

TCEQ DOCKET NO. 2016-0049-WR

WATER RIGHTS APPLICATION	§	BEFORE THE TEXAS COMMISSION
NO. 08-2462I BY THE	§	
CITY OF DALLAS	§	ON
FOR ADDITIONAL DIVERSIONS	§	
FROM LAKE RAY HUBBARD	§	ENVIRONMENTAL QUALITY

**CITY OF DALLAS' RESPONSE TO HEARING REQUESTS ON CITY OF DALLAS
WATER RIGHTS APPLICATION NO. 08-2462I**

TO THE TEXAS COMMISSION ON ENCIRONMENTAL QUALITY:

COMES NOW, the City of Dallas ("Dallas"), by and through its attorney, Gwendolyn Hill Webb of Webb & Webb, Attorneys at Law, and files this, its Response to Hearing Requests on Water Rights Application No. 08-2462I. In support thereof, Austin would respectfully state as follows:

I. INTRODUCTION AND SUMMARY OF APPLICATION

Dallas applied for an amendment to its Certificate of Adjudication No. 08-2462 to authorize additional diversions from Lake Ray Hubbard. Dallas' water right is based on its authorization to impound 490,000 acre-feet of water in the reservoir on the East Fork Trinity River known as Lake Ray Hubbard, and its authorization to divert and use 89,700 acre-feet/year for municipal (78,700 acre-feet), industrial (10,000 acre-feet) and domestic (1,000 acre-feet). Permit amendments were granted for: Changes in use of water for City of Garland irrigation and Eastern Hills Country Club irrigation (08-2462A); Richardson Country Club d/b/a Canyon Creek Country Club irrigation, and reducing the industrial use authorization (08-2462B); Changing the purpose of use of the 1,000 acre-feet diverted directly from Lake Ray Hubbard (08-2462C); Authorizing municipal or irrigation use for 2,000 acre-feet of water (08-2462D); Reallocating water between municipal and irrigation uses (08-2462E); Increasing the authorized diversion rate

to 619 CFS; and Authorizing use of water for Multiple Purposes: Municipal, Industrial, Agriculture (Irrigation), Mining, Domestic, Recreation, Livestock, and Hydroelectric Power Generation (08-2462H). Amendment 08-2462G authorized indirect reuse (08-2462G); that authorization has been fully incorporated into Dallas' water reuse permit, Permit No. 12468. All amendments have a priority date of February 2, 1955, except indirect water reuse, which has a December 5, 2001 priority date.

Dallas' Application No. 08-2462I is essential to providing additional water supply needed to meet demands in North Central Texas. Amendment 08-2462I has the important advantage of making more efficient use of water already available in the watershed, using the available storage in Lake Ray Hubbard. *No new storage reservoirs are needed to produce the additional water supply.* Dallas' Application No. 08-2462I would change Dallas' Lake Ray Hubbard water right as shown on the following graphic:

**Summary of Current and Requested Authorizations for
Certificate of Adjudication No. 08-2462I for Lake Ray Hubbard**

ITEM	CURRENT AUTHORIZATION	REQUESTED AUTHORIZATION	INCREASE
Annual Diversion	89,700 ac-ft/yr	209,300 ac-ft/yr	119,600 ac-ft/yr
Maximum Diversion Rate	619 cfs	1,455 cfs	836 cfs
	277,807 gpm	653,004 gpm	375,197 gpm
	400 MGD	940 MGD	540 MGD
Storage	490,000 ac-ft	490,000 ac-ft	0 ac-ft

Dallas provided extensive application documents, including hydrology analyses and an accounting plan in support of the proposed appropriation. After review of application and supporting documents, the TCEQ prepared staff memoranda and draft permits, and the Executive Director recommends issuance of amendment 08-2462I with conditions, including the

implementation of Trinity River Basin Environmental Flow Standards, and implementation of the *Lake Ray Hubbard Certificate of Adjudication 08-2462 Reservoir Accounting Plan* which is fully incorporated in the permit terms and conditions.

II. LEGAL REQUIREMENTS FOR ISSUANCE OF CERTIFICATE OF ADJUDICATION NO. 08-2462I

Dallas asserts that its application for additional appropriations from Lake Ray Hubbard under amendment 08-2462I can be granted in accordance with Texas Water Code, §11.134(b). Specifically, Dallas contends Application No. 08-2462I should be granted by the Texas Commission on Environmental Quality (“TCEQ” or “Commission”), because:

- (1) Dallas’ application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;
- (2) Unappropriated water is available at Lake Ray Hubbard;
- (3) Dallas’ proposed appropriation:
 - (A) is intended for a beneficial use;
 - (B) does not impair existing water rights or vested riparian rights;
 - (C) is not detrimental to the public welfare;
 - (D) considers any applicable environmental flow standards established under Section 11.1471 and, if applicable, the assessments performed under Sections 11.147(d) and (e) and Sections 11.150, 11.151, and 11.152; and
 - (E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement;
- (4) Dallas has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by Section 11.002(8)(B); and
- (5) Dallas’ proposed appropriation is in accordance with the approved regional water plan.

Dallas contends that all legal and procedural requirements for issuance of Certificate of Adjudication No. 08-2462I have been satisfied, including recognition and resolution of all legal concerns of those entities requesting contested case hearings, such that no referral to SOAH or contested case hearing is necessary. Moreover, Dallas hopes that, ultimately, the parties with active hearing requests will agree with Dallas that the current amendment draft can be issued in compliance with Texas Water Code §11.134(b) without the need for a contested case hearing.

III. REQUESTS FOR HEARING

The TCEQ issued notice of Application No. 08-2462I on October 3, 2008. The following eight (8) entities, which are affected persons potentially under the Texas Administrative Procedure Act, TEX. GOV'T CODE §2001.001, *et seq.*, timely filed requests for a contested case hearing:

- A. Colette J. Barron-Bradsby, Attorney for Texas, Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3218
Phone: (512) 389-8899
Fax: 512-389-4482
Colette.barron@tpwd.texas.gov

- B. Myron Hess, Attorney for National Wildlife Federation
Gulf States Natural Resource Center
44 East Avenue, Suite 200
Austin, Texas 78701
Phone: 512-476-9805
Phone: 512-610-7754
Fax: 512-476-9810
hess@nwf.org

- C. Nichole Saunders, Attorney for Environmental Defense Fund
301 Congress Avenue, Suite 1300
Austin, Texas 78701
Phone: (512) 478-5161
Fax: (512) 478-8140
nsaunders@edf.org

- D. Edmond R. McCarthy, Jr., Attorney for City of Houston, Texas
Jackson, Sjoberg McCarthy & Townsend,
711 W. 7th Street
Austin, Texas 78701-2711
Phone 512-225-5606
Fax: 512-225-5565
emccarthy@jacksonsjoberg.com
- E. Martin C. Rochelle, Attorney for North Texas Municipal Water District
Lloyd, Gosselink, Rochelle & Townsend PC
816 Congress Avenue, Suite 1900
Austin, Texas 78701-2478
Phone: 512-322-5810
Fax: 512-472-0532
mrochelle@lglawfirm.com
- F. Fred B. Werkenthin, Jr., Attorney for Trinity River Authority
Booth, Ahrens, & Werkenthin PC
206 E. 9th Street, Suite 1501
Austin, Texas 78701
Phone: 512-472-3263
Fax: 512-473-2609
fbw@baw.com
- G. Robin A. Melvin, Attorney for Coastal Conservation Association
Graves, Dougherty, Hearon & Moody
P.O. Box 98
Austin, Texas 78767-0098
Phone: 512-480-5688
Fax: 512-480-5888
rmelvin@gdhm.com
- H. Brad B. Castleberry, Attorney for Texas Westmoreland Coal Company
Lloyd, Gosselink, Rochelle & Townsend PC
816 Congress Avenue, Suite 1900
Austin, Texas 78701-2478
Phone: 512-22-5800
bcastleberry@lglaw.com

IV. WITHDRAWAL OF PROTESTS AND HEARING REQUESTS

Three (3) entities withdrew their protests and requests for contested case hearing as set out below.

On October 29, 2015, the Texas Chapter of the Coastal Conservation Association withdrew its protest and request for contested case hearing.

On November 3, 2015, Texas Westmoreland Coal Company withdrew its protest and request for contested case hearing.

On July 5, 2016, the Environmental Defense Fund withdrew its protest and request for contested case hearing.

Each of these three entities stated that they would not pursue their protests of Dallas' Application for Amendment 08-2462I further.

V. STATUS AND EVALUATION OF REMAINING PROTESTS

A. Status of Hearing Requests

Neither Texas Parks and Wildlife Department ("TPWD") nor National Wildlife Federation ("NWF") has withdrawn comments, protests and requests for contested case hearing. TPWD and NWF were aligned for the purpose of their negotiations with Dallas regarding environmental issues. Dallas and TPWD/NWF have negotiated extensively, but these parties have yet to achieve full resolution of all issues.

Neither City of Houston ("Houston") nor Trinity River Authority of Texas ("TRA") has withdrawn comments, protests and requests for contested case hearing. Houston and TRA were aligned during their negotiations with Dallas regarding the impact of 08-2462I on their Trinity River Basin water rights, especially Lake Livingston. Dallas, Houston and TRA have negotiated extensively, but these parties have yet to achieve full resolution of all issues.

North Texas Municipal Water District has not withdrawn its comments, protests and requests for contested case hearing. North Texas and Dallas have negotiated regarding the impact of 08-2462I on the District's water rights, especially its senior Lake Lavon water right,

Certificate of Adjudication No. 08-2410, as amended. Dallas and North Texas have yet to achieve full resolution of all issues.

B. Evaluation of Hearing Requests

Dallas does not dispute that these five (5) remaining hearing requestors have justiciable interests in Dallas' Lake Ray Hubbard water right, nor does Dallas dispute that their interests could be determined through a contested case hearing. As mentioned in Dallas' two unopposed requests for postponement, Dallas was hopeful that all comments, protests and requests for contested case hearing could be resolved before Commission consideration of hearing requests. The parties, including Dallas, have worked diligently to resolve all issues. At the same time, Amendment 08-2462I is a very complex application in its own right, and also involves consideration of relatively new environmental flow standards. Additionally, both the completion of TCEQ staff reviews of other Trinity River Basin applications and the parties' vacation schedules contributed to the failure to reach a comprehensive settlement. Therefore, it remains to be seen whether additional protests can be resolved, and the parties can agree with Dallas that the proposed amendment 08-2462I can be granted in accordance with the requirements of Texas Water Code, §11.134(b). Dallas remains hopeful that many of the remaining issues can be resolved before Commission consideration at the August 24, 2016 TCEQ Agenda, at least narrowing the scope of any contested case hearing, should this matter be referred to the State Office of Administrative Hearings.

VI. SUMMARY AND CONCLUSION

Dallas asserts that after over a year spent considering proposed drafts of the Certificate of Adjudication Amendment 08-2462I, the current amendment draft includes sufficient provisions

to address all concerns of the parties requesting a contested case hearing. Dallas believes that it has negotiated in good faith with all those who requested a contested case hearing in this matter and has satisfied all the legitimate legal concerns. Nonetheless, all parties continue to be actively engaged in resolution of the contested case hearing matters. Dallas requests that if this matter cannot be resolved before Commission consideration of hearing requests at its August 24, 2016 Agenda meeting, and the Commission does refer this matter to SOAH for a contested case hearing, that it do so with an order which:

1. Directs the State Office of Administrative Hearings (“SOAH”) adopt a hearing schedule to allow further opportunity for further settlement discussions; and
2. Specifies the hearing issues, so that the scope of the contested case hearing is limited to issues raised in the hearing requests which remain unresolved.

Although Dallas does not dispute that the remaining hearing requestors are water rights holders in the Trinity River Basin with justiciable interests in Application No. 08-2462I, Dallas does note that many issues have been resolved to date and need not be referred for SOAH hearing. Identifying only the remaining issues subject to contested case hearing will assist SOAH in narrowing the scope of any contested case hearing as appropriate.

VII. REQUESTED RELIEF

WHEREFORE, CONSIDERING THE FORGOING, Dallas respectfully requests that the Commission consider the status and evaluate any outstanding hearing requests at its scheduled public meeting on August 24, 2016. Should the Commission determine that the remaining hearing requests meet the requirements of TCEQ rules and that Application No. 08-2462I should be referred to SOAH, Dallas requests that the Commission do so with an order which allows for continued resolution negotiations before proceeding to contested case hearing, and which limits the hearing issues to those raised by the parties in their hearing requests.

AND, FURTHER, Dallas also requests that during its consideration of Application No. 08-2462I, the Commission grant Dallas any other relief which will facilitate the orderly consideration and ultimate granting of the Certificate of Adjudication No. 08-2462I.

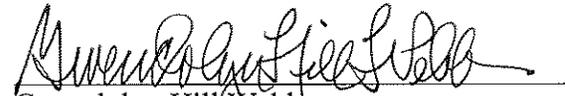
Respectfully submitted,

CHRISTOPHER D. BOWERS,
Interim City Attorney

JAMES B. MCGUIRE,
Senior Assistant City Attorney

WEBB & WEBB
2028 East Ben White Blvd. Suite 425
Austin, Texas 78741
Tel: (512) 472-9990
Fax: (512) 472-3183

By:



Gwendolyn Hill Webb
g.hill.webb@webbwebblaw.com
State Bar No. 21026300
ATTORNEYS FOR CITY OF DALLAS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested on all parties whose names appear on the attached mailing list on this the 1st day of August, 2016.

FOR THE EXECUTIVE DIRECTOR:

Todd Galiga, Senior Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC 173
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-0600
Fax: (512) 239-0606
Todd.galiga@tceq.texas.gov

Chris Kozłowski, Technical Staff
Texas Commission on Environmental Quality
Water Availability Division, MC 160
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-1801
Fax: (512) 239-2214
Chris.kozłowski@tceq.texas.gov

Brian Christian, Director
Texas Commission on Environmental Quality
Small Business and Environmental Assistance
Division
Public Education Program, MC 160
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-1801
Fax: (512) 239-2214
Brian.christian@tceq.texas.gov

FOR OFFICE OF PUBLIC INTEREST COUNSEL:

Eli Martinez, Attorney
Office of Public Interest Counsel
Texas Commission on Environmental Quality
Public Interest Counsel
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-6363
Fax: (512) 239-6377
Eli.martinez@tceq.texas.gov

FOR ALTERNATIVE DISPUTE RESOLUTION:

Todd Burkey, Attorney
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC 222
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-4010
Fax: (512) 239-4015
Todd.Burkey@tceq.texas.gov

FOR THE CHIEF CLERK:

Bridget C. Bohac
Texas Commission on Environmental Quality
Office of Chief Clerk, MC 105
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-330
Fax: (512) 239-3311

HEARING REQUESTERS:

FOR THE TEXAS PARKS AND WILDLIFE DEPARTMENT:

Colette J. Barron-Bradsby, Attorney
Texas, Parks and Wildlife Department
4200 Smith School Road
Austin, Texas 78744-3218
Phone: (512) 389-8899
Fax: (512) 389-4482
Colette.barron@tpwd.texas.gov

FOR NATIONAL WILDLIFE FEDERATION:

Myron Hess, Attorney
National Wildlife Federation
Gulf States Natural Resource Center
44 East Avenue, Suite 200
Austin, Texas 78701
Phone: (512) 476-9805
Phone: (512) 610-7754
Fax: (512) 476-9810
hess@nwf.org

FOR THE CITY OF HOUSTON:

Edmond R. McCarthy, Jr., Attorney
Jackson, Sjoberg McCarthy & Townsend,
711 W. 7th Street
Austin, Texas 78701-2711
Phone: (512) 225-5606
Fax: (512) 225-5565
emccarthy@jacksonsjoberg.com

FOR NORTH TEXAS MUNICIPAL WATER DISTRICT:

Martin C. Rochelle, Attorney
Lloyd, Gosselink, Rochelle & Townsend PC
816 Congress Avenue, Suite 1900
Austin, Texas 78701-2478
Phone: (512) 322-5810
Fax: (512) 472-0532
mrochelle@lglawfirm.com

FOR THE TRINITY RIVER AUTHORITY OF TEXAS:

Fred B. Werkenthin, Jr., Attorney
Booth, Ahrens, & Werkenthin PC
206 E. 9th Street, Suite 1501
Austin, Texas 78701
Phone: (512) 472-3263
Fax: (512) 473-2609
fbw@baw.com

WITHDRAW OF REQUEST(S):

FOR THE TEXAS WESTMORELAND COAL COMPANY:

Brad B. Castleberry, Attorney
Lloyd, Gosselink, Rochelle & Townsend PC
816 Congress Avenue, Suite 1900
Austin, Texas 78701-2478
Phone: (512) 322-5800
Fax: (512) 472-0532
bcastleberry@lglaw.com

FOR THE TEXAS CHAPTER OF THE COSTAL CONSERVATION ASSOCIATION:

Robin A. Melvin, Attorney
Graves, Dougherty, Hearon & Moody
P.O. Box 98
Austin, Texas 78767-0098
Phone: (512) 480-5688
Fax: (512) 480-5888
rmelvin@gdhm.com

FOR THE ENVIRONMENTAL DEFENSE FUND:

Nichole Saunders, Attorney
Environmental Defense Fund
301 Congress Avenue, Suite 1300
Austin, Texas 78701
Phone: (512) 478-5161
Fax: (512) 478-8140
nsaunders@edf.org

INTERESTED PERSON(S):

FOR THE LOWER COLORADO RIVER AUTHORITY:

Lyn Clancy, Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220
Phone: (512) 578-3378
Fax: (512) 473-4010
lyn.clancy@lcrsra.org


Gwendolyn Hill Webb