SOAH DOCKET NO. 582-22-2634
TCEQ DOCKET NO. 2022-0125-WR

APPLICATION BY CITY OF	**§**	**BEFORE THE TEXAS**
WICHITA FALLS FOR WATER	**§**	**COMMISSION ON**
USE PERMIT NO. 13404	**§**	**ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S EXCEPTIONS TO PROPOSAL FOR DECISION AND PROPOSED ORDER

TO THE HONORABLE COMMISSIONERS:

The Executive Director (or ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files these exceptions to the Proposal for Decision (PFD) and proposed Order issued by the Administrative Law Judge on December 21, 2023, regarding the application by the City of Wichita Falls (City or Applicant) for Water Use Permit No. 13404.

I. Introduction.

The Executive Director respectfully disagrees with several findings of fact and conclusions of law set forth in the PFD, and therefore also disagrees with the proposed order. The Executive Director believes that the City carried its burden of proof on all required elements in its application and recommends that the Commission grant the application and issue the draft permit prepared by program staff.

II. Summary of Argument.

The Executive Director believes that the PFD incorrectly concludes that denial is appropriate based upon misinterpretation of the law governing surface water rights in Texas. The Executive Director excepts to the PFD in three primary areas: 1) the application, its identified beneficial purposes of use, and its lack of specificity as to amounts of water for each use; 2) the environmental review by program staff; and 3) the program staff's review of and reliance on Texas Water Development Board information related to need for the proposed reservoir (Lake Ringgold) in the City's application. These areas of concern are identified below by referencing the PFD headings.

III. PFD Item V.B.1. Requirement to Specify.

In her SOAH briefs on this issue, the Executive Director appropriately acknowledged the language in Tex. Water Code Sec. 11.023(e) and TCEQ rules, 30 Tex. Admin. Code (TAC) Sec. 295.5, but also provided the Commission's acceptance of SOAH's interpretation of the statute and rules in the Brazos River Authority contested case (Application for Water Use Permit No. 5851; TCEQ Docket No. 2005-1490-WR; SOAH Docket No. 582-10-4184).

On page 15, the PFD attempts to distinguish the Brazos River Authority interpretation from the City's application, but the very attempt leads the Executive Director to a different conclusion. It is the Executive Director's ongoing position that the City provided enough information in its application. Under the PFD's analysis, the consequence for the Brazos River Authority and the City would have been the same for not providing specific amounts for each identified beneficial purpose of use – denial. However, the Commission granted the Brazos River Authority's application in 2016 based in relevant part on finding that the requirements in 30 TAC Sec. 295.5 are directory, not mandatory. The Brazos River Authority never provided specific amounts for each identified purpose of use in its application, nor does Permit No. 5851 specify amounts for each authorized purpose of use.

On page 15, the PFD states that "The Water Code further makes clear that it requires strict compliance to appropriate state water." The Executive Director agrees that a water right is required to appropriate state water, absent an applicable exemption to water rights permitting.[1] The PFD concludes incorrectly that "Therefore, the requirement to state the nature and purpose of the proposed use or uses and the amount of water to be used for each purpose is mandatory to appropriate state water." The Executive Director excepts to the PFD's conclusion because the requirement for this information is not mandatory but it is directory.

On page 16, the PFD 16 states that specifying amounts for each purpose of use would aid in evaluating whether the requested amount is economically necessary – in short, the PFD would result in analyzing each purpose of use separately in order to determine whether the requested appropriation as a whole should be authorized. The

[1] Tex. Water Code Sec. 11.022, 11.0235, 11.081, 11.121. *See* also Tex. Water Code Sec. 11.142, 11.1421, 11.1422, 11.1405, 18.003.

Executive Director disagrees because the total amount of water appropriated cannot be exceeded if water is diverted for multiple purposes of use. Tex. Water Code Sec. 11.023(e) does not require that each purpose of use be separately analyzed or authorized – it requires that any amount of water diverted for each purpose of use that will be or may be diverted for that use be part of the total amount appropriated, not separate from it.

On page 17, the PFD cites to information regarding another water right held by the City, Certificate of Adjudication No. 02-5123, to argue that if the City designated specific amounts for different purposes of use for Lake Kemp, the City should be required to do so for this application. The Executive Director disagrees that cite supports the premise argued because No. 02-5123 was issued in 1987 based on a court decree which adjudicated the City's claim to state water, and the amounts and purposes of use are set forth in the water right itself. In addition, the law governing No. 02-5123 was different than that governing the current application because Tex. Water Code Sec. 11.023(e) was amended in 1997 as indicated in italics:

> (e) The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated for that purpose, subject to the preferences prescribed in Section 11.024 of this code. *The commission may authorize appropriation of a single amount or volume of water for more than one purpose of use. In the event that a single amount or volume of water is appropriated for more than one purpose of use, the total amount of water actually diverted for all of the authorized purposes may not exceed the total amount of water appropriated.*

Acts 1997, 75th Leg., R.S., Ch. 1010, Section 2.03. The italicized language in the later legislation governs.[2]

The ED recommends that the Commission find that the City has met its burden of proof on this issue.

IV. PFD Item V.E.4. Habitat Assessment.

On page 34, the PFD states that no witness from the ED had any personal knowledge of the assessment. This is not supported by the administrative record. The

[2] Tex. Gov't Code Sec. 311.025.

HEP report documents the approach and methods used in the HEP study, including TCEQ's role in the stream assessment and pre-application studies as well as the work performed during the various components of the study.[3] Dr. Alexander, a witness in this case, worked with Mr. Hanson on the earlier pre-application studies.[4] Although Mr. Coonrod did not personally participate in the studies, this is irrelevant because Tex. Rule of Evidence 703 provides that an expert may base an opinion on facts or data that the expert ***has been made aware of***, reviewed, or personally observed [emphasis added]. All required technical reviews were conducted on this application. Mr. Coonrod, the ED's environmental review expert, performed the environmental technical review for this application,[5] followed internal procedures for his work on the application,[6] discussed the review with the previously assigned staff person who had personal knowledge of the City's HEP study,[7] and testified about the environmental review.[8]

On page 34, the PFD states that "Coonrod did not conduct any independent assessment…. …did not perform a substantive review…. …or otherwise independently verify the contents of the report." The ED excepts to this conclusion because the ED is not required to perform an environmental "substantive review" to "verify the contents" of a HEP report. The PFD seeks to impose a standard on ED program staff for environmental review of an application that is inappropriate because ED staff is required to determine whether an application met applicable regulatory requirements – no more, no less – and whether to recommend special conditions to protect the environment.[9] Though Mr. Coonrod was not originally assigned to the application, as noted above the HEP report documents the approach and methods used in the HEP study, including TCEQ's role in the stream assessment and pre-application studies as well as the work performed during the various components of the study.[10] As noted above, Dr. Alexander testified that she worked with Mr. Hanson on the earlier studies.[11]

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[3] WF Ex. 2J page WF00008238.
[4] Tr. Vol. 7 lines 7-13.
[5] Ex. ED-KC-1 page 0033 lines 30-31.
[6] Ex. ED-KC-1 page 0034 lines 17-20.
[7] Tr. Vol. 7 page 83 lines 2-8.
[8] Tr. Vol. 7 pages 78-139.
[9] Ex. ED-KC-1 page 0034 lines 21-32.
[10] WF Ex. 2J page WF00008238.
[11] Tr. Vol. 7 lines 7-13.

On page 38, the PFD states that 30 TAC Sec. 297.53(c) requires a fish and wildlife assessment to include the project site as well as potentially impacted habitat upstream, adjoining, and downstream of the project site and that the City did not perform that assessment and TCEQ did not review it. The ED excepts to this conclusion because the City, as noted on page 37 of the PFD, concluded that there was no need to assess further than the reservoir footprint because the HEP study determined that there would be no impacts to habitats upstream or adjoining proposed Lake Ringgold.

On page 38, the PFD conflates 30 TAC Sec. 297.53(f)(6) with fish and wildlife assessment. The ED excepts to this as error because subsection (f), as a whole, addresses unavoidable wetlands loss and mitigation for wetland habitat, which are mitigated in accordance with the seven enumerated ***guidelines*** [emphasis added] listed in subsection (f).

On page 43, the PFD dismisses the CWA Section 404 permitting process by concluding that it is immaterial to what is required for the City's water rights application. The ED excepts to this conclusion because the TCEQ has no jurisdiction over CWA Section 404 permitting and Section 404 federal permitting is highly relevant because CWA Section 404 permit requirements trump any requirements imposed at the state level by TCEQ. That is why the ED's draft permit ensures that the water right is contingent upon the City obtaining federal approval for the proposed mitigation plan for Lake Ringgold via the federal CWA process and if the City's Conceptual Mitigation Plan is modified or changed, the ED must approve it.[12]

On page 53-54, the PFD examines "clues" to conclude on page 56 that the ED's internal policy about processing an application based on a conceptual mitigation plan is inappropriate because the habitat mitigation "should" occur in the course of the water rights application, not during the CWA Section 404 permitting process. The ED excepts to this conclusion for two reasons. The first is because mitigation information that complies with TCEQ's rules was submitted with the application; therefore, a review of a review of proposed mitigation did occur during processing of the water rights application. TCEQ has no jurisdiction over CWA Section 404 permitting, but the federal government does have such jurisdiction. If the Commission concludes that a

[12] ED-JA-3 pages 0021-0022, Special conditions 7.A. and B.

conceptual mitigation plan is not acceptable for applications to construct reservoirs requiring federal Section 404 permits, the ED anticipates that such applications will take seven years or longer to process, without any guarantee that a Section 404 permit will result that conforms to any recommendation made by non-federal state participants. The permit for Lake Ralph Hall, which required seven years for technical review, had a state-based mitigation plan resulting from an interdisciplinary team that required amendment because the Section 404 requirements differed from the state approved mitigation plan incorporated into the water right permit.[13] Second, the PFD misstates ED staff's practice related to habitat mitigation and when it was adopted. There is no evidence in the record showing the date the procedure was adopted or put into practice, or that the procedure was adopted after the City's application was submitted. The record shows that the practice existed long before the City's application was submitted.[14] Evidence in the record also shows that ED program staff had an active role in the studies conducted before the application was submitted including review and concurrence throughout the study process.[15] The HEP report, which documents the results of the studies, is dated before the application was submitted.[16] The HEP report and the Conceptual Mitigation Plan were submitted with the application, which is not only consistent with the current procedure but is conclusive evidence showing that the practice was in place before the application was submitted.

The ED believes her procedure related to how mitigation is treated in a water rights application follows the statute and rules governing water rights applications and is a reasonable approach balancing strict adherence to the requirements of water rights rules and statutes with an acknowledgement that further environmental permitting with different requirements and longer timelines is required at the federal level.

The ED recommends that the Commission find that the City has met its burden of proof on this issue.

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[13] ED-KA-1 page 0090 lines 18-27 and page 0091 lines 1-2.
[14] *See* Ex. WF 5K pages FNI00043794-FNI00043807 and pages FNI00043808-FNI00043815.
[15] WF Ex. 5J page WF00008238.
[16] WF Ex. 5F page WF00008237.

V. PFD Item V.F. Need.

On page 59, the PFD incorrectly states that ED expert Ms. Allis' consistency review for this application ended when she "looked at" the 2016 Regional Water Plan, which included proposed Lake Ringgold. The ED excepts to this conclusion because the record does not support this dismissive statement. Ms. Allis testified that she reviewed the 2016 Region B Water Plan, the 2017 State Water Plan, the 2021 Region B Water Plan, and the 2022 State Water Plan,[17] and she concluded that the City's application continued to be consistent with those Plans.

On page 91, the PFD incorrectly attributes Ms. Allis' conclusions on consistency with the state and regional water plans to her initial review. The ED excepts to this conclusion because the PFD does identify Ms. Allis' subsequent review of the 2021 Region B Water Plan, and the 2022 State Water Plan, which supported her conclusion that the City's application continued to be consistent with those Plans.[18]

On page 93, the PFD again dismisses Ms. Allis' subsequent review and faults her for not reviewing the 2021 Region B Water Plan and the 2022 State Water Plan. The ED excepts to this conclusion because it is incorrect.[19]

On Page 89, the PFD concludes that Lake Ringgold is oversized and on Page 104 concludes that if the Commission were to grant the permit, it should be granted for a significantly smaller amount. The ED excepts to these conclusions because they ignore the statutory scheme for future water planning enacted by the Texas Legislature, TCEQ's statutorily required consideration of that future planning, as well as the information in both the 2021 Region B Water Plan and the 2022 State Water Plan. The Regional Water Planning Groups are charged with developing regional water plans.[20] The Texas Water Development Board (TWDB) is charged with developing and adopting a State Water Plan that incorporates the regional water plans, provides for development of the state's water resources, and serves as a guide to state water planning policy.[21] Based on that statutory scheme, TCEQ must consider the plans

[17] Ex. ED-JA-1 page 0012 lines 18-24.
[18] *Id.*
[19] *Id.*
[20] WF Ex. 3F page FNI00016676. *See* also Tex. Water Code Sec. 16.053.
[21] WF Ex. 3J pages FNI00039822-FNI0003984. *See* also Tex. Water Code Sec. 16.051.

adopted by the TWDB[22] and can only grant an application if it addresses a water supply need in a manner that is consistent with the state and regional water plans.[23]

The conclusions in the PFD ignore the determination of need, and strategies to meet the needs, identified in the regional and state planning process, and how the determination of need in the planning process informs the water rights permitting process. Because the regional planning groups and the TWDB are tasked by the legislature with developing plans to meet the future water needs in the state, the plans are the best evidence to support a determination of whether the appropriation requested in the application would meet a water supply need. The 2021 Region B Water Plan documents the determination of need for the water from Lake Ringgold and recommends Lake Ringgold as a strategy to meet that need. The strategy to meet identified future water supply shortages, determined by the regional water planning group in the 2021 Region B Water Plan, is a reservoir (Lake Ringgold) impounding 275,000 acre-feet of water with a firm yield of 23,450 acre-feet of water.[24] The State Water Plan also includes Lake Ringgold.[25] The state water plan provides explanations about the basis for its recommendations and how information from the regional water plans should be considered. Specifically, the state water plan, which guides state water planning policy, explicitly recognizes that the volumes associated with recommended strategies may be greater than the identified needs.[26]

Regarding the 65,000 acre-feet in the request, firm yield is an amount of water that is available every year in the period of record,[27] and the regional planning groups make their decisions based on firm yields.[28] Therefore, a recommendation for 65,000 acre-feet of water would not be specifically identified in the plans. However, the evidence in the record shows that the state planning process contemplates and supports requests for water above the identified firm needs in the regional plans for reasons such as operation and management of water systems.[29] Information relating to

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[22] WF Ex. 3J page FNI00039824 Sec. 1.1 Regional water planning overview. *See* also Tex. Water Code Sec. 16.051(b).
[23] Tex. Water Code Sec. 11.134(b)(3)(E).
[24] WF Ex. 3F pages FNI00016839-FNI00016840.
[25] WF Ex. 3J page FNI00039913 Figure 7-4.
[26] WF Ex. 3J page FNI00039914, 7.4 Assessment of strategy and project supply volumes.
[27] WF Ex. 3J page FNI00016755 last paragraph. *See* also 31 TAC 357.10 (14).
[28] Tr. Vol. 7 page 164 lines 18-25, page 164, page 165 lines 1-5.
[29] WF Exhibit 3J page FNI00039814.

use of up to 65,000 acre-feet of water was included in the application and evaluated by program staff.[30] ED program staff found that the additional water, up to 65,000 acre-feet on a non-firm basis, would allow the City to optimize its water resources and was therefore viable for the intended purpose. That determination is consistent with state planning policy as reflected in and determined by the state water plan.

The ED recommends that the Commission find that the City has met its burden of proof on this issue.

VI. Proposed Order.

The Executive Director does not support the proposed Order because it incorrectly denies the City's application.

The Executive Director's recommended revisions incorporate most of the City's proposed Findings of Fact and Conclusions of Law. These revisions to the proposed Order are shown in Attachment A as tracked changes, while Attachment B is a copy of the same document without tracked changes.

VII. Conclusion

The Executive Director believes that Application No. 13404 should be granted because it satisfies all relevant statutes and administrative rule requirements.

WHEREFORE, the Executive Director respectfully requests that the Commission revise the PFD's Findings of Fact and Conclusions of Law based upon the arguments herein, grant the authorizations requested in the City's application, issue the Executive Director's Draft Permit, and for such other relief as deemed proper and just.

[30] Tr. Vol. 7 page 148 lines 5-11; Ex. ED-KA-1 page 0083 line 25, page 0084 line 2; ED-KA-4 page 0118 third and fourth paragraphs.

Respectfully Submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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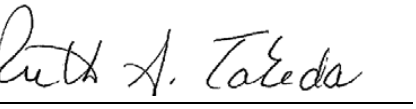
By 

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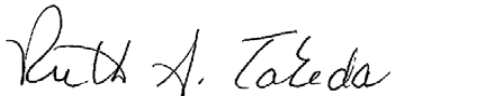
CERTIFICATE OF SERVICE

I certify that on this 19th day of January 2024, this *Executive Director's Exceptions to Proposal for Decision and Proposed Order* was delivered as indicated on the attached Service List.



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SOAH DOCKET NO. 582-22-2634
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APPLICATION BY CITY OF	**§**	**BEFORE THE TEXAS**
WICHITA FALLS FOR WATER	**§**	**COMMISSION ON**
USE PERMIT NO. 13404	**§**	**ENVIRONMENTAL QUALITY**

Attachment A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER ~~DENY~~GRANTING APPLICATION BY THE CITY OF WICHITA FALLS FOR WATER USE PERMIT NO. 13404
TCEQ DOCKET NO. 2022-0125-WR
SOAH DOCKET NO. 582-22-2634

On _____, the Texas Commission on Environmental Quality (TCEQ) considered the Application by the City of Wichita Falls for Water Use Permit No. 13404. State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Christiaan Siano conducted an evidentiary hearing by videoconference on August 14-22, 2023.

After considering the proposal for decision, the Commission adopts the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

Procedural History

1. The City of Wichita Falls (City or Applicant) submitted its application for Water Use Permit No. 13404 on June 27, 2017. Consistent with WF44

2. The application seeks authorization to construct a dam and reservoir (Lake Ringgold) on the Little Wichita River in the Red River Basin; to divert and use 65,000 acre-feet of water per year for municipal, industrial, mining, and agricultural purposes within its service area in Archer, Clay, and Wichita Counties; and to authorize use of the bed and banks of the Little Wichita River (Lake Arrowhead), Red River Basin. Consistent with WF44 and WF46

3. Between ~~The City submitted additional information on~~ July ~~7, July 10,~~2017 and August ~~7,~~ 2017, TCEQ's Executive Director's staff (ED staff) requested additional information related to the application, which the City provided. WF47

4. The City has paid applicable TCEQ application and administrative fees totaling $31,130.28, which represent all fees due at this time. The City will pay the remaining portions of fees due upon issuance of the Draft Permit. WF45

5. On August 10, 2017, ~~the Executive Director (~~ED~~)~~ staff~~of the TCEQ~~ declared the application administratively complete and filed it with the Office of the Chief Clerk. WF48

6. During the technical review, ED staff made requests for information pertaining to the technical aspects of the application, to which the City provided the requested ~~additional~~ information ~~in response to ED staff's requests for information~~. WF49

7. On August 8, 2019, ~~the~~ ED ~~declared the application~~ staff concluded program technical~~ly~~ review of the application~~complete~~. See Ex. ED-JA-4 page 0026, ED-KC-3 page 0045, ED-KA-4 page 0116.

~~7.~~8. On September 3, 2019, TCEQ's Dam Safety Section concluded its review of the application. See Ex.ED-JC-3 page 0068.

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~~8.~~9. On October 16, 2019, ED staff prepared a Draft Permit, and the TCEQ's Chief Clerk mailed the Notice of an Application for a Water Use Permit ~~for Water Use Permit~~ Application No. 13404 to the following entities located in the Red River Basin:

a. all navigation districts;

b. all holders of certified filings, permits, and claim of water rights; and

c. all county judges, each mayor of a city with a population of 1,000 or more, all groundwater conservation districts, state legislators, and the presiding officer of each affected regional water planning group. WF50

10. The Notice of Application for a Water Use Permit Application No. 13404 was issued on January 24, 2020, and published in the *Clay County Leader*, a newspaper of general circulation within Clay County, on February 6, 2020. Consistent with WF Ex. 2K and WF51

~~9.~~11. Each notice of the application that the City caused to be published was at least 15 square inches in size, and its shortest dimension was at least three inches. WF52

12. The City also provided notice of the application to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir, will be located. WF54

~~10.~~13. The mailed and published notices of the application each stated the name and address of the Applicant, the application number, the dates on which the application was received by the Commission and filed with the TCEQ's Chief Clerk, that ED staff has determined that the technical review of the application is complete, the type of permit the Applicant is seeking, the purpose and extent of the proposed appropriation of water, the source of supply and the place where the water is to be stored or taken or diverted from the source of supply, the ED's recommendation regarding the application, that an affected person may request a hearing as set out in Chapter 55, Subchapter G of Title 30 of the Texas Administrative Code (relating to Requests for Contested Case Hearing and Public Comment on

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Certain Applications), and included the name and address of the agency, and the telephone number of an agency contact from whom interested persons may obtain future information. WF53

14. The formal public comment and hearing request period closed on March 9, 2020. Due to significant public interest, the comment period was re-opened.

15. Each mailed and published notice of the application ~~also~~ included information about TCEQ's permitting process and public participation in that process. See WF Ex. 2K

16. The City paid the costs for the mailed and published notices of the application and public hearings. WF57

~~11.~~17. N~~n~~otice was issued by TCEQ's Chief Clerk on July 22, 2020, of the public meeting to be held via videoconference on August 25, 2020, for the purpose of receiving comments on the application. See WF Ex. 2K page WF00007476-WF00007478

~~12.~~1. ~~The formal public comment and hearing request period closed on March 9, 2020. Due to significant public interest, the comment period was re-opened.~~

18. On August 25, 2020, a public meeting was held via videoconference to receive comments on the application, at the conclusion of which the final public comment period closed. Consistent with WF56

~~13.~~19. The Commission received multiple requests for a contested case hearing on the application. WF58

~~14.~~20. On April 13, 2022, the Commission referred the application to SOAH for a contested case hearing. WF59

~~15.~~21. Notice of the preliminary hearing at SOAH was mailed on June 9, 2022, to all persons who had requested a hearing on the application. WF60

22. On July 19, 2022, SOAH ALJ Christiaan Siano convened a preliminary hearing via videoconference, during which jurisdiction was established and the Administrative Record was admitted. Consistent with WF61

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23~~16.~~ Following the preliminary hearing, the following parties were named in the ALJ's Order No. 1 as clarified by Order No. 2: the City of Wichita Falls; the ED; the Office of Public Interest Counsel; Emry Birdwell; Deborah Clark; Shane and Casey Cody; Laura Del Murray; ~~Joshua Don Ferguson;~~ Mark Hill; Stan Horwood; Larry Horwood; Lonnie Horwood; Umhaill Valley, LLC; Kildavnet Castle, LLC; Rockfleet Castle, LLC; William O'Malley; ~~Carol Staley Morrow, executor of the Staley Family Trust and Melva Jo Staley Estate;~~ Joe Staley; Phil Staley; Gil Staley; Jason Obermier; Jimmy Dale Obermier; Johnnie Shaw; William (Chris) Welborn and Welborn Ranch Ltd.; the City of Henrietta; Clay County; ~~the National Wildlife Federation;~~ the Texas and Southwestern Cattle Raisers Association; the Texas Conservation Alliance; the Texas Wildlife Association; the Texoma Stewardship Coalition; Brent Durham; Dan Stansbury for Lively Ranch Limited; Rebecca Hickman; Robert and Courtney Wilson. See WF61

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24. The ALJ's Order No. 4 memorialized the parties' alignment as follows: William O'Malley represented aligned parties Umhaill Valley, LLC, Kildavnet Castle, LLC, and Rockfleet Castle, LLC; Deborah Clark represented aligned parties Emry Birdwell, Shane and Casey Cody, Diaz Murray (on behalf of Laura Del Murray), Mark Hill, Jason Obermier, Jimmy Dale Obermier, Johnny Shaw, Joe Staley, Phil Staley, Gil Staley, William (Chris) Wellborn (on behalf of Wellborn Ranch, Ltd.), Brent Durham, Dan Stansbury (on behalf of Lively Ranch Limited), Mark Hickman (on behalf of Rebecca Hickman), Robert and Courtney Wilson, and Texoma Stewardship Coalition. See WF61

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~~17.~~25. The Texas Wildlife Association filed a motion to withdraw as a party, which was granted on November 9, 2022.

~~18.~~26. The City of Henrietta and Laura Del Murray each filed motions to withdraw as parties, which were granted on August 1, 2023.

~~19.~~27. The hearing on the merits was held before ALJ Christiaan Siano via videoconference on August 14 through August 22, 2023. Consistent with WF62

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~~20.~~28. The record closed on October 23, 2023, after the parties submitted written

closing arguments and replies. WF63

Background

29. The City is a home-rule city and a political subdivision of the State of Texas. WF1

30. The City's boundaries are established by its City Charter as set out in the official map in the official minutes of the City. WF2

31. The boundaries of the City may be altered by extension through annexation or contraction through disannexation by the City Council, petition of owners, or as authorized by the laws of the State of Texas. WF3

32. The City is authorized to provide, among other services, water, wastewater, and solid waste services to its retail customers. WF6

33. The City provides both raw and treated water supply to its wholesale and retail customers. WF7

~~21.~~34. The City is located within the Region B Regional Water Planning Area, as defined by the Texas Water Development Board (TWDB). WF5

~~22.~~35. The Region B Regional Water Planning Area, as defined by TWDB, covers all or part of 11 counties in North Central Texas—Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Montague, Wichita, Wilbarger, and Young Counties. WF169

~~23.~~36. The Region B Regional Water Plan recognizes that the City is a Major Water Provider that provides water to water user groups on a wholesale and retail basis to a large regional area. WF170

37. Currently, t~~T~~he City's water service area includes all or portions of Archer, Clay, Wichita, and Young Counties. WF4

38. As part of its responsibilities to its members and customers through the water planning process, the City considered multiple water supply development strategies that could bridge the gap between its current water supplies and its anticipated 50-year water demand projections. WF171

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39. While the City is implementing water conservation and reuse to meet part of its projected demands, the applicable Region B and State Water Plans confirm that those strategies alone cannot meet all the City's projected future demands. WF172

40. As part of its water supply strategy considerations, the City's staff and consultants conducted a preliminary assessment of the feasibility of Lake Ringgold as a water supply strategy for the City. WF173

41. After careful consideration, the City determined that Lake Ringgold – a new water supply reservoir on the Little Wichita River in Clay County – could provide a safe, reliable, long-term water source for the City's customers for potable and nonpotable water service. WF174

42. The Region B Regional Water Planning Group submitted a regional water plan during the fourth round of planning efforts in 2016 (2016 Region B Water Plan). WF175

43. The water service area of the City is approximately 70 percent of the entire Region B population and the municipal water demand on the City's system accounts for approximately 82 percent of the total Region B municipal demand, as documented in the applicable state and regional water plans. WF8

44. The City currently has a peak water treatment capacity of 79.8 million gallons per day. WF9

45. To provide a reliable, secure, and adequate water supply for its customers within the City's service area, the City has developed a comprehensive and diversified water supply portfolio. WF10

~~24.~~46. The City manages its use of water from its various sources on a system-wise basis to make maximum use of the most efficient or most available supply. WF11

~~25.~~47. The City holds all or a portion of the following water rights permits, as have been amended from time to time: Certificate of Adjudication (COA) No. 02-5123 (Lake Kemp-Diversion system), COA No. 02-5144 (Lake Kickapoo), and COA No. 02-5150 (Lake Arrowhead). WF12

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~~26.~~48. ~~In~~During the drought of records most severe years (2011-2015), the City experienced ~~what would become the new~~ extreme drought ~~of record~~conditions that caused the City's surface water sources to decline to unprecedented levels. WF13

49. In response to the extreme drought conditions, the City ~~curtailed water use~~implemented restrictions pursuant to its Drought Contingency Plan and added a fifth drought stage to substantially~~,~~ reduc~~e~~~~ing~~ water use~~reservoir demands by 75% during the summer peak~~. WF14

~~27.~~50. As a result of the drought, the City also implemented a temporary direct potable reuse project to reduce diversions from Lakes Arrowhead and Kickapoo. WF15

~~28.~~51. Between 2011 and 2015, Lakes Arrowhead, Kickapoo and Kemp experienced record low inflows and high evaporation rates.

~~29.~~52. During the drought, the City was forced to take Lake Kemp offline due to water quality concerns as Lake Kemp's water levels declined. WF16

~~30.~~53. By June 2015, Lakes Arrowhead and Kickapoo returned to pre-drought levels. WF17

54. After the drought, ~~T~~the City recognized that extreme drought management and the direct potable reuse project were not permanent solutions for its long-term water needs~~implemented an indirect potable reuse project, which provides an additional 8,968 acre-feet of water supplies annually and reduced the water supply deficit~~. WF18

55. The City evaluated 22 potential new water supply strategies, including Lake Ringgold and other alternative strategies. WF19

56. The 2016 Region B Water Plan shows that the City needs to develop an additional 19,124 acre-feet per year of raw water supplies by 2070 to meet its projected demands. WF26

57. The 2016 Region B Water Plan recommends Lake Ringgold for implementation by 2014 to meet the City's long-term projected demands. WF27

58. Following the 2016 Region B Water Plan, the City implemented its indirect

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potable reuse project, which provides an additional 8,968 acre-feet of water supplies annually and reduced the water supply deficit for the 2021 Region B Water Plan. WF28

59. The 2021 Region B Water Plan shows that the City needs to develop an additional 10,864 acre-feet per year of raw water supplies by 2070 to meet its projected demands. WF29

60. The 2021 Region B Water Plan also recommends Lake Ringgold for implementation by 2040 to meet the City's long-term projected demands. WF30

61. The City has determined that the Lake Ringgold project is the only feasible water supply available to the City to meet its long-term water supply needs. WF34

62. The appropriation requested in the application will provide significant, reliable surface water supplies to the City and its existing customers. WF164

63. The Red River Basin, including its tributaries, is located in north Texas, Oklahoma, Arkansas, and Louisiana. WF36

64. From its headwaters in New Mexico, the Red River flows across Texas, along the Texas-Oklahoma border, and into Arkansas before reaching its confluence with the Atchafalaya River in Louisiana at a point outside of the boundaries of the State of Texas. WF37

65. The Little Wichita River is a tributary of the Red River, within the Red River Basin, and the Little Wichita River watershed is entirely within the State of Texas. WF38

66. Under the Red River Compact, all waters in the Little Wichita River watershed belongs to the State of Texas. WF39

67. The Little Wichita River is designated as Segment No. 0211 pursuant to 30 Tex. Admin. Code § 307.10. WF40

68. The Little Wichita River begins near Archer City, Texas, and it flows

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northeast for over 82 miles to its confluence with the Red River in Clay County, Texas. WF41

69. The Little Wichita River is classified by the TCEQ as a perennial stream from its confluence with the Red River upstream to Lake Arrowhead Dam with a high aquatic life use designation; however, there are periods during dry summer months when there is little to no flow in the river. WF42

~~31.~~70. The riparian areas adjacent to the river are dominated by cedar elm and pecan trees with lesser amounts of western soapberry, sugarberry, green ash, and others. WF43

The Application

~~32.~~71. The application includes a request~~s~~ for a water use permit authorizing construction and maintenance of a dam and reservoir ~~(Lake Ringgold)~~ with a maximum capacity of 275,000 acre-feet of water and a surface area ~~at the conservation pool~~ of 15,500 acres, on the Little Wichita River in Clay County, Texas, for municipal, industrial, mining, and agricultural purposes to be known as Lake Ringgold. WF64

72. The application describes the proposed location of Lake Ringgold to be approximately 13 miles in a northeasterly direction from Henrietta, Texas, with Station 50+00 on the centerline of the proposed Lake Ringgold dam to be S 63° East, 924.879 feet from the northeast corner of Bass, A Original Survey No. 11, Abstract No. 11, in Clay County. Texas, at 33.896° North Latitude, 97.992° West Longitude. WF65

~~33.~~73. The application also includes a request~~s~~ to divert and use ~~up~~not to exceed 65,000 acre-feet of water per year from the perimeter of Lake Ringgold at a maximum combined diversion rate of 139.79 cubic feet per second (cfs) (62,770 gallons per minute (gpm)) for municipal, industrial, mining, and agricultural purposes within the City's service area ~~of Archer, Clay, and Wichita Counties~~. WF66

~~34.~~74. The application also includes a request for authorization to use the bed and banks of the Little Wichita River (Lake Arrowhead) in the Red River Basin to convey up to 65,000 acre-feet of water per year for subsequent diversion and

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use for municipal, industrial, mining, and agricultural purposes. WF67

~~35.~~75. In addition, t~~T~~he application requests authorization to use the bed and banks of Lake Arrowhead to convey return flows generated from the diversion and use of water originating from Lake Ringgold and return flows authorized by Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010509001 under COA 02-5150C. WF68

~~36.~~76. The application states that the water would be diverted from Lake Arrowhead within days of discharge, with little to no residence time in Lake Arrowhead, therefore carriage losses are expected to be minimal.

~~37.~~77. ~~The application states that the City proposes to divert at a maximum combined diversion rate of 62,770 gallons per minute by intake pump station and a transmission system to move the water to the City.~~In the application, the City provided a statement of each general category of proposed use of the water at issue in the application to be diverted and a detailed description of the proposed uses and users under each category. WF69

78. The application states that the point of diversion will be on the perimeter of the proposed Lake Ringgold and included a map of the diversion location.

79. In the application, the City provided its 2014 Water Conservation and Drought Contingency Plans and later supplemented the application to provide its 2018 Water Conservation and Drought Contingency Plans. WF70

80. In support of the requests made in the application, the City submitted to TCEQ the *Report Supporting an Application for A Texas Water Right for Lake Ringgold* dated May 2017 (Supporting Report). WF71

81. In support of the requests made in the application, the City submitted to TCEQ the *Conceptual Mitigation Plan* dated April 2017 (Conceptual Mitigation Plan). WF72

82. An applicant's submission with the application of ~~a~~ a conceptual mitigation plan and supporting environmental studies approved by ED program staff meets applicable requirements.

83. In support of the requests made in the application, the City submitted to

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TCEQ the *City of Wichita Falls Water Rights Accounting Plan*, as revised May 30, 2019 (Accounting Plan). WF73

~~38.~~84. Multiple members of the ED staff conducted independent reviews of the application during the technical review process. WF 82

Available Water

85. In support of the requests made in the Application, the City submitted to TCEQ its *Red River Water Availability Model Run 3*, as supplemented in October 2017 (the City's WAM) and additional hydrologic information~~modified to~~ showing extended hydrology through 2015. WF81

86. The City conducted an evaluation of hydrologic and hydraulic conditions within the Red River Basin as part of the application. WF83

87. The City commissioned the Supporting Report to determine, among other things, whether unappropriated water was available to satisfy the requests made in the application. WF84

88. The City conducted flood modeling for the preliminary dam design as part of the Supporting Report based on the requests made in the application. WF85

89. The Lake Ringgold project area consists of the area of land that will be inundated by Lake Ringgold up to the 844 feet mean seal level elevation, the dam, and the spillway (the Project Area). WF86

90. Based on topographic and geographic data, the Lake Ringgold project as proposed in the application would impound 275,000 acre-feet of water in the proposed conservation pool at 844 feet above mean sea level. WF87

91. The City's Supporting Report also included conceptual drawings of the Lake Ringgold dam and spillway (the Proposed Dam). WF88

~~39.~~92. Unappropriated water is available in the Little Wichita River, Red River Basin, pursuant to Tex. Water Code § 11.134(b)(2). WF74

Beneficial Use

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~~40.~~93. The application states that the appropriation of 65,000 acre-feet per year will be used for municipal, industrial, agricultural, and mining purposes.

94. ~~The application does not state the amount of water to be used for each purpose~~The City will use the appropriation for municipal, industrial, agricultural, and mining purposes, which are identified as beneficial uses of water under Tex. Water Code § 11.023, pursuant to Tex. Water Code § 11.134(b)(3)(A). WF75

~~41.~~95. The City's Water Conservation and Drought Contingency Plans demonstrate that the water would be beneficially used without waste pursuant to Tex. Water Code § 11.134(b)(4). WF80

Existing Water Rights

96. The City analyzed potential impacts to existing water rights, including vested riparian rights.

97. As part of its water availability analysis, ED staff employed its Water Rights Availability Package (WRAP) to evaluate whether the requests made in the application can be authorized while protecting existing water rights in the Red River Basin using the prior appropriation doctrine. WF93

98. The WRAP is a generalized simulation model that requires the development of input data sets for the particular basin that is the subject of review. WF94

99. TCEQ developed basin-specific data for the river basins in Texas to incorporate into the WRAP simulation model that include geographical information, water rights information, naturalized flows, evaporation rates, and specific management assumptions, which are known as Water Availability Models (WAMs). WF95

~~42.~~ TCEQ's standard water availability model used for the application is commonly referred to as WAM Run 3. WF96

100. WAM Run 3 is significant in determining water that is available without impacting senior water rights. WAM Run 3 models the hydrologic

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impacts of a proposed appropriation by first assuming all existing permanent water rights in the basin are being exercised at their authorized maximum impoundment capacities and ~~,~~ maximum annual diversion amounts~~, and types of use~~. WAM Run 3 also models the hydrologic impacts of a proposed appropriation by assuming that all of the water appropriated by others is fully used. This is accomplished by assuming that there are no return flows in the basin (except those required by water right permits) available to satisfy modeled existing surface water operations. WF97

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101. WAM Run 3 is the best hydrologic model relied upon by TCEQ today to assess available water for proposed new appropriations of State water and potential impacts of proposed new appropriations such as the appropriation requested in the application. WF98

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102. ED staff employed WAM Run 3 to evaluate the availability of the requested 65,000 acre-feet annual firm yield diversions for Lake Ringgold (TCEQ WAM). WF99

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103. The TCEQ WAM demonstrates that the requested 65,000 acre-feet annual firm yield diversions for Lake Ringgold would be available 63 percent of the time. WF100

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104. The TCEQ WAM shows that the firm annual yield of Lake Ringgold is 27,060 acre-feet per year. WF101

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105. The City also developed a spreadsheet model of the Little Wichita System (Lakes Kickapoo, Arrowhead, and Ringgold) based on the TCEQ WAM with hydrology extended to include recent droughts that were not included in the TCEQ WAM. WF102

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106. The City determined a firm-yield assessment of the Lake Ringgold project using the spreadsheet model in order to determine the impact of recent droughts that were not included in the TCEQ WAM. WF103

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107. The City can divert up to 65,000 acre-feet each year on a non-firm basis when the City operates Lake Ringgold on a system-wide basis. WF104

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108. By managing its other available water rights and other water supplies,

including available diversions from Lakes Kemp, Arrowhead, and Kickapoo, on a system-wide basis, the City could satisfy its water needs during drought periods when the normal supply capabilities of proposed Lake Ringgold would be exceeded. WF105

109. The City developed the Accounting Plan as an additional means of ensuring that the requests made in the application are complied with, and the City is obligated to comply with such Accounting Plan as a condition of the proposed Draft Permit. WF111

110. The Accounting Plan provides the City with a process for determining the daily quantities of water that it may divert pursuant to the terms of the appropriation requested in the Application. WF112

111. The Accounting Plan developed by the City establishes a reliable, consistent methodology for calculating specific quantities of water that the City may divert pursuant to the terms and conditions contained in the Draft Permit. WF113

112. The Accounting Plan is a required tool that can be used by the City and by TCEQ for determining the City's compliance with the terms and conditions of the Draft Permit. WF114

113. ED staff concluded that the Accounting Plan will adequately track diversions. WF115

114. ED staff determined that the availability of the requested 65,000 acre-feet annual diversions that are to be made on a less-than-firm basis is viable for the purposes identified, and under the conditions described, in the application. WF116

115. ~~The impact on existing water rights was analyzed using a Water Availability Model (WAM) analysis by both the City and the ED, to determine that water was available to accommodate the requests made in the application~~Overall, the City was able to determine, as reflected in the Supporting Report and Supplement, that 65,000 acre-feet per year of water could be diverted from the proposed Lake Ringgold at a maximum combined diversion rate of 139.79 cfs (62,770 gpm) without adversely impacting downstream senior and superior water rights within the Red River Basin. WF106

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~~43.~~116. The application requests a new appropriation of State water, rendering the priority date of the proposed new appropriation junior to any other water right in the Red River Basin that existed at the time the application was deemed administratively complete. WF117

~~44.~~117. Granting the application would~~ill~~ not ~~cause an~~ affect~~dverse impact to an~~ existing water rights pursuant to Tex. Water Code § 11.134(b)(3)(B). WF76

Public Welfare

118. Granting t~~T~~he application~~proposed appropriation would~~ is not ~~be~~ detrimental to the public welfare pursuant to Tex. Water Code § 11.134(b)(3)(C). WF77

~~45.~~119. In addition to the ecological benefits attributable to the proposed Lake Ringgold project by virtue of the Conceptual Mitigation Plan and ultimate final mitigation plan, the requests made in the application would also benefit the public welfare by providing a reliable water source for customers within the City's service area. WF166

Environmental ~~Flows and~~ Assessments

120. The City conducted an evaluation of instream uses, water quality, fish habitat, wildlife habitat, and other environmental conditions within the Red River Basin in support of the Application. WF118

121. Granting the application would be protective of the environment based on the assessments required under Tex. Water Code §§ 11.147(d) and (e), 11.150, 11.151, and 11.152 pursuant to Tex. Water Code § 11.134(b)(3)(D). WF78

122. In assessing the instream uses relevant to the application, ED staff followed current operation procedures, policies, and analyzed available data. WF110

Environmental Flow Standards

123. In 2007, the Texas Legislature enacted Senate Bill 3 which, among other things, established a mechanism for developing basin-specific environmental flow standards by considering the ecosystem or ecosystems within a particular basin, and determining the flow standards based on the consideration of those ecological conditions. WF107

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124. Senate Bill 3 did not establish environmental flow standards for every river basin in Texas. WF108

125. No environmental flow standards have been developed for the Red River Basin by Sentate Bill 3. WF109

126. The location of Lake Ringgold proposed in the application is more than 200 river miles from a bay or estuary. WF159

127. The receiving estuaries of the Red River Basin are not located in Texas. WF160

~~46.~~128. The appropriation and impoundment requested in the application will not impact any bay or estuary in Texas. WF161

Water Quality and Instream Uses

~~47.~~129. The Lake Ringgold dam would be located on the Little Wichita River a half mile from the confluence with the Red River. This segment of the channel is considered fully impacted by Lake Ringgold.

130. The City evaluated whether the appropriation and impoundment requested in the application would impair water quality in Texas. WF154

~~48.~~131. The City evaluated whether the appropriation and impoundment requested in the application would result in a violation of the general criteria of the Water Quality Standards set out in Title 30, Chapter 307 of the Tex. Admin. Code, including temperature, dissolved salts, DO, and PH, as the water quality is expected to be of similar quality to the other reservoirs in the Little Wichita River watershed. WF155

132. In assessing impacts to water quality, the City considered impacts to the area of impoundment and to the reach of the Red River downstream of the Proposed Dam. WF156

133. ED staff analyzed water quality downstream of the Proposed Dam and recommended that the City conduct monitoring to ensure that water quality is protected after the Proposed Dam is constructed.

~~49.~~134. The appropriation and impoundment requested in the application will

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not impair water quality standards for [Texas] including temperature, dissolved salts, DO, and pH in Segment No. 0211. WF157

~~50.~~135. The appropriation and impoundment requested~~:~~ in the application will not impair water quality standards for any other surface waters in Texas. WF158

~~51.~~136. With and without Lake Ringgold, the flows are expected to exceed 739 acre- feet per month 99% of the time.

~~52.~~137. The Draft Permit conditions will maintain existing instream uses and water quality.

Groundwater

~~53.~~138. The City conducted an assessment of the hydrologic conditions of areas within the Red River Basin watershed to determine the extent to which the requests proposed in the application would impact groundwater availability, use, quality or recharge. WF162

139. There are not any major or minor aquifers that underlie the Project Area within, downstream, or upstream of Clay County, within the Red River Basin. WF163

~~54.~~140. The appropriation requested in the application would not significantly impair existing uses of groundwater, groundwater quality, recharge, or spring flow. WF165

Habitat Assessment and Mitigation

141. The City used the United States Fish and Wildlife Service's Habitat Evaluation Procedures (HEP) to assess the potential impacts the appropriation requested in the application will have on terrestrial habitats, which includes wetlands. WF121

142. HEP is identified in TCEQ rules as a technically appropriate habitat evaluation methodology. WF122

143. HEP is used by federal and state agencies to assess potential impacts to wildlife resources caused by water supply projects, including proposed reservoirs in Texas. WF123

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~~55.~~144. HEP evaluates key characteristics of various land cover types that contribute to the cover types' suitability for supporting wildlife. WF124

~~56.~~145. ~~The City's HEP assessed the terrestrial and wetland fish and wildlife habitat in the project site—the footprint of the proposed reservoir at the conservation pool level—as well as the dam site and the spillway~~As part of its HEP assessment, the City evaluated the specific functions and values of wetland habitats in the Project Area that could potentially be impacted by the appropriation requested in the application. WF130

146. ~~The City's HEP assessment did not assess terrestrial and wetland fish and wildlife habitats at the 100-year flood plain level~~In performing the HEP assessment, the City's consultants evaluated both potential direct and indirect impacts of the appropriation requested in the application. WF125

~~57.~~147. In performing the HEP assessment, the City's consultants evaluated both potential short-term and long-term impacts of the appropriation requested in the application. WF126

~~58.~~148. In performing the HEP assessment, the City developed an acreage inventory of each land cover type within the project area. WF127

~~59.~~149. The land cover types identified in the Project Area include cropland, emergent/herbaceous wetland, grassland/old field, riparian woodland/bottomland hardwood, shrubland, shrub savanna, shrub wetland, tree savanna, and upland deciduous forest. WF128

~~60.~~150. The City's consultants, along with TCEQ representatives, conducted various site visits between 2016-2017 to evaluate land cover types at sites within the Project Area using HEP. WF129

~~61.~~151. As a condition of the Draft Permit, t~~T~~he City~~'~~ is required to mitigate for impacted ~~HEP failed to properly determine the functions and values of~~ wetlands ~~habitats~~as provided for in its Conceptual Mitigation Plan. WF131

~~62.~~152. The City's stream assessment ~~only~~ identified stream lengths by type, i.e., perennial, intermittent, and ephemeral.

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~~63.~~153. ~~The City's stream assessment did not involve any biological sampling or numerical valuing of existing habitat~~The City will also be required to develop a final mitigation plan during the federal permitting process that must be submitted to TCEQ for approval pursuant to a condition of the Draft Permit that required compensatory mitigation for impacts to waters of the United States, including wetlands. WF132

~~64.~~154. As part of its environmental investigation, t~~T~~he City ~~did not~~ conducted extensive ~~an~~ assessments of the ~~effects of the proposed reservoir~~ potential impacts the appropriation requested in the application will have on habitats within the Project Area as well as~~adjoining,~~ upstream, adjoining, and downstream of the ~~Lake Ringgold p~~Project ~~site~~Area. WF119

~~65.~~ The ~~application~~ City's ~~did not~~ assessment of wildlife habitat included ~~direct and indirect impacts to~~ terrestrial and riparian habitats. WF120

155. The appropriation and impoundment requested in the application will have low to no potential impact on wildlife habitat that would be considered critical habitat for federally listed endangered or threatened species. WF133

~~66.~~156. The Texas Kangaroo Rat and the Texas Horned Lizard are State-listed threatened species that are likely present within the proposed project area.

~~67.~~157. The City did not conduct a presence-absence survey for the State-listed threatened species, or assess whether the populations would be able to re- establish outside the footprint of the reservoir.

158. The appropriation and impoundment requested in the application will have low to no potential negative effect on wildlife habitat that would be considered critical habitat for state listed endangered or threatened species. WF134

~~68. The Conceptual Mitigation Plan does not establish unavoidable impacts to habitat on the Little Wichita River and confluence of the Red River because the City did not assess the aquatic habitat.~~

159. Using its HEP assessment, the City was able to calculate a Habitat

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Suitability Index (HSI) value for wildlife habitat that would be impacted by the appropriation requested in the application. WF135

160. HSI was multiplied by the acreage of each cover type to calculate Habitat Units (HUs). WF136

161. HUs are used to describe the current or baseline wildlife habitat value by cover type. WF137

162. HUs can also be used to describe the wildlife habitat value that will exist after mitigation activities are complete. WF138

163. The City will mitigate for wildlife habitat within the Project Area as a condition in the proposed Draft Permit. WF139

164. The City will mitigate for the loss of river or stream segments that will be impacted by the appropriation requested in the application. WF 140

165. To offset adverse impacts to fish and wildlife habitat and to wetlands, the City proposed mitigation measures to TCEQ through the Conceptual Mitigation Plan. WF 141

166. Before proposing any mitigation, the City considered the extent to which adverse impacts to fish and wildlife habitat could be avoided, minimized, or modified. WF 142

167. The City determined that the construction of Lake Ringgold and its associated habitat impacts could not be avoided altogether. WF 143

168. The mitigation measures proposed by the City will be completed onsite within the Project Area or near-site on property owned by the City through a watershed approach to mitigation that will benefit upstream and downstream areas. WF 145

169. The mitigation proposed by the City will compensate for each of the types of habitats that will be impacted, including wetlands. WF146

~~69. The City's Conceptual Mitigation Plan does not establish that there is suitable mitigation habitat available for complete compensation for the lost habitat of grasslands or upland deciduous forest habitat.~~

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~~70.~~170. The United States Army Corps of Engineers (USACE) ~~does not have~~ has jurisdiction to assess terrestrial habitat ~~other than~~ in wetlands, ~~nor does the USACE have~~ and jurisdiction to impose mitigation requirements to offset impacts to wetlands' terrestrial habitats.

171. ~~The applicant failed to meet its burden of proof in showing that its habitat assessment and proposed mitigation were sufficient in assessing the effects of the proposed authorization on fish and wildlife habitats and offsetting those effects appropriately.~~The City is required to develop detailed, long-term maintenance and management plans that include goals for mitigation and a general schedule for completion of those goals as part of the federal permitting process. WF151

172. Impacts to streams will be mitigated through implementation of the Conceptual Mitigation Plan. WF147

173. Impacts to impoundments and other open waters will be mitigated by creation of the reservoir. WF148

174. Based on the goals, objectives, and strategies of the Conceptual Mitigation Plan, the requests made in the application will result in the offset of lost functions and values within the Red River Basin watershed such that, at a minimum, there will be no net loss of functions and values, and a potential net gain of functions and values in both fish, wildlife, and wetland habitat is anticipated. WF149

175. The requests made in the application will not impair the existing aquatic life use, ecosystem, or habitat in the Little Wichita River and the Red River. WF152

~~71.~~176. The mitigation measures proposed by the City in the Conceptual Mitigation Plan will create aquatic habitat and a viable and sustainable aquatic community, which will compensate for any potential impacts to instream uses. WF153

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Need

177. Each of TWDB's 16 Regional Water Planning groups is composed of stakeholder members that are charged with planning for the long-term

water supply needs of each respective region. WF167

178. Regional water planning groups include representatives of municipal, industrial, agricultural, and environmental interests, the interests of the public-at-large, and others that work collaboratively as members in a n open process to address the future water needs of their region. WF168

179. The State Water Plan and applicable regional water plan are the best evidence to determine whether an appropriation requested in a water rights application would meet a water supply need.

180. The 2016 Region B Water Plan was approved by TWDB in 2016 and it was incorporated into the 2017 State Water Plan. WF176

181. The 2016 Region B Water Plan was the most recent plan at the time the application was submitted. This plan was prepared during the worst years of the 2011-2015 drought and before such drought ended. WF177

182. The 2016 Region B Water Plan was reviewed by the ED's staff as part of its technical review of the application. WF178

183. The 2016 Region B Water Plan shows that the City needs to develop an additional 15,776 acre-feet per year of water supplies by 2020 to meet projected demands and an additional 19,124 acre-feet per year by 2070. WF179

184. The 2016 Region B Water Plan included several recommended water management strategies for the City, including th permitting, construction, and maintenance of Lake Ringgold and the use of water associated therewith as requested in the application. WF180

185. The 2016 Region B Water Plan identified 18,600 acre-feet per year of the firm yield of Lake Ringgold (assuming the worst years of the drought would continue from 2013 through 2016) as a recommended water management strategy to help the City meet projected water demands for the next 50-year planning period. WF181

186. Lake Ringgold is listed as one of the recommended water management strategies in the 2016 Region B Water Plan and the 2017 State Water Plan and is one of the major water management strategies proposed by the

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Region B Regional Water Planning Group. It is also recommended in the ~~current~~2017 State Water Plan. WF182

187. ED staff determined that, in light of the needs of the City and the recommended water management strategies for the City as identified in the 2016 Region B Water Plan, the City has a need for the water to be supplied by Lake Ringgold and that the requested appropriation is reasonable for the proposed uses. WF183

188. The 2021 Region B Water Plan made no significant changes to the recommendations from the 2016 Region B Water Plan for the Lake Ringgold project proposed in the application as a recommended water management strategy for the Region B Regional Water Planning Area. WF184

189. For the 2021 Region B Water Plan the firm yield was re-calculated to reflect the end of the drought in May 2015. The firm yield of Lake Ringgold in the 2021 Region B Water Plan is 23,450 acre-feet per year. The yield using the TCEQ WAM, which does not include the most recent drought, is 28,090 acre-feet per year. WF185

~~72.~~190. The application shows a projected need of 9,110 acre-feet per year in 2070.

~~73.~~191. ~~This projection is based primarily on projected population growth~~The appropriation requested in the application provides enough water to meet the City's demands for a reasonable period into the future. WF186

~~74.~~192. ~~The City's projected population growth does not support a need for 9,110 acre-feet per year in 2070~~The requests sought in the application and proposed in the Draft Permit do not conflict with any provision of the 2016 Region B Water Plan, the 2021 Region B Water Plan, 2017 State Water Plan, or the 2022 State Water Plan. WF187

193. ~~In calculating need, the City added 20% both to the forecasted demand for retail customers and to its reserve supply.~~

~~75.~~194. The requests sought in the application and proposed in the Draft Permit are consistent with the 2016 Region B Water Plan, the 2021 Region B Water Plan, the 2017 State Water Plan, and the 2022 State Water Plan. WF188

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~~76. Adding 20% to the retail demand to determine "safe supply" demand was reasonable to calculate projected need.Adding 20% to the projected municipal and manufacturing demands was unsubstantiated and overstates the City's projected need by approximately 11%.The applicant failed to demonstrate a need for the requested appropriation. Neither applicable regional water plans nor the City's Application demonstrated a need for the requested 65,000 acre-feet diversion amount.~~

~~Projected water supply needs did not factor into the City's design or sizing of the proposed Ringgold reservoir, and so, the proposed reservoir is oversized for the City's projected water supply needs.~~

~~The applicant failed to demonstrate the proposed appropriation of 65,000 acre-feet per year addresses a water supply need.~~

Conservation

195. The City has formulated and submitted a water conservation plan and adopted reasonable water conservation measures.

~~77.~~196. The City's use of water stored and diverted pursuant to the requested appropriation will be subject to the City's Water Conservation and Drought Contingency Plans as approved by TCEQ. WF 189

~~78.~~197. The City's 2018 Water Conservation Plan adopts conservation goals and strategies for the City's wholesale and retail supply distribution system. WF190

~~79.~~198. In addition to its own conservation goals and strategies, the City also supports and encourages the conservation efforts of its customers by public education efforts, and requiring in its contracts for wholesale purchase of water that its customers adopt water conservation plans that are at least as stringent as the City's Water Conservation Plan. WF191

~~80.~~199. In the 2018 Water Conservation Plan, the City also addressed conservation through reducing unaccounted-for water in its system through installation of advanced metering systems. WF192

~~81.~~200. The City established multiple water conservation goals for itself and its customers in its 2018 Water Conservation Plan. WF193

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~~82.~~201. The City identified several strategies for achieving the goals established in its 2018 Water Conservation Plan. WF195

~~83.~~202. The City's 2018 Water Conservation Plan meets and goes beyond TCEQ's minimum requirements for water conservation plans for wholesale and retail water suppliers. WF197

~~84.~~203. The City's 2018 Water Conservation Plan incorporates an aggressive water reuse program; includes procedures and practices that have led to, and maintain, a low rate of lost and unaccounted-for water; and includes time of day restrictions on lawn irrigation and a public education program, among other water conservation measures. WF199

204. ED staff determined that the City established reasonable water conservation goals in its 2018 Water Conservation Plan. WF194

205. ED staff determined the overall water conservation strategies provided in the City's 2018 Water Conservation Plan are reasonable and can achieve the stated goals. WF196

~~85.~~206. The City intends to use, at a minimum, reasonable diligence to avoid waste and achieve water conservation through the implementation of its 2018 Water Conservation and Drought Contingency Plans, including the goals and strategies adopted therein. WF200

~~86.~~207. The City's Drought Contingency Plan incorporates several strategies and required actions to ensure compliance with TCEQ rules and reliable provisions of water for its customers during periods of drought-induced reductions in supply. WF203

208. The City has prepared a drought contingency plan that, along with the implementation of its 2018 Water Conservation Plan, will result in the avoidance of waste and achieve reasonable levels of water conservation within the City's jurisdiction. WF204

209. The City's Drought Contingency Plan satisfies the statutory requirements and the corresponding rules applicable to applicants. WF202

210. ED staff has determined that the City's Drought Contingency Plan meets the applicable requirements for retail and wholesale water suppliers.

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WF198

~~87.~~211. ED staff determined that the City intends to use, at a minimum, reasonable diligence to avoid waste and achieve water conservation through the implementation of its 2018 Water Conservation and Drought Contingency plans. WF201

~~88.~~212. The City is already implementing indirect reuse and water conservation.

Alternatives

~~89.~~213. The Applicant evaluated 22 potential new water supply strategies, including Lake Ringgold and other alternative strategies. WF19

~~90. The City based its alternatives analysis on a projected demand for 21,633 acre-feet per year in 2070, shown in its 2016 Long-Range Water Supply Plan.~~

214. ~~The City did not perform an alternatives analysis based on a demand for 9,110 acre-feet per year 2070, as shown in the application~~The City's strategy for accommodating the water demands within the next 50 years includes efforts to increase ~~evaluated~~ water conservation and efficiency efforts by its residents and customers~~as an alternative to the proposed appropriation to the requested appropriation for Lake Ringgold~~. WF31

215. The City's strategy for accommodating water demands within the next 50 years also includes reuse of its existing water supplies. WF32

216. In addition to its work to maximize its existing water supplies through enhanced conservation and reuse efforts, the City has determined that the development of new surface water supply sources is critical to its success in meeting the water demands within its boundaries, and during drought conditions, over the course of the next 50 years. WF33

217. The City considered constructing and developing groundwater supply wells in the Seymour Aquifer in Wilbarger County as a potential alternative; however, historical information and data show that Seymour Aquifer is a shallow aquifer that is significantly affected by drought. WF20

218. In addition, based on Modeled Available Groundwater estimates, nearly all the groundwater in Wilbarger County is permitted and used by existing users. WF21

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219. The City also considered groundwater from the Ogallala Aquifer in Donley and/or Gray Counties as a water supply alternative; however, this is the most expensive potential alternative, and such strategy would not provide sufficient supplies to meet the City's long-term water supply needs, making it an infeasible alternative. WF22

220. The City also considered contracting for the purchase of waer from an existing water right holder in Lake Texoma, but the water in Lake Texoma has been fully contracted for or purchased and thus is not available to the City. WF23

221. The City also considered contracting for the purchase of water from Lake Bridgeport, which is owned and operated by Tarrant Regional Water District (TRWD); however, TRWD has allocated the full amount of its water supplies to its customers or contracted with parties. WF24

~~91.~~222. The City and its customers will benefit from Lake Ringgold because it would provide the City's customers with a reliable water supply. WF25

Consistency with State and Regional Water Plans

223. In 2007, the Texas Legislature designated the Lake Ringgold site as a Unique Reservoir Site pursuant to Tex. Water Code § 16.051(g-1), and it remains a designated site today. WF35

224. The 2016 and 2021 Region B Water Plans project water conservation savings for the City. WF205

225. The 2016 and 2021 Region B Water Plans recognize that water conservation alone will not be sufficient to meet the City's projected demands, and thus is not by itself a viable alternative to Lake Ringgold. WF206

226. The 2016 Region B Water Plan recognizes that additional indirect and direct reuse is projected for the City, but such reuse is insufficient to meet the City's projected demands. WF207

227. The 2021 Region B Water Plan recognizes that the City has implemented indirect reuse. WF208

228. The 2016 and 2021 Region B Water Plans address potential alternatives

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to Lake Ringgold, including, among others, groundwater from Seymour Aquifer in Wilbarger County and Wichita River Supply. WF209

229. The 2016 and 2021 Region B Water Plans also recommend the City implement indirect reuse and water conservation. WF210

230. The City is already implementing indirect reuse and water conservation. WF211

231. The 2016 Region B Water Plan compares all potentially feasible alternatives based on several factors, including unit cost. WF212

232. The subsequent 2021 Region B Water Plan reaffirms the evaluations and recommendations for the City's water management strategies in the 2016 Region B Water Plan. WF213

~~92.~~233. The 2016 and 2021 Region B Water Plans identify Lake Ringgold ~~is listed~~ as a ~~one of the~~ recommended water management strategy for the City~~ies in the 2016 Region B Water Plan and the 2017 State Water Plan and is one of the major water management strategies proposed by the Region B Regional Water Planning Group~~. ~~It is also recommended in the current State Water Plan.~~ WF214

~~93.~~234. The 2016 and 2021 Region B Water Plans ~~projects~~ identify that water developed pursuant to the requests made in the application will be needed and used to meet demands in the Red River Basin in ~~a regional shortage of 44,946 acre-feet in 2070, and the 2021~~ Region B ~~Water Plan projects a regional shortage of 36,114 acre-feet in 2070~~. WF215

~~94.~~235. The 2016 and 2021 Region B Water Plans also identify the methods for transmission, treatment, and delivery of the water by the City for its customers~~is updated from the 2016 Region B Plan to take into account technological advances, changes in population, and water supply projections and is, therefore, more reliable~~. WF216

~~95.~~236. The 2016 and 2021 Region B Water Plans show~~s~~ that if no additional water supplies are developed, Region B will face shortages in water supply over the next several decades~~the City needs to develop an additional 10,864 acre-feet per year of raw water supplies by 2070 to meet its~~

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~~projected demands~~. WF217

~~96.~~237. The City's strategy for accommodating the water demands within the next 50 years includes efforts to increase water conservation and efficiency efforts by its residents and customers. WF31

~~97.~~238. The City's strategy for accommodating water demands within the next 50 years also includes reuse of its existing water supplies. WF32

239. ~~The Applicant's requested appropriation of 65,000 acre-feet per year is significantly more water than the 36,114 acre-feet per year in 2021 Region B Plan projections of potential shortage in all of Region B in 2070~~The 2016 and 2021 Region B Water Plans include a planning-level analysis of economic and environmental factors that was part of the regional planning group's evaluation and selection of recommended water management strategies. WF218

240. The 2016 and 2021 Region B Water Plans include factors related to the quantity of supply made available, unit cost, impacts pm agricultural and other rural areas, and impacts on natural resources. WF219

241. The 2016 and 2021 Region B Water Plans rate the impact on bays and estuaries in the Red River Basin as low because the Red River Basin has no bay or estuary system in Texas. WF220

~~98.~~242. ED staff found that the application and draft permit are consistent with the applicable Region B Water Plan and State Water Plan. WF221

~~99.~~243. The application ~~does not address a water supply need in a manner that~~ is consistent with the applicable State and Region B ~~Plan and State~~ Water Plans pursuant to Tex. Water Code § 11.134(b)(3)(E). WF79

Dam Safety

~~100.~~244. The Applicant submitted a conceptual design of the construction for a proposed dam and appurtenant structures, or proposed reconstruction, modification, enlargement, rehabilitation, alteration, or repair of an existing dam; the geotechnical, hydrologic, and hydraulic reports for the proposed site, if the reports have been completed; and other pertinent information on an existing dam using a form provided by the ED.

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245. The ED provided a technical review of these documents.

246. The Proposed Dam will be approximately 9,485 feet in length with a maximum height of 85 feet. WF89

247. The Proposed Dam will have a 20-foot-wide crest at an elevation of 875 feet-msl. WF90

248. The principal spillway was designed to minimize the number of impacted structures within the town of Henrietta while also minimizing the required spillway width. WF91

~~101.~~249. The Proposed Dam was designed to safely pass the full critical probable maximum flood without overtopping the embankment. WF92

~~102.~~250. The Draft Permit requires the construction of the Lake Ringgold dam and reservoir to be performed in accordance with plans approved by the ED, and it makes clear that construction of the dam without final approval of the plans is a violation of the authorization.

~~103.~~251. Under the Draft Permit, construction of the Lake Ringgold dam and reservoir is to begin within two years of permit issuance and be completed within ten years of permit issuance, unless the City applies for and is subsequently granted an extension of time before the expiration of these time limitations.

Transcript Costs

~~104.~~252. The total costs for the transcription and reporting services amounted to
$19,302.30.

~~105.~~253. O'Malley participated extensively in the hearing and post-hearing briefing, making extensive use of the transcript, as did the City.

~~106.~~254. By retaining counsel, O'Malley has demonstrated an ability to pay.

~~107.~~255. The City, by having prosecuted this application for seven years, hired counsel and consultants, has demonstrated a superior ability to pay.

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256. City is the party seeking affirmative relief, whereas O'Malley seeks to maintain the status quo.

DRAFT PERMIT

257. Following ED staff's technical review of the application, ED staff issued the Draft Permit and recommended that the application be granted. WF222

258. The Draft Permit prepared by ED staff would authorize the City to construct and maintain a dam and reservoir (Lake Ringgold) with a maximum capacity of 275,000 acre-feet of water on the Little Wichita River in Clay County, Texas. WF223

259. The Draft Permit indicates that Stion 50+00 on the centerline of the proposed Lake Ringgold dam will be located at S 63° East, 924.879 feet from the northeast corner of Bass, A Original Survey No. 11, Abstract No. 11, in Clay County, Texas, at 33.896° North Latitude, 97.992° West Longitude, 13 miles in a northeasterly direction from Henrietta, Texas, in Clay County, Texas. WF224

260. The Draft Permit would additionally authorize the City to divert and use not to exceed 65,000 acre-feet of water per year from any point on the perimeter of Lake Ringgold at a maximum combined diversion rate of 139.79 cfs (62,770 gpm) for municipal, industrial, mining, and agricultural purposes within its service area in all or parts of Archer, Clay, and Wichita Counties within the Red River Basin. WF 225

261. In addition, the Draft Permit authorizes the use of the bed and banks of Lake Arrowhead to convey the return flows generated from the diversion and use of water originating from Lake Ringgold for subsequent diversion and use pursuant to the authorization to reuse return flows authorized by TPDES No. WQ0010509001 and permitted under COA No. 02-5150C. WF226

262. The Draft Permit would additionally authorize the City to use the bed and banks of the Little Wichita River (Lake Arrowhead) in the Red River Basin to convey up to 65,000 acre-feet of water per year for subsequent diversion and use for municipal, industrial, mining, and agricultural

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purposes. WF 227

263. The Draft Permit would authorize the City to use water impounded in Lake Ringgold for municipal, industrial, mining, and agricultural purposes. WF 228

264. The time priority date for Lake Ringgold in the Draft Permit is August 10, 2017. WF 229

265. The Draft Permit contains provisions that would require the City to 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. WF230

266. The Draft Permit contains several special conditions, including a provision that restricts the City from impounding in, or diverting water from, Lake Ringgold unless the impoundment and diversions are made in accordance with the most recently approved Accounting Plan. WF231

267. The Draft Permit also requires that the City maintain the Accounting Plan in electronic format and make the data available to the ED upon request. WF232

268. The Draft Permit only authorizes modifications to the Accounting Plan if such modifications are first approved by the ED, and it makes clear that any such modifications that change a term of the permit shall require an amendment to the permit. WF233

269. If the City fails to maintain the Accounting Plan or notify the ED of any modifications to the plan, the Draft Permit requires the City to immediately cease impoundments and diversions otherwise authorized by the Draft Permit, and either apply to amend the permit, or voluntarily forfeit the permit. WF234

270. The Draft Permit also requires the City to implement measures to minimize impacts to aquatic resources due to entrainment or

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impingement including, but not limited to, the installation of screens at the diversion facilities. WF235

271. The Draft Permit makes clear that the impoundment of water and diversions under its terms are contingent upon implementation of the Conceptual Mitigation Plan and approval of the Final Mitigation Plan as implemented through the U.S. Army Corps of Engineers permit for Lake Ringgold. WF236

272. The Draft Permit requires the City to perform instream monitoring within Assessment Unit 0204 03, or future segment designation, downstream of the Red River confluence with the Little Wichita River at U.S. Highway 81 and one site father downstream, twice per year in the first, third, fifth, and tenth tears [sic] after commencing deliberate impoundment. Monitoring shall include assessment of fish and macroinvertebrate communities and assessment of physical habitat. Aquatic biological monitoring and habitat characterization shall follow TCEQ protocols set forth in the most recently approved Surface Water Quality Monitoring Procedures, Volume 2: Methods for Collecting and Analyzing Biological Community and Habitat Data. WF237

273. The Draft Permit requires the City to submit a report to the Ed summarizing the required semi-annual monitoring activities, within six months after the second monitoring event, for the respective year, is complete. WF 238

274. The monitoring activity report required by the Draft Permit must include an assessment of the fish and macroinvertebrate communities and the biological metric scoring criteria used to assess aquatic life uses, and it must identify and outline remedial management strategies to be implemented to meet the designated aquatic life use in those instances where aquatic life does not meet the water quality standards for Segment No. 0204. WF239

275. The Draft Permit requires all mitigation plans and monitoring to comply with conditions set forth in Title 33, Section 1341 of the United States Code (Sections 401 and 404 of the federal Clean Water Act), as well as Title 30, Chapter 279 of the Texas Administrative Code. WF240

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276. The Draft Permit requires that the City install and maintain measuring devices which account for, within five percentt accuracy, the quantity of water diverted from the authorized diversion points; maintain measurement records; and allow representatives of TCEQ reasonable access to the property to inspect the measuring devices and records. WF241

277. The Draft Permit requires the construction of the Lake Ringgold dam and reservoir to be performed in accordance with plans approved by the ED, and it makes clear that construction of the dam without final approval of the plans is a violation of the authorization. WF242

278. Under the Draft Permit, construction of the Lake Ringgold dam and reservoir is to begin within two years of permit issuance and be completed within ten years of permit issuance, unless the City applies for and is subsequently granted an extension of time before the expiration of these time limitations. WF243

~~108.~~279. The Draft Permit explicitly states that it is subject to all senior and superior water rights. WF244

II. CONCLUSIONS OF LAW

1. TCEQ has subject matter jurisdiction over this proceeding pursuant to ~~s~~Sections 5.013(a)(1), 11.122, and 11.134 of the Texas Water Code. WF-1

2. SOAH has jurisdiction to conduct a hearing and to prepare a Proposal for Decision on contested cases referred to it by TCEQ pursuant to section 2003.047 of the Texas Government Code and ~~s~~Section 5.311 of the Texas Water Code. WF-2

3. The State of Texas owns all water in every river, natural stream, and lake in the state, which includes the Little Wichita River, Red River Basin. Tex. Water Code § 11.021. WF-3

4. The application is administratively complete, was accompanied by all required fees, and was properly noticed pursuant to Title 30, Sections 295.151 of the Texas Administrative Code as well as Section 11.132, of the Texas Water Code~~waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law~~. Tex. Water Code

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§ 11.132, 11.134(b)(1)~~0235~~. WF-4

5. The application complies withTitle 30, Section 297.41(a)(1) of the Texas Administrative Code, which requires applicants to adhere to the procedural rules listed in Chapter 295 and pay the prescribed fees~~was accompanied by all required fees~~. ~~Tex. Water Code § 11.134(b)(1).~~ WF-5

~~6. The application was properly noticed. Tex. Water Code § 11.132, 30 Tex. Admin. Code § 295.151.~~

~~7.~~6. Unappropriated water is available in the Red River Basin in an amount that equals or exceeds the amount requested for appropriation in the application and proposed in the Draft Permit. Tex. Water Code § 11.134(b)(2), 30 Tex. Admin. Code § 297.41(a)(2). WF-6

~~8. The applicant properly accounted for carriage losses in its bed and banks authorization request. Tex. Water Code § 11.042, 30 Tex. Admin. Code § 295.113.~~

~~9. Municipal, industrial, agricultural, and mining purposes are beneficial uses. Tex. Water Code § 11.023.~~

~~10. An application to appropriate unappropriated state water must state the amount of water to be used for each purpose. Tex. Water Code § 11.124(a)(4).~~

~~11. If a water right applicant seeks to use water for more than one purpose, the specific amount to be used annually for each purpose shall be clearly set forth. 30 Tex. Admin. Code § 295.5.~~

~~12. The application does not state or clearly set forth the amount of water to be used for each purpose, as required by 30 Texas Administrative Code section 295.5.~~

~~13. The application properly states the rate and method. 30 Tex. Admin. Code § 295.6.~~

~~14. The application properly stated the location of the point of diversion, the location of the dam, and a map showing those location. 30 Tex. Admin. Code § 295.7.~~

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~~15. The Applicant submitted the documents required by 30 Texas Administrative Code section 299.3(b).~~

~~16. The ED provided a technical review of the documents required by 30 Texas Administrative Code section 299.3(b).~~

~~17. Because the application did not comply with Texas Water Code section 11.124(a)(4), the application does not conform to the requirements of Chapter~~

~~11. Tex. Water Code § 11.134(b)(1).~~

~~18. Because the application did not clearly set forth the specific amount to be used annually for each purpose as required by 30 Texas Administrative Code, section 295.5, the application does not conform to 30 Texas Administrative Code chapter 295. 30 Tex. Admin. Code § 297.41.~~

~~19.~~7. The City will beneficially use the water requested in the application and proposed in the terms and conditions of the Draft Permit~~proposed appropriation is intended for beneficial uses~~. Tex. Water Code § 11.134(b)(3)(A); 30 Tex. Admin. Code § 297.41(a)(3)(A). WF-7

~~20.~~8. The appropriation and authorizations requested in the a~~A~~pplication, and proposed in the Draft Permit, do not impair existing water rights or vested riparian rights. Tex. Water Code § 11.134(b)(3)(B); 30 Tex. Admin. Code § 297.41(a)(3)(B). WF-8

~~21.~~9. The ~~applicant met its burden of proof that the~~ proposed appropriation and authorizations requested in the application, and proposed in the Draft Permit, are~~is~~ not detrimental to the public welfare. Tex. Water Code § 11.134(b)(3)(C); 30 Tex. Admin. Code § 297.41(a)(3)(C). WF-9

~~22.~~10. There are no applicable environmental flow standards established under Section 11.1471 of the Texas Water Code to consider in determining whether to grant the authorizations requested in the application. Tex. Water Code § 11.134(b)(3)(D). WF-10

~~23. The proposed appropriation must consider the assessments performed under Sections 11.147(d) and (e), 11.150, 11.151, and 11.152 of the Texas Water Code. Tex. Water Code § 11.134(b)(3)(D); 30 Tex. Admin. Code~~

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~~§ 297.41(a)(2)(D).~~

~~24.~~11. In considering whether to grant the authorizations requested in ~~T~~the application~~nt~~, the Commission considered ~~has met its burden of proof that~~ the ~~required~~ assessments ~~were~~ performed under Sections 11.147(d) and (e), 11.150, ~~and~~ 11.151, and 11.152 of the Texas Water Code ~~in considering whether to grant the authorizations requested in the application~~. Tex. Water Code § 11.134(b)(3)(D) and 30 Tex. Admin. Code § 297.41(a)(2)(D). WF-11

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~~25.~~12. The Draft Permit contains conditions that, after having considered all factors required under Section 11.147(d) of the Texas Water Code, are necessary and sufficient to maintain existing instream uses and water quality in the Red River Basin. Tex. Water Code § 11.147(d); 30 Tex. Admin. Code § 297.54. WF-12.

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13. The ~~Applicant~~ Draft Permit ~~did not meet its burden of proof to establish that the Draft Permit~~ contains conditions, ~~or that it~~after having considered all factors required under Section 11.147(e) of the Texas Water Code, ~~that~~that the Commissioner determined are necessary and sufficient to maintain fish and wildlife habitats. Tex. Water Code § 11.147(e); 30 Tex. Admin. Code § 297.53. WF-13

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~~26.~~14. The authorizations requested in the application and proposed in the Draft Permit will not adversely affect instream uses, fish and wildlife habitat, water quality, or existing groundwater resources or groundwater recharge. Tex. Water Code § 11.134(b)(3)(D) and 30 Tex. Admin. Code § 297.41(a)(3)(D). WF-14

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~~27.~~15. The City has submitted a water conservation plan and drought contingency plan with the application that complies with applicable requirements of 30 Texas Administrative Code ~~c~~Chapter 288. Tex. Water Code §§ 11.1271, 11.1272; 30 Tex. Admin. Code § 297.50. WF-15

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~~28.~~16. The City will use reasonable diligence to avoid waste and encourage the use of practices, techniques, and technologies designed to reduce the consumption of water, reduce the loss or waste of water, and improve the efficiency in the use of water. Tex. Water Code § 11.134(b)(4); 30 Tex. Admin. Code § 297.41(a)(4). WF-16

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~~29. The City's Water Conservation and Drought Contingency Plans demonstrate~~

~~that the water would be beneficially used without waste pursuant to Texas Water Code section 11.134(b)(4).~~

~~30. The Applicant has met its burden of proof to evaluate whether conservation is a feasible alternative to the proposed appropriation. 30 Tex. Admin. Code §§ 288.7, 297.50.~~

~~31. The Applicant has burden of proof to evaluate any feasible alternatives to the proposed appropriation. 30 Tex. Admin. Code § 288.7(b).~~

~~32. It is appropriate to consider cost in reviewing alternatives. 30 Tex. Admin. Code §§ 288.7(a), 297.50(a), (b).~~

~~33. The Applicant has the burden of proof to demonstrate that the requested amount of appropriation is necessary and reasonable for the proposed use. 30 Tex. Admin. Code §§ 297.50(b)(3), 288.7(b).~~

~~34. The applicant did not meet its burden of proof to show that the requested amount of appropriation is necessary and reasonable for the proposed use.~~

~~35. The applicant has the burden of proof to establish that the proposed appropriation addresses a water supply need in a manner that is consistent with the State Water Plan and the Region B Water Plan. Tex. Water Code § 11.13 4(b)(3)(E) and 30 Tex. Admin. Code § 297. 4 1(a)(2)(E).~~

~~36. The applicant failed to meet its burden of proof to establish that the proposed appropriation addresses a water supply need in a manner that is consistent with the State Water Plan and the Region B Water Plan.~~

~~37.~~17. All regional water planning group regions relevant to the application have a regional water plan that has been approved pursuant to Section 16.053(i) of the Texas Water Code. Tex. Water Code § 11.134(c); 30 Tex. Admin. Code § 297.41(b). WF-17

18. The application addresses a water supply need in a manner that is consistent with the relevant regional water plan for each area in which the appropriation requested therein is located (Region B) and the State Water Plan~~Draft Permit states the time within which construction or work must begin and the time within which it must be completed~~. Tex.~~as~~ Water Code § 11.13~~54~~(b)(~~73~~)(E) and 30 Tex. Admin. Code § 297.41(a)(2)(E). WF-18

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19. The Commission may, on a case-by-case basis, authorize an on-channel storage facility that is proposed to supply water for municipal use by issuing a water right that exceeds the storage facility's firm yield when the implementation of a drought management plan or the use of a reservoir system provides an available means of satisfying water needs during drought periods when the reservoir's normal supply capabilities would be exceeded. 30 Tex. Admin. Code § 297.42(d). WF-19

20. The City has demonstrated that the Application satisfies each applicable statutory and regulatory requirement. WF-20

~~38.~~21. The evidence admitted in this case supports granting the application and issuing the draft permit. WF-21

~~39.~~22. The transcript cost should be shared by both the applicant and O'Malley as follows: the City bears 70 percent ($13,511.61); O'Malley bears 30 percent ($5,790.69). 30 Tex. Admin. Code § 80.23.

~~40. The Applicant did not meet its burden of proof to establish that the application satisfies each applicable statutory and regulatory requirement.~~

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The application ~~for Water Use Permit No. 13404 is denied~~be approved in accordance with the attached Draft Permit. WF-22

2. The transcript costs are allocated 70 percent to the City and 30 percent to O'Malley.

~~3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.~~

~~4. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code section 80.273 and Texas Government Code section 2001.144.~~

~~5.~~3. The ~~TCEQ's~~ Chief Clerk of the Commission will~~shall~~ forward a copy of this Order and attached Draft Permit to all parties and, subject to the filing of motions for rehearing, issue the attached Draft Permit. WF-23

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4. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order. WF-24

~~6.~~5. The effective date of this Order is the date the Order is final as provided by Title 30, Section 80.273 of the Texas Administrative Code, and Section 2001.144 of the Texas Government Code. WF-25

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ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

Jon Niermann, Chairman for the Commission

SOAH DOCKET NO. 582-22-2634
TCEQ DOCKET NO. 2022-0125-WR

APPLICATION BY CITY OF	**§**	**BEFORE THE TEXAS**
WICHITA FALLS FOR WATER	**§**	**COMMISSION ON**
USE PERMIT NO. 13404	**§**	**ENVIRONMENTAL QUALITY**

Attachment B

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER GRANTING APPLICATION BY THE CITY OF WICHITA FALLS FOR WATER USE PERMIT NO. 13404
TCEQ DOCKET NO. 2022-0125-WR SOAH
DOCKET NO. 582-22-2634

On _____, the Texas Commission on Environmental Quality (TCEQ) considered the Application by the City of Wichita Falls for Water Use Permit No. 13404. State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Christiaan Siano conducted an evidentiary hearing by videoconference on August 14-22, 2023.

After considering the proposal for decision, the Commission adopts the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

Procedural History

1. The City of Wichita Falls (City or Applicant) submitted its application for Water Use Permit No. 13404 on June 27, 2017. Consistent with WF44

2. The application seeks authorization to construct a dam and reservoir (Lake Ringgold) on the Little Wichita River in the Red River Basin; to divert and use 65,000 acre-feet of water per year for municipal, industrial, mining, and agricultural purposes within its service area in Archer, Clay, and Wichita Counties; and to authorize use of the bed and banks of the Little Wichita River (Lake Arrowhead), Red River Basin. Consistent with WF44 and WF46

3. Between July2017 and August 2017, TCEQ's Executive Director's staff (ED staff) requested additional information related to the application, which the City provided. WF47

4. The City has paid applicable TCEQ application and administrative fees totaling $31,130.28, which represent all fees due at this time. The City will pay the remaining portions of fees due upon issuance of the Draft Permit. WF45

5. On August 10, 2017, ED staff declared the application administratively complete and filed it with the Office of the Chief Clerk. WF48

6. During the technical review, ED staff made requests for information pertaining to the technical aspects of the application, to which the City provided the requested information. WF49

7. On August 8, 2019, ED staff concluded program technical review of the application. See Ex. ED-JA-4 page 0026, ED-KC-3 page 0045, ED-KA-4 page 0116.

8. On September 3, 2019, TCEQ's Dam Safety Section concluded its review of the application. See Ex.ED-JC-3 page 0068.

9. On October 16, 2019, ED staff prepared a Draft Permit, and the TCEQ's Chief Clerk mailed the Notice of an Application for a Water Use Permit Application No. 13404 to the following entities located in the Red River Basin:

   a. all navigation districts;

   b. all holders of certified filings, permits, and claim of water rights; and

   c. all county judges, each mayor of a city with a population of 1,000 or more, all groundwater conservation districts, state legislators, and the presiding officer of each affected regional water planning group. WF50

10. The Notice of Application for a Water Use Permit Application No. 13404 was issued on January 24, 2020, and published in the *Clay County Leader*, a

newspaper of general circulation within Clay County, on February 6, 2020. Consistent with WF Ex. 2K and WF51

11. Each notice of the application that the City caused to be published was at least 15 square inches in size, and its shortest dimension was at least three inches. WF52

12. The City also provided notice of the application to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir, will be located. WF54

13. The mailed and published notices of the application each stated the name and address of the Applicant, the application number, the dates on which the application was received by the Commission and filed with the TCEQ's Chief Clerk, that ED staff has determined that the technical review of the application is complete, the type of permit the Applicant is seeking, the purpose and extent of the proposed appropriation of water, the source of supply and the place where the water is to be stored or taken or diverted from the source of supply, the ED's recommendation regarding the application, that an affected person may request a hearing as set out in Chapter 55, Subchapter G of Title 30 of the Texas Administrative Code (relating to Requests for Contested Case Hearing and Public Comment on Certain Applications), and included the name and address of the agency, and the telephone number of an agency contact from whom interested persons may obtain future information. WF53

14. The formal public comment and hearing request period closed on March 9, 2020. Due to significant public interest, the comment period was re-opened.

15. Each mailed and published notice of the application included information about TCEQ's permitting process and public participation in that process. See WF Ex. 2K

16. The City paid the costs for the mailed and published notices of the application and public hearings. WF57

17. Notice was issued by TCEQ's Chief Clerk on July 22, 2020, of the public meeting to be held via videoconference on August 25, 2020, for the purpose of receiving comments on the application. See WF Ex. 2K page WF00007476-WF00007478

18. On August 25, 2020, a public meeting was held via videoconference to receive comments on the application, at the conclusion of which the final public comment period closed. Consistent with WF56

19. The Commission received multiple requests for a contested case hearing on the application. WF58

20. On April 13, 2022, the Commission referred the application to SOAH for a contested case hearing. WF59

21. Notice of the preliminary hearing at SOAH was mailed on June 9, 2022, to all persons who had requested a hearing on the application. WF60

22. On July 19, 2022, SOAH ALJ Christiaan Siano convened a preliminary hearing via videoconference, during which jurisdiction was established and the Administrative Record was admitted. Consistent with WF61

23. Following the preliminary hearing, the following parties were named in the ALJ's Order No. 1 as clarified by Order No. 2: the City of Wichita Falls; the ED; the Office of Public Interest Counsel; Emry Birdwell; Deborah Clark; Shane and Casey Cody; Laura Del Murray; Mark Hill; Stan Horwood; Larry Horwood; Lonnie Horwood; Umhaill Valley, LLC; Kildavnet Castle, LLC; Rockfleet Castle, LLC; William O'Malley; Joe Staley; Phil Staley; Gil Staley; Jason Obermier; Jimmy Dale Obermier; Johnnie Shaw; William (Chris) Welborn and Welborn Ranch Ltd.; the City of Henrietta; Clay County; the Texas and Southwestern Cattle Raisers Association; the Texas Conservation Alliance; the Texas Wildlife Association; the Texoma Stewardship Coalition; Brent Durham; Dan Stansbury for Lively Ranch Limited; Rebecca Hickman; Robert and Courtney Wilson. See WF61

24. The ALJ's Order No. 4 memorialized the parties' alignment as follows: William O'Malley represented aligned parties Umhaill Valley, LLC, Kildavnet Castle, LLC, and Rockfleet Castle, LLC; Deborah Clark represented aligned parties Emry Birdwell, Shane and Casey Cody, Diaz Murray (on behalf of Laura Del Murray), Mark Hill, Jason Obermier, Jimmy Dale Obermier, Johnny Shaw, Joe Staley, Phil Staley, Gil Staley, William (Chris) Wellborn (on behalf of Wellborn Ranch, Ltd.), Brent Durham, Dan Stansbury (on behalf of Lively Ranch Limited), Mark Hickman (on behalf of Rebecca Hickman), Robert and Courtney Wilson, and Texoma Stewardship Coalition. See WF61

25. The Texas Wildlife Association filed a motion to withdraw as a party, which was granted on November 9, 2022.

26. The City of Henrietta and Laura Del Murray each filed motions to withdraw as parties, which were granted on August 1, 2023.

27. The hearing on the merits was held before ALJ Christiaan Siano via videoconference on August 14 through August 22, 2023. Consistent with WF62

28. The record closed on October 23, 2023, after the parties submitted written closing arguments and replies. WF63

Background

29. The City is a home-rule city and a political subdivision of the State of Texas. WF1

30. The City's boundaries are established by its City Charter as set out in the official map in the official minutes of the City. WF2

31. The boundaries of the City may be altered by extension through annexation or contraction through disannexation by the City Council, petition of owners, or as authorized by the laws of the State of Texas. WF3

32. The City is authorized to provide, among other services, water, wastewater, and solid waste services to its retail customers. WF6

33. The City provides both raw and treated water supply to its wholesale and retail customers. WF7

34. The City is located within the Region B Regional Water Planning Area, as defined by the Texas Water Development Board (TWDB). WF5

35. The Region B Regional Water Planning Area, as defined by TWDB, covers all or part of 11 counties in North Central Texas—Archer, Baylor, Clay, Cottle, Foard, Hardeman, King, Montague, Wichita, Wilbarger, and Young Counties. WF169

36. The Region B Regional Water Plan recognizes that the City is a Major Water Provider that provides water to water user groups on a wholesale and retail basis to a large regional area. WF170

37. Currently, the City's water service area includes all or portions of Archer, Clay, Wichita, and Young Counties. WF4

38. As part of its responsibilities to its members and customers through the water planning process, the City considered multiple water supply development strategies that could bridge the gap between its current water supplies and its anticipated 50-year water demand projections. WF171

39. While the City is implementing water conservation and reuse to meet part of its projected demands, the applicable Region B and State Water Plans confirm that those strategies alone cannot meet all the City's projected future demands. WF172

40. As part of its water supply strategy considerations, the City's staff and consultants conducted a preliminary assessment of the feasibility of Lake Ringgold as a water supply strategy for the City. WF173

41. After careful consideration, the City determined that Lake Ringgold – a new water supply reservoir on the Little Wichita River in Clay County – could provide a safe, reliable, long-term water source for the City's customers for potable and nonpotable water service. WF174

42. The Region B Regional Water Planning Group submitted a regional water plan during the fourth round of planning efforts in 2016 (2016 Region B Water Plan). WF175

43. The water service area of the City is approximately 70 percent of the entire Region B population and the municipal water demand on the City's system accounts for approximately 82 percent of the total Region B municipal demand, as documented in the applicable state and regional water plans. WF8

44. The City currently has a peak water treatment capacity of 79.8 million gallons per day. WF9

45. To provide a reliable, secure, and adequate water supply for its customers within the City's service area, the City has developed a comprehensive and diversified water supply portfolio. WF10

46. The City manages its use of water from its various sources on a system-wise basis to make maximum use of the most efficient or most available supply. WF11

47. The City holds all or a portion of the following water rights permits, as have been amended from time to time: Certificate of Adjudication (COA) No. 02- 5123 (Lake Kemp-Diversion system), COA No. 02-5144 (Lake Kickapoo), and COA No. 02-5150 (Lake Arrowhead). WF12

48. During the drought of records most severe years (2011-2015), the City experienced extreme drought conditions that caused the City's surface water sources to decline to unprecedented levels. WF13

49. In response to the extreme drought conditions, the City implemented restrictions pursuant to its Drought Contingency Plan and added a fifth drought stage to substantially reduce water use. WF14

50. As a result of the drought, the City also implemented a temporary direct potable reuse project to reduce diversions from Lakes Arrowhead and Kickapoo. WF15

51. Between 2011 and 2015, Lakes Arrowhead, Kickapoo and Kemp experienced record low inflows and high evaporation rates.

52. During the drought, the City was forced to take Lake Kemp offline due to water quality concerns as Lake Kemp's water levels declined. WF16

53. By June 2015, Lakes Arrowhead and Kickapoo returned to pre-drought levels. WF17

54. After the drought, the City recognized that extreme drought management and the direct potable reuse project were not permanent solutions for its long-term water needs. WF18

55. The City evaluated 22 potential new water supply strategies, including Lake Ringgold and other alternative strategies. WF19

56. The 2016 Region B Water Plan shows that the City needs to develop an additional 19,124 acre-feet per year of raw water supplies by 2070 to meet its projected demands. WF26

57. The 2016 Region B Water Plan recommends Lake Ringgold for implementation by 2014 to meet the City's long-term projected demands. WF27

58. Following the 2016 Region B Water Plan, the City implemented its indirect potable reuse project, which provides an additional 8,968 acre-feet of water supplies annually and reduced the water supply deficit for the 2021 Region B Water Plan. WF28

59. The 2021 Region B Water Plan shows that the City needs to develop an additional 10,864 acre-feet per year of raw water supplies by 2070 to meet its projected demands. WF29

60. The 2021 Region B Water Plan also recommends Lake Ringgold for implementation by 2040 to meet the City's long-term projected demands. WF30

61. The City has determined that the Lake Ringgold project is the only feasible water supply available to the City to meet its long-term water supply needs. WF34

62. The appropriation requested in the application will provide significant, reliable surface water supplies to the City and its existing customers. WF164

63. The Red River Basin, including its tributaries, is located in north Texas, Oklahoma, Arkansas, and Louisiana. WF36

64. From its headwaters in New Mexico, the Red River flows across Texas, along the Texas-Oklahoma border, and into Arkansas before reaching its confluence with the Atchafalaya River in Louisiana at a point outside of the boundaries of the State of Texas. WF37

65. The Little Wichita River is a tributary of the Red River, within the Red River Basin, and the Little Wichita River watershed is entirely within the State of Texas. WF38

66. Under the Red River Compact, all waters in the Little Wichita River watershed belongs to the State of Texas. WF39

67. The Little Wichita River is designated as Segment No. 0211 pursuant to 30 Tex. Admin. Code § 307.10. WF40

68. The Little Wichita River begins near Archer City, Texas, and it flows northeast for over 82 miles to its confluence with the Red River in Clay County, Texas. WF41

69. The Little Wichita River is classified by the TCEQ as a perennial stream from its

confluence with the Red River upstream to Lake Arrowhead Dam with a high aquatic life use designation; however, there are periods during dry summer months when there is little to no flow in the river. WF42

70. The riparian areas adjacent to the river are dominated by cedar elm and pecan trees with lesser amounts of western soapberry, sugarberry, green ash, and others. WF43

The Application

71. The application includes a request for a water use permit authorizing construction and maintenance of a dam and reservoir with a maximum capacity of 275,000 acre-feet of water and a surface area of 15,500 acres, on the Little Wichita River in Clay County, Texas, for municipal, industrial, mining, and agricultural purposes to be known as Lake Ringgold. WF64

72. The application describes the proposed location of Lake Ringgold to be approximately 13 miles in a northeasterly direction from Henrietta, Texas, with Station 50+00 on the centerline of the proposed Lake Ringgold dam to be S 63° East, 924.879 feet from the northeast corner of Bass, A Original Survey No. 11, Abstract No. 11, in Clay County. Texas, at 33.896° North Latitude, 97.992° West Longitude. WF65

73. The application also includes a request to divert and use not to exceed 65,000 acre-feet of water per year from the perimeter of Lake Ringgold at a maximum combined diversion rate of 139,79 cubic feet per second (cfs) (62,770 gallons per minute (gpm)) for municipal, industrial, mining, and agricultural purposes within the City's service area. WF66

74. The application also includes a request for authorization to use the bed and banks of the Little Wichita River (Lake Arrowhead) in the Red River Basin to convey up to 65,000 acre-feet of water per year for subsequent diversion and use for municipal, industrial, mining, and agricultural purposes. WF67

75. In addition, the application requests authorization to use the bed and banks of Lake Arrowhead to convey return flows generated from the diversion and use of water originating from Lake Ringgold and return flows authorized by Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010509001 under COA 02-5150C. WF68

76. The application states that the water would be diverted from Lake Arrowhead within days of discharge, with little to no residence time in Lake Arrowhead, therefore carriage losses are expected to be minimal.

77. In the application, the City provided a statement of each general category of proposed use of the water at issue in the application to be diverted and a detailed description of the proposed uses and users under each category. WF69

78. The application states that the point of diversion will be on the perimeter of the proposed Lake Ringgold and included a map of the diversion location.

79. In the application, the City provided its 2014 Water Conservation and Drought Contingency Plans and later supplemented the application to provide its 2018 Water Conservation and Drought Contingency Plans. WF70

80. In support of the requests made in the application, the City submitted to TCEQ the Report Supporting an Application for A Texas Water Right for Lake Ringgold dated May 2017 (Supporting Report). WF71

81. In support of the requests made in the application, the City submitted to TCEQ the Conceptual Mitigation Plan dated April 2017 (Conceptual Mitigation Plan). WF72

82. An applicant's submission with the application of a conceptual mitigation plan and supporting environmental studies approved by ED program staff meets applicable requirements.

83. In support of the requests made in the application, the City submitted to TCEQ the City of Wichita Falls Water Rights Accounting Plan, as revised May 30, 2019 (Accounting Plan). WF73

84. Multiple members of the ED staff conducted independent reviews of the application during the technical review process. WF82

Available Water

85. In support of the requests made in the Application, the City submitted to TCEQ its *Red River Water Availability Model R*un 3, as supplemented in October 2017 (the City's WAM) and additional hydrologic information showing extended hydrology through 2015. WF81

86. The City conducted an evaluation of hydrologic and hydraulic conditions within the Red River Basin as part of the application. WF83

87. The City commissioned the Supporting Report to determine, among other things, whether unappropriated water was available to satisfy the requests made in the application. WF84

88. The City conducted flood modeling for the preliminary dam design as part of the Supporting Report based on the requests made in the application. WF85

89. The Lake Ringgold project area consists of the area of land that will be inundated by Lake Ringgold up to the 844 feet mean seal level elevation, the dam, and the spillway (the Project Area). WF86

90. Based on topographic and geographic data, the Lake Ringgold project as proposed in the application would impound 275,000 acre-feet of water in the proposed

conservation pool at 844 feet above mean sea level. WF87

91. The City's Supporting Report also included conceptual drawings of the Lake Ringgold dam and spillway (the Proposed Dam). WF88

92. Unappropriated water is available in the Little Wichita River, Red River Basin, pursuant to Tex. Water Code § 11.134(b)(2). WF74

Beneficial Use

93. The application states that the appropriation of 65,000 acre-feet per year will be used for municipal, industrial, agricultural, and mining purposes.

94. The City will use the appropriation for municipal, industrial, agricultural, and mining purposes, which are identified as beneficial uses of water under Tex. Water Code § 11.023, pursuant to Tex. Water Code § 11.134(b)(3)(A). WF75

95. The City's Water Conservation and Drought Contingency Plans demonstrate that the water would be beneficially used without waste pursuant to Tex. Water Code § 11.134(b)(4). WF80

Existing Water Rights

96. The City analyzed potential impacts to existing water rights, including vested riparian rights.

97. As part of its water availability analysis, ED staff employed its Water Rights Availability Package (WRAP) to evaluate whether the requests made in the application can be authorized while protecting existing water rights in the Red River Basin using the prior appropriation doctrine. WF93

98. The WRAP is a generalized simulation model that requires the development of input data sets for the particular basin that is the subject of review. WF94

99. TCEQ developed basin-specific data for the river basins in Texas to incorporate into the WRAP simulation model that include geographical information, water rights information, naturalized flows, evaporation rates, and specific management assumptions, which are known as Water Availability Models (WAMs). WF95

100. TCEQ's standard water availability model used for the application is commonly referred to as WAM Run 3. WF96 WAM Run 3 is significant in determining water that is available without impacting senior water rights. WAM Run 3 models the hydrologic impacts of a proposed appropriation by first assuming all existing permanent water rights in the basin are being exercised at their authorized maximum impoundment capacities and maximum annual diversion amounts. WAM Run 3 also models the hydrologic impacts of a proposed appropriation by assuming that all of the water appropriated by others is fully used. This is accomplished by assuming that there are no return flows in the basin (except

those required by water right permits) available to satisfy modeled existing surface water operations. WF97

101. WAM Run 3 is the best hydrologic model relied upon by TCEQ today to assess available water for proposed new appropriations of State water and potential impacts of proposed new appropriations such as the appropriation requested in the application. WF98

102. ED staff employed WAM Run 3 to evaluate the availability of the requested 65,000 acre-feet annual firm yield diversions for Lake Ringgold (TCEQ WAM). WF99

103. The TCEQ WAM demonstrates that the requested 65,000 acre-feet annual firm yield diversions for Lake Ringgold would be available 63 percent of the time. WF100

104. The TCEQ WAM shows that the firm annual yield of Lake Ringgold is 27,060 acre-feet per year. WF101

105. The City also developed a spreadsheet model of the Little Wichita System (Lakes Kickapoo, Arrowhead, and Ringgold) based on the TCEQ WAM with hydrology extended to include recent droughts that were not included in the TCEQ WAM. WF102

106. The City determined a firm-yield assessment of the Lake Ringgold project using the spreadsheet model in order to determine the impact of recent droughts that were not included in the TCEQ WAM. WF103

107. The City can divert up to 65,000 acre-feet each year on a non-firm basis when the City operates Lake Ringgold on a system-wide basis. WF104

108. By managing its other available water rights and other water supplies, including available diversions from Lakes Kemp, Arrowhead, and Kickapoo, on a system-wide basis, the City could satisfy its water needs during drought periods when the normal supply capabilities of proposed Lake Ringgold would be exceeded. WF105

109. The City developed the Accounting Plan as an additional means of ensuring that the requests made in the application are complied with, and the City is obligated to comply with such Accounting Plan as a condition of the proposed Draft Permit. WF111

110. The Accounting Plan provides the City with a process for determining the daily quantities of water that it may divert pursuant to the terms of the appropriation requested in the Application. WF112

111. The Accounting Plan developed by the City establishes a reliable, consistent methodology for calculating specific quantities of water that the City may divert pursuant to the terms and conditions contained in the Draft Permit. WF113

112. The Accounting Plan is a required tool that can be used by the City and by TCEQ for determining the City's compliance with the terms and conditions of the Draft Permit. WF114

113. ED staff concluded that the Accounting Plan will adequately track diversions. WF115

114. ED staff determined that the availability of the requested 65,000 acre-feet annual diversions that are to be made on a less-than-firm basis is viable for the purposes identified, and under the conditions described, in the application. WF116

115. Overall, the City was able to determine, as reflected in the Supporting Report and Supplement, that 65,000 acre-feet per year of water could be diverted from the proposed Lake Ringgold at a maximum combined diversion rate of 139.79 cfs (62,770 gpm) without adversely impacting downstream senior and superior water rights within the Red River Basin. WF106

116. The application requests a new appropriation of State water, rendering the priority date of the proposed new appropriation junior to any other water right in the Red River Basin that existed at the time the application was deemed administratively complete. WF117

117. Granting the application would not affect existing water rights pursuant to Tex. Water Code § 11.134(b)(3)(B). WF76

Public Welfare

118. Granting the application is not detrimental to the public welfare pursuant to Tex. Water Code § 11.134(b)(3)(C). WF77

119. In addition to the ecological benefits attributable to the proposed Lake Ringgold project by virtue of the Conceptual Mitigation Plan and ultimate final mitigation plan, the requests made in the application would also benefit the public welfare by providing a reliable water source for customers within the City's service area. WF166

Environmental Assessments

120. The City conducted an evaluation of instream uses, water quality, fish habitat, wildlife habitat, and other environmental conditions within the Red River Basin in support of the Application. WF118

121. Granting the application would be protective of the environment based on the assessments required under Tex. Water Code §§ 11.147(d) and (e), 11.150, 11.151, and 11.152 pursuant to Tex. Water Code § 11.134(b)(3)(D). WF78

122. In assessing the instream uses relevant to the application, ED staff followed current operation procedures, policies, and analyzed available data. WF110

Environmental Flow Standards

123. In 2007, the Texas Legislature enacted Senate Bill 3 which, among other things, established a mechanism for developing basin-specific environmental flow standards by considering the ecosystem or ecosystems within a particular basin, and determining the flow standards based on the consideration of those ecological conditions. WF107

124. Senate Bill 3 did not establish environmental flow standards for every river basin in Texas. WF108

125. No environmental flow standards have been developed for the Red River Basin by Senate Bill 3. WF109

126. The location of Lake Ringgold proposed in the application is more than 200 river miles from a bay or estuary. WF159

127. The receiving estuaries of the Red River Basin are not located in Texas. WF160

128. The appropriation and impoundment requested in the application will not impact any bay or estuary in Texas. WF161

Water Quality and Instream Uses

129. The Lake Ringgold dam would be located on the Little Wichita River a half mile from the confluence with the Red River. This segment of the channel is considered fully impacted by Lake Ringgold.

130. The City evaluated whether the appropriation and impoundment requested in the application would impair water quality in Texas. WF154

131. The City evaluated whether the appropriation and impoundment requested in the application would result in a violation of the general criteria of the Water Quality Standards set out in Title 30, Chapter 307 of the Tex. Admin. Code, including temperature, dissolved salts, DO, and PH, as the water quality is expected to be of similar quality to the other reservoirs in the Little Wichita River watershed. WF155

132. In assessing impacts to water quality, the City considered impacts to the area of impoundment and to the reach of the Red River downstream of the Proposed Dam. WF156

133. ED staff analyzed water quality downstream of the Proposed Dam and recommended that the City conduct monitoring to ensure that water quality is protected after the Proposed Dam is constructed.

134. The appropriation and impoundment requested in the application will not impair water quality standards for [Texas] including temperature, dissolved salts, DO, and pH in Segment No. 0211. WF157

135. The appropriation and impoundment requested in the application will not impair water quality standards for any other surface waters in Texas. WF158

136. With and without Lake Ringgold, the flows are expected to exceed 739 acre- feet per month 99% of the time.

137. The Draft Permit conditions will maintain existing instream uses and water quality.

Groundwater

138. The City conducted an assessment of the hydrologic conditions of areas within the Red River Basin watershed to determine the extent to which the requests proposed in the application would impact groundwater availability, use, quality or recharge. WF162

139. There are not any major or minor aquifers that underlie the Project Area within, downstream, or upstream of Clay County, within the Red River Basin. WF163

140. The appropriation requested in the application would not significantly impair existing uses of groundwater, groundwater quality, recharge, or spring flow. WF165

Habitat Assessment and Mitigation

141. The City used the United States Fish and Wildlife Service's Habitat Evaluation Procedures (HEP) to assess the potential impacts the appropriation requested in the application will have on terrestrial habitats, which includes wetlands. WF121

142. HEP is identified in TCEQ rules as a technically appropriate habitat evaluation methodology. WF122

143. HEP is used by federal and state agencies to assess potential impacts to wildlife resources caused by water supply projects, including proposed reservoirs in Texas. WF123

144. HEP evaluates key characteristics of various land cover types that contribute to the cover types' suitability for supporting wildlife. WF124

145. As part of its HEP assessment, the City evaluated the specific functions and values of wetland habitats in the Project Area that could potentially be impacted by the appropriation requested in the application. WF130

146. In performing the HEP assessment, the City's consultants evaluated both potential direct and indirect impacts of the appropriation requested in the application. WF125

147. In performing the HEP assessment, the City's consultants evaluated both potential short-term and long-term impacts of the appropriation requested in the application. WF126

148. In performing the HEP assessment, the City developed an acreage inventory of each land cover type within the project area. WF127

149. The land cover types identified in the Project Area include cropland, emergent/herbaceous wetland, grassland/old field, riparian woodland/bottomland hardwood, shrubland, shrub savanna, shrub wetland, tree savanna, and upland deciduous forest. WF128

150. The City's consultants, along with TCEQ representatives, conducted various site visits between 2016-2017 to evaluate land cover types at sites within the Project Area using HEP. WF129

151. As a condition of the Draft Permit, the City is required to mitigate for impacted wetlands as provided for in its Conceptual Mitigation Plan. WF131

152. The City's stream assessment identified stream lengths by type, i.e., perennial, intermittent, and ephemeral.

153. The City will also be required to develop a final mitigation plan during the federal permitting process that must be submitted to TCEQ for approval pursuant to a condition of the Draft Permit that required compensatory mitigation for impacts to waters of the United States, including wetlands. WF132

154. As part of its environmental investigation, the City conducted extensive assessments of the potential impacts the appropriation requested in the application will have on habitats within the Project Area as well as upstream, adjoining, and downstream of the Project Area. WF119

155. The City's assessment of wildlife habitat included terrestrial and riparian habitats. WF120The appropriation and impoundment requested in the application will have low to no potential impact on wildlife habitat that would be considered critical habitat for federally listed endangered or threatened species. WF133

156. The Texas Kangaroo Rat and the Texas Horned Lizard are State-listed threatened species that are likely present within the proposed project area.

157. The City did not conduct a presence-absence survey for the State-listed threatened species, or assess whether the populations would be able to re-establish outside the footprint of the reservoir.

158. The appropriation and impoundment requested in the application will have low to no potential negative effect on wildlife habitat that would be considered critical habitat for state listed endangered or threatened species. WF134

159. Using its HEP assessment, the City was able to calculate a Habitat Suitability Index (HSI) value for wildlife habitat that would be impacted by the appropriation requested in the application. WF135

160. HSI was multiplied by the acreage of each cover type to calculate Habitat Units (HUs). WF136

161. HUs are used to describe the current or baseline wildlife habitat value by cover type. WF137

162. HUs can also be used to describe the wildlife habitat value that will exist after mitigation activities are complete. WF138

163. The City will mitigate for wildlife habitat within the Project Area as a condition in the proposed Draft Permit. WF139

164. The City will mitigate for the loss of river or stream segments that will be impacted by the appropriation requested in the application. WF140

165. To offset adverse impacts to fish and wildlife habitat and to wetlands, the City proposed mitigation measures to TCEQ through the Conceptual Mitigation Plan. WF141

166. Before proposing any mitigation, the City considered the extent to which adverse impacts to fish and wildlife habitat could be avoided, minimized, or modified. WF142

167. The City determined that the construction of Lake Ringgold and its associated habitat impacts could not be avoided altogether. WF143

168. The mitigation measures proposed by the City will be completed onsite within the Project Area or near-site on property owned by the City through a watershed approach to mitigation that will benefit upstream and downstream areas. WF145

169. The mitigation proposed by the City will compensate for each of the types of habitats that will be impacted, including wetlands. WF146

170. The United States Army Corps of Engineers (USACE) has jurisdiction to assess terrestrial habitat in wetlands, and jurisdiction to impose mitigation requirements to offset impacts to wetlands' terrestrial habitats.

171. The City is required to develop detailed, long-term maintenance and management plans that include goals for mitigation and a general schedule for completion of those goals as part of the federal permitting process. WF151

172. Impacts to streams will be mitigated through implementation of the Conceptual Mitigation Plan. WF147

173. Impacts to impoundments and other open waters will be mitigated by creation of the reservoir. WF148

174. Based on the goals, objectives, and strategies of the Conceptual Mitigation Plan, the requests made in the application will result in the offset of lost functions and values within the Red River Basin watershed such that, at a minimum, there will be no net loss of functions and values, and a potential net gain of functions and values in both fish, wildlife, and wetland habitat is anticipated. WF149

175. The requests made in the application will not impair the existing aquatic life use, ecosystem, or habitat in the Little Wichita River and the Red River. WF152

176. The mitigation measures proposed by the City in the Conceptual Mitigation Plan will create aquatic habitat and a viable and sustainable aquatic community, which will compensate for any potential impacts to instream uses. WF153

Need

177. Each of TWDB's 16 Regional Water Planning groups is composed of stakeholder members that are charged with planning for the long-term water supply needs of each respective region. WF167

178. Regional water planning groups include representatives of municipal, industrial, agricultural, and environmental interests, the interests of the public-at-large, and others that work collaboratively as members in a n open process to address the future water needs of their region. WF168

179. The State Water Plan and applicable regional water plan are the best evidence to determine whether an appropriation requested in a water rights application would meet a water supply need.

180. The 2016 Region B Water Plan was approved by TWDB in 2016 and it was incorporated into the 2017 State Water Plan. WF176

181. The 2016 Region B Water Plan was the most recent plan at the time the application was submitted. This plan was prepared during the worst years of the 2011-2015 drought and before such drought ended. WF177

182. The 2016 Region B Water Plan was reviewed by the ED's staff as part of its technical review of the application. WF178

183. The 2016 Region B Water Plan shows that the City needs to develop an additional 15,776 acre-feet per year of water supplies by 2020 to meet projected demands and an additional 19,124 acre-feet per year by 2070. WF179

184. The 2016 Region B Water Plan included several recommended water management strategies for the City, including the permitting, construction, and maintenance of Lake Ringgold and the use of water associated therewith as requested in the application, WF180

185. The 2016 Region B Water Plan identified 18,600 acre-feet per year of the firm yield of Lake Ringgold (assuming the worst years of the drought would continue from 2013 through 2016) as a recommended water management strategy to help the City meet projected water demands for the next 50-year planning period. WF181

186. Lake Ringgold is listed as one of the recommended water management strategies in the 2016 Region B Water Plan and the 2017 State Water Plan and is one of the major water management strategies proposed by the Region B Regional Water Planning Group. It is also recommended in the 2017 State Water Plan. WF182

187. ED staff determined that, in light of the needs of the City and the recommended water management strategies for the City as identified in the 2016 Region B Water Plan, the City has a need for the water to be supplied by Lake Ringgold and that the requested appropriation is reasonable for the proposed uses. WF183

188. The 2021 Region B Water Plan made no significant changes to the recommendations from the 2016 Region B Water Plan for the Lake Ringgold project proposed in the application as a recommended water management strategy for the Region B Regional Water Planning Area. WF184

189. For the 2021 Region B Water Plan the firm yield was re-calculated to reflect the end of the drought in May 2015. The firm yield of Lake Ringgold in the 2021 Region B Water Plan is 23,450 acre-feet per year. The yield using the TCEQ WAM, which does not include the most recent drought, is 28,090 acre-feet per year. WF185

190. The application shows a projected need of 9,110 acre-feet per year in 2070.

191. The appropriation requested in the application provides enough water to meet the City's demands for a reasonable period into the future. WF186

192. The requests sought in the application and proposed in the Draft Permit do not conflict with any provision of the 2016 Region B Water Plan, the 2021 Region B Water Plan, 2017 State Water Plan, or the 2022 State Water Plan. WF187

193. The requests sought in the application and proposed in the Draft Permit are consistent with the 2016 Region B Water Plan, the 2021 Region B Water Plan, the 2017 State Water Plan, and the 2022 State Water Plan. WF188

Conservation

194. The City has formulated and submitted a water conservation plan and adopted reasonable water conservation measures.

195. The City's use of water stored and diverted pursuant to the requested appropriation will be subject to the City's Water Conservation and Drought Contingency Plans as approved by TCEQ. WF189

196. The City's 2018 Water Conservation Plan adopts conservation goals and strategies for the City's wholesale and retail supply distribution system. WF190

197. In addition to its own conservation goals and strategies, the City also supports and encourages the conservation efforts of its customers by public education efforts, and requiring in its contracts for wholesale purchase of water that its customers adopt water conservation plans that are at least as stringent as the City's Water Conservation Plan. WF191

198. In the 2018 Water Conservation Plan, the City also addressed conservation through reducing unaccounted-for water in its system through installation of advanced metering systems. WF192

199. The City established multiple water conservation goals for itself and its customers in its 2018 Water Conservation Plan. WF193

200. The City identified several strategies for achieving the goals established in its 2018 Water Conservation Plan. WF195

201. The City's 2018 Water Conservation Plan meets and goes beyond TCEQ's minimum requirements for water conservation plans for wholesale and retail water suppliers. WF197

202. The City's 2018 Water Conservation Plan incorporates an aggressive water reuse program; includes procedures and practices that have led to, and maintain, a low rate of lost and unaccounted-for water; and includes time of day restrictions on lawn irrigation and a public education program, among other water conservation measures. WF199

203. ED staff determined that the City established reasonable water conservation goals in its 2018 Water Conservation Plan. WF194

204. ED staff determined the overall water conservation strategies provided in the City's 2018 Water Conservation Plan are reasonable and can achieve the stated goals. WF196

205. The City intends to use, at a minimum, reasonable diligence to avoid waste and achieve water conservation through the implementation of its 2018 Water Conservation and Drought Contingency Plans, including the goals and strategies adopted therein. WF200

206. The City's Drought Contingency Plan incorporates several strategies and required actions to ensure compliance with TCEQ rules and reliable provisions of water for its customers during periods of drought-induced reductions in supply. WF203

207. The City has prepared a drought contingency plan that, along with the implementation of its 2018 Water Conservation Plan, will result in the avoidance of waste and achieve reasonable levels of water conservation within the City's jurisdiction. WF204

208. The City's Drought Contingency Plan satisfies the statutory requirements and the corresponding rules applicable to applicants. WF202

209. ED staff has determined that the City's Drought Contingency Plan meets the applicable requirements for retail and wholesale water suppliers. WF198

210. ED staff determined that the City intends to use, at a minimum, reasonable diligence to avoid waste and achieve water conservation through the implementation of its 2018 Water Conservation and Drought Contingency plans. WF201

211. The City is already implementing indirect reuse and water conservation.

Alternatives

212. The Applicant evaluated 22 potential new water supply strategies, including Lake Ringgold and other alternative strategies. WF19

213. The City's strategy for accommodating the water demands within the next 50 years includes efforts to increase water conservation and efficiency efforts by its residents and customers. WF31

214. The City's strategy for accommodating water demands within the next 50 years also includes reuse of its existing water supplies. WF32

215. In addition to its work to maximize its existing water supplies through enhanced conservation and reuse efforts, the City has determined that the development of new surface water supply sources is critical to its success in meeting the water demands within its boundaries, and during drought conditions, over the course of the next 50 years. WF33

216. The City considered constructing and developing groundwater supply wells in the Seymour Aquifer in Wilbarger County as a potential alternative; however, historical information and data show that Seymour Aquifer is a shallow aquifer that is significantly affected by drought. WF20

217. In addition, based on Modeled Available Groundwater estimates, nearly all the groundwater in Wilbarger County is permitted and used by existing users. WF21

218. The City also considered groundwater from the Ogallala Aquifer in Donley and/or Gray Counties as a water supply alternative; however, this is the most expensive potential alternative, and such strategy would not provide sufficient supplies to meet the City's long-term water supply needs, making it an infeasible alternative. WF22

219. The City also considered contracting for the purchase of water from an existing water right holder in Lake Texoma, but the water in Lake Texoma has been fully contracted for or purchased and thus is not available to the City. WF23

220. The City also considered contracting for the purchase of water from Lake Bridgeport, which is owned and operated by Tarrant Regional Water District (TRWD); however, TRWD has allocated the full amount of its water supplies to its customers or contracted with parties. WF24

221. The City and its customers will benefit from Lake Ringgold because it would provide the City's customers with a reliable water supply. WF25

Consistency with State and Regional Water Plans

222. In 2007, the Texas Legislature designated the Lake Ringgold site as a Unique Reservoir Site pursuant to Tex. Water Code § 16.051(g-1), and it remains a designated site today. WF35

223. The 2016 and 2021 Region B Water Plans project water conservation savings for the City. WF205

224. The 2016 and 2021 Region B Water Plans recognize that water conservation alone will not be sufficient to meet the City's projected demands, and thus is not by itself a viable alternative to Lake Ringgold. WF206

225. The 2016 Region B Water Plan recognizes that additional indirect and direct reuse is projected for the City, but such reuse is insufficient to meet the City's projected demands. WF207

226. The 2021 Region B Water Plan recognizes that the City has implemented indirect reuse. WF208

227. The 2016 and 2021 Region B Water Plans address potential alternatives to Lake Ringgold, including, among others, groundwater from Seymour Aquifer in Wilbarger County and Wichita River Supply. WF209

228. The 2016 and 2021 Region B Water Plans also recommend the City implement indirect reuse and water conservation. WF210

229. The City is already implementing indirect reuse and water conservation. WF211

230. The 2016 Region B Water Plan compares all potentially feasible alternatives based on several factors, including unit cost. WF212

231. The subsequent 2021 Region B Water Plan reaffirms the evaluations and recommendations for the City's water management strategies in the 2016 Region B Water Plan. WF213

232. The 2016 and 2021 Region B Water Plans identify Lake Ringgold as a recommended water management strategy for the City. WF214

233. The 2016 and 2021 Region B Water Plans identify that water developed pursuant to the requests made in the application will be needed and used to meet demands

in the Red River Basin in Region B . WF215

234. The 2016 and 2021 Region B Water Plans also identify the methods for transmission, treatment, and delivery of the water by the City for its customers. WF216

235. The 2016 and 2021 Region B Water Plans show that if no additional water supplies are developed, Region B will face shortages in water supply over the next several decades . WF217

236. The City's strategy for accommodating the water demands within the next 50 years includes efforts to increase water conservation and efficiency efforts by its residents and customers. WF31

237. The City's strategy for accommodating water demands within the next 50 years also includes reuse of its existing water supplies. WF32

238. The 2016 and 2021 Region B Water Plans include a planning-level analysis of economic and environmental factors that was part of the regional planning group's evaluation and selection of recommended water management strategies. WF218

239. The 2016 and 2021 Region B Water Plans include factors related to the quantity of supply made available, unit cost, impacts pm agricultural and other rural areas, and impacts on natural resources. WF219

240. The 2016 and 2021 Region B Water Plans rate the impact on bays and estuaries in the Red River Basin as low because the Red River Basin has no bay or estuary system in Texas. WF220

241. ED staff found that the application and draft permit are consistent with the applicable Region B Water Plan and State Water Plan. WF221

242. The application is consistent with the applicable State and Region B Water Plans pursuant to Tex. Water Code § 11.134(b)(3)(E). WF79

Dam Safety

243. The Applicant submitted a conceptual design of the construction for a proposed dam and appurtenant structures, or proposed reconstruction, modification, enlargement, rehabilitation, alteration, or repair of an existing dam; the geotechnical, hydrologic, and hydraulic reports for the proposed site, if the reports have been completed; and other pertinent information on an existing dam using a form provided by the ED.

244. The ED provided a technical review of these documents.

245. The Proposed Dam will be approximately 9,485 feet in length with a maximum height of 85 feet. WF89

246. The Proposed Dam will have a 20-foot-wide crest at an elevation of 875 feet-msl. WF90

247. The principal spillway was designed to minimize the number of impacted structures within the town of Henrietta while also minimizing the required spillway width. WF91

248. The Proposed Dam was designed to safely pass the full critical probable maximum flood without overtopping the embankment. WF92

249. The Draft Permit requires the construction of the Lake Ringgold dam and reservoir to be performed in accordance with plans approved by the ED, and it makes clear that construction of the dam without final approval of the plans is a violation of the authorization.

250. Under the Draft Permit, construction of the Lake Ringgold dam and reservoir is to begin within two years of permit issuance and be completed within ten years of permit issuance, unless the City applies for and is subsequently granted an extension of time before the expiration of these time limitations.

Transcript Costs

251. The total costs for the transcription and reporting services amounted to $19,302.30.

252. O'Malley participated extensively in the hearing and post-hearing briefing, making extensive use of the transcript, as did the City.

253. By retaining counsel, O'Malley has demonstrated an ability to pay.

254. The City, by having prosecuted this application for seven years, hired counsel and consultants, has demonstrated a superior ability to pay.

255. City is the party seeking affirmative relief, whereas O'Malley seeks to maintain the status quo.

DRAFT PERMIT

256. Following ED staff's technical review of the application, ED staff issued the Draft Permit and recommended that the application be granted. WF222

257. The Draft Permit prepared by ED staff would authorize the City to construct and maintain a dam and reservoir (Lake Ringgold) with a maximum capacity of 275,000 acre-feet of water on the Little Wichita River in Clay County, Texas. WF223

258. The Draft Permit indicates that Stion 50+00 on the centerline of the proposed Lake Ringgold dam will be located at S 63°East, 924.879 feet from the northeast corner of Bass, A Original Survey No. 11, Abstract No. 11, in Clay County, Texas,

at 33.896 ° North Latitude, 97.992 ° West Longitude, 13 miles in a northeasterly direction from Henrietta, Texas, in Clay County, Texas. WF224

259. The Draft Permit would additionally authorize the City to divert and use not to exceed 65,000 acre-feet of water per year from any point on the perimeter of Lake Ringgold at a maximum combined diversion rate of 139.79 cfs (62,770 gpm) for municipal, industrial, mining, and agricultural purposes within its service area in all or parts of Archer, Clay, and Wichita Counties within the Red River Basin. WF225

260. In addition, the Draft Permit authorizes the use of the bed and banks of Lake Arrowhead to convey the return flows generated from the diversion and use of water originating from Lake Ringgold for subsequent diversion and use pursuant to the authorization to reuse return flows authorized by TPDES No. WQ0010509001 and permitted under COA No. 02-5150C. WF226

261. The Draft Permit would additionally authorize the City to use the bed and banks of the Little Wichita River (Lake Arrowhead) in the Red River Basin to convey up to 65,000 acre-feet of water per year for subsequent diversion and use for municipal, industrial, mining, and agricultural purposes. WF227

262. The Draft Permit would authorize the City to use water impounded in Lake Ringgold for municipal, industrial, mining, and agricultural purposes. WF228

263. The time priority date for Lake Ringgold in the Draft Permit is August 10, 2017. WF229

264. The Draft Permit contains provisions that would require the City to 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. WF230

265. The Draft Permit contains several special conditions, including a provision that restricts the City from impounding in, or diverting water from, Lake Ringgold unless the impoundment and diversions are made in accordance with the most recently approved Accounting Plan. WF231

266. The Draft Permit also requires that the City maintain the Accounting Plan in electronic format and make the data available to the ED upon request. WF232

267. The Draft Permit only authorizes modifications to the Accounting Plan if such modifications are first approved by the ED, and it makes clear that any such modifications that change a term of the permit shall require an amendment to the permit. WF233

268. If the City fails to maintain the Accounting Plan or notify the ED of any

modifications to the plan, the Draft Permit requires the City to immediately cease impoundments and diversions otherwise authorized by the Draft Permit, and either apply to amend the permit, or voluntarily forfeit the permit. WF234

269. The Draft Permit also requires the City to implement measures to minimize impacts to aquatic resources due to entrainment or impingement including, but not limited to, the installation of screens at the diversion facilities. WF235

270. The Draft Permit makes clear that the impoundment of water and diversions under its terms are contingent upon implementation of the Conceptual Mitigation Plan and approval of the Final Mitigation Plan as implemented through the U.S. Army Corps of Engineers permit for Lake Ringgold. WF236

271. The Draft Permit requires the City to perform instream monitoring within Assessment Unit 0204_03, or future segment designation, downstream of the Red River confluence with the Little Wichita River at U.S. Highway 81 and one site father downstream, twice per year in the first, third, fifth, and tenth tears [sic] after commencing deliberate impoundment. Monitoring shall include assessment of fish and macroinvertebrate communities and assessment of physical habitat. Aquatic biological monitoring and habitat characterization shall follow TCEQ protocols set forth in the most recently approved Surface Water Quality Monitoring Procedures, Volume 2: Methods for Collecting and Analyzing Biological Community and Habitat Data. WF237

272. The Draft Permit requires the City to submit a report to the Ed summarizing the required semi-annual monitoring activities, within six months after the second monitoring event, for the respective year, is complete. WF238

273. The monitoring activity report required by the Draft Permit must include an assessment of the fish and macroinvertebrate communities and the biological metric scoring criteria used to assess aquatic life uses, and it must identify and outline remedial management strategies to be implemented to meet the designated aquatic life use in those instances where aquatic life does not meet the water quality standards for Segment No. 0204. WF239

274. The Draft Permit requires all mitigation plans and monitoring to comply with conditions set forth in Title 33, Section 1341 of the United States Code (Sections 401 and 404 of the federal Clean Water Act), as well as Title 30, Chapter 279 of the Texas Administrative Code. WF240

275. The Draft Permit requires that the City install and maintain measuring devices which account for, within five percent accuracy, the quantity of water diverted from the authorized diversion points; maintain measurement records; and allow representatives of TCEQ reasonable access to the property to inspect the measuring devices and records. WF241

276. The Draft Permit requires the construction of the Lake Ringgold dam and reservoir to be performed in accordance with plans approved by the ED, and it

makes clear that construction of the dam without final approval of the plans is a violation of the authorization. WF242

277. Under the Draft Permit, construction of the Lake Ringgold dam and reservoir is to begin within two years of permit issuance and be completed within ten years of permit issuance, unless the City applies for and is subsequently granted an extension of time before the expiration of these time limitations. WF243

278. The Draft Permit explicitly states that it is subject to all senior and superior water rights. WF244

II. CONCLUSIONS OF LAW

1. TCEQ has subject matter jurisdiction over this proceeding pursuant to Sections 5.013(a)(1), 11.122, and 11.134 of the Texas Water Code. WF-1

2. SOAH has jurisdiction to conduct a hearing and to prepare a Proposal for Decision on contested cases referred to it by TCEQ pursuant to section 2003.047 of the Texas Government Code and Section 5.311 of the Texas Water Code. WF-2

3. The State of Texas owns all water in every river, natural stream, and lake in the state, which includes the Little Wichita River, Red River Basin. Tex. Water Code § 11.021. WF-3

4. The application is administratively complete, was accompanied by all required fees, and was properly noticed pursuant to Title 30, Sections 295.151 of the Texas Administrative Code as well as Section 11.132, of the Texas Water Code. Tex. Water Code § 11.132, 11.134(b)(1). WF-4

5. The application complies with Title 30, Section 297.41(a)(1) of the Texas Administrative Code, which requires applicants to adhere to the procedural rules listed in Chapter 295 and pay the prescribed fees.
WF-5

6. Unappropriated water is available in the Red River Basin in an amount that equals or exceeds the amount requested for appropriation in the application and proposed in the Draft Permit. Tex. Water Code
§ 11.134(b)(2), 30 Tex. Admin. Code § 297.41(a)(2). WF-6

7. The City will beneficially use the water requested in the application and proposed in the terms and conditions of the Draft Permit. Tex. Water Code
§ 11.134(b)(3)(A); 30 Tex. Admin. Code § 297.41(a)(3)(A). WF-7

8. The appropriation and authorizations requested in the application, and proposed in the Draft Permit, do not impair existing water rights or vested riparian rights. Tex. Water Code § 11.134(b)(3)(B); 30 Tex. Admin. Code § 297.41(a)(3)(B). WF-8

9. The proposed appropriation and authorizations requested in the application, and proposed in the Draft Permit, are not detrimental to the public welfare. Tex. Water Code § 11.134(b)(3)(C); 30 Tex. Admin. Code § 297.41(a)(3)(C). WF-9

10. There are no applicable environmental flow standards established under Section 11.1471 of the Texas Water Code to consider in determining whether to grant the authorizations requested in the application. Tex. Water Code § 11.134(b)(3)(D). WF-10

11. In considering whether to grant the authorizations requested in the application, the Commission considered the assessments performed under Sections 11.147(d) and (e), 11.150, 11.151, and 11.152 of the Texas Water Code. Tex. Water Code § 11.134(b)(3)(D) and 30 Tex. Admin. Code § 297.41(a)(2)(D). WF-11

12. The Draft Permit contains conditions that, after having considered all factors required under Section 11.147(d) of the Texas Water Code, are necessary and sufficient to maintain existing instream uses and water quality in the Red River Basin. Tex. Water Code § 11.147(d); 30 Tex. Admin. Code § 297.54 WF-12.

13. The Draft Permit contains conditions, after having considered all factors required under Section 11.147(e) of the Texas Water Code, that the Commissioner determined are necessary and sufficient to maintain fish and wildlife habitats. Tex. Water Code § 11.147(e); 30 Tex. Admin. Code § 297.53. WF-13

14. The authorizations requested in the application and proposed in the Draft Permit will not adversely affect instream uses, fish and wildlife habitat, water quality, or existing groundwater resources or groundwater recharge. Tex. Water Code § 11.134(b)(3)(D) and 30 Tex. Admin. Code § 297.41(a)(3)(D). WF-14

15. The City has submitted a water conservation plan and drought contingency plan with the application that complies with applicable requirements of 30 Texas Administrative Code Chapter 288. Tex. Water Code §§ 11.1271, 11.1272; 30 Tex. Admin. Code § 297.50. WF-15

16. The City will use reasonable diligence to avoid waste and encourage the use of practices, techniques, and technologies designed to reduce the consumption of water, reduce the loss or waste of water, and improve the efficiency in the use of water. Tex. Water Code § 11.134(b)(4); 30 Tex. Admin. Code § 297.41(a)(4). WF-16

17. All regional water planning group regions relevant to the application have a regional water plan that has been approved pursuant to Section 16.053(i) of the Texas Water Code. Tex. Water Code § 11.134(c); 30 Tex. Admin. Code § 297.41(b). WF-17

18. The application addresses a water supply need in a manner that is consistent with the relevant regional water plan for each area in which the appropriation requested therein is located (Region B) and the State Water Plan. Tex. Water Code § 11.134(b)(3)(E) and 30 Tex. Admin. Code § 297.41(a)(2)(E). WF-18

19. The Commission may, on a case-by-case basis, authorize an on-channel storage facility that is proposed to supply water for municipal use by issuing a water right that exceeds the storage facility's firm yield when the implementation of a drought management plan or the use of a reservoir system provides an available

means of satisfying water needs during drought periods when the reservoir's normal supply capabilities would be exceeded. 30 Tex. Admin. Code § 297.42(d). WF-19

20. The City has demonstrated that the Application satisfies each applicable statutory and regulatory requirement. WF-20

21. The evidence admitted in this case supports granting the application and issuing the draft permit. WF-21

22. The transcript cost should be shared by both the applicant and O'Malley as follows: the City bears 70 percent ($13,511.61); O'Malley bears 30 percent ($5,790.69). 30 Tex. Admin. Code § 80.23.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The application be approved in accordance with the attached Draft Permit. WF-22

2. The transcript costs are allocated 70 percent to the City and 30 percent to O'Malley.

3. The Chief Clerk of the Commission will forward a copy of this Order and attached Draft Permit to all parties and, subject to the filing of motions for rehearing, issue the attached Draft Permit. WF-23

4. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order. WF-24

5. The effective date of this Order is the date the Order is final as provided by Title 30, Section 80.273 of the Texas Administrative Code, and Section 2001.144 of the Texas Government Code. WF-25

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Jon Niermann, Chairman for the Commission