

# TCEQ Interoffice Memorandum

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TO: Office of the Chief Clerk  
Texas Commission on Environmental Quality

THRU:  Liana Delgado, Team Leader  
Water Rights Permitting Team

FROM: Sarah Henderson, Project Manager  
Water Rights Permitting Team

DATE: September 21, 2016

SUBJECT: TCEQ Docket No. 2016-0532-WR  
Robert D. Rogers, Jr.  
WRTP 12452; CN603433491, RN105762181  
Application No. 12452 for Temporary Water Use Permit  
Texas Water Code § 11.138, Requiring Limited Mailed Notice  
Cottonwood Creek, Trinity River Basin  
Ellis County

The Executive Director received an application from Robert D. Rogers, Jr. seeking a Temporary Water Use Permit pursuant to Texas Water Code § 11.138 and Texas Commission on Environmental Quality Rules Title 30 Texas Administrative Code §§ 295.1, *et seq.*

The application was received on April 20, 2009. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 7, 2009. Notice of the application was mailed on October 6, 2009 to the downstream water right holders in the Trinity River Basin. Two requests for a contested case hearing were received; however, one request was subsequently withdrawn.

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

The application is now technically complete and the staff has recommended that the application be granted based on the analysis in the technical review memos.

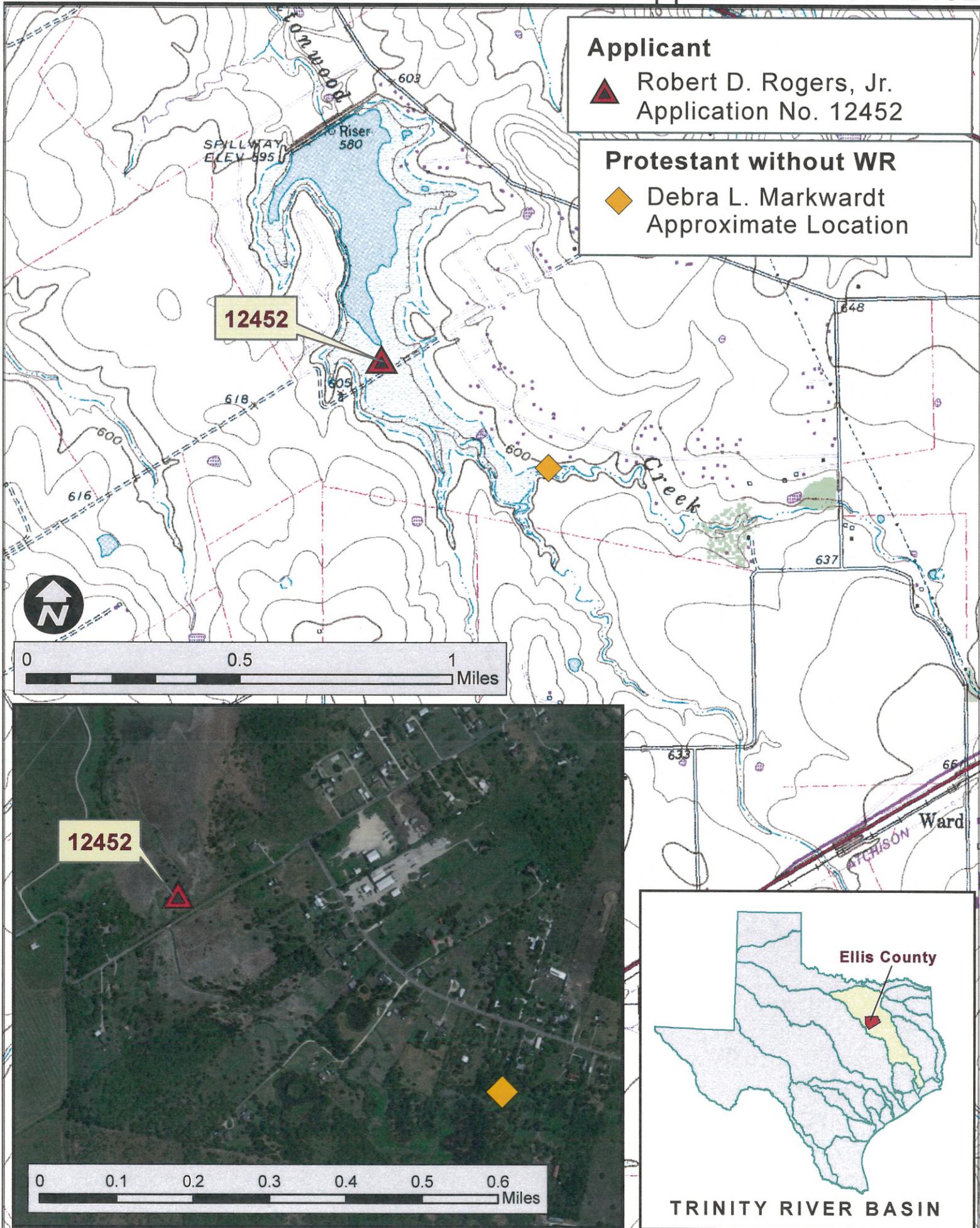
Below is the caption for this application:

TCEQ Docket No. 2016-0532-WR. Consideration of an application for Temporary Water Use Permit 12452 by Robert D. Rodgers, Jr. to divert and use not to exceed 900 acre-feet of water within a period of three years from a reservoir (Flood Prevention Dam No. 9) authorized by Certificate of Adjudication No. 08-3401 on Cottonwood Creek,

tributary of Newton Branch, tributary of Soap Creek, tributary of Mountain Creek, tributary of West Fork Trinity River, tributary of Trinity River, Trinity River Basin, at a maximum diversion rate of 0.334 cfs (150 gpm) for mining purposes (gas well fracturing) in Ellis County. The Executive Director recommends granting the application for 726 acre-feet subject to flow requirements within the draft permit. The Commission will consider all timely filed hearing requests and related responses and replies. (Sarah Henderson, Linda Horng)



Sarah Henderson, Project Manager  
Water Rights Permitting Team



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## NOTICE OF TEMPORARY WATER RIGHTS APPLICATION

Application No. 12452

**SUMMARY.** Robert D. Rogers, Jr. has applied for a temporary permit to divert and use not to exceed 900 acre-feet of water within a period of three years from Cottonwood Creek, Trinity River Basin, for mining purposes in Ellis County. More information on the application and how to participate in the permitting process is given below.

**APPLICATION.** Robert D. Rogers, Jr., 904 Columbia Drive, Southlake, Texas 76092, applicant seeks a Temporary Water Use Permit pursuant to Texas Water Code (TWC) §11.138 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §295.1, *et seq.* Notice is being mailed to the 33 downstream water right holders of record in the Trinity River Basin pursuant to 30 TAC §295.154.

Applicant seeks a temporary water use permit to divert and use not to exceed 900 acre-feet of water from a reservoir, authorized by Certificate of Adjudication No. 08-3401, on Cottonwood Creek, tributary of Mountain Creek, tributary of the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, within a period of three years at a maximum diversion rate of 0.334 cfs (150 gpm) for mining purposes (natural gas well drilling and fracturing) in Ellis County, Texas, 76065. The diversion point on the reservoir will be located at Latitude 32.4806° N, Longitude 97.0517° W, approximately 12.0 miles northwest of Waxahachie, Texas and 2.5 miles west of Midlothian, 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 April 20, 2009. Additional information and fees were received on June 15, 2009. The application was declared administratively complete and accepted for filing on July 7, 2009.

**PUBLIC COMMENT / PUBLIC MEETING.** Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by October 28, 2009. 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 by October 28, 2009. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by October 28, 2009.

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 or electronically at <http://www.tceq.state.tx.us/about/comments.html>. 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](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.state.tx.us>.

Issued: October 6, 2009

TEMPORARY WATER USE PERMIT

PERMIT NO. 12452

TYPE: §11.138

Permittee: Robert D. Rogers, Jr.

Address: 830 Forest Lakes Dr.  
Keller, Texas 76248

Received: April 20, 2009

Granted:

Purpose: Mining

County: Ellis

Watercourse: Cottonwood Creek, tributary of  
Newton Branch, tributary of  
Soap Creek, tributary of  
Mountain Creek, tributary of the  
West Fork Trinity River, tributary  
of the Trinity River

Watershed: Trinity River Basin

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. Robert D. Rogers, Jr., applicant, seeks a temporary water use permit to divert and use not to exceed 900 acre-feet of water within a three-year period from an existing reservoir, authorized under Certificate of Adjudication No. 08-3401, located on Cottonwood Creek, tributary of Newton Branch, tributary of Soap Creek, tributary of Mountain Creek, tributary of the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, for mining purposes (for natural gas well drilling and fracturing) in Ellis County, Texas.
3. The water will be diverted at a maximum diversion rate of 0.334 cfs (150 gpm).
4. Notice was given to the water right holders of record with diversion points downstream of the proposed diversion point and two requests for a contested case hearing were received for this application.

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.
3. The Executive Director determined, based on the applicant's requested diversion rate of 0.334 cfs (150 gpm), the maximum amount of water the applicant could divert over a three year period would be 726 acre-feet of water.
4. The Executive Director recommends that special conditions be included.

NOW, THEREFORE, Temporary Water Use Permit No. 2452 is issued to Robert D. Rogers, Jr., subject to the following terms and conditions:

1. USE

Permittee is authorized to divert and use not to exceed 726 acre-feet of water from a reservoir on Cottonwood Creek, tributary of Newton Branch, tributary of Soap Creek, tributary of Mountain Creek, tributary of the West Fork Trinity, tributary of the Trinity River, Trinity River Basin, within a three-year period for mining purposes in Ellis County, Texas.

2. DIVERSION

A. Permittee is authorized to divert water from a point located 12.0 miles northwest of Waxahachie, Texas, and 2.5 miles west of Midlothian, Texas, also being at 32.480556 °N Latitude, 97.051667 °W Longitude in Ellis County.

B. Diversion is authorized at a maximum diversion rate of 0.334 cfs (150 gpm).

3. SPECIAL CONDITIONS

A. Diversion of water under this permit shall be authorized when streamflows exceed the values below at USGS Gage No. 08057000 Trinity River at Dallas, Texas, subject to the requirements of Special Conditions B-C below:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Subsistence Flow (cfs)	26	26	37	37	37	22	22	22	15	15	15	26
Base Flow (cfs)	50	50	70	70	70	40	40	40	50	50	50	50

- B. Permittee shall not divert water authorized by this temporary permit if streamflow at USGS Gage No. 08057000 is below the applicable subsistence flow.
- C. If streamflow at USGS Gage No. 08057000 is greater than the applicable base flow, Permittee may divert water authorized under this temporary permit unless streamflows fall below the applicable base flow standards, in which case Special Condition B applies to the diversions.
- D. Permittee shall install and maintain a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the point authorized above in Paragraph 2 DIVERSION and maintain measurement records.
- E. Permittee shall allow representatives of the TCEQ reasonable access to the property to inspect the measuring device and records.
- F. Upon diversion and use of the water authorized herein, this temporary water use permit shall expire and be of no further force and effect.
- G. This temporary water use 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.
- H. This temporary water use permit is junior in priority to all existing water rights in the Trinity River Basin.
- I. 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.
- J. The issuance of this temporary water use 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 water use 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 temporary water use permit.

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

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

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For The Commission

DATE ISSUED:

**DRAFT**

**Texas Commission on Environmental Quality**  
**INTEROFFICE MEMORANDUM**

To: Sarah Henderson, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting & Availability Section

Date: January 30, 2013

Through:  Kathy Alexander, Ph. D.  
Technical Specialist  
Water Rights Permitting & Availability Section

Stephen Densmore, Team Leader   
Surface Water Availability & Interstate Compacts Team

From: Leonard Oliver, Hydrologist  
Surface Water Availability & Intestate Compacts Team

Subject: Robert D. Rodgers Jr.  
WRTP 12452  
CN60343491  
Cottonwood Creek, Trinity River Basin  
Harrison County

**HYDROLOGY REVIEW ADDENDUM**

On December 1, 2009, staff recommended denial of the applicant's request to divert 900 ac-ft per year over a three year period. Based on the applicant's requested diversion rate of 0.334 cfs, staff determined that the maximum amount the applicant could divert over a three year period would be 726 ac-ft. Based on improved conditions in the Trinity River Basin, staff reviewed its previous recommendations. Staff is now of the opinion that an additional flow requirement would mitigate any impacts on existing water rights, should they be determined to occur.

Based on the adopted environmental flow standards, Resource Protection staff recommended the following special conditions be include in the permit:

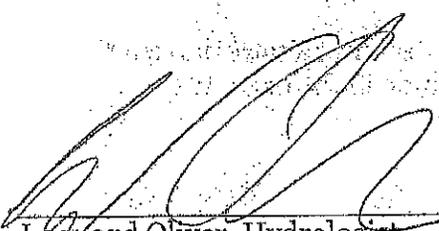
1. Diversion of water under this permit shall be authorized when streamflows exceed the values below at USGS Gage No. 08057000 Trinity River at Dallas, Tx, subject to the requirements of Special Conditions 2-3 below:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Base Flow (cfs)	50	50	70	70	70	40	40	40	50	50	50	50
Subsistence Flow (cfs)	26	26	37	37	37	22	22	22	15	15	15	26

2. Permittee shall not divert water authorized by this temporary permit if streamflow at USGS Gage No. 08057000 is below the applicable subsistence flow.
3. If streamflow at USGS Gage No. 08057000 is greater than the applicable base flow, Permittee may divert water authorized under this temporary permit unless streamflows fall below the applicable base flow standards, in which case Special Condition 2 applies to the diversions.
4. In order to minimize entrainment and impingement of aquatic organisms, the Permittee shall install a screen with a mesh size of 0.25 inches or smaller on the diversion structure(s).

The diversions requested in the application are for a short period of time (three years). In addition, this temporary permit will be junior to all existing water rights and will be subject to suspension if water is needed for senior and superior water rights. Staff is of the opinion that the requirements imposed by Resources Protection staff would mitigate any impacts on existing water rights, should they be determined to occur.

Staff can support granting the application for 726 acre-feet, provided the permit contains Resource Protection staff's recommendation.



Leonard Oliver, Hydrologist

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

To: Sarah Henderson, Project Manager      Date: January 24, 2013  
Water Rights Permitting Team  
Water Rights Permitting & Availability Section

Through: *CL* Chris Loft, Team Leader  
*1/24/13* Resource Protection Team  
Water Rights Permitting & Availability Section

*RH* Robert Hansen, Aquatic Scientist  
*1/24/13* Resource Protection Team  
Water Rights Permitting & Availability Section

From: *KG* Kyle Garmany, Aquatic Scientist  
*1/24* Resource Protection Team  
Water Rights Permitting & Availability Section

Subject: Robert Rogers  
WRTP 12452  
CN60343491  
Water Right Application No. 12452 for a Temporary Water Use Permit  
Flood Prevention Dam No. 9 on Cottonwood Creek  
Trinity River Basin

**Application Summary:** Robert Rogers, applicant seeks a temporary water use permit to divert and use not to exceed 900.0 acre-feet of water within a period of three years from a reservoir (Flood Prevention Dam No. 9) authorized by Certificate of Adjudication No. 08-3401 on Cottonwood Creek, tributary of Soap Creek, tributary of Mountain Creek, tributary of West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, at a maximum diversion rate of 0.334 cfs (150 gpm) for mining (gas well fracturing) purposes in Ellis County.

**Environmental Analysis Addendum:** In the November 24, 2009 environmental analysis memo, Resource Protection staff provided several special conditions to be included in the final permit. However, on April 20, 2011, TCEQ adopted environmental flow standards for the Trinity River Basin which include instream flow requirements applicable to the applicant's diversion location.

This review is conducted in accordance with §11.471 of the Texas Water Code and with TCEQ administrative rules which include 30 TAC §298 Subchapter B (Trinity and San Jacinto Rivers,

and Galveston Bay). According to 30 Texas Administrative Code §298.225(c)(2) the nearest stream gage, USGS Gage No. 08057000 - Trinity River at Dallas, is located approximately 31 miles downstream of the applicant's proposed diversion point. The environmental flow standards for this segment of the Trinity River are shown in Table 1.

**Table 1. Environmental flow standards (cfs) at Gage No. 08057000 - Trinity River at Dallas, TX.**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Subsistence Flow	26	26	37	37	37	22	22	22	15	15	15	26
Base Flow	50	50	70	70	70	40	40	40	50	50	50	50

Diversions of water under this permit shall be authorized when streamflows exceed the above values at USGS Gage No. 08057000 (Trinity River at Dallas) subject to the requirements of the Special Conditions below.

**Coastal Zone Management Review:** Freshwater inflows are important for maintaining the historical productivity of bays and estuaries along the Gulf Coast. The proposed temporary diversion is located more than 200 river miles from the Gulf of Mexico and does not meet the criteria requiring a determination of consistency with Coastal Management Program goals and policies.

### SUMMARY

Applicant seeks a temporary water use permit to divert and use not to exceed 900.0 acre-feet of water within a period of three years from a reservoir (Flood Prevention Dam No. 9) authorized by Certificate of Adjudication No. 08-3401 on Cottonwood Creek, tributary of Soap Creek, tributary of Mountain Creek, tributary of West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, at a maximum diversion rate of 0.334 cfs (150 gpm) for mining (gas well fracturing) purposes in Ellis County.

**Resource Protection staff recommend the following special condition be adopted in the permit, if granted:**

1. Diversions of water under this permit shall be authorized when streamflows exceed the following values at USGS Gage No. 08057000 (Trinity River at Dallas) subject to the requirements of the Special Conditions 2-3 below:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Subsistence Flow	26	26	37	37	37	22	22	22	15	15	15	26
Base Flow	50	50	70	70	70	40	40	40	50	50	50	50

2. Permittee shall not divert water authorized by this permit if streamflow at USGS Gage No. 0805700 is below the applicable subsistence flow.
  
3. If streamflow at USGS Gage No. 0805700 is greater than the applicable base flow, the permittee may divert water authorized under this permit unless the streamflow falls below the applicable base flow standard in which case Special Condition 2 applies to the diversions.

All other analyses and recommendations in the November 24, 2009 environmental memorandum remain unchanged unless specifically addressed in this addendum.

# Texas Commission on Environmental Quality

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## INTEROFFICE MEMORANDUM

To: Sarah Henderson, Application Manager  
Water Rights Team  
Water Rights Permitting & Availability Section

Through: *SB* Lann Bookout, Team Leader  
Surface Water Availability & Interstate Compacts Team  
*KA* Kathy Alexander, Hydrologist (Work Leader)  
Surface Water Availability & Interstate Compacts Team

From: Leonard Oliver, Hydrologist  
Surface Water Availability & Interstate Compacts Team

Subject: Robert D. Rodgers Jr.  
WRPERM 12452  
CN60343491  
Cottonwood Creek  
Trinity River Basin  
Ellis County

Jan. 11, 2009

### HYDROLOGY REVIEW

#### Application Summary

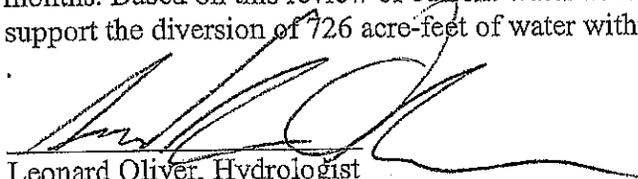
The applicant seeks a Temporary Water Use Permit to divert and use not to exceed 900 acre-feet of water within a period of three-years from a reservoir (Flood Prevention Dam No. 9) authorized by Certificated of Adjudication No. 08-3401 on Cottonwood Creek, Trinity River Basin, at a maximum diversion rate of 0.334 cfs (150 gpm) for mining purposes (gas well fracturing) in Ellis County.

#### Hydrology Review and Conclusion

Staff calculated that given the applicant's requested diversion rate (0.334 cfs, apx. 242 acft/yr) the applicant could not divert 900 acft over a three year period. Therefore the maximum amount that the applicant could divert would be 242 acft annually and 726 acft over a three year period. Instream uses staff recommend that the permit owner be required to limit diversions to times when the reservoir is spilling and water is flowing downstream, if the permit is granted. Staff used the Current Conditions Simulation of the Trinity WAM, which includes return flows and

Robert D. Rodgers Jr.  
Application 12452  
Trinity River Basin  
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maximum reported water use for a 10 year period to determine whether water would be available on a temporary basis. The period of record for the Trinity River Basin WAM is 1940 through 1996. The model indicates that there is no available uncommitted water in 75% percent of the months. Based on this review of current water availability, there is insufficient water available to support the diversion of 726 acre-feet of water within a period of three-years.



Leonard Oliver, Hydrologist

# Texas Commission on Environmental Quality

## INTEROFFICE MEMORANDUM

**To:** Sarah Henderson, Application Manager      **Date:** November 24, 2009  
Water Rights Team  
Water Rights Permitting & Availability Section

**Through:** *DL* Chris Loft, Team Leader  
*11/24/09* Resource Protection Team  
Water Rights Permitting & Availability Section

*DG*  
*11/24/09*  
*for* Gregg Easley, Aquatic Scientist  
Resource Protection Team  
Water Rights Permitting & Availability Section

**From:** *JW* Justin Degrate, Aquatic Scientist  
*11/24/09* Resource Protection Team  
Water Rights Permitting & Availability Section

**Subject:** Robert Rogers  
WRTP 12452  
CN60343491  
Water Right Application No. 12452  
Flood Prevention Dam No. 9, Cottonwood Creek  
Trinity Basin, Ellis 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 a temporary water use permit to divert and use not to exceed 900.0 acre-feet of water within a period of three years from a reservoir (Flood Prevention Dam No. 9) authorized by Certificate of Adjudication No. 08-3401 on Cottonwood Creek, tributary of Soap Creek, tributary of Mountain Creek, tributary of West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, at a maximum diversion rate of 0.334 cfs (150 gpm) for mining (gas well fracturing) purposes in Ellis County.

## INSTREAM USES

**Aquatic and Riparian Habitats:** The application requests temporary authorization to divert over a three year period 900 acre-feet of water per year from any point along the perimeter of the reservoir (Flood Prevention Reservoir No. 9). The reservoir is located on Cottonwood Creek. The creek continues approximately 2.35 miles to its confluence with Soap Creek. Soap Creek then continues another 1.70 miles to its confluence with Mountain Creek. The confluence of Soap Creek with Mountain Creek is within the surface profile of Joe Pool Lake. Mountain Creek was dammed in 1985 to form Joe Pool Lake. According to *The Handbook of Texas Online* (Ellis et al. 2001) the lake is operated by the Trinity River Authority for conservation, flood control, recreation, and municipal water supply. Recreation facilities at Joe Pool Lake include a number of parks, paved boat ramps and parking lots, public swimming areas, and a public marina. Joe Pool Lake is stocked with bass and catfish. Based upon observations of the area during a site visit conducted by Instream staff on November 10, 2009, the land is mostly rangeland used for grazing cattle. However, several areas surrounding the applicant's property have been converted for housing developments. Based upon information gathered during the November 10, 2009 site visit and information provided in the application, the habitat downstream of Flood Prevention Reservoir No. 9 appears to be high quality aquatic habitat. Furthermore, this segment of Cottonwood Creek appears to flow perennially; this is further evidenced from communication with the applicant. Therefore, instream staff is of the opinion that diversions should not take place unless the reservoir is spilling in order to maintain downstream habitats. The spillway structure for the reservoir is a modified morning glory that has a constant spill at elevations above 583 ft above mean sea level.

**Recreational Uses:** There are currently no known recreation uses for Flood Prevention Reservoir No. 9 at the requested diversion location.

**Water Quality:** Based on the *2004 Atlas of Texas Surface Waters (TCEQ)*, the nearest classified segment downstream of the proposed diversion is Segment 0838 Joe Pool Lake. According to the *2000 Texas Water Quality Standards (TCEQ)*, the designated uses of Segment 0838 include high aquatic life use, contact recreation, and public water supply use. The *2008 Texas Water Quality Inventory, (TCEQ)* indicates that all uses are fully supported. The proposed project should not cause adverse effects to water quality for downstream water bodies.

**Bay and Estuary Freshwater Inflows:** Freshwater inflows are critical for maintaining the historical productivity of bays and estuaries along the Gulf Coast. The proposed project site is located in North-Central Texas and is significantly more than 200 miles from the Gulf Coast. Therefore, the proposed temporary diversion should not have any adverse impact on the state's bay and estuaries. However, the cumulative effects of all diversions in the Trinity Basin are unknown at this time.

## SUMMARY

Applicant seeks a temporary water use permit to divert and use not to exceed 900.0 acre-feet of water within a period of three years from a reservoir (Flood Prevention Reservoir No. 9) authorized by Certificate of Adjudication No. 08-3401 on Cottonwood Creek, tributary of Soap Creek, tributary of Mountain Creek, tributary of West Fork Trinity River, tributary of the Trinity River, Trinity River Basin, at a maximum diversion rate of 0.334 cfs (150 gpm) for mining purposes in Ellis County.

**Instream Uses staff recommend the following special conditions be adopted in the permit, if granted:**

**Permit owner shall limit diversions to times when the reservoir is spilling and water is flowing downstream.**

This instream use assessment was conducted using current TCEQ operation procedures and policies and available data and information. 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.

## LITERATURE CITED

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

TCEQ. 2004. Atlas of Texas Surface Waters: Maps of the Classified Segments of Texas Rivers and Coastal Basins. Publication No. GI-316. Texas Commission on Environmental Quality. Austin, Texas.

TCEQ. 2008. Texas Water Quality Inventory and 303(d) List. Texas Commission on Environmental Quality.

TCEQ. 2000. Texas Water Quality Standards. Texas Commission on Environmental Quality.