

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. 2008-1913-WR, Application No. 12-4318D to Amend COA No. 12-4318;** In the matter of an amendment to a water right by **John and Wendell McPherson dba McPherson Farms.**

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 cursive script, reading "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/mc

MAILING LIST
JOHN AND WENDELL MCPHERSON DBA MCPHERSON FARMS
TCEQ DOCKET NO. 2008-1913-WR

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Wendell McPherson
McPherson Farms
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FOR ALTERNATIVE DISPUTE
RESOLUTION:

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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

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 DEC 16 AM 9:44
CHIEF CLERKS OFFICE

SUBJECT: John and Wendell McPherson, dba McPherson Farms
Docket # 2008-1913-WR
Application No. 12-4318D to Amend Certificate of Adjudication No. 12-4318
Brazos River, Brazos River Basin
Hill County

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).

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The purpose of this memo is to discuss the public notice that should be given in the above referenced application by John and Wendell McPherson, dba Mcpherson Farms in light of agency rules and the Court's decision in the case of *Marshall*.

Current Authorization and Application for Amendment

The applicants currently own a portion of Certificate of Adjudication No. 12-4318. That portion authorizes the Owners to divert and use not to exceed 150 acre-feet of water per year to irrigate 148.586 acres in Hill County for agricultural purposes from the Brazos River, Brazos River Basin, at a combined maximum diversion rate of 8.89 cfs (4,000 gpm) from a currently authorized diversion point also in Hill County. The time priority for this water right is December 31, 1921.

John and Wendell McPherson, dba McPherson Farms have applied to amend their portion of the existing Certificate, requesting to include mining use in the existing authorization. John and Wendell McPherson also request to include a 10 acre-foot off-channel storage reservoir with a surface area of one acre.

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 or amendments to add off-channel impoundments. 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 its application John and Wendell McPherson, dba Mcpherson Farms are 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

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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 mining use 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 holders will only be able to take 150 acre-feet of water per year from the Brazos River 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. In other words, there are no special conditions in the permit that restrict the water right holder to a particular pattern of use, or that spreads out the diversion of 150 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 holders are taking their 150 acre-feet for agricultural (irrigation, current use) or for mining 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 150 acre-feet of water per year less after the diversion. Also, addition of an off-channel reservoir will have no effect on flows available for downstream water rights of the aquatic environment. The amount of water diverted from the river (150 acre feet) and the diversion rate (combined maximum diversion rate of 8.89 cfs) will be the same whether that water is directly used after the diversion or it is stored in an off-channel reservoir for subsequent use. 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 add mining use in the existing authorization and also include a 10 acre-foot off-channel storage reservoir with a surface area of one acre. This application does not change a diversion point or change a

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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. Therefore, this application has not been declared administratively complete. In the event the Commission recommends notice is required, notice fees will be requested at that time and upon payment of notice fees the application will be declared administratively complete and accepted for filing with the Chief Clerk.

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 applicants have asked that mining use be added to their authorized use in the certificate and indicate they will continue to use a portion of their water for agricultural purposes as currently authorized and, upon authorization of the amendment, a portion of the water will be used for gas well development activities. Mining use is recognized as a beneficial use by TWC §11.023(a)(2).

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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 or limits on public welfare in the Texas Water Code, the Commission has wide discretion in determining benefits or detriments to the public welfare. The applicants seek to add mining use to their existing agricultural use and to also add a 10 acre-foot off-channel storage reservoir. This type of multi-use permit is authorized by TWC §11.023(e). The applicants assert that the proposed amendment will not be detrimental to the public welfare because of the addition of mining use will negate the alternative use of groundwater in an area in which many rural water supply systems rely on groundwater. There are no specific facts that would indicate that this use is not in 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 the

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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.

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 Brazos River at which the diversions under this permit occur. The Brazos WAM includes channel loss factors associated with the Brazos River at the permitted diversion points. The Water Availability Report for the Brazos River Basin indicates that the losses in the segment of the Brazos River where the diversion points are located are approximately 2%.³ These losses are likely attributable to 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

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 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&ifm=NotSet&fn=top&sv=Split&tc=-1&docname=TXWAS11.024&ordoc=1034726&findtype=L&db=1000186&vr=2.0&prp=%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.

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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 Hill County.⁷ The Brazos G Regional Water Plan does not indicate issues with groundwater in the area of the application.⁸

The amount of water diverted by the owner will be the same (150 acre-feet per year) whether that water is drawn from the Brazos River for the existing or proposed uses. Thus, the diversion of the full authorized volume of water for either agricultural (irrigation) or mining 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. The state and regional water plans consider agricultural and mining uses in planning projections. Therefore, the Executive Director concludes that 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

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.

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relevant regional water plan and the state water plan, the Executive Director believes that it would warrant a waiver of the consistency requirement.

The applicants have submitted a water conservation plan and assert that water conservation is addressed as well as methods to insure that the addition of mining use as well as the associated off-channel storage sought with this amendment will actually serve to help meet some of the projected mining demands through 2060 as outlined in the Regional and State Water Plans for Hill and adjacent counties and that those demands are significantly lower than current mining demands associated with Barnett Shale gas development activities

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 applicants are not increasing the amount of the appropriation. The applicants are adding mining use to its existing authorized agricultural (irrigation) use and also adding a 10 acre-foot off-channel storage reservoir with a surface area of one acre. Applicants assert that conservation elements of the off-channel reservoir include a liner to eliminate loss of water through infiltration into the ground and pipeline leak detection monitoring. Applicants also assert that water levels in the proposed off-channel reservoir will be managed at minimal levels required for pumping into trucks for transport to local gas well development sites so that evaporation losses from the off-channel storage are minimized. The applicant has submitted a water conservation plan. Staff has reviewed the plan and finds that the applicants will achieve water conservation and avoid waste.

Conclusion

This application seeks an amendment to an existing authorization to add mining use to the existing use and to add a 10 acre-foot off-channel storage reservoir. 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 (except any required notice fees, if applicable), 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: John and Wendell McPherson, dba McPherson Farms
Docket # 2008-1913-WR
ADJ 4318
CN603349093 and CN602498180
RN105503841 and RN105503833
Application No. 12-4318D to Amend Certificate of Adjudication No. 12-4318
TWC § 11.122
Brazos River, Brazos River Basin
Hill County

Below is the caption for this application:

Consideration of the notice required for John and Wendell McPherson, dba McPherson Farms's application to amend Certificate of Adjudication No. 12-4318 to add mining use to their current authorization of 150 acre-feet of water per year for agricultural (irrigation) purposes. John and Wendell McPherson also request that the certificate be amended to authorize a 10 acre-foot off-channel storage reservoir with a surface area of one acre. Certificate of Adjudication No. 12-4318 currently authorizes the Owners to divert and use not to exceed 150 acre-feet of water per year for agricultural (irrigation) purposes from the Brazos River, Brazos River Basin, at a combined maximum diversion rate of 8.89 cfs (4,000 gpm) from a currently authorized diversion point in Hill 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)

BOSQUE

HILL

Whitney Lake

Aquilla Reservoir

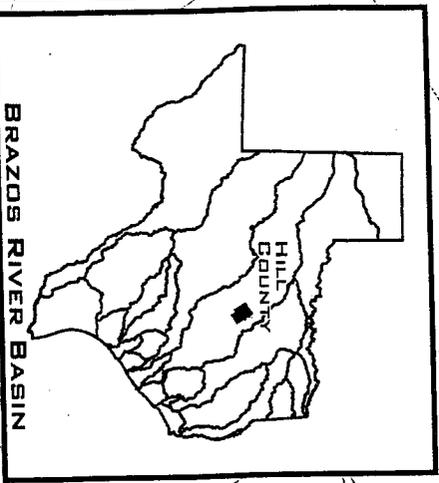
12-4318

Waco Lake

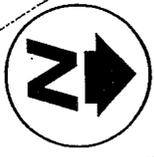
Brazos River

Brazos River

MCLENNAN

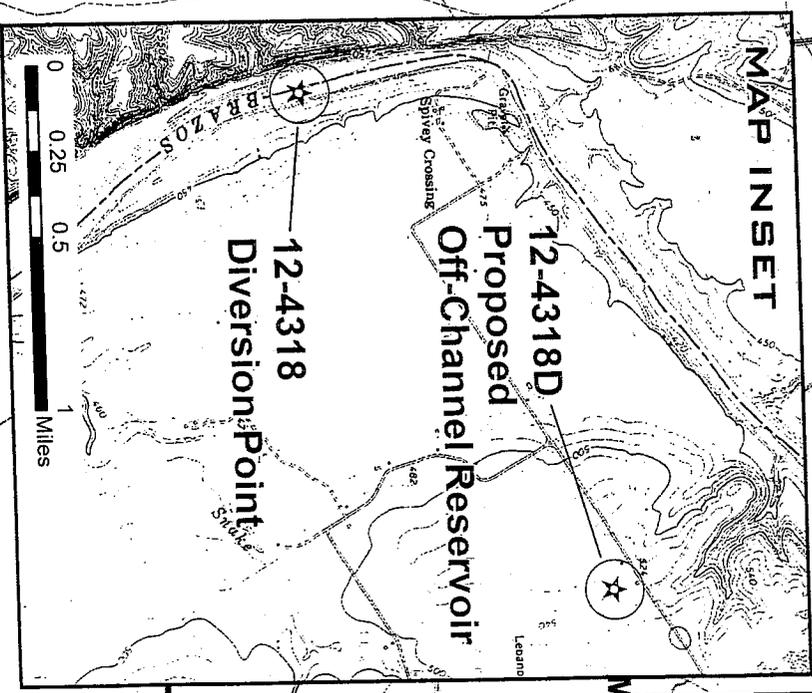


BRAZOS RIVER BASIN



0 2.5 5 10 15 Miles

John and Wendell McPherson,
- dba McPherson Farms
Application No. 12-4318D



MAP INSET

Proposed Off-Channel Reservoir

12-4318 Diversion Point

0 0.25 0.5 1 Miles

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

P.O. Box 13088, MC-160.

Austin, Texas 78711-3088

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

AP-908

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: John and Wendell McPherson dba McPherson Farms
Address: 127 Thousand Oaks Drive
Whitney, Texas 76692
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:
Use Fees - \$10⁰⁰

3. Permit No. _____ Certificate of Adjudication No. 12-4318 A
Stream: Brazos River Watershed: Brazos
Reservoir (present condition, if one exists): _____
County: Hill

4. Proposed Changes To Water Right Authorizations:
Add mining USE
Add WAF off-channel storage

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

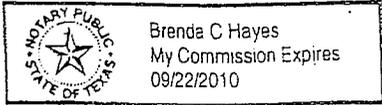
5. I understand the Agency may require additional information in regard to the requested amendment before considering this application.

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

John McPherson
Name (sign)
John McPherson
Name (print)

Wendell McPherson
Name (sign)
Wendell McPherson
Name (print)

Subscribed and sworn to me as being true and correct before me this 7th day of April, 2008



Brenda C Hayes
Notary Public, State of Texas

1. We believe that 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) sections 281, 295, and 297. Prior to submitting the application, we inquired with TCEQ as to the administrative and application requirements for the amendment being sought. We submitted everything that we were instructed was necessary including a completed application form, a map showing the location of the Brazos River diversion and the proposed 10 acre-foot off-channel storage, a completed mining water conservation plan (TCEQ – 10213 form), and check in the amount of \$101.25 for the fee.
2. The amendment is requesting the addition of mining as an authorized type of use to the water right. Some water used under the right will continue to be for irrigation purposes as currently authorized and, upon authorization of the amendment, some water will be used for gas well development activities associated with the Barnett Shale. These uses meet the definition of beneficial use in TWC 11.002(4) and are in accordance with the types of use for which water may be appropriated as listed in TWC 11.023.
3. The proposed amendment will not be detrimental to the public welfare. The beneficial use of surface water for mining and recovery of minerals as requested under this amendment will negate the alternative use of groundwater in an area in which many rural water supply systems rely on groundwater. This, in fact, will result in a positive effect on the aquifer and the public welfare. Additionally, the proposed off-channel storage and water truck loading facility is in a rural area adjacent to FM 1304 with minimal traffic. It is located approximately 2 miles from the river, which minimizes the potential for any adverse environmental effects associated with the water trucks on the Brazos River itself. Lastly, no increase in the amount of water available under the permit is being requested, so there will be no impact on the availability of surface water from the Brazos River to others.
4. As discussed in 3 above, this amendment will have a positive effect on groundwater in that it will offset up to 150 AF of the alternative use of groundwater for gas well development activities in the area. The amendment will not affect groundwater recharge.
5. The proposed amendment addresses a water supply need in a manner that is consistent with the 2007 State Water Plan and the 2006 Brazos G Regional Water Plan. Mining demands are projected for Hill and adjacent counties through 2060 in these plans. The addition of mining as an authorized type of use and the associated off-channel storage sought with this amendment application will help meet some of this projected demand. In fact, current mining demands associated with Barnett Shale gas development activities are significantly higher than those originally projected by the Texas Water Development Board for use in the 2006 Brazos G Regional Water Plan and the 2007 State Water Plan.

6. A mining water conservation plan was submitted with the original amendment application. Significant conservation elements associated with the amendment application include use of a liner for the proposed off-channel storage pond to eliminate loss of water through infiltration into the ground. Additionally, as noted in 3 above, the water will be pumped approximately 2 miles from the Brazos River diversion to the off-channel storage facility from which it will then be pumped into trucks for transport to local gas well development sites. In addition to resource stewardship, the high cost of energy (diesel) for pumping from the River to the off-channel storage necessitates the need for an efficient operation that minimizes transportation losses from the river to the off-channel storage. Pipeline leak detection monitoring will be performed routinely. Additionally, water levels in the proposed off-channel storage pond will be managed at minimal levels required for pumping into trucks so that evaporation losses from the off-channel storage are minimized.

7. The proposed amendment will not impact water right holders. There are no proposed changes to the existing Brazos River diversion point from which water has been pumped for approximately 28 years for irrigation purposes. The proposed 10 acre-foot off-channel storage has a surface area of approximately 1 acre and essentially no drainage area, so there are miniscule effects on alteration of runoff to watercourses. As described in 3 and 4 above, the proposed amendment will have some beneficial impact on groundwater.

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 18, 2008

Wendell McPherson
127 Thousand Oaks Drive
Whitney, Texas 76692

CERTIFIED MAIL

RE: McPherson Farms
ADJ 4318
Application No. 12-4318D for an Amendment to Certificate of Adjudication No. 12-4318
TWC §11.122
Brazos River, Brazos River Basin
Hill County

Dear Mr. McPherson:

This acknowledges receipt, on January 7, 2008, of the referenced application and fees in the amount of \$101.25 (Receipt No. R817685, enclosed).

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 right holders in the Brazos River Basin.

If the applicant elects 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 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 published notice and mailed notice to the water right holders in the Brazos River Basin.

If the applicant elects to proceed with published and mailed notice, please remit fees in the amount of \$1033.66*, described below: (Please make check payable to TCEQ or Texas Commission on Environmental Quality.)

Filing Fee	\$ 100.00
Recording Fee	\$. 1.25
Use Fee (storage)	\$ 10.00 (\$1.00 per acre-foot)
Notice Fee (postage)	\$1023.66 (Brazos River Basin)
TOTAL FEES DUE	\$1134.91
<u>FEES PAID</u>	<u>\$ 101.25</u>
BALANCE DUE	<u>\$1033.66*</u>

*If the applicant elects to provide responses to items 1-7 above instead of agreeing to published and mailed notice, pay \$10.00 in use fees, and any additional notice fees will be determined at a later date.

In addition to the information and fees requested above, the following information is required before the application can be declared administratively complete.

1. Provide a revised application. Our records indicate the Certificate is currently owned by "Tom and Wendell McPherson dba McPherson Farms". The revised application should be submitted in the name of the current owner.

If Wendell McPherson is to be the sole signator, provide evidence that he is authorized to sign the application for John McPherson pursuant to Title 30 Texas Administrative Code (TAC) §295.14(2).
Enclosed.

2. Provide a USGS 7.5 minute topographic map showing the location of the proposed 10 acre-foot off-channel reservoir. A topographic map and aerial photo of the area in the vicinity of diversion point No. 3 has been provided for your convenience. Indicate the location of the off-channel reservoir on the map and return it for our records.
3. Verify that the existing off-channel reservoir is located within the 148,586-acre tract currently authorized for agricultural purposes.

If the reservoir is not located on the authorized tract of land, provide a copy of the deed, lease, or consent for the property where the existing reservoir is located with recording information, including volume and page number and date recorded with the County Clerk. Note that the application must be in the name(s) of all persons or entities who own the land as shown on the deeds or the land owners must provide written, notarized consent.

Please provide the requested information and fees by April 21, 2008, or the application may be returned pursuant to 30 Texas Administrative Code §281.18.

If you have any questions concerning this application, please contact me at (512) 239-5049 or by email at cmikes@tceq.state.tx.us.

Sincerely,



Craig Mikes, Project Manager
Water Rights Permitting & Availability Section
Water Supply Division

Enclosures

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 12-4318C

TYPE: 11.122

Owner: Smith Bend Ranch, Ltd. Address: 20475 Highway 46 West
Suite No. 180-619
Spring Branch, Texas 78070

Filed: January 11, 2007 Granted: **MAR 13 2007**

Purpose: Agricultural (Irrigation),
Municipal, and Mining Counties: Bosque, McLennan and Hill

Watercourse: Brazos River Watershed: Brazos River Basin

WHEREAS, Applicant owns a portion of Certificate of Adjudication No. 12-4318 which authorizes the diversion and use of not to exceed 2,153 acre-feet of water per year from the Brazos River, Brazos River Basin at a maximum combined diversion rate of 8.89 cfs (4,000 gpm) for agricultural purposes to irrigate 628.85 acres in Bosque County. Owner is also authorized to maintain an off-channel reservoir with a capacity of 288 acre-feet of water. Diverted water may be placed directly on the authorized lands or stored in the off-channel reservoir for subsequent diversion and use, the time priority for this right is of December 31, 1921; and

WHEREAS, Applicant seeks to amend Certificate of Adjudication No. 12-4318 to add municipal and mining uses to the 2,153 acre-feet of water per year from the Brazos River, Brazos River Basin, and to add a place of use to anywhere in Bosque and McLennan Counties and those portions of Hill County within the Brazos River Basin; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, no one protested the granting of this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment:

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 12-4318, designated Certificate of Adjudication No. 12-4318C, is issued to Smith Bend Ranch, Ltd., subject to the following terms and conditions:

1. USE

In addition to the authorization to divert and use not to exceed 2,153 acre-feet of water per year from the Brazos River, Brazos River Basin for agricultural purposes to irrigate 628.85 acres in Bosque County, Owner is also authorized to use the water for municipal and mining purposes anywhere in Bosque, McLennan, and those portions of Hill County within the Brazos River Basin.

2. CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses.

3. SPECIAL CONDITIONS

- a.) Owner shall complete and submit to TCEQ, within 180 days prior to delivery of water to, or diversion of water by, any wholesale customer, a water conservation and drought contingency plan for use by a wholesale water supplier to meet the minimum requirements of Title 30 TAC 288.5 and 288.22.
- b.) Within 90 days prior to the diversion of water for industrial/mining purposes, the owner or contract customer shall submit an industrial/mining water conservation plan to the TCEQ to comply with Title 30 TAC Chapter 288.3.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 12-4318, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Certificate owner agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY



For the Commission

Date Issued: MAR 13 2007

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Records Management

DATE: June 13, 2005

Certificate of Adjudication No. 12-4318B
Bosque and Hill Counties
Brazos River Basin

FROM: Water Rights Permitting & Availability
Water Supply Division

SUBJECT: Change of Ownership

DELETE: Ed Huddleston, et ux (Lynn Johnson), as part ownerADD: Smith Bend Ranch, Ltd. a Texas Limited partnership, as part owner

A Special Warranty Deed, dated April 27, 2005, has been checked and found to cover the water right.

Ownership of Record with Address:

- | | |
|------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 1. CHS Farms, Ltd.
964 FM 2114
Clifton, Texas 76634 | 2. John McPherson, et al
(Wendell McPherson)
d/b/a McPherson Farms, a Texas Partnership
Route 1, Box 138
Aquilla, Texas 76622 |
| 3. Smith Bend Ranch, Ltd., a Texas limited partnership
c/o John Weakly, Manager
P.O. Box 519
Stockdale, Texas 78160 | 4. Lakeview Recreation Association, Inc.
d/b/a Bosque Valley Golf Club
P.O. Box 759
Meridian, Texas 76665 |

The ownership of the water rights under this certificate of adjudication (288 acre-foot capacity reservoir and use of 2,820 acre-feet of water per annum from the Brazos River for irrigation) is established as follows:

- | | |
|------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|
| 1. CHS | 497.00 ac/ft for irrigation out of 373.68 ac, being 7.00 and 366.68 ac tr in Wm H. Smith Survey, Abstract 775, Bosque County, Texas |
| 2. John, et al | 150.00 ac/ft for irrigation out of 148.586 ac. tr in J.H. Chambers Survey, Abstract 165, Hill County, Texas |
| 3. Smith Bend | 2,153.00 ac/ft for irrigation out of 628.85 ac tr & reservoir in John W. Carpenter Survey, Abstract 128, Bosque County, Texas |
| 4. Lakeview | 20.00 ac/fl. to be amended |
| 2,820.00 ac/ft for irrigation & 288 acre-foot capacity reservoir | |

Data Entry Made: mc JUN 16 2005

WU & A Section: _____

Central Records/Date:

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



AMENDMENT TO A
CERTIFICATE OF ADJUDICATION

APPLICATION NO. 12-4318B CERTIFICATE NO. 12-4318B TYPE: §11.122

Permittee: Lakeview Recreation Address: P.O. Box 759
 Association, Inc., Meridian, Texas 76665
 DBA Bosque Valley
 Golf Club

Filed: January 18, 2001 Granted: APR 03 2003

Purpose: Agriculture Counties: Bosque and Hill

Watercourse: Rock Branch tributary Watershed: Brazos River Basin
 of the North Bosque River,
 and the North Bosque River,
 tributary of the Brazos River

WHEREAS, Certificate of Adjudication No. 12-4318, as amended, authorizes the Owner to maintain a 288 acre-foot capacity off-channel reservoir and to divert and use, with a time priority of December 31, 1921, not to exceed 2,820 acre-feet of water per annum from the Brazos River at a maximum diversion rate of 8.89 cfs (4,000 gpm) to irrigate a maximum of 752 acres of land out of an 823.66 acre tract in the John Carpenter Survey, Abstract No. 128, approximately 23 miles southeast of Meridian in Bosque County; and

WHEREAS, Helen S. Hodge acquired a portion of the aforesaid 2,820 acre-feet of water authorization and amended the Certificate to authorize diversion and use of not to exceed 667 acre-feet of water per annum at a maximum diversion rate of 8.89 cfs (4,000 gpm) from two additional points on the Brazos River in combination with the diversion points previously authorized by the Certificate to irrigate 522.366 acres of land out of two tracts in the William H. Smith Survey, Abstract No. 775 in Bosque County and one tract in the James H. Chambers Survey, Abstract No. 165, in Hill County; and

WHEREAS, Lakeview Recreation Association, Inc., DBA Bosque Valley Golf Club, Applicant, pursuant to a Gift Deed dated March 23, 2000, acquired a portion of the aforesaid 667 acre-feet of water owned by Helen S. Hodge, which authorizes the Applicant to divert and use not to exceed 20 acre-feet of water per annum for irrigation at a (proportionate) diversion rate of 0.062 cfs (28 gpm); and

RECEIVED

APR 14 2003

WHEREAS, no diversion point or place of use was granted in the Gift Deed; and

WHEREAS, Applicant seeks to amend Certificate of Adjudication No. 12-4318, as amended, by adding an additional diversion point on the east, or left, bank of the North Bosque River, located at 31.89°N Latitude and 97.64°W Longitude, also bearing S 69° W, 4,950 feet from the southwest corner of the John W. Mayberry Survey in Bosque County; and

WHEREAS, Applicant also seeks authorization to increase the diversion rate of the water authorized from 0.062 cfs (28 gpm) to 0.67 cfs (300 gpm); and

WHEREAS, Applicant seeks authorization to add 30 acres of land in the John W. Mayberry Survey known as the Bosque Valley Golf Club, approximately 3 miles southeast of Meridian in Bosque County, as a place of use for the aforesaid water; and

WHEREAS, Applicant seeks authorization to maintain an existing on-channel reservoir complex of two reservoirs having a total surface area of 1.22 acres and storage capacity of 8.54 acre-feet of water on Rock Branch, tributary of the North Bosque River, tributary of the Brazos River, in the Brazos River Basin and;

WHEREAS, the center point of the aforesaid reservoir complex is located at 32.47°N Latitude and 98.06°W Longitude, approximately 3 miles southeast of Meridian; and

WHEREAS, Applicant will pipe the water authorized by this amendment, if granted, from the North Bosque River to the aforesaid reservoirs for storage and subsequent diversion for agricultural purposes to irrigate 30 acres of land in the John W. Mayberry Survey; and

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director finds that in order to protect instream uses and water quality certain streamflow restrictions should be required; and

WHEREAS, the City of Waco (Protester) on or about September 25, 2001, filed a protest to the granting of this amendment; and

WHEREAS, the Applicant and the Protester reached a signed agreement on points of concern, including the site for streamflow measurement, meters for diversion, streamflow restrictions, and access to pump sites and records; and

WHEREAS, The Executive Director finds that the Applicant may divert and use for agricultural purposes only that amount of water that is pumped from the Bosque River and piped to the on-channel reservoirs, less evaporative loss; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 12-4318, as amended, designated Certificate of Adjudication No. 12-4318B, is issued to Lakeview Recreation Association, Inc., DBA Bosque Valley Golf Club, subject to the following terms and conditions:

1. IMPOUNDMENT

Lakeview Recreation Association, Inc., DBA Bosque Valley Golf Club (Owner) is authorized to maintain an existing on-channel reservoir complex of two reservoirs having a total surface area of 1.22 acres and storage capacity of 8.54 acre-feet of water on Rock Branch, tributary of the North Bosque River, tributary of the Brazos River, in the Brazos River Basin. The center point of the reservoir complex is located at 32.47°N Latitude and 98.06°W Longitude, approximately 3 miles southeast of Meridian.

2. USE

Owner is authorized to divert from the North Bosque River and pipe to the aforesaid reservoir complex for storage and subsequent diversion not to exceed 20 acre-feet of water per annum for agricultural purposes to irrigate 30 acres of land in the John W. Mayberry Survey known as the Bosque Valley Golf Club, approximately 3 miles southeast of Meridian in Bosque County.

3. DIVERSION

- A. Owner may divert the water authorized herein from a point, Diversion Point 1, on the east, or left, bank of the North Bosque River, located at 31.89°N Latitude and 97.64°W Longitude, also bearing S 69° W, 4,950 feet from the southwest corner of the John W. Mayberry Survey, in Bosque County to the on-channel reservoir complex for subsequent diversion for agricultural purposes.
- B. Owner may divert the water authorized herein from the perimeter of the aforesaid on-channel reservoir complex.
- C. Owner may divert the water authorized herein at a maximum rate of 0.67 cfs (300 gpm).

4. PRIORITY

The time priority of Owner's right is December 31, 1921, except it shall be junior in priority to the water rights owners of record, at the date of issuance of this

amendment, with diversion points in the North Bosque River watershed between the new diversion point and the confluence of the North Bosque River with the Brazos River.

5. SPECIAL CONDITIONS

- A. Prior to diversion of the water authorized herein, Owner shall install a meter at Diversion Point No. 1 to record the amount of water diverted from the North Bosque River to the on-channel reservoirs for subsequent diversion for agricultural purposes.
- B. In order to provide maintenance flows for existing instream uses, including water quality, Owner may only divert water when the streamflow of the North Bosque River measured at USGS Gauge No. 08095000 at Clifton, Texas equals or exceeds:
 - 1. 12 cfs during the months of January, February, and July,
 - 2. 37 cfs during the months of March, April, and June,
 - 3. 70 cfs during the month of May, and
 - 4. 6.5 cfs during the months of August through December.
- C. Owner must pass all inflows of state water through the reservoir complex.
- D. Owner may divert from the reservoir complex only that amount of water that has been piped from the diversion point on the North Bosque River less evaporative loss.
- E. Owner shall record diversion meter measurements at least weekly.
- F. Owner shall record the streamflow measurement at USGS Gauge No. 08095000 daily beginning the day prior to river pumping operations and continuing one day after pumping ceases.
- G. During normal business hours, and upon request, representatives of the TCEQ shall be provided physical access to the diversion sites, including pumping and metering facilities, and recorded data for review, inspection, and verification purposes.

6. CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 12-4318, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

The water right granted by this permit 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.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
Margaret Hoffman

For the Commission

Date Issued: APR 03 2003

AMENDMENT TO
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 12-4318A

TYPE: AMENDMENT

Name: Helen S. Hodge

Address: 1043 N. Plymoth Road
Dallas, Texas 75208

Filed: August 14, 1987

Granted: September 8, 1987

Purpose: Irrigation

Counties: Bosque and Hill

Watercourse: Brazos River

Watershed: Brazos River Basin

WHEREAS, Certificate of Adjudication No. 12-4318 was issued to Daniel M. Leonard and H. L. Hunt, Jr., Trust Estate on June 16, 1986, and authorizes the certificate owners to maintain a 288 acre-foot capacity off-channel reservoir, about 2300 feet south of the Brazos River and to divert and use not to exceed 2820 acre-feet of water per annum from the Brazos River for the irrigation of a maximum of 752 acres of land out of 823.66 acres in Bosque County, Texas. Certificate No. 12-4318 authorizes a diversion point on the Brazos River in the John W. Carpenter Survey, Abstract No. 128, approximately 23 miles southeast of Meridian, Bosque County at a maximum diversion rate of 8.89 cfs (4000 gpm); and

WHEREAS, Daniel M. Leonard and H. L. Hunt, Jr., Trust Estate entered into an agreement whereby the aforesaid 2820 acre-feet of water rights were divided and as a result Daniel M. Leonard has the right to divert 667 acre-feet of water per annum and H. L. Hunt, Jr., Trust Estate has the right to divert 2153 acre-feet of water per annum authorized by Certificate No. 12-4318; and

WHEREAS, Helen S. Hodge has acquired the aforesaid 667 acre-feet of water rights and the land to which the rights attach from Daniel M. Leonard; and

WHEREAS, Helen S. Hodge has requested an amendment to this part of Certificate No. 12-4318 to authorize a change in the place of use, the irrigation of additional acreage and to add two diversion points; and

WHEREAS, the Texas Water Commission finds that jurisdiction over the application is established; and

WHEREAS, no person protested the granting of this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Water Commission in issuing this amendment.

NOW, THEREFORE, this amendment to Certificate No. 12-4318 is issued to Helen S. Hodge, subject to the following provisions:

1. USE

Certificate owner is authorized to divert and use not to exceed 667 acre-feet of water per annum from the Brazos River to irrigate two separate tracts of land totaling 522.366 acres: one tract being comprised of two parcels, a 7-acre tract and a 366.68-acre tract in the William H. Smith Survey, Abstract No. 775, Bosque County, Texas, the conveyance of which tracts to certificate owner is recorded in Volume 239, page 330 and Volume 221, page 945 of the Bosque County Deed Records, respectively, and a 148.586-acre tract in the James H. Chambers Survey, Abstract No. 165, Hill County, Texas, the conveyance of which tract to certificate owner is recorded in Volume 547, page 729 of the Hill County Deed Records.

2. DIVERSION

a) Point No. 1: Certificate owner is authorized to divert water from the southwest, or right, bank of the Brazos River, at a point which is N 48°45' W, 9000 feet from the southeast corner of the aforesaid Carpenter survey, approximately 21.5 miles southeast of Meridian, Bosque County, Texas.

Point No. 2: Certificate owner is authorized to divert water from the east, or left, bank of the Brazos River, at a point which is S 39°15' W, 23,200 feet from the aforesaid survey corner, approximately 19.5 miles southwest of Hillsboro, Hill County, Texas.

b) The maximum combined rate of diversion for all diversion points on the Brazos River authorized by Certificate No. 12-4318, as amended, is 8.89 cfs (4000 gpm).

3. PRIORITY

The time priority of this amendment is December 31, 1921.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 12-4318, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Water Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS WATER COMMISSION

DATE ISSUED:

November 2, 1987

ATTEST:

/s/ Paul Hopkins
Paul Hopkins, Chairman

/s/ John O. Houchins
John O. Houchins, Commissioner

/s/ Karen A. Phillips
Karen A. Phillips, Chief Clerk

/s/ B.J. Wynne, III
B. J. Wynne, III, Commissioner

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 12-4318

OWNERS: Daniel M. Leonard
P. O. Box 1718
Fort Worth, Texas 76101

H. L. Hunt, Jr., Trust
Estate
2800 Thanksgiving Tower
Dallas, Texas 75201

COUNTY: Bosque

PRIORITY DATE: December 31, 1921

WATERCOURSE: Brazos River

BASIN: Brazos River

WHEREAS, by final decree of the 20th Judicial District Court of Milam County, in Cause No. 20,266, In Re: The Adjudication of Water Rights in the Brazos III River Segment of the Brazos River Basin dated November 7, 1985, a right was recognized under Claim 431 authorizing H. L. Hunt, Jr., Trust Estate to appropriate waters of the State of Texas as set forth below;

WHEREAS, by Trustee's Deed dated March 5, 1979, recorded in Volume 251, Page 547, Deed Records of Bosque County, Texas, Daniel M. Leonard acquired part ownership of Claim 431;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Brazos River Basin is issued to Daniel M. Leonard and H. L. Hunt, Jr., Trust Estate, subject to the following terms and conditions:

1. IMPOUNDMENT

Owners are authorized to maintain an existing 288 acre-foot capacity off-channel reservoir located in the John W. Carpenter Survey, Abstract 128, Bosque County, Texas.

2. USE

Owners are authorized to divert and use not to exceed 2820 acre-feet of water per annum from the Brazos River to irrigate a maximum of 752 acres of land out of a 823.66 acre tract located in the John W. Carpenter Survey, Abstract 128, Bosque County, Texas, said 823.66 acre tract being described as follows:

- (1) BEGINNING in the eastern right-of-way line of F.M. Road 2114, being the Southwest corner of a 137.54 acre tract described in a deed recorded in Volume 221, Page 648 of Deed Records of Bosque County, Texas.
- (2) THENCE N 58°08'E, 834.5 feet to a 5/8" iron pin;
- (3) THENCE N 57°38'E, 6461.5 feet to a point on the west bank of the Brazos River;
- (4) THENCE along said west bank with its meanders as follows: S 78°E, 1115 feet; S 62°E, 70 feet; S 75°E, 300 feet; S 69°E, 700 feet; S 66°E, 220 feet; S 86°E, 80 feet; S 60°E, 180 feet; S 43°E, 240 feet; S 30°E, 380 feet; S 22°E, 220 feet; S 12°E, 140 feet; S 35°W, 60 feet; S 22°E, 340 feet; S 17°E, 740 feet; S 12°E, 300 feet; S 14°E, 600 feet and S 05°41'E, 269.7 feet to a point, being the southeast corner of this tract;
- (5) THENCE S 57°08'W, 715.8 feet to a 5/8" iron pin;
- (6) THENCE S 57°48'W, 1544.1 feet to a point for corner;
- (7) THENCE N 32°21'W, 2642.5 feet to a point for corner;
- (8) THENCE S 57°38'W, 2499.1 feet to a point for corner;

- (9) THENCE S 32°20'E, 2626.8 feet to a point for corner;
- (10) THENCE S 57°39'W, 942.6 feet to a point in the east line of a county road;
- (11) THENCE N 85°54'W, 55.4 feet to a 5/8" iron pin;
- (12) THENCE S 57°35'W, 2769.4 feet to an iron pin in the east R.O.W. line of F.M. Road 2114;
- (13) THENCE with the east R.O.W. line of F.M. Road 2114 as follows: N 65°18'W, 54.3 feet; N 08°10'W, 988.3 feet; N 09°08'W 961.6 feet to the beginning of a curve to the left having a radius of 1685.08 feet and thence along said curve a distance of 1136.2 feet to a 2" pipe;
- (14) THENCE N 47°46'W 1505.3 feet to a 2" pipe at the beginning of a curve to the right having a radius of 5657.98 feet and thence along said curve a distance of 480.9 feet to a 2" pipe;
- (15) THENCE N 43°W, 253.9 feet to the place of beginning.

3. DIVERSION

A. Location

At a point on the Brazos River in the John W. Carpenter Survey, Abstract 128, Bosque County, Texas.

B. Maximum rate: 8.89 cfs (4000 gpm).

4. PRIORITY

The time priority of owners' right is December 31, 1921.

5. SPECIAL CONDITION

Owners are authorized to store water diverted from the Brazos River in the aforesaid off-channel reservoir for subsequent diversion and use to the extent authorized herein.

The locations of pertinent features related to this certificate are shown on Page 1 of the Brazos III River Segment Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Water Commission, Austin, Texas and the Bosque County Clerk.

This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 20th Judicial District Court of Milam County, Texas, in Cause No. 20,266, In Re: The Adjudication of Water Rights in the Brazos III River Segment of the Brazos River Basin dated November 7, 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:

JUN 16 1986

ATTEST:

Mary Ann Refner

Mary Ann Refner, Chief Clerk