Brooke T. Paup, *Chairwoman*
Catarina R. Gonzales, *Commissioner*
Tonya R. Miller, *Commissioner*
Kelly Keel, *Executive Director*

Eli A. Martinez, Interim Public Interest Counsel

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 25, 2026

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

RE: **IN THE MATTER OF THE APPLICATION BY THE CITY OF WACO TO AMEND CERTIFICATE OF ADJUDICATION APPLICATION NO. 12-4318G**
TCEQ DOCKET NO. 2026-1018-WR

Dear Ms. Gharis:

Enclosed for filing is the Office of Public Interest Counsel's Response to Hearing Request in the above-entitled matter.

Sincerely,

Eli Martinez

Eli A. Martinez
Interim Public Interest Counsel

cc: Mailing List

TCEQ DOCKET NO. 2026-1018-WR

APPLICATION OF CITY OF WACO FOR PERMIT NO. ADJ 12-4318G	**§**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO HEARING REQUEST

To the Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Hearing Request in the above-referenced matter and submits the following:

I. INTRODUCTION

City of Waco (Waco or Applicant) seeks to amend Certificate of Adjudication No. 12-4318 to add industrial, recreation, and instream purposes of use and to authorize the diversion of its currently authorized water from anywhere on the perimeter of Lake Brazos.

A portion of Certificate of Adjudication No. 12-4318 (Certificate) authorizes Waco to divert and use not to exceed 2,153 acre-feet of water per year from a point on the Brazos River, Brazos River Basin, at a maximum diversion rate of 8.89 cfs (4.000 gpm) for agricultural, municipal, and mining purposes in Bosque, McLennan, and Hill counties within the Brazos River Basin. Waco is further authorized to maintain an off-channel reservoir and impound not to exceed 288 acre-feet of water in Bosque County. The time priority of the right is December 31, 1921.

Applicant seeks to amend its portion of the Certificate to add industrial,

recreational, and instream purposes of use. Applicant also seeks to amend its portion of the Certificate to authorize diversion from the Brazos River anywhere along the perimeter of Lake Brazos, authorized under Certificate of Adjudication No. 12-4340.

The application was received on September 3, 2025. Partial fees were received on September 4, 2025. Additional fees were received on October 7, 2025. The application was declared administratively complete and filed with the Office of the Chief Clerk on October 10, 2025. Notice was mailed to the interjacent water right holders in the Brazos River Basin pursuant to Title 30 Texas Administrative Code (TAC) § 295.158(c)(3)(D) and notice to co-owners pursuant to 30 TAC § 295.158(c)(2)(A). In accordance with 30 TAC § 55.251(d), the mailed notice set the filing deadline for a contested case hearing request as July 10, 2026. On July 2, 2026, Miriam Cobb submitted a timely request for a contested case hearing to the Commission.

II. REQUIREMENTS OF APPLICABLE LAW

A. Requirements to Obtain Affected Person Status

This application was declared administratively complete after September 1, 1999, and is subject to Chapter 55, Subchapter G, sections 55.250 - 55.256. According to these rules, an "affected person" must submit a timely contested case hearing request in writing and in compliance with Commission requirements for making a request.[1] In addition, the request must identify the

[1] 30 TAC §§ 55.251 *et seq.* and 30 TAC § 295.171.

person's personal justiciable interest affected by the application, including a brief, specific explanation regarding "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 the members of the general public."[2]

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" in a manner not common to members of the general public. [3] Relevant factors considered in determining a person's affected person status include:

> (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 the 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.[4]

A contested case hearing should be granted if an affected person's hearing request meets all requirements of applicable law. A request for hearing

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[2] 30 TAC § 55.251(c)(2).
[3] 30 TAC § 55.256(a). "This standard does not require parties to show that they will ultimately prevail on the merits; it simply requires them to show that they will potentially suffer harm or have a justiciable interest that will be affected." *United Copper v. TNRCC*, 17 S.W.3d 797, 803 (Tex.App. - Austin 2000).
[4] 30 TAC § 55.256(c).

shall be granted if the request is made by the Applicant or the Executive Director.[5] The Commission may also refer an application to the State Office of Administrative Hearings if the Commission determines that a hearing would be in the public interest.[6]

B. Requirements for Amendment of a Water Use Permit

Water rights holders must obtain authority from the TCEQ to alter their water right, including changing the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or any other change to their current authority under TEX. WATER CODE (TWC) § 11.122(a). The TCEQ must approve the requested amendment unless the amendment increases the amount of water to be diverted, the rate at which the water will be diverted, or the requested change would have an adverse impact upon other water rights holders or the environment, beyond that which would occur if the water right holder seeking an amendment fully exercised the existing right.[7]

In addition, the TCEQ may approve an amendment only if it would not be detrimental to the public welfare.[8] The TCEQ also must consider effects on surface water and groundwater quality, groundwater uses, aquatic and wildlife habitat, bays and estuaries, and instream flows necessary to support recreation,

[5] 30 TAC § 55.255(b)1
[6] 30 TAC § 55.255(c).
[7] Tex. Water Code § 11.122(b). *See also* 30 TAC § 297.45.
[7] 30 TAC § 297.46

navigation, and federally listed species.[9] The TCEQ must include any "condition, restriction, limitation or provision reasonably necessary for the enforcement and administration of the water laws of the state and the rules of the Commission."[10] Finally, the amendment also must "meet all other applicable requirements" of TWC Ch. 11.[11]

III. DISCUSSION

A. Determination of Affected Persons

Miriam Cobb submitted a timely hearing request in this matter. The request states that the proposed amendment should be clarified and raises concerns about the requestor's significant health issues. The Executive Director produced a map in this matter confirming that the requestor lives approximately 11 miles from the proposed diversion point and does not reside on a watercourse. Miriam Cobb furthermore does not indicate that she holds a water right.

OPIC finds that, because Miriam Cobb does not hold a water right that may be potentially impacted by the proposed amendment, does not live along the potentially impacted watercourse, and resides far from the diversion point indicated in the amendment—minimizing any potential personal impacts by the Applicant's proposed activity—she does not have a personal justiciable interest that may be impacted under TWC §11.122(b). OPIC therefore cannot find that

[9] 30 TAC §§ 297.47, 297.53–297.56.
[10] 30 TAC § 297.59(a).
[11] TWC § 11.122(b).

the requestor is an affected person under the Commission's rules and recommends that her hearing request be denied.

IV. CONCLUSION

OPIC respectfully recommends that the Commission find that Miriam Cobb is not an affected person under the applicable rules and that her hearing request, therefore, should be denied.

Respectfully submitted,

Eli A. Martinez
Interim Public Interest Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2026, the Office of Public Counsel's Response to Hearing Request was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via electronic mail, Inter-Agency Mail or by deposit in the U.S. Mail.

Eli A. Martinez

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TCEQ DOCKET NO. 2026-1018-WR

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