

**TCEQ DOCKET NO. 2016-0049-WR**

<b>APPLICATION OF THE CITY OF</b>	<b>§</b>	<b>BEFORE THE</b>
<b>DALLAS TO AMEND CERTIFICATE</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>OF ADJUDICATION NO. 08-2462</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

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**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

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The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this response to hearing requests for the above-styled application. Five hearing requests were received and not withdrawn. The ED recommends that four hearing requests, from the Trinity River Authority (TRA), the City of Houston (Houston), North Texas Municipal Water District (NTMWD), and Texas Parks and Wildlife Department (TPWD), be granted.

**I. APPLICATION**

The City of Dallas (Dallas) owns Certificate of Adjudication No. 08-2462 which authorizes the Dallas to maintain and existing dam and reservoir, Lake Ray Hubbard on the East Fork of the Trinity River, Trinity River Basin, in Dallas, Kaufman, Rockwell and Collins County. Dallas may divert and use not to exceed 89,807 acre feet of water per year at a maximum combined diversion rate of 619 cubic feet per second (cfs) from the perimeter of Lake Ray Hubbard and other points for municipal, industrial, agricultural, mining, domestic, recreation, instream, livestock, and hydroelectric power generation.

The City of Dallas has filed an application to amend Certificate of Adjudication No. 08-2462 to increase the diversion amount by 119,600 acre feet, from 89,700 acre feet to 209,300 acre feet from the perimeter of Lake Ray Hubbard, three reservoirs on Canyon Creek, tributary of Spring Creek, tributary of Rowlett Creek and two points on Rowlett Creek Tributary of East Fork Trinity River, tributary of the Trinity River, Trinity River Basin. Dallas also wants to increase the authorized maximum combined diversion rate from Lake Ray Hubbard by 836 cfs, from 619 to 1,455 cfs. Of the additional diversion, the 119,600 acre feet includes 49,600 acre feet of firm water and 70,000 of water per year that is available on less than a firm basis.

Dallas in its application presented modifications to the Water Availability Models. In those models the naturalized flow of the river has been modified to reflect the amount of runoff that would be available with today's development. Dallas

requested that those models be used for the water availability analysis. The ED did not use Dallas' proposed model.

## **II. BACKGROUND**

Dallas' application was filed on July 11, 2007. It was declared admin complete on June 6, 2008. Notice issued on October 3, 2008. In his water availability analysis, the ED did not rely on Dallas' WAMs modifying naturalized flow. The ED recommends granting Dallas' request for less than firm water. The ED includes special conditions, including an accounting plan, in the draft permit to protect other water rights. The SB 3 environmental flow standards for the Trinity River Basin also apply to this application.

Eight timely hearing requests were filed. These are:

Trinity River Authority (TRA)  
Texas Parks and Wildlife Department (TPWD)  
North Texas Municipal Water District (NTMWD)  
City of Houston (Houston)  
National Wildlife Federation (NWF)  
Environmental Defense Fund (EDF)  
Texas Chapter of the Coastal Conservation Association  
Texas Westmoreland Coal Company

The Coastal Conservation Association, Texas Westmoreland Coal Company, and the Environmental Defense Fund have withdrawn their hearing requests, leaving five hearing requests.

## **III. LEGAL AUTHORITY FOR AFFECTED PERSON STATUS**

Pursuant to 30 Tex. Admin. Code § 55.251(a), the following may request a contested case hearing on water rights applications: the Commission, the Executive Director, the applicant, and affected persons when authorized by law. Affected persons are authorized to submit hearing requests for water rights applications under Tex. Water Code § 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 Tex. Admin. Code §§ 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. *Id.*

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. § 55.256(c). These factors 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.

A hearing request by a group or association must meet the requirements set forth in 30 Tex. Admin. Code § 55.252(a). There are three requirements. First, at least one member of the group or association would have standing to request a hearing on his or her own. Second, the interests that the group or association seeks to protect must be germane to its purpose. Third, neither the claim asserted nor the relief requested by the group or association requires participation of the individual member(s) in the case.

A hearing request must substantially comply with the four requirements set forth in 30 Tex. Admin. Code § 55.251(c):

- (1) Give the name, address, and daytime telephone number of the person filing the request. If made by a group or association, the request must identify one person by who shall be responsible for receiving all official communications for the group, with the person's name, address, daytime telephone number and facsimile number if possible.
- (2) Identify the person's personal justiciable interest affected by the application, including a written statement explaining the requestor's location and distance relative to the application activity and how/ 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.

(4) Provide any other information specified in the public notice of the 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 Tex. Admin. Code § 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. DISCUSSION**

All five of the remaining hearing requests meet the administrative requirements of TCEQ's rules.

#### **TRA**

TRA is a water right holder on the Trinity River. Its water rights include part of Certificate of Adjudication No. 08-4248. That Certificate and its many amendments authorizes the impoundment of 30% of the total impoundment of Lake Livingston (1,750,000 acre feet). TRA may divert and use 351,600 acre feet (AF) of water from Lake Livingston, and 51,600 acre feet from Lake Wallisville, for multiple uses. The Certificate has a priority date of 1959. This diversion points are downstream of Dallas' proposed new diversion points. TRA is a major water supplier for the area.

TRA does not state the distance of its diversions from Dallas' diversion points. It attaches copies of its multiple amendments to Certificate of Adjudication No. 08-4248.

From the attached map prepared by staff, it appears that TRA's diversion points are about 100 and 200 miles downstream of Dallas' proposed diversion points.

TRA states that this hearing request is conditional, and that it believes it can work out its differences with the ED and Dallas.

TRA's Certificate of Adjudication could be impacted by Dallas' new diversion points. It is therefore an affected person because the interest claimed is one protected by the law under which the application will be considered, there is a reasonable relationship between the interest claimed and the activity regulated, and there could be an impact of the regulated activity on the health, safety, and use of property of the person.

***Recommendation: Grant the hearing request.***

## **Houston**

Houston owns Certificates of Adjudication Nos 08-4261 and 08-4277. It says that it provides water to more than 3 million customers and in Harris County. Its water rights are downstream of Dallas' diversion points. Houston does not state what is authorized in the water rights, or how far downstream its diversions are from Dallas' proposed diversion points.

From Staff's map, it appears that Houston's water rights are approximately 250 miles downstream of Dallas' diversion points.

Houston states that this hearing request is conditional, and that it believes it can work out its differences with the ED and Dallas.

Houston is downstream of Dallas' proposed diversion points and could be affected because the interest claimed is one protected by the law under which the application will be considered, there is a reasonable relationship between the interest claimed and the activity regulated, and there could be an impact of the regulated activity on the health, safety, and use of property of the person.

***Recommendation: Grant the hearing request.***

## **NTMWD**

NTMWD relies on Trinity River water for its municipal water supplies to meet the needs of its members and customers. It owns Certificate of Adjudication No. 08-2410, as amended. Its water right includes special conditions which limit NTMWD's diversion of water to times when Lake Ray Hubbard is spilling. Thus, Dallas' application has the potential to impact NTMWD's water rights.

NTMWD does not provide the amount of its water right, or its location. Based on Staff's map, NTMWD's water right is very close to Dallas' diversion points.

NTMWD states that this hearing request is conditional, and that it believes it can work out its differences with the ED and Dallas.

NTMWD is downstream of Dallas' proposed diversion points and could be affected because the interest claimed is one protected by the law under which the application will be considered, there is a reasonable relationship between the interest claimed and the activity regulated, and there could be an impact of the regulated activity on the health, safety, and use of property of the person.

***Recommendation: Grant the hearing request.***

## TPWD

TPWD is concerned about the impact of the application on wildlife and fish. It also is concerned about Dallas' use of a modified WAM which recalculates naturalized flows to account for modern runoff rates.

TPWD is entitled to be a party in any water right proceeding under Tex. Water Code § 11.147(f). Under Tex. Water Code § 5.115(b), a state agency cannot be a party to a contested case hearing if the application was filed after September 1, 2011. 30 Tex. Admin. Code Section 80.109(b)(5) provides:

Notwithstanding any other law, a state agency, except a river authority, may not be a party to a hearing on an application received by the commission on or after September 1, 2011 unless the state agency is the applicant.

This application was filed before September 1, 2011.

***Recommendation: Grant the hearing request.***

## NWF

NWF says that it is affected in a way that is not common to the general public because NWF is a national non-profit organization dedicated to protecting natural resources and the right of people to use those resources. Its members use and enjoy the Trinity River and Galveston Bay. Its members' uses include, but are not limited to, fishing, recreation and economic pursuits. NWF's participation in this hearing does not require the participation of individual members in any capacity other than possibly to establish standing. NWF argues that under this permit, the Trinity River downstream of the reservoir would experience significantly reduced flows and Galveston Bay would experience reduced freshwater inflows.

NWF makes the same arguments as EDF. It does not name a member and show that the member is affected in a way different than the public.

***Recommendation: Deny the hearing request.***

## V. CONCLUSION

Grant the hearing requests of TRA, Houston, NTMWD, and TPWD and deny the hearing request of NWF.

Respectfully submitted,

Richard A. Hyde, P.E.  
Executive Director

Caroline Sweeney, Deputy Director  
Office of Legal Services

Robert Martinez, Director  
Environmental Law Division

by Robin Smith  
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Robin.Smith@tceq.texas.gov

## CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of August 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.

Robin Smith  
Robin Smith, Staff Attorney  
Environmental Law Division

**Mailing List  
City of Dallas  
TCEQ Docket No. 2016-0049-WR**

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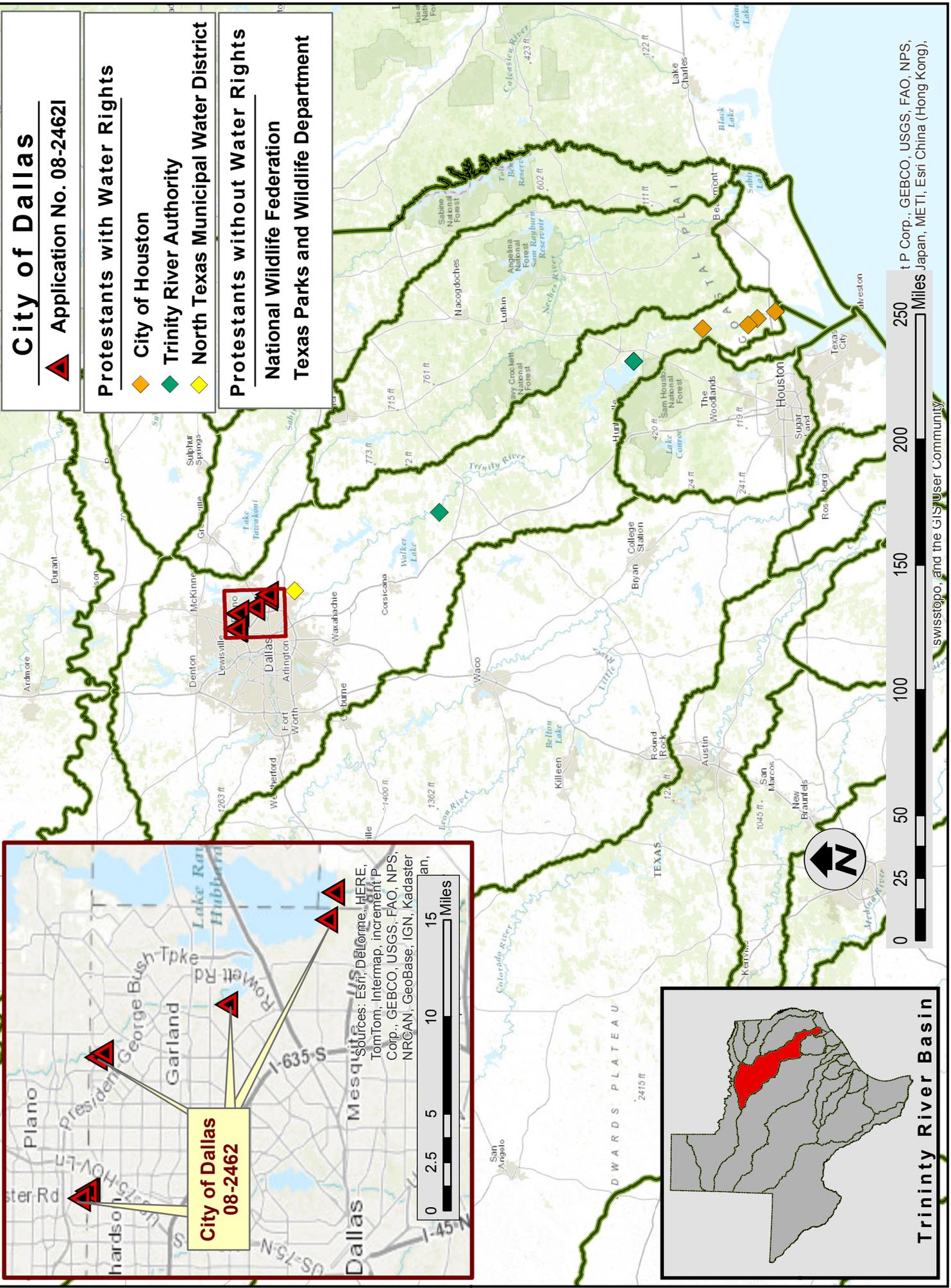
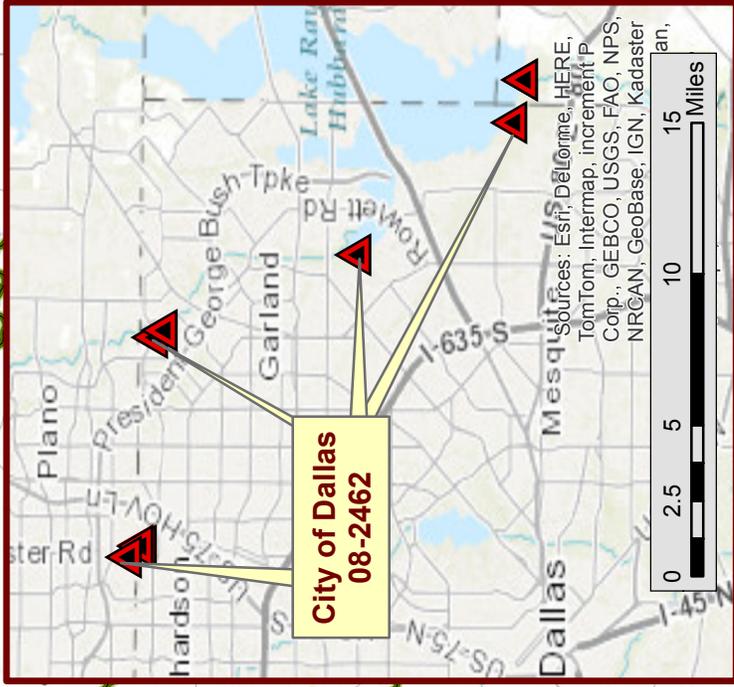
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**Attachment A**  
**Map of Protestants**



**Attachment B**  
**Outstanding Hearing Requests**

WR  
63771

LAW OFFICE OF  
BOOTH, AHRENS & WERKENTHIN, P.C.

A PROFESSIONAL CORPORATION

515 CONGRESS AVENUE, SUITE 1515  
AUSTIN, TEXAS 78701-3503  
512/472-9283 • 512/473-2000

OPA

NOV 07 2008

BY BC

3:07 PM - 7 NOV 2008  
CHIEF CLERK'S OFFICE  
CAROL AHRENS  
OF COURSE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

MICHAEL J. BOOTH  
FRED D. WERKENTHIN, JR.  
WIL GALLOWAY  
TREY NESLONEY

November 6, 2008

Ms. LaDonna Castañuela  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

VIA FACSIMILE & REGULAR MAIL

RE: Application No. 08-2462I, City of Dallas' Application to Amend  
Certificate of Adjudication No. 08-2462, as amended

Dear Ms. Castañuela:

~~The following is Trinity River Authority's ("TRA") request for a contested case hearing in response to the notice of the above-referenced Application (the "Application") recently filed by the City of Dallas ("Dallas") to amend Certificate of Adjudication No. 08-2462 (the "Certificate"). A copy of the notice that was reviewed by TRA, having been issued on October 3, 2008 (received October 9, 2008), is attached for reference.~~

The Texas Commission on Environmental Quality ("TCEQ") may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of notice. TRA requests for TCEQ to conduct a contested case hearing on the Application.

One of TRA's major functions is to provide water and wastewater related services within the TRA territory. This is a valuable service to millions of Texans who live and work in the Trinity River Basin. To help to accomplish this function, TRA is the owner of water rights in the Trinity River Basin, some of which are specified in Certificate of Adjudication No. 08-4248, as amended. Copies of Certificate of Adjudication No. 08-4248 and its subsequent amendments are attached for reference.

Accordingly, TRA has water rights that could be affected by the impacts of the above-referenced Application, if granted. TRA's water right is located downstream of the diversion points identified in the Application. For these reasons, in order to protect

Ms. Castañuela  
November 6, 2008  
Page 2

its rights and afford adequate opportunity to review the Application and any proposed amendments to the Certificate that may be published by Executive Director for consideration by TCEQ, TRA requests that TCEQ conduct a contested case hearing on the Application.

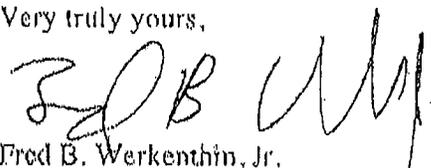
Therefore, TRA requests that TCEQ and the Executive Director's staff provide TRA with copies of all proposed amendments, technical memoranda, and any other evaluations, and/or any notices proposed, promulgated, or published by TCEQ or the Executive Director's staff related to this Application. Please send these documents using the following contact information:

Fred B. Werkenthin, Jr.  
Booth, Ahrens & Werkenthin, P.C.  
515 Congress  
Suite 1515  
Austin, Texas 78701-3503  
(512) 472-3263 Phone  
(512) 473-2609 Facsimile  
fbw@baw.com

Please note that this request is conditional. After further review and evaluation of the Application and its potential impacts, TRA hopes to reach an agreement with TCEQ and Dallas on the Application that will address TRA's interest by protecting TRA's downstream water rights and other affected interests. Assuming that effort is successful, ~~TRA would be able to withdraw its contested case hearing request.~~

Thank you for your assistance.

Very truly yours,

  
Fred B. Werkenthin, Jr.  
Attorney for the Trinity River Authority

FBW/THN/cms  
Enclosures

cc: Mr. Howard Slobodin

VIA E-MAIL

H/S

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



OCT - 9 2008

NOTICE OF AN APPLICATION TO AMEND A  
CERTIFICATE OF ADJUDICATION

APPLICATION NO. 08-24621

The City of Dallas has applied to amend Certificate of Adjudication No. 08-2462 to increase the diversion amount and the maximum combined diversion rate from the perimeter of Lake Ray Hubbard on the East Fork Trinity River, Trinity River Basin in Dallas, Kaufman, Rockwall, and Collin Counties. More information on the application and how to participate in the permitting process is given below.

**APPLICATION.** The City of Dallas, Applicant, 1500 Marilla Street, Room 4AN, Dallas, Texas 75201, seeks an amendment pursuant to Texas Water Code §11.122 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §§295.1, *et seq.* Published and mailed notice of the application is being given to the water right holders of record in the Trinity River Basin pursuant to 30 TAC §295.158.

Certificate of Adjudication No. 08-2462 authorizes the City of Dallas to maintain an existing dam and reservoir (Lake Ray Hubbard) on the East Fork Trinity River, tributary of the Trinity River, Trinity River Basin, in Dallas, Kaufman, Rockwall, and Collin Counties, and to impound therein 490,000 acre-feet of water. Owner is also authorized to divert and use not to exceed 89,700 acre-feet of water per year at a maximum combined diversion rate of 619 cfs (277,807 gpm) from the perimeter of Lake Ray Hubbard and other points for municipal, industrial, agricultural (irrigation), mining, domestic, recreation, instream, livestock, and hydroelectric power generation purposes.

Owner is further authorized to use the bed and banks of Lake Ray Hubbard to store, divert and use not to exceed 150,000 acre-feet of return-flows per year for the purposes authorized by the Certificate. Multiple special conditions apply.

Applicant seeks to amend Certificate of Adjudication No. 08-2462 to increase diversion and use of water from Lake Ray Hubbard by 119,600 acre-feet of water per year, from 89,700 acre-feet of water per year to 209,300 acre-feet of water per year, from the perimeter of Lake Ray Hubbard and other points authorized for diversion for the authorized multiple purposes, being municipal, industrial, agricultural (irrigation), mining, domestic, recreation, instream, livestock, and hydroelectric power generation.

The request for the additional diversion of 119,600 acre-feet of water per year includes 49,600 acre-feet of additional firm water and 70,000 acre-feet of water per year that is available on a less than firm basis.

The application states that the request for an additional appropriation of water is based on adjustment of the naturalized flows in the Trinity WAM to reflect "the increase in runoff that would have occurred over the historical period had today's level of development been there." The application further indicates that since "the initial water rights permit for Lake Ray Hubbard was based on pre-development conditions, the reservoir is currently permitted for significantly less than its full water supply potential based on 2004 and ultimate watershed conditions."

Applicant also seeks to increase the authorized maximum combined diversion rate from Lake Ray Hubbard by 836 cfs (375,197 gpm), from 619 cfs (277,807 gpm) to 1,455 cfs (653,004 gpm). No increase in storage is requested.

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

The application and partial fees were received on July 11, 2007, and additional information and fees were received on April 11, and April 30, 2008. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on June 6, 2008.

**PUBLIC COMMENT / PUBLIC MEETING.** Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

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

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

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

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

Issued: October 3, 2008

## CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 08-4240 OWNER: Trinity River Authority  
of Texas  
P. O. Box 60  
Arlington, Texas 76010

COUNTIES: Polk, Liberty, Chambers PALOUBITZ DATES:  
San Jacinto, Jefferson and February 26, 1917,  
Colverton September 8, 1926,  
November 12, 1929,  
September 24, 1936,  
and September 23, 1939.

WATERCOURSE: Lake Livingston and the Trinity River BASIN: Trinity River

WHEREAS, by final decree of the 364th Judicial District Court of Chambers County, in Cause No. 344-10843, In Re: The Adjudication of Waters Rights in the Lower Trinity River Segment of the Trinity River Basin and the western portion of the Neches-Trinity Coastal Basin dated October 30, 1983 a Right was recognized under Permit 173, Permit 922, Permit 1132, Permit 1243A, Permit 197DANDEFG and Permit 1974A authorizing the Trinity River Authority of Texas to appropriate waters of the State of Texas as set forth below;

WHEREAS, by an amendment to Permit 197DANDEFG issued on August 10, 1987, the Texas Water Commission authorized a change in the use of 7000 acre-feet of water from industrial to mining purposes within Liberty and Chambers Counties, Texas, with an expiration date of September 1, 1986;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Trinity River Basin is issued to the Trinity River Authority of Texas, subject to the following terms and conditions:

## 1. FUNDAMENTAL

- A. Owner, in conjunction with the City of Houston under Certificate of Adjudication 08-4241, is authorized to maintain an existing dam and reservoir (Lake Livingston) on the Trinity River and impound therein not to exceed 1,750,000 acre-feet of water. The east end of the dam is located in the Thomas Bradley Survey, Abstract 96, Polk County, Texas.
- B. Owner, in conjunction with the City of Houston under Certificate of Adjudication 08-4241, is authorized to complete construction of a dam and reservoir (Lake Wallisville) on the Trinity River and impound not to exceed 51,600 acre-feet of water. Station 0 + 00 on the centerline of the dam bears S 12°29'54"W, 13,986.24 feet from the northwest corner of the C. B. Survey Grant, Abstract 7, Chambers County, Texas.
- C. Owner is authorized to maintain an existing 1000 acre-foot capacity off-channel reservoir. The lower creating said reservoir is located in the Washington County RR Company Survey 11, Abstract 413, Liberty County, Texas.
- D. Owner is authorized to maintain an existing 195 acre-foot capacity off-channel reservoir. The lower creating said reservoir is located in the U. A. Nixie Survey, Abstract 607, Chambers County, Texas.

## 2. USE

- A. Owner is authorized to divert and use not to exceed 151,920 acre-feet of water per annum for the irrigation of 79,000 acres of land within the service area of the Trinity River Authority of Texas in Trinity, Polk, San Jacinto, Liberty, Chambers and Jefferson Counties. The water authorized herein shall be diverted from the following sources:

Coefficients of Apportionment as:

- (1) Trinity River . . . . . 47,300 acre-feet
- (2) Lake Livingston . . . . . 106,650 acre-feet
- (3) Lake Wallisville  
(when constructed) . . . . . 30,000 acre-feet

D. Owner is authorized to divert and use not to exceed 40,000 acre-feet of water per annum from Lake Livingston and 10,000 acre-feet of water per annum from Lake Wallisville (when constructed) for domestic and municipal purposes.

C. Owner is authorized to divert and use not to exceed 222,750 acre-feet of water per annum for industrial purposes. The water authorized herein shall be diverted from the following sources:

- (1) Trinity River . . . . . 4,000 acre-feet
- (2) Lake Livingston . . . . . 207,150 acre-feet
- (3) Lake Wallisville  
(when constructed) . . . . . 11,600 acre-feet

D. Owner is authorized to temporarily convert the use of the 4000 acre-feet of water authorized under Paragraph 2 C(1) above from industrial to mining purposes in Chambers, Liberty and Jefferson Counties, Texas.

E. Owner is authorized to temporarily convert the use of 7000 of the 207,150 acre-feet of water authorized under Paragraph 2 C(2) above from industrial to mining purposes in Chambers and Liberty Counties, Texas.

F. Owner is authorized to divert and use not to exceed 7000 acre-feet of water per annum from the Trinity River for mining purposes.

G. Owner is further authorized to use the water impounded in the aforesaid on-channel reservoirs for recreation purposes.

3. DIVERSION

A. Location and Rate:

- (1) At a point on the Trinity River in the Manual Rippe DeMat, Abstract 25, Kromerson County, Texas at a maximum rate of not to exceed 36.07 cfs (30,000 gpm), located in the Middle Trinity River Segment of the Trinity River Basin.
- (2) At the outlet works on Lake Livingston dam in the William Pace Survey, Abstract 60, Cook County, Texas, at an unpermitted diversion rate.
- (3) At a point on the Trinity River in the Samuel Vanhook Survey, Abstract 325, Liberty County, Texas, to a relief station located in the Jacob E. Bell Survey, Abstract 104, Liberty County, Texas at a maximum rate of not to exceed 613.00 cfs (363,000 gpm).
- (4) At various points on the perimeter of the aforesaid Lake Livingston at a maximum combined diversion rate of 71.79 cfs (32,300 gpm).

B. Maximum combined diversion rates 951.49 cfs (428,371 gpm) exclusive of release through Lake Livingston Dam.

6. PRIORITY

A. The time priority of owner's right is February 26, 1977 for the diversion and use of the first 7500 acre-feet of water per annum for irrigation purposes.

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- D. The time priority of owner's right in September 8, 1926 for the diversion and use of the new 20,000 acre-foot of water per annum for irrigation purposes.
- E. The time priority of owner's right in December 12, 1927 for the diversion and use of the new 20,000 acre-foot of water per annum for irrigation purposes.
- H. The time priority of owner's right in September 24, 1936 for the diversion and use of 4000 acre-foot of water per annum for industrial purposes and 7000 acre-foot of water per annum for irrigation purposes.
- I. The time priority of owner's right in September 23, 1939, for the improvement of 1,750,000 acre-foot of water in Lake Livingston; to divert and use 500 acre-foot of water per annum for domestic purposes; 39,500 acre-foot of water per annum for municipal purposes; 287,150 acre-foot of water per annum for industrial purposes and 104,450 acre-foot of water per annum for irrigation purposes at a minimum combined diversion rate of 251.43 cfs (426,171 gpm).
- F. Upon completion of Lake Wallisville Dam and Reservoir, the time priority of owner's right in September 23, 1939 for the diversion of the additional 10,000 acre-foot of water per annum for domestic and municipal purposes; 10,000 acre-foot of water per annum for irrigation purposes and 11,000 acre-foot of water per annum for industrial purposes.

#### SPECIAL CONDITIONS

- A. Owner shall maintain a driveway in the Altonville Lake Livingston Dam at a bottom elevation of not more than seventy (70) feet above mean sea level, having an opening of not less than thirty-six (36) inches in diameter and equipped with a regulating gate for the purpose of allowing the flow passage through the dam at all times of those waters to which lower users are lawfully entitled. Whenever the Commission finds that owners are working any works to which downstream appropriate or lawful diversions are entitled, the owners shall release same to said appropriate or lawful diversions at the order of the Texas Water Commission.
- B. Owners are authorized and required to operate the Lake Livingston Dam and Reservoir described in this certificate of adjudication in conjunction with the Lake Wallisville Dam and Reservoir which are required to be constructed on the Trinity River in Cherokee County, Texas. The total water available from both projects shall be divided between the owners so that the City shall receive seventy per cent (70%) and the authority shall receive thirty per cent (30%) thereof, and that the specific quantities for each shall, if necessary, be adjusted so as to divide the total available water between the owners in such proportions.
- C. Owner shall install a measuring device at each diversion point which will automatically record the total amount of water diverted. Owner shall make determinations of water surface elevations in Lake Livingston reservoir by means of recording gages set to U. S. Coast and Geodetic Survey datum, each of which shall be protected by a well house designed for such purposes and the Commission shall be furnished complete records of such determinations. Owner shall relocate, or cause to be relocated, all existing stream flow stations which may be inundated or impaired by the reservoir and established, or cause to be established, such other record or stream flow stations as this Commission may deem necessary to record inflows into the reservoir. Owner shall maintain daily records of water released through the reservoir authorized herein for downstream use. All stream flow stations shall be

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and to the work done described above and the Commission shall be furnished complete records of the data herein required to be kept. The working instruments, the gauges with well points and the stream flow stations and the installation, design and operation thereof shall be subject to approval of the Commission.

- D. Owner is authorized to use the bed and banks of the Trinity River, below the above said dams (Lake Livingston and Lake Wallingville) to convey and deliver water to be appropriated hereunder to downstream diversion points.
- E. Owner shall make no diversions of water from the diversion points downstream of the Lake Livingston dam under priority date of September 23, 1939, except to the extent that water for such diversions is released from the above said reservoir.
- F. Owner's right is subordinate to any claim on waters of the Trinity River Basin imported into and/or originating in and above Lake Louisville Reservoir, Osprey Reservoir, Lake Worth Reservoir and Lake Ray Hubbard Reservoir, and shall not constitute any limitation upon the granting of permits by the Commission for the impoundment and use of waters above the said four named reservoirs.
- G. This certificate is further subordinate to any claim on waters imported and/or originating in the Trinity River Basin above Lake Livingston Reservoir authorized herein, that could be supported by 1) existing reservoirs; 2) by reservoirs for which permits have been granted or certificates of adjudication issued and the construction of such reservoirs is incomplete; 3) by reservoirs for which applications are pending before the Commission; 4) by the following proposed reservoirs as shown in the Master Plan Report of the Trinity River Authority of Texas dated April 18, 1938, but only to the extent necessary to insure a dependable yield from each such proposed reservoir as shown opposite the respective names, to-wit:

Reservoir Name	Dependable Yield (MFD)*
Big Texas	0.5
Tehuacan	61.0
Tennessee Colony	162.0
Upper Kauschi	13.6
Lower Kauschi	28.5
Big Elkhart	11.0
Little Elkhart	8.2
Hickman Bayou	13.6
Hedley	98.3
Madison	14.8
Hudson	7.4
Carl	16.6
Hawthorn	12.2
Cherry	12.8
Long King	18.3

\*Million Gallons per Day

It is the intent herein that this certificate of adjudication shall not constitute a prior claim against upstream flows necessary to produce dependable yields in the aggregate amount from future reservoirs heretofore listed. Except for the Tennessee Colony Reservoir, nothing herein shall prohibit the construction of future reservoirs at different locations, of different dimensions, or the combination of reservoirs as substitutes for the above-listed future reservoirs; provided, however, that such modifications in dimensions, locations or the combination of reservoirs shall not diminish the dependable yield of the reservoir authorized herein in excess of the

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diversion which would be occasioned by the construction of such reservoir with the respective dependable yields as hereinabove listed. Towns and Colony Reservoir may be modified as to location and diversion provided that any such modification shall likewise not further diminish the dependable yield of the reservoir authorized herein.

- 11. This certificate of adjudication is specifically subordinated to the present and future use and uses and consumptive use of any return flows from wastes impounded in each of the existing and above described proposed reservoirs and the return flows from wastes impounded in the river basin, for municipal and industrial purposes within the Trinity River Basin above Lake Livingston authorized herein and notwithstanding the priority of such return flows over a public stream they may nevertheless be used again, diverted and routed through such treatment facilities as may be considered necessary for their purification, under authority of permits heretofore or hereafter issued by the Texas Water Commission for such purposes in the upstream watershed. And this certificate of adjudication is subordinated to the present and future use and uses for navigation purposes of the return flows from the metropolitan areas of Dallas and Fort Worth in their natural flowing state and by impoundment in pools created by locks and appurtenances within the river and navigation channels; and further, such return flows shall be allowed to pass through the reservoir authorized herein to the extent necessary to provide navigation below said reservoir and the rights hereby acquired shall be subordinate to such uses.
- I. The amount of water which owner is authorized to divert and use in any one year under priority date of February 26, 1917, for irrigation, shall not exceed 1.5 acre-foot on any acre of land actually irrigated.
- J. The amount of water which owner is authorized to divert and use in any one year, under priority dates of September 8, 1926 and December 12, 1929, for irrigation, shall not exceed 2.0 acre-foot on any acre of land actually irrigated.
- K. The authority to divert and use water authorized under Paragraphs I and J for mining purposes will expire and become null and void on September 1, 1986, after which date the use of water will revert to industrial purposes.
- L. Owner shall maintain suitable weirs in the aforesaid dam authorized herein to allow the free passage of water when owner is not entitled to divert or impound.
- M. Construction of the Wallisville dam, reservoir and related facilities authorized or required by this certificate of adjudication shall be in accordance with plans approved by the Texas Water Commission and shall be started and completed within the time limits established by the Commission.
- N. Owner may not exercise the right to divert and use that portion of the water authorized herein which is to be diverted from Lake Wallisville for any purposes until construction of the aforesaid reservoir is complete and owner applies for and is granted a diversion point or points and a rate of diversion.
- O. Owner may divert all or any portion of the water authorized herein from the Trinity River Basin and use same on the Coastal Watersheds of Eastern Liberty County, Eastern and Southwestern Chambers County and Waller Peninsula in Galveston County. The waters authorized to be appropriated hereunder shall be made available for beneficial uses without discrimination and owner's right to supply water to the aforesaid areas shall not be exclusive.

Certificate of Adjudication

The locations of permanent landmarks related to this certificate are shown on Plans 18, 19, 20, 21 and 22 of the Lower Trinity River Segment Certificate of Adjudication Maps, copies of which are located in the offices of the Texas Water Commission, Austin, Texas and the Folk, Liberty, Chambers, Tully, San Jacinto, Jefferson and Galveston County Clerks.

This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 344th Judicial District Court of Chambers County, Texas, in Cause No. 344-10065. In Re: The Adjudication of Water Rights in the Lower Trinity River Segment of the Trinity River Basin and the Western portion of the Redwood-Trinity Coastal Basin dated March 30, 1985 and superseded all rights of the paper awarded in that case.

This certificate of adjudication is issued subject to senior and superjior water rights in the Trinity River Basin.

This certificate of adjudication is issued subject to the honor of the Texas Water Commission and the continuing right of superjiority of State water sources consistent with the public policy of the State as set forth in the Texas Water Code.

TEXAS WATER COMMISSION

Paul Hopkins  
Paul Hopkins, Chairman

ISSUED:

BY: MM 1/17  
157:

Max Anna Byrne  
Max Anna Byrne, Chief Clerk

## TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

AMENDMENT TO  
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO.	08-4248A	TYPE:	AMENDMENT
Name:	Trinity River Authority of Texas	Address:	P.O. Box 60 Arlington, TX, 76004 76004
Filed:		Granted:	<b>JUL 27 1998</b>
Purposes:	Domestic, Municipal, Industrial and Irrigation	Counties:	Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Leon, Houston, Walker, Galveston, Grimes, Freestone and Madison
Watercourse:	Trinity River	Watersheds:	Trinity River Basin, San Jacinto River Basin, Neches River Basin and the Neches- Trinity Coastal Basin

WHEREAS, Certificate of Adjudication No. 08-4248 includes authorization, with a time priority of September 23, 1959, for impoundment of water in Livingston Reservoir and use of water from the reservoir for domestic, municipal, industrial and irrigation purposes; and

WHEREAS, the Certificate specifically indicates that the water may be used within owner's service area in Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson and Galveston Counties; and

WHEREAS, the Certificate indicates the water included in the Certificate may be used in the Trinity River Basin and the Coastal Watersheds of Eastern Liberty County, Eastern and Southeastern Chambers County and Bolivar Peninsula in Galveston County; and

WHEREAS, the actual and historical statutory service area of the Trinity River Authority and places of use of the water authorized in the Certificate include Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Galveston, Leon, Houston, Walker, Grimes, Freestone and Madison Counties; and

WHEREAS, pursuant to Texas Water Codes Sections 11.122 and 11.085(v) an application was received from the Trinity River Authority of Texas on June 26, 1998 requesting an amendment to Certificate No. 08-4248 to authorize and reflect the actual and historical use of the water included in the Certificate as being in Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Galveston, Leon, Houston, Walker, Grimes, Freestone and Madison Counties in the Trinity, San Jacinto and Neches River Basins and in the Trinity-Neches Coastal Basin; and

WHEREAS, Leon, Houston, Walker, Grimes, Freestone and Madison counties are located partially in the Trinity River Basin and partially in the San Jacinto River Basin, the Neches River Basin or the Trinity-Neches Coastal Basin; and

WHEREAS, the City of Houston, the only other water right owner for Lake Livingston, and the Chambers-Liberty Counties Navigation District have submitted letters to the Commission indicating that they do not object to the granting of this application; and

WHEREAS, the Texas Natural Resource Conservation Commission finds that jurisdiction over the application is established; and

WHEREAS, no person protested the granting of this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Natural Resource Conservation Commission in issuing this amendment.

NOW, THEREFORE, this amendment to Certificate No. 08-4248 is issued to the Trinity River Authority of Texas, subject to the following provisions:

#### 1. PLACE OF USE

Owner is authorized to use the water included in the Certificate for diversion and use from Lake Livingston in Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Galveston, Leon, Houston, Walker, Grimes, Freestone and Madison Counties in the Trinity River Basin, the San Jacinto River Basin, the Neches River Basin and the Trinity-Neches Coastal Basin.

#### 2. CONSERVATION

A. Certificate owner shall maintain a water conservation plan that provides for the utilization of those practices, techniques and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such a plan shall include a requirement in every wholesale water supply contract entered into on or after the effective date of this amendment and including any contract extension or renewal, that each successive wholesale customer develop and implement water conservation measures. If the customer intends to resell the water, the contract for the resale of the water must

measures. If the customer intends to resell the water, the contract for the resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water will be required to implement water conservation measures.

- B. Within 1 (one) year of the date of issuance of this amendment, Certificate owner shall submit a written report to the Executive Director of the Texas Natural Resource Conservation Commission responding to the TNRCC technical memos dated July 29, 1994, September 8, 1994 and July 16, 1998 regarding the River Authority's conservation plans and providing a progress report on the River Authority's effort to update its water conservation plans to cover the River Authority's entire service area and to officially adopt its conservation plan(s) in accordance with agency rule 30 Texas Administrative Code §288.5 (1) (I).

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 08-4248 except as specifically amended herein.

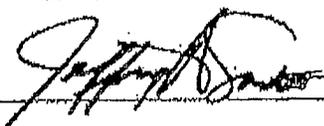
This amendment is issued subject to all superior and senior water rights in the Trinity River Basin.

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

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

This amendment is issued subject to the Rules of the Texas Natural Resource Conservation Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION



For the Commission

DATE ISSUED: JUL 27 1998

ATTEST: 

Eugenia K. Brumm, Ph.D., Chief Clerk

ADS/08-4248B/KO

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AMENDMENT TO  
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 08-4248B APPLICATION 08-4248B TYPE §§ 11.121, 11.122,  
11.042 & 11.046

Owner:	Trinity River Authority of Texas	Address:	P. O. Box 60 Arlington, Texas 76004
Filed:	September 7, 2000	Granted:	<b>OCT 12 2006</b>
Purpose:	Domestic, Municipal, Mining, Industrial, and Agriculture	Counties:	Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Leon, Houston, Walker, Galveston, Grimes, Freestone, Madison
Watercourse:	Trinity River	Watershed:	Trinity River Basin, San Jacinto River Basin, Neches River Basin, and the Neches-Trinity Coastal Basin

WHEREAS Certificate of Adjudication No. 08-4248 authorizes the Trinity River Authority (TRA or Applicant), in conjunction with the City of Houston, owner of Certificate of Adjudication No. 08-4261, to maintain an existing dam and reservoir (Lake Livingston) on the Trinity River, Trinity River Basin, and impound therein not to exceed 1,750,000 acre-feet of water, and to construct and maintain a dam and reservoir (Lake Wallisville) on the Trinity River and impound therein not to exceed 51,600 acre-feet of water; and

WHEREAS Certificate of Adjudication No. 08-4248 also authorizes Applicant to divert and use not to exceed 351,600 acre-feet of water per annum from Lake Livingston and 51,600 acre-feet of water per annum from Lake Wallisville for domestic, municipal, industrial and agriculture (irrigation) purposes within Applicant's service area; and

WHEREAS, by Texas Water Commission, now Texas Commission on Environmental Quality, Order issued September 24, 1990, a portion of the water right authorized by Certificate of Adjudication No. 08-4248 was severed from the Certificate and re-authorized as Water Use Permit No. 5271 with a priority date of February 23, 1917, which includes the maintenance of two off-channel reservoirs and the diversion and use of 58,500 acre-feet of water per year at a combined diversion rate of 813 cfs (365,850 gpm) for agricultural (irrigation), mining and industrial purposes from a diversion point on the Trinity River in the Samuel Neathery Survey, Abstract No. 325, Liberty County, Texas, to a relift station located in the Jacob E. Self Survey, Abstract No. 104, Liberty County; and

WHEREAS, the Certificate authorizes recreation use of the water impounded in Lakes Livingston and Wallisville; and

WHEREAS, Applicant is authorized to divert a portion of the water at a point on the Trinity River in the Manuel Rionda Grant, Abstract 25, at a maximum rate of 66.67 cfs (30,000 gpm), a portion at the outlet works on Lake Livingston in the William Pace Survey, Abstract No. 60 at an unspecified diversion rate, and a portion at various points on the perimeter of Lake Livingston at a combined maximum rate of 71.79 cfs (32,305 gpm); and

WHEREAS, the priority date for the diversion and use of the water is September 23, 1959, and for the impoundment of water in Lake Livingston is September 23, 1959; and

WHEREAS, the Certificate authorizes the Trinity River Authority to use the water authorized for diversion and use from Lake Livingston in Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Galveston, Leon, Houston, Walker, Grimes, Freestone, and Madison Counties in the Trinity River Basin, the San Jacinto River Basin, the Neches River Basin and the Neches-Trinity Coastal Basin; and

WHEREAS, special conditions in the certificate include authorization to use the bed and banks of the Trinity River downstream of the dams and reservoirs to convey water, and to subordinate the authorization of the certificate to present and future use and reuse, and consumptive use of certain return flows within the Trinity River Basin upstream of Lake Livingston, as well as other conditions; and

WHEREAS, Applicant seeks authorization to impound, in its share of the storage capacity of Lake Livingston (30%), the return flows from TRA's wastewater treatment plants (WWTPs) located upstream from the lake, except return flows from TRA's Denton Creek Regional Wastewater Treatment Plant, under any theory recognized in Texas Law, including those of developed water, unappropriated return flows from whatever source, release of stored water, use of bed and banks, and unappropriated state water that will not cause adverse impact on other water right holders of a greater magnitude than under circumstances in which the certificate to be amended was fully exercised according to its terms and conditions that existed prior to the amendment; and

WHEREAS, the wastewater treatment plants are identified as TRA's Central Regional, Red Oak Creek, and Ten Mile Creek Wastewater Treatment Plants in Dallas, and Ellis Counties; and

WHEREAS, whenever the natural flow of the Trinity River is insufficient to fill and refill TRA's storage space in Lake Livingston, Applicant will impound its return flows, however characterized, in its Lake Livingston storage space and will divert and use this water as authorized in Certificate of Adjudication No. 08-4248, as amended; and

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

WHEREAS, six (6) requests for a contested case hearing were received, but all were subsequently withdrawn; and

WHEREAS, Applicant requested that all references to the Denton Creek Regional Wastewater Treatment Plant and the effluent related thereto be removed from the application; and

WHEREAS, the Executive Director has determined that, in order to protect existing water rights and aquatic habitat in the Trinity River Basin, a special condition limiting Applicant's diversions and reuse of water to actual discharges from the WWTPs, less carriage losses, be included in the permit; and

WHEREAS, the Executive Director has determined that existing water rights will not be impacted by the discharge, conveyance, storage and redirection of TRA's historic and future return flows if appropriate accounting is made pursuant to an accounting plan that measures discharges and adjusts available amounts by losses to prohibit TRA from diverting return flows that physically and legally would have been available for impoundment, diversion, and use by water rights issued prior to the filing of this application; and

WHEREAS, the Texas Commission on Environmental Quality finds that granting this amendment will benefit the public welfare; and

WHEREAS, the Texas Commission on Environmental Quality's current rules provide that a water right may be granted upon the availability of return flows or discharges, however a water right granted based on return flows or discharges will be granted with the express provision that the water available to the water right is dependent upon potentially interruptible return flows and discharges; and

WHEREAS, TRA's application for this amendment was declared administratively complete by the Executive Director on September 7, 2000, and therefore the time priority for the appropriation of additional state water under this amendment is September 7, 2000; and

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

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 08-4248, designated Certificate of Adjudication No. 08-4248B, is issued to Trinity River Authority of Texas, subject to the following terms and conditions:

1. IMPOUNDMENT

TRA is authorized to impound, in its share of the storage capacity of Lake Livingston (30% of total capacity), the return flows, less carriage loss, that are discharged by TRA's Central Regional, Red Oak Creek Regional, and Ten Mile Creek Regional Wastewater Treatment Plants in Dallas, and Ellis Counties.

2. USE

In addition to the current diversion authorization, the Trinity River Authority is also authorized to divert the amount of documented return flows, less carriage and evaporative losses, discharged by the TRA's Central Regional, Red Oak Creek Regional, and Ten Mile Creek Regional Wastewater Treatment Plants and conveyed to Lake Livingston from the Lake for use within its service area for the purposes authorized by Certificate of Adjudication No. 08-4248. The maximum amount of effluent currently authorized for discharge from each identified WWTP (as of 7/22/2004) is as follows:

Wastewater Treatment Plant	Permit Amount	Per Annum
Central Regional WWTP	193 MGD	215,774 Acre-feet
Red Oak Creek WWTP	3.5 MGD	3,913 Acre-feet
Ten Mile Creek WWTP	24.0 MGD	26,832 Acre-feet
Total	220.5 MGD	246,219 Acre-feet

3. RELEASE POINTS

- A. Central Regional WWTP - approximately Latitude 32.776° N, Longitude 96.939° W on the right bank of the West Fork Trinity River approximately 0.55 river miles upstream of the confluence with Mountain Creek.

- B. Red Oak Creek Regional WWTP - approximately Latitude 32.483° N, Longitude 96.800° W on the left bank of Red Oak Creek approximately 0.7 stream miles upstream of the confluence with Sanger Branch.
- C. Ten Mile Creek Regional WWTP - approximately Latitude 32.563° N, Longitude 96.623° W on the left bank of Ten Mile Creek approximately 3 stream miles upstream of the confluence with the Trinity River.

4. TIME PRIORITY

The time priority for the use of the water authorized by this amendment is September 7, 2000.

5. CONSERVATION

- A. Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses.
- B. Every wholesale water supply contract entered into or renewed after official adoption of the water conservation plan, including any contract extension, must ensure that ~~each successive wholesale customer develop and implement a water conservation plan or water conservation measures that incorporate elements of Title 30, Texas Administrative Code Chapter 288.~~

6. SPECIAL CONDITIONS

- A. TRA is authorized to use the bed and banks of the West Fork Trinity River, Red Oak Creek, Ten Mile Creek, and the Trinity River to convey treated effluent from the three identified WWTPs downstream to Lake Livingston.
- B. Prior to diversion of the water authorized herein, TRA shall install and maintain a measuring device at the discharge point of each WWTP, capable of measuring within plus or minus 5% accuracy, to record the amount of water discharged into the Trinity River for conveyance downstream to Lake Livingston.
- C. Prior to the diversion of the water authorized herein, TRA shall prepare, implement, and follow an accounting plan, approved by the Commission, designed to determine

the combined total amount of divertible return flows present each month, based on measured discharges less calculated carriage losses resulting from the conveyance of the treated effluent from the WWTPs to Lake Livingston.

- D. TRA shall maintain electronic records (in spreadsheet or database format) of the records of discharges of each of the specified WWTPs used in the return flow accounting, the calculations of carriage and evaporative losses, and diversions of the return flows from Lake Livingston and make them available to the public during normal business hours and shall submit them to the Executive Director upon request.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 08-4248 except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Trinity River Basin.

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

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

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



Executive Director, Texas Commission on Environmental Quality

DATE ISSUED: OCT 12 2006

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



08-4248/W

AMENDMENT TO  
CERTIFICATE OF ADJUDICATIONRECEIVED  
DEC 19 2006TCEQ  
CENTRAL FILE ROOM

CERTIFICATE NO. 08-4248C	APPLICATION 08-4248C	TYPE § 11.122
Owner: Trinity River Authority of Texas	Address: P. O. Box 60 Arlington, Texas 76004	
Filed: September 23, 2005	Granted: DEC 12 2005	
Purpose: Multiple Use (Domestic, Municipal, Industrial, Mining, and Agriculture)	Countries: Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Leon, Houston, Walker, Galveston, Grimes, Freestone, Madison	
Watercourse: Trinity River	Watershed: Trinity River Basin, San Jacinto River Basin, Neches River Basin, and Neches-Trinity Coastal Basin	

WHEREAS, Certificate of Adjudication No. 08-4248 authorizes the Trinity River Authority (TRA, Applicant), in conjunction with the City of Houston (owner of Certificate of Adjudication No. 08-4261) to maintain an existing dam and reservoir (Lake Livingston) on the Trinity River, Trinity River Basin, and impound therein not to exceed 1,750,000 acre-feet of water, and to construct and maintain a dam and reservoir (Lake Wallisville) on the Trinity River and impound therein not to exceed 51,600 acre-feet of water; and

WHEREAS, Certificate of Adjudication No. 08-4248 also authorizes the TRA to divert and use 461,700 acre-feet of water per year from three separate locations (a point on the Trinity River and from Lake Livingston and Lake Wallisville) at a maximum combined diversion rate of not to exceed 951.49 cfs (428,171 gpm) for domestic, agricultural (irrigation), municipal, and mining purposes within the Owner's service area in the Trinity River Basin; and

WHEREAS, of the total amount of water authorized for diversion, Certificate of Adjudication No. 4248 authorizes TRA to divert and use not to exceed 104,450 acre-feet of water per year from Lake Livingston for agriculture (irrigation) purposes, 40,000 acre-feet of water per year

for domestic and municipal purposes, and 207,150 acre-feet of water per year for industrial purposes within the applicant's service area; and

WHEREAS, TRA is authorized to divert water from Lake Livingston at the outlet works of the dam at an unspecified diversion rate and at various points on the perimeter of Lake Livingston at a combined maximum rate of not to exceed 71.79 cfs (32,305 gpm); and

WHEREAS, TRA is authorized to use the water from Lake Livingston in Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Galveston, Leon, Houston, Walker, Grimes, Freestone, and Marlson Counties in the Trinity River Basin, the San Jacinto River Basin, the Neches River Basin and the Neches-Trinity Coastal Basin; and

WHEREAS, the priority date for the impoundment, diversion, and use of the water from Lake Livingston is September 23, 1959; and

WHEREAS, Applicant seeks authorization to add multiple use [domestic, municipal, industrial, and agricultural (irrigation)] purposes to the water authorized for diversion from Lake Livingston, and to increase the diversion rate authorized from Lake Livingston from 71.79 cfs (32,305 gpm) to 152.79 cfs (68,572.152 gpm); and

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

WHEREAS, the City of Houston provided a letter of consent to the application and, therefore notice was not mailed; and

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

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 08-4248, designated Certificate of Adjudication No. 08-4248C, is issued to the Trinity River Authority of Texas, subject to the following terms and conditions:

1. USE

In lieu of the previous purposes of use for the water authorized for diversion from Lake Livingston, the Trinity River Authority is now authorized to divert and use not to exceed 351,600 acre-feet of water per year for multiple use [domestic, municipal, agricultural (irrigation), and industrial] purposes.

2. DIVERSION

A. In lieu of the previous diversion rate from various points on the perimeter of Lake Livingston of 71.79 cfs (32,305 gpm), Owner is now authorized to divert the water from various points on the perimeter of Lake Livingston at a maximum rate of not to exceed 152.79 cfs (68,572.152 gpm).

B. In lieu of the previous maximum combined diversion rate authorized by Certificate of Adjudication No. 08-4248 of not exceed 951.49 cfs (428,171 gpm), exclusive of release through Lake Livingston Dam, the maximum combined diversion rate authorized by the Certificate, exclusive of release through Lake Livingston Dam, shall not exceed 1,032.49 cfs (463,381.512 gpm).

3. CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 08-4248, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Trinity River Basin.

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

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

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*[Handwritten Signature]*  
For the Commission

DATE ISSUED: DEC 12 2005



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Commissioners

Peter M. Holt  
Chairman  
San Antonio

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Houston

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Lee M. Bass  
Chairman-Emeritus  
Fort Worth

Carter P. Smith  
Executive Director

November 24, 2008

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63771

H

OPA

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BY

BP

CHIEF CLERKS OFFICE

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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Ms. LaDonna Castanuela  
Office of the Chief Clerk  
Texas Natural Resource Conservation Commission  
MC 105  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Application by the City of Dallas to Amend Certificate of Adjudication  
No. 08-2462; Application No. 08-2462I

Dear Ms. Castanuela:

Texas Parks and Wildlife Department (TPWD) respectfully requests a contested case hearing regarding the City of Dallas Application No. 08-2462I. Because the notice period for water right applications comes very early in the TCEQ review process, often there is not enough specific technical information available to fully evaluate a proposed project. To protect TPWD's ability to participate in the development of permit conditions to protect fish and wildlife resources, TPWD files this hearing request.

Pursuant to Texas Parks and Wildlife Code § 12.0011, TPWD is the state agency charged with the primary responsibility for protecting the state's fish and wildlife resources. Under Texas Water Code § 11.147, the Texas Commission on Environmental Quality (TCEQ), in making a final decision on any application to store, take or divert water, shall consider all information, evidence and testimony presented by TPWD. Under the same provision, TPWD has the right to be named a party in hearings on water use permit applications.

The City of Dallas (City) seeks to amend Certificate of Adjudication No. 08-2462 to increase the amount of water appropriated and to increase the maximum combined diversion rate from the perimeter of Lake Ray Hubbard on the East Fork Trinity River, Trinity River Basin, in Dallas, Kaufman, Rockwall, and Collin Counties. Authorization is sought to increase the diversion and use of water from Lake Ray Hubbard by 119,600 acre-feet per year. This additional water includes 49,600 acre-feet of firm water and 70,000 acre-feet of water per year that is available on a less than firm basis. The City states that the additional water is available based upon an adjustment of the naturalized flows in the TCEQ Trinity River Basin Water Availability Model (WAM) to "reflect the increase in runoff that would have occurred over the historical period had today's level of development been there."

The TCEQ must consider the impacts of the City's application on water quality, instream uses, and freshwater inflows, and all water use permits may be conditioned to protect those flows. (Tex. Water Code §§ 11.147, 11.150, 11.152; 30 Tex. Admin. Code §§ 297.54-56.) TPWD's statutory obligation and ability to protect the fish and wildlife resources of the state are affected by the actions proposed in the City's application. The City seeks to alter the manner in which the

To manage and conserve the natural and cultural resources of Texas and to provide hunting, fishing and outdoor recreation opportunities for the use and enjoyment of present and future generations.

4200 SMITH SCHOOL ROAD  
AUSTIN, TEXAS 78744-3291  
512.389.4800  
www.tpwd.state.tx.us

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TCEQ  
WATER SUPPLY DIV.  
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TCEQ determines water availability. The availability of water is a critical issue in fish and wildlife management, and the state must be in a position to fairly assess the water needs and uses of both people and the environment. Maintaining adequate instream flows and habitat to protect fish and wildlife resources is essential to the duties of TPWD. TPWD is concerned about the use of an applicant-modified WAM to determine water availability in this application and its potential to cause over-allocation of water to the detriment of fish and wildlife and other water right holders.

The TCEQ has implemented a set of basin-specific WAMs for use in each of Texas 23 river basins. A WAM is the fundamental tool used by the TCEQ to determine the water that may be appropriated. A standardized WAM has been and should be used across each basin to fairly and consistently evaluate all water right applications. If the TCEQ uses an applicant-modified WAM, the modified WAM should be made publicly available, and it should be properly vetted prior to use. Technical assumptions and decisions need to be evaluated by multiple parties to ensure validity and credibility of the model. Additionally, use of an applicant modified WAM raises questions of equity concerning other water right applicants. It is unknown whether other applicants or potential applicants relied upon the TCEQ WAM to determine official water availability and inform their decisions regarding applications in the Trinity basin. At a minimum, if a new WAM is employed for this applicant, a full accounting of previously applied for and granted water rights throughout the basin is required to ensure that no water right denials or limitations have been issued by the TCEQ based upon a previous version of the WAM. Finally, there is potential for the City's application to open the door for other applicants to use specialized WAMs to support their applications and introduce technical uncertainty in water rights permitting-decisions-by-leaving the state with a network of competing and perhaps non-compatible WAMs to consider.

In its modified WAM, the City adjusted the naturalized flows previously presented in the TCEQ WAM. The central tenet of the City's adjustment is that base flows have increased due to changes in land use, meaning that developed areas have allowed for more runoff than undeveloped areas. The City's application seeks to appropriate this "new water" that has been found by its modified WAM in the Lake Ray Hubbard watershed. This analysis of creating state water by developing land is overly simplistic and overlooks a number of complicating factors about changes in hydrology through time, in both surface water and groundwater. It also cannot accurately determine if the "new water" is due solely to increased runoff or if other sources, such as return flows, unused water rights, and other water management operations in the basin have contributed to this "new water." If it is state policy that naturalized flows should be retrofitted to reflect changes in land use, it's conceivable that every TCEQ WAM must be modified from the sub-watershed to the basin scale to reflect such changes. And it is unclear where such an exercise may end as land uses are altered into the future. Additionally, other factors of change such as climate change or the presence of flood control structures may need consideration in adjusting naturalized flows. If TCEQ determines that it is appropriate to alter the naturalized flows in all the TCEQ WAMs, TPWD believes that should be done with broad public input and peer review.

Ms. LaDonna Castanuela  
November 24, 2008  
Page 3 of 3

TPWD may withdraw its hearing request if its concerns can be met by technically acceptable water availability modeling or by the inclusion of special protective conditions in the permit or other appropriate means. TPWD understands that the TCEQ will perform a detailed technical review of the application and may develop draft permit conditions that may alleviate some or all of the stated concerns. TPWD will continue to evaluate the merits of the proposed project as additional technical information becomes available.

Please use the information below to place TPWD on the official mailing list for this application. Should you have any questions, please call me at 512 389 8899. Thank you for your attention to this matter.

Sincerely,



Colette J. Barron, Attorney  
State Bar of Texas No. 00783607  
Texas Parks and Wildlife Department  
Legal Division  
4200 Smith School Road  
Austin, TX 78744  
512 389 8899 Phone  
512 389 4482 Fax

---

CB:bh

cc: Mr. Carter Smith  
Mr. Phil Durocher  
Ms. Ann Bright  
Mr. Mike Ray

**Lloyd Gosselink**  
ATTORNEYS AT LAW

Mr. Rochelle's Direct Line: (512) 322-5810  
mrochelle@lglawfirm.com

816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Telephone: (512) 322-5800  
Facsimile: (512) 472-0532  
www.lglawfirm.com

WR  
63771

November 10, 2008

HR  
OPA  
NOV 12 2008  
BY [Signature]  
CHIEF CLERK OF  
2008 NOV 12 AM 11:09  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

VIA FACSIMILE TRANSMISSION AND FIRST-CLASS MAIL

Ms. LaDonna Castañuela (MC 105)  
Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Application No. 08-2462I of the City of Dallas to Amend Certificate of Adjudication No. 08-2462, as amended (446-12)

Dear Ms. Castañuela:

I am writing on behalf of my client, the North Texas Municipal Water District (the "District"), in response to the notice of an application (the "Application") to amend Certificate of Adjudication No. 08-2462, as amended (the "Certificate"), filed by the City of Dallas ("Applicant"). Please consider this letter as the District's formal request for a contested case hearing on the Application.

The North Texas Municipal Water District relies upon water supplies in the Trinity River Basin, as well as other water resources, for its municipal water supplies to meet the needs of its members and customers. The District is the owner of a number of surface water rights in the Trinity River Basin, including Certificate of Adjudication No. 08-2410, as amended, and it has a pending application to amend that right currently on file with the Commission. This water right of the District includes special conditions which limit the District's diversion of water thereunder to times when Lake Ray Hubbard, authorized by the Applicant's Certificate, is spilling; therefore, the Application has the potential to impact the extent to which the District is able to utilize its own water rights. Additionally, the Trinity River provides water that supports the economic health and well being of the District and its members and customers. Accordingly, the District has significant property interests in the waters of the Trinity River Basin. For these reasons, and in order to protect its rights to further review the Application and the proposed water right amendment that may be proposed by the Executive Director and the Commission, the District requests that the Commission conduct a contested case hearing on the Application.

The District expects to reach agreement with the Executive Director and the Applicant regarding the Application, following the Executive Director's completion of its technical review of the Application and its preparation of a draft permit amendment. Thus, the District makes this filing only in order to preserve its ability to further evaluate the Application, the manner in which it is reviewed by the Executive Director and considered by the Commission, and any draft permit

Lloyd Gosselink Rochelle & Townsend, P.C.

Ms. LaDonna Castañuela  
November 10, 2008  
Page 2

amendment that may be prepared by the Executive Director. The District anticipates that following its further evaluation of such matters it will be able to withdraw this hearing request.

Accordingly, on behalf of the District, I request that the Commission and the Executive Director's staff provide the District with copies of all proposed amendments, technical memoranda, and any other evaluations and/or any notices proposed, promulgated, or published by the Commission or the Executive Director's staff related to this Application. Please have these documents sent to my attention using the following contact information:

Martin C. Rochelle  
Lloyd Gosselink Rochelle & Townsend, P.C.  
816 Congress Ave., Suite 1900  
Austin, TX 78701  
(512) 322-5810  
(512) 472-0532 Fax  
[mrochelle@lglawfirm.com](mailto:mrochelle@lglawfirm.com)

Thank you for your assistance in this important matter.

Sincerely,



Martin C. Rochelle

MCR/aph  
044612ADWUltr081105aph

cc: Ms. Gwendolyn Webb  
Mr. Robert McCarthy  
Mr. Mike Rickman  
Mr. Tom Gooch

Nov 24 08 03:50p



Gulf States Natural Resource Center  
44 East Avenue, Suite 200 Austin, TX 78701 512.476.9805 www.nwf.org

ADJ  
03771

CHIEF CLERKS OFFICE

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

November 24, 2008

Ms. LaDonna Castañuela  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

OPA

H  
BY BP

Re: Request for Contested Case Hearing in the Matter of Application No. 08-24621 by the City of Dallas for an Amendment to a Certificate of Adjudication

Dear Ms. Castañuela:

The National Wildlife Federation (NWF) hereby requests a contested case hearing on the above-referenced application and provides the following information in support of that request.

This request for a contested case hearing is submitted on behalf of the National Wildlife Federation through its Gulf States Natural Resource Center. The contact information for NWF in this matter is as follows:

Inspiring  
Americans  
to protect  
wildlife for  
our children's  
future.

Myron J. Hess  
National Wildlife Federation  
44 East Avenue, Suite 200  
Austin, TX 78701  
Ph: 512-610-7754  
Fax: 512-476-9810  
email: [hess@nwf.org](mailto:hess@nwf.org)

This is a **REQUEST FOR A CONTESTED CASE HEARING** on application number 08-24621, which was filed by the City of Dallas and through which the City seeks to authorize additional diversions of state water from Lake Ray Hubbard. The National Wildlife Federation would be affected in a way that is not common to the general public because the National Wildlife Federation is a national, non-profit organization dedicated, among other things, to protecting natural resources and the right of people to use and enjoy those resources. NWF's membership is composed of people who share the goals of protecting fish and wildlife resources and the right of people to use and enjoy those resources. NWF has approximately 44,000 members in Texas many of whom use and enjoy those resources, including the resources of the Trinity River and Galveston Bay



*Handwritten signature*

*Hearing Request of NWF  
Appl. No. 08-24621, City of Dallas  
Page 2*

downstream of the proposed diversions. NWF's participation in the hearing does not require the participation of individual members in any capacity other than possibly to establish standing.

The Gulf States Natural Resource Center is a regional office of NWF and is located in Austin, Texas. One of the key functions of the office is the implementation of a program to ensure adequate protection of stream and river flows to support fish and wildlife resources in Texas. NWF is actively pursuing that goal through a variety of avenues, including the filing of this hearing request.

The application by the City of Dallas that is the subject of this hearing request has the potential to significantly affect in a direct way the fish and wildlife resources of the Trinity River watershed and Galveston Bay and to affect NWF members. Through this application, the City seeks authorization to divert an additional 119,600 acre-feet of water per year from Lake Ray Hubbard. As a result of such diversions, the Trinity River downstream of the reservoir would experience significantly reduced flows and Galveston Bay would experience reduced freshwater inflows. Unless appropriately controlled, that would result in reductions in water quality and in adverse impacts to fish and wildlife resources and to the ability of people, including NWF members, to use and enjoy those resources. Accordingly, NWF's interests in protecting fish and wildlife resources would be adversely affected by the granting of this application, as would its interests in protecting the ability of its members and others to use and enjoy the resources in and along the River and the associated estuary system.

This application also has the potential to adversely affect fish and wildlife resources and NWF members in a more indirect fashion through the precedent that it could establish. The City seeks to rely on a novel basis for establishing the availability of unappropriated water: an adjustment in naturalized flows in the relevant water availability model ("WAM") to "reflect the increase in runoff that would have occurred over the historical period had today's level of development been there." If an additional appropriation is authorized in the absence of an adequate demonstration that the water to be appropriated will be available on a reliable basis, downstream flows and water quality, along with downstream rights, may be adversely affected. Accordingly, this application raises important factual and policy issues that require careful consideration after development of a complete factual record.

An initial policy issue, that has significant factual aspects, is whether a modification of naturalized flow assumptions should be allowed. If such modifications are allowed, a comprehensive mechanism for fully evaluating the appropriateness of any particular modification is needed. An applicant should be required to meet a high evidentiary burden in demonstrating that such a modification is appropriate. In meeting that burden,

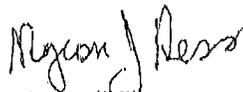
*Hearing Request of NWF  
Appl. No.08-24621, City of Dallas  
Page 3*

an applicant should be required to demonstrate that all factors potentially affecting naturalized flow assumptions have been adequately evaluated, including factors such as groundwater depletion that might reduce inflow, rather than simply one particular factor that might increase runoff. Basing an appropriation upon increased impervious cover also raises major policy and factual issues about measures required to maintain the assumed increased runoff in the future. For example, how would implementation of measures such as rainwater harvesting, use of green roofs, and pervious paving affect the future availability of the appropriation?

Although NWF has serious concerns about the application, NWF is not unalterably opposed to its approval. NWF recognizes that obtaining increased yield from existing reservoirs, if it can be achieved in a dependable manner that does not have unintended adverse consequences for water management and the environment, can be a positive development. Accordingly, NWF is interested in participating in the development of conditions to be included in any permit to address adverse impacts to fish and wildlife resources, water quality, commercial and recreational fisheries, and other recreational activities resulting from any diversion authorization that might be granted. In addition, NWF is interested in ensuring that the potential recipients of any water from those additional diversions have implemented adequate water conservation and drought management measures to ensure that any diversions are, in fact, necessary and that state water is used in a way consistent with the public welfare. NWF also is vitally interested in ensuring that an adequate record is created and that the important policy issues raised by this application are carefully considered and appropriately resolved.

Please contact me at the phone number or address listed below if you have any questions or need additional information.

Sincerely,



Myron J. Hess,  
Manager, Texas Water Programs/Counsel  
Office: 512-610-7754  
Fax: 512-476-9810  
Email: [hess@nwf.org](mailto:hess@nwf.org)  
44 East Avenue, Suite 200  
Austin, TX 78701



October 31, 2008

Page 2

Accordingly, on behalf of the City of Houston, I request that the Commission and the Executive Director's staff provide the City with copies of all proposed amendments, technical memoranda, and any other evaluations, and/or any notices proposed, promulgated, or published by the Commission or the Executive Director's staff related to this Application. Please have these documents sent to my attention using the following contact information:

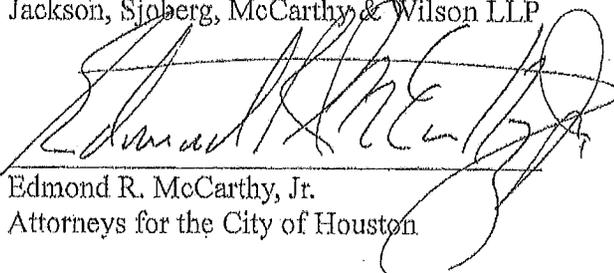
Edmond R. McCarthy, Jr.  
Jackson, Sjoberg, McCarthy & Wilson, L.L.P.  
711 West 7<sup>th</sup> Street  
Austin, Texas 78701  
(512) 225-5606  
(512) 225-5565 Fax  
[emccarthy@jacksonsjoberg.com](mailto:emccarthy@jacksonsjoberg.com)

Please note that this request is conditional. After further review and evaluation of the Application and its potential impacts, Houston hopes to reach an agreement with the Commission and Dallas on the Application that will address Houston's interest in providing for the health and well being of the Trinity River Basin, as well as protecting Houston's downstream water rights and other affected interests. Assuming that effort is successful, the City would be able to withdraw its contested case hearing request.

By copy of this letter, I am advising Ms. Gwendolyn Webb, special counsel for Dallas, and Mr. Ron Ellis of the Executive Director's staff of this request for a contested case hearing and copies of documents.

Thank you for your assistance.

Sincerely,  
Jackson, Sjoberg, McCarthy & Wilson LLP



Edmond R. McCarthy, Jr.  
Attorneys for the City of Houston

ERM/tn

cc: City of Houston  
Attn: Mr. Jun Chang, Interim Deputy Director  
Public Works & Engineering Department  
Mr. Bill Beauchamp, Senior Assistant City Attorney  
City Attorney's Office  
TCEQ  
Attn: Mr. Ron Ellis (MC 160)  
City of Dallas  
Attn: Ms. Gwendolyn Webb, Special Counsel