

TCEQ DOCKET NO. 2006-1890-WR

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APPLICATION BY BOOT RANCH
DEVELOPMENT, L.P. FOR AN
AMENDMENT TO CERTIFICATE
OF ADJUDICATION NO. 14-1441

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BEFORE THE CHIEF CLERKS OFFICE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this response to the 34 hearing requests on the Boot Ranch Development L.P.'s (Boot Ranch) application to amend Certificate of Adjudication No. 14-1441. Twenty-one hearing requests were timely filed, 13 hearing requests were not timely. The Executive Director recommends that the 13 untimely requests be denied, 7 timely requests be denied, and that 14 of the timely requests be granted.

1. BACKGROUND

The Application

Boot Ranch owns Certificate of Adjudication No. 14-1441, which authorizes it to maintain a dam and reservoir on Upper Palo Alto Creek, tributary of the Pedernales River, tributary of the Colorado River, Colorado River Basin, and impound in the reservoir not to exceed 6 acre feet of water. Boot Ranch is also authorized to divert 34 acre feet of water from the reservoir at a maximum diversion rate of 1.89 cfs (800 gallons per minute (gpm)) for agricultural purposes to irrigate a maximum of 29 acres in Gillespie County. The priority date on the Certificate is 1943.

Boot Ranch requests to amend its Certificate to authorize the increased storage capacity of the reservoir from 6 to 93 acre feet, increase the annual diversion amount from 34 to 232 acre feet per year, increase the diversion rate from 1.89 cfs (800 gpm) to 5.79 cfs (2,200 gpm), add an existing off-channel reservoir as part of the irrigation system, add recreation use to both reservoirs, and increase the lands to be irrigated from 29 acres to a maximum of 100 acres of land out of a 1,921.5 acre tract in Gillespie County.

Boot Ranch has a water contract with Lower Colorado River Authority (LCRA) for 353 acre feet of water a year. The additional water and evaporation loss associated with increased reservoir storage will be accounted for against LCRA's right to Lakes Travis and Buchanan, which are downstream of the Boot Ranch Property. Under this contract, LCRA, the senior water right, has agreed not to call on water upstream from Boot Ranch.

Procedural History

The application was received on May 25, 2005. The application was determined to be administratively complete and filed with the Office of the Chief Clerk on November 8, 2005. Notice was subsequently mailed to the water right holders in the Colorado River Basin on January 27, 2006, and published in the *Fredericksburg Standard-Radio Post*, Gillespie County on February 8, 2006.

2. RESPONSE TO HEARING REQUESTS

Legal Authority

The application is subject to the procedures for evaluating hearing requests on applications declared administratively complete on or after September 1, 1999 in 30 Texas Administrative Code, Chapter 55, Subchapter G (Sections 55.250-55.256).

Title 30, Sections 55.251 (b) and (c) of the Texas Administrative Code specify that a hearing request must:

- (1) be in writing and be filed with the Office of the Chief Clerk during the public comment period;
- (2) give the name, address, and daytime telephone number of the person who files the request;
- (3) identify the person's personal justiciable interest affected by the application including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public; and
- (4) request a contested case hearing.

A hearing request must comply with requirement (1) above and must "substantially comply" with requirements (2) through (4). 30 TEX. ADMIN. CODE § 55.251(c).

A request for a contested case hearing must be granted if the request is made by an affected person and the request:

- (A) complies with the requirements of 30 TEX. ADMIN. CODE § 55.251;
- (B) is timely filed; and
- (C) is pursuant to a right to hearing authorized by law.

30 TEX. ADMIN. CODE § 55.255(b)(2).

An "affected person" is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to the general public does not constitute a justiciable interest. 30 TEX. ADMIN. CODE § 55.256(a).

To determine whether a person is an affected person, all relevant factors must be considered, including but not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) the likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) the likely impact of the regulated activity on the use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE § 55.256(c).

Hearing Requests

Late Requests:

Robert Brandes, Chris and Bill Brown, County Commissioner Calvin Ransleben, Texas Wildlife Association, Michael Hartman, William Weldon, Morey Weldon, David Peake, David Peake, III, Ronald W. Johns, James Schonaerts, Edwin and Lila Mae Beyer, Carter Schidknecht, Judge, and Margaret Myers did not timely file their hearing requests.

Timely requests:

Clark and Patrica Kibler own property 5 miles downstream of Boot Ranch, several hundred feet north of Palo Alto Creek ("the creek"). They are concerned about aquifer levels, and believe that the development will adversely affect the welfare of the community. They do not say that they are riparian to the creek or that they are domestic and livestock users.

Irene Mae Fritz is an heir to land adjacent to Palo Alto Creek (the creek). She is concerned that the reduction in flow will have a negative impact on the market value of the land.

Elizabeth Ida Terry is an heir to land adjacent to the creek. She is concerned that the reduction in flow will have a negative impact on the market value of the land.

Louis Buehn owns property that adjoins the creek. The creek is his lifeblood, and he uses the creek for livestock, wildlife, and plants, and is concerned about the groundwater in the area. He is opposed to granting the application for water for a golf course. He does not state where he is on the creek.

Curtis Cameron and John Thompson, Gillespie County Commissioners, state that their constituents are concerned about increased pumping of water at Boot Ranch.

Katherine Peake lives approximately 15 miles downstream of Boot Ranch on the Pedernales River. She believes that this request will impact the creek and the river. The creek runs into the Pedernales River approximately 13 miles downstream of Boot Ranch.

Laura Bailey is a domestic and livestock user who lives 6 miles downstream from Boot Ranch on the creek. She is concerned about effect on domestic and livestock users, flow through property, water quality. She is also concerned that the water will be used for recreation by a very few who do not even live in the area.

Charles and Meta Bendele are landowners on the creek 5 ½ miles downstream of Boot Ranch. They are concerned about flow of creek, water quality, decreasing land value, affecting wildlife, and stopping family's recreational use.

Archie Crenwelge is an heir to riparian property adjoining Boot Ranch property, and uses water for livestock and wildlife. He is worried about flow of the creek stopping. He is concerned that water will be used for recreation when the landowners need it for domestic and livestock use.

Cecil Crenwelge, heir to riparian property adjoining Boot Ranch property, is concerned that the application would be adverse to the wildlife in the area. He states that there is no water available without having an adverse effect on the ecosystem immediately downstream.

Sidney Crenwelge, heir to riparian property adjoining Boot Ranch property, is worried about flow of the creek stopping. He is concerned that water will be used for recreation when the landowners need it for domestic and livestock use.

Stanley Crenwelge, heir to riparian property adjoining Boot Ranch property, is worried about flow of the creek stopping. He is concerned that water will be used for recreation when the landowners need it for domestic and livestock use.

Mary Jane Henrich, domestic and livestock user on the creek, has property adjoining Boot Ranch. Concerned about property values and having to resort to groundwater, but also says "creek serves

as sole source of water for livestock and wildlife on the property.” She is also concerned that Boot Ranch did not plan correctly for its development.

Eugenia A. Jenschke is an heir to property on the creek adjoining Boot Ranch and is worried about lack of water for livestock and wildlife on the property, having to drill a well, and decreased property values due to lack of existing water supply.

Darlyn Jung is an heir to property on the creek adjoining Boot Ranch, is concerned flow will be reduced on ranch, water is source of water for livestock. The landowner is concerned that this water will be used for recreation and may result in negative impact on the water quality and wildlife.

Patrick H. Klein is a riparian landowner on the creek 3 to 5 miles downstream from Boot Ranch, uses water for livestock. He is concerned about the flow of the river and water quality.

Donna Oehler has family property approximately 4 to 5 miles downstream from Boot Ranch. Her family has used water for domestic and livestock purposes, and believes that this application will impact the quantity and quality of the water.

Gregory Oeler has family property approximately 4.5 miles downstream from Boot Ranch. His family has used water for domestic and livestock purposes, and believes that this application will impact the quantity and quality of the water.

Shirley A. Preece has property on the creek just a few miles downstream from Boot Ranch. She is concerned about diminished flow in the creek, both because it will impact her farm and ranch economically and because it will adversely impact the creek and the Pedernales River. She is also concerned about the impact on domestic and wildlife use of the creek, and the effect on wildlife.

Dora Lee Wierich Sewell is an heir to land which adjoins Boot Ranch. She fears that the application will devalue the property and affect the water flow. Water has been used for domestic and livestock on her property.

Analysis

Robert Brandes, Chris and Bill Brown, County Commissioner Calvin Ransleben, Texas Wildlife Association, Michael Hartman, William Weldon, Morey Weldon, David Peake, David Peake, III, Ronald W. Johns, James Schonaerts, Edwin and Lila Mae Beyer, and Margaret Myers did not timely file their hearing requests and therefore did not meet Section 55.251(b)(1) (“was filed in writing with the Office of the Chief Clerk before the end of the public comment/hearing request period”). The deadline for filing hearing requests was March 10, 2007.

Clark and Patricia Kibler do not indicate that they are domestic and wildlife users or own a water right. Louis Buehn does not state where he is on the creek. Therefore, these two hearing requestors

do not meet the requirements of Section 55.251(b)(3) (indicate their location related to the application or their personal justiciable interest).

Irene Mae Fritz and Elizabeth Ida Terry do not indicate that they are domestic and livestock users, and only comment on property values, which this agency does not regulate. They did not show that they have a justiciable interest in this application under Section 55.251(b)(3), and are not protected by the law under which this application will be considered. 30 TAC § 55.256(b)(1).

Curtis Cameron and John Thompson, Gillespie County Commissioners, state that their constituents are concerned about increased pumping of water at Boot Ranch. Under 30 TAC § 55.256(b), governmental entities "with authority under state law over issues contemplated by this application" are affected persons. Because counties do not have authority over water rights, these hearing requests do not comply with that rule or Section 55.256(a)(6).

Katherine Peake lives approximately 15 miles downstream of Boot Ranch on the Pedernales River. She believes that this request will impact the creek and the river. The creek runs into the Pedernales River approximately 13 miles downstream of Boot Ranch. Because of the distance of her property from the Boot Ranch property, and the fact that Ms. Peake is on the Pedernales River, not the creek, Ms. Peake has not shown that her property rights might be impaired as required by Section 55.256(a)(3), (4), and (5).

The other hearing requestors indicate where they are located in reference to Boot Ranch, are riparian to the creek, and state their personal justiciable interests as domestic and livestock water users. Their location is within a few miles of the Boot Ranch property. Their interests are protected by the law under which the application will be considered and there is a reasonable relationship between their interests and the activity regulated. 30 TAC. Code § 55.256(a).

Conclusion on Hearing Requests

For the reasons stated above, the Executive Director recommends that the hearing requests Laura Bailey, Charles and Meta Bendele, Archie Crenwelge, Cecil Crenwelge, Sidney Crenwelge, Stanley Crenwelge, Mary Jane Henrich, Eugenia Jenschke, Darlyn Jung, Patrick Klein, Donna Oehler, Gregory Oehler, Shirley Preece, and Dora Lee Wierich Sewell be granted. The Executive Director recommends that the other hearing requests be denied.

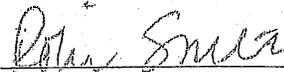
Length of Contested Case Hearing

If the Commission decides to grant a hearing request and refer the application to SOAH, the Executive Director recommends that the hearing be no more than six months.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th of June, 2007, a true and correct copy of the foregoing document was delivered via facsimile, hand delivery, interagency mail, or by deposit in the U.S. Mail to all persons on the attached mailing list.



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*See attached for a full listing of all requests
and comments.*

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FOREST J REES
4486 LOWER CRABAPPLE RD
FREDERICKSBURG TX 78624-6722

MARIA PALMER
423 MEUSEBACH CREEK RD
FREDERICKSBURG TX 78624-7328

M L ROHRER
279 ROCKY HILL LN
FREDERICKSBURG TX 78624-7440

ELGIN PAPE
2180 FIRDLER RD
HARPER TX 78631

BOB SAGEBIEL
PO BOX 1934
FREDERICKSBURG TX 78624-1909

EUGENE PATTERSON
377 PATTERSON LN
FREDERICKSBURG TX 78624

BOBBIE SCHONAERTS
1064 TRIPLE CREEK RD
FREDERICKSBURG TX 78624-5860

DAVID PEAKE, JR
309 LUCKENBACH RD
FREDERICKSBURG TX 78624-7457

HELEN SCROGGS
2735 RANCH ROAD 965
FREDERICKSBURG TX 78624-6782

ZOE PEAKE
309 LUCKENBACH RD
FREDERICKSBURG TX 78624-7457

FREDERICK M & JERRIE SMITH
78 RANCHO PALO ALTO RD
FREDERICKSBURG TX 78624-5862

CAROLYN & DAVID PHILLIPS
PO BOX 684037
AUSTIN TX 78768-4037

MARK STROEHER
COUNTY JUDGE, COUNTY OF GILLESPIE
101 W MAIN ST
FREDERICKSBURG TX 78624-3745

CHRISSY & DICK STUEWE
PO BOX 734
FREDERICKSBURG TX 78624-0734

PAULINE VOGLER
2619 S HIGHWAY 349
LAMESA TX 79331-4917

CORD SWITZER
FREDERICKSBURG WINERY
247 W MAIN ST
FREDERICKSBURG TX 78624-3709

BILLY WALLER
157 COUNTRY CREEK LN
FREDERICKSBURG TX 78624-7040

BILL TEAGUE
895 TEAGUE LN
FREDERICKSBURG TX 78624-6563

ARTHUR L WATSON
3120 LOWER CRABAPPLE RD
FREDERICKSBURG TX 78624-6721

MARY ELLEN TERRELL
4957 MORRIS RANCH RD
FREDERICKSBURG TX 78624-7327

JAMES A & MARGARET Q WATSON
3120 LOWER CRABAPPLE RD
FREDERICKSBURG TX 78624-6721

JOHN E (CORKEY) THOMPSON
704 W TRAVIS ST
FREDERICKSBURG TX 78624-2523

SAM WATSON
14197 HWY 290 E
STONEWALL TX 78671

MIKE TOMFORDE
12796 RANCH ROAD 965
FREDERICKSBURG TX 78624-6550

AL WEINZIERL
18211 FM 2093
HARPER TX 78631-8488

KENNETH TREIBS
5561 RR 1631
FREDERICKSBURG TX 78624

TOM WEIRICH
PO BOX 1042
FREDERICKSBURG TX 78624-1042

PAUL TYBOR
508 S WASHINGTON ST
FREDERICKSBURG TX 78624-4557

ED VAUGHAN
2868 KNEESE RD
FREDERICKSBURG TX 78624-7075

DARLENE VOGLER
2619 S HIGHWAY 349
LAMESA TX 79331-4917

JERRY VOGLER
2619 S HIGHWAY 349
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