

# DYKEMA COX SMITH

Dykema Cox Smith  
Weston Centre  
112 E. Pecan Street, Suite 1800  
San Antonio, Texas 78205

WWW.DYKEMA.COM  
Tel: 210.554.5500  
Fax: 210.226.8395

**Rene Ruiz**  
Direct Dial: 210.554.5328  
Email: [RRuiz@dykema.com](mailto:RRuiz@dykema.com)

Board Certified  
Administrative Law  
Texas Board of Legal Specialization

June 15, 2015

Office of the Chief Clerk  
TCEQ  
12100 Park 35, Bldg. F, 3<sup>rd</sup> Floor  
Austin, Texas 78753

Via Hand Delivery

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
JUN 15 PM 12:08  
CHIEF CLERKS OFFICE

Re: Flying "L" Guest Ranch, LTD., Application For Permit To Appropriate State Water  
("Bed and Banks" Permit Using Privately-Owned Groundwater)

Dear Sir or Madam:

On behalf of the Flying "L" Guest Ranch, LTD. ("Applicant") enclosed please find:

- One original Application For Permit To Appropriate State Water ("the "Application") and one file-stamp copy of the Application for our records;
- Seven copies of the Application and supporting documents;
- Filing Fee in the amount of \$250.00;
- Section II of the Core Data Form (TCEQ-10400).

Please stamp the file-copy of the Application and return to our courier for delivery to me.

By way of background, Applicant owns three water wells that are permitted by the Bandera County River Authority and Groundwater District (the "Wells"). The Wells are used to supply and discharge privately-owned groundwater to a pre-existing pond by Hole # 3 on a golf course (the "Pond"). Groundwater is diverted out of the Pond to irrigate the golf course. But for the discharge of groundwater into the Pond, the Pond is dry for most if not all of the year.

California | Illinois | Michigan | Minnesota | Texas | Washington, D.C.

RECEIVED  
JUN 15 2015

DYKEMA COX SMITH

June 15, 2015  
Page 2

The Pond could be considered an unnamed creek, tributary to the Medina River. Without admitting same, Applicant submits the enclosed Application for the purpose of obtaining a "bed and banks" permit authorizing the discharge and storage of privately-owned groundwater from the Wells into the Pond for irrigation and recreational purposes. As the Application indicates, Applicant seeks the ability to discharge into and divert out of anywhere along the perimeter of the Pond.

Please let me know if there are questions.

Respectfully submitted,

DYKEMA COX SMITH



Rene Ruiz

Enclosures

cc: Flying "L" Guest Ranch, LTD.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
APPLICATION FOR PERMIT TO APPROPRIATE STATE WATER  
(SECTION 11.121, 11.042, 11.085 OR 11.143, TEXAS WATER CODE)  
TAC CHAPTERS 30, 50, 281, 287, 288, 295, 297 AND 299  
Water Supply Division, Water Rights Permitting MC-160

P.O. Box 13087

Austin, Texas 78711-3087

Telephone (512) 239-4691, FAX (512) 239-4770

(If including a check, mail directly to P.O. Box 13088, Austin, TX 78711-3088)

Notice: This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.

1. Applicant Information.

A. Applicant Name(s): Flying "L" Guest Ranch, Ltd., a Texas limited partnership

Mailing Address: 28615 IH 10 W

Boerne, Texas 78006

Telephone Number: (830) 755-5205

Fax Number: (830) 755-6488

Email Address: ruiz@dykema.com

B. Customer Reference Number (if issued): CN

Note: If you do not have a Customer Reference Number, complete Section II of the Core Data Form (TCEQ-10400) and submit it with this application.

C. Fees and Penalties

Applicant owes fees or penalties?

Yes  No

If yes, provide the amount and the nature of the fee or penalty as well as any identifying number:

D. Lienholder Information

Provide this information on the holder of any liens on any land to which the water right would be appurtenant):

Using groundwater so water right will not be appurtenant to any land.

2. Dam (structure), Reservoir and Watercourse Data.

A. Type of Storage Reservoir (indicate by checking (√) all applicable)

on-channel  off-channel  existing structure  proposed structure  exempt structure

Applicant shall provide a copy of the notice that was mailed to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir, will be located as well as copies of the certified mailing cards.

\*\*TWC Section 11.143 for uses of water for other than domestic, livestock, or fish and wildlife from an existing, exempt reservoir with a capacity of 200 acre-feet or less. Please complete Paragraph 6 below if proceeding under TWC 11.143.

Date of Construction: unknown

RECEIVED  
JUN 15 2015

B. Location of Structure No. 1 (Pond "A")

- 1) Watercourse: Unnamed creek, tributary to the Medina River
- 2) Location from County Seat: 1.3 miles in a S 58° E direction from Bandera, Bandera County, Texas.  
 Location from nearby town (if other than County Seat): 1.8 miles in a \_\_\_\_\_ direction from \_\_\_\_\_, a nearby town shown on county highway map.
- 3) Zip Code: 78003
- 4) The dam will be/is located in the Wm. Kelly Original Survey No. 35, Abstract No. 220 in Bandera County, Texas.
- 5) Station \_\_\_\_\_ on the centerline of the dam is S 03° E (bearing), 366.3 feet (distance) from the North corner of Wm. Kelly Original Survey No. 35, Abstract No. 220, in Bandera County, Texas, also being at Latitude 29.716644°N, Longitude 99.053654° W.  
 Provide the Latitude and Longitude coordinates in decimal degrees, to at least six decimal places, and indicate the method used to calculate the diversion point location.

C. Reservoir:

- 1) Acre-feet of water impounded by structure at normal maximum operating level: 3.4 acre feet
- 2) Surface area in acres of reservoir at normal maximum operating level: 0.74 acres

D. Drainage Area

The drainage area above the dam is 115 acres or \_\_\_\_\_ square miles.

E. Other

- 1) If this is a U.S. Natural Resources Conservation Service (NRCS) (formerly Soil Conservation Service (SCS)) floodwater-retarding structure, provide the Site No. \_\_\_\_\_ and watershed project name \_\_\_\_\_
- 2) Do you request authorization to close the "ports" or "windows" in the service spillway? N/A  
 Yes      No

3. Appropriation/Diversion Request (total amount of water needed, including maximum projected uses and accounting for evaporative losses for off-channel storage, if applicable).

A. Appropriated water will be used as follows: Bed and banks permit to store groundwater in on-channel reservoir for recreation and irrigation purposes; not requesting use of any state water

	Purpose*	Place of Use	Acre-feet per year
1)	Recreational and irrigation	291 acres	Irrigation: 383 af/yr; Evaporation: 3 af/yr; 0 af of state water
2)			
3)			

\*If agricultural use, list crops(s) to be irrigated:

Irrigation of 18-hole golf course

B. Lands to be irrigated (if applicable):

- 1) Applicant proposes to irrigate a total of 150 acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of 291 acres in Bandera County, Texas. A copy of the deed(s) describing the overall tract(s) with the recording information from the county records is attached. **See Exhibit 1.**
- 2) Location of land to be irrigated: In the Wm. Kelly Original Survey No. 35, Abstract No. 220

C. Diversion Point No. 1

- 1) Watercourse: Divert anywhere around the perimeter of Structure No. 1 - Pond "A"
- 2) Location of point of diversion at Latitude 29.716644° N, Longitude 99.063654° W, (GPS)(Lat/Long same as reservoir)  
Provide Latitude and Longitude coordinates in decimal degrees, to at least six decimal places, and indicate the method used to calculate the diversion point location.  
  
also bearing S 70° W, 5226 feet  
(distance) from the NE corner of the Wm. Kelly Original Survey No. 35, Abstract No. 220, County, Texas.
- 3) Location from County Seat: 1.8 miles in a S 56° E direction from Bandera, Bandera County, Texas.  
Location from nearby town (if other than County Seat): \_\_\_\_\_ miles in a \_\_\_\_\_ direction from \_\_\_\_\_, a nearby town shown on county highway map.
- 4) Zip Code: 78003
- 5) The diversion will be (check (√) all appropriate boxes and if applicable, indicate whether existing or proposed):

	Existing	Proposed
Directly from stream		
From an on-channel reservoir	X	
From stream to an off-channel reservoir		
From a stream to an on-channel reservoir		
From an off-channel reservoir		
Other method (explain fully, use additional sheets if necessary)		

6) Rate of Diversion (Check (√) applicable provision):

1. Diversion Facility: **Pump house: 3 pumps: Pump #1: 500 gpm; Pump #2 100 gpm; Pump #3 500 gpm.**

A. 1100 Maximum gpm (gallons per minute)

B. 3 Number of pumps

- C. submersible \_\_\_\_\_ Type of pump  
 D. see above \_\_\_\_\_ gpm, Pump capacity of each pump  
 E. Portable pump \_\_\_\_\_ Yes or XXX No.

2. If by gravity:

- A. \_\_\_\_\_ Headgate \_\_\_\_\_ Diversion Dam \_\_\_\_\_ Maximum gpm  
 B. \_\_\_\_\_ Other method (explain fully - use additional sheets if necessary)

7) The drainage area above the diversion point is 115 acres or \_\_\_\_\_ square miles.

D. Return Water or Return Flow (location and quantity information, provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places and indicate the method used to calculate the diversion point location):

Water which is diverted but not consumed as a result of the above stated use, will be returned to

\_\_\_\_\_, tributary of \_\_\_\_\_  
 \_\_\_\_\_, tributary of \_\_\_\_\_  
 \_\_\_\_\_ Basin, at a point which is at Latitude \_\_\_\_\_  
 \_\_\_\_\_°000000N, Longitude \_\_\_\_\_°W, also, bearing  
 \_\_\_\_\_° (direction), \_\_\_\_\_ feet (distance) from the  
 \_\_\_\_\_ corner of the \_\_\_\_\_ Original Survey  
 No. \_\_\_\_\_, Abstract No. \_\_\_\_\_, in \_\_\_\_\_ County, Texas.

Zip Code: \_\_\_\_\_

Estimated annual amount of return flow to said stream will be \_\_\_\_\_ acre-feet.

E. Surplus Water (provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places and indicate the method used to calculate the diversion point location):

Water which is diverted but not used beneficially will be returned to \_\_\_\_\_  
 tributary of \_\_\_\_\_ Basin at a point  
 which is at Latitude \_\_\_\_\_°N, Longitude \_\_\_\_\_°W, also  
 bearing \_\_\_\_\_° (direction), \_\_\_\_\_ feet  
 (distance) from the \_\_\_\_\_ corner of the \_\_\_\_\_ Original Survey  
 No. \_\_\_\_\_, Abstract No. \_\_\_\_\_, in \_\_\_\_\_ County, Texas.

Zip Code: \_\_\_\_\_

4. Discharge Point Information (if applicable, provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places and indicate the method used to calculate the diversion point location).

Discharge Point No. or Name: Into Structure #1 - Pond "A"

A. Select the appropriate box for the source of water being discharged:

- Treated effluent  
 Groundwater  
 Other \_\_\_\_\_

B. Location of discharge point will be/is at Latitude 29.716644° N, Longitude 99.053654°W,  
 also bearing S 70° W, 5226 feet from the NE corner of the Wm. Kelly

Original Survey No. 35, Abstract No. 220, in Bandera  
County, Texas.

What method was used to determine the Latitude and Longitude for the discharge point? (i.e., GPS Unit, USGS 7.5 Topographic Map, etc.)

GPS

- C. Location from County Seat: 1.8 miles in a S 56° E direction from Bandera  
Bandera County, Texas.  
Location from nearby town (if other than County Seat): \_\_\_\_\_ miles in a \_\_\_\_\_  
direction from \_\_\_\_\_, a nearby town shown on county highway map.
- D. Zip Code: 78003
- E. Water will be discharged into anywhere along perimeter of Structure #1 -- Pond  
"A" stream/reservoir,  
(tributaries) \_\_\_\_\_  
\_\_\_\_\_ Basin.
- F. Water will be discharged at a maximum rate of \_\_\_\_\_ cfs (600 gpm).
- G. The amount of water that will be discharged is 386 acre-feet per year.
- H. The purpose of use for the water being discharged will be irrigation and  
recreational.
- I. Additional information required:

For groundwater

- 1) Provide water quality analysis and 24 hour pump test for the well if one has been conducted. See Exhibit 2.
- 2) Locate and label the groundwater well(s) on a USGS 7.5 Minute Topographic Map. See Exhibit 3
- 3) Provide a copy of the groundwater well permit if it is located in a Groundwater Conservation District. See Exhibit 4
- 4) What aquifer the water is being pumped from? Trinity

For treated effluent

- 1) What is the TPDES Permit Number? Provide a copy of the permit.
- 2) Provide the monthly discharge data for the past 5 years.
- 3) What % of treated water was groundwater, surface water?
- 4) If any original water is surface water, provide the base water right number.

##### 5. General Information.

- A. The proposed \_\_\_\_\_ or existing \_\_\_\_\_ X works will be (are) located on the land of Applicant & Janice M. Shafer Living Trust, whose mailing address is 215 Valley View, Bandera, Tx, 78003; non-joiner of Shafer Living Trust; See Consent to Inundate by Trustees of Shafer Living Trust attached as Exhibit 5.
- B. If an application for the appropriation is granted, either in whole or in part, construction works will begin within \_\_\_\_\_ after such permit is issued. The proposed work will be completed within \_\_\_\_\_ from the date the permit is issued.

- C. A Water Conservation Plan is attached? \_\_\_\_\_ Yes XX No. *Not asking for state water.*
- D. XX Interbasin transfer is not requested.  
 \_\_\_\_\_ Applicant requests authorization to transfer \_\_\_\_\_ acre-feet of water per year from the \_\_\_\_\_ Basin to the \_\_\_\_\_ Basin of which \_\_\_\_\_ acre-feet of water will be used for \_\_\_\_\_ purposes and \_\_\_\_\_ acre-feet of water will be used for \_\_\_\_\_ purposes.
- E. X Bed and Banks request to transfer See Above acre-feet of water per year within the bed and banks of \_\_\_\_\_, tributary of \_\_\_\_\_, \_\_\_\_\_ Basin.
- F. Is this project located within 200 river miles of the coast? \_\_\_\_\_ Yes XX No \_\_\_\_\_ Unknown

5. Maps, plats, plans, and drawings accompany this application as required by applicable TAC Sections.  
XX Yes \_\_\_\_\_ No. Attach additional sheets.
6. \_\_\_\_\_ The dam(s) and reservoir(s) shown on the attached application was (were) constructed for domestic and livestock purposes and I/we elect to seek a permit under Section 11.143 of the Texas Water Code.
7. Provide information describing how this application addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement.

This is a small bed and banks application to store and convey private groundwater in a pre-existing, on-channel reservoir for recreational and irrigation purposes. It is not in the State/Regional plans.

\_\_\_\_\_

\_\_\_\_\_

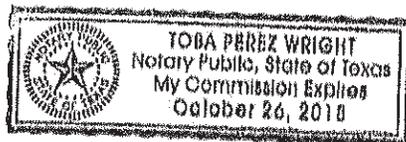
Susan duPerler Jenkins  
 Applicant Name (Sign)

\_\_\_\_\_  
 Applicant Name (Sign)

Susan duPerler Jenkins  
 Applicant Name (Printed)

\_\_\_\_\_  
 Applicant Name (Printed)

SWORN TO AND SUBSCRIBED before me this 12<sup>th</sup> day of June, 2015.



Toba Perez-Wright  
 County of Brewster