

# 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: November 28, 2023

SUBJECT: The Vaughn Living Trust  
ADJ 4082  
CN605252378, RN106895279  
Application No. 12-4082A to Amend Certificate of Adjudication No. 12-4082  
Texas Water Code § 11.122, Requiring Limited Mailed Notice  
Brazos River, Brazos River Basin  
Somervell County

The application was received on October 16, 2023 and fees were received on October 17, 2023. Additional information was received on November 21, 2023. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on November 28, 2023. Mailed notice to the interjacent water right holders of record in the Brazos River Basin is required pursuant to Title 30 TAC § 295.158(c)(3)(D); however, there are no interjacent water right holders to notice. Mailed notice to the record holder is required pursuant to Title 30 TAC § 295.158(c)(2)(B).

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*  
Kelly Keel, *Interim Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 28, 2023

Mr. Dwane Smith, President  
Brazos Valley Grass  
P.O. Box 190  
Cresson, TX 76035-0190

**VIA E-MAIL**

RE: The Vaughn Living Trust  
ADJ 4082  
CN605252378, RN106895279  
Application No. 12-4082A to Amend Certificate of Adjudication No. 12-4082  
Texas Water Code § 11.122, Requiring Limited Mailed Notice  
Brazos River, Brazos River Basin  
Somervell County

Dear Mr. Smith:

This acknowledges receipt, on November 21, 2023, of additional information.

The application was declared administratively complete and filed with the Office of the Chief Clerk on November 28, 2023. Staff will continue processing the application for consideration by the Executive Director.

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

## Jenna Rollins

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**From:** Dwane Smith [REDACTED] >  
**Sent:** Tuesday, November 21, 2023 2:01 PM  
**To:** Jenna Rollins  
**Cc:** Humberto Galvan; Chris Kozlowski; Natalia Ponebshek  
**Subject:** Re: Vaughn Living Trust, Application No. 12-4082A  
**Attachments:** Vaughn\_Living\_Trust\_12-4082A\_RFI\_Sent\_11.20.23.pdf

Ms. Jenna Rollins

Please consider this response as confirmation that the intent of this application is to add the 310.52 acre tract authorized under Certificate of Adjudication No. 12-4081 as a place of use.

Sincerely, Dwane Smith

On Nov 20, 2023, at 3:26 PM, Jenna Rollins <Jenna.Rollins@tceq.texas.gov> wrote:

Dear Mr. Smith,

Please see the attached request for information letter for Vaughn Living Trust, application No. 12-4082A, and provide a response by December 20, 2023.

Best regards,  
Jenna Rollins, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section  
512-239-1845

## Natalia Ponebshek

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**From:** Jenna Rollins  
**Sent:** Monday, November 20, 2023 3:26 PM  
**To:** [REDACTED]  
**Cc:** Humberto Galvan; Chris Kozlowski; Natalia Ponebshek  
**Subject:** Vaughn Living Trust, Application No. 12-4082A  
**Attachments:** Vaughn\_Living\_Trust\_12-4082A\_RFI\_Sent\_11.20.23.pdf

Dear Mr. Smith,

Please see the attached request for information letter for Vaughn Living Trust, application No. 12-4082A, and provide a response by December 20, 2023.

Best regards,  
Jenna Rollins, Project Manager  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section  
512-239-1845



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 20, 2023

Mr. Dwane Smith, President  
Brazos Valley Grass  
P.O. Box 190  
Cresson, TX 76035-0190

VIA E-MAIL

RE: The Vaughn Living Trust  
ADJ 4082  
CN605252378, RN106895279  
Application No. 12-4082A to Amend Certificate of Adjudication No. 12-4082  
Texas Water Code § 11.122, Not Requiring Notice  
Brazos River, Brazos River Basin  
Somervell County

Dear Mr. Smith:

This acknowledges receipt, on October 16, 2023, of the referenced application, and on October 17, 2023, of fees in the amount of \$112.50 (Receipt No. M401410, copy attached).

Before the application can be declared administratively complete confirm that the applicant is requesting to add the 310.52-acre-tract authorized under Certificate of Adjudication No. 12-4081 as a place of use.

Please provide the requested information by December 20, 2023 or the application may be returned pursuant to Title 30 TAC § 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,

*Jenna Rollins* for

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

Attachment



17-OCT-23 04:10 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>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 PERMITS	WUP	M401409	3367		BS00105454	17-OCT-23	-\$112.50
	WUP	ADJ141787	101723	N	D4800295		
WATER USE PERMITS		WHELESS, SUSAN H	MELLOPEZ	CK			
	WUP	M401410	19489		BS00105454	17-OCT 23	-\$112.50
	WUP	ADJ124082	101723	N	D4800295		
WATER USE PERMITS		BRAZOS VALLEY GRASS INC	MELLOPEZ	CK			
Total (Fee Code):							-\$225.00
Grand Total:							-\$2,240.00

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# 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): \_\_\_\_\_

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	Y/N
<input checked="" type="checkbox"/> Administrative Information Report	<input checked="" type="checkbox"/> Worksheet 3.0
<input type="checkbox"/> Additional Co-Applicant Information	<input checked="" type="checkbox"/> Additional W.S. 3.0 for each Point
<input type="checkbox"/> Additional Co-Applicant Signature Pages	<input checked="" type="checkbox"/> Recorded Deeds for Diversion Points
<input checked="" type="checkbox"/> Written Evidence of Signature Authority	<input checked="" type="checkbox"/> Consent for Diversion Access
<input type="checkbox"/> Technical Information Report	<input type="checkbox"/> Worksheet 4.0
<input checked="" type="checkbox"/> USGS Map (or equivalent)	<input type="checkbox"/> TPDES Permit(s)
<input checked="" type="checkbox"/> Map Showing Project Details	<input type="checkbox"/> WWTP Discharge Data
<input checked="" type="checkbox"/> Original Photographs	<input type="checkbox"/> Groundwater Well Permit
<input type="checkbox"/> Water Availability Analysis	<input type="checkbox"/> Signed Water Supply Contract
<input checked="" type="checkbox"/> Worksheet 1.0	<input type="checkbox"/> Worksheet 4.1
<input checked="" type="checkbox"/> Recorded Deeds for Irrigated Land	<input checked="" type="checkbox"/> Worksheet 5.0
<input checked="" type="checkbox"/> Consent for Irrigated Land	<input type="checkbox"/> Addendum to Worksheet 5.0
<input type="checkbox"/> Worksheet 1.1	<input type="checkbox"/> Worksheet 6.0
<input type="checkbox"/> Addendum to Worksheet 1.1	<input type="checkbox"/> Water Conservation Plan(s)
<input type="checkbox"/> Worksheet 1.2	<input type="checkbox"/> Drought Contingency Plan(s)
<input type="checkbox"/> Worksheet 2.0	<input type="checkbox"/> Documentation of Adoption
<input type="checkbox"/> Additional W.S. 2.0 for Each Reservoir	<input type="checkbox"/> Worksheet 7.0
<input type="checkbox"/> Dam Safety Documents	<input type="checkbox"/> Accounting Plan
<input type="checkbox"/> Notice(s) to Governing Bodies	<input checked="" type="checkbox"/> Worksheet 8.0
<input type="checkbox"/> Recorded Deeds for Inundated Land	<input checked="" type="checkbox"/> Fees
<input type="checkbox"/> Consent for Inundated Land	<input type="checkbox"/> Public Involvement Plan

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# ADMINISTRATIVE INFORMATION REPORT

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

**\*\*\*Applicants are REQUIRED 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."

THE INTENT OF THE AMENDMENT IS TO DIVERT WATER AUTHORIZED BY PERMIT # 4082 FROM THE EXISTING DIVERSION POINT FOR WATER RIGHT PERMIT #4081

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2. APPLICANT INFORMATION (Instructions, Page. 6 )

a. Applicant

Indicate the number of Applicants/Co-Applicants \_\_\_\_\_  
(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?

JANE VAUGHN, TRUSTEE VAUGHN LIVING TRUST

(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 : 605252378 ( 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: JANE VAUGHN

Title: TRUSTEE

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

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: JANE VAUGHN

Mailing Address: 12200 MITCHELL BEND CT

City: GRANBURY State: TX ZIP Code: 76048

Indicate an X next to the type of Applicant:

- |   |   |
|---|---|
| <input type="checkbox"/> Individual         | <input type="checkbox"/> Sole Proprietorship-D.B.A. |
| <input type="checkbox"/> Partnership        | <input type="checkbox"/> Corporation                |
| <input checked="" type="checkbox"/> Trust   | <input type="checkbox"/> Estate                     |
| <input type="checkbox"/> Federal Government | <input type="checkbox"/> State Government           |
| <input type="checkbox"/> County Government  | <input type="checkbox"/> City Government            |
| <input type="checkbox"/> Other Government   | <input type="checkbox"/> Other _____                |

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For Corporations or Limited Partnerships, provide:  
State Franchise Tax ID Number: \_\_\_\_\_ SOS Charter (filing) Number: \_\_\_\_\_

**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: DWANE SMITH

Title: PRESIDENT

Organization Name: BRAZOS VALLEY GRASS

Mailing Address: P.O. BOX 190

City: CRESSON State: TX ZIP Code: 76035

Phone Number: 817-219-8622

Fax Number: \_\_\_\_\_

E-mail Address: 

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**4. WATER RIGHT CONSOLIDATED CONTACT INFORMATION**  
**(Instructions, Page. 9)**

This section applies only if there are multiple Owners of the same authorization. Unless otherwise requested, Co-Owners will each receive future correspondence from the Commission regarding this water right (after a permit has been issued), such as notices and water use reports. Multiple copies will be sent to the same address if Co-Owners share the same address. Complete this section if there will be multiple owners and all owners agree to let one owner receive correspondence from the Commission. Leave this section blank if you would like all future notices to be sent to the address of each of the applicants listed in section 2 above.

I/We authorize all future notices be received on my/our behalf at the following:

First and Last Name: \_\_\_\_\_

Title: \_\_\_\_\_

Organization Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**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). Applicants should check survey status on the TWDB website prior to filing:

[https://www3.twdb.texas.gov/apps/reports/WU/SurveyStatus\\_PriorThreeYears](https://www3.twdb.texas.gov/apps/reports/WU/SurveyStatus_PriorThreeYears)

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



6. SIGNATURE PAGE (Instructions, Page. 11)

Applicant:

I, JANE VAUGHN TRUSTEE  
(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: Jane Vaughn Date: 9/21/23  
(Use blue ink)

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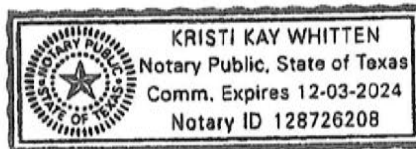
Subscribed and Sworn to before me by the said

on this 21st day of September, 2023.

Water Availability Division

My commission expires on the 03 day of December, 2023.

Notary Public



[SEAL]

County, Texas

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



# TECHNICAL INFORMATION REPORT WATER RIGHTS PERMITTING

RECEIVED  
OCT 16 2023  
Water Availability Division

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

*Applicants are REQUIRED 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 contact the Water Availability Division at (512) 239-4600 or [WRPT@tceq.texas.gov](mailto:WRPT@tceq.texas.gov) to schedule a meeting.*

Date of pre-application meeting: 10-3-2023

## 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 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 N (If yes, indicate the Certificate or Permit number: 12-4082)

*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 N*

- c. Applicant requests to extend an existing Term authorization or to make the right permanent? Y / N 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: 12-4082

Applicant requests to sever and combine existing water rights from one or more Permits or Certificates into another Permit or Certificate? Y / N 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 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 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 Y  
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 Y  
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 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 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 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 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 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 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 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”:

THE STATE AND REGIONAL WATER PLANS GENERALLY DO NOT ACCESS EVERY POSSIBLE CHANGE IN INDIVIDUAL WATER RIGHTS. THE APPLICATION IS CONSISTENT WITH THE 2021 REGION X WATER PLAN AND THE 2022 STATE WATER PLAN BECAUSE THERE IS NOTHING IN THE PLANS THAT CONFLICT WITH THE APPLICATION.

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



# 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- feet) <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**
114	AG	AG	PROPOSED LAND AUTHORIZED UNDER 4081	274.91 ACRE TRACT AND A 310.52 ACRE TRACT

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\*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:
- Applicant proposes to irrigate a total of 585.43 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 585.43 acres in SOMERVELL County, TX.
  - Location of land to be irrigated: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_.

***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.***

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



# WORKSHEET 1.1

## INTERBASIN TRANSFERS, TWC § 11.085

Submit this worksheet for an application for a new or amended water right which requests to transfer State Water from its river basin of origin to use in a different river basin. A river basin is defined and designated by the Texas Water Development Board by rule pursuant to TWC § 16.051.

Applicant requests to transfer State Water to another river basin within the State? Y / N\_\_\_\_\_

### 1. Interbasin Transfer Request (Instructions, Page. 20)

- a. Provide the Basin of Origin. \_\_\_\_\_
- b. Provide the quantity of water to be transferred (acre-feet). \_\_\_\_\_
- c. Provide the Basin(s) and count(y/ies) where use will occur in the space below:  
\_\_\_\_\_

### 2. Exemptions (Instructions, Page. 20), TWC § 11.085(v)

Certain interbasin transfers are exempt from further requirements. Answer the following:

- a. The proposed transfer, which in combination with any existing transfers, totals less than 3,000 acre-feet of water per annum from the same water right. Y/N\_\_
- b. The proposed transfer is from a basin to an adjoining coastal basin? Y/N\_\_
- c. The proposed transfer from the part of the geographic area of a county or municipality, or the part of the retail service area of a retail public utility as defined by Section 13.002, that is within the basin of origin for use in that part of the geographic area of the county or municipality, or that contiguous part of the retail service area of the utility, not within the basin of origin? Y/N\_\_
- d. The proposed transfer is for water that is imported from a source located wholly outside the boundaries of Texas, except water that is imported from a source located in the United Mexican States? Y/N\_\_

### 3. Interbasin Transfer Requirements (Instructions, Page. 20)

For each Interbasin Transfer request that is not exempt under any of the exemptions listed above Section 2, provide the following information in a supplemental attachment titled "Addendum to Worksheet 1.1, Interbasin Transfer":

- a. the contract price of the water to be transferred (if applicable) (also include a copy of the contract or adopted rate for contract water);
- b. a statement of each general category of proposed use of the water to be transferred and a detailed description of the proposed uses and users under each category;
- c. the cost of diverting, conveying, distributing, and supplying the water to, and treating the water for, the proposed users (example - expert plans and/or reports documents may be provided to show the cost);

- d. describe the need for the water in the basin of origin and in the proposed receiving basin based on the period for which the water supply is requested, but not to exceed 50 years (the need can be identified in the most recently approved regional water plans. The state and regional water plans are available for download at this website: (<http://www.twdb.texas.gov/waterplanning/swp/index.asp>);
- e. address the factors identified in the applicable most recently approved regional water plans which address the following:
  - (i) the availability of feasible and practicable alternative supplies in the receiving basin to the water proposed for transfer;
  - (ii) the amount and purposes of use in the receiving basin for which water is needed;
  - (iii) proposed methods and efforts by the receiving basin to avoid waste and implement water conservation and drought contingency measures;
  - (iv) proposed methods and efforts by the receiving basin to put the water proposed for transfer to beneficial use;
  - (v) the projected economic impact that is reasonably expected to occur in each basin as a result of the transfer; and
  - (vi) the projected impacts of the proposed transfer that are reasonably expected to occur on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries that must be assessed under Sections 11.147, 11.150, and 11.152 in each basin (*if applicable*). If the water sought to be transferred is currently authorized to be used under an existing permit, certified filing, or certificate of adjudication, such impacts shall only be considered in relation to that portion of the permit, certified filing, or certificate of adjudication proposed for transfer and shall be based on historical uses of the permit, certified filing, or certificate of adjudication for which amendment is sought;
- f. proposed mitigation or compensation, if any, to the basin of origin by the applicant; and
- g. the continued need to use the water for the purposes authorized under the existing Permit, Certified Filing, or Certificate of Adjudication, if an amendment to an existing water right is sought.

## WORKSHEET 1.2 NOTICE. "THE MARSHALL CRITERIA"

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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 amendments 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 the 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.

## WORKSHEET 2.0 Impoundment/Dam Information

This worksheet is required for any impoundment, reservoir and/or dam. Submit an additional Worksheet 2.0 for each impoundment or reservoir requested in this application.

*If there is more than one structure, the numbering/naming of structures should be consistent throughout the application and on any supplemental documents (e.g., maps).*

### 1. Storage Information (Instructions, Page. 21)

- a. Official USGS name of reservoir, if applicable: \_\_\_\_\_
- b. Provide amount of water (in acre-feet) impounded by structure at normal maximum operating level: \_\_\_\_\_.
- c. The impoundment is on-channel \_\_\_\_\_ or off-channel \_\_\_\_\_ (mark one)
  - i. Applicant has verified on-channel or off-channel determination by contacting Surface Water Availability Team at (512) 239-4600? Y / N \_\_\_\_\_
  - ii. If on-channel, will the structure have the ability to pass all State Water inflows that Applicant does not have authorization to impound? Y / N \_\_\_\_\_
- d. Is the impoundment structure already constructed? Y / N \_\_\_\_\_
  - i. For already constructed **on-channel** structures:
    1. Date of Construction: \_\_\_\_\_
    2. Was it constructed to be an exempt structure under TWC § 11.142? Y / N \_\_\_\_\_
      - a. If Yes, is Applicant requesting to proceed under TWC § 11.143? Y / N \_\_\_\_\_
      - b. If No, has the structure been issued a notice of violation by TCEQ? Y / N \_\_\_\_\_
    3. Is it a U.S. Natural Resources Conservation Service (NRCS) (formerly Soil Conservation Service (SCS)) floodwater-retarding structure? Y / N \_\_\_\_\_
      - a. If yes, provide the Site No. \_\_\_\_\_ and watershed project name \_\_\_\_\_;
      - b. Authorization to close "ports" in the service spillway requested? Y / N \_\_\_\_\_
  - ii. For **any** proposed new structures or modifications to structures:
    1. Applicant **must** contact TCEQ Dam Safety Section at (512) 239-0326, *prior to submitting an Application*. Applicant has contacted the TCEQ Dam Safety Section regarding the submission requirements of 30 TAC, Ch. 299? Y / N \_\_\_\_\_  
Provide the date and the name of the Staff Person \_\_\_\_\_
    2. As a result of Applicant's consultation with the TCEQ Dam Safety Section, TCEQ has confirmed that:
      - a. No additional dam safety documents required with the Application. Y / N \_\_\_\_\_
      - b. Plans (with engineer's seal) for the structure required. Y / N \_\_\_\_\_
      - c. Engineer's signed and sealed hazard classification required. Y / N \_\_\_\_\_
      - d. Engineer's statement that structure complies with 30 TAC, Ch. 299 Rules required. Y / N \_\_\_\_\_

3. Applicants **shall** give notice by certified mail to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir to be constructed, will be located. (30 TAC § 295.42). Applicant must submit a copy of all the notices and certified mailing cards with this Application. Notices and cards are included? Y / N\_\_\_\_\_

iii. Additional information required for **on-channel** storage:

1. Surface area (in acres) of on-channel reservoir at normal maximum operating level:\_\_\_\_\_.
2. Based on the Application information provided, Staff will calculate the drainage area above the on-channel dam or reservoir. If Applicant wishes to also calculate the drainage area they 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 prior to submitting the application, (512) 239-4600).

## 2. Structure Location (Instructions, Page. 23)

- a. On Watercourse (if on-channel) (USGS name):\_\_\_\_\_
- b. Zip Code: \_\_\_\_\_
- c. In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_, \_\_\_\_\_ County, Texas.

*\* A copy of the deed(s) with the recording information from the county records must be submitted describing the tract(s) that include the structure and all lands to be inundated.*

*\*\*If the Applicant is not currently the sole owner of the land on which the structure is or will be built and sole owner of all lands to be inundated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.*

- d. A point on the centerline of the dam (on-channel) or anywhere within the impoundment (off-channel) is:

Latitude \_\_\_\_\_°N, Longitude \_\_\_\_\_°W.

*\*Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places*

- i. Indicate the method used to calculate the location (examples: Handheld GPS Device, GIS, Mapping Program):\_\_\_\_\_
- ii. Map submitted which clearly identifies the Impoundment, dam (where applicable), and the lands to be inundated. See instructions Page. 15. Y / N\_\_\_\_\_



## 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.

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b. Maximum Rate of Diversion for this new point \_\_\_\_\_ cfs (cubic feet per second)  
or 1500 gpm (gallons per minute)

c. Does this point share a diversion rate with other points? Y / N Y  
If yes, submit Maximum **Combined** Rate of Diversion for all points/reaches \_\_\_\_\_ cfs or 1500 gpm

d. For amendments, is Applicant seeking to increase combined diversion rate? Y / N 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	EXISTING
<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 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): BRAZOS RIVER
- b. Zip Code: 76048
- c. Location of point: In the GALVESTON COUNTY SCHOOL LAND SURVEY Original Survey No. \_\_\_\_\_, Abstract No. 30, SOMERVELL 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 32.297127 °N, Longitude -97.683277 °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): HAND HELD GPS
- f. Map submitted must clearly identify each diversion point and/or reach. See instructions Page. 15.
- 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.

The intent of this amendment is to divert water authorized by permit #4082 from the existing diversion points for water right permit #4081 for the purpose of irrigating agriculture crops.

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## WORKSHEET 4.0 DISCHARGE INFORMATION

This worksheet required for any requested authorization to discharge water into a State Watercourse for conveyance and later withdrawal or in-place use. Worksheet 4.1 is also required for each Discharge point location requested. **Instructions Page. 26. Applicant is responsible for obtaining any separate water quality authorizations which may be required and for insuring compliance with TWC, Chapter 26 or any other applicable law.**

- a. The purpose of use for the water being discharged will be \_\_\_\_\_.
- b. Provide the amount of water that will be lost to transportation, evaporation, seepage, channel or other associated carriage losses \_\_\_\_\_ (% or amount) and explain the method of calculation: \_\_\_\_\_
- c. Is the source of the discharged water return flows? Y / N \_\_\_\_ If yes, provide the following information:
  1. The TPDES Permit Number(s). \_\_\_\_\_ (attach a copy of the current TPDES permit(s))
  2. Applicant is the owner/holder of each TPDES permit listed above? Y / N \_\_\_\_

*PLEASE NOTE: If Applicant is not the discharger of the return flows, or the Applicant is not the water right owner of the underlying surface water right, or the Applicant does not have a contract with the discharger, the application should be submitted under Section 1, New or Additional Appropriation of State Water, as a request for a new appropriation of state water. If Applicant is the discharger, the surface water right holder, or the contract holder, then the application should be submitted under Section 3, Bed and Banks.*

3. Monthly WWTP discharge data for the past 5 years in electronic format. (Attach and label as "Supplement to Worksheet 4.0").
  4. The percentage of return flows from groundwater \_\_\_\_\_, surface water \_\_\_\_\_?
  5. If any percentage is surface water, provide the base water right number(s) \_\_\_\_\_.
- d. Is the source of the water being discharged groundwater? Y / N \_\_\_\_ If yes, provide the following information:
1. Source aquifer(s) from which water will be pumped: \_\_\_\_\_
  2. If the well has not been constructed, provide production information for wells in the same aquifer in the area of the application. See <http://www.twdb.texas.gov/groundwater/data/gwdbrrpt.asp>. Additionally, provide well numbers or identifiers \_\_\_\_\_
  3. Indicate how the groundwater will be conveyed to the stream or reservoir.
  4. A copy of the groundwater well permit if it is located in a Groundwater Conservation District (GCD) or evidence that a groundwater well permit is not required.
- di. Is the source of the water being discharged a surface water supply contract? Y / N \_\_\_\_  
If yes, provide the signed contract(s).
- dii. Identify any other source of the water \_\_\_\_\_

## WORKSHEET 4.1 DISCHARGE POINT INFORMATION

This worksheet is required for each discharge point. Submit one Worksheet 4.1 for each discharge point. If there is more than one discharge point, the numbering of the points should be consistent throughout the application and on any supplemental documents (e.g., maps).  
**Instructions, Page 27.**

**For water discharged at this location provide:**

- a. The amount of water that will be discharged at this point is \_\_\_\_\_ acre-feet per year. The discharged amount should include the amount needed for use and to compensate for any losses.
- b. Water will be discharged at this point at a maximum rate of \_\_\_\_\_ cfs or \_\_\_\_\_ gpm.
- c. Name of Watercourse as shown on Official USGS maps: \_\_\_\_\_
- d. Zip Code \_\_\_\_\_
- e. Location of point: In the \_\_\_\_\_ Original Survey No. \_\_\_\_\_, Abstract No. \_\_\_\_\_, \_\_\_\_\_ County, Texas.
- f. Point is at:  
Latitude \_\_\_\_\_°N, Longitude \_\_\_\_\_°W.  
*\*Provide Latitude and Longitude coordinates in decimal degrees to at least six decimal places*
- g. Indicate the method used to calculate the discharge point location (examples: Handheld GPS Device, GIS, Mapping Program): \_\_\_\_\_

**Map submitted must clearly identify each discharge point. See instructions Page. 15.**

# 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 28.**

REQUESTING TO DIVERT FROM 4081  
SCREEN IS ATTACHED TO SUCTION PIPE ON DIVERSION PUMP

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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

e. 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 maps 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 \_\_\_\_\_.

## 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\_\_\_\_\_



## WORKSHEET 7.0

### ACCOUNTING PLAN INFORMATION WORKSHEET

The following information provides guidance on when an Accounting Plan may be required for certain applications and if so, what information should be provided. An accounting plan can either be very simple such as keeping records of gage flows, discharges, and diversions; or, more complex depending on the requests in the application. Contact the Surface Water Availability Team at 512-239-4600 for information about accounting plan requirements, if any, for your application. **Instructions, Page 34.**

#### 1. Is Accounting Plan Required

Accounting Plans are generally required:

- For applications that request authorization to divert large amounts of water from a single point where multiple diversion rates, priority dates, and water rights can also divert from that point;
- For applications for new major water supply reservoirs;
- For applications that amend a water right where an accounting plan is already required, if the amendment would require changes to the accounting plan;
- For applications with complex environmental flow requirements;
- For applications with an alternate source of water where the water is conveyed and diverted; and
- For reuse applications.

#### 2. Accounting Plan Requirements

a. A **text file** that includes:

1. an introduction explaining the water rights and what they authorize;
2. an explanation of the fields in the accounting plan spreadsheet including how they are calculated and the source of the data;
3. for accounting plans that include multiple priority dates and authorizations, a section that discusses how water is accounted for by priority date and which water is subject to a priority call by whom; and
4. Should provide a summary of all sources of water.

b. A **spreadsheet** that includes:

1. Basic daily data such as diversions, deliveries, compliance with any instream flow requirements, return flows discharged and diverted and reservoir content;
2. Method for accounting for inflows if needed;
3. Reporting of all water use from all authorizations, both existing and proposed;
4. An accounting for all sources of water;
5. An accounting of water by priority date;
6. For bed and banks applications, the accounting plan must track the discharged water from the point of delivery to the final point of diversion;
7. Accounting for conveyance losses;
8. Evaporation losses if the water will be stored in or transported through a reservoir. Include changes in evaporation losses and a method for measuring reservoir content resulting from the discharge of additional water into the reservoir;
9. An accounting for spills of other water added to the reservoir; and
10. Calculation of the amount of drawdown resulting from diversion by junior rights or diversions of other water discharged into and then stored in the reservoir.



## WORKSHEET 8.0 CALCULATION OF FEES

This worksheet is for calculating required application fees. Applications are not Administratively Complete until all required fees are received. **Instructions, Page. 34**

### 1. NEW APPROPRIATION

	Description	Amount (\$)
<b>Filing Fee</b>	Circle fee correlating to the total amount of water* requested for any new appropriation and/or impoundment. Amount should match total on Worksheet 1, Section 1. Enter corresponding fee under <b>Amount (\$)</b> . <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
<b>Recording Fee</b>		\$25.00
<b>Agriculture Use Fee</b>	<i>Only for those with an Irrigation Use.</i> Multiply 50¢ x _____ Number of acres that will be irrigated with State Water. **	
<b>Use Fee</b>	<i>Required for all Use Types, excluding Irrigation Use.</i> Multiply \$1.00 x _____ Maximum annual diversion of State Water in acre-feet. **	
<b>Recreational Storage Fee</b>	<i>Only for those with Recreational Storage.</i> Multiply \$1.00 x _____ acre-feet of in-place Recreational Use State Water to be stored at normal max operating level.	
<b>Storage Fee</b>	<i>Only for those with Storage, excluding Recreational Storage.</i> Multiply 50¢ x _____ acre-feet of State Water to be stored at normal max operating level.	
<b>Mailed Notice</b>	Cost of mailed notice to all water rights in the basin. Contact Staff to determine the amount (512) 239-4600.	
<b>TOTAL</b>		<b>\$</b>

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### 2. AMENDMENT OR SEVER AND COMBINE

	Description	Amount (\$)
<b>Filing Fee</b>	Amendment: \$100	100
	OR Sever and Combine: \$100 x _____ of water rights to combine	
<b>Recording Fee</b>		\$12.50
<b>Mailed Notice</b>	Additional notice fee to be determined once application is submitted.	
<b>TOTAL INCLUDED</b>		<b>\$ 112.50</b>

### 3. BED AND BANKS

	Description	Amount (\$)
<b>Filing Fee</b>		\$100.00
<b>Recording Fee</b>		\$12.50
<b>Mailed Notice</b>	Additional notice fee to be determined once application is submitted.	
<b>TOTAL INCLUDED</b>		<b>\$</b>

BRAZOS VALLEY GRASS INC

19489

TEXAS Commission on Environmental Quality

10/12/2023

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
10/12/2023	Bill	Amend 12-4082	112.50	112.50		112.50
					Check Amount	112.50

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Checking Account      Amending Diversion Point 4082

112.50





4081 Diversion point

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Diversion Pt - 4082

15000 Mitchell Bend Ct

Diversion Point - 4081

Sarasota River

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## TCEQ Water Rights Change of Ownership Memorandum

**To:** Records Management                      **Date:** July 27, 2017  
**From:** Permit Support Compliance and      **Certificate of Adjudication No.** 12-4082  
             Groundwater Section  
             Water Availability Division              **Source Counties:** Hood and Somervell

**Source Basin:** Brazos River Basin

**Subject:** Change of Ownership

**Add:** The Vaughn Living Trust, as part owner

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**Conveyance Documents Reviewed**

Title	Dated	Doc. No.	Vol. No.	Page No.
Warranty Deed with Vendor's Lien	10/25/1972	150	59	31
Warranty Deed	02/15/1984	2116	1044	514
Warranty Deed	02/15/1984	2117	1044	517
Certificate of Vital Records	11/28/1984	2621	6	88
Warranty Deed with Vendor's Lien	07/01/1992	14285	22	778
Last Will & Testament, Probate Order and Will Inventory for the Estate of Floy Lynn Vaughn	10/27/1998	1515	25	564
Executor's Deed	11/18/1999	20141934		
The Vaughn Living Trust Agreement	11/15/2005			
Executor's Deed	10/19/2016	20161812		
Trustee's Deed	10/19/2016	20161814		
Deed	10/19/2016	20161815		

The change of ownership application was received on February 5, 2014 and the \$100 recording fee (Receipt Nos. R427713) was received on May 29, 2014. The review of the application was completed on July 27, 2017. The conclusions in this memo are based upon a review of the above mentioned conveyance documents submitted by the applicants from the Official Public Records of Hood and Somervell County, Texas. The conclusions are subject to change if additional information is received.

**Ownership of Record with Addresses and Remarks:**

1. S. B. Grissom  
 1614 Montieri  
 League City, Texas 77573- 4779
2. The Vaughn Living Trust  
 Attn: Jane Vaughn, Trustee  
 12200 Mitchell Bend Ct  
 Granbury, Texas 76048-9600



The ownership interest has been apportioned as follows:

**Authorization 1: 88.2 acre-feet diversion for Agricultural Purposes** from the Brazos River located in the Galveston County School Land Survey, Abstract 36, Somervell County, and Abstract 852, Hood County, Texas.

Owner Names	Amount	Purpose
S. B. Grissom	88.2 acre-feet	Irrigation of 88.2 acres out of a 211.09-acre tract

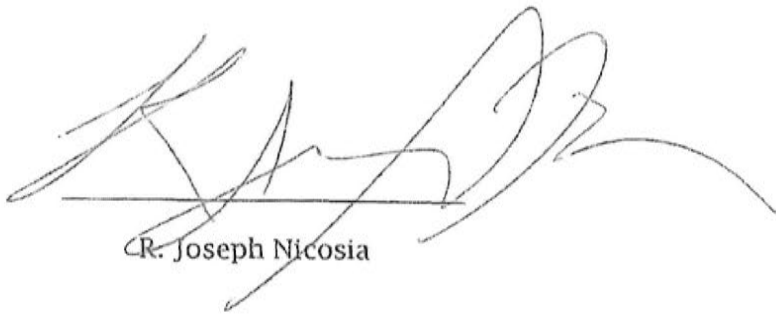
The 88.2 acre-feet of agricultural water rights are appurtenant to the 211.09-acre tract of land located in the Galveston County School Land Survey, Abstract 36, Somervell County, and Abstract 852, Hood County, Texas. As such, a conveyance of any portion of these acres will automatically carry a proportionate share of the water right to the new owner unless the water right is reserved in the conveyance.

**Authorization 2: 114.8 acre-feet diversion for Agricultural Purposes** from the Brazos River located in the Galveston County School Land Survey, Abstract 36, Somervell County, Texas.

Owner Names	Amount	Purpose
Vaughn Living Trust	114.8 acre-feet	Irrigation of 114.8 acres out of a 274.91-acre tract

The 114.8 acre-feet of agricultural water rights are appurtenant to the 274.91-acre tract of land located in the Galveston County School Land Survey, Abstract 36, Somervell County, Texas. As such, a conveyance of any portion of these acres will automatically carry a proportionate share of the water right to the new owner unless the water right is reserved in the conveyance.

This water right falls under the jurisdiction of the Brazos Watermaster's office. There is an outstanding balance of \$151.82 associated with this account. Prior to diversion please contact the Brazos Watermaster's office at (254) 791-3006.



R. Joseph Nicosia

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4081 & 4082

THE VAUGHN  
LIVING TRUST AGREEMENT

DATED THIS 15 DAY OF November, 2005

THIS TRUST AGREEMENT between HELEN JANE VAUGHN, (hereinafter referred to as Trustor), a resident of the State of Texas, County of Somervell, and HELEN JANE VAUGHN, (hereinafter referred to as the Trustee), establishes a Trust upon the conditions and for the purposes hereafter set forth.

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ARTICLE ONE  
TRUSTEES AND FAMILY IDENTIFIED

Water Availability Division

Section 1.01 Trustee Designation. HELEN JANE VAUGHN is hereby designated as Trustee. Should she become unable, because of death, incapacity or other cause, to serve as Trustee, or should she resign as Trustee, then ALEX LYNN VAUGHN, shall serve as First Successor Trustee. Should the First Successor Trustee decline or fail to serve, then LEE BROOKE VAUGHN shall serve as Second Successor Trustee. Should the Second Successor Trustee decline or fail to serve, then BETTY MCCREIGHT shall serve as Third Successor Trustee. They are to serve without bond.

If each of the above named persons should be unable or unwilling to serve, a Trustee shall be chosen by the majority of the current income beneficiaries, with a parent or legal guardian voting for any minor beneficiaries; provided, however, that the issue of any deceased beneficiary shall collectively have only one vote.

a) Appointment of Successor Trustees of Separate Trusts: Subsequent to the time period described above when a separate Trust is established for each child and the child has attained thirty (30) years of age, the then serving Trustee shall terminate the Trusteeship and Trustor appoints each child as the Trustee of the separate Trust created for the benefit of such child. For instance, a child shall become the Trustee of the separate Trust established for his or her benefit as well as the benefit of his or her descendants. If a child is unable or unwilling to serve as Trustee of his or her own Trust, or cannot continue to serve for any reason, then the Successor Trustee shall be an individual or a bank or Trust company named in accordance with provisions above. In the event a child is not living at such time or dies during the term of his or her Trust, Trustor's remaining children who are at least thirty (30) years of age [or as they become thirty (30) years of age] shall serve as the Co-Trustees of such deceased child's separate Trust. Otherwise, each child shall serve as a Trustee of his or her own separate Trust for whose benefit such Trust has been established. In the event that a child is not living and none of Trustor's other children are at least thirty (30) years of age, then the Trustees named in the paragraph above shall each serve in the order specified as the sole Trustee until such time as a child reaches thirty (30) years of age.

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**Section 1.02 Successor Trustees.** Any Successor Trustee taking office pursuant to this Trust Agreement shall forthwith succeed to all title of the prior Trustee and shall have all the power, rights, discretions and obligations conferred on such Trustee by this Trust Agreement.

a) All rights, titles and interest in the property of the Trust shall immediately vest in the Successor Trustee at the time of appointment. The prior Trustee shall, without warranty, transfer to the Successor Trustee the existing Trust property.

b) No Successor Trustee shall be under any duty to examine, verify, question, or audit the books, records, accounts, or transaction of any preceding Trustee; and no Successor Trustee shall be liable or responsible in any way for any acts or defaults of any predecessor Trustee, nor for any loss or expense from or occasioned by anything done or neglected to be done by any predecessor Trustee. A Successor Trustee shall be liable only for their own acts and defaults.

(1) If the Trustee has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment and management of similar estates in the same geographic area, then the Trustee shall not at any time be held liable to the Trust or any Beneficiary for any action or default of the Trustee or of any other person in connection with the administration of the Trust unless caused by the Trustee's gross negligence, bad faith, or willful commission of an act in breach of Trust. However, a corporate Trustee shall always be liable for the acts, omissions and defaults of its officers and regular employees. The Trustee shall never be subject to liability for its decision either to make or refuse to make a distribution out of the Trust Estate that may be made in the "sole discretion" or "sole and absolute discretion" of the Trustee or for exercising or not exercising any power under this Trust that is specifically made subject to the Trustee's "sole discretion" or "sole and absolute discretion".

(2) The Trustee shall not incur any personal liability to anyone dealing with the Trustee in the administration of the Trust Estate. The Trustee shall be entitled to reimbursement from the Trust Estate for any liability, whether in contract or in tort, incurred in the administration of the Trust. The Trustee may contract in such form as to exempt the Trustee from personal liability and to cause such liability to be limited to the Trust Estate.

**Section 1.03 Removal of a Trustee.** Except for the Trustee by original appointment, a Trustee may be removed by a court of competent jurisdiction for cause in any proceeding brought by a beneficiary of the Trust, by another Trustee, or by any other person who has a direct or indirect interest in the Trust. The term "for cause" shall mean and include: any material act of self dealing by a Trustee or any material act or omission to act constituting gross negligence or intentional fraud. The term "material" identifies a significant monetary damage to the trust as the result of the act or omission to act by a trustee constituting self dealing, gross negligence or fraud. The term "material" does not include incidental or insignificant monetary damage to

the trust; monetary damages incurred by someone who is not a vested or contingent beneficiary of the trust; nor an intangible loss or damage which cannot be valued under the fair market valuation standards of the tax laws of the United States.

**Section 1.04 Removal of a Corporate Trustee.** The trust beneficiary or beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may remove any corporate trustee then serving, the notice of removal to be delivered in writing to the corporate trustee. Unless this trust declaration, or any amendment to the trust declaration, or any instrument appointing a successor provides otherwise, the selection of a successor to the corporate trustee shall be made by a court of competent jurisdiction, however such successor, shall be a corporate trustee. In the event there is more than one beneficiary entitled to the income from the trust, all income beneficiaries must join in the written notice of removal. The consent of any person who is deceased or legally disabled shall not be required in meeting the unanimous consent requirements for removal.

**Section 1.05 Trustee Resignation.** Any Trustee or Successor Trustee may resign from that office, without court approval, by giving the next Trustee in line of succession ten (10) days prior written notice and transferring all existing Trust property to his/her successor. The prior Trustee shall cooperate with the new Trustee in executing whatever documents are necessary to accomplish this end. If the resigning party is the last named Trustee, he/she shall give the required notice to the current income beneficiaries of the Trust and may only resign after a successor Trustee has been duly elected as set forth in Section 1.01 of this Agreement.

**Section 1.06 Definition of Children.** For the purpose of identification, the children of HELEN JANE VAUGHN are two children, namely ALEX LYNN VAUGHN and LEE BROOKE VAUGHN. The terms "child" and "children" as used in this Trust Agreement mean the lawful issue of the Trustor, and includes children legally adopted by the Trustor, but not step-children.

## **ARTICLE TWO**

### **TRUSTEE'S ADMINISTRATIVE AND INVESTMENT POWERS**

**Section 2.01 Trustee Powers.** The Trustee shall have all powers conferred upon a Trustee by the laws of Texas for the orderly administration of the Trust Estate, including those specified in the Texas Trust Code in effect in Texas as it may be amended from time to time. If any property is distributed outright under the provision of this instrument to a person who is a minor, distribution may be made under the Texas Transfers to Minors Act; any fiduciary acting under this instrument may name the custodian and distribute the property to the custodian.

The Trustee shall with respect to any and all property which may at any time be held by the Trustee in Trust pursuant to this Agreement, whether such property constitutes principal or accumulated income, have power, exercisable in the Trustee's absolute discretion, at any time

and from time to time on such terms and in such manner as the Trustee may deem advisable, to:

a) Sell, convey, exchange, convert, improve, repair, partition, divide, allot, subdivide, create restrictions, easements or other servitude thereon, operate and control;

b) Lease for terms within or beyond the term of the Trust and for any purpose, including exploration for removal of gas, oil and other minerals; and enter into any covenants and agreements relating to the property so leased or any improvements which may then or thereafter be erected on such property;

c) Encumber or hypothecate for any Trust purpose by mortgage, Deed of Trust, pledge or otherwise;

d) Carry insurance of such kinds and in such amounts at the expense of the Trust as the Trustee may deem advisable;

e) Commence or defend at the expense of the Trust such litigation with respect to any Trust or any property of the Trust Estate as Trustee may deem advisable and employ, for reasonable compensation payable by any such Trust, such counsel as the Trustee shall deem advisable for that purpose;

f) Invest and reinvest the Trust funds in such property as the Trustee, in the exercise of reasonable business judgment, may deem advisable;

g) Vote by proxy or otherwise, in such manner as Trustee may determine to be in the best interests of the Trust any securities having voting rights held by the Trustee pursuant to this Agreement;

h) Pay any assessments or other charges levied on any stock or other security held by Trustee in Trust pursuant to this Agreement;

i) Exercise or not exercise as Trustee may deem best, any subscription, conversion or other rights or options which may at any time attach, belong or be given to the holders of any stocks, bonds, securities or other instruments held by Trustee in Trust pursuant to this Agreement;

j) Participate in any plans or proceedings for the foreclosure, reorganization, consolidation, merger or liquidation of any corporation or organization that has issued securities held by Trustee in Trust pursuant to the terms of this Agreement, to deposit securities with and transfer title or securities on such terms as Trustee may deem in the best interest of the Trust to any protective of or other committee established to further or defeat any such plan or proceeding;



k) Enforce any mortgage or Deed of Trust or pledge held by Trustee in trust pursuant to this Agreement and at any sale under any such mortgage, Deed of Trust or pledge, to bid and purchase at the expense of the Trust any property subject to such security instrument;

l) Compromise, submit to arbitration, release with or without consideration and otherwise adjust any claims in favor or against the Trust provided for in this Agreement;

m) Manage any business or interest and use the general assets of the Trust for the purpose of the business, and invest additional capital in, or make loans to such business;

n) Subject to any limitations expressly set forth in this declaration and faithful performance of Trustee's fiduciary obligations, to do all acts, take all such proceedings, and exercise all such rights and privileges as could be done, taken or exercised by an absolute owner of the Trust property.

o) The Trustee is authorized to employ attorneys, accountants, investment advisors, specialists and such other agents as she shall deem necessary or desirable. The Trustee shall have the authority to appoint an investment manager or managers to manage all or any part of the assets of the Trust, and to delegate to said manager investment discretion. Such appointment shall include the power to acquire and dispose of such assets. The Trustee may charge the compensation of such attorneys, accountants, investment advisors, investments managers, specialists and other agents and any other expenses against the Trust.

**Section 2.02 Power to Borrow** .The Trustee shall have the power to borrow money for any Trust purpose (including borrowing from the probate estate for the purpose of paying taxes) on such terms and conditions as the Trustee may deem proper, from any person, firm or corporation, and shall have the power to repay such borrowed money.

**Section 2.03 Power to Loan to Trust**. The Trustee is authorized to loan or advance Trustee's own funds to the Trust for any Trust purpose and to charge for such loan or advance, the rate of interest that Trustee, at the time such loan or advance is made, would have charged had such loan or advance been made to a person not connected with the Trust having at least a net worth equal to the value of the principal of the Trust. Any such loan or advance, shall be repaid from the income or principal of the Trust as in the discretion of the Trustee appears for the best interests of the Trust and its beneficiaries.

**Section 2.04 Purchase of Securities**. The Trustee is authorized to purchase securities, to buy and sell commodities and options, both covered and uncovered, to buy and sell precious metals and futures, and to enter into agreements and sign documents opening or closing brokerage accounts and maintaining these accounts. The Trustee is further authorized to purchase securities or other property from the probate estate, with or without security to the executor or other representative of the estate of the Trustor, and to make loans and advancements from the probate estate, again, with or without security to the executor or other representative of the estate of the

Trustor. The Trustee is also authorized to engage in margin trading and may maintain accounts with brokers for that purpose.

**Section 2.05 Manner of Holding Title.** The Trustee may hold securities or other property held by Trustee in Trust pursuant to this Agreement in Trustee's name as Trustee, in Trustee's own name without a designation showing it to be Trustee, in the name of Trustee's nominee, or the Trustee may hold such securities unregistered in such condition that ownership will pay by delivery. Any corporate Trustee is expressly authorized by Trustor's to deposit the funds of the Trust with itself.

**Section 2.06 Payment of Expenses.** The Trustee is authorized to engage any and all attorneys, accountants, agents and other professionals it deems necessary to aid in the proper and efficient administration of the Trust Estate. All expenses and costs of the administration of the Trust Estate, including the Trustee's travel and lodging expenses, shall be paid first from the income of the Trust Estate and second from corpus of the Trust Estate.

**Section 2.07 Rights of Persons Dealing With The Trustee:** The trustee may execute and deliver any and all instruments in writing which the trustee considers necessary to carry out any of the powers granted herein. No party to any such instrument in writing signed by the trustee shall be obligated to inquire into its validity, or be bound to see to the application by the trustee of any money or other property paid or delivered by or to the trustee pursuant to the terms of any such instrument. It is further expressly provided that anyone dealing with the trustee is not required to inquire into the terms of this trust instrument, the authority of the trustee, or to see to the application which the trustee makes of funds or other property received by the trustee, but shall be entitled to deal with the trustee assuming that the trustee has full authority to act.

Any person dealing with this trust shall in addition be entitled to rely upon a copy of the original trust instrument, certified as a true and correct copy of the original by the trustee, and upon any instruments duly executed in accordance with the provisions thereof, to the same extent as such person might rely upon the original trust instrument.

### **ARTICLE THREE** **TRUST PROPERTY**

**Section 3.01 Trust Purposes.** The primary Trust Purpose shall be to provide for the health, support and maintenance of the Trustor in her accustomed manner of living. The secondary Trust Purpose shall be to permit the Trustor to provide funds for the Trustor's designated beneficiaries. This instrument shall always be interpreted in such a way as to allow the Trustee to meet these purposes.

**Section 3.02 Trust Estate.** HELEN JANE VAUGHN has delivered to the trust \$100 as the initial corpus of this trust, the receipt of which is acknowledged. All property hereafter transferred or conveyed to and received by the Trustee to be held pursuant to the terms of this



instrument is herein called the "Trust Estate" and shall be held, administered, and distributed by the Trustee as provided in this Trust Agreement. Trustor has transferred and delivered to Trustee the property described in the various schedules accompanying this Trust including any and all property, (real and personal), which has been transferred to this Trust by other legal documents. Such title and interests as Trustee has received or may hereafter acquire in that property and such other property as may hereafter be added to the Trust, shall be vested in the Trustee.

### **Section 3.03 Additions to Trust Estate**

a) At any time during the continuance of this Trust its Trustee, in her sole discretion after consideration of the possible tax consequences thereof to all concerned, is authorized to receive additions of cash or other properties to the Trust, subject to any conditions to which the Trustee may agree, from any source whatsoever without limitation, whether by gift, will, or otherwise. However, the Trustee shall accept all assets which any person or persons may give, devise, and/or bequeath by last will and testament to this Trust hereunder as well as all assets which may be transferred to such Trust pursuant to the express provisions of any other Trust document or other documents of any kind.

b) Furthermore, at any time any person or persons may designate this Trust as the beneficiary, primary or contingent, of any insurance, pension, or other death benefit, relating to the life of anyone (such designation to be presumed to be revocable unless it is expressly irrevocable) and, until such benefit matures by reason of death. The Trustee shall have no responsibility whatsoever with respect thereto, it being intended that, unless and until the Trust which is the designated beneficiary of such death benefit becomes the owner of the insurance proceeds involved (or other source of such benefit), such Trust arrangement shall be operative only with respect to such net proceeds as actually become payable by reason of death.

**Section 3.04 Non-Income Producing Property.** During the life of the Trustor, the Trustee is authorized to retain in the Trust for so long as the Trustee may deem advisable and in the best interest of such Trust, any property received by the Trustee from the Trustor. After the death of the Trustor, a beneficiary who is then entitled to the income of the Trust, or the income of any other trust established or continued pursuant to this Trust declaration, will have the authority to issue a written directive to the Trustee to convert Trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the Trust. Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as is prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of sale in income producing instruments or obligations. Notwithstanding these requirements, a trust beneficiary may not direct the trustee

to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this Trust Agreement.

**Section 3.05 Removal of Trust Property.** At any time during the life of the Trustor, Trustor may, by a written instrument filed with Trustee, withdraw from the Trust Estate, discharged of the Trust, all or any part of the principal and accumulated income of the Trust upon satisfying all sums due to the Trustee and indemnifying Trust, to the Trustee's reasonable satisfaction, against liabilities lawfully incurred in the administration of this Trust.

Any gift made directly by our Trustee to a third party shall be construed as a distribution made directly to Trustor and then a gift from Trustor to such third party.

**Section 3.06 Residence.** If the Trustor's current residence property is a part of the Trust, the Trustor shall have possession and full management of it, and shall have the unrestricted right to occupy the residence rent free. All taxes, insurance, assessments, repairs, and other charges necessary to maintain the property shall be paid out of the Trust Estates.

#### **ARTICLE FOUR** **AMENDMENT OF THE TRUST**

**Section 4.01 Amendment.** At any time during the life of the Trustor, Trustor may, by a written instrument filed with Trustee, amend this Trust Agreement (including its technical provisions) in any manner.

**Section 4.02 Revocation.** At any time during the life of the Trustor, Trustor may, by a written instrument filed with Trustee, revoke this Trust Agreement in part or in whole, in which latter event any and all Trust properties shall forthwith revert to such Trustor free of Trust.

Any instrument of amendment or revocation shall be effective immediately upon its proper execution by Trustor, but until a copy has been received by a Trustee, that Trustee shall not incur any liability or responsibility either (i) for failing to act in accordance with such instrument or (ii) for acting in accordance with the provisions of this Trust Agreement without regard to such instrument.

**Section 4.03 Irrevocability.** Upon the death of the Trustor the Trust shall become irrevocable and not subject to amendment or modification.

**Section 4.04 Revocation or Alteration by Trustor Alone.** The rights of revocation, withdrawal, alteration, and amendment reserved by Trustor in this Article must be exercised by the Trustor, and may not be exercised by any other person, including agent, guardian, or conservator.

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ARTICLE FIVE  
DISTRIBUTIONS DURING TRUSTOR'S LIFETIME Water Availability Division

**Section 5.01 Distributions of Income and Principal.** The Trustee shall distribute to or for the benefit of Trustor during her lifetime so much of the net income and/or principal of the Trust as shall be appropriate or necessary to provide for her respective health, maintenance support, and general welfare.

**Section 5.02 Protection of Trustor in Event of Incapacity.** During any disability or incompetency of Trustor as defined in Section 5.03 below, the Trustor shall be relieved of all the powers heretofore reserved by the Trustor in the Trustor's individual or fiduciary capacity, as the case may be. During any such disability or incompetency, all such powers shall be suspended, and the current Trustee or Successor Trustee, whichever is applicable, shall have or continue to have those powers with respect to the Trust Estate given in this Trust to a Trustee.

As long as the Trustor is disabled or incapacitated, the Trustee shall distribute to or for the benefit of incapacitated Trustor so much of the net income and/or principal from the Trust Estate, as the Trustee deems necessary to provide for incapacitated Trustor's respective health, maintenance, support, and general welfare.

**Section 5.03 Incapacity.** In the event that any Trustee or any beneficiary hereunder comes into possession of any of the following:

a) A court order, which such Trustee or beneficiary deems to be jurisdictionally proper and still concurrently applicable, holding the Trustor to be legally incapacitated to act on her own behalf or appointing a guardian to act for her; or

b) A written certificate of two licensed physicians, at least one of which is her attending physician and is unrevoked, each certifying that such physician has examined the Trustor and has concluded that, by reason of accident, or mental deterioration, or similar cause, she has, at the date thereof, become incapacitated to act rationally and prudently in her own financial best interests; or;

c) Evidence which such Trustee or beneficiary deems to be creditable and still currently applicable that the Trustor has disappeared, is unaccountably absent for more than three (3) months, or is being detained under duress where she is unable effectively and prudently to look after her own best interests;

Then in that event and under those circumstances:

(1) Such person shall be deemed to have thereupon become incapacitated, as that term is used in and for all of the purposes of this instrument, and

(2) Such incapacity shall be deemed to continue until such

court order, certificates, and or circumstances have become inapplicable or have been revoked.

d) Any physician's aforesaid certificate may be revoked by a similar certificate to the effect that the person is no longer thus incapacitated and said certificate is executed either (i) by the originally certifying physician or (ii) by two other licensed physicians.

No Trustee shall be under any duty to institute any inquiry into a person's possible incapacity, but the expense of any such inquiry reasonably instituted may be paid from Trust assets. Payment for such inquiry refers both to a reasonable inquiry as to the incapacity of such individual and to that inquiry as to the revocation of such a certificate.

**Section 5.04 Items of Tangible Personal Property in Trust.** HELEN JANE VAUGHN may have certain items of tangible personal property which have been transferred to the Trust or otherwise subject to the Trustee's control. The term "*personal belongings*" or "*tangible personal property*" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment, and all items of decoration or adornment. Trustor may at any time and from time to time deliver to the Trustee written instructions as to any living or post-mortem gifts of her personal belongings, and the Trustee shall be authorized and bound to make disposition of these items as a Trustor has reasonably directed. All of the tangible personal property which is or becomes Trust Property and is not disposed of by written instructions shall be distributed under the terms of this Agreement.

## ARTICLE SIX DISTRIBUTIONS UPON THE DEATH OF TRUSTOR

**Section 6.01 Distribution of Trust Upon Death of Trustor.** Upon the death of the Trustor, the then remaining principal and undistributed income of each of the shares of the resulting Trust Estate, shall be divided into as many shares as shall be necessary to create one equal share for each of Trustor's then living children (my children ALEX LYNN VAUGHN and LEE BROOKE VAUGHN), and one equal share for each of Trustor's deceased children who has then living descendants.

The Trust Estate may further be divided into two broad categories, if necessary: the Exempt Trust and the Nonexempt Trust. The Exempt Trust shall consist of an amount equal to the Trustor's generation-skipping tax (GST) exemption, reduced by the aggregate amount of the Trustor's GST exemption that has been allocated (by the Trustor or by the executor of the Trustor's Will) to other transfers of property by the Trustor during her lifetime or as a result of the Trustor's death. The Nonexempt Trust shall consist of the balance of the remaining Trust Estate. The term "*GST Exemption*" or "*GST Exemption Amount*" is the dollar amount of property which may pass as generation skipping transfers under Subtitle B, Chapter 13, of the Internal Revenue Code of 1986 [entitled "Tax On Generation-Skipping Transfers"] which is exempt from the generation-skipping tax.

a) **Distribution of Trust Shares for ALEX LYNN VAUGHN.** The trust share for ALEX LYNN VAUGHN shall be held in trust for his life and administered and distributed as follows:

(1) **Distribution of Income and Principal.** Distributions of income and principal shall be made by the Trustee for the health, education, maintenance and support of ALEX LYNN VAUGHN. In making distributions of the trust income, the Trustee may consider other income and financial resources to the respective trust beneficiary.

(2) **Distribution on the Death of ALEX LYNN VAUGHN.** ALEX LYNN VAUGHN shall have the power to appoint any remaining Trust Estate of a Nonexempt Trust established for his benefit to the executors or administrators of his estate if ALEX LYNN VAUGHN dies before receiving distribution of the entire Trust Estate. Such power must be exercised pursuant to a clause in his duly probated Last Will and Testament which makes specific reference to this paragraph of this Section of the Trust Agreement. To the extent such power is validly exercised, the Trustee shall distribute the remaining Trust Estate to the executors or administrators of such deceased Beneficiary's estate subject, however, to the other provisions of this Trust Agreement regarding the reserves and withholding of taxes. Any remaining Trust Estate of a Nonexempt Trust shall be distributed in accordance with the remaining provisions of this Trust Agreement to the extent the Beneficiary fails to exercise such power of appointment.

ALEX LYNN VAUGHN shall have the power to appoint any remaining Trust Estate of an Exempt Trust established for his benefit to a class of individuals consisting solely of his children and descendants. Such power must be exercised pursuant to a clause in his duly probated Last Will and Testament which makes specific reference to this paragraph of this Section of the Trust Agreement, and must further designate the beneficiaries and the shares, proportions, and amounts that each shall be entitled to, and whether such appointment is in trust for or is directly to such beneficiaries. Any remaining Trust Estate of an Exempt Trust shall be distributed in accordance with the remaining provisions of this Trust Agreement to the extent the Beneficiary fails to exercise such power of appointment.

Any property in the trust share which is not distributed pursuant to the exercise of the general or special power of appointment shall be distributed to ALEX LYNN VAUGHN'S then living descendants, per stirpes.

If ALEX LYNN VAUGHN has no then living descendants, the Trustee shall distribute the remaining trust property to Trustor's descendants on a per stirpes basis.

b) **Distribution of Trust Shares for LEE BROOKE VAUGHN.** The trust share for LEE BROOKE VAUGHN shall be held in trust and administered and distributed for her life as follows:



(1) **Distribution of Income and Principal.** Distributions of income and principal shall be made by the Trustee for the health, education, maintenance and support of LEE BROOKE VAUGHN. In making distributions of the trust income, the Trustee may consider other income and financial resources to the respective trust beneficiary.

(2) **Distribution on the Death of LEE BROOKE VAUGHN.** LEE BROOKE VAUGHN shall have the power to appoint any remaining Trust Estate of a Nonexempt Trust established for her benefit to the executors or administrators of her estate if LEE BROOKE VAUGHN dies before receiving distribution of the entire Trust Estate. Such power must be exercised pursuant to a clause in her duly probated Last Will and Testament which makes specific reference to this paragraph of this Section of the Trust Agreement. To the extent such power is validly exercised, the Trustee shall distribute the remaining Trust Estate to the executors or administrators of such deceased Beneficiary's estate subject, however, to the other provisions of this Trust Agreement regarding the reserves and withholding of taxes. Any remaining Trust Estate of a Nonexempt Trust shall be distributed in accordance with the remaining provisions of this Trust Agreement to the extent the Beneficiary fails to exercise such power of appointment.

LEE BROOKE VAUGHN shall have the power to appoint any remaining Trust Estate of an Exempt Trust established for her benefit to a class of individuals consisting solely of her children and descendants. Such power must be exercised pursuant to a clause in her duly probated Last Will and Testament which makes specific reference to this paragraph of this Section of the Trust Agreement, and must further designate the beneficiaries and the shares, proportions, and amounts that each shall be entitled to, and whether such appointment is in trust for or is directly to such beneficiaries. Any remaining Trust Estate of an Exempt Trust shall be distributed in accordance with the remaining provisions of this Trust Agreement to the extent the Beneficiary fails to exercise such power of appointment.

Any property in the trust share which is not distributed pursuant to the exercise of the general or special power of appointment shall be distributed to LEE BROOKE VAUGHN'S then living descendants, per stirpes.

If LEE BROOKE VAUGHN has no then living descendants, the Trustee shall distribute the remaining trust property to Trustor's descendants on a per stirpes basis.

c) **Share of a Descendant of a Deceased Child.** The Trustee shall distribute any share set aside for a deceased child who has then living descendants outright on a per stirpes basis, subject to the contingent trust below.

d) **Alternative Ultimate Distribution.** If all of the Trustor's beneficiaries should fail to survive final distribution of the Trust Estate, all of the Trust Estate not disposed of as hereinabove provided shall be distributed to the heirs-at-law of the Trustor, such persons and their shares to be determined in accordance with laws of the State of Texas then in effect.

e) **Contingent Trust for Certain Beneficiaries.** If any beneficiary, to whom the Trustee is directed in a preceding provision hereof, to distribute any share of the trust principal, is under the age of 21 years when the distribution is to be made, the Trustee shall continue to hold it as a separate trust for such period of time for matters including college or vocational training, but not after the time the beneficiary reaches the age of 21 years. Prior to termination, the Trustee shall distribute as much of the income and principal as the Trustee determines necessary, in addition to the beneficiary's other income, from all sources known to the Trustee, for the beneficiary's reasonable health, education, maintenance, and support. The Trustee has discretion to add any excess income to the principal. When each beneficiary reaches the age of twenty-one (21) years, the Trustee shall distribute to each beneficiary one hundred percent (100%) of the then balance of the principal of his or her share of the Trust Estate. If the beneficiary dies prior to final distribution of his or her interest from the Trust, that person's interest shall pass per stirpes to his or her descendants then living, or if none, per stirpes to the descendants of the Trustor.

**Section 6.02 Accrued Income on Termination of Beneficial Interest.** Whenever the right of any beneficiary to payments from the net income or principal of the Trust provided for in this Agreement shall terminate either by reason of death or other cause, any accrued net income in the Trust undistributed by the Trustee on the date of such termination shall be held, administered and distributed by the Trustee in the same manner as if such income had accrued and been received by the Trustee after the date such beneficiary's right to receive payments from such Trust terminated.

**Section 6.03 Distribution in Kind or Cash.** On any division of the assets of the Trust Estate into shares or partial shares and on any final or partial distribution of the assets of the Trust Estate, the Trustee, at his or her absolute discretion, may divide and distribute undivided interests of such assets, or may sell all or any part of such assets and make division or distribution in cash or partly in cash and partly in kind. The decision of the Trustee, either prior to or on any division or distribution of such assets, as to what constitutes a proper division of such assets of the Trust Estate, shall be binding on all persons in any manner interested in any Trust provided for in this Trust Agreement.

**Section 6.04 Spendthrift Provision.** Neither the principal nor the income shall be liable for the Debts of any beneficiary. Except as otherwise expressly provided in this Agreement, no beneficiary of any Trust shall have any right, power or authority to alienate, encumber or hypothecate his or her interest in the principal or income or such Trust in any manner, nor shall such interests of any beneficiary be subject to claims of his or her creditors or liable to attachment, execution or other process of law. The limitations herein shall not restrict the exercise of any power of appointment on the right to disclaim.

**Section 6.05 Compensation.** Any individual who is a Trustee and who is Trustor or a relative of a Trustor shall receive no compensation unless he or she requests compensation whereupon a reasonable compensation shall be paid. Any other individual who is a Trustee shall be compensated by a reasonable compensation, unless such individual waives compensation. Any



individual serving as a Trustee may be employed to provide other services to the Trust, and charges for services shall not reduce such Trustee's compensation as a Trustee. Any corporation or other entity which is a professional Trustee serving as Trustee shall be compensated for its services at the then prevailing rates for similar services to Trusts of a similar nature and size. Trustee also shall be reimbursed all expenses, including, but not limited to, expenses incurred with others in managing property, broker's fees, attorney's fees, and accountant's fees.

**Section 6.06. Creation of Multiple Trusts.** If at any time the Trustee is directed or authorized to allocate assets to a Trust created under this Trust Agreement and if, in the Trustee's judgment, accounting or other administrative burdens would be simplified (for tax reasons or otherwise) by the creation of two or more identical Trusts (as may be the case if creating multiple Trusts will facilitate making appropriate elections so that one or more of such Trusts will be wholly exempt from the GST tax) the Trustee may elect to create two or more separate and distinct identical Trusts and to allocate the assets between such identical Trusts as the Trustee determines to be appropriate so long as the method of asset allocation does not jeopardize an otherwise allowable estate tax deduction or GST tax exemption available to such Trust. This Section shall not apply and shall abate to the extent it is inconsistent with the provisions regarding the creation of qualified subchapter S Trusts.

**Section 6.07 S Corporation Stock.** Before the date on which any "S Corporation Shares" (defined below) would otherwise pass to or be treated as held by an "Ineligible Trust" (defined below), the Trustee (excluding, however, any Interested Trustee) may elect to hold these S Corporation Shares in one or more separate trusts or trust shares on the terms set forth in this article. The Trustee (excluding, however, any Interested Trustee) may elect to hold such S Corporation Shares under paragraph a) ("Qualified Subchapter S Trusts") or paragraph B ("Electing Small Business Trusts"), as the Trustee (excluding, however, any Interested Trustee) shall deem appropriate, considering the changes that such provisions would require from the terms and conditions under which such shares would otherwise be held under this Will.

**a) Qualified Subchapter S Trust.** Any S Corporation Shares held under this paragraph a) shall be held on the following terms:

(1) Each trust held under this paragraph a) shall be a separate trust or substantially separate and independent share, as defined in Code Sec. 1361(d)(3), held for the benefit of one beneficiary. Any reference in this paragraph a) to a beneficiary's separate trust shall refer equally to any substantially separate and independent trust share.

(2) Until the "QSST Termination Date" (defined below), the Trustee shall annually distribute all of the trust's "Net Income" (defined below), to the sole beneficiary of each trust held under this paragraph a), together with as much of that trust's principal as is appropriate under the standard contained in the trust to which such S Corporation Shares would otherwise have been held. The Trustee shall not distribute income or principal to anyone other than the beneficiary to whom Net Income is distributable, until the QSST Termination Date.

(3) Upon the QSST Termination Date, the Trustee shall distribute the remaining trust assets to the beneficiary to whom Net Income was then distributable, if then living, or otherwise to such beneficiary's estate.

(4) The Trustee shall elect under Code Sec. 1361(d)(2) to cause each trust held under this paragraph a) to be treated as a Qualified Subchapter S Trust for federal income tax purposes.

(5) The Trustee (excluding, however, any Interested Trustee) shall administer any trust under this paragraph a) as a Qualified Subchapter S Trust, as defined in Code Sec 1361(d)(3).

(6) The Trustee shall allocate any S Corporation Shares that will be held under this paragraph a) between or among one or more separate trusts, based on each beneficiary's interest in the income of the Ineligible Trust that would otherwise have held those shares. If no beneficiary was entitled to income of such Ineligible Trust at that time, the Trustee may allocate any S Corporation Shares among the trusts under this paragraph a) for the beneficiaries of such Ineligible Trust, in such manner as the Trustee shall deem appropriate.

**b) Electing Small Business Trust.** Any S Corporation Shares held under this paragraph b) shall be held on the following terms:

(1) The Trustee (excluding, however, any Interested Trustee) shall apportion to the trusts under this paragraph b) a reasonable share of the unallocated expenses of all trusts under this Will, in a manner consistent with the applicable Code and Regs.

(2) The Trustee shall make that election required by Code Sec. 1361(e)(3) to qualify the trust under this paragraph b) as an Electing Small Business Trust, under Code Sec. 1361(e).

(3) The Trustee (excluding, however, any Interested Trustee) shall administer each trust under this paragraph b) as an Electing Small Business Trust, under Code Sec. 1361(e).

**c) Implementation.** The Trustee (excluding, however, any Interested Trustee), shall manifest their selection of the form in which the Trustee shall hold any S Corporation Shares by written notice to all persons who would be eligible or entitled at the time of such writing, to receive income from the Ineligible Trust that would otherwise hold such S Corporation Shares.

**d) Definitions.** The following definitions apply for purposes of this article:

(1) "Ineligible Trust" means a trust whose ownership of any S Corporation Shares would cause the termination of that corporation's election to be taxed under subchapter S of the Code.

(2) "Net Income" means income, as defined in Code Sec. 643(b).

(3) "S Corporation Shares" means shares of any stock of a corporation that then operates or that the Trustee shall deem likely to operate in the future under an election to have its earnings taxed directly to its stockholders, under subchapter S of the Code.

(4) The "QSST Termination Date" means the earlier of the date on which the beneficiary of a trust under paragraph a) dies, and the date on which such trust no longer holds any S Corporation Shares.

e) **Application.** None of the foregoing provisions of this article shall apply with respect to any S Corporation shares that would, but for the provisions of this article, be held in any trust any portion of the disposition to which would qualify for the federal estate and/or gift tax marital deduction.

**Section 6.08 Multiple Trustees.** If the Trustees agree to do so, one Trustee acting alone may be given the primary responsibility of administration and accounting, and one Trustee alone may be authorized to deposit, transfer and withdraw funds from any depository account held by the Trust. The authority vested in three or more Trustees may be exercised by a majority of the Trustees. In the event of an action or decision by a majority, the non-consenting Trustee will not be responsible for the act of the majority.

**ARTICLE SEVEN  
PAYMENT OF DEBTS, TAXES, AND  
SETTLEMENT COSTS  
EXERCISE OF ELECTIONS**

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**Section 7.01 Coordination with Trustor's Probate Estate** The following directions concern the payment of debts, taxes, estate settlement costs, and the exercise of any election permitted by Texas law or by the Internal Revenue Code. The personal representative of the estate subject to probate and the Trustee of THE VAUGHN LIVING TRUST (collectively called the "*personal representative*") may act jointly and may treat the property of the estate subject to probate and the property of THE VAUGHN LIVING TRUST as one fund for the purpose of paying debts, taxes, estate settlement costs, and the making of elections. The probate estate and the Trust estate are called collectively "the estate". The term "*residuary estate*" will mean the rest and residue of the estate remaining after allowance for the payment of specific bequests or gifts.

a) **Payment of Indebtedness and Settlement Costs.** The personal representative will have the discretionary authority to pay from the estate all costs reasonably and lawfully required to settle the estate and the Trust. The personal representative is under no obligation to prepay an indebtedness payable in installments or which is not then due and payable. Unless otherwise provided, indebtedness and settlement costs will be paid first from the residuary estate and, if the residuary estate is insufficient, will be prorated among specific gifts and bequests.

Unless otherwise directed, if property given as a specific bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient. The obligation to be assumed will be the principal balance of the indebtedness on date of death, and the estate will be entitled to reimbursement or offset for principal and interest payments paid by the estate to date of distribution.

b) **Elective Deductions.** The personal representative will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the personal representative's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of the estate.

c) **Estate, Generation Skipping, or Other Death Tax.** Estate, inheritance, succession, or other similar tax shall be charged to and apportioned to those whose gifts or distributive share generate a death tax liability by reason of death or by reason of a taxable distribution from the Trust or a taxable termination of the Trust. To the greatest extent possible, the personal representative may pay and deduct from a beneficiary's distributive share (whether the distribution is to be paid outright or is to be continued in Trust) the increment in taxes payable by reason of a required distribution or termination of interest (i.e., estate, gift, inheritance, or generation skipping taxes) to the extent that the total of such taxes payable by reason of a distribution or termination is greater than the tax which would have been imposed if the property of the Trust subject to the distribution or termination of interest had not been taken into account in determining the amount of such tax.

To the extent a tax liability results from the distribution of property to a beneficiary other than under THE VAUGHN LIVING TRUST, the personal representative will have the authority to reduce any distribution to the beneficiary by the amount of the tax liability apportioned to the beneficiary, or if the distribution is insufficient, the personal representative will have the authority to proceed against the beneficiary for his, her, or its share of the tax liability. In making an allocation, the personal representative may consider all property included in the gross estate for federal estate tax purposes, including all property subject to probate, all amounts paid or payable to another as the result of death, including life insurance proceeds, proceeds from a qualified retirement plan or account, proceeds from a joint and survivorship account with a financial institution or brokerage company, proceeds from a buy-sell or redemption contract, and/or any other plan or policy which provides for a payment of death benefits. This provision further

contemplates and includes any tax which results from the inclusion of a prior transfer in the federal gross estate even though possession of the property previously transferred is vested in someone other than the personal representative. This provision does not include a reduction in the unified credit by reason of taxable gifts previously made. If the personal representative determines that the collection of an apportioned tax liability against another is not economically feasible or probable, the tax liability will be paid by the estate and will reduce the amount distributable to the residuary beneficiaries. The personal representative's judgment with regard to the feasibility of collection is to be conclusive.

**Section 7.02 Direction to Minimize Taxes.** In the administration of the Trust hereunder, its fiduciaries shall exercise all tax related elections, options, and choices which they have in such manner as they in their sole but reasonable judgment (where appropriate, receiving advice of tax counsel), believe will achieve the overall minimum in total combined present and reasonably anticipated (but appropriately discounted) future administrative expenses and taxes of all kinds, upon not only such Trust but also its beneficiaries, the other Trusts hereunder and their beneficiaries and Trustor's probate estate.

## **ARTICLE EIGHT** **NO-CONTEST REQUIREMENTS**

**Section 8.01 Incontestability.** The beneficial provisions of this instrument (and of Trustor's Last Will and Testament) are intended to be in lieu of any other rights, claims, or interests of whatsoever nature, whether statutory or otherwise, except bona fide pre-death debts, which any beneficiary hereunder may have against or in Trustor's estate of the properties in Trust hereunder. Accordingly, if any beneficiary hereunder asserts any claim (except a legally enforceable debt), statutory election, or other right or interest against or in Trustor's estate, Trustor's Will, or any properties of this Trust, other than pursuant to the express terms hereof or of said Will, or directly or indirectly contests, disputes, or calls into question, before any court, the validity of this instrument or of said Will, then;

a) Such beneficiary shall thereby absolutely forfeit any and all beneficial interests of whatsoever kind and nature which such beneficiary might otherwise have under this instrument and the interests of the other beneficiaries hereunder shall thereupon be appropriately and proportionately increased and/or advanced,

b) All of the provisions of this instrument, to the extent that they confer any benefits, powers, or rights whatsoever upon such claiming, electing or contesting beneficiary, shall thereupon become absolutely void and revoked, and

c) Such claiming, electing, or contesting beneficiary, if then acting as a Trustee hereunder, shall automatically cease to be a Trustee and shall thereafter be ineligible either to select, remove, or become a Trustee hereunder. The foregoing shall not be construed, however, to limit the appearance of any beneficiary as a witness in any proceeding involving this



instrument of said Will nor limit any beneficiary's appearance in any capacity in any proceeding solely for the construction of either of said documents.

**ARTICLE NINE**  
**PERPETUITIES SAVINGS CLAUSE**

**Section 9.01 Perpetuities Savings Clause.** Notwithstanding anything to the contrary herein, no Trust or Share, in whole or in part, created herein shall continue longer than twenty-one (21) years after the death of the last of all of the beneficiaries hereunder who were living at the death of the Trustor. Any such Trust or Share so terminated shall be distributed, outright and free of trust, proportionately to the then current income beneficiaries of said Trust or Share, in accordance with the amount or amounts called for under the provisions of the said Trust or Share, and in which event any applicable remaindermen shall not be considered as having a vested interest in the said Trust or Share so conveyed.

**ARTICLE TEN**  
**JURISDICTION**

**Section 10.01 Governing Law.** It is not intended that the laws of only one particular state shall necessarily govern all questions pertaining to all of the Trust hereunder. Rather;

a) The validity of the Trust hereunder, as well as the validity of the particular provisions of that Trust, shall be governed by the laws of whatever state having any sufficient connection with such Trust will support such validity.

b) The meaning and effect of the terms of this Trust instrument, and of any other instrument related hereto, shall be governed by the laws of the State of Texas in the case of this instrument, and such other state as may be designated in the governing instrument of any Trust receiving an appointment hereunder.

c) The administration of the Trust hereunder shall be governed by laws of the state in which the Trust is then being administered (based on the location of the principal office of the Trustee then having custody of that Trust's principal assets and records), which state's courts shall have exclusive jurisdiction over that administration of the Trust with respect to any period during which it was thus administered in that state.

The foregoing shall apply even though the situs of some Trust assets or the home of the Trustor, a Trustee, or beneficiary may at some time or times be elsewhere.

**Section 10.02 Invalidity of any Provision.** If any part or provision hereof is determined by a court of competent jurisdiction to be invalid or ineffectual, then this instrument, to the greatest extent possible, shall be construed as though such part had not been contained herein.

**Section 10.03 Continuation of Trust.** The trust may continue beyond its termination for a time reasonably necessary to conclude the administration of the trust, pay expenses of termination and distribute the trust property to those entitled thereto.

IN WITNESS WHEREOF, I have caused this Agreement to be executed on this 15 day of November, 2005, at Granbury, Texas.

BY: Helen Jane Vaughn TRUSTOR  
HELEN JANE VAUGHN

BY: Helen Jane Vaughn TRUSTEE  
HELEN JANE VAUGHN

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Water Availability Division

STATE OF TEXAS

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§

COUNTY OF SOMERVELL

Before me, the undersigned authority, on this 15 day of November, 2005, personally appeared HELEN JANE VAUGHN and she acknowledged and stated that she executed the above and foregoing Trust Agreement as an act of her own free will, for the purposes therein expressed.

R. G. Hatcher  
Notary Public, State of Texas

