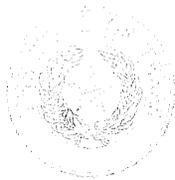


Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 23, 2009

TO: All Persons on Mailing List

RE: **TCEQ Docket No. 2008-1902-WR, Application No.12-4175A to Amend COA No. 12-4175;** In the matter of an amendment to a water right by **H.R. Stasney & Sons, Ltd.**

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, reading "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/mc

MAILING LIST
H.R. STASNEY & SONS, LTD.
TCEQ DOCKET NO. 2008-1902-WR

FOR THE APPLICANT:

Mike Thornton
Environment Consultants, Inc.
P.O. Box 1016
Breckenridge, Texas 76424

H.R. Stasney & Sons, Ltd.
P.O. Box 1826
Albany, Texas 76430

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
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Tel: (512) 239-3678
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Craig Mikes, Project Manager
Texas Commission on Environmental Quality
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Tel: (512) 239-5049
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FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
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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: Craig Mikes, Project Manager
Kellye Rila, Section Manager
Water Rights Permitting & Availability Section

Robin Smith, Attorney
Environmental Law Division

SUBJECT: H.R. Stasney & Sons, Ltd.
Docket # 2008-1902-WR
Application No. 12-4175A to Amend Certificate of Adjudication No. 12-4175
Clear Fork Brazos River, Brazos River Basin
Shackelford County

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 DEC 16 AM 9:44
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 in *Marshall* 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 8, 2008

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

Current Authorization and Application for Amendment

The applicant currently owns Certificate of Adjudication No. 12-4175. That water right authorizes the Owner to maintain a dam and reservoir on the Clear Fork Brazos River, Brazos River Basin and impound therein not to exceed 108 acre-feet of water and divert and use from the perimeter of the reservoir or a point located on the Clear Fork Brazos River not to exceed 7 acre-feet of water per year for livestock purposes, 14 acre-feet of water per year for domestic purposes, and 63 acre feet of water per year for mining purposes, at a combined maximum diversion rate of 0.17 cfs (75 gpm) in Shackelford County. The time priority for diversion and use is July 1, 1926.

H.R. Stasney & Sons, Ltd. have applied for an amendment to the existing Certificate, requesting to include the entire combined current authorization of 84 acre feet of water per year for livestock, domestic, and mining purposes, without a specified amount of water allocated to each use, to allow for flexibility.

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 no rules that specifically provide notice for changes in use. Under 30 TAC § 295.158, in subsection (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. Subsection (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."

Subsection (b) of §11.122 sets out the scope of the Commission's authority in reviewing applications to amend a water right. Staff notes that in their application, H.R. Stasney & Sons, Ltd. 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

TO: Commissioners
Page 3
December 8, 2008

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 and conditions as they existed before the requested amendment,*" and the application meets, "*all other applicable requirements,*" of TWC Chapter 11. The clause that requires the Commission to compare the requested amendment to the existing permit as if the existing permit 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 multiple uses can have no greater impact on other water right holders or the environment than the impacts to those interests under the existing permit because the amount of water to be diverted is the same. Both before and after the amendment, the water right holder will only be able to take a total of 84 acre-feet of water per year from the Clear Fork Brazos River at the same specified diversion points. 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. In other words, there are no special conditions in the permit that restrict the water right holder to a particular pattern of use for any of the uses, or that spreads out the diversion of 84 acre-feet to specific amounts over the course of the year. Because there is no specific pattern of use in the permit, 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 84 acre-feet for livestock (a current use), domestic (a current use) or for mining use (a current use) or for livestock, domestic, and mining purposes, without a specified amount of water allocated to each 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 84 acre-feet per year less after the diversion. Therefore with the full use assumption, the proposed amendment will not cause adverse impacts 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 there are none. This amendment is to include the entire combined current authorization of 84 acre feet of water per year for livestock, domestic, and mining purposes, without a specified amount of water allocated to each use. This

TO: Commissioners
Page 4
December 8, 2008

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 a change in 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.

Some persons also argue that when adding a use, the Executive Director should consider whether the applicant is using all of the authorized 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 which are discussed below. 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 declared the application administratively complete and accepted it for filing with the Chief Clerk on July 2, 2007. In the event the Commission recommends notice is 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 the entire authorized 84 acre-feet of water per year be authorized for livestock, domestic, and mining purposes. Domestic and mining use are recognized as beneficial uses by TWC §11.023(a). Livestock use is recognized as a beneficial use by TWC §11.023(b).

TO: Commissioners
Page 5
December 8, 2008

Some persons argue that an applicant should only be allowed to change the use only for the amount of water being used. The Executive Director believes that limiting the change or additional 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 thru 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 region 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.

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 applicant seeks to use the entire authorized 84 acre-feet of water per year for livestock, domestic, and mining purposes. This type of multi-use permit is authorized by TWC §11.023(e). The applicant asserts that a multi-use permit in this situation would allow the applicant the ability to allocate the water between the three approved uses as determined would be the best use of the water under conditions at the time the water will be used. There are no specific facts that would indicate that this use is not to the public welfare.

Some persons argue that an applicant should only be allowed to change the use only for the amount of water being used. The Executive Director disagrees with this 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, 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

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 Section 11.147(c)(6), which provides that a factor for determining beneficial inflow requirements

TO: Commissioners
Page 6
December 8, 2008

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.

The Executive Director's opinion is that there is no detriment to the public welfare by granting this application.

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 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 the Clear Fork Brazos River at which the diversions under this permit occur. The Brazos WAM includes channel loss factors associated with the Clear Fork Brazos River at the permitted diversion point. The Water Availability Report for the Brazos River Basin indicates that the losses in the segment of the Clear Fork Brazos River where the diversion points are located are approximately 43%.³ These losses are likely attributable to other losses besides recharge, such as free-surface evaporation from the stream.

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 to assess 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

in an application is "the declarations as to preferences for competing uses of water as found in Sections 11.024 (<http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW8.11&ifin=NotSet&fn=top&sv=Split&tc=-1&docname=TXWAS11.024&ordoc=1034726&findtype=L&db=1000186&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Texas>).

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.

TO: Commissioners
Page 7
December 8, 2008

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 Shackelford County.⁷ The Brazos G Regional Water Plan does not indicate issues with groundwater in the area of the application and indicates that there are no major or minor aquifers in the area of the application.⁸

The amount of water diverted by the owner will be the same (84 acre-feet per year) whether that water is drawn from the Clear Fork Brazos River for the existing or proposed uses. Thus, the diversion of the full authorized volume of water for either livestock, domestic and mining use will have no greater effect on groundwater resources or groundwater recharge than the diversion of water for the existing quantified amounts for livestock, domestic and mining 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. The state and regional water plans consider livestock, domestic, and mining uses in planning projections. Furthermore, the state and regional plans do not assess or plan for every possible water use. Therefore, the Executive Director concludes, 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

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. Volume 1. Prepared by Brazos G Regional Water Planning Group and others for the Texas Water Development Board. January 2006.

TO: Commissioners
Page 8
December 8, 2008

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 the amendment only requests the ability of the owner to be able to allocate the water as needed by the approved uses in 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 seeking to use the entire authorized 84 acre-feet of water per year for domestic, livestock, and mining purposes. The applicant assert that water conservation is addressed as well as methods to insure that water is not lost to leaks in transmission lines. The applicant has submitted a water conservation plan. Staff has reviewed the plan and finds that the applicant will achieve water conservation and avoid waste.

Conclusion

This application seeks an amendment to an existing authorization to authorize the entire combined current authorization of 84 acre feet of water per year for livestock, domestic and mining purposes with 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: Craig Mikes, Project Manager
Water Rights Permitting Team

SUBJECT: H.R. Stasney & Sons, Ltd.
Docket # 2008-1902-WR
ADJ 4175
CN603163601
RN105180178
Application No. 12-4175A to Amend Certificate of Adjudication No. 12-4175
TWC § 11.122
Clear Fork Brazos River, Brazos River Basin
Shackelford County

Below is the caption for this application:

Consideration of the notice required for H.R. Stasney & Sons, Ltd.'s application to amend Certificate of Adjudication No. 12-4175 to authorize the entire combined current authorization of 84 acre feet of water per year for livestock, domestic and mining purposes without a specified amount of water allocated to each use. Certificate of Adjudication No. 12-4175 currently authorizes the Owner to maintain a dam and reservoir on the Clear Fork Brazos River, Brazos River Basin and impound therein not to exceed 108 acre-feet of water and divert and use from the perimeter of the reservoir or a point located on the Clear Fork Brazos River not to exceed 7 acre-feet of water per year for livestock purposes, 14 acre-feet of water per year for domestic purposes and 63 acre feet of water per year for mining purposes at a combined maximum diversion rate of 0.17 cfs (75 gpm) in Shackelford County. The commission will consider the application, the executive director's memo on notice, and any other relevant documents or information. (Craig Mikes, Robin Smith)

★ H.R. Stasney & Sons, LTD.
Application No. 12-4175A

HASKELL

Lake Stamford

Wichita River

THROCKMORTON

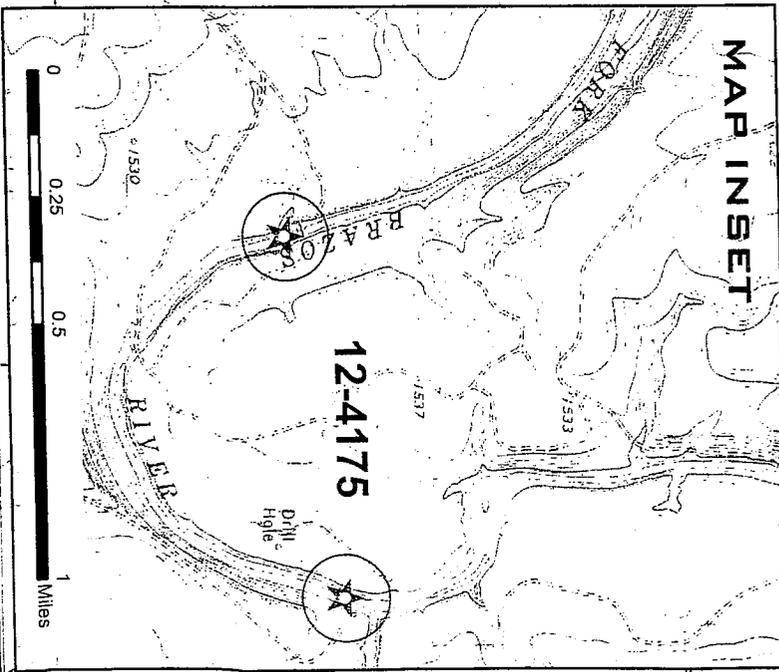
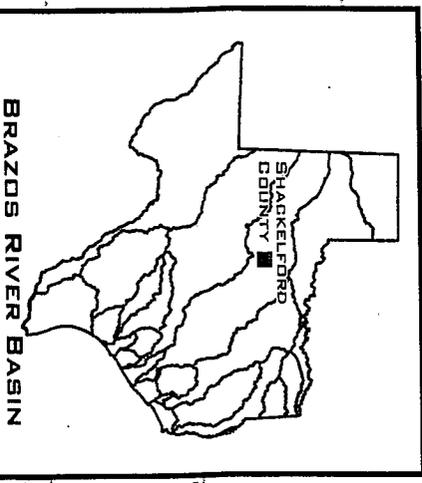
SHACKELFORD

12-4175

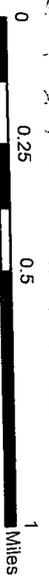
JONES

Clear Fork of the Brazos River

Fort Panthom Hill Reservoir



MAP INSET





TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

737424 NF-81

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: H.R. Stasney and Sons, LTD
Address: P.O. Drawer 1826
Albany, TX 76430
Email Address: IKTHOMAS@STASNEY.COM Fax: (525) 762-3312

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. _____ Certificate of Adjudication No. 12-4175

Stream: _____ Watershed: Clear Fork Brazos River, Brazos River Basin
Reservoir (present condition, if one exists): _____
County: Shackelford

4. Proposed Changes To Water Right Authorizations:
We request that the 84 acre-feet of water per annum be authorized for livestock, domestic use, and mining uses without a specified amount of water allocated to each use, to allow for flexibility.
(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)

[Signature]
Name (print): Lance Thomas

Name (print): _____

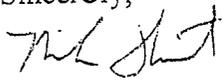
Subscribed and sworn to me as being true and correct before me this 23 day of February, 2007

[Signature]
Notary Public, State of Texas

3. The proposed amendment is not detrimental to the public welfare; since the amendment is not requesting additional water; but the ability to allocate the water between three approved uses as the operator determines is the best use of the water under conditions at the time the water will be used.
4. Since the amendment does not request additional water or additional uses, the proposed amendment will not have any additional effect on groundwater or groundwater recharge.
5. The amendment only requests the ability of the operator to be able to allocate the water as needed by the approved uses in the state water plan.
6. In the Water Conservation Plans for Agricultural Use and Mining Use previously submitted, water conservation is addressed as well as methods to insure that water is not lost to leaks in transmission lines.
7. The amendment will not impact water right holders or the environment as the amendment does not request additional water that would impact water right holders and does not request additional water uses that would impact the environment.

If you need additional information please contact ECI at (254) 559-6414 or by e-mail at mikedthornton@yahoo.com.

Sincerely;



Mike Thornton

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

Mike Thornton
Environmental Consultants, Inc.
P.O. Box 1016
Breckenridge, Texas 76424

CERTIFIED MAIL

RE: H.R. Stasney & Sons, Ltd.
ADJ 4175
CN603163601, RN105180178
Application No. 12-4175A to Amend Certification of Adjudication No. 12-4175
TWC§ 11.122
Clear Fork Brazos River, Brazos River Basin
Shackelford County

Dear Mr. Thornton:

This acknowledges receipt, on October 17, 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 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.)

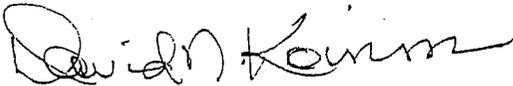
Filing Fee	\$ 100.00
Recording Fee	\$ 1.25
Notice Fee (Brazos River Basin)	\$ 1,023.66
TOTAL FEES DUE	<u>\$ 1,124.91</u>
FEES PAID	\$ 101.25
BALANCE DUE	\$ 1,023.66

Mike Thornton
Application No. 12-4175A
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,

A handwritten signature in black ink that reads "David N. Koinm". The signature is written in a cursive style with a large initial "D".

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

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 12-4175 OWNER: Marshall R. Young Oil Co.
750 West Fifth Street
Fort Worth, Texas 76102

COUNTY: Shackelford PRIORITY DATES: July 1, 1926 and
November 23, 1934

WATERCOURSE: Clear Fork Brazos River, BASIN: Brazos River
tributary of Brazos River

WHEREAS, by final decree of the 91st Judicial District Court of Eastland County, in Cause No. 32,003, In Re: The Adjudication of Water Rights in the Clear Fork of the Brazos River Watershed, Brazos River Basin, dated November 8, 1985, a right was recognized under Permit 97J authorizing the Marshall R. Young Oil Company 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 the Marshall R. Young Oil Company, subject to the following terms and conditions:

1. IMPOUNDMENT

Owner is authorized to maintain an existing dam and reservoir on the Clear Fork Brazos River and impound therein not to exceed 108 acre-feet of water. The dam is located in the Charles Cosner Survey 26, Abstract 39, Shackelford County, Texas.

2. USE

- A. Owner is authorized to divert and use not to exceed 7 acre-feet of water per annum from the aforesaid reservoir or from the Clear Fork Brazos River for livestock purposes.
- B. Owner is authorized to divert and use not to exceed 14 acre-feet of water per annum from the aforesaid reservoir or from the Clear Fork Brazos River for domestic purposes.
- C. Owner is authorized to divert and use not to exceed 63 acre-feet of water per annum from the aforesaid reservoir or from the Clear Fork Brazos River for mining purposes.

3. DIVERSION

- A. Location
 - (1) At a point on the Clear Fork Brazos River in the Charles Cosner Survey 27, Abstract 38, Shackelford County, Texas.
 - (2) At the perimeter of the aforesaid reservoir.
- B. Maximum combined rate: 0.17 cfs (75 gpm).

4. PRIORITY

- A. The time priority of owner's right is July 1, 1926 for the diversion of water for the aforesaid purposes at the aforesaid diversion rate.
- B. The time priority of owner's right is November 23, 1934 for the impoundment of water in the aforesaid reservoir.

5. SPECIAL CONDITION

Owner shall maintain a suitable outlet in the aforesaid dam authorized herein to allow the free passage of water that owner is not entitled to divert or impound.

The locations of pertinent features related to this certificate are shown on Page 11 of Clear Fork of the Brazos River Watershed Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Water Commission, Austin, Texas and the Shackelford County Clerk.

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. 32,003, In Re: The Adjudication of Water Rights in the Clear Fork of the Brazos River Watershed, 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.

TEXAS WATER COMMISSION

/s/ Paul Hopkins
Paul Hopkins, Chairman

DATE ISSUED:

APR 1 1986

ATTEST:

/s/ Mary Ann Hefner
Mary Ann Hefner, Chief Clerk