



District 13

Ruben A. Garza
District Director

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April 29, 2014

Texas Water Development Board
Office of the General Counsel
Attn: Connie Sanders
1700 N. Congress Ave.
Austin, TX 78701

Re: Interregional Conflict between the 2011 Region C and Region D Regional Water Plans

Via email: regioncandd@twdb.texas.gov

Dear Ms. Sanders:

I am writing on behalf of the 850,000 members of the United Steelworkers and in particular of its 25,000 members in the State of Texas. Our Texan members work in a wide variety of manufacturing industries including oil, chemicals, paper, cement, aluminum, steel, and a wide variety of other products. In addition we represent Texas health care workers, public safety officers and many other public workers. We represent close to 2,500 workers in TWDB Region D, including the nearly 1,000 employed at the International Paper (IP) mill in Texarkana who will be impacted directly by TWDB decision-making on the above-captioned matter.

The USW opposes construction of the Marvin Nichols Reservoir, and for that reason believes TWDB should select the "no build" alternative for the Marvin Nichols Reservoir, and should omit it from future planning for Region C's water needs. The reasons for our opposition for this un-needed project are discussed below.

Negative Effects of Building the Marvin Nichols Reservoir

The reservoir would flood more than 70,000 acres of productive forest and agricultural land, including important wetlands and wildlife habitat. Furthermore up to 683,000 additional acres (more than 1,000 square miles) could be needed to mitigate the loss of habitat.

The dam and reservoir would substantially reduce flow on the Sulphur River, negatively impacting downstream ranches, businesses and communities that depend on the river for water. Decreased flow in the river may well decrease the water table downstream of the reservoir. The smaller amount of water could severely impact the quality of drinking water downstream of the dam.

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union

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It is possible that that the Marvin Nichols Reservoir could eliminate as many as one million acres of hardwood timber production, impacting both our members in Texarkana and many small, family-owned timber companies and their workers. If the Texarkana mill were sufficiently impacted that it had to close, 1,000 or more direct jobs would be lost, as well as several thousand more jobs at companies that supply the mill and serve its workers. This is on top of hundreds of jobs at smaller businesses should they also be forced to close.

Alternatives to the Marvin Nichols Reservoir

There are numerous less costly and less harmful ways for TWDB to meet the water needs of its Region C constituents than by the construction of the Marvin Nichols Reservoir. These include the use of already existing water sources, such as obtaining water from Wright Patman Reservoir, the reallocation of flood storage to water supply in Lake Texoma, and obtaining water from Toledo Bend Reservoir. TWDB also could combine these with a variety of smaller sources. In addition the TWDB plan could put more emphasis on water conservation and the recycling and re-use of water for such purposes as lawn irrigation. We are certain TWDB will be able to craft a viable plan for Region C's water needs that does not include the destructive effects on the land and people of Region D that would be entailed by the construction of the Marvin Nichols Reservoir.

Legal Concerns

TWDB initially approved the Region D water plan, which discussed in detail the many negative impacts of the Marvin Nichols Reservoir on its agricultural, environmental and timber resources and stated explicitly that these impacts created an interregional conflict under the requirements of Texas law whereby a regional water plan can be approved only if "all interregional conflicts involving that regional water planning area have been resolved."¹

However, when TWDB approved the Region D plan and again when it approved the Region C plan in December 2010, it made a formal determination that no interregional conflict existed. Several landowners and members of the Region D planning group then sued TWDB, arguing that the board's determination that no interregional conflict existed was faulty and that the Region C plan containing the Marvin Nichols Reservoir should not have been approved prior to resolution of the conflict.

The district court agreed with the plaintiffs, stated that an interregional conflict did in fact exist, and remanded the case back to TWDB, directing it to use its rules, follow the statute, and resolve the conflict prior to approval of the Region C water plan. TWDB appealed and in May 2013 the appeals court affirmed the judgment of the district court.

One of the key principles of the 1997 legislation that set up the current multi-regional water planning process is that each regional plan be "consistent with long-term protection of *the state's* (italics added) water resources, agricultural resources, and natural resources."² Furthermore, the Texas legislature has defined specifically the purposes of state water planning to "provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions, in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; *and protect the agricultural and natural resources of the entire state* (italics added)."³

¹ Texas Water Code Section 16.053(h)(7)(A)

² Texas Water Code Section 16.053(h)(7)(C)

³ Texas Water Code Section 16.051(a)

Even though TWDB re-wrote its rules in 2012 in response to the district court decision, it continues to insist that an interregional conflict does not exist unless “more than one regional water plan relies upon the same water source, so that there is not sufficient water available to fully implement both plans and would create an over-allocation of that source.”⁴

The appeals court specifically admonished TWDB to amend its rule “to include its present definition and the present situation where a region has studied the impacts and finds there is a substantial conflict.”⁵ At this point the board has not done so, and its staff has recommended that the board re-affirm its previous decision that there is no inter-regional conflict.⁶

We believe TWDB’s insistence on holding to its narrow definition of when an interregional conflict exists is in error and in specific contradiction both to the recommendation of the appeals court and to the plain language of the underlying statute.

Furthermore, the potential impacts of the Marvin Nichols Reservoir on the downstream behavior of the Sulphur River and on the underlying water table, suggest that even under TWDB’s narrow definition an interregional conflict exists. Since the source of the reservoir would be the Sulphur River and since its downstream flow and the water table would be negatively impacted it is likely “that there is not sufficient water available to fully implement both plans.”⁷

Conclusion

The United Steelworkers strongly urges that TWDB accept that there is an interregional conflict caused by the inclusion of the Marvin Nichols Reservoir in the Region C water plan, and further emphatically urges that the conflict be resolved by its acceptance of its staff’s identified Option 2, the removal of the Marvin Nichols Reservoir from the Region C plan.⁸

Thank you very much for this opportunity to comment.

Sincerely,


Ruben A. Garza
Director, USW District 13

⁴ 31 Texas Administrative Code 357.10(15)

⁵ Texas Water Development Board v. Ward Timber, Ltd. No. 11-12-0030-CV

⁶ “Resolution of the Interregional Conflict between the 2011 Region C and the Region D Regional Water Plans,” TWDB staff memorandum (no date)

⁷ Texas Water Code Section 16.051 (op. cit.)

⁸ TWDB staff memorandum (op. cit.), page 6