

Dear Mayor Tedder and DWG City Councilmen,

Thank you for inviting us to the special meeting on January 27, 2015, at which the city's retained engineering firm, Freese & Nichols ("FN"), made a presentation concerning Pappy Elkins Lake. Since the special meeting, those of us present have been reflecting on the crisis the city now faces that was the subject of the meeting. We believe the vast majority of DWG citizens are unaware of this crisis, and last week's city newsletter made no mention of it. We believe all DWG citizens are entitled to important information concerning our city, so we will circulate this letter as broadly as possible.

The crisis is the possible elimination of the spillway of the Pappy Elkins Lake that would cause our lake to be lost forever. The elimination of the spillway, according to FN, is one of two possible outcomes from the city's efforts to comply with corrective actions required by the Texas Commission on Environmental Quality ("TCEQ") and related to the city's noncompliance with several statutes concerning water impoundment and dam safety. Clearly, your actions, in dealing with this crisis will be as important as any ever undertaken by DWG elected officials.

We are requesting that caution be taken with this process to ensure that all key issues are identified, vetted, and solutions carefully executed. **There is no need to rush, and it is imperative that the citizens of DWG be fully informed and given the opportunity to help and voice their concerns.** This city is rich in intellectual capital, and we urge you to take advantage of these resources to deal with a matter that is complex, technical, and contains a political element that could prove to be the key to keeping Pappy Elkins Lake.

DWG has up to 180 days, from the date of the final approval by the TCEQ of its administrative order, during which to apply for a water impoundment permit. Final approval by the TCEQ is expected in February or March 2015, which would allow for a filing as late as August or September 2015. **The granting of such a permit would allow the lake to survive.** Therefore, we urge you to identify resources and a strategy that together could help keep Pappy Elkins Lake as a city treasure. Rushing a permit process that could increase the likelihood of denial would only benefit XTO Energy for reasons we explain below. We believe this matter must be addressed to best serve the interests of the city – not the interests of XTO Energy.

By way of review, we summarize some of the key events leading up to this crisis:

- During a scheduled visit to DWG in the spring of 2014, the TCEQ determined that the city was impounding water in Pappy Elkins Lake without a required permit.
- Use of surface water in Texas requires a water right permit. DWG has never possessed such a permit to use water in Pappy Elkins Lake.
- The TCEQ makes periodic visits to DWG and was also investigating a complaint filed against XTO Energy that alleged their illegal removal of water from Pappy Elkins Lake. This investigation resulted in XTO Energy being cited for violations.

- Perhaps the city has been unaware of TCEQ regulations or has assumed that a water right permit was unnecessary because the lake predates the TCEQ's initial promulgation of surface water permits.
- The TCEQ cited the city with a second violation for failing to comply with state regulations regarding dam safety. All surface water fed lakes, such as Pappy Elkins Lake, have a dam, and our dam is occupied by XTO Energy's pad site.
- DWG was notified of these violations by the TCEQ in July 2014.
- In August of 2014, DWG consented to an administrative order with the TCEQ and agreed to the imposition of penalties (\$2,700) and the development of a plan to resolve violations.

Water Rights Issues

To resolve the violation concerning water rights, the TCEQ offered the city two choices:

1. Obtain a permit from the TCEQ; or
 2. Breach the dam / spillway and eliminate the lake.
- If a permit application were denied, the dam and spillway of the lake would need to be permanently breached so no water could ever be held or impounded. In this scenario Pappy Elkins Lake would be gone forever and the "dam" would no longer be considered as such.
 - If the permit is approved, the city must also comply with state dam safety rules and regulations. The dam is considered a high-risk category dam because of the apartment complex situated directly behind it on Sieber Street.

Scenario #2 above, we fear, is the preferred outcome for XTO Energy because it could then drill six more wells on the pad site. As long as its pad site resides on what is recognized as a "dam" by the TCEQ, obtaining permission to drill more wells would be problematic if not impossible. Our concerns are fully supported by the city council's established pattern of placing XTO's interests in front of the city's including:

- Promising citizens XTO would not be allowed to take water from Pappy Elkins Lake then permitting millions of gallons to be removed.
- Allowing XTO to operate in violation of multiple city ordinances.
- Allowing XTO to operate for over four years without a single inspection of the pad site.
- Refusing to consider a city ordinance to require air monitors on the pad site – something our neighboring cities now require. **Your position on this issue is inexplicable given the pad site is only 200 feet from a playground and most cities now require setbacks of 1,200 to 1,500 feet.**

For obvious safety reasons, there are laws and regulations that prohibit an energy company from drilling on dams.

In view of the above, we ask the following question: “How did XTO Energy find it possible to drill ten wells on a dam and receive all necessary approvals from DWG, the TCEQ, and the Texas Railroad Commission in the first place?” **This question has been asked of XTO Energy on multiple occasions, and it has refused to answer it.** It is now time for this city council to answer that question.

Dam Safety Issues

If DWG secures a TCEQ water rights permit, the city must still comply with the state’s dam safety regulations. One requirement includes a hydrologic/hydraulic analysis where the dam must safely pass a “75% of a Probable Maximum Flood” event without overtopping. The TCEQ has asked DWG to complete such an analysis, and FN has been retained by the city to do this work.

At the January 27, 2015 special meeting at DWG city hall, FN presented the results of their analysis that determined the dam to be substandard (too low) because the spillway in place now – which is a series of six culverts XTO Energy installed under their road leading into the north end of the pad site – and the downstream infrastructure are inadequate to meet the test requirements. Submitting this report to the TCEQ would set in motion a process whereby the dam and spillway would need to be modified at great expense in order to be compliant. FN preliminarily estimated these costs to be \$400,000 to \$700,000.

XTO Energy Involvement

One matter that was touched on that night but not adequately addressed is what role does XTO Energy play in this debacle? Before the construction of its pad site, XTO Energy was responsible for determining the adequacy of the land they leased from DWG and has expressly indemnified DWG for any and all deficiencies in the suitability of the leased lands and offsite areas associated with drilling. This is clear in the DWG/XTO Energy lease. In this context we note the following:

- In 2009 XTO Energy engaged the international engineering firm of Carter Burgess, a unit of Jacobs Engineering Group Inc., to design the lake’s spillway, the pad site, and related drainage structures. DWG approved and accepted all the Carter Burgess designs in conjunction with issuing XTO Energy a drilling permit.
- Dam safety rules in place in 2009 are the same as today. **Therefore, how could XTO Energy have been “compliant” in 2009 with the design of their DWG operations – yet in 2015 another engineering firm (FN) hired by the city reaches a completely different outcome? How is this possible?**

- Under its lease with the city, XTO Energy was and is solely responsible for determining the adequacy of the pad site land as well as the offsite areas used for their operations within the city. **The lease requires XTO Energy to “comply with all applicable rules, regulations, ordinances, statutes and other laws in connection with any drilling, producing or other operations under the terms of the lease.” To the extent that XTO Energy does not comply, it is in breach of the lease and must indemnify DWG from any and all costs resulting from its operations on the dam.**
- The remedy, according to FN, is to raise the dam (by up to 5 feet) without any modification to XTO Energy’s road and spillway. But to the extent the spillway capacity is increased, the required increase in the dam’s height would be reduced.

Why did XTO Energy not properly evaluate the site in 2009? **Clearly, if FN had produced their 2015 study in 2009, instead of the analysis done by Carter Burgess, then XTO Energy would have had no choice but to modify the entire site structure at its expense.** Now, DWG is facing the prospect of having to incur these costs.

Further, in our conversation with the FN representatives following the special meeting, they were surprised to learn about the work Carter Burgess had done in 2009! They had also not seen any of XTO Energy’s documentation related to DWG’s drilling permit that contains significant amounts of geological data. We ask why this information was not shared with them? This information would have been “helpful” (their words) to their work. Why did DWG not hire Carter Burgess? At a minimum, why not have the two firms work together in this matter? After all, they have reached two very different conclusions.

Here is what disturbs us:

- **2009** – XTO Energy needed an engineering study showing the proposed pad site land area is compliant with Texas law. Carter Burgess produced such a study.
- **2015** – XTO Energy wants to drill six more wells at the DWG pad site, but now the TCEQ has determined that the dam the pad site sits on is substandard. **To drill, XTO Energy needs the “dam” designation to go away**, which would require the elimination of Pappy Elkins Lake. FN produces an engineering study showing the dam noncompliant (opposite conclusion of Carter Burgess) and requiring improvements DWG can’t or won’t afford.

Mr. Mayor, in the special meeting you seemed unwilling to investigate the role of XTO Energy and Carter Burgess in this important matter. We urge you to reconsider and to do so mindful of the provisions in the lease with XTO Energy that were included **to protect the city and its citizens from adverse consequences like this one.** In our view, XTO Energy and Carter Burgess are involved and must be brought into this matter now.

Please consider that XTO Energy surely knew it was drilling on a dam all along. It hired a world-class engineering firm and presented a construction plan to the city that was approved in 2009 when the dam safety laws were the same as they are now. XTO Energy already has derived more than \$50 million of revenue from DWG – this number will increase several fold in years to come.

We have a very serious matter before us. Our city could lose its lake if the permit application with the TCEQ is denied. We all agree that the development of the application and the manner in which the process is handled is critical to the preservation of a cherished city asset.

We remind you that you are stewards of our city and urge you to broaden your working group to include citizens who want to help reach the best outcome possible for DWG. Losing Pappy Elkins Lake would be a tragic outcome for the entire city. It remains a defining asset and to lose it would diminish the city's standing in the North Texas community.

Respectfully yours,

Marion Armstrong

John Bergdorf

David and Elgie Bergh

Kristin Bergh

Bill and Paula Boehme

Frank and Jeannine Calhoun

Paul and Kay Cohen

Jay and Ingrid Cooley

Chris Danford

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Steve and Trish Flowers

Mickey and Kathy Grasty

Reghan Grasty

Alyssa Hall

Greg Hutson

John and Suzanne Kacinski

Jeff and Claudine Kemp

Tim and Jett Lamun

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