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March 30, 2022

Office of the Chief Clerk
MC 105, TCEQ
P.O. Box 13087
Austin, TX 78711-3087

Re: Docket No. 2022-0125-WR – Application No. 13404 by the City of Wichita Falls for Construction of Lake Ringgold, a Proposed Reservoir to be in Clay County, Texas,

Dear Ladies/Gentlemen:

This letter is in response to the recent filings by the City of Wichita Falls and the TCEQ Executive Director recommending that Clay County's request to be a party to the contested hearing for this case be denied. Clay County also requests that this document be a part of the record the record for the hearing scheduled for Wednesday, April 13, 2022, I represent Clay County, Texas. We oppose the construction of the proposed "Lake Ringgold."

The City of Wichita Falls has filed a document entitled "RESPONSE TO REQUESTS FOR CONTESTED CASE HEARING" wherein it objects to every request for a contested hearing.

The City's Cited Reasons for Recommending Denial of Clay County's Request to Be Heard at the Contested Hearing.

The County failed to establish authority over issues contemplated by the Application and raised concerns that are not related to interests protected under the law (sic- "that") the Application is being considered. Therefore, the County cannot be considered an affected person under the applicable TCEQ rules.

The TCEQ Executive Director's Reasons for Recommending Denial of Clay County's Request to Be Heard at the Contested Hearing.

The TCEQ Executive Director's Response to Hearing Requests for the April 13, 2022, recommends denial of several requests of a contested hearing, including the request of Clay 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.

The TCEQ Office of Public Interest Counsel's Reasons for Recommending that Clay County's Request be Granted.

The TCEQ Office of Public Interest Counsel's Response to Hearing Requests recommends that the request by Clay County be granted. Public Interest Counsel says:

The County's request raises concerns that proposed Lake Ringgold will deplete the county tax base, burden law enforcement services, require additional road maintenance, negatively impact wildlife, threaten endangered species and cultural resources, and flood upstream areas, including county roads.

Clay County's Reasons it is a Proper Party to the Hearing

Clay County is a governmental entity that would be affected under 30 TAC § 55.256(b) and (c)(6). The county is presumably responsible for public safety, maintenance of roads and bridges, providing emergency services, and protecting wildlife within its jurisdiction. Ultimately, the proposed reservoir could impact county property, services, and wildlife.

Clay County adopts as a part of this request to be included as a party to the expected contested hearing the reasoning, conclusions, and recommendation of the Public Interest Counsel.

Texas Administrative Code 30 Section 55.256 - Determination of Affected Person

Section 55.256, Texas Administrative Code, Determination of Affected Person provides the all relevant factors shall be considered, including . . . subsection (c)(6) that for governmental entities, their statutory authority over or interest in the issues relevant to the application.

This Code Section provides in relevant part, the following:

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) Except as provided by § 55.103 of this title (relating to Definitions), governmental entities, governmental entities, including local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons.
- (c) All relevant factors shall be considered, including, but not limited to, the following:

- (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. [Emphasis supplied]

30 Tex. Admin. Code § 55.103 provides in relevant part, the following: “Affected person – A person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.

The Clay County Governing Body, the Commissioners’ Court, has the several powers and duties that are affected by the application. Clay County has statutory authority over the following that are relevant to this application thus entitling it to participate in the contested hearing, for example:

1. It adopts the county’s budget and tax rate.
2. It approves all budgeted purchases of the county.
3. It sets all salaries and benefits
4. It has exclusive authority to authorize contracts
5. It provides and maintains all county buildings and facilities.
6. It establishes and maintains all county roads and bridges.
7. It provides for the health and safety of its citizens and other within the county by providing Its hospital facility and related facilities like an ambulance and EMS.

Comment: All the above responsibilities will be impacted by the loss of tax revenue and the increased burden of road ad bridge maintenance and increased law enforcement expenses.

8. Clay County may adopt and enforce subdivision regulations. [See Local Government Code, §232.001 et seq. & §242.001.

Comment: The expected construction around the proposed lake will require subdivision regulations. Hopefully Wichita Falls will not try to operate the subdivisions as they did at Lake Arrowhead. That is a disaster.

9. Clay County may make recommendations to TCEQ and may bring enforcement actions

under clean air act. [See Texas Health & Safety Code, §382.111 et seq]

Comment: This indicates that TCEQ has an interest in county input. Obviously that includes Clay County,. That input should occur before problem issues arise that will be created by the proposed lake.

10. Clay County may adopt standards for on-site sewage disposal (septic tanks). [See Texas Health & Safety Code, §366.001 et seq]

Comment: If construction occurs at the propose lake, the application of the standards by the County will impact the County's expense of approval and supervision of on-site sewage disposal.

11. Clay County may provide county funding of public health and sanitation. [See Texas Health & Safety Code §122.001]

Comment: The activity during construction and at the lake after construction will impact the County's expense of funding of public health and sanitation. The personnel during construction and population after construction will presumably be an increase in the individuals subject to services to be provided by Clay County. This will create an additional burden in health and safety, providing infrastructure, and law enforcement..

12. Clay County may regulate litter under Texas Litter Abatement Act. [See Chapter 365 Texas Health & Safety Code]

Comment: The litter impact will be burdensome to the county both during construction and after the lake after construction.

Each of those duties are impacted by the available taxable property in the county which will be substantially impacted by the removal of thousands of acres of productive land. The county will have to establish and maintain addition roads and bridges as a result of the construction of this lake. It will have to increase law enforcement personnel and equipment because of the construction of this lake.

Clay County operates a County Hospital and EMS personnel and equipment. Undoubtedly the additional work crews during construction of the lake and the additional people accessing the lake after construction will impose significant additional expense on the county for health and safety.

The Commission should be aware that claims that issues also affect the "general public" differs when the contestant is the governing body for the general public, because it must provide the funding to provide services for the general public.

Additional Statutes For the Commission’s Consideration

Section 11.124 (f), Texas Water Code states: “If the application is for a permit to construct a storage reservoir, the application must also contain evidence that the applicant has mailed 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.” Surely that means that the Legislature expects the governing body in Clay County to have a say in this proposed reservoir permitting and construction.

HB 3735 added subsection (b-1) in Section 11.134 of the Texas Water Code inapplicable to this permit request because of its effective date, still demonstrates that the Legislature intended that the proposed reservoir “is not detrimental to the public welfare.” The concerns Clay County raised in its hearing request, such as tax base impacts, are relevant for this application and certainly are not common to the general public. Furthermore, concerns about impacts to fish and wildlife resources are a relevant concern and within TCEQ’s jurisdiction. The impacts raised by Clay County are not common to the general public because they affect the County’s tax base.

Lake Ringgold Proposed Dam is a High Hazard Dam

A rancher in Clay County recently employed engineers to study the location of the proposed dam for this proposed lake. That study suggests that the dam is vulnerable to backwater damage from Red River at flood stage, perhaps significant enough to cause it to fail in the event of a very high flood stage on Red River. At the closest point it appears that there is perhaps less than 3,000 feet from the southeast toe of the dam to the south bank of Red River. [See Wichita Falls 2013 Feasibility Study Map at Page 27]. Red River, at the Terral Bridge in 1941, 1951, 1954, 1955, 1956, 1957, 1960, 1965, 1972, 1975, 1981, twice in 1985, 1989, 1990, twice in 1991, 1993, 1998, 2007, 2015, and 2016 gage height exceeded 20 feet. It exceeded 30 feet in 1983, 1987, and 1995. A failure of that dam would pose a threat to the health and safety of our folks and huge expense to the County to deal with the havoc of such a disaster. It would also seriously damage roads and bridges.

The City’s 2013 Lake Ringgold Feasibility Study points out that the proposed dam would be located on the Little Wichita River, approximately 0.5 miles upstream of its confluence with the Red River [See Feasibility Study page ES-1. That study points out that “there may be some backwater from the Red River on the downstream toe of the dam during high flow events, but this can be addressed through added protections along this area.” [See Feasibility Study Page 46] [Emphasis supplied]

The Lake Ringgold Dam will be classified as a high hazard dam. As a large size, high hazard dam, Lake Ringgold Dam will be required to pass 100 percent of the critical PMF with suitable freeboard based on wind – wave calculations, which are discussed in Section 2.7. [See Appendix B Conceptual Dam Design Technical Memorandum Page 13] [Emphasis supplied]

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Conclusion

Clay County and its Commissioners' Court request that for all of the foregoing reasons it be included as a party contestant at the hearing to be conducted on April; 13, 2022, concerning Application No. 13404 by the City of Wichita Falls for Lake Ringgold (located in Clay County) Water Use Permit 13404.

Certificate of Service

The undersigned lawyer certifies that this document was served on the persons and entities listed on the attached service list by hand delivery, by United States Postal Service ("USPS"), or electronic mail on the same date as the dat of this document.

Respectfully Submitted,



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