted.

29. David Nabors

David Nabors submitted a request for a contested case hearing on the Application. In his request, Mr. Nabors describes his concerns about the impacts of the development of LRH, as proposed in the Application, on his family's recreational uses of the Sulphur River along his property.

While Mr. Nabors does not disclose the specific location of the property he is concerned will be affected, he describes it as being located approximately 15 miles downstream of the reservoir proposed in the Application. He identifies no water rights, nor does he claim any vested riparian rights, that will be affected by the development of LRH, as proposed in the Application.

In the application by Boot Ranch Development, L.P., for an amendment to Certificate of Adjudication No. 14-1441 (TCEQ Docket No. 2006-1890-WR) (the "Boot Ranch application"), the TCEQ Executive Director recommended that the TCEQ Commissioners deny party status for a hearing requestor who owned property approximately 15 miles downstream of the proposed recreational reservoir. Part of the Executive Director's basis for his recommendation in that instance was, at 15 miles removed from the project, the mere fact of the property's location at that distance, in the absence of any additional information indicating otherwise, was insufficient to demonstrate that the requestor's property rights might be impaired by the Boot Ranch application, as required by TCEQ rules. The TCEQ Commissioners subsequently denied the hearing request.[13]

Similarly, the request by Mr. Nabors does not show that his property rights might be impaired by the requests made in the Application, as required by Section 55.251 of the TCEQ rules. He does not specify in his request whether his property is located on the North Sulphur River or on the main stem of the Sulphur River. Nevertheless, the lengthy distance that, by Mr. Nabors' own description, would separate him from the LRH project does not suggest any impairment.

In addition, Mr. Nabors expresses his concerns with the Application regarding wildlife mitigation, general environmental considerations, and the District's water needs. Mr. Nabors' description of the issue, however, does not reflect any anticipated impacts to what would qualify as his personal justiciable interests. Instead, as he has described them, his concerns are each related to interests common to members of the general public—if they are attributable to the Application at all.

Because his request does not identify any personal justiciable interest affected by the Application, it is impossible to determine that this requestor is an affected person using

[13] *See* Boot Ranch application, *Executive Director's Response to Hearing Requests*, discussion regarding Katherine Peake, June 4, 2007.

any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Therefore, the hearing request submitted by David Nabors should not be granted.

30. Sharon Nabors

Sharon Nabors submitted a request for a contested case hearing on the Application. In her request, Ms. Nabors describes her concerns about the impacts of the development of LRH, as proposed in the Application, on her family's recreational uses of the Sulphur River along her property.

While Ms. Nabors does not disclose the specific location of the property she is concerned will be affected, she describes it as being located approximately 15 miles downstream of the reservoir proposed in the Application. She identifies no water rights, nor does she claim any vested riparian rights, that will be affected by the development of LRH, as proposed in the Application.

In the application by Boot Ranch Development, L.P., for an amendment to Certificate of Adjudication No. 14-1441 (TCEQ Docket No. 2006-1890-WR) (the "Boot Ranch application"), the TCEQ Executive Director recommended that the TCEQ Commissioners deny party status for a hearing requestor who owned property approximately 15 miles downstream of the proposed recreational reservoir. Part of the Executive Director's basis for his recommendation in that instance was, at 15 miles removed from the project, the mere fact of the property's location at that distance, in the absence of any additional information indicating otherwise, was insufficient to demonstrate that the requestor's property rights might be impaired by the Boot Ranch application, as required by TCEQ rules. The TCEQ Commissioners subsequently denied the hearing request.[14]

Similarly, the request by Ms. Nabors does not show that her property rights might be impaired by the requests made in the Application, as required by Section 55.251 of the TCEQ rules. She does not specify in her request whether her property is located on the North Fork of the Sulphur River or on the main stem of the Sulphur River. Nevertheless, the lengthy distance that, by Ms. Nabors' own description, would separate her from the LRH project does not suggest impairment.

In addition, Ms. Nabors expresses her concerns with the Application regarding wildlife mitigation, general environmental considerations, and the District's water needs. Ms. Nabors' description of the issue, however, does not reflect any anticipated impacts to what would qualify as her personal justiciable interests. Instead, as she has described

[14] *See* Boot Ranch application, *Executive Director's Response to Hearing Requests*, discussion regarding Katherine Peake, June 4, 2007.

them, her concerns are each related to interests common to members of the general public—if they are attributable to the Application at all.

Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Sharon Nabors should not be granted.

31. Izickdale Pope

Izickdale Pope submitted a request for a contested case hearing on the Application, wherein Mr. Pope describes his opinions regarding the availability of other water supply options to the District that would obviate the need for the development of LRH, as proposed in the Application. His description of such concerns, however, does not reflect any anticipated impacts to what would qualify as Mr. Pope's personal justiciable interests. Instead, as he has described them, his concerns are each clearly related to interests common to members of the general public.

In addition, Mr. Pope describes his property as being located outside of the boundaries of the impoundment proposed in the Application, without identifying any water right or vested riparian right that will be affected by the requests made in the Application, if approved.

Mr. Pope has failed to describe in his hearing request how and why he believes he will be affected in a manner not common to members of the general public. Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Izickdale Pope should not be granted.

32. Karen Pope

Karen Pope submitted a request for a contested case hearing on the Application, wherein Ms. Pope describes her opinions regarding the availability of other water supply options that would obviate the need for the development of LRH, as proposed in the Application. Her description of such concerns, however, does not reflect any anticipated impacts to what would qualify as Ms. Pope's personal justiciable interests. Instead, as she has described them, her concerns are clearly related to interests common to members of the general public.

In addition, Ms. Pope describes her property as being located outside of the boundaries of the impoundment proposed in the Application, without identifying any water right or vested riparian right that will be affected by the requests made in the Application, if approved.

Ms. Pope has failed to describe in her hearing request how and why she believes she will be affected in a manner not common to members of the general public. Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Karen Pope should not be granted.

33. Angela Scott

The name of Angela Scott appears on a petition opposing the reservoir proposed in the Application. The petition, however, does not request a contested case hearing on the Application. Similarly, the petition fails to comply with the clear requirements of Title 30, Section 55.251(c)(2) of the Texas Administrative Code to briefly, but specifically, describe how and why the requests made in the Application will affect her personal justiciable interests. Ms. Scott identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application. She provides a St. Louis, Missouri, address and an out-of-state phone number for her contact information on the petition.

To the extent that the petition containing Ms. Scott's name is considered to be an attempt to request a hearing, it includes no information describing how or why she believes the interests described in the petition will be affected by the requests made in the Application in a manner not common to members of the general public. 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.

The petition containing Angela Scott's signature should not be recognized as a request for a contested case hearing on the Application. To the extent that it is, however, her request should not be granted.

34. Angela J. Scott

Angela J. Scott submitted a request for a contested case hearing on the Application that was received by the TCEQ Office of the Chief Clerk on March 16, 2006. In her request, Ms. Scott describes her concerns regarding the potential acquisition by the District of all

or a portion of her family's property, should the Application be granted. Similarly, she describes her concerns regarding the potential relocation of a local cemetery should the Application be approved. However, each of these issues are ones that fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. Notwithstanding the fact that Ms. Scott has claimed no personal ownership interest in her family's property, to the extent that the Application would affect the property, or the local cemetery, as she describes, such interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application.

Additionally, Ms. Scott identifies no water rights, vested riparian rights, or any other personal justiciable interests 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.

Therefore, the hearing request submitted by Angela J. Scott should not be granted.

35. Ezra Scott

Ezra Scott submitted a letter indicating his opposition to the Application that was received in the Chief Clerk's office on March 10, 2006. In addition, Mr. Scott's name appears on a petition opposing the reservoir proposed in the Application that was received by the TCEQ Office of the Chief Clerk on March 10, 2006. Neither correspondence satisfies the requirements of Title 30, Section 55.251 of the Texas Administrative Code.

With respect to Mr. Scott's March 10, 2006 letter, he describes his concerns regarding the potential acquisition of all or a portion of his property by the District, should the Application be granted. Similarly, he describes his concerns regarding the potential relocation of a local cemetery should the Application be approved. However, each of these issues are ones that fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. To the extent that the Application would affect Mr. Scott's property, or the local cemetery, as he describes, such interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application. Furthermore, the correspondence does not include a request for a contested case hearing.

With respect to the March 10, 2006 petition containing Mr. Scott's name, the petition also did not request a contested case hearing on the Application. The petition additionally fails to comply with the clear requirements of Title 30, Section 55.251 of the Texas Administrative Code to briefly, but specifically, describe how and why the requests made in the Application will affect his personal justiciable interests.

With respect to both correspondences, Mr. Scott identifies no water rights, vested riparian rights, or any other personal justiciable interests 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.

Neither correspondence from Ezra Scott should be recognized as a request for a contested case hearing on the Application. To the extent that either one of them is, however, his request should not be granted.

36. Jeffrey Scott

The name of Jeffrey Scott appears on a petition opposing the reservoir proposed in the Application. The petition, however, does not include a request for a contested case hearing on the Application. Similarly, the petition fails to comply with the clear requirements of Title 30, Section 55.251(c)(2) of the Texas Administrative Code to briefly, but specifically, describe how and why the requests made in the Application will affect his personal justiciable interests. Mr. Scott identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application.

To the extent that the petition containing Mr. Scott's name is considered to be an attempt to request a hearing, it includes no information describing how or why he believes the interests described in the petition will be affected by the requests made in the Application in a manner not common to members of the general public. 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.

The petition containing Jeffrey Scott's name should not be recognized as a request for a contested case hearing on the Application. To the extent that it is, however, his request should not be granted.

37. Marilyn Scott

Marilyn Scott submitted a letter indicating her opposition to the Application that was received in the Chief Clerk's office on March 10, 2006. In addition, Ms. Scott's name appears on a petition opposing the reservoir proposed in the Application that was received by the TCEQ Office of Chief Clerk on March 10, 2006. Neither correspondence satisfies the requirements of Title 30, Section 55.251 of the Texas Administrative Code.

With respect to Ms. Scott's March 10, 2006 letter, she describes her concerns regarding the potential acquisition of all or a portion of her property by the District, should the Application be granted. Similarly, she describes her concerns regarding the potential

relocation of a local cemetery should the Application be approved. However, each of these issues are ones that fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. To the extent that the Application would affect Ms. Scott's property, or the local cemetery, as she describes, such interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application. Furthermore, the correspondence does not include a request for a contested case hearing.

With respect to the March 10, 2006 petition containing Ms. Scott's name, the petition also did not request a contested case hearing on the Application. The petition additionally fails to comply with the clear requirements of Title 30, Section 55.251 of the Texas Administrative Code to briefly, but specifically, describe how and why the requests made in the Application will affect her personal justiciable interests.

With respect to both correspondences, Ms. Scott identifies no water rights, vested riparian rights, or any other personal justiciable interests 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.

Neither correspondence from Marilyn Scott should be recognized as a request for a contested case hearing on the Application. To the extent that either one of them is, however, her request should not be granted.

38. Mitchell Wayne Scott

The name of Mitchell Wayne Scott appears on a petition opposing the reservoir proposed in the Application. The petition, however, does not include a request for a contested case hearing on the Application. Similarly, the petition fails to comply with the clear requirements of Title 30, Section 55.251(c)(2) of the Texas Administrative Code to briefly, but specifically, describe how and why the requests made in the Application will affect his personal justiciable interests. Mr. Scott identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application.

To the extent that the petition containing Mr. Scott's name is considered to be an attempt to request a hearing, it includes no information describing how or why he believes the interests described in the petition will be affected by the requests made in the Application in a manner not common to members of the general public. 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.

The petition containing Mitchell Wayne Scott's name should not be recognized as a request for a contested case hearing on the Application. To the extent that it is, however, his request should not be granted.

39. Wayne Scott

The name of Wayne Scott appears on a petition opposing the reservoir proposed in the Application. The petition, however, does not include a request for a contested case hearing on the Application. Similarly, the petition fails to comply with the clear requirements of Title 30, Section 55.251(c)(2) of the Texas Administrative Code to briefly, but specifically, describe how and why the requests made in the Application will affect his personal justiciable interests. Mr. Scott identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application.

To the extent that the petition containing Mr. Scott's name is considered to be an attempt to request a hearing, it includes no information describing how or why he believes the interests described in the petition will be affected by the requests made in the Application in a manner not common to members of the general public. 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.

The petition containing Wayne Scott's name should not be recognized as a request for a contested case hearing on the Application. To the extent that it is, however, his request should not be granted.

40. Floyd Sessums

Floyd Sessums submitted a request for a contested case hearing on the Application as part of a request by several other self-described Citizens of Cuthand Community. In the request, Mr. Sessums describes various concerns he has with the development of LRH, as proposed in the Application. Specifically, he references wildlife mitigation, jobs, and impacts he relates to the development of projects that are unrelated to the requests made in the Application. None of these issues, however, reflect any anticipated impacts to what would qualify as Mr. Sessums' personal justiciable interests. Instead, as he has described them, his concerns are each clearly related to interests common to members of the general public—if they are attributable to the Application at all.

Furthermore, Mr. Sessums describes his property as being located approximately 40 miles east of the impoundment proposed in the Application, without identifying any water right or vested riparian right that will be affected by the requests made in the Application, if approved.

Mr. Sessums has failed to describe in his hearing request how and why he believes he will be affected in a manner not common to members of the general public. Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Floyd Sessums should not be granted.

41. Helen Sessums

Helen Sessums submitted a request for a contested case hearing on the Application as part of a request by several other self-described Citizens of Cuthand Community. In the request, Ms. Sessums describes various concerns she has with the development of LRH, as proposed in the Application. Specifically, she references wildlife mitigation, jobs, and impacts she relates to the development of projects that are unrelated to the requests made in the Application. None of these issues, however, reflect any anticipated impacts to what would qualify as Ms. Sessums' personal justiciable interests. Instead, as she has described them, her concerns are each clearly related to interests common to members of the general public—if they are attributable to the Application at all.

Furthermore, Ms. Sessums describes her property as being located approximately 40 miles east of the impoundment proposed in the Application, without identifying any water right or vested riparian right that will be affected by the requests made in the Application, if approved.

Ms. Sessums has failed to describe in her hearing request how and why she believes she will be affected in a manner not common to members of the general public. Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Helen Sessums should not be granted.

42. John Smith

John Smith submitted a request for a contested case hearing on the Application, but his request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. In his request, Mr. Smith describes his concerns regarding the potential acquisition of all or a portion of his property by the District should the Application be granted. Similarly, he describes his concerns regarding the potential relocation of a local cemetery and church should the Application be approved. However,

each of these issues are ones that fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Mr. Smith's property, the local cemetery, or local church, as he describes, those interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application.

Additionally, Mr. Smith identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application, nor any explanation regarding how or why he believes the Application affects his interests in a manner not common to members of the general public.

Because Mr. Smith's request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by John Smith should not be granted.

43. Tommy Sutherland

Tommy Sutherland submitted a request for a contested case hearing on the Application on behalf of the Woodson family and the Woodson Hereford Ranch, wherein he describes his concerns about the potential impacts to the Woodson Hereford Ranch if the requests made in the Application are granted. Mr. Sutherland has not described having any legal ownership interest in the property, or legal relationship to the Woodson family. Instead, he identifies himself as the ranch manager. He provides no indication of the location of the property in relation to the reservoir proposed in the Application.

In his hearing request, Mr. Sutherland describes his concerns regarding the potential loss of property that constitutes the Woodson Hereford Ranch. Such issues, however, are ones that fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects the Woodson Hereford Ranch as Mr. Sutherland describes, those interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

Mr. Sutherland describes no water rights, vested riparian rights, or other personal justiciable interests that he is concerned would be affected by the requests made in the Application. Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Tommy Sutherland should not be granted.

44. Carol Weiss and the Weiss Living Trust

Carol Weiss submitted two requests for a contested case hearing on the Application. One request was received by the TCEQ Office of the Chief Clerk on March 9, 2006. A second request was received by the TCEQ Office of the Chief Clerk on March 10, 2006. The requests were identical, and appear to have been submitted on behalf of Ms. Weiss individually and as trustee for the Weiss Living Trust. The District provides the following response to both requests in the context of Ms. Weis and the Weiss Living Trust.

In each of the two identical requests, Ms. Weiss describes three main concerns she attributes to the requests made in the Application. She describes concerns regarding the District's jurisdictional boundaries, the costs associated with needed onsite sanitary sewer system upgrades, and issues relating to potential property condemnation. With respect to the first two concerns, neither reflects any anticipated impacts to what would qualify as Ms. Weiss' personal justiciable interests or those of the Weiss Living Trust. Instead, as Ms. Weiss has described them, her concerns are each clearly related to interests common to members of the general public—if they are attributable to the Application at all.

With respect to her concerns about the potential loss of property to the District through its acquisition efforts, that issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. To the extent that the Application affects Ms. Weiss' property at all, or that of the Weiss Living Trust, such interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

Ms. Weiss has not described any water right or vested riparian right that will be affected by the requests made in the Application, if approved. She has, therefore, failed to describe in her hearing request how and why she believes she will be affected in a manner not common to members of the general public. Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing requests submitted by Carol Weiss, individually and on behalf of the Weiss Living Trust, should not be granted.

45. Charlote Wicks

Charlote Wicks submitted a request for a contested case hearing on the Application, but her request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. Specifically, Ms. Wicks describes her concerns regarding the potential loss of all or portions of her property should the Application be granted. However, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Ms. Wicks' property as she describes, her interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Ms. Wicks describes the location of her property as 10 miles removed from the Sulphur River, with indications that it might be located in the watershed of the South Sulphur River. Furthermore, she describes no water rights, vested riparian rights, or other personal justiciable interests that she is concerned would be affected by the requests made in the Application. Instead, she describes general concerns about impacts on wildlife without describing how or why her interests would be affected in a manner not common to members of the general public.

Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Charlote Wicks should not be granted.

46. Doug Wicks

Doug Wicks submitted a request for a contested case hearing on the Application, but his request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. Specifically, Mr. Wicks describes his concerns regarding the potential loss of all or portions of his property should the Application be granted. However, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Mr. Wicks' property as he describes, his interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Mr. Wicks describes the location of his property as 10 miles removed from the Sulphur River, with indications that it might be located in the watershed of the South Sulphur River. Furthermore, he describes no water rights, vested riparian rights, or other personal justiciable interests that he is concerned would be affected by the requests made in the Application. Instead, he describes general concerns about impacts on wildlife without describing how or why his interests would be affected in a manner not common to members of the general public.

Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Doug Wicks should not be granted.

47. Kristi Wicks

Kristi Wicks submitted a request for a contested case hearing on the Application, but her request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. Specifically, Ms. Wicks describes her concerns regarding the potential loss of all or portions of her property should the Application be granted. However, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Ms. Wicks' property as she describes, her interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Ms. Wicks describes the location of her property as 10 miles removed from the Sulphur River, with indications that it might be located in the watershed of the South Sulphur River. Furthermore, she describes no water rights, vested riparian rights, or other personal justiciable interests that she is concerned would be affected by the requests made in the Application. Instead, she describes general concerns about impacts on wildlife without describing how or why her interests would be affected in a manner not common to members of the general public.

Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Kristi Wicks should not be granted.

48. Patsy Wicks

Patsy Wicks submitted a request for a contested case hearing on the Application, but her request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. Specifically, Ms. Wicks describes her concerns regarding the potential loss of all or portions of her property should the Application be granted. However, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Ms. Wicks' property as she describes, her interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Ms. Wicks describes the location of her property as 10 miles removed from the Sulphur River, with indications that it might be located in the watershed of the South Sulphur River. Furthermore, she describes no water rights, vested riparian rights, or other personal justiciable interests that she is concerned would be affected by the requests made in the Application. Instead, she describes general concerns about impacts on wildlife without describing how or why her interests would be affected in a manner not common to members of the general public.

Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Patsy Wicks should not be granted.

49. Randy Wicks

Randy Wicks submitted a request for a contested case hearing on the Application, but his request fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. Specifically, Mr. Wicks describes his concerns regarding the potential loss of all or portions of his property should the Application be granted. However, such an issue is one that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects Mr. Wicks' property as he describes, his interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Mr. Wicks describes the location of his property as 10 miles removed from the Sulphur River, with indications that it might be located in the watershed of the South Sulphur River. Furthermore, he describes no water rights, vested riparian rights, or other personal justiciable interests that he is concerned would be affected by the requests made in the Application. Instead, he describes general concerns about impacts on wildlife without describing how or why his interests would be affected in a manner not common to members of the general public.

Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Randy Wicks should not be granted.

50. Rosa Dell Woods

The name of Rosa Dell Woods appears on a petition opposing the reservoir proposed in the Application. The petition, however, does not request a contested case hearing on the Application. Similarly, the petition fails to comply with the clear requirements of Title 30, Section 55.251(c)(2) of the Texas Administrative Code to briefly, but specifically, describe how and why the requests made in the Application will affect her personal justiciable interests. Ms. Woods identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application.

To the extent that the petition containing Ms. Woods' name is considered to be an attempt to request a hearing, it includes no information describing how or why she believes the interests described in the petition will be affected by the requests made in the Application in a manner not common to members of the general public. 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.

The petition containing Rosa Dell Woods' name should not be recognized as a request for a contested case hearing on the Application. To the extent that it is, however, her request should not be granted.

51. Annie Woodson and the Woodson Hereford Ranch

Annie Woodson submitted a request for a contested case hearing on the Application on behalf of herself and the Woodson Hereford Ranch, wherein she describes her concerns about the potential impacts to the Woodson Hereford Ranch if the requests made in the

Application are granted. She provides no indication of the location of the property in relation to the reservoir proposed in the Application.

Ms. Woodson describes her concerns regarding the potential loss of property that constitutes the Woodson Hereford Ranch. Such issues, however, are ones that fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects the Woodson Hereford Ranch as Ms. Woodson describes, those interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Ms. Woodson identifies no water rights, vested riparian rights, or other personal justiciable interests that she is concerned would be affected by the requests made in the Application. Because her request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Annie Woodson should not be granted.

52. Larry Woodson and the Woodson Hereford Ranch

Larry Woodson submitted a request for a contested case hearing on the Application on behalf of himself and the Woodson Hereford Ranch, wherein he describes his concerns about the potential impacts to the Woodson Hereford Ranch if the requests made in the Application are granted. He provides no indication of the location of the property in relation to the reservoir proposed in the Application.

Mr. Woodson describes his concerns regarding the potential loss of property that constitutes the Woodson Hereford Ranch. Such issues, however, are ones that fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects the Woodson Hereford Ranch as Mr. Woodson describes, those interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Mr. Woodson identifies no water rights, vested riparian rights, or other personal justiciable interests that he is concerned would be affected by the requests made in the Application. Because his request does not identify any personal justiciable interest affected by the Application, 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.

Therefore, the hearing request submitted by Larry Woodson should not be granted.

53. Citizens Against Ralph Hall Lake

John Smith and Crystal Cooper-Smith together submitted a request for a contested case hearing on the Application, wherein Ms. Smith noted that she was the president of the Citizens Against Ralph Hall Lake (the "CARHL"). It is not clear from the request whether the Smiths were requesting a hearing as individuals, or on behalf of the CARHL organization. As discussed above, neither Mr. Smith nor Ms. Smith have identified in their hearing requests that they have personal justiciable interests that are affected by the Application. Similarly, there is no indication that CARHL possesses any personal justiciable interests affected by the Application. Furthermore, the Smiths' hearing requests fail to satisfy the associational standing requirements imposed by TCEQ on CARHL.

As an initial matter, CARHL provides no indication in its request that it is, in fact, a legitimate organization. To the contrary, the Office of the Texas Secretary of State does not recognize the existence of any organization bearing the name of Citizens Against Ralph Hall Lake.

Furthermore, there is no information contained in the hearing request that indicates CARHL has any justiciable interest potentially impacted by the changes proposed in the Application. Since it is not clear that CARHL has any independent justiciable interest that it claims is affected by the Application, then it must meet the associational standing requirements in order to request a contested case hearing as an organization.

TCEQ rules provide that an association like CARHL may request a contested case hearing only if it meets the requirements set forth in Title 30, Section 55.252 of the Texas Administrative Code. Section 55.252(a) requires that, for CARHL to have associational standing to request a contested case hearing, it must be comprised of members that otherwise have standing on their own right to request such a hearing.[15] The only persons that even referenced CARHL in their hearing requests were John Smith and Crystal Cooper-Smith. As discussed above, neither of these individuals have shown that they meet the TCEQ's criteria for being considered affected persons. Under TCEQ rules, a person that is not the Commission, the Executive Director, or the applicant must be an affected person to request a contested case hearing on requests like those made in the Application.[16] With respect to Mr. and Ms. Smith, they provide no basis for the

[15] 30 TEX. ADMIN. CODE § 55.252(a)(1).

[16] *Id.* § 55.251(a).

associational standing of CARHL to make a request, as their requests each fail to meet the substantive requirements of Title 30, Section 55.251 of the Texas Administrative Code.

Because it has not been demonstrated that any CARHL members would otherwise have standing to request a hearing on the Application on their own right, the organization has no standing under Title 30, Section 55.252(a)(1) of the Texas Administrative Code to request a hearing, either.

Section 55.252(a) also requires CARHL to demonstrate that the interests it seeks to protect through a hearing request are germane to its organizational purpose.[17] CARHL has made no such demonstration. In addition to the bases for its lack of standing discussed above, CARHL also has no standing under Title 30, Section 55.252(a)(2) of the Texas Administrative Code to request a hearing on the Application.

The third requirement that CARHL must meet to demonstrate the requisite standing to make its hearing request is that neither the claim it asserts, nor the relief it requests, requires the participation of individual members in the case.[18] CARHL has made no such demonstration. Because CARHL is unable to demonstrate that neither the claim it asserts nor the relief it seeks requires the participation of any individual members it may have, it also has no standing under Title 30, Section 55.252(a)(3) of the Texas Administrative Code to request a hearing on the Application.

In addition to its lack of standing, it has not been shown that CARHL has any water rights, vested riparian rights, or any other personal justiciable interests affected by the Application, nor any explanation regarding how or why the organization takes the position the Application affects its or its members interests in a manner not common to members of the general public. As a consequence, setting aside the issues of standing for purposes of additional discussion, it is impossible to determine that CARHL is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

To the extent that the hearing requests submitted by John Smith and Crystal Cooper-Smith are interpreted as a hearing request by the Citizens Against Ralph Hall Lake, the request should not be granted.

54. <u>Town of Copper Canyon, Texas</u>

The Town of Copper Canyon ("Copper Canyon") submitted correspondence regarding the Application to the TCEQ Office of Chief Clerk. In its letter, Copper Canyon declares

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[17] *Id.* § 55.252(a)(2).

[18] *Id.* § 55.252(a)(3).

its support for a hearing request made by the Town of Flower Mound. The District responds to the request by the Town of Flower Mound below. However, with respect to the correspondence submitted by Copper Canyon, the letter does not itself contain a request for a contested case hearing. Instead, as indicated, the correspondence was written to "support" the hearing request by the Town of Flower Mound. Copper Canyon's correspondence, therefore, does not substantially comply with Title 30, Section 55.251(c)(3) of the Texas Administrative Code.

Furthermore, Copper Canyon identifies five criticisms of the requests made in the Application, including its opinions regarding anticipated construction costs associated with the development of LRH as proposed in the Application, the financial condition of the District, population growth projections for the Region C Regional Water Planning Area, sedimentation along the North Fork of the Sulphur River, and the overall costs associated with the requests made in the Application. None of these issues, however, reflect any anticipated impacts to what would qualify as Copper Canyon's personal justiciable interests. Instead, the concerns expressed in the correspondence are each clearly related to interests common to members of the general public.

Additionally, Copper Canyon identifies no water rights, vested riparian rights, or other personal justiciable interests that it is concerned would be affected by the requests made in the Application. The entirety of its corporate boundaries are located within the Trinity River Basin, nearly 100 miles west of the reservoir proposed in the Application. Therefore, even assuming for purposes of discussion that the Copper Canyon correspondence included a request for a contested case hearing, it does not identify any personal justiciable interest that would be affected by the Application, making it 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.

The correspondence submitted by Copper Canyon regarding the Application is not a request for a contested case hearing. To the extent that it is interpreted as such a request, however, it should not be granted.

55. Citizens of Cuthand Community

Several individuals identifying themselves as Citizens of Cuthand Community submitted requests for a contested case hearing on the Application. Specifically, Eddie Belcher, Linda Belcher, Peggy Belcher, Pete Belcher, Joe McKelvey, Patricia McKelvey, Nina Holt, Robert Holt, Helen Sessums, and Floyd Sessums each submitted hearing requests wherein they identified themselves as Citizens of Cuthand Community ("Cuthand"). It is not clear from the correspondence submitted by these individuals whether they were requesting a hearing on the Application as individuals, or also as members of Cuthand. As discussed with respect to each individual in these responses above, however, none of these persons demonstrate in their hearing requests that they have personal justiciable

interests that are affected by the Application. As individuals, therefore, they have failed to meet the requirements imposed by TCEQ rules for requesting a contested case hearing on the Application.

Furthermore, Cuthand does not appear to be an incorporated community. It therefore does not itself qualify as a governmental entity that may be considered an affected person under Title 30, Section 55.256(b) of the Texas Administrative Code. The hearing requests therefore fail to show that Cuthand meets the requirements imposed on governmental entities by TCEQ rules for requesting a contested case on the Application.

In addition, there is nothing in the hearing requests that indicate Cuthand is, in fact, a legitimate organization. To the contrary, the Office of the Texas Secretary of State does not recognize the existence of any organization bearing the name of Citizens of Cuthand Community.

Even if Cuthand were an existing organization, the requests fail to provide any indication that it possesses any personal justiciable interests affected by the Application. Therefore, if Cuthand was a legitimate organization, it would have to have satisfied the associational standing requirements imposed by TCEQ in order for it to request a contested case hearing on the Application. As described below, it has not satisfied these requirements.[19]

TCEQ rules provide that an association may request a contested case hearing only if it meets the requirements set forth in Title 30, Section 55.252 of the Texas Administrative Code. For Cuthand to have associational standing to request a contested case hearing, therefore, Section 55.252(a) requires it to be comprised of members that otherwise have standing on their own right to request such a hearing.[20] There were ten individuals that requested a contested case hearing on the Application and that also referenced Cuthand. As discussed above, however, none of these individuals demonstrated that they meet the TCEQ's criteria for being considered affected persons in their own right. Under TCEQ rules, a person that is not the Commission, the Executive Director, or the applicant must be an affected person to request a contested case hearing on requests like those made in the Application.[21] With respect to Eddie Belcher, Linda Belcher, Peggy Belcher, Pete Belcher, Joe McKelvey, Patricia McKelvey, Nina Holt, Robert Holt, Helen Sessums, and Floyd Sessums, they provide no basis for the associational standing of Cuthand to make a request, as their requests each fail to meet the substantive requirements of Title 30, Section 55.251 of the Texas Administrative Code.

Because it has not been demonstrated that any Cuthand members would otherwise have standing to request a hearing on the Application on their own right, the organization has

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[19] *Id.* § 55.252.

[20] 30 TEX. ADMIN. CODE § 55.252(a)(1).

[21] *Id.* § 55.251(a).

no standing under Title 30, Section 55.252(a)(1) of the Texas Administrative Code to request a hearing, either.

Section 55.252(a) also requires Cuthand to demonstrate that the interests it seeks to protect through a hearing request are germane to its organizational purpose.[22] Cuthand has made no such demonstration. In addition to the bases for its lack of standing discussed above, Cuthand also has no standing under Title 30, Section 55.252(a)(2) of the Texas Administrative Code to request a hearing on the Application.

The third requirement that Cuthand must meet to demonstrate the requisite standing to make its hearing request is that neither the claim it asserts, nor the relief it requests, requires the participation of individual members in the case.[23] Cuthand has made no such demonstration. Because Cuthand is unable to demonstrate that neither the claim it asserts nor the relief it seeks requires the participation of any individual members it may have, it also has no standing under Title 30, Section 55.252(a)(3) of the Texas Administrative Code to request a hearing on the Application.

In addition to its lack of standing, it has not been shown that Cuthand has any water rights, vested riparian rights, or any other personal justiciable interests affected by the Application, nor any explanation regarding how or why the organization takes the position the Application affects its or its members interests in a manner not common to members of the general public. As a consequence, setting aside the issues of standing for purposes of this response, it is impossible to determine that Cuthand is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

To the extent that the hearing requests submitted by Eddie Belcher, Linda Belcher, Peggy Belcher, Pete Belcher, Joe McKelvey, Patricia McKelvey, Nina Holt, Robert Holt, Helen Sessums, and Floyd Sessums are interpreted as associational hearing requests by the Citizens of Cuthand Community, the request should not be granted.

56. Town of Double Oak, Texas

The Town of Double Oak ("Double Oak") submitted a request for a contested case hearing on the Application, wherein it identifies three bases for its request. The request, however, fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. Specifically, Double Oak explains its opinions regarding anticipated construction costs associated with the development of LRH as proposed in the Application, the financial condition of the District, and anticipated water supplies based on projected population growth for the Region C Regional Water Planning Area. None

[22] *Id.* § 55.252(a)(2).

[23] *Id.* § 55.252(a)(3).

of these issues, however, reflect any anticipated impacts to what would qualify as Double Oak's justiciable interests. Instead, the concerns expressed in its request are each clearly related to interests common to members of the general public.

Additionally, Double Oak identifies no water rights, vested riparian rights, or other personal justiciable interests that it is concerned would be affected by the requests made in the Application. The entirety of its corporate boundaries is located within the Trinity River Basin, nearly 100 miles west of the reservoir proposed in the Application. Because it has failed to identify any personal justiciable interest that would be affected by the Application, 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.

Therefore, the hearing request submitted by Double Oak should not be granted.

57. Fannin County, Texas

Fannin County submitted a request for a contested case hearing on the Application that was received by the TCEQ Office of Chief Clerk on April 3, 2006. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, this request must have been received by the TCEQ Office of the Chief Clerk following the Chief Clerk's issuance of mailed notice on February 20, 2006 and not later than March 22, 2006 to be considered a valid request. The request by Fannin County, therefore, was not timely submitted.

On April 15, 2008, the Honorable George E. "Butch" Henderson, Fannin County Judge, submitted a withdrawal of the request by Fannin County for a contested case hearing on the Application, and instead requested that the County be identified as a supporter of the requests made in the Application. Judge Henderson's letter was received by the TCEQ Office of the Chief Clerk on April 17, 2008. Again, on May 18, 2011, James P. Allison, as legal counsel to Fannin County, submitted correspondence to the TCEQ Office of Chief Clerk reiterating the County's withdrawal of its request for a contested case hearing, and reaffirming its support for the requests made in the Application.

Fannin County's withdrawal of its request for a contested case hearing on the Application should be recognized, and its initial request should not be granted, accordingly.

58. Town of Flower Mound, Texas

The Town of Flower Mound ("Flower Mound") submitted two requests for a contested case hearing on the Application. One such request was received by the TCEQ Office of the Chief Clerk on March 23, 2006. The other request was received by the TCEQ Office of the Chief Clerk on April 28, 2011. Pursuant to Title 30, Section 55.251 of the Texas Administrative Code, these requests must have been received by the TCEQ Office of the

Chief Clerk following the Chief Clerk's issuance of mailed notice on February 20, 2006 and not later than March 22, 2006 to be considered a valid request. Neither of the requests made by Flower Mound, therefore, were timely submitted.

Notwithstanding Flower Mound's late submissions, its requests fail to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code on other grounds as well. In its requests, Flower Mound identifies six bases for it to be considered an affected person. Specifically, Flower Mound describes its concerns regarding anticipated construction costs associated with the development of LRH as proposed in the Application, its opinions regarding the financial condition of the District, population growth projections for the Region C Regional Water Planning Area, sedimentation along the North Fork of the Sulphur River, the overall costs associated with the requests made in the Application, and its purported share of those costs as a District member city. None of these issues, however, reflect any anticipated impacts to what would qualify as Flower Mound's justiciable interests. Instead, the concerns expressed in its requests are each clearly related to interests common to members of the general public.

Flower Mound identifies no water rights, vested riparian rights, or other personal justiciable interests that it is concerned would be affected by the requests made in the Application. The entirety of its corporate boundaries is located within the Trinity River Basin, nearly 100 miles west of the reservoir proposed in the Application. Because it has failed to identify any personal justiciable interest that would be affected by the Application, 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.

The hearing requests submitted by Flower Mound should not be recognized because of their untimely submission. For purposes of further discussion, however, even if the requests were delivered on time to the TCEQ Office of the Chief Clerk, Flower Mound's requests still would not have satisfied the requirements of Section 55.251 to effectively request a contested case hearing on the Application.

Therefore, the requests submitted by the Town of Flower Mound should not be granted.

59. <u>International Paper</u>

Kevin Driscoll submitted a request for a contested case hearing on the Application on behalf of the Texarkana Mill of International Paper ("IP"). In its request, IP expresses concerns that the requests made in the Application, if approved, could interfere with flows in the Sulphur River that IP has traditionally enjoyed during its operations. In addition, IP explains its concerns regarding the potential loss of property attributable to the development of LRH, as proposed in the Application. In both cases, however, IP has failed to articulate a justiciable interest that qualifies it as an affected person under TCEQ rules.

Specifically, while IP describes its interest in the preservation of flows in the Sulphur River, it does not describe any water right that entitles it to any flows in the Sulphur. Indeed, it is not clear that IP holds any appropriative water rights to Sulphur River flows, particularly any appropriation that could theoretically be impaired by the requests made in the Application, if approved. When considering that IP is located over 120 miles from the location of the reservoir proposed in the Application, the IP request does little to demonstrate that it is an affected person on these grounds.

In addition, its concerns regarding the potential loss of property because of the development of LRH are insufficient to qualify it as an affected person. The District's acquisition of property in connection with the requests made in the Application is an issue that falls outside the scope of the TCEQ's review of the Application and is otherwise beyond the jurisdiction of the agency to adjudicate. To the extent that the Application affects any property in which IP has a legal interest, such interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

Because IP has not identified any personal justiciable interest affected by the Application in its request, 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.

Therefore, the hearing request submitted by International Paper should not be granted.

60. <u>McCrury Community</u>

John McConnell submitted a request for a contested case hearing on the Application, wherein he identified himself as a representative of McCrury Community ("McCrury"). It is not clear from Mr. McConnell's request whether he requested a hearing on the Application in his individual capacity, or also as a member of McCrury. As discussed above with respect to McConnell individually, however, his request failed to demonstrate that he had personal justiciable interests that are affected by the Application. As an individual, therefore, Mr. McConnell failed to meet the requirements imposed by TCEQ rules for requesting a contested case hearing on the Application.

Furthermore, McCrury does not appear to be an incorporated community. It therefore does not itself qualify as a governmental entity that may be considered an affected person under Title 30, Section 55.256(b) of the Texas Administrative Code. The hearing request therefore fails to show that McCrury meets the requirements imposed on governmental entities by TCEQ rules for requesting a contested case on the Application

In addition, there is no indication in the hearing request that McCrury is, in fact, a legitimate organization. To the contrary, the Office of the Texas Secretary of State does not recognize the existence of any organization bearing the name of McCrury Community.

Even if McCrury were an existing organization, it request fails to provide any indication that it possesses any personal justiciable interests affected by the Application. Therefore, if McCrury was a legitimate organization, it would have to have satisfied the associational standing requirements imposed by TCEQ in order for it to request a contested case hearing on the Application. As discussed below, it has not satisfied these requirements.[24]

TCEQ rules provide that an association may request a contested case hearing only if it meets the requirements set forth in Title 30, Section 55.252 of the Texas Administrative Code. For McCrury to have associational standing to request a contested case hearing, therefore, Section 55.252(a) requires it to be comprised of members that otherwise have standing on their own right to request such a hearing.[25] The only person that requested a contested case hearing on the Application and that also referenced an association with McCrury was John McConnell. As discussed above, however, he failed to demonstrate that he meets the TCEQ's criteria for being considered an affected person in his own right. Under TCEQ rules, a person that is not the Commission, the Executive Director, or the applicant must be an affected person to request a contested case hearing on requests like those made in the Application.[26] With respect to John McConnell, he provides no basis for the associational standing of McCrury to make a request, as his request failed to meet the substantive requirements of Title 30, Section 55.251 of the Texas Administrative Code. No other person who submitted a request for a contested case hearing on the application identified themselves as a member or representative of McCrury.

Because it has not been demonstrated that any McCrury member or representative would otherwise have standing to request a hearing on the Application on their own right, the organization has no standing under Title 30, Section 55.252(a)(1) of the Texas Administrative Code to request a hearing, either.

Section 55.252(a) also requires McCrury to demonstrate that the interests it seeks to protect through a hearing request are germane to its organizational purpose.[27] McCrury has made no such demonstration. In addition to the bases for its lack of standing discussed above, McCrury also has no standing under Title 30, Section 55.252(a)(2) of the Texas Administrative Code to request a hearing on the Application.

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[24] *Id.* § 55.252.

[25] 30 TEX. ADMIN. CODE § 55.252(a)(1).

[26] *Id.* § 55.251(a).

[27] *Id.* § 55.252(a)(2).

The third requirement that McCrury must meet to demonstrate the requisite standing to make its hearing request is that neither the claim it asserts, nor the relief it requests, requires the participation of individual members in the case.[28] McCrury has made no such demonstration. Because McCrury is unable to demonstrate that neither the claim it asserts nor the relief it seeks requires the participation of any individual members it may have, it also has no standing under Title 30, Section 55.252(a)(3) of the Texas Administrative Code to request a hearing on the Application.

In addition to its lack of standing, it has not been shown that McCrury has any water rights, vested riparian rights, or any other personal justiciable interests affected by the Application, nor any explanation regarding how or why the organization takes the position the Application affects its or its members interests in a manner not common to members of the general public. As a consequence, setting aside the issues of standing for purposes of this response, it is impossible to determine that McCrury is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

To the extent that the hearing requests submitted by John McConnell is interpreted as an associational hearing request by the McCrury Community, the request should not be granted.

61. National Wildlife Federation

Christopher Brown submitted a request for a contested case hearing on the Application on behalf of the National Wildlife Federation ("NWF"). There is no indication that NWF possesses any personal justiciable interests affected by the Application. While NWF identifies various concerns the organization has regarding certain requests made in the Application, none of those issues reflect any anticipated impacts to what would qualify as the justiciable interests of NWF itself. The organization identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application. Since NWF has no independent justiciable interest that it claims is affected by the Application, then it must meet the associational standing requirements in order to submit a valid request for a contested case hearing.

TCEQ rules provide that an association may request a contested case hearing only if it meets the requirements set forth in Title 30, Section 55.252 of the Texas Administrative Code. Section 55.252(a) requires that, for NWF to have associational standing to request a contested case hearing, it must be comprised of members that otherwise have standing on their own right to request such a hearing.[29] NWF states in its request that it has members who are concerned with the District's acquisition of all or portions of their

[28] *Id.* § 55.252(a)(3).

[29] 30 TEX. ADMIN. CODE § 55.252(a)(1).

property in connection with the development of LRH, as proposed in the Application. However, NWF does not identify these members, nor does it provide any other indications of how they would have standing in their own right to request a hearing on the Application. Nevertheless, such issues are ones that fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects its members properties as described in the NWF request, those interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property. In addition, no hearing requests were submitted to the TCEQ Office of the Chief Clerk by individuals who described themselves as members of NWF and who demonstrated they have standing to request a hearing on the Application in their own right.

As a consequence, because NWF has failed to demonstrate that any of its members would have standing to request a hearing on the Application in their own right, it has no associational standing under Title 30, Section 55.252(a)(1) of the Texas Administrative Code to request a hearing on the Application.

Section 55.252(a) also requires NWF to demonstrate that neither the claim it asserts, nor the relief it requests, requires the participation of its individual members.[30] NWF has made no such demonstration. Because NWF is unable to demonstrate that neither the claim it asserts nor the relief it seeks requires the participation of any of its individual members, it also has no standing under Title 30, Section 55.252(a)(3) of the Texas Administrative Code to request a hearing on the Application.

In addition it its absence of the requisite associational standing, NWF also fails in its request to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, it fails to comply with 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 its interests or its members' interests in a manner not common to members of the general public. Instead, the concerns articulated in the NWF request are each clearly related to interests common to members of the general public. As a consequence, setting aside the issues of standing for purposes of this response, it is impossible to determine that NWF is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Therefore, the request by the National Wildlife Federation should not be granted.

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[30] *Id.* § 55.252(a)(3).

62. Sulphur River Oversight Society

Max Shumake submitted a request for a contested case hearing on the Application on behalf of the Sulphur River Oversight Society ("SROS"). There is no indication that SROS possesses any personal justiciable interests affected by the Application. Since SROS has no independent justiciable interest that it claims is affected by the Application, then it must meet the associational standing requirements in order to submit a valid request for a contested case hearing.

Specifically, TCEQ rules provide that an association may request a contested case hearing only if it meets the requirements set forth in Title 30, Section 55.252 of the Texas Administrative Code. Section 55.252(a) requires that, for SROS to have associational standing to request a contested case hearing, it must be comprised of members that otherwise have standing on their own right to request such a hearing.[31] Despite the general statements made in the SROS request that the organization has members in the vicinity of the reservoir proposed in the Application, no hearing requests were submitted to the TCEQ Office of the Chief Clerk by individuals who demonstrated they have standing to request a hearing on the Application in their own right and who identified themselves as members of SROS, as required by TCEQ rules.[32] Furthermore, the SROS request describes no members who would have standing to request a hearing on the Application in their own right.

As a consequence, because SROS has failed to demonstrate that any of its members would have standing to request a hearing on the Application in their own right, it has no associational standing under Title 30, Section 55.252(a)(1) of the Texas Administrative Code to request a hearing on the Application.

Section 55.252(a) also requires SROS to demonstrate that the interests it seeks to protect in its requests are germane to its organizational purpose.[33] SROS has made no such demonstration. In addition to its substantive failures in establishing standing discussed above, SROS also has no standing under Title 30, Section 55.252(a)(2) of the Texas Administrative Code to request a hearing on the Application.

The third requirement that SROS must meet to demonstrate the requisite standing to make its hearing request is that neither the claim it asserts, nor the relief it requests, requires the participation of its individual members.[34] SROS has made no such demonstration. Because SROS is unable to demonstrate that neither the claim it asserts nor the relief it seeks requires the participation of any of its individual members, it also

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[31] 30 TEX. ADMIN. CODE § 55.252(a)(1).

[32] *Id.*

[33] *Id.* § 55.252(a)(2).

[34] *Id.* § 55.252(a)(3).

has no standing under Title 30, Section 55.252(a)(3) of the Texas Administrative Code to request a hearing on the Application.

In addition to its absence of the requisite associational standing, SROS also fails in its request to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, it fails to comply with 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 its interests or its members interests in a manner not common to members of the general public. In fact, SROS identified no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application. As a consequence, setting aside the issues of standing for purposes of this response, it is impossible to determine that SROS is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

Therefore, the request by the Sulphur River Oversight Society should not be granted.

63. Texas Committee on Natural Resources

Janice Bezanson submitted a request for a contested case hearing on the Application on behalf of the Texas Committee on Natural Resources ("TCNR"). As an initial matter, it is not clear that TCNR is a legitimate organization. In fact, the Office of the Texas Secretary of State does not recognize the existence of any organization bearing the name of the Texas Committee on Natural Resources. In addition, even if TNCR was an existing organization, there is no indication in its request that TCNR possesses any personal justiciable interests affected by the Application. Therefore, if TCNR was a legitimate organization, it could have requested a contested case hearing on the Application only if its request demonstrated that it satisfied the associational standing requirements imposed by TCEQ rules. As discussed below, however, its request fails to make such a demonstration.

Specifically, TCEQ rules provide that an association may request a contested case hearing only if it meets the requirements set forth in Title 30, Section 55.252 of the Texas Administrative Code. Section 55.252(a) requires that, for TCNR to have associational standing to request a contested case hearing, it must be comprised of members that otherwise have standing on their own right to request such a hearing.[35] TCNR states in its request that it has members who are concerned with losing all or portions of their property due to inundation or mitigation from the development of LRH as proposed in the Application. However, TCNR does not identify these members, nor does it provide any other indications of how they would have standing in their own right to request a hearing on the Application. In addition, no hearing requests were submitted to the TCEQ Office of the Chief Clerk by individuals who described themselves as members of TCNR and

[35] 30 TEX. ADMIN. CODE § 55.252(a)(1).

who demonstrated they have standing to request a hearing on the Application.[36] The TCNR request itself describes no members who would have standing to request a hearing on the Application in their own right.

As a consequence, because TCNR has failed to demonstrate that any of its members would have standing to request a hearing on the Application in their own right, it has no associational standing under Title 30, Section 55.252(a)(1) of the Texas Administrative Code to request a hearing on the Application.

Section 55.252(a) also requires TCNR to demonstrate that the interests it seeks to protect in its requests are germane to its organizational purpose.[37] TCNR has made no such demonstration. In addition to its substantive failures in establishing standing discussed above, TCNR also has no standing under Title 30, Section 55.252(a)(2) of the Texas Administrative Code to request a hearing on the Application.

The third requirement that TCNR must meet to demonstrate the requisite standing to make its hearing request is that neither the claim it asserts, nor the relief it requests, requires the participation of its individual members.[38] TCNR has made no such demonstration. Because TCNR is unable to demonstrate that neither the claim it asserts nor the relief it seeks requires the participation of any of its individual members, it also has no standing under Title 30, Section 55.252(a)(3) of the Texas Administrative Code to request a hearing on the Application.

In addition it its absence of the requisite associational standing, TCNR also fails in its request to satisfy the substantive requirements of Title 30, Section 251 of the Texas Administrative Code. Specifically, it fails to comply with 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 its or its members interests in a manner not common to members of the general public. While TCNR describes in its request several criticism of the requests made in the Application, none of those issues reflect any anticipated impacts to what would qualify as personal justiciable interests. Instead, the concerns are each clearly related to interests common to members of the general public—if they are attributable to the Application at all.

TCNR identifies no water rights, vested riparian rights, or any other personal justiciable interests affected by the Application. As a consequence, setting aside the issues of standing for purposes of this response, it is impossible to determine that TCNR is an affected person using any relevant factors, including those enumerated in Title 30, Section 55.256 of the Texas Administrative Code.

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[36] *Id.*

[37] *Id.* § 55.252(a)(2).

[38] *Id.* § 55.252(a)(3).

Therefore, the request by the Texas Committee on Natural Resources should not be granted.

64. Ward Timber Holdings, Ltd.

Richard Lowerre submitted a request for a contested case hearing on the Application on behalf of Ward Timber Holdings, Ltd. ("Ward Timber Holdings") that fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. In its request, Ward Timber Holdings generally describes its concerns regarding impacts to forest lands that it attributes to the requests made in the Application. Without regard to whether these concerns are valid, or not, they fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects property in the manner described in the Ward Timber Holdings request, such interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Ward Timber Holdings describes its general concerns regarding potential impacts of the requests made in the Application to the forest industry in Texas, including its concerns regarding impacts to other entities with whom Ward Timber Holdings conducts business. It does not, however, identify any specific water right or use of water that can be attributed specifically to Ward Timber Holdings that it is concerned will be impaired with the granting of the Application. These and the various other issues addressed in the Ward Timber Holdings request do not reflect any anticipated impacts to what would qualify as the personal justiciable interests of Ward Timber Holdings. Instead, each of the concerns expressed in its request more accurately describe and reflect interests common to members of the general public.

Because it has failed to identify any personal justiciable interest that would be affected by the Application, 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.

Therefore, the hearing request submitted by Ward Timber Holdings, Ltd. should not be granted.

65. Ward Timber, Ltd.

Richard Lowerre submitted a request for a contested case hearing on the Application on behalf of Ward Timber, Ltd. ("Ward Timber") that fails to meet the requirements of Title 30, Section 55.251 of the Texas Administrative Code. In its request, Ward Timber generally describes its concerns regarding impacts to forest lands that it attributes to the

requests made in the Application. Without regard to whether these concerns are valid, or not, they fall outside the scope of the TCEQ's review of the Application and are otherwise beyond the jurisdiction of the agency to adjudicate. Instead, to the extent that the Application affects property in the manner described in the Ward Timber request, its interests are addressed and protected by the availability of relief under other sources of law that are distinct and removed from the considerations governing the Application—*e.g.*, the applicable constitutional and statutory requirements governing the condemnation of property.

In addition, Ward Timber describes its general concerns regarding potential impacts of the requests made in the Application to the forest industry in Texas, including its concerns regarding impacts to other entities with whom Ward Timber conducts business. It does not, however, identify any specific water right or use of water that can be attributed specifically to Ward Timber that it is concerned will be impaired with the granting of the Application. These and the various other issues addressed in the Ward Timber request do not reflect any anticipated impacts to what would qualify as the personal justiciable interests of Ward Timber. Instead, each of the concerns expressed in its request more accurately describe and reflect interests common to members of the general public.

Because it has failed to identify any personal justiciable interest that would be affected by the Application, 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.

Therefore, the hearing request submitted by Ward Timber, Ltd. should not be granted.

V. CONCLUSION

If the State of Texas is to take anything away from the crippling drought of 2011, it should be the sobering recognition that our future will be determined by the level to which we meaningfully address our State-projected long-term water supply requirements. While the District submitted the Application years before the current drought conditions manifested, the project contemplated in the Application is designed to provide the type of relief that the lessons of 2011 demand.

The project proposed in the Application will supply just that type of relief by providing as much as 45,000 acre-feet of reliable water supplies each year to a Texas region whose future depends on an adequate water supply. And it will provide this needed resource in a manner that fully mitigates environmental and other instream use impacts that might be attributable to the project.

LRH is recommended as a water management strategy in the Region C section of *Texas State Water Plan* ("SWP"), which is developed in cooperation with other state agencies and a

wide variety of regional, local and private interests. Consequently, the SWP is vetted in one of the most detailed processes of its kind in the country. In addition, the Texas Water Development Board has identified LRH as one of 19 essential sites for protection or acquisition by the State for future development of surface water supplies.[39]

Another important consideration is that the North Sulphur River has a serious and ever-worsening environmental problem. During the past 70 years, erosion has swept away more than 100 acres of valuable land from the river's main channel and tributaries. The river's streambed has altered dramatically from its original channel of 20 feet wide and 10 feet deep to one that is now more than 200 feet wide and 60 feet deep. The negative environmental effect of this alarming erosion is that valuable soil, trees, wetlands and wildlife habitats are continually washed downstream. Once constructed, LRH will improve and enhance the environmental conditions by mitigating erosion, restoring natural conditions, and encouraging the development of permanent fish and wildlife habitats while helping preserve soil and wetlands.

It is reasonable to expect a high-profile water supply project to gain the attention of many interested persons. The project proposed in the Application should be seen as no exception. The number of hearing requests submitted by persons interested in the Application make it clear that water issues are as important today as they have ever been. The uniform lack of articulated impacts attributable to the requests made about the Application, however, are equally telling. The LRH project, as proposed in the Application, reflects a prudently designed, environmentally sound, and responsibly sited reservoir project that is undoubtedly one of the state's most important future water projects, the circumstances and need for which are most thoroughly documented in the approved SWP, as well as in the Application.

Because no requestor was able to identify a justiciable interest that would be impacted by the change proposed in the Application, Commission rules do not support declaring any of them to be an "affected person." 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 the TCEQ rules, the District respectfully requests that their hearing requests each be denied and that the Application be granted.

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[39] Gilbert E. Kretzchmar and Texas Development Board, *Reservoir Site Protection Study*, Volume 370, 1-2, (2007), prepared by HDR, Freese & Nichols, Inc., and R. J. Brandes Co.

Respectfully submitted,

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ATTORNEYS FOR APPLICANT UPPER TRINITY REGIONAL WATER DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was delivered by hand delivery, facsimile, United States Postal Service, or by email to the persons listed in the attached service list on this, the 30th day of January, 2012.

MARTIN C. ROCHELLE

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101 E SAM RAYBURN DR STE 101
BONHAM TX 75418-4347

JOE MAX MCKELVEY
4905 COUNTY ROAD 1412
BOGATA TX 75417-7164

PATRICIA MCKELVEY
4905 COUNTY ROAD 1412
BOGATA TX 75417-7164

PUBLIC OFFICIALS - INTERESTED PERSON(S)

THE HONORABLE DERRELL HALL
COUNTY JUDGE, FANNIN COUNTY
101 E SAM RAYBURN DR STE 101
BONHAM TX 75418-4347

INTERESTED PERSON(S)

JAN HART BLACK
PRESIDENT, GREATER DALLAS CHAMBER
700 N PEARL ST STE 1200
DALLAS TX 75201-2824

VIRGINIA BLEVINS
PO BOX 129
JUSTIN TX 76247-0129

JOHNNY BRALEY
406 OAK ST
HONEY GROVE TX 75446-2152

TOMMY BROWN
586 COUNTY ROAD 3345
LADONIA TX 75449-3403

DAVID BRUNE
RR 1 BOX 154B
CROWELL TX 79227-9750

SAM BULLOCK
785 COUNTY ROAD 2670
TELEPHONE TX 75488-6833

LYNDAL BURNETT
206 E MAIN ST
LADONIA TX 75449-1003

GREG BUSH
PO BOX 348
REDWATER TX 75573-0348

MARY CALL
203 BONHAM ST
LADONIA TX 75449-1304

W P CAMERON
679 SISTER GROVE RD
VAN ALSTYNE TX 75495-2429

GENE CAREY
MAYOR
PO BOX 299002
LEWISVILLE TX 75029-9002

JANICE & MIKE CAYLOR
PO BOX 152
LADONIA TX 75449-0152

GARY W CHEATWOOD
3705 FARM ROAD 1487
BOGATA TX 75417-6156

RANDEL CHUMBLEY
504 REDNER ST
LADONIA TX 75449-1117

LYN CLANCY
ASSOC GEN COUNSEL, LCRA
PO BOX 220 H429
AUSTIN TX 78767-0220

BRENDA & LARRY COOK
3648 FM 2990
LADONIA TX 75449-3411

GARY & LORRAINE COTA
415 N BUSINESS HIGHWAY 78
BLUE RIDGE TX 75424-9728

DAVID COTHREN
1312 2ND ST
QUEEN CITY TX 75572-2349

JEAN COTHREN
1312 2ND ST
QUEEN CITY TX 75572-2349

DAVID CUNNINGHAM
627 COUNTY ROAD 3475
HONEY GROVE TX 75446-6600

DICKIE DALBY
3143 COUNTY ROAD 4315
DE KALB TX 75559-2815

CHERYL DAVENPORT
TOWN OF FLOWER MOUND
2121 CROSS TIMBERS RD
FLOWER MOUND TX 75028-2602

CHERYL DAVENPORT
2020 SAULS LN
DENTON TX 76209-2117

ROBERT S DAVIS
505 W MAIN ST
LADONIA TX 75449-1333

DONNA SCOTT DOCKERY
310 STONE RIDGE DR
SUNNYVALE TX 75182-2627

DONNA DOCKERY
310 STONE RIDGE DR
SUNNYVALE TX 75182-2627

JIMMY DOWELL
PO BOX 52
GOBER TX 75443-0052

RIC DUNBAR
1113 S STATE HIGHWAY 78
BONHAM TX 75418-9124

MICKEY DUNCAN
PO BOX 31
LADONIA TX 75449-0031

BLAKE ENGLISH
110 W HICKORY ST
DENTON TX 76201-4116

GARY DON ERWIN
2981 FM 904 N
PECAN GAP TX 75469-4017

RICHARD FIELDS
5698 FM 2990
LADONIA TX 75449-3415

TIM FISHER
ASSISTANT DIRECTOR OF WATER UTILITIES, CITY OF DENTON
901 TEXAS ST STE A
DENTON TX 76209-4354

DOUG FRANKLIN
100 OAK LN
LADONIA TX 75449-1454

LARRY D FRANKLIN
15924 E FM 1396
WINDOM TX 75492-3625

GEORGE FROST
408 WARD ST
MAUD TX 75567-4432

DON GAINES
561 COUNTY ROAD 4621
ANNONA TX 75550-4609

PETE GANIS
4053 FOREST LN
GARLAND TX 75042-6934

DAVE GEHALO
10101 E FM 1396
TELEPHONE TX 75488-6039

TOMMY GILBERT
835 COUNTY ROAD 2730
HONEY GROVE TX 75446-4204

GILBERT GOSSETT
661 COUNTY ROAD 2670
TELEPHONE TX 75488-6817

CYNDEE & PHIL HALEY
1596 COUNTY ROAD 4215
BONHAM TX 75418-9378

TOM HARPOOL
2222 HOUSTON PL
DENTON TX 76201-3700

MARY HARRIS
2317 APPLETON DR
DALLAS TX 75216-7417

DIANNE HELMS
4401 N INTERSTATE 35 UNIT 202
DENTON TX 76207-3432

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9412 TIMBERCREEK DR
BONHAM TX 75418-5138

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LEWISVILLE TX 75067-3524

MABEL HOLMES
15924 E FM 1396
WINDOM TX 75492-3625

MARY HORN
DENTON COUNTY JUDGE, DENTON COUNTY
110 W HICKORY ST
DENTON TX 76201-4116

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MAYOR, CITY OF LADONIA
PO BOX 5
LADONIA TX 75449-0005

LEON HURSE
PO BOX 121
LADONIA TX 75449-0121

JANET E JONES
3054 COUNTY ROAD 2730
HONEY GROVE TX 75446-4211

KENNETH JONES
3054 COUNTY ROAD 2730
HONEY GROVE TX 75446-4211

REBECCA KNIGHT
317 COUNTY ROAD 2950
DODD CITY TX 75438-3209

DEL KNOWLER
739 SEALS RD
BARTONVILLE TX 76226-6353

JERRY LANE
4517 CROWN RIDGE DR
PLANO TX 75024-5221

JIM LANG
2220 LOCKESLEY DR
FLOWER MOUND TX 75028-3571

MARGARET LAWS
5001 COUNTY ROAD 4806
LADONIA TX 75449-6006

LAURIE LONG
2708 LAKE FLOWER DR
FLOWER MOUND TX 75022-4380

LISA LYON
522 S EDMONDS LN STE 200
LEWISVILLE TX 75067-3524

MICHAEL MANN
2551 COUNTY ROAD 3640
LADONIA TX 75449-4410

KERRY D MARONEY
2500 BROOK AVE
WICHITA FALLS TX 76301-6105

DAVID MENDEZ
5530 FM 2990
LADONIA TX 75449-3414

KEVIN MERCER
1190 BONHAM PKWY
LANTANA TX 76226-6431

ERIC METZGER
904 HILLSIDE DR
COPPER CANYON TX 75077-8529

LAWRENCE MILLETT
PO BOX 37
GOBER TX 75443-0037

BLAKE MOORE
STATE REP LARRY PHIILIPS OFFICE
421 N CROCKETT ST
SHERMAN TX 75090-0019

MARK NEWHOUSE
BOIS D'ARC MUNICIPAL UTILITY DISTRICT
14101 E FM RD 1396
HONEY GROVE TX 75446

CHIP NICHOLSON
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STACEY NICHOLSON
NORTH HUNT WSC
PO BOX 1170
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DIR OF PUBLIC WORKS, TOWN OF FLOWER MOUND
2121 CROSS TIMBERS RD
FLOWER MOUND TX 75028-2602

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WEEKLY GAZETTE
PO BOX 165
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STATE REPRESENTATIVE MARY DENNY
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FLOWER MOUND TX 75028-1371

GENE RAIDEN
125 E 5TH ST
BONHAM TX 75418-4310

DAVID RYBORN
333 VALLEY VIEW LN
IRVING TX 75061-6024

WAYNE RYSER
16909 E FM 1396
WINDOM TX 75492-3627

CECILE SATIN
THE MESSENGER
1721 E SOUTHLAKE BLVD
SOUTHLAKE TX 76092-6440

ANGELA SCOTT
PO BOX 2886
SAINT LOUIS MO 63111-0086

EZRA & MARILYN SCOTT
985 COUNTY ROAD 3635
LADONIA TX 75449-4402

MARILYN J SCOTT
985 COUNTY ROAD 3635
LADONIA TX 75449-4402

MITCHELL WAYNE SCOTT
1213 ARP ST
COMMERCE TX 75428-2503

CHERYL SEILHAN
505 PARIS ST
LADONIA TX 75449-1027

SHIRLEY SHUMAKE
2012 COUNTY ROAD 4303
DE KALB TX 75559-5625

PAUL A SMITH
1246 COUNTY ROAD 3343
LADONIA TX 75449-3439

TRICIA STOLTENBERG
519 COUNTY ROAD 3370
LADONIA TX 75449-3608

PAUL STONE
709 LAKE BLUFF DR
FLOWER MOUND TX 75028-7219

JACK STRICKLAND
907 RUSH CREEK DR
ALLEN TX 75002-2310

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MICHAEL TEELING
716 CAMBRIDGE DR
RICHARDSON TX 75080-3106

SUE TEJML
400 WOODLAND DR
COPPER CANYON TX 75077-8501

JIM THOMPSON
PO BOX 1107
ATLANTA TX 75551-1107

CHRIS TORLEY
6618 RAINTREE PL
FLOWER MOUND TX 75022-6112

LARRY TRAYLOR
3053 COUNTY ROAD 4315
DE KALB TX 75559-2814

T JERVIS UNDERWOOD
930 CRYSTAL CV
OAK POINT TX 75068-2288

THOMAS VELIS
798 COUNTY ROAD 3245
WINDOM TX 75492-4402

HAPPY WALLACE
5920 FM 68
WOLFE CITY TX 75496-4846

HAPPY & JOETTA WALLACE
5920 FM 68
WOLFE CITY TX 75496-4846

SHANE WALLACE
PO BOX 32
GOBER TX 75443-0032

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COOPER TX 75432-3706

JEANNIE WEEKS
2500 STONEWALL ST STE 805
GREENVILLE TX 75401-4209

JOHN W WELCH
1588 COUNTY ROAD 2655
TELEPHONE TX 75488-6804

JOE WISHARD
10972 E FM 1550
LADONIA TX 75449-3618

H D WITCHER, JR
972 COUNTY ROAD 2705
TELEPHONE TX 75488-6066

STEPHEN WRIGHT
675 COUNTY ROAD 3395
LADONIA TX 75449-4200

JOHN YARBROUGH
3576 COUNTY ROAD 2765
HONEY GROVE TX 75446-5215

MIKE YARBROUGH
2325 COUNTY ROAD 2765
HONEY GROVE TX 75446-5210

ROD ZIELKE
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ADDISON TX 75001-4233