TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Chief Clerk

DATE: June 19, 2007

THRU: Kellye Rila, Team Leader KR 6-19-07
Water Rights Permitting Team

FROM: David N. Koinm, Project Manager
Water Rights Permitting Team

SUBJECT: Alvin, Pamela, & Nathan Starr
Docket # 2007-0014-WR
WRPERM 5920
CN602935058, CN602935066, CN602935074
RN104788062
Application No. 5920 to Appropriate state Water
TWC §11.121, Requiring Mailed and Published Notice
North Fork Trinity River, Tributary of the Trinity River, Trinity River Basin
Kaufman County

2007 JUN 19 PM 1:08
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

The Commission/Executive Director (ED) received an application from Alvin, Pamela, & Nathan Starr seeking authorization to appropriate State water pursuant to Texas Water Code §11.121 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §§295.1, *et seq.*

The application was received on October 10, 2005. The ED declared the application administratively complete on February 16, 2006 and filed it with the Office of the Chief Clerk. Notice of this application was subsequently published and mailed to the water right holders of record in the Trinity River Basin. Three (3) requests for a contested case 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 requesters 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 NOT be granted based on findings. Therefore, we request that the application be set on the next available Commission's Contested Agenda.

Below is the caption for this application:

Docket No. 2007-0014-WR. Consideration of an application by Alvin, Pamela, & Nathan Starr to divert and use, at a maximum rate of 2.01 cfs (900 gpm), an amount not to exceed 320 acre-feet of water per year from the Trinity River, Trinity River Basin to irrigate 200 acres out of a 576.283 acre tract in Kaufman County, Texas. The Commission will consider hearing requests, responses to the requests, and replies thereto. (Ross Henderson, David Koinm)

Attached is a draft notice for you to send.

David N. Koinm

David N. Koinm, Project Manager
Water Rights Permitting Team

Enclosure

cc: Lann Bookout, TCEQ
Todd Chenoweth, TCEQ
Kellye Rila, TCEQ
Bill Billingsley, TCEQ
Kristin Wang, TCEQ
Chris Loft, TCEQ
Jeff Thomas, TCEQ
Ross Henderson, TCEQ

TO: Persons on Attached Mailing List

Re: **Docket No. 2007-0014-WR**
Alvin Starr, Pamela Starr, & Nathan Starr
Hearing request filed on Water Rights Permit No. 5920

The above-referenced application and all timely filed hearing requests filed on the application will be considered by the Commissioners of the Texas Conservation Commission on Environmental Quality (TCEQ) during the public meeting on _____. The meeting will begin at 9:30 a.m. in Room 201S of Building E, at the Commission's offices located at 12100 Park 35 Circle in Austin, Texas.

In accordance with Commission rules, copies of the hearing request(s) have been forwarded to the applicant, the Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ. The applicant, Executive Director of the TCEQ, and the Public Interest Counsel of the TCEQ may file written responses to these hearing requests no later than twenty days before the public meeting date, that is by _____. Persons who filed hearing requests (hearing requesters) may file a written reply to responses no later than six days before the public meeting, that is by _____. All responses and replies must be filed with the Chief Clerk of the TCEQ, and sent on the same day to all individuals on the attached mailing list. The address of the Chief Clerk's Office is: Chief Clerk, ATTN: Agenda Docket Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087 (Fax 512/239-3311). The procedures for evaluating hearing requests and for filing responses and replies are located in 30 Texas Administrative Code (TAC) Chapter 55, Subchapter B (Sections 55.250 - 55.256) and 30 TAC Sections 1.10-1.11.

The Commissioners will not take oral argument or additional public comment on this matter, but may wish to ask questions of the applicant, hearing requesters or staff. The Commissioners will make their decision based on the hearing requests, written responses to the hearing requests, any written replies to those responses, and any response to questions.

Copies of all public comment and hearing requests have also been referred to the Alternative Dispute Resolution Office, where they will be evaluated to determine if informal, voluntary mediation might help resolve any dispute.

Individual members of the public may seek further information concerning the application, public participation, the processing of hearing requests, copies of Commission rules, or the attachment, by calling the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040.

Sincerely,

LaDonna Castañuela, Chief Clerk

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 17, 2006

CERTIFIED MAIL

Michael Shook
Inspection Services
6263 Taylor Road
Kaufman, Texas 75142

RE: Alvin Starr, Pamela Starr, and Nathan Starr
WRPERM 5920
CN602935058
CN602935066
CN602935074
RN104788062
Application No. 5920 for a Water Use Permit
TWC §11.121, Requiring Mailed and Published Notice
East Fork Trinity River, Trinity River Basin
Kaufman County

Dear Mr. Shook:

The Texas Commission on Environmental Quality (TCEQ) is in receipt of Alvin Starr, Pamela Starr, and Nathan Starr's application to appropriate State water.

The Executive Director's staff has determined they cannot recommend the Commission grant the amendment because there is insufficient water available for appropriation in this portion of the Trinity River Basin. Enclosed are copies of the Water Availability Analysis and In-Stream Uses technical memoranda for your review.

You may decide to withdraw the application or request a hearing on the recommended denial of the application. If you elect to withdraw the application, we must receive a written request to withdraw the application. Any unused portion of the fees submitted with the application will be refunded and the application materials will be returned.

If you elect to proceed with the application, you must send a written request for a contested case hearing to the Office of the Chief Clerk at this agency. The request must clearly indicate that Alvin Starr, Pamela Starr, and Nathan Starr are requesting a contested case hearing. Once a request has been received, you will be contacted by a staff attorney in order to reach agreement on the issues and a time frame for the proposed hearing. Once an agreement is reached, the application will be referred to the State Office of Administrative Hearings (SOAH). If no agreement can be reached, the matter will go to an open meeting for the Commissioners to decide whether to remand for a contested case hearing. A contested case hearing is held before

a SOAH administrative law judge, and is similar to a district court trial. The Executive Director will recommend that the application be denied in accordance with §11.134(b)(2)-(3)(B) of the Texas Water Code. The applicant will have the burden of proving that the application should be approved by the Commission.

Please provide your decision on whether to withdraw or proceed with the application in writing by November 27, 2006. If no response is received by this date, the application will be scheduled on a Commission Agenda, where it will be considered by the Commission, with a recommendation from the Executive Director that the application be denied.

If you have any questions concerning this matter, please contact me at (512) 239-004 or by e-mail at dkoinm@tceq.state.tx.us.

Sincerely,

David N. Koinm

David N. Koinm, Projects Manager - MC 160
Water Rights Permitting Team
Water Supply Division

Enclosures

7003 0500 0002 9933 7574

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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Total P	WRPERM 5920	

Sent To: Michael Shook
Inspection Services
Street, Apt. or P.O.B.: 6263 Taylor Rd.
City, State: Kaufman, TX 75142
DK/al

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WRPERM 5920
Michael Shook
Inspection Services
6263 Taylor Rd.
Kaufman, TX 75142
DK/al

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 10-25-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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☒ Certified Mail ☐ Express Mail
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☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 0500 0002 9933 7574

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

STATE OF TEXAS)(

COUNTY OF TRAVIS)(

I, LaDonna Castañuela, Chief Clerk of the Texas Commission on Environmental Quality, do hereby certify that the attached lists all navigation districts in the Trinity River Basin as well as all holders of certified filings, permits, and claims of water rights in the Trinity River Basin. These navigation districts and rights holders were sent, by first-class mail on July 3, 2006, the attached notice for Application No. WRPERM 5920, submitted by Alvin, Starr, Pamela Starr, and Nathan Starr.

Given under my hand and the seal of the Texas Commission on Environmental Quality, this the 5th day of July, 2006.

LaDonna Castañuela, Chief Clerk

SEAL

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

NOTICE OF WATER RIGHTS APPLICATION
APPLICATION NO. 5920

Alvin Starr, Pamela Starr, and Nathan Starr have applied for a Water Use Permit to divert and use not to exceed 320 acre-feet of water per year from the East Fork Trinity River, Trinity River Basin, for agricultural purposes in Kaufman County, Texas. More information on the application and how to participate in the permitting process is given below.

APPLICATION. Alvin Starr, Pamela Starr, and Nathan Starr, 15651 E. U.S. 80, Sunnyvale, Texas 75182, Applicants, seek a Water Use Permit pursuant to Texas Water Code §11.121 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (30 TAC) §§ 295.1, *et seq*. Pursuant to 30 TAC §295.151, notice is being published and mailed to the water rights holders of record in the Trinity River Basin.

Applicants seek authorization to divert and use not to exceed 320 acre-feet of water per year at a maximum diversion rate of 2.01 cfs (900 gpm) from the East Fork Trinity River, tributary of the Trinity River, Trinity River Basin, Texas, for agricultural purposes to irrigate 200 acres out of a 576.283-acre tract in the J.P. Lawrence Survey, Abstract No. 296 and the McKinney and Williams Survey, Abstract No. 662, Kaufman County, Texas

Water will be diverted from a point located on the west bank of the East Fork Trinity River located at Latitude 32.765°N, Longitude 96.508°W also located at a point bearing S 27.367°E, 1,944.32 feet from the southwest corner of the McKinney and Williams Survey, 23 miles northwest of the City of Kaufman and 3 miles west of the City of Forney.

Ownership of the land to be irrigated is evidenced by a Special Warranty Deed with Vendor's Lien recorded in Volume 02137, Pages 442-453 of the Official Public Records of Kaufman County, Texas.

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

The application and partial fees were received on October 7, 2005, and requested information and fees were received on December 27, 2005, and February 13, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 16, 2006.

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, at 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.

Issued: July 3, 2006

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: David Koinm, Application Manager
Water Rights Permitting Team

December 27, 2006

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

From: Jeff Thomas, Hydrologist
Surface Water Availability & Interstate Compacts Team

Subject: Alvin Starr, Pamela Starr, and Nathan Starr
WRPERM 5920
CN602935058
CN602935066
CN602935074
RN104788062
Water Right Application No. 5920
East Fork Trinity River, Trinity River Basin
Kaufman County

WATER AVAILABILITY ANALYSIS ADDENDUM

Water Availability Analysis

The Commission's water availability model (WAM) for the Trinity River Basin protects existing water rights based on the prior appropriation doctrine. The period of record for the Trinity WAM is 1940 through 1996. The applicant's request was declared administratively complete on February 16, 2006.

Resource Protection staff recommends the following special condition be included in the proposed permit:

1. **In order to provide sufficient flow for instream uses of the East Fork Trinity River, diversions should be limited to times when streamflow at USGS Gage 08061750 equals or exceeds the following values**

Recommended Monthly Flows (cfs)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
43	43	123	67	145	86	43	43	43	43	43	43

Using the WAM Full Authorization Simulation in which all basin rights use their maximum authorized amounts the simulation results indicate that 100 percent and 75 percent of the annual demand of 320 acre-feet would be met in 0.0 percent and 3.5 percent of the years, respectively, and the monthly demand would be met in 28.5 percent of the months.

To determine if there is term water available for the annual demand of 320 acre-feet of water, the applicant's request was evaluated using the Current Conditions Simulation of the WAM, which includes all return flows and current water usage. The results of the Current Conditions Simulation indicate that 100 percent and 75 percent of the annual demand would be met in 1.8 percent and 29.8 percent of the years, respectively, and the monthly demand would also be met in 52.2 percent of the months.

Several alternate simulations were run with a reduced diversion demand down to 50 acre-feet for a perpetual and or term water right, but the simulation results did not show any improvement in water availability on a perpetual or term basis.

Conclusion

The water availability analysis indicates that there is not sufficient water available at the applicant's location to support the requested diversion demand of 320 acre-feet of water per year.

Jeff Thomas, P.E., P.G.
Hydrologist

WAM Code:

** Water Right (diversion only) STARR GRASS FARMS Application 5920 12-21-06

IF B5920 46309 strIF20020216 1 5920IF

WR B5920 50 starr20020216 1 10805920001 5920

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: David Koinm, Application Manager
Water Rights Permitting Team

October 4, 2006

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

From: Jeff Thomas, Hydrologist
Surface Water Availability & Interstate Compacts Team

Subject: Alvin Starr, Pamela Starr, and Nathan Starr
WRPERM 5920
CN602935058
CN602935066
CN602935074
RN104788062
Water Right Application No. 5920
East Fork Trinity River, Trinity River Basin
Kaufman County

WATER AVAILABILITY ANALYSIS

Application Summary

Applicant seeks authorization to divert and use 320 acre-feet of water per year from the East-Fork Trinity River, tributary of the Trinity River, Trinity River Basin for agricultural purposes in Kaufman County. The maximum diversion rate will be 2.10 cfs (900 gpm).

Water Availability Analysis

The Commission's water availability model (WAM) for the Trinity River Basin protects existing water rights based on the prior appropriation doctrine. The period of record for the Trinity WAM is 1940 through 1996. The applicant's request was declared administratively complete on February 16, 2006.

Resource Protection staff recommends the following special condition be included in the proposed permit:

1. **In order to provide sufficient flow for instream uses of the East Fork Trinity River, diversions should be limited to times when streamflow at USGS Gage 08061750 equals or exceeds the following values**

Recommended Monthly Flows (cfs)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
43	43	123	67	145	86	43	43	43	43	43	43

Staff reviewed the WAM to evaluate the availability of water at the applicant's location and found insufficient water available to meet the applicant's demand.

Conclusion

The water availability analysis indicates that there is not sufficient water available at the applicant's location to support the requested diversion demand of 320 acre-feet of water per year.

Jeff Thomas, P.E., P.G.
Hydrologist

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Julie Wood, Application Manager
Water Rights Permitting Team
Water Rights Permitting & Availability Section

Date: June 21, 2006

Through: Bill Billingsley, Team Leader
Resource Protection Team BB 6/20/06
Water Rights Permitting & Availability Section

WG 6/21/06 Wendy Gordon, Ph.D., Aquatic Scientist
Resource Protection Team
Water Rights Permitting & Availability Section

From: Chris Loft, Aquatic Scientist
Resource Protection Team
Water Rights Permitting & Availability Section

Subject: Alvin Starr, Pamela Starr, and Nathan Starr
WRPERM 5920
CN 602935058
CN602935066
CN602935074
Water Right Application No. 5920
East Fork Trinity River, Trinity River Basin
Kaufman County

Environmental reviews of water right applications are conducted in accordance with §11.042, §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

Applicant seeks authorization to divert and use 320 acre-feet of water per year from the East Fork Trinity River, tributary of the Trinity River, Trinity River Basin for agricultural purposes in Kaufman County. The maximum diversion rate will be 2.01 cfs (900 gpm).

INSTREAM USES

Recreational Uses:

According to the Texas Parks and Wildlife Department (TPWD) publication, *An Analysis of Texas Waterways*, the East Fork Trinity River offers recreational uses that depend upon releases from Lake Hubbard. The 40-mile stretch between Interstate 20 and State Highway 34 has the potential for recreational use. However, the last 20-25 miles is reportedly the best section for recreational float trips. The proposed diversion is not expected to affect recreational uses in this segment of the East Fork Trinity River.

Aquatic and Riparian Habitats:

According to *An Analysis of Texas Waterways*, the East Fork Trinity River flows through wooded bottomlands of post oak, elm, ash, and pecan. Lake Lavon and Lake Ray Hubbard are located upstream of the proposed diversion point. The East Fork Trinity River is a perennial river that is strongly influenced by the outflows of these two reservoirs. According to the applicant, in the area of the diversion point, the river averages 20-feet wide and 3-feet deep. Land uses in the watershed consist mostly of residential neighborhoods and agricultural lands. According to the *Handbook of Texas Online* the East Fork Trinity River traverses flat to rolling prairie with occasional steep slopes, surfaced by clays and sandy and clay loams that support oak, juniper, water tolerant hardwoods, conifers and grasses.

Streamflow, which is strongly correlated with many critical physicochemical characteristics of rivers such as water temperature, channel geomorphology and habitat diversity, can be considered the master variable that limits the distribution and abundance or riverine species and regulates the ecological integrity of flowing water systems (Poff and others 1997). Maintaining the natural flow regime or variability plays a critical role in sustaining native biodiversity and ecosystem integrity in rivers (Poff and others 1997). Although the hydrology of the East Fork Trinity River has been altered by reservoir construction and wastewater inputs, aerial imagery (www.maps.google.com, accessed 6/6/06) show the river in the applicant's vicinity to be unaltered with high quality riparian habitats. When developing environmental flow restrictions to maintain aquatic and riparian habitats, the TCEQ utilizes a desktop methodology referred to as the Lyon's Method. The Lyon's Method recommends minimum flows of 40% of the median monthly flows for October through February and 60% of the median monthly flows for March through September in order to protect aquatic habitat. This methodology produces flow numbers for each month of the year to mimic natural flow patterns. The nearest active USGS gage (East Fork Trinity River near Forney) is located approximately 1.1 miles upstream of the applicant's proposed diversion point. The USGS Gage #08061750 has a drainage area of 1,118 square miles and was used in calculating the monthly medians for the period of record from 1973-2004 (Table 1).

Table 1. Monthly Median Flows (cfs) at USGS Gage 08061750

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
65	108	205	112	242	143	53	47	48	49	58	69

Applying the Lyon's Method results in the following monthly flow recommendations (Table 2):

Table 2. Recommended Monthly Flows (cfs) at USGS Gaging Station #08061750

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
26	43	123	67	145	86	32	28	29	20	23	28

Implementation of the recommended flow restrictions as measured at USGS Gage #08061750 should provide sufficient maintenance flows to the aquatic and riparian habitats in this segment of the East Fork Trinity River.

Water Quality:

The East Fork Trinity River in the applicant's vicinity is designated as Segment No. 0819 in the *State of Texas Water Quality Inventory*. Designated uses of Segment No. 0819 include contact recreation, intermediate aquatic life use and fish consumption. Based on data collected during the assessment period for the *2002 305(b)/303(d) Report*, the aquatic life use is fully supported. The fish consumption use was not assessed. The contact recreation use is not supported and the segment is on the 2002 303(d) list due to elevated bacteria levels. Nutrient enrichment is a concern throughout the entire segment due to elevated levels of ammonia, orthophosphorus and nitrate plus nitrite nitrogen

For determining minimum flows that would sustain water quality, the seven day, two-year low flow (7Q2) is used. The 7Q2 is often considered the lowest allowable flow which provides adequate assimilation of pollutants, and it is the low flow value used in water quality modeling for Texas Pollutant Discharge Elimination System (TPDES) permitting. The 7Q2 is statistically derived from historical daily gaged flow data. The most recent 7Q2 value calculated by the Water Quality Assessment Team of the TCEQ for the East Fork Trinity River at USGS Gage 08061750 is 43 cfs for the period of 1993-2004. Since the recommended monthly flow values during February through June are equal to or higher than the 7Q2 value of 43 cfs, adequate water quality maintenance should be provided during these months. However, during the months of July through January, the monthly flow recommendations are less than the 7Q2 value, and therefore may not provide adequate flow to protect water quality. In order to provide sufficient flow to maintain water quality, diversions during the months of July through January should be limited to times when streamflow of the East Fork Trinity River at USGS Gage 08161750 equals or exceeds 43 cfs.

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 more than 200 river miles from the Gulf of Mexico. Therefore as an individual event, the annual diversion of 320 acre-feet of water should have negligible impact the bays and estuaries systems of the Trinity River Basin

SUMMARY

Applicant seeks authorization to divert and use 320 acre-feet of water per year from the East Fork Trinity River, tributary of the Trinity River, Trinity River Basin for agricultural purposes in Kaufman County. The maximum diversion rate will be 2.01 cfs (900 gpm).

Resource Protection staff support issuance of the permit if the following special condition is adopted in the permit if granted:

1. **In order to provide sufficient flow for instream uses of the East Fork Trinity River, diversions should be limited to times when streamflow at USGS Gage 08061750 equals or exceeds the following values**

Recommended Monthly Flows (cfs)

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
43	43	123	67	145	86	43	43	43	43	43	43

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.

Chris Loft
Resource Protection Team

LITERATURE CITED

Ellis, L.T., W. Pohl, R. Tyler. 1997-2001. Handbook of Texas Online. The Texas State Historical Association.

TNRCC. 2002. Texas Water Quality Inventory and 303(d) List. Texas Natural Resource Conservation Commission.

TPWD. 1979. An Analysis of Texas Waterways. Texas Parks and Wildlife Department.

Cc: Todd Chenoweth, Manager, Water Rights Permitting & Availability Section, TCEQ
Jeff Thomas, Surface Water Availability and Interstate Compacts Team, TCEQ

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Julie Wood, Project Manager
Water Rights Permitting Team
Water Supply Division

Date: December 29, 2005

Thru: Bill Billingsley, Team Leader
Resource Protection Team
Water Supply Division

OL for BB 12/29/05

Kristin Wang, Senior Water Conservation Specialist
Resource Protection Team
Water Supply Division

ESS for KW 12/29/05

From: Dean Minchillo, Water Conservation Specialist
Resource Protection Team
Water Supply Division

DM 12/29/05

Subject: Starr Grass Farms
(Alvin, Pamela, Nathan Starr)
WRPERM5920
CN602935058
CN602935066
CN602935074
Review of Water Conservation Plan for Administrative Sufficiency

Alvin Starr, et al., applicants, seek a Water Use Permit to divert and use not to exceed 320 acre-feet of water per year at a maximum diversion rate of 2.01 cfs (900 gpm) from the East Fork Trinity River, Trinity River Basin, for agricultural purposes to irrigate 200 acres of grass farm in Kaufman County, Texas.

Applicants also seek authorization to maintain an existing reservoir (flat pond) on an unspecified watercourse in the Trinity River Basin, with a surface area of 20 acres and a maximum impoundment capacity of 200 acre-feet of water.

The December 18, 2005 Irrigation Water Conservation Plan for Starr Grass Farm 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 bermuda on 200 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 320 acre-feet of water per year for irrigation on 200 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 "C" 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 "C" 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.

Law Offices of

Joseph E. Ashmore, Jr. P.C.

Attorneys ~ Counselors and Litigators:

Joseph E. Ashmore, Jr.
Gary M. Ashmore
Lori Ashmore Peters
Hutton W. Sentell*
Andy Nikolopoulos
Martin Valko***
Edward W. Sampson°
Sheppard Sands

*Also Admitted in LA
*** Also Admitted in DC
° Board Certified in Personal Injury Trial Law by the Texas Board of Legal Specialization

3636 Maple Avenue
Dallas, Texas 75219-3908
214-559-7202
Fax 214-520-1550

Patti Patak
Office Manager

November 8, 2006

VIA CERTIFIED MAIL NO. 7006 0100 0001 5737 3868
RETURN RECEIPT REQUESTED

Ms. LaDonna Castañuela
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Alvin, Pamela and Nathan Starr
WRPERM 5920
CN602935058
CN602935066
CN602935074
RN104788062
Application No. 5920 for a Water Use Permit
TWC §11.121, Requiring Mailed and Published Notice
East Fork Trinity River, Trinity River Basin
Kaufman County

Dear Ms. Castañuela:

As I previously advised by letter dated August 31, 2006, this firm has been retained to represent Alvin, Pamela and Nathan Starr ("Starrs") in the above matter. In response to David N. Koinm's letter of October 17, 2006, on behalf of the Starrs I hereby **demand a contested case hearing regarding the above referenced matter - Application No. 5920 for a Water Use Permit**. Once this request for a contested case hearing has been assigned in accordance with your customary procedures, please have the staff attorney contact me directly. Please direct any and all future correspondence regarding the above-referenced matter, including all notices, to my attention.

By copy of this letter, I am notifying all interested parties of record. Please contact me should you have any questions or comments regarding this matter.

Sincerely,

Hutton W. Sentell

cc: City of Dallas – Dallas Water Utilities
c/o Gwendolyn Hill Webb, Esq.
Webb & Webb, Attorneys
515 Congress Avenue, Ste. 1270
P.O. Box 1239
Austin, Texas 78767
Via Facsimile No. 512.472.3183 and First Class Mail

North Texas Municipal Water District
c/o Martin C. Rochelle, Esq.
Lloyd Gosselink, Attorneys at Law
816 Congress Avenue, Ste. 1900
Austin, Texas 78701
Via Facsimile No. 512.472.0532 and First Class Mail

David N. Koinm, Projects Manager – MC 160
Water Rights Permitting Team
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
Via Facsimile No. 512.239.4770 and First Class Mail

Nathan Starr
Via First Class Mail

51945
WR

Lloyd Gosselink
ATTORNEYS AT LAW

816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532
www.lglawfirm.com

OPA
JUL 20 2006
BY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CLERKS OFFICE
19 PM 2:01

Mr. Rochelle's Direct Line: (512) 322-5810
mrochelle@lglawfirm.com

July 19, 2006

Ms. LaDonna Castañuela (MC 105)
Office of the Chief Clerk
Texas Commission on Environmental Quality
Building F, Room 1101
Austin, Texas 78711-3087

VIA HAND DELIVERY

Re: In the Matter of the Water Use Application of Alvin, Pamela and Nathan Starr, Application No. 5920 (446-12)

Dear Ms. Castañuela:

Enclosed please find the original and one copy of a Request for Contested Case Hearing filed by my client, the North Texas Municipal Water District, in the above-referenced matter. Please file stamp the extra copy and return it to me via my messenger.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Martin C. Rochelle

MCR/ldp
446\12\Starr\ltr060717mcr
ENCLOSURES

cc: Mr. Alvin Starr
Ms. Pamela Starr
Mr. Nathan Starr
Mr. Mike Rickman
Mr. Robert McCarthy
Mr. Brad B. Castleberry

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
CHIEF CLERK'S OFFICE

IN THE MATTER OF THE WATER USE APPLICATION NO. 5920 OF ALVIN, PAMELA & NATHAN STARR	§ § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

REQUEST FOR CONTESTED CASE HEARING

COMES NOW, the North Texas Municipal Water District ("the District" or "Requestor"), through its undersigned counsel, and files this request for a contested case hearing concerning the above-referenced application with the Texas Commission on Environmental Quality (the "Commission"), and pursuant to 30 TAC §295.171 the District would show the following:

1. The full name and address of the Requestor is the North Texas Municipal Water District, P.O. Box 2408, Wylie, Texas 75098.

2. The application being contested is Application No. 5920 (the "Application"), filed by Alvin, Pamela and Nathan Starr ("Applicant"). The Application seeks to divert and use not to exceed 320 acre-feet of water per year from the East Fork Trinity River, tributary of the Trinity River, Trinity River Basin (the "Basin"), at a maximum diversion rate of 2.01 cfs (900 gpm) for agricultural purposes to irrigate 200 acres in Kaufman County, Texas.

3. Because the District may be affected by the granting of the Application, it hereby requests a hearing on the Application, at least until such time as the District is able to review a draft permit that may be prepared in response to the Application, in order that it may determine if its interests will be affected by the granting of the Application.

4. The District currently holds a number of water rights within the Trinity River Basin. Additionally, the District has several pending water rights applications, including but not limited to its application to amend Certificate of Adjudication No. 08-2410F, also known as the East Fork Reuse Project application. The East Fork Reuse Project application seeks to divert

historical and future District return flows by reclaiming water produced by wastewater treatment plants that discharge unconsumed District water supplies into the East Fork Trinity River watershed. The East Fork Reuse Project application seeks the right to divert water directly from the East Fork Trinity River. In light of the fact that the proposed diversion and use will affect the water available in the watershed that would otherwise flow to the East Fork Trinity River, water that would otherwise be available to help meet the environmental flows that may be specified in any water right issued in response to the District's application to amend Certificate of Adjudication No. 08-2410F, the District's East Fork Reuse Project may be impacted by the granting of the Application.

In connection with its East Fork Reuse Project, the District has also received a temporary water use permit, Temporary Permit No. 5871, to facilitate the development of constructed wetlands associated with the East Fork Reuse Project. Pursuant to the Temporary Permit, the District is authorized to divert and use 2,250 acre-feet of water over a three-year period, but its diversion rights are limited to times when stream flow at USGS Gage No. 08062000 is no less than 64 cfs on the East Fork Trinity River. As filed, the Application may adversely affect the District's rights under the Temporary Permit inasmuch as the Application contemplates proposed diversion and use will affect the water available in the watershed that would otherwise flow into the East Fork Trinity River, and, thus, reducing the river's natural stream flow. Therefore, granting the Application may inhibit the District's ability to divert water, given the stream flow limitations contained in the Temporary Permit.

In summary, the Application may adversely affect the District's use of water pursuant to its existing water rights and pending applications by reducing stream flow in the East Fork Trinity River and hindering the District's ability to divert and use its own water rights.

Moreover, it is unclear as to whether the Application adequately addresses conservation, protects and effectively utilizes groundwater resources, or is in the public welfare. As such, the District is concerned that the Application, if granted without appropriate special conditions, may impact the District's ability to meet the current and future water supply needs of its member cities and customers.

WHEREFORE, PREMISES CONSIDERED, the District requests that the Commission forward the Application to the State Office of Administrative Hearings for a contested case hearing, and for such other and further relief to which it may be entitled.

Respectfully submitted,

LLOYD GOSSELINK BLEVINS ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue
Suite 1900
Austin, Texas 78701
(512) 322-5810
FAX: (512) 472-0532

By: _____
MARTIN C. ROCHELLE
State Bar No. 17126500
BRAD B. CASTLEBERRY
State Bar No. 24036339

ATTORNEYS FOR NORTH TEXAS MUNICIPAL WATER DISTRICT

WEBB & WEBB
ATTORNEYS AT LAW
1270 BANK OF AMERICA CENTER, 515 CONGRESS AVENUE
P.O. DRAWER 1329
AUSTIN, TEXAS 78767-1329

STEPHEN P. WEBB
GWENDOLYN HILL WEBB

TELEPHONE: (512) 472-9990
FACSIMILE: (512) 472-3183

HR OPA
AUG 04 2006
BY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2006 AUG -3 PM 3:02
CHIEF CLERKS OFFICE

August 3, 2006

Ms. LaDonna Castañuela
Office of the Chief Clerk - MC 105
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087

WR 51945

RE: Request for Contested Case Hearing by the City of Dallas on Application No. 5920 by Alvin Starr, Pamela Starr, and Nathan Starr

Dear Ms. Castañuela:

The City of Dallas ("Dallas") requests to be named a party and requests a contested case hearing in Application No. 5920 by Alvin Starr, Pamela Starr, and Nathan Starr ("Applicants"). Based on the notice of Application No. 5920 issued by the Texas Commission on Environmental Quality ("Commission") on July 3, 2006, Dallas protests the issuance of a water right to Applicant and submits the following information in support of its request for party status and for a contested case hearing:

Name and Contact Information for Requesting Party:

City of Dallas - Dallas Water Utilities
Jo M. "Jody" Puckett, P. E., Director
Dallas City Hall, Room 4AN
1500 Marilla Street
Dallas, Texas
Phone: 214-670-3144
Fax: 214-670-3154

Gwendolyn Hill Webb
Webb & Webb, Attorneys
515 Congress Avenue, Suite 1270
P. O. Box 1239
Austin, TX 78767
Phone: 512-472-9990
Fax: 512-472-3183

Dallas is the holder of Certificate of Adjudication No. 08-2462 for Lake Ray Hubbard, which is located on the East Fork Trinity River approximately three (3) miles upstream of Applicants' proposed diversion point, but in the same Trinity River Basin watershed, with the same source of surface water as Applicants. Dallas' Lake Ray Hubbard water rights are senior in priority to any water rights permit which could be issued to Applicants pursuant to Application No. 5920. No draft permit is available for Dallas' review at this time.

Effect of Proposed Water Right:

According to the notice issued by TCEQ on July 3, 2006, the Applicants propose to divert and use not to exceed 320 acre-feet of water per year at a maximum diversion rate of 2.01cfs (900gpm). The proposed diversion and use seeks to appropriate water which may need to be used to satisfy Dallas' senior water right; in other words, there may not be sufficient water available in the watershed for Applicants' appropriation. Appropriate terms and conditions for Applicants' use of watershed inflows has not been resolved so as not to impair Dallas' existing senior water right and not to prejudice Dallas' pending water reuse permit in Lake Ray Hubbard. Both Dallas' senior water right and its pending water reuse application could be impaired by the granting of a permit to Applicants in accordance with Application No. 5920, without sufficient protections for Dallas' senior water rights.

Conclusion:

Dallas should be named a party to further proceedings concerning Application No.5920 on the basis of this letter. Dallas requests a contested case hearing on Application No. 5920 by Applicants as an affected party whose water rights in the East Fork Trinity River are potentially impaired by the issuance of a permit to appropriate State water to convey such water to irrigate 200 acres out of a 576.283-acre tract in Kaufman County as requested in Application No. 5920. Dallas wishes to initiate discussions with Applicants, review the draft permit, and remain a party to this proceeding until all matters resolving the potential impact on Lake Ray Hubbard are resolved. Dallas will keep the Commission advised and will notify the Commission promptly at such time as the parties reach agreement such that this letter of protest and request for contested case hearing is no longer valid.

Sincerely,

Gwendolyn Hill Webb
ATTORNEY FOR THE CITY OF DALLAS

cc: Mr. Alvin Starr
Ms. Pamela Starr
Mr. Nathan Starr
15651 E. US 80
Sunnyvale, Texas 75182

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

December 15, 2006

Hutton W. Sentell, Esq.
Law Office of Joseph E. Ashmore, Jr. P.C.
3636 Maple Ave
Dallas, Texas, 75219

Re: Alvin, Pamela, and Nathan Starr
WRPERM 5920
CN602935058, CN602935066, CN602935074, RN104788062
Application No. 5920 for a Water Use Permit
TWC §11.121, Requiring Mailed and Published Notice
East Fork Trinity River, Trinity River Basin
Kaufman County

Dear Mr. Sentell:

As a general response to your questions in an e-mail dated December 8, 2006, temporary applications are issued for exactly that - temporary purposes and have never been intended to be a permanent water right. They are intended to be granted for a maximum of three (3) years.

Temporary Permits are ONLY issued when surplus water above and beyond permitted water rights is available in the source of supply - in many cases this only happens when there is a significant amount of rainfall in any given year, or some of the already permitted water rights are not using the full amount of their permitted water rights. The application form for a Temporary Permit states: "This form is for an application for a temporary permit to divert water under Section 11.138, Texas Water Code. Any permit granted from the application may be suspended **at any time** by the applicable TCEQ Office if it determined that surplus water is no longer available."

We cannot consider whether substantial financial investments have been made on the basis of a temporary water right, as again, they are temporary in nature and could never be for more than three years in any case, even when surplus water is available. Our review of a temporary or permanent water right is primarily for the protection of water resources.

Due to already granted senior and superior water rights, there is not water available for appropriation for this application. The availability of effluent in this area was also taken into account during the technical review which found insufficient water available to recommend granting this application.

Water Rights in Texas are authorized under the Prior Appropriation doctrine, basically meaning, "first come, first served" and we are unable by law to recommend granting an application for a water right which would harm an existing senior and superior water right.

To answer your numbered questions:

1. Replacement of the Temporary Permit by this application is not an issue as there is insufficient water available in this area to recommend granting this application. This Temporary Permit is not being replaced by a permanent water right. Temporary Permits are meant to be for a short period of time. The review for a permanent water right does not consider the temporary water right to exist permanently.

2. If you would like, we can send you a list of all the water right holders in the Trinity River Basin. You may request this information from Marian Chervenka at mcherven@tceq.state.tx.us. Please be aware that Marian is a database program specialist and cannot answer technical water rights questions.

3. Water in the temporary application did not factor into the recommendation for denial of the application - for the reasons stated above Temporary Permits are not considered in the water availability model.

4. The Commission is required by law to protect existing senior and superior water rights when reviewing new applications for appropriation and cannot recommend any application which would harm existing water rights.

If you have other questions concerning this matter, or would like to discuss this further, please contact me at (512) 239-0047 or by e-mail at dkoinm@tceq.state.tx.us.

Sincerely,

David N. Koinm, Project Manager - MC 160
Water Rights Permitting Team
Water Supply Division

7003 0500 0002 9933 7574

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Sent To WRPERM 5920
Michael Shook
Inspection Services
Street, A or PO B 6263 Taylor Rd.
City, Sta Kaufman, TX 75142
DK/al

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

WRPERM 5920
Michael Shook
Inspection Services
6263 Taylor Rd.
Kaufman, TX 75142
DK/al

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery 10-25-06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
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☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7003 0500 0002 9933 7574

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1035

From: "Hutton Sentell" <HSentell@ashmorelaw.com>
To: <dkoinm@tceq.state.tx.us>
Date: 12/8/06 12:34:23 PM
Subject: Water Use Permit Application No. 5290

Re: Alvin, Pamela and Nathan Starr
WRPERM 5920
CN602935058
CN602935066
CN602935074
RN104788062
Application No. 5920 for a Water Use Permit
TWC §11.121, Requiring Mailed and Published Notice
East Fork Trinity River, Trinity River Basin
Kaufman County

Dear Mr. Koinm:

As you may now be aware, I have been retained to represent Alvin Starr, Pamela Starr and Nathan Starr (the Starrs) with regard to their application for water use in the East Fork of the Trinity River, Water Use Permit Application No. 5290. I have already filed a notice requesting a contested hearing on this matter, but I wanted to talk to you about it first to be sure everyone is clear on this application. I strongly believe that once the application is fully understood, all parties can agree to the requested water use permit.

I tried to call you about this but your telephone number set forth in your letter to Michael Shook dated October 17, 2006 omitted the complete number (512-239-004). Therefore, I'm sending you this email instead. Please call me regarding this matter or email me with your complete telephone number. Again, I want to make sure the TCEQ's understanding of this application is clear.

Water Use Permit Application No. 5290 was filed to simply convert Temporary Permit No. TP-8252 into a permanent water use permit. The Starrs application (No. 5290) is not a request for additional water use for this portion of the Trinity River Basin, along with the already existing permit TP-8252, but instead, their intent is to convert and substitute TP-8252 with a permanent water use permit.

In case you are not aware, the Starrs have made a significant financial investment in Kaufman County off of Highway 80 to operate a turf grass operation with their temporary water use permit. Their operation employs numerous residents of Kaufman County, generates significant tax income for the county coffers, and is certainly an economic boost for Kaufman County. To deny their request for a permanent water use permit would result in an economic loss to Kaufman County.

Moreover, it is my further understanding that the small amount of water that they are drawing from the East Fork of the Trinity River pursuant to their current temporary permit, TP-8252, is in effect just taking a minuscule amount of treated wastewater and effluent from the Duck Creek Wastewater Treatment Plant and wastewater from the Forney Energy Center that is being discharged immediately upstream. The Starrs operation in

no way effects or impairs water use by the City of Dallas or the North Texas Municipal Water District of lake runoff in the East Fork of the Trinity River. The Starrs request for a permanent water use permit mirrors the amount they were granted in their temporary water use permit. They put that small amount of effluent and discharge to extremely good use.

Accordingly, I would like to discuss with you the following:

1.) Was the TCEQ aware that Water Use Permit Application No. 5290 was meant to replace Temporary Permit No. TP-8252, and not constitute an additional request of water resources from the current "status quo" in the East Fork of the Trinity River?
2.) Since the TCEQ's denial was based upon "insufficient water availability for appropriation in this portion of the Trinity River Basin. . ." who are the other owners of registered water use permits for this portion of the Trinity River Basin?
3.) Did water appropriation for TP-8252 factor into the decision to deny this permanent application?
4.) If any currently registered water use permits for this portion of the Trinity River Basin are inactive and are not being actively used, how did these permits factor into the decision to deny this permanent application, if at all?

If you can provide me with these answers, I would very much appreciate it. Again, on behalf of the Starrs, I am interested in a quick and informal resolution of this issue, if possible, since my clients have already invested so much time, effort and money into their operation in Kaufman County, and the continued financial success of their operation depends on the TCEQ granting their request to convert their temporary water use permit into a permanent water use permit.

Please contact me at your earliest convenience so that we can discuss the best way to proceed. Thank you in advance for your time and consideration in this matter.

Sincerely,

Hutton W. Sentell, Esq.
Law Office of Joseph E. Ashmore Jr., P.C.
3636 Maple Ave. tel: 214-559-7202
Dallas, TX 75219 fax: 214-520-1550
http://www.ashmorelaw.com/ <http://www.ashmorelaw.com/>
hsentell@ashmorelaw.com <mailto:hsentell@ashmorelaw.com>
hws814@hotmail.com <mailto:hws814@hotmail.com>

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TA/8252/CW

TEMPORARY PERMIT
TO APPROPRIATE STATE WATER

APPLICATION NO. TA-8252 PERMIT NO. TP-8252

Permittee:	Starr Enterprises, LLP	Address:	15651 East U.S. 80 Sunnyvale, Texas 75182
Received:	January 30, 2004	Granted:	NOV 01 2004
		County:	Kaufman
Watercourse:	East Fork Trinity River, tributary of the Trinity River	Watershed:	Trinity River Basin

RECEIVED
MAR 02 2007
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CENTRAL FILE ROOM

WHEREAS, after considering the recommendation of the staff relative to the above identified application, the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. The application is in proper form and accompanied by all necessary fees.

2. Sufficient water is available at the proposed point of diversion to satisfy the requested diversion and use of up to 320 acre-feet of water per year at a maximum diversion rate of 2.01 cfs (900 gpm) for a period of three years (totalling 960 acre-feet of water) from the East Fork Trinity River, Trinity River Basin, Kaufman County, Texas, for agricultural (irrigation) purposes. All water rights owners of record with diversion points downstream of Starr Enterprises's requested diversion point were provided a copy of the notice to make them aware of Starr Enterprises's request and no person protested the granting of this temporary permit.

3. Agricultural (irrigation) is a beneficial purpose for which this quantity of water may be diverted in Kaufman County.

CONCLUSIONS OF LAW

1. Jurisdiction is vested to consider this application under Section 11.138 of the Texas Water Code and Sections 295.174 and 297.13 of Title 30 Texas Administrative Code.

2. Applicant has complied with the particular requirements of the Texas Commission on Environmental Quality.

NOW, THEREFORE, this permit is issued to Starr Enterprises, LLP, subject to the following terms and conditions:

1. USE

   Permittee is authorized to divert and use not to exceed 960 acre-feet of water from the East Fork Trinity River, tributary of the Trinity River, Trinity River Basin, for a three-year period, of which no more than 320 acre-feet of water may be used during any consecutive twelve-month period for agricultural (irrigation) use in Kaufman County, Texas.

2. DIVERSION

   Diversion is authorized at a maximum diversion rate of 2.01 cfs (900 gpm) from a point at the stream crossing of U.S. 80 and the East Fork Trinity River, located 23 miles northwest of Kaufman and 3 miles west of Forney, Texas.

3. SPECIAL CONDITIONS

   A. Permittee shall not divert when flow in the East Fork Trinity River, as measured at USGS Gage 08061750, is less than or equal to:

      79 cfs in January and February,
      113 cfs in March and April,
      201 cfs in May,
      79 cfs in June, and
      44 cfs in July through December.

   B. Upon diversion and use of the water authorized herein, this permit shall expire and be of no further force and effect.

   C. This permit shall expire and become null and void three years from the date of issuance with no further Commission action. Permittee also waives the right to notice and hearing on cancellation of this water right.

D. This permit is junior in priority to all existing water rights in the Trinity River Basin.

E. No diversion shall be made when such water is required to satisfy domestic and livestock demands downstream, or when necessary to satisfy senior and superior water rights and instream needs.

F. The issuance of this permit does not grant to the permittee the right to use private or public property for diversion of water authorized by this permit. This includes property belonging to but not limited to any individual, partnership, corporation or public entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to make any diversion authorized by this permit.

This temporary permit does not vest in its holder a permanent right and shall in no event be construed as a commitment of the Commission to approve or disapprove any other application or request by the permittee.

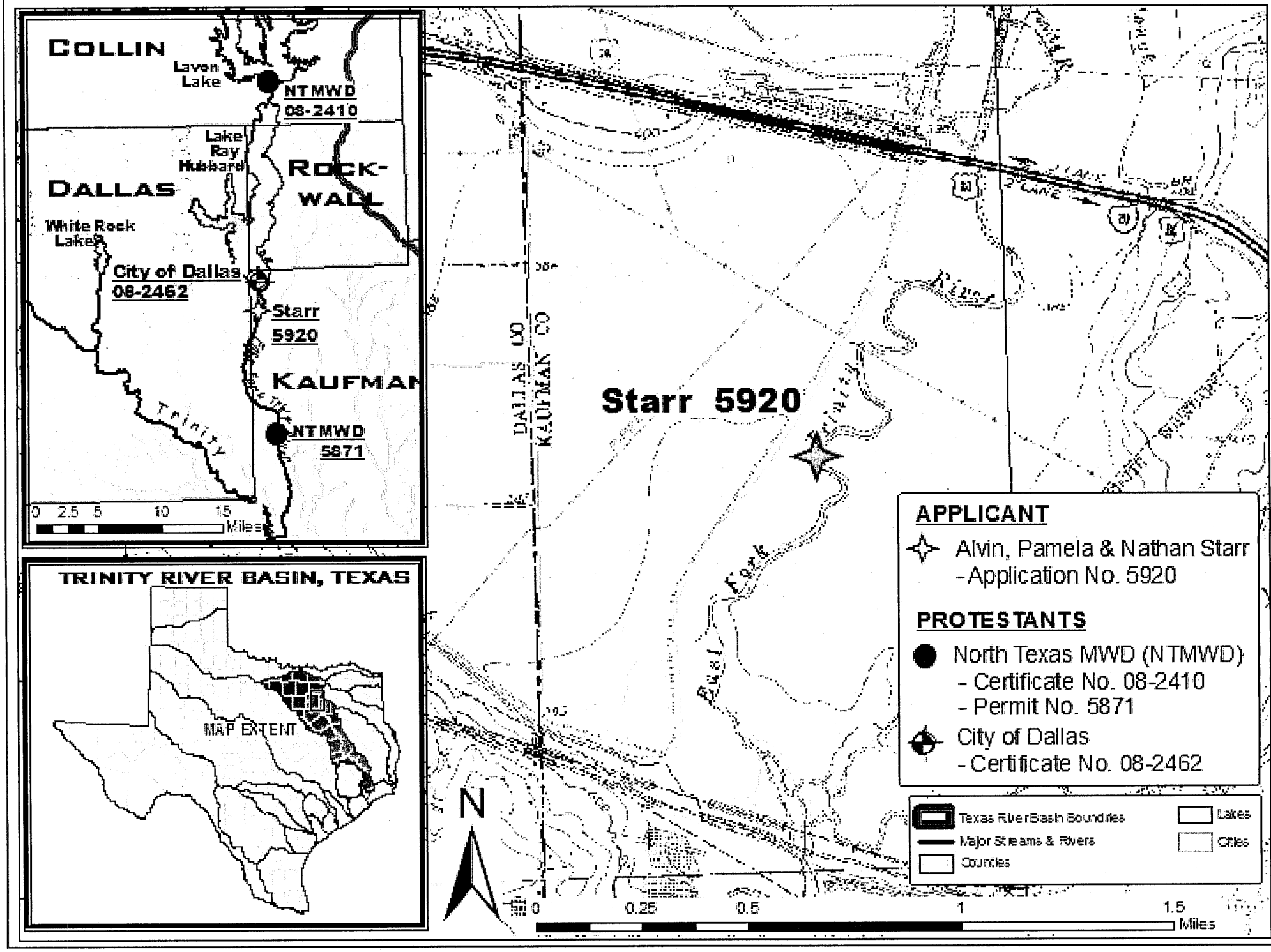
Permittee agrees to be bound by the terms, conditions, and provisions contained herein, and such agreement is a condition precedent to the granting of this permit.

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

This permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to its right of continuing supervision.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For The Commission

DATE ISSUED: NOV 01 2004

DOCKET NO. 2007-0014-WR STARR - APPLICATION NO. 5920