

Texarkana Resolution No. 2018-013

Riverbend Resolution No. 2018 0228-05

A JOINT RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AND THE BOARD OF DIRECTORS OF RIVERBEND WATER RESOURCES DISTRICT, DELEGATING AUTHORITY TO RIVERBEND'S EXECUTIVE DIRECTOR/CEO, ELIZABETH FAZIO HALE, TO SIGN AND SUBMIT FEDERAL AND STATE PERMIT APPLICATIONS, PERMIT AMENDMENTS, AND AMENDMENTS TO TEXARKANA'S CERTIFICATE OF ADJUDICATION NO. 03-4836 FOR THE LIMITED PURPOSE OF DEVELOPING AND LOCATING ADDITIONAL, NEW DIVERSION LOCATIONS AND INTAKE STRUCTURES AT LAKE WRIGHT PATMAN; PROVIDING FOR A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Texarkana, Texas ("Texarkana"), formed in 1873, is a home-rule municipality operating under a municipal charter adopted as authorized by Article XI, Section 5, of the Texas Constitution and as recognized by Texas Local Government Code Section 5.004 and having full power of local self-government.

WHEREAS, Riverbend Water Resources District ("Riverbend") is a conservation and reclamation district created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution, as set forth in Title 6, Special District Local Laws Code, Subtitle L, Municipal Water Districts, Chapter 9601, with statutory powers including the authority to acquire any and all storage rights and storage capacity in a reservoir or other water source inside or outside the boundaries of the district, and to acquire the right to take water from that reservoir or source, subject to the rights or permits held by municipalities or other persons.

WHEREAS, in 2011, the Texas Legislature reconstituted the Board of Directors of Riverbend to be composed of five qualified voters who are residents of the district, not otherwise serving as an elected official or as an employee of a Riverbend member, selected by the local governing bodies of the Riverbend members (the Counties of Bowie, Cass, and Red River, TexAmericas Center, and the Cities of Annona, Atlanta, Avery, DeKalb, Hooks, Leary, Maud, Nash, New Boston, Redwater, Texarkana, and Wake Village) as provided by law.

WHEREAS, Texarkana holds rights to appropriate, divert, and use waters of the State of Texas in the Sulphur River Basin under multiple permits issued to Texarkana by the State of Texas, as recognized by final decree of the 202nd Judicial District Court of Bowie County, Texas, Cause No. 86-C1702-202, In re: The Adjudication of Water Rights in the Sulphur River Basin dated December 17, 1986, with those rights and the priority dates associated with those rights certified by the Texas Water Commission in *Certificate of Adjudication* No. 03-4836, issued on March 31, 1987 (collectively, hereinafter, "Texarkana's Water Rights").

WHEREAS, Texarkana and Riverbend entered into an Interlocal Cooperation Agreement in 2010, revised in 2015, which, among other provisions, detailed specific services to be provided by Riverbend to Texarkana as set forth in Schedule A appended to the agreement, stating in pertinent part:

Schedule A

Services to be provided by Riverbend under this Interlocal Cooperation Agreement shall include the following:

1. Acting as City's agent in coordination with the City Council and City Manager of City in the following matters:

a. negotiating with the United States Army Corps of Engineers regarding contractual rights and responsibilities with respect to the entire pool in the Lake Wright Patman Reservoir;

b. securing water permits and permissions from the Texas Water Development Board, Texas Commission on Environmental Quality, and any other state or federal agency, with respect to the entire pool in the Lake Wright Patman Reservoir, corresponding with item 1a, above;

c. negotiating with governmental entities or political subdivisions outside of Texas Regional Water Planning Group - Region D regarding the purchase of water in the Lake Wright Patman Reservoir, corresponding with items 1a and 1b, above; and

d. attendance at and participation in state and regional water planning and development meetings.

The term "coordination" as used in this Section 1 shall include the following:

- Notifying the Mayor and City Manager in advance of any meetings or engagements which correspond with items 1a, 1b, 1c, or 1d, that Agent intends to either attend or participate in, so as to facilitate City attendance; and regardless of City attendance, submitting a written summary of such meetings or engagements to the Mayor and City Manager, detailing any tasks or commitments Agent proposes or recommends for City.
- Submitting a monthly status report to the City Council on all major efforts which correspond with items 1a, 1b, 1c, or 1d, including securing water rights, providing water resources to the region, funding of recommended goals and efforts (including identification of revenues, sources of revenue, and expenditures), and defining any impediments towards achieving the recommended goals and efforts.

Agent shall have no authority to bind the City or the City Council on any matter. The City Council may revoke this Section 1 at any time with or without cause.

WHEREAS, in 2016, the City Council of Texarkana and the Board of Directors of Riverbend, by joint resolution (Texarkana Res. No. 2016-118 and Riverbend Res. No. 20160817-03), confirmed that representatives of the U.S. Army Corps of Engineers may contact Texarkana City Liaison Stephen A. Mayo and Riverbend Executive Director / CEO Elizabeth Fazio Hale as authorized points of contact with regard to the subject matters set forth in the resolution, stating in pertinent part:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AND THE BOARD OF DIRECTORS OF RIVERBEND WATER RESOURCES DISTRICT THAT:

Section 1. The City Council of Texarkana, Texas, and the Board of Directors of Riverbend continue to concur with and affirm the multiple requests made to Col. Calvin C. Hudson, II, Commander, U.S. Army Corps of Engineers, Fort Worth District, that Texarkana and its surrounding entities through Riverbend remain local sponsors for any existing or new water reallocated or developed out of Lake Wright Patman Reservoir. The City Council of Texarkana, Texas, and the Board of Directors of Riverbend support the full utilization of Lake Wright Patman Reservoir to its highest and best use as a responsible strategy that produces a water supply that would be plentiful, immediate, and least costly, with minimal negative impact on the region as compared to the creation of any new reservoirs.

Section 2. The City Council of Texarkana, Texas, and the Board of Directors of Riverbend respectfully submit that Texarkana and its surrounding entities through Riverbend should be included as formal local sponsors to the Sulphur River Basin Feasibility Study given the inclusion of the Lake Wright Patman Reservoir dam safety study into the feasibility study.

Section 3. Consistent with the previous authorizations recited herein, the City Council of Texarkana, Texas, and the Board of Directors of Riverbend Water District confirm that representatives of the U.S. Army Corps of Engineers may contact Texarkana City Liaison Stephen A. Mayo and Riverbend Executive Director / CEO Elizabeth Fazio Hale as authorized points of contact with regard to the subject matters set forth in this Resolution.

WHEREAS, in 2017, the City Council of Texarkana and the Board of Directors of Riverbend, by joint resolution (Texarkana Res. No. 2017-038 and Riverbend Res. No. 20170510-04), identified Riverbend's role with regard to future water rights in Lake Wright Patman, stating in pertinent part:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS AND THE BOARD OF DIRECTORS OF RIVERBEND WATER RESOURCES DISTRICT:

Section 1. Riverbend Water Resources District is the appropriate entity and authority to move forward with implementing the Ultimate Rule Curve on behalf of the City of Texarkana, Texas; in cooperation with the United States Army Corps of Engineers, and further that Riverbend Water Resources District is the appropriate entity and authority to apply at the Texas Commission on Environmental Quality for future water rights between the interim level and the permanent level "ultimate rule curve" that may become available once the Ultimate Rule Curve is fully implemented on behalf of all of the Northeast Texas region and all of Riverbend's member entities.

WHEREAS, Section 3.A of Texarkana's *Certificate of Adjudication* No. 03-4836 specifies authorized diversion locations, but at least one of those locations corresponding to a current intake system in Bowie County at Lake Wright Patman has limiting characteristics which could negatively impact both access to Texarkana's water rights and current production of water supply, and therefore developing and implementing a new intake structure would be in the best interest of the Riverbend members, including Texarkana.

WHEREAS, in 2017, the Board of Directors of Riverbend authorized Riverbend's Executive Director/CEO to begin implementation of a new intake structure by Res. No. 20171024-03:

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Riverbend Water Resources District hereby authorizes the Executive Director/CEO, Elizabeth Fazio Hale, to take all necessary steps to begin development and implementation of a new intake structure at Lake Wright Patman and to further present to the Board of Directors at a later date all costs associated with implementation of the project for further approval.

WHEREAS, Section 404 of the federal Clean Water Act establishes a program which regulates, among other matters, activities in waters of the United States such as water resource projects, with the U.S. Army Corps of Engineers enforcing Section 404 provisions and administering the day-to-day regulatory program, including individual and general permit decisions.

WHEREAS, Riverbend's Executive Director/CEO contacted the U.S. Army Corps of Engineers to begin the process for implementation of a new intake structure at Lake Wright Patman, and a regulatory project manager has been assigned for the subject project.

WHEREAS, as part of the Section 404 permit process, Riverbend's Executive Director/CEO anticipates the scheduling of an in-person pre-application meeting with the U.S. Army Corps of Engineers for the eventual submission of an application for the placement of a new intake structure at Wright Patman Lake.

WHEREAS, Riverbend's Executive Director/CEO also anticipates the need to submit an application to the Texas Commission on Environmental Quality ("TCEQ") amending Texarkana's current water rights permits and Texarkana's *Certificate of Adjudication* No. 03-4836 for inclusion of additional, new diversion locations and intake structures anywhere along the perimeter of Lake Wright Patman.

WHEREAS, for the limited purpose of facilitating the development and location of additional, new intake structures on Lake Wright Patman, the City Council of Texarkana and the Board of Directors of Riverbend intend for this resolution to delegate signature authority to Riverbend's Executive Director/CEO, Elizabeth Fazio Hale, for signature and submission to the U.S. Army Corps of Engineers of Section 404 permit applications and, after review and approval within thirty (30) days by Texarkana's City Manager, for signature and submission to TCEQ of any applications amending Texarkana's water permits and Section 3.A of Texarkana's *Certificate of Adjudication* No. 03-4836 for the inclusion of additional, new diversion locations and intake structures anywhere along the perimeter of Lake Wright Patman.

WHEREAS, the City Council of Texarkana and the Board of Directors of Riverbend acknowledge that Schedule A of the Interlocal Cooperation Agreement between Texarkana and Riverbend does not extend to Riverbend, as Texarkana's agent, any authority to bind the City or the City Council on any matter, and therefore the parties intend for the specific authority detailed in this Joint Resolution to constitute an amendment to Schedule A as may be necessary to

effectuate the intended purpose of this Joint Resolution.

WHEREAS, the City Council of Texarkana and the Board of Directors of Riverbend do not intend for this Joint Resolution to abrogate Texarkana's Water Rights.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEXARKANA, TEXAS, AND THE BOARD OF DIRECTORS OF RIVERBEND WATER RESOURCES DISTRICT:

Section 1. For the limited purpose of facilitating the development and location of additional, new diversion locations and intake structures on Lake Wright Patman, the City Council of Texarkana and the Board of Directors of Riverbend authorize Riverbend's Executive Director/CEO, Elizabeth Fazio Hale, (i) to prepare, execute, submit, prosecute, negotiate, settle, and compromise Section 404 permit applications to the U.S. Army Corps of Engineers, and (ii) after review and approval within thirty (30) days by Texarkana's City Manager, to prepare, execute, submit, prosecute, negotiate, settle, and compromise water right applications to TCEQ necessary to amend Texarkana's water permits and Section 3.A of Texarkana's *Certificate of Adjudication* No. 03-4836 for the inclusion of additional, new diversion locations and intake structures anywhere along the perimeter of Lake Wright Patman.

Section 2. This Joint Resolution shall be deemed as providing written evidence of signature authority as required by Title 30, Texas Administrative Code § 295.14; provided, however, that such signature authority is limited solely to Elizabeth Fazio Hale in her official capacity as Riverbend's Executive Director/CEO and shall not be transferrable to any successor Executive Director/CEO of Riverbend.

Section 3. This Joint Resolution shall constitute a limited amendment to the Interlocal Cooperation Agreement between Texarkana and Riverbend, signed in 2010 and revised in 2015, by providing for an exception to the sentence in Schedule A of the agreement which reads, "Agent shall have no authority to bind the City or the City Council on any matter.", solely to effectuate the limited purpose set forth in Section 1. This Joint Resolution shall not be construed to amend any other provisions of the Interlocal Cooperation Agreement between Texarkana and Riverbend or to delegate to Riverbend any other authority to bind Texarkana or the City Council of Texarkana on any matter.

Section 4. This Joint Resolution shall not be construed to abrogate Texarkana's Water Rights.

Section 5. This Joint Resolution shall expire on January 31, 2021, unless renewed by the City Council of Texarkana and the Board of Directors of Riverbend.

Section 6. In case a section, clause, sentence or part of this Resolution shall be deemed or adjudged by a court of competent jurisdiction to be invalid, then such invalidity shall not affect, impair or invalidate the remainder of this resolution.

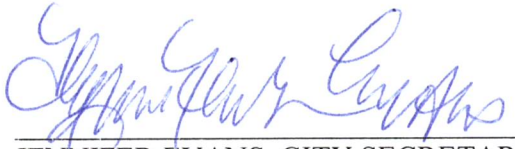
TEXARKANA:

PASSED AND APPROVED in Regular Council Session on this the **12th day of February, 2018.**



BOB BRUGGEMAN, MAYOR

ATTEST:



JENNIFER EVANS, CITY SECRETARY

6:46 p.m.

RIVERBEND:

PASSED AND APPROVED in Regular Board Meeting on this the 28 day of February, 2018.



MARSHALL WOOD, PRESIDENT

ATTEST:



SEAN ROMMEL, SECRETARY