

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## NOTICE OF HEARING

**DON FRAZIER CLARK, DUSTIN K. JONES, AND  
DONNA CLARK JONES, INDIVIDUALLY AND AS A TRUSTEE FOR  
CADEN R. JONES AND COLTEN H. JONES  
SOAH Docket No. 582-17-4027  
TCEQ Docket No. 2011-0085-WR  
Application No. 3808C**

### **APPLICATION.**

Don Frazier Clark, Dustin K. Jones, and Donna Clark Jones, individually and as trustee for Caden R. Jones and Colten H. Jones, P.O. Box 947, Comanche, Texas, 76442, (Applicants or Permittees) seek to amend Water Use Permit No. 3808 pursuant to Texas Water Code § 11.122 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) § 295.1, *et seq.*

Applicants have applied for an amendment to Water Use Permit No. 3808 to extend the expiration date of their term authorization to divert and use water from a reservoir on Copperas (Rush) Creek, and a point on Copperas (Rush) Creek, Brazos River Basin in Comanche County.

Water Use Permit No. 3808 authorizes Permittees to close the ports on the Soil Conservation Service (SCS) Floodwater Retarding Dam No. 1, on Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River, Brazos River Basin, and to impound 1,271 acre-feet of water.

The Permittees are also authorized to divert and use not to exceed 1,060 acre-feet of water per year from two points on the above mentioned reservoir and one point on Copperas (Rush) Creek for agricultural purposes to irrigate 530 acres of land out of a 2,035 acre tract of land in Comanche and Eastland Counties. The permit also authorizes the use of the bed and banks to convey water from the reservoir to the diversion point on the creek. The Applicants indicated that the reservoir and diversion points are located in zip code 76442.

Water Use Permit No. 3808 contains a special condition which states "In lieu of Special Condition 1.a., the authorization to divert and use water shall expire and become null and void on December 31, 2009, without further Commission action, and thereafter permittees shall open the ports in the service spillway to be opened allowing the reservoir to return to 200 acre-foot capacity level or less and maintain the reservoir. The impoundment may be used for domestic and livestock purposes, unless prior to such date the owner applies for and is subsequently granted an extension hereof." Other special conditions apply.

Applicants seek to amend Water Use Permit No. 3808 by extending the term authorization expiration date.

The application and a portion of the fees were received on April 30, 2009. Additional information and fees were received on August 19, 2009, and additional information August 28, and September 3, 2009. The application was accepted for filing and declared administratively complete on September 11, 2009.

The Executive Director has completed the technical review of the application and based on the results of the water availability analysis, appropriated but unused water is not available in the Brazos River Basin to support the Applicants' request. Staff therefore recommends that the application be denied.

### **CONTESTED CASE HEARING.**

SOAH will conduct a preliminary hearing on this application at:

**10:00 a.m. – June 19, 2017  
William P. Clements Building  
300 West 15th Street, 4th Floor  
Austin, Texas 78701**

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, allow an opportunity for settlement discussions, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding will be similar to a civil trial in state district court.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 11, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

The applicant is automatically a party in this hearing. If anyone else wishes to be a party to the hearing, he or she must attend the hearing and show how he or she would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and any person may request to be a party. Only persons named as parties may participate at the hearing.

**In accordance with 1 Tex. Admin. Code § 155.401(a), Notice of Hearing, “Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH.”**

### **INFORMATION.**

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at 800-687-4040. General information about the TCEQ can be found at <http://www.tceq.texas.gov/>.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at 512-475-3445, at least one week prior to the hearing.

Issued: May 15, 2017

*Bridget C. Bohac*

Bridget C. Bohac, Chief Clerk  
Texas Commission on Environmental Quality