

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Chief Clerk

THRU: Kellye Rila, Team Leader
Water Rights Permitting Team

FROM: Iliana Delgado, Project Manager
Water Rights Permitting Team

SUBJECT: Boot Ranch Development, L.P.
Docket # 2006-1890-WR
ADJ 1441
CN602772642, RN102703964, RN102721370
Application No. 14-1441A to Amend Certificate of Adjudication No. 14-1441
TWC §11.122, Requiring Mailed and Published Notice
Upper Palo Alto Creek, Colorado River Basin
Gillespie County

DATE: May 25, 2007

CHIEF CLERKS OFFICE

2007 MAY 25 PM 4:23

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

An application was received from Boot Ranch Development, L.P. seeking an amendment to a Certificate of Adjudication pursuant to Texas Water Code §§11.122 and Texas Commission on Environmental Quality Rules 30 TAC §§295.1, *et seq.*

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. Mailed notice was issued on January 27, 2006 to the water right holders of record in the Colorado River Basin and published on February 8, 2006 in the Fredericksburg Standard-Radio Post, Gillespie County. Several requests for a public hearing were received.

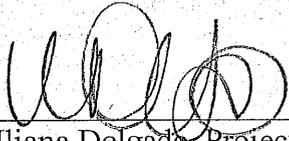
Because this application was declared administratively complete after September 1, 1999, the rules in Chapter 55, Subchapter G, Section 55.250 - 55.256 apply. The Chief Clerk shall mail notice to the applicant, executive director, public interest counsel, and timely hearing requestors not later than 35 days prior to the agenda setting. Applicants, the public interest counsel, and the executive director shall file a response no later than 23 days before agenda, and the hearing requestors shall reply no later than nine days before agenda.

The application is now technically complete and the staff has recommended that the application be granted based on the staff's technical review. Therefore, we request that the application be set on the May 23, 2007 Commission's Contested agenda.

Below is the caption for this application:

Consideration of the application of Boot Ranch Development, L.P. for amendment of Certificate of Adjudication No. 14-1441 to increase the storage capacity of its reservoir on Upper Palo Alto Creek, tributary of the Pedernales River, tributary to the Colorado River, Colorado River Basin, in Gillespie County from 6 acre-feet to 93 acre-feet. Applicant also asks to increase the annual diversion amount from that reservoir from 34 to 232 acre-feet per year, increase the diversion rate from 1.89 cfs to 5.79 cfs, add an existing 56 acre-foot off-channel reservoir, add recreation use to both reservoirs, and increase the land to be irrigated from 29 acres to a maximum of 100 acres out of a larger tract of land in Gillespie County. This authorization would be subject to a contract with the Lower Colorado River Authority (LCRA) in which LCRA accounts for the water taken upstream by the applicant with water from LCRA's system. The commission will also consider any hearing requests or filings. (Iliana Delgado, Robin Smith)

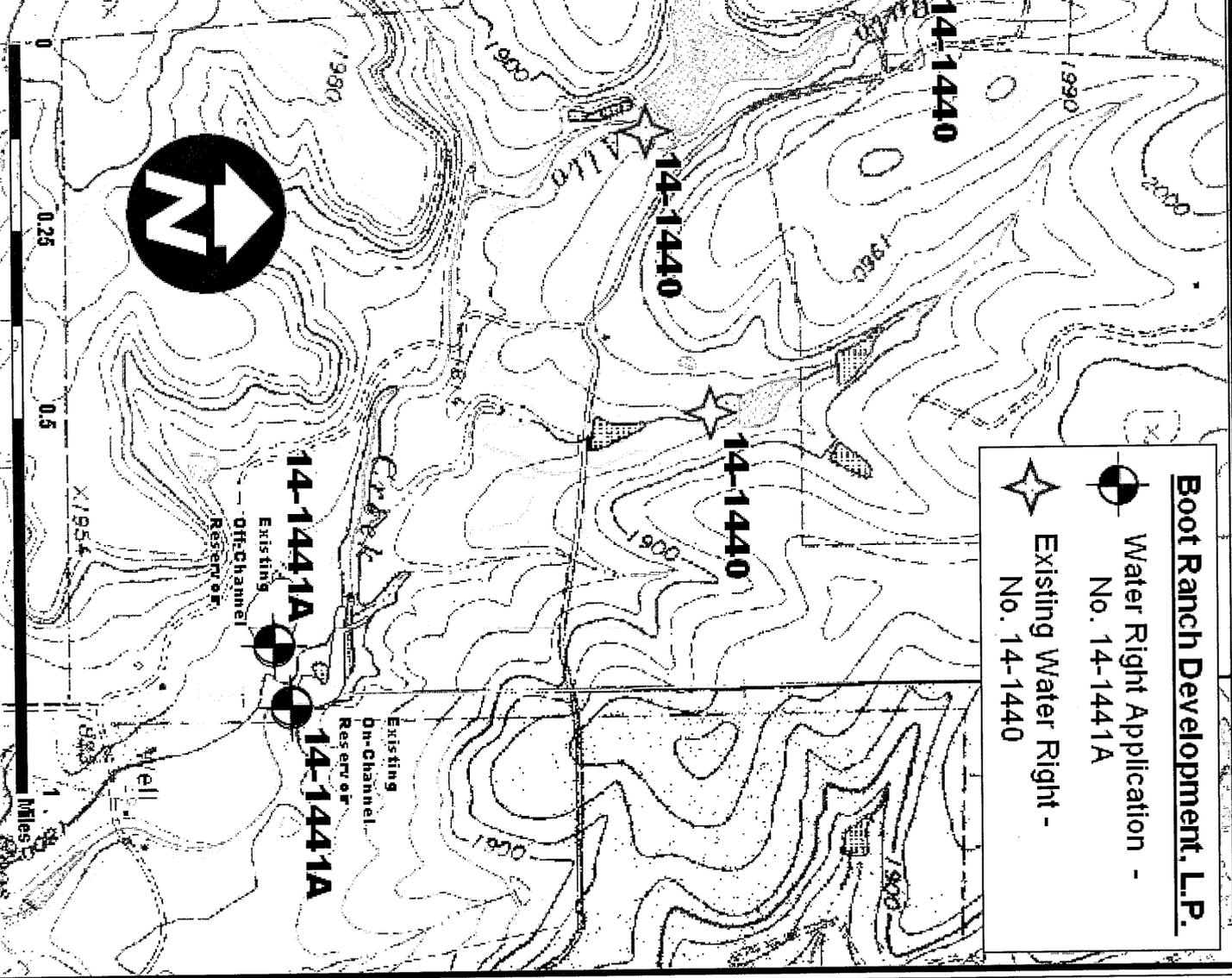
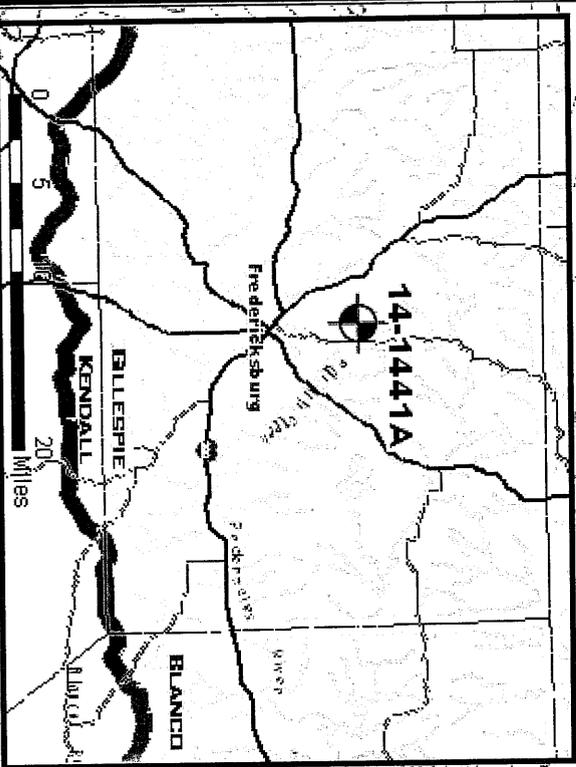
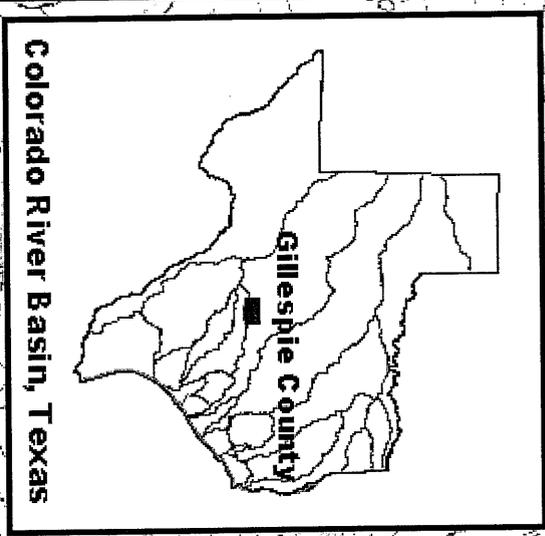
Attached is a draft notice for you to send.



Iliana Delgado, Project Manager
Water Rights Permitting Team

Enclosure

cc: Todd Chenoweth, TCEQ
Lann Bookout, TCEQ
Kellye Rila, TCEQ
Bill Billingsley, TCEQ
Kristin Wang, TCEQ
John Botros, TCEQ
Robin Smith, TCEQ
Kathy Alexander, TCEQ
Warren Samuelson, TCEQ



Boot Ranch Development, L.P.

- Water Right Application - No. 14-1441A
- Existing Water Right - No. 14-1440

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF AN AMENDMENT TO A CERTIFICATE OF ADJUDICATION APPLICATION NO. 14-1441A

Boot Ranch Development, L.P. has applied for an amendment to a certificate pursuant to an Upstream Firm Water Contract to increase the authorized storage capacity in a reservoir on Upper Palo Alto Creek, Colorado River Basin Gillespie County, increase the annual diversion amount, increase the diversion rate, add off-channel reservoir storage, add recreational use to the reservoirs, and change and increase the lands to be irrigated. More information on the application and how to participate in the permitting process is given below.

APPLICATION. Boot Ranch Development, L.P., applicant, 36 Fares Ranch Road, Fredericksburg, TX 78624, seeks an amendment to Certificate of Adjudication No. 14-1441 pursuant to Texas Water Code §11.122, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §§295.1, *et seq.* Notice is being published and mailed to the water right holders of record in the Colorado River Basin pursuant to 30 TAC §295.158.

Certificate of Adjudication No. 14-1441 authorizes the owner 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 therein not to exceed 6 acre-feet of water. The owner is also authorized to divert 34 acre-feet of water from the reservoir at a maximum diversion rate of 1.89 cfs (800 gpm) for agricultural purposes to irrigate a maximum of 29 acres in Gillespie County with a time priority of 1943.

Pursuant to an Upstream Firm Water Contract between the applicant and the Lower Colorado River Authority, the applicant has applied for an amendment to Certificate of Adjudication No. 14-1441 to:

1. increase the storage capacity of the reservoir on Upper Palo Alto Creek from 6 acre-feet to 93 acre-feet,
2. increase the annual diversion amount from 34 acre-feet to 232 acre-feet of water per year,
3. increase the diversion rate from 1.89 cfs (800 gpm) to 5.79 cfs (2,550 gpm),
4. add an existing off-channel reservoir as part of the irrigation system,
5. add recreational use to both reservoirs, and
6. 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, being the same tract as authorized in Certificate of Adjudication No. 14-1440.

The applicant indicates water diverted from the reservoir on Upper Palo Alto Creek will be discharged directly into the off-channel reservoir for subsequent irrigation. The off-channel reservoir is located four miles north from Fredericksburg in the Charles C. Cammert Original Survey 295, Abstract 128, Gillespie County, bearing S23.5°W, 2,402 feet from the northeast corner of the Cammert Survey, also being at Latitude 30.3468°N, Longitude 98.8763°W. It has a capacity of 56 acre-feet and a surface area of 5 acres.

The applicant further indicates that authorized diversions will be reported as metered at the existing diversion point on Palo Alto Creek and any evaporation losses from the off-channel reservoir will be included in the reported diversions. Therefore, the off-channel reservoir was not considered in determining water availability for this application. The applicant also indicates that any evaporative losses

resulting from the increase in the on-channel storage capacity will be estimated and the total amount of water diverted from Palo Alto Creek will be limited to the authorized annual diversion amount less the estimated evaporative losses from the enlarged portion of the reservoir. The applicant submitted an accounting plan *Accounting Procedure for Increased Evaporative Losses From Enlarged Portion of On-Channel Reservoir* which accounts for all diversions from the reservoir under all of the applicant's authorizations. Staff reviewed the accounting plan and found it acceptable.

Ownership of the 1,921.5-acre tract is evidenced by a Special Warranty Deed as recorded in Volume 562, Page 75 (Document #044217) in the Official County Clerk Records of Gillespie County.

The Commission will review the application as submitted by the applicant and may or may not grant the application as requested.

The application was received on May 25, 2005. Additional information and fees were received on August 5 and October 25, 2005. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on November 8, 2005.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

AMENDMENT TO
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 14-1441A

TYPE §11.122

Owner:	Boot Ranch Development, L.P	Address:	36 Fares Ranch Road Fredericksburg, TX 78624
Filed:	November 8, 2005	Granted:	
Purpose:	Agriculture (irrigation) and Recreation	County:	Gillespie
Watercourse:	Palo Alto Creek, tributary of the Pedernales River, tributary of the Colorado River	Watershed:	Colorado River Basin

WHEREAS, Certificate of Adjudication No. 14-1441 authorizes the owner 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 therein not to exceed 6 acre-feet of water; and

WHEREAS, the owner is also authorized to divert and use not to exceed 34 acre-feet of water from the reservoir at a maximum diversion rate of 1.89 cfs (800 gpm) for agricultural purposes to irrigate a maximum of 29 acres in Gillespie County with a time priority of 1943; and

WHEREAS, pursuant to an Upstream Firm Water Contract between the applicant and the Lower Colorado River Authority (LCRA), the applicant has applied for an amendment to Certificate of Adjudication No. 14-1441 to:

1. increase the storage capacity of the reservoir on Upper Palo Alto Creek from 6 acre-feet to 93 acre-feet,
2. increase the annual diversion amount from 34 acre-feet to 232 acre-feet of water per year,
3. increase the diversion rate from 1.89 cfs (800 gpm) to 5.79 cfs (2,550 gpm),
4. add an existing off-channel reservoir as part of the irrigation system,
5. add recreational use to both reservoirs, and
6. 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, being the same tract as authorized in Certificate of Adjudication No. 14-1440; and

WHEREAS, under the Upstream Firm Water Contract, LCRA has agreed to sell 353 acre-feet of water per year to Boot Ranch, in which LCRA accounts for the water taken upstream by the applicant under this Certificate of Adjudication No. 14-1441 as well as Certificate of Adjudication No. 14-1440, with water from LCRA's system; and

WHEREAS, the applicant indicates water diverted from the reservoir on Upper Palo Alto Creek will be discharged directly into the off-channel reservoir for subsequent diversion and use for irrigation; and

WHEREAS, the applicant further indicates that authorized diversions will be reported as metered at the existing diversion point on Palo Alto Creek, and any evaporation losses from the off-channel reservoir will be included in the reported diversions; and

WHEREAS, the applicant also indicates that any evaporative losses resulting from the increase in the on-channel storage capacity will be estimated and the total amount of water diverted from Palo Alto Creek will be limited to the authorized annual diversion amount less the estimated evaporative losses from the enlarged portion of the reservoir; and

WHEREAS, the applicant submitted an accounting plan, *Accounting Procedure for Increased Evaporative Losses From Enlarged Portion of On-Channel Reservoir*, which accounts for all diversions from the reservoir under all of the applicant's authorizations; and

WHEREAS, ownership of the 1,921.5-acre tract is evidenced by a Special Warranty Deed as recorded in Volume 562, Page 75 (Document #044217) in the Official County Clerk Records of Gillespie County; and

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

WHEREAS, the Executive Director recommends a special condition be included in the amendment to maintain the instream uses of Palo Alto Creek; 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 14-1441 designated Certificate of Adjudication No. 14-1441A, is issued to Boot Ranch Development, L.P., subject to the following conditions:

1. IMPOUNDMENTS

- A. In lieu of the previous authorization, owner is now authorized 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 therein not to exceed 93 acre-feet of water. A point on the dam at the

center of the stream is S10°W, 1,125 feet from the northeast corner of the Charles C. Cammert Survey 295, Abstract 128, Gillespie County.

- B. The owner is also authorized to maintain an off-channel reservoir with a capacity of 56 acre-feet and a surface area of 5 acres located four miles north from Fredericksburg in the Cammert Survey, bearing S23.5°W, 2,402 feet from the northeast corner of the Cammert Survey, also being at Latitude 30.3468°N, Longitude 98.8763°W.

2. USE

In lieu of the previous authorization, owner is now authorized to divert and use 232 acre-feet of water (34 acre-feet being state water and the remaining 198 acre-feet is contract water) from the on-channel reservoir for agricultural purposes to irrigate a maximum of 100 acres of land out of a 1,921.5-acre tract in Gillespie County, being the same tract as authorized in Certificate of Adjudication No. 14-1440 or to maintain the off-channel reservoir for subsequent irrigation of the same tract.

Ownership of the 1,921.5-acre tract is evidenced by a Special Warranty Deed as recorded in Volume 562, Page 75 (Document #044217) in the Official County Clerk Records of Gillespie County.

3. DIVERSION

In lieu of the previous authorization to divert at a maximum diversion rate of 1.89 cfs (800 gpm), the owner is now authorized to divert at a maximum diversion rate of 5.79 cfs (2,550 gpm).

4. TIME PRIORITY

The time priority to impound the first 6 acre-feet of water and divert the first 34 acre-feet of water is 1943; the time priority to impound the additional 87 acre-feet of water on-channel and to divert the additional 198 acre-feet of water is November 8, 2005.

5. 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.

6. SPECIAL CONDITIONS

- A. Owner shall only impound water in the additional on-channel storage authorized in this amendment and shall only divert the additional 198 acre-feet of water from storage in the on-channel reservoir when the streamflow of Palo Alto Creek equals or exceeds 0.2 cfs (90 gpm) as measured at a reference device to be established downstream of all diversion points within the described 1,921.5-acre tract. In the event that there are no measurable inflows to the reservoir, owner may divert up to the maximum amount of the additional 198 acre-feet diversion authorization from previously stored water.
- B. All storage and diversions in and from the off-channel reservoir shall be charged against owner's diversion rights from the on-channel reservoir in accordance with the *Accounting Procedure for Increased Evaporative Losses From Enlarged Portion of On-Channel Reservoir*.
- C. Owner shall only divert the additional water in accordance with the *Accounting Procedure for Increased Evaporative Losses From Enlarged Portion of On-Channel Reservoir*. Any future changes to the owner's accounting plan must be approved by the Executive Director.
- D. Owner shall maintain electronic records (in spreadsheet or database format) of the accounting and shall submit them to the Executive Director upon request.
- E. Diversion and use of the additional 198 acre-feet of water and storage of the additional 87 acre-feet of water is subject to the maintenance of the Upstream Firm Water Contract with the Lower Colorado River Authority, and the authorizations shall become null and void without further Commission action upon the termination of the contract.
- F. The maximum amount of water that can be diverted from the reservoir under all of the owner's authorizations (Certificate 14-1440 and Certificate 14-1441, as amended) is 353 acre-feet per year.
- G. Owner shall maintain a suitable outlet in good working order or devise a method to pass any inflows through the reservoir that they are not entitled to impound.

7. TIME LIMITATIONS

- A. Modification of the dam must be in accordance with the plans approved by the Executive Director and must begin within two years of issuance of this

amendment and be completed within three years of the issuance of this amendment.

- B. Failure to commence and/or complete modification of the dam within the period stated above shall cause the authorization for use of the reservoir to expire and become null and void unless Owner applies for an extension of time to commence and/or complete modification prior to the deadline for commencement and completion of construction, and the application is subsequently granted.

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 Certificate of Adjudication by the owners or seller at the time of the transaction.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 14-1441 except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Colorado 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.

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:

1. The first part of the document is a letter from the author to the editor, dated 10/10/1998. The letter discusses the author's interest in the journal and the topic of the proposed article.

2. The second part of the document is the author's response to the editor's letter, dated 10/15/1998. The author expresses their appreciation for the editor's response and provides further details about the proposed article.

3. The third part of the document is the author's response to the editor's letter, dated 10/20/1998. The author provides a detailed outline of the proposed article and discusses the author's research methodology.

4. The fourth part of the document is the author's response to the editor's letter, dated 10/25/1998. The author discusses the author's research findings and provides a preliminary conclusion.

5. The fifth part of the document is the author's response to the editor's letter, dated 10/30/1998. The author discusses the author's research findings and provides a preliminary conclusion.

6. The sixth part of the document is the author's response to the editor's letter, dated 11/5/1998. The author discusses the author's research findings and provides a preliminary conclusion.

7. The seventh part of the document is the author's response to the editor's letter, dated 11/10/1998. The author discusses the author's research findings and provides a preliminary conclusion.

8. The eighth part of the document is the author's response to the editor's letter, dated 11/15/1998. The author discusses the author's research findings and provides a preliminary conclusion.

9. The ninth part of the document is the author's response to the editor's letter, dated 11/20/1998. The author discusses the author's research findings and provides a preliminary conclusion.

10. The tenth part of the document is the author's response to the editor's letter, dated 11/25/1998. The author discusses the author's research findings and provides a preliminary conclusion.

11. The eleventh part of the document is the author's response to the editor's letter, dated 12/1/1998. The author discusses the author's research findings and provides a preliminary conclusion.

12. The twelfth part of the document is the author's response to the editor's letter, dated 12/5/1998. The author discusses the author's research findings and provides a preliminary conclusion.

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Iliana Delgado, Application Manager
Water Rights Permitting Team

March 14, 2006

Through: JB Lann Bookout, Team Leader
Surface Water Availability & Interstate Compacts Team

From: Kathy Alexander, Hydrologist
Surface Water Availability & Interstate Compacts Team

Subject: Boot Ranch Development, LP
ADJ 1441, CN602772642
Upper Palo Alto Creek, Colorado River Basin
Gillespie County

WATER AVAILABILITY ANALYSIS

Application Summary

Certificate of Adjudication 14-1441 authorizes the owner 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 therein up to six acre-feet of water. The owner is also authorized to divert 34 acre-feet of water from the reservoir at a maximum diversion rate of 1.89 cfs (800 gpm) for agricultural purposes in Gillespie County.

The applicant seeks to amend the certificate to: 1) increase the authorized on-channel reservoir storage capacity to 93 acre-feet on 9.7 surface acres, 2) include an off-channel storage reservoir with capacity of 56.0 acre-feet on 5.0 surface acres, 3) increase the annual diversion amount to 232 acre-feet pursuant to an Upstream Firm Water Contract between the applicant and the Lower Colorado River Authority (LCRA), 4) increase the maximum diversion rate to 5.79 (cfs) (2,550 gpm), and 5) change and increase the lands to be irrigated, and 6) add recreational use to the reservoir.

Water Availability Analysis

The TCEQ Water Availability Model (WAM) for the Colorado River Basin has a period of record from 1940 to 1998. The priority date of the application is November 8, 2005.

Resource Protection staff recommends that diversion of the additional 198 acre-feet of water be limited to those times when the streamflow of Palo Alto Creek equals or exceeds 90 gpm as measured at a reference device to be established downstream of all diversion points within the Boot Ranch property.

The Upstream Firm Water Contract between the applicant and LCRA includes an annual amount of 353 acre-feet of water with the amount of water charged to the contract dependant upon the elevation of Lake Travis. The applicant indicates that authorized diversions will be reported as metered at the existing diversion point on Palo Alto Creek and any evaporation losses from the off-channel reservoir will be included in the reported diversions. Therefore, the off-channel reservoir was not considered in determining availability for this application. The applicant also indicates that any evaporative losses resulting from the increase in storage capacity will be estimated and the total amount of water diverted from Palo Alto Creek will be limited to the authorized annual diversion less the estimated evaporative losses from the enlarged portion of the reservoir. The applicant submitted an accounting plan *Accounting Procedure for Increased Evaporative Losses From Enlarged Portion of On-Channel Reservoir* which accounts for all diversions from the reservoir under all of the applicant's authorizations. Staff reviewed the accounting plan and found it acceptable.

Staff modeled the application in the Full Authorization simulation as an upstream firm water contract based on the Lower Colorado River Authority's rights under Certificates 14-5478 and 14-5482 (for the Highland Lakes). The existing authorization was modeled at the original priority date with depletions limited to the maximum that could have been available under the original certificate. Staff found that 100% and 75% of the additional diversion amount of 198 acre-feet would be available in 20% and 46% of the years, respectively, and that the monthly demand could be met in 63% of the months.

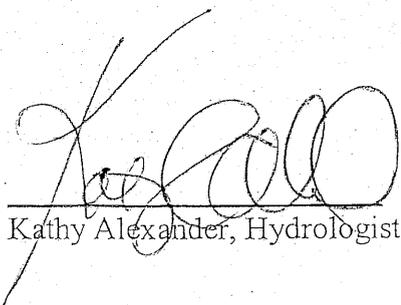
No Injury Analysis

Staff compared the pre- and post- reliabilities of all water rights in the Colorado River Basin and found that the only water right significantly affected by the application was Certificate 14-1440, which is located upstream and is owned by the applicant.

Conclusion

Because the additional water and additional evaporative loss associated with the increase in reservoir storage is accounted for via the upstream contract with LCRA, staff can support granting the application so long as the amendment includes the following special conditions:

1. Owner may only impound water in the additional on-channel storage authorized in this amendment and may only divert the additional 198 acre-feet of water from storage in the on-channel reservoir when the streamflow of Palo Alto Creek equals or exceeds 90 gpm (0.2 cfs) as measured at a reference device to be established downstream of all diversion points within the Boot Ranch property. In the event that there are no measurable inflows to the reservoir, owner may divert up to the maximum amount of the additional 198 acre-feet diversion authorization from previously stored water.
2. All storage and diversions in and from the off-channel reservoir shall be charged against the owner's diversion rights from the on-channel reservoir in accordance with the *Accounting Procedure for Increased Evaporative Losses From Enlarged Portion of On-Channel Reservoir*.
3. Owner may only divert the additional water in accordance with the *Accounting Procedure for Increased Evaporative Losses From Enlarged Portion of On-Channel Reservoir*. Any future changes to the owner's accounting plan must be approved by the Executive Director.
4. The owner shall maintain electronic records (in spreadsheet or database format) of the accounting and shall submit them to the Executive Director upon request.
5. Diversion of the additional 198 acre-feet of water and storage of the additional 87 acre-feet of water is subject to the maintenance of the Upstream Firm Water Contract with the Lower Colorado River Authority.
6. The maximum amount of water that can be diverted from the reservoir under all of the owner's authorizations (Certificate 14-1440 and Certificate 14-1441, as amended) is 353 acre-feet per year.
7. Owner must pass any inflows through the reservoir that they are not entitled to impound.



Kathy Alexander, Hydrologist

HYDROLOGY UNIT ANALYSIS FACT SHEET

Applicant: Boot Ranch Development
 Company LP
 Water Right: 14-1441A
 Stream: Palo Alto Creek

Basin: Colorado
 Counties: Gillespie
 Requested Amount: 198 acre-ft
 Drainage Area:

Input

Changes made to .dat

UC BOOT	6	6	12	19	23	27		
UC	42	40	25	19	8	6		
IFH10800	145	OTH19260328					IF1BOOT1	
WRH10800	198	BOOT19260328						C1441_2
WS H1004	93	0.911	0.695					
IFH10800	0	OTH19260328					IF2BOOT2	
WRH10800	34.0	IRR-H19430101						61401441001 6140144161441001
WS H1004	93	0.911	0.695					
SO	19							
IFH10800	145	OTH20051108					IF1BOOT3	

Remarks: Resource Protection staff recommend that diversions be limited to those times when the streamflow of Palo Alto Creek equals or exceeds 90 gallons per minute as measured at reference device to be established downstream of all diversion points within the Boot Ranch property.

Signature: _____

Date: _____

3/14/06

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Iliana Delgado, Project Manager
Water Rights Permitting Team

Date: December 21, 2005

Thru: Bill Billingsley, Team Leader *BB 12/21/05*
Resource Protection Team

Wendy Gordon
12/21/05
Wendy Gordon, Ph.D., Aquatic Scientist
Resource Protection Team

John Botros
12/21/05
From: John Botros, Aquatic Scientist
Resource Protection Team

Subject: Boot Ranch Development, L.P., CN 602772642, RN 102703964, RN 102721370
Application 14-1441A to Amend Certificate of Adjudication 14-1441
Upper Palo Alto Creek, Colorado River Basin
Gillespie County

Environmental reviews of water right applications are conducted in accordance with §11.147, §11.1491, §11.150, and §11.152 of the Texas Water Code and with TCEQ administrative rules which include 30 TAC §297.53 through §297.56. These statutes and rules require the TCEQ to consider the possible impacts of the granting of a water right on fish and wildlife habitat, water quality, and instream uses associated with the affected body of water. Possible impacts to bays and estuaries are also addressed.

ENVIRONMENTAL ANALYSIS

Application Summary: Certificate of Adjudication 14-1441 authorizes the owner 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 therein up to 6 acre-feet of water. The owner is also authorized to divert 34 acre-feet of water from the reservoir at a maximum diversion rate of 1.89 cfs (800 gpm) for agricultural purposes in Gillespie County.

Boot Ranch Development, L.P., applicant, seeks an amendment to the certificate to: 1) increase the

authorized on-channel reservoir storage capacity to 93 acre-feet on 9.7 surface acres, 2) include an off-channel storage reservoir with capacity of 56.0 acre-feet on 5.0 surface acres, 3) increase the annual diversion amount to up to 232 acre-feet pursuant to an Upstream Firm Water Contract between the applicant and the LCRA, 4) increase the maximum diversion rate to 5.79 cubic feet per second (cfs) (2,550 gallons per minute (gpm)), 5) change and increase the lands to be irrigated, and 6) add recreational use to the reservoir.

INSTREAM USES

Aquatic and Riparian Habitats: According to the *Handbook of Texas Online*, Palo Alto Creek rises in the hills of the eastern Edwards Plateau and crosses into the Central basin, running through flat to rolling terrain with loamy and clayey soils; vegetation consists primarily of grasses and open stands of live oak, Ashe juniper, and mesquite.¹ At the applicant's location, Palo Alto Creek is shown as a perennial stream on USGS topographical maps (Fredericksburg East & Fredericksburg West quads). Based on observations during the site visit by TCEQ and TPWD staff on August 17, 2005, Palo Alto Creek appears to flow perennially below the main irrigation reservoir due to contributions from springs and alluvial seeps along the southern bank of Palo Alto Creek. Staff performed flow measurements at three cross sections on Palo Alto Creek downstream of the dam creating the reservoir (referred to as Dam No. 1). Table 1 below provides details of the flow measurements taken on Palo Alto Creek using Acoustic Doppler Velocity instrumentation.

Cross Section	Approx. Stream Distance from Dam No. 1 (ft)	Channel Wetted Width (ft)	Mean Depth (ft)	Cross Sectional Area (ft ²)	Mean Velocity (ft/sec)	Mean Temp (°F)	Flow (ft ³ /sec)	Flow (gal/min)
A	350	3.6	0.52	2.03	0.086	78.4	0.173	77.6
B	500	5.1	0.43	2.04	0.164	77.0	0.334	149.9
C	3400	8.4	1.27	10.03	0.040	84.5	0.400	179.5

Examination of the data reveal that flow in the stream between cross sections A and B (150 feet apart) approximately doubled from 77.6 to 149.9 gallons per minute during that day. Furthermore, the temperature of the water was approximately 1.4 degrees Fahrenheit cooler at cross section B compared to A further indicating the connectivity of the stream with subsurface flow.

The aquatic and riparian habitats supported by spring-fed streams warrant environmental flow

¹ Handbook of Texas Online, s.v. "PALO ALTO CREEK," <http://www.tsha.utexas.edu/handbook/online/articles/view/PP/rbp12.html>

protection. Therefore, an instream flow restriction is applicable to the amendment because the proposed increase of the diversion amount to 232 acre-feet per year at a maximum diversion rate 5.79 cfs represents a new environmental impact to the stream. When site-specific information is absent, the TCEQ utilizes a default methodology, referred to as the Lyons Method, for determining environmental flow restrictions. Using USGS streamflow gage data, the Lyons Method establishes minimum flows of 40% of the monthly median flows for October through February and 60% of the monthly median flows for March through September to maintain aquatic habitat. The nearest active downstream USGS streamflow gaging station 08153500 (Pedernales River at Johnson City, TX) is located approximately 42.5 river miles downstream of the project area. This gaging station has a drainage area of 901 square miles. In order to estimate the monthly median flows at the applicant's location, a drainage area factor of 0.0044 would be used. It is staff's opinion that use of the default Lyons Method is not applicable in this case. Use of a drainage area factor (0.0044) to prorate the gaged data assumes that each watershed of the Pedernales River contributes a proportionate amount of flow based on the amount of area each watershed drains. This methodology underestimates the flow contributions from a watershed with springs.

As noted earlier, Palo Alto Creek appears largely influenced by seep/spring flow contributions which would not be reflected in the relatively small drainage area (approx. 4 sq. miles) above the applicant's reservoir. Therefore, it is staff's opinion that site specific field data collected should be used in determining the instream flow restrictions. Based on the observations made on August 17, 2005 on site, staff believe that adequate maintenance of instream uses would be achieved if diversions under this request are limited to times when flows in Palo Alto Creek equal or exceed 90 gallons per minute (60% of the measured flow at cross section B) as measured at a reference device below all authorized diversion points within the Boot Ranch property.

Water Quality: The project site is located 12.2 river miles upstream from the Pedernales River, designated as Segment 1414 in the *State of Texas Water Quality Inventory*. Designated uses of Segment 1414 are aquatic life use, contact recreation, general use, public water supply and fish consumption use. Based on data collected during the assessment period for the *2002 305(b)/303(d) Report*, all uses are fully supported except for fish consumption use which was not assessed. The segment was listed on the *Clean Water Act Section 303(d) List of Impaired Waters (2000)* due to elevated bacteria levels, but was not included in the 303(d) list revision in 2002 since the most recent data demonstrate that water quality standards are now being met.

According to the *Texas Surface Water Quality Standards* (30 TAC §307), 7Q2 flows represent low flow criteria above which water quality standards apply to a given water body. The 7Q2 value is defined as the lowest average flow for seven consecutive days that is expected to recur every two years. The 7Q2 flow is often considered the lowest allowable flow which provides adequate dilution of pollutants. The calculated 7Q2 value from USGS gage 08153500 data during the period 1940-2003 is 4.0 cfs.

The potential causes for water quality degradation due to the development and operation of the golf course are primarily related to the transport of pollutants with stormwater runoff and the discharge of these pollutants into water bodies. According to information dated February 10, 2005 submitted in support of Application 14-1440A, best management practices (BMPs) will be implemented on the golf course to minimize potential pollutant loadings through the control of sediment and nutrients. BMPs to control erosion include: (1) the installation and placement of rip-rap or other erosion resistant materials in areas subject to high velocity flows; (2) the use of silt fencing or sediment control barriers; (3) temporary and permanent ground cover (both natural and artificial types); (4) aerification of soils to promote infiltration and runoff reduction; and (5) temporary storage of stormwater runoff in catch basins to allow sediments to settle prior to the discharge into downstream areas. Nutrient loadings from the golf course will be minimized through proper management and control of fertilizer applications.²

Bay and Estuary Freshwater Inflows: Freshwater inflows are critical for maintaining the historical productivity of bays and estuaries along the Gulf Coast. The proposed diversion point is located greater than 200 river miles of the Gulf of Mexico. The proposed amendment is expected to have negligible, if any, impact on the freshwater inflows to the Matagorda Bay system.

Recreational Uses: The Pedernales River is listed in the National Park Service's Nationwide Rivers Inventory. The Nationwide Rivers Inventory (NRI) is a listing of more than 3,400 free-flowing river segments in the United States that are believed to possess one or more "outstandingly remarkable" natural or cultural values judged to be of more than local or regional significance. The Pedernales is identified in the NRI as having the outstanding remarkable values of scenery, recreation, wildlife, and history.

According to *An Analysis of Texas Waterways*, the Pedernales River is a scenic Hill Country stream, flowing through rocky, rugged country. Water levels are usually insufficient for normal recreational use of the upper reaches during most of the year. However, during periods of runoff, portions of the upper Pedernales have the potential to become an exciting white water recreational waterway. However, these high water conditions can be very dangerous to inexperienced waterway recreationists. Generally, the Pedernales River above U.S. Highway 281 is extremely narrow and shallow and not feasible for recreational uses.

Other than the recreational features of the golf course/housing development the applicant is creating, no recreational opportunities are known to exist on Palo Alto Creek. The proposed request is not expected to affect recreational uses of the Pedernales River downstream of the diversion point.

² Response letter dated February 10, 2005 from R. J. Brandes Company to TCEQ regarding Boot Ranch Development, Application 14-1440A

Summary and Conclusions: Applicant seeks several amendments to Certificate 14-1441 including increasing the annual diversion amount and the maximum diversion rate.

In order to maintain the instream uses of Palo Alto Creek, staff recommend the following special condition to be adopted into the amendment of Certificate of Adjudication 14-1441:

Permittee shall limit water diversions from Palo Alto Creek authorized under this amendment to times when streamflow of Palo Alto Creek equals or exceeds 90 gallons per minute as measured at reference device to be established downstream of all diversion points within the Boot Ranch property.

This instream use assessment was conducted using current TCEQ operation procedures and policies and available data and information. The recommendations in this environmental analysis are intended for the protection of instream uses and do not necessarily provide protection to downstream water rights; that analysis is addressed in the hydrology memo and further restrictions may be applicable as necessary. Authorizations granted to the permittee by the water rights permit shall comply with all rules of the Texas Commission on Environmental Quality, and other applicable State and Federal authorizations.

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Abstract

Keywords

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Iliana Delgado, Project Manager
Water Rights Permitting Team
Water Supply Division

Date: August 9, 2005

Thru: Bill Billingsley, Team Leader
Resource Protection Team *bb 8/9/05*
Water Supply Division

Kristin Wang, Senior Water Conservation Specialist
Resource Protection Team *KW 8/9/05*
Water Supply Division

From: Dean Minchillo, Water Conservation Specialist *(m) 8/9/05*
Resource Protection Team
Water Supply Division

Subject: Boot Ranch Development, LP.
ADJ1441
CN602772642
Review of Water Conservation Plan for Administrative Sufficiency

Certificate of Adjudication No. 14-1441 authorizes the owner 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 therein, not to exceed, 6 acre-feet of water. The owner is also authorized to divert 34 acre-feet of water from the reservoir at a maximum diversion rate of 1.89 cfs (800 gpm) for agricultural purposes to irrigate a maximum of 29 acres in Gillespie County, Texas, with a time priority of 1943.

Boot Ranch Development, LP, applicant, seeks an amendment to Certificate of Adjudication No. 14-1441 to increase the authorized storage capacity, increase the annual diversion amount [pursuant to an upstream firm water contract between the applicant and the LCRA], increase the diversion rate, change and increase the lands to be irrigated, and add recreational use to the reservoir.

The May 2005 Irrigation Water Conservation Plan for Boot Ranch Development, LP, has been reviewed for administrative sufficiency for irrigation use. The submitted plan meets the minimum requirements for irrigation uses as defined by TCEQ Rules, Title 30 TAC Chapter 288.4.

In addition, an analysis of the irrigation requirement for turfgrass on 100 acres of land, was performed in accordance with the *TCEQ Regulatory Guidance Document for Applications to Divert, Store or Use State Water*, (RG-141), pages 35-36. The requested 232 acre-feet of water per year for irrigation on 100 acres of land was found to be reasonable.

This application requests a small amount of state water and is not mentioned in the approved 2002 State Water Plan or the January 2001 Region "K" Water Plan. It is the Water Conservation Staff's opinion that the project is not included with the state or approved regional plans due to its insignificant impact. Therefore, it is the Staff's position that this project cannot be inconsistent with the approved 2002 State Water Plan or the January 2001 Region "K" Plan.

The following standard water conservation language should be included in the permit:

“Owners 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.”

No further review is required by the Water Conservation Staff of the Resource Protection Team.

RECEIVED
JUN 29 2005
WATER RIGHTS PERMITTING

Texas Commission on Environmental Quality
INTEROFFICE MEMORANDUM

TO: Iliana Delgado
Water Rights Permitting Team

DATE: June 28, 2005

FROM: Warren D. Samuelson, P. E.
Dam Safety Program, MC-174

SUBJECT: Boot Ranch Development, L.P., Application to amend Certificate of Adjudication No. 14-1441, Upper Palo Alto Creek, Colorado River Basin, Gillespie County.

The applicant seeks authorization to amend Certificate of Adjudication No. 14-1441. There is one existing dam covered under the Certificate. The application is to increase the storage in the reservoir, increase the diversion amount and rate, change and increase the lands to be irrigated, and add recreational use.

Apparently, the dam was modified in the 1980s by raising the dam some 10 to 12 feet, thereby increasing the reservoir capacity.

The dam was evaluated by the owner's engineer to determine its adequacy to meet Chapter 299 rules, and modifications are required. Construction plans have been approved for the upgrading of the dam and spillways to meet 43% of the probable maximum flood (PMF) as required by the current rules. The modifications do not include changing the spillway elevations. Construction has not started due to Corps of Engineers permitting requirements.

No additional information is required.

It is recommended that the amendment include the following language:

TIME LIMITATIONS

- (a) Modification of the dam must be in accordance with the plans approved by the Executive Director and must begin within two years of issuance of this amendment and be completed within three years of issuance of the amendment.
- (b) Failure to commence and/or complete modification of the dam within the period stated above shall cause the authorization for use of the reservoir to expire and become null and void without further Commission consideration unless Owners apply for an extension of time to commence and/or complete modification prior to the deadline for commence and completion, and the application is subsequently granted.


Warren D. Samuelson, P. E.
Dam Safety Program

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 14-1441

OWNER: Wayne K. Goettsche
2001 Kirby Drive
Suite 1313
Houston, TX 77019

COUNTY: Gillespie

PRIORITY DATE: 1943

WATERCOURSE: Palo Alto Creek

BASIN: Colorado River

WHEREAS, by final decree of the 261st District Court of Travis County, in Cause No. 289,208, In Re: The Adjudication of Water Rights in the Pedernales River Watershed of the Colorado River Basin, dated July 2, 1979, a right was recognized under Claim 1514 authorizing Wayne K. Goettsche to appropriate waters of the State of Texas as set forth below;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Colorado River Basin is issued to Wayne K. Goettsche, subject to the following terms and conditions:

1. IMPOUNDMENT

Owner is authorized to maintain a dam and reservoir on Upper Palo Alto Creek and impound therein not to exceed 6 acre-feet of water. Point on the dam at the center of the stream is S 10°W, 1125 feet from the northeast corner of the Charles C. Cammert Survey 295, Abstract 128, Gillespie County, Texas.

2. USE

Owner is authorized to divert and use not to exceed 34 acre-feet of water per annum from Upper Palo Alto Creek to irrigate a maximum of 29 acres of land out of a 171.45 acre tract located in the Charles C. Cammert Survey 295, Abstract 128, Gillespie County, Texas, said 171.45 acre tract being described as follows:

- (1) BEGINNING at a fence corner post for the Northeast corner of the Charles C. Cammert Survey 295;
- (2) THENCE S 00°33'W, 2750.5 feet to a fence corner post for the Southeast corner of Survey 295;
- (3) THENCE N 89°53'W, 2682.5 feet to a fence corner post for the Southwest corner of Survey No. 295;
- (4) THENCE N 00°04'W, 2659.5 feet to a fence corner post on South bank of a creek;
- (5) THENCE N 02°21'W, 125 feet to a fence corner post;
- (6) THENCE N 07°19'E, 16.1 feet to a fence corner post;
- (7) THENCE S 84°20'E, 250 feet to a fence corner post;
- (8) THENCE S 89°54'E, 1324.4 feet to a fence corner post;
- (9) THENCE S 88°34'E, 1136.1 feet to the place of beginning.

3. DIVERSION

A. Location:

At a point on the north bank of Upper Palo Alto Creek which is S 31°W, 940 feet from the northeast corner of the Charles C. Cammert Survey 295, Abstract 128, Gillespie County, Texas.

B. Maximum Rate: 1.89 cfs (800 gpm).

4. PRIORITY

The time priority of owner's right is 1943.

5. SPECIAL CONDITION

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

The locations of pertinent features related to this certificate are shown on Page 4 of the Pedernales River Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Department of Water Resources and the office of the County Clerk.

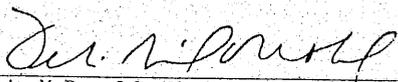
This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 261st District Court of Travis County, in Cause No. 289,208, In Re: The Adjudication of Water Rights in the Pedernales River Watershed of the Colorado River Basin, dated July 2, 1979, 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 Colorado River Basin.

This certificate of adjudication is issued subject to the Rules of the Texas Department of Water Resources 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 the above-described land within which irrigation is authorized, unless and until severed from the land. A transfer of any portion of the above-described land includes, unless otherwise specified, that portion of the water right which is appurtenant to the transferred land at the time of the transaction.

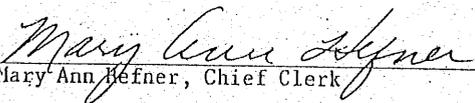
TEXAS WATER COMMISSION


Felix McDonald, Chairman

DATE ISSUED:

AUG 15 1980

ATTEST:


Mary Ann Refner, Chief Clerk

RECEIVED

OCT 19 2006

WATER RIGHTS PERMITTING

PROPOSED AMENDMENT TO CERTIFICATE
OF ADJUDICATION NO. 14-1441A

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

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.

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.



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