

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 1, 2021

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 12, 2021. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on November 1, 2021. 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*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

November 1, 2021

Ms. Maris Chambers
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701

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
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Palo Pinto Creek, Brazos River Basin
Palo Pinto County

Dear Ms. Chambers:

This acknowledges receipt on October 12, 2021 of the referenced application and fees in the amount of \$2,509.84 (Receipt No. M201299, copy attached).

The application was declared administratively complete and filed with the Office of the Chief Clerk on November 1, 2021. 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
Texas Commission on Environmental Quality

Attachment



Basis2 Receipt Report by Endorsement Number

NOV-01-21 04:05 PM

Acct. #: WPC

Account Name: WATER USE PERMITS-CONSTRUCTION DELAY

<u>Paid For</u>	<u>Endors. #</u>	<u>Ref #2</u>	<u>Paid In By</u>	<u>PayTyp</u>	<u>Chk #</u>	<u>Card#</u>	<u>Bank Slip</u>	<u>Tran.Date</u>	<u>Receipt Amnt.</u>
	M201299	ADJ124031	PALO PINTO COUNTY MUNICIPAL WATER DISTRICT 1	CK	7617		BS00089333	13-OCT-21	\$2509.84



816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532
www.lglawfirm.com

Ms. Chambers' Direct Line: (512) 322-5804
Email: [REDACTED]

October 11, 2021

Water Rights Availability Division, MC 160
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Austin, Texas 78753

VIA UPS DELIVERY

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; Certificate of Adjudication No. 12-4031, as amended (2445-1)

Dear Sir or Madam:

Please find enclosed one (1) original and six (6) copies of the above-referenced application (the "Application") filed on behalf of the Palo Pinto County Municipal Water District No. 1. Also attached is "A Resolution of the Board of Directors of Palo Pinto County Municipal Water District No. 1 Authorizing the Filing and Prosecution 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."

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

Please consider me your contact for this Application, and if you have any questions, please do not hesitate to contact me at (512) 322-5804 or [REDACTED]

Sincerely,

Maris M. Chambers

MMC/dsr
Enclosures

cc: Kenneth Martin, for the District
Richard Ritchie, General Counsel for the District
David Klein, *of the Firm*

RECEIVED

OCT 12 2021

Water Availability Division



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: Maris M. Chambers, Attorney
Mailing Address: Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900, Austin, Texas 78701
Phone Number: (512) 322-5804 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

4. **Project Dates**

BEGINNING CONSTRUCTION DATE:

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

Current (From last extension granted,
if applicable): October 12, 2021

Proposed: October 12, 2023

COMPLETION DATE:

Original: October 12, 2020

Current: October 12, 2024

Proposed: October 12, 2026

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

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 (\$). <u>In Acre-Feet</u>	\$500.00	
	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:	\$1,000.00
	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 ^{18,500} 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 ^{49,792} 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, David R. Turk, President, Board of Directors, Palo Pinto County Municipal Water District No. 1
(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.

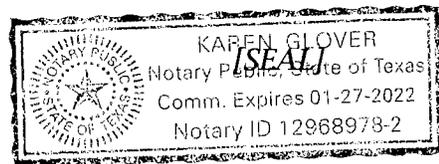
Signature: David R. Turk Date: 10-1-21
(Use blue ink)

Subscribed and Sworn to before me by the said

on this 1 day of October, 2021.

My commission expires on the 27 day of January, 2022.

Karen Glover
Notary Public
Palo Pinto
County, Texas



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

County, Texas

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, 2021, with such construction required to be completed no later than October 12, 2024.

Since the TCEQ’s approval of the District’s most recent extension request, issued on May 19, 2020, several issues outside of the District’s control have temporarily impeded its progress on the Project. Specifically, in addition to the ongoing COVID-19 pandemic and Winter Storm Uri, the District also faced the impending failure of critical infrastructure (which is discussed in more detail below). Nevertheless, it has made significant progress and completed essential steps necessary to commence construction of the Project.

First, the final design of the Project is now nearing completion. Even though pandemic-related shutdowns and precautions prevented the District from effectively and efficiently coordinating with its Project engineer, other consultants, and regulators on the Project’s final design, the process to take the final design from 90% to 100% completion is currently underway. The 90% plan set has already been provided to the TCEQ’s Dam Safety Program, which returned comments the District is now working to address in the 100% completion set. The District is also on track to complete an updated construction schedule and opinion of probable construction cost by fall 2021.

In addition to the progress on the final design of the Project facilities, the District has remained diligent in its work to complete the land acquisition necessary for the Project. Landowner negotiations, survey work, and title research have remained ongoing since the Certificate’s issuance, but COVID-19 and Winter Storm Uri significantly limited the District’s ability to complete surveys, inspections, and other critical on-site activities. Nevertheless, only about 15 parcels of land located near or in the inundation area and/or dam site are yet to be purchased by the District, and it has already initiated negotiations to acquire such tracts of land.

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**

Finally, degradation of certain critical infrastructure forced the District to redirect time and money that would have otherwise been available for the Project. Specifically, the District had to reallocate such resources to replace approximately 1,250 linear feet of water pipeline that enables the District to transport water from Lake Palo Pinto to its Hilltop Water Treatment Plant. That pipeline crosses the Brazos River and was at risk of failing due to sustained exposure to river currents, flood events, and debris jams.

Nevertheless, despite the above-described delays, the District has remained diligent in its efforts to begin construction of the Project, not only making the above-described progress but also completing mandatory mitigation work; managing necessary utility relocations; coordinating with other stakeholders, such as the United States Army Corps of Engineers, Palo Pinto County, and the Texas Department of Transportation; and conducting ongoing cultural resources projects in coordination with the Texas Historical Commission. The District appreciates the TCEQ's consideration of this Application and will continue using its best efforts to timely complete this important Project.

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 THE FILING AND PROSECUTION 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 Certification 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, since the Second 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 projects in coordination with the Texas Historical Commission; and (iv) coordinating with other stakeholders, such as the United States Army Corps of Engineers, Palo Pinto County, and the Texas Department of Transportation;

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 Commission 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.

(signature page follows)

PASSED, ADOPTED, AND APPROVED this 1ST day of OCTOBER
2021.

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

ATTEST:

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

(SEAL)

