

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 13, 2016

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

Re: Docket No. 2013-2114-WR
Covered Bridge Canyon Homeowners Association, Inc.
Water Rights Permit No. 12479

Dear Ms. Bohac:

Attached for filing please find an original and seven copies of the Executive Director's Response to Hearing Requests in the above referenced matter. Please feel free to contact me at dinniah.tadema@tceq.texas.gov or (512) 239-0617 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Dinniah C. Tadema".

Dinniah C. Tadema
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List

TCEQ DOCKET NO. 2013-2114-WR

**APPLICATION BY COVERED
BRIDGE CANYON HOMEOWNERS
ASSOCIATION, INC. PERMIT NO.
12479**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) respectfully submits this response to hearing requests filed in the application by Covered Bridge Canyon Homeowners Association, Inc. (Covered Bridge Canyon HOA) for new Water Use Permit No. 12479. Hearing requests were filed by Kathy Chruscielski, Joyce Hartman, and the City of Houston (City). In addition, comments were filed by John Cavenah, Sr.; Al Jones; and Tony Wright.

The Executive Director respectfully recommends that the Commission grant Kathy Chruscielski's hearing request and deny Joyce Hartman and the City of Houston's hearing requests.

Staff has prepared a map showing the location of Kathy Chruscielski and Joyce Hartman's property according to the addresses provided in their hearing requests and the City's authorized diversions. Staff's map is attached as Attachment A. Staff has also prepared a plat map showing Ms. Chruscielski and Ms. Hartman's property relative to the stream. The plat map is attached as Attachment B.

I. BACKGROUND

Covered Bridge Canyon HOA filed an application for Water Use Permit No. 12479 to maintain seven dams and reservoirs (known as Reservoirs 1-7) on unnamed tributaries of Silver Creek, tributary of Lake Worth on the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin with a combined normal capacity of 29.55 acre-feet for recreational purposes in Parker County.

Covered Bridge Canyon HOA has provided evidence of an alternate source of water, groundwater from the Paluxy Formation of the Trinity Aquifer, to provide makeup water for evaporation losses, 27.6 acre-feet per year, and to maintain the reservoirs at a constant level. The five existing groundwater wells are capable of producing a combined total of 90.33 acre-feet of water per year at a maximum combined rate of 0.1114 cubic feet per second.

II. PROCEDURAL HISTORY

The Commission received this application on July 16, 2009. The application was declared administratively complete on January 28, 2010. Notice of the application was mailed by the Commission's Chief Clerk on January 28, 2011 to water right

holders of record in the Trinity River Basin. The notice for this application was published in the Fort Worth Star Telegram on February 17, 2011.

The hearing request period for this application closed on March 21, 2011. Three hearing requests for a contested case hearing were timely received.

III. LEGAL AUTHORITY

Pursuant to 30 Texas Administrative Code Section 55.251(a), the following may request a contested case hearing on water rights applications: 1) the Commission; 2) the Executive Director; 3) the applicant; and 4) affected persons when authorized by law. Affected persons are authorized to submit hearing requests for water rights applications under Texas Water Code Section 11.132(a). The Commission, on the request of any affected person shall hold a hearing on a water rights application. The procedures for determining whether a hearing requestor is an affected person and whether the hearing request is valid are set forth in 30 Texas Administrative Code Sections 55.250-55.256, which apply to water rights applications such as this one that were declared administratively complete after September 1, 1999.

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 Tex. Admin. Code § 55.256(a). An interest "common to members of the general public does not qualify as a personal justiciable interest." 30 Tex. Admin. Code § 55.256(a).

Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 Tex. Admin. Code § 55.256(b).

To determine whether a hearing requestor is an affected person, all relevant factors must be considered. 30 Tex. Admin. Code § 55.256(c). These factors include but are not limited to the following:

- 1) whether the interest claimed is one protected by the law under which the application will be considered;
- 2) distance restrictions or other limitations imposed by law on the affected interest;
- 3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- 4) the likely impact of the regulated activity on the health, safety, and use of property of the person;
- 5) the likely impact of the regulated activity on the 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 Tex. Admin. Code § 55.256(c).

In addition, the hearing request must substantially comply with the four requirements set forth in 30 Texas Administrative Code Section 55.251(c):

- 1) Give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- 2) Identify the person's personal justiciable interest affected by the application including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application 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;
- 3) Request a contested case hearing; and
- 4) Provide any other information specified in the public notice of application.

The request for a contested case hearing must be filed with the Commission's Chief Clerk during the public comment period. 30 Tex. Admin. Code § 55.251(d).

The Commission must grant a request for a contested case hearing made by an affected person if the request complies with the requirements of 30 Texas Administrative Code Section 55.251; is timely filed with the Chief Clerk; and is pursuant to a right to hearing authorized by law. 30 Tex. Admin. Code § 55.255(b)(2).

IV. HEARING REQUESTS AND RECOMMENDATION

A total of three hearing requests were timely filed by Kathy Chrusielski, Joyce Hartman, and the City of Houston. An outline of each hearing request and the Executive Director's recommendation on each request follows. All of the hearing requestors substantially complied with the procedural requirements of Section 55.251. However, the City of Houston and Joyce Hartman failed to show how they are affected persons.

A. Recommendation to Grant

Kathy Chrusielski

Kathy Chrusielski requests a hearing on the basis that the creek flows on her property have slowed to a trickle since the construction of the dams at Covered Bridge Canyon. She alleges that the dam construction has created stagnant waters with a low oxygen content which is unable to sustain fish and turtles that once inhabited the creek.

Based on the factors in 30 Texas Administrative Code Section 55.256(c)(3)-(5), Ms. Chrusielski is an affected person. Ms. Chrusielski's property is downstream and in close proximity to the seven reservoirs in the draft permit; the unnamed tributaries of Silver Creek that the reservoirs are located on also feed into the creek that

crosses Ms. Chruscielski's property. Therefore, a reasonable relationship could exist between Ms. Chruscielski's claim of stagnant water with decreased wildlife and the issuance of Covered Bridge Canyon HOA's water right permit. The issuance of Covered Bridge Canyon HOA's water rights permit may also impact Ms. Chruscielski's use of her property and her use of the creek that crosses her property. Therefore, Chruscielski's hearing request should be granted.

B. Recommendation to Deny

Joyce Hartman

Joyce Hartman requests a hearing on the basis that the Covered Bridge dams have created a nuisance and health hazard near her home due to stagnant water full of mosquitos.

Based on the applicable factors in 30 Texas Administrative Code Section 55.256(c), Ms. Hartman is not an affected person. The Executive Director recommends denying Ms. Hartman's hearing requests because she failed to show how her concerns are not common to members of the general public. Unlike Ms. Chruscielski, Ms. Hartman does not own property that is riparian to the creek that the reservoirs are located on. See Attachment B. Therefore, she has no direct use of the creek. It is unlikely that the permitting of Covered Bridge Canyon HOA's reservoirs will impact the use of Ms. Hartman's property nor her use of the creek. Therefore, Ms. Hartman's hearing request should be denied.

The City of Houston

The City requests a hearing on the basis that it relies upon the Trinity River Basin for its municipal water supplies to provide water to Houston and its environs. The City is the owner of, and/or has contracts for, multiple water rights in the Trinity River Basin, including Lake Livingston (Certificate of Adjudication No. 08-4261) and Certificate of Adjudication No. 08-4277. The City also alleges that the Trinity River Basin provides freshwater inflows to Galveston Bay and its estuaries, which contribute to the economic well-being and quality of life of the City and its citizens. Therefore, the City alleges that it has a direct health and safety, as well as water rights and pecuniary interests associated with the condition and well-being of the Trinity River Basin.

Based on the applicable factors in 30 Texas Administrative Code Section 55.256(c), the City is not an affected person. The Executive Director recommends that the City of Houston's hearing request be denied because the City failed to explain how its water rights may be affected by the issuance of Covered Bridge Canyon HOA's water right permit. Although the City's water rights in the Trinity River Basin are an interest protected by law, the City's closest water right is approximately 200 miles from Covered Bridge Canyon HOA's seven reservoirs and is unlikely to be affected by a total storage capacity of approximately 30 acre-feet. It is unlikely that the issuance of Covered Bridge Canyon HOA's water right permit will impact the health and safety of the citizens of the City and the City's use of the Trinity

River. In addition, the City's concerns about freshwater inflows into Galveston Bay are common to the general public. Therefore, the City's hearing request should be denied.

V. CONCLUSION

The Executive Director respectfully recommends that the Commission grant Kathy Chruscielski's hearing request and deny Joyce Hartman and the City of Houston's hearing requests.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

Richard A. Hyde, P.E.
Executive Director

Robert Martinez, Director
Environmental Law Division



By _____
Dinniah C. Tadema
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Certificate of Service

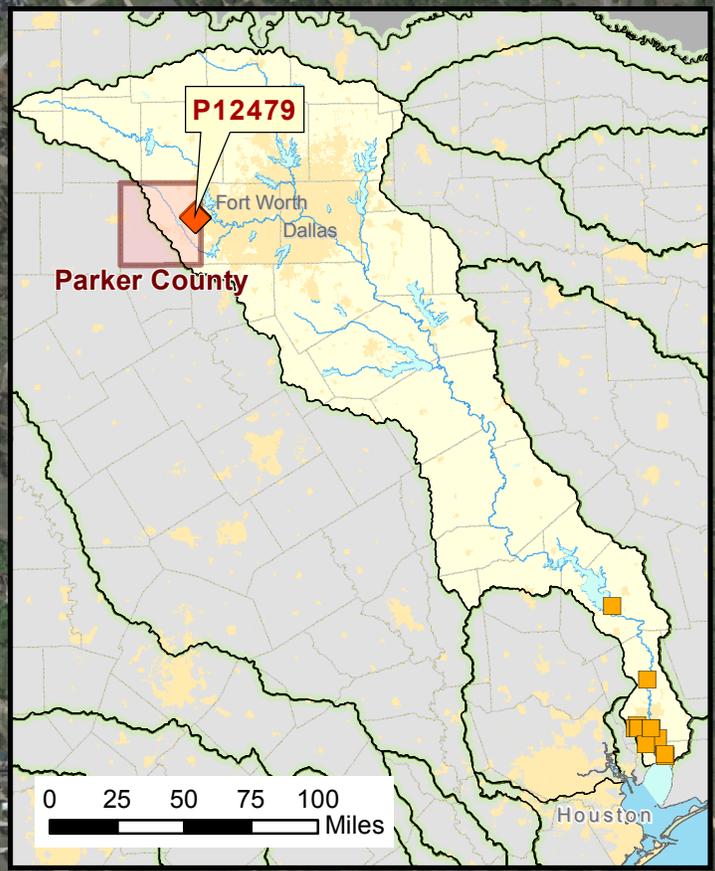
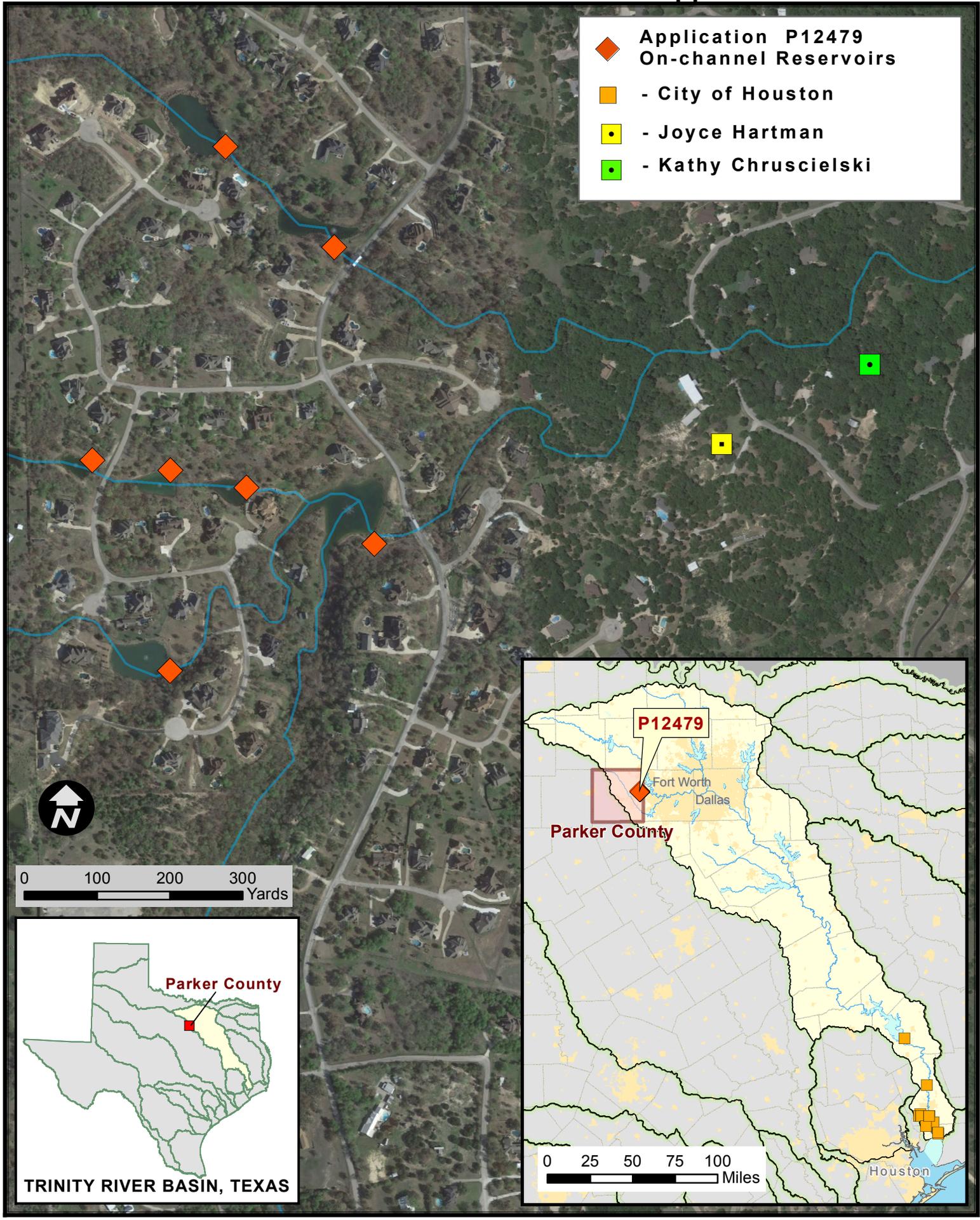
I hereby certify that on this 13th day of May, 2016, a true and correct copy of the Executive Director's Response to Hearing Requests was filed with the Chief Clerk of the Texas Commission on Environmental Quality and sent to the persons on the attached Mailing List.



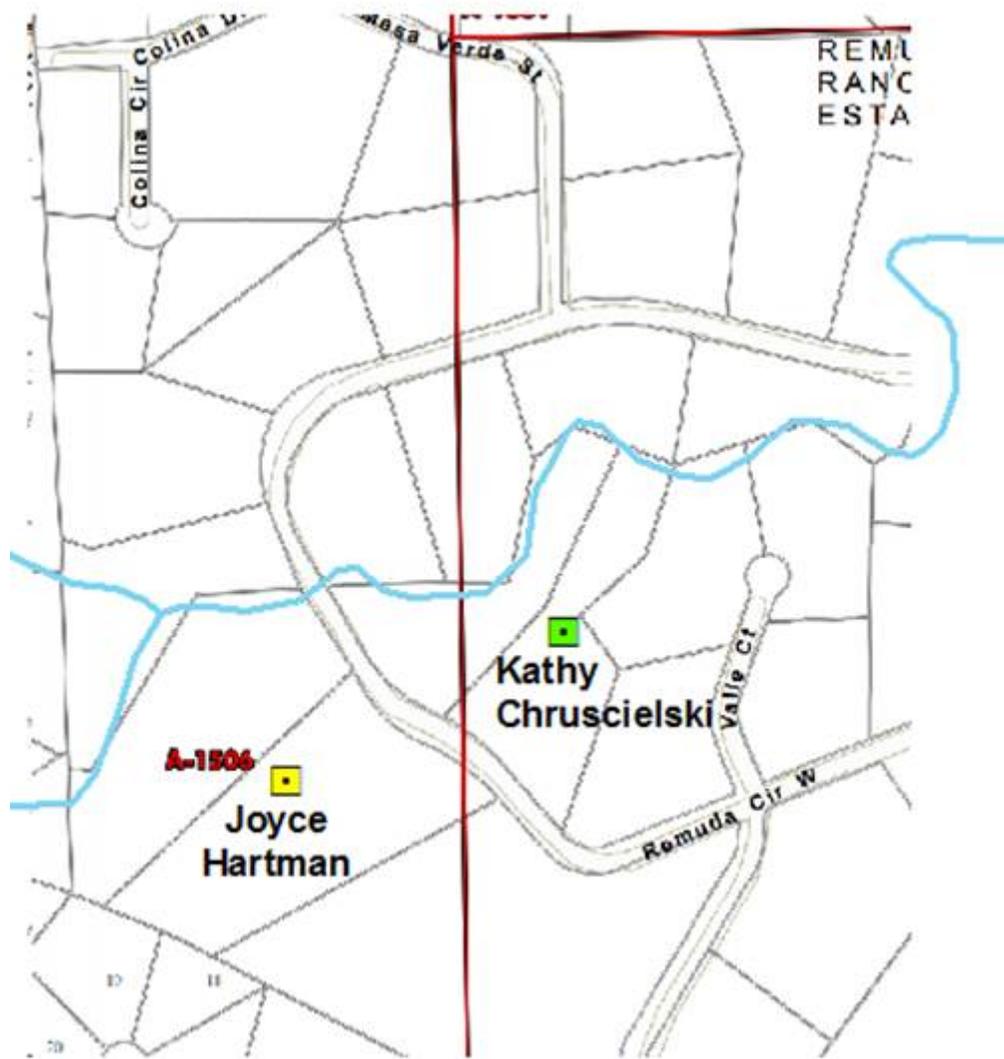
Dinniah Tadema, Staff Attorney
Environmental Law Division

Attachment A

- ◆ Application P12479 On-channel Reservoirs
- - City of Houston
- - Joyce Hartman
- - Kathy Chruscielski



Attachment B



MAILING LIST
COVERED BRIDGE CANYON HOA
DOCKET NO. 2013-2114-WR
WRPERM 12479

FOR THE APPLICANT:

Via U.S. mail:

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Fort Worth, Texas 76108-9602

Rena Peden
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FOR THE EXECUTIVE DIRECTOR:

Via electronic mail:

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FOR PUBLIC INTEREST COUNSEL:

Via electronic mail:

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RESOLUTION

Via electronic mail:

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Texas Commission on Environmental
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FOR THE CHIEF CLERK:

Via e-filing:

Bridget C. Bohac
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REQUESTER(S):

Via U.S. mail:

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Joyce Hartman
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Edmond R. McCarthy, Jr. Jackson,
Sjoberg, McCarthy & Townsend
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INTERESTED PERSON(S):

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Lockheed/Martin (Retired)
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