

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

May 27, 2016

To: Persons on the attached mailing list (by mail and facsimile as indicated)

Re: Application by the City of Dallas to Amend Certificate of Adjudication No. 08-2462, Application No. 08-2462I; TCEQ Docket No. 2016-0049-WR

The Texas Commission on Environmental Quality ("Commission") has scheduled the above-referenced matter for consideration at its Agenda meeting on June 22, 2016, at 9:30 a.m., as noticed by the Office of General Counsel's letter dated April 15, 2016. By letter dated May 25, 2016, the Applicant filed a motion for continuance of the matter in order to resolve the concerns raised by the hearing requesters. The motion indicates that Applicant has heard from all the parties, with the exception of the Environmental Defense Fund and the Office of Public Interest Counsel, and has encountered no objection to the postponement.

The Office of General Counsel has determined to continue the matter from the scheduled Agenda meeting pursuant to 30 TAC §10.4. Accordingly, this matter is continued to the Commission's Agenda meeting on **Wednesday, August 24, 2016**, starting at **9:30 a.m.** in Room 201S, Building E, 12100 Park 35 Circle, Austin, Texas 78753.

Pursuant to 30 TAC §§ 10.3 and 55.209, the Office of General Counsel has determined to extend the deadlines for the parties to file written responses and replies as noticed by the Commission's letter dated April 15, 2016. Accordingly, the Applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ are entitled to file a formal written response to the hearing requests/requests for reconsideration on or before 5:00 p.m. on **August 1, 2016**. Persons who have filed timely hearing requests/requests for reconsideration may file a formal written reply to these responses on or before 5:00 p.m. on **August 15, 2016**. To be considered timely, an original and seven copies of any response or reply brief must be received in the Office of Chief Clerk (OCC) on or before the applicable 5:00 P.M. deadline. All briefs filed with the OCC should also be addressed to the attention of the Agenda Docket Clerk and be marked with the TCEQ Docket number provided above. Responses and replies may be filed with the Chief Clerk electronically at <http://www10.tceq.state.tx.us/epic/efilings/> *or* by filing an original and 7 copies with the Chief Clerk of the TCEQ. All response and reply briefs should also be mailed to all other persons on the attached mailing list on the same day mailed or filed in the OCC.

If you have any questions concerning this matter, please contact Elaine Lucas, Assistant General Counsel, at (512) 239-6215.

Respectfully,

A handwritten signature in black ink, appearing to read "Tucker Royall".

Tucker Royall  
General Counsel

Mailing List

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TCEQ Docket No. 2016-0049-WR

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May 25, 2016

Mr. Tucker Royall, General Counsel, MC 101  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**Re: City of Dallas Application for Water Rights Permit Amendment  
Certificate of Adjudication No. 08-2462I**

**Subject: *Second Request for Extension of time for Commission Consideration of  
Hearing Requests to Complete Settlement of Contested Issues***

Dear Mr. Royall;

The purpose of this letter is to request a second postponement for Commission consideration of Hearing Requests. The parties are actively involved in settlement negotiations, and additional time is needed to finalize the terms of resolution and obtain approvals.

The above referenced water rights permit amendment Application No. 08-2462I has been scheduled for the June 22, 2016 TCEQ Commission agenda. On behalf of my client, the City of Dallas, I am requesting that the Commission postpone its consideration of hearing requests and delay the entire schedule in this matter as appropriate for the August 3, 2016 agenda to allow settlement details to be finalized and approved by the several government entities involved in this contested case hearing. Dallas and all other parties, with the exception of Environmental Defense Fund continue to work very actively to resolve protests filed by the hearing requestors and we all—Dallas and the protesting parties—are hopeful that our efforts will either resolve the issues completely or significantly reduce the matters at issue in any contested case hearing. Unfortunately, it has proven impossible for the parties to complete resolution in time to address the current May 27, 2016 deadline for the parties to present pre-Agenda materials.

Please accept this letter as Dallas' second formal request for a postponement of the Commission's consideration of hearing requests at the June 22, 2016 agenda, and a request to move that item to the August 3, 2016 TCEQ agenda. Applicant and the protestants would also

like to see the date for responses to be filed to be extended appropriately, also, so that written Responses to Hearing Requests are due on or about Monday, July 11, 2016, and Replies to Responses are due on or about Monday, July 25, 2016. Dallas continues to believe that resolution of disputed issues with the protestants and the other parties will be successful; it makes sense to continue to direct our efforts in that direction rather than initiating the contested case hearing process at this time. I have contacted all of the protestants and have heard from all statutory (TCEQ Executive Director, TCEQ Office of Public Interest Counsel and TCEQ Alternative Dispute Resolution Program, and Texas Parks and Wildlife Department) and remaining protesting parties (City of Houston, Trinity River Authority of Texas, North Texas Municipal Water Authority, and National Wildlife Federation) except Environmental Defense Fund that there is no objection to the postponement. Todd Burkey, of the TCEQ Alternative Dispute Resolution Attorney has contacted the attorney representing the Environmental Defense Fund, who is reviewing this case file on behalf of that protestant.

Thank you for your continued consideration in this matter. Please let me know if I can provide any additional information or assistance. I look forward to hearing from you soon.

Sincerely,

  
Gwendolyn Hill Webb  
ATTORNEY FOR THE CITY OF DALLAS

cc: Attached Mailing List

Kim Wilson, Director, Water Availability Division  
Lori Hamilton, Manager, Water Rights Permitting and Availability Section  
Iliana Delgado, Team Leader, Water Rights Permits  
Jo M. Puckett, P. E., Director, City of Dallas Water Utilities  
Denis W. Qualls, P. E., Manager, Dallas Water Utilities Planning Division

MAILING LIST  
CITY OF DALLAS  
DOCKET NO. 2016-0049-WR; CERTIFICATE OF ADJUDICATION NO. ADJ 2462

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FOR OFFICE OF PUBLIC INTEREST COUNSEL:

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REQUESTER(S)/INTERESTED PERSONS:

See attached list.

**MAILING LIST: REQUESTER(S) AND INTERESTED PERSON(S)**

**REQUESTER(S):**

**FOR THE TEXAS PARKS AND WILDLIFE  
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Colette J. Barron-Bradsby, Attorney  
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**FOR THE NATIONAL WILDLIFE FEDERATION:**

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National wildlife Federation  
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**FOR THE CITY OF HOUSTON:**

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**FOR THE NORTH TEXAS MUNICIPAL WATER  
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**FOR THE TRINITY RIVER AUTHORITY OF  
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**FOR THE ENVIRONMENTAL DEFENSE FUND:**

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**WITHDREW OF HEARING REQUEST(S):**

**FOR THE TEXAS WESTMORELAND COAL  
COMPANY:**

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Lloyd, Gosselink, Rochelle & Townsend PC  
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**FOR THE COASTAL CONSERVATION  
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**INTERESTED PERSON(S):**

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Toby Baker, *Commissioner*  
Jon Niermann, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 15, 2016

To: Persons on the attached mailing list (by mail and facsimile as indicated)

Re: Application by the City of Dallas to Amend Certificate of Adjudication No. 08-2462, Application No. 08-2462I; TCEQ Docket No. 2016-0049-WR

The Texas Commission on Environmental Quality ("Commission") has scheduled the above-referenced matter for consideration at its Agenda meeting on May 11, 2016, at 9:30 a.m., as noticed by the Commission's letter dated April 6, 2016. On April 13, 2016, the Applicant filed a motion for continuance of the matter in order to resolve the concerns raised by the hearing requesters. The motion indicates that Applicant has heard from all the parties, with the exception of the Environmental Defense Fund and the Office of Public Interest Counsel, and has encountered no objection to the postponement.

The Office of General Counsel has determined to continue the matter from the scheduled Agenda meeting pursuant to 30 TAC § 10.4. Accordingly, this matter is continued to the Commission's Agenda meeting on **Wednesday, June 22, 2016**, starting at **9:30 a.m.** in Room 201S, Building E, 12100 Park 35 Circle, Austin, Texas 78753.

Pursuant to 30 TAC §§ 10.3 and 55.209, the Office of General Counsel has determined to extend the deadlines for the parties to file written responses and replies as noticed by the Commission's letter dated April 6, 2016. Accordingly, the Applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ are entitled to file a formal written response to the hearing requests/requests for reconsideration on or before 5:00 p.m. on **May 27, 2016**. Persons who have filed timely hearing requests/requests for reconsideration may file a formal written reply to these responses on or before 5:00 p.m. on **June 13, 2016**.

If you have any questions concerning this matter, please contact Todd Burkey, Assistant General Counsel, at (512) 239-2941.

Respectfully,

A handwritten signature in black ink, appearing to read "Tucker Royall".

Tucker Royall  
General Counsel

Mailing List

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

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April 13, 2016

Mr. Tucker Royall, General Counsel, MC 101  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**Re: City of Dallas Application for Permit Amendment  
Certificate of Adjudication No. 08-2462I**

**Subject: *Request for Extension of time for Commission consideration of Hearing  
Requests***

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2016 APR 14 AM 10:07  
CHIEF CLERKS OFFICE

Dear Mr. Royall;

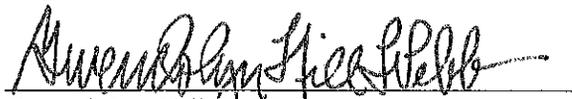
The above referenced water rights permit amendment Application No. 08-2462I has been scheduled for the May 11, 2016 TCEQ Commission agenda. On behalf of my client, the City of Dallas, I am requesting that the Commission postpone its consideration of hearing requests and delay the entire schedule in this matter as appropriate for the June 22, 2016 agenda. Dallas is now working to resolve protests filed by the hearing requestors and we all—Dallas and the protesting parties—are hopeful that our efforts will either resolve the issues completely or significantly reduce the matters at issue in any contested case hearing. Unfortunately, it is unlikely that Dallas can complete its work in time to address the current April 18, 2016 deadline for the parties to present pre-Agenda materials.

Please accept this letter as Dallas' formal request for a postponement of the Commission's consideration of hearing requests at the May 11, 2016 agenda, and a request to move that item to the June 22, 2016 TCEQ agenda. Applicant and the protestants would also like to see the date for responses to be filed to be extended, also, so that written Responses to Hearing Requests are due Tuesday, May 31, 2016 (allowing for the Memorial Day holiday), and Replies to Responses are due Tuesday, June 14, 2016. Hopefully, Dallas is close to resolution with the protestants and the other parties; it makes sense to direct our efforts in that direction rather than initiating the contested case hearing process at this time. I have contacted all of the

protestants and have heard from all parties except the Environmental Defense Fund that there is no objection to the postponement. The Executive Director has also stated that there is no objection to the postponement, and I have not heard yet from the Office of Public Interest Counsel.

Thank you for your continued consideration in this matter. Please let me know if I can provide any additional information or assistance. I look forward to hearing from you soon.

Sincerely,

  
Gwendolyn Hill Webb  
ATTORNEY FOR THE CITY OF DALLAS

cc: Attached Mailing List

Kim Wilson, Director, Water Availability Division  
Lori Hamilton, Manager, Water Rights Permitting and Availability Section  
Iliana Delgado, Team Leader, Water Rights Permits  
Jo M. Puckett, P. E., Director, City of Dallas Water Utilities  
Denis W. Qualls, P. E., Manager, Dallas Water Utilities Planning Division

MAILING LIST  
CITY OF DALLAS

DOCKET NO. 2016-0049-WR; CERTIFICATE OF ADJUDICATION NO. ADJ 2462

FOR THE EXECUTIVE DIRECTOR:

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REQUESTER(S)/INTERESTED PERSONS:

See attached list.

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**REQUESTER(S):**

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National wildlife Federation  
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Fred B. Werkenthin, Jr., Attorney  
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206 E. 9<sup>th</sup> Street, Suite 1501

**WITHDRAW OF REQUEST(S):**

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Robin A. Melvin, Attorney  
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**INTERESTED PERSON(S):**

Lyn Clancy, Associate General Counsel  
Lower Colorado River Authority  
P.O. Box 220  
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Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Jon Niermann, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

April 6, 2016

**TO: Persons on Attached Mailing List**

**RE: Docket No. 2016-0049-WR**

**City of Dallas**

**Hearing Requests filed on Certificate of Adjudication No. ADJ 2462**

The above-referenced application and all timely filed hearing requests filed on the application will be considered by the Commissioners of the Texas Commission on Environmental Quality during the public meeting on **May 11, 2016**. The meeting will begin at 9:30 a.m. in Room 201S of Building E, at the Commission's offices located at 12100 Park 35 Circle in Austin, Texas.

In accordance with Commission rules, copies of the hearing request(s) have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. They may file written responses to these hearing requests on or before 5:00 p.m. on **April 18, 2016**. Persons who filed hearing requests (hearing requesters) may file a written reply to responses on or before 5:00 p.m. on **May 2, 2016**. All responses and replies must be filed with the Chief Clerk of the TCEQ, and sent on the same day to all individuals on the attached mailing list. Responses and replies may be filed with the Chief Clerk electronically at <http://www.tceq.texas.gov/goto/eFilings> or by filing an original and 7 copies with the Chief Clerk of the TCEQ. The address of the Chief Clerk's Office is: Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 (Fax 512/239-3311). The procedures for evaluating hearing requests and for filing and serving responses and replies are located in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter G (§§55.250-55.256) and 30 TAC §§1.10-1.11. The hardcopy filing requirement is waived by the General Counsel pursuant to 30 TAC §1.10(h).

The Commissioners will not take oral argument or additional public comment on this matter, but may wish to ask questions of the applicant, hearing requesters or staff. The Commissioners will make their decision based on the hearing requests, written responses to the hearing requests, any written replies to those responses, and any response to questions.

Copies of all public comment and hearing requests have also been referred to the Alternative Dispute Resolution Office, where they will be evaluated to determine if informal, voluntary mediation might help resolve any dispute. Individual members of the public may seek further information concerning the application, public participation, the processing of hearing requests, copies of Commission rules, or the attachment, by calling the TCEQ Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink that reads "Bridget C. Bohac". The signature is written in a cursive style with a large initial 'B' and a long, sweeping tail on the 'c'.

Bridget C. Bohac  
Chief Clerk

**MAILING LIST  
CITY OF DALLAS**

**DOCKET NO. 2016-0049-WR; Certificate of Adjudication No. ADJ 2462**

**FOR THE APPLICANT:**

Gwen Webb  
Webb & Webb Attorneys at Law  
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**FOR THE EXECUTIVE DIRECTOR:**  
via electronic mail:

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**FOR PUBLIC INTEREST COUNSEL:**  
via electronic mail:

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**FOR ALTERNATIVE DISPUTE  
RESOLUTION**  
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**FOR THE CHIEF CLERK:**

Bridget C. Bohac  
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**REQUESTER(S)/INTERESTED  
PERSON(S):**

See attached list.

## **REQUIREMENTS FOR WATER RIGHTS HEARING REQUESTS**

Commission Rules in 30 TAC Section 55.251 (b) and (c) require a hearing request to:

- (1) be in writing and be filed with the Office of the Chief Clerk during the public comment period;
- (2) give the name, address, and daytime telephone number of the person who files the request;
- (3) identify the person's personal justiciable interest affected by the application including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public; and (4) request a contested case hearing.

A hearing request must comply with requirement (1) above and "substantially comply" with requirements (2) through (4). In addition, a group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right,
- (2) the interests the group or association seeks to protect are germane to the organization's purpose,
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

A request for a contested case hearing must be granted if the request is made by an affected person and the request: (A) complies with the requirements of 30 TAC Section 55.251; (B) is timely filed; and (C) is pursuant to a right to hearing authorized by law. 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. An interest common to the general public does not constitute a justiciable interest. To determine whether a person is an affected person, all relevant factors must be considered, including but 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) the likely impact of the regulated activity on the health, safety, and use of property of the person; and
- (5) the likely impact of the regulated activity on the use of the impacted natural resource by the person.
- (6) 30 TAC Section 55.256(c).

**REQUESTER(S)**

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**WITHDRAW OF REQUEST(S)**

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