

TCEQ Interoffice Memorandum

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: November 2, 2023

SUBJECT: Palo Pinto County Municipal Water District No. 1
ADJ 4031
CN600674303, RN105808471
Application for an Extension of Time to Commence and Complete
Construction for Certificate of Adjudication No. 12-4031A
Texas Water Code § 11.145, Mailed and Published Notice Required
Palo Pinto Creek, Brazos River Basin
Palo Pinto County

The application and fees were received on October 4, 2023. Additional information was received on October 27, 2023. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on November 2, 2023. Published and mailed notice to water right holders in the Brazos River Basin is required pursuant to Title 30 Texas Administrative Code § 295.159(a).

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

Natalia Ponebshek

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*
Kelly Keel, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 2, 2023

Mr. David J. Klein, Attorney
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave, Suite 1900
Austin, TX 78701-2478

VIA E-MAIL

RE: Palo Pinto County Municipal Water District No. 1
ADJ 4031
CN600674303, RN105808471
Application for an Extension of Time to Commence and Complete
Construction for Certificate of Adjudication No. 12-4031A
Texas Water Code § 11.145, Mailed and Published Notice Required
Palo Pinto Creek, Brazos River Basin
Palo Pinto County

Dear Mr. Klein:

This acknowledges receipt, on October 4, 2023, of the referenced application and fees in the amount of \$2,509.84 (Receipt No. M400901, copy attached), and of additional information on October 27, 2023.

The application was declared administratively complete and filed with the Office of the Chief Clerk on November 2, 2023. 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 or 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: David Klein [REDACTED] >
Sent: Friday, October 27, 2023 5:28 PM
To: Natalia Ponebshek
Cc: Howard B. Huffman [REDACTED] Chloe Daniels
Subject: Response to Informal Request for Information
Attachments: 2023.10.27 PPCMWD1 Resolution for Turkey Peak Extension of Time Application.pdf

Natalia,

On October 17, 2023 you called and requested that Palo Pinto County Municipal Water District No. 1 supplement its application with proof of authority for the District to file its application for extension of time to commence/complete construction of the expansion of Lake Palo Pinto at Turkey Peak dam.

To that end, attached please find the signed resolution from the Board of Directors of the District authorizing the filing and prosecution of such application.

As always, let us know if you have any questions. My direct line is 512-322-5818 and Chloe's line is 512-322-5814.

Thanks,
David



DAVID KLEIN

Principal
512-322-5818 Direct
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900, Austin, TX 78701
www.lglawfirm.com | 512-322-5800

****ATTENTION TO PUBLIC OFFICIALS AND OFFICIALS WITH OTHER INSTITUTIONS SUBJECT TO THE OPEN MEETINGS ACT ****

A "REPLY TO ALL" OF THIS EMAIL COULD LEAD TO VIOLATIONS OF THE TEXAS OPEN MEETINGS ACT. PLEASE REPLY ONLY TO LEGAL COUNSEL.

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PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1
AUTHORIZING AND RATIFYING THE PREPARATION AND FILING OF
AN APPLICATION WITH THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY FOR AN EXTENSION OF TIME TO COMMENCE AND COMPLETE
CONSTRUCTION RELATED TO THE ENLARGEMENT OF LAKE PALO PINTO
AND TURKEY PEAK DAM**

WHEREAS, Palo Pinto County Municipal Water District No. 1 (the "*District*") owns Certificate of Adjudication ("*COA*") 12-4031A, issued by the Texas Commission on Environmental Quality ("*TCEQ*") on October 12, 2015, authorizing the District to enlarge Lake Palo Pinto (so as to restore its authorized capacity) and to construct the new Turkey Peak Dam and Reservoir (the "*Project*");

WHEREAS, COA 12-4031A includes provisions that require the District to commence construction on the Project within two (2) years of issuance and to complete construction within five (5) years of issuance;

WHEREAS, in 2017, the District filed an application at the TCEQ for an extension of time to commence and complete construction related to the enlargement of Lake Palo Pinto and Turkey Peak Dam ("*First Extension Application*");

WHEREAS, on February 6, 2018, the TCEQ granted the First Extension Application, setting the deadline to commence construction to October 12, 2019 and the deadline to complete construction to October 12, 2022;

WHEREAS, in 2019, the District filed an application at the TCEQ for a second extension of time to commence and complete construction related to the enlargement of Lake Palo Pinto and Turkey Peak Dam ("*Second Extension Application*");

WHEREAS, on May 19, 2020, the TCEQ granted the Second Extension Application, setting the deadline to commence construction to October 12, 2021 and the deadline to complete construction to October 12, 2024;

WHEREAS, in 2021, the District filed an application at the TCEQ for a third extension of time to commence and complete construction related to the enlargement of Lake Palo Pinto and Turkey Peak Dam ("*Third Extension Application*");

WHEREAS, on March 31, 2022, the TCEQ granted the Third Extension Application, setting the deadline to commence construction to October 12, 2023, and the deadline to complete construction to October 12, 2026.

WHEREAS, since the Third Extension Application was approved, the District has continued to move forward with the Project, namely: (i) working with local landowners to obtain the needed real property interests for the implementation of the Project and the District's associated mitigation plan; (ii) performing the final design necessary for the Project; (iii) conducting ongoing cultural resources investigations; (iv) coordinating with stakeholders, such as the Texas Department of Transportation; and (v) securing funding for the Project.

WHEREAS, under Texas Water Code § 11.145 and 30 Texas Administrative Code § 295.184, the District may file and prosecute an application (the "***Application***") with the TCEQ requesting an extension of time for beginning construction of a reservoir; and

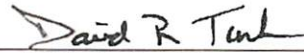
WHEREAS, the District now desires to file the Application and to authorize its President, on behalf of the District, to prepare and execute such Application to extend the time for commencement of the construction of the Project by two (2) years and completion of the construction by two (2) years.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1 THAT:

1. The recitals set forth above are true and correct and incorporated herein for all purposes.
2. The Board of the District hereby authorizes and directs its President to prepare and file the Application and any other documents as are necessary to secure authorization from the TCEQ for an extension of time to commence and complete construction of the Project.
3. The Board of the District hereby authorizes and directs Lloyd Gosselink Rochelle & Townsend, P.C., to: (i) prepare and file the Application as well as appear and arrange for the appearances of persons representing the District at hearings and other proceedings on the Application before the TCEQ and other governmental entities; (ii) prosecute the Application on behalf of the District; and (iii) assist the President and Secretary with the preparation and filing of future Applications, if necessary.
4. This resolution shall take effect and be in full force and effect from and after the date of its adoption, and it is so resolved that all resolutions of the Board of Directors of the District in conflict herewith are hereby amended or repealed to the extent of such conflict.
5. The District's President and/or Secretary, and their delegates are hereby directed and authorized on behalf of the Board of Directors to implement and to take further actions as necessary that are consistent with the purposes of this resolution. The Board of Directors of the District hereby ratifies any and all actions taken by the District's President and/or Secretary, and their delegates regarding the Application, prior to the adoption of this Resolution.

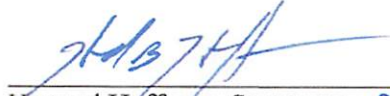
(signature page follows)

PASSED, ADOPTED, AND APPROVED this 27th day of October, 2023.



David Turk, President,
Palo Pinto County Municipal Water District No. 1

ATTEST:



Howard Huffman, ~~Secretary~~, General Manager
Palo Pinto County Municipal Water District No. 1

(SEAL)



Texas Commission on Environmental Quality
TELEPHONE MEMO TO THE FILE

Call to: Mr. David Klein	Call from: TECQ Staff Natalia Ponebshek
Date: 10/17/2023	Applicant: Palo Pinto County Municipal Water District 1 12-4031
<i>Information for File follows:</i> I contacted Mr. Klein to let him know that signature authority was missing from the submitted application. He responded that he would submit signature authority for this application. <i>Natalia Ponebshek</i> 10/17/2023	
Signed	



05-OCT-23 01:14 PM

TCEQ - A/R RECEIPT REPORT BY ACCOUNT NUMBER

<u>Fee Description</u>	<u>Fee Code</u> <u>Account#</u>	<u>Ref#1</u> <u>Ref#2</u> <u>Paid In By</u>	<u>Check Number</u> <u>Card Auth.</u> <u>User Data</u>	<u>CC Type</u> <u>Tran Code</u> <u>Rec Code</u>	<u>Slip Key</u> <u>Document#</u>	<u>Tran Date</u>	<u>Tran Amount</u>
WTR USE PRMTS- CONSTR DELAY	WPC WPC	M400901 ADJ124031	41408 100523	N	BS00105266 D4800201	05-OCT-23	-\$2,509.84
WATER USE PERMITS- CONSTRUCTION DELAY		LLOYD GOSSELINK ROCHELLE E TOWNSEND PC	VHERNAND	CK			

Total (Fee Code) :

-\$2,509.84

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OCT 10 2023
Water Availability Division

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Water Availability Division

400901 8-58

Ms. Daniels' Direct Line: (512) 322-5814

October 4, 2023

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OCT 10 2023

Water Availability Division

Texas Commission on Environmental Quality
Financial Administration Division Cashier's Office, MC 214
Attn: Veronica Torrez
P.O. Box 13088
Austin, Texas 78711-3088

**VIA HAND DELIVERY
AND ELECTRONIC MAIL**

Re: Submittal of Fees for Application for an Extension of Time to Begin and/or Complete Construction of an Authorized Project; Palo Pinto County Municipal Water District No. 1 (CN600674303); Certificate of Adjudication No. 12-4031, as amended

Ms. Torrez:

Please find enclosed a check from the Palo Pinto County Municipal Water District No. 1 in the amount of \$2,509.84, which is payable to the Texas Commission on Environmental Quality ("**TCEQ**") as fees for the above-referenced Application for an Extension of Time to Begin and/or Complete Construction of an Authorized Project ("**Application**").

The Application fees were calculated as follows:

<u>Type and Description</u>	<u>Amount</u>
Filing Fee for 5,001 to 10,000 acre-feet	\$500.00
Recording Fee	\$12.50
Extension Fee (not to exceed \$1,000.00)	\$1,000.00
Mailed Notice – All Water Right Holders in the Brazos River Basin	\$997.34
Total:	\$2,509.84

October 4, 2023

Page 2

The Application was submitted to the Water Availability Division under separate cover via hand delivery and electronic mail to wrpt@teeq.texas.gov on October 4, 2023. If you have any questions regarding this matter, please do not hesitate to contact me at (512) 322-5814 or [REDACTED] or David Klein at (512) 322-5818 or [REDACTED]

Sincerely,



Chloe Daniels

CXD/smb
Enclosure

cc: Howard Huffman, General Manager of Palo Pinto Municipal Water District No. 1
David Klein, Lloyd Gosselink Rochelle & Townsend, P.C.

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Water Availability Division

Ms. Daniels' Direct Line: (512) 322-5814
[REDACTED]

October 4, 2023

Texas Commission on Environmental Quality
Water Availability Division, MC 160
P.O. Box 13087
Austin, Texas 78711-3088

**VIA HAND DELIVERY
AND ELECTRONIC MAIL**

Re: Application for an Extension of Time to Begin and/or Complete Construction of an Authorized Project; Palo Pinto County Municipal Water District No. 1 (CN600674303); Certificate of Adjudication No. 12-4031, as amended

Dear Sir or Madam:

Please find enclosed one (1) copy of the above-referenced Application for an Extension of Time to Begin and/or Complete Construction of an Authorized Project ("***Application***"), filed on behalf of the Palo Pinto County Municipal Water District No. 1.

A check in the amount of \$2,509.84 for the filing, recording, and extension fees, as well as the costs of mailed notice associated with the Application has been delivered to the Financial Administration Division Cashier's Office.

If you have any questions, please do not hesitate to contact me at (512) 322-5814 or [REDACTED] or David Klein at (512) 322-5818 or [REDACTED]

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Water Availability Division

CXD/smb

Enclosures

cc: Howard Huffman, General Manager of Palo Pinto County Municipal Water District No. 1
David Klein, Lloyd Gosselink Rochelle & Townsend, P.C.

Sincerely,

Chloe A. Daniels

Chloe Daniels



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Water Availability Division - MC-160, P.O. Box 13087 Austin, Texas 78711-3087
Telephone (512) 239-4600 FAX (512) 239-2214

APPLICATION FOR AN EXTENSION OF TIME TO BEGIN AND/OR
COMPLETE CONSTRUCTION OF AN AUTHORIZED PROJECT
Texas Water Code Section §11.145
TO BE SUBMITTED PRIOR TO EXPIRATION DATE

1. Applicant Information

Permittee/Owner Name: Palo Pinto County Municipal Water District No. 1 (CN600674303)

Point of Contact name: David J. Klein, Attorney for the District

Mailing Address: Lloyd Gosselink Rochelle & Townsend, P. C.
816 Congress Avenue, Suite 1900, Austin, TX 78701

Phone Number: (512) 322-5818 Email Address: [REDACTED]

2. Fees or penalties

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.

Does Applicant or Co-Applicant owe any fees to the TCEQ?

Yes or No: No

If yes, provide the following information:

Account number: N/A Amount past due: N/A

Does Applicant or Co-Applicant owe any penalties to the TCEQ?

Yes or No: No

If yes, please provide the following information:

Enforcement order number: N/A Amount past due: N/A

3. Project Data

Certificate of Adjudication No.: 12-4031A or Permit No.: N/A

and,

River Basin: Brazos

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Water Availability Division

4. **Project Dates**

BEGINNING CONSTRUCTION DATE:

Original (Date in water right): October 12, 2017

Current (From last extension granted,
if applicable): October 12, 2023

Proposed: October 12, 2025

COMPLETION DATE:

Original: October 12, 2020

Current: October 12, 2026

Proposed: October 12, 2028

5. **Reason(s) for delay and why the proposed dates requested are necessary**

Under 30 TAC 295.72(b) the applicant must include* why the extension should be granted and why the permit should not be forfeited if the commission finds that sufficient due diligence to begin and/or complete construction of the authorized project has not been demonstrated. Reasonable causes for delay include, but are not limited to, the operation of legal proceedings or other causes which were not within the reasonable control of the permittee and which were reasonably unforeseeable at the time of the appropriation or the last extension. Financial hardship shall not, by itself, constitute sufficient cause for the granting of an extension. Notice of the application, if required, will also indicate that the Commission will consider whether the appropriation shall be forfeited by the applicant, if the extension is denied.

** Please provide a statement setting forth the reasons why construction work could not be commenced or completed in the space below or attach a statement entitled*

"Reasons Why Construction Work Could not be Commenced or Completed."

Please refer to the document entitled, "Reasons Why Construction Work Could not be Commenced or Completed," attached hereto as Attachment 1.

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Water Availability Division

6. **Application Fees**

(Please make checks payable to the Texas Commission on Environmental Quality or TCEQ)

A. All requests for extension of time require payment of the following fees:

Type	Description	Amount (\$)
Filing Fee	Circle fee correlating to the total amount of water requested for any new appropriation and/or impoundment. Enter corresponding fee under Amount (\$).	\$500.00
	<u>In Acre-Feet</u>	
	a. Less than 100	\$100.00
	b. 100 - 5,000	\$250.00
	c. 5,001 - 10,000	\$500.00
	d. 10,001 - 250,000	\$1,000.00
	e. More than 250,000	\$2,000.00
Recording Fee		\$12.50
TOTAL		\$512.50

B. Extensions of time that require mailed and published notice require additional fees. Mailed and published notice of the application is required if a new beginning date for construction is more than four years past the original issue date of the water right, or a new completion date for construction is more than five years past the original completion date. If the application requires mailed and published notice, pay the following fees in addition to the fees in section (A) above:

Type	Description	Amount (\$)
Extension Fee	Pursuant to 30 TAC §295.138, extension fees are equivalent to one-time use fees established under §295.133 not to exceed \$1,000. Enter corresponding extension fee under Amount (\$). Using the one-time use fees as follows:	\$1,000
	Agriculture Use Fee - Only for those with an Irrigation Use. Multiply 50¢ x ____ Number of acres that will be irrigated with State Water.	
	Use Fee - Required for all Use Types, excluding Irrigation Use. Multiply \$1.00 x $\frac{18,500}{\text{Maximum annual diversion of State Water in acre-feet}}$	
	Recreational Storage Fee - For those with Recreational storage. Multiply \$1.00 x ____ acre-feet of in-place Recreational Use State Water to be stored at normal max operating level.	
	Storage Fee - For Storage, excluding Recreational Storage. Multiply 50¢ x $\frac{49,792}{\text{acre-feet of State Water to be stored at normal max operating level}}$	
	Note - if the total extension fees in this column above exceed \$1,000 - enter \$1,000 under Amount (\$).	
Mailed Notice	Cost of mailed notice to all water rights in the basin. Contact Staff to determine the amount (512) 239-4600. (Different for each basin and the applicant will publish the notice in a locally circulated newspaper at its expense)	\$997.34
TOTAL		\$1,997.34

7. Applicant Signature

I, Dr. David Turk President of the Board of Directors of the District
(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: David R Turk Date: 10-3-23
(Use blue ink)

Subscribed and Sworn to before me by the said

on this 3rd day of October, 2023.

My commission expires on the 19th day of September, 2026.

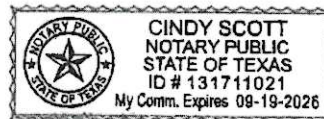
Notary Public

[SEAL]

Cindy Scott

County, Texas

Palo Pinto



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

County, Texas

ATTACHMENT 1

Palo Pinto County Municipal Water District No. 1 (CN600674303)

APPLICATION FOR AN EXTENSION OF TIME TO BEGIN AND/OR COMPLETE
CONSTRUCTION OF AN AUTHORIZED PROJECT

Texas Water Code § 11.145

“Reasons Why Construction Work Could not be Commenced or Completed”

Under Certificate of Adjudication No. 12-4031A (the “Certificate”), the Palo Pinto County Municipal Water District No. 1 (the “District”) is authorized to enlarge Lake Palo Pinto by constructing the new Turkey Peak Dam (the “Project”). The purpose of the Project is to restore and further increase the previously authorized water storage capacity in Lake Palo Pinto by 5,692 acre-feet. The Certificate originally required construction to begin within two (2) years of Certificate issuance and be completed within five (5) years of Certificate issuance. The Texas Commission on Environmental Quality (“TCEQ”) has granted the District’s prior requests for an extension of time, and the current deadline for commencement of construction on the Project is October 12, 2023, with such construction required to be completed no later than October 12, 2026.

While the District has not yet commenced construction of the Project, the District’s efforts in these past two years demonstrate that it has been advancing this project with more than sufficient due diligence and that the reasonable cause exists for such delay in commencing construction, as required under 30 Texas Administrative Code § 297.72(b). Per TCEQ regulations, proving “reasonable diligence does not require unusual or extraordinary effort, but it does require a steady application of effort that is usual, ordinary, and reasonable under the circumstances and evidences prosecution of such efforts in good faith.” Here, since TCEQ approval of the District’s most recent extension request, issued on March 31, 2022, the District has continuously been taking meaningful steps and making significant progress toward commencing construction of the Project, despite issues outside of the District’s control. After substantial delays caused by COVID-19 and Winter Storm Uri, the District is now on schedule to begin construction of the Project in 2025.

The District has and is engaged in activities critical to the commencement of construction of the Project. Such activities include acquisition of land necessary for the Project, completion of final design activities, implementation of a mitigation plan, and conducting a cultural resources investigation. In addition to these activities, the District has coordinated with multiple stakeholders regarding the Project, including the Texas Department of Transportation and Palo Pinto County officials. The District has also made significant strides toward securing funding for the Project, and most recently, the City of Mineral Wells has approved a budget to finance the Project. Each of these activities is a usual, ordinary, and reasonable aspect of a new dam/reservoir project, and all of these steps are necessary prerequisites to breaking ground on the construction of the dam itself. These accomplishments demonstrate a good

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Water Availability Division

ATTACHMENT 1

Palo Pinto County Municipal Water District No. 1 (CN600674303)

**APPLICATION FOR AN EXTENSION OF TIME TO BEGIN AND/OR COMPLETE
CONSTRUCTION OF AN AUTHORIZED PROJECT
Texas Water Code § 11.145**

faith effort by the District to construct this much-needed Project in this drought-stricken regional area. The District appreciates the TCEQ's consideration of this Application and will continue using its best efforts to timely complete this critical Project within the requested deadlines.

Form TCEQ-10203b (revised 06/2018)

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