

# TCEQ Interoffice Memorandum

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

THRU: Chris Kozlowski, Team Leader  
Water Rights Permitting Team

FROM: Natalia Ponebshek, Project Manager  
Water Rights Permitting Team

DATE: December 15, 2020

SUBJECT: El Prado Stone, LP  
ADJ 4169  
CN604802546, RN108299280  
Application No. 12-4169C to Amend Certificate of Adjudication No. 12-4169  
Texas Water Code § 11.122, Requiring Limited Mailed Notice  
Deadman Creek, Brazos River Basin  
Jones and Shackelford Counties

The application and fees were received on September 17, 2020. Additional information was received on November 24, 2020. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on December 15, 2020. Mailed notice to the interjacent water right holders of record in the Brazos River Basin is required pursuant to Title 30 Texas Administrative Code § 295.158(c)(3)(c). However, there are no interjacent water right holders to be noticed.

All fees have been paid and the application is sufficient for filing.

*Natalia Ponebshek*

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Natalia Ponebshek, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section

**OCC Mailed Notice Required**     YES     NO

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

December 15, 2020

Montana Bragg  
Westward Environmental, Inc.  
4 Shooting Club Rd.  
Boerne, TX 78006

**VIA E-MAIL**

RE: El Prado Stone, LP  
ADJ 4169  
CN604802546, RN108299280  
Application No. 12-4169C to Amend Certificate of Adjudication No. 12-4169  
Texas Water Code § 11.122, Requiring Limited Mailed Notice  
Deadman Creek, Brazos River Basin  
Jones and Shackelford Counties

Dear Ms. Bragg:

This acknowledges receipt, on November 24, 2020, of additional information.

The application was declared administratively complete and filed with the Office of the Chief Clerk on December 15, 2020. Staff will continue processing the application for consideration by the Executive Director.

Please be advised that additional information may be requested during the technical review phase of the application process.

If you have any questions concerning the application, please contact me via email at [Natalia.Ponebshek@tceq.texas.gov](mailto:Natalia.Ponebshek@tceq.texas.gov) or by telephone at (512) 239-4641.

Sincerely,

*Natalia Ponebshek*

Natalia Ponebshek, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section

## Natalia Ponebshek

---

**From:** Montana Bragg [REDACTED]  
**Sent:** Tuesday, November 24, 2020 12:15 PM  
**To:** Natalia Ponebshek  
**Cc:** Sarah Henderson  
**Subject:** RE: El Prado Stone, LP Application No. 12-4169C RFI  
**Attachments:** 201124\_10818.012\_12-4169 RFI.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Natalia,

Please see the attached response to the RFI. Please let me know if any further information is needed to declare the application administratively complete.

Have a Happy Thanksgiving!



Montana Bragg, CЕСP

Environmental Specialist

Hours: 9 am - 3 pm

Westward Environmental, Inc.

P.O. Box 2205 / Boerne, Texas 78006

830.249.8284 Phone

830.249.0221 Fax

[www.westwardenv.com](http://www.westwardenv.com)



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---

**From:** Natalia Ponebshek <Natalia.Ponebshek@tceq.texas.gov>  
**Sent:** Monday, November 9, 2020 6:01 PM  
**To:** Montana Bragg [REDACTED]  
**Cc:** Sarah Henderson <sarah.henderson@tceq.texas.gov>  
**Subject:** El Prado Stone, LP Application No. 12-4169C RFI

Hello,

Please find the attached request for information for the abovementioned application. Please provide any comments you may have by close of business on December 9, 2020.

Thank you,

Natalia Ponebshek, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section  
(512) 239-4641



November 24, 2020

Natalia Ponebshek, Project Manager  
Texas Commission on Environmental Quality  
Water Rights Permitting Team, MC 160  
12100 Park 35 Circle  
Austin TX 78753

Re: Response to Request for Information  
Application No. 12-4169C to Amend Certificate of Adjudication No. 12-4169  
El Prado Stone, LP  
Adj 4169  
CN604802546, RN108299280

Ms. Ponebshek,

Please see the below response to the Request for Information Letter dated November 9, 2020.

Enclosed are the updated Worksheet 5 and an updated Water Conservation Plan, specifically section II.B.3.

Westward Environmental will serve as the contact for this project. Please contact me with any questions.

Respectfully Submitted,  
**WESTWARD ENVIRONMENTAL, INC.**

A handwritten signature in blue ink that reads "Montana Bragg".

Montana Bragg  
Environmental Specialist

Enclosures:  
Updated page 74 of original application submitted 9/17/2020 - Worksheet 5  
Updated page 92 of original application submitted 9/17/2020 - Water Conservation Plan  
Copy of RFI Letter



# WORKSHEET 5.0

## ENVIRONMENTAL INFORMATION

### 1. Impingement and Entrainment

This section is required for any new diversion point that is not already authorized. Indicate the measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on any new diversion structure that is not already authorized in a water right). **Instructions, Page 29.**

Any new diversion structures will be outfitted with screens as required. The mesh size and flow velocity are not available at this time.

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### 2. New Appropriations of Water (Canadian, Red, Sulphur, and Cypress Creek Basins only) and Changes in Diversion Point(s)

This section is required for new appropriations of water in the Canadian, Red, Sulphur, and Cypress Creek Basins and in all basins for requests to change a diversion point. **Instructions, Page 30.**

Description of the Water Body at each Diversion Point or Dam Location. (Provide an Environmental Information Sheet for each location),

a. Identify the appropriate description of the water body.

Stream

Reservoir

Average depth of the entire water body, in feet: \_\_\_\_\_

Other, specify: \_\_\_\_\_

b. Flow characteristics

If a stream, was checked above, provide the following. For new diversion locations, check one of the following that best characterize the area downstream of the diversion (check one).

Intermittent - dry for at least one week during most years

Intermittent with Perennial Pools - enduring pools

Perennial - normally flowing

Check the method used to characterize the area downstream of the new diversion location.

USGS flow records

Historical observation by adjacent landowners

2. Provide specific, quantified 5-year and 10-year targets for water savings and the basis for development of such goals for this water use/facility.

This facility will recirculate diverted water for processing aggregates. The facility plans to attempt to recirculate up to 80% of the water used for processing.

Quantified 5-year and 10-year targets for water savings:

- a. 5-year goal: approx. 2 acre-feet saved per year by recirculating
- b. 10-year goal: approx. 2 acre-feet saved per year by recirculating

3. Describe the device(s) and/or method(s) used to measure and account for the amount of water diverted from the supply source, and verify the accuracy is within plus or minus 5%.

Water use will be estimated using the pump rate and time pumped. Accuracy shall be within plus or minus 5%.

4. Provide a description of the leak-detection and repair, and water-loss accounting measures used.

Water will be pumped directly to haul trucks for use throughout the site. Leaks will be detected immediately.

5. Describe the application of state-of-the-art equipment and/or process modifications used to improve water use efficiency.

Process water is allowed to settle in ponds throughout the site. The sediment is removed, therefore increasing the capacity for reuse water storage.

6. Describe any other water conservation practice, method, or technique which the user shows to be appropriate for achieving the stated goal or goals of the water conservation plan:

n/a

### **III. Water Conservation Plans submitted with a Water Right Application for New or Additional State Water N/A**

Water Conservation Plans submitted with a water right application for New or Additional State Water must include data and information which:

1. support the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan;
2. evaluates conservation as an alternative to the proposed appropriation; and
3. evaluates any other feasible alternative to new water development including, but not limited to, waste prevention, recycling and reuse, water transfer and marketing, regionalization, and optimum water management practices and procedures.

Additionally, it shall be the burden of proof of the applicant to demonstrate that no feasible alternative to the proposed appropriation exists and that the requested amount of appropriation is necessary and reasonable for the proposed use.

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 9, 2020

Montana Bragg  
Westward Environmental, Inc.  
4 Shooting Club Rd.  
Boerne, TX 78006

VIA E-MAIL

RE: El Prado Stone, LP  
ADJ 4169  
CN604802546, RN108299280  
Application No. 12-4169C to Amend Certificate of Adjudication No. 12-4169  
Texas Water Code § 11.122, Requiring Limited Mailed Notice  
Deadman Creek, Brazos River Basin  
Jones and Shackelford Counties

Dear Ms. Bragg:

This acknowledges receipt, on September 17, 2020, of the referenced application and fees in the amount of \$112.50 (Receipt No. M100788, copy attached).

Additional information is required before the application can be declared administratively complete.

1. Confirm that the method used to measure and account for the amount of water diverted from the source of supply, described in Section II.B.3. of the submitted water conservation plan, is within an accuracy of plus or minus 5.0%.
2. Indicate the measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on any new diversion structure that is not already authorized in a water right). Refer to pages 28-29 from the *Instructions for Completing the Water Right Permitting Application* (Form TCEQ-10214A-inst) for assistance in developing your response.

Please provide the requested information by December 9, 2020 or the application may be returned pursuant to Title 30 Texas Administrative Code § 281.18.

If you have any questions concerning this matter, please contact me via e-mail at [Natalia.Ponebshek@tceq.texas.gov](mailto:Natalia.Ponebshek@tceq.texas.gov) or by telephone at (512) 239-4641.

Sincerely,

*Natalia Ponebshek*

Natalia Ponebshek, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section

Attachment

## **Natalia Ponebshek**

---

**From:** Natalia Ponebshek  
**Sent:** Monday, November 9, 2020 6:01 PM  
**To:** Montana Bragg  
**Cc:** Sarah Henderson  
**Subject:** El Prado Stone, LP Application No. 12-4169C RFI  
**Attachments:** El\_Prado\_Stone, LP\_12-4169C\_RFI #1.pdf; El\_Prado\_Stone, LP\_12-4169C\_Receipt #1.pdf

Hello,

Please find the attached request for information for the abovementioned application. Please provide any comments you may have by close of business on December 9, 2020.

Thank you,

Natalia Ponebshek, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section  
(512) 239-4641

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



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If you have any questions concerning this matter, please contact me via e-mail at [Natalia.Ponebshek@tceq.texas.gov](mailto:Natalia.Ponebshek@tceq.texas.gov) or by telephone at (512) 239-4641.

Sincerely,

*Natalia Ponebshek*

Natalia Ponebshek, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section

Attachment



23-SEP-20 02:29 PM

TCEQ - A/R RECEIPT REPORT BY ACCOUNT NUMBER

<u>Fee Description</u>	<u>Fee Code</u>	<u>Account#</u>	<u>Account Name</u>	<u>Ref#1</u>	<u>Ref#2</u>	<u>Paid In By</u>	<u>Check Number</u>	<u>CC Type</u>	<u>Tran Code</u>	<u>Slip Key</u>	<u>Document#</u>	<u>Tran Date</u>	<u>Tran Amount</u>
WTR USE PERMITS	WUP			M100788			27114				BS00082847	23-SEP-20	-\$112.50
	WUP			ADJ124169			092320	N			D1800270		
WATER USE PERMITS				EL PRADO			VHERNAND	CK					
				STONE LP									
	WUP			M100789			1080				BS00082847	23-SEP-20	-\$112.50
	WUP			4972			092320	N			D1800270		
WATER USE PERMITS				FANCHER			VHERNAND	CK					
				LEGAL PLLC									
	WUP			M100790			52320				BS00082847	23-SEP-20	-\$100.00
	WUP			ADJ142524			092320	N			D1800270		
WATER USE PERMITS				MCAT			VHERNAND	MO					

Total (Fee Code) : -\$325.00

Grand Total: -\$5,581.30

**TCEQ WATER RIGHTS  
PERMITTING APPLICATION  
PERMIT AMENDMENT**

**EL PRADO STONE LP  
CERTIFICATE 12-4169  
DEADMAN CREEK  
BRAZOS RIVER BASIN  
JONES AND SHACKELFORD  
COUNTIES, TEXAS**



Prepared by:

Boerne, TX

830-249-8284

Date: Sept 2020

Project No. 10818.012

-MCB-

TEXAS REGISTERED ENGINEERING FIRM NO. 4524

TEXAS REGISTERED GEOSCIENCE FIRM NO. 50112

**El Prado Stone LP  
TCEQ Water Rights Permitting Application  
Permit Amendment  
Certificate 12-4169  
Deadman Creek, Brazos River Basin  
Jones and Shackelford Counties  
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September 2020  
**Westward Environmental, Inc.**  
 Project No.: 10818.012  
[www.westwardenv.com](http://www.westwardenv.com)

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## TCEQ WATER RIGHTS PERMITTING APPLICATION

### ADMINISTRATIVE INFORMATION CHECKLIST

Complete and submit this checklist for each application. See Instructions Page. 5.

APPLICANT(S): El Prado Stone

Indicate whether the following items are included in your application by writing either Y (for yes) or N (for no) next to each item (all items are not required for every application).

Y/N

- Administrative Information Report**
- Additional Co-Applicant Information
- Additional Co-Applicant Signature Pages
- Written Evidence of Signature Authority
- Technical Information Report**
- USGS Map (or equivalent)
- Map Showing Project Details
- Original Photographs
- Water Availability Analysis
- Worksheet 1.0**
- Recorded Deeds for Irrigated Land
- Consent For Irrigation Land
- Worksheet 1.1**
- Addendum to Worksheet 1.1
- Worksheet 1.2**
- Addendum to Worksheet 1.2
- Worksheet 2.0**
- Additional W.S 2.0 for Each Reservoir
- Dam Safety Documents
- Notice(s) to Governing Bodies
- Recorded Deeds for Inundated Land
- Consent For Inundation Land

Y/N

- Worksheet 3.0**
- Additional W.S 3.0 for each Point
- Recorded Deeds for Diversion Points
- Consent For Diversion Access
- Worksheet 4.0**
- TPDES Permit(s)
- WWTP Discharge Data
- 24-hour Pump Test
- Groundwater Well Permit
- Signed Water Supply Contract
- Worksheet 4.1**
- Worksheet 5.0**
- Addendum to Worksheet 5.0
- Worksheet 6.0**
- Water Conservation Plan(s)
- Drought Contingency Plan(s)
- Documentation of Adoption
- Worksheet 7.0**
- Accounting Plan
- Worksheet 8.0**
- Fees

**For Commission Use Only:**

Proposed/Current Water Right Number: \_\_\_\_\_

Basin: \_\_\_\_\_ Watermaster area Y/N: \_\_\_\_\_

## Administrative Information Report

# ADMINISTRATIVE INFORMATION REPORT

The following information is required for all new applications and amendments.

**\*\*\*Applicants are strongly encouraged to schedule a pre-application meeting with TCEQ Staff to discuss Applicant's needs prior to submitting an application. Call the Water Rights Permitting Team to schedule a meeting at (512) 239-4600.**

## 1. TYPE OF APPLICATION (Instructions, Page. 6)

Indicate, by marking X, next to the following authorizations you are seeking.

New Appropriation of State Water

Amendment to a Water Right \*

Bed and Banks

*\*If you are seeking an amendment to an existing water rights authorization, you must be the owner of record of the authorization. If the name of the Applicant in Section 2, does not match the name of the current owner(s) of record for the permit or certificate or if any of the co-owners is not included as an applicant in this amendment request, your application could be returned. If you or a co-applicant are a new owner, but ownership is not reflected in the records of the TCEQ, submit a change of ownership request (Form TCEQ-10204) prior to submitting the application for an amendment. See Instructions page. 6. Please note that an amendment application may be returned, and the Applicant may resubmit once the change of ownership is complete.*

Please summarize the authorizations or amendments you are seeking in the space below or attach a narrative description entitled "Summary of Request."

This application is seeking the following amendments for an existing water right:

Amend the mining diversion point to an approximately 0.75 mile long diversion reach along Deadman Creek.

Change the purpose use of 50 acre-feet of irrigation water to mining use.

Amend the irrigation area from 80 acres to approximately 46 acres.

No changes to the diversion amount, diversion rate, or place of use are requested.

## 2. APPLICANT INFORMATION (Instructions, Page. 6 )

### a. Applicant

Indicate the number of Applicants/Co-Applicants 1  
(Include a copy of this section for each Co-Applicant, if any)

What is the Full Legal Name of the individual or entity (applicant) applying for this permit?

**El Prado Stone, LP**

*(If the Applicant is an entity, the legal name must be spelled exactly as filed with the Texas Secretary of State, County, or in the legal documents forming the entity.)*

If the applicant is currently a customer with the TCEQ, what is the Customer Number (CN)?  
You may search for your CN on the TCEQ website at

<http://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=cust.CustSearch>

CN : 604802546 (leave blank if you do not yet have a CN).

What is the name and title of the person or persons signing the application? Unless an application is signed by an individual applicant, the person or persons must submit written evidence that they meet the signatory requirements in 30 TAC § 295.14.

First/Last Name: **George E. Karutz**

Title: **General Partner**

Have you provided written evidence meeting the signatory requirements in 30 TAC § 295.14, as an attachment to this application? **Yes**

What is the applicant's mailing address as recognized by the US Postal Service (USPS)? You may verify the address on the USPS website at

<https://tools.usps.com/go/ZipLookupAction!input.action>.

Name: **El Prado Stone, LP**

Mailing Address: **115 W. El Prado Drive, Suite 1**

City: **San Antonio**

State: **TX**

ZIP Code: **78212**

Indicate an X next to the type of Applicant:

Individual

Sole Proprietorship-D.B.A.

Partnership

Corporation

Trust

Estate

Federal Government

State Government

County Government

City Government

Other Government

Other \_\_\_\_\_

For Corporations or Limited Partnerships, provide:

State Franchise Tax ID Number: 32056074415 SOS Charter (filing) Number: 0802131478

### 3. APPLICATION CONTACT INFORMATION (Instructions, Page. 9)

If the TCEQ needs additional information during the review of the application, who should be contacted? Applicant may submit their own contact information if Applicant wishes to be the point of contact.

First and Last Name: **Montana Bragg**

Title: **Environmental Specialist**

Organization Name: **Westward Environmental, Inc.**

Mailing Address: **4 Shooting Club Road**

City: **Boerne**

State: **TX**

ZIP Code: **78006**

Phone No.: **830-249-8284**

Extension:

Fax No.: **830-249-0221**

E-mail [REDACTED]

[REDACTED]

## 5. MISCELLANEOUS INFORMATION (Instructions, Page. 9)

a. The application will not be processed unless 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 by all applicants/co-applicants. If you need assistance determining whether you owe delinquent penalties or fees, please call the Water Rights Permitting Team at (512) 239-4600, prior to submitting your application.

1. Does Applicant or Co-Applicant owe any fees to the TCEQ? Yes / **No**

If **yes**, provide the following information:

Account number:

Amount past due:

2. Does Applicant or Co-Applicant owe any penalties to the TCEQ? Yes / **No**

If **yes**, please provide the following information:

Enforcement order number:

Amount past due:

b. If the Applicant is a taxable entity (corporation or limited partnership), the Applicant must be in good standing with the Comptroller or the right of the entity to transact business in the State may be forfeited. See Texas Tax Code, Subchapter F. Applicant's may check their status with the Comptroller at <https://mycpa.cpa.state.tx.us/coa/>

Is the Applicant or Co-Applicant in good standing with the Comptroller? **Yes** / No

c. The commission will not grant an application for a water right unless the applicant has submitted all Texas Water Development Board (TWDB) surveys of groundwater and surface water use - if required. See TWC §16.012(m) and 30 TAC § 297.41(a)(5).

Applicant has submitted all required TWDB surveys of groundwater and surface water? **Yes** / No

**6. SIGNATURE PAGE (Instructions, Page. 11)**

Applicant:

I, George Kantz General Partner  
(Typed or printed name) (Title)

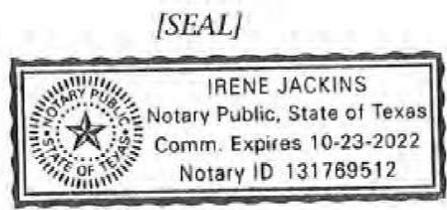
certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I further certify that I am authorized under Title 30 Texas Administrative Code §295.14 to sign and submit this document and I have submitted written evidence of my signature authority.

Signature: [Handwritten Signature] Date: 8/13/2020  
(Use blue ink)

Subscribed and Sworn to before me by the said George Kantz  
on this 13<sup>th</sup> 13<sup>th</sup> day of August, 2020.  
My commission expires on the 10<sup>th</sup> 22<sup>nd</sup> day of Oct, 2022.

Notary Public Irene Jackin  
Bexar  
County, Texas



**If the Application includes Co-Applicants, each Applicant and Co-Applicant must submit an original, separate signature page**

## Written Evidence of Signatory Authority



July 15, 2020

El Prado Stone, LP (d.b.a. Champion Stone Company)  
115 W. El Prado Drive, Suite 1  
San Antonio, Texas 78212

Subject: Signature Authority Acknowledgment - TCEQ

To: Texas Commission on Environmental Quality

This letter is to acknowledge that George E. Karutz is a General Partner of El Prado Stone, LP and as such has signature authority on behalf of the company and ability to execute documents and filing on behalf of the company with the Texas Commission on Environmental Quality (TCEQ).

Sincerely,

El Prado Stone, LP

## Technical Information Report

# TECHNICAL INFORMATION REPORT

## WATER RIGHTS PERMITTING

This Report is required for applications for new or amended water rights. Based on the Applicant's responses below, Applicant are directed to submit additional Worksheets (provided herein). A completed Administrative Information Report is also required for each application.

*Applicants are strongly encouraged to schedule a pre-application meeting with TCEQ Permitting Staff to discuss Applicant's needs and to confirm information necessary for an application prior to submitting such application. Please call Water Availability Division at (512) 239-4600 to schedule a meeting.* Applicant attended a pre-application meeting with TCEQ Staff for this Application?  Y / N \_\_\_\_\_ (If yes, date : 9/3/2020 \_\_\_\_\_).

### 1. New or Additional Appropriations of State Water. Texas Water Code (TWC) § 11.121 (Instructions, Page. 12)

**State Water is:** *The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state. TWC § 11.021.*

- a. Applicant requests a new appropriation (diversion or impoundment) of State Water? Y /  N \_\_\_\_\_
- b. Applicant requests an amendment to an existing water right requesting an increase in the appropriation of State Water or an increase of the overall or maximum combined diversion rate? Y /  N \_\_\_\_\_ (If yes, indicate the Certificate or Permit number: \_\_\_\_\_)

*If Applicant answered yes to (a) or (b) above, does Applicant also wish to be considered for a term permit pursuant to TWC § 11.1381? Y / N \_\_\_\_\_*

- c. Applicant requests to extend an existing Term authorization or to make the right permanent? Y /  N \_\_\_\_\_ (If yes, indicate the Term Certificate or Permit number: \_\_\_\_\_)

*If Applicant answered yes to (a), (b) or (c), the following worksheets and documents are required:*

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir requested in the application)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for each diversion point and/or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach requested in the application)
- **Worksheet 5.0 - Environmental Information Worksheet**
- **Worksheet 6.0 - Water Conservation Information Worksheet**
- **Worksheet 7.0 - Accounting Plan Information Worksheet**
- **Worksheet 8.0 - Calculation of Fees**
- **Fees calculated on Worksheet 8.0 - see instructions Page. 34.**
- **Maps - See instructions Page. 15.**
- **Photographs - See instructions Page. 30.**

*Additionally, if Applicant wishes to submit an alternate source of water for the project/authorization, see Section 3, Page 3 for Bed and Banks Authorizations (Alternate sources may include groundwater, imported water, contract water or other sources).*

**Additional Documents and Worksheets may be required (see within).**

**2. Amendments to Water Rights. TWC § 11.122 (Instructions, Page. 12)**

This section should be completed if Applicant owns an existing water right and Applicant requests to amend the water right. *If Applicant is not currently the Owner of Record in the TCEQ Records, Applicant must submit a Change of Ownership Application (TCEQ-10204) prior to submitting the amendment Application or provide consent from the current owner to make the requested amendment. If the application does not contain consent from the current owner to make the requested amendment, TCEQ will not begin processing the amendment application until the Change of Ownership has been completed and will consider the Received Date for the application to be the date the Change of Ownership is completed. See instructions page. 6.*

Water Right (Certificate or Permit) number you are requesting to amend: 12-4169

Applicant requests to sever and combine existing water rights from one or more Permits or Certificates into another Permit or Certificate? Y / N (if yes, complete chart below):

List of water rights to sever	Combine into this ONE water right

a. Applicant requests an amendment to an existing water right to increase the amount of the appropriation of State Water (diversion and/or impoundment)? Y / N

*If yes, application is a new appropriation for the increased amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.*

b. Applicant requests to amend existing Term authorization to extend the term or make the water right permanent (remove conditions restricting water right to a term of years)? Y / N

*If yes, application is a new appropriation for the entire amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.*

c. Applicant requests an amendment to change the purpose or place of use or to add an additional purpose or place of use to an existing Permit or Certificate? Y / N

*If yes, submit:*

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 1.2 - Notice: "Marshall Criteria"**

d. Applicant requests to change: diversion point(s); or reach(es); or diversion rate? Y / N

*If yes, submit:*

- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for each diversion point or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach)
- **Worksheet 5.0 - Environmental Information** (Required for any new diversion points that are not already authorized in a water right)

e. Applicant requests amendment to add or modify an impoundment, reservoir, or dam? Y / N

*If yes, submit: Worksheet 2.0 - Impoundment/Dam Information Worksheet* (submit one worksheet for each impoundment or reservoir)

- f. Other Applicant requests to change any provision of an authorization not mentioned above? **Y** / N \_\_\_\_\_ If yes, call the Water Availability Division at (512) 239-4600 to discuss.

**Additionally, all amendments require:**

- **Worksheet 8.0 – Calculation of Fees; and Fees calculated – see instructions Page. 34**
- **Maps – See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**

### **3. Bed and Banks. TWC § 11.042 (Instructions, Page 13)**

- a. Pursuant to contract, Applicant requests authorization to convey, stored or conserved water to the place of use or diversion point of purchaser(s) using the bed and banks of a watercourse? TWC § 11.042(a). **Y**/N \_\_\_\_\_

*If yes, submit a signed copy of the Water Supply Contract pursuant to 30 TAC §§ 295.101 and 297.101. Further, if the underlying Permit or Authorization upon which the Contract is based does not authorize Purchaser's requested Quantity, Purpose or Place of Use, or Purchaser's diversion point(s), then either:*

- 1. Purchaser must submit the worksheets required under Section 1 above with the Contract Water identified as an alternate source; or*
- 2. Seller must amend its underlying water right under Section 2.*

- b. Applicant requests to convey water imported into the state from a source located wholly outside the state using the bed and banks of a watercourse? TWC § 11.042(a-1). **Y**/N \_\_\_\_\_

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps and fees from the list below.*

- c. Applicant requests to convey Applicant's own return flows derived from privately owned groundwater using the bed and banks of a watercourse? TWC § 11.042(b). **Y** / N \_\_\_\_\_

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.*

- d. Applicant requests to convey Applicant's own return flows derived from surface water using the bed and banks of a watercourse? TWC § 11.042(c). **Y** / N \_\_\_\_\_

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 6.0, 7.0, 8.0, Maps, and fees from the list below.*

***\*Please note, if Applicant requests the reuse of return flows belonging to others, the Applicant will need to submit the worksheets and documents under Section 1 above, as the application will be treated as a new appropriation subject to termination upon direct or indirect reuse by the return flow discharger/owner.***

- e. Applicant requests to convey water from any other source, other than (a)-(d) above, using the bed and banks of a watercourse? TWC § 11.042(c). **Y** / N \_\_\_\_\_

*If yes, submit: worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.*

*Worksheets and information:*

- **Worksheet 1.0 – Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir owned by the applicant through which water will be conveyed or diverted)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for the downstream limit of each diversion reach for the proposed conveyances)
- **Worksheet 4.0 – Discharge Information Worksheet** (for each discharge point)

- **Worksheet 5.0 – Environmental Information Worksheet**
- **Worksheet 6.0 – Water Conservation Information Worksheet**
- **Worksheet 7.0 – Accounting Plan Information Worksheet**
- **Worksheet 8.0 – Calculation of Fees; and Fees calculated – see instructions Page. 34**
- **Maps – See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**

**4. General Information, Response Required for all Water Right Applications (Instructions, Page 15)**

a. 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 (*not required for applications to use groundwater-based return flows*). Include citations or page numbers for the State and Regional Water Plans, if applicable. Provide the information in the space below or submit a supplemental sheet entitled “Addendum Regarding the State and Regional Water Plans”:

El Prado Stone, LP - Lueders Quarry is located in Region G Planning Group.

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The State and Regional Water Plans do not address this individual water right.

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This application is consistent with the 2016 Regional and the 2017 State Water Plans

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because there is nothing in the plans that conflict with the application.

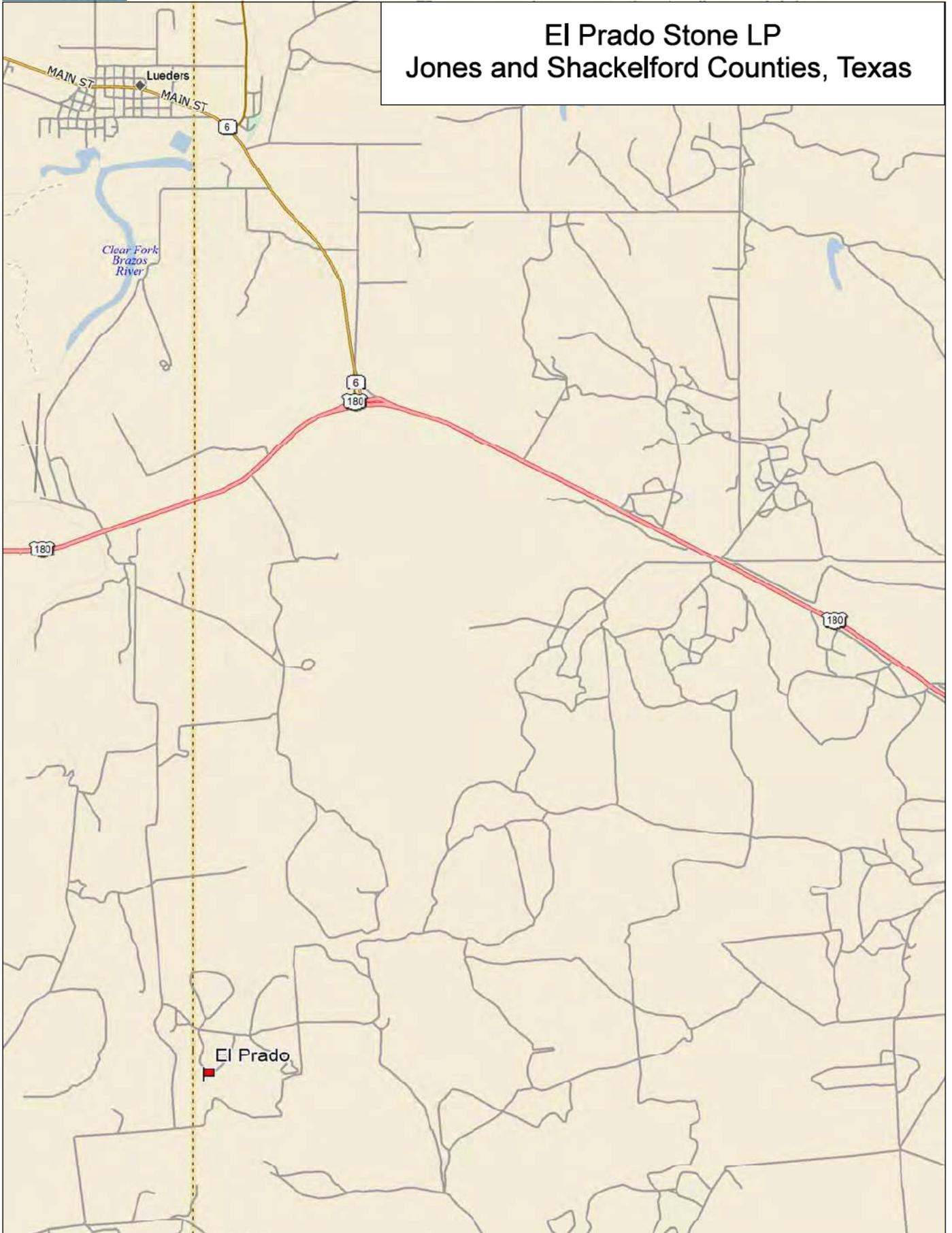
b. Did the Applicant perform its own Water Availability Analysis? Y /  N \_\_\_\_\_

*If the Applicant performed its own Water Availability Analysis, provide electronic copies of any modeling files and reports.*

c. Does the application include required Maps? (Instructions Page. 15)  Y /  N \_\_\_\_\_

## Maps

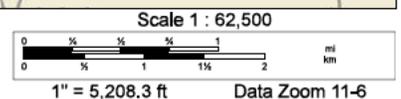
# El Prado Stone LP Jones and Shackelford Counties, Texas



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# El Prado Stone LP

Site Map  
Jones and Shackelford Counties, Texas

## Legend

-  Full Boundary
-  Irrigation Area
-  Irrigation Diversion
-  Mining Diversion Reach

Mining: Downstream Limit

Irrigation diversion

Mining: Upstream Limit

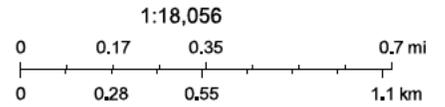


# Shackelford CAD Web Map



8/18/2020, 10:19:17 AM

 Parcels

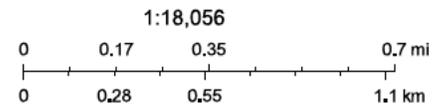


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# Jones CAD



August 18, 2020



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

# El Prado Stone LP

Photo Location Map  
Jones and Shackelford Counties, Texas

## Legend

-  Full Boundary
-  Photographer Location

Photographer Location (Downstream)



Photographer Location (mining diversion pt)



Photographer Location (Irrigation Diversion pt)



Photographer Location (upstream)

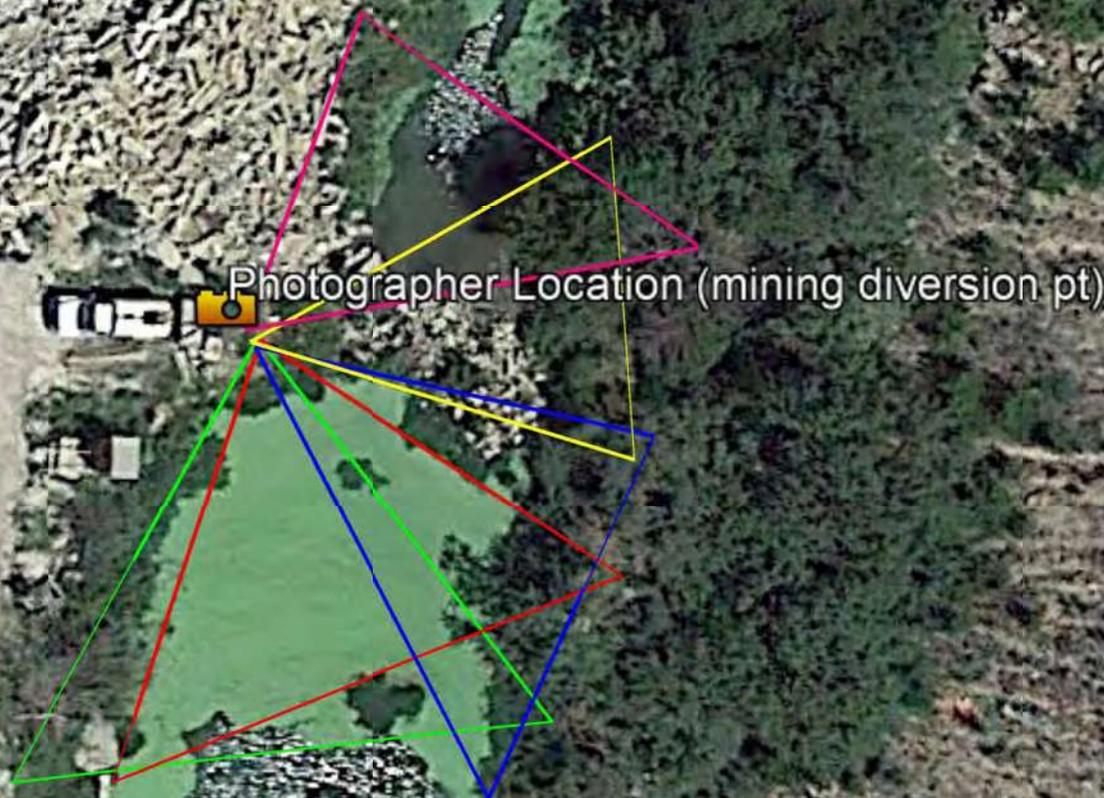


# El Prado Stone LP

Photo Location Map  
Current Mining Diversion Point  
Jones and Shackelford Counties, Texas

## Legend

-  1
-  2
-  3
-  4
-  5
-  Photographer Location (mining diversion pt)



# El Prado Stone LP

Photo Location Map  
Irrigation Diversion Point  
Proposed Upstream Reach Limit  
Jones and Shackelford Counties, Texas

## Legend

- 6
- 7
- 8
- 9
- Photographer Location

Photographer Location (Irrigation Diversion pt)

Photographer Location (upstream)



# El Prado Stone LP

Photo Location Map  
Proposed Downstream Reach Area  
Jones and Shackelford Counties, Texas

## Legend

-  10
-  11
-  Photographer Location (Downstream)

Photographer Location (Downstream)



## Worksheet 1.0

# WORKSHEET 1.0

## Quantity, Purpose and Place of Use

### 1. New Authorizations (Instructions, Page. 16)

Submit the following information regarding quantity, purpose and place of use for requests for new or additional appropriations of State Water or Bed and Banks authorizations:

Quantity (acre-foot) <i>(Include losses for Bed and Banks)</i>	State Water Source (River Basin) or Alternate Source <i>*each alternate source (and new appropriation based on return flows of others) also requires completion of Worksheet 4.0</i>	Purpose(s) of Use	Place(s) of Use <i>*requests to move state water out of basin also require completion of Worksheet 1.1 Interbasin Transfer</i>

\_\_\_\_\_ Total amount of water (in acre-feet) to be used annually (*include losses for Bed and Banks applications*)

If the Purpose of Use is Agricultural/Irrigation for any amount of water, provide:

a. Location Information Regarding the Lands to be Irrigated

i) Applicant proposes to irrigate a total of \_\_\_\_\_ 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 \_\_\_\_\_ acres in \_\_\_\_\_ County, TX.

ii) Location of land to be irrigated: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_.

***A copy of the deed(s) or other acceptable instrument describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds.***

***If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.***

***Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.***

## 2. Amendments - Purpose or Place of Use (Instructions, Page. 12)

- a. Complete this section for each requested amendment changing, adding, or removing Purpose(s) or Place(s) of Use, complete the following:

Quantity (acre- feet)	Existing Purpose(s) of Use	Proposed Purpose(s) of Use*	Existing Place(s) of Use	Proposed Place(s) of Use**
50	Irrigation	Mining	No Change	No Change

*\*If the request is to add additional purpose(s) of use, include the existing and new purposes of use under "Proposed Purpose(s) of Use."*

*\*\*If the request is to add additional place(s) of use, include the existing and new places of use under "Proposed Place(s) of Use."*

*Changes to the purpose of use in the Rio Grande Basin may require conversion. 30 TAC § 303.43.*

- b. For any request which adds Agricultural purpose of use or changes the place of use for Agricultural rights, provide the following location information regarding the lands to be irrigated:
- i. Applicant proposes to irrigate a total of 46 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 80.8 acres in Jones & Shackelford Counties, TX.
  - ii. Location of land to be irrigated: J.A. Gholston Survey, Abstract 1497 in Jones County and Abstract 1786 in Shackelford County

***A copy of the deed(s) describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds. If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other legal right for Applicant to use the land described.***

***Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.***

- c. Submit Worksheet 1.1, Interbasin Transfers, for any request to change the place of use which moves State Water to another river basin.
- d. See Worksheet 1.2, Marshall Criteria, and submit if required.
- e. See Worksheet 6.0, Water Conservation/Drought Contingency, and submit if required.

## Worksheet 1.2

## WORKSHEET 1.2

### NOTICE. “THE MARSHALL CRITERIA”

This worksheet assists the Commission in determining notice required for certain **amendments** that do not already have a specific notice requirement in a rule for that type of amendment, and *that do not change the amount of water to be taken or the diversion rate*. The worksheet provides information that Applicant **is required** to submit for such amendments which include changes in use, changes in place of use, or other non-substantive changes in a water right (such as certain amendments to special conditions or changes to off-channel storage). These criteria address whether the proposed amendment will impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

*This worksheet is **not required for Applications in the Rio Grande Basin** requesting changes in the purpose of use, rate of diversion, point of diversion, and place of use for water rights held in and transferred within and between the mainstems of the Lower Rio Grande, Middle Rio Grande, and Amistad Reservoir. See 30 TAC § 303.42.*

*This worksheet is **not required for amendments which are only changing or adding diversion points, or request only a bed and banks authorization or an IBT authorization**. However, Applicants may wish to submit the Marshall Criteria to ensure that the administrative record includes information supporting each of these criteria*

#### 1. The “Marshall Criteria” (Instructions, Page. 21)

Submit responses on a supplemental attachment titled “Marshall Criteria” in a manner that conforms to the paragraphs (a) – (g) below:

- a. Administrative Requirements and Fees. Confirm whether application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) Chapters 281, 295, and 297. An amendment application should include, but is not limited to, a sworn application, maps, completed conservation plan, fees, etc.
- b. Beneficial Use. Discuss how proposed amendment is a beneficial use of the water as defined in TWC § 11.002 and listed in TWC § 11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.
- c. Public Welfare. Explain how proposed amendment is not detrimental to the public welfare. Consider any public welfare matters that might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.
- d. Groundwater Effects. Discuss effects of proposed amendment on groundwater or groundwater recharge.

- e. State Water Plan. Describe how proposed amendment 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. The state and regional water plans are available for download at:  
<http://www.twdb.texas.gov/waterplanning/swp/index.asp>.
- f. Waste Avoidance. Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC § 11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC Chapter 288.
- g. Impacts on Water Rights or On-stream Environment. Explain how proposed amendment will not impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

## Marshall Criteria



## Marshall Criteria

Job Number	10818.012
Site Name	Lueders

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A. Administrative Requirements and Fees. Confirm whether application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) Chapters 281, 295, and 297. An amendment application should include, but is not limited to, a sworn application, maps, completed conservation plan, fees, etc.

- 1. This application, to the best of our knowledge, meets criteria listed in TWC Chapter 11 and Title 30 TAC Chapters 281, 295, and 297.*

---

B. Beneficial Use. Discuss how proposed amendment is a beneficial use of the water as defined in TWC § 11.002 and listed in TWC § 11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.

- 1. Certificate of Adjudication 12-4169 authorizes the removal of a total of 67 acre-feet of water per annum from Deadman Creek. Presently, the usage consists of 5 acre-feet mining and 62 acre-feet irrigation. Due to mining and processing facility demands, El Prado Stone LP is seeking to amend Certificate of Adjudication 12-4169 to change the purpose of use. This will redistribute the authorized usage to allow a total of 55 acre-feet of water per annum for mining purposes, and 12 acre-feet of water per annum for irrigation purposes.*

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C. Public Welfare. Explain how proposed amendment is not detrimental to the public welfare. Consider any public welfare matters that might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.

- 1. This amendment is not requesting to increase the appropriation of State Water, nor to increase the overall or maximum combined diversion rate. The mining operation is pre-existing and is included as a purpose of use in the present permit. Therefore, the proposed amendment will not change the existing impact to public welfare.*

---

D. Groundwater Effects. Discuss effects of proposed amendment on groundwater or groundwater recharge.

- 1. This amendment is not requesting to increase the appropriation of State Water, nor to increase the overall or maximum combined diversion rate. Therefore, this amendment will not change the existing impact on groundwater or groundwater recharge.*

---

E. State Water Plan. Describe how proposed amendment 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.

- 1. El Prado Stone, LP – Lueders Quarry is located in Region G Planning Group. The State and Regional Water Plans do not address this individual water right. The application is consistent with the 2016 Regional and the 2017 State Water Plans because there is nothing in the plans that conflict with the application.*



## Marshall Criteria

Job Number 10818.012

Site Name Lueders

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F. Waste Avoidance. Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC 11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC Chapter 288.

1. *Water for irrigation purposes will be diverted on an as-needed basis and used immediately. Water for mining purposes will be diverted either directly to portable water trucks for use throughout the facility, or to the authorized impoundment. Water from this impoundment is circulated throughout the processing facility, allowed to settle in basins, and then recycled and recirculated.*

---

G. Impacts on Water Rights or On-stream Environment. Explain how proposed amendment will not impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

1. *This amendment is not requesting to increase the appropriation of State Water, nor to increase the overall or maximum combined diversion rate. The mining operation is pre-existing and is included as a purpose of use in the present permit. Therefore, the proposed amendment will not change the existing impact to other water rights holders or the on-stream environment.*

## Worksheet 3.0

## WORKSHEET 3.0

### DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet is **required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

*The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).*

#### 1. Diversion Information (Instructions, Page. 24)

a. This Worksheet is to add new (select 1 of 3 below):

1. \_\_\_ Diversion Point No.
2. \_\_\_ Upstream Limit of Diversion Reach No.
3. x Downstream Limit of Diversion Reach No.

b. Maximum Rate of Diversion for **this new point** <sup>1.67</sup> \_\_\_\_\_ cfs (cubic feet per second)  
or <sup>750</sup> \_\_\_\_\_ gpm (gallons per minute)

c. Does this point share a diversion rate with other points? Y / N \_\_\_\_\_  
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches* <sup>1.67</sup> \_\_\_\_\_ cfs or <sup>750</sup> \_\_\_\_\_ gpm

d. For amendments, is Applicant seeking to increase combined diversion rate? Y / N \_\_\_\_\_

*\*\* An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed:

Check one		Write: Existing or Proposed
<u>x</u>	Directly from stream	Proposed
	From an on-channel reservoir	
	From a stream to an on-channel reservoir	
	Other method (explain fully, use additional sheets if necessary)	

f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. Y / N \_\_\_\_\_

If yes, the drainage area is \_\_\_\_\_ sq. miles.

*(If assistance is needed, call the Surface Water Availability Team at (512) 239-4600, prior to submitting application)*

## 2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Deadman Creek, tributary of Clear Fork Brazos River, Tributary of Brazos River
- b. Zip Code: 78212
- c. Location of point: In the In the J.A. Gholston Original Survey, Abstract 1497 in Jones County and Abstract 1786 in Shackelford County, Texas.

***A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure.***

***For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.***

- d. Point is at:  
Latitude 32.694448 °N, Longitude -99.614567 °W.  
***Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places***
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Google Earth
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38.
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

## WORKSHEET 3.0 DIVERSION POINT (OR DIVERSION REACH) INFORMATION

This worksheet is **required** for each diversion point or diversion reach. Submit one Worksheet 3.0 for **each** diversion point and two Worksheets for **each** diversion reach (one for the upstream limit and one for the downstream limit of each diversion reach).

*The numbering of any points or reach limits should be consistent throughout the application and on supplemental documents (e.g. maps).*

### 1. Diversion Information (Instructions, Page. 24)

a. This Worksheet is to add new (select 1 of 3 below):

1.  Diversion Point No.
2.  Upstream Limit of Diversion Reach No.
3.  Downstream Limit of Diversion Reach No.

b. Maximum Rate of Diversion for **this new point** <sup>1.67</sup> \_\_\_\_\_ cfs (cubic feet per second)  
or <sup>750</sup> \_\_\_\_\_ gpm (gallons per minute)

c. Does this point share a diversion rate with other points? **Y** / N \_\_\_\_\_  
*If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches* <sup>1.67</sup> \_\_\_\_\_ cfs or <sup>750</sup> \_\_\_\_\_ gpm

d. For amendments, is Applicant seeking to increase combined diversion rate? Y / **N** \_\_\_\_\_

*\*\* An increase in diversion rate is considered a new appropriation and would require completion of Section 1, New or Additional Appropriation of State Water.*

e. Check (✓) the appropriate box to indicate diversion location and indicate whether the diversion location is existing or proposed):

Check one		Write: Existing or Proposed
<input checked="" type="checkbox"/>	Directly from stream	Proposed
<input type="checkbox"/>	From an on-channel reservoir	
<input type="checkbox"/>	From a stream to an on-channel reservoir	
<input type="checkbox"/>	Other method (explain fully, use additional sheets if necessary)	

f. Based on the Application information provided, Staff will calculate the drainage area above the diversion point (or reach limit). If Applicant wishes to also calculate the drainage area, you may do so at their option.

Applicant has calculated the drainage area. Y / **N** \_\_\_\_\_

If yes, the drainage area is \_\_\_\_\_ sq. miles.

*(If assistance is needed, call the Surface Water Availability Team at (512) 239-4600, prior to submitting application)*

## 2. Diversion Location (Instructions, Page 25)

- a. On watercourse (USGS name): Deadman Creek, tributary of Clear Fork Brazos River, Tributary of Brazos River
- b. Zip Code: 79533
- c. Location of point: In the In the J.A. Gholston Original Survey, Abstract 1497 in Jones County and Abstract 1786 in Shackelford County, Texas.

***A copy of the deed(s) with the recording information from the county records must be submitted describing tract(s) that include the diversion structure.***

***For diversion reaches, the Commission cannot grant an Applicant access to property that the Applicant does not own or have consent or a legal right to access, the Applicant will be required to provide deeds, or consent, or other documents supporting a legal right to use the specific points when specific diversion points within the reach are utilized. Other documents may include, but are not limited to: a recorded easement, a land lease, a contract, or a citation to the Applicant's right to exercise eminent domain to acquire access.***

- d. Point is at:  
Latitude 32.684611 °N, Longitude -99.609988 °W.  
***Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places***
- e. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program): Google Earth
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 38.
- g. If the Plan of Diversion is complicated and not readily discernable from looking at the map, attach additional sheets that fully explain the plan of diversion.

## Recorded Deeds for Diversion Access and Lease Agreements

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.  
SPECIAL WARRANTY DEED

THE STATE OF TEXAS §

COUNTIES OF JONES AND §  
SHACKELFORD §

THAT, CHAMPION STONE COMPANY, LLC, a Texas limited liability company (herein referred to as "Grantor") whose mailing address is P. O. Box 1509, Midland, Texas 79702, for and return of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, in hand paid to Grantor by El Prado Stone, LP (herein referred to as "Grantee"), whose mailing address is 115 W. El Prado, Suite 1, San Antonio TX 78212, and other good and valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, have GRANTED, SOLD AND CONVEYED and by these presents do GRANT, SELL and CONVEY unto Grantee, subject to the exceptions and encumbrances hereinafter set forth, those certain tracts of real property situated in Jones and Shackelford Counties, Texas more particularly described on Addendum A attached hereto, incorporated herein and made a part hereof for all purposes, together with (i) any and all improvements or fixtures located thereon; (ii) any and all appurtenant easements or rights of way affecting said real property and all of Grantor's rights to use same; (iii) any and all rights of ingress and egress to and from said real property and all of Grantor's rights to use same; (iv) any and all strips, gores or pieces of property abutting, bounding or which are adjacent or contiguous to said real property (whether owned or claimed by deed, limitations or otherwise); and (v) any and all mineral rights and interests of Grantor relating to said real property (present or reversionary) (vi) any and all water permits, any and all water rights owned by Grantor or relating to said real property [said real property together with any and all of the related improvements and rights are herein collectively referred to as the "Property"].

TO HAVE AND TO HOLD the Property together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantee, its successors and assigns forever, subject to the matters herein stated; and Grantor does hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor subject to any and all restrictions, covenants, conditions, mineral reservations and easements, if any, but only to the extent they are still in effect and shown of record in the above-mentioned Counties and State, all zoning laws, regulations and ordinances of municipal and/or other governmental authorities, if any, but only to the extent that they are still in effect.

With respect to the physical condition of any and all improvements and personal property covered hereby and included in this conveyance, same are conveyed AS IS, WITH

ALL FAULTS.

Grantor warrants that all ad valorem taxes and assessments for the Property for the year 2014 and all prior years have been fully paid. Subject to the foregoing, such taxes and assessments for the year 2015 have been prorated between the parties hereto as of the effective date of this Deed, and Grantee assumes liability for the payment thereof and for subsequent years. If such proration was based upon an estimate of such taxes and assessments for the year 2014, then upon demand the parties hereto, if necessary, shall promptly and equitably adjust all such taxes and assessments, as soon as actual figures for these items for calendar year 2015 are available.

This Deed is expressly subject to the Agreement to Purchase and Sell dated January 27, 2015 between Grantor and Grantee.

Champion Stone Company, LLC  
By: [Signature]  
Stephen C. Cole  
It's: Manager

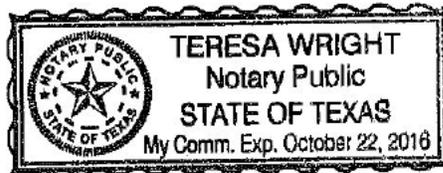
THE STATE OF TEXAS       §  
  §  
COUNTY OF MIDLAND     §

This instrument was acknowledged before me on January 27, 2015 by Stephen C. Cole as Manager of Champion Stone Company, LLC, a Texas limited liability company, on behalf of said company.

[Signature]  
Notary Public in and for the State of Texas  
Name Printed: 10-22-16 Terese Wright

My commission expires:  
10-22-16

After recording return to:  
El Prado Stone, LP  
115 W. Prado, Suite 1  
San Antonio, Texas 78212



ADDENDUM A  
TO SPECIAL WARRANTY DEEDTRACT ONE:

320 acres of land, more or less, of the North half of Section 8, Block 14, T & P RR. Co. Lands, Jones and Shackelford Counties, Texas, and being more particularly described in 5 parcels as follows:

Parcel One:

161.40 acres of land, more or less out of and a part of the North ½ of Section 8, Block 14, T & P Railroad Company Survey in Jones and Shackelford Counties, Texas; said property was conveyed to Richard Schkade by deed dated April 4, 1978, of record in Volume 263, Page 504, Deed Records of Shackelford County, Texas; said 161.40 acres, more or less, is more particularly described as follows:

BEGINNING at a 5/8" iron pin set at the Northwest corner of said Section 8, same being the Southwest corner of Section 5, Block 14, T & P Railroad Company Survey for the Northwest corner of this tract;

THENCE North 83°20'39" East along the North boundary line of said Section 8, same being along the South boundary line of Section 5, same being along the South boundary line of a 634.85 acre tract conveyed to Lee Roy Nauert, et ux, by deed dated January 24, 1983, of record in Volume 287, Page 220, Deed Records of Shackelford County, Texas, a distance of 5,275.64 feet to a 5/8" iron pin set at the Northeast corner of said Section 8, same being the Southeast corner of said Nauert 634.85 acre tract for the Northeast corner of this tract;

THENCE South 0°07'25" East along the East boundary line of said Section 8, same being along the West boundary line of Section 7, Block 14, T & P Railroad Company Survey a distance of 1,132.81 feet to a 5/8" iron pin set for the Southeast corner of this tract;

THENCE South 81°14'55" West a distance of 2,399.99 feet to a 5/8" iron pin set for an interior corner of this tract;

THENCE South 5°31'07" East a distance of 225.55 feet to a 5/8" iron corner post set for the most southerly Southeast corner of this tract;

THENCE South 81°15'05" West a distance of 890.00 feet to a 5/8" iron corner post set on the South boundary line of this tract;

continued on following page

ADDENDUM A  
TO SPECIAL WARRANTY DEED  
(CONTINUED)

THENCE South 84°33'48" West a distance of 2,001.80 feet to a 5/8" iron pin set on the West boundary line of said Section 8, said point also being in County Road No. 303, for the Southwest corner of this tract;

THENCE North 5° 31'07" West along the West boundary line of said Section 8 a distance of 1,436.20 feet to the point of beginning.

SAVE AND EXCEPT THE FOLLOWING TWO DESCRIBED PARCELS OF LAND:

Subparcel A:

29.94 acres of land, more or less, out of said Section No. 8, Block 14, T & P Railroad Company Survey, Shackelford County, Texas, described as follows:

BEGINNING at an iron pin for a corner said corner; said corner being 5°31'07" East 1,436.2 feet and North 84°33'48" East 2,000.8 feet from the Northwest corner of Section 8, Block 14, T & P Railroad Company Survey in Shackelford County, Texas; said corner also being the Northeast corner of a 53.83 acre survey made for Dennis Schkade on September 6, 1994, in Shackelford and Jones Counties.

THENCE South 84°33'48" West 300 feet along the North line of the 53.83 acre survey made for Dennis Schkade, to an iron pin set for the Southwest corner of this tract;

THENCE North 5°13'49" West 1,085.61 feet to an iron pin set for the northwest corner of this tract;

THENCE North 81°25'38" East 1,184.80 feet to an iron pin set for the Northeast corner of this tract;

THENCE South 5°31'07" East 1,100.00 feet to an iron pin set for the Southeast corner of this tract;

THENCE South 81°15'05" West 890.00 feet to the place of beginning.

Subparcel B:

Two acres of land, more or less, out of said Section No. 8, Block 14, T & P Railroad Company Survey, Jones County, Texas, described as follows:

COMMENCING at a 5/8" iron pin set at the Northwest corner of said Section 8, the same being the Southwest corner of Section 5, Block 14, T & P Railroad Company Survey;

continued on following page

ADDENDUM A  
TO SPECIAL WARRANTY DEED  
(CONTINUED)

THENCE, South 5°31'07" East along the West boundary line of said Section 8 a distance of 80.00 feet to a point on said West boundary line, and also being in County Road No. 303, for the PLACE OF BEGINNING of this two acre tract;

THENCE, North 83°20'39" East a distance of 296.00 feet to a point for a corner;

THENCE, South 5°31'07" East a distance of 296.00 feet to a point for a corner;

THENCE, South 83°20'39" West a distance of 296.00 feet to a point for a corner on the West boundary line of said Section 8, said point also being in County Road No. 303;

THENCE, North 5° 31'07" West along the West boundary line of said Section 8 a distance of 296.00 feet to the PLACE OF BEGINNING.

**Parcel Two:**

The surface only of 29.94 acres of land out of and a part of Section No. 8, Block 14, T & P RR Company Lands, described by metes and bounds as follows to-wit:

BEGINNING at an iron pin for a corner said corner being 5°31'07" East 1,436.2 feet and North 84°33'48" East 2,000.8 feet for the Northwest corner of Section 8, Block 14, T & P Railroad Company Survey in Shackelford County, Texas; said corner also being the Northeast corner of a 53.83 acre survey made for Dennis Schkade on September 6, 1994, in Shackelford and Jones Counties.

THENCE South 84°33'48" West 300 feet along the North line of the 53.83 acre survey made for Dennis Schkade, to an iron pin set for the Southwest corner of this tract;

THENCE North 5°13'49" West 1,085.61 feet to an iron pin set for the northwest corner of this tract;

THENCE North 81°25'38" East 1,184.80 feet to an iron pin set for the Northeast corner of this tract;

THENCE South 5°31'07" East 1,100.00 feet to an iron pin set for the Southeast corner of this tract;

THENCE South 81°15'05" West 890.00 feet to the place of beginning.

continued on following page

ADDENDUM A  
TO SPECIAL WARRANTY DEED  
(CONTINUED)Parcel Three:

161.46 acres of land, more or less, out of and a part of the North ½ of Section 8, Block 14, T & P Railroad Company Survey in Jones and Shackelford Counties, Texas; said property was conveyed to Richard Schkade by deed dated April 4, 1978, of record in Volume 264, Page 504, Deed Records of Shackelford County, Texas; said 161.46 acres, more or less is more particularly described as follows:

BEGINNING at a 5/8" iron pin set in the West boundary line of said Section 8 for the Northwest corner of this tract, said point being 1,436.20 feet South 5°31'07" East from the Northwest corner of said Section 8 and the Southwest corner of Section 5, Block 14, T & P Railroad Company Survey;

THENCE North 84°33'48" East a distance of 2,001.08 feet to a 5/8" iron corner post set on the North boundary line of this tract;

THENCE North 81°15'05" East a distance of 890.00 feet to a 5/8" iron corner post for an interior corner of this tract;

THENCE North 5°31'07" East a distance of 225.55 feet to a 5/8" iron pin set for the most westerly Northeast corner of this tract;

THENCE North 81°14'55" East a distance of 2,399.99 feet to a 5/8" iron pin set in the East boundary line of said Section 8, same being on the West boundary line of Section 7, Block 14, T & P Railroad Company Survey;

THENCE South 6°05'54" East along the East boundary line of said Section 8 a distance of 1,583.60 feet to a 5/8" iron pin set for the Southeast corner of this tract, said point being the Northeast corner of the Southeast ¼ of said Section 8;

THENCE South 84°41'11" West along the North boundary line of a 160 acre tract of land conveyed to the William Watt Matthews Royalty Trust by deed dated November 16, 1983, of record in Volume 294, Page 215, Deed Records of Shackelford County, Texas, at 2,632.80 feet pass the Northwest corner of said Matthews 160 acre tract same being the Northeast corner of a 160.01 acre tract of land conveyed to Jessie Deola Doby by deed dated August 5, 1988, of record in Volume 424, Page 731, Deed Records of Shackelford County, Texas, and continue along the North line of said Doby 160.01 acre tract a total distance of 3,300.06 feet to a 5/8" iron pin set in the South boundary line of this tract;

THENCE South 84°00'07" West continue along the North boundary line of said Doby 160.01 acre tract a distance of 2,002.48 feet to a 5/8" iron pin set in the West boundary line of said Section 8 for the Southwest corner of this tract, same being the Northwest corner of the said Doby 160.01 acre tract;

continued on following page

ADDENDUM A  
TO SPECIAL WARRANTY DEED  
(CONTINUED)

THENCE North 5°31'07" West along the West boundary line of said Section 8 a distance of 1,181.00 feet to the point of beginning.

SAVE AND EXCEPT from the above described 161.46 acres of land, 53.83 acres, more or less, and being the same land conveyed to Diane Willson in Partition Deed dated August 23, 2001, recorded in Volume 481, Page 98, Official Public Records of Shackelford County, Texas, reference to which instrument is herein made for description purposes.

Parcel Four:

A tract of land out of Section 8, Block 14, T. & P. RR. Co. Lands in Shackelford and Jones Counties, Texas, to-wit:

BEGINNING at the most southerly corner of the 161.46 acre tract above described, the same being the Southwest corner of said tract;

THENCE North 05 degrees 31' 07" West 450 feet with the West line of said 161.46 acre tract;

THENCE in an Easterly direction, parallel with the south line of said 161.46 acre tract to a point in the East line of said 161.46 acre tract;

THENCE South with the east line of said 161.46 acre tract to the southeast corner of said 161.46 acre tract, said point being the NE corner of the SE/4 of said Section 8;

THENCE Westerly with the south boundary of said 161.46 acre tract to the place of beginning, being approximately 53.83 acres of land, and being the same land conveyed to Diane Willson in Partition Deed dated August 23, 2001, recorded in Volume 481, Page 98, Official Public Records of Shackelford County, Texas.

Parcel Five:

Two acres of land, more or less, out of said Section No. 8, Block 14, T & P Railroad Company Survey, Jones County, Texas, described as follows:

COMMENCING at a 5/8" iron pin set at the Northwest corner of said Section 8, the same being the Southwest corner of Section 5, Block 14, T & P Railroad Company Survey;

THENCE, South 5°31'07" East along the West boundary line of said Section 8 a distance of 80.00 feet to a point on said West boundary line, and also being in County Road No. 303, for the PLACE OF BEGINNING of this two acre tract;

continued on following page

ADDENDUM A  
TO SPECIAL WARRANTY DEED  
(CONTINUED)

THENCE, North 83°20'39" East a distance of 296.00 feet to a point for a corner;

THENCE, South 5°31'07" East a distance of 296.00 feet to a point for a corner;

THENCE, South 83°20'39" West a distance of 296.00 feet to a point for a corner on the West boundary line of said Section 8, said point also being in County Road No. 303;

THENCE, North 5° 31'07" West along the West boundary line of said Section 8 a distance of 296.00 feet to the PLACE OF BEGINNING.

20150094

No. \_\_\_\_\_  
FILED FOR RECORD  
AT 10:46 O'CLOCK A M  
ON THE 2<sup>nd</sup> DAY OF  
Feb A.D. 2015.

STATE OF TEXAS  
COUNTY OF SHACKELFORD  
I hereby certify that this instrument was FILED  
on the date and at the time stamped hereon by  
me and was duly RECORDED in the Volume  
and Page of the Official Public Records of  
Shackelford County, Texas.



*Cheri Hawkins*  
Cheri Hawkins, County Clerk, Shackelford County, Texas

*Cheri Hawkins*  
Cheri Hawkins, County Clerk, Shackelford County, TX

OFFICIAL PUBLIC RECORDS  
VOL. 573 PAGE 933  
RECORDED 2/2/2015

150202

No. \_\_\_\_\_  
FILED FOR RECORD  
AT 3 O'CLOCK P M  
ON THE 2<sup>nd</sup> DAY OF  
Feb A.D. 2015.

STATE OF TEXAS  
COUNTY OF JONES  
I hereby certify that this instrument was FILED  
on the date and at the time stamped hereon by  
me and was duly RECORDED in the Volume  
and Page of the Official Public Records of  
Jones County, Texas.



*LeeAnn Jennings*  
LeeAnn Jennings, County Clerk, Jones County, Texas

*LeeAnn Jennings*  
LeeAnn Jennings, County Clerk, Jones County, TX  
BY *Janice McFee*  
Deputy

OFFICIAL PUBLIC RECORDS  
VOL. 405 PAGE 667  
RECORDED 2-2-15

## MINING LEASE AGREEMENT

This Mining Lease Agreement ("*Lease*") is made and entered into on this the 17<sup>th</sup> day of April, 2017 by and between Richard Craig Leeder ("*Landlord*"), an individual who resides in Boerne, Texas and joined pro forma herein by Jeanine E. Leeder, *et ux*, and El Prado Stone LP ("*Tenant*"), a Texas limited partnership with its principal office in San Antonio, Texas. (Landlord and Tenant are sometimes referred to herein singly as a "party" or together as the "parties".)

1. GRANT OF LEASE. In return for ten and no/100 dollars (\$10.00) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord hereby leases the property that is the subject hereof to Tenant, and Tenant hereby leases such property from Landlord, in accordance with the following terms and conditions:
2. PREMISES. The property that is the subject of this Lease is a tract of land belonging to Landowner in Jones and Shackelford Counties, Texas, containing six hundred thirty-four and eighteen-hundredths (634.18) acres, more or less, including all of Landowner's improvements thereon and all of rights of Landlord that are appurtenant thereto (collectively the "*Premises*"). A more complete description of the Premises is set forth on Exhibit A which is attached hereto and incorporated herein. The Premises are leased to, and accepted by, Tenant subject to all restrictions and encumbrances affecting the Premises that are reflected by the Official Real Property Records of Jones County or Shackelford County, Texas as of the date hereof ("*Permitted Encumbrances*").
3. CONDITION OF PREMISES. Except as otherwise expressly set forth herein, the Premises are also leased by Landlord, and accepted by Tenant, in their present "AS IS" condition, "WITH ALL FAULTS", without any expressed or implied representations or warranties by Landlord of any nature whatsoever, including, without limitation, representations or warranties regarding the fitness of the Premises for the purposes authorized hereunder. Tenant shall have the sole responsibility at its expense for taking all action required during the Term of this Lease (hereinafter defined) to make and keep the Premises safe and fit for its intended purposes.
4. PURPOSE. Tenant will have the exclusive right during the Term to occupy and use the Premises for mining, extracting, processing, cutting, finishing, storing, handling, transporting and distributing all rock, stone, sand, gravel, limestone, sandstone or similar solid materials that are located on or under the Premises (the "*Material*"), except as otherwise expressly provided herein. In furtherance thereof, Tenant may install, operate, maintain, repair and replace all plants, equipment, buildings, machines, tools, stockpiles, roads, and other facilities on the Premises that Tenant deems desirable, as well as carry out any other related activities which are not otherwise prohibited by the provisions hereof.
5. QUIET ENJOYMENT. Landlord represents and warrants to Tenant that (i) Landlord has good, fee simple title to the Premises and the Material and the right to enter into this Lease and carry out its provisions without the approval or involvement of third parties, (ii) the Premises and Material are free and clear of all liens, mortgages and encumbrances, other than the Permitted Encumbrances, (iii) under this Lease, Tenant will have the right to use the Premise to carry out all the activities described in Section 4 above, and (iv) except as otherwise provided herein, Tenant will be entitled to full, exclusive and undisturbed possession and enjoyment of the Premises throughout the Lease Term.
6. MONTHLY ROYALTY. Tenant shall pay Landlord a royalty by the twentieth (20th) day of each month for each ton of Material mined from the Premises that Tenant sold during the immediately preceding month (the "*Monthly Royalty*"); provided, however, that with respect to Material extracted as Mill Blocks (hereafter defined) from the Premises and processed into dimension stone at Tenant's processing facilities located within the Lueders Mine (also, hereafter defined), the Monthly Royalty shall be paid to Landlord

*JK*

within thirty (30) days following the date the applicable Mill Block was moved to Tenant's processing facility. The manner of determining the number of tons of Material sold each month for which a Monthly Royalty is due, is set forth on Exhibit B which is attached hereto and incorporated herein. Payment of the Monthly Royalty shall be made to Landlord at its address set forth in Section 28 below, or such other address as Landlord may hereafter designate in a written change of address notice delivered to Tenant, or in any other manner or place that may be agreed upon by the parties in writing.

7. AMOUNT OF MONTHLY ROYALTY. The Monthly Royalty rates for Material sold each month will be as follows:

A. The Monthly Royalty payable to Landlord upon the sale of Material that is intended for use as dimension stone<sup>1</sup> will be initially calculated at the rate of eight dollars (\$8.00) per ton. Such rate will be adjusted every thirty-six (36) months, beginning on May 1, 2020 and continuing regularly on the same day every thirty-six (36) month period thereafter, to proportionally reflect (i) any net percentage increase experienced in the "Consumer Price Index" ("CPI") during the thirty-six (36) month period then ending, or (ii) an increase of two percent (2%), whichever produces the greater result.

The phrase "Consumer Price Index" as used herein means the "Consumer Price Index For All Urban Consumers" published by the United States Department of Labor, Bureau of Labor Statistics, or, if that index is not available, it shall mean a comparable index published by the federal government measuring the rate of price inflation or deflation experienced by urban consumers in the United States. If CPI information is not available at the time required for making the above described calculation, the parties will continue using the then existing Monthly Royalty rate until the calculation can be made. When the calculation is ultimately made, the result will be applied by the parties retroactively to the beginning of the applicable thirty-six (36) month period and any corrective payment required will be promptly made by Tenant.

B. The Monthly Royalty payable to Landlord upon the sale of Material intended for uses other than dimension stone (as aggregate, for example) will equal one-half (½) of the "net profit" received by Tenant upon the sale of such Material. The net profit received by Tenant will be the difference between (i) the sales price of the applicable Material, and (ii) the direct and indirect costs of Tenant in producing the Material, selling it, and delivering it to the buyer. No Monthly Royalty will be owed by Tenant with respect to Material in the form of aggregates used by Tenant to construct roads and other similar facilities at the Lueders Mine (hereafter defined) that further Tenant's operations or are used by Tenant in connection with reclamation or restoration activities undertaken pursuant to Section 24 below.

8. MINIMUM QUARTERLY PAYMENTS. Tenant warrants to Landlord that payments owed by Tenant as Monthly Royalties for Material sold under this Lease will total not less than twenty thousand dollars (\$20,000.00) each calendar quarter<sup>2</sup> (the "*Minimum Quarterly Payment*"). The amount of such Minimum Quarterly Payment will be adjusted every thirty-six (36) months, beginning on May 1, 2020, and continuing regularly on the same day of every thirty-six (36) month period thereafter, at the same time, and in the same manner, as adjustments are made to the Monthly Royalty rate as described in the first paragraph of Subsection 7.A. above.

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<sup>1</sup> "dimension stone" is natural stone that has been extracted, cut or trimmed into blocks or slabs, and finished to meet specific project requirements for size, shape, color, and other characteristics.

<sup>2</sup> "calendar quarter" shall mean each of the three (3) month periods beginning on the first (1<sup>st</sup>) day of January, April, July and October of each calendar year. In the event this Lease is in effect for only part of a calendar quarter, the Minimum Quarterly Payment applicable for that quarter will be proportionately reduced to reflect the percentage of time during the quarter this Lease was in effect.

If Monthly Royalties during a calendar quarter are less than the then existing Minimum Quarterly Payment amount, Tenant shall pay Landlord, within thirty (30) days following the end of the calendar quarter, as Landlord's sole remedy for breach of the above warranty, the difference between the amount of Monthly Royalties owed by Tenant during the calendar quarter and the Minimum Quarterly Payment (a "*Shortfall Payment*"). Tenant may thereafter deduct the amount of such Shortfall Payments against subsequent Monthly Royalty amounts due Landlord in any calendar quarters which are in excess of the then existing Minimum Quarterly Payment amount.

9. INSPECTION AND AUDIT RIGHTS OF LANDLORD. In addition to its other rights hereunder, Landlord shall be entitled to enter upon the Premises from time to time during regular business hours, upon reasonable advance notice to Tenant, in order to carry out such inspections as Landlord may deem appropriate to ensure compliance with the terms hereof. In addition, on reasonable advance notice to Tenant, Landlord may review, audit and make copies of any applicable production, weight, sales and other business records of Tenant. All information obtained by Landlord under this Section 9 will be kept strictly confidential and not disclosed to any other party unless otherwise required by law or necessary to enforce the provisions hereof.

10. LAWFUL CONDUCT. All activities that are conducted on the Premises by Tenant under this Lease shall be carried out in a manner that comports with all applicable legal requirements. In this regard, Tenant, at its expense, will comply in all material respects with all applicable federal, state, and local laws, as well as all other governmental rules, regulations and permit conditions that may affect its personnel, equipment, mining or distribution activities, including, without limitation, all laws, rules, regulations and conditions as may now or hereafter be in force relating to public health, mine safety, and the environment.

11. ENVIRONMENTAL. Landlord makes those representations and warranties to Tenant regarding the knowledge of Landlord as to the present environmental condition of the Premises set forth on Exhibit C which is attached hereto and incorporated herein. Such representations and warranties are made without independent investigation of Landlord and only as to the Landlord's present actual personal knowledge. Landlord further represents and warrants to Tenant that, to the extent Landlord is engaged in activities on any portion of the Premises in the future, he will comply in all material respects with all applicable environmental laws, regulations and permit conditions.

12. AD VALOREM TAXES. Tenant will pay all ad valorem taxes and other similar charges assessed against (i) its equipment, plants, machinery, stockpiles, and other property on the Premises and (ii) all land constituting the Premises other than land Landlord is then entitled to occupy pursuant to the Occupancy Agreement described in Section 17 below; with Landlord being responsible for paying any such taxes and charges assessed against the land he is entitled to so occupy. The payment of all taxes and charges as provided for herein shall be made promptly by the respective parties before the final authorized date for such payment unless such taxes or charges are contested in good faith in accordance with applicable procedures.

13. UTILITIES. Tenant will pay for all utilities that it uses in its operations on the Premises including, but not limited to, electricity, gas and water. Subject to meeting all applicable legal requirements, Tenant may drill water wells or otherwise capture water on or near the Premises for use in its operations. Tenant may also bring, gas, electricity and such other utilities as it deems appropriate on the Premises and Landlord will cooperate with Tenant and take such action and execute such easements and other documents as may be reasonably requested by Tenant in order to bring such utilities to, and use them in connection with its operations on, the Premises, at the expense of Tenant.

14. REPAIRS AND IMPROVEMENTS. Landlord shall not be required to make any repairs to the land or any improvements located on the Premises, except as otherwise expressly provided herein. Tenant

shall have the sole right and responsibility during the Term, at its expense, to make all tests and inspections, as well as all improvements or repairs, that it deems necessary or appropriate with respect to the Premises or its equipment. Any alterations, additions or improvements made to the property or facilities of Tenant on the Premises shall belong exclusively to Tenant and shall remain its exclusive property upon the termination of this Lease.

15. MAINTENANCE OF PREMISES. Tenant will not allow trash or debris to accumulate on the Premises as a result of its operations, provided, however, that Tenant may extract and place on the Premises at any locations it deems appropriate any overburden, soil, vegetation, or other matter, not constituting Material, that Tenant, in its sole discretion, determines it must remove in order to carry out (i) mining and other activities permitted hereunder or (ii) other operations at the Leuders Mine. Tenant may make any use that it desires of such overburden, soil, vegetation or other matter, including, without limitation, selling it or transferring it to a third party without charge.

16. GOVERNMENTAL AUTHORIZATIONS. Except as otherwise agreed by the parties in writing, Tenant will be responsible at its expense for obtaining and maintaining all governmental permits and other authorizations that (i) are required for its operations, or (ii) in the sole judgment of Tenant, would benefit its operations (collectively "Authorizations"). Landlord shall cooperate fully with Tenant with respect to obtaining such Authorizations and throughout the Lease Term Landlord will take such action and execute such documents, as Tenant may reasonably request in writing, to assist with its Authorizations efforts. All reasonable costs incurred by Landlord in making such efforts will be paid by Tenant.

17. LANDLORD'S CONTINUED OCCUPANCY OF PORTIONS OF THE PREMISES. Simultaneously herewith, the parties are entering in a "Right of Occupancy Agreement" ("*Occupancy Agreement*") pursuant to which Tenant is granting Landlord the right to occupy and use for personal, recreational, and agricultural purposes, portions of the Premises that are not immediately needed by Tenant for its operations. As set forth more fully in the Occupancy Agreement, a copy of which is attached hereto as Exhibit D and incorporated herein, as Tenant's mining operations expand over time Tenant shall have the unilateral right to revise the Occupancy Agreement from time to time to reduce the lands that are the subject thereof.

18. INDEMNITY. TENANT AND LANDLORD, ALONG WITH OTHER PARTIES, ARE ALSO SIMULTANEOUSLY HEREWITH ENTERING INTO AN ASSET PURCHASE AGREEMENT ("*APA*") THAT IS RELATED, IN PART, TO THE MINING BUSINESS PREVIOUSLY CARRIED OUT BY I-10 BUILDING MATERIALS, LTD. ON THE PREMISES. THIS LEASE IS ONE OF THE "TRANSACTION DOCUMENTS" DEFINED IN THE APA AND, AS SUCH, IS COVERED BY THE INDEMNIFICATION PROVISIONS OF ARTICLE VIII OF THE APA, THE APPLICABLE PROVISIONS OF WHICH ARE INCORPORATED HEREIN BY REFERENCE FOR ALL PURPOSES.

IN ADDITION TO THE APPLICABLE INDEMNIFICATION PROVISIONS OF ARTICLE VIII OF THE APA, THE PARTIES FURTHER AGREE THAT:

A. TENANT SHALL DEFEND, INDEMNIFY AND HOLD LANDLORD AND ITS AFFILIATES (AS DEFINED IN THE APA) HARMLESS FROM ANY AND ALL LOSSES (AS DEFINED IN THE APA) ARISING FROM: (I) ANY DAMAGE TO THE PROPERTY OF ANY THIRD PARTY; (II) ANY DAMAGE, INJURY OR OTHER HARM TO PERSONS OR PROPERTY SUSTAINED BY LANDLORD OR ANY OF ITS AFFILIATES; OR (III) ANY DEMAND, CLAIM, CAUSE OF ACTION OR OTHER PROCEEDING BROUGHT AGAINST LANDLORD OR ANY ITS AFFILIATES BY A THIRD PARTY; IN EACH CASE, TO THE EXTENT SUCH LOSSES ARISE FROM ANY NEGLIGENT OR WRONGFUL ACT OR OMISSION OF TENANT, ITS SUBCONTRACTORS OR SUPPLIERS; AND

B. LANDLORD SHALL DEFEND, INDEMNIFY AND HOLD TENANT AND ITS AFFILIATES (AS DEFINED IN THE APA) HARMLESS FROM ANY AND ALL LOSSES ARISING FROM: (I) ANY DAMAGE TO THE PROPERTY OF ANY THIRD PARTY; (II) ANY DAMAGE, INJURY OR OTHER HARM TO PERSONS OR PROPERTY SUSTAINED BY TENANT OR ANY OF ITS AFFILIATES; OR (III) ANY DEMAND, CLAIM, CAUSE OF ACTION OR OTHER PROCEEDING BROUGHT AGAINST TENANT OR ANY ITS AFFILIATES BY A THIRD PARTY; IN EACH CASE, TO THE EXTENT SUCH LOSSES ARISE FROM ANY NEGLIGENT OR WRONGFUL ACT OR OMISSION OF LANDLORD, ITS SUBCONTRACTORS OR SUPPLIERS.

19. INSURANCE. Tenant, at its expense, shall carry comprehensive general liability insurance in a minimum amount of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate, endorsed for contractual liability, and shall name Landlord as an additional insured under such comprehensive liability insurance policies with respect to all indemnifiable matters under this Lease. Tenant shall also carry statutory workers' compensation insurance. Tenant shall cause a certificate evidencing such coverage to be forwarded to Landlord within ten (10) days after the execution of this Lease and annually thereafter throughout the Term of this Lease.

20. TERM. The period of this Lease will begin on the date set forth above and continue for fifty (50) years (the "Term"), unless earlier terminated as provided herein.

21. TERMINATION BY LANDLORD. Landlord may terminate this Lease at any time if Tenant (i) fails to pay any amount owed to Landlord hereunder when due and such failure continues for a period of thirty (30) days following notice from Landlord of such failure, or (ii) fails to perform any of its other obligations hereunder and such failure continues for a period of sixty (60) days after notice specifying such failure. If through no fault of Tenant the applicable failure is impracticable to correct within such sixty (60) day period, Landlord shall not terminate this Lease if Tenant commences with good faith and with due diligence to correct such failure within the sixty (60) day period and diligently prosecutes the correction of such failure until cured.

22. TERMINATION BY TENANT. Tenant may terminate this Lease at any time (i) if Landlord fails to perform any of its obligations hereunder, and such failure continues for a period of sixty (60) days after notice from Tenant of such failure; provided that, if, through no fault of Landlord such failure is impracticable to correct within such sixty (60) day period, Tenant shall not terminate this Lease if Landlord commences with good faith and with due diligence to correct such failure within the sixty (60) day period and diligently prosecutes the correction of such failure until cured, or (ii) for any reason whatsoever, on not less than six (6) months' prior written notice to Landlord.

23. CONDEMNATION. If any portion of the Premises which materially affects Tenant is taken by any competent authority, whether such taking is by actual dispossession, regulation of use or otherwise, and without regard to whether such action is legally cognizable as a compensable taking by such authority, Tenant in its sole discretion may terminate this Lease; provided, however, any such termination shall be without prejudice to the rights of either Tenant or Landlord to recover from the condemnor compensation or damages caused by the condemnation, apportioned in accordance with their respective interests.

24. WINDING-UP. Tenant will have six (6) months following the expiration or earlier termination of this Lease (the "*Winding-Up Period*") to remain and wind-up its affairs on the Premises. All obligations of the parties set forth herein shall continue during such period, provided, however, there shall be no further Minimum Quarterly Payments or Shortfall Payments due. By the end of the Winding-Up period, Tenant will remove all of its property and leave the Premises in a clean condition, subject to the effects of (i) normal

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wear and tear, (ii) mining and other activities authorized hereunder, and (iii) the consequences of any acts of Landlord, or others acting under Landlord's authority.

During the Winding-Up Period, Tenant will comply with all applicable legal requirements relating to the completion of mining activities on that portion of the land Tenant has occupied during the Term of this Lease. Tenant will have no other reclamation or restoration related obligations respecting the Premises.

25. TENANT PROPERTY. All fixtures and personal property of Tenant of whatever kind and nature placed or kept on the Premises shall continue to belong to Tenant, provided that such items are removed from the Premises by the end of the Winding-Up Period as set forth in the immediately preceding Section. If Tenant fails to so remove its fixtures and personal property, Tenant shall be conclusively deemed to have abandoned such property and Landlord may (i) claim and hold such property as its own, or (ii) cause such property to be removed from the Premises and disposed of at the expense of Tenant.

26. NO DUTY TO MINE. Notwithstanding any other terms hereof, provided that all Minimum Quarterly Payments are made to Landlord as set forth herein, Tenant may conduct mining activities on the Premises at levels Tenant determines, in its sole discretion, are appropriate for then existing economic conditions. Tenant shall have no obligation to mine, or sell any Material from the Premises and, if such activities are begun, nothing herein shall require Tenant to continue to develop, mine, or sell Material if, in the sole discretion and judgment of Tenant, it is not then commercially advantageous to Tenant to do so.

27. ASSIGNMENT AND SUBLEASE. Tenant may assign this Lease or sublease portions of the Premises without the prior written consent of the Landlord to a corporate affiliate of Tenant as part of an organizational restructuring. All other assignments or subletting of this Lease shall require the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. Neither the use of contractors to carry out activities on the Premises, nor a merger or change of control with respect to Tenant, will constitute an assignment or sublease of this Lease. Likewise, the Occupancy Agreement will not constitute an assignment or sublease of this Lease.

28. NOTICES. Whenever any notice is required or permitted hereunder, such notice or other communication provided for hereunder shall be in writing and may be (i) served by personal delivery, (ii) made by electronic mail, or (iii) sent by commercial courier service (with all fees prepaid) to the receiving parties as follows, or to any other address which either party may hereafter designate for itself in writing:

If to Landlord : Richard Craig Leeder  
2778 Turkey Knob  
Boerne, TX 78006  
Email: [REDACTED]

With a copy to:  
Cokinos | Young  
Attn: Ryan Schmidt  
1221 Lamar Street, 16<sup>th</sup> Floor  
Houston, Texas 77010  
Email: [REDACTED]

If to Tenant : El Prado Stone, LP  
115 W. El Prado, Suite 1  
San Antonio TX 78212  
Email: George Karutz [REDACTED]

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Until May 1, 2017 with a copy to:  
Kruger Carson PLLC  
3308 Broadway Street, Suite 305  
San Antonio, Texas 78209  
Attn: Brad Carson  
Email: [REDACTED]

After May 1, 2017, with a copy to:  
Kruger Carson PLLC  
711 Navarro, Suite 230  
San Antonio, TX 78205  
Attn: Brad Carson  
Email: [REDACTED]

Any such notice or communication shall be deemed to be given, if delivered in person, on the date delivered, if made by electronic mail, on the date transmitted, or, if sent by commercial courier service, on the date sent as evidenced by the bill of lading, and shall be deemed received, if delivered in person, on the date of personal delivery, if made by electronic mail, upon confirmation of receipt (including electronic confirmation), or if sent by commercial courier service, on the first business day after the day sent. Pursuant to Tex. Bus. & Comm. Code §43.005(b), the parties agree that the provisions of the Uniform Electronic Transactions Act shall apply to this Lease.

Any notice or other communication shall be given to such other designated representative or at such other designated address as one of the parties to this Lease may furnish in writing to the other party pursuant to this Section 28.

Payments to the parties under this Lease shall be made at the address of the payee as set forth above unless the parties agree otherwise in writing.

29. RECORDING. Tenant and Landlord shall, simultaneously with the execution of this Lease, sign a memorandum hereof to be duly recorded in the Official Real Property Records of Jones County and Shackelford County, Texas. A copy of such memorandum is attached hereto as Exhibit E and incorporated herein. Upon the conclusion of this Lease, Tenant will promptly file another document in such real estate records to evidence the fact that this Lease has been terminated and is no longer in effect.

30. AMENDMENTS. This Lease, including the attached Exhibits, constitutes the entire understanding of the parties regarding the subject matter hereof and may amended, changed, altered or otherwise modified or expanded only by a written amendment or addendum signed after the date hereof by an authorized representative of each party.

31. SEVERABILITY. If any term or provision of this Lease, or the application thereof to any person or circumstance, shall to any extent be determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Lease shall not be affected thereby.

32. FORCE MAJEURE. If the performance of any party hereunder, other than with respect to payments, is rendered commercially impracticable as a result of weather, strikes, wars, governmental orders, court action, transportation problems, mechanical difficulties, Acts of God, fire, or other events beyond such party's reasonable control, then performance will be suspended during the period of such commercial impracticability.

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33. WAIVER. The waiver by either party of any default in any of the terms and conditions stated herein shall not be deemed a waiver of any subsequent default of the same or any other term or condition hereof.

34. AMENDMENTS. This Lease constitutes the entire understanding of the parties regarding the subject matter hereof and may be amended, changed, altered or otherwise modified or expanded only by a written amendment signed after the date hereof by an authorized representative of each party.

35. NO OTHER PARTIES REQUIRED. Landlord and Tenant each warrants to the other that such warranting party possesses all rights and authorizations necessary to enter into and carry out the provisions of this Lease as set forth herein without the joinder, consent or approval of any other party and that upon execution, this Lease will be a binding agreement, enforceable in accordance with its terms, subject bankruptcy and similar creditor relief laws and courts acting in equity.

36. BINDING EFFECT. This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

37. TIME IS OF ESSENCE. Time is of the essence with respect to the provisions of this Lease.

38. GOVERNING LAW; ATTORNEYS' FEES; WAIVER OF JURY TRIAL. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law principles thereof.

ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS LEASE, MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF TEXAS IN EACH CASE LOCATED IN THE CITY OF SAN ANTONIO AND COUNTY OF BEXAR, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

In the event it becomes necessary for a party to commence legal action to enforce the terms of this Lease, the prevailing party shall be entitled to receive its reasonable attorneys' fees.

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS LEASE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS LEASE. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO

THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 38.

39. LIMITATION OF DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES RELATED TO THIS LEASE.

40. SECTION HEADINGS-GENDER. The Section headings contained in this Lease are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Lease. Words of the masculine gender in this Lease shall be deemed and construed to include correlative words of the feminine and neuter genders and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

41. SURVIVAL OF CERTAIN SECTIONS. The provisions of Sections 6, 7, 11, 12, 18, 23, 24, 25, 28, 29, 33, 34, 35, 38, 39, 40 above, as well as this Section 41, shall survive the expiration or earlier termination of this Lease, regardless of the reason for termination.

42. MEANING OF CERTAIN WORDS. In addition to those words defined elsewhere in this Lease, or in its Exhibits, the following words shall have the meaning indicated:

A. “*day*” means calendar day, unless the ending day of a period shall fall on a Saturday, Sunday or federal holiday, when it shall mean the next following business day. Any reference to a number of days shall mean consecutive days;

B. “*hereof*”, “*herein*”, “*hereunder*” and other words of like import mean this Lease taken as a whole unless the context in which such words are used clearly indicates otherwise;

C. “*Leuders Mine*” means the total area encompassed by (i) the Premises, (ii) an adjacent area owned by Tenant described more fully in a Special Warranty Deed found in the Official Real Property Records of Jones County, Texas under Clerk’s Number 150202, and in the Official Real Property Records of Shackelford County, Texas under Clerk’s Number 20150094, (iii) a nearby area owned by Tenant described more fully in a General Warrant Deed found in the Official Real Property Records of Shackelford County, Texas under Clerk’s Number 20150635, and (iv) any other real property now or hereafter owned or leased by Tenant in Jones County or Shackelford County, Texas which is used with foregoing parcels as an integrated mining operation.

D. “*Mill Blocks*” are large pieces of limestone which are mechanically extracted from their geological formation at the Premises and other areas within the Leuders Mine and provide the basic raw material for the production of dimension stone and other limestone products, such as aggregates;

E. “*month*” means calendar month unless the context clearly indicates otherwise. Any reference to a number of months shall mean consecutive months;

F. “*sold*” with respect to Material means that (i) title or possession of Material has been transferred by Tenant to any other party, (ii) Material has been removed from the property constituting the Leuders Mine by Tenant or anyone acting under the authority of Tenant, or (iii) Material has used on the property constituting the Leuders Mine by Tenant or anyone acting under the authority of Tenant for any purposes other than those expressly authorized by Subsection 7 B. above;

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G. “*ton*” means two thousand (2000) pounds; and

H. “*year*” means a calendar year unless the context clearly indicates otherwise. Any reference to a number of years shall mean consecutive years.

[COUNTERPART SIGNATURES PAGES FOLLOW]

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IN TESTIMONY WHEREOF, witness the signature of Tenant by its duly authorized officer, and Landlord, effective as of the date first set forth above.

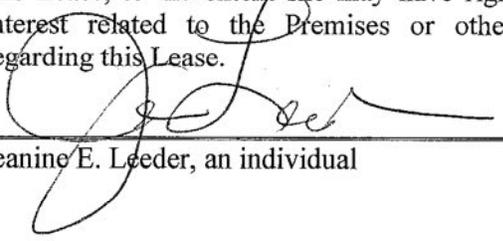
LANDLORD:

Richard Craig Leeder



Richard Craig Leeder, an individual

Landlord is joined *pro-forma* by his wife, Jeanine E. Leeder, who hereby agrees with and consents to this Lease, to the extent she may have rights or interest related to the Premises or otherwise regarding this Lease.

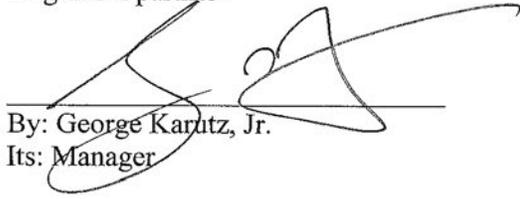


Jeanine E. Leeder, an individual

TENANT:

El Prado Stone, LP

By: El Prado Stone Management LLC,  
a Texas limited liability company,  
its general partner



By: George Karutz, Jr.  
Its: Manager

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**EXHIBIT A  
PREMISES DESCRIPTION**

The Premises is a tract of land situated in Jones and Shackelford Counties, Texas described as follows:

634.18 acres

Section 5 Block 14, T. & P. RR. Co. Lands, Jones and Shackelford Counties of Texas, and being the same land as described in deed recorded in Volume 522, Page 503, Official Public Records, Shackelford County, Texas.

BEGINNING at a 5/8" iron pin found for the northeast corner of Section 5 Block 14, T. & P. RR. Co.

THENCE S 5°49'13"E 5283.70' to a 1/2" iron pin set for the southeast corner of Section 5 and being the northeast corner of a tract described in deed recorded in Volume 491, Page 380;

THENCE S 83°20'40"W (Called Bearing of the north line of Volume 491, Page 380, Official Public Records, Shackelford County, Texas) 5257.26' to a 3/8" iron pin found in Jones County Road 303 for the southwest corner of Section 5;

THENCE N 5°30'00"E with the east line of the county road 911.10' to a 1/2" iron pin set for a corner of a 5.15 acre tract described in Volume 426, Page 339;

THENCE N 46°38'00"E 272.70' to a 1/2" iron pin set for the eastern most northeast corner of the 5.15 acre tract;

THENCE N 50°36'00"W crossing the county road 567.37' to a 1/2" iron pin set in the west line of Section 5 for the northern most corner of the 5.15 acre tract;

THENCE N 6°00'00"W 3827.26' to a 1/2" iron pin set in County Road 303 for the northwest corner of Section 5;

THENCE N 83°24'38"E 5273.77' to the place of beginning and containing 634.18 acres of land.

*GW*  
*GLK*

**EXHIBIT B**  
**MONTHLY ROYALTY CALCULATIONS**

Prior to the execution of this Lease the parties, or their affiliates, have conducted mining operations of adjacent or nearby tracts of land which are described in Subsection 42. C. of the Mining Lease. Both Landlord and Tenant have separately extracted limestone from their respective tracts and thereafter separately processed the limestone to create dimension stone or other stone products such as aggregates, which each party has then sold to their customers. Following the execution of this Lease, the parties anticipate that mining activities will be carried out by Tenant concurrently on several tracts of land as a single business enterprise identified in the Mining Lease as the "Lueders Mine". In order to determine the number of tons of Material that are extracted from the Premises and sold to customers from the Lueders Mine each month, which will be used to calculate the royalties owed to Landlord, the parties have agreed to the following procedure.

As Mill Blocks are extracted by Loaders from the Premises, the Loader operators will fill out a Daily Tracking Form recording the extraction of the Mill Block from the Premises and its removal from the quarry area for processing. The same procedure will be followed with respect to the extraction of Mill Blocks from other areas of the Lueders Mine; that is, the Loader operator will fill out a Daily Tracking Form recording the extraction of the Mill Block from such areas and its removal from the quarry area for processing. Among other things, the Daily Tracking Forms will identify the Mill Block by ledge type and size, which will allow the parties to determine the gross tonnage of each Mill Block extracted from the Premise or from other areas of the Lueders Mine, as the case may be. The Loader operators will turn in the Daily Tracking Forms to the Tenant's Office every working day (as they scan out on the time clock), and the Office will enter the information into an overall Excel Tracking Sheet. The hard copies of the Daily Tracking Forms will be maintained by Tenant for auditing purposes, and will be available to Landlord as set forth in Section 9 of the Mining Lease. The Excel Tracking Sheet will separately calculate the gross tonnage of Mill Blocks removed from (i) the Premises, and (ii) other areas, into processing operations, on a daily, weekly, monthly and annual basis.

In addition:

- A. In the case of Mill Blocks that are extracted from the Premises, and processed into dimension stone products on the Premises prior to being shipped to customers, the parties will determine the tonnage of such products by weighing them on truck scales located within the Lueders Mine prior to shipment;
- B. In the case of Mill Blocks that are extracted from the Premises, and processed into dimension stone products at the Comfort, Texas facility simultaneously herewith being leased by Tenant, the parties will weigh each Mill Block on truck scales and then reduce that tonnage by ten percent (10%) to account for loss during the processing of such products;
- C. In the case of Mill Blocks extracted from the Premises and processed into dimension stone products at Tenant's processing facilities located within the Lueders Mine, the parties will weigh each Mill Block on truck scales and then reduce that tonnage by twenty-five percent (25%) to account for loss during the processing of such products.
- D. If, in the future, Mill Blocks are processed into dimension stone products at other locations, or if different processing technologies or processes are employed, the parties will cooperate to determine the percentage of loss that is then experienced in processing Mill Blocks into dimension stone products and will deduct that percentage from the gross tonnage of the Mill Blocks to arrive at the number of tons sold.

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**EXHIBIT C**  
**ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES**

1. Definitions.

(a) The term "Environmental Laws" shall mean all federal, state, local and foreign (as may be applicable) laws relating to pollution or protection of the environment and any regulation, code, plan, order, decree, judgment or injunction related thereto, including the following federal laws:

- (i) the Resource Conservation and Recovery Act;
- (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980;
- (iii) the Superfund Amendments and Reauthorization Act of 1986;
- (iv) the Clean Air Act;
- (v) the Clean Water Act;
- (vi) the Safe Drinking Water Act;
- (vii) the Toxic Substances Control Act; and
- (viii) the Hazardous Materials Transportation Act.

(b) The term "Contamination" and any derivative thereof means any release, spill, leak, discharge, disposal, deposit, pumping, pouring, emitting, emptying, or injection of a Regulated Substance into the environment.

(c) The term "Regulated Substance" means any hazardous, radioactive or toxic material, substance, waste, contamination or petroleum product, the assessment or removal of which is required or the maintenance or storage of which is regulated, restricted, prohibited or penalized under any Environmental Law.

2. Landlord represents and warrants that, except as set forth on Schedule A attached hereto, to the best of his current actual knowledge, and without any independent investigation on his part:

(a) There are no waste dumps or disposal, treatment or storage sites located on the Premises and the Premises have not been used for the treatment, storage or disposal of Regulated Substances;

(b) The Premises have not been contaminated with any Regulated Substance so as to constitute a violation of any Environmental Laws or so to trigger any corrective or remedial action under any Environmental Laws

(c) There are no transformers, capacitors or other equipment located on the Premises which contain polychlorinated biphenyls;

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(d) No portion of the Premises is reasonably believed by Landlord to be a wetland as defined in 33 CFR §328.3;

(e) There are no underground storage tanks located on or under the Premises;

(f) All uses of Premises and all activities conducted on the Premises by Landlord have, in all material respects, been in compliance with all Environmental Laws;

(g) There are no past or present events, conditions, circumstances or activities which may interfere with or prevent continued compliance with the Environmental Laws, or which may give rise to any common law or legal liability, or form the basis of any claim or action, proceeding, hearing, study or investigation, based on or related to the manufacture, processing, use, storage, disposal or handling, or the release or threatened release into the environment, of any Regulated Substance;

(h) There is no pending or, to the current actual knowledge of Landlord, threatened civil or criminal litigation, notice of violation or administrative proceeding relating in any way to the Environmental Laws involving the Premises or Landlord, and to the current actual knowledge of Landlord, there is no basis for any such litigation, notice or proceeding; and

(i) Landlord has provided Tenant with a copy of any environmental assessment and audit of the Premises, including all sampling reports of surface water, ground water, soil and sub-soil, air and vegetation, in Landlord's possession, other than any commissioned by Tenant.

Handwritten initials 'CW' and 'GK' with checkmarks, located in the bottom right corner of the page.

**EXHIBIT D**  
**RIGHT OF OCCUPANCY AGREEMENT**

This Right of Occupancy Agreement ("*Agreement*") is made and entered into on this the 17<sup>th</sup> day of April, 2017 by and between and El Prado Stone LP ("*Grantor*"), a Texas limited partnership with its principal office in San Antonio, Texas and Richard Craig Leeder ("*Grantee*"), an individual who resides in Boerne, Texas. (Grantor and Grantee are sometimes referred to herein singly as a "party" or together as the "parties".)

Grantee is the owner of a six hundred thirty-four and eighteen-hundredths (634.18) acre tract of land, more or less, situated in Jones County and Shackelford County, Texas. As of the date hereof, Grantor has leased the tract of land to Grantor for mining purposes pursuant to a Mining Lease Agreement ("*Mining Lease*") which may extend for a period of fifty (50) years. A portion of the leased land, shown on Appendix A which is attached hereto and incorporated herein (the "*Reserve Area*"), will not be used by Grantor for mining activities immediately and therefore may remain in its present condition for some period of time. Until needed by Grantor, Grantee would like to continue occupying the Reserve Area for his own personal, recreational and agricultural purposes, in accordance with the terms and conditions set forth below. Grantor is agreeable to those terms and conditions and accordingly, in return for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. RIGHT TO OCCUPY RESERVE AREA. Notwithstanding the Mining Lease, Grantor hereby grants to Grantee the right to continue occupying and using the Reserve Area, including the personal property and fixtures presently located thereon, without charge, for personal, recreational and agricultural purposes during the term of this Agreement. Except as otherwise provided herein, such occupancy and use by Grantee will be exclusive; Grantor will neither occupy Reserve Area itself nor grant others the right to occupy Reserve Area while this Agreement remains in effect.
2. CONDITION OF RESERVE AREA. As owner, Grantee is very familiar with the land that constitutes the Reserve Area and the personal property and fixtures located thereon and he hereby accepts the Reserve Area, including all personal property and fixtures thereon, in their present "AS IS" condition "WITH ALL FAULTS" and without any express or implied representations or warranties by Grantor of any nature whatsoever, including, without limitation, representations or warranties regarding the Reserved Areas' habitability, merchantability, safety or fitness for any particular purpose.
3. MODIFICATIONS OF RESERVE AREA. From time to time, as Grantor's mining operations under the Mining Lease expand geographically, Grantor will require additional land for use in extracting materials and carrying out other mining activities. In those instances, Grantor, acting in its sole discretion, shall have the unilateral right on not less than three (3) months advance written notice to Grantee to reduce the Reserve Area described on Appendix A, thus making more land subject of the Mining Lease available to Grantor for its mining operations.

In such instances, Grantor will prepare a revised Appendix A reflecting the land that will then constitute Reserve Area and provide Grantee with a copy thereof in a manner that conforms to Section 28 of the Mining Lease, which Section is incorporated herein by reference. The revised Appendix will be automatically deemed attached to this Agreement in place of the immediately preceding Appendix A. In reducing the Reserve Area, Grantor will use its best commercially reasonable efforts<sup>3</sup> to mine contiguous lands, thus avoiding isolated areas of disturbance; recognizing that the lithology of the materials, as well as

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<sup>3</sup> In using its best commercially reasonable efforts to mine contiguous lands, Grantor will act in a manner consistent with the manner first class mining companies would customarily be expected to act in a similar situation.

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other mining and marketing conditions, may occasionally require Grantor to remove non-contiguous land from the Reserve Area.

If any portion of the Reserve Area is condemned by any competent authority, whether such taking is by actual dispossession, regulation of use or otherwise, without resulting in the termination of the entire Mining Lease, Appendix A will likewise be revised by the parties to remove the condemned lands from the lands constituting the Reserve Area.

Grantor, at its expense, shall install any new fencing and gates on, or adjacent to, the borders of the revised Reserve Area necessary to replace any existing fencing and gates that will be removed as a result of Grantor's modification of the Reserve Area. The fencing and gates installed by Grantor will be comparable to those they replace.

4. ADJACENT ACTIVITIES. Grantee further accepts the Reserve Area with knowledge that Grantor will be conducting mining activities on adjacent lands which are the subject of the Mining Lease, as well as other nearby lands; from time to time, producing dust, noise, lights, truck traffic and other perturbations ("*Perturbations*") which are often associated with large commercial mining operations. Grantee acknowledges that he is well aware of the effects of mining activities and hereby irrevocably waives any claims he may now or hereafter have against Grantor related to any or all of such Perturbations.

5. GRANTEE'S RESPONSIBILITY FOR COSTS. All costs incurred by Grantee's related to his occupancy of the Reserve Area during the term of this Agreement, as well all costs associated with the personal property and fixtures located thereon, will be borne solely by Grantee. Such costs shall be timely paid by Grantee so that no liens are filed against the Reserve Area. In the event such a lien is filed, Grantee shall cause the lien to be removed immediately at his expense. Grantee shall also timely and properly pay all ad valorem taxes assessed against the land then constituting the Reserve Area.

6. LAWFUL AND SAFE CONDUCT. Grantee and individuals acting under his authority will carry out activities on the Reserve Area in strict compliance with all applicable federal, state and local laws, regulations, rules, orders and governmental authorizations including, without limitation, rules and regulations promulgated by the federal Mine Safety and Health Administration, the Environmental Protection Agency and the Texas Commission on Environmental Quality. In addition, all hunting activities on the Reserve Area will be conducted by Grantee and those acting under his authority with due regard for Grantor's personnel and equipment on adjacent and nearby lands.

7. HAZARDOUS MATERIALS. Without limiting the immediately preceding Section, neither Grantee nor those acting under his authority, shall cause or permit any substances which are defined by any applicable federal, state or local law or regulation as "hazardous" to be brought upon or introduced in the Reserve Area, other than small amount of such substances commonly associated with personal and agricultural activities when stored and used in strict conformance with the manufacturer's, and all applicable governmental, requirements or guidelines.

8. INSPECTIONS BY GRANTOR. Grantor shall be entitled to enter upon the Reserve Area during regular business hours, upon reasonable advance notice to Grantee, in order to carry out such inspections as Grantor may deem appropriate to, (i) ensure compliance with the provisions hereof, or (ii) carry out investigations regarding material on or under the Reserve Area, including, without limitation, drilling small holes at locations it selects, extracting small amounts of test material, and sending the material off-site for examination, or both.

9. NO RIGHT OR DUTY OF CONTROL. All activities undertaken by Grantee on the Reserve Area shall be under the exclusive direction and control of Grantee and Grantor will not have any right or duty to

inspect or repair any facilities or equipment of Grantee or control or supervise the activities of any individuals who are on the Reserve Area for the benefit, or at the invitation, of Grantee.

10. TERM. This Agreement shall continue until (i) the Mining Lease expires or is terminated, (ii) no lands remain in the Reserve Area as a result of revisions to Appendix A as described in Section 3 above, or (iii) this Agreement is otherwise terminated as provided herein, whichever shall first occur. Following termination of this Agreement, except as provided in romanettes (i) and (ii) above, Grantee shall wind-up his affairs on the Reserve Area and remove all of his personal property therefrom within six (6) months following the date this Agreement ends.

11. INDEMNIFICATION. GRANTEE SHALL DEFEND, INDEMNIFY AND HOLD GRANTOR AND ITS PARTNERS, OFFICERS, EMPLOYEES AND REPRESENTATIVES (SINGLY AND COLLECTIVELY THE "*GRANTOR INDEMNITEES*") HARMLESS FROM ANY AND ALL LOSSES, COSTS, EXPENSES, DAMAGES, JUDGMENTS AND PENALTIES, OF WHATEVER KIND, INCLUDING REASONABLE ATTORNEYS' FEES AND THE COST OF ENFORCING ANY RIGHT TO INDEMNIFICATION HEREUNDER ("*LOSSES*"), ARISING FROM ANY VIOLATION OF THIS AGREEMENT BY GRANTEE OR (I) ANY DAMAGE TO THE PROPERTY OF ANY THIRD PARTY; (II) ANY DAMAGE, INJURY OR OTHER HARM TO SUSTAINED DIRECTLY BY ANY OF THE GRANTOR INDEMNITEES (III) ANY DEMAND, CLAIM, CAUSE OF ACTION OR OTHER PROCEEDING BROUGHT AGAINST ANY OF THE GRANTOR INDEMNITEES BY A THIRD PARTY; IN EACH CASE DESCRIBED IN ROMANETTES (1), (II) OR (III) ABOVE, TO THE EXTENT SUCH LOSSES ARISE FROM ANY NEGLIGENT OR WRONGFUL ACT OR OMISSION OF GRANTEE OR ANY PARTY ACTING UNDER THE AUTHORITY OF GRANTEE.

GRANTOR SHALL DEFEND, INDEMNIFY AND HOLD GRANTEE AND MEMBERS OF HIS FAMILY (SINGLY AND COLLECTIVELY THE "*GRANTEE INDEMNITEES*") HARMLESS FROM ANY AND ALL LOSSES ARISING FROM ANY VIOLATION OF THIS AGREEMENT BY GRANTOR OR (I) ANY DAMAGE TO THE PROPERTY OF ANY THIRD PARTY; (II) ANY DAMAGE, INJURY OR OTHER HARM TO SUSTAINED DIRECTLY BY ANY OF THE GRANTEE INDEMNITEES OR (III) ANY DEMAND, CLAIM, CAUSE OF ACTION OR OTHER PROCEEDING BROUGHT AGAINST ANY OF THE GRANTEE INDEMNITEES BY A THIRD PARTY; IN EACH CASE DESCRIBED IN ROMANETTES (1), (II) OR (III) ABOVE, TO THE EXTENT SUCH LOSSES ARISE FROM ANY NEGLIGENT OR WRONGFUL ACT OR OMISSION OF GRANTOR OR ANY PARTY ACTING UNDER THE AUTHORITY OF GRANTOR.

12. INSURANCE. Grantee, at his expense, shall carry comprehensive general liability insurance in a minimum amount of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate, endorsed for contractual liability, and shall name Grantor as an additional insured under such comprehensive liability insurance with respect to all indemnifiable matters under this Agreement. Grantee shall cause a certificate evidencing such coverage to be forwarded to Grantor within ten (10) days after the execution of this Agreement and annually thereafter throughout the Term of this Agreement.

13. TERMINATION BY GRANTOR. Grantor may terminate this Agreement at any time if Grantee fails to perform any of its obligations under this Agreement and such failure continues for a period of sixty (60) days after notice specifying such failure. If through no fault of Grantee the applicable failure is impracticable to correct within such sixty (60) day period, Grantor shall not terminate this Agreement if Grantee commences with good faith and with due diligence to correct such failure within the sixty (60) day period and diligently prosecutes the correction of such failure until cured.

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14. TERMINATION BY GRANTEE. Grantee may terminate this Agreement at any time for any reason by providing Grantor with written notice of termination not less than thirty (30) days in advance of the termination date.

15. ASSIGNMENT AND SUBLEASE. Grantor may assign this Agreement without the prior written consent of the Grantee. This Agreement is personal to Grantee, however, and may not be assigned by Grantee to any other party without the prior written consent of Grantor, which consent may be withheld or delayed by Grantor for any reason or no reason at all; except that this Agreement may pass along with ownership of land then constituting the Reserve Area to Grantee's devisees or other applicable heirs upon his death.

16. NOTICES. Whenever any notice is required or permitted hereunder, such notice or other communication provided for hereunder shall be in writing and may be (i) served by personal delivery, (ii) made by electronic mail, or (iii) sent by commercial courier service (with all fees prepaid) to the receiving parties as follows, or to any other address which either party may hereafter designate for itself in writing:

If to Landlord : Richard Craig Leeder  
2778 Turkey Knob  
Boerne, TX 78006  
Email: [REDACTED]

With a copy to:  
Cokinos | Young  
Attn: Ryan Schmidt  
1221 Lamar Street, 16<sup>th</sup> Floor  
Houston, Texas 77010  
Email: [REDACTED]

If to Tenant : El Prado Stone, LP  
115 W. El Prado, Suite 1  
San Antonio TX 78212  
Email: George Karutz [REDACTED]

*Until May 1, 2017 with a copy to:*  
Kruger Carson PLLC  
3308 Broadway Street, Suite 305  
San Antonio, Texas 78209  
Attn: Brad Carson  
Email: [REDACTED]

*After May 1, 2017, with a copy to:*  
Kruger Carson PLLC  
711 Navarro, Suite 230  
San Antonio, TX 78205  
Attn: Brad Carson  
Email: [REDACTED]

Any such notice or communication shall be deemed to be given, if delivered in person, on the date delivered, if made by electronic mail, on the date transmitted, or, if sent by commercial courier service, on the date sent as evidenced by the bill of lading, and shall be deemed received, if delivered in person, on the date of personal delivery, if made by electronic mail, upon confirmation of receipt (including electronic

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confirmation), or if sent by commercial courier service, on the first business day after the day sent. Pursuant to Tex. Bus. & Comm. Code §43.005(b), the parties agree that the provisions of the Uniform Electronic Transactions Act shall apply to this Lease.

17. AMENDMENTS. This Agreement, together with the Mining Lease, constitute the entire understanding of the parties regarding the subject matter hereof and may amended, changed, altered or otherwise modified or expanded only by a written amendment or addendum signed after the date hereof by an authorized representative of each party.

18. SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be determined to be invalid or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall not be affected thereby.

19. FORCE MAJEURE. If the performance of any party hereunder, other than with respect to payments, is rendered commercially impracticable as a result of weather, strikes, wars, governmental orders, court action, transportation problems, mechanical difficulties, Acts of God, fire, or other events beyond such party's reasonable control, then performance will be suspended during the period of such commercial impracticability.

20. WAIVER. The waiver by either party of any default in any of the terms and conditions stated herein shall not be deemed a waiver of any subsequent default of the same or any other term or condition hereof.

21. NO OTHER PARTIES REQUIRED. Grantor and Grantee each warrants to the other that such warranting party possesses all rights and authorizations necessary to enter into and carry out the provisions of this Agreement as set forth herein without the joinder, consent or approval of any other party and that upon execution, this Agreement will be a binding agreement, enforceable in accordance with its terms, subject bankruptcy and similar creditor relief laws and courts acting in equity.

22. BINDING EFFECT. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

23. TIME IS OF ESSENCE. Time is of the essence with respect to the provisions of this Agreement.

24. GOVERNING LAW; ATTORNEYS' FEES; WAIVER OF JURY TRIAL. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law principles thereof.

ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF TEXAS IN EACH CASE LOCATED IN THE CITY OF SAN ANTONIO AND COUNTY OF BEXAR, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

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In the event it becomes necessary for a party to commence legal action to enforce the terms of this Agreement, the prevailing party shall be entitled to receive its reasonable attorneys' fees.

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 39.

25. LIMITATION OF DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES RELATED TO THIS AGREEMENT.

26. SECTION HEADINGS-GENDER. The Section headings contained in this Agreement are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement. Words of the masculine gender in this Agreement shall be deemed and construed to include correlative words of the feminine and neuter genders and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.

27. SURVIVAL OF CERTAIN SECTIONS. The provisions of Sections 4, 5, 11, 20, 23, 24, this Section 27, and 28 shall survive the expiration or earlier termination of this Agreement, regardless of the reason for termination.

28. MEANING OF CERTAIN WORDS. In addition to those words defined elsewhere in this Agreement, the following words shall have the meaning indicated:

A. "day" means calendar day, unless the ending day of a period shall fall on a Saturday, Sunday or federal holiday, when it shall mean the next following business day. Any reference to a number of days shall mean consecutive days;

B. "hereof", "herein", "hereunder" and other words of like import mean this Agreement taken as a whole unless the context in which such words are used clearly indicates otherwise;

C. "month" means calendar month unless the context clearly indicates otherwise. Any reference to a number of months shall mean consecutive months;

COUNTERPART SIGNATURE PAGES FOLLOW

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COUNTERPART SIGNATURE PAGES  
OF  
RIGHT OF OCCUPANCY AGREEMENT

IN TESTIMONY WHEREOF, witness the signature of Grantor by its duly authorized officer, and Grantee, effective as of the date first set forth above.

GRANTEE:

Richard Craig Leeder

\_\_\_\_\_  
Richard Craig Leeder, an individual

Landlord is joined *pro-forma* by his wife, Jeanine E. Leeder, who hereby agrees with and consents to this Lease, to the extent she may have rights or interest related to the Premises or otherwise regarding this Lease.

\_\_\_\_\_  
Jeanine E. Leeder, an individual

GRANTOR:

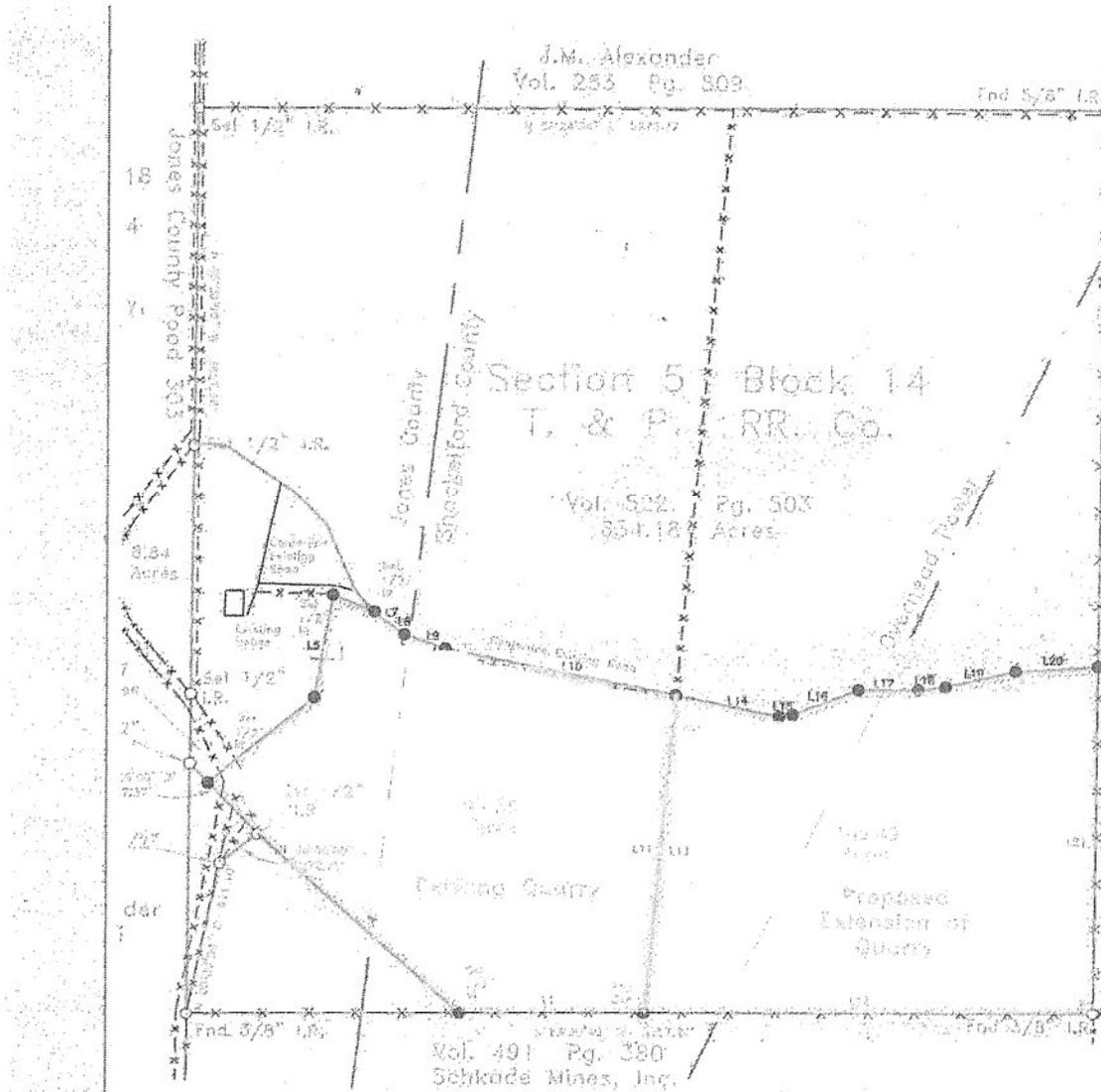
El Prado Stone, LP  
By: El Prado Stone Management LLC,  
a Texas limited liability company,  
its general partner

\_\_\_\_\_  
By: George Karutz, Jr.  
Its: Manager

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at

**APPENDIX A  
INITIAL RESERVE AREA**

The portion of the six hundred thirty-four and eighteen-hundredths (634.18) acre tract of land constituting the area that will be initially used by Grantor for mining activities under the Mining Lease is highlighted in yellow below. The portion of such tract that is not highlighted in yellow will constitute the initial Reserve Area that may be occupied by Grantee, until this Appendix A is revised by Grantor.



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**EXHIBIT E**  
**MEMORANDUM OF LEASE**

This Memorandum of Mining Lease Agreement is filed to record to provide public notice that El Prado Stone, LP, a Texas limited partnership with offices at 115 W. El Prado, Suite 1, San Antonio, Texas 78212 has entered into a Mining Lease Agreement with Richard Craig Leeder, joined pro forma by Jeanine E. Leeder, *et ux*, covering a tract of land situated in Jones County and Shackelford County, Texas more fully described on Exhibit A which is attached hereto and incorporated herein. The said Mining Lease Agreement may extend through April 16, 2067. Upon termination of the Mining Lease Agreement, El Prado Stone, LP will file notice of such termination in the Official Real Property Records of each of the above referenced Counties.

Date: April 17, 2017

RICHARD CRAIG LEEDER:

  
Richard Craig Leeder, an individual

Richard Craig Leeder is joined *pro-forma* by his wife, Jeanine E. Leeder, who hereby agrees with and consents to this Memorandum, to the extent she may have rights or interest in the property and related rights contemplated by the Mining Lease Agreement.

\_\_\_\_\_  
Jeanine E. Leeder, an individual

EL PRADO STONE, LP  
By, EL PRADO STONE MANAGEMENT, LLC  
Its, GENERAL PARTNER.

\_\_\_\_\_  
Name: George Karutz, Jr.  
Title: Manager

[SIGNATURES CONTINUED ON FOLLOWING PAGE]



THE STATE OF TEXAS                   §  
  §  
COUNTY OF \_\_\_\_\_               §

This instrument was acknowledged before me by Richard Craig Leeder, on this the 17<sup>th</sup> day of April, 2017.

\_\_\_\_\_  
Notary Public Signature

(PERSONALIZED SEAL)

THE STATE OF TEXAS                   §  
  §  
COUNTY OF \_\_\_\_\_               §

This instrument was acknowledged before me by Jeanine E. Leeder, on this the 17<sup>th</sup> day of April, 2017.

\_\_\_\_\_  
Notary Public Signature

(PERSONALIZED SEAL)

THE STATE OF TEXAS                   §  
  §  
COUNTY OF BEXAR                   §

This instrument was acknowledged before me on this the 17<sup>th</sup> day of April, 2017 by George Karutz, Jr., the Manager of El Prado Stone Management, LLC., the general partner of El Prado Stone, LP, a Texas limited partnership, on behalf of said limited partnership.

\_\_\_\_\_  
Notary Public Signature

(PERSONALIZED SEAL)

After recording return to:  
  
El Prado Stone, LP  
115 W. Prado, Suite 1  
San Antonio, Texas 78212

EXHIBIT A

The tract of land which is the subject of this Memorandum of Lease is situated in Jones and Shackelford Counties, Texas and is described as follows:

634.18 acres

Section 5 Block 14, T. & P. RR. Co. Lands, Jones and Shackelford Counties of Texas, and being the same land as described in deed recorded in Volume 522, Page 503, Official Public Records, Shackelford County, Texas.

BEGINNING at a 5/8" iron pin found for the northeast corner of Section 5 Block 14, T. & P. RR. Co.

THENCE S 5°49'13"E 5283.70' to a 1/2" iron pin set for the southeast corner of Section 5 and being the northeast corner of a tract described in deed recorded in Volume 491, Page 380;

THENCE S 83°20'40"W (Called Bearing of the north line of Volume 491, Page 380, Official Public Records, Shackelford County, Texas) 5257.26' to a 3/8" iron pin found in Jones County Road 303 for the southwest corner of Section 5;

THENCE N 5°30'00"E with the east line of the county road 911.10' to a 1/2" iron pin set for a corner of a 5.15 acre tract described in Volume 426, Page 339;

THENCE N 46°38'00"E 272.70' to a 1/2" iron pin set for the eastern most northeast corner of the 5.15 acre tract;

THENCE N 50°36'00"W crossing the county road 567.37' to a 1/2" iron pin set in the west line of Section 5 for the northern most corner of the 5.15 acre tract;

THENCE N 6°00'00"W 3827.26' to a 1/2" iron pin set in County Road 303 for the northwest corner of Section 5;

THENCE N 83°24'38"E 5273.77' to the place of beginning and containing 634.18 acres of land.

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## Worksheet 5.0

# WORKSHEET 5.0

## ENVIRONMENTAL INFORMATION

### 1. Impingement and Entrainment

This section is required for any new diversion point that is not already authorized. Indicate the measures the applicant will take to avoid impingement and entrainment of aquatic organisms (ex. Screens on any new diversion structure that is not already authorized in a water right). **Instructions, Page 29.**

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### 2. New Appropriations of Water (Canadian, Red, Sulphur, and Cypress Creek Basins only) and Changes in Diversion Point(s)

This section is required for new appropriations of water in the Canadian, Red, Sulphur, and Cypress Creek Basins and in all basins for requests to change a diversion point. **Instructions, Page 30.**

Description of the Water Body at each Diversion Point or Dam Location. (Provide an Environmental Information Sheet for each location),

a. Identify the appropriate description of the water body.

Stream

Reservoir

Average depth of the entire water body, in feet: \_\_\_\_\_

Other, specify: \_\_\_\_\_

b. Flow characteristics

If a stream, was checked above, provide the following. For new diversion locations, check one of the following that best characterize the area downstream of the diversion (check one).

Intermittent - dry for at least one week during most years

Intermittent with Perennial Pools - enduring pools

Perennial - normally flowing

Check the method used to characterize the area downstream of the new diversion location.

USGS flow records

Historical observation by adjacent landowners

Personal observation

Other, specify: \_\_\_\_\_

c. Waterbody aesthetics

Check one of the following that best describes the aesthetics of the stream segments affected by the application and the area surrounding those stream segments.

- Wilderness: outstanding natural beauty; usually wooded or unpastured area; water clarity exceptional
- Natural Area: trees and/or native vegetation common; some development evident (from fields, pastures, dwellings); water clarity discolored
- Common Setting: not offensive; developed but uncluttered; water may be colored or turbid
- Offensive: stream does not enhance aesthetics; cluttered; highly developed; dumping areas; water discolored

d. Waterbody Recreational Uses

Are there any known recreational uses of the stream segments affected by the application?

- Primary contact recreation (swimming or direct contact with water)
- Secondary contact recreation (fishing, canoeing, or limited contact with water)
- Non-contact recreation

Submit the following information in a Supplemental Attachment, labeled Addendum to Worksheet 5.0:

1. Photographs of the stream at the diversion point or dam location. Photographs should be in color and show the proposed point or reservoir and upstream and downstream views of the stream, including riparian vegetation along the banks. Include a description of each photograph and reference the photograph to the map submitted with the application indicating the location of the photograph and the direction of the shot.
2. If the application includes a proposed reservoir, also include:
  - i. A brief description of the area that will be inundated by the reservoir.
  - ii. If a United States Army Corps of Engineers (USACE) 404 permit is required, provide the project number and USACE project manager.
  - iii. A description of how any impacts to wetland habitat, if any, will be mitigated if the reservoir is greater than 5,000 acre-feet.

### 3. Alternate Sources of Water and/or Bed and Banks Applications

This section is required for applications using an alternate source of water and bed and banks applications in any basins. **Instructions, page 31.**

- a. For all bed and banks applications:
  - i. Submit an assessment of the adequacy of the quantity and quality of flows remaining after the proposed diversion to meet instream uses and bay and estuary freshwater inflow requirements.

b. For all alternate source applications:

- i. If the alternate source is treated return flows, provide the TPDES permit number\_\_\_\_\_

- ii. If groundwater is the alternate source, or groundwater or other surface water will be discharged into a watercourse provide:

Reasonably current water chemistry information including but not limited to the following parameters in the table below. Additional parameters may be requested if there is a specific water quality concern associated with the aquifer from which water is withdrawn. If data for onsite wells are unavailable; historical data collected from similar sized wells drawing water from the same aquifer may be provided. However, onsite data may still be required when it becomes available. Provide the well number or well identifier. Complete the information below for each well and provide the Well Number or identifier.

Parameter	Average Conc.	Max Conc.	No. of Samples	Sample Type	Sample Date/Time
Sulfate, mg/L					
Chloride, mg/L					
Total Dissolved Solids, mg/L					
pH, standard units					
Temperature*, degrees Celsius					

\* Temperature must be measured onsite at the time the groundwater sample is collected.

- iii. If groundwater will be used, provide the depth of the well\_\_\_\_\_and the name of the aquifer from which water is withdrawn\_\_\_\_\_.

Addendum to Worksheet 5.0  
Photos

## Addendum to Worksheet 5.0

Job Number	10818.012
Site Name	Lueders
Date	6/16/2020 & 8/21/2020



**Photo # 1**  
**Direction: S**

**Notes: Upstream view of Deadman Creek at the pump at the current mining diversion point.**



**Photo # 2**  
**Direction: SSE**

**Notes: Upstream view of Deadman Creek at the current mining diversion point**

## Addendum to Worksheet 5.0

Job Number	10818.012
Site Name	Lueders
Date	6/16/2020 & 8/21/2020



**Photo # 3**  
**Direction: SE**

**Notes: Deadman Creek  
at the current mining  
diversion point**



**Photo # 4**  
**Direction: E**

**Notes: : Downstream  
view of Deadman  
Creek at the current  
mining diversion point**

## Addendum to Worksheet 5.0

Job Number	10818.012
Site Name	Lueders
Date	6/16/2020 & 8/21/2020



**Photo # 5**  
**Direction: NE**

**Notes: Downstream  
view of Deadman  
Creek at the current  
mining diversion point**



**Photo # 6**  
**Direction: E**

**Notes: Deadman Creek  
at the irrigation  
diversion point**

## Addendum to Worksheet 5.0

Job Number	10818.012
Site Name	Lueders
Date	6/16/2020 & 8/21/2020



**Photo # 7**  
**Direction: SSE**

**Notes: Upstream view of Deadman Creek at the irrigation diversion point**



**Photo # 8**  
**Direction: NE**

**Notes: Downstream view of Deadman Creek at the irrigation diversion point**

## Addendum to Worksheet 5.0

Job Number 10818.012  
Site Name Lueders  
Date 6/16/2020 & 8/21/2020



**Photo # 9**  
**Direction: E**

**Notes: View of  
Deadman Creek at the  
proposed Upstream  
Diversion Reach**



**Photo # 10**  
**Direction: SSW**

**Notes: View of  
Deadman Creek near  
the proposed  
Downstream Diversion  
Reach**



## Addendum to Worksheet 5.0

Job Number 10818.012  
Site Name Lueders  
Date 6/16/2020 & 8/21/2020



**Photo # 11**  
**Direction: SW**

**Notes: View of  
Deadman Creek near  
the proposed  
Downstream Diversion  
Reach**

## Worksheet 6.0

# WORKSHEET 6.0

## Water Conservation/Drought Contingency Plans

This form is intended to assist applicants in determining whether a Water Conservation Plan and/or Drought Contingency Plans is required and to specify the requirements for plans.

**Instructions, Page 31.**

*The TCEQ has developed guidance and model plans to help applicants prepare plans. Applicants may use the model plan with pertinent information filled in. For assistance submitting a plan call the Resource Protection Team (Water Conservation staff) at 512-239-4600, or e-mail [wras@tceq.texas.gov](mailto:wras@tceq.texas.gov). The model plans can also be downloaded from the TCEQ webpage. **Please use the most up-to-date plan documents available on the webpage.***

### 1. Water Conservation Plans

a. The following applications must include a completed Water Conservation Plan (30 TAC § 295.9) for each use specified in 30 TAC, Chapter 288 (municipal, industrial or mining, agriculture - including irrigation, wholesale):

1. Request for a new appropriation or use of State Water.
2. Request to amend water right to increase appropriation of State Water.
3. Request to amend water right to extend a term.
4. Request to amend water right to change a place of use.  
*\*does not apply to a request to expand irrigation acreage to adjacent tracts.*
5. Request to amend water right to change the purpose of use.  
*\*applicant need only address new uses.*
6. Request for bed and banks under TWC § 11.042(c), when the source water is State Water  
*\*including return flows, contract water, or other State Water.*

b. If Applicant is requesting any authorization in section (1)(a) above, indicate each use for which Applicant is submitting a Water Conservation Plan as an attachment:

1. \_\_\_ Municipal Use. See 30 TAC § 288.2. \*\*
2.  Industrial or Mining Use. See 30 TAC § 288.3.
3. \_\_\_ Agricultural Use, including irrigation. See 30 TAC § 288.4.
4. \_\_\_ Wholesale Water Suppliers. See 30 TAC § 288.5. \*\*

\*\*If Applicant is a water supplier, Applicant must also submit documentation of adoption of the plan. Documentation may include an ordinance, resolution, or tariff, etc. See 30 TAC §§ 288.2(a)(1)(J)(i) and 288.5(1)(H). Applicant has submitted such documentation with each water conservation plan? Y /  N \_\_\_

c. Water conservation plans submitted with an application must also include data and information which: supports applicant's proposed use with consideration of the plan's water conservation goals; evaluates conservation as an alternative to the proposed

appropriation; and evaluates any other feasible alternative to new water development.  
See 30 TAC § 288.7.

Applicant has included this information in each applicable plan?  Y /  N\_\_\_\_\_

## 2. Drought Contingency Plans

- a. A drought contingency plan is also required for the following entities if Applicant is requesting any of the authorizations in section (1) (a) above - indicate each that applies:
1. \_\_\_\_\_Municipal Uses by public water suppliers. See 30 TAC § 288.20.
  2. \_\_\_\_\_Irrigation Use/ Irrigation water suppliers. See 30 TAC § 288.21.
  3. \_\_\_\_\_Wholesale Water Suppliers. See 30 TAC § 288.22.
- b. If Applicant must submit a plan under section 2(a) above, Applicant has also submitted documentation of adoption of drought contingency plan (*ordinance, resolution, or tariff, etc. See 30 TAC § 288.30*)  Y /  N\_\_\_\_\_

## Water Conservation Plan



# Texas Commission on Environmental Quality

Water Availability Division

MC-160, P.O. Box 13087 Austin, Texas 78711-3087

Telephone (512) 239-4691, FAX (512) 239-2214

## Mining Water Conservation Plan

This form is provided to assist entities in developing a water conservation plan for mining water use. If you need assistance in completing this form or in developing your plan, please contact the Conservation staff of the Resource Protection Team in the Water Availability Division at (512) 239-4691.

Additional resources such as best management practices (BMPs) are available on the Texas Water Development Board's website <http://www.twdb.texas.gov/conservation/BMPs/index.asp>. The practices are broken out into sectors such as Agriculture, Commercial and Institutional, Industrial, Municipal and Wholesale. BMPs are voluntary measures that water users use to develop the required components of Title 30, Texas Administrative Code, Chapter 288. BMPs can also be implemented in addition to the rule requirements to achieve water conservation goals.

### Contact Information

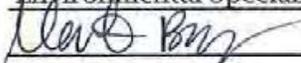
Name: El Prado Stone, LP - George E. Karutz

Address: 115 W. El Prado Drive, Suite 1 San Antonio TX 78212

Telephone Number: (210)804-4241 Fax: ( )

Form Completed By: Montana Bragg

Title: Environmental Specialist

Signature:  Date: 9/17/2020

A water conservation plan for mining use must include the following requirements (as detailed in 30 TAC Section 288.3). If the plan does not provide information for each requirement, you must include in the plan an explanation of why the requirement is not applicable.

### I. BACKGROUND DATA

#### A. Water Use

1. Annual diversion appropriated or requested (in acre-feet):

Requested: 50 acre-feet for mining purposes

2. Maximum diversion rate (cfs):

1.67

#### B. Water Sources

1. Please indicate the maximum or average annual amounts of water currently used and anticipated to be used (in acre-feet) for mining purposes:

<i>Source</i>	<i>Water Right No.(s)</i>	<i>Current Use</i>	<i>Anticipated Use</i>
Surface Water	12-4169A	0	5.0
Groundwater	0	0	0
Purchased	0	0	0
<b>Total</b>		0	5.0

2. How was the surface water data and/or groundwater data provided in B(1) obtained?

Master meter ; Customer meter ; Estimated x ; Other

3. Was purchased water raw or treated? N/A

If both, % raw ; % treated ; and Supplier(s)

*C. Mining Information*

1. Major product(s) or service(s) produced by applicant:

Dimension cut stone

2. North American Industry Classification System (NAICS):

2 1 2 3 1 1

**II. WATER USE AND CONSERVATION PRACTICES**

*A. Water Use in Mining Processes*

<i>Mining Use</i>	<i>% Groundwater</i>	<i>% Surface Water</i>	<i>% Saline Water</i>	<i>% Treated Water</i>	<i>Water Use (in acre-ft)</i>
Hydraulic Fracturing	0	0	0	0	0
Drilling	0	0	0	0	0
Washing Sand/gravel	0	0	0	0	0
Dust Control	0	100	0	0	TBD
Oil Field Repressuring	0	0	0	0	0

Other (dimension stone processing)	0	100	0	0	4.2
<i>Facility Use</i>	<i>% Groundwater</i>	<i>% Surface Water</i>	<i>% Saline Water</i>	<i>% Treated Water</i>	<i>Water Use (in acre-ft)</i>
Pond(s)	0	100	0	0	TBD
Sanitary & drinking water	0	0	0	0	0
Irrigation & dust control	0	100	0	0	TBD
Other	0	0	0	0	0

- Was fresh water recirculated at this facility?  Yes  No
- Provide a detailed description of how the water will be utilized in the mining process.

Water diverted under the mining authorization will be recirculated throughout the aggregate processing facility and supplemented as needed. Sediment is allowed to settle out. Diverted water may also be utilized for dust suppression.

- Estimate the quantity of water consumed in production and mining processes and is therefore unavailable for reuse, discharge, or other means of disposal.

10-20%

- Monthly water consumption for previous year (in acre-feet).

<i>Month</i>	<i>Diversion Amount</i>	<i>% of Water Returned (If Any)</i>	<i>Monthly Consumption</i>
January	0	0	0
February	0	0	0
March	0	0	0
April	0	0	0
May	0	0	0
June	0	0	0
July	0	0	0

August	0	0	0
September	0	0	0
October	0	0	0
November	0	0	0
December	0	0	0
<b>Totals</b>	<b>0</b>	<b>0</b>	<b>0</b>

5. Projected monthly water consumption for next year (in acre-feet).

<i>Month</i>	<i>Diversion Amount</i>	<i>% of Water Returned (If Any)</i>	<i>Monthly Consumption</i>
January	0.5	0	0.05
February	0.5	0	0.05
March	0.5	0	0.05
April	0.5	0	0.05
May	0.5	0	0.05
June	0.5	0	0.05
July	0.5	0	0.05
August	0.5	0	0.05
September	0.5	0	0.05
October	0.5	0	0.05
November	0.5	0	0.05
December	0.5	0	0.05
<b>Totals</b>	<b>6</b>	<b>0</b>	<b>0.6</b>

*B. Specific and Quantified Conservation Goal*

Water conservation goals for the mining sector are generally established either for (1) the amount of water recycled, (2) the amount of water reused, or (3) the amount of water not lost or consumed, and therefore is available for return flow.

1. Water conservation goal (water use efficiency measure)

Type of goal(s):

80 % reused water

0 % of water not consumed and therefore returned

Other (specify)

2. Provide specific, quantified 5-year and 10-year targets for water savings and the basis for development of such goals for this water use/facility.

This facility will recirculate diverted water for processing aggregates. The facility plans to attempt to recirculate up to 80% of the water used for processing.

Quantified 5-year and 10-year targets for water savings:

- a. 5-year goal: approx. 2 acre-feet saved per year by recirculating
- b. 10-year goal: approx. 2 acre-feet saved per year by recirculating

3. Describe the device(s) and/or method(s) used to measure and account for the amount of water diverted from the supply source, and verify the accuracy is within plus or minus 5%.

Water use will be estimated using the pump rate and time pumped.

4. Provide a description of the leak-detection and repair, and water-loss accounting measures used.

Water will be pumped directly to haul trucks for use throughout the site. Leaks will be detected immediately.

5. Describe the application of state-of-the-art equipment and/or process modifications used to improve water use efficiency.

Process water is allowed to settle in ponds throughout the site. The sediment is removed, therefore increasing the capacity for reuse water storage.

6. Describe any other water conservation practice, method, or technique which the user shows to be appropriate for achieving the stated goal or goals of the water conservation plan:

n/a

### **III. Water Conservation Plans submitted with a Water Right Application for New or Additional State Water N/A**

Water Conservation Plans submitted with a water right application for New or Additional State Water must include data and information which:

1. support the applicant's proposed use of water with consideration of the water conservation goals of the water conservation plan;
2. evaluates conservation as an alternative to the proposed appropriation; and
3. evaluates any other feasible alternative to new water development including, but not limited to, waste prevention, recycling and reuse, water transfer and marketing, regionalization, and optimum water management practices and procedures.

Additionally, it shall be the burden of proof of the applicant to demonstrate that no feasible alternative to the proposed appropriation exists and that the requested amount of appropriation is necessary and reasonable for the proposed use.

## Worksheet 8.0



## Fees

Copy of 12-4169

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 12-4169      OWNER: Richard Schkade  
Route 6, Box 162  
Abilene, Texas 79601

COUNTIES: Jones & Shackelford      PRIORITY DATE: October 19, 1970

WATERCOURSE: Deadman Creek, tribu-      BASIN: Brazos River  
tary of Clear Fork Brazos  
River, tributary of  
Brazos River

WHEREAS, by final decree of the 91st Judicial District Court of Eastland County, in Cause No. 32,003, In Re: The Adjudication of Water Rights in the Clear Fork of the Brazos River Watershed, Brazos River Basin, dated November 8, 1985, a right was recognized under Permit 2632 authorizing Richard Schkade, Clarence Schkade, Oscar Schkade and H. P. Harvey to appropriate waters of the State of Texas as set forth below;

WHEREAS, by Warranty Deed dated April 4, 1978, recorded in Volume 614, Page 868 of the Deed Records of Jones County, Richard Schkade acquired all of the land and water right recognized under Permit 2632;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Brazos River Basin is issued to Richard Schkade, subject to the following terms and conditions:

1. USE

Owner is authorized to divert and use not to exceed 67 acre-feet of water per annum from Deadman Creek to irrigate a maximum of 80 acres of land out of a 80.8 acre tract located in the J. A. Gholston Survey, Abstract 1497 in Jones County and Abstract 1786 in Shackelford County, Texas, said 80.8 acre tract being described as follows:

- (1) BEGINNING at a point which bears N 82°41'E, 23.5 feet from the northwest corner of the J. A. Gholston Survey;
- (2) THENCE N 82°41'E, 1215 feet to a point for a corner;
- (3) THENCE S 47°29'E, 325 feet to a point for a corner;
- (4) THENCE S 06°24'E, 330 feet to a point for a corner;
- (5) THENCE S 06°34'W, 630 feet to a point for a corner;
- (6) THENCE S 03°41'E, 264 feet to a point for a corner;
- (7) THENCE S 47°38'E, 132 feet to a point for a corner;
- (8) THENCE S 11°30'E, 287 feet to a point for a corner;
- (9) THENCE S 09°51'W, 554 feet to a point for a corner;
- (10) THENCE S 03°37'W, 266 feet to a point for a corner;
- (11) THENCE S 83°23'W, 1206 feet to a point in the west line of said Gholston Survey;
- (12) THENCE N 06°W, 2618 feet to the place of beginning.

2. DIVERSION

A. Location

At a point on Deadman Creek in the J. A. Gholston Survey, Abstract 1786, Shackelford County, Texas.

B. Maximum rate: 1.67 cfs (750 gpm).

3. PRIORITY

The time priority of owner's right is October 19, 1970.

The locations of pertinent features related to this certificate are shown on Page 9 of Clear Fork of the Brazos River Watershed Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Water Commission, Austin, Texas and the Jones County Clerk.

This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 91st Judicial District Court of Eastland County, Texas, in Cause No. 32,003, In Re: The Adjudication of Water Rights in the Clear Fork of the Brazos River Watershed, Brazos River Basin, dated November 8, 1985, 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 Brazos River Basin.

This certificate of adjudication is issued subject to the Rules of the Texas Water Commission 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

/s/ Paul Hopkins  
Paul Hopkins, Chairman

DATE ISSUED:

APR 1 1986

ATTEST:

/s/ Mary Ann Hefner  
Mary Ann Hefner, Chief Clerk

# TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



## AMENDMENT TO CERTIFICATE OF ADJUDICATION

APPLICATION NO. 12-4169A	CERTIFICATE NO. 12-4169A	TYPE §11.122
Permittee: Richard Schkade	Address: P. O. Box 2617 Abilene, TX 79604	
Filed: September 24, 2001	Granted: JAN 08 2002	
Purpose: Irrigation and mining	County: Jones and Shackelford	
Watercourse: Deadman Creek, tributary of Clear Fork Brazos River, tributary of the Brazos River	Watershed: Brazos River Basin	

WHEREAS, Certificate of Adjudication No. 12-4169 was issued to Richard Schkade and authorizes the diversion and use of not to exceed 67 acre-feet of water per annum from Deadman Creek to irrigate a maximum of 80 acres of land out of a 80.8 acre tract located in the J.A. Gholston Survey, Abstract 1497 in Jones County and Abstract 1786 in Shackelford County, Texas; and

WHEREAS, applicant seeks to amend said Certificate by changing the use of 5 acre-feet of irrigation water to mining use and adding a diversion point approximately 300 yards downstream of the existing diversion point on Deadman Creek; and

WHEREAS, the applicant also seeks to divert the 5 acre-feet of water into a proposed off-channel reservoir for subsequent mining use (cleaning and reuse in rocksaw cooling effort); and

WHEREAS, there are no interjacent water right holders between the original and proposed diversion points; and

WHEREAS, the Texas Natural Resource Conservation Commission finds that jurisdiction over the application is established; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Natural Resource Conservation Commission in issuing this amendment; and

WHEREAS, no person protested the granting of this application/amendment; and

NOW, THEREFORE, this amendment to Certificate No. 12-4169, is issued to Richard Schkade subject to the following terms and conditions:

1. IMPOUNDMENT

Permittee is authorized to impound 0.10 acre-feet of water in an off-channel reservoir with a surface area of 0.02 acre. The reservoir is located 16 miles in a southwest direction from Albany, Texas, and the center line of the dam is S60°E, 1500 feet from the Northwest corner of the T&P RR blk 14, Survey 8, Abstract 1795, Shackelford County, also being Latitude 32.690°N and Longitude 99.611°W.

2. USE

Permittee is authorized to divert and use not to exceed 62 acre-feet of water per annum from Deadman Creek to irrigate 80 acres of land out of the aforesaid survey and 5 acre-feet of water per annum from Deadman Creek for mining purposes. The five acre-feet will be diverted into the off-channel reservoir for mining purposes.

3. DIVERSION POINTS

A. Irrigation diversion:

A point on Deadman Creek which bears N62.383°E, 1666 feet from the Southwest corner of the aforesaid survey, also being Latitude 32.686°N, Longitude 99.609°W.

B. Mining diversion:

A point on Deadman Creek which bears N34.033°E, 1468 feet from the Southwest corner of the aforesaid survey, also being Latitude 32.690°N, Longitude 99.610°W.

4. DIVERSION RATE

Owner is authorized a maximum diversion rate which in combination shall not exceed 1.67 cfs (750 gpm).

5. CONSERVATION

Certificate owner shall implement a conservation plan that provides for the utilization of water conservation practices, techniques and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 12-4169 except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Owner agree to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment. All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Natural Resource Conservation Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION

  
For the Commission

Date issued: JAN 08 2002