

Kathleen Hartnett White, *Chairman*  
Larry R. Soward, *Commissioner*  
Martin A. Hubert, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

October 30, 2006

TO: Persons on the attached mailing list.

RE: Boot Ranch Development LP  
Certificate of Adjudication No. 14-1441

Enclosed with this letter is a copy of the Executive Director's Response to Comments.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela".

LaDonna Castañuela  
Chief Clerk

LDC/spb

Enclosure

MAILING LIST  
Boot Ranch Development LP  
Certificate of Adjudication No. 14-1441

FOR THE APPLICANT:

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Boot Ranch Development, L.P.  
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FOR THE CHIEF CLERK:

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See attached list.

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ARLEEN CRENWELGE  
POWER  
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LARRY BEYER  
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FOREST J REES  
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ML ROHRER  
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ZOE PEAKE  
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MIKE TOMFORDE  
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CORD SWITZER  
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**PROPOSED AMENDMENT TO CERTIFICATE  
OF ADJUDICATION NO. 14-1441A**

<b>APPLICATION OF BOOT RANCH</b>	<b>§</b>	<b>BEFORE THE</b>
<b>DEVELOPMENT L.P. FOR</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>AMENDMENT TO CERTIFICATE OF</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>ADJUDICATION NO. 14-1441</b>		

**EXECUTIVE DIRECTOR'S RESPONSE TO COMMENTS**

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Comments made at the June 6, 2006, public meeting on Boot Ranch Development L.P.'s (Boot Ranch) application to amend Certificate of Adjudication No. 14-1441 (the "application"), and the written comments received after that meeting. The Executive Director responds to the written and verbal comments made at the meeting and received after the public meeting until the deadline for comments on June 6, 2006.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICE OF THE EXECUTIVE DIRECTOR  
JUN 16 2006

**BACKGROUND**

Boot Ranch filed this application with the TCEQ on May 25, 2005. The application was declared administratively complete on November 8, 2005, and mailed notice was issued on January 27, 2006. Published notice was provided in the Fredericksburg Standard-Radio Post, Gillespie County on February 8, 2006. At the time of this Response to Comments was filed, the technical review had been completed on this application.

Certificate of Adjudication No. 14-1441 was issued on August 15, 1980 to Wayne K. Goettsche. Boot Ranch Development, L.P. filed a change of ownership in 2004 and TCEQ records were updated to reflect it as owner of the Certificate on January 14, 2005.

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 an Upstream Firm 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 by the upstream contract.

## COMMENTERS

The following persons provided written and/or oral comment at the public meeting:

Curtis Cameron	Sam Watson
Carter T. Schildknecht	Marc Jacobi
Al Weinzierl	E.J. Beyer
Elgin Pape	Jerry Vogler
Lou Buehn	Beth Cross-Watson
Dick and Chrissy Stuewe	Ann Baltzer
Bruce McNabb	Chris & Bill Brown
Robert Brandes	Elizabeth Covert
Clayton Klinksiek	Joyce Feuge
James Schonaerts	Joanie Harris
Norman Michalk	Ronald Johns
Edward N. Rees	Shirley A. Land
Steve Rawls	Ernie Loeffler
Greg Oehler	Mark Mazur
William F. Weldon	Judy McGookey
Morey Weldon	Julia McNabb

Jimmy G. Melton  
Robert & Melissa Mial  
Linda Mohr  
Gary Netterdorf  
Maria Palmer  
Katherine, David, Zoe, and David Peake  
John Ramsay  
Forest J. Rees  
Helen Scroggs  
James & Margaret Watson  
Arthur Watson  
Cecil Crenwelge  
John Engel  
Ernest McKenney  
Bob Sagebiel  
M. L. Rohrer  
Pauline Vogler  
Genevieve Dooly  
Thomas Kaderli  
Mary Ellen Terrell  
Texas Wildlife Association

## RESPONSE TO COMMENTS

### Property Values

COMMENT NO. 1: Curtis Cameron, Jerry Vogler, Arthur Watson, William and Morey Weldon, Marc Jacobi, James and Margaret Watson, and Texas Wildlife Association, are concerned that approval of this application would affect the value of the property along Palo Alto Creek. The value of property on the creek is dependent upon a healthy flow of water in the creek.

**RESPONSE NO. 1: The Commission responds that it cannot consider decrease in property values in deciding whether to grant or deny a water right. The Commission is limited to the criteria established in its governing statutes and in its rules. Property values are not a listed consideration.**

### Existing Low Flows in Palo Alto Creek

COMMENT NO. 2: John Ramsey, Steve Rawls, Ed Rees, and Carter Schildknecht comment that there has been a visible decrease in flows in the creek. John Engel comments that Boot Ranch should not get additional water because currently there is little to no flow downstream in the summer months. James and Margaret Watson comment that the flow of the creek has already diminished from over water usage and the flow will decrease even further with the permit. Forest Rees comments that ample flows on the creek may only occur after a half to one inch of rain near the Boot Ranch development. Louis Buehn has witnessed the gradual deterioration of the creek since upstream owners have dammed the creek. Ann Baltzer states that there are currently dry creek conditions. Ernie Loeffler states that right now the Pedernales stops flowing in dry weather. Mark Mazur comments that the creek runs dry periodically now. Steve Rawls comments that if you drive by the creek today you will find that it is just a trickle of water. Jerry Vogler comments that the creek has dried up in three straight years, 1999-2001 during July and August.

**RESPONSE NO. 2: The Executive Director recommends that special conditions to protect the environment be included in the amendment. Boot Ranch cannot divert the additional water unless the flow in Palo Alto Creek exceeds 90 gpm downstream of all of Boot Ranch's diversion points. Furthermore, the Executive Director's staff performed a water availability analysis on this application and only recommended issuance of an amendment for diversion of water which has not been appropriated by others in the Palo Alto Creek watershed. The staff further found that the only water right that would be adversely affected by the requested permit is a water right owned by the applicant.**

COMMENT NO. 3: Norman Michalk comments that the situation in the Palo Alto is similar to the one in Corpus Christi in Nueces County. In dry years, the water supply becomes limited and strict

rationing takes place. He does not hear any guarantee that Boot Ranch will conserve water in dry periods.

**RESPONSE NO. 3: The Executive Director responds that Boot Ranch submitted a conservation plan in accordance with Texas statutes and TCEQ rules. The Executive Director's staff reviewed the plan for compliance with the TCEQ's rules and found that Boot Ranch had established five and ten year goals for water savings that meet their systems efficiency and identified other practices that they would use to conserve water. Boot Ranch's plan met the applicable criteria.**

Affects on domestic and livestock users

COMMENT NO. 4: Carter Schildknecht, Dick and Chrissy Stuewe, James Schonaerts, Greg Oehler, William and Morey Weldon, Beyer Farms, Texas Wildlife Association, Chris and Bill Brown, Shirley A. Land, Ernie Loeffler, Mark Mazur, Robert and Melissa Mial, Linda Mohr, Jerry Vogler, Darlene Vogler, Al Weinzierl, James and Margaret Watson, Elizabeth Covert, Arthur Watson, Helen Scroggs, Joyce Feuge, comment that this diversion will negatively impact the flow downstream, domestic and livestock users, and agriculture users.

**RESPONSE NO. 4: The Executive Director responds that domestic and livestock owners are not specifically protected in the TCEQ's water availability analysis because they are exempt from permitting requirements and are mostly unknown. There is no realistic way for the TCEQ to obtain this information. The fact that water rights are protected at their full authorized amount for a new appropriation and that flows must be passed through the dam to protect the downstream environment may help mitigate impacts to domestic and livestock users.**

Affect on Wildlife

COMMENT NO. 5: Carter Schildknecht, James and Margaret Watson, and John Ramsay comment that developers are diminishing the quantity of water and the health of the creek downstream. Deer, rabbits, squirrels, armadillos, rodents and foxes, turkey, and blue herons will be harmed, as well as shiner and gambusia minnow, tadpoles, adult frogs, freshwater clams, crayfish, flatworms and diving beetles. Lou Buehn, James Schonaerts, William and Morey Weldon, Texas Wildlife Association, Chris and Bill Brown, Joyce Feuge, Elizabeth Covert, Ernie Loeffler, Mark Mazur, Robert and Melissa Mial, John Ramsey, Darlene Vogler, M.L. Rohrer, Arthur Watson, Helen Scroggs comment that taking additional water out of the stream will stress and damage the fish, wildlife and plant life. Arthur Watson states that the increased water usage in recent years and decreased rainfall have made the water left in the creek and springs more important to the wildlife.

**RESPONSE No. 5:** The Executive Director's staff has reviewed the application for impacts to fish and wildlife. In order to provide water for fish and wildlife habitats, the Executive Director recommends a special condition be included in the amendment limiting Boot Ranch's diversions from Palo Alto Creek to times when streamflow is at least 90 gpm as measured downstream of all Boot Ranch diversion points.

Water Availability

COMMENT NO. 6: Jerry Vogler, Darlene Vogler, Ernest McKenney, Judy McGookey, and Curtis Cameron, and Arthur Watson comment that granting the permit will cause loss of the water in the creek. Forest J. Rees comments that the flow will be zero in the creek if the permit is granted, except under flash flood conditions.

**RESPONSE NO. 6:** The Executive Director responds that a water availability analysis and environmental review were performed for this application and any amendment granted will be in accordance with statutory law and the TCEQ rules. The Executive Director's draft permit would only grant water which has not been appropriated to others in the Palo Alto Creek Watershed to Boot Ranch and contains streamflow restrictions for protection of the environment.

COMMENT NO. 7: Greg Oehler asks how evaporation from the reservoirs will be accounted for in any permit issued by the TCEQ for these lakes.

**RESPONSE NO. 7:** The Executive Director responds that Boot Ranch already has authorization to store 6 acre-feet in the on-channel reservoir and will only need to account for any increase in evaporation resulting from the increased storage (87 acre-feet) and the evaporation from the off-channel reservoir. Boot Ranch submitted an accounting plan to account for evaporations and the plan was reviewed by the Executive Director's staff and found to be adequate. Maintenance of the accounting plan will be a requirement in any amendment issued to Boot Ranch.

COMMENT NO. 8: William and Morey Weldon ask how water availability was determined for this application? Julia McNabb asks why the increase in capacity for Boot Ranch B didn't they do their homework before they developed this land? Was permitting based on facts?

**RESPONSE NO 8:** The Executive Director's staff used the TCEQ Water Availability Model (WAM) for the Colorado River Basin, which assumes that all basin water rights divert their maximum authorized amount, to determine water availability. Because Boot Ranch's application is based on an upstream contract with LCRA, water used by Boot Ranch will come

from water already appropriated to LCRA in its Lake Travis and Lake Buchanan permits. The Executive Director does not know what the landowners knew prior to buying this land.

COMMENT NO. 9: Louis Buehn comments the Boot Ranch is now taking 100% of the water in the creek B he asks how the TCEQ can allow this, or allow them to take more than 100%? Right now there is no water running over Boot Ranch's dam. Chris and Bill Brown ask how TCEQ could issue a permit to deplete the flow?

**RESPONSE NO. 9:** See answer to Comment No. 8 above. Also, the Executive Director responds that Boot Ranch currently has authorization to store and divert water from Palo Alto Creek and its tributaries. This authorization does not require Boot Ranch to pass flow over the dam. Any amendment granted to Boot Ranch will be in accordance with statutory law and the TCEQ rules and will include requirements to pass flow through the dam. If Boot Ranch has violated its water rights or statutes within the TCEQ's jurisdiction or TCEQ rules, persons may contact the TCEQ Region 13 office at (210) 490-3096.

COMMENT NO. 10: James Schonaerts, William and Morey Weldon comment that LCRA did not use factual data when it entered into this contract with Boot Ranch. The LCRA has no information on the average water flow in this creek and has no gages on the creek. Maria Palmer comments that we cannot validly measure the flow on the creek if there isn't a gage on the creek. Mary Ellen Terrell and Bob Sagebiel comment that the TCEQ cannot represent that there is no harm without flow data. Ernest McKenney comment that the Commission should deny the application because there is no flow data for the creek.

**RESPONSE NO. 10:** The Executive Director does not know what criteria LCRA used for the contract. The Executive Director's staff used the TCEQ WAM for the Colorado River Basin to determine whether water was available for Boot Ranch's request. The TCEQ WAM includes an estimation of the flows in Palo Alto Creek based on a drainage area ratio with USGS gage 08153500 Pedernales River near Johnson City, Texas. This method adequately accounts for flows at locations where flows are not measured.

COMMENT NO. 11: Cecil Crenwelge is concerned that the flow of Palo Alto Creek was determined downstream from where the creek flows into the Pedernales. William Weldon questions the technical validity of modeling flows 7 or 8 miles upstream on a minor tributary based on the flow of the Pedernales River. The Palo Alto is a small fraction of 1% of the flow in the Pedernales.

**RESPONSE NO. 11:** The Executive Director responds that the flows used in the TCEQ WAM are distributed from gaged to ungaged locations using the drainage area ratio method. This means that the flow in Palo Alto Creek is equal to the flow at the USGS gage Pedernales River

near Johnson City multiplied by the ratio of the drainage area of Palo Alto Creek above Boot Ranch to the drainage area of the Pedernales River above the gage. This method adequately accounts for flows at locations where flows are not measured.

COMMENT NO. 12: Jimmy Melton comments that on a creek as small as the Palo Alto, it is critically important to have accurate flow data at Boot Ranch and further downstream. Any permit granted should take the information into account. Any permit should require the amount to be withdrawn to decrease as the flow decreases. Marc Jacobi comments that Boot Ranch will have full authority to drain the creek at the expense of downstream landowners in a drought.

**RESPONSE NO. 12:** See response to Comment No. 11 above. Also, the Executive Director responds that any amendment issued to Boot Ranch will require special conditions to protect downstream water right holders and the environment. The Executive Director is recommending that 90 gpm be passed downstream of Boot Ranch's diversion points before diversions can be made, if there is inflow to the reservoir. When flow downstream is reduced and there are no inflows, Boot Ranch will be able to divert previously stored water.

COMMENT NO. 13: Marc Jacobi comments that there will be no way to meter to determine if Boot Ranch has exceeded their authorization. Helen Scroggs asks if Boot Ranch will be monitored to insure that they don't increase their retention of water.

**RESPONSE NO. 13:** The Executive Director responds that Boot Ranch submitted an accounting plan to account for all diversions and evaporative losses. Maintenance of the accounting plan will be a requirement in any amendment issued to Boot Ranch. Meters are not generally required outside of watermaster areas, but the TCEQ Region 13 Office will respond to any complaints of permit violations.

COMMENT NO. 14: Texas Wildlife Association comments that any permit issued to Boot Ranch will allow almost unrestricted pumping.

**RESPONSE NO. 14:** The Executive Director responds that any amendment issued to Boot Ranch will include a maximum diversion rate and amount, special conditions to protect downstream water rights and the environment and a requirement to maintain an accounting of the amount of water stored and diverted.

COMMENT NO. 15: Elizabeth Covert comments that Boot Ranch should have performed a water availability analysis before developing this project. It would have found that there is no water. Joanie Harris is concerned about the impact of a permit on future water availability downstream.

**RESPONSE NO. 15:** The Executive Director does not know whether Boot Ranch performed a water availability analysis; none was submitted with the application. The Executive Director's

staff does its own hydrology review of this application in order to determine if the Executive Director recommends issuance of a permit for the amount of water requested by Boot Ranch. If there is a contested case hearing, Boot Ranch may produce its modeling results at that hearing.

COMMENT NO. 16: Ernie Loeffler comments that any further impoundment of water on the creek will only cause further harm to the flow in the Pedernales.

**RESPONSE NO. 16: The Executive Director responds that any amendment issued to Boot Ranch will include special conditions, an accounting plan and passage of 90 gpm before diversion of the new water, to protect downstream water rights and the environment.**

COMMENT NO. 17: Katherine, David, Zoe, and David Peake comment that according to TCEQ's website, there is not water availability in the area and the area is suffering a drought.

**RESPONSE NO. 17: The Executive Director agrees that there is insufficient water available in this area to grant a new appropriation of water. Boot Ranch accounted for this by submitting an agreement between Boot Ranch and the LCRA in which Boot Ranch can impound and divert an amount of water from Palo Alto Creek that would have been available for call by the LCRA's downstream senior water rights. LCRA will account for this water from its water right.**

COMMENT NO. 18: Thomas Kaderli asks what the total flow of Palo Alto creek is in cubic feet and what percentage of this flow Boot Ranch is taking? Cecil J. Crenwelge asks if the state has formal records of the normal flow on the creek. Forest J. Rees asks that the flow of the creek be officially measured.

**RESPONSE NO. 18: The Executive Director responds that staff does not know the total flow in the creek or what percentage Boot Ranch is taking at any given time. The flow used in the WAM was calculated as described in the comments above. All water right owners are required to submit annual water use reports that detail the monthly diversion amount for that water right. The Executive Director does not have any formal records of the normal flow of the creek.**

COMMENT NO. 19: Helen Scroggs asks why Boot Ranch originally asked for only 155 acre feet of water, but now they want 353 acre feet.

**RESPONSE NO. 19: The Executive Director does not know why Boot Ranch did not obtain the increase before now. The applicant must only show that it will beneficially use the water.**

COMMENT NO. 20: Clayton Klinksiek comments that the only way Boot Ranch can get firm water is through a pipeline from LCRA or someone else. LCRA cannot guarantee anything upstream of its lakes without a pipeline.

**RESPONSE NO. 20: To the Executive Director, firm water means an amount of water that will be available 100% of the time during the drought of record. Boot Ranch did not request firm water and staff did not find that firm water was available. The contract between Boot Ranch and LCRA is an agreement that Boot Ranch can store and divert water that would have flowed downstream to be used by LCRA under LCRA's senior water rights on a firm basis. The fact that the water would be firm if used by the LCRA does not mean that the water is firm at Boot Ranch's location. The Executive Director's hydrology analysis indicated that no existing water rights will be harmed except for a water right owned by the applicant.**

COMMENT NO. 21: Norman Michalk comments that he is concerned with the way waterflow has been calculated. There are any number of ways to record water use. The yearly pump reports are not adequate.

**RESPONSE NO. 21: The Executive Director responds that Boot Ranch submitted an accounting plan to account for water use. This accounting plan requires measurement and accounting for evaporation, reservoir storage and diversions. A requirement to maintain the accounting plan will be included in the amendment.**

Effluent from City of Fredericksburg

COMMENT NO. 22: Carter Schildknecht, James Schonaerts, Greg Oehler, Sam Watson, Elizabeth Covert, Joyce Feuge, Ronald Johns, the City Manager of Fredericksburg, Linda Mohr, Jerry Vogler, Shirley A. Land, Ernest McKenney, Robert Brandes, and Genevieve Dooly comment that Boot Ranch should use the effluent which the City of Fredericksburg has offered to sell them instead of creek water and the permit should be denied for that reason. James Schonaerts adds that he does not think that LCRA recognized this when it entered into this contract with Boot Ranch.

**RESPONSE NO. 22: The Executive Director does not know what factors LCRA considered when it entered into the contract with Boot Ranch. The application submitted by Boot Ranch did not request authorization to use effluent from the City of Fredericksburg, so this was not considered by the Executive Director's staff in the technical review of the application.**

COMMENT NO. 23: Ronald Johns comments that the TCEQ has a golden opportunity to set a precedent in conserving water by requiring Boot Ranch to use wastewater rather than pumping from the creek. Mary Ellen Terrell asks how granting this permit can be considered a conservative use rather than a wasteful use of creek water when effluent has been offered by the City.

**RESPONSE NO. 23:** The Executive Director responds that the application submitted by Boot Ranch did not request authorization to use effluent from the City of Fredericksburg, so this was not considered by the Executive Director's staff in the technical review of the application. Boot Ranch is not required by any law to use effluent for its development.

#### Water Quality

COMMENT NO. 24: Dick and Chrissy Stuewe comment that the decrease in water from a permit will cause moss, algae and pollutants in the low flows. Greg Oehler, Helen Scroggs, Joanie Harris, Dick Stuewe, and Mary Ellen Terrell comment that potent chemicals used at the golf course will drain into the creek and affect the water quality of the creek. Jerry Vogler comments the increase in water use will increase nitrates in the creek due to more irrigation and fertilizer use. Judy McGookey comments that low flows left after the permit may be contaminated.

**RESPONSE NO. 24:** The Executive Director's staff reviewed the application for water quality impacts. Boot Ranch Golf Course has presented adequate information to the TCEQ describing appropriate best management practices (BMPs), integrated pest management (IPMs) techniques, and irrigation operations being implemented on site to minimize the potential for the generation and discharge of nonpoint source pollutants into the downstream sections of Palo Alto Creek.

#### Beneficial Uses

COMMENT NO. 25: Luis Buehn comments that recreational water usage should never supersede the historical water rights of downstream farmers and ranchers. The National Wildlife Federation and Carter Schildknecht, comment that granting this permit would set a bad precedent because it would indicate that water for recreational pursuits such as golf have a higher priority than agriculture or natural resources.

**RESPONSE NO. 25:** Unless the TCEQ is presented with 2 or more permits competing for the same water, the TCEQ cannot look at the relative value of different kinds of beneficial use. Irrigation of the golf course is considered agricultural use as well as recreational use. Natural resources have historically been protected through conditions relating to streamflow in the permit.

COMMENT NO. 26: Mary Ellen Terrell asks if a golf course is a beneficial use of state water? What is the proportional benefit?

**RESPONSE NO. 26:** See Response No. 26 above. Agricultural and recreational uses are beneficial uses under Tex. Water Code § 11.023.

COMMENT NO. 27: Bob Sagebiel asks if irrigation for non-agricultural use is lower in priority than that for livestock, wildlife, and water eco-systems?

**RESPONSE NO. 27:** See Response No. 26 above. Concerning domestic and livestock use of water under a riparian landowner doctrine, as stated above, the Commission has no specific way to directly protect these domestic and livestock rights when permitting water rights because these rights do not register or receive any type of authorization from the Commission.

COMMENT NO. 28: Arthur Watson, Ronald Johns and Katherine, David, Zoe, and David Peake comment that the permit has been allowed under the pretense of irrigation but it is actually being used to water a golf course.

**RESPONSE NO. 28:** The Executive Director is aware that the water is being used to water a golf course. This is considered agricultural and recreational use, beneficial uses under the Water Code.

#### Public Welfare/Ethics/Fairness Issues

COMMENT NO. 29: Curtis Cameron, Robert Brandes, and Carter Schildknecht comment that it sets a bad precedent and is contrary to the public welfare to allow a landowner at the headwater of any of the creeks in the county to divert the normal flow for the benefit of a few at the costs of many.

Dick Stuewe comments that those with power and financial resources can take away water that has been equally accessible for generations, and that this is wrong. The Boot Ranch application is solely for recreation for the rich. William and Morey Weldon comment that this application harms downstream users and the environment to increase developer's profits and water golf courses. Greg Oehler and Elizabeth Covert comment that use of water by Boot Creek will be for non-permanent residents for second and third homes. Ann Baltzer comments that granting this permit would give the perception of TCEQ favoring wealthy commercial enterprises over landowners and residents. Chris and Bill Brown comment that granting this permit would set a bad precedent because agriculture and wildlife users are just as worthy as the golfers at Boot Ranch. Ronald Johns comments that Boot Ranch's golf course benefits no one in Gillespie County. Shirley A. Land comments that it is more important for people to have food than to play golf. Maria Palmer comments that it is totally unethical to waste precious water on a golf course. Cecil Crenwelge comments that water rights at the state level are issued as political rewards to friends and that perhaps water rights should be under local control.

**RESPONSE NO. 29:** The Executive Director and Commission must consider whether an application for a water right is detrimental to the public welfare when considering whether to grant a water right. The above comments will be considered.

Illegal Dams/Non-Compliance Issues

RESPONSE NO. 30: Shirley A. Land comments that Boot Ranch is already in violation of the permits it has.

**RESPONSE NO. 30:** The Executive Director agrees that the reservoir impounds more water than the certificate authorizes; however, this application requests the right to impound the additional water.

COMMENT NO. 31: Cecil J. Crenwelge comments that nothing has been done to correct violations of the existing permit committed in the past.

**RESPONSE NO. 31:** Under Chapter 11 of the Water Code, an applicant's compliance history is not relevant to the issuance of a water right. If a complaint is made about the reservoirs not being in compliance with the permit. The TCEQ Region Office will investigate the complaint. TCEQ does not act on its own to begin enforcement proceedings without receiving a complaint. The telephone number for Region 13, San Antonio, is (210) 490-3096, or a complainant may call (888)-777-3186.

Other Issues

COMMENT NO. 32: Marc Jacobi asks whether Boot Ranch and the TCEQ are prepared to compensate me or other property owners for loss of irrigation resources. He will look for satisfaction from the TCEQ and/or Boot Ranch.

**RESPONSE NO. 32:** If this permit is granted, anyone may pursue any claims under any legal theories that they believe are applicable.

COMMENT NO. 33: Ronald Johns asks whether anyone has investigated the business history of Boot Ranch and whether they have been successful with other ventures?

**RESPONSE NO. 33:** The Executive Director has not investigated Boot Ranch's business history and would have no authority to base a decision on that business history. Under Chapter 11 of the Water Code, an applicant's business history is not relevant to the issuance of a water right.

COMMENT NO. 34: Katherine, David, Zoe, and David Peake comment that Atmos Energy at Boot Ranch has been cited for noncompliance by the Texas Railroad Commission, and they do not feel confident that Boot Ranch will obey other rules.

**RESPONSE NO. 34: The Executive Director has not investigated the noncompliance by Boot Ranch and would have no authority to base a decision on this noncompliance. Under Chapters 5 and 11 of the Water Code, an applicant's compliance history is not relevant to the issuance of a water right.**

COMMENT NO. 35: Mary Ellen Terrell asks how this application is consistent with the State Water Plan?

**RESPONSE NO. 35: The Boot Ranch Development application is considered to be not inconsistent with the State and Regional Water Plan due to its request to appropriate a small amount of state water as well as the fact that the Water Plan does not itemize individual developments. A review of the approved 2002 State Water Plan, January 2001 Region K Water Plan (effective at the time the application was submitted), and the January 2006 Region K Water Plan revealed no potential impact of this type of irrigation project to the regions water supply. Therefore, the Boot Ranch Development application is considered to be of insignificant impact, and if this amendment is granted, the Staff of the Resource Protection Team expects this request will not be inconsistent with the 2007 State Water Plan when approved.**

COMMENT NO. 36: Jerry Vogler comments that Boot Ranch already has enough water to operate the golf course.

**RESPONSE NO. 36: The applicant currently has a water right for 34 acre feet per year. The applicant seeks to increase this authorization to 232 acre feet per year to irrigate 100 acres of a golf course. The Executive Director calculates an acceptable water requirement for this area, and the Executive Director is recommending the requested amount.**

COMMENT NO. 37: Thomas Kaderli asks whether the city well that was once located on the Boot Ranch fairway has been plugged and replaced? If so, what percentage of the city water is used by Boot Ranch from the replaced well?

**RESPONSE NO. 37: The Executive Director does not know whether the well has been plugged and replaced or what percentage of the city water is used by Boot Ranch. These issues were not part of the application and were not considered during technical review of the application.**

COMMENT NO. 38: M. L. Rohrer comments that she is unhappy with the fact that the written comment period ended on the day of the public meeting.

**RESPONSE NO. 38: The comment period for water right permit applications is generally 30 days from the date of notice of the application. The notice period was extended in this case to the date of the public meeting because the TCEQ decided to have a public meeting. This is common practice of the water rights permitting program..**

COMMENT NO. 39: M. L. Rohrer asks how many households or equivalent dwelling units could be served with Boot Ranch's requested amount of water that it intends to use for a golf course?

**RESPONSE NO. 39: Since this is not a factor that must be reviewed for the issuance of a water right permit, the Executive Director does not know the answer to this question.**

COMMENT NO. 40: M. L. Rohrer comments that Boot Ranch needs to provide daily data on water volume, water quality, aquatic life and spring flows, and report that data to the TCEQ.

**RESPONSE NO. 40: The Executive Director responds that Boot Ranch submitted an accounting plan to account for all diversions, evaporative losses and instream flow requirements. Maintenance of the accounting plan will be a requirement in any permit issued to Boot Ranch.**

COMMENT NO. 41: Ronald Johns comments that the TCEQ has a duty to conserve groundwater, which could be impacted by this project. Sam Watson and E.J. Beyer asks the TCEQ to consider the impact of this application on groundwater in the area.

**RESPONSE NO. 41: Palo Alto Creek does cross the outcrop (recharge area) of the Trinity aquifer. Because the Paulo Alto Creek appears to have other impoundments above that at Boot Ranch, and because the actual drainage area feeding the Boot Ranch impoundment is small compared to the drainage area downstream, any impacts to recharge of the Trinity aquifer from the presence of this impoundment should be insignificant.**

COMMENT NO. 42: Texas Wildlife Association comments that an evidentiary hearing should be held on this application in order to get a full explanation of the facts and because it will set disturbing precedents.

**RESPONSE NO. 42: The TCEQ will consider the requests for hearing at a Commission open meeting. All timely hearing requesters will receive notice of this hearing and will have the opportunity to file written arguments before the meeting.**

Respectfully submitted,  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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**CERTIFICATE OF SERVICE**

I certify that on October 18, 2006, the foregoing Executive Director's Response to Comments regarding the Application of Boot Ranch Development L.P. for Amendment to Certificate of Adjudication No. 14-1441, was filed with the Chief Clerk of the Texas Commission on Environmental Quality.

*Robin Smith*

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Environmental Law Division  
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