

Bryan W. Shaw, Ph.D., *Chairman*  
Carlos Rubinstein, *Commissioner*  
Toby Baker, *Commissioner*  
Zak Covar, *Executive Director*



Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 24, 2012

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

**RE: JOHN PAT GRUMBLES, EMMETT LEE GRUMBLES,  
LOWER COLORADO RIVER AUTHORITY  
TCEQ DOCKET NO. 2012-1195-WR**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Request in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Arthur", written over a horizontal line.

Garrett Arthur, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

**DOCKET NO. 2012-1195-WR**

<b>JOHN PAT GRUMBLES</b>	<b>§</b>	<b>BEFORE THE</b>
<b>EMMETT LEE GRUMBLES</b>	<b>§</b>	
<b>LOWER COLORADO RIVER</b>	<b>§</b>	
<b>AUTHORITY</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>PROPOSED AMENDMENT</b>	<b>§</b>	
<b>CERTIFICATE OF</b>	<b>§</b>	
<b>ADJUDICATION NO. 14-1913</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**OFFICE OF PUBLIC INTEREST COUNSEL'S  
RESPONSE TO HEARING REQUEST**

**To the Members of the Texas Commission on Environmental Quality:**

The Office of Public Interest Counsel (OPIC) at the Texas Commission on Environmental Quality (TCEQ) files this response to a hearing request concerning John Pat Grumbles, Emmett Lee Grumbles, and the Lower Colorado River Authority's (LCRA) application to amend Water Rights Certificate of Adjudication No. 14-1913.

**I. Background**

On May 16, 2011, John Pat Grumbles, Emmett Lee Grumbles, and LCRA (Applicants) submitted the amendment application to TCEQ. The application was declared administratively complete on July 26, 2011. The agency mailed notice of the application on September 12, 2011, and the public comment period closed September 30, 2011. On September 22, 2011, Roger W. Gilbert (Requestor) timely submitted a hearing request.

For the reasons stated herein, OPIC respectfully recommends the Commission deny Mr. Gilbert's hearing request.

Certificate of Adjudication No. 14-1913 authorizes the Grumbles to divert 270 acre-feet of water per year from the San Saba River, a tributary of the Colorado River in the Colorado River Basin. The water right is for agricultural purposes to irrigate 270 acres of land in San Saba County, and the time priority of this right is 1932.

LCRA's Water Use Permit No. 5715 authorizes LCRA to maintain Lometa Reservoir located on Salt Creek, a tributary of the Colorado River in the Colorado River Basin, and impound approximately 555 acre-feet of water in the reservoir. The LCRA permit also authorizes diversion from the Colorado River and the perimeter of Lometa Reservoir for municipal purposes within the service areas of the City of Lometa and the Lampasas County Regional Water and Wastewater System in the Colorado River and Brazos River Basins.

Pursuant to a lease of the Grumbles' water right to LCRA, Applicants seek to amend Certificate of Adjudication No. 14-1913 to add a downstream diversion point on the Colorado River. The additional diversion point for the Grumbles would be the same location as LCRA's existing diversion point under Water Use Permit No. 5715. Also pursuant to the lease, Applicants propose to: add municipal use to the allowable uses for the Grumbles' 270 acre-feet of water; and add authorization to impound and store those 270 acre-feet in Lometa Reservoir for subsequent diversion and municipal use within the Lometa Water System. Finally, Applicants seek an interbasin transfer to use the water in the service area of the Lometa Water System, which serves the City of Lometa and rural areas in Lampasas, Mills, San Saba, and Burnet Counties in the Colorado River Basin and Brazos River Basin.

## II. Applicable Law

Because this application was declared administratively complete after September 1, 1999, it is subject to the requirements of the Texas Administrative Code (TAC), Title 30, Sections 55.250–55.256. 30 TAC §§ 55.250, 295.171. Under those provisions, the Commission, Executive Director (ED), applicant, and affected persons may request a contested case hearing. 30 TAC §§ 55.251(a), 295.171.

A hearing requestor must make their request in writing within the time period specified in the notice and identify the requestor's personal justiciable interest affected by the application, specifically noting the "requestor's location and distance relative to the activity" and "how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public." 30 TAC § 55.251(b)–(d).

An affected person is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." 30 TAC § 55.256(a). An interest common to members of the general public does not qualify as a personal justiciable interest. *Id.* Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.256(b). Relevant factors to be considered in determining whether a person is affected include but are not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.256(c).

The Commission shall grant a request for a contested case hearing if (1) the request is made by the applicant or the ED, or (2) the request is made by an affected person, timely filed with the chief clerk, and made pursuant to a right to hearing authorized by law. 30 TAC § 55.255(b).

### **III. Analysis of Hearing Request**

The Requestor Mr. Gilbert states that he holds Certificate of Adjudication No. 14-1821 for the San Saba River, with a priority date of 1952. This water right allows 165 acre-feet per year for irrigation. According to a map prepared by ED staff (available from the TCEQ Chief Clerk), Mr. Gilbert's diversion point is upstream of the Grumbles' existing and proposed diversion points.

Mr. Gilbert asserts that most of the water rights on the San Saba were intended for agricultural use, not municipal use, and the proposed amendment is not fair and not right. Requestor further asserts that the proposed amendment is not legal because it is contrary to the purpose of TCEQ's suspension of water rights on the San Saba River.<sup>1</sup> Mr. Gilbert concludes that the proposed amendment is an exception to the suspension, and TCEQ cannot make such an exception.

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<sup>1</sup> OPIC acknowledges that on August 8, 2011, TCEQ suspended certain water rights on the San Saba River, and on February 7, 2012, the suspension was lifted. We also note that Mr. Gilbert's hearing request was submitted during that suspension on September 22, 2011.

Under 30 TAC § 55.256(a), an affected person is “one who has a personal justiciable interest related to a legal right ... affected by the application”, and “[a]n interest common to members of the general public does not qualify as a person justiciable interest.” In spite of Mr. Gilbert’s water right and his interest in how San Saba River water is used, OPIC cannot find that he qualifies as an affected person. As stated previously, Mr. Gilbert’s diversion is upstream from the Applicants’ proposed diversion. Further, Mr. Gilbert’s diversion point is on the San Saba River. In contrast, the proposed amendment would add a diversion point on the Colorado River, not the San Saba. Without a downstream diversion right on the same river, Mr. Gilbert’s interest in the uses of San Saba River water is an interest common to members of the general public, and as such, cannot qualify as a personal justiciable interest.

Section 55.256(c) provides relevant factors to help determine whether a hearing requestor qualifies as an affected person. Application of those factors further demonstrates that Mr. Gilbert is not an affected person in this matter. Subsection (c)(3) asks whether a reasonable relationship exists between the interest claimed and the activity regulated. Also, subsections (c)(4) and (c)(5) ask whether the regulated activity is likely to impact the hearing requestor’s use of property or use of the impacted natural resource. Mr. Gilbert’s interest is his water right, and a reasonable relationship exists between that water right and the regulation of the Grumbles’ water right. However, the proposed amendment is not likely to impact Mr. Gilbert’s use of his property or his use of San Saba River water. Mr. Gilbert’s diversion point on the San Saba River is upstream from the Applicants’ proposed diversion point on the Colorado River, and his hearing request does not show how a downstream diversion is likely to impact him.

After considering the definition of "affected person" provided in § 55.256(a) and the relevant factors provided in § 55.256(c), OPIC finds that Mr. Gilbert is not an affected person.

#### **IV. Conclusion**

Having found that Mr. Gilbert does not qualify as an affected person under the applicable law, OPIC must respectfully recommend the Commission deny his hearing request.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
Garrett Arthur  
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## CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2012, the foregoing document was filed with the TCEQ Chief Clerk, and copies were served to all parties on the attached mailing list via hand delivery, facsimile transmission, electronic mail, inter-agency mail, or by deposit in the U.S. Mail.

  
\_\_\_\_\_  
Garrett Arthur

**MAILING LIST**  
**JOHN PAT GRUMBLES, EMMETT LEE GRUMBLES,**  
**LOWER COLORADO RIVER AUTHORITY**  
**TCEQ DOCKET NO. 2012-1195-WR**

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REQUESTER:

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