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April 1, 2022

Via Electronic Filing
Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

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

Dear Ms. Gharis:

Enclosed for filing in the referenced docket, please find Texas and Southwestern Cattle Raisers Association's Reply in Support of Hearing Request for the April 13, 2022 agenda item on the above-referenced docket.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

/s/ James D. Bradbury

James D. Bradbury
Attorney for Texas and Southwestern Cattle
Raisers Association

Enclosure

TCEQ DOCKET NO. 2022-0125-WR

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

TEXAS AND SOUTHWESTERN CATTLE RAISERS ASSOCIATION’S REPLY IN SUPPORT OF HEARING REQUEST

Texas and Southwestern Cattle Raisers Association (“TSCRA”) respectfully submits this Reply in Support of its Hearing Request filed in Application No. 13404 by the City of Wichita Falls (“Applicant”) to obtain a water use permit in Archer, Clay, and Wichita Counties to construct and maintain a reservoir, to divert and use state water, and for a bed and banks authorization in the Red River Basin (the “Application”). TSCRA timely filed a hearing request on behalf of its membership on February 19, 2020 seeking a contested case hearing on the Application. TSCRA now submits this Reply in support of its hearing request and respectfully asks the Commissioners to grant its request for a contested case hearing.

INTRODUCTION

TSCRA requested a contested case hearing on the Application on behalf of its many members in Clay County, Texas who will be significantly impacted from the proposed reservoir and water use sought by Applicant. TSCRA is a 143-year old livestock trade association whose membership includes more than 17,500 beef cattle operations, ranching families and agricultural businesses. TSCRA has 128 active members in Clay County, Texas. These members operate ranches for livestock production, many of whom utilize the streams and waters at issue in this proceeding for their operations. Various members of TSCRA, including Deborah Clark, Emry Birdwell, Birdwell and Clark Ranch, and Brent Durham have individually submitted comments and/or hearing requests on this Application concerning impacts to their properties. These interests extend far beyond interests of the general public. TSCRA respectfully submits this reply in support of its hearing request, supplying additional information, and requesting that the Commissioners grant TSCRA’s request for a contested case hearing on this Application.

REPLY IN SUPPORT OF HEARING REQUEST

Responses to Hearing Request by Applicant, Executive Director, and Office of Public Interest Counsel

The Applicant, the Executive Director and the Office of Public Interest Counsel (“OPIC”) addressed TSCRA’s hearing request in their Responses to Hearing Requests. Applicant, the Executive Director and OPIC all concluded that TSCRA’s Hearing Request should be denied based on one factor: that TSCRA’s hearing request did not identify one or more members of the

group or association who would otherwise have standing to request a hearing in their own right, which is a requirement for associational standing in a contested case hearing. *See* 30 Tex. Admin. Code § 55.252(a)(1).

Applicant further generally argues throughout its Response that issues of land inundation and impacts from inundation are outside the scope of the Application and outside the jurisdiction of the Commissioners. The Executive Director explained, however, in its Response to Hearing Requests that “property interests in land impacted by inundation relate directly to the reservoir, which is within the Commission’s jurisdiction.” Executive Director’s Response to Hearing Requests, at 10. TSCRA believes that the Executive Director’s assessment of the applicability and jurisdiction over these matters is correct and urges the Commissioners to grant these hearing requests on the Application.

TSCRA’s Reply to Responses to Hearing Requests

For an association to obtain a contested case hearing on the Application, it must meet the following requirements:

- 1) One or more members of the group or association would otherwise have standing to request a hearing in their own right;
- 2) The interest the group or association seeks to protect are germane to the organization’s purpose; and
- 3) Neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 Tex. Admin. Code §55.252(a). With the supplemental information provided in this Reply, TSCRA’s Hearing Request meets these requirements.

TSCRA’s Hearing Request demonstrated that it is a livestock trade association and organization with members comprised of more than 17,500 beef cattle operations, ranching families, and businesses. TSCRA explained in its Hearing Request that the Application and the proposed reservoir would heavily impact mostly rural and agrarian land in Clay County, Texas, which is home to more than 1,300 agricultural producers and more than 77,500 cattle. TSCRA explained the significant impacts to its members and agricultural producers in the area—notably pointing to the thousands of acres of agricultural land that will be taken out of production through inundation for the reservoir as well as impacts to these agricultural operations who depend on both the land and surrounding waters for their livestock operations. TSCRA specifically noted that the reservoir alone would take more than 16,000 acres of land, including the pastures used to feed cattle in Clay County, that directly and materially will impact TSCRA members and their properties. Further, these interests in protecting thousands of acres of rural, agricultural land used by TSCRA members and grazed by TSCRA members’ cattle are germane to TSCRA’s purpose of supporting beef cattle operations, ranching families, and agricultural businesses. Further, neither the claims asserted by TSCRA nor the relief requested requires the participation of any individual TSCRA members in this case.

As to the final requirement for associational standing concerning the association's membership, Section 55.254(f) allows a person who filed a hearing request to submit a written reply to a response to a hearing request with additional information. *Id.* § 55.254(f). TSCRA now submits this Reply to address the Applicant, Executive Director, and OPIC's Responses to TSCRA's Hearing Request and in particular supply information concerning individual members of TSCRA impacted by the Application who would otherwise have standing to request a hearing in their own right.

TSCRA has over 128 active members in Clay County, Texas, each of whom operate ranches to produce livestock and depend on continuous and adequate stream flows that may be impacted by this Application. Among these members are Emry Birdwell and Deborah Clark, Birdwell and Clark Ranch, Brent Durham, and Diaz Murray. Many of these members would otherwise have standing to request a hearing in their own right. In fact, Deborah Clark, Emry Birdwell, and the Birdwell and Clark Ranch have requested a contested case hearing on this Application. Impacts of the Application and proposed reservoir to the Birdwell and Clark Ranch will be significant, with 1200 to 2000 acres of the Ranch land subject to inundation. This inundation not only removes thousands of acres of agricultural land from the Ranch but will negatively impact the Ranch operations by severing portions of the Ranch property, altering the management structure, limiting production capacity, and negatively impacting revenue. Decreased flows impacting water availability and flows necessary for livestock production also must be considered. Brent Durham also submitted public comment at the public meeting on the Application in August 2020 and would further have standing in his own right because the inundation of his land will destroy critical wildlife habitat and have significant negative impacts to his ranching business. These impacts will be felt by many Clay County TSCRA members beyond the Birdwell and Clark Ranch and Durham Ranch. Many of the impacts are not fully known, including impacts of flooding native tallgrass prairie and riparian woodlands among other concerns. Significantly, the Executive Director and OPIC have both recommended granting the request of TSCRA member, the Birdwell and Clark Ranch. *See* Executive Director's Response to Hearing Requests, at 10; OPIC's Response to Hearing Requests, at 7.

CONCLUSION

With this clarification of individual multiple TSCRA members who would have standing to request a hearing on the Application, TSCRA has demonstrated through its Hearing Request and Reply that it has met the requirements for an association to request a contested case hearing. *See* 30 Tex. Admin. Code § 55.252(a). TSCRA respectfully asks the Commissioners to grant its request for a contested case hearing on the Application.

Respectfully submitted,

/s/ James D. Bradbury

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ATTORNEYS FOR TSCRA

CERTIFICATE OF SERVICE

On this 1st day of April, 2022, I certify that a true and correct copy of the foregoing document 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 via Electronic Mail to the Executive Director, the Public Interest Counsel, and the Applicant as required by 30 Tex. Admin. Code § 55.254(f).

For the Applicant

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/s/ James D. Bradbury

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