

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Kelly Keel, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 1, 2023

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. 2023-0617-WR**; Regarding Application No. 5921 by the City of Lubbock to Obtain a Water Use Permit in Lubbock and Lynn Counties, Texas.

Dear Ms. Gharis:

Enclosed for filing are the following backup materials for the **September 27, 2023 agenda** on the above-referenced matter:

1. Draft permit/ technical information from the Water Availability Division:
 - a. Executive Summary;
 - b. Draft permit;
 - c. Technical memoranda;
 - d. Notice of the application;
 - e. Map.
2. Executive Director's Response to Hearing Requests.

Please let us know if you have any questions. I can be reached at 512-239-6635 or ruth.takeda@tceq.texas.gov. My co-counsel, Harrison (Cole) Malley can be reached at 512-239-1439 or harrison.malley@tceq.texas.gov. Thank you.

Sincerely,

A handwritten signature in cursive script, reading "Ruth A. Takeda".

Ruth Takeda, Staff Attorney
TCEQ Office of Legal Services/ Environmental Law Division

A handwritten signature in cursive script, reading "Harrison Cole Malley".

Harrison Cole Malley, Staff Attorney
TCEQ Office of Legal Services/ Environmental Law Division

Attachment 1

TCEQ Interoffice Memorandum

To: Mehgan Taack
Office of the Chief Clerk

From: Chris Kozlowski, Team Leader
Water Rights Permitting Team
Water Rights Permitting & Availability Section

Date: May 11, 2023

Subject: **Items to be Scheduled for Commissioners' Agenda
City of Lubbock**
Docket No. 2023-0617-WR
WRPERM 5921

The Executive Director respectfully requests that the above-referenced item be scheduled for Commissioners' Agenda. Permit information is attached for your convenience. This is a contested Water Use Permit Application Matter.

The Executive Director received an application from City of Lubbock seeking a Water Use Permit pursuant to Texas Water Code §§ 11.121, 11.042 and Texas Commission on Environmental Quality Rules Title 30 Texas Administrative Code (TAC) §§ 295.1, *et seq.*

The application and partial fees were received on October 17, 2005. Additional information and fees were received on January 31, March 24, April 13, and April 14, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 17, 2006. Notice was published and mailed to the water right holders of record in the Brazos River Basin pursuant to Title 30 TAC § 295.151. Multiple parties requested a contested case hearing during the hearing request period, which closed on August 28, 2006. The application was subsequently amended on March 5 and July 28, 2008. Additional information was received on July 28 and October 14, 2008, June 1 and September 28, 2011, July 21, 2015, July 18, August 15 and August 16, 2016, February 3, July 5, and July 13, 2018, April 30, May 12, and December 2, 2020, February 2 and October 20, 2021.

The application is now technically complete, and staff has recommended that the application be granted based on the analysis in the technical review memos.

The Applicant's current contact information is below:

City of Lubbock
P.O. Box 2000
Lubbock, Texas 79457

The caption for this matter is below and has been uploaded into the eAgenda system.

TCEQ Docket No. 2023-0617-WR. Consideration of Application No. 5921 filed by the City of Lubbock, seeking authorization to construct and maintain a dam and reservoir (Jim Bertram Lake 7) with a capacity of 20,708 acre-feet of water on the North Fork Double Mountain Fork Brazos River, Brazos River Basin, in Lubbock County. The application also seeks authorization to divert and use up to 50,000 acre-feet of water per year from the perimeter of the reservoir, at a diversion rate of 138.12 cubic feet per second (62,016 gallons per minute), for municipal, industrial, and agricultural purposes in Lubbock and Lynn Counties. The application also seeks authorization to use the bed and banks of the North Fork Double Mountain Fork Brazos River to convey up to 14,856 acre-feet of water per year discharged from the South Central Lubbock Drainage System; up to 8,934 acre-feet of water per year discharged from the South Lubbock Drainage System; and up to 16,240 acre-feet of surface water and groundwater- based return flows per year discharged from the Southeast Water Reclamation Plant as authorized under TPDES Permit No. WQ00010353002. Water conveyed via the bed and banks of the North Fork Double Mountain Fork Brazos River will support storage in and diversions from the Jim Bertram Lake 7. The application also seeks authorization to use water authorized under Water Use Permit Nos. 3985 and 3705, as amended, to support the application. The Commission will consider all timely filed hearing requests and related responses and replies. (Ruth Takeda, Sarah Henderson)

Please do not hesitate to call me at (512) 239-2535 if you have any questions regarding this matter.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



WATER USE PERMIT

PERMIT NO. 5921

TYPE: §§ 11.121, 11.042

Permittee: City of Lubbock

Address: P.O. Box 2000
Lubbock, Texas 79457

Filed: April 17, 2006

Granted:

Purposes: Municipal, Industrial,
Agricultural

Counties: Lubbock and Lynn

Watercourse: North Fork Double Mountain
Fork Brazos River

Watershed: Brazos River Basin

WHEREAS, the City of Lubbock (City) seeks a Water Use Permit to construct and maintain a 20,708 acre-foot capacity reservoir (Jim Bertram Lake 7) on the North Fork Double Mountain Fork Brazos River, Brazos River Basin with the centerline of the dam being at Latitude 33.534012° N, Longitude 101.730515° W in Lubbock County; and

WHEREAS, the City also seeks to divert and use not to exceed 50,000 acre-feet of water per year from anywhere along the perimeter of the aforementioned reservoir, at a maximum diversion rate of 138.12 cfs (62,016 gpm), for municipal, industrial, and agricultural purposes within the City's service area in Lubbock and Lynn counties, Brazos River Basin; and

WHEREAS, the City further seeks to authorize the use of the bed and banks of the North Fork Double Mountain Fork Brazos River, Brazos River Basin to convey up to 14,856 acre-feet of water per year discharged from the South Central Lubbock Drainage System, up to 8,934 acre-feet of water per year discharged from the South Lubbock Drainage System, and up to 16,240 acre-feet of surface water- and groundwater-based return flows per year from the Southeast Water Reclamation Plant, authorized under TPDES Permit No. WQ00010353002, to Jim Bertram Lake 7 to support storage in and diversions from the reservoir; and

WHEREAS, water from the South Central Lubbock Drainage System and the South Lubbock Drainage System originates from stormwater collected in playa lakes and subsequently discharged to the North Fork Double Mountain Fork Brazos River; and

WHEREAS, the City will also use other water sources available to it in the North Fork Double Mountain Fork Brazos River, that are authorized under Water Permit Nos. 3985, as amended, and 3705, as amended, to support storage in and diversions from the reservoir; and

WHEREAS, water and return flows will be discharged at the following three points located on the North Fork Double Mountain Fork Brazos River, Brazos River Basin, Lubbock County.

- a. Discharge Point No. 1 (South Central Lubbock Drainage System) being at Latitude 33.55965° N, Longitude 101.79652° W at a maximum rate of 185 cfs;
- b. Discharge Point No. 2 (South Lubbock Drainage System) being at Latitude 33.53363° N, Longitude 101.77879° W at a maximum rate of 75 cfs;
- c. Discharge Point No. 3 (Southeast Water Reclamation Plant, TPDES Permit No. WQ00010353002) being at Latitude 33.56273° N, Longitude 101.79935° W at a maximum rate of 22.47 cfs; and

WHEREAS, the City maintains an agreement with the Brazos River Authority (BRA) in which the City will pass inflows of state water through Jim Bertram Lake 7 when the water surface elevation of Possum Kingdom Lake is below 1,000 feet msl and inflows exceed 5 cfs; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the City has provided, and the Executive Director has approved, the *City of Lubbock Accounting Plan for Permit 12-5921 Lake 7*; and

WHEREAS, the Executive Director recommends special conditions be included in the permit; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this permit;

NOW, THEREFORE, this permit, designated as Water Use Permit No. 5921, is issued to the City of Lubbock subject to the following terms and conditions:

1. IMPOUNDMENT

Permittee is authorized to construct and maintain a 20,708 acre-foot capacity reservoir (Jim Bertram Lake 7) on the North Fork Double Mountain Fork Brazos River, Brazos River Basin with the centerline of the dam being at Latitude 33.534012° N, Longitude 101.730515° W in Lubbock County.

2. USE

- A. Permittee is authorized to divert and use not to exceed 50,000 acre-feet of water per year from Jim Bertram Lake 7 for municipal, industrial, and agricultural purposes within the City's service area in Lubbock and Lynn counties.
- B. Permittee is authorized to use the bed and banks of the North Fork Double Mountain Fork Brazos River to convey up to 14,856 acre-feet of water per year discharged from the South Central Lubbock Drainage System, up to 8,934 acre-feet of water per year discharged from the South Lubbock Drainage System, and up to 16,240 acre-feet of surface water- and groundwater-based return flows per year from the Southeast Water Reclamation Plant, authorized under TPDES Permit No. WQ00010353002, to Jim Bertram Lake 7 to support storage in and diversions from the reservoir.

- C. Permittee is authorized to use water authorized under Water Permit Nos. 3985, as amended and 3705, as amended to support storage in and diversions from the reservoir.

3. DISCHARGE

Water will be discharged to the North Fork Double Mountain Fork Brazos River, in Lubbock County as follows:

- A. Discharge Point No. 1 (South Central Lubbock Drainage System) - being at Latitude 33.55965° N, Longitude 101.79652° W at a maximum rate of 185 cfs.
- B. Discharge Point No. 2 (South Lubbock Drainage System) - being at Latitude 33.53363° N, Longitude 101.77879° W at a maximum rate of 75 cfs.
- C. Discharge Point No. 3 (Southeast Water Reclamation Plant, TPDES Permit No. WQ00010353002) being at Latitude 33.56273° N, Longitude 101.79935° W at a maximum rate of 22.47 cfs.

4. DIVERSION

Permittee is authorized to divert:

- A. 50,000 acre-feet of water per year from anywhere along the perimeter of Jim Bertram Lake 7.
- B. at a maximum diversion rate of 138.12 cfs (62,016 gpm).

5. TIME PRIORITY

- A. The time priority for this right is April 17, 2006.
- B. Water discharged from the South Central Lubbock Drainage System, the South Lubbock Drainage System, and return flows discharged from the Southeast Water Reclamation Plant and authorized to be conveyed via the bed and banks of a State watercourse in this permit does not have a priority date and is not subject to priority calls from senior water rights.

6. CONSERVATION

Permittee shall 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, and prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every water supply contract entered into on or after the effective date of this permit, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures.

7. SPECIAL CONDITIONS

- A. Permittee shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall include, but shall not be limited to, the installation of screens at any new diversion structures.
- B. For purposes of applying the environmental flow requirements in Paragraphs 7.D. – 7.J. of this permit, the measurement point shall be the dam at Jim Bertram Lake 7 and streamflows shall be measured and determined by the *City of Lubbock Accounting Plan for Permit 12-5921 Lake 7*.
- C. Notwithstanding the requirements set out in Paragraphs 7.D. – 7.J. of this permit, if Permittee has stored water in accordance with the terms and conditions of this permit at the time the water was stored, Permittee may divert and use that stored water, even if any environmental flow requirements are not met at the time of the subsequent diversion and use of that stored water.
- D. Impoundment and diversion of state water under this permit shall be restricted based on the following streamflows at Permittee's measurement point, as set forth in Paragraphs 7.E. – 7.J. below.

Season	Subsistence	Dry Condition Seasonal Pulse	Average Condition Seasonal Pulse	Wet Condition Seasonal Pulse
Winter	1 cfs	N/A	N/A	N/A
Spring	1 cfs	1 per season Trigger: 43 cfs Volume: 157 af Duration: 8 days	2 per season Trigger: 43 cfs Volume: 157 af Duration: 8 days	1 per season Trigger: 88 cfs Volume: 335 af Duration: 10 days
Summer	1 cfs	1 per season Trigger: 36 cfs Volume: 119 af Duration: 7 days	2 per season Trigger: 36 cfs Volume: 119 af Duration: 7 days	1 per season Trigger: 74 cfs Volume: 278 af Duration: 10 days

cfs = cubic feet per second

af = acre-feet

N/A = not applicable

- E. Seasons are defined as follows: Winter (November through February), Spring (March through June), and Summer (July through October).
- F. Permittee shall determine the hydrologic condition once per season. The Palmer Hydrologic Drought Index (PHDI) value present on the last day of the month of the preceding season, as reported by the National Weather Service, shall be used to

determine the hydrologic condition for the following season as set out in Paragraphs F.i. – F.iii. below:

- i. Permittee shall determine the PHDI Index for a season based on the following formula:

$$(0.027 \times \text{High Plains PHDI}) + (0.647 \times \text{Low Rolling Plains PHDI}) + (0.326 \times \text{North Central PHDI})$$

- ii. The PHDI Index and corresponding hydrologic conditions that govern diversions under this permit are:

Dry	Average	Wet
Less than -1.78	-1.78 – 2.18	Greater than 2.18

- iii. Permittee may utilize an interim PHDI value to determine the hydrologic condition until the value preceding the start of the season is published in accordance with the procedure described in *City of Lubbock Accounting Plan for Permit 12-5921 Lake 7*.

Subsistence Flow

- G. Permittee shall not impound or divert water if the average streamflow at Permittee's measurement point is less than or equal to the applicable subsistence flow in Paragraph 7.D. The "average streamflow" at the measurement point is the average of measured streamflows for the previous 24 hours.

High Flow Pulse

- H. If a pulse flow event required under Paragraph 7.D. is determined to have been triggered based on average streamflows at Permittee's measurement point then, until either the applicable volume amount has passed or the applicable duration time has passed since the high flow pulse was triggered, Permittee shall not impound or divert state water except during times that average streamflow exceeds the applicable pulse flow trigger level. Diversions during such times shall not exceed the rate that would reduce average streamflow to the applicable pulse flow trigger level; provided, however, Permittee is not required to adjust its diversion rate during the pulse event more frequently than once every 24 hours.
- I. Each season is independent of the preceding and subsequent seasons with respect to high flow pulse frequency and the applicable high flow pulse is dependent on the applicable hydrologic condition.
- J. If a qualifying pulse flow event occurs at Permittee's measurement point within a given season, the pulse event shall satisfy a pulse requirement for that season. A qualifying event occurs if the event is determined to have been triggered based on average streamflow and either the pulse flow volume or duration requirement is met.
- K. Impoundment and diversion of return flows and other discharged water as authorized by this permit is dependent upon potentially interruptible return flows and discharges and is conditioned on the availability of those discharges. The right to divert return flows discharged from the Southeast Water Reclamation Plant and the water discharged from the South Central Lubbock Drainage System and the South Lubbock Drainage System is subject to revocation if all discharges become

permanently unavailable for impoundment and diversion and may be subject to reduction if the return flows discharged from the Southeast Water Reclamation Plant and the water discharged from the City's South Central Lubbock Drainage System and the South Lubbock Drainage System are not available in quantities and qualities sufficient to fully support the permit authorizations. Should any of the discharges become permanently unavailable for impoundment and diversion, Permittee shall immediately cease impoundment and diversion of return flows and other discharged water under this permit and either apply to amend the permit, or voluntarily forfeit the authorization to impound and divert return flows and other discharged water. If Permittee does not amend or forfeit the authorization, the Commission may begin proceedings to cancel these authorizations in the permit.

- L. Permittee shall only impound or divert daily return flows and any water discharged from the City's South Central Lubbock Drainage System and the South Lubbock Drainage System that is actually discharged.
- M. Prior to diversion and impoundment of return flows in excess of the amount currently authorized by TPDES Permit No. WQ00010353002, described in Paragraph 2. USE and Paragraph 3. DISCHARGE, Permittee shall apply for and be granted the right to reuse those return flows. Permittee shall amend the accounting plan to include future discharges of return flows prior to diverting said return flows.
- N. Prior to diversion of any additional water discharged from the City's South Central Lubbock Drainage System and the South Lubbock Drainage System in excess of the maximum annual discharge volume described in Paragraph 2. USE and Paragraph 3. DISCHARGE, Permittee shall apply for and be granted the right to use the discharged water. Permittee shall amend the accounting plan to include additional discharges from the City's South Central Lubbock Drainage System and the South Lubbock Drainage System prior to diverting said additional discharges.
- O. Permittee shall only impound or divert water authorized under this permit pursuant to Paragraph 2. USE and Paragraph 4. DIVERSION in accordance with the most recently approved *City of Lubbock Accounting Plan for Permit 12-5921 Lake 7*. Permittee shall maintain the plan in electronic format and make it available upon request. Any modifications to the accounting plan shall be approved by the Executive Director. Any modification to the accounting plan that changes the permit terms must be in the form of an amendment to the permit. Should Permittee fail to maintain the accounting plan or notify the Executive Director of any modifications to the plan, Permittee shall immediately cease diversion and impoundment of water authorized in this permit, and either apply to amend the permit, or voluntarily forfeit the permit. If Permittee fails to amend the accounting plan or forfeit the permit, the Commission may begin proceedings to cancel the permit. Permittee shall immediately notify the Executive Director upon modification of the accounting plan and provide copies of the appropriate documents effectuating such changes.
- P. Any required mitigation plan for Jim Bertram Lake 7 shall comply with requirements set forth in 33 United States Code §1341, commonly known as the federal Clean Water Act (CWA), §401 and 30 Texas Administrative Code Chapter 279. The mitigation plan shall also comply with the requirements in §404 of the CWA as implemented through any approved U.S. Army Corps of Engineers permit for Jim Bertram Lake 7. Impoundment and diversions of water under this permit are contingent upon the initiation and completion of implementation of any U.S. Army Corps of Engineers approved mitigation plan.

- Q. Permittee shall install and maintain a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the point(s) authorized above in Paragraph 4. DIVERSION.
- R. Permittee shall allow representatives of the Texas Commission on Environmental Quality reasonable access to the property to inspect the measuring device and records.
- S. Consistent with and subject to the conditions stated in Texas Water Code §11.147(e-1), the commission may adjust the environmental flow conditions in this permit to provide for the protection of instream flows or freshwater inflows to the bay and estuary, if the commission determines, through an expedited public review process, that such adjustment is appropriate to achieve compliance with applicable environmental flow standards adopted pursuant to Texas Water Code §11.1471. Any adjustment shall be made in accordance with the provisions of Texas Water Code §11.147(e-1).

8. TIME LIMITATIONS

- A. Construction of the proposed dam for Jim Bertram Lake 7 shall be in accordance with plans approved by the Executive Director. Construction of the dam without final approval of the construction plans is a violation of this authorization.
- B. Construction shall begin within two years of issuance of this permit and be completed within five years of issuance of the permit unless Permittee applies for and is subsequently granted an extension of time before the expiration of these time limitations.

The diversion and impoundment of unappropriated state water authorized in this permit is subject to all superior and senior water rights in the Brazos River Basin.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this permit are denied.

This permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

For the Commission

ISSUED:

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Iliana Delgado, Project Manager
Water Rights Permitting Team
Water Supply Division

Date: October 26, 2005

Thru: Bill Billingsley, Team Leader
Resource Protection Team
Water Supply Division

From: Kristin Wang, Senior Water Conservation Specialist
Resource Protection Team
Water Supply Division

Subject: City of Lubbock
WRPERM5921
CN600130736
Review of Water Conservation and Drought Contingency Plan for Administrative Sufficiency

BP 10/26/05

KW 10/26/05

The City of Lubbock, applicant, seeks a water use permit for authorization to construct two dams and reservoirs on the North Fork Double Mountain Fork Brazos River, tributary of the Brazos River, Brazos River Basin, one with a capacity of 20,708 acre-feet and surface area of 801 acres and the other with a capacity of 49,930 acre-feet and surface area of 1,680 acres in Lubbock County.

The applicant also seeks to divert and use not to exceed 50,000 acre-feet of water per year from the perimeter of either reservoir at a maximum diversion rate of 51.76 cfs (23,230 gpm) for municipal, industrial, and agricultural purposes in Lubbock and Lynn Counties.

The applicant further seeks to return flows to the tributaries of the North Fork Double Mountain Fork Brazos River, use the bed and banks of those tributaries for subsequent diversion and use of those flows (as well as: i. the City's developed water-based storm water discharges; ii. future surface water-based return flows and developed waters based return flows resulting from the City's use of groundwater and its use of other developed waters; iii. third party's wastewater return flows that are discharged upstream of the proposed reservoirs) for the uses stated above.

The applicant indicates land will be purchased in the event that permits authorizing the construction of the proposed works are issued.

The City of Lubbock's 2004 Water Conservation and Drought Contingency Plan has been reviewed for administrative sufficiency for municipal purposes. The submitted plan meets the minimum requirements as defined in the TCEQ Rules, Title 30 TAC Chapter 288.2, 288.5, 288.20 and 288.22.

With the requested new appropriation and seeking return flows with the use of the bed and banks in this application, a further technical review will be conducted by the conservation staff of the Resource Protection Team.

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Iliana Delagdo, Project Manager
Water Rights Permitting Team

Date: November 3, 2005

Thru: Bill Billingsley, Team Leader
Resource Protection Team

Wendy Gordon, Ph.D., Aquatic Scientist
Resource Protection Team

From: John Botros, Aquatic Scientist
Resource Protection Team

Subject: City of Lubbock, Initial Review of Application 5921
North Fork Double Mountain Fork Brazos River, Brazos River Basin
Lubbock and Lynn Counties

The City of Lubbock's application 5921 proposes to construct two dams and reservoirs on the North Fork Double Mountain Fork Brazos River (North Fork) with a combined storage of more than 70,000 acre-feet and a diversion of up to 50,000 acre-feet/year at a max diversion rate of 23,320 gallons per minute. Furthermore, applicant requests to use the bed and banks of unidentified tributaries of the North Fork as well as indirect reuse from vaguely described sources in unspecified amounts.

Resource Protection, Instream Uses staff will not be able to conduct the required reviews in accordance with §11.046, §11.147, §11.150, and §11.152 of the Texas Water Code and under Texas Administrative Code sections §297.49, §297.53, §297.54 and §297.56 with the information provided. These statutes and rules require the TCEQ to consider the possible impacts of the granting of a water right permit on fish and wildlife habitat, water quality, and the instream uses associated with the affected body of water. The application does not include adequate information to consider the appropriate environmental aspects and potential impacts associated with the proposed project.

The following additional information is required in order to proceed with the processing of this application:

1. A quantitative or qualitative evaluation of existing aquatic, riparian, wetland and terrestrial habitats that will be subject to impact by the proposed reservoir projects needs to be performed preferably by a qualified third party. Acceptable evaluation procedures to be used may be but are not limited to USFWS's Habitat Evaluation Procedures (HEP) or TPWD's Wildlife Habitat Appraisal Procedure (WHAP). Any habitat evaluation should include an assessment of the effects of the project on habitats in the river segment downstream as well.

2. An analysis is required that characterizes and quantifies of stream flow patterns needed to protect the instream uses of the North Fork Double Mountain Fork Brazos River. This analysis should include the frequency, magnitude, duration and timing of various components of the hydrograph for the North Fork needed to maintain annual/seasonal variability in flows, bankfull flows that generally occur every 1-2 years needed to maintain sediment transport of silt and sands, as well as higher flood flows which typically occur on the order of every 5-10 years needed for channel scour and maintenance of habitat features. Each component of the stream's hydrograph has specific ecological functions which collectively provide for processes that sustain the river ecosystem.
3. Description of the alternatives that were examined to meet the water needs that the proposed project is intended to fulfill. Were other site locations examined that may have resulted in less environmental impact? How were the size the proposed reservoirs determined? Would smaller reservoirs be adequate to meet the projected water needs? Habitat mitigation shall be considered only after the complete sequencing (avoidance, minimization or modification, and compensation/replacement) process has been performed.
4. Should habitat losses be found to be unavoidable, a mitigation plan needs to be developed that will compensate for lost or altered ecosystem functions and values imposed by the proposed project. This plan should address both the direct and indirect impacts to aquatic, riparian, and terrestrial habitats, as well as long and short-term effects that may result from the proposed project. Habitat mitigation plans need to be ensured through binding legal contracts or conservation easement and need to include goals and schedules for completion of those goals. Mitigation areas need to be managed in perpetuity by a party approved by the Commission to maintain the habitat functions and values that were effected due to the proposed project.
5. Reservoir operations plan describing how and when flows will be passed through the dams in order to provide for the instream needs determined from item #2 above.
6. Have the U.S. Army Corps of Engineers (USACE) been notified of the proposed project in order to determine whether Federal authorization will be required under Section 404/401 of Clean Water Act?
7. On-ground color photographs of the stream at each dam site and downstream as well as several photographs of the stream and riparian areas within, upstream, and downstream of the reservoir inundation areas. Each photographs should include a description of what is depicted as well as referenced to a map indicating the location and direction of the shot.
8. Identify all the tributaries of the North Fork requested under the bed and banks portion of the application.
9. Identify all the wastewater treatment plants and the future amounts of water requested in this application.

For questions concerning the above requested information, please contact John Botros by telephone at 512-239-4445 or by e-mail at jbotros@tceq.state.tx.us.

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

TO: Iliana Delgado
Water Rights Permitting Team

DATE: February 17, 2006

FROM: Warren D. Samuelson, P. E.
Dam Safety Program, MC-174

SUBJECT: City of Lubbock, Application to construct and maintain two dams and reservoirs, North Fork Double Mountain Fork Brazos River, Brazos River Basin, Lubbock County.

The applicant seeks authorization to construct and maintain two reservoirs (Lake No. 7 and Lake No. 8) on North Fork Double Mountain Fork Brazos River in Lubbock County. The proposed Lake No. 7 will have a capacity of 20,708 acre-feet and a surface area of 801 acres. The proposed Lake No. 8 will have a capacity of 49,930 acre-feet and a surface area of 1,680 acres. The reservoirs will be used for municipal, industrial, and agricultural purposes.

The engineer, HDR Engineering, Inc., has indicated that the proposed dams and spillways will be designed to pass 100% of the probable maximum flood (PMF) as required in Chapter 299.

It is recommended that the permit include the following language:

TIME LIMITATIONS

- (a) Construction of the dams for Lakes 7 and 8 must be in accordance with plans and specifications approved by the Executive Director and must begin within two years of issuance of this permit and be completed within five years of issuance of the permit.
- (b) Failure to commence and/or complete construction of the proposed dam within the period stated above shall cause the authorization for use of the reservoirs to expire and become null and void without further Commission consideration unless the Owner applies for an extension of time to commence and/or complete construction prior to the deadline for commencement and completion, and the application is subsequently granted.



Warren D. Samuelson, P. E.
Dam Safety Program

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Ron Ellis
Water Rights Permitting Team

Date: March 27, 2008

Thru:

From: Warren D. Samuelson, P. E.
Dam Safety Program, MC-174

Subject: City of Lubbock, Supplemental Application to construct and maintain a dam and reservoir, North Fork Double Mountain Fork Brazos River, Brazos River Basin, Lubbock County.

The applicant has indicated through the applicant's attorney that the applicant is not pursuing the permitting of one of the proposed dams and reservoirs (Lake No. 8). Therefore, this is a supplemental memorandum. To the original memorandum of February 17, 2006.

The applicant seeks authorization to construct and maintain one reservoir (Lake No. 8) on North Fork Double Mountain Fork Brazos River in Lubbock County. The proposed Lake No. 7 will have a capacity of 20,708 acre-feet and a surface area of 801 acres. The reservoir will be used for municipal, industrial, and agricultural purposes.

The engineer, HDR Engineering, Inc., has indicated that the proposed dam and spillways will be designed to pass 100% of the probable maximum flood (PMF) as required in Chapter 299.

It is recommended that the permit include the following language:

TIME LIMITATIONS

- (a) Construction of the proposed dam for Lake No. 7 shall be in accordance with plans approved by the Executive Director. Construction of the dam without final approval of the construction plans is a violation of this authorization.
- (b) Construction shall begin within two years of issuance of this permit and be completed within five years of issuance of the permit, unless Permittee applies for and is subsequently granted an extension of time before the expiration of these time limitations.
- (b) Failure to commence the proposed dam and reservoir within the period stated above shall subject all rights to this permit to forfeiture, subject to

notice and hearing. After beginning construction, failure to timely construct the proposed dam and reservoir stated above shall subject this permit to cancellation in whole or in part, subject to notice and hearing.


A handwritten signature in cursive script, reading "Warren D. Samuelson".


Warren D. Samuelson, P. E.
Dam Safety Program

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Sarah Henderson, Project Manager Date: April 22, 2021
Water Rights Permitting Team

Through: Jason Godeaux, Team Leader
 Resource Protection Team

From: Kenneth Coonrod, Aquatic Scientist
 Resource Protection Team

Subject: City of Lubbock
WRPERM 5921
CN600130736
North Fork Double Mountain Fork Brazos River, Brazos River Basin
Lubbock and Lynn counties

Environmental reviews of water right applications are conducted in accordance with applicable provisions of the Texas Water Code (TWC) and the administrative rules of the Texas Commission on Environmental Quality (TCEQ). The provisions applicable to environmental reviews can vary according to the type and the location of the authorization requested.

APPLICATION SUMMARY

The City of Lubbock (City) requests authorization to construct and maintain a reservoir (Lake 7) impounding 20,708 acre-feet of water on the North Fork Double Mountain Fork Brazos River, Brazos River Basin, for subsequent diversion of 50,000 acre-feet of water per year from the perimeter of the reservoir at a maximum diversion rate of 138.12 cfs (62,016 gpm) for municipal, industrial, and agricultural purposes in Lubbock and Lynn counties. The City also requests authorization to use the bed and banks of the North Fork Double Mountain Fork Brazos River to convey up to 14,856 acre-feet of water per year discharged from the South Central Lubbock Drainage System, up to 8,934 acre-feet of water per year from the South Lubbock Drainage System, and up to 16,420 acre-feet of surface water- and groundwater-based return flows per year, to Lake 7 to support storage in and diversions from the reservoir, from the Southeast Water Recycling Plant, authorized under Texas Pollutant Discharge Elimination System Permit No. WQ00010353002. The City will use other water sources available to it in the North Fork Double Mountain Fork Brazos River, that are authorized under Water Use Permit Nos. 3985, as amended, and 3705, as amended.

The City maintains an agreement with the Brazos River Authority in which the City will pass water through Lake 7 when streamflows exceed 5 cfs and when the water surface elevation of Possum Kingdom Lake is below 1,000 feet msl.

ENVIRONMENTAL ANALYSIS

New Appropriation Request

On February 12, 2014, the TCEQ adopted environmental flow standards for the Brazos River and its associated bay and estuary system (Title 30 Texas Administrative Code (TAC) Chapter 298 Subchapter G). These environmental flow standards are considered adequate to support a sound ecological environment (Title 30 TAC § 298.460).

The City is requesting a new appropriation of water and therefore is subject to the adopted standards. This review is conducted in accordance with §11.147(e-3) of the TWC and Title 30 TAC Chapter 298 Subchapter G (Brazos River and its associated bay and estuary system). In Title 30 TAC § 298.480(1), environmental flow standards were established at United States Geological Survey (USGS) Gage No. 08080500 – Double Mountain Fork Brazos River near Aspermont, and the applicable environmental flow standards are shown in Table 1.

Table 1. Environmental Flow Standards at USGS Gage No. 08080500 – Double Mountain Fork Brazos River near Aspermont.

Season	Subsistence	Hydrologic Condition	Base	Dry Condition Seasonal Pulse	Average Condition Seasonal Pulse	Wet Condition Seasonal Pulse
Winter	1 cfs	Dry	1 cfs	N/A	N/A	N/A
		Average	4 cfs			
		Wet	15 cfs			
Spring	1 cfs	Dry	1 cfs	1 per season Trigger: 280 cfs Volume: 1,270 af Duration: 10 days	2 per season Trigger: 280 cfs Volume: 1,270 af Duration: 10 days	1 per season Trigger: 570 cfs Volume: 2,600 af Duration: 12 days
		Average	3 cfs			
		Wet	8 cfs			
Summer	1 cfs	Dry	1 cfs	1 per season Trigger: 230 cfs Volume: 990 af Duration: 9 days	2 per season Trigger: 230 cfs Volume: 990 af Duration: 9 days	1 per season Trigger: 480 cfs Volume: 2,160 af Duration: 12 days
		Average	2 cfs			
		Wet	7 cfs			

cfs = cubic feet per second
af = acre-feet
N/A = not applicable

The City has requested that compliance with the adopted environmental flow standards be calculated at their measurement point. The City further requested that compliance with the adopted environmental flow standards for subsistence and base flows utilize a drainage area ratio to determine the flows that must pass the gage. The City translated the adopted subsistence and base flow standards using a drainage area ratio from the contributing drainage area of USGS Gage No. 08080500 – Double Mountain Fork Brazos River near Aspermont, TX to the contributing drainage area of the Lake 7 dam. Computation of state water inflows between USGS Gage No. 08079510 – North Fork Double Mountain Fork Brazos River at Loop 289 near Lubbock, TX and the Lake 7 dam location, translation of the pulse flow standards, and hydrologic conditions are discussed in the Water Availability Analysis. Resource Protection staff reviewed the information submitted by the City, and the translated values, and agrees that using the translated values for subsistence and base flows and applying those values at their measurement point would protect the adopted standards. Resource Protection staff recommendations are shown in Table 2.

Table 2. Environmental Flow Values at City of Lubbock’s Measurement Point.

Season	Subsistence	Hydrologic Condition	Base	Dry Condition Seasonal Pulse	Average Condition Seasonal Pulse	Wet Condition Seasonal Pulse
Winter	1 cfs	Dry	1 cfs	N/A	N/A	N/A
		Average	1 cfs			
		Wet	1 cfs			
Spring	1 cfs	Dry	1 cfs	1 per season Trigger: 43 cfs Volume: 157 af Duration: 8 days	2 per season Trigger: 43 cfs Volume: 157 af Duration: 8 days	1 per season Trigger: 88 cfs Volume: 335 af Duration: 10 days
		Average	1 cfs			
		Wet	1 cfs			
Summer	1 cfs	Dry	1 cfs	1 per season Trigger: 36 cfs Volume: 119 af Duration: 7 days	2 per season Trigger: 36 cfs Volume: 119 af Duration: 7 days	1 per season Trigger: 88 cfs Volume: 278 af Duration: 10 days
		Average	1 cfs			
		Wet	1 cfs			

cfs = cubic feet per second

af = acre-feet

N/A = not applicable

Seasons are defined in Title 30 TAC § 298.455 as follows: Winter (November through February), Spring (March through June), and Summer (July through October). Hydrologic conditions will be discussed in the water availability analysis for this application.

Given the applicable values for subsistence and base are equal, as shown in Table 2 above, Resource Protection staff's opinion is that the subsistence flow values alone are sufficient to provide adequate protection for the environment.

Special conditions to protect high flow pulses are required, because the City's diversion rate, 138.12 cfs, is greater than 20% of the applicable high flow pulse trigger level requirements of an applicable high flow pulse at the measurement point, as described in Title 30 TAC § 298.485.

Resource Protection staff recommend that impoundment and diversion of water under this proposed permit should be limited to comply with the applicable environmental flow values.

Bed and Banks Request

Aquatic and Riparian Habitats: The City provided an *Environmental Information Document in Support of Water Use Permit Application No. 5921* (EID), prepared by HDR, Inc. (HDR) and dated June 2011, as supplemental documentation for their application. The EID describes the area of the City's project as being located on the North Fork Double Mountain Fork Brazos River, a perennial stream in Lubbock County, which is situated in the High Plains Ecoregion in what was once characterized as shortgrass prairie but is now dominated by agriculture (HDR, Inc. 2011). The river runs in a southeasterly direction and has cut a deep canyon into the escarpment, which has caused turbidity in the stream, and riparian vegetation cited in the EID includes black willow, salt cedar, and American elm found in varying densities throughout the project area (HDR, Inc. 2011). Within the footprint of the proposed reservoir's conservation pool, playa lakes, perennial river habitat, and intermittent stream tributaries were the predominate aquatic habitats (HDR, Inc. 2011).

The EID cites the Texas Parks and Wildlife Department (TPWD), the Llano Estacado Regional Water Planning Group, and the Texas Legislature as having identified no river or stream segments of unique ecological value in the affected area (HDR, Inc. 2011).

As part of the EID, a study was conducted to assess the project area and the natural and cultural resources that would be affected by construction of a large reservoir. The EID guided the preparation of the mitigation plan that the City

submitted to the United States Army Corps of Engineers (USACE) in its application for a permit to comply with Section 404 of the Clean Water Act.

In the EID, a vegetation evaluation using aerial photography was conducted simultaneously with a habitat characterization employing the Wildlife Habitat Appraisal Procedure (WHAP) developed by TPWD. The WHAP evaluates wildlife habitat with the presumption that quantity and quality of plant density and plant community is sufficient to make a determination of suitability (TPWD and USFWS 1990). The vegetation study, in conjunction with the WHAP survey, identified multiple vegetation types across approximately 795 acres of vegetated habitat, or 247 Habitat Units, within the proposed Lake 7 conservation pool (HDR, Inc. 2011).

The City also submitted a soil survey based on a United States Department of Agriculture study for Lubbock County which identified Berda loam, Berda-Potter Association soils, and Bippus clay loam as the predominate soil types found within the reservoir's proposed conservation pool (HDR, Inc. 2011).

A wetland delineation using the National Wetland Inventory identified Palustrine shrubland, intermittent emergent wetlands, and sparse areas of Riverine and Lacustrine wetlands within the proposed conservation pool (HDR, Inc. 2011). Additionally, the delineation determined that up to 45.3 acres of waters of the U.S. were found within the proposed project area (HDR, Inc. 2011). HDR chose four locations based on site-specific water quality, habitat quality, and biological integrity, and conducted sampling of physio-chemical parameters, stream habitat, streamflow, and fish and benthic macroinvertebrate communities utilizing the Aquatic Life Monitoring protocol developed by the TCEQ in the *Surface Water Quality Monitoring Procedure Manual* and the *Biological Monitoring Fact Sheet*, and each were sampled once in June and again in September of 2009 (HDR, Inc. 2011).

The EID's benthic macroinvertebrate survey produced 1,773 individuals representing 27 taxa, and fewer intolerant species than tolerant species were found during the study, which would indicate conditions in the river reflect degraded water quality, poor habitat, and an overall Intermediate aquatic life use score (HDR, Inc. 2011).

The North Fork Double Mountain Fork Brazos River at the survey sites is a relatively saline stream, and as such, fish sampling was conducted using seines rather than a combination of seining and electrofishing (HDR, Inc. 2011). The results of HDR's study found 4,417 individuals representing seven families, 15 species, and one hybrid sunfish, and of the 15 species, four represented nearly 95% of the catch, and of those, one species represented 59% of the total catch (HDR, Inc. 2011). As with the macroinvertebrate study, most of the fish caught were highly tolerant of adverse conditions, reflecting poor water quality and habitat structure, but species diversity varied between the four sample sites, which therefore earned aquatic life use ratings ranging from Intermediate to Exceptional (HDR, Inc. 2011).

An evaluation of Lubbock County protected species by HDR found one extant, federally-listed endangered species, the whooping crane (*Grus americana*); three state-listed threatened species, the American peregrine falcon (*Falco peregrinus anatum*), the bald eagle (*Haliaeetus leucocephalus*), and the Texas horned lizard (*Phrynosoma cornutum*); and two species of fish whose historical geographic range once extended into the project area, the smalleye shiner (*Notropis buccula*) and the sharpnose shiner (*Notropis oxyrhynchus*) (HDR, Inc. 2011). The EID reports no net negative effect is expected for any of the bird species because any potential habitat would only be used temporarily during migration, and no habitat was found to be preferred by any of the three species (HDR, Inc. 2011).

The EID reports that the smalleye and sharpnose shiners, whose range once extended into the project area, have not been recorded in Lubbock County, but both species have been accounted for downstream in Garza County (HDR, Inc. 2011). Additionally, neither of the two species were caught during the surveys for this portion of the report (HDR, Inc. 2011). Two reservoirs, Buffalo Springs Lake and Lake Ransom Canyon, are found between the City's proposed reservoir and Garza County, and these reservoirs act as physical barriers between the known population and the proposed Lake 7, which led HDR to conclude that this project is not expected to impact these two species (HDR, Inc. 2011).

Because the Texas horned lizard prefers habitat that is known to occur within the proposed conservation pool of Lake 7, a rapid baseline survey was conducted to evaluate available habitat and presence of the species. The habitat assessment used aerial photography to identify approximately 619 acres of potentially suitable habitat and field surveys which guided the inspection of the roughly 240 acres of habitat sampled within the project area (HDR, Inc. 2011). Eight lizards were caught in June and July of 2009, including five hatchlings and three sub-adults/adults, and the occurrence of hatchlings in the project area suggests a healthy breeding population (HDR, Inc. 2011).

Based on the results of the Texas horned lizard survey conducted for this report, the EID recommends the following:

- Further assessments of Texas horned lizard occurrence and suitability of potential habitat within the proposed conservation pool footprint should be conducted;
- Potential off-site relocation areas should be identified;
- Development of a preliminary management plan for the Texas horned lizard addressing potential mitigation strategies for relocation to adjacent or near-site suitable habitat;
- Coordination with TCEQ/TPWD to address these concerns.

The results of the above studies were used to assign habitat values that would be impacted by construction of the proposed reservoir, and wetlands and wooded riparian areas were identified as high-priority targets for mitigation (HDR, Inc. 2011).

The request to use the bed and banks of the North Fork Double Mountain Fork Brazos River is not expected to have an effect on any federally-listed or high-interest aquatic species, because staff are recommending environmental flow requirements.

On February 12, 2014, the TCEQ adopted environmental flow standards for the Brazos River and its associated bay and estuary system (Title 30 Texas Administrative Code (TAC) Chapter 298 Subchapter G). These environmental flow standards are considered adequate to support a sound ecological environment (Title 30 TAC § 298.460). The City's request to use the bed and banks of the North Fork Double Mountain Fork Brazos River is not a new appropriation of water or an amendment that increases the amount of water stored, taken, or diverted; therefore, the environmental flow standards do not apply. The City proposes to use the bed and banks of the North Fork Double Mountain Fork Brazos River to support storage in and diversions from Lake 7. The City's request is not expected to adversely impact aquatic and riparian habitats in the area.

Recreational Uses: The North Fork Double Mountain Fork Brazos River has a presumed primary contact recreation 1 use (TCEQ 2018). The City's request should not adversely impact recreational uses.

Water Quality: The North Fork Double Mountain Fork Brazos River has a presumed limited aquatic life use for its intermittent with pools portion and a presumed high aquatic life use for its perennial portion (TCEQ 2018). Assessment Unit 1241A_02 was identified in the *Texas Integrated Report* as non-supporting for bacteria in water and with a concern for screening levels for chlorophyll-*a* in water and nitrate in water (TCEQ 2020). The City's request should not adversely impact water quality.

Freshwater Inflows: Freshwater inflows are critical for maintaining the historical productivity of bays and estuaries along the Gulf Coast. The proposed project is located more than 200 river miles from the Gulf of Mexico. The request for the use of the bed and banks is not a new appropriation of water; therefore, the City's request should not have any impact to the Brazos River Estuary.

RECOMMENDATIONS

Resource Protection staff recommend the following Special Conditions be included in the proposed permit, if granted:

1. Permittee shall implement reasonable measures in order to reduce impacts to aquatic resources due to entrainment or impingement. Such measures shall

include, but shall not be limited to, the installation of screens at the diversion structure.

2. Impoundment and diversion shall be restricted based on the following streamflows at the City's measurement point, as set forth in Special Conditions 3-7 below.

Season	Subsistence	Dry Condition Seasonal Pulse	Average Condition Seasonal Pulse	Wet Condition Seasonal Pulse
Winter	1 cfs	N/A	N/A	N/A
Spring	1 cfs	1 per season Trigger: 43 cfs Volume: 157 af Duration: 8 days	2 per season Trigger: 43 cfs Volume: 157 af Duration: 8 days	1 per season Trigger: 88 cfs Volume: 335 af Duration: 10 days
Summer	1 cfs	1 per season Trigger: 36 cfs Volume: 119 af Duration: 7 days	2 per season Trigger: 36 cfs Volume: 119 af Duration: 7 days	1 per season Trigger: 88 cfs Volume: 278 af Duration: 10 days

cfs = cubic feet per second

af = acre-feet

N/A = not applicable

3. Seasons are defined as follows: Winter (November through February), Spring (March through June), and Summer (July through October).

Subsistence Flow

4. Permittee shall not impound or divert water if the average streamflow at the City's measurement point is less than or equal to the applicable subsistence flow in Special Condition 2. The "average streamflow" at the gage is the average of measured streamflows at the gage for the previous 24 hours.

High Flow Pulse

5. If a pulse flow event required under Special Condition 2 is determined to have been triggered based on average streamflows at the City's measurement point then, until either the applicable volume amount has passed the gage or the applicable duration time has passed since the high flow pulse was triggered, Permittee shall not impound or divert except during times that average streamflow at the gage exceeds the applicable pulse flow trigger level. Diversions during such times shall not exceed the rate that would reduce average streamflow at the gage to the applicable pulse flow trigger level; provided, however, Permittee is not required to adjust its diversion rate during the pulse event more frequently than once every 24 hours.
6. Each season is independent of the preceding and subsequent seasons with respect to high flow pulse frequency and the applicable high flow pulse is dependent on the applicable hydrologic condition.
7. If a qualifying pulse flow event occurs at the City's measurement point within a given season, the pulse event shall satisfy a pulse requirement for that season. A qualifying event occurs if the event is determined to have been triggered based on average streamflow at the gage and either the pulse flow volume or duration requirement is met.

LITERATURE CITED

HDR, Inc. 2011. Environmental Information Document in Support of Water Use Permit Application No. 5921 Prepared in Response to TCEQ RFI Dated 06/23/2008. Prepared for City of Lubbock, TX.

TCEQ. 2018. Texas Surface Water Quality Standards §§ 307.1-307.10. Austin (TX): Texas Commission on Environmental Quality.

TCEQ. 2020. Texas Integrated Report of Surface Water Quality. Austin (TX): Texas Commission on Environmental Quality.

TPWD and USFWS. 1990. An Assessment of Direct Impacts to Wildlife Habitat from Future Water Development Projects [Internet]. Austin (TX): Texas Parks and Wildlife and United States Fish and Wildlife Service [cited 2019 Sep 11]. Available from https://tpwd.texas.gov/publications/pwdpubs/pwd_rp_t3200_1055/index.phtml

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Sarah Henderson, Project Manager
Water Rights Permitting Team

Date: April 22, 2021

Through: Jason Godeaux, Team Leader
Resource Protection Team



Kristin Wang, Senior Water Conservation Specialist
Resource Protection Team

From: Jennifer Allis, Senior Water Conservation Specialist
Resource Protection Team



Subject: City of Lubbock
WRPERM 5921
CN600130736
North Fork Double Mountain Fork Brazos River, Brazos River Basin
Lubbock and Lynn counties

APPLICATION SUMMARY

City of Lubbock (City) requests authorization to construct and maintain a reservoir (Lake 7) impounding 20,708 acre-feet of water on the North Fork Double Mountain Fork Brazos River, Brazos River Basin, for subsequent diversion of 50,000 acre-feet of water per year from the perimeter of the reservoir at a maximum diversion rate of 138.12 cfs (62,016 gpm) for municipal, industrial, and agricultural purposes in Lubbock and Lynn counties. The City also requests authorization to use the bed and banks of the North Fork Double Mountain Fork Brazos River to convey up to 14,856 acre-feet of water per year discharged from the South Central Lubbock Drainage System, up to 8,934 acre-feet of water per year from the South Lubbock Drainage System, and up to 16,420 acre-feet of surface water- and groundwater-based return flows per year, to support storage in and diversions from the reservoir, from the Southeast Water Recycling Plant, authorized by Texas Pollutant Discharge Elimination System Permit No. WQ00010353002, to Lake 7 to support storage in and diversions from the reservoir. The City will use other water sources available to it in the North Fork Double Mountain Fork, that are authorized under Water Use Permit Nos. 3985, as amended, and 3705, as amended.

The City maintains an agreement with the Brazos River Authority in which the City will pass water through Lake 7 when streamflows exceed 5 cfs and when the water surface elevation of Possum Kingdom Lake is below 1,000 feet msl.

WATER CONSERVATION REVIEW

Pursuant to Title 30 Texas Administrative Code (TAC) §295.9(1), an application requesting a new appropriation of water requires the submittal of water conservation and drought contingency plans.

Resource Protection staff reviewed the water conservation and drought contingency plans and found the plans to be administratively complete per 30 TAC Chapter 288.

Additionally, the City is required to provide evidence that the amount of water appropriated will be beneficially used, i.e., effectively managed and not wasted pursuant to Texas Water Code (TWC), §11.134(b)(3)(A). Also, the City must provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation pursuant to TWC §11.134(b)(4). To provide that evidence, the City must submit a water conservation plan in accordance with 30 TAC Chapter 288. In applications where a new appropriation of water is requested, the review includes an analysis of whether the requested appropriation is reasonable and necessary for the proposed uses in accordance with TWC §11.134 and 30 TAC §297.50 and §288.7.

The purpose of this review is to:

- 1) determine whether reasonable water conservation goals have been set;
- 2) determine whether the proposed strategies can achieve the stated goals;
- 3) determine whether there is a substantiated need for the water and whether the amount to be appropriated is reasonable for the proposed use; and
- 4) determine whether the water conservation plan addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan.

If these criteria are met, then Resource Protection staff considers this sufficient evidence to conclude that the City will avoid waste and achieve water conservation. This review forms a basis for permit conditions and limitations as provided by TWC §11.134.

Water Conservation Goals and Strategies

The City submitted 2019 water conservation and drought contingency plans which were reviewed by Resource Protection staff and found to meet the requirements in 30 TAC Chapter 288 for retail and wholesale water suppliers.

The City established five- and ten-year goals for water use in gallons per capita per day (gpcd). The City's annual average per capita per day usage declined by 27 percent over the past eight years. The City's water conservation goals were determined using the baseline of per capita water use of the 10-year average from

2009 to 2018 of 143 gpcd. Of note, the City met its previous goal for water use which was 150 gpcd for 2019.

The City's goals were developed utilizing a 0.5 percent per year reduction in per capita water use, resulting in a per capita goal of 139 gpcd for 2024 and of 136 gpcd for 2029.

In addition to the per capita water use goal, the City set a maximum water loss goal of 10 percent for the retail water delivery system, which corresponds to a loss rate of 13.9 gpcd in 2024 and 13.6 gpcd in 2029.

According to the City's *2018 Strategic Water Supply Plan (SWSP)*, the significant reduction in per capita consumption over the past few years can be directly attributed to the effectiveness of the City's conservation block rate structure, volume rates, and two-day per week irrigation limitation on a year-round basis.

The City's water conservation program is comprised of four main strategies:

1. Maintain a rate structure that encourages conservation;
2. Reduce water loss within the City's distribution system;
3. Educate the public and provide useful information; and
4. Enforce irrigation and waste of water restrictions.

The City has implemented water conservation strategies that include public education and awareness, stringent seasonal watering restrictions, an increasing block rate structure, reducing unaccounted-for water losses, and additional measures to increase the efficiency of irrigation practices and commercial water use. Additionally, the City requires its wholesale customers to adopt and implement water conservation plans that will reduce their per capita water use.

The City also submitted an irrigation water conservation plan indicating that it uses sewage effluent from its wastewater treatment plant to irrigate two land application sites. Effluent is used to irrigate crops as wheat, jojoba, bermuda, and rye. The City's current and future goals for this reuse system are to be able to dispose of the total wastewater volume necessary through this system. Irrigation practices are designed to prevent contamination of surface and groundwater in the area. The City monitors the delivery system for any leaks by visually inspecting the system on a regular basis, and all leaks are repaired in a timely manner.

As such, Resource Protection staff has deemed these goals and strategies to be reasonable.

Requirements for Water Right Application under 30 TAC §288.7

Under 30 TAC §288.7, a water conservation plan submitted with a water right application for a new or additional appropriation of water must include data and information which:

- 1) supports the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan;
- 2) evaluates conservation as an alternative to the proposed appropriation; and
- 3) evaluates any other feasible alternative to new water development including, but not limited to, waste prevention, recycling and reuse, water transfer and marketing, regionalization, and optimum water management practices and procedures.

The City developed the 2018 SWSP to actively plan for future water supplies. The 2018 SWSP includes multiple strategies to diversify the City's water supply portfolio to minimize risk associated with variable climatic conditions while emphasizing conservation efforts to delay expensive water supply projects.

Consideration of Water Conservation Goals

Based on projections, continued conservation could reduce the per capita demand for the City by 21 gpcd by 2035. This translates into a reduction in water demand of 7,564 acre-feet in 2035, or almost 14 percent when compared to the expected water demand.

Conservation as an Alternative to the Proposed Appropriation

As part of the regional water planning process, the planning groups are required to perform a comprehensive analysis of potentially feasible water management strategies, including consideration of water conservation as a strategy for all water users with supply needs. Given the large irrigation water needs in the region, the Region O Water Planning Group gave special consideration to agricultural conservation methods. In addition to conservation, strategies that include the development of new supplies and infrastructure were developed and evaluated. However, the projected shortage for the City after Conservation is expected to be 32,370 acre-feet per year in 2070.

Feasible Alternatives to New Water Development

Most recommended water management strategies in the Region O Water Plan are new groundwater development or expansion of existing well fields. Although surface water supplies are limited in the region, expansion of surface water supply from Lake Alan Henry was evaluated. New reuse and brackish groundwater development were also evaluated. Lake 7 would impound reclaimed water, developed playa lake stormwater, and natural inflows. Because Lake 7 will utilize the City's reclaimed water as the primary portion of its yield, supply from Lake 7 will be relatively drought proof. The use of reclaimed water is considered an important water supply strategy in the 2017 State Water Plan. Since the City must import its potable water

from such long distances, reusing water makes economical and practical sense. Using reclaimed water can reduce dependency on new water supplies.

Water Need

The City is the largest demand center in the Region for municipal and manufacturing water use. According to the 2021 Region O Water Plan, Lubbock has the largest predicted water needs, with a shortage of 5,154 acre-feet per year in 2020 that increases to a shortage of 33,808 acre-feet per year in 2070. The City has wholesale water supply contracts with several customers. Total water use by the City and its customers is projected to be 49,863 acre-feet in 2020 and 71,477 acre-feet in 2070.

Consistency with State and Regional Water Plans

The project is included as a recommended water management strategy in the City's *2018 Strategic Water Supply Plan* and in the 2021 Region O Water Plan. As such, the application is consistent with the 2021 Region O Water Plan, and Resource Protection staff expects that the request will also be consistent with the 2022 State Water Plan once it is approved, because there is nothing in the water plans that conflicts with issuing the permit.

RECOMMENDATIONS

Based on the analysis, Resource Protection staff has evaluated the application and determined that it meets the review requirements.

The following water conservation language should be included in the permit, if granted:

Permittee shall 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, and prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every water supply contract entered into on or after the effective date of this permit, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures.

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Sarah Henderson, Project Manager Date: November 10, 2021
Water Rights Permitting Team

From: Kathy Alexander, Ph.D.
Policy and Technical Analyst
Water Availability Division

Subject: City of Lubbock
WRPERM 5921
CN600130736
North Fork Double Mountain Fork Brazos River, Brazos River Basin
Lubbock and Lynn counties

WATER AVAILABILITY ANALYSIS

Application Summary

The City of Lubbock (City) requests authorization to construct and maintain a reservoir (Lake 7) impounding 20,708 acre-feet of water on the North Fork Double Mountain Fork Brazos River, Brazos River Basin, for subsequent diversion of 50,000 acre-feet of water per year from the perimeter of the reservoir at a maximum diversion rate of 138.12 cfs (62,016 gpm) for municipal, industrial, and agricultural purposes in Lubbock and Lynn counties. The City also requests authorization to use the bed and banks of the North Fork Double Mountain Fork of the Brazos River to convey up to 14,856 acre-feet of water discharged from the South Central Lubbock Drainage System, up to 8,934 acre-feet of water from the South Lubbock Drainage System, and up to 16,240 acre-feet of surface water- and groundwater-based return flows from Southeast Water Recycling Plant, authorized by WQ00010353002, to Lake 7 to support storage in and diversions from the reservoir. The City will use other water sources available to it in the North Fork Double Mountain Fork Brazos River, that are authorized under Water Use Permit Nos. 3985, as amended, and 3705, as amended. The City maintains an agreement with the Brazos River Authority in which the City will pass water through Lake 7 when streamflow exceeds 5 cfs and when the water surface elevation of Possum Kingdom Lake is below 1,000 feet msl.

The application was declared administratively complete on April 17, 2006.

The City submitted an accounting plan on August 15, 2016, which was revised several times. The final accounting plan was submitted on February 2, 2021.

Water Availability Analysis

Pursuant to 30 Texas Administrative Code (TAC) §298 Subchapter G, Resource

Protection staff recommend that the application be subject to instream flow requirements. Resource Protection staff also recommended other special conditions. See Resource Protection staff's April 22, 2021 memorandum.

The Water Rights Analysis Package (WRAP) simulates management of the water resources of a river basin. TCEQ uses WRAP in the evaluation of water right permit applications using priority-based water allocations. WRAP is a generalized simulation model for application to any river basin, and input datasets must be developed for the particular river basin of concern. The TCEQ developed water availability models (WAMs) for Texas river basins that include geographical information, water right information, naturalized flows, evaporation rates, channel losses, and specific management assumptions. Hydrology staff operates WRAP to evaluate water rights applications to determine water availability and to ensure that senior water rights are protected.

An evaluation of a proposed appropriation of state water must consider effects of the proposed permit on groundwater or groundwater recharge. The naturalized flows that are the basis for the TCEQ WAM take into account both contribution to river flow caused by groundwater coming to the surface in the river (springs) and decreases in river flow caused by the river flowing over recharge features and losing surface water to groundwater recharge. Therefore, any effects on groundwater or groundwater recharge are incorporated into the modeling for this application. By considering any gains and losses due to groundwater/surface water interaction in its water availability analysis, the commission is protecting groundwater resources.

The City requested that compliance with the adopted environmental flow standards be measured at Lake 7. Staff reviewed this request and is not opposed to measuring compliance under the permit at Lake 7. The City translated the adopted subsistence and base flow standards from USGS Gage No. 08080500 – Double Mountain Fork Brazos River near Aspermont to Lake 7 based on their contributing drainage areas and provided the method used to translate the pulse flow standards. Staff reviewed the methods and found them adequate. Measurement of the applicable environmental flow requirements at Lake 7 would be an adequate indicator of whether operations under the permit are in compliance with the adopted standards.

TCEQ's environmental flow standards for the Brazos Basin in 30 TAC §298 Subchapter G (Brazos River and its Associated Bay and Estuary System) include a hydrologic condition (§298.470 Calculation of Hydrologic Conditions). The hydrologic condition is based on the Palmer Hydrologic Drought Index (PHDI) and the PHDI Index as defined in §298.455 (6) and (7). Based on §298.455(11), the application is located in the Upper Basin. The Climate Divisions included in the Upper Basin are the High Plains (Climate Division 1), Low Rolling Plains (Climate Division 2), and North Central (Climate Division 3). The values for the PHDI Index for the Upper Basin used to determine the hydrologic condition are calculated as follows (§298.470(b)):

$(0.027 \times \text{High Plains PHDI}) + (0.647 \times \text{Low Rolling Plains PHDI}) + (0.326 \times \text{North Central PHDI})$.

The determination of the hydrologic condition for a particular season is determined once per season. The PHDI value present on the last day of the month of the preceding season, as reported by the National Weather Service, and calculated for the geographic area as described in subsection (b) of the section, determines the hydrologic condition for the following season. The values for the PHDI are available at <https://www.ncdc.noaa.gov/temp-and-precip/drought/weekly-palmers/>. Under the adopted rules, PHDI values are based on the last day of the month before the start of a new season; however, final approved PHDI values for a month are typically available from the National Climatic Data Center (NCDC) near the middle of the following month. Therefore, in order to determine the hydrologic condition for a season, the latest published monthly value can be used on an interim basis until the final value for the month preceding the season is available. When the NCDC publishes the final value for the month preceding the season, the hydrologic condition applicable for the season can be updated if required.

Staff notes that TCEQ's adopted environmental flow standards for the Brazos Basin in 30 TAC §298 Subchapter G (Brazos River and its Associated Bay and Estuary System) do not include freshwater inflow standards for the Brazos Estuary.

New Appropriation Analysis

Staff modeled the application using the Full Authorization simulation of the Brazos River Basin WAM where water rights utilize their maximum authorized amounts for storage and diversion, and return flows are not included. The period of record for the Brazos WAM is 1940 through 2018. The Brazos WAM includes the adopted standards for all measurement points required by Chapter 298, Subchapter G. Under 30 TAC §298.465, the priority date for the environmental flow standards in the Brazos WAM is March 1, 2012. For modeling purposes, this application was modeled with a priority date of March 8, 2012 so that the application would be junior to both the adopted standards and applications for new appropriations considered after the standards were adopted.

Staff first evaluated the extent to which unappropriated water was available to support the request if 50,000 acre-feet of water was diverted from the reservoir and the City's additional sources were not available to support diversion and storage. The simulation results indicate that 39,930 acre-feet is available for diversion in one year of the period of record. Staff also evaluated storage of unappropriated water assuming no diversions from the reservoir. Simulation results indicate that the reservoir was more than 50% full in 28% of the months in the period of record. Staff notes that the City has an agreement with Brazos River Authority (BRA) which states that when the elevation of BRA's Possum Kingdom Lake is below 1,000 feet msl and inflows of state water exceed 5 cfs, the City will pass inflows above 5 cfs through Lake 7. The Brazos WAM implements the prior appropriation doctrine whereby senior water rights get access to available flows first, based on their priority dates. In the simulation, BRA's senior rights in Lake

Possum Kingdom would have access to all available unappropriated water prior to the City's impoundment and diversion at Lake 7 under its junior priority date. Therefore, staff's simulation represents a very conservative estimate of the amount of unappropriated water available for storage and diversion from Lake 7.

Bed and Banks

The City also requested authorization to use the bed and banks of the North Fork Double Mountain Fork, Brazos River to convey up to 14,856 acre-feet of water discharged from the South Central Lubbock Drainage System (SCLDS), up to 8,934 acre-feet of water from the South Lubbock Drainage System (SLDS), and up to 16,240 acre-feet of surface water and groundwater based return flows from Southeast Water Recycling Plant (SEWRP), authorized by WQ00010353002, to Lake 7. Water conveyed to Lake 7 will support storage in and diversions from the reservoir. Water from the SCLDS and SLDS originates from stormwater collected in playa lakes and subsequently discharged to the North Fork Double Mountain Fork Brazos River. This stormwater would not naturally have contributed flow to the Brazos River and its tributaries. Therefore, staff's opinion is that downstream water rights could not have relied on these flows in the river and the City's use of these flows cannot affect other water rights. The City applied for reuse of return flows from SEWRP prior to discharge of those return flows. Therefore, downstream water rights could not have been granted based on these return flows and the City's use of these flows cannot affect other water rights.

The City estimated channel losses associated with the requests to convey water and return flows from SCLDS, SLDS, and SEWRP to Lake 7 as well as revised channel losses for conveyance of return flows from NWRP and water from NDP. The proposed and revised channel losses are based on channel loss factors in TCEQ's Brazos WAM. Staff reviewed the estimates of losses and found them to be acceptable.

Consideration of other sources of water available to the City

Staff performed an additional simulation that considered use of water from SCLDS, SLDS, SEWRP and water authorized under Water Use Permit No. 3985, as amended to support diversions from and storage in Lake 7. Staff added flows from these additional sources to the Brazos WAM as follows:

- Discharges from SCLDS, SLDS, SEWRP requested in the application, and 6,725 acre-feet of return flows discharged from the Northwest Water Reclamation Plant (NWRP) and up to 7,100 acre-feet of water discharged by the Northwest Drainage Project (NDP) authorized by Water Use Permit No. 3985, as amended, were made available only for the City's use in Lake 7.
- Discharges from SEWRP and NWRP were modeled as constant monthly volumes.
- Discharges from SCLDS, SLDS and NDP are variable and dependent on rainfall. Staff used the City's estimates of the volume of water anticipated to be discharged from these facilities based on studies that are further described in a

July 15, 2015 memorandum and supplemented by an October 20, 2021 submittal of data through 2018.

- Discharges of stormwater and reuse water were adjusted for channel losses.

Simulation results indicate that the requested diversion amount, 50,000 acre-feet per year, is available in one year of the period of record. TCEQ's rules (30 TAC §297.42(d)) provide that the required water availability for projects that are not based on the continuous availability of streamflow shall be determined on a case-by-case basis based upon whether the proposed project can be viable for the intended purpose and the water will be beneficially used without waste. The determination of whether the water will be beneficially used without waste is addressed in the conservation review of the application. Regarding whether the proposed project is viable for the intended purpose, the City owns water rights in Lakes Meredith and Alan Henry as well as groundwater sources. Given the City's multiple sources of supply, staff's opinion is that the project can be viable for the intended purpose.

Accounting Plan

The City submitted an accounting plan (*City of Lubbock Accounting Plan for Permit 12-5921 Lake 7*) that calculates state water inflows to Lake 7 and accounts for the use of the City's sources of supply as well as compliance with the recommended environmental flow requirements. Staff reviewed the accounting plan and found it adequate to demonstrate compliance with the terms and conditions of the proposed permit.

Conclusion

Simulation results indicate that the amount of water requested is available during the period of record. Staff is of the opinion that if the City manages the new appropriation as part of its water supply system in accordance with the approved accounting plan, the application will not affect existing water rights and will be viable for the intended purpose. Therefore, Staff can support granting the application.

Staff recommends that the following special conditions be included in the permit:

1. If Permittee has stored water in accordance with the terms and conditions of this permit at the time the water was stored, Permittee may divert and use that stored water, even if any environmental flow requirements are not met at the time of the subsequent diversion and use of that stored water.
2. Permittee shall determine the hydrologic condition once per season. The Palmer Hydrologic Drought Index (PHDI) value present on the last day of the month of the preceding season, as reported by the National Weather Service, shall be used to determine the hydrologic condition for the following season as set out in Paragraphs 1.a. – c. below.

- a. Permittee shall determine the PHDI Index for a season based on the following formula:

$$(0.027 \times \text{High Plains PHDI}) + (0.647 \times \text{Low Rolling Plains PHDI}) + (0.326 \times \text{North Central PHDI})$$

- b. The PHDI Index and corresponding hydrologic conditions that govern diversions under this permit are:

Dry	Average	Wet
Less than -1.78	-1.78 – 2.18	Greater than 2.18

- c. Permittee may utilize an interim PHDI value to determine the hydrologic condition until the value preceding the start of the season is published in accordance with the procedure described in *City of Lubbock Accounting Plan for Permit 12-5921 Lake 7*.
2. Impoundment and diversion of return flows and other discharged water as authorized by this permit is dependent upon potentially interruptible return flows and discharges and is conditioned on the availability of those discharges. The right to divert return flows discharged from the Southeast Water Recycling Plant and the water discharged from the South Central Lubbock Drainage System and the South Lubbock Drainage System is subject to revocation if all discharges become permanently unavailable for impoundment and diversion and may be subject to reduction if the return flows discharged from the Southeast Water Recycling Plant and the water discharged from the City's South Central Lubbock Drainage System and the South Lubbock Drainage System are not available in quantities and qualities sufficient to fully support the permit authorizations. Should any of the discharges become permanently unavailable for impoundment and diversion, Permittee shall immediately cease impoundment and diversion of return flows and other discharged water under this permit and either apply to amend the permit, or voluntarily forfeit the authorization to impound and divert return flows and other discharged water. If Permittee does not amend or forfeit the authorization, the Commission may begin proceedings to cancel these authorizations in the permit.
3. Permittee shall only divert daily return flows and any water discharged from the City's South Central Lubbock Drainage System and the South Lubbock Drainage System that is actually discharged.
4. Prior to diversion and impoundment of return flows in excess of the amount currently authorized by TPDES Permit No. WQ00010353002, described in Paragraph 2. USE and Paragraph 3. DISCHARGE, Permittee shall apply for and be granted the right to reuse those return flows. Permittee shall amend the accounting plan to include future discharges of return flows prior to diverting said return flows.

5. Prior to diversion of any additional water discharged from the City's South Central Lubbock Drainage System and the South Lubbock Drainage System in excess of the maximum annual discharge volume described in Paragraph 2. USE and Paragraph 3. DISCHARGE, Permittee shall apply for and be granted the right to use the discharged water. Permittee shall amend the accounting plan to include additional discharges from the City's South Central Lubbock Drainage System and the South Lubbock Drainage System prior to diverting said additional discharges.
6. Permittee shall only divert water authorized under this permit pursuant to Paragraph 2. USE and Paragraph 4. DIVERSION in accordance with the most recently approved *City of Lubbock Accounting Plan for Permit 12-5921 Lake 7*. Permittee shall maintain the plan in electronic format and make it available upon request. Any modifications to the accounting plan shall be approved by the Executive Director. Any modification to the accounting plan that changes the permit terms must be in the form of an amendment to the permit. Should Permittee fail to maintain the accounting plan or notify the Executive Director of any modifications to the plan, Permittee shall immediately cease diversion and impoundment of water authorized in this permit, and either apply to amend the permit, or voluntarily forfeit the permit. If Permittee fails to amend the accounting plan or forfeit the permit, the Commission may begin proceedings to cancel the permit. Permittee shall immediately notify the Executive Director upon modification of the accounting plan and provide copies of the appropriate documents effectuating such changes.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

THE STATE OF TEXAS
COUNTY OF TRAVIS
I HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY
OF A TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
DOCUMENT, WHICH IS FILED IN THE PERMANENT RECORDS

NOV 25 2019

OF THE COMMISSION GIVEN UNDER MY HAND AND THE
SEAL OF OFFICE ON

Bridget C. Bohan
BRIDGET C. BOHAN, CHIEF CLERK

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



STATE OF TEXAS)(

COUNTY OF TRAVIS)(

I, LaDonna Castañuela, Chief Clerk of the Texas Commission on Environmental Quality, do hereby certify that the attached lists all navigation districts in the Brazos River Basin as well as all holders of certified filings, permits, and claims of water rights in the Brazos River Basin. These navigation districts and rights holders were sent, by first-class mail on July 7, 2006, the attached notice for Application No. WRPERM 5921, submitted by the City of Lubbock.

Given under my hand and the seal of the Texas Commission on Environmental Quality, this the 7th day of July, 2006.

LaDonna Castañuela
LaDonna Castañuela, Chief Clerk

SEAL

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF WATER RIGHTS APPLICATION APPLICATION NO. 5921

The City of Lubbock ("Applicant" or "City") has applied for a Water Use Permit to construct two dams and reservoirs on the North Fork Double Mountain Fork Brazos River, Brazos River Basin, to divert and use water from those reservoirs, and to use the bed and banks of the North Fork Double Mountain Fork Brazos River, including certain specified tributaries, for the conveyance of water sought for diversion for municipal, industrial, and agricultural purposes in Lubbock and Lynn Counties. More information on the application and how to participate in the permitting process is given below.

APPLICATION. The City of Lubbock, P.O. Box 2000, Lubbock, TX 79457, seeks a Water Use Permit pursuant to Texas Water Code §§ 11.042, 11.046, and 11.121, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §§ 295.1, et seq. Notice is being published and mailed to the water right holders of record in the Brazos River Basin pursuant to 30 TAC § 295.151.

The Applicant seeks a Water Use Permit for authorization to construct two dams and reservoirs on the North Fork Double Mountain Fork Brazos River, tributary of the Brazos River, Brazos River Basin, in Lubbock County. Structure No. 1 (known as Dam No. 7) will be located 7.6 miles southeast from the City of Lubbock at Latitude 33.534°N, Longitude 101.730°W, bearing S4.166°E, 5,227.85 feet to the southeast corner of Blk. S, G.C. & S.F. R.R. Co. Survey 21, Abstract 217. It will have a capacity of 20,708 acre-feet and surface area of 801 acres. Structure No. 2 (known as Dam No. 8) will be located 15.4 miles east-southeast from the City of Lubbock at Latitude 33.486°N, Longitude 101.607°W, bearing N61.683°W, 5,514.77 feet to the northwest corner of Blk. S, G.C. & S.F. R.R. Co. Survey 35, Abstract 214. It will have a capacity of 49,930 acre-feet and surface area of 1,680 acres.

The Applicant seeks to divert and use water impounded in these reservoirs for municipal, industrial, and agricultural purposes in Lubbock and Lynn Counties in amount not to exceed 50,000 acre-feet of water per year, collectively, from the perimeter of the reservoir created by Dam No. 7 at a maximum diversion rate of 7.20 cfs (3,230 gpm) and from the perimeter of the reservoir created by Dam No. 8 at a maximum diversion rate of 44.56 cfs (20,000 gpm).

The Applicant seeks authorization to impound, divert, and use water requested by the application based upon a recognition of rights related to: i) the City's claim to developed water-based stormwater discharges from the City's storm sewer system to the North Fork Double Mountain Fork Brazos River and its tributaries; ii) unappropriated state water; iii) future surface water-based return flows and developed water-based return flows resulting from the City's use of groundwater and its use of other developed waters, excluding return flows previously sought by the City pursuant to concurrent Application Nos. 12-3705B and 3985A; and iv) any and all wastewater return flows that are discharged upstream of the proposed reservoirs by third parties for the uses stated above.

TPDES Permit No. 10778, issued to the Town of Ransom Canyon, authorizes the treatment and disposal of up to 0.41 MGD of return flows. The Applicant is seeking the authorization and recognition of both historical and future return flows of the Town of Ransom Canyon.

TPDES Permit No. 10353, issued to the City of Lubbock, authorizes the City to treat and dispose of 31.5 MGD of treated effluent. The Applicant is seeking the authorization and recognition of the difference between the City's current 31.5 MGD authorization and the 9.0 MGD of return flows that are the subject of concurrent Application No. 3985A.

The Applicant has requested authorization to use the bed and banks of the North Fork Double Mountain Fork Brazos River, including certain of its tributaries, to convey water requested by the application from the points of discharge identified as follows to the points of diversion requested herein:

- 0 Discharges of developed stormwater at Canyon at the Duke Street (University Avenue outfall) to Yellow House Draw, tributary of the North Fork Double Mountain Fork Brazos River, tributary of the Brazos River, Brazos River Basin, 1.6 miles northwest of the City of Lubbock, located at Latitude 33.60523°N, Longitude 101.86032°W and bearing S77.46222°E, 2,280.76 feet from the northeast corner of Blk A of the T.T. & R.R. Co. Survey 19, Abstract 92. The Applicant indicates the outfall is 14.23 miles upstream of Dam 7, with 91.78% of the discharged water reaching the dam, and 24.56 miles upstream of Dam 8, with 86.24% of the water reaching that dam.
- 1 Discharges of developed stormwater north of Cornell & Ave Q to Yellow House Draw, 1.4 miles north/northwest of the City of Lubbock, located at Latitude 33.60388°N, Longitude 101.85564°W and bearing S38.49°E, 1,317.9 feet from the northeast corner of Blk A of the T.T. & R.R. Co. Survey 19, Abstract 92. The Applicant indicates the outfall is 13.91 miles upstream of Dam 7, with 91.96% of the discharged water reaching the dam, and 24.24 miles upstream of Dam 8, with 86.41% of the water reaching that dam.
- 2 Discharges of developed stormwater at Ave P between Erskine & Cornell to Yellow House Draw, 1.4 miles north/northwest of the City of Lubbock, located at Latitude 33.60439°N, Longitude 101.85315°W and bearing S3.68611°E, 871.68 feet from the northeast corner of Blk A of the T.T. & R.R. Co. Survey 19, Abstract 92. The Applicant indicates the outfall is 13.79 miles upstream of Dam 7, with 92.02% of the discharged water reaching the dam, and 24.12 miles upstream of Dam 8, with 86.47% of the water reaching that dam.
- 3 Discharges of developed stormwater at Aztlan Park (at Canyon about 300 feet west of outfall #4) to Yellow House Draw, 1.0 mile north of the City of Lubbock, located at Latitude 33.59928°N, Longitude 101.84506°W and bearing S45.79056°E, 3,528.02 feet from the southwest corner of Blk A of the E.L. & R.R.R.R. Co. Survey 79, Abstract 331. The Applicant indicates the outfall is 13.17 miles upstream of Dam 7, with 92.37% of the discharged water reaching the dam, and 23.50 miles upstream of Dam 8, with 86.79% of the water reaching that dam.
- 4 Discharges of developed stormwater at Aztlan Park (at Canyon under I-27 southbound frontage road) to Yellow House Draw, 1.0 mile north of the City of Lubbock, located at Latitude 33.59908°N, Longitude 101.84420°W and bearing S44.32167°E, 3,562.48 feet from the southeast corner of Blk A of the E.L. & R.R.R.R. Co. Survey 79, Abstract 331. The Applicant indicates the outfall is 13.12 miles upstream of Dam 7, with 92.40% of the discharged water reaching the dam, and 23.45 miles upstream of Dam 8, with 86.82% of the water reaching that dam.
- 5 Discharges of developed stormwater at Aztlan Park (at Canyon under I-27 southbound frontage road) to Yellow House Draw, 1.0 mile north of the City of Lubbock, located at Latitude 33.59908°N, Longitude 101.84416°W and bearing S44.32167°E, 3,562.48 feet from the southeast corner of Blk A of the E.L. & R.R.R.R. Co. Survey 79, Abstract 331. The Applicant indicates the outfall is 13.12 miles upstream of Dam 7, with 92.40% of the discharged water reaching the dam, and 23.45 miles upstream of Dam 8, with 86.82% of the water reaching that dam.
- 6 Discharges of developed stormwater at Aztlan Park (at Canyon northeast of outfall #5) to an unnamed tributary of Yellow House Draw, 1.0 mile north of the City of Lubbock, located at Latitude 33.59970°N, Longitude 101.84401°W and bearing S46.22444°E, 3,608 feet from the northeast corner of Blk A of the W.E. Penny Survey 80, Abstract 995. The Applicant indicates the outfall is 13.16 miles upstream of Dam 7, with 92.37% of the discharged water reaching the dam, and 23.49 miles upstream of Dam 8, with 86.80% of the water reaching that dam.

- 7 Discharges of developed stormwater at McKenzie State Park (just west of Joyland) to an unnamed tributary to Yellow House Draw, 0.8 mile northeast of the City of Lubbock, located at Latitude 33.59227°N, Longitude 101.83507°W and bearing S84.91861°E, 211.81 feet from the northwest corner of Blk O of the E.L. & R.R.R.R. Co. Survey 3, Abstract 24. The Applicant indicates the outfall is 12.36 miles upstream of Dam 7, with 92.82% of the discharged water reaching the dam, and 22.69 miles upstream of Dam 8, with 87.22% of the water reaching that dam.
- 8 Discharges of developed stormwater at McKenzie State Park (just east of Joyland, north of overpass) to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 1.0 mile east/northeast of the City of Lubbock, located at Latitude 33.59180°N, Longitude 101.82975°W and bearing S82.4825°E, 1,841.28 feet from the northwest corner of Blk O of the E.L. & R.R.R.R. Co. Survey 3, Abstract 24. The Applicant indicates the outfall is 12.05 miles upstream of Dam 7, with 92.99% of the discharged water reaching the dam, and 22.38 miles upstream of Dam 8, with 87.38% of the water reaching that dam.
- 9 Discharges of developed stormwater 300 feet West of Compress Ave. on E. 19th to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 1.0 mile southeast of the City of Lubbock, located at Latitude 33.57822°N, Longitude 101.83005°W and bearing S86.90111°E, 1,760.48 feet from the southwest corner of Blk O of the E.L. & R.R.R.R. Co. Survey 3, Abstract 24. The Applicant indicates the outfall is 10.04 miles upstream of Dam 7, with 94.13% of the discharged water reaching the dam, and 20.37 miles upstream of Dam 8, with 88.45% of the water reaching that dam.
- 10 Discharges of developed stormwater 300 feet West of Compress Ave. on E. 19th to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 1.0 mile southeast of the City of Lubbock, located at Latitude 33.57822°N, Longitude 101.83005°W and bearing S86.90111°E, 1,760.48 feet from the southwest corner of Blk O of the E.L. & R.R.R.R. Co. Survey 3, Abstract 24. The Applicant indicates the outfall is 10.04 miles upstream of Dam 7, with 94.13% of the discharged water reaching the dam, and 20.37 miles upstream of Dam 8, with 88.45% of the water reaching that dam.
- 11 Discharges of developed stormwater at East 26th & Southeast Dr. to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 1.0 mile southeast of the City of Lubbock, located at Latitude 33.57139°N, Longitude 101.82472°W and bearing S86.57444°E, 1,729.81 feet from the southwest corner of Blk O of the E.L. & R.R.R.R. Co. Survey 3, Abstract 24. The Applicant indicates the outfall is 10.04 miles upstream of Dam 7, with 94.13% of the discharged water reaching the dam, and 20.37 miles upstream of Dam 8, with 88.45% of the water reaching that dam.
- 12 Discharges of developed stormwater at Canyon Lake, East of MLK (south of Vanda Ave.) to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 1.5 miles southeast of the City of Lubbock, located at Latitude 33.57243°N, Longitude 101.82461°W and bearing S47.46139°E, 2,702.28 feet from the northeast corner of Blk B of the T.T. & R.R. Co. Survey 5, Abstract 96. The Applicant indicates the outfall is 9.67 miles upstream of Dam 7, with 94.34% of the discharged water reaching the dam, and 20.00 miles upstream of Dam 8, with 88.64% of the water reaching that dam.
- 13 Discharges of developed stormwater at Canyon Lake, East of MLK (south of Zenith Ave.) to the North Fork Double Mountain Fork Brazos River, 2.0 miles southeast of the City of Lubbock, located at Latitude 33.57558°N, Longitude 101.81202°W and bearing S66.78667°E, 2,043.69 feet from the northwest corner of Blk B of the T.T. & R.R. Co. Survey 3, Abstract 95. The Applicant indicates the outfall is 8.77 miles upstream of Dam 7, with 94.85% of the discharged water reaching the dam, and 19.10 miles upstream of Dam 8, with 89.13% of the water reaching that dam.
- 14 Discharges of developed stormwater at the Lift Station at I-27 & Loop 289 to Blackwater Draw, tributary of the North Fork Double Mountain Fork Brazos River, 2.2 miles north of the City of Lubbock, located at Latitude

33.61712°N, Longitude 101.84157°W and bearing S52.42056°E, 2,327.25 feet from the northeast corner of Blk A of the T.T. & R.R. Co. Survey 15, Abstract 85. The Applicant indicates the outfall is 14.77 miles upstream of Dam 7, with 91.48% of the discharged water reaching the dam, and 25.10 miles upstream of Dam 8, with 85.96% of the water reaching that dam.

- 15 Discharges of developed stormwater Southeast of Municipal Dr & Northbound I-27 Frontage Rd. (Canyon) to an unnamed tributary to Yellow House Draw, 1.1 miles north of the City of Lubbock, located at Latitude 33.60099°N, Longitude 101.84333°W and bearing S49.53694°E, 3,135.68 feet from the northeast corner of Blk A of the W.E. Penny Survey 80, Abstract 995. The Applicant indicates the outfall is 13.23 miles upstream of Dam 7, with 92.34% of the discharged water reaching the dam, and 23.56 miles upstream of Dam 8, with 86.76% of the water reaching that dam.
- 16 Discharges of developed stormwater under Northbound I-27 at Canyon Lakes Dr. (Canyon) to Yellow House Draw, 0.9 mile north of the City of Lubbock, located at Latitude 33.59749°N, Longitude 101.84161°W and bearing S41.47°E, 2,595.4 feet from the southeast corner of Blk A of the E.L. & R.R.R.R. Co. Survey 79, Abstract 331. The Applicant indicates the outfall is 12.93 miles upstream of Dam 7, with 92.50% of the discharged water reaching the dam, and 23.26 miles upstream of Dam 8, with 86.92% of the water reaching that dam.
- 17 Discharges of developed stormwater Southwest of Northbound I-27 frontage Rd. & Municipal Dr (Canyon) to an unnamed tributary to Yellow House Draw 0.9 mile north of the City of Lubbock, located at Latitude 33.59972°N, Longitude 100.16000°W and bearing S49.53694°E, 3,135.68 feet from the northeast corner of Blk A of the W.E. Penny Survey 80, Abstract 995. The Applicant indicates the outfall is 13.00 miles upstream of Dam 7, with 92.46% of the discharged water reaching the dam, and 23.33 miles upstream of Dam 8, with 86.88% of the water reaching that dam.
- 18 Discharges of developed stormwater at Canyon Lakes Dr. under I-27 to an unnamed tributary to Yellow House Draw, 0.9 mile north of the City of Lubbock, located at Latitude 33.59861°N, Longitude 101.84264°W and bearing S40.53222°E, 3,106.5 feet from the southeast corner of Blk A of the E.L. & R.R.R.R. Co. Survey 79, Abstract 331. The Applicant indicates the outfall is 13.06 miles upstream of Dam 7, with 92.43% of the discharged water reaching the dam, and 23.39 miles upstream of Dam 8, with 86.85% of the water reaching that dam.
- 19 Discharges of developed stormwater at the entrance to I-27 Northbound, North of Municipal Dr. to an unnamed tributary to Yellow House Draw, 1.1 miles north of the City of Lubbock, located at Latitude 33.60054°N, Longitude 101.84314°W and bearing S46.07444°E, 3,143.07 feet from the northeast corner of Blk A of the W.E. Penny Survey 80, Abstract 995. The Applicant indicates the outfall is 13.20 miles upstream of Dam 7, with 92.35% of the discharged water reaching the dam, and 23.53 miles upstream of Dam 8, with 86.78% of the water reaching that dam.
- 20 Discharges of developed stormwater Southeast of Compress and E. 19th, to the North Fork Double Mountain Fork Brazos River, 1.2 miles southeast of the City of Lubbock, located at Latitude 33.57781°N, Longitude 101.82668°W and bearing S88.36028°E, 2,747.95 feet from the northwest corner of Blk B of the T.T. & R.R. Co. Survey 5, Abstract 96. The Applicant indicates the outfall is 9.78 miles upstream of Dam 7, with 94.28% of the discharged water reaching the dam, and 20.11 miles upstream of Dam 8, with 88.58% of the water reaching that dam.
- 24 Discharges of developed stormwater at East Loop 289 & E. 50th (northeast corner) to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 4.2 miles southeast of the City of Lubbock, located at Latitude 33.54905°N, Longitude 101.78690°W and bearing S82.34028°E, 914.11 feet from the southeast corner of Blk B of the T.T. & R.R. Co. Survey 1, Abstract 93. The Applicant indicates the outfall is 6.08 miles

upstream of Dam 7, with 96.40% of the discharged water reaching the dam, and 16.41 miles upstream of Dam 8, with 90.58% of the water reaching that dam.

- 27 Discharges of developed stormwater Southeast of the Water Rec Plant (South Outfall) to the North Fork Double Mountain Fork Brazos River 3.3 miles southeast of the City of Lubbock, located at Latitude 33.55945°N, Longitude 101.79633°W and bearing S44.395°E, 2,013.56 feet from the northwest corner of Blk B of the T.T. & R.R. Co. Survey 1, Abstract 93. The Applicant indicates the outfall is 7.09 miles upstream of Dam 7, with 95.82% of the discharged water reaching the dam, and 17.42 miles upstream of Dam 8, with 90.03% of the water reaching that dam.
- 28 Discharges of developed stormwater South of E. 14th and Date Ave. (West of Warehouse) to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 0.7 mile east/southeast of the City of Lubbock, located at Latitude 33.58224°N, Longitude 101.83307°W and bearing S27.23306°E, 1,812.26 feet from the southwest corner of Blk O of the E.L. & R.R.R.R. Co. Survey 3, Abstract 24. The Applicant indicates the outfall is 10.27 miles upstream of Dam 7, with 94.00% of the discharged water reaching the dam, and 20.60 miles upstream of Dam 8, with 88.32% of the water reaching that dam.
- 29 Discharges of developed stormwater at I-27 Northbound Frontage Rd at the Canyon (South of N. Loop) to Blackwater Draw, 2.1 miles north of the City of Lubbock, located at Latitude 33.61496°N, Longitude 101.84373°W and bearing S49.26833°E, 3,317.43 feet from the northeast corner of Blk A of the T.T. & R.R. Co. Survey 15, Abstract 85. The Applicant indicates the outfall is 14.63 miles upstream of Dam 7, with 91.56% of the discharged water reaching the dam, and 24.96 miles upstream of Dam 8, with 86.03% of the water reaching that dam.
- 30 Discharges of developed stormwater Southeast of the Water Rec Plant (North Outfall) to the North Fork Double Mountain Fork Brazos River, 3.3 miles southeast of the City of Lubbock, located at Latitude 33.55967°N, Longitude 101.79653°W and bearing S44.91889°E, 1,913.61 feet from the northwest corner of Blk B of the T.T. & R.R. Co. Survey 1, Abstract 93. The Applicant indicates the outfall is 7.11 miles upstream of Dam 7, with 95.81% of the discharged water reaching the dam, and 17.44 miles upstream of Dam 8, with 90.02% of the water reaching that dam.
- 31 Discharges of developed stormwater at South Lubbock Drainage Improvements Outfall to the North Fork Double Mountain Fork Brazos River, 5.2 miles southeast of the City of Lubbock, located at Latitude 33.53361°N, Longitude 101.77878°W and bearing S52.195°E, 568.64 feet from the northwest corner of Blk S of the G.C. & S.F. R.R. Survey 11, Abstract 216. The Applicant indicates the outfall is 3.55 miles upstream of Dam 7, with 97.88% of the discharged water reaching the dam, and 13.88 miles upstream of Dam 8, with 91.97% of the water reaching that dam.
- 32 Discharges of treated effluent at the City of Lubbock - SEWRP to the North Fork Double Mountain Fork Brazos River, 3.3 miles southeast of the City of Lubbock, located at Latitude 33.55961°N, Longitude 101.79654°W and bearing S26.62139°E, 10,389.04 feet from the northwest corner of Blk S of the G.C. & S.F. R.R. Survey 11, Abstract 216. The Applicant indicates the outfall is 7.12 miles upstream of Dam 7, with 95.80% of the discharged water reaching the dam, and 17.45 miles upstream of Dam 8, with 90.02% of the water reaching that dam.
- 33 Discharges of treated effluent at the Town of Ransom Canyon to the North Fork Double Mountain Fork Brazos River, 10.5 miles southeast of the City of Lubbock, located at Latitude 31.43567°N, Longitude 101.67819°W and bearing S61.96722°E, 7,326.72 feet from the northeast corner of Blk I of the J.M. Kidwell Survey 4, Abstract 437. The Applicant indicates the outfall is downstream of Dam 7 and 5.64 miles upstream of Dam 8, with 96.66% of the water reaching that dam.

The Applicant indicates land will be purchased in the event that permits authorizing the construction of the proposed works are issued.

The Commission will review the application as submitted by the Applicant and may or may not grant the application as requested.

The application and partial fees were received on October 17, 2005. Additional information and fees were received on January 31, March 24, and April 13, 2006. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on April 17, 2006.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

Issued: July 7, 2006

NOV 25 2019

OF THE COMMISSION, GIVEN UNDER MY HAND AND THE
SEAL OF OFFICE ON:

Bridget C. Bohrer
BRIDGET C. BOHRER, CHIEF CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TCEQ-OFFICE OF THE CHIEF CLERK
MC-105 Attn: Notice Team
PO BOX 13087
AUSTIN TX 78711-3087

APPLICANT NAME: City of Lubbock
APPLICATION NO.: WRPERM 5921
NOTICE OF WATER RIGHT APPLICATION

AFFIDAVIT OF PUBLICATION

STATE OF TEXAS

COUNTY OF Lubbock

Before me, the undersigned authority, on this day personally appeared

Sarah Kelley, who being by me duly
(name of newspaper representative)

sworn, deposes and says that (s)he is the Classified Manager
(title of newspaper representative)

of the Lubbock Avalanche Journal; that said newspaper is
(name of newspaper)

regularly published in Lubbock County, Texas, and is a newspaper of
(name of county)

general circulation in Lubbock & Lynn County/Countries, Texas;
(name of county or counties newspaper is circulated within)

that the attached notice was published in said newspaper on the following date:

July 28, 2006
(date, or dates, of publication in the newspaper)

Sarah Kelley
Newspaper Representative's Signature

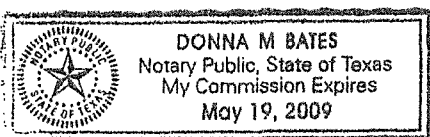
Subscribed and sworn to before me this the 28th day of July,
20 06, to certify which witness my hand and seal of office.

(Seal)

Donna M. Bates
Notary Public in and for the State of Texas

DONNA M. BATES
Print or Type Name of Notary Public

05-19-2009
My Commission Expires



Texas Commission on Environmental Quality
 NOTICE OF WATER RIGHTS APPLICATION
 APPLICATION NO. 5921

The City of Lubbock ("Applicant" or "City") has applied for a Water Use Permit to construct two dams and reservoirs on the North Fork Double Mountain Fork Brazos River, Brazos River Basin, to divert and use water from those reservoirs, and to use the bed and banks of the North Fork Double Mountain Fork Brazos River, including certain specified tributaries, for the conveyance, of water sought for diversion for municipal, industrial, and agricultural purposes in Lubbock and Lynn Counties. More information on the application and how to participate in the permitting process is given below.

APPLICATION. The City of Lubbock, P.O. Box 2000, Lubbock, TX 79457, seeks a Water Use Permit pursuant to Texas Water Code §§11.042, 11.046, and 11.121, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §§295.1, et seq. Notice is being published and mailed to the water right holders of record in the Brazos River Basin pursuant to 30 TAC §295.151.

The Applicant seeks a Water Use Permit for authorization to construct two dams and reservoirs on the North Fork Double Mountain Fork Brazos River, tributary of the Brazos River, Brazos River Basin, in Lubbock County. Structure No. 1 (known as Dam No. 7) will be located 7.6 miles southeast from the City of Lubbock at Latitude 33.53°N, Longitude 101.730°W, bearing S4.166°E, 5,227.85 feet to the southeast corner of Blk. S, G.C. & S.F. R.R. Co. Survey 21, Abstract 217. It will have a capacity of 20,708 acre-feet and surface area of 801 acres. Structure No. 2 (known as Dam No. 8) will be located 15.4 miles east-southeast from the City of Lubbock at Latitude 33.486°N, Longitude 101.607°W, bearing N61.683°W, 5,514.77 feet to the northwest corner of Blk. S, G.C. & S.F. R.R. Co. Survey 35, Abstract 214. It will have a capacity of 49,930 acre-feet and surface area of 1,680 acres.

The Applicant seeks to divert and use water impounded in these reservoirs for municipal, industrial, and agricultural purposes in Lubbock and Lynn Counties in amount not to exceed 50,000 acre-feet of water per year, collectively, from the perimeter of the reservoir created by Dam No. 7 at a maximum diversion rate of 7.20 cfs (3,220 gpm) and from the perimeter of the reservoir created by Dam No. 8 at a maximum diversion rate of 44.56 cfs (20,000 gpm).

The Applicant seeks authorization to impound, divert, and use water requested by the application based upon a recognition of rights related to: i) the City's claim to developed water-based stormwater discharges from the City's storm sewer system to the North Fork Double Mountain Fork Brazos River and its tributaries; ii) unappropriated state water; iii) future surface water-based return flows and developed water-based return flows resulting from the City's use of groundwater and its use of other developed waters, excluding return flows previously sought by the City pursuant to concurrent Application Nos. 12-3705B and 3985A; and iv) any and all wastewater return flows that are discharged upstream of the proposed reservoirs by third parties for the uses stated above.

TPDES Permit No. 10778, issued to the Town of Ransom Canyon, authorizes the treatment and disposal of up to 0.41 MGD of return flows. The Applicant is seeking the authorization and recognition of both historical and future return flows of the Town of Ransom Canyon.

TPDES Permit No. 10353, issued to the City of Lubbock, authorizes the City to treat and dispose of 31.5 MGD of treated effluent. The Applicant is seeking the authorization and recognition of the difference between the City's current 31.5 MGD authorization and the 9.0 MGD of return flows that are the subject of concurrent Application No. 3985A.

The Applicant has requested authorization to use the bed and banks of the North Fork Double Mountain Fork Brazos River, including certain of its tributaries, to convey water requested by the application from the points of discharge identified as follows to the points of diversion requested herein:

- 0 Discharges of developed stormwater at Canyon at the Duke Street (University Avenue outfall) to Yellow House Draw, tributary of the North Fork Double Mountain Fork Brazos River, tributary of the Brazos River, Brazos River Basin, 1.6 miles northwest of the City of Lubbock, located at Latitude 33.60523°N, Longitude 101.86032°W and bearing S77.46222 degrees E, 2,280.76 feet from the northeast corner of Blk A of the T.T. & R.R. Co. Survey 19, Abstract 92. The Applicant indicates the outfall is 14.23 miles upstream of Dam 7, with 91.78% of the discharged water reaching the dam, and 24.56 miles upstream of Dam 8, with 86.24% of the water reaching that dam.
- 1 Discharges of developed stormwater north of Cornell & Ave Q to Yellow House Draw, 1.4 miles north/northwest of the City of Lubbock, located at Latitude 33.60388°N, Longitude 101.85564°W and bearing S38.49 degrees E, 1,317.9 feet from the northeast corner of Blk A of the T.T. & R.R. Co. Survey 19, Abstract 92. The Applicant indicates the outfall is 13.91 miles upstream of Dam 7, with 91.96% of the discharged water reaching the dam, and 24.24 miles upstream of Dam 8, with 86.41% of the water reaching that dam.
- 2 Discharges of developed stormwater at Ave P between Erskine & Cornell to Yellow House Draw, 1.4 miles north/northwest of the City of Lubbock, located at Latitude 33.60439°N, Longitude 101.85315°W and bearing S38.6811 degrees E, 871.68 feet from the northeast corner of Blk A of the T.T. & R.R. Co. Survey 19, Abstract 92. The Applicant indicates the outfall is 13.79 miles upstream of Dam 7, with 92.02% of the discharged water reaching the dam, and 24.12 miles upstream of Dam 8, with 86.47% of the water reaching that dam.
- 3 Discharges of developed stormwater at Aztlan Park (at Canyon about 300 feet west of outfall #4) to Yellow House Draw, 1.0 mile north of the City of Lubbock, located at Latitude 33.59928°N, Longitude 101.84506°W and bearing S45.79056 degrees E, 3,528.02 feet from the southwest corner of Blk A of the E.L. & R.R.R.R. Co. Survey 79, Abstract 331. The Applicant indicates the outfall is 13.17 miles upstream of Dam 7, with 92.37% of the discharged water reaching the dam, and 23.50 miles upstream of Dam 8, with 86.79% of the water reaching that dam.
- 4 Discharges of developed stormwater at Aztlan Park (at Canyon under I-27 southbound frontage road) to Yellow House Draw, 1.0 mile north of the City of Lubbock, located at Latitude 33.59908°N, Longitude 101.84420°W and bearing S44.32167 degrees E, 3,562.48 feet from the southeast corner of Blk A of the E.L. & R.R.R.R. Co. Survey 79, Abstract 331. The Applicant indicates the outfall is 13.12 miles upstream of Dam 7, with 92.40% of the discharged water reaching the dam, and 23.45 miles upstream of Dam 8, with 86.82% of the water reaching that dam.
- 5 Discharges of developed stormwater at Aztlan Park (at Canyon under I-27 southbound frontage road) to Yellow House Draw, 1.0 mile north of the City of Lubbock, located at Latitude 33.59908°N, Longitude 101.84416°W and bearing S44.32167 degrees E, 3,562.48 feet from the southeast corner of Blk A of the E.L. & R.R.R.R. Co. Survey 79, Abstract 331. The Applicant indicates the outfall is 13.12 miles upstream of Dam 7, with 92.40% of the discharged water reaching the dam, and 23.45 miles upstream of Dam 8, with 86.82% of the water reaching that dam.
- 6 Discharges of developed stormwater at Aztlan Park (at Canyon northeast of outfall #5) to an unnamed tributary to Yellow House Draw, 1.0 mile north of the City of Lubbock, located at Latitude 33.59970°N, Longitude 101.84401°W and bearing S46.22444 degrees E, 3,608 feet from the northeast corner of Blk A of the W.E. Penny Survey 80, Abstract 995. The Applicant indicates the outfall is 13.16 miles upstream of Dam 7, with 92.37% of the discharged water reaching the dam, and 23.49 miles upstream of Dam 8, with 86.80% of the water reaching that dam.
- 7 Discharges of developed stormwater at McKenzie State Park (just west of Joyland) to an unnamed tributary to Yellow House Draw, 0.8 mile northeast of the City of Lubbock, located at Latitude 33.59227°N, Longitude 101.83507°W and bearing S84.91861 degrees E, 2,118.1 feet from the northwest corner of Blk O of the E.L. & R.R.R.R. Co. Survey 3, Abstract 24. The Applicant indicates the outfall is 12.36 miles upstream of Dam 7, with 92.82% of the discharged water reaching the dam, and 22.69 miles upstream of Dam 8, with 87.22% of the water reaching that dam.
- 8 Discharges of developed stormwater at McKenzie State Park (just east of Joyland, north of overpass) to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 1.0 mile east/northeast of the City of Lubbock, located at Latitude 33.59180°N, Longitude 101.82975°W and bearing S82.4825 degrees E, 1,841.28 feet from the northwest corner of Blk O of the E.L. & R.R.R.R. Co. Survey 3, Abstract 24. The Applicant indicates the outfall is 12.05 miles upstream of Dam 7, with 92.99% of the discharged water reaching the dam, and 22.38 miles upstream of Dam 8, with 87.38% of the water reaching that dam.
- 9 Discharges of developed stormwater 300 feet West of Compress Ave. on E. 19th to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 1.0 mile southeast of the City of Lubbock, located at Latitude 33.57822°N, Longitude 101.83005°W and bearing S86.90111 degrees E, 1,760.48 feet from the southwest corner of Blk O of the E.L. & R.R.R.R. Co. Survey 3, Abstract 24. The Applicant indicates the outfall is 10.04 miles upstream of Dam 7, with 94.13% of the discharged water reaching the dam, and 20.37 miles upstream of Dam 8, with 88.45% of the water reaching that dam.
- 10 Discharges of developed stormwater 300 feet West of Compress Ave. on E. 19th to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 1.0 mile southeast of the City of Lubbock, located at Latitude 33.57822°N, Longitude 101.83005°W and bearing S86.90111 degrees E, 1,760.48 feet from the southwest corner of Blk O of the E.L. & R.R.R.R. Co. Survey 3, Abstract 24. The Applicant indicates the outfall is 10.04 miles upstream of Dam 7, with 94.13% of the discharged water reaching the dam, and 20.37 miles upstream of Dam 8, with 88.45% of the water reaching that dam.
- 11 Discharges of developed stormwater at East 26th & Southeast Dr. to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 1.0 mile southeast of the City of Lubbock, located at Latitude 33.57139°N, Longitude 101.82472°W and bearing S86.57444 degrees E, 1,729.81 feet from the southwest corner of Blk O of the E.L. & R.R.R.R. Co. Survey 3, Abstract 24. The Applicant indicates the outfall is 10.04 miles upstream of Dam 7, with 94.13% of the discharged water reaching the dam, and 20.37 miles upstream of Dam 8, with 88.45% of the water reaching that dam.
- 12 Discharges of developed stormwater at Canyon Lake, East of MLK (south of Vonda Ave.) to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 3.5 miles southeast of the City of Lubbock, located at Latitude 33.57243°N, Longitude 101.82461°W and bearing S47.46139 degrees E, 2,702.28 feet from the northeast corner of Blk B of the T.T. & R.R. Co. Survey 5, Abstract 96. The Applicant indicates the outfall is 9.67 miles upstream of Dam 7, with 94.34% of the discharged water reaching the dam, and 20.00 miles upstream of Dam 8, with 88.64% of the water reaching that dam.
- 13 Discharges of developed stormwater at Canyon Lake, East of MLK (south of Zenith Ave.) to the North Fork Double Mountain Fork Brazos River, 2.0 miles southeast of the City of Lubbock, located at Latitude 33.57558°N, Longitude 101.81202°W and bearing S66.78667 degrees E, 2,043.69 feet from the northwest corner of Blk B of the T.T. & R.R. Co. Survey 3, Abstract 95. The Applicant indicates the outfall is 8.77 miles upstream of Dam 7, with 94.85% of the discharged water reaching the dam, and 19.10 miles upstream of Dam 8, with 89.13% of the water reaching that dam.
- 14 Discharges of developed stormwater at the Lift Station at I-27 & Loop 289 to Blackwater Draw, tributary of the North Fork Double Mountain Fork Brazos River, 2.2 miles north of the City of Lubbock, located at Latitude 33.61712°N, Longitude 101.84157°W and bearing S52.42056 degrees E, 2,227.25 feet from the northeast corner of Blk A of the T.T. & R.R. Co. Survey 15, Abstract 85. The Applicant indicates the outfall is 14.77 miles upstream of Dam 7, with 91.48% of the discharged water reaching the dam, and 25.10 miles upstream of Dam 8, with 85.96% of the water reaching that dam.
- 15 Discharges of developed stormwater Southeast of Municipal Dr & Northbound I-27 Frontage Rd. (Canyon) to an unnamed tributary to Yellow House Draw, 1.1 miles north of the City of Lubbock, located at Latitude 33.60099°N, Longitude 101.84333°W and bearing S49.53694 degrees E, 3,135.68 feet from the northeast corner of Blk A of the W.E. Penny Survey 80, Abstract 995. The Applicant indicates the outfall is 13.23 miles upstream of Dam 7, with 92.34% of the discharged water reaching the dam, and 23.56 miles upstream of Dam 8, with 86.76% of the water reaching that dam.
- 16 Discharges of developed stormwater under Northbound I-27 at Canyon Lakes Dr. (Canyon) to Yellow House Draw, 0.9 mile north of the City of Lubbock, located at Latitude 33.59749°N, Longitude 101.84161°W and bearing S41.47 degrees E, 2,595.4 feet from the southeast corner of Blk A of the E.L. & R.R.R.R. Co. Survey 79, Abstract 331. The Applicant indicates the outfall is 12.93 miles upstream of Dam 7, with 92.50% of the discharged water reaching the dam, and 23.26 miles upstream of Dam 8, with 86.92% of the water reaching that dam.
- 17 Discharges of developed stormwater Southwest of Northbound I-27 frontage Rd. & Municipal Dr. (Canyon) to an unnamed tributary to Yellow House Draw 0.9 mile north of the City of Lubbock, located at Latitude 33.59722°N, Longitude 101.84000°W and bearing S49.53694 degrees E, 3,135.68 feet from the northeast corner of Blk A of the W.E. Penny Survey 80, Abstract 995. The Applicant indicates the outfall is 13.00 miles upstream of Dam 7, with 92.46% of the discharged water reaching the dam, and 23.33 miles upstream of Dam 8, with 86.88% of the water reaching that dam.
- 18 Discharges of developed stormwater at Canyon Lakes Dr. under I-27 to an unnamed tributary to Yellow House Draw, 0.9 mile north of the City of Lubbock, located at Latitude 33.59861°N, Longitude 101.84264°W and bearing S40.53222 degrees E, 3,106.5 feet from the southeast corner of Blk A of the E.L. & R.R.R.R. Co. Survey 79, Abstract 331. The Applicant indicates the outfall is 13.06 miles upstream of Dam 7, with 92.43% of the discharged water reaching the dam, and 23.39 miles upstream of Dam 8, with 86.85% of the water reaching that dam.

See also reservoir

19 Discharges of developed stormwater at the entrance to I-27 Northbound, North of Municipal Dr. to an unnamed tributary to Yellow House Draw, 1.1 miles north of the City of Lubbock, located at Latitude 33.60054°N, Longitude 101.84314°W and bearing S46.07444 degrees E, 3,143.07 feet from the northeast corner of Blk A of the T.T. & R.R. Co. Survey 80, Abstract 995. The Applicant indicates the outfall is 13.20 miles upstream of Dam 7, with 92.35% of the discharged water reaching the dam, and 23.53 miles upstream of Dam 8, with 86.78% of the water reaching that dam.

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24 Discharges of developed stormwater at East Loop 289 & E. 50th (northeast corner) to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 4.2 miles southeast of the City of Lubbock, located at Latitude 33.54905°N, Longitude 101.78690°W and bearing S82.34028 degrees E, 914.11 feet from the southeast corner of Blk B of the T.T. & R.R. Co. Survey 1, Abstract 93. The Applicant indicates the outfall is 6.08 miles upstream of Dam 7, with 96.40% of the discharged water reaching the dam, and 16.41 miles upstream of Dam 8, with 90.58% of the water reaching that dam.

27 Discharges of developed stormwater Southeast of the Water Rec Plant (South Outfall) to the North Fork Double Mountain Fork Brazos River 3.3 miles southeast of the City of Lubbock, located at Latitude 33.55945°N, Longitude 101.79633°W and bearing S44.395 degrees E, 2,013.56 feet from the northwest corner of Blk B of the T.T. & R.R. Co. Survey 1, Abstract 93. The Applicant indicates the outfall is 7.09 miles upstream of Dam 7, with 95.82% of the discharged water reaching the dam, and 17.42 miles upstream of Dam 8, with 90.03% of the water reaching that dam.

28 Discharges of developed stormwater South of E. 14th and Date Ave. (West of Warehouse) to an unnamed tributary to the North Fork Double Mountain Fork Brazos River, 0.7 mile east/southeast of the City of Lubbock, located at Latitude 33.58224°N, Longitude 101.83307°W and bearing S27.23306 degrees E, 1,812.26 feet from the southwest corner of Blk O of the E.L. & R.R. Co. Survey 3, Abstract 24. The Applicant indicates the outfall is 10.27 miles upstream of Dam 7, with 94.00% of the discharged water reaching the dam, and 20.60 miles upstream of Dam 8, with 88.32% of the water reaching that dam.

29 Discharges of developed stormwater at I-27 Northbound Frontage Rd at the Canyon (South of N. Loop) to Blackwater Draw, 2.1 miles north of the City of Lubbock, located at Latitude 33.61496°N, Longitude 101.84373°W and bearing S49.26833 degrees E, 3,317.43 feet from the northeast corner of Blk A of the T.T. & R.R. Co. Survey 15, Abstract 85. The Applicant indicates the outfall is 14.63 miles upstream of Dam 7, with 91.56% of the discharged water reaching the dam, and 24.96 miles upstream of Dam 8, with 86.03% of the water reaching that dam.

30 Discharges of developed stormwater Southeast of the Water Rec Plant (North Outfall) to the North Fork Double Mountain Fork Brazos River, 3.3 miles southeast of the City of Lubbock, located at Latitude 33.55967°N, Longitude 101.79653°W and bearing S44.91889 degrees E, 1,913.61 feet from the northwest corner of Blk B of the T.T. & R.R. Co. Survey 1, Abstract 93. The Applicant indicates the outfall is 7.11 miles upstream of Dam 7, with 95.81% of the discharged water reaching the dam, and 17.44 miles upstream of Dam 8, with 90.02% of the water reaching that dam.

31 Discharges of developed stormwater at South Lubbock Drainage Improvements Outfall to the North Fork Double Mountain Fork Brazos River, 5.2 miles southeast of the City of Lubbock, located at Latitude 33.53361°N, Longitude 101.77878°W and bearing S52.195 degrees E, 568.64 feet from the northwest corner of Blk S of the G.C. & S.F. R.R. Co. Survey 11, Abstract 216. The Applicant indicates the outfall is 3.55 miles upstream of Dam 7, with 97.88% of the discharged water reaching the dam, and 13.88 miles upstream of Dam 8, with 91.97% of the water reaching that dam.

32 Discharges of treated effluent at the City of Lubbock - SEWRP to the North Fork Double Mountain Fork Brazos River, 3.3 miles southeast of the City of Lubbock, located at Latitude 33.55961°N, Longitude 101.79654°W and bearing S26.62139 degrees E, 10,389.04 feet from the northwest corner of Blk S of the G.C. & S.F. R.R. Co. Survey 11, Abstract 216. The Applicant indicates the outfall is 7.12 miles upstream of Dam 7, with 95.80% of the discharged water reaching the dam, and 17.45 miles upstream of Dam 8, with 90.02% of the water reaching that dam.

33 Discharges of treated effluent at the Town of Ransom Canyon to the North Fork Double Mountain Fork Brazos River, 10.5 miles southeast of the City of Lubbock, located at Latitude 31.43567°N, Longitude 101.67819°W and bearing S61.96722 degrees E, 7,326.72 feet from the northeast corner of Blk I of the J.M. Kidwell Survey 4, Abstract 437. The Applicant indicates the outfall is downstream of Dam 7 and 5.64 miles upstream of Dam 8, with 96.66% of the water reaching that dam.

The Applicant indicates land will be purchased in the event that permits authorizing the construction of the proposed works are issued.

The Commission will review the application as submitted by the applicant and may or may not grant the application as requested.

The application and partial fees were received on October 17, 2005. Additional information and fees were received on January 31, March 24, and April 13, 2006. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on April 17, 2006.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

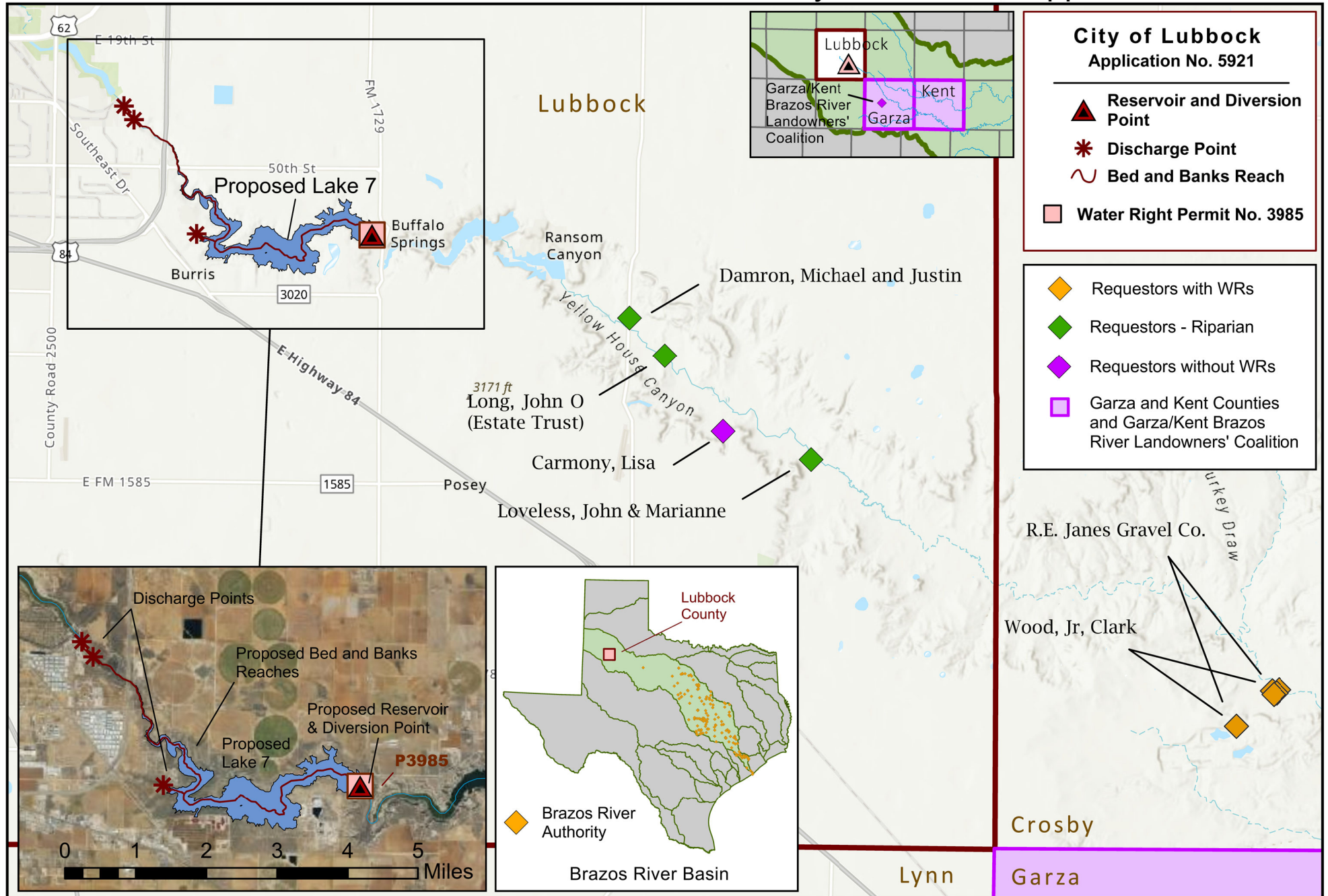
If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

Issued: July 7, 2006

Catherine Butler
163

Handwritten signature: *Frankie*



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.

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Attachment 2

TCEQ DOCKET NO. 2023-0617-WR

APPLICATION NO. 5921 BY THE	§	BEFORE THE TEXAS
CITY OF LUBBOCK TO OBTAIN	§	
A WATER USE PERMIT IN	§	COMMISSION ON
LUBBOCK AND LYNN	§	
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 regarding Application No. 5921 by the City of Lubbock (Applicant) to obtain a water use permit in Lubbock and Lynn Counties which includes authorization to construct and maintain a reservoir in the Brazos River Basin. Eleven timely hearing requests were received from:

1. Brazos River Authority – represented by Douglas G. Caroom, Esq.
2. William (Bill) R. Carmony and Lisa Carmony
3. Terry Crofoot – represented by Kerry L. Haliburton, Esq.
4. Justin Damron and Michael Damron – represented by Kerry L. Haliburton, Esq.
5. The Dow Chemical Company – represented by Steve Morton, Esq.
6. Lynn Forrest – represented by Kerry L. Haliburton, Esq.
7. Garza County, Kent County, and the Garza/Kent Brazos River Landowners' Coalition – represented by James P. Allison, Esq.
8. John O. Long – represented by Kerry L. Haliburton, Esq.
9. John Loveless and Marianne Loveless
10. R.E. Janes Gravel Co. – represented by Paul M. Terrill III, Esq.
11. Clark Wood, Jr. – represented by George H. Nelson, Esq.

No untimely requests were received.

The Executive Director recommends granting the application and has prepared a draft permit, with special conditions and an accounting plan the Executive Director has reviewed and approved.

Staff has prepared a map, attached as Attachment A, showing the Applicant's proposed water right location. The locations of all requestors are indicated on the map. Those requestors holding water rights are mapped according to the water right location.

I. BACKGROUND

The Applicant seeks authorization to construct a dam (proposed Dam 7) and maintain a reservoir (Jim Bertram Lake 7) with a capacity of 20,708 acre-feet of water on the North Fork Double Mountain Fork Brazos River, Brazos River Basin, in Lubbock County. The Applicant also seeks authorization to divert and use up to 50,000 acre-feet of water per year from the reservoir perimeter, at a diversion rate of 138.12 cubic feet per second (62,016 gallons per minute), for municipal, industrial, and agricultural purposes in Lubbock and Lynn Counties. The Applicant also seeks authorization to use

the bed and banks of the North Fork Double Mountain Fork Brazos River to convey up to 14,856 acre-feet of water per year discharged from the South Central Lubbock Drainage System; up to 8,934 acre-feet of water per year discharged from the South Lubbock Drainage System; and up to 16,240 acre-feet of return flows per year discharged from the Southeast Water Reclamation Plant as authorized under TPDES Permit No. WQ00010353002. Water conveyed via the requested bed and banks authorization will support storage in and diversions from the reservoir. The Applicant also seeks authorization to use water authorized under Water Use Permit Nos. 3985 and 3705, as amended, to support storage in and diversions from the reservoir.

II. PROCEDURAL HISTORY

The Commission received this application on October 17, 2005. The application was declared administratively complete on April 17, 2006. Notice of the application was mailed by the Commission's Chief Clerk on July 7, 2006, to water right holders of record in the Brazos River Basin. Notice of the application was published in The Lubbock Avalanche Journal on July 28, 2006. At that time, notice was provided prior to completion of technical review. Effective December 31, 2009, the applicable rule¹ was amended to require notice after completion of technical review. The hearing request period closed on August 28, 2006. The application was amended in 2008 but was not re-noticed because the requested amount of state water was reduced.

The application originally requested authorizations for two dams – proposed Dam 7 and Dam 8 – and their resulting reservoirs. By letter dated March 4, 2008, the Applicant withdrew a portion of the application relating to Dam 8 and its reservoir and indicated that it still requested authorizations for proposed Dam 7 and its reservoir.

By letter dated July 28, 2008, the Applicant amended its application to reduce the number of discharge points to three, including two storm drainage systems.

Technical review was completed on November 10, 2021, and included review of an accounting plan the Applicant submitted. The Executive Director found that the accounting plan was adequate to demonstrate compliance with the draft permit.

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.

¹ 30 Tex. Admin. Code Sec. 295.151, *see also* 34 Tex. Reg. 9454.

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. § 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 nor 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 RECOMMENDATION

Eleven hearing requests, some from more than one individual joining together, were filed prior to the closing of the hearing request period on August 28, 2006. No untimely requests were received.

The following requests have been withdrawn and will not be discussed further: The Dow Chemical Company; William (Bill) Carmony; Terry Crofoot; Lynn Forrest.

The Executive Director recommends granting the following requests: Brazos River Authority; R.E. Janes Gravel; Clark Wood, Jr.; John O. Long. The Executive Director recommends denying all other requests.

REQUESTORS HOLDING PERMITS OR CERTIFICATES OF ADJUDICATION

1. Brazos River Authority (BRA) – represented by Douglas Caroom, Esq.

BRA states that it holds several water rights (Possum Kingdom Lake, Lake Granbury, Lake Whitney, Lake Aquila, Lake Proctor, Lake Belton, Lake Stillhouse Hollow, Lake Georgetown, Lake Granger, Lake Somerville, Lake Limestone, Lake Alan Henry, and proposed Allens Creek Reservoir) in the basin and that one or more of those rights may be impaired if the application is granted.

BRA has indicated that it will withdraw its hearing request contingent upon its review of the final draft permit prepared by the Executive Director to determine that the permit is consistent with the Interlocal Agreement between BRA and the Applicant effective May 14, 2009.

The request substantially complies with 30 Tex. Admin. Code § 55.251. BRA's identified water rights are located downstream of the Applicant's proposed Dam 7. The Executive Director recommends granting the request.

2. R.E. Janes Gravel (Janes Gravel) – represented by Paul Terrill, Esq.

Janes Gravel states that it holds water rights in the basin and indicates that if the application is granted, its water right will be impaired.

Janes Gravel holds Certificate of Adjudication No. 12-3710, which has a diversion point on the North Fork of the Double Mountain Fork.

The request substantially complies with 30 Tex. Admin. Code § 55.251. Janes

Gravel's identified water right is located downstream of the Applicant's proposed Dam 7. The Executive Director recommends granting the request.

3. Clark Wood, Jr. – represented by George Nelson, Esq.

Mr. Wood is an owner of Certificate of Adjudication No. 12-3709. The water rights referenced in the hearing request (2376 and 2376A, App. 2601 and 2601A, Claim Number 1640) relate to the same water right – Certificate of Adjudication No. 12-3709.

The request substantially complies with 30 Tex. Admin. Code § 55.251. Mr. Wood's water right is located downstream of the Applicant's proposed Dam 7. The Executive Director recommends granting the request.

REQUESTORS – PROPERTY OWNERS – GRANT

4. John O. Long – represented by Kerry L. Haliburton

Mr. Long states that he owns property located on each side of the Double Mountain Fork, between Lake Ransom Canyon and proposed dam number 8, approximately 1.5 miles from proposed dam number 8.

Mr. Long does not hold a water rights permit or certificate of adjudication, but his property is riparian to the watercourse and he indicates that historically he has used the water in the river for domestic and livestock use.

The Applicant no longer seeks authorization for Dam 8.

Domestic and livestock users can claim an interest protected in a water rights application. Though Dam 8 is no longer proposed and Mr. Long based his request on Dam 8, the Executive Director recommends that his request be granted based on his asserted domestic and livestock use downstream of proposed Dam 7.

5. Michael and Justin Damron – represented by Kerry L. Haliburton

The Damrons state that they own property on each side of the Double Mountain Fork, between Lake Ransom Canyon and proposed dam number 8, approximately one-half mile from proposed dam number 8.

The Damrons do not hold a water right but indicate that historically they have used the water in the river for domestic and livestock use.

The Applicant no longer seeks authorization for Dam 8.

Domestic and livestock users can claim an interest protected in a water rights application. Though Dam 8 is no longer proposed and the Damrons based their request on Dam 8, the Executive Director recommends that their request be granted because they assert domestic and livestock downstream of proposed Dam 7.

REQUESTORS – PROPERTY OWNERS – DENY

6. Lisa Carmony

Ms. Carmony filed a request on behalf of herself and William (Bill) Carmony. Mr. Carmony has withdrawn his request.

Ms. Carmony states she lives off County Road 7300, located in Yellow House Canyon. She is concerned about her home and access to it once the dam is built.

She does not hold a water right. The program map indicates that her property will not be inundated and is not riparian to the downstream watercourse.

The Executive Director recommends denying Ms. Carmony's request because she had not identified a personal justiciable interest in this application as amended.

7. John and Marianne Loveless

The Lovelesses state that their land will be partially lost to dam #8 and partially inundated by the reservoir.

The Lovelesses do not hold a water rights permit or certificate of adjudication. Though their property is riparian to the watercourse, they do not indicate that they have used water in the river for domestic or livestock use.

The Applicant no longer seeks authorization for Dam 8.

The Executive Director recommends that this request be denied because Dam 8 is no longer proposed and the requestors do not identify a personal justiciable interest in this application as amended.

GOVERNMENTAL ENTITY REQUESTORS/ GROUP OR ASSOCIATION REQUESTOR

8. Garza County, Kent County, and the Garza/Kent Brazos River Landowners Coalition (Joint Protestants) – represented by James Allison, Esq.

Joint Protestants state as follows:

Garza County and Kent County seek to protect the interest of their citizens and their respective counties as a whole. Both counties state that they are responsible for providing and protecting the water supply for their respective citizens; that they maintain county roads and transportation infrastructure which will be affected by the Applicant's project; that the Applicant's project will affect the value of taxable property for ad valorem property taxes; that they are responsible for economic development with county boundaries. They are concerned that the Applicant's project will affect Brazos River flows within their respective counties.

The Garza/Kent Brazos River Landowners Coalition is an association of property owners, many of whom own property adjacent to the Brazos River and who rely upon water from the Brazos River for their ranching and other economic activities. They are concerned that the Applicant's project will affect Brazos River flows by their properties.

None of the Joint Protestants indicate that they hold a water rights permit or certificate of adjudication.

Though the request substantially complies with the procedural requirements in 30 Tex. Admin. Code § 55.251, the Executive Director recommends that the Joint Protestants' requests be denied because the requests do not demonstrate that the Joint Protestants are affected persons.

First, when analyzed under 30 Tex. Admin. Code § 55.256(c)(6), the Executive Director concludes that neither County has established that it has statutory authority over or interest in state water permitting, nor has either County claimed interests protected by the law under which this application will be considered. The Executive Director recommends that their requests be denied.

Second, a hearing request by a group or association must meet the three requirements set forth in 30 Tex. Admin. Code § 55.252(a). The Garza/ Kent Brazos River Landowners Coalition's request does not meet those requirements because it failed to identify at least one member who would have standing to request a hearing in his or her own right; its purpose is not identified; and it is unclear what claim is asserted or what relief is requested, therefore whether participation of individual member(s) is required is also unclear. The Executive Director recommends that the Brazos River Landowners Coalition request be denied.

V. CONCLUSION

The Executive Director respectfully recommends that the Commission grant the hearing requests of Brazos River Authority; R.E. Janes Gravel; Clark Wood, Jr.; and John O. Long. The Executive Director recommends denying all other requests.

Respectfully submitted,

Kelly Keel Linden
Interim Executive Director

Erin E. Chancellor, Director
Office of Legal Services

Charmaine Backens, Deputy Director
Environmental Law Division

by 

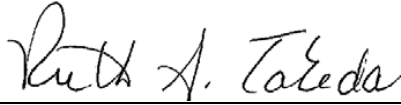
Ruth Ann Takeda
State Bar of Texas No. 24053592
Environmental Law Division, MC 173
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-6635
(512) 239-0626 (FAX)
ruth.takeda@tceq.texas.gov



Harrison Cole Malley
Staff Attorney
Environmental Law Division
State Bar of Texas No. 24116710
MC-173, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-1439

CERTIFICATE OF SERVICE

I certify that on the 1st day of September 2023, 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.

A handwritten signature in black ink, reading "Ruth A. Takeda". The signature is written in a cursive style with a horizontal line underneath it.

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

Mailing List
City of Lubbock, Water Use Permit Application No. WRPERM 5921
TCEQ Docket No. 2023-0617-WR

APPLICANT

Via electronic mail and first-class mail:

Sara Thornton, Esq.
Lloyd Gosselink Rochelle & Townsend,
P.C.
816 Congress Avenue, Ste. 1900
Austin TX 78701
PH. 512-322-5876
sthornton@lglawfirm.com

**OFFICE OF PUBLIC INTEREST
COUNSEL**

Via electronic mail:

Garrett T. Arthur, Attorney
Texas Commission on Environmental
Quality
Office of Public Interest Counsel
P.O. Box 13087 MC 103
Austin, Texas 78711-3087
12100 Park 35 Circle, Bldg. F
Austin TX 78753
PH. 512-239-5757
FAX 512-239-6377
Garrett.Arthur@tceq.texas.gov

**EXECUTIVE DIRECTOR
EXTERNAL RELATIONS**

Via electronic mail:

Ryan Vise, Director
TCEQ External Relations Division
Public Education Program MC-108
P.O. Box 13087
Austin TX 78711-3087
PH. 512-239-4000
FAX 512-239-5678
Ryan.Vise@tceq.texas.gov

**ALTERNATIVE DISPUTE RESOLUTION
Via electronic mail:**

Kyle Lucas
TCEQ
Alternative Dispute Resolution MC-222
P.O. Box 13087
Austin TX 78711-3087
PH. 512-239-0687
FAX 512-239-4015
Kyle.Lucas@tceq.texas.gov

**OFFICE OF THE CHIEF CLERK
Via electronic filing:**

Docket Clerk
TCEQ Office of Chief Clerk
P.O. Box 13087 MC 105
Austin, Texas 78711-3087
12100 Park 35 Circle, Bldg. F
Austin TX 78753
PH. 512-239-3300
FAX (512) 239-3311

PROTESTANTS

Via first-class mail:

Brazos River Authority
c/o Douglas G. Caroom, Esq.
Bickerstaff Heath Delgado Acosta LLP
Bldg 1 Ste 300
3711 S Mopac Expy
Austin TX 78746-8013

Brazos River Authority
c/o Douglas G. Caroom, Esq.
Bickerstaff Heath Delgado Acosta LLP
816 Congress Avenue Ste. 1700
Austin TX 78701

Lisa Carmony
11609 PR 3530
Slaton TX 79364

William R. Carmony
11609 PR 3530
Slaton TX 79364

Terry Crofoot
c/o Kerry L. Haliburton, Esq.
Naman Howell Smith & Lee PLLC
P.O. Box 1470
Waco TX 76703

Terry Crofoot
Box 53188
Lubbock TX 79453

Michael and Justin Damron
c/o Kerry L. Haliburton, Esq.
Naman Howell Smith & Lee PLLC
P.O. Box 1470
Waco TX 76703

The Dow Chemical Company
c/o Steve Morton, Esq.
Jenkins & Gilchrist
401 Congress Avenue, Suite 2500
Austin TX 78701-3799

The Dow Chemical Company
c/o Steve Morton, Esq.
5113 Southwest Pkwy Ste.120
Austin TX 78735-8969

The Dow Chemical Company
c/o Steve Morton, Esq.
2801 Via Fortunata Ste. 350
Austin TX 78746

The Dow Chemical Company
Attn. Carlos Moreno, Esq.
332 SH 332E, 4A016
Lake Jackson TX 77566

Lynn Forrest
c/o Kerry L. Haliburton, Esq.
Naman Howell Smith & Lee PLLC
P.O. Box 1470
Waco TX 76703

Amber Forrest Davis, Executor
Lynn Forrest Estate
Forrest Ranch
12019 E CR 7300
Slaton TX 79364

Garza County, Kent County and
Garza/Kent Brazos River Landowners'
Coalition
c/o James P. Allison, Esq.
Allison, Bass & Associates, LLP
402 W. 12th St.
Austin TX 78701

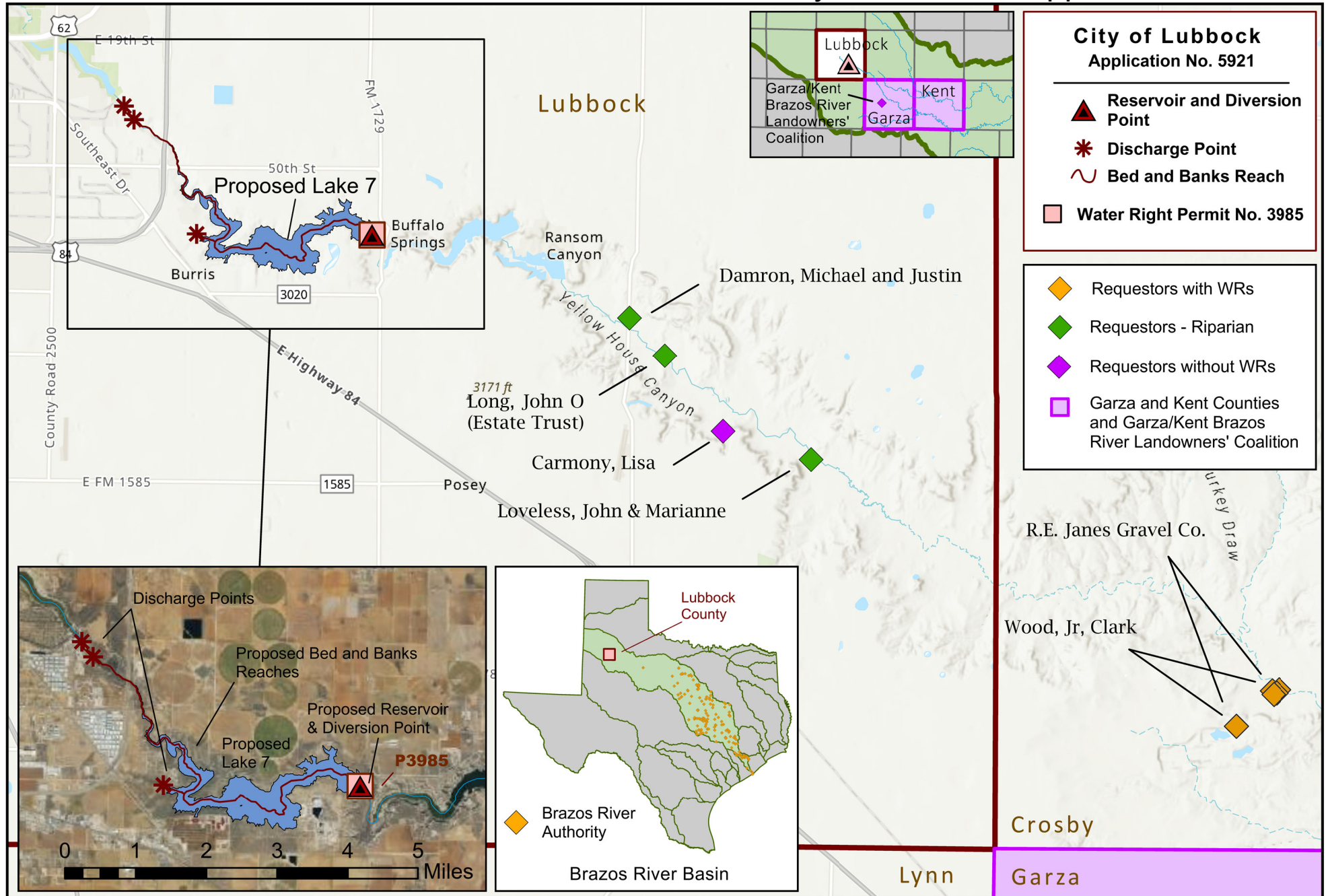
John O. Long
c/o Kerry L. Haliburton, Esq.
Naman Howell Smith & Lee PLLC
P.O. Box 1470
Waco TX 76703

John Loveless and Marianne Loveless
7106 32nd Street
Lubbock TX 79407

R.E. Janes Gravel Co.
c/o Paul M. Terrill, III, Esq.
810 West 10th Street
Austin TX 78701

Clark Wood, Jr.
c/o George H. Nelson, Esq.
George Nelson Law Firm
1501 Avenue K
Lubbock TX 79401

Attachment A



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.

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