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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 21, 2022

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

Re: **TCEQ Docket No. 2022-0125-WR**; Application No. 13404 by the City of Wichita Falls to obtain a water use permit in Archer, Clay, and Wichita Counties, Texas.

Dear Ms. Gharis:

Enclosed for filing as agenda backup is the Executive Director's Response to Hearing Requests for the **April 13, 2022, agenda** item on the above-referenced matter.

Please let me know if you have any questions. I can be reached at 512-239-6635.
Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Ruth A. Takeda".

Ruth Takeda, Staff Attorney - Environmental Law Division

Enclosure

Cc: Mailing List

TCEQ DOCKET NO. 2022-0125-WR

APPLICATION NO. 13404 BY	§	BEFORE THE TEXAS
THE CITY OF WICHITA FALLS	§	
TO OBTAIN A WATER USE	§	COMMISSION ON
PERMIT IN ARCHER, CLAY, AND	§	
WICHITA COUNTIES, TEXAS	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR’S RESPONSE TO HEARING REQUESTS

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) respectfully submits this Response to the hearing requests filed in Application No. 13404 by the City of Wichita Falls (Applicant) to obtain a water use permit in Archer, Clay, and Wichita Counties to construct and maintain a reservoir; to divert and use state water for identified beneficial purposes; and for a bed and banks authorization in the Red River Basin. The Executive Director recommends granting the application. A public meeting was held and the Executive Director has prepared and filed a separate Response to Comments.

Seventy requestors timely submitted hearing requests:

- 1-2. Birdwell, Emry and Clark, Deborah
3. Timothy Burch
4. City of Henrietta - Kelley Bloodworth, City Administrator
5. Clay County - Frank J. Douthitt, Esq.
6. Clay County Rural Development - William O’Malley, Chairman
- 7-18. Clay County Farm Bureau members
 - Board President
 - Tommy Henderson
 - Board Vice-President
 - Scott Cleveland
 - Board of Directors
 - Bob Howard
 - L.C. Harrison
 - Donna Wines
 - Steve Forester
 - Sam Scaling
 - Cecil Sparkman
 - Dewayne Davis
 - E.C. Crump
 - Ross Cantrell
 - R. Leonard Phillips
- 19-20. Cody, Shane and Casey
21. Cox, John A.
22. Del Murray, Laura - Catherine Webking, Esq.
23. Ferguson, Joshua Don
24. Fitts, Sharon
25. Greer, Haley

26. Greer, John M.
27. Greer, Katie
28. Greer, Lea Ann
29. Greer, Dr. Thomas David
30. Halsell, Luke
31. Halsell, Sherri
32. Henrietta Clay County Chamber of Commerce - Lynda Cannedy, Board President
- 33-34. Henrietta Independent School District - Scot Clayton, Superintendent, and Betty Ellsworth, Board of Trustees
35. Hill, Mark
- 36-38. Horwood, Larry; Horwood, Lonnie; Horwood, Stan - James C. Skinner, Esq.
39. Kildavnet Castle, LLC - William O'Malley, Agent
40. Lively Ranch, Ltd. - Daniel W. Stansbury, Jr., President of General Partner
- 41-42. Lyde, Luther and Darlene
43. Maddox, Mary Ellen
44. Maddox, Randi M.
45. McDonnell, Adeline
46. McDonnell, Caroline
47. McDonnell, Jan Greer
48. Morrow, Carol Staley - Executor, Staley Family Trust and Melva Jo Staley Estate
- 49-50. The National Wildlife Federation - Danielle Goshen, Water Policy and Outreach Specialist; Michael Choate, Director of Texas Water Programs
51. Obermier, Jason
52. Obermier, Jimmy Dale
53. Parker, Jr., Joe J.
54. Payne, Pamela Maddox
55. Quail Coalition - James (Jay) Dell Stine, III, Executive Director
56. Roberson, Jake
57. Scott, Ken
58. Shaw, Johnnie
59. Staley, Clint
- 60-62. Staley, Joe A.; Staley, Phil; Staley, Gil
63. Texas and Southwestern Cattle Raisers Association - Robert E. McKnight, Jr., President
64. Texas Conservation Alliance - Janice Bezanson, Executive Director
65. Texas Wildlife Association - Richard David Yeates, Chief Executive Officer
66. Texoma Stewardship Coalition - Deborah Clark
67. Umhail Valley, LLC - William O'Malley, President
68. Unidentified landowners - Deborah Clark
69. Wellborn, William (Chris)
70. Yandell, Kelly Dean

Staff has prepared maps showing the Applicant's proposed water right location by outlining the reservoir footprint with a dashed line. One map, Attachment A, includes the locations of the water rights held by requestors with water rights and requestors who provided location information near the proposed reservoir. Requestors with Post Office Box addresses, requestors who provided location information too far away from the proposed site to be included on the map, and requestors did not provide property location are noted in the map legend. The second map, Attachment B, includes

surveys and abstract numbers based on GLO mapping information because some requestors provided such information with their hearing requests. Though individual properties cannot be identified, this map may be helpful in reviewing the hearing requests.

I. BACKGROUND

The Applicant seeks authorization to construct and maintain a reservoir, Lake Ringgold, with a capacity of 275,000 acre-feet on the Little Wichita River, Red River Basin, in Clay County. The Applicant also seeks authorizations to divert and use up to 65,000 acre-feet of water per year from the perimeter of Lake Ringgold for municipal, industrial, mining, and agricultural purposes within the Applicant's service area in Archer, Clay, and Wichita Counties; to use the bed and banks of the Little Wichita River (Lake Arrowhead) to convey up to 65,000 acre-feet of water per year for subsequent diversion and use for municipal, industrial, mining, and agricultural purposes; to use the bed and banks of the Little Wichita River (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 Applicant holds to reuse return flows under Certificate of Adjudication No. 02-5150C.

The Applicant plans to utilize Lake Ringgold as part of a system operation with the Applicant's existing water supplies. The application is subject to State obligations under the Red River Compact.

II. PROCEDURAL HISTORY

The Commission received this application on June 27, 2017. The application was declared administratively complete on August 10, 2017. Technical review was completed on August 8, 2019. Notice of the application was mailed by the Commission's Chief Clerk on January 24, 2020, to water right holders of record in the Red River Basin. Notice of the application was published in the Clay County Leader on February 6, 2020.

The comment period and hearing request period for this application closed on March 9, 2020.

Due to significant public interest in this application, the comment period was re-opened. The hearing request period was not re-opened. Notice of a virtual public meeting was mailed on July 22, 2020. The re-opened comment period closed at the conclusion of the virtual public meeting on August 25, 2020.

III. LEGAL AUTHORITY

Pursuant to 30 Tex. Admin. Code § 55.251(a), the following may request a contested case hearing on water rights applications: the Commission, the Executive Director; the applicant; and affected persons when authorized by law.

Affected persons are authorized to submit hearing requests for water rights applications under Tex. Water Code § 11.132(a). The Commission, on the request of

any affected person, shall hold a hearing on a water rights application. The procedures for determining whether a hearing requestor is an affected person and whether the hearing request is valid are set forth in 30 Tex. Admin. Code §§ 55.250-55.256, which apply to water rights applications such as this one that were declared administratively complete after September 1, 1999.

An affected person is “one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.” 30 Tex. Admin. Code § 55.256(a). An interest “common to members of the general public” does not qualify as a personal justiciable interest. Id.

Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 Tex. Admin. Code § 55.256(b). *See* 30 Tex. Admin. Code § 55.103.

To determine whether a hearing requestor is an affected person, all relevant factors must be considered. 30 Tex. Admin. Code § 55.256(c). These factors include, but are not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

A hearing request by a group or association must meet the requirements set forth in 30 Tex. Admin. Code § 55.252(a). There are three requirements. First, at least one member of the group or association would have standing to request a hearing in his or her own right. Second, the interests that the group or association seeks to protect must be germane to its purpose. Third, neither the claim asserted or the relief requested by the group or association requires participation of the individual member(s) in the case.

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

- (1) give the name, address, and daytime telephone number of the person who files the request. If the request is made by a group or association, the

request must identify one person by name, address, daytime telephone number and, where possible, fax number, who shall be responsible for receiving all official communications and documents for the group.

(2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public;

(3) request a contested case hearing; and

(4) provide any other information specified in the public notice of application.

The request for a contested case hearing must be filed with the Commission's Chief Clerk within the time period specified in the notice. 30 Tex. Admin. Code § 55.251(d).

The Commission must grant a request for a contested case hearing made by an affected person if the request complies with the requirements of 30 Tex. Admin. Code § 55.251; is timely filed with the Chief Clerk; and is pursuant to a right to hearing authorized by law. 30 Tex. Admin. Code § 55.255(b)(2).

IV. HEARING REQUESTS AND RECOMMENDATIONS

Seventy requestors requested a hearing prior to the closing of the hearing request period on March 9, 2020.

Untimely requests. Nine untimely hearing requests were received after March 9, 2020.

One untimely request was submitted by attorney Catherine Webking for client, Laura Del Murray, and a timely request had also been submitted that is discussed further in this Response.

Two untimely requests (Frances Essler; Edna Mae Klein) assert inundation. Their separate requests were postmarked March 3, 2020, but were not received at the TCEQ until March 16, 2020. Based on the program mapping, it does not appear that the Klein property will be inundated, and the Essler property is located near Lake Arrowhead, not the proposed Lake Ringgold.

The six remaining untimely requests (Margaret Bivens, June 23, 2020; Grayson Gaither, October 7, 2020; Jennica Lambert, October 28, 2020; Michael Davidson, January 30, 2021; Taiwan Tremayne Savage April 4, 2021; Patricia Reynosa Nava, April 4, 2021) do not assert inundation or ownership of a water right and are not addressed further in this Response.

The Executive Director recommends granting the following 23 requests:

1. City of Henrietta - Kelley Bloodworth;

- 2-3. Horwood, Stan; Horwood, Larry – James Skinner, Esq.;
4. Johnnie Shaw;
- 5-6. National Wildlife Federation – Danielle Goshen, Michael Choate;
7. Texas Conservation Alliance – Janice Bezanson;
8. Texas Wildlife Association – Richard David Yeates;
9. Texoma Stewardship Coalition – Deborah Clark;
10. Horwood, Lonnie– James Skinner, Esq.;
- 11-12. Birdwell, Emry and Clark, Deborah Clark;
- 13-14. Cody, Shane and Casey;
15. Fitts, Sharon;
16. Hill, Mark;
17. Kildavnet Castle – William O’Malley;
18. Morrow, Carol Staley;
19. Obermier, Jason;
- 20-22. Staley, Joe A.; Staley, Phil; Staley, Gil;
23. Wellborn, William (Chris).

The Executive Director recommends denying all other requests.

All of the hearing requests substantially complied with the procedural requirements of 30 Tex. Admin. Code § 55.251, but not all hearing requestors showed they were affected persons. An outline of each request and the Executive Director’s conclusions follows.

RECOMMENDATIONS TO GRANT

Water rights holders

1. City of Henrietta – Kelly Bloodworth, City Administrator

The requestor holds Certificate of Adjudication No. 02-5152 on the Little Wichita River. The requestor states that its diversion point and intake structure are located within the conservation pool of the Applicant’s proposed reservoir site.

Inundation related to the requestor’s water right was acknowledged in the Applicant’s application and is shown on the map prepared by program staff.

The Executive Director concludes that the requestor is an affected person under 30 Tex. Admin. Code Chapter 55, Subchapter G and recommends granting the request.

2-3. Stan Horwood and Larry Horwood – James C. Skinner, Esq.

The requestors state that their water rights and surface estate will be adversely affected by the Applicant’s proposed reservoir because its construction would require condemnation of a significant portion of the requestors’ land.

TCEQ records indicate that Stanley Horwood and Larry Horwood are partial owners of water use Permit No. 3965. Permit No. 3965 is located on the Little Wichita River. Inundation related to the requestors’ water right is shown on the map prepared by program staff.

The Executive Director concludes that Stan Horwood and Larry Horwood are affected persons under 30 Tex. Admin. Code Chapter 55, Subchapter G and recommends granting their requests.

4. Johnnie Shaw

The requestor states that the requestor's house and land will be inundated by the reservoir, and believes that rich folks shouldn't be stealing the requestor's land so that golf courses in Wichita Falls can be kept green.

Though the request does not identify a water right, TCEQ's records indicate that the requestor's name and location are the same as the individual holding Certificate of Adjudication No. 02-5154.

The Executive Director agrees that property interests in land impacted by inundation relates directly to the reservoir, which is within the jurisdiction of the Commission and constitutes a personal justiciable interest for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application. In addition, the requestor's water right is located near the proposed reservoir. The Executive Director recommends granting the request.

Groups or associations

5-6. National Wildlife Federation – Danielle Goshen, Water Policy and Outreach Specialist; Michael Choate, Director of Texas Water Programs

The requestor states that it is a nonprofit organization dedicated to protecting natural resources and the right of people to use and enjoy them and is a member of the Texas Living Waters Project, which is a collaboration of conservation groups working to ensure healthy waterways for wildlife, the economy, and the future by protecting stream and river flows. The requestor indicates that it works in collaboration with the Texas Living Waters Project to ensure adequate protection of stream and river flows to support fish and wildlife resources in the state.

The requestor's concerns include the following: the proposed reservoir's potential adverse effects on the Little Wichita River, the fish and wildlife resources that the river supports, and a large swath of ecologically fragile native prairie; permanent inundation of wooded river and creek bottoms and rare native tallgrass prairie; reduction of flows in the Little Wichita River; adverse impact to wildlife, including listed species and aquatic/ aquatic dependent species. The requestor questions whether the reservoir is needed; the methods used by the Applicant to justify its future water supply needs and the reservoir; and the cost of the reservoir.

A hearing request by a group or association must meet the three requirements set forth in 30 Tex. Admin. Code § 55.252(a). The requestor identifies member Deborah Clark, who has standing to request a hearing in her own right for this application (*see* hearing request from Emry Birdwell and Deborah Clark) and the Executive Director concludes that request otherwise satisfies the requirements for associational standing under 30 Tex. Admin. Code Chapter 55, Subchapter G. Therefore the Executive Director recommends granting the request.

7. Texas Conservation Alliance – Janice Bezanson, Executive Director

The requestor states that it is a conservation organization focused on protecting wildlife habitat and water resources.

The requestor's concerns include the following: whether the proposed reservoir is needed; the methods used by the Applicant to justify its future water supply needs and the reservoir; use of demand uncertainty in the reservoir application; lack of information about alternatives to the reservoir in the application; cost of the reservoir; environmental impacts of the reservoir, including inundation of native tallgrass prairie,

destruction of trees in Clay County because most are located in the river and creek bottoms that will be inundated, loss of 24,000 acres of wildlife habitat; economic impacts on rural Clay County. The requestor notes that part of the justification for the reservoir is to support economic development in the City of Wichita Falls, but local economic activity in Clay County will be impacted by the reservoir taking more than 40,000 acres of land out of production.

A hearing request by a group or association must meet the three requirements set forth in 30 Tex. Admin. Code § 55.252(a). The requestor identifies members Emry Birdwell and Deborah Clark, who have standing to request a hearing in their own right for this application (*see* hearing request from Emry Birdwell and Deborah Clark) and the Executive Director concludes that request otherwise satisfies the requirements for associational standing under 30 Tex. Admin. Code Chapter 55, Subchapter G. Therefore the Executive Director recommends granting the request.

8. Texas Wildlife Association – Richard David Yeates, Chief Executive Officer

The requestor identifies members Emry Birdwell and Deborah Clark, and describes how they will be impacted by the reservoir.

The requestor's concerns include the following: the proposed reservoir will have a significant negative impact on the requestor's members, on the ranching economy of Clay County, on wildlife and wildlife habitat, and on hunting, fishing, and other recreational activities in the region.

A hearing request by a group or association must meet the three requirements set forth in 30 Tex. Admin. Code § 55.252(a). The requestor identifies members Emry Birdwell and Deborah Clark, who have standing to request a hearing in their own right for this application (*see* request from Emry Birdwell and Deborah Clark) and the Executive Director concludes that request otherwise satisfies the requirements for associational standing under 30 Tex. Admin. Code Chapter 55, Subchapter G. Therefore the Executive Director recommends granting the request.

9. Texoma Stewardship Coalition – Deborah Clark

The requestor states that its members are a group of affected property owners whose land is in the footprint of the reservoir.

The requestor expresses the following concerns: the proposed reservoir and its inundation of 16,000 acres; negative impact to ranching and farming operations; economic impact on landowners; lack of environmental impact studies; loss of wildlife and wildlife habitat; economic loss to the county; added cost to the county for road maintenance and law enforcement; impact on the local school district due to loss in property tax; and safety concerns about the location of the proposed dam. The requestor questions whether the reservoir is needed; notes that building a shallow reservoir in the same watershed as Lake Arrowhead and Lake Kemp is not innovative or cost-efficient; and questions who will pay the cost of the reservoir.

A hearing request by a group or association must meet the three requirements set forth in 30 Tex. Admin. Code § 55.252(a). The request identifies several members, including Deborah Clark, who have requested a contested case hearing and at least one member who has standing to request a hearing in her own right for this application (*see* request from Emry Birdwell and Deborah Clark) and the Executive Director concludes that request otherwise satisfies the requirements for associational standing under 30 Tex. Admin. Code Chapter 55, Subchapter G. Therefore the Executive Director recommends granting the request.

Property owners – inundation

10. Lonnie Horwood – James C. Skinner, Esq.

The requestor states that his surface estate will be adversely affected by the Applicant's proposed reservoir because its construction would require condemnation of a significant portion of their land.

Mapping indicates that the requestor's land is within the footprint of the proposed reservoir.

The Executive Director concludes that property interests in land impacted by inundation relate directly to the reservoir, which is within the Commission's jurisdiction that the request meets the requirements of 30 Tex. Admin. Code Chapter 55, Subchapter G, and recommends granting the request.

11-12. Deborah Clark and Emry Birdwell

The requestors are partners in the Birdwell and Clark Ranch, which is located on the south side of the reservoir. They indicate 1,200 to 2,000 acres of their ranch would be inundated by the reservoir's conservation pool; that the only road into the center of the ranch would be inundated at three locations; that the ranch would be divided into two or more pieces; and that the result of such division would require a different management structure, limit production, and negatively impact revenue because the current practice of grazing the ranch as one property could no longer be done.

The requestor's concerns include the following: diminished income from hunting leases due to loss of habitat and reduction in wildlife population; the impact of flooding native tallgrass prairie and riparian woodlands; loss of habitat and reduction in wildlife populations; economic losses to the county from loss of property tax revenue; increased county costs for road maintenance and law enforcement; impact on the City of Henrietta; dam safety; and cost of the reservoir. They do not believe the reservoir is necessary.

The Executive Director does not agree that all interests identified by the requestors are personal justiciable interests for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application. However, property interests in land impacted by inundation relate directly to the reservoir, which is within the Commission's jurisdiction, therefore the Executive Director recommends granting the request.

13-14. Shane and Casey Cody

The requestors state that they own property that would be inundated by the reservoir; that the reservoir would come within feet of the back door of their residence; and that access from their residence to the county road could be infringed.

The requestors concerns include the following: the proposed reservoir's impacts on the economy; archaeological/ environmental impact; and increased potential for flooding events.

The Executive Director does not agree that all interests identified by the requestors are personal justiciable interests for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application. However, property interests in land impacted by inundation relate directly to the reservoir, which is within the Commission's jurisdiction, therefore the Executive Director recommends granting the request.

15. Sharon Fitts

The requestor states that the requestor owns land that would be inundated by the reservoir. The land is used for hay production, cattle feeding, and hunting.

The Executive Director concludes that property interests in land impacted by inundation relates directly to the reservoir, which is within the jurisdiction of the Commission and constitutes a personal justiciable interest for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application, therefore recommends granting the request.

16. Mark Hill

The requestor indicates that the reservoir would cause possible damage to the requestor's land and house, which is located in the 100-year flood elevation and approximately ½ mile from the reservoir.

Program mapping confirms that the requestor's property is approximately ½ mile from the proposed reservoir, therefore may be inundated. The Executive Director concludes that property interests in land impacted by inundation relates directly to the reservoir, which is within the jurisdiction of the Commission and constitutes a personal justiciable interest for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application, therefore recommends granting the request.

17. Kildavnet Castle, LLC - agent William O'Malley

Mr. O'Malley states that the requestor owns land that would be inundated by the reservoir, which is described by survey names and abstract numbers.

The map provided by the program confirms that the survey names and abstract numbers are within the reservoir footprint.

The Executive Director concludes that property interests in land impacted by inundation relates directly to the reservoir, which is within the jurisdiction of the Commission and constitutes a personal justiciable interest for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application, therefore recommends granting the request assuming that Mr. O'Malley can provide documentation establishing that he is an agent for the requestor because he is not listed as a member, manager, or registered agent of Kildavnet Castle, LLC in the information available online from the Texas Secretary of State.

18. Carol Staley Morrow, Executor - Staley Family Trust and Melva Jo Staley Estate

The requestor states that the identified trust and estate own land that would be inundated by the reservoir. The land is described by survey names and abstract numbers.

The map provided by the program confirms that the survey names and abstract numbers are within the reservoir footprint.

The requestor states that the Staley Family Trust and Melva Jo Staley Estate owns approximately 782.78 acres from the Red River west up the Little Wichita River; that the reservoir's dam will cross both properties and inundate it; that the properties have been under lease for farming, cattle grazing, and hunting. The requestor expresses concern about the reservoir's environmental impact, specifically as to an oil pipeline running under the dam.

The Executive Director concludes that property interests in land impacted by

inundation relates directly to the reservoir, which is within the jurisdiction of the Commission and constitutes a personal justiciable interest for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application, therefore recommends granting the request.

19. Jason Obermier

The requestor states that the requestor owns land that will be inundated by the reservoir, as well as improvements that will be directly affected.

The requestor's concerns include the following: the requestor owns land downstream of the proposed reservoir; has a water right in the Little Wichita River drainage but not a permit; has a deed stating that the requestor owns land to the center of the Little Wichita River; uses the land for crops, grazing, hunting and camping; and uses the river for fishing, boating, swimming, and recreational activities.

It is unclear what the requestor means by stating that the requestor has a water right in river drainage but no permit. It is correct that, according to TCEQ's records, the requestor does not hold a water right.

The Executive Director does not agree that all interests identified by the requestor are personal justiciable interests for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application. However, property interests in land impacted by inundation relate directly to the reservoir, which is within the Commission's jurisdiction, therefore the Executive Director recommends granting the request.

20-22. Joe A. Staley, Phil Staley, Gil Staley - Staley Two Rivers Ranch

The requestors state that they will be impacted by the reservoir because a substantial portion of their land will be inundated and a residence, barns, and equipment are located less than one mile from the reservoir's dam.

The map provided by the program confirms that the survey names and abstract numbers are within the reservoir footprint.

The requestors indicate that they own a family working ranch, where cattle is raised and wheat and hay produced. The family has enjoyed recreational activities on the Little Wichita River, including boating and fishing, for four generations.

The Executive Director concludes that property interests in land impacted by inundation relates directly to the reservoir, which is within the jurisdiction of the Commission and constitutes a personal justiciable interest for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application, therefore recommends granting the request.

23. William (Chris) Wellborn – owner, Wellborn Ranch Ltd.

The requestor states that the requestor's land will be inundated by the reservoir, with four tracts negatively impacted – one tract will be flooded and the remainder of the ranch will be split into three separate sections, with access to these tracts severely limited. Splitting the ranch in this manner, combined with the loss of acreage, will limit the ability for effective grazing, management, productivity, and revenue.

The requestor's concerns include the following: the impact on recreational activities and hunting; impact on wildlife and wildlife habitat; economic impact on Clay County due to loss of property tax revenue, along with added costs associated with maintenance and law enforcement. The requestor questions whether the reservoir is needed, states that there have been no environmental impact studies done, and that

there has been no information or communication regarding the ability of landowners to access the reservoir. The requestor also expresses concern about the cost of the reservoir.

The Executive Director does not agree that all interests identified by the requestor are personal justiciable interests for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application. However, property interests in land impacted by inundation relate directly to the reservoir, which is within the Commission's jurisdiction, therefore the Executive Director recommends granting the request.

RECOMMENDATIONS TO DENY

Local entities

24. Clay County – Frank J. Douthitt, Esq.

The requestor's concerns include: the effect of taking substantial land value from the tax base; additional burden on law enforcement; additional road maintenance; ownership of water front property and the effect on law enforcement and on road maintenance; effect on wildlife; effect on threatened species and cultural resources; effect on citizens due to expected lake watershed enforcement; the effect of likely flooding upstream. The requestor describes its prior negative experience with the permitting of Lake Arrowhead; explains concerns regarding the county tax base, burden on local law enforcement, expenses related to road creation and maintenance, the native wildlife and its role in the requestor's annual Turkey Fest and Dove Salute, watershed enforcement and its impact on ranchers and farmers, and explains its concerns about threatened species, cultural resources, and upstream flooding. The requestor does not believe additional water supply is needed in Wichita Falls. The requestor notes that the proposed reservoir is not located in or near Wichita Falls and indicates that Applicant's permitting for Lake Arrowhead ultimately resulted in increased burden for the County.

The Executive Director concludes that the requestor has not established that it has statutory authority over or interest in state water permitting and that the interests identified in the request are not within the TCEQ's jurisdiction, or are interests not within the TCEQ's expertise under Tex. Water Code Chapter 11, or are interests common to members of the general public. The Executive Director therefore concludes that the requestor does not meet the affected person requirements under 30 Tex. Admin. Code § 55.256, and recommends that the request be denied.

25-26. Henrietta Independent School District – Superintendent Scot Clayton, Board of Trustees representative Betty Ellsworth

The requestor's concerns include: approximately 40,000 acres of land will be taken off the Clay County tax rolls and thus will decrease available funding for schools, which will in turn result in the requestor having to reduce staff and salaries; approximately 40 landowners and families will have some or all of their land inundated and likely will be forced to leave the community; and impacts to property tax and to funding based upon enrollment/ daily attendance will result in financial consequences to the requestor.

The Executive Director concludes that the interests identified in the request are not within the TCEQ's jurisdiction, or are interests not within the TCEQ's expertise

under Tex. Water Code Chapter 11, or are interests common to members of the general public. The Executive Director therefore concludes that the requestor does not meet the affected person requirements under 30 Tex. Admin. Code § 55.256, and recommends that the request be denied.

Groups or associations

27. Henrietta and Clay County Chamber of Commerce – Lynda Cannedy, Board President

The requestor's concerns include: the Applicant's proposed reservoir footprint will adversely affect the requestor's members who derive their livelihood from ranching and hunting operations; the requestor's largest fundraiser, the Turkey Fest, is held on the land of several host ranches and the proposed reservoir will eliminate several of those sites and the current turkey hunting opportunities in the area; the growth of Wichita Falls is stagnant; the local area's hunting trade, wildlife habitat, history, and agricultural industries should not be sacrificed for the good of a perceived yet unproven need; the costs to the county and community, including loss of property tax dollars, far outweigh any benefits derived from the proposed reservoir.

A hearing request by a group or association must meet the three requirements set forth in 30 Tex. Admin. Code § 55.252(a).

First, one or more members of the group or association would have standing to request a hearing in their own right. The request does not identify members. The request identifies owners of ranches hosting the Turkey Fest (Deborah Clark, Emry Birdwell, Lyle Horwood, Chris and Joan Wellborn) and some of these ranch owners (with the exception of Lyle Horwood and Joan Wellborn) have requested hearings, asserting inundation of property.

Second, the interests that the group or association seeks to protect must be germane to its purpose. The request does not identify the requestor's purpose. A chamber of commerce is defined as "An association of merchants and other business leaders who organize to promote the commercial interests in a given area and whose group is generally affiliated with the national organization of the same name." Black's Law Dictionary, 8th Ed. The interests that the requestor seeks to protect are therefore commercial in nature. While germane to the requestor's purpose, commercial interests are not within the Commission's jurisdiction, or are interests not within the TCEQ's expertise under Tex. Water Code Chapter 11, and the other interests identified by the requestor are common to members of the general public.

The Executive Director concludes that the requestor has not met the associational standing requirements under 30 Tex. Admin. Code § 55.252(a), therefore recommends that the request be denied.

28-39. Farm Bureau Clay County members – Board of Directors

Farm Bureau Clay County Board President (Tommy Henderson), Board Vice President (Scott Cleveland), and Board of Director members (Bob Howard, Cecil Sparkman, L.C. Harrison, Dewayne Davis, Donna Wines, EC Crump, Sam Forester, Ross Cantrell, Sam Scaling, and R. Leonard Phillips) submitted separate, very similar requests on behalf of the requestor's members.

The requestor's concerns include: the Applicant's proposed reservoir footprint includes the property of multiple members; the proposed reservoir will adversely impact forty ranch owners and property owners who will lose revenue opportunities

from ranching and hunting enterprises; approximately 40,000 acres will be taken off county tax rolls because of the project, negatively impacting the county budget and schools; law enforcement, road maintenance, waste management, and other expenses for the county will increase and were not considered or included in the Applicant's cost estimate of \$443 million.

A hearing request by a group or association must meet the three requirements set forth in 30 Tex. Admin. Code § 55.252(a). Though the requestor identifies Randi Maddox as a member, this individual does not have standing to request a hearing in his or her own right (*see* Randi Maddox request) on this application. The interests related to the concerns expressed in the request are not within the TCEQ's jurisdiction, or are interests not within the TCEQ's expertise under Tex. Water Code Chapter 11, or are interests common to members of the general public. The Executive Director therefore concludes that the requestor does not meet the affected person requirements under 30 Tex. Admin. Code § 55.256, and recommends that the request be denied.

40. Quail Coalition – James (Jay) Stine, III, Executive Director

The requestor states that it has approximately 4,000 members in Texas, including members who would be directly affected by the Applicant's proposed reservoir.

The requestor's concerns include the following: the proposed reservoir's impact on quail habitat because bobwhite quail populations are declining due to factors that include loss of suitable habitat; the reservoir would remove approximately 16,000 acres of habitat suitable for bobwhite quail; the removed acreage includes native prairie pasture, which is the most optimal landscape for quail to thrive in; the proposed reservoir's impact on other wildlife. The requestor questions whether the project is necessary.

A hearing request by a group or association must meet the three requirements set forth in 30 Tex. Admin. Code § 55.252(a). The request does not identify a member. The Executive Director concludes that the requestor has not met the associational standing requirements under 30 Tex. Admin. Code § 55.252(a), therefore recommends that the request be denied.

41. Texas and Southwestern Cattle Raisers Association – Robert E. McKnight, Jr., President

The requestor states that it is a trade association and the largest and oldest livestock organization based in Texas. The requestor has members directly involved in ranching and beef production – managing 4 million head of cattle on 76 million acres of range and pastureland primarily in Texas, Oklahoma, and throughout the Southwest.

The requestor's concerns include: the impact of the proposed reservoir on its members and every agricultural producer living in the area; loss of rangeland; impact on businesses supplying agricultural operations; impact on wildlife and activities related to wildlife; loss to the reservoir of 16,000 acres of land, including pastures used to feed cattle and nurture wildlife. The requestor acknowledges the increasing challenges faced by Texas in balancing the water needs of urban areas with the livelihoods of rural agricultural producers.

A hearing request by a group or association must meet the three requirements set forth in 30 Tex. Admin. Code § 55.252(a). The request does not identify a member.

The Executive Director concludes that the requestor has not met the associational standing requirements under 30 Tex. Admin. Code § 55.252(a), therefore recommends that the request be denied.

Property owners - property location not provided

42. Lively Ranch, Ltd. – Daniel W. Stansbury, Jr., president of general partner

Mr. Stansbury, whose address is in Dallas, states that the requestor owns land which will be inundated by the reservoir. No location of the land was provided, therefore the requestor's location could not be mapped.

Mr. Stansbury states that the proposed reservoir would take the requestor's local well site; access to the property would be altered; the property would be divided in an unacceptable manner; and improvements and cattle operation facilities would be taken.

The Executive Director agrees that property interests in land impacted by inundation relates directly to the reservoir, which is within the jurisdiction of the Commission and constitutes a personal justiciable interest for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application. However, the Executive Director cannot recommend granting the request because there is insufficient information to establish the requestor's location relative to the reservoir. Therefore the Executive Director recommends denying the request.

43. Laura Del Murray – Catherine J. Webking, Esq.

Ms. Webking states that the requestor owns land that would be affected because the reservoir would "take" land in use for an active cattle ranch; that it would split one pasture and isolate another from the remainder of the ranch. No information is provided regarding the ranch address or location, therefore the property could not be mapped.

The Executive Director agrees that property interests in land impacted by inundation relates directly to the reservoir, which is within the jurisdiction of the Commission and constitutes a personal justiciable interest for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application. However, the Executive Director cannot recommend granting the request because there is insufficient information to establish the requestor's location relative to the reservoir, therefore recommends that the request be denied.

44. Umhaill Valley, LLC – William O'Malley, president

The requestor owns land that will be inundated by the reservoir.

Program staff could not confirm that the property is located within the reservoir footprint because plat information was included. Survey names and abstract numbers were not provided.

The Executive Director concludes that property interests in land impacted by inundation relates directly to the reservoir, which is within the jurisdiction of the Commission and constitutes a personal justiciable interest for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256 for this application, therefore recommends granting the request.

Property owners – speculative inundation or flooding

45. Clay County Rural Development – Chairman William O'Malley

The requestor owns two properties that would “possibly” be inundated by the reservoir and/ or subject to flooding by the reservoir. Survey and abstract numbers were provided.

The map provided by the program does not confirm that the survey names and abstract numbers are within the reservoir footprint.

The requestor suggests that the name of the reservoir be changed because the proposed name appears to insult the people of Clay County; asks for impact studies on the reservoir and potential flooding; expresses concern about the lack of studies on the impact on endangered species; concern about destruction of historic sites in Clay County, including Native American camp and burial grounds, as well as pioneer settlements, burial grounds, historic stagecoach river crossings and their monuments.

The Executive Director concludes that the requestor’s description of how it would be affected in a manner not common to the general public is based on speculation because land possibly being inundated is different from land which will actually be inundated by the reservoir, and the mere potential for flooding is insufficient to establish affected person status. The requestor’s other identified interests appear to be common to members of the general public. Based on this analysis, the Executive Director concludes that the requestor is not an affected person under 30 Tex. Admin. Code § 55.256 for purposes of this application, therefore recommends denying the request.

46. Luke Halsell

The requestor indicates that he and Sherri Halsell own a tract of land covering 2,680 acres and including approximately 1 ½ miles of river front land on the Little Wichita River, north of the dam of Lake Arrowhead.

The requestor notes that the land gets saturated from time to time due to water backed up from the drainage of the Little Wichita River to the Red River during wet years – which impacts grazing for livestock.

The requestor expresses concern about flooding of the property and reduction in wildlife, hunting and land value. He is also concerned about the possible plan to build a pipeline from the reservoir back to Lake Arrowhead and the impact it would have on ranch operations.

Though the requestor owns land on the Little Wichita River, its location is upstream of the proposed reservoir. The Executive Director concludes that the requestor is not an affected person for purposes of this application and recommends denying the request.

47. Sherri Halsell

The requestor states that she and Luke Halsell own approximately 1 ½ miles of river front land on the Little Wichita River, north of the dam of Lake Arrowhead, and that the land extends over approximately 2,680 acres.

The requestor notes that the land gets saturated from time to time due to water backed up from the drainage of the Little Wichita River to the Red River during wet years – which impacts grazing for livestock.

The requestor expresses concern about flooding of the property and reduction in wildlife, hunting and land value. She is also concerned about the possible plan to

build a pipeline from the reservoir back to Lake Arrowhead and the impact it would have on ranch operations.

Though the requestor owns land on the Little Wichita River, its location is upstream of the proposed reservoir. The Executive Director concludes that the requestor is not an affected person for purposes of this application and recommends denying the request.

No inundation

48. Tim Burch

The requestor states that he has a hunting lease with Umhaill Valley, LLC, which has property in the footprint of the reservoir. The requestor does not express other concerns.

Under 30 Tex. Admin. Code § 55.256(c), a relevant factor to be considered to determine whether a requestor is an affected person includes whether the interest claimed is one protected by the law under which the application is considered. An interest in a hunting lease is not protected by the law under which this application will be considered.

The Executive Director concludes that the request does not identify a personal justiciable interest affected by this application and recommends that the request be denied.

49. John A. Cox

The requestor states that he is a wildlife biologist and owns land in another county. The requestor works with local landowners and assists them by integrating existing farming and ranch operations with wildlife management.

The requestor's concerns include the following: the reservoir's impact on the local ecosystem; destruction of thousands of acres of ranch and farm land; impact on the local economy, particularly the loss of revenue generated from hunting, cattle and farming operations; and lack of environmental impact studies.

Under 30 Tex. Admin. Code § 55.256(c), a relevant factor to be considered to determine whether a requestor is an affected person includes whether the interest claimed is one protected by the law under which the application is considered. An interest in wildlife management for landowners directly impacted is not protected by the law under which this application will be considered because it is too attenuated, as the requestor's expertise can be provided in other business relationships established at other sites.

The Executive Director concludes that the request does not identify a personal justiciable interest affected by this application and recommends that the request be denied.

50. Joshua Don Ferguson

The requestor states that he has a hunting lease with Umhaill Valley, LLC, which has property in the footprint of the reservoir. The requestor expresses concerns about the effect of the reservoir on whooping crane migration and on wildlife in the area.

Under 30 Tex. Admin. Code § 55.256(c), a relevant factor to be considered to determine whether a requestor is an affected person includes whether the interest claimed is one protected by the law under which the application is considered. An interest in a hunting lease is not protected by the law under which this application will

be considered. The other interests identified appear to be common to members of the general public.

The Executive Director concludes that the request does not identify a personal justiciable interest affected by this application and recommends that the request be denied.

51. Haley Greer

The requestor provided a Dallas address but indicates property ownership in the area - approximately 10 miles southwest of the reservoir and approximately 2 miles south of the reservoir - and payment of county and school taxes on the property.

The requestor expresses concerns about whether the reservoir is really needed; the cost of building and maintaining the reservoir; the cost to build and maintain roads and bridges to and around the reservoir; the increase in school and county taxes caused by the loss of land from the tax rolls; the need for increased law enforcement to patrol and to enforce a drug-free zone around the reservoir; and water quality.

The Executive Director concludes that the request does not identify a personal justiciable interest when analyzed under 30 Tex. Admin. Code § 55.256 because it describes interests common to members of the general public and the requestor's closest property is too far from the proposed reservoir to establish a personal justiciable interest for purposes of this application. The Executive Director recommends denying the request.

52. John M. Greer

The requestor provided a Dallas address but indicates property ownership in the area - approximately 10 miles southwest of the reservoir and approximately 2 miles south of the reservoir - and payment of county and school taxes on the property.

The requestor expresses concerns about whether the reservoir is really needed; the cost of building and maintaining the reservoir; the cost to build and maintain roads and bridges to and around the reservoir; the increase in school and county taxes caused by the loss of land from the tax rolls; the need for increased law enforcement to patrol and to enforce a drug-free zone around the reservoir; and water quality.

The Executive Director concludes that the request does not identify a personal justiciable interest when analyzed under 30 Tex. Admin. Code § 55.256 because it describes interests common to members of the general public and the requestor's closest property is too far from the proposed reservoir to establish a personal justiciable interest for purposes of this application. The Executive Director recommends denying the request.

53. Katie Greer

The requestor provided a Dallas address but indicates property ownership in the area - approximately 10 miles southwest of the reservoir and approximately 2 miles south of the reservoir - and payment of county and school taxes on the property.

The requestor expresses concerns about whether the reservoir is really needed; the cost of building and maintaining the reservoir; the cost to build and maintain roads and bridges to and around the reservoir; the increase in school and county taxes caused by the loss of land from the tax rolls; the need for increased law enforcement to patrol and to enforce a drug-free zone around the reservoir; and water quality.

The Executive Director concludes that the request does not identify a personal justiciable interest when analyzed under 30 Tex. Admin. Code § 55.256 because it

describes interests common to members of the general public and the requestor's closest property is too far from the proposed reservoir to establish a personal justiciable interest for purposes of this application. The Executive Director recommends denying the request.

54. Lea Ann Greer

The requestor provided a P.O. Box address but indicates property ownership in the area - approximately 10 miles southwest of the reservoir and approximately 2 miles south of the reservoir - and payment of county and school taxes on the property.

The requestor expresses concerns about whether the reservoir is really needed; the cost of building and maintaining the reservoir; the cost to build and maintain roads and bridges to and around the reservoir; the increase in school and county taxes caused by the loss of land from the tax rolls; the need for increased law enforcement to patrol and to enforce a drug-free zone around the reservoir; and water quality.

The Executive Director concludes that the request does not identify a personal justiciable interest when analyzed under 30 Tex. Admin. Code § 55.256 because it describes interests common to members of the general public and the requestor's closest property is too far from the proposed reservoir to establish a personal justiciable interest for purposes of this application. The Executive Director recommends denying the request.

55. Dr. Thomas David Greer

The requestor provided a P.O. Box address but indicates property ownership in the area - approximately 10 miles southwest of the reservoir and approximately 2 miles south of the reservoir - and payment of county and school taxes on the property. The requestor states that he is the Health Officer for both the City of Henrietta and Clay County.

The requestor expresses concerns about whether the reservoir is really needed; the cost of building and maintaining the reservoir; the cost to build and maintain roads and bridges to and around the reservoir; the increase in school and county taxes caused by the loss of land from the tax rolls; the need for increased law enforcement to patrol and to enforce a drug-free zone around the reservoir; and water quality.

The Executive Director concludes that the request does not identify a personal justiciable interest when analyzed under 30 Tex. Admin. Code § 55.256 because it describes interests common to members of the general public and the requestor's closest property is too far from the proposed reservoir to establish a personal justiciable interest for purposes of this application. The Executive Director recommends denying the request.

56-57. Luther and Darlene Lyde

The requestors state that their home, barn, land, and livelihood would be taken by the proposed reservoir. They question whether the reservoir is needed.

Program mapping did not confirm inundation.

The requestors express concerns that include the following: the reservoir's impact on their land; wildlife and nature; old Indian campgrounds and archaeological artifacts; their land is used for grazing, hunting, fishing, canoeing, and family togetherness; the reservoir will put a strain on law enforcement because there would be more areas to patrol, and on the small volunteer fire department in the area.

The Executive Director concludes that the request does not identify a personal

justiciable interest for purposes of this application when analyzed under 30 Tex. Admin. Code § 55.256 because inundation of the requestors' property was not confirmed by program mapping and the request it describes interests common to members of the general public, therefore the Executive Director recommends denying the request.

58. Mary Ellen Maddox

The requestor states that she owns a home and barn approximately 2 miles from the reservoir. She indicates that she and her husband raise registered Texas longhorns.

Program mapping did not confirm inundation.

The requestor concern include the following: the changes the reservoir may bring to the close-knit community - crime, drugs, and traffic; impact on wildlife; whether the reservoir is needed; the stress she is experiencing related to the reservoir, as she has health issues and is trying to recover. The requestor notes that Wichita Falls is losing population - several retail stores there have closed, as have several restaurants.

The Executive Director concludes that the request does not identify a personal justiciable interest for purposes of this application when analyzed under 30 Tex. Admin. Code § 55.256 because inundation of the requestors' property was not confirmed by program mapping and the request it describes interests common to members of the general public, therefore the Executive Director recommends denying the request.

59. Randi M. Maddox

The requestor states that the requestor owns land that will be inundated.

Program mapping did not confirm inundation.

The requestor expresses concerns that include the following: the destruction of excellent hunting, managed by Texas Parks and Wildlife MLDP program; inundation of historical "Rock Crossing" across the Little Wichita River, which dates back to 1852; the impact on wildlife/ threatened species; and the loss of income and enjoyment for the requestor's family.

The Executive Director concludes that the request does not identify a personal justiciable interest for purposes of this application when analyzed under 30 Tex. Admin. Code § 55.256 because inundation of the requestors' property was not confirmed by program mapping and the request it describes interests common to members of the general public, therefore the Executive Director recommends denying the request.

60. Adeline McDonnell

The requestor provided a P.O. Box address but indicates property ownership in the area - approximately 10 miles southwest of the reservoir and approximately 2 miles south of the reservoir - and payment of county and school taxes on the property.

The requestor expresses concerns about whether the reservoir is really needed; the cost of building and maintaining the reservoir; the cost to build and maintain roads and bridges to and around the reservoir; the increase in school and county taxes caused by the loss of land from the tax rolls; the need for increased law enforcement to patrol and to enforce a drug-free zone around the reservoir; and water quality.

The Executive Director concludes that the request does not identify a personal

justiciable interest when analyzed under 30 Tex. Admin. Code § 55.256 because it describes interests common to members of the general public and the requestor's closest property is too far from the proposed reservoir to establish a personal justiciable interest for purposes of this application. The Executive Director recommends denying the request.

61. Caroline McDonnell

The requestor provided a P.O. Box address but indicates property ownership in the area - approximately 10 miles southwest of the reservoir and approximately 2 miles south of the reservoir - and payment of county and school taxes on the property.

The requestor expresses concerns about whether the reservoir is really needed; the cost of building and maintaining the reservoir; the cost to build and maintain roads and bridges to and around the reservoir; the increase in school and county taxes caused by the loss of land from the tax rolls; the need for increased law enforcement to patrol and to enforce a drug-free zone around the reservoir; and water quality.

The Executive Director concludes that the request does not identify a personal justiciable interest when analyzed under 30 Tex. Admin. Code § 55.256 because it describes interests common to members of the general public and the requestor's closest property is too far from the proposed reservoir to establish a personal justiciable interest for purposes of this application. The Executive Director recommends denying the request.

62. Jan Greer McDonnell

The requestor provided a P.O. Box address but indicates property ownership in the area - approximately 10 miles southwest of the reservoir and approximately 2 miles south of the reservoir - and payment of county and school taxes on the property.

The requestor expresses concerns about whether the reservoir is really needed; the cost of building and maintaining the reservoir; the cost to build and maintain roads and bridges to and around the reservoir; the increase in school and county taxes caused by the loss of land from the tax rolls; the need for increased law enforcement to patrol and to enforce a drug-free zone around the reservoir; and water quality.

The Executive Director concludes that the request does not identify a personal justiciable interest when analyzed under 30 Tex. Admin. Code § 55.256 because it describes interests common to members of the general public and the requestor's closest property is too far from the proposed reservoir to establish a personal justiciable interest for purposes of this application. The Executive Director recommends denying the request.

63. Jimmy Dale Obermier

The requestor states that the requestor owns property that will be flooded by the reservoir, which will be within 500' of the requestor's home.

Program mapping did not confirm inundation.

The requestor's concerns include the following: the inundation of the requestor's land, which is used for agriculture and which will be worthless if the proposed reservoir is constructed; the reservoir's average depth is very shallow and will have tremendous evaporative loss; the reservoir will not be desirable for recreation, fishing, development of homes or tourism. The requestor states that Clay County citizens will have to pay for road maintenance and law enforcement while

losing a significant portion of the county's tax base - in return, the county will get nothing.

The Executive Director concludes that the request does not identify a personal justiciable interest for purposes of this application when analyzed under 30 Tex. Admin. Code § 55.256 because inundation of the requestors' property was not confirmed by program mapping and the request it describes interests common to members of the general public, therefore the Executive Director recommends denying the request.

64. Joe J. Parker, Jr.

The requestor provided a P.O. Box address and indicated that he owns land approximately 20 miles north of the reservoir.

The requestor states that he is in the ranching and farming business in Clay County. The requestor expresses concern about the reservoir's impact on his neighbors; the increase in water rates for him as a customer of the Dean Dale Water SUD and Benvenue Water Company; and the increase in county maintenance and security expenses.

The Executive Director concludes that the requestor's property is located too far from the proposed reservoir to establish affected person status for this application under 30 Tex. Admin. Code § 55.256. The other concerns expressed in the request describe interests common to members of the general public, therefore the Executive Director recommends denying the request.

65. Pamela Maddox Payne

The requestor indicates that the reservoir will affect her, her family, and the family's farm and ranch operation. The requestor states that the reservoir will have an effect on the land, wildlife, and the ecosystem. The requestor expresses concern about Clay County paying for loss of tax roll acres, law enforcement, fire department, loss of grazing, extra highway and county road expenses.

Program mapping shows that the property location is too far from the proposed reservoir for purposes of affected person status under 30 Tex. Admin. Code § 55.256. The other concerns expressed in the request describe interests common to members of the general public, therefore the Executive Director recommends denying the request.

66. Jake Roberson

The requestor states that he has a hunting lease with Umhaill Valley, LLC, which has property in the footprint of the reservoir. The requestor does not express other concerns.

Under 30 Tex. Admin. Code § 55.256(c), a relevant factor to be considered to determine whether a requestor is an affected person includes whether the interest claimed is one protected by the law under which the application is considered. An interest in a hunting lease is not protected by the law under which this application will be considered.

The Executive Director concludes that the request does not identify a personal justiciable interest affected by this application and recommends that the request be denied.

67. Ken Scott

The requestor provided a P.O. Box address and did not provide a physical

location in the area, though he states that he is a property owner and taxpayer in Clay County. The requestor states that he has business endeavors with local hunting and cattle operations that will be affected by the reservoir.

The requestor expresses concerns about the reservoir's negative impact on Clay County taxpayers with the loss of tax base; the continuing cost of road maintenance; the burden on the sheriff's office; and taking thousands of very productive acres out of the hands of production for ranchers, farmers, and hunters to create a shallow mudhole.

Under 30 Tex. Admin. Code § 55.256(c), a relevant factor to be considered to determine whether a requestor is an affected person includes whether the interest claimed is one protected by the law under which the application is considered. An interest in business relationships with local individuals or groups is not protected by the law under which this application will be considered because it is too attenuated, as the requestor can establish other business relationships in other geographic areas.

The Executive Director concludes that the request does not identify a personal justiciable interest affected by this application and recommends that the request be denied.

68. Clint Staley

The requestor states that he has a hunting lease with Kildavnet Castle, LLC, which has property in the footprint of the reservoir. The requestor does not indicate that he owns property in the reservoir footprint.

The requestor expresses concern about the reservoir's inundation of Indian campgrounds and burial grounds.

Under 30 Tex. Admin. Code § 55.256(c), a relevant factor to be considered to determine whether a requestor is an affected person includes whether the interest claimed is one protected by the law under which the application is considered. An interest in a hunting lease is not protected by the law under which this application will be considered.

The Executive Director concludes that the request does not identify a personal justiciable interest affected by this application and recommends that the request be denied.

69. Unidentified landowners – Deborah Clark

Ms. Clark filed two other requests – one with Emry Birdwell, the other on behalf of the Texoma Stewardship Coalition – and files this request on behalf of unknown/unidentified landowners.

The requestor states that the Applicant, in the application filed on February 6, 2020, described a change in plans to re-route a pipeline from the reservoir back to Lake Arrowhead, while the original plan and map showed a pipeline going from the reservoir due west to Wichita Falls. To her knowledge, a map of the proposed re-route has not been made public, therefore those impacted by the re-route may not be aware of it and its potential impact on their property. She requests a contested case hearing on behalf of those landowners.

The request provides contact information for Deborah Clark but the request does not comply with the substantive requirements of 30 Tex. Admin. Code § 55.251 because it does not provide specific names and locations of these unidentified individuals, therefore personal justiciable interests have not been identified as required. Therefore the Executive Director recommends that the request be denied.

70. Kelly Dean Yandell

The requestor requests a “public comment” hearing, which may be interpreted as a request for a contested case hearing, therefore the Executive Director analyzes it as such. The requestor provided a Dallas mailing address and did not provide information about the requestor’s property, other than describing it as not being in the reservoir footprint.

The requestor states that the reservoir will impact the requestor’s ability to access the requestor’s land, which is used for agricultural and recreational purposes.

The requestor’s concern include the following: the reservoir cost; impact of the reservoir on road use, pollution, or crime; economic impact on Clay County when the reservoir would serve only the Applicant; and such use of Clay County if the Applicant’s real goal is to sell water to Tarrant County. Safety, impact on the Red River, and cost impacts are also mentioned.

The Executive Director believes that property located outside of the reservoir footprint, absent additional information, is not negatively impacted for purposes of affected person analysis under 30 Tex. Admin. Code § 55.256. The other concerns expressed in the request describe interests common to members of the general public, therefore the Executive Director concludes that the request does identify a personal justiciable interest for purposes of this application and recommends denying the request.

V. CONCLUSION

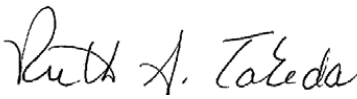
The Executive Director respectfully recommends that the Commission grant 23 hearing requests, refer the application to the State Office of Administrative Hearings for a contested case hearing, and deny all other hearing requests.

Respectfully submitted,

Toby Baker
Executive Director

Erin E. Chancellor, Director
Office of Legal Services

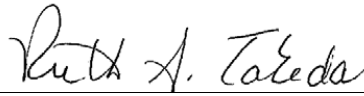
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CERTIFICATE OF SERVICE

I certify that on the 21st day of March 2022, the foregoing *Executive Director's Response to Hearing Requests* was filed electronically with the Chief Clerk of the Texas Commission on Environmental Quality in Austin, Texas, and that a true and correct copy was delivered as indicated to the persons on the attached Mailing List.



Ruth Ann Takeda, Staff Attorney
Environmental Law Division
Texas Commission on Environmental Quality

Mailing List
City of Wichita Falls, Water Use Permit Application No. WRPERM 13404
TCEQ Docket No. 2022-0125-WR

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Emry Birdwell and Deborah Clark
Birdwell and Clark Ranch
P.O. Box 90
Henrietta TX 76365-0090

Deborah Clark
Texoma Stewardship Coalition
P.O. Box 90
Henrietta TX 76365-0090

Deborah Clark
Unidentified landowners
P.O. Box 90
Henrietta TX 76365-0090

Clay County Farm Bureau
Board of Directors
P.O. Box 97
Henrietta TX 76365-0097

Clay County Farm Bureau
Tommy Henderson, Board President
P.O. Box 97
Henrietta TX 76365-0097

Clay County Farm Bureau Board
Scott Cleveland, Board Vice President
P.O. Box 97
Henrietta TX 76365-0097

Shane and Casey Cody
375 N. Lucille Dr.
Henrietta TX 76365-5616

John A. Cox
P.O. Box 464
Nocona TX 76255-0464

Michael Davidson
4905 San Marcus Dr
Mesquite Tx 75150-1021

Frank Douthitt, Esq.
102 S. Fannin St.
Henrietta TX 76365-2713

Frances Essler
13501 FM 172
Henrietta TX 76365-6706

Joshua Don Ferguson
614 W. Gilbert St.
Henrietta TX 76365-2719

Sharon Fitts
402 Kay St.
Henrietta TX 76365-2416

Grayson Gaither
3558 Waldorf Dr.
Dallas TX 75229-3826

Haley Greer
7506 Marquette St.
Dallas TX 75225-4521

John M. Greer
7506 Marquette St.
Dallas TX 75225-4521

Katie Greer
7506 Marquette St.
Dallas TX 75225-4521

Lee Ann Greer
P.O. Box 360
Henrietta TX 76365-0360

Dr. Thomas David Greer
P.O. Box 360
Henrietta TX 76365 -0360

Luke Halsell
9426 FM 2606
Henrietta TX 76365-6401

Sherri Halsell
9426 FM 2606
Henrietta TX 76365-6401

Henrietta Independent School District
Scot Clayton, Superintendent
Betty Ellsworth, Board of Trustees
1801 E. Crafton St.
Henrietta TX 76365-2414

Mark Hill
2404 N. Lucille St.
Henrietta, TX 76365-5619

Edna Mae Klein
1178 Edna Dr.
Henrietta TX 76365-5519

Jennica Lambert
1338 T Bone Rd.
Wichita Falls TX 76310-0491

Darlene Lyde
18255 FM 2332
Henrietta TX 76365-5305

Mary Ellen Maddox
18758 FM 2332
Henrietta TX 76365-5303

Randi M. Maddox
18758 FM 2332
Henrietta TX 76365-5303

Adeline McDonnell
P.O. Box 547
Henrietta TX 76365-0547

Caroline McDonnell
P.O. Box 547
Henrietta TX 76365-0547

Jan Greer McDonnell
P.O. Box 547
Henrietta TX 76365-0547

Carol Staley Morrow, Executor
Staley Family Trust and Melva Jo Staley
Estate
311 9th St.
Nocona TX 76255-2908

National Wildlife Federation
Danielle Goshen, Water Policy and
Outreach Specialist
Michael Choate, Director of Texas Water
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505 E. Huntland Dr. No. 485
Austin TX 78752-3717

Patricia E. Reynosa Nava
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Dallas TX 75201-4923

Jason Obermier
12655 State Highway 148 N.
Henrietta TX 76365-5556

Jimmy Dale Obermier
12107 State Highway 148 N.
Henrietta TX 76365-5560

William O'Malley, Chairman
Clay County Rural Development
P.O. Box 114
Henrietta TX 76365-0114

William O'Malley, Agent
Kildavnet Castle, LLC
P.O. Box 114
Henrietta TX 76365-0114

William O'Malley, President
Umhaill Valley, LLC
P.O. Box 114
Henrietta TX 76365-0114

Joe J. Parker, Jr.
P.O. Box 245
Byers TX 76357-0245

Pamela Maddox Payne
2328 Jim Maddox Rd.
Henrietta TX 76365-5314

Quail Coalition
James (Jay) Dell Stine, III, Executive
Director
2410 County Road 394
Princeton TX 75407-4204

Jake Roberson
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Henrietta TX 76365-3012

Taiwan Treymane Savage, Jr.
1500 Jackson St. Apt. 611
Dallas TX 75201-4923

Ken Scott
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Bowie TX 76230-1592

Johnnie Shaw
1378 FM 1197
Henrietta TX 76365-5503

James Skinner, Esq.
P.O. Box 2540
San Angelo TX 76902-2540

Clint Staley
1509 New Castle Rd.
Southlake TX 76092-4227

Joe Staley, Phil Staley, and Gil Staley
Staley Two Rivers Ranch
303 Park Rd.
Nocona TX 76255-3626

Daniel W. Stansbury, Jr.
Lively Ranch, Ltd.
25 Highland Park Vlg., Ste. 100-364
Dallas TX 75205-2789

Texas and Southwestern Cattle Raisers
Association
Robert E. McKnight, Jr., President
1005 Congress Ave., Ste. 1050
Austin TX 78701-2463

Texas Wildlife Association
Richard David Yeates, Chief Executive
Officer
3660 Thousand Oaks Dr., Ste. 126
San Antonio TX 78247-3123

Catherine Webking, Esq.
303 Colorado St., Ste. 2400
Austin TX 78701-4653


William (Chris) Wellborn
Wellborn Ranch Ltd.
1410 Eagle Bend Dr.
Southlake TX 76092-9426

Kelly Dean Yandell
4413 Wildwood Rd.
Dallas TX 75209-2801

Attachment A

City of Wichita Falls

 **Application No. 13404**

 Requestors with a water right

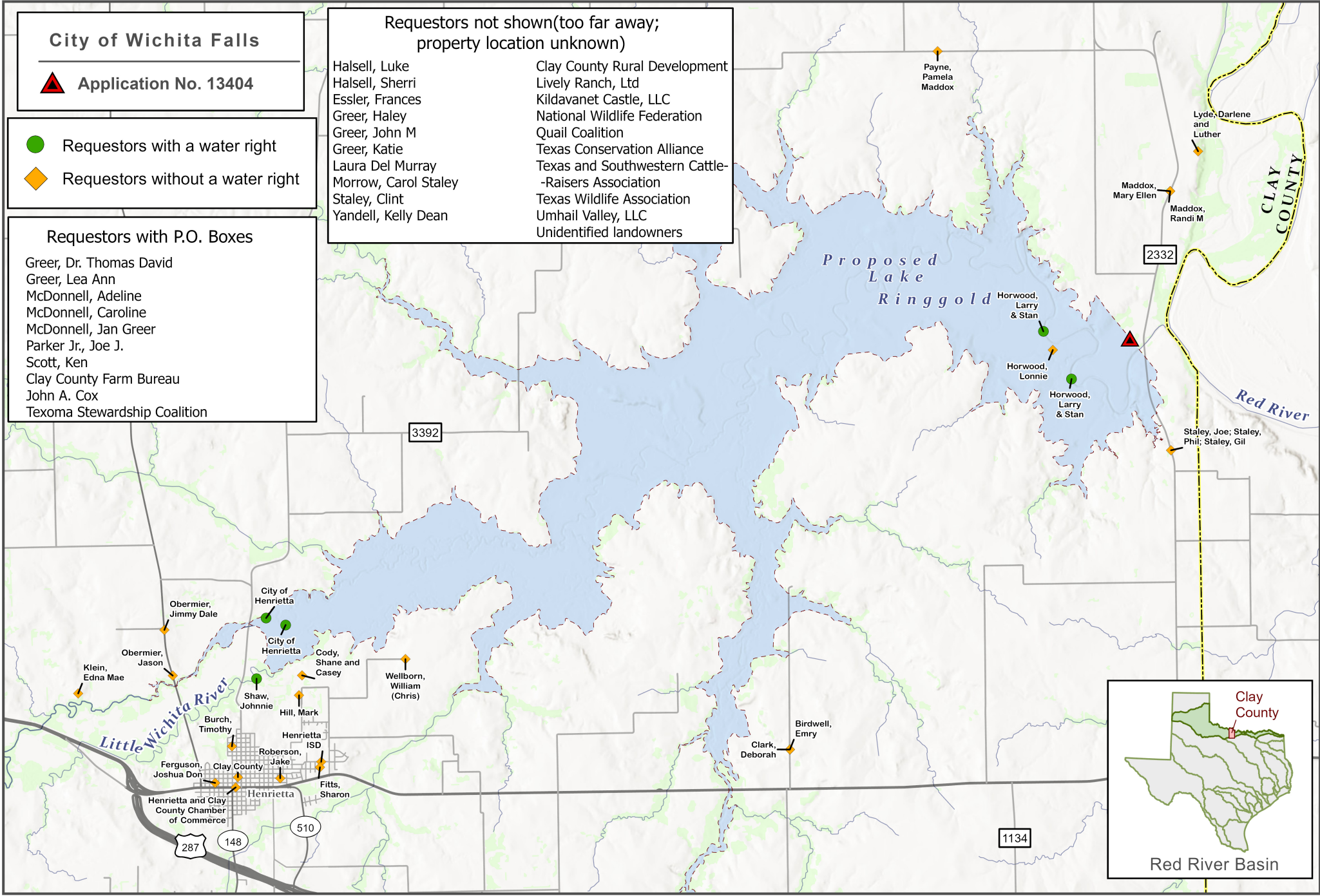
 Requestors without a water right

Requestors with P.O. Boxes

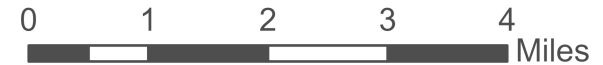
- Greer, Dr. Thomas David
- Greer, Lea Ann
- McDonnell, Adeline
- McDonnell, Caroline
- McDonnell, Jan Greer
- Parker Jr., Joe J.
- Scott, Ken
- Clay County Farm Bureau
- John A. Cox
- Texoma Stewardship Coalition

**Requestors not shown (too far away;
property location unknown)**

- | | |
|----------------------|--------------------------------|
| Halsell, Luke | Clay County Rural Development |
| Halsell, Sherri | Lively Ranch, Ltd |
| Essler, Frances | Kildavanet Castle, LLC |
| Greer, Haley | National Wildlife Federation |
| Greer, John M | Quail Coalition |
| Greer, Katie | Texas Conservation Alliance |
| Laura Del Murray | Texas and Southwestern Cattle- |
| Morrow, Carol Staley | -Raisers Association |
| Staley, Clint | Texas Wildlife Association |
| Yandell, Kelly Dean | Umhail Valley, LLC |
| | Unidentified landowners |



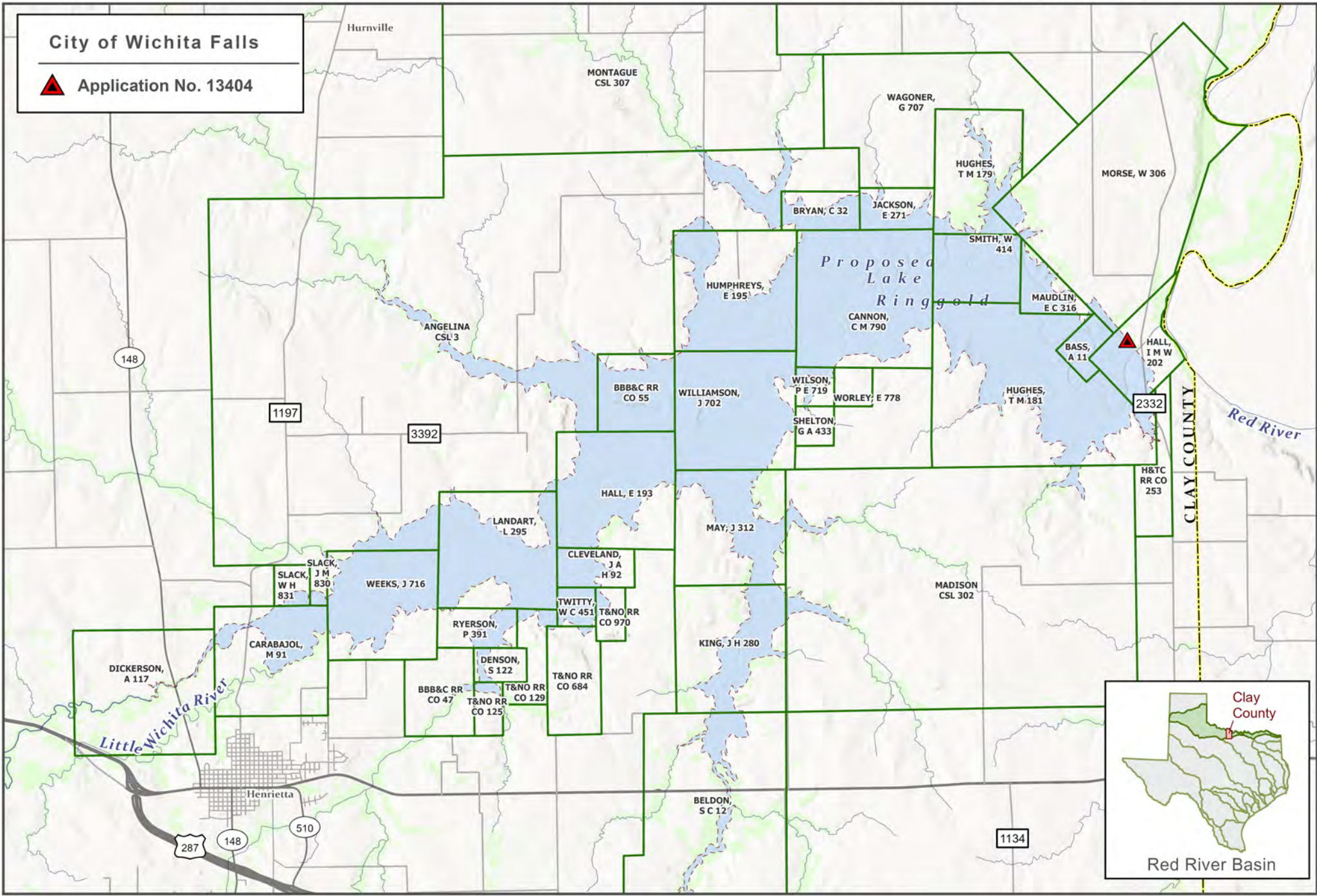
This map was generated by the Water Availability Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Water Availability Division at (512)239-4600.



Attachment B

City of Wichita Falls

▲ Application No. 13404



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