

TCEQ DOCKET NO. 2015-1645-WR

APPLICATION BY POPEK	§	BEFORE THE
& SON FOR WATER USE	§	TEXAS COMMISSION ON
PERMIT NO. 12496	§	ENVIRONMENTAL QUALITY

APPLICANT'S RESPONSE TO HEARING REQUESTS

William Popek, on behalf of Popek and Son, hereby submit this Applicant's Response to Hearing Requests with the Texas Commission on Environmental Quality ("TCEQ") and shows the Commissions the following.

On or about August 20, 2009, William Popek on behalf of Popek and Son filed an application for a Bed and Banks Permit with the TCEQ. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 8, 2010. The application was assigned Permit Number 12496 by TCEQ. The TCEQ Hydrologist, Jessica Hudock also supported the granting of the application in her July 30, 2010 Water Availability Review. All indications from TCEQ are that the permit would be approved pending the 30-day comment period.

During the 30 day comment period, letters were received by TCEQ from John Runnells of Runnells Pierce Ranch, David, Minze of Minze Land Investments, Barrett Franz of Franz Agriculture, J.V., and Matagorda County Drainage District No. 1. These hearing requesters noted several alleged issues in their requests for a hearing. Applicant files this Response to Hearing Requests to respond to each issues raised.

Runnells Pierce Ranch

Mr. Runnells primary concern is that Popek and Son is operating part of their irrigation system in a county drainage easement. He is also concerned that his property could flood as a result. First, there has been no evidence suggested by any requestor or any report of the TCEQ during this application process that would indicate Popek and Son's property contains a county drainage easement. To the contrary, a title report that was previously filed with the TCEQ and is attached here as Exhibit A clearly shows that there are no drainage easements on the subject property. As for Mr. Runnells concern regarding the flooding issue, there have been no documented instances of water backing up on Runnells Pierce Ranch as a result of Popek and Son's operations and no such instances are offered with Mr. Runnell's submission to the TCEQ.

Minze Land Investments

Mr. Minze raised three concerns including (1) Whether or not Popek can prove he is using groundwater to fill the ditch with meters; (2) whether a dam and diversion point should remain in place; and (3) whether Popek is using a public ditch for a private irrigation system. First, Mr. Popek has installed meters on all of his wells and on his pump to make sure that all of the ground water placed in the ditch and pumped out for irrigation can be measured. See Exhibit B which is a certified Test Report from one of these meters. This will ensure that all of the ground water pumped into the ditch can be measured and compared to all of the water pumped out of the ditch for irrigation uses. TCEQ's enforcement division will be more that able to review and compare these numbers once the bed and banks permit is issued to make sure this concern is addressed.

Regarding the dam and diversion point described by Mr. Minze, these devices were in place long before Mr. Popek took possession of the property. What is used is not a dam, but a spill way

system that uses boards to set the height of the water needed to be stored in the ditch from pumping groundwater. An excess water will spill over the boards and flow downstream. Because the system is metered, it is easy to distinguish between water draining through the property from the upstream portion of the ditch and that which is pumped in by Popek. He has enhanced the system and invested considerable capital to make sure the irrigation system complies with all TCEQ requirements and has applied for the bed and banks permit as he was requested to do by the TCEQ. It would appear that the irrigation system configuration on Popek's turf farm is precisely the type that TCEQ would expect to see using a bed and banks permit to accomplish its irrigation goals while complying with environmental regulations.

Mr. Minze's final concern is similar to that of Mr. Runnells. He makes the assumption that the ditch in question on Popek's land is a county drainage easement. Again, there is no evidence suggested by any requestor or any report of the TCEQ during this application process that would indicate Popek and Son's property contains a county drainage easement. As such, Mr. Minze's concerns can be addressed and Mr. Popek's bed and banks permit can be granted by the TCEQ without further hearings on this matter.

Franz Agriculture J.V.

Mr. Franz raises three concerns including (1) How can TCEQ monitor the water from Popek's wells with accuracy; (2) Whether Popek is using a public ditch; and (3) whether the dam on Popek's property will cause water to back up on upstream property. Mr. Franz's first concern has been addressed above in that Popek is using meters on all of his wells and pumps which he, the TCEQ, and any other regulatory authority with jurisdiction can monitor for accuracy. With these meters in place, it will be easy to accurately measure the water pumped from the wells into the

private ditch on Popek's property and pumped back out to irrigate his turf grass crop.

The second concern of Mr. Franz regarding whether the ditch on Popek's property is a public has been addressed above as well. Again, there is no evidence suggested by any requestor or any report of the TCEQ during this application process that would indicate Popek and Son's property contains a county drainage easement.

Matagorda County Drainage District No. 1

Throughout this application process, different parties have referred to the private ditch Popek's property as a tributary of Hardeman Slough. In their January 25, 2011 letter to TCEQ, Matagorda County Drainage District No. 1 refers to the ditch as part of Hardeman Slough as well as a tributary of Caney Creek and the Brazos-Colorado Coastal Basin in Matagorda County, Texas. Upon viewing the ditch in question it appears to be man-made and not a naturally occurring tributary of any creek or slough. The concerns of the Matagorda County Drainage District No. 1 all revolve around whether or not they have jurisdiction over the ditch on Popek's property. Matagorda County Drainage District No. 1 has not offered any evidence or cited any drainage easement filed of record that was ever granted to them. Again, there is no evidence suggested by any requestor or any report of the TCEQ during this application process, including the Matagorda County Drainage District No. 1, that would indicate Popek and Son's property contains a county drainage easement that falls within the requestor's jurisdiction. As such, the Matagorda County Drainage District No. 1 does not have standing to bring a complaint regarding whether or not Popek has applied for a permit through their office.

Mr. Popek has been transparent in his plans to irrigate the subject property and with his application for the bed and banks permit. With meters in place on the subject wells and re-lift

pumps, the concerns of the downstream land owners can be addressed. Because the ditch in question on the Popek property is a private ditch, there are no issues regarding a drainage easement. The irrigation system that is proposed will pose no threat to flooding as any runoff water will be allowed to spill over and flow naturally downstream through the ditch. The boards that are placed in the ditch are only enough to provide the amount of water needed to satisfy the needs of the irrigation operation on the subject property. TCEQ's own investigation of the application for the bed and banks permit supports these conclusions.

Respectfully submitted,

Duckett, Bouligny & Collins, LLP

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Attorney for Popek & Son

CERTIFICATE OF SERVICE

I hereby certify by my signature below that on the 29th day of August, 2016, a true and correct copy of the above and foregoing document was forwarded to the parties on the attached Service List.



RICHARD L. KERZEE

SERVICE LIST

TCEQ DOCKET NO. 2015-1645-WR

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Katy, TX 77450

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Runnells Pasture Company, LTD
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OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
TEXAS RESIDENTIAL OWNER POLICY OF TITLE INSURANCE
ONE-TO-FOUR FAMILY RESIDENCES

GF No. 70541

OWNER'S INFORMATION SHEET

Policy Number **TR 3221710**



Your Title Insurance Policy is a legal contract between you and Old Republic National Title Insurance Company. This policy is not an opinion or report of your title. It is a contract of indemnity, meaning a promise to pay you or to take other action if you have a loss resulting from a covered title risk.

It applies only to an improved one-to-four family residential property or condominium unit. If your land is not either of these, contact us immediately.

Su Póliza de Seguro de Título es un contrato legal entre usted y Old Republic National Title Insurance Company. Esta póliza no es una opinión o reporte en relación a su título de propiedad. Es un contrato de indemnificación, esto es, la promesa de reembolsarle o de tomar cualquier otro tipo de acción si usted sufre una pérdida como resultado de cualquier riesgo cubierto por la póliza.

Esta forma de póliza ha sido designada para ser utilizada exclusivamente en los casos de propiedades en las cuales hay construidas viviendas para no más de cuatro familias o unidades en condominios. Si su propiedad no es ninguna de las anteriores, por favor, notifiquenos inmediatamente.

We insure you against certain risks to your land title. We list these risks on page 2. The following limit your coverage:

- Exclusions on pages 2 and 3.
- Exceptions on Schedule B.
- Conditions on pages 3 and 4.

You should keep the policy even if you transfer the title to your land. If you want to make a claim, see Section 3 under Conditions on page 3.

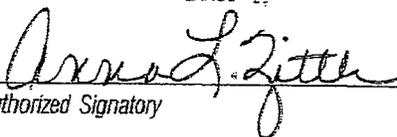
You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. The Policy — and not this sheet — is the legal document. **YOU SHOULD READ THE POLICY VERY CAREFULLY.**

THE TOLL-FREE NUMBER OF OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY IS 1-888-678-1700. YOU MAY CALL THIS NUMBER TO DISCUSS THIS POLICY OR TO MAKE A COMPLAINT. YOU MAY WRITE TO OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY AT THE ADDRESS IN SECTION 3 UNDER CONDITIONS ON PAGE 3.

MATAGORDA COUNTY TITLE CO. LLC
1700 6th STREET
BAY CITY, TEXAS 77414
PHONE 979-244-2700 FAX 979-244-2131

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111


Authorized Signatory

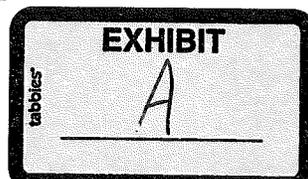
By



President



Secretary



Policy Codes: 1200

**TEXAS RESIDENTIAL OWNER POLICY OF TITLE INSURANCE
ONE-TO-FOUR FAMILY RESIDENCES**

SCHEDULE A

File Number: 70541

Policy Date: January 28, 2008 at 1:16 pm

Policy Number: TR3221710

Policy Amount: [REDACTED]

Premium: [REDACTED]

1. Name of Insured:

Popek and Son, a Texas general partnership

2. We insure your interest in the land covered by this Policy is:

Fee Simple as to Tracts I and II

3. Legal Description of land:

Tract I: (Fee simple)

BEING ALL of Lot Ten (10) of Texas Land & Rice Co. Subdivision, Abstract 252, 261 and 414, according to the map or plat, recorded in Volume 31, Page 339 of the Deed Records of Matagorda County, Texas, **LESS AND EXCEPT:** 5.46 acres conveyed to Matagorda County, Texas, for 40 foot road by instrument dated November 23, 1914, recorded in Volume 1, Page 148 of the County Land Records, of Matagorda County, Texas, (and being the same property described in deed dated June 22, 1992 recorded in Volume 322, Page 513, of the Official Records of Matagorda County, Texas.

LESS AND EXCEPT: Deed from James D. Kinard etux Karen Kinard dated August 5, 1993 to Lower Colorado River Authority conveying a 1.469 acre tract more or less, out of the I. & G. N. R. R. Co. Survey No.3, Block 5, Abstract 252 and a 1.625 acre tract, more or less, out of the I. & G. N. R. R. Co. Survey No.3, Block 5, Abstract 252 and the J. Whitworth Survey, Abstract 414, both in Matagorda County, Texas and being recorded in Volume 413, Page 810 of the Official Records of Matagorda County, Texas, which deed and its description of said tract are made a part hereof as though fully described herein.

Tract II: (Fee Simple)

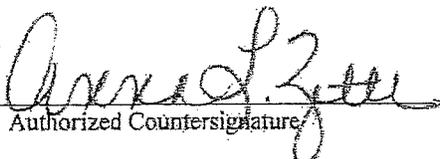
123.08 acres of land, more or less, out of the Daniel Rawls League, Abstract 83, J. Whitworth Survey, Abstract 414, I. & G. N. R. R. Company Survey 3, Block 5, Abstract 252 and I. & G. N. R. R. Survey 4, in Block 5, Abstract 261, in Matagorda County, Texas, and is a part of Lot No. Eleven (11) of the Texas Land & Rice Company Subdivision, a plat of which is recorded in Volume 31, at Page 339, of the Deed Records of Matagorda County, Texas, the said 123.08 acres is the same land set aside to Ed Cook and Margaret Cook in Partition deed dated December 11, 1953, recorded in Volume 254, at Page 24 of the Deed Records of Matagorda County, Texas, and more fully described by metes and bounds in attached Exhibit "A".

File No. 70541

Owner Policy No. Old Republic National Title Insurance Company TR3221710

- p) Memorandum of Oil and Gas Lease, dated October 10, 2001 recorded in Volume 639, Page 560 of the Official Records of Matagorda County, Texas.
- q) Rights of parties in possession
- r) Section 14 of the Conditions and Stipulations of this policy is hereby deleted.

BY:


Authorized Countersignature

File No. 70541

Owner Policy No. Old Republic National Title Insurance Company TR3221710

- d) Agreement with Central Power and Light Company for the installation, operation and maintenance of an underground/overhead electrical service distribution system, as recorded in Volume 621, Page 893, of the Official Records of Matagorda County, Texas. (Affects the 285.54 acres less and except 5.46 acres.)

Tract II:

- e) Undefined pipeline easement dated April 4, 1949, from Ed Cook et al to Tennessee Gas Transmission Co., recorded in Volume 197, Page 345 of the Deed Records of Matagorda County, Texas.
- f) Road right of way dated November 13, 1943, from W.J. Woxter to Matagorda County, Texas, recorded in Volume 3 at Page 29 of the County Land Records of Matagorda County, Texas.

Tract I:

- g) A $\frac{1}{2}$ of the $\frac{1}{8}$ th royalty interest in and to all of the oil, gas, and other minerals in, on, under or that may be produced from the subject property, as set forth in an instrument of record in Volume 99, Page 583, of the Deed Records of Matagorda County, Texas.
- h) $\frac{1}{2}$ of the oil, gas and other minerals, the royalties, bonuses, rentals, and all other rights in connection with the same, as the same are set forth in an instrument recorded in Volume 55, Page 501, of the Official Records of Matagorda County, Texas.
- i) A $\frac{1}{2}$ interest in and to all of the oil, gas, and other minerals in, on, under or that may be produced from the subject property, to Tilford Eugene Clark, $\frac{7}{16}$ th to Lloyd Shoppa and Betty Jean Shoppa, husband and wife and $\frac{1}{16}$ th to James D. Kinard and N. Karen Kinard to as set forth in an instrument of record in Volume 322, Page 519, of the Official Records of Matagorda County, Texas.
- j) An oil, gas, and mineral lease dated June 4, 1998, in favor of Unit Petroleum Company as lessee, and recorded in Volume 509, Page 330, of the Official Records of Matagorda County, Texas. Title to said lease has not been examined subsequent to the date of its execution.
- k) An oil, gas, and mineral lease dated September 30, 1998, in favor of Unit Petroleum Company as lessee, and recorded in Volume 521, Page 352, of the Official Records of Matagorda County, Texas and modified in Volume 610, Page 772 of the Official Records of Matagorda County, Texas. Title to said lease has not been examined subsequent to the date of its execution.

Tract II:

- l) All of the oil, gas and other minerals, the royalties, bonuses, rentals, and all other rights in connection with the same, as the same are set forth in an instrument recorded in Volume 398, Page 540, of the Official Records of Matagorda County, Texas.
- m) An oil, gas, and mineral lease dated November 14, 1976, in favor of C. Neil Johnson, Jr. as lessee, and recorded in Volume 574, Page 195, of the Deed Records of Matagorda County, Texas. Title to said lease has not been examined subsequent to the date of its execution.
- n) An oil, gas, and mineral lease dated October 31, 1979, in favor of Houston Oil & Minerals Corporation as lessee, and recorded in Volume 633, Page 834, of the Deed Records of Matagorda County, Texas. Title to said lease has not been examined subsequent to the date of its execution.
- o) An oil, gas, and mineral lease dated July 30, 1981, in favor of R.H. Engelke as lessee, and recorded in Volume 684, Page 487, of the Deed Records of Matagorda County, Texas. Title to said lease has not been examined subsequent to the date of its execution.

File No. 70541

Owner Policy No. Old Republic National Title Insurance Company TR3221710

SCHEDULE B

EXCEPTIONS FROM COVERAGE

We do not cover loss, costs, attorney's fees and expenses resulting from:

1. ~~The following restrictive covenants of record itemized below, (the Company must either insert specific recording data or delete this exceptions):~~

DELETED
2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Homestead or community property or survivorship rights, if any, of any spouse of any insured.
4. Any titles or rights asserted by anyone, including but not limited to, persons, the public, corporations, governments or other entities,
 - a) to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
 - b) to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
 - c) to filled-in lands, or artificial islands, or
 - d) to statutory water rights, including riparian rights, or
 - e) to the area extending from the line of mean low tide to the line of vegetation, or the right of access to that area or easement along and across that area.
5. Standby fees, taxes and assessments by any taxing authority for the year 2008 and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year.
6. The following matters and all terms of the documents creating or offering evidence of the matters (The Company must insert matters or delete this exception.):
 - a) Deed of Trust lien date January 25, 2008, executed by Popek and Son, a Texas general partnership composed of William Popek and Deborah Lynn Popek, to Richard Waddell, Trustee for the benefit of The First State Bank, Louise, Texas, securing a payment of a certain note in the sum of [REDACTED], executed by Popek and Son, a Texas general partnership composed of William Popek and Deborah Lynn Popek and payable to the order of The First State Bank, Louise, Texas; said Deed of Trust lien of record under county clerk's file no. 080672 Official Records of Matagorda County, Texas.
 - b) Visible and apparent easements, to include but not limited to, any easement for roadway on or across the Land.

Tract I:
 - c) A 40-foot (5.46 acres) right of way, being a public road granted to Matagorda County, in the State of Texas being described by metes and bounds by deed dated September 22, 1914 recorded in Volume 1, Page 148 County Land Records of Matagorda County, Texas.

Policy Codes: 1200

LESS AND EXCEPT: That certain 1.792 acres, more or less, out of the J. Whitworth Survey, Abstract 414, in Matagorda County, Texas, conveyed by deed dated August 3, 1993, from Marjorie Pearl Cook Brandenburg to the Lower Colorado River Authority, recorded in Volume 413, Page 805 of the Official Records of Matagorda County, Texas, to which deed and its description is made a part hereof as though fully described herein.



Quality Products are our Business. Quality Service is our Ethic

Great Plains Meter Inc.

CERTIFIED TEST REPORT

CUSTOMER: POPEK'S TURF
 MODEL NO: MD308-1300OV
 METER SERIAL NO: GP11-0788

CONFIGURATION

METER INSIDE DIAMETER: 7.872
 METER OUTSIDE DIAMETER: 8
 TEST DATE: 2/24/2011
 TEST FACILITY: Volumetric
 IDEAL TEST CONSTANT: 3768

CALIBRATION DATA

	Tested TC	GPM	Accuracy
1	3772	798	100.1

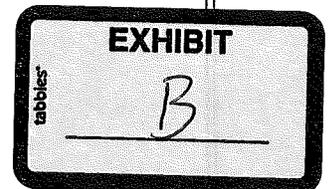
CERTIFIED BY: Paul Hobbs DATE: 2/24/2011

This calibration was performed on a gravimetric or volumetric test facility, traceable to the National Institute of Standards and Technology, USA. The estimated flow measurement uncertainty of the calibration facilities are:
 Gravimetric +/- 0.15% Volumetric +/- 0.5%



Great Plains Meter Inc.

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 Aurora, Nebraska 68818 USA
 PHONE (402) 694-4114 / FAX (402) 694-6688
 WEB SITE: <http://www.mccrometer.com> E-MAIL: info@mccrometer.com



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