

Cause No. 07-12-00302-CV

IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AMARILLO, TEXAS

CONCHO RIVER BASIN WATER CONSERVANCY ASSOCIATION,

Appellant,

v.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,

Appellee; and

THE CITY OF SAN ANGELO,

Intervenor/Appellee.

On Appeal from the 98th District Court of Travis County, Texas,
Cause No. D-1-GS-11-001298
Affirming an Order of the Texas Commission on Environmental Quality

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October 15, 2012

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TABLE OF CONTENTS

INDEX OF AUTHORITIES..... iii

CITATION TO THE RECORD..... vii

GLOSSARY OF TERMS..... viii

STATEMENT OF THE CASE..... 1

STATEMENT OF FACTS..... 6

ARGUMENT & AUTHORITIES..... 13

I. NO SUBSTANTIAL RIGHTS OF APPELLANT HAVE BEEN PREJUDICED BY THE ISSUANCE OF COA 14-1318C (Cross Point 1).....13

I.A. The Record Contains No Evidence of Harm to Appellant13

I.B. The 1318C Amendment Would Not Authorize the City to Impound Any Water In Twin Buttes Reservoir to Which Appellant’s Members Are Legally Entitled16

I.C. Appellant Can Point to No Evidence or Legal Support for Its Characterization of Certificate of Adjudication No. 14-131818

I.C.1. Appellant’s Complaints Are Forged In Obsolete Law18

I.C.2. The Texas Legislature Neutered Appellant’s Claim in 1967.....20

I.C.3. Appellant’s Complaint is Simply That the TCEQ Refused to Rehabilitate the Law That Spawned the *Motl* Distinctions.....24

I.D. Substantial Evidence Demonstrates That Certificate of Adjudication No. 14-1318 Does Not Entitle Appellant to Water Lawfully Impounded In Twin Buttes Reservoir25

I.E. Appellant Cannot Satisfy Condition Precedent to Substantial Evidence Review27

II. THE RECORD OVERWHELMINGLY SUPPORTS THE TCEQ COMMISSIONERS’ DECISION ON APPLICATION 1318C (Reply to Issue 1, 2, 3, 4, and 5)27

II.A. The 1318C Amendment Does Not Provide the City With the Ability to Impound or Divert Any Additional State Water27

II.B. The 1318C Amendment Requires the City to Pass Flows At All Times to Protect Instream Uses and the Environment Downstream of Twin Buttes Dam29

II.C.	The 1318C Amendment Benefits the City, the Concho Watermaster, and Downstream Senior and Superior Water Rights Holders	30
II.D.	Application 1318C Satisfied All Applicable Statutory and Regulatory Requirements	33
II.E.	The TCEQ Commissioners’ Decision on Application 1318C Was Not Arbitrary and Capricious	33
II.E.1	TCEQ Staff Conducted the Requisite and Customary “No Injury” Analysis	34
II.E.2.	An Unappropriated Water Analysis Was Not Necessary for Application 1318C	35
III.	APPELLANT HAS NOT SHOWN ANY ERROR WAS COMMITTED BY THE EXCLUSION OF EVIDENCE DURING THE CONTESTED CASE HEARING (Reply to Issue 1, 2, 3, 4, and 5) (Cross Point 3)	36
III.A.	Appellant Failed to Preserve Error for Appellate Review	37
III.B.	Even if Preserved, Appellant’s Asserted Error is Not Reversible	39
III.B.1.	The Exclusion of Permit 1949 Was Appropriate	40
III.B.2.	The Exclusion of Witness Testimony and Related Exhibits Specified by Appellant Was Appropriate	42
IV.	APPELLANT HAS NO PROPERTY RIGHTS IN CERTIFICATE OF ADJUDICATION NO. 14-1318 (Reply to Issue 6)	44
V.	APPELLANT MISREPRESENTS THE APPLICABILITY OF <i>MARSHALL</i> TO APPLICATION 1318C (Reply to Issue 1, 2, 4, and 5) (Cross Point 3)	46
	PRAYER FOR RELIEF	49
	APPELLEE’S APPENDIX	51

INDEX OF AUTHORITIES

CASES

<i>Bartley v. Guillot</i> , 990 S.W.2d 481 (Tex. App.—Houston [14th Dist.] 1999, pet. denied).....	25
<i>BFI Waste Sys. of N. Am., Inc. v. Martinez Env'tl. Group</i> , 93 S.W.3d 570 (Tex. App.—Austin 2002, pet. denied).....	38, 39
<i>C.O.N.T.R.O.L. v. Sentry Env'tl., L.P.</i> , 916 S.W.2d 677 (Tex. App.—Austin 1996, writ denied).....	13, 26, 27
<i>Central Power & Light Co. v. Public Util. Comm'n of Texas</i> , 36 S.W.3d 547 (Tex. App.—Austin 2001, pet. denied).....	1
<i>City of Amarillo v. R.R. Comm'n</i> , 894 S.W.2d 491 (Tex. App.—Austin 1995, writ denied).....	39
<i>City of Marshall v. City of Uncertain</i>	46, 47, 48, 51
<i>Colorado River Auth. v. Texas Dept. of Water Resources</i> , 989 S.W.2d 873, 882 (Tex. 1984).....	passim
<i>Downer v. Aquamarine Operators, Inc.</i> , 701 S.W.2d 238 (Tex. 1985).....	40
<i>Engelbrecht v. State</i> , 294 S.W.2d 864 (Tex. App.—Beaumont 2009, no pet.)	25
<i>Fleetwood Community Home v. Bost</i> , 110 S.W.3d 635 (Tex. App.—Austin 2003, no pet.)	1, 2, 30, 33
<i>Haas v. Choussard</i> , 17 Tex. 588 (1856).....	18
In re Adjudication of Water Rights of the Upper Guadalupe Segment of the Guadalupe River Basin, 642 S.W.2d 438 (Tex. 1982)	18
<i>In re the Adjudication of Water Rights of the Brazos III Segment of the Brazos River Basin</i> , 746 S.W.2d 207 (Tex. 1988).....	41, 51
<i>League City v. Texas Water Comm'n</i> , 777 S.W.2d 802 (Tex. App.—Austin 1989, no writ).....	1
<i>Lewis v. Metro. Sav. & Loan Ass'n</i> , 550 S.W.2d 11 (Tex. 1997).....	40
<i>Lone Star Salt Water Disposal Co. v. Railroad Comm'n</i> , 800 S.W.2d 924 (Tex. App.—Austin 1990, no writ)	2
<i>Ludlow v. DeBerry</i> , 959 S.W.2d 265, 270 (Tex. App.—Houston [14th Dist.] 1997, no pet.)	38
<i>Middleton v. Tex. Power & Light Co.</i> , 185 S.W. 556 (Tex. 1916).....	25
<i>Office of Public Util. Counsel v. Tex.-N.M. Power Co.</i> , 344 S.W.3d 446 (Tex. App.—Austin 2011, pet. filed)	2
<i>Smith Motor Sales v. Texas Motor Vehicle Comm'n</i> , 809 S.W.2d 268 (Tex. App.—Austin 1991, writ denied)	40
<i>Southern Union Gas Co. v. Railroad Comm'n</i> , 692 S.W.2d 137, 141-42 (Tex. App.—Austin 1985, writ ref'd n.r.e.)	2

<i>Subaru of Am. v. David McDavid Nissan, Inc.</i> , 84 S.W.3d 212, 219 (Tex. 2002)	25
<i>Texas Dept. of Ins. v. State Farm Lloyds</i> , 260 S.W.3d 233, 243-44 (Tex. App.—Austin 2008, no pet.).....	25
<i>Texas Dept. of Public Safety v. Williams</i> , 303 S.W.3d 356 (Tex. App.—El Paso 2009, no pet.)	39
<i>Texas Health Facilities Comm’n v. Charter Med.-Dallas, Inc.</i> , 665 S.W.2d 446 (Tex. 1994).	2
<i>Texas Med. Ass’n v. Mathews</i> , 408 F. Supp. 303 (W.D. Tex. 1976).....	2, 33
<i>Texas Water Comm’n v. Boyt Realty Co.</i> , 10 S.W.3d 334 (Tex. App.—Austin 1993 , no pet .)	1, 2, 33
<i>Truck Ins. Exch. v. Seelbach</i> , 339 S.W.2d 521 (Tex. 1960)	25
<i>United Sav. Ass’n of Tex. v. Vandygriff</i> , 594 S.W.2d 163 (Tex. App.—Austin 1980, writ ref. n.r.e.)	13

CONSTITUTION

Tex. Const. art. XVI, §59	27
---------------------------------	----

STATUTES

TEX. GOV’T CODE § 2001.060	39
TEX. GOV’T CODE § 2001.141(c).....	37
TEX. GOV’T CODE § 2001.174	3, 13, 33
TEX. GOV’T CODE § 2001.174(2).....	13, 27
TEX. GOV’T CODE § 2001.081	43
TEX. WATER CODE ANN. § 11.303(a)-(b)	41
TEX. WATER CODE ANN. § 11.022.....	45
TEX. WATER CODE ANN. § 11.121.....	26, 45
TEX. WATER CODE ANN. § 11.134(b)(3)(B)	34, 47
TEX. WATER CODE ANN. § 11.303(l)	9
TEX. WATER CODE ANN. § 11.306.....	6
TEX. WATER CODE ANN. § 11.307	6
TEX. WATER CODE ANN. § 11.308.....	6
TEX. WATER CODE ANN. § 11.309	6
TEX. WATER CODE ANN. § 11.310.....	7
TEX. WATER CODE ANN. § 11.312(a)	7
TEX. WATER CODE ANN. § 11.312(b)	7

TEX. WATER CODE ANN. § 11.312(c)	7
TEX. WATER CODE ANN. § 11.313.....	7, 46
TEX. WATER CODE ANN. § 11.314.....	7
TEX. WATER CODE ANN. § 11.315.....	7
TEX. WATER CODE ANN. § 11.316.....	7
TEX. WATER CODE ANN. § 11.317(a)	8
TEX. WATER CODE ANN. § 11.317(b).....	8
TEX. WATER CODE ANN. § 11.318.....	8
TEX. WATER CODE ANN. § 11.319.....	8
TEX. WATER CODE ANN. § 11.320(a)	8
TEX. WATER CODE ANN. § 11.320(b).....	8
TEX. WATER CODE ANN. § 11.320(c)	8
TEX. WATER CODE ANN. § 11.321	8
TEX. WATER CODE ANN. § 11.322.....	41
TEX. WATER CODE ANN. § 11.322(a)	8
TEX. WATER CODE ANN. § 11.322(b)	8
TEX. WATER CODE ANN. § 11.322(c)	41
TEX. WATER CODE ANN. § 11.322(d)	8, 22, 45
TEX. WATER CODE ANN. § 11.322(e)	26
TEX. WATER CODE ANN. § 11.322(e)	9
TEX. WATER CODE ANN. § 11.323.....	9, 26
TEX. WATER CODE ANN. § 11.324(a)	9
TEX. WATER CODE ANN. § 11.324(b).....	9
TEX. WATER CODE ANN. § 11.327.....	31
TEX. WATER CODE ANN. § 11.337.....	7
TEX. WATER CODE ANN. §11.551 et. seq.....	14
TEX. WATER CODE Ch. 11, Subch. G.....	41

RULES

30 TEX. ADMIN. CODE § 297.21(a).....	21
30 TEX. ADMIN. CODE § 297.45.....	34
30 TEX. ADMIN. CODE § 80.127(a)(1).....	37

OTHER AUTHORITIES

1 Ronald L. Beal, Texas Administrative Practice and Procedure § 7.4 (June 2011).....	37
--------------------------------------------------------------------------------------	----

24 Tex. Reg. 1166.....	34, 48
45 Tex. Prac. Series, Env'tl. Law § 14.3 (2d ed.) (2011).....	21, 41
Frank J. Trelease, <i>Coordination of Riparian and Appropriative Rights to the Use of Water</i> , 33 Tex. L. Rev. 24, 45 (1954).....	19
Glenn Jarvis, <i>Texas Groundwater and Surface Water Law Before and After Senate Bill 1</i> , 8th Annual Texas Water Law Conference, Austin, Texas, on “Overview of Texas Water Law” (1998).....	21, 25, 26, 41
R. Lambeth Townsend, <i>Cancellation of Water Rights In Texas: Use It Or Lose It</i> , 17 ST. MARY’S L. J. 1217 (1986).....	18
W. Jeremy Counsellor, <i>Judicial Review of Evidentiary Decisions In Contested Case Hearings</i> , State Bar of Texas 18th Annual Admin. L. Course, 4 (Sept. 2006)	38

CITATION TO THE RECORD

Citations to the Record of Administrative Decision are made as follows: “AR [volume number]-[item number]. By way of example, a citation to document 148, which is found in volume 9 of the Record of Administrative Decision, will be cited as AR 9-148.

Citations to the Transcript are made as follows: “Tr.” at [Page] : [Line Number].

GLOSSARY OF TERMS

“**Accounting Plan**” means the *City of San Angelo Water Rights Accounting Plan* referenced in the 1318C Amendment (AR 8-132).

“**Adjudication Act**” means the Water Rights Adjudication Act of 1967, codified at Section 11.303, et seq., Texas Water Code.

“**ALJ**” means Administrative Law Judge.

“**Ap. Brief**” means the Appellant’s Brief.

“**Appellant**” means the Concho River Basin Water Conservancy Association.

“**Appellant’s Brief**” means the Brief of Appellant Concho River Basin Water Conservancy Association submitted in this cause on August 17, 2012

“**Appellee**” means the City of San Angelo.

“**Application 1318C**” means Application No. 14-1318C by City of San Angelo for Amendment to Certificate of Adjudication No. 14-1318; SOAH Docket No. 582-10-0294, TCEQ Docket No. 2008-1617-WR.

“**AR**” refers to the Record of Administrative Decision.

“**Certificate of Adjudication No. 14-1318**” means the certificate of adjudication identified by the same number issued on March 12, 1980 by the Texas Water Commission, predecessor to the TCEQ, as a reflection of the City’s final, adjudicated claims to storage and diversion rights in Twin Buttes Reservoir (AR 9-152).

“**City**” means the City of San Angelo, Appellee / Intevenor in Cause No. 07-12-00302-CV, *Concho River Basin Water Conservancy Association v. Texas Commission on Environmental Quality, et al.*, in the Court of Appeals for the Seventh District of Texas, Amarillo, Texas.

“**Final Decree**” means the Final Judgment and Decree issued on June 14, 1979, in Cause No. 44,900-A, *In the Matter of the Adjudication of the Concho River Segment and its Tributaries of the Colorado River Basin*; in the District Court of Tom Green County, Texas, 51st Judicial District (AR 8-147).

“**Modified Final Determination**” means the Modified Final Determination of claims of water rights in the Concho River Segment of the Colorado River Basin (AR 9-148)

“**Motion for Rehearing**” means the Protestants’ Motion for Rehearing filed by Appellant with the TCEQ on March 11, 2011 in the matter involving the Application by the City of San Angelo to Amend Certificate of Adjudication No. 14-1318; SOAH Docket No. 582-10-0294, TCEQ Docket No. 2008-1617-WR (AR 6-117)

“**PFD**” means the Proposal for Decision issued by Administrative Law Judge Sharon Cloninger in Application No. 14-1318C By City of San Angelo for Amendment to Certificate of Adjudication No. 14-1318; SOAH Docket No. 582-10-0294, TCEQ Docket No. 2008-1617-WR (AR 5-102).

“**MFR**” means the Motion for Rehearing.

“**Record of Administrative Decision**” means the Record of Administrative Decision before the Court of Appeals for the Seventh District of Texas in Cause No. 07-12-00302-CV.

“**SOAH**” means the State Office of Administrative Hearings.

“**TCEQ**” means the Texas Commission on Environmental Quality, including, when context is appropriate, its predecessor agencies.

“**TCEQ Commissioners**” means the Commissioners of the TCEQ.

“**Transcript**” means the Transcript of the Hearing on the Merits of SOAH Docket No. 582-10-0294, TCEQ Docket No. 2008-1617-WR, *Application No. 14-1318C by City of San Angelo for Amendment to Certificate of Adjudication No. 14-1318*, before the State Office of Administrative Hearings, June 28, 2010 – June 29, 2010 (AR 7-121 – 123).

“**Twin Buttes Dam**” means the dam authorized by Certificate of Adjudication No. 14-1318.

“**Twin Buttes Reservoir**” means the impoundment of the Middle Concho River, Spring Creek, and South Concho River, tributaries to the Concho River, tributary to the Colorado River, in the Colorado River Basin, authorized by Certificate of Adjudication No. 14-1318.

“**1318C Amendment**” means the amendment to Certificate of Adjudication No. 14-1318 issued by the TCEQ in response to Application 1318C, as evidenced in the 1318C Order (AR 6-120).

“**1318C Draft Amendment**” means the draft amendment to Certificate of Adjudication No. 14-1318 that was proposed by the TCEQ Executive Director in response to Application 1318C.

“**1318C Order**” means the 1318C Order by the TCEQ on Application by the City of San Angelo to Amend Certificate of Adjudication No. 14-1318; SOAH Docket No. 582-10-0294, TCEQ Docket No. 2008-1617-WR (AR 6-115).

STATEMENT OF THE CASE

The Appellee agrees with Appellant’s statement of the procedural history of the case, except as herein noted. Appellant states that “[a]fter the contested case hearing held by the State Office of Administrative Hearings ..., the Texas Commission on Environmental Quality ... issued an Order approving Amendment to Certificate of Adjudication No. 14-1318C (*sic*).”¹ In fact, the 1318C Order amended Certificate of Adjudication No. 14-1318, not Certificate of Adjudication No. 14-1318C.² The resulting amendment was issued as Certificate of Adjudication No. 14-1318C.³

Additionally, the Appellant’s discussion of the limitations of review under the substantial evidence rule, as articulated in Section 2001.174, Texas Government Code, is incomplete. When reviewing the 1318C Order in this appeal, the Court must presume that each of the TCEQ’s findings, inferences, conclusions, and decisions are supported by substantial evidence.⁴ The burden is on the Appellant to prove that the agency’s findings, inferences, conclusions and decision on Application 1318C are not supported by substantial evidence.⁵

The Court may not substitute its judgment for that of the TCEQ, and it may only consider the record on which the TCEQ based its decision.⁶ The Court is not bound by the reasons supporting the TCEQ’s decision as articulated in the 1318C Order, provided the record contains evidence supporting the agency’s action.⁷

The Court must determine whether the evidence in the administrative record as a whole is such that reasonable minds could have reached the same conclusion as the TCEQ on the issues

¹ Ap. Brief at xiv.

² AR 6-115.

³ AR 6-120.

⁴ *Texas Water Comm’n v. Boyt Realty Co.*, 10 S.W.3d 334, 340 (Tex. App.—Austin 1993, no pet.), (citing *League City v. Texas Water Comm’n*, 777 S.W.2d 802 (Tex. App.—Austin 1989, no writ).

⁵ *Fleetwood Community Home v. Bost*, 110 S.W.3d 635, 645 (Tex. App.—Austin 2003, no pet.)

⁶ *Fleetwood*, 110 S.W.3d at 639.

⁷ *Central Power & Light Co. v. Public Util. Comm’n of Texas*, 36 S.W.3d 547, 559 (Tex. App.—Austin 2001, pet. denied).

disputed by the Appellant.⁸ Even if evidence in the Administrative Record preponderates against the TCEQ's decision, it can still amount to substantial evidence.⁹ If evidence in the record supports either affirmative or negative findings on a particular issue disputed by the Appellant, the Court must nonetheless uphold the decision of the TCEQ.¹⁰ The Court may not substitute its judgment with of that of the TCEQ on questions of the weight of testimonial evidence, as the agency is the final judge regarding the credibility and validity of such testimony.¹¹ Under a substantial evidence review, the Court must give significant deference to the agency in its field of expertise.¹²

Furthermore, an administrative decision is generally not arbitrary and capricious if the decision is supported by substantial evidence.¹³ Exceptions to this general rule have been narrowly drawn, to include circumstances where an agency is pressured into its decision from congressional sources,¹⁴ when the agency has denied a litigant due process, when an agency has totally failed to make findings of fact and instead based its decision on findings from a different case, when the agency based its decision on non-statutory criteria, and when the agency based its decision on irrelevant factors, or failed to consider legally relevant factors.¹⁵

Most significantly, the Appellant must demonstrate that the objectionable findings, inferences, conclusions, or decision of the agency—when reviewed against the criteria provided

⁸ *Fleetwood*, 110 S.W.3d at 639.

⁹ *Texas Health Facilities Comm'n v. Charter Med.-Dallas, Inc.*, 665 S.W.2d 446, 452 (Tex. 1994).

¹⁰ *Id.* at 453; *Lone Star Salt Water Disposal Co. v. Railroad Comm'n*, 800 S.W.2d 924, 928 (Tex. App.—Austin 1990, no writ).

¹¹ *Fleetwood*, 110 S.W.3d at 643 (citing *Charter Med.*, 665 S.W.2d at 452); *Boyt Realty Co.*, 10 S.W.3d at 434 (citing *Southern Union Gas Co. v. Railroad Comm'n*, 692 S.W.2d 137, 141-42 (Tex. App.—Austin 1985, writ ref'd n.r.e.)).

¹² *Office of Public Util. Counsel v. Tex.-N.M. Power Co.*, 344 S.W.3d 446, 450 (Tex. App.—Austin 2011, pet. filed).

¹³ *Fleetwood*, 110 S.W.3d at 644.

¹⁴ *See id.* (citing *Texas Med. Ass'n v. Mathews*, 408 F. Supp. 303, 306 (W.D. Tex. 1976)).

¹⁵ *Boyt Realty Co.*, 10 S.W.3d at 340-41 (citing references omitted).

for in Section 2001.174 of the Texas Government Code—actually prejudiced the “substantial rights” of the Appellant.¹⁶

Because the Appellant cannot demonstrate that its substantial rights have been prejudiced by the decision reflected in the 1318C Order, or that the decision was not supported by substantial evidence, or was arbitrary and capricious, the City respectfully requests that the Court affirm the order of the trial court below, and otherwise deny in all respects the relief requested by Appellant in this appeal.

¹⁶ TEX. GOV'T CODE ANN. § 2001.174 (West 2008).

ISSUES PRESENTED FOR REVIEW

Reply to Issue 1: The TCEQ Commissioners fully and appropriately considered all terms and conditions of Certificate of Adjudication No. 14-1318 under all applicable law in determining that Application 1318C should be granted, and the 1318C Amendment should be issued.

Reply to Issue 2: The Record of Administrative Decision contains overwhelming evidence demonstrating that the TCEQ reviewed Application 1318C by, *inter alia*, subjecting the request to a “no injury analysis” under the requirements set forth in applicable statute and agency rules.

Reply to Issue 3: The grant of the 1318C Amendment does not cause adverse impact on other water rights, or on the environment, within the Colorado River Basin.

Reply to Issue 4: The Record of Administrative Decision reflects that the TCEQ Commissioners’ grant of Application 1318C is supported by substantial evidence.

Reply to Issue 5: The TCEQ Commissioners’ finding that a water availability analysis was not required for Application 1318C was supported by substantial evidence, and was not arbitrary and capricious, in excess of its authority, made through unlawful procedure, affected by error, or characterized as an abuse of the agency’s discretion.

Reply to Issue 6: Appellant has no vested property right in the terms and conditions of Appellee’s water right.

CROSS-POINTS PRESENTED FOR REVIEW

1. Has Appellant demonstrated that any of its substantial rights are prejudiced by the TCEQ Commissioners' administrative findings, inferences, or decisions in this matter?

2. Does Section 11.122(b), Texas Water Code, have any operative effect on Application 1318C in light of *City of Marshall v. City of Uncertain*, 206 S.W.3d 97 (Tex. 2006), when Application 1318C was properly noticed and was the subject of a contested case that provided parties an opportunity for meaningful discovery that resulted in an evidentiary hearing, and the development of a complete evidentiary record?

3. In its Motion for Rehearing, Appellant complained, *inter alia*, that the TCEQ Commissioners refused to weigh, and otherwise consider in its decision on the merits of Application 1318C, documents and testimony that were excluded from the evidentiary record as a result of timely raised, sustained objections to the same. In the proceedings before the trial court below, and again in its brief on the merits before this Court, Appellant complains instead that the evidence was improperly excluded during the contested case hearing. Did Appellant's Motion for Rehearing contain a sufficient description of its complaint regarding evidentiary exclusions made during the contested case hearing such that it properly preserved the purported error it complains of on appeal?

STATEMENT OF FACTS

The City of San Angelo owns several water rights in the Concho River Basin, including Certificate of Adjudication No. 14-1318—the water right that is the subject of this appeal. Through Certificate of Adjudication No. 14-1318, the City is entitled to impound and store up to 170,000 acre feet of water flowing into the reservoir from the Middle Concho River, Spring Creek, and the South Concho River. Each of these watercourses are tributaries to the Concho River, which is tributary to the Colorado River, in the Colorado River Basin. Twin Buttes Reservoir has served as one of the City’s most important sources of water supply for its residents and other water customers since the Twin Buttes Dam was completed in 1963.

Certificate of Adjudication No. 14-1318 was originally issued to the San Angelo Water Supply Corporation by the Texas Water Commission in 1980 as a reflection of the owner’s final, adjudicated claims to storage and diversion rights in Twin Buttes Reservoir following implementation of the Water Rights Adjudication Act of 1967.¹⁷ This statutory water rights adjudication process was repeated throughout the Colorado River Basin, and all remaining river basins in Texas other than the Rio Grande River Basin. It required each and every person or entity claiming any right to surface water in the subject watershed to make a formal water claim to the Texas Water Commission,¹⁸ and to have that claim subjected to review by agency staff members.¹⁹ Following completion of the agency review, each of the claims in the segment were subjected to an evidentiary hearing that was noticed to each person submitting a claim in the river basin segment.²⁰

Following completion of the evidentiary hearings, the agency produced its preliminary determination of the water rights claims submitted in the segment, which were furnished without charge to each claimant, were made available at various public locations throughout the river basin segment, and were otherwise available for copying.²¹ In addition, all evidence considered by the Texas Water Commission was available for public inspection for no less than 60 days

¹⁷ AR 9-152 [Ex. ED-1318C-3].

¹⁸ TEX. WATER CODE ANN. § 11.307.

¹⁹ *Id.* § 11.306.

²⁰ *Id.* § 11.308.

²¹ *Id.* § 11.309.

following this notice.²² Any water right claimant that was affected by the agency’s preliminary determination—including any water right claimant within the river basin, but outside the stream segment at issue in the preliminary determination—was entitled to contest any claim addressed therein.²³ In addition, the Texas Water Commission published noticed of its preliminary determination of claims in one or more newspapers of general circulation in the river basin that contains the stream segment at issue.²⁴ This notice was published once a week for two consecutive weeks.²⁵ It was also delivered by first-class mail to each claimant.²⁶ The notice contained information on, *inter alia*, how to obtain copies of the preliminary determination, how and where to inspect the evidence considered by the agency, and the date by which challenges to the preliminary determination must be filed.²⁷

All contests of the Texas Water Commission’s preliminary determination were considered at yet another evidentiary hearing, which was itself noticed to each water right claimant in the segment at issue.²⁸ The evidentiary hearing process on preliminary determination challenges provided each participant with an opportunity for meaningful discovery and to provide and examine sworn testimony.²⁹

Following completion of this evidentiary hearing, the Texas Water Commission produced its final determination of claims in the adjudicated segment.³⁰ Each party affected by the final determination was given the opportunity to submit an application for rehearing to the Texas Water Commission.³¹ Following the disposition of any such requests, the Texas Water Commission filed a certified copy of its final determination, along with all evidence presented during its consideration of claims addressed in the final determination, to a district court of any

²² *Id.* § 11.310.

²³ *Id.* § 11.313.

²⁴ *Id.* § 11.312(a).

²⁵ *Id.*

²⁶ *Id.* § 11.312(b).

²⁷ *Id.* § 11.312(c).

²⁸ *Id.* § 11.314.

²⁹ *Id.* §§ 11.314, 11.337.

³⁰ *Id.* § 11.315.

³¹ *Id.* § 11.316.

county within the stream segment at issue.³² Parties were given the opportunity to submit to the court written exceptions to the final determination.³³ The court was then required to conduct an evidentiary hearing on any exceptions filed.³⁴

The evidentiary hearing was not subjected to substantial evidence review.³⁵ Instead, the court was required to determine all issues of law and fact separately and independently from the review and determination of the Texas Water Commission.³⁶ Any party to the proceeding could demand a trial of the fact issues raised in the exceptions to a jury.³⁷ In its review of the final determination, the court was allowed to consider the evidence developed by the Texas Water Commission, and it was also allowed to receive and consider additional evidence.³⁸ It could even order the Texas Water Commission to consider additional evidence.³⁹ This separate, independent judicial review of the Texas Water Commission's final determination of water claims was so important that the Texas Legislature made it non-severable from the entirety of the Water Rights Adjudication Act of 1967.⁴⁰

Once the article V, Texas Constitution court concluded its review of all issues of law and fact of the claims made in the segment at issue, it memorialized its conclusions in a decree that affirmed or modified the final determination of the Texas Water Commission.⁴¹ The court's final decree was subject to appeal in the same manner as civil cases.⁴² The final decree affirming or modifying the final determination became final and conclusive with respect to all existing and prior water claims in, and to all claimants outside of, the adjudicated stream segment.⁴³ The

³² *Id.* § 11.317(a).

³³ *Id.* §§ 11.317(b), 11.318.

³⁴ *Id.* § 11.319.

³⁵ *Id.* § 11.320(a).

³⁶ *Id.*

³⁷ *Id.* § 11.320(b).

³⁸ *Id.* § 11.321.

³⁹ *Id.*

⁴⁰ *Id.* § 11.320(c).

⁴¹ *Id.* § 11.322(a).

⁴² *Id.* § 11.322(b).

⁴³ *Id.* § 11.322(d).

Texas Legislature has made clear that the law recognizes no water right in an adjudicated stream segment unless (1) it was included in the final decree that affirmed or modified a final determination, (2) it was a domestic and livestock use, the claimants of which were not required to perfect their claims through the adjudication process,⁴⁴ or (3) the water right was issued by the State of Texas after the stream segment was adjudicated.⁴⁵

Following the final determination of all claims to water in an adjudicated stream segment, including a separate, independent court review and final decree of those claims, the Texas Water Commission memorialized each adjudicated water claim in the form of a certificate of adjudication.⁴⁶ Each certificate of adjudication was filed by the Texas Water Commission with the county clerk of each county in which the appropriation was made.⁴⁷ County clerks maintain these records in a well-bound book provided and kept for this purpose only, with an index of the certificate alphabetically by owner and under the name of the stream or source of supply.⁴⁸ Any person who claims injury by an act of the Texas Water Commission in carrying out its duties prescribed by the Water Rights Adjudication Act of 1967 is allowed file suit against the agency, or its successors, for review of the action and injunctive relief under Section 11.334, of the Texas Water Code.

Appellant's members, or their predecessors in interest, had no fewer than three opportunities during the adjudication of water claims in the Concho River segment of the Colorado River Basin to assert their purported "right" to water stored in Twin Buttes Reservoir. The record reflects no such claims being made. Indeed, none of Appellant's members, or their predecessors in interest, obtained any right, through the adjudication of water claims in the Concho River Basin, to water stored in Twin Buttes Reservoir. In addition, no domestic and livestock diverter, including any that the Appellant purportedly represents, has a right to any water in storage, particularly in Twin Buttes Reservoir. Finally, the State of Texas has issued no water rights subsequent to the completion of the adjudication of water claims in the Concho

⁴⁴ *Id.* § 11.303(l).

⁴⁵ *Id.* § 11.322(e).

⁴⁶ *Id.* § 11.323.

⁴⁷ *Id.* § 11.324(a).

⁴⁸ *Id.* § 11.324(b).

River segment of the Colorado River Basin that authorizes any person or entity, other than the owner of Certificate of Adjudication No. 14-1318, to impound or otherwise beneficially use water lawfully stored in Twin Buttes Reservoir.

The City is now the exclusive owner of Certificate of Adjudication No. 14-1318. Prior to the City's acquisition, Certificate of Adjudication No. 14-1318 was owned exclusively by the San Angelo Water Supply Corporation. At all times throughout the administrative and evidentiary proceedings involving Application 1318C, the City acted on behalf of the San Angelo Water Supply Corporation in all respects in regards to the requested amendment. At no point in time has Appellant, any of its purported members, or any other person or entity possessed any ownership interest in Certificate of Adjudication No. 14-1318 other than the San Angelo Water Supply Corporation or the City of San Angelo.

Application 1318C was a request to amend Certificate of Adjudication No. 14-1318 to resolve ambiguities in the certificate created by its use of "normal flows".⁴⁹ The 1318C Amendment addresses the issue by revising Certificate of Adjudication No. 14-1318 Special Condition 5.C. to read as follows:

A conduit shall be constructed in the aforementioned dam with the inlet at elevation 1,885.0 feet above mean sea level, having an opening of not less than five feet in diameter and equipped with a regulating gate. Owner shall permit the free passage of inflows through Twin Buttes Reservoir via the conduit as required by Special Condition 2.C. of Certificate of Adjudication No. 14-1318C, and in such amounts as determined by the Watermaster or the Executive Director for downstream water right holders and livestock users.⁵⁰

The "aforementioned dam" referenced in the proposed language is the Twin Buttes Dam, and the "Watermaster" referred to in the language is the Concho Watermaster.⁵¹

After an evidentiary hearing that produced prefiled testimony from 13 witnesses, over 300 pages of live testimony transcript, dozens of exhibits, post-hearing arguments from each party, and multiple replies to closing arguments, SOAH Administrative Law Judge Sharon

⁴⁹ AR 8-124 [SA 1318C Ex. 1 at 7:6-10].

⁵⁰ AR 8-129 [SA 1318C Ex. 1-E at 2].

⁵¹ AR 8-130 [SA 1318C Ex. 2 at 22:21-23].

Cloninger issued a comprehensive and thoughtful Proposal for Decision that included detailed proposed Findings of Fact and Conclusions of Law, wherein she recommended that the City's Application 1318C be approved, and that the 1318C Amendment be issued. The City, the Executive Director of the TCEQ, and the TCEQ Office of Public Interest Counsel all argued in support of the approval of Application 1318C and issuance of the 1318C Draft Amendment.

Having considered Judge Cloninger's findings and recommendations, the evidence presented during the hearing by all parties, as well as the parties' written and oral arguments, the TCEQ Commissioners voted to approve Application 1318C and issue the 1318C Amendment. Order 1318C, which articulates the TCEQ Commissioners' Findings of Fact and Conclusions of Law in the matter, and ordered the issuance of the 1318C Amendment, was issued on February 14, 2011. Appellant filed an appeal to district court in Travis County. After a hearing on the merits of Appellant's claims, the trial court affirmed the 1318C Order upholding the issuance of the 1318C Amendment on all grounds.

The 1318C Amendment provides the City with no increase in the amount of water that is authorized to be stored or diverted pursuant to Certificate of Adjudication No. 14-1318.⁵² Similarly, the 1318C Amendment authorizes no increase in any diversion rate that is associated with Certificate of Adjudication No. 14-1318.⁵³ As a result, the changes authorized in the 1318C Amendment do not cause adverse impacts to any other water rights in the Concho River Basin.⁵⁴

⁵² AR 8-124 [SA 1318C Ex. 1 at 12:14]; AR 8-130 [SA 1318C Ex. 2 at 14:1-3, 28:1-23]; AR 9-160 [ED-1318C-12 at 3:18-19].

⁵³ AR 8-130 [SA 1318C Ex. 2 at 14:6-8, 28:23 – 29:2]; AR 9-161 [ED-1318C-12 at 3:18-19].

⁵⁴ AR 9-161 [ED-1318C-12 at 4:9-17]; AR 7-123 [Tr. at 106:6-14].

SUMMARY OF THE ARGUMENT

The Record of Administrative Decision contains substantial evidence to support each and every finding of fact made by the Texas Commission on Environmental Quality in its approval of Application 1318C. In each instance, the TCEQ Commissioners fully and appropriately considered all applicable statutory and regulatory predicates to the issuance of the 1318C Amendment. Administrative Law Judge Sharon Cloninger, the Executive Director of the TCEQ, the Office of Public Interest Council, and the TCEQ Commissioners all agreed that the City demonstrated, by at least a preponderance of evidence, that it had satisfied each applicable requirement necessary to obtain the 1318C Amendment.

In the face of an evidentiary record that overwhelmingly supports the TCEQ Commissioners' decision on Application 1318C, Appellant attempts to have this Court disregard firmly established legislative policy and settled jurisprudence that create the reliability in our State's surface water rights management and recognition today. At the heart of its effort on appeal, Appellant hopes the Court will create, by fiat, a right of its members to water that the City has lawfully stored in Twin Buttes Reservoir, pursuant to the terms and conditions of Certificate of Adjudication No. 14-1318. A fiat, indeed, would be required for the Appellant to succeed, as it can point to no actual water right, no statute, no rule, and no other source of law that creates what it asks this Court to manufacture through this appeal.

The record and pertinent law of this case all firmly support the judgment of the trial court below affirming the TCEQ issuance of the 1318C Order. Appellee respectfully requests that Appellant's appeal in all respects be denied.

ARGUMENT & AUTHORITIES

I. NO SUBSTANTIAL RIGHTS OF APPELLANT HAVE BEEN PREJUDICED BY THE ISSUANCE OF COA 14-1318C (Cross Point 1)

Appellant must first demonstrate, as a condition precedent to any judicial review of an agency decision under the substantial evidence rule, that its substantial rights have been prejudiced by the TCEQ Commissioners' decision on the 1318C Order.⁵⁵ Stated another way, regardless of whether the TCEQ failed to satisfy each element of the substantial evidence test articulated in Section 2001.174(2) of the Texas Government Code, the Court cannot disturb the agency's action through a substantial evidence review unless the Appellant is able to demonstrate that it has some right that is subjected to harm because of the TCEQ's decision on the 1318C Order.⁵⁶ As discussed below, Appellant has failed to identify any substantial rights that have been prejudiced by the issuance of the 1318C Order. Accordingly, its request for relief should be denied.

I.A. The Record Contains No Evidence of Harm to Appellant

Multiple lay witnesses proffered by the Appellant during the evidentiary hearing on Application 1318C described their satisfaction with flow conditions in the Concho River downstream from Twin Buttes Reservoir over the past several years leading up to the hearing itself.⁵⁷ The witnesses consistently testified that the Concho Watermaster was responsible for the good condition of the river⁵⁸ and they wanted to ensure that he had the tools to keep it that way.⁵⁹

⁵⁵ TEX. GOV'T CODE ANN. § 2001.174(2) (West 2008); *United Sav. Ass'n of Tex. v. Vandygriff*, 594 S.W.2d 163, 171-72 (Tex. App.—Austin 1980, writ ref. n.r.e.).

⁵⁶ *C.O.N.T.R.O.L. v. Sentry Envtl., L.P.*, 916 S.W.2d 677, 679-80 (Tex. App.—Austin 1996, writ denied).

⁵⁷ AR 8-141 [CONCHO 1318C PFT Ex. 4 at 3:8-9, 3:34-36 (testimony of Scott Spoons noting improvement in the Concho River flow conditions)]; AR 7-123 [Tr. at 116:2-4 (testimony by A. J. Jones indicating satisfaction with the current general flow conditions of the Concho River)], 154:6 (testimony from Steven Hoelscher stating that the Concho River “is in good shape now”), 161:15-16 (testimony of Scott Spoons reiterating satisfactory flow conditions in the Concho River)].

⁵⁸ AR 7-123 [Tr. at 116:7-8, 126:3-6 (testimony of A. J. Jones stating that the Concho Watermaster was doing “an excellent job” in his “very, very efficient” administration of water rights in the Concho River Basin)], [163:9-14 (testimony of Scott Spoons attributing good condition of Concho River to administration of water rights by Concho Watermaster)].

⁵⁹ AR 7-123 [Tr. at 163:23 – 164:1].

By comparison, Dr. Robert Brandes and Ms. Kathy Alexander each testified repeatedly throughout the evidentiary hearing that the Accounting Plan gave the Concho Watermaster a clearly defined diversion, storage and pass-through protocol that would ensure that the City passes all flows through Twin Buttes Dam to which downstream senior and superior water rights were legally entitled.⁶⁰ The Accounting Plan is designed to provide the Concho Watermaster with the very tool the Appellant's witnesses were purportedly interested in—one that would facilitate the Watermaster's abilities to carry out his or her duties as defined by the Texas Legislature.⁶¹

The record demonstrates that the Accounting Plan requires the City to monitor and record all river flow—*i.e.*, inflow—into Twin Buttes Reservoir.⁶² It then provides a means for determining how much of that water the City must pass to meet the lawful demands of other water rights downstream that have senior or superior priority to the 1318C Amendment, and therefore how much of the water the City is authorized to store in Twin Buttes Reservoir pursuant to the 1318C Amendment.⁶³ In addition, the 1318C Amendment requires the City to memorialize in the Accounting Plan ledger the specified volume of inflows that the City must—*at all times*—allow to pass through Twin Buttes Dam for environmental and other instream use purposes.⁶⁴ As reflected throughout the record, the Accounting Plan is designed to assist the City and the Concho Watermaster in determining precisely what water the City is entitled to store and divert under its multiple water rights.⁶⁵ It works to ensure that the City yields to all other water rights in the Concho River Basin—including those held by the Appellant's members—as well as the minimum environmental flow requirements, before it is authorized to impound any water in Twin Buttes Reservoir.⁶⁶ It is important to recognize that not only did the City's expert hydrology consultant, Dr. Brandes, play a significant role in the development of the

⁶⁰ AR 8-30 [SA 1318C Ex. 2 at 17:1-5, 23:18 – 24:2, 24:13-16]; AR 9-168 [Ex. ED-1318C-19 at 4:30 – 5:1]; AR 7-121 [Tr. 34:4-7, 60:1-4, 63:19-21, 94:9-14]; AR 7-123 [Tr. 317:22 – 318:4, 335:9-13].

⁶¹ AR 7-123 [Tr. at 335:9-13]; TEX. WATER CODE §§ 11.551-.561.

⁶² AR 8-130 [SA 1318C Ex. 2 at 17:9-13].

⁶³ AR 8-130 [SA 1318C Ex. 2 at 16:11-16, 17:13-16].

⁶⁴ AR 7-123 [Tr. at 290:3-10].

⁶⁵ AR 9-168 [ED-1318C-19 at 4:24-28].

⁶⁶ AR 9-168 [ED-1318C-19 at 4:9-12].

Accounting Plan,⁶⁷ but so too did Ms. Alexander, the Technical Specialist for Hydrology for the TCEQ's Surface Water Availability and Interstate Compacts Team.⁶⁸ The record reflects that even the Concho Watermaster himself participated in the development and decision to approve the Accounting Plan.⁶⁹

Even more compelling, however, is the fact that the Concho Watermaster has actually been using the Accounting Plan to account for the City's storage of water in Twin Buttes Reservoir under Certificate of Adjudication No. 14-1318,⁷⁰ and to quantify the volume of river flows coming into Twin Buttes Reservoir that must be passed to satisfy downstream senior and superior water rights⁷¹ since at least 2008,⁷² if not before that time.⁷³ Since at least 2008, therefore, all water flowing into Twin Buttes Reservoir has been managed by the Concho Watermaster and the City in the same manner that storage and flow passage is managed under the 1318C Amendment.⁷⁴ The record reflects that, despite the recent droughts that plagued the Concho River Basin even at the time of the hearing on the merits,⁷⁵ the lay witnesses proffered by the Appellant indicated nothing but satisfaction with the work done by the Concho Watermaster to manage flows in, and to ensure that they received water to which they were legally entitled from, the Concho River.⁷⁶

⁶⁷ AR 7-123 [Tr. at 345:21 – 346:19].

⁶⁸ AR 9-161 [Ex. ED-1318C-12 at 4:28-30]; AR9, 168 [Ex. ED-1318C-19 at 2:26-27, 3:13-14].

⁶⁹ AR 7-123 [Tr. at 335:17-18].

⁷⁰ AR 7-123 [Tr. at 342:5-8, 357:23 – 348:4].

⁷¹ AR 7-123 [Tr. at 342:21 – 343:3].

⁷² AR 7-123 [Tr. at 348:9-12].

⁷³ AR 7-123 [Tr. at 342:18-20].

⁷⁴ AR 8-130 [SA 1318C Ex. 2 at 23:1-5 (testimony by Dr. Brandes noting that proposed Special Condition 2.C in the 1318C Draft Amendment requires the City to only store water in Twin Buttes Reservoir in accordance with the Accounting Plan)]; AR 9-168 [Ex. ED-1318C-19 at 4:26 – 5:1]; AR 7-123 [Tr. at 317:22 – 318:4 (testimony by Ms. Alexander noting that the City would be authorized under the 1318C Draft Amendment to impound in Twin Buttes Reservoir only those flows that the Concho Watermaster determines are not needed to satisfy downstream senior and superior water rights and the environment)].

⁷⁵ AR 7-123 [Tr. at 116:5-6].

⁷⁶ AR 5-100 [Applicant City of San Angelo's Reply to Closing Arguments and Motion to Strike Protestants' Pleadings, note 15].

By illustration, one of the Appellant’s primary witnesses, A. J. Jones, was so impressed with the work of the Concho Watermaster during this time period that he declared under oath that the Watermaster had “done an excellent job” of managing flows in the Concho River Basin.⁷⁷ Another Appellant witness, Steven Hoelscher, testified during the hearing on the merits that the Concho River “is in good shape now.”⁷⁸ Yet another Appellant witness, Scott Spoons, testified that he had the same experience, explaining that because of the work of the Concho Watermaster, the river “has been kept going” for the City of Paint Rock since approximately 2006.⁷⁹

The testimony of the Appellant’s witnesses confirms what Dr. Brandes, Ms. Alexander, and Steve Densmore each said, as well, with regard to the 1318C Amendment: no water rights would be harmed as a result of its issuance and implementation.⁸⁰ The Appellant’s own witnesses, simply stated, provided convincing, albeit unwitting, endorsements of the City’s management of Certificate of Adjudication No. 14-1318 using the protocol provided for in the Accounting Plan—which is precisely what the City formally requested through Application 1318C, and what it is now expressly authorized to do through the 1318C Amendment.

The Appellant’s argument that the changes made through the 1318C Amendment are “facially harmful” is a tacit admission that there is no evidence that supports its assertion that the 1318C Amendment adversely impacts its legally protected interests. Indeed the Appellant’s own case helps to demonstrate that its substantial rights have not been prejudiced with the issuance of the 1318C Amendment.

I.B. The 1318C Amendment Would Not Authorize the City to Impound Any Water In Twin Buttes Reservoir to Which Appellant’s Members Are Legally Entitled

Notwithstanding unsupported statements in the Appellant’s Brief to the contrary, the record reflects that the 1318C Amendment does not authorize any increased diversion rate, any

⁷⁷ AR 7-123 [Tr. at 116:7-8].

⁷⁸ AR 7-123 [Tr. at 154:6].

⁷⁹ AR 7-123 [Tr. at 161:15-16].

⁸⁰ AR 8-130 [SA 1318C Ex. 2 at 26:21 – 27:1, 28:13-15]; AR 9-161 [Ex. ED-1318C-12 at 4:15-17, 4:9-13]; AR 7-121 [Tr. at 63:19-21]; AR 7-123 [Tr. at 324:16-21, 335:9-13, 344:1-7].

increased diversion volume, or any increased storage authorization that was provided for in Certificate of Adjudication No. 14-1318 before the issuance of the 1318C Amendment.⁸¹ No unavailable water analysis was performed because Application 1318C was not a request for any unavailable water in the Concho River.⁸² The record demonstrates that the 1318C Amendment requires no unappropriated State water to accommodate the changes requested by the City in Application 1318C.⁸³ The record also reflects that the City would be legally prohibited from impounding any State water to which the Appellant's members are lawfully entitled.⁸⁴ Any such action on the part of the City would subject the 1318C Amendment to forfeiture or cancellation.⁸⁵ Appellant can point to no credible evidence in the record demonstrating the contrary.

⁸¹ *E.g.*, AR 8-124 [SA 1318C Exhibit 1 at 12:14-16 (Mr. Wilde testifying that Application 1318C was not a request for any additional appropriation of State water)]; *and* AR 8-130 [SA 1318C Exhibit 2 at 14:1-3 (Dr. Brandes testifying that Application 1318C, if granted, would not change the maximum storage of water authorized under Certificate of Adjudication No. 14-1318), 14:6-8 (Dr. Brandes testifying that Application 1318C, if granted, would not authorize the City to divert any volumes of water at any greater rate than authorized under Certificate of Adjudication No. 14-1318); 28:21-23 (Dr. Brandes testifying that City has not requested the authority to increase storage in Twin Buttes Reservoir); 28:23 – 29:2 (Dr. Brandes testifying that the City has not requested the authority to increase any diversion rate authorized by Certificate of Adjudication No. 14-1318); 29:2-3 (Dr. Brandes testifying that Application 1318C is not a request for any new or increased appropriation of State water)]; AR 9-161 [ED-1318C-12 at 3:18-19 (Mr. Densmore testifying that the City has not requested the authority to divert or store additional State water, or divert state water at any increased rate)]; AR 7-123 [Tr. at 336:11-16 (Ms. Alexander testifying that Accounting Plan does not increase the amount of water that the City is authorized to divert under any of its water rights)]; AR 7-123 [Tr. 336:17-20 (Ms. Alexander testifying that the Accounting Plan does not increase the amount of water that the City would be authorized to impound in pursuant to any of its water rights)].

⁸² AR 9-161 [ED-1318C-12 at 3:18-19].

⁸³ AR 5-102 [PFD at 19 (citing to SA 1318C Exhibit 2 at 29:2-3, 30:14-17, 31:17-19)]; AR 9-161 [ED-1318C-12 at 3:18-19]; AR 7-121 [Tr. at 25:20-23]; AR 7-123 [Tr. at 336:11-23].

⁸⁴ AR 8-129 [SA 1318C Exhibit 1-E (1318C Draft Amendment, now 1318C Amendment, limiting City to storing water in Twin Buttes Reservoir only in accordance with the Accounting Plan, and making 1318C Amendment “subject to all superior and senior water rights in the Colorado River Basin”)]; AR 7-121 [Tr. at 63:5-7 (Dr. Brandes testimony that the Accounting Plan requires the City to pass all flows through Twin Buttes Dam to which downstream senior and superior water rights holders are legally entitled), 63:19-17 (Dr. Brandes testimony that the Accounting Plan will ensure that the City passes all flows that water rights holders downstream are entitled to), 63:25 – 64:1 (Dr. Brandes testimony that downstream senior and superior water rights holders are entitled to the water they request from the Concho Watermaster, in priority order)]; AR 7-123 [Tr. at 342:15-17 (Ms. Alexander testimony that the Concho Watermaster uses the Accounting Plan because it is simple and efficient)].

⁸⁵ AR 8-129 [SA 1318C Exhibit 1-E (1318C Draft Amendment, now 1318C Amendment)].

I.C. Appellant Can Point to No Evidence or Legal Support for Its Characterization of Certificate of Adjudication No. 14-1318

Throughout the Appellant’s Brief, Appellant complains of the TCEQ’s refusal to ignore the mandates of the Texas Legislature, and instead maintain a legally created partitioning of river flow *types* in the Concho River Basin that the Supreme Court of Texas attributed to the chaotic condition of water prior to 1967.⁸⁶ That is, the Appellant complains that the TCEQ no longer adheres to the legal partitions between the portions of a river flow attributable to storm or flood flows, versus the portions of the same flow attributable to “normal” flow in the watercourse, for purposes of determining what downstream senior and superior diverters are entitled to, and what the City is entitled to store in Twin Buttes Reservoir.

I.C.1. Appellant’s Complaints Are Forged In Obsolete Law

This legal partitioning was imposed for the first time by the Texas Supreme Court in 1926 in an effort to ease the legal tension that existed between the State’s two otherwise contradictory water right management doctrines of the day—riparianism and priority based water appropriations.⁸⁷ Common law riparian rights at the time provided owners of land adjacent to a watercourse with an unquantified right—whether exercised or not—to the reasonable use of the undiminished flow of water that flowed past their property.⁸⁸ A riparian right was considered incidental to land ownership, and was not memorialized by any paper right.⁸⁹ In the same watercourses, however, the State had implemented the statutory doctrine of prior appropriation.⁹⁰ The appropriation doctrine is founded on the fundamental premise that non-use of State water is waste.⁹¹ Therefore, appropriative water rights encouraged—and indeed required—the consumptive use of State water.⁹² Unlike riparian rights, an appropriative right was reflected in a

⁸⁶ See, e.g., Ap. Brief § I.; *In re Upper Guadalupe Segment*, 642 S.W.2d at 439, 441.

⁸⁷ *Motl v. Boyd*, 286 S.W. 458 (Tex. 1926), *overruled on oth. grounds by*, 335 S.W.2d 502 (Tex. 1962); see also *In re the Adjudication of Water Rights of the Brazos III Segment of the Brazos River Basin*, 746 S.W.2d 207, 209 n. 2 (Tex. 1988) (citing *Haas v. Choussard*, 17 Tex. 588, 590 (1856), and R. Lambeth Townsend, *Cancellation of Water Rights In Texas: Use It Or Lose It*, 17 ST. MARY’S L. J. 1217, 1220 (1986)).

⁸⁸ *Motl*, 286 S.W. at 473; *In re Upper Guadalupe Segment*, 642 S.W.2d at 441.

⁸⁹ *In re Brazos III*, 746 S.W.2d at 209.

⁹⁰ *Motl*, 286 S.W. at 439-42.

⁹¹ *Colorado River Auth. v. Texas Dept. of Water Resources*, 989 S.W.2d 873, 882 (Tex. 1984).

⁹² *In re Upper Guadalupe Segment*, 642 S.W.2d at 441.

paper water right issued by the State of Texas, describing, *inter alia*, a specified authorized quantity, type of use, location of use, and time-priority of use of State water within the river basin.⁹³ Where conflicts between riparians were resolved by courts applying common law, conflicts between appropriators were resolved by administrative enforcement of the time priority of the competing rights.⁹⁴

The tension arose when courts attempted to resolve claims between riparians and appropriators in the same watershed.⁹⁵ The State in one breath was encouraging appropriators to make consumptive uses of State water under prior appropriation, while in another breath it mandated that the exercise of such appropriative rights could cause no prejudice to riparian owners' rights—*i.e.*, could not negatively influence the natural flow of the watercourse.⁹⁶

At issue in *Motl* was the legal authority of a riparian landowner to divert storm flows from an impoundment built by a riparian across the creek, and to use the diversions for irrigation purposes.⁹⁷⁹⁸ The *Motl* Court held that riparians had rights only to the “normal flow” of the river.⁹⁹ To protect riparians' rights to these flows—*i.e.*, to not cause prejudice to riparian owners—and to combat the destructive forces of floods in the state, the court determined that storm and flood flows were beyond the rights of riparians, and were thus subject to appropriation by the State for beneficial, consumptive uses using water rights issued with time priority.¹⁰⁰

Despite this legal partitioning of stream flow created by the *Motl* Court, riparianism and prior appropriation remained incompatible water rights doctrines,¹⁰¹ and the qualitative standard

⁹³ *In re Brazos III*, 746 S.W.2d at 209.

⁹⁴ *In re Upper Guadalupe Segment*, 642 S.W.2d at 441.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Motl*, 286 S.W. at 471-74.

⁹⁸ *Id.*

⁹⁹ *Id.* at 468. [286 S.W. at 471-74]

¹⁰⁰ *Id.* [286 S.W. at 471-74] at 474; Frank J. Trelease, *Coordination of Riparian and Appropriative Rights to the Use of Water*, 33 Tex. L. Rev. 24, 45 (1954).

¹⁰¹ See *In re Upper Guadalupe Segment*, 642 S.W.2d at 439 (recognizing that Texas surface water law remained in “a chaotic state” before adoption of the Water Rights Adjudication Act of 1967).

adopted by the court proved practically impossible to quantify.¹⁰² The Supreme Court later described its *Motl* distinction between normal flow and flood flow as an “amorphous” one, noting that “engineers and hydrologists had problems determining the ordinary flow of a stream that flowed only when it rained.”¹⁰³ Courts have routinely recognized the chaos spawned by the continued delineation of water rights using these unquantifiable standards.¹⁰⁴

Furthermore, the Texas Supreme Court in *Upper Guadalupe* noted that the terms “[m]ean flow, average flow and ordinary flow” had not been judicially addressed.¹⁰⁵ Appellant argues that this lack of guidance indicates that the *Upper Guadalupe* Court “did not extinguish the distinction between normal and flood flows.”¹⁰⁶ However, the *Upper Guadalupe* Court clearly acknowledges the institutional problems that engineers and hydrologists had with defining and measuring water rights in Texas based on the ubiquitous *Motl* partition, as well as the role the Water Rights Adjudication Act of 1967 was designed to play in remedying this problem. Contrary to Appellants suggestion, the Court used this practical dilemma to illustrate the source of the chaos attributable to *Motl* based on the anachronistic flood flow and normal flow distinction.

I.C.2. The Texas Legislature Neutered Appellant’s Claim in 1967

The Water Rights Adjudication Act of 1967 (the “Adjudication Act”) was adopted to resolve the legal calamity created by the State’s historical recognition of two, diametrically opposed water rights doctrines—statute-based prior appropriations and common law riparianism.¹⁰⁷ The Adjudication Act required all persons claiming a right to surface water in Texas—except those using water for domestic and livestock purposes—to articulate their water

¹⁰² *Id.* at 441; *State v. Hidalgo County Water Conservation & Improvement Dist. No. 18*, 443 S.W.2d 728, 739-40 (Tex. Civ. App.—Corpus Christi 1969, writ ref’d n.r.e.) (noting the difficulty of the trial court in quantifying the phrase “normal flow” as “neither the hydrologists nor the legal profession can identify ‘normal flow’ as defined in *Motl v. Boyd*”).

¹⁰³ *In re Upper Guadalupe Segment*, 642 S.W.2d at 441.

¹⁰⁴ *City of Marshall v. City of Uncertain*, 206 S.W.3d 97, 102 (Tex. 2006); *In re Brazos III*, 746 S.W.2d at 211; *Lower Colorado River Auth.*, 989 S.W.2d at 882; *In re Upper Guadalupe Segment*, 642 S.W.2d at 429.

¹⁰⁵ *In re Upper Guadalupe Segment*, 642 S.W.2d at 441.

¹⁰⁶ Ap. Brief at 25.

¹⁰⁷ *In re Brazos III*, 746 S.W.2d at 209.; TEX. WATER CODE §§ 11.301-.341.

claims, and to have each of those claims formally adjudicated through a comprehensive evidentiary process.¹⁰⁸ The adjudication process had the effect of reducing all proven non-domestic and non-livestock claims to surface water in a watershed to a paper water right, evidenced as a certificate of adjudication with an assigned priority date, subject to all downstream water rights within the river basin that had a more senior priority date.¹⁰⁹ Domestic and livestock riparian diverters were no longer recognized to have a right to undiminished normal flows of a watercourse, regardless of whether they needed them; they instead were recognized to have only a right to call for the volume of flows that they could beneficially use.¹¹⁰ Because State law still afforded riparian users protection against impairment from other uses in the watershed, these domestic and livestock riparian users are considered to have water rights in the basin that are superior to even the most senior appropriator in the basin.¹¹¹

The Adjudication Act worked to effectively abandon riparianism in Texas and replace it with the prior appropriation method of administering and enforcing water rights in this state by merging the vast majority of riparian rights into a paper right system organized by time priority.¹¹² By merging these water rights doctrines into one system, and by abandoning the hallmark of the riparian claim—*viz.*, the land owner has a right to the undiminished normal flow of a watercourse, whether he needs the water or not—the Adjudication Act therefore erased the need for the unworkable, “amorphous” normal flows partition installed by the *Mott* Court many decades prior to ease the friction created by these dual systems.¹¹³ Appellant refuses to acknowledge to the Court that this was a chief function of the Adjudication Act, even though its counsel has lectured the same point in publications circulated before the commencement of this matter.¹¹⁴ The process of water rights adjudication created by the Texas Legislature was

¹⁰⁸ *In re Upper Guadalupe Segment*, 642 S.W.2d at 442.

¹⁰⁹ *Id.* at 442-44.

¹¹⁰ *Id.* at 444.

¹¹¹ 30 TEX. ADMIN. CODE § 297.21(a).

¹¹² *In re Upper Guadalupe Segment*, 642 S.W.2d at 442; TEX. WATER CODE § 11.303; AR 9-148 [CONCHO 1318C Ex. 10 at 7-8 § 11].

¹¹³ AR 9-148 [CONCHO 1318C Ex. 10 at 7-8 § 11].

¹¹⁴ Glenn Jarvis, *Texas Groundwater and Surface Water Law Before and After Senate Bill 1*, 8th Annual Texas Water Law Conference, Austin, Texas, on “Overview of Texas Water Law” at 13, 20 (1998) (bolding added, all other emphases in the original); *see also generally* 45 Tex. Prac. Series, *Envtl. Law* § 14.3 (2d ed.) (2011).

explicitly designed to produce a definitive right that superseded all other prior claims, certified filings, and permits.¹¹⁵ Importantly, the Texas Supreme Court has upheld the constitutionality of the Texas Legislature’s statutory approach to water rights management in the Adjudication Act.¹¹⁶

The courts have also recognized that the Texas Legislature designed the Adjudication Act to merge common law riparian—*i.e.*, normal flow—claims with statutory appropriative—*i.e.*, storm and flood flow—rights into one consolidated system.¹¹⁷ The Court need look no further than the Modified Final Determination itself, which, as the Appellant concedes, was adopted by an article V, Texas Constitution tribunal in the Final Decree. Therefore, through the Modified Final Determination, the 51st Judicial District of Tom Green County affirmed that:

Continual division of a stream into normal flow and storm and flood flow is a difficult engineering problem. If the administrator is to deal with not only this division but also the problem of allocating water between holders of certificates with a time priority and those without a time priority, particularly with the small quantity of water available in this segment, a wholly unworkable scheme will have been created. Therefore, the Commission has merged appropriative rights and rights recognized under Section 5.303 into a common system as an equitable and workable means of administering the water rights adjudicated and placed all recognized claimants on a time priority with statutory water rights.¹¹⁸

In fact, the Concho River Segment Final Determination is not the only segment that the Texas Water Commission included this language—water right adjudications undertaken through the provisions of the Adjudication Act all across the state include the same, or virtually identical, language. As an example, the Texas Water Commission’s Final Determination of All Claims of Water Rights in the Brazos III Segment of the Brazos River Basin included a virtually identical discussion of the State’s historical difficulties with managing competing water rights using the

¹¹⁵ Tex. Water Code Ann. §§ 11.303(i) (stating that “...failure to file a sworn statement in substantial compliance with this section extinguishes and bars any claim of water rights to which this section applies.”), and 11.322(d) (providing that “[t]he *final decree* in every water right adjudication is *final and conclusive* as to all existing and prior rights and claims to the water rights in the adjudicated stream or segment of a stream. The decree is *binding* on all claimants to water rights outside the adjudicated stream or segment of a stream.” (emphasis added)).

¹¹⁶ *In re Upper Guadalupe Segment*, 642 S.W.2d at 443-44.

¹¹⁷ *In re Upper Guadalupe Segment*, 642 S.W.2d at 439, 442.

¹¹⁸ Appendix 6 (Modified Final Determination for Concho River Segment of the Colorado River Basin)(AR 9-148).

normal flow and storm flow distinctions.¹¹⁹ Like the Final Determination in this case, the Final Determination of All Claims of Water Rights in the Brazos III Segment of the Brazos River Basin is settled law. With respect to the latter, it was ultimately reviewed and endorsed by the Supreme Court of Texas.¹²⁰

Finally, the TCEQ Executive Director explained in a letter to Appellant that “the TRWC recognized the problem with dividing a stream into normal flow and flood flow and that it was to deal with that division as well as allocating water to those with or without a time priority, particularly in the Concho River Segment, ‘a wholly unworkable scheme will have been created.’”¹²¹

In the same correspondence, TCEQ further expressed its position that the conditions from the 1949 Permit have no bearing on water rights in the Concho River Segment.¹²² In a letter to Appellant, the Executive Director of the TCEQ states: “the [storm and flood waters] provision is only in a permit that no longer exists. When a Certificate of Adjudication is prepared after the Final Decree is issued by the court, the underlying permits are superseded by the certificate.”¹²³

Notwithstanding this clearly documented, and otherwise widely understood and acknowledged, legal evolution of Texas surface water rights, Appellant still argues that the Adjudication Act did not do away with the distinction for purposes of Application 1318C, and that special conditions of Permit 1949 somehow still apply.¹²⁴ It is telling that Appellant offers no legal support for its theory.

Instead, it is clear from: (1) the fallout of *Mott*; (2) the language of the Adjudication Act; (3) the legal conclusions endorsed in the Final Decree; and (4) the TCEQ’s longstanding implementation of these policies, that for Certificate of Adjudication No. 14-1318, the phrase

¹¹⁹ Appendix 7 (Final Determination for Brazos III Segment of the Brazos River Basin).

¹²⁰ *In re Brazos III*, 746 S.W.2d 207 (Tex. 1988).

¹²¹ AR 2-66 (Appendix 2).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Ap. Brief at 23, Section I.E.

“normal flow” offers no practical, or hydrological utility.¹²⁵ Appellant’s argument to the contrary is wholly devoid of legal support.

I.C.3. Appellant’s Complaint is Simply That the TCEQ Refused to Rehabilitate the Law That Spawned the *Motl* Distinctions

Throughout the Appellant’s Brief, it complains that the 1318C Order fails to limit the City’s impoundment authorization in Twin Buttes Reservoir to only those flows considered “storm” or “flood” flows, and it fails to obligate the City to always pass all “normal flows” through the Twin Buttes Dam for uses downstream. This, alone, the Appellant claims, is evidence of harm. The Appellant offers this “facial harm” argument because the evidentiary record provides it with no other choice. There is no evidence that indicates the Appellant, or its membership, would be harmed by the 1318C Amendment. To the contrary, the record is replete with evidence that the Appellant’s members are protected by priority—meaning that the City must yield in its efforts to impound water in Twin Buttes Reservoir to those in the Colorado River Basin who have water rights that are senior and superior in priority to those reflected in Certificate of Adjudication No. 14-1318, including the 1318C Amendment. Furthermore, the record contains an overwhelming weight of evidence that those same senior and superior water rights actually benefit from management of the water right using the Accounting Plan, and that the Concho Watermaster’s management of the Concho River Basin will ensure they receive all water to which they are lawfully entitled.

But the Appellant is not complaining that the 1318C Order precludes its members from receiving any volumes of water to which they are lawfully entitled. Instead, the Appellant is complaining merely about the absence of the legal partitions of water in the Concho River between normal flows and storm flows. In other words, the Appellant complains about the loss of the *idea* of having to parse river flows into storm flows and normal flows. It asks, in no uncertain terms, that the Court disregard the 1967 Act, the policy decisions that motivated passage of the Adjudication Act, and the long line of appellate court cases that have recognized both. The harm it complains of is the TCEQ’s refusal to continue recognizing a legal partitioning that was rendered obsolete by the adoption of the 1967 Act—an action of the Texas

¹²⁵ AR 9-130 [SA 1318C Ex. 2 at 13:1-5].

Legislature that the Supreme Court has recognized to be a lawful exercise of its prerogative pursuant to Article XVI, Section 59 of the Texas Constitution.¹²⁶

Texas courts have long held that no person has a right to the continuation of a particular law.¹²⁷ Instead of demonstrating how legally enforceable rights held by the Appellant, or perhaps its members, are harmed by the 1318C Amendment, the Appellant instead complains that the TCEQ has failed to give deference to the common law distinctions between normal flows and storm flows in the Concho River that were legally relevant before the enactment of the 1967 Act. As counsel for the Appellant has conceded, common law riparian rights and existing appropriative rights were merged through the 1967 Act into a singular, priority based system of water right appropriations.¹²⁸ The Texas Legislature has therefore abandoned the Appellant's common law recognitions.¹²⁹ No substantial rights of the Appellant can be prejudiced simply by the TCEQ's refusal to recognize the prior common law constructs in the 1318C Order as advocated in Appellant's Brief.

I.D. Substantial Evidence Demonstrates That Certificate of Adjudication No. 14-1318 Does Not Entitle Appellant to Water Lawfully Impounded In Twin Buttes Reservoir

The evidence admitted into the record in this case is abundantly clear that Certificate of Adjudication No. 14-1318 does not entitle the Appellant or any of its members to water lawfully impounded in Twin Buttes Reservoir. As mentioned above, even counsel for the Appellant has acknowledged that “[t]he *certificate of adjudication* has [as a result of the Adjudication Act] become the basic evidence of and measure of water rights, regardless of their origin, riparian or

¹²⁶ *Id.* [642 S.W.2d] at 443.

¹²⁷ *Engelbrecht v. State*, 294 S.W.3d 864, 869 (Tex. App.—Beaumont 2009, no pet.); *Texas Dept. of Ins. v. State Farm Lloyds*, 260 S.W.3d 233, 243-44 (Tex. App.—Austin 2008, no pet.); *Subaru of Am. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 219 (Tex. 2002) (citing *Middleton v. Tex. Power & Light Co.*, 185 S.W. 556, 560 (Tex. 1916)).

¹²⁸ Glenn Jarvis, *Texas Groundwater and Surface Water Law Before and After Senate Bill 1*, 8th Annual Texas Water Law Conference, Austin, Texas, on “Overview of Texas Water Law” at 13 (1998).

¹²⁹ *Bartley v. Guillot*, 990 S.W.2d 481, 485 (Tex. App.—Houston [14th Dist.] 1999, pet. denied); *Truck Ins. Exch. v. Seelbach*, 339 S.W.2d 521 (Tex. 1960) (recognizing that where Texas Workmen's Compensation Act directs action to be taken in a certain way that is contrary to the common law, the action must be taken as directed by statute).

otherwise.”¹³⁰ Appellant’s claim that its members are lawfully entitled to water legally stored by the City in Twin Buttes Reservoir must be memorialized in a certificate of adjudication, or in a water use permit subsequently issued by the State of Texas.¹³¹

The record makes clear that no such water rights exist. To the contrary, Ms. Alexander testified with authority on multiple instances during the evidentiary hearing that Certificate of Adjudication No. 14-1318 does not require the City to release stored water to satisfy downstream senior and superior water rights.¹³² In addition, Appellant produced no water rights that contained terms supporting its argument. Amendment 1318C cannot adversely impact water rights that do not exist.¹³³

Instead, what the Appellant seeks through this appellate review is akin to a request for an equitable right to water lawfully stored in Twin Buttes Reservoir. In instances where parties failed to meet the requisites of the Adjudication Act, some lower courts in Texas attempted to create equitable water rights using the courts’ powers in equity.¹³⁴ The Supreme Court of Texas subsequently rejected the recognition of any equitable rights to waters outside of the Rio Grande Basin, however, and has made abundantly clear that the process set forth in the Adjudication Act is the exclusive means by which the Appellant, or any of its members, could secure a recognized water right arising out of a Adjudication Act claim.¹³⁵

¹³⁰ Glenn Jarvis, *Texas Groundwater and Surface Water Law Before and After Senate Bill 1*, 8th Annual Texas Water Law Conference, Austin, Texas, on “Overview of Texas Water Law” at 20 (1998) (emphasis in the original).

¹³¹ TEX. WATER CODE ANN. §§ 11.121, .322(e), .323 (West 2008).

¹³² AR 7-123 [Tr. at 319:1-16, 330:6-12 (Ms. Alexander testifying that TCEQ staff is aware of no circumstance where the City would be required to release water it has lawfully stored in Twin Buttes Reservoir to satisfy a need other than its own)].

¹³³ *C.O.N.T.R.O.L. v. Sentry Envtl., L.P.*, 916 S.W.2d 677, 679-80 (Tex. App.—Austin 1996, writ denied).

¹³⁴ *See, e.g., In re the Adjudication of Water Rights of the Brazos III Segment of the Brazos River Basin*, 726 S.W.2d 214, 215-16 (Tex. App.—Waco 1987), overruled by, *In re Brazos III*, 746 S.W.2d 207 (Tex. 1988) (noting complaints by the Appellees that “there was uncertainty as to the nature and origin of water rights in the Brazos River; that numerous dams have been constructed on the Brazos River which have changed the river from a free-flowing stream to a controlled water course; that this has resulted in a great amount of water being available for irrigation due to the ability to catch and store flood waters in these reservoirs; that is was undisputed at trial that there was an abundance of water in the Brazos River; that such waters, if released and not beneficially used, will flow unused into the Gulf of Mexico...”).

¹³⁵ *In re Brazos III*, 746 S.W.2d at 210.

I.E. Appellant Cannot Satisfy Condition Precedent to Substantial Evidence Review

Section 2001.174 of the Texas Government Code requires the Appellant to do more than just complain of conditions described in Subsection (2)(A)-(F)—it must also show that its substantial rights have been prejudiced by the decision of the TCEQ Commissioners to approve Application 1318C and issue the 1318C Amendment.¹³⁶ The Appellant cannot make the predicate showing necessary to trigger a substantial evidence review.¹³⁷ Appellant’s requested relief should be denied on this ground.

II. THE RECORD OVERWHELMINGLY SUPPORTS THE TCEQ COMMISSIONERS’ DECISION ON APPLICATION 1318C (Reply to Issue 1, 2, 3, 4, and 5)

Notwithstanding the City’s reply points above, and without waiving any of the same, the TCEQ Commissioners’ decision on Application 1318C was supported, in all respects, by substantial evidence. As discussed below, the Appellant can point to no ground upon which reversal of the 1318C Order would be legally supported.

II.A. The 1318C Amendment Does Not Provide the City With the Ability to Impound or Divert Any Additional State Water

As noted previously, multiple witnesses provided credible testimony that Application 1318C was not a request for any additional appropriation of State water. Similarly, the overwhelming weight of evidence in the record demonstrates that the 1318C Amendment does not authorize the City to divert any additional volumes of water from within the Concho River Basin. Specifically, Will Wilde—the City’s Director of Water Utilities¹³⁸—testified that Application 1318C was not a request for any additional appropriation of State water.¹³⁹ Similarly, Dr. Robert Brandes testified that the City did not request the authority to store any more water under the 1318C Amendment than what it was already authorized to store pursuant

¹³⁶ TEX. GOV’T CODE ANN. § 2001.174(2) (West 2008); *United Sav. Ass’n of Tex. v. Vandygriff*, 594 S.W.2d 163, 171-72 (Tex. App.—Austin 1980, writ ref. n.r.e.).

¹³⁷ *C.O.N.T.R.O.L. v. Sentry Envtl., L.P.*, 916 S.W.2d 677, 679-80 (Tex. App.—Austin 1996, writ denied).

¹³⁸ AR 8-124 [SA 1318C Exhibit 1 at 1:14].

¹³⁹ AR 8-124 [SA 1318C Exhibit 1 at 12:14-16].

to Certificate of Adjudication No. 14-1318.¹⁴⁰ Additionally, he testified that Application 1318C, if granted, would not change the maximum amount of water that the City is already authorized to impound in Twin Buttes Reservoir by virtue of Certificate of Adjudication No. 14-1318.¹⁴¹

Substantial evidence in the record similarly demonstrates that Application 1318C, if granted, would not authorize the City to divert any volumes of water at any greater rate than authorized under Certificate of Adjudication No. 14-1318.¹⁴² Substantial evidence also demonstrates that the Accounting Plan does not increase the amount of water that the City is authorized to divert or impound pursuant to Certificate of Adjudication No. 14-1318.¹⁴³

Indeed, the overwhelming weight of evidence—not just substantial evidence—in the record demonstrates that the 1318C Amendment does not authorize the City to impound any additional water in, or divert any additional water from, Twin Buttes Reservoir than is otherwise authorized by Certificate of Adjudication No. 14-1318.¹⁴⁴ Appellant’s arguments, therefore, provide no basis for reversal on these grounds.

¹⁴⁰ AR 8-130 [SA 1318C Exhibit 2 at 28:21-23].

¹⁴¹ AR 8-130 [SA 1318C Exhibit 2 at 14:1-3].

¹⁴² AR 8-130 [SA 1318C Exhibit 2 at 14:6-8; 28:23 – 29:2 (Dr. Brandes testifying that the City did not request the authority to increase any diversion rate authorized by Certificate of Adjudication No. 14-1318), 29:2-3 (Dr. Brandes testifying that Application 1318C is not a request for any new or increased appropriation of State water)]; AR 9-161 [ED 1318C Exhibit 12 at 3:18-19 (Mr. Densmore testifying that the City has not requested the authority to divert or store additional State water, or divert state water at any increased rate)].

¹⁴³ AR 7-123 [Tr. at 336:11-16 (Ms. Alexander testifying that Accounting Plan does not increase the amount of water that the City is authorized to divert under any of its water rights), 336:17-20 (Ms. Alexander testifying that the Accounting Plan does not increase the amount of water that the City would be authorized to impound in pursuant to any of its water rights)].

¹⁴⁴ AR 8-129 [SA 1318C Exhibit 1-E (1318C Draft Amendment, now 1318C Amendment, limiting City to storing water in Twin Buttes Reservoir only in accordance with the Accounting Plan, and making 1318C Amendment “subject to all superior and senior water rights in the Colorado River Basin”)]; AR 7-121 [Tr. at 63:5-7 (Dr. Brandes testimony that the Accounting Plan requires the City to pass all flows through Twin Buttes Dam to which downstream senior and superior water rights holders are legally entitled), 63:19-17 (Dr. Brandes testimony that the Accounting Plan will ensure that the City passes all flows that water rights holders downstream are entitled to), 63:25 – 64:1 (Dr. Brandes testimony that downstream senior and superior water rights holders are entitled to the water they request from the Concho Watermaster, in priority order)]; AR 7-123 [Tr. at 342:15-17 (Ms. Alexander testimony that the Concho Watermaster uses the Accounting Plan because it is simple and efficient)].

II.B. The 1318C Amendment Requires the City to Pass Flows At All Times to Protect Instream Uses and the Environment Downstream of Twin Buttes Dam

There is substantial evidence in the record that demonstrates the 1318C Amendment authorizes no new or increased appropriation of State water that would implicate or adversely affect instream flows, fish and wildlife habitat, water quality, or existing groundwater resources or groundwater recharge.¹⁴⁵ Notwithstanding this fact, the record makes clear that the 1318C Amendment requires the City to pass a minimum flow of water through the Twin Buttes Dam, as measured immediately downstream at the Lake Nasworthy Dam outlet, for the maintenance of instream uses and environmental protection.¹⁴⁶ The record demonstrates that these minimum flow requirements were designed by TCEQ staff based on water quality, aquatic and riparian habitat, and recreational use considerations¹⁴⁷ to ensure that instream uses of the South Concho River—including fish and wildlife habitat—are protected.¹⁴⁸ The record reflects that the City must pass these flows through the Twin Buttes Dam *at all times* that water flows into Twin Buttes Reservoir.¹⁴⁹

In addition, the record contains substantial evidence demonstrating that the 1318C Amendment authorizes no new or increased appropriation of State water that could have any impact on groundwater, including groundwater recharge.¹⁵⁰ Furthermore, there is substantial evidence in the record demonstrating that the Lake Nasworthy Dam outlet was a superior instream flow requirement measuring point to the Bell Street Dam location advocated by the Appellant.¹⁵¹

It is noteworthy that the Appellant offered no evidence to rebut the testimony elicited during the hearing on this issue.¹⁵² The Appellant's own testifying expert, Dr. Barney Austin,

¹⁴⁵ AR 8-130 [SA 1318C Ex. 2 at 32:10-14].

¹⁴⁶ AR 8-124 [SA 1318C Ex. 1-E at 4].

¹⁴⁷ AR 7-123 [Tr. at 283:1-7, 283:16-20].

¹⁴⁸ AR 8-130 [SA 1318C Ex. 2 at 28:3-6].

¹⁴⁹ AR 7-123 [Tr. at 288:1-8, 288:24 – 289:6, 290:3-10].

¹⁵⁰ AR 8-130 [SA 1318C Exhibit 2 at 32:10-14].

¹⁵¹ AR 7-123 [Tr. at 274:11-16, 275:19-21].

¹⁵² AR 5-102 [PFD at 17].

admitted on multiple occasions that he was “not qualified or knowledgeable enough” to render opinions on the propriety of the minimum environmental flow conditions imposed on the City through the 1318C Amendment.¹⁵³

The Appellant wants the Court to disregard all of this competent evidence, and to look past the evidentiary shortcomings of its own case.¹⁵⁴ However, as the Court is aware, it is bound to consider the evidence in determining whether, as a whole, the record reflects that reasonable minds could have reached the same conclusion as the TCEQ on these issues.¹⁵⁵ Appellant cannot demonstrate the absence of substantial evidence. Instead, the record makes clear that the 1318C Amendment adequately protects instream uses and the environment in a way that satisfies applicable statutory provisions and TCEQ rules. Its arguments, therefore, provide no basis for reversal on these grounds.

II.C. The 1318C Amendment Benefits the City, the Concho Watermaster, and Downstream Senior and Superior Water Rights Holders

The impracticability of quantifying “normal flow” and “storm flow” for water rights management purposes has been well documented.¹⁵⁶ Substantial evidence in the record demonstrates that understanding the regulatory scope of the terms has proven to be a challenge for the City in its efforts to properly administer Certificate of Adjudication No. 14-1318, particularly as more and more demands were made for water in the Concho River Basin.¹⁵⁷ Indeed, throughout the years, the City has found it impossible to accurately quantify the volumes of a river flow that constitute the “normal flow” of river water coming into Twin Buttes Reservoir.¹⁵⁸

¹⁵³ AR 8-144 [CONCHO 1318C PFT Exhibit 7 at 19:1-3]; AR 7-123 [Tr. at 200:23 – 201:1].

¹⁵⁴ See generally, Ap. Brief at II.C.

¹⁵⁵ *Fleetwood*, 110 S.W.3d at 639.

¹⁵⁶ *In re Upper Guadalupe*, 642 S.W.2d at 438, 441 (Tex. 1982); *State v. Hidalgo County Water Conservation & Improvement Dist. No. 18*, 443 S.W.2d 728, 739-40 (Tex. Civ. App.—Corpus Christi 1969, writ ref’d n.r.e.); AR8, 130 [SA 1318C Ex. 2 at 13:1-5]; AR9, 148 [CONCHO 1318C Ex. 10 at 2 § 2].

¹⁵⁷ AR 8-124 [SA 1318C Ex. 1 at 7:18-20 – 8:4].

¹⁵⁸ AR 8-124 [SA 1318C Ex. 1 at 7:2, 7:5-6].

The City filed Application 1318C in an effort to resolve the lingering ambiguity in Certificate of Adjudication No. 14-1318 created by the use of the phrase “normal flow.”¹⁵⁹ The record demonstrates that with no scientifically accepted meaning, the “normal flow” language provided the City with no true means of consistently quantifying the precise volumes of water that it either was entitled to store in Twin Buttes Reservoir, or that it was obligated to pass through Twin Buttes Dam to satisfy downstream senior and superior water rights.¹⁶⁰

The record additionally demonstrates that the “inflow” approach incorporated into the 1318C Amendment clarifies the scope of Certificate of Adjudication No. 14-1318 by not only removing the ambiguous “normal flow” language,¹⁶¹ but also by simplifying the methodology for determining the City’s impoundment rights and pass-through obligations.¹⁶² The 1318C Amendment abandons the requirement of continually having to parse one or more components of the total volume of flows into Twin Buttes Reservoir, replacing it with the much simpler, standard procedure used throughout the Colorado River Basin, and indeed the State, of assessing the total flows—or inflows—to the Reservoir in order to determine which volumes of flow the City can store and which volumes of flow it must pass.¹⁶³

The Appellant asserts in its Appellant’s Brief that “[t]he water rights in a watermaster area must be well defined in order to allow the proper administration of those rights under the watermaster’s charge.”¹⁶⁴ The City agrees. Substantial evidence in the record demonstrates that the Accounting Plan incorporated into the 1318C Amendment gives the City *and the Concho Watermaster* the necessary tool for determining on a daily basis that the City is properly accounting for storage and diversions made pursuant to each of its water rights, and is therefore

¹⁵⁹ AR 8-133[SA 1318C Exhibit 3].

¹⁶⁰ AR 8-130 [SA 1318C Ex. 2 at 13:1-5, 13:15-19].

¹⁶¹ AR 7-121 [Tr. at 33:14, 49:16-17, 54:13-23 (Dr. Brandes testimony regarding the difficulties in actually calculating what constitutes a “normal flow” and “storm flow” in a watercourse)].

¹⁶² AR 7-123 [Tr. at 342:15-17 (Ms. Alexander testimony that the Concho Watermaster uses the Accounting Plan because it is simple and efficient)].

¹⁶³ AR 7-121 [Tr. at 50:16-19, 59:25 – 60:4].

¹⁶⁴ Ap. Brief at 34 (citing to TEX. WATER CODE ANN. § 11.327).

appropriating only the water to which it is lawfully entitled.¹⁶⁵ As discussed above, the Concho Watermaster assisted in the Accounting Plan development prior to the TCEQ staff recommendation that it be approved.¹⁶⁶

Substantial evidence in the record demonstrates that the 1318C Amendment¹⁶⁷ resolved the troubling ambiguities of Certificate of Adjudication No. 14-1318 by replacing the nebulous “normal flow” provision with the much easier, quantifiable, “inflow” provision.¹⁶⁸ In addition, the record makes clear that the amendment incorporated a series of additional protective features¹⁶⁹ that has provided the Concho Watermaster with the tools needed to ensure that water rights and the environment in the Concho River Basin are appropriately protected from impairment.¹⁷⁰

The record reflects that by resolving these ambiguities, the City and other water rights holders in the Concho River Basin all have benefitted by the clarity regarding which flows the City is entitled to store and which flows must be passed to satisfy downstream senior and superior water rights.¹⁷¹ The record also demonstrates that the 1318C Amendment benefits the public welfare.¹⁷²

The Appellant cannot avoid the substantial evidence in the record demonstrating that the 1318C Amendment provides needed clarity regarding the management of Certificate of Adjudication No. 14-1318 and, as a result, benefits the public welfare. Its arguments, therefore, provide no basis for reversal on these grounds.

¹⁶⁵ AR 9-168 [ED-1318C-19 at 3:16-18, 4:9-12].

¹⁶⁶ AR 7-123 [Tr. at 335:9 – 336:10].

¹⁶⁷ AR 8-129 [SA 1318C Ex. 1-E].

¹⁶⁸ AR 8-130 [SA 1318C Ex. 2 at 22:16-20].

¹⁶⁹ AR 8-130 [SA 1318C Ex. 2 at 26:21 – 28:13].

¹⁷⁰ AR 8-130 [SA 1318C Ex. 2 at 28:13-17].

¹⁷¹ AR 8-124 [SA 1318C Ex. 1 at 8:4-10, 15:10-13]; AR8, 130 [SA 1318C Ex. 2 at 13:8-11]; AR 7-121 [Tr. at 106:6-14].

¹⁷² AR 8-130 [SA 1318C Ex. 2 at 32:2-9].

II.D. Application 1318C Satisfied All Applicable Statutory and Regulatory Requirements

As noted by Judge Cloninger, and as endorsed by the TCEQ Commissioners, the City satisfied all applicable statutory and regulatory requirements necessary for the proper approval of Application 1318C, and the issuance of the 1318C Amendment. The Appellant cannot demonstrate a basis for reversal on its claims of no substantial evidence.

II.E. The TCEQ Commissioners' Decision on Application 1318C Was Not Arbitrary and Capricious

The decision of an administrative agency is generally not arbitrary and capricious if the decision is supported by substantial evidence.¹⁷³ However, because Texas courts have recognized exceptions to this general rule Appellants have argued this point separately, the City feels compelled to separately address the Appellant's claim that the 1318C Order reflects an arbitrary and capricious decision by the TCEQ Commissioners.¹⁷⁴

As discussed above, these exceptions have been narrowly drawn to include circumstances where an agency is pressured into its decision from congressional sources,¹⁷⁵ when the agency has denied a litigant due process, when an agency has totally failed to make findings of fact and instead based its decision on findings from a different case, when the agency based its decision on non-statutory criteria, and when the agency based its decision on irrelevant factors, or failed to consider legally relevant factors.¹⁷⁶

The Appellant alleges that the TCEQ acted arbitrarily and capriciously by failing to conduct a required "no injury" analysis of the requests made in Application 1318C. In addition, it argues that the absence of an unappropriated water analysis reflects arbitrary and capricious conclusions by the TCEQ Commissioners. As discussed below, the Appellant has not shown the existence of any arbitrary and capricious conduct.

¹⁷³ *Fleetwood*, 110 S.W.3d at 644.

¹⁷⁴ See TEX. GOV'T CODE ANN. § 2001.174(2)(F) (West 2008).

¹⁷⁵ *Fleetwood*, 110 S.W.3d at 644 (citing *Texas Med. Ass'n v. Mathews*, 408 F. Supp. 303, 306 (W.D. Tex. 1976)).

¹⁷⁶ *Boyt Realty Co.*, 10 S.W.3d at 340-41 (citing references omitted).

II.E.1 TCEQ Staff Conducted the Requisite and Customary “No Injury” Analysis

A “no injury” analysis is an assessment of whether a requested water right or water right amendment would cause impairment to an existing water right or vested riparian right within the river basin. The requirement emanates from Section 11.134(b)(3)(B) of the Texas Water Code, not Section 11.122(b).¹⁷⁷ Substantial evidence in the record demonstrates that TCEQ staff conducted a “no injury” analysis of Application 1318C.¹⁷⁸ TCEQ staff assessed the potential impacts of the City’s requested amendment to the “normal flow” portion of Certificate of Adjudication No. 14-1318 to other water rights in the Colorado River Basin, but initially had difficulty in determining what “normal flow” meant as a hydrologic value in the South Concho River.¹⁷⁹ After corresponding with representatives for the City in attempting to quantify the issue,¹⁸⁰ TCEQ staff determined that “normal flow” could not be quantified in a manner that was practicable for real-time management of Certificate of Adjudication No. 14-1318.¹⁸¹ TCEQ staff concluded that its struggles in quantifying “normal flow” in the context of the City’s water right paralleled the very challenges that the Texas Legislature attempted to resolve in enacting the 1967 Act.¹⁸²

After considering the reliability of the City’s proposed approach—using river gages upstream of Twin Buttes Reservoir to calculate the total volume of flows coming into the reservoir, and making a calculation from that volume of the total volume of water the City must allow to pass through Twin Buttes Reservoir because downstream senior and superior diverters have a superior claim to the water—the TCEQ staff was able to conclude that the City’s proposal

¹⁷⁷ 24 Tex. Reg. 1166 (Noting that the “No Injury Rule” embodied in 30 TEX. ADMIN. CODE § 297.45 “sets forth the “no injury” rule pursuant to TEX. WATER CODE ANN. § 11.134(b)(3)(B) providing that an application may not be approved if it would impair an existing water right or vested riparian right such as domestic and livestock use exempt from permitting.”).

¹⁷⁸ AR 9-161 [ED 1318C Exhibit 12 at 2:26-27].

¹⁷⁹ AR 9-161 [ED 1318C Exhibit 12 at 3:21-23].

¹⁸⁰ AR 8-133 [SA 1318C Exhibit 3].

¹⁸¹ AR 9-161 [ED 1318C Exhibit 12 at 4:1-6].

¹⁸² AR 9-161 [ED 1318C Exhibit 12 at 4:8].

would not harm downstream water rights.¹⁸³ The City's expert hydrology consultant, Dr. Brandes, arrived at the same conclusion.¹⁸⁴

The Appellant argues that this evidence of no injury was insufficient to satisfy Section 11.134(b)(3)(B). However, there is much more than just substantial evidence in the record demonstrating otherwise.¹⁸⁵ The Appellant's arguments, therefore, provide no basis for reversal on these grounds.

II.E.2. An Unappropriated Water Analysis Was Not Necessary for Application 1318C

Similarly, the Appellant complains that the TCEQ staff failed to undertake an unappropriated water analysis. The Appellant argues that the 1318C Amendment offers the City enhanced storage rights in Twin Buttes Reservoir than it would otherwise have had under Certificate of Adjudication No. 14-1318 prior to the amendment.

Specifically, Appellant would have the Court ignore substantial evidence in the record demonstrating that TCEQ staff recognized, and considered during its review of Application 1318C, that Certificate of Adjudication No. 14-1318 authorized the maintenance of the Twin Buttes Dam at its current location, and, with a time priority of May 6, 1959, it authorized:

- the impoundment no more than **170,000 acre-feet** of water in the Twin Buttes Reservoir;
- the diversion from Twin Buttes Reservoir, and use, of no more than **25,000 acre-feet** annually for agricultural irrigation purposes; and
- the diversion from Twin Buttes Reservoir, and use, of no more than **29,000 acre-feet** annually for municipal purposes.¹⁸⁶

¹⁸³ AR 9-161 [ED 1318C Exhibit 12 at 4:9-13].

¹⁸⁴ AR 8-130 [SA 1318C Exhibit 2 at 31:22 – 32:2]; AR7, 121 [Tr. at 106:6-14, 106:25 – 107:6].

¹⁸⁵ AR 8-124 [SA 1318C Ex. 1 at 12:14]; AR 8-130 [SA 1318C Ex. 2 at 14:1-3, 14:6-8, 28:1– 29:2]; AR 9-161 [Ex. ED-1318C-12 at 3:18-19]; AR 7-121 [Tr. at 25:20-23]; AR 7- 123 [Tr. at 336:11-23].

¹⁸⁶ AR 9-148 [ED-1318C-1 at 2:30 – 3:5 (Mr. Mikes testimony regarding the scope of Certificate of Adjudication No. 14-1318)]; AR 9-156 [ED-1318C-7 at 1]; AR 9-159 [ED-1318C-10 at 1]; AR 9-160 [ED-1318C-11 at 1]; AR 9-154 [ED-1318C-15 at 1].

The Appellant additionally hopes that the Court ignores substantial evidence in the record demonstrating that TCEQ staff appropriately recognized that the request made in Application 1318C was not a request for a new or increased appropriation of water.¹⁸⁷ *To wit*, the Appellant hopes the Court will disregard the substantial evidence in the record demonstrating that under the 1318C Amendment issued in response to the 1318C Application, the City is still restricted to maintaining the Twin Buttes Dam at its current location and, with the same time priority of May 6, 1959, it is still restricted to:

- impounding no more than **170,000 acre-feet** of water in Twin Buttes Reservoir;
- diverting from Twin Buttes Reservoir, and using, no more than **25,000 acre-feet** annually for agricultural purposes; and
- diverting from Twin Buttes Reservoir, and using, no more than **29,000 acre-feet** annually for municipal purposes.¹⁸⁸

The record clearly demonstrates that the 1318C Amendment does not provide the City with any additional or enhanced storage rights, nor does it otherwise provide the City with any additional appropriation of State water.¹⁸⁹ Because the requests made in Application 1318C would not appropriate any additional water to the City, the TCEQ staff rightfully determined there was no need to assess whether any unappropriated water was available in the Colorado River Basin.¹⁹⁰

Because the Appellant is unable to demonstrate that the 1318C Order was issued as a result of arbitrary and capricious conduct, there is no basis for reversal on these grounds.

III. APPELLANT HAS NOT SHOWN ANY ERROR WAS COMMITTED BY THE EXCLUSION OF EVIDENCE DURING THE CONTESTED CASE HEARING (Reply to Issue 1, 2, 3, 4, and 5) (Cross Point 3)

In advance of the hearing on the merits on this matter before SOAH, Appellant was provided an opportunity like all other parties to present its case-in-chief through written prefiled

¹⁸⁷ AR 9-161 [ED-1318C-12 at 3:18-19]; AR 7-123 [Tr. at 302:20-25, 336:11-23].

¹⁸⁸ AR 6-120 [1318C Amendment].

¹⁸⁹ AR 8-124 [SA 1318C Ex. 1 at 12:14]; AR 8-130 [SA 1318C Ex. 2 at 14:1-3, 14:6-8, 28:1– 29:2]; AR 9-161 [Ex. ED-1318C-12 at 3:18-19]; AR 7-123 [Tr. at 302:20-25, 336:11-23].

¹⁹⁰ AR 9-161 [Ex. ED-1318C-12 at 3:18-19].

testimony and exhibits.¹⁹¹ Like all other parties' direct cases, the admissibility of the Appellant's case-in-chief was governed by the standards of admissibility established by the Texas Rules of Evidence vis-à-vis applicable TCEQ procedural rules.¹⁹² Each party was given the same opportunity to file written objections to the prefiled direct cases of all other parties in the case.¹⁹³ After reviewing the prefiled direct case submitted by Appellant, the City determined that several portions of the proffered testimony, along with multiple proffered exhibits, were objectionable under the standards for admissibility imposed by the Texas Rules of Evidence.¹⁹⁴ Judge Cloninger sustained many of the City's objections, as well as multiple objections raised by the Executive Director, regarding the Appellant's prefiled case.

For the reasons addressed below, the Appellant has not identified any error in the exclusion of evidence that would support the Court's reversal of the 1318C Order.

III.A. Appellant Failed to Preserve Error for Appellate Review

In its Motion for Rehearing, Appellant takes up the issue of the excluded evidence in a peculiar manner.¹⁹⁵ While it asserts its general disagreement with Judge Cloninger's evidentiary rulings, the "error" asserted in its Motion for Rehearing is that the TCEQ Commissioners refused to consider Appellant's offer of proof as competent evidence upon which their decision on Application 1318C could be based.¹⁹⁶ Calling the documents contained in the offer of proof "evidence in the record," the Appellant urged the TCEQ Commissioners to "review the excluded evidence and make [their] determination as to whether the evidence excluded by the ALJ is probative and to be considered."¹⁹⁷

¹⁹¹ AR 2-59 [Order No. 1].

¹⁹² 30 TEX. ADMIN. CODE § 80.127(a)(1).

¹⁹³ AR 2-59 [Order No. 1].

¹⁹⁴ AR 3-77 [Applicant's Objections to Certain Prefiled Testimony and Related Motions to Strike, Motion to Exclude Certain Prefiled Testimony and Motion in Limine].

¹⁹⁵ AR 6-117 [MFR at 7, Point of Error No. 1].

¹⁹⁶ Complaining that "Even if the ALJ had ruled evidence inadmissible for relevancy or on other grounds, the Commission has authority to review and make its decision on the probative value of such evidence."

¹⁹⁷ See MFR at 8, Point of Error No. 1; cf. TEX. GOV'T CODE ANN. § 2001.141(c) (West 2008), 1 Ronald L. Beal, Texas Administrative Practice and Procedure § 7.4 (June 2011) (noting that an administrative decision must be made based on findings of fact derived exclusively from evidence that is formally admitted into the evidentiary

To have preserved its asserted error for appellate review by the Court, the Appellant must have included in its Motion for Rehearing (1) a specific description of the fact finding, legal conclusion, or ruling complained of, and (2) a description of the asserted legal basis of the error that the TCEQ purportedly committed.¹⁹⁸ Both elements must have been disclosed in the Appellant’s Motion for Rehearing in sufficient detail to provide the TCEQ Commissioners with fair notice of the Appellant’s true complaint.¹⁹⁹ Failure to do so constitutes a waiver of the purported error.²⁰⁰

In its Brief, the Appellant complains of Judge Cloninger’s exclusion of specific portions of proffered prefiled testimony of A. J. Jones, Van Carson, Steven Hoelscher, and Stuart Seidel, as well as various associated documentary exhibits that were proffered through the witnesses.²⁰¹ Appellant also complains about the ALJ’s exclusion of Permit 1949 “and related testimony erroneously excluded from evidence.”²⁰² In both instances, the Appellant provides a limited description of its asserted legal basis for its claim of error.

Yet, nowhere in its Motion for Rehearing does the Appellant reference the excluded testimony of Mr. Jones, Mr. Carson, Mr. Hoelscher, or Mr. Seidel. Similarly, the Appellant fails to describe with any reasonable level of specificity its asserted legal basis for claiming error in the exclusion of this testimony and the related excluded exhibits.²⁰³ Instead, the Appellant merely complains that the TCEQ Commissioners would not consider the materials contained in

record), and W. Jeremy Counsellor, *Judicial Review of Evidentiary Decisions In Contested Case Hearings*, State Bar of Texas 18th Annual Admin. L. Course, 4-5 (Sept. 2006) (describing the offer of proof as an instrument that affords the ALJ with an opportunity to reconsider her rulings and that allows an appellate court to determine whether the exclusion was erroneous) (citing *Ludlow v. DeBerry*, 959 S.W.2d 265, 270 (Tex. App.—Houston [14th Dist.] 1997, no pet.).

¹⁹⁸ *Coal. for Long Point Pres. v. Texas Comm’n on Env’tl. Quality*, 106 S.W.3d 363, 373 (Tex. App.—Austin 2003, pet. denied).

¹⁹⁹ *BFI Waste Sys. of N. Am., Inc. v. Martinez Env’tl. Group*, 93 S.W.3d 570, 578 (Tex. App.—Austin 2002, pet. denied).

²⁰⁰ *Id.* at 579; *Coal. for Long Point Pres.*, 106 S.W.3d 373.

²⁰¹ Ap. Brief at 42 (Point of Error Nos. II.B. and III.D.).

²⁰² Ap. Brief at 13-16 (Point of Error No. I.C.).

²⁰³ *See generally* AR 6-117 [MFR].

the Appellant’s offer of proof in their findings of fact.²⁰⁴ In fact, the Appellant argued that the “record” upon which the TCEQ Commissioners could base their decision including, *inter alia*, “offers of proof, objections, and rulings on them.”²⁰⁵

The clear import of Appellant’s complaint in its Motion for Rehearing was that the Appellant wanted the TCEQ Commissioners to consider excluded documents as competent evidence. The Appellant did not attempt in its Motion for Rehearing to notify the TCEQ Commissioners that it intended to appeal any specific ruling made by the ALJ on any specific evidence, nor did it provide any guidance on why any specific ruling made by the ALJ was legally unsupportable. Notwithstanding the Appellant’s Motion to Reconsider Rulings in Order No. 7 on Objections to Prefiled Testimony, its offer of proof, or any other filings or arguments it made regarding the excluded testimony and exhibits,²⁰⁶ the TCEQ Commissioners were entitled to conclude that the Appellant had abandoned its complaints when it failed to properly and specifically identify each purported erroneous ruling in its Motion for Rehearing.²⁰⁷ The Appellant did not preserve any purported error regarding the ALJ’s exclusion of evidence for review by the Court.²⁰⁸ Its complaints on this ground should be dismissed accordingly.

III.B. Even if Preserved, Appellant’s Asserted Error is Not Reversible

Assuming, *arguendo*, that Appellant had properly preserved error it attributes to the exclusion of evidence as discussed in its Brief, the Appellant has not demonstrated that any such error would be reversible. Administrative rulings on evidentiary issues are reviewed on appeal under the same abuse of discretion standard that is applied to trial courts.²⁰⁹ The test for abuse of discretion is not whether the reviewing court would have rendered a different ruling than the trial

²⁰⁴ AR 6-117 [MFR at 7-8 (Point of Error No. 1)].

²⁰⁵ AR 6-117 [MFR at 8, note 5 (citing to TEX. GOV’T CODE § 2001.060)].

²⁰⁶ *See, e.g.*, Ap. Brief at 42-43

²⁰⁷ *BFI*, 93 S.W.3d at 579.

²⁰⁸ *Coal. for Long Point Pres.*, 106 S.W.3d at 373 (recognizing a distinction between alleging error regarding findings of fact and error regarding evidentiary rulings).

²⁰⁹ *Texas Dept. of Public Safety v. Williams*, 303 S.W.3d 356, 358 (Tex. App.—El Paso 2009, no pet.); *City of Amarillo v. R.R. Comm’n*, 894 S.W.2d 491, 495 (Tex. App.—Austin 1995, writ denied).

judge under similar circumstances.²¹⁰ The test is whether the trial judge acted without reference to any guiding rules or principles.²¹¹ Even if the exclusion of evidence was tainted with error, however, the error is reversible in this instance only if it materially affected the TCEQ Commissioners' decision or impacted a material issue in the 1318C Order.²¹² Stated another way, an error committed in excluding evidence is reversible only if it was reasonably calculated to cause and probably did cause the rendition of an improper order.²¹³ Absent such a demonstration by the Appellant, any error committed by the ALJ in the exclusion of the evidence discussed in Appellant's Brief is harmless error and therefore not a proper ground for reversal.²¹⁴

III.B.1. The Exclusion of Permit 1949 Was Appropriate

The Appellant complains that Judge Cloninger improperly excluded Permit 1949 “and related testimony” from evidence.²¹⁵ The City raised multiple objections to numerous portions of the Appellant's prefiled direct case on various grounds, each of which the City specified with particular clarity in its written objections and motion to strike.²¹⁶ The City objected to the admission of Permit 1949—a document that the Appellant refers to throughout its brief—into the evidentiary record on the ground that the document was irrelevant, and was thus inadmissible under Rule 402 of the Texas Rules of Evidence.²¹⁷ Indeed, the document was not relevant for the purposes that the Appellant attempted to offer it—*i.e.*, as evidence of the scope and breadth of the City's authorization to impound waters in Twin Buttes Reservoir.

²¹⁰ *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 242 (Tex. 1985).

²¹¹ *Id.* at 242-43.

²¹² *Lewis v. Metro. Sav. & Loan Ass'n*, 550 S.W.2d 11, 14-16 (Tex. 1997).

²¹³ *Smith Motor Sales v. Texas Motor Vehicle Comm'n*, 809 S.W.2d 268, 273 (Tex. App.—Austin 1991, writ denied).

²¹⁴ *Id.*

²¹⁵ Ap. Brief at 17.

²¹⁶ AR 3-77 [Applicant's Objections to Certain Prefiled Testimony and Related Motions to Strike, Motion to Exclude Certain Prefiled Testimony and Motion in Limine].

²¹⁷ AR 3-77 [Applicant's Objections to Certain Prefiled Testimony and Related Motions to Strike, Motion to Exclude Certain Prefiled Testimony and Motion in Limine].

Indeed, Permit 1949 today has no legal effect whatsoever.²¹⁸ Certificate of Adjudication No. 14-1318, as amended, is the exclusive controlling water right that today governs the City's ability to impound State waters in, and beneficially use water from, Twin Buttes Reservoir.²¹⁹ It was issued by the Texas Water Commission in 1980 as a reflection of the City's final, adjudicated claims to storage and diversion rights in Twin Buttes Reservoir pursuant to the adjudication requirements imposed by the Texas Legislature through the Water Rights Adjudication Act.²²⁰ With the City's claim to water rights in Twin Buttes Reservoir finally determined through the adjudication process, and finally decreed by the 51st District Court of Tom Green County, the City's claim based on Permit 1949 was replaced by the City's adjudicated water right described in Certificate of Adjudication No. 14-1318.²²¹

As the Appellant's own counsel has described—well in advance of undertaking representation of the Appellant in this case:

... under the *Water Rights Adjudication Act*, the state completed the merging of riparian and appropriative water rights for most practical purposes. On rivers that have been adjudicated, the distinction between riparian rights and appropriative rights have essentially been removed, and riparian rights have been converted into appropriative rights for all practical purposes...

...

... Riparian rights were thus transformed from a right to make an unquantified reasonable use of water into a right to make a beneficial use of a specified quantity of water – *a characteristic of appropriative rights*. The transformation was made complete by administrative construction of the Adjudication Act as authorizing assignment of time priorities to proven riparian claims. The then Texas Water Commission declared that this was essential to a workable scheme... **The certificate of adjudication has, thus, become the basic evidence of and measure of water rights, regardless of their origin, riparian, or otherwise.**²²²

²¹⁸ *In re the Adjudication of Water Rights of the Brazos III Segment of the Brazos River Basin*, 746 S.W.2d 207, 210 (Tex. 1988) (recognizing that the Water Rights Adjudication Act of 1967 (TEX. WATER CODE Ch. 11, Subch. G) provides the exclusive means by which a claim to water in a watercourse arising at some point prior to 1968 may be recognized); TEX. WATER CODE ANN. §§ 11.303(a), (b), .322(c) (providing that “[e]xcept for domestic and livestock purposes or rights subsequently acquired by permit, a water right is not recognized in the adjudicated stream or Segment of a stream unless the right is included in the final decree of the court.”).

²¹⁹ AR 8-130 [SA 1318C Ex. 2 at 12:7-10].

²²⁰ AR 9-152 [Ex. ED-1318C-3]; TEX. WATER CODE ANN. § 11.322 (West 2008).

²²¹ AR 9-152 [ED-1318C-3].

²²² Glenn Jarvis, *Texas Groundwater and Surface Water Law Before and After Senate Bill 1*, 8th Annual Texas Water Law Conference, Austin, Texas, on “Overview of Texas Water Law” at 13, 20 (1998) (bolding added, all other emphases in the original); *see also generally* 45 Tex. Prac. Series, *Envtl. Law* § 14.3 (2d ed.) (2011).

Application 1318C was not a request to amend Permit 1949, it was a request to amend Certificate of Adjudication No. 14-1318. Permit 1949—for decades having no legal significance to the City’s ability to store State water in Twin Buttes Reservoir—was not probative of any material proposition in the contested case. The City appropriately objected to its admission on these grounds. Judge Cloninger appropriately sustained the City’s objections pursuant to Rule 402 of the Texas Rules of Evidence. Her rulings were clearly constrained by her adherence and reference to the guiding principles of the Texas Rules of Evidence.²²³ She did not abuse her discretion in excluding the document and the related testimony that the Appellant complains of in its brief.

For the same reasons that the document was not relevant to any material proposition in the contested case, it was nevertheless not harmful error to have excluded it. The document was not dispositive to any decision that the TCEQ Commissioners could have reached. Assuming *arguendo* that the exclusion of the document and testimony was tainted with error, it was not reasonably calculated to cause and did not cause the rendition of any improper order.

III.B.2. The Exclusion of Witness Testimony and Related Exhibits Specified by Appellant Was Appropriate

As discussed above, the Appellant complains of the exclusion of certain testimony and related exhibits proffered by Mr. Jones, Mr. Carson, Mr. Hoelscher, or Mr. Seidel for the first time on appeal. Assuming, *arguendo*, that the Appellant had properly preserved any such error for review by the Court, the ALJ’s rulings in each instance would nevertheless withstand appellate review. The City objected to a great deal of the Appellant’s proffered testimony, including the testimony generally referenced by the Appellant in its Brief, on several different bases, each of which were fully explained in the City’s written objections.²²⁴ Similarly, Judge

²²³ AR 4-86 [Order No. 7]; AR 4-93 [Order No. 8].

²²⁴ AR 3-77 [Applicant’s Objections to Certain Prefiled Testimony and Related Motions to Strike, Motion to Exclude Certain Prefiled Testimony and Motion in Limine].

Cloninger's rulings, and the basis for each, were specifically described in her written orders on objections to prefiled testimony.²²⁵

For the first time, here at the Court of Appeals, Appellant asserts an additional argument that even if the evidence was excluded pursuant to the Texas Rules of Evidence, the excluded evidence was admissible at the hearing pursuant to Section 2001.081 of the Texas Government Code.²²⁶ However, Appellant's interpretation of Section 2001.081 is misplaced. The provision does not mandate that any evidence be admitted, but rather merely provides the Administrative Law Judge with *discretion* to admit evidence that is otherwise inadmissible pursuant to the Texas Rules of Evidence.²²⁷ Appellant improperly suggests that the evidence excluded on firm legal grounds should still have been admitted. Appellant offers not authority in support of this novel argument.

Appellant further argues, again for the first time here on appeal, that the exclusion of evidence violated its right to due process. Appellant's argument, however, hinges on its misapplication of *Lewis v. Metropolitan Savings and Loan Association*. 550 S.W.2d 11 (Tex. 1997). Appellant argues that *Lewis* stands for the proposition that exclusion of "competent and material evidence" may provide grounds for a due process violation.²²⁸ Appellant overlooks that the excluded evidence in *Lewis* differs from the evidence excluded by Judge Cloninger in that the evidence in this case was deemed not "competent and material". Judge Cloninger considered extensive briefing from both parties prior to determining that the proffered testimony was inadmissible.²²⁹

Appellant has not raised arguments appealing the bases for her rulings. Rather, Appellant assumes the evidence was *competent and material* and then applies *Lewis* to suggest a due process violation. Appellant ignores that Judge Cloninger, as indicated by her rulings, adhered to and referenced the guiding rules of the Texas Rules of Evidence in her considerations and

²²⁵ AR 4-86 [Order No. 7]; AR 4-93 [Order No. 8].

²²⁶ Ap. Brief at 42.

²²⁷ TEX. GOV'T. CODE § 2001.081

²²⁸ Ap. Brief at 43.

²²⁹ AR 3-77 [Applicant's Objections to Certain Prefiled Testimony and Related Motions to Strike, Motion to Exclude Certain Prefiled Testimony and Motion in Limine].

ultimate rulings on each of the parties' objections.²³⁰ She did not abuse her discretion in excluding the testimony and exhibits referenced by the Appellant in its Brief. Accordingly, Appellant members did not suffer any due process violations.

Nevertheless, it was not harmful error to have excluded it. Appellant must “show that any error [from exclusion of evidence] was so injurious or prejudicial that it constitutes reversible error.”²³¹ There was no competent evidence offered by the witnesses that was inconsistent with the City's position regarding the anticipated impacts of the 1318C Draft Amendment. Predominantly, the witnesses described riverine conditions that they purportedly observed well in the past. If anything, their testimony would have bolstered the City's stated concerns regarding the problems in managing Certificate of Adjudication No. 14-1318 given the ambiguities that plagued the water right at that time—giving rise to the basis for the requested amendments in Application 1318C.²³² Appellant has made no showing, nor can it make any showing, that the exclusion of its referenced testimony and exhibits from the evidentiary record was reasonably calculated to cause, and probably did cause, the rendition of an improper order. Again, assuming *arguendo* that it was error to exclude the testimony, the error was harmless.

IV. APPELLANT HAS NO PROPERTY RIGHTS IN CERTIFICATE OF ADJUDICATION NO. 14-1318 (Reply to Issue 6)

Appellant asserts that the Commission's issuance of Amendment 1318C violates various constitutional protections afforded to the members of Appellant.²³³ The grounds and legal authority for Appellant's claims are vague, but Appellant appears to argue that: (1) an unconstitutional taking has occurred; and (2) its members have suffered due process and equal

²³⁰ *Coal. for Long Point Pres. v. Texas Comm'n on Envtl. Quality*, 106 S.W.3d 363, 374 (Tex. App. 2003).

²³¹ *Id.*

²³² *See, e.g.*, AR 8-124 [SA 1318C Exhibit 1 at 7:18 – 8:2 (Mr. Wilde describing the difficulty the City, its consulting engineer Dr. Robert Brandes, and the TCEQ staff have all had in quantifying the normal flows language contained in Certificate of Adjudication No. 14-1318)]; AR 8-130 [SA 1318C Exhibit 2 at 13:1-11 (Dr. Brandes explaining the absence of any clear standard for quantifying the volume of the “normal flow” of a watercourse)]; AR 7-121 [Tr. at 125:22 – 126:2 (Mr. Jones describing dry riverine conditions before the installation of the Concho River Basin Watermaster)].

²³³ Ap. Brief at 68 – 71.

protection violations.²³⁴ However, Appellant’s argument is premised on the flawed presumption that the terms contained in Permit 1949 give its members the right to water lawfully stored in Twin Buttes Reservoir. Again, Appellant makes this argument with no legal support.

As an initial matter, water rights for the City are defined by Certificate of Adjudication No. 14-1318. Any prior claim to, or bases for, water in the Concho River Basin were extinguished upon the conclusion of the adjudication process for that basin.²³⁵ In addition, Appellant’s members can have no “equitable rights” in the Concho River Basin.²³⁶ Like the City, the Appellant’s members only have water rights as defined in their individual certificates of adjudication, or through a superior claim to beneficial use for domestic or livestock purposes.²³⁷ No such rights were presented during the evidentiary hearing that authorized any of Appellant’s members to water stored in Twin Buttes Reservoir. Consequently, the water rights owned by Appellant’s members remain entirely unchanged by the 1318C Amendment.

Furthermore, contrary to the Appellant’s suggestion, Amendment 1318C does not “fail to recognize the appropriative senior water rights for irrigation use, in favor of junior rights to use the water for municipal purposes.”²³⁸ Amendment 1318C expressly makes Amendment 1318C “subject to all superior and senior water rights in the Colorado River Basin.”²³⁹ Similarly, the record clearly reflects that the City would be legally prohibited from impounding any State water to which the Appellant’s members are lawfully entitled.²⁴⁰ Any such action on the part of the

²³⁴ *Id* at 69 – 70.

²³⁵ TEX. WATER CODE ANN. §§ 11.303(i), 11.322(d), (e).

²³⁶ *In re Brazos III*, 746 S.W.2d 207, 211 (Tex. 1988).

²³⁷ TEX. WATER CODE ANN. §§ 11.022, 11.121.

²³⁸ Ap. Brief at 70.

²³⁹ AR 8-129 [SA 1318C Exhibit 1-E (1318C Draft Amendment, now 1318C Amendment)]

²⁴⁰ AR 8-129 [SA 1318C Exhibit 1-E (1318C Draft Amendment, now 1318C Amendment, limiting City to storing water in Twin Buttes Reservoir only in accordance with the Accounting Plan, and making 1318C Amendment “subject to all superior and senior water rights in the Colorado River Basin”)]; AR 7-121 [Tr. at 63:5-7 (Dr. Brandes testimony that the Accounting Plan requires the City to pass all flows through Twin Buttes Dam to which downstream senior and superior water rights holders are legally entitled), 63:19-17 (Dr. Brandes testimony that the Accounting Plan will ensure that the City passes all flows that water rights holders downstream are entitled to), 63:25 – 64:1 (Dr. Brandes testimony that downstream senior and superior water rights holders are entitled to the water they request from the Concho Watermaster, in priority order)]; AR 7-123 [Tr. at 342:15-17 (Ms. Alexander testimony that the Concho Watermaster uses the Accounting Plan because it is simple and efficient)].

City would subject the 1318C Amendment to forfeiture or cancellation.²⁴¹ Appellant can point to no credible evidence in the record demonstrating the contrary.

Finally, Appellant’s members were afforded due process. The Adjudication Act provided Appellant members, or their predecessors in interest, with the opportunity to participate in the adjudication process, as well as raise objections to the Final Determination. Section 11.313, Water Code, provides that “[a]ny water right claimant affected by the preliminary determination” must file a written contest “stating with reasonable certainty the grounds of his contest.” Appellant’s membership, or their predecessors, each certainly had the opportunity to contest the Final Determination that created the blemish they complain of today regarding “storm” and “flood” flows.²⁴² Now, approximately 40 years after the adjudication process was completed for the Concho River Basin, Appellant argues that the constitutionally affirmed process provided for thought the Adjudication Act²⁴³ was not sufficient enough to address its concerns. Appellant’s hollow argument cannot alter the fact that this process afforded each of its members due process and equal protection under the law.

Substantial evidence in the record, as well as the law of the State of Texas, defeat Appellant’s attempts to obtain rights to stored water in Twin Buttes Reservoir through this appeal. Its arguments, therefore, provide no basis for reversal on these grounds.

V. APPELLANT MISREPRESENTS THE APPLICABILITY OF *MARSHALL* TO APPLICATION 1318C (Reply to Issue 1, 2, 4, and 5) (Cross Point 3)

In its Brief, the Appellant argues that Section 11.122(b) of the Texas Water Code, as explained by the Supreme Court of Texas in *City of Marshall v. City of Uncertain*,²⁴⁴ should have compelled denial of Application 1318C. The City respectfully disagrees with the Appellant’s interpretation of Section 11.122(b) and of the *Marshall* opinion as discussed in its Brief.²⁴⁵

²⁴¹ AR 8-129 [SA 1318C Exhibit 1-E (1318C Draft Amendment, now 1318C Amendment)].

²⁴² TEX. WATER CODE § 11.313.

²⁴³ *In re Upper Guadalupe Segment*, 642 S.W.2d at 443-44.

²⁴⁴ 206 S.W.3d 97 (Tex. 2006).

²⁴⁵ *E.g.*, Ap. Brief at 25.

At issue on appeal in *Marshall* was the TCEQ Executive Director's approval of an application by a municipality to amend its certificate of adjudication to include an additional purpose of use without first providing notice and an opportunity for a contested case hearing on the merits of the request.²⁴⁶ As the Supreme Court explained, the plain language of Section 11.122(b) *mandates* that the TCEQ authorize a water right amendment when an application contains the necessary information to demonstrate that the request satisfies the provisions of the statute.²⁴⁷

Contrary to the Appellant's interpretation of Section 11.122(b), that provision does not prohibit issuance of a water right amendment when the application cannot satisfy the Section 11.122(b) terms. Instead, the statute requires that if its terms are not met, the application is subject to notice and an opportunity for a contested case hearing, applying all other applicable criteria, which includes those set forth in Section 11.134 of the Water Code.²⁴⁸ In the case of a noticed application, like Application 1318C, an applicant would surely lose the benefit of the issuance mandate in Section 11.122(b), and instead it would be required to demonstrate satisfaction of criteria provided for in Section 11.134(b)(3) of the Water Code.²⁴⁹ The plain language of Section 11.134(b)(3) prohibits approval of an application for a water right or water right amendment if, *inter alia*, the proposed appropriation impairs existing water rights or vested riparian rights, or if it fails to consider any applicable environmental flow standards established elsewhere in Chapter 11, Water Code.²⁵⁰ As the TCEQ noted in its promulgation of rules based on Section 11.134(b)(3)(B):

If the existing water right can be fully exercised in accordance with all terms and conditions within the "four corners" of the existing water right so as to have the same impacts on stream flows as the proposed amended water right, then the

²⁴⁶ *Marshall*, 206 S.W.3d at 99 (explaining that the Court granted petition for review "to determine section 11.122(b)'s effect on section 11.132 and 11.133 notice and hearing requirements when a proposed permit amendment changes the permit's purpose of use but does not affect the amount of water appropriated or the authorized diversion rate.").

²⁴⁷ *Id.* at 105 (noting that Section 11.122(b) requires issuance of a water right amendment "that does not increase the amount of water authorized to be diverted or the authorized diversion rate, but it also contains a number of conditional clauses through which the mandate must be viewed...").

²⁴⁸ *Id.* at 108, 111-12.

²⁴⁹ *Id.* at 112-13.

²⁵⁰ TEX. WATER CODE ANN. §§ 11.134(b)(3)(B), (D) (West 2008).

proposed change could not, as a matter of law, impair other water rights. If the proposed change would create such impacts, however, the commission will consider what types of restrictions to place on the amendment to prevent such impacts. This is commission practice and consistent with case law.²⁵¹

Nothing in *Marshall* disturbs this approach. Instead, *Marshall* instructs us that Section 11.122(b) dictates the circumstances under which a particular water right amendment application may be issued without notice and an opportunity for hearing, and when a particular water right amendment application may be issued without notice or an opportunity for hearing.²⁵² Here, the City did not seek an amendment without notice and hearing.²⁵³ Therefore, the Appellant has no argument to make that it was deprived of the protections afforded by Section 11.122(b), as explained by *Marshall*.

As discussed above, and as otherwise reflected in the PFD and the 1318C Order, substantial evidence in the record demonstrates that Application 1318C satisfied all applicable criteria of Section 11.134 of the Texas Water Code.²⁵⁴ The Appellant has incorrectly described *Marshall* and the degree to which that case influences the review of the 1318C Order in this appeal. As a consequence, Appellant has demonstrated no basis for reversal on these grounds.

²⁵¹ 24 Tex. Reg. 1166 (Feb. 19, 1999).

²⁵² *Marshall*, 206 S.W.3d at 112-13.

²⁵³ AR 6-115 [1318C Order, FOF 24, 24, COL 7].

²⁵⁴ *E.g.*, AR 6-115 [1318C Order, COL 6, 8, 9, 10, 11, 12, 13].

PRAYER FOR RELIEF

Based on the foregoing, the City of San Angelo respectfully requests that the Court:

1. Affirm the judgment of the trial court below;
2. Determine that the Appellant take nothing by its action; and
3. Grant the City all such other and further relief to which it may be justly entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &
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By: /s/ Jason Hill

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**ATTORNEYS FOR INTERVENOR/
DEFENDANT CITY OF SAN ANGELO**

CERTIFICATE OF SERVICE

I certify that on this, the 15th day of October, 2012, a true and correct copy of the foregoing submission has been served on the persons listed below by Certified Mail, Return Receipt Requested:

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McAllen, Texas 78503

(By certified mail, return receipt requested
and electronically to glenjarvis@aol.com)

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**ATTORNEYS FOR DEFENDANT TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY**

/s/ Jason Hill
JASON T. HILL

CONCHO RIVER BASIN WATER CONSERVANCY ASSOCIATION,

Appellant,

v.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY,

Appellee; and

THE CITY OF SAN ANGELO,

Intervenor/Appellee.

APPELLEE'S APPENDIX

- Appendix 1: Correspondence from Tim Brown, esq., to Craig Mikes regarding Application 1318C letter (AR 8-133)
- Appendix 2: Correspondence Mark Vickery, P.G., to Glenn Jarvis, esq., regarding scope of Certificate of Adjudication No. 14-1318 (AR 2-66)
- Appendix 3: 24 Tex. Reg. 1166 (Feb. 19, 1999)
- Appendix 4: *In re Adjudication of Water Rights of the Upper Guadalupe Segment of the Guadalupe River Basin*, 642 S.W.2d 438 (Tex. 1982).
- Appendix 5: *In re Adjudication of Water Rights of the Brazos III Segment of the Brazos River Basin*, 746 S.W.2d 207 (Tex. 1988).
- Appendix 6: Modified Final Determination for Concho River Segment of the Colorado River Basin (AR 9-148)
- Appendix 7: Final Determination for Brazos III Segment of the Brazos River Basin.
- Appendix 8: *City of Marshall v. City of Uncertain*, 206 S.W.3d 97 (Tex. 2006)

SA 1318C 3

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December 2, 2005

Craig Mikes, Project Manager MC-160
Water Rights Permitting and Availability Section
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

RE: Application No. 14-1318C by San Angelo Water Supply Corporation; Middle Concho River, Colorado River Basin, Tom Green County, Texas

Dear Craig:

By your letter dated October 12, 2005, you requested Mr. Will Wilde of the San Angelo Water Utilities, to provide to the staff the scientific definition of "normal flow" as referenced in the above application and, additionally, the method used to determine or calculate the "normal flow." The date stated in your letter has been extended several times to the date of December 2, 2005. The application proposes to amend the Twin Buttes water right to, among other things, amend Special Condition 5.C. which contains the "normal flow" verbage.

As I believe you know, Bob Brandes assists the City on hydrological matters. On receipt of your letter, the question about the definition was put to him. Dr. Brandes advises that there is no accepted scientific definition for "normal flow." Accordingly, he could not define it.

In the meantime, we have been in contact with Glenn Jarvis who represents downstream appropriators, in an attempt to come up language to substitute for Condition 5.C.. Although several proposals were put forward, none could meet Mr. Jarvis' satisfaction. While we are disappointed in not being able to accomplish a resolution with Mr. Jarvis and his clients, Dr. Brandes and the City have come up with what I believe is an appropriate paragraph to replace the problematical special condition paragraph. It is as follows:

A conduit shall be constructed in the aforementioned dam with the inlet at elevation 1885.0 feet above mean seal level, having an opening of not less than five feet in diameter and equipped with a regulating gate. Certificate holder shall permit and provide

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SA 1318C 3

WATER RIGHTS PERMITTING

Appendix 1

SA 1318C Exhibit 3

Craig Mikes, Project Manager

December 2, 2005

Page 2

for the free passage of inflows to Twin Buttes Reservoir through the conduit in amounts to which lower appropriators are entitled as determined by the watermaster or the commission.

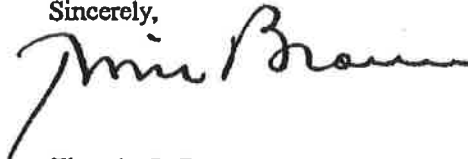
Additionally, the City would not have any problem with adding to the paragraph, after the word "commission," these words, "based on streamflow gages located on upstream watercourses that the watermaster or the commission considers appropriate for making such determinations." Having said that, I do not think the words are necessary or would assist or detract in any way the watermaster or the Commission from fulfilling their duties. I should tell you that this suggested paragraph and these added words were provided to Mr. Jarvis and rejected.

We recommend the suggested paragraph and request that it be substituted for the special condition 5.C. If the draft amendment results in a protest, we will simply have to deal with them as they come.

In closing, on behalf of the City, we would like to thank you for courtesies allowed by extending the time to make this response and it is with regret that the extensions did not result in a resolution of the Special Condition 5.C. language.

Regards to all.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Brown", written in a cursive style.

Timothy L. Brown

cc: Will Wilde
Dr. Bob Brandes
Glenn Jarvis

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



S.A. Reply Exhibit A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 30, 2008

Mr. Glenn Jarvis, Attorney
Law Offices of Glenn Jarvis
Inter National Bank Building
1801 South Second Street, Suite 550
McAllen, TX 78503

Re: Concho River Basin Water Conservancy Association's (CRBWCA) Motion to the Executive Director to Correct Clerical Error in Certificate of Adjudication No. 4 - 1318

Dear Mr. Jarvis:

This letter is in response to CRBWCA's motion to the Executive Director to amend Certificate of Adjudication No. 14-1318, belonging to the City of San Angelo, to correct the Certificate to add a provision that was in the prior permit, Permit No. 1949. I have reviewed this request with staff and have determined that the Executive Director does not have the authority to grant this request. I also have determined that even if I or this agency had the authority to act on this request, the motion should be denied.

The provision in Permit No. 1949 that you ask to be included in Certificate of Adjudication No. 14-1318 is:

The permittee shall store only storm and flood waters of said stream subject to all the rights of prior appropriators and lawful diverters below. Whenever the Board finds that the permittee is storing any water to which downstream appropriators and lawful diverters are entitled, the permittee shall release same to said appropriators or lawful diverters on the order of the Board. By accepting this permit, permittee agrees to abide by and comply with any such order of the Board without delay. Failure to comply with any such order shall constitute grounds for forfeiture and cancellation.

The motion cannot be granted because there is no rule or statute that provides for the type of relief that CRBWCA requests. This Certificate of Adjudication was finalized many years ago and the Executive Director and the TCEQ do not have the authority to make any changes to this water right in this proceeding. Additionally, CRBWCA is requesting to change someone else's water right. It does not have standing to make this request. Any complaints about this Certificate should have been handled in the adjudication process, or after the Certificate was issued. Nothing in the Texas Water Rights Adjudication Act allows this Certificate of Adjudication to be reopened now.

Moreover, this motion is to the Executive Director, who does not make decisions like the one requested here. Although there is a rule that allows corrections to permits, 30 Tex. Admin. Code § 50.145, that rule allows the Executive Director to make *nonsubstantive* corrections to permits

with the General Counsel's approval. The correction is initiated by the ED or the permittee. If this motion is considered as a request to the Executive Director to make a correction under Section 50.145, the types of corrections that can be made are the following:

1. To correct a clerical or typographical error
2. To change the mailing address of the permittee
3. To change the name of an incorporated permittee
4. To describe more accurately the location of area with a Certificate of Convenience and Necessity (CNN)
5. To redraw incorrectly drawn maps for a CNN
6. To describe more accurately in a water rights permit the boundary of or the point, rate or period of diversion
7. To describe more accurately the place of discharge or the route of the discharge in the watercourse in a water quality permit
8. To describe more accurately the pattern of discharge or disposal of waste
9. To describe more accurately the character, quality, or quantity of waste being disposed of; or
10. To state more accurately or update any provision in a permit without changing the authorizations or the requirements addressed by the provision

Sections 1, 6, and 10 could apply to a water right. However, CRBWCA's request does not request a change to describe a diversion or boundary more correctly, or more accurately state a provision. The change is to add a new provision that CRBWCA believes was inadvertently left out of the Certificate.

Additionally, the requested provision could be considered to be a substantive change to the Certificate, depending on how the provision is interpreted. The provision could be considered nonsubstantive because senior water rights are always protected in water rights. Tex. Water Code § 11.134. If a reservoir impounds water that should have been passed to a senior water right holder (the senior water right holder requested that inflows to the reservoir be passed to him), the TCEQ could order the reservoir permittee to release that water illegally stored to the senior. However, if the requested provision is interpreted the way CRBWCA requests, to mean that all flows other than "storm and flood waters" cannot be impounded and must be passed downstream for seniors, this paragraph is a substantive change from the rest of the permit and current water law and policy.

Although it did not argue this, CRBWCA may also be asking for an involuntary amendment under 30 Tex. Admin. Code § 297.61 to correct this water right. That section provides that on the petition of the executive director, the commission may amend a permit, certified filing, or certificate of adjudication in order to:

- (1) protect superior and senior water rights in the river basin, or in the case of transwatershed diversions of water, in the basin of origin;

- (2) provide a reasonable means for the enforcement of the terms, conditions, provisions, and limitations contained in the water right;
- (3) provide for the keeping and reporting of information and measurements in connection with the use of water;
- (4) provide a reasonable means for the enforcement of applicable law;
- (5) correct errors inadvertently made in the preparation of a water right, such as in the name of the water right holder, boundary description, or other detail incorrectly transcribed; or
- (6) cure ambiguities or ineffective provisions in a water right.

However, CRBWCA did not follow the procedures in this rule by asking for the Executive Director to file a petition with the Commission to amend this water right, but instead asked for the Executive Director to correct the water right.

Despite this procedural problem, CRBWCA may argue that Subsection (5) applies to this situation. However, as stated above, this addition of the paragraph would be a substantive change to the water right if interpreted as CRBWCA requests. Arguably, Subsection (5) would not apply to substantive changes, since it covers "errors inadvertently made" and the listed examples are detail-type corrections or non-substantive. If the rule does cover substantive changes, staff asserts that it is likely that the paragraph CRBWCA requests was not "inadvertently" left out. The requested paragraph is not necessary to protect superior and senior rights of the river basin (Subsection 1), or provide a reasonable means for the enforcement of applicable law (Subsection 4).

For the reasons stated above, I have determined that the motion should be dismissed because the Executive Director and the TCEQ do not have the authority to grant the relief requested.

If there were no procedural difficulties with this motion, I still would not grant the motion. CRBWCA has not shown that this paragraph was left out inadvertently. I believe that it is most likely that the omission was intentional and was made for several reasons. As CRBWCA states, the requested provision is not in the Final Determination, nor is it mentioned in the trial court's judgment that approved and modified the Final Determination. The provision is only in a permit that no longer exists. When a Certificate of Adjudication is prepared after the Final Decree is issued by the court, the underlying permits are superseded by the certificate. Tex. Water Code § 11.322 (c) provides that except for domestic and livestock purposes or rights subsequently acquired by permit, a water right is not recognized in the adjudicated stream or segment of a stream unless the right is included in the final decree of the court.

The subject matter of the provision, the different treatment of floodflows and normal flows, was addressed in the Final Determination that adjudicated this Certificate of Adjudication (the Concho River Basin Adjudication). The Texas Water Rights Commission (TRWC) (TCEQ predecessor agency) recognized the problem with dividing a stream into normal flow and flood flow and stated that if it was to deal with that division as well as allocating water to those with or without a time priority, particularly in the Concho River segment, "a wholly unworkable scheme will have

been created." The TWRC merged appropriative rights and rights recognized under Section 5.303 (which includes riparian rights) of the Texas Adjudication Act (now Section 11.303) into a common system and placed all recognized riparian claimants on a time priority with statutory rights. *Modified Final Determination of Claims of Water Rights in the Concho River Segment of the Colorado River Basin*, Texas Water Rights Commission, August 16, 1976, p. 8. A provision dividing normal flow and flood flow in the certificates of adjudication, including San Angelo's, would be contrary to this finding.

Additionally, Chapter 11 of the Texas Water Code nowhere distinguishes between flood flows and normal flows. Although this provision is in some older Certificates, "storm and floodwaters" cannot in reality be distinguished from "normal flow" or "other flow" of the river. There is no workable definition of "normal flow." "Normal flow" is primarily discussed in older, pre-adjudication case law concerning what water riparian right owners could take from a river. After the Texas Adjudication Act was enacted in 1967, riparian rights for irrigation use must be adjudicated, limiting the need for the definition of normal flow.

In *Mott v. Boyd*, 116 Tex. 82, 286 S.W. 458 (1926), the court was concerned with the nature of riparian rights and discussed that riparian's were limited to normal flows of the river. The court stated that normal flows are the flows below the "line of highest ordinary flow" of the river. The court determined that "'the line of highest ordinary flow" is the highest line of flow which the stream reaches and maintains for a sufficient length of time to become characteristic when its waters are in their ordinary, normal and usual condition, uninfluenced by recent rainfall or surface run-off." 286 S.W. at 469.

The statements regarding "normal flow" in the *Mott* case have been criticized. A hearing examiner for The Texas Board of Engineers (predecessor agency to the TCEQ) determined in 1954 that "there is no earthly way that the ordinary flow of a stream can be determined with certainty at any one time or at any one place under [the *Mott v. Boyd* decision]." Hutchins, Wells, *The Texas Law of Water Rights* (The Texas Legislature and Texas Board of Water Engineers, p. 351 (1968).

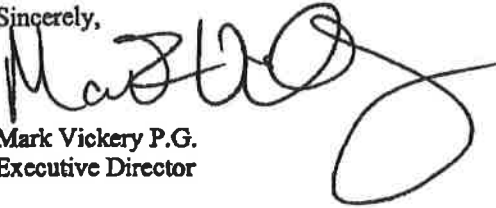
In *State v. Hidalgo County Water Cons. & I. Dist. No. 18*, 443 S.W.2d 728, 739-40 (Tex. Civ. App. - Corpus Christi 1969, *superseded by statute on other grounds*), the court discussed the fact that some water rights call for the normal flow and underflow of the river, while others claim floodwaters. The court noted that the trial court had found that "as a fact that for all practical purposes it is impossible to classify waters in the categories" of normal flow and floodwaters, and that neither the hydrologist nor the legal profession could identify "normal" flow as defined in *Mott*.

With more water appropriated in the rivers, the definition of normal flows versus flood flows has become even more problematic. With rivers at lower levels, all the water would be considered normal flow except immediately after a rain. Requiring the passage of floodflows at all times to senior water right holders is unworkable and contrary to good public policy.

Mr. Glenn Jarvis, Attorney
October 30, 2008
Page 5

Therefore, we are returning your Motion to the Executive Director to Correct Clerical Error in Certificate of Adjudication No. 14-1318.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Vickery", with a large, stylized flourish extending from the end of the signature.

Mark Vickery P.G.
Executive Director

cc:

Mr. Tom. C. Massey, Attorney at Law, Massey, Balentine & Psencik, P.C., 202 West Twohig, Suite 200, P. O. Drawer 2809, San Angelo, Texas 76902-2809

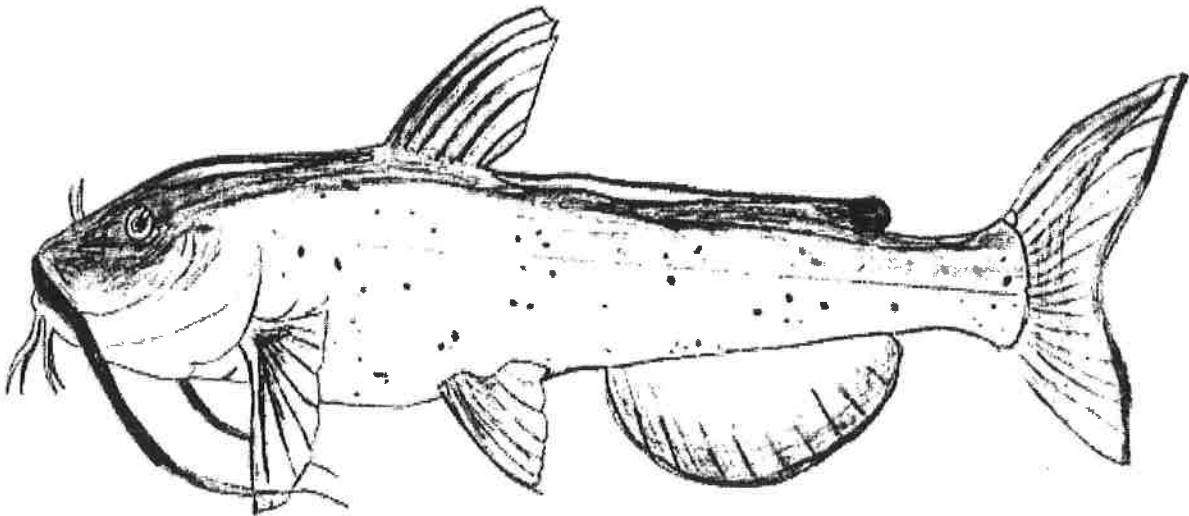
Mr. Yantis Green, Manager, Tom Green County WCID No. 1, P. O. Box 488, Veribest, Texas 76886

Mr. Mark A. Trevino, Area Manager, United States Department of the Interior, Bureau of Reclamation, Oklahoma Texas Area Office, 5316 Highway 290 West, Suite 510, Austin, Texas 78735-8931

TEXAS REGISTER

Volume 24 Number 8 February 19, 1999

Pages 1095-1286



water resources as provided by Texas Water Code §11.027. The amendment further provides that the priority of a water right is determined by the date the application is filed with the commission as provided by Texas Water Code 11.141. The amendment clarifies that an application is deemed to have been filed with the commission for purposes of time priority when it has been declared administratively complete by the executive director and filed with the chief clerk. The provisions of existing §297.44 are transferred and consolidated with other special conditions under new §297.58 described below.

Additionally, new §297.44 provides that there are some exceptions to the first in time, first in right principle. One such exception relates to water rights granted on the main stem of the Rio Grande below the Amistad Reservoir in the Lower Rio Grande Valley (see, generally, Chapter 303 of this title). In the court's adjudication of those rights in *State v. Hidalgo County WCID No. 18, 443 S.W.2d 728* (Tex. Civ. App. - Corpus Christi 1969, writ ref'd n.r.e.), priority was assigned based upon the classification of use, rather than the date the certified filing, claim, or application was filed, in order to address rights granted under Spanish and Mexican law and recognized by Texas under treaty and equitable rights granted by the courts. *State v. Valmont Plantations*, S.W. 2d 502 (1962). Under the court's ruling, rights for domestic, municipal, and industrial use have a higher priority and may be curtailed during times of low flow only after rights for irrigation, mining, and other uses have been limited. The other exceptions to the prior appropriation principle relate to certain limited uses exempt from permitting under Texas Water Code §§11.142, 11.1421, 11.1422, and 11.303(l).

The repeal of §297.45, Return and Surplus Water, and adoption of new §297.45, "No Injury" Rule, sets forth the "no injury" rule pursuant to Texas Water Code §11.134(b)(3)(B) providing that an application may not be approved if it would impair an existing water right or vested riparian right such as domestic and livestock use exempt from permitting. Additionally, the amendment provides that the scope of review under the "no injury" rule when considering an application for a water right amendment is limited by the "four corners" analysis provided under Texas Water Code §11.122, as amended by Senate Bill 1 (1997). Under this provision, the commission is to compare the effect of the proposed amendment on other existing water rights with such effects from the full, lawful exercise of the water right prior to its amendment to determine whether the proposed change would impair another existing water right. If the existing water right can be fully exercised in accordance with all terms and conditions within the "four corners" of the existing water right so as to have the same impacts on stream flows as the proposed amended water right, then the proposed change could not, as a matter of law, impair other water rights. If the proposed change would create such impacts, however, the commission will consider what types of restrictions to place on the amendment to prevent such impacts. This is commission practice and consistent with case law. The provisions of existing §297.45 are clarified and transferred to new §297.49 as described below.

The repeal of §297.46, Suppliers of Water for Irrigation, and adoption of new §297.46, Consideration of Public Welfare, implements Texas Water Code §11.134(b)(3)(C) by providing that the commission may not grant an application for a new or amended water right if it would be detrimental to the public welfare. The rule sets out the factors and criteria, already in another rule, to be used by the commission in making

this determination. The provisions of existing §297.46 are transferred to new §297.52.

The repeal of §297.47, Time Limitations for Commencement or Completion of Construction, and adoption of new §297.47, Impacts on Groundwater, implements changes made by Senate Bill 1 (1997) to Texas Water Code §11.134(b)(3)(D) and new Texas Water Code §11.151 requiring the commission to assess the impacts to groundwater in its review and action on an application for a new or amended water right. The provisions of existing §297.47 are transferred to new §297.51 as described below.

The repeal of §297.48, Low-Flow Outlets for Dams, and adoption of new §297.48, Waste Prevention, provides for the transfer of provisions in existing §297.54 to new 297.48. The provisions of existing §298.48 are consolidated with other special conditions and transferred to new §297.58.

The repeal of §297.49, Habitat Mitigation, and adoption of new §297.49, Return and Surplus Water, implements changes made by Senate Bill 1 (1997) to Texas Water Code 11.046. Such changes clarify that, unless provided otherwise in the water right, the water right holder may use and reuse the water as authorized under the water right prior to its return to the stream. However, once the water is returned to the stream, it is generally considered to be surplus water, subject to appropriation by others and meeting environmental water needs. The amendments also make clear that return flows must also meet applicable water quality standards for the stream contained in Chapter 307 of this title. The provisions of existing §297.49 are clarified and transferred to new §297.53 as described below.

The repeal of §297.50, Water Quality Effects, and adoption of new §297.50, Consideration of Water Conservation Plans, provides for the clarification and transfer of the provisions of §297.50 to new §297.54 and the transfer of the provisions of §297.55 to proposed new §297.50.

The repeal of §297.51, Estuarine Considerations, and adoption of new §297.51, Time Limitations for Commencement or Completion of Construction, provides for the clarification and transfer of the existing provisions of §297.51 to proposed new §297.55 as described below and the transfer of existing provisions of §297.47 to new §297.51.

The repeal of §297.52, Instream Uses, and adoption of new §297.52, Suppliers of Water for Irrigation, allows for the transfer of the existing provisions of §297.46 to proposed new §297.52 and the clarification and transfer of the existing provisions of §297.52 to proposed new §297.56 as described below.

The repeal of §297.53, Conservation and Beneficial Use, and adoption of new §297.53, Habitat Mitigation, allows for the clarification and transfer of the existing provisions of §297.53 to new §297.50 and for the clarification and transfer of existing provisions of §297.49 to new 297.53. New §297.53, Habitat Mitigation, reorganizes the existing provisions under §297.49 to make it more readable. Additionally, the change clarifies existing criteria used to determine the manner and extent of mitigation required for aquatic and wildlife habitat lost as a result of the approval of the application pursuant to Texas Water Code §11.152. Specifically, the commission is to consider any environmental net benefit to the habitat produced by the project in determining overall mitigation requirements. These rules are consistent with current 279 rules and policy.

the contacts of the defendant himself that are determinative.⁴

We recognize that it was incumbent upon these individuals to negate all bases of personal jurisdiction. Thode, *In Personam Jurisdiction; Article 2031b, The Texas "Long Arm" Jurisdiction Statute; And the Special Appearance to Challenge Jurisdiction in Texas and Elsewhere*, 42 Texas L.Rev. 279, 322 (1964). At the special appearance hearing, the only evidence offered to negate jurisdiction was Steinbeck's testimony that she and the other individuals were residents of Arizona. Villa's answers to interrogatories propounded by Siskind confirm this fact. In view of Siskind's failure to allege any act by these individuals in Texas, we believe that the individual Respondents have sustained their burden.⁵

[3] Subjecting the individual Respondents to the jurisdiction of the Texas courts violates "traditional notions of fair play and substantial justice." Siskind's attempt to hail these individuals into a Texas court based on Villa's contacts fails the ultimate test of due process. Absent some allegation of a specific act in Texas, or one with reasonably foreseeable consequences within this state's borders, a nonresident employee of a foreign corporation cannot be sued in Texas simply because his or her employer solicits business here. Constitutional considerations of due process forbid this bootstrapping of minimum contacts. See *Rush v. Savchuk*, *supra*, 444 U.S. at 329, 100 S.Ct. at 577.

The judgment of the Court of Appeals affirming the trial court's dismissal of Siskind's suit against Villa is reversed. That part of Siskind's suit is severed and remanded for trial. In all other respects, the judgment of the Court of Appeals is affirmed.

4. Although *Rush* involved the attempted exercise of *quasi in rem* jurisdiction, its principles are equally applicable to the attempted exercise of *in personam* jurisdiction. As the Supreme Court indicated in *Shaffer v. Heitner*, 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977), the exercise of jurisdiction over nonresidents in any case must satisfy the due process requirements of minimum contacts with the forum.

In re the ADJUDICATION OF THE WATER RIGHTS OF the UPPER GUADALUPE SEGMENT OF the GUADALUPE RIVER BASIN.

No. C-770.

Supreme Court of Texas.

Nov. 24, 1982.

Rehearing Denied Dec. 31, 1982.

Appeal was taken from a judgment of 57th District Court, Bexar County, Richard J. Woods, J., affirming a determination of the Water Rights Commission with respect to navigability and riparian rights and upholding the constitutionality of the Water Rights Adjudication Act. The Court of Civil Appeals, Klingeman, J., 625 S.W.2d 353, affirmed, and appeal was again taken. The Supreme Court, Pope, J., held that: (1) Water Rights Adjudication Act did not violate doctrine of separation of powers, and (2) after notice and upon reasonable terms, termination of riparians' continuous nonuse of water under test period provision of Act was not taking of their property.

Judgments affirmed.

1. Constitutional Law ⇐52

Waters and Water Courses ⇐128

Water Rights Adjudication Act did not violate doctrine of separation of powers where judicial review provision made clear that court would act independently of Water Commission's determination, Commission's determination was followed by au-

5. Of course, a nonresident need not be physically present in the state. Due process is satisfied if the defendant's activities outside the state have reasonably foreseeable consequences in the forum. *Product Promotions, Inc. v. Cousteau*, 495 F.2d 483, 496 (5th Cir. 1974). Siskind, however, does not allege any act on the part of these individuals from which we can infer a reasonably foreseeable consequence occurring Texas.

tomatic and mandatory judicial review, and review was to be exercised on those parts of Commission's determination to which exceptions were timely filed and as to which court could hear additional evidence. V.T.C.A., Water Code §§ 11.301 et seq., 11.320, 11.321.

2. Waters and Water Courses ⇐152(12)

Burden of proof on judicial review of adjudication of Water Commission under Water Rights Adjudication Act is upon one who levels exceptions. V.T.C.A., Water Code §§ 11.301 et seq., 11.320, 11.321.

3. Waters and Water Courses ⇐42

Although riparians, whose land grants were acquired before July 1, 1895, have vested right in use of nonflood waters, such vested right is to a usufructuary use of what state owns. Acts 1889, 21st Leg., p. 100, ch. 88, § 1 et seq.; Acts 1895, 24th Leg., p. 21, ch. 21, § 1 et seq.

4. Navigable Waters ⇐4

State holds title to waters in navigable stream in trust for public.

5. Eminent Domain ⇐2(10)

After notice and upon reasonable terms, termination of riparians' continuous nonuse of water under provision of Water Rights Adjudication Act limiting riparian rights to maximum amount of water beneficially used for any calendar year in test period was not "taking" of their property. V.T.C.A., Water Code §§ 3.301 et seq., 11.303(b); U.S.C.A. Const.Amends. 5, 14.

See publication Words and Phrases for other judicial constructions and definitions.

Darrell G. Lochte, Wallace & Jackson, Kerrville, Hooper, Robinson & Moeller, Elbert Hooper, Henry & Lowerre, Richard Lowerre, Austin, for petitioner.

Mark White, Atty. Gen., R. Lambeth Townsend and Timothy Brown, Asst. Attys. Gen., Austin, for respondent.

1. Professor A.W. Walker, Jr. has collected some of the legislative acts in his *Legal History of the Riparian Right of Irrigation in Texas*

POPE, Justice.

This is an appeal from an adjudication of the water rights along the Upper Guadalupe River. The Texas Water Rights Commission, acting under the Water Adjudication Act of 1967, determined the water rights of owners of 208 separate tracts of land that border the Upper Guadalupe River. Nineteen parties excepted, and, after hearing additional evidence, the 57th District Court made final the adjudication. The judgment fully recognized the riparian right to domestic and livestock uses; it recognized no riparian rights for lands granted after July 1, 1895; it recognized the riparian right to water used for irrigation but limited the right to the extent of the actual use during any year of the statutory test period from 1963 to 1967. The court of civil appeals affirmed the judgment of the trial court. 625 S.W.2d 353. We granted the writ of error because the decision in this case conflicts in some respects with the decision of the court of appeals in the case of *Schero v. Texas Dept. of Water Resources*, 630 S.W.2d 516 (Tex. App.—Waco, 1982), which is also decided today. Common to both appeals are several constitutional attacks upon the validity of the Water Adjudication Act. We affirm the judgments of the courts below in this case.

Water law in Texas was in a chaotic state prior to the enactment of the Water Rights Adjudication Act in 1967. Tex. Water Code Ann. §§ 5.301-5.341. Texas recognized both the law of riparian rights and also the law of appropriation of waters. Texas judicially adopted the riparian rights system, at least by 1856. *Haas v. Choussard*, 17 Tex. 588 (1856); see also *Fleming v. Davis*, 37 Tex. 173, 201 (1872). During the same general period of time, however, the Texas Legislature treated the ordinary flow of rivers, including that of the Guadalupe, as waters that the State could legislatively appropriate.¹ In 1852 the Texas Legisla-

¹Since 1836, Proceedings, Water Law Conference, University of Texas 41, 47 (1959):

ture, by enacting its first irrigation law, authorized county courts to regulate dams and the distribution of shares of water. 1852 Tex.Gen.Laws, ch. 74, at 80, 3 H. Gammel, Laws of Texas 958 (1898).

Following the severe drought that began in the summer of 1883, Governor Lawrence S. Ross called on the 21st Legislature to adopt for Texas the appropriation system of water rights.² The legislature responded enacting The Irrigation Act of 1889, 1889 Tex.Gen.Laws, ch. 88, at 100, 9 H. Gammel, Laws of Texas 1128 (1898). Governor Culberson called on the 24th Legislature six years later to preserve the State's storm waters for beneficial use, and that resulted in the enactment of the Irrigation Act of 1895. 1895 Tex.Gen.Laws, ch. 21, at 21, 10 H. Gammel, Laws of Texas 751 (1898). The acts declared that the unappropriated waters of streams in the arid parts of the State were the property of the public, but provided that the rights of riparian owners were not prejudiced.

Those two acts launched Texas upon its dual system of water rights. The State today makes appropriations of (1) its flood waters, *Motl v. Boyd*, 116 Tex. 82, 286 S.W. 458 (1926), (2) the waters in streams riparian to lands previously granted by Spain and Mexico, *State v. Valmont Plantations*, 346 S.W.2d 853 (Tex.Civ.App.—San Antonio 1961), *opinion adopted*, 163 Tex. 381, 355 S.W.2d 502 (1962), and (3) the ordinary flow

By a special act of October 1, 1866 (5 Gammel's, Laws, 1284), the Guadalupe Water Company was incorporated with the power to construct a dam across the Guadalupe river for the purpose of irrigation and for motive power for machinery, and with the right to divert from the channel of the river three-fourths of all the water in the river.

By a special act of October 20, 1866 (5 Gammel's, Laws, 1360), the San Marcos Irrigation, Manufacturing and Navigation Company was incorporated with the power to construct a dam across the San Marcos river and with the right to divert from the channel of the river two-thirds of all the water in the river for purposes of irrigation and motive power for machinery.

By a special act of November 6, 1886 (5 Gammel's, Laws, 1491), the El Paso Irrigation and Manufacturing Company was incorporated with authority to construct a dam on the Rio Grande river and to divert from its

and underflow of streams riparian to lands granted after July 1, 1895, Tex. Water Code Ann. § 11.001(b). It distributes those waters for beneficial use by the issuance of permits.

The acts of 1889 and 1895 generated an entirely new problem. They authorized the use of state waters by those who filed in the offices of the county clerks affidavits describing the amount of water claimed and where it would be used. 1889 Tex.Gen. Laws, ch. 88, § 5, at 101, 9 H. Gammel, Laws of Texas 1128 (1898); 1895 Tex.Gen. Laws, ch. 21, § 6, at 22, 10 H. Gammel, Laws of Texas 751 (1898). The filings, called certified filings, actually magnified the problems, because paper appropriations exceeded the capacity of the streams. Furthermore, "less than one-fourth of the total appropriated quantity was put to consumptive use." Rollins, *The Need For a Water Inventory in Texas*, Proceedings, Water Law Conference, University of Texas, 67, 68 (1952).

The droughts in 1910 and 1917 prompted the citizens of Texas to adopt the "Conservation Amendment" to the Texas Constitution, mandating the conservation of public waters. Tex.Const. art. XVI, § 59. The Legislature also enacted the Irrigation Act of 1917. 1917 Tex.Gen.Laws, ch. 88, at 211. That act authorized the Board of Water Engineers to make determinations of conflicting water rights, but in 1921 this court

channel one-fourth of all the water forming said river for purposes of irrigation and motive power.

* * * * *

By a special act of April 19, 1879 (9 Gammel's, Laws, 14), the Austin Canal, Irrigation and Manufacturing Company, which had been previously incorporated under the general corporation law of the State, was granted the right to construct a dam across the Colorado river above the City of Austin and to divert so much of the water of the river as it might need for irrigation purposes. [Emphasis added.]

2. Biennial Message from Governor Ross, Tex. H.R.J. 13, 24 (1889); see Walker, *Legal History of the Riparian Right of Irrigation in Texas Since 1836*, Proceedings, Water Law Conference, University of Texas (1959) 41, at 51.

held the adjudicatory powers of the Board unconstitutional as an invasion by the executive branch upon the judicial branch of government. *Board of Water Engineers v. McKnight*, 111 Tex. 82, 229 S.W. 301 (1921). The Texas Legislature in 1953 again created a forum for the adjudication of the massive confusion about claims to water rights. 1953 Tex.Gen.Laws, ch. 357, at 874. Again, the legislation failed because of its provision for a hybrid method of review that inconsistently authorized both a factual de novo review as well as a legal substantial evidence review. *Southern Canal Co. v. State Board of Water Engineers*, 159 Tex. 227, 318 S.W.2d 619 (1958).

McKnight ushered in a half century interregnum during which there was no inventory of available water and no record of the extent of claims upon the dwindling supply. The appropriators did not know the extent of their claims vis-a-vis other appropriators; riparian claimants did not know their rights vis-a-vis other riparians; and appropriators and riparians did not know their rights vis-a-vis each other. The problem was that the concepts basic to the two systems were hostile to each other. The appropriative system is based upon the beneficial consumption or use of water, while the riparian system is based on an ongoing right to an undetermined amount of future use to the falsely assumed undiminished flow of Texas streams. The appropriation system quantifies both the available waters and the amount of the authorized beneficial uses. Permittees use or lose their rights. Riparians on the other hand assert that their unquantified rights, though unexercised, continue indefinitely to the undiminished flow of streams that periodically ranges between flood levels to long periods of slight flow or no flow at all.

3. Judge James V. Allred, Federal Judge of the Southern District of Texas, recognizing the void in Texas law on the subject, refused to accept jurisdiction, saying:

I feel that, under all the circumstances of the record and matters of which I may take judicial knowledge, I should decline the invitation of counsel for plaintiffs to "accept the challenge presented in this case, that is, to

The judiciary has tried to reconcile the conflicts between the two systems. This court held in 1905 that the riparian doctrine, like the appropriation system, permitted irrigation. *Watkins Land Co. v. Clements*, 98 Tex. 573, 86 S.W. 733 (1905). The Supreme Court in 1926 undertook to divide the waters between riparians and appropriators, so that riparians would get the ordinary flow and underflow of streams; appropriators would get the flood waters. *Motl v. Boyd*, 116 Tex. 82, 236 S.W. 458 (1926). The line was amorphous, and engineers and hydrologists had problems determining the ordinary flow of a stream that flowed only when it rained. Mean flow, average flow, and ordinary flow are measures that have not been judicially addressed. *Motl* also generated a new problem by its dicta that Spain and Mexico also recognized the riparian system. The error was corrected in *State v. Valmont Plantations*, 346 S.W.2d 853 (Tex.Civ.App.—San Antonio 1961), *opinion adopted*, 163 Tex. 381, 355 S.W.2d 502 (1962).

The story of water law in Texas is also the story of its droughts. Texas' longest sustained recorded period of drought was between 1950 and 1957. The judicial focus during those years was upon the Lower Rio Grande—the region from Falcon Dam, not then completed, to the Gulf of Mexico. The region was irrigated by water districts that variously claimed both riparian and appropriative rights. Upper irrigators were depriving citizens of lower municipalities of water essential for basic domestic uses. With no adjudicatory body in Texas, the District Court of Cameron County, acting under the common law, took judicial custody of the scarce waters of the Rio Grande and appointed a watermaster to distribute the waters equitably.³

help solve the problem of water rights which it looks like the legislature of Texas cannot solve."

[T]he Texas water laws and decisions are in hopeless confusion; * * * their application and administration would be difficult * * *; said laws confer little, if any, real authority upon the State Board of Engineers; that the Board has granted permits on many streams

The procedure, though bitterly contested, was approved. *Hidalgo County Water Improvement District No. Two v. Cameron County Water Control & Improvement Dist. No. 5*, 253 S.W.2d 294, 298 (Tex.Civ.App.—San Antonio 1952, writ ref'd n.r.e.); *Hidalgo County Water Improvement District No. Two v. Cameron County Water Control & Improvement District No. Five*, 250 S.W.2d 941, 945 (Tex.Civ.App.—San Antonio 1952, no writ). The legislature later enacted a statute authorizing the appointment of a watermaster. Tex.Water Code Ann. §§ 5.326, 5.401–5.409.

Ordinary trial rules were inadequate to regulate an entire waterway. The rivers of Texas do not flow according to venue rules. Procedures about parties, venue, and jurisdiction do not fit suits concerning multiple claimants to waters that flow great distances. *Maverick County Water Control & Improvement Dist. v. City of Laredo*, 346 S.W.2d 886 (Tex.Civ.App.—San Antonio 1961, writ ref'd n.r.e.). After a number of subsidiary cases were concluded, the main suit that decided the rights of more than three thousand claimants to the dwindling waters of the Rio Grande finally terminated in a final judgment in 1970.⁴ *State of Texas v. Hidalgo County Water Control & Improvement District No. Eighteen*, 443 S.W.2d 728 (Tex.Civ.App.—Corpus Christi 1969, writ ref'd n.r.e.).

The same expensive and sterile judicial process was considered inappropriate for the hundreds of other streams in Texas, so in 1967, the Texas Legislature enacted the Water Rights Adjudication Act which provided in Texas, for the first time, a forum and procedure for the stream-wide adjudication of water rights. Tex.Water Code Ann. §§ 11.301–11.341.

* * * very few of which have been canceled, in such numbers and for such quantities that if riparian rights are given the full effect for which plaintiffs contend, practically every drop of water, normal flow or flood, is "bespoken" * * * particularly true in the Rio Grande Valley.

The Water Rights Adjudication Act Is Constitutional.

[1] The Water Rights Adjudication Act does not, as urged by the riparian claimants in this action, violate the doctrine of separation of powers, and *McKnight*, 11 Tex. 82, 229 S.W. 301, is not authority for striking down the present statutes. The act was designed to avoid the constitutional infirmities of the earlier act. It required all claimants to water rights, except for claims under permits or certified filings, to file sworn statements with the Texas Water Commission by September 1, 1969. Tex. Water Code Ann. § 11.303(c). The same statute required statewide notice of the filing requirement. *Id.* § 11.303(g). In this way, the state for the first time had an inventory of all waters that were being used and claimed. The statute provided further that claims to water would be recognized "only if valid under existing law and only to the extent of the maximum actual application of water to beneficial use without waste during any calendar year from 1963 to 1967, inclusive." *Id.* § 11.303(b).

Section 11.304 of the act authorizes the adjudication of water rights. Section 11.305 provides for an investigation of the claims and a report in writing. Section 11.306 requires public and actual notice of adjudication. Persons claiming water rights of any nature, except for domestic and livestock purposes must then file a timely sworn claim with the department. *Id.* § 11.307. There is notice followed by a hearing on each claim, *id.* § 11.308, and after all evidentiary hearings are completed, the Commission makes a preliminary determination of each claim, *id.* § 11.309, and notifies all parties. *Id.* § 11.312. The parties may then file contests of the preliminary determination. *Id.* § 11.313. After

Martinez v. Maverick County Water Control & Improvement Dist. No. 1, 219 F.2d 666, 670 (5th Cir.1955).

4. Smith, *The Valley Water Suit and Its Impact on Texas Water Policy: Some Practical Advice for the Future*, 8 Tex.Tech.L.Rev. 577 (1977); Johnson, *Adjudication of Water Rights*, 42 Tex. L.Rev. 121 (1963).

notice there is a hearing on each contest, *id.* § 11.314, followed by the Commission's final determination, *id.* § 11.315. Provision is made for timely rehearings. *Id.* § 11.316.

When all applications for rehearing are ruled upon, the Commission then files a certified copy of its final determination, together with all evidence presented to or considered by the Commission, in a district court. *Id.* § 11.317. The court then orders the date for filing exceptions to the final determination, the date for the hearings on exceptions, and notifies all parties. *Id.*

Sections 11.320-11.323 are significant changes from the law as it existed in 1921 when this court held that the 1917 Irrigation Act was unconstitutional. Section 11.320 makes clear that the court shall act independently of the Commission's determination, and that substantial evidence shall not be the standard of review. It is also clear that the entire subchapter would not have been enacted without the inclusion of section 11.320.⁵

A significant difference between the 1917 Irrigation Act and the procedure under the Water Rights Adjudication Act is that the agency does not make the final determination of rights. There is a two-step procedure. The Commission makes its determination which is followed by an automatic and mandatory judicial review. See *Current Problems, Administrative Government in Texas*, 47 *Tex.L.Rev.* 805, 875 (1969).

[2] By statute, the standard of review under the Adjudication Act is neither a substantial evidence review nor a de novo review. It is a review made independently of the Commission's adjudication, and a review exercised on those parts of the Com-

mission's determination to which exceptions were timely leveled. In passing on the exceptions, the court may, as in the case now before us, hear additional evidence. *Tex. Water Code Ann.* § 11.321. The exceptions are the pleadings which the court acts upon with or without a jury trial. The burden of proof is upon the one who levels the exceptions. *Railroad Commission of Texas v. Magnolia Petroleum Co.*, 130 *Tex.* 484, 491, 109 *S.W.2d* 967, 972 (1937). See also *Pacific Live Stock Co. v. Lewis*, 241 *U.S.* 440, 455, 36 *S.Ct.* 637, 643, 60 *L.Ed.* 1084 (1916); *Trapp v. Shell Oil Co.*, 145 *Tex.* 328, 347-48, 198 *S.W.2d* 424, 440 (1946); *City of Houston v. Southwestern Bell Tel. Co.*, 283 *S.W.2d* 169, 172 (*Tex.Civ.App.*—Galveston 1953, writ *ref'd*); *Drummev v. State Board of Funeral Directors*, 13 *Cal.2d* 75, 87 *P.2d* 848, 854 (1939). We conclude that the act, unlike the statutes construed in *McKnight*, 111 *Tex.* 82, 229 *S.W.* 301, and *Southern Canal Co.*, 159 *Tex.* 227, 318 *S.W.2d* 619, provides a constitutional method for adjudication.

There is a second reason that the Adjudication Act does not violate the principle of the separation of powers. The reason is expounded in *Corzelius v. Harrell*, 143 *Tex.* 509, 186 *S.W.2d* 961 (1945). Article XVI, section 59a, of the Texas Constitution, the Conservation Amendment, had not been enacted when the statutes involved in *McKnight* were considered. The validity of the review procedures for administrative actions concerning oil and gas conservation was discussed in *Corzelius* and sustained against the same constitutional attack that is now made. The court held that the broad language of the Conservation Amendment

5. § 11.320. Scope of Judicial Review

(a) In passing on exceptions, the court shall determine all issues of law and fact independently of the commission's determination. The substantial evidence rule shall not be used. The court shall not consider any exception which was not brought to the commission's attention by application for rehearing. The court shall not consider any issue of fact raised by an exception unless the record of evidence before the commission reveals that the question was genuinely in issue before the commission.

(b) A party in interest may demand a jury trial of any issue of fact, but the court may in its discretion have a separate trial with a separate jury of any such issue.

(c) The legislature declares that the provisions of this section are not severable from the remainder of this subchapter and that this subchapter would not have been passed without the inclusion of this section. If this section is for any reason held invalid, unconstitutional, or inoperative in any way, the holding applies to the entire subchapter so that the entire subchapter is null and void.

empowered the legislature to confer upon the Railroad Commission the power to adjust correlative rights in gas fields, subject to the review by the courts. The court rejected the claimed violation of the separation of powers provision of Article II, section 1, of the Texas Constitution.

The Water Rights Adjudication Act Is Not An Unconstitutional Taking.

[3, 4] Riparians along the Guadalupe River also urge that section 11.303 of the Water Code provides for an unconstitutional taking of vested property rights without compensation and is not a valid exercise of the State's police powers. It is true that riparians, whose land grants were acquired before July 1, 1895, have a vested right in the use of the non-flood waters, but that vested right is to a usufructory use of what the state owns. A usufruct has been defined as the right to use, enjoy and receive the profits of property that belongs to another. *Magnolia Petroleum Co. v. Dodd*, 125 Tex. 125, 129, 81 S.W.2d 653, 655 (1935); *Sparks v. Spence*, 40 Tex. 693, 694, 700 (1874); *Cartwright v. Cartwright*, 18 Tex. 626, 628 (1857). Texas holds the title to the waters in a navigable stream in trust for the public. *Motl v. Boyd*, 116 Tex. 82, 111, 286 S.W. 458, 468 (1926); *Landry v. Robinson*, 110 Tex. 295, 298-99, 219 S.W. 819, 820-21 (1920); *City of Austin v. Hall*, 93 Tex. 591, 598, 57 S.W. 563, 565 (1900); *W. Hutchins, The Texas Law of Water Rights* 77 (1961). This court wrote in *Texas Co. v. Burkett*, 117 Tex. 16, 25, 296 S.W. 273, 276 (1927), "The right of Burkett as a riparian owner was one of use only, since the riparian does not own the water which flows past his land." See *Motl v. Boyd*, 116 Tex. at 111, 286 S.W. at 468 (1926); *Rhodes v. Whitehead*, 27 Tex. 304, 309 (1863); *Haas v. Choussard*, 17 Tex. 588, 589 (1856); *W. Hutchins, The Texas Law of Water Rights* 77-81 (1961).

Many decisions have held that the riparian rights to waters were vested at the time the lands to which they are appurtenant were granted, if granted before July 1, 1895. See *San Antonio River Authority v.*

Lewis, 363 S.W.2d 444, 449 (Tex.1962); *Texas Water Rights Commission v. Wright*, 464 S.W.2d 642, 647 (Tex.1971); *Chicago, R.I., & G. Ry. Co. v. Tarrant County Water Control & Improvement Dist. No. 1*, 123 Tex. 432, 447-48, 73 S.W.2d 55, 64 (1934); *Board of Water Engineers v. McKnight*, 111 Tex. 82, 92, 229 S.W. 301, 305 (1921); *Bigham Bros. v. Port Arthur Canal & Dock Co.*, 100 Tex. 192, 201, 97 S.W. 686, 688 (1906); *McGhee Irrigating Ditch Co. v. Hudson*, 85 Tex. 587, 592-93, 22 S.W. 987, 988 (1893); *Mud Creek Irrigation, Agricultural, & Manufacturing Co. v. Vivian*, 74 Tex. 170, 173, 11 S.W. 1078, 1079 (1889); *Tolle v. Correth*, 31 Tex. 362, 365 (1868).

We have also held that riparian rights are an incident of the land ownership. *Magnolia Petroleum Co. v. Dodd*, 125 Tex. 125, 128-29, 81 S.W.2d 653, 655 (1935); *Fleming v. Davis*, 37 Tex. 173 (1872); *Parker v. El Paso County Water Improvement Dist. No. 1*, 116 Tex. 631, 642-43, 297 S.W. 737, 742 (1927); *Bigham Bros. v. Port Arthur Canal & Dock Co.*, 91 S.W. 843, 853 (Tex.Civ.App. 1905), reversed and remanded on other points, 100 Tex. 192, 97 S.W. 686 (1906).

[5] This court has not previously been faced with the precise and narrow issue that is here presented. Our question is whether the State of Texas can constitutionally limit riparian claimants to that quantity of water actually beneficially used during any one of the five years between 1963 and 1967. Tex. Water Code Ann. § 11.303(b). The riparians in this case are entitled to and have received the full measure of their usufruct to the extent of their maximum beneficial use during the test period from 1963 through 1967. Article 11.303 does not deprive riparians of any waters they beneficially used during the inventory period. The complaint is that continued non-use of the usufructory right may not be abrogated. We hold that, after notice and upon reasonable terms, the termination of the riparians' continuous non-use of water is not a taking of their property.

A similar contention that water rights were unlawfully taken was urged in *Texas Water Rights Commission v. Wright*, 464

IN RE ADJUDICATION OF THE WATER RIGHTS, ETC. Tex. 445

Cite as, Tex., 642 S.W.2d 438

S.W.2d 642 (Tex.1971). Appropriated water rights, like riparian rights, are vested. *Id.* at 646-47. See also *State Board of Water Engineers v. Slaughter*, 382 S.W.2d 111 (Tex.Civ.App.—San Antonio 1964), *per curiam*, 407 S.W.2d 467 (Tex.1966). We held in *Wright* that, notwithstanding the vested nature of the right, water permits could be cancelled upon proof of ten years of non-use, saying:

The permittees did not acquire the right of non-use of water. Common to the law of the western arid regions and of appropriation law generally is the idea that non-use of appropriated waters is a waste of the water. Once water is appropriated, its availability to another user is reduced or defeated, and if the permittee does not use a substantial portion of it the water will run unused into the sea. A workable system of appropriated waters has produced the general rule that the beneficial use of waters is the conservation of the resource, whereas, the non-use of appropriated waters is equivalent to waste.

464 S.W.2d at 647.

We regard the non-use of the State's ordinary flow of its streams equally wasteful and for similar reasons. As expressed in *Wright*, "the State, in administering its water resources, is under a constitutional duty to conserve water as a precious resource . . ." *Id.* at 648. The riparian's vested usufructory right, like a permittee's vested right is the right to use the resource beneficially—not waste it.

Texas modeled its Adjudication Act after the Oregon statutes and almost seventy years ago, the same contention here urged was before the Oregon Supreme Court in *In re Willow Creek*, 74 Or. 592, 144 P. 505 (1914). In rejecting the argument that the unused riparian rights had been unconstitutionally taken, the Oregon court wrote:

6. "The Act reflects the legislative belief that the existence of a mineral interest about which there has been no display of activity or interest by the owners thereof for a period of twenty years or more is mischievous and contrary to the economic interests and welfare of the public. The existence of such stale and abandoned interests creates uncertainties in titles and constitutes an imped-

The right to the use of water is a valuable property right guaranteed to every citizen. It cannot be arbitrarily nor unreasonably interfered with by the legislative department of the state.

Water rights, like all other rights, are subject to such reasonable regulations, as are essential to the general welfare, peace, and good order of the citizens of the state, to the end that the use of water by one, however absolute and unqualified his right thereto, shall not be injurious to the equal enjoyment of others entitled to the equal privilege of using water from the same source, nor injurious to the rights of the public.

The requirements of the statute . . . are not arbitrary, unreasonable, nor unduly burdensome . . . They are salutary and in the interest of an orderly regulation of the use of water to be made by skilled officers who have particular knowledge in that line.

74 Or. at 616-17, 144 P. at 514.

Other western states have reached a similar result by treating the statutory scheme as a reasonable exercise of the police power. *Gin Chow v. City of Santa Barbara*, 217 Cal. 673, 705, 22 P.2d 5, 16-17 (1933); *Williams v. City of Wichita*, 190 Kan. 317, 333-34, 374 P.2d 578, 591 (1962).

The United States Supreme Court in *Texasco, Inc. v. Short*, 454 U.S. 516, 102 S.Ct. 781, 788, 70 L.Ed.2d 738 (1982), upheld the Indiana Dormant Mineral Interests Act which provided that a severed mineral interest that was not used for a period of twenty years automatically lapsed and reverted to the current surface owner, unless the owner took certain protective steps.⁶

ment to the development of the mineral interests that may be present and to the development of the surface rights as well. The Act removes this impediment by returning the severed mineral estate to the surface right owners. There is a decided public interest to be served when this occurs. The extinguishment of such an interest makes the entire productive potential of the property again

The court in holding there was no taking wrote:

We have concluded that the State may treat a mineral interest that has not been used for 20 years and for which no statement of claim has been filed as abandoned; it follows that, after abandonment, the former owner retains no interest for which he may claim compensation. *It is the owner's failure to make any use of the property—and not the action of the State—that causes the lapse of the property right; there is no "taking" that requires compensation. The requirement that an owner of a property interest that has not been used for 20 years must come forward and file a current statement of claim is not itself a "taking."*

102 S.Ct. 781, 792 (emphasis added).

The riparians also urge that the Commission had no authority to declare the North and South Forks of the Guadalupe River statutory navigable streams, and that in doing so, the Commission made an unauthorized decision affecting the title to their lands. The riparians reason that they hold patents from the state, which include the bed of the stream, that the surveys for their lands crossed the streams instead of fronting one-half of the square on the river and the line running at right angles with the general course of the stream.⁷ They argue that the General Land Office made its determination of non-navigability at the time of the original surveys and the patents. They argue further that the decision by the Commission was a judgment concerning their title to the stream bed which cannot now be divested by an administrative decision.

available for human use." [*Short v. Texaco, Inc.*] Ind., 406 N.E.2d [625] at 627. 102 S.Ct. at 788.

7. Art. 5302. Surveys on navigable streams

All lands surveyed for individuals, lying on navigable water courses, shall front one-half of the square on the water course and the line running at right angles with the general course of the stream, if circumstances of the lines previously surveyed under the laws will permit. All streams so far as they retain an average width of thirty feet from the mouth

Title to the bed of the stream is not here in issue.⁸ The issue before us is navigability and the water rights associated with that decision. In our opinion, these matters are settled by *Diversion Lake Club v. Heath*, 126 Tex. 129, 86 S.W.2d 441 (1935), and *Port Acres Sportsman's Club v. Mann*, 541 S.W.2d 847 (Tex.Civ.App.—Beaumont 1976, writ ref'd n.r.e.).

We affirm the judgments of the courts below.



In re the ADJUDICATION OF WATER RIGHTS IN THE LLANO RIVER WATERSHED OF THE COLORADO RIVER BASIN.

No. C-1248.

Supreme Court of Texas.

Nov. 24, 1982.

Rehearing Denied Dec. 31, 1982.

Action was brought challenging Texas Water Rights Commission's final determination insofar as it affected plaintiff's rights as landowner. The 33rd District Court, Llano County, D. V. Hammond, J., affirmed, and plaintiff appealed. The Court of Appeals, James, J., 630 S.W.2d 516, affirmed in part and reversed and rendered in part. Plaintiff again appealed, and the Supreme Court, Pope, J., held that: (1) plaintiff had no riparian right to irrigate lands

up shall be considered navigable streams within the meaning hereof, and they shall not be crossed by the lines of any survey. All surveys not made upon navigable water courses shall be in a square, so far as lines previously surveyed will permit. Tex.Rev.Civ.Stat. Ann. art. 5302.

8. For a discussion concerning title to the bed of streams see *State v. Bradford*, 121 Tex. 515, 50 S.W.2d 1065 (1932).

address those issues relevant to the right against self-incrimination.

ATTORNEYS' FEES

[4] The Union argues that it is entitled to recover its attorney's fees and costs from the Department. The Department contends in response that the sovereign immunity of the state shields it from liability for any of the Union's attorney's fees or costs. The trial court denied attorney's fees to the Union on the grounds they were barred by the State's sovereign immunity. The trial court found, however, that if sovereign immunity did not bar payment, the Department was liable for \$18,000 in attorney's fees and \$800 in costs. The court of appeals reserved the matter until a final disposition of the appeal.

The Legislature has provided express statutory authority for payment of court costs and attorney's fees in actions arising from the unconstitutional conduct of state officials. *TEX.GIV.PRAC. & REM.CODE* § 104.001 (Vernon 1986). Section 104 provides:

§ 104.001. State Liability: Persons Covered

[T]he state is liable for actual damages, court costs, and attorney's fees adjudged against:

(1) an employee, a member of the governing board, or any other officer of a state agency ...:

104.002. State Liability; Conduct Covered

The state is liable under this chapter only if the damages are based on an act or omission by the person in the course and scope of the person's office, employment, or contractual performance for or service on behalf of the agency, institution, or department and if:

(2) the damages arise out of a cause of action for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States, except when the court in its judgment or the jury in its verdict finds the person acted in bad faith.

In this case the trial court enjoined Department officers Gary E. Miller and W. Kent Johnson from further use of the polygraph policy and from taking disciplinary action against employees for refusal to submit to polygraph testing. The trial court also granted a declaratory judgment that the polygraph policy was unenforceable.

We hold that such a judgment can be the basis for invoking the attorney's fees provision of Section 104. We therefore uphold the trial court's finding granting the Union \$18,000 in attorney's fees and \$800 in costs and hold that the trial court erred in finding that the state was immune from liability for such costs.

CONCLUSION

We reverse the judgment of the court of appeals. We affirm that part of the trial court's judgment invalidating the Department's polygraph policies and enjoining their enforcement. We reverse the portion of the trial court's judgment denying the Union's recovery of costs and attorney's fees and render judgment that the Union recover \$18,000 in attorney's fees and \$800 in costs.



In re The ADJUDICATION OF WATER RIGHTS OF the BRAZOS III SEGMENT OF the BRAZOS RIVER BASIN.

No. C-6317.

Supreme Court of Texas.

Feb. 17, 1988.

Rehearing Denied April 6, 1988.

Action was brought to challenge decision of the Water Commission which adjudicated water rights in river basin. The 82nd Judicial District Court, Falls County, Bartlett, J., modified determination and the

Commission appealed. The Waco Court of Appeals, Tenth Supreme Judicial District, McDonald, C.J., 726 S.W.2d 214, affirmed, and the Commission brought error. The Supreme Court, Phillips, C.J., held that: (1) owners of all Spanish and Mexican lands granted prior to 1840 must affirmatively show grant of irrigation rights from the sovereign to claim a riparian right; (2) the legislature, in passing the Water Rights Adjudication Act, provided the exclusive means by which water rights may be recognized, and the district courts may not grant in equity water rights not otherwise recognized by law; and (3) district court, by declaring water rights based on longtime good-faith use, did not merely recognize water rights but created equitable water rights in violation of the Act.

Judgment of the Court of Appeals reversed and determination of the Commission affirmed.

1. Waters and Water Courses ⇐44

Owners of all Spanish and Mexican lands granted prior to 1840 must affirmatively show a grant of irrigation rights from the sovereign to claim a riparian right.

2. Waters and Water Courses ⇐127, 128

The legislature, in passing the Water Rights Adjudication Act, provided the exclusive means by which water rights may be recognized, and district courts do not have authority under the Texas Constitution to grant in equity water rights not otherwise recognized by law, in cases filed after August 28, 1967. Vernon's Ann. Texas Const. Art. 5, § 8; V.T.C.A., Water Code § 11.301 et seq.

3. Waters and Water Courses ⇐152(2)

Trial court, by declaring water rights based on good-faith use for many years of plentiful water supply, was not merely recognizing water rights already in existence, but was creating equitable water rights in violation of the Water Rights Adjudication Act; court was limited to recog-

1. The Water Commission has previously issued ten year water permits to most of these excep-

nizing legal water rights which existed prior to the date of the Act. Vernon's Ann. Texas Const. Art. 5, § 8; V.T.C.A., Water Code §§ 11.301 et seq., 11.303(k), 11.341.

4. Constitutional Law ⇐56

Legislature has broad power to change the boundaries of equity jurisdiction provided such legislation does not destroy or invade a constitutional right.

Jim Mattox, Atty. Gen., Virginia Agnew, Asst. Atty. Gen., Austin, for petitioner.

Smith and Bratcher, David C. Alford and Linda M. Gassaway, Waco, Lutchers Simmons, Austin, for respondent.

OPINION

PHILLIPS, Chief Justice.

This is an appeal from an adjudication of water rights in the Brazos III Segment of the Brazos River Basin. The Texas Water Commission, acting pursuant to section 11.301 et seq., Texas Water Code (the Water Rights Adjudication Act), began this proceeding in 1983 by taking evidence at public hearings and investigating claims of water rights within the segment. As a result of these hearings, the Commission issued its final determination in compliance with section 11.315 in 1985. The Commission next filed this final determination with the district court as required by section 11.317, and notices were sent to all affected persons.

Eleven affected persons filed six exceptions pursuant to section 11.318, and, after hearing additional evidence, the district court modified the Commission's final determination by recognizing equitable water rights for all of the exceptors.¹ With one justice dissenting, the court of appeals affirmed the judgment of the district court, holding that district courts have the equitable power to recognize water rights on behalf of the exceptors by virtue of Article

10rs.

V, Section 8 of the Texas Constitution. 726 S.W.2d 214. We reverse the judgment of the court of appeals and affirm the final determination of the Texas Water Commission.

Prior to 1967, Texas recognized a dual system of water rights; (1) the law of riparian rights, and (2) the law of appropriation of waters. *In re Adjudication of the Water Rights of the Upper Guadalupe River Basin*, 642 S.W.2d 438, 439 (Tex. 1982). The Water Rights Adjudication Act was passed in 1967 to remedy this chaotic condition of Texas water law by consolidating water administration into a single system. *Id.* at 439-42. In so doing, the Texas Legislature created for the first time an orderly forum and procedure for the adjudication and administration of water rights. *Id.* at 442; TEX.WATER CODE ANN. § 11.301 et seq. The Water Code assigns to the Water Commission the authority to issue water permits upon application after appropriate notice and hearing is given. TEX.WATER CODE ANN. §§ 5.013, 11.135. Section 11.304 of the Water Rights Adjudication Act authorizes the adjudication of water rights, and section 11.303 recognizes only those water rights which are valid under existing law. TEX.WATER CODE ANN. §§ 11.303, 11.304. Finally, section 11.341 specifically exempts from the Act's provisions any action or proceeding instituted before August 28, 1967. TEX.WATER CODE ANN. § 11.341.

The Water Commission urges that the recognition of equitable water rights by the courts below improperly creates a new method of acquiring a water right outside of those prescribed by the Act, resulting in the type of uncertainty and chaos which the Act was intended to remedy. For the reasons discussed below, we agree.

2. Act of January 20, 1840, § 1, 1840 Tex.Gen. Laws 4, 2 H. GAMMEL, LAWS OF TEXAS 177 et seq. (1898). The current version of this law is TEX.CIV.FRAC. & REM. CODE ANN. § 5.001, which provides:

The rule of decision in this state consists of those portions of the common law of England that are not inconsistent with the constitution

Spanish and Mexican Land Grants

[1] In 1926, this court determined that all land grants made between 1840 and 1895 by the Republic or State of Texas carried with them an implied right to irrigate. *Mott v. Boyd*, 116 Tex. 82, 107-08, 286 S.W. 458, 467 (1926). These irrigation rights, often called "riparian rights," pass under silent grants of land by virtue of our State's adoption of the common law in 1840.² See *State v. Hidalgo County Water Control and Improvement District No. 18*, 443 S.W.2d 723, 738 (Tex.Civ.App.—Corpus Christi 1969, writ ref'd n.r.e.). This court in *Mott* further announced in dicta, however, that Mexican land grants from 1823 to 1840 also conveyed implied riparian rights. *Mott*, 116 Tex. at 107-08, 286 S.W. at 467.

In *Valmont Plantations v. State*, 163 Tex. 381, 355 S.W.2d 502 (1962), this court adopted the opinion of the court of civil appeals. *State v. Valmont Plantations*, 346 S.W.2d 853 (Tex.Civ.App.—San Antonio 1961, opinion adopted). Noting that the Spanish and Mexican system of irrigation was not a riparian system, this court held that Spanish and Mexican land grants do not carry with them any implied rights of irrigation, thereby expressly rejecting the dicta in *Mott v. Boyd*. *Valmont*, 163 Tex. at 383, 355 S.W.2d at 503 (1962). We reaffirm these principles today and hold that owners of all Spanish and Mexican lands granted prior to 1840 must affirmatively show a grant of irrigation rights from the sovereign to claim a riparian right.

In this case, it is stipulated that all of the exceptors hold title through pre-1840 Spanish and/or Mexican land grants. It was further stipulated that no exceptor has shown an affirmative grant of water rights from the sovereign. Accordingly, the exceptors have no legal claim of riparian wa-

or the laws of this state, the constitution of this state, and the laws of this state.

Texas first recognized the riparian system in 1856. See *Haas v. Choussard*, 17 Tex. 588, 590 (1856); see generally Townsend, *Cancellation of Water Rights in Texas: Use It Or Lose It*, 17 St. Mary's L.J. 1217, 1220 (1986).

ter rights. *Valmont*, 163 Tex. at 883, 355 S.W.2d at 503.

Equitable Water Rights

[2] The question for our determination is whether the courts below erred in holding that the exceptors are entitled to equitable water rights based on prior use in the Brazos III segment of the Brazos River Basin. The exceptors maintain that district courts may, under Article V, Section 8 of the Texas Constitution, grant in equity certain water rights not otherwise recognized by law. We disagree, because the Legislature in passing the Water Rights Adjudication Act provided the exclusive means by which these rights may be recognized.

The exceptors rely on *State v. Hidalgo County Water Control and Improvement District No. 18*, 443 S.W.2d 728 (Tex.Civ. App.—Corpus Christi 1969, writ ref'd n.r.e.), for the proposition that district courts may grant equitable water rights. The *Hidalgo* case did recognize such rights, but only on the unprecedented facts of that case. We hold that *Hidalgo* is limited to those facts, and cannot again be used as authority for the equitable creation of water rights. To hold otherwise would destroy the benefits of the Water Rights Adjudication Act.

The Water Rights Adjudication Act was passed by the Texas Legislature in 1967. Tex. Water Code Ann. § 11.301 et seq. The drafting of the Act commenced during the course of the *Hidalgo* suit, and at least one commentator asserts that the complexity involved with court-adjudicated priority schemes was partially responsible for its passage. See Smith, *The Valley Water Suit and Its Impact on Texas Water Policy: Some Political Advice For the Future*, 8 Tex. Tech L. Rev. 577, 628-30 (1977). Section 11.341 of the Act specifically excludes the application of its provisions to the Lower Rio Grande adjudication, preserving any water rights which might be recognized in the then-pending *Hidalgo* litigation. That section provides:

This subchapter does not affect any action or proceeding instituted before August 28, 1967, or any right accrued be-

fore that date except those specifically provided for in this subchapter.

[3, 4] In the instant case, the court of appeals held that the trial court did not "create" equitable water rights, but merely recognized those rights which were already in existence. 726 S.W.2d 214, 216. We disagree. The court in *Hidalgo* did not merely recognize water rights on behalf of the equitable claimants; rather, it created rights which heretofore did not exist. The court noted that mere prior good faith use did not ripen into a vested legal irrigation right:

The circumstance that numerous tracts of land in the Lower Rio Grande Valley, having no connection with the legal title to an appropriate right, have been under irrigation for a long period of time does not authorize us to disregard the *Valmont* decision and say that such lands have a legal appurtenant water right under the appropriation statutes of this State.

Hidalgo, 443 S.W.2d at 731. Declaring that "the equity arm of a court is not inoperative in the presence of an unprecedented situation," the court in *Hidalgo* designated two classes of water rights, Class A and Class B. Class A comprised those claimants with legal rights:

This class embraces those who have acquired a right to use waters of the Rio Grande by virtue of having complied with the appropriation statutes of the State or those whose rights have been recognized by the State.

Id. at 748. Class B comprised those claimants with no legal rights:

This class embraces those who have been making a good faith use of the waters of the Rio Grande for irrigation purposes prior to the institution of this suit but do not qualify as Class A users.

Id. at 749.

The courts below in this case have, like the court in *Hidalgo*, created water rights based solely upon equity. The Act allowed such a creation in *Hidalgo*; it precludes it here. Section 11.303(k) of the Act provides as follows:

(k) Nothing in this section shall be construed to recognize any water right which did not exist before August 28, 1967.

Absent the Act's specific exclusion of the *Hidalgo* litigation in section 11.341, no equitable rights could have been created in that case after August 28, 1967, the effective date of the Act. *Hidalgo* cannot recur, and cannot be a precedent for any further action.

Since the exceptors cannot claim the benefit of section 11.341's tolling provision, it was incumbent upon them to establish before the Water Commission a legal water right which existed prior to August 28, 1967. Having failed to do so, neither the Commission nor the courts have the power to create new equitable water rights. The legislature has the broad power to change the boundaries of equity jurisdiction, provided such legislation does not destroy or invade a constitutional right. *Johnson v. State*, 267 S.W. 1057, 1062 (Tex.Civ.App.—Dallas 1924, writ ref'd). We therefore hold that section 11.303(k) of the Water Rights Adjudication Act bars all equitable creation of water rights for cases filed after August 28, 1967.

Strong public policy concerns mandate this result. In *Lower Colorado River Authority v. Texas Dept. of Water Resources*, 689 S.W.2d 873 (Tex.1984), this court clearly instructed the Texas Water Commission not to issue permits for water already appropriated. To hold otherwise "would return water rights to the state of chaos that the act is designed to avoid." *Id.* at 882. Allowing district courts to grant equitable water rights outside the adjudication process of the Act would deprive the Commission of the control necessary to prevent overappropriation. Such a result would clearly frustrate the Act's purpose of consolidating into a single system the administration and adjudication of rights in state water.

Further, the Water Code assigns to the Texas Water Commission the authority to issue water rights permits. TEX.WATER CODE ANN. §§ 5.013(a)(1), 11.121 et seq. Upon proper application, notice and hear-

746 S.W.2d—6

ing, the Commission grants or denies the permit so long as, *inter alia*, the use will not impair existing water rights or vested riparian rights. TEX.WATER CODE ANN. §§ 11.124, 11.132, 11.133, 11.134(b)(3)(B). These permits are for a term of years, and contain restrictions to ensure that the rights of downstream irrigators are protected. TEX.WATER CODE ANN. § 11.1331.

The exceptors in the instant case, however, have received from the courts below far greater rights than those which can be granted by the Commission. The district court granted riparian water rights based on *Hidalgo* and equity. The record reflects that the district court's award of water rights contained no restrictions preventing use during periods of low water on the Brazos River, yet many of those same claimants hold term permits restricting their use during low-flow levels. These latter restrictions serve to eliminate overappropriation and protect downstream irrigators. The district court's unrestricted award of equitable riparian rights serves to punish those downstream irrigators who have complied with the Water Code and whose water rights are threatened by the superior rights granted to these exceptors.

Conclusion

To grant equitable riparian rights to the exceptors would inject uncertainty and chaos into Texas water law. The actions by the courts below improperly create a new system of water rights adjudication, frustrating the intent of the Legislature in passing the Water Rights Adjudication Act. Accordingly, we reverse the judgment of the court of appeals and affirm the Final Determination of the Texas Water Commission.



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MODIFIED
FINAL DETERMINATION OF
CLAIMS OF WATER RIGHTS IN
THE CONCHO RIVER SEGMENT
OF THE COLORADO RIVER
BASIN.

AUGUST 16, 1976



JOE D. CARTER, Chairman
JOE R. CARROLL, Commissioner
DORSEY B. HARDEMAN, Commissioner
Executive Director
ROBERT E. SCHNEIDER

TEXAS WATER RIGHTS COMMISSION

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NOTICE OF THE MODIFIED FINAL DETERMINATION BY THE TEXAS WATER RIGHTS COMMISSION OF ALL CLAIMS OF WATER RIGHTS IN THE CONCHO RIVER SEGMENT OF THE COLORADO RIVER BASIN

Notice is given that on August 16, 1976, the Texas Water Rights Commission made a Modified Final Determination of all claims of water rights in the Concho River Segment of the Colorado River Basin, including portions of Concho, Runnels, Tom Green, Coke, Schleicher, Irion, Crockett, Reagan, Upton, Midland, Glasscock, Howard and Sterlin Counties, Texas. As the rehearings of the Final Determination of July 6, 1976, of the claims of water rights in the Concho River Segment have been completed, this Modified Final Determination was authorized by Section 5.316, Texas Water Code, and Commission Rule 129.07.30.004. On the reverse side hereof is a summary of the changes made in the determination.

One copy of the Commission's Modified Final Determination of August 16, 1976, is being furnished without charge by regular mail to each person on the Commission's official mailing list for the Concho River Segment.


Copies of the Modified Final Determination are available to interested persons at the offices of the Texas Water Rights Commission. Anyone desiring to order a copy of the Modified Final Determination may do so by writing Mrs. Mary Ann Hefner, Secretary, Texas Water Rights Commission, Box 13207, Austin, Texas 78711. Each request must be accompanied by a check or money order in the amount of \$5.00.

As provided by Texas Water Code, Section 5.317 and Commission Rule 129.07.35.001 the Commission orders the Modified Final Determination and all evidence presented to or considered by the Commission to be filed in a district court of a county in which the Concho River Segment is located.

Executed and entered of record, this 16th day of August, 1976.

TEXAS WATER RIGHTS COMMISSION


Joe D. Carter, Chairman


Joe R. Carroll, Commissioner


Dorsey B. Hardeman, Commissioner

ATTEST:


Bernice Clifton, Assistant Secretary

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TEXAS WATER DEVELOPMENT BOARD
AUSTIN, TEXAS



SUMMARY OF MODIFICATIONS TO FINAL DETERMINATION
OF WATER RIGHTS IN THE CONCHO RIVER SEGMENT
OF THE COLORADO RIVER BASIN

The following substantive changes in the Final Determination of March 1, 1976, were ordered by the Commission in its Modified Final Determination:

1. On page 29 of the Final Determination, under the claim of Jack M. Landers and Jess C. Landers, Diversion Point No. 0850, Tract No. 0850, the amount of water recognized to claimants Jack M. Landers and Jess C. Landers was amended from 68 acre-feet of water as originally recognized in the Final Determination to 89 acre-feet of water.

2. On page 47 of the Final Determination under the claim of J. Eldon Williams, Diversion Points Nos. 1620 and 1625, Tracts Nos. 1570 and 1575, the determination was amended to reflect that claimant J. Eldon Williams had acquired an undivided 1/3 interest in a 55 acre-foot capacity reservoir on the Concho River which was previously recognized to Hayward E. Krall and Johnye M. Krall in the Final Determination.

3. On page 48 of the Final Determination, the claim of Schneeman Investment Corporation, Diversion Point No. 1630, Tract No. 1580, was changed by recognizing a maximum use under Certified Filing No. 168 of 306 acre-feet of water diverted from the Concho River in 1975 for irrigation of 100 acres of land within the certified filing area, a maximum of 125 acres of land irrigated within the certified filing area in 1954, and a maximum diversion rate of 4.46 cfs (2000 gpm) in various years from Diversion Point No. 1630.

4. On page 43 of the Final Determination, the claim of Marylou Hall, Diversion Point Nos. 1430, 1435 and 1415, Tract Nos. 1370 and 1375, was amended by reducing the award from 820 acre-feet of water per year to 738 acre-feet of water per year.

5. In regards to the claim of the City of San Angelo under Permit No. 168, found on page 41 of the Final Determination under Diversion Point No. 1330, Tract No. None, the Commission recognized a correction in Permit No. 168 to change the size of the reservoir under the permit from 31.6 acre-feet to 316 acre-feet.

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IN THE MATTER OF THE X BEFORE THE TEXAS WATER
ADJUDICATION OF THE CONCHO X RIGHTS COMMISSION
RIVER SEGMENT OF THE
COLORADO RIVER BASIN

MODIFIED FINAL DETERMINATION

The Texas Water Rights Commission hereby makes its modified final determination of claims of water rights in the Concho River Segment of the Colorado River Basin. This action is taken pursuant to Title 2, Subtitle A, Chapter 5, Subchapter G of the Texas Water Code (1971).* Jurisdiction was established at the initial public hearing in San Angelo, Texas, on March 6, 1973, and evidence was received on March 19, 1973 and at subsequent public hearings. The Commission's preliminary determination was entered on April 14, 1975. Contest hearings were held on September 23, 24 and 25, 1975 and on October 29, 1975. The Commission's final determination was entered on March 1, 1976 and re-hearings were held on July 6, 1976.

The Commission has considered the record of these proceedings, including the examiner's report, the investigation report, the appendix to the investigation report, the written statement of facts, documentary evidence admitted into evidence, the contests filed and the exceptions and briefs filed by parties, in making the following findings of fact and conclusions of law:

INTRODUCTION

1. The Concho River Segment of the Colorado River Basin consists of the Main Concho River and its tributaries between the confluence of the river with the Colorado River and the headwaters of the North Concho, Middle Concho and South Concho Rivers and their tributaries including Spring Creek and Dove Creek and their tributaries and including all or portions of Concho, Runnels, Tom Green, Coke, Schleicher, Irion, Crockett, Reagan, Upton, Midland, Glasscock, Howard and Sterling Counties, Texas. State water within this area is used for municipal irrigation, industrial and recreational purposes.

*All statutory references are to the Texas Water Code unless otherwise noted.

2. In the adjudication of water rights which includes permits, certified filings and claims filed pursuant to Section 5.303 (previously Article 7542a, Section 4, Vernon's Annotated Civil Statutes), the Commission has applied state statutory and judicial criteria. In accordance with Section 5.021, all flows of the various streams in the Concho River Segment are State waters subject to this adjudication except water being used for domestic and livestock purposes.

3. In determining water rights in the Concho River Segment, beneficial use, as the term has been defined by law, is an essential element for any claimant seeking recognition of a water right. Beneficial use is use of that amount of water which is economically necessary for a purpose authorized by Chapter 5 of the Water Code, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose (Section 5.002).

STATUTORY RIGHTS

4. Statutory appropriators are persons (1) who have made a beneficial use of water in a lawful manner under the provisions of any act of the legislature before the enactment of Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended, or (2) who filed with the State Board of Water Engineers a record of their appropriation as provided by the 1913 Act, as amended, known as a "certified filing," or (3) who have made a beneficial use of water within the limitations of a permit lawfully issued by the Texas Water Rights Commission or its predecessors.

5(a) Permits which have not been developed due to their recent issuance cannot be adjudicated as vested rights. The Commission, therefore, has recognized such a right to the extent of the development according to the terms and conditions of the permit and has authorized the holder of such a permit to continue diligent development.

(b) Subject to the foregoing, the Commission therefore determines that appropriative rights are limited to the amounts specifically appropriated and beneficially used for the purposes specified, and recognizes the maximum quantity of water beneficially used and, if appropriate, the maximum acreage irrigated, together with the diversion rates and time priorities thereof.

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(c) An appropriator who was diverting water from an unauthorized diversion point was allowed to continue this practice where it was determined that the deviation from the terms of the appropriative right was inconsequential. This authorization was conditioned on the absence of intervening appropriators between the authorized point of diversion and the unauthorized point at which the water was actually diverted.

(d) An appropriator who was irrigating acreage located outside the authorized area was allowed to continue this practice where it was determined that the deviation from the terms of the appropriative right was inconsequential.

6. Due to several destructive floods during this century on the Main Concho River, the most severe of which occurred in 1936, a number of on-channel dams authorized by permits and certified filings were breached and became incapable of creating the on-channel reservoirs specified by the terms of the permits and certified filings. Some of the dams were never repaired while others that were rebuilt were washed out by subsequent floods. Where the permits or certified filings authorize diversion from the authorized reservoirs and do not authorize the diversion of normal flow, the appropriative rights herein recognized are limited to the maximum annual quantity of water diverted from the authorized reservoirs and beneficially used for the purposes authorized. If a permit or certified filing requires the construction and maintenance of a dam and limits the diversion and use of water to storm and flood water, the diversion of the normal flow of the watercourse is not in accordance with the terms and conditions of the water right and such use cannot be considered development of the water right. Where it was established in evidentiary hearings that an authorized dam was constructed in accordance with a permit or certified filing, it is recognized herein to the maximum capacity established, regardless of its present condition.

7. The appropriative rights of holders of term permits, those granted for a specific number of years, were adjudicated and are included in this determination. The appropriative rights of holders of temporary permits, those granted for a period of less than three

years, were not included in this adjudication or this determination. The appropriate rights of holders of contractual permits, those authorizing use of water based upon a written agreement with a water right holder, are recognized under the water right holder's permit or certified filing.

RIPARIAN RIGHTS

8. In determining the nature and extent of riparian right claims, the Commission has applied the following statutory criteria:

(a) The Texas Water Code does not recognize any riparian right in the owner of land the title to which passed out of the State of Texas after July, 1, 1895. In this regard, it is sufficient that equitable title to the land passed from the State of Texas prior to July 1, 1895.

(b) Claims of riparian rights not filed in substantial compliance with Section 5.303 are barred and extinguished.

(c) Claims of riparian rights, if valid under existing law, are recognized to the extent of the maximum actual application of water to beneficial use without waste, and to the extent acreage was irrigated, if applicable, during any calendar year from 1963 to 1967, inclusive. However, in any case where a riparian claimant has, prior to August 28, 1967, commenced or completed the construction of works designed to apply a greater quantity of water to beneficial use, the right is recognized to the extent of the maximum amount of water actually applied to beneficial use without waste during any calendar year from 1963 to 1970, inclusive, if the claimant filed an additional sworn statement as provided by Section 5.303(e) and (h).

9. Subject to the statutory limitations regarding riparian rights the Commission finds that the following judicial criteria are applicable:

(a) Lands which border or have frontage upon a stream or water-course are riparian, and the owner is deemed to have a correlative right to share in the use of the normal flow of those waters which pass his land. No riparian has a property right in the water, but only a right of use.

(b) All land abutting upon a running stream is riparian as to that part of the survey which lies within the watershed of the stream. The boundary of riparian land is restricted to land the title to which

n. is acquired by one transaction, and a parcel of land may lose its
er riparian character and status when separated from the stream by grant
or deed.

(c) The riparian owner is subject to the doctrine of reasonable
use which limits all rights to the use of water to that quantity
reasonably required for beneficial use and prohibits waste or un-
reasonable use, or unreasonable methods of use or diversion.

(d) A riparian's use of water for irrigation, industry and other
non-natural uses is inferior to the use of water for sustaining human
life and the life of domestic animals.

(e) Because of the general semi-arid condition in the Concho
River Segment and the fact that streams in the Segment have a flow
which fluctuates seasonally, some riparian owners have erected minor
holding structures which serve as pumping pools on streams from which
water is diverted for irrigation. Where the storage capacity of these
structures is insignificant, this activity has been determined to be
permissible as a riparian water right.

OTHER CLAIMS OF WATER RIGHTS

10. Section 5.303 provided for the recordation and limitation of
other water rights in addition to riparian rights. These rights were
claims under former Article 7500a,* Vernon's Annotated Civil Statutes,
to impound, divert or use State water for other than domestic and
livestock purposes, for which no permit has been issued; claims of
water rights under the Irrigation Acts of 1889 and 1895 which were not
filed with the State Board of Water Engineers in accordance with the
Irrigation Act of 1913, as amended; and other claims of water rights
except claims under permits or certified filings.

(a) The Commission finds that no one introduced into evidence
and substantiated a declaration of intent which was not filed with the
State Board of Water Engineers in accordance with the Irrigation Act
of 1913, as amended.

(b) The Commission gave consideration to numerous claims of
"equitable" water rights. Several claimants of water rights

*With the enactment of the Texas Water Code in 1971, Article 7500a was
repealed and codified as Sections 5.140 and 5.141.

presented evidence in support of Section 5.303 claims that during the period 1963 to 1970, inclusive, they had contracted with the U.S. Department of Agriculture Commodity Stabilization Service by Soil Bank Conservation Reserve Contract, commonly named Soil Bank agreements, by which the landowner was paid by the federal government not to harvest or graze designated tracts. If the landowner had irrigated the designated tracts during the contract term, the use of State water would have been neither economical nor beneficial unless the landowner breached the contract by harvesting or grazing, and subjected himself to penalties.

In the course of its investigations and hearings, the Commission has become aware of certain instances in which strict application of the provisions of the Water Rights Adjudication Act of 1967 seems to work undue and apparently unanticipated hardship upon persons claiming under Section 5.303 and 5.307 of such Act. The legislation is explicit and does not vest the Commission with any latitude to deviate from the limitations expressed in Section 5.303(b) which limits recognition of claims described in Section 5.303(a) to the extent of the maximum actual application of water to beneficial use without waste during any calendar year from 1963 to 1967, inclusive, and under certain circumstances, to the extent of the maximum amount of water applied to beneficial use during any calendar year from 1963 to 1970, inclusive.

The Commission is of the view that it has no jurisdiction or authority to recognize an equitable water right under the Water Rights Adjudication Act or under any other provisions of the Water Code except where the recognition of such right has been established by judicial precedent as in the Lower Rio Grande litigation where the Court took into account a combination of unique factors found only in certain reaches of that river. (State of Texas v. Hidalgo County Water Control and Improvement District No. Eighteen, 443 S.W.2d 728). The District Court, on the other hand, is vested with the power to invoke equity to remedy situations where there is no adequate remedy at law (Texas Constitution Article V, Section 8). Therefore, the Commission recommends that the Court recognize equitable water rights for claimants under Section 5.303 of the Adjudication Act in the Concho River Segment under exceptional circumstances. The Commission

the suggests that such circumstances would include those situations where
Section 5.303 claimants had applied water to beneficial use prior to
1963 but did not use water during the historical period because the
Bank irrigable land was in a "soil bank contract"; because the source of
s, by supply was so polluted with minerals during the historical period as
vest to make the irrigation of land with such water impractical since it
would have been deleterious to any lands upon which it was applied; or
r for other unusual and extenuating circumstances brought to the Court's
owner attention by exception to the modified final determination.

self (c) The Commission also considered several claims of water
rights presented pursuant to former Article 7500a,* Vernon's Annotated
Civil Statutes. Under this article, enacted originally in 1895, and
often amended, a landowner could construct on his own property a
reservoir of a maximum size which varied with each amendatory statute
and could use the water in the reservoir for any use without being
required to obtain a permit. See City of Anson v. Arnett, 250 S.W.2d
450 (Tex. Civ. App.--Eastland 1952, writ ref'd n.r.e.). A dam may not
be constructed across a navigable stream unless authorized by a permit
or certified filing. See Garrison v. Bexar-Medina-Atascosa Counties
Water Improvement District No. 1, 404 S.W.2d 376 (Tex. Civ. App.--
Austin 1966, writ ref'd n.r.e.). The 47th Legislature amended the Act
effective March 17, 1941, being Chapter 36, Section 1 on page 53 of
the Session Laws, to restrict the use of water from such a reservoir
to domestic and livestock purposes in the absence of a permit author-
izing other uses. In considering the claims of water right under
former Article 7500a,* the Commission has recognized claims attaching
to reservoirs which were constructed within the maximum size allowable
under the statute in effect at the time of construction, and which
were built prior to March 17, 1941. The owner of such a reservoir
constructed after March 17, 1941, has no water right for other than
domestic and livestock purposes unless such use was authorized under a
permit.

MERGER FOR ADMINISTRATIVE PURPOSES

11. The allocation of water between users during times of
shortage has confronted and confounded every administrator of water

*With the enactment of the Texas Water Code in 1971, Article 7500a was
repealed and codified as Sections 5.140 and 5.141.

resources. Continual division of a stream into normal flow and storm and flood flow is a difficult engineering problem. If the administrator is to deal with not only this division but also the problem of allocating water between holders of certificates with a time priority and those without a time priority, particularly with the small quantity of water available in this segment, a wholly unworkable scheme will have been created. Therefore, the Commission has merged appropriative rights and rights recognized under Section 5.303 into a common system as an equitable and workable means of administering the water rights adjudicated and has placed all recognized riparian claimants on a time priority with statutory water rights. The time priority for riparians is the date of first beneficial use of water established under the claim. The time priority for permits is the date the application was formally accepted for filing with the Commission or its predecessors. For the purpose of determining time priority of certified filings the Commission determines that the following are relevant:

- Acts 1889, 21st Leg., Ch. 88, Sections 4 through 8;
- Acts 1895, 24th Leg., Ch. 21, Sections 5 through 7; and
- Acts 1913, 33rd Leg., Ch. 171, Section 14.

NEWLY ISSUED PERMITS AND AMENDMENTS

12. The addendum to this determination contains, in chronological order of the date of issuance, all permits or amendments to permits and certified filings which were issued by the Commission during the pendency of the adjudication. Due to their recent issuance, these permits and amendments could not be considered in the adjudication and are not included in this determination.

FAILURE TO FILE AND SUBSTANTIATE CLAIMS

13. Sections 5.303 and 5.307 of the Water Rights Adjudication Act of 1967 require all claimants of water rights except users of water for domestic and livestock purposes to file a statement of the claim of right with the Commission. The Commission finds that the failure to file a sworn statement extinguishes and bars any claim of water rights under Section 5.303, and the failure to file a sworn claim in accordance with the Commission's Notice of Adjudication under Section 5.307 bars the recognition of any right under this determination.

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As a basic premise those parties to the adjudication proceeding asserting water right claims under Sections 5.303 and 5.307 have an affirmative obligation to produce credible evidence to substantiate the nature and extent of their claims. The Commission finds that any party whose claim was not substantiated by credible evidence cannot be recognized a water right under this determination.

ORDER

NOW, THEREFORE, BE IT ORDERED as the Modified Final Determination of the Texas Water Rights Commission that the Commission makes findings of fact and conclusions defining the nature and extent of valid claims of water rights, if any, as to each respective party as hereinafter enumerated. The parties are indexed alphabetically and listed in numerical order of diversion point, or by tract number when there is no diversion point. The Commission declares that the right to use the water of the State of Texas in the Concho River Segment of the Colorado River Basin on the basis of the findings of fact indicated, in the annual quantities stated, for the purposes indicated, and at the rates of diversion and time priorities, is set forth below following the alphabetical index.

ALPHABETICAL LISTING OF PARTIES:

NAME	DIVERSION POINT NO	TRACT NO.	PAGE NO.	NAME	DIVERSION POINT NO	TRACT NO.	PAGE NO.
ALBERT, RICHARD R.	0440	0430	29	DICKSON, GENE	1647	1595	48
ANDERSON, (DR.) H. D.	NONE	0805	17	DICKSON, JACK	1647	1595	48
APPLEWHITE, JACK M.	0490	0440	21	DICKSON, JESSIE MAE	1647	1595	48
APPLEWHITE, JOANN	0490	0460	21	DICKSON, KENNETH	1647	1595	48
AUGUSTINE, THOMAS R.	0080	0060 & 0065	13	DICKSON, W. H.	1647	1595	48
AULT AND COMPANY	0500	0470	21	DINKLAGE, MRS. MARGARET BARNET	1460 & 1490	1410	43
BAILEY, WILBURN, ESTATE	1900, 1905, 1907 & 1909	1840 & 1850	54	DODSON, DWAIN F.	1980	1950	35
BAZER, MARIE NOELKE	0540 & 0550	0530	22	DORRANCE, ZAY E.	0730	0720	25
BALL, FRED	0700 & 0710	0700	23	DUNAHAY, DORMAN H.	0490	0460	21
BALLARD, BILLY P.	1090 & 1105	1100	34	DUNCAN, B. A.	0830, 0860, 0870 & 0905	0830 & 0880	28
BALLARD, MARY A.	1090 & 1105	1100	34	DUNCAN, BLAEE LEWIS	0240 & 0245	0170	15
BARROW, CLOLA LEE, ESTATE	NONE	1970	36	DUNCAN, RUBY C.	0240 & 0245	0170	15
BIRD, MARIAM A.	0070	0050	12	DUNLAP, BEVERLY H.	0490	0460	21
BLAIR, LOUIE	2120	2100	38	DUNLAP, GEORGE M.	0490	0460	21
BLAIR, THOMAS C., ESTATE	0540	0510	22	EDWARDS, BETH R.	0070	0050	12
BLANK, HARRY J.	0405	0380	19	EDWARDS, WILL F., JR.	NONE	1170	36
BLANK, HARRY J.	0560	0540	22	EDWARDS, WILSON C.	NONE	1170	36
BOULWARE, EDITH ANSON	0930	0950	31	ELLOTT, BILL	0315	0270	17
BOULWARE, FORD H.	0930	0950	31	ELLIS, DAN	1110	1110 & 1113	34
BOYD, MRS. E. M.	1250	1250 & 1255	18 & 59	ELLIS, DAN	1670 & 1680	1620	49
BROOKS, CLIFTON B.	0260	0190, 0195, 0200 & 0210	16	ELLIS, MABEL	1110	1110 & 1115	34
BROOKS, CLIFTON B.	0290	0240	16	ELLIS, MABEL	1670 & 1680	1620	49
BROOKS, MURRY K.	1470	1420	44	ELLIS, W. H.	1990	1900	56
BROOME, HAROLD W.	1790	1720	51	ERMIN, MRS. NELSON L.	1540	1480	43
BROOME, HAROLD W.	NONE	1750	52	EWALD, P. P. AND SAMIE C.	2080	2050	57
BROOME, JACKSON S.	1790	1720	51	FARR STREET ASSOCIATES, INC.	0490	0460	21
BROOME, JACKSON S.	NONE	1750	52	FINKS, MARY M.	1050	1050	33
BROSIG, J. C.	1920	1870	54	FINKS, R. M.	1050	1050	33
BROWN, DANIEL F.	0980, 0985	0990, 0992, & 0995	31	FORD, EDWIN	1480	1440 & 1445	44
BROWN, KENNETH W.	0160	NONE	14	FOSTER, E. E., JR.	0890	0920	30
BROWN, MRS. R. WILBER, JR.	0980 & 0985	0990, 0992, & 0995	31	FOSTER, MRS. KATIE PEARL	0890	0910	29
BROWN, W. L.	0980 & 0985	0990, 0992, & 0995	31	FOSTER, MRS. KATIE PEARL	0890	0915 & 0917	30
BRYAN, CHAPLIE	1420 & 1425	1360	42	FRANKLIN, JIM, ENGINEER	0390	0360	18
BRYAN, LORATINE	1420 & 1425	1360	42	FRY, LEE PAUL	1710	1640	49
BRYANT, HOMER I.	0520	0490	21	FUENTES, RICHARD B. AND LYDIA M.	0440	0430	20
BRYANT, NETTIE LEE	0520	0490	21	GASSIOT, BETTY M.	0250	0180	16
BURSCHER, ROBERT R.	1130, 1150, & 1160	1120	33	GASSIOT, WILLIAM Z.	0250	0180	16
BUNYARD, BESSIE, ESTATE	1340	1320	41	GRANTHAM, LEONARD, JR.	1770 & 1781	1700 & 1710	51
BUNYARD, B. P., ESTATE	1340	1320	41	GREGORY, PAUL	NONE	1390	43
BUNYARD, BOBBY	0440	0430	20	GOEBRING, DONALD H.	2110, 2115, & 2117	2080, 2085 & 2087	57
BURK, J. D.	0830 & 0910	0890	28	GROSSHANS, MRS. NONA G.	0050	0030	12
BUBLESON, LEWIS B.	0940, 0941, 0938 & 0943	0960	31	GROSSHANS, MRS. NONA G.	0060	0040	12
BUSEHLISHER, JOE	2050	2020	37	GUINN, MRS. W. A.	0730	0790	27
BUTLER, F. R.	1300	1290	40	GUINN, W. A. ESTATE	0790	0790	27
BUTTS, CHARLES	1800	1730	51	HAPER, CHARLES LEE	0580	0560	23
BUTTS, GENE	1800	1730	51	HAGEN, MRS. A. M.	1250	1250 & 1255	38
BUTTS, HELEN	1800	1730	51	HAGEN, ARTHUR M., JR.	1250	1250 & 1255	38
BUTTS, PATRICIA	1800	1730	51	BALCONB, MRS. OLSEN SHAW	NONE	0110	14
CALLIHAN, ALTON G. AND RUTH ANNE	1040	1040	33	HALL, MRS. MARY B. JOHNSON	1590	1540	46
CALLIHAN, MILDRED MERLE	0820	0820	27	HALL, MARY LOU	1430, 1435, & 1435	1370 & 1375	43
CAMPBELL, J. S.	NONE	1890	53	HANBLIN, ROBERT ALLEN AND CONSTANCE B.	1910	1960	54
CARPENTER, KAY	0320	0280	17	HARDY, (DR.) HAROLD R.	0250	0180	16
CARSON, HEZZIE	1500, 1520, & 1530	1460	45	HARDY, JOY H.	0250	0180	16
CASSLES, C. C.	0630	0630	24	HARRIS, WOODROW	0850	0860	29
CATHEY, CHARLES L.	0640	0640	24	HART, MRS. F. M.	1580	1530	46
CAUBLE, DOUGLAS J.	0820	0820	27	HARTMAN, MRS. CARLOTTA T.	NONE	0695	25
CAUBLE, E. G., JR.	0820	0820	27	HELMIG, BILLY JOE	1870 & 1880	1810 & 1820	54
CENTRAL NATIONAL BANK, TRUSTEE	1790	1720	51	HELMIG, JUNE L.	1870 & 1880	1810 & 1820	54
CENTRAL NATIONAL BANK, TRUSTEE	NONE	1750	51	HELMIG, HARVIN J. AND LEONA A.	1850	1790	53
CHANDLER, WAYNE, JR.	1640 & 1645	1590	48	HOLDENMAN, A. P.	0780	0780	26
CHILDRESS, ORA	1890	1820 & 1830	56	HODSON, WAYNE	1270	1270	38
CLEMENTS, BOB	0660	0660	24	HUGHES, MRS. ZULETTE	0680	0680	24
CLEVELAND, KENNETH	NONE	1175	36	IRION COUNTY IRRIGATION ASSOCIATION	0410	0390	19
CSEBEK, VICTOR	1810	1740	52	IVEY, C. H.	0380	0350	18
CONCHO COUNTY WCID NO. 1	2000	NONE	56	IWEY, C. H.	0450	0440	20
CURRIE, MRS. LOUISE HARDLAW	2100	2070	57	JACKS, DICK & DORIS	0370	0340	18
CURRIS, W. B.	2010 & 2015	1980	56	JACKSON, J. T.	2030	2000	56
DANIEL, HARRY	1510	1470	45	JENYSON, PAULINE & ELTIE	0990 & 1000	1000	32
DAVIS, MRS. ELTON	1570 & 1558	1510	46	JOHNSON, CLIFTON A.	1060	1060	33
DAY, GENA MARIE BEICHERT	1730	1660	50	JOHNSON, CLYDE A.	0540	0520	22
DAY, MURL E.	1730	1660	50	JOHNSON, MRS. R. C.	0810	0810	27
DICKSON, BOB W.	1647	1595	48	JOHNSON, MRS. R. C.	0840	0840	28
				JONES, CLARENCE E.	0580	0570	23
				JONES, EUGENE W.	1020	1020	32
				JONES, EUGENE W.	1198, 1200, & 1205	1180	36

DIVERSION POINT NO: 0010
TRACT NO: 0010

OWNERSHIP:
J.C. REED ESTATE

IR 1-2
Vol. 2 SF 4-26
Findings:

1. Certified Filing No. 599, as partially cancelled June 15, 1966, authorizes the diversion of 20 acre-feet of water per year at an unspecified diversion rate from a 10.8 acre-foot reservoir on the North Concho River for the irrigation of 10 acres of land in Survey No. 8, Sterling County.
2. The maximum historical use of water Certified Filing No. 599 was 20 acre-feet of water in 1968 or 1969 for the irrigation of 10 acres of land designated as Tract 0010 from Diversion Point 0010 at a maximum rate of 1.78 cfs (800 gpm).
3. Claim No. 4186 claims the maximum use of 20 acre-feet of water for the irrigation of 10 acres of land based on Certified Filing No. 599. The maximum diversion rate claimed was 800 gpm at Diversion Point 0010 from a 10.8 acre-foot reservoir. With the date of first beneficial use of water declared to be 1909. Although the claim indicates additional land was cleared prior to the filing of the claim to enable a larger quantity of water to be put to beneficial use. No Additional Sworn Statement was filed to support a claim of right based on use during 1968-1970 inclusive.
4. There was no evidence as to the possible riparian basis of this claim or of use 1961-1967.
5. Certified Filing No. 599 was filed on June 23, 1914.
6. The dam and 10.8 acre-foot reservoir authorized by Certified Filing No. 599 were constructed.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 4186

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 599

SOURCE OF WATER - NORTH CONCHO RIVER

NO. OF RESERVOIRS - 1 CAPACITY 10.8 ACRE-FEET

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 20 ACRE-FEET PER YEAR

NO. OF ACRES - 10

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7 APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN BOUNDARIES OF CERTIFIED FILING NO. 599 ON OWNED TRACT.

TRACT LOCATION - STERLING COUNTY

MAP NO. - 1 OF 1, PAGE 2

SURVEY - 8

DIVERSION - 1.78 CFS (800 GPM) AT DIVERSION POINT 0010

PRIORITY DATE - JUNE 23, 1914

DIVERSION POINT NO: 0020, 0030 AND 0040
TRACT NO: 0020 AND 0025

OWNERSHIP:
N.H. REED

IR 5-4
Vol. 2 SF 27-49
Findings:

1. Certified Filing No. 594 authorizes the use of an unspecified amount of water from a 40 acre-foot capacity reservoir on the North Concho River for the irrigation of 56 acres of land out of Survey 16, Sterling County. The authorized diversion rate is 1.8 cfs (1250 gpm) from Diversion Point 0030.
2. The filing owner testified to a maximum use under Certified Filing No. 594 of 360 acre-feet of water per annum for the irrigation of 56 acres, as planimetered.
3. The maximum amount of water which can be beneficially used without waste for agricultural purposes on this tract is 140 acre-feet of water for the irrigation of the 56 acres.
4. Certified Filing No. 594 also covers a 4 acre tract, designated as Tract 0025, and an additional diversion point, designated as Diversion Point 0040, however, there is no evidence as to irrigation of Tract 0025 or diversion at Diversion Point 0040.
5. Claim No. 5314 seeks a riparian right and a right under Certified Filing No. 594 to the use of 360 acre-feet of water from the North Concho River for the irrigation of 60 acres in Survey No. 16. The maximum diversion rate claimed was 3.02 cfs at Diversion Point 0050 from an 80 acre-foot reservoir, with the date of first beneficial use of water declared as prior to 1900.
6. Survey 16 is not a valid riparian survey as it was patented from the State in 1960, after the 1895 riparian cut-off date of Section 5.001, Texas Water Code. Further, claimant stated in open hearing an intention to litigate his water right claim to Certified Filing No. 594 only.
7. There is a dam and 80 acre-foot capacity reservoir upstream from the existing, authorized 40 acre-foot capacity reservoir. There is also an unauthorized diversion point, designated as Diversion Point 0020, on the perimeter of this reservoir.
8. Certified Filing No. 594 was filed on June 23, 1914.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 5314.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 594

SOURCE OF WATER - NORTH CONCHO RIVER

NO. OF RESERVOIRS - 1 TOTAL CAPACITY 40 ACRE-FEET

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 140 ACRE-FEET PER YEAR

NO. OF ACRES - 56

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 594 ON OWNED TRACT.

TRACT LOCATION - STERLING COUNTY

MAP NO. - 1 OF 1, PAGE 2

SURVEY - 16

DIVERSION - 2.8 CFS (1250 GPM) AT DIVERSION POINT 0030

PRIORITY DATE - JUNE 23, 1914

DIVERSION POINT NO: 0050
TRACT NO: 0030

OWNERSHIP:
MRS. NONA G. CROSSHANS

IR 5-6
Vol. 2 SF 50-69
Findings:

1. Certified Filing No. 595, as totally cancelled March 30, 1951, and reinstated July 29, 1961, authorizes the use of 40 acre-feet of water per year from the North Concho River for the irrigation of 20 acres of land out of a 320 acre tract in Survey 22, Sterling County, at a maximum diversion rate of 2.0 cfs (900 gpm) from Diversion Point 0050.
2. Claim No. 6876 seeks a riparian right and a right based on Certified Filing No. 595 to the use of an unspecified quantity of water from the North Concho River for the irrigation of an unspecified number of acres of land in Survey 22. The claim declares 35 acres were irrigable and the date of first beneficial use of water was asserted to be 1890.
3. Certified Filing No. 595 was totally cancelled by the Texas Water Rights Commission on July 30, 1974.
4. Claim No. 6876 is not a valid riparian claim because Survey 22 was patented from the State in 1925, after the riparian cut-off date of Section 5.001, Texas Water Code.
5. The maximum use under Certified Filing No. 595 was the use of an unspecified quantity of water for the irrigation of 20 acres during 1941 to 1946, inclusive. There was no evidence adduced of any use under either the certified filing or the riparian claim during 1963-1967, inclusive.
6. Diversion was at Diversion Point 0050 at a maximum rate of 2.0 cfs (900 gpm).
7. Certified Filing No. 595 was filed on June 24, 1914.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 6876 OR CERTIFIED FILING NO. 595

DIVERSION POINT NO: 0060
TRACT NO: 0040

OWNERSHIP:
MRS. NONA G. CROSSHANS

IR 7-8
Vol. 2 SF 61-69
Findings:

1. Certified Filing No. 594 as partially cancelled on July 23, 1962, and again on August 30, 1969, authorizes the use of 12 acre-feet of water per year from the North Concho River for irrigation of 12 acres of land out of Survey 27, Sterling County, at a maximum diversion rate of 0.07 cfs (300gpm) at Diversion Point 0060.
2. Claim No. 4399 seeks a riparian right to the use of an unspecified quantity of water from the North Concho River for the irrigation of an unspecified number of acres of land in Survey 27. The claimed diversion was at Diversion Point 0060 by a 500 gpm capacity pump with 13.63 acres declared as irrigable. The date of first beneficial use of water was asserted to be 1919.
3. No evidence was introduced of water use during 1963-1967, inclusive, under Claim No. 4399, and claimant abandoned any water right under the claim in open hearing except for Certified Filing No. 594.
4. The lands claimed for irrigation under Claim No. 4399 are located adjacent to the North Concho River in Survey 27, which was patented from the State in 1962.
5. The maximum use under Certified Filing No. 594 was of 8 acre-feet in 1970 and 1971 for the irrigation of 12 acres of land.
6. Diversion is at Diversion Point 0060 at a maximum rate of 1.11 cfs (500 gpm), which is in excess of that rate authorized under Certified Filing No. 594.
7. Certified Filing No. 594 was filed on June 23, 1914.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 4399

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 594

SOURCE OF WATER - NORTH CONCHO RIVER

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 8 ACRE-FEET PER YEAR

NO. OF ACRES - 12

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, OF INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 594 IN SURVEY 27 ON OWNED TRACT.

TRACT LOCATION - STERLING COUNTY

MAP NO. - 1 OF 1, PAGE 2

SURVEY - 27

DIVERSION - 0.67 CFS (300 GPM) AT DIVERSION POINT 0060

PRIORITY DATE - JUNE 23, 1914

DIVERSION POINT NO: 0070
TRACT NO: 0050

OWNERSHIP:
T.C. RAWLINGS, TRUSTEE
MARIAN A. BIRD
BETH R. EDWARDS

IR 9
Vol. 2 SF 70-81
Findings:

1. Permit No. 146, as partially cancelled February 8, 1967, authorizes the diversion and use of 25 acre-feet of water per year from the North Concho River for the irrigation of 25 acres of land in Survey 359, Tom Green County.
2. The diversion authorized under Permit No. 146 was at Diversion Point 0070 by pump at a maximum rate of 5.00 cfs (2250 gpm).
3. Permit No. 146 was totally cancelled by the Texas Water Rights Commission on July 30, 1974, for non-use.
4. Claim No. 476 seeks a riparian right to the use of an unspecified quantity of water from the North Concho River for "farm purposes" on an unspecified number of acres in Survey 259, Tom Green County. The date of first beneficial use was declared to be about 1911.
5. The lands claimed for irrigation under Claim No. 476 are located adjacent to the North Concho River in Survey 259, which was patented from the State in 1856.
6. There was no evidence introduced as to non-exempt, beneficial use of water in connection with Claim No. 476 during the period 1963-1967, inclusive.
7. The application for Permit No. 146 was filed on April 3, 1916.

CLAIMANTS ARE RECOGNIZED NO RIGHT UNDER EITHER CLAIM NO. 476 OR PERMIT NO. 146

DIVERSION POINT NO: 0080
TRACT NO: 0060 AND 0065

OWNERSHIP:
THOMAS R. AUGUSTINE

IR 11
Vol. 2 SF 82-90
Findings:

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- Permit No. 1171A, as amended April 14, 1943, authorizes the use of 14 acre-feet of water per year from the North Concho River for the irrigation of 7 acres of land in two tracts in Survey 279, Tom Green County. The authorized rate of diversion was not specified. The original permit stipulated that the application of water was to be limited to 2 acre-feet of water for each acre actually irrigated.
- Diversion under Permit No. 1171A was by pump at Diversion Point 0080 at a maximum rate of 5.00 cfs (2250 gpm).
- Permit No. 1171A was totally cancelled by the Texas Water Rights Commission on July 30, 1974, for non-use of water.
- Claim No. 3458 and an Additional Sworn Statement seek a riparian right and a right based on Permit No. 146 to use an unspecified quantity of water for the irrigation of an unspecified number of acres in Survey 259, Tom Green County. A 16.5 acre-foot reservoir was described in the claim and 6 acres were declared as irrigable. An Additional Sworn Statement was filed with the Commission which states that no water was put to beneficial use under the claim during 1968-1970, inclusive.
- The lands claimed for irrigation under Claim No. 3458 are located adjacent to the North Concho River in Survey 259, which was patented from the State in 1855.
 - There was no evidence introduced of any non-exempt, beneficial use of water in connection with Claim No. 3458 during the period 1968-1970, inclusive.
 - An unspecified quantity of water was used for irrigation in the permit area prior to 1954.
 - The application for Permit No. 1171A was filed on February 2, 1931.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER EITHER
CLAIM NO. 3458 OR PERMIT NO. 1171A

DIVERSION POINT NO: 0090
TRACT NO: 0070

OWNERSHIP:
MRS. MYRTLE MITCHELL

IR 12
Vol. 2 SF 91-98
Findings:

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- Permit No. 1171, owned jointly with W. Maxwell Turner, authorizes the use of 58 acre-feet of water from the North Concho River for the irrigation of 29 acres of land in Surveys 278 and 231, Tom Green County. It also authorizes a 36.6 acre-foot capacity on-channel reservoir with diversion by pump at Diversion Point 0090. The permit stipulates that the application of water was to be limited to 2 acre-feet for each acre actually irrigated.
- Mrs. Myrtle Mitchell's portion of Permit No. 1171, contains 14.5 acres of land out of Survey 278, 11 acres of which are cleared and have been irrigated within the boundaries of the permit.
- Permit No. 1171 was totally cancelled by the Texas Water Rights Commission on July 30, 1974, for non-use of water.
- The last use of water in the permit area was of an unknown quantity of water for the irrigation of an unspecified number of acres in 1948-1954, inclusive.
- The application for Permit No. 1171 was filed on February 2, 1931.

PERMITTEE IS RECOGNIZED NO RIGHT UNDER PERMIT NO. 1171

DIVERSION POINT NO: 0100
TRACT NO: 0090

OWNERSHIP:
W. MAXWELL TURNER

IR 13
Vol. 3 SF 99-113
Findings:

- Permit No. 1171, owned jointly with Myrtle Mitchell, authorizes the use of 58 acre-feet of water from the North Concho River for irrigation of 29 acres of land out of Surveys 278 and 231, Tom Green County. It also authorizes a 36.6 acre-foot capacity on-channel reservoir with diversion by pump at Diversion Point 0100.
- W. Maxwell Turner's portion of Permit No. 1171, contains 14.5 acres of land out of Survey 231. This tract is also covered by Certified Filing No. 914 which authorizes the use of an unspecified amount of water from the North Concho River for irrigation of 50 acres of land out of Survey 231, with a diversion rate of 1.45 cfs at Diversion Point 0100.
- Permit No. 1171 and Certified Filing No. 914 were totally cancelled by the Texas Water Rights Commission on July 30, 1974, for non-use of water.
- The maximum use under this portion of Permit No. 1171 and Certified Filing No. 914 was of 12 acre-feet in 1951 for the irrigation of 12 acres of land which was covered by both rights.
- The application for Permit No. 1171 was filed on February 2, 1931; Certified Filing No. 914 was filed on February 26, 1916.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER EITHER
PERMIT NO. 1171 OR CERTIFIED FILING NO. 914

DIVERSION POINT NO: 0110
TRACT NO: 0090

OWNERSHIP:
SAN ANGELO CENTER

IR 14
Vol. 2 SF 114-130
Findings:

- Certified Filing No. 536 authorizes the use of water from the North Concho River for irrigation of a 160 acre tract in Surveys 283, 284, and 285, Tom Green County, with no diversion rate specified.
- The maximum use of water under Certified Filing No. 536 was of 393.3 acre-feet in 1947 for the irrigation of 160 acres, with the last irrigation use in 1962. Diversion was at Diversion Point 0110 at a maximum rate of 4.4 cfs (2000 gpm).
- San Angelo Center is operated by the State of Texas Department of Mental Health and Mental Retardation. Claimant presented a Development Plan which shows an earnest intent to beneficially use the waters of the North Concho River in patient recovery programs and do intend to amend the certified filing to full fill future requirements.
- Certified Filing No. 536 was filed on June 26, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 536
SOURCE OF WATER - NORTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 594 ACRE-FEET PER YEAR
NO. OF ACRES - 160
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO
INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER
BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 536 ON
OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 1 OF 1, PAGE 7
SURVEYS - 283, 284, AND 285
DIVERSION - 4.4 CFS (2000 GPM) AT DIVERSION POINT 0110
PRIORITY DATE - JUNE 26, 1914

DIVERSION POINT NO: 0120, 0130, 0140 AND 0150
TRACT NO: 0100

OWNERSHIP:
GLENN H. SIMPSON

IR 15-16
Vol. 2 SF 173-191
Findings:

1. Claim No. 2595 seeks a riparian water right to use 45 acre-feet of water from the North Concho River for irrigation of 80 acres of land out of Surveys 292 and 293, Tom Green County, at a maximum rate of 800 gpm. The claimed diversion was at Diversion Points 0120 and 0130, and the date of first beneficial use was asserted to be 1930.
2. Maximum use during 1963-1967, inclusive, was 45 acre-feet of water in 1963 for the irrigation of 80 acres located in a tract adjacent to the North Concho River in Survey 293 which was patented from the State in 1865.
3. Diversion under Claim No. 2595 was at Diversion Points 0120 and 0130 by two pumps at a maximum combined diversion rate of 3.56 cfs (1600 gpm). There are also two unclaimed portable pump sites used in connection with this irrigated area, designated as Diversion Points 0140 and 0150.
4. First beneficial use of water under Claim No. 2595 was in 1935.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2595
SOURCE OF WATER - NORTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 45 ACRE-FEET PER YEAR
NO. OF ACRES - 80
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 2595 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 2 OF 11, PAGE 8
SURVEY - 293
ABSTRACT - 162
DIVERSION - 3.56 CFS (1600 GPM) AT DIVERSION POINTS 0120, 0140, 0140 AND 0150
PRIORITY DATE - 1935

DIVERSION POINT NO: None
TRACT NO: 0110

OWNERSHIP:
MRS. OLEEN SHAW HALCOMB
MISS NELL E. SHAW

IR 17
Vol. 2 SF 131-160
Findings:

1. Claim No. 2909 seeks a riparian water right, a right under the Irrigation Acts of 1889 and 1895 and an equitable right to use water from the North Concho River for irrigation of 143 acres of land out of Surveys 214, 295 and 296, Tom Green County. No water use during 1963-1967, inclusive, was declared in the claim and no diversion facilities were described. The date of first beneficial use was asserted to be April 1, 1911, and 143 acres were declared as irrigable.
2. There was no evidence introduced of any non-exempt, beneficial use of water in association with Claim No. 2909 during the years 1963-1970, inclusive. The last use of water for irrigation was prior to 1947 when 160 acre-feet of water per year were used to irrigate 160 acres of land.
3. Claimants did use an unspecified quantity of water from the North Concho River in 1961 for gravel-washing purposes, however this use was not in the claim area nor did claimants seek to preserve a right to such use.
4. The claimed tract is adjacent to the North Concho River in Surveys 214, 295 and 296 which were patented from the State in 1855.

CLAIMANTS ARE RECOGNIZED NO RIGHT UNDER CLAIM NO. 2909

DIVERSION POINT NO: 0100
TRACT NO: None

OWNERSHIP:
KENNETH W. BROWN

IR 14
Vol. 9 SF 19-30
Findings:

1. Field investigation revealed the existence of a Diversion Point 0100 and a canal located in Survey 1140, Tom Green County, which conveys the storm and floodwaters of an unnamed, non-navigable tributary of the North Concho River to a reservoir located in Survey 1139, Tom Green County.
2. No claim was filed for these facilities, nor are they covered by any statutory appropriation right of record.
3. The capacity of the reservoir is less than 200 acre-feet, the dam and reservoir are on the Brown property, and the impounded waters are used only for domestic and livestock purposes.
4. There is no evidence to substantiate any need for a water right associated with this system.

THERE IS NO NEED FOR AUTHORIZATION OF THIS WATER USE UNDER EXISTING LAW.

DIVERSION POINT NO: 0170
TRACT NO: NONE

OWNERSHIP:
UPPER COLORADO RIVER AUTHORITY

IR 19
Vol. 3 SF 574-612
Findings:

1. Permit No. 1516 authorizes the impoundment of 80,400 acre-feet per annum of water from the North Concho River in a 391,500 acre-foot capacity un-channel reservoir and diversion therefrom for use by the City of San Angelo for domestic, municipal, industrial, irrigation, mining and recreational purposes.
2. The permit authorizes impoundment of storm and floodwaters only with normal flow to be passed through the dam.
3. The permit authorizes diversion at Diversion Point 0170, the outlets in the dam, as required to meet the needs of the City of San Angelo.
4. The application for Permit No. 1516 was filed on May 27, 1949.
5. The maximum amount of water used under the permit was in 1966 when 12,243 acre-feet of water were used for municipal purposes and 516 acre-feet were used for industrial purposes.
6. Permittees have exercised due diligence in attempting to perfect the permit to the maximum authorized amounts and purposes of use.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 1516
SOURCE OF WATER - NORTH CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 391,500 ACRE-FEET
PURPOSE OF USE - MUNICIPAL AND INDUSTRIAL
AMOUNT OF WATER - 12,759 ACRE-FEET PER YEAR
DAM AND RESERVOIR SHOWN IN EXHIBIT NO. 7 APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972
LOCATION - TOM GREEN COUNTY
MAP NO. - 2 AND 3 OF 11, PAGE 8 AND 9
DIVERSION - AS REQUIRED FROM DIVERSION POINT NO. 0170
PRIORITY DATE - MAY 27, 1949
REMARKS - PERMITTEE HAS A LICENSE TO PERFECT TO THE FULL 80,400 ACRE-FEET OF WATER AUTHORIZED BY PERMIT NO. 1516 FOR MUNICIPAL, INDUSTRIAL, MINING AND RECREATIONAL PURPOSES.

DIVERSION POINT NO: 0180
TRACT NO: None

OWNERSHIP:
CITY OF SAN ANGELO

IR 20
Vol. 8 SF 611-621
Findings:

1. Permit No. 1194 authorizes the construction of a dam (Johnson Dam) and 150 acre-foot capacity on-channel reservoir on the North Concho River in Survey 323, Tom Green County, to be used for public park, recreation and resort purposes. Type of flow is not specified.
2. Diversion Point 0180 is a drain gate only and is not used to release normal flows through Johnson Dam.
3. All North Concho River flows to be used by the City of San Angelo and/or downstream users must flow over the top of Johnson Dam.
4. Numerous City of San Angelo residences use the waters of this on-channel reservoir for domestic purposes.
5. The application for Permit No. 1194 was filed on October 13, 1931.
6. Permit No. 1194 specifically prohibits the permittee from diverting any of the impounded water.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 1194
SOURCE OF WATER - NORTH CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 150 ACRE-FEET
PURPOSE OF USE - PUBLIC PARK, RECREATION AND RESORT
AMOUNT OF WATER - 150 ACRE-FEET PER YEAR
DAM AND RESERVOIR SHOWN IN EXHIBIT NO. 7 APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 5 OF 11, PAGE 11
SURVEY - 323
PRIORITY DATE - OCTOBER 13, 1931

DIVERSION POINT NO: 0190
TRACT NO: 0120

OWNERSHIP:
BOYD W. LOVELACE

IR 11-17
Findings:

1. Claim No. 3666 and an Additional Sworn Statement seek a riparian right to the use of 1.05 acre-feet of water per year from the North Concho River for irrigation of one acre of land in Survey 173, Tom Green County. The claimed diversion was at Diversion Point 0190 by a 4 gpm capacity pump.
2. Claimant submitted a written instrument abandoning Claim No. 3666 and tendering it to the Texas Water Rights Commission dismissal.
3. Claim No. 3666 was dismissed by Commission action February 27, 1973.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 3666

DIVERSION POINT NO: 0200
TRACT NO: 0130

OWNERSHIP:
A. A. SUGG, JR.

IR 23
Vol. 2 SF 192-215
Findings:

1. Claim No. 5288 and an Additional Sworn Statement seek a riparian water right to use an unspecified quantity of water from the Middle Concho River for irrigation of an unspecified number of acres located in Survey 1894, Irion County. Diversion was claimed at Diversion Point 0200 by a 5 horsepower pump with 55 acres declared as usable and the date of first beneficial use of water asserted to be 1942. An Additional Sworn Statement was filed with the Commission which states that no water was used under the claim during 1968-1970, inclusive.
2. There was no evidence introduced of non-exempt, beneficial use of public water in association with Claim No. 5288 during the years 1963-1970, inclusive.
3. Water was used in the claim area for the irrigation of five to ten acres of land in 1962. There is presently no operable irrigation system located in the claim area.
4. Survey 1894 is located adjacent to the Middle Concho River and was patented from the State in 1859.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 5288

DIVERSION POINT NO: 0210 AND 0220
TRACT NO: 0140 AND 0150

OWNERSHIP:
GLADYS M. MAYER

IR 24
Vol. 2 SF 226-262
Findings:

1. Claim No. 3057 and an Additional Sworn Statement seek a riparian right and a right under the Irrigation Act of 1889 to use the waters of the Middle Concho River for irrigation in two separate tracts, designated as Tracts 0140 and 0150, in Survey 48, Irion County. The claim indicates no water was used during 1963-1970, inclusive. Two reservoirs having a total capacity of 50 acre-feet of water were claimed, and 86 acres were declared as irrigable with a date of first beneficial use asserted as prior to 1914.
2. Survey 48, in which the claim area is located, was patented from the State in two parts, the east half in 1929 and the west half in 1924 after the 1595 riparian cut-off date of Section 5-001, Texas Water Code.
3. There has been no non-exempt, beneficial use of water in association with Claim No. 3057 during the years 1963-1967, inclusive. The last beneficial use was in 1936 when some 78 acres were irrigated with an unknown quantity of water.
4. Two dams and reservoirs, built in 1905 and 1907, were also claimed under Claim No. 3057, of which one is still in existence on the Middle Concho River.
5. The Middle Concho River is a navigable stream at this point.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 3057

DIVERSION POINT: 0230
TRACT NO: 0160

OWNERSHIP:
BILL M. TULLOS
MAGGIE LILVIA TULLOS

IR 25-26
Vol. 2 SF 216-225
Findings:

1. Claim No. 5168 seeks a riparian right to use 30 acre-feet of water from the Middle Concho River for irrigation of 30 acres of land, located in Surveys 858 and 859, Irion County. The maximum diversion rate was 1.11 cfs with 30 acres declared as irrigable and the date of first beneficial use was asserted to be 1961.
2. The maximum use of water during 1963-1967, inclusive, under Claim No. 5168 was 30 acre-feet of water per year in each year for the irrigation of 20 acres located in a tract adjacent to the Middle Concho River in Surveys 858 and 859, which were patented from the State in 1850.
3. Diversion was at Diversion Point 0230 by pump at a maximum rate of 1.11 cfs (500 gpm).
4. Date of first beneficial use of water under Claim No. 5168 was in 1960.
5. Claimant testified that the land was cleared and put in irrigation in 1960.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 5168
SOURCE OF WATER - MIDDLE CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 30 ACRE-FEET PER YEAR
NO. OF ACRES - 20
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 5168 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 7 OF 4, PAGE 4
SURVEYS - 858 AND 859
ABSTRACTS - 539 AND 475
DIVERSION - 1.11 CFS (500 GPM) AT DIVERSION POINT 0230
PRIORITY DATE - 1960

DIVERSION POINT NO: 0240 AND 0245
TRACT NO: 0170

OWNERSHIP:
BLAKE LEWIS DUNCAN
RUBY C. DUNCAN
W. JACK LEWIS

IR 27-28
Vol. 2 SF 263-330
Findings:

1. Permit No. 1104 authorizes the use of 152 acre-feet of water per annum from the Middle Concho River for irrigation of 76 acres located in Surveys 833, 834 and 835, Tom Green County. Diversion is authorized from two on-channel reservoirs having a combined capacity of 76 acre-feet at Diversion Points 0240 and 0245. The permit stipulates that the application of water shall be limited to 2 acre-feet of water per year for each acre of land actually irrigated.
2. Claim No. 3559 seeks a riparian right and a right under Article 7500a to the use of an unspecified quantity of water for irrigation with 76 acres of land declared as irrigable in Surveys 833, 834 and 835. Claim No. 3559 was abandoned by the claimants in open hearing, and there was no evidence introduced as to the possible riparian basis of this claim or of use under the claim during 1963-1970, inclusive. The date of first beneficial use was asserted in the claim to be 1930.
3. The maximum use of water under Permit No. 1104 was in 1950 when 152 acre-feet of water were used for the irrigation of 47 acres. This use of water was in excess of two acre-feet of water per acre actually irrigated limitation imposed by the permit. The greatest amount of water used within this limitation was in 1951 when 124 acre-feet of water were used to irrigate 62 acres. The greatest number of acres irrigated was 76 acres in 1949, and the maximum diversion was 6.68 cfs (3000 gpm) using two pumps at Diversion Points 0240 and 0245. There has been no irrigation under this permit since 1960.
4. There are presently no irrigation, diversion or distribution facilities associated with Permit No. 1104 and one of the two owners have purchased a pump and motor and declared an intention to repair the breached dam.
5. The application for Permit No. 1104 was filed on December 3, 1928.

CLAIMANTS ARE RECOGNIZED NO RIGHT UNDER CLAIM NO. 3559

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 1104
SOURCE OF WATER - MIDDLE CONCHO RIVER
NO. OF RESERVOIRS - 2 TOTAL CAPACITY 76 ACRE-FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 124 ACRE-FEET PER YEAR LIMITED TO 2 ACRE-FEET PER ACRE ACTUALLY IRRIGATED
NO. OF ACRES - 76
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7 APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF PERMIT NO. 1104 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEYS - 833, 834 AND 835
DIVERSION - 6.68 CFS (3000 GPM) AT DIVERSION POINTS 0240 AND 0245
PRIORITY DATE - DECEMBER 3, 1928

DIVERSION POINT NO: 0250
TRACT NO: 0180

OWNERSHIP:
DR. HAROLD R. HARDY
JOY H. HARDY
WILLIAM L. GASSTOT
BEITY M. GASSTOT

IR 29 30
Vol. 2 SF 331-397 Vol. IX-A SF 20
Findings:

1. Permit No. 997A, as partially cancelled November 12, 1970, and amended May 8, 1973, authorizes the use of 35 acre-feet of water from the Middle Concho River at a maximum diversion rate of 2.0 cfs for irrigation of 35 acres out of Surveys 327 and 828, Irion County. The permit also authorizes an 88 acre-foot capacity on-channel reservoir.
2. The maximum use under Permit No. 997A, as partially cancelled and amended, was in 1950 when 43 acre-feet of water were used to irrigate 35 acres of land. There was no irrigation under the permit from 1956-1970, inclusive.
3. Owners have purchased new irrigation equipment for the conveyance of water to the permit area.
4. Diversion under Permit No. 997A, as amended, is at Diversion Point 0250 by pump at a maximum diversion rate of 2.0 cfs (300 gpm).
5. The application for Permit No. 997A was filed on August 2, 1926.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 997A
SOURCE OF WATER - MIDDLE CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 80 ACRE FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 35 ACRE-FEET PER YEAR
NO. OF ACRES - 35
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF PERMIT NO. 997A ON OWNED TRACT.
TRACT LOCATION - 70M GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEYS - 827 AND 828
DIVERSION - 2.00 CFS (900 GPM) AT DIVERSION POINT 0250
PRIORITY DATE - AUGUST 2, 1926

DIVERSION POINT NO: 0255
TRACT NO: 0145

OWNERSHIP:
ELIZABETH SCHEUBER

IR 31
Vol. 2 SF 398-416
Findings:

1. Certified Filing No. 327, as amended on October 30, 1964, is jointly owned by Elizabeth Scheuber, Boyce Tankersley and the Claude L. Tankersley Estate. It authorizes the use of an unspecified amount of water from Spring Creek for irrigation of 500 acres of land at a maximum diversion rate of 17.82 cfs (8000 gpm). The certified filing also authorizes a dam and 50 acre-foot capacity on-channel reservoir on Spring Creek.
2. The maximum use of water under Elizabeth Scheuber's portion of Certified Filing No. 327 was 264 acre-feet of water in 1972 for the irrigation of 130 acres, designated as Tract 0135, in Surveys 707, 708 and 709, Irion County.
3. Diversion under Elizabeth Scheuber's portion of Certified Filing No. 327 was at Diversion Point 0255 by pump at a maximum rate of 1.30 cfs (810 gpm). The authorized diversion point under Certified Filing No. 327 is at Diversion Point 0270. There are no other appropriators who would be adversely effected by diversion at Diversion 0255 under Certified Filing No. 327, and the total rates of diversion from both Diversion Point 0255 and 0270 would not exceed that authorized under the certified filing.
4. Certified Filing No. 327 was filed on June 27, 1914.
5. The authorized dam and 50 acre-foot capacity reservoir are located in Survey 706, adjacent to Boyce Tankersley's land on the west bank and Clifton Brook's land on the east bank of Spring Creek.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 327
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 1 CAPACITY 50 ACRE-FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 264 ACRE-FEET PER YEAR
NO. OF ACRES - 130
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7 APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 327 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 707, 708 AND 709
DIVERSION - 1.30 CFS (810 GPM) AT DIVERSION POINT 0255
PRIORITY DATE - JUNE 27, 1914

DIVERSION POINT NO: 0290
TRACT NO: 0190, 1195, 0290 AND 0210

OWNERSHIP:
CLIFTON B. BROOKS

IR 32
Vol. 2 SF 439-461
Findings:

1. Certified Filing No. 144 authorizes the use of an unspecified amount of water from Spring Creek for irrigation of 70 acres of land in three separate tracts of land out of Surveys 710 and 717 in Irion County. The authorized diversion is at Diversion Point 0290 at a maximum rate of 3.34 cfs (1500 gpm).
2. The maximum use of water was 121 acre-feet of water per year during 1965-1970, inclusive, for the irrigation of 61 acres, as surveyed, 12.6 acres of which are not within the boundaries of the certified filing. The maximum use of water within the area of the certified filing was 1 acre-foot of water per acre on 49 acres of land.

3. Diversion under Certified Filing No. 148 was at Diversion Point 0290 at a maximum rate of 3.56 cfs (1600 gpm) which is in excess of the authorized diversion rate.
4. Certified Filing No. 148 contains an error in survey numbers and the actual lands authorized for irrigation are in Surveys 717 and 718, not Surveys 710 and 717.
5. Certified Filing No. 148 was filed on May 25, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 148
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 98 ACRE-FEET PER YEAR
NO. OF ACRES - 49
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: ALL IRRIGATED TRACTS, EXCEPT 12.5 ACRES ARE WITHIN AUTHORIZED CERTIFIED FILING BOUNDARIES ON OWNED TRACTS.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 717 AND 718
DIVERSION - 3.56 CFS (1500 GPM) AT DIVERSION POINT 0290
PRIORITY DATE - MAY 25, 1914

DIVERSION POINT NO: 0270 AND 0280
TRACT NO: 0230 AND 0230

OWNERSHIP:
LEMON TANKERSLEY, TRUSTEE

IR 33
Vol. 2 SF 292-303
Findings:

1. Certified Filing No. 327, as amended on October 30, 1964, is jointly owned by Boyce Tankersley, Clyde L. Tankersley Estate, and Elizabeth Scheuber. It authorizes the use of an unspecified amount of water from Spring Creek for irrigation of 500 acres of land in Surveys 704, 705, 706 and 707, Irion County, at a maximum diversion rate of 17.82 cfs (8000 gpm). The certified filing also authorizes a dam and 50 acre-foot capacity on-channel reservoir on Spring Creek.
2. The maximum use of water under Boyce Tankersley's portion of Certified Filing No. 327 was 276 acre-feet of water in 1972 for the irrigation of 133 acres of land in Surveys 704, 705, 706 and 707, Irion County, designated as Tracts 0220 and 0230.
3. Diversion is at Diversion Point 0270, as authorized by Certified Filing No. 327, by pump at a maximum rate of 3.9 cfs (1800 gpm). There is also an unauthorized diversion point on a spring branch tributary of Spring Creek at Diversion Point 0280 which is used to augment the diversion at Diversion Point 0270. There are no intervening landowners or interjaacent appropriators between Diversion Points 0270 and 0280 who would be adversely effected by the additional diversion point.
4. The authorized dam and 50 acre-foot capacity reservoir are located in Survey 706 adjacent to Boyce Tankersley's land on the west bank and Clifton Brook's land on the east bank of Spring Creek.
5. Certified Filing No. 327 was filed on June 27, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 327
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 1 CAPACITY 50 ACRE-FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 276 ACRE-FEET PER YEAR
NO. OF ACRES - 133
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 327, ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 704, 705, 706 AND 707
DIVERSION - 3.9 CFS (1800 GPM) AT DIVERSION POINT 0270 AND DIVERSION POINT 0280
PRIORITY DATE - JUNE 27, 1914

DIVERSION POINT NO: 0290
TRACT NO: 0210

OWNERSHIP:
CLIFTON B. BROOKS

IR 33
Vol. 2 SF 461-479
Findings:

1. Certified Filing No. 373 authorizes the use of an unspecified amount of water from Spring Creek at a maximum diversion rate of 1.23 cfs (1000 gpm) for irrigation of 50 acres of land out of Surveys 718 and 719, Irion County.
2. The maximum use of water under Certified Filing No. 373 was 91 acre-feet of water per year since 1965 for the irrigation of 42 acres of land, as surveyed, designated as Tract 0240.
3. Diversion is at Diversion Point 0290, as authorized by the certified filing, at a maximum rate of 0.78 cfs (350 gpm).
4. Certified Filing No. 373 was filed on June 23, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 373
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 91 ACRE-FEET PER YEAR
NO. OF ACRES - 42
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 373 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 718 AND 719
DIVERSION - 0.78 CFS (350 GPM) AT DIVERSION POINT 0290
PRIORITY DATE - JUNE 23, 1914

Point No. 0250
TRACT NO: 0250
OWNERSHIP:
MRS. PEARL WILLIAMS

1. Certified Filing No. 328, as partially cancelled on March 10, 1967 authorizes Mrs. Pearl Williams the use of 40 acre-feet of water from Spring Creek at a maximum diversion rate of 1.00 cfs (450 gpm) for the irrigation of 20 acres of land out of Survey 703, Irion County.

2. Claim No. 147 seeks a riparian right to irrigate a total of 11 acres of land in a tract adjacent to Spring Creek in Survey 703, which was patented from the State in 1858. The maximum diversion rate was claimed to be 1.67 cfs and 24 acres were declared as irrigable.

3. The maximum use of water 1963-1967, inclusive, under Claim No. 147 was 4 acre-feet of water for the irrigation of 11 acres of land. The partial cancellation order of March 10, 1967, comprises a valid finding upon evidence presented in that proceeding of perfection under the certified filing to the extent of 40 acre-feet of water per year for the irrigation of 20 acres.

4. Diversion under Certified Filing No. 328 and Claim No. 477 was at Diversion Point 0300, as authorized, by pump at a maximum rate of 1.0 cfs (450 gpm). The diversion rate at the time of the hearing was 1.67 cfs (750 gpm) which is in excess of the rate authorized by the certified filing.

5. Certified Filing was filed on June 27, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 328 AND CLAIM NO. 447

SOURCE OF WATER - SPRING CREEK

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 40 ACRE FEET PER YEAR

NO. OF ACRES - 20

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 328 AND CLAIM NO. 447 ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY

MAP NO. - 3 OF 1, PAGE 5

SURVEY - 703

ABSTRACT - 167

DIVERSION - 1.00 CFS (450 GPM) AT DIVERSION POINT 0300

PRIORITY DATE - JUNE 27, 1914

DIVERSION POINT NO: 0310
TRACT NO: 0260
OWNERSHIP:
CLAUDE L. TANKERSLEY ESTATE

IR 38, 39 AND 35
Vol. 2 SF 417-437

1. Certified Filing No. 327A, which amended Certified Filing No. 327 on October 30, 1964, authorizes the use of 160 acre-feet of water from Spring Creek at a diversion rate of 3.0 cfs (1350 gpm) for irrigation of 80 acres of land out of Surveys 721 and 722, Irion County.

2. Claim No. 179A seeks a riparian right and a right under Certified Filing No. 327 to use 562 acre-feet of the waters of Spring Creek per year for the irrigation of 30 acres of land at a maximum rate of 1.46 cfs. This is the same tract as that covered by Certified Filing No. 327A.

3. The maximum use 1963-1967, inclusive, under Claim No. 179A was 112 acre-feet of water in 1967 for the irrigation of 80 acres of land. This use also constitutes the maximum use under Certified Filing No. 327A.

4. Diversion is at Diversion Point 0310 by portable pump at a maximum rate of 2.23 cfs (1000 gpm), as authorized by Certified Filing No. 327A.

5. The filing owner has exercised due diligence in perfecting the water right granted under Certified Filing No. 327A to the maximum quantity of water of 160 acre-feet per annum.

6. Claimant's attorney made an abrogation of any claims under Certified Filing No. 327 conditioned on the recognition of Certified Filing No. 327A as a separate water right.

7. Certified Filing No. 327A was filed on June 27, 1914.

8. The lands irrigated under Claim No. 179A are located adjacent to Spring Creek in Surveys 721 and 722, which were patented from the State in 1858.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 327A AND CLAIM NO. 179A

SOURCE OF WATER - SPRING CREEK

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 112 ACRE-FEET PER YEAR

NO. OF ACRES - 30

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 327A AND CLAIM NO. 179A ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY

MAP NO. - 3 OF 1, PAGE 5

SURVEYS - 721 AND 722

ABSTRACTS - 494 AND 641

DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 0310

PRIORITY DATE - JUNE 27, 1914

REMARKS - FILING OWNER HAS A LICENSE TO PERFECT CERTIFIED FILING NO. 327A TO 160 ACRE-FEET OF WATER PER ANNUM FOR THE IRRIGATION OF 80 ACRES AT A MAXIMUM DIVERSION RATE OF 3.0 CFS (1350 GPM).

DIVERSION POINT NO: 0315
TRACT NO: 0270
OWNERSHIP:
BILL ELLIOTT (Previously H.H. Rains)

IR 41
Vol. 11

1. Certified Filing No. 328, as partially cancelled March 10, 1967, authorized H.H. Rains the use of 4 acre-feet of water from Spring Creek for irrigation of 2 acres of land out of Survey 703, Irion County.

2. H.H. Rains failed to file a Section 5.107 Claim due to ill health. Bill Elliott submitted a petition to file a late Section 5.107 claim stating good cause and extenuating circumstances for failure to timely file. The petition was granted and the claim accepted for filing by Commission action.

3. The authorized diversion under Certified Filing No. 328, as partially cancelled, is at Diversion Point 0315 at a maximum rate of 1.0 cfs (450 gpm). Bill Elliott has installed a 0.33 cfs (150 gpm) capacity pump at that point.

4. The partial cancellation order of March 10, 1967, constitutes a valid finding upon the evidence presented in that proceeding of perfection under the certified filing to the extent of 4 acre-feet of water per year for the irrigation of 2 acres.

5. Certified Filing No. 328 was filed on June 27, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 328

SOURCE OF WATER - SPRING CREEK

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 4 ACRE FEET PER YEAR

NO. OF ACRES - 2

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 328 ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY

MAP NO. - 3 OF 1, PAGE 5

SURVEY - 703

DIVERSION - 1.0 CFS (450 GPM) AT DIVERSION POINT 0315

PRIORITY DATE - JUNE 27, 1914

DIVERSION POINT NO: 0320
TRACT NO: 0280
OWNERSHIP:
MRS. GLAD C. WILLIAMS ESTATE
RAY CARPENTER

IR 42
Vol. 2 SF 490-490

1. Certified Filing No. 328, as partially cancelled on March 10, 1967, authorizes Glad C. Williams the use of 4 acre-feet of water from Spring Creek at Diversion Point 0320 with a maximum diversion rate of 1.0 cfs (450 gpm) for the irrigation of 2 acres of land in Survey 702 and 703 in Irion County.

2. Present diversion is by a 25 gpa domestic-type pump at Diversion Point 0320 for domestic purposes only, including the irrigation of a garden, lawn and orchard with no commercial intent.

3. The partial cancellation order of March 10, 1967, constitutes a valid finding upon the evidence presented in that proceeding of perfection under the certified filing to the extent of 4 acre-feet of water per year for the irrigation of 2 acres.

4. Certified Filing No. 328 was filed on June 27, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 328

SOURCE OF WATER - SPRING CREEK

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 4 ACRE FEET PER YEAR

NO. OF ACRES - 2

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 328 ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY

MAP NO. - 3 OF 1, PAGE 5

SURVEYS - 702 AND 703

DIVERSION - 1.0 CFS (450 GPM) AT DIVERSION POINT 0320

PRIORITY DATE - JUNE 27, 1914

DIVERSION POINT NO: 0330
TRACT NO: 0290
OWNERSHIP:
WILSON L. McNEEL

IR 43
Vol. 9 SF 57-53

1. Certified Filing No. 328, as partially cancelled on March 10, 1967, authorizes Feroi McNeels the diversion of 4 acre-feet of water from Spring Creek at Diversion Point 0330 with a maximum diversion rate of 1.0 cfs (450 gpm) for the irrigation of 4 acres of land in Survey 702, Irion County.

2. Present diversion is by a 30 gpm domestic-type pump at Diversion Point 0330 for domestic purposes only.

3. The partial cancellation order of March 10, 1967, constitutes a valid finding upon the evidence presented in that proceeding of perfection under the certified filing to the extent of 4 acre-feet of water per year for the irrigation of 4 acres.

4. Certified Filing No. 328 was filed on June 27, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 328

SOURCE OF WATER - SPRING CREEK

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 4 ACRE-FEET PER YEAR

NO. OF ACRES - 4

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 328 ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY

MAP NO. - 3 OF 1, PAGE 5

SURVEY - 702

DIVERSION - 1.0 CFS (450 GPM) AT DIVERSION POINT 0330

PRIORITY DATE - JUNE 27, 1914

DIVERSION POINT NO: 0340
TRACT NO: 0390
OWNERSHIP:
JAMES A. ULMER (Previously J. Taylor Evans)
SUE S. ULMER

IR 44
Vol. 2 SF 499-501

1. Certified Filing No. 328, as partially cancelled March 10, 1967, authorizes the diversion of 1 acre-foot of water from Spring Creek at Diversion Point 0340 with a diversion rate of 1.0 cfs (450 gpm) for irrigation of 0.5 acres of land in Survey 702, Irion County.

2. J. Taylor Evans conveyed his interest in the property and the certified filing to G.W. Evans and wife, who then conveyed the property to James A. Ulmer and wife, Sue S. Ulmer.

3. Present diversion is by a domestic-type pump of unspecified capacity for domestic purposes only.

4. Certified Filing No. 328 was filed on June 27, 1914.

5. The partial cancellation order of March 10, 1967, constitutes a valid finding upon the evidence presented in that proceeding of perfection to the extent of 1 acre-foot of water for the irrigation of 0.5 acres of land.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 328

SOURCE OF WATER - SPRING CREEK

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 1 ACRE-FOOT PER YEAR

NO. OF ACRES - 0.5

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 328 ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY

MAP NO. - 3 OF 4, PAGE 5

SURVEY - 702

DIVERSION - 1.0 CFS (450 GPM) AT DIVERSION POINT 0340

PRIORITY DATE - JUNE 27, 1914

DIVERSION POINT NO: 0350
TRACT NO: 0310

OWNERSHIP
UPPER DITCH COMPANY

IR 44
Vol. 1 SF 53-144
Findings:

1. Certified Filing No. 60 authorizes the use of an unspecified amount of water from Spring Creek at a maximum diversion rate of 10.0 cfs (4500 gpm) by gravity flow ditch for irrigation of 320 acres of land out of Surveys 725, 726 and 726b, Irion County.
2. Certified Filing No. 60 also authorizes a dam and 35 acre-foot capacity un-channel reservoir which is in existence.
3. The Upper Ditch Company is a cooperative of individual landowners and the Company in itself owns no lands which are irrigated under this certified filing.
4. Maximum use of water under Certified Filing No. 60 was 536 acre-feet of water per annum for the irrigation of 298 acres of land belonging to numerous interest-holders in the Company. The maximum diversion rate through the gravity flow system was 10.0 cfs (4500 gpm) at Diversion Point 0350, as authorized by the certified filing.
5. Certified Filing No. 60 was filed on March 14, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 60
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 1 CAPACITY 35 ACRE-FOOT
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER 536 ACRE-FOOT PER YEAR
NO. OF ACRES - 298
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 60.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 725, 726 AND 726b
DIVERSION - 10.0 CFS (4500 GPM) AT DIVERSION POINT 0350
PRIORITY DATE - MARCH 14, 1914

DIVERSION POINT NO: 0350
TRACT NO: 0320

OWNERSHIP
J. K. WOLFENBARGER, JR. (Previously Dr. W.M. Behrens)
STELLA O. WOLFENBARGER

IR 45
Vol. 1 SF 592-519
Findings:

1. Claim No. 11545 and an Additional Sworn Statement seek a riparian water right to use 21 acre-feet of water from Spring Creek for irrigation of 16 acres of land out of Surveys 724 and 725, Irion County. The maximum claimed diversion rate was 4.01 cfs. An Additional Sworn Statement was filed with the Commission indicating use during 1964-1970, inclusive.
2. The maximum use of water 1963-1970, inclusive, was 21 acre feet in 1961 for the irrigation of 13 acres of land designated as Tract 0320.
3. Tract 0320 is located adjacent to Spring Creek in Surveys 724 and 725, Irion County, which were patented from the State in 1854.
4. Diversion under Claim No. 11545 was by pump at Diversion Point 0350 at a maximum rate of 4.01 cfs (1800 gpm).
5. First beneficial use of water under Claim No. 11545 was in 1964.
6. Surveys 724 and 725 are valid riparian surveys and Claim No. 11545 is a valid claim of riparian water rights to the extent of 21 acre-feet of water per year for the irrigation of 13 acres.
7. Claimants amended their Section 5.307 Form in open hearing to reduce their claimed acreage from 15 acres to 13 acres.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 11545
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 24 ACRE-FOOT PER YEAR
NO. OF ACRES - 13
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 11545 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 724 AND 725
ABSTRACTS - 659 AND 660
DIVERSION - 4.01 CFS (1800 GPM) AT DIVERSION POINT 0360
PRIORITY DATE - DECEMBER 31, 1964

DIVERSION POINT NO: 0370
TRACT NO: 0330

OWNERSHIP
EMORY C. LOFTON

IR 17
Vol. 1 SF 510-535 and Vol. 2 SF 539-565
Findings:

1. Claim No. 320 and an Additional Sworn Statement seek a riparian water right to use 9.2 acre-feet of water from Spring Creek for irrigation of 4.0 acres of land out of Survey 699, Irion County. The maximum claimed diversion rate was 1.56 cfs.
2. There was no evidence introduced of beneficial use of water during 1963-1970, inclusive, in connection with Claim No. 320 on which to base a recognizable riparian water right.
3. The claimed diversion point at Diversion Point 0370 refers to land and facilities owned by Dick and Doris Jacks who stated that there was no diversion at that point during 1963-1967, inclusive, for irrigation of the Lofton tract and that Emory C. Lofton and his lessee did not have authority to use these facilities.
4. Claim No. 320 is also based on Certified Filing No. 420, however this certified filing covers lands in Survey 699 only and not the lands in Survey 699 owned by Emory C. Lofton.
5. The lands claimed for irrigation under Claim No. 320 consist of 4.0 acres located adjacent to Spring Creek in Survey 699 which was patented from the State in 1861. Claimant asserted the use of 9.2 acre-feet of water per year during 1963-1967, inclusive, with beneficial use claimed only from 1961.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 320

DIVERSION POINT NO: 0370
TRACT NO: 0340

OWNERSHIP
DICK AND DORIS JACKS

IR 19
Vol. 2 SF 530-565
Findings:

1. Certified Filing No. 420 authorizes the use of an unspecified amount of water from Spring Creek at a maximum diversion rate of 1.67 cfs (750 gpm) at Diversion Point 0370 for the irrigation of 12.4 acres of land out of Survey 694, Irion County.
2. A portion of the lands covered by Certified Filing No. 420, located north of the Jacks' tract and containing 19 acres, are owned by the Southwest Stockman's Supply Company.
3. Maximum use under Certified Filing No. 420 was 74 acre-feet in 1972 for the irrigation of 12.4 acres of land.
4. Diversion is at Diversion Point 0370 by pump at a maximum rate of 1.56 cfs (700 gpm).
5. Certified Filing No. 420 was filed on June 29, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 420
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 24 ACRE-FOOT PER YEAR
NO. OF ACRES - 12.4
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 420 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 699
DIVERSION - 1.56 CFS (700 GPM) AT DIVERSION POINT 0370
PRIORITY DATE - JUNE 29, 1914

DIVERSION POINT NO: 0350
TRACT NO: 0350

OWNERSHIP
C.H. IVEY (Previously Erwin Ewing)

IR 49
Vol. 1 SF 572-585
Findings:

1. Field investigation revealed a pump at Diversion Point 0350 which is not authorized by any recorded riparian water right or claim of right and which was used to irrigate 5.0 acres of land adjacent to Spring Creek in Survey 725, Irion County.
2. No Section 5.307 or Section 5.107 claim was filed by either the previous owner of this property, Erwin Ewing, or the present owner, C.H. Ivey, to cover this diversion.
3. The lands irrigated from Diversion Point 0350 are located within the boundaries of Certified Filing No. 60 of the Upper Ditch Company, of which C.H. Ivey is a member. They are irrigated under that certified filing, with water diverted from Diversion Point 0360 being used only to augment that supply.
4. C.H. Ivey expressed no intent to use this diversion point for irrigation purposes in the future.

NO RIGHT IS RECOGNIZED FOR DIVERSION POINT 0350

REMARKS - C.H. IVEY IS RECOGNIZED A RIGHT TO IRRIGATE ONLY AS A MEMBER OF THE UPPER DITCH COMPANY UNDER CERTIFIED FILING NO. 60.

DIVERSION POINT NO: 0390
TRACT NO: 0360

OWNERSHIP
JIM FRANKLIN, TRUSTEE

IR 50 51
Vol. 1 SF 5-21
Findings:

1. Certified Filing No. 420, owned jointly with Dick Jacks and Doris Jacks authorizes the use of an unspecified quantity of water from Spring Creek with a maximum diversion rate at Diversion Point 0390 of 1.67 cfs (750 gpm) for the irrigation of 22.4 acres out of Survey 693, Irion County.
2. Southwest Stockman's Supply Company owns 10 acres of land covered by Certified Filing No. 420.
3. Maximum use of water under Certified Filing No. 420 was 13.2 acre-feet of water in 1964 for the irrigation of 6.8 acres.
4. Claim No. 1845 seeks a riparian right to use 26.7 acre-feet of water from Spring Creek for the irrigation of 13 acres of land in Surveys 697 and 693, Irion County. The maximum diversion rate was claimed to be 1.56 cfs and the date of first beneficial use was declared to be 1912.
5. The maximum use of water 1963-1967, inclusive, under Claim No. 1845 was 26 acre-feet of water in 1964 for the irrigation of 13 acres of land. Of this 13 acres, 6.4 acres are covered by the riparian claim only, and 0.8 acres are also covered by Certified Filing No. 420.
6. The tract of land irrigated under Claim No. 1845 is located adjacent to Spring Creek in Surveys 697 and 693 which were patented from the State in 1833 and 1861, respectively.
7. Diversion is at Diversion Point 0390, as authorized by Certified Filing No. 420, at a maximum rate of 1.67 cfs (750 gpm).
8. Certified Filing No. 420 was filed on June 29, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 420 AND CLAIM NO. 1845
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 26 ACRE-FOOT PER YEAR
NO. OF ACRES - 13
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF AMENDED CERTIFIED FILING NO. 420 AND CLAIM NO. 1845 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 697 AND 693
ABSTRACTS - 495 AND 496
DIVERSION - 1.67 CFS (750 GPM) AT DIVERSION POINT 0390
PRIORITY DATE - JUNE 29, 1914

DIVERSION POINT NO: 0400
TRACT NO: 0370

OWNERSHIP:
IDA E. NUTT

IR 55
Vol. 3 SF 21 96
Findings:

Certified Filing No. 143 authorizes the use of an unspecified amount of water from Spring Creek at a maximum diversion rate of 2.25 cfs (1000 gpm) at Diversion Point 0400 for the irrigation of 40 acres of land out of Surveys 644, 695 and 695A, Irion County.
Ida E. Nutt owns 21 acres of land in Surveys 695 and 695A covered by Certified Filing No. 143, the remaining 19 acres being owned by David B. Read, et al, under Certified Filing No. 143A. Claim No. 1564 and an Additional Sworn Statement seek a riparian right to the use of water from Spring Creek to irrigate 60 acres, including the 19 acres covered by Certified Filing No. 143. The claimed diversion is from a 15 acre-foot reservoir at Diversion Point 0400 at a maximum rate of 2.67 cfs. The date of first beneficial use of water was declared to be 1904. The maximum use of water during 1963-1970, inclusive, in connection with that portion of Claim No. 1364 belonging to Ida E. Nutt was 1 acre-foot of water per acre in 1966 for the irrigation of 26.7 acres in Surveys 695 and 695A. Survey 695 contains 5.7 acres irrigated under Claim No. 1364 located adjacent to Spring Creek and patented from the State in 1961. Survey 695A, containing the remaining 21 irrigated acres, was patented from the State in 1903, after the 1895 riparian cut-off date of Section 5.001, Texas Water Code. The maximum historical use under that portion of Certified Filing No. 143 belonging to Ida E. Nutt was 42 acre-feet of water per year for the irrigation of 21 acres of land.
Certified Filing No. 143 was filed on May 30, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 143 AND CLAIM NO. 1364

SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 18 ACRE-Feet PER YEAR
NO. OF ACRES - 27
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 143 AND CLAIM NO. 1364 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 695 AND 695A
ESTRATES - 164 AND 1117
DIVERSION - 2.25 CFS (1000 GPM) AT DIVERSION POINT 0400
PRIORITY DATE - MAY 30, 1914

DIVERSION POINT NO: 0405
TRACT NO: 0380

OWNERSHIP:
DAVID B. READ
HARRY J. BLANEY

IR 54
Vol. 3 SF 37-52 and Vol. 1X A SF 17
Findings:

- 1. Certified Filing No. 143A, as amended April 10, 1973, authorizes the use of an unspecified amount of water from Spring Creek at Diversion Point 0405 with a maximum diversion rate of 0.50 cfs (225 gpm) for the irrigation of 19 acres in Surveys 694A, Irion County.
- 2. The maximum historical use of water under Certified Filing No. 143 was 2 acre-feet per acre for the irrigation of 40 acres. David B. Read and Harry J. Blaney own 19 acres of land within the certified filing area which have been irrigated with a maximum of 19 acre-feet of water.
- 3. By the amendment to Certified Filing No. 143 dated April 10, 1973, the Commission approved a change in the place of use of 19 acres under the certified filing to a 19 acre tract in Survey 694A, owned by David B. Read and Harry J. Blaney. The remaining 21 acres covered by the original certified filing are owned by Ida E. Nutt.
- 4. David B. Read and Harry J. Blaney abandoned all water rights claims under Claim No. 1364 in open hearing.
- 5. Certified Filing No. 143 was filed on May 30, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 143A

SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 39 ACRE-Feet PER YEAR
NO. OF ACRES - 19
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 143A ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 694A
DIVERSION - 0.50 CFS (225 GPM) AT DIVERSION POINT 0405
PRIORITY DATE - MAY 30, 1914

DIVERSION POINT NO: 0410
TRACT NO: 0390

OWNERSHIP:
IRION COUNTY IRRIGATION ASSOCIATION

IR 55-56
Vol. 3 SF 145-188
Findings:

- 1. Certified Filing No. 132 authorizes the use of an unspecified amount of water from Spring Creek by gravity flow diversion at a maximum rate of 6.6 cfs (3000 gpm) from a 45 acre-foot capacity on-channel reservoir for irrigation of 216 acres in Surveys 727, 728 and 729, Irion County.
- 2. Certified Filing No. 225 authorizes the use of an unspecified amount of water from Spring Creek by gravity flow diversion at a maximum rate of 5.0 cfs (2250 gpm) from an on-channel reservoir of unspecified capacity for the irrigation of 108 acres of land also in Surveys 727, 728 and 729, Irion County.
- 3. Claim No. 6043 seeks a riparian right to use 673 acre-feet of water from Spring Creek for livestock use and the irrigation of 324 acres of land in Surveys 727, 728 and 729 from Diversion Point 0410. The claimed tract is contiguous with the combined area covered by the certified filings. The claimed diversion is from a reservoir at Diversion Point 0410 at a rate of 2.23 cfs. The date of first beneficial use was declared as 1883.

*The recognition herein is modified by action of the Commission during the pendency of this adjudication by the granting of an application for a new permits or an amendment of an existing permit or certified filing, a summary of which is described in the addendum to this determination.

- 1. The maximum use of water under Certified Filings No. 132 and 225 combined was 490 acre feet of water in 1967 for the irrigation of 272 acres of land, as planimetered.
- 2. The Irion County Irrigation Association does not itself own any riparian lands for which a water right is claimed under Claim No. 6043, but only owns a system for distribution to member landowners.
- 3. Both gravity flow diversion systems authorized under the two certified filings including the two reservoirs have been abandoned. Water is presently diverted by pump at Diversion Point 0410 at a maximum rate of 2.23 cfs (1000 gpm). There are no other appropriators who would be adversely effected by diversion at Diversion Point 0410 under Certified Filing No. 132 and Certified Filing No. 225 and there would not be an increase in the rate of diversion authorized under these certified filings.
- 4. The irrigated tract claimed under Claim No. 6043 is adjacent to Spring Creek in Surveys 727, 728 and 729, which were all patented from the State in 1858.
- 5. Certified Filing No. 132 was filed on May 22, 1914, and Certified Filing No. 225 was filed on May 23, 1914.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 6043

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 132 AND CERTIFIED FILING NO. 225

SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 490 ACRE-Feet PER YEAR
NO. OF ACRES - 272
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILINGS NO. 132 AND 225
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 727, 728 AND 729
DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 0410
PRIORITY DATE - MAY 22, 1914

DIVERSION POINT NO: 0420
TRACT NO: 0400

OWNERSHIP:
HARRY F. WOODY

IR 57
Vol. 3 SF 193-206
Findings:

- 1. Certified Filing No. 151 owned jointly with the Iult Company and Homer Bryant, authorizes the use of an unspecified quantity of water from Spring Creek at a maximum diversion rate of 4.00 cfs (1800 gpm) for the irrigation of a total of 110 acres located in 3 tracts in Surveys 725, 726, 728 and 729, Irion County.
- 2. Harry F. Woody owns 12.5 acres of land in Surveys 725 and 726 which are covered by Certified Filing No. 151 and which have been irrigated under that certified filing to a maximum extent of 10.3 acre-feet of water in 1970 for the full 12.5 acres.
- 3. Diversion has been at Diversion Point 0420, as authorized by the certified filing, at a maximum rate of 1.11 cfs (500 gpm).
- 4. Harry F. Woody is also a member of the Upper Ditch Company and this tract is covered by and irrigated under the Company's Certified Filing No. 60.
- 5. Certified Filing No. 151 was filed on May 30, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 151

SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 11 ACRE-Feet PER YEAR
NO. OF ACRES - 11.5
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 151 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 725 AND 726
DIVERSION - 1.11 CFS (500 GPM) AT DIVERSION POINT 0420
PRIORITY DATE - MAY 30, 1914
REMARKS - THIS RIGHT IS RECOGNIZED INDEPENDENTLY OF WHAT EVER QUANTITY OF WATER THE OWNER MAY BE ENTITLED TO AS A MEMBER OF THE UPPER DITCH COMPANY UNDER ITS CERTIFIED FILING NO. 60.

DIVERSION POINT NO: 0420
TRACT NO: 0410

OWNERSHIP:
HARRY F. WOODY

IR 58
Vol. 3 SF 207-211
Findings:

- 1. Certified Filing No. 102 authorizes the use of an unspecified quantity of water from Spring Creek at Diversion Point 0420 with a maximum diversion rate of 1.67 cfs (750 gpm) for the irrigation of 52 acres in Surveys 725, Irion County.
- 2. The maximum use of water under Certified Filing No. 102 was 28.7 acre-feet in 1969 for the irrigation of 28.3 acres of land.
- 3. Harry F. Woody is also a member of the Upper Ditch Company and this tract is also covered by and irrigated under the Company's Certified Filing No. 60.
- 4. Diversion is at Diversion Point 0420 by pump at a maximum rate of 1.11 cfs (500 gpm).
- 5. Certified Filing No. 102 was filed on May 7, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 102

SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 29 ACRE-Feet PER YEAR
NO. OF ACRES - 29
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 102 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 726
DIVERSION - 1.11 CFS (500 GPM) AT DIVERSION POINT 0420
PRIORITY DATE - MAY 7, 1914
REMARKS - THIS RIGHT IS RECOGNIZED INDEPENDENTLY OF WHAT EVER QUANTITY OF WATER THE OWNER MAY BE ENTITLED TO AS A MEMBER OF THE UPPER DITCH COMPANY UNDER ITS CERTIFIED FILING NO. 60.

DIVERSION POINT NO. 0430
TRACT NO. 0430

OWNERSHIP
DAVID E. POWELL

IR 54
Vol. 2 SF 195-198
Findings:

1. Certified Filing No. 146, owned jointly with C.H. Ivey, authorizes the use of an unspecified quantity of water from Spring Creek at Diversion Point 0430 at a maximum rate of 1.70 cfs (760 gpm) for the irrigation of 22 acres of land out of Survey 726, Irion County.
2. David E. Powell owns 1 acre of land covered by Certified Filing No. 146 on which the maximum historical use of water was 2 acre-feet in 1969 for irrigation of the full 1 acre.
3. Diversion is at Diversion Point 0430 at a maximum rate of 0.04 cfs (20 gpm). Diversion Point 0430 is not authorized under Certified Filing No. 146 on any other water right of record. There are no other appropriators who would be adversely affected by diversion at Diversion Point 0430 under Certified Filing No. 146 and there would not be an increase in the rate of diversion authorized under these certified filings.
4. This 1 acre tract is also covered by Certified Filing No. 60 of the Upper Ditch Company, however, David E. Powell is not a member of that company.
5. This 1 acre tract is also covered by Claim No. 164 of C.H. Ivey although David E. Powell did not assert a right under the claim and no evidence was presented as to use under this claim.
6. Certified Filing No. 146 was filed on May 21, 1914.
7. Present use of water in connection with this tract is for domestic use only.

CLAIMANT IS RECOGNIZED HIS RIGHT UNDER CLAIM NO. 164

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 146
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 2 ACRE-FEET PER YEAR
NO. OF ACRES - 1
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX F7
(INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 146, ON OWNED TRACT.)
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 726
ABSTRACT - 460
DIVERSION - 1.70 CFS (760 GPM) AT DIVERSION POINT 0430
PRIORITY DATE - MAY 21, 1914

DIVERSION POINT NO. 0410
TRACT NO. 0430

OWNERSHIP:
BOBEN BUNYARD, REV. FREDERICK G. NAWARSKAS, REV. BENEDICT J. ZIENTEK, RICHARD R. ALBERT, MIKE KALATZES, RICHARD B. FUENTES, LYDIA M. FUENTES, JOHNNY KALATZES, DONALD C. SMITH, PERM M. SMITH

IR 60-51
Vol. 3 SF 242-253
Findings:

1. Certified Filing No. 226, jointly owned with J.S. McComb, Jr., Travis Crawford, George L. Woolard, et al, authorizes the use of an unspecified quantity of water from Spring Creek at Diversion Points 0410 and 0470 with a maximum diversion rate of 6.24 cfs (2600 gpm) for the irrigation of 110 acres of land in Surveys 692, 693 and 694, Irion County. The certified filing also authorizes a dam and on-channel reservoir of unspecified capacity.
2. Claim No. 991 and an Additional Sworn Statement seek a riparian right to 54.3 acre-feet of water from Spring Creek for the irrigation of 54 acres of land out of Survey 694. The claimed diversion is at Diversion Point 0410 from a 6 acre-foot reservoir at a rate of 2.51 cfs. The date of first beneficial use under the claim was asserted to be 1901.
3. H.C. Moreland owns a 40-acre tract located within the boundaries of Certified Filing No. 226 which has been irrigated to a maximum extent of 2.4 acre-feet per acre in 1963 or 96 acre-feet of water for the irrigation of 40 acres of land.
4. Maximum use during 1963-1970, inclusive, in connection with Claim No. 991 was 120 acre-feet of water in 1963 for the irrigation of 50 acres, consisting of 40 acres which were also irrigated under the certified filing and 10 acres irrigated under the riparian claim above.
5. There is currently a 2.51 cfs (1150 gpm) capacity pump at Diversion Point 0410 which was in use during the 1967-1968 period.
6. The existing on-channel reservoir authorized by Certified Filing No. 226 has a capacity of 6 acre-feet.
7. Certified Filing No. 226 was filed on June 17, 1914.
8. The tract irrigated under Claim No. 991 is adjacent to Spring Creek and located in Survey 694 which was patented from the State in 1856.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 226 AND CLAIM NO. 991
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 1 CAPACITY 6 ACRE-FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 110 ACRE-FEET PER YEAR
NO. OF ACRES - 50
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 226 AND CLAIM NO. 991 ON OWNED TRACT.)
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 694
ABSTRACT - 452
DIVERSION - 2.51 CFS (1150 GPM) AT DIVERSION POINT 0410
PRIORITY DATE - JUNE 17, 1914

DIVERSION POINT NO. 0450
TRACT NO. 0430

OWNERSHIP:
C.H. IVEY

IR 62-63
Vol. 2 SF 585-597
Findings:

1. Certified Filing No. 146, owned jointly with David Powell, Tract 0430, authorizes the use of an unspecified amount of water from Spring Creek at a maximum diversion rate of 1.70 cfs (760 gpm), for the irrigation of 22 acres of land out of Survey 726, Irion County.
2. C.H. Ivey owns 21 acres of land covered by Certified Filing No. 146 and also covered by Certified Filing No. 60 of the Upper Ditch Company, of which C.H. Ivey is a member.

3. Claim No. 164 and an Additional Sworn Statement seek a Riparian water right to use 2.3 acre-feet of water of Spring Creek for irrigation, with 22 acres of land declared as irrigable, 21 acres of which are owned by C.H. Ivey and are covered by both Certified Filing No. 146 and Certified Filing No. 60.
4. The maximum historical use of water used in connection with Certified Filing No. 146 was 12 acre-feet of water in 1967 for the irrigation of 18 acres of land. This use is independent of any water use which the filing owner may have made under Certified Filing No. 60 of the Upper Ditch Company.
5. The maximum use of water under Claim No. 164 during 1963-1970, inclusive, was 12 acre-feet of water in 1967 for the irrigation of the same 18 acres irrigated under Certified Filing No. 146.
6. Diversion under Certified Filing No. 146 and Claim No. 164 is by portable pump at Diversion Point 0450 which was used in 1967 at a maximum rate of 1.70 cfs (760 gpm).
7. This tract is also irrigated from the Upper Ditch Company's canal under Certified Filing No. 60.
8. The tract irrigated under Claim No. 164 is located adjacent to Spring Creek in Survey 726 which was patented from the State in 1856.
9. Certified Filing No. 146 was filed on May 21, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 146 AND CLAIM NO. 164

SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 12 ACRE-FEET PER YEAR
NO. OF ACRES - 18
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 146 AND CLAIM NO. 164 ON OWNED TRACT.)
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 726
ABSTRACT - 460
DIVERSION - 1.70 CFS (760 GPM) AT DIVERSION POINT 0450
PRIORITY DATE - MAY 21, 1914
REMARKS - THIS RIGHT IS RECOGNIZED INDEPENDENTLY OF WHAT-EVER QUANTITY OF WATER THE OWNER MAY BE ENTITLED TO AS A MEMBER OF THE UPPER DITCH COMPANY UNDER ITS CERTIFIED FILING NO. 60.

DIVERSION POINT NO. 0460 AND 0470
TRACT NO. 0450

OWNERSHIP:
J.S. MCCOMB, JR.

IR 64
Vol. 3 SF 263-276
Findings:

1. Certified Filing No. 226, owned jointly with H.C. Moreland, Travis Crawford, George L. Woolard, et al, authorizes the use of an unspecified quantity of water from Spring Creek at Diversion Point 0410 for the irrigation of a total of 140 acres of land in Surveys 692, 693 and 694, Irion County.
2. J.S. McComb, Jr., owns 50 acres of land located within the boundaries of Certified Filing No. 226 in Surveys 693 and 694.
3. Claim No. 4065 seeks a right based on Certified Filing No. 226 to the use of 70 acre-feet of water from Spring Creek for the irrigation of 70 acres of land. The claim also asserts a right to diversion from Diversion Points 0460 and 0470 at a maximum rate of 9.14 cfs. The date of first beneficial use was declared to be 1910.
4. The maximum historical use under Certified Filing No. 226 was 56 acre-feet of water for the irrigation of 50 acres.
5. The maximum use during 1963-1967, inclusive, under Claim No. 4065 was 34 acre-feet of water in 1965 for the irrigation of 50 acres, which was the same tract as that irrigated under the certified filing.
6. Diversion is at Diversion Points 0460 and 0470 by pump at a maximum rate of 1.46 cfs (2000 gpm). This pump and diversion rate were used during the period 1963-1967, inclusive, under Claim No. 4065.
7. The tract irrigated under Claim No. 4065 is adjacent to Spring Creek in Surveys 693 and 694 which were patented from the State in 1856.
8. Certified Filing No. 226 was filed on June 17, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 226 AND CLAIM NO. 4065

SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 50 ACRE-FEET PER YEAR
NO. OF ACRES - 50
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 226 AND CLAIM NO. 4065 ON OWNED TRACT.)
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 694 AND 693
ABSTRACTS - 454 AND 453
DIVERSION - 4.46 CFS (2000 GPM) TOTAL AT DIVERSION POINT 0460 AND 0470
PRIORITY DATE - JUNE 17, 1914

DIVERSION POINT NO. 0480
TRACT NO. 0455

OWNERSHIP:
REUBEN STANLEY

IR 65
Vol. 3 SF 182-193
Findings:

1. There was a portable pump at Diversion Point 0480 on Spring Creek and irrigation equipment in place on Tract 0455 at the time of the field investigation.
2. Tract No. 0455 is within the boundaries of Certified Filings No. 152 and 225 owned by the Irion County Irrigation Association.
3. Reuben Stanley is not a member of the Irion County Irrigation Association.
4. The portable pump and irrigation equipment have been removed subsequent to the field investigation.
5. Reuben Stanley abandoned in open hearing any claim to the use of surface water from Spring Creek for non-exempt uses.

NO WATER RIGHT IS RECOGNIZED FOR TRACT 0455 EXCEPT UNDER CERTIFIED FILING NO. 152 AND CERTIFIED FILING NO. 225 OF THE IRION COUNTY IRRIGATION COMPANY PURSUANT TO MEMBERSHIP IN THE COMPANY.

with 967 dependent under 3-1970 irrigation of 161.11 in 1967 by's sent to State 16 AND TO RIVER DMS: AND MNT 04 WHAT AS A ED FILE nd, use Diver: as of 16 1 694, 3, 226 r the 1 right claim declared was No. 1 under a tion der being AND 0 RIVER MS: AND ION POINT ng the ngs di- tion red use RTI- ON IPANY

DIVERSION POINT NO: 0190
CLAIM NO: 0460
OWNERSHIP:
HAROLD D. TURNER
MADELENE L. TURNER
JACK M. APPLEWHITE
JOANN APPLEWHITE
FRED D. SMATHERS
FARM STREET ASSOCIATES, INC.
JOANNA L. SMATHERS
DORMAN H. DUNAWAY
GEORGE M. DUNCAP
BEVERLY M. DUNCAP
Certified Filing No. 224, owned jointly with H.C. Moreland and J.S. McClamb, Jr., authorizes the use of an unspecified quantity of water from Spring Creek at Diversion Point 0410 with a maximum diversion rate of 6.21 cfs (1800 gpm) for the irrigation of a total of 140 acres of land in Surveys 692, 693 and 694, Irion County. Travis Crawford, et al, own a total of 102.75 acres of land, 40 acres of which are within the boundaries of Certified Filing No. 224. The 102.75-acre tract has been subdivided into separate lots with ownership divided among Travis Crawford, George M. Moolard, Harold D. Turner, Madelene L. Turner, Jack M. Applewhite, Joann Applewhite, Fred D. Smathers and Joanna L. Smathers, as confirmed by deeds entered into Commission records. Harold D. Turner and Madelene L. Turner filed a separate Section 5.19" Claim under Certified Filing No. 224 and Claim No. 175, however no evidence was introduced as to what portion of these rights are within the boundaries of his separately owned tract. Claim No. 175 seeks a riparian right to 31 acre-feet of water from Spring Creek for the irrigation of 73 acres of land in Surveys No. 692 and 693, Irion County. The maximum diversion rate claimed was 1.67 cfs at Diversion Point 0490, with the date of first beneficial use declared to be 1958. The maximum historical use under Certified Filing No. 224 was 80 acre-feet of water per year in 1948-1955, inclusive, for the irrigation of 40 acres, with a maximum diversion rate at Diversion Point 0490 of 4.0 cfs (1800 gpm). Maximum use 1963-1967, inclusive, under Claim No. 175 was 41 acre-feet of water in 1967 for the irrigation of 51 acres of land located adjacent to Spring Creek in Surveys 692 and 693, which were patented from the State in 1858 and 1856, respectively. Diversion was from Diversion Point 0490 at a maximum rate of 1.0 cfs (450 gpm). Of the 51 acres irrigated under Claim No. 175, 40 acres are also within the boundaries of Certified Filing No. 224. Dorman H. Dunaway, an owner of one of the subdivided tracts involved here, appeared in open hearing and abandoned all claims of right to public water for his lands. The three claimed reservoirs are no longer in existence and all irrigation facilities have been removed from this tract. Certified Filing No. 224 was filed on June 17, 1911.
NO WATER RIGHT IS RECOGNIZED UNDER EITHER CERTIFIED FILING NO. 226 OR CLAIM NO. 175 FOR THE TRACT OWNED BY DORMAN H. DUNAWAY.
BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 224 AND CLAIM NO. 175
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 91 ACRE- FEET PER YEAR
NO. OF ACRES - 51
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 224 AND CLAIM NO. 175 ON OWNED TRACTS.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 692 AND 693
ABSTRACTS - 45 AND 453
DIVERSION - 4.0 CFS (1800 GPM) AT DIVERSION POINT 0490
PRIORITY DATE - JUNE 17, 1911
REMARKS - FOR THE PURPOSES OF THIS ADJUDICATION, THE SEPARATE TRACT OWNERS ARE RECOGNIZED AS JOINT OWNERS OF THE WATER RIGHT.
DIVERSION POINT NO: 0500
TRACT NO: 0470
OWNERSHIP:
AULT AND COMPANY, A PARTNERSHIP OF SAM AULT AND LKEY AULT (Previously Drs. Joe L. Cornelson)
IR 68-69
Vol. 3 SF 218-231
Findings:
1. Certified Filing No. 151, owned jointly with Harry F. Woody and Mrs. Harry L. Bryant, authorizes the use of an unspecified quantity of water from Spring Creek for the irrigation of a total of 110 acres of land in Surveys 725, 726, 728 and 729, Irion County. Diversion is authorized at Diversion Point 0500 with a maximum diversion rate of 4.0 cfs (1800 gpm). Ault and Company owns 18.5 acres covered by Certified Filing No. 151.
2. Claim No. 310 and an Additional Sworn Statement seek a riparian right to 30 acre-feet of water from Spring Creek for the irrigation of 30 acres in Survey No. 728, including the 13.7 acres covered by Certified Filing No. 151. The claim also asserts a right to maintain a 9.5 acre-foot capacity on-channel reservoir on Spring Creek. The claimed diversion was from Diversion Point 0500 at a maximum rate of 1.11 cfs. The date of first beneficial use was declared as 1954.
3. Maximum use of water under Certified Filing No. 151 was 21 acre-feet of water per year in 1967-1972, inclusive, for the irrigation of 18.5 acres.
4. Maximum use 1963-1970, inclusive, under Claim No. 310 was 39 acre-feet of water in 1967 for the irrigation of 30 acres of land located adjacent to Spring Creek in Survey 728 which was patented from the State in 1858.
5. The maximum rate was 1.11 cfs (500 gpm) at Diversion Point 0500.
6. Of the 30 acres recognized for irrigation under Claim No. 310, 18.5 acres are also recognized for irrigation under Certified Filing No. 151.
7. Certified Filing No. 151 was filed on May 30, 1914.
8. The entire 30-acre tract recognized for irrigation is also within the boundaries of Certified Filings No. 132 and 325 of the Irion County Irrigation Association.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 151 AND CLAIM NO. 310
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 39 ACRE FEET PER YEAR
NO. OF ACRES - 50
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 151 AND CLAIM NO. 310 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 728
ABSTRACT - 412
DIVERSION - 1.11 CFS (500 GPM) AT DIVERSION POINT 0500
PRIORITY DATE - MAY 30, 1914
REMARKS - THIS RIGHT IS RECOGNIZED INDEPENDENTLY OF WHATEVER QUANTITY OF WATER THE OWNER MAY BE ENTITLED TO AS A MEMBER OF THE IRION COUNTY IRRIGATION ASSOCIATION UNDER ITS CERTIFIED FILINGS NO. 132 AND 325.
DIVERSION POINT NO: 0510
TRACT NO: 0480
OWNERSHIP:
CARLTON WIFE
IR 70-71
Vol. 3 SF 238-308
Findings:
1. Certified Filing No. 374 authorizes the use of an unspecified amount of water from Spring Creek with a maximum diversion rate at Diversion Point 0510 of 1.78 cfs (1800 gpm) for the irrigation of 60 acres of land out of Surveys 692 and 691, Irion County. The certified filing also authorizes an on-channel dam and reservoir with an unspecified capacity.
2. Claim No. 3927 seeks a riparian water right to 71.25 acre-feet of water from Spring Creek to irrigate a total of 60 acres of land adjacent to Spring Creek in Surveys 691 and 692, both of which were patented from the State in 1858. This 60-acre tract is also covered by the certified filing. The claimed diversion is at Diversion Point 0510 at a maximum rate of 1.78 cfs from a 6 acre-foot reservoir, with the date of first beneficial use of water asserted to be 1905.
3. Maximum use under Certified Filing No. 374 was 71 acre-feet of water in 1967 for the irrigation of 44 acres of land. This also constitutes the maximum use 1963-1967, inclusive, under Claim No. 3927.
4. Diversion was at Diversion Point 0510 by pump at a maximum rate of 1.78 cfs (1800 gpm).
5. Certified Filing No. 374 was filed on June 20, 1914.
BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 374 AND CLAIM NO. 3927
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 71 ACRE FEET PER YEAR
NO. OF ACRES - 44
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 374 AND CLAIM NO. 3927 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 692 AND 691
ABSTRACTS - 45 AND 45
DIVERSION - 1.78 CFS (800 GPM) AT DIVERSION POINT 0510
PRIORITY DATE - JUNE 20, 1914
DIVERSION POINT NO: 0520
TRACT NO: 0199
OWNERSHIP:
MR. AND MRS. HOMER L. BRYANT (HOMER L. BRYANT AND NETTIE LEE BRYANT)
IR 72
Vol. 3 SF 232-242
Findings:
1. Certified Filing No. 151, jointly owned by Harry Woody and Ault and Company, authorizes the use of an unspecified quantity of water from Spring Creek for the irrigation of a total of 110 acres of land in Surveys 725, 726, 728 and 729, Irion County. Diversion is authorized at Diversion Point 0520 with a maximum diversion rate of 4.0 cfs (1800 gpm).
2. Mr. and Mrs. Homer L. Bryant own 70 acres of land within the boundaries of Certified Filing No. 151 in Survey 729.
3. Maximum use under Certified Filing No. 151 was 76 acre-feet of water in 1966 for the irrigation of 35 acres of land.
4. Diversion under Certified Filing No. 151 is at Diversion Point 0520 with a maximum diversion rate of 1.0 cfs (450 gpm).
5. The dam authorized by Certified Filing No. 151 has been breached and the reservoir is non-existent.
6. This 70 acre tract is also within the boundaries of Certified Filings No. 132 and 225 of the Irion County Irrigation Association.
7. Certified Filing No. 151 was filed on May 30, 1914.
BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 151
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 76 ACRE FEET PER YEAR
NO. OF ACRES - 59
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 151 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 729
DIVERSION - 1.00 CFS (450 GPM) AT DIVERSION POINT 0520
PRIORITY DATE - MAY 30, 1914
REMARKS - THIS RIGHT IS RECOGNIZED INDEPENDENTLY OF WHATEVER QUANTITY OF WATER THE OWNER MAY BE ENTITLED TO AS A MEMBER OF THE IRION COUNTY IRRIGATION ASSOCIATION UNDER ITS CERTIFIED FILINGS NO. 132 AND 325.

DIVERSION POINT NO: 0530
TRACT NO: 0500

OWNERSHIP:
CLAYTON C. WARD

IR 73
Vol. 9 SF 487-504
Findings:

1. Certified Filing No. 145, as partially cancelled October 27, 1961, authorized C.H. McDaniel the use of 14 acre-feet of water from Spring Creek at an unspecified diversion rate from Diversion Point 0530 for the irrigation of 9 acres in Survey 691, Irion County.
2. This property was conveyed to Clayton C. Ward and wife, Bertha Ward, by deed dated June 30, 1967 and they are recognized in the Commission records as owners of this tract within the certified filing area.
3. Claim No. 5056 seeks a right to an unspecified quantity of water from Spring Creek for the irrigation of an unspecified number of acres of land in Survey 691, Irion County. No diversion rate was specified and no date of first beneficial use was asserted. A 1 acre foot capacity reservoir was obtained and 10 acres were declared as irrigable.
4. The maximum quantity of water used under this portion of Certified Filing No. 145 was 14 acre-feet of water per year during 1961-1973, inclusive, for the irrigation of 7 acres of land.
5. There was no evidence introduced as to the maximum use of water during 1963-1973, inclusive and no Additional Sworn Statement was submitted to support a water rights claim based on use during 1963-1970, inclusive.
6. Diversion is at Diversion Point 0530 by pump having a maximum diversion rate of 1.11 cfs (500 gpm).
7. Certified Filing No. 145 was filed on May 23, 1914.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 5056

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 145
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 14 ACRE-FEET PER YEAR
NO. OF ACRES - 7
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING 145 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 691
DIVERSION - 1.11 CFS (500 GPM) AT DIVERSION POINT 0530
PRIORITY DATE - MAY 23, 1914

DIVERSION POINT NO: 0510
TRACT NO: 0510

OWNERSHIP:
THOMAS C. BLAIR ESTATE

IR 74
Vol. 3 SF 158-169
Findings:

1. Certified Filing No. 145, as partially cancelled October 27, 1964, authorized Thomas C. Blair the use of 10 acre-feet of water from Spring Creek at an unspecified diversion rate from Diversion Point 0540 for the irrigation of 20 acres of land out of Survey 691, Irion County. This tract is now being administered by the Thomas C. Blair Estate.
2. The maximum use of water under this portion of Certified Filing No. 145 was 13 acre-feet of water per year during 1964-1957, inclusive, for the irrigation of 25 acres, which is in excess of the 20 acres authorized by the certified filing.
3. Diversion is at Diversion Point 0510 by pump at a maximum rate of 1.34 cfs (600 gpm).
4. Certified Filing No. 145 was filed on May 23, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 145
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 13 ACRE-FEET PER YEAR
NO. OF ACRES - 20
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 145 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 691
DIVERSION - 1.34 CFS (600 GPM) AT DIVERSION POINT 0510
PRIORITY DATE - MAY 23, 1914

DIVERSION POINT NO: 0540
TRACT NO: 0520

OWNERSHIP:
CLYDE A. JOHNSON

IR 75
Vol. 3 SF 470-483
Findings:

1. Certified Filing No. 145, as partially cancelled October 27, 1961, authorized John C. Galloway the use of 26 acre-feet of water from Spring Creek at an unspecified diversion rate for irrigation of 13 acres of land out of Survey 691, Irion County. This property and John C. Galloway's interest in the certified filing have been conveyed to Clyde A. Johnson by deed dated July 26, 1968.
2. The maximum use of water under this portion of Certified Filing No. 145 was 20 acre-feet of water in 1963 for the irrigation of 11 acres as platted.
3. Diversion is at Diversion Point 0540 at a maximum rate of 1.34 cfs (600 gpm). This pump has also been used for irrigation by the Thomas C. Blair Estate and Marie Noelke Baker. Certified Filing No. 145 was filed on May 23, 1914.
4. The present owner, Clyde A. Johnson, has exercised due diligence in perfecting his portion of the certified filing as partially cancelled to its fullest extent since acquiring this tract.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 145
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 20 ACRE-FEET PER YEAR
NO. OF ACRES - 11
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 145 ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 691
DIVERSION - 1.34 CFS (600 GPM) AT DIVERSION POINT 0540
PRIORITY DATE - MAY 23, 1914
REMARKS - CLYDE A. JOHNSON HAS A LICENSE TO PERFECT THIS PORTION OF CERTIFIED FILING NO. 145 TO THE EXTENT OF 26 ACRE- FEET FOR THE IRRIGATION OF 13 ACRES.

DIVERSION POINT NO: 0540 AND 0550
TRACT NO: 0530

OWNERSHIP:
MARIE NOELKE BAKER (Previously Alfred Helmers, et al)

IR 76
Vol. 3 SF 502-520
Findings:

1. Certified Filing No. 145, as partially cancelled October 27, 1961, authorized Alfred Helmers, et al, the use of 100 acre-feet of water from Spring Creek at an unspecified diversion rate for the irrigation of 50 acres of land out of Survey 691, Irion County. This property and Adolph Helmer's interest in Certified Filing No. 145 have been conveyed to Marie Noelke Baker by deed dated May 6, 1972.
2. Maximum use of water in connection with this portion of Certified Filing No. 145 was 68 acre-feet of water for the irrigation of 34 acres of land by the previous owners, Alfred Helmers, et al.
3. The present owner, Marie Noelke Baker, has exercised due diligence in perfecting her portion of the certified filing as partially cancelled to the fullest extent authorized since acquiring this tract.
4. Diversion has been at Diversion Point 0540 by pump, owned jointly with Clyde A. Johnson and the Thomas C. Blair Estate, at a maximum rate of 1.34 cfs (600 gpm). Marie Noelke Baker has also diverted at Diversion Point 0550 by pump at a maximum diversion rate of 0.78 cfs (350 gpm), however this diversion point is not authorized under Certified Filing No. 145 or any other water right of record.
5. Certified Filing No. 145 was filed on May 23, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 145
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 68 ACRE-FEET PER YEAR
NO. OF ACRES - 34
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 145 ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 691
DIVERSION - 1.34 CFS (600 GPM) AT DIVERSION POINT 0540 AND 0550
PRIORITY DATE - MAY 23, 1914
REMARKS - MARIE NOELKE BAKER HAS A LICENSE TO PERFECT THIS PORTION OF CERTIFIED FILING NO. 145 TO THE EXTENT OF 100 ACRE- FEET PER YEAR FOR THE IRRIGATION OF 50 ACRES.

DIVERSION POINT NO: 0560
TRACT NO: 0540

OWNERSHIP:
DAVID B. READ AND HARRY J. BLANEK (Previously David B. Read and Dennis L. Winterrowd)

IR 76
Vol. 3 SF 484-501
Findings:

1. Certified Filing No. 145, as partially cancelled October 27, 1964, authorized Lynn Langston and Mozella Jackson the use of 38 acre feet of water from Spring Creek at an unspecified diversion rate for irrigation of 19 acres of land in Survey 691, Irion County.
2. This property and Lynn Langston and Mozella Jackson's interest in Certified Filing No. 145 were conveyed to Thomas R. Hunter and Clyde E. Hoyt, Jr., in November, 1969, and Clyde E. Hoyt's interest was then conveyed to Thomas R. Hunter in November, 1970. By deed dated July 1, 1971, Thomas R. Hunter conveyed the property to David B. Read and Dennis L. Winterrowd. By deed dated September 30, 1972, Dennis L. Winterrowd conveyed his interest in these lands and the certified filing to Harry J. Blank.
3. Claim No. 235 and an Additional Sworn Statement seek a riparian right and a right under Certified Filing No. 145 to the use of 15 acre-feet of water per year from Spring Creek for the irrigation of 30 acres of land out of Survey 691. Claim No. 235 was abandoned by the claimants and dismissed by Commission order dated April 19, 1973.
4. Maximum use of water under this portion of Certified Filing No. 145 was 31 acre feet of water in 1970 for the irrigation of 19 acres of land.
5. The present owners, David B. Read and Harry J. Blank, have exercised due diligence in perfecting their portion of Certified Filing No. 145 to the fullest extent authorized since acquiring this tract.
6. Diversion is by pump at Diversion Point 0560 at a maximum rate of 0.78 cfs (350 gpm). There is also a smaller pump at Diversion Point 0550 used for domestic purposes only.
7. Certified Filing No. 145 was filed on May 23, 1914.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 235

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 145
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 34 ACRE- FEET PER YEAR
NO. OF ACRES - 19
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 145 ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 691
DIVERSION - 0.78 CFS (350 GPM) AT DIVERSION POINT 0560
PRIORITY DATE - MAY 23, 1914
REMARKS - DAVID B. READ AND HARRY J. BLANEK HAVE A LICENSE TO PERFECT THIS PORTION OF CERTIFIED FILING NO. 145 TO THE EXTENT OF 38 ACRE- FEET FOR THE IRRIGATION OF 19 ACRES.

POINT NO: 0570 AND 0610
0550, 0590 AND 0610

OWNERSHIP:
BERNICE PAVLICEK LINE

30
OF 522-565

Certified Filing No. 149 authorizes the use of an unspecified amount of water from Spring Creek at a diversion rate of 1.67 cfs (750 gpm) for irrigation of 40 acres of land out of Survey 711, Irion County.

Claim No. 5531 and an Additional Sworn Statement seek a riparian water right to the use of 85 acre-feet of water per year for irrigation of 85 acres of land adjacent to Spring Creek in Surveys 710 and 731, which were patented from the State in 1861. Of the 85 acres claimed, 40 are also within the boundaries of the certified filing. The maximum claimed diversion rate was not specified and the date of first beneficial use was declared as June 1, 1912.

Maximum use of water under Certified Filing No. 149 was 40 acre-feet of water for the irrigation of 40 acres in 1970. The maximum use of water during 1963-1970, inclusive, under Claim No. 5531 was 85 acre-feet of water in 1970 for the irrigation of 85 acres of land.

Diversion was at Diversion Points 0570 and 0610 by pump at a maximum rate of 3.34 cfs (1500 gpm).

Certified Filing No. 149 was Filed on May 25, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 149 AND CLAIM NO. 5531

SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 85 ACRE-FEET PER YEAR
NO. OF ACRES - 85
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 149 AND CLAIM NO. 5531 ON OWNED TRACTS.

TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 731 AND 730
ABSTRACTS - 25 AND 24
DIVERSION - 3.34 CFS (1500 GPM) TOTAL AT DIVERSION POINT 0570 AND DIVERSION POINT 0610
PRIORITY DATE - MAY 25, 1914

DIVERSION POINT NO: 0580
TRACT NO: 0560

OWNERSHIP:
CHARLES LEE HAFER

IR 81-82
Vol. 3 SF 277-309
Findings:

1. Claim No. 3182 and an Additional Sworn Statement seek a riparian water right to use 10.6 acre-feet of water from Spring Creek at a maximum diversion rate of 1.11 cfs (500 gpm) for irrigation of 6 acres of land located adjacent to Spring Creek in Survey 690, Irion County, which was patented from the State in 1861. The date of first beneficial use was asserted to be February, 1966.
2. Maximum use during the period 1963-1970, inclusive, was 10.6 acre-feet of water for irrigation of 6 acres of land in 1967.
3. The first beneficial use of water was in February, 1966.
4. Diversion during 1963-1970, inclusive, was at Diversion Point 0580 at a maximum rate of 1.11 cfs (500 gpm).

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 3182

SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 11 ACRE-FEET PER YEAR
NO. OF ACRES - 6
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 3182 ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 690
ABSTRACT - 109
DIVERSION - 1.11 CFS (500 GPM) AT DIVERSION POINT 0580
PRIORITY DATE - FEBRUARY 28, 1966

DIVERSION POINT NO: 0580
TRACT NO: 0570

OWNERSHIP:
CLARENCE E. JONES

IR 83-84
Vol. 9 SF 280-283
Findings:

1. Claim No. 263 seeks a riparian water right to use the waters of Spring Creek at a maximum diversion rate of 0.89 cfs (400 gpm) for irrigation of 3.0 acres of land located adjacent to Spring Creek in Survey 691, Irion County, which was patented from the State in 1861.
2. Maximum claimed use during the period 1963-1967, inclusive, was 4.0 acre-feet for irrigation of 3 acres of land in 1967. The claim declares that 5.0 acres were considered irrigable. The date of first beneficial use was asserted to be February, 1965.
3. Diversion is at Diversion Point 0580 at a maximum rate of 1.11 cfs (500 gpm). This diversion point is also used by Charles Lee Hafef.
4. Claimant failed to appear at the evidentiary hearing and no credible evidence was submitted as to the nature, the extent and the basis of a right cognizable under existing state law.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 263

DIVERSION POINT NO: 0590
TRACT NO: 0580

OWNERSHIP:
RANDY AND ROBERTA McCREA

IR 85-86
Vol. 3 SF 573-583
Findings:

1. Claim No. 644 seeks a riparian water right to use 13.5 acre-feet of the waters of Spring Creek at a maximum diversion rate of 0.89 cfs (400 gpm) for the irrigation of 3 acres of land adjacent to Spring Creek in Survey 690, Irion County, which was patented from the State in 1861.
2. Maximum use of water 1963-1967, inclusive, was 6 acre-feet of water per year for the irrigation of 3 acres.

3. Diversion was at Diversion Point 0590 at a maximum rate of 0.60 cfs (270 gpm).
4. First beneficial use of water under Claim No. 644 was in November, 1965.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 644

SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 6 ACRE-FEET PER YEAR
NO. OF ACRES - 3
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 644 ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEY - 690
ABSTRACT - 109
DIVERSION - 0.60 CFS (270 GPM) AT DIVERSION POINT 0590
PRIORITY DATE - NOVEMBER 30, 1965

DIVERSION POINT NO: 0600
TRACT NO: 0600

OWNERSHIP:
GAMBALL MOTORS, INC.

IR 47-49
Vol. 3 SF 115-119 and Vol. 3 SF 576-590
Findings:

1. Claim No. 547A and an Additional Sworn Statement seek a riparian water right to use 12 acre-feet of the waters of Spring Creek at a maximum diversion rate of 0.45 cfs (200 gpm) for the irrigation of 12 acres of land located adjacent to Spring Creek in surveys 693 and 690, which were patented from the State in 1855 and 1861, respectively. The date of first beneficial use was asserted to be 1900.
2. The maximum use of water during 1963-1970, inclusive, was 9 acre-feet of water in 1965 for the irrigation of 9 acres of land, as planned.
3. Diversion is at Diversion Point 0600 by pump at a maximum rate of 0.45 cfs (200 gpm).
4. Date of first beneficial use within Claim No. 547A was 1900.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 547A

SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 9 ACRE-FEET PER YEAR
NO. OF ACRES - 9
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 547A ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY
MAP NO. - 3 OF 4, PAGE 5
SURVEYS - 690 AND 689
ABSTRACTS - 170 AND 656
DIVERSION - 0.45 CFS (200 GPM) AT DIVERSION POINT 0600
PRIORITY DATE - December 31, 1900

DIVERSION POINT NO: NONE
TRACT NO: 0615

OWNERSHIP:
W. A. HANNON

IR 89
Vol. 3 SF 158-159
Findings:

1. Claim No. 10783 seeks a riparian water right to use the waters of Spring Creek for irrigation with 9.5 acres declared as irrigable located adjacent to Spring Creek in Survey 689, Irion County, which was patented from the State in 1858.
2. Claimant has no water use during the period 1963-1970, inclusive, and affirmatively stated that his claim was for future use only.
3. There are no diversion facilities, no irrigation system and no evidence to substantiate any irrigation of Tract 0615.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 10783

DIVERSION POINT NO: 0620
TRACT NO: 0620

OWNERSHIP:
ROBERT E. STEGER (Previously H. B. Bosworth)
PEGGY W. STEGER

IR 90
Vol. 3 SF 511-515
Findings:

1. Claim No. 2769 and an Additional Sworn Statement seek a riparian water right to use 0.89 acre-feet of the waters of Spring Creek at a maximum rate of 0.89 cfs (400 gpm) for irrigation of an unspecified quantity of land located adjacent to Spring Creek in Survey 689, Irion County, which was patented from the State in 1858. The date of first beneficial use was asserted to be December, 1967.
2. Maximum use 1963-1970, inclusive, was 0.68 acre-feet in 1967 for the irrigation of 3 acres of land.
3. Diversion is at Diversion Point 0620 at a maximum rate of 0.17 cfs (75 gpm).
4. Date of first beneficial use under Claim No. 2769 was December, 1967.
5. The use of water 1965-1967 under Claim No. 2769 was limited to domestic and livestock uses, with the tract irrigated consisting of a garden and domestic orchard.

CLAIMANT IS RECOGNIZED NO IRRIGATION RIGHT UNDER CLAIM NO. 2769

DIVERSION POINT NO: 0630
TRACT NO: 0630

OWNERSHIP:
G.C. CASSELLS

IR 91
Vol. 3 SF 396-607
Findings:

1. Claim No. 2708 seeks a riparian water right and rights under Article 7500a and the Irrigation Act of 1895 to use the waters of Spring Creek at a maximum diversion rate of 0.11 cfs (50 gpm), for irrigation of an unspecified amount of land adjacent to Spring Creek in Survey 689, Irion County, which was patented from the State in 1853.
2. There was no evidence introduced of non-exempt use in the claim area during the period 1963-1970, inclusive.
3. All water use in the claim area has been subsequent to 1970 for the irrigation of 100 pecan trees.
4. There is a pump at Diversion Point 0630 having a capacity of 0.09 cfs (40 gpm).

CLAIMANT IS RECOGNIZED NO IRRIGATION RIGHT UNDER CLAIM NO. 2708

DIVERSION POINT NO: 0640
TRACT NO: 0640

OWNERSHIP:
CHARLES L. CATHRY

IR 92-93
Vol. 3 SF 608-614
Findings:

1. Claim No. 1945 and an Additional Sworn Statement seek a riparian water right to use 5.5 acre-feet of the waters of Spring Creek at a maximum diversion rate of 0.04 cfs (20 gpm), for irrigation of 0.25 acres of land located adjacent to Spring Creek in Survey 652, Irion County, which was patented from the State in 1853. The date of first beneficial use was asserted to be February, 1958.
2. The water used for the irrigation of greenhouse tomatoes prior to the hearing date was ground water. There was no testimony as to the use of state water during 1963-1970, inclusive.
3. Tract 0640 contains no cleared acreage suitable for irrigation. There is a pump at Diversion Point 0640 having a capacity of 0.01 cfs (20 gpm) used for domestic and livestock use only.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 1945

DIVERSION POINT NO: 0650
TRACT NO: 0650

OWNERSHIP:
CHARLES POULTER AND SONS, INC.

IR 94-95
Vol. 4 SF 1-45
Findings:

1. Claim No. 1611 and an Additional Sworn Statement seek a riparian water right to use 50.3 acre-feet of the waters of Spring Creek at a maximum diversion rate of 0.45 cfs (200 gpm), for irrigation of 11 acres of land adjacent to Spring Creek in Survey 652, Irion County, which was patented from the State in 1857. The date of first beneficial use was asserted to be October 1, 1959.
2. Maximum use claimed 1963-1970 was 50.3 acre-feet of water for the irrigation of 11 acres in 1969. A new pump and additional irrigation pipe were installed prior to August 28, 1967, to allow the application of a greater quantity of water to beneficial use.
3. The tract irrigated during the historical period contains 9 acres, as planimetered, rather than the 12 acres claimed. Also the quantity of water claimed to have been applied was proven in testimony to be in error.
4. The maximum quantity of water which claimant put to beneficial use on this tract during 1963-1970, inclusive, was 18 acre-feet of water for the irrigation of 9 acres of land.
5. The maximum diversion rate under Claim No. 1611 was 0.45 cfs (200 gpm) at Diversion Point 0650.
6. The first beneficial use of water in the claim area was on October 1, 1959.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 1611
 SOURCE OF WATER - SPRING CREEK
 NO. OF RESERVOIRS - 0
 PURPOSE OF USE - IRRIGATION
 AMOUNT OF WATER - 18 ACRE-FEET PER YEAR
 NO. OF ACRES - 9
 IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 1611 ON OWNED TRACT.
 TRACT LOCATION - IRION COUNTY
 MAP NO. - 2 OF 4, PAGE 4
 SURVEY - 652
 ABSTRACT - 104
 DIVERSION - 0.45 CFS (200 GPM) AT DIVERSION POINT 0650
 PRIORITY DATE - SEPTEMBER 31, 1959

DIVERSION POINT NO: 0660
TRACT NO: 0660

OWNERSHIP:
BOB CLEMENTS

IR 90
Vol. 9 SF 304-308
Findings:

1. Field investigation revealed the diversion of water from Spring Creek for irrigation of Tract No. 0660 which contains 12 acres of land out of Survey 652 and 648, Irion County.
2. Diversion of water was by two pumps at Diversion Point 0660, having a combined capacity of 0.40 cfs (180 gpm), and sprinkler distribution.
3. Owner was advised of his non-authorized irrigation practices and declared he would file a claim.
4. The party failed to file a Section 5.303 Claim of right in compliance with the Adjudication Act of 1967, failed to file compliance with the Adjudication Act of 1967, failed to file a Section 5.307 Claim, failed to appear at the evidentiary hearing and failed to offer credible evidence as to the nature, the extent and the basis of a right cognizable under existing law.

PARTY IS RECOGNIZED NO WATER RIGHT FOR DIVERSION POINT 0660 OR TRACT 0660

DIVERSION POINT NO: 0670
TRACT NO: 0670

OWNERSHIP:
WALTER F. TUCKER AND BESSIE MAE TUCKER (Previously Fred Gray)

IR 97-98
Vol. 4 SF 48-63
Findings:

1. Claim No. 745 and an Additional Sworn Statement seek a riparian water right to use 24 acre-feet of the waters of Spring Creek at a maximum diversion rate of 0.33 cfs (150 gpm) for irrigation of 11 acres of land out of Survey 648, located adjacent to Spring Creek in Irion County, and patented from the State in 1857. The claimed diversion was from a 53 acre-foot reservoir on Spring Creek, and the date of first beneficial use was declared to be 1966.
2. Maximum use during 1963-1970, inclusive, was 24 acre-feet of water per annum for the irrigation of 12 acres in 1970.
3. Diversion is by pump at Diversion Point 0670 at a maximum rate of 0.33 cfs (150 gpm). Diversion is from an on-channel reservoir created by dam authorized under Permit No. 789 owned by Mrs. Juliette Hughes.
4. Date of first beneficial use was in 1966.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 745
 SOURCE OF WATER - SPRING CREEK
 NO. OF RESERVOIRS - 0
 PURPOSE OF USE - IRRIGATION
 AMOUNT OF WATER - 24 ACRE-FEET PER YEAR
 NO. OF ACRES - 12
 IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7 APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 745 ON OWNED TRACT.
 TRACT LOCATION - IRION COUNTY
 MAP NO. - 2 OF 4, PAGE 4
 SURVEY - 648
 ABSTRACT - 104
 DIVERSION - 0.33 CFS (150 GPM) AT DIVERSION POINT 0670
 PRIORITY DATE - DECEMBER 31, 1966

DIVERSION POINT NO: 0690
TRACT NO: 0690

OWNERSHIP:
MRS. JULIETTE HUGHES

IR 99-100
Vol. 1 SF 64-73
Findings:

1. Permit No. 789 authorizes the use of 111 acre-feet of water from Spring Creek for the irrigation of 56 acres of land in Surveys 734, 735 and 736, Irion County. The permit also authorizes a dam and 50 acre-foot capacity on-channel reservoir from which diversion is made at an unspecified rate. The permit stipulated that the application of water was to be limited to 2 acre-feet of water per acre actually irrigated in each year.
2. Claim No. 2990 seeks a riparian water right and rights under Permit No. 789 and Article 7500a to use water from Spring Creek for irrigation of a total of 160 acres of land of which 50 acres are covered by the permit. The maximum claimed water use was 50 acre-feet per year at a rate of 4.01 cfs from a 100 acre-foot capacity reservoir. The date of first beneficial use was asserted to be 1920.
3. Maximum use in the claim area during 1963-1967, inclusive, was 50 acre-feet of water per year during 1964-1966, inclusive, for the irrigation of 60 acres. Maximum use under Permit No. 789 was in 1970 when 60 acre-feet of water were used for the irrigation of 60 acres of land, in excess of the 50 acres authorized by the permit.
4. Diversion is from the patented reservoir at Diversion Point 0690 at a maximum rate of 4.01 cfs (1800 gpm).
5. The 60-acre tract irrigated under Claim No. 2990 is located adjacent to Spring Creek in Surveys 731, 735 and 736, which were patented from the State in 1857, 1857 and 1858, respectively.
6. The application for Permit No. 789 was filed on May 3, 1924.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 789 AND CLAIM NO. 2990
 SOURCE OF WATER - SPRING CREEK
 NO. OF RESERVOIRS - 1 CAPACITY 50 ACRE-FEET
 PURPOSE OF USE - IRRIGATION
 AMOUNT OF WATER - 60 ACRE-FEET PER YEAR
 NO. OF ACRES - 60
 IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7 APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF PERMIT NO. 789 AND CLAIM NO. 2990 ON OWNED TRACT.
 TRACT LOCATION - IRION COUNTY
 MAP NO. - 2 OF 4, PAGE 4
 SURVEYS - 731, 735 AND 736
 ABSTRACTS - 651, 650 AND 31
 DIVERSION - 4.01 CFS (1800 GPM) AT DIVERSION POINT 0690
 PRIORITY DATE - MAY 3, 1924

DIVERSION POINT NO: 0690
TRACT NO: 0690

OWNERSHIP:
MRS. BEVA C. TUCKER

IR 101-102
Vol. 1 SF 73-103
Findings:

1. Claim No. 2484 seeks a riparian water right to use 12 acre-feet of the waters of Spring Creek at a maximum diversion rate of 1.1 cfs (500 gpm) for the irrigation of 30 acres of land located adjacent to Spring Creek in Surveys 648 and 650, Irion County, which were patented from the State in 1857. The claim diversion was from a 50 acre-foot capacity reservoir at Diversion Point 0690, with the date of first beneficial use asserted to be 1949.
2. Maximum use during the period 1963-1967, inclusive, was the irrigation of 30 acres in 1964 and 1964 with a maximum of 12 acre-feet of water in 1965.
3. Diversion at Diversion Point 0690 in 1963 and 1964 was by a pump having a capacity of 1.9 cfs (850 gpm). This pump was inoperable at the time of the field investigation and diversion was by a 0.11 cfs (50 gpm) capacity pump which was used to irrigate a 5-acre tract with 1.5 acre-feet of water per annum during 1965-1970.
4. The claimed on channel reservoir was constructed and is authorized under Permit 789 owned by Mrs. Juliette Hughes.
5. The date of first beneficial use of water was in 1949.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2484
 SOURCE OF WATER - SPRING CREEK
 NO. OF RESERVOIRS - 0
 PURPOSE OF USE - IRRIGATION
 AMOUNT OF WATER - 12 ACRE-FEET PER YEAR
 NO. OF ACRES - 30
 IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 2484 ON OWNED TRACT.
 TRACT LOCATION - IRION COUNTY
 MAP NO. - 2 OF 4, PAGE 4
 SURVEYS - 648 AND 650
 ABSTRACTS - 93 AND 102
 DIVERSION - 1.1 CFS (500 GPM) AT DIVERSION POINT 0690
 PRIORITY DATE - DECEMBER 31, 1949

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DIVERSION POINT NO: NONE
TRACT NO: 0695
OWNERSHIP:
MRS. CAROLITA T. HARTMAN
IR 103
Vol. 9 SF 289-291
Findings:
1. Claim No. 9344 seeks a riparian water right to use an unspecified amount of water from Spring Creek at an unspecified diversion rate for unspecified uses on an unspecified quantity of land out of Surveys 737 and 738, Irion County, which were patented from the State in 1861 and 1858, respectively. The claimed diversion was from a 100 acre-foot reservoir with the date of first beneficial use declared as 1957.
2. There is no water use during 1963-1967, inclusive, reflected in the claim.
3. Field investigation revealed no irrigation system and no evidence of irrigation of Tract 0695.
4. Party failed to file a Section 5.107 Claim of right in compliance with the Commission's directive and failed to appear at the evidentiary hearing. No credible evidence was introduced as to the nature, the extent and the basis of right claimable under existing State law.
CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 9344

DIVERSION POINT NO: 0700 AND 0710
TRACT NO: 0700
OWNERSHIP:
FRED BALL
IR 104-105
Vol. 9 SF 137-172
Findings:
1. Permit No. 785 authorizes the use of 320 acre-feet of water per annum from 2 on-channel reservoirs, having a combined capacity of 165.5 acre-feet, at an unspecified diversion rate for the irrigation of 160 acres. The permit stipulated that the application of water was to be limited to 2 acre-feet for each acre actually irrigated in each year.
2. Permit No. 1099 authorizes the use of 106.9 acre-feet of water per annum from a 137.4 acre-foot on-channel reservoir for the irrigation of 53.4 acres of land at an unspecified diversion rate. The permit stipulated that the application of water was to be limited to 2 acre-feet for each acre actually irrigated each year.
3. Permit No. 785 and 1099 have been perfected to the extent of 160 acres and 53.4 acres, respectively. The maximum use of water under the combined permits was 441.7 acre-feet in 1967, an amount in excess of the 426.8 acre-feet authorized under the permits.
4. Diversion is by gravity flow at Diversion Point 0700 at a maximum rate of 6.68 cfs (3000 gpm). Diversion at Diversion Point 0710 is by pump at a maximum rate of 4.46 cfs (2000 gpm).
5. The one existing reservoir authorized by Permit No. 785 has a capacity of 82 acre-feet of water. The second reservoir authorized by Permit No. 1099 has a capacity of 137.4 acre-feet of water.
6. The application for Permit No. 785 was filed on April 1, 1924. The application for Permit No. 1099 was filed on July 12, 1928.
7. Three off-channel reservoirs are also used for industrial uses (catfish farming) and have a capacity of 10 acre-feet of water. They have been in use since 1966 and an unspecified quantity of water has been used to replenish them.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 785 AND PERMIT NO. 1099
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 2 TOTAL CAPACITY 303 ACRE-FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 427 ACRE-FEET PER YEAR LIMITED TO TWO ACRE-FEET PER YEAR FOR EACH ACRE ACTUALLY IRRIGATED
NO. OF ACRES - 214
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF PERMIT NO. 785 AND PERMIT NO. 1099 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 2 OF 4, PAGE 4
SURVEYS - 676, 677, 678, 679 AND 680
DIVERSION - 6.68 CFS (3000 GPM) AT DIVERSION POINTS 0700 AND 0710
PRIORITY DATE - APRIL 1, 1924
REMARKS - DIVERSION RATE IS A TOTAL RATE FOR THE COMBINED DIVERSION POINTS, NOT A SEPARATE RATE FOR EACH.

DIVERSION POINT NO: 0720
TRACT NO: 0710
OWNERSHIP:
BRYANT WILLIAMS, TRUSTEE
IR 106-107
Vol. 4 SF 114-148
Findings:
1. Certified Filing No. 372, as partially cancelled October 8, 1969, authorizes the use of 145 acre-feet per annum of water from Spring Creek at a maximum diversion rate of 2.2 cfs (1000 gpm) for irrigation of 145 acres of land out of Surveys 743 and 744, Irion County.
2. Claim No. 511 seeks a riparian water right, and a right under the certified filing to use 68.76 acre-feet of water from Spring Creek for irrigation of 40 acres of land out of Surveys 743 and 744, Irion County, which are located adjacent to Spring Creek and were patented from the State in 1856. The maximum claimed diversion rate was 1.23 cfs from an 18 acre-foot capacity reservoir at Diversion Point 0720.
3. Maximum use of water 1963-1967, inclusive, under Claim No. 511 was 69 acre-feet of water in 1964 for the irrigation of 40 acres. This also constitutes the maximum historical use under Certified Filing No. 372.
4. Maximum diversion was by pump at Diversion Point 0720 at a rate of 1.23 cfs (590 gpm).
5. Certified Filing No. 372 was filed on June 20, 1914.
BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 372 AND CLAIM NO. 511
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 69 ACRE-FEET PER YEAR
NO. OF ACRES - 40
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 372 AND CLAIM NO. 511 ON OWNED TRACT.

TRACT LOCATION - IRION COUNTY
MAP NO. - 2 OF 4, PAGE 4
SURVEYS - 713 AND 744
ABSTRACTS - 593 AND 473
DIVERSION - 1.23 CFS (559 GPM) AT DIVERSION POINT 0720
PRIORITY DATE - JUNE 20, 1914

DIVERSION POINT NO: 0731
TRACT NO: 0720
OWNERSHIP:
RAY E. DORRANCE (Previously Ray S. Dorrance, et al)
IR 108-109
Vol. 1 SF 202-226
Findings:
1. Permit No. 1306 authorizes the use of 150 acre-feet of water per annum from an 80 acre-foot capacity on channel reservoir on Spring Creek at an unspecified diversion rate for the irrigation of 75 acres of land out of Surveys 674, 675 and 676, Irion County.
2. Claim No. 95 asserts a right under Permit No. 1006 to the use of 80 acre-feet of water from Spring Creek for the irrigation of 75 acres of land adjacent to Spring Creek in Survey No. 674, 675 and 676, Irion County, which were patented from the State in 1856, 1856 and 1859, respectively. Twenty eight acres of land are included in the claim area which are outside the permit area.
3. Diversion at Diversion Point 0730 is by pump at a maximum rate of 1.56 cfs (1600 gpm).
4. The maximum use of water 1963-1967, inclusive, under Claim No. 95 was 55 acre-feet of water in 1963-1965 for the irrigation of 55 acres of which 47 acres are within the boundaries of Permit No. 1306. Permit No. 1006 was perfected in 1933-1935 and 1943-1971 to the extent of 110 acre-feet of water for the irrigation of 75 acres of land. The total right under both the permit and the claim is for 154 acre-feet of water for the irrigation of 83 acres.
5. The application for Permit No. 1006 was filed on January 31, 1927.
6. Permit No. 1006 contains an error in the location of the tract to be irrigated under the permit. The tract is in Irion County, instead of Tom Green County.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 1306 AND CLAIM NO. 95
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 1 CAPACITY 80 ACRE FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 158 ACRE-FEET PER YEAR
NO. OF ACRES - 83
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF PERMIT NO. 1306 AND CLAIM NO. 95 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 2 OF 4, PAGE 4
SURVEYS - 674, 675 AND 676
ABSTRACTS - 19, 30 AND 22
DIVERSION - 1.56 CFS (1600 GPM) AT DIVERSION POINT 0730
PRIORITY DATE - JANUARY 31, 1927

DIVERSION POINT NO: 0720
TRACT NO: 0720
OWNERSHIP:
H. J. SALLEE
IR 110
Vol. 4 SF 202
Findings:
Mr. H. J. Sallee no longer owns any interest in either Permit No. 1306 or Claim No. 95.
CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 95 AND PERMIT NO. 1306

DIVERSION POINT NO: 0740
TRACT NO: 0730
OWNERSHIP:
BRYANT WILLIAMS, TRUSTEE
IR 111-112
Vol. 4 SF 119-174
Findings:

1. Claim No. 474 seeks a riparian water right to use 123 acre-feet of the waters of Spring Creek from a 150 acre-foot capacity on-channel reservoir for irrigation of 66 acres of land adjacent to Spring Creek in Surveys 745, 747 and 748, Tom Green County, which were patented from the State in 1858. The maximum claimed diversion was at Diversion Point 0740 at a rate of 1.89 cfs, with the date of first beneficial use asserted to be 1917.
2. Maximum use during the period 1963-1967, inclusive, was, as declared in the claim, 123 acre-feet of water for irrigation of 66 acres in 1966.
3. There is a non-authorized dam and 42 acre-foot capacity on-channel reservoir on Spring Creek from which water is diverted by pump at Diversion Point 0740 at a maximum rate of 1.89 cfs (850 gpm).
4. Date of first beneficial use was July, 1917.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 474
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 1 CAPACITY 42 ACRE FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 123 ACRE-FEET PER YEAR
NO. OF ACRES - 66
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 474 ON OWNED TRACT.
TRACT LOCATION - IRION COUNTY
MAP NO. - 2 OF 4, PAGE 4
SURVEYS - 746, 747 AND 748
ABSTRACTS - 8155, 1561 AND 1560
DIVERSION - 1.89 CFS (850 GPM) AT DIVERSION POINT 0740
PRIORITY DATE - JULY 31, 1917

DIVERSION POINT NO: NONE
TRACT NO: 0735
OWNERSHIP:
JNO P. LEE ESTATE
IR 113
Findings:
1. Claim No. 3036 was dismissed by Commission action on October 18, 1972.
CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 3036

*The recognition herein is modified by action of the Commission during the pendency of this adjudication by the granting of an application for a new permits or an amendment of an existing permit or certified filing, a summary of which is described in the addendum to this determination.

DIVERSION POINT NO. 0750
TRACT NO. 0710

OWNERSHIP:
BRYANT WILLIAMS, TRUSTEE

IR 114-115
Vol. 4 SF 179-201
Findings:

1. Permit No. 861 authorizes the use of 320 acre-feet of water per annum at an unspecified diversion rate from a 160 acre-foot capacity on-channel reservoir on Spring Creek for the irrigation of 160 acres of land out of Surveys 754 and 755, Tom Green County.
2. Claim No. 602 seeks a riparian water right and a right under Permit No. 861 for the use of 123 acre-feet of water from Spring Creek for irrigation of 66 acres of land adjacent to Spring Creek in Surveys 754 and 755, which were patented from the State in 1858. This 66-acre tract is within the boundaries of Permit No. 861. The maximum claimed diversion was from a 150 acre-foot reservoir at Diversion Point 0750 at a rate of 1.89 cfs, with the date of first beneficial use asserted to be 1917.
3. Maximum use under Permit No. 861 has been the irrigation of 120 acres with 2 acre-feet of water per acre at a diversion rate at Diversion Point 0750 of 2.23 cfs (1000 gpm). Claimant's Section 5.307 Claim was amended in hearing to reflect recognition of this partial perfection under the permit.
4. Maximum use 1963-1967 in the area of Claim No. 602 was 240 acre-feet of water for the irrigation of 120 acres in each year.
5. The application for Permit No. 861 was filed on March 31, 1925.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 861 AND CLAIM NO. 602
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 1 CAPACITY 160 ACRE-FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 240 ACRE-FEET PER YEAR
NO. OF ACRES - 120
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF PERMIT NO. 861 AND CLAIM NO. 602 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEYS - 754 AND 755
ABSTRACTS - 143 AND 142
DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 0750
PRIORITY DATE - MARCH 31, 1925

DIVERSION POINT NO. 0760
TRACT NO. 0750

OWNERSHIP:
WEST TEXAS BOYS RANCH

IR 116-117
Vol. 4 SF 227-244
Findings:

1. Claim No. 2815 and an Additional Sworn Statement seek a riparian water right to use 20 acre-feet of the waters of Spring Creek from an on-channel 200 acre-foot capacity reservoir for irrigation of 74 acres of land located adjacent to Spring Creek in Surveys 660, 661, 662 and 665, Tom Green County, which were patented from the State in 1857. The claimed diversion was from Diversion Point 0760 on a 200 acre-foot reservoir at a maximum rate of 0.26 cfs. The date of first beneficial use was asserted to be prior to 1947.
2. Maximum irrigation use 1963-1967, inclusive, was 13 acre-feet of water for the irrigation of 15 acres of land in each year.
3. The Section 5.307 Claim was amended in open hearing by the claimant and seeks 18 acre-feet of water per annum for the irrigation of 15 acres of land in Tract 0750. This quantity of water also includes a small amount used for recreational purposes to fill a swimming pool.
4. Maximum diversion rate at Diversion Point 0760 is 0.26 cfs (120 gpm).
5. Diversion at Diversion Point 0760 is from a 50 acre-foot capacity reservoir authorized under Permit No. 713 of Henry J. Ripple, et al, and A.F. Holdeman.
6. The date of first beneficial use of water was December 31, 1946.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2815
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION AND RECREATION
AMOUNT OF WATER - 18 ACRE-FEET PER YEAR
NO. OF ACRES - 15
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 2815 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEYS - 660, 661, 662 AND 665
ABSTRACTS - 310, 309, 308 AND 507
DIVERSION - 0.26 CFS (120 GPM) AT DIVERSION POINT 0760
PRIORITY DATE - DECEMBER 31, 1946

DIVERSION POINT NO. 0770
TRACT NO. 0760, 0765 AND 0770

OWNERSHIP:
HENRY J. RIPPLE
JULIUS J. RIPPLE
WILLIAM E. RIPPLE

IR 118-119
Vol. 4 SF 245-304 and Vol. IX-A SF 20
Findings:

1. Permit No. 713 is owned jointly with A. F. Holdeman, Diversion Point 0780, and authorizes the use of 320 acre-feet of water per annum from a 180 acre-foot capacity reservoir on Spring Creek for irrigation of 160 acres of land out of Surveys 658, 659 and 660, Tom Green County. The permit stipulated that the application of water be limited to 2 acre-feet of water per acre actually irrigated in any one year.
2. Permit No. 713 was amended by a Commission order dated September 24, 1973, to authorize Henry J. Ripple, et al, the irrigation of 127.69 acres of land out of Surveys 659 and 660 from Spring Creek with 2 acre-feet of water per acre, at a maximum diversion rate at Diversion Point 0770 of 3.1 cfs (1400 gpm).

3. Permit No. 817 owned jointly with A. F. Holdeman authorizes the diversion of 120 acre-feet of water from Spring Creek for the irrigation of 63 acres of land in Surveys 659 and 660, Tom Green County. The permit also authorizes a 126 acre-foot capacity reservoir on Spring Creek, and stipulates that the application of water shall be limited to 2 acre-feet per acre actually irrigated.
4. The maximum combined use of water under Permit No. 713A and Permit No. 817 was 330 acre-feet of water for the irrigation of 175 acres of land.
5. Diversion under Permit No. 713A has been from Diversion Point 0770 by pump at a rate of 3.1 cfs (1400 gpm). Diversion under Permit No. 817 has been from Diversion Point 0770 by pump at a rate of 3.1 cfs (1400 gpm).
6. The amendment to Permit No. 713 changed the place of use under the permit from a 127.69 acre tract which had previously been irrigated under the terms of the permit in Survey 659 to a 127.69 acre tract which was being irrigated outside the boundaries of the permit area in Surveys 659 and 660.
7. Permittee has been irrigating a 46.7 acre tract of land in Surveys 659 and 660 which is outside the boundaries of Permit No. 817 in the mistaken belief that the irrigated area was covered by the permit. If this change in the place of use under Permit No. 817 is recognized, there will be no increased use of state water and no other appropriations will be adversely affected.
8. The dam and reservoir authorized by Permit No. 713 are not being used by Henry J. Ripple, et al, in connection with their permitted water use. They are being used in connection with Claim No. 2815 of West Texas Boys Ranch. Henry J. Ripple, et al, and A. F. Holdeman are the owners of record of Permit No. 713 and West Texas Boys Ranch is not a record owner of the permit.
9. The 126 acre-foot capacity reservoir authorized by Permit No. 817 is used by Henry J. Ripple, et al, but is not used by A. F. Holdeman joint owner of Permit No. 817.
10. The application for Permit No. 713 was filed on December 4, 1922; the application for Permit No. 817 was filed on December 5, 1924.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 713A AND 817
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 2 CAPACITY 126 ACRE-FEET (P-817) AND 180 ACRE-FEET (P-713)
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 350 ACRE-FEET PER YEAR, LIMITED TO 2 ACRE-FEET ACTUALLY IRRIGATED
NO. OF ACRES - 175

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF PERMIT NO. 713A AND 817 ON OWNED TRACTS.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 4 OF 11, PAGE 10
SURVEYS - 659 AND 660
DIVERSION - 3.1 CFS (1400 GPM) AT DIVERSION POINT 0770
PRIORITY DATE - PERMIT NO. 713A - DECEMBER 4, 1922; PERMIT NO. 817 - DECEMBER 5, 1924
REMARKS - OF THE 350 ACRE-FEET OF WATER PER YEAR RECOGNIZED, 256 ARE RECOGNIZED UNDER PERMIT NO. 713A WITH A PRIORITY DATE OF DECEMBER 4, 1922, AND 94 ACRE-FEET ARE RECOGNIZED UNDER PERMIT NO. 817 WITH A PRIORITY DATE OF DECEMBER 5, 1924.

DIVERSION POINT NO. 0780
TRACT NO. 0730

OWNERSHIP:
A. F. HOLDEMAN

IR 120-121
Vol. 4 SF 326-327
Findings:

1. Permit No. 713, owned jointly with Henry J. Ripple, et al, authorizes the irrigation of 160 acres with 2 acre-feet of water per acre from Spring Creek, with application of water to be limited to 2 acre-feet per acre actually irrigated in any one year. By Commission order dated September 24, 1973, Henry J. Ripple, et al, were recognized the right to irrigate 127.69 acres leaving A. F. Holdeman a balance of 42.31 acres to be irrigated under the permit in Survey 659, Tom Green County.
2. Permit No. 817, owned jointly with Henry J. Ripple, et al, authorizes the irrigation from Spring Creek of 63 acres of land with 2 acre-feet of water per acre per annum, with the application of water to be limited to 2 acre-feet per acre actually irrigated in any one year. By Commission order dated April 17, 1974, Henry J. Ripple, et al, were recognized the right to irrigate 46.7 acres leaving A. F. Holdeman a balance of 16.3 acres to be irrigated under the permit in Survey 659, Tom Green County.
3. Claim No. 2815 and an Additional Sworn Statement seek a riparian water right to use 18 acre-feet of the waters of Spring Creek for the irrigation of 15 acres of land in Surveys 657, 658 and 659 at a maximum diversion rate of 2.78 cfs (1250 gpm). Fifty-nine acres of this land are also covered by the two permits. This tract is located adjacent to Spring Creek in Surveys 657, 658 and 659, Tom Green County, which were patented from the State in 1857.
4. Diversion is by pump at Diversion Point 0780 at a maximum rate of 2.34 cfs (1050 gpm).
5. Maximum use of water during 1963-1970, inclusive, under Claim No. 2815 was 313 acre-feet of water in 1965 to irrigate 170 acres of land. This 4100 included the maximum combined historical use under the two permits.
6. The application for Permit No. 713 was filed on December 4, 1922; the application for Permit No. 817 was filed on December 5, 1924. The date of first beneficial use under Claim No. 2815 was 1904.
7. Diversion Point 0780 is a direct diversion point on the Concho River and is not located on either of the two reservoirs authorized by the permits, which are not located adjacent to A. F. Holdeman's property. There was no evidence introduced as to the use of water from these reservoirs on this tract in compliance with Permit No. 713A or Permit No. 817A.

CLAIMANT IS RECOGNIZED NO RIGHTS UNDER PERMIT NO. 713A OR PERMIT NO. 817A

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 3183
SOURCE OF WATER - SPRING CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 313 ACRE-FEET PER YEAR
NO. OF ACRES - 270

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 3183 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 4 OF 11, PAGE 10
SURVEYS - 657, 658 AND 659
ABSTRACTS - 299, 312 AND 311
DIVERSION - 2.34 CFS (1050 GPM) AT DIVERSION POINT #11
PRIORITY DATE - DECEMBER 31, 1904

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DIVERSION POINT NO: 0790
TRACT NO: 0790

OWNERSHIP:
MRS. W.A. GILIN AND W.A. GILIN ESTATE

IR 125
Vol. 4 SF 378-450
Findings:

1. Certified Filing No. 249 authorizes irrigation of 650 acres of land out of Surveys 787, 788, 789, 790, 791, 792 and 793 in Irion and Tom Green Counties, using water from 2 on-channel reservoirs on Dove Creek having a total capacity of 241 acre-feet with a maximum diversion rate by gravity flow canal of 330.0 cfs.
2. Claim No. 5921 makes a right under Certified Filing No. 249 to use 1240 acre-feet of the waters of Dove Creek for the irrigation of 650 acres of land located in Surveys No. 787, 788, 789, 790, 791, 792 and 793, Tom Green County. The claimed diversion was at Diversion Point 0790 on an 85 acre-foot capacity reservoir at a maximum rate of 5,00 cfs. The date of first beneficial use of water was asserted to be 1914.
3. Maximum use 1963-1967, inclusive, under Claim No. 5921 was 1348 acre-feet of water in 1964 for the irrigation of 543 acres of land. This also constitutes the maximum historical use under Certified Filing No. 249.
4. Diversion at Diversion Point 0790 is by canal at a maximum rate of 2.0 cfs (900 gpm). In addition there is a 0.35 cfs (150 gpm) capacity portable pump used to divert water from the canal to a sprinkler system.
5. Only one of the two reservoirs authorized under Certified Filing No. 249 is in existence and it has a capacity of 85 acre-feet. There are three fish tanks of unspecified capacity which are also supplied water from Diversion Point 0790.
6. The irrigated tract under Claim No. 5921 is adjacent to Dove Creek and located in Surveys 787, 788, 789, and 790, Irion County, and Surveys 791, 792 and 793, Tom Green County, all of which were patented from the State prior to 1895.
7. Certified Filing No. 249 was filed on June 25, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 249 AND CLAIM NO. 5921
SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 1 CAPACITY 85 ACRE-FEET
PURPOSE OF USE - IRRIGATION AND CATFISH FARMING
AMOUNT OF WATER - 1348 ACRE-FEET PER YEAR
NO. OF ACRES - 543
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 249 AND CLAIM NO. 5921 ON OWNED TRACT.
TRACT LOCATION - IRION AND TOM GREEN COUNTIES
MAP NO. - 4 OF 4, PAGE 6
SURVEYS - 787, 788, 789, 790, 791, 792 AND 793
ABSTRACTS - 28, 648, 1938, 1939, 392, 391 AND 1826
DIVERSION - 2.0 CFS (900 GPM) AT DIVERSION POINT 0790
PRIORITY DATE - JUNE 23, 1914

DIVERSION POINT NO: 0800
TRACT NO: 0800

OWNERSHIP:
A.M. TWEEDY ESTATE

IR 124-125
Vol. 4 SF 451-486
Findings:

1. Certified Filing No. 556, as partially cancelled by Commission order March 14, 1967, authorizes the use of 550 acre-feet of water from Dove Creek at a maximum diversion rate of 4.0 cfs (1800 gpm) for irrigation of 275 acres of land out of Surveys 793, 794, 795, 796, 797 and 798, Tom Green County.
2. Claim No. 510 reiterated the water right claimed under Certified Filing No. 556, was not included in the Section 5.507 Claim and was abandoned in open hearing.
3. Tract 0800 contains 396 acres of which 275 acres are authorized irrigation under Certified Filing No. 556. Diversion is by pump at Diversion Point 0800 with a maximum diversion rate of 4.45cfs (2000 gpm).
4. Certified Filing No. 556 was filed on June 19, 1914.
5. Diversion Point 0800 is not the point of diversion authorized under Certified Filing No. 556. There are no other appropriators who would be adversely affected by diversion at Diversion Point 0800 and the rate of diversion authorized by Certified Filing No. 556 would not be increased.
6. The partial cancellation order of March 14, 1967, constitutes a finding as to maximum use under Certified Filing No. 556 of 550 acre-feet of water per annum for irrigation of 275 acres.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 556
SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 550 ACRE-FEET PER YEAR
NO. OF ACRES - 275
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 556 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEYS - 793, 794, 795, 796, 797 AND 798
DIVERSION - 4.00 CFS (1800 GPM) AT THE DIVERSION POINT 0800
PRIORITY DATE - JUNE 19, 1914

DIVERSION POINT NO: 0800
TRACT NO: 0800

OWNERSHIP:
DR. W.H. ANDERSON

IR 126
Vol. 1 SF 303-328
Findings:

1. Claim No. 7802 seeks a riparian and/or equitable water right to use the waters of Dove Creek for irrigation with 100 acres of land out of Survey 799, 800 and 801, Tom Green County, declared as irrigable. The date of first beneficial use was asserted to be 1855.
2. No water use during 1963-1970, inclusive, is declared in the claim. No evidence was introduced to support a claim of water right under Claim No. 7802.
3. There are no facilities for the diversion of water, no irrigation system, and no evidence to substantiate any irrigation in the claim area.
4. Claimant declared in open hearing that no water had been used in connection with Tract 0810 at Diversion Point 0810.
5. The land claimed for irrigation under Claim No. 7802 is located adjacent to Dove Creek in Surveys 799, 800 and 801, which were patented from the State in 1959.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 7802

DIVERSION POINT NO: 0810
TRACT NO: 0810

OWNERSHIP:
MRS. R.C. JOHNSON

IR 127
Vol. 4 SF 512-518
Findings:

1. Filed investigation revealed the existence of a 1.36 cfs (700 gpm) capacity unauthorized portable pump at Diversion Point 0810 used to convey water to Tract 0810.
2. No claim has been filed and there is no recorded water right in connection with Tract 0810 at Diversion Point 0810.
3. The attorney for the owner abandoned any claim of water right for Tract 0810 and Diversion Point 0810.

CLAIMANT IS RECOGNIZED NO WATER RIGHT FOR DIVERSION POINT 0810 OR TRACT 0810

DIVERSION POINT NO: 0820
TRACT NO: 0820

OWNERSHIP:
E.G. CAUBLE, JR.
DOUGLAS J. CAUBLE
MILDRED MERLE CALLIHAN

IR 128-129
Vol. 4 SF 543-588
Findings:

1. Certified Filing No. 774, jointly owned by E.G. Cauble, et al., Mrs. R.C. Johnson, the Emma L. Strother Estate, K. Foster and E. Foster, authorizes the irrigation of a total of 500 acres of land in Surveys 802, 803 and 804, Tom Green County. E.G. Cauble, et al., own 237 acres of land located within the boundaries of the certified filing in Surveys 802, 803 and 804.
2. Claim No. 774 seeks a riparian and equitable water right to the use of 1500 acre-feet of water from Dove Creek for the irrigation of 252 acres of land in Surveys 1, 802, 803 and 804, Tom Green County, all of which were patented from the State prior to 1895. The irrigated tract is adjacent to Dove Creek. Fifteen acres of land covered by the claim are located in Survey 4 which is not adjacent to Dove Creek but is part of a single, contiguous riparian tract. The claimed diversion is at Diversion Point 0820 from a reservoir of unspecified capacity at a rate of 3.34 cfs. The date of first beneficial use was asserted to be before 1890.
3. Certified Filing No. 774 has been perfected to the extent of 471 acre-feet of water for the irrigation of 237 acres of land in 1963. The maximum use of water during 1963-1967, inclusive, under Claim No. 774 was of 504 acre-feet of water for the irrigation of 252 acres of land.
4. The maximum diversion rate at Diversion Point 0820 is 4.16 cfs (2000 gpm). The dam authorized by Certified Filing No. 774 is non-existent. The dam claimed in Claim No. 774 is authorized by Certified Filing No. 290 and has been breached.
5. Certified Filing No. 774 was filed on June 29, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 774 AND CLAIM NO. 774
SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 504 ACRE-FEET PER YEAR
NO. OF ACRES - 252
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 774 AND CLAIM NO. 774 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEYS - 1, 802, 803 AND 804
ABSTRACTS - 5209, 242, 2143 AND 287
DIVERSION - 4.16 CFS (2000 GPM) AT DIVERSION POINT 0820
PRIORITY DATE - JUNE 29, 1914

*The record of this claim contains circumstances warranting equitable consideration as stated in Section 10(b) of the introduction to this determination.

OWNERSHIP:
B. A. DUNCAN

IR 150, 152, 153, 141 AND 142
Vol. 4 SF 087-708, Vol. 9 SF 263-271 and Vol. 12 SF 18-73
Findings:

1. Claimant's Section 5.107 claim asserts a right under Permit No. 198, Certified Filings Nos. 290, 845 and 207, and Section 5.103 Claims Nos. 0677 and 7688 to annually divert and use 170 acre-feet of water from Dove Creek at a maximum diversion rate of 1.5 cfs for the irrigation of 130 acres of land with a priority date of 1906. There is a reservoir with an impounding capacity of 20 acre-feet on Dove Creek as claimed.
2. Certified Filing No. 290 declared the intent to irrigate approximately 300 acres of land within Surveys Nos. 760 and 761 with water diverted by gravity at D-0830 from a reservoir created by a dam on Dove Creek adjacent to Survey No. 761. A ditch was declared to have been constructed at said point with a carrying capacity of 5 cubic feet per second.
3. Certified Filing No. 845 declared the intention to divert water from two points on the North Bank of Dove Creek in Surveys Nos. 760 and 761, Tom Green County, for the irrigation of 153 acres of land out of a total tract of 348 acres of land located in Surveys Nos. 760 and 761, Tom Green County, Texas, at a diversion rate of 3800 gpm. By Commission order dated November 30, 1965, Certified Filing No. 845 was amended by the addition of a diversion point located at the new point should be used only when a pre-existing diversion point within Survey No. 760 was not in use.
4. Permit No. 198 was originally issued on October 8, 1917, and authorizes the construction of a reservoir having a capacity of not to exceed 20 acre-feet of water to impound the storm and flood waters of Dove Creek and the annual diversion and use therefrom of not to exceed 120 acre-feet of water at a maximum diversion rate of 3 cfs for the irrigation of 80 acres out of a 0.4 acre tract of land, being 60 acres in Survey No. 761 and 20 acres in Survey No. 762, Tom Green County. The permit specifically provides for the construction of a sluice way in the reservoir so that during the irrigation season the permittee shall permit that portion of the normal flow of said stream to which lower appropriators may be entitled to pass through said sluice way. The dam is on land owned by Jack H. and Jess C. Landers. Claimant owns no land within permit area P-198 and no evidence was presented of any use of water by claimant under the permit.
5. Certified Filing No. 207 involves an appropriation of water right on the San Saba River and does not apply to any water rights in the Concho River watershed. The reference in claimant's Section 5.107 claim to this certified filing is apparently mistaken; the application for Permit No. 198 was assigned Application No. 107 by the Commission and apparently this is how claimant obtained the number 207.
6. Section 5.103 Claim No. 6677 claims a right as a riparian to use water from Dove Creek to irrigate 214 acres in Surveys Nos. 760 and 761, Tom Green County. Survey No. 760 was patented in 1858, Survey No. 761 was patented in 1857. Both Survey No. 760 and 761 abut Dove Creek. The claimant does not own land within Survey No. 761 which abuts Dove Creek. None of claimant's irrigated area under Section 5.103 Claim No. 6677 abuts Dove Creek. However, claimant does own a narrow strip of land which abuts Dove Creek at D-0870 in Survey No. 760. Claimant pumps water from this point to his land irrigated within Claim Area C-2609 by pumping the water across a neighbor's land which intervenes between claimant's irrigated land and Dove Creek. Claimant has an easement across his neighbor's land.
7. Section 5.103 Claim No. 7688 claims a right as a riparian to use water from Dove Creek for the irrigation of 60 acres of land in Surveys 3 and 760, Tom Green County, and alleges a maximum diversion and use of 91.67 acre-feet of water in 1964. The diversion point is claimed from D-0830 on Dove Creek in Survey No. 762 at the point authorized under Certified Filing No. 290. Survey No. 760 has a patent date of 1858. Survey No. 3 does not abut Dove Creek. Surveys Nos. 760 and 762 do abut Dove Creek. Claimant does not own any property within Survey No. 762.
8. Prior to 1910 claimant diverted water from Diversion Point No. 0830 located in Survey No. 762, Tom Green County, on Dove Creek for the irrigation of 55 acres of land within T-0830 in Survey No. 760, Tom Green County, Texas. This land was irrigated each year during the period 1903-1907. The 55 acres lies within Certified Filing area CF-290 and Claim area C-2609, and Diversion Point No. 0830 is the authorized point under Certified Filing No. 290. The maximum amount of water used on this land from that diversion point during the period 1903-1907 was 110 acre-feet of water in any one year.
9. Since 1910 claimant has diverted water from D-0905 on Dove Creek for the irrigation of the 55 acres within T-0830. The maximum amount of water diverted in any one year from D-0905 was 145 acre-feet of water for irrigation within T-0830. There are many intervening diverters between D-0830, the originally authorized point under Certified Filing No. 290, and D-0905.
10. Claimant also diverts water from Diversion Point No. 0870 in Surveys Nos. 761 and 760, Tom Green County, Texas, which tract lies within Certified Filing area CF-845A, Certified Filing area CF-290 and Claim area C-6677. Diversion Point No. 0870 is an authorized point under Certified Filing No. 845A.
11. Maximum amount of water diverted and used in any one year from D-0870 for the irrigation within T-0830 was 80 acre-feet of water in 1974.
12. Claimant uses a pump with a maximum diversion rate of 2.67 cfs (1200 gpm) for irrigation within T-0830.
13. Maximum number of acres ever irrigated by claimant from D-0870 was 30 acres out of T-0830 within Certified Filing areas CF-290 and CF-845A in 1974.
14. Claimant's Section 5.107 claim was filed with the County Clerk of Tom Green County on June 27, 1914. Certified Filing No. 845 was filed with the County Clerk of Tom Green County by November 18, 1915. Application for Permit No. 198 was filed with the Commission on July 2, 1917.
15. Maximum rate of diversion of water by claimant at D-0830 was 3 cfs (1350 gpm).

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILINGS NOS. 290 AND 845A
SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 170 ACRE-FEET PER ANNUM
NO. OF ACRES - 45
IRRIGATED TRACTS SHOWN IN EXHIBIT NO. 1396 AND DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILINGS NOS. 290 AND 845A ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEYS - 760 AND 761
DIVERSION RATE - 3 CFS (1350 GPM) AT DIVERSION POINT NO. 0830 AND 2.67 CFS (1200 GPM) AT DIVERSION POINT NO. 0870
PRIORITY DATE - JUNE 27, 1914

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 6677 BECAUSE ALL OF CLAIMANT'S IRRIGATED LAND UNDER THAT CLAIM IS SEPARATED FROM DOVE CREEK BY INTERVENING OWNERSHIP. CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 7688 BECAUSE ALL OF THE WATER DIVERTED BY CLAIMANT FOR USE UNDER THAT CLAIM DURING THE PERIOD 1963-1970 WAS FROM D-0830 WHICH LIES ON DOVE CREEK IN SURVEY NO. 762 AND CLAIMANT OWNS NO LAND WITHIN THAT SURVEY WHICH ABUTS DOVE CREEK. CLAIMANT IS RECOGNIZED NO RIGHT UNDER PERMIT NO. 198 BECAUSE HE OWNS NO PART OF THE PERMIT AREA AND BECAUSE NO EVIDENCE WAS PRESENTED OF ANY USE OF WATER BY CLAIMANT UNDER THE PERMIT. CLAIMANT IS ALSO NOT RECOGNIZED THE RIGHT TO IRRIGATE FROM DIVERSION POINT D-0905 BECAUSE THIS POINT IS NOT AUTHORIZED UNDER EITHER CERTIFIED FILING AND CANNOT BE AUTHORIZED UNDER EITHER CLAIM BECAUSE THE POINT WAS NOT USED DURING THE PERIOD 1903-1907.

OWNERSHIP:
T. N. ROBBINS ESTATE

IR 151
Vol. 4 SF 655-680
Findings:

1. Certified Filing No. 290, jointly owned by the B.A. Duncan Estate, the T.N. Robbins Estate and J.D. Burk, authorizes the diversion of water by gravity flow at a maximum rate of 5.0 cfs from a dam and reservoir on Dove Creek at Diversion Point 0870 for the irrigation of 300 acres of land in Surveys 760 and 761, Tom Green County.
2. Maximum use under the portion of Certified Filing No. 290 owned by the T.N. Robbins Estate was 38 acre-feet of water per year for the irrigation of 38 acres.
3. The dam and reservoir authorized by Certified Filing No. 290 is non-existent and there is no operable irrigation system associated with Tract No. 0870. Formerly irrigation on this tract was from the "Bate Canal" under Certified Filing No. 290, at a rate of 4.0 cfs (600 gpm). However this canal has not been used since 1967.
4. Certified Filing No. 290 was filed on June 27, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 290
SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 38 ACRE-FEET PER YEAR
NO. OF ACRES - 38
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 290 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEY - 760
DIVERSION - 1.34 CFS (600 GPM) AT DIVERSION POINT 0870
PRIORITY DATE - JUNE 27, 1914

DIVERSION POINT NO: 0830 AND 0910
TRACT NO: 0890

OWNERSHIP:
J. D. BURK

IR 134-135
Vol. 4 SF 709-769
Findings:

1. Claim No. 6852 seeks a riparian right to the waters of Dove Creek for irrigation, with 220 acres of land in Surveys 760 and 761, Tom Green County declared as irrigable. The tract is adjacent to Dove Creek and Survey 760 was patented from the State in 1858. However Survey 760 is not contiguous to Dove Creek and is therefore not a valid riparian survey. The maximum diversion rate was asserted to be 2.23 cfs. The date of first beneficial use was declared as prior to 1947.
2. Certified Filing No. 290, jointly owned by the B.A. Duncan Estate, the T.N. Robbins Estate, and J.D. Burk authorizes the diversion by gravity flow at a maximum rate of 5.0 cfs from a reservoir on Dove Creek at Diversion Point 0870 for irrigation of 300 acres of land in Surveys 760 and 761, Tom Green County.
3. The portion of Certified Filing No. 290 owned by J.D. Burk covers that part of the acreage claimed under Claim No. 6852 located in Tract 0890, Survey 760.
4. Maximum use 1963-1967, inclusive, under Claim No. 6852 was 130 acre-feet in 1963 and the irrigation of 85 acres of land in 1965. Maximum use in Tract 0890 under Certified Filing No. 290 was the irrigation of 142 acres with 2 acre-feet per acre in 1970. The 142 acres irrigated under Certified Filing No. 290 overlap the 80 acres irrigated under Claim No. 6852.
5. Diversion Point 0830 authorized by Certified Filing No. 290 is not operable and has not been used since 1964. Claim No. 6852 also includes Diversion Point 0910 from which irrigation was made by pump at a maximum rate of 1.78 cfs (800 gpm).
6. Certified Filing No. 290 was filed on June 27, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 290 AND CLAIM NO. 6852
SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 284 ACRE-FEET PER YEAR
NO. OF ACRES - 142
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 290 AND CLAIM NO. 6852 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEY - 690
ABSTRACT - 361
DIVERSION - 1.78 CFS (800 GPM) AT DIVERSION POINT 0910 ONLY
PRIORITY DATE - JUNE 27, 1914

DIVERSION POINT NO: 0840
TRACT NO: 0840

OWNERSHIP:
MRS. R.C. JOHNSON

IR 144
Vol. 9 SF 519-541
Findings:

Certified Filing No. 787, jointly owned by E.G. Cauble, Jr., et al., Mrs. R.C. Johnson, Mrs. Fannie Laura Strother, Mrs. Katie Pearl Foster and E.E. Foster, Jr., authorizes the diversion of water from Dove Creek for the irrigation of 500 acres of land in Surveys 802, 803 and 804, Tom Green County. Mrs. R.C. Johnson owns 240.2 acres located within the boundaries of the certified filing in Surveys 803 and 804. Mrs. R.C. Johnson's portion of Certified Filing No. 787 has been perfected to the extent of 147 acre-feet of water per annum for the irrigation of 135 acres in 1972. Diversion is by a portable pump at Diversion Point 0840 at a maximum rate of 2.45 cfs (1100 gpm). Diversion Point 0840 is not authorized by Certified Filing No. 787 and cannot be recognized. A gravity flow canal authorized under Certified Filing No. 787 has not been used for many years. Certified Filing No. 787 was filed on June 29, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 787
SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 147 ACRE-FEET PER ANNUM
NO. OF ACRES - 135
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 787 ON OWNED TRACT:
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEYS - 803 AND 804
DIVERSION - NONE
PRIORITY DATE - JUNE 29, 1914

DIVERSION POINT NO: 0850
TRACT NO: 0850

OWNERSHIP:
JACK M. LANDERS AND JESS C. LANDERS

IR 137 AND 145
Vol. 4 SF 767, 770-813 and Vol. 12 SF 74-123
Findings:

1. Claimant's Section 5.307 claim asserts a right under Permit No. 198 and Certified Filing No. 845A to impound 26 acre-feet of water in a reservoir on Dove Creek and to annually divert and use therefrom 120 acre-feet of water for the irrigation of 60 acres of land at a maximum diversion rate of 0.55 cfs (250 gpm) with a priority date of July 2, 1914.

2. Permit No. 198, owned jointly with Woodrow Harris and B. A. Duncan, authorizes the use of 120 acre-feet of water per year for the irrigation of 60 acres of land out of a 64 acre tract. Diversion is authorized from a 26 acre-foot reservoir on Dove Creek at a maximum rate of 3.0 cfs.

3. Certified Filing No. 845A, owned jointly with B. A. Duncan, authorizes the use of water from Dove Creek for the irrigation of 153 acres out of a 340 acre tract of land in Surveys Nos. 760 and 761, Tom Green County, Texas at a diversion rate of 3800 gpm.

4. Application for Permit No. 198 was filed with the Commission on July 2, 1917.

5. Certified Filing No. 845 was filed with the County Clerk of Tom Green County by November 18, 1915.

6. Claimants divert water from Diversion Point D-0850, an authorized point under Permit No. 198 and Certified Filing No. 845A, located on a natural pool on Dove Creek. This natural pool is at a point where the authorized dam under Permit No. 198 was originally constructed but the dam is breached at the present time. Claimants divert water from said point in Survey No. 761 at a maximum diversion rate of 300 gpm.

7. The maximum amount of land irrigated by claimants in any one year was 48 acres, all of which lie within Certified Filing area CP-845A, and 24 acres of which also lie within Permit area P-198, which occurred in both 1974 and 1975 with Dove Creek water diverted at D-0850.

8. Maximum amount of water diverted and used by claimants in any one year was 89 acre-feet of water diverted and used from D-0850 for the irrigation of 48 acres of land, all of which lie within Certified Filing area CP-845A, and 24 acres of which also lie within Permit area P-198, in 1975.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 198 AND CERTIFIED FILING NO. 845A
SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 1 CAPACITY 26 ACRE-FEET (P-198)
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 89 ACRE-FEET
NO. OF ACRES - 48
IRRIGATED TRACT SHOWN ON EXHIBIT NO. 1401, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF PERMIT NO. 198 AND CERTIFIED FILING NO. 845A ON OWNED TRACT:
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEYS NOS. - 760 AND 761
DIVERSION RATE - 0.67 CFS (300 GPM) AT DIVERSION POINT NO. 0850
PRIORITY DATE - NOVEMBER 18, 1915

DIVERSION POINT NO: 0860
TRACT NO: 0860

OWNERSHIP:
WOODROW HARRIS

IR 138
Vol. 9 SF 272-274
Findings:

1. Permit No. 198 covers lands in Tract 0860 owned by Woodrow Harris. There is no presently existing irrigation system associated with this tract.

2. The party failed to file a Section 5.307 Claim of right in compliance with Commission's directive and failed to appear at the evidentiary hearing. No credible evidence as to the nature, the extent or the basis of right cognizable under existing state law was introduced at the hearing.

PARTY IS RECOGNIZED NO RIGHT UNDER PERMIT NO. 198

DIVERSION POINT NO: 0900
TRACT NO: 0900

OWNERSHIP:
MRS. FANNIE L. STROTHER

IR 140
Vol. 9 SF 285-288
Findings:

1. Certified Filing No. 787 covers lands in Tract 0900 owned by the Fannie L. Strother Estate. There is no presently existing irrigation system associated with this tract and no indication of recent irrigation.

2. Mrs. Fannie L. Strother is listed in Commission records as a part owner of Certified Filing No. 824, however no evidence was introduced as to the extent of this ownership or as to the quantity of water used in the perfection of the right.

3. The party failed to file a Section 5.307 Claim of right in compliance with the Commission's directive and failed to appear at the evidentiary hearing. No credible evidence as to the nature, the extent or the basis of right cognizable under existing state law was introduced at the hearing.

PARTY IS RECOGNIZED NO RIGHT UNDER CERTIFIED FILING NO. 787 OR UNDER CERTIFIED FILING NO. 824

DIVERSION POINT NO: 0880
TRACT NO: 0910

OWNERSHIP:
MRS. FATTIE PEARL FOSTER

IR 144
Vol. 4 SF 604-655
Findings:

1. Mrs. Katie Pearl Foster owns a 5-acre tract designated as Tract 0910 located in Survey 804, Tom Green County, and which is covered by Claim No. 227, Certified Filing No. 787 and Certified Filing No. 824.

2. Certified Filing No. 787, jointly owned with E.G. Cauble, Jr., et al., Mrs. R.C. Johnson, the Fannie Laura Strother Estate and E.E. Foster, Jr., authorizes the diversion of an unspecified quantity of water from Dove Creek for the irrigation of 500 acres of land in Surveys 802, 803 and 804, Tom Green County, at a diversion rate of 3.91 cfs.

3. Certified Filing No. 824, jointly owned with the Fannie Laura Strother Estate and E.E. Foster, Jr., authorizes the diversion of an unspecified quantity of water from Dove Creek for the irrigation of 120 acres of land in Survey 804, Tom Green County, at a diversion rate of 2.34 cfs.

4. Claim No. 227 seeks a riparian right and a right under Certified Filing No. 824 to use 3 acre-feet of the waters of Dove Creek for the irrigation of 10 acres in Survey 804 located adjacent to Dove Creek and which were patented from the State in 1857. The maximum claimed diversion rate was 0.67 cfs and the date of first beneficial use was asserted to be 1922.

5. The maximum use of water on Tract 0910 was 5 acre-feet in 1970 for the irrigation of 5 acres.

6. The maximum use of water 1963-1967, inclusive, under Claim No. 227 was 3 acre-feet in each year for the irrigation of 5 acres of land.

7. Diversion is at Diversion Point 0880, as authorized by Certified Filing No. 787 at a maximum rate of 0.5 cfs (230 gpm).

8. Certified Filing No. 787 was filed on June 29, 1914; Certified Filing No. 824 was filed on May 19, 1915.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 824 AND CLAIM NO. 227

SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 5 ACRE-FEET PER YEAR
NO. OF ACRES - 5
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 824, CERTIFIED FILING NO. 787 AND CLAIM NO. 227 ON OWNED TRACT:
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEY - 804
ABSTRACT - 287
DIVERSION - 0.5 CFS (230 GPM) AT DIVERSION POINT 0880
PRIORITY DATE - JUNE 29, 1914

DIVERSION POINT NO: 0880
TRACT NO: 0915 AND 0917

OWNERSHIP:
MRS. KATIE PEARL FOSTER

IR 145-116
Vol. 4 SF 604-633
Findings:

1. Mrs. Katie Pearl Foster owns a 22.4-acre tract of land designated as Tract 0915 located in Survey 804, Tom Green County, and covered by Certified Filing No. 787 and Certified Filing No. 824. A 24.4-acre tract, designated as Tract 0917, is also owned by Mrs. Foster but is not located within the boundaries of any claim or statutory appropriation.
2. Certified Filing No. 787, owned jointly with E.G. Cauble, Jr., et al, Mrs. E.C. Johnson, the Fannie Laura Strother Estate and E.E. Foster, Jr., authorizes the diversion of an unspecified quantity of water from Dove Creek for the irrigation of 300 acres of land in Surveys 802, 805 and 804, Tom Green County, at a diversion rate of 8.91 cfs.
3. Certified Filing No. 824, jointly owned with the Fannie Laura Strother Estate and E.E. Foster, Jr., authorizes the diversion of an unspecified quantity of water from Dove Creek for the irrigation of 120 acres of land in Survey 804, Tom Green County, at a diversion rate of 2.34 cfs.
4. Claim No. 223 seeks a riparian right and a right under Certified Filing No. 824 to the use of 14 acre-feet of water from Dove Creek for the irrigation of 10 acres of land located adjacent to Dove Creek in Survey 804, which was patented from the State in 1857. The area of the claim is entirely within the boundaries of Certified Filing No. 824 and 787. The claimed diversion rate was 1.34 cfs and the date of first beneficial use was asserted to be 1922.
5. Maximum use of water under Claim No. 228 during 1963-1967, inclusive, was 22.4 acre-feet of water in each year for the irrigation of 22.4 acres of land.
6. Diversion is at Diversion Point 0880, as authorized by Certified Filing No. 824, at a maximum rate of 1.45 cfs (650 gpm).
7. Certified Filing No. 787 was filed on June 29, 1914; Certified Filing No. 824 was filed on May 19, 1915.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 824, 737
AND CLAIM NO. 228

SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 25 ACRE-FEET PER ANNUM
NO. OF ACRES - 23
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 824, CERTIFIED FILING NO. 787 AND CLAIM NO. 228 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 5 OF 11, PAGE 9
SURVEYS - 804
ABSTRACTS - 287
DIVERSION - 1.45 CFS (650 GPM) AT DIVERSION POINT 0880
PRIORITY DATE - JUNE 29, 1914

DIVERSION POINT NO: 0930
TRACT NO: 0920

OWNERSHIP:
E.E. FOSTER, JR.

IR 147-148
Vol. 4 SF 636-654
Findings:

1. E.E. Foster, Jr., owns 224.9 acres of land in Surveys 1, 804, 805 and 1195, Tom Green County, which are covered in part by Claim No. 3562 and by portions of Certified Filing No. 787 and Certified Filing No. 824.
2. Certified Filing No. 787, owned jointly with E.G. Cauble, Jr., et al, Mrs. E.C. Johnson, the Fannie Laura Strother Estate, and Mrs. Katie Pearl Foster, authorizes the diversion of an unspecified quantity of water from Dove Creek for the irrigation of 300 acres of land in Surveys 802, 803 and 804, Tom Green County, at a diversion rate of 8.91 cfs.
3. Certified Filing No. 824, jointly owned with the Fannie Laura Strother Estate and Katie Pearl Foster, authorizes the diversion of an unspecified quantity of water from Dove Creek for the irrigation of 120 acres of land in Survey 804, Tom Green County, at a diversion rate of 2.34 cfs.
4. Claim No. 3562 seeks a riparian water right of 27 acre-feet of water to irrigate 54 acres of land in Surveys 1, 804, 805, and 1195. Surveys 804 and 805 are adjacent to Dove Creek and were patented in 1857. Surveys 1 and 1195 are not adjacent to Dove Creek and are not valid riparian surveys. Of the 54 acres claimed, 15 are in Surveys 804 and 805. The maximum claimed diversion rate is 0.78 cfs and the date of first beneficial use was asserted to be 1913.
5. The portions of Certified Filing No. 787 and 824 owned by E.E. Foster and located in Tract 0920 have been perfected to the extent of 36 acre-feet per annum for the irrigation of 36 acres in 1970.
6. The maximum use 1963-1967 under Claim No. 3562 in the riparian Surveys 804 and 805 was 27 acre-feet of water in 1967 for the irrigation of 15 acres. 36 acres of which are also covered by Certified Filing No. 787 and 824.
7. Diversion under Claim No. 3562 is at Diversion Point 0890 by pump at a maximum diversion rate of 3.34 cfs (1500 gpm).
8. Certified Filing No. 787 was filed on June 29, 1914; Certified Filing No. 824 was filed on May 19, 1915.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 824 AND 787
AND CLAIM 3562

SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 39 ACRE-FEET PER YEAR
NO. OF ACRES - 45
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 824, CERTIFIED FILING NO. 787 AND CLAIM NO. 3562 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEYS - 804 AND 805
ABSTRACTS - 278 AND 288
DIVERSION - 3.34 CFS (1500 GPM) AT DIVERSION POINT 0890
PRIORITY DATE - JUNE 29, 1914

DIVERSION POINT NO: 0900
TRACT NO: 0930

OWNERSHIP:
J.W. WEST

IR 149
Vol. 4 SF 549-603
Findings:

1. Claim No. 732 seeks a riparian right to use 45 acre-feet of the waters of Dove Creek for the irrigation of 45 acres of land adjacent to Dove Creek in Surveys 1 and 805, Tom Green County. Survey 805 is adjacent to Dove Creek and was patented from the State in 1857. Survey 1 was patented from the State in 1878, but is not contiguous to the creek and is therefore not a valid riparian survey. Survey 1 does contain a contiguous portion of the claim area, the rest of which is in a riparian survey. The claimed diversion was at a rate of 2.25 cfs and the date of first beneficial use was asserted to be 1942.
2. Maximum water use during the period 1963-1967, inclusive, was 45 acre-feet for irrigation of 45 acres each year.
3. Diversion is by pump at Diversion Point 0900 at a maximum rate of 1.11 cfs (500 gpm).
4. Date of first beneficial use was 1942.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 732
SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 45 ACRE-FEET PER YEAR
NO. OF ACRES - 45
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 732 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 3 OF 11, PAGE 9
SURVEYS - 805 AND 1
ABSTRACTS - 288 AND 1527
DIVERSION - 1.11 CFS (500 GPM) AT DIVERSION POINT 0900
PRIORITY DATE - DECEMBER 31, 1942

DIVERSION POINT NO: 0920 AND 0925
TRACT NO: 0940 AND 0945

OWNERSHIP:
MRS. DIERDRE J. PATTERSON (Previously Mrs. D.J. Ayres)

IR 150-151
Vol. 4 SF 481 and 487-510 and Vol. 9 SF 18
Findings:

1. Permit No. 442 authorizes the use of 286 acre-feet of water from a 143 acre-foot capacity on-channel reservoir on Dove Creek for the irrigation of 143 acres in Surveys 759, 807, 808 and 809, Tom Green County. The permit stipulated that the actual application of water be limited to 2 acre-feet per acre of land irrigated in any one year. Permit No. 442 was amended on September 24, 1975, to change the place of use to 143 acres in Surveys 807, 808 and 809, 73 acres of which are located within the original boundaries of the permit and to change the points of diversion.
2. Permit No. 442, as amended, has been perfected to the extent of 286 acre-feet of water in 1971 and 1972 for the irrigation of 143 acres of land in Tract No. 0940 and 0945.
3. Diversion at Diversion Point 0920 is by pump at a maximum rate of 1.78 cfs (800 gpm). Diversion at Diversion Point 0925 is by pump at a maximum rate of 1.34 cfs (600 gpm).
4. There are two dams associated with these tracts. The first is permitted under Permit No. 442A and impounds 65 acre-feet. The second dam, located between Surveys 805 and 759 on the Dierdre J. Patterson property is not authorized. This dam was constructed in 1928 and impounds 25 acre-feet.
5. The application for Permit No. 442 was filed April 27, 1920.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 442A
SOURCE OF WATER - DOVE CREEK
NO. OF RESERVOIRS - 1 CAPACITY 65 ACRE-FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 286 ACRE-FEET PER YEAR LIMITED TO 2 ACRE-FEET PER ACRE IRRIGATED
NO. OF ACRES - 143
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF OWNED TRACTS.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 4 OF 11, PAGE 10
SURVEYS - 807, 808, 809 AND 759
DIVERSION - 3.12 CFS (1400 GPM) AT DIVERSION POINT 0920 AND 0925
PRIORITY DATE - APRIL 27, 1920
REMARKS - THE DIVERSION RATE IS A TOTAL RATE FOR THE COMBINED DIVERSION POINTS, NOT A SEPARATE RATE FOR EACH.

DIVERSION POINT NO. 0930
TRACT NO. 0930

OWNERSHIP:
EDITH ANSON BOULWARE AND FORD M. BOULWARE

IR 152-153
Vol. 5 SF 2-54
Findings:

1. Certified Filing No. 391 authorizes the use of an unspecified amount of water at a maximum diversion rate of 1.78 cfs (800 gpm) from the South Concho River for irrigation of 25 acres of land out of Surveys 1887 and 1886, Tom Green County.
2. Claim No. 6952 seeks a riparian right and a right under Certified Filing No. 391 to use 95.4 acre-feet of the waters of the South Concho River for the irrigation of 50 acres of land in Surveys 1887, 1886 and 1009, Tom Green County. The claimed diversion was from a 27 acre-foot capacity reservoir at a rate of 1.89 cfs, with the date of first beneficial use asserted to be 1914.
3. Maximum historical use of water under Certified Filing No. 391 was 50 acre-feet of water in 1963 for the irrigation of 25 acres of land.
4. Maximum use of water during 1963-1967, inclusive, under Claim No. 6952 was 95.4 acre-feet of water in 1963 for the irrigation of 50 acres of land.
5. The 50 acres of land irrigated under Claim No. 6952 includes the 25 acres of land irrigated under the certified filing. The quantity of water used under the certified filing is included in the water use claimed under Claim No. 6952.
6. The tract irrigated under Claim No. 6952 is located adjacent to the South Concho River in Surveys 1886, 1887 and 1009, which were patented from the State in 1860, 1860 and 1879, respectively.
7. Diversion is at Diversion Point 0930 at a maximum rate of 1.89 cfs (850 gpm).
8. Date of first beneficial use under Claim No. 6952 was 1914. Certified Filing No. 391 was filed on June 30, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 391 AND CLAIM NO. 6952
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 96 ACRE-FEET PER YEAR
NO. OF ACRES - 50
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 391 AND CLAIM NO. 6952 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 6 OF 11, PAGE 12
SURVEYS - 1887, 1886 AND 1009
ABSTRACTS - 201, 3979 AND 4260
DIVERSION - 1.89 CFS (850 GPM) AT DIVERSION POINT 0930
PRIORITY DATE - JUNE 30, 1914

DIVERSION POINT NOS: 0940, 0941, 0938 and 0943
TRACT NO: 0960

OWNERSHIP:
LEWIS B. BURLESON

IR 154-155
Vol. 5 SF 55-85 and Vol. 12 SF 134-154
Findings:

1. Claim No. 2388 and an Additional Sworn Statement seek a riparian water right to use 11.7 acre-feet of the waters of the South Concho River at a maximum diversion rate of 2.22 cfs (1000 gpm) for irrigation of 20 acres out of Surveys 955 and 954, Tom Green County. Two dams and reservoirs having a total capacity of 25 acre-feet of water are claimed, one on-channel on the South Concho River and the other on Cole Creek, a tributary of the South Concho River.
2. Maximum use of water 1963-1967, inclusive, was 1.1 acre-foot in 1967 for the irrigation of 11 acres of land within T-0960.
3. Claimant commenced works prior to August 28, 1967, to enable the application of a greater amount of water to beneficial use by the clearing of additional land for irrigation and by purchasing a pump motor in May, 1967.
4. Maximum use 1963-1970, inclusive, was 15 acre-feet of water in 1967 for the irrigation of 11 acres of land within Tract 0960 on Exhibit No. 1408. Tract 0960 includes both the area originally outlined on Exhibit No. 7 and Exhibit No. 1408 and the area outlined in green in surveys 954 and 955 on Exhibit No. 1408.
5. Tract 0960 lies in Surveys Nos. 954 and 955, both of which were patented from the State in 1860. Tract 0960 includes two areas, both of which are adjacent to Cole Creek.
6. During the period 1963-1970, inclusive, claimant diverted water from Diversion Points 0938 and 0943 on the South Concho River and Diversion Points 0943 and 0941 on Cole Creek for irrigation within Tract 0960.
7. Water was first beneficially used for irrigation purposes under Claim No. 2388 prior to August 16, 1898.
8. Claimant maintains two small dams which create a 6 acre-foot reservoir on the South Concho River which is not used in connection with irrigation and a 3 acre-foot reservoir on Cole Creek which is associated with claimant's irrigation.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2388
SOURCE OF WATER - SOUTH CONCHO RIVER AND COLE CREEK
NO. OF RESERVOIRS - 1 CAPACITY 3 ACRE-FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 15 ACRE-FEET PER YEAR
NO. OF ACRES - 14
IRRIGATED TRACT SHOWN ON EXHIBIT NO. 1408 DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM AREA C-2388.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 6 OF 11, PAGE 12
SURVEYS - 955 AND 954
ABSTRACTS - 1899 AND 1000
DIVERSION - 2.22 CFS (1000 GPM) TOTAL AT DIVERSION POINTS 0940, 0941, 0938 AND 0943
PRIORITY DATE - AUGUST 16, 1898

DIVERSION POINT NOS: 0950 AND 0960
TRACT NOS: 0970, 0972 AND 0975

OWNERSHIP:
MAY WOOLWORTH ESTATE (Previously May Woolworth)

IR 165-157
Vol. 5 SF 87-116
Findings:

1. Claim No. 1616 seeks a riparian water right to use 29.1 acre-feet of the waters of the South Concho River for irrigation of 25 acres of land out of Surveys 954, 953 and 952, Irion County. The claimed diversion rate was 0.89 cfs and the claimed date of first beneficial use was March, 1967.
2. Maximum water use during the period 1963-1967, inclusive, was 29.1 acre-feet in 1967 for the irrigation of 19 acres, designated as Tracts 0970, 0972 and 0975.

3. Diversion under Claim No. 1616 was by pump at Diversion Points 0950 and 0960 at a total maximum diversion rate of 1.34 cfs (600 gpm).
4. Tracts 0970, 0972 and 0975 are located adjacent to the South Concho River in Surveys 952, 953 and 954 which were patented from the State in 1860.
5. First beneficial use was in March, 1967.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 1616
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 30 ACRE-FEET PER YEAR
NO. OF ACRES - 19
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 1616 ON OWNED TRACTS 0970, 0972 AND 0975.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 6 OF 11, PAGE 12
SURVEYS - 954, 953 AND 952
ABSTRACTS - 1899, 168 AND 167
DIVERSION - 1.34 CFS (600 GPM) TOTAL AT DIVERSION POINTS 0950 AND 0960
PRIORITY DATE - MARCH 31, 1967

DIVERSION POINT NOS: 0970
TRACT NO: 0980

OWNERSHIP:
T.J. KELLY ESTATE

IR 158
Vol. 5 SF 117-134
Findings:

1. Certified Filing No. 526, as partially cancelled July 17, 1966, authorizes the use of 5 acre-feet of water per annum from the South Concho River for irrigation of 5 acres of land out of Surveys 1831 and 1833, Tom Green County.
2. There has been no irrigation or other non-exempt use of water by the filing owner in order to perfect any part of the certified filing. The only use of water by the filing owner has been for domestic uses.
3. Diversion is by pump at Diversion Point 0970 at a maximum rate of 1.23 cfs (550 gpm). Historical use for domestic purposes has been less than 1 acre-foot per year.
4. Certified Filing No. 526 was filed on June 25, 1914.

FILING OWNER IS RECOGNIZED NO RIGHT UNDER CERTIFIED FILING NO. 526

DIVERSION POINT NOS: 0980 AND 0985
TRACT NOS: 0990, 0992 AND 0995

OWNERSHIP:
MRS. R. WILBER BROWN, JR.
W.L. BROWN
DANIEL F. BROWN

IR 150-160
Vol. 5 SF 135-161
Findings:

1. Permit No. 1155 authorizes the use of 20 acre-feet of water per annum from the South Concho River for irrigation of 10 acres of land out of Survey 65, Tom Green County, designated as Tract 0990. The permit also authorizes 2 on channel reservoirs having a total capacity of 34 acre-feet. The diversion rate was unspecified.
2. Claim No. 4150 and an Additional Sworn Statement seek a right under Permit 1155 to irrigate 18 acres of land, designated as Tract 0992, with 27 acre-feet of water per year diverted from a 34 acre-foot capacity reservoir on the South Concho River at a rate of 0.80 cfs. The date of first beneficial use was asserted to 1930.
3. Claim No. 3685 and an Additional Sworn Statement seek a riparian water right to use 17 acre-feet of water from the South Concho River to irrigate 26 acres of land adjacent to the South Concho River in Surveys 65 and 67, Tom Green County, designated as Tract 0995. The surveys are adjacent to the river and were patented from the State in 1861 and 1859, respectively. The maximum claimed diversion rate was 0.80 cfs from a 34 acre-foot capacity reservoir with the date of first beneficial use of water asserted to be 1930.
4. Permit No. 1155 has been perfected to the extent of 20 acre-feet of water for the irrigation of 10 acres at an unspecified diversion rate. Only 1 of the authorized reservoirs was constructed, having a capacity of 34 acre-feet.
5. Maximum use during 1963-1970, inclusive, under Claim No. 3685 was 17 acre-feet of water in 1967 for the irrigation of 25 acres. Diversion was from Diversion Point 0985 by pump at a maximum rate of .02 cfs (10 gpm).
6. Maximum use of 1963-1970 under Claim No. 4150 was 27 acre-feet of water in 1967 for the irrigation of 18 acres. Diversion was from Diversion Point 0980 by pump at a maximum rate of 0.78 cfs (350 gpm).
7. The application for Permit No. 1155, was filed on February 24, 1930.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 1155, CLAIM NO. 3685 AND CLAIM NO. 4150
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 34 ACRE-FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 64 ACRE-FEET PER YEAR
NO. OF ACRES - 53
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 4150, CLAIM NO. 3685 AND PERMIT NO. 1155 ON OWNED TRACTS.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 6 OF 11, PAGE 12
SURVEYS - 65 AND 67
ABSTRACTS - 155 AND 185
DIVERSION - 0.80 CFS (360 GPM) TOTAL AT DIVERSION POINT 0980 AND DIVERSION POINT 0985
PRIORITY DATE - FEBRUARY 24, 1930

DIVERSION POINT NO: 0990 AND 1000
TRACT NO: 1000

OWNERSHIP:
PAULINE AND ELSIE JENEYSON

IR 161-142
Vol. 5 SF 242-253
Findings:

1. Certified Filing No. 736 authorizes the use of an unspecified amount of water from the South Concho River at a maximum diversion rate of 2.23 cfs (1000 gpm) for irrigation of 80 acres of land out of Surveys 1831 and 70, Tom Green County.
2. Claim No. 92 seeks a right under Certified Filing No. 780 to use 667 acre-feet of the waters of the South Concho River for the irrigation of 89 acres of land. The claimed diversion was at a rate of 3.79 cfs with the date of first beneficial use asserted to be 1914.
3. Maximum use of water under Certified Filing No. 785 was 140 acre-feet of water per year during 1908-1970, inclusive, for the irrigation of 89 acres of land at 1.74 acre-feet of water per acre of land.
4. Maximum use of water during 1963-1967, inclusive, under Claim No. 92 was 132 acre-feet of water in 1967 for the irrigation of 80 acres of land located adjacent to the South Concho River in Surveys 1831 and 70, which were patented from the State in 1863 and 1871, respectively.
5. Diversion is at Diversion Points 0990 and 1000 by two pumps at a maximum diversion rate for the combined diversion points of 6.91 cfs (3100 gpm). These diversions points are not authorized under Certified Filing No. 736, but were claimed and used under Claim No. 92.
6. Certified Filing No. 785 was filed on June 29, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 786 AND CLAIM NO. 92

SOURCE OF WATER - SOUTH CONCHO RIVER

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 140 ACRE-FEET PER YEAR

NO. OF ACRES - 80

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 786 AND CLAIM NO. 92 ON OWNED TRACT.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 6 OF 11, PAGE 12

SURVEYS - 1431 AND 70

ABSTRACTS - 216 AND 133

DIVERSION - 6.91 CFS (3100 GPM) AT DIVERSION POINTS

0990 AND 1000

PRIORITY DATE - JUNE 29, 1914

REMARKS - THE DIVERSION RATE IS A TOTAL RATE FOR THE COMBINED POINTS AND NOT A SEPARATE RATE FOR EACH.

DIVERSION POINT NO: 1010
TRACT NO: 1010

OWNERSHIP:
BILLY RAY ROBINSON

IR 163
Vol. 5 SF 152-174
Findings:

1. Claim No. 1736 seeks a riparian water right to use 16 acre-feet of the waters of South Concho River for irrigation of 8 acres of land out of Survey 1829, Tom Green County. The claimed diversion rate was 1.00 cfs and the claim declared a reservoir.
2. Maximum use during the period 1903-1967, inclusive, was 16 acre-feet of water for the irrigation of 8 acres of land located adjacent to the South Concho River in Survey 1829 which was patented from the State in 1862.
3. Diversion under Claim No. 1736 is at Diversion Point 1010 by pump at a maximum rate of 1.0 cfs (450 gpm).
4. First beneficial use was in 1950.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 1736

SOURCE OF WATER - SOUTH CONCHO RIVER

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 16 ACRE-FEET PER YEAR

NO. OF ACRES - 8

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 1736 ON OWNED TRACT.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 4 OF 11, PAGE 12

SURVEY - 1829

ABSTRACT - 1945

DIVERSION - 1.0 CFS (450 GPM) AT DIVERSION POINT 1010

PRIORITY DATE - DECEMBER 31, 1950

DIVERSION POINT NO: 1020
TRACT NO: 1020

OWNERSHIP:
EUGENE W. JONES

IR 164-165
Vol. 5 SF 175-194
Findings:

1. Claim No. 2648 seeks a riparian right and a right under Certified Filing No. 539 to the use of 26 acre-feet of the waters of the South Concho River for the irrigation of 18 acres of land in Survey 1829, Tom Green County. The claimed diversion was from a 400 acre-foot capacity reservoir at a rate of 1.67 cfs with the date of first beneficial use asserted to be 1914.
2. Maximum use during the period 1963-1967, inclusive, was 26 acre-feet of water for irrigation of 18 acres of land located adjacent to the South Concho River in Survey 1829 which was patented from the State in 1862.
3. First beneficial use was June 11, 1914 under Certified Filing No. 539 which was totally cancelled on October 14, 1940.
4. Diversion under Claim No. 2648 is at Diversion Point 1020 by pump at a maximum rate of 1.67 cfs (750 gpm).
5. Water is diverted from an on-channel reservoir on the South Concho River authorized by Certified Filing No. 291 of the South Concho Irrigation Company.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2648

SOURCE OF WATER - SOUTH CONCHO RIVER

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 26 ACRE-FEET PER YEAR

NO. OF ACRES - 18

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 2648 ON OWNED TRACT.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 6 OF 11, PAGE 12

SURVEY - 1829

ABSTRACT - 1945

DIVERSION - 1.67 CFS (750 GPM) AT DIVERSION POINT 1020

PRIORITY DATE - JUNE 11, 1914

DIVERSION POINT NO: 1030
TRACT NO: 1030

OWNERSHIP:
D. R. SPEARS, ET AL.

IR 166
Vol. 5 SF 287-440 and Vol. 12 SF 155-191
Findings:

1. Certified Filing No. 291 authorizes the use of an unspecified amount of water from the South Concho River at a maximum diversion rate of 14.00 cfs for irrigation of 800 acres of land out of Surveys 78, 77, 79, 81, 81, 1825, 1823, 89 and 91, Tom Green County. The appropriation also authorizes a dam and 50 acre-foot capacity on-channel reservoir on the South Concho River.
2. The maximum historical use of water under Certified Filing No. 291 was 1900 acre-feet of water for the irrigation of 800 acres of land. However, a representative of the owners of the certified filing amended its claim in open hearing to 1254 acre-feet of water for the irrigation of 800 acres of land, based on more contemporary data as to land use and water use requirements.
3. Diversion from the South Concho River is by gravity flow at Diversion Point 1030 at a maximum rate of 15.0 cfs (6800 gpm).
4. Certified Filing No. 291 was filed on July 29, 1914.
5. The 50 acre-foot capacity reservoir is presently in use as authorized.
6. The South Concho Irrigation Company is the owner of Certified Filing No. 291 according to Commission records. However, the Secretary of State certified that two companies of similar name had existed, "The South Concho Irrigation Company", and "South Concho Irrigation Company". Both charters were forfeited on May 16, 1900, apparently for failure to pay franchise taxes. No other evidence was received of the legal status of the "company", therefore, Commission records have been changed to reflect that the 22 "members" of the "South Concho Irrigation Company" listed in the Section 5.307 claim are co-owners of Certified Filing No. 291. As there is no evidence from which the Commission can prorate this certified filing among the owners, each owner will retain his contractual right of diversion from the authorized ditch.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 291

SOURCE OF WATER - SOUTH CONCHO RIVER

NO. OF RESERVOIRS - 1 CAPACITY 50 ACRE-FEET

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 1254 ACRE-FEET PER YEAR

NO. OF ACRES - 800

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 291, AS AMENDED IN THIS DETERMINATION. SEE DIVERSION POINT NO:

SUBJECT NUMBER 1415.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 7 OF 11, PAGE 13

SURVEYS - 77, 79, 81, 83, 1825, 1823, 89 AND 91

DIVERSION - 15.0 CFS (6800 GPM) AT DIVERSION POINT 1030

PRIORITY DATE - JULY 29, 1914

DIVERSION POINT NO: 1040
TRACT NO: 1040

OWNERSHIP:
ALTON G. AND RUTH ANN CALLIHAN

IR 168
Vol. 5 SF 225-241
Findings:

1. Claim No. 6037 seeks a riparian right to the use of 4 acre-feet of water from the South Concho River for the irrigation of 2 acres of land in Survey 899, Tom Green County. The claimed diversion was at a rate of 0.04 cfs with the date of first beneficial use asserted to be 1964.
2. Maximum use of water under Claim No. 6037 during 1963-1967, inclusive, was 2 acre-feet of water for the irrigation of 2 acres of land located adjacent to the South Concho River in Survey 899, which was patented from the State in 1860.
3. Diversion under Claim No. 6037 is at Diversion Point 1040 by pump at a maximum rate of 0.04 cfs (20 gpm).
4. First beneficial use was in 1964.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 6037
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 2 ACRE-FEET PER YEAR
NO. OF ACRES - 2
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 6037 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEY - 899
ABSTRACT - 356
DIVERSION - 0.04 CFS (20 GPM) AT DIVERSION POINT 1040
PRIORITY DATE - DECEMBER 31, 1964

DIVERSION POINT NO: 1050
TRACT NO: 1050

OWNERSHIP:
R.W. FINKS
MARY H. FINKS

IR 169
Vol. 5 SF 256-286
Findings:

1. Claim No. 11517 seeks a riparian and an equitable right to the use of 19 acre-feet of water for irrigation of 19 acres of land out of Surveys 898 and 899, Tom Green County. The claimed diversion was at a rate of 1.11 cfs with the date of first beneficial use asserted to be prior to 1920.
2. Maximum use of water under Claim No. 11517 during 1963-1967, inclusive, was 19 acre-feet of water in 1963 for the irrigation of 19 acres of land located adjacent to the South Concho River in Surveys 895 and 899, Tom Green County, which were both patented from the State in 1860.
3. Diversion under Claim No. 11517 is by pump at Diversion Point 1050 at a maximum rate of 1.11 cfs (500 gpm).
4. The date of first beneficial use of water under the claim was December 31, 1912.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 11517
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 19 ACRE-FEET PER YEAR
NO. OF ACRES - 19
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 11517 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEYS - 898 AND 899
ABSTRACTS - 367 AND 366
DIVERSION - 1.11 CFS (500 GPM) AT DIVERSION POINT 1050
PRIORITY DATE - DECEMBER 31, 1912

DIVERSION POINT NO: 1060
TRACT NO: 1060

OWNERSHIP:
CLIFTON A. JOHNSON

IR 170-171
Vol. 5 SF 536-544
Findings:

1. Claim No. 2188 and an Additional Sworn Statement seek a riparian water right to use 20 acre-feet of the waters of the South Concho River at a maximum diversion rate of 1.11 cfs (500 gpm) for irrigation of 10 acres of land out of Surveys 73 and 75, Tom Green County. The date of first beneficial use was asserted to be 1966.
2. Maximum use of water under Claim No. 2188 during 1963-1967, inclusive, was 20 acre-feet of water per year in 1966 and 1967 for the irrigation of 10 acres of land located adjacent to the South Concho River in Surveys 73 and 75 which were patented from the State in 1864.
3. Diversion under Claim No. 2188 was at Diversion Point 1060 at a maximum rate of 1.11 cfs (500 gpm).
4. The date of first beneficial use under Claim No. 2188 was in 1966.
5. A portion of the tract irrigated under Claim No. 2188 located in Survey 75 is also covered by Certified Filing No. 291 of the South Concho Irrigation Company, however Clifton A. Johnson is not a member of that company.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2188
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 20 ACRE-FEET PER YEAR
NO. OF ACRES - 10
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 2188 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEYS - 73 AND 75
ABSTRACTS - 173 AND 98
DIVERSION - 1.11 CFS (500 GPM) AT DIVERSION POINT 1060
PRIORITY DATE - DECEMBER 31, 1966

DIVERSION POINT NO: 1070
TRACT NO: 1070 AND 1075

OWNERSHIP:
D.R. SPEARS

IR 172
Vol. 5 SF 474-535
Findings:

1. Claim No. 11579 seeks a riparian water right to use 135 acre-feet of water directly from the South Concho River at a maximum diversion rate of 1.00 cfs (450 gpm) for irrigation of 45 acres of land out of Surveys 75, Tom Green County. The claim also declares a 20 acre-foot reservoir and asserted that the date of first beneficial use was 1951.
2. Of the 45 acres claimed for irrigation under Claim No. 11579, 26 acres are also within the boundaries of Certified Filing No. 291 of the South Concho Irrigation Company, of which D.R. Spears is a member, and have been irrigated under that certified filing.
3. The maximum use of water on D.R. Spears' land under both Claim No. 11579 and Certified Filing No. 291 was 135 acre-feet of water each year during the period 1963-1967, inclusive, for the irrigation of 45 acres of land. However, claimant was unable to offer testimony or other evidence so as to distinguish the amount of water used from each source.
4. Nineteen acres of the area covered by Claim No. 11579 are not also within the boundaries of Certified Filing No. 291.
5. The 2 acre-feet of water per acre average duty proven by the South Concho Irrigation Company as its water use on lands within Certified Filing No. 291 constitutes a reasonable use of water in this area.
6. Claim No. 11579 is a valid riparian water right claim to the use of 35 acre-feet of water per annum from the South Concho River for irrigation of the 19 acres of land owned by D.R. Spears lying outside the boundaries of Certified Filing No. 291. No riparian right is recognized for the 26 acres of land owned by D.R. Spears located within Certified Filing No. 291.
7. The 19-acre tract irrigated under Claim No. 11517 lying outside Certified Filing No. 291 has not been asserted by title from the South Concho River and is located in Survey 75, Tom Green County, which was patented from the State in 1864.
8. Diversion under Claim No. 11517 was by pump at Diversion Point 1070 at a maximum rate of 1.00 cfs (450 gpm).
9. First beneficial use of water under Claim No. 11517 was in 1951.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 11579
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 38 ACRE-FEET PER YEAR
NO. OF ACRES - 19
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 11579 ON OWNED TRACTS.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEY - 75
ABSTRACT - 98
DIVERSION - 1.00 CFS (450 GPM) AT DIVERSION POINT 1070
PRIORITY - DECEMBER 31, 1951
REMARKS - THIS RIGHT IS RECOGNIZED INDEPENDENTLY OF WHATEVER WATER USE D.R. SPEARS MAY BE ENTITLED TO AS A MEMBER OF THE SOUTH CONCHO IRRIGATION COMPANY ON HIS PROPERTY LYING WITHIN CERTIFIED FILING NO. 291.

DIVERSION POINT NO: 1080
TRACT NO: 1080 AND 1085

OWNERSHIP:
DEIDRE H. LEBOUTILLIER

IR 173-174
Vol. 5 SF 441-473
Findings:

1. Claim No. 5849 seeks a riparian water right to use 30 acre-feet of water directly from the South Concho River at a maximum diversion rate of 2.51 cfs (1125 gpm) for the irrigation of 15 acres of land out of Surveys 75 and 77, Tom Green County. The date of first beneficial use was asserted to be prior to 1965.
2. Nine acres of land claimed for irrigation, designated as Tract 1080, are located within the boundaries of Certified Filing No. 291 of the South Concho Irrigation Company and are irrigated in part under that certified filing.
3. Maximum use of water during 1963-1967, inclusive, under Claim No. 5849 only was 30 acre-feet of water from the South Concho River in each year for the irrigation of 15 acres of land located adjacent to the South Concho River in Surveys 75 and 77 which were patented from the State in 1858 and 1879, respectively.
4. Diversion from the South Concho River under Claim No. 5849 was by pump at Diversion Point 1080 at a maximum rate of 4.74 cfs (2125 gpm).
5. First beneficial use of water from the South Concho River under Claim No. 5849 was prior to 1965.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 5849
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 30 ACRE-FEET PER YEAR
NO. OF ACRES - 15
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 5849 ON OWNED TRACTS.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEYS - 75 AND 77
ABSTRACTS - 98 AND 4372
DIVERSION - 4.74 CFS (2125 GPM) AT DIVERSION POINT 1080
PRIORITY DATE - DECEMBER 31, 1964
REMARKS - THIS RIGHT IS RECOGNIZED INDEPENDENTLY OF WHATEVER WATER USE CLAIMANT MAY BE ENTITLED TO AS A MEMBER OF THE SOUTH CONCHO IRRIGATION COMPANY ON HIS PROPERTY LYING WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 291.

DIVERSION POINT NO: 1090
TRACT NO: 1090

OWNERSHIP:
CLEBURNE D. WELLS (Previously J.H. Evans)
MURLENE WELLS

IR 175-176
Vol. 9 SF 316 343
Findings:

1. Certified Filing No. 153, owned jointly with Gordon Kenley, authorizes the use of an unspecified quantity of water from the South Concho River for the irrigation of a total of 94 acres of land in Surveys No. 78 and 80, Tom Green County. Cleburne D. Wells and Murlene Wells own 40 acres within the boundaries of the certified filing in Survey No. 78.
2. Claim No. 286 and an Additional Sworn Statement seek a riparian water right to use 15 acre-feet of the waters of the South Concho River at a maximum diversion rate of 1.78 cfs (1800 gpm) for the irrigation of 25 acres of land in Surveys No. 74, 80 and 959. These 25 acres claimed for irrigation are also within the boundaries of Certified Filing No. 153. The date of first beneficial use was asserted to be 1905.
3. Diversion under Certified Filing No. 153 is at Diversion Point 1090 by pump at a maximum rate of 2.78 cfs (1850 gpm).
4. Maximum historical use under Certified Filing No. 153 was 64 acre-feet of water for the irrigation of 52 acres of land.
5. Maximum use of water during 1963-1970, inclusive, under Claim No. 286 was 15 acre-feet of water per year in 1965 and 1966 for the irrigation of 25 acres of land located in a tract which is contiguous to the South Concho River and has not been severed from the river. The 25 acres are in Survey No. 78 which was patented from the State in 1857. The remainder of the claim area is in Survey 959, which is adjacent to the South Concho River and was patented from the State in 1861, and in Survey 804, which is not adjacent to the river and which was patented from the State in 1905, after the 1905 riparian cut off date of Section 5 001, Texas Water Code.
6. Certified Filing No. 153 was filed on June 4, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 153 AND CLAIM NO. 286

SOURCE OF WATER - SOUTH CONCHO RIVER

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 64 ACRE-FEET PER YEAR

NO. OF ACRES - 32

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 153 AND CLAIM NO. 153 ON OWNED TRACT.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 7 OF 11, PAGE 13

SURVEYS - 75 AND 355

ABSTRACTS - 1540 AND 1023

DIVERSION - 2.78 CFS (1250 GPM) AT DIVERSION POINT 1090

PRIORITY DATE - JUNE 4, 1914

DIVERSION POINT NO: 1090 AND 1100
TRACT NO: 1095

OWNERSHIP:
GORDON KENLEY

IR 177-179
Vol. 5 SF 195-224
Findings:

1. Certified Filing No. 153, owned jointly with Cleburne D. Wells, et al., authorizes the use of an unspecified quantity of water from the South Concho River for the irrigation of a total of 94 acres of land in Surveys No. 78 and 80, Tom Green County. Gordon Kenley owns 54 acres of land within the boundaries of the certified filing in Surveys No. 78 and 80.
2. Claim No. 115 seeks a riparian water right to use 526 acre-feet of water from the South Concho River for irrigation of 50 acres of land out of Surveys 78 and 80. The claim also declares the existence of a dam and 20 acre-foot capacity reservoir and claims a diversion rate of 1.40 cfs. The date of first beneficial use was asserted to be about 1890.
3. Maximum total use of water under both Claim No. 115 and Certified Filing No. 153 was 140 acre-feet of water in 1963 for the irrigation of 50 acres of land located adjacent to the South Concho River within the boundaries of Certified Filing No. 153 in Surveys No. 78 and 80 which were patented from the State in 1857 and 1873, respectively.
4. Diversion is from the South Concho River at Diversion Point 1100, as covered by Claim No. 115, at a maximum rate of 4.01 cfs (1800 gpm).
5. Diversion Point 1090 is no longer on land owned by Gordon Kenley and has not been used by him in connection with his irrigation practices.
6. Certified Filing No. 153 was filed on June 4, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 153 AND CLAIM NO. 115

SOURCE OF WATER - SOUTH CONCHO RIVER

NO. OF RESERVOIRS - 1 CAPACITY 20 ACRE-FEET

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 100 ACRE-FEET PER YEAR

NO. OF ACRES - 50

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 153 AND CLAIM NO. 115 ON OWNED TRACT.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 7 OF 11, PAGE 13

SURVEYS - 78 AND 80

ABSTRACTS - 1540 AND 97

DIVERSION - 4.01 CFS (1800 GPM) AT DIVERSION POINT 1100

PRIORITY DATE - JUNE 4, 1914

DIVERSION POINT NO: 1090 AND 1105
TRACT NO: 1100

OWNERSHIP:
BILLY P. BALLARD
MARY A. BALLARD

IR 179
Vol. 5 SF 385 929 and Vol. 11-A SF 18
Findings:

1. Certified Filing No. 538A, amended by Commission action October 1, 1973, and owned jointly with W.S. Riley and Maxine Riley, authorizes the use of an unspecified quantity of water from the South Concho River at a maximum diversion rate of 2.89 cfs (1300 gpm) for the irrigation of 25 acres of land out of Surveys 80 and 962, Tom Green County.
2. The maximum historical use of water under Certified Filing No. 538A was 46 acre-feet of water per year for the irrigation of 25 acres of land.
3. The amendment to the original Certified Filing No. 538, dated October 1, 1973, authorized the relocation of the diversion point for Billy P. Ballard's and Mary A. Ballard's portion of the Certified Filing from Diversion Point 1090 to Diversion Point 1105. In addition, the amendment deletes the canal authorized by the original Certified Filing No. 538, and authorizes the use of a pipe line from Diversion Point 1105 to the irrigated tract.
4. Diversion is at Diversion Point 1105 by pump at a maximum rate of 2.89 cfs (1300 gpm).
5. Certified Filing No. 538 was filed on June 23, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 538A

SOURCE OF WATER - SOUTH CONCHO RIVER

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 46 ACRE-FEET PER YEAR

NO. OF ACRES - 23

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 538A ON OWNED TRACT.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 7 OF 11, PAGE 13

SURVEYS - 80 AND 962

DIVERSION - 2.89 CFS (1300 GPM) AT DIVERSION POINT 1105

PRIORITY DATE - JUNE 23, 1914

DIVERSION POINT NO: 1090 AND 1120
TRACT NO: 1105

OWNERSHIP:
W S RILEY, JR. (Previously Bevie Demoville)
MAXINE RILEY

IR 190
Vol. 9 SF 303-311
Findings:

1. Certified Filing No. 538, owned jointly with Billy P. Ballard and Mary A. Ballard, authorizes the use of an unspecified amount of water from the South Concho River at a maximum diversion rate of 2.89 cfs (1300 gpm) for the irrigation of 25 acres of land out of Surveys 80 and 962, Tom Green County. W.S. Riley and Maxine Riley own one acre located within the boundaries of the certified filing in Survey 962.
2. There is a 0.94 cfs (20 gpm) capacity pump at Diversion Point 1120 and the water diverted is used for domestic purposes only.
3. There is no irrigation system or diversion facility at Diversion Point 1090, as authorized by Certified Filing No. 538.
4. Farry failed to file a Section 5.307 Claim of right in compliance with the Commission's directive and failed to appear at the evidentiary hearing. No credible evidence was adduced as to the nature or extent of a right cognizable under existing state law.

CLAIMANT IS RECOGNIZED NO IRRIGATION RIGHT UNDER CERTIFIED FILING NO. 538

DIVERSION POINT NO: 1110
TRACT NO: 1110 AND 1115

OWNERSHIP:
DAN ELLIS
MADEL ELLIS

IR 181-182
Vol. 5 SF 546-547
Findings:

1. Claim No. 976 seeks a riparian or equitable right to 16 acre-feet of the waters of the South Concho River for the irrigation of 8 acres of land out of Surveys No. 77 and 79, Tom Green County. The claimed diversion is at a rate of 0.67 cfs and the date of first beneficial use was asserted to be 1930.
2. The lands claimed for irrigation under Claim No. 976 are also within the boundaries of Certified Filing No. 291 of the South Concho Irrigation Company and are irrigated under that certified filing.
3. Claim No. 976 was abandoned by the claimant and was dismissed by Commission action of September 12, 1973.
4. There is a 0.67 cfs (300 gpm) capacity pump at Diversion Point 1110 which diverts water from the South Concho River for domestic purposes only.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 976

DIVERSION POINT NO: 1130, 1150 AND 1160
TRACT NO: 1120

OWNERSHIP:
ROBERT R. BUESCHER

IR 185-183
Vol. 6 SF 3-98
Findings:

1. Certified Filing No. 718A, as amended February 16, 1965, authorizes the use of an unspecified amount of water from the South Concho River at a maximum diversion rate of 7.80 cfs (3500 gpm) for irrigation of 94 acres of land out of Surveys 895 and 896, Tom Green County. The certified filing also authorizes two on-channel reservoirs having a total capacity of 21 acre-feet.
2. Claim No. 290 and an Additional Sworn Statement seek a right under Certified Filing No. 718 and Certified Filing No. 719 to 266 acre-feet of the waters of the South Concho River for the irrigation of 133 acres of land in Surveys 895 and 896, Tom Green County. The claim also seeks recognition of a 37 acre-foot capacity reservoir on the South Concho River. The claimed diversion is at a rate of 7.58 cfs and the date of first beneficial use is asserted to be about 1907.
3. The lands claimed for irrigation under Claim No. 290 are riparian lands, being adjacent to the South Concho River in Surveys 895 and 896, which were patented from the State in 1860, and never having been covered by title from the river.
4. The maximum use of water under Claim No. 290 and Certified Filing No. 718A combined was 276 acre-feet of water in 1967 for the irrigation of 120 acres of land, as planimetered.
5. Of the 120 acres of land irrigated under Claim No. 290 and Certified Filing No. 718A, 87 acres are within the boundaries of both the certified filing and the claim and 33 acres are covered by the claim alone.
6. Diversion is at Diversion Points 1130, 1150 and 1160. Diversion Point 1130 was authorized by Certified Filing No. 718 and diversion at that location has been by pump at a maximum rate of 5.35 cfs (2500 gpm). Diversion Points 1150 and 1160 were claimed under Claim No. 290. The pump at Diversion Point 1150 was installed in 1965 and has a maximum diversion capacity of 2.23 cfs (1000 gpm). The pump at Diversion Point 1160 was installed in 1966 and also has a maximum diversion capacity of 2.23 cfs (1000 gpm).
7. Certified Filing No. 718 originally authorized the maintenance of a dam and 37 acre-foot capacity reservoir on the South Concho River. By Commission order dated February 16, 1965, this provision was amended to authorize two dams on the South Concho River and two reservoirs of 12 and 9 acre-foot capacity, respectively, in lieu of the 37 acre-foot impoundment originally authorized. These two dams are in existence and in good condition. The dam and reservoir claimed under Claim No. 290 is the same as that authorized under the original Certified Filing No. 718 which has been replaced by the two existing reservoirs authorized by the amendment.
8. Certified Filing No. 718A was filed on May 30, 1914.
9. Commission records do not indicate that Robert R. Buescher owns any property within the boundaries of Certified Filing No. 719 or any other interest in that filing.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 718A AND CLAIM NO. 290

SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 2 TOTAL CAPACITY 21 ACRE-FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 276 ACRE-FEET PER YEAR
NO. OF ACRES - 120
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 718A AND CLAIM NO. 290 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEYS - 895 AND 896
ABSTRACTS - 4214 AND 4215
DIVERSION - 5.35 CFS (2500 GPM) AT DIVERSION POINT 1130;
2.23 CFS (1000 GPM) AT DIVERSION POINT 1150;
2.23 CFS (1000 GPM) AT DIVERSION POINT 1160
PRIORITY DATE - MAY 30, 1914

DIVERSION POINT NO: 1130 AND 1150
TRACT NO: 1130

OWNERSHIP:
VIOLA MAE MCWHORTER ESTATE

IR 185-186
Vol. 6 SF 100-117
Findings:

1. Certified Filing No. 719 authorizes the use of an unspecified amount of water at an unspecified diversion rate from the South Concho River for irrigation of 55 acres of land out of Surveys 84, 961 and 895, Tom Green County.
2. Claim No. 221 seeks a riparian water right to use 110 acre-feet of the waters of the South Concho River for irrigation of 70 acres of land out of Surveys 84, 961 and 895. The claimed diversion is at a rate of 4.01 cfs from a 2 acre-foot reservoir with the date of first beneficial use unknown.
3. The maximum historical use under Certified Filing No. 719 was 112 acre-feet of water in 1964 for the irrigation of 56 acres of land.
4. Maximum use of water during 1963-1967, inclusive, under Claim No. 221 was 140 acre-feet of water in 1964 for the irrigation of 70 acres of land located adjacent to the South Concho River in Surveys 84, 961 and 895, which were patented from the State in 1877, 1861 and 1860, respectively.
5. Diversion under Claim No. 221 was by pump at Diversion Point 1130 at a maximum diversion rate of 1.78 cfs (800 gpm). Diversion Point 1150, authorized by Certified Filing No. 719, has not been used recently.
6. Certified Filing No. 719 was filed on June 15, 1914.
7. The claimed reservoir is not a man-made reservoir but was found to be a natural impoundment in the river.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 719 AND CLAIM NO. 221

SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 110 ACRE-FEET PER YEAR
NO. OF ACRES - 70
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 719 AND CLAIM NO. 221 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEYS - 84, 961 AND 895
ABSTRACTS - 453, 72 AND 4214
DIVERSION - 1.78 CFS (800 GPM) TOTAL AT DIVERSION POINT 1130 AND DIVERSION POINT 1150
PRIORITY DATE - JUNE 15, 1914

DIVERSION POINT NO 1140
TRACT NO: 1140 AND 1145

OWNERSHIP:
DR. AND MRS. G.C. TURNER

IR 187-188
Vol. 9 SF 91-136
Findings:

1. Claim No. 912 seeks a riparian right and a right under Certified Filing 719 to use 50 acre-feet of water from a 9 acre-foot capacity on-channel reservoir on the South Concho River to irrigate 25 acres of land in Surveys 79 and 81, Tom Green County. The claimed diversion rate is 2.23 cfs and the date of first beneficial use is asserted to be January 18, 1962.
2. Claim No. 5170 seeks a water right to use the waters of the South Concho Irrigation Company Canal, authorized by Certified Filing No. 291, for the irrigation of 25 acres of land in Surveys 79 and 81, Tom Green County.
3. Claim No. 912 and Claim No. 5170 claim irrigation for the same 25 acre tract.
4. The maximum amount of water used during 1963-1967, inclusive, within the area covered by Claim No. 912, Claim No. 5170, and this portion of Certified Filing No. 291 was 51 acre-feet of water per year in 1963 and 1964 for the irrigation of 17 acres of land. Of this 51 acre-feet of water, 34 acre-feet were diverted from the South Concho Irrigation Company canal under Certified Filing No. 291, and 17 acre-feet were diverted from the South Concho River under Claim No. 912.
5. The tract irrigated under Claim No. 912 is located adjacent to the South Concho River in Survey 79 and 81, which were patented from the State in 1884.
6. Diversion under Claim No. 912 was at Diversion Point 1140 by pump at a maximum diversion rate of 2.23 cfs (1000 gpm).
7. Date of first beneficial use under Claim No. 912 was January 18, 1962.
8. Claim No. 5170 is not a valid claim of water right since it is based on a water right exempt from the recordation requirement of Section 5.303, Texas Water Code, and is a claim to the use of water from a private canal and not a public watercourse.
9. Commission records do not indicate that Dr. and Mrs. G.C. Turner own any property within the boundaries of Certified Filing No. 719 or any other interest in that filing.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 5170

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 912
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 17 ACRE-FEET PER YEAR
NO. OF ACRES - 17
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 912 ON OWNED TRACTS
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEYS - 79 AND 81
ABSTRACTS - 4966 AND 4881
DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 1140
PRIORITY DATE - JANUARY 18, 1962
REMARKS - THIS RIGHT IS RECOGNIZED INDEPENDENTLY OF WHATEVER QUANTITY OF WATER THE OWNER MAY BE ENTITLED TO AS A MEMBER OF THE SOUTH CONCHO IRRIGATION COMPANY UNDER ITS CERTIFIED FILING NO. 291.

DIVERSION POINT NO: 1170
TRACT NO: 1150

OWNERSHIP:
ROY LAVERGNE VARLEY
MARY JOHN MCCALL VARLEY

IR 189-190
Vol. 5 SF 592-657
Findings:

1. Claim No. 3331 seeks a riparian water right to the use of 35 acre-feet of water from the South Concho River for the irrigation of 35 acres of land located in Survey 81, Tom Green County. Twenty-nine of the 35 acres claimed for irrigation are located within the boundaries of Certified Filing No. 291 of the South Concho Irrigation Company, and six acres are covered by the claim alone. The claimed diversion was at 2.33 cfs with the date of first beneficial use asserted to be 1965.
2. Maximum use of water during 1963-1967, inclusive, under Claim No. 3331 was 70 acre-feet of water per year during 1965-1967, inclusive, for the irrigation of 35 acres of land. This use was of water from the South Concho River only and does not include water diverted from the South Concho Irrigation Company ditch under Certified Filing No. 291.
3. The 35 acres irrigated under Claim No. 3331 during 1963-1967, inclusive, are located adjacent to the South Concho River in Survey 81, which was patented from the State in 1884.
4. Diversion under Claim No. 3331 was at Diversion Point 1170 by pump at a maximum diversion rate of 2.23 cfs (1000 gpm).
5. The date of first beneficial use of water under Claim No. 3331 was January 31, 1965.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 3331

SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 70 ACRE-FEET PER YEAR
NO. OF ACRES - 35
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 3331 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEY - 81
ABSTRACT - 4821
DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 1170
PRIORITY DATE - JANUARY 31, 1965
REMARKS - THIS RIGHT IS RECOGNIZED INDEPENDENTLY OF WHATEVER QUANTITY OF WATER THE OWNER MAY BE ENTITLED TO AS A MEMBER OF THE SOUTH CONCHO IRRIGATION COMPANY UNDER ITS CERTIFIED FILING NO. 291.

DIVERSION POINT NO: 1190
TRACT NO: 1100

OWNERSHIP:
MRS. CLARICE ATKINS McMILLAN

IR 191 192
Vol. 5 SF 069-715
Findings:

1. Claim No. 233 seeks a riparian right to directly divert and use 51 acre-feet of water from the South Concho River for the irrigation of 36 acres of land in Survey 81, Tom Green County. This 36 acre tract is also located within the boundaries of Certified Filing No. 291 of the South Concho Irrigation Company of which the owner is a member. The claimed diversion was at a rate of 4.46 cfs with the date of first beneficial use asserted to be March 12, 1964.
2. Maximum use of water during 1963-1967, inclusive, under Claim No. 233 was 56 acre-feet of water in each year, 1964-1967, inclusive, for the irrigation of 36 acres of land. This use was water from the South Concho River only and does not include water diverted from the South Concho Irrigation Company ditch under Certified Filing No. 291.
3. The 36 acre tract irrigated under Claim No. 233 during 1964-1967, inclusive, is located adjacent to the South Concho River in Survey 81, which was patented in 1894.
4. Diversion under Claim No. 233 was at Diversion Point 1190 by pump at 4.46 cfs (2000 gpm).
5. Date of first beneficial use was March 12, 1964.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 233
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 56 ACRE-FEET PER YEAR
NO. OF ACRES - 36
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 238 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEYS - 81
ABSTRACT - 4881
DIVERSION - 4.46 CFS (2000 GPM) AT DIVERSION POINT 1190
PRIORITY DATE - MARCH 12, 1964
REMARKS - THIS RIGHT IS RECOGNIZED INDEPENDENTLY OF WHATEVER QUANTITY OF WATER THE OWNER MAY BE ENTITLED TO AS A MEMBER OF THE SOUTH CONCHO IRRIGATION COMPANY UNDER ITS CERTIFIED FILING NO. 291.

DIVERSION POINT NO: NONE
TRACT NO: 1170

OWNERSHIP:
WILL P. EDWARDS JR.
WILSON C. EDWARDS

IR 193-194
Vol. 5 SF 530-593
Findings:

1. Claim No. 8614 seeks a riparian water right to the use of water from the South Concho River for irrigation, with 123.9 acres of land out of Survey 83, Tom Green County, declared as irrigable.
2. Seventy-eight acres of land located within the 123.9 acres of land claimed for irrigation under Claim No. 8614 are also within the boundaries of and are irrigated under Certified Filing No. 291 of the South Concho Irrigation Company.
3. There was no evidence introduced of water from the South Concho River being diverted for any non-exempt beneficial use during 1963-1967, inclusive, under the riparian claim. There are no facilities for diversion from the South Concho River and no system for the application of water from the river to irrigate lands within the claim area.
4. All irrigation within the boundaries of the lands claimed for irrigation under Claim No. 8614 has been from the South Concho Irrigation Company canal under its Certified Filing No. 291.
5. The 123.9 acres of land claimed for irrigation are located adjacent to the South Concho River in Survey 83, which was patented from the State in 1890.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 8614

DIVERSION POINT NO: NONE
TRACT NO: 1175

OWNERSHIP:
KENNETH CLEVELAND

IR: 107
Vol. 5 SF 435-440 and Vol. 12 SF 155-191
Findings:

1. Kenneth Cleveland is the owner of Tract 1175 which contains 11 acres of land in Survey No. 83, Tom Green County, which have been irrigated with water diverted from the canal authorized under Certified Filing No. 291.
2. Tract 1175 contains 11 acres of land located outside the boundaries of Certified Filing No. 291.
3. By deed of February 27, 1959 from G. J. Eskew, et ux., to L. Kenneth Cleveland, et ux., claimant obtained 10.21 acres of land out of Survey No. 83 which includes Tract 1175. Claimant was expressly granted all the water rights appertaining to the land to use the water from the irrigation ditch of the South Concho Irrigation Company, being all the water rights owned by grantor save and except those water rights granted to Mrs. Vera Edwards. Kenneth Cleveland acquired the right to divert water from the ditch for two hours every 9 days.
4. Owners of water right shares from the ditch authorized by Certified Filing No. 291 held a meeting in Christoval, Texas, at which time they voted to allow claimant to divert his share of water onto Tract 1175.
5. Since the meeting claimant has been irrigating the one acre below the ditch within the certified filing area by gravity and the eleven acres above the ditch by pumping.

Conclusions of Law:

1. As claimant owns a right to use water from the ditch authorized by Certified Filing No. 291, and as the various holders of water rights under Certified Filing No. 291 have consented to allow claimant to use water outside of the original boundaries of Certified Filing No. 291, and as the change of place of use would not and has no potential for harming any other lawful users of the water, claimant is authorized to continue to divert his share of water from the ditch authorized under Certified Filing No. 291 for the irrigation of Tract 1175.
2. Claimant is recognized no right in the determination except the right to his lawful share of South Concho River water from the ditch authorized under Certified Filing No. 291.

DIVERSION POINT NOS: 1198, 1200 and 1205
TRACT NO: 1130

OWNERSHIP:
EUGENE M. JONES

IR: 195 196
Vol. 6 SF 120-138 and Vol. 12 SF 190-235
Findings:

1. Claim No. 2258 seeks a riparian right and a right under the Irrigation Acts of 1889, 1895 and 1913 to 110 acre-feet of the waters of the South Concho River for the irrigation of 100 acres of land out of Surveys 84, 86, 90, 894 and 893, Tom Green County. The claimed diversion was at a rate of 1.67 cfs with the date of first beneficial use asserted to be 1965.
2. The maximum annual use of South Concho River water during 1963-1967, inclusive, under Claim No. 2258 was 270 acre-feet of water in 1966 and 1967.
3. The tract irrigated under Claim No. 2258 is located adjacent to the South Concho River in Surveys 84, 86, 90, 894 and 893, which were patented from the State in 1877, 1857, 1804, 1860 and 1860, respectively.
4. During the period 1963-1967, claimant diverted water from the South Concho River under Claim No. 2258 at Diversion Point Nos. 1178 and 1200. Diversion Point No. 1205 was added after 1967 and is presently claimant's main point. There are no other venting water users of record diverting between B-1205 and B-1178 and the change of point of diversion has no potential for harming any other existing water right.
5. The date of first beneficial use under Claim No. 2258 was April 1, 1965.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2258
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 270 ACRE-FEET PER YEAR
NO. OF ACRES - 100
IRRIGATED TRACT SHOWN ON EXHIBIT NO. 1419 DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM AREA C-2258.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEYS - 84, 86, 90, 894 AND 893
ABSTRACTS - 151, 320, 71, 3976 AND 1901
DIVERSION - 1.67 CFS (750 GPM) TOTAL AT DIVERSION POINTS 1198, 1200 AND 1205
PRIORITY DATE - APRIL 1, 1965

DIVERSION POINT NO: 1210
TRACT NO: 1190

OWNERSHIP:
MRS. LAURA P. SHAW

IR 197
Vol. 6 SF 138-215
Findings:

1. Certified Filing No. 337 authorizes the use of an unspecified amount of water from the South Concho River at a maximum diversion rate of 3.67 cfs (1650 gpm) at Diversion Point 1210 for irrigation of 250 acres of land out of Surveys 890, 891, 892 and 893, Tom Green County.
2. The maximum historical use of water under Certified Filing No. 337 was 892 acre-feet of water in 1969 for the irrigation of 250 acres of land.
3. Diversion under Certified Filing No. 337 is at Diversion Point 1210 by pump with a maximum perfected diversion rate of 3.16 cfs (1420 gpm).
4. Certified Filing No. 337 was filed on June 19, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 337
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 892 ACRE FEET OF WATER
NO. OF ACRES - 250
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 337 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEYS - 890, 891, 892 AND 893
DIVERSION - 3.16 CFS (1420 GPM) AT DIVERSION POINT 1210
PRIORITY DATE - JUNE 19, 1914

DIVERSION POINT NO: NONE
TRACT NO: 1195

OWNERSHIP:
JOE R. LEMLEY

IR 198
Vol. 9 SF 218-321
Findings:

1. Permit No. 1193, owned jointly with W.L. Slaughter, Maxine Slaughter and M.P. Ratliff, authorizes the diversion of 16 acre-feet of water from an 8.44 acre-foot capacity reservoir on the South Concho River for the irrigation of 7.97 acres in Survey 1323, Tom Green County. The amount of water which the permittee was authorized to divert in each year under the terms of the permit was not to exceed 2 acre-feet of water for each acre actually irrigated.
2. Joe R. Lemley owns a 6.74 acres of land located within the boundaries of Permit No. 1193.
3. There are no diversion or irrigation facilities associated with this tract and no evidence was introduced to substantiate any irrigation history under this portion of Permit No. 1193.
4. Party failed to file a Section 5.307 Claim of Right in compliance with the Commission's directive and failed to appear at the evidentiary hearing. No credible evidence was introduced as to the nature, the extent, or the basis of a right cognizable under existing state law.

PARTY IS RECOGNIZED NO RIGHT UNDER PERMIT NO. 1193

DIVERSION POINT NO: 1220 AND 1223
TRACT NO: 1200, 1205 AND 1210

OWNERSHIP:
W. L. SLAUGHTER
MAXINE SLAUGHTER

IR 192-200 and 202-210
Vol. 5 SF 716-901 and 5 SF 864
Findings:

1. Permit No. 1193, owned jointly with Joe R. Lemley and W.P. Ratliff, authorizes the diversion of 16 acre-feet of water from the South Concho River for the irrigation of 7.97 acres of land in Survey 1823, Tom Green County. The amount of water which the permittee was authorized to divert in each year under the terms of the permit was not to exceed 2 acre-feet of water for each acre actually irrigated. Permit No. 1193 also authorized an 8.44 acre-foot capacity reservoir on the South Concho River and a diversion point at Diversion Point 1220. W. L. Slaughter and Maxine Slaughter own 3.74 acres within the boundaries of the permit.
2. Claim No. 970 seeks recognition of a riparian and/or equitable right to 47.6 acre-feet of the waters of the South Concho River for the irrigation of 27 acres of land in Survey 1823, Tom Green County. The maximum claimed diversion rate was 1.9 cfs and the date of first beneficial use was asserted to be prior to 1921.
3. Claim No. 975 seeks a riparian and/or equitable right to 215.68 acre-feet of the waters of the South Concho River for the irrigation of 42.56 acres of land in Survey 1823, Tom Green County. The maximum claimed diversion rate was 3.67 cfs and the date of first beneficial use was asserted to be prior to May 19, 1925.
4. Maximum use of water during 1965-1967, inclusive, under Claim No. 970 was 41 acre-feet of water per year during 1964-1967, inclusive, for the irrigation of 27 acres of land in Tract 1210, Survey 1823.
5. Maximum use of water during 1963-1967, inclusive, under Claim No. 975 was 80 acre-feet of water per year during 1964-1967, inclusive, for the irrigation of 44 acres of land in Tracts 1200 and 1205, Survey 1823.
6. The lands irrigated under Claims No. 970 and 975 are located adjacent to the South Concho River in Survey 1823, which was patented from the State in 1861. The tract irrigated under Claim No. 970 has been severed by title from the tract irrigated under Claim No. 975, however both tracts are contiguous to the South Concho River and neither has been severed by title from the river.
7. The maximum historical use of water under this portion of Permit No. 1193 was 10 acre-feet of water per year during 1965-1968, inclusive, for the irrigation of 4 acres of land. These four acres are also within the boundaries of Claim No. 975, and the number of acres and quantity of water recognized under the claim overlap and duplicate those recognized under the permit.
8. There is an 8.44 acre-foot reservoir on the South Concho River as authorized by Permit No. 1193.
9. Diversion under Claim No. 970 was at Diversion Point 1225 by pump directly from the South Concho River at a maximum diversion rate of 1.0 cfs (450 gpm).
10. Diversion under Claim No. 975 and Permit No. 1193 was at Diversion Point 1220 by pump from the authorized reservoir on the South Concho River at a maximum diversion rate of 2.67 cfs (1200 gpm).
11. The lands owned by W. L. Slaughter and Maxine Slaughter are also located within the boundaries of Certified Filing No. 291 of the South Concho Irrigation Company and are authorized irrigation under that certified filing consistent with membership in the Company.
12. The application for Permit No. 1193 was filed on October 8, 1931.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 1193 AND CLAIMS NO. 975 AND 970

SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 8.44 ACRE-FOOT
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 121 ACRE-FOOT PER YEAR
NO. OF ACRES - 71

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF PERMIT NO. 1193 AND CLAIMS NO. 975 AND 970 ON OWNED TRACTS.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 7 OF 11, PAGE 13

SURVEY - 1823

ABSTRACTS - 1539

DIVERSION - 2.67 CFS (1200 GPM) AT DIVERSION POINT 1220;

1.0 CFS (450 GPM) AT DIVERSION POINT 1225

PRIORITY DATE - OCTOBER 8, 1931

REMARKS THIS RIGHT IS RECOGNIZED INDEPENDENTLY OF WHATEVER WATER USE W.L. SLAUGHTER AND MAXINE SLAUGHTER MAY BE ENTITLED TO UNDER MEMBERSHIP IN THE SOUTH CONCHO IRRIGATION COMPANY ON THEIR PROPERTY LYING WITHIN CERTIFIED FILING NO. 291.

DIVERSION POINT NO: NONE
TRACT NO: 1207

OWNERSHIP:
W.P. RATLIFF

IR 203
Vol. 9 SF 173-217
Findings:

1. Permit No. 1193, owned jointly with Joe R. Lemley and W.L. Slaughter and Maxine Slaughter, authorizes the diversion of 16 acre-feet of water from the South Concho River for the irrigation of 7.97 acres of land in Survey 1823, Tom Green County. The amount of water which the permittee was authorized to divert in each year under the terms of the permit was not to exceed 2 acre-feet of water for each acre actually irrigated. Permit No. 1193 also authorized an 8.44 acre-foot capacity reservoir on the South Concho River and a diversion point at Diversion Point 1220. W. P. Ratliff owns a 2.2 acre tract of land, 1.5 acres of which are within the boundaries of the permit.
2. The maximum historical use of water under this portion of Permit No. 1193 was 3 acre-feet of water per year during 1966-1970, inclusive, for the irrigation of 1.5 acre-feet of land.
3. The irrigation of this portion of Permit No. 1193 was accomplished in conjunction with the irrigation of that portion of the permit area now owned by W.L. Slaughter and Maxine Slaughter. Diversion for both tracts was by pump at a maximum rate of 2.67 cfs (1200 gpm) from Diversion Point 1220 which is owned by W.L. Slaughter.

4. There is no presently existing diversion facility or irrigation system located on Tract 1207, as all such facilities are located on the adjoining tracts belonging to W.L. Slaughter and Maxine Slaughter.
5. Tract 1207 is located within the boundaries of Certified Filing No. 291 of the South Concho Irrigation Company, however W.P. Ratliff is not now a member of the company and the tract has not been irrigated from the canal.
6. Permit No. 1193 was filed on October 8, 1931.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 1193

SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 1.0 ACRE-FOOT PER YEAR LIMITED TO 2 ACRE-FOOT PER ACRE ACTUALLY IRRIGATED

NO. OF ACRES - 1.5
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF PERMIT NO. 1193 ON OWNED TRACT.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 7 OF 11, PAGE 13

SURVEY - 1823

DIVERSION - OWNER IS RECOGNIZED NEITHER A DIVERSION POINT NOR DIVERSION RATE UNDER THIS SEPARATE WATER RIGHT.

PRIORITY DATE - OCTOBER 8, 1931

DIVERSION POINT NO: 1250
TRACT NO: 1220 AND 1225

OWNERSHIP:
JACK M. RANSOM

IR 104-295
Vol. 5 SF 837-859
Findings:

1. Claim No. 969 seeks a riparian and/or equitable right to 12.5 acre-feet of the waters of the South Concho River for the irrigation of 7 acres of land out of Survey 1823, Tom Green County. Claim No. 969 was originally filed by John Donham and Jack M. Ransom, however John Donham has conveyed his interest in the land and the claim to Jack M. Ransom who is now the only owner and claimant. The maximum claimed diversion rate was 1.00 cfs and the date of first beneficial use was asserted to be prior to 1921.
2. The maximum use of water during 1963-1967, inclusive, was 1325 acre-feet of water during 1966 and 1967 for the irrigation of a 9-acre tract. This 9-acre tract is adjacent to and north of W.L. Slaughter's Tract No. 1210 and is bounded on the north by a natural draw. There is no tract number designation for this tract on Exhibit No. 7, the maps comprising the "Appendix to the Report of the Investigation of Water Rights Claims from the Concho River Segment and its Tributaries in the Colorado River Basin".
3. The tract irrigated under Claim No. 969 is located adjacent to the South Concho River in Survey 1823 which was patented from the State in 1861.
4. Diversion under Claim No. 969 was from Diversion Point 1225 at a maximum diversion rate of 1.0 cfs (450 gpm). Diversion Point 1225 is on land now owned by W.L. Slaughter and Maxine Slaughter.
5. Portions of the area of Claim No. 969 lies within the boundaries of Certified Filing No. 291 of the South Concho Irrigation Company and Jack Ransom is presently a member of that company.
6. There is a 1.0 cfs (450 gpm) pump at Diversion Point 1230 which was not used for irrigation during the 1963-1967, inclusive, statutory period and which is now used for domestic use only.
7. Date of first beneficial use of water under Claim No. 969 was 1966.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 969

SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 11 ACRE FEET PER YEAR

NO. OF ACRES - 9
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 969 ON OWNED TRACT.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 7 OF 11, PAGE 13

SURVEY - 1823

DIVERSION - OWNER IS RECOGNIZED NEITHER A DIVERSION POINT NOR DIVERSION RATE UNDER THIS WATER RIGHT

PRIORITY DATE - DECEMBER 31, 1966

DIVERSION POINT NO: NONE
TRACT NO: 1250

OWNERSHIP:
CHARLES FOUTLER AND SONS, INC.

IR 207-208
Vol. 5 SF 966-884
Findings:

1. Claim No. 3115 seeks a riparian water right to use 80 acre-feet of water from the South Concho River for farming, stock raising and irrigation of 63 acres of land out of Survey 89, Tom Green County.
2. The 63-acre tract claimed for irrigation under Claim No. 3115 is also within the boundaries of Certified Filing No. 291 of the South Concho Irrigation Company and Charles Foutler and Sons, Inc. is presently a member of the Company.
3. No water was diverted from the South Concho River for irrigation within the claim area during the period 1963-1967, inclusive. Claimant testified that irrigation of this tract has been from the South Concho Irrigation Company Canal.
4. The 63-acre tract claimed for irrigation is located adjacent to the South Concho River in Survey 89, which was patented from the State in 1856.
5. There are presently no facilities for the diversion and for irrigation of the claim area from the South Concho River.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 3115

DIVERSION POINT NO 1240
TRACT NO 1240

OWNERSHIP:
RICHARD H. AND DORA O. VAN COURT

IR 200-210
Vol. 5 SF 548-597
Findings:

1. Claim No. 973 and an Additional Sworn Statement seek a riparian water right and a right under the Irrigation Acts of 1889 and 1895 to use 90 acre-feet of the waters of the South Concho River for irrigation of a total of 45 acres of land in Surveys 89 and 91, Tom Green County. The maximum claimed diversion rate was 2.01 cfs and the date of first beneficial use was asserted to be 1904.
2. Maximum use of water during the period 1963-1967, inclusive, under Claim No. 973 was 90 acre-feet of water per year during 1963-1965, inclusive, for irrigation of 45 acres of land in Surveys 89 and 91.
3. Diversion under Claim No. 973 was at Diversion Point 1240 by pump at a maximum rate of 1.7 cfs (750 gpm).
4. The 90 acres irrigated under Claim No. 973 are also within the boundaries of Certified Filing No. 291 and are authorized irrigation under the terms of membership in the South Concho Irrigation Company.
5. The date of first beneficial use under Claim No. 973 was 1905. The 90 acres irrigated under Claim No. 973 are located adjacent to the South Concho River in Surveys 89 and 91, which were patented from the State in 1850 and 1853, respectively.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 973
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 90 ACRE-FEET PER YEAR
NO. OF ACRES - 45
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 973 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEYS - 89 AND 91
ABSTRACTS - 321 AND 14
DIVERSION - 1.7 CFS (750 GPM) AT DIVERSION POINT 1240
PRIORITY DATE - DECEMBER 31, 1905
REMARKS - THIS RIGHT IS RECOGNIZED INDEPENDENTLY OF WHATEVER WATER USE CLAIMANT MAY BE ENTITLED TO UNDER THE TERMS OF MEMBERSHIP IN THE SOUTH CONCHO IRRIGATION COMPANY ON HIS LANDS LYING WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 291.

DIVERSION POINT NO 1250
TRACT NO: 1250 AND 1255

OWNERSHIP:
MRS. A. M. HAGEN
MRS. E. M. BOYD
ARTHUR M. HAGEN, JR.

IR 211
Vol. 6 SF 210-232
Findings:

1. Certified Filing No. 785 authorizes the use of an unspecified amount of water from the South Concho River at a maximum diversion rate of 1.07 cfs (1200 gpm) for irrigation of 5.75 acres of land designated as Tract 1250 in Survey 91, Tom Green County.
2. The maximum use of water under Certified Filing No. 785 on Tract 1250 was 11.5 acre-feet of water for the irrigation of 5.75 acres of land.
3. There has been recent irrigation on Tract 1255, a 12 acre tract owned by Mrs. A.M. Hagen, et al., although this tract is not within the boundaries of the certified filing. Tract 1255 contains 12 acres, 95 platted, that had been irrigated with 2 acre-feet of water per acre and diversion has been at Diversion Point 1250, as authorized by the certified filing, at 1.70 cfs (1250 gpm). There are no other appropriators who would be adversely affected by a change in the place of use of water under Certified Filing No. 785 from the originally authorized tract to 5.75 acres out of the 12 acre tract designated as Tract 1255.
4. Certified Filing No. 785 was filed on June 29, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 785
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 12 ACRE-FEET PER YEAR
NO. OF ACRES - 6
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF TRACT 1255 ON OWNED PROPERTY.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEY - 91
DIVERSION - 1.67 CFS (1200 GPM) AT DIVERSION POINT 1250
PRIORITY DATE - JUNE 29, 1914

DIVERSION POINT NO: 1260
TRACT NO 1260

OWNERSHIP:
MRS. ROBERT PRITZ

IR 212-213
Vol. 6 SF 233-272
Findings:

1. Certified Filing No. 289, as amended September 20, 1918, and jointly owned by Wayne Hudson, authorizes the use of an unspecified quantity of water from the South Concho River at a maximum diversion rate of 2.67 cfs (1200 gpm) for irrigation of 100 acres of land out of Surveys 91, 93 and 1821, Tom Green County. Computation based on the description of the tract to be irrigated contained in the certified filing shows Certified Filing No. 289 actually covers a total of 119 acres.
2. Claim No. 5414 seeks a riparian and equitable water right and a right under Certified Filing No. 289 to use 30 acre-feet of the waters of the South Concho River for irrigation of 100 acres of land. The maximum claimed diversion rate was at 2.23 cfs with the date of first beneficial use asserted to be 1905.
3. The maximum use of water under Mrs. Robert Pritz's portion of Certified Filing No. 289 was 128 acre-feet of water per year during 1904-1908, inclusive, for the irrigation of 55 acres of land in Surveys 91, 93 and 1821. This use also constituted the maximum use during 1963-1967, inclusive, under Claim No. 5414.
4. Diversion under Claim No. 5414 was from Diversion Point 1260 by pump at a maximum rate of 0.67 cfs (300 gpm). The diversion point authorized under Certified Filing No. 289 was used prior to 1965 for diversion by pump at an unspecified diversion rate.
5. Certified Filing No. 289 was filed on June 28, 1914.
6. The lands irrigated under Claim No. 5414 are adjacent to the South Concho River in Surveys 91, 93 and 1821, which were patented from the State in 1873, 1862 and 1861, respectively.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 289 AND CLAIM NO. 5414

SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 126 ACRE-FEET PER YEAR
NO. OF ACRES - 55
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 289 AND CLAIM NO. 5414 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEYS - 91, 93 AND 1821
ABSTRACTS - 14, 152 AND 374
DIVERSION - 0.67 CFS (300 GPM) AT DIVERSION POINT 1260
PRIORITY DATE - JUNE 28, 1914

DIVERSION POINT NO: 1270
TRACT NO: 1270

OWNERSHIP:
WAYNE HUDSON

IR 214-215
Vol. 6 SF 273-307
Findings:

1. Certified Filing No. 289, as amended September 20, 1918, and jointly owned with Mrs. Robert Pritz, authorizes the use of an unspecified quantity of water from the South Concho River at a maximum diversion rate of 2.67 cfs (1200 gpm) for irrigation of 100 acres of land out of Surveys 91, 93 and 1821, Tom Green County. Computation based on the description of the tract to be irrigated contained in the certified filing shows Certified Filing No. 289 actually covers a total of 119 acres.
2. Claim No. 1316 seeks a riparian water right to use 128 acre-feet of the waters of the South Concho River for irrigation of 64.6 acres of land out of Surveys 93 and 1821. The maximum claimed diversion rate was 2.23 cfs and the date of first beneficial use was asserted to be 1905.
3. The maximum use of water under Wayne Hudson's portion of Certified Filing No. 289 was 128 acre-feet in 1967 for the irrigation of 64 acres of land in Surveys 93 and 1821. This use also constituted the maximum amount of water used under Claim No. 1316 during 1963-1967, inclusive.
4. Diversion under Claim No. 1316 was at Diversion Point 1270 by pump at a maximum rate of 1.6 cfs (700 gpm). The diversion point authorized by Certified Filing No. 289 has not been used in recent years for the irrigation of this tract and is not on land owned by Wayne Hudson.
5. Certified Filing No. 289 was filed on June 28, 1914.
6. The lands irrigated under Claim No. 1316 is located adjacent to the South Concho River in Surveys 93 and 1821 which were patented from the State in 1862 and 1861, respectively.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 289 AND CLAIM NO. 1316

SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 128 ACRE-FEET PER YEAR
NO. OF ACRES - 64
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 289 AND CLAIM NO. 1316 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 13
SURVEYS - 1821 AND 93
ABSTRACTS - 374 AND 152
DIVERSION - 1.6 CFS (700 GPM) AT DIVERSION POINT 1270
PRIORITY DATE - JUNE 28, 1914

DIVERSION POINT NO: 1280 AND 1285
TRACT NO: NONE

OWNERSHIP:
SAN ANGELO WATER SUPPLY CORPORATION

FILE NO:
VOL. 8 SF 623-631, Vol. 12 SF 237-288 and Vol. 13 SF 26-54
FINDINGS:

1. Permit No. 1949 authorizes the impoundment of 170,000 acre-feet of storm and flood water in a 600,000 acre-foot capacity on-channel reservoir on the South and Middle Concho Rivers (Twin Buttes Reservoir). The permit also authorizes the diversion from the reservoir of 29,000 acre-feet of water per year at a maximum rate of 120 cfs for municipal purposes, and the diversion of 25,000 acre-feet of water per year at a maximum rate of 150 cfs for the irrigation of 10,000 acres of land in Tom Green County, with the actual application of water not to exceed 2.5 acre-feet of water for each acre irrigated.
2. Diversion from Twin Buttes Reservoir under Permit No. 1949 is by gravity flow at Diversion Point 1280 and water is transported through the bed and banks of the Middle Concho River into Lake Nasworthy. Water for irrigation purposes is then diverted at Diversion Point 1285 on Lake Nasworthy into a gravity flow canal for conveyance to the lands authorized irrigation through the Tom Green County Water Control and Improvement District No. 1. Water for municipal purposes passes through Lake Nasworthy at Diversion Point 1290 and is conveyed by the bed and banks of the South Concho River to the City of San Angelo Water Plant at Diversion Point 1350.
3. The maximum use of water under Permit No. 1949 for irrigation purposes was 10,081 acre-feet of water in 1972 for the irrigation of 8,000 acres of land.
4. Permittee has exercised due diligence in perfecting Permit No. 1949 to the maximum extent of 25,000 acre-feet of water for the irrigation of 10,000 acres of land.
5. Permit No. 1949 and the facilities located at Twin Buttes Reservoir are part of an integrated surface water supply system along the Middle Concho and South Concho Rivers which serves the municipal needs of the City of San Angelo. Other water rights included in this system are Permit No. 1120, Permit No. 168 and Certified Filing No. 155 of the City of San Angelo.
6. Water use by the City of San Angelo under this system of water rights has been reported without differentiating what quantity of water is attributable to which individual water right. The maximum amount of water used under these combined water rights (Certified Filing No. 155, Permit No. 168, Permit No. 1120 and Permit No. 1949) was 15,782 acre-feet of water in 1972 for municipal and industrial uses.
7. Permit No. 1949 has a time priority of May 6, 1959 and is fourth in seniority among the four rights comprising the City of San Angelo's water delivery system on the Middle Concho and South Concho Rivers.
8. Of the 15,782 acre-feet of water used by the City of San Angelo for municipal purposes in 1972, 6,534 acre-feet of water per year are attributable to Certified Filing No. 155 and Permit No. 168 as full perfection of those rights since they are senior in time to Permits No. 1120 and 1949. Permit No. 1120, as the next water right in seniority in this system, has been perfected to the extent of the remaining 7,248 acre-feet of water per year for municipal purposes.
9. Contractual Permit No. 61, issued to the Texas Parks and Wildlife Department on September 26, 1968, is based on Permit No. 1120 of the City of San Angelo and any water use under Contractual Permit No. 61 accrues to the perfection of Permit No. 1120. The maximum use of water under Contractual Permit No. 61 was 678 acre-feet of water in 1972 for industrial (fish hatchery) purposes.
10. The order partially cancelling Permit No. 1120 dated February 10, 1961, stipulates that the 25,000 acre-feet of water authorized for municipal and industrial use under Permit No. 1120 is included in the 29,000 acre-feet of water authorized for municipal and industrial use under Permit No. 1949. Water use for municipal and industrial use under Permit No. 1120, therefore, is also attributable to the partial perfection of Permit No. 1949.
11. Permit No. 1949 has been perfected to the extent of 8016 acre-feet of water per year for municipal purposes.
12. Permittee has exercised due diligence in perfecting Permit No. 1949 to the maximum extent of 29,000 acre-feet of water for municipal purposes.
13. On October 28, 1974, for the first time since construction, Twin Buttes Reservoir under Permit No. 1949 reached its conservation storage capacity of 170,000 acre-feet of water. With the exception of 8 days during the period of October 28, 1974 through June 11, 1975, Twin Buttes Reservoir was maintained at or in excess of conservation storage capacity.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 1949
SOURCE OF WATER - MIDDLE AND SOUTH CONCHO RIVERS
NO. OF RESERVOIRS - 1 CAPACITY 600,000 ACRE-Feet, AUTHORIZED IMPOUNDMENT 170,000 ACRE-Feet
PURPOSE OF USE - MUNICIPAL AND IRRIGATION
AMOUNT OF WATER - IRRIGATION; 10,931 ACRE-Feet PER YEAR - MUNICIPAL USE; 8,016 ACRE-Feet PER YEAR
NO. OF ACRES - 8000
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF TOM GREEN COUNTY WCID NO. 1.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 5 OF 11, PAGE 11 AND 10 OF 11, PAGE 16
DIVERSION - 270 CFS AT DIVERSION POINT 1280 (120 CFS FOR MUNICIPAL PURPOSES AND 150 CFS FOR IRRIGATION PURPOSES); THEN 120 CFS AT DIVERSION POINT 1295 (FOR IRRIGATION PURPOSES)
PRIORITY DATE - MAY 6, 1959
REMARKS - PERMITTEE HAS A LICENSE TO PERFECT PERMIT NO. 1949 TO THE FULL EXTENT AUTHORIZED OF 29,000 ACRE-Feet OF WATER PER YEAR FOR MUNICIPAL PURPOSES AND 25,000 ACRE-Feet OF WATER PER YEAR FOR THE IRRIGATION OF 10,000 ACRES OF LAND. THE 29,000 ACRE-Feet AUTHORIZED BY MUNICIPAL PURPOSES INCLUDES THE 25,000 ACRE-Feet AUTHORIZED FOR MUNICIPAL AND INDUSTRIAL USES UNDER PERMIT NO. 1120 OWNED BY THE CITY OF SAN ANGELO. PERMITTEE IS AUTHORIZED TO USE THE BED AND BANKS OF THE MIDDLE CONCHO RIVER FOR TRANSPORTATION OF WATER TO DIVERSION POINT NO. 1350. THE CITY OF SAN ANGELO WATER TREATMENT PLANT FOR MUNICIPAL PURPOSES. THE QUANTITY OF WATER HEREIN RECOGNIZED IS INDEPENDENT OF THAT QUANTITY RECOGNIZED UNDER CERTIFIED FILING NO. 155 AND PERMIT NO. 168 OF THE CITY OF SAN ANGELO, DIVERSION POINTS 1330, 1350 AND 1360. PERMITTEE IS RECOGNIZED THE RIGHT TO RELEASE WATER INTO LAKE NASWORTHY AND DIVERT AT DIVERSION POINT NO. 1285 FOR IRRIGATION USE.

DIVERSION POINT NO: 1290 AND 1295
TRACT NO: 1280

OWNERSHIP:
CITY OF SAN ANGELO

FILE NO:
VOL. 4 SF 682-699
FINDINGS:

1. Permit No. 1120, as partially cancelled on February 10, 1961, authorizes the impoundment of 10,500 acre-feet of storm and flood water in an on-channel reservoir on the Middle Concho and South Concho Rivers (Nasworthy Dam and Reservoir). The permit also authorizes the diversion from the reservoir at Diversion Point 1290 of 25,000 acre-feet of water per year at a maximum rate of 120 cfs for municipal and industrial purposes. Permit No. 1446 authorizes an increase in the impoundment of water in Nasworthy Reservoir from 10,500 acre-feet to 12,500 acre-feet.
2. The order partially cancelling Permit No. 1120 dated February 10, 1961, stipulates that the 25,000 acre-feet of water authorized for municipal use under Permit No. 1120 is included in the 29,000 acre-feet of water authorized for municipal use under Permit No. 1949 and is not to be in addition to that appropriation.
3. Permit No. 1120 and the facilities located at Nasworthy Reservoir are part of an integrated surface water supply system along the Middle Concho and South Concho Rivers which serves the municipal needs of the City of San Angelo. Other water rights included in this system are Permit No. 1949 of the San Angelo Water Supply Corporation and Permit No. 168 and Certified Filing No. 155 of the City of San Angelo. The operation of this system involves the storage of 34,000 acre-feet of water in Twin Buttes Reservoir, Nasworthy Reservoir and Ben Ficklin Reservoir and its release and conveyance down the bed and banks of the South Concho and Middle Concho Rivers to Lone Wolf Reservoir, and diversion of a total of 35,534 acre-feet of water at the City of San Angelo's water treatment plant.
4. Water use by the City of San Angelo under this system of water rights has been reported without differentiating what quantity of water is attributable to which individual right. The maximum amount of water used under these combined water rights (Certified Filing No. 155, Permit No. 168, Permit No. 1120 and Permit No. 1949) was 15,782 acre-feet of water in 1972 for municipal and industrial uses.
5. Permit No. 1120 has a time priority of March 11, 1949, and is the third water right in seniority among those rights comprising the City of San Angelo's water delivery system on the South Concho and Middle Concho Rivers.
6. Of the 15,782 acre-feet of water used by the City of San Angelo in 1972, 6,534 acre-feet per annum are attributable to Certified Filing No. 155 and Permit No. 168 as full perfection of those rights since they are senior in time to Permit No. 1120. The remaining 7,248 acre-feet of water per annum are attributable to the partial perfection of Permit No. 1120 as the next water right in seniority in this system.
7. The 7,248 acre-feet of water per annum recognized as perfected under Permit No. 1120 also constitutes perfection to that extent of Permit No. 1949 as the order partially cancelling Permit No. 1120 provided that the water authorized for municipal use under Permit No. 1120 was to be included in the authorized appropriation for municipal use in Permit No. 1949.
8. Contractual Permit No. 61 issued to the Texas Parks and Wildlife Department on September 26, 1968, authorized the diversion of 800 acre-feet of water per year from Lake Nasworthy for industrial (operation of fish hatchery) purposes. This permit was based on a contract between the Texas Parks and Wildlife Department and the City of San Angelo for the use of water under Permit No. 1120.
9. The maximum use of water under Contractual Permit No. 61 was 768 acre-feet of water in 1972 for industrial (fish hatchery purposes).
10. Water use under Contractual Permit No. 61 accrues to the City of San Angelo for perfection of Permit No. 1120 upon which the contract is based.
11. The application for Permit No. 1446 was filed on February 12, 1948.
12. The 12,500 acre-foot impoundment authorized under combined Permits No. 1120 and No. 1446 has been perfected to the maximum authorized.
13. Permittee has exercised due diligence in perfecting Permit No. 1120 to the maximum authorized of 25,000 acre-feet for municipal and industrial purposes.

BASIS OF RIGHT RECOGNIZED - PERMITS NO. 1120 AND 1446
SOURCE OF WATER - MIDDLE AND SOUTH CONCHO RIVERS
NO. OF RESERVOIRS - 1 CAPACITY 12,500 ACRE-Feet
PURPOSE OF USE - MUNICIPAL AND INDUSTRIAL
AMOUNT OF WATER - 8016 ACRE-Feet PER YEAR
DAM AND RESERVOIR SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972.
DAM LOCATION - TOM GREEN COUNTY
MAP NO. - 5 OF 11, PAGE 11
SURVEY - 172
DIVERSION - 120 CFS AT DIVERSION POINT 1290
PRIORITY DATE - MARCH 11, 1949
REMARKS - PERMITTEE HAS A LICENSE TO PERFECT PERMIT NO. 1120 TO THE FULL EXTENT AUTHORIZED OF 25,000 ACRE-Feet OF WATER PER ANNUM FOR MUNICIPAL AND INDUSTRIAL PURPOSES. THIS 25,000 ACRE-Feet APPROPRIATION IS INCLUDED IN THE 29,000 ACRE-Feet AUTHORIZED FOR MUNICIPAL USES UNDER PERMIT NO. 1949 OWNED BY THE SAN ANGELO WATER SUPPLY CORPORATION (DIVERSION POINT NO. 1250). PERMITTEE IS AUTHORIZED TO USE THE BED AND BANKS OF THE MIDDLE CONCHO RIVER FOR TRANSPORTATION OF WATER TO DIVERSION POINT NO. 1350. THE CITY OF SAN ANGELO'S WATER TREATMENT PLANT. THE QUANTITY OF WATER RECOGNIZED HEREIN IS INDEPENDENT OF THAT QUANTITY RECOGNIZED UNDER CERTIFIED FILING NO. 155 AND PERMIT NO. 168 OF THE CITY OF SAN ANGELO, DIVERSION POINTS 1330, 1350 AND 1360.

DIVERSION POINT NO: 1309
TRACT NO: 1290

OWNERSHIP:
F. R. BUTLER

IR 219-220
Vol. 3 SF 356-373, Vol. 9A SF 315, Vol. 11 SF 289 311 and Vol. 13 SF 35 74
Findings:

1. On June 27, 1914, J. P. Holding filed a water appropriation affidavit with the County Clerk of Tom Green County. A certified copy of this declaration of intent was ordered filed by the Board of Water Engineers on June 30, 1914, which was given Certified Filing No. 348. The affidavit filed with the county clerk declared that J. P. Holding of Holding and Holding were owners of land in connection with which water is desired for irrigation. It described 175 acres out of Tom Green County Survey 177 and that 30.3 acres were to be irrigated. The diversion system declared was the J. P. Holding Ditch, the head gate for pumping place of which was situated at the S.W. corner of J. P. Holding 124 acre tract out of Survey No. 177. The ditch was described as having a carrying capacity of "1500 gals. cubic feet per second". It declared that diversion was from the Main Concho River and that work was commenced on about 1905. Reference was made to an accompanying plat. The plat was also filed June 27, 1914 and outlined a ditch in Survey No. 177 with laterals in a South field described as 30.3 acres. The outline ditch continues north on the west side of a North field described as 80.7 acres the outlined ditch runs east into Survey No. 170 into a lower field described as 140 acres.
2. By an order of the Commission of February 10, 1961, Certified Filing No. 348 was partially cancelled as to the right to irrigate a 14.5 acre tract of land owned by the City of San Angelo within the filing area, however, the order expressly stated that it was not intended to affect any rights of F. R. Butler under the certified filing.
3. The authorized diversion point under Certified Filing No. 348 was established on the South Concho River within the 14.5 acre tract belonging to the City of San Angelo which was the subject of the partial cancellation order of February 10, 1961. A new point of diversion, designated as Diversion Point 1309, was established by F. R. Butler in 1957 on a 1 acre tract adjacent to but outside of the certified filing area and approximately 30 feet from the originally established site. Although no amendment was made to the certified filing to authorize this new diversion point, there are no intervening appropriators between the originally established diversion point and the point now in use. Claimant has diverted Concho River water at D-1309 since 1952 by means of two pumps, each having a diversion rate of 1.35 cfs (300 gpm). From time to time two pumps have been used simultaneously. Between 1944 when F. R. Butler began irrigation and 1952, two pump locations were used, one being at the authorized diversion point under the certified filing, which is some fifty feet east of D-1309 on the 14.5 acres owned by the City of San Angelo, and the other on located river front land in Survey No. 170. D-1309 is on a 1 acre tract acquired from Mark Nasworthy by deed dated September 27, 1952.
4. Claim No. 415 seeks a riparian right and a right under Certified Filing No. 348 to the use of 129 acre-feet of the waters of the South Concho River for the irrigation of 125 acres of land out claimed diversion rate was 2.23 cfs and the date of first beneficial use was asserted to be 1928.
5. Claimant's maximum use of Concho River water in any one calendar year during the period 1965-1967 inclusive, was 10,196.7 acre-feet of water diverted from D-1309 for the irrigation of 125 acres of land within claim area C-415.
6. The date of first beneficial use under Claim No. 415 was 1928.
7. The land covered by Claim No. 415 consists of three tracts: 108 acres purchased from West Texas Utilities Co. by deed dated July 1, 1943, 256 acres purchased from West Texas Utilities Co. by deed dated July 26, 1943, and 1 acre purchased from Mark Nasworthy, et al., by deed dated September 27, 1952. Of these three tracts only the 1 acre Nasworthy Tract is adjacent to the South Concho River. The remaining two tracts are not adjacent to the river, having been severed by title. The 1 acre Nasworthy Tract is in Survey No. 177 which was patented from the State in 1855.
8. There is no evidence as to irrigation of other beneficial use of water during 1965-1970, inclusive, on the riparian 1 acre Nasworthy Tract. The land was used solely as the site of pump and diversion facilities for transporting water to the non-riparian tracts in the claim area.
9. The point of diversion claimed under Claim No. 415, Diversion Point 1309, is located on the banks of an on-channel reservoir on the South Concho River impounded by Metcalfe Dam, which was authorized by Permit No. 1142 of the Texas Parks and Wildlife Department.
10. Permit No. 1120, as originally issued and amended by Permit No. 1140, authorized West Texas Utilities Company the use of 35,000 acre-feet of water per annum from a 12,500 acre-foot reservoir on the Middle Concho and South Concho Rivers (the Nasworthy) for municipal and industrial use. The permit further authorized that any water within the 35,000 acre-foot maximum which was in excess of the municipal and industrial needs served by West Texas Utilities Company could be diverted from the reservoir for the irrigation of a 3000 acre tract of land, with the actual application of water not to exceed 2 acre-feet of water per acre.
11. By deeds dated July 1, 1943 and July 26, 1943, West Texas Utilities Company conveyed to F. R. Butler approximately 362 acres of land, a portion of which is within the boundaries of Permit No. 1120. By a deed dated September 27, 1952, Mark Nasworthy, et al., conveyed a 1 acre tract located within the permit boundaries to F. R. Butler.
12. By deed dated May 21, 1950, West Texas Utilities Company conveyed to the City of San Angelo the title to several tracts of land located within the area authorized for irrigation under Permit No. 1120.
13. Documentation of notice of the conveyances from West Texas Utilities Company to F. R. Butler were never filed with the Texas Water Rights Commission or its predecessor agency, the Board of Water Engineers and F. R. Butler was not recorded in the records of this agency as a part owner of Permit No. 1120.
14. The conveyance of lands within the boundaries of Permit No. 1120 from West Texas Utilities Company to the City of San Angelo and the transfer of water rights appurtenant to these lands were recorded with the Board of Water Engineers. The City of San Angelo was the only owner recognized in the records of this agency under Permit No. 1120.
15. By an order of the Commission dated February 10, 1961, Permit No. 1120 was partially cancelled, revoking any right to the use of water under that permit for the irrigation of the 3000 acre tract. The order was based on each and all of the following reasons: non-use of water by the City of San Angelo for irrigation purposes for 18 consecutive years preceding the institution of cancellation proceedings, willful abandonment by the City of San Angelo of the right to appropriate water for irrigation for three consecutive years preceding the institution of cancellation proceedings, failure of the holders of Permit No. 1120 to begin and diligently prosecute the construction of facilities for irrigation under the permit, and a cancellation waiver of the irrigation right executed by the City Manager of the City of San Angelo.
16. Notice of this cancellation proceeding was issued in accordance with Article 5159a, Revised Civil Statutes of Texas, Acts 1957, 55th Legislature, p. 82, ch. 39, Section 1, by certified mail to the holder of the permit as shown by the records of the Board of Water Engineers, by mail to all other holders of permits and certified filings in the watershed, and by publication in accordance with the statute in the San Angelo Standard Times. F. R. Butler, as part owner of Certified Filing No. 348, was a holder of a certified filing in the Concho River Watershed and was so recognized in the records of the Board of Water Engineers at the time notice of the proceedings partially cancelling Permit No. 1120 was issued.
17. Permit No. 1120, as originally issued, specified that diversion under the permit for irrigation was to be from the reservoir authorized under that permit. All diversion for the lands owned by F. R. Butler within the boundaries of Permit No. 1120 has been from Metcalfe Reservoir, authorized by Permit No. 1142, and not from Lake Nasworthy.

*The recognition herein is modified by action of the Commission during the pendency of this adjudication by the granting of an application for a new permits or an amendment of an existing permit or certified filing, a summary of which is described in the addendum to this determination.

19. The application for Permit No. 1120 was filed on March 11, 1929. Between the date of the filing of the declaration of intent and 1955, the L. P. Holding Ditch was constructed and fell in disrepair. Since 1957, when the diversion system was repaired, irrigation has occurred on a regular basis. In 1944, F. R. Butler again reworked the irrigation system and has been continuously irrigating in every year since 1944.
21. F. R. Butler owns 106 acres within the 125 acre tract in Survey No. 177 which was described in the plat included in the filing. Claimant's long established irrigation practice has been to annually irrigate a total of 125 acres of vegetables out of his 210 acre tract in Surveys 176 and 177.
22. Official notice is taken of all water use reports filed under Certified Filing No. 348 which are in the Commission's permanent records.
23. Claimant has regularly diverted Concho River water at D-1309 and has annually used two acre-feet per acre irrigated.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 415 OR PERMIT NO. 1120

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 348
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 212 ACRE-FEET PER YEAR
NO. OF ACRES - 100
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 4, 1975, DESCRIBED AS FOLLOWS: WITHIN SURVEY NO. 177 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 5 OF 11, PAGE 11
SURVEY NO. - 177
DIVERSION - 5.12 CFS (2100 GPM) AT DIVERSION POINT 1309
PRIORITY DATE - JUNE 27, 1914

DIVERSION POINT NO: 1310
TRACT NO: 1500

OWNERSHIP:
SAN ANGELO COUNTRY CLUB, INC.

IR 221-223
Vol. 6 SF 337-376

Findings:

1. Claim No. 1572 seeks a riparian right to use 312 acre-feet of the waters of South Concho River for irrigation of 100 acres of land out of Survey 159, Tom Green County. The maximum claimed diversion rate was 2.23 cfs and the date of first beneficial use was asserted to be 1912.
2. Water diverted by San Angelo Country Club, Inc., is also used for recreational purposes of the country club grounds to fill a swimming pool and for use in the clubhouse.
3. Maximum use of water during 1965-1967, inclusive, was 317 acre-feet of water in 1966 for the irrigation of 150 acres of golf course and for recreational purposes.
4. Diversion under Claim No. 1572 was at Diversion Point 1310 by two pumps having a total capacity of 2.23 cfs (1000 gpm).
5. The lands irrigated under Claim No. 1572 are located adjacent to the South Concho River in Survey 169 which was patented from the State in 1857.
6. Date of first beneficial use of water under Claim No. 1572 was prior to 1912.
7. Diversion Point 1310 is located on the banks of Metcalfe Reservoir, an on-channel reservoir on the South Concho River authorized by Permit No. 1142 of the Texas Parks and Wildlife Department, and all water use under this claim has been from the reservoir.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 1572
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION AND RECREATION
AMOUNT OF WATER - 318 ACRE-FEET PER YEAR
NO. OF ACRES - 160
TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 4, 1975, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 1572 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 5 OF 11, PAGE 11
SURVEY NO. - 159
ARSTRACT - 1647
DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 1310
PRIORITY DATE - DECEMBER 31, 1911

DIVERSION POINT NO: 1320
TRACT NO: 1310

* OWNERSHIP:
TEXAS PARKS AND WILDLIFE DEPARTMENT

IR 323
Vol. 6 SF 312-336

Findings:

1. Permit No. 1142 authorizes the diversion of 1000 acre-feet of water per annum from the South Concho River for industrial purposes (fish hatchery) in Survey 167, Tom Green County. The permit also authorizes a dam and 1157 acre-foot capacity reservoir on the South Concho River (Metcalfe Reservoir).
2. The maximum use of water under Permit No. 1142 was 992 acre-feet in 1971 for industrial purposes (fish hatchery).
3. The originally authorized diversion was by gravity flow canal from Metcalfe Reservoir at Diversion Point 1320 and the maximum diversion rate preferred is 3.8 cfs (1700 gpm).
4. The dam and 1157 acre-foot capacity reservoir authorized by Permit No. 1142 (Metcalfe Reservoir) are in existence.
5. The application for Permit No. 1142 was filed on August 19, 1933.
6. Claimant's presented evidence as to recent implementation of plans to increase the size of the fish hatchery and thereby increase the appropriation granted under this permit to its maximum extent. This action constitutes due diligence by the Texas Parks and Wildlife Department in perfecting Permit No. 1142 to its maximum extent.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 1142
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 1157 ACRE-FEET
PURPOSE OF USE - INDUSTRIAL (FISH HATCHERY)
AMOUNT OF WATER - 492 ACRE-FEET PER YEAR
TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 4, 1975, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF PERMIT NO. 1142 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 5 OF 11, PAGE 11
SURVEY NO. - 167
DIVERSION - 3.8 CFS (1700 GPM) AT DIVERSION POINT 1320
PRIORITY DATE - AUGUST 26, 1933
REMARKS - PERMITTEES HAVE A LICENSE TO PERFECT PERMIT NO. 1142 TO ITS MAXIMUM AUTHORIZED AMOUNT OF 1000 ACRE-FEET OF WATER FOR INDUSTRIAL PURPOSES (FISH HATCHERY).

DIVERSION POINT NO. 1350
TRACT NO. NONE

OWNERSHIP:
CITY OF SAN ANGELO

IR 224
Vol. 8 SF 691-702
Findings:

1. Permit No. 168 authorizes the diversion and use of 5000 acre-feet of the storm and flood waters of the South Concho River for municipal and domestic purposes. The permit also authorizes a dam and 316 acre-foot capacity reservoir on the South Concho River (Ben Ficklin Dam and Reservoir) and provides that the dam be so constructed as to allow the passage through the structure of such normal flow in the river as may be required to satisfy the rights of lower appropriators.
2. Permit No. 168 and the facilities located at Ben Ficklin Dam and Reservoir are part of an integrated surface water supply system along the Middle Concho and South Concho Rivers which serves the municipal needs of the City of San Angelo. Other water rights included in this system are Permit No. 1940 of the San Angelo Water Supply Corporation and Permits No. 1120, and No. 1446 and Certified Filing No. 155 of the City of San Angelo. These rights authorize the storage and release of a total of 31,000 acre-feet of water per annum from Twin Buttes Reservoir, Lake Nasworthy and Ben Ficklin Reservoir, and conveyance of this water down the bed and banks of the South Concho and Middle Concho Rivers to Lone Wolf Reservoir and diversion of a total of 35,534 acre-feet of water per annum at the City of San Angelo's water treatment plant.
3. Water use by the City of San Angelo under this system of water rights has been reported without differentiating what quantity of water is attributable to which individual right. The maximum amount of water used under these combined water rights (Certified Filing No. 155, Permit No. 168, Permit No. 1120 and Permit No. 1949) was 13,782 acre-feet of water in 1972 for municipal and industrial purposes.
4. Permit No. 168 has a time priority of December 8, 1916, and is the second water right in seniority among those rights comprising the City of San Angelo's water delivery system on the South Concho and Middle Concho Rivers.
5. Of the 13,782 acre-feet of water used by the City of San Angelo in 1972, 1534 acre-feet are attributable to Certified Filing No. 155 as full perfection of that right, since Certified Filing No. 155 is the most senior of the water rights involved and would therefore have a prior claim to the water available. As the second water right in time of priority, Permit No. 168 can be attributed 5,000 acre-feet of water per annum of the remaining 12,248 acre-foot total used by the system in full perfection of the appropriation authorized by Permit No. 168. The remaining 7,248 acre-feet of water per annum are to be attributed to Permit No. 1120 and Permit No. 1949 according to their priority dates and authorized appropriation.
6. The 316 acre-foot capacity reservoir authorized by Permit No. 168 has been built.
7. All water used under Permit No. 168 is released from Ben Ficklin Reservoir and conveyed to Lone Wolf Reservoir where it is diverted at Diversion Point 1350 and 1360 of the City of San Angelo Water Treatment Plant by six pumps at a maximum diversion rate of 63.63 cfs.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 168
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 316 ACRE-FOOT
PURPOSE OF USE - MUNICIPAL
AMOUNT OF WATER - 5000 ACRE-FOET PER YEAR
DAM AND RESERVOIR SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972.
DAM LOCATION - TOM GREEN COUNTY
MAP NO. - 5 OF 11, PAGE 11
SURVEY - 175
DIVERSION - AT DIVERSION POINT 1330 BY OVERFLOW OF DAM
PRIORITY DATE - DECEMBER 8, 1916
REMARKS - PERMITTEE IS AUTHORIZED TO USE THE BED AND BANKS OF THE MIDDLE CONCHO RIVER FOR THE TRANSPORTATION OF WATER TO DIVERSION POINT NO. 1350, THE CITY OF SAN ANGELO WATER TREATMENT PLANT. THE QUANTITY OF WATER HEREIN RECOGNIZED IS INDEPENDENT OF THAT QUANTITY RECOGNIZED UNDER CERTIFIED FILING NO. 155 OF THE CITY OF SAN ANGELO, DIVERSION POINT NO. 1350.

DIVERSION POINT NO: 1340
TRACT NO: 1320

OWNERSHIP:
B.F. BUNYARD ESTATE AND BESSIE BUNYARD ESTATE

IR 225-398
Vol. 6 SF 377-398
Findings:

1. Certified Filing No. 576, as partially cancelled on December 28, 1960, authorizes the diversion and use of an unspecified quantity of water from the South Concho River at a maximum diversion rate of 1.10 cfs (500 gpm) for irrigation of 30 acres of land in Survey 174, Tom Green County.
2. Claim No. 6269 and an Additional Sworn Statement seek a riparian right and a right under Certified Filing No. 576 to use 30 acre-feet of the waters of the South Concho River for the irrigation of 28 acres of land out of Survey 174, Tom Green County. The maximum diversion rate claimed is 3.34 cfs and the date of first beneficial use is asserted to be June 30, 1914.
3. The maximum historical use of water under Certified Filing No. 576 was 45 acre-feet of water in 1945 and the irrigation of 28 acres of land, according to the claimant's testimony, in 1954 and 1967.
4. The maximum use of water during 1963-1970, inclusive, under Claim No. 6269 was 30 acre-feet of water for the irrigation of 28 acres of land in 1967.
5. The lands claimed for irrigation under Claim No. 6269 are located adjacent to the South Concho River in Survey 174 which was patented from the State in 1855.
6. Diversion under Claim No. 6269 is by a 3.11 cfs (1400 gpm) capacity pump located at Diversion Point 1340. This diversion rate is in excess of that rate of 1.10 cfs (500 gpm) authorized by Certified Filing No. 576.
7. Certified Filing No. 576 was filed on June 25, 1914.
8. Diversion Point 1340 is located on the banks of Lone Wolf Reservoir, an on-channel reservoir on the South Concho River authorized by Certified Filing No. 155 of the City of San Angelo, and all water used under Claim No. 6269 has been from this reservoir.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 576 AND CLAIM NO. 6269
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 45 ACRE-FOET PFR YEAR
NO. OF ACRES - 28
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 576 AND CLAIM NO. 6269 ON OWNED TRACT.

*The recognition herein is modified by action of the Commission during the pendency of this adjudication by the granting of an application for a new permit or an amendment of an existing permit or certified filing, a summary of which is described in the addendum to this determination.

TRAC LOCALIZATION - 5 OF 11, PAGE 11
MAP NO. - 174
SURVEY - 174
ABSTRACT - 319
DESCRIPTIC - 5 11 - CFS (1400 GPM) AT DIVERSION POINT 1340
PRIORITY DATE - MARCH 11, 1953

DIVERSION POINT NO: 1350 AND 1360
TRACT NO: NONE

OWNERSHIP:
CITY OF SAN ANGELO

IR 227
Vol. 8 SF 703-712
Findings:

1. Certified Filing No. 155 authorizes the diversion and use of 1534 acre feet of water per annum from the South Concho River for municipal and industrial use at a maximum diversion rate of 6.24 cfs (280 gpm). The certified filing also authorizes the maintenance of a dam and 300 acre-foot reservoir on the South Concho River (Lone Wolf Reservoir).
2. Certified Filing No. 155 and the facilities located at Lone Wolf Reservoir are part of an integrated surface water supply system along the Middle Concho and South Concho Rivers which serves the municipal needs of the City of San Angelo. Other water rights included in this system are Permit No. 1919 of the San Angelo Water Supply Corporation, and Permits No. 1120, No. 1446 and No. 158 of the City of San Angelo. These rights authorize the storage and release of a total of 31,000 acre-feet of water per annum from Twin Buttes Reservoir, Lake Nasworthy, and Ben Ficklin Reservoir, and conveyance of this water down the bed and banks of the South Concho and Middle Concho Rivers to Lone Wolf Reservoir and the diversion of a total of 35,534 acre feet of water per annum at the City of San Angelo Water Treatment Plant.
3. Water use by the City of San Angelo under this system of water rights has been reported without differentiating what quantity of water used is attributable to which individual right. The maximum amount of water used under these combined water rights (Certified Filing No. 155, Permit No. 1919, Permit No. 1120 and Permit No. 188) was 11,782 acre-feet of water in 1972 for municipal and industrial purposes.
4. Certified Filing No. 155 has a time priority of May 16, 1914, and is the most senior of the water rights comprising the City of San Angelo's water delivery system on the South Concho and Middle Concho Rivers.
5. As the senior water right in this system, the perfection of Certified Filing No. 155 has priority over the perfection of other water rights in the same system having later priority dates. Therefore, of the total 13,782 acre-feet of water per annum constituting the maximum use by the system, 1534 acre-feet of water per annum are attributable to Certified Filing No. 155 as full perfection of that right, with the remaining 12,248 acre-feet of water per annum to be attributed to Permit No. 168, Permit No. 1120, and Permit No. 1949 according to their priority dates and authorized appropriation.
6. The 300 acre-foot reservoir authorized by Certified Filing No. 155 is presently in use in accordance with that certified filing for municipal purposes as by five pumps at a total maximum diversion rate of 61.18 cfs at Diversion Point 1350. Diversion for industrial purposes is by a pump at Diversion Point 1360 at a maximum rate of 2.45 cfs (1100 gpm). This total diversion rate of 63.63 cfs is in excess of that rate authorized by the certified filing and was not increased by amendment to the filing nor by the provisions of any of the subsequent permits issued to the City of San Angelo.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 155
SOURCE OF WATER - SOUTH CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 300 ACRE-FOET
PURPOSE OF USE - MUNICIPAL AND INDUSTRIAL
AMOUNT OF WATER - 1534 ACRE-FOET PER YEAR
DAM AND RESERVOIR ARE SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972.
DAM LOCATION - TOM GREEN COUNTY
MAP NO. - 5 OF 11, PAGE 11
DIVERSION - 6.24 CFS (280 GPM) TOTAL AT DIVERSION POINT 1350 AND DIVERSION POINT 1360
PRIORITY DATE - MAY 16, 1914

DIVERSION POINT NO: 1370 AND 1330
TRACT NO: NONE

OWNERSHIP:
CITY OF SAN ANGELO

IR 226
Vol. 8 SF 713-729
Findings:

1. Permit No. 1669 authorizes the construction of a dam on the Concho River and a 370 acre-foot capacity reservoir on the Concho, North Concho, and South Concho Rivers (Bell Street Reservoir). Water released from the San Angelo Reservoir for municipal purposes under Permit No. 1516 of the Upper Colorado River Authority is conveyed down the bed and banks of the North Concho River for storage in the Bell Street Reservoir. The water may then be diverted from the Bell Street Reservoir at Lone Wolf Dam on the South Concho River for use in the City of San Angelo's water supply system.
2. Water is diverted from Bell Street Reservoir by two pumps having a total capacity of 45.0 cfs and located at Diversion Points 1370 and 1380, on the west bank of the South Concho River below Lone Wolf Dam. The water is diverted into Lone Wolf Reservoir for ultimate diversion at the City of San Angelo's water treatment plant at Diversion Point 1350 and Diversion Point 1360.
3. The source of the water stored in Bell Street Reservoir is from Twin Buttes and Nasworthy Reservoirs on the South Concho River, and from San Angelo Reservoir on the North Concho River. Bell Street Reservoir is the last water-storage structure on the Concho River and its tributaries included in the City of San Angelo's water supply system.
4. The application for Permit No. 1669 was filed on March 11, 1953.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 1669
SOURCE OF WATER - NORTH AND SOUTH CONCHO RIVERS
NO. OF RESERVOIRS - 1 CAPACITY 370 ACRE-FOET
PURPOSE OF USE - MUNICIPAL (IMPOUNDMENT ONLY)
DAM AND RESERVOIR ARE SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972.
DAM LOCATION - TOM GREEN COUNTY
MAP NO. - 5 OF 11, PAGE 11
DIVERSION - 45.0 CFS AT DIVERSION POINT 1370 AND DIVERSION POINT 1380.
PRIORITY DATE - MARCH 11, 1953
REMARKS - THE DIVERSION RATE OF 45.0 CFS IS A COMBINED RATE FOR BOTH DIVERSION POINTS AND NOT A SEPARATE RATE FOR EACH. CLAIMANT IS RECOGNIZED THE RIGHT TO USE THE BED AND BANKS OF THE NORTH CONCHO AND CONCHO RIVERS FOR THE TRANSPORTATION AND IMPOUNDMENT OF WATERS RELEASED UNDER PERMIT NO. 1516 OF THE UPPER COLORADO RIVER AUTHORITY, DIVERSION POINT 0170.

DIVERSION POINT NO. 1390
TRACT NO. 1330

OWNERSHIP:
UNITED STATES DEPARTMENT OF THE AIR FORCE

IR 229
Vol. 9 SF 533-558
Findings:

1. Claim No. 2503 seeks recognition of a right to use 173 acre-feet of water from the Concho River for irrigation of 42.3 acres of land within Surveys 1, 163, 164, 165 and 166, Tom Green County, at a diversion rate of 2.32 cfs.
2. The lands claimed for irrigation under Claim No. 2563 are within the boundaries of Goodfellow Air Force Base.
3. Claim No. 2563 did not state on what legal basis the claim of water right was being asserted and the claimant's representative did not state such a legal basis at the adjudication hearing.
4. Claimant is not an interest holder or owner of record of a permit, certified filing, or other statutory appropriate right covering this water use.
5. The lands claimed for irrigation are not adjacent to the Concho River and have been severed by title from the river. Claimant did assert that it has a "perpetual easement" from W.C. Rutherford, the City of San Angelo, and the Texas Highway Department for access to the river across intervening lands for the purpose of installing diversion and distribution facilities to convey water from Diversion Point 1390 to claimant's property. This easement was not offered into evidence by claimant's representatives, nor is it part of the Commission's records.
6. There have been no complaints made to the claimant or objection made as to its water use from the Concho River.
7. Water diverted from the Concho River by claimant is used to irrigate 42.3 acres of lawns on the base and is stored in a one-million gallon storage tank from which the water is pumped for irrigation purposes. The maximum use of water used during 1963-1967, inclusive, was 172.7 acre-feet of water in 1963 for the irrigation of 42.28 acres.
8. Diversion under Claim No. 5362 was from Diversion Point 1390 at a maximum rate of 2.32 cfs (1050 gpm).
9. The owner of the riparian tract from which diversion is made for claimant's property did not file either a 5303 Claim or a 5307 Claim seeking recognition of any water right for this tract.
10. There was no contract or other document offered into evidence or placed in the Commission's records whereby the owner of the riparian property agreed to convey water or any right to use or appropriate water or water rights to the claimant.
11. Date of first beneficial use of water from the Concho River under Claim No. 2563 was March 31, 1953.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 2563

DIVERSION POINT NO. 1400
TRACT NO. 1340

OWNERSHIP:
VERNON VINES
TRILBIA VINES

IR 230-251
Vol. 6 SF 599-419
Findings:

1. Claim No. 2464 records a riparian and an equitable water right claim to the use of 44 acre-feet of water from the Concho River for irrigation purposes in Surveys 160 and 161, Tom Green County. The claimed diversion is at Diversion Point 1400 on the Concho River by a 350 gpm pump and 22 acres are declared as irrigable. The maximum use of water claimed during 1963-1967, inclusive, was 44 acre-feet in each year for the irrigation of 22 acres of land at a rate of 350 gpm. Date of first beneficial use was asserted to be prior to 1931.
2. An Additional Sworn Statement was filed with the Commission recording a maximum use of water during 1968-1970, inclusive, of 20 acre-feet in 1969 for the irrigation of 20 acres. No additional works commenced or completed prior to the filing of this statement for application of a greater quantity of water to beneficial use were indicated in this statement.
3. The maximum use of water under Claim No. 2464 during 1963-1970, inclusive, was 2 acre-feet per acre in each year for the irrigation of 20 acres of land, as planimetered, or 40 acre-feet of water per year.
4. Diversion is by pump at Diversion Point 1400 by pump at a maximum rate of 0.78 cfs (350 gpm).
5. The tract claimed for irrigation under Claim No. 2454 is adjacent to the Concho River in Surveys 160 and 161 which were patented from the State in 1855 and 1885, respectively.
6. The date of first beneficial use of water under Claim No. 2464 was 1931.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2464
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 40 ACRE-FEET PER YEAR
NO. OF ACRES - 20
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 2464 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 14
SURVEYS - 160 AND 161
ABSTRACTS - 1867 AND 1553
DIVERSION - 0.78 CFS (350 GPM) AT DIVERSION POINT 1400
PRIORITY DATE - DECEMBER 31, 1931

DIVERSION POINT NO. 1410
TRACT NO. 1350

OWNERSHIP:
GLENN P. SNOODGRASS AND NANCY L. SNOODGRASS

IR 252
Vol. 9 SF 344-373
Findings:

1. Claim No. 11569 records a riparian claim of water right to the use of water from the Concho River for irrigation, livestock and domestic purposes in Survey 160, Tom Green County. The claimed diversion is at Diversion Point 1390 by pump and 10 acres are declared as irrigable. No water use was claimed during the period 1963-1967, inclusive. The claim indicates that additional works were commenced prior to the filing of this claim to apply a greater quantity of water to beneficial use by the clearing of land for grazing and stock raising and the construction of an irrigation ditch. Date of first beneficial use was asserted to be 1970.
2. An Additional Sworn Statement was filed with the Commission recording a maximum use of water during 1968-1970, inclusive, of 21 acre-feet of water in 1970 for the irrigation of 14 acres of land. The statement describes a pump and distribution system for irrigation and indicates a maximum diversion rate of 1200 gpm.
3. Claimant did commence works prior to August 27, 1967, for the application of additional water to beneficial use by engaging in an improvement program to clear the land and establish a water distribution system on the land. Claimant did irrigate in 1967, 1968 and 1969 to water grasses grown to prepare the soil for the commencement of the full irrigation program in 1970.
4. The maximum use of water during 1963-1970, inclusive, was 21 acre-feet of water for the irrigation of 14 acres of land.
5. Diversion under Claim No. 11569 was at Diversion Point 1410 by pump at a maximum rate of 2.04 cfs (1200 gpm).
6. The lands irrigated under Claim No. 11569 are located adjacent to the Concho River in Survey 160, which was patented from the State in 1855.
7. Date of first beneficial use was in Spring 1967.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 11569
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 21 ACRE-FEET PER YEAR
NO. OF ACRES - 14
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 11569 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 14
SURVEY - 160
ABSTRACT - 1867
DIVERSION - 2.04 CFS (1200 GPM) AT DIVERSION POINT 1410
PRIORITY DATE - APRIL 1, 1967

DIVERSION POINT NO. 1420 AND 1425
TRACT NO. 1360

OWNERSHIP:
CHAPPLE BRYAN AND LORNAE BRYAN (Previously Mrs. Katie Blackwood)

IR 233-234
Vol. 6 SF 422-459
Findings:

1. Claim No. 1499 records a riparian water right claim to the use of water from the Concho River for irrigation purposes in Survey 160, Tom Green County. The claimed diversion is at Diversion Point 1420 by a 500 gpm capacity pump from a 64 acre-foot capacity reservoir and 50 acres are declared as irrigable. Maximum use of water claimed during 1963-1967, inclusive, was 100 acre-feet in each year for the irrigation of 50 acres of land at a rate of 500 gpm. The claim indicates additional works were commenced prior to the filing of the claim by repairing the claimed dam and clearing land. The date of first beneficial use of water was asserted to be June, 1953.
2. An Additional Sworn Statement was filed with the Commission recording a maximum use of water during 1968-1970, inclusive, of 100 acre-feet of water in each year for the irrigation of 50 acres of land at a rate of 500 gpm.
3. The maximum use of water during 1963-1970, inclusive, under Claim No. 1499 was 100 acre-feet of water in each year for irrigation of 50 acres of land.
4. Diversion under Claim No. 1499 during 1963-1967, inclusive, was at Diversion Point 1420 by pump at a maximum rate of 1.11 cfs (500 gpm). A 2.2 cfs (1000 gpm) capacity portable pump was used at Diversion Point 1425 beginning in 1970.
5. The lands irrigated under Claim No. 1499 are adjacent to the Concho River and are located in Survey 160 which was patented from the State in 1855.
6. The date of first beneficial use of water was in June, 1953.
7. The claimed reservoir is created by a dam across the Concho River contiguous to property owned by Mary Lou Hall and impounds 700 acre-feet of water. The dam is not contiguous to Chapple Bryan's property although the impounded waters are contiguous.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 1499
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 100 ACRE-FEET PER YEAR
NO. OF ACRES - 50
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 1499 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 14
SURVEY - 160
ABSTRACT - 1867
DIVERSION - 2.2 CFS (1000 GPM) TOTAL AT DIVERSION POINTS 1420 AND 1425
PRIORITY DATE - JUNE 30, 1953
REMARKS CLAIMANT RECOGNIZED A RIGHT TO USE TWO DIVERSION POINTS FOR IRRIGATION OF TRACT 1360. HOWEVER, DIVERSION RATE IS LIMITED TO 2.2 CFS (1000 GPM).

OWNERSHIP
MARYLOU HALL

IR 235-236
Vol. 6 SF 100-500, Vol. 12 SF 515-102 and Vol. 13 SF 10-25
Findings:

1. Claim No. 966 records a claim of water right as a riparian, under equity, and under the Irrigation Acts of 1889 and 1895 for the irrigation of 500 acres of land in Tom Green County Surveys 329, 330 and 331 with 1331 acre-feet of water per annum from a diversion point on the Concho River 2610 feet west from the S.E. corner of Survey No. 331 at a combined diversion rate of 1.44 cfs (2000 gpm) and for the impoundment of 700 acre-feet of water in a reservoir on the Concho River created by a dam located 1540 feet in an easterly direction from the S.W. corner of Survey No. 332 with a priority date of 1904.
2. During the period 1963-1967, inclusive, claimant diverted Concho River water at D-1130 under Claim No. 966 by means of two identical pumps, with a combined capacity of 6.67 cfs (3000 gpm), and diverted Concho River water at D-1435 and D-1415 by a portable pump at a maximum effective rate of 2.23 cfs (1000 gpm). This diversion of water was for the irrigation of land within claim area C-966. All three pumps were simultaneously used from time to time during this period.
3. Claimant's diversion points, D-1430, D-1415 and D-1435 are all on the Concho River on the perimeter of a reservoir caused by a dam constructed in 1901, breached thereafter, and repaired in 1963. A turn out box added to the dam in 1953 has not been operated since installation. At times there is no water flowing over the dam. The reservoir has a capacity of 155 acre-feet of water and is located downstream of claimant's ownership.
4. The date of first beneficial use under Claim No. 966 was in 1955.
5. The tract irrigated under Claim No. 966 is located adjacent to the Concho River in Surveys 329, 330, and 331, which were patented from the State in 1891, 1895 and 1895.
6. Tract T 1375, which is within claim area C-966, was not irrigated during the period 1963-1967, inclusive.
7. The maximum number of acres claimant irrigated during the period 1963-1967, inclusive, in any one year under Claim No. 966 was 230 acres within claim area C-966, which occurred in 1964.
8. During the period 1963-1967, inclusive, claimant diverted Concho River water at D-1430 by means of the two above described pumps with a flood distribution system and applied a maximum annual quantity of 493 acre-feet of water, which occurred in 1965. In addition, claimant diverted Concho River water during this period by means of the 1000 gpm portable pump at D-1435 for the irrigation of a 17 acre field north of the main field. This 17 acre field lies within claim area C-966 and was irrigated from D-1435. In addition, claimant diverted Concho River water during this period by means of the 1000 gpm portable pump for the irrigation of two fields totalling 68 acres to the south of the main field. These two fields lie within claim area C-966 and were irrigated from D-1415. During 1964, the year of highest use on the main field, the 23 acre field was not irrigated, but the above-described 17 acre field and 41 acres of the 68 acres to the south of the main field were irrigated. The total quantity of water used within these 61 acres in 1964 was 122 acre feet.
9. In 1968 a sand and gravel operation was commenced within the claim area. Concho River water has been diverted at Diversion Point No. 1415 by stationary pump. No claim was presented for this use of State water and no evidence was received concerning the usage.
10. The City of San Angelo and San Angelo Water Supply Corporation filed a contest to the recognition of 820 acre-feet of water per year to Marylou Hall in the Final Determination. Subsequently, those parties agreed that the amount of water recognized to Marylou Hall in the Final Determination should be reduced from 820 acre-feet of water per year to 738 acre-feet of water per year.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 966
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 738 ACRE-FEET PER YEAR
NO. OF ACRES - 280
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 1425 DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM AREA C-966
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 14
SURVEYS - 329, 330 AND 331
ABSTRACTS - 1750, 1849 AND 1751
DIVERSION - 8.89 CFS (4000 GPM) AT DIVERSION POINTS 1415, 1450 AND 1435
PRIORITY DATE - 1955

DIVERSION POINT NO: 1440
TRACT NO: 1380

OWNERSHIP:
RENNY R. STIARD

IR 237-238
Vol. 6 SF 509-532
Findings:

1. Claim No. 2573 records a riparian water right claim to use the waters of the Concho River for irrigation purposes in Survey 334, Tom Green County. The claimed diversion is at Diversion Point 1440 by a 250 gpm capacity pump and 15 acres are declared as irrigable. Maximum use of water during 1963-1967, inclusive, was 45 acre-feet in each year for the irrigation of 15 acres at a rate of 500 gpm. The date of first beneficial use was asserted to be April, 1961.
2. The maximum use of water during 1963-1967, inclusive, was 16 acre-feet of water for the irrigation of 14 acres of land.
3. Diversion under Claim No. 2573 was at Diversion Point 1440 by pump at a maximum rate of 0.56 cfs (250 gpm).
4. The lands irrigated under Claim No. 2573 are located adjacent to the Concho River in Survey 334 which was patented from the State in 1855.
5. The date of first beneficial use of water was April 1961.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2573
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 16 ACRE-FEET PER YEAR
NO. OF ACRES - 14
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 2573 ON OWNED TRACT
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 14
SURVEY - 334
ABSTRACT - 1862
DIVERSION - 0.56 CFS (250 GPM) AT DIVERSION POINT 1440
PRIORITY DATE - April 30, 1961

DIVERSION POINT NO: NONE
TRACT NO: 1390

OWNERSHIP:
PAUL GREGORY (Previously Dr. Claude B. Beall)

IR 239
Vol. 9 SF 253-259
Findings:

1. Claim No. 6188 records a riparian water right claim to use the waters of the Concho River for irrigation purposes in Survey No. 155, Tom Green County. The claimed diversion is from a point adjacent to Tract 1390 by a pump of unspecified capacity and 3 to 5 acres of land are declared as irrigable. Claimant states there is "no record" of water usage during the period 1963-1967, inclusive, and that no works were commenced prior to the filing of this claim to apply a greater quantity of water to beneficial use. The date of first beneficial use of water is "unknown".

2. There was no evidence adduced as to water use on this tract during the period 1963-1967, inclusive, in order to quantify either the amount of water used or the number of acres irrigated.
3. The land claimed for irrigation under Claim No. 6188 is adjacent to the Concho River in Survey 155, which was patented from the State in 1855.
4. There are no diversion or distribution facilities for irrigation associated with the claim area.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 6188

DIVERSION POINT NO: 1450
TRACT NO: 1400

OWNERSHIP:
RAYMOND D. MUSICK

IR 240
Vol. 6 SF 559-571
Findings:

1. Claim No. 11570 records a riparian water right claim to the use of water from the Concho River for irrigation purposes in Survey 154, Tom Green County. The claimed diversion is at Diversion Point 1450 by a 500 gpm capacity pump for irrigation and by a 2-inch pump for domestic use. Fifty acres of land are declared as irrigable. The maximum use of water claimed during 1963-1967, inclusive, was of an unknown number of acre-feet of water for the irrigation of 15 acres of land at a rate of 500 gpm. The date of first claimed beneficial use is 1957.
2. An Additional Sworn Statement was filed with the Commission recording an unknown quantity of water was used for irrigation of an unknown number of acres at a rate of 500 gpm.
3. The maximum use of water during the period 1963-1970, inclusive, under Claim No. 11570 was 24 acre-feet of water in each year for irrigation of 12 acres of land.
4. Diversion under Claim No. 11570 was at Diversion Point 1450 by pump at a maximum rate of 1.11 cfs (500 gpm).
5. The lands claimed for irrigation under Claim No. 11570 are adjacent to the Concho River in Survey 154 which was patented from the State in 1865.
6. The date of first beneficial use of water under Claim No. 11570 was in 1957.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 11570
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 24 ACRE-FEET PER YEAR
NO. OF ACRES - 12
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 11570 ON OWNED TRACT
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 11
SURVEY - 154
ABSTRACT - 347
DIVERSION - 1.11 CFS (500 GPM) AT DIVERSION POINT 1450
PRIORITY DATE - DECEMBER 31, 1957

DIVERSION POINT NO: 1460 AND 1490
TRACT NO: 1410

OWNERSHIP:
MRS. MARGARET BARNET DINKLAGE

IR 241-242
Vol. 6 SF 574-599
Findings:

1. Permit No. 524, owned jointly with the City of San Angelo, authorizes the use of 260 acre-feet of storm and flood water per annum from the Concho River for irrigation of 130 acres of land in Survey 338, Tom Green County. The permit also authorizes a dam and 130 acre-foot capacity on-channel reservoir and diversion at Diversion Point 1490 at an unspecified diversion rate. The permit stipulates that the application of water be limited to two acre-feet of water for each acre actually irrigated. Mrs. Margaret Barnet Dinklage owns 62.4 acres of land within the permit boundaries.
2. Claim No. 3558 records a riparian right claim to use the waters of the Concho River for irrigation purposes in Surveys 337 and 338, Tom Green County. The claimed diversion is at Diversion Point 1460 by two pumps, one having a capacity of 1500 gpm and one having a capacity of 400 gpm, from a 50 acre-foot on-channel reservoir with 180 acres of land declared as irrigable. The maximum use of water claimed during 1963-1967, inclusive, was 190 acre-feet in 1967 and the irrigation of 150 acres in 1966 at a rate of 1900 gpm. The claim indicates no additional works were commenced or completed prior to the filing of this claim for the application of a greater amount of water to beneficial use. The date of first beneficial use was asserted to be 1922.
3. The maximum use of water during 1963-1967, inclusive, under Claim No. 3558 was 184 acre-feet of water in 1967 and the irrigation of 121 acres of land in each year. This 121 acre tract includes the 62.4 acres owned by Mrs. Margaret Barnet Dinklage within the boundaries of Permit No. 524.
4. Although there was irrigation on the lands covered by Permit No. 524 which belong to Mrs. Margaret Barnet Dinklage, no evidence was adduced as to the maximum use of water or number of acres irrigated under the permit as distinguished from use under the riparian claim.
5. Diversion under Claim No. 3558 was at Diversion Point 1460 by two pumps having a combined capacity of 4.23 cfs (1900 gpm). Diversion Point 1490, as authorized by Permit No. 524, is located on land now belonging to the City of San Angelo and there was no evidence as to its use in connection with the area of Permit No. 524 belonging to Mrs. Margaret Barnet Dinklage.
6. The lands irrigated under Claim No. 3558 are located adjacent to the Concho River in Surveys 337 and 338, which were patented from the State in 1855.
7. The date of first beneficial use under Claim No. 3558 was 1922. The application for Permit No. 524 was filed on January 3, 1921.
8. The dam and reservoir authorized by Permit No. 524 and claimed under Claim No. 3558 are in existence. The dam is located contiguous with land owned by the City of San Angelo.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 524 AND CLAIM NO. 3558
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 184 ACRE-FEET PER YEAR
NO. OF ACRES - 121
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF PERMIT NO. 524 AND CLAIM NO. 3558 ON OWNED TRACT
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 14
SURVEYS - 337 AND 338
ABSTRACTS - 1869 AND 1771
DIVERSION - 4.23 CFS (1900 GPM) AT DIVERSION POINT 1460
PRIORITY DATE - JANUARY 3, 1921

DIVERSION POINT NO: 1470
TRACT NO: 1470

OWNERSHIP
MURRAY S. BROOKS

IR 245-211
Vol. 9 SF 553-540
Findings:

1. Claim No. 791 records a riparian claim of water right to the waters of the Concho River for irrigation purposes in Survey 154, Tom Green County. The claimed diversion is at Diversion Point 1470 by a 900 gpm pump, with 33 acres declared as irrigable. The maximum use of water claimed during 1963-1967, inclusive, was 60 acre-feet of water in 1965 and 1966 for irrigation of 30 acres at a rate of 900 gpm. The claim indicates additional works consisting of the clearing of land and purchase of pipe were commenced prior to the filing of the claim for the application of additional quantities of water to beneficial use. The date of first beneficial use of water was asserted to be August 1, 1962.
2. No Additional Sworn Statement was filed with the Commission to record a claim of water right on the basis of use during 1968-1970, inclusive.
3. The maximum use of water during 1963-1967, inclusive, under Claim No. 791 was 45 acre-feet of water per year in 1965 and 1966 for irrigation of 23 acres, as planimetered.
4. Diversion under Claim No. 791 was at Diversion Point 1470 by pump having a capacity of 2.01 cfs (900 gpm). Diversion Point 1470 is located on land owned by Ina Geneva Wilhite and by agreement the pump at that location serves lands irrigated under both Claim No. 791 and Claim No. 1381.
5. The lands irrigated under Claim No. 791 are located adjacent to the Concho River in Survey 154 which was patented from the State in 1865.
6. The date of first beneficial use under Claim No. 791 was August 1, 1962.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 791
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 45 ACRE- FEET PER YEAR
NO. OF ACRES - 33
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 791 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 14
SURVEY - 154
ABSTRACT - 347
DIVERSION - 2.01 CFS (900 GPM) AT DIVERSION POINT 1470
PRIORITY DATE - AUGUST 1, 1962

DIVERSION POINT NO: 1470
TRACT NO: 1470

OWNERSHIP
INA GENEVA WILHITE

IR 245-210
Vol. 9 SF 601-632
Findings:

1. Claim No. 1381 records a riparian claim of water right to the waters of the Concho River for irrigation purposes in Survey 154, Tom Green County. The claimed diversion is at Diversion Point 1470 by a 900 gpm capacity portable pump with 30 acres declared as irrigable. The maximum use of water claimed during 1963-1967, inclusive, was 70 acre-feet of water in 1966 for the irrigation of 20 acres at a rate of 900 gpm. The claim indicates additional works were commenced prior to the filing of this claim, consisting of the clearing of land and purchase of irrigation pipe, for the application of an additional quantity of water to beneficial use. The date of first beneficial use of water was asserted to be August 1, 1962.
2. No Additional Sworn Statement was filed with the Commission to record a claim of water right based on use during 1968-1970, inclusive.
3. The maximum use of water during 1963-1967, inclusive, under Claim No. 1381 was 40 acre-feet of water per year in 1966 and 1967 for the irrigation of 20 acres.
4. Diversion under Claim No. 1381 was at Diversion Point 1470 at a maximum rate of 2.01 cfs (900 gpm). Diversion Point 1470 and the pump at that location are used jointly with Murray K. Brooks, Claim No. 791.
5. The lands irrigated under Claim No. 1381 are located adjacent to the Concho River in Survey 154 which was patented from the State in 1865.
6. The date of first beneficial use of water under Claim No. 1381 was August 1, 1962.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 1381
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 40 ACRE- FEET PER YEAR
NO. OF ACRES - 20
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 1381 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 14
SURVEY - 154
ABSTRACT - 347
DIVERSION - 2.01 CFS (900 GPM) AT DIVERSION POINT 1470
PRIORITY DATE - AUGUST 1, 1962

DIVERSION POINT NO: 1480
TRACT NO: 1440 AND 1445

OWNERSHIP
ERANON FORD

IR 247-248
Vol. 6 SF 641-653
Findings:

1. Claim No. 181 records a claim of water right to the use of water from the Concho River for irrigation purposes in Survey 153, Tom Green County. The claimed diversion is at Diversion Point 1480 by a 700 gpm capacity pump from a 130 acre-foot capacity reservoir with 100 acres declared as irrigable. The maximum claimed use of water during 1963-1967, inclusive, was 52 acre-feet of water in each year for irrigation of 52 acres at a rate of 750 gpm. The date of first beneficial use was asserted to be about May, 1925.
2. An Additional Sworn Statement was filed with the Commission indicating a maximum use of water during 1968-1970, inclusive, of 20 acre-feet for the irrigation of 28 acres in each year at a maximum rate of 700 gpm.
3. The maximum amount of water used during 1963-1970, inclusive, under Claim No. 181 was 88 acre-feet per year for the irrigation of 44 acres of land, as planimetered.
4. Diversion under Claim No. 181 was at Diversion Point 1480 at a maximum rate of 1.56 cfs (700 gpm).
5. The lands irrigated under Claim No. 181 are located adjacent to the Concho River in Survey No. 153, which was patented from the State in 1855.
6. The date of first beneficial use under Claim No. 181 was May, 1925.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 181
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 88 ACRE- FEET PER YEAR
NO. OF ACRES - 44
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 181 ON OWNED TRACTS.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 14
SURVEY - 153
ABSTRACT - 55
DIVERSION - 1.56 CFS (700 GPM) AT DIVERSION POINT 1480
PRIORITY DATE - MAY 31, 1925

DIVERSION POINT NO: 1480
TRACT NO: 1450

OWNERSHIP
CITY OF SAN ANGELO

IR 249
Vol. 9 SF 64-90
Findings:

1. Permit No. 524, owned jointly with Mrs. Margaret Dinklage, authorizes the impoundment and diversion of storm and flood water from the Concho River for the irrigation of 130 acres of land in Survey No. 338, Tom Green County, with 260 acre-feet of water. The permit further authorized the construction of a dam and 130 acre-foot reservoir at the southeast corner of Survey No. 338 and impoundment of 260 acre-feet of water. Permittees were to divert from a pumping plant located adjacent to the reservoir and the application of water was to be limited to 2 acre-feet of water for each acre actually irrigated.
2. The City of San Angelo owns 67.5 acres within the area of Permit No. 524, and the remainder is owned by Mrs. Margaret Dinklage.
3. The maximum use of water under the City of San Angelo's portion of Permit No. 524 was 135 acre-feet of water in 1960 for the irrigation of 67.5 acres.
4. Recent irrigation on Tract 1450 has been using sewage effluent from the City of San Angelo's sewage treatment plant and has not employed public water.
5. Diversion under Permit No. 524 has been at Diversion Point 1490, located adjacent to the permitted reservoir, at a maximum rate of 3.34 cfs (1500 gpm).
6. The permitted dam and reservoir have been constructed and have an impounding capacity of 130 acre-feet.
7. The application for Permit No. 524 was filed on January 3, 1921.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 524
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 130 ACRE- FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 135 ACRE- FEET PER YEAR, LIMITED TO 2 ACRE- FEET PER ACRE ACTUALLY IRRIGATED
NO. OF ACRES - 67.5
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF PERMIT NO. 524 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 14
SURVEY - 338
DIVERSION - 3.34 CFS (1500 GPM) AT DIVERSION POINT 1490
PRIORITY DATE - JANUARY 3, 1921

DIVERSION POINT NO: 1500, 1520 AND 1530
TRACT NO: 1460

OWNERSHIP:
HEZZIE CARSON

IR 250-251
Vol. 6 SF 655-678
Findings:

1. Certified Filing No. 822 authorizes the use of an unspecified quantity of water from the Concho River for the irrigation of 55 acres of land in Survey 339, Tom Green County. Diversion under the certified filing was authorized at Diversion Point 1530 by a 2.2 cfs (1000 gpm).
2. Claim No. 221 records a claim of water right as a riparian to the use of water from the Concho River for irrigation purposes in Survey 339, Tom Green County. The claimed diversion was at Diversion Points 1500, 1520 and 1530, by three pumps, each having a capacity of 800 gpm, and 198.1 acres were declared as irrigable. The maximum use of water claimed during 1963-1967, inclusive, was 752.4 acre-feet of water in 1965 for the irrigation of 198 acres of land in each year, 1965-1967, and a maximum diversion rate of 2400 gpm with three pumps. The date of first beneficial use was unknown.
3. An Additional Sworn Statement was filed with the Commission recording a maximum use of water during 1968-1970, inclusive, of 630.8 acre-feet of water in 1969 for irrigation of 234 acres of land at a maximum diversion rate of 2000 gpm.
4. The maximum historical use of water under Certified Filing No. 822 was 139 acre-feet of water for the irrigation of 55 acres of land.
5. The maximum use of water during 1963-1970, inclusive, under Claim No. 221 was 500 acre-feet of water for the irrigation of 200 acres of land in 1969. The lands irrigated and water used under Claim No. 221 included those recognized under Certified Filing No. 822.
6. Diversion under Claim No. 822 was at Diversion Points 1500, 1520 and 1530 at a maximum rate of 1.8 cfs (800 gpm) at each point. Diversion Point 1530 is also authorized by Certified Filing No. 822.
7. The lands irrigated under Claim No. 221 are located adjacent to the Concho River in Survey No. 339, which was patented from the State in 1855.
8. Certified Filing No. 822 was filed on December 19, 1911.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 822 AND CLAIM NO. 221

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 500 ACRE-FEET PER YEAR
NO. OF ACRES - 200
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 822 AND CLAIM NO. 221, ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 14
SURVEY - 339
ABSTRACT - 1305
DIVERSION - 5.4 CFS (2400 GPM) TOTAL AT DIVERSION POINT 1500, DIVERSION POINT 1520 AND DIVERSION POINT 1530
PRIORITY DATE - DECEMBER 19, 1911

REMARKS: THE RECOGNIZED DIVERSION RATE IS A COMBINED RATE FOR ALL THREE POINTS AND NOT A SEPARATE RATE FOR EACH.

DIVERSION POINT NO: 1510
TRACT NO: 1470

OWNERSHIP:
HARRY DANTEL

IR 252
Vol. 6 SF 679-693
Findings:

1. Claim No. 11555 records a riparian right claim to the waters of the Concho River for irrigation purposes in Survey 152, Tom Green County. Diversion was claimed at Diversion Point 1510 by a 300 gpm capacity pump, with 50 acres declared as irrigable. The maximum water use claimed during 1963-1967, inclusive, was 48 acre-feet for the irrigation of 60 acres of land in 1966 at a rate of 300 gpm. The date of first beneficial use was asserted to be March, 1966.
2. An Additional Sworn Statement was filed with the Commission recording a maximum water use during 1968-1970, inclusive, of 45 acre-feet of water in 1969 and 1970 for irrigation of 65 acres of land at a rate of 300 gpm.
3. The maximum use of water during 1963-1970, inclusive, was 48 acre-feet in 1966 and the irrigation of 65 acres in 1969 and 1970.
4. Diversion under Claim No. 11555 was at Diversion Point 1510 at a maximum rate of 0.67 cfs (300 gpm).
5. The lands irrigated under Claim No. 11555 are located adjacent to the Concho River in Survey 152 which was patented from the State in 1855.
6. The date of first beneficial use of water under Claim No. 11555 was March, 1966.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 11555

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 48 ACRE-FEET PER YEAR
NO. OF ACRES - 65
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 11555 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 8 OF 11, PAGE 14
SURVEY - 152
ABSTRACT - 12965
DIVERSION - 0.67 CFS (300 GPM) AT DIVERSION POINT 1510
PRIORITY DATE - MARCH 31, 1966

DIVERSION POINT NO: 1540
TRACT NO: 1480

OWNERSHIP:
MRS. NELSON L. ERWIN

IR 253-254
Vol. 6 SF 736-799 and Vol. 9A SF 20
Findings:

1. Permit No. 234A, as amended on October 13, 1973, authorizes the annual diversion of 210 acre-feet of water from a reservoir on the Concho River for the irrigation of 105 acres out of Survey 347, Tom Green County, at a maximum diversion rate of 3.0 cfs (1350 gpm) at Diversion Point 1540, limited to 2 acre-feet per acre actually irrigated. The permit authorizes the addition of 2.2 feet to the height of a dam owned by Tract 1480 owner Mrs. Gladys M. Lewis under Permit No. 145A so as to increase the capacity of the reservoir by 54 acre-feet.
2. The dam addition authorized by Permit No. 234A was completed in 1919. The dam was breached prior to 1953 and has not since been functional.
3. Claim No. 6015 and an Additional Sworn Statement seek a riparian water right and a right under Permit No. 234 to annually divert 498.06 acre-feet of water from the Concho River for the irrigation of an unspecified number of acres out of Survey 347, Tom Green County, at a maximum diversion rate of 3.12 cfs (1400 gpm) at Diversion Point 1540 with a priority date of 1905.
4. Survey 347 is adjacent to the Concho River and was patented from the State in 1857. The claim area is adjacent to the Concho River and contains all of the area under Permit No. 234A.
5. Maximum use on the permit area prior to 1953 was 210 acre-feet of water diverted from the reservoir to irrigate 105 acres in various years. It was established that the authorized dam was breached on several occasions prior to 1953. Maximum use subsequent to 1953 on the permit area was 210 acre-feet diverted from the Concho River to irrigate 105 acres in 1944 at a maximum diversion rate of 3.12 cfs (1400 gpm) at Diversion Point 1540.
6. Maximum use during the period 1953-1970, inclusive, was 210 acre-feet diverted from the Concho River to irrigate 112 acres in 1965, at a maximum diversion rate of 3.12 cfs (1400 gpm) at Diversion Point 1540.
7. Application for Permit No. 234 was filed on December 22, 1917.
8. First beneficial use of Concho River water for irrigation within the claim area was in 1919.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 234A AND CLAIM NO. 6015

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - ONE 51 ACRE-FOOT CAPACITY ADDITION TO RESERVOIR AUTHORIZED BY PERMIT NO. 145A
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 210 ACRE-FEET PER YEAR
NO. OF ACRES - 112
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF PERMIT NO. 234A AND CLAIM NO. 6015 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEY - 347
ABSTRACT - 232
DIVERSION - 3.12 CFS (1400 GPM) AT DIVERSION POINT 1540
PRIORITY DATE - DECEMBER 22, 1917

DIVERSION POINT NO: 1550
TRACT NO: 1490

OWNERSHIP:
MRS. GLADYS M. LEWIS

IR 255-256
Vol. 6 SF 694-724 and Vol. 9A SF 17
Findings:

1. Permit No. 145A, as partially cancelled on September 22, 1954 and as amended on August 31, 1970, is owned jointly with M.J. Krall, owner of Tract 1500. The permit authorizes the annual diversion of 240 acre-feet of water from a 400 acre-foot capacity reservoir on the Concho River. One hundred and seventy eight acre-feet are authorized to be diverted for the irrigation of 120 acres out of Survey 144, Tom Green County, at a maximum diversion rate of 3.0 cfs (1350 gpm) at Diversion Point 1550, limited to 2 acre-feet per acre actually irrigated, and 62 acre-feet are authorized to be diverted for industrial use (catfish farming) on Tract 1500. Claimant owns 83 acres within the permit area.
2. The dam authorized by Permit No. 145A was constructed as authorized. It was breached prior to 1953 and has not since been functional.
3. Maximum use under claimant's portion of Permit No. 145A prior to 1953 was not established. Maximum use subsequent to 1953 on the permit area now owned by the claimant was 115 acre-feet of water diverted from the Concho River in 1964 to irrigate 74 acres of land, designated as Tract 1490, at a maximum diversion rate of 3.12 cfs (1400 gpm) at Diversion Point 1550.
4. Claim No. 170 and an Additional Sworn Statement seek a right to annually divert 160 acre-feet of water from the Concho River for the irrigation of 92.65 acres out of Survey No. 144, Tom Green County, at a maximum diversion rate of 4.01 cfs (1800 gpm) at Diversion Point 1550 with a priority date of 1916. The claim area includes owned Tract 1490 and Tract 1500 which is owned by M.J. Krall.
5. Survey 144 is adjacent to the Concho River and was patented from the State in 1855. Claimant's portion of the claim area, which includes Tract 1490, is separated from the Concho River by other land owned by the claimant.
6. Maximum use on claimant's portion of the claim area during the period 1963-1970, inclusive, was 115 acre-feet of water diverted from the Concho River to irrigate 74 acres in 1964, inclusive, at a maximum diversion rate of 3.12 cfs (1400 gpm) at Diversion Point 1550.
7. Application for Permit No. 145 was filed on May 13, 1916.
8. First beneficial use of Concho River water for irrigation within claimant's portion of the claim area was in 1916.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 145A AND CLAIM NO. 170

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 400 ACRE-FOOT
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 115 ACRE-FEET PER YEAR
NO. OF ACRES - 74
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF PERMIT NO. 145A AND CLAIM NO. 170 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEY - 144
ABSTRACT - 1872
DIVERSION - 3.12 CFS (1400 GPM) AT DIVERSION POINT 1550
PRIORITY DATE - MAY 13, 1916

DIVERSION POINT NO: 1550
TRACT NO: 1500

OWNERSHIP:
JOHN F. AND RUTH S. JORDAN

IR 257
Vol. 6 SF 725-735
Findings:

1. Permit No. 145A, as partially cancelled on September 22, 1958 and as amended on August 31, 1970, is owned jointly with Tract 1190 owner Gladys M. Lewis. The permit authorizes the annual diversion of 240 acre-feet of water from a 400 acre-foot capacity reservoir on the Concho River for the irrigation of 120 acres out of Survey 144, Tom Green County, at a maximum diversion rate of 3.0 cfs (1550 gpm) at Diversion Point 1550 limited to 2 acre-feet per acre actually irrigated. By amendment on August 31, 1970, the purpose of use of 62 acre-feet of the 240 acre-feet authorized was changed to industrial use (catfish farming) on Tract 1500. Claimant owns 32 acres within the permit area.
2. The dam authorized by Permit No. 145A was constructed as authorized. It was breached prior to 1953 and has not since been functional.
3. Claim No. 170 and an Additional Sworn Statement seek a right to annually divert 60 acre-feet from the Concho River for the irrigation of 92.65 acres out of Survey No. 144, Tom Green County, at a maximum diversion rate of 4.01 cfs (1800 gpm) at Diversion Point 1550 with a priority date of 1916. The claim area includes Tract 1190 which is owned by Mrs. Gladys M. Lewis.
4. Survey 144 is adjacent to the Concho River and was patented from the State in 1955. Claimant's portion of the claim area, which includes Tract 1500, is separated by the Concho River by other land owned by the claimant.
5. Maximum use under claimant's portion of Permit No. 145A prior to 1953 was not established. Maximum use subsequent to 1953 on the permit area now owned by the claimant was 32 acre feet of water diverted from the Concho River to irrigate 20 acres of land, designated as Tract 1500, in 1961 at a maximum diversion rate of 3.12 cfs (1400 gpm) at Diversion Point 1550. Industrial use was not established.
6. Maximum use on claimant's portion of the claim area during the period 1961-1970, inclusive, was 32 acre-feet of water diverted from the Concho River to irrigate 20 acres, Tract 1500, in 1964 at a maximum diversion rate of 3.12 cfs (1400 gpm) at Diversion Point 1550.
7. Application for Permit No. 145 was filed on May 15, 1916.
8. First beneficial use of Concho River water for irrigation within claimant's portion of the claim area was in 1916.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 145A AND CLAIM NO. 170
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 400 ACRE-Feet
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 32 ACRE-Feet PER YEAR
NO. OF ACRES - 20
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF PERMIT NO. 145A AND CLAIM NO. 170 ON OWNED TRACT
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEY - 144
ABSTRACT - 1972
DIVERSION - 3.12 CFS (1400 GPM) AT DIVERSION POINT 1550
PRIORITY DATE - MAY 15, 1916

DIVERSION POINT NOS: 1570 and 1550
TRACT NO: 1510

OWNERSHIP:
MRS. ELTON DAVIS

IR: 253
Vol. 6 SF 300-309 and Vol. 12 SF 403-436
Findings:

1. Permit No. 232, which claimant owns jointly with Tract 1510 owner Mrs. E. M. Hart, authorizes the permittee to annually divert and use 170 acre-feet of storm and flood water of the Concho River at a maximum diversion rate of 5 cfs (2250 gpm) at D-1570 and 1580 for the irrigation of 135 acres of land out of Tom Green County Surveys 348 and 349, and to impound 20 acre-feet of storm and flood water in a reservoir created by a six foot high dam across the bed of the Concho River.
2. The dam authorized by Permit No. 232 was constructed as authorized. In 1924 or 1925 the height of the dam was increased to 12 feet. Part of the dam was washed out in 1936 and has not been repaired since that time.
3. Irrigation under Permit No. 232 has been continuous since its issuance except for seven years. The maximum area ever irrigated under Permit No. 232 by claimant was 59 acres of land within the permit area and 2 adjacent acres of land outside the permit area, all within Survey No. 348.
4. The maximum irrigation with storm and flood water by claimant within tract T-1510 occurred in years prior to the Permit No. 232 dam breaching in 1936 when 121 acre-feet were diverted at D-1570, the authorized diversion point on the Concho River.
5. Claimant has utilized an unauthorized diversion point on the Concho River, D-1588, but such use was discontinued in 1970.
6. The maximum diversion rate by claimant was 2.2 cfs (1000 gpm) in sixty years. In recent years the maximum diversion rate has been 1.8 cfs (800 gpm).
7. An existing dam on the Concho River, reconstructed in 1971 or 1972, downstream of permit area P-232, and authorized under Permit No. 398 until the permit was cancelled, causes Concho River water to back up past claimant's authorized diversion point, D-1570.
8. Application for Permit No. 232 was filed on December 22, 1917.
9. Claimant's diversion and use of water prior to 1936 and since 1971 has been storm and flood water of the Concho River at D-1570, as authorized.
10. Claimant's change of place of use of irrigation did not and has no potential to operate to the injury of any other lawful user of State water.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 232
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 86 ACRE-Feet
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 122 ACRE-Feet PER YEAR
NO. OF ACRES - 61
IRRIGATED TRACT SHOWN AS AREA OUTLINED IN RED ON EXHIBIT NO. 1427
TRACT AND DAM LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 348
DIVERSION - 2.2 CFS (1000 GPM) AT DIVERSION POINT 1570
PRIORITY DATE - DECEMBER 22, 1917

DIVERSION POINT NO: NONE
TRACT NO: 1520

OWNERSHIP:
CECIL E. TUCKER

IR 259
Vol. 6 SF 846-850
Findings:

1. Claim No. 5161 seeks a riparian water right to annually divert 80 acre-feet of water from a reservoir on Big Crownest Creek, a tributary of the Concho River, for the irrigation of 15 acres out of Surveys 942 and 3, Tom Green County, at a maximum diversion rate of 1.78 cfs (800 gpm) at an unspecified diversion point with a priority date of May 1961.
2. Surveys 942 and 3 cross Big Crownest Creek. Survey 942 was patented from the State in 1961. Survey 3 was patented from the State in 1916 and therefore the portion of the claim area within that survey is nonriparian. The claim area lies across Big Crownest Creek.
3. Maximum use during the period 1963-1967, inclusive, was not established. Any irrigation within the claim area has been solely on that portion within Survey 3.
4. Claimant has a small dam and on-channel reservoir on Big Crownest Creek. Use of this reservoir was not established.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 5161

DIVERSION POINT NO: 1530
TRACT NO: 1530

OWNERSHIP:
MRS. E. M. HART

IR: 260
Vol. 6 SF 810-818 and Vol. 12 SF 403-436
Findings:

1. Permit No. 232, which claimant owns jointly with Tract 1510 owner Mrs. Elton Davis, authorizes the permittee to annually divert and use 170 acre-feet of storm and flood water of the Concho River at a maximum diversion rate of 5 cfs (2250 gpm) at D-1570 and D-1580 for the irrigation of 135 acres of land out of Tom Green County Surveys 348 and 349, and to impound 20 acre-feet of storm and flood water in a reservoir created by a six foot high dam across the bed of the Concho River.
2. The dam authorized by Permit No. 232 was constructed as authorized. In 1924 or 1925 the height of the dam was increased to 12 feet. Part of the dam was washed out in 1936 and has not been repaired since that time.
3. Irrigation under Permit No. 232 has been continuous since its issuance except for seven years. The maximum area ever irrigated under Permit No. 232 by claimant was 43 acres within the permit area and 3 adjacent acres outside the permit area, all within Survey No. 349.
4. The maximum irrigation with storm and flood water by claimant within tract T-1530 occurred in 1971 and in 1972 when 94 acre-feet were diverted at D-1590.
5. The maximum diversion rate by claimant was 1.8 cfs (800 gpm) at Diversion Point 1580, an authorized diversion point on Big Crownest Creek.
6. An existing dam on the Concho River, reconstructed in 1971 or 1972, downstream of permit area P-232, and authorized under Permit 398 until the permit was cancelled, causes Concho River water to back up Big Crownest Creek past claimant's authorized diversion point, D-1590. It also causes water to back the Concho River near D-1570, the diversion point of co-permittee, Mrs. Elton Davis.
7. Application for Permit No. 232 was filed on December 22, 1917.
8. Claimant's diversion and use of water prior to 1936 and since 1971 has been storm and flood water of the Concho River at D-1580, as authorized.
9. Claimant's change of place of use of irrigation did not and has no potential to operate to the injury of any other lawful user of State water.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 232
SOURCE OF WATER - CONCHO RIVER AND BIG CROWNEST CREEK
NO. OF RESERVOIRS - 1 CAPACITY 86 ACRE-Feet
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 94 ACRE-Feet PER YEAR
NO. OF ACRES - 51
IRRIGATED TRACT SHOWN AS AREA OUTLINED IN RED ON EXHIBIT NO. 1429
TRACT AND DAM LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 349
DIVERSION - 1.8 CFS (800 GPM) AT DIVERSION POINT 1580
PRIORITY DATE - DECEMBER 22, 1917

DIVERSION POINT NO: 1590
TRACT NO: 1540

OWNERSHIP:
MRS. MARY B. JOHNSON HALL

IR 261
Vol. 6 SF 819-845
Findings:

1. Claim No. 972 seeks a riparian water right to annually divert 188 acre-feet of water from the Concho River for the irrigation of 94 acres out of Survey 143, Tom Green County, at a maximum diversion rate of 2.67 cfs (1200 gpm) at various diversion points with a priority date of prior to 1919.
2. Survey 143 is adjacent to the Concho River and was patented from the State in 1860. The claim area is adjacent to the Concho River.
3. Maximum use during the period 1963-1967, inclusive, was 188 acre-feet of water per year diverted from the Concho River to irrigate 94 acres during the period 1965-1967, inclusive, at a maximum rate of 2.67 cfs (1200 gpm) at Diversion Point 1590.
4. First beneficial use of Concho River water for irrigation within the claim area was prior to 1919.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 972
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 188 ACRE-Feet PER YEAR
NO. OF ACRES - 94
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 972 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEY - 143
ABSTRACT - 89
DIVERSION - 2.67 CFS (1200 GPM) AT DIVERSION POINT 1590
PRIORITY DATE - DECEMBER 31, 1918

DIVERSION POINT NO: 1600
TRACT NO: 1570

OWNERSHIP:
LOIS MCGLOTHLIN

IR 262-263
Vol. 7 SF 160-190
Findings:

1. Certified Filing No. 292, owned jointly with Tract 1570 owner J. Elton Williams, authorizes the annual diversion of an unspecified amount of water from the Concho River for the irrigation of 40 acres out of Survey 351, Tom Green County, at a maximum diversion rate of 3.34 cfs (1500 gpm) at a diversion point downstream from Diversion Point 1600. Claimant owns approximately 25 acres within the certified filing area.
2. Claim No. 2844 seeks a riparian water right and a right under Certified Filing No. 292 to annually divert 152.5 acre-feet of water from the Concho River for the irrigation of 156 acres out of Surveys 350 and 351, Tom Green County, at a maximum diversion rate of 3.34 cfs (1500 gpm) at Diversion Point 1600 with a priority date prior to 1914.
3. Surveys 350 and 351 are adjacent to the Concho River and were patented from the State in 1855. The claim area includes the area under the claimant's portion of Certified Filing No. 292 and is adjacent to the Concho River.
4. Maximum use under claimant's portion of Certified Filing No. 292 was 25 acre-feet of water diverted from the Concho River in 1964 to irrigate 25 acres at a maximum diversion rate of 3.34 cfs (1500 gpm) at Diversion Point 1600.
5. Maximum use during the period 1964-1967, inclusive, was 86 acre-feet of water diverted from the Concho River to irrigate 86 acres in 1964 at a maximum diversion rate of 3.34 cfs (1500 gpm) at Diversion Point 1600.
6. Construction of diversion facilities was commenced in March, 1911, and Certified Filing No. 292 was filed on June 27, 1914.
7. First use of Concho River water for irrigation within the claim area was in March, 1911.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 292 AND CLAIM NO. 2844

SOURCE OF WATER - CONCHO RIVER

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 86 ACRE-FEET PER YEAR

NO. OF ACRES - 86

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 292 AND CLAIM NO. 2844 ON OWNED TRACT.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 9 OF 11, PAGE 15

SURVEYS - 350 AND 351

ABSTRACTS - 280 AND 311

DIVERSION - 3.34 CFS (1500 GPM) AT DIVERSION POINT 1600

PRIORITY DATE - MARCH 31, 1911

DIVERSION POINT NO: 1610
TRACT NO: 1560

OWNERSHIP:
HAYWARD E. KRALL
JOHNYE M. KRALL

IR 264-265
Vol. 7 SF 2-60
Findings:

1. Claim No. 974 seeks a riparian water right, a right under Article 7500a and an equitable right to annually divert 110 acre-feet of water from the Concho River and from a reservoir on the Concho River for the irrigation of 55 acres out of Survey 142, Tom Green County, at a maximum diversion rate of 2.67 cfs (1200 gpm) at various diversion points with a priority date prior to 1919.
2. The claimed dam and reservoir were authorized under Permit No. 398 which was cancelled on November 15, 1954. The capacity of the reservoir is approximately 55 acre-feet.
3. Survey 142 is adjacent to the Concho River and was patented from the State in 1855. The claim area is adjacent to the river.
4. Maximum use during the period 1963-1967, inclusive, was 110 acre-feet of water diverted from the Concho River to irrigate 50 acres at a maximum diversion rate of 2.67 cfs (1200 gpm) at Diversion Point 1610.
5. First use of Concho River water for irrigation within the claim area was on February 28, 1925.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 974

SOURCE OF WATER - CONCHO RIVER

NO. OF RESERVOIRS - 1 CAPACITY 55 ACRE-FEET (2/3 INTEREST)

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 110 ACRE-FEET PER YEAR

NO. OF ACRES - 50

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 974 ON OWNED TRACT.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 9 OF 11, PAGE 15

SURVEY - 142

ABSTRACT - 1806

DIVERSION - 2.67 CFS (1200 GPM) AT DIVERSION POINT 1610

PRIORITY DATE - FEBRUARY 28, 1925

DIVERSION POINT NOS: 1620 and 1625
TRACT NOS: 1570 and 1575

OWNERSHIP:
J. ELTON WILLIAMS

IR: 266-267
Vol. 9 SF 31-56, Vol. 12 SF 437-474 and Vol. 13 SF 3-10
Findings:

1. Claimant's Section 5.307 claim asserts a right under Permit No. 371, Certified Filing No. 292, and Section 5.307 Claim No. 3172 to annually divert and use 214 acre-feet of water for the irrigation of 180 acres of land at a maximum diversion rate of 4.44 cfs (2000 gpm) with a priority date of 1914. Diversion is claimed from the Concho River. Claimant also claims a reservoir with an impounding capacity of 80 acre-feet.
2. Permit No. 371, owned jointly with Tract No. 1590 owner Wayne Chandler, authorizes the impoundment of 67 acre-feet of water in a reservoir on the Concho River and the annual diversion and use therefrom of 134 acre-feet of water for the irrigation of 67 acres of land out of Surveys Nos. 352 and 353, Tom Green County, at an unspecified diversion rate from the perimeter of the reservoir. Claimant owns approximately 31 acres out of Survey No. 352 within the permit area.
3. Certified Filing No. 292, owned jointly with Tract No. 1550 owner Lois McGlorthlin, authorizes the annual diversion and use of an unspecified amount of water from the Main Concho River for the irrigation of 40 acres of land out of Survey No. 351, Tom Green County, at a maximum diversion rate of 3.33 cfs (1500 gpm) at a diversion point upstream from Diversion Point No. 1620. Claimant owns approximately 15 acres within the Certified Filing area.
4. Appropriation of water for Certified Filing No. 292 was filed with the County Clerk of Tom Green County on June 27, 1914.
5. Application for Permit No. 371 was filed with the Commission on November 5, 1918.
6. The dam authorized by Permit No. 371 was constructed as authorized but was breached in 1936 and has not since been functional.
7. Claim No. 3172 seeks a riparian water right to annually divert and use water from the Concho River for the irrigation of land within Surveys Nos. 351, 352, 352 1/2 and 353, Tom Green County, at a maximum diversion rate of 2.2 cfs (1000 gpm) at two diversion points with a priority date of June, 1914. Two dams and reservoirs are described in the claim, the first being authorized by Permit No. 398, which was cancelled on November 15, 1954, and the second being authorized by Permit No. 371, which dam was breached in 1936 and never repaired.
8. Surveys Nos. 351, 352 and 353 are adjacent to the Concho River and were patented from the State in 1857. Survey No. 352 1/2 is not adjacent to the Concho River but is contiguous to a portion of the claim area and was patented from the State on May 21, 1895. The claim area includes the area owned by the claimant within Certified Filing No. 292 and Permit No. 371 and is adjacent to the Concho River.
9. Maximum amount of acreage irrigated in any one year by claimant within Certified Filing No. 292 was 10 acres irrigated in 1921. Maximum amount of acreage irrigated by the claimant in any one year within permit area P-371 was 31 acres in 1971. Claimant has irrigated each of the areas during the period 1971-1974 and prior to 1960. From 1971 to the present, claimant has also irrigated 71 acres of land within that part of the claim area C-3172 in Survey No. 352, but none of this acreage lies within permit area P-371 or Certified Filing area CF-292.
10. Prior to 1960, claimant also irrigated a maximum of 112 acres in any one year, the 112 acres being the same acreage as described above in fact finding No. 9.
11. Claimant did not irrigate at all during the period 1960-1970 since his land was in the Soil Bank.
12. Claimant diverts water from Diversion Points Nos. 1620 and 1625 both located on the perimeter of a reservoir created under the authority of Permit No. 398 which is cancelled at the current time, said Diversion Points lying in Survey No. 351 on the Concho River. There is no intervening ownership between the authorized diversion points under Certified Filing No. 292 and Permit No. 371 and Diversion Points Nos. 1620 and 1625. Maximum diversion rate used by claimant during any one year was 3.3 cfs (1500 gpm). The most water ever diverted and used by claimant in any one year was in 1974 when claimant diverted and used 20 acre-feet of water from D-1620 and D-1625 for the irrigation of 10 acres of land within Certified Filing No. 292, 67 acre-feet of water from D-1620 and D-1625 for the irrigation of 65 acres of land outside of Certified Filing area CF-292 and permit area P-371, but within claim area C-3172.
14. First use of water from the Concho River by claimant was in 1919. Prior to 1956 the reservoir authorized under Permit No. 371 was constructed as authorized and used, but was later washed out in 1936 and never re-established.
15. By conveyance dated July 5, 1976, claimant J. Eldon Williams has acquired an undivided 1/3 interest in a 55 acre-foot capacity reservoir in the Concho River which was previously recognized to Hayward E. Krall and Johnny M. Krall in the Final Determination.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 3172 SINCE HE DID NOT ACCOMPLISH ANY IRRIGATION DURING THE PERIOD 1963-1970.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 292 AND PERMIT NO. 371

SOURCE OF WATER - CONCHO RIVER

NO. OF RESERVOIRS - 1 CAPACITY 67 ACRE-FEET (P-371)

NO. OF RESERVOIRS - 1 CAPACITY 55 ACRE-FEET (1/3 INTEREST)

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 82 ACRE-FEET PER YEAR

NO. OF ACRES - 11

IRRIGATED TRACT SHOWN ON EXHIBIT NO. 1429, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 292 AND PERMIT NO. 371 ON OWNED TRACT.

TRACT LOCATION - TOM GREEN COUNTY

MAP NO. - 9 OF 11, PAGE 15

SURVEY NO. - 351, 352, 353

DIVERSION RATE - 3.3 CFS (1500 GPM) TOTAL AT DIVERSION

POINTS NOS. 1620 AND 1625

PRIORITY DATE - JUNE 27, 1914

*The recognition herein is modified by action of the Commission during the pendency of this adjudication by the granting of an application for a new permits or an amendment of an existing permit or certified filing, a summary of which is described in the addendum to this determination.

**The record of this claim contains circumstances warranting equitable consideration as stated in Section 10(b) of the introduction to this determination.

DIVERSION POINT NO. 1630
TRACT NO. 1580

OWNERSHIP:
SCHNEEMANN INVESTMENT CORPORATION (Previously Max Schneemann)

IR 268 269
Vol. 7 SF 01-122
Findings

1. Certified Filing No. 168 authorizes the annual diversion of an unspecified amount of water from the Concho River to irrigate 135 acres out of Surveys 574, 575, 142 and 2 (Abstract 8602), Tom Green County, at a maximum diversion rate of 6.5 cfs (2920 gpm) at Diversion Point 1630. The certified filing also authorizes a Jan and 122 acre-foot capacity reservoir on the Concho River. The Jan authorized by Certified Filing No. 168 has been breached and is not functional.
2. Claim No. 295 seeks a riparian water right to annually divert 100 acre-feet of water from a reservoir on the Concho River for the irrigation of 100 acres out of Surveys 574, 575, 142 and 2 (Abstract 8602), Tom Green County, at a maximum diversion rate of 1.90 cfs (2700 gpm) at Diversion Point 1630 with a priority date of 1914.
3. Surveys 574, 575 and 142 are adjacent to the Concho River and were patented from the State in 1860, 1860 and 1855, respectively. Survey 2 (Abstract 8602) is not adjacent to the Concho River and was patented from the State in 1905. The claim area is the same as the area under Certified Filing No. 168 and is adjacent to the Concho River.
4. Maximum use under Certified Filing No. 168 was 306 acre-feet of water diverted from the Concho River in 1975 and 125 acres of land irrigated in 1954. Maximum diversion rate was 4.46 cfs (2000 gpm) in various years at Diversion Point 1630.
5. Maximum use during the period 1963-1967, inclusive, was 120 acre-feet of water diverted from the Concho River to irrigate 112 acres in 1967. Maximum diversion rate was 1.46 cfs (2000 gpm) in 1964 at Diversion Point 1630.
6. Construction of diversion facilities was commenced in August, 1911 and Certified Filing No. 168 was filed on April 28, 1914.
7. First use of Concho River water for irrigation within the claim area was in 1912.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 168 AND CLAIM NO. 295

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 122 ACRE-FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 306 ACRE-FEET PER YEAR
NO. OF ACRES - 125

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 168 AND CLAIM NO. 295 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 574, 575, 142 AND 2
ABSTRACTS - 249, 250, 1304 AND 8502
DIVERSION - 4.46 CFS (2000 GPM) AT DIVERSION POINT 1630
PRIORITY DATE - DECEMBER 31, 1912

DIVERSION POINT NO. 1640 AND 1645
TRACT NO. 1590

OWNERSHIP:
WAYNE CHANDLER, JR.

IR 270 271
Vol. 7 SF 191-210
Findings

1. Permit No. 371, owned jointly with Tract 1570 owner J. Eldon Williams, authorizes the annual impoundment and diversion of 131 acre-feet of water from a 67 acre-foot capacity reservoir on the Concho River for the irrigation of 67 acres out of Surveys 352 and 353, Tom Green County, at an unspecified diversion rate at 2 diversion points on the perimeter of the reservoir. Claimant owns approximately 36 acres out of Survey 353 within the permit area.
2. The dam authorized by Permit No. 371 was constructed as authorized. It was breached in 1936 and has not since been functional.
3. Claim No. 2652 seeks a riparian water right and a right under Permit No. 371 to annually divert 40.5 acre-feet of water from a reservoir on the Concho River for the irrigation of 92 acres out of Surveys 353, 354 and 355, Tom Green County, at a maximum diversion rate of 1 cfs (450 gpm) at Diversion Point 1640 with a priority date of 1918.
4. Surveys 353, 354 and 355 are adjacent to the Concho River and were patented from the State in 1957, 1957 and 1950, respectively. The claim area includes the area under claimant's portion of Permit No. 371 and is adjacent to the Concho River.
5. Maximum use under Permit No. 371 prior to 1936 was not established. Maximum use subsequent to 1936 on the permit area now owned by the claimant was 36 acre-feet of water diverted from the Concho River to irrigate 36 acres in 1967 at a maximum total diversion rate of 1 cfs (450 gpm) at Diversion Points 1640 and 1645.
6. Maximum use during the period 1963-1967, inclusive, was 51 acre-feet of water diverted from the Concho River to irrigate 51 acres out of Surveys 353 and 355, including the permit area now owned by the claimant, at a maximum diversion rate of 1 cfs (450 gpm) at Diversion Point 1640 and 1645.
7. Application for Permit No. 371 was filed on November 5, 1918.
8. First use of Concho River water for irrigation within the claim area was in 1920.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2652 AND PERMIT NO. 371
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 67 ACRE FEET (P-371)
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 51 ACRE FEET PER YEAR
NO. OF ACRES - 51
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 2652 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 353, 354 AND 355
ABSTRACTS - 303, 304 AND 272
DIVERSION - 1.0 CFS (450 GPM) TOTAL AT DIVERSION POINTS 1640 AND 1645
PRIORITY DATE - DECEMBER 31, 1920

DIVERSION POINT NO. 1647
TRACT NO. 1595

OWNERSHIP:
JESSIE MAE DICKSON GENE DICKSON AND
A.H. DICKSON KENNETH DICKSON
JACK DICKSON
BOB W. DICKSON

IR 302
Vol. 9A SF 15-17 and Vol. 10 SF 2-34
Findings:

1. Claim No. 11586 seeks a riparian water right to annually divert 250 acre-feet of water from the Concho River for the irrigation of 125 acres out of Survey 140, Tom Green County, at a maximum diversion rate of 1.9 cfs (850 gpm) at Diversion Point 1640 with a priority date prior to 1915. Claimant's petition for late filing was granted on December 11, 1973.
2. Survey 140 is adjacent to the Concho River and was patented from the State in 1855. The claim area is adjacent to the Concho River.
3. Maximum use during the period 1963-1967, inclusive, was 180 acre-feet of water per year diverted from a reservoir on the Concho River to irrigate 90 acres at a maximum diversion rate of 1.9 cfs (850 gpm) at Diversion Point 1647. Diversion was from a reservoir authorized by Certified Filing No. 555 which was cancelled on August 17, 1942. The capacity of the reservoir is approximately 40 acre-feet.
4. First use of Concho River water for irrigation within the claim area was on June 25, 1914.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 11586
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 40 ACRE- FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 180 ACRE- FEET PER YEAR
NO. OF ACRES - 90

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 11586 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEY - 140
ABSTRACT - 198
DIVERSION - 1.9 CFS (850 GPM) AT DIVERSION POINT 1647
PRIORITY DATE - JUNE 25, 1914

DIVERSION POINT NO. 1650
TRACT NO. 1600

OWNERSHIP:
EDWARD E. WERNER

IR 272-273
Vol. 7 SF 123-139 and Vol. 12 SF 475-503, 506-508
Findings

1. Permit No. 161 authorizes the annual impoundment and diversion of not to exceed 200 acre-feet of storm and flood waters from a 70 acre-foot capacity reservoir on the Concho River for the irrigation of 100 acres out of Surveys 357 and 358, Tom Green County, at a maximum diversion rate of 6.0 cfs (2700 gpm) at Diversion Point No. 1650. Said diversion restricted to 2 acre-feet per acre actually irrigated.
2. Claim No. 2929 and an Additional Sworn Statement, which was received by the Commission on July 2, 1971, seeks a riparian water right to annually divert 115 acre-feet of water at a maximum diversion rate of 4.44 cfs (2000 gpm) at Diversion Point No. 1650 for the irrigation of 155 acres out of Surveys 356, 357, 358 and 1, Tom Green County, with a priority date of 1916. A dam and reservoir are described and are the same as those authorized by Permit No. 161.
3. The area within Claim No. 2929 contains 245 acres of land. Totally within the claim area is an area designated as permit area P-161 which contains 100 acres.
4. Surveys 356, 357 and 358 are adjacent to the Concho River and were patented from the State in 1869, 1860 and 1867, respectively. Survey 1 is not adjacent to the Concho River, was patented from the State in 1890, and is adjacent to Surveys 357 and 358.
5. Outlined in green on Exhibit No. 1132 is an area which is the maximum number of acres irrigated with water from the Concho River. Of this area, 100 acres are within the area of Permit No. 161, leaving 70 acres outside of the area of Permit No. 161, but within the area of Claim No. 2929. In addition to the area irrigated with water from the Concho River, there is an area within the area of Claim No. 2929 containing approximately 35 acres which was irrigated with water from a well.
6. During the period 1963-1970, inclusive, claimant diverted Concho River water at 0-1650 at a maximum diversion rate of 4.44 cfs (2000 gpm). In 1971 claimant increased the diversion rate at 0-1650 to 7.77 cfs (3500 gpm), which is the current pumping capacity. Diversion Point 0-1650 is the only point of diversion on the Concho River that has been used by claimant.
7. The maximum use of Concho River water under Permit No. 161 occurred in 1971 when claimant diverted and used 250 acre-feet of water within the permit area.
8. Maximum use within the area of Claim No. 2929, but outside of permit area P-161, during the period 1963-1970, inclusive, was 70 acre-feet of water diverted from the reservoir on the Concho River at Diversion Point No. 1650 at a maximum diversion rate of 4.44 cfs (2000 gpm) for the irrigation of 70 acres of land, which occurred in 1967.
9. The dam is located at the authorized point and impounds approximately 60 acre-feet of water.
10. First use of Concho River water for irrigation within the claim area was in 1918.
11. The dam on the Concho River authorized under Permit No. 161 is of the size cognizable to riparians as stated in the introduction to this determination.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 161 AND CLAIM NO. 2929
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 70 ACRE- FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 270 ACRE- FEET PER YEAR
NO. OF ACRES - 170
IRRIGATED TRACT SHOWN ON EXHIBIT NO. 1432 DESCRIBED AS FOLLOWS - WITHIN BOUNDARIES OF CLAIM AREA C-2929.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 7 OF 11, PAGE 15
SURVEYS - 356, 357 AND 358
ABSTRACTS - 271, 275 AND 276
DIVERSIONS - 6.0 CFS (2700 GPM) AT DIVERSION POINT NO. 1650
PRIORITY DATE - OCTOBER 31, 1916

DIVERSION POINT NOS 1650 AND 1690
TRACT NO: 1610

OWNERSHIP:
DR. R. G. McWILLIAMS AND CLARICE McWILLIAMS

IR 214-275
Vol. 7 SF 210, Vol. 93 SF 17 and Vol. 12 SF 529-015
Findings:

1. Claimants' Section 5 307 Claim asserts a right under Section 5 303 Claim No. 690 to annually divert and use 300 acre-feet of water for the irrigation of 38 acres of land at a maximum diversion rate of 8.67 cfs (3700 gpm) with a priority date of 1890. Two reservoirs are also claimed with impounding capacities of 60 and 15 acre feet.
2. Claimants' Section 5 303 Claim No. 590 and Additional Sworn Statement appurtenant thereto claim a right as a riparian to divert water from the Concho River and allege a maximum diversion and use of 300 acre-feet of water for the irrigation of 87 acres at a maximum diversion rate of 1700 gpm in 1965 and 1965. The claim form also describes two reservoirs with impounding capacities of 60 and 15 acre feet.
3. Claim area C 600 lies in Survey No. 573, Tom Green County, and adjoins the Concho River. The area claimants irrigated during the period 1963-1970, inclusive, lies wholly within the claim area and Survey No. 573. Survey No. 573 was patented in 1860.
4. First use of Concho River water within the claim area for irrigation purposes was in 1957.
5. The most acres claimants irrigated with Concho River water in any one year during the period 1963-1970, inclusive, was 87 acres during each year within said period, being completely within the claim area as outlined on Exhibit No. 1434.
6. During the period 1963-1970, inclusive, claimants diverted water for irrigation purposes at D-1660 on the perimeter of a 50 acre-foot capacity reservoir which was constructed under the authority of Permit No. 161, which permit was cancelled by Commission order dated July 15, 1945, and from Diversion Point No. 1690 located on the Concho River downstream from said reservoir. Both diversion points are located in Survey No. 573, Tom Green County, Texas. Between 1955-1958 the dam authorized under Permit No. 161 was repaired. During the period 1963-1967, claimants used two pumps with maximum capacities of 2000 gpm and 1700 gpm at Diversion Points Nos. 1660 and 1690, respectively. Claimants sometimes used both pumps at the same time during the period 1963-1967.
7. During the period 1963-1970, claimants also diverted water from a well in order to supplement his irrigation with water from the Concho River at Diversion Points Nos. 1660 and 1690. Of the total of 37 acres irrigated during the period 1963-1970 during any one year, approximately 35 acres were irrigated with water solely from Diversion Point D 1660, 22 acres were watered with two-thirds of the water coming from D 1660 and one-third of said water coming from the well, and 30 acres of said land were irrigated with two-thirds of the water coming from D-1690 and one-third of the water coming from the well.
8. The most water claimants irrigated and used in any one year during the period 1963-1970, inclusive, was 149 acre-feet of water from D-1660 for the irrigation of 35 acres of land, 32 acre-feet of water diverted from D-1660 and from the well for the irrigation of 22 acres of land, being 62 acre-feet of water from D-1660 and 30 acre feet of water from the well, and 75 acre-feet of water from D 1690 and the well for the irrigation of 30 acres of land, being 50 acre-feet of water from D-1690 and 25 acre-feet of water from the well, all of said water being used for irrigation within the claim area.
9. Claimants maintain a 50 acre foot reservoir on the Concho River in Tom Green County at a point previously authorized by Permit No. 161. This dam and reservoir is within the size recognizable to riparians as stated in the introduction of this determination.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 690
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 50 ACRE- FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 250 ACRE- FEET
NO. OF ACRES - 87
IRRIGATED TRACT SHOWN ON EXHIBIT NO. 1434 DESCRIBED AS FOLLOWS WITHIN THE BOUNDARIES OF CLAIM AREA C-690.
TRACT LOCATION - TOM GREEN COUNTY
SURVEY - 573
DIVERSION - 8.67 CFS (3700 GPM) TOTAL AT DIVERSION POINTS NOS. 1660 AND 1690
PRIORITY - 1957

DIVERSION POINT NO: 1670 AND 1680
TRACT NO: 1620

OWNERSHIP:
DAN ELLIS
MABEL ELLIS

IR 216-277
Vol. 7 SF 241-307
Findings:

1. Claim No. 971 and an Additional Sworn Statement seek a riparian water right, a right under Article 7500a and an equitable right to annually divert 266 acre-feet of water from the Concho River and from a reservoir on the Concho River for the irrigation of 133 acres out of Surveys 357 and 358, Tom Green County, at a maximum diversion rate of 4.9 cfs (2200 gpm) at Diversion Point 1680 and a non-existing diversion point downstream with a priority date of 1917. The claimed dam and reservoir were authorized by Permit No. 161 which was cancelled on July 16, 1945. The capacity of the reservoir is approximately 50 acre-feet.
2. Surveys 357 and 358 are adjacent to the Concho River and were patented from the State in 1860 and 1855, respectively. The claim area is adjacent to the Concho River.
3. Maximum use during the period 1963-1970, inclusive, was 200 acre-feet of water per year diverted from the reservoir to irrigate 100 acres during the period 1961-1967, inclusive, at a maximum total diversion rate of 4.00 cfs (2200 gpm) at Diversion Points 1670 and 1680.
4. First use of Concho River water for irrigation within the claim area was in 1917.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 971
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 50 ACRE- FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 200 ACRE- FEET PER YEAR
NO. OF ACRES - 100
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS WITHIN THE BOUNDARIES OF CLAIM NO. 971 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 357 AND 358
ABSTRACTS - 275 AND 276
DIVERSION - 4.00 CFS (2200 GPM) TOTAL AT DIVERSION POINTS 1670 AND 1680
PRIORITY DATE - DECEMBER 31, 1917

DIVERSION POINT NO: 1700
TRACT NO: 1630

OWNERSHIP:
DAWSE E. SWITZER

IR 278
Vol. 7 SF 314-355
Findings:

1. Permit No. 242, as partially cancelled on October 6, 1969, is jointly owned with Tract 1640 owners Lee Paul Fry and Jack S. Rice. Claimant's portion of the permit authorizes the annual diversion of 24 acre feet from the Concho River for the irrigation of 16 acres out of Surveys 570 and 571, Tom Green County, at a maximum diversion rate of 2.0 cfs (896 gpm) at Diversion Point 1700. Prior to the partial cancellation, the permit also authorized a dam and 200 acre-foot capacity on-channel reservoir.
2. The dam and reservoir authorized by Permit No. 242 were constructed as authorized. At the date of partial cancellation the capacity of the reservoir was approximately 40 acre-feet.
3. Maximum use under claimant's portion of the permit was 24 acre-feet of water diverted from the reservoir to irrigate 16 acres in 1971 at a maximum diversion rate of 1.34 cfs (600 gpm) at Diversion Point 1700.
4. Application for Permit No. 242 was filed on January 17, 1918.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 242
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 40 ACRE- FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 24 ACRE- FEET PER YEAR
NO. OF ACRES - 16
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX FOR INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS WITHIN THE BOUNDARIES OF PERMIT NO. 242 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 570 AND 571
DIVERSION - 1.34 CFS (600 GPM) AT DIVERSION POINT 1700
PRIORITY DATE - JANUARY 17, 1918

DIVERSION POINT NO: 1710
TRACT NO: 1640

OWNERSHIP:
LEE PAUL FRY (Previously Alton G. O'Dell)
JACK S. RICE

IR 279-280
Vol. 7 SF 309-326
Findings:

1. Permit No. 242, as partially cancelled on November 6, 1969, is owned jointly with Tract 1630 owner Dawse E. Switzer. Claimant's portion of the permit authorizes the annual diversion of 59 acre-feet from the Concho River for the irrigation of 46 acres out of Surveys 569 and 570, Tom Green County, at a maximum diversion rate of 2.0 cfs (896 gpm) at Diversion Point 1700. Prior to the partial cancellation, a dam and 200 acre-foot capacity reservoir on the Concho River were also authorized.
2. The dam and reservoir authorized by Permit No. 242 were constructed as authorized. At the time of partial cancellation, the capacity of the reservoir was approximately 40 acre-feet.
3. Claim No. 1505 seeks a riparian water right to annually divert 40.02 acre-feet of water from the Concho River for the irrigation of 29 acres out of Surveys 569, 570 and 571, Tom Green County, at a maximum diversion rate of 1.11 cfs (500 gpm) at Diversion Point 1710 with a priority date of 1918.
4. Surveys 569, 570 and 571 are adjacent to the Concho River and were patented from the State in 1860. The claim area is the same as the area under Permit No. 242 and is adjacent to the Concho River.
5. Maximum use during the years 1963-1970, inclusive, and claimant's portion of Permit No. 242 was 69 acre-feet of water diverted from the reservoir to irrigate 16 acres in 1970 at a maximum diversion rate of 1.45 cfs (650 gpm) at Diversion Point 1710.
6. Application for Permit No. 242 was filed on January 17, 1918.
7. First use of Concho River water for irrigation within the claim area was in 1918.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 242 AND CLAIM NO. 1506
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 40 ACRE- FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 69 ACRE- FEET PER YEAR
NO. OF ACRES - 46
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS WITHIN THE BOUNDARIES OF PERMIT NO. 242 AND CLAIM NO. 1506 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 569, 570 AND 571
ABSTRACTS - 255, 256 AND 253
DIVERSION - 1.35 CFS (650 GPM) AT DIVERSION POINT 1710
PRIORITY DATE - JANUARY 17, 1918

DIVERSION POINT NOS. 1720 AND 1740
TRACT NO. 1650

OWNER:
MRS. ALTA McNEILLAN

IR 241-282
Vol. 7 SF 345, 306, 13 SF 619-711
Findings:

1. Claimant's section 5, 307 claim asserts a right under Permits Nos. 160, 378 and 415 to impound 55 acre-feet of water in a reservoir on the Main Concho River and to annually divert and use therefrom 100 acres from the Main Concho River 334 acre-feet of water for the irrigation of 109 acres of land at a maximum diversion rate of 3.50 cfs (1600 gpm) with a priority date of February 8, 1917.
2. Permit No. 160 authorizes the construction of a 75 acre-foot capacity reservoir on the Main Concho River and the annual diversion and use therefrom of 200 acre-feet of water for the irrigation of 100 acres of land out of Surveys Nos. 559, 560 and 561, Tom Green County, at a maximum diversion rate of 6 cfs (2700 gpm), with a specific limitation of 2 acre-feet of water per acre actually irrigated.
3. Permit No. 378 authorized the construction of a 77 acre-foot capacity reservoir on the Main Concho River and to annually divert and use therefrom 154 acre-feet of water for the irrigation of 77 acres of land at an unspecified diversion rate, with a specific limitation of 2 acre-feet of water per acre irrigated. Application for Permit No. 160 was filed with the Commission on October 31, 1910.
4. Application for Permit No. 378 was filed with the Commission on December 12, 1913.
5. Plaintiff maintains an existing 50 acre-foot reservoir on the Main Concho River in Survey No. 561, Tom Green County, as authorized under Permit No. 160. This reservoir is located upstream from the reservoir authorized under Permit No. 378. The reservoir authorized under Permit No. 378 is existing, is located as authorized, and has an impounding capacity of approximately 45 acre-feet. Plaintiff presently owns all of the land along the north side of the reservoir created under the authority of Permit No. 160. Plaintiff does not own the land at the point where the dam authorized under Permit No. 378 is located. However, claimant does own land which is not on the main Concho River and the reservoir created under the authority of Permit No. 378.
6. In 1961 claimant sold 8 acres of the permit area authorized to be irrigated under Permit No. 378 to Muri E. Day who presently owns most of the land abutting the reservoir created under the authority of Permit No. 378. Thus, claimant Alta McNeillan currently owns 52 acres of land authorized to be irrigated under Permit No. 378 and Muri E. Day currently owns 8 acres of land authorized to be irrigated under Permit No. 378.
7. Plaintiff has diverted water solely from 0-1720, an authorized point under Permit No. 160 on the perimeter of the reservoir created under the authority of this permit. Plaintiff has diverted water from this point by means of a stationary pump with a maximum diversion rate of 1.07 cfs (2100 gpm). Plaintiff has never diverted water from the reservoir authorized under Permit No. 378. There are no intervening diversions on the Concho River between Plaintiff's authorized diversion point at 0-1720 on the perimeter of the reservoir authorized under Permit No. 160 and the reservoir authorized under Permit No. 378.
8. The maximum amount of average irrigation in any one year by Plaintiff from Diversion Point No. 1720 was 207 acres, being 100 acres in permit area P-160, 84 acres in permit area P-378 and 39 acres located outside of both permit area P-160 and permit area P-378. The maximum amount of water diverted and used by Plaintiff in any one year from 0-1720 for the irrigation of the 109 acres described above was 495 acre-feet of water used on 109 acres of land in 1933, being 200 acre-feet of water used on 100 acres within permit area P-160, 136 acre-feet of water used on 88 acres in permit area P-378, and 69 acre-feet of water used on 59 acres located outside of permit areas P-160 and P-378.
9. No evidence was introduced in regard to any claim of right under the authority of Permit No. 415. Claimant is recognized no right under Permit No. 415.

BASIS OF RIGHT RECOGNIZED - PERMITS NOS 160 AND 378
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 75 ACRE-FOOT (P-160)
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 110 ACRE-FOOT PER YEAR
NO. OF ACRES - 109
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: 100 ACRES WITHIN THE BOUNDARIES OF PERMIT NO. 160 AND 9 ACRES WITHIN THE BOUNDARIES OF PERMIT NO. 378
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 559, 560 AND 561
DIVERSION - 1.07 CFS (2100 GPM) AT DIVERSION POINT NO. 1720
PRIORITY DATES - OCTOBER 31, 1910 (P-160)
DECEMBER 12, 1913 (P-378)

DIVERSION POINT NO. 1730
TRACT NO. 1650

OWNERSHIP:
MURI E. DAY
GENA MARIE REICHERT DAY

IR 233-284
Vol. 7 SF 140-159
Findings:

1. Permit No. 378, owned jointly with Tract 1650 owner Mrs. Alta McNeillan, authorizes the annual impounding and diversion of 154 acre-feet from a 77 acre-foot capacity reservoir on the Concho River for the irrigation of 27 acres out of Surveys 559 and 560, Tom Green County, and 50 acres out of Surveys 560 and 561, Tom Green County, at an unstated maximum diversion rate at Diversion Point 1730, limited to 2 acre-feet per acre actually irrigated. Claimants own 8 acres within the permit area out of Survey 560.
2. Claim No. 2985 and an Additional Sworn Statement seek a riparian water right to annually divert 83 acre-feet of water from the Concho River for the irrigation of 83 acres out of Survey 561, Tom Green County, at a maximum diversion rate of 2.67 cfs (1200 gpm) at Diversion Point 1750 with a priority date of 1919. A described dam and reservoir are those authorized by Permit 160 which is owned by Tract 1650 owner Mrs. Alta McNeillan.
3. Survey 561 is adjacent to the Concho River and was patented from the State in 1860. The claim area, which includes claimant's portion of the area under Permit No. 378, is adjacent to the Concho River.
4. Maximum use under claimants' portion of Permit No. 378 was 12 acre-feet of water diverted from Permit No. 378 reservoir to irrigate 8 acres in 1909 at a maximum diversion rate of 2.67 cfs (1200 gpm) in 1972 at Diversion Point 1730.
5. Maximum use during the period 1963-1970, inclusive, was 83 acre-feet of water diverted from the Permit No. 378 reservoir to irrigate 83 acres in 1966 at a maximum diversion rate of 1.78 cfs (800 gpm) at Diversion Point 1750.
6. Application for Permit No. 378 was filed on December 12, 1913.
7. First use of Concho River water for irrigation within the claim area was in 1919.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 378 AND CLAIM NO. 2985
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 77 ACRE-FOOT (P-378)
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 83 ACRE-FOOT PER YEAR
NO. OF ACRES - 83

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF PERMIT NO. 378 AND CLAIM NO. 2985 ON OWNED TRACT.

TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEY - 561
ABSTRACT - 267
DIVERSION - 2.67 CFS (1200 GPM) AT DIVERSION POINT 1750
PRIORITY DATE - DECEMBER 12, 1918

DIVERSION POINT NO. 1740
TRACT NO. 1670

OWNERSHIP:
CARSON C. MILES

IR 265-286
Vol. 7 SF 357-374
Findings:

1. Certified Filing No. 11, as partially cancelled on October 10, 1969, authorizes the annual diversion of 150 acre-feet of water from the Concho River for the irrigation of 100 acres out of Surveys 567, 568, 569 and C. Dunbar Survey 2, Tom Green County, at a maximum total diversion rate of 4.0 cfs (1792 gpm) at Diversion Points 1740 and 1710. The actual area under Certified Filing No. 11 includes a portion of Survey 2 (Abstract 7826) and does not include any portion of C. Dunbar Survey 2 (Abstract 4732).
2. Claimant's rights under Permit No. 242 were cancelled by Commission order on October 6, 1969, except to the extent necessary for the identification of diversion points and land to be irrigated pursuant to the provisions of Certified Filing No. 11.
3. Claim No. 560 seeks a right under the Irrigation Act of 1889 to annually divert 24 acre-feet of water from the Concho River for the irrigation of 70 acres out of Surveys 567, 568, 569 and 2 (Abstract 7826), Tom Green County, at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1740 with a priority date prior to November 5, 1913. A described dam and reservoir abutting claimant's property are authorized by Permit No. 578 which is owned jointly by Tract No. 1650 owner Mrs. Alta McNeillan and Tract No. 1650 owner Muri E. Day, et al.
4. Surveys 567, 568 and 569 are adjacent to the Concho River and were patented from the State in 1860. Survey 2 (Abstract 7826), patented in 1891, is not adjacent to the Concho River, but contains a contiguous portion of the claim area. The claim area includes the area under Certified Filing No. 11 and is adjacent to the Concho River.
5. Maximum use under Certified Filing No. 11 was 150 acre-feet of water diverted from the Permit No. 378 reservoir to irrigate 100 acres out of Surveys 567, 568 and 569 in 1971 at a maximum diversion rate of 4.0 cfs (1792 gpm) at Diversion Point 1740.
6. Maximum use during the period 1963-1967, inclusive, was 24 acre-feet of water diverted from the Permit No. 378 reservoir to irrigate 70 acres out of Surveys 567, 568 and 569 in 1961 at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1740.
7. Construction of diversion facilities was commenced on January 15, 1913 and Certified Filing No. 11 was filed on November 5, 1913.
8. First use of Concho River water for irrigation within the claim area was in 1913.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER PERMIT NO. 242

CLAIMANT IS RECOGNIZED NO RIGHT UNDER PERMIT NO. 242

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 11 AND CLAIM NO. 560
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 150 ACRE-FOOT PER YEAR
NO. OF ACRES - 100
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 11 AND CLAIM NO. 560 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 567, 568, 569 AND 2
ABSTRACTS - 258, 257, 255 AND 7826
DIVERSION - 4.0 CFS (1792 GPM) AT DIVERSION POINT 1740
PRIORITY DATE - NOVEMBER 5, 1913

DIVERSION POINT NO. 1750
TRACT NO. 1680

OWNERSHIP:
MELBURN WRIGHT, SR.

IR 287
Vol. 7 SF 376-403 and Vol. 9A SF 18
Findings:

1. Claim No. 2002A seeks a riparian water right to annually divert 82.5 acre-feet of water from the Concho River for the irrigation of 55 acres out of Survey 562, Tom Green County, at a maximum diversion rate of 1.67 cfs (1200 gpm) at Diversion Point 1750 with a priority date of 1924. A dam and reservoir are described. Claimant's petition for the late filing of an amendment to Claim No. 2002 was granted by the Commission on October 29, 1973.
2. Survey 562 is adjacent to the Concho River and was patented from the State in 1860. The claim area is adjacent to the Concho River.
3. Maximum use during the period 1963-1967, inclusive, was 83 acre-feet of water diverted from the Concho River to irrigate 55 acres in 1964 at a maximum diversion rate of 2.67 cfs (1200 gpm) at Diversion Point 1750.
4. First use of Concho River water for irrigation within the claim area was on October 31, 1922.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2002A
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 83 ACRE-FOOT PER YEAR
NO. OF ACRES - 55
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 2002 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEY - 562
ABSTRACT - 268
DIVERSION - 2.67 CFS (1200 GPM) AT DIVERSION POINT 1750
PRIORITY DATE - OCTOBER 31, 1922

DIVERSION POINT NO: 1760
TRACT NO: 1616

OWNERSHIP:
MILBURN BRIGGS, SR

IR 293-249
Vol. 7 SF 175-172
Findings:

1. Claim No. 2005 seeks a riparian water right to annually divert 1 acre-foot from the Concho River for the irrigation of 10 acres out of Survey 365, Tom Green County, at a maximum diversion rate of 2.07 cfs (1200 gpm) at Diversion Point 1760 with a priority date of 1916.
2. Survey 365 is adjacent to the Concho River and was patented from the State in 1860. The claim area is adjacent to the Concho River.
3. Any irrigation within the claim area during the period 1963-1967, inclusive, was with groundwater only.
4. Maximum use during the period 1963-1967, inclusive, was 2 acre-feet of water for industrial use (10-cow dairy operation) in 1963 at a maximum diversion rate of 0.09 cfs (40 gpm) at Diversion Point 1760.
5. First use of Concho River water for irrigation within the claim area was in 1931.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2005
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - INDUSTRIAL
AMOUNT OF WATER - 2 ACRE-FEET PER YEAR
DIVERSION POINT SHOWN IN EXHIBIT NO. 2, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
DIVERSION POINT NO. 1760 ON OWNED TRACT
DIVERSION POINT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 365
ABSTRACTS - 265
DIVERSION - 0.09 CFS (40 GPM) AT DIVERSION POINT 1760
PRIORITY DATE - DECEMBER 31, 1931

DIVERSION POINT NOS: 1770 and 1781
TRACT NOS: 1700 and 1710

OWNERSHIP:
LEONARD GRANTHAM, JR.

IR 293-241
Vol. 7 SF 171-171 and Vol. 12 SF 711-753
Findings:

1. Claim No. 2341 and an Additional sworn Statement seek a riparian water right and a right under the Irrigation Acts of 1889, 1895 and 1913, to annually divert 30 acre-feet of water from the Concho River for the irrigation of 25 acres out of Survey 361, Tom Green County, at a maximum diversion rate of 2.67 cfs (1200 gpm) at Diversion Point 1700 with a priority date of 1965. An unrecorded Section 5, 303 claim was timely filed on August 27, 1969 claiming an irrigation right in Tom Green County Survey No. 365. It alleges a diversion rate of 2.57 cfs (1200 gpm) at a point on the Concho River 500 feet southeast of Survey No. 365, which is 0-1781. No land was indicated as having been irrigated 1963-1967 in Survey No. 365 because the acreage was in the C. R. Program. A 25 acre-foot reservoir was declared with a dam described as 250 feet in a westerly direction from the southeast corner of Tom Green County Survey No. 365.
2. The dam described in the unrecorded claim is located approximately 25 feet west upstream of Diversion Point No. 1781, and it unambiguously diverts 15 to 20 acre-feet of water.
3. The claim area (both Claim No. 2341 and the unrecorded Section 5, 303 claim) encompasses all of Surveys 361 and 365 which are adjacent to the Concho River and were patented from the State in 1868 and 1890.
4. Maximum use under Claim No. 2341 during the period 1963-1967, inclusive, was 28 acre-feet of water per year diverted from the Concho River at Diversion Point No. 1770 at a maximum diversion rate of 2.07 cfs (1200 gpm) to irrigate 22 acres out of Surveys 364 and 365, marked as T-1700 on Exhibit No. 1453.
5. From January 1, 1960 until December 31, 1969, 91.3 acres within the claim area were in the Soil Bank program. Of these 23.3 acres, 19 acres were located in Survey No. 364 north of T-1700 and west of Willow Creek, and 45.5 acres were located in Surveys 361 and 365 east of Willow Creek.
6. The area of claimant's property marked on Exhibit No. 1453 as T-1710 contains 12 acres and represents the boundaries of a gravel operation by Montgomery Sand and Gravel Company between 1959 and 1972. This company obtained Permit No. 2586 for industrial use of water in connection with this gravel operation which was cancelled by the Commission on March 5, 1973.
7. In 1973 claimant resumed irrigation of a portion of the claim area east of Willow Creek and north of T-1710 from Diversion Point No. 1781.
8. The claimed dam on the Concho River is within the size cognizable to riparian claimants as stated in the introduction of this determination.
9. First use of Concho River water for irrigation within the claim area was in 1931.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2341
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 15 ACRE FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 28 ACRE FEET PER YEAR
IRRIGATED TRACT SHOWN ON EXHIBIT NO. 1453 AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM AREA C-2341
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 364 AND 365
ABSTRACTS - 265 AND 263
DIVERSION - 2.67 CFS (1200 GPM) AT DIVERSION POINT 1770
PRIORITY DATE - 1951

DIVERSION POINT NO: 1780
TRACT NO: 1710

OWNERSHIP:
MONTGOMERY SAND AND GRAVEL, INC.

IR 292
Findings:

Permit No. 2586, which authorized the annual diversion of 320 acre feet of water from the Concho River for mining use (gravel washing), was cancelled on March 5, 1973.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER PERMIT NO. 2586

DIVERSION POINT NO: 1790
TRACT NO: 1720

OWNERSHIP:
CENTRAL NATIONAL BANK, TRUSTEE
HAROLD W. BROOME
JACKSON S. BROOME
ROSEMARY BROOME VAN KUEREN

IR 293-294
Vol. 7 SF 193-538
Findings:

1. Certified Filing No. 2 authorizes the annual diversion of an unspecified amount of water from the Concho River for the irrigation of 104 acres out of Surveys 566, 583 and 584, Tom Green County, at a maximum diversion rate of 4.0 cfs (1800 gpm) at Diversion Point 1790.
2. A dam and on-channel reservoir were authorized by Permit No. 307. The dam was breached and not functional when the permit was cancelled on December 13, 1972.
3. Claim No. 575, which includes the Certified Filing No. 2 area, was filed by Sellman Matters who did not own any part of the certified filing area.
4. Maximum use under Certified Filing No. 2 was 190 acre-feet of water diverted from the Concho River to irrigate 90 acres in 1972 at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1790.
5. Construction of diversion facilities was commenced in 1904 and Certified Filing No. 2 was filed on August 29, 1913.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 575

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 2
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 180 ACRE FEET PER YEAR
NO. OF ACRES - 90
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 2 ON OWNED TRACT
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 366, 583 AND 584
DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 1790
PRIORITY DATE - AUGUST 29, 1913

DIVERSION POINT NO: 1800
TRACT NO: 1710

OWNERSHIP:
GENE BUTTS (Previously John W. Ellis)
HELEN BUTTS
CHARLES BUTTS
PATRICIA BUTTS

IR 295
Vol. 7 SF 686-720
Findings:

1. Certified Filing No. 17, owned jointly with Tract 1710 owner Victor Omerck and Tract 1750 trustee Central National Bank, et al, authorizes the annual diversion of an unspecified amount of water from the Concho River for the irrigation of 125 acres out of Surveys 562, 563 and 564, Tom Green County, at a maximum diversion rate of 4.46 cfs (2000 gpm) at a diversion point downstream from Diversion Point 1800. The actual area under Certified Filing No. 17 is 151 acres. Claimants own 45 acres out of Surveys 563 and 564 within the certified filing area.
2. A dam and on-channel reservoir were authorized by Permit No. 307. The dam was breached and not functional when the permit was cancelled on December 16, 1972.
3. Claim No. 575, which includes the Certified Filing No. 17 area, was filed by Sellman Matters who did not own any part of the certified filing area.
4. Maximum use under claimants' portion of Certified Filing No. 17 was 51 acre-feet of water diverted from the Concho River to irrigate 42 acres in 1963 at a maximum diversion rate of 1.11 cfs (500 gpm) at Diversion Point 1800.
5. There are no interagency appropriators or intervening landowners between the authorized diversion point and Diversion Point 1800.
6. Construction of diversion facilities was commenced on December 15, 1911 and Certified Filing No. 17 was filed on January 29, 1914.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 575

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 17
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 51 ACRE FEET
NO. OF ACRES - 42
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 17 ON OWNED TRACT
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 563 AND 564
DIVERSION - 1.11 CFS (500 GPM) AT DIVERSION POINT 1800
PRIORITY DATE - JANUARY 29, 1914

DIVERSION POINT NO. 1810
TRACT NO. 1740

OWNERSHIP:
VICTOR AMEREX

IR 296
Vol. 7 SP 651-649
Findings:

1. Certified Filing No. 17, owned jointly with Tract 1750 owner Gene Butts, et al, and Tract 1750 trustee Central National Bank, et al, authorizes the annual diversion of an unspecified amount of water from the Concho River for the irrigation of 125 acres out of Surveys 562, 563 and 561, Tom Green County, at a maximum diversion rate of 4.48 cfs (1000 gpm) at a diversion point upstream from Diversion Point 1810. The actual area under Certified Filing No. 17 is 154 acres. Claimant owns 75 acres out of Surveys 562 and 563 within the certified filing area.
2. A dam and on-channel reservoir were authorized by Permit No. 307. The dam was breached and not functional when the permit was cancelled on December 19, 1973.
3. Claim No. 575, which includes the Certified Filing No. 17 area, was filed by Sellman Matters who did not own any part of the certified filing area.
4. Maximum use under claimant's portion of Certified Filing No. 17 was 15 acre-feet of water diverted from the Concho River in 1965 and the irrigation of 55 acres in 1979 and 1971 at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1810.
5. There are no interjacent appropriators or intervening landowners between the authorized diversion point and Diversion Point 1810.
6. Construction of diversion facilities was commenced on December 15, 1912 and Certified Filing No. 17 was filed on January 20, 1914.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 575

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 17
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 45 ACRE FEET PER YEAR
NO. OF ACRES - 85
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 4, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 17 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 562 AND 563
DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 1810
PRIORITY DATE - JANUARY 20, 1914

DIVERSION POINT NO. NONE
TRACT NO. 1750

OWNERSHIP:
CENTRAL NATIONAL BANK, TRUSTEE
HAROLD W. BROOME
JACKSON S. BROOME
ROSEMARY BROOME VAN ZUEREN

IR 295
Vol. 9 SP 232-252
Findings:

1. Certified Filing No. 17 owned jointly with Tract 1750 owner Gene Butts, et al, and Tract 1750 owner Victor Amerex, authorizes the annual diversion of an unspecified amount of water from the Concho River for the irrigation of 125 acres out of Surveys 562, 563 and 561, Tom Green County, at a maximum diversion rate of 4.48 cfs (1000 gpm) at a diversion point upstream from Tract 1750. The actual area under Certified Filing No. 17 is 154 acres. Claimants own 54 acres out of Surveys 562 within the certified filing area.
2. A dam and on-channel reservoir on the Concho River were authorized by Permit No. 307. The dam was breached and not functional when the permit was cancelled on December 19, 1973.
3. Claim No. 575, which includes the Certified Filing No. 17 area, was filed by Sellman Matters who did not own any part of the certified filing area.
4. The amount of water used during any year to irrigate within the area under claimant's portion of Certified Filing No. 17 was not established by testimony or other credible evidence. There has been no irrigation within the area since 1953.
5. Construction of diversion facilities was commenced on December 15, 1912 and Certified Filing No. 17 was filed on January 20, 1914.

CLAIMANTS ARE RECOGNIZED NO RIGHT UNDER CERTIFIED FILING NO. 17 AND CLAIM NO. 575

DIVERSION POINT NO. 1820
TRACT NO. 1740

OWNERSHIP:
JAMES KENNETH WEBB (Previously Mrs. G.W. Webb)

IR 298-299
Vol. 7 SP 650-685
Findings:

1. Certified Filing No. 439, owned jointly with Tract 1770 owner W.S. Matters, Tract 1790 owner M.B. Helwig, Tract 1800 owner Bernice L. Mika and Tract 1810 owner Billy Joe Helwig, et ux, authorizes the annual diversion of an unspecified amount of water from the Concho River for the irrigation of 900 acres out of Surveys 555, 556, 557, 558, 559, 560, 561 and 16054, Tom Green County, at a maximum diversion rate of 12.0 cfs (5400 gpm) at Diversion Point 1830. Claimant owns 12 acres out of Survey 561 within the certified filing area.
2. A dam and on-channel reservoir were authorized by Permit No. 307. The dam was breached and not functional when the permit was cancelled on December 19, 1973.

3. Claim No. 570 seeks a right under Certified Filing No. 439 to annually divert 30 acre-feet of water from the Concho River for the irrigation of 45 acres out of Survey 561, Tom Green County, at a maximum diversion rate of 2.23 cfs (1000 gpm) at a diversion point upstream from Diversion Point 1820 with a priority date of 1905.
4. Claim No. 35 seeks a right under Permit No. 307 to annually divert 45 acre-feet of water from the Concho River for the irrigation of 45 acres out of Survey 561, Tom Green County, at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1820 with an unstated priority date. The claim area is the same as the area under Claim No. 570.
5. Claim No. 575, which includes claimant's portion of Certified Filing No. 439, was filed by W.S. Matters who did not own any part of the certified filing area.
6. Maximum use under claimant's portion of Certified Filing No. 439 was 87 acre-feet of water diverted from the Concho River to irrigate 87 acres in 1949 at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1820.
7. Survey 561 is adjacent to the Concho River and was patented from the State in 1860. The claim area is the same as claimant's portion of the area under Certified Filing No. 439 and is adjacent to the Concho River.
8. Use during the period 1963-1967, inclusive, was not established.
9. There are no interjacent appropriators or intervening landowners between authorized Diversion Point 1850 and Diversion Point 1820.
10. Construction of diversion facilities was commenced in 1905 and Certified Filing No. 439 was filed on June 29, 1914.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIMS NO. 35, 570 AND 575

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 439
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 87
NO. OF ACRES - 87
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 439 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEY - 561
DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 1820
PRIORITY DATE - JUNE 29, 1914

DIVERSION POINT NO. 1830
TRACT NO. 1740

OWNERSHIP:
W. S. MATTERS

IR 100-291
Vol. 9 SP 124-471, Vol. 12 SP 754-811 and Vol. 13 SP 75-83
Findings:

1. Certified Filing No. 439, owned jointly with Tracts 1740 and 1780 owner James Kenneth Webb, Tract 1790 owner Marvin J. Helwig, et ux, Tract 1800 owner Bernice L. Mika and Tract 1810 owner Billy Joe Helwig, et ux, authorizes the annual diversion of an unspecified amount of water from the Concho River for the irrigation of 900 acres out of Surveys 555, 556, 557, 558, 559, 560 and 561 and 1605 1/2, Tom Green County, at a maximum diversion rate of 12.0 cfs (5400 gpm) at Diversion Point 1830.
2. Claim No. 572 seeks a riparian right and a right under Certified Filing No. 439 to annually divert 50 acre-feet of water from the Concho River for the irrigation of 50 acres out of Survey No. 559, Tom Green County, at a maximum diversion rate of 4.90 cfs (2100 gpm) at Diversion Point 1830 with a priority date of 1905.
3. Claim No. 575 seeks a riparian right and a right under Permit No. 307 to annually divert 50 acre-feet of water from the Concho River and from a reservoir on the Concho River for the irrigation of 50 acres out of Surveys 560, 561, 562, 1605 1/2 and 1611, Tom Green County, at a maximum diversion rate of 4.90 cfs (2200 gpm) at a diversion point upstream from Diversion Point 1830 with a priority date of 1905.
4. Permit No. 307 authorized a dam and on-channel reservoir on the Concho River. The authorized dam was breached and was not functional when the permit was cancelled on December 19, 1973.
5. Surveys 560 and 561 are adjacent to the Concho River and were patented from the State in 1860 and 1880, respectively. That portion of the area within Certified Filing No. 439 which is owned by claimant contains 100 acres and has been marked on Exhibit No. 1457 to be Tracts 1, 2 and 3. The area claimed under Claim No. 572 is all of claimant's ownership in Survey No. 560 and contains 97 acres of land which has been marked on Exhibit No. 1457 to be Tracts 1 and 3. The area claimed under Claim No. 575 is all of claimant's ownership in Surveys 560, 561, 1605 1/2 and 1611, Tom Green County. Tracts 1 and 3 abut the Concho River. Tracts 2 and 4 are severed from the Concho River by intervening ownership in Survey No. 561, Tom Green County.
6. Maximum use under claimant's portion of Certified Filing No. 439 was 120 acre-feet of water diverted from the Concho River at Diversion Point 1830 by pump at a maximum diversion rate of 1.90 cfs (2200 gpm) in 1974, and a maximum of 79 acres of land were irrigated in 1962.
7. Maximum use during 1963-1967, inclusive, under Claim No. 575 not within the area under Certified Filing No. 439, was in 1965 when 5 acre-feet of water was diverted from the Concho River at Diversion Point 1830 by pump at a maximum diversion rate of 4.90 cfs (2200 gpm) for the irrigation of 7 acres, which was marked on Exhibit No. 1457 as Tract No. 4, and which is severed from the Concho River by intervening ownership.
8. Certified Filing No. 439 was filed on June 29, 1914.
9. First use of Concho River water for irrigation within the claimed area was in 1905.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 439, CLAIM NO. 572 AND CLAIM NO. 575
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 120 ACRE FEET PER YEAR
NO. OF ACRES - 79
IRRIGATED TRACT SHOWN ON EXHIBIT NO. 1457, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 439 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 560 AND 561
ABSTRACTS - 7899 AND 273
DIVERSION - 4.90 CFS (2200 GPM) AT DIVERSION POINT NO. 1830
PRIORITY DATE - DECEMBER 19, 1905

DIVERSION POINT NO. 1810
TRACT NO. 1730

UNSUBMITTED:
LAWRENCE KENNETH WEBB (Previously Mrs. G.W. Webb)

IR 392-303
Vol. 7 SF 721-51
Findings

1. Certified Filing No. 439, owned jointly with Tract 1770 owner W.S. Watters, Tract 1790 owner M.B. Helwig, Tract 1800 owner Bernie L. Mika and Tract 1810 owner Billy Joe Helwig, et ux, authorizes the annual diversion of an unspecified amount of water from the Concho River for the irrigation of 900 acres out of Surveys 555, 556, 557, 558, 559, 560, 561 and 16054, Tom Green County, at a maximum diversion rate of 12.0 cfs (5100 gpm) at Diversion Point 1850. Claimant owns 40 acres out of Survey 560 within the certified filing area.
2. Claim No. 57 seeks a right under Certified Filing No. 439 to annually divert 34 acre-feet of water from the Concho River for the irrigation of 45 acres out of Surveys 560, 16054 and 1611, Tom Green County, at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1840 with a priority date of 1905.
3. Survey 560 is adjacent to the Concho River and was patented from the State in 1886. Surveys 16054 and 1611, patented from the State in 1889 and 1861 respectively, are not adjacent to the Concho River but contain a contiguous portion of the claim area. The claim area, including claimant's portion of the area under Certified Filing No. 439, is joined to the Concho River by a small strip of land. It was not established that title to this strip of land was acquired on the same date that title to any other portion of the claim area was acquired. It was established that title to some portions of the claim area was acquired on different dates.
4. Maximum use under claimant's portion of Certified Filing No. 439 was 40 acre-feet of water diverted from the Concho River to irrigate 40 acres in 1971 at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1840.
5. Maximum use during the period 1961-1971, inclusive, was 65 acre-feet of water diverted from the Concho River to irrigate 50 acres out of Survey 560 in 1965 at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1840.
6. There are no intervening landowners or interjacent appropriators between authorized Diversion Point 1810 and Diversion Point 1840.
7. Construction of diversion facilities was commenced in 1905 and Certified Filing No. 439 was filed on June 29, 1914.
8. First use of Concho River water for irrigation with the claim area was in 1905.

BASES OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 439 AND CLAIM NO. 57

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 40 ACRE-FEET PER YEAR
NO. OF ACRES - 40
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 439 AND CLAIM NO. 57 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 560, 16054 AND 1611
ABSTRACTS - 7893, 7814 AND 16066
DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 1840
PRIORITY DATE - JUNE 29, 1914

DIVERSION POINT NO. 1850
TRACT NO. 1790

OWNERSHIP:
MARVIN J. AND LEONA A. HELWIG

IR 504-305
Vol. 7 SF 752-786
Findings

1. Certified Filing No. 439, owned jointly with Tracts 1760 and 1780 owner Mrs. Evelyn Webb Estate, Tract 1770 owner W.S. Watters, Tract 1800 owner Bernie L. Mika and Tract 1810 owner Billy Joe Helwig, et ux, authorizes the annual diversion of an unspecified amount of water from the Concho River for the irrigation of 900 acres out of Surveys 555, 556, 557, 558, 559, 560, 561 and 16054, Tom Green County, at a maximum diversion rate of 12.0 cfs (5100 gpm) at Diversion Point 1850. Claimant owns 160 acres out of Surveys 557, 558, 559 and 16054 within the certified filing area.
2. Permit No. 165, owned jointly with Tract 1790 owner Bernie L. Mika and Tract 1810 owner Billy Joe Helwig, et ux, authorizes the annual diversion of 1400 acre-feet of water from a 700 acre-foot capacity reservoir on the Concho River for the irrigation of 700 acres out of Surveys 555, 556, 557, 558 and 559, Tom Green County, at a maximum diversion rate of 20.0 cfs (8900 gpm) at Diversion Point 1850. The permit area is wholly within the area under Certified Filing No. 439. Claimant owns 157 acres out of Survey 557, 558 and 559 within the permit area.
3. The dam authorized by Permit No. 165 was constructed as authorized and subsequently destroyed in 1917. The dam presently at the authorized site adjacent to Tract 1810 owned by Billy Joe Helwig, et ux, does not contain a sluiceway to release normal flow as required by the permit. The capacity of the present reservoir is approximately 70 acre-feet.
4. Maximum use on claimant's portion of Certified Filing No. 439 was 270 acre-feet of water diverted from the Concho River to irrigate 135 acres in 1972 at a maximum diversion rate of 1.6 cfs (700 gpm) at Diversion Point 1850.
5. Use under claimant's portion of Permit No. 165 was not established.

9. Construction of diversion facilities was commenced in 1905 and Certified Filing No. 439 was filed on June 29, 1914.
10. Application for Permit No. 165 was filed on November 17, 1916.

BASES OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 439 AND PERMIT NO. 165

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 700 ACRE-FEET (P-165)
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 270 ACRE-FEET PER YEAR
NO. OF ACRES - 135
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 439 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 557, 558, 559 AND 16054
DIVERSION - 1.6 CFS (700 GPM) AT DIVERSION POINT 1850
PRIORITY DATE - JUNE 29, 1914

DIVERSION POINT NO. 1860
TRACT NO. 1800

OWNERSHIP:
BERNIE L. MIKA

IR 506-307
Vol. 7 SF 787-814
Findings

1. Certified Filing No. 439, owned jointly with Tracts 1760 and 1780 owner Mrs. Evelyn Webb Estate, Tract 1770 owner W.S. Watters, Tract 1790 owner M.B. Helwig and Tract 1810 owner Billy Joe Helwig, et ux, authorizes the annual diversion of an unspecified amount of water from the Concho River for the irrigation of 900 acres out of Surveys 555, 556, 557, 558, 559, 560, 561 and 16054, Tom Green County, at a maximum diversion rate of 12.0 cfs (5100 gpm) at Diversion Point 1850. Claimant owns 217 acres out of Surveys 556, 557, 558, 559 and 16054 within the certified filing area.
2. Permit No. 165, owned jointly with Tract 1790 owner M.B. Helwig and Tract 1810 owner Billy Joe Helwig, et ux, authorizes the annual diversion of 1400 acre-feet of water from a 700 acre-foot capacity reservoir on the Concho River for the irrigation of 700 acres out of Surveys 555, 556, 557, 558 and 559, Tom Green County, at a maximum diversion rate of 20.0 cfs (8900 gpm) at Diversion Point 1850. The permit area is totally within the area under Certified Filing No. 439. Claimant owns approximately 213 acres out of Surveys 556, 557, 558 and 559 within the permit area.
3. The dam authorized by Permit No. 165 was constructed as authorized and subsequently destroyed in 1917. The dam presently at the authorized site adjacent to Tract 1810 owned by Billy Joe Helwig, et ux, does not contain a sluiceway to release normal flow as required by the permit. The capacity of the present reservoir is approximately 70 acre-feet.
4. Claim No. 110 and an Additional Sworn Statement seek a riparian water right to annually divert 304 acre-feet of water from the Concho River for the irrigation of 192 acres out of Surveys 556, 557, 558, 559 and 16054, Tom Green County, at a maximum diversion rate of 5.57 (2500 gpm) at Diversion Point 1860 with a priority date of 1924. A dam and reservoir are described. The dam is unauthorized and breached.
5. Surveys 556, 557, 558 and 559 are adjacent to the Concho River and were patented from the State in 1860. Survey 16054 is not adjacent to the Concho River and was patented from the State in 1889. The claim area is adjacent to the Concho River.
6. Maximum use on claimant's portion of Certified Filing No. 439 was 204 acre-feet of water diverted from the Concho River to irrigate 182 acres in 1968 at a maximum diversion rate of 5.57 cfs (2500 gpm) at Diversion Point 1860.
7. Use under claimant's portion of Permit No. 165 was not established.
8. Maximum use during the period 1963-1970, inclusive, was 204 acre-feet of water diverted from the Concho River to irrigate 182 acres in 1963 at a maximum diversion rate of 5.57 cfs (2500 gpm) at Diversion Point 1860.
9. Construction of diversion facilities was commenced in 1905 and Certified Filing No. 439 was filed on June 29, 1914.
10. Application for Permit No. 165 was filed on November 17, 1916.
11. First use of Concho River water for irrigation within the claim area was in 1905.

BASES OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 439, PERMIT NO. 165 AND CLAIM NO. 110

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 700 ACRE-FEET (P-155)
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 201 ACRE-FEET PER YEAR
NO. OF ACRES - 192
IRRIGATED TRACT IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 439 AND CLAIM NO. 110 ON OWNED TRACT.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 556, 557, 558, 559 AND 16054
ABSTRACTS - 7795, 7796, 7810, 7808 AND 8814
DIVERSION - 5.57 CFS (2500 GPM) AT DIVERSION POINT 1860
PRIORITY DATE - DECEMBER 29, 1925

DIVERSION POINT NO: 1870 AND 1890
TRACT NO: 1810 AND 1820

OWNERSHIP:
WILLIE JOE HELVIG
JUNE L. HELVIG

IR 308-310
Vol. 7 SF 535-534
Findings:

- Certified Filing No. 439, owned jointly with Tracts 1760 and 1790 owner Mrs. Evelyn Webb Estate, Tract 1770 owner W.S. Watters, tract 1790 owner M.S. Helvig and Tract 1900 owner Bernice L. Mika, authorizes the annual diversion of an unspecified amount of water from the Concho River for the irrigation of 900 acres out of Surveys 555, 556, 557, 558, 559, 560, 561 and 595, Tom Green County, at a maximum diversion rate of 12.0 cfs (8400 gpm) at Diversion Point 1850. Claimants own 277 acres out of Surveys 555, 559 and 557 within the certified filing area.
- Permit No. 163, owned jointly with Tract 1790 owner M.S. Helvig and Tract 1801 owner Bernice L. Mika, authorizes the annual diversion of 1400 acre-feet of water from a 700 acre-foot capacity reservoir on the Concho River for the irrigation of 700 acres out of Surveys 555, 556, 557, 559 and 559, Tom Green County, at a maximum diversion rate of 24.0 cfs (8300 gpm) at Diversion Point 1850. The permit area is wholly within the area under Certified Filing No. 439. Claimants own 277 acres out of Surveys 555, 556 and 557 within the permit area.
- The dam authorized by Permit No. 155 was constructed as authorized and subsequently destroyed in 1917. The dam presently at the authorized site adjacent to Tract 1820 does not contain a sluiceway to release normal flow as required by the permit. The capacity of the present reservoir is approximately 70 acre-feet.
- Claims No. 512 and 513 seek rights under Permit No. 163 and Certified Filing No. 439, respectively, to annually divert 53 1/3 acre-feet of water from the Concho River and from a reservoir on the Concho River for the irrigation of 80 acres out of Surveys 555, 556 and 557, Tom Green County, at a maximum diversion rate of 2.23 cfs (1000 gpm) at a non-existing diversion point between Diversion Point 1870 and Diversion Point 1890 with a priority date of 1917. The claimed dam and reservoir are those authorized by Permit No. 155.
- Claim No. 1900 and an Additional Sworn Statement seek a right under Certified Filing No. 439 to annually divert 70 acre-feet of water from the Concho River for the irrigation of 32 acres out of Surveys 555, 556 and 10051, Tom Green County, at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1890 with a priority date of 1917. A dam and reservoir are described, being those authorized by Permit No. 165.
- Surveys 555, 556 and 557 are adjacent to the Concho River and were patented from the State in 1869, 1860 and 1889. Survey 10051 is not adjacent to the Concho River and was patented in 1899. The area under Claims No. 512, 513 and 1900 is adjacent to the Concho River.
- Maximum use under Claimants' portion of Certified Filing No. 439 and Permit No. 163 was 182 acre-feet of water diverted from the reservoir on the Concho River to irrigate 103 acres in 1971 at a maximum total diversion rate of 4.40 cfs (2090 gpm) at Diversion Points 1870 and 1890.
- Use during the period 1963-1970, inclusive, was not established.
- There is an intervening landowner and interjacent appropriator between authorized Diversion Point 1890 and Diversion Points 1870 and 1890.
- Construction of diversion facilities was commenced in 1905 and Certified Filing No. 439 was filed on June 29, 1914.
- Application for Permit No. 163 was filed on November 17, 1915.
- First use of Concho River water for irrigation within the claim area was in 1905.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIMS NO. 512, 513 AND 1901

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 439 AND PERMIT NO. 165

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 704 ACRE FEET (P 163)
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 192 ACRE-FEET PER YEAR
NO. OF ACRES - 205
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX D INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 439 AND PERMIT NO. 165 ON OWNED TRACTS.
TRACTS LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 555, 556 AND 557
DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 1850
PRIORITY DATE - JUNE 29, 1914

DIVERSION POINT NO: 1890
TRACT NO: 1820 AND 1830

OWNERSHIP:
WILLIE MAE RAY, ORA GERTRUDE CHILDRESS AND ROMA LEO RAY

IR 311-313
Vol. 7 SF 535-805
Findings:

- Claim No. 755 seeks a riparian water right to annually divert 41 acre-feet from the Concho River for the irrigation of 41 acres out of Survey 594, Tom Green County, at a maximum diversion rate of 2.67 cfs (1200 gpm) at a non-existing diversion point upstream from Diversion Point 1890 with a priority date of February, 1964.
- Claim No. 756 seeks a riparian water right to annually divert 41 acre-feet of water from the Concho River for the irrigation of 41 acres out of Survey 595, Tom Green County, at a maximum diversion rate of 2.67 cfs (1200 gpm) at Diversion Point 1890 with a priority date of February, 1964.
- Surveys 594 and 595 are adjacent to the Concho River and were patented from the State in 1860. The area under Claims No. 594 and 595 is adjacent to the Concho River.
- Maximum use during the period 1963-1967, inclusive, was 13 acre-feet of water diverted from the Concho River in 1964 to irrigate 13 acres out of Survey 594 and 41 acre-feet diverted from the Concho River to irrigate 41 acres out of Survey 595 at a maximum diversion rate of 2.56 cfs (1150 gpm) at Diversion Point 1890.
- First use of Concho River water for irrigation within the claim area was in February, 1964.

BASIS OF RIGHT RECOGNIZED - CLAIMS NO. 755 AND 756

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 59 ACRE-FEET PER YEAR
NO. OF ACRES - 59
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX D INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIMS NO. 755 AND 756 ON OWNED TRACTS.
TRACT LOCATION - TOM GREEN COUNTY
MAP NO. - 9 OF 11, PAGE 15
SURVEYS - 594 AND 595
ABSTRACTS - 7798 AND 7799
DIVERSION - 2.56 CFS (1150 GPM) AT DIVERSION POINT 1890
PRIORITY DATE - FEBRUARY 29, 1964

DIVERSION POINT NO: 1900, 1905, 1907 AND 1909
TRACT NO: 1840 AND 1850

OWNERSHIP:
MILBURN BAILEY ESTATE

IR 314-315
Vol. 7 SF 539-636
Findings:

- Claim No. 813 seeks a riparian water right to annually divert 42.1 acre-feet of water from the Concho River for the irrigation of 180 acres out of Surveys 550 and 596, Tom Green County, and Surveys 547, 548, 549 and 597, Concho County, at a maximum diversion rate of 3.34 cfs (1500 gpm) at Diversion Points 1900, 1905, 1907 and 1909 with a priority date of 1903.
- Surveys 547, 548, 549, 550, 596 and 597 are adjacent to the Concho River and were patented from the State in 1860. The claim area crosses the Concho River.
- Maximum use during the period 1963-1967, inclusive, was 444 acre-feet of water diverted from the Concho River in 1967 to irrigate 180 acres out of Surveys 547, 548, 549 and 550 at a maximum total diversion rate of 3.34 cfs (1500 gpm) at Diversion Points 1900, 1907 and 1909. Diversion at Diversion Point 1905 and use on Surveys 596 and 597 were not established.
- First use of Concho River water for irrigation within the claim area was in 1903.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 813

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 444 ACRE-FEET PER YEAR
NO. OF ACRES - 180
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX D INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 813 ON OWNED TRACTS.
TRACTS LOCATION - TOM GREEN AND CONCHO COUNTIES
MAP NO. - 1 OF 3, PAGE 19
SURVEYS - 547, 548, 549, 550, 596 AND 597
ABSTRACTS - 281, 255, 232, 244, 267 AND 268
DIVERSION - 3.34 CFS (1500 GPM) TOTAL AT DIVERSION POINTS 1900, 1907 AND 1909
PRIORITY DATE - DECEMBER 31, 1903

DIVERSION POINT NO: 1910
TRACT NO: 1860

OWNERSHIP:
ROBERT ALLEN AND CONSTANCE B. HAMBLEH

IR 316
Vol. 7 SF 539-546
Findings:

- Certified Filing No. 843, as partially cancelled on April 17, 1904, authorizes the annual diversion of 300 acre-feet of water from the Concho River for the irrigation of 103 acres out of Surveys 111, 142, 143 and 546, Concho County, at a maximum diversion rate of 4.01 cfs (1890 gpm) at Diversion Point 1910.
- Maximum use under Certified Filing No. 843 was 200 acre-feet of water diverted from the Concho River in 1964 and 100 acres out of Surveys 141, 142 and 143 irrigated in 1971 at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1910.
- Construction of diversion facilities was commenced in 1907 and Certified Filing No. 843 was filed on November 10, 1915.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 843

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 200 ACRE-FEET PER YEAR
NO. OF ACRES - 100
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX D INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 843 ON OWNED TRACT.
TRACT LOCATION - CONCHO COUNTY
MAP NO. - 1 OF 3, PAGE 19
SURVEYS - 141, 142, 143 AND 546
DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 1910
PRIORITY DATE - NOVEMBER 10, 1915

DIVERSION POINT NO: 1920
TRACT NO: 1870

OWNERSHIP:
J.C. BRODIE

IR 317-318
Vol. 7 SF 566-856
Findings:

- Permit No. 176, as partially cancelled on October 7, 1968, authorizes the annual diversion of 75 acre-feet of water from the Concho River for the irrigation of 50 acres out of Surveys 136 and 137, Concho County, at a maximum diversion rate of 2.5 cfs (1100 gpm) at Diversion Point 1920, limited to 2 acre-feet per acre actually irrigated.
- Claim No. 12 and an Additional Sworn Statement seek a riparian water right and a right under Permit No. 176 to annually divert 59.1 acre-feet of water from the Concho River for the irrigation of 50 acres out of Surveys 136 and 137, Concho County, at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1920 with a priority date of 1917.
- Surveys 136 and 137 are adjacent to the Concho River and were patented from the State in 1860. The claim area is the same as the area under Permit No. 176 and is separated from the Concho River by other land owned by the claimant.
- Maximum use under Permit No. 176 was 75 acre-feet of water diverted from the Concho River to irrigate 50 acres in 1972 at a maximum diversion rate of 2.23 cfs (1000 gpm) at Diversion Point 1920.
- Maximum use during the period 1963-1970, inclusive, was not established.
- Although Diversion Point 1920 is located on land not owned by claimant, the claimant owns an easement permitting the diversion facilities.
- Application for Permit No. 176 was filed on March 9, 1917.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 12

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 176

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 75 ACRE-FEET PER YEAR, LIMITED TO 2 ACRE-FEET PER ACRE ACTUALLY IRRIGATED
NO. OF ACRES - 50
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX D INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF PERMIT NO. 176 ON OWNED TRACT.
TRACT LOCATION - CONCHO COUNTY
MAP NO. - 1 OF 3, PAGE 19
SURVEYS - 136 AND 137
DIVERSION - 2.23 CFS (1000 GPM) AT DIVERSION POINT 1920
PRIORITY DATE - MARCH 9, 1917

DIVERSION POINT NO: NONE
TRACT NO: 1830

OWNERSHIP:
MULTI-DIM PROPERTIES, INC. (Previously W. S. Karing Estate)

IR 319
Vol. 9 SF 399-405 and Vol. 9A SF 20-21
Findings:

1. Claim No. 927 seeks a riparian water right to annual divert 40 acre-feet of water from a reservoir on the Lipan Creek for the irrigation of 7 acres out of Survey 2500, Tom Green County, at a maximum diversion rate of 1.0 cfs (150 gpm) at a non-existing diversion point with a priority date prior to 1909. The claimed dam and reservoir are unauthorized.
2. Survey 2500 crosses Lipan Creek and was patented from the State in 1960. The claim area crosses Lipan Creek.
3. Claimant did not file a Section 5.307 Claim, did not appear at the evidentiary hearing and did not otherwise establish any beneficial use during any period.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 927

DIVERSION POINT NO: NONE
TRACT NO: 1890

OWNERSHIP:
J. S. CAMPBELL

IR 320
Vol. 9 SF 312-315
Findings:

1. Claim No. 8209 seeks a riparian water right and a right under Article 1590a to annually divert an unstated amount of water from Lipan Creek, a tributary of the Concho River, for mining, industrial and recreation purposes, and for the irrigation of an unstated number of acres out of Surveys 1601, 1606, 1614 and 1617, Tom Green and Concho Counties, at an unstated diversion rate at an unstated diversion point with a priority date of 1946.
2. Surveys 1604, 1606, 1616 and 1617 cross or are adjacent to Lipan Creek and were patented from the State in 1850, 1857, 1857 and 1957, respectively. The claim area crosses Lipan Creek.
3. Claimant did not file a Section 5.307 Claim, did not appear at the evidentiary hearing and did not otherwise establish any beneficial use during any period.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 8209

DIVERSION POINT NO: 1930, 1940 AND 1970
TRACT NO: 1900 AND 1905

OWNERSHIP:
CHARLES KVINTA (Previously Lea Allison)

IR 321-322
Vol. 8 SF 3-35
Findings:

1. Permit No. 2146 authorizes the annual diversion of 450 acre-feet of water from a 450 acre-foot capacity reservoir on the Concho River for the irrigation of 150 acres out of Surveys 56 through 64, Concho County, at a maximum total diversion rate of 3.0 cfs (2250 gpm) at 3 diversion points on the perimeter of the reservoir. The permit provides that if the level of the downstream reservoir of the City of Paint Rock used for municipal purposes is severely depleted and an acute water shortage is threatened, permittee shall cease irrigation operations until such shortage is abated.
2. The dam authorized by Permit No. 2146 was constructed as authorized. Although water regularly flows over a portion of the dam, the dam is functional.
3. Claim No. 232 seeks a riparian water right to annually divert 353 acre-feet of water from a reservoir on the Concho River for the irrigation of 550 acres out of Surveys 56 through 64, Concho County, at a maximum total diversion rate of 12.48 cfs (5600 gpm) at Diversion Points 1930 and 1970 with a priority date prior to 1914. The dam and reservoir are those authorized by Permit No. 2146.
4. Surveys 56 through 64 are adjacent to the Concho River and were patented from the State in 1860, 1857, 1857, 1856, 1856, 1859, 1857, 1858 and 1858, respectively. The claim area is the same as the area under Permit No. 2146 and is adjacent to the Concho River.
5. Maximum use under Permit No. 2146 and during the period 1953-1967, inclusive, was 450 acre-feet of water diverted from the reservoir on the Concho River in 1969 and 450 acres irrigated in 1967 at a maximum diversion rate of 12.48 cfs (5600 gpm) at Diversion Points 1930, 1940 and 1970.
6. Application for Permit No. 2146 was filed on May 12, 1964.
7. First use of Concho River water for irrigation within the claim area was in 1964.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 2146 AND CLAIM NO. 232
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 450 ACRE-FOOT
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 455 ACRE-FOOT PER YEAR
NO. OF ACRES - 450
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF PERMIT NO. 2146 ON OWNED TRACTS
TRACT LOCATION - CONCHO COUNTY
MAP NO. - 2 OF 3, PAGE 20
SURVEYS - 55, 57, 58, 60, 61, 62, 63 AND 64
DIVERSION - 12.48 CFS (5600 GPM) TOTAL AT DIVERSION POINTS 1930, 1940 AND 1970
PRIORITY DATE - MAY 12, 1964
REMARKS - IF THE LEVEL OF THE DOWNSTREAM RESERVOIR OF THE CITY OF PAINT ROCK USED FOR MUNICIPAL PURPOSES IS SEVERELY DEPLETED AND AN ACUTE WATER SHORTAGE IS THREATENED, CLAIMANT SHALL CEASE IRRIGATION OPERATIONS UNTIL SUCH SHORTAGE IS ABATED.

DIVERSION POINT NO: 1950
TRACT NO: 1910

OWNERSHIP:
GLEN EDWARD WRIGHT

IR 523-324
Vol. 8 SF 36-51
Findings:

1. Claim No. 1030 seeks a riparian water right to annually divert 68 acre-feet of water from Little Concho Creek and from a reservoir on Little Concho Creek, a tributary of the Concho River, for the irrigation of 68 acres out of Survey 147, Runnels County, at an unstated maximum diversion rate at Diversion Point 1950 with a priority date of 1951. A dam and on-channel reservoir are described.

*The recognition herein is modified by action of the Commission during the pendency of this adjudication by the granting of an application for a new permit or an amendment of an existing permit or certified filing, a summary of which is described in the addendum to this determination.

2. Survey 142 crosses Little Concho Creek but was patented from the State in 1942. The claim area crosses Little Concho Creek.
3. Maximum use during the period 1963-1967, inclusive, was not established.
4. Little Concho Creek is normally dry at this location except during and subsequent to rainfall.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 1030

DIVERSION POINT NO: NONE
TRACT NO: 1920

OWNERSHIP:
ROY L. SHILLER AND JUDITH E. SHILLER (Previously Frank Droll, et al)

IR 325
Vol. 8 SF 217-220
Findings:

1. Claim No. 3186 seeks a right to annually divert 100 acre-feet of water from Little Concho Creek and from a reservoir on Little Concho Creek, a tributary of the Concho River, for livestock use and for the irrigation of 100 acres out of Survey 180, Runnels County, at an unstated diversion rate at a non-existing diversion point with a priority date of March 1950. A dam and reservoir are described.
2. Survey 180 crosses Little Concho Creek and was patented from the State in 1857. The claim area crosses Little Concho Creek.
3. Irrigation during the period 1961-1967, inclusive, was with ground water only and Claim No. 3186 was abandoned by the claimant at the evidentiary hearing.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 3186

DIVERSION POINT NO: 1960
TRACT NO: 1930 AND 1910

OWNERSHIP:
MRS. D. P. WILLIAMS
BEATRICE R. MYERS

IR 326-327
Vol. 8 SF 54-72
Findings:

1. Claim No. 2010 seeks a riparian water right to annually divert 1.21 acre-feet of water from a reservoir on the Concho River for the irrigation of 87.43 acres out of Surveys 119, 120 and 123, Concho County, at a maximum diversion rate of 2.67 cfs (1200 gpm) at Diversion Point 1960 with a priority date of June, 1914. The claimed dam and reservoir are those authorized by Permit No. 2146 owned by Tract 1900 owner Lea Allison.
2. The area under Claim No. 2010 consists of 2 non-contiguous tracts. Tract 1930 in Survey 123 contains no cleared land. Tract 1940 in Surveys 119 and 120 contains 87 acres of cleared lands and water in the reservoir backs up on the tract.
3. Surveys 119, 120 and 123 are adjacent to the Concho River and were patented from the State in 1860. The claim areas are adjacent to the Concho River.
4. Maximum use during the period 1953-1967, inclusive, was 3 acre-feet of water diverted from the reservoir on the Concho River to irrigate 18 acres out of Tract 1940 in 1964 at a maximum diversion rate of 2.67 cfs (1200 gpm) at Diversion Point 1960. Water was diverted and used for irrigation within the claim area on this one occasion only before Claimant's lease ceased diversion from the reservoir at the order of Lea Allison. In 1964, 19 acre-feet of water was diverted from the reservoir to irrigate 78 acres out of Tract 1940.
5. First use of Concho River water for irrigation within the claim area was in 1964.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2010
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 3 ACRE-FEET PER YEAR
NO. OF ACRES - 18
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 2010 ON OWNED TRACT 1940.
TRACT LOCATION - CONCHO COUNTY
MAP NO. - 2 OF 3, PAGE 20
SURVEYS - 119 AND 120
ABSTRACTS - 238 AND 214
DIVERSION - 2.67 CFS (1200 GPM) AT DIVERSION POINT 1960
PRIORITY DATE - DECEMBER 31, 1964

DIVERSION POINT NO: 1940
TRACT NO: 1950

OWNERSHIP:
FRANK F. BOGSON

IR 528
Vol. 8 SF 225-234
Findings:

1. Permit No. 2558 authorizes the impoundment of 62 acre-feet of water in a 62 acre-foot capacity reservoir on the Concho River for recreational purposes. The dam must contain an Branch Diversion Point at 74 feet sea base. Water released upstream by downstream users may not be impounded and, upon order of the Commission, stored water must be released.
2. It was not established that construction has commenced on the authorized dam. Time for completion was extended to April 15, 1974 by Commission order on March 22, 1972.
3. Claim No. 1851, applicable to Tract 1950, was dismissed on May 10, 1972.
4. Application for Permit No. 2558 was filed on January 26, 1970.
5. Permit No. 2558 was cancelled by Commission order dated July 22, 1974.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER PERMIT NO. 2558

DIVERSION POINT NO: 1990
TRACT NO: 1950

OWNERSHIP:
M.H. ELLIS

IR 329
Vol. 8 SF 75-100
Findings:

1. Permit No. 1823 authorizes the impoundment of 193 acre-feet of water in a 193 acre-foot capacity reservoir on an unnamed tributary of Kickapoo Creek, a tributary of the Concho River, and the annual diversion of 150 acre-feet of water from the reservoir for the irrigation of 75 acres out of Survey 22, Concho County, at an unstated diversion rate at Diversion Point 1990, limited to 2 acre-feet per acre actually irrigated. The permit requires the installation of a metering instrument which will automatically record to within a five percent of accuracy the total amount of water diverted.
2. Maximum use under the permit was 119 acre-feet of water diverted from the reservoir to irrigate 70 acres in 1960 at a maximum diversion rate of 1.67 cfs (1200 gpm) at Diversion Point 1990.
3. Application for Permit No. 1823 was filed on February 27, 1956.

BASIS OF RIGHT RECOGNIZED - PERMIT NO. 1823
SOURCE OF WATER - UNNAMED TRIBUTARY TO KICKAPOO CREEK
NO. OF RESERVOIRS - 1 CAPACITY 193 ACRES FEET
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 119 ACRE-FEET PER YEAR, LIMITED TO 2 ACRE-FEET PER ACRE ACTUALLY IRRIGATED
NO. OF ACRES - 70
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF PERMIT NO. 1823 ON OWNED TRACT.
TRACT LOCATION - CONCHO COUNTY
MAP NO. - 2 OF 3, PAGE 20
SURVEY - 22
DIVERSION - 2.67 CFS (1200 GPM) AT DIVERSION POINT 1990
PRIORITY DATE - FEBRUARY 27, 1956
REMARKS - A METERING INSTRUMENT MUST BE INSTALLED WHICH WILL AUTOMATICALLY RECORD TO WITHIN A FIVE PERCENT OF ACCURACY THE TOTAL AMOUNT OF WATER DIVERTED.

DIVERSION POINT NO: NONE
TRACT NO: 1970

OWNERSHIP:
CLOLA LEE BARROW ESTATE

IR 330-331
Findings:

CLAIM NO. 1917 WAS DISMISSED ON FEBRUARY 27, 1973.

DIVERSION POINT NO: 2000
TRACT NO: NONE

OWNERSHIP:
CONCHO COUNTY WCID NO. 1

IR 332
Vol. 8 SF 101-120
Findings:

1. Certified Filing No. 36, as partially cancelled on May 18, 1964, authorizes the annual diversion of 50 acre-feet of water from an existing reservoir on the Concho River for municipal and domestic use by the Town of Paint Rock at an unspecified diversion rate at Diversion Point 2000.
2. Claimant asserted that in 1970 the United States Department of Agriculture's Soil Conservation Service estimated the capacity of the authorized reservoir to be 110 acre-feet.
3. Maximum use under Certified Filing No. 36 was 35 acre-feet of water diverted in 1972 for municipal and domestic use at a maximum diversion rate of 3.31 cfs (1500 gpm) at Diversion Point 2000.
4. Certified Filing No. 36 was filed on March 5, 1914.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 36
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 1 CAPACITY 110 ACRE-FEET
PURPOSE OF USE - MUNICIPAL
AMOUNT OF WATER - 35 ACRE-FEET PER YEAR
DAM, RESERVOIR AND DIVERSION POINT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: AT POINTS AUTHORIZED BY CERTIFIED FILING NO. 36.
LOCATION - CONCHO COUNTY
MAP NO. - 2 OF 3, PAGE 20
DIVERSION - 3.34 CFS (1500 GPM) AT DIVERSION POINT 2000
PRIORITY DATE - MARCH 5, 1914

DIVERSION POINT NO: 2010 AND 2015
TRACT NO: 1990

OWNERSHIP:
W.B. CURRIE

IR 333-334
Vol. 8 SF 141-157
Findings:

1. Certified Filing No. 837 authorizes the annual diversion of an unspecified amount of water from the Concho River for the irrigation of 85 acres out of Surveys 263, 264 and 265, Concho County, at a maximum diversion rate of 3.0 cfs (1350 gpm) at Diversion Point 2010.
2. Claim No. 51 and an Additional Sworn Statement seek a right under Certified Filing No. 837 to annually divert 35.35 acre-feet of water from the Concho River for the irrigation of 50 acres out of Surveys 263, 264 and 265, Concho County, at a maximum diversion rate of 5.35 cfs (2400 gpm) at Diversion Point 2010 with a priority date of 1915.
3. Surveys 263, 264 and 265 are adjacent to the Concho River and were patented from the State in 1856. The claim area is adjacent to the Concho River and is the same as the Certified Filing area.
4. Maximum use under Certified Filing No. 837 and maximum use during the period 1963-1970, inclusive, was 36 acre-feet of water diverted from the Concho River to irrigate 50 acres in 1970 at a maximum total diversion rate of 3.34 cfs (1500 gpm) at Diversion Points 2010 and 2015.
5. Construction of diversion facilities was commenced on April 1912 and Certified Filing No. 836 was filed on June 15, 1914.
6. First use of Concho River water for irrigation within the claim area was in 1912.

BASIS OF RIGHT RECOGNIZED - CERTIFIED FILING NO. 837 AND CLAIM NO. 51

SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 35 ACRE-FEET OF WATER PER YEAR
NO. OF ACRES - 50
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CERTIFIED FILING NO. 837 AND CLAIM NO. 51 ON OWNED TRACT.
TRACT LOCATION - CONCHO COUNTY
MAP NO. - 2 OF 2, PAGE 20
SURVEYS - 263, 264 AND 265
ABSTRACTS - 661, 662 AND 144
DIVERSION - 3.31 CFS (1500 GPM) AT DIVERSION POINTS 2010 AND 2015
PRIORITY DATE - DECEMBER 31, 1912

DIVERSION POINT NO: 2020
TRACT NO: 1990

OWNERSHIP:
STELLA ELIZABETH WARDLAW WILLIAMS

IR 335-336
Vol. 8 SF 121-145
Findings:

1. Claim No. 3429 seeks a riparian water right to annually divert 180 acre-feet of water from the Concho River for the irrigation of 120 acres out of Surveys 251, 253 and 255, Concho County, at a maximum diversion rate of 3.31 cfs (1500 gpm) at Diversion Point 2020 with a priority date of 1917.
2. Surveys 251, 253 and 255 are adjacent to the Concho River and were patented from the State in 1837, 1857 and 1856, respectively. The claim area is adjacent to the Concho River.
3. Maximum use during the period 1963-1967, inclusive, was 180 acre-feet of water diverted from the Concho River to irrigate 120 acres in one undetermined year at a maximum diversion rate of 3.31 cfs (1500 gpm) at Diversion Point 2020.
4. First use of Concho River water for irrigation within the claim area was in 1957.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 3429
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 180 ACRE-FEET PER YEAR
NO. OF ACRES - 120
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 3429 ON OWNED TRACT.
TRACT LOCATION - CONCHO COUNTY
MAP NO. - 5 OF 5, PAGE 21
SURVEYS - 251, 253 AND 255
ABSTRACTS - 18 AND 523
DIVERSION - 3.31 CFS (1500 GPM) AT DIVERSION POINT 2020
PRIORITY DATE - DECEMBER 31, 1957

DIVERSION POINT NO: 2030
TRACT NO: 2000

OWNERSHIP:
J.T. JACKSON

IR 337
Vol. 8 SF 159-181
Findings:

1. Claim No. 641 and an Additional Sworn Statement seek a riparian right to annually divert 25 acre-feet of water from the Concho River for the irrigation of an unstated number of acres out of Survey 31, Concho County, at a maximum diversion rate of 0.04 cfs (20 gpm) at Diversion Point 2030 with a priority date of 1906. The claimant did not allege any commencement or completion of works prior to August 24, 1967 to apply a greater quantity of water to beneficial use.
2. Survey 31 is adjacent to the Concho River and was patented from the State in 1859. The claim area is adjacent to the Concho River.
3. There was no irrigation within the claim area during the period 1953-1967, inclusive, and the commencement or completion of the construction of works prior to August 24, 1967, designed to apply a greater quantity of water to beneficial use was not established by testimony or other credible evidence.
4. First use of Concho River water for irrigation within the claim area was in 1958.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 641

DIVERSION POINT NO: 2010
TRACT NO: 2010

OWNERSHIP:
JAMES M. NEAL

IR 333
Vol. 8 SF 182-195
Findings:

1. Claim No. 11567 seeks a riparian water right to annually divert an unstated amount of water from the Concho River for the irrigation of an unstated number of acres out of Surveys 29 and 30, Concho County, at a maximum diversion rate of 1.78 cfs (800 gpm) at Diversion Point 2010 with a priority date of 1951. An Additional Sworn Statement was filed which did not allege any use during the period 1944-1970, inclusive. Claimant's late filing petition was granted on September 19, 1972.
2. Surveys 29 and 30, Concho County, are adjacent to the Concho River and were patented from the State in 1800 and 1857, respectively. The claim area is adjacent to the Concho River.
3. Use during the period 1953-1970, inclusive, was not established.
4. First use of Concho River water for irrigation within the claim area was in 1954.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 11567

DIVERSION POINT NO: 2050
TRACT NO: 2020

OWNERSHIP:
JOE HUSENLOHNER

IR 339-146
Vol. 9 SF 407-111
Findings:

1. Claim No. 1590 seeks a riparian water right to annually divert 36 acre-feet of water from Fuzzy Creek, a tributary of the Concho River, for the irrigation of 45 acres out of Survey 534, Punnells County, at a maximum diversion rate of 1.23 cfs (550 gpm) at Diversion Point 2050 with a priority date of May 19, 1967.
2. Survey 534 crosses Fuzzy Creek and was patented from the State in 1891. The claim area crosses Fuzzy Creek.
3. Maximum use during the period 1963-1967, inclusive, was 36 acre-feet of water diverted from Fuzzy Creek to irrigate 33 acres in 1967 at a maximum diversion rate of 1.23 cfs (550 gpm) at Diversion Point 2050.
4. First use of Fuzzy Creek water for irrigation from the claim area was in 1967.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 1590
SOURCE OF WATER - FUZZY CREEK
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 36 ACRE-FEET PER YEAR
NO. OF ACRES - 33
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 1590 ON OWNED TRACT.
TRACT LOCATION - RINNELS COUNTY
MAP NO. - 2 OF 2, PAGE 18
SURVEYS - 534
ABSTRACTS - R21
DIVERSION - 1.23 CFS (550 GPM) AT DIVERSION POINT 2050
PRIORITY DATE - MAY 10, 1967

DIVERSION POINT NO: 2060
TRACT NO: 2030

OWNERSHIP:
JACK V. WILLIAMS

IR 311
Vol. 9 SF 83-99
Findings:

1. Claim No. 3333 seeks a riparian water right to annually divert 105 acre-feet of water from the Concho River for the irrigation of 70 acres out of Survey 249, Concho County, at a maximum diversion rate of 3.34 cfs (1500 gpm) at Diversion Point 2060 with a priority date of 1960.
2. Survey 249 is adjacent to the Concho River and was patented from the State in 1861. The claim area is adjacent to the Concho River.
3. Use during the period 1963-1967, inclusive, was not established.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 3333

DIVERSION POINT NO: 2070
TRACT NO: 2040

OWNERSHIP:
MALCORINE WARDLAW STASNEY

IR 342-345
Vol. 9 SF 474-486
Findings:

1. Claim No. 2799 and an Additional Sworn Statement seek a riparian water right to annually divert 142 acre-feet of water from the Concho River for the irrigation of 150 acres out of Surveys 27 and 28, Concho County, at a maximum diversion rate of 3.34 cfs (1500 gpm) at Diversion Point 2070 with a priority date of 1964.
2. Surveys 27 and 28 are adjacent to the Concho River and were patented from the State in 1859. The claim area is adjacent to the Concho River.
3. Maximum use during the period 1963-1970, inclusive, was not established. It was established that there had been no irrigation within the claim area since 1966.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 2799

DIVERSION POINT NO: 2080
TRACT NO: 2050

OWNERSHIP:
P. P. AND SANIE C. EWALD

IR 344
Vol. 8 SF 229-259
Findings:

1. Claim No. 3003 and an Additional Sworn Statement seek a riparian water right to annually divert 51 acre-feet of water from the Concho River for the irrigation of 50 acres out of Surveys 247, 248 and 249, Concho County, at a maximum diversion rate of 3.34 cfs (1500 gpm) at Diversion Point 2080 with a priority date of 1915.
2. Surveys 247, 248 and 249 are adjacent to the Concho River and were patented in 1856, 1856 and 1861, respectively. The claim area is adjacent to the Concho River.
3. Maximum use during the period 1963-1970, inclusive, was 51 acre-feet of water diverted from the Concho River to irrigate 43 acres in 1966 at a maximum diversion rate of 3.34 cfs (1500 gpm) at Diversion Point 2080.
4. First use of Concho River water for irrigation within the claim area was in 1957.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 3003
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 51 ACRE-FEET PER YEAR
NO. OF ACRES - 43
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 3003 ON OWNED TRACT.
TRACT LOCATION - CONCHO COUNTY
MAP NO. - 3 OF 3, PAGE 21
SURVEYS - 247, 248 AND 249
ABSTRACTS - 543, 542 AND 373
DIVERSION - 3.34 CFS (1500 GPM) AT DIVERSION POINT 2080
PRIORITY DATE - DECEMBER 31, 1957

DIVERSION POINT NO: 2090
TRACT NO: 2060

OWNERSHIP:
HAROLD GLEICHER (A.K.A. Schaefflein, Ownership unverified)

IR 445
Vol. 9 SF 357-397
Findings:

CLAIM NO. 539 WAS DISMISSED ON MARCH 8, 1972

DIVERSION POINT NO: 2100
TRACT NO: 2070

OWNERSHIP:
MRS. LOUISE WARDLAW CUPRICE (Previously Louise Wardlaw Hall)

IR 346
Vol. 8 SF 261-279
Findings:

1. Claim No. 2717 and an Additional Sworn Statement seek a riparian water right to annually divert 92 acre-feet of water from the Concho River for the irrigation of 30 acres out of Surveys 245 and 246, Concho County, at a maximum diversion rate of 3.34 cfs (1500 gpm) at Diversion Point 2100 with a priority date of 1957.
2. Surveys 245 and 246 are adjacent to the Concho River and were patented from the State in 1859. The claim area is adjacent to the Concho River.
3. Maximum use during the period 1961-70, inclusive, was 92 acre-feet of water diverted from the Concho River to irrigate 31 acres in 1966 at a maximum diversion rate of 3.34 cfs (1500 gpm) at Diversion Point 2100.
4. First use of Concho River water for irrigation within the claim area was in 1957.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 2717
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 92 ACRE-FEET PER YEAR
NO. OF ACRES - 31
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 2717 ON OWNED TRACT.
TRACT LOCATION - CONCHO COUNTY
MAP NO. - 3 OF 3, PAGE 21
SURVEYS - 245 AND 246
ABSTRACTS - 107 AND 106
DIVERSION - 3.34 CFS (1500 GPM) AT DIVERSION POINT 2100
PRIORITY DATE - DECEMBER 31, 1957

DIVERSION POINT NO: 2110, 2115 AND 2117
TRACT NO: 2090, 2035 AND 2037

OWNERSHIP:
DONALD H. GOERING

IR 217-218
Vol. 9 SF 279-313
Findings:

1. Claim No. 5895 and an Additional Sworn Statement seek a riparian water right to annually divert 250 acre-feet of water from the Concho River for the irrigation of 147 acres out of Surveys 6, 7 and 8, Concho County, at a maximum diversion rate of 1.95 cfs (880 gpm) at Diversion Points 2115, 2117 and a non-existing diversion point between them with a priority date of 1959.
2. Surveys 6, 7 and 8 are adjacent to the Concho River and were patented from the State in 1856, 1857 and 1857, respectively. The claim area is adjacent to the Concho River.
3. Maximum use during the period 1955-1970, inclusive, was 250 acre-feet of water diverted from the Concho River in 1966 and the irrigation of 120 acres in 1970 at a maximum total diversion rate of 0.99 cfs (450 gpm) at Diversion Points 2110, 2115 and 2117.
4. First use of Concho River water for irrigation within the claim area was in 1954.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 5895
SOURCE OF WATER - CONCHO RIVER
NO. OF RESERVOIRS - 0
PURPOSE OF USE - IRRIGATION
AMOUNT OF WATER - 250 ACRE-FEET PER YEAR
NO. OF ACRES - 120
IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS:
WITHIN THE BOUNDARIES OF CLAIM NO. 5895 ON OWNED TRACTS.
TRACT LOCATION - CONCHO COUNTY
MAP NO. - 5 OF 5, PAGE 21
SURVEYS - 6, 7 AND 8
ABSTRACTS - 762, 127 AND 126
DIVERSION - 0.98 CFS (450 GPM) TOTAL AT DIVERSION POINTS 2110, 2115 AND 2117
PRIORITY DATE - DECEMBER 31, 1959

DIVERSION POINT NO: NONE
TRACT NO: 2090

OWNERSHIP:
EDWIN T. TICKLE

IR 349
Vol. 8 SF 333-335
Findings:

1. Claim No. 2695 seeks a riparian water right to annually divert an unstated amount of water from the Concho River for the irrigation of an unstated number of acres out of Survey 1968, Concho County, at an unstated maximum diversion rate at a non-existing diversion point with a priority date of 1920-1925.
2. Survey 1968 is adjacent to the Concho River and was patented from the State in 1879. The claim area is adjacent to the Concho River.
3. Claimant did not file a Section 5.307 Claim, did not establish any beneficial use during any period and abandoned the claim at the evidentiary hearing.

CLAIMANT IS RECOGNIZED NO RIGHT UNDER CLAIM NO. 2695

DIVERSION POINT NO: 2120
TRACT NO: 2100

OWNERSHIP:
LOUIE BLAIR

IR 359
Vol. 8 SF 314 332
Findings:

1. Claim No. 6219 seeks a riparian water right to annually divert 19.56 acre-feet of water from the Concho River for the irrigation of 19.56 acres out of Survey 2101, Concho County, at a maximum diversion rate of 1.78 cfs (800 gpm) at Diversion Point 2120 with a priority date of March, 1950.
2. Survey 2101 is adjacent to the Concho River and was patented from the State in 1859. The claim area is adjacent to the Concho River.
3. Maximum use during the period 1963-1967, inclusive, was 20 acre-feet of water diverted from the Concho River to irrigate 20 acres in 1963 at a maximum diversion rate of 1.78 cfs (800 gpm) at Diversion Point 2120.
4. First use of Concho River water for irrigation within the claim area was on March 1, 1950.

BASIS OF RIGHT RECOGNIZED - CLAIM NO. 6219

SOURCE OF WATER - CONCHO RIVER

NO. OF RESERVOIRS - 0

PURPOSE OF USE - IRRIGATION

AMOUNT OF WATER - 20 ACRE-FEET PER YEAR

NO. OF ACRES - 20

IRRIGATED TRACT SHOWN IN EXHIBIT NO. 7, APPENDIX TO INVESTIGATION REPORT FOR CONCHO SEGMENT, COLORADO RIVER BASIN, DATED SEPTEMBER 8, 1972, DESCRIBED AS FOLLOWS: WITHIN THE BOUNDARIES OF CLAIM NO. 6219 ON OWNED TRACT

TRACT LOCATION - CONCHO COUNTY

MAP NO. - 3 OF 3, PAGE 21

SURVEY - 2101

ABSTRACT - 975

DIVERSION - 1.78 CFS (800 GPM) AT DIVERSION POINT 2120

PRIORITY DATE - MARCH 1, 1950

ADDENDUM

THE FOLLOWING LIST INCLUDES ALL NEWLY ISSUED AMENDMENTS TO EXISTING PERMITS AND CERTIFIED FILING, WHICH HAVE OCCURRED IN THE CONCHO RIVER SEGMENT DURING THE PENDENCY OF THIS ADJUDICATION.

1. OWNERSHIP: Irion County Irrigation Association (D-0110; T-0390)
By Commission order dated June 28, 1971, Certified Filing No. 132 was amended to:

1. Decrease the maximum authorized diversion rate from 6.67 cfs to 2.23 cfs (1000 gpm), and to;
2. Change the point of diversion to the "right, or east, bank of Spring Creek, S 24° W, 2500 feet from the NE corner of the heirs of C. W. Munsch Survey No. 725, Abstract No. 660".

2. OWNERSHIP: Irion County Irrigation Association (D-0410; T-0390)
By Commission order dated June 28, 1973, Certified Filing No. 225 was amended to:

1. Decrease the maximum authorized diversion rate from 5.0 cfs to 2.23 cfs (1000 gpm), and to;
2. Change the point of diversion to the "right, or east, bank of Spring Creek, S 24° W, 2500 feet from the NE corner of the heirs of C. W. Munsch Survey No. 725, Abstract No. 660".

3. OWNERSHIP: Ray E. Dorrance (D-0730; T-0720)

By Commission orders dated October 15, 1973 and November 27, 1973, Permit No. 1006 was amended to:

1. Change the place of use under the permit to 75 acres out of a 151.037 acre tract in Survey No. 675, designated as Tract 0770, and described by metes and bounds in the order correcting the amendment, and to;
2. Establish a maximum diversion rate of 3.5 cfs (1600 gpm).

4. OWNERSHIP: Texas Parks and Wildlife Department (D-1320; T-1310)

By Commission order dated October 30, 1973, Permit No. 1142 was amended to:

1. Change the point of diversion from the canal headgate at Metcalfe Dam to a point on the east, or right, bank of the South Concho River, S 85°55' W, 3915 feet from the SW corner of the George Blum Survey No. 116, Abstract No. 59, Tom Green County, and to;
2. Change the method of diversion from gravity canal to a pump with a maximum diversion capacity of 3.8 cfs (1700 gpm).

5. OWNERSHIP: Mrs. A.M. Hagen, Mrs. E.M. Boyd and Arthur M. Hagen, Jr. (D-1250; T-1250 and T-1255)

By Commission order dated December 18, 1973, Certified Filing No. 785 was amended to:

1. Change the place of use under the certified filing to authorize the use of 12 acre-feet of water on 5.75 acres of land in the R.A. Abbott Survey No. 91, Abstract No. 14, Tom Green County, described by metes and bounds in the amendment.

6. OWNERSHIP: Henry J. Ripple, Julius J. Ripple and William E. Ripple (D-0770; T-0760, T-0765 and T-0770)

By Commission order dated April 17, 1974, Permit No. 817 was amended to:

1. Change the place of use under the permit to 46.7 acres in Surveys No. 659 and 660, described by metes and bounds in the amendment, with the specific provision that this amendment was not to enhance or diminish the determination made through the adjudication process.

7. OWNERSHIP: Lois McGlochin (D-1600; T-1550)

By Commission order dated January 10, 1975, Certified Filing No. 292 was amended to:

1. Redefine the place of use out of which irrigation may be conducted within the portion of Certified Filing No. 292 to a tract of 761.78 acres out of German Emigration Survey Nos. 350 and 351, and C. Schaidt Survey No. 937, Tom Green County.
2. Add a point of diversion on the Main Concho River, 400 feet east of the SW corner of the German Emigration Survey No. 350, Tom Green County, with a maximum diversion rate of 3.34 cfs (1500 gpm).

8. OWNERSHIP: United States Department of the Air Force (D-1199; T-1199)

The Commission issued Permit No. 1242 on March 11, 1976, which authorized the owner to:

1. Impound 3 acre-feet of water in an off-channel circular reservoir.
2. Divert into the off-channel reservoir not to exceed 85 acre-feet of water per annum from a seasonally diversion point on the south bank of the Concho River at a maximum diversion rate of 2.3 cfs (1040 gpm) and to use the same amount of water for irrigation of 169 acres of land in the Christian Hietzer Survey No. 154, Abstract No. 1556; Heinrich Delkers Survey No. 165, Abstract No. 1751; and George Blum Survey No. 166, Abstract No. 59, Tom Green County.
3. Special Conditions: Diversion shall be restricted such that the flow of the Concho River immediately downstream of the authorized diversion point will not be reduced below 2.0 cfs due to pumping.

9. OWNERSHIP: Whitehead Properties, Inc. (T-1880)

The Commission issued Permit No. 1262 on April 28, 1976, which authorized the owner to:

1. Maintain an existing dam and reservoir on an unused tributary of Lipan Creek and impound therein not to exceed 90 acre-feet of water.
2. Divert and use not to exceed 100 acre-feet of water per annum from the percolate of the reservoir with one portable pump at a maximum diversion rate of 1.1 cfs (500 gpm) for the irrigation of 200 acres of land in the Henry Koehler Survey No. 2500, Abstract No. 1598; and the Max Falkenstein Survey No. 2502, Abstract No. 210, Tom Green County.
3. Special Conditions:
 - (a) Permittee shall maintain an existing Parshall flume, or the equivalent thereof, in such a manner as to maintain an accurate continuing measurement and monitoring of the flow of Lipan Springs.
 - (b) Permittee shall also maintain an existing Sparling flow meter, or the equivalent thereof, in such a manner as to maintain an accurate continuing measurement and monitoring of the flow of waters discharged from the reservoir on permittee's land below Lipan Springs.
 - (c) Permittee shall continuously release waters from the reservoir into the creek bed below the reservoirs at a rate equivalent to 75 percent or 3/4 of the rate of flow of Lipan Springs as continuously measured. Permittee is authorized to retain on the property not to exceed 25 percent of 1/4 of the total waters flowing from Lipan Springs.
 - (d) Nothing in this permit shall be construed to limit permittee's right to make controlled releases of water from the reservoir at a rate of flow in excess of 75 percent of 3/4 of the waters flowing from Lipan Springs.

10. OWNERSHIP: B. A. Duncan (D-0930, 0960, 0970 & 0905; T-0930 & 0930)

By Commission order dated June 23, 1976, Certified Filing No. 290 was amended to:

1. Change the point of diversion from Diversion Point No. 0930 to Diversion Point No. 0905 located N 83°10' E, 2950 feet from the NE corner of the F. Ostromoblan Survey No. 761, Abstract No. 3229, Tom Green County.
2. Special Conditions: This amendment affects only the interests of B. A. Duncan in Certified Filing No. 290.

11. OWNERSHIP: City of San Angelo (D-1330)

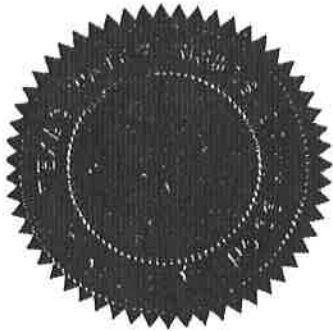
By Commission order dated July 6, 1976, Permit No. 168 was corrected to:

1. Authorize the City of San Angelo to impound 316 acre-feet of water in Ben Picklin Reservoir.

The Secretary of the Commission is directed to forward copies of the modified final determination by regular mail to each person on the Commission's official mailing list for this segment as required by Commission Rule 129.07.30.004. The Secretary of the Commission is further directed to forward copies of the notice of the modified final determination by first-class mail to each claimant of water rights within the Colorado River Basin and to each other person on the Commission's official mailing list for this segment as required by Commission Rule 129.07.30.004. Interested persons can obtain a copy of the modified final determination upon request as provided in this notice.

Executed and entered of record, this the 16th day of August, 1976.

TEXAS WATER RIGHTS COMMISSION




Joe D. Carter, Chairman


Joe R. Carroll, Commissioner

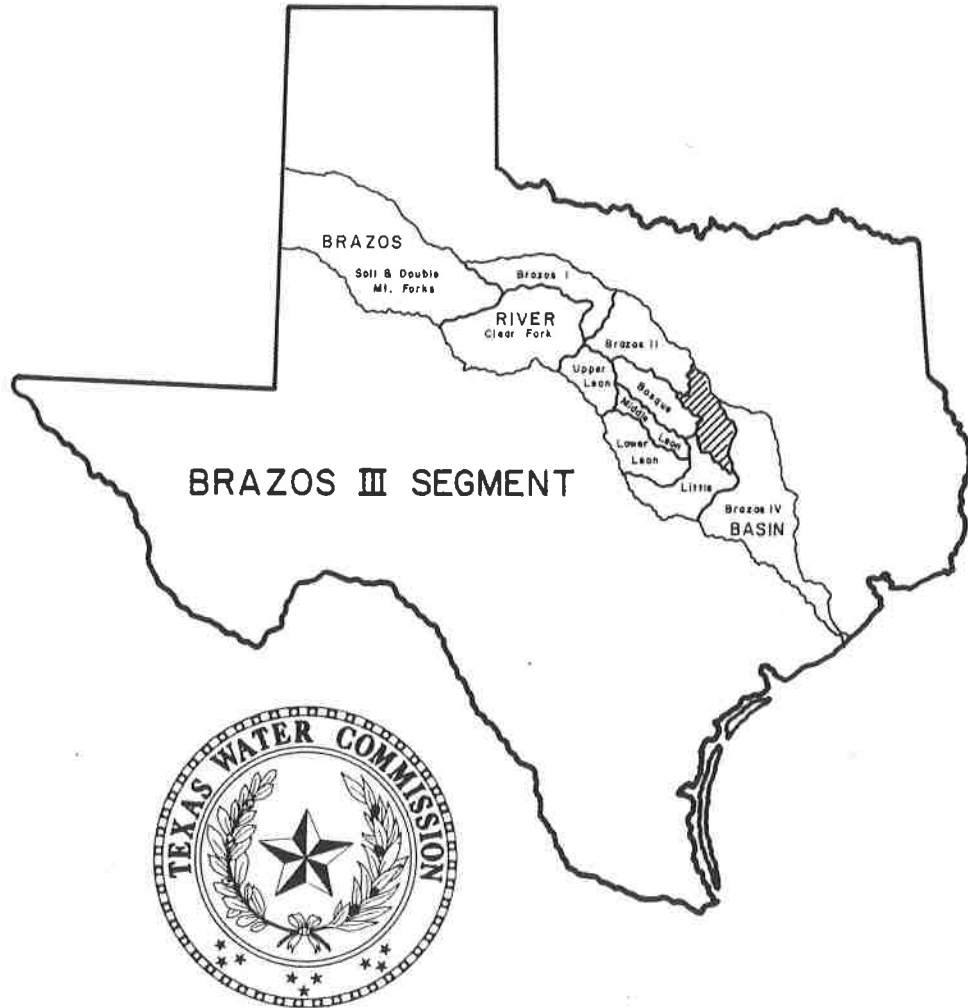

Dorsey B. Hardeman, Commissioner

ATTEST:


Bernice Clifton, Assistant Secretary

FINAL DETERMINATION OF ALL
CLAIMS OF WATER RIGHTS IN THE
BRAZOS III SEGMENT OF THE BRAZOS
RIVER BASIN.

MARCH 27, 1985



PAUL HOPKINS, Chairman
LEE B. M. BIGGART, Commissioner
RALPH ROMING, Commissioner

TEXAS DEPARTMENT OF WATER RESOURCES

TEXAS WATER COMMISSION

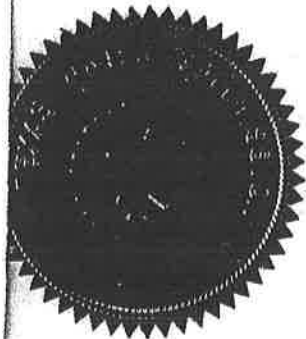


NOTICE OF FINAL DETERMINATION OF ALL CLAIMS
OF WATER RIGHTS IN THE BRAZOS III SEGMENT

Notice is given pursuant to Texas Water Commission Rule 31 TAC §275.18(c) that on March 27, 1985, the Texas Water Commission adopted a Final Determination of Claims of Water Rights in the Brazos III Segment. The Brazos III Segment consists of the Brazos River and its tributaries from Lake Whitney Dam downstream to the confluence of and including the Little Brazos River, but excluding the Bosque River Watershed, the Little River Watershed, and a dam and reservoir known as Bryan Utilities Lake which is authorized by Permit No. 2792 and partially located on an unnamed tributary of the Little Brazos River in Brazos County and includes all or portions of Johnson, Hill, Bosque, McLennan, Limestone, Falls, Bell, Robertson, Milam, Brazos and Burleson Counties, Texas.

The final determination and all evidence presented to or considered by the Commission will be open for public inspection during normal office hours at the offices of the Commission in the Stephen F. Austin State Office Building, Austin, Texas. One copy of the final determination is being furnished without charge by first-class mail to each person on the official mailing list for the Brazos III Segment. Any person may order a copy of the final determination by writing to Permits Division, Texas Department of Water Resources, P. O. Box 13087, Austin, Texas 78711. Each request must be accompanied by check or money order in the amount of \$5.00.

As provided in §11.316, Texas Water Code, and Commission Rule 31 TAC §275.18(d), any affected party may apply to the Commission for a rehearing. Applications for rehearing must be filed with the Commission by May 10, 1985, and any reply to an application for rehearing must be filed with the Commission by May 20, 1985. Pursuant to §11.316, Texas Water Code, and Commission Rule 31 TAC §275.18(d), applications for rehearing which in the opinion of the Commission are without merit may be denied without notice to other parties, but if any application for rehearing is granted, the Commission will give notice to all persons on the official mailing list for the Brazos III Segment. The Commission will take action on applications for rehearing at 2:00 p. m. on May 21, 1985 in Room 118 of the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin, Texas.



Mary Ann Hefner
Mary Ann Hefner, Chief Clerk
Texas Water Commission

Date: April 10, 1985

TEXAS DEPARTMENT OF WATER RESOURCES

TEXAS WATER COMMISSION



IN THE MATTER OF THE ADJUDI-	X	BEFORE THE TEXAS
CATION OF THE BRAZOS III	X	WATER COMMISSION
SEGMENT OF THE BRAZOS	X	
RIVER BASIN	X	

FINAL DETERMINATION

The Texas Water Commission hereby makes its Final Determination of Claims of Water Rights in the Brazos III Segment of the Brazos River Basin pursuant to Section 11.315, Texas Water Code.* This adjudication is authorized by the Water Rights Adjudication Act of 1967, Title 2, Subtitle B, Chapter 11, Subchapter G of the Texas Water Code. Jurisdiction was established at the initial public hearing in Waco, Texas, on May 23, 1983, and evidence was received at subsequent public hearings. A preliminary determination was entered by the Commission on September 13, 1984. Hearings on contests to the preliminary determination were held on January 29, 1985. A proposed final determination was issued on March 1, 1985. Exceptions to the proposed final determination were considered by the Commission on March 27, 1985. The Commission has considered the record of these proceedings, including the examiner's report, the investigation report, the appendix to the investigation report, the written statement of facts and documents admitted into evidence, the contests, the proposed final determination, exceptions, briefs and oral argument in making its final determination.

*All statutory references are to the Texas Water Code Ann. (Supp. 1981) unless otherwise noted.

INTRODUCTION

1. The Brazos III Segment consists of the Brazos River and its tributaries from Lake Whitney Dam downstream to the confluence of and including the Little Brazos River, but excluding the Bosque River Watershed, Little River Watershed, and Bryan Utilities Lake, authorized by Permit No. 2792 and partially located on an unnamed tributary of the Little Brazos River in Brazos County, and includes all or portions of Johnson, Hill, Bosque, McLennan, Limestone, Falls, Bell, Robertson, Milam, Brazos and Burleson Counties, Texas. State water within the Brazos III Segment is used for municipal, industrial, irrigation, mining, recreation and other beneficial uses.

2. (a) In the adjudication of water rights, which includes permits, certified filings and claims filed pursuant to Section 11.303 (1967 Tex. Gen. Laws, Ch. 45, §4), the Commission has applied state statutory and judicial criteria. In accordance with Section 11.021, all flows of the various streams in the Brazos III Segment are state waters subject to this adjudication except water being used for domestic or livestock purposes.

(b) Groundwater which flows to the surface of the land from springs may originate either from percolating waters or from an underground river. Where the source of the spring water is originally percolating waters, then the spring water is the private property of the landowner on whose land the spring flows. Houston & T.C.R.R. v. East, 98 Tex. 146, 81 S.W. 279 (1904); Texas Company v. Burkett, 117 Tex. 16, 296, S.W. 273 (1927); Corpus Christi v. Pleasanton, 154 Tex. 289, 276 S.W.2d 798 (1955). In the absence of evidence that the flow of the spring in question (1) had its source in an underground stream with a defined channel, or (2) was of sufficient magnitude to be of any value to riparian proprietors, or (3) was the source of, or added perceptibly to, the flow of a stream, the presumption is that

the water source or spring is ordinary percolating waters, which are the exclusive property of the owner of the surface of the soil. Bartley v. Sone, 527 S.W.2d 754 (Tex. Civ. App.-- San Antonio 1974, writ ref'd n.r.e.), Texas Company v. Burkett, supra.

If the spring water which originates from ordinary percolating waters is private water under the rules stated above, it may be captured by the landowner at any time before it enters a watercourse. However, at such time as private, percolating spring water enters a watercourse and commingles with state water in the watercourse, it will be presumed that any water used from the watercourse is state water and not private, percolating spring water. Private, percolating spring water which is allowed to enter into a watercourse and mix with state water retains its private property characteristic only if the landowner maintains control over the spring water and can identify it both as to amount and location in the watercourse. In the absence of this evidence, the private spring water which has been allowed to enter a state watercourse and commingle with state water therein will be presumed to have become state water subject to this adjudication.

(c) Springs arising on Spanish or Mexican land grants are presumed to be the private property of the landowner. Where, however, it is shown that the spring contributes to a flowing watercourse upon which other persons rely, or would do so but for the artificial impoundment of the water, and the contribution is of sufficient magnitude to serve the needs of other persons, consistent with the civil laws of Spain and Mexico, the spring waters will be considered state water subject to this adjudication.

3. In determining water rights in the Brazos III Segment, beneficial use, as the term has been defined by law, is an essential element for any claimant seeking recognition of a water right. Beneficial use is use of that amount of water

which is economically necessary for a purpose authorized by Chapter 11 of the Water Code, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose [Section 11.002].

PERMITS AND CERTIFIED FILINGS

4. Statutory appropriators are persons (1) who filed with the State Board of Water Engineers a record of their appropriation as provided by the Irrigation Act of 1913 (1913 Tex. Gen. Laws, Ch. 171, §14), as amended, known as a "certified filing," or (2) who have made a beneficial use of water within the limitations of a permit lawfully issued by the Texas Water Commission or its predecessors.

5. (a) The Commission determined that appropriative rights under permits are limited to the amounts specifically appropriated and beneficially used for the purposes specified, and recognized the maximum quantity of water beneficially used and, if appropriate, the maximum acreage irrigated, together with the diversion rates and time priorities thereof. The Commission determined that appropriative rights under certified filings are limited to the amounts beneficially used and which were reasonably intended to be appropriated as determined by the documents filed pursuant to the Irrigation Acts. Only those persons who were determined to be successors-in-interest to the original holder of the certified filing were considered to own a share of the appropriative right. Mere ownership of land within a service area of a certified filing is not sufficient to establish ownership of any portion of the certified filing. Where permits were not recognized to the full extent of the original authorization in the right or where certified filings were not recognized to the full extent of the declarations contained in the original documents, the Commission determined whether or not the appropriator could develop any further rights under the appropriation beyond the extent recognized in the preliminary

determination. The Commission finds in most cases that ten (10) years is a reasonable period of time to develop a permit to the full extent authorized. Appropriators under permits issued within the past ten (10) years were permitted to continue diligent development to the full extent of the authorization. Appropriators under permits issued more than ten (10) years ago and under certified filings, except for certain municipal use certified filings, were permitted to diligently develop up to the full extent of the authorization or the declaration if justification for the lack of development and a bona fide intention to develop in the foreseeable future were shown.

(b) An appropriator who was diverting water from an unauthorized diversion point was allowed to continue this practice if the deviation from the terms of the appropriative right was inconsequential. This authorization was conditioned on the absence of harm to interjacent appropriators between the authorized point of diversion and the unauthorized point at which the water was actually diverted.

(c) The most significant terms and conditions stated in permits or amended certified filings are specifically included in the findings and/or conclusions for each right. However, all of the terms and conditions stated in permits or amended certified filings shall continue in full force and effect, except for obsolete, irrelevant or immaterial terms and conditions which will be deleted from certificates of adjudication when they are issued.

6. The appropriative rights of holders of term permits, those granted for a specific number of years, were adjudicated and are included in this determination. The appropriative rights of holders of temporary permits, those granted for a period of less than three (3) years, were not included in this adjudication or this determination.

7. All permits which were issued during the pendency of the adjudication and all amendments to permits and certified filings issued during the pendency of the adjudication but subsequent to the last evidentiary hearing on the affected permit or certified filing are included in the addendum to this determination in chronological order of the date of issuance. Due to their recent issuance, hearings could not be held on these permits and amendments.

RIPARIAN RIGHTS UNDER SECTION 11.303

8. In determining the nature and extent of riparian right claims under Section 11.303, the Commission has applied the following statutory criteria:

(a) Claims of riparian rights not filed in substantial compliance with Section 11.303 were barred and extinguished [Section 11.303(i)].

(b) Claims of riparian rights, if valid under existing law, were recognized to the extent of the maximum actual application of water to beneficial use without waste, and to the extent acreage was irrigated, if applicable, during any calendar year from 1963 to 1967, inclusive. However, in any case where a riparian claimant had, prior to August 28, 1967, commenced or completed the construction of works designed to apply a greater quantity of water to beneficial use, the right was recognized to the extent of the maximum amount of water actually applied to beneficial use without waste during any calendar year from 1963 to 1970, inclusive, if the claimant filed an additional sworn statement as provided by Sections 11.303(e) and (h).

9. Subject to the statutory limitations regarding riparian rights, the Commission finds that the following judicial criteria are applicable:

(a) Lands granted by Spain or Mexico are governed by the law of the sovereign when the grants were made. State v. Valmont Plantations, 346 S.W.2d 853 (Tex. Civ. App.-- San Antonio), aff'd, 355 S.W.2d 502 (Tex. 1962). Under the law

of those sovereigns, a specific grant of water was required in order for the landowner to have the right to use public water for irrigation purposes. State v. Valmont Plantations, supra. In the absence of a specific grant of water, Spanish or Mexican land grants did not have appurtenant irrigation rights similar to the common law riparian right to irrigate.

In this regard, the claimant must prove the existence of a specific grant of water for the irrigation of lands granted prior to January 20, 1840. No claim of a water right under Section 11.303 was recognized for land granted prior to January 20, 1840 in the absence of proof showing the existence of a specific grant of water. Land classified as irrigable in the original granting document was considered to have a specific grant of water for the irrigation of that land so classified.

A specific grant of water from the sovereign was also deemed necessary in this adjudication for all other uses of water within the land granted prior to January 20, 1840 except for domestic or livestock use.

(b) Lands patented from the Republic or State of Texas after the adoption of the common law on January 20, 1840, but on or before July 1, 1895, and which border or have frontage upon a stream or watercourse are riparian and the owner was deemed to have a correlative right to share in the use of the normal flow of those waters which pass his land.

(c) All lands abutting upon a stream is riparian as to that part of the survey which lies within the watershed of the stream. The boundary of riparian land is restricted to land the title to which is acquired by one transaction and a parcel of land may lose its riparian status when separated from the stream by grant or deed.

(d) The riparian owner was subject to the doctrine of reasonable use which limits all rights to the use of water to that quantity reasonably required for beneficial use and

prohibits waste, unreasonable use or unreasonable methods of diversion.

(e) The Commission finds that the common law riparian right includes the right to maintain and use a dam or reservoir in certain circumstances. The riparian right is based upon the doctrine of reasonable use; therefore, the exercise of a right to maintain and use a dam or reservoir must be reasonable under the facts and circumstances of each case. The use of a dam or reservoir in connection with a valid riparian right was considered reasonable so long as the structure and impoundment were necessary for the efficient and effective utilization and exercise of a recognized riparian use. In addition, the size of the impoundment must bear a reasonable relationship to the extent and purpose of use and to the character of the stream. Such use was considered unreasonable if it constituted waste or worked an injury or impairment to the exercise of valid rights to the use of water by other appropriators or persons with equal status, or senior or superior priority. Any claim to maintain a dam or reservoir as part of a riparian right was recognized only to the maximum extent that the dam or reservoir was in existence and maintained to facilitate the nonexempt beneficial use of water during any calendar year from 1963 to 1967, inclusive, or from 1963 to 1970, inclusive, if the right was entitled to recognition based on use from 1968 to 1970, inclusive, as provided in Sections 11.303(b) and (e).

The right of a riparian to build and maintain a dam and reservoir on a navigable stream was recognized only if the impoundment did not unreasonably impair the public's right of navigation or access to and enjoyment of the stream.

OTHER CLAIMS OF WATER RIGHTS UNDER SECTION 11.303

10. Section 11.303 provided for the recordation and limitation of other water right claims in addition to riparian right claims. These include claims of water rights

based upon former Article 7500a, Tex. Rev. Civ. Stat. (1925), to impound, divert or use state water for other than domestic or livestock purposes, for which no permit has been issued; claims of water rights under the Irrigation Acts of 1889 and 1895 [declarations of intent] which were not filed with the Board of Water Engineers in accordance with the Irrigation Act of 1913, as amended; and other claims of water rights except claims under permits or certified filings. [With the enactment and recodification of the Texas Water Code, Article 7500a was repealed and codified as Sections 11.142 and 11.143.]

(a) The Commission considered several claims of water rights based upon former Article 7500a, Tex. Rev. Civ. Stat. (1925). Under this article, enacted originally in 1895 and often amended, a landowner could construct, after June 18, 1917 and prior to March 17, 1941, on his own property a reservoir of a maximum size which varied with each amendatory statute and could use the water in the reservoir for any purpose without being required to obtain a permit. City of Anson v. Arnett, 250 S.W.2d 450 (Tex. Civ. App. - Eastland 1952, writ ref'd n.r.e.). A dam may not be constructed across a navigable stream unless authorized by a permit or certified filing, Garrison v. Bexar-Medina-Atascosa Counties Water Improvement District No. 1, 404 S.W.2d 376 (Tex. Civ. App. -- Austin 1966, writ ref'd n.r.e.), or in the exercise of a riparian right as outlined above in paragraph 9(e). The 47th Legislature amended the Act effective March 17, 1941 (1941 Tex. Gen. Laws, Ch. 37), to restrict the use of water from such a reservoir to domestic or livestock purposes in the absence of a permit authorizing other uses. In considering claims of water rights based upon former Article 7500a, the Commission has recognized claims attaching to reservoirs which were constructed with the statute in effect at the time of construction. The owner of such a reservoir constructed after March 27, 1941 has no water right for other

than domestic or livestock purposes unless such use was authorized under a permit or recognized as part of a riparian right.

(b) Several water right claims under Section 11.303 based on prescription were presented. A prescriptive right to divert and use water has been recognized by a court against downstream riparians. Martin v. Burr, 111 Tex. 57, 228 S.W. 543 (1921). However, a water right may not be acquired by prescription as against the State of Texas; therefore, the unappropriated waters of the State are not subject to prescription. See W. HUTCHINS, THE TEXAS LAW OF WATER RIGHTS, pp. 451-452 (1961). Recognition of a water right claimed by prescription is limited to the extent of maximum actual application of water to beneficial use without waste during any calendar year from 1963 to 1967 or 1970, inclusive, as provided by Section 11.303.

The party claiming a water right by prescription has the burden of proving the elements that would constitute adverse use by the overwhelming preponderance of the evidence. Scoggins v. Cameron County W.I.D. No. 15, 264 S.W.2d 169 (Tex. Civ. App. -- Austin 1954, writ ref'd n.r.e.). In order to mature into a prescriptive right, the adverse use of water must be actual, open and obvious, exclusive and have been commenced and continued under a claim of right, inconsistent with and hostile to the claim of another. Heard v. State, 146 Tex. 139, 204 S.W.2d 344 (1947). It must result in injury and detriment to the owner whose right is prescribed and be such an invasion of his right as to give rise to a cause of action. Mud Creek Irr. Agric. and Mfg. Co. v. Vivian, 74 Tex. 170, 11 S.W. 1078 (1889). Such use must also be continuous and uninterrupted for the full term of the prescriptive period which is a minimum of ten years. Kountz v. Carpenter, 206 S.W. 109 (Tex. Civ. App. -- El Paso 1918, no writ).

(c) Several claimants of a riparian water right presented evidence in support of their Section 11.303 claims that showed irrigation during the period 1963-1967, inclusive, on lands granted from Spain or Mexico. As was outlined in paragraph 9(a), the claims of a riparian right of irrigation on lands granted by Spain or Mexico were held not to be valid under existing law. State v. Valmont Plantations, supra. Therefore, the Commission did not recognize those claims since the Adjudication Act is explicit and does not vest the Commission with any latitude to deviate from the limitations expressed in Section 11.303(b), which permits the recognition of claims described in Section 11.303(a) only if they are valid under existing law.

(d) The Commission is of the view that it has no jurisdiction or authority under the Water Rights Adjudication Act or under any other provision of the Water Code to recognize any claim of a water right based on equity.

MERGER FOR ADMINISTRATIVE PURPOSES

11. The allocation of water between users during times of shortage has confronted and confounded every administrator of water resources. Continual division of a stream into normal flow and storm and flood flow is a difficult engineering problem. If the administrator is to deal with not only this division but also the problem of allocating water between holders of certificates of adjudication with a time priority and those without a time priority, a wholly unworkable scheme will have been created. Therefore, the Commission has merged appropriative rights with rights recognized under Section 11.303 into a common system as an equitable and workable means of administering the water rights adjudicated and has placed all rights recognized under Section 11.303 on a time priority with statutory water rights. The time priority for a right recognized under Section 11.303, except for declarations of intent, is the date of first beneficial use of state water within the claim

area for a purpose of use that occurred during the period 1963 to 1967 or 1970, inclusive. The time priority for a right recognized under a permit is the date the application for the permit was formally accepted for filing with the Commission or its predecessors. For the purpose of determining time priority of certified filings and declarations of intent, the Commission determines that the following are relevant:

1889 Tex. Gen. Laws, Ch. 88, §§4-8, 9 H. Gammel, Laws of Texas 1128 (1898);

1895 Tex. Gen. Laws, Ch. 21, §§5-7, 10 H. Gammel, Laws of Texas 751 (1898); and

1913 Tex. Gen. Laws, Ch. 171, §§5-14.

FAILURE TO FILE AND SUBSTANTIATE CLAIMS

12. Sections 11.303 and 11.307 require all claimants of water rights except for domestic or livestock purposes to file a statement of claim of right with the Commission. The Commission finds that the failure to file a sworn statement extinguishes and bars any claim of water right under Section 11.303.

As a basic premise, those parties to the adjudication proceeding asserting water rights under Sections 11.303 and 11.307 have an affirmative obligation to produce credible evidence to substantiate the nature and extent of their claims. The Commission finds that any party whose claim was not substantiated by credible evidence cannot be recognized a water right under this determination.

FINAL DECREE OF COURT

13. The recognition of water rights in this adjudication shall be final and conclusive as to all existing and prior rights and claims to the water rights in the Brazos III Segment of the Brazos River Basin upon the final decree of the court. A water right will not exist in the Brazos III Segment of the Brazos River Basin unless included in the final decree of the court or created under a permit issued by the

Commission subsequent to the final decree of the court.
[Section 11.322.]

ORDER

NOW, THEREFORE BE IT ORDERED BY THE TEXAS WATER COMMISSION THAT:

1. As its final determination of claims of water rights in the Brazos III Segment of the Brazos River Basin, the Commission makes findings of fact and conclusions of law defining the nature and extent of the claims of each respective party as hereinafter enumerated. The parties are indexed alphabetically and set out in the determination in numerical order of diversion point, or by tract number when there is no diversion point.

2. The rights to use the water of the State of Texas in the Brazos III Segment of the Brazos River Basin, based on the findings of fact indicated, with the annual quantities, purposes of use, rates of diversion, time priorities and conditions stated, are set forth below, following the alphabetical index.

3. The following action is taken on the exceptions to the proposed final determination:

a. The exceptions of Texas Utilities Electric Company to the proposed final determination of rights under Permit No. 2250, as amended, are hereby granted.

b. The exceptions of the Estate of Joe Reistino, Deceased, to the proposed final determination of rights under §11.303, Claim No. 2283 are hereby overruled.

c. The exceptions of the Northern Trust Company (As Trustee for Goodland Farms) to the proposed final determination of rights under §11.303, Claim No. 1628 are hereby overruled.

d. The exceptions of Kathleen Kelly to the proposed final determination of rights under §11.303, Claim No. 3383 are hereby overruled.

e. The exceptions of the Northern Trust Company, (as Trustee for Brazos River Farm) to the proposed final determination of rights under §11.303, Claim No. 332 are hereby overruled, except that Fact Finding No. 5 is corrected to show that the first beneficial use of water actually occurred in 1925.

f. The exceptions of Frank Abate, Pat Abate and Tony Lombardo to the proposed final determination of rights under §11.303, Claim No. 6028 are hereby overruled.

g. The exceptions of Basil Abate, Tony Abate, Pat Abate, Lena Akkerman and Kathleen Kelly to the proposed final determination of rights under §11.303, Claim No. 3671 are hereby overruled, except that Fact Finding No. 5 is added to reflect that the first nonexempt beneficial use of water within the claim area actually occurred in 1950.

h. The exceptions of the Executive Director to the proposed final determination of rights under §11.303, Claim No. 431 of Daniel Leonard and H. L. Hunt Trust Estate are hereby granted.

i. The exceptions of the Executive Director to the proposed final determination of rights under Permit No. 271 of Wesley Robinson and Lola Robinson are hereby overruled.

j. The exceptions of the Executive Director to the proposed final determination of rights under Permit No. 904 of W. J. Dube are hereby overruled.

k. The exceptions of the Executive Director to the proposed final determination of rights under Permit No. 2155 of Greater Houston Council of Camp Fire, Inc. are hereby overruled.

NAME	DIVERSION POINT NO.	TRACT NO.	PAGE NO.
REISING, JOE, ESTATE OF	2260, 2320, 4240, 4260 & 4280	2760	50
REISING, JOE, ESTATE OF	3180, 3260 & 3260	3180	55 & 66
REISING, JOE, ESTATE OF	4640	3160 & 4640	62 & 68
REISING, GATHAN	4640	3140	61
REWKE, CAMILLE STEVEN	0965	0965	37
REWER, KENNETH ROBERT, FAMILY TRUST	0965	0965	37
REPUBLIC BANK MACO, TRUSTEE	0270	0270	23
REPUBLIC BANK MACO, TRUSTEE	0700	0700	31
ROBERTS, DAVID L. & WIFE, JENNIE KRAMER ROBERTS	1300, 1302, 1304 & 1308	1300	44
ROBINSON MACHINERY COMPANY, INC.	0870	0870	35
ROBINSON, WESLEY & WIFE, LOLA ROBINSON	0730, 0734 & 0737	0730	32 & 67
ROBINSON, WESLEY & WIFE, LOLA ROBINSON	0740	0740	32
ROBINSON, WESLEY & WIFE, LOLA ROBINSON	0820, 0830 & 0840	0820	34
ROBINSON, WESLEY & WIFE, LOLA ROBINSON	0965 & 0970	0970	37 & 67
ROGERS, R. A.	0020	0020	18
ROPER, W. C. & SUZANNE ROPER			66
ROSEBUD, CITY OF	1960, 1964, 1968, 1972 & 1976	NONE	68
ROWAN, STELLA S.	1100, 1102, 1104, 1220, 1222, 1224, 1226, 1230 & 1230	1100	59
SAVINE PRODUCTION COMPANY	2180, 4160, 4180, 4200 & 4220	2180	69
SANFORD, OLAN, JR.	0110	0110	20
SCARMARDO, L. P.	3350, 3355, 3360, 4660, 4680 & 4700	3350	56
SCARMARDO, PETER L.	3020 & 3040	3020	55
SCARMARDO, SAM P.	3280	3280	56
SCOTT, DAVID J. & WIFE, ELISE J. SCOTT	0510, 0512, 0514, 0543 & 0560	0510 & 0543	27
SEALE, FRANK R., ESTATE OF	4780, 4800, 4820, 4840, 4860, 4880 & 4900	4780 & 4840	62
SEALE, FRANK R., ESTATE OF	4920 & 4940	4920	62
SEALE, R. H., II	4780, 4800, 4820, 4840, 4860, 4880 & 4900	4780 & 4840	62
SHANNON, DORNEY	0350	0350	28
SIMONS, DAVE	0720	0720	31
SIMONS, DAVID	0690	0690	31
SIMONS, DAVID J.	0690	0690	31
SIMS, M. W., ESTATE OF	3480 & 3500	3480	57
SIPAN, FRANK W.	0570	0570	28
SLADE, HARRY W.	0570	0570	28
SLIMP, LOYD S., JR. & WIFE, MARCELINE W. SLIMP	0030 & 0035	0030, 0031 & 0032	18
SMITH, ELVETA	1197 & 1200	1197	41
SMITH, JOHN A., JR.	2500 & 2520	2500	52
SMITH, MAC F.	0520	0520	27
SNEED FARMS	2060 & 2080	2060	49
STARNEY, GRACE	1240 & 1242	1244	43
STARNEY, LEONARD	1240 & 1242	1244	43
STARNEY, MARIOTA	1240 & 1242	1244	43
STARNEY, BUE	1240 & 1242	1244	43
STEWART, JOHN L. TRUSTEE	0510, 0512, 0514, 0543 & 0560	0510 & 0543	27 & 69

NAME	DIVERSION POINT NO.	TRACT NO.	PAGE NO.
TEARFILL, JOE	0510, 0512, 0514, 0543 & 0560	0310 & 0345	27
TEAKELL, JOHN	0510, 0512, 0514, 0543 & 0560	0310 & 0345	27
TEXAS UTILITIES ELECTRIC COMPANY	0765 & 0766	NONE	33
TEXAS UTILITIES ELECTRIC COMPANY	0835	NONE	34
TEXAS UTILITIES ELECTRIC COMPANY	0950, 0949 & 0954	NONE	36
THEVIS, JUPP	0850	0850	34
THLOPUN, J. E.	1070	1070	38
TRIPPET, HARRY J.	1010	1010	37
TRIPPET, HORACE R.	1000	1000	37
TRIPPET, HORACE R.	1010	1010	37
UNIVERSITY NATIONAL BANK	3700	3700	58
URANOVSKY, ALPHONS D.	0500	0500	27
VICK, KYLE A., JR., ESTATE OF	0370	0370	25
VICK, KYLE A., JR., ESTATE OF	0750	0750	52
VON LUENENCK, FRIEDRICH	2700	2700	53
MACO, CITY OF	0630	NONE	70
MACO, CITY OF	0640 & 0650	NONE	70
WALKER, CHARLES	0620	0620	70
WALKER, LAMAR	2860	2860	54
WALSH, MARY D.	1090 & 1091	1090	39 & 65
WALTERS, R. BRUCE	0600 & 0604	0600	29
WEAR, DALE W.	0030 & 0035	0030, 0031 & 0032	18
WEBB, GERALDINE	0030 & 0035	0030, 0031 & 0032	18
WEBB, MORRIS H., ESTATE OF	0030 & 0035	0030, 0031 & 0032	18
WEINACHT BROTHERS	2200	2200	49 & 63
WELBORN, DIANE H.	0320A	0340	24
WELBORN, DIANE H.	0320	0340	24
WENZEL, ANDREA	2760 & 2800	2760	53
WENZEL, CHRISTEL	2760 & 2800	2760	53
WENZEL, HANS JOSEF	2760 & 2800	2760	53
WENZEL, WILFRIED	2760 & 2800	2760	53
WHALEY, T. W., JR.	0970	0980	37 & 66
WHALEY, T. W., JR.	1020	1020	38 & 66
WHALEY, T. W., JR.	0970	0980	37 & 66
WHALEY, T. W., SR.	1020	1020	28 & 66
WHITLESS, R. P.	4540	4540	61
WHITLATCH, JOHN & WIFE, HILDRED WHITLATCH	0400	0400	25
WILSON, BIRCH	0080 & 0084	0080	19
WILLIAMS, DAN WELDON	0230	0230	22
WILLIAMS, DAN WELDON	0240	0240	22
WILLIS, DAN M.	0120	0120	20
WILSON, MELBA LINDA	1197 & 1200	1197	41
WOODALL FARMS	1900, 1920, 2060, 2065 & 2010	1900	48
WOODALL, JOHN R. & MARY T. WOODALL	1880, 1940, 2040, 2110 & 2100	1880	48 & 66
YOUNG, GARY B.	0510, 0512, 0514, 0543 & 0560	0310 & 0345	27 & 69
YOUNG BROTHERS, INC.	0670	0670	31
YOUNGBLOOD, PAVE HARPER	0710	0710	31
ZIMMERMAN, HERBERT S.	0200, 0203 & 0203	0200	28

DIVERSION POINT NO: 0010
TRACT NO: 0010
OWNERSHIP: Marshal Overton
IR: 1
APP: 2
XI SF 96

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 10251 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that no water was diverted during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1956. (Exh. 460)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 96)
3. Claimant is the owner of claim area T-0010 which is located in Abstracts Nos. 9 and 246, Hill County. Abstract No. 9 was patented in 1855. Abstract No. 246 was patented in 1957. (Exh. 5)
4. There was no evidence presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 9. (XI SF 96)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 10251 because he did not file any §11.307 claim or present any evidence concerning any water use within claim area T-0010 during the period 1963-1967, inclusive, and because the portion of claim area T-0010 within Abstract No. 9 was granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant.

DIVERSION POINT NO: 0020
TRACT NO: 0020

OWNERSHIP: R. A. Rogers

IR: 3
APP: 3
XI SF 97

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2404 and Certified Filing No. 19474 to divert and use 15 acre-feet of water per year from the Brazos River at a maximum diversion rate of 800 gpm for the irrigation of an unspecified number of acres of land with a priority date of 1950. (Exh. 461)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2404 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 5 acre-feet of water was diverted at a maximum of 800 gpm, to irrigate 10 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1950. (Exh. 462)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 97)
3. Claimant is the owner of claim area T-0020 which is located in Abstract No. 9, Hill County. Abstract No. 9 was granted prior to January 20, 1840. (Exh. 5)
4. There was no evidence presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 9. (XI SF 97)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2404 because (1) claim area T-0020 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 0030 and 0035
TRACTS NOS: 0030, 0031, and 0032

OWNERSHIP: Loyd B. Slimp, Jr. and wife, Marginal H. Slimp, Dale W. Webb, Geraldine Webb and Estate of Morris S. Webb, Deceased

IR: 4, 5
APP: 2
I SF 66-76

SECTION 11.307 CLAIM (Claimant Dale W. Webb): Under §11.303 Claim No. 6928 to divert and use 56 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1.60 cfs for the irrigation of 100 acres of land with a priority date of 1935. (Exh. 6)

SECTION 11.307 CLAIM (Claimants Loyd B. Slimp and wife, Marginal H. Slimp): Under §11.303 Claim No. 6928 to divert and use 56 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1.60 cfs for the irrigation of 56 acres of land with an unspecified priority date. (Exh. 7)

SECTION 11.307 CLAIM (Claimants Geraldine Webb and Estate of Morris S. Webb, Deceased): Under §11.303 Claim No. 6928 to divert and use 56 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1.60 cfs for the irrigation of 100 acres of land with an unspecified priority date. (Exh. 8)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 6928 which asserted a riparian right to divert and use water for irrigation purposes and declared that no water was diverted in any calendar year during the period 1963-1967. The date of first beneficial use of water within the claim area was declared to be 1935. (Exh. 9)
2. Claimants Loyd B. Slimp and wife, Marginal H. Slimp, are the owners of claim area T-0030. Claimant Dale W. Webb is the owner of claim area T-0031. Claimants Geraldine Webb and Estate of Morris S. Webb, Deceased, are the owners of claim area T-0032. Claim area T-0030, T-0031, and T-0032 are located in Abstract No. 9, Hill County. Abstract No. 9 was patented in 1835. T-0030, T-0031, and T-0032 and Abstract No. 9 abut the Brazos River. (I SF 72)
3. The record in this adjudication does not contain any English translation of the Robertson Grant (A-4) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes.
4. The first diversion and use of state water for irrigation purposes within T-0030, T-0031, and T-0032 was in 1935. (Exh. 6, 7, 8 and 9)

5. No evidence was presented by claimants at the hearing as to the maximum acreage irrigated, maximum diversion rate, or amount of water diverted during the period 1963-1967. (I SF 66-76)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 6928 because (1) tracts T-0030, T-0031 and T-0032 are located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any theory.

DIVERSION POINT NO: 0040
TRACT NO: 0040

OWNERSHIP: Chesley J. Austen

IR: 6, 7
APP: 2
I SF 104-124

SECTION 11.307 CLAIM: Under §11.303 Claim No. 759 to divert and use 100 acre-feet of water per year from the Brazos River at a maximum diversion rate of 650 gpm for the irrigation of 100 acres of land with a priority date of 1969. (Exh. 13)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 759 which asserted a riparian right to divert and use water for irrigation purposes and declared that no water was diverted in any calendar year during the period 1963-1967. The date of first beneficial use of water within the claim area was declared to be June, 1959. (Exh. 14)
2. An additional sworn statement to §11.303 Claim No. 759 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 23 acre-feet of water from the Brazos River at a maximum diversion rate of 650 gpm for the irrigation of 25 acres of land. (Exh. 15)
3. Claimant is the owner of claim area T-0040 which is located in Abstract No. 460, Hill County. Abstract No. 460 was patented in 1853. T-0040 and Abstract No. 460 abut the Brazos River. (I SF 106)
4. The first diversion and use of state water for irrigation purposes within T-0040 was prior to 1961. (I SF 124)
5. Claimant commenced the construction of works designed to apply a greater quantity of water to beneficial use prior to August 28, 1967 by clearing additional land. (I SF 109)
6. The most acreage within T-0040 irrigated with state water in any calendar year during the period 1963-1970, inclusive, was 45 acres, being fields Nos. 1, 2, and 3, in Abstract No. 460, in 1970. (I SF 115-119)
7. During the period 1963-1970, inclusive, state water was diverted for irrigation purposes within T-0040 at diversion point D-0040 located on the Brazos River by a portable pump at a maximum effective diversion rate of 1.44 cfs (650 gpm) using a volume gpm type distribution system. (I SF 111, 112)
8. The maximum amount of state water diverted and used for irrigation purposes within T-0040 in any calendar year during the period 1963-1970, inclusive, was 70 acre-feet of water in 1970. (I SF 119)

CONCLUSION:

Claimant is recognized a right under §11.303 Claim No. 759 to divert and use not to exceed 30 acre-feet of water per year from diversion point D-0040 located on the Brazos River, at a maximum diversion rate of 1.44 cfs (650 gpm) for the irrigation of 45 acres of land within tract T-0040 in Abstract No. 460, Hill County, with a priority date of December 31, 1960.

DIVERSION POINT NO: 0050
TRACT NO: 0050

OWNERSHIP: Bobbie W. Bowens and Sara Bowens

IR: 8-9
APP: 2
I SF 77-101

SECTION 11.307 CLAIM: Under §11.303 Claim No. 1901 to divert and use 60 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1.3 cfs for the irrigation of 120 acres of land with a priority date of 1961. (Exh. 10)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 1901 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be an unspecified amount of water from the Brazos River at a maximum diversion rate of 1.34 cfs for the irrigation of 100 acres of land. The date of first beneficial use of water within the claim area was declared to be June 1961. (Exh. 11)
2. Claimants are the owners of claim area T-0050 which is located in Abstracts Nos. 9 and 460, Hill County. Abstract No. 9 was patented in 1835. Abstract No. 460 was patented in 1853. Abstract No. 460 and the portion of tract T-0050 lying therein abut the Brazos River. The portion of T-0050 lying within Abstract No. 9 is severed from the Brazos River by intervening survey lines. (I SF 83, 83; Exh. 5)
3. The first diversion and use of state water for irrigation purposes within T-0050 was in 1961. (I SF 87)
4. The most acreage within the nonsevered portion of T-0050 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 60 acres, being fields Nos. 2, 3 and 4, in Abstract No. 460 in 1967. (I SF 89, 93)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0050 at diversion point D-0050 located on the Brazos River by a portable pump at a maximum effective diversion rate of 1.3 cfs (600 gpm) using a sprinkler type distribution system. (I SF 88, 94)
6. The maximum amount of state water diverted and used for irrigation purposes within T-0050 in any calendar year during the period 1963-1967, inclusive, was 75 acre-feet of water in 1967. (I SF 92, 93)

CONCLUSION:

Claimants are recognized a right under §11.303 Claim No. 1901 to divert and use not to exceed 75 acre-feet of water per year from diversion point D-0050 located on the Brazos River at a maximum diversion rate of 1.3 cfs for the irrigation of 60 acres of land within tract T-0050 in Abstract No. 460, Hill County, with a priority date of December 31, 1961.

DIVERSION POINT NO: 0060
TRACT NO: 0060

OWNERSHIP: Mary Kremplin Jenkins and Mary Kremplin Jenkins, Trustee

IR: 10
APP: 2
IX SF 82

SECTION 11.307 CLAIM: Under §11.303 Claim No. 1356 to divert and use 296 acre-feet of water per year from the Brazos River at a maximum diversion rate of 3000 gpm for the irrigation of 148 acres of land with a priority date of 1968. (Exh. 354)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 1356 which asserted riparian, equitable, and all other water rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 243 acre-feet of water from the Brazos River at a maximum diversion rate of 3,000 gpm for the irrigation of 148 acres of land. The date of first beneficial use of water within the claim area was declared to be in 1965. (Exh. 355)
2. Claimants are the owners of claim area T-0060 which is located in Abstract No. 128, Bosque County, Abstract No. 128 was patented in 1857. T-0060 and Abstract No. 128 abut the Brazos River. (Exh. 5) IX SF 85
3. The first diversion and use of state water for irrigation purposes within T-0060 was in 1963. (IX SF 86)
4. The most acreage within T-0060 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 98 acres, being Field No. 1 in Abstract No. 128. (IX SF 87)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0060 at diversion point D-0060 located on the Brazos River by a pump at a maximum effective diversion rate of 3.56 cfs (1600 gpm) using a volume gun type distribution system. (IX SF 92)
6. The maximum amount of state water diverted and used for irrigation purposes within T-0060 in any calendar year during the period 1963-1967, inclusive, was 243 acre-feet of water in 1965, 1966, and 1967. (Exh. 355) IX SF 91, 97

CONCLUSION:

Claimants are recognized a right under §11.303 Claim No. 1356 to divert and use not to exceed 243 acre-feet of water per year from diversion point D-0060 located on the Brazos River at a maximum diversion rate of 3.56 cfs (1600 gpm) for the irrigation of 98 acres of land within tract T-0060 in Abstract No. 128, Bosque County, with a priority date of December 31, 1963.

DIVERSION POINT NO: 0070 and 0071
TRACT NO: 0070

OWNERSHIP: H. L. Hunt, Jr., Trust Estate

IR: 11-12
APP: 2
I SF 125-178

SECTION 11.307 CLAIM: Under §11.303 Claim No. 431 to divert and use 4799 acre-feet of water per year from the Brazos River at a maximum diversion rate of 9.76 cfs for the irrigation of 752 acres of land with a priority date prior to 1962. A 300 acre-foot capacity off-channel reservoir was also claimed. (Exh. 17)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 431 which asserted a riparian right to divert and use water for irrigation and livestock purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 2300 acre-feet of water from the Brazos River at an unspecified diversion rate for the irrigation of 718 acres of land. The date of first beneficial use of water within the claim area was declared to be prior to 1962. An off-channel reservoir with a capacity of 300 acre-feet was also claimed. (Exh. 18)
2. The official records of the Department show that Daniel M. Leonard is the holder of §11.303 Claim No. 431. At the evidentiary hearing, H. L. Hunt, Jr., Trust Estate, appeared as the claimant and asserted part ownership of §11.303 Claim No. 431. No deed or other legal document has been received by the Department to reflect the change of ownership. (I SF 128, 127)
3. Claimants are the owners of claim area T-0070 which is located in Abstract No. 128, Bosque County, Abstract No. 128 was patented in 1857. T-0070 and Abstract No. 128 abut the Brazos River. (Exh. 5) I SF 132
4. The first diversion and use of state water for irrigation purposes within T-0070 was in 1921. (I SF 138)
5. The most acreage within T-0070 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 752 acres. (I SF 143, 148, 170)
6. An off-channel reservoir was constructed in 1963 and is located at diversion point D-0071 within T-0070. During the period 1963-1967, inclusive, 288 acre-feet of water was impounded in the reservoir and the water was used for irrigation purposes within T-0070. The diversion and use of state water within T-0070 during this period was facilitated by use of the impoundment. (I SF 135, 155, 156, 170)
7. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0070 at diversion point D-0070 on the Brazos River by two stationary pumps at a total maximum effective diversion rate of 8.89 cfs (4000 gpm) using sprinkler and flood type distribution systems. (I SF 156, 157, 160)
8. The maximum amount of state water diverted and used for irrigation purposes within T-0070 in any calendar year during the period 1963-1967, inclusive, was 4,799 acre-feet of water. (I SF 146, 149, 161)
9. Claimants' high use of water for irrigation purposes during the period 1963-1967 was attributed to necessity created by the intensive fertilization of feed crops for dairy cattle. (I SF 150-152)
10. The maximum reasonable water duty for irrigation within tract T-0070 is 3.75 acre-feet per acre actually irrigated per annum.

CONCLUSIONS:

1. Annual water use in excess of 2820 acre-feet for the irrigation of 752 acres of land within tract T-0070 is an unreasonable use.
2. Claimants are recognized a right under §11.303 Claim No. 431 to divert and use not to exceed 2820 acre-feet of water per year from diversion point D-0070 located on the Brazos River at a total maximum diversion rate of 8.89 cfs (4000 gpm) for the irrigation of 752 acres of land within tract T-0070 in Abstract No. 128, Bosque County, with a priority date of December 31, 1921. Claimants are further recognized a right to store the diverted water in a 288 acre-foot capacity off-channel reservoir located at diversion point D-0071 and to subsequently divert and use the stored water for irrigation purposes to the extent authorized herein.

DIVERSION POINTS NOS: 0080, 0084
TRACT NO: 0080

OWNERSHIP: Birch Wilfong

IR: 13
APP: 2
I SF 164-180

SECTION 11.307 CLAIM: Under §11.303 Claim No. 11302 to divert and use 14 acre-feet of water per year from the Brazos River at a maximum diversion rate of 600 gpm for the irrigation of 40 acres of land with a priority date before 1964. (Exh. 84)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 11302 which asserted a riparian right to divert and use water for irrigation, industrial and other purposes. §11.303 Claim No. 11302 did not specify the maximum diversion and use, but declared the maximum diversion rate to be 600 gpm for the irrigation of 40 acres of land during the period 1963-1967, inclusive. The date of first beneficial use of water within the claim area was declared to be May, 1964. (Exh. 85)
2. Claimant is the owner of claim area T-0080 which is located in Abstracts Nos. 1 and 210, Hill County. All irrigation within T-0080 during the period 1963-1967, inclusive, was in Abstract No. 210, Abstract No. 210 was patented in 1845. The portion of T-0080 lying within Abstract No. 210 and Abstract No. 210 abut the Brazos River and across Tenor Creek. (I SF 169, 169) App. 2
3. The first diversion and use of state water for irrigation purposes within T-0080 was in March, 1962. (I SF 172)
4. The most acreage within T-0080 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 27 acres. (I SF 173)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0080 at diversion point D-0084 located on Tenor Creek and diversion point D-0080 located on the Brazos River by a portable pump at a maximum effective diversion rate of 600 gpm using a sprinkler type distribution system. (I SF 171, 177)
6. The maximum amount of state water diverted and used for irrigation purposes within T-0080 in any calendar year during the period 1963-1967, inclusive, was 34 acre-feet of water. (I SF 176)

CONCLUSIONS:

1. Claimant is recognized a right under §11.303 Claim No. 11302 to divert and use not to exceed 34 acre-feet of water per year from diversion point D-0084 on the Brazos River and diversion point D-0084 located on Tenor Creek, tributary of the Brazos River at a maximum diversion rate of 1.33 cfs for the irrigation of 27 acres of land within tract T-0080 in Abstract No. 210, Hill County, with a priority date of March 31, 1962.

DIVERSION POINT NO: 0090
TRACT NO: 0090

OWNERSHIP: Ollin Dennis

IR: 15
APP: 2
XI SF 95

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 1357 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 38.8 acre-feet of water was diverted at a maximum diversion rate of 900 gpm, to irrigate 55 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in July 1965. (Exh. 459)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (I SF 95)
3. Claimant is the owner of claim area T-0090, which is located in Abstract No. 1, Bosque County, Abstract No. 1 was granted prior to January 20, 1840. (Exh. 5)
4. There was no evidence presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 1. (XI SF 95)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 1357 because (1) claim area T-0090 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NOS: 0100 and 0155
TRACT NOS: 0100, 0155

OWNERSHIP: W. O. Gibson

IR: 16
APP: 2
XI SF 93

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2571 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 15 acre-feet of water was diverted at a maximum diversion rate of 800 gpm, to irrigate 30 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1962. (Exh. 457)
2. Claimant is the owner of claim area T-0100, which is located in Abstract No. 1, Hill County, Abstract No. 1 was patented prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River within Abstract No. 1. (XI SF 93)
4. Claimant failed to appear at his scheduled hearing and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 93)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 2571 because he did not file any §11.303 claim or present any evidence concerning any water use during the period 1963-1967, inclusive, and claim area T-0100 is located on land granted prior to January 20, 1840.

DIVERSION POINT NO: 0110
TRACT NO: 0110

OWNERSHIP: Allison J. Dick; Alford J. Conaway; Leo H. Fetner and L. M. Fetner; Floyd T. Holland; Harold W. Kinard or N. S. Kinard, (ownership unverified); Alvin Ledwig; Charles R. Matthews; Douglas M. Matthews; McRobertson Farms, A Partnership; Jerry R. Niles, (ownership unverified); Glen Sanford, Jr.

IR: 17-18
APP: 2
I SF 180-195

SECTION 11.307 CLAIM: Under §11.303 Claim No. 527 to divert and use zero amount of water per year from an unspecified stream at an unspecified diversion rate for the irrigation of zero acres of land with an unspecified priority date. (Exh. 20)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 527 which asserted riparian, equitable and other rights to divert and use water for irrigation purposes and declared no diversion and use in any calendar year during the period 1963-1967. The date of first beneficial use of water within the claim area was declared to be in 1968. (Exh. 21)
2. Claimants are the owners of claim area T-0110 which is located in Abstracts Nos. 1 and 165, Hill County. Abstract No. 1 was patented in 1835. Abstract No. 165 was patented in 1860. The portion of T-0110 lying within Abstract No. 1 abuts the Brazos River and Abstract No. 1 abuts the river. The portion of T-0110 lying within Abstract No. 165 does not abut or cross the river. (I SF 186, App. 2)
3. The record in this adjudication does not contain any English translation of the Brooks Survey (A-1) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (I SF 186)
4. The first diversion and use of state water for irrigation purposes within T-0110 was in 1968. (I SF 186-190)
5. No portion of the acreage within T-0110 was irrigated with state water in any calendar year during the period 1963-1967, inclusive. (I SF 186-188)
6. Diversion point D-0110 was not used to divert state water during the period 1963-1967, inclusive. (I SF 189)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 527 because no evidence of exempt beneficial use during the period 1963-1967 was presented. The portion of claimants' tract abutting the Brazos River lies within a grant patented before January 20, 1940.

DIVERSION POINT NO: 0120
TRACT NO: 0120

OWNERSHIP: Dan H. Willis
IR: 19
APP: 2
XI SF 99

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5037 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 5 acre-feet of water was diverted at a maximum of 1850 gpm, to irrigate 60 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in October 1966. (Exh. 463)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 99)
3. Claimant is the owner of claim area T-0120, which is located in Abstract No. 1, Hill County. Abstract No. 1 was granted prior to January 20, 1940. (Exh. 5)
4. There was no evidence presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 2.

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 5037 because (1) claim area T-0120 is located on land granted prior to January 20, 1940, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0130
TRACT NO: 0130

OWNERSHIP: Herman L. Horn
IR: 20
APP: 2
I SF 209-233

SECTION 11.307 CLAIM: Under §11.303 Claim No. 1837 to divert and use 75 acre-feet of water per year from the Brazos River at a maximum diversion rate of 2,000 cfs for the irrigation of 100 acres of land with a priority date of 1967. (Exh. 24)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 1837 which asserted riparian, equitable, and other rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 75 acre-feet of water from the Brazos River at a maximum diversion rate of 800 gpm for the irrigation of 100 acres of land. The date of first beneficial use of water within the claim area was declared to be 1967. (Exh. 25)
2. An additional sworn statement to §11.303 Claim No. 1837 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 22 acre-feet of water from the Brazos River at a maximum diversion rate of 900 gpm for the irrigation of 100 acres of land. (Exh. 26)

3. Claimant is the owner of claim area T-0130 which is located in Abstracts Nos. 73, 150, 236 and 310, Bosque County. Abstract No. 73 was patented in 1847. Abstract No. 150 was patented in 1863. Abstract No. 236 was patented in 1863. Abstract No. 310 was patented in 1875. T-0130 and Abstract No. 73 abut the Brazos River. (I SF 213)

4. That portion of T-0130 located in Abstracts Nos. 310, 236, and 150 is severed from the Brazos River. (Exh. 5; I SF 213, 214)

5. The first diversion and use of state water for irrigation purposes within T-0130 was in July, 1967. (I SF 218, 225)

6. Claimant failed to commence or complete the construction of works designed to apply a greater quantity of water to beneficial use prior to August 28, 1967. (I SF 228)

7. The most acreage within that portion of T-0130 located in Abstract No. 73 which was irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 85 acres, in 1967. (I SF 222)

8. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0130 at diversion point D-0130 located on the Brazos River by a stationary pump at a maximum effective diversion rate of 7.22 cfs (1000 gpm) using a sprinkler type distribution system. (I SF 217, 230)

9. The maximum amount of state water diverted and used for irrigation purposes within the portion of T-0130 located in Abstract No. 73 in any calendar year during the period 1963-1967, inclusive, was 84 acre-feet of water in 1967. (I SF 223, 224)

CONCLUSION:

Claimant is recognized a right under §11.303 Claim No. 1837 to divert and use not to exceed 84 acre-feet of water per year from diversion point D-0130 located on the Brazos River, at a maximum diversion rate of 7.22 cfs (1000 gpm) for the irrigation of 84 acres of land within tract T-0130 in Abstract No. 73, Bosque County, with a priority date of July 31, 1967.

DIVERSION POINT NO: 0150
TRACT NO: 0150

OWNERSHIP: Charles R. Matthews and wife, Julia Hutchins

IR: 21-22
APP: 2
I SF 196-208

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5038 to divert and use 18 acre-feet of water per year from an unspecified stream at an unspecified diversion rate for the irrigation of 18 acres of land with a priority date of August 26, 1969. (Exh. 22)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 5038 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 18 acre-feet of water from the Brazos River at a maximum diversion rate of 1500 gpm for the irrigation of 18 acres of land. The date of first beneficial use of water within the claim area was not specified. (Exh. 23)
2. Claimants are the owners of claim area T-0150 which is located in Abstract No. 1, Hill County. Abstract No. 1 was patented in 1835. T-0150 and Abstract No. 1 abut the Brazos River. (I SF 199, 200)
3. The record in this adjudication does not contain any English translation of the Brooks Survey (A-1) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (I SF 196-200)
4. The first diversion and use of state water for irrigation purposes within T-0150 was in 1963. (I SF 204, 207, 208)
5. The most acreage within T-0150 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 36 acres. (I SF 206, 207)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0150 at diversion point D-0150 located on the Brazos River at a maximum effective diversion rate of 3.33 cfs (1500 gpm). (I SF 208, 209)
7. The maximum amount of state water diverted and used for irrigation purposes within T-0150 in any calendar year during the period 1963-1967, inclusive, was 18 acre-feet of water. (I SF 205, 207)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 5038 because (1) the claim area T-0150 is located on land granted prior to January 20, 1940, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0160
TRACT NO: 0160

OWNERSHIP: Wayne Gibson

IR: 24
APP: 2
XI SF 94

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 3664 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that no water was diverted in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1962. (Exh. 458)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 94)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 3664 because he did not file any §11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: 0170
TRACT NO: 0170

OWNERSHIP: Walton K. Ballew

IR: 25-26
APP: 2
I SP 234-254

SECTION 11.307 CLAIM: Under §11.303 Claim No. 6164 to divert and use 300 acre-feet of water per year from the Brazos River at a maximum diversion rate of 4.90 cfs for the irrigation of 427.47 acres of land with a priority date of 1963. (Exh. 28)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 6164 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 300 acre-feet of water from the Brazos River at a maximum diversion rate of 2200 gpm for the irrigation of 215 acres of land. The date of first beneficial use of water within the claim area was declared to be 1963. (Exh. 29)
2. Claimant is the owner of claim area T-0170 which is located in Abstracts Nos. 88 and 89, Hill County. Abstracts Nos. 88 and 89 were patented in 1893. T-0170 and Abstracts Nos. 88 and 89 about the Brazos River. (I SP 238, App. 2)
3. The first diversion and use of state water for irrigation purposes within T-0170 was in August, 1963. (I SP 240)
4. The most acreage within T-0170 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 269 acres, being Field No. 1 in Abstract 89 and Fields Nos. 2 and 3 in Abstract No. 88. (I SP 245)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0170 at diversion point D-0170 located on the Brazos River by a portable pump at a maximum effective diversion rate of 3.11 cfs (1400 gpm) using a sprinkler type distribution system. (I SP 241-243)
6. The maximum amount of state water diverted and used for irrigation purposes within T-0170 in any calendar year during the period 1963-1967, inclusive, was 337 acre-feet of water in 1967. (I SP 246, 247)

CONCLUSION:

Claimant is recognized a right under §11.303 Claim No. 6164 to divert and use not to exceed 337 acre-feet of water per year from diversion point D-0170 located on the Brazos River, at a maximum diversion rate of 3.11 cfs (1400 gpm) for the irrigation of 269 acres of land within tract T-0170 in Abstracts Nos. 88 and 89, Hill County, with a priority date of August 31, 1963.

DIVERSION POINTS NOS: 0180, 0185, 0190
TRACTS NOS: 0180 and 0190

OWNERSHIP: Althia Boyce Gage Burnette and Dock L. Burnette

IR: 27-30
APP: 2
I SP 278-320

SECTION 11.307 CLAIM (Claimant Althia Boyce Gage Burnette): Under §11.303 Claim No. 529 to divert and use 250 acre-feet of water per year from the Brazos River at a maximum diversion rate of 2000 gpm for the irrigation of 160 acres of land with a priority date of June, 1956. (Exh. 35)

SECTION 11.307 CLAIM (Claimant Dock L. Burnette): Under §11.303 Claim No. 528 to divert and use 250 acre-feet of water per year from the Brazos River at a maximum diversion rate of 2000 gpm for the irrigation of 155 acres of land with a priority date of June, 1956. (Exh. 37)

FINDINGS:

1. Claimant Althia Boyce Gage Burnette is the owner of §11.303 Claim No. 529 which asserted riparian, equitable, and all other water rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 250 acre-feet of water from the Brazos River at a maximum diversion rate of 1000 gpm for the irrigation of 160 acres of land. The date of first beneficial use of water within the claim area was declared to be June, 1956. (Exh. 36)
2. Claimant Althia Boyce Gage Burnette is the owner of claim area T-0180 which is located in Abstracts Nos. 372 and 954, Hill County. All irrigation within T-0180 during the period 1963-1967, inclusive, was in Abstract No. 954. Abstract No. 954 was patented in 1846. T-0180 and Abstract No. 954 about the Brazos River. (Exh. 5; I SP 283, 284, 286)
3. The first diversion and use of state water for irrigation purposes within T-0180 was in June, 1964. (I SP 291, 310)
4. The most acreage within T-0180 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 140 acres, being Field No. 1, in Abstract No. 954. (I SP 300, 301)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0180 at diversion point D-0180 located on the Brazos River by a portable pump at a maximum effective diversion rate of 2.22 cfs (1000 gpm) using a sprinkler type distribution system. (I SP 292, 293, 304)
6. The maximum amount of state water diverted and used for irrigation purposes within T-0180 in any calendar year during the period 1963-1967, inclusive, was 175 acre-feet of water. (I SP 297, 299)
7. Claimant Dock L. Burnette is the owner of §11.303 Claim No. 528 which asserted riparian, equitable, and all other water rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 250 acre-feet of water from the Brazos River at a maximum diversion rate of 1000 gpm for the irrigation of 155 acres of land. The date of first beneficial use of water within the claim area was declared to be June, 1956. (Exh. 38)
8. Claimant Dock L. Burnette is the owner of claim area T-0190 which is located in Abstracts Nos. 372, 863 and 954, Hill County. All irrigation within T-0190 during the period 1963-1967, inclusive, was in Abstracts Nos. 863 and 954. Abstract No. 863 was patented in 1846. Abstract No. 954 was patented in 1846. Abstracts Nos. 863 and 954 about the Brazos River. (I SP 286-289)
9. The first diversion and use of state water for irrigation purposes within T-0190 was in June, 1956. (I SP 311)
10. The most acreage within T-0190 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 138 acres, being Fields Nos. 1, 2 and 3 in Abstracts Nos. 954 and 863. (I SP 314)

11. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0190 at diversion point D-0190 located on the Brazos River by a portable pump at a maximum effective diversion rate of 2.22 cfs (1000 gpm) using a sprinkler type distribution system. (I SP 313, 318)
12. The maximum amount of state water diverted and used for irrigation purposes within T-0190 in any calendar year during the period 1963-1967, inclusive, was 173 acre-feet of water. (I SP 315)
13. D-0180 has been moved to D-0185, with no intervening diversion points. (I SP 284, 318)

CONCLUSIONS:

1. Claimant Althia Boyce Gage Burnette is recognized a right under §11.303 Claim No. 529 to divert and use not to exceed 175 acre-feet of water per year from diversion points D-0180 and D-0185 located on the Brazos River, at a maximum diversion rate of 2.22 cfs (1000 gpm) for the irrigation of 140 acres of land within tract T-0180 in Abstract No. 954, Hill County, with a priority date of June 30, 1964.
2. Claimant Dock L. Burnette is recognized a right under §11.303 Claim No. 528 to divert and use not to exceed 173 acre-feet of water per year from diversion point D-0190 located on the Brazos River, at a maximum diversion rate of 2.22 cfs (1000 gpm) for the irrigation of 138 acres of land within tract T-0190 in Abstracts Nos. 863 and 954, Hill County, with a priority date of June 30, 1956.

DIVERSION POINTS NOS: 0200, 0203, and 0205
TRACT NO: 0200

OWNERSHIP: Herbert B. Zimmerman

IR: 31
APP: 2
I SP 34-82

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5962 to divert and use 390 acre-feet of water per year from the Brazos River at a maximum diversion rate of 650 gpm for the irrigation of 270 acres of land with an unspecified priority date. (Exh. 351)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5962 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 390 acre-feet of water from the Brazos River at a maximum diversion rate of 190 gpm for the irrigation of 149 acres of land. The date of first beneficial use of water within the claim area was declared to be 1961. An off-channel reservoir with a capacity of 9 acre-feet was also claimed. (Exh. 352)
2. Claimant is the owner of claim area T-0200 which is located in Abstracts Nos. 863, 864, and 370, Hill County. Abstract No. 863 was patented in 1846. Abstract No. 864 was patented in 1846. Abstract No. 370 was patented in 1846. T-0200 and Abstracts Nos. 863, 864, and 370 about the Brazos River. (I SP 42, 62, 63 App. 2)
3. The first diversion and use of state water for irrigation purposes within T-0200 was in June, 1965. (I SP 57)
4. The most acreage within T-0200 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 173 acres, being Fields Nos. 1, 2, 3, 4, 5, 6 and 7 in Abstracts Nos. 370, 863 and 864. (I SP 68, 69)
5. A 12 acre-foot off-channel reservoir formed by a natural depression in the land is located within T-0200. During the period 1963-1967, inclusive, water was diverted from the Brazos River at diversion points D-0200, D-0203, and D-0205 and impounded in the reservoir and the water was used for irrigation purposes within T-0200. The diversion and use of state water within T-0200 during this period was facilitated by use of the impoundment. (I SP 77, 79, 80)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0200 at diversion points D-0200, D-0203 and D-0205 on the Brazos River by a portable pump at a maximum effective diversion rate of 4.32 cfs (1944 gpm). (I SP 47, 80; I SP 209-212)
7. The maximum amount of state water diverted and used for irrigation purposes within T-0200 in any calendar year during the period 1963-1967, inclusive, was 305 acre-feet of water, in 1967. (I SP 51, 54, 55, 80)

CONCLUSIONS:

1. The use of the reservoir located within T-0200, as well as the capacity of the reservoir, was reasonable.
2. Claimant is recognized a right under §11.303 Claim No. 5962 to divert and use not to exceed 305 acre-feet of water per year from diversion points D-0200, D-0203 and D-0205 located on the Brazos River, at a maximum diversion rate of 4.32 cfs for the irrigation of 173 acres of land within tract T-0200 in Abstracts Nos. 370, 863 and 864, Hill County, with a priority date of June 30, 1965. Claimant is further recognized a right to store the diverted water in a 12 acre-foot capacity off-channel reservoir located within T-0200 and to subsequently divert and use this stored water for irrigation purposes to the extent authorized herein.

DIVERSION POINT NO: 0210
TRACT NO: 0210

OWNERSHIP: John S. Harvey Estate

IR: 33
APP: 4
IX SF 2-19

SECTION 11.307 CLAIM: Under §11.303 Claim No. 1456 to divert and use 100 acre-feet of water per year from the Brazos River at a maximum diversion rate of 900 gpm for the irrigation of 100 acres of land with a priority date of August 7, 1969. First diversion of water was declared to be in 1969. (Exh. 40)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 1456 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 125 acre-feet of water from the Brazos River at a maximum diversion rate of 900 gpm for the irrigation of 100 acres of land. The date of first beneficial use of water within the claim area was declared to be 1951. (Exh. 41)
2. An additional sworn statement to §11.303 Claim No. 1456 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 90.66 acre-feet of water from the Brazos River at a maximum diversion rate of 500 gpm for the irrigation of 89.5 acres of land. (Exh. 42)
3. Claimant is the owner of claim area T-0210 which is located in Abstract No. 7, Bosque County, and Abstract No. 33, McLennan County. Abstract No. 7 was patented in 1834. Abstract No. 33 was patented in 1834. T-0210 and Abstracts Nos. 7 and 33 abut the Brazos River. (II SF 7, 8, 11, App. 4)
4. The record in this adjudication does not contain any English translation of the Robayo Grant (A-7 and A-33) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (II SF 2-19)
5. The first diversion and use of state water for irrigation purposes within T-0210 was in June 1963. (II SF 10)
6. Claimant failed to commence or complete the construction of works designed to apply a greater quantity of water to beneficial use prior to August 28, 1967. (II SF 17)
7. The most acreage within T-0210 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 39 acres, being Fields Nos. 1 and 2, in Abstracts Nos. 33 and 7, in 1967. (II SF 10, 15, 17)
8. During the period 1963-1970, inclusive, state water was diverted for irrigation purposes within T-0210 at diversion point D-0210 located on the Brazos River by a portable pump at a maximum effective diversion rate of 2.0 cfs (900 gpm) using a sprinkler type distribution system. (II SF 8, 11, 12, 17)
9. The maximum amount of state water diverted and used for irrigation purposes within T-0210 in any calendar year during the period 1963-1970, inclusive, was 113 acre-feet of water in 1967. (II SF 16, 17)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 1456 because (1) the claim area T-0210 is located on land granted prior to January 20, 1940, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0220
TRACT NO: 0220

OWNERSHIP: Nelda K. Cargill

IR: 35-36
APP: 4
IX SF 20-41

SECTION 11.307 CLAIM: Under §11.303 Claim No. 270 to divert and use 48 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1.78 cfs for the irrigation of 25 acres of land with a priority date of 1967. (Exh. 45)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 270 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 8 acre-feet of water from the Brazos River at a maximum diversion rate of 250 gpm for the irrigation of 8 acres of land. The date of first beneficial use of water within the claim area was declared to be June, 1967. (Exh. 46)
2. An additional sworn statement to §11.303 Claim No. 270 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 48 acre-feet of water from the Brazos River at a maximum diversion rate of 800 gpm for the irrigation of 25 acres of land. (Exh. 47)
3. Claimant is the owner of claim area T-0220 which is located in Abstract No. 1056, McLennan County. All irrigation within T-0220 during the period 1963-1970, inclusive, was in Abstract No. 1056. Abstract No. 1056 was patented in 1848. T-0220 and Abstract No. 1056 abut the Brazos River. (II SF 25; App. 4)
4. The first diversion and use of state water for irrigation purposes within T-0220 was in June, 1967. (II SF 28, 29, 38; Exh. 46)
5. Claimant commenced the construction of works designed to apply a greater quantity of water to beneficial use prior to August 28, 1967, by the purchase of additional irrigation pipe. (II SF 29)
6. The most acreage within T-0220 irrigated with state water in any calendar year during the period 1963-1970, inclusive, was 26 acres, being Fields Nos. 1, 2 and 3, in Abstract No. 1056. (II SF 30)
7. During the period 1963-1970, inclusive, state water was diverted for irrigation purposes within T-0220 at diversion point B-0220 located on the Brazos River by an unspecified type of pump at a maximum effective diversion rate of 1.78 cfs (800 gpm) using a sprinkler type distribution system. (II SF 33)
8. The maximum amount of state water diverted and used for irrigation purposes within T-0220 in any calendar year during the period 1963-1970, inclusive, was 48 acre-feet of water in 1970. (II SF 35, 36)

CONCLUSION:

Claimant is recognized a right under §11.303 Claim No. 270 to divert and use not to exceed 48 acre-feet of water per year from diversion point B-0220 located on the Brazos River, at a maximum diversion rate of 1.78 cfs (800 gpm) for the irrigation of 25 acres of land within tract T-0220 in Abstract No. 1056, McLennan County, with a priority date of June 30, 1967.

DIVERSION POINT NO: 0230
TRACT NO: 0230

OWNERSHIP: Dan Weldon Williams

IR: 37
APP: 4
IX SF 99-118

SECTION 11.307 CLAIM: Under a claim of a riparian right to divert and use an unspecified amount of water per year from the Brazos River at an unspecified diversion rate for the irrigation of 50 acres of land with an unspecified priority date. (Exh. 350)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 6940 which asserted a riparian right to divert and use water for irrigation purposes and did not declare a maximum diversion and use in any calendar year during the period 1963-1967, inclusive. The date of first beneficial use of water within the claim area was declared to be prior to 1959. (Exh. 357)
2. Claimant is the owner of claim area T-0230 which is located in Abstract No. 1056, McLennan County. Abstract No. 1056 was patented in 1848. T-0230 abuts the Brazos River. (IX SF 10)
3. The first diversion and use of state water for irrigation purposes within T-0230 was in 1959. (IX SF 105)
4. The most acreage within T-0230 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 18 acres. (IX SF 110, 113)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0230 at diversion point D-0230 located on the Brazos River by a portable pump at a maximum effective diversion rate of 3.33 cfs (1500 gpm) using a flood type distribution system. (IX SF 105, 107, 108, 116)
6. The maximum amount of state water diverted and used for irrigation purposes within T-0230 in any calendar year during the period 1963-1967, inclusive, was six acre-feet of water. (IX SF 116, 118)

CONCLUSION:

Claimant is recognized a right under §11.303 Claim No. 6940 to divert and use not to exceed six acre-feet of water per year from diversion point D-0230 located on the Brazos River, at a maximum diversion rate of 3.33 cfs (1500 gpm) for the irrigation of 18 acres of land within tract T-0230 in Abstract No. 1056, McLennan County, with a priority date of December 31, 1959.

DIVERSION POINT NO: 0240
TRACT NO: 0240

OWNERSHIP: Dan Weldon Williams

IR: 38
APP: 4
IX SF 119-120

SECTION 11.307 CLAIM: Under a claim of a riparian right to divert and use an unspecified amount of water per year from the Brazos River at an unspecified maximum diversion rate for the irrigation of 18 acres of land with an unspecified priority date.

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 6941 which asserted a riparian right to divert and use water for irrigation purposes and did not declare the maximum diversion and use in any calendar year during the period 1963-1967, inclusive. The date of first beneficial use of water within the claim area was declared to be prior to 1959. (Exh. 360)
2. Claimant is the owner of claim area T-0240 which is located in Abstract No. 1056, McLennan County. Abstract No. 1056 was patented in 1848. T-0240 and Abstract No. 1056 abut the Brazos River. (IX SF 122; App. 4)
3. The first diversion and use of state water for irrigation purposes within T-0240 was in 1959. (IX SF 125)
4. The most acreage within T-0240 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 11 acres. (IX SF 126)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0240 at diversion point D-0240 on the Brazos River by a portable pump at a maximum effective diversion rate of 3.33 cfs (1500 gpm) using a flood type distribution system. (IX SF 105, 107, 108, 116, 126)
6. The maximum amount of state water diverted and used for irrigation purposes within T-0240 in any calendar year during the period 1963-1967, inclusive, was 4 acre-feet of water. (IX SF 116, 118, 126)

CONCLUSION:

Claimant is recognized a right under §11.303 Claim No. 6941 to divert and use not to exceed 4 acre-feet of water per year from diversion point D-0240 located on the Brazos River, at a maximum diversion rate of 3.33 cfs (1500 gpm) for the irrigation of 11 acres of land within tract T-0240 in Abstract No. 1056, McLennan County, with a priority date of December 31, 1959.

DIVERSION POINT NO: 0250
TRACT NO: 0250

OWNERSHIP: George L. Moore

IR: 39-40
APP: 4
IX SF 42-65

SECTION 11.307 CLAIM: Under §11.303 Claim No. 7018 to divert and use an unspecified amount of water per year from the Brazos River at a maximum diversion rate of approximately 300 gpm for the irrigation of 90 acres of land with an unspecified priority date. (Exh. 51)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 7018 which asserted a riparian right to divert and use water from the Brazos River for irrigation purposes and did not specify maximum diversion, diversion rate, or irrigated acreage during the period 1963-1967, inclusive. The first beneficial use of water within the claim area was declared to have been at the time of purchase. (Exh. 52)
2. Claimant is the owner of claim area T-0250 which is located in Abstract No. 1056, McLennan County. Abstract No. 1056 was patented in 1846. T-0250 and Abstract No. 1056 about the Brazos River. (IX SF 46; IX 39)
3. The first diversion and use of state water for irrigation purposes within T-0250 was in the first of July, 1964. (IX SF 50)
4. The most acreage within T-0250 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 80 acres, being Field No. 1 in Abstract No. 1056. (IX SF 52)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0250 at diversion point D-0250 located on the Brazos River by a portable pump at a maximum effective diversion rate of 0.67 cfs (300 gpm) using a row flood type distribution system. (Exh. 53; IX SF 51)
6. The maximum amount of state water diverted and used for irrigation purposes within T-0250 in any calendar year during the period 1963-1967, inclusive, was 40 acre-feet of water. (IX SF 53, 55)

CONCLUSION:

Claimant is recognized a right under §11.303 Claim No. 7018 to divert and use not to exceed 40 acre-feet of water per year from diversion point D-0250 located on the Brazos River, at a maximum diversion rate of 0.67 cfs (300 gpm) for the irrigation of 80 acres of land within tract T-0250 in Abstract No. 1056, McLennan County, with a priority date of July 1, 1964.

DIVERSION POINT NO: 0260
TRACT NO: 0260

OWNERSHIP: Wallace Ferguson

IR: 41
APP: 4
IX SF 63; IX SF 156; XI SF 89

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2110 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 60 acre-feet of water was diverted at an unspecified diversion rate to irrigate 59 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1967. (Exh. 493)
2. An additional sworn statement to §11.303 Claim No. 2110 was timely filed which declared no additional water use. (Exh. 454)
3. Claimant is the owner of claim area T-0260 which is located in Abstract No. 33, McLennan County. Abstract No. 33 was granted prior to January 20, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 33.
5. Claimant failed to appear at his scheduled hearing and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (IX SF 63; IX SF 156; XI SF 89)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2110 because (1) the claim area T-0260 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a right under any other theory.

DIVERSION POINT NO: 0270
TRACT NO: 0270

OWNERSHIP: Republic Bank Waco, Trustee

IR: 42, 43
APP: 4
IX SF 131-156

SECTION 11.307 CLAIM: Under §11.303 Claim No. 6074 to divert and use 1000 acre-feet of water per year from the Brazos River at a maximum diversion rate of 2850 gpm for the irrigation of 400 acres of land and for turkey raising with an unspecified priority date. (Exh. 362)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 6074 which asserted a riparian right to divert and use water for irrigation and industrial purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive to be 1000 acre-feet of water from the Brazos River at a maximum diversion rate of 1580 gpm for the irrigation of 400 acres of land. The date of first beneficial use of water within the claim area was declared to be 1964. (Exh. 363)
2. An additional sworn statement to §11.303 Claim No. 6074 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 1200 acre-feet of water from the Brazos River at a maximum diversion rate of 1580 gpm for the irrigation of 400 acres of land. (Exh. 364)

3. The official records of this Department show that the Citizens National Bank of Waco, Trustee, is the holder of §11.303 Claim No. 6074. At the evidentiary hearing, Republic Bank Waco National Association, Trustee, appeared as the claimant and asserted ownership of §11.303 Claim No. 6074. No deed or other legal document has been received by the Department to reflect the change of ownership. (IX SF 132)

4. Claimant is the owner of claim area T-0270 which is located in Abstract No. 1056, McLennan County. Abstract No. 1056 was patented in 1846. T-0270 and Abstract No. 1056 about the Brazos River. (IX SF 136; App 4)

5. The first diversion and use of state water for irrigation and industrial purposes within T-0270 was in 1964. (IX SF 151, 152)

6. Claimant failed to commence or complete the construction of works designed to apply a greater quantity of water to beneficial use prior to August 28, 1967. (IX SF 151)

7. The most acreage within T-0270 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 274 acres, being Fields Nos. 1 and 2, in Abstract No. 1056. (IX SF 137, 138)

8. During the period 1963-1967, inclusive, state water was diverted for irrigation and industrial purposes within T-0270 at diversion point D-0270 located on the Brazos River by a pump at a maximum effective diversion rate of 6.33 cfs (2850 gpm). Water for irrigation was applied using a sprinkler type distribution system. (IX SF 146, 147)

9. The maximum amount of state water diverted and used for irrigation purposes within T-0270 in any calendar year during the period 1963-1967, inclusive, was 858 acre-feet of water. (IX SF 148, 152, 154)

10. The maximum amount of state water diverted and used for industrial purposes within T-0270 in any calendar year during the period 1963-1967, inclusive, was 74 acre-feet of water. (IX SF 146)

CONCLUSIONS:

1. Claimant is recognized a right under §11.303 Claim No. 6074 to divert and use not to exceed 858 acre-feet of water per year from diversion point D-0270 located on the Brazos River, at a maximum diversion rate of 6.33 cfs for the irrigation of 274 acres of land within tract T-0270 in Abstract No. 1056, McLennan County, with a priority date of December 31, 1964.
2. Claimant is recognized a right under §11.303 Claim No. 6074 to divert and use not to exceed 74 acre-feet of water per year from diversion point D-0270 located on the Brazos River at a maximum diversion rate of 6.33 cfs for the industrial purposes within tract T-0270 in Abstract No. 1056, McLennan County, with a priority date of December 31, 1964.

DIVERSION POINT NO: 0280
TRACT NO: 0280

OWNERSHIP: J. C. Oswald

IR: 44
APP: 3
XI SF 150

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5446 which claims a riparian and prescriptive right to divert and use water from Childress Creek, tributary of the Brazos River, for irrigation purposes, and does declare the maximum amount of water diverted at a maximum diversion rate, or number of acres of land irrigated in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1954. A 512 acre-foot capacity reservoir is also claimed. (Exh. 512)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (IX SF 150)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 5446 because he did not file any §11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: 0290
TRACT NO: 0290

OWNERSHIP: J. C. Oswald

IR: 46
APP: 3
XI SF 151

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5445 which claims a riparian and prescriptive right to divert and use water from Childress Creek, tributary of the Brazos River, for irrigation purposes, and does not declare the maximum amount of water diverted, at a maximum diversion rate, or maximum number of acres of land irrigated in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1954. (Exh. 513)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (IX SF 151)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 5445 because he did not file any §11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: 0300
TRACT NO: 0300

OWNERSHIP: T. R. Allen

IR: 48, 49
APP: 4
IX SF 152

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 1084 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 50 acre-feet of water was diverted at a maximum diversion rate of 400 gpm, to irrigate 50 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1964. (Exh. 514)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (IX SF 152)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 1084 because he did not file any §11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: 0310
TRACT NO: 0310

OWNERSHIP: Mike L. Frey

IR: 50
APP: 4
IX SF 100

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5867 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 130 acre-feet of water was diverted at a maximum diversion rate of 800 gpm, to irrigate 105 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1952. (Exh. 464)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (IX SF 100)
3. Claimant is the owner of claim area T-0310, which is located in Abstract No. 33, McLennan County, Abstract No. 33 was granted prior to January 20, 1840. (Exh. 5)
4. There was no evidence presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 33. (IX SF 100)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 5867 because (1) claim area T-0310 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0320b
TRACT NO: 0320

OWNERSHIP: Karl Lee Reddell and wife, Elsie Mae Reddell

IR: 51
APP: 4
IX SF 2-34

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5439 to divert and use 15 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1400 gpm for the irrigation of 10 acres of land with a priority date of 1940. (Exh. 344)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 5439 which asserted riparian, equitable, and prescriptive rights and a right under Article 7500a to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 15 acre-feet of water from the Brazos River at a maximum diversion rate of 1400 gpm for the irrigation of 10 acres of land. The date of first beneficial use of water within the claim area was declared to be 1940. (Exh. 347)
2. Claimants are the owners of claim area T-0320 which is located in Abstract No. 283, McLennan County, Abstract No. 283 was patented in 1856. T-0320 and Abstract No. 283 abut the Brazos River. (IX SF 12) App. 4)
3. The first diversion and use of state water for irrigation purposes within T-0320 was in 1940. (IX SF 18)
4. The most acreage within T-0320 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 10 acres. (IX SF 13, 19)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0320 at diversion point D-0320 located on the Brazos River by a portable pump at a maximum effective diversion rate of 3.11 cfs (1400 gpm) using sprinkler, volume gun and flood type distribution systems. (IX SF 15, 27, 30)
6. Claimants' tract T-0320 is now severed by ownership from the land upon which diversion point D-0320 is located. (IX SF 11)
7. The maximum amount of state water diverted and used for irrigation purposes within T-0320 in any calendar year during the period 1963-1967, inclusive, was 16 acre-feet of water. (IX SF 26, 29, 31)

CONCLUSIONS:

1. Claimants are recognized a right under §11.303 Claim No. 5439 to divert and use not to exceed 16 acre-feet of water per year for the irrigation of 10 acres of land within tract T-0320 from the Brazos River at T-0320 in Abstract No. 283, McLennan County, with a priority date of December 31, 1940. The total maximum diversion rate from point D-0320 shall not exceed 3.11 cfs.
2. At such time that this adjudication becomes final and conclusive, claimant may seek an amendment authorizing a new diversion point.

DIVERSION POINT NO: 0320
TRACTS NO: 0340

OWNERSHIP: Terry F. Reddell, Robert W. Reddell, and Diana M. Wellborn

IR: 52
APP: 4
IX SF 2-34

SECTION 11.307 CLAIM: Under §11.303 Claim No. 3408 to divert and use 45 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1400 gpm for the irrigation of 30 acres of land with a priority date of 1940. (Exh. 345)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 3408 which asserted riparian, equitable, and prescriptive rights and a right under Article 7500a to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 45 acre-feet of water from the Brazos River at a maximum diversion rate of 1400 gpm for the irrigation of 30 acres of land. The date of first beneficial use of water within the claim area was declared to be 1940. (Exh. 348)
2. Claimants are the owners of claim areas T-0330 and T-0331 which are located in Abstract No. 283, McLennan County, Abstract No. 283 was patented in 1856. T-0331 abuts the Brazos River. (IX SF 12) APP 4)
3. Tract T-0330 is now severed from the Brazos River by intervening ownership. Prior to 1964, T-0330 was part of a larger riparian tract composed of T-0330, T-0331, T-0320, and T-0340. (IX SF 16) App. 4)
4. The first diversion and use of state water for irrigation purposes within T-0330 and T-0331 was in 1940. (IX SF 18)
5. The most acreage within T-0330 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 11 acres. (IX SF 13, 19)
6. The most acreage within T-0331 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 18 acres. (IX SF 13, 19)
7. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0330 and T-0331 at diversion point D-0320 located on the Brazos River by a portable pump at a maximum effective diversion rate of 3.11 cfs (1400 gpm) using sprinkler, volume gun and flood type distribution systems. (IX SF 15, 27, 30)
8. The maximum amount of state water diverted and used for irrigation purposes within T-0330 and T-0331 in any calendar year during the period 1963-1967, inclusive, was 44 acre-feet of water. (IX SF 26, 29, 31)

CONCLUSION:

Claimants are recognized a right under §11.303 Claim No. 3408 to divert and use not to exceed 44 acre-feet of water per year from diversion point D-0320 located on the Brazos River for the irrigation of 30 acres of land within tract T-0330 and 18 acres of land within tract T-0331 in Abstract No. 283, McLennan County, with a priority date of December 31, 1940. The total maximum diversion rate from diversion point D-0320 shall not exceed 3.11 cfs.

DIVERSION POINT NO: 0320a
TRACT NO: 0340

OWNERSHIP: Karl Lee Reddell, Elsie Mae Reddell, Diana M. Wellborn, Terry F. Reddell, and Robert W. Reddell

IR: 53
APP: 4
IX SF 2-34

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5439 to divert and use 50 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1400 gpm for the irrigation of 45 acres of land with a priority date of 1940. (Exh. 346)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 5439 which asserted riparian, equitable, and prescriptive rights and a right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 50 acre-feet of water from the Brazos River at a maximum diversion rate of 1400 gpm for the irrigation of 45 acres of land. The date of first beneficial use of water within the claim area was declared to be 1940. (Exh. 349)
2. The official records of the Department show that Karl Lee Reddell, Elsie Mae Reddell, Diana Wellborn, and Terry and K. W. Reddell are the holders of §11.303 Claim No. 5439. At the evidentiary hearing, Lara W. Glander appeared as the claimant and asserted ownership of §11.303 Claim No. 5439. No deed or other legal document has been received by the Department to reflect the change of ownership. (IX SF 3)
3. Claimants are the owners of claim area T-0340 which is located in Abstract No. 283, McLennan County, Abstract No. 283 was patented in 1856. T-0340 and Abstract No. 283 abut the Brazos River. (IX SF 12) App. 4)
4. The first diversion and use of state water for irrigation purposes within T-0340 was in 1940. (IX SF 18)
5. The most acreage within T-0340 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 21 acres. (IX SF 13, 19)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0340 at diversion point D-0320 on the Brazos River by a portable pump at a maximum effective diversion rate of 3.11 cfs (1400 gpm) using sprinkler, volume gun and flood type distribution systems. (IX SF 15, 27, 30)
7. The maximum amount of state water diverted and used for irrigation purposes within T-0340 in any calendar year during the period 1963-1967, inclusive, was 32 acre-feet of water. (IX SF 26)

CONCLUSION:

Claimants are recognized a right under §11.303 Claim No. 5439 to divert and use not to exceed 32 acre-feet of water per year from diversion point D-0320 located on the Brazos River, for the irrigation of 21 acres of land within tract T-0340 in Abstract No. 283, McLennan County, with a priority date of December 31, 1940. The total maximum diversion rate from diversion point D-0320 shall not exceed 3.11 cfs.

DIVERSION POINT NO: 0350
TRACT NO: 0350
OWNERSHIP: Randall C. Ballew
IR: 54
APP: 4
XI SF 153, 154
SECTION 11.307 CLAIM: None
FINDINGS:

1. Claimant is the owner of \$11.307 Claim No. 6163 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that an unspecified amount of water was diverted at a maximum diversion rate of 1200 gpm, to irrigate 10 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be on September 1, 1965. (Exh. 515)
2. Claimant is the owner of claim area T-0350, which is located in Abstracts Nos. 18 and 283. Abstract No. 18 was patented prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River within Abstract No. 18. (XI SF 153-154)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 153)

CONCLUSION:

Claimant is recognized no right under \$11.307 Claim No. 6163, because he did not file any \$11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive, and part of claim area T-0350 is located on land granted prior to January 20, 1840.

DIVERSION POINT NO: 0360
TRACT NO: 0360

OWNERSHIP: E. Kelley Clark, Randall C. Ballew (ownership unverified)
IR: 56
APP: 4
XI SF 155, 156
SECTION 11.307 CLAIM: None
FINDINGS:

1. Claimants are the owners of \$11.307 Claim No. 2993 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that an unspecified amount of water was diverted at a maximum diversion rate of 1500 gpm, to irrigate 25 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be August 1, 1967. (Exh. 516)
2. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 155-156)
3. Claimants are the owners of claim area T-0360, which is located in Abstract No. 18, McLennan County. Abstract No. 18 was granted prior to January 20, 1840. (Exh. 5)
4. There was no evidence presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 18. (XI SF 155)

CONCLUSION:

Claimants are not recognized any right under \$11.307 Claim No. 2993 because (1) claim area T-0360 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0370
TRACT NO: 0370

OWNERSHIP: Estate of Kyle A. Vick, Jr.
IR: 58
APP: 4
XI SF 101

SECTION 11.307 CLAIM: Under \$11.307 Claim No. 113 to divert and use an unspecified amount of water per year from the Brazos River at a maximum diversion rate of 2500 gpm for the irrigation of 105-110 acres of land with an unspecified date. (Exh. 465)

FINDINGS:

1. Claimant is the owner of \$11.307 Claim No. 5112 which claims a riparian right to divert and use water from the Brazos River and Rock Creek, a tributary of the Brazos River, for irrigation and domestic use purposes, and does not specify a maximum amount of water diverted, diversion rate, or number of acres of land irrigated in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in May 1953. A reservoir of an unspecified capacity is also claimed. (Exh. 466)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 101)
3. Claimant is the owner of claim area T-0370 which is located in Abstract No. 33, McLennan County. Abstract No. 33 was granted prior to January 20, 1840. (Exh. 5)
4. There was no evidence presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River or Rock Creek for irrigation purposes within Abstract No. 33. (XI SF 101)

CONCLUSION:

Claimant is not recognized any right under \$11.307 Claim No. 5112 because (1) claim area T-0370 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0380
TRACT NO: 0380
OWNERSHIP: Dr. Joe Harrell
IR: 59, 60
APP: 4
XI SF 157
SECTION 11.307 CLAIM: None
FINDINGS:

1. Claimant is the owner of \$11.307 Claim No. 5229 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 45 acre-feet of water was diverted at a maximum diversion rate of 275 gpm, to irrigate 80 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1954. (Exh. 517)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 157)

CONCLUSION:

Claimant is recognized no right under \$11.307 Claim No. 5229 because he did not file any \$11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: 0390
TRACT NOS: 0390 and 0394

OWNERSHIP: H. G. McCartney
IR: 61
APP: 4
XI SF 24-25

SECTION 11.307 CLAIM: None
FINDINGS:

1. Claimant is the owner of \$11.307 Claim No. 952 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and does not declare the maximum amount of water diverted, maximum diversion rate or number of acres of land irrigated in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1969.
2. Claimant did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 24)
3. Claimant is the owner of the claim area which consists of tracts T-0390 and T-0394 and is located in Abstract No. 18, McLennan County. Abstract No. 18 was granted prior to January 20, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River within Abstract No. 18. (XI SF 24-25)

CONCLUSION:

Claimant is not recognized any right under \$11.307 Claim No. 952 because (1) the claim area T-0390 and T-0394 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0400
TRACT NO: 0400

OWNERSHIP: John Whitlatch and wife, Mildred Whitlatch
IR: 63
APP: 4
XI SF 158

SECTION 11.307 CLAIM: Under \$11.307 Claim No. 3640 to divert and use 45 acre-foot of water per year from the Brazos River at an unspecified diversion rate for the irrigation of 65 acres of land with an unspecified priority date. (Exh. 518)

FINDINGS:

1. Claimants are the owners of \$11.307 Claim No. 3640 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 45 acre-feet of water was diverted at a maximum diversion rate of 275 gpm, to irrigate 80 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1954. (Exh. 519)
2. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 158)
3. Claimants are the owners of claim area T-0400 which is located in Abstract No. 33, McLennan County. Abstract No. 33 was granted prior to January 20, 1840. (Exh. 5)
4. There was no evidence presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 33. (XI SF 58)

CONCLUSION:

Claimants are not recognized any right under \$11.307 Claim No. 3640 because (1) claim area T-0400 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 0410
TRACT NO: 0410

OWNERSHIP: G. M. Gorman

IR: 64
APP: 4
I SF 83-97

SECTION 11.307 CLAIM: Under §11.303 Claim No. 801 to divert and use 200 acre-feet of water per year from the Brazos River at a minimum diversion rate of 1.78 cfs for the irrigation of 200 acres of land with a priority date of 1956. (Exh. 67)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 801 which asserted a riparian right to divert and use water for irrigation and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 200 acre-feet of water from the Brazos River at a maximum diversion rate of 1000 gpm for the irrigation of 200 acres of land. The date of first beneficial use of water within the claim area was declared to be November, 1956. (Exh. 68)
2. Claimant is the owner of claim area T-0410 which is located in Abstract No. 2, McLennan County, Abstract No. 2 was patented in 1835. T-0410 and Abstract No. 2 abut the Brazos River. (I SF 87,88; APP 4)
3. The record in this adjudication does not contain any English translation of the Barron Grant, Abstract No. 2, and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (I SF 93-97)
4. The first diversion and use of state water for irrigation purposes within T-0410 was in May, 1956. (I SF 91, 96)
5. The most acreage within T-0410 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 200 acres in 1967. (I SF 92, 93)
6. A drainage within the claim area is dammed to form a 4 acre-foot capacity reservoir. Water from the reservoir is used solely for livestock watering. (I SF 90)
7. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0410 at diversion point D-0410 located on the Brazos River by a pump at a maximum effective diversion rate of 2.22 cfs (1000 gpm) using a volume gun type distribution system. (I SF 91, 92)
8. The maximum amount of state water diverted and used for irrigation purposes within T-0410 in any calendar year during the period 1963-1967, inclusive, was 279 acre-feet of water. (I SF 94-96)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 801 because (1) the claim area T-0410 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT: 0420
TRACT NO: 0420

OWNERSHIP: Walton K. Ballew

IR: 65-66
APP: 4
I SF 255-277

SECTION 11.307 CLAIM: Under §11.303 Claim No. 6165 to divert and use 150 acre-feet of water per year from the Brazos River and Aquilla Creek at a maximum diversion rate of 1.12 cfs for the irrigation of 395 acres of land with a priority date of 1951. (Exh. 31)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 6165 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 150 acre-feet of water from the Brazos River at a maximum rate of 1400 gpm for the irrigation of 395 acres of land. The date of first beneficial use of water within the claim area was declared to be 1951. (Exh. 32)
2. Claimant is the owner of claim area T-0420 which is located in Abstracts Nos. 34 and 44, McLennan County. All irrigation within T-0420 during the period 1963-1967, inclusive, was in Abstract No. 44. Abstracts Nos. 34 and 44 were patented in 1834. T-0420 and Abstracts Nos. 34 and 44 abut the Brazos River. T-0420 abuts and Abstracts Nos. 34 and 44 across Aquilla (Elm) Creek, tributary of the Brazos River. (I SF 258, 259; APP 4)
3. The record in this adjudication does not contain any English translation of the J. Webb Survey, Abstract No. 44, or the J. Rutherford Survey, Abstract No. 34, and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (I SF 255-277)
4. The first diversion and use of state water for irrigation purposes within T-0420 was in July, 1951. (I SF 261)
5. The most acreage within T-0420 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 168 acres, being Fields Nos. 1 and 3, in Abstract No. 44. (I SF 267, 269, 270)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0420 at diversion point D-0420 located on the Brazos River by a portable pump at a maximum effective diversion rate of 1.44 cfs (640 gpm) using a sprinkler type distribution system. (I SF 264, 266)
7. The maximum amount of state water diverted and used for irrigation purposes within T-0420 in any calendar year during the period 1963-1967, inclusive, was 156 acre-feet of water. (I SF 268-271, 274)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 6165 because (1) the claim area T-0420 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0430
TRACT NO: 0430

OWNERSHIP: Hillbore Country Club

IR: 67
APP: 2
I SF 3-23

SECTION 11.307 CLAIM: Under Permit No. 3335 to impound water in an eight acre-foot capacity reservoir located on an unnamed tributary of Pecan Creek and to divert and use therefrom eight acre-feet of water per year for golf course irrigation at a maximum diversion rate of 1300 gpm for the irrigation of three acres of land with a priority date of June 14, 1976. (Exh. 56)

FINDINGS:

1. Claimant is the owner of Permit No. 3335 (Application No. 3610), a §11.121 type permit, which authorizes the maintenance of an existing dam and reservoir located on an unnamed tributary of Pecan Creek, tributary of Little Hockberry Creek, tributary of Hockberry Creek, tributary of Aquilla Creek, tributary of the Brazos River, the impoundment therein of 10 acre-feet of water per year, and the diversion and use therefrom of not to exceed eight acre-feet of water per year for irrigation purposes, at a maximum diversion rate of 2.89 cfs (1300 gpm) for the irrigation of three acres of land located in the J. B. Ross Survey, Abstract No. 750, Hill County. (Exh. 57)
2. Application No. 3610 for permit No. 3335 was accepted for filing by the Commission on June 14, 1976, and the permit was issued on September 20, 1976. (Exh. 57)
3. Claimant maintains an eight acre-foot capacity reservoir located at diversion point D-0430, which is the authorized location on an unnamed tributary of Pecan Creek with the dam being located in Abstract No. 750, Hill County. (I SF 8)
4. The most acreage within permit area T-0430 irrigated with state water in any calendar year since the issuance of the permit was three acres. (I SF 15)
5. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-0430 at a diversion point located on the perimeter of the authorized reservoir located on an unnamed tributary of Pecan Creek by means of a stationary pump at a maximum effective diversion rate of 2.89 cfs (1300 gpm) using a sprinkler type distribution system. (I SF 9, 16, 19)
6. The maximum amount of state water diverted and used for irrigation purposes within T-0430 in any calendar year since the issuance of the permit was eight acre-feet of water. (I SF 15)

CONCLUSION:

Claimant is recognized a right under Permit No. 3335 to impound 10 acre-feet of water in a reservoir located at a diversion point D-0430 on an unnamed tributary of Pecan Creek, tributary of Little Hockberry Creek, tributary of Hockberry Creek, tributary of Aquilla Creek, tributary of the Brazos River, with the dam being located in Abstract No. 750, Hill County, and to divert and use therefrom not to exceed eight acre-feet of water per year for irrigation purposes from a diversion point located on the perimeter of the reservoir at a maximum diversion rate of 2.89 cfs (1300 gpm) for the irrigation of three acres of land within Abstract No. 750, with a priority date of June 14, 1976.

DIVERSION POINTS NOS: 0440, 0450, and 0460
TRACT NOS: None

OWNERSHIP: Hillbore Lake Park Association

IR: 68
APP: 2
I SF 91-92

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of Permit No. 3418 (Application No. 3670), a §11.121 type permit, which authorizes the impoundment of water in 65, 17, and 13 acre-foot capacity reservoirs located on unnamed tributaries of Pecan Creek, tributary of Little Hockberry Creek, tributary of Hockberry Creek, tributary of Aquilla Creek, tributary of the Brazos River, for recreation purposes. All three dams are located in the John E. Ross Survey, Abstract No. 750, Hill County. (Exh. 455)
2. Application No. 3670 for Permit No. 3418 was accepted for filing by the Commission on September 27, 1976, and the permit was issued on March 4, 1977. (Exh. 455)
3. Claimant did not appear at either the regularly scheduled evidentiary hearing and no evidence was presented concerning the diversion and use of state water since the issuance of Permit No. 3418. (I SF 91, 92)

CONCLUSION:

Claimant is not recognized any right under Permit No. 3418 because no evidence was presented of any use of state water pursuant to Permit No. 3418 since its issuance and no §11.307 claim pertains to the irrigation of three acres of land within this segment.

DIVERSION POINTS NOS: 0480, 0484, 0487
TRACTS NOS: 0480, 0484, 0487

OWNERSHIP: Jerry C. Gerik

IR: 70
APP: 2
I SF 160

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5882 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that an unspecified amount of water was diverted at a maximum of 750 gpm, to irrigate 140 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1965. (Exh. 520)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (I SF 160)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 5882 because he did not file any §11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: 0490
TRACTS NOS: 0490 and 0491

OWNERSHIP: John W. McNeil and George W. McNeil

IR: 71
APP: 2
IX SF 24-53

SECTION 11.307 CLAIM: Under Permit No. 2123 to impound water in a three acre-foot capacity reservoir located on an unnamed tributary of Aquilla Creek and to divert and use therefrom 0.0206 acre-foot of water per year for irrigation purposes at a maximum diversion rate of seven gpm for the irrigation of 50 acres of land with a priority date of August 11, 1964. (Exh. 60)

FINDINGS:

1. Claimants are the owners of Permit No. 2123 (Application No. 2349), which authorizes the maintenance of a dam and 50 acre-foot capacity reservoir located on an unnamed tributary of Aquilla Creek, Brazos River Watershed, and the diversion and use therefrom of not to exceed 45 acre-feet of water per year for irrigation purposes at a maximum diversion rate of 1.0 cfs for the irrigation of 50 acres of land located in the L. B. Scott Survey, Abstract No. 803, Hill County. (Exh. 6)
2. Application No. 2349 for Permit No. 2123 was accepted for filing by the Commission on August 11, 1964, and the permit was issued on September 30, 1964. (Exh. 61)
3. Claimants maintain a 60 acre-foot capacity reservoir located at diversion point D-0490 which is the authorized location on an unnamed tributary of Aquilla Creek, with the dam being located in Abstract No. 803, Hill County. (Exh. 5) (IX SF 29, 33, 34)
4. The most acreage within permit area T-0490 irrigated with state water in any calendar year since the issuance of the permit was 19 acres, being Field No. 1, in 1975. (III SF 37)
5. Claimants requested that the permit area be extended to include an additional 35 acres in area T-0491, with 27 to 28 acres within the area to be irrigated. No additional water usage above the permitted amount or increased rate or period of diversion is contemplated by this practice. (III SF 46, 48)
6. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-0440 at an unlicensed diversion point located on the perimeter of the authorized reservoir by means of a portable pump at a maximum effective diversion rate of 0.02 cfs (7 gpm) using a 3/4-inch hose for distribution. (III SF 33)
7. The maximum amount of state water diverted and used for irrigation purposes within T-0490 in any calendar year since the issuance of the permit was 1.0 acre-foot of water in 1975. (III SF 43)
8. The reason claimants failed to divert and use the total amount of water authorized by Permit No. 2123 for irrigation purposes was because claimants' pecan orchard was destroyed by a hogher in 1976. Claimants have not replanted the orchard. (III SF 49)
9. Claimants demonstrated an intention to divert and use the full amount of 45 acre-feet of water per year authorized by Permit No. 2123 for irrigation purposes in the foreseeable future by showing that a tenant has purchased a bulldozer and other equipment to clear more land for irrigation. (III SF 50)

CONCLUSIONS:

1. Claimants are recognized a right under Permit No. 2123 to impound 50 acre-feet of water in a 50 acre-foot capacity reservoir located at diversion point D-0490 on an unnamed tributary of Aquilla Creek, Brazos River Watershed, with the dam being located in Abstract No. 803, Hill County, and to divert and use therefrom not to exceed 1.0 acre-foot of water per year for irrigation purposes from diversion point D-0490 located on the perimeter of the reservoir at a maximum diversion rate of 0.02 cfs (7 gpm) for the irrigation of 19 acres of land within tract T-0490 in Abstract No. 803, Hill County, with a priority date of August 11, 1964.
2. Claimants did not show sufficient justification for the lack of development under Permit No. 2123 to the full extent authorized for irrigation purposes.
3. Claimants did demonstrate a bona fide intention to divert and use more state water than previously diverted in the foreseeable future.

DIVERSION POINT: 0500
TRACT NOS: 0500

OWNERSHIP: Alphonse D. Urbanovsky

IR: 72, 73
APP: 2
IX SF 165-378

SECTION 11.307 CLAIM: Under \$11,303 Claim No. 3548 to divert and use 60 acre-feet of water per year from Aquilla Creek at a maximum diversion rate of 750 gpm for the irrigation of 112 acres of land with a priority date of July 1964.

FINDINGS:

1. Claimant is the owner of \$11,303 Claim No. 3548 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 60 acre-feet of water from Aquilla Creek at a maximum diversion rate of 750 gpm for the irrigation of 120 acres of land. The date of first beneficial use of water within the claim area was declared to be July, 1964. (Exh. 408)
2. Claimant is the owner of claim area T-0500 which is located in Abstracts Nos. 183, 652, and 824, Hill County. Abstract No. 183 was patented in 1849, Abstract No. 652 was patented in 1852, Abstract No. 824 was patented in 1849. Claim area T-0500 consists of three fields, Nos. 1, 2, and 3. Field No. 1 is in Abstract No. 652 and is severed from Aquilla Creek by survey lines. Field No. 2 is in Abstract No. 824 and is also severed by survey lines. Field No. 3 is in Abstract No. 183 and abuts Aquilla Creek, tributary of the Brazos River. Abstract No. 183 crosses Aquilla Creek. (IX SF 368, 369; App. 2)
3. The first diversion and use of state water for irrigation purposes within T-0500 was in July, 1964. (IX SF 373)
4. The most acreage within Field No. 3 of T-0500 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 34 acres. (IX SF 370, 376)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0500 at diversion point D-0500 on Aquilla Creek by a portable pump at a maximum effective diversion rate of 1.11 cfs (1500 gpm) using a sprinkler type distribution system. (IX SF 371, 375; Exh. 408)
6. The maximum amount of state water diverted and used for irrigation purposes within Field No. 3 of T-0500 in any calendar year during the period 1963-1967, inclusive, was 40 acre-feet of water. (IX SF 377)

CONCLUSION:

Claimant is recognized a right under \$11,303 Claim No. 3548 to divert and use not to exceed 60 acre-feet of water per year from diversion point D-0500 located on Aquilla Creek, tributary of the Brazos River at a maximum diversion rate of 1.111 cfs (1500 gpm) for the irrigation of 34 acres of land within Field No. 3 of tract T-0500 in Abstract No. 183, Hill County, with a priority date of July 31, 1964.

DIVERSION NOS: 0510, 0512, 0514, 0545 and 0560
TRACTS NOS: 0510 and 0545

OWNERSHIP: B. N. Cox, Ray Bowen and wife, John Bowen, Albert E. Chisman and wife, Mary D. Chisman, James W. Gregory and wife, Joan D. Gregory, James W. Gregory, Jr., Gary A. Prassel, Donna Prassel, Richard E. McFalls and wife, Ezra S. McFalls, Harry W. Ningledorff and wife, Joan E. Ningledorff, Gary H. Peoples and wife, Elna Rae Peoples, David J. Scott and wife, Elaine J. Scott, John L. Stewart, Trustees, John Teakell, Joe Teakell and Gary B. Young

IR: 74-76
APP: 4
IX SF 162, 163

SECTION 11.307 CLAIM: (Claimants James W. Gregory Sr. and Joan D. Gregory, wife) Claimants' \$11,307 claim states that water is used for livestock and domestic purposes. (Exh. 521)

SECTION 11.307 CLAIM: (Claimants Ray Bowen and wife, John Bowen) Under \$11,307 Claim No. 6126 to divert and use an unspecified amount of water from the Brazos River at an unspecified diversion rate for the irrigation of 3 acres of land with a priority date of May, 1975. (Exh. 522)

SECTION 11.307 CLAIM: (Claimants John Teakell and Joe Teakell) Claimants' \$11,307 claim states that water was used for domestic purposes only. (Exh. 523)

SECTION 11.307 CLAIM: (Claimant Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints) Under \$11,303 Claim No. 6126 to divert and use 20 acre-feet of water per year from the Brazos River at an unspecified diversion rate for the irrigation of 20 acres of land with an unspecified priority date. (Exh. 524)

FINDINGS:

1. Claimants are the owners of \$11,303 Claim No. 6126 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 900 acre feet of water was diverted at a maximum diversion rate of 1400 gpm, to irrigate 650 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1951. (Exh. 525)
2. An additional sworn statement to Claim No. 6126 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 309 acre-feet of water from the Brazos River at a maximum diversion rate of 1400 gpm for the irrigation of 600 acres of land. (Exh. 526)
3. Claimants are the owners of claim areas T-0510 and T-0545 which are located in Abstracts Nos. 9, 13, 27 and 886. Abstract No. 886 was granted in 1849. Abstracts Nos. 9, 13, and 27 were granted prior to January 20, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 9, 13, and 27. (IX SF 162, 163)
5. Claimants failed to appear at their scheduled hearings and did not present evidence concerning any use of water during the period 1963-1970, inclusive. (IX SF 162, 163)

CONCLUSION:

Claimants are not recognized any right under \$11,303 Claim No. 6126 because (1) claim areas T-0510 and T-0545 are located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grants, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 0520
TRACT NOS: 0520

OWNERSHIP: Mac P. Smith

IR: 77-98
APP: 4
III SF 54-82

SECTION 11.307 CLAIM: Under \$11,303 Claim No. 1652 to divert and use 80 acre-feet of water per year from the Brazos River at the mouth of Giles Branch at a maximum diversion rate of 500 gpm for the irrigation of 80.28 acres of land with a priority date of August 13, 1969. (Exh. 63)

FINDINGS:

1. Claimant is the owner of \$11,303 Claim No. 1652 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 25.3 acre-feet of water from Giles Branch at a maximum diversion rate of 500 gpm for the irrigation of 51 acres of land. The date of first beneficial use of water within the claim area was declared to be June, 1953. (Exh. 648)
2. Claimant is the owner of claim area T-0520 which is located in Abstract No. 383, McLennan County. Abstract No. 383 was patented in 1850. T-0520 abuts and Abstract No. 383 crosses Giles Creek, tributary of the Brazos River. (III SF 61, APP 4)
3. The first diversion and use of state water for irrigation purposes within T-0520 was in June, 1953. (III SF 77, 78; Exh. 64)
4. The most acreage within T-0520 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 41 acres, being Fields Nos. 1 and 2 in Abstract No. 383. (III SF 73)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0520 at diversion point D-0520 on Giles Creek by a portable pump at a maximum effective diversion rate of 1.11 cfs (1500 gpm) using a sprinkler type distribution system. (III SF 77, 78; Exh. 64)
6. The maximum amount of state water diverted and used for irrigation purposes within T-0520 in any calendar year during the period 1963-1967, inclusive, was 110 acre-feet of water. (III SF 77)

CONCLUSION:

Claimant is recognized a right under \$11,303 Claim No. 1652 to divert and use not to exceed 110 acre-feet of water per year from diversion point D-0520 located on Giles Creek, tributary of the Brazos River, at a maximum diversion rate of 1.11 cfs (1500 gpm) for the irrigation of 41 acres of land within tract T-0520 in Abstract No. 383, McLennan County, with a priority date of June 30, 1953.

DIVERSION POINT NO: 0530
TRACT NO: 0530

OWNERSHIP: A. F. Conner

IR: 79-80
APP: 4
XI SF 164-165

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of \$11.303 Claim No. 6123 which claims riparian rights to divert and use water from the Brazos River for irrigation and livestock purposes, and declares that a maximum of 1065 acre-feet of water was diverted at a maximum rate of 800 gpm, to irrigate 50 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1920. (Exh. 527)
2. An additional sworn statement to \$11.303 Claim No. 6123 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 91 acre-feet of water at the maximum diversion rate of 660 gpm for the irrigation of 50 acres in 1970. (Exh. 528)
3. Claimant is the owner of claim area T-0530 which is located in Abstract No. 40, McLennan County, Abstract No. 40 was granted prior to January 20, 1840. (Exh. 5)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 40. (XI SF 164-165)
5. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1970, inclusive. (III SF 99; XI SF 164-165)

CONCLUSION:

Claimant is recognized no right under \$11.303 Claim No. 6123 because (1) claim area T-0530 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0540
TRACT NO: 0540

OWNERSHIP: Walter P. Armstrong

IR: 81
APP: 4
III SF 99, VI SF 166, X SF 166

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of \$11.303 Claim No. 4071 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of one acre-foot of water was diverted at a maximum rate of 12-2/3 gpm, to irrigate one acre of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1969. (Exh. 529)
2. Claimant is the owner of claim area T-0540 which is located in Abstract No. 40, McLennan County, Abstract No. 40 was granted prior to January 20, 1840. (Exh. 5)
3. No evidence was presented of an expressed grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 40. (Exh. 5)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (III SF 99; X SF 166)

CONCLUSION:

Claimant is not recognized any right under \$11.303 Claim No. 4071 because (1) claim area T-0540 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0550
TRACT NO: 0550

OWNERSHIP: Dewey Shannon; Jow Downing and Gene Evans (ownership unverified)

IR: 82
APP: 4
XI SF 136-137

SECTION 11.307 CLAIM: NONE

FINDINGS:

1. Claimants are the owners of Permit No. 358N (Application No. 376), which authorizes the diversion and use of not to exceed 2088 acre-feet of water per year for irrigation purposes from the Bosque River, tributary of the Brazos River, at the maximum diversion rate of 20 cfs (8,000 gpm) for the irrigation of 1044 acres of land located in the John Tucker Survey and Leo R. Davis Survey, Abstract No. 41, McLennan County. (Exh. 492)
2. A special condition in Permit No. 358N is that the amount of water which said grantee is permitted to divert and use in any one year shall be restricted to two acre-feet per acre for each acre actually irrigated within the limitation of 1044 acres. (Exh. 492)
3. Application No. 376N for Permit No. 358N was accepted for filing by the Commission on November 20, 1918, and the permit was issued on January 21, 1919. (Exh. 492)
4. Permit No. 358N was partially cancelled by Commission Order dated March 11, 1970. Claimant retained the right to divert and use not to exceed 220 acre-feet of water per year from the Brazos River to irrigate 110 acres out of a 129 acre tract at the maximum diversion rate of 3.67 cfs (1650 gpm) located in the John Tucker Survey, Abstract No. 41, McLennan County. This portion of the permit was designated as Application No. 376N, Permit No. 358N. (Exh. 493)
5. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water since the issuance of the permit. (III SF 99; XI SF 136-137)

CONCLUSION:

Claimants are not recognized any right under Permit No. 358N because no evidence was presented as to use of state water pursuant to Permit No. 358N since its issuance and no \$11.307 Claim pertaining to Permit No. 358N was filed in adjudication of this segment.

DIVERSION POINT NO: 0560
TRACT NO: 0560

OWNERSHIP: Daryl L. Reed

IR: 83
APP: 4
X SF 138-139

SECTION 11.307 CLAIM: NONE

FINDINGS:

1. Claimant is the owner of \$11.303 Claim No. 2317 which asserted a riparian right and a right to irrigate according to Permit No. 358 to divert and use water for irrigation purposes, and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 240 acre-feet of water from the Brazos River at a maximum diversion rate of 1650 gpm for the irrigation of 112 acres of land. The first beneficial use of water within the claim area was declared to be in 1953. (Exh. 494)
2. Claimant is the owner of Permit No. 358 (Application No. 376) which authorizes the diversion and use of not to exceed 2088 acre-feet of water per year for irrigation purposes from the Bosque River, tributary of the Brazos River, at the maximum diversion rate of 20 cfs (8,000 gpm) for the irrigation of 1044 acres of land located in the John Tucker Survey and Leo R. Davis Survey, Abstract No. 41, McLennan County. (Exh. 495)
3. A special condition in Permit No. 358 is that the amount of water which said grantee is permitted to divert and use in any one year shall be restricted to two acre-feet per acre for each acre actually irrigated within the limitation of 1044 acres. (Exh. 495)
4. Application No. 376 for Permit No. 358 was accepted for filing by the Commission on November 20, 1918, and the permit was issued on January 20, 1919. (Exh. 495)
5. Permit No. 358 was partially cancelled by Commission Order dated March 11, 1970. Claimant retained the right to divert and use not to exceed 200 acre-feet of water per year from the Brazos River to irrigate 100 acres out of a 124 acre tract at the maximum diversion rate of 3.67 cfs (1650 gpm) located in the John Tucker Survey, Abstract No. 41, McLennan County. This portion of the permit was designated Application No. 376-0, Permit No. 358-0. (Exh. 496)
6. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water made under the authority of Permit No. 358-0 or made during the period of 1963-1967, inclusive. (III SF 99; X SF 138-139)

CONCLUSION:

Claimant is not recognized any rights under \$11.303 Claim No. 2317 and Permit No. 358-0 because no evidence was presented of any nonexempt beneficial use of state water within tract T-0560 during the period 1963-1967, inclusive, or in any calendar year since issuance of the permit and no \$11.307 claim pertaining to \$11.303 Claim No. 2317 or Permit No. 358-0 was filed in the adjudication.

DIVERSION POINT NO: 0570
TRACT NO: 0570

OWNERSHIP: Charles W. Dulaney, Harry W. Slade, Joseph A. Corbett and Frank W. Sipan (ownership unverified)

IR: 85-86
APP: 4
XI SF 140-142

SECTION 11.307 CLAIM: Under \$11.303 Claim No. 11498 to divert and use 400 acre-feet of water per year from the Brazos River for the irrigation of 200 acres of land with a priority date of 1953. (Exh. 498)

SECTION 11.307 CLAIM: Under Permit No. 358-P to divert and use 400 acre-feet of water per year from the Brazos River for the irrigation of 200 acres of land with a priority date of November 20, 1918. (Exh. 497)

FINDINGS:

1. Claimants are the owners of \$11.303 Claim No. 11498 which claims riparian rights and irrigation Permit No. 358 to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 325 acre-feet of water was diverted at a maximum rate of 2.23 cfs (1000 gpm), to irrigate 204 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1953. (Exh. 499)
2. Section 11.303 Claim No. 11498 was timely filed.
 - a. By petition dated January 3, 1970, claimants requested waiver of \$11.303(c) which provides, in part, that claims shall be filed on or before September 1, 1969. (Exh. 500)
 - b. By Commission Order dated October 7, 1970, the Commission authorized the filing of \$11.303 Claim No. 11498. (Exh. 502)
3. Claimants are the owners of Permit No. 358 (Application No. 376), which authorizes the diversion and use of not to exceed 2,088 acre-feet of water per year for irrigation purposes from the Bosque River, tributary of the Brazos River, at the maximum diversion rate of 20 cfs (8,000 gpm) for the irrigation of 1044 acres of land located in the John Tucker Survey and Leo R. Davis Survey, Abstract No. 41, McLennan County. (Exh. 501)
4. A special condition in Permit No. 358 is that the amount of water which said grantee is permitted to divert and use in any one year shall be restricted to two acre-feet per acre for each acre actually irrigated within the limitation of 1044 acres. (Exh. 501)
5. Application No. 376 for Permit No. 358 was accepted for filing by the Commission on November 20, 1918, and the permit was issued on January 21, 1919. (Exh. 501)
6. Claimants did not appear at either the regularly scheduled evidentiary hearing or the final check evidentiary hearing and no evidence was presented concerning the diversion and use of state water under \$11.303 Claim No. 11498 during the period 1963-1967, inclusive, under the authority of Permit No. 358-P. (III SF 99; XI SF 140-142)

CONCLUSION:

Claimants are not recognized any right under \$11.303 Claim No. 11498 or under Permit No. 358-P because no evidence was presented of any nonexempt beneficial use of state water during the period 1963-1967, inclusive, nor was there evidence of the use of state water pursuant to Permit No. 358-P since its issuance.

DIVERSION POINT NO: 0580
TRACT NO: 0580
OWNERSHIP: Raymond L. Hicks and O. H. Browning
IR: 87-88
APP: 4
III SF 99; X SF 167; XI SF 167-168
SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 1409 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 83 acre-feet of water was diverted at a maximum rate of 500 gpm, to irrigate 42 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in July 1957. (Exh. 530)
2. An additional sworn statement to §11.303 Claim No. 1409 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 74 acre-feet of water from the Brazos River at a maximum diversion rate of 1000 gpm for the irrigation of 55 acres. (Exh. 531)
3. Claimants are the owners of Claim Area T-0580 which is located in Abstract No. 27, McLennan County, Abstract No. 27 was granted prior to January 20, 1840. (Exh. 5)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 27. (Exh. 5)
5. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (III SF 99; X SF 167)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 1409 because (1) claim area T-0580 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 0590
TRACT NO: 0590
OWNERSHIP: Harvin L. Lehrman
IR: 89-90
APP: 4
XI SF 143-144
SECTION 11.307 CLAIM: NONE

FINDINGS:

1. Claimant is the owner of Permit No. 358 (Application No. 376), which authorizes the diversion and use of not to exceed 2088 acre-feet of water per year from the Brazos River for irrigation purposes at a maximum diversion rate of 20.0 cfs (9000 gpm) for the irrigation of 1044 acres of land located in the John Tucker Survey, Abstract No. 41, McLennan County, (Exh. 504)
2. A Special Condition in Permit No. 358 is: The amount of water which said grantee is permitted to divert and use in any one year shall be restricted to 2 acre-feet per acre for each acre actually irrigated within the limitation of 1044 acres. (Exh. 504)
3. Application No. 376 for Permit No. 358 was accepted for filing by the Commission on November 20, 1918, and the permit was issued on January 21, 1919. (Exh. 504)
4. Application No. 376 was partially cancelled by Commission Order dated March 11, 1970. Claimant retained the right to divert and use not to exceed 150 acre-feet of water per year from the Brazos River to irrigate 75 acres out of a 130 acre-tract at the maximum diversion rate of 3.67 cfs (1650 gpm) located in John Tucker Survey, Abstract No. 41, McLennan County. This portion of the permit was designated Application No. 376Q, Permit No. 358Q (Exh. 505)
5. Claimant is the owner of §11.303 Claim No. 2472 which claims riparian rights and rights under irrigation Permit No. 358 to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 150 acre-feet of water was diverted at a maximum rate of 550 gpm, to irrigate 85 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in June 1955. (Exh. 503)
6. Claimant did not appear at either the regularly scheduled evidentiary hearing or the final docket evidentiary hearing and no evidence was presented concerning the diversion and use of state water since the issuance of Permit No. 358-Q and during the period 1963-1967, inclusive, under §11.303 Claim No. 2472. (III SF 99; XI SF 143-144)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2472 and under Permit No. 358-Q because no evidence was presented of any use of any nonexempt beneficial use of state water during 1963-1967, inclusive, nor was there evidence of state water diverted and used pursuant to Permit No. 358-Q since its issuance and no §11.307 claim pertinent to Permit No. 358-Q or §11.303 Claim No. 2472 was filed in the adjudication of this segment.

DIVERSION POINTS NOS: 0600 and 0604
TRACT NO: 0600
OWNERSHIP: R. Bruce Walters
IR: 91
APP: 4
III SF 182-214

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2041 to divert and use 81 acre-feet of water per year from the Brazos River and White Rock Creek at a maximum diversion rate of 1.78 cfs for the irrigation of 37 acres of land with a priority date of December 31, 1928. (Exh. 86)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2041 which asserted a riparian right to divert and use water for irrigation purposes and declared no diversion and use in any calendar year during the period 1963-1967, inclusive, of state water. The date of first beneficial use of water within the claim area was declared to be 1910. (Exh. 87)
2. An additional sworn statement to §11.303 Claim No. 2041 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 81 acre-feet of water from the Brazos River and White Rock Creek at a maximum diversion rate of 800 gpm for the irrigation of 37 acres of land. (Exh. 88)
3. Claimant is the owner of claim area T-0600 which is located in Abstract No. 885, McLennan County, Abstract No. 885 was patented on February 1, 1841. T-0600 abuts and Abstract No. 885 crosses White Rock Creek, tributary of the Brazos River. (III SF 106-187; App. 4)
4. The first diversion and use of state water for irrigation purposes within T-0600 was in June, 1966. (III SF 210)
5. Claimant completed the construction of works designed to apply a greater quantity of water to beneficial use in May, 1966, by the completion of pump stations on both sides of the the Brazos River. (III SF 191-198)
6. The most acreage within T-0600 irrigated with state water in any calendar year during the period 1963-1970, inclusive, was 40 acres, in Abstract No. 885, in 1970. (III SF 199)
7. During the period 1963-1970, inclusive, state water was diverted for irrigation purposes within T-0600 at diversion points D-0600 located on the Brazos River and D-0604 located on White Rock Creek by a portable pump at a maximum effective diversion rate of 4.32 cfs (1944 gpm) using a sprinkler type distribution system. (III SF 209-12)
8. The maximum amount of state water diverted and used for irrigation purposes within T-0600 in any calendar year during the period 1963-1970, inclusive, was 58 acre-feet of water. (III SF 208)

CONCLUSION:

Claimant is recognized a right under §11.303 Claim No. 2041 to divert and use not to exceed 81 acre-feet of water per year from diversion points D-0600 located on the Brazos River and D-0604 located on White Rock Creek, tributary of the Brazos River, at a maximum diversion rate of 4.32 cfs (1944 gpm) for the irrigation of 37 acres of land within T-0600, with a priority date of June 30, 1966.

DIVERSION POINT NO: 0610
TRACT NO: 0610

OWNERSHIP: J. G. Collins, Sr. and J. G. Collins, Jr. (ownership unverified)

IR: 92
APP: 4
III SF 101-112

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2411 to divert and use 130 acre-feet of water per year from the Brazos River at a maximum diversion rate of 3.34 cfs for the irrigation of 60 acres of land with an unverified priority date. (Exh. 69)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 2411 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 130 acre-feet of water from the Brazos River at a maximum diversion rate of 1500 gpm for the irrigation of 60 acres of land. The date of first beneficial use of water within the claim area was declared to be May, 1963. (Exh. 70)
2. Claimants are the owners of claim area T-0610 which is located in Abstract No. 885, McLennan County, Abstract No. 885 was patented in 1841. T-0610 and Abstract No. 885 abut the Brazos River. (Exh. 5; III SF 104)
3. The first diversion and use of state water for irrigation purposes within T-0610 was on May 23, 1963. (III SF 111)
4. The most acreage within T-0610 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 60 acres, being Field No. 1 in Abstract No. 885. (III SF 109)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0610 at diversion point D-0610 located on the Brazos River by a pump at a maximum effective diversion rate of 3.3 cfs (1500 gpm) using a sprinkler type distribution system. (III SF 110)
6. The maximum amount of state water diverted and used for irrigation purposes within T-0610 in any calendar year during the period 1963-1967, inclusive, was 130 acre-feet of water. (III SF 110)

CONCLUSION:

Claimants are recognized a right under §11.303 Claim No. 2411 to divert and use not to exceed 130 acre-feet of water per year from diversion point D-0610 located on the Brazos River at a maximum diversion rate of 3.3 cfs (1500 gpm) for the irrigation of 60 acres of land within tract T-0610 in Abstract No. 885, McLennan County, with a priority date of May 23, 1963.

DIVERSION POINT NO: 0620
TRACT NO: 0620

OWNERSHIP: Bonnie T. George, Charlene Walker, Joannette English and Billy O. English

IR: 93
APP: 0
III SF 113-135

SECTION 11.307 CLAIM: Under §11.303 Claim No. 6871 to divert and use 280 acre-feet of water per year from an unspecified watercourse at a maximum diversion rate of 3.34 cfs for the irrigation of "200+" acres of land with an unspecified priority date. (Exh. 72)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 6871 which asserted riparian and any other rights to divert and use water for irrigation, mining and all other appropriate purposes, which did not specify maximum diversion and use diversion rate, or number of acres irrigated during the period 1963-1967, inclusive. The date of first beneficial use of water within the claim area was declared to be 1851-1856. (Exh. 73)
2. Claimants are the owners of claim area T-0620 which is located in Abstracts Nos. 43 and 885, McLennan County. Abstract No. 43 was patented in 1833. Abstract No. 885 was patented in 1841. Fluids Nos. 1 and 4 of T-0620 and Abstract No. 885 about the Brazos River. Field No. 5 of T-0620 and Abstract No. 43 about the Brazos River. Fields Nos. 2 and 3 of T-0620 are severed from the river by Lake Brazos Drive. (Exh. 5; III SF 121, 129)
3. The record in this adjudication does not contain any English translations of the Vega Grant (A-43) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes.
4. The first diversion and use of state water for irrigation purposes within T-0620 was on May 23, 1963. (III SF 128)
5. The most acreage within the portion of T-0620 lying in Abstract No. 885 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 41 acres, being Fields Nos. 1 and 4. (III SF 125)
6. The most acreage within the portion of T-0620 lying in Abstract No. 43 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 58 acres, being Fields Nos. 2, 3 and 5. (III SF 118, 129)
7. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0620 at points between diversion points D-0610 and D-0620 located on the Brazos River by a portable pump at a maximum effective diversion rate of 3.3 cfs (1500 gpm) using a sprinkler type distribution system. (III SF 124)
8. The maximum amount of state water diverted and used for irrigation purposes within Fields Nos. 1 and 4 in any calendar year during the period 1963-1967, inclusive, was 100 acre-feet of water. (III SF 126)
9. The maximum amount of state water diverted and used for irrigation purposes within Fields Nos. 2, 3 and 5 in any calendar year during the period 1963-1967, inclusive, was 119 acre-feet of water. (III SF 132)

CONCLUSION:

Claimants are recognized a right under §11.303 Claim No. 6871 to divert and use not to exceed 100 acre-feet of water per year from the points on claimants' property between D-0620 and D-0610 on the Brazos River at a maximum diversion rate of 3.3 cfs (1500 gpm) for the irrigation of 41 acres of land with T-0620, in Abstract No. 885, McLennan County with a priority date of May 23, 1963.

DIVERSION POINT NO: 0630
TRACT NO: None

OWNERSHIP: City of Waco

IR: 94
APP: 9
III SF 215-248

SECTION 11.307 CLAIM: Under Certified Filing No. 521 to impound water in a 3500 acre-foot capacity reservoir located on the Brazos River and to divert and use therefrom an unspecified amount of water per year for municipal purposes at a maximum diversion rate of 20 mgd with a priority date of June 29, 1914. (Exh. 90)

FINDINGS:

1. Claimant is the owner of Certified Filing No. 521 which declared an intention to divert and use five million gallons of water per day (5000 acre-feet per year) from the Brazos River for the supply of domestic and commercial purposes at a maximum diversion rate of 4500 gpm. (Exh. 90)
2. The appropriation affidavit which was recorded as Certified Filing No. 521 was filed with the County Clerk of McLennan County on June 29, 1914. (Exh. 91)
3. Since the certified filing was filed, a low water dam was constructed downstream of authorized diversion point D-0630 creating a reservoir, called Lake Brazos. Diversion equipment is now located at a point on the perimeter of the lake. (III SF 221, 238)
4. The City of Waco presently obtains its municipal water supply from a reservoir on the Bosque River (Lake Waco). Water is diverted from the Brazos River only in the case of an emergency. (III SF 233, 234)
5. Water from the Brazos River is of a lower quality and requires more extensive treatment than water from Lake Waco. (III SF 233)
6. Water has not been diverted from the Brazos River under Certified Filing 521 since 1970. Diversion equipment on the river has been maintained in a usable condition since that time in order to assure the City of Waco a back-up, emergency municipal water supply, should its primary source become contaminated or inaccessible due to mechanical failure of diversion or distribution equipment. (III SF 233, 234-236)
7. Should the water quality of the Brazos River improve because of possible upstream demineralization measures by the Brazos River Authority and the State, water from the Brazos River may be used for other than emergency purposes. (III SF 237)
8. The maximum amount of state water diverted and used for municipal purposes in any calendar year since the certified filing was filed was 2653 acre-feet in 1962. (III SF 242)

9. Since the certified filing was filed, state water has been diverted for municipal purposes at a diversion point on the perimeter of Lake Brazos by two stationary pumps at a maximum diversion rate of 30.94 cfs. (III SF 244)

CONCLUSIONS:

1. Claimant is recognized a right to impound water in a 3500 acre-foot capacity reservoir in the Brazos River with a priority date of June 29, 1914.
2. Claimant is recognized a right to divert and use 2653 acre-feet of water per year therefrom for municipal purposes at a maximum diversion rate of 10 cfs (4500 gpm) with a priority date of June 29, 1914.
3. Claimant may continue diligent development to a diversion and use not to exceed 5600 acre-feet per year from the Brazos River at a maximum diversion rate of 10 cfs (4500 gpm).

DIVERSION POINT NO: 0640 and 0650
TRACT NO: None

OWNERSHIP: City of Waco

IR: 95
APP: 5
III SF 249-266

SECTION 11.307 CLAIM: Under Permit No. 2333 to impound water in a 3500 acre-foot capacity reservoir located on the Brazos River for recreation purposes. (Exh. 105)

FINDINGS:

1. Claimant is the owner of Permit No. 2333 (Application No. 2502), a regular type permit, which authorizes the construction of a dam and 3537 acre-foot capacity reservoir located on the Brazos River, located in the Marie Josefa Curriel Survey, Abstract No. 8, McLennan County. The use of the impounded water for recreational purposes is also authorized. (Exh. 106)
2. Application No. 2562 for Permit No. 2333 was accepted for filing by the Commission on January 8, 1968, and the permit was issued on March 27, 1968. (Exh. 106)
3. Claimant constructed and maintains a 3537 acre-foot capacity reservoir located at diversion point D-0640, which is the authorized location on the Brazos River with the dam being located in Abstracts Nos. 7 and 43, McLennan County. (III SF 266)
4. The reservoir located at diversion point D-0640 is used for recreation purposes. (III SF 260-263)
5. The City of Waco has entered into Water Contract No. 1148 under Permit No. 2333 with Young Brothers, Inc. to supply 20 acre-feet of water per year for mining purposes at diversion point D-0650. (Exh. 4)

CONCLUSIONS:

1. Claimant is recognized a right under Permit No. 2333 to impound water in a 3537 acre-foot capacity reservoir located at diversion point D-0640 on the Brazos River with the dam being located in Abstracts Nos. 7 and 43, McLennan County for recreation purposes with a priority date of January 8, 1968.
2. Claimant is recognized no right under Permit No. 2333 to supply water for mining purposes to Young Brothers, Inc. under Water Contract No. 1148 because Permit No. 2333 does not authorize the use of the impounded water for mining purposes.

DIVERSION POINT NO: 0660
TRACT NO: 0660

OWNERSHIP: Jack W. Donaldson

IR: 97
APP: 5
XI SF 215-216

SECTION 11.307 CLAIM: Under §11.303 Claim No. 954 to divert and use 50 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1.56 cfs (702 gpm) for the irrigation of 25 acres of land with a priority date of 1962. (Exh. 566)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 954 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum rate of 50 acre-feet of water was diverted at a maximum diversion rate of 700 gpm, to irrigate 25 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in June, 1962. (Exh. 567)
2. An additional sworn statement received by the Commission on May 3, 1972, was not timely filed. It declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be an unspecified amount of acre-feet of water at an unspecified maximum diversion rate for the irrigation of an unspecified amount of acres of land. (Exh. 568)
3. There is no record that the Texas Water Commission authorized the late filing of this claim as required by §11.303(h), Texas Water Code.
4. Claimant is the owner of claim area T-0660 which is located in Abstract No. 7, McLennan County. Abstract No. 7 was granted prior to January 20, 1840. (Exh. 4)
5. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 7. (XI SF 215-216)
6. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (IV SF 196) XI SF 215-216)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 954 because (1) claim area T-0660 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0660
TRACT NO: 0680

OWNERSHIP: C. C. Donaldson

IR: 99
APP: 5
XI SF 217-218

SECTION 11.307 CLAIM: Under §11.303 Claim No. 953 to divert and use 80 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1.56 cfs (702 gpm) for the irrigation of 40 acres of land with a priority date of 1962. (Exh. 569)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 953 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 80 acre-feet of water was diverted at a maximum diversion rate of 700 gpm, to irrigate 40 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in June, 1962. (Exh. 570)
2. Claimant is the owner of claim area T-0680 which is located in Abstracts Nos. 14 and 7, McLennan County. Abstracts Nos. 14 and 7 were granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 14 and 7. (XI SF 217-218)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (V SF 196; XI SF 217-218)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 953 because (1) claim area T-0680 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0670
TRACT NO: 0670

OWNERSHIP: Young Brothers, Inc.

IR: 98
APP: 5
III SF 267; XI SF 176-177

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5632 to divert and use 134 acre-feet of water per year from the Brazos River at a maximum diversion rate of 0.89 cfs (400 gpm) for the irrigation of 98 acres of land with a priority date of 1948. (Exh. 538)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5632 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 134 acre-feet of water was diverted at a maximum rate of 400 gpm, to irrigate 115 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1948. (Exh. 539)
2. Claimant is the owner of claim area T-0670 which is located in Abstract No. 43, McLennan County. Abstract No. 43 was granted prior to January 20, 1840. (Exh. 5)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 43. (Exh. 5)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 5632 because (1) claim area T-0670 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0690
TRACT NO: 0690

OWNERSHIP: David J. Simons and David Simons

IR: 101
APP: 5
III SF 267; XI SF 178

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 50 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 30 acre-feet of water was diverted at a maximum rate of 900 gpm, to irrigate 30 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in March 1962. (Exh. 540)
2. Claimants are the owners of claim area T-0690 which is located in Abstract No. 14, McLennan County. Abstract No. 14 was granted prior to January 20, 1840. (Exh. 5)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 14. (Exh. 5)
4. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (III SF 267; XI SF 178)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 50 because (1) claim area T-0690 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 0700
TRACT NO: 0700

OWNERSHIP: Republic Bank Waco, Trustee

IR: 102
APP: 5
IX SF 129-130

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 1483 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 150 acre-feet of water was diverted at a maximum rate of 600 gpm, to irrigate 100 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1956.
2. A representative of the claimant appeared at the hearing and stated that the claimant would not pursue the claim because the land associated with the claim lies within an abstract granted prior to January 20, 1840. (IX SF 129, 130)
3. Claimant is the owner of claim area T-0700 which is located in Abstract No. 43, McLennan County. Abstract No. 43 was granted prior to January 20, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River within Abstract No. 43. (IX SF 129-130)
5. Claimant did not present any evidence concerning any use of water within the claim area during the period 1963-1967, inclusive. (IX SF 129, 130)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 1483 because (1) claim area T-0700 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0710
TRACT NO: 0710

OWNERSHIP: Dave Harper Youngblood

IR: 103
APP: 5
III SF 267; XI SF 180

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 1484 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum rate of 100 acre-feet of water was diverted at a maximum rate of 600 gpm, to irrigate 100 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1959. (Exh. 542)
2. Claimant is the owner of claim area T-0710 which is located in Abstract No. 43, McLennan County. Abstract No. 43 was granted prior to January 20, 1840. (Exh. 5)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 43. (Exh. 5)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (III SF 267; XI SF 180)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 1484 because (1) claim area T-0710 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0720
TRACT NO: 0720

OWNERSHIP: Dave Simons

IR: 104
APP: 5
III SF 267; XI SF 179

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 49 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 30 acre-feet of water was diverted at a maximum rate of 900 gpm, to irrigate 60 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in July 1954. (Exh. 541)
2. Claimant is the owner of claim area T-0720 which is located in Abstract No. 32, McLennan County. Abstract No. 32 was granted prior to January 20, 1840. (Exh. 5)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 32. (Exh. 5)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (III SF 267; XI SF 179)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 49 because (1) claim area T-0720 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 0730, 0734 and 0737
TRACT NO: 0730

OWNERSHIP: Wesley Robinson and wife, Lola Robinson

IR: 105-106
APP: 5
III SF 180; XI SF 173-174

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of \$11,303 Claim No. 2469 which claims riparian rights, claims under Article 750a, Revised Civil Statutes of Texas, claims under Irrigation Act of 1889 or 1895, all other equitable and prescriptive rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum rate of 283 acre-feet of water was diverted at a maximum rate of 2100 gpm, to irrigate 283 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in claim area is declared to be in 1962. (Exh. 536)
2. Claimants are the owners of claim area T-0730 which is located in Abstract No. 43, McLennan County. Abstract No. 43 was granted prior to January 20, 1840. (Exh. 5)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 43. (Exh. 5)
4. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (III SF 180; XI SF 173-174)

CONCLUSION:

Claimants are not recognized any right under \$11,303 Claim No. 2469 because (1) claim area T-0730 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign or a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 0740
TRACT NO: 0740

OWNERSHIP: Wesley Robinson and wife, Lola Robinson

IR: 107
APP: 5
III SF 136-150

SECTION 11.307 CLAIM: Under Permit No. 271 to divert and use 400 acre-feet of water per year for irrigation purposes from the Brazos River and "w" at a maximum diversion rate of 5 cfs for the irrigation of 200 acres of land with an unspecified priority date. (Exh. 75)

FINDINGS:

1. Claimants are the owners of Permit No. 271 (Application No. 289), which authorizes the diversion and use of not to exceed 600 acre-feet of water per year for irrigation purposes from the Brazos River at a maximum diversion rate of 5.0 cfs for the irrigation of 200 acres of land located in the Thomas de la Vega League Grant (Abstract No. 43), McLennan County. (Exhs. 76, 77)
2. A Special Condition in Permit No. 271 is: The amount of water the grantee is permitted to divert and appropriate in any one year is restricted to two acre-feet per acre. (Exh. 76)
3. Application No. 289 for Permit No. 271 was accepted for filing by the Commission on March 16, 1918, and the permit was issued on April 22, 1918. (Exh. 76)
4. Permit No. 271 was partially cancelled by Commission Order dated May 10, 1967. Claimant retained the right to divert and use 400 acre-feet of water from the Brazos River at a maximum diversion rate of 5.0 cfs to irrigate 200 acres of land in the original tract in the Thomas de la Vega Grant, McLennan County, Texas. (Exh. 77)
5. The most acreage within permit area T-0740 irrigated with state water in any calendar year since the issuance of the permit was 290 acres. (III SF 144, 145)
6. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-0740 at authorized diversion point D-0740 located on the Brazos River by means of a portable pump at an unspecified maximum effective diversion rate using a sprinkler type distribution system. (III SF 141, 150)
7. The maximum amount of state water diverted and used for irrigation purposes within T-0740 in any calendar year since the issuance of the permit was 362 acre-feet of water. (III SF 144, 145)
8. The reason claimants failed to divert and use the total amount of water authorized by Permit No. 271 for irrigation purposes was that sufficient rainfall made irrigation unnecessary.
9. Claimants demonstrated an intention to divert and use the full 400 acre-feet of water per year authorized by Permit No. 271 for irrigation purposes in the foreseeable future by obtaining irrigation equipment. (III SF 146, 148)

CONCLUSIONS:

1. Claimants are recognized a right under Permit No. 271 to divert and use 362 acre-feet of water for irrigation purposes from diversion point 0740 at a maximum diversion rate of 5 cfs for the irrigation of 200 acres of land within tract T-0740 in Abstract No. 43, McLennan County, with a priority date of March 16, 1918.
2. Claimants showed sufficient justification for the lack of development under Permit No. 271 to the full extent authorized.
3. Claimants demonstrated a bona fide intention to divert and use more state water than previously diverted in the foreseeable future.
4. Claimants may continue diligent development to a diversion and use of not to exceed 400 acre-feet of water per year for the irrigation of 200 acres of land within tract T-0740 for irrigation purposes at a maximum diversion rate of 5 cfs with a priority date of March 16, 1918.

DIVERSION POINT NO: 0750
TRACT NO: 0750

OWNERSHIP: Estate of Kyle A. Vick, Jr.

IR: 108
APP: 4
XI SF 102

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of \$11,303 Claim No. 5113 which claims a riparian right to divert and use water from Vick's Creek for irrigation and domestic purposes, and does not declare the maximum amount of water diverted, maximum diversion rate, or number of acres irrigated during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is not specified. (Exh. 467)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 102)

CONCLUSION:

Claimant is recognized no right under \$11,303 Claim No. 5113 because he did not file any \$11,307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: 0760
TRACT NO: 0760

OWNERSHIP: C. H. Graves Estate, Inc.

IR: 109
APP: 5
V SF 50; XI SF 104

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of \$11,303 Claim No. 2522 which claims riparian water rights to divert and use water from Beluachua River, a tributary of the Brazos River, for irrigation purposes, and declares that a maximum of 870 acre-feet of water was diverted at a maximum diversion rate of 1000 gpm, to irrigate 216 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in March 1960. (Exh. 669)
2. Claimant is the owner of claim area T-0760 which is located in Abstracts Nos. 43 and 117, McLennan County. Abstract No. 43 was granted prior to January 20, 1840. Abstract No. 117 was patented on December 13, 1856. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Beluachua River, a tributary of the Brazos River, for irrigation purposes within Abstract No. 43. (Exh. 5)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (V SF 50; XI SF 104)

CONCLUSIONS:

1. Claimant is recognized no right under \$11,303 Claim No. 2522 because he did not file any \$11,307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.
2. Claimant is not recognized any right under \$11,303 Claim No. 2522 because (1) part of claim area T-0760 in Abstract No. 43 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant and (2) claimant did not establish a water right under any other theory for this part of the claim area.

DIVERSION POINT NOS: 0762, 0763
TRACT NO: 0762

OWNERSHIP: Walter F. Fulton Estate

IR: 110-111
APP: 5
XI SF 145

SECTION 11.307 CLAIM: Under \$11,303 Claim No. 8675, to divert and use 173 acre-feet of water per year from Harris Creek at a maximum diversion rate of 4.45 cfs (1000 gpm) for the irrigation of 250 acres of land with a priority date of "prior to 1963". A 2004 acre-foot capacity off-channel reservoir was also claimed. (Exh. 506)

FINDINGS:

1. Claimant is the owner of \$11,303 Claim No. 8675 which claims riparian rights to divert and use water from Harris Creek, a tributary to the Brazos River, for irrigation purposes and declares that an unspecified amount of water was diverted at an unspecified diversion rate to irrigate an unspecified amount of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is unspecified. (Exh. 507)
2. By Commission order dated May 15, 1975, Claim No. 8675 was reinstated. (Exh. 508)
3. Claimant is the owner of claim area T-0762 which is located in Abstracts Nos. 43, 429, 583, 756 and 1162, McLennan County. Abstract No. 43 was granted prior to January 20, 1840. Abstracts Nos. 429, 583, 756 and 1162 were patented between 1846 and 1870. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from Harris Creek for irrigation purposes within Abstract No. 43. (Exh. 4)
5. Claimant failed to appear at its scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (V SF 2; XI SF 145)

CONCLUSION:

Claimant is not recognized any right under \$11,303 Claim No. 8675 because (1) part of claim area T-0762 in Abstract No. 43 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant; (2) claimant did not establish a water right under any other theory; and (3) claimant did not present any evidence of water use in the remainder of the claim area during the period 1963-1967, inclusive.

DIVERSION POINTS NOS: 0765, 0766
TRACT NO.: None

OWNERSHIP: Texas Utilities Electric Company

IR: 112
APP: 5
VI SF 153-204; CONTEST SF 8-19

SECTION 11.307 CLAIM: Under Permit No. 2250, as amended, to impound water in a 37,814 acre-foot capacity reservoir located on Tradinghouse Creek and to divert and use therefrom 15,000 acre-feet of water per year for industrial purposes from Tradinghouse Creek, tributary of Tehuacana Creek, tributary of the Brazos River, at a maximum diversion rate of 2230 cfs with a priority date of September 16, 1966. (Exh. 232)

FINDINGS:

1. Claimant is the owner of Permits Nos. 2250 and 2250-A and Applications Nos. 2474 and 2474-A, which, as amended, authorize:
 - a. The impoundment of water in a 37,814 acre-foot capacity reservoir and the diversion and use consumptively therefrom of not to exceed 15,000 acre-feet of water per year for industrial purposes from Tradinghouse Creek;
 - b. The diversion and use of not to exceed 200 acre-feet of water from Tradinghouse Creek during the construction of the project;
 - c. At a maximum diversion rate of 2230.0 cfs (1,000,000 gpm), located in the Thomas de la Vega Survey, Abstract No. 43, McLennan County. (Exh. 233)
2. Special conditions in Permit No. 2250 include the following:
 - a. Claimant shall supplement water impounded for use under this permit with water authorized to be appropriated under Contractual Permit No. 20, supplemental water to be diverted from the Brazos River with a maximum diversion rate of not to exceed 45.0 cfs (20,200 gpm);
 - b. Claimant shall maintain the following: (1) a continuous reservoir content and lake level measuring station; (2) record of all discharges through the reservoir; (3) daily record of diversions from the Brazos River into the reservoir under Contractual Permit No. 20; and (4) monthly estimate of consumptive use. All records shall be compiled monthly and reported annually to the Commission. (Exh. 233)
3. Application No. 2474 for Permit No. 2250 was accepted for filing by the Commission on September 16, 1966, and the permit was issued on January 24, 1967. (Exh. 233)
4. Application No. 2474-A for Permit No. 2250-A, which authorized the use of four additional pumps, making a total of 7 pumps located on the perimeter of the reservoir, was accepted for filing by the Commission on June 17, 1968; the permit was issued on July 18, 1968. (Exh. 234)
5. Claimant constructed and maintains a 37,800 acre-foot capacity reservoir located at diversion point D-0765, which is the authorized location point on Tradinghouse Creek, tributary of Tehuacana Creek, tributary of the Brazos River, with the dam being located in Abstract No. 43, McLennan County. (VI SF 163, 169)
6. Since the issuance of the permit, state water has been diverted for cooling and condensing (industrial) purposes at authorized diversion point D-0766 at the dam and D-0765 located on the perimeter of the authorized reservoir by means of 7 stationary pumps at a maximum effective diversion rate of 1623.0 cfs (728,000 gpm). (Exh. 232, VI 163, 173)
7. Since the issuance of the special condition in Permit No. 2250 under Contractual Permit No. 20, supplemental state water has been diverted for industrial purposes at authorized diversion point D-0765 from the Brazos River by means of a stationary pump at a maximum effective diversion rate of 45 cfs (20,200 gpm). (VI SF 163)
8. The maximum amount of state water diverted and used for cooling and condensing (industrial) purposes in any calendar year since the issuance of the permit was 15,634 acre-feet of water in 1981. (VI SF 174, 184, 188)
9. Under Contractual Permit No. 20, claimant intends to divert 6000 acre-feet of state water for industrial purposes in 1983. (VI SF 175)
10. The maximum amount of induced or forced evaporation consumed for cooling and condensing industrial purposes in any calendar year since the issuance of the permit was 6100 acre-feet of water in 1974. (VI SF 176, 188)
11. Adequate reasons were specified for claimant's failure to divert up to the maximum authorized diversion rate of 2230 cfs.
12. Claimant demonstrated an intention to increase diversion rate capacity from 1623.0 cfs to the maximum rate authorized by Permit No. 2250-A, for industrial purposes, in the foreseeable future by showing that Tradinghouse Creek reservoir has a design such that additional capacity can be installed there but claimant has not developed specific plans other than the unit size and consideration of when it would be needed. (VI SF 194)

CONCLUSIONS:

1. Claimant is recognized a right under Permit No. 2250, as amended, to impound water in a 37,800 acre-foot capacity reservoir located at diversion point D-0766 on Tradinghouse Creek, tributary of Tehuacana Creek, tributary of the Brazos River, with the dam being located in Abstract No. 43, McLennan County, and to divert and consumptively use therefrom not to exceed 15,000 acre-feet of water per year for cooling and condensing (industrial) purposes at a maximum diversion rate of 1623.0 cfs (728,000 gpm) with a priority date of September 16, 1966.
2. Claimant is recognized a right under Contractual Permit No. 20 to divert and use supplemental state water for cooling and condensing (industrial) purposes at authorized diversion point D-0765 from the Brazos River at a maximum effective diversion rate of 45.0 cfs (20,200 gpm).
3. Claimant's right under Permit No. 2250 is subject to the special conditions contained in the permit.
4. Claimant did show sufficient justification for the lack of development under Permit No. 2250, as amended, to the full extent authorized for cooling and condensing (industrial) purposes.
5. Claimant did demonstrate a bona fide intention to use the maximum diversion rate authorized in the foreseeable future.
6. Claimant is recognized a right to continue to diligently develop its maximum diversion rate up to the maximum authorized rate of 2230.0 cfs (1,000,000 gpm).

DIVERSION POINTS NOS: 0770 and 0780
TRACT NO: None

OWNERSHIP: Oak Lake Club, Inc.

IR: 113
APP: 5
V SF J-18

SECTION 11.307 CLAIM: Under Permit No. 2839 to impound water in a 100 acre-foot capacity reservoir located on Tiger Branch, tributary of Tradinghouse Creek, tributary of Tehuacana Creek, tributary of the Brazos River, for recreational purposes only, with a priority date of February 12, 1983. (Exh. 176)

FINDINGS:

1. Claimant is the owner of Permit No. 2839 (Application No. 3105), a 511.141 type permit, which authorizes the impoundment of 100 acre-feet of water in two reservoirs on Tiger Branch, tributary of Tradinghouse Creek, tributary of Tehuacana Creek, tributary of the Brazos River, one reservoir impounding 73 acre-feet of water and the other reservoir impounding 27 acre-feet of water, and the use of the impounded water for recreational purposes only with no right of diversion from the reservoirs. (Exh. 171)
2. Application No. 3105 for Permit No. 2839 was accepted for filing by the Commission on February 12, 1973, and the permit was issued on March 20, 1973. (Exh. 171)
3. Claimant maintains an authorized 27 acre-foot capacity reservoir at D-0780 and a 73 acre-foot capacity reservoir at D-0770 in the Marla J. Carhall Survey on Tiger Branch, tributary of Tradinghouse Creek, tributary of Tehuacana Creek, tributary of the Brazos River, Abstract No. 43, McLennan County. (Exh. 171; V SF 11)
4. Claimant uses both reservoirs for recreational purposes and does not divert any water from these reservoirs. (V SF 9, 14)
5. Claimant maintains a total of 100 acre-feet of water in a 27 acre-foot capacity reservoir located at diversion point D-0770 and a 73 acre-foot capacity reservoir located at D-0780 which is the authorized location, with the dam being located in Abstract No. 43, McLennan County. (V SF 11)

CONCLUSION:

Claimant is recognized a right under Permit No. 2839 to impound a total of 100 acre-feet of water in a 27 acre-foot capacity reservoir located at diversion point D-0770 and a 73 acre-foot capacity reservoir located at diversion point D-0780 on Tiger Branch, tributary of Tradinghouse Creek, tributary of Tehuacana Creek, tributary of the Brazos River, with the dam being located in Abstract No. 43, McLennan County, and to use the impounded water for recreational purposes only with no right of diversion from the impoundments, with a priority date of February 12, 1973.

DIVERSION POINT NO: 0790

TRACT NO: 0790

OWNERSHIP: C. H. Graves Estate, Inc.

IR: 114
APP: 5
XI SF 105

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of 511.303 Claim No. 5904 which asserts riparian rights to divert and use water from Tehuacana Creek, a tributary to the Brazos River, for irrigation purposes, and declares that a maximum of 143 acre-feet of water was diverted at a maximum diversion rate of 1000 gpm, to irrigate 95 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1960. (Exh. 470)
2. Claimant is the owner of claim area T-0790 which is located in Abstract No. 43, McLennan County. Abstract No. 43 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from Tehuacana Creek for irrigation purposes within Abstract No. 43. (Exh. 4)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (V SF 50, XI SF 105)

CONCLUSION:

Claimant is not recognized any right under 511.303 Claim No. 5904 because (1) claim area T-0790 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0800
TRACT NO: 0800
OWNERSHIP: Fink E. Gleasie
IR: 115-116
APP: 5
VI SF 18-27
SECTION 11.307 CLAIM: NONE
FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 11520 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1970, inclusive, to be 23 acre-feet of water from Tahuacana Creek, tributary of the Brazos River at a maximum diversion rate of 800 gpm for the irrigation of 80 acres of land. The date of first beneficial use of water within the claim area was declared to be June 1954. (Exh. 174)
2. Section 11.303 Claim No. 11520 was timely filed:
 - A. By petition dated June 30, 1970, claimant requested waiver of §11.303(c) which provides, in part, that claims shall be filed on or before September 1, 1968. (Exh. 175)
 - B. By Commission Order dated May 6, 1971, the Commission authorized the filing of §11.303 Claim No. 11520. (Exh. 176)
3. An additional sworn statement to §11.303 Claim No. 11520 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 40 acre-feet of water from Tahuacana Creek, tributary of the Brazos River, at a maximum diversion rate of 800 gpm for the irrigation of 80 acres of land. (Exh. 173)
4. Claimant is the owner of claim area T-0800 which is located in Abstracts Nos. 23 and 43, McLennan County. Abstract No. 43 was patented on October 4, 1833. Abstract No. 23 was patented on September 27, 1833. T-0800 and Abstracts Nos. 23 and 43 abut Tahuacana Creek, tributary of the Brazos River. (V SF 23-24)
5. The record in this adjudication does not contain any English translation of either the Tomas de la Vega Grant (A-42) or of the Mexican land grant (A-2) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (V SF 24; App. 5)
6. The first diversion and use of state water for irrigation purposes within T-0800 was in June, 1954. (Exh. 174)
7. The most acreage within T-0800 irrigated with state water in any calendar year during the period 1963-1970, inclusive, was 80 acres, being Field No. 1, in 1968. (V SF 24)
8. During the period 1963-1970, inclusive, state water was diverted for irrigation purposes within T-0800 at diversion point D-0800 located on Tahuacana Creek by a portable pump at a total maximum effective diversion rate of 1.78 cfs (800 gpm) using a sprinkler type distribution system. (Exhs. 173, 174; V SF 24)
9. The maximum amount of state water diverted and used for irrigation purposes within T-0800 in any calendar year during the period 1963-1970, inclusive, was 40 acre-feet of water in 1968. (Exh. 173)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 11520 because (1) claim area, T-0800, is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 0820, 0830, and 0840
TRACT NO: 0820

OWNERSHIP: Wesley Robinson and wife, Lola Robinson
IR: 117
APP: 5
III SF 151-163

SECTION 11.307 CLAIM: Under Permit No. 1119 to divert and use 660 acre-feet of water per year for irrigation purposes from the Brazos River and Tahuacana Creek, at a maximum diversion rate of 10 cfs for the irrigation of 330 acres of land with an unspecified priority date. (Exh. 80)

FINDINGS:

1. Claimants are the owners of Permit No. 1119 (Application No. 1189), which authorizes the diversion and use of not to exceed 660 acre-feet of water per year for irrigation purposes from the Brazos River and Tahuacana Creek, tributary of the Brazos River, at a maximum diversion rate of 10 cfs for the irrigation of 330 acres of land located in the Tomas de la Vega and Ignacio Antonio Manchaca Grants in McLennan County. (Exh. 81)
2. A Special Condition in Permit No. 1119 is: That the amount of water to be diverted in each year is restricted to 2 acre-feet per acre actually irrigated. (Exh. 81)
3. Application No. 1189 for Permit No. 1119 was accepted for filing by the Commission on January 26, 1929, and the permit was issued on August 15, 1929. (Exh. 81)
4. The most acreage within permit area T-0820 irrigated with state water in any calendar year since the issuance of the permit was 330 acres, being Field No. 1, in 1956. (III SF 158; Exh. 81)
5. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-0820 at authorized diversion points D-0820 and D-0830 located on Tahuacana Creek and diversion point D-0840 on the Brazos River by means of an unspecified type of pump at a maximum effective diversion rate of 6.6 cfs (3000 gpm). (III SF 161; Exh. 83)
6. The maximum amount of state water diverted and used for irrigation purposes within T-0820 in any calendar year since the issuance of the permit was 760 acre-feet of water in 1956. (III SF 158; Exh. 83)

CONCLUSIONS:

1. Claimants are recognized a right under Permit No. 1119 to divert and use not to exceed 660 acre-feet of water per year for irrigation purposes at diversion points D-0820 and D-0830 located on Tahuacana Creek, tributary of the Brazos River, and D-0840 located on the Brazos River at a maximum diversion rate of 6.6 cfs (3000 gpm) for the irrigation of 330 acres of land within tract T-0820 with a priority date of January 26, 1929.
2. Claimants' rights under Permit No. 1119 are subject to the Special Conditions contained in the Permit.

DIVERSION POINT NO: 0835
TRACT NO: None

OWNERSHIP: Texas Utilities Electric Company
IR: 188
APP: 5
VI SF 153-204

SECTION 11.307 CLAIM: Under Permit No. 988B to divert and use 12,000 acre-feet of water per year for industrial purposes from the Brazos River at a maximum diversion rate of 31 cfs with a priority date of August 21, 1926. (Exh. 232)

FINDINGS:

1. Claimant is the owner of Permits Nos. 988, 988A, 988B, (Applications Nos. 1059, 1059A, and 1059B) which, as amended, authorize the diversion and use of not to exceed 12,000 acre-feet of water per year for cooling and condensing (industrial) purposes from the Brazos River at a maximum diversion rate of 31 cfs (13,950 gpm) located in the Tomas de la Vega Survey, Abstract No. 43, McLennan County. (Exh. 238)
2. Application No. 1059 for Permit No. 988 was accepted for filing by the Commission on August 21, 1926, and the permit was issued on November 4, 1927. (Exh. 236)
3. Application No. 1059A for Permit No. 988A, which authorized:
 - a. the original diversion of 72,390 acre-feet per annum under Permit No. 988 to be reduced to not to exceed 12,000 acre-feet per annum for industrial purposes, and
 - b. the maximum rate of diversion to be reduced from 100 cfs to 31,was accepted for filing by the Commission on April 10, 1967, and the permit was issued on July 20, 1967. (Exh. 237)
4. Application No. 1059B for Permit No. 988B, which authorized a change in the diversion point previously authorized to divert at a point on the left, or northeast bank of the Brazos River, 863°43'W, 46,200 feet from the southeast corner of the Tomas de la Vega Survey, was accepted for filing by the Commission on October 6, 1980, and the permit was issued on November 9, 1980. (Exh. 238)
5. Since the issuance of the permit, state water has been diverted for cooling and condensing (industrial) purposes at authorized diversion point D-0835 located on the Brazos River by means of a stationary pump at a maximum effective diversion rate of 31 cfs (13,950 gpm). (VI SF 157, 183)
6. The maximum amount of state water diverted and used for industrial purposes in any calendar year since the issuance of the permit was 12,322 acre-feet of water in 1983. (Exh. 239)

CONCLUSION:

Claimant is recognized a right under Permit No. 988, as amended, to divert and use not to exceed 12,000 acre-feet of water per year for cooling and condensing (industrial) purposes from diversion point D-0835 located on the Brazos River, at a maximum diversion rate of 31 cfs (13,950 gpm) in Abstract No. 43, McLennan County, with a priority date of August 21, 1926.

DIVERSION POINT NO: 0850
TRACT NO: 0850

OWNERSHIP: Jupp Thesis
IR: 120
APP: 5
V SF 28-31

SECTION 11.307 CLAIM: Jupp Thesis, under §11.303 Claim No. 445 to divert and use 144 acre-feet of water per year from the Brazos River at a maximum diversion rate of 2500 gpm for the irrigation of 72 acres of land with a priority date of December 31, 1966. (Exh. 178)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 445 which asserted a riparian right to divert and use water for irrigation purposes from the Brazos River at a maximum diversion rate of 2500 gpm for the irrigation of 72.44 acres of land. The date of first beneficial use of water within the claim area was declared to be June, 1967. (Exh. 179)
2. Claimant is the owner of claim area T-0850 which is located in Abstract No. 32, McLennan County. Abstract No. 32 was patented in 1833. (V SF 31)
3. The record in this adjudication does not contain any English translation of the Mexican land grant (A-32) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (V SF 31)
4. The first diversion and use of state water for irrigation purposes within T-0850 was in 1966. (Exh. 178)
5. No evidence was presented regarding the maximum amount of state water diverted and used for irrigation purposes within T-0850 in any calendar year during the period 1963-1967.

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 445 because (1) claim area T-0850 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0860
TRACT NO: 0860

OWNERSHIP: Gayle Peary

IR: 121
APP: 5
XI SF 181

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2620 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that an unspecified amount of water was diverted at a maximum diversion rate of 500 gpm, to irrigate an unspecified amount of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in May 1960. (Exh. 543)
2. Claimant is the owner of claim area T-0860 which is located in Abstract No. 23, McLennan County, Abstract No. 23 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 23. (Exh. 4)
4. Claimant failed to appear at her scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (V SF 50; XI SF 181)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2620 because (1) claim area T-0860 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0870
TRACT NO: 0870

OWNERSHIP: Robinson Machinery Company, Inc.

IR: 122-123
APP: 5
XI SF 175

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 1772 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 167 acre-feet of water was diverted at a maximum of 1500 gpm, to irrigate 175 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1952. (Exh. 537)
2. Claimant is the owner of claim area T-0870 which is located in Abstracts Nos. 32 and 24, McLennan County. Abstracts Nos. 32 and 24 were granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 32 or 24. (Exh. 4; XI SF 175)
4. Claimant failed to appear at its scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 180; XI SF 175)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 1772 because (1) claim area T-0870 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0880
TRACT NO: 0880

OWNERSHIP: Guy S. Combs, Jr. and Wife, Martha Combs

IR: 124
APP: 5
XI SF 182-3

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 2289 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 60 acre-feet of water was diverted, at a maximum diversion rate of 100 gpm, to irrigate 60 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in August 1958. (Exh. 544)
2. An additional sworn statement to §11.303 Claim No. 2289 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be an unspecified amount of acre-feet of water from the Brazos River at an unspecified maximum diversion rate for the irrigation of an unspecified amount of acres of land. (Exh. 544)
3. Claimants are the owners of claim area T-0880 which is located in Abstracts Nos. 24 and 16, McLennan County. Abstracts Nos. 24 and 16 were granted prior to January 10, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 24 and 16. (XI SF 182-183)
5. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1970, inclusive. (V SF 50; XI SF 182-183)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 2289 because (1) claim area T-0880 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 0885
TRACT NO: 0885

OWNERSHIP: Roy E. Hall

IR: 125-126
APP: 5
XI SF 184-185

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2092, to divert and use 48 acre-feet of water per year from an unnamed tributary of the Brazos River at a maximum diversion rate of 0.22 cfs (99 gpm) for the irrigation of 20 acres of land with a priority date of 1968. A 48 acre-foot capacity off-channel reservoir was claimed. (Exh. 545)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2092 which claims riparian rights to divert and use water from an unnamed tributary of the Brazos River for irrigation purposes, and declares that an unspecified amount of water was diverted at an unspecified rate, to irrigate an unspecified amount of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1968. A 48 acre-foot capacity reservoir is also claimed. (Exh. 546)
2. Claimant is the owner of claim area T-0885 which is located in Abstract No. 23, McLennan County. Abstract No. 23 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from an unnamed tributary of the Brazos River for irrigation purposes within Abstract No. 23. (Exh. 4)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 184-185)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2092 because (1) claim area T-0885 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0890
TRACT NO: 0890

OWNERSHIP: Central Texas Compress Co.

IR: 127
APP: 5
XI SF 213-214

SECTION 11.307 CLAIM: NONE

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 757 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 180 acre-feet of water was diverted at a maximum diversion rate of 1200 gpm, to irrigate 230 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1952. (Exh. 565)
2. Claimant is the owner of claim area T-0890 which is located in Abstract No. 17, McLennan County. Abstract No. 17 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 17. (XI SF 213-214)
4. Claimant did not appear at either the regularly scheduled evidentiary hearing or the final docket hearing and no evidence was presented concerning the diversion and use of state water during the period 1963-1967, inclusive. (V SF 50; XI SF 213-214)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 757 because (1) claim area T-0890 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 0900
TRACT NO: 0900

OWNERSHIP: Jov L. Uerglin
IR: 128-129
APP: 5
V SF 22-50

SECTION 11.307 CLAIM: Under §11.303 Claim No. 3005 to divert and use 150 acre-feet of water per year from the Brazos River at a maximum diversion rate of 4.44 cfs for the irrigation of 150 acres of land with a priority date unspecified. (Exh. 182)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 3005 which asserted riparian rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 250 acre-feet of water from the Brazos River at a maximum diversion rate of 2000 gpm for the irrigation of 150 acres of land. The date of first beneficial use of water within the claim area was declared to be 1952. (Exh. 183)
2. An additional sworn statement received by the Commission on July 26, 1971, to §11.303 Claim No. 3005 was not timely filed. It declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 156 acre-feet of water from the Brazos River at a maximum diversion rate of 2000 gpm for the irrigation of 147 acres of land. (Exh. 184)
3. Claimant is the owner of claim area T-0900 which is located in Abstract No. 17, McLennan County. All irrigation within T-0900 during the period 1963-1967, inclusive, was in Abstract No. 17. Abstract No. 17 was patented in April 13, 1833. T-0900 and Abstract No. 17 abut the Brazos River. (V SF 37-38)
4. The record in this adjudication does not contain any English translation of the Mexican land grant (Galindo Grant A-17) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (V SF 49)
5. The first diversion and use of state water for irrigation purposes within T-0900 was in July 1952. (V SF 48-49)
6. The most acreage within T-0900 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 150 acres in Abstract No. 17 in 1966. (V SF 37, 41)
7. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0900 at diversion point D-0900 located on the Brazos River by a portable pump at a total maximum effective diversion rate of 4.44 cfs (2000 gpm). (Exh. 182; V SF 33, 44)
8. The maximum amount of state water diverted and used for irrigation purposes within T-0900 in any calendar year during the period 1963-1967, inclusive, was 245 acre-feet of water in 1966. (V SF 45)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 3005 because (1) claim area T-0900 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 0910, 0915, 0925, 0930
TRACT NO: 0910

OWNERSHIP: Northern Trust Company (Brazos River Farm)

IR: 130-131
APP: 5
VI SF 86-196, CORRECTED SF 62-65

SECTION 11.307 CLAIM: Under §11.303 Claim No. 332 to divert and use 2800 acre-feet of water per year from the Brazos River at a maximum diversion rate of 11.37 cfs for the irrigation of 2800 acres of land with a priority date of February 28, 1951. (Exh. 194)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 332 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 1159 acre-feet of water from the Brazos River at a maximum diversion rate of 7000 gpm for the irrigation of 1850 acres of land. The date of first beneficial use of water within the claim area was declared to be February, 1951. (Exh. 194)
2. An additional sworn statement to §11.303 Claim No. 332 received by the Commission on July 4, 1971, was not timely filed. It declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 350 acre-feet of water from the Brazos River at a maximum diversion rate of 7000 gpm for the irrigation of 700 acres of land. (Exh. 196)
3. Claimant is the owner of claim area T-0910 which is located in Abstract No. 16, McLennan County, Abstract No. 16 was patented on April 13, 1855. T-0910 and Abstract No. 16 abut the Brazos River. (V SF 97, 98, 109)
4. The record in this adjudication does not contain any English translation of the Mexican land grant (A-16) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (V SF 97)
5. The first diversion and use of state water for irrigation purposes within T-0910 was actually in 1923. (Exh. 195; V SF 131)
6. The most acreage within T-0910 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 1915 acres in Abstract No. 16 in 1967. (V SF 138, 144)
7. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-0910 at diversion points D-0915 and D-0930 located on the Brazos River by a pump at a maximum effective diversion rate of 15.4 cfs (7000 gpm) using a sprinkler and flood type distribution system. (V SF 118, 124, 156)
8. The maximum amount of state water diverted and used for irrigation purposes within T-0910 in any calendar year during the period 1963-1967, inclusive, was 2799 acre-feet of water. (V SF 140)
9. Diversion points D-0910 and D-0925 were not claimed. (V SF 98)

CONCLUSIONS:

1. Claimant is not recognized any right under §11.303 Claim No. 332 because claim area T-0910 is located on land granted prior to January 9, 1849, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant.
2. Claimant is not recognized any equitable right to impound, divert or use state water.

DIVERSION POINT NOS: 0920
TRACTS NOS: 0920 and 0921

OWNERSHIP: W. P. Glass, Josephine Glass, Newman E. Copeland and wife, Jewel E. Copeland

IR: 132-133
APP: 5
XI SF 219-20

SECTION 11.307 CLAIM: NONE

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 2508 which claims riparian rights to divert and use water from the Brazos River for agricultural, irrigation and domestic uses, and declares that a maximum of 900 acre-feet of water was diverted at a maximum diversion rate of 1800 gpm, to irrigate 786 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in June, 1954. (Exh. 571)
2. An additional sworn statement to §11.303 Claim No. 2508 was timely filed which declared the maximum diversion and use of the water in any calendar year during the period 1968-1970, inclusive, to be an unspecified amount of acre-feet of water from the Brazos River at a maximum diversion rate of 1000 gpm for the irrigation of an unspecified amount of acres of land. (Exh. 572)
3. Claimants are the owners of claim area T-0920 and 0921 which is located in Abstracts Nos. 17 and 36, McLennan County. Abstracts Nos. 17 and 36 were granted prior to January 20, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 17 and 36. (XI SF 219-220)
5. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1970, inclusive. (V SF 196; XI SF 219-220)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 2508 because (1) claim area T-0920 and 0921 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 0950, 0949, 0954
TRACT NO: None

OWNERSHIP: Texas Utilities Electric Company

IR: 134
APP: 5
VI SF 113-152

SECTION 11.307 CLAIM: Under Permit No. 1566, as amended, to impound water in an 8500 acre-foot capacity reservoir located on Manos Creek and to divert and use therefrom for industrial purposes 10,000 acre-feet of water, from the Brazos River at a maximum diversion rate of 50 cfs and from Lake Creek Reservoir on Manos Creek with no limit on maximum permitted diversion rate with a priority date of March 6, 1951. (Exh. 222)

FINDINGS:

1. Claimant is the owner of Permits Nos. 1566, 1616 (designated as 1566A, 1566B, and 1566C, Applications Nos. 1665, 1784 and 2272), which, as amended, authorize:
 - a. Construction of a dam and maintenance of an 8500 acre-foot capacity reservoir located on Manos Creek, tributary of the Brazos River, in McLennan County; the impoundment therein of 10,000 acre-feet of water per year for cooling and condensing (industrial) purposes.
 - b. The diversion of not to exceed 10,000 acre-feet of water per annum of the unappropriated waters of the Brazos River, at a maximum diversion rate of 50.0 cfs (22,500 gpm), for cooling and condensing (industrial) purposes. (Exhs. 222, 224, 225, 228, 229)
2. Application No. 1685 for Permit No. 1566 was accepted for filing by the Commission on March 6, 1951, and the permit was issued on May 10, 1951. (Exh. 223)
3. Application No. 1784 for Permit No. 1566A, which authorized an impoundment of water in an 8500 acre-foot capacity reservoir on Manos Creek, a tributary of the Brazos River, from its original 8000 acre-feet of water to 9500 acre-feet, was accepted for filing by the Commission on March 5, 1952, and the permit was issued on April 22, 1952. (Exhs. 224, 228, 229)
4. Application No. 2272 for Permit No. 1566B, which authorized a change in diversion point location from the point described in Permit No. 1566, as amended, as a point which bears South 20°30' East 5200 feet from the northwest corner of the A. Sanchez Tract of the J. D. Sanchez Survey, to a point which bears North 38°05' East 10,377 feet from the southwest corner of the J. D. Sanchez Survey, was accepted for filing by the Commission on April 29, 1963, and the amendment was issued on August 1, 1963. (Exh. 229)
5. Permit No. 1566C, which authorized the maintenance of an existing dam and reservoir on Manos Creek having an impounding capacity of 8500 acre-feet of water, being a reduction of the originally authorized impounding capacity, was accepted for filing by the Commission on November 8, 1971, and the amendment was issued on January 26, 1972. (Exh. 225)
6. Claimant constructed and maintains an 8500 acre-foot capacity reservoir located at diversion point D-0954, which is the authorized location on the Brazos River, with the dam being located on D-0950 in Abstract No. 36, McLennan County. (VI SF 131)
7. Since the issuance of the permit, state water has been diverted for industrial purposes at authorized diversion point D-0954 located on the Brazos River by means of two stationary pumps at a maximum effective diversion rate of 45.0 cfs (20,250 gpm). (VI SF 122, 133, 144)
8. Since the issuance of the permit, state water was diverted for industrial purposes at authorized diversion point D-0949 located on the perimeter of the authorized reservoir (Lake Creek Reservoir) by means of 5 stationary pumps at 455 cfs (204,750 gpm). (VI SF 122, 235, 141).
9. The maximum amount of state water diverted and used for industrial purposes from Lake Creek Reservoir, diversion point D-0949, in any calendar year since the issuance of the permit was 11,804 acre-feet of water in 1961. (VI SF 134, 143)
10. The maximum amount of state water diverted from diversion point D-0954 on the Brazos River in any calendar year since the issuance of the permit was 8996 acre-feet of water in 1961. (VI SF 142, 147).
11. The maximum amount of water that has been consumed by induced or forced evaporation for industrial purposes in any calendar year since the issuance of the permit was 2110 acre-feet of water. (VI SF 136, 144)
12. No reasons were specified for claimant's failure to increase the diversion rate to authorized use of 50.0 cfs. (VI SF 144)

CONCLUSIONS:

1. Claimant is recognized a right under Permit No. 1566, as amended, to maintain an 8500 acre-foot capacity reservoir on Manos Creek, tributary of the Brazos River, with the dam being located at diversion point D-0950 in Abstract No. 36, McLennan County, on Manos Creek.
2. Claimant is recognized a right to divert from diversion point D-0954 on the Brazos River not to exceed 8996 acre-feet of water per year at a maximum diversion rate of 45.0 cfs (20,250 gpm) for cooling and condensing (industrial) purposes.
3. Claimant is recognized a right to divert and use from Lake Creek Reservoir, at diversion point D-0949, 10,000 acre-feet of water per year, at the maximum diversion rate of 455.0 cfs (204,750 gpm) for cooling and condensing purposes.
4. Claimant is recognized a priority date of March 6, 1951 for the above usage except for the impoundment right of the 8,000 acre-foot capacity reservoir which shall have a priority date of March 6, 1952 and the extra 500 acre-foot capacity right which shall have a priority date of March 3, 1952.
5. Claimant did not show sufficient justification for the lack of development under Permit No. 1566, as amended, to the full extent authorized for industrial purposes.

DIVERSION POINT NO: 0960
TRACT NO: 0960

OWNERSHIP: Cooper Foundation

IR: 135
APP: 5
XI SF 147

SECTION 11.307 CLAIM: NONE

FINDINGS:

1. Claimant is the owner of Permit No. 324 (Application No. 340), which authorizes the diversion and use of not to exceed 644 acre-feet of water per year for irrigation purposes at a maximum diversion rate of 10 cfs (4500 gpm) for the irrigation of 322 acres of land from the Brazos River located in the J. D. Sanchez and M. Martinez Surveys, Abstracts Nos. 24 and 36, McLennan County. (Exh. 509)
2. A Special Condition in Permit No. 324 included the following: the beneficial use of 2 acre-feet of water per acre per year. (Exh. 509)
3. Application No. 340 for Permit No. 324 was accepted for filing by the Commission on August 13, 1918, and the permit was issued on October 7, 1918. (Exh. 509)
4. Claimant did not appear at either the regularly scheduled evidentiary hearing or the final docket evidentiary hearing and no evidence was presented concerning the diversion and use of state water since the issuance of Permit No. 324. (V SF 196; XI SF 147)

CONCLUSION:

Claimant is not recognized any right under Permit No. 324 because no evidence was presented of any use of state water pursuant to Permit No. 324 since its issuance and no §11.307 claim pertinent to Permit No. 324 was filed in the adjudication of this segment.

DIVERSION POINTS NOS: 0965
TRACT NO: 0965
OWNERSHIP: Camilla Stevens Renner, Camilla Stevens Renner Family Trust and Raymond Johnson (ownership unverified)

IR: 116-117
APP: 5
XI SF 221

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 claim No. 1332 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 175 acre-feet of water was diverted at a maximum diversion rate of 6300 gpm, to irrigate 175 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1957. (Exh. 573)
2. Claimants are the owners of claim area T-0965 which is located in Abstract No. 16, McLennan County, and Abstracts Nos. 21 and 81, Falls County. Abstracts Nos. 16, 21, 81 were granted prior to January 20, 1840. (Exh. 5)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 16, 21 or 81. (XI SF 221)
4. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (V SF 196, XI SF 221)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 1332 because (1) claim area T-0965 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 0965 and 0970
TRACT NO: 0970

OWNERSHIP: Wesley Robinson and wife, Lola Robinson

IR: 138-139
APP: 5
III SF 160; X SF 25; XI SF 188

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 117 which claims riparian water rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 700 acre-feet of water was diverted at a maximum diversion rate of 1300 gpm, to irrigate 700 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1957. (Exh. 532)
2. An additional sworn statement to §11.303 Claim No. 117 was timely filed which declared that the maximum diversion and use of water in any calendar year during the period 1963-1970, inclusive, to be 303 acre-feet of water from the Brazos River at a maximum diversion rate of 15,000 gpm for the irrigation of 623 acres of land. (Exh. 533)
3. Claimants are the owners of claim area T-0970 which is located in Abstracts Nos. 21 and 81, Falls County and Abstract No. 16, McLennan County. Abstracts Nos. 16, 21, 81 were granted prior to January 20, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 16, 21, or 81. (XI SF 188)
5. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1970, inclusive. (III SF 160; X SF 25; XI SF 188)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 117 because (1) claim area T-0970 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 0967, 0960
TRACT NO: 0967

OWNERSHIP: Cooper Foundation

IR: 140-141
APP: 5
XI SF 148-49

SECTION 11.307 CLAIM: NONE

FINDINGS:

1. Claimant is the owner of Permit No. 386 (Application No. 404), which authorizes the diversion and use of not to exceed 578 acre-feet of water per year for irrigation purposes at a maximum diversion rate of 7.8 cfs (1150 gpm) for the irrigation of 289 acres of land from the Brazos River located in the J. O. Sanchez and H. Martinez Surveys, Abstracts Nos. 24 and 37, Falls and McLennan Counties. (Exh. 510)
2. A Special Condition in Permit No. 386 includes the following: [Allowance as to quantity is based upon the beneficial use of 2 acre-feet of water per acre per year. (Exh. 510)]
3. Application No. 404 for Permit No. 386 was accepted for filing by the Commission on February 6, 1919, and the permit was issued on April 8, 1919. (Exh. 510)
4. Permit No. 386 was partially cancelled by Commission Order dated June 21, 1967. Claimant retained the right to use a maximum of 30 acre-feet of water from the Brazos River, to irrigate 30 acres of land out of 289 acres in the J. O. Sanchez Survey and H. Martinez Survey in Falls and McLennan Counties. (Exh. 511)
5. Claimant did not appear at either the regularly scheduled evidentiary hearing or the final docket evidentiary hearing and no evidence was presented concerning the diversion and use of state water since the issuance of Permit No. 386. (V SF 196; XI SF 148)

CONCLUSION:

Claimant is not recognized any right under Permit No. 386 because no evidence was presented of any use of state water pursuant to Permit No. 386 since its issuance and no §11.307 claim pertinent to Permit No. 386 was filed in the adjudication of this segment.

DIVERSION POINT NO: 0970
TRACT NO: 0980

OWNERSHIP: T. H. Whaley, Sr. and T. W. Whaley, Jr.

IR: 142
APP: 5
XI SF 169-170

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 claim No. 117 which claims riparian, patent, and dead rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 700 acre-feet of water was diverted, at a maximum rate of 1300 gpm, to irrigate 700 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1957. (Exh. 532)
2. An additional sworn statement, received by the Commission on May 4, 1972, to §11.303 Claim No. 117 was not timely filed. It declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 303 acre-feet of water at the maximum diversion rate 15,000 gpm for the irrigation of 623 acres. (Exh. 533)
3. Claimants are the owners of claim area T-0980 which is located in Abstract No. 81, Falls County, Abstract No. 81 was granted prior to January 20, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 81. (XI SF 169-170)
5. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1970, inclusive. (III SF 180; XI SF 169-170)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 117 because (1) claim area T-0980 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 1000
TRACT NO: 1000

OWNERSHIP: Horace H. Trippett

IR: 143
APP: 6
XI SF 222

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5159 which claims riparian water rights to divert and use water from Bullhide Creek, a tributary of the Brazos River, for irrigation purposes, and declares that a maximum of 50 acre-feet of water was diverted at a maximum diversion rate of 750 gpm, to irrigate 50 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in June 1964. (Exh. 574)
2. Claimant is the owner of claim area T-1000 which is located in Abstract 16, McLennan County, Abstract No. 16 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from Bullhide Creek, a tributary of the Brazos River, for irrigation purposes within Abstract No. 16. (XI SF 222)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (V SF 196, XI SF 222)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 5159 because (1) claim area T-1000 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 1010
TRACT NO: 1010

OWNERSHIP: Horace H. Trippett and Harry J. Trippett

IR: 144
APP: 6
XI SF 223

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 5158 which claims riparian water rights to divert and use water from Bullhide Creek, a tributary of the Brazos River, for irrigation purposes, and declares that a maximum of 50 acre-feet of water was diverted at a maximum diversion rate of 750 gpm, to irrigate 50 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in June 1964. (Exh. 575)
2. Claimants are the owners of claim area T-1010 which is located in Abstract No. 16, McLennan County, Abstract No. 16 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from Bullhide Creek, a tributary of the Brazos River, for irrigation purposes within Abstract No. 16. (XI SF 223)
4. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (V SF 196; XI SF 223)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 5158 because (1) claim area T-1010 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 1020
TRACT NO: 1020
OWNERSHIP: T. W. Whaley, Sr. and T. W. Whaley, Jr.
IR: 145-146
APP: 7
XI SF 171-172
SECTION 11.307 CLAIM: None
FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 191 which claims riparian and Article 7500a rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 20 acre-feet of water was diverted at an unspecified rate, to irrigate 40 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1963. (Exh. 534)
2. An additional sworn statement to §11.303 Claim No. 191 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 124 acre-feet of water from the Brazos River at the maximum diversion rate of 2.67 cfs (1200 gpm) for the irrigation of 75 acres of land in 1969. (Exh. 535)
3. Claimants are the owners of claim area T-1020 which is located in Abstract No. 81, Falls County. Abstract No. 81 was granted prior to January 20, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 81. (XI SF 171-172)
5. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1970, inclusive. (XI SF 180, XI SF 171-172)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 191 because (1) claim area T-1020 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 1060
TRACT NO: 1060
OWNERSHIP: W. J. Dube

IR: 147
APP: 7
V SF 52-68

SECTION 11.307 CLAIM: Under Permit No. 904 to divert and use 200 acre-feet of water per year for irrigation purposes from the Brazos River at a maximum diversion rate of 6.0 cfs for the irrigation of 100 acres of land with a priority date of August 28, 1925. (Exh. 187)

FINDINGS:

1. Claimant is the owner of Permit No. 904 (Application No. 972), which authorizes the diversion and use of not to exceed 334 acre-feet of water per year for irrigation purposes from the Brazos River at a maximum diversion rate of 6.0 cfs (2700 gpm) for the irrigation of 167 acres of land located in the George Morgan Survey, Falls County. (Exh. 188)
2. A Special Condition in Permit No. 904 is that the amount of water which they said permittees is permitted to divert and appropriate in any one year shall be restricted to two acre-feet per acre for each acre actually irrigated within the limitation on the 167 acres of land.
3. Application No. 973 for Permit No. 904 was accepted for filing by the Commission on August 28, 1925, and the permit was issued on November 1, 1926. (Exh. 189)
4. Permit No. 904 was partially cancelled by Commission Order dated March 4, 1963. Claimant retained the right to appropriate 200 acre-feet of water for 100 acres of land. (Exh. 189)
5. The most acreage within permit area T-1060, an area located outside the permit area irrigated with state water in any calendar year since the issuance of the permit was 85 acres, being Fields Nos. 1 and 2, in 1975. (V SF 62-63)
6. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-1060 and unauthorized diversion points D-1059 and D-1061 located on the Brazos River by means of a portable pump at a maximum effective diversion rate of 1.33 cfs (600 gpm) using a sprinkler type distribution system. (V SF 64, 68, 73, 76, 82)
7. There are no intervening diverters between D-1061 and authorized diversion point D-1059. (V SF 64, 85)
8. The maximum amount of state water diverted and used for irrigation purposes within T-1060 in any calendar year since the issuance of the permit was 186 acre-feet of water in 1968. (V SF 76, 77)
9. The reason claimant failed to divert and use the total amount of water authorized by Permit No. 904 for irrigation purposes was that he has not needed to irrigate the authorized amount; he has not been able to get enough production for what he needed for his Coastal Bermuda from 85 acres; and, because of sufficient rainfall he has not used the maximum amount of acre-feet of water. (Exh. 192; V SF 82)
10. Claimant demonstrated an intention to divert and use the full amount of water per year authorized by Permit No. 904 for irrigation purposes in the foreseeable future by stating that he has the equipment necessary to irrigate the authorized 100 acres and the possibility in the near future of expanding his operation to its full capacity by replacing his forty year old pump and increasing the diversion rate. (V SF 83-84, 86-8)

CONCLUSIONS:

1. Claimant is recognized a right under Permit No. 904 to divert and use not to exceed 170 acre-feet of water per year for irrigation purposes from diversion points D-1059 and D-1061 located on the Brazos River, at a maximum diversion rate of 1.33 cfs (600 gpm) for the irrigation of 85 acres of land within tract T-1060, Falls County, with a priority date of August 28, 1925.
2. Claimant did show sufficient justification for the lack of development under Permit No. 904 to the full extent authorized for irrigation purposes.
3. Claimant did demonstrate a bona fide intention to divert and use more state water than previously diverted in the foreseeable future.
4. Claimant may continue diligent development to a diversion and use of not to exceed 200 acre-feet of water per year for the irrigation of 100 acres of land within tract T-1060 at a maximum diversion rate of 1.33 cfs (600 gpm) with a priority date of August 28, 1925.
5. Claimant's rights under Permit No. 904 are subject to the Special Conditions contained in the permit.

DIVERSION POINT NO: 1070
TRACT NO: 1070

OWNERSHIP: J. E. Thigpen
IR: 148-149
APP: 7
XI SF 224
SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 claim No. 5135 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that an unspecified amount of water was diverted at a maximum rate of 7200 gpm, to irrigate 400 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in May 1951. (Exh. 576)
2. Claimant is the owner of claim area T-1070 which is located in Abstract No. 1, Falls County. Abstract No. 1 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 1. (XI SF 224)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VI SF 205, XI SF 224)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 5135 because (1) claim area T-1070 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 1080
TRACT NO: 1080

OWNERSHIP: W. T. Halbert
IR: 150-151
APP: 7
VI SF 2-38

SECTION 11.307 CLAIM: Under §11.303 Claim No. 178 to divert and use 800 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1200 gpm for the irrigation of 800 acres of land with a priority date of 1924. (Exh. 200)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 178 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 600 acre-feet of water from the Brazos River at a maximum diversion rate of 4.4 cfs for the irrigation of 800 acres of land. The date of first beneficial use of water within the claim area was declared to be July 1963. (Exh. 201)
2. An additional sworn statement to §11.303 Claim No. 178 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 270 acre-feet of water from the Brazos River at a maximum diversion rate of 1200 gpm for the irrigation of 55 acres of land. (Exh. 202)
3. Claimant is the owner of claim area T-1080 which is located in Abstract No. 1, Falls County. All irrigation within T-1080 during the period 1963-1970, inclusive, was in Abstract No. 1. Abstract No. 1 was patented on September 30, 1833. T-1080 and Abstract No. 1 abut the Brazos River. (VI SF 12-13)
4. The record in this adjudication does not contain any English translation of the J. J. Acosta Grant and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (Exh. 202; VI SF 12)
5. The first diversion and use of state water for irrigation purposes within T-1080 was in June 1924. (VI SF 28-29)
6. The most acreage within T-1080 irrigated with state water in any calendar year during the period 1963-1970, inclusive, was 560 acres, in Abstract No. 1, in 1967. (VI SF 16)
7. During the period 1963-1970, inclusive, state water was diverted for irrigation purposes within T-1080 at diversion point D-1080 located on the Brazos River by a stationary pump at a maximum effective diversion rate of 2.67 cfs (1200 gpm) using a row flood type distribution system. (VI SF 24, 31-32)
8. The maximum amount of state water diverted and used for irrigation purposes within T-1080 in any calendar year during the period 1963-1970, inclusive, was 112 acre-feet of water in 1967. (VI SF 28)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 178 because (1) claim area T-1080 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1090 and 1091
TRACT NO: 1090

OWNERSHIP: Mrs. Mary D. Walsh

IR: 152-53
APP: 7
VI SF 19-46

SECTION 11.307 CLAIM: Under §11.303 Claim No. 336 to divert and use 150 acre-feet of water per year from the Brazos River at a maximum diversion rate of 6.7 cfs for the irrigation of 1352 acres of land with a priority date of 1960. (Exh. 204)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 336 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 150 acre-feet of water from the Brazos River at a maximum diversion rate of 1250 gpm for the irrigation of 135 acres of land. The date of first beneficial use of water within the claim area was declared to be 1960. (Exh. 205)
2. An additional sworn statement to §11.303 Claim No. 336 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be an unspecified amount of water from the Brazos River at a maximum diversion rate of unspecified cfs for the irrigation of unspecified acres of land. (Exh. 206)
3. Claimant is the owner of claim area T-1090 which is located in Abstract No. 45, Falls County, Abstract No. 45 was patented on September 9, 1833. T-1090 and Abstract No. 45 abut the Brazos River. (VI SF 43-44)
4. The record in this adjudication does not contain any English translation of the Mexican land grant (A-43) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VI SF 43)
5. The first diversion and use of state water for irrigation purposes within T-1090 was in 1960. (Exhs. 204, 205; VI SF 40)
6. The most acreage within T-1090 irrigated with state water in any calendar year during the period 1963-1970, inclusive, was 135 acres, being Fields Nos. 1 and 2, in Abstract No. 45 in 1965. (Exh. 205; VI SF 43)
7. During the period 1963-1970, inclusive, state water was diverted for irrigation purposes within T-1090 at diversion point D-1090 and D-1091 located on the Brazos River by a portable pump at a total maximum effective diversion rate of 2.78 cfs (1250 gpm) using a flood type distribution system. (Exh. 205)
8. The maximum amount of state water diverted and used for irrigation purposes within T-1090 in any calendar year during the period 1963-1970, inclusive, was 150 acre-feet of water in 1965. (Exh. 205)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 336 because claim area T-1090 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant.

DIVERSION POINTS NOS: 1100, 1102, 1104, 1220, 1222, 1224, 1226, 1330
TRACT NO: 1100

OWNERSHIP: Stella S. Rowan

IR: 154-155
APP: 7
XI SF 225

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 1775 which claims riparian rights to divert and use water from Cow Bayou, a tributary of the Brazos River, for irrigation purposes, and declares that a maximum of 500 acre-feet of water was diverted at a maximum diversion rate of 4 cfs, to irrigate 1000 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1925. (Exh. 577)
2. An additional sworn statement to §11.303 Claim No. 1775 was timely filed which declared that the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 188 acre-feet of water from Cow Bayou, a tributary of the Brazos River, at a maximum diversion rate of 1200 gpm for the irrigation of 471 acres of land. (Exh. 578)
3. Claimant is the owner of claim area T-1100 which is located in Abstracts Nos. 1 and 34, Falls County, Abstracts Nos. 1 and 34 were granted prior to January 20, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from Cow Bayou, a tributary of the Brazos River, for irrigation purposes within Abstracts Nos. 1 and 34. (XI SF 225-226)
5. Claimant failed to appear at her scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1970, inclusive. (VI SF 205, XI SF 225-226)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 1775 because (1) claim area T-1100 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 1110
TRACT NO: 1110

OWNERSHIP: Felix H. Macha, Edmond Macha and Robert Macha

IR: 156-157
APP: 7
XI SF 227

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 2389 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 1925 acre-feet of water was diverted at a maximum rate of 10,000 gpm, to irrigate 550 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be prior to 1929. (Exh. 579)
2. Claimants are the owners of claim area T-1110 which is located in Abstracts Nos. 12 and 34, Falls County, Abstracts Nos. 12 and 34 were granted prior to January 20, 1840. (Exh. 4)

3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 12 or 34. (VI SF 205, XI SF 227)
4. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VI SF 205, XI SF 227)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 2389 because (1) claim area T-1110 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 1120
TRACT NO: 1120

OWNERSHIP: John H. Brinegar

IR: 158
APP: 6
XI SF 103

SECTION 11.307 CLAIM: NONE

FINDINGS:

1. Claimant is the owner of Permit No. 2324 (Application No. 2558), an Article 7500a type permit, which authorizes the impoundment of water in an existing dam and reservoir located on an unnamed tributary of Cow Bayou, tributary of the Brazos River, and the impoundment therein of not to exceed 78 acre-feet of water and the diversion and use therefrom of 45 acre-feet of water per year for irrigation purposes at a maximum diversion rate of 1.0 cfs (450 gpm) for the irrigation of 30 acres of land out of a 60 acre tract located in the W. H. Maxam Survey, Abstract No. 887, McLennan County. (Exh. 449)
2. Application No. 2558 for Permit No. 2324 was accepted for filing by the Commission on November 20, 1967, and the permit was issued on February 8, 1968. (Exh. 468)
3. Claimant did not appear at either the regularly scheduled evidentiary hearing of the final docket evidentiary hearing and no evidence was presented concerning the diversion and use of state water since the issuance of Permit No. 2324. (VI SF 205; XI SF 103)

CONCLUSION:

Claimant is not recognized any right under Permit No. 2324 because no evidence was presented of any use of state water pursuant to Permit No. 2324 since its issuance and no §11.307 claim pertinent to Permit No. 2324 was filed in the adjudication of this segment.

DIVERSION POINTS NOS: 1130, 1131
TRACT NO: 1130

OWNERSHIP: Vance Dunnam, Jr.

IR: 159
APP: 6
X SF 2-11

SECTION 11.307 CLAIM: Under Permit No. 2633 to divert and use 100 acre-feet of water per year for irrigation purposes from an unnamed tributary of Cow Bayou at a maximum diversion rate of 2.00 cfs for the irrigation of 200 acres of land with a priority date of November 2, 1970. (Exh. 410)

FINDINGS:

1. Claimant is the owner of Permit No. 2633 (Application No. 2881), an Article 7500a type permit, which authorizes the impoundment of water in a 200 acre-foot capacity reservoir located on an unnamed tributary of South Fork Cow Bayou, tributary of Cow Bayou, tributary of the Brazos River, and the diversion and use therefrom of not to exceed 100 acre-feet of water per year for irrigation purposes at a maximum diversion rate of 2.0 cfs (900 gpm) for the irrigation of 100 acres of land out of a 216-acre tract located in the I. Kille Survey, Abstracts Nos. 521 and 523, and the E. S. Davis Survey, Abstract No. 995, McLennan County. (Exh. 411)
2. Application No. 2881 for Permit No. 2633 was accepted for filing by the Commission on November 2, 1970, and the permit was issued on December 17, 1970. (Exh. 411)
3. Claimant maintains a 200 acre-foot capacity reservoir located at diversion point D-1130, which is the authorized location on an unnamed tributary of South Cow Bayou, with the dam being located in Abstract No. 521, McLennan County. (Exh. 5 X SF 7, 12)
4. The most acreage within permit area T-1130 irrigated with state water in any calendar year since the issuance of the permit was 46 acres, in 1971. (X SF 13-14)
5. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-1130 at authorized diversion point D-1131 located on the perimeter of the authorized reservoir by means of a portable pump at a maximum unspecified diversion rate using a sprinkler and volume gun type distribution system. (Exh. 410; X SF 7, 14, 18)
6. The maximum amount of state water diverted and used for irrigation purposes within T-1130 in any calendar year since the issuance of the permit was 12 acre-feet of water in 1977 and 1978. (X SF 16)
7. No reasons were specified for claimant's failure to divert and use the total amount of water authorized by Permit No. 2633. (X SF 2-11)
8. No intention to divert and use more state water than the amount previously diverted under the authority of Permit No. 2633 was shown by claimant. (X SF 2-11)

CONCLUSIONS:

1. Claimant is recognized a right under Permit No. 2633 to impound 200 acre-feet of water in a 200 acre-foot capacity reservoir located at diversion point D-1130 on an unnamed tributary of South Cow Bayou, tributary of the Brazos River, with the dam being located in Abstract No. 521, McLennan County, and to divert and use therefrom not to exceed 12 acre-feet of water per year for irrigation purposes from diversion point D-1131 located on the perimeter of the reservoir, for the irrigation of 46 Acres of land within tract T-1130 in Abstracts Nos. 521 and 523, McLennan County, with a priority date of November 2, 1970.
2. At such time as this determination shall become final and conclusive, claimant may seek to amend the authorization to authorize a maximum diversion rate.
3. Claimant did not show sufficient justification for the lack of development under Permit No. 2633 to the full extent authorized for irrigation purposes.
4. Claimant did not demonstrate a bona fide intention to divert and use more state water than previously diverted in the foreseeable future.

DIVERSION POINT NO: 1140
TRACTS NOS: 1140, 1141

OWNERSHIP: Joe Ray Hatter, Sr.

IR: 160
APP: 6
VI SF 46-74

SECTION 11.307 CLAIM: Under Permit No. 2145 to impound water in a 110 acre-foot capacity reservoir located on an unnamed tributary of Brazos River and to divert and use therefrom 110 acre-feet of water per year for irrigation purposes at a maximum diversion rate of 2200 gpm for the irrigation of 56 acres of land with a priority date of January 8, 1965. (Exh. 208)

FINDINGS:

1. Claimant is the owner of Permit No. 2145 (Application No. 2370), which authorizes the impoundment of water in a 110 acre-foot capacity reservoir located on an unnamed tributary of South Cow Bayou, tributary of Cow Bayou, tributary of the Brazos River, and the diversion and use therefrom of not to exceed 110 acre-feet of water per year for irrigation purposes at a maximum diversion rate of 2.0 cfs (900 gpm) for the irrigation of 56 acres of land located in the W. A. Burns Original Survey, Abstract No. 80, McLennan County. (Exh. 209)
2. A Special Condition in Permit No. 2145 is as follows:
All water diverted hereunder except that which is consumed as a consequence of the reasonable and beneficial use thereof for the purpose authorized herein shall forthwith be returned to said unnamed stream, a tributary of the Brazos River. (Exh. 208)
3. Application No. 2370 for Permit No. 2145 was accepted for filing by the Commission on January 6, 1965, and the permit was issued on March 4, 1965. (Exh. 209)
4. Claimant maintains a 110 acre-foot capacity reservoir located at diversion point D-1140, which is the authorized location on an unnamed stream, tributary of South Cow Creek, tributary of Cow Creek, tributary of the Brazos River, with the dam being located in Abstract No. 80, McLennan County. (VI SF 52, 58)
5. Since the claimant's acquisition of the permit, claimant has irrigated within tract T-1141, Field P-1, which lands outside the permit area. Field P-1, together with Fields P-1 and P-2, form tract T-1141, the total acreage when platted contained 58 acres. The most acreage within permit area T-1140 and within T-1141, an area located outside the permit area, irrigated with state water in any calendar year since the issuance of the permit was 45 acres, being Fields Nos. 1, 2 and 3, in 1969. (VI SF 52, 53, 55, 56, 61)
6. Claimant requested that the area authorized to be irrigated under Permit No. 2145 be enlarged to include T-1141 and Field No. P-1. No additional water usage or increased rate or period of diversion is contemplated by this practice and it has no potential for harming any other existing water right. (VI SF 58, 72)
7. Since the issuance of the permit, state water has been diverted for irrigation purposes within tract T-1140 and authorized diversion point D-1140 located on the perimeter of the authorized reservoir by means of a portable pump at a maximum effective diversion rate of 4.89 cfs (1220 gpm) using a volume gun type distribution system. (VI SF 52, 69)
8. The maximum amount of state water diverted and used for irrigation purposes within T-1140 and T-1141 in any calendar year since the issuance of the permit was 70 acre-feet of water. (VI SF 69, 71)
9. The reasons claimant failed to divert and use the total amount of water authorized by Permit No. 2145 for irrigation purposes were lack of labor and his age. (VI SF 71)
10. No intention to divert and use more state water than the amount previously diverted under the authority of Permit No. 2145 was shown by claimant. (VI SF 71)

CONCLUSIONS:

1. Claimant is recognized a right under Permit No. 2145 to impound water in a 110 acre-foot capacity reservoir located at diversion point D-1140 on an unnamed tributary of South Cow Creek, tributary of Cow Creek, tributary of the Brazos River, with the dam being located in Abstract No. 80, McLennan County.
2. Claimant is recognized a right under Permit No. 2145 to divert and use therefrom not to exceed 70 acre-feet of water per year for irrigation purposes from diversion point D-1140 located on the perimeter of the reservoir at a maximum diversion rate of 2.0 cfs (900 gpm) for the irrigation of 45 acres of land within tracts T-1140 and T-1141 in Abstract No. 80, McLennan County, with a priority date of January 8, 1965.

DIVERSION POINTS NOS: 1160, 1162, 1164
TRACTS NOS: 1160, 1162, 1164

OWNERSHIP: Cloyce K. Box

IR: 161
APP: 6
VI SF 75-97

SECTION 11.307 CLAIM: Under Permit No. 3565 to impound water in a 2400 acre-foot capacity reservoir located on Cow Bayou (south-fork) and to divert and use therefrom 199 acre-feet of water per year for crop irrigation purposes from unnamed tributaries of Cow Bayou at a maximum diversion rate of 500 gpm for the irrigation of 1800 acres of land with a priority date of January 23, 1978. (Exh. 212)

FINDINGS:

1. Claimant is the owner of Permit No. 3565 (Application No. 3842), a Section 11.143 permit, which authorizes the maintenance of three existing dams and reservoirs which impound therein a total of approximately 204 acre-feet of water for all three reservoirs located in McLennan County; the impoundment of water in a 72 acre-foot capacity reservoir and diversion and use therefrom of not to exceed 70 acre-feet of water per year to irrigate 70 acres of land out of a 225-acre tract located in the J. Arrendaris survey and W. A. Burns Survey located on an unnamed tributary of North Fork Cow Bayou, Abstracts Nos. 80 and 64; the impoundment of water in a 93 acre-foot capacity reservoir and the diversion and use therefrom of not to exceed 90 acre-feet per year to irrigate 90 acres of land out of a 250 acre tract located in the J. N. Moreland, W. A. Hall and J. Arrendaris Surveys located on an unnamed tributary of South Fork Cow Bayou, Abstract No. 62; and the impoundment of water in a 39 acre-foot capacity reservoir and the diversion and use therefrom of not to exceed 38 acre-feet of water per year to irrigate 39 acres out of a 200 acre tract located in the B. W. Sloan and P. Hunt Surveys located on an unnamed tributary of South Fork Cow Bayou, Abstract No. 79, at a maximum diversion rate of 0.89 cfs (400 gpm) for each reservoir. (Exh. 213)
2. A special condition in Permit No. 3565 provides the following:
No diversion of water is authorized from any of the reservoirs when the water surface in that reservoir is at or below one foot above the invert of the low-flow outlet in that particular reservoir. (Exh. 213)
3. Application No. 3842 for Permit No. 3565 was accepted for filing by the Commission on January 23, 1978, and the permit was issued on April 20, 1978. (Exh. 213)

4. Claimant maintains a 72 acre-foot capacity reservoir located at diversion point D-1160, a 93 acre-foot capacity reservoir located at diversion point D-1162, and a 39 acre-foot capacity reservoir located at diversion point D-1164, which is the authorized location on an unnamed tributary of South Cow Creek, tributary of Cow Creek, tributary of the Brazos River, with the dam being located in Abstracts Nos. 80, 662, and 792, respectively, McLennan County. (VI SF 80-81)

5. The most acreage within permit area T-1160, T-1162 and T-1164 irrigated with state water in any calendar year since the issuance of the permit was unspecified acres, being Fields Nos. 1 and 2. (VI SF 81)

6. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-1160 (tract T-1162) at authorized diversion points D-1160 and D-1162 located on the perimeters of the authorized reservoirs by means of a portable pump at a maximum effective diversion rate of .39 cfs (177 gpm) using a volume gun type distribution system. (VI SF 81, 89, 90; Exh. 213)

7. The maximum amount of state water diverted and used for irrigation purposes within T-1160 and tract T-1162 in any calendar year since the issuance of the permit was 15 acre-feet of water in 1980. (VI SF 94)

8. The reasons claimant failed to divert and use the total amount of water authorized by Permit No. 3565 for irrigation purposes were economic nonfeasibility and he placed his farm in a FIK program for the years 1981-1984. (VI SF 94-96)

9. Claimant demonstrated an intention to divert and use the full amount of water - 70 acre-feet out of the most northern reservoir to irrigate 70 acres, 90 acre-feet out of the middle reservoir to irrigate 90 acres, 39 acre-feet out of the most southern reservoir to irrigate 39 acres - per year authorized by Permit No. 3565 in the foreseeable future by the purchase of an additional irrigation system for the tract of land never irrigated and by showing that he has spent some money to increase the irrigation of his other two larger fields (P-1 and P-2). (VI SF 95-96)

CONCLUSIONS:

1. Claimant is recognized a right under Texas Water Code §11.142 to maintain a dam and 72-acre-foot capacity reservoir at D-1160, a dam and 93-acre-foot capacity reservoir at D-1162, and a dam and 39-acre-foot capacity reservoir at D-1164, all on an unnamed tributary of South Fork Cow Bayou for domestic and livestock purposes. Claimant is also recognized a right under Permit No. 3565 to maintain these reservoirs for irrigation purposes in accordance with the terms of the permit.
2. Claimant is recognized a right under Permit No. 3565 to divert and use not to exceed 15 acre-feet of water per annum from an unnamed tributary of South Fork Cow Bayou at diversion points D-1160 and D-1162, at a maximum combined rate of 0.39 cfs (177 gpm), for irrigation purposes within tracts T-1160, T-1162 and T-1164, with a priority date of January 23, 1978.
3. Claimant did show sufficient justification for the lack of development under Permit No. 3565 to the full extent authorized for irrigation purposes.
4. Claimant did demonstrate a bona fide intention to divert and use more state water than previously diverted in the foreseeable future.
5. Claimant may continue diligent development to a diversion and use of not to exceed 199 acre-feet of water per year for the irrigation of 199 acres of land within tracts T-1160, T-1162, and T-1164, at a maximum diversion rate of 0.89 cfs (400 gpm) with a priority date of January 23, 1978.
6. Claimant's rights under Permit No. 3565 are subject to the Special Conditions contained in the permit.

DIVERSION POINT NO: 1180
TRACT NO: 1180

OWNERSHIP: Elizabeth W. Stov

IR: 163
APP: 6
VI SF 98-112

SECTION 11.307 CLAIM: Under Permit No. 2218 to impound water in a 44 acre-foot capacity reservoir and to divert and use therefrom 44 acre-feet of water per year for irrigation purposes from an unnamed tributary of North Cow Bayou at a maximum diversion rate of 0.7 cfs for the irrigation of 44 acres of land with a priority date of July 1966. (Exh. 216)

FINDINGS:

1. Claimant is the owner of Permit No. 2218 (Application No. 2445), a 750a type permit, which authorizes the impoundment of water in a 44 acre-foot capacity reservoir and the diversion and use therefrom of not to exceed 44 acre-feet of water per year for irrigation purposes from an unnamed tributary of North Cow Bayou, tributary of Cow Bayou, tributary of the Brazos River, at a maximum diversion rate of 0.7 cfs (320 gpm) for the irrigation of 44 acres of land out of a 52-acre tract located in the Duke Faulkner Survey, Abstract No. 349, McLennan County. (Exh. 217)
2. Application No. 2445 for Permit No. 2218 was accepted for filing by the Commission on May 24, 1966, and the permit was issued on July 5, 1966. (Exh. 217)
3. Claimant maintains a 44 acre-foot capacity reservoir located at diversion point D-1180, which is the authorized location on an unnamed tributary of North Cow Creek, tributary of Cow Creek, tributary of the Brazos River, with the dam being located in Abstract No. 349, McLennan County. (VI SF 103-4)
4. The most acreage within permit area T-1180 irrigated with state water in any calendar year since the issuance of the permit was 40 acres, being Field No. 1, in 1966. (VI SF 105, 108, 109)
5. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-1180 at authorized diversion point D-1180 located on the perimeter of the authorized reservoir by means of a portable pump at a maximum effective diversion rate of 0.7 cfs (315 gpm). (Exh. 216; VI SF 99)
6. The maximum amount of state water diverted and used for irrigation purposes within T-1180 in any calendar year since the issuance of the permit was 20 acre-feet of water in 1972. (VI SF 108)
7. No reasons were specified for claimant's failure to divert and use the total amount of water authorized by Permit No. 2218. (VI SF 109)
8. No intention to divert and use more state water than the amount previously diverted under the authority of Permit No. 2218 was shown by claimant. (VI SF 110)

CONCLUSIONS:

1. Claimant is recognized a right under Permit No. 2218 to impound water in a 44 acre-foot capacity reservoir located at diversion point D-1180 on an unnamed tributary of North Cow Creek, tributary of Cow Creek, tributary of the Brazos River, with the dam being located in Abstract No. 349, McLennan County, and to divert and use therefrom not to exceed 20 acre-feet of water per year for irrigation purposes from diversion point D-1180 located on the perimeter of the reservoir at a maximum diversion rate of 0.7 cfs (315 gpm) for the irrigation of 40 acres of land within T-1180 in Abstract No. 349, McLennan County, with a priority date of May 24, 1966.
2. Claimant did not show sufficient justification for the lack of development under Permit No. 2218 to the full extent authorized.
3. Claimant did not demonstrate a bona fide intention to divert and use more state water than previously diverted in the foreseeable future.

DIVERSION POINT NO: 1190
TRACT NO: 1190

OWNERSHIP: Mont Hamm

IR: 164
APP: 8
IX SF 187-208

SECTION 11.307 CLAIM: Under Permit No. 1758 to impound water in an 80 acre-foot capacity reservoir located on Cow Bayou and to divert and use therefrom 160 acre-feet of water per year for irrigation purposes at a maximum diversion rate of 2 cfs for the irrigation of 94.53 acres of land with an unspecified priority date. (Exh. 377)

FINDINGS:

1. Claimant is the owner of Permit No. 1758 (Application No. 1905), which authorizes the impoundment of water in an existing 80 acre-foot capacity reservoir located on an unnamed tributary of North Cow Bayou, tributary of the Brazos River, and the diversion and use therefrom of not to exceed 160 acre-feet of water per year for irrigation at a maximum diversion rate of 2.0 cfs for the irrigation of 94.53 acres of land located in the Abstracts Nos. 81, 409, and 438, Falls County. (Exh. 378)
2. Application No. 1950 for Permit No. 1758 was accepted for filing by the Commission on May 2, 1955 and the permit was issued on June 29, 1955. (Exh. 378)
3. Claimant maintains an 80 acre-foot capacity reservoir located at diversion point D-1190 which is the authorized location, with the dam being located in Abstract No. 81, Falls County. (IX SF 196, 197; IR 164)
4. The most acreage within permit area T-1190 irrigated with state water in any calendar year since the issuance of the permit was 115 acres, being Field No. 1. (IX SF 203)
5. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-1190 at authorized diversion point D-1190 located on the perimeter of the authorized reservoir by means of a canal at a maximum effective diversion rate of 2.2 cfs using a flood type distribution system. (IX SF 199, 203)
6. The maximum amount of state water diverted and used for irrigation purposes within T-1190 in any calendar year since the issuance of the permit was 173 acre-feet of water. (IX SF 203, 207)
7. No intention to divert and use more state water than the amount previously diverted under the authority of Permit No. 1758 was shown by claimant. (IX SF 208)

CONCLUSION:

Claimant is recognized a right under Permit No. 1758 to impound 80 acre-feet of water in an 80 acre-foot capacity reservoir located at diversion point D-1190 on an unnamed tributary of North Cow Bayou, tributary of the Brazos River, with the dam being located in Abstract No. 81, Falls County and to divert and use therefrom not to exceed 160 acre-feet of water per year for irrigation purposes from a diversion point located on the perimeter of the reservoir at a maximum diversion rate of 2 cfs for the irrigation of 94.53 acres of land within tract T-1190 in Abstracts Nos. 81 and 438, Falls County, with a priority date of May 2, 1955.

DIVERSION POINT NO: 1195

TRACT NO: None

OWNERSHIP: Goulizer Cattle Company

IR: 165
APP: 7
IX SF 158-167

SECTION 11.307 CLAIM: Under Permit No. 2151 to impound water in a 569 acre-foot capacity reservoir located on Long Branch. (Exh. 367)

FINDINGS:

1. Claimant is the owner of Permit No. 2151 (Application No. 2374), which authorizes the increased impoundment of an existing Article 7500a reservoir to 569 acre-feet, located on Long Branch, tributary of Cow Bayou, tributary of the Brazos River, and the impoundment therefrom of 569 acre-feet of water per year for recreational purposes only, located in the Pedro Zarza Grant, Abstract No. 81, Falls County. (Exh. 376)
2. Claimant is the owner of \$11,303 Claim No. 1 which asserted a riparian right to divert and use water for recreational purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 569 acre-feet of water from Long Branch, tributary of Cow Bayou, tributary of Brazos River, at an unspecified diversion rate. The date of first beneficial use of water within the claim area was declared to be 1965. (Exh. 368)
3. An additional sworn statement to \$11,303 Claim No. 1 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be an unspecified amount of water from Long Branch at an unspecified diversion rate. (Exh. 369)
4. Application No. 2374 for Permit No. 2151 was accepted for filing by the Commission on January 25, 1965 and the permit was issued on March 18, 1965. (Exh. 370)
5. Claimant is the owner of the claim area, which is located in Abstract No. 81, Falls County. Abstract No. 81 was granted prior to January 20, 1840. (IX SF 164)
6. A dam was constructed in 1964 and is located at diversion point D-1193 on Long Branch. Since the issuance of Permit No. 2151, 569 acre-feet of water was impounded in the reservoir and the water was used for recreational purposes. (IX SF 165-187)

CONCLUSIONS:

1. Claimant is recognized a right under Permit No. 2151 to impound 569 acre-feet of water in a 569 acre-foot capacity reservoir located at diversion point D-1193 on Long Branch, tributary of Cow Bayou, tributary of the Brazos River, with the dam being located in Abstract No. 81, Falls County, for recreational purposes with a priority date of January 25, 1965.
2. Claimant is not recognized any right under \$11,303 Claim No. 1 because the claim area is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for recreation purposes within the grant.

DIVERSION POINTS NOS: 1197 and 1200
TRACT NO: 1197

OWNERSHIP: Dennis L. Birkes, Lorene Carter, Elveta Smith, Jerry Birkes, Wallace U. Birkes and Melba Lillian Wilson

IR: 166-167
APP: 7
VI SF 206-256

SECTION 11.307 CLAIM: Under \$11,303 Claim No. 3465 and Permit No. 2177 to impound water in a 200 acre-foot capacity reservoir located on the Lavalla Creek and to divert and use therefrom 100 acre-feet of water per year for irrigation purposes at a maximum diversion rate of 1.50 cfs for the irrigation of 100 acres of land with a priority date of June 21, 1965. (Exh. 240)

FINDINGS:

1. Claimants are the co-owners (with Mrs. Jean W. Epperson) of permit No. 2177 (Application No. 2408) which authorizes the impoundment of water in a 200 acre-foot capacity reservoir located on Lavalla Creek, tributary of Long Branch, tributary of Cow Bayou, tributary of the Brazos River, and the diversion and use therefrom of not to exceed 100 acre-feet of water per year for irrigation purposes at a maximum diversion rate of 1.50 cfs (675 gpm) for the irrigation of 50 acres of land located in the J. J. Acosta Survey, Abstract No. 1, and the Pedro Zarza Survey, Abstract No. 81, Falls County. (Exh. 242)
2. Claimants are the owners of \$11,303 Claim No. 3465 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 200 acre-feet of water from the Lavalla Creek, tributary of Cow Bayou, tributary of the Brazos River, at a maximum diversion rate of 1.50 cfs for the irrigation of 50 acres of land. The date of first beneficial use of water within the claim area was declared to be 1967. (Exh. 243)
3. Application No. 2400 for Permit No. 2177 was accepted for filing by the Commission on June 21, 1965, and the permit was issued on August 30, 1965. (Exh. 242)
4. Claimants maintain a 200 acre-foot capacity reservoir located at diversion point D-1200, which is the authorized location on Lavalla Creek, with the dam being located in Abstract No. 81, Falls County. (VI SF 223-224)
5. Claimants are the owners of claim area T-1197 located in Abstract No. 81, Falls County. Abstract No. 81 was patented on October 17, 1833. T-1197 and Abstract No. 81 cross Lavalla Creek, tributary of Cow Bayou, tributary of the Brazos River. (VI SF 223-224, 226-227, 235)
6. The most acreage within permit area T-1197 irrigated with state water in any calendar year since the issuance of the permit was 48 acres, being Fields Nos. 1, 2 and 3. (VI SF 226, 229)
7. The most acreage within claim area T-1197 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 35 acres, being Fields Nos. 1, 2 and 3, in Abstract No. 81 in 1967. (VI SF 227)
8. A dam and on-channel reservoir was constructed in 1965 and is located at diversion point D-1200 within T-1197 on Lavalla Creek. During the period 1963-1967, inclusive, 200 acre-feet of water was impounded in the reservoir and the water was used for irrigation purposes within T-1197. The diversion and use of state water within T-1197 during this period was facilitated by use of the impoundment. (VI SF 240, 244)
9. The maximum amount of state water diverted and used for irrigation purposes within T-1197 in any calendar year since the issuance of the permit was 40 acre-feet of water in 1974. (VI SF 235, 238)
10. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-1197 at authorized diversion points D-1197 located on the perimeter of the authorized reservoir and D-1200 located on Lavalla Creek by means of a portable pump at a maximum effective diversion rate of 1.5 cfs (675 gpm) using a volume gun type distribution system. (VI SF 235-6, 241)
11. Claimants asserted that the failure to divert and use the total amount of water authorized by Permit No. 2177 for irrigation purposes was due to the following reason: That due to the topography in the area previously irrigated is the maximum claimants could develop. (VI SF 239)
12. No intention to divert and use more state water than the amount previously diverted for irrigation purposes pursuant to Permit No. 2177 was shown by claimants. Claimants do not have a bona fide intention of utilizing the unused water as authorized by the permit within a reasonable time after the hearing on this claim.
13. The record in this adjudication does not contain any English translation of the J. J. Acosta Grant (A-1) or the Pedro Zarza Grant (A-81) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation. (VI SF 206-156)

CONCLUSIONS:

1. Claimants are recognized a right under Permit No. 2177 to impound 200 acre-feet of water in a 200 acre-foot capacity reservoir located at diversion point D-1200 on Lavalla Creek, tributary of Cow Creek, tributary of the Brazos River, with the dam being located in Abstract No. 81, Falls County, and to divert and use therefrom not to exceed 100 acre-feet of water per year for irrigation purposes from diversion point D-1197 located on the perimeter of the reservoir at a maximum diversion rate of 1.50 cfs (675 gpm) for the irrigation of 50 acres of land within tract T-1197 in Abstract No. 81, Falls County, with a priority date of June 21, 1965.
2. Claimants are not recognized any right under \$11,303 Claim No. 3465 for the following reasons: claim area T-1197 is located on land granted prior to January 20, 1840, which was granted without a specific grant to divert and use public water for irrigation purposes.
3. The maximum rates recognized for diversions from the perimeter of the reservoir at D-1200 are concurrent.

DIVERSION POINT NO: 1200
TRACT NO: 1200

OWNERSHIP: Mrs. Jean W. Epperson

IN: 168
APP: 7
VI SF 206-256

SECTION 11.307 CLAIM: Under Permit No. 2177 to impound water in a 200 acre-foot capacity reservoir located on Lavalla Creek and to divert and use therefrom 100 acre-feet of water per year for irrigation purposes at a maximum diversion rate of 18 cfs for the irrigation of 50 acres of land with a priority date of June 21, 1965. (Exh. 241)

FINDINGS:

1. Claimant is the co-owner (with Dennis L. Barker, et al of Permit No. 2177 (Application No. 2400) which authorizes the impoundment of water in a 200 acre-foot capacity reservoir located on Lavalla Creek, tributary of Long Branch, tributary of Cow Bayou, tributary of the Brazos River, and the diversion and use therefrom of not to exceed 100 acre-feet of water per year for irrigation purposes at a maximum diversion rate of 1.50 cfs (675 gpm) for the irrigation of 50 acres of land located in the J. J. Acosta Survey, Abstract No. 1, and the Pedro Zarza Survey, Abstract No. 81, Falls County. (Exh. 242)
2. Application No. 2400 for Permit No. 2177 was accepted for filing by the Commission on June 21, 1965, and the permit was issued on August 30, 1965. (Exh. 242)
3. Claimant maintains a 200 acre-foot capacity reservoir located at diversion point D-1200, which is the authorized location on the Lavalla Creek, with the dam being located in Abstract No. 81, Falls County. (VI SF 223-224, 241)
4. The most acreage within permit Area T-1200 irrigated with state water in any calendar year since the issuance of the permit was 35 acres in 1967. (VI SF 242)
5. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-1200 at authorized diversion point D-1200 located on the perimeter of the authorized reservoir by means of a gravity flow at a maximum effective diversion rate of 18.0 cfs (8100 gpm). (Exh. 241; VI SF 241, 252)
6. The maximum amount of state water diverted and used for irrigation purposes within T-1200 in any calendar year since the issuance of the permit was 50 acre-feet of water in 1977. (VI SF 255)
7. The reasons claimant failed to divert and use the total amount of water and irrigate the total amount of acres authorized by Permit No. 2177 for irrigation purposes were: Claimant did not actually farm the land heretofore, and hasn't really been living on the property since the permit was in effect. (VI SF 251)
8. Claimant demonstrated an intention to divert and use the full amount of water per year and irrigate the full amount of acres authorized by Permit No. 2177 for irrigation purposes in the foreseeable future by laying steps now to develop the irrigation of the property for a "crus farm" where she would grow crows for sale to nurseries. (VI SF 248-251)

CONCLUSIONS:

1. Claimant is recognized a right under Permit No. 2177 to impound 200 acre-feet of water in a 200 acre-foot capacity reservoir located at diversion point D-1200 on Lavalla Creek, tributary of Long Branch, tributary of Cow Creek, tributary of the Brazos River, with the dam being located in Abstract No. 81, Falls County, and to divert and use therefrom not to exceed 50 acre-feet of water per year for irrigation purposes from diversion point D-1200 located on the perimeter of the reservoir at a maximum diversion rate of 1.50 cfs (675 gpm) for the irrigation of 50 acres of land within tract T-1200 in Abstract No. 81, Falls County, with a priority date of June 21, 1965.
2. Claimant did not show sufficient justification for the lack of development under Permit No. 2177 to the full extent authorized for irrigation purposes.
3. Claimant did demonstrate a bona fide intention to divert and use more state water than previously diverted in the foreseeable future.
4. The maximum rates recognized for diversions from the perimeter of the reservoir at D-1200 are concurrent.

DIVERSION POINTS NOS: 1220, 3920, 3940, and 3960
TRACT NO: None

OWNERSHIP: City of Marlin

IN: 189, 314, 315
APP: 7, 9
IV SF 188-252

SECTION 11.307 CLAIM: Under Permits Nos. 1449 and 1449B to impound water in a 3135 acre-foot capacity reservoir located on Big Sandy Creek and to divert and use therefrom 1500 acre-feet of water per year under Permit No. 1449 and an additional 1000 acre-feet of water per year under Permit No. 1449B for municipal purposes at a maximum total diversion rate of 13.2 cfs with a priority date of April 9, 1946 for the portion of usage authorized by Permit No. 1449 and a priority date of March 16, 1953 for the portion of usage authorized by Permit No. 1449B. (Exh. 158)

SECTION 11.307 CLAIM: Under Permits Nos. 3407, 1449A, and 1449B to impound water in a 791 acre-foot capacity reservoir located on Big Sandy Creek for recreation and sediment trapping purposes with a priority date of November 1, 1976 for the portion of usage authorized by Permit No. 3407 and March 16, 1953 for the portion of usage authorized by Permits Nos. 1449A and 1449B. (Exh. 160)

SECTION 11.307 CLAIM: Under Permit No. 1892 to divert and use 3,500 acre-feet of water per year for municipal purposes and 2,000 acre-feet of water per year for industrial purposes from the Brazos River at a maximum diversion rate of 6.2 cfs with a priority date of November 27, 1956. (Exh. 150)

FINDINGS:

1. Claimant is the owner of Permit No. 1449 (Application No. 1557), which authorizes the construction of a dam and 3135 acre-foot capacity reservoir located on Big Sandy Creek, tributary of the Brazos River, located in the Jose Antonio Manchaca Survey (A-33) in Falls County and the impoundment therein of 3135 acre-feet of water per year and the diversion and use therefrom of not to exceed 1,500 acre-feet of water per year for municipal purposes. (Exh. 159)
2. A special condition of Permit No. 1449 is: Construction of the dam and reservoir shall commence within one year of the issuance of the permit and be completed within two years. (Exh. 159)
3. Application No. 1557 for Permit No. 1449 was accepted for filing by the Board of Water Engineers on April 9, 1946, and the permit was issued on May 24, 1946. (Exh. 159)
4. Claimant is the owner of Permit No. 3407 (Application No. 3650), a §5.121 type permit, which authorizes the maintenance of an existing dam and reservoir located on Big Sandy Creek, tributary of Big Sandy Creek, tributary of Mansel Run Creek, tributary of the Brazos River, and the impoundment therein of not to exceed 650 acre-feet of water per year for recreation purposes, with the dam and reservoir being located in the Jose Antonio Manchaca Survey, Abstract No. 33, Falls County. (Exh. 161)

5. A special condition in Permit No. 3407 is that repairs to correct deficient and unsafe conditions shall be commenced within one year and completed within two years of the issuance of the permit. (Exh. 161)
6. Application No. 3688 for Permit No. 3407 was accepted for filing by the Commission on November 1, 1976 and the permit was issued on February 16, 1977. (Exh. 162)
7. On February 16, 1978, the Commission granted an amendment to Permit No. 3407 authorizing an extension of time to complete construction authorized by Permit No. 3407 to February 16, 1979. (Exh. 162)
8. On May 7, 1980, the Commission granted an amendment to Permit No. 3407 authorizing an extension of time to complete construction authorized by Permit No. 3407 to February 16, 1982. (Exh. 164)
9. On June 24, 1982, the Commission granted an amendment to Permit No. 3407 authorizing an extension of time to complete construction authorized by Permit No. 3407 to February 16, 1984. (Exh. 165)
10. On February 29, 1983, the Commission granted an amendment to Permits Nos. 1449 and 3407 combining them and allowing the two impoundments authorized by Permits Nos. 1449 and 3407 to be operated as one system, and renumbering Permit No. 3407 as Permit No. 1449A. (Exh. 160)
11. Application No. 1557B for Permit No. 1449B was accepted for filing by the Commission on November 22, 1982. Permit No. 1449B amends Permits Nos. 1449 and 1449A and authorizes the enlargement of an existing dam and reservoir known as New Marlin City Lake on Big Sandy Creek, located in the Jose Antonio Manchaca Grant, Abstract No. 33, Falls County, to a total capacity of not to exceed 6056 acre-feet of water. Permit No. 1449B further authorizes the maintenance of an existing dam and reservoir known as Old Marlin City Lake to a total capacity of 2000 acre-feet for water subsequently released into New Marlin City Lake. The permittee is authorized to divert and use not to exceed 2500 acre-feet of water per annum from New Marlin City Lake for municipal purposes, with the provision that water diverted but not consumed must be returned to Big Sandy Creek. One diversion point on each dam is authorized, with an authorized maximum diversion rate of 13.2 cfs each. (Exh. 167)
12. Claimant is the owner of Permit No. 1892 (Application No. 2007), which authorizes the diversion and use of 3500 acre-feet of water per year for municipal purposes and 2000 acre-feet of water per year for industrial purposes from the Brazos River. Permit No. 1892 further authorizes the maintenance of two existing dams and two reservoirs having a total capacity of 5500 acre-feet for storage of the diverted water. (Exh. 151)
13. Special conditions in Permit No. 1892 include the following: (1) No diversions shall be made except between the dates of October 1 and April 30 of the following year; and (2) Construction of diversion works and storage facilities is to be begun within three months of the issuance of the permit and completed by August 14, 1958. (Exh. 151)
14. Application No. 2007 for Permit No. 1892 was accepted for filing by the Board of Water Engineers on November 27, 1956 and the permit was issued on August 15, 1957. (Exh. 151)
15. An application for the amendment of Permit No. 1892, which authorized an extension of time to complete construction authorized by Permit No. 1892 to August 15, 1959, was accepted for filing by the Board of Water Engineers on April 29, 1958, and the amendment (Permit No. 1892-A) was issued on May 5, 1958. (Exh. 168A)
16. An application for the amendment of Permit No. 1892, which authorized a second extension of time to complete construction authorized by Permit No. 1892 to August 15, 1960 was accepted for filing by the Board of Water Engineers on January 29, 1959, and the amendment (Permit No. 1892-B) was issued on March 5, 1959. (Exh. 168B)
17. An application for the amendment of Permit No. 1892, which authorized a third extension of time to complete construction authorized by Permit No. 1892 to August 15, 1961, was accepted for filing by the Board of Water Engineers on April 28, 1960, and the amendment (Permit No. 1892-C) was issued on May 10, 1960. (Exh. 168C)
18. An application for the amendment of Permit No. 1892, which authorized a fourth extension of time to complete construction authorized by Permit No. 1892 to August 15, 1962, was accepted for filing by the Board of Water Engineers on June 16, 1961, and the amendment (Permit No. 1892-D) was issued on July 5, 1961. (Exh. 168D)
19. An application for the amendment of Permit No. 1892, which authorized an extension of time to complete construction authorized by Permit No. 1892 to August 15, 1963 was accepted for filing by the Commission on May 24, 1962, and the amendment (Permit No. 1892-E) was issued June 6, 1962. (Exh. 168E)
20. Claimant maintains a 791 acre-foot capacity reservoir at diversion point D-3920, which is the location authorized by Permit No. 1449A (formerly Permit No. 3407), on Big Sandy Creek, with the dam being located in Abstract No. 33, Falls County. (IV SF 234, 239)
21. Old Marlin City Lake is used for recreational purposes. (IV SF 237)
22. Claimant has corrected deficiencies existing in the dam located at D-3920 at the time Permit No. 3407, now Permit 1449A, was issued by the Commission. (IV SF 238)
23. Claimant maintains a 3135 acre-foot capacity reservoir, called New Marlin City Lake, at diversion point D-3960, which is the location authorized by Permit No. 1449 on Big Sandy Creek, with the dam being located in Abstract No. 67, Falls County. (IV SF 234, 239)
24. The maximum amount of state water diverted from New Marlin City Lake and used for municipal purposes under Permit No. 1449 in any calendar year since the issuance of the permit is 1500 acre-feet in the years 1974-1980. (IV SF 241)
25. In each calendar year since the issuance of Permit No. 1449, water has been diverted for municipal purposes from New Marlin City Lake at diversion point D-3940 on the perimeter of the reservoir at a maximum diversion rate of 4.66 cfs by a combination of gravity flow and a stationary pump. (IV SF 240)
26. Except in drought conditions, the source of water impounded in New Marlin City Lake and diverted for municipal purposes is Big Sandy Creek. In drought conditions, supplementary water is diverted from the Brazos River under Permit No. 1892. (IV SF 241)
27. Since the issuance of Permit No. 1892, state water has been diverted for municipal purposes at authorized diversion point U-1220 located on the Brazos River by means of a stationary pump at a maximum effective diversion rate of 6.2 cfs. (IV SF 199)
28. The maximum amount of state water diverted and used for municipal purposes under Permit No. 1892 in any calendar year since the issuance of the permit was 934 acre-feet of water. (Exh. 156; IV SF 199)
29. The reason claimant failed to divert and use the total amount of water authorized by Permit No. 1892 for municipal and industrial purposes is that the permit currently acts as an emergency back-up supply to the claimant's municipal and industrial water supply from Big Sandy Creek authorized by Permits Nos. 1449 and 1449A (formerly Permit 3407). (IV SF 201)

30. Claimant demonstrated a bona fide intent to divert and use more water than previously diverted under Permit No. 1892 by showing:
- Claimant has applied for a grant to improve the water distribution system in a recently annexed area known as South Marlin. South Marlin has approximately 1000 residents. (IV SF 210)
 - Claimant is finalizing plans for the development of a 63 acre industrial park with a potential to utilize the 2000 acre-feet of state water for industrial purposes authorized by Permit No. 1892. (IV SF 204, 249)
 - Claimant has conducted a study which projects future nonindustrial water needs to be 1806 acre-feet per annum by the year 2030. (IV SF 202, 203)
 - Claimant has entered into an agreement with the Tri-County Water Supply Corporation to provide an emergency back-up water supply to the corporation in case of a breakdown in the corporation's rural water supply system. (Exh. 155)

CONCLUSIONS:

- Claimant is recognized a right under Permit No. 1449 to impound a 315 acre-foot capacity reservoir located at diversion point D-3960 on Big Sandy Creek, tributary of Big Creek, tributary of Mussel Run Creek, tributary of the Brazos River, with the dam being located in Abstract No. 33 and to divert and use therefrom not to exceed 1500 acre-feet of water per year for municipal purposes at a maximum diversion rate of 4.88 cfs with a priority date of April 9, 1948.
- Claimant may continue diligent development to an impoundment not to exceed 6056 acre-feet of water in the reservoir located at diversion point D-3960 and a diversion and use therefrom of not to exceed 2500 acre-feet of water for municipal purposes, from diversion point D-1940 located on the northwest of the reservoir at a maximum diversion rate of 11.2 cfs with the provision that water diverted but not consumed must be returned to Big Sandy Creek with a priority date of November 22, 1982 for the additional impoundment and diversion and use.
- Claimant is recognized a right under Permit No. 1449A (formerly Permit No. 1407) and Permit No. 1449B to impound 791 acre-feet of water in a reservoir located at diversion point D-2920 located on Big Sandy Creek to use for recreation purposes and for municipal purposes as a sedimentation basin, with the dam being located in Abstract 33, Falls County, with a priority date of November 1, 1974 for 650 acre-feet of the impoundment and a priority date of November 22, 1982 for the additional 141 acre-feet.
- Claimants are recognized a right to divert and use 934 acre-feet of water for municipal purposes from diversion point D-1270 on the Brazos River at a maximum diversion rate of 6.7 cfs with a priority date of November 27, 1956. Water diverted at this diversion may be stored for use in the reservoirs located at diversion points D-3960 and D-3960.
- Claimant may diligently develop to a diversion and use of not to exceed 3000 acre-feet of water for municipal purposes and 2000 acre-feet of water per year for industrial purposes from diversion point U-1220 on the Brazos River at a maximum diversion rate of 6.2 cfs with a priority date of November 27, 1956.

DIVERSION POINTS NOS: 1240 and 1242
TRACT NOS: 1240, 1242 and 1244

OWNERSHIP: W. W. Callan

IR: 170

APP: 7

XI SF 119

SECTION 11.307 CLAIM: None

FINDINGS:

- Claimant is the owner of \$11.303 Claim No. 2579 which claims riparian and equitable rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 508 acre-feet of water was diverted at a maximum diversion rate of 4.68 cfs, to irrigate 495 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1925. (Exh. 420)
- Claimant is the owner of the claim area which consists of tracts T-1240, T-1242, and T-1244 and is located in Abstracts Nos. 3, 12, and 34, Falls County, Abstracts Nos. 3, 12 and 34 were granted prior to January 20, 1840. (Exh. 4)
- No evidence was presented of an express grant from the sovereign of a right to divert and use public water within Abstracts Nos. 3, 12, and 34. (XI SF 119)
- Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 119)

CONCLUSION:

Claimant is not recognized any right under \$11.303 Claim No. 2579 because (1) claim area T-1240, T-1242, and T-1244 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1240 and 1242
TRACT NO: 1244

OWNERSHIP: Leonard Stoney, Marcia Stoney, Grace Stoney, Sue Stoney, David Janeson and wife, Martha Janeson

IR: 170

APP: 7

X SF 119-141, 201-217

SECTION 11.307 CLAIM: Under \$11.303 Claim No. 2579 to divert and use 508 acre-feet of water per year from the Brazos River at a maximum diversion rate of 3000 gpm for the irrigation of 495 acres of land with a priority date of 1925. (Exh. 427)

FINDINGS:

- Claimants are the owners of \$11.303 Claim No. 2579 which asserts equitable and riparian rights to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 508 acre-feet of water from the Brazos River at a maximum rate of 6.68 cfs for the irrigation of 495 acres of land. The date of first beneficial use of water within the claim area is declared to be 1925. (Exh. 428)
- An additional sworn statement to \$11.303 Claim No. 2579 was timely filed which declares the maximum diversion and use of water in any calendar year during the period 1963-1967, inclusive, to be 120 acre-feet of water from the Brazos River at a maximum diversion rate of 3000 gpm for the irrigation of 225 acres of land. (Exh. 429)

Claimants are the owners of claim area T-1244 which is located in Abstract No. 12, Falls County. Abstract No. 12 was patented in 1832. T-1244 and Abstract No. 12 abut the Brazos River. (X SF 129, 132)

4. Claim area T-1244 is located in Leagues 3 and 4 of the Chambers Grant, which were classified as arable and pastureland, with no specific grant of an irrigation right. Only League 5 of the Chambers Grant was specifically granted with an irrigation right. (Exh. 432)

5. Department records contain no evidence of any water right, active or cancelled, pertinent to T-1244. (Exh. 433)

CONCLUSION:

Claimants are not recognized any right under \$11.303 Claim No. 2579 because (1) claim area T-1244 is located on land granted prior to January 20, 1840, which was granted without a specific grant to divert and use public water for irrigation purposes, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1260, 1262 and 1264
TRACT NO: 1260

OWNERSHIP: Anderson Development Corporation

IR: 172

APP: 8

IV SF 2-18

SECTION 11.307 CLAIM: Under \$11.303 Claim No. 118, to divert and use 650 acre-feet of water per annum from the Brazos River at a maximum rate of 3200 gpm for the irrigation of 650 acres of land with a priority date of 1960. (Exh. 115)

FINDINGS:

- Claimant is the owner of \$11.303 Claim No. 118 which asserts patent, deed and riparian rights to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 650 acre-feet of water from the Brazos River at a maximum rate of 3200 gpm for the irrigation of 650 acres of land. The date of first beneficial use of water within the claim area is declared to be 1960. (Exh. 116)
- An additional sworn statement to \$11.303 Claim No. 118 was timely filed which declares that no water was diverted and used in any calendar year during the period 1968-1970, inclusive. (Exh. 117)
- Claimant is the owner of claim area T-1260 which is located in Abstract No. 65, Falls County. Abstract No. 65 was patented in 1833. T-1260 and Abstract No. 65 abut the Brazos River. (IV SF 9)
- The record in this adjudication does not contain any English translation of the Sanchez Grant (A-65) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (IV SF 2-18)
- Claimant presented no evidence of any diversion or use of surface water within T-1260. (IV SF 2-18)

CONCLUSION:

Claimant is recognized no right under \$11.303 Claim No. 118 because (1) claim area T-1260 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1280 and 1282
TRACT NO: 1280

OWNERSHIP: Edward L. Hay and Elise W. Hay

IR: 174

APP: 7

XI SF 122

SECTION 11.307 CLAIM: None

FINDINGS:

- Claimants are the owners of \$11.303 Claim No. 5730 which claims riparian, equitable and adverse rights to divert and use water from the Brazos River for irrigation, domestic, industrial, livestock, mining, and oil well development purposes, and declares that a maximum of 45 acre-feet of water was diverted at an unspecified diversion rate to irrigate an unspecified number of acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be before 1963. (Exh. 481)
- Claimants are the owners of claim area T-1280 which is located in Abstract No. 12, Falls County. Abstract No. 12 was granted prior to January 20, 1840. (Exh. 4)
- No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 40. (XI SF 122)
- Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 122)

CONCLUSION:

Claimants are not recognized any right under \$11.303 Claim No. 5730 because (1) claim area T-1280 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1300, 1302, 1304, and 1306
TRACT NO: 1300

OWNERSHIP: David Lloyd Roberts and wife, Jennie Kremer Roberts

IR: 175
APP: 8
IV SF 123-142

SECTION 11.307 CLAIM: Under Permit No. 2262, to impound water in a 512 acre-foot capacity reservoir located on Poole Creek for recreation purposes and to divert and use therefrom 200 acre-feet of water per annum at a maximum rate of 900 gpm for the irrigation of 132 acres of land with a priority date of February 7, 1967. (Exh. 140)

FINDINGS:

1. Claimants are the owners of Permit No. 2262, which authorizes the construction and maintenance of a dam and 512 acre-foot capacity reservoir on Poole Creek, tributary of the Brazos River, for recreation purposes and the diversion and use therefrom of not to exceed 200 acre-feet of water per annum at a maximum rate of 2.0 cfs (900 gpm) for the irrigation of 132 acres of land in the J. G. W. Ferguson Survey, Abstract No. 49, Falls County. (Exh. 137)
2. Application No. 2500 for Permit No. 2262 was accepted for filing by the Texas Water Rights Commission on February 7, 1967, and the permit was issued on March 31, 1967. (Exh. 137)
3. Claimants constructed and maintain a 512 acre-foot capacity reservoir located at diversion point D-1302, which is the authorized location on Poole Creek, with the dam being located in Abstract No. 49, Falls County. (IV SF 131, 135)
4. The most acreage within permit area T-1300 irrigated with state water in any calendar year since the issuance of the permit is 132 acres. (IV SF 137)
5. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-1300 at authorized diversion point D-1300 located on the perimeter of the authorized reservoir by means of a pump at a maximum rate of 900 gpm using a sprinkler type distribution system. (IV SF 137)
6. Since the issuance of the permit, the reservoir located at D-1302 has been used for recreation and irrigation purposes. (IV SF 137)
7. The maximum amount of state water diverted and used for irrigation purposes within T-1300 in any calendar year since the issuance of the permit was 84 acre-feet of water. (IV SF 138)
8. No reasons were specified for claimants' failure to divert and use the total amount of water authorized by Permit No. 2262. (IV SF 138)
9. Claimants demonstrated an intention to divert and use the full amount of water per year authorized by Permit No. 2262 for irrigation purposes in the foreseeable future by obtaining land management and erosion control information from the soil conservation service. (IV SF 139)
10. Claimants maintain an unauthorized reservoir at D-1306 and an unauthorized diversion point at D-1304 located on Poole Creek, tributary of the Brazos River. (IV SF 131, 141)

CONCLUSIONS:

1. Claimants are recognized a right under Permit No. 2262 to impound water in a 512 acre-foot capacity reservoir located at diversion point D-1302 on Poole Creek, tributary of the Brazos River, with the dam being located in Abstract No. 49, Falls County, and to divert and use therefrom not to exceed 84 acre-feet of water per year for irrigation purposes from diversion point D-1300 at a maximum diversion rate of 2.0 cfs for the irrigation of 132 acres of land within tract T-1300 in Abstract No. 49, with a priority date of February 7, 1967.
2. Claimants did not show sufficient justification for the lack of development under Permit No. 2262 to the full extent authorized for irrigation purposes.
3. Claimants demonstrated a bona fide intention to divert and use more state water than previously diverted in the foreseeable future.
4. Claimants are recognized no right to maintain the existing dam and reservoir located at diversion point D-1306 on Poole Creek, tributary of the Brazos River, or to divert water therefrom at the existing diversion point located at D-1304.

DIVERSION POINTS NOS: 1320
TRACT NO: 1320

OWNERSHIP: Estate of C. M. Meers, Deceased

IR: 176
APP: 8
XI SF 228

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of 111,303 Claim No. 316 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 31.3 acre-feet of water was diverted at a maximum diversion rate of 1000 gpm, to irrigate 75 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1925. (Exh. 580)
2. Claimant is the owner of claim area T-1320 which is located in Abstract No. 69, Falls County. Abstract No. 69 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 69. (XI SF 228)
4. Claimant failed to appear at its scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 228)

CONCLUSION:

Claimant is not recognized any right under 111,303 Claim No. 316 because (1) claim area T-1320 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1340, 1420, 1422, 1440, 1442
TRACT NO: 1340

OWNERSHIP: Estate of Fah Read Bule Cornwell, Deceased

IR: 177
APP: 8
IV SF 35-62

SECTION 11.307 CLAIM: Under 111,303 Claim No. 6265, to divert and use 375 acre-feet of water per annum from the Brazos River, Mussel Run Creek at a maximum diversion rate of 6.68 cfs for the irrigation of 300 acres of land with a priority date of prior to 1954. (Exh. 123)

FINDINGS:

1. Claimant is the owner of 111,303 Claim No. 6265 which asserts a riparian right to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 375 acre-feet of water from the Brazos River and Mussel Run Creek, at a maximum rate of 3000 gpm, for the irrigation of 250 acres of land. The date of first beneficial use of water within the claim area is declared to be before 1954. (Exh. 124)
2. Claimant is the owner of claim area T-1340 which is located in Abstracts Nos. 41, 42 and 43, Falls County. Abstract No. 41 was patented in 1813. Abstract No. 42 was patented in 1835. Abstract No. 43 was patented in 1835. T-1340 and Abstracts Nos. 41, 42 and 43 abut the Brazos River and cross Mussel Run Creek, tributary of the Brazos River. (IV SF 401 App. 9)
3. The record in this adjudication does not contain any English translation of the Bouquet Grant (A-6), Montgomery Grant (A-42) or Montgomery Grant (A-43) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (IV SF 35-62)
4. The first diversion and use of state water for irrigation purposes within T-1340 was in July 1941. (IV SF 55)
5. The most acreage within T-1340 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 498 acres, being Fields Nos. F1 and F2, in Abstract No. 43, Falls County. (IV SF 50)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-1340 at diversion points D-1340 on the Brazos River as well as D-1420 and D-1440 on Mussel Run Creek by a portable pump at a maximum rate of 6.7 cfs (3000 gpm) at D-1340 and a maximum combined rate of 2.67 cfs (1200 gpm) at D-1420 and D-1440, using a flood type distribution system. (IV SF 49, 53)
7. Diversion points D-1422 and G-1442 reference small reservoirs on Mussel Run Creek used to facilitate diversions at D-1420 and D-1440, respectively. (IV SF 48)
8. The maximum amount of state water diverted and used for irrigation purposes within T-1340 in any calendar year during the period 1963-1967, inclusive, is 288 acre-feet of water. (IV SF 52)
9. Claimant maintains that Mussel Run Creek is an intermittent stream, and as such, is privately-owned. Claimant also alleges that it has an equitable right to divert and use water from the Brazos River based upon necessity. (IV SF 44, 45)

CONCLUSION:

Claimant is recognized no right under 11,303 Claim No. 6265 because (1) claim area T-1340 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1360, 1380, 1460 and 1480
TRACT NO: 1360

OWNERSHIP: J. T. Falco

IR: 179
APP: 9
IV SF 63-97

SECTION 11.307 CLAIM: Under 111,303 Claim No. 5838, to divert and use 792 acre-feet of water per annum from the Brazos River, Mussel Run Creek and Highbank Slough at a maximum diversion rate of 17.82 cfs for the irrigation of 765 acres of land with a priority date of 1929. (Exh. 127)

FINDINGS:

1. Claimant is the owner of 111,303 Claim No. 5838 which asserts a riparian right to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 792 acre-feet of water from the Brazos River and Mussel Run Creek at a maximum rate of 10,300 gpm for the irrigation of 396 acres of land. The date of first beneficial use of water within the claim area is declared to be in 1937. (Exh. 128)
2. Claimant is the owner of claim area T-1360 which is located in Abstracts Nos. 44 and 58, Falls County. Abstract No. 44 was patented in 1815. Abstract No. 58 was patented in 1838. T-1360 and Abstracts Nos. 44 and 58 abut the Brazos River and cross Mussel Run Creek and Highbank Creek, tributaries of the Brazos River. (IV SF 68, 69)
3. The record in this adjudication does not contain any English translation of the Montgomery Grant (A-44) or Robertson Grant (A-58) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (IV SF 63-97)
4. The first diversion and use of state water for irrigation purposes within T-1360 was in 1929. (IV SF 73)
5. The most acreage within T-1360 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 436 acres, being Fields Nos. F-1, F-2 and F-3, in Abstracts Nos. 44 and 58, Falls County. (IV SF 77, 89, 93)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-1360 at the following diversion points and at the following maximum rates:

D-1360 on the Brazos River	- 16.7 cfs (7500 gpm)
D-1380 on the Brazos River	- 4.0 cfs (1800 gpm)
D-1460 on Mussel Run Creek	- 7.8 cfs (3500 gpm)
D-1480 on Mussel Run Creek	- 4.0 cfs (1800 gpm)
D-1485 on Mussel Run Creek	- 1.3 cfs (600 gpm)
D-1487 on High Bank Creek	- 1.3 cfs (600 gpm)

(IV SF 89, 95)
7. The maximum amount of state water diverted and used for irrigation purposes within T-1360 in any calendar year during the period 1963-1967, inclusive, was 872 acre-feet of water. (IV SF 84, 93)
8. Claimant maintains that Mussel Run Creek and High Bank Creek are intermittent streams, and as such, are privately owned. Claimant also alleges that he has an equitable right to divert and use water from the Brazos River based upon necessity. (IV SF 72)

CONCLUSION:

Claimant is recognized no right under 11,303 Claim No. 5838 because (1) claim area T-1360 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1400 and 1402
TRACT NO: None

OWNERSHIP: Greater Houston Council of Camp Fire, Inc.

IR: 181
APP: 9
IV SF 20

SECTION 11.307 CLAIM: Under Permit No. 2155, to impound water in a 195 acre-foot capacity reservoir located on Gum Creek for domestic and recreation use, with a priority date of February 11, 1965. (Exh. 120)

FINDINGS:

1. Claimant is the owner of Permit No. 2155, which authorizes the impoundment of water for recreation in a 130 acre-foot capacity reservoir authorized under former Article 7500a, on Gum Branch, tributary of Cottonwood Branch, tributary of the Brazos River. (Exh. 121)
2. Application No. 2378 for Permit No. 2155 was accepted for filing by the Texas Water Rights Commission on February 11, 1965. (Exh. 121)
3. Claimant maintains a 195 acre-foot capacity reservoir located at diversion point D-1402, which is on Gum Branch, with the dam being located in Abstract No. 74, Falls County. (IV SF 15)
4. Since the issuance of the permit, the reservoir has been used for recreation and state water has been diverted for domestic purposes at diversion point D-1400 on the perimeter of the authorized reservoir by means of a stationary pump. (IV SF 3)

CONCLUSION:

Claimant is recognized a right under Permit No. 2155 to impound water in a 195 acre-foot capacity reservoir for recreation use at diversion point D-1402 on Gum Branch, tributary of Cottonwood Branch, tributary of the Brazos River, with the dam being located in Abstract No. 74, Falls County, and to divert and use reasonable amounts of water therefrom for domestic purposes at diversion point D-1400 on the perimeter of the reservoir with a priority date of February 11, 1965.

DIVERSION POINTS NOS: 1500 and 1520
TRACT NO: 1500

OWNERSHIP: John C. Isaacs, David G. Isaacs, Sr., David G. Isaacs, Jr., William C. Isaacs, and Amarillo National Bank

IR: 182-183
APP: 9
IV SF 252-260

SECTION 11.307 CLAIM: Under Permit No. 3917 to divert and use 991 acre-feet of water per year for irrigation purposes from the Brazos River at a maximum diversion rate of 17.8 cfs for the irrigation of 429 acres of land with a priority date of May 3, 1981. (Exh. 389)

FINDINGS:

1. Claimants are the owners of Permit No. 3917 (Application No. 4214), a Section 11.307 type permit, which authorizes the diversion and use of not to exceed 991 acre-feet of water per year from the Brazos River at a maximum diversion rate of 17.8 cfs (8000 gpm) for the irrigation of 429 acres of land out of two tracts totalling 823 acres located in the S. C. Robertson Survey No. 3, Abstract No. 58, and the S. C. Robertson Survey No. 4, Abstract No. 59, Falls County. (Exh. 390)
2. Special Conditions in Permit No. 3917 include the following:
 - a. If a right to divert and use water is recognized under Water Code Section 11.307 Claim No. 1410 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.307 Claim No. 1410 is recognized.
 - b. Permittances are authorized to divert water only when the flow of the Brazos River, at the USGS Gaging Station No. 08098290 at Highbank, Texas, equals or exceeds 640 cfs (286,013 gpm) during the months April through August and equals or exceeds 140 cfs (62,868 gpm) during other months. This flow rate shall be exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. (Exh. 390)
3. Application No. 4214 for Permit No. 3917 was accepted for filing by the Commission on May 3, 1982, and the permit was issued on November 3, 1982. (Exh. 390)
4. Claimants are the owners of §11.303 Claim No. 1410 which asserts a riparian right for irrigation purposes and declares a maximum diversion and use of state water during the period 1963-1967, inclusive, to be 100 acre-feet of water per annum from the Brazos River at a maximum rate of 8.91 cfs for the irrigation of 146 acres of land. The first beneficial use of state water is declared to have been in 1955. (Exh. 392)
5. Claimant surrendered all rights to §11.303 Claim No. 1410. (IX SF 254)
6. No water has been diverted and used for irrigation purposes within the permit area tract T-1500 since the issuance of the permit. (IX SF 258; Exh. 391)
7. Claimants demonstrated an intention to divert and use the full amount of water per year authorized by Permit No. 3917 for irrigation purposes in the foreseeable future by showing the production of design plans for diversion facilities for use within the permit area. (IX SF 257)

CONCLUSIONS:

1. Claimants may diligently develop under Permit No. 3917 to a diversion and use of not to exceed 991 acre-feet of water per year for the irrigation of 429 acres of land within tract T-1500 at a total maximum diversion rate of 17.8 cfs with a priority date of May 3, 1982.
2. Claimants are not recognized any right under §11.303 Claim No. 1410.

DIVERSION POINT NO: 1560
TRACT NO: 1560

OWNERSHIP: Jesse La Barbara

IR: 185
APP: 9
IV SF 98-124

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5500, to exercise the right to 65 acre-feet of water per annum from the Brazos River, at a maximum diversion rate of 1.67 cfs, for the irrigation of 200 acres of land, with a priority date of prior to 1963. (Exh. 130)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5500 which asserts a riparian right to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 400 acre-feet of water from the Brazos River, at a maximum rate of 1000 gpm, for the irrigation of 200 acres of land. The date of first beneficial use of water within the claim area is declared to be in 1955. (Exh. 131)
2. Claimant is the owner of claim area T-1560 which is located in Abstracts Nos. 59 and 60, Falls County. Abstract No. 59 was patented in 1835, Abstract No. 60 was patented in 1835. T-1560 and Abstracts Nos. 59 and 60 abut the Brazos River. (IV SF 106, 107)
3. The record in this adjudication does not contain any English translation of the Robertson Grant (A-58) or Robertson Grant (A-60) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (IV SF 98-124)
4. The first diversion and use of state water for irrigation purposes within T-1560 was in 1955. (IV SF 110)
5. The most acreage within T-1560 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 65 acres, being Fields Nos. T-1 and T-2, in Abstracts Nos. 59 and 60, Falls County. (IV SF 111)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-1560 at diversion point D-1560 on the Brazos River by a portable pump at a maximum rate of 4.2 cfs (1800 gpm) using a flood type distribution system. (IV SF 111)
7. The maximum amount of state water diverted and used for irrigation purposes within T-1560 in any calendar year during the period 1963-1967, inclusive, was 62 acre-feet of water. (IV SF 115)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 5500 because (1) claim area T-1560 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1580 and 1600
TRACT NO: 1580

OWNERSHIP: Jack Falco

IR: 187
APP: 9
IV SF 98-124

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5848, to divert and use 45 acre-feet of water per annum from the Brazos River, at a maximum diversion rate of 1.67 cfs, for the irrigation of 43 acres of land, with a priority date of 1959. (Exh. 133)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5848 which asserts a riparian right to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be an unspecified amount of water from the Brazos River at a maximum rate of 1200 gpm for the irrigation of 43 acres of land. The date of first beneficial use of water within the claim area is declared to be in 1959. (Exh. 134)
2. Claimant is the owner of claim area T-1580 which is located in Abstracts Nos. 60 and 61, Falls County. Abstract No. 60 was patented in 1835, Abstract No. 61 was patented in 1835. T-1580 and Abstracts Nos. 60 and 61 abut the Brazos River. (IV SF 116, 117)
3. The record in this adjudication does not contain any English translation of the Robertson Grant (A-60) or Robertson Grant (A-61) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (IV SF 98-124)
4. The first diversion and use of state water for irrigation purposes within T-1580 was on July 1, 1955. (IV SF 123)
5. The most acreage within T-1580 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 45 acres, being Field No. T-1, in Abstracts Nos. 60 and 61, Falls County. (IV SF 118)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-1580 at diversion points D-1580 and D-1600 on the Brazos River by a portable pump at a maximum combined rate of 2.67 cfs (1200 gpm) using a flood type distribution system. (IV SF 117, 120)
7. The maximum amount of state water diverted and used for irrigation purposes within T-1580 in any calendar year during the period 1963-1967, inclusive, is 91 acre-feet of water. (IV SF 124)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 5848 because (1) claim area T-1580 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1620, 1640 and 4000

TRACT NO: 1620

OWNERSHIP: Basil Abate, Tony Abate, Pat Abate, Lena Akkerman and Kathleen Kelly

IR: 189, 190
APP: 9
IX SF 316-349; CONTEST SF 19-46

SECTION 11.307 CLAIM: Under §11.303 Claim No. 3671 to divert and use 1500 acre-feet of water per year from the Brazos River at a maximum diversion rate of 3.33 cfs for the irrigation of 600 acres of land with a priority date of 1968.

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 3671 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 200 acre-feet of water from the Brazos River at a maximum diversion rate of 3000 gpm for the irrigation of 125 acres of land. The date of first beneficial use of water within the claim area was declared to be June, 1968. (Exh. 359)
2. An additional sworn statement to §11.303 Claim No. 3611 was received by the Commission September 3, 1974, and declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 900 acre-feet of water from the Brazos River at an unspecified diversion rate for the irrigation of 600 acres of land. (Exh. 400)
- a. On April 25, 1975, the Commission received the claimants' petition for permission to file a late claim of water rights pursuant to the Water Rights Adjudication Act, Section 5.303, Texas Water Code. (Exh. 401)
- b. By Commission Order dated June 16, 1975, the Commission authorized the late filing of the above-referenced claim. (Exh. 401)
3. Claimants are the owners of claim area T-1620 which is located in Abstract No. 61, Falls County, Abstract No. 61 was patented in 1835. T-1620 and Abstract No. 61 abut the Brazos River. (IX SF 322, 323)
4. The record in this adjudication does not contain any English translation of the Robertson Grant (A-61) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (IX SF 316-349)
5. The first nonemphatic beneficial use of state water within the claim area occurred in 1950.

CONCLUSIONS:

1. Claimants are not recognized any right under §11.303 Claim No. 3671 because (1) claim area T-1620 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.
2. Claimants are not recognized any equitable right to impound, divert or use state water.

DIVERSION POINTS NOS: 1620, 1660, 1665, 1680

TRACT NO: 1682 (Composed of tracts T-1660 and T-1680)

OWNERSHIP: John C. Isaacs, David O. Isaacs, Sr., David O. Isaacs, Jr., William C. Isaacs, Amalillo National Bank

IR: 191-192
APP: 9
IX SF 209-251

SECTION 11.307 CLAIM: Under Permit No. 917 to divert and use 495 acre-feet of water per year for irrigation purposes from the Brazos River at a maximum diversion rate of 6.0 cfs for the irrigation of 248 acres of land with an unspecified priority date. (Exh. 385)

SECTION 11.307 CLAIM: Under Permit No. 3916 to divert and use 991 acre-feet of water per year for irrigation purposes from the Brazos River at a maximum diversion rate of 8.9 cfs for the irrigation of 495 acres of land with a priority date of May 3, 1961. (Exh. 380)

FINDINGS:

1. Claimants are the owners of Permit No. 917 (Application No. 985), which authorizes the diversion and use of not to exceed 495 acre-feet of water per year for irrigation purposes from the Brazos River at a maximum diversion rate of 6.0 cfs for the irrigation of 248 acres of land located in the Robertson Grant, Abstract No. 61, Falls County, and Abstract No. 40, Robertson County. (Exh. 386)
2. A special condition in Permit No. 917 is: the amount of water which the permittee is authorized to divert and use is limited to 2 acre-feet for each acre actually irrigated. (Exh. 386)
3. Application No. 985 for Permit No. 917 was accepted for filing by the Commission on October 22, 1925, and the permit was issued on November 4, 1927. (Exh. 386)
4. Claimants are the owners of Permit No. 3916 (Application No. 4213), a Section 11.121 type permit, which authorizes the diversion and use of not to exceed 991 acre-feet of water per annum from the Brazos River at a maximum diversion rate of 8.9 cfs for the irrigation of 495 acres of land out of 2 tracts totalling 958.9 acres located in the O. C. Robertson Survey No. 6, Abstract No. 61, Falls County, and the S. C. Robertson Survey No. 7, Abstract No. 40, Robertson County. (Exh. 381)
5. Special Conditions in Permit No. 3916 include the following:
 - a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 279 by the final judgment of the Court in the adjudication process, the authorizations of the permit shall be reduced by the extent Section 11.303 Claim No. 279 is recognized.
 - b. Permittees are authorized to divert water only when the flow of the Brazos River at the USGS Gaging Station No. 0848290 at Highbank, Texas, equals or exceeds 640 cfs (286,013 gpm) during the months April through August and equals or exceeds 140 cfs (62,860 gpm) during other months. This flow rate shall be exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream.
6. Application No. 4213 for Permit No. 3916 was accepted for filing by the Commission on May 3, 1962, and the permit was issued on November 3, 1962. (Exh. 391)
7. Permit area tract T-1662 encompasses both permit area tract T-1680 of Permit No. 917 and claim area tract T-1660 of §11.303 Claim No. 279. (Exh. 5) IX SF 215-216)
8. Claimant has surrendered all rights under §11.303 Claim No. 279. (IX SF 210)
9. D-1660 is the diversion point authorized by Permit No. 3916. D-1665 is the diversion point authorized by Permit No. 917. D-1620 is a diversion point associated with §11.303 Claim No. 279. D-1680 is an unauthorized existing diversion point located in T-1680. (Exh. 5) IX SF 219)
10. The most acreage within permit area T-1680 irrigated with state water in any calendar year since the issuance of Permit No. 917 was 400 acres in 1982. (Exh. 388) IX SF 242)
11. The most acreage within permit area T-1662 in any calendar year since the issuance of Permit No. 3916 was 2348 acres in 1983. (Exh. 387)

12. Since the issuance of Permit No. 917, state water has been diverted for irrigation purposes within T-1680 at authorized diversion point D-1665 located on the Brazos River by means of a portable pump at a maximum effective diversion rate of 5.5 cfs (2500 gpm) using a flood-type distribution system. (IX SF 250, 251)

13. Since the issuance of Permit No. 3916, state water has been diverted for irrigation purposes within T-1662 at authorized diversion point D-1665 located on the Brazos River by means of a portable pump at a maximum effective diversion rate of 3.33 cfs (1500 gpm). (Exh. 387)

14. The maximum amount of state water diverted and used for irrigation purposes within T-1680 in any calendar year since the issuance of Permit No. 917 was 1200 acre-feet of water in 1983. (Exh. 382, IX SF 242)

15. The maximum amount of state water diverted and used for irrigation purposes within T-1662 in any calendar year since the issuance of Permit No. 3916 was 480 acre-feet of water in 1983. (Exh. 387)

CONCLUSIONS:

1. Claimants are recognized a right under Permits Nos. 917 and 3916 to divert and use not to exceed 991 acre-feet of water per annum at diversion points D-1660 and D-1665 on the Brazos River, at a maximum combined rate of 5.5 cfs (2500 gpm), for the irrigation of 495 acres of land within tract T-1662, in Abstracts Nos. 40 and 61, Robertson County.
2. The priority date associated with the rights recognized in Conclusion No. 1 is October 22, 1925 for the diversion and use of not to exceed 495 acre-feet of water per annum, at a maximum rate of 5.5 cfs (2500 gpm) for the irrigation of 248 acres of land within tract T-1662; and May 3, 1962 for the remainder of the recognized rights.
3. Claimants are not recognized any right under §11.303 Claim No. 279.

DIVERSION POINT NO: 1700

TRACT NO: 1700

OWNERSHIP: Kathleen Kelly (Patricia Kelly Monzingo, ownership unverified)

IR: 193-194
APP: 9
IX SF 261-300; CONTEST SF 46-53

SECTION 11.307 CLAIM: Under §11.303 Claim No. 3383 to divert and use 75 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1500 gpm for the irrigation of 75 acres of land with an unspecified priority date. (Exh. 393)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 3383 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 75 acre-feet of water from the Brazos River at a maximum diversion rate of 1500 gpm for the irrigation of 75 acres of land. The date of first beneficial use of water within the claim area was declared to be 1955. (Exh. 394)
2. Claimant is the owner of claim area T-1700 which is located in Abstract No. 40, Robertson County. Abstract No. 40 was patented in 1835. T-1700 and Abstract No. 40 abut the Brazos River. (IX SF 266)
3. The record in this adjudication does not contain any English translation of the Robertson Grant (A-40) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (IX SF 261-300)

CONCLUSIONS:

1. Claimant is not recognized any right under §11.303 Claim No. 3383 because (1) claim area T-1700 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.
2. Claimant is not recognized any equitable right to impound, divert or use state water.

DIVERSION POINTS NOS: 1720 and 1722

TRACTS NOS: 1720, 1722 and 1724

OWNERSHIP: H. W. Ellison

IR: 195 - 196
APP: 11
XI SF 110 - 111

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 160 which claims permit rights to divert and use water from an unnamed tributary of the Brazos River for irrigation purposes, and declares that a maximum of 50 acre-feet of water was diverted at a maximum diversion rate of 1 cfs, to irrigate 20 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1965. (Exh. 471)
2. Claimant is the owner of Permit No. 2131 (Application No. 2255), which authorizes the impoundment of water in a 145 acre-foot capacity reservoir constructed under the provisions of Article 7500a, V.A.C.S., located on an unnamed tributary of the Brazos River, in Abstract No. 22, Milam County, and the diversion by gravity flow and use therefrom of not to exceed 100 acre-feet per annum for the irrigation of 50 acres of land located in Abstracts No. 61 and 22, Milam County, at a maximum diversion rate of 450 gpm. (Exh. 472)
3. Claimant is the owner of the claim area designated as tracts T-1720, T-1722, and T-1724, which are located in Abstracts Nos. 22 and 61, Milam County. Abstracts Nos. 22 and 61 were patented before January 20, 1840. (Exh. 5)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water. (IX SF 110, 111)
5. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from an unnamed tributary of the Brazos River within Abstracts Nos. 22 or 61. (IX SF 110, 111)

CONCLUSIONS:

1. Claimant is not recognized any right under Permit No. 2131 because no evidence was presented of any use of state water pursuant to Permit No. 2131 since its issuance and no §11.307 claim pertinent to Permit No. 2131 was filed in the adjudication of this segment.
2. Claimant is not recognized any right under §11.303 Claim No. 160 because (1) claim area tracts T-1720, T-1722, and T-1724 are located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 1740
TRACT NO: 1740

OWNERSHIP: W. W. Callan

IR: 197
APP: 13
XI SF 120

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5975 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 800 acre-feet of water was diverted at a maximum diversion rate of 13.37 cfs, to irrigate an unspecified number of acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1954. (Exh. 480)
2. Claimant is the owner of claim area T-1740 which is located in Abstract No. 40, Robertson County. Abstract No. 40 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 40. (XI SF 120)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 120)

CONCLUSION:

Claimant is not recognized no right under §11.303 Claim No. 265 because (1) claim area T-1740 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1760, 1762, and 1764
TRACT NO: 1760

OWNERSHIP: C. M. Campbell

IR: 198-199
APP: 13
XI SF 125

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 6027 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 212 acre-feet of water was diverted at a maximum diversion rate of 106 gpm, to irrigate 106 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1952. (Exh. 483)
2. Claimant is the owner of claim area T-1760 which is located in Abstract No. 2, Robertson County. Abstract No. 2 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 2. (XI SF 125)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 125)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 6027 because (1) claim area T-1760 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1780 and 1785
TRACT NO: 1780

OWNERSHIP: Bert Wheeler's, Inc.

IR: 200-201
APP: 13
XI SF 126-127

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5720 to divert and use 512 acre-feet of water per year from the Brazos River at a maximum diversion rate of 3000 gpm for the irrigation of 256 acres of land with a priority date of 1834. (Exh. 484)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5720 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 150 acre-feet of water was diverted at a maximum diversion rate of 1000 gpm, to irrigate 75 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1952. (Exh. 485)
2. Claimant is the owner of claim area T-1780 which is located in Abstract No. 2, Robertson County. Abstract No. 2 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 2. (XI SF 126-127)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 126-127)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 5720 because (1) claim area T-1780 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 1800
TRACT NO: 1800

OWNERSHIP: James H. Jones and Henry DeAnda (Ownership unverified)

IR: 202-203
APP: 13
XI SF 203

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 5883 which claims a riparian and equitable rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 300 acre-feet of water was diverted at a maximum diversion rate of 3000 gpm, to irrigate 300 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in June, 1964. (Exh. 555)
2. Claimants are the owners of claim area T-1800 which is located in Abstract No. 2, Robertson County. Abstract No. 2 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 2. (XI SF 203)
4. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 203)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 5883 because (1) claim area T-1800 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NOS: 1820
TRACT NO: 1820

OWNERSHIP: Duwell Hailey

IR: 204-205
APP: 11
XI SF 12

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 241 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 60 acre-feet of water was diverted at a maximum diversion rate of 1000 gpm, to irrigate 60 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1963. (Exh. 482)
2. Claimant is the owner of claim area T-1820 which is located in Abstracts Nos. 19 and 10, Milam County. Abstracts Nos. 19 and 10 were granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 19 or 10. (XI SF 124)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 124)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 241 because (1) claim area T-1820 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1835, 1860, 1864 and 1868
TRACT NO: 1860

OWNERSHIP: Hedway Corporation

IR: 208
APP: 13
IV SF 147 - 163

SECTION 11.307 CLAIM: Under §11.303 Claim No. 6026, to divert and use 800 acre-feet of water per annum from the Brazos River at a maximum rate of 7000 gpm, for the irrigation of 800 acres of land with a priority date of September 28, 1834. (Exh. 141)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 6026 which asserts equitable and riparian rights to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 800 acre-feet of water from the Brazos River, at a maximum rate of 7,000 gpm for the irrigation of 800 acres of land. The first beneficial use of water within the claim area is declared to have been in 1962. (Exh. 142)
2. Claimant is the owner of claim area T-1860 which is located in Abstracts Nos. 2 and 3, Robertson County. Abstract No. 2 was patented in 1834. Abstract No. 3 was patented in 1835. T-1860 and Abstracts Nos. 2 and 3 abut the Brazos River. (IV SF 153, App. 13)
3. The land granted by the Chambers Grant (A-2) was not classified and the grant does not contain any language concerning the use of water for irrigation purposes. (Exh. 144)
4. The record in this adjudication does not contain any English translation of the Charles Grant (A-3) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (Res'd. Exh. 145)
5. The most acreage within T-1860 irrigated with estate water in any calendar year during the period 1963-1967, inclusive, is 479 acres, being Fields Nos. F-1 and F-2, in Abstract No. 2. (IV SF 153, 162)
6. During the period 1963-1967, inclusive, estate water was diverted for irrigation purposes within T-1860 at diversion points D-1835, D-1860, D-1864 and D-1868 on the Brazos River by a portable pump using a flood type distribution system. (IV SF 159)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 6026 because (1) claim area T-1860 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 1840
TRACT NO: 1840

OWNERSHIP: James H. Jones

IR: 206-207
APP: 11
X SF 53-62

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5682 to divert and use 250 acre-feet of water per year from the Brazos River at a maximum diversion rate of 2000 gpm for the irrigation of 150 acres of land with a priority date of June 1, 1960. (Exh. 418)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5682 which asserted equitable and riparian rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 200 acre-feet of water from the Brazos River at a maximum diversion rate of 2000 gpm for the irrigation of 200 acres of land. The date of first beneficial use of water within the claim area was declared to be July, 1960. (Exh. 418)
2. Claimant is the owner of claim area T-1040 which is located in Abstracts Nos. 19 and 68, Milam County. Abstract No. 19 was patented in 1835. Abstract No. 68 was patented in 1834. T-1040 and Abstracts Nos. 19 and 68 abut the Brazos River. (X SF 56)
3. The record in this adjudication does not contain any English translation of the Flaier Grant (A-19) or Wicksom Grant (A-68) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (X SF 53-62)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 5682 because (1) claim area T-1040 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1880, 1940, 2040, 2110 and 2100
TRACT NO: 1800

OWNERSHIP: John K. Woodall and Mary T. Woodall

IR: 210-211
APP: 11
X SF 63-76

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5052 to divert and use 825 acre-feet of water per year from the Brazos River at a maximum diversion rate of 7000 gpm for the irrigation of 500 acres of land with a priority date of June 1, 1957. (Exh. 420)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 5052 which asserted equitable and riparian rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 800 acre-feet of water from the Brazos River at a maximum diversion rate of 7000 gpm for the irrigation of 800 acres of land. The date of first beneficial use of water within the claim area was declared to be June 1957. (Exh. 421)
2. Claimants are the owners of claim area T-1880 which is located in Abstracts Nos. 1, 3, 35 and 51, Robertson County. All irrigation within T-1880 during the period 1963-1967, inclusive, was in Abstract No. 1. Abstract No. 1 was granted in 1834. T-1880 and Abstract No. 1 abut the Brazos River. (X SF 67)
3. The record in this adjudication does not contain any English translations of the Bugga Grant (A-1), Charlie Grant (A-3), Purdy Grant (A-34), or Habb Grant (A-51) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (X SF 63-76)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 5052 because (1) claim area T-1880 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 1900, 1920, 2000, 2005, and 2010
TRACT NO: 1900

OWNERSHIP: Woodall Farms and Thomas J. Holmes, Jr. (ownership unverified)

IR: 212-213
APP: 11
XII SF 5-10, IX SF 378, XIII SF 5-10

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 2603 which claims riparian, equitable, prescriptive, and permit rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 190 acre-feet of water was diverted at a maximum diversion rate of 2000 gpm to irrigate 142 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1950s. (Exh. 618)
2. Claimants are the owners of Permit No. 2443 (Application No. 2676), a regular type permit, which authorizes the construction of a dam and a 30 acre-foot capacity reservoir located on an unnamed tributary of Pond Creek, tributary of the Brazos River, and the diversion and use of not to exceed 30 acre-feet of water per year from the reservoir, Pond Creek, or the Brazos River, at a maximum diversion rate of 4.0 cfs (1800 gpm) for the irrigation of 142 acres of land located in the Byron Wilson Survey, Abstract No. 168, and the J. Walter Survey, Abstract No. 65, Milam County. (Exh. 619)
3. Application No. 2676 for Permit No. 2443 was accepted for filing by the Commission on April 28, 1969, and the permit was issued on July 29, 1969. (Exh. 619)
4. Claimants did not appear at either the regularly scheduled evidentiary hearing or the final docket evidentiary hearing and no evidence was presented concerning the diversion and use of state water since the issuance of Permit No. 2443. (IX SF 378, XIII SF 5-10)
5. Claimants are the owners of claim area T-1900 which is located in Abstracts Nos. 68 and 65, Milam County. Abstracts Nos. 68 and 65 were granted prior to January 20, 1840. (Exh. 4)
6. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 68 and 65. (IX SF 318, XIII SF 5-10)

7. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive, or concerning any use of water since the issuance of Permit No. 2443. (IX SF 378, XIII SF 5-10)

CONCLUSIONS:

1. Claimants are not recognized any right under §11.303 Claim No. 2603 because (1) claim area T-1900 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.
2. Claimants are not recognized any right under Permit No. 2443 because no evidence was presented of any use of state water pursuant to Permit No. 2443 since its issuance and no §11.307 claim pertinent to Permit No. 2443 was filed in the adjudication of this segment.

DIVERSION POINTS NOS: 1960, 1964, 1968, 1972 and 1976
TRACT NO: None

OWNERSHIP: City of Rowlett

IR: 214, 215
APP: 11
IX SF 168-187

SECTION 11.307 CLAIM: Under Permit No. 2003A to impound water in a 408 acre-foot capacity reservoir located on a tributary of Pond Creek and to divert and use 224 acre-feet of water per year for municipal use purposes at a maximum diversion rate of 0.29 cfs with a priority date of October 2, 1961. (Exh. 372)

FINDINGS:

1. Claimant is the owner of Permit No. 2003 (Application No. 2704) which authorizes maintenance of an existing dam and 124 acre-foot capacity reservoir located on an unnamed tributary of Pond Creek, tributary of the Brazos River, in Abstracts Nos. 295 and 231, Falls County. The permittee is also authorized to divert water from Pond Creek at a maximum diversion rate of 6.0 cfs and to store the diverted water in the reservoir to supplement the waters of the unnamed tributary. The diversion and use of 124 acre-feet of water from the reservoir for municipal use purposes is also authorized. (Exh. 373)
2. A Special Condition in Permit No. 2003A is as follows:
"The permittee is required to furnish water which is not beneficially consumed to Salt Creek at the site of the permittee's sewage treatment plant, using reasonable diligence to insure that the water does not materially impair the quality of water in the stream. (Exh. 373)"
3. Application No. 2704 for Permit No. 2003 was accepted for filing by the Board of Water Engineers on October 2, 1961, and the permit was issued on November 28, 1961. (Exh. 373)
4. Application No. 2004A for Permit No. 2003A which authorized an increase of the size of the impoundment authorized by Permit No. 2003 to 408 acre-feet, and an increase in the authorized diversion from the reservoir to 224 acre-feet per annum was accepted for filing by the Commission on July 15, 1974, and the permit was issued on October 16, 1974. (Exh. 374)
5. Claimant maintains a 408 acre-foot capacity reservoir located at diversion point D-1964, which is the authorized location on the unnamed tributary of Pond Creek, with the dam being located in Abstracts Nos. 231 and 295, Falls County. (IX SF 174, 177)
6. Claimant maintains a pump sump on Pond Creek created by two dams located at diversion points D-1960 and D-1976 located in Abstract 231, Falls County, which facilitates claimant's authorized diversion of water under Permit No. 2003A from Pond Creek. (IX SF 175)
7. Since the issuance of the permit, state water has been diverted for municipal use at authorized diversion point D-1968 located on the perimeter of the authorized reservoir by means of a gravity flow system at a maximum effective diversion rate of 0.66 cfs (299 gpm). (IX SF 184; Exh. 376A)
8. Since the issuance of the permit, state water has been diverted to the reservoir located on an unnamed tributary of Pond Creek from authorized diversion point D-1972 located on Pond Creek at a maximum effective diversion rate of 26.89 cfs (13,000 gpm) by means of a pump. (IX SF 815; Exh. 376A)
9. The maximum amount of state water diverted at authorized diversion point D-1968 located on the perimeter of the reservoir and used for municipal purposes in any calendar year since the issuance of the permit was 239 acre-feet of water in 1983. (IX SF 182 and 183)
10. The maximum amount of state water diverted into the reservoir authorized by Permit No. 2003A located at D-1964 from diversion point D-1972 located on Pond Creek and used for municipal purposes in any calendar year since the issuance of the permit was 115 acre-feet of water in 1978. (IX SF 185; Exh. 376A)
11. Claimant owns a contractual permit with the Brazos River Authority which authorizes the diversion of 100 acre-feet of water per year from the Brazos River into the reservoir authorized by Permit No. 2003A. (IX SF 174, 179)
12. The reservoir authorized by Permit No. 2003A was filled to full capacity by the waters of the unnamed tributary of Pond Creek, without any supplementation by water from the Brazos River, in 1983. (IX SF 180)

CONCLUSIONS:

1. Claimant is recognized a right under Permit No. 2003A to impound water in a 408 acre-foot capacity reservoir located at diversion point D-1964 on an unnamed tributary of Pond Creek, tributary of the Brazos River, with the dam being located in Abstracts Nos. 231 and 295, Falls County, and to divert and use therefrom not to exceed 224 acre-feet of water per year for municipal purposes from diversion point D-1968 located on the perimeter of the reservoir at a maximum diversion rate of 0.66 cfs with a priority date of November 28, 1961 for the first 124 acre-feet of water for the impoundment and the first 124 acre-feet of the diversion and use, and a priority date of July 15, 1974 for the additional 284 acre-feet of the impoundment and for the additional 100 acre-feet of the diversion and use.
2. Claimant is recognized a right under Permit No. 2003 to divert to the authorized reservoir located at diversion point D-1964 115 acre-feet of water for municipal purposes from diversion point D-1972 on Pond Creek, tributary of the Brazos River, located in Abstract No. 231, Falls County, at a maximum diversion rate of 6.0 cfs.

DIVERSION POINTS NOS: 2060 and 2080
TRACT NO: 2060

OWNERSHIP: Sneed Farms (Lillian Denson and Henry Marcus-ownership
unverified)

IR: 216-217
APP: 11
XI SF 225-230

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 265 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 450 acre-feet of water was diverted at a maximum diversion rate of 3600 gpm, to irrigate 450 acres of land in any calendar year during the period 1963-1967, inclusive. The date of first beneficial use of water in the claim area is not specified. (Exh. 5011)
2. Claimants are the owners of claim area T-2060 which is located in Abstract No. 65, Milam County. Abstract No. 65 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 65. (XI SF 229-230)
4. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 229-230)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 265 because (1) claim area T-2060 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 2120
TRACT NO: 2120

OWNERSHIP: Katherine Sommer Fagan

IR: 218-219
APP: 11
XI SF 115

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 3311 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 300 acre-feet of water was diverted at a maximum diversion rate of 3500 gpm, to irrigate 300 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1951. (Exh. 476)
2. Claimant is the owner of claim area T-2120 which is located in Abstract No. 58, Milam County. Abstract No. 58 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 58. (Exh. 4)
4. Claimant failed to appear at its scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 218; IX SF 378; XI SF 115)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 3311 because (1) claim area T-2120 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 2140
TRACT NO: 2140

OWNERSHIP: Estate of Pauline Doremu, Deceased

IR: 220
APP: 13
VII SF 177-186

SECTION 11.307 CLAIM: Under §11.303 Claim No. 3084, to divert and use 300 acre-feet of water per annum from the Brazos River at a maximum rate of 889 cfs for the irrigation of 150 acres of land with a priority date of May 1956. (Exh. 275)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 3084 which asserts equitable and riparian rights to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 300 acre-feet of water from the Brazos River at an unspecified rate for the irrigation of 150 acres of land. The date of first beneficial use of water within the claim area was declared to be May, 1956. (Exh. 276)
2. Claimant is the owner of claim area T-2140 which is located in Abstracts Nos. 1, 22, 48, 49 and 51, Robertson County. Abstracts Nos. 1, 48 and 49 were patented in 1834. Abstracts Nos. 22 and 51 were patented in 1835. T-2140 and Abstracts Nos. 1, 48, 49 and 51 abut the Brazos River. Abstract No. 22 is severed from the Brazos River. (VII SF 190-181)
3. The record in this adjudication does not contain any English translation of the Bangs Grant (A-1), Kenney Grant (A-22), A. J. Webb Grant (A-48), Jesse Webb Grant (A-49) or J. Webb Grant (A-51), and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VII SF 180)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 3084 because (1) claim area T-2140 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 2160
TRACT NO: 2160

OWNERSHIP: Douglas A. McCrary and Wendy Brock

IR: 222
APP: 11
X SF 142-167

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5489 to divert and use 90 acre-feet of water per year from the Brazos River at a maximum diversion rate of 3,91 cfs for the irrigation of 90 acres of land with a priority date of 1956. (Exh. 434)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 5489 which asserts a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 90 acre-feet of water from the Brazos River at a maximum diversion rate of 1750 gpm for the irrigation of 90 acres of land. The date of first beneficial use of water within the claim area was declared to be 1959. (Exh. 434)
2. Claimants are the owners of claim area T-2160 which is located in Abstracts Nos. 58 and 24, Milam County. Abstract No. 58 was granted in 1834, Abstract No. 24 was granted in 1835, T-2160 and Abstract No. 58 abut the Brazos River. (X SF 147, 148)
3. The land granted by the Smith Grant (A-58) was classified as arable land and pasture land and the grant does not contain any language concerning the use of water for irrigation purposes. (Exh. 437)
4. The record in this adjudication does not contain any English translation of the Chelawier Grant (A-24) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (X SF 142-167)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 5489 because (1) claim area T-2160 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 2180, 4160, 4180, 4200 and 4220
TRACT NO: 2180

OWNERSHIP: Sabine Production Company

IR: 223
APP: 13
VII SF 220-257

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5488, to divert and use 950 acre-feet of water per annum from the Brazos River at a maximum rate of 3,37 cfs for the irrigation of 950 acres of land with a priority date of 1958. Three reservoirs with a total capacity of 16 acre-feet on a slough were also claimed. (Exh. 293)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5488 which asserts a riparian right to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 500 acre-feet of water from the Brazos River at a maximum rate of 500 gpm for the irrigation of 500 acres of land. The date of first beneficial use of water within the claim area was declared to be 1958. (Exh. 294)
2. Claimant is the owner of claim area T-2180 which is located in Abstracts Nos. 1, 48, 49, 50 and 51, Robertson County. Abstracts Nos. 1, 48, 49 and 50 were granted in 1834. Abstract No. 51 was granted in 1835. T-2180 and Abstracts Nos. 1, 48, 49, 50 and 51 abut the Brazos River. (VII SF 227-9)
3. The land granted by the A. J. Webb Grant (A-48), the J. Webb Grant (A-49) and the John B. Webb Grant (A-50) was classified as arable land and the grants do not contain any language concerning the use of water for irrigation purposes. (Exh. 297, 298, 300)
4. The record in this adjudication does not contain any English translation of the Bangs Grant (A-1) or Joseph Webb Grant (A-51), and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VII SF 257)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 5488 because (1) claim area T-2180 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 2200
TRACT NO: 2200

OWNERSHIP: Weinaicht Brothers

IR: 224-225
APP: 14
VII SF 347; IX SF 379; XI SF 239-240

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5014 to divert and use 900 acre-feet of water per year from the Brazos River at a maximum diversion rate of 6.7 cfs (3015 gpm) for the irrigation of 507 acres of land with a priority date of 1967. (Exh. 590)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5014 which claims riparian and Section 4 rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 900 acre-feet of water was diverted at a maximum diversion rate of 3000 gpm to irrigate 225 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in August 1967. (Exh. 591)
2. Claimant is the owner of claim area T-2200 which is located in Abstracts Nos. 1 and 49, Robertson County. Abstracts Nos. 1 and 49 were granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 1 or 49. (XI SF 239-240)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 347; IX SF 379; XI SF 239-240)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 5014 because (1) claim area T-2200 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 2220
TRACT NO: 2220

OWNERSHIP: Agnes Field Kilot

IN: 226
APP: 14
XI SF 2-29

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5844 to divert and use 184 acre-feet of water per year from the Brazos and Little Brazos Rivers at a maximum diversion rate of 2500 gpm for the irrigation of 184 acres of land with a priority date of 1961. (Exh. 441)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5844 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 184 acre-feet of water from the Brazos and Little Brazos Rivers at an unspecified maximum diversion rate for the irrigation of 184 acres of land. The date of first beneficial use of water within the claim area was declared to be 1961. (Exh. 442)
2. Claimant is the owner of claim area T-2220 which is located in Abstracts Nos. 1 and 155, Robertson County. All irrigation within T-2220 during the period 1963-1967, inclusive, was in Abstract No. 155. Abstract No. 155 was patented in 1871. T-2220 abuts Little Brazos River and Brazos River and Abstract No. 155 abuts the Brazos River. (XI SF 6-7)
3. The first diversion and use of state water for irrigation purposes within T-2220 was in 1961. (Exh. 442)
4. The most acreage within T-2220 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 104 acres. (Abstract No. 155 in 1963. (XI SF 20)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-2220 at diversion point D-2220 located on the Brazos River by a pump at a maximum effective diversion rate of 5.56 cfs (2000 gpm) using a flood type distribution system. (Exh. 442, XI SF 7, 21)
6. The maximum amount of state water diverted and used for irrigation purposes within T-2220 in any calendar year during the period 1963-1967, inclusive, was 184 acre-feet of water in 1963. (XI SF 20)

CONCLUSION:

Claimant is recognized a right under §11.303 Claim No. 5844 to divert and use not to exceed 184 acre-feet of water per year from diversion point D-2220 located on the Brazos River at a maximum diversion rate of 5.56 cfs (2000 gpm) for the irrigation of 184 acres of land within tract T-2220 in Abstract No. 155, Robertson County, with a priority date of December 31, 1961.

DIVERSION POINT NO: 2240
TRACT NO: 2240

OWNERSHIP: Douglas A. McCrary

IN: 227
APP: 14
K SF 168-198

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5490 to divert and use 282 acre-feet of water per year from the Brazos River at a maximum diversion rate of 6.14 cfs for the irrigation of 282 acres of land with a priority date of 1959. (Exh. 438)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5490 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 282 acre-feet of water from the Brazos River at a maximum diversion rate of 2750 gpm for the irrigation of 282 acres of land. The date of first beneficial use of water within the claim area was declared to be 1959. (Exh. 439)
2. Claimant is the owner of claim area T-2240 which is located in Abstract No. 155, Robertson County. Abstract No. 155 was patented in 1871. T-2240 and Abstract No. 155 abut the Brazos River. (X SF 172)
3. The first diversion and use of state water for irrigation purposes within T-2240 was in June, 1959. (X SF 178, 193)
4. The most acreage within T-2240 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 272 acres. (X SF 183)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-2240 at diversion point D-2240 located on the Brazos River by a pump at a maximum effective diversion rate of 6.11 cfs (2750 gpm) using a low flood type distribution system. (X SF 179, 186)
6. The maximum amount of state water diverted and used for irrigation purposes within T-2240 in any calendar year during the period 1963-1967, inclusive, was 282 acre-feet of water in 1963. (X SF 180, 181, 188)

CONCLUSION:

Claimant is recognized a right under §11.303 Claim No. 5490 to divert and use not to exceed 282 acre-feet of water per year from diversion point D-2240 located on the Brazos River at a maximum diversion rate of 6.11 cfs (2750 gpm) for the irrigation of 282 acres of land within tract T-2240 in Abstract No. 155, Robertson County, with a priority date of June 30, 1959.

DIVERSION POINTS NOS: 2260, 2320, 4240, 4260, and 4280
TRACT NO: 2260

OWNERSHIP: Estate of Joe Reutino, Deceased

IN: 228-229
APP: 14
X SF 89-109

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5321 to divert and use 800 acre-feet of water per year from an unspecified stream at a maximum diversion rate of 4,000 gpm for the irrigation of "400 plus" acres of land with a priority date of 1957. (Exh. 424)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5321 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 800 acre-feet of water from the Little Brazos and Big Brazos Rivers at an unspecified diversion rate for the irrigation of 400 acres of land. The date of first beneficial use of water within the claim area was declared to be 1957. (Exh. 425)

2. Claimant is the owner of claim area T-2250 which is located in Abstract No. 166, Robertson County. Abstract No. 166 was patented in 1849. T-2260 and Abstract No. 166 abut the Brazos River and cross the Little Brazos River, tributary of the Brazos River, except for Fields Nos. 1 and 5 which are severed from the Brazos River by the Missouri Pacific Railroad but abut the Little Brazos River. (X SF 93-96; Exh. 5)

3. The first diversion and use of state water for irrigation purposes within T-2260 was in 1951. (X SF 101)

4. The most acreage within T-2260 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 371 acres. (X SF 95, 97)

5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-2260 at diversion points D-2260 and D-2230 located on the Brazos River and at diversion points D-4240, D-4260, and D-4280 on the Little Brazos River by pump at a total maximum effective diversion rate of 8.89 cfs (3000 gpm) using a flood type distribution system. (X SF 102, 109)

6. The maximum amount of state water diverted from the Brazos River and used for irrigation purposes within T-2260 in any calendar year during the period 1963-1967, inclusive, was 384 acre-feet of water in each year. (X SF 99, 016; Exh. 425)

7. Fifty percent of the water applied to Fields Nos. 1 and 5 in the period 1963-1967, inclusive, consisted of groundwater, and 50 percent consisted of water from the Little Brazos River. (X SF 105)

8. The maximum amount of state water diverted from the Little Brazos River and used for irrigation purposes within T-2260 in any calendar year during the period 1963-1967, inclusive, was 48 acre-feet of water in each year. (X SF 99, 105; Exh. 425)

CONCLUSION:

Claimant is recognized a right under §11.303 Claim No. 5321 to divert and use not to exceed 384 acre-feet of water per year from diversion points D-2260 and D-2230 located on the Brazos River and 48 acre-feet of water per year from diversion points D-4240, D-4260 and D-4280 on the Little Brazos River at a total maximum diversion rate of 8.89 cfs for the irrigation of 573 acres of land within tract T-2260 in Abstract No. 166, Robertson County, with a priority date of December 31, 1951.

DIVERSION POINT NO: 2280
TRACT NO: 2280

OWNERSHIP: Barton Fazio (Nancy Elizabeth Caldwell), Francis H. Bley, Deborah Miller and Clara H. Marshall

IN: 230

APP: 11

XI SF 231-232

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 2655 which claims riparian rights to divert and use water for irrigation, domestic and livestock purposes, and declares that an unspecified amount of water was diverted at a maximum diversion rate of 1100 gpm to irrigate 40 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1955. (Exh. 582)

2. Claimants are the owners of claim area T-2280 which is located in Abstract No. 44, Milam County. Abstract No. 44 was granted prior to January 20, 1840. (Exh. 4)

3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 44. (Exh. 4)

4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 218; XI SF 231-232)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 2655 because (1) claim area T-2280 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 2300, 2380
TRACTS NOS: 2300, 2380

OWNERSHIP: J. W. Paster, Jr.

IN: 231-232

APP: 11

VII SF 218; XI SF 208

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 4221 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 75 acre-feet of water was diverted at a maximum diversion rate of 1500 gpm, to irrigate 75 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1955. (Exh. 360)

2. Claimant is the owner of a claim area designated as tracts T-2300 and T-2380 which are located in Abstract No. 44, Milam County. Tract No. T-2380 is not covered by §11.303 Claim No. 4221. Abstract No. 44 was granted prior to January 20, 1840. (Exh. 4)

3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 44.

4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 219; XI SF 208)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 4221 because (1) claim area T-2300 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 2340, 2342, 2330, 2360, 2400, 4300, 4320, 4360
TRACT NO: 2340

OWNERSHIP: Northern Trust Company (Brazos Barton Farm No. 2-48284)
IR: 233-4
APP: 14
VIII SF 373-428

SECTION 11.307 CLAIM: Under §11.307 Claim No. 2656 to divert and use 6206.68 acre-feet of water per year from the Brazos River and Little Brazos River at a maximum diversion rate of 3000 gpm for the irrigation of 2482.67 acres of land with a priority date of 1957. (Exh. 321)

FINDINGS:

1. Claimant is the owner of §11.307 Claim No. 2656 which asserted a riparian right to divert and use water for irrigation, domestic and livestock purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be an unspecified amount of water from the Brazos and Little Brazos Rivers at a maximum diversion rate of 3000 gpm for the irrigation of 395.8 acres of land. The date of first beneficial use of water within the claim area was declared to be 1955. (Exh. 322)
2. Claimant is the owner of claim area T-2340 which is located in Abstracts Nos. 311 and 166, Robertson County. Abstract No. 311 was patented on April 10, 1856. Abstract No. 166 was patented on November 16, 1849. T-2340 and Abstracts Nos. 166 and 311 about the Brazos River. (VIII SF 378-379)
3. The first diversion and use of state water for irrigation purposes within T-2340 was in 1958. (VIII SF 409)
4. The most acreage within T-2340 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 398 acres, being Fields Nos. 1, 2 and 3 in Abstracts Nos. 166 and 311, in 1963. (VIII SF 427-48)
5. An off-channel reservoir, known as Big Brazos River, is located at diversion point D-2342 within T-2340. During the period 1963-1967, inclusive, six acre-feet of water was impounded in the reservoir and the water was used for irrigation purposes within T-2340. The diversion and use of state water within T-2340 during this period was facilitated by use of the impoundment. (VIII SF 421-423; Exh. 5)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-2340 at diversion points D-2340, D-2350, D-2360, and D-2400 located on the Brazos River, D-4000 and D-4120 located on the Little Brazos River by two portable pumps at a total effective diversion rate of 4.89 cfs (3100 gpm) 406, 408.
7. The maximum amount of state water diverted and used for irrigation purposes within T-2340 in any calendar year during the period 1963-1967, inclusive, was 724 acre-feet of water. (VIII SF 408)

CONCLUSION:

Claimant is recognized a right under §11.307 Claim No. 2656 to divert and use not to exceed 724 acre-feet of water per year from diversion points D-2340, D-2350, D-2360 and D-2400 located on the Brazos River and diversion points D-4000 and D-4120 located on the Little Brazos River, at a total maximum diversion rate of 4.89 cfs (3100 gpm) for the irrigation of 398 acres of land within tract T-2340 in Abstracts Nos. 311 and 166, Robertson County, with a priority date of December 31, 1958. Claimant is further recognized a right to store the diverted water in a six acre-foot capacity off-channel reservoir located at diversion point D-2342 within T-2340 and to subsequently divert and use this stored water for irrigation purposes to the extent authorized herein.

DIVERSION POINT NO: 2420
TRACT NO: 2420

OWNERSHIP: Wesley F. Anderson and Jane Anderson Mackinnon (ownership unverified)
IR: 235-236
APP: 14
VII SF 45-64

SECTION 11.307 CLAIM: Under §11.307 Claim No. 3120, to divert and use 976 acre-feet of water per annum from the Brazos River at a maximum rate of 5500 gpm for the irrigation of 600 acres of land with a priority date of 1953. (Exh. 251)

FINDINGS:

1. Claimants are the owners of §11.307 Claim No. 3120 which asserts a riparian right to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 976 acre-feet of water from the Brazos River at a maximum rate of 5500 gpm for the irrigation of 383 acres of land. The date of first beneficial use of water within the claim area is declared to be 1963. (Exh. 252)
2. Claimants are the owners of claim area T-2420 which is located in Abstract No. 331, Robertson County. Abstract No. 331 was patented in 1856. T-2420 and Abstract No. 331 about the Brazos River. (VII SF 49, 50)
3. The first diversion and use of state water for irrigation purposes within T-2420 was in 1953. (VII SF 53)
4. The most acreage within T-2420 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 383 acres, being Fields Nos. 1 and 2, in 1963 and 1964. (VII SF 55, 56)
5. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-2420 at D-2420 on the Brazos River by two portable pumps at a maximum combined rate of 12.23 cfs (5500 gpm) using a row flood type distribution system. (VII SF 55, 61)
6. The maximum amount of state water diverted and used for irrigation purposes within T-2420 in any calendar year during the period 1963-1967, inclusive, is 976 acre-feet of water in 1963 and 1964. (VII SF 56, 60)

CONCLUSION:

Claimants are recognized a right under §11.307 Claim No. 3120 to divert and use not to exceed 976 acre-feet of water per annum from D-2420 on the Brazos River, at a maximum rate of 12.23 cfs (5500 gpm) for the irrigation of 383 acres of land within T-2420 in Abstract No. 331, Robertson County, with a priority date of December 31, 1953.

DIVERSION POINT NO: 2440
TRACT NO: 2440

OWNERSHIP: Ellen Wiese Brien, Laura Emily Wiese Hoore
IR: 231-230
APP: 14
X SF 27

SECTION 11.307 CLAIM: Under §11.307 Claim No. 5030 to divert and use 400 acre-feet of water per year from the Brazos River at a maximum diversion rate of 3000 gpm for the irrigation of 400 acres of land with a priority date of June 1, 1957. (Exhs. 415, 416)

FINDINGS:

1. Claimants are the owners of §11.307 Claim No. 5030 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 275 acre-feet of water from the Brazos River at a maximum diversion rate of 3000 gpm for the irrigation of 250 acres of land. The date of first beneficial use of water within the claim area was declared to be 1960. (Exh. 416)
2. Claimants are the owners of claim area T-2440 which is located in Abstracts Nos. 331 and 134, Robertson County. Abstracts Nos. 331 and 134 were patented in 1856. T-2440 and Abstracts Nos. 134 and 331 about the Brazos River. (X SF 13-34)
3. The land within T-2440 is covered by the Waco Valley Railroad, but the claimants presented evidence of an easement which covers the right-of-way of the Railroad across their land. (Exh. 417)
4. The first diversion and use of state water for irrigation purposes within T-2440 was on June 30, 1957. (X SF 45)
5. The most acreage within T-2440 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 250 acres, being Fields Nos. 1, 4 and 5, in Abstracts Nos. 134 and 331, in 1963. (X SF 46)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-2440 at diversion point D-2440 located on the Brazos River at a maximum effective diversion rate of 6.67 cfs (3000 gpm) using a row flood type distribution system. (X SF 49)
7. The maximum amount of state water diverted and used for irrigation purposes within T-2440 in any calendar year during the period 1963-1967, inclusive, was 275 acre-feet of water. (X SF 49)

CONCLUSION:

Claimants are recognized a right under §11.307 Claim No. 5030 to divert and use not to exceed 275 acre-feet of water per year from diversion point D-2440 located on the Brazos River at a maximum diversion rate of 6.67 cfs (3000 gpm) for the irrigation of 250 acres of land within tract T-2440 in Abstracts Nos. 331 and 134, Robertson County, with a priority date of June 30, 1957.

DIVERSION POINTS NOS: 2460, 2480
TRACTS NOS: 2460, 2480

OWNERSHIP: Gertrud Papp, Elva Theres Papp,
Florenz Papp, Peter Geipel,
Francis Hermsdorf

IR: 239-240
APP: 14
XII SF 35-61

SECTION 11.307 CLAIM: Under §11.307 Claim No. 1527, to divert and use an unspecified amount of water per year from the Brazos River at an unspecified maximum diversion rate for the irrigation of 430 acres of land. (Exh. 603)

FINDINGS:

1. Claimants are the owners of §11.307 Claim No. 1527 which asserted equitable and riparian rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 380 acre-feet of water from the Brazos River, at a maximum diversion rate of 6700 gpm, for the irrigation of 380 acres of land. The date of first beneficial use of water within the claim area was declared to be 1959. (Exh. 604)
2. Claimants are the owners of the claim area which consists of tracts T-2460 and T-2480 and which is located in Abstracts Nos. 31 and 181, Robertson County. Abstract No. 31 was patented in 1835, Abstract No. 181 was patented in 1846. T-2460 and T-2480 and Abstracts Nos. 31 and 181 about the Brazos River. (XII SF 39-39)
3. The record in this adjudication does not contain any English translation of the Nixon Grant (A-31) and there was no other evidence presented concerning a specific grant from the owners of a right to divert and use public water for irrigation purposes. (XII SF 35-61)
4. The land granted by the J. Harlan Grant (A-181) completely overlaps the land granted by the G. A. Nixon Grant (A-31). (XII SF 58)
5. The first diversion and use of state water for irrigation purposes within T-2460 and T-2480 was in 1959. (XII SF 47)
6. The most acreage within tracts T-2460 and T-2480 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 400 acres, in Abstracts Nos. 31 and 181. Of the 400 acres irrigated during this period, 255 acres are covered from the Brazos River by a railroad running through the claim area. (XII SF 48, 58)
7. The most acreage within T-2460 and T-2480 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 145 acres in Abstracts Nos. 31 and 181. (XII SF 47)
8. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within tracts T-2460 and T-2480 at diversion points D-2460 and D-2480 located on the Brazos River by two portable pumps at a maximum combined diversion rate of 6.44 cfs (2900 gpm). (XII SF 39, 53)
9. The maximum amount of state water diverted and used for irrigation purposes within those portions of tracts T-2460 and T-2480 located adjacent to the Brazos River in any calendar year during the period 1963-1967, inclusive, was 145 acre-feet of water. (XII SF 52)

CONCLUSION:

Claimants are recognized a right under §11.307 Claim No. 1527 to divert and use not to exceed 145 acre-feet of water per year from diversion points D-2460 and D-2480 located on the Brazos River at a maximum combined diversion rate of 6.44 cfs (2900 gpm) for the irrigation of 145 acres of land within those portions of tracts T-2460 and T-2480 located adjacent to the Brazos River, in Abstract No. 181, Robertson County, with a priority date of December 31, 1959.

DIVERSION POINTS NOS: 2500 and 2520
TRACT NO: 2500

OWNERSHIP: John A. Smith, Jr.

IR: 241
APP: 12
VII SF 187-204

SECTION 11.307 CLAIM: Under §11.303 Claim No. 282, to divert and use 250 acre-feet of water per annum from the Brazos River at an unspecified rate for the irrigation of 500 acres of land with a priority date of 1951. (Exh. 277)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 282 which asserts a riparian right to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be eight acre-feet of water from the Brazos River at a maximum rate of 1800 gpm for the irrigation of 50 acres of land. The date of first beneficial use of water within the claim area was declared to be June 1951. (Exh. 278)
2. Claimant is the owner of claim area T-2500 which is located in Abstracts Nos. 5 and 21, Hillom County. Abstracts Nos. 5 and 21 were granted in 1835. (VII SF 191)
3. The lands granted by the Caruthers Grant (A-5) and Frick Grant (A-21) were classified as arable land and the grants do not contain any language concerning the use of water for irrigation purposes. (Exhs. 280, 281)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 282 because (1) claim area T-2500 is located on land granted prior to January 20, 1840, which was granted without a specific grant to divert and use public water for irrigation purposes, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 2540
TRACT NO: 2540

OWNERSHIP: Margaret A. Harris and Deborah Anderson Frazier

IR: 243
APP: 14
XI SF 114

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 3995 which claims riparian rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 125 acre-feet of water was diverted at a maximum diversion rate of 3000 gpm, to irrigate 125 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in June 1967. (Exh. 475)
2. Claimants are the owners of claim area T-2540 which is located in Abstracts Nos. 31 and 181, Robertson County. Abstract No. 31 was granted prior to January 20, 1840. Abstract No. 181 was granted on October 26, 1846. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 31. (Exh. 4)
4. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 218, XI SF 378, XI SF 114)

CONCLUSION:

Claimants are recognized no right under §11.303 Claim No. 3995 because they did not file any §11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive, and because a portion of claim area T-2540 is located in land granted prior to January 20, 1840 (A-31), and there was no evidence presented of a specific grant from the sovereign of a right to divert and use water within the grant.

DIVERSION POINTS NOS: 2560, 2580
TRACT NO: 2560

OWNERSHIP: Gertrud Papp, Elsa Therese Papp, Florian Papp, Peter Gelpel, Franco Bernasconi

IR: 244-245
APP: 14
XII SF 62-73

SECTION 11.307 CLAIM: Under §11.303 Claim No. 3177 to divert and use an unspecified amount of water per year from the Brazos River at an unspecified maximum diversion rate for the irrigation of 450 acres of land. (Exh. 603)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 3177 which asserted equitable and riparian rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 193 acre-feet of water from the Brazos River at a maximum diversion rate of 4000 gpm for the irrigation of 153 acres of land. The date of first beneficial use of water within the claim area was declared to be 1966. (Exh. 608)
2. An additional sworn statement to §11.303 Claim No. 3177 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be an unspecified amount of water from the Brazos River at an unspecified maximum diversion rate for the irrigation of unspecified acres of land. (Exh. 609)
3. Claimants are the owners of claim area T-2560 which is located in Abstract No. 31, Robertson County. Abstract No. 31 was patented in 1835. T-2560 and Abstract No. 31 abut the Brazos River. (XII SF 66-67)
4. The record in this adjudication does not contain any English translation of the Nixon Grant (A-31) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (XII SF 62-73)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 3177 because (1) claim area T-2560 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 2600 and 2620
TRACT NO: 2600

OWNERSHIP: The Northern Trust Company, Trustee for Trust No. 2-45216

IR: 246-247
APP: 14
VII SF 65-100, CONTEXT SF 59-62

SECTION 11.307 CLAIM: Under §11.303 Claim No. 1628 and Permit No. 228, to divert and use 5375.75 acre-feet of water per annum from the Brazos River at a maximum rate of 7.80 cfs for the irrigation of 2150.3 acres of land with a priority date of 1835. (Exh. 254)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 1628 which asserts a riparian right and right under Permit No. 228 to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 225 acre-feet of water from the Brazos River at a maximum rate of 3600 gpm for the irrigation of 250 acres of land. The date of first beneficial use of water within the claim area is declared to be 1918. (Exh. 255)
2. An additional sworn statement to §11.303 Claim No. 1628 was timely filed which declares the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 240 acre-feet of water from the Brazos River at a maximum rate of 3000 gpm for the irrigation of 250 acres of land. (Exh. 256)
3. Claimant is the owner of Permit No. 228, which authorizes the diversion and use of not to exceed 514 acre-feet of water per annum from the Brazos River, in Robertson County, at a maximum rate of 5.0 cfs, for the irrigation of 257 acres of land within a 2350 acre tract. (Exh. 257)
4. A special condition in Permit No. 228 restricts the permittee to divert and use not to exceed two acre-feet of water per annum per acre of land actually irrigated within the authorized 257 acres. (Exh. 257)
5. Application No. 239 for Permit No. 228 was accepted for filing by the Board of Water Engineers on November 22, 1917, and the permit was issued on July 31, 1918. (Exh. 257)
6. Claimant is the owner of claim area T-2600 which is located in Abstract No. 31, Robertson County. Abstract No. 31 was granted in 1835. T-2600 and Abstract No. 31 abut the Brazos River. (VII SF 73)
7. The record in this adjudication does not contain any English translation of the G. A. Nixon Grant (A-31) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VII SF 65-66)
8. Claim area T-2600 is coterminous with the area authorized to be irrigated under Permit No. 228. (VII SF 74)
9. The most acreage within T-2600 irrigated with state water in any calendar year since the issuance of the permit is 340 acres irrigated in 1971. (VII SF 81, 92)
10. Since the issuance of the permit, state water has been diverted for irrigation purposes within T-2600 at authorized diversion point D-2600 on the Brazos River by means of a portable canal at a maximum rate of 6.68 cfs (3000 gpm) using a flood type distribution system. (VII SF 85, 93)
11. State water has been diverted from the Brazos River at D-2620 under §11.303 Claim No. 1628. (VII SF 92)
12. The maximum amount of state water diverted and used for irrigation purposes within T-2600 in any calendar year since the issuance of the permit was 770 acre-feet of water in 1963. (VII SF 96, 92)

CONCLUSIONS:

1. Claimant is not recognized any right under §11.303 Claim No. 1628 because (1) claim area T-2600 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant.
2. Claimant is recognized a right under Permit No. 228 to divert and use not to exceed 514 acre-feet of water per annum from diversion point D-2600 at a maximum rate of 5.0 cfs (2500 gpm) for the irrigation of 257 acres of land within tract T-2600 in Abstract No. 31, with a priority date of November 22, 1917.
3. The right recognized in Conclusion No. 2 is subject to the special conditions contained in Permit No. 228.
4. Claimant is not recognized any equitable right to impound, divert or use state water.

DIVERSION POINTS NOS: 2640, 2660
TRACT NO: 2640

OWNERSHIP: W. T. Barnhaus

IR: 240-249
APP: 14
XI SF 235-236

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2015, to divert and use 172 acre-feet of water per year from the Brazos River at a maximum diversion rate of 6.08 cfs (3000 gpm) for the irrigation of 156 acres of land with a priority date of 1963. (Exh. 583)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2105 which claims riparian and equitable rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 172 acre-feet of water was diverted at a maximum diversion rate of 3000 gpm, to irrigate 156 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1963. (Exh. 586)
2. An additional sworn statement to §11.303 Claim No. 2015 was timely filed which declared that the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be an unspecified amount of water from the Brazos River at an unspecified diversion rate for the irrigation of an unspecified amount of land. (Exh. 587)
3. Claimant is the owner of claim area T-2640 which is located in Abstracts Nos. 31 and 41, Robertson County. Abstracts Nos. 31 and 41 were granted prior to January 20, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 31 or 41. (VII SF 218, XI SF 235-236)
5. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 218; XI SF 235)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2015 because (1) claim area T-2640 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 2680
TRACT NO: 2680
OWNERSHIP: Merlin D. Jentsch and Mary Lou Jentsch, Buck E. Porter

IR: 250-251
APP: 14
XII SF 237-238

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of \$11,303 Claim No. 1413 which claims riparian rights to divert and use water from Big Brazos River for irrigation purposes, and declares that a maximum of 170 acre-feet of water was diverted at a maximum diversion rate of 1500 gpm, to irrigate 80 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1952. (Exh. 588)
2. An additional sworn statement to \$11,303 Claim No. 1413 was timely filed which declared that the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 170 acre-feet of water from Big Brazos River at a maximum diversion rate of 1500 gpm for the irrigation of 80 acres of land. (Exh. 589)
3. Claimants are the owners of claim area T-2680 which is located in Abstracts Nos. 31 and 41, Robertson County. Abstracts Nos. 31 and 41 were granted prior to January 20, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from Big Brazos River for irrigation purposes within Abstracts Nos. 31 and 41. (Exh. 4)
5. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1970, inclusive. (VII SF 219, XII SF 237-238)

CONCLUSION:

Claimants are not recognized any right under \$11,303 Claim No. 1413 because (1) claim area T-2680 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 2700
TRACT NO: 2700

OWNERSHIP: Freiherr Von Lueninck

IR: 252-253
APP: 14
XII SF 2-19

SECTION 11.307 CLAIM: Under \$11,303 Claim No. 10710 to divert and use an unspecified amount of water per year from the Brazos River at an unspecified maximum diversion rate for the irrigation of 547 acres of land. (Exh. 594)

FINDINGS:

1. Claimant is the owner of \$11,303 Claim No. 10710 which asserted equitable and riparian rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 250 acre-feet of water from the Brazos River at a maximum diversion rate of 4000 gpm for the irrigation of 230 acres of land. The date of first beneficial use of water within the claim area was declared to be 1955. (Exh. 595)
2. Claimant is the owner of claim area T-2700 which is located in Abstracts Nos. 27, 31 and 41, Robertson County. Abstract No. 27 was patented in 1833. Abstract No. 31 was patented in 1835. Abstract No. 41 was patented in 1833. T-2700 and Abstracts Nos. 27, 31 and 41 about the Brazos River. (XII SF 7-8)
3. The record in this adjudication does not contain any English translations of the Nixon Grant (A-11), Manchaca Grant (A-27), or Hilsa Grant (A-41) and there was no other evidence presented concerning the specific grants from the sovereign of a right to divert and use public water for irrigation purposes. (XII SF 2-19)

CONCLUSION:

Claimant is not recognized any right under \$11,303 Claim No. 10710 because (1) claim area T-2700 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 2720
TRACT NO: 2720

OWNERSHIP: John W. Migliazzo

IR: 254
APP: 16
VII SF 281-300

SECTION 11.307 CLAIM: Under \$11,303 Claim No. 1545, to divert and use 336 acre-feet of water per annum from the Brazos River at a maximum rate of 3000 gpm for the irrigation of 224 acres of land with a priority date of 1948. (Exh. 301)

FINDINGS:

1. Claimant is the owner of \$11,303 Claim No. 1545 which asserts equitable and riparian rights to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 1.3 acre-feet of water per acre from the Brazos River at a maximum rate of 4800 gpm for the irrigation of 224 acres of land. The date of first beneficial use of water within the claim area was declared to be 1948. (Exh. 302)
2. Claimant is the owner of claim area T-2720 which is located in Abstracts Nos. 27 and 31, Robertson County. Abstract No. 27 was granted in 1833. Abstract No. 31 was granted in 1835. T-2720 and Abstracts Nos. 27 and 31 about the Brazos River. (VII SF 285)
3. The record in this adjudication does not contain any English translations of the Manchaca Grant (A-27) or Nixon Grant (A-11) and there was no other evidence presented concerning the specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VII SF 293)

CONCLUSION:

Claimant is not recognized any right under \$11,303 Claim No. 1545 because (1) claim area T-2720 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 2740 and 2780
TRACTS NOS: 2740 and 2780

OWNERSHIP: Gloria Ely Holden and Jewell Ely Moore
IR: 256-257
APP: 12
VII SF 100-122

SECTION 11.307 CLAIM: Gloria Ely Holden Under \$11,303 Claim No. 3312, to divert and use 20 acre-feet of water per annum from the Brazos River at a maximum rate of 1.0 cfs for the irrigation of 55 acres of land, with a priority date of July 1956. (Exh. 260)

FINDINGS:

1. Claimants are the owners of \$11,303 Claim No. 3312 which asserts a riparian right to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 76 acre-feet of water from the Brazos River at a maximum rate of 1200 gpm for the irrigation of 55 acres of land. The date of first beneficial use of water within the claim area is declared to be 1966. (Exh. 261)
2. Claimants are the owners of tracts T-2740 and T-2780 which comprise the claim area and which are located in Abstracts Nos. 29, 29, 155 and 329, Milam County. All irrigation within T-2740 and T-2780 during the period 1963-1967, inclusive, was in Abstracts Nos. 155 and 329. Abstract No. 155 was patented in 1872. Abstract No. 329 was patented in 1849. T-2740, T-2780 and Abstracts Nos. 155 and 329 about the Brazos River. (VII SF 104, 105)
3. Claimant Gloria Ely Holden owns that portion of the claim area designated as T-2740. Claimant Jewell Ely Moore owns that portion of the claim area designated as T-2780.
4. The first diversion and use of state water for irrigation purposes within the claim area was in August 1956. (VII SF 112)
5. The most acreage within T-2740 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 76 acres, being Fields Nos. 1 and 2, in Abstracts Nos. 155 and 329, in 1966. (VII SF 113)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-2740 at diversion points D-2740 and D-2780 on the Brazos River by a portable pump at a maximum rate of 1.0 cfs (450 gpm) using a sprinkler type distribution system. (VII SF 112)
7. The maximum amount of state water diverted and used for irrigation purposes within T-2740 in any calendar year during the period 1963-1967, inclusive, was 76 acre-feet of water in 1966. (VII SF 119)
8. No evidence was presented of any use of state water within T-2780 during the period 1963-1967, inclusive.

CONCLUSION:

Claimant Gloria Ely Holden is recognized a right under \$11,303 Claim No. 3312 to divert and use not to exceed 76 acre-feet of water per annum from diversion points D-2740 and D-2780 on the Brazos River, at a maximum rate of 1.0 cfs (450 gpm) for the irrigation of 76 acres of land within tract T-2740 in Abstracts Nos. 155 and 329, Milam County, with a priority date of August 31, 1956.

DIVERSION POINTS NOS: 2760, 2800
TRACT NO: 2760

OWNERSHIP: Hans Josef Wentzel, Christel Wentzel, Wilfried Wentzel, Andrea Wentzel

IR: 258-259
APP: 16
XII SF 20-34

SECTION 11.307 CLAIM: Under \$11,303 Claim No. 6122 to divert and use an unspecified amount of water per year from the Brazos River at an unspecified diversion rate for the irrigation of 388 acres of land. (Exh. 599)

FINDINGS:

1. Claimants are the owners of \$11,303 Claim No. 6122 which asserted a riparian right to divert and use water for irrigation and livestock purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 700 acre-feet of water from the Brazos River at a maximum diversion rate of 400 gpm for the irrigation of 230 acres of land. The date of first beneficial use of water within the claim area was declared to be 1944. (Exh. 600)
2. Claimants are the owners of claim area T-2760 which is located in Abstracts Nos. 27 and 31, Robertson County. Abstract No. 27 was patented in 1833. Abstract No. 31 was patented in 1835. T-2760 and Abstracts Nos. 27 and 31 about the Brazos River. (XII SF 24-25)
3. The record in this adjudication does not contain any English translations of the Manchaca Grant (A-27) or Nixon Grant (A-11) and there was no other evidence presented concerning the specific grants from the sovereign of a right to divert and use public water for irrigation purposes. (XII SF 20-34)

CONCLUSION:

Claimants are not recognized any right under \$11,303 Claim No. 6122 because (1) claim area T-2760 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 2820, 2840
TRACTS NOS: 2820, 2840

OWNERSHIP: Estate of Sam Degelia, Deceased, and Mike M. Perrone

IR: 260-261
APP: 16
XII SF 209-210

SECTION 11.307 CLAIM: Under \$11,303 Claim No. 3121, to divert and use 1000 acre-feet of water per year from the Big Brazos River at a maximum diversion rate of 4.44 cfs (2000 gpm) for the irrigation of 400 acres of land with a priority date of 1962. (Exh. 561)

FINDINGS:

1. Claimants are the owners of \$11,303 Claim No. 3121 which claims riparian rights to divert and use water from Big Brazos River for irrigation purposes, and declares that a maximum of 1000 acre-feet of water was diverted at a maximum diversion rate of 2000 gpm, to irrigate 400 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1962. (Exh. 562)
2. Claimants are the owners of the claim area, which consists of tracts T-2820 and T-2840, located in Abstracts Nos. 27 and 31, Robertson County. Abstracts Nos. 27 and 31 were granted prior to January 20, 1840. (Exh. 4)

- No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Big Brazos River for irrigation purposes within Abstracts Nos. 27 and 31. (XI SF 209-210)
- Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 210, XI SF 209-210)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 3121 because (1) claim area consisting of T-2870 and T-2880 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: 2860
TRACT NO: 2860

OWNERSHIP: Frank Cotropia

IR: 262
APP: 16
VII SF 336-347

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2457, to divert and use 360 acre-feet of water per annum from the Brazos River at a maximum rate of 5900 gpm for the irrigation of 300 acres of land with a priority date of 1963. (Exh. 111)

FINDINGS:

- Claimant is the owner of §11.303 Claim No. 2457 which asserts prescriptive, equitable, riparian and all other rights to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 360 acre-feet of water from the Brazos River at a maximum rate of 5900 gpm for the irrigation of 300 acres of land. The date of first beneficial use of water within the claim area was declared to be 1958. (Exh. 111)
- Claimant is the owner of claim area T-2860 which is located in Abstracts Nos. 27 and 31, Robertson County. Abstract No. 27 was granted in 1833. Abstract No. 31 was granted in 1835. T-2860 and Abstracts Nos. 27 and 31 abut the Brazos River. (VII SF 339)
- The record in this adjudication does not contain any English translation of the Manchaca Grant (A-27) or Nixon Grant (A-31) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VII SF 336-347)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2457 because (1) claim area T-2860 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 2860
TRACT NO: 2900

OWNERSHIP: Lawrence Cotropia

IR: 266
APP: 16
XI SF 129

SECTION 11.307 CLAIM: None

FINDINGS:

- Claimant is the owner of §11.303 Claim No. 2540 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 325 acre-feet of water was diverted at a maximum diversion rate of 1500 gpm, to irrigate 130 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in June 1959. (Exh. 486)
- An additional sworn statement to §11.303 Claim No. 2540 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1963-1970, inclusive, to be 420 acre-feet of water from the Brazos River at a maximum diversion rate of 1000 gpm for the irrigation of 300 acres of land. (Exh. 487)
- Claimant is the owner of claim area T-2900 which is located in Abstracts Nos. 27 and 31, Robertson County. Abstracts Nos. 27 and 31 were granted prior to January 20, 1840. (Exh. 4)
- No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 27 and 31. (XI SF 129)
- Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 129)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2540 because (1) claim area T-2900 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within Abstracts Nos. 27 or 31, Robertson County, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 2880
TRACT NO: 2880

OWNERSHIP: Lemar Walker

IR: 264-265
APP: 12
VIII SF 468; XI SF 117-118

SECTION 11.307 CLAIM: None

FINDINGS:

- Claimant is the owner of §11.303 Claim No. 3105 which claims a riparian right to divert and use water from the Brazos River for irrigation purposes, and declares that no water was diverted in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1960. (Exh. 470)
- An additional sworn statement to §11.303 Claim No. 479 was timely filed which declared that no water was diverted in any calendar year during the period 1968-1970. (Exh. 479)

- Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1970, inclusive. (VIII SF 468; XI SF 117-118)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 3105 because he did not file any §11.307 claim or present any evidence concerning any water use during the period 1964-1967, inclusive.

DIVERSION POINTS NOS: 2920 and 2930
TRACT NO: 2920

OWNERSHIP: Gene W. Bonorden

IR: 260
APP: 12
VII SF 135-164

SECTION 11.307 CLAIM: Under §11.303 Claim No. 6225, to divert and use 30 acre-feet of water per annum from Three Mile Creek at a maximum rate of 300 gpm for the irrigation of 100 acres of land with a priority date of 1966. A 30-acre-foot capacity reservoir on Three Mile Creek was also claimed. (Exh. 268)

FINDINGS:

- Claimant is the owner of §11.303 Claim No. 6225 which asserts a riparian right to divert and use water for irrigation, industrial and fish-raising purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 30 acre-feet of water from Three Mile Creek at a maximum rate of 300 gpm for the irrigation of one acre of land. The date of first beneficial use of water within the claim area was declared to be June 1966. Two reservoirs on Three Mile Creek with a total capacity of 30 acre-feet were also claimed. (Exh. 269)
- Claimant is the owner of claim area T-2920 which is located in Abstract No. 250, Milam County. Abstract No. 250 was patented in 1850. T-2920 and Abstract No. 250 cross Three Mile Creek, tributary of the Brazos River. (VII SF 140-141)
- The first diversion and use of state water for irrigation purposes within T-2920 was in 1965. (VII SF 160)
- The most acreage within T-2920 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was nine acres. (VII SF 152, 150)
- Two dams were constructed in 1961 and are located at U-2930 and immediately upstream within T-2920 on Three Mile Creek. During the period 1963-1967, inclusive, a total of four acre-feet of water was impounded in the reservoirs and the water was used for irrigation purposes within T-2920. The diversion and use of state water within T-2920 during this period was facilitated by use of the impoundments. (VII SF 146)
- During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-2920 at diversion point U-2920 on the perimeter of the reservoir at U-2930 by a portable pump at a maximum rate of 0.67 cfs (300 gpm) using a sprinkler type distribution system. (VII SF 150, 151)
- The maximum amount of state water diverted and used for irrigation purposes within T-2920 in any calendar year during the period 1963-1967, inclusive, was four acre-feet of water in 1965. (VII SF 161)

CONCLUSIONS:

- The use of the two dams and reservoirs at U-2930 and immediately upstream within T-2920 on Three Mile Creek, and the capacity of the reservoirs were reasonable.
- Claimant is recognized a right under §11.303 Claim No. 6225 to maintain two existing dams and reservoirs at U-2930 and immediately upstream within T-2920 on Three Mile Creek, tributary of the Brazos River, and to impound therein not to exceed a total of four acre-feet of water.
- Claimant is recognized a right under §11.303 Claim No. 6225 to divert and use not to exceed four acre-feet of water per annum from diversion point U-2920 on the perimeter of the reservoir at U-2930 at a rate of 0.67 cfs (300 gpm) for the irrigation of nine acres of land within T-2920 in Abstract No. 250, Milam County, with a priority date of December 31, 1965.

DIVERSION POINTS NOS: 2960, 3000, 3080 and 3120
TRACTS NOS: 2960 and 3120

OWNERSHIP: Myron E. Ely and Brown Ely, Jr.

IR: 270
APP: 12
VII SF 123-135

SECTION 11.307 CLAIM: Under §11.303 Claim No. 3791, to divert and use 20 acre-feet of water per annum from the Brazos River at a maximum rate of 1.0 cfs for the irrigation of 50 acres of land with a priority date of 1958. (Exh. 264)

SECTION 11.307 CLAIM: Myron E. Ely; Under §11.303 Claim No. 3791, to divert and use 20 acre-feet of water per annum from the Brazos River at a maximum rate of 1.0 cfs for the irrigation of 50 acres of land with a priority date of 1958. (Exh. 263)

FINDINGS:

- Claimants are the owners of §11.303 Claim No. 3791 which asserts a riparian right to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be an unspecified amount of water from the Brazos River at an unspecified rate for the irrigation of an unspecified amount of land. The date of first beneficial use of water within the claim area is declared to be 1958. (Exh. 265)
- Claimants are the owners of tracts T-2960 and T-3120 which comprise the claim area and which are located in Abstracts Nos. 53, 122, 279 and 346, Milam County. (VII SF 127)
- There was no use of state water for irrigation purposes within the claim area during the period 1963-1967, inclusive. (VII SF 131)
- No evidence was presented of any other beneficial use of state water within the claim area during the period 1963-1967, inclusive.
- Abstract No. 53 was granted on October 29, 1833. (Exh. 4; VII SF 128)

CONCLUSION:

Claimants are recognized no right under §11.303 Claim No. 3791 because no state water was diverted or used within the claim area, tracts T-2960 or T-3120 during the period 1963-1967, inclusive.

DIVERSION POINT NO: 2980
TRACT NO: 2980

OWNERSHIP: Carl Cotcopla and A. M. Cotcopla

IR: 272
APP: 16
VII SF 319-335

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2502, to divert and use 100 acre-feet of water per annum from the Brazos River at a maximum rate of 2.22 cfs for the irrigation of 100 acres of land with a priority date of 1956. (Exh. 309)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 2602 which asserts prescriptive, equitable, riparian and all other rights to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 180 acre-feet of water from the Brazos River at a maximum rate of 2000 gpm for the irrigation of 90 acres of land. The date of first beneficial use of water within the claim area was declared to be 1956. (Exh. 310)
2. Claimants are the owners of claim area T-2380 which is located in Abstracts Nos. 27 and 31, Robertson County. Abstract No. 27 was granted in 1831. Abstract No. 31 was granted in 1835. T-2990 and Abstracts Nos. 27 and 31 about the Brazos River. (VII SF 322)
3. The record in this adjudication does not contain any English translation of the Manchaca Grant (A-27) or Nixon Grant (A-31) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VII SF 323)

CONCLUSION:

Claimants are recognized no right under §11.303 Claim No. 2602 because (1) claim area T-2380 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 3020, 3040
TRACT NO: 3020

OWNERSHIP: Peter L. Scamardo

IR: 274-275
APP: 16
VII SF 347; IX SF 378; XI SF 131

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2664 which claims riparian right, under Article 7500a and Irrigation Act of 1835, to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 700 acre-feet of water was diverted at a maximum diversion rate of 300 gpm, to irrigate 230 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1948. (Exh. 488)
2. Claimant is the owner of claim area T-3020 which is located in Abstracts Nos. 26 and 31, Robertson County. Abstracts Nos. 26 and 31 were granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 26 or 31. (XI SF 131)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 347; IX SF 378; XI SF 131)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2664 because (1) claim area T-3020 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 3060
TRACT NO: 3060

OWNERSHIP: Estate of W. C. Merka, Deceased

IR: 276-277
APP: 16
VIII SF 468; X SF 218; XI SF 242-243

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2294 which claims riparian, equitable, and prescriptive rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 50 acre-feet of water was diverted at a maximum diversion rate of 1000 gpm, to irrigate 50 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1963. (Exh. 593)
2. Claimant is the owner of claim area T-3060 which is located in conflicting Abstracts Nos. 26 and 31, Robertson County. Abstracts Nos. 26 and 31 were granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within either Abstract No. 26 or Abstract No. 31. (XI SF 242-243)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VIII SF 468; X SF 218; XI SF 242-243)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2294 because (1) claim area T-3060 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grants, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 3100
TRACT NO: 3100

OWNERSHIP: Helen Kubin Pope, Edward W. Kubin, and Frank S. Kubin, Jr.

IR: 278
APP: 16
VII SF 301-218

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2282, to divert and use 42 acre-feet of water per annum from the Brazos River at an unspecified rate for the irrigation of 75 acres of land with a priority date of 1963. (Exh. 305, 306)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 2282 which asserts prescriptive, equitable, riparian and all other rights to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 42 acre-feet of water from the Brazos River at a maximum diversion rate of 1000 gpm for the irrigation of 42 acres of land. The date of first beneficial use of water within the claim area was declared to be 1963. (Exh. 307)
2. Claimants are the owners of claim area T-3100 which is located in Abstracts Nos. 26 and 31, Robertson County. Abstract No. 26 was granted in 1834. Abstract No. 31 was granted in 1835. T-3100 and Abstracts Nos. 26 and 31 about the Brazos River. (VII SF 305)
3. The record in this adjudication does not contain any English translation of the Martinez Grant (A-35) or Nixon Grant (A-31) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VII SF 308)

CONCLUSION:

Claimants are recognized no right under §11.303 Claim No. 2282 because (1) claim area T-3100 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 3180, 3200, 3260
TRACT NO: 3180

OWNERSHIP: Estate of Joe Reistling, Deceased

IR: 282-283
APP: 16
X SF 79-88; CONTEST SF 65-77

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2283 to divert and use 1500 acre-feet of water per year from the Brazos River at a maximum total diversion rate of approximately 3500 gpm for the irrigation of 750 acres of land with a priority date of June 1, 1951. (Exh. 424)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2283 which asserted riparian, equitable, and prescriptive rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be approximately 100 acre-feet of water from the Brazos River at a maximum total diversion rate of approximately 3500 gpm for the irrigation of approximately 200 acres of land. The date of first beneficial use of water within the claim area was declared to be 1951. (Exh. 423)
2. Claimant is the owner of claim area T-3180 which is located in Abstract No. 31, Robertson County. Abstract No. 31 was patented in 1835. T-3180 and Abstract No. 31 about the Brazos River. (X SF 83)
3. The record in this adjudication does not contain any English translation of the Nixon Grant (A-31) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (X SF 79-84)

CONCLUSIONS:

1. Claimant is not recognized any right under §11.303 Claim No. 2283 because (1) claim area T-3180 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.
2. Claimant is not recognized any equitable right to impound, divert, or use state water.

DIVERSION POINTS NOS: 3220 and 3240
TRACT NO: 3220

OWNERSHIP: Henry J. Bonorden

IR: 284-295
APP: 12
VII SF 165-176

SECTION 11.307 CLAIM: Under §11.303 Claim No. 3096, to divert and use 50 acre-feet of water per annum from Coopers Hollow at a maximum rate of 0.5 cfs for the irrigation of 150 acres of land with a priority date of 1965. Two reservoirs with a total capacity of 50 acre-feet on Coopers Hollow were also claimed. (Exh. 271)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 3096 which asserts a riparian right to divert and use water for irrigation, fish raising, industrial and commercial purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 80 acre-feet of water from Six Mile Creek at a maximum rate of 300 gpm for the irrigation of 10 acres of land. The date of first beneficial use of water within the claim area was declared to be June, 1966. Two reservoirs on Coopers Hollow with a total capacity of 50 acre-feet were also claimed. (Exh. 272)
2. Claimant is the owner of claim area T-3220 which is located in Abstract No. 53, Nilam County. Abstract No. 53 was patented in 1833. T-3220 and Abstract No. 53 cross Coopers Hollow, tributary of Six Mile Creek, tributary of the Brazos River. (VII SF 163)
3. The record in this adjudication does not contain any English translation of the Rodriguez Grant (A-53) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VII SF 169)
4. The first diversion and use of state water for irrigation purposes within T-3220 was in July 1965. (VII SF 173, 174)
5. The most acreage within T-3220 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 15 acres, being Fields Nos. 1 and 2, in 1965. (VII SF 173)
6. Two dams were constructed in 1961 at D-3220 and D-3241 within T-3220 on Coopers Hollow. During the period 1963-1967, inclusive, a total of 75 acre-feet of water was impounded in the reservoirs and the water was used for irrigation purposes within T-3220. The diversion and use of state water within T-3220 during this period was facilitated by use of the impoundments. (VII SF 161, 164)
7. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-3220 at diversion point D-3240 on the perimeter of the reservoir at D-3230 by portable pump at a maximum rate of 0.67 cfs (300 gpm) using a sprinkler type distribution system. (VII SF 174)
8. The maximum amount of state water diverted and used for irrigation purposes within T-3220 in any calendar year during the period 1963-1967, inclusive, was 15 acre-feet of water in 1965. (VII SF 173-174)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 3096 because (1) claim area T-3220 is located on land granted prior to January 20, 1940, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 3280
TRACT NO: 3280

OWNERSHIP: Sam P. Scamardo

IR: 285
APP: 16
VII SF 205-218

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5186, to divert and use 390 acre-feet of water per annum from the Brazos River at a maximum rate of 8.91 cfs for the irrigation of an unspecified amount of land with a priority date of 1947. (Exh. 285)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 3196 which asserts a riparian right to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 115 acre-feet of water from the Brazos River at a maximum rate of 4000 gpm for the irrigation of 130 acres of land. The date of first beneficial use of water within the claim area is declared to have been January 2, 1947. (Exh. 287)
2. Claimant is the owner of claim area T-3230 which is located in Abstract No. 31, Robertson County, Abstract No. 31 was granted in 1835. T-3230 and Abstract No. 31 abut the Brazos River. (VII SF 311)
3. The land granted by the Nixon Grant (A-31) was classified as arable land and the grant does not contain any language concerning the use of water for irrigation purposes. (Exh. 289)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 3186 because (1) claim area T-3230 is located on land granted prior to January 20, 1940, which was granted without a specific grant to divert and use public water for irrigation purposes, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 3300, 3320, 3322, 3324, 3326, 3325
TRACTS NOS: 3300, 3320, 3340

OWNERSHIP: Estate of J. H. Collier, Deceased and Mrs. Frances C. Poyt

IR: 288-289
APP: 16
VIII SF 429-443

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2295 to divert and use 180 acre-feet of water per year from the Brazos River at a maximum diversion rate of 2500 gpm for the irrigation of 253 acres of land with a priority date of August 29, 1969. (Exh. 324)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 2295 which asserted prescriptive, equitable and riparian rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 180 acre-feet of water from the Brazos River at a maximum diversion rate of 2500 gpm for the irrigation of 253 acres of land. The date of first beneficial use of water within the claim area was declared to be 1958.
2. Claimants are the owners of the claim area which consists of tracts T-3300, T-3322, and T-3340 and is located in Abstract No. 31, Robertson County. No irrigation occurred within the claim area during the period 1963-1967, inclusive. The claim area is located in Abstract No. 31. Abstract No. 31 was patented in 1835. The claim area and Abstract No. 31 abut the Brazos River. (VIII SF 434-435)
3. The record in this adjudication does not contain any English translation of the Nixon Grant (A-31) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VIII SF 429-443)
4. Three dams were constructed in the late 1950's and are located at diversion point D-3324, D-3326, and D-3328 within T-3320 on the unnamed tributary of the Brazos River for domestic and livestock purposes and to control erosion. (VIII SF 435, 442)

CONCLUSIONS:

1. Claimants are not recognized any right under §11.303 Claim No. 2295 because (1) claim area T-3300, 3320, 3340 is located on land granted prior to January 20, 1940, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, (2) claimants did not establish a water right under any other theory, and (3) no evidence was presented of irrigation within the claim area during the period 1963-1967, inclusive.
2. Claimants may maintain three existing dams and reservoirs located at diversion points D-3324, D-3326, and D-3328 within T-3320 on the unnamed tributary of the Brazos River for domestic and livestock uses and erosion control.

DIVERSION POINTS NOS: 3350, 3355, 3360, 4660, 4680, 4700
TRACT NO: 3350

OWNERSHIP: L. P. Scamardo

IR: 290-291
APP: 16
VII SF 347; IX SF 378; XI SF 132-133

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2660 which claims a riparian right, under Article 7500a and Irrigation Act of 1895 to divert and use water from Little Brazos River, a tributary to the Brazos River for irrigation purposes, and declares that a maximum of 1700 acre-feet of water shall be diverted at a maximum diversion rate of 1000 gpm, to irrigate 777 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1934. (Exh. 483)

2. Claimant is the owner of claim area T-3350 which is located in Abstract No. 31, Robertson County, Abstract No. 31 was granted prior to January 20, 1940. (Exh. 4)

3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from Little Brazos River for irrigation purposes within Abstract No. 31. (IX SF 132-133)

4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 347; IX SF 378; XI SF 132-133)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2660 because (1) claim area T-3350 is located on land granted prior to January 20, 1940, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 3380, 3400, 3420, 3422
TRACT NO: 3380

OWNERSHIP: Onah B. Penn, Betty Ann Barwise and Onah Astin Barwise

IR: 292-293
APP: 16
VIII SF 485-520

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2940, to divert and use 250 acre-feet of water per year from the Brazos River at a maximum diversion rate of 11.14 cfs for the irrigation of 736 acres of land with a priority date of 1954. (Exh. 334)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 2940 which asserted equitable, prescriptive, riparian rights and any other water right recognized in law and equity to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 180 acre-feet of water from the Brazos River at a total maximum diversion rate of 2500 gpm for the irrigation of 736 acres of land. The date of first beneficial use of water within the claim area was declared to be 1954. (Exh. 335)
2. Claimants are the owners of claim area T-3380 which is located in Abstracts Nos. 31 and 334, Robertson County, Abstract No. 31 was patented in 1835. Abstract No. 334 was patented on February 7, 1842. T-3380 and Abstracts Nos. 31 and 334 abut the Brazos River. (VIII SF 489)
3. The record in this adjudication does not contain any English translation of the Nixon Grant (A-31) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VIII SF 485-520)
4. The first diversion and use of state water for irrigation purposes within T-3380 was in 1954. (VIII SF 505)
5. The most acreage within T-3380 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 611 acres, being Fields Nos. 1-5, in Abstracts Nos. 31 and 334. (VIII SF 498)
6. Field No. F-1 in Abstract No. 31 has a total of 66 acres of land. Field No. F-2 in Abstracts Nos. 31 and 334 has a total of 265 acres of land. The part of F-2 within Abstract No. 334 contains 61 acres. Field No. F-3 in Abstracts Nos. 31 and 334 has a total of 143 acres of land. That part of F-3 within Abstract No. 334 contains 94 acres. Field No. F-4 is in Abstract No. 31 and contains 70 acres. Field No. F-5 in Abstracts Nos. 31 and 334 has a total of 66 acres of land. That part of F-5 within Abstract No. 334 contains 43 acres. (Exh. 337; VIII SF 490, 497)
7. A sump was constructed in 1955 and is located at diversion point D-3422 located in the area where Abstracts Nos. 31 and 334 overlap. During the period 1963-1967, inclusive, 5 acre-feet of water was contained in the sump and the water was used for irrigation purposes within T-3380. The diversion and use of state water within T-3380 during this period was facilitated by use of the sump. (VIII SF 508, 511-512)
8. A dam was constructed in 1955 and is located at diversion point D-3420 on the unnamed tributary of the Brazos River. During the period 1963-1967, inclusive, 10 acre-feet of water was impounded in the reservoir and the water was used for irrigation purposes within T-3380. The diversion and use of state water within T-3380 during this period was facilitated by use of the impoundment. (VIII SF 506-509-510, 512)
9. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-3380 at diversion points D-3380 and D-3400 located on the Brazos River by two stationary pumps at a maximum combined diversion rate of 8.88 cfs (4000 gpm) using a row flood type distribution system. (VIII SF 489, 500, 503, 508)
10. The maximum amount of state water diverted and used for irrigation purposes within that portion of T-3380 located in Abstract No. 334 in any calendar year during the period 1963-1967, inclusive, was 297 acre-feet of water. (VIII SF 490, 503; Exh. 337)

CONCLUSIONS:

1. Claimants are recognized a right under §11.303 Claim No. 2940 to divert and use not to exceed 297 acre-feet of water per year from diversion points D-3380 and D-3400 located on the Brazos River at a maximum combined diversion rate of 8.88 cfs (4000 gpm) for the irrigation of 198 acres of land within tract T-3380 in Abstract No. 334, Robertson County, with a priority date of December 31, 1954.
2. Claimants are recognized a right under §11.303 Claim No. 2940 to maintain an existing dam and reservoir located at diversion point D-3420 on the unnamed tributary of the Brazos River and to impound therein not to exceed 10 acre-feet of water for irrigation, with a priority date of December 31, 1955.
3. Claimants are recognized a right under §11.303 Claim No. 2940 to maintain an existing diversion sump located at diversion point D-3422 located in Abstracts Nos. 31 and 334 and to contain therein not to exceed 5 acre-feet of water for irrigation, with a priority date of December 31, 1955.

DIVERSION POINT NO: 3440
TRACT NO: 3440

OWNERSHIP: Sam F. DeStofano

IR: 294-295
APP: 16
XI SF 30-62

SECTION 11.307 CLAIM: Under §11.303 Claim No. 5384 to divert and use 300 acre-feet of water per year from the Brazos River at a maximum diversion rate of 2400 gpm for the irrigation of 300 acres of land with an unspecified priority date. (Exh. 446)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 5384 which asserted riparian, prescriptive, and equitable rights to divert and use water for irrigation purposes and declared the maximum diversion rate to be 2400 gpm for the period 1963-1967, and was in any calendar year during the period 1963-1967, inclusive, to be 300 acre-feet of water from the Brazos River at a maximum diversion rate of 2400 gpm for the irrigation of 300 acres of land. The date of first beneficial use of water within the claim area was declared to be 1956. (Exh. 447)
2. Claimant is the owner of claim area T-3440 which is located in Abstracts Nos. 31 and 334, Robertson County, which are partially in conflict. Abstract No. 31 was patented in 1833. Abstract No. 334 was patented in 1842. T-3440 and Abstracts Nos. 31 and 334 abut the Brazos River. (XI SF 34, 35)
3. One hundred and ninety-two acres of T-3440 lie within the conflicting portion of Abstracts Nos. 31 and 334. (XI SF 42)
4. Eighty acres of T-3440 lie within Abstract No. 334 alone and are not severed from the Brazos River by intervening survey lines. (XI SF 42)
5. Fifty-six acres of T-3440 lie within Abstract No. 334 alone and are severed from the Brazos River by an intervening railroad right-of-way. (XI SF 42)
6. The record in this adjudication does not contain any English translation of the Hixon Grant (A-11) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (XI SF 10-42)
7. The first diversion and use of state water for irrigation purposes within T-3440 was in July, 1956. (XI SF 45)
8. The most acreage within the unsevered portion of T-3440 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 224 acres. (XI SF 51)
9. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-3440 at diversion point D-3440 located on the Brazos River by a portable pump at a maximum effective diversion rate of 3.33 cfs (2400 gpm) using a flood type distribution system. (XI SF 47, 49, 60)
10. The maximum amount of state water diverted and used for irrigation purposes within the unsevered portion of T-3440 in any calendar year during the period 1963-1967, inclusive, was 410 acre-feet of water. (XI SF 54)

CONCLUSION:

Claimant is recognized a right under §11.303 Claim No. 5384 to divert and use not to exceed 410 acre-feet of water per year from diversion point D-3440 located on the Brazos River, at a maximum diversion rate of 3.33 cfs (2400 gpm) for the irrigation of 224 acres of land within tract T-3440 in conflicting Abstracts Nos. 31 and 334, Robertson County, with a priority date of July 31, 1956.

DIVERSION POINTS NOS: 3460, 3725, 3730
TRACT NO: None

OWNERSHIP: Forbin Investments, N.V.

IR: 296
APP: 18
XII SF 74-84

SECTION 11.307 CLAIM: Under Permit No. 3861 to impound water in a 120 acre-foot capacity reservoir located on the Mooring Slough and to divert and use therefrom 700 acre-feet of water per year for irrigation purposes at an unspecified diversion rate with a priority date of March 9, 1981. (Exh. 612)

FINDINGS:

1. Claimant is the owner of Permit No. 3861 (Application No. 4104), a Section 11.121 type permit, which authorizes the maintenance of an existing dam and 120 acre-foot capacity reservoir located on Mooring Slough, tributary of the Brazos River. The permittee is further authorized to divert 700 acre-feet of water per annum from the Brazos River for the irrigation of 400 acres of land directly to the irrigated fields or to divert 700 acre-feet of water per annum into the permittee's reservoir from which 700 acre-feet may be diverted for irrigation purposes. Of the 700 acre-feet the permittee is authorized to divert from the reservoir, no more than 335 acre-feet may consist of reservoir inflows from the upstream drainage area. The combined total of water diverted to the land may not exceed 700 acre-feet. Maximum diversion rate from the Brazos River is 4.5 cfs. Maximum diversion rate from the perimeter of the reservoir is 4.5 cfs. The dam is located in the Bulz Survey (Abstract No. 48) and the tract to be irrigated is located in the Bulz Survey (Abstracts Nos. 18 and 48), Brazos County. (Exh. 613)
2. Special Conditions in Permit No. 3861 include the following: Permittee is authorized to divert water from the Brazos River only when the gauged flow of the Brazos River at the USGS gauge near Bryan equals or exceeds the following discharges exclusive of any releases by Brazos River Authority from their upstream reservoirs to satisfy their rights and contractual obligations downstream of the Bryan gauge:
 - a. During the months April through September, only when the adjusted gauged discharge exceeds 1065 cfs;
 - b. During other months, only when the adjusted gauged discharge exceeds 350 cfs. (Exh. 613)
3. Application No. 4104 for Permit No. 3861 was accepted for filing by the Commission on March 9, 1981, and the permit was issued on April 29, 1982. (Exh. 613)
4. Claimant maintains a 120 acre-foot capacity reservoir located at diversion point D-3730, which is the authorized location on the Mooring Slough, with the dam being located in Abstract No. 18, Brazos County. (XI SF 78)
5. No state water has been diverted from the Brazos River at authorized diversion point D-3725 on the perimeter of the reservoir since the issuance of Permit No. 3861. (XI SF 81)

CONCLUSIONS:

1. Claimant is recognized a right under Permit No. 3861 to maintain a dam and 120 acre-foot capacity reservoir located on Mooring Slough, tributary of the Brazos River, with a priority date of March 9, 1981.
2. Claimant may continue diligent development to a diversion and use of not to exceed 700 acre-feet of water per year for the irrigation of 400 acres of land within tract T-3460 at a maximum diversion rate of 4.5 cfs at diversion point D-3460 and 4.5 cfs at diversion point D-3725 with a priority date of March 9, 1981.
3. The rights recognized herein are subject to the Special Conditions contained in Permit No. 3861.

DIVERSION POINTS NOS: 3480 and 3500
TRACT NO: 3480

OWNERSHIP: H. M. Jina Estate; James P. Newberry (ownership unverified); Milton S. Newberry (ownership unverified); and James P. Newberry II (ownership unverified)

IR: 297
APP: 18
VIII SF 458; X SF 198; XI SF 204-205

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2257 to divert and use 300 acre-feet of water per year from the Brazos River at a maximum diversion rate of 1800 gpm for the irrigation of an unspecified number of acres of land with an unspecified priority date. (Exh. 556)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 2257 which claims riparian, equitable, and prescriptive rights to divert and use water from the Brazos River for irrigation purposes, and declare that a maximum of 360 acre-feet of water was diverted at a total maximum diversion rate of 1500 gpm, to irrigate 360 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water within the claim area is declared to be in 1958. (Exh. 557)
2. Claimants are the owners of claim area T-3480 which is located in conflicting Abstracts Nos. 18 and 48, Brazos County. Abstracts Nos. 18 and 48 were granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstracts Nos. 18 and 48. (XI SF 204-205)
4. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VIII SF 468; X SF 198; XI SF 204-205)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 2257 because (1) claim area T-3480 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 3520, 3540
TRACTS NOS: 3520, 3540

OWNERSHIP: Lyman S. Reed, Milton S. Bransford; Ronald D. Kay, (Ownership unverified)

IR: 298-9
APP: 18
VIII SF 351-372; X SF 199; XI SF 190

SECTION 11.307 CLAIM: Under §11.303 Claim No. 4494 to divert and use 60 acre-feet of water per year from the Brazos River at an unspecified diversion rate for the irrigation of 260 acres of land with a priority date of March 14, 1969 (Exh. 313)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 4494 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 40 acre-feet of water from the Brazos River at a maximum diversion rate of 1000 gpm for the irrigation of 82 acres of land. The date of first beneficial use of water within the claim area was declared to be 1952. (Exhs. 314 and 316)
 2. An additional sworn statement to §11.303 Claim No. 4494 was timely filed which declared the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be 40 acre-feet of water from the Brazos River at an unspecified diversion rate for the irrigation of 80 acres of land. (Exhs. 315 and 317)
 3. Claimants are the owners of the claim area which consists of tracts T-3520 and T-3540, and which is located in Abstracts Nos. 18 and 48, Brazos County. Abstract No. 48 was patented on August 31, 1833. Abstract No. 18 was patented on October 20, 1834. T-3520 and Abstracts Nos. 18 and 48 abut the Brazos River. (VIII SF 357-359; Exh. 5)
 4. Claimant Lyman S. Reed owns tract T-3520. Claimants Milton S. Bransford and Ronald D. Kay own tract T-3540. (VIII SF 363; Exh. 5)
 5. The land granted by the Ruiz Grant (A-48) was classified as arable land and pastureland and the grant does not contain any language concerning the use of water for irrigation purposes. (Exh. 318)
 6. The record in this adjudication does not contain any English translations of the De La Garza Grant (A-18) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VIII SF 361)
 7. The first diversion and use of state water for irrigation purposes within T-3520 was in 1952. (VIII SF 365)
 8. The most acreage within T-3520 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 84 acres, being Field No. 1, in Abstracts Nos. 18 and 48. (VIII SF 366)
 9. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-3500 at diversion points D-3520 and D-3540 located on the Brazos River by two portable pumps at a maximum combined diversion rate of 2.1 cfs (1000 gpm). (VIII SF 367)
 10. The maximum amount of state water diverted and used for irrigation purposes within T-3500 in any calendar year during the period 1963-1967, inclusive, was 40 acre-feet of water. (VIII SF 366)
- II. Claimants, Milton Bransford and Ronald Kay, did not appear at either the regularly scheduled evidentiary hearing or final docket evidentiary hearing and no evidence was presented concerning the diversion and use of state water during 1963-1967, inclusive. (VIII SF 351-372; X SF 199; XI SF 190)

CONCLUSION:

Claimants are not recognized any right under §11.303 Claim No. 4494 because (1) the claim area consisting of tracts T-3520 and T-3540 is located on land granted prior to January 20, 1840, which was granted without a specific grant to divert and use public water for irrigation purposes, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINTS NOS: 3560, 3560, 3660
TRACT NO: none

OWNERSHIP: Estate of W. R. Newton, N.D., Deceased
IR: 300
APP: 12
VIII SF 454-471

SECTION 11.307 CLAIM: Under Permit No. 3097 to impound water in a 333 acre-foot capacity reservoir located on the Ferguson Branch for recreation purposes with a priority date of February 24, 1975. (Exh. 329)

FINDINGS:

1. Claimant is the owner of Permit No. 3097 (Application No. 3399), a Section 5.141 type of permit, which authorizes:
 - a. the use of water impounded for recreational purposes with no right of diversion from the impoundment;
 - b. the maintenance of two existing dams and reservoirs on Ferguson Branch and an unnamed tributary of Foster Branch in Milam County, located in the D.B. Anderson Survey, Abstract No. 78, Milam County;
 - c. Newton Lake No. 1 on Ferguson Branch has a capacity of approximately 177 acre-feet of water and Newton Lake No. 2 on an unnamed tributary of Foster Branch has a capacity of approximately 156 acre-feet of water. (Exh. 330)
2. Application No. 3399 for Permit No. 3097 was accepted for filing by the Commission on February 24, 1975, and the permit was issued on April 30, 1975. (Exh. 330)
3. Claimant maintains a 156 acre-foot capacity reservoir located at diversion point D-3600 which is the authorized location on an unnamed tributary of Foster Branch, with the dam being located in Abstract No. 78, Milam County, for recreational purposes. (VIII SF 459, 460, 463)
4. Claimant maintains a 177 acre-foot capacity reservoir located at diversion point D-3560 which is the authorized location on Ferguson Branch, with the dam being located in Abstract No. 78, Milam County, for recreational purposes. (VIII SF 459, 460, 462)
5. Diversion point D-3590 is the location of a connecting channel between the two reservoirs located at diversion points D-3560 and D-3600.

CONCLUSION:

Claimant is recognized a right under Permit No. 3097 to use water impounded in two reservoirs, one with a capacity of 177 acre-feet of water located at D-3560 on the Ferguson Branch and the other with a capacity of 156 acre-feet of water located at D-3600 on an unnamed tributary of Foster Branch, with the dams being located in Abstract No. 78, Milam County, for recreational purposes, with a priority date of February 24, 1975.

DIVERSION POINT NO: 3620
TRACT NO: None

OWNERSHIP: Lake Woodrow, Inc.
IR: 301
APP: 17
VII SF 2-13

SECTION 11.307 CLAIM: Under Permit No. 2765, to impound water in a 166 acre-foot capacity reservoir located on an unnamed tributary of Sweet Gum Branch for recreation use only, with a priority date of June 26, 1972. (Exh. 247)

FINDINGS:

1. Claimant is the owner of Permit No. 2765, which authorizes the maintenance of a dam and 166-acre-foot capacity reservoir located on an unnamed tributary of Sweet Gum Branch, tributary of Cedar Creek, tributary of the Brazos River, and the impoundment therein of 166 acre-feet of water for recreation purposes without right of diversion. (Exh. 246)
2. Application No. 3048 for Permit No. 2765 was accepted for filing by the Texas Water Rights Commission on June 26, 1972, and the permit was issued on August 17, 1972. (Exh. 246)
3. Claimant maintains a 166 acre-foot capacity reservoir located at diversion point D-3620, which is the authorized location on an unnamed tributary of Sweet Gum Branch, with the dam being located in Abstract No. 8, Burleson County. (VII SF 7, 8, 11)
4. Claimant uses the impounded water for nonconsumptive recreation use. Claimant does not divert water from the reservoir. (VII SF 9)

CONCLUSION:

Claimant is recognized a right under Permit No. 2765 to impound water in a 166 acre-foot capacity reservoir at diversion point D-3620 on an unnamed tributary of Sweet Gum Branch, tributary of Cedar Creek, tributary of the Brazos River, with the dam being located in Abstract No. 8, Burleson County, with a priority date of June 26, 1972.

DIVERSION POINTS NOS: 3640, 4360, 4980, 5100, 5120
TRACTS NOS: 3640, 4960, 5100, 5120

OWNERSHIP: Lee J. Pazzino
IR: 302-303
APP: 18
VIII SF 521-568

SECTION 11.307 CLAIM: Under §11.303 Claim No. 2880, to divert and use 665 acre-feet of water per year from the Little Brazos and Big Brazos Rivers at a maximum combined diversion rate of 7000 gpm for the irrigation of 443 acres of land with a priority date of June 15, 1953. (Exh. 339)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2880 which asserts riparian, equitable, and prescriptive rights, and any other water rights recognized in law and equity to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 223 acre-feet of water from the Brazos and Little Brazos Rivers at a maximum combined diversion rate of 2300 gpm for the irrigation of 223 acres of land. The date of first beneficial use of water within the claim area was declared to be 1950. (Exh. 340)
2. Claimant is the owner of the claim area which consists of T-3640, T-4960, T-5100 and T-5120. (VIII SF 521)

1. T-3640 is located in Abstract No. 37, Brazos County, Abstract No. 37 was granted in 1824. T-3640 and Abstract No. 37 about the Brazos River. (VIII SF 525-526)

2. T-4960 is located in Abstract No. 48, Brazos County, Abstract No. 48 was granted in 1833. T-4960 and Abstract No. 48 cross the Little Brazos River. (VIII SF 535-536)

3. T-5100 and T-5120 are located in Abstract No. 12, Brazos County, Abstract No. 12 was granted in 1824. During the historical period 1963-1967, inclusive, T-5100 and T-5120 abutted the Brazos River and Abstract No. 12 crosses the Little Brazos River. Now, T-5100 abuts the Little Brazos River and Abstract No. 12 crosses the Little Brazos River and Abstract No. 12 crosses the Little Brazos River and Abstract No. 12 crosses the Little Brazos River. (VIII SF 549-552, 555; Exh. 5)

4. The land granted by the M. Mathis Grant (A-37) was classified as arable land and pastureland and the grant does not contain any language concerning the use of water for irrigation purposes. (Exh. 343B)

5. The land granted by the Ruiz Grant (A-48) was classified as arable and pastureland and the grant does not contain any language concerning the use of water for irrigation purposes. (Exh. 343A)

6. The land granted by the Curtis Grant (A-12) was classified as arable land and pastureland and the grant does not contain any language concerning the use of water for irrigation purposes. (Exh. 343C)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2880 because (1) the claim area, consisting of tracts T-3640, T-4960, T-5100, and T-5120, is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 3660
TRACTS NOS: 3560, 3680

OWNERSHIP: Mrs. John-Lula Pazzino
IR: 304-305
APP: 18
VIII SF 569

SECTION 11.307 CLAIM: Under §11.303 Claim No. 4230 to divert and use 223 acre-feet of water per year from the Big Brazos River at a maximum diversion rate of 2600 gpm for the irrigation of 115 acres of land with a priority date of June 1953. (Exh. 341)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 4230 which asserts riparian, equitable, and prescriptive rights, and any other water rights recognized in law and equity to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 160 acre-feet of water from the Big Brazos River at a maximum diversion rate of 1600 gpm for the irrigation of 115 acres of land. The date of first beneficial use of water within the claim area was declared to be 1955. (Exh. 342)

2. Claimant is the owner of tract T-3660 and leased tract T-3680 during the historical period. Those tracts are located in Abstract No. 37, Brazos County, Abstract No. 37 was granted in 1824. Tracts T-3660 and T-3680 and Abstract No. 37 about the Brazos River. (VIII SF 572-573; Exh. 5)

3. The land granted by the Mathis Grant (A-37, Brazos County) was classified as arable land and pastureland and the grant does not contain any language concerning the use of water for irrigation purposes. (Exh. 343B)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 4230 because (1) the claim area consisting of tracts T-3660 and T-3680 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign or a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 3700
TRACT NO: 3700

OWNERSHIP: University National Bank
IR: 306-307
APP: 18
VIII SF 468; X SF 218; XI SF 233-234

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2703 which claims riparian, equitable, and prescriptive rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 40 acre-feet of water was diverted at a maximum diversion rate of 1000 gpm, to irrigate 37 acres of land in any calendar year during the period 1963-1967, inclusive. The claim further declared that all irrigation was from well water. The first beneficial use of water in the claim area is declared to be in 1947.

2. Claimant is the owner of claim area T-3700 which is located in Abstract No. 37, Brazos County, Abstract No. 37 was granted prior to January 20, 1840. (Exh. 4)

3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 37. (XI SF 233-234)

4. Claimant failed to appear at its scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VIII SF 468; X SF 218; XI SF 233-234)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 2703 because (1) claim area T-3700 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 3720
TRACT NO: 3720
OWNERSHIP: Leon F. Cash
IR: 308-309
APP: 18
VIII SF 468; X SF 218; XI SF 234-235

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 6050 which claims a right under the Irrigation Act to divert and use water from the Brazos River for irrigation purposes, and declares that an unspecified amount of water was diverted at a maximum diversion rate of 2000 gpm, to irrigate 100 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1964.
2. Claimant is the owner of claim area T-3720 which is located in Abstract No. 37, Brazos County. Abstract No. 37 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 37, Brazos County. (XI SF 234-235)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VIII SF 468; X SF 218; XI SF 234-235)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 6050 because (1) claim area T-3720 is located in land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 3740, 3760, 3780, 5020, 5060, and 5089
TRACT NO: 3740

OWNERSHIP: H.U.S.A. Ltd. and Brazos Farm Ltd.

IR: 310-311
APP: 18
VIII SF 468; X SF 199; XI SF 197-198

SECTION 11.307 CLAIM: Under §11.303 Claim No. 1130, to divert and use 600 acre-feet of water per year from the Brazos River and the Little Brazos River at a maximum diversion rate of 20 cfs for the irrigation of an unspecified number of acres of land with a priority date of 1952. (Exh. 55)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 1130 which claims riparian, equitable, and prescriptive rights to divert and use water from the Brazos River and the Little Brazos River for irrigation purposes, and declares that a maximum of 430 acre-feet of water was diverted at a maximum diversion rate of 6000 gpm, to irrigate 430 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1952.
2. Claimants are the owners of claim area T-3740 which is located in Abstracts Nos. 12, 37, 70, and 183, Brazos County. Abstracts Nos. 12 and 37 were granted prior to January 20, 1840. Abstract No. 70 was patented in 1859. Abstract No. 183 was patented in 1872. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River or the Little Brazos River for irrigation purposes within Abstracts Nos. 12 and 37. (XI SF 197-198)
4. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VIII SF 496; X SF 199; XI SF 197-198)

CONCLUSION:

Claimants are recognized no right under §11.303 Claim No. 1130 because: (1) they did not present any evidence concerning any water use during the period 1963-1967, inclusive, and because a part of claim area T-3740 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grants, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT NO: NONE
TRACT NO: 3900

OWNERSHIP: Macy K. Brewer

IR: 312-313
APP: 18
XI SF 113

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 3166 which claims a riparian right to divert and use water from an unnamed creek, tributary to the Little Brazos River, tributary to the Brazos River, for irrigation purposes, and declares that a maximum of 20 acre-feet of water was diverted at an unspecified diversion rate to irrigate 40 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1965. (Exh. 474)
2. Claimant failed to appear at her scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 113)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 3166 because she did not file any §11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: 3980
TRACT NO: 3980

OWNERSHIP: Tony Lombardo, Frank Abate, and Pat Abate

IR: 316-317
APP: 9
IX SF 301-316; CONTEST SF 53-59

SECTION 11.307 CLAIM: Under §11.303 Claim No. 6028 to divert and use 175 acre-feet of water per year from the Little Brazos River at a maximum diversion rate of 2.2 cfs for the irrigation of 10 acres of land with a priority date of 1966. (Exh. 396)

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 6028 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 187.5 acre-feet of water from the Little Brazos River at a maximum diversion rate of 800 gpm for the irrigation of 75 acres of land. The date of first beneficial use of water within the claim area was declared to be 1966. (Exh. 397)
2. Claimants are the owners of claim area T-3980 which is located in Abstract No. 61, Robertson County. Abstract No. 61 was granted in 1935. T-3980 and Abstract No. 61 cross the Little Brazos River, tributary of the Brazos River. (IX SF 306)
3. The record in this adjudication does not contain any English translation of the Robertson Grant (A-61) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (IX SF 301-316)

CONCLUSIONS:

1. Claimants are not recognized any right under §11.303 Claim No. 6028 because (1) claim area T-3980 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.
2. Claimants are not recognized any equitable right to impound, divert or use state water.

DIVERSION POINTS NOS: 4020, 4060, 4080 and 4100
TRACT NO: 4020

OWNERSHIP: Joe Ingram and wife, Jane Ingram

IR: 318
APP: 16
VII SF 64; X SF 198; XI SF 199

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 5705 which claims a riparian right and rights under the Irrigation Acts of 1889 or 1895 and under Article 7500e, Revised Civil Statutes, to divert and use water from Bee Branch, tributary of Walnut Creek, tributary of the Little Brazos River, tributary of the Brazos River, for irrigation purposes, and declares that a maximum of 40 acre-feet of water was diverted at a maximum diversion rate of 40,000 gpm, to irrigate 288.10 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be 1925. (Exh. 550)
2. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 64; X SF 198; XI SF 199)

CONCLUSION:

Claimants are recognized no right under §11.303 Claim No. 5705 because they did not file any §11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: None
TRACT NO: 4040

OWNERSHIP: Charlie P. Briggs, III

IR: 319
APP: 13
VIII SF 347; XI SF 241

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 10458 which claims riparian rights to divert and use water from Little Brazos River, a tributary to the Brazos River, for irrigation purposes, and declares that an unspecified amount of water was diverted at an unspecified rate to irrigate 350 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1954. (Exh. 592)
2. Claimant is the owner of claim area T-4040 which is located in Abstracts Nos. 2, 3 and 34, Robertson County. Abstracts Nos. 2, 3 and 34 were granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from Little Brazos River for irrigation purposes within Abstracts Nos. 2, 3, or 34. (XI SF 241)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VIII SF 347; XI SF 241)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 10458 because (1) claim area T-4040 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 4118, 4119 and 4120
TRACT NO: 4120

OWNERSHIP: Floyd Kempinski

IR: 320-321
APP: 16
VII SF 14-44

SECTION 11.307 CLAIM: Under §11.307 Claim No. 9653, to divert and use 10 acre-feet of water per annum from Bee Branch and an unnamed tributary at a maximum rate of 100 gpm for the irrigation of 24 acres of land with a priority date of 1961. Two ten acre-foot capacity reservoirs on the unnamed tributary were also claimed. (Exh. 248)

FINDINGS:

1. Claimant is the owner of §11.307 Claim No. 9653 which asserts a riparian right to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be an unspecified amount of water from Bee Branch at an unspecified rate for the irrigation of 20 acres of land. The date of first beneficial use of water within the claim area is declared to be 1967. Two reservoirs on an unnamed tributary of Bee Branch with a capacity of ten acre-feet each are also claimed. (Exh. 249)
2. An unrecorded additional sworn statement to §11.307 Claim No. 9653 was timely received which declares the maximum diversion and use of water in any calendar year during the period 1968-1970, inclusive, to be ten acre-feet of water from Bee Branch at an unspecified rate for the irrigation of five acres of land. (Exh. 250)
3. Claimant is the owner of claim area T-4120 which is located in Abstracts Nos. 229 and 261, Robertson County. All irrigation within T-4120 during the period 1961-1970, inclusive, was in Abstract No. 229. Abstract No. 229 was patented on June 27, 1945. Abstract No. 261 was patented on May 24, 1946. T-4120 and Abstract No. 229 cross an unnamed tributary of Bee Branch, tributary of the Brazos River. (VII SF 14-19)
4. The first diversion and use of state water for irrigation purposes within T-4120 was in 1963. (VII SF 27)
5. The most acreage within T-4120 irrigated with state water in any calendar year during the period 1963-1970, inclusive, was 10 acres, within fields Nos. 1 and 2, in Abstract No. 229, in 1964. (VII SF 28, 29)
6. Two dams on an unnamed tributary of Bee Branch were constructed prior to 1935 and are located at D-4118 and D-4119 within T-4120. During the period 1943-1967, inclusive, 10 acre-feet of water was impounded in each reservoir and the water was used for irrigation purposes within T-4120. The diversion and use of state water within T-4120 during this period was facilitated by use of the impoundments. (VII SF 36)
7. During the period 1943-1970, inclusive, state water was diverted for irrigation purposes within T-4120. D-4118, D-4119 and D-4120 located on the perimeters of the two reservoirs and on Bee Branch, respectively, by portable pumps at a maximum combined rate of 0.28 cfs (125 gpm) using a sprinkler type distribution system. (VII SF 24, 25, 37)
8. The maximum amount of state water diverted and used for irrigation purposes within T-4120 in any calendar year during the period 1963-1970, inclusive, was four acre-feet of water in 1964. (VII SF 26, 30, 31)

CONCLUSIONS:

1. The use of the dams and reservoirs located at D-4118 and D-4119, within T-4120 on the unnamed tributary of Bee Branch, as well as the capacities of the reservoirs are reasonable.
2. Claimant is recognized a right under §11.307 Claim No. 9653 to maintain two existing dams and reservoirs located at D-4118 and D-4119 within T-4120 on an unnamed tributary of Bee Branch, tributary of the Brazos River, and to impound in each reservoir not to exceed 10 acre-feet of water.
3. Claimant is recognized a right under §11.307 Claim No. 9653 to divert and use not to exceed four acre-feet of water per annum from D-4118 and D-4119 on the perimeters of the reservoirs on the unnamed tributary of Bee Branch and from diversion point D-4120 on Bee Branch, tributary of the Brazos River, at a maximum combined rate of 0.28 cfs (125 gpm) for the irrigation of 10 acres of land within tract T-4120 in Abstract No. 229, Robertson County, with a priority date of December 31, 1961.

DIVERSION POINT NO: 4140
TRACT NO: 4140

OWNERSHIP: Billy R. Hall

IR: 322
APP: 13
IV SF 167

SECTION 11.307 CLAIM: Under §11.307 Claim No. 5706, to divert and use 40 acre-feet of water per annum from an unnamed tributary of Walnut Creek, at a maximum rate of 40 gpm, for the irrigation of 20 acres of land, with a priority date of June 1960. A 25 acre-foot capacity reservoir on an unnamed tributary of Walnut Creek is also claimed. (Exh. 147)

FINDINGS:

1. Claimant is the owner of §11.307 Claim No. 5706 which asserts Article 7500a, Irrigation Act 1889 and 1895, and riparian rights to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be seven acre-feet of water from Walnut Creek, at a maximum rate of 0.09 cfs for the irrigation of 24 acres of land. The first beneficial use of water within the claim area was declared to have been in 1966. A reservoir on Walnut Creek with a capacity of seven acre-feet is also claimed. (Exh. 148)
2. Claimant is the owner of claim area T-4140 which is located in Abstract No. 84, Robertson County. Abstract No. 84 was patented in 1834. T-4140 and Abstract No. 84 cross an unnamed tributary of Walnut Creek, tributary of the Little Brazos River, tributary of the Brazos River. (IV SF 171)
3. The record in this adjudication does not contain any English translation of the Purdy Grant (A-34) and there was no other evidence presented concerning a specific grant from the sovereign purposes. (IV SF 167)
4. A dam was constructed in 1973 and is located at diversion point D-4140 within T-4140 on the unnamed tributary of Walnut Creek. (IV SF 171, 178)
5. Claimant presented no evidence concerning any use of water during the period 1963-1967, inclusive. (IV SF 167-187)

CONCLUSION:

Claimant is recognized no right under §11.307 Claim No. 5706 because (1) claim area T-4140 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 4340
TRACT NO: None

OWNERSHIP: Calvert Country Club, Inc.

IR: 323
APP: 14
VII SF 64; IX SF 374; XI SF 112

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of Permit No. 3460 which authorizes the maintenance of an existing dam and reservoir located on an unnamed tributary of Peters Slough, tributary of the Little Brazos River, tributary of the Brazos River, and the impoundment therein of 30 acre-feet of water for recreational purposes. The dam is located in the Grafton Survey, Abstract No. 155, Robertson County. (Exh. 473)
2. Application No. 3721 for Permit No. 3460 was filed with the Texas Water Rights Commission on January 17, 1977, and the permit was issued in 1977. (Exh. 473)
3. Claimant did not appear at either the regularly scheduled evidentiary hearing or the final docket evidentiary hearing and no evidence was presented concerning the diversion and use of state water since the issuance of Permit No. 3460. (VII SF 374; XI SF 112)

CONCLUSION:

Claimant is not recognized any right under Permit No. 3460 because no evidence was presented of any use of state water pursuant to Permit No. 3460 since its issuance and no §11.307 claim pertinent to Permit No. 3460 was filed in the adjudication of claims in this river segment.

DIVERSION POINTS NOS: 4380, 4440 and 4420
TRACT NO: 4380

OWNERSHIP: Venice Corpco

IR: 323-325
APP: 14
VII SF 454; X SF 198; XI SF 195

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.307 Claim No. 3245 which claims a riparian right to divert and use water from the Little Brazos River, tributary to the Georgia River, for irrigation purposes, and declares that a maximum of 30 acre-feet of water was diverted at a maximum diversion rate of 400 gpm, to irrigate 120 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1952. (Exh. 549)
2. Claimant is the owner of claim area T-4380 which is located in Abstracts Nos. 44, 134, 191, and 311, Robertson County. Abstracts Nos. 134 and 311 were patented in 1856. Abstract No. 191 was patented in 1846. Abstract No. 44 was granted prior to January 20, 1840. (Exh. 5)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Little Brazos River for irrigation purposes within Abstract No. 44. (XI SF 198)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 454; X SF 198; XI SF 196)

CONCLUSION:

Claimant is not recognized any right under §11.307 Claim No. 3245 because (1) part of claim area T-4380 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, (2) claimant did not establish a water right under any other theory, and (3) claimant did not file any §11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: 4440
TRACT NO: 4440

OWNERSHIP: B. W. Clements

IR: 326-327
APP: 15
IX SF 350-364

SECTION 11.307 CLAIM: Under §11.307 Claim No. 1923 to divert and use 64 acre-feet of water per year from the Gum Branch at a maximum diversion rate of 100 gpm for the irrigation of 45 acres of land with a priority date of November 6, 1964. (Exh. 404)

FINDINGS:

1. Claimant is the owner of §11.307 Claim No. 1923 which asserted a riparian right to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 64 acre-feet of water from Gum Branch, a tributary to the Little Brazos River, a tributary of the Brazos River, at a maximum diversion rate of 450 gpm for the irrigation of 30 acres of land. The date of first beneficial use of water within the claim area was declared to be 1963. (Exh. 403)
2. Claimant is the owner of claim area T-4440 which is located in Abstract No. 83, Robertson County. Abstract No. 83 was patented in 1849. T-4440 and Abstract No. 83 cross Touchstone Branch, tributary of Mud Creek, tributary of the Little Brazos River, tributary of the Brazos River. (IX SF 354-356)
3. Touchstone Branch is also known as Gum Branch. (IX SF 357)
4. The first diversion and use of state water for irrigation purposes within T-4440 was in August, 1963. (IX SF 357, 363)
5. The most acreage within T-4440 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 74 acres, in Abstract No. 83 in 1964. (IX SF 359-360)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-4440 at diversion point D-4440 located on the Touchstone Branch by a stationary pump at a maximum effective diversion rate of 0.89 cfs (400 gpm) using a sprinkler type distribution system. (Exh. 404; IX SF 354, 358, 362)
7. The maximum amount of state water diverted and used for irrigation purposes within T-4440 in any calendar year during the period 1963-1967, inclusive, was 74 acre-feet of water in 1965. (IX SF 361-362)

CONCLUSION:

Claimant is recognized a right under §11.307 Claim No. 1923 to divert and use not to exceed 74 acre-feet of water per year from diversion point D-4440 located on the Touchstone Branch, tributary of Mud Creek, tributary of the Little Brazos River, tributary of the Brazos River, at a maximum diversion rate of 0.89 cfs (400 gpm) for the irrigation of 74 acres of land within tract T-4440 in Abstract No. 83, Robertson County, with a priority date of August 11, 1963.

DIVERSION POINTS NOS: 4460, 4480, 4500 and 4520
TRACT NO: 4460
OWNERSHIP: George C. Gassen
IR: 328-9
APP: 15
VII SF 258-285
SECTION 11.307 CLAIM: Under §11.303 Claim No. 2396, to divert and use 20 acre-feet of water per annum from Three Mile Creek at a maximum rate of 750 gpm for the irrigation of 20 acres of land, with a priority date of 1946. Three reservoirs with a total capacity of 48 acre-feet on Three Mile Creek were also claimed. (Exh. 295)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 2396 which asserts "Section 4" and riparian rights to divert and use water for irrigation purposes and declares the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 20 acre-feet of water from Three Mile Creek at an unspecified rate for the irrigation of 20 acres of land. The date of first beneficial use of water within the claim area is declared to be 1946. Reservoirs on Three Mile Creek with a total capacity of 48 acre-feet were also claimed. (Exh. 296)
2. Claimant is the owner of claim area T-4460 which is located in Abstract No. 357, Robertson County. Abstract No. 357 was patented in 1841. T-4460 and Abstract No. 357 cross Three Mile Creek, tributary of Mud Creek, tributary of the Brazos River. (VII SF 262; Exh. 296)
3. The first diversion and use of state water for irrigation purposes within T-4460 was in 1958. (VII SF 266)
4. The most acreage within T-4460 irrigated with state water in any calendar year during the period 1963-1967, inclusive, was 20 acres. (VII SF 278)
5. Three dams were constructed in 1958, 1959 and 1963, respectively, and are located at D-4460, D-4500 and D-4520 within T-4460 on Three Mile Creek. During the period 1963-1967, inclusive, a total of 48 acre-feet of water was impounded in the reservoirs and the water was used for irrigation purposes within T-4460. The diversion and use of state water within T-4460 during this period was facilitated by use of the impoundments. (VII SF 270-271)
6. During the period 1963-1967, inclusive, state water was diverted for irrigation purposes within T-4460 at diversion point D-4480 located on the perimeter of the reservoir at D-4500 by a portable pump at a maximum rate of 1.67 cfs (750 gpm) using a sprinkler type distribution system. (Exh. 296, VII SF 278)
7. The maximum amount of state water diverted and used for irrigation purposes within T-4460 in any calendar year during the period 1963-1967, inclusive, was 20 acre-feet of water. (Exh. 296, VII SF 278)

CONCLUSIONS:

1. The use of the dams and reservoirs located at D-4460, D-4500 and D-4520 on Three Mile Creek, and the total capacity of the reservoirs, is reasonable.
2. Claimant is recognized a right under §11.303 Claim No. 2396 to maintain three existing dams and reservoirs at D-4460, D-4500 and D-4520 on Three Mile Creek, tributary of Mud Creek, tributary of the Little Brazos River, tributary of the Brazos River, and to impound therein not to exceed a total of 48 acre-feet of water.
3. Claimant is recognized a right under §11.303 Claim No. 2396 to divert and use not to exceed 20 acre-feet per annum at diversion point D-4480 on the perimeter of the reservoir at D-4500 at a maximum rate of 1.67 cfs (750 gpm) for the irrigation of 20 acres of land within tract T-4460 in Abstract No. 357, Robertson County, with a priority date of December 31, 1958.

DIVERSION POINT NO: 4540
TRACT NO: 4540
OWNERSHIP: Joe F. Gibson, R. F. Wheelless (Ownership Unverified)
IR: 330-311
APP: 15
XI SF 200-201
SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimants are the owners of §11.303 Claim No. 4723 which claims riparian rights to divert and use water from Touchstone and Mud Creeks, tributaries to Little Brazos River, a tributary to the Brazos River, for irrigation and mining (oil and gas) purposes, and declares that a maximum unspecified amount of water was diverted at an unspecified maximum diversion rate, to irrigate an unspecified area of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1960. (Exh. 553)
2. Claimants are the owners of claim area T-4540 which is located in Abstracts Nos. 143, 184, 185, 217, and 357, Robertson County. Abstract No. 143 was patented in 1846. Abstract No. 184 was patented in 1851. Abstract No. 185 was patented in 1851. Abstract No. 217 was patented in 1851. Abstract No. 357 was patented in 1841. (Exh. 4)
3. Claimants failed to appear at their scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 200-201)

CONCLUSION:

Claimants are recognized no right under §11.303 Claim No. 4723 because they did not file any §11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: None
TRACT NO: 4569

OWNERSHIP: Estate of C. S. Anchicks, Deceased
IR: 332
APP: 14
VII SF 347; XI SF 116

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 1562 which claims riparian rights to divert and use water from Mud Creek for irrigation purposes, and declares that no water was diverted during the period 1963-1967, inclusive. (Exh. 477)
2. Claimant is the owner of claim area T-4560 which is located in Abstract No. 299, Robertson County. Abstract No. 299 was patented on October 23, 1846. (Exh. 4)
3. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 347, XI SF 116)

CONCLUSION:

Claimant is recognized no right under §11.303 Claim No. 1562 because he did not file any §11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: 4590
TRACT NO: 4580
OWNERSHIP: Gifford-Hill and Company, Inc.
IR: 333-334
APP: 16
VII SF 347; IX SF 378; XI SF 134

SECTION 11.307 CLAIM: Under §11.303 Claim No. 855 to divert and use 150 acre-feet of water per year from the Little Brazos River at a maximum diversion rate of 2.00 cfs (900 gpm) for the irrigation of 130 acres of land with a priority date of 1952. (Exh. 490)

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 855 which claims riparian rights to divert and use water from the Little Brazos River for irrigation purposes, and declares that a maximum of 150 acre-feet of water was diverted at a maximum diversion rate of 900 gpm, to irrigate 135 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in May, 1952. (Exh. 491)
2. Claimant is the owner of claim area T-4580 which is located in Abstracts Nos. 27 and 41, Robertson County. Abstracts Nos. 41 and 27 were granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Little Brazos River for irrigation purposes within Abstracts Nos. 27 or 41. (XI SF 134)
4. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 347; IX SF 378; XI SF 134)

CONCLUSIONS:

Claimant is not recognized any right under §11.303 Claim No. 855 because (1) claim area T-4580 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINTS NOS: 4690 and 4620
TRACT NO: 4600

OWNERSHIP: Estate of E. Y. Ely, Deceased
IR: 335-336
APP: 16
VIII SF 468; X SF 200; XI SF 206-207

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 1372 which claims a riparian right to divert and use water from the Little Brazos River, tributary to the Big Brazos River, for irrigation purposes, and declares that a maximum of 600 acre-feet of water was diverted at a maximum diversion rate of 900 gpm, to irrigate 246 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1952. (Exh. 558)
2. An additional sworn statement to §11.303 Claim No. 1372 was timely filed which declared that no water was diverted in any calendar year during the period 1968-1970, inclusive. (Exh. 559)
3. Claimant is the owner of claim area T-4600 which is located in the Manchaca Grant, Abstract No. 27; the Nixon Grant, Abstract No. 31; and, the J. F. McGrew Grant, Abstract No. 23, all in Robertson County, Texas. Each of these surveys was granted prior to January 20, 1840. (Exh. 4)
4. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Little Brazos River for irrigation purposes within Abstracts Nos. 23, 27, or 31, Robertson County. (XI SF 206-207)
5. Claimant failed to appear at its scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VIII SF 468; X SF 200; XI SF 206-207)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 1372 because (1) claim area T-4600 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grants, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 4640
TRACT NO: 3140

OWNERSHIP: Gathan Reistano
IR: 280
APP: 16
X SF 77-78

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of §11.303 Claim No. 7247 which claims riparian, equitable and prescriptive rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of approximately 300 acre-feet of water was diverted at a maximum diversion rate of 5150 gpm, to irrigate approximately 266 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1958. (Exh. 617)
2. Claimant is the owner of claim area T-3140 which is located in Abstract No. 31, Robertson County. Abstract No. 31 was granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water from the Brazos River for irrigation purposes within Abstract No. 31. (X SF 77-78)
4. Claimant did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (X SF 77-78)

CONCLUSION:

Claimant is not recognized any right under §11.303 Claim No. 7247 because (1) claim area T-3140 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 4640
TRACTS NOS: 3160 and 4640

OWNERSHIP: Estate of Joe Felstino, Deceased

IR: 281, 337-338
APP: 16
X SF 77-78

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of \$11.303 Claim No. 7245 which claims riparian, equitable, and prescriptive rights to divert and use water from the Little Brazos River, tributary to the Brazos River, for irrigation purposes, and declared that a maximum of 120 acre-feet of water was diverted at a maximum diversion rate of 2190 gpm for irrigation of 100 acres of land in any calendar year during the period 1963-1967, inclusive. The date of the first beneficial use of water in the claim area was not specified. (Exh. 615)
2. Claimant is the owner of \$11.303 Claim No. 7246 which claims riparian, equitable, and prescriptive rights to divert and use water from the Brazos River for irrigation purposes, and declares that a maximum of 240 acre-feet of water was diverted at a maximum diversion rate of 4350 gpm, to irrigate 200 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1956. (Exh. 616)
3. Claimant's representative appeared and surrendered all rights under \$11.303 Claims Nos. 7245 and 7246. (X SF 77-78)
4. Claimant did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (X SF 77-78)

CONCLUSION:

Claimant is recognized no right under \$11.303 Claims Nos. 7245, 7246, and 7247 because he did not present any evidence concerning any water use during the period 1963-1967, inclusive, and because his representative surrendered all rights under \$11.303 Claims Nos. 7245, 7246 and 7247.

DIVERSION POINT: 4720
TRACT NO: 4720

OWNERSHIP: Sam P. DeStefano

IR: 339-340
APP: 16
XI SF 63-65

SECTION 11.307 CLAIM: Under \$11.303 Claim No. 4140 to divert and use 125 acre-feet of water per year from the Little Brazos River at a maximum diversion rate of 1500 gpm for the irrigation of 125 acres of land with an unspecified priority date. (Exh. 458)

FINDINGS:

1. Claimant is the owner of \$11.303 Claim No. 4140 which asserted a riparian right to divert and use water for irrigation and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 240 acre-feet of water from the Little Brazos River at a maximum diversion rate of 5190 gpm for the irrigation of 200 acres of land. The date of first beneficial use of water within the claim area was declared to be 1951. (Exh. 451)
2. Claimant is the owner of claim area T-4720 which is located in Abstract No. 31, Robertson County. Abstract No. 31 was patented in 1835. T-4720 and Abstract No. 31 cross the Little Brazos River, tributary of the Brazos River. (XI SF 67)
3. The land granted by the Nixon Grant (A-31) was classified as arable land and pastureland and the grant does not contain any language concerning the use as water for irrigation purposes. (Exh. 452)

CONCLUSION:

Claimant is not recognized any right under \$11.303 Claim No. 4140 because (1) claim area T-4720 is located on land granted prior to January 20, 1840, which was granted without a specific grant to divert and use public water for irrigation purposes, and (2) claimant did not establish a water right under any other theory.

DIVERSION POINT NO: 4740
TRACT NO: None

OWNERSHIP: Robert H. Benbow, M. D.

IR: 341
APP: 15
XI SF 191-192

SECTION 11.307 CLAIM: Under Permit No. 3500 to impound water in a 166 acre-foot capacity reservoir located on an unnamed tributary of Dunn Creek for recreational purposes, with a priority date of June 27, 1977. (Exh. 547)

FINDINGS:

1. Claimant is the owner of Permit No. 3500 (Application No. 3786), a Section 11.421 type permit, which authorizes maintenance of a dam and a 166 acre-foot capacity reservoir located on an unnamed tributary of Dunn Creek, tributary of Spring Creek, tributary of the Little Brazos River, tributary of the Brazos River, and the impoundment of not to exceed 166 acre-feet of water per year for recreational purposes, with no right of diversion from the impoundment, located in the Stephen Gafford Survey, Abstract No. 16, Robertson County. (Exh. 548)
2. Application No. 3786 for Permit No. 3500 was accepted for filing by the Commission on June 27, 1977, and the permit was issued on September 28, 1977. (Exh. 548)
3. Claimant maintains a 166 acre-foot capacity reservoir located at diversion point D-4740, which is the authorized location on an unnamed tributary to Dunn Creek, with the dam being located in Abstract No. 16, Robertson County, and used only for recreation. (Exh. 4)

CONCLUSION:

Claimant is recognized a right under Permit No. 3500 to impound water in a 166 acre-foot capacity reservoir located at diversion point D-4740 on an unnamed tributary of Dunn Creek, tributary to Spring Creek, tributary to the Little Brazos River, tributary to the Brazos River, with the dam being located in Abstract No. 16, Robertson County and to use the impounded waters for recreational purposes only, with a priority date of June 27, 1977.

DIVERSION POINT NO: NONE
TRACT NO: 4760

OWNERSHIP: Mrs. Frances C. Foyt

IR: 342
APP: 16
VIII SF 448-453

SECTION 11.307 CLAIM: Under \$11.303 Claim No. 5803 to divert and use 380 acre-feet of water per year from the Big Brazos and Little Brazos Rivers at a maximum diversion rate of 7000 gpm for the irrigation of 140 acres of land with a priority date of August 27, 1959. (Exh. 151)

FINDINGS:

1. Claimant is the owner of \$11.303 Claim No. 5803 which asserted prescriptive, equitable, and riparian rights to divert and use water for irrigation purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 200 acre-feet of water from the Brazos River at a maximum diversion rate of 3500 gpm for the irrigation of 150 acres of land. The date of first beneficial use of water within the claim area was declared to be 1953. (Exh. 127)
2. Claimant is the owner of claim area T-4760 which is located in Abstract No. 31, Robertson County. No irrigation occurred within T-4760 during the period 1961-1967, inclusive. T-4760 is located in Abstract No. 31. Abstract No. 31 was patented in 1835. T-4760 abuts and Abstract No. 31 crosses Little Brazos River. (VIII SF 448-449)
3. The record in this adjudication does not contain any English translation of the Nixon Grant (A-31) and there was no other evidence presented concerning a specific grant from the sovereign of a right to divert and use public water for irrigation purposes. (VIII SF 448-453)
4. The first diversion and use of state water for irrigation purposes within T-4760 was in 1958. (VIII SF 449)

CONCLUSION:

Claimant is not recognized any right under \$11.303 Claim No. 5803 because (1) claim area T-4760 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, (2) claimant did not establish a water right under any other theory, and (3) no evidence was presented of irrigation within the claim area during the period 1963-1967, inclusive.

DIVERSION POINTS NOS: 4780, 4850, 4820, 4940, 4860, 4880, 4900
TRACTS NOS: 4780, 4840

OWNERSHIP: Estate of Frank B. Seale, Deceased, and R. H. Seale, II (ownership unspecified)

IR: 343-344
APP: 15
VIII SF 472-484, X SF 217; XI SF 150

SECTION 11.307 CLAIM: Under \$11.303 Claim No. 5198 to divert and use 2000 acre-feet of water per year from Camp Creek at a maximum diversion rate of 1500 gpm for the irrigation of 2000 acres of land with a priority date of 1952. (Exh. 332)

FINDINGS:

1. Claimants are the owners of \$11.303 Claim No. 5198 which asserted equitable, prescriptive and riparian rights to divert and use water for irrigation, mining and industrial purposes and declared the maximum diversion and use in any calendar year during the period 1963-1967, inclusive, to be 2000 acre-feet of water from the Little Brazos River and Campbell Creek in the Brazos River Basin at a maximum diversion rate of 1200 gpm for the irrigation of 2000 acres of land. The date of first beneficial use of water within the claim area was declared to be 1924. (Exh. 333)
2. Claimants are the owners of claim areas T-4780 and T-4840 which are located in Abstracts Nos. 6, 55, 167 and 148, Robertson County. All irrigation within T-4780 and T-4840 during the period 1963-1967, inclusive, was in Abstracts Nos. 6 and 55. Abstract No. 6 was patented in 1835. Abstract No. 55 was patented in 1834. T-4780 and Abstract No. 6 cross both Campbells Creek and Dry Hollow. T-4840 and Abstract No. 55 cross both Campbells Creek and an unnamed tributary of Campbells Creek. (VIII SF 477-479, 483)
3. Claimants did not appear at the final docket evidentiary hearing and no evidence was presented concerning the diversion and use of state water during the period 1963-1967, inclusive. (VIII SF 472-484; X SF 217, XI SF 156)

CONCLUSION:

Claimants are not recognized any right under \$11.303 Claim No. 5198 because no evidence was presented of any use of state water during the period 1963-1967, inclusive.

DIVERSION POINTS NOS: 4920, 4940
TRACT NO: 4920

OWNERSHIP: Estate of Frank B. Seale, Deceased, and Walter Pyhr

IR: 345
APP: 18
XI SF 187

SECTION 11.307 CLAIM: Under \$11.303 Claim No. 5198, to divert and use 2000 acre-feet of water per year from Campbells Creek at a maximum diversion rate of 2,333 cfs (1500 gpm) for the irrigation of 2000 acres of land with a priority date of 1952. (Exh. 332)

FINDINGS:

1. Claimants are the owners of \$11.303 Claim No. 5198 which claims riparian, equitable, and prescriptive rights to divert and use water from the Little Brazos River and Campbells Creek in the Brazos River Basin for mining, industrial and irrigation purposes, and declares that a maximum of 2000 acre-feet of water was diverted at a maximum diversion rate of 1200 gpm, to irrigate 2000 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1952. (Exh. 333)
2. Claimants are the owners of claim area T-4920 which is located in Abstracts Nos. 18 and 48, Brazos County. Abstracts Nos. 18 and 48 were granted prior to January 20, 1840. (Exh. 4)
3. No evidence was presented of an express grant from the sovereign of a right to divert and use public water for irrigation purposes of Little Brazos River within Abstracts Nos. 18 and 48. (XI SF 187)
4. Claimants failed to appear at its scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (XI SF 187)

CONCLUSION:

Claimants are not recognized any right under \$11.303 Claim No. 5198 because (1) claim area T-4920 is located on land granted prior to January 20, 1840, and there was no evidence presented of a specific grant from the sovereign of a right to divert and use public water for irrigation purposes within the grant, and (2) claimants did not establish a water right under any other theory.

DIVERSION POINT No. 5000
TRACT No: 5000

OWNERSHIP: Johnnie Haberta, Jr.

IR: J46-347
APP: 18
VII SF 468; X SF 198; XI SF 211-212

SECTION 11.307 CLAIM: Claimant's \$11.307 claim requested that his \$11.303 be cancelled. (Exh. 363)

FINDINGS:

1. Claimant is the owner of \$11.303 Claim No. 2255 which claims riparian, equitable, and prescriptive rights to divert and use water from the Little Brazos River, tributary to the Brazos River, for irrigation purposes, and declares that a maximum of 36 acre-feet of water was diverted at a maximum diversion rate of 900 gpm, to irrigate 55 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1951. (Exh. 364)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VII SF 468; X SF 198; XI SF 211-212)

CONCLUSION:

Claimant is recognized no right under 11.303 Claim No. 2255 because he did not present any evidence concerning any water use during the period 1963-1967, inclusive.

DIVERSION POINT NO: None
TRACT No: 5040

OWNERSHIP: Mike Fazzino

IR: J48
APP: 18
VIII SF 468; X SF 198; XI SF 202

SECTION 11.307 CLAIM: None

FINDINGS:

1. Claimant is the owner of \$11.303 Claim No. 1846 which claims riparian, equitable, and prescriptive rights to divert and use water from the Little Brazos River, tributary to the Brazos River, for irrigation purposes, and declares that a maximum of 145 acre-feet of water was diverted at a maximum diversion rate of 1200 gpm, to irrigate 115 acres of land in any calendar year during the period 1963-1967, inclusive. The first beneficial use of water in the claim area is declared to be in 1951. (Exh. 354)
2. Claimant failed to appear at his scheduled hearings and did not present any evidence concerning any use of water during the period 1963-1967, inclusive. (VIII SF 468; X SF 198; XI SF 202)

CONCLUSION:

Claimant is recognized no right under 11.303 Claim No. 1846 because he did not file any \$11.307 claim or present any evidence concerning any water use during the period 1963-1967, inclusive.

The Chief Clerk of the Commission is directed to forward a copy of the final determination and notice thereof by first-class mail to each person on the official mailing list of the Brazos III Segment, and is directed to forward a copy of the notice of the final determination to each claimant of water rights within the Brazos River Basin. Applications for rehearing and replies thereto may be filed with the Commission as provided in the notice of the final determination. The date, time and place for Commission action on any application for rehearing will be set out in the notice of final determination.

Signed this 27th day of March, 1985.



TEXAS WATER COMMISSION

Paul Hopkins
Paul Hopkins, Chairman

Lee B. M. Biggart
Lee B. M. Biggart, Commissioner

Ralph Roming
Ralph Roming, Commissioner

ATTEST:

Mary Ann Hefner
Mary Ann Hefner, Chief Clerk
Texas Water Commission

ADDENDUM

THE FOLLOWING LIST SUMMARIZES ALL NEWLY ISSUED PERMITS AND AMENDMENTS IN THE BRAZOS III SEGMENT OF THE BRAZOS RIVER BASIN

OWNERSHIP: The Northern Trust Company as Trustee for Trust No. 2-45255

Permit No. 3936 was issued by the Commission on January 27, 1983. Application No. 4235 for the permit was accepted for filing on August 30, 1982.

Permit No. 3936 authorizes the permittee to divert and use not to exceed 2600 acre-feet of water per annum from the Brazos River to irrigate 2350 acres of land out of 2498.12 acres in Abstract No. 16, McLennan County.

Special conditions in the permit are as follows:

- a. Permittee is authorized to divert water from the Brazos River only when the gauged flow of the Brazos River at the USGS Gaging Station No. 08095600 near Maco equals or exceeds the following discharges, exclusive of any releases by Brazos River Authority from their upstream reservoirs to satisfy their rights and contractual obligations downstream of the Maco gauge. The Executive Director may establish a procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Thereafter, permittee shall abide by such procedure. Permittee shall contact the Department prior to the diversion of water each irrigation season to be advised of this procedure.
 1. During the months April through August, only when the adjusted gauged discharge equals or exceeds 610 cfs.
 2. During other months, only when the adjusted gauged discharge equals or exceeds 110 cfs.
- b. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 332 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 332 is recognized.

OWNERSHIP: Robert L. Macha, Felix H. Macha and Edward V. Macha

Permit No. 4013 was issued by the Commission on September 9, 1983. Application No. 4276 for the permit was accepted for filing on November 29, 1982.

Permit No. 4013 authorizes the permittee to divert and use not to exceed 1200 acre-feet of water per annum from the Brazos River at a maximum rate of 11.1 cfs (5000 gpm) to irrigate 600 acres of land within several tracts totalling 132.2 acres in Abstracts Nos. 12, 33 and 67, Falls County, Texas.

Special conditions in the permit are as follows:

- a. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank, Texas equals or exceeds 650 cfs (291,200 gpm) during the months April through August, or during the remaining months when the flow of the Brazos River at the Highbank Gage equals or exceeds 150 cfs (67,200 gpm). This flow rate shall be exclusive of any releases dedicated by the Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director shall establish a procedure for advising a permittee when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Thereafter, permittee shall abide by such procedure. Permittee shall contact the Executive Director prior to diversion of water each irrigation season to be advised of this procedure.
- b. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 2389 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 2389 is recognized.

OWNERSHIP: Mary D. Walsh

Permit No. 4014 was issued by the Commission on September 9, 1983. Application No. 4270 for the permit was accepted for filing on September 22, 1982.

Permit No. 4014 authorizes the permittee to divert and use not to exceed 1851 acre-feet of water per annum from the Brazos River at a maximum rate of 6.7 cfs (3000 gpm) to irrigate one tract totalling 1352 acres of land in Abstracts Nos. 45, 6 and 33, Falls County, Texas.

Special conditions in the permit are as follows:

- a. Permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank, Texas equals or exceeds 655 cfs during the months April through August, or, during the remaining months when the flow of the Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director shall establish a procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Thereafter, permittee shall abide by such procedure. Permittee shall contact the Executive Director prior to diversion of water each irrigation season to be advised of this procedure.
- b. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 336 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent to which Claim No. 336 is recognized.

OWNERSHIP: Lathan Springs Baptist Encampment, Inc.

Permit No. 4020 was issued by the Commission on September 9, 1983. Application No. 4311 for the permit was accepted for filing on January 24, 1983.

Permit No. 4020 authorizes the permittee to divert and use not to exceed 25 acre-feet of water per annum directly from the Brazos River at a maximum rate of 1.3 cfs (600 gpm) to irrigate 50 acres of land in Abstract No. 1, Hill County.

Special conditions in the permit are as follows:

- a. In lieu of Special Condition 1a) of Permit No. 4020, permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08095500 near Maco equals or exceeds 610 cfs during the months April through August and 110 cfs during other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittee shall contact the Department prior to diversion of water each irrigation season to be advised of the procedure established by the Executive Director for determining when the flow of said river is sufficient for permittee's diversion.
- b. This permit shall expire and become null and void on December 31, 1992, unless one year prior to such date permittee applies for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be January 24, 1983.

OWNERSHIP: Sam F. DeStefano

Permit No. 4022 was issued by the Commission on September 9, 1983. Application No. 4319 for the permit was accepted for filing on February 7, 1983.

Permit No. 4022 authorizes the permittee to divert and use not to exceed 700 acre-feet of water per annum from the Brazos River at a maximum rate of 14.0 cfs (7200 gpm) to irrigate 472 acres of land out of 552.73771 acres in Abstract No. 334, Robertson County.

Special conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 5384 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 5384 is recognized.
- b. Permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 637 cfs (285,885 gpm) during the months of April through August and 140 cfs (63,000 gpm) during other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director shall establish a procedure for advising permittee when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Thereafter, permittee shall abide by such procedure. Permittee shall contact the Executive Director prior to diversion of water each irrigation season to be advised of this procedure.

OWNERSHIP: Don Wehnacht and Wife, Ellen Wehnacht, and Charles Wehnacht and Wife, Mary Ann Wehnacht

Permit No. 4023 was issued by the Commission on September 9, 1983. Application No. 4320 for the permit was accepted for filing on February 7, 1983.

Permit No. 4023 authorizes the permittees to divert and use not to exceed 600 acre-feet of water per annum from the Brazos River at a maximum rate of 6.7 cfs (3000 gpm) to irrigate 300 acres of land out of 1249 acres in Abstract No. 49, Robertson County.

Special conditions in the permit are as follows:

- a. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 637 cfs (285,905 gpm) during the months of April through August and 140 cfs (63,336 gpm) during the remaining months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director shall establish procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Thereafter, permittees shall abide by such procedure. Permittees shall contact the Executive Director prior to diversion of water each irrigation season to be advised of this procedure.
- b. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 5014 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 5014 is recognized.

OWNERSHIP: T. W. Whaley, Sr., Mabel H. Whaley, and T. W. Whaley, Jr.

Permit No. 4042 was issued by the Commission on November 9, 1983. Application No. 4321 for the permit was accepted for filing on February 7, 1984.

Permit No. 4042 authorizes the permittees to divert and use not to exceed 700 acre-feet of water per annum from the Brazos River at a maximum rate of 8.9 cfs (4000 gpm) to irrigate 800 acres of land out of 2405.6 acres in Abstract Nos. 91 and 71, Falls County.

Special conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claims Nos. 191 and 117 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claims Nos. 191 and 117 are recognized.
- b. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 650 cfs (291,984 gpm) during the months April through August, and 151 cfs (67,773 gpm) during other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director shall establish a procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Thereafter, permittees shall abide by such procedure. Permittees shall contact the Executive Director prior to diversion of water each irrigation season to be advised of this procedure.

OWNERSHIP: W. C. Roper, Jr. and Wife, Suzanne R. Roper

Permit No. 4063 was issued by the Commission on January 10, 1984. Application No. 4384 for the permit was accepted for filing on July 11, 1983.

Permit No. 4063 authorizes the permittees to maintain an existing dam in Abstract No. 53, Falls County, and a reservoir on an unnamed tributary of the Brazos River and to impound therein not to exceed 30 acre-feet of water.

Permit No. 4063 also authorizes the permittees to divert not to exceed 370 acre-feet of water per annum from the Brazos River at a maximum rate of 2.0 cfs (900 gpm) directly to the fields or to the above-mentioned reservoir for subsequent irrigation of 136 acres of land out of 273.24 acres in the Mary Prior League, Falls County.

A special condition in the permit is as follows:

Permittees are authorized to divert water hereunder only when the remaining flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 643 cfs (288,500 gpm) during the months April through August, and 144 cfs (64,790 gpm) during other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director shall establish a procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Thereafter, permittees shall abide by such procedure. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.

OWNERSHIP: Bert Wheeler's, Inc.

Permit No. 4075 was issued by the Commission on February 27, 1984. Application No. 4393 for the permit was accepted for filing on September 6, 1983.

Permit No. 4075 authorizes the permittee to divert and use not to exceed 512 acre-feet of water per annum from the Brazos River at a maximum rate of 6.7 cfs (3000 gpm) to irrigate 256 acres of land out of a 274.88 acre tract in Abstract No. 2, Robertson County.

Special conditions in the permit are as follows:

- a. Failure to commence and complete construction of the diversion facilities within the period stated in Time Limitations shall cause this permit to expire and become of no further force and effect unless permittee applies for an extension herein and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be September 6, 1983.
- b. Permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank, Texas equals or exceeds 650 cfs during the months April through August and 140 cfs during other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittee shall abide by procedures established by the Executive Director for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion.
- c. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 5720 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 5720 is recognized.
- d. This permit shall expire and become null and void on December 11, 1984, unless one year prior to such date permittee applies for an extension herein and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be September 6, 1983.

OWNERSHIP: Estate of Joe Reistino, Deceased

Permit No. 4079 was issued by the Commission on February 27, 1984. Application No. 4399 for the permit was accepted for filing on September 19, 1983.

Permit No. 4079 authorizes the permittee to divert and use not to exceed 1500 acre-feet of water per annum from the Brazos River at a maximum rate of 8.9 cfs (4000 gpm) to irrigate 750 acres of land out of 1420 acres in Abstract No. 166, Robertson County.

Special conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 5321 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 5321 is recognized.
- b. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 670 cfs during the months April through August and 145 cfs during other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director has established a procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall abide by such procedure. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.

OWNERSHIP: Estate of Joe Reistino, Deceased

Permit No. 4080 was issued by the Commission on February 27, 1984. Application No. 4398 for the permit was accepted for filing on September 19, 1983.

Permit No. 4080 authorizes the permittee to divert and use not to exceed 1500 acre-feet of water per annum from the Brazos River at a maximum rate of 20.1 cfs (9000 gpm) to irrigate 750 acres of land out of 939.96 acres in Abstract No. 31, Robertson County.

Special conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 2283 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 2283 is recognized.
- b. Permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 670 cfs during the months April through August and 145 cfs during other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director has established a procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. The permittee shall abide by such procedure. Permittee shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.

OWNERSHIP: John R. and Mary T. Woodall

Permit No. 4078 was issued by the Commission on February 27, 1984. Application No. 4401 for the permit was accepted for filing on September 26, 1983.

Permit No. 4078 authorizes the permittees to divert and use not to exceed 625 acre-feet of water per annum from the Brazos River at a maximum rate of 19.5 cfs (8900 gpm) to irrigate 500 acres of land out of a 1742.15 acre tract in Abstracts Nos. 2, 34 and 51, Robertson County.

Special conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 5052 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 5052 is recognized.
- b. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 670 cfs (301,500 gpm) during the months April through August and 145 cfs (65,790 gpm) during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director has established a procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure and shall abide by the same.

OWNERSHIP: Ellen Wiese Brien and Laura Emily Wiese Moore

Permit No. 4077 was issued by the Commission on February 27, 1984. Application No. 4409 for the permit was accepted for filing on October 11, 1983.

Permit No. 4077 authorizes the permittees to divert and use not to exceed 400 acre-feet of water per annum from the Brazos River at a maximum rate of 6.7 cfs (3000 gpm) to irrigate 400 acres of land out of 688 acres in Abstracts Nos. 311 and 134, Robertson County.

Special conditions in the permit are as follows:

- a. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 670 cfs during the months April through August and 145 cfs during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director has established a procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure and shall abide by such procedure.
- b. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 5030 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 5030 is recognized.

OWNERSHIP: James H. Jones and Wife, Marie Jones

Permit No. 4074 was issued by the Commission on February 27, 1984. Application No. 4410 for the permit was accepted for filing on November 7, 1983.

Permit No. 4076 authorizes the permittees to divert and use not to exceed 250 acre-feet of water per annum from the Brazos River at a maximum rate of 7.8 cfs (3500 gpm) to irrigate 150 acres of land out of three tracts of land totalling 920.17 acres in Abstracts Nos. 19 and 68, Milam County.

Special conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 5682 by the final judgement of this Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 5682 is recognized.
- b. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 670 cfs during the months April through August and 145 cfs during other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director has established a procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Therefore, permittees shall abide by such procedure. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.

OWNERSHIP: W. T. Helbert and Wife, Berna Helbert

Permit No. 4081 was issued by the Commission on February 28, 1984. Application No. 4396 for the permit was accepted for filing on September 12, 1983.

Permit No. 4081 authorizes the permittees to divert and use not to exceed 525 acre-feet of water per annum from the Brazos River at a maximum rate of 3.25 cfs (1508 gpm) to irrigate 700 acres of land out of 1153.05 acres in Abstract No. 1, Falls County.

Special Conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 178 by the final judgement of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 178 is recognized.
- b. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 680 cfs during the months April through August and 155 cfs during other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director has established a procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall abide by such procedure. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.
- c. This permit shall expire and become null and void on December 31, 1994, unless one year prior to such date permittee applies for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be September 12, 1983.

OWNERSHIP: Wesley Robinson and Wife, Lola Robinson

Permit No. 4089 was issued by the Commission on April 4, 1984. Application No. 4417 for the permit was accepted for filing on December 19, 1983.

Permit No. 4089 authorizes the permittees to divert and use not to exceed 200 acre-feet of water per annum from the Brazos River at a maximum rate of 2.2 cfs (1000 gpm) to irrigate 200 acres of land out of 1645.94 Acres in Abstracts Nos. 81 and 21, Falls County.

Special conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 117 by the final judgement of this Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 117 is recognized.
- b. This permit shall expire and become null and void on December 31, 1994, unless one year prior to such date permittees apply for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be December 19, 1983.

- c. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 705 cfs (316,426) during the months April through August and 160 cfs (71,811 gpm) during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittees shall abide by procedures established by the Executive Director for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.

OWNERSHIP: Wesley Robinson and Wife, Lola Robinson

Permit No. 4090 was issued by the Commission on April 4, 1984. Application No. 4418 for the permit was accepted for filing on December 19, 1983.

Permit No. 4090 authorizes the permittees to divert and use not to exceed 150 acre-feet of water per annum from the Brazos River at a maximum rate of 2.2 cfs (1000 gpm) to irrigate 150 acres of land out of a 250 acre tract in Abstract No. 43, McLennan County.

Special conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 2469 by the final judgement of this Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 2469 is recognized.
- b. This permit shall expire and become null and void on December 31, 1994, unless one year prior to such date permittees apply for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be December 19, 1983.
- c. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 743 cfs (334,379) during the months April through August and 165 cfs (74,057 gpm) during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittees shall abide by procedures established by the Executive Director for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.

OWNERSHIP: Anderson Development Corporation

Permit No. 4108 was issued by the Commission on May 2, 1984. Application No. 4431 for the permit was accepted for filing on January 31, 1984.

Permit No. 4108 authorizes the permittee to divert and use not to exceed 700 acre-feet of water per annum from the Brazos River at a maximum rate of 8.9 cfs (4000 gpm) to irrigate 800 acres of land out of 1967.692 acres in Abstract No. 45, Falls County.

Special conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 118 by the final judgement of this Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 118 is recognized.
- b. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08098290 near Highbank equals or exceeds 690 cfs during the months April through August and 145 cfs during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittees shall abide by procedures established by the Executive Director for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.
- c. This permit shall expire and become null and void on December 31, 1994, unless one year prior to such date permittees apply for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be January 31, 1984.

OWNERSHIP: Latham Springs Baptist Encampment, Inc.

Permit No. 4020A was issued by the Commission on October 31, 1983. Application No. 4311A for the permit was filed on October 31, 1983.

Permit No. 4020 authorizes the permittees to divert and use not to exceed 25 acre-feet of water per annum directly from the Brazos River to irrigate 50 acres of land out of 193 acres in Hill County, Texas; and

Whereas, Special Condition (a) of Permit No. 4020 provides that "permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 0809180 near Aquilla equals or exceeds 375 cfs during April through September and 45 cfs during other months, exclusive of any releases dedicated by Brazos River Authority from its upstream conservation storage for subsequent use downstream. The Executive Director shall establish a procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases is available for diversion. Thereafter, permittee shall abide by such procedure. Permittee shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure;

Special Conditions in the permit are as follows:

In lieu of Special Condition (a) of Permit No. 4020, permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08096500 near Waco equals or exceeds 610 cfs during the months April through August and 110 cfs during other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittee shall contact the Department prior to diversion of water each irrigation season to be advised of the procedure established by the Executive Director for determining when the flow of said river is sufficient for permittee's diversion.

OWNERSHIP: Farouche Investments, N.V.

Permit No. 4120 was issued by the Commission on June 4, 1984. Application No. 4421 for the permit was accepted for filing on January 3, 1984.

Permit No. 4120 authorizes the permittee to divert and use not to exceed 400 acre-feet of water per annum from the Brazos River at a maximum rate of 8.9 cfs (4000 gpm) to irrigate 400 acres of land out of 562 acres in Abstract Nos. 7 and 35, Falls County.

Special conditions in the permit are as follows:

- Permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08092930 near Highbank equals or exceeds 685 cfs (307,455 gpm) during the months April through August and 145 cfs (65,042 gpm) during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittee shall abide by procedures established by the Executive Director for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittee shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.
- This permit shall expire and become null and void on December 31, 1994, unless prior to such date permittees apply for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be January 3, 1984.

OWNERSHIP: The Ennis Company

Permit No. 4126 was issued by the Commission on July 16, 1984. Application No. 4439 for the permit was accepted for filing on March 6, 1984.

Permit No. 4126 authorizes the permittee to impound in an existing off-channel reservoir in Abstract No. 32, McLennan County, not to exceed two acre-feet of water to be diverted from the Brazos River.

Permit No. 4126 also authorizes the permittee to divert and use not to exceed 744 acre-feet of water per annum directly from the Brazos River to the land out to the authorized off-channel reservoir for subsequent use to irrigate 393 acres of land out of 418,774 acres in Abstract No. 32, McLennan County, Texas

Special conditions in the permit are as follows:

- If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 1772 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 1772 is recognized.
- This permit shall expire and become null and void on December 31, 1994, unless prior to such date permittee applies for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be March 6, 1984.
- Permittee is authorized to divert water hereunder only when the flow of the Brazos River is at U.S.G.S. Gaging Station No. 08096500 at Waco equals or exceeds 635 cfs (284,700 gpm) during the months April through August, and 120 cfs (53,800 gpm) during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director has established a procedure for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittee shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure and shall abide by such procedure.

OWNERSHIP: W. L. McPherson, Wendell McPherson, and Jeff McPherson dba McPherson Farms

Permit No. 4141 was issued by the Commission on August 24, 1984. Application No. 4455 for the permit was filed on May 15, 1984.

Permit No. 4141 authorizes the permittees to divert and use not to exceed 170 acre-feet of water per annum from Brazos River to irrigate 172.16 acres of land out of 387.28 acres in the J. H. Chambers Survey, Abstract No. 155 and William H. Nelson Survey, Abstract No. 678, Hill County, 8 miles southwest of Aquilla, Texas, the conveyance of which tract to permittees is recorded in Volume 561, page 625 of the Hill County Deed Records.

Special Conditions in the permit are as follows:

- If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 527 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 527 is recognized.
- This permit shall expire and become null and void on December 31, 1994 unless prior to such date permittees apply for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be May 15, 1984.
- Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08096500 at Waco equals or exceeds 640 cfs (287,254 gpm) during the months of April through August and 105 cfs (47,080 gpm) during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittees shall abide by procedures established by the Executive Director for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.

OWNERSHIP: John W. Nigilazzo and wife, Jonia Nigilazzo

Permit No. 4145 was issued by the Commission on September 6, 1984. Application No. 4454 for the permit was filed on May 15, 1984.

Permit No. 4145 authorizes the permittees to divert and use not to exceed 448 acre-feet of water per annum from the Brazos River to irrigate 224 acres of land out of 264.86 acres in the Antonio Manchaca Grant, Abstract No. 27, Robertson County, approximately 17 miles SW of Franklin, Texas. The three deeds conveying the tract to permittees are in Volume 119, page 528; Volume 149, page 154; and Volume 195, page 284 of the Robertson County Deed Records.

Special Conditions in the permit are as follows:

- Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08092930 near Highbank equals or exceeds 640 cfs during the months April through August and 110 cfs during other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittees shall abide by procedures established by the Executive Director for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.
- If a right on the part of the permittees to divert and use water on the land to which this permit pertains is recognized by final court judgment in the adjudication process, under Water Code Section 11.303 Claim No. 1545, the authorizations of this permit shall be reduced by the extent to which that right under Claim No. 1545 is recognized.

OWNERSHIP: Nick R. Lutz and wife, Joan Lutz

Permit No. 4150 was issued by the Commission on November 1, 1984. Application No. 4466 for the permit was filed on July 10, 1984.

Permit No. 4150 authorizes the permittees to divert and use not to exceed 520 acre-feet of water per annum from the Brazos River to irrigate 260 acres of land out of 510.57 acres in the Joseph Mariah Survey, Abstract No. 121 in conflict with the George Antonio Nixon Grant, Abstract No. 31, Robertson County, 14 miles southwest of Franklin, Texas, the conveyance of which tract to permittees is recorded in Volume 194, page 311 of the Robertson County Deed Records.

Special Conditions in the permit are as follows:

- Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 08092930 near Highbank equals or exceeds 655 cfs during the months of April through August, and equals or exceeds 135 cfs during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittees shall abide by procedures established by the Executive Director for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.
- This permit shall expire and become null and void on December 31, 1994 unless prior to such date permittees apply for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be July 10, 1984.

OWNERSHIP: Kathryn Sommer Pagan

Permit No. 4149 was issued by the Commission on November 1, 1984. Application No. 4465 for the permit was filed on July 10, 1984.

Permit No. 4149 authorizes the permittees to divert and use not to exceed 1000 acre-feet of water per annum directly from the Brazos River to irrigate 500 acres out of 572 acres of land in the Miles F. Smith League, Abstract No. 58, Milam County, approximately 15 miles northeast of Cameron, Texas. Permittee's ownership of the land is evidenced by deeds recorded in Volume 131, page 134, Volume 131, page 135, and Volume 133, page 188 of the Milam County Deed Records, and by an Affidavit of Heirship recorded in Volume 167, page 321 of the Robertson County Deed Records.

Special Conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 7311 by the final judgment of the court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 7311 is recognized.
- b. This permit shall expire and become null and void on December 31, 1994 unless prior to such date permittee applies for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be July 10, 1984.
- c. Permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 80998290 near Highbank, Texas, equals or exceeds 655 cfs (293,294 gpm) during the months of April through August, and equals or exceeds 125 cfs (56,104 gpm) during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittee shall abide by procedures established by the Executive Director for advising permittee when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion of water each irrigation season to be advised for this procedure.

OWNERSHIP: Gary B. Young

Permit No. 4153 was issued by the Commission on November 9, 1984. Application No. 4474 for the permit was filed on August 7, 1984.

Permit No. 4153 authorizes the permittees to divert and use not to exceed 25 acre-feet of water per annum from the Brazos River to irrigate 21 acres of land out of 21 acres in the Louis Moore Survey, Abstract No. 27, McLennan County, approximately 4 miles northeast of Waco, Texas, the conveyance of which tract to permittee is recorded in Volume 1353, page 320 of the McLennan County Deed Records.

Special Conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under permittee's portion of Water Code Section 11.303 Claim No. 6126 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent permittee's portion of Section 11.303 Claim No. 6126 is recognized.
- b. This permit shall expire and become null and void on December 31, 1994 unless prior to such date permittee applies for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be August 7, 1984.
- c. Permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 8096500 near Waco equals or exceeds 420 cfs during the months of April through August, and equals or exceeds 105 cfs during all other months, exclusive of any releases dedicated by Brazos River Authority for its conservation storage for subsequent use downstream. Permittee shall abide by procedures established by the Executive Director for advising permittee when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittee shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.
- d. This permit is subject to permittee maintaining the easement associated with permittee's authorized point of diversion.

OWNERSHIP: John L. Stewart, Trustee for Kyle Anderson, Willie Mae Judd, Harold Clark and John L. Stewart

Permit No. 4154 was issued by the Commission on November 9, 1984. Application No. 4475 for the permit was filed on August 7, 1984.

Permit No. 4154 authorizes the permittees to divert and use not to exceed 25 acre-feet of water per annum from the Brazos River to irrigate 19.9 acres of land out of 19.993 acres in the Louis Moore Survey, Abstract No. 27, McLennan County, approximately 4 miles northeast of Waco, Texas, the conveyance of which tract to permittee is recorded in Volume 1216, page 849 of the McLennan County Deed Records.

Special Conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under permittee's portion of Water Code Section 11.303 Claim No. 6126 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent permittee's portion of Section 11.303 Claim No. 6126 is recognized.
- b. This permit shall expire and become null and void on December 31, 1994 unless prior to such date permittee applies for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be August 7, 1984.

- f. Permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 8096500 near Waco equals or exceeds 620 cfs during the months of April through August, and equals or exceeds 105 cfs during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittee shall abide by procedures established by the Executive Director for advising permittee when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittee shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.

OWNERSHIP: Margaret Anderson Harris and Deborah A. Frazier

Permit No. 4151 was issued by the Commission on December 1, 1984. Application No. 4467 for the permit was filed on July 10, 1984.

Permit No. 4151 authorizes the permittees to divert and use not to exceed 520 acre-feet of water per annum from the Brazos River to irrigate 260 acres of land out of 510.57 acres in the Joseph Marlan Survey, Abstract No. 181 in conflict with the George Antonio Wison Grant, Abstract No. 31, Robertson County, 14 miles southwest of Franklin, Texas, the conveyances comprising the aforesaid tract to permittees are recorded in Volume 289, page 457; Volume 289, page 446; Volume 271, page 10; Volume 270, page 494; and Volume 282, page 817 of the Robertson County Deed Records.

Special Conditions in the permit are as follows:

- a. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 80998290 near Highbank equals or exceeds 655 cfs during the months of April through August, and equals or exceeds 125 cfs during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittees shall abide by procedures established by the Executive Director for advising permittee when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.
- b. This permit shall expire and become null and void on December 31, 1994 unless prior to such date permittees apply for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be July 10, 1984.
- c. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 3995 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 3995 is recognized.

OWNERSHIP: Tony Lombardo and wife, Providence Lombardo

Permit No. 4158 was issued by the Commission on December 19, 1984. Application No. 4462 for the permit was filed on July 3, 1984.

Permit No. 4158 authorizes the permittees to divert to an unnamed tributary of Hardin Slough not to exceed 345 acre-feet of water per annum from the Brazos River to irrigate 138 acres of land out of two tracts totaling 139.41 acres in the S. C. Robertson League, Abstract No. 61, Falls County, approximately 13.5 miles SE of Marlin, Texas, the conveyances of which tracts to permittees are recorded in Volume 241, page 602 and Volume 302, page 260 of the Falls County Deed Records.

Permittees are authorized to use the bed and banks of an unnamed tributary of Hardin Slough for the purpose of conveying waters diverted from the Brazos River from a point S 55°E, 3600 feet from the NW corner of the aforesaid Robertson League to Diversion No. 2.

Special Conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 3671 by the final judgment of the Court in the adjudication process for irrigation of the land included in this permit, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 3671 is recognized.
- b. This permit shall expire and become null and void on December 31, 1994, unless prior to such date permittee applies for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be July 3, 1984.
- c. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 8096500 near Highbank equals or exceeds 455 cfs during the months April through August and 125 cfs during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittees shall abide by procedures established by the Executive Director for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.
- d. Permittees are authorized to divert and use water under this permit only so long as the necessary easements for the conveyance of water across other persons property are maintained.

OWNERSHIP: The Northern Trust Company as Trustee of Trust No. 2-49284

Permit No. 4160 was issued by the Commission on December 19, 1984. Application No. 4469 for the permit was filed on July 10, 1984.

Permit No. 4160 authorizes the permittees to divert and use not to exceed 1750 acre-feet of water per annum directly from the Brazos River to irrigate 1600 acres out of 2450.47 acres of land in the John A. Hill Survey, Abstract No. 166, and the John O. Smith Survey, Abstract No. 231, Robertson County, about 16.5 miles southwest of Franklin, Texas, the conveyance of which tract to permittee is recorded in Volume 135, page 751 of the Robertson County Deed Records.

Special Conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 2656 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 2656 is recognized.
- b. This permit shall expire and become null and void on December 31, 1994 unless prior to such date permittee applies for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be July 10, 1984.
- c. Permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 8099290 near Highbank equals or exceeds 650 cfs (29,184 gpm) during the months of April through August, and equals or exceeds 125 cfs (56,104 gpm) during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittee shall abide by procedures established by the Executive Director for advising permittee when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittee shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.

OWNERSHIP: The Northern Trust Company as Trustee of Trust No. 2-45216 (Goodland Farms)

Permit No. 228A was issued by the Commission on December 19, 1984. Application No. 239A for the permit was filed on June 26, 1984.

Permit No. 228A authorizes the permittees to divert and use not to exceed a total of 1750 acre-feet of water per annum, being the sum of the previously authorized 514 acre-feet per annum plus an additional 1236 acre-feet per annum, directly for the Brazos River to irrigate 1500 acres out of 2080.69 acres of land in the George Antonio Nixon Grant, Abstract No. 31, Robertson County, approximately 15.5 miles southwest of Franklin, Texas. The ownership of said land by permittee is evidenced by Articles of Dissolution and by deed of trust recorded in Volume 312, page 593 and Volume 311, page 246 of the Robertson County Public Records, respectively.

Special Conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 1628 by the final judgment of the Court in the adjudication process, the authorizations of this amendment shall be reduced by the extent Section 11.303 Claim No. 1628 is recognized.
- b. The authorization to divert the additional 1236 acre-feet of water per annum under this amendment shall expire and become null and void on December 31, 1994 unless prior to such date permittee applies for an extension thereof and such application is subsequently granted for an additional term or in perpetuity.
- c. Permittee is authorized to divert the additional 1236 acre-feet of water per annum under this amendment only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 8099290 near Highbank, Texas equals or exceeds 655 cfs (29,984 gpm) during the months of April through August, and 125 cfs (56,104 gpm) during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittee shall abide by procedures established by the Executive Director for advising permittee when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittee shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.

OWNERSHIP: Frank Abate, Pat Abate and Tony Lombardo

Permit No. 4157 was issued by the Commission on December 19, 1984. Application No. 4458 for the permit was filed on July 3, 1984.

Permit No. 4157 authorizes the permittees to divert not to exceed 600 acre-feet of water per annum from the Brazos River to an unnamed tributary of Brazos River for subsequent irrigation of 240 acres of land out of 243.5 acres in the J. C. Robertson Lease, Abstract No. 60, Falls County, 12.5 miles southeast of Marlin, Texas. The conveyance concerning this tract to permittees are recorded in Volume 306, page 201 and Volume 314, page 259 of the Falls County Deed Records.

Special Conditions in the permit are as follows:

- a. Permittees are authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 8099290 near Highbank equals or exceeds 650 cfs (29,184 gpm), during the months of April through August, and 125 cfs (56,104 gpm) during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittees shall abide by procedures established by the Executive Director for advising permittees when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittees shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.

b. This permit shall expire and become null and void on December 31, 1994 unless prior to such date permittees apply for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be June 12, 1984.

c. Permittees are authorized to use the bed and banks of an unnamed tributary of Brazos River for the purpose of conveying water diverted from the Brazos River to the diversion area described by 2.(b).

OWNERSHIP: Pat Abate

Permit No. 4159 was issued by the Commission on December 19, 1984. Application No. 4463 for the permit was filed on July 3, 1984.

Permit No. 4159 authorizes the permittees to divert directly to the fields or to an unnamed tributary of Hardin Slough not to exceed 475 acre-feet of water per annum from the Brazos River in the S. C. Robertson Lease, Abstract No. 61, Falls County, approximately 11.5 miles SE of Marlin, Texas, the conveyance of which tract to permittee is recorded in Volume 196, page 178 of the Falls County Deed Records.

Permittee is authorized to use the bed and banks of an unnamed tributary of Hardin Slough for the purpose of conveying water diverted hereunder from the Brazos River from a point 3 3/4", 3600 feet from the NW corner of the aforesaid Robertson Lease to Diversion No. 2.

Special Conditions in the permit are as follows:

- a. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 1671 by the final judgment of the Court in the adjudication process for irrigation of the land included in this permit, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 1671 is recognized.
- b. This permit shall expire and become null and void on December 31, 1994, unless prior to such date permittee applies for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be July 3, 1984.
- c. Permittee is authorized to divert water hereunder from the Brazos River only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 8099290 near Highbank equals or exceeds 655 cfs during the months of April through August and 125 cfs during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittee shall abide by procedures established by the Executive Director for advising permittee when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittee shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.
- d. Permittee is authorized to divert and use water from Diversion No. 1 under this permit only so long as the necessary easements for the conveyance of water across other persons' property are maintained.
- e. Water diverted at Diversion Points Nos. 1 and 3 may not exceed 475 acre-feet per annum when combined.

OWNERSHIP: Kathleen Kelly

Permit No. 4164 was issued by the Commission on January 4, 1985. Application No. 4471 for the permit was filed on July 31, 1984.

Permit No. 4164 authorizes the permittee to divert and use not to exceed 935 acre-feet of water per annum from the Brazos River to irrigate 374 acres of land out of 374 acres in the S. C. Robertson Survey, Abstract No. 48, Robertson County, 20 miles west of Franklin, Texas. The 374 acres of land is composed of a 271.25-acre tract; a 98.75-acre tract; and a 4-acre tract. Said 271.25 acres is described in a Deed Recorded in Volume 101, page 149 of the Deed Records of Robertson County.

The 98.75-acre tract and the 4-acre tract were described and conveyed to T. B. Kelly and wife, Kathleen Kelly in a Deed recorded in Volume 146, page 104 of the Deed Records of Robertson County.

Special Conditions in the permit are as follows:

- a. Permittee is authorized to divert water hereunder only when the flow of the Brazos River at the U.S.G.S. Gaging Station No. 8099290 near Highbank equals or exceeds 650 cfs (29,184 gpm) during the months of April through August, and equals or exceeds 125 cfs (56,104 gpm) during all other months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. Permittee shall abide by procedures established by the Executive Director for advising permittee when water, exclusive of Brazos River Authority's dedicated releases, is available for diversion. Permittee shall contact the Department prior to diversion of water each irrigation season to be advised of this procedure.
- b. If a right to divert and use water is recognized under Water Code Section 11.303 Claim No. 3383 by the final judgment of the Court in the adjudication process, the authorizations of this permit shall be reduced by the extent Section 11.303 Claim No. 3383 is recognized.
- c. This permit shall expire and become null and void on December 31, 1994 unless prior to such date permittee applies for an extension hereof and such application is subsequently granted for an additional term or in perpetuity. The priority date of this permit and all extensions hereof shall be July 31, 1984.

**CITY OF MARSHALL and Texas
Commission on Environmental
Quality, Petitioners,**

v.

**CITY OF UNCERTAIN, Caddo Lake
Area Chamber of Commerce and
Tourism, Greater Caddo Lake Associ-
ation, Caddo Lake Institute, John T.
Echols and Barry L. Bennick, Respon-
dents.**

No. 03-1111.

Supreme Court of Texas.

Argued Oct. 21, 2004.

Decided June 9, 2006.

Rehearing Denied Dec. 15, 2006.

Background: Chamber of Commerce and others sought review of decision by the Texas Commission on Environmental Quality, finding that Water Code mandated approval, without a contested-case hearing, of the amendment of city's water-rights permit. The District Court, Travis County, 53rd Judicial District, Suzanne Covington, J., reversed Commission's order and remanded for contested-case hearing. City and Commission appealed. The Austin Court of Appeals, Mack Kidd, J., 124 S.W.3d 690, affirmed in part, and reversed and rendered in part. Review was granted.

Holdings: The Supreme Court, O'Neill, J., held that:

- (1) Commission was required to assess specified criteria, other than impacts on other water-rights holders and the on-stream environment, when considering city's proposed amendment, and
- (2) Commission was required to determine whether city's application impacted substantive criteria necessitating notice and hearing.

Affirmed in part and remanded.

1. Waters and Water Courses \Leftrightarrow 5

Surface water in Texas is generally owned by the State of Texas and held in trust for the public, and the preservation and conservation of water resources are public rights and duties. Vernon's Ann.Texas Const. Art. 16, § 59; V.T.C.A., Water Code § 11.021(a).

2. Statutes \Leftrightarrow 181(1)

In construing a statute, the court's primary objective is to ascertain and give effect to the Legislature's intent.

3. Statutes \Leftrightarrow 188

A court, in construing a statute, looks first to the plain and ordinary meaning of the statute's words.

4. Statutes \Leftrightarrow 212.6, 212.7

A court construing a statute presumes that every word of the statute has been included or excluded for a reason.

5. Statutes \Leftrightarrow 206

It is an elementary rule of statutory construction that, when possible to do so, effect must be given to every sentence, clause, and word of a statute so that no part thereof be rendered superfluous. V.T.C.A., Government Code § 311.021(2).

6. Statutes \Leftrightarrow 181(2), 184, 217.4

If necessary, a court construing a statute may consider factors other than the text of the statute, including the law's objective, legislative history, and the consequences of a particular construction.

7. Waters and Water Courses \Leftrightarrow 145

Under Water Code section providing that "subject to meeting all other applicable requirements," amendments to water-right permits that did not increase amount or rate of diversion were to be authorized, "other applicable requirements" meant those not concerning assessment of "ad-

verse impact on other water-right holders or the environment on the stream"; the other applicable requirements concerned conformance with administrative requirements, beneficial use of the water right, protection of the public welfare, groundwater effects, consistency with the state and any applicable regional water plan, avoidance of waste, and achievement of water conservation. V.T.C.A., Water Code §§ 11.122(b), 11.134(b).

8. Waters and Water Courses ⇌145

The Commission on Environmental Quality was required to assess specified criteria, other than impacts on other water-rights holders and the on-stream environment, when considering city's proposed water-rights permit amendment that would have changed purpose of use, but not amount of water diverted, under Water Code article providing that "subject to meeting all other applicable requirements," amendments to water-right permits that did not increase amount or rate of diversion were to be authorized; city had a specifically-defined right to fully use the amount of water identified in its permit, but it had no right to use that water other than as conditioned. V.T.C.A., Water Code §§ 11.122(b), 11.134(b), 11.135(a).

9. Waters and Water Courses ⇌145

The Commission on Environmental Quality was required to determine whether it was able to assess from city's application for water-rights permit amendment whether the application impacted substantive criteria imposed by the Water Code, including the proposed amendment's impact on public welfare, groundwater, and the adequacy of city's conservation plan, and whether application met such criteria, to determine whether notice and hearing would be required under the Water Code and the Commission rules. V.T.C.A., Water Code §§ 11.122(b), 11.134(b).

10. Waters and Water Courses ⇌133

An affected person, for purposes of notice and hearing regarding permits to use water, is one who has a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application. 30 TAC § 55.29.

R. Lambeth Townsend, Lloyd Gosselink Blevins Rochelle & Townsend, P.C., Martha S. Dickie, Minton Burton Foster & Collins, Martin C. Rochelle, Lloyd Gosselink Blevins Rochelle, George Thomas Bohl, Cynthia Woelk, Brian E. Berwick, Greg Abbott, Barry Ross McBee, Edward D. Burbach, Karen Watson Kornell, Office of Attorney General, Austin, for Petitioners.

Richard W. Lowerre, Lowerre & Kelly, Craig T. Enoch, Winstead Sechrest & Minick, P.C., Austin, Beth Ann Blackwood, Koleday, Thomas & Blackwood, Tom Max Thomas II, Dallas, for Respondents.

R. Glenn Jarvis, Law Offices of Glenn Jarvis, McAllen, Aric Kurtis Short, Molly Cagle, David P. Blanke, Vinson & Elkins L.L.P., Roger P. Nevola, Law Offices of Roger P. Nevola, Austin, Frank R. Booth, Aransas Pass, Jonathan D. Pauerstein, Loeffler Tuggey Pauerstein Rosenthal LLP, San Antonio, P.M. Schenkkan, Graves Dougherty Hearon & Moody, P.C., Timothy L. Brown, Austin, for Amicus Curiae.

Justice O'NEILL delivered the opinion of the Court.

In 1986, the City of Marshall received a certificate of adjudication recognizing a right to divert and use up to 16,000 acre-feet of water from Cypress Creek for municipal use, meaning that the water it supplied had to be potable. In 2001, the City

applied to the Texas Commission on Environmental Quality¹ to change the purpose of use in its certificate so that it could supply untreated water for industrial use. The City's application did not request a change in the amount of water or rate of diversion. The City of Uncertain and others opposed the application, alleging the amendment would have serious adverse environmental and socio-economic consequences, and sought a contested-case hearing. The Commission concluded that section 11.122(b) of the Texas Water Code mandated approval of the amendment without a contested-case hearing. We must decide whether that provision precludes a contested-case hearing when a proposed water-rights amendment requests a change in use but does not seek to increase the amount of water appropriated or the rate of diversion. We conclude that, while section 11.122(b) significantly restricts the issues that may be reviewed in a contested-case proceeding, it does not altogether preclude one. Depending upon the particular amendment application, a hearing may be necessary to allow the Commission to assess certain limited criteria other than the application's effect on other water-rights holders and the on-stream environment that the Legislature considered necessary to protect the public interest, including assessment of water conservation plans, consistency with the state and any approved regional water plans, and groundwater effects. Accordingly, we affirm the court of appeals' judg-

ment in part and remand to the Commission for further proceedings.

I. Background

The City of Marshall is located in Harrison County, Texas, which is located partially within the Cypress Creek Basin and partially within the Sabine River Basin. Marshall received a permit in 1947 from the Texas Board of Water Engineers, a predecessor of the Texas Commission on Environmental Quality, authorizing Marshall to divert 7,558 acre-feet of water per year from Cypress Creek. Almost a decade later, the permit was amended to authorize an additional 8,442 acre-feet diversion. In 1986, Marshall received a certification of adjudication² from the Commission under the Water Rights Adjudication Act³ recognizing its right to divert a total of 16,000 acre-feet of water for municipal use per year. The Commission's rules define "municipal use" as "the use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes." 30 TEX. ADMIN. CODE § 297.1(32). It is undisputed that Marshall has never used more than half of its authorized amount of water.

In 2001, Marshall applied to the Commission for a permit amendment authorizing it to change the purpose of use so that it could supply untreated water for industrial purposes. The record suggests that Marshall was negotiating to sell the water to a power company and possibly to other

1. At the time, the agency was named the Texas Natural Resource Conservation Commission (TNRCC). The name was changed to the Texas Commission on Environmental Quality in 2002. See 27 Tex. Reg. 8340 (2002). When we refer to "the Commission" in this opinion, we refer to the Texas Commission on Environmental Quality and its predecessor agencies.

2. With limited exceptions, water rights in Texas are currently recognized in certificates of adjudication or permits. For ease of reference, we use the term permit to refer to both certificates of adjudication and permits.

3. As discussed further below, the Water Rights Adjudication Act was designed to unify various legal water rights systems. TEX. WATER CODE §§ 11.301–341.

industrial users. Marshall also sought recognition of its historical practice of providing water to customers in the portion of Harrison County located within the Sabine River Basin in addition to its existing authorization to provide water to customers within the Cypress Creek Basin. Hundreds of individuals and organizations filed requests for notice and hearing on the application, including the City of Uncertain, the Greater Caddo Lake Association, the Caddo Lake Institute, the Caddo Lake Area Chamber of Commerce, John Echols, and Barry Bennick (collectively, "Uncertain"), respondents in this Court. Uncertain asserted that the application posed a serious threat to Big Cypress Bayou and Caddo Lake, which has been designated by the state and federal governments as a wetland of international importance. Tourism centered around Caddo Lake is a significant component of the City of Uncertain's local economy, and the other opponents and their constituents either operate businesses, own land, hold water rights, or reside downstream from Marshall's point of diversion. Uncertain asserted that the amendment would impair existing water rights and adversely affect the public welfare. It also contended that the application was inconsistent with the regional water plan and that Marshall's objectives in seeking the amendment could be met through conservation measures. In addition, Uncertain argued that there were indications of a hydrological relationship between Caddo Lake and groundwater resources that the Commission was

required to consider under the Commission's rules. *See* 30 TEX. ADMIN. CODE § 297.47(a).

The Commission's executive director determined that neither of Marshall's requested amendments required notice and hearing.⁴ The director concluded that section 11.085(v)(4) of the Water Code exempted the requested change in basin of use from notice and hearing requirements.⁵ He also concluded that notice and hearing were not required for the requested change in use, reasoning that section 11.122(b)'s "full use" assumption mandated authorization of the change. TEX. WATER CODE § 11.122(b). The full-use assumption, also known as the four-corners doctrine, requires the Commission to assess a requested amendment's impact on other water rights and the on-stream environment based upon the full amount of water authorized by the existing permit irrespective of the amount that the permit holder has actually used. *See id.* The executive director granted Marshall's application in March 2002, and the Commission denied Uncertain's appeal of that decision. *See* 30 TEX. ADMIN. CODE § 55.201.

Uncertain appealed to the district court, naming the Commission and Marshall as defendants. Uncertain sought a temporary restraining order and temporary injunction to prevent Marshall from selling untreated water for industrial use pending disposition of the lawsuit, and also sought

4. The Commission did hold a public meeting to receive comments on the application, which hundreds of permit opponents and dozens of supporters attended, although the meeting occurred before the application was declared administratively complete.
5. Section 11.085(a) of the Water Code prohibits the use of state water from one river basin in another basin without Commission authorization. Sections 11.085(b)-(u) of the Water

Code set out procedures governing interbasin transfer authorization proceedings. Section 11.085(v)(4) provides that those procedures do not apply to "a proposed transfer from a basin to a county or municipality or the municipality's retail service area that is partially within the basin for use in that part of the county or municipality and the municipality's retail service area not within the basin."

reversal of the executive director's decision to grant the permit without allowing a contested-case hearing. Uncertain further alleged that the approval violated several Water Code provisions and its right to due process under Article I, sections 17 and 19 of the Texas Constitution. The parties filed cross-motions for summary judgment; the trial court granted Uncertain's motion and denied Marshall's and the Commission's, holding that the Commission erred in its determination that the Water Code mandated approval of the amendment without a contested-case hearing.

The court of appeals affirmed in part, and reversed in part the trial court's judgment. 124 S.W.3d 690. The court held that section 11.085(v)(4) of the Water Code did not require a hearing on Marshall's request to change its permitted basin of use, *id.* at 696, but that section 11.122(b) allowed a hearing on Marshall's request to change the purpose of use, *id.* at 698. The court further held that notice and hearing were required under sections 11.132 and 11.133 of the Water Code. *Id.* We granted the Commission's and Marshall's petitions for review to determine section 11.122(b)'s effect on section 11.132 and 11.133 notice and hearing requirements when a proposed permit amendment changes the permit's purpose of use but does not affect the amount of water appropriated or the authorized diversion rate. Uncertain does not contest the court of appeals' decision that no hearing was required on Marshall's change-in-basin-of-use request, so that issue is not before us.

II. Discussion

Before addressing the parties' arguments regarding section 11.122(b)'s import,

6. By "surface water," we refer to "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

it is helpful to consider the statute's origin in the context of the development of water law in Texas. That development illustrates the Legislature's continuing efforts to properly conserve and manage this increasingly vital resource.

A. Water Law Background

[1] Surface water⁶ in Texas is generally owned by the State of Texas and held in trust for the public, and the preservation and conservation of water resources are "public rights and duties." TEX. CONST. ART. XVI, § 59; TEX. WATER CODE § 11.021(a); FRANK F. SKILLERN, 1 TEXAS WATER LAW SERIES 29 (1992). Current laws governing Texas surface-water rights have grown out of "a hodgepodge of historical and contradictory water rights systems." Robin A. Melvin, *Transferring Water Rights in Texas*, in 14.1, THE CHANGING FACE OF TEXAS WATER RIGHTS IN TEXAS 2003 (State Bar of Texas 2003).

1. Spanish, Mexican, and Common Law

Spanish or Mexican law governed water rights granted before Texas gained independence in 1836. Under that body of law, a landowner had no right to use surface water unless the land grant specifically provided for it. *Id.*; *State v. Valmont Plantations*, 346 S.W.2d 853 (Tex.Civ. App.—San Antonio 1961), *aff'd*, 163 Tex. 381, 355 S.W.2d 502 (1962). After independence, the Republic of Texas adopted the common law of England except to the extent it was specifically abrogated by statute. SKILLERN, *supra*, at 29. England's system of riparian rights, as adapted by this Court, allowed owners of lands

the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state" TEX. WATER CODE § 11.021(a).

adjacent to streams to use such water for irrigation of riparian lands as was reasonable under the circumstances. See *Watkins Land Co. v. Clements*, 98 Tex. 578, 86 S.W. 733, 735 (1905); Melvin, *supra*, at 1; SKILLERN, *supra*, at 35-36. The riparian system, though, proved ill-suited to more arid parts of the state, leading the Legislature to enact the Irrigation Acts of 1889 and 1895. Act of Mar. 19, 1889, 21st Leg., R.S., ch. 88, 1889 Tex. Gen. Laws 100; Act of Mar. 9, 1895, 24th Leg., R.S., ch. 21, 1895 Tex. Gen. Laws 21.

2. The Irrigation Acts

The Irrigation Acts of 1889 and 1895 preserved previously recognized riparian rights to some extent, but also allowed the acquisition of appropriative water rights in certain parts of the state. Act of Mar. 19, 1889, 21st Leg., R.S., ch. 88, §§ 1, 9, 1889 Tex. Gen. Laws 100, 101; Act of Mar. 9, 1895, 24th Leg., R.S., ch. 21, §§ 1, 3, 1895 Tex. Gen. Laws 21, 22. The Irrigation Acts provided that a water right was acquired by diverting water and applying it to a beneficial purpose. Act of Mar. 19, 1889, 21st Leg., R.S., ch. 88, § 1, 1889 Tex. Gen. Laws 100, 100; Act of Mar. 9, 1895, 24th Leg., R.S., ch. 21, § 1, 1895 Tex. Gen. Laws 21, 21. Under the appropriative system, the right to divert water in times of shortage is determined by the seniority of the appropriation—as between appropriators, first in time is first in right.⁷ TEX. WATER CODE § 11.027; Act of Mar. 19, 1889, 21st Leg., R.S., ch. 88, § 4, 1889 Tex. Gen. Laws 100, 101; Act of Mar. 9, 1895, 24th Leg., R.S., ch. 21 § 5, 1895 Tex. Gen. Laws 21, 21-23. The Irrigation Acts contemplated that any rights acquired would be recorded by filing a sworn statement with the county clerk. Act of Mar. 9, 1889,

21st Leg., R.S., ch. 88, § 5, 1889 Tex. Gen. Laws 100, 101; Act of Mar. 19, 1895, 24th Leg., R.S., ch. 21, §§ 6, 8, 1895 Tex. Gen. Laws 21, 22. Appropriative rights under the Irrigation Acts were acquired without any assessment of environmental impacts or water availability. Under the 1895 Act, new riparian rights were no longer recognized in the arid parts of the state except for domestic purposes. Act of Mar. 19, 1895, 24th Leg., R.S., ch. 21, § 1, 1895 Tex. Gen. Laws 21, 21.

In 1913, Texas continued to refine its ability to manage its water resources by creating a permit system administered by the Board of Water Engineers, a Commission predecessor. Act of Apr. 9, 1913, 33rd Leg., R.S., ch. 171, § 7, 1913 Tex. Gen. Laws 358, 359. Under that system, the Board was empowered to grant or deny permits for new rights, subject to notice and hearing. *Id.* §§ 15, 20-23, 1913 Tex. Gen. Laws 358, 364-65. Rights acquired under the Irrigation Acts were to be recorded and filed with the Board, but failure to file did not extinguish previously perfected appropriative rights. *Id.* § 14. The existence of unrecorded but valid riparian and appropriative rights led to uncertainty and clashes between conflicting claims in times of water shortages, leading the Legislature to further action.

3. The Water Rights Adjudication Act

In 1967, the Legislature enacted the Water Rights Adjudication Act to unify the dual systems of riparian and appropriative rights. TEX. WATER CODE §§ 11.301-341. The Act required water-rights claimants to file claims with the Board's successor, the Texas Water Rights Commission, based upon the amount of water applied to beneficial use between 1963 and 1967.

7. For example, the Commission's order granting Marshall's amendment assigns a time priority of April 18, 1947 for 7,558 acre-feet of

the water to be used for municipal purposes, and a priority of November 27, 1956 for an additional 8,442 acre-feet.

The Commission conducted adjudicative hearings throughout the state, and the courts ultimately approved its decisions. *See, e.g., In re the Adjudication of the Water Rights of Upper Guadalupe Segment of Guadalupe River Basin*, 642 S.W.2d 438, 443 (Tex.1982). The adjudication process did not weigh the environmental impacts of the claimants' historic use. *See* TEX. WATER CODE §§ 11.301–324. The certificate of adjudication that Marshall sought to amend was obtained in this process.

While the adjudication process resulted in a unitary system of defined rights, many river basins in the state were overappropriated because the rights recognized were based upon historic use rather than water availability. H. RESEARCH ORGANIZATION, No. 75–13, TEXAS AT A WATERSHED: PLANNING NOW FOR FUTURE NEEDS (April 15, 1997). A severe drought in the mid–1990s drew the Legislature's attention once again to water-supply issues. *Id.* at 3.

4. Senate Bill 1

In response to the Legislature's directive that "those policies and action required to meet Texas's near and long-term water needs" be identified, the Commission, the Texas Water Development Board, and the Texas Parks and Wildlife Department prepared a state water plan that projected huge increases in water demands in the next 50 years. *See* TEXAS WATER DEVELOPMENT BOARD, WATER FOR TEXAS TODAY & TOMORROW: LEGISLATIVE SUMMARY OF THE 1996 CONSENSUS-BASED UPDATE OF THE STATE WATER PLAN 1 (1997). The plan noted that the opportunities to develop new reservoirs were limit-

ed by high costs and serious environmental issues, and recommended a number of measures to meet Texas's growing needs, including legislation to encourage conservation, planning, reuse, and the transfer and marketing of water rights. *Id.* at 4–7. The Legislature enacted many of those measures in Senate Bill 1, a landmark in natural-resource legislation and the source of section 11.122(b) of the Water Code, which forms the basis of the parties' dispute in this case.

B. The Water Code and Contested-Case Hearings

The parties assert differing interpretations of the Water Code's notice and hearing requirements when a holder of permitted water rights seeks to amend the permit. We begin by considering the Water Code's notice and hearing requirements and other pertinent criteria that the parties agree are mandatory for approval when an applicant seeks a new appropriation of state water.

1. Appropriative Permit Requirements

The right to use and divert state water is "acquired by appropriation in the manner and for the purposes provided in [the Water Code]." TEX. WATER CODE § 11.022. The Code contains a number of procedural and substantive requirements that an application to appropriate unappropriated state water must meet. The procedural criteria relate generally to the form of the application, the necessary fee, and notice and hearing. *Id.* §§ 11.124, 11.125, 11.128, 11.132, 11.133, 11.134(b)(1). More substantively, the applicant must show that

- (3) the proposed appropriation
- (A) is intended for a beneficial use⁸;

8. The Water Code defines "beneficial use" as "the amount of water which is economically

necessary for a purpose authorized by [Chapter 11 of the Code] when reasonable intelli-

- (B) does not impair existing water rights or vested riparian rights;
 - (C) is not detrimental to the public welfare;
 - (D) considers the assessments performed under Sections 11.147(d) and (e) [effects on bays and estuaries and instream uses] and Sections 11.150 [effects on water quality], 11.151 [effects on groundwater], and 11.152 [effects on fish and wildlife habitats]; and
 - (E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement; and
- (4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by Subdivision (8)(B), Section 11.002.

Id. § 11.134(b)(3)-(4). The applicant is also required to “provide[] evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by Subdivision (8)(B), Section 11.002.” *Id.* § 11.134(b)(4). In sum, the substantive components that currently must be assessed when an applicant seeks a new appropriation of water are comprehensive, and sections 11.132 and 11.133 of the Water Code provide that notice and hearing must be afforded to those who may be affected by the proposed appropriation. *Id.* §§ 11.132, 11.133.

We note that Marshall’s certificate of adjudication was based upon water rights initially granted in permits issued by the

gence and reasonable diligence are used in applying the water to that purpose and shall

Commission in 1947 and 1956. At the time the permits were issued, the Commission could reject an application to appropriate water only if there was no unappropriated water in the source of supply, or if the proposed use conflicted with existing water rights or would be detrimental to the public welfare. *See* Act of May 10, 1943, 48th Leg., R.S., ch. 303, 943 Tex. Gen. Laws 455 (1943). And certificates of adjudication under the Water Rights Adjudication Act took into account only the amount of water beneficially used without waste in any given year during a specified time period. TEX. WATER CODE § 11.303(b). In contrast, the current Water Code and its implementing regulations require the Commission, in assessing new permit applications, to consider a proposed appropriation’s impact on bays and estuaries and in-stream uses, effects on water quality and groundwater, effects on fish and wildlife habitat, as well as its consistency with the state and any regional water plans. *Id.* §§ 11.134(b)(3)(D), (E). Consequently, in a December 20, 2001 letter to the Commission, the Texas Parks & Wildlife Department complained that “no environmental assessment was required or performed at the time [Marshall’s] original permit was granted” and, as far as it could discern, “no comprehensive review of [Marshall’s] application has been performed to determine whether the City’s application complies with section 11.134.”

The parties do not dispute the requirements that are necessary to initially acquire an appropriative water-rights permit. But they part ways over the process that governs an application to amend a water-rights permit when no additional water is sought to be appropriated and the diversion rate is unaffected. Section 11.122 governs amendments to permitted

include conserved water.” TEX. WATER CODE § 11.002(4).

water rights, and we now turn to its provisions.

2. Water-Rights Amendments

a. Section 11.122(b)

Section 11.122(b) of the Water Code provides:

Subject to meeting all other applicable requirements of this chapter for the approval of an application, an amendment, except an amendment to a water right that increases the amount of water authorized to be diverted or the authorized rate of diversion, shall be authorized if the requested change will not cause adverse impact on other water right holders or the environment on the stream of greater magnitude than under circumstances in which the permit, certified filing, or certificate of adjudication that is sought to be amended was fully exercised according to its terms and conditions as they existed before the requested amendment.

TEX. WATER CODE § 11.122(b).

[2–6] In construing this statute, our primary objective is to ascertain and give effect to the Legislature’s intent. *McIntyre v. Ramirez*, 109 S.W.3d 741, 745 (Tex.2003)(citing *Tex. Dep’t of Transp. v. Needham*, 82 S.W.3d 314, 318 (Tex.2002)). We look first to the plain and ordinary meaning of the statute’s words. *Id.* (citing *State Dep’t of Highways & Pub. Transp. v. Gonzalez*, 82 S.W.3d 322, 327 (Tex.2002)). A statute that uses the term “shall” imposes a duty “unless the context in which the word or phrase appears necessarily requires a different construction.” TEX. GOVT CODE § 311.016. “[W]e presume that every word of a statute has been included or excluded for a reason” *Old Am. County Mut. Fire Ins. Co. v. Sanchez*, 149 S.W.3d 111, 115 (Tex.2004). “It is an elementary rule of construction

that, when possible to do so, effect must be given to every sentence, clause, and word of a statute so that no part thereof be rendered superfluous.” *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 29 (Tex.2003); *see also* TEX. GOVT CODE § 311.021(2). If necessary, we may consider other factors, including the law’s objective, legislative history, and the consequences of a particular construction. *McIntyre*, 109 S.W.3d at 745; *Tex. Water Comm’n v. Brushy Creek Mun. Util. Dist.*, 917 S.W.2d 19, 21 (Tex.1996).

Section 11.122(b)’s plain language mandates authorization of a proposed water-rights amendment that does not increase the amount of water authorized to be diverted or the authorized diversion rate, but it also contains a number of conditional clauses through which the mandate must be viewed:

Subject to meeting all other applicable requirements of this chapter for the approval of an application, an amendment . . . shall be authorized if the requested change will not cause adverse impact on other water right holders or the environment on the stream of greater magnitude than [if the certificate were being fully used]

TEX. WATER CODE § 11.122(b) (emphasis added). Not surprisingly, the parties rely on different clauses and interpretations to support their respective positions.

Marshall and the Commission direct their focus on the full-use assumption. They claim the Legislature enacted section 11.122 in 1975 to give the Commission authority to adopt rules that would govern amendments to water rights, thus taking water-rights amendments out of section 11.132–11.134s’ purview and allowing the Commission to determine which amendment applications required notice and hearing and which did not. By enacting subsection (b) in 1997, they contend, the

Legislature sought to streamline the amendment process even further by removing Commission discretion to deny an amendment that did not seek to appropriate additional water or increase the authorized diversion rate beyond the full use already permitted. According to Marshall and the Commission, section 11.122(b)'s predicate language subjecting an amendment's approval to "all other *applicable* requirements of this chapter for the approval of an application" refers merely to matters they assert are not tied to a new appropriation of water, such as payment of a filing fee, administrative completeness, and provision of a conservation plan. *Id.* § 11.122(b) (emphasis added). Applying all of the section 11.132–11.134 criteria to permit amendments, they claim, would thwart the Legislature's intent to streamline the amendment process.

Uncertain's primary focus is section 11.122(b)'s predicate language—"[s]ubject to meeting *all* other applicable *requirements* of this chapter for the approval of an application . . ." TEX. WATER CODE § 11.122(b) (emphasis added). Uncertain argues that the term "application" includes amendment applications, and that "all" requirements for approval of a new appropriation apply equally to amendments like Marshall's that request a change in the purpose of use, including the substantive and procedural requirements contained in sections 11.132–11.134. According to Uncertain, section 11.122(b)'s full-use assumption only restricts the parameters of the Commission's review of those elements specified in that section, namely that the proposed amendment "will not cause adverse impact on other water right holders or the environment on the stream," and does not exempt the applicant from meeting all other section 11.132–11.134 requirements. *Id.* But even if the full-use assumption does preclude the Commission's consideration of all other factors, Uncer-

tain argues, assessing the proposed amendment's impact on other water-rights holders and the on-stream environment involves a factual determination upon which a contested-case hearing must be afforded.

Each of the parties' arguments finds some support in the statutory language. As Marshall points out, section 11.132, which requires the Commission to give notice and hearing to persons potentially affected by an application, refers to the "proposed use" and "proposed appropriation" in describing the required contents of the notice. *Id.* § 11.132(b), (c)(3). By referring to the "proposed appropriation," the notice and hearing provisions suggest they apply to water to which a right has not been previously recognized under a permit or certificate of adjudication. *See Lower Colo. River Auth. v. Tex. Dept of Water Res.*, 689 S.W.2d 873, 874, 880–82 (Tex.1984) (holding that section 11.025 of the Water Code, which provides that water that has not been beneficially used is considered "not appropriated," does not apply to the determination of whether unappropriated water is available under section 11.134(b)(2) of the Code). On the other hand, as Uncertain argues and the court of appeals noted, the Legislature has expressly stated in other sections of the Water Code when notice and hearing are not required yet chose not to include comparable language in section 11.122(b), suggesting that notice and hearing are required for proposed water-rights amendments because they are not expressly excluded. 124 S.W.3d at 698 n. 13.

[7] While the parties' arguments have some textual support, neither gives full effect to section 11.122(b)'s statutory language. Uncertain glosses over the term "[s]ubject to meeting all other *applicable* requirements of this chapter for the approval of an application"; "applicable"

must mean something less than all requirements necessary for an original permit else section 11.122(b)'s purpose to streamline the amendment process would have no effect. TEX. WATER CODE § 11.122(b) (emphasis added). On the other hand, Marshall's position that the subject-to clause refers only to administrative form and content requirements has no support in the text or the legislative history, not to mention the ease with which the Legislature could have said "subject to meeting all *administrative* requirements for the approval of an application" had it so intended. Contrary to the parties' diametrically opposed interpretations, we believe all of section 11.122(b)'s language can be given effect without undermining the statute's overall purpose to streamline the amendment application process.

In denying notice and hearing on Marshall's permit amendment application, the Commission concluded that section 11.122(b) mandated authorization of the amendment and left no factual issues to be resolved in an evidentiary hearing.⁹ That interpretation presumes, we believe incorrectly, that the only relevant criteria governing an amendment's disposition are contained in section 11.122(b) itself, *i.e.*, that the requested change does not adversely impact other water-rights holders or the on-stream environment any more than would full use of the permitted right.

9. In a letter to former Lieutenant Governor Bill Ratliff, who had inquired whether the Commission had authority to grant a request for a public hearing, the executive director noted that "[s]ection 11.132 of the Texas Water Code does not entirely preclude the possibility of notice and opportunity for a contested case hearing, but providing that opportunity would contradict the structure and language of the statute" because section 11.122(b) limited the Commission's discretion to deny or condition approval of the amendment. Letter from Jeffrey A. Saitas, Executive Dir., Tex. Natural Res. Conservation Comm'n, to the Honorable Bill Ratliff,

It is clear, as the Commission believed, that the Legislature did intend to make the amendment process less cumbersome by imposing the full-use restriction on the assessment of adverse impacts on other water rights and the on-stream environment. But the Legislature's intent in enacting section 11.122(b) and other portions of Senate Bill 1 was also to protect the public welfare by otherwise ensuring protection of this valuable resource.

As we have noted, the Legislature sought in Senate Bill 1 to comprehensively address the State's present and future water-supply needs. Toward this end, Senate Bill 1 implemented a number of steps to make better use of existing supplies, including measures to facilitate water-rights transfers and marketing, to encourage conservation, to protect groundwater resources, and to encourage systematic water-resource planning.¹⁰ While section 11.122(b) simplified the permit amendment process to facilitate water-rights marketing by curtailing certain assessments under the full-use assumption, other provisions of Senate Bill 1 specifically require applicants for both new and amended water rights to submit water conservation plans and direct the Commission to assess an amendment application's consistency with the state water plan and any approved regional plan. Act of June 1, 1997, 75th Leg., R.S., ch. 1010, § 1.03, 1997 Tex.

Lieutenant Governor of Texas (Nov. 13, 2001) (R. at 314).

10. As we have noted, those steps were recommended by the three state agencies charged with water resource responsibility: the Commission, the Texas Water Development Board, and the Texas Parks and Wildlife Department. See TEXAS WATER DEVELOPMENT BOARD, WATER FOR TEXAS TODAY & TOMORROW: LEGISLATIVE SUMMARY OF THE 1996 CONSENSUS BASED-UPDATE OF THE STATE WATER PLAN 1 (1997).

Gen. Laws 3610, 3616 (amended 1999, 2001) (current version at TEX. WATER CODE § 11.134(b)(3)(D),(E)); TEX. WATER CODE §§ 11.1271(a), 11.1501. Section 11.134(b)(3)(D), as implemented through section 297.47 of the Commission's implementing regulations, also requires the Commission to assess an amendment application's effect on groundwater use, quality, or recharge. Act of June 1, 1997, 75th Leg., R.S., ch. 1010, § 4.01, 1997 Tex. Gen. Laws 3610, 3633 (current version at TEX. WATER CODE § 11.134(b)(3)(D)); 30 TEX. ADMIN. CODE § 297.47. Marshall and the Commission's contention that any application that does not increase the amount or rate of diversion must be approved irrespective of these effects would undermine the Code's public-welfare purpose as reflected in section 11.122(b)'s "subject-to" clause.

Section 11.122(b)'s predicate clause requires that an amendment application meet "all other applicable requirements of this chapter for the approval of an application." TEX. WATER CODE § 11.122(b). All *other* requirements of the chapter can only mean those that do not concern section 11.122(b)'s specific criteria, *i.e.*, assessment of "adverse impact on other water right holders or the environment on the stream." Those requirements are described as follows in section 11.134(b); for ease of illustration, those criteria that section 11.122(b) excludes or that clearly do not apply to amendments are indicated and explained in bold text:

(b) The commission shall grant the application only if:

(1) the application conforms to the requirements prescribed by this chapter and accompanied by the prescribed fee;

11. As previously noted, the term is defined as the nonwasteful use of water for a purpose recognized under the Water Code.

(2) *unappropriated water is available in the source of supply [the amendment here seeks no new appropriation, but would instead allow Marshall to use previously appropriated water for a different purpose];*

(3) the proposed appropriation:

(A) is intended for a beneficial use;¹¹

(B) *does not impair existing water rights or vested riparian rights [full-use assumption applies to impacts on other water-rights holders under section 11.122(b)];*

(C) is not detrimental to the public welfare;

(D) *considers the assessments performed under Sections 11.147(d) and (e) [effects on bays and estuaries and in-stream uses] and Sections 11.150 [effects on water quality], 11.151 [effects on groundwater],¹² and 11.152 [effects on fish and wildlife habitats]; [full-use assumption applies to these on-stream effects under section 11.122(b)]; and*

(E) addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement; and

(4) the applicant has provided evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined by Subdivision (8)(B), Section 11.002.

12. As already noted, the Commission's implementing regulations make the assessment of groundwater effects applicable to permit amendment applications. 30 TEX. ADMIN. CODE § 297.47.

TEX. WATER CODE § 11.134(b). In sum, the “other applicable requirements” that do not implicate effects on other water-rights holders or the on-stream environment concern conformance with administrative requirements, beneficial use of the water right, protection of the public welfare, groundwater effects, consistency with the state and any applicable regional water plan, avoidance of waste, and achievement of water conservation. *Id.*

The legislative history that we have described, as well as the history of the Commission’s authority over water-rights amendments and section 11.122(b)’s place in the general regulatory scheme, comports with this interpretation.

b. Commission’s Authority

The Legislature enacted the legislation that became section 11.122 of the Water Code in 1975. Act of May 22, 1975, 64th Leg., R.S., ch. 472, § 1, 1975 Tex. Gen. Laws 1249. That legislation resolved longstanding jurisprudential questions about the Commission’s authority over changes to water rights. In 1947, the Austin court of appeals had held that a water-rights permit holder was required to obtain permission from the Board of Water Engineers to change the permitted purpose and place of use of the water right. *Clark v. Briscoe Irrigation Co.*, 200 S.W.2d 674, 682 (Tex.Civ.App.—Austin 1947, no writ). Twenty-five years later, the same court held that an irrigation district was *not* required to obtain the agency’s approval to change the use of water rights reflected in the district’s certified filing. *Nueces County Water Control & Improvement Dist. No. 3 v. Tex. Water Rights Comm’n*, 481 S.W.2d 930, 933 (Tex.Civ.App.—Austin 1972, writ ref’d n.r.e.). The court distinguished *Clark* on the ground that the case had involved a permit rather than a certified filing:

The rationale of *Clark* . . . is that the necessity for obtaining approval of the Commission to change the authorized place or purpose of use of water under a *permit* is implied from the statutory policy and requirements relating to the grant of a permit in its original form, including the Commission’s approval of the original place and purpose of use. Those reasons are absent in the instance of a certified filing since the State’s approval of the place and purpose of use was not required in initiating a certified filing.

Id. The court’s decision in *Nueces County* prompted the Legislature to adopt the legislation embodied in sections 11.122(a) and (c), which made clear that “[a]ll holders of permits, certified filings, and certificates of adjudication” are required to obtain agency permission to alter a water right in any way. See Act of May 22, 1975, 64th Leg., R.S., ch. 472, § 1, 1975 Tex. Gen. Laws 1249 (current version at TEX. WATER CODE § 11.122(a)). The Legislature directed the Commission to adopt rules to effectuate the statute. *Id.* (current version at TEX. WATER CODE § 11.122(c)). In accordance with that mandate, the Commission adopted procedural rules governing amendment applications, as well as rules incorporating substantive Water Code criteria for the approval of amendments.

c. Commission Rules

In response to the Legislature’s directive, the Commission adopted the predecessor to its current rules governing notice and hearing for applications to amend water rights. See Texas Water Rights Commission, Rule 129.06.05.001 (1975) (available at the Texas Commission on Environmental Quality). That rule, like the Commission’s current rule, did not require notice and hearing on every amend-

ment application.¹³ *Id.* The current rule provides:

Only an application to amend an existing permit . . . which does not contemplate an additional consumptive use of state water or an increased rate or period of diversion and which, in the judgment of the commission, has no potential for harming any other existing water right, is subject to amendment by the commission without notice other than that provided to the record holder. Upon filing such an application, the commission shall consider whether additional notice is required based on the particular facts of the application.

30 TEX. ADMIN. CODE § 295.158(c)(1). Thus, a proposed amendment that contemplates no additional consumptive water use or increase in the rate or period of diversion, and that lacks potential to harm other existing water rights, is presumptively not subject to notice and hearing, although the rule contemplates that the Commission may determine additional notice and hearing is required “based on the particular facts of the application.” *Id.*; *see generally* 30 TEX. ADMIN. CODE § 295.171.¹⁴

The substantive rules that the Commission adopted under section 11.122(c) and other Water Code provisions require assessment of a number of factors when considering an application to amend an existing water-rights permit. Those rules were amended in 1999, largely in response to Senate Bill 1. In amending the rules,

13. Commentators have similarly agreed that notice and hearing on water-rights amendments are not always required. *See, e.g., Ronald A. Kaiser, Texas Water Marketing in the Next Millennium: A Conceptual and Legal Analysis*, 27 TEX. TECH L. REV. 181, 245 (1996); Melvin, *supra*, at 5; SKILLERN, *supra*, at 110.

14. The language of 30 Tex. Admin. Code § 295.158 appears to establish a fairly flexible standard for notice and hearing on water

the Commission differentiated between criteria pertaining to an amendment’s impact on other water rights and the on-stream environment, and other particular section 11.134 criteria. Criteria concerning the former include the “no injury” rule, 30 TEX. ADMIN. CODE § 297.45, water-quality effects, *id.* § 297.54, estuarine considerations, *id.* § 297.55, and in-stream uses, *id.* § 297.56. While these substantive criteria must be assessed when an applicant seeks a new appropriation of water, and notice and hearing must be afforded to those who may be affected, their assessment is constrained by the full-use assumption for an amendment of that appropriation. This constraint significantly reduces the criteria that must be assessed for a permit amendment, thereby streamlining the amendment process as section 11.122(b) intended.

Other Commission rules specifically require the Commission to consider other section 11.134 criteria unconstrained by section 11.122(b)’s full-use assumption. These include the public welfare, groundwater effects, the adequacy of a water conservation plan, and consistency with the state water plan and any approved regional plan. *Id.* §§ 297.41(a)(3)(C), (E), 297.46, 297.47.

[8] In sum, we interpret section 11.122(b) to require the Commission to assess specified criteria other than impacts on other water-rights holders and the on-stream environment when considering a

rights amendments. In oral argument before this Court and, according to Uncertain, before the court of appeals, the Commission has acknowledged that at least some amendment applications would be subject to notice and hearing, and, as we discuss below, the Commission took the position in adopting certain rules that the full-use assumption would not constrain it with respect to certain regulatory criteria.

proposed water-rights amendment. Marshall has a specifically defined right to fully use the amount of water identified in its permit, but it has no right to use that water other than as conditioned. *See* TEX. WATER CODE § 11.135(a) (“[The water right] is limited to the extent and purposes stated in the permit.”). The Legislature has determined that the Commission must approve alterations in water rights like the change in purpose of use that Marshall seeks in its amendment. *Id.* § 11.122(a). If removal of the potability restriction from Marshall’s permit would adversely impact the limited public-interest criteria that the Legislature carved out of section 11.122(b), then holding a contested-case hearing to determine those specific effects comports with the Legislature’s overall purpose to protect this valuable resource. On the other hand, if it is apparent from the application that those limited public-interest criteria are not adversely impacted, then no hearing on the application would be required. We emphasize, however, that in evaluating an amendment application seeking a change in use, the Commission must focus on the impacts that are inherent in the type of use that is proposed, and not on the fact that the applicant may fully use its permitted water right.

3. Notice and Hearing

[9] The question remains whether notice and hearing are necessary to assess the Marshall amendment application’s compliance with these other criteria. In general, the Commission should be able to evaluate an amendment’s effect on other water-rights holders and the on-stream environment without the need for a formal evidentiary hearing, although certainly nothing would prohibit the Commission from holding a hearing if there appear to be disputed issues relevant to determining those effects. 30 TEX. ADMIN. CODE

§§ 295.158(c)(1), 295.71. A hearing would be required, for example, if other water-rights holders or the on-stream environment were affected beyond or irrespective of the full-use assumption. For instance, if the amendment moved the point of diversion upstream above a senior right holder, it could affect that person’s diversion of water even if the applicant’s amount and rate of diversion were unchanged. Or if the use changed from a nonconsumptive use to a consumptive one, the amount returned to the stream would decrease and could affect downstream right holders, again irrespective of the full-use assumption or the rate of diversion. In situations like these, the Commission would be required to provide notice and hearing.

Uncertain claims that assessing Marshall’s proposed amendment as it relates to these effects involves a factual determination upon which a contested-case hearing must be afforded. We cannot tell from the record before us whether Uncertain claims that other water rights or the on-stream environment would be adversely affected beyond or irrespective of Marshall’s full use of the permitted right. If that determination can be made from the face of the application, then notice and hearing would not be required as to those elements; if it cannot, then a limited hearing would be necessary to assess those effects.

The same is true for the other applicable requirements that we have discussed. It may generally be possible for the Commission to determine from the face of a proposed amendment that the relevant criteria are met or are not implicated by a particular amendment application, in which event a hearing would not be necessary. But if an issue is raised as to these effects, a hearing should be afforded to assess them. We see no reason why notice and

hearing must be afforded to assess these effects before water is appropriated, *see* TEX. WATER CODE §§ 11.132, 11.133, but not when the purpose of use is later sought to be changed in a manner that might impact these considerations that the Legislature and the Commission deemed necessary to protect the public interest. In this case, Uncertain and numerous others, including the Texas Parks and Wildlife Department and the Commission's Office of Public Interest Counsel, raise a number of substantive issues not cabined by the full-use assumption, including the proposed amendment's impact on public welfare, groundwater, and the adequacy of Marshall's conservation plan. If the Commission is unable to assess these criteria from Marshall's amendment application, then notice and hearing would be required under the Water Code and Commission rules.

[10] Several amici¹⁵ argue that subjecting water-rights amendments to the time and expense of contested-case hearing procedures will discourage the development of needed supplies. As we read the Water Code and the Commission's implementing rules, however, the issues that are subject to hearing have been considerably narrowed by the elimination of significant potentially contentious issues that generally require complex hydrological analysis. *See generally* DOUGLAS G. CAROOM ET AL., 45 TEXAS PRACTICE: ENVIRONMENTAL LAW § 14.4 (Jeff Civins, Jimmy Alan Hall, & Mary K. Sahs eds., 2d ed.2005); Robert J. Brandes, *Why Do Surface Water Availability Mod-*

15. We have received amicus briefs from the Guadalupe-Blanco River Authority, the San Antonio Water Systems, the Texas Irrigation Council, and the Texas Water Conservation Association urging us to reverse the court of appeals' judgment as it pertains to section 11.122(b) of the Water Code. The Coastal Conservation Association, Texas, and the Texas Wildlife Association ask us to affirm.

els Matter to Your Client?, THE CHANGING FACE OF WATER RIGHTS IN TEXAS (State Bar of Texas 2004); *Lower Colo. River Auth.*, 689 S.W.2d 873. Under the full-use assumption, an amendment's impact on other water rights and the on-stream environment, including the issues of habitat mitigation, water-quality effects, estuarine considerations, and in-stream uses, can in most instances be determined from a facial review of the permit application without an evidentiary hearing. Moreover, application of the full-use assumption may substantially limit the pool of potential parties¹⁶ to a contested-case hearing. At the same time, any limited hearing that may be required gives effect to other provisions of Senate Bill 1 and Chapter 11 of the Water Code that the Legislature considered necessary to protect the public interest and preserve this valuable resource.

III. Conclusion

We conclude that section 11.122(b) does not mandate issuance of Marshall's water-rights amendment without the assessment of other substantive criteria imposed by the Water Code and the Commission's rules. From what we have said, it may be that persons affected by these substantive criteria are entitled to notice and hearing to determine the proposed amendment's effect, or it may be that the Commission could determine from the application that these criteria are not impacted and a hearing is not necessary. We believe that the Commission should make this determina-

16. "An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power or economic interest affected by the application." *Collins v. Tex. Natural Res. Conservation Com'n*, 94 S.W.3d 876, 882 (Tex.App.—Austin 2002, no pet.) (citing 30 TEX. ADMIN. CODE § 55.29(a)).

tion in light of our construction of section 11.122(b). We therefore affirm the court of appeals' judgment in part, although for different reasons, and remand to the Commission for further proceedings.



CITY OF HOUSTON, Petitioner,

v.

ALLCO, INC., Respondent.

No. 04-0730.

Supreme Court of Texas.

June 30, 2006.

Rehearing Denied Dec. 15, 2006.

Background: Contractor sued city for breach of contract and declaratory judgment, relating to contract to provide sewer rehabilitation services. After a bench trial, the 80th District Court, Harris County, rendered judgment for contractor. City appealed The Houston Court of Appeals, First District, affirmed. Review was granted.

Holdings: The Supreme Court held that:

- (1) city charter did not waive immunity from suit, and
- (2) Local Government Code did not waive immunity from suit.

Reversed and remanded.

1. Municipal Corporations ⇨254

Assuming city could waive, in its charter, immunity from suit, provision of charter for city of Houston, authorizing city to

1. Act approved March 18, 1905, 29th Leg., R.S., ch. 17, art. II, sec. 1, 1905 Tex. Spec.

“sue and be sued, . . . contract and be contracted with, implead and be impleaded in all courts and places and in all matters whatever,” was not a clear and unambiguous waiver of governmental immunity from suit for breach of contract.

2. Municipal Corporations ⇨1016

Provision of Local Government Code, stating that a “municipality may sue and be sued, implead and be impleaded, and answer and be answered in any matter in any court or other place,” is not a clear and unambiguous waiver of governmental immunity from suit. V.T.C.A., Local Government Code § 51.013.

Elizabeth L. Pool, Malinda York Crouch, Arturo G. Michel, Michael D. Hudgins, Eric Carl Nordstrom, Chandra Lashae Horne, Hudgins, Hudgins & Warrick, a Professional Corp., Houston, for petitioner.

Robert A. Plessala, Cokinos, Bosien & Young, Houston, for respondent.

PER CURIAM.

[1, 2] Allco, Inc. sued the City of Houston for breach of contract to provide sewer rehabilitation services and for declaratory judgment. After a bench trial, the trial court rendered judgment for Allco. The court of appeals affirmed, holding that the City's immunity from suit is waived by a provision in its charter authorizing it to “sue and be sued, . . . contract and be contracted with, implead and be impleaded in all courts and places and in all matters whatever”.¹ 2004 Tex.App. LEXIS 5934, 2004 WL 1471818, No. 01-02-00812-CV, at *3-8 (Tex.App.—Houston [1st Dist.] July

Laws 131, 131.