

# REGION C WATER PLANNING GROUP

Senate Bill One Fourth Round of Regional Water Planning - Texas Water Development Board

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August 24, 2015

VIA E-MAIL  
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Mr. Les Trobman  
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1700 North Congress Avenue  
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Re: Potential Interregional Conflict between Regional Water Plans for Regions C & D

Dear Mr. Trobman,

The Region C Water Planning Group (RCWPG) submits this letter brief in response to your solicitation of briefing dated August 6, 2015. The Region D Water Planning Group has alleged by a letter of July 21 that Region C's "proposed Marvin Nichols Reservoir . . . will have an unacceptable degree of impact on Region D's water planning area and appears to conflict with the Region D Round 4 IPP." It further contends that the proposed reservoir "is not protective of the natural and agricultural resources of Region D." Those claims are without merit and do not rise to the level of an interregional conflict between the Region C and D fourth-round IPPs.

### Marvin Nichols in the 2015 RCWPG IPP

Region C has elected to include multiple strategies for the development of Marvin Nichols in its 2015 IPP. The Sulphur Basin Supplies strategy (5C.1 Recommended Strategies for Regional Wholesale Water Providers, pp. 5C.1-4 of the RCWPG IPP) is a recommended strategy for the Tarrant Regional Water District (TRWD), the North Texas Municipal Water District (NTMWD) and the Upper Trinity Regional Water District (UTRWD), and an alternate strategy for the Cities of Dallas and Irving. The strategy consists of a combination of water from Marvin Nichols and the reallocation of conservation storage in Wright Patman Lake. The 2015 RCWPG IPP retains the 2011 configuration of Marvin Nichols as an alternate water management strategy for NTMWD, UTRWD, TRWD, and the City of Irving.

NTMWD, TRWD, Dallas, UTRWD, and Irving, along with the Sulphur River Basin Authority, formed a Joint Committee on Program Development (JCPD) in 2001. Since that time, the JCPD Region C entities have provided more than \$5 million to the SRBA to further investigate the development of surface water supplies in the Sulphur River basin. Sulphur basin feasibility studies are underway, conducted by the U.S. Army Corps of Engineers, SRBA and the JCPD. Those studies include multiple potential configurations for Marvin Nichols.

### RCWPG has furnished extensive studies on impacts of the recommended and alternate Marvin Nichols strategies

Region D's allegation of an interregional conflict is an attempt by it to use the water planning process to thwart, rather than encourage, the development of adequate water supplies for the State of Texas. The RCWPG and JCPD have studied the impacts of both the 2011 and 2015 Marvin Nichols configurations, and also concurrent reliance by Region C on other supplies available in Region D. In doing so, the RCWPG was mindful of the direction it received from the Board during the resolution of the last claimed conflict in "An Order Concerning the Interregional Conflict between the 2011 North Central Texas Regional Planning Area Regional Water Plan and the 2011 East Texas Regional Planning Area Regional Water Plan in Accordance with Texas Water Code §16.053" issued January 8, 2015 (Order).

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The Board is familiar with the long history of the resolved interregional conflict in connection with the RCWPG's 2011 Regional Water Plan. As a part of the resolution process, the Board ordered the RCWPG to conduct an analysis of the impacts of Marvin Nichols (as then proposed) on the resources of Region D and the State. Region C furnished that report to the Board on October 29, 2014. In support of what is now an alternate strategy, the RCWPG furnished the data it developed as an appendix to its 2015 IPP. See, 2015 RCWPG IPP, Appendix Y, *Analysis and Quantification of the Impacts of the Marvin Nichols Reservoir Water Management Strategy on the Agricultural and Natural Resources of Region D and the State*.

The RCWPG has built upon and continued to study the impacts of Region D-based water supply strategies in the Region C plan. With its 2015 IPP, the RCWPG has furnished the Board with its *Analysis and Quantification of the Impacts of the Marvin Nichols Reservoir Water Management Strategy on Agricultural and Natural Resources with the Top of Conservation Storage at 313.5 Feet above Mean Sea Level*. That report includes an in-depth analysis entitled *Timberland and Agricultural Land Impact Assessment For Selected Water Resource Options in the Sulphur River Basin*. Copies of those documents are attached hereto. Those studies demonstrate that the development of the revised Marvin Nichols project is consistent with the long-term protection of the state's water resources, agricultural resources and natural resources.

Based on the RCWPG's extensive studies and the Board's resolution of the prior conflict, no interregional conflict exists with respect to either the recommended or alternate Marvin Nichols strategies, as described below.

#### No substantial adverse effect on Region D

The RCWPG has furnished extensive data regarding the impacts of both the recommended and alternate strategy implementations of Marvin Nichols, and no conflict exists with respect to either strategy. With respect to the alternate strategy, the Board resolved the conflict by directing that Marvin Nichols be included in the 2011 RCWPG Regional Water Plan and the State Water Plan, and stated that upon that inclusion, "no outstanding interregional conflicts [existed] related to the 2011 Region C RWP." Order page 8, Conclusion of Law 6. The effects of the alternate strategy Marvin Nichols have been studied extensively, and have not changed since January of this year. Likewise, no conflict exists with respect to the draft 2016 IPP's recommended Marvin Nichols strategy. As described, Region C has furnished with its IPP its *Analysis and Quantification of the Impacts of the Marvin Nichols Reservoir Water Management Strategy on Agricultural and Natural Resources with the Top of Conservation Storage at 313.5 Feet above Mean Sea Level*, including its *Timberland and Agricultural Land Impact Assessment For Selected Water Resource Options in the Sulphur River Basin*. Those documents confirm no greater impacts to Region D under the recommended strategy than those associated with the now alternate strategy for Marvin Nichols.

In general, in determining whether the recommended or alternate Marvin Nichols strategies are in conflict with Region D's IPP, the Board should differentiate between short and long-term effects on Region D. It should also consider long-term benefits to that region based on proposed Region C water management strategies. Long-term benefits may, in fact, totally offset temporary effects on economic, agricultural, and natural resources. Disrupted agricultural activities may potentially be relocated and pursued at prior or greater levels of intensity. Short-term economic effects in one sector may be offset entirely by long-term development of other businesses and industries. The Board should determine the presence or absence of an interregional conflict based upon the reasonably foreseeable, long-term and net effects on a host region's economic, agricultural and natural resources.

#### Ward Timber does not mandate a finding of interregional conflict

A finding of an interregional conflict on the facts presented is not required by *Texas Water Development Board v. Ward Timber, LTD, et al.*, 411 S.W.3rd 554 (Tex. App.—Eastland 2013, no pet.) (*Ward Timber*). The analyses furnished by the RCWPG of Marvin Nichols's impacts on Region D distinguish the current conflict claim from the one previously alleged by Region D. In *Ward Timber*, the Court observed that "Region D [] examined the impacts [of Marvin Nichols]" in its Regional Water Plan, and "Region C [] decided to evaluate the impacts of the Marvin Nichols Reservoir in the future as part of its planning process." *Id.* at 573. Region C has now done so and has submitted extensive analyses on that subject as a part of its fourth-round IPP.

Unlike last planning cycle, the Board has significant data before it, presented by both Regions C and D, upon which it may determine the presence or absence of an interregional conflict. In addition, the Board may look back to its findings

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and conclusions reached in resolving the prior conflict for guidance as to whether Region D has alleged a valid conflict in this instance. In its order, the Board correctly observed that the development of Marvin Nichols “could act as a catalyst for economic development and growth” in Region D, and that new reservoirs [] stimulate the economy through new recreational business and local improvements.” Order page 5, Finding of Fact 31. Likewise, the Board found that the RCWPG’s 2011 Regional Water Plan, which included the now alternate Marvin Nichols strategy, was “consistent with the long-term protection of the state’s agricultural and natural resources.” Order page 8, Conclusion of Law 11. Those findings apply with even greater force to the RCWPG’s fourth-round IPP recommended Marvin Nichols strategy.

Conclusion

The Board has previously reviewed and resolved a conflict outlined in the Order in favor of the 2011 Region C Water Plan Marvin Nichols strategy. As recommended in the 2015 Region C IPP, the proposed Marvin Nichols strategy does not have a substantial adverse effect on the natural and agricultural resources in Region D. The Board has sufficient information before it to find that the currently proposed Region C water management strategies in Region D do not have a substantial adverse effect, and accordingly should find no conflict between the plans.

Respectfully submitted,



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