

Appendix 10-C

Public Comments

Opportunities for public comment are provided throughout the regional water planning process. Comments were received at regularly scheduled meetings during development of the IPP. During the public comment period, comments will also be received from the public, state agencies, and the TWDB. This appendix includes copies of written comments from the following entities:

- Agencies
- Organizations
- Individuals

Comments from Agencies

Comments from Organizations

City of Tyler's Supplemental Comments on the Proposed Population Projections and Water Demands for the East Texas Water Planning Area

Submitted on October 27, 2009

After listening to the discussion at the regional planning group meeting on October 14, 2009, and after discussing issues with the regional planning group's consultants, Tyler offers the following supplemental comments.

Tyler's Population

Tyler remains concerned that the projected populations in the 2011 Region I Plan for Tyler and Smith County will be far below actual populations, particularly given that Tyler's current population exceeds the projections for 2030. Nevertheless, based on discussions with the planning group's consultants, Tyler believes that the possibility of adverse consequences from the understatement of population (which will continue until the 2016 Plan) can be substantially mitigated by including in the 2011 Region I Plan a statement that acknowledges the under-projection of Tyler's population and a statement in the management strategies section of the plan that acknowledges that Tyler may need to construct additional transmission and treatment infrastructure to use additional water out of Lake Palestine sooner than currently anticipated. Tyler requests that it be given the opportunity to review the language proposed to be added to the plan prior to adoption of the plan by the regional planning group.

Manufacturing Demand in Jefferson County

Tyler understands that the motion to include the recommendation to increase manufacturing demand in Jefferson was conditioned on LNVA not needing new or amended water rights to provide the water for this demand. Depending on how this condition is incorporated into the request and into the Region I Plan, Tyler may no longer have an objection to the request to increase the demand.

The crux of Tyler's concern about LNVA's request is whether the request is a subterfuge for reducing the amount of water available for appropriation in the upper parts of the Neches and Angelina Basins and reserving that water for future uses in the lower part of the basin. This is a complicated issue that needs to be evaluated carefully by the regional planning group after fully vetting all of the issues.

LNVA currently has pending at TCEQ an application to amend its water right. LNVA's amendment application seeks to remove the following special conditions:

Special Condition 5.C. – Excepting municipal purposes, all of owner's right to divert and use public water, under the priority date of November 12, 1963, is subordinate to any present or future domestic and/or municipal water needs or requirements.

Special Condition 5.D. – Owner's rights, under the priority date of November 12, 1963, authorized by this certificate of adjudication, shall be subordinate to any rights hereafter granted by the Commission for storage and/or use of waters in and

above the proposed Ponta Dam on the Angelina River and the proposed Weches Dam on the Neches River.

These special conditions, in part, prevent LNVA's enormous water rights in the basin from hampering the development of water uses in the upper basins. These provisions accomplish this by making LNVA's rights junior to upstream uses, even future upstream uses. Effectively, these special conditions in LNVA's water right have created two hydrologically separate sub-basins in the Angelina/Neches Basin – the upper basin above the Weches and Ponta dam sites, and the lower basin below the dam sites. This legal separation of the two parts of the basin has existed since 1963 and is now a fundamental aspect in the appropriation of water in the basin. Removal of these special conditions would make water in the upper basin subject to appropriation in the lower basin.

Tyler's concern is that LNVA is attempting to use the requested change to the region's water demands as a basis to argue that LNVA's proposed amendment is consistent with the Region I Plan and to argue that the regional planning group agrees that all of LNVA's existing water rights should be made senior to all future water rights in the upper basin. While Tyler can understand that LNVA would like some certainty as to the reliability of its water rights, Tyler does not believe that LNVA has demonstrated that all of its water has been put to a beneficial use deserving of a priority date. Given the complexity of the regulatory scheme, Tyler wants to make sure that the regional planning group does not unintentionally change this long-standing understanding of how water will be divided between the upper and lower basins.

At the October 14, 2009, planning group meeting, LNVA represented that it wanted the increased manufacturing demand as a means of ensuring access to TWDB funds, if necessary, to construct improvements to deliver water to the LNG terminals. LNVA further represented that the addition of the demand was not going to be used as a basis of obtaining additional water rights. If this is truly LNVA's purpose, then Tyler will not oppose LNVA's request.¹ Tyler, therefore, requests that the actual request to the TWDB and the 2011 Region I Plan clearly state that the request to add the additional manufacturing demand in Jefferson County cannot be used to demonstrate consistency with the regional plan for purposes of Texas Water Code §13.134 and is not an endorsement by the regional planning group of an amendment of Certificate of Adjudication No. 06-4411.

The regional planning group is free to examine whether the upper and lower basins should remain hydrologically separate. Such an inquiry is a fundamental part of planning for the future. Tyler asks that the planning group make any such inquiry in a straight-forward and direct manner so that all affected parties know what is being discussed and what is at stake.

Tyler thanks the regional planning group for its continued hard work on these issues and for affording Tyler with the opportunity to supply these supplemental comments.

¹ Tyler continues to believe that LNVA has not adequately documented the proposed quantities of water to be used by these terminals. Additionally, Tyler fails to see how LNVA can claim that it is conserving water when it proposes that a single LNG terminal will use more than 175,000 acre-feet per year of water.

Comments from Individuals