

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 5, 2012

Bridget Bohac, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

**RE: SADDLE CREEK DEVELOPMENT, LTD
TCEQ DOCKET NO. 2012-0815-WR**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Hearing in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott A. Humphrey".

Scott A. Humphrey, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2012-0815-WR

IN THE MATTER OF THE	§	BEFORE THE
APPLICATION OF SADDLE CREEK	§	
DEVELOPMENT, LTD FOR WATER	§	TEXAS COMMISSION ON
RIGHTS PERMIT NO. WRPERM	§	
12202	§	ENVIRONMENTAL QUALITY

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S
RESPONSE TO REQUEST FOR HEARING**

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Request for Hearing in the above-referenced matter.

I. INTRODUCTION

Saddle Creek Development, Ltd (Applicant or Saddle Creek) applied to the TCEQ on January 23, 2007, for authorization to modify and maintain an existing dam and reservoir on Brown Branch, tributary of the Clear Fork Trinity River, tributary of the Trinity River, Trinity River Basin for in-place recreational purposes in Parker County, Texas. The reservoir has a capacity of approximately 6.7 acre-feet and a surface area of 1.32 acres.

The Applicant has provided evidence of an alternate source of water, which the Applicant has identified as groundwater. The Applicant indicates the reservoir will be maintained at a constant level with groundwater from an existing well that produces 0.0434 cfs (19.5 gpm) after a 24-hour operation test. The reservoir is located 3.28 miles southeast of the City of Aledo and 503 feet from the southeast corner of the William Robinson Survey, Abstract No. 1109, in Parker County, Texas.

The Executive Director (ED) declared Saddle Creek's application administratively complete on May 15, 2007. The Applicant published notice of its water rights application in the *Weatherford Democrat*, a newspaper of general circulation in Parker County, on August 30, 2007. The comment period ended on October 1, 2007.

In response to the notice, the TCEQ received two hearing requests prior to the close of the comment period from the following: Denis and Vivien Benjamin; and Gwendolyn Webb, representing the City of Dallas. On August 25, 2008, Dallas agreed to withdraw its hearing request subject to a minor change to Special Condition D of the draft permit. The ED has represented to OPIC that the requested change has been made; therefore, OPIC considers the hearing request filed by the City of Dallas to be withdrawn. OPIC further recommends that the Benjamins' hearing request be denied based on information obtained by the ED that they no longer own the property from which they submitted their hearing request.

II. APPLICABLE LAW

Persons seeking to appropriate state water or to begin construction of work designed for the storage, taking or diversion of water must first obtain a permit from the Commission to make the appropriation. TEX. WATER CODE ("TWC") § 11.121 (2006). Applications to appropriate unappropriated state water must be made pursuant to the requirements in TWC section 11.124. In accordance with TWC section 11.134, the Commission must consider the following issues in its decision to grant or deny the application: whether unappropriated water is available; whether the proposed appropriation is intended for a beneficial use, does not impair existing water rights or vested riparian rights, is not detrimental to the public welfare, considers assessments performed under sections 11.147(d) and (e) and sections 11.150, 11.151, and 11.152, and

addresses water supply needs consistent with the state and applicable regional water plans; and whether the applicant will avoid waste and achieve water conservation. TWC § 11.134(b) (2006).

This application was declared administratively complete on May 15, 2007. As the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Title 30, Chapter 55, Subchapter G, sections 55.250-55.256 of the Texas Administrative Code (TAC). Under those provisions, a contested case hearing may be requested by the Commission, the Executive Director, the Applicant, and affected persons. 30 TAC § 55.251(a).

A hearing requestor must make their request in writing 30 days after the publication of the notice of the application and identify the requestor's personal justiciable interest affected by the application, specifically noting the "requestor's location and distance relative to the activity" and "how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public." 30 TAC § 55.251(b), (c); 30 TAC § 295.171.

An affected person is "one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application." 30 TAC § 55.256(a). 30 TAC section 55.256(c) provides relevant factors to be considered in determining whether a person is affected. These factors include, but are not limited to:

- (1) Whether the interest claimed is one protected by the law under which the application will be considered;
- (2) Distance restrictions or other limitations imposed by law on the affected interest;
- (3) Whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) Likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) Likely impact of the regulated activity on use of the impacted natural resource by the person; and

(6) For governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.256(c). In addition, governmental entities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.256(b).

III. Discussion of Hearing Request

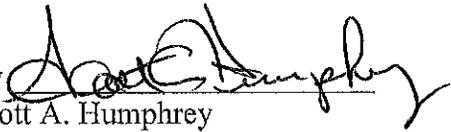
At the time their hearing request had been submitted, Mr. and Mrs. Benjamin resided at 10311 FM 1187 W, Fort Worth, TX 76126. The Applicant had represented to the ED that the Benjamins have since moved from their residence. TCEQ mediator Kyle Lucas forwarded to OPIC property records (attached to this filing) that show Mr. and Mrs. Benjamin have in fact sold the property. Furthermore, Mr. Lucas has attempted to contact the Benjamins but has not been successful. Based on the representations of the Applicant plus the property records for Parker County, OPIC cannot recommend that Mr. and Mrs. Benjamin are affected persons entitled to a contested case hearing. If in response to OPIC's recommendation Mr. and Mrs. Benjamin can show that they own the property or still reside there, OPIC will reconsider its recommendation.

IV. CONCLUSION

For the reasons set forth above, the Office of Public Interest Counsel respectfully recommends that the Commission deny the hearing request submitted by Denis and Vivien Benjamin.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By 

Scott A. Humphrey
Assistant Public Interest Counsel
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CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2012 the foregoing document was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.


Scott A. Humphrey



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Property Year 2012 [Tax Summary](#)

Information Updated 9/26/2012

Property ID: R000071471 Geo ID: 20496.016.001.00

< Previous Property 416 Next Property >

Property Details

Ownership

ROBINSON MARGHALL T & MICHAEL

10311 FM 1187 S
FORT WORTH, TX 76120

Ownership Interest: 1.0000000

Map Number: M-29

Qualified Exemptions

Not Applicable

Legal Information

Legal: Acres: 25.033, TR:, BLK:, SURV: JAMES F GOMER

Situs: FM RD 1187 10311

Property Valuation History

Values by Year		2012	2011	2010	2009	2008	n/a
Improvements	+	\$0	\$0	\$0	\$0	\$0	\$0
Land	+	\$0	\$0	\$0	\$0	\$0	\$0
Production Market	+	\$500,660	\$500,660	\$375,500	\$375,500	\$375,500	\$0
Personal	+	\$0	\$0	\$0	\$0	\$0	\$0
Mineral	+	\$0	\$0	\$0	\$0	\$0	\$0
Total Market	=	\$500,660	\$500,660	\$375,500	\$375,500	\$375,500	\$0
Agricultural Loss	-	\$498,660	\$498,660	\$373,500	\$373,500	\$373,500	\$0
Homestead Cap Loss	-	\$0	\$0	\$0	\$0	\$0	\$0
Total Assessed	=	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$0

Improvement / Buildings Improvement Value: \$0

Group Sequence	Code	Building Description	Year Built	Square Footage	Perimeter Footage
Land Details Market Value: \$0 Production Market Value: \$500,660 Production Value: \$2,000					

Land Code	Acres	Sq Ft	Front Ft	Rear Ft	Depth	Mkt. Value	Prod. Value
A20	25.033	1,090,437	0	0		500,660	2,000

Deed History

Sold By	Volume	Page	Deed Date	Instrument
BENJAMIN DENIS & VIVIEN	2761	1521	1/20/2010	733640
TAPPER JAY B	1851	1389	4/11/2000	

Property Tax Estimation by Entity / Jurisdiction

Code	Description	Taxable Value	Tax Rate per \$100	Tax Factor applied to Taxable Value	Estimated Tax
AL	ALEDO L.S.D.	2,000	\$1.4262	0.014262	\$28.60
COL	JR COLLEGE DISTR	2,000	\$0.11195	0.0011195	\$2.24
HOS	HOSPITAL DISTRICT	2,000	\$0.113	0.00113	\$2.26
LTR	LATERAL ROAD	2,000	\$0.08316	0.0008316	\$1.66
PAR	PARKER COUNTY	2,000	\$0.32702	0.0032702	\$6.54
Total Estimation			\$2.06036	0.0206036	\$41.20

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Southwest Data Solutions is not responsible for any errors or omissions.

MAILING LIST
SADDLE CREEK DEVELOPMENT, LTD
TCEQ DOCKET NO. 2012-0815-WR

FOR THE APPLICANT:

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FOR ALTERNATIVE DISPUTE
RESOLUTION

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REQUESTERS:

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Gwendolyn Hill
Webb Webb & Webb
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