



April 16, 2024

Mr. Chris Kozlowski, Team Leader  
Water Rights Permitting Team  
TCEQ, MC 160  
P.O. Box 13087  
Austin, Texas 78711-3087

**Received**

**Date:** 04/16/2024

**By:** Water Availability Division

Re: City of Marlin, Texas: Application for Extension of Time to Complete an Authorized Project; Brushy Creek Dam and Reservoir; Certificate of Adjudication Number 12-4355

Dear Mr. Kozlowski:

Please accept this letter and the accompanying attachments as an application by the City of Marlin, Texas ("the City"), for an extension of time to complete construction of an authorized project under Section 11.145, Texas Water Code, regarding the construction of the Brushy Creek Dam and Reservoir Project in Falls County, Texas, as authorized by Certificate of Adjudication No. 12-4355 ("the Project"). My firm has served as legal counsel for the City since 2014.

As set forth in the attached application form and resolution approved by the City, Certificate of Adjudication No. 12-4355 and a previously granted extension of time by the Commission authorizes the City to complete construction of the Project no later than May 8, 2024.

In 2007, the Texas Legislature formally designated the Brushy Creek Reservoir as a site of unique value for the construction of a reservoir in Senate Bill 3, and it is included as such in the 2022 State Water Plan. The City has already acquired all of the land in the footprint of the Project and completed a number of engineering studies related to its feasibility and construction. However, it has not been possible to complete construction due to a number of reasons. Among these were litigation that has been associated with the acquisition of upstream sediment control impoundments that were identified as part of the Project in the engineering and feasibility studies to prevent sedimentation of the main reservoir of the Project. That litigation was resolved through a compromise and settlement agreement with the Falls County Water Control and Improvement District No. 1 ("the District") in May 2017. In addition, the District was dissolved and all its assets and liabilities transferred to the City during the 2017 legislative session. Act of May 23, 2017, 85<sup>th</sup> Leg., R.S., ch. 454, General and Special Laws of Texas. This legislative action removed the primary barrier to the Project moving forward by transferring from the District to the City the easements necessary to the construction of the upstream sediment control impoundments.

The City then began in earnest to have conversations with potential partners and develop a plan for progress and completion of the Project. The City retained in November 2018 a water planning consulting firm with extensive experience in state and regional water planning and Corps

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of Engineers Section 404 permits to assist the City with evaluating Project studies that have already been done and working with federal agencies on Section 404 permit requirements. In early 2020, the City began discussions with federal agencies, including the Natural Resource Conservation Service (“NRCS”) and the United States Army Corps of Engineers, regarding federal permits and authorizations for the project, which discussions were hindered and delayed because of the COVID-19 pandemic that began shortly after such discussions were initiated.

The City continues to diligently pursue the project, and is currently in renewed discussions with the NRCS for that federal agency to conduct a review of the existing project studies to reaffirm the feasibility of the Brushy Creek Reservoir project and to take the lead on pursuing any federal 404 permit authorizations that may be required for the project. The City has recently submitted a formal request for NRCS to do so, and has received favorable feedback from NRCS on its ability and willingness to do so. Additionally, Congressman Pete Sessions of Waco has taken a supportive interest in the Project and will be working to provide federal assistance to the City.

Attached to this letter are (1) a resolution by the Marlin City Council authorizing the submission of application for an extension of time to construct the project, and (2) a completed application for the extension signed by the mayor of the City.

We look forward to expeditiously working with you and the Commission staff to favorably consider this application. If the City or my firm can provide additional information to you as you review the application, we would be pleased to do so.

On behalf of the City, thank you in advance for your timely consideration of this application.

Very truly yours,

A handwritten signature in black ink, appearing to be 'BS' with a stylized flourish extending to the right.

Brian L. Sledge  
Legal Counsel for the City of Marlin

cc: Hon. Susan R. Byrd, Mayor, and Mr. Keith Whitfield, City Manager, City of Marlin



**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**  
Water Availability Division - MC-160, P.O. Box 13087 Austin, Texas 78711-3087  
Telephone (512) 239-4600 FAX (512) 239-2214

**APPLICATION FOR AN EXTENSION OF TIME TO BEGIN AND/OR  
COMPLETE CONSTRUCTION OF AN AUTHORIZED PROJECT**  
**Texas Water Code Section §11.145**  
TO BE SUBMITTED PRIOR TO EXPIRATION DATE

**1. Applicant Information**

Permittee/Owner Name: City of Marlin

Point of Contact name: Brian L. Sledge, Attorney for the City

Mailing Address: P.O. Box 66367, Austin, TX 78766

Phone Number: 512-579-3601

Email Address: [REDACTED]

**2. Fees or penalties**

The application will not be processed unless all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol by all applicants/co-applicants. If you need assistance determining whether you owe delinquent penalties or fees, please call the Water Rights Permitting Team at (512) 239-4600, prior to submitting your application.

Does Applicant or Co-Applicant owe any **fees** to the TCEQ?

Yes or No: No

If yes, provide the following information:

Account number: n/a Amount past due: n/a

Does Applicant or Co-Applicant owe any **penalties** to the TCEQ?

Yes or No: No

If yes, please provide the following information:

Enforcement order number: n/a Amount past due: n/a

**3. Project Data**

Certificate of Adjudication No.: 12-4355 or Permit No.: 4355

and,

River Basin: Brazos

4. **Project Dates**

**BEGINNING CONSTRUCTION DATE:**

Original (Date in water right): March 16, 1991

Current (From last extension granted,

if applicable): \_\_\_\_\_

Proposed: \_\_\_\_\_

**COMPLETION DATE:**

Original: 03/06/1993

Current: 05/08/2024

Proposed: 05/08/2029

5. **Reason(s) for delay and why the proposed dates requested are necessary**

Under 30 TAC 295.72(b) the applicant must include\* why the extension should be granted and why the permit should not be forfeited if the commission finds that sufficient due diligence to begin and/or complete construction of the authorized project has not been demonstrated. Reasonable causes for delay include, but are not limited to, the operation of legal proceedings or other causes which were not within the reasonable control of the permittee and which were reasonably unforeseeable at the time of the appropriation or the last extension. Financial hardship shall not, by itself, constitute sufficient cause for the granting of an extension. Notice of the application, if required, will also indicate that the Commission will consider whether the appropriation shall be forfeited by the applicant, if the extension is denied.

*\* Please provide a statement setting forth the reasons why construction work could not be commenced or completed in the space below or attach a statement entitled*

**"Reasons Why Construction Work Could not be Commenced or Completed."**

The City has already acquired all of the land in the footprint of the Brushy Creek Reservoir Project ("Project") and completed a number of engineering studies related to its feasibility. Years of litigation that were hindering the Project were settled in 2017. Additionally, the Texas Legislature passed a new law in 2017 that dissolved the Falls Creek WCID No. 1 and transferred all its assets and liabilities to the City, particularly including the easements necessary to the construction of the upstream sediment control impoundments that were identified as part of the Project in the engineering and feasibility studies to prevent sedimentation of the main reservoir of the Project. Act of May 23, 2017, 85th Leg., R.S., ch. 454, General and Special Laws of Texas. T

The City then began in earnest to have conversations with potential partners and develop a plan for progress and completion of the Project. The City retained in November 2018 a water planning consulting firm with extensive experience in state and regional water planning and Corps of Engineers Section 404 permits to assist the City with evaluating Project studies that have already been done and working with federal agencies on Section 404 permit requirements. In early 2020, the City began discussions with federal agencies, including the Natural Resource Conservation Service ("NRCS") and the United States Army Corps of Engineers, regarding federal permits and authorizations for the project, which discussions were hindered and delayed because of the COVID-19 pandemic that began shortly after such discussions were initiated.

The City continues to diligently pursue the project, and is currently in renewed discussions with the NRCS for that federal agency to conduct a review of the existing project studies to reaffirm the feasibility of the Brushy Creek Reservoir project and to take the lead on pursuing any federal 404 permit authorizations that may be required for the project. The City has recently submitted a formal request for NRCS to do so, and has received favorable feedback from NRCS on its ability and willingness to do so. Additionally, Congressman Pete Sessions of Waco has taken a supportive interest in the Project and will be working to provide federal assistance to the City.

6. **Application Fees**

(Please make checks payable to the Texas Commission on Environmental Quality or TCEQ)

A. All requests for extension of time require payment of the following fees:

Type	Description	Amount (\$)
<b>Filing Fee</b>	Circle fee correlating to the total amount of water requested for any new appropriation and/or impoundment. Enter corresponding fee under <b>Amount (\$)</b> .	<b>500.00</b>
	<u>In Acre-Feet</u>	
	a. Less than 100	
	b. 100 - 5,000	
	c. 5,001 - 10,000	
	d. 10,001 - 250,000	
	e. More than 250,000	
<b>Recording Fee</b>		<b>\$12.50</b>
<b>TOTAL</b>		<b>\$512.50</b>

B. Extensions of time that require mailed and published notice require additional fees. Mailed and published notice of the application is required if a new beginning date for construction is more than four years past the original issue date of the water right, or a new completion date for construction is more than five years past the original completion date. If the application requires mailed and published notice, pay the following fees in addition to the fees in section (A) above:

Type	Description	Amount (\$)
<b>Extension Fee</b>	Pursuant to 30 TAC §295.138, extension fees are equivalent to one-time use fees established under §295.133 <b>not to exceed \$1,000</b> . Enter corresponding extension fee under Amount (\$). Using the one-time use fees as follows:	<b>1000.00</b>
	<b>Agriculture Use Fee</b> - Only for those with an Irrigation Use. Multiply 50¢ x ____ Number of acres that will be irrigated with State Water.	
	<b>Use Fee</b> - Required for all Use Types, excluding Irrigation Use. Multiply \$1.00 x ____ Maximum annual diversion of State Water in acre-feet.	
	<b>Recreational Storage Fee</b> - For those with Recreational storage. Multiply \$1.00 x ____ acre-feet of in-place Recreational Use State Water to be stored at normal max operating level.	
	<b>Storage Fee</b> - For Storage, excluding Recreational Storage. Multiply 50¢ x ____ acre-feet of State Water to be stored at normal max operating level.	
	<b>Note - if the total extension fees in this column above exceed \$1,000 - enter \$1,000 under Amount (\$).</b>	
<b>Mailed Notice</b>	Cost of mailed notice to all water rights in the basin. Contact Staff to determine the amount (512) 239-4600. (Different for each basin and the applicant will publish the notice in a locally circulated newspaper at its expense)	<b>997.34</b>
<b>TOTAL</b>		<b>\$ 2509.84</b>

7. **Applicant Signature**

I, **Susan Byrd**

(Typed or printed name)

**Mayor, City of Marlin**

(Title)

certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I further certify that I am authorized under Title 30 Texas Administrative Code §295.14 to sign and submit this document and I have submitted written evidence of my signature authority.

Signature: \_\_\_\_\_

(Use blue ink)

Date: \_\_\_\_\_

March 24, 2024

Subscribed and Sworn to before me by the said

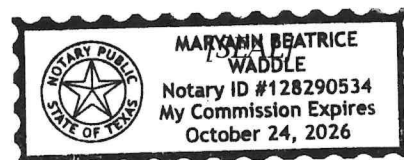
on this 24 day of March, 2024.

My commission expires on the 24 day of October, 2026.

Notary Public

\_\_\_\_\_

County, Texas



***If the Application includes Co-Applicants, each Applicant and Co-Applicant must submit an original, separate signature page.***

County, Texas



## RESOLUTION No. 18-024

**A RESOLUTION AUTHORIZING AN APPLICATION TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ) FOR EXTENSION OF TIME TO COMPLETE CONSTRUCTION OF THE BRUSHY CREEK DAM AND RESERVOIR AUTHORIZED UNDER WATER RIGHTS CERTIFICATE OF ADJUDICATION NO. 12-4355; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT:**

**Whereas**, the City of Marlin ("City") has the responsibility and duty to provide a clean and plentiful supply of potable water to its residents, and

**Whereas**, existing sources of raw water have a limited supply, often forcing drought contingency limitations on water use to be imposed, and

**Whereas**, the City possesses a permit from the State of Texas to construct a new dam and reservoir on Brushy Creek in Falls County, Texas ("the Brushy Creek Reservoir"), and

**Whereas**, the Texas Legislature in 2007 designated the Brushy Creek Reservoir as a site of unique value for the construction of a reservoir, and

**Whereas**, the 2017 State Water Plan finds that the City's current supplies are inadequate to meet projected water demands during either the near-term or for any decade in the 50-year planning horizon of the State Water Plan, and

**Whereas**, the 2017 State Water Plan identifies construction and use of the Brushy Creek Reservoir and conservation as recommended water supply strategies that will both be necessary in order to meet current and future demands of the City, and

**Whereas**, the City has acquired the land for the Brushy Creek Reservoir, and

**Whereas**, the City's efforts to complete the project have been hindered due to numerous reasons, including without limitation litigation with the Falls County Water Control Improvement District No. 1 ("District") that has been associated with the acquisition of upstream sediment control impoundments identified in feasibility studies associated with the Brushy Creek Reservoir project, and

**Whereas**, the City successfully settled the litigation with the District in 2017, and

**Whereas**, the Texas Legislature passed Senate Bill 976 in its regular session in 2017, which became law, and which dissolved the District and transferred all of its assets to the City, including assets associated with the Brushy Creek Reservoir project that will be of great benefit to the City in moving forward with the project,

**Whereas**, the litigation hindered discussions that had been ongoing with other potential partners in the region near the Brushy Creek Reservoir project that may have participated in pursuing the project with the City or purchasing water from the project, and

**Whereas**, because of the delays described above, the City has not yet completed construction of the Brushy Creek Reservoir, and

**Whereas**, the City continues to diligently pursue the project, and is currently beginning work on pursuing the Section 404 permit for the Brushy Creek Reservoir project with the U.S. Army Corps of Engineers;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARLIN THAT:**

**Section 1.** The matters and facts recited in the preamble of this Resolution are hereby found to be true and correct.

**Section 2.** Representatives of the City of Marlin are authorized to continue discussions with potential partners for the Brushy Creek Reservoir project related to project financing and implementation, possible purchases of water from the project, and cost, feasibility, technical, or other studies related to project implementation.

**Section 3.** The Mayor of Marlin is authorized to execute an extension of time application with the Texas Commission on Environmental Quality for construction of the Brushy Creek Reservoir under the water rights permit, Certificate of Adjudication No. 12-4355, and all other necessary documents to extend the city's permit to construct and operate the proposed Brushy Creek Reservoir (collectively "the application").

**Section 4.** The Mayor and designated members of the City Council, the City Manager, attorneys, engineers and other technical consultants, and other authorized representatives of the City are directed to testify and represent the City at meetings, hearings and other proceedings with or before the Texas Commission on Environmental Quality and other state and federal agencies concerning the application and to undertake and perform any other actions appropriate to their respective positions as may be necessary and helpful in prosecuting and obtaining the approval of the application.

Approved and signed this 13 th day of November, 2018.



  
\_\_\_\_\_  
John Keefer, Mayor

  
\_\_\_\_\_  
Sandra Herring, City Secretary