

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
**INTEROFFICE MEMORANDUM**

TO:  Chief Clerk

THRU:  Iliana Delgado, Team Leader  
Water Rights Permitting Team

FROM: Ron Ellis, Project Manager  
Water Rights Permitting Team

DATE: February 3, 2012

SUBJECT: Upper Trinity Regional Water District  
Docket # 2012-0065-WR  
WRPERM 5821  
CN600639272, RN104258199 & RN104259379  
Application No. 5821 for a Water Use Permit  
TWC §§11.121 & 11.085, Requiring Mailed and Published Notice  
North Sulphur River, Sulphur River Basin and Trinity River Basin  
Fannin, Collin, Cooke, Dallas, Denton, Grayson, and Wise Counties

The Executive Director received an application from the Upper Trinity Regional Water District seeking a Water Use Permit No. 5821 pursuant to Texas Water Code §11.121 and Texas Commission on Environmental Quality Rules 30 TAC §§295.1, *et seq.*

The application was received on September 2, 2003. The application was declared administratively complete and filed with the Office of the Chief Clerk on August 13, 2004. The notice of the application was filed with the Chief Clerk on May 12, 2005, and notice was subsequently mailed, re-mailed and published to the water right holders in the Sulphur and Trinity River Basins. Several requests for a contested case hearing were received.

Because this application was declared administratively complete after September 1, 1999, the rules in Chapter 55, Subchapter G, Section 55.250 - 55.256 apply. The Chief Clerk shall mail notice to the applicant, executive director, public interest counsel, and timely hearing requestors not later than 35 days prior to the agenda setting. Applicants, the public interest counsel, and the executive director shall file a response no later than 23 days before agenda, and the hearing requestors shall reply no later than nine days before agenda.

The application is now technically complete and the staff has recommended that the application be granted based on the analysis in the technical review memos.

Below is the caption for this application:

Consideration of the application by the **Upper Trinity Regional Water District** for new Water Use Permit No. 5821 to construct and maintain a dam and reservoir (Lake Ralph Hall) on the North Sulphur River, Sulphur River Basin, in **Fannin County** for in-place recreational purposes and to divert and use not to exceed 45,000 acre-feet of water per year from the perimeter of the proposed reservoir for municipal, industrial, and agricultural purposes. The Applicant also requests an authorization to transfer water from the Sulphur River Basin to the Trinity River Basin for use in portions of Collin, Cooke, Dallas, Denton, Fannin, Grayson, and Wise Counties within the Trinity and

Sulphur River Basins. The Commission will also consider requests for hearing or reconsideration, related responses and replies, and public comment. (James Aldredge, Ron Ellis)

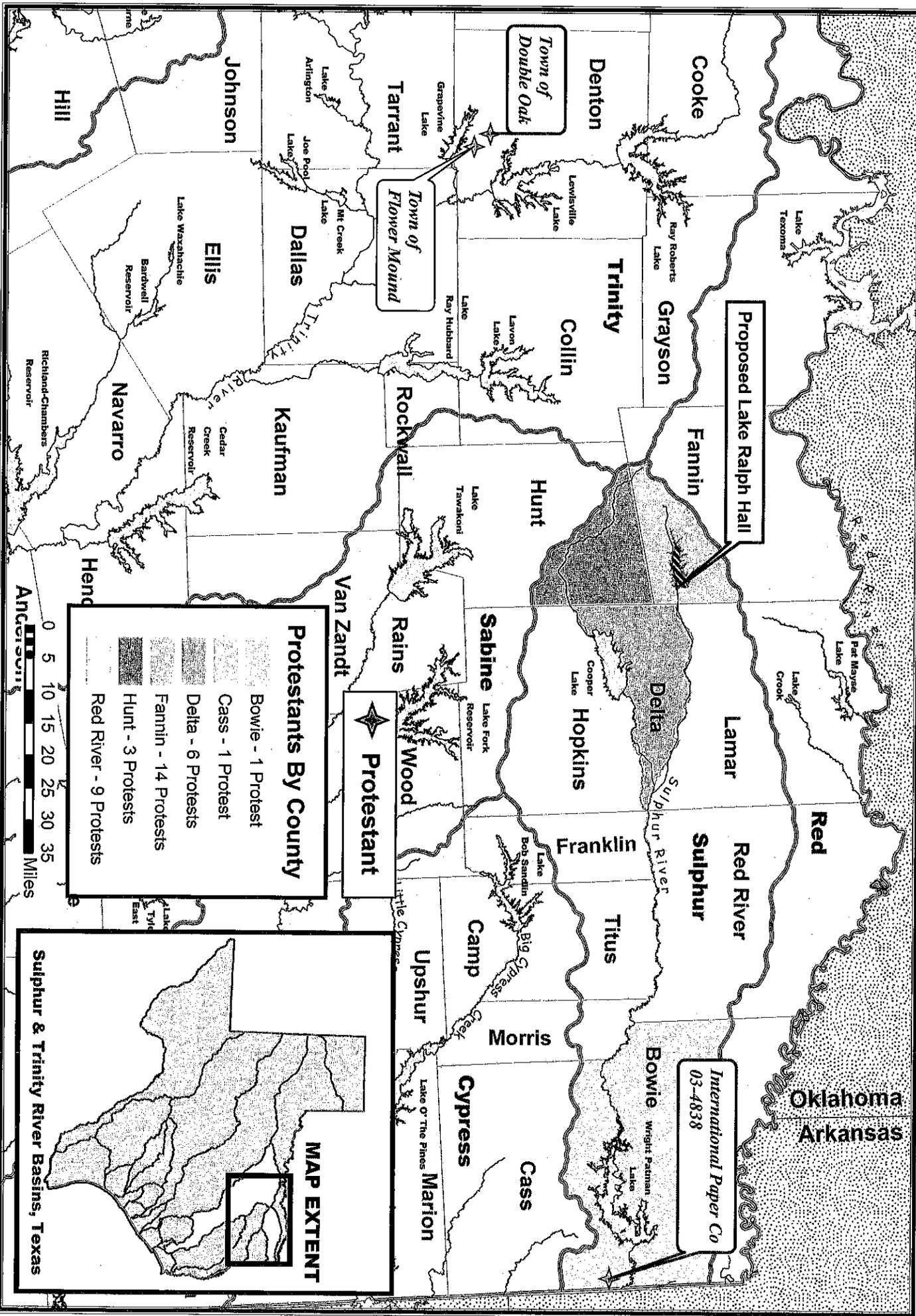


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Ron Ellis, Manager  
Water Rights Permitting and Availability Section

Enclosure

cc: Kellye Rila, TCEQ  
Kathy Alexander, TCEQ  
Iliana Delgado, TCEQ  
Stephen Densmore, TCEQ  
Chris Loft, TCEQ  
Stephen Mahr, TCEQ  
Dakus Geeslin, TCEQ  
Kristen Wang, TCEQ  
James Aldredge, TCEQ



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03-4838

Proposed Lake Ralph Hall

Town of Double Oak

Town of Flower Mound



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**NOTICE OF AN APPLICATION  
FOR A WATER USE PERMIT  
AND PUBLIC MEETINGS**

APPLICATION NO. 5821

**SUMMARY.** Upper Trinity Regional Water District (UTRWD or Applicant) has applied for a Water Use Permit to construct and maintain a reservoir (known as Lake Ralph Hall) on the North Sulphur River, Sulphur River Basin, Fannin County, Texas for in-place recreational purposes and divert and use not to exceed 45,000 acre-feet of water per year from Lake Ralph Hall for municipal, industrial, and agricultural purposes. Applicant requests to use the water in Collin, Cooke, Dallas, Denton, Fannin, Grayson, and Wise Counties within the Sulphur River Basin and Trinity River Basin. Because Applicant has requested an interbasin transfer of water, public meetings will be held in the basin of origin, the Sulphur River Basin, and the receiving basin, the Trinity River Basin. More information on the application and how to participate in the permitting process is given below.

The application was received on September 2, 2003. Additional fees and information were received on May 3, 2004, July 7, 2004, July 19, 2004, and August 6, 2004. The Executive Director reviewed the application and determined it to be administratively complete on August 13, 2004. The Executive Director has not completed its technical review of the application.

**PUBLIC COMMENT / PUBLIC MEETINGS.** The Texas Commission on Environmental Quality (TCEQ) will hold public meetings to receive comments on the application for an amendment filed by the applicant, Upper Trinity Regional Water District. The public meetings will consist of two parts, an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the Commissioners before reaching a decision on the application and no formal response will be made. During the Formal Comment Period, members of the public may state their comments into the official record. The Executive Director will summarize the formal comments and prepare a written response. The written response will be considered by the Commissioners in their decision-making process and upon request will be available to the public.

**Public Meetings are to be held:**

Monday, March 27, 2006 at 7:00pm  
Fannindel High School-Cafetorium  
610 Main Street  
Ladonia, Texas 75449

Tuesday, March 28, 2006 at 7:00pm  
City of Lewisville - Municipal Annex  
1197 West Main Street  
Lewisville, Texas 75067

Citizens are encouraged to submit written comments anytime during the meetings or by mail before the meetings to the Office of the Chief Clerk, TCEQ, MC 105, P.O. Box 13087, Austin, Texas, 78711-3087. If you need more information, please call the TCEQ Office of Public Assistance, Toll Free at 1-800-687-4040.

**APPLICATION.** Upper Trinity Regional Water District (UTRWD), Applicant, P.O. Drawer 305, Lewisville, Texas 75067, seeks a Water User Permit pursuant to Texas Water Code (TWC) §11.121 and §11.085 and Texas Commission on Environmental Quality (TCEQ) Rules 30 TAC §§ 295.1, et seq. Pursuant to 30 TAC §295.155, published and mailed notice of the application is being given to all of the water right holders of record in the Sulphur River Basin, basin of origin, and the Trinity River Basin, receiving basin.

Applicant seeks authorization to construct and maintain a dam and reservoir, known as Lake Ralph Hall, on the North Sulphur River, tributary of the Sulphur River, Sulphur River Basin in Fannin County. Applicant also seeks to divert and use not to exceed 45,000 acre-feet of water per year from one or more diversion points on the perimeter of Lake Ralph Hall for municipal, industrial, and agricultural purposes at a maximum combined diversion rate of 205 cfs (92,000 gpm). Applicant seeks to use the water within its service area in all or parts of Collin, Cooke, Dallas, Denton, Fannin, Grayson, and Wise Counties within the Trinity River Basin and Sulphur River Basin and also seeks a request for the interbasin transfer of water pursuant to TWC §11.085.

The proposed Lake Ralph Hall is located 22.5 miles in a southeast direction from City of Bonham and 4.8 miles in a northeast direction from City of Ladonia. Station 70+00 on the centerline of the proposed dam is S 32° W, 1,600 feet from the northeast corner of H. McMillian Survey Abstract No. 713, in Fannin County, Texas also being at 33.463° N Latitude, 95.901° W Longitude. The maximum capacity of the proposed Lake Ralph Hall will be 180,000 acre-feet of water with a surface area of 8,500 acres.

Applicant indicates that diversions from the reservoir may be "overdrafted" as a part of the system operation with existing district supplies from other basins to achieve maximum conservation of limited water resources.

To the extent that return flow exists, they will be returned to various streams in the Trinity River Basin and the Sulphur River Basin.

The Commission will review the application as submitted by the applicant and may or may not grant the application as requested.

Information relating to the contract price of the water to be transferred; a statement of each general category of proposed use of the water to be transferred, and a detailed description of the proposed

uses and users under each category; the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users; and the projected effect on user rates and fees for each class of ratepayers can be obtained without cost by submitting a written request to Larry N. Patterson, UTRWD, P.O. Drawer 305, Lewisville, Texas 75067 or by telephone at (972)219-1228, or by accessing the Applicant's website at [www.lakeralphhallinfo.com](http://www.lakeralphhallinfo.com).

**CONTESTED CASE HEARING.** The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**INFORMATION.** Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Council, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

Issued: January 31, 2006.

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## REVISED NOTICE OF AN APPLICATION FOR A WATER USE PERMIT AND PUBLIC MEETINGS

APPLICATION NO. 5821

**SUMMARY.** Upper Trinity Regional Water District (UTRWD or Applicant) has applied for a Water Use Permit to construct and maintain a reservoir (known as Lake Ralph Hall) on the North Sulphur River, Sulphur River Basin, Fannin County, Texas for in-place recreational purposes and divert and use not to exceed 45,000 acre-feet of water per year from Lake Ralph Hall for municipal, industrial, and agricultural purposes. Applicant requests to use the water in Collin, Cooke, Dallas, Denton, Fannin, Grayson, and Wise Counties within the Sulphur River Basin and Trinity River Basin. Because Applicant has requested an interbasin transfer of water, public meetings will be held in the basin of origin, the Sulphur River Basin, and the receiving basin, the Trinity River Basin. More information on the application and how to participate in the permitting process is given below.

The application was received on September 2, 2003. Additional fees and information were received on May 3, 2004, July 7, 2004, July 19, 2004, and August 6, 2004. The Executive Director reviewed the application and determined it to be administratively complete on August 13, 2004. The Executive Director has not completed its technical review of the application. The original notice was issued on January 31, 2006.

**PUBLIC COMMENT / PUBLIC MEETINGS.** The Texas Commission on Environmental Quality (TCEQ) will hold public meetings to receive comments on the application for an amendment filed by the applicant, Upper Trinity Regional Water District. The public meetings will consist of two parts, an Informal Discussion Period and a Formal Comment Period. During the Informal Discussion Period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the Commissioners before reaching a decision on the application and no formal response will be made. During the Formal Comment Period, members of the public may state their comments into the official record. The Executive Director will summarize the formal comments and prepare a written response. The written response will be considered by the Commissioners in their decision-making process and upon request will be available to the public.

**Public Meetings are to be held:**

On February 7, 2006, the applicant requested that the address for the public meeting, March 27, 2006, at Fannindel High School be revised. The address for the Fannindel High School incorrectly read as 610 Main Street, Ladonia, Texas 75449. The correct address is 601 Main Street.

Monday, March 27, 2006 at 7:00pm  
Fannindel High School-Cafetorium  
601 Main Street  
Ladonia, Texas 75449

Tuesday, March 28, 2006 at 7:00pm  
City of Lewisville - Municipal Annex  
1197 West Main Street  
Lewisville, Texas 75067

Citizens are encouraged to submit written comments anytime during the meetings or by mail before the meetings to the Office of the Chief Clerk, TCEQ, MC 105, P.O. Box 13087, Austin, Texas, 78711-3087. If you need more information, please call the TCEQ Office of Public Assistance, Toll Free at 1-800-687-4040.

**APPLICATION.** Upper Trinity Regional Water District (UTRWD), Applicant, P.O. Drawer 305, Lewisville, Texas 75067, seeks a Water User Permit pursuant to Texas Water Code (TWC) §11.121 and §11.085 and Texas Commission on Environmental Quality (TCEQ) Rules 30 TAC §§ 295.1, et seq. Pursuant to 30 TAC §295.155, published and mailed notice of the application is being given to all of the water right holders of record in the Sulphur River Basin, basin of origin, and the Trinity River Basin, receiving basin.

Applicant seeks authorization to construct and maintain a dam and reservoir, known as Lake Ralph Hall, on the North Sulphur River, tributary of the Sulphur River, Sulphur River Basin in Fannin County. Applicant also seeks to divert and use not to exceed 45,000 acre-feet of water per year from one or more diversion points on the perimeter of Lake Ralph Hall for municipal, industrial, and agricultural purposes at a maximum combined diversion rate of 205 cfs (92,000 gpm). Applicant seeks to use the water within its service area in all or parts of Collin, Cooke, Dallas, Denton, Fannin, Grayson, and Wise Counties within the Trinity River Basin and Sulphur River Basin and also seeks a request for the interbasin transfer of water pursuant to TWC §11.085.

The proposed Lake Ralph Hall is located 22.5 miles in a southeast direction from City of Bonham and 4.8 miles in a northeast direction from City of Ladonia. Station 70+00 on the centerline of the proposed dam is S 32° W, 1,600 feet from the northeast corner of H. McMillian Survey Abstract No. 713, in Fannin County, Texas also being at 33.463° N Latitude, 95.901° W Longitude. The maximum capacity of the proposed Lake Ralph Hall will be 180,000 acre-feet of water with a surface area of 8,500 acres.

Applicant indicates that diversions from the reservoir may be "overdrafted" as a part of the system operation with existing district supplies from other basins to achieve maximum conservation of limited water resources.

To the extent that return flow exists, they will be returned to various streams in the Trinity River Basin and the Sulphur River Basin.

The Commission will review the application as submitted by the applicant and may or may not grant the application as requested.

Information relating to the contract price of the water to be transferred; a statement of each general category of proposed use of the water to be transferred, and a detailed description of the proposed uses and users under each category; the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users; and the projected effect on user rates and fees for each class of ratepayers can be obtained without cost by submitting a written request to Larry N. Patterson, UTRWD, P.O. Drawer 305, Lewisville, Texas 75067 or by telephone at (972)219-1228, or by accessing the Applicant's website at [www.lakeralphhallinfo.com](http://www.lakeralphhallinfo.com).

**CONTESTED CASE HEARING.** The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

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Issued: February 8, 2006

WATER USE PERMIT

Permit No. 5821

Type §§ 11.121, 11.085

Permittee: Upper Trinity Regional  
Water District

Address: P.O. Drawer 305  
Lewisville, Texas 75067

Filed: August 13, 2004

Granted:

Purposes: Municipal, Industrial,  
Agricultural, and  
Recreation

Counties: Fannin, Collin, Cooke,  
Dallas, Denton, Grayson,  
and Wise

Watercourse: North Sulphur River,  
Tributary of the  
Sulphur River

Watershed: Sulphur and Trinity River  
Basins

WHEREAS, Upper Trinity Regional Water District (UTRWD, Applicant or Permittee) applied for a water use permit to construct and maintain a dam and reservoir (Lake Ralph Hall) with a maximum capacity of 180,000 acre-feet of water and a surface area of approximately 8,500 acres on the North Sulphur River, tributary of the Sulphur River, Sulphur River Basin in Fannin County for recreation purposes; and

WHEREAS, Applicant seeks to divert and use not to exceed 45,000 acre-feet of water per year from the perimeter of Lake Ralph Hall for municipal, industrial, and agricultural purposes at a maximum combined diversion rate of 205 cfs (92,000 gpm); and

WHEREAS, Applicant indicates that diversions from the reservoir may be "overdrafted" as a part of the system operation with existing UTRWD supplies from other basins to achieve maximum conservation of limited water resources; and

WHEREAS, Applicant indicates that of the 45,000 acre-feet of water per year requested, 34,082 acre-feet of water per year is available on a firm basis; and

WHEREAS, Applicant seeks to use the water within its service area in all or parts of Collin, Cooke, Dallas, Denton, Fannin, Grayson, and Wise Counties and also seeks

authorization for the interbasin transfer of water to those counties in the Trinity River Basin pursuant to Texas Water Code (TWC) § 11.085; and

WHEREAS, the proposed Lake Ralph Hall is located 22.5 miles in a southeast direction from City of Bonham and 4.8 miles in a northeast direction from City of Ladonia. Station 70+00 on the centerline of the proposed dam is S 32° W, 1,600 feet from the northeast corner of H. McMillian Survey, Abstract No. 713, in Fannin County, Texas also being at 33.463° N Latitude, 95.901° W Longitude; and

WHEREAS, to the extent that return flows exist, they will be returned to various streams in the Trinity River Basin and the Sulphur River Basin; and

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

WHEREAS, Applicant submitted the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall*, which was accepted and approved by the Executive Director; and

WHEREAS, Applicant submitted the *Lake Ralph Hall Accounting Plan*, which was accepted and approved by the Executive Director; and

WHEREAS, the Executive Director performed a water availability analysis and determined that 34,082 acre-feet of water per year is available on a firm basis from the proposed reservoir; and

WHEREAS, the Executive Director recommends that special conditions be included in the permit to protect instream uses, water quality conditions, and senior and superior water rights; and

WHEREAS, notice of the application was mailed and published, and public meetings were held on March 27, 2006 and March 28, 2006; and

WHEREAS, numerous requests for a contested case hearing were received for this application; and

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

NOW, THEREFORE, this Water Use Permit No. 5821 is issued to Upper Trinity Regional Water District subject to the following terms and conditions:

1. IMPOUNDMENT

Permittee is authorized to construct and maintain a dam and reservoir (Lake Ralph Hall) with a maximum capacity of 180,000 acre-feet of water on the North

Sulphur River, tributary of the Sulphur River, Sulphur River Basin in Fannin County. Station 70+00 on the centerline of the dam will be located S 32° W, 1,600 feet from the northeast corner of H. McMillian Survey, Abstract No. 713 in Fannin County, at 33.463° N Latitude, 95.901° W Longitude, 22.5 miles in a southeast direction from City of Bonham, and 4.8 miles in a northeast direction from City of Ladonia in Fannin County, Texas.

2. USE

- A. Permittee is authorized to use the impounded water for recreation purposes.
- B. Permittee is authorized to divert and use not to exceed 45,000 acre-feet of water per year, of which 34,082 acre-feet of water per year is available on a firm basis, for municipal, industrial, and agricultural purposes.
- C. Permittee is authorized an interbasin transfer to use the authorized water within its service area in all or parts of Fannin, Collin, Cooke, Dallas, Denton, Grayson, and Wise Counties within the Sulphur and Trinity River Basins.

3. DIVERSION

- A. Permittee is authorized to divert the authorized water from any point on the perimeter of Lake Ralph Hall.
- B. Permittee is authorized to divert the authorized water at a maximum combined diversion rate of 205 cfs (92,000 gpm).

4. TIME PRIORITY

The time priority for this right is August 13, 2004.

5. CONSERVATION

Permittee shall implement water conservation plans that provide for the utilization of these practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this permit, including any contract extension or renewal, each successive wholesale customer develop and implement conservation measures that will result in the highest practicable levels of water conservation and efficiency in order to comply with TWC § 11.085 (1)(2). If Permittee authorizes the resale of water by a customer, then the contract for resale must have water conservation

requirements so that each successive wholesale customer in the resale of the water will be required to implement water conservation measures.

6. SPECIAL CONDITIONS

- A. Permittee shall only impound and divert water authorized by this permit in accordance with the most recently approved *Lake Ralph Hall Accounting Plan*. Permittee shall maintain said plan in electronic format and make the data available to the Executive Director upon request. Any modifications to the *Lake Ralph Hall Accounting Plan* shall be approved by the Executive Director. Only such modification that changes the permit terms must be in the form of an amendment to the permit. Should Permittee fail to maintain the accounting plan or notify the Executive Director of any modifications to the plan, Permittee shall immediately cease impoundments and diversions authorized in Paragraph 1. IMPOUNDMENT and Paragraph 2. USE and either apply to amend the permit, or voluntarily forfeit the permit. If Permittee fails to amend the accounting plan or forfeit the permit, the Commission shall be notified immediately by Permittee upon modification of the accounting plan and provided with the appropriate documents effectuating such changes.
- B. All mitigation plans and monitoring required herein shall comply with conditions set forth in 33 United States Code, § 1341, commonly known as the federal Clean Water Act (CWA) § 401 and Title 30 TAC § 279. Mitigation and monitoring plans shall also comply with § 404 of the CWA.
- C. Following deliberate impoundment of water in Lake Ralph Hall to elevation 510 feet mean sea level (MSL), Permittee shall complete and maintain the restored channel mitigation area with stored water released from Lake Ralph Hall as described in the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall (revised March 18, 2010)* and documented in the *Lake Ralph Hall Accounting Plan*. Prior to operation of the recirculation pump system in the restored channel mitigation area, Permittee shall obtain the appropriate authorizations under § 11.042 of the Texas Water Code.
- D. As identified in the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall*, Permittee shall construct approximately 14,500 linear feet of riparian habitat along a segment of the abandoned channel of the original North Sulphur River (the restored channel mitigation area) located on the south bank of the existing river channel immediately downstream of the proposed dam for Lake Ralph Hall.
- E. Impoundment of water and diversions under this permit are contingent upon commencement of construction of the approved *Conceptual Design*

and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall. Modifications or changes to this design must be approved by the Executive Director. Only such modification that changes the permit terms must be in the form of an amendment to the permit.

- F. Permittee shall install flow measurement devices to measure flow associated with the recirculation pump system identified in the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall*.
- G. Permittee shall install multiple water quality and water level logger instrumentation in the deeper pool habitats, as identified in the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall*, in the restored channel mitigation area to continuously monitor dissolved oxygen, temperature, and water level within the pools. Permittee shall connect the monitoring instruments to a supervisory control and data acquisition (SCADA) system to detect a measurement below the *Texas Surface Water Quality Standards* (Title 30 Texas Administrative Code (TAC) § 307) for Segment 0305 for a period of greater than 24 hours or if the water surface in the pools drops more than one foot below its normal level.
- H. In the event that the above mentioned water level and/or water quality parameters within the restored channel mitigation area drop below the *Water Quality Standards* for Segment 0305 for a period greater than 24 hours, Permittee shall release water from Lake Ralph Hall, and/or utilize the recirculation pump system to provide flow through the mitigation area in order to restore the water level or help ensure compliance with the *Water Quality Standards*.
- I. Upon completion of the construction and enhancement of the restored channel mitigation area, Permittee shall establish and maintain an appropriate fish community representative of the aquatic life use designation for Segment 0305 of the *Texas Surface Water Quality Standards* (Title 30 TAC § 307). If available, the initial fish stocking shall be composed of, at a minimum, fish species listed in the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall*. Permittee shall obtain the fish to be stocked in the restored channel from local sources if available.
- J. Permittee shall visit the restored channel mitigation area at a minimum of once per month for a period of five years following deliberate impoundment of water in Lake Ralph Hall and completion of the mitigation area to inspect and observe the condition of the mitigation area and take any appropriate action, such as initiate reservoir releases or engage the recirculation pump system, so as to ensure compliance with the

*Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall.*

- K. In consultation with the Executive Director, Permittee shall conduct monitoring of the restored channel mitigation area twice a year for a period of five years following deliberate impoundment of water in Lake Ralph Hall and completion of the mitigation area. Monitoring shall include discharge measurements, assessment of fish and macroinvertebrate communities, physical habitat assessment, and documenting survival success of the planted vegetation within the restored channel riparian area. All aquatic biological monitoring and physical habitat assessments shall take place in the index period (March 15 - October 15) with at least one of the twice a year monitoring events taking place in the critical period (July 1 - September 15). Aquatic biological monitoring and habitat characterization shall follow TCEQ protocols set forth in the *Surface Water Quality Monitoring Procedures, Volume 2: Methods for Collecting and Analyzing Biological Community and Habitat Data.* (TCEQ 2005).
- L. Permittee shall submit a report to the Executive Director every two years summarizing the twice a year monitoring activities in Special Condition M. Permittee shall also submit a final report at the end of the five-year monitoring period summarizing the monitoring efforts. The report shall include an assessment of the fish and macroinvertebrate communities and the biological metric scoring criteria used to assess aquatic life uses. In the event that aquatic life is not meeting the water quality standards for Segment 0305, the report shall identify and outline remedial management strategies to be implemented to meet the designated aquatic life use.
- M. Permittee shall establish and maintain a riparian buffer zone of permanent vegetation around the perimeter of the reservoir averaging at least 50 feet in width with the exception of reasonable access areas and the area of the dam and spillway. Permittee shall also establish and maintain riparian buffer zones 25 to 50 feet wide at or below elevation 560 feet MSL along Bear Creek, Brushy Creek, Pickle Creek, Davis Creek, Leggets Branch, Bralley Pool Creek, Merrill Creek, the North Sulphur River, and along unnamed tributaries within the area of the reservoir project. The buffer zone shall be planted with native vegetation as necessary to ensure complete coverage at maturity.
- N. Permittee shall implement measures to minimize impacts to aquatic resources due to entrainment or impingement including, but not limited to, the installation of screens at the diversion facilities.
- O. Permittee shall install and maintain measuring devices which account for, within 5% accuracy, the quantity of water diverted from the points authorized above in Paragraph 3. DIVERSION and maintain measurement

records. Permittee shall allow representatives of the TCEQ reasonable access to the property to inspect the measuring device and records.

7. TIME LIMITATIONS

- A. Construction of the dam and reservoir shall be in accordance with plans approved by the Executive Director. Construction of the dam without final approval of the construction plans is a violation of this authorization.
- B. Construction shall begin within two years of issuance of this permit and be completed within ten years of the issuance of this permit, unless Permittee applies for and is subsequently granted an extension of time before the expiration of these time limitations.

This water use permit is issued subject to all superior and senior water rights in the Sulphur River Basin.

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

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

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

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

ISSUED:

**Texas Commission on Environmental Quality**  
INTEROFFICE MEMORANDUM

**TO:** Kathy Hopkins  
Water Rights Permitting Team

**DATE:** July 22, 2004

**FROM:** Warren D. Samuelson, P. E.  
Dam Safety Program, MC-174

**SUBJECT:** Upper Trinity Regional Water District, Application to construct and maintain a dam and reservoir, North Sulphur River, Sulphur River Basin, Fannin County.

The applicant seeks authorization to construct and maintain a reservoir (Ralph Hall Lake) on North Sulphur River in Fannin County. The proposed reservoir will have a capacity of 180,000 acre-feet and a surface area of 8,500 acres. The reservoir will be used for municipal, industrial, and agricultural purposes.

A hydrologic and hydraulic report and a geological characteristics report were submitted by letter of May 3, 2004. The engineer, RJ Brandes Company has evaluated the proposed dam and spillways. The dam and spillways were found to pass 100% of the probable maximum flood (PMF) as required in Chapter 299. The geologist, Chiang, Patel & Yerby, Inc., has determined that there are no unusual or adverse conditions at the proposed dam location that would prohibit construction of the dam.

It is recommended that the permit include the following language:

**TIME LIMITATIONS**

- (a) Construction of the dam for Ralph Hall Lake must be in accordance with plans approved by the Executive Director and must begin within two years of issuance of this permit and be completed within ten years of issuance of the permit.
- (b) Failure to commence and/or complete construction of the proposed dam within the period stated above shall cause the authorization for use of the reservoir to expire and become null and void without further Commission consideration unless Owners apply for an extension of time to commence and/or complete construction prior to the deadline for commence and completion, and the application is subsequently granted.

  
Warren D. Samuelson, P. E.  
Dam Safety Program

**RECEIVED**

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WATER RIGHTS PER

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Ronald L. Ellis, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section

**Date:** February 15, 2011

**Thru:** Kathy Alexander, Technical Specialist  
Water Rights Permitting and Availability Section

**Thru:** Stephen Densmore, Team Leader  
Surface Water Availability & Interstate Compacts Team

**From:** Steven Mahr, Hydrologist  
Surface Water Availability & Interstate Compacts Team

**Subject:** Upper Trinity Regional Water District  
WRPERM 5821  
CN600639272  
North Sulphur River, Sulphur River Basin  
Fannin County

## Water Availability Analysis

### Application Summary

Upper Trinity Regional Water District (UTRWD) seeks authorization to construct and maintain a dam and reservoir, Lake Ralph Hall (Lake), with a maximum capacity of 180,000 acre-feet of water and a surface area of 8,500 acres on the North Sulphur River, tributary of the Sulphur River, Sulphur River Basin, Fannin County, Texas, for in-place recreational purposes and to divert and use not to exceed 45,000 acre-feet of water per year from the Lake at a maximum diversion rate of 205 cfs (92,000 gpm) for municipal, industrial, and agricultural purposes. UTRWD requests an interbasin transfer (IBT) of water from the Sulphur River Basin to the Trinity River Basin. UTRWD requests authorization to use the water in Collin, Cooke, Dallas, Denton, Fannin, Grayson, and Wise Counties. UTRWD also indicates that the reservoir may be overdrafted as part of a system operation with existing district supplies.

### Water Availability Analysis

Resource Protection staff did not recommend flow requirements for this application. However, they did recommend special conditions requiring maintenance of a downstream mitigation area based on the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall, revised March 18, 2010*.

Of the 45,000 acre-feet diversion request, UTRWD indicates that 34,082 acre-feet will be available on a firm basis, while the remaining 10,918 acre-feet will be available on a

less than firm basis, when the reservoir stage is above a trigger level to be determined by demands on firm water. UTRWD further indicates that the mitigation area would be maintained with firm water supplies.

The Water Rights Analysis Package (WRAP) simulates management of the water resources of a river basin. TCEQ uses WRAP in the evaluation of water right permit applications using priority-based water allocation. WRAP is a generalized simulation model for application to any river basin, and input datasets must be developed for the particular river basin of concern. The TCEQ developed water availability models (WAMs) for Texas' river basins that include geographical information, water right information, naturalized flows, evaporation rates, and specific management assumptions. Hydrology staff operates WRAP to evaluate water rights applications and protects existing water rights using the prior appropriation doctrine.

Staff modeled this application using the Full Authorization Sulphur Basin WAM, where all water rights use their maximum authorizations and return flows are not included. The priority date of this application is August 13, 2004. Staff first used the WAM Full Authorization Simulation to evaluate the firm yield request. The simulation results indicate that 34,082 acre-feet of water would be available 100 percent of the time. Staff then used the same simulation for the full requested diversion of 45,000 acre-feet, which includes 10,918 acre-feet of less than firm water. The simulation results indicate that 100 percent of the total annual demand of 45,000 acre-feet would be met in 95 percent of the years, and 75 percent of the monthly demand would be met in 97 percent of the months.

The applicant provided an accounting plan, Lake Ralph Hall Accounting Plan, dated March 2, 2010, to track diversions from the reservoir and firm water supplied to the mitigation area. This accounting plan includes preliminary stage trigger levels for less than firm water. Staff reviewed the accounting plan and found it adequate.

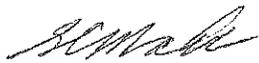
Pursuant to 30 TAC §297.42 (d), staff may, on a case by case basis, recommend granting a municipal water right that is less than firm. In this case, the accounting plan includes a trigger level that defines when less than firm water may be diverted. The accounting plan will control and track diversions of both firm and non-firm water to ensure that firm demands are met. Therefore, staff believes that the availability of less than firm water is viable for the intended purposes.

Reviews of IBT requests are conducted in accordance with §11.085 of the Texas Water Code and TCEQ rules regarding IBTs. This application requests a new appropriation of water and the priority date of the new appropriation is junior to all existing water rights in the Sulphur River Basin at the time the application was filed. Because the priority date for the new appropriation and the IBT are the same, any IBT or new appropriation granted by this application will be junior to all basin water rights in existence on the filing date. Therefore, the IBT does not impact senior water rights any more than the new appropriation does.

## Conclusion

Hydrology staff can support granting the application provided the permit includes Resource Protection staff's recommendations and the following special conditions:

1. Permittee shall only impound and divert water authorized by this permit in accordance with the most recently approved *Lake Ralph Hall Accounting Plan*. Permittee shall maintain said plan in electronic format and make the data available to the Executive Director upon request. Any modifications to the *Lake Ralph Hall Accounting Plan* shall be approved by the Executive Director. Only such modifications that change the permit terms must be in the form of an amendment to the permit. Should Permittee fail to maintain the accounting plan or notify the Executive Director of any modifications to the plan, Permittee shall immediately cease impoundments and diversions authorized in Paragraph 1. IMPOUNDMENT and Paragraph 2. USE, and either apply to amend the permit, or voluntarily forfeit the permit. If Permittee fails to amend the accounting plan or forfeit the permit, the Commission shall be notified immediately by Permittee upon modification of the accounting plan and provided with the appropriate documents effectuating such changes.
2. Permittee shall maintain the downstream mitigation area with stored water released from Lake Ralph Hall as described in the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall (revised March 18, 2010)* and documented in the *Lake Ralph Hall Accounting Plan*. Prior to construction and operation of the restored channel mitigation area, Permittee shall obtain the appropriate authorizations under §11.042 of the Texas Water Code.



Steven Mahr, Hydrologist

## Hydrology Unit Analysis Fact Sheet

Applicant: Upper Trinity Regional Water District Basin: Sulphur  
Water Right: PERM 5821 County: Fannin  
Stream: North Sulphur River Drainage Area: 102.74 sq. miles  
Requested Amount: 45,000 acre-feet

### Changes to RUN 3:

Changes to \*.DAT file:

UC HALL 0.0730 0.0650 0.0590 0.0850 0.0690 0.0880  
UC 0.1230 0.1470 0.1130 0.0870 0.0520 0.0390

CP158211 B10 7 A70 0

WR158211 45000 HALL20040813 1 15821F 15821F  
WS158211 180000

** ELEVATION	460	470	480	490	500	510	520	530	540	550	560	564
SV158211	0	57	397	1027	2357	7521	21849	47989	90104	152630	238693	280506
SA	0	17.9	49.6	79.1	208	941	2003	3307	5189	7345	9914	10985

Changes to \*.DIS file:

FD158211 B10 0  
WP158211 102.74

Remarks: Resource Protection Staff did not recommend streamflow restrictions for this application.



Steven Mahr, Hydrologist

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

To: Ron Ellis, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting & Availability Section

Date: February 15, 2011

Through: *CL* Chris Loft, Team Leader  
*2/15/11* Resource Protection Team  
Water Rights Permitting & Availability Section

*GE* Gregg Easley, Aquatic Scientist  
*2/15/11* Resource Protection Team  
Water Rights Permitting & Availability Section

From: *DG* Dakus Geeslin, Aquatic Scientist  
*2/15/11* Resource Protection Team  
Water Rights Permitting & Availability Section

Subject: Upper Trinity Regional Water District  
WRPERM 5821  
CN600639272  
Water Right Application No. 5821  
Ralph Hall Reservoir, Collin, Cooke, Dallas, Denton, Fannin, and Grayson  
Counties

Environmental reviews of water right applications are conducted in accordance with §11.042, §11.147, §11.1491, §11.150, and §11.152 of the Texas Water Code and with TCEQ administrative rules which include 30 TAC §297.53 through §297.56. These statutes and rules require the TCEQ to consider the possible impacts of the granting of a water right on fish and wildlife habitat, water quality, and instream uses associated with the affected body of water. Possible impacts to bays and estuaries are also addressed.

### ENVIRONMENTAL ANALYSIS

**Application Summary:** Applicant seeks authorization to construct and maintain a dam and reservoir (known as Lake Ralph Hall) on the North Sulphur River, tributary of the Sulphur River, Sulphur River Basin in Fannin County. The proposed reservoir will have a maximum capacity of 180,000 acre-feet of water with a surface area of 8,500 acres. Applicant also seeks to divert and use not to exceed 45,000 acre-feet of water per year from one or more diversion points on the perimeter of the proposed reservoir for municipal, industrial, and agricultural purposes at a maximum combined diversion rate of 205 cfs (92,000 gpm). Water diverted will be used in all or parts of Collin, Cooke, Dallas, Denton, Fannin, Grayson, and Wise Counties within the Trinity and Sulphur River Basins.

Applicant seeks an interbasin transfer (IBT) from the Sulphur to the Trinity River Basin. Applicant indicates that the reservoir may be overdrafted as a part of a system operation with existing district supplies from other basins to achieve maximum conservation of limited water resources.

## INSTREAM USES

**Aquatic and Riparian Habitats:** According to the *Handbook of Texas Online* (Ellis et al 1997-2001), the North Sulphur River rises in southeastern Fannin County, a mile southwest of Gober, TX and runs east and southeast for a total of 54 miles, passing into Delta County just north of Pecan Gap, TX, then briefly into Lamar County, then forming the boundary line of Delta and Lamar counties, before reaching its mouth on the South Sulphur River two miles south of Cunningham, TX in Lamar County. Over ninety percent of the watershed is used for agricultural purposes, making the North Sulphur River Watershed the most intensively developed watershed in the Sulphur River Basin (Sulphur River Basin Authority 2007). However, a portion of the river's riparian habitat remains as forested land. This watershed is located in the northern reaches of the Texas Blackland Prairie Ecoregion. Major tributaries draining the North Sulphur River Watershed include Auds Creek, Maxwell Creek, Cane Creek, Rowdy Creek, Ghost Creek, and Baker Creek. The vegetation of the watershed is marked by a transition from the extensive agricultural clearing of the western portion of the basin to the more forested eastern portion.

The North Sulphur River traverses flat to rolling terrain, surfaced by shallow to deep expansive clays and moderately shallow to deep sandy and clay loams that support oaks, junipers, conifers, and native grasses. In the late 1920s the river was channelized to improve drainage for agricultural lands. The original channelization project created a straight channel approximately 40 feet wide and 10 feet deep. Approximately 28 river miles were straightened to create an earthen channel with little to no river bank vegetation (University of Texas 2009). This modification significantly increased the river channel's gradient. The steeper river gradient, compounded with the erosive nature of the shale substrate within the river channel, has led to a highly degraded river channel. The current river channel is approximately 200-300 feet wide and up to 80 feet deep and remains subject to significant erosion after rain events because of this channelization. Ordinarily Resource Protection staff recommends instream flow restrictions based on a modified Lyon's method or more site-specific approaches such as an instream flow study. The severely degraded channel of the North Sulphur River does not lend itself to properly applying either type of evaluation. Consequently, Resource Protection staff believes that recommending flow releases, based on either the modified Lyon's method or site specific information, would provide minimal benefit to the instream uses and the aquatic ecosystem in this highly degraded section of the North Sulphur River.

The North Sulphur River is designated as Segment 0305. The fish assemblage in Segment 0305 is composed of various trophic groups and numerous species belonging to big river fish guilds. Most of these fish are also classified as generalist species, as they are well suited to a variety of habitats and flow regimes. A use-attainability analysis of Segment 0305 conducted by the TCEQ documented the presence of 19 fish species collected during multiple sampling events at four routine Surface Water Quality Monitoring (SWQM) sites (TCEQ 2009). Of these species, seven are classified as tolerant by Linam and Kleinsasser (1998). None of the fish collected are currently listed as State or Federal threatened or endangered species. The impoundment of the

North Sulphur River and transformation from a riverine ecosystem to a lacustrine ecosystem will have effects on the fish community (Jackson and Marmulla 2001). Species richness and relative abundance are expected to change over time. Typically warm water reservoir fishes such as basses, sunfishes, and catfishes will become the dominant species.

The proposed reservoir will inundate approximately 600,000 linear feet of streams constituting 250 acres and an additional 72 acres of open water area within the proposed project area.

### PROPOSED MITIGATION

The applicant has proposed a mitigation plan titled *Draft Mitigation Plan for Impacts to Aquatic Resources and Terrestrial Habitats for Lake Ralph Hall* dated October 26, 2006 (UTRWD 2006a) as part of the application for Clean Water Act § 404 authorization submitted to the United States Army Corps of Engineers. The goal of this mitigation plan is to use a watershed-based approach to provide compensation for impacts to existing functions of the aquatic resources and terrestrial habitats impacted by the construction of the proposed water supply (UTRWD 2006b).

The draft mitigation plan (UTRWD 2006a) includes a list of qualitatively and/or quantitatively measurable outcomes of the proposed mitigation plan such as:

1. Development of contiguous riparian buffer zones along tributaries to filter potential pollutants carried in storm runoff from the watershed to provide protection of water quality within Lake Ralph Hall.
2. Improvement of vegetative cover diversity by mitigation plantings to connect existing isolated habitat areas and provide higher quality wildlife habitat and corridors, and to promote erosion control and water quality improvement of watershed runoff.
3. Restoration of hydrology to floodplain areas along tributary channels and the upper reaches of the North Sulphur River.
4. Restoration of hydrology to approximately 14,500 linear feet of abandoned North Sulphur River channel downstream of the Lake Ralph Hall dam, including reconstruction of the channel segment formerly filled by siltation and agricultural practices.
5. Development of native woody vegetation along approximately 14,500 linear feet of the former North Sulphur River channel downstream of the Lake Ralph Hall dam to establish a minimum 50-foot wide riparian buffer zone along each bank.
6. Establishment of native vegetation to provide erosion protection for bank stability along tributary channels and reaches of the North Sulphur River within the upper end of the Lake Ralph Hall.
7. Improvement of conditions within tributary and North Sulphur River channels upstream of Lake Ralph Hall conservation pool through the development of grade control to minimize erosive channel downcutting, increased bottom topography, and increased available cover for epifaunal substrate with the addition of cover elements such as large woody debris.

8. Improvements of bank stability along tributary and North Sulphur River channels upstream of Lake Ralph Hall conservation pool through establishment of native vegetative protection within the project area.

The *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall* (UTRWD 2010) describes the restored channel mitigation area:

“One of the elements of the draft mitigation plan involves the creation of three miles of linear riparian habitat along a segment of the abandoned channel of the original North Sulphur River located on the south bank of the existing river channel immediately downstream of the proposed dam for Lake Ralph Hall. The intent is to restore this segment of the original river channel in a manner that emulates the habitat and ecological functions of the natural channel of the North Sulphur River, with similar hydrologic and hydraulic characteristics primarily supported with natural inflows from the upstream watershed. Stored water from Lake Ralph Hall will be used to augment the natural inflows during dry periods when the natural inflows are insufficient to maintain the habitat.”

The creation of the three miles (approximately 14,500 linear feet) of linear riparian habitat is being proposed as the primary component of the mitigation. The mitigation plan is intended as a substitute for passing inflows to the reservoir in specified flow volumes for purposes of maintaining instream uses in the existing channel of the North Sulphur River downstream of the reservoir. Given the degraded instream habitat conditions of the North Sulphur River, Resource Protection staff agrees that the proposed mitigation plan (UTRWD 2006a) contained within the 404 Application (UTRWD 2006b) and the mitigation area design submitted by the applicant (UTRWD 2010) provides more long-term benefits to the North Sulphur River. Therefore, instream staff considers the mitigation alternative adequate.

**Recreational Uses:** According to *An Analysis of Texas Waterways* (TPWD 1979), the water in the North Sulphur River flows through heavily timbered woods where little or no current is present and is generally muddy due to channelization. No rapids are present. According to the Proctor Museum website, there are Pleistocene fossil deposits (various mammoth, sloth, bison, horse, etc.) and Cretaceous fossil deposits (Mosasaur {a marine reptile}, *Exogyra ponderosa* {a large marine oyster}) within the bed and banks of the North Sulphur River that are frequented by professional and novice fossil collectors. Lake Ralph Hall can be expected to provide various types of recreation in the forms of boating, fishing, swimming, and birding.

**Water Quality:** Based on the *Atlas of Texas Surface Waters* (TCEQ 2004), the North Sulphur River is designated as Segment 0305. According to the *Texas Surface Water Quality Standards* (30 TAC Chapter 307), the designated uses of Segment 0305 include high aquatic life use (ALU) and contact recreation. In the 2006 303(d) List of Impaired Water Bodies (TCEQ 2006), the upper 23 miles of the segment did not meet high ALU based on sampling data for fish and benthic macroinvertebrate communities. This listing was continued on the 2008 303(d) List (TCEQ 2008). Segment 0305 is not listed for depressed dissolved oxygen. The 2008 integrated assessment (TCEQ 2008) also noted that there was a habitat concern for the North Sulphur River, most likely as a result of the prior channelization. Water quality field measurements indicate that the North Sulphur River tends to be turbid, slightly alkaline, well oxygenated, and of moderate to high conductivity, with moderate to high nutrient concentrations in terms of the

amount needed for plant growth under favorable conditions (Sulphur River Basin Authority 2007). The river is intermittent in its upper reaches but is classified as perennial according to the *Texas Surface Water Quality Standards* (30 TAC Chapter 307). Adherence to the special conditions listed below, which include completion of the restored channel mitigation area and compliance with conditions set forth in the 401 Water Quality Certification, should provide protection for water quality in Segment 0305 and in Lake Ralph Hall.

**Bay and Estuary Freshwater Inflows:** Freshwater inflows are critical for maintaining the historical productivity of bays and estuaries along the Gulf Coast. The proposed project site is located near the Texas and Oklahoma border and is significantly more than 200 river miles from the Gulf Coast. The receiving estuaries are located in Louisiana. The cumulative effects of all diversions and impoundments on the Sulphur River Basin and its receiving estuary in Louisiana are unknown at this time.

### SUMMARY

Applicant seeks authorization to construct and maintain a dam and reservoir (known as Ralph Hall Lake) on the North Sulphur River, tributary of the Sulphur River, Sulphur River Basin in Fannin County. The proposed reservoir will have a maximum capacity of 180,000 acre-feet of water with a surface area of 8,500 acres. Applicant also seeks to divert and use not to exceed 45,000 acre-feet of water per year from one or more diversion points on the perimeter of the proposed reservoir for municipal, industrial, and agricultural purposes at a maximum combined diversion rate of 205 cfs (92,000 gpm). Water diverted will be used in all or parts of Collin, Cooke, Dallas, Denton, Fannin, Grayson, and Wise Counties within the Trinity and Sulphur River Basins.

Applicant also seeks an IBT from the Sulphur to the Trinity River Basin. Applicant indicates that the reservoir may be overdrafted as part of a system operation with existing district supplies from other basins to achieve maximum conservation of limited water resources.

**Resource Protection staff recommends the following special conditions be included in the permit, if granted:**

1. All mitigation plans and monitoring required herein shall comply with conditions set forth in 33 United States Code §1341, commonly known as the federal Clean Water Act (CWA), §401 and 30 TAC §279. Mitigation and monitoring plans shall also comply with § 404 of the CWA.
2. As identified in the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall* permittee shall construct approximately 14,500 linear feet of riparian habitat along a segment of the abandoned channel of the original North Sulphur River located on the south bank of the existing river channel immediately downstream of the proposed dam for Lake Ralph Hall.
3. Permittee shall establish and maintain a riparian buffer zone of permanent vegetation around the perimeter of the reservoir averaging at least 50 feet in width with the exception of reasonable access areas and the area of the dam and spillway. Permittee shall also establish and maintain riparian buffer zones 25 to 50 feet wide along Bear Creek, Brushy Creek, Pickle Creek, Davis Creek, Leggets Branch, Bralley Pool Creek, Merrill Creek, the North Sulphur River, and along unnamed tributaries within the area of the reservoir project. The buffer zone shall be planted with native vegetation as

necessary to ensure complete coverage at maturity.

4. Permittee shall implement measures to minimize impacts to aquatic resources due to entrainment or impingement including, but not limited to, the installation of screens at the diversion facilities.

#### **Special Conditions Specific to the Restored Channel Mitigation Area**

5. Impoundment of water and diversions under this permit are contingent upon implementation of the approved *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall*. Modifications or changes to this design must be approved by the Executive Director. Any modification that changes the permit terms must be in the form of an amendment to the permit.
6. Permittee shall install flow measurement devices to measure flow associated with the recirculation system identified in the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall*.
7. Permittee shall install multiple water quality and water level logger instrumentation in the deeper pool habitats as identified in the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall*, in the restored channel mitigation area to continuously monitor dissolved oxygen, temperature, and water level within the pools. Permittee shall connect the monitoring instruments to a supervisory control and data acquisition (SCADA) system to detect a measurement below the *Texas Surface Water Quality Standards (30 TAC §307)* for Segment 0305 for a period of greater than 24 hours or if the water surface in the pools drops more than one foot below its normal level.
8. In the event that the above mentioned water level and/or water quality parameters drop below the Water Quality Standards for Segment 0305 for a period greater than 24 hours, Permittee shall release water from Lake Ralph Hall, and/or utilize the recirculation pump system to provide flow through the mitigation area in order to restore the water level or help ensure compliance with the Water Quality Standards.
9. Upon completion of the construction and enhancement of the restored channel mitigation area, Permittee shall establish and maintain an appropriate fish community representative of the aquatic life use designation for Segment 0305 in the *Texas Surface Water Quality Standards (30 TAC §307)*. The initial fish stocking shall be composed of, at a minimum, fish species listed in the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall*. Permittee shall obtain the fish to be stocked in the restored channel from local sources if available.
10. Permittee shall visit the restored channel mitigation area at a minimum of once per month for a period of five years following the deliberate impoundment of water in Lake Ralph Hall to inspect and observe the condition of the mitigation area and take any appropriate action, such as initiate reservoir releases or engage the recirculation system, so as to ensure compliance with the *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall*.

11. In consultation with the Executive Director, Permittee shall conduct monitoring of the restored channel mitigation area twice a year for a period of five years following deliberate impoundment of water in Lake Ralph Hall. Monitoring shall include discharge measurements, assessment of fish and macroinvertebrate communities, physical habitat assessment, and documenting survival success of the planted vegetation within the restored channel riparian area. All aquatic biological monitoring and physical habitat assessments shall take place in the index period (March 15 – October 15) with at least one of the biannual monitoring events taking place in the critical period (July 1 – September 15). Aquatic biological monitoring and habitat characterization shall follow TCEQ protocols set forth in the *Surface Water Quality Monitoring Procedures, Volume 2: Methods for Collecting and Analyzing Biological Community and Habitat Data*. (TCEQ 2005).
12. Permittee shall submit a report to the Executive Director every two years summarizing the twice a year monitoring activities in Special Condition No. 11. Permittee shall also submit a final report at the end of the five-year monitoring period summarizing the monitoring efforts. The report shall include an assessment of the fish and macroinvertebrate communities and the biological metric scoring criteria used to assess aquatic life uses. In the event that aquatic life use is not meeting the water quality standards for Segment 0305, the report shall identify and outline remedial management strategies to be implemented to meet the designated aquatic life use.

This instream use assessment was conducted using current TCEQ operation procedures and policies and available data and information. Authorizations granted to the permittee by the water rights permit shall comply with all rules of the Texas Commission on Environmental Quality and other applicable State and Federal authorizations.

#### LITERATURE CITED

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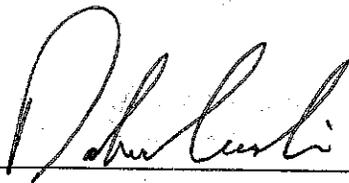
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UTRWD. 2006a. *Draft Mitigation Plan for Impacts to Aquatic Resources and Terrestrial Habitats for Lake Ralph Hall* dated October 26, 2006. Submitted as Attachment 9 in the 404 Application titled *Proposed Lake Ralph Hall Project Fannin County, Texas*.

UTRWD. 2006b. *Proposed Lake Ralph Hall Project Fannin County, Texas*. Section 404 Application submitted to USACE.

UTRWD. 2010. *Conceptual Design and Analysis of the Proposed North Sulphur River Riparian Habitat Mitigation Area for Lake Ralph Hall* dated March 18, 2010.



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Dakus Geeslin, Aquatic Scientist

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**To:** Ronald Ellis, Project Manager  
Water Rights Permitting Team  
Water Supply Division

**Date:** February 15, 2011

**Thru:** *pl*  
*2/15/11* Christopher Loft, Team Leader  
Resource Protection Team  
Water Supply Division

*ES*  
*2/15/11* Scott Swanson, Senior Water Conservation Specialist  
Resource Protection Team  
Water Supply Division

**From:** *KW*  
*2/15/11* Kristin Wang, Senior Water Conservation Specialist  
Resource Protection Team  
Water Supply Division

**Subject:** Upper Trinity Regional Water District (UTRWD)  
WRPERM5821  
CN600639272  
Technical Review of Water Conservation Plan

Upper Trinity Regional Water District (UTRWD or applicant) seeks authorization to construct and maintain a dam and reservoir (known as Lake Ralph Hall) with a maximum capacity of 180,000 acre-feet of water and a surface area of 8,500 acres on the North Sulphur River, Sulphur River Basin, Fannin County, Texas for in-place recreation purposes and to divert and use not to exceed 45,000 acre-feet of water per year from Lake Ralph Hall at a maximum diversion rate of 205 cfs (92,000 gpm) for municipal, industrial, and agricultural purposes. The application also requests authorization to overdraft the reservoir as part of a system operation with existing UTRWD supplies. Applicant requests to use the water in Collin, Cooke, Dallas, Denton, Fannin, Grayson, and Wise Counties within the Sulphur River and Trinity River Basins and requests an interbasin transfer (IBT) of water from the Sulphur River Basin to the Trinity River Basin.

The applicant is required to provide evidence that the amount of water appropriated will be beneficially used, i.e., effectively managed and not wasted pursuant to Texas Water Code (TWC), Section 11.134(b)(3)(A). Also, the applicant must provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation pursuant to TWC 11.134(b)(4). To provide that evidence, the applicant must submit a water conservation plan in accordance with Title 30, Texas Administrative Code (TAC), Chapter 288. In applications where a new appropriation of water is requested, the technical review includes an analysis of whether the requested appropriation is reasonable and necessary for the proposed uses in accordance with TWC 11.134 and 30 TAC 297.50. In applications where an IBT is requested, the technical

review considers water conservation efforts in accordance with the requirements of 30 TAC 297.18 and TWC 11.085.

The purpose of this technical review is to:

- (1) determine whether reasonable water conservation goals have been set;
- (2) determine whether the proposed strategies can achieve the stated goals;
- (3) determine whether there is a substantiated need for the water and whether the amount to be appropriated is reasonable for the proposed use;
- (4) determine whether the application meets the requirements of TWC 11.085(k) and (l) for IBTs; and
- (5) determine whether the water conservation plan addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan.

If these criteria are met, then staff considers this sufficient evidence to conclude that the applicant will avoid waste and achieve water conservation. This technical review forms a basis for permit conditions and limitations as provided by TWC 11.134 and 11.085.

UTRWD's water right application was received on September 2, 2003. UTRWD submitted a 2002 water conservation plan, additional information in 2004, and an amended plan in 2005. In 2009, UTRWD submitted an updated water conservation and drought contingency plan.

#### WATER CONSERVATION GOALS & STRATEGIES

UTRWD's plans were first reviewed in accordance with 30 TAC 288. As a wholesale water supplier, UTRWD does control the operation of its water supply, treatment, and transmission system and can take direct action to maximize the efficiency of the system. UTRWD's average unaccounted for water has been approximately three percent (3%) and UTRWD measures all raw water diversions using meters with an accuracy of plus or minus two percent (2%).

The following goals and strategies have been outlined by UTRWD for water conservation and include:

1. Five-year and 10-year conservation goals of 175 gallons per capita per day (gpcd).
2. Maintain unaccounted-for water in the system below ten percent (10%) annually.
3. Meter and record water deliveries and sales with a minimum accuracy of plus or minus two percent (2%).
4. Maintain programs for leak detection and repair, and water loss accounting.
5. Raise public awareness of water conservation and encourage responsible public behavior (Public Education Program).
6. Reuse and recycling of reclaimed wastewater.

Staff determined that the overall water conservation strategies provided in the UTRWD's water conservation plan are reasonable and can achieve the stated goals.

### WATER NEED

Based on the 2009 water conservation plan, UTRWD currently provides wholesale treated water service to nineteen members and customers (serving more than twenty-five communities) in Denton and Collin Counties. UTRWD's planning area includes the communities currently served plus additional portions of Grayson, Wise, and Cook Counties.

UTRWD purchases raw water from the City of Dallas and City of Denton out of Lewisville Lake and Ray Roberts Lake. Further, UTRWD has a contract for raw water from Lake Chapman in the Sulphur River Basin and a permit to reuse water transferred from Lake Chapman to the Trinity River Basin.

According to the 2006 Region C Water Plan, UTRWD currently supplies treated water to users in Denton County, and a small amount to users in Collin County. UTRWD also provides direct reuse for irrigation in Denton County. The total existing supplies can provide between 25,200 and 42,200 acre-feet per year from 2010 to 2060.

Considering losses associated with treatment and distribution, UTRWD needs to develop an additional 7,000 acre-feet per year of raw water supplies by 2010 to meet projected demands and an additional 122,000 acre-feet per year by 2060. UTRWD will also need to develop additional treatment and distribution capacity to serve the growing demands of its current and future customers.

The recommended water management strategies listed in Region C Water Plan for UTRWD include the following:

- Conservation
- Additional supplies from Dallas Water Utilities (DWU) under current contract
- Lake Chapman indirect reuse
- Additional supplies from DWU linked to Lake Chapman reuse
- Lake Ralph Hall
- Indirect reuse of return flows from Lake Ralph Hall
- Marvin Nichols Reservoir
- Additional DWU supplies
- Oklahoma water
- Water treatment plant and distribution system improvements

**Table 1**  
**Recommended Water Management Strategies for**  
**Upper Trinity Regional Water District**  
**(acre-feet per year)**

Source	2010	2020	2030	2040	2050	2060
<b>Current Supplies</b>						
Lake Chapman	14,068	13,835	13,602	13,369	13,136	12,905
DWU	10,317	11,041	14,458	19,867	28,184	27,463
Direct Reuse	897	897	897	897	897	897
<b>Total Existing</b>	<b>25,282</b>	<b>25,773</b>	<b>28,957</b>	<b>34,133</b>	<b>42,217</b>	<b>41,265</b>
<b>Water Management Strategies</b>						
Conservation	850	3,070	4,933	7,196	9,643	11,762
Additional Supplies from DWU (Under Current Contract)	1,000	1,000	1,000	1,000	23,295	27,386
Lake Chapman Indirect Reuse	8,441	8,301	8,161	8,021	7,882	7,743
Additional DWU Supplies (Reuse)	5,627	5,534	5,441	5,348	5,254	5,162
Lake Ralph Hall		29,600	29,600	29,600	29,600	29,600
Additional Indirect Reuse		17,760	17,760	17,760	17,760	17,760
Marvin Nichols Reservoir			17,500	35,000	35,000	35,000
Additional DWU Supplies					2,200	6,000
Oklahoma Water						15,000
<b>Total Supplies of Strategies</b>	<b>15,918</b>	<b>65,265</b>	<b>84,395</b>	<b>103,925</b>	<b>130,634</b>	<b>155,413</b>
<b>Total Supplies</b>	<b>41,200</b>	<b>91,039</b>	<b>113,351</b>	<b>138,058</b>	<b>172,851</b>	<b>196,678</b>
Portion of DWU Supply from Reuse	5,627	5,534	5,441	5,348	12,690	15,266
Total from Conservation & Reuse	15,815	35,562	37,192	39,222	48,872	53,428
Percent from Conservation & Reuse	38.4%	39.1%	32.8%	28.4%	28.3%	27.2%
<b>Project Demands</b>	<b>31,769</b>	<b>56,353</b>	<b>80,904</b>	<b>109,456</b>	<b>136,932</b>	<b>155,831</b>
Losses in Treatment and Transmission	1,588	2,818	4,045	5,473	6,847	7,792
Surplus	7,843	31,868	28,402	23,128	29,072	33,055

\*source: 2006 Region C Water Plan (Volume I, Table 4E.14, pages 4E.40-4E.41)

Table 1 shows the recommended water management strategies for UTRWD's water supply development. Conservation savings from UTRWD's existing and potential customers is projected to reach 11,762 acre-feet per year by 2060. As shown in Table 1 above, 29,600 acre-feet per year of the yield from Lake Ralph Hall (32,940 acre-feet) has been listed as a recommended supply strategy to help UTRWD meet projected water demands for the next 50-year planning period.

#### ALTERNATIVE WATER MANAGEMENT STRATEGIES

The 2006 Region C Water Plan also indicates that if any of the projects identified in the recommended plan are not implemented, UTRWD may wish to pursue alternative strategies. The following alternative water management strategies are recommended for UTRWD:

- Toledo Bend Reservoir
- Wright Patman Lake
- George Parkhouse Reservoir (North)
- George Parkhouse Reservoir (South)
- Lake Texoma
- Additional reuse

#### INTERBASIN TRANSFER CONSIDERATIONS

Review of the IBT request is based on the projected water needs for the basin of origin and receiving basin for the 50-year planning period. The Sulphur River Basin is the basin of origin and the Trinity River Basin is the receiving basin for the proposed Lake Ralph Hall Project. A comparison of the total available supplies to projected demands for the Sulphur and Trinity River Basins is shown in Table 2, which is based on the information provided in the 2006 Region C Water Plan. From the table, the Sulphur River Basin shows a surplus of water, while the Trinity River Basin is projected to have shortages during the 50-year planning period.

<b>River Basin</b>	<b>2010</b>	<b>2020</b>	<b>2030</b>	<b>2040</b>	<b>2050</b>	<b>2060</b>
Sulphur	222,104	209,476	198,260	187,562	177,332	161,760
Trinity	1,065,986	722,172	451,588	177,387	(145,550)	(535,830)

*\*source: 2006 Region C Water Plan (Volume I, Table 4C.5, page 4C.19)*

Projected shortages in the Trinity River Basin will reach 145,550 and 535,830 acre-feet per year in 2050 and 2060, respectively. The plan indicates that the IBT request from this project can help meet the water demands for Trinity River Basin during the 50-year planning period and meet the overall water demands for the region.

The economic impacts of new reservoirs (including Lake Ralph Hall) were discussed and considered in the 2006 Region C Water Plan (*Volume I*). The plan indicates that new reservoirs can stimulate the rural economy through new recreational business and local improvement. The 2006 Region C Water Plan also includes a preliminary analysis of the impacts of not meeting the projected water demands. The analysis indicates that a severe drought occurring in a single year would reduce the projected 2060 population, employment, and income trends. Further, the plan indicates if no additional water supplies are developed, Region C will face substantial shortages in water supply over the next several decades. This information is presented in Appendix Q of the Region C Water Plan. For municipal uses, the economic impacts by counties (for example Fannin and Denton), and distribution of regional impact among major river basins (Sulphur and Trinity) were considered.

Based on the 2006 Region C Water Plan, UTRWD plans to provide 10% of the yield from Lake Ralph Hall for use in southern Fannin County. The City of Ladonia uses the Trinity Aquifer as their current water supply. According to the 2006 Region C Water Plan, Ladonia will have water shortages throughout the 50-year planning period. The recommended water management strategies to meet their needs include water conservation, overdraft of the Trinity Aquifer with new wells, and purchase of water from UTRWD (Lake Ralph Hall). The City of Ladonia's projected population, total projected water demand, current supply, and water management strategies are summarized in Table 3.

	2010	2020	2030	2040	2050	2060
<b>Projected Population</b>	1,500	1,600	2,000	2,200	2,500	3,000
<b>Projected Municipal Water Demand</b>	546	577	715	779	879	1,055
<b>Current Available Water Supplies (Trinity Aquifer)</b>	276	276	276	276	276	276
<b>Water Management Strategies</b>						
Water Conservation – Basic Strategies	16	27	40	50	64	85
Water Conservation – Expanded Strategies	0	2	5	6	6	8
Ralph Hall Reservoir	0	558	709	754	914	1,140
Overdraft Trinity Aquifer (New Wells)	254	0	0	0	0	0
<b>Total Water Management Strategies</b>	<b>270</b>	<b>587</b>	<b>754</b>	<b>810</b>	<b>984</b>	<b>1,233</b>
<b>Total Supply Less Projected Demand</b>	<b>0</b>	<b>286</b>	<b>315</b>	<b>307</b>	<b>381</b>	<b>454</b>

*\*source: 2006 Region C Water Plan (Volume IV, Appendix V, Table V-1, page 64 of 112)*

With the Trinity Aquifer as the only current water supply, Ladonia will have a maximum need of 779 acre-feet per year during the 50-year planning period. The City's water needs can be

supplemented by the Lake Ralph Hall project, which can provide Ladonia with 558 to 1,140 acre-feet of water per year from 2020 to 2060. Therefore, the Lake Ralph Hall project will benefit the Sulphur River Basin by providing additional water supply to City of Ladonia.

As previously shown in Table 2, the Trinity River Basin will have water shortages during the 50-year planning period. Many water user groups in Denton County receive water supplies from UTRWD. Table 4 summarizes population projections, water demand projections, currently available supplies, and water needs for Denton County. Denton County will have projected water needs of 24,753, 113,311, and 256,411 acre-feet per year in 2010, 2030, and 2060, respectively.

<b>Table 4</b> <b>Population and Water Planning Summary</b> <b>for Denton County</b> <b>(water quantities in acre-feet per year)</b>						
	2010	2020	2030	2040	2050	2060
Population Projections	720,064	953,668	1,184,744	1,392,575	1,610,447	1,870,472
Water Demand Projections	162,003	212,211	263,594	307,951	353,800	406,700
Currently Available Supplies	137,250	142,695	150,283	153,531	155,652	150,289
Water Need	24,753	69,516	113,311	154,420	198,148	256,411

*\*source: 2006 Region C Water Plan (Volume I, Tables 2.1, 2.2, 3.7 & 4A.2, pages 2.8, 2.19, 3.13 & 4A.5)*

UTRWD is a significant water supplier in this area in conjunction with other region water providers such as Dallas Water Utilities, City of Denton, North Texas Municipal Water District (NTMWD), and Tarrant Regional Water District (TRWD). In the 2006 Region C Water Plan, 26 Denton County water user groups list "additional UTRWD water" as one of the recommended water management strategies to meet their water demand projections.

Many UTRWD members use groundwater for a portion of their water supply. In Denton County, groundwater resources are very limited, and current groundwater use from the Trinity and Woodbine aquifers exceeds the estimated reliable long-term supply based on groundwater availability (2006 Region C Water Plan). Therefore, water suppliers in Denton County need to increase their use of surface water supplies. Based on UTRWD's 2009 water conservation plan, one of the key purposes of the regional Surface Water Supply and Wastewater Treatment Program is to avoid further draw-down of limited ground water resources, and to make surface water available for further growth.

According to the 2006 Region C Water Plan, UTRWD intends to transport 90% of the Lake Ralph Hall yield to Denton County. Thus, the project will benefit the receiving Trinity River Basin by providing water to Denton County mainly for municipal purposes. In addition, the IBT water can be used for Collin, Cooke, Dallas, Denton, Grayson, and Wise Counties within the Trinity River Basin for municipal, industrial, and agricultural purposes.

UTRWD submitted an economic analysis, "The Economic Impact of Lake Ralph Hall" with the water right application. UTRWD states that construction of Lake Ralph Hall will bring recreational and other benefits to the Sulphur River Basin. The report details the costs and benefits to Fannin County (in the basin of origin), and Denton County (in the receiving basin) from the construction of Lake Ralph Hall. The report shows that the benefits of the proposed IBT outweigh the costs to both the area in and around Fannin County and the area in and around Denton County. A net present worth analysis of these costs and benefits was performed for the period from 2004 through 2036. Based on the analysis, the net present worth of benefits to basin of origin is \$147 million and the net present worth of benefits to receiving basin is \$18 billion.

The 2006 Region C Water Plan identified a set of water conservation strategies that will result in the highest practicable level of conservation and efficiency achievable as required for IBTs under TWC 11.085. The Region C Plan's recommended water conservation strategies include a basic package that includes low-flow plumbing fixture rules, public and school education, water use reduction due to increasing water prices, water system audit, leak detection and repair, pressure control, and Federal residential clothes washer standards. Reuse of treated wastewater effluent has been identified as one of the strategies for an expanded water conservation package. UTRWD has included the identified water conservation strategies in its water conservation plan and included a model water conservation plan for its members and customers. In order to comply with TCEQ conservation rule requirements, UTRWD is required to submit a water conservation implementation report every five years. The implementation report must include: (a) the list of dates and descriptions of the conservation measures implemented; (b) data about whether or not targets in the plans are being met; (c) the actual amount of water saved; and (d) if the targets are not being met, an explanation as to why any of the targets are not being met, including any progress on that particular target.

As a wholesale public water supplier, UTRWD will develop and implement wholesale water contracts that include applicable water conservation and drought contingency requirements. In addition, one of the strategies identified by the Water Conservation Task Force Best Management Practices (BMP) Guide (TWDB Report 362), Wholesale Agency Assistance Programs BMP (BMP 2.14), is exclusively applicable to wholesale water suppliers. UTRWD has included elements of the wholesale BMP in its conservation plan. If UTRWD implements all elements of its water conservation plan, then staff believes that the highest practicable level of conservation for UTRWD can be achieved. By preparing a drought contingency plan and preparing and implementing a water conservation plan that will result in the highest practicable levels of water conservation and efficiency within its jurisdiction, and if UTRWD ensures through contracts that its customers develop water conservation plans that implement the recommended strategies listed in the approved Regional Water Plan, the application can meet the requirements of TWC 11.085(1)(2).

#### CONSISTENCY WITH STATE AND REGIONAL WATER PLANS

The Lake Ralph Hall Project is listed as one of the recommended water management strategies in the Region C Water Plan and the current State Water Plan and is one of the major water conveyances proposed by the planning group. This application is consistent with 2006 Region C

Water Plan and 2007 State Water Plan.

### SUMMARY

The application has been evaluated and determined to meet technical review requirements in TCEQ rules and applicable statutes. Staff determined that the listed conservation goals and strategies in UTRWD's water conservation plan can achieve the highest practicable levels of water conservation and efficiency in UTRWD's service area.

The application is consistent with the approved January 2006 Region C Water Plan and the 2007 State Water Plan because the Lake Ralph Hall project is listed as one of the recommended water management strategies for UTRWD in both plans.

### RECOMMENDATIONS

Staff recommends that, if the application is granted, the following water conservation language should be included in the permit:

Permittee shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this permit, including any contract extension or renewal, each successive wholesale customer develop and implement conservation measures that can result in the highest practicable levels of water conservation and efficiency in order to comply with TWC 11.085 (1)(2). If Permittee authorizes the resale of water by a customer, then the contract for resale must have water conservation requirements so that each successive wholesale customer in the resale of the water will be required to implement water conservation measures.

APPLICATION FOR WATER USE PERMIT NO. 5821

2009 MAY 26 PM 4:08

APPLICATION OF	§	BEFORE THE CHIEF CLERKS OFFICE
UPPER TRINITY REGIONAL	§	TEXAS COMMISSION
WATER DISTRICT FOR	§	ON
WATER USE PERMIT	§	ENVIRONMENTAL
NO. 5821	§	QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO COMMENTS

The Executive Director files this Response to Comments made at the March 27 and 28, 2006 public meetings regarding the application of Upper Trinity Regional Water District (UTRWD) or Applicant) for Water Use Permit No. 5821, and the written comments received by the Texas Commission on Environmental Quality (TCEQ). The Executive Director responds to the timely submitted written and oral comments regarding this application.

**BACKGROUND**

UTRWD has applied for a Water Use Permit to construct and maintain a dam and reservoir (known as Lake Ralph Hall) with a maximum capacity of 180,000 acre feet of water and a surface area of 8,500 acres on the North Sulphur River, Sulphur River Basin, Fannin County, Texas for in-place recreation purposes and to divert and use not to exceed 45,000 acre-feet of water per year from Lake Ralph Hall at a maximum diversion rate of 205 cubic feet per second (cfs) (92,000 gpm) for municipal, industrial and agricultural purposes. Applicant requests to use the water in Collin, Cooke, Dallas, Denton, Fannin, Grayson and Wise Counties within the Sulphur River and Trinity River Basins. Applicant also requests an interbasin transfer of water from the Sulphur River Basin to the Trinity River basin, and Applicant indicates that the reservoir may be overdrafted as part of a system operation with existing district supplies.

The application was received by TCEQ on September 2, 2003. Additional fees and information were received 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. Published notice was provided in the Dallas Morning News, Beaumont Enterprise, Houston Chronicle, Paris News, Texarkana Gazette, and Wichita Falls Times Record News on February 13 and February 20, 2006. Public meetings were held in Ladonia and Lewisville, Texas on March 27 and 28, 2006, respectively. At the time this Response to Comments is filed, the technical review of this application has not been completed.

Comments were received from John S. Adams, Jeffrey Barnett, Eddie Belcher, Linda Belcher, Peggy Belcher, Pete Belcher, Janice Bezanson for the Texas Committee on

Natural Resources, Jan Black for Greater Dallas Chamber, Virginia Blevins for the City of Justin, Christopher Brown for National Wildlife Foundation, Tommy Brown and Gail Brown, David Brune, James G. (Greg) Bush, Lyndal Burnett, Gary Cheatwood, Mary Call, Mayor Gene Carey for City of Lewisville, Leah and Steve Colley, Mayor Richard Cook, Town of Double Oak, Chester DeBord, Donna Dockery, Jimmy Dowell, Michelle Dowell, Kenneth (Mike) Flesher, George Frost for Rep. Stephen Frost, Don Gaines, Marry Harris, Robert Holt, Nina Holt, Judge Mary Horn (Denton County), Mayor Leon Hurse, Ronal and Debbie Kennemer, Del Knowler, Jerry Lane for the Ladonia Chamber of Commerce, Jim Lang, Laurie Long for Town of Flower Mound, Kerry Maroney for Argyle Water Supply Corporation & Bolivar Water Supply Corporation, John McConnell, Joe McKelney, Patricia McKelney, Kevin Mercer for Lantana, David and Sharron Nabors, Chip Nicholson for the North Hunt Water Supply Corporation, Sarah Hembree-Ashcraft-Petersen, Dan Petty for North Texas Commission, Karen and Dale Pope, David Ryborn for the City of Irving, Angela Scott, Ezra and Marilyn Scott, Jeffrey Scott, Marilyn Scott, Mitchell Scott, Wayne Scott, Floyd Sessums, Hellen Sessums, Max Shumake for Sulphur River Oversight Society, Crystal Cooper-Smith, Mayor Jody Smith for Town of Flower Mound, Paul Stone for the Town of Flower Mound, Tommy Sutherland for the Woodson Hereford Ranch, Thomas Taylor for UTRWD, Mayor Sue Tejml for Town of Copper Canyon, Ward Timber, International Paper, Chris Torley for Town of Flower Mound, Joetta Wallace, Shane Wallis, John Welch, Carol Weiss, Trustee, Charlotte Wicks, Kristi Wicks and Doug Wicks, Patsy and Randy Wicks, H. D. Witcher, Rosa Dell Woods, Annie Woodson, Larry Woodson, T. Jervis Underwood, Mike Yarbrough, Rod Zielke.

Requests for contested case hearing have been received regarding this application. Unless all hearing requests are withdrawn, the Commission will consider the hearing requests before a decision is made on whether to issue the permit. This consideration will be held in an open meeting of the Commission after technical review of the application is complete and a draft permit has been prepared by the Executive Director's staff.

## COMMENTS AND RESPONSES

### Comments from State Representative

#### Water Availability / Downstream Uses

**COMMENT 1:** Those downstream of the reservoir will be affected by change in flow. (George Frost for Rep. Stephen Frost)

**RESPONSE 1:** A water availability analysis will be performed for the application. The TCEQ's water availability model encompasses a 57 year period of record that is representative of hydrologic variability in the area, including droughts. If there is water that has not been appropriated to other water rights in the basin, then the Executive Director may recommend granting that unappropriated water. The projected impacts of the proposed project that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries will be

considered. The environmental review will include an instream flow analysis to determine if the project could impair instream uses. If such an impairment is identified, the draft permit will include streamflow restrictions or other conditions to mitigate those impacts

### Water Conservation

**COMMENT 2:** Conservation is important. (George Frost for Rep. Stephen Frost)

**RESPONSE 2:** Tex. Water Code § 11.085 requires applicants to submit drought contingency plans and develop and implement water conservation plans that will result in the highest practicable levels of water conservation and efficiency achievable. The term "conservation" is defined in TCEQ rule as those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses. A water conservation plan submitted with an application for a new or additional appropriation of water must include data and information which (1) supports the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan; (2) evaluates conservation as an alternative to the proposed appropriation; and (3) evaluates any other feasible alternative to new water development including, but not limited to, waste prevention, recycling and reuse, water transfer and marketing, regionalization, and optimum water management practices and procedures. The Executive Director's staff will review UTRWD's water conservation plan to determine whether it meets the requirements of the applicable law.

### Environmental/Mitigation Concerns

**COMMENT 3:** Those downstream of the reservoir will be affected by mitigation. (George Frost for Rep. Stephen Frost)

**RESPONSE 3:** The application is reviewed for environmental impacts, including the effects on fish and wildlife habitat, water quality and instream uses. The evaluation of any proposed mitigation will be in coordination with other state and federal agencies, including Texas Parks and Wildlife Department and the U.S. Army Corps of Engineers. If any adverse impacts are found, the draft permit will contain special conditions to address those impacts.

### Property Tax/ Economic Issues

**COMMENT 4:** The reservoir will affect economic impacts on the timber industry. (George Frost for Rep. Stephen Frost)

**RESPONSE 4:** As part of the technical review of the interbasin transfer in this application, the TCEQ must look at the economic impact to the basins as a result of the transfer. For the appropriation of the water for the reservoir, the TCEQ is limited to the criteria established in its governing statutes and rules, and therefore the TCEQ does not consider economic issues or economic impacts as part of that technical review related to the new appropriation of water and permitting of the reservoir.

## Comments

### General Support

**COMMENT 5:** Supports the reservoir. (Mayor Gene Carey for City of Lewisville, Virginia Blevins for the City of Justin, Kerry Maroney for Argyle Water Supply Corporation and Bolivar Water Supply Corporation, Dan Petty for North Texas Commission, T. Jervis Underwood, Rod Zielke, Kevin Mercer for Lantana, David Ryborn for the City of Irving, Jerry Lane for Ladonia Chamber of Commerce, Thomas Taylor for UTRWD, Jerry Lane, Jan Black for Greater Dallas Chamber)

**RESPONSE 5:** The Executive Director acknowledges the comment.

### General Opposition

**COMMENT 6:** Opposes the reservoir. (Don Gaines, Sarah Hembree-Petersen, John Welch)

**RESPONSE 6:** The Executive Director acknowledges the comment.

**COMMENT 7:** The reservoir is unneeded, and injurious to the land and people. It threatens to deprive Fannin County residents of their home, property and water. A large number of people are opposed to this project. (Crystal Cooper-Smith, Ezra Scott, Jeffrey Scott, Marilyn Scott, Donna Dockery, Mitchell Scott, Angela Scott, Mary Call, Marry Harris, Rosa Dell Woods, Wayne Scott, Joetta Wallace, Jeffrey Barnett). Opposes the reservoir on basis that water needs don't justify taking their property. (Karen and Dale Pope, Angela Scott, Ezra and Marilyn Scott, Tommy Sutherland for the Woodson Hereford Ranch, Annie Woodson, Larry Woodson) Opposes the reservoir because Fannin County would not benefit, given the drawbacks to this idea. (John S. Adams)

**RESPONSE 7:** The Executive Director's staff is conducting a technical review of this application. Concerning need, the review will include the evaluation of UTRWD's projected water supply and demand, and the listed recommended water management strategies for UTRWD. Texas Water Code § 11.085, regarding Interbasin Transfers requires the TCBQ to weigh the effects of the proposed transfer by considering the need for the water in the basin of origin and in the proposed receiving basin. The commission must also consider the factors identified in the applicable approved water plans which address availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer; the amount and purpose of use in the receiving basin for which water is needed; proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures; the proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use; the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries. The commission must

also consider the proposed mitigation or compensation, if any, to the basin of origin by the applicant, and the information required to be submitted by an applicant.

The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period; and the applicant has prepared a drought contingency plan and has developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable.

Issues associated with compensating land owners whose property is appropriated for the reservoirs will be addressed through the eminent domain process. The TCEQ does not regulate the eminent domain process.

**COMMENT 8:** The North Hunt Water Supply Corporation (NHWSC) would be in favor of the lake if it had more control of the water for its customers and it wouldn't affect the district as it now exists. (Chip Nicholson for NHWSC)

**RESPONSE 8:** It is not clear exactly what control NHWSC has or expects to have (or not have) if this application is approved. The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period. Further, Texas Water Code § 11.085 provides that the parties to a contract for an interbasin transfer may include provisions for compensation and mitigation.

**COMMENT 9:** Opposes the reservoir because it may adversely affect operations of the International Paper mill in Texarkana through construction, water rights, river flow or permanent removal of a significant amount of renewable resources, particularly productive forestry land. The individual and cumulative impacts of this and existing reservoirs in East Texas need to be evaluated by TCEQ, the Corps of Engineers, and other state and federal resource agencies. (International Paper, Ward Timber)

**RESPONSE 9:** The Executive Director's staff will perform a water availability analysis for this application and will only recommend issuance of a permit for water that has not been appropriated by others. The water availability analysis will include all water rights already issued by the Commission. Concerning environmental impact, the Executive Director is reviewing the application to determine impact and the best way, considering the public interest factors, to mitigate that impact. The appropriate amount, type, and location of any mitigation will be evaluated under applicable law by the TCEQ. The Applicant must obtain any necessary authorization from other state and federal agencies.

#### Interbasin Transfers

**COMMENT 10:** In the permitting process, TCEQ should consider all requirements for interbasin transfers. The TCEQ should also consider the cumulative impacts Lake Ralph Hall and the two existing reservoirs in the Sulphur River Basin, as well as proposed

Marvin Nichols and George Parkhouse Reservoirs. (Janice Bezanson for the Texas Committee on Natural Resources, Max Shumake for Sulphur River Oversight Society)

**RESPONSE 10:** The application is reviewed according to the requirements in the Texas Water Code and in TCEQ rules regarding interbasin transfers, as discussed in responses below. TCEQ staff will perform a water availability analysis on this application and only recommend issuance of a permit for water that has not been appropriated by others. The water availability analysis will only include water rights that are already granted. During the technical review of applications to determine water availability, the Executive Director does not consider applications that may be filed in the future.

**COMMENT 10:** The TCEQ's decision on this proposed reservoir could significantly affect the decision on the proposed Marvin Nichols reservoir, because the first decision could set precedent under the new limitations for interbasin transfers of water from the Sulphur River. (Ward Timber, Max Shumake for Sulphur River Oversight Society) The application does not adequately address the issues required for interbasin transfer, such as assurance of the type of water conservation required for such transfers. As a result, this application could result in improper application of Texas law and TCEQ rules, setting a dangerous precedent for future decisions on reservoirs and water rights, including the TCEQ's decision regarding the proposed Marvin Nichols Reservoir. (Ward Timber) Wants the application to strictly comply with the Texas Water Code and TCEQ rules. (Christopher Brown for National Wildlife Foundation)

**RESPONSE 11:** Each decision on an interbasin transfer will be based upon the applicable law and unique facts in that application. The Commission will determine any precedential value of this case in subsequent cases. The application will be processed according to the relevant Texas statutes and TCEQ rules. For permit issuance, the Executive Director must find that the application adequately addresses applicable statutes and rules for interbasin transfers. TCEQ cannot consider future water right applications when performing a water availability analysis.

#### **Water Supply – Regional Water Planning**

**COMMENT 12:** Supports reservoir, because it will provide water for the Upper Trinity service area, the City of Ladonia, and Fannin County, one of the fastest growing regions in North Texas. Region C Planning Group, Dallas Water Utilities, UTRWD and City of Justin support Lake Ralph Hall. Water will be made available as needed for Ladonia and Fannin County. It will ensure an adequate water supply for future generations. (Virginia Blevins for the City of Justin) Supports reservoir to ensure adequate water supply for Denton County. (Blake English) Supports reservoir to ensure North Texas citizens will never face a water crisis. (Denton County Judge Mary Horn)

**RESPONSE 12:** The Executive Director's staff is conducting a technical review of this application, and will evaluate specific water demands based on the 2006 Region C Water Plan, the 2007 State Water Plan, and the UTRWD's submittal. The TCEQ will consider the factors identified in the approved water plan which address, among other things, the amount and purposes of use in the receiving basin for which water is needed. The listed

recommended water management strategy for City of Ladonia in the 2006 Water Plan will also be examined in the review process for this application. However, if TCEQ approves this application, the permit or order will not include a finding that the reservoir will prevent a future water crisis.

**COMMENT 13:** Lake Ralph Hall will go a long way to enable Denton County to satisfy its long range water requirements. It is an integral part of the regional plan, which reflects the best professional judgment of those responsible for taking prudent steps to provide water for the future. It compliments the existing water supply pipeline from Lake Chapman to northeast Denton County. (David Brune) Lake Ralph Hall is included in the Region C Water Plan as one of the recommended water management strategies for the Denton County area, and is a very important element of UTRWD's overall strategy for a dependable water supply for this region. (Kevin Mercer for Lantana, Jan Black for Greater Dallas Chamber) Diversity of water sources is absolutely critical. Lake Ralph Hall will be a smart future investment as the cities and utilities that rely on UTRWD may be assured of a safe, reliable water supply for their citizens. Communities cannot be prosperous without a clean, safe and abundant water supply. (Denton County Judge Mary Horn) The project can be completed in time to avoid water shortage. (Virginia Blevins for the City of Justin) The project can be expeditiously implemented. (David Brune). The lake can be built in time to meet the demand for additional water supply. (Dan Petty for North Texas Commission)

Region C and the Texas Water Development Board were correct in 2001 when they listed this lake as an Alternative Water Supply Strategy, and nothing has changed that would warrant permitting Lake Ralph Hall. (Paul Stone for the Town of Flower Mound) There is an abundance of more cost-effective water that is already available to our region from other sources. At a production rate of 30 million gallons per day, this will not be a high-producing reservoir. If Lake Ralph Hall is excluded from UTRWD's 50-year plan, the district's additional water supply strategies would be able to meet the region's projected water needs while still providing a surplus. (Paul Stone for Town of Flower Mound, Chris Torley for Town of Flower Mound) There has been no demonstrated need that reflects urgency in building this new reservoir. Alternate water supply sources exist that can provide water to our residents at significantly lower financial and environmental costs and should be prioritized over Lake Ralph Hall. (Laurie Long for Town of Flower Mound)

**RESPONSE 13:** The technical review of the application will include reviewing the 2006 Region C Water Plan. Denton County's population growth and projected water demands pertaining to UTRWD's water supply and this application will be evaluated in the review. The TCEQ will consider the factors identified in the approved water plan which address, among other things, the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer, the amount and purposes of use in the receiving basin for which water is needed; the proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures, and the proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use. Based on the requirements in the Water

Code, the Executive Director is reviewing whether the appropriation will be put to beneficial use. The timing of the permit, if issued, is dependent on many factors, including time for technical review, contested case hearing, and any settlement discussions.

**COMMENT 14:** The north Texas area is growing in population, and a dependable water supply is needed. This project has considerable merit, and strikes a reasonable balance between impact to environment and benefits to the increased population. (Tim Fisher for the City of Denton) There seems to be no end to growth in the area, and no way to stop the demand for more water. (T. Jervis Underwood)

The need for Lake Ralph Hall is justified by UTRWD based on inflated and outdated population projections. However, population projections for the region have fallen short for the past six years, and UTRWD's capacity and available water supply already far exceeds its demand. There will not be enough residents to support a new lake, and there is more than enough water available to the region to sustain projected population. (Paul Stone for the Town of Flower Mound, Mayor Richard Cook, Town of Double Oak, Mayor Sue Tejml for Town of Copper Canyon, Mayor Jody Smith for Town of Flower Mound) Doesn't believe there is a need for this lake. (Crystal Cooper-Smith)

**RESPONSE 14:** The Executive Director's staff is conducting a technical review of this application. The TCEQ will consider the factors identified in the approved Region C Water Plan which address, among other things, the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer, the amount and purposes of use in the receiving basin for which water is needed, and the proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use. The projected population to be served by UTRWD and projected water demands will be evaluated in the review. With regard to the balance of water needs and protection of the environment, Texas law requires that the TCEQ perform an analysis to determine environmental impact and consider mitigation of that impact and, to the extent water is available after consideration of instream flow needs and freshwater inflow needs, the TCEQ will consider the beneficial uses established in statute and in TCEQ rules.

**COMMENT 15:** The City of Ladonia has sufficient water at this time, even if its population triples in size, so there is no need for additional water at this time. New reservoirs should be built only when all other existing sources have been utilized. (Shane Wallis) The county, city and water supply corporations all have sufficient sources of water. (Mike Yarbrough) In the permitting process, TCEQ should consider the need for the water for water supply. (Janice Bezanson for the Texas Committee on Natural Resources)

**RESPONSE 15:** The Executive Director's staff is reviewing the 2006 Region C Water Plan as part of the technical review of this application. The recommended water management strategies for City of Ladonia will be examined using the 2006 Region C Water Plan in the review. The commission must find that water requested in an application will be beneficially used.

**COMMENT 16:** Dependence on well water will be a problem as the aquifer continues to drop, and to pass up this future source of water would be a big mistake. (Del Knowler)

**RESPONSE 16:** The Executive Director acknowledges this comment.

**COMMENT 17:** Dependence on Dallas to meet future water needs could be a problem, since Dallas will take care of its own requirements first. (Del Knowler) UTRWD has a long term contract with Dallas Water Utilities for all the water it needs. (David and Sharron Nabors)

**RESPONSE 17:** The technical review of the application will include the evaluation of UTRWD's projected water supply and demand, and the listed recommended water management strategies for UTRWD.

**COMMENT 18:** There is no need for an additional reservoir in this location, given the fact that the state has adequate surface water and groundwater sources, even if the per person usage in the DFW area is doubled. The critical issue is transport of water to where it is needed, not the development of another water source on land that cannot be replaced. (John McConnell)

**RESPONSE 18:** As part of the beneficial use determination, the Executive Director's staff is reviewing the 2006 Region C Water Plan as part of the technical review of this application. The projected water demands and supplies for the UTRWD's service area will be evaluated in the review for consistency with the Water Plan and the statutory requirements. Texas Water Code § 11.085, regarding Interbasin Transfers requires the TCEQ to consider the factors identified in the applicable approved water plans which address availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer; the amount and purpose of use in the receiving basin for which water is needed; proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures; the proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use; the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries.

**COMMENT 19:** Group wants to ensure that strong water efficiency and drought management measures are implemented in UTRWD's service area to ensure that the proposed diversion and impoundment are actually necessary, and that the state's water is used in a manner consistent with the public welfare and without waste. (Christopher Brown for National Wildlife Foundation)

**RESPONSE 19:** As part of the technical review of the application, Executive Director's staff will review UTRWD's water conservation and drought contingency plan to determine whether the plan meets the requirements of the applicable TCEQ rules.

Applicants are required to submit drought contingency plans and develop and implement water conservation plans that will result in the highest practicable levels of water conservation and efficiency achievable. In addition, the Executive Director must consider whether issuance of a water right is detrimental to public welfare, and this comment will be considered in that process.

**COMMENT 20:** The building of the lake is a temporary solution to a permanent problem, which is the demand for water. As an alternative to building the lake, the commenter recommends consideration of construction of a nuclear powered desalinization plant, and then pump the water to wherever it is needed. (John Welch)

**RESPONSE 20:** The technical review of this application will include evaluating the need for the project based on the 2006 Region C Water Plan, which will include any alternatives listed in the plan and in the application.

**Water Availability / Downstream Uses**

**COMMENT 21:** The lake will probably have subordinate water rights, and therefore in times of drought, the lake won't have water because it will have to be released downstream to those with priority rights. (Chris Torley for Town of Flower Mound) Most of the time there is no water running in the Sulphur River channel. Also, because water must be passed through, in times of drought, Lake Ralph Hall will not be of much use as a recreational lake due to sediment and vegetation. (Chester DeBord) Concerned about any reduction in water flow downstream because International Paper is located downstream. Flow reduction in the river could limit the operations of International Paper and also adversely affect Ward Timber. (Jim Thompson for Ward Timber Company)

**RESPONSE 21:** A water availability analysis will be performed for the application. The TCEQ's water availability model encompasses a 57 year period of record that is representative of hydrologic variability in the area, including droughts. If there is water that has not been appropriated to other water rights in the basin, then the Executive Director may recommend granting that unappropriated water. The projected impacts of the proposed project that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries will be considered. The environmental review will include an instream flow analysis to determine if the project could impair instream uses. If such an impairment is identified, the draft permit will include streamflow restrictions or other conditions to mitigate those impacts.

**COMMENT 22:** Commenter asked whether this reservoir be used to keep Lake Ray Roberts or Lake Lewisville at pool level, or whether it will be used as an emergency source. (H. D. Witcher)

**RESPONSE 22:** The application indicates the water diverted from Lake Ralph Hall will be used for municipal, industrial and agricultural purposes in all or parts of Collin, Cooke, Dallas, Denton, Fannin, Grayson and Wise Counties within the Trinity and Sulphur River Basins. The Executive Director does not know whether this water will be

used to keep other lakes full in the future because that information was not submitted with the application and therefore cannot be considered during the technical review of the application. If the water diverted from Lake Ralph Hall is used to keep other reservoirs full in the future, the Executive Director would require that an amendment application be filed.

#### Water Conservation

**COMMENT 23:** The Metroplex should conserve more water before asking this area to supply water. (Jimmy Dowell) Commenter doesn't see how this reservoir will meet the requirements regarding the highest practical uses of levels of conservation. (Jim Thompson for Ward Timber Company.)

**RESPONSE 23:** Tex. Water Code § 11.085 requires applicants to submit drought contingency plans and develop and implement water conservation plans that will result in the highest practicable levels of water conservation and efficiency achievable. The term "conservation" is defined in TCEQ rule as those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses. A water conservation plan submitted with an application for a new or additional appropriation of water must include data and information which (1) supports the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan; (2) evaluates conservation as an alternative to the proposed appropriation; and (3) evaluates any other feasible alternative to new water development including, but not limited to, waste prevention, recycling and reuse, water transfer and marketing, regionalization, and optimum water management practices and procedures. The Executive Director's staff will review UTRWD's water conservation plan to determine whether it meets the requirements of the applicable law.

#### Reservoir design

**COMMENT 24:** Opposes the lake because it is not expected to hold water for very many years before it fills with silt and run-off from farmland west of the lake. (Tommy Brown and Gail Brown, Chester DeBord) No dredging plans are included in the application. The sedimentation rate will be a problem, and the lake will be silted in if not dredged within 20 years. Sedimentation rates for this region are disproportionately high and can drastically reduce the productive life of a lake, create additional environmental concerns, significantly increase the financial costs associated with the operation and maintenance issues of the reservoir, and potentially force the consideration of costly mitigation measures in the future, including check dams. (Laurie Long for Town of Flower Mound, Mayor Sue Tejml for Town of Copper Canyon, Mayor Jody Smith for Town of Flower Mound) Sedimentation issues have not been thoroughly addressed, and a number of check dams will be needed in the entire watershed further north and west of the lake. (Chris Torley for Town of Flower Mound)

Building the lake will help control the erosion damage and benefit the area environmentally. (T. Jervis Underwood) The soil in the region and along the North

Sulphur River is prone to erosion. Excessive sedimentation can drastically reduce the productive lifespan of a lake and create a need for costly mitigation measures in the future. A preliminary engineering report has indicated that the sedimentation rates for Lake Ralph Hall will be disproportionately high. The Town of Flower Mound requests that TCEQ take into consideration the engineering study it has commissioned to provide a more accurate assessment of the potential problems. (Paul Stone for the Town of Flower Mound) Even if the dam is constructed, erosion going into the lake will not stop because there are a number of huge tributaries that come into the lake. (H.D. Witcher) The reservoir site is less than ideal because it has significantly high sedimentation rates, is not spring fed, and will likely be dry during times of drought. Wants TCEQ to consider engineering studies when determining the viability of permitting of Lake Ralph Hall. (Laurie Long for the Town of Flower Mound)

**RESPONSE 24:** Neither the Texas Water Code nor the TCEQ's dam and reservoir rules address sedimentation. However, any proposed check dams are subject to the TCEQ's rules in 30 TAC Chapter 299, and the plans and specifications are reviewed by the TCEQ's dam safety staff before any work starts. If check dams are proposed that are located on a watercourse, a water use permit for those structures and impoundments would be required. TCEQ's water availability model encompasses a 57 years period of record that is representative of hydrologic-variability in the area. Staff review will use the criteria in 30 TAC § 297.42 to determine if water is available for appropriation.

**COMMENT 25:** Water is wasted every time it rains until the dam is built, and until then the channel is getting deeper. (Jerry Lane for the Ladonia Chamber of Commerce)

**RESPONSE 25:** The Executive Director acknowledges this comment.

**Selected location**

**COMMENT 26:** Commended UTRWD for its planning efforts and for identifying an appropriate reservoir site. (Rod Zielke)

**RESPONSE 26:** The Executive Director acknowledges this comment.

**COMMENT 27:** This project can supply water to the Denton County area because a transmission line is in close proximity. (T. Jervis Underwood)

**RESPONSE 27:** The Executive Director acknowledges this comment.

**COMMENT 28:** The dam should be located west of Highways 34 and 50 that follow the same path between Ladonia and Honey Grove. This would eliminate the need to elevate the road bed and for a new bridge. (Chester DeBord)

**RESPONSE 28:** The Executive Director acknowledges the comment. Issues regarding dam siting and road and bridge relocation are not considered in the technical review of the application unless these issues relate to dam safety.

**COMMENT 29:** Commenter expressed concern about building a dam across the Mexia-Talco Fault Line, and whether the dam will withstand a major earthquake. (Gary Cheatwood)

**RESPONSE 29:** Chapter 299 of TCEQ's rules, concerning dam safety, require applications which include a dam as part of a water rights application, to provide geotechnical, hydrologic and hydraulic reports for the site and other information regarding the site. The geotechnical report should address any faults in the vicinity of the dam. The Executive Director will review the report to ensure that all foundation issues are addressed.

**Project costs**

**COMMENT 30:** Commenter supports the site as a suitable site, and the cost will be reasonable. (Blake English) The cost is reasonable, and has the lowest cost of all alternatives. (Dan Petty for North Texas Commission) The cost analyses are inconsistent—ranging from \$200 to \$300 million. There is reason to doubt UTRWD will raise \$300 million in the foreseeable future. Except for ten percent (10%) proposed to be raised via bonds by the town of Ladonia, there has been no public discussion about how UTRWD plans to finance the remaining ninety percent (90%). Commenter asks if the law provides delay of the project until UTRWD demonstrates a reasonable ability to raise \$300 million. (Kenneth (Mike) Flesher) The City of Ladonia is not obligated as to any cost of the project. (Mayor Leon Hurse)

Construction cost estimates are significantly understated based upon the rapid increase in costs for building materials since the original estimates were prepared, especially due to recent price increases in fuel and materials and the effects of the 2005 Gulf Coast storms and flooding. Costs estimates should be updated and indexed to construction material inflation rates. The relative cost/benefit relationship should be reevaluated with regard to the higher costs and other cost effective alternatives available. (Mayor Richard Cook, Town of Double Oak)

There are significant financial and management concerns that must be rectified with the UTRWD before their operations unnecessarily expand and drain its membership of excessive funds. Request that TCEQ require UTRWD provide updated cost estimates for the total cost and a cost benefit analysis of Lake Ralph Hall. (Laurie Long for Town of Flower Mound, Sue Tejml for Town of Copper Canyon, Mayor Jody Smith for Town of Flower Mound)

**RESPONSE 30:** The Commission must consider the availability of feasible and practicable alternative supplies to water from an interbasin transfer, and the technical review of the application will include consideration of the factors identified in the approved Region C Water Plan which address, among other things, the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer. Issuance of a water rights permit is not contingent on the applicant's ability to demonstrate its financial ability to construct and operate the project.

**COMMENT 31:** In the permitting process, TCEQ should consider the costs of water from Lake Ralph Hall compared to other potential sources of water, particularly compared with increased water use efficiency (conservation), reuse of current supply (recycled water), and use of unused water from existing reservoirs whose impacts have already occurred. TCEQ should consider the prospect of other entities in the DFW area doing a joint project, with economies of scale making Lake Ralph Hall very expensive by comparison. (Janice Bezanson for the Texas Committee on Natural Resources) Dallas Water Utilities, the UTRWD's primary water supply, has already committed to providing UTRWD with additional water at a much lower cost than is projected for Lake Ralph Hall. (Paul Stone for Town of Flower Mound)

**RESPONSE 31:** Texas Water Code § 11.085, regarding Interbasin Transfers requires, among other things, the TCEQ to weigh the effects of the proposed transfer by considering the need for the water in the basin of origin and in the proposed receiving basin. The commission must also consider the factors identified in the applicable approved water plans which address availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer; the amount and purpose of use in the receiving basin for which water is needed; proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures; the proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use; the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries. The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period; and the applicant has prepared a drought contingency plan and has developed and implemented a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant.

**COMMENT 32:** The reservoir will need a small pipeline, which is not as cost effective as a large pipeline, and there are a lot of economies of scale that will not come into place with a reservoir this small. The costs need to be looked at independently. (Janice Bezanson for Texas Committee on Natural Resources)

**RESPONSE 32:** Texas Water Code § 11.085, regarding Interbasin Transfers requires the TCEQ to weigh the effects of the proposed transfer by considering the need for the water in the basin of origin and in the proposed receiving basin. The commission must also consider, among other things, the factors identified in the applicable approved water plans which address availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer; proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures; the proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use; the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and the projected

impacts of the proposed transfer that are reasonably expected to occur on existing water rights. The commission must also consider the information required to be submitted by the applicant. The commission may grant, in whole or in part, an application for an interbasin transfer only to the extent that the detriments to the basin of origin during the proposed transfer period are less than the benefits to the receiving basin during the proposed transfer period.

#### **Financial Ability of UTRWD**

**COMMENT 33:** This project can be financed. (David Brune) UTRWD has been operating at a financial loss and has one of the highest debt loads of any comparable organization. If the permit is approved, UTRWD's combined debt load will exceed \$1.15 billion, which is an unacceptable level of financial burden to place on the District's members. (Laurie Long for Town of Flower Mound, Sue Tejml for Town of Copper Canyon, Mayor Jody Smith for Town of Flower Mound) UTRWD has an unacceptable debt ratio. (Chris Torley for the Town of Flower Mound)

The financial position of UTRWD indicates it may not have the financial strength necessary to complete a project of this magnitude. This is because its debt exceeds the value of its assets, and due to the continued losses incurred in the Regional Treated Water System Segment. Further, UTRWD has a strategy of utilizing the commercial paper market for other than short term needs. A revised estimate based upon today's costs will approach the size of the current UTRWD debt, and the plans for this project rely upon the ability to obtain an additional \$100 million in state participation funding which has not yet been approved. (Mayor Richard Cook, Town of Double Oak)

**RESPONSE 33:** Except to the extent that financial strength and ability may be relevant to the issue of public welfare, issuance of a water rights permit is not contingent on an applicant's ability to demonstrate its financial ability to construct and operate the project. The TCEQ has no statutory authority to make this estimate and no statutory criteria on which to base such a cost estimate.

#### **Environmental/Mitigation Concerns**

**COMMENT 34:** The lake will improve serious existing environmental problems in the lake area. (Virginia Blevins for the City of Justin) The project is not burdened by environmental problems and will actually benefit the environment. (David Brune) The lake will make a positive contribution to the environment. (Dan Petty for North Texas Commission) There have been no environmental impact studies. (David and Sharron Nabors)

**RESPONSE 34:** The environmental impacts of the project are being reviewed as part of the review of the application. This assessment includes a review of existing information and data. However, additional studies are being conducted to properly evaluate the impact of the project. If the Executive Director's staff determines that there will be impacts to in stream uses, including fish and wildlife habitat and water quality, then special conditions will be included in the draft permit to mitigate those impacts. If the mitigation plan is not completed by the time technical review of the application is

completed, the draft permit will contain a special condition requiring the Applicant to obtain approval of its mitigation plan prior to beginning construction of the reservoir.

**COMMENT 35:** In the permitting process, TCEQ should consider the requirement that the project be consistent with the long-term protection of the state's water resources, agricultural resources and natural resources. (Janice Bezanson for the Texas Committee on Natural Resources, Max Shumake for Sulphur River Oversight Society)

**RESPONSE 35:** The review of the application includes an evaluation of environmental impacts associated with the project. If any adverse impacts to these resources are identified, then the draft permit will contain special conditions to mitigate these impacts. If the mitigation plan is not completed by the time technical review of the application is completed, the draft permit will contain a special condition requiring the Applicant to obtain approval of its mitigation plan prior to beginning construction of the reservoir.

**COMMENT 36:** In the permitting process, TCEQ should consider reduction in environmental flows. The TCEQ should also consider the effect on the International Paper plant downstream of reducing flood flows. (Janice Bezanson for the Texas Committee on Natural Resources) Wants to ensure the permit contains appropriate environmental flow conditions. (Christopher Brown for National Wildlife Foundation)

**RESPONSE 36:** The review of the application includes an instream flow analysis to determine if the project could impair instream uses. If such an impairment is identified, the draft permit will include streamflow restrictions or other conditions to mitigate those impacts. If the permit is issued, it will also contain a "re-opener" clause which will allow the TCEQ to make changes to the environmental conditions.

**COMMENT 37:** A change in the flow of the river will eliminate use and enjoyment of the river for fishing, hunting and camping. (David and Sharron Nabors)

**RESPONSE 37:** The Executive Director's review of the application includes an evaluation of environmental impacts associated with the project, and this review includes impacts to recreation areas. If adverse impacts are identified, the draft permit will include special conditions to mitigate those impacts.

**COMMENT 38:** The application does not provide needed information or analysis for the impacts on impact on bottomland hardwoods along the Sulphur River and diversions of water from the Sulphur River on the lands that depend upon the river. (Ward Timber) The proposed location has specific qualities that make this sound choice. Specifically, there are no hardwoods, wetlands or endangered species. (Dan Petty for the North Texas Commission) There are no old growth trees in the area, and few structures will be flooded. (T. Jervis Underwood)

**RESPONSE 38:** The review of the application includes an environmental analysis to determine the impact the project may have on the environment. The analysis includes a

review of existing information and data. Additional studies are being conducted to properly evaluate the environmental impacts from the project.

**COMMENT 39:** Wildlife mitigation issue has not been addressed in the permit application. Specifically, the application does not provide the location or amount of land that may be taken for mitigation, which is required by state and federal law. (Patsy Wicks, Randy Wicks, Charlotte Wicks, Ronal and Debbie Kennemer, Leah and Steve Colley, Kristi Wicks and Doug Wicks, Ward Timber, Max Shumake for Sulphur River Oversight Society, and the Citizens of Cuthand Community: Hellen Sessums, Floyd Sessums, Peggy Belcher, Pete Belcher, Eddie Belcher, Linda Belcher, Nina Holt, Robert Holt, Joe McKelney, Patricia McKelney) The significant diversion and impoundment of flows from the North Sulphur River has the potential to adversely affect the fish and wildlife of the Sulphur River Basin. Fish and wildlife resources would suffer adverse effects if the application is granted without adequate permit conditions. (Christopher Brown for National Wildlife Foundation) In the permitting process, TCEQ should consider the impacts on both aquatic and terrestrial wildlife habitat, both from building the reservoir and from diverting water that otherwise would have supplemented downstream flows. The TCEQ should also consider mitigation for impacts on wildlife habitat. (Janice Bezanson for the Texas Committee on Natural Resources)

Mitigation may cause loss of timber lands. (Ward Timber) Mitigation may directly affect land. (David and Sharron Nabors)

**RESPONSE 39:** The application is reviewed for environmental impacts, including the effects on fish and wildlife habitat, water quality and instream uses. The evaluation of any proposed mitigation will be in coordination with other state and federal agencies, including Texas Parks and Wildlife Department and the U.S. Army Corps of Engineers. If any adverse impacts are found, the draft permit will contain special conditions to address those impacts. If the mitigation plan is not completed by the time technical review of the application is completed, the draft permit will contain a special condition requiring the Applicant to obtain approval of its mitigation plan prior to beginning construction of the reservoir.

**COMMENT 40:** Regulations are not in place for the protection of the reservoir water from substandard wastewater and septic systems, but the costs of the upgrade should not be borne by homeowners within the new district. The developer should bear the costs for these upgrades. (Carol Weiss, Trustee)

**RESPONSE 40:** The application is being reviewed for environmental impacts, including the impact on water quality. If any adverse impacts from the construction of the reservoir and diversion of water are found, the draft permit will contain special conditions to mitigate those impacts. The commission is not granted the authority to consider the costs of service upgrades when reviewing a water rights application. TCEQ has rules to protect the waters of the state from contamination from wastewater and septic systems. However, in the review of this application, the Executive Director does not consider whether these systems may contaminate the reservoir in the future.

**Property Issues**

**COMMENT 41:** Opposes the reservoir because it will take property belonging to our family, land that has been in some families for generations. (John S. Adams, Chester DeBord, Donna Dockery, Sarah Hembree-Ashcraft-Petersen, Angela Scott) This will also take farming and ranching businesses. (Sarah Hembree-Ashcraft-Petersen, Patsy and Randy Wicks, Ronal and Debbie Kennemer, Leah and Steve Colley, Kristi Wicks and Doug Wicks, Crystal Smith) Opposes loss of property. (Lyndal Burnett) Concerned about loss of land that is for their retirement. (Michelle Dowell)

Commenter asked whether landowners will be sufficiently reimbursed to buy property of similar quality and quantity, and whether landowners will be reimbursed for relocation costs. Commenter asked whether they would be reimbursed for (a) improvements to property (such as fences, barns and improved pasture), (b) labor-intensive additions to the infrastructure of the homes (such as flower beds, gardens, shelving, racks, out buildings), and (c) agricultural equipment that will no longer be of use to them. (Kenneth (Mike) and Evelyn Flesher) Citizens who lose their property should be adequately compensated. (Mike Yarbrough) The State of Texas has a responsibility to protect the landowners who will lose their land to the project from the offensive tactics used by UTRWD regarding dealings with landholders. (Carol Weiss, Trustee)

**RESPONSE 41:** Issues associated with compensating land owners whose property is appropriated for the reservoirs will be addressed through the eminent domain process. The TCEQ does not regulate the eminent domain process.

**COMMENT 42:** The reservoir will inundate a portion of my property. (Leslie Adams)

**RESPONSE 42:** Issues associated with compensating land owners whose property is appropriated for the reservoirs will be addressed through the eminent domain process. The TCEQ does not regulate the eminent domain process.

**COMMENT 43:** Opposes the reservoir because it will restrict use of remaining property. (John S. Adams) The issues of impacts on homeowners in the vicinity of the lake and landowners whose land could be taken for mitigation of the lake should be considered. (Max Shumake for Sulphur River Oversight Society)

**RESPONSE 43:** Mitigation will be required for the building of the reservoir. The environmental review will consider any mitigation information provided by the applicant and determine that information adequately addresses impacts from the project. If any adverse impacts are identified, then the draft permit will contain special conditions to mitigate these impacts. If the mitigation plan is not completed by the time technical review of the application is completed, the draft permit will contain a special condition requiring the Applicant to obtain approval of its mitigation plan prior to beginning construction of the reservoir. Issues associated with compensating land owners whose property is appropriated for the reservoirs will be addressed through the eminent domain process. The TCEQ does not regulate the eminent domain process.

**Property Tax/ Economic Issues**

**COMMENT 44:** Opposes the reservoir because it will cause an increase in property taxes. The property tax burden will increase when land for the reservoir is removed from the tax roll. (John S. Adams, Ezra and Marilyn Scott, Joetta Wallace, Janice Bezanson for Texas Committee on Natural Resources, Mike Yarbrough, Fannin County Commissioners Court) Concerned about increase in property taxes when lake takes property off the tax roll. (Michelle Dowel, H. D. Witcher) The project will affect the county roads and transportation infrastructure. (Fannin County Commissioners Court) Property taxes of those downstream will be affected because productivity will decrease. (Dickie Dolby) The tax district boundaries are too narrow to bear the costs of dam upkeep. The tax district boundaries must be expanded to include the larger group of users. Otherwise, it will be an equitable and onerous tax on those citizens who have given up land for this project. (Carol Weiss, Trustee) Commenter asks the purpose of taking more land from the tax base to support the Metroplex when there are other sources of water for that area. (Tommy Brown and Gail Brown)

**RESPONSE 44:** The TCEQ is limited to the criteria established in its governing statutes and rules, which do not authorize the TCEQ to review tax valuation issues. Texas Water Code § 11.085, regarding Interbasin Transfers requires the TCEQ to weigh the effects of the proposed transfer by considering, among other things, the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer. The commission must also consider the proposed mitigation or compensation, if any, by the applicant to the basin of origin, as well as the information required to be submitted by the applicant as part of the application.

**COMMENT 45:** If implemented with appropriate land use and soil conservation practices as contemplated by the district, this can provide economic growth for Ladonia and Fannin County. (David Brune) The project will economically benefit the City of Ladonia. (Mayor Leon Hurse) The lake will make a positive contribution to the economy. (Dan Petty for North Texas Commission) The lake will also bring economic benefits to Collin, Dallas, Denton and Fannin Counties. (Greater Dallas Chamber) The lake will produce multi-billion dollar dividends of economic benefits for North Texans. (Denton County Judge Mary Horn, Jan Black for Greater Dallas Chamber) There have been no economic impact studies. (David and Sharron Nabors) The project may adversely affect the economics of the forest industry in East Texas and Ward Timber. Opposes the loss of land, which is the basis for the largest industry in Fannin County (agriculture). (David Hembry for the Fannin County Farm Bureau, Mike Yarbrough) In the permitting process, TCEQ should consider the economic impacts of the timber industry, agribusiness industry, landowners for whom hunting leases are a major source of revenue, and other economic impacts. (Janice Bezanson for the Texas Committee on Natural Resources, Max Shumake for Sulphur River Oversight Society)

**RESPONSE 45:** As part of the technical review of the interbasin transfer in this application, the TCEQ must look at the economic impact to the basins as a result of the transfer. For the appropriation of the water for the reservoir, the TCEQ is limited to the

criteria established in its governing statutes and rules, and the analysis will be limited to those criteria. The TCEQ does not consider economic issues or economic impacts as part of that technical review related to the new appropriation of water and permitting of the reservoir.

**COMMENT 46:** Commenters expressed concern about job elimination. (Citizens of Cuthand Community: Hellen Sessums, Floyd Sessums, Peggy Belcher, Pete Belcher, Eddie Belcher, Linda Belcher, Nina Holt, Robert Holt, Joe McKelney, Patricia McKelney) Opposes the reservoir because not only will some people lose their property, but thousands of other people downstream will also be affected, such as the employees of International Paper in Cass County. (James G. (Greg) Bush)

**RESPONSE 46:** As part of the technical review of the interbasin transfer in this application, the TCEQ must look at the economic impact to the basins as a result of the transfer. For the appropriation of the water for the reservoir, the TCEQ is limited to the criteria established in its governing statutes and rules, and the analysis will be limited to those criteria. The TCEQ does not consider economic issues or economic impacts as part of that technical review related to the new appropriation of water and permitting of the reservoir.

#### Impacts on Cultural Resources

**COMMENT 47:** In the permitting process, TCEQ should consider the issue of condemnation of land, both for the reservoir and as mitigation sites, including the loss of archeological and historical artifacts. (Janice Bezanson for the Texas Committee on Natural Resources)

**RESPONSE 47:** As part of the technical review of the interbasin transfer in this application, the TCEQ must look at the economic impact to the basins as a result of the transfer. For the appropriation of the water for the reservoir, the TCEQ is limited to the criteria established in its governing statutes and rules, and the analysis will be limited to those criteria. The TCEQ does not consider economic issues or economic impacts as part of that technical review related to the new appropriation of water and permitting of the reservoir.

**COMMENT 48:** Oppose the reservoir because a cemetery will be destroyed, losing family history. (Crystal Cooper-Smith, Donna Dockery, Angela Scott, Ezra and Marilyn Scott) In the permitting process, TCEQ should consider the issue of movement of cemeteries. (Janice Bezanson for the Texas Committee on Natural Resources)

**RESPONSE 48:** When reviewing water rights applications, the TCEQ can only consider the criteria in applicable statutes and rules. The movement of cemeteries is not a listed criterion.

#### Miscellaneous

**COMMENT 49:** Opposes the reservoir because it will produce noise, pollution and traffic. (John S. Adams)

**RESPONSE 49:** An environmental analysis is part of the application review. This includes consideration of fish and wildlife habitats, water quality and in stream uses. Although TCEQ's authority includes a determination of whether public welfare will be adversely affected due to the issuance of a water rights permit, the Executive Director does not consider noise and traffic that may occur as a result of the issuance of a water rights permit.

**COMMENT 50:** Citizens need to work together to solve problems, such as issues associated with this application. (Jim Lang)

**RESPONSE 50:** The Executive Director appreciates citizen participation in the application comment process.

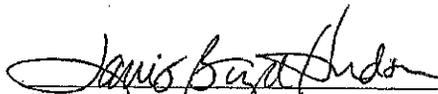
Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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CERTIFICATE OF SERVICE

I certify that on May 26, 2009, the "Executive Director's Response to Comment" for Water Use Permit No. 5821 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

*Robin Smith*

Robin Smith, Staff Attorney  
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CHIEF CLERKS OFFICE

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