

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Office of the Chief Clerk
Texas Commission on Environmental Quality

DATE: September 17, 2008

FROM: Ron Ellis, Project Manager *RE*
Water Rights Permitting Team

SUBJECT: Northeast Texas Municipal Water District
Docket # 2008-0791-WR
ADJ 4590
CN601368368
RN103186771

Application No. 04-4590B to Amend Certificate of Adjudication No. 04-4590
TWC §11.085
Cypress Creek, Cypress Basin and Sabine River Basin
Marion and Harrison Counties

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
7:00 SEP 17 PM 2: 57
CHIEF CLERKS OFFICE

Supplemental Backup Documents

The attached documents, identified in the supplement to the application as documents A - E, were received with this application.

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 04-4590 OWNER: Northeast Texas Municipal
Water District
P. O. Box 955
Hughes Springs, Texas
75656

COUNTY: Marion PRIORITY DATE: September 16, 1957

WATERCOURSE: Johnson Creek, tributary BASIN: Cypress Creek
of Cypress Creek and
Cypress Creek
(Lake O' the Pines)

WHEREAS, by final decree of the 188th Judicial District Court of Gregg County, in Cause No. 86-257-A, In Re: The Adjudication of Water Rights in the Cypress Creek Basin dated June 9, 1986 a right was recognized under Permit 1897ABC authorizing the Northeast Texas Municipal Water District to appropriate waters of the State of Texas as set forth below;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Cypress Creek Basin is issued to the Northeast Texas Municipal Water District, subject to the following terms and conditions:

1. IMPOUNDMENT

Owner is authorized to store 251,000 acre feet of water in an existing dam and reservoir on Cypress Creek, known as Lake O' the Pines, which is owned by the United States of America and operated by the U.S. Corps of Engineers, between elevation 201 feet and elevation 228.5 feet above mean sea level. The dam is located in the A. Abram Survey, Abstract 3; the Joseph French Survey, Abstract 131; the Mrs. E.T. Jones Survey, Abstract 232; the T.B. Morton Survey, Abstract 283 and the David Chote Survey, Abstract 80, Marion County, Texas.

2. USE

A. Owner is authorized to divert and use not to exceed 42,000 acre-feet of water per annum from the aforesaid reservoir and Lake Bob Sandlin for municipal and domestic purposes of which not more than 1930 acre-feet of water per annum may be diverted from Lake Bob Sandlin by the City of Pittsburg in accordance with the trilateral agreement between the Titus County Fresh Water Supply District No. 1; the City of Pittsburg and the owner of this certificate.

B. Owner is authorized to divert and use not to exceed 161,800 acre-feet of water per annum from the aforesaid reservoir and

Certificate of Adjudication 04-4590

Lake Bob Sandlin for industrial purposes of which not more than 10,000 acre feet of water per annum may be diverted from Lake Bob Sandlin.

- C. Owner is authorized to release sufficient amounts of industrial use water from Lake O' the Pines, to provide for the transwatershed diversion of 18,000 acre-feet of water per annum to the Sabine River Basin. Released water will be diverted from Cypress Creek and transported via pipeline for storage in Southwestern Electric Power Company's cooling Pond on Brady Branch, tributary of the Sabine River, Sabine River Basin.
- D. Owner is also authorized to use the impounded water of the aforesaid reservoir for recreation purposes.

3. DIVERSION

- A. Location:
At the perimeter of the aforesaid reservoir and from the perimeter of Lake Bob Sandlin under the Reservoir Operation Agreement.
- B. Maximum rates are as shown:
 - (1) 1300.00 cfs (585,000 gpm) from Lake O' the Pines.
 - (2) 85.00 cfs (38,250 gpm) from Lake Bob Sandlin.

4. PRIORITY

The time priority of owner's right is September 16, 1957.

5. SPECIAL CONDITIONS

- A. Owner shall maintain a suitable outlet in the aforesaid dam authorized herein to allow the free passage of water that owner is not entitled to divert or impound.
- B. Owner is authorized to use the bed and banks of Cypress Creek, below the aforesaid dam, to convey and deliver water to be appropriated hereunder to downstream diversion points.
- C. Owner's rights hereunder are subject to an agreement for reservoir operations on Cypress Creek between the Texas Water Development Board, the Titus County Fresh Water Supply District No. 1, the Franklin County Water District, the Northeast Texas Municipal Water District and the Lone Star Steel Company, dated January 1, 1973 and to subsequent amendments to that agreement or basin operation orders issued by the Commission.

Certificate of Adjudication 04-4590

The locations of pertinent features related to this certificate are shown on Page 6 of the Cypress Creek Basin Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Water Commission, Austin, Texas and the office of the County Clerk of Morris and Marion Counties.

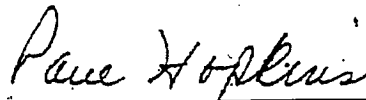
This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 188th Judicial District Court of Gregg County, Texas, in Cause No. 86-257-A, In Re: The Adjudication of Water Rights in the Cypress Creek Basin dated June 9, 1986 and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to senior and superior water rights in the Cypress Creek Basin.

This certificate of adjudication is issued subject to the obligations of the State of Texas pursuant to the terms of the Red River Compact.

This certificate of adjudication is issued subject to the Rules of the Texas Water Commission and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.


TEXAS WATER COMMISSION


Paul Hopkins, Chairman

DATE ISSUED:

OCT 13 1986

ATTEST:


Mary Ann Refner, Chief Clerk

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



Lake O' the pines

AMENDMENT TO
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 04-4590A

Permittee	: Northeast Texas Municipal Water District	Address	: P.O. Box 955 Hughes Springs, Texas 75656
Filed	: August 22, 1995	Granted	: DEC 15 1995
Purpose	: Municipal, Domestic, Industrial And Recreation	County	: Marion
Watercourse	: Johnson Creek, tributary of Cypress Creek and Cypress Creek	Watershed	: Cypress Basin

WHEREAS, Certificate of Adjudication No. 04-4590 was issued to the Northeast Texas Municipal Water District on October 13, 1986 and authorized certificate owner to store 251,000 acre-feet of water in an existing dam and reservoir on Cypress Creek known as Lake O' the Pines; and

WHEREAS, owner is authorized: to divert and use not to exceed 42,000 acre-feet of water per annum from the aforesaid reservoir and Lake Bob Sandlin (immediately upstream of Lake O' the Pines) for municipal and domestic purposes; to divert and use not to exceed 161,800 acre-feet of water per annum from the aforesaid reservoir and Lake Bob Sandlin for industrial purposes of which not more than 10,000 acre-feet of water per annum may be diverted from Lake Bob Sandlin and to use the impounded water of Lake O' the Pines for recreational purposes; and

WHEREAS, an application was received from Northeast Texas Municipal Water District wherein applicant seeks to amend the certificate by authorizing transwatershed diversion of an additional 20,000 acre-feet of water per annum from Lake O' the Pines into the Sabine River Basin for municipal and industrial use by the City of Longview; and

WHEREAS, the water will be diverted from the perimeter of the reservoir on the south shore of Lake O' the Pines at a rate of diversion not to exceed 100 cfs (44,883 gpm); and

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

NOW, THEREFORE, this amendment to Certificate No. 04-4590 is issued to Northeast Texas Municipal Water District, subject to the following terms and conditions:

1. USE

In addition to the uses contained in Certificate No. 04-4590, owner is authorized to provide for the transwatershed diversion of 20,000 acre-feet of water per annum for municipal and industrial uses from Lake O' the Pines to the Sabine River Basin for use by the City of Longview, Texas.

2. DIVERSION RATE

Water diverted from the perimeter of the reservoir at a maximum rate of 100 cfs (44,883 gpm)

3. WATER CONSERVATION

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 use or alternative uses. Such plan shall include a requirement in every wholesale water supply contract entered into, on or after the effective date of this permit, 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, then 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.

3. TIME PRIORITY

The time priority of this amendment is September 6, 1957.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 04-4590, except as specifically amended herein.


This amendment is issued subject to all superior and senior water rights in the Cypress 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: DEC 15 1955

ATTEST:


Gloria A. Vasquez, Chief Clerk

**NORTHEAST TEXAS MUNICIPAL WATER DISTRICT
RAW WATER PURCHASE CONTRACT**

This Raw Water Purchase Contract (the "Agreement"), is made and entered into this 1st day of February, 2006 (the "Effective Date"), by and between the Northeast Texas Municipal Water District (the "District"), a conservation and reclamation district and political subdivision of the State of Texas, created under the provisions of Acts 1953, 53rd Legislature of the State of Texas, as amended (the "District Act"), and the City of Marshall, Texas (the "City"), a municipal corporation acting pursuant to its home rule charter and the constitution and laws of the State of Texas.

WITNESSETH:

WHEREAS, the District and the City are authorized to enter into this Agreement pursuant to the District Act and other applicable state law;

WHEREAS, pursuant to Certificate of Adjudication No. 04-4590, (Priority date of 1957) (the "District Water Rights"), the District has rights to store water in and divert water from Lake O' the Pines ("LOTP") for domestic, municipal and industrial purposes;

WHEREAS, the District holds contractual rights to water in LOTP by virtue of an agreement dated May 11, 1998 between the District and its member cities;

WHEREAS, the District desires to make available to the City a supply of raw water for use by the City to benefit the City, its citizens and customers, pursuant to the May 11, 1998 agreement with the District's member cities;

WHEREAS, pursuant to Certificate of Adjudication No. 04-4614, (Priority dates of April 1947 and November 1956) (the "City Water Rights"), the City has the right to divert and use water from Big Cypress Creek for supplying its citizens and customers with water;

WHEREAS, this Agreement is intended to provide an additional water supply to supplement the existing City Water Rights that are senior to the District's Water Rights; and, this Agreement shall not diminish the City's existing water rights in the Cypress Basin;

WHEREAS, the District and the City desire to specify the terms and conditions for the purchase and delivery of such water;

WHEREAS, the District determines that its sale of water to the City will be a fair investment for the District and that the public will derive a benefit by the District's efforts to provide a water supply; and,

WHEREAS, the District has determined that entering into this Agreement with the City is within the District's power: (1) under Section 7 of the District Act, and TEX. GOV'T CODE Section 791.026, to store and process water and transport it to cities and others for municipal, domestic, and industrial purposes; and (2) under Section 15 of the District Act, and TEX. GOV'T CODE Section 791.026, to make contracts with municipalities regarding a water supply, the operation of water production, water filtration or water purification for cities.

NOW, THEREFORE, in order to affect said purposes, the District and the City hereby enter into this Agreement, as follows:

1. **Raw Water Supply and Title.** The District agrees to sell, convey and deliver to the City at the Delivery Point water from LOTP in amounts up to and including 9,000 acre-feet per annum for the City's subsequent transfer, diversion and use. The District agrees that the City may take water at any time after the Effective Date of the Agreement, in accordance with the terms and conditions of this Agreement. Title to the water actually delivered by the District to the Delivery Point pursuant to this Agreement shall pass to the City at said Delivery Point.

2. **Delivery Point for Raw Water.** The water supplied hereunder shall be made available to the City at a point in Big Cypress Bayou immediately below the outfall of LOTP. The District shall deliver the raw water upon the request of the City. Such request shall be delivered to the District by the City's City Manager or his designee and shall specify the quantity of raw water to be made available at the Delivery Point. Except in emergencies, the District shall make the delivery by allowing the water to be released out of LOTP by use of the gated facilities located in or near the dam of LOTP. The District shall supply the amount of water requested. Within twenty-four (24) hours of completing the requested release, the District shall provide written confirmation that the requested quantity of water has been released. The District shall have the sole responsibility for the delivery of such water to the Delivery Point, including securing any federal, state, county or local approvals that may be required for such transport and delivery of water. The City shall have the sole responsibility for the conveyance and delivery of such water from the Delivery Point to the City's actual place of diversion from Big Cypress Bayou, including securing any federal, state, county or local approvals required for such transport, diversion and use of such water. The District shall cooperate with the City in securing any and all permits required by any federal, state, county, or local authority to use the beds and banks of any stream as a means of conveyance of the water from the Delivery Point to the City's actual place of diversion on Big Cypress Bayou as authorized in the City's Water Right (the "Diversion Point"). The City shall be responsible for determining how much water the District should deliver at the Delivery Point for the City's transfer, diversion and use. The City shall bear the risk of any carriage loss associated with the transport of the water from the Delivery Point to the Diversion Point on Big Cypress Bayou.

3. **Payment Obligation.** Following the issuance of any and all final and non-appealable permits necessary to lawfully allow the City's transfer, diversion and use of the water supplied by the District pursuant to this Agreement, the City will begin to pay the District based on the schedule, quantities and rates provided for herein.

a. **Payment for first 5,000 acre-feet.** Commencing on the day the City begins actually diverting water delivered by the District to the Delivery Point (the "Initial Delivery Date"), and continuing thereafter for the term of this Agreement, the City shall pay the District \$100.00 per acre-foot of water (the "Delivered Water Fee") actually delivered to the City at the request of the City to the Delivery Point.

b. **Rate adjustments on first 5,000 acre-feet.** On the first anniversary of the Initial Delivery Date, and each anniversary thereafter during the term of the Agreement, the Delivered Water Fee may be adjusted for each succeeding year by changes in the Consumer Price Index - Dallas-Fort Worth SMSA; Series: CUURA316SA0 (CPI-U), as published by the U.S. Department of Labor, Bureau of Labor Statistics with a starting index point of the Initial Delivery Date. Provided, however, that no annual adjustment to the Delivered Water Fee shall reduce or increase the rate to be charged to the City by more than 3% of such fee.

For further clarification, the Delivered Water Fee may be adjusted by multiplying the initial Delivered Water Fee (\$100.00 per acre-foot) as set out above in Section 3. a by an inflation factor calculated in accordance with the following formula:

$$\text{Adjusted Rate per acre-foot} = \text{Delivered Water Fee of } \$100 \text{ per acre-foot} \times \frac{\text{Current CPI-U}}{\text{Base CPI-U}}$$

Where:

Current CPI-U = The value for the Index for the month of the anniversary of the Initial Delivery Date of the current year; and,

Base CPI-U = The value for the Index for the month of Initial Delivery Date.

If the Consumer Price Index ceases to be made available during the term of this Agreement, then the City and the District shall mutually agree on a substitute index or method to adjust the fee for inflation.

c. **Take or Pay Obligation for the first 5,000 acre-feet.** To the extent that the City is not actually taking water at the Delivery Point, and therefore is not paying the Delivered Water Fee for the volume of water delivered by the District hereunder, the City agrees to pay the following annual take or pay fee (the "Take or Pay Fee") to the District for the difference between the take or pay

amounts referenced in this Paragraph 3. c and the volume of water actually delivered by the District to the Delivery Point, if there be any difference. Commencing on the Initial Delivery Date, and continuing for a period of five (5) years thereafter, and excluding the amount of water the City has paid for pursuant to Paragraph 3. a of this Agreement, the City shall also pay to the District a Take or Pay Fee of up to twenty percent (20%) per annum of the first 5,000 acre-feet of water made available under this Agreement. After the initial five-year period following the Initial Delivery Date, and after reducing the take or pay amount by the amount of water the City has paid for pursuant to Paragraph 3. a of this Agreement, the Take or Pay Fee payment obligation will escalate, as follows:

1. Year 6-10: 22% of 5,000 acre-feet, per annum;
2. Year 11-15: 24% of 5,000 acre-feet, per annum;
3. Year 16-20: 26% of 5,000 acre-feet, per annum;
4. Year 21-25: 28% of 5,000 acre-feet, per annum;
5. Year 26-30: 30% of 5,000 acre-feet, per annum;
6. Year 31-35: 32% of 5,000 acre-feet, per annum;
7. Year 36-40: 34% of 5,000 acre-feet, per annum;
8. Year 41-45: 36% of 5,000 acre-feet, per annum; and,
9. Year 46-50: 38% of 5,000 acre-feet, per annum.

Regardless of the amount of water actually supplied by the District at the Delivery Point in any given fiscal year, the City shall pay to the District the rate(s) applicable to the year in which the water is taken, as set forth in the schedule above.

d. Payment for additional 4,000 acre-feet. The District agrees to reserve to the City an additional 4,000 acre-feet of water, in excess of the 5,000 acre-feet referenced above in Paragraph 3. a of this Agreement, for the City's possible diversion and use under the following conditions:

(1) Commencing on the Initial Delivery Date, the City agrees to pay an annual fee for the reservation of the additional 4,000 acre-feet of water per annum so as to reserve the additional water (the "Reservation Fee"). For the first five (5) years following the Initial Delivery Date, the City shall pay a Reservation Fee in the amount of \$20,000 for 4,000 acre-feet of water reserved under this Agreement. After the initial five-year period following the Initial Delivery Date, the Reservation Fee will be adjusted, as follows:

1. Years 6-10: \$22,000 together with any adjustment for inflation;
2. Years 11-15: \$24,000 together with any adjustment for inflation;
3. Years 16-20: \$26,000 together with any adjustment for inflation;
4. Years 21-25: \$28,000 together with any adjustment for inflation;
5. Years 26-30: \$30,000 together with any adjustment for inflation;

6. Years 31-35: \$32,000 together with any adjustment for inflation;
7. Years 36-40: \$34,000 together with any adjustment for inflation;
8. Years 41-45: \$36,000 together with any adjustment for inflation;
9. Years 46-50: \$38,000 together with any adjustment for inflation.

(2) The Reservation Fee shall be adjusted for inflation. The adjustment shall be made according to changes in the Consumer Price Index - Dallas-Fort Worth SMSA; Series: CUJRA316SA0 (CPI-U) as published by the U.S. Department of Labor, Bureau of Labor Statistics with a starting index point of the Initial Delivery Date. The first adjustment shall be made on the third anniversary of the Initial Delivery Date and subsequent adjustments shall be made on the anniversary of the Initial Delivery Date in each succeeding year during the term of this Agreement. Provided, however, that no annual adjustment shall reduce or increase the Reservation Fee by more than 3% of the then current rate. If the Consumer Price Index ceases to be made available during the term of this Agreement, then the City and the District shall mutually agree on a substitute index or method to adjust the fee for inflation.

(3) If the City takes the initial 5,000 acre-feet of water per annum made available to it under this Agreement and the City is in need of additional water, up to a total of 9,000 acre-feet of water per annum, the District agrees to provide the City with up to an additional 4,000 acre-feet of water per annum, as may be requested in whole or in part by the City for the remainder of the term of the Agreement, at the same price per acre-foot that is then applicable to the first 5,000 acre-feet of supply, as same may be adjusted herein, and under the terms and conditions of this Agreement.

(4) Following the City's request for additional water pursuant to Paragraph 3. d. (3) above, the District shall have the option to charge a higher price for that portion of the additional 4,000 acre-feet of water requested by the City, in the event that another potential District customer offers to pay the District a price that is greater than the price the City has agreed to pay for such water hereunder, and to the extent that i) the District's other potential customer has agreed to such payment in writing, ii) the District's other potential customer has agreed to purchase at least 4,000 acre-feet per annum of water under terms and conditions similar to those included in this Agreement, and iii) the District's other potential customer has agreed to purchase such water for a similar term of years as contained in this Agreement. The District shall notify the City of the offer and provide a written proposal executed by the District's other potential customer evidencing the price per acre-foot that the District's other potential customer has agreed to pay for the water, the amount of water proposed to be purchased, and the term of years of the purchase. Upon receiving such notice from the District, the City shall have thirty

(30) days to agree to pay the same price agreed upon by the District and such other potential customer for all or part of the additional 4,000 acre-feet of water supply. In the event the City declines to accept the price or the City fails to respond in thirty (30) days to the notice, the District shall have no further duty to make that portion of the 4,000 acre-feet of supply available to the City.

(5) The District and the City agree that this Paragraph 3. d shall not be construed to require the City to pay any additional Delivered Water Fee, Take or Pay Fee, or Reservation Fee other than as expressly set forth herein. Further, the parties agree that the City will not pay more than the Reservation Fee for any of the additional 4,000 acre-feet of water unless or until that amount has been requested by the City pursuant to Paragraph 3. d. (3) of this Agreement. Once so requested, the City will be under no further obligation to pay the Reservation Fee.

e. **Payment.** The District shall present an invoice to the City one time each month following the Initial Delivery Date and during the term of this Agreement and any extension thereof, stating the quantity of water actually delivered to the City at the Delivery Point and the amount owed for same pursuant to Paragraph 3. a, as may be adjusted pursuant to Paragraph 3. b, and 1/12 of any additional Take or Pay Fee and/or Reservation Fee that may be due hereunder. The invoice shall be submitted to the City on or before the twenty-fifth (25th) day of each month, such invoices shall be due and payable on or before the twelfth (12th) day of each succeeding month. Any invoice not timely paid shall bear an interest rate of 7% from the time the invoice was due until the date that the invoice is paid.

4. **Non-availability of Water.** In the event available water in LOTP is not sufficient to meet the requirements of all the District's customers, the City shall be entitled to receive water in accordance with applicable state laws during such period of shortage, such supplies to be distributed among all District customers pro rata, according to the amount each District customer may be entitled to, so that every municipal user suffers alike, and in accordance with the District's Water Conservation Plan and Drought Contingency Plan, as may be amended from time to time. The City agrees to comply with the District's Water Conservation Plan and the Drought Contingency Plan as is now in effect and as may hereafter be amended.

5. **Measurement of Water.** The City shall furnish, install, operate and maintain the necessary equipment and devices of standard type for measuring properly and controlling the quantity of raw water diverted by the City at the Diversion Point pursuant to this Agreement, which facilities shall be located at a location at or near the City's existing point of diversion on Big Cypress Bayou. Such meter or meters or other equipment so installed shall remain the property of the City. The meter and all measuring devices shall conform to the specifications as mutually agreed by the parties.

The City shall furnish any replacements of the meter used to measure the volume of water diverted by the City. The District shall have access to such metering equipment at all reasonable times, but the reading, calibration and adjustment thereof shall be done only by the employees or agents of the City. For the purposes of this Agreement, the original record or reading of the meter or meters shall be in a journal, computer or other record-keeping device maintained by the City in its offices. Upon written request by the District, the City shall give the District a copy of the journal or electronic file, or permit the District to have access to the same in the offices of the City wherein such records are customarily kept during reasonable business hours.

In addition to measuring the raw water actually diverted by the City at the Diversion Point, the City and the District shall cause to be constructed and maintained a USGS Gauging Station on Big Cypress Bayou upstream from the Diversion Point. The obligation of the parties to construct and maintain a USGS Gauging Station continues for the life of this Agreement and any extension of this Agreement.

6. **Use of Water.** The City will use the raw water purchased pursuant to this Agreement, at its discretion, for stream maintenance purposes, municipal use purposes, industrial use purposes, and any other lawful purpose of use. The City is responsible for obtaining any permits that are or may become necessary for the transfer, diversion and use of the water at any location determined by the City. The terms of this Agreement and the parties' obligations hereunder are specifically made contingent upon the City obtaining any and all permits necessary for the City's transfer, diversion and use of the water made available hereunder by the City and its customers, including any Interbasin Transfer Permit for the use of the water in the Sabine River Basin. The District shall be obligated to use all reasonable efforts to assist the City in obtaining any permits necessary for the City to fully utilize the water provided for under this Agreement.

7. Reporting.

a. The parties agree to provide each other with any and all information necessary to meet their reporting requirements under state law with respect to the water provided under this Agreement. The District agrees to submit annual reports to the Texas Commission on Environmental Quality (the "TCEQ") in accordance with the rules of the TCEQ, regarding the quantities of water delivered to its customers, including the quantities of water delivered to the Deliver Point. The District will, concurrently, forward a copy of each of those reports to the City.

b. The District shall submit on a monthly basis, by the 10th day of each month, a report showing the amount of Lake O the Pines water delivered to the Delivery Point under this Agreement for the previous month and the amount of water released for other purposes from LOTP into Big Cypress Bayou during the previous month.

8. **Conditions Precedent.** The effectiveness of this Agreement is dependent on the District's and the City's compliance with rules of the TCEQ that are applicable to this Agreement, and upon the filing of the Agreement with the TCEQ, or any successor agency, as required by such agency's rules. Additionally, the obligations of the parties hereunder are contingent on securing any and all necessary approval or authorization from any federal, state, county, or local authority necessary for the City's transfer, delivery, and use of water as contemplated in this Agreement.

9. **Termination by the District.** The obligation of the District to supply water under this Agreement may be terminated by the District if it becomes illegal or impossible for the District to perform such obligations as a result of the occurrence of any one or more of the following:

a. the cancellation, amendment or other limitation by any local, state, or federal agency of any of the permits, amendments, licenses or authorizations required for the appropriation of water from LOTP for municipal or industrial use, or for the operation of LOTP, despite the District's reasonable efforts to resist or avoid any such cancellation, amendment or other limitation, or

b. the promulgation or issuance of any order, rule, regulation or determination by a court or governmental agency that prevents the District from performing its obligation under this Agreement to supply water, despite the District's reasonable efforts to resist or avoid any such order, rule, regulation or determination, or

c. if the City fails to make payment of any monthly charge for water as provided above, plus any additional amount due by reason of delinquency, within thirty (30) days after payment is due to the District under Paragraph 3 above. In the event of any delinquent payment, the District will cause written notice of such delinquency to be given to the City, and the City shall have 10 days from the delivery of such notice to cure such delinquency and/or default, and thereby prevent the termination of this Agreement by the District.

10. **Termination by the City.** The City may terminate the City's obligation under this Agreement related to raw water if:

a. it becomes illegal or impossible, in the City's sole discretion, for the City to take the raw water as a result of the occurrence of any or more of the following:

(1) the failure of any local, state or federal agency to issue or approve any of the permits, amendments, licenses or authorizations required for the City to divert the water, despite the City's reasonable efforts to obtain such permits, amendments, licenses, or

(2) the revocation or modification or any such permit, amendment, license or authorization, despite the City's reasonable efforts to resist or avoid any such revocation or modification, or

(3) the promulgation or issuance of any permit, amendment, license or authorization that makes the City's diversion of water purchased under this Agreement unlawful, or

b. it becomes illegal or impossible, in the City's sole discretion, for the City to utilize the water furnished hereunder as a result of the occurrence of any one or more of the following:

(1) the cancellation, amendment or other limitation by any local, state or federal agency of any of the permits, amendments, licenses or authorizations required for the appropriation of water from LOTP for municipal or industrial use, or for the delivery of water to the Delivery Point, or for the purchase and use by the City of the water to be furnished hereunder, or for the construction of the City's projects to enable its use of water supplied by the Cities, despite the City's reasonable efforts to resist or avoid any such cancellation, amendment or other limitation, or

(2) the promulgation or issuance of any order, rule, regulation or determination by a court or governmental agency, despite the City's reasonable efforts to resist or avoid any such order, rule, regulation or determination; or

c. it becomes economically unfeasible for the City to continue its payment obligation due to events beyond the control of the City (For example, closure of a major industry and/or decline in population) and the City can demonstrate to the District why the Agreement is no longer economically feasible.

d. at any time during the term of this Agreement the City determines that the carriage losses occurring between the Delivery Point and the Diversion Point is greater than 10% during any 30-day period; provided however that the City cannot terminate this Agreement due to carriage loss if the District causes the release of an additional volume of the District's water from Lake O' the Pines that assures that the City has access to divert at least 90% of the amount requested by the City to be made available at the Delivery Point. It is acknowledged that the City is not financially obligated for any additional volume voluntarily released by the District from Lake O' the Pines.

11. Notice of Termination. If any party desires to terminate this Agreement by reason of any of the events described in Paragraph 3, 9.a., 9.b., or Paragraph 10 above, it shall, within three (3) months after it acquires knowledge of such event, deliver to the other party a written notice stating such desire, describing the event, and specifying the

date on which supplying raw water under this Agreement is to terminate, which date shall be at least six (6) months from the date of such notice. It is further provided that a party's failure to timely provide written notice of termination is not a waiver of the party's right to terminate this Agreement for the reasons specified in Paragraph 10.

12. **Hold Harmless.** Each party will indemnify and hold harmless the other party from all claims, demands, and causes of action which may be asserted by anyone on account of each party's exercise of its obligations under this Contract.

13. **Default.** If any party defaults in the observance or performance of any of the provisions, agreements or conditions to be observed or performed on its part under the terms of this Agreement related to supplying raw water, the other party may give written notice to the party in default of its intention to terminate this Agreement, specifying the failure or default relied upon. Upon the expiration of forty-five (45) days after the giving of such notice, the provisions of this Agreement related to supplying raw water shall terminate unless, within such forty-five (45) day period, or such longer period as may be specified in such notice of any amendment of or supplement to such notice, the default specified in such notice shall have been fully cured.

14. **Term of Agreement.** The term of the Raw Water Purchase Agreement, as amended, shall continue for a period of fifty (50) years following the Effective Date.

15. **Option to Renew.** If, at the expiration of the initial term of this Agreement, provided the City is not in default and this Agreement is then in full force and effect, the City shall have an absolute right to renew and extend the term of this Agreement up to additional period of fifty (50) years, on terms and conditions providing for the supply of water at a rate which is reasonable, just and nondiscriminatory, and as negotiated by the parties, provided that the City delivers written notice to the District by registered or certified mail of its intention to do so not less than one (1) year prior to the expiration of the initial term as herein provided. The parties agree to commence their negotiations immediately after the giving of the notice.

16. **Force Majeure.** If by reason of force majeure, either party shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, and if such party gives notice and full particulars of such force majeure, in writing, to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligations of the parties (including obligations for the payment of money), so far as they are affected by such force majeure shall be suspended during the continuance of the inability then claimed, including a reasonable time for removal of the effect thereof. The term "force majeure" shall mean acts of God, strikes, lockouts or other industrial disturbances, act of the public enemy, orders of any kind of Government of the United States, or any state, or any agency or political subdivision of the United States or any state, or any other civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, tornadoes, storms, floods, washouts, arrests, civil disturbances, explosions, breakage or accidents to machinery, transmission pipes or

canals, shortages of labor, material or supplies, or transportation, or any other cause not reasonably within the control of the party claiming such inability. The requirement that any force majeure shall be reasonably beyond the control of the party shall be deemed to be fulfilled even though the existing or impending strike, lockout or other industrial disturbance may not be settled but could have been settled by acceding to the demand of the opposing person or persons. The parties shall use their best efforts to remove the cause of any force majeure; provide further, to the extent the inability does not continue, the City shall retain its right to receive (but not its obligation to take or pay under Section 3) the volume of water that would have otherwise been delivered as soon as is reasonably possible, or upon such other terms as the parties may agree.

17. **Amendments.** This Agreement may not be amended, supplemented or otherwise modified unless done so in writing signed by the Parties, and no provision hereof shall be waived unless such waiver is in writing and signed by the waiving party.

18. **Notices.** Any and all notices and other communications required or permitted to be given, pursuant to this Agreement, shall be deemed given (i) upon personal delivery, or (ii) upon the sender's receipt of electronic confirmation of transmission, if sent by facsimile, or (iii) upon receipt if sent by U.S. mail or courier. The parties designate the following addresses:

If to the City:
City Manager
City of Marshall
P.O. Box 698
Marshall, TX 75671
Attention: Frank Johnson
Telephone: (903) 935-4418
Facsimile: (903) 938-3531

If to the District:
Northeast Texas Municipal Water District
General Manager
P.O. Box 955
Hughes Springs, TX 75656
Attention: Walt Sears
Telephone: (903) 639-7538
Facsimile: (903) 639-2208

19. **No Third Party Beneficiary.** Nothing in this Agreement or any action taken hereunder shall be construed to create any duty, liability or standard of care to any person or entity that is not a party to the Agreement. No person that is not a party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder. This Agreement is intended solely for the benefit of the parties, and the

parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services provided hereunder.

20. **Additional Provisions.** The following miscellaneous provisions are a part of this Agreement:

a. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to mediation prior to the initiation of administrative or civil litigation. Such mediation shall be pursued by the parties' selecting a mediator, within thirty (30) days of a party's written notification to the other party of a disagreement or conflict, and such effort shall be completed within ninety (90) days of such notification. In the event that such mediation does not resolve the disagreement or conflict within such time, at the sole discretion of each of the parties, either party is entitled to pursue any other recourse, administrative, civil or other, at its sole discretion. Notwithstanding the foregoing, nothing in this Agreement shall be construed to prevent either party from securing injunctive relief, as may be required in each party's sole discretion, in order to avoid imminent or irreparable harm to the party's interests.

b. No modifications or amendments to this Agreement shall be valid unless in writing and signed by the signatories hereto or their heirs, successors and assigns.

c. This Agreement shall become a binding obligation on the parties upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The District warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind the District to the same.

d. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

NORTHEAST TEXAS MUNICIPAL WATER DISTRICT

By: Stan Wyatt
President - Stan Wyatt

ATTEST:
Kate Smith
Secretary

CITY OF MARSHALL
By: Frank Johnson
City Manager

ATTEST:
William B. Holcomb
Secretary

ATTEST:
Lisa Agnor
Lisa Agnor, City Secretary
City of Marshall, Texas

(Original Number One of Two Originals.)

SUPPLEMENTAL AGREEMENT

This Supplemental Agreement (the "Agreement") is made and entered into as of the date last executed below ("Effective Date") by and between: the CITY OF MARSHALL, TEXAS (the "City"), a municipality of the State of Texas, organized and operating pursuant to its home rule charter, and the Constitution and laws of the State of Texas, acting herein by and through its City Commission and pursuant to an ordinance duly passed and adopted by said City Commission; and, the NORTHEAST TEXAS MUNICIPAL WATER DISTRICT (the "District"), a conservation and reclamation district created by the Texas Legislature pursuant to the provisions of Art. XVI, Section 59 of the Texas Constitution, acting by and through its Board of Directors and pursuant to a resolution duly passed and adopted by said Board of Directors (collectively referred to as the "Parties").

RECITALS

WHEREAS, the District holds Certificate of Adjudication No. 04-4590, as amended, which authorizes, in part, the impoundment in and use of water from Lake O' the Pines ("LOTP"); and

WHEREAS, on February 1, 2006 the City and the District entered into that certain "Northeast Texas Municipal Water District Raw Water Purchase Contract" (the "Contract"), for the City's purchase of and payment for up to 9,000 acre-feet of water, per annum, from the District's rights in LOTP; and

WHEREAS, the Contract contemplates that water will be made available at a point in Big Cypress Bayou and that the City will divert such water at the City's existing diversion point on Cypress Creek, authorized under Certificate of Adjudication No. 04-4614, as amended, and utilize such water within the City's existing service area; and

WHEREAS, while the Contract contemplates that the City is responsible for obtaining all permits necessary for the transfer, diversion and use of the water made available under the Contract, it is the intent of the Parties that the District will obtain all permits necessary for the transfer, diversion and use of the water made available under the Contract and the City shall reimburse the District the expenses for doing so; and

WHEREAS, the City has confirmed its authorization pursuant to Texas Water Code § 11.042(a) and 30 TAC § 295.111(a) to utilize the bed and banks of Cypress Creek to transport the water made available from LOTP under the Contract to the City's existing diversion facilities on Cypress Creek; and

WHEREAS, the City's existing and proposed service areas are in Harrison County and are located in both the Cypress Creek Basin and the Sabine River Basin; and

WHEREAS, Certificate of Adjudication No. 04-4590, as amended, does not authorize the use of water purchased by the City pursuant to the Contract within that portion of Harrison County located in the Sabine River Basin; and

WHEREAS, it is necessary for Certificate of Adjudication No. 04-4590, as amended, to be amended so as to authorize an interbasin transfer of the 9,000 acre-feet of LOTP water, per annum, the City has purchased under the Contract from the Cypress Creek Basin to that portion of Harrison County located in the Sabine River Basin; and

WHEREAS, the District has agreed to supplement the Contract to provide for the District's application, on behalf of the City, for the necessary interbasin transfer from the Texas Commission on Environmental Quality ("TCEQ"), with assistance and oversight from the City; and

WHEREAS, the City will pay the District for all reasonable costs and expenses associated with obtaining the necessary interbasin transfer authorization, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, be it resolved that for and in consideration of the mutual covenants, benefits and agreements hereinafter set forth, the adequacy and sufficiency of which is evidenced by the Parties' respective execution of this Agreement, the Parties agree as follows:

AGREEMENT

1. **SUPPLEMENT TO CONTRACT:** The Contract is hereby supplemented to provide for the District's filing of an interbasin transfer application, so as to authorize the City the right to divert into and use the water obtained under the Contract in that portion of Harrison County located in the Sabine River Basin, pursuant to the terms and conditions herein.
2. **APPLICATION:** Pursuant to Texas Water Code § 11.085(v)(4) and 30 TAC 295.13(c)(4), the District agrees to file, seek, and prosecute an application with TCEQ to amend Certificate of Adjudication No. 04-4590, as amended, to obtain an interbasin transfer of 9,000 acre-feet of LOTP water, per annum, from the Cypress Creek Basin to that portion of Harrison County located in the Sabine River Basin, for a term not less than the term of the Contract, as same may be extended by the Parties.
3. **COSTS AND EXPENSES:** The City agrees to pay all reasonable costs and expenses associated with the application identified in Section 2 up to \$5,000. Costs and expenses beyond \$5,000 must be approved in advance by the City.
4. **COOPERATION:** The District and the City agree to perform all obligations and undertake such actions as are or may become necessary or convenient to effectuate the purposes and intent of this Agreement. The District agrees to coordinate with the City on all aspects of the application identified in Section 1, including the preparation, filing, and prosecution of the same. The District agrees to allow the City to review and approve all filings and submissions to TCEQ associated with the application identified in Section 2, including the application itself, any responses to requests for additional information, a draft permit, and a final permit that may be issued by TCEQ. The District also agrees to

notify the City of any meetings with regulatory bodies and interested persons that may be held in relation to the application identified in Section 2 and afford the City the opportunity to attend such meetings.

5. RELATIONSHIP OF PARTIES: This Agreement and the application identified in Section 2 is based upon the active participation of the Parties. Neither the execution nor delivery of this Agreement, nor the consummation of the transactions contemplated hereunder, shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement between the City and the District, except for the contractual arrangements specifically set forth in this Agreement. Except as is expressly agreed to in writing in this Agreement, neither the City nor the District (or any of their agents, officers or employees) have any power to assume or create any obligation on behalf of the other.
6. TERM: This Agreement shall be effective as of the date last executed below until such time as a final and non-appealable authorization is issued to the District by TCEQ for the interbasin transfer authorization contemplated in this Agreement.
7. FUTURE AMENDMENT OF WATER RIGHTS: Nothing in this Agreement shall be construed to prohibit or restrict the District from seeking to amend or to secure an amendment of any term of Certificate of Adjudication No. 04-4590, as amended, or from pursuing additional authorizations, that are not contemplated herein. The District may amend its water rights or pursue additional authorizations as long as such amendment or additional authorizations will not impair the agreements contained herein or interfere with the ability of the District and the City to carry out their respective obligations or pursue their rights under the Contract and this Agreement.

EXECUTED this _____ day of _____, 2007.

THE CITY OF MARSHALL, TEXAS

Mayor

ATTEST/SEAL:

City Secretary

NORTHEAST TEXAS MUNICIPAL WATER DISTRICT



President, Board of Directors

ATTEST/SEAL:

W. Holsabake

Secretary, Board of Directors

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 28, 2006

Walt Scars, Jr., General Manager
Northeast Texas MWD
P.O. Box 955
Hughes Springs, Texas 75656

Subject: Filing of Water Sales Contract, TCEQ NO. 12029
City of Marshall

Dear Mr. Dean:

The Water Supply Contract between the Northeast Texas Municipal Water District and the City of Marshall has been accepted for filing. The Agreement meets the filing requirements of 30 Texas Administrative Code Chapters §295.101 and §297 Sub-Chapter J.

Please note that for correspondence and reporting purposes this contract is being identified as TCEQ Water Supply Contract No. 12029.

Term: 50 years, beginning February 1, 2006, ending February 1, 2056
Use: as authorized by law; 9,000 acre-feet per year
Source: Lake O'The Pines
Supplier's Water Right: Certificate No. 04-4590

If you have any questions or comments, you may contact me at (512) 239-6538 or by e-mail at sramos@tceq.tx.us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Esteban Ramos".

Esteban (Steve) Ramos - MC 160
Water Rights Permitting
Water Supply Division

cc: City of Marshall



816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0572
www.lglawfirm.com

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

September 29, 2006

Ms. Kellye Rila (MC 160)
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA FACSIMILE
AND FIRST-CLASS MAIL

Re: Bed and Banks Transfer Pursuant to TWC § 11.042(a) (1279-04)

Dear Kellye:

On February 1, 2006, my client, the City of Marshall (the "City"), entered into a raw water purchase contract (the "Contract") with the Northeast Texas Municipal Water District (the "District") for the purchase of up to 9,000 acre-feet of water per annum from rights in the Lake O' the Pines ("LOTP"), which is located on Cypress Creek and held by the District under Certificate of Adjudication No. 04-4590. The Contract contemplates that the City will divert such water downstream from LOTP at the City's existing diversion point on Cypress Creek, as authorized in Certificate of Adjudication No. 04-4614.

On March 8, 2006, the District submitted a copy of the Contract to the Texas Commission on Environmental Quality ("TCEQ") for approval pursuant to the contract's permit requirements found at 30 TAC § 295.101. As referenced in the enclosed letter from Steve Ramos of the TCEQ's Water Supply Division, the Contract was "accepted for filing" by TCEQ staff on June 28, 2006.

This letter serves as the City's notice to TCEQ that, pursuant to Texas Water Code § 11.042(a) and TCEQ rules at 30 TAC 295.111(a), it intends to make use of the bed and banks of Cypress Creek to transport stored or conserved water from LOTP to the City's existing diversion point on Cypress Creek. Texas Water Code § 11.042(a) provides that an entity "supplying stored or conserved water under contract...may use the bank and bed of any flowing natural stream in the state to convey the water from the place of storage to the place of use or the diversion point of the appropriator." TCEQ rules at 30 TAC § 295.111(a) require that a copy of the contract for the purchase of stored water be filed (by either the seller or purchaser) with the executive director in order for the seller or purchaser of stored water to make use of the bed and banks of any natural watercourse in conveying such water pursuant to Texas Water Code § 11.042(a).

Pursuant to Texas Water Code § 11.042(a) and TCEQ rules at 30 TAC § 295.111(a), enclosed is a copy of the Contract between the City and the District that the TCEQ has accepted for filing. The City intends to transfer the water it purchases from the District, and pursuant to TCEQ rules it would offer the following:

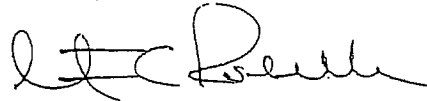
- The water, once transported and diverted by the City, will be utilized for industrial and municipal purposes within the City's service area located in both the Cypress Creek Basin and the Sabine River Basin.
- The water will be transported through the bed and banks of Cypress Creek.
- The District owns LOTP, the reservoir from which the water that is the subject of this transfer is stored and conserved. There is no other reservoir located on Cypress Creek between LOTP and the City's existing diversion point by which the water will be conveyed.
- The water to be transported will originate in LOTP and will terminate at the City's existing diversion point on Cypress Creek.
- The City will commence its transit of water from LOTP at times when the flow in Cypress Creek at the City's existing diversion point is less than the City's proposed diversion rate, for any period of time the City is diverting, and it will terminate same when the flow in Cypress Creek at the City's existing diversion point is equal to or greater than the City's proposed diversion rate, for any period of time the City is diverting. The City may also commence its transit of water from LOTP at times when water quality in Cypress Creek at the City's existing diversion point is threatened, and may terminate same when the threat to water quality in Cypress Creek at the City's existing diversion point is diminished or eliminated. The Contract between the District and the City is for a term of 50 years, beginning on February 1, 2006 and ending on February 1, 2056.
- Up to 9,000 acre-feet of water per annum from LOTP will be transported.
- The maximum rate of flow at which water will be released from LOTP (the point of origin) will be at a rate necessary to ensure there is adequate flow in Cypress Creek at the City's diversion point so as to allow the City to divert water at a rate not greater than 100 cfs, which is the City's maximum rate of diversion under Certificate of Adjudication No. 04-4614.
- The water to be transported is owned by the District, pursuant to its authorization under Certificate of Adjudication No. 04-4590.
- During times when releases from LOTP are made pursuant to the Contract, the City will measure the amount of LOTP water diverted at its authorized diversion point by installing, operating and maintaining (at or near the diversion point location) the necessary equipment for measuring the quantity of water diverted. The City will also maintain a log of information to ensure that a record is made of the volume of water released from LOTP pursuant to the Contract, the volume of water that is delivered to the diversion point near the City's intake, and the volume of water diverted by the City pursuant to the Contract. The City will calculate carriage losses occurring between the release point

Ms. Kellye Rila
September 29, 2006
Page 3

the diversion point. Such actions will ensure that the City only diverts water that it is entitled to divert under its water right and the Contract.

If you have any questions or need any further information regarding this matter, please feel free to contact me or Michelle Smith (512-322-5850). I appreciate your attention to this important matter.

Sincerely,



Martin C. Rochelle

MCR/ldp
1279\04\ltr\060929mms
ENCLOSURES

cc: Mr. Frank Johnson
Mr. Todd Fitts
Mr. Walt Sears
Mr. Ken Choffel
Ms. Michelle Smith



816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 322-5850
www.lglawfirm.com

FILE COPY

Ms. Smith's Direct Line: (512) 322-5850
msmith@lglawfirm.com

November 10, 2006

Ms. Kellye Rila (MC 160)
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA FACSIMILE
AND FIRST-CLASS MAIL

Re: Bed and Banks Authorization (1279-04)

Dear Kellye:

I wanted to confirm my understanding regarding the use of the bed and banks of Cypress Creek to transport stored or conserved water from Lake O' the Pines ("LOTP") to the City of Marshall's existing diversion point on Cypress Creek. As you know, the City entered into a raw water purchase contract (the "Contract") with the Northeast Texas Municipal Water District (the "District") for the purchase of up to 9,000 acre-feet of water per annum from rights in LOTP. The Contract was "accepted for filing" by TCEQ staff on June 28, 2006. On September 29, 2006, Martin Rochelle submitted notification to you that the City intends to make use of the bed and banks of Cypress Creek to transport stored water from LOTP to the City's existing diversion point on Cypress Creek pursuant to Texas Water Code § 11.042(a) and 30 TAC § 295.111(a). This letter is enclosed.

It is my understanding, based upon our recent conversations, that i) TCEQ does not need to take any formal action (including the issuance of notice to interjacent water right holders) in order for the transport of water under the Contract to commence; ii) the District's LOTP water right (Certificate of Adjudication No. 04-4590), which I enclose for your reference, provides that the District is "authorized to use the bed and banks of Cypress Creek...to convey and deliver water to be appropriated hereunder to downstream diversion points"; and, iii) this existing bed and banks authorization, coupled with the City's compliance with 30 TAC § 295.111(a), provides sufficient authorization for the transport of LOTP water pursuant to the Contract. Indeed, it is my understanding that our September 29, 2006 notification letter was filed in TCEQ's Central Records under the LOTP water right.

I appreciate your time in reviewing this matter with me. If I have misstated or misunderstood anything related to our prior conversations or the agency's position with regard to the need for further bed and banks authorization for the delivery of LOTP water pursuant to the Contract to the City's current authorized point of diversion on Cypress Creek, please let me know as soon as possible, for unless directed otherwise by the agency, the City will exercise its right under the Contract for the release of water from LOTP, as necessary.

Ms. Kellye Rila
November 10, 2006
Page 2

If you have any questions or need any further information regarding this matter, please feel free to contact me or Martin Rochelle (512-322-5810) at your convenience. Again, thank you for your time and help.

Sincerely,



Michelle Maddox Smith

MMS/ldp
1279\04\tr061108mms
ENCLOSURES

cc: Mr. Frank Johnson
Mr. Todd Fitts
Mr. Walt Sears
Mr. Ken Choffel
Ms. Robin Smith
Mr. Martin C. Rochelle

RESOLUTION BY THE BOARD OF DIRECTORS OF THE
NORTHEAST TEXAS MUNICIPAL WATER DISTRICT

AUTHORIZING AND DIRECTING

THE GENERAL MANAGER TO FILE AN APPLICATION WITH
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
TO ALLOW FOR AN INTERBASIN TRANSFER OF WATER
ON BEHALF OF THE CITY OF MARSHALL, TEXAS

WHEREAS, the Northeast Texas Municipal Water District ("District") has entered into a contract (the "Contract") to provide up to 9,000 acre-feet of water, per annum, for domestic, municipal and industrial purposes to the City of Marshall, Texas ("City") for a defined period of time; and,

WHEREAS, the District holds rights to store, divert and use state water pursuant to Certificate of Adjudication No. 04-4590, as amended ("Certificate"), which authorizes, in part, the storage of water in Lake O' the Pines, and the diversion and use of water from Lake O' the Pines; and,

WHEREAS, Lake O' the Pines is located in the Cypress Creek Basin and the City's existing and future service area is located in Harrison County, which is situated in both the Cypress Creek Basin and the Sabine River Basin; and,

WHEREAS, in order for the City to fully utilize the water supply it has agreed to purchase pursuant to the Contract within the totality of its existing and future service area, it is necessary that water from Lake O' the Pines be capable of being lawfully transferred from the Cypress Creek Basin to the Sabine River Basin; and,

WHEREAS, state law prohibits the transfer of water from one basin to another without the authority of the Texas Commission on Environmental Quality ("Commission"); and,

WHEREAS, the Board finds that the right to transfer water from Lake O' the Pines in the Cypress Creek Basin to that portion of the City's existing and future service area located within the Sabine River Basin will not impair or prejudice the future needs of the District's members and customers or other water right holders located in the Cypress Creek Basin.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE NORTHEAST TEXAS MUNICIPAL WATER DISTRICT that the General Manager be authorized as follows:

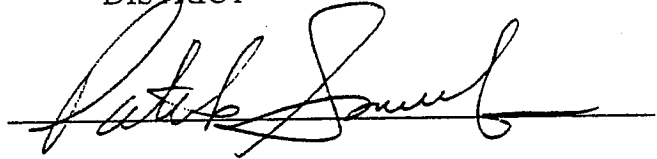
(1) to enter into a Supplemental Agreement with the City regarding the filing of an application with the Commission for an amendment to the Certificate to secure authorization for an exempt interbasin transfer of up to 9,000 acre-feet of water, per annum, from that portion of Harrison County located in the Cypress Creek Basin to that portion of Harrison County located in the Sabine River Basin, pursuant to Texas Water Code § 11.085(v)(4); and,

(2) to file an application with the Commission for an amendment to the Certificate to make an exempt interbasin transfer of up to 9,000 acre-feet of water, per annum, from that portion of Harrison County located in the Cypress Creek Basin to that portion of Harrison County located in the Sabine River Basin, pursuant to Texas Water Code § 11.085(v)(4), and to prosecute same; and,

(3) to coordinate with the City and its consultants regarding such matters.

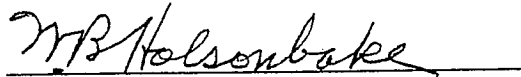
ADOPTED AND APPROVED this ___ day of ___, 2007

NORTHEAST TEXAS MUNICIPAL WATER
DISTRICT



A handwritten signature in black ink, appearing to read "Patrick J. Jones", is written over a horizontal line.

ATTEST:



A handwritten signature in black ink, appearing to read "M. B. Holsonbake", is written over a horizontal line.