

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
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Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 14, 2013

Via E-Mail

The Honorable Jo-Ellen Darcy
Assistant Secretary of the Army (Civil Works)
108 Army Pentagon
Washington, DC 20310-0108

Re: Water Supply Storage Agreements and Disposition of Return Flows; Policy
Memorandum CWPM 13-00X

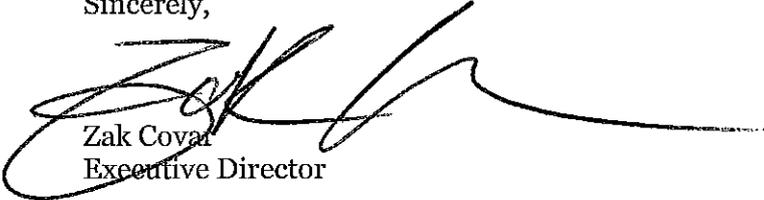
Dear Secretary Darcy:

The Texas Commission on Environmental Quality (TCEQ) understands rulemaking is in progress regarding reuse of return flows discharged into a U.S. Army Corps of Engineers (USACE or Corps) reservoir. We appreciate the Corps' recognition throughout the document that the states grant rights for the withdrawal and use of water under state law. In reviewing the document, we do have some concerns and would offer the following comments:

- Water in a watercourse (including impoundments) is state water that is owned by the state of Texas.
- Impoundment and diversion of state water requires a water right permit; this authorization requirement includes any diversion of water from surplus storage.
- Allocation of return flows to all owners/users in a reservoir, even if distributed proportionately, may result in water that is permitted to an existing water right being allocated in a manner that would violate state law.
- Regarding inflows generated from return flows, return flows are not considered in TCEQ's water availability determinations for new appropriations for storage or diversion. Any use or *reuse* of return flows requires a permit from the state and an analysis that such use of state water belonging to the state does not impair existing permitted water rights.

The TCEQ appreciates the opportunity to comment and we would be happy to discuss our comments at your convenience. The contact for this matter will be Kellye Rila, Director of the Water Availability Division, at (512) 239-4612.

Sincerely,


Zak Covar
Executive Director