



February 23, 2015

Via Electronic Submission to:
<http://www.tceq.texas.gov/about/comments.html> (ADJ 2472)

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

Re: Central Texas Water Coalition Comments Regarding Application of O.P. Leonard, Jr. and Nancy Leonard to Amend Certificate of Adjudication No. 14-2472B; Proposed Channel Dam and Reservoir on Colorado River; San Saba and Mills Counties

Dear Ms. Bohac:

On behalf of the Central Texas Water Coalition, Inc. ("CTWC"), we appreciate the opportunity to submit these comments regarding the application by O.P. Leonard, Jr. and Nancy Leonard (the "Applicant") to amend Certificate of Adjudication No. 14-2472 (the "Application"). If granted, the proposed amendment would authorize the construction and maintenance of a channel dam on the Colorado River upstream of the Highland Lakes, potentially decreasing the amount of water that will flow from the river into the reservoirs. Given the significant potential consequences of such an authorization on the people we represent, CTWC respectfully requests the TCEQ's careful consideration of these comments.

I. Request for Public Meeting

CTWC respectfully requests that a public meeting be held so that members of the public can learn more about the Application and its implications for the management of surface water in the river, especially during this time of historic, extended drought. In addition, we request that the deadline for public comment and requests for contested case hearing be extended at least to the close of the public meeting convened by the TCEQ.

II. Request for Contested Case Hearing

CTWC respectfully requests a contested case hearing on the application of O.P. Leonard, Jr. and Nancy Leonard to Amend Certificate of Adjudication No. 14-2472B.

Contact information for CTWC is:
Jo Karr Tedder, President
Central Texas Water Coalition
P.O. Box 328; Spicewood, Texas 78669
Phone: (512) 755-4805

CTWC's primary mission is to advocate for the preservation and conservation of the Highland Lakes' water supply and water levels for the benefit of human health, safety, and recreation, and to preserve the Highland Lakes' role as an irreplaceable economic engine for the State of Texas. Our organization includes property owners in the Highland Lakes region (including landowners near the interface between the Colorado River and Lake Buchanan), domestic water users who hold domestic use contracts for use of water from the Highland Lakes, water suppliers whose supply for municipal purposes comes from the Highland Lakes, and citizens of Central Texas whose drinking water depends upon the Highland Lakes.

Specifically, Mr. Kevin Klein, CTWC Vice President for Public Relations, holds a Lower Colorado River Authority (LCRA) domestic use permit on Lake Buchanan. Because the Colorado River feeds into Lake Buchanan, the erection of a dam on the Colorado River upstream of Lake Buchanan is likely to affect inflows from the Colorado River into Lake Buchanan, decreasing the overall reliability of the water supply on which Mr. Klein relies. Mr. Klein is concerned that the Application, if granted, will result in lower inflows to Lake Buchanan and thus lower lake levels, impeding his ability to access and use water under his domestic use permit.

III. Questions and Concerns

Inflows to the Highland Lakes provide the recharge we so desperately need during this extended drought to lift storage amounts to safer levels. But inflows to the Highland Lakes have been abysmal over the last several years. In fact, seven of the lowest-inflow years on record have occurred since 2006. Last week, the LCRA acknowledged the impacts of sustained low inflows, reducing the estimated firm yield of the water rights it holds and manages. In a February 18, 2015 e-mail to firm water customers, Karen Bondy, LCRA Senior Vice President, Water Resources stated:

As a direct result of the prolonged record-dry conditions and record-low inflows from streams and tributaries feeding the Highland Lakes, the firm yield, inventory of water LCRA can provide reliably every year, has been decreased. LCRA staff now estimates the preliminary recalculated firm yield is about 500,000 acre-feet per year – about 100,000 acre-feet less than the annual firm yield that was based on the 1947-1957 drought. Further reductions in firm yield are possible as the drought continues.

CTWC is so concerned about the low inflow trend that it is conducting studies to try to understand the reason for it. In addition to studying the problem, it is critical that we protect the meager inflows we *are* getting and minimize impediments to the inflows that refill the Highland Lakes. CTWC is concerned that the construction of a dam across the Colorado River upstream of the Highland Lakes and the addition of a storage reservoir to capture water will negatively impact inflows into the Highland Lakes. CTWC would like to learn more about how the Applicant will measure inflows into the reservoir, track them under its several permits, and decide when inflows must be released downstream.

Similarly, CTWC is concerned about the protection of senior water rights downstream of the proposed dam and reservoir. There is no watermaster to ensure compliance with the priority doctrine in this area. The fact that the Applicant holds several water rights with different priority dates complicates matters – how will the Applicant account for diversions and releases among its water rights? How will the Applicant ensure that it passes flows to others downstream who have senior priority water rights or superior permit-exempt domestic and livestock rights? On a separate, but related note: is it proper for the Applicant to firm up its more senior water rights by using its most junior water right?

Compliance with the amendment, if issued, is a major concern for CTWC. The amendment must include adequate requirements for metering, measurement, allocation among water rights, accounting, and reporting to ensure that water that enters the impoundment that would be created is passed through at the times and in the amounts required by law and TCEQ rules. The amendment, if issued, must require the Applicant to maintain detailed records of the water it impounds, diverts, and passes through the dam so that compliance can be verified.

While the draft permit requires the Applicant to maintain suitable outlets to pass inflows of state water downstream, CTWC is concerned that this language is not specific enough to adequately ensure proper handling of inflows, especially during high-flow pulse events. If built, the dam must be equipped to immediately pass all inflows required to be passed, even at high flow rates, without temporary storage or associated delays. If the permit is issued, it should contain specific requirements to ensure that the dam is built, operated and maintained in perpetuity in such a manner as to ensure compliance with its legal requirements with respect to the passage of inflows.

An over-arching concern of CTWC's is the very real possibility that reservoir storage in the Colorado River basin has already been over-permitted. It appears from historical data that the basin's build capacity cannot be utilized by the amount of normal inflows. The clear decrease in the amount of inflows over the course of the recent drought further exacerbates and highlights this concern. Additionally, the analysis of potential impacts on other water rights holders has been based on a water model that is most likely already outdated, as it does not incorporate data from 2014 (one of the worst inflow years on record). And the model may prove to be even less accurate as the drought continues and the full extent of the drought is realized. Just last week, the LCRA acknowledged that the basin is in the midst of a new "critical period" characterized by the driest conditions and lowest flows on record – drier even than the drought of record of the 1940s and 1950s. At this time, perhaps more than ever, the state should be taking a conservative approach to water rights permitting.

Finally, we would like information on the other environmental permits and authorizations the Applicant will be seeking for this dam and reservoir, including the status of its application for a Clean Water Act §404 permit from the U.S. Army Corps of Engineers. Also, we understand that the U.S. Fish and Wildlife Service has identified several endangered or potentially endangered species in this region, including freshwater mussels. CTWC is unclear as to how granting the Application might impact endangered species and requests more information regarding how endangered species were considered in the draft amendment and how they will be protected should the Application be granted.

IV. Request for Addition to Mailing List

Please add CTWC to your mailing list for this Application. Service of documents by email is preferred. If a document is sent to the email address provided below, duplicate service of a hard copy by mail is not necessary.

Central Texas Water Coalition
Ward Wyatt, Executive Director
P.O. Box 328
Spicewood, TX 78669
Email: wardwyatt.ctwc@gmail.com

In closing, we appreciate your consideration of these comments and our request for a public meeting and contested case hearing on this Application. As you know, the continuing drought in this region, the threats to the water supply for the millions of people that depend upon the Highland Lakes for drinking water, and the urgent need for careful attention to all matters involving the appropriation and use of the state's surface water resources justify the highest levels of scrutiny for this Application. Thank you for your efforts to protect our state's water.

Sincerely,

Jo Karr Tedder

Jo Karr Tedder, President
Central Texas Water Coalition

CENTRAL TEXAS WATER COALITION
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