

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 23, 2009

TO: All Persons on Mailing List

RE: **TCEQ Docket Nos. 2008-1899-WR, 2008-1900-WR, 2008-1901-WR; Application Nos. 12-4028A, 12-4034A, 12-4035A, to Amend COA Nos. 12-4028, 12-4034, 12-4035;** In the matter of an amendment to a water right by **Helen H. McDaniel.**

The above-referenced matter is scheduled to be considered by the Texas Commission on Environmental Quality on **April 22, 2009 at 9:30 A.M.** in Room 201S, Building E, 12100 Park 35 Circle, Austin, Texas. The Commission will consider whether notice is required for this application, and if so, what type of notice will be required. The Executive Director's memorandum and recommendation and other documents related to this matter may be found at http://www.tceq.state.tx.us/permitting/water_supply/water_rights/wran.html.

Should you need any additional information, please contact Melissa Chao at the Texas Commission on Environmental Quality, Office of the Chief Clerk, (512) 239-3300.

Sincerely,

A handwritten signature in black ink that reads "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/mc

MAILING LIST
HELEN H. MCDANIEL
TCEQ DOCKET NOS. 2008-1899-WR, 2008-1900-WR, 2008-1901-WR

FOR THE APPLICANT:

Helen H. McDaniel
8012 Llano Avenue
Fort Worth, Texas 76116

FOR THE EXECUTIVE DIRECTOR:

Robin Smith, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Iliana Delgado, Team Leader
Texas Commission on Environmental Quality
Water Supply Division, MC-160
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3678
Fax: (512) 239-2214

Amy Dunsmore, Project Manager
Texas Commission on Environmental Quality
Water Supply Division, MC-160
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0047
Fax: (512) 239-2214

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE
RESOLUTION:

Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Commissioners

DATE: December 12, 2008

THRU: Todd Chenoweth, Director
Water Supply Division

FROM: Amy Dunsmore, Project Manager
Kellye Rila, Section Manager
Water Rights Permitting & Availability Section

Robin Smith, Attorney
Environmental Law Division

SUBJECT: Helen H. McDaniel
Docket # 2008-1901-WR
Application No. 12-4035A to Amend Certificate of Adjudication No. 12-4035
Big Sunday Creek, Brazos River Basin
Palo Pinto County

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 DEC 16 AM 9:45
CHIEF CLERKS OFFICE

On June 9, 2006 the Texas Supreme Court issued an opinion in the case of *Marshall v Uncertain*.¹ The Supreme Court in that opinion considered the Commission's practices regarding notice and hearing for applications to amend a water right under Texas Water Code (TWC) § 11.122(b). The Court held that it could not determine under the record in that case whether notice and a hearing would be required. The Court remanded the case to the Commission.

The Court held that when reviewing the type of notice required for an amendment to a water right, the Commission must determine whether there could be an adverse impact from the application on other water rights or the environment beyond or irrespective of the full use assumption, explained below. The Court also held that the Commission must determine if the application could have an adverse impact on the public interest criteria: beneficial use, public welfare, groundwater effects, consistency with the state and regional water plan, compliance with administrative requirements, and conservation.

The types of amendments that come within the *Marshall* decision are those amendments that do not already have a specific notice requirement in a rule for that type of amendment and that do not change the amount of water to be taken or the diversion rate. These amendments are changes in use, changes in place of use, or changes in substantive conditions in a water right.

¹ City of Marshall et. al. v. City of Uncertain et. al., No. 03-1111 (Tx. June 9, 2006).

TO: Commissioners
Page 2
December 12, 2008

The purpose of this memo is to discuss the public notice that should be given in the above referenced application by Helen H. McDaniel in light of agency rules and the Court's decision in the case of *Marshall*.

Current Authorization and Application for Amendment

The applicant currently owns Certificate of Adjudication (COA) 12-4035. This water right authorizes the Owner to divert and use not to exceed 5 acre-feet of water per year at a maximum rate of 1.50 cfs (675 gpm) from Big Sunday Creek, tributary of Palo Pinto Creek, tributary of the Brazos River, Brazos River Basin, for agricultural purposes to irrigate a maximum of 1 acre of land out of a 175-acre tract in Palo Pinto County. The time priority for this water right is December 31, 1963.

Helen H. McDaniel has applied for an amendment to the existing certificate, requesting to include industrial, domestic and livestock, and irrigation purposes of use in the existing authorization. The application was subsequently amended to add industrial purpose of use alone to the existing authorization.

Rules Related to Notice

The Commission has rules concerning what notice is required for applications to amend a water right in 30 Texas Administrative Code (TAC) § 295.158. There are not rules that specifically provide notice for changes in use. Under 30 TAC § 295.158(c), no notice is required if no additional consumptive use is contemplated, no increase in diversion rate or period will be granted, and in the judgment of the Commission there is no potential for harming another water right. This application falls under this rule and does not require notice for the reasons set out below.

Texas Water Code

This application for an amendment to an existing water right is governed by TWC § 11.122. TWC § 11.122(a) requires a water right holder, except as discussed above, to obtain a water right amendment if the holder is going to change the purpose of use or "otherwise alter a water right."

TWC § 11.122(b) sets out the scope of the Commission's authority in reviewing applications to amend a water right. Staff notes that in the application, Helen H. McDaniel is not asking for either an increase in the amount of water authorized for diversion or an increase in the rate of diversion. With that understanding of the application, it then becomes a duty of the Commission to approve the application "*if the requested change will not cause adverse impact on other water right holders or the environment on the stream of greater magnitude than under circumstances in which the permit . . . that is sought to be amended was fully exercised according to its terms*"

TO: Commissioners
Page 3
December 12, 2008

and conditions as they existed before the requested amendment, ” and the application must meet, “*all other applicable requirements,*” of Chapter 11 of the TWC. The clause that requires the Commission to compare the requested amendment to the existing water right as if the existing water right was fully exercised is often referred to as the “full use assumption.”

Adverse Impact on Water Right Holders and the Environment

Under the *City of Marshall* opinion, the Commission must evaluate whether an amendment can adversely impair other water rights or the environment beyond the full use assumption. Under the full use assumption, the addition of industrial use can have no greater impact on other water right holders or the environment than the impacts to those interests under the existing certificate because the amount of water being diverted is the same. Both before and after the amendment, the water right holder will only be able to take 5 acre-feet of water per year from Big Sunday Creek at the same specified diversion point. The water right holder, under the existing certificate and the proposed amended certificate, could take all of that water in the first part of the year, or take all of that water in later parts of the year, subject to a maximum diversion rate of 1.50 cfs. In other words, there are no special conditions in the certificate that restrict the water right holder to a particular pattern of use, or that spreads out the diversion of 5 acre-feet to specific amounts over the course of the year. Because there is no specific pattern of use in the certificate, the full use assumption requires the Commission to consider the existing certificate and the proposed amended certificate as potentially exercised under all lawful patterns of use.

It makes no difference to other water right holders or the environment, whether the water right holder is taking their 5 acre-feet for agricultural (irrigation, the current use) or for industrial use (the future use). The effect on streamflow, and therefore water available for downstream water right holders or the downstream aquatic environment, will be the same; there will be 5 acre-feet per year less after the diversion. Therefore with the full use assumption, the proposed amendment will not cause adverse impact to other water right holders or the environment.

Concerning whether there are impacts to water rights or the environment beyond the full use assumption, the Executive Director believes that there are none. This amendment is to add industrial use (dust suppression) to the authorized agricultural (irrigation) use. This application does not change a diversion point or change a non-consumptive use to a consumptive use. Also, there is no specific pattern of use required in the certificate that will be changed.

Some persons argue that adding a use can result in an applicant taking water with a different pattern of use. Unless the existing permit requires a specific pattern of use, the Executive Director does not believe that this is a proper factor because patterns of use change due to weather, time of use, and needs of the applicant. A specific pattern of use cannot be specifically determined ahead of time.

TO: Commissioners
Page 4
December 12, 2008

Some persons also argue that when adding a use, the Executive Director should consider whether the applicant is using all of her water. The Executive Director does not believe that this is a proper factor to consider because it would discourage conservation and future water planning.

Other Applicable Requirements

Under TWC § 11.122(b) the proposed amendment must also satisfy all other applicable requirements of TWC Chapter 11. The Supreme Court in the *Marshall* case itemized those other requirements. We turn now to a consideration of the requested amendments and those other requirements that the Supreme Court has told us are applicable.

Administrative Requirements

Staff has reviewed the application and has found that it meets all administrative requirements of the TWC Chapter 11. Because the Executive Director recommends that no notice be required, notice fees have not been requested or paid. Staff therefore declared the application administratively complete and accepted it for filing with the Chief Clerk on July 2, 2007. In the event that the Commission recommends notice to be required, notice fees will be requested at that time.

Beneficial Use

Proposed appropriations of state water must be for a beneficial use. Beneficial use is defined in TWC § 11.002(4) as “the use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose and shall include conserved water.” The applicant has asked that industrial use (dust suppression) be added as an authorized use in their certificate. Industrial use is recognized as a beneficial use by TWC § 11.023(a)(2).

Some persons argue that an applicant should only be allowed to change the place of use for water that is being used. The Executive Director believes that limiting the place of use to the amount of water currently being used is inappropriate. The fact that the applicant may not be using all of their appropriated water does not mean that there has not been or will not be a beneficial use for the water. In addition, this factor would discourage conservation and future water planning. While water rights can be canceled after 10 years of non-use, municipalities have historically been allowed to obtain water for future needs. The cancellation statutes, TWC §§ 11.171 - 11.186, provide that the Commission, in determining whether non-use is justified, will consider whether the purpose of use is consistent with the approved regional water plan. Also, TWC § 11.173(b)(3) exempts from cancellation a water right that was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan and is consistent with projections of future water needs contained in the state water plan.

TO: Commissioners
Page 5
December 12, 2008

We will consider whether the use is non-wasteful under "Avoidance of Waste and Achievement of Water Conservation" below.

Protection of Public Welfare

A proposed appropriation of state water must not be detrimental to the public welfare. No definition of "detriment to public welfare" is provided in the law. Therefore, the Commission has wide discretion in determining benefits or detriments to the public welfare. The application seeks to add industrial to the existing use. This type of multi-use certificate is authorized by TWC § 11.023(e). A multi-use certificate in this situation would allow the owner to continue to irrigate land for crops. At the same time, that water will be available for industrial use. The applicant has indicated that the industrial water would be used for dust suppression. The applicant states that the proposed amendment would be helpful to the public welfare since the water would be used to minimize soil erosion, reduce respiratory irritants in the atmosphere, and reduce incidents of Bovine Respiratory Disease. There are no specific facts that would indicate that this use is not in the public welfare.

Some persons argue that if an applicant is not using all of their water, they should not be allowed to amend the purpose of use for the water that is not being used. The Executive Director believes that limiting the change or additional use to the amount of water currently being used is inappropriate for the reasons stated above.

Some persons also argue that the additional use should be as beneficial as some other use of the water. The Executive Director disagrees because he has historically considered that TWC § 11.024 of the Texas Water Code, which provides for a preference of use, only applies when there are two pending applications for the same water.² Also, a law that required the Texas Commission on Environmental Quality (TCEQ) to give preference to municipal use was repealed several years ago. If the TCEQ is to weigh uses in granting permits, and deny permits that it does not think are the best use of the water, this would be a major change in TCEQ policy.

Groundwater Effects

A proposed appropriation of state water must consider effects of the proposed permit on groundwater or groundwater recharge. The Commission's Water Availability Model (WAM) is

² Although there are no cases directly in point on this issue, *see*, *City of San Antonio v. Texas Water Commission*, 407 S.W.2d 752, 764 (Tex. 1966) (discussing preferences of use in the context of competing water rights). *See also*, Tex. Water Code § 11.147(c)(6), which provides that a factor for determining beneficial inflow requirements in an application is "the declarations as to preferences for competing uses of water as found in TWC § 11.024." (<http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW8.11&ifm=NotSet&fn=top&sv=Split&tc=-1&docname=TXWAS11.024&ordoc=1034726&findtype=L&db=1000186&vr=2.0&r p=%2ffind%2fdefault.wl&mt=Texas>)

TO: Commissioners
Page 6
December 12, 2008

used to evaluate the availability of unappropriated water for new appropriations and takes into account both contribution to river flow caused by groundwater coming to the surface in the river (springs) and decreases in river flow caused by the river flowing over recharge features and losing surface water to groundwater recharge. The WAM contains channel loss factors that account for the gain or loss of river flow. These channel loss factors were developed by the expert engineering contractors hired by the Commission to develop the WAMs.

The Brazos WAM includes the segment of Big Sunday Creek at which diversions under this permit occur. The Brazos WAM does not have channel loss factors associated with Big Sunday Creek at the permitted diversion point. The Water Availability report for the Brazos Basin does not include specific information regarding groundwater/surface water interaction at the location of the applicant's diversion point.³ The report identifies one study that demonstrated losses occurring on Palo Pinto Creek downstream of the applicant's diversion points. The application indicates that soil in the area has a high amount of clay and is highly impermeable, thereby limiting the amount of recharge that could occur.

Some persons have suggested that the Executive Director examine the Texas Water Development Board Groundwater Availability Models (GAMs) and information from the University of Texas Bureau of Economic Geology for assessing groundwater impact. Predictive simulations using the GAMs do not account for streamflow changes associated with permitted surface water withdrawals or return flows. GAMs were not originally designed to address groundwater-surface water interactions and there are issues with using these models for that purpose.⁴ The GAMs are regional in nature and are not able to simulate groundwater-surface water interaction in detail.⁵ Both the WAMs and the GAMs have issues related to quantifying groundwater-surface water interactions; however, the WAMs were developed as a tool for surface water permitting.

The Bureau of Economic Geology provides information about aquifer recharge rates.⁶ In general, these rates, where quantified, are applicable to aquifers or portions of aquifers. As such, they do not provide sufficient detail to determine interaction between surface and groundwater at discrete points. There is no groundwater conservation district in Palo Pinto County⁷. The Brazos G Regional Water Plan does not indicate issues with groundwater in the area of the application.⁸

³ Water Availability in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin. Appendix VIII. Memorandum Documenting Assessment of Channel Losses and Groundwater/Surface Water Interactions. Prepared by HDR Engineering for the Texas Natural Resource Conservation Commission. December 2001.

⁴ Bureau of Economic Geology. 2005. Groundwater-Surface Water Interactions in Texas. August 2005.

⁵ Mace, R., Austin, B. Angle, E. and R. Batchelder. 2007. Surface Water and GroundWater Together Again. Paper presented at State Bar of Texas 8th Annual Changing Face of Water Rights in Texas. San Antonio, Texas.

⁶ Scanlon, B., Dutton, A. and M. Sophocleous. 2002. Groundwater Recharge in Texas. Water Research Fund Grant Contract No. 2000-483-340

⁷ http://www.twdb.state.tx.us/mapping/maps/pdf/gcd_only_8x11.pdf

⁸ Brazos G Regional Water Planning Area Regional Water Plan. Appendix B. Prepared by Brazos G Regional Water Planning Group and others for the Texas Water Development Board. January 2006.

TO: Commissioners
Page 7
December 12, 2008

The amount of water diverted by the owner will be the same (5 acre-feet per year) whether that water is diverted for the existing or proposed uses. Thus, the diversion of the full authorized volume of water for industrial and agricultural (irrigation) use will have no greater effect on groundwater resources or groundwater recharge than the diversion of water for the existing agricultural (irrigation) use. Therefore, the Executive Director concludes that there is no potential groundwater issue involved with this application.

Consistency with Regional and State Plan

Water right applications are only granted if the application addresses a water supply need in a manner that is consistent with the state water plan and the relevant regional water plan, unless the Commission determines that conditions warrant a waiver of this requirement. The purpose of the state and regional water plans is to assess the likely future use of water and to develop strategies for meeting water supply shortfalls. The state and regional water plans simply do not address every possible change in individual water rights. Furthermore, the state and regional plans do not assess or plan for every possible water use. According to the regional water plan, agriculture is important to the rural economy in the area. Among livestock, cattle are a significant component and livestock uses are considered in the planning projections in the regional water plan.⁹ Therefore, the Executive Director concludes that because of the statements in the regional water plan and because the state and regional water plans are not designed to cover this specific type of amendment, the requested amendment is consistent with the relevant regional water plan and the state water plan. If the Commission determines that the amendment is not consistent with the relevant regional water plan and the state water plan, the Executive Director believes that it would warrant a waiver of the consistency requirement.

The applicant asserts that use of water for industrial uses is consistent with the state water plan.

Avoidance of Waste and Achievement of Water Conservation

The Commission has adopted rules to specify the type of water conservation plans that will be required for amendments to existing water rights in 30 TAC § 295.9(a)(4). The applicant is not increasing the amount of the appropriation. The applicant is adding industrial use to accommodate water use for dust suppression. The applicant has submitted an industrial water conservation plan and a conservation plan for individually-operated irrigation systems. Staff has reviewed the plan and finds that the applicant will achieve water conservation and avoid waste.

⁹ Brazos G Regional Water Planning Area Regional Water Plan. Volume I. Section 1. Description of the Region. Subsection 1.6.7 Agricultural Resources. Prepared by Brazos G Regional Water Planning Group and others for the Texas Water Development Board. January 2006.

TO: Commissioners
Page 8
December 12, 2008

Conclusion

This application seeks an amendment to an existing authorization to add industrial use (dust suppression) to their existing use. The application does not seek an increase in either the amount of water diverted, or the rate of diversion. Under the full use assumption, the amendment will not have an adverse impact on other water right holders or the environment, and there are no negative impacts to other water rights and the environment beyond the full use assumption. The application does not raise any issues of beneficial use, detriment to the public welfare, groundwater effects, consistency with the state and regional water plans, compliance with administrative requirements, or avoidance of waste and achievement of water conservation. Commission rules, statutes, and case law allow this application to be processed without notice. Therefore, the Executive Director recommends that no notice be issued for this application.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Chief Clerk DATE: December 12, 2008

THRU: Iliana Delgado, Team Leader
Water Rights Permitting Team

FROM: Amy Dunsmore, Project Manager
Water Rights Permitting Team

SUBJECT: Helen H. McDaniel
Docket # 2008-1901-WR
ADJ 4035
CN603175910
RN105204325
Application No. 12-4035A to Amend Certificate of Adjudication No. 12-4035
TWC § 11.122
Big Sunday Creek, Brazos River Basin
Palo Pinto County

Below is the caption for this application:

Consideration of the notice required for an amendment to Certificate of Adjudication No. 12-4035 owned by Helen H. McDaniel to add industrial purpose of use to the existing authorization. Certificate of Adjudication (COA) 12-4035 currently authorizes the Owner to divert and use not to exceed 5 acre-feet of water per year at a maximum rate of 1.50 cfs (675 gpm) from Big Sunday Creek, tributary of Palo Pinto Creek, tributary of the Brazos River, Brazos River Basin, for agricultural purposes to irrigate a maximum of 1 acre of land out of a 175-acre tract in Palo Pinto County. The time priority for this water right is December 31, 1963. The Commission will consider the application, the executive director's memo on notice, and any other relevant documents or information. (Amy Dunsmore, Robin Smith)



Helen H. McDaniel
Application No. 12-4035A

PALO PINTO

PARKER

Lake
Palo Pinto

12-4035



Palo Pinto Creek

Barton Creek

Brazos River

Paluxy

ERATH

MARINSET

12-4035

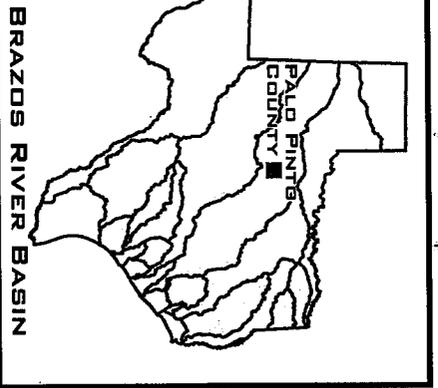


Sunday Creek

Creek

PALO PINTO CO
ERATH CO

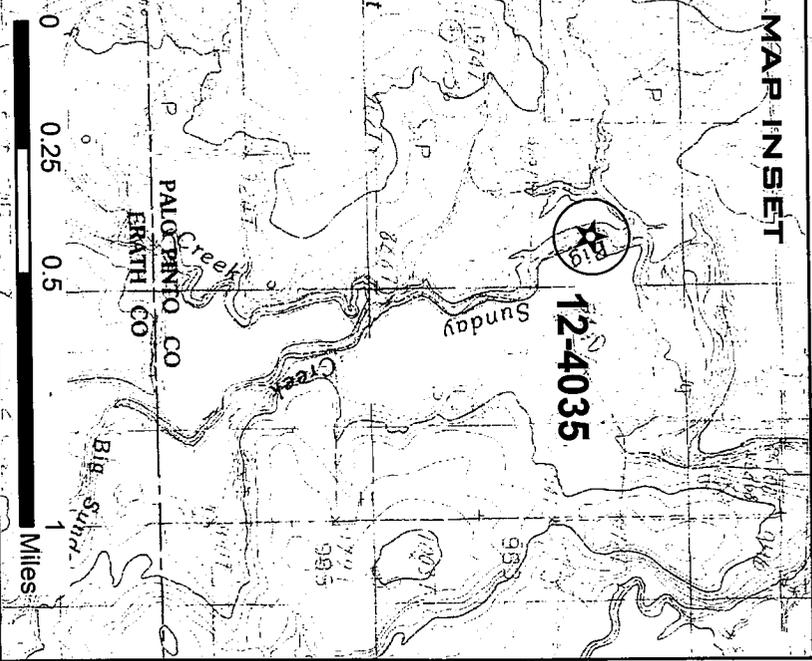
Big Spring



BRAZOS RIVER BASIN



0 2.5 5 10 15 Miles



0 0.25 0.5 1 Miles

Staggs

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 12-4035 OWNER: J. E. McDaniel
c/o J. L. McDaniel
8012 Llano Avenue
Fort Worth, Texas 76116

COUNTY: Palo Pinto PRIORITY DATE: December 31, 1963

WATERCOURSE: Big Sunday Creek, BASIN: Brazos River
tributary of Palo Pinto
Creek, tributary of Brazos
River

WHEREAS, by final decree of the 91st Judicial District Court of Eastland County, in Cause No. 32,002, In Re: The Adjudication of Water Rights in the Brazos II River Segment, Brazos River Basin, dated November 8, 1965, a right was recognized under Claim 5484 authorizing J. E. McDaniel to appropriate waters of the State of Texas as set forth below;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Brazos River Basin is issued to J. E. McDaniel, subject to the following terms and conditions:

1. USE

Owner is authorized to divert and use not to exceed 5 acre-feet of water per annum from Big Sunday Creek to irrigate a maximum of one acre of land out of a 175 acre tract located in the Thomas Toby Survey, Abstract 1765, Palo Pinto County, Texas, said 175 acre tract being described as follows:

- (1) BEGINNING at the northeast corner of the Thomas Toby Survey, Abstract 1765;
- (2) THENCE West, 1344 varas to the northwest corner of said Toby Survey;
- (3) THENCE South, 750 varas to a ravine with flat rock bottom;
- (4) THENCE Easterly with the meanders of said ravine to its junction with Big Sunday Creek;
- (5) THENCE up Big Sunday Creek approximately 180 varas to an elm on the east bank of said creek for the southwest corner;
- (6) THENCE N 65°E, 700 varas to a point for a corner;
- (7) THENCE East, 260 varas to a pile of rock on the east line of said Toby Survey;
- (8) THENCE North, 615 varas to the place of beginning.

2. DIVERSION

A. Location
At a point on Big Sunday Creek in Thomas Toby Survey, Abstract 1765, Palo Pinto County, Texas.

B. Maximum rate: 1.50 cfs (675 gpm).

3. PRIORITY

The time priority of owner's right is December 31, 1963.

The locations of pertinent features related to this certificate are shown on Page 6 of the Brazos II River Segment Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Water Commission, Austin, Texas and the Palo Pinto County Clerk.

Certificate of Adjudication 12-4035

This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 91st Judicial District Court of Eastland County, Texas, in Cause No. 32,002, In Re: The Adjudication of Water Rights in the Brazos II River Segment, Brazos River Basin, dated November 8, 1985, and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to senior and superior water rights in the Brazos River Basin.

This certificate of adjudication is issued subject to the Rules of the Texas Water Commission and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.

This water right is appurtenant to and is an undivided part of the above-described land within which irrigation is authorized. A transfer of any portion of the land described includes, unless otherwise specified, a proportionate amount of the water right owned by the owner or seller at the time of the transaction.

TEXAS WATER COMMISSION

Paul Hopkins
Paul Hopkins, Chairman

DATE ISSUED:

FEB 28 1986

ATTEST:

Mary Ann Heffner
Mary Ann Heffner, Chief Clerk



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

P.O. Box 13088, MC-160
Austin, Texas 78711-3088

Telephone No. (512) 239-4691 FAX (512) 239-4770

732960

Handwritten initials/signature

APPLICATION FOR AMENDMENT TO A WATER RIGHT

- REQUIRING MAILED AND PUBLISHED NOTICE
NOT REQUIRING MAILED AND PUBLISHED NOTICE

Reference Texas Administrative Code § 295.158(b) or (c)

Notice: This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.

Customer Reference Number (if issued): CN

Note: If you do not have a Customer Reference Number, complete Section II of the Core Data Form (TCEQ-10400) and submit it with this application.

1. Name: Helen H. McDaniel
Address: 8012 Llano Ave
Fort Worth TX, 76116
Email Address: Fax:

2. Applicant owes fees or penalties?
Yes No
If yes, provide the amount and the nature of the fee or penalty as well as any identifying number:

3. Permit No. 4035 Certificate of Adjudication No. 12-4035
Stream: Bigsunday Watershed: Brazos River Basin
Reservoir (present condition, if one exists): Good
County: Palo Pinto/Erath

4. Proposed Changes To Water Right Authorizations:
To include Industrial use along with livestock and domestic and irrigation use

(ATTACH ADDITIONAL PAGE AS NECESSARY, ATTACH MAP/PLAT DEPICTING PROJECT LOCATION, DIVERSION POINT, PLACE OF USE AND OTHER PERTINENT DATA)

5. I understand the Agency may require additional information in regard to the requested amendment before considering this application.

6. I have submitted the required fees herewith. (Sections 295.131-295.139)

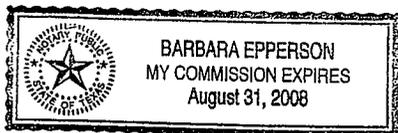
Name (sign) Helen H McDaniel

Name (sign)

Name (print) Helen H McDaniel

Name (print)

Subscribed and sworn to me as being true and correct before me this 26th day of January, 2007



Signature of Barbara Epperson
Notary Public, State of Texas

RECEIVED
TCEQ WATER SUPPLY
2007 FEB 13 PM 3:46

To: Texas Commission On Environmental Quality 3 36

pg.1 of 2

RE: Helen H. McDaniel
Application # A054035

The following is the additional information as required regarding the above application #.

1. This application meets all the administrative requirements as indicated. We have provided all of the necessary maps, sworn applications, and completed conservation plans as well as submitted all required fees.
2. The water to be used is for the production of livestock agricultural products as well as livestock sold for human consumption. (e.g. irrigation of crops, livestock watering, dust control of pens and roads, etc.)
3. The water used is necessary in the production of products consumed in the food supply by the public. Water used for dust suppression is beneficial to minimizing soil erosion as well as reducing respiratory human irritants in the atmosphere. It is a major factor in reducing incidents of Bovine Respiratory Disease (BRD). Water used for irrigation is also beneficial to wildlife habitats. (e.g. nesting cover for several species of fowl, promoting vegetative growth of native grasses, suppresses brush competition among mesquite/cedar trees, etc.)
4. To the best of my knowledge, the amount of water to be used as permitted will not be enough to cause run-off or a recharge of any underground stream, which are not present in the soil structure. The soil itself has a high amount of clay, therefore it is highly impermeable.
5. To the best of my knowledge, there is a surplus of water for such uses in both Erath and Palo Pinto counties. (see attachments)

6. We have provided an approved conservation plan. The irrigation process will promote a healthy roots zone for agricultural growth, thus will also promote water conservation.

7. We will not exceed the permitted allotment of water . All water usage will be for agricultural and/or livestock production. Evaporation will take care of any excess water as it occurs.

x Helen McDaniel
Print HELEN Mc DANIEL

4C.9 Erath County Water Supply Plan

Table 4C.9-1 lists each water user group in Erath County and their corresponding surplus or shortage in years 2030 and 2060.

**Table 4C.9-1.
Erath County Surplus/(Shortage)**

| Water User Group | Surplus/(Shortage) ¹ | | Comment |
|----------------------|---------------------------------|-------------------|-------------------------------------|
| | 2030 (acft/yr) | 2060 (acft/yr) | |
| City of Dublin | 0 | 0 | No projected needs |
| City of Stephenville | 3,043 | 2,268 | Projected surplus |
| County-Other | 1,009 | 0 | Projected surplus |
| Manufacturing | (16) | (40) | Projected shortage – see plan below |
| Steam-Electric | 0 | 0 | No projected needs |
| Mining | 0 | 0 | No projected needs |
| Irrigation | 2,322 | 2,453 | Projected surplus |
| Livestock | 0 | 0 | No projected needs |

¹ From Tables C-17 and C-18, Appendix C – Comparison of Water Demands with Water Supplies to Determine Needs.

4C.9.1 City of Dublin

The City of Dublin obtains its water supply from the Upper Leon Municipal Water District (Upper Leon MWD). The Upper Leon MWD has contracted for surface water from Lake Proctor and treats and delivers it to the City of Dublin. The City of Dublin and Upper Leon MWD have contracted for adequate quantities of water to provide a firm supply and meet their needs through the year 2060.

4C.9.2 City of Stephenville

The City of Stephenville obtains its water supply from groundwater from the Trinity Aquifer. The City has also recently completed the construction of a pipeline to Lake Proctor to receive water supplied through a contract with the Upper Leon MWD. With the completion of this project, the City has adequate water supplies to meet their needs through the year 2060.

4C.9.3 County-Other

County-Other is projected to have a surplus of water through the year 2060 and no changes in water supply are recommended.

4C.9.4 Manufacturing

4C.9.4.1 Description of Supply

Manufacturing entities in Erath County currently obtain their water supply from the Trinity Aquifer.

4C.9.4.2 Water Supply Plan

Working within the planning criteria established by the Brazos G RWPG and TWDB, the following water supply plan is recommended to meet the projected shortage of Erath County Manufacturing:

- Conservation
- Additional Trinity Aquifer Development

4C.9.4.3 Costs

Costs of the recommended plan for Erath County Manufacturing to meet the shortages are:

- a. Conservation:
 - Date to be Implemented: before 2010
 - Annual Cost: Not determined
- b. Additional Trinity Aquifer Development:
 - Date to be Implemented: By year 2020
 - Total Project Cost: \$198,000
 - Annual Cost: \$18,000

The project cost includes one 150 gpm well drilled to a depth of 400 feet in the Trinity Aquifer.

**Table 4C.9-2.
Recommended Plan Costs by Decade for Erath County Manufacturing**

| Plan Element | 2010 | 2020 | 2030 | 2040 | 2050 | 2060 |
|---|------|----------|----------|----------|----------|----------|
| Projected Surplus/(Shortage) (acft/yr) | 1 | (8) | (16) | (24) | (31) | (40) |
| Conservation | | | | | | |
| Supply From Plan Element (acft/yr) | 2 | 4 | 6 | 7 | 7 | 8 |
| Annual Cost (\$/yr) | — | — | — | — | — | — |
| Unit Cost (\$/acft) | — | — | — | — | — | — |
| Additional Trinity Aquifer Development | | | | | | |
| Supply From Plan Element (acft/yr) | — | 50 | 50 | 50 | 50 | 50 |
| Annual Cost (\$/yr) | | \$18,000 | \$18,000 | \$18,000 | \$18,000 | \$18,000 |
| Unit Cost (\$/acft) | | \$360 | \$360 | \$360 | \$360 | \$360 |

4C.9.5 Steam-Electric

No Steam-Electric demand exists or is projected for the county.

4C.9.6 Mining

No Mining demand exists or is projected for the county.

4C.9.7 Irrigation

Irrigation is projected to have a surplus of water from available groundwater and surface water supplies and no changes in water supply are recommended.

4C.9.8 Livestock

No shortages are projected for Livestock use and no changes in water supply are recommended.

4C.27 Palo Pinto County Water Supply Plan

Table 4C.27-1 lists each water user group in Palo Pinto County and their corresponding surplus or shortage in years 2030 and 2060. For each water user group with a projected shortage, a water supply plan has been developed and is presented in the following subsections.

**Table 4C.27-1.
Palo Pinto County Surplus/(Shortage)**

| Water User Group | Surplus/(Shortage) ¹ | | Comment |
|-----------------------|---------------------------------|-------------------|-----------------------------------|
| | 2030 (acft/yr) | 2060 (acft/yr) | |
| City of Graford | 76 | 73 | Projected surplus |
| City of Mineral Wells | 3,219 | 3,156 | Projected surplus |
| City of Strawn | (7) | (23) | Projected shortage—see plan below |
| County-Other | (203) | (637) | Projected shortage—see plan below |
| Manufacturing | 114 | 104 | Projected surplus |
| Steam-Electric | 563 | (1,658) | Projected shortage—see plan below |
| Mining | 410 | 410 | Projected surplus |
| Irrigation | 6,053 | 6,100 | Projected surplus |
| Livestock | 0 | 0 | Supply equals demand |

¹ From Tables C-53 and C-54, Appendix C – Comparison of Water Demands with Water Supplies to Determine Needs.

4C.27.1 City of Graford

The City of Graford obtains surface water from Keechi Creek and purchases water from Palo Pinto County MWD No. 1. No shortages are projected and no changes in water supply are recommended.

4C.27.2 City of Mineral Wells

The City of Mineral Wells obtains surface water from Lake Palo Pinto from a contract with the Palo Pinto County Municipal Water District No. 1. No shortages are projected and no changes in water supply are recommended.

4C.27.3 City of Strawn**4C.27.3.1 Description of Supply**

Surface water supplies are obtained from Lake Tucker. Supplies will not be sufficient to meet demands through 2060.

4C.27.3.2 Water Supply Plan

Working within the planning criteria established by the Brazos G RWPG, the following water supply plan is recommended to meet the projected shortage of the City of Strawn:

- Conservation
- Water supply from Eastland County WSD.

4C.27.3.3 Costs

Cost of the Recommended Plan for the City of Strawn.

- a. Conservation
 - Cost Source: Volume II, Section 4B.2
 - Date to be Implemented: 2010
 - Annual Cost: maximum of \$5,320 in 2020
- b. Water Supply from Eastland County WSD:
 - Cost Source: Cost estimate to provide service
 - Date to be Implemented: by 2020
 - Total Project Cost: \$1,488,262
 - Annual Cost: \$218,400

**Table 4C.27-2.
Recommended Plan Costs by Decade for the City of Strawn**

| <i>Plan Element</i> | <i>2010</i> | <i>2020</i> | <i>2030</i> | <i>2040</i> | <i>2050</i> | <i>2060</i> |
|--|-------------|-------------|-------------|-------------|-------------|-------------|
| Projected Surplus/(Shortage) (acft/yr) | 0 | (4) | (7) | (10) | (16) | (23) |
| Conservation | | | | | | |
| Supply From Plan Element (acft/yr) | 7 | 14 | 11 | 9 | 9 | 9 |
| Annual Cost (\$/yr) | \$2,660 | \$5,320 | \$4,180 | \$3,420 | \$3,420 | \$3,420 |
| Unit Cost (\$/acft) | \$380 | \$380 | \$380 | \$380 | \$380 | \$380 |
| Water Supply from Eastland County WSD | | | | | | |
| Supply From Plan Element (acft/yr) | 0 | 200 | 200 | 200 | 200 | 200 |
| Annual Cost (\$/yr) | 0 | \$218,400 | \$218,400 | \$218,400 | \$218,400 | \$218,400 |
| Unit Cost (\$/acft) | 0 | \$1,092 | \$1,092 | \$1,092 | \$1,092 | \$1,092 |

4C.27.4 County-Other

4C.27.4.1 Description of Supply

The current supply includes water purchased from Lake Palo Pinto through the Palo Pinto County MWD No. 1 and run-of-the-river diversions. The water supply entities for County-Other show a projected shortage beginning in 2010.

4C.27.4.2 Water Supply Plan

Working within the planning criteria established by the Brazos G RWPG, the following water supply plan is recommended to meet the projected shortage of the County-Other entities:

- Purchase water from Mineral Wells
- Conservation was also considered; however, current per capita use rate is below the selected target rate of 140 gpcd.

4C.27.4.3 Costs

Cost of the Recommended Plan for the Palo Pinto County-Other.

a. Purchase water from Mineral Wells.

- Cost Source: assumed wholesale treated water rate of \$489/acft (\$1.50/1,000 gallons)
- Date to be Implemented: 2010
- Annual Cost: \$24,450

**Table 4C.27-3.
Recommended Plan Costs by Decade for Palo Pinto County-Other**

| <i>Plan Element</i> | <i>2010</i> | <i>2020</i> | <i>2030</i> | <i>2040</i> | <i>2050</i> | <i>2060</i> |
|--|-------------|-------------|-------------|-------------|-------------|-------------|
| Projected Surplus/(Shortage) (acft/yr) | (26) | (121) | (203) | (302) | (446) | (637) |
| Water Supply from Mineral Wells | | | | | | |
| Supply From Plan Element (acft/yr) | 100 | 200 | 250 | 350 | 450 | 650 |
| Annual Cost (\$/yr) | \$48,900 | \$97,800 | \$122,250 | \$171,150 | \$220,050 | \$317,850 |
| Unit Cost (\$/acft) | \$489 | \$489 | \$489 | \$489 | \$489 | \$489 |

4C.27.5 Manufacturing

Manufacturing supplies are obtained from local surface water sources and groundwater from the Trinity Aquifer. Palo Pinto County Manufacturing shows a projected surplus and no changes in water supply are recommended.

4C.27.6 Steam-Electric

4C.27.6.1 Description of Supply

Surface water supplies are obtained from a contract with Palo Pinto County MWD No. 1. The current contract is not sufficient to meet demands through 2060.

4C.27.6.2 Water Supply Plan

Working within the planning criteria established by the Brazos G RWPG, the following water supply plan is recommended to meet the projected shortage for Palo Pinto County Steam-Electric:

- Conservation
- Additional Supply from Palo Pinto County MWD No. 1

4C.27.6.3 Costs

Cost of the Recommended Plan for Palo Pinto County Steam-Electric.

- a. Conservation
 - Cost Source: Volume II, Section 4B.2
 - Date to be Implemented: 2010
 - Annual Cost: not determined

- b. Additional Supply from Lake Palo Pinto (requires Palo Pinto County MWD No. 1 to implement strategies to increase supply):
- Cost Source: Volume II, Section 4B.13.6 (Lake Palo Pinto Off-Channel Reservoir)
 - Date to be Implemented: 2040
 - Total Project Cost: \$19,314,000
 - Annual Cost: \$1,621,000

Table 4C.27-4.
Recommended Plan Costs by Decade for Palo Pinto County Steam-Electric

| <i>Plan Element</i> | 2010 | 2020 | 2030 | 2040 | 2050 | 2060 |
|---|-------------|-------------|-------------|-------------|-------------|-------------|
| Projected Surplus/(Shortage) (acft/yr) | 659 | 774 | 563 | (19) | (782) | (1,658) |
| Conservation | | | | | | |
| Supply From Plan Element (acft/yr) | 41 | 63 | 102 | 120 | 142 | 169 |
| Annual Cost (\$/yr) | — | — | — | — | — | — |
| Unit Cost (\$/acft) | — | — | — | — | — | — |
| Additional Supply from Palo Pinto County MWD No. 1 | | | | | | |
| Supply From Plan Element (acft/yr) | — | — | — | 3,110 | 3,110 | 3,110 |
| Annual Cost (\$/yr) | | | | \$1,621,000 | \$1,621,000 | \$1,621,000 |
| Unit Cost (\$/acft) | | | | \$521 | \$521 | \$521 |

4C.27.8 Mining

No future shortages are projected and no changes in water supply are recommended.

4C.27.9 Irrigation

No future shortages are projected and no changes in water supply are recommended.

4C.27.10 Livestock

No future shortages are projected and no changes in water supply are recommended.

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 17, 2008

Helen H. McDaniel
8012 Llano Avenue
Fort Worth, Texas 76116

CERTIFIED MAIL

RE: Helen H. McDaniel
ADJ 4035
CN603175910, RN105204325
Application No. 12-4035A to Amend Certification of Adjudication No. 12-4035
TWC§ 11.122
Big Sunday Creek, Brazos River Basin
Palo Pinto County

Dear Ms. McDaniel:

This acknowledges receipt, on April 11, 2007, of additional information for the referenced application.

The Commission is reviewing notice requirements for water right amendment applications pursuant to Texas Water Code (TWC) §11.122(b). On Friday, January 18, 2008, the Commission decided that in order to determine if an amendment application requires notice, staff must consider how an application addresses the relevant public interest criteria described in TWC §11.134 and outlined by the Texas Supreme Court in the case of *Marshall v. Uncertain* as well as how the proposed amendment will or will not impact water right holders or the environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

Therefore, staff is requesting responses to Items 1-7 below. In lieu of providing responses, the applicant may agree to the issuance of published notice and mailed notice to the water rights holders of record in the Brazos River Basin.

If you elect to proceed without agreeing to published and mailed notice, additional information is required.

1. Confirm whether this application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) §§281, 295, and 297. An amendment application should include, but is not limited to, a sworn

Helen H. McDaniel
Application No. 4035A
March 17, 2008
Page 2 of 3

application, maps, completed conservation plan, fees, etc.

2. Discuss how the proposed amendment is a beneficial use of the water right as defined in TWC §11.002 and listed in TWC §11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.
3. Explain how the proposed amendment is not detrimental to the public welfare. Consider any public welfare matters you think might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.
4. Discuss the effects, if any, of the proposed amendment on groundwater or groundwater recharge.
5. Describe how the proposed amendment addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement. The state and regional water plans are available for download at this website: http://www.twdb.state.tx.us/RWPG/planning_page.asp.
6. Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC §11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC §288.
7. Explain how the proposed amendment will or will not impact water right holders or the environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

The responses will be reviewed by the Executive Director's staff to make a determination of the application's notice requirement. The staff-recommended notice determination may then be set on Commissioner's Agenda for consideration. In lieu of responding to Items 1-7 above, the applicant may agree to full basin mailed and published notice.

If you elect to proceed with full basin mailed and published notice for the Brazos River Basin, please remit fees in the amount of \$1,023.66, described below. (Please make check payable to TCEQ or Texas Commission on Environmental Quality.)

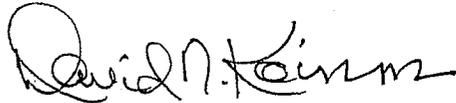
| | |
|---------------------------------|--------------------|
| Filing Fee | \$ 100.00 |
| Recording Fee | \$ 1.25 |
| Notice Fee (Brazos River Basin) | <u>\$ 1,023.66</u> |
| TOTAL FEES DUE | \$ 1,124.91 |
| FEES PAID | \$ 101.25 |
| BALANCE DUE | \$ 1,023.66 |

Helen H. McDaniel
Application No. 4035A
March 17, 2008
Page 3 of 3

Please provide the information requested above or the notice fees by April 23, 2008, or the application may be returned pursuant to 30 Texas Administrative Code §281.19.

If you have any questions concerning this application, please contact me at (512) 239-0047 or by email at dkoinm@tceq.state.tx.us.

Sincerely,



David N. Koinm, Project Manager
Mail Code 160
Water Rights Permitting Team
Water Rights Permitting & Availability Section