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Larry R. Soward, *Commissioner*
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Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 3, 2009

TO: Persons on the attached mailing list.

RE: Upper Trinity Regional Water District
Water Use Permit No. 5821

Enclosed is a copy of the Executive Director's Response to Comments regarding the above-referenced matter.

Should you have any questions, please contact Melissa Schmidt of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3317.

Sincerely,

LaDonna Castanuela
Chief Clerk

LDC/ms

Enclosure

MAILING LIST
for
Upper Trinity Regional Water District
Water Use Permit No. 5821

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See attached list.

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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 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 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 Brume). 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.

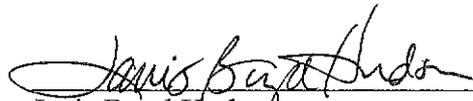
Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G.
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

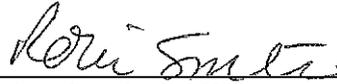
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CERTIFICATE OF SERVICE

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, Staff Attorney
Environmental Law Division
State Bar No. 18645600

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