

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Commissioners

DATE: July 30, 2008

THRU: Todd Chenoweth, Director
Water Supply Division *TC*

Robin Smith, Attorney *RS*
Environmental Law Division

FROM: Kellye Rila, Section Manager *KR*
Water Rights Permitting & Availability Section

SUBJECT: Herbst Holdings, Ltd.
Docket # 2008-0652-WR
ADJ 3149
CN602819252
RN101484103
Application No. 21-3149B to Amend Certificate of Adjudication No. 21-3149
TWC §11.122
East Frio River, Nueces River Basin
Real County

CHIEF CLERKS OFFICE

2008 AUG - 1 PM 2: 02

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Supplement to Memorandum for Herbst Holdings, Ltd.:

Concerning whether there are impacts to water rights or the environment beyond the full use assumption, the Executive Director believes that there are none. This amendment is to add industrial use to its authorized agricultural use. This application does not change a diversion point or change a non-consumptive use to a consumptive use. Also, there is no specific pattern of use required in the existing permit that will be changed.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

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

DATE: August 1, 2008

FROM: Ron Ellis, Project Manager ^{RE}
Water Rights Permitting Team

SUBJECT: Herbst Holdings, Ltd.
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Supplemental Backup Documents

Attached is the only comment letter received for this application.

CHIEF CLERKS OFFICE

2008 AUG - 1 PM 4: 21

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TIMOTHY L. BROWN

ATTORNEY AT LAW
1600 WEST 38TH STREET, SUITE 206
AUSTIN, TEXAS 78731

WR
39341

TELEPHONE: (512) 371-7070

FACSIMILE: (512) 450-0389

September 21, 2007

OPA

H SEP 25 2007
BY pl

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

2007 AUG -11 PM 4: 21
CHIEF CLERK'S OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

RE: Application No. 21-3149, Herbst Holdings, Ltd., Application to Amend Certificate of Adjudication No. 21-3149

Dear LaDonna:

Enclosed please find an original and one copy of this letter from the City of Corpus Christi, Texas ("City") requesting a contested case hearing in the above-referenced matter. PLEASE FILE STAMP THE COPY AND RETURN WITH THE ENCLOSED SELF-ADDRESSED STAMPED ENVELOPE TO MY ATTENTION.

In support of its request, the City submits the following information in compliance with the Commission's rules for requests for contested case hearings:

- (1) City of Corpus Christi, Texas-Protestant
1201 Leopard
P.O. Box 9277
Corpus Christi, Texas 78469-9277
Phone: (361) 826-3360
Facsimile: (361) 826-3239
- (2) The Applicant's name is Herbst Holdings, Ltd.
- (3) The City requests a contested case hearing

Ms. LaDonna Castañuela, Chief Clerk

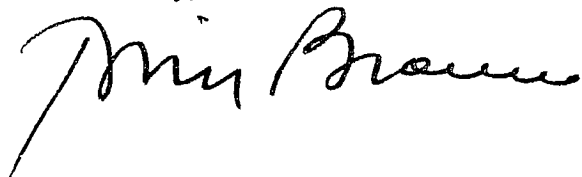
September 21, 2007

Page 2

- (4) The City is opposed to the requested amendment to the portion of Certificate of Adjudication No. 14-1815 acquired by Applicants so as to authorize the diversion and use of water for the additional purpose of industrial purposes.
- (a) There is insufficient water available for diversion for industrial purposes without impairing superior and senior water rights; and,
- (b) By taking water for industrial purposes effectively constitutes a new appropriation and there is no unappropriated water available; and
- (c) The net impact of the amendment will be that an increased amount of water will be appropriated over that which would occur without the amendment, thereby negatively impacting the City's water rights and environmental flows of the rivers and the bay.
- (5) The City would consider withdrawing this protest and request for a contested case hearing if the Applicants would agree to accept a temporary amendment for the use of water for industrial purposes, to expire two years after the date the permit is granted, after which the water right would revert solely to irrigation purposes.

I represent the City in this matter, so please forward any notices and correspondence to my attention. If you have any questions, please call me at (512) 371-7070.

Sincerely,



Timothy L. Brown

Attorney for the City of
Corpus Christi, Texas

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 21-3149 OWNER: Estate of Ora L. Rogers,
Deceased
c/o Howard Dale Rogers,
Independent Executor
3002 Lakeside Drive
Austin, TX 78723

COUNTY: Real

PRIORITY DATE: December 31, 1953

WATERCOURSE: East Frio River,
tributary of the
Frio River, tribu-
tary of the Nueces
River

BASIN: Nueces River

WHEREAS, by final decree of the 73rd Judicial District Court of Bexar County, in Cause No. 82CI-01498 In Re: The Adjudication of Water Rights in the Frio-Atascosa Rivers Watershed of the Nueces River Basin, dated April 12, 1982, a right was recognized under Claim 1585 authorizing the Estate of Ora L. Rogers, Deceased, to appropriate waters of the State of Texas as set forth below;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Nueces River Basin is issued to the Estate of Ora L. Rogers, Deceased, subject to the following terms and conditions:

1. USE

Owner is authorized to divert and use not to exceed 30 acre-feet of water per annum from the East Frio River to irrigate a maximum of 28 acres of land out of a larger tract of land located in the J. B. Steadham Survey 1536.3, Abstract 736, Real County, Texas, said larger tract of land being described as follows:

- (1) BEGINNING at a point in the west line of the J. B. Steadham Survey 1536.3, Abstract 736, which bears N 27°30'E, 345 feet from the southwest corner of said survey;
- (2) THENCE N 88°00'E, 175.70 feet to an iron pin in the south line of Cypress Creek Road;
- (3) THENCE S 61°31'E, 458.80 feet to an iron pin for corner;
- (4) THENCE N 88°39'E, 292.19 feet to an iron pin for corner;
- (5) THENCE S 69°15'E, 1670.48 feet to the northeast corner of Lot 4, Block 1 of the Cypress Creek Subdivision;
- (6) THENCE N 24°30'E, 95.00 feet to a fence corner;
- (7) THENCE S 52°07'W, 116.80 feet to a fence corner;
- (8) THENCE N 24°27'E, 1099.20 feet to a point in fence;
- (9) THENCE N 17°22'W, 119.40 feet to a point in fence;
- (10) THENCE N 21°38'E, 611.10 feet to a point in the north line of said Steadham Survey;
- (11) THENCE N 63°W, 1050.18 feet to a point for a corner;
- (12) THENCE S 19°30'W, 680.80 feet to a point for a corner;
- (13) THENCE N 62°48'W, 1165.00 feet to a point for a corner;
- (14) THENCE S 27°00'W, 450.00 feet to a point for a corner;

Certificate of Adjudication 21-3149

(15) THENCE N 63°00'W, 327.78 feet to the most westerly northwest corner of said Survey 1536.3;

(16) THENCE S 27°30'W, 1168.89 feet to the place of beginning.

2. DIVERSION

A. Location:

At a point on the East Frio River in the J. B. Steadham Survey 1536.3, Abstract 736, Real County, Texas.

B. Maximum Rate: 1.33 cfs (600 gpm).

3. PRIORITY

The time priority of owner's right is December 31, 1953.

The locations of pertinent features related to this certificate are shown on Page 1 of the Frio-Atascosa Rivers Watershed Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Department of Water Resources, Austin, Texas and the Real County Clerk.

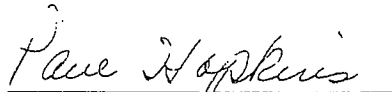
This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 73rd Judicial District Court of Bexar County, Texas, in Cause No. 82CI-01498, In Re: The Adjudication of Water Rights in the Frio-Atascosa Rivers Watershed of the Nueces River Basin, dated April 12, 1982, and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to senior and superior water rights in the Nueces River Basin.

This certificate of adjudication is issued subject to the Rules of the Texas Department of Water Resources and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.

This water right is appurtenant to and is an undivided part of the above-described land within which irrigation is authorized. A transfer of any portion of the land described includes, unless otherwise specified, a proportionate amount of the water right owned by the owner or seller at the time of the transaction.

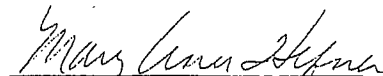
TEXAS WATER COMMISSION


Paul Hopkins, Chairman

DATE ISSUED:

MAY 11 1984

ATTEST:


Mary Ann Hefner, Chief Clerk