



FLYING "A" RANCH  
PERRY & MARGIE ADAMS  
P. O. BOX 400  
NEMO, TX 76070  
PHONE 274/897-2230  
email perry@hcnews.com

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2005 MAY 27 PM 4: 40

CHIEF CLERKS OFFICE

MAY 14,2005

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY C/O  
OFFICE OF CHIEF CLARK, MC105,  
P.O. BOX 13087  
AUSTIN, TEXAS 78711-3087

REFERENCE: BRAZOS RIVER AUTHORITY  
APPLICATION NO. 5851  
SYSTEM OPERATION PERMIT

*WRP  
440474*

H OPA

MAY 31 2005

BY *D*

SIRS:

WE REQUEST A CONTEST CASE HEARING, IN THE 30 YEARS THAT WE HAVE OWNED OUR RANCH, THAT IS LOCATED IN THE CENTER OF COX BEND OF THE BRAZOS, THE (BRA) "BRAZOS RIVER AUTHORITY" HAS CONSISTENTLY MISHANDLED THE FLOW OF THE RIVER AS IT PASSES OUR PROPERTY. IN THE FIRST YEARS THAT WE OWNED THE RANCH, THERE WAS EITHER NO WATER FLOWING OR OUR PECAN BOTTOM WAS FLOODED, CAUSING CONSIDERABLE DAMAGE TO THE LAND, TREES, AND FENCES.

CURRENTLY, BRA IS NOT RELEASING ENOUGH WATER FROM LAKE GRANBURY DAM TO KEEP THE RIVER ALIVE, THE FISH ARE DYING, THE WATER IS STAGANT, NO RECREATIONAL SWIMMING OR CANOEING, PECAN TREES ARE DYING FOR THE LACK OF SUB IRRIGATION, ECOLOGY IS TERRIBLE, ALL WATER FOWL HAS LEFT, EVEN OUR EAGLES ARE GONE. THE TERRIBLE CONDITION OF THE RIVER HAS ALSO DEPRECIATED THE VALUE OF OUR RANCH.

ANY AND ALL PROTESTS TO THE BRA ARE MET WITH THE SAME RESPONSE, **"WE ARE THE BRA AND WE WILL MANAGE THE RIVER AS WE WANT TO"**. WE FEEL THAT THEIR MAJOR CONCERN HAS BEEN TO KEEP WATER UP TO LAKE GRANBURY RESIDENT'S RETAINING WALLS, THAN TO THE CONDITION OF ONE OF TEXAS' MAJOR RIVERS. WE THINK IT'S TIME, FOR SOME OTHER AUTHORITY TO TAKE OVER CONTROL OF OUR ONCE BEAUTIFUL BRAZOS RIVER, SO THAT IT MAY BE RESTORED TO THE RIVER IT WAS WHEN WE FIRST BOUGHT OUR RANCH, IN 1975.

THANK YOU  
FOR YOUR CONSIDERATION  
IN THIS MATTER.

*Margaret Adams*  
PERRY & ADAMS  
MARGARET ADAMS  
FLYING "A" RANCH

*dup*

① More formal oral comments

Filed written comments

**TCEQ Public Participation Form**  
**Brazos River Authority**  
**Public Meeting**  
**Proposed Application to Appropriate State Water**  
**Permit No. 5851**

**Tuesday, May 17, 2005**

**OPA RECEIVED**

**MAY 17 2005**

**AT PUBLIC MEETING**

**PLEASE PRINT:**

Name: Lawrence L Bellatti, Andrews Kurth LLP

Address: 600 Travis Area + Suite 4200

City/State: Houston, Texas Zip: 77002

Phone: (713) 220-4196

Are you here today representing a municipality, legislator, agency, or group?  Yes  No

If yes, which one? \_\_\_\_\_

Persons whose names and addresses appear legibly on the sign in sheet at the public meeting and persons who submitted written comments to the TCEQ will be notified by the TCEQ's Office of Chief Clerk of the executive director's decision and provided the final technical summary on which the decision was based.

Please give this to the person at the information table. Thank you.

CHIEF CLERKS OFFICE

2005 MAY 19 PM 4:37

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Supplemental W. Hen  
Comments of Chocolate  
Bayou Water Company at  
Public Hearing 17 May 2005 Waco, Texas  
NO. 5851

H by BCB

IN THE MATTER OF THE § BEFORE THE TEXAS  
WATER RIGHTS APPLICATION § COMMISSION ON  
OF THE BRAZOS RIVER AUTHORITY § ENVIRONMENTAL QUALITY

OPA RECEIVED

MAY 17 2005

AT PUBLIC MEETING

REQUEST FOR CONTESTED CASE HEARING  
OF CHOCOLATE BAYOU WATER COMPANY

CHIEF CLERKS OFFICE  
2005 APR 28 PM 3:38  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

1. The name and address of the Protestant is Chocolate Bayou Water Company ("Chocolate Bayou"), P.O. Box 550, Alvin, Texas 77512-0550; its telephone number is 393-1596; and its facsimile number is 281-581-9921.

2. The pending application is No. 5851 (the "Application"), being the application of the Brazos River Authority (the "BRA") in which the Applicant has applied for a permit designated its "System Operation Permit" to, among other things, authorize:

- (a) a new appropriation of state water in the amount of 421,449 acre-feet per year for multiple use purposes, including domestic, municipal, agricultural, industrial, mining, and other beneficial uses on a firm basis in the Brazos River Basin from (i) the existing diversion points authorized by BRA's existing water rights; (ii) the Brazos River at the USGS gage No. 08091000 near Glen Rose, Texas; (iii) the Brazos River at USGS gage No. 08098290 near Highbank, Texas; (iv) the Brazos River at the Gulf of Mexico; and (v) at such other diversion points that may be identified and included in BRA's proposed Water Management Plan which is subject to TCEQ's approval;
- (b) an exempt interbasin transfer authorization to transfer and use, on a firm and interruptible basis, such water in the adjoining San Jacinto-Brazos

Coastal Basin and the Brazos-Colorado Coastal Basin, and to transfer such water to any county or municipality or the municipality's retail service area that is partially within the Brazos River Basin for use, on a firm and interruptible basis, in that part of the county or municipality and the municipality's retail service area not within the Brazos River basin;

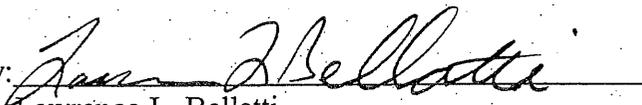
- (c) an appropriation of current and future return flows (treated sewage effluent and brine bypass/return) to the extent that such return flows continue to be discharged or returned into the bed and banks of the Brazos River, its tributaries, and applicant's reservoirs;
- (d) operational flexibility to (i) use any source of water available to the applicant to satisfy the diversion requirements of senior water rights to the same extent that those water rights would have been satisfied by passing inflows through the applicant's reservoirs on a priority basis; and (ii) release, pump and transport water from any of the applicant's reservoirs for subsequent storage, diversion and use throughout the applicant's service area;
- (e) recognition that the System Operation Permit approved pursuant to this application will prevail over inconsistent provisions in the Applicant's existing water rights regarding system operation; and
- (f) use of the bed and banks of the Brazos River, its tributaries and the Applicant's reservoirs for the conveyance, storage, and subsequent diversion of water that the Applicant seeks to appropriate under this Application.

3. The basis of the interest of Chocolate Bayou is that it is the holder of Certificate of Adjudication 12-5322 as amended, which authorizes diversion of 155,000 acre-feet of water per annum with priority dates of February 8, 1929, for the first 40,000 acre-feet, March 14, 1955 for the next 40,000 acre-feet, and July 25, 1983 for the remaining 75,000 acre-feet at a rate of 900 cubic feet per second from the Brazos River at Juliff, Fort Bend County, Texas. The exercise of the rights sought under the Application may impair Chocolate Bayou's senior water rights.

4. The diversion point authorized under Chocolate Bayou's Certificate of Adjudication 12-5322 as amended is located at river mile marker 67.5 on the Brazos River. The Applicant's proposed diversion points on the Brazos River range from approximately 280 miles upstream (Highbank, Texas) to 67.5 miles downstream (Gulf of Mexico) of Chocolate Bayou's diversion point. Accordingly, Chocolate Bayou requests that the Commission set this matter for a contested case hearing to determine whether the approval of the Application would adversely impact and impair Chocolate Bayou's senior downstream water rights, is in the public interest, and authorized by Texas law.

Respectfully submitted,

ANDREWS KURTH LLP

By:   
Lawrence L. Bellatti  
Texas Bar No. 02105500  
600 Travis, Suite 4200  
Houston, Texas 77002  
(713) 220-4200  
Fax: (713) 238-7207

Attorneys for Protestant  
Chocolate Bayou Water Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the Applicant set forth below by certified mail, return receipt requested, on this 27<sup>th</sup> day of April, 2005.

Mr. Bruce Wasinger  
Bickerstaff, Heath, Smiley, Pollan,  
Kever & McDaniel, L.L.P.  
816 Congress Avenue, Suite 1700  
Austin, Texas 78701

  
\_\_\_\_\_  
Lawrence L. Bellatti

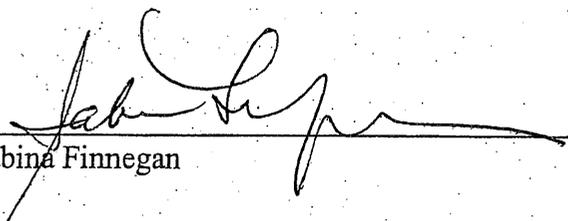
VERIFICATION

THE STATE OF NEW JERSEY

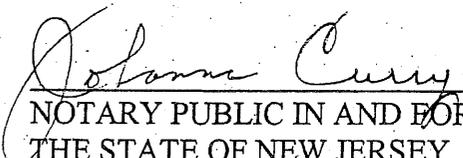
§  
§  
§

COUNTY OF BERGEN

Sabina Finnegan, Vice President and General Manager of Chocolate Bayou Water Company, personally appeared before me, and being first duly sworn declared that she signed this Request for Contested Case Hearing in the capacity designated, and is authorized to request this evidentiary hearing by Chocolate Bayou Water Company, and further states that she has read the above Request for Contested Case Hearing and the statements therein contained are true and correct.

  
\_\_\_\_\_  
Sabina Finnegan

SWORN TO AND SUBSCRIBED BEFORE ME this 26<sup>th</sup> day of APRIL,  
2005.

  
\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF NEW JERSEY

JOHANNA CURRY  
Notary Public, State of New Jersey  
My Commission Expires October 5, 2005

**ANDREWS**  
ATTORNEYS **KURTH** LLP

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

600 Travis, Suite 4200  
Houston, Texas 77002  
713.220.4200 Phone  
713.220.4285 Fax  
andrewskurth.com

2005 APR 28 PM 2:34

CHIEF CLERKS OFFICE

Lawrence L. Bellatti  
713-220-4196 Direct  
713-238-7207 Fax

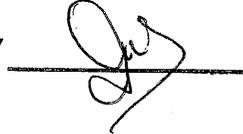
April 27, 2005

*HR*  
**OPA**

Ms. LaDonna Castañuela  
Office of the Chief Clerk, MC 105  
12100 Park 35 Circle  
Austin, Texas 78753

*WR*  
44044

**APR 29 2005**

**BY** 

Re: No. 5851; *In the Matter of the Water Rights Application of the Brazos River Authority*

Dear Ms. Castañuela:

Please find enclosed an original and 12 copies of a Request for Contested Case Hearing of Chocolate Bayou Water Company which we request that you file among the papers of the above-referenced cause. Please stamp one copy with your file mark and return to the undersigned.

Thank you for your courtesies and cooperation.

Yours very truly,



Lawrence L. Bellatti

1128:amm

Enclosure

cc/enc: **BY CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
Mr. Bruce Wasinger  
Bickerstaff, Heath, Smiley, Pollan,  
Kever & McDaniel, L.L.P.  
816 Congress Avenue, Suite 1700  
Austin, Texas 78701





Coastal Basin and the Brazos-Colorado Coastal Basin, and to transfer such water to any county or municipality or the municipality's retail service area that is partially within the Brazos River Basin for use, on a firm and interruptible basis, in that part of the county or municipality and the municipality's retail service area not within the Brazos River basin;

- (c) an appropriation of current and future return flows (treated sewage effluent and brine bypass/return) to the extent that such return flows continue to be discharged or returned into the bed and banks of the Brazos River, its tributaries, and applicant's reservoirs;
- (d) operational flexibility to (i) use any source of water available to the applicant to satisfy the diversion requirements of senior water rights to the same extent that those water rights would have been satisfied by passing inflows through the applicant's reservoirs on a priority basis; and (ii) release, pump and transport water from any of the applicant's reservoirs for subsequent storage, diversion and use throughout the applicant's service area;
- (e) recognition that the System Operation Permit approved pursuant to this application will prevail over inconsistent provisions in the Applicant's existing water rights regarding system operation; and
- (f) use of the bed and banks of the Brazos River, its tributaries and the Applicant's reservoirs for the conveyance, storage, and subsequent diversion of water that the Applicant seeks to appropriate under this Application.

3. The basis of the interest of Chocolate Bayou is that it is the holder of Certificate of Adjudication 12-5322 as amended, which authorizes diversion of 155,000 acre-feet of water per annum with priority dates of February 8, 1929, for the first 40,000 acre-feet, March 14, 1955 for the next 40,000 acre-feet, and July 25, 1983 for the remaining 75,000 acre-feet at a rate of 900 cubic feet per second from the Brazos River at Juliff, Fort Bend County, Texas. The exercise of the rights sought under the Application may impair Chocolate Bayou's senior water rights.

4. The diversion point authorized under Chocolate Bayou's Certificate of Adjudication 12-5322 as amended is located at river mile marker 67.5 on the Brazos River. The Applicant's proposed diversion points on the Brazos River range from approximately 280 miles upstream (Highbank, Texas) to 67.5 miles downstream (Gulf of Mexico) of Chocolate Bayou's diversion point. Accordingly, Chocolate Bayou requests that the Commission set this matter for a contested case hearing to determine whether the approval of the Application would adversely impact and impair Chocolate Bayou's senior downstream water rights, is in the public interest, and authorized by Texas law.

Respectfully submitted,

ANDREWS KURTH LLP

By: 

Lawrence L. Bellatti  
Texas Bar No. 02105500  
600 Travis, Suite 4200  
Houston, Texas 77002  
(713) 220-4200  
Fax: (713) 238-7207

Attorneys for Protestant  
Chocolate Bayou Water Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the Applicant set forth below by certified mail, return receipt requested, on this 27<sup>th</sup> day of April, 2005.

Mr. Bruce Wasinger  
Bickerstaff, Heath, Smiley, Pollan,  
Kever & McDaniel, L.L.P.  
816 Congress Avenue, Suite 1700  
Austin, Texas 78701

  
\_\_\_\_\_  
Lawrence L. Bellatti



**ANDREWS**  
ATTORNEYS **KURTH** LLP

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

600 Travis, Suite 4200  
Houston, Texas 77002  
713.220.4200 Phone  
713.220.4285 Fax  
andrewskurth.com

2005 APR 28 PM 2:34

CHIEF CLERKS OFFICE

Lawrence L. Bellatti  
713-220-4196 Direct  
713-238-7207 Fax

April 27, 2005

*HR*  
**OPA**

Ms. LaDonna Castañuela  
Office of the Chief Clerk, MC 105  
12100 Park 35 Circle  
Austin, Texas 78753

*WR*  
**44044**

**APR 29 2005**  
**BY** *[Signature]*

Re: No. 5851; *In the Matter of the Water Rights Application of the Brazos River Authority*

Dear Ms. Castañuela:

Please find enclosed an original and 12 copies of a Request for Contested Case Hearing of Chocolate Bayou Water Company which we request that you file among the papers of the above-referenced cause. Please stamp one copy with your file mark and return to the undersigned.

Thank you for your courtesies and cooperation.

Yours very truly,

*[Signature]*

Lawrence L. Bellatti

1128:amm

Enclosure

cc/enc: **BY CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
Mr. Bruce Wasinger  
Bickerstaff, Heath, Smiley, Pollan,  
Keever & McDaniel, L.L.P.  
816 Congress Avenue, Suite 1700  
Austin, Texas 78701

*[Handwritten mark]*



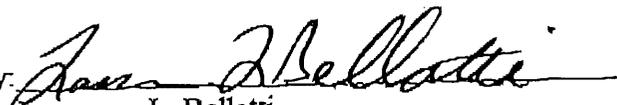
- Coastal Basin and the Brazos-Colorado Coastal Basin, and to transfer such water to any county or municipality or the municipality's retail service area that is partially within the Brazos River Basin for use, on a firm and interruptible basis, in that part of the county or municipality and the municipality's retail service area not within the Brazos River basin;
- (c) an appropriation of current and future return flows (treated sewage effluent and brine bypass/return) to the extent that such return flows continue to be discharged or returned into the bed and banks of the Brazos River, its tributaries, and applicant's reservoirs;
  - (d) operational flexibility to (i) use any source of water available to the applicant to satisfy the diversion requirements of senior water rights to the same extent that those water rights would have been satisfied by passing inflows through the applicant's reservoirs on a priority basis; and (ii) release, pump and transport water from any of the applicant's reservoirs for subsequent storage, diversion and use throughout the applicant's service area;
  - (e) recognition that the System Operation Permit approved pursuant to this application will prevail over inconsistent provisions in the Applicant's existing water rights regarding system operation; and
  - (f) use of the bed and banks of the Brazos River, its tributaries and the Applicant's reservoirs for the conveyance, storage, and subsequent diversion of water that the Applicant seeks to appropriate under this Application.

3. The basis of the interest of Chocolate Bayou is that it is the holder of Certificate of Adjudication 12-5322 as amended, which authorizes diversion of 155,000 acre-feet of water per annum with priority dates of February 8, 1929, for the first 40,000 acre-feet, March 14, 1955 for the next 40,000 acre-feet, and July 25, 1983 for the remaining 75,000 acre-feet at a rate of 900 cubic feet per second from the Brazos River at Juliff, Fort Bend County, Texas. The exercise of the rights sought under the Application may impair Chocolate Bayou's senior water rights.

4. The diversion point authorized under Chocolate Bayou's Certificate of Adjudication 12-5322 as amended is located at river mile marker 67.5 on the Brazos River. The Applicant's proposed diversion points on the Brazos River range from approximately 280 miles upstream (Highbank, Texas) to 67.5 miles downstream (Gulf of Mexico) of Chocolate Bayou's diversion point. Accordingly, Chocolate Bayou requests that the Commission set this matter for a contested case hearing to determine whether the approval of the Application would adversely impact and impair Chocolate Bayou's senior downstream water rights, is in the public interest, and authorized by Texas law.

Respectfully submitted,

ANDREWS KURTH LLP

By: 

Lawrence L. Bellatti  
Texas Bar No. 02105500  
600 Travis, Suite 4200  
Houston, Texas 77002  
(713) 220-4200  
Fax: (713) 238-7207

Attorneys for Protestant  
Chocolate Bayou Water Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served on the Applicant set forth below by certified mail, return receipt requested, on this 27<sup>th</sup> day of April, 2005.

Mr. Bruce Wasinger  
Bickerstaff, Heath, Smiley, Pollan,  
Keever & McDaniel, L.L.P.  
816 Congress Avenue, Suite 1700  
Austin, Texas 78701

  
Lawrence L. Bellatti



**ANDREWS**  
ATTORNEYS **KURTH** LLP

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

600 Travis, Suite 4200  
Houston, Texas 77002  
713.220.4200 Phone  
713.220.4285 Fax  
andrewskurth.com

2008 JAN 30 AM 10:51

CHIEF CLERKS OFFICE

Lawrence L. Bellatti  
713.220.4196 Phone  
713.238.7207 Fax  
lbellatti@andrewskurth.com

2005-1490-WR

January 28, 2008

**BY FACSIMILE 512-239-2214**

Ms. Kellye Rila  
Texas Commission on Environmental Quality  
Water Rights Permitting Section  
12100 Park 35 Circle, MC-160  
Austin, Texas 78753

OPA  
FILED BY  
BY RG

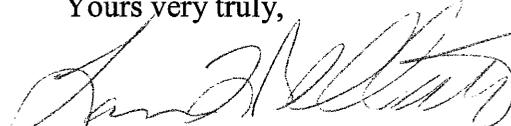
Re: *Brazos River Authority – Water Rights Permit 5851*

Dear Ms. Rila:

Pursuant to our previous letter of January 30, 2007, please note that Glenn Jarvis and I are no longer counsel of record for Chocolate Bayou Water Company in this proceeding. As Gulf Coast Water Authority is now the protestant of record, all future notices and correspondence in this matter should be directed to:

Robert Istre  
General Manager  
Gulf Coast Water Authority  
3630 Highway 1765  
Texas City, Texas 77591  
409-935-2438 ext. 17

Yours very truly,

  
Lawrence L. Bellatti

1128:amm

cc: Mr. Bruce Wasinger  
Bickerstaff, Heath, Smiley, Pollan, Keever  
& McDaniel, L.L.P.  
816 Congress Ave., Suite 1700  
Austin, Texas 78701

mw

Ms. Kellye Rila  
Page 2  
January 28, 2008

cc: Ms. LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Mr. Robert Istre  
Gulf Coast Water Authority  
3630 Highway 1765  
Texas City, Texas 77591

1128178000

600 Travis, Suite 4200  
Houston, Texas 77002

**ANDREWS**  
ATTORNEYS **KURTH** LLP



**RECEIVED**

JAN 3 U 2008

Ms. LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087



R.D.B. 19736

002  
44044  
WR

Law Offices  
of

**GLENN JARVIS**

Inter National Bank Building  
1801 South Second Street, Suite 550  
McAllen, Texas 78503

Telephone (956) 682-2660

Telefax (956) 618-2660

#55518

OPA

JUL 20 2004

July 16, 2004

JUL 23 2004

BY



Ms. LaDonna Castañuela, Chief Clerk  
Office of the Chief Clerk, MC-105  
Texas Comm. On Environmental Quality  
P.O. Box 13987, Capital Station  
Austin, TX 78711-3087

CHIEF CLERKS OFFICE

JUL 22 11 33 AM '04

RE: Application by Brazos River Authority for Permit to Appropriate Public Water  
("System Operation Permit")

Dear Ms. Castañuela:

I am writing on behalf of Chocolate Bayou Water Company who owns water rights on the Brazos River. I am Co-counsel with Mr. Larry Bellatti and our client has reviewed the Application, which the Brazos River Authority filed with Commission staff with its letter dated June 25, 2004. Our client has an interest in this Application, and would request to be placed on the Mailing List once this Application is docketed. Our names and addresses are as follows:

Glenn Jarvis  
LAW OFFICES OF GLENN JARVIS  
Inter National Bank Bldg.  
1801 South Second Street, Ste. 550  
McAllen, TX 78503

Lawrence L. Bellatti  
ANDREWS KURTH LLP  
600 Travis, Ste. 4200  
Houston, TX 77002

I am sending a copy of this letter to Mr. David Koinm, Water Uses and Availability Section of the Commission, who I understand is working on the Application.

Thank you for your attention to this matter, and the usual courtesies extended by your office.

Should there be any questions regarding this matter, please do not hesitate to contact me.

Sincerely yours,

  
Glenn Jarvis

GJ:llc





24670

**Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.**  
*A Registered Limited Liability Partnership*

816 Congress Ave., Ste. 1700  
Austin, Texas 78701-2443  
Telephone: (512) 472-8021  
<http://www.bickerstaff.com>



*The information contained in this facsimile is privileged & confidential. It is intended only for the use of the individual or entity named below. If you have received this transmission in error, please notify us by telephone collect and return it to us at the above address. Thank you.*

**DATE:** July 21, 2004

**CLIENT #:** 2882.01

**TELECOPIER COVER SHEET**  
Fax Number: (512) 320-5638

CHIEF CLERKS OFFICE  
JUL 22 11 33 AM '04

**TELECOPIER NUMBER:** 239-3939

**SEND TO:** Margaret Hoffman, Executive Director

**FIRM/COMPANY:** TCEQ

In case of transmission problems -  
**TELEPHONE NUMBER:** 239-3900

**FROM:** Doug Caroom

**TOTAL PAGES INCLUDING COVER SHEET:** 3

ORIGINAL WILL FOLLOW VIA U.S. MAIL       ORIGINAL WILL NOT FOLLOW

**TELECOPIER OPERATOR:** \_\_\_\_\_ **TIME:** \_\_\_\_\_ a.m./p.m.

*Please contact the fax center at 512-472-8021 if complete FAX is not received.*

**MESSAGE:**

**Re: Application by Brazos River Authority for Permit to Appropriate Public Water**

For your information - July 16, 2004 correspondence from Glenn Jarvis to TCEQ Chief Clerk

44044  
WR

Law Offices  
of

**GLENN JARVIS**

Inter National Bank Building  
1801 South Second Street, Suite 550  
McAllen, Texas 78503

Telephone (956) 682-2660

Telefax (956) 618-2660

CHIEF CLERKS OFFICE

2004 JUL 16 PM 3:21

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**OPA**

JUL 20 2004

July 16, 2004

BY *Glenn Jarvis*

Ms. LaDonna Castañuela, Chief Clerk  
Office of the Chief Clerk, MC-105  
Texas Comm. On Environmental Quality  
P.O. Box 13087, Capital Station  
Austin, TX 78711-3087

RE: Application by Brazos River Authority for Permit to Appropriate Public Water  
("System Operation Permit")

5851  
WR

Dear Ms. Castañuela:

I am writing on behalf of Chocolate Bayou Water Company who owns water rights on the Brazos River. I am Co-counsel with Mr. Larry Bellatti and our client has reviewed the Application, which the Brazos River Authority filed with Commission staff with its letter dated June 25, 2004. Our client has an interest in this Application, and would request to be placed on the Mailing List once this Application is docketed. Our names and addresses are as follows:

Glenn Jarvis  
LAW OFFICES OF GLENN JARVIS  
Inter National Bank Bldg.  
1801 South Second Street, Ste. 550  
McAllen, TX 78503

Lawrence L. Bellatti  
ANDREWS KURTH LLP  
600 Travis, Ste. 4200  
Houston, TX 77002

I am sending a copy of this letter to Mr. David Koinm, Water Uses and Availability Section of the Commission, who I understand is working on the Application.

Thank you for your attention to this matter, and the usual courtesies extended by your office.

Should there be any questions regarding this matter, please do not hesitate to contact me.

Sincerely yours,

*Glenn Jarvis*  
Glenn Jarvis

GJ:lhc

*WR*

LaDonna Castañuela, Chief Clerk  
July 16, 2004  
Page 2 of 2

xc: Mr. David N. Koinm, MC-160  
Water Rights Permitting Team  
Water Uses and Availability Section  
TEXAS COMMISSION ON ENVIRONMENTAL QUAL.  
P.O. Box 13087  
Austin, TX 78711-3087

Lawrence L. Bellatti  
ANDREWS KURTH LLP  
600 Travis, Ste. 4200  
Houston, TX 77002

Douglas G. Caroom  
BICKERSTAFF, HEATH, SMILEY, POLLAN, KEVER & MCDANIEL  
816 Congress Ave., Ste. 1700  
Austin, TX 78701-2443

WR  
44044

June 9, 2005

OPA

H JUN 15 2005  
BY *KY*

CHIEF CLERKS OFFICE

2005 JUN 13 PM 2:27

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Ms. LaDonna Castañuela VIA First Class Mail  
Office of the Chief Clerk (MC 105)  
Texas Commission on Environmental Quality\_  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Request for Contested Case Hearing In the Matter of the Brazos  
River Authority's Application No. 5851

Dear Ms. Castañuela:

I, George E. Bingham, on behalf of myself, Juanita Sue Bingham, Brian Bingham, Kellie Bingham, and Carey Bingham (hereinafter, the "Hearing Requestors"), hereby request a contested case hearing on the above-referenced application. The Hearing Requestors' contact information is:

George E. Bingham  
2191 Highway 2247  
Comanche, Texas 76442  
Telephone: 254/842-5285  
Facsimile: 254/842-5919

Application No. 5851 (the "Application"), the application of the Brazos River Authority ("BRA"), proposes, in part: i) the appropriation of over 1 million acre-feet of water supplies in the Brazos River Basin; ii) the use of all of the bed and banks of streams in the Brazos River Basin to transport water proposed for appropriation thereunder, as well as other water, including any water under the control of the BRA; and, iii) a system operation protocol. The Hearing Requestors have an interest in the Application as a result of water rights they hold in Certificate of Adjudication No. 12-3580, as amended, and Permit No. 4264, as amended (collectively, the "Water Rights"). The Application seeks to appropriate both firm and interruptible surface water supplies within the Brazos River Basin, including return flows from other entities. As such, the exercise of additional rights sought by BRA pursuant to the Application may impact the reliability, and the continued availability, of the Water Rights, and have significant economic impacts on the Hearing Requestors.

The Hearing Requestors' Water Rights are located on: i) an unnamed tributary of Martins Creek, tributary of Copperas (Rush) Creek, tributary of the Leon River, tributary of the Little River, tributary of the Brazos River in Comanche County, Texas (all as reflected in Permit No. 4264, as amended); and, ii) an unnamed tributary of Beattie Branch and Beattie Branch, tributary of Copperas (Rush) Creek, tributary of the Leon

River, tributary of the Little River, tributary of the Brazos River, in Comanche County, Texas (all as reflected in CA 12-3580, as amended). According to the Notice of Application No. 5851, BRA's Application proposes the diversion of water from: "(i) the existing diversion points authorized by BRA's existing water rights; (ii) the Brazos River at the USGS gage No. 08091000 near Glen Rose, Texas; (iii) the Brazos River at USGS gage No. 08098290 near Highbank, Texas; (iv) the Brazos River at the Gulf of Mexico; and, (v) at such other diversion points that may be identified and included in BRA's proposed Water Management Plan which is subject to TCEQ's approval."

Given the expansive nature of BRA's requested appropriation in the Application, and the general nature of the description of the proposed diversion points in the Notice of Application No. 5851, the Hearing Requestors' Water Rights are at various distances from the rights proposed to be granted to BRA by the Application. For example, to the extent that BRA seeks the right to use the bed and banks of all streams in the Brazos River Basin, including streams traversing the real property of the Hearing Requestors (e.g., unnamed tributaries of Martins Creek and Beattie Branch, and Martins Creek and Beattie Branch), then this portion of BRA's request is immediately adjacent to the property of the Hearing Requestors, including their Water Rights. Other portions of the requested appropriation of BRA, identified in the Notice of Application No. 5851 as BRA's "System Operation Permit", and referencing BRA's proposed "Water Management Plan" are not adequately described in said Notice such that the Hearing Requestors could more specifically identify the location and distance of their property interests to BRA's proposed activities. In any event, please consider this letter as a request for a contested case hearing on Application No. 5851.

Please contact me at the telephone number or address listed above if you have questions or need additional information concerning this request for hearing.

Sincerely,

  
George E. Bingham

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICE OF CHIEF CLERK, MC 105  
P.O. Box 13087  
Austin, Texas 78711-3087

WWW.TCEQ.STATE.TX.US

750544

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

2005 MAY 27 PM 4:38

CHIEF CLERKS OFFICE

LACK WELDON BRIDGES III  
P.O. Box 7233  
GLEN ROSE, TEXAS 76043  
254-897-2937

LBRIDGES@VAKOR.NET.COM

H OPA

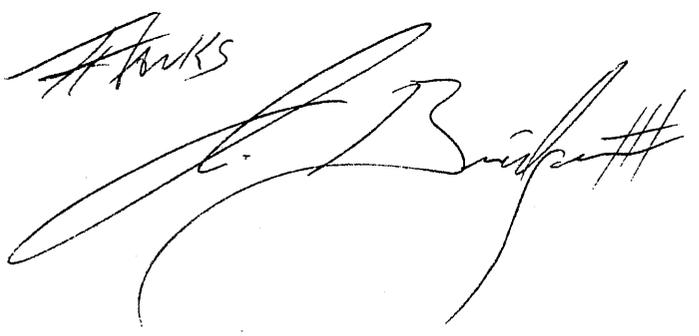
MAY 31 2005

BY D

17 May/05

RE: BRAZOS RIVER AUTHORITY'S APPLICATION # 5851, SYSTEM OPERATION PERMIT

I AM REQUESTING A CONTESTED CASE HEARING.  
MY PROPERTY IS LOCATED ON A TRIBUTARY TO THE BRAZOS RIVER IN SOMERVELL COUNTY.  
THIS PERMIT WILL ADVERSELY AFFECT MY + MY FAMILY'S USE OF THE RIVER. WHEN THE RIVER GOES STAGNANT THEN THERE IS NO SWIMMING, CANOEING, FISHING OR WADEING IN THE RIVER FOR FEAR OF DISEASE.  
I BELIEVE THAT GRANTING THIS PERMIT WILL ADVERSELY AFFECT MY PROPERTY.

THANKS  






NATIONAL  
WILDLIFE  
FEDERATION®

www.nwf.org™

NATIONAL WILDLIFE FEDERATION ON ENVIRONMENTAL QUALITY

GULF STATES NATURAL RESOURCE CENTER

44 East Avenue, Suite 200  
Austin, Texas 78701

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

(512) 476-9805

FAX (512) 476-9810

www.nwf.org

2005 JUN 13 PM 3:12

CHIEF CLERKS OFFICE

OPA

H JUN 15 2005

BY KA

WR  
441044

June 13, 2005

Ms. LaDonna Castañuela  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

RE: Request for Contested Case Hearing In the Matter of the Brazos River Authority  
Permit Application No. 5851

Dear Ms. Castañuela:

The National Wildlife Federation (NWF) hereby requests a contested case hearing on the above-referenced application through its Gulf States Natural Resource Center. NWF's contact information is:

Christopher Brown  
Water Projects Attorney  
National Wildlife Federation  
44 East Avenue, Suite 200  
Austin, TX 78701  
Tel. 512-476-9805  
Fax: 512-476-9810  
E-mail: [chrisbrown@nwf.org](mailto:chrisbrown@nwf.org).

This **REQUEST FOR CONTESTED CASE HEARING** on the Brazos River Authority's (BRA's) Permit Application No. 5851 arises from the fact that BRA's permit application, if granted, would affect NWF in a manner not common to the general public because NWF is a national, non-profit organization dedicated, among other things, to protecting natural resources and the right of people to use and enjoy those resources. NWF's membership is composed of people who share the goals of protecting fish and wildlife resources and the right of people to enjoy those resources.<sup>1</sup> NWF has approximately 38,000 members in Texas, many of who use and enjoy those resources, including the resources of the Brazos River.

BRA's application represents a massive and unprecedented attempt to appropriate or control what comprises most of the remaining unappropriated waters on the Brazos

<sup>1</sup> The formal mission of the National Wildlife Federation is to inspire Americans to protect wildlife for our children's future.

River. In broad terms, it seeks authorization for the BRA to: (1) make a new appropriation of state water for various purposes; (2) appropriate current and future return flows; (3) make exempted interbasin transfers of the water; (4) enjoy "operational flexibility" on the 13 different reservoirs that the BRA manages; (5) have the ability to use this permit to trump the conditions in present water rights permits/adjudications (without actually amending the existing permits); (6) use the bed and banks of the Brazos River and its tributaries to convey, store, and divert state water appropriated under this permit and other sources.

Generally, the requested permit would authorize the diversion and appropriation of unappropriated water of which up to 421,449 acre feet will be firm and up to 670,000 acre feet will be interruptible. Until the completion of the Allen's Creek Reservoir, BRA asks for authorization allowing for a higher quantity of diversion: up to 425,099 acre feet as firm rights and up to 869,000 acre feet as interruptible rights. This application clearly represents a massive, complex, and unprecedented application on the Brazos River.

BRA's application states that the BRA's existing water rights should be altered when their terms conflict with the proposed permit. Thus, BRA attempts to gain approval of the current permit application and approval for modifications to existing water rights *without* formally seeking amendments to those existing rights. At least fourteen BRA certificates of adjudication or permits that would be affected: No. 12-5155 (Possum Kingdom Lake); No. 12-5156 (Lake Granbury); No. 12-5165 (Lake Limestone); No. 12-5157 (Lake Whitney); No. 12-05160 (Lake Belton); No. 12-05159 (Lake Proctor); No. 12-5164 (Lake Somerville); No. 12-5161 (Lake Stillhouse Hollow); No. 12-5163 (Lake Granger); No. 12-5162 (Lake Georgetown); No. 12-5158 (Lake Aquilla); Permit No. 2925A (Allens Creek Reservoir, along with the Texas Water Development Board and the City of Houston); and, Permit Nos. 5166 and 5167. NWF questions the legality of that approach and the adequacy of notice for this application.

In short, BRA proposes a massive new appropriation and potentially major adjustments to existing water rights. Such an application has a tremendous potential to significantly affect the fish and wildlife resources of the Brazos River watershed, and the ability of people -- including NWF members -- to use and enjoy these resources. NWF's interests in protecting fish and wildlife would therefore suffer adverse effects if the TCEQ grants this permit application without significant protective conditions, as would its interests in protecting the ability of its members to use and enjoy these resources in and along the Brazos River, including the estuarine portions of the River, and its tributaries.

In particular, NWF seeks to participate in developing environmental flow conditions to include in any permit or permit amendments to address adverse impacts to fish and wildlife resources, water quality, commercial and recreational fisheries, and other recreational activities that the proposed application could affect. BRA proposes to rely on some form of future management plan in order to preserve flexibility for BRA in its future operations. However, any authorization for such a plan must, at minimum, establish definite and enforceable criteria adequate to ensure that any future version of

such a plan will ensure adequate protections. Further, NWF seeks to ensure that any potential recipients of water from the proposed diversion have implemented adequate water conservation and drought management measures to ensure that any diversions are actually necessary, and to ensure that state water is used in a manner consistent with the public welfare. NWF is open to discussions of how these concerns may be addressed without the need for a contested case hearing.

Please contact me at the telephone number, physical address, or e-mail address listed above if you have questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Christopher Brown". The signature is written in black ink and is positioned above a horizontal line.

Christopher Brown  
Water Projects Attorney



JACKSON WALKER L.L.P.  
ATTORNEYS & COUNSELORS

44044

Leonard H. Dougal  
(512) 236-2233 (Direct Dial)  
(512) 391-2112 (Direct Fax)  
ldougal@jw.com

November 12, 2007

**CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Ms. LaDonna Castañuela (MC-105)  
Chief Clerk  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

**OPA**  
NOV 12 2007

RE: Brazos River Authority "System Operation Permit";  
Application to Appropriate State Water - Permit No. 5851

Dear Ms. Castañuela:

Please take note that Jackson Walker L.L.P. has been substituted as counsel for Matthews Land and Cattle Company in place of Molly Cagle of Vinson & Elkins LLP regarding the above-referenced matter.

I ask that you please note this change in your records, and please provide a copy of all future notices and correspondence regarding this matter to:

Leonard H. Dougal  
Jackson Walker L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, TX 78701  
(512) 391-2112 (Direct Fax)

Finally, I ask that all parties and interested persons also please note this change, and copy the undersigned on all correspondence. Thank you for your assistance in this matter.

Sincerely,

Leonard H. Dougal

LHD:pjs

cc: Molly Cagle  
Vinson & Elkins LLP  
2801 Via Fortuna, Suite 100  
Austin, Texas 78746-7567

**VIA U.S. MAIL**

4922179v.1 127499/00003

100 Congress Avenue, Suite 1100 • Austin, Texas 78701 • (512) 236-2000 • fax (512) 236-2002

***FOR THE APPLICANT:***

Bruce Wasinger  
Bickerstaff, Health, Smiley, Pollan,  
Kever & McDaniel, L.L.P.  
816 Congress Avenue, Suite 1700  
Austin, Texas 78701

***VIA CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED***

***PROTESTANTS/INTERESTED PERSONS:***

See attached list

***VIA U.S. MAIL***

***FOR THE EXECUTIVE DIRECTOR:***

David Klein (MC-173)  
Staff Attorney  
Environmental Law Division  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

***VIA U.S. MAIL***

David Koinm (MC-160)  
Technical Staff  
Water Supply Division  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

***VIA U.S. MAIL***

***FOR PUBLIC INTEREST COUNSEL:***

Blas J. Coy, Jr. (MC-103)  
Public Interest Counsel  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

***VIA U.S. MAIL***

***FOR OFFICE OF PUBLIC ASSISTANCE:***

Jodena Henneke (MC-108)  
Director  
Office of Public Assistance  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

***VIA U.S. MAIL***

Margie and Perry Adams  
P. O. Box 400  
Nemo, Texas 76070-0400

Jack Cathey  
P. O. Box 420  
Nemo, Texas 76070-0420

Richard L. Giesecke  
3205 Cornell Avenue  
Dallas, Texas 75205-2933

Perry J. Adams  
P. O. Box 400  
Nemo, Texas 76070-0400

Rina Chang  
The Dow Chemical Company  
APB Building #2029  
2301 North Brazosport Boulevard  
Freeport, Texas 77541-3203

John Graves  
P. O. Box 667  
Glen Rose, Texas 76043-0667

Lawrence L. Bellatti  
Andrews & Kurth LLP  
600 Travis Street, Suite 4200  
Houston, Texas 77002-3009

Christi & Rick Clark  
2776 County Road 312  
Glen Rose, Texas 76043-6061

Philip S. Haag  
Winsted Sechrest & Minick  
401 Congress Avenue, Suite 2100  
Austin, Texas 78701-3798

George E. Bingham  
2191 Highway 2247  
Comanche, Texas 76442-4316

Don Clevenger  
TXU Power  
1601 Bryan Street, 6<sup>th</sup> Floor  
Dallas, Texas 75201-3431

Bridges Hague  
P. O. Box 2857  
Glen Rose, Texas 76043-2857

Justin Bower  
Water Resources  
City of Sugar Land  
P. O. Box 110  
Sugar Land, Texas 77587-0110

Doris Dollar-Kuretich, CPA  
141 Paseo Del Rio  
Seguin, Texas 78155-0161

Stuart Henry  
Henry & Poplin  
819 1/2 West 11<sup>th</sup> Street  
Austin, Texas 78701-2009

Justin Bower  
111 Gillingham Lane  
Sugar Land, Texas 77478-3150

Ginger and Maurice English  
P. O. Box 2280  
Glen Rose, Texas 76043-2280

Jo Ann Howard  
P. O. Box 160130  
Austin, Texas 78716-0130

H. Bridges, III  
P. O. Box 7233  
Glen Rose, Texas 76043-7233

Adam Eyres  
President  
Rhino Ridge Outfitters, Inc.  
P. O. Box 2027  
Glen Rose, Texas 76043-2027

John Howard  
2801 Via Fortuna  
Austin, Texas 78746-7567

Jack Weldon Bridges  
P. O. Box 7233  
Glen Rose, Texas 76043-7233

John W. Fainter, Jr.  
1005 Congress Avenue, Suite 600  
Austin, Texas 78701-2463

Bob Huddleston  
1133 North Highway 16  
De Leon, Texas 76444-1109

Christopher Brown  
National Wildlife Federation  
44 East Avenue, Suite 200  
Austin, Texas 78701-4385

Willie Gavranovic  
5713 Country Road 156  
Wharton, Texas 77488-5362

James and Melodie Isham  
P. O. Box 84  
Rainbow, Texas 76077-0084

Molly Cagle  
Vinson & Elkins LLP  
2801 Via Fortuna, Suite 100  
Austin, Texas 78746-7567

Dorothy Gibbs  
P. o. Box 636  
Glen Rose, Texas 76043-0636

Glenn Jarvis  
Law Office of Glenn Jarvis  
1801 South 2<sup>nd</sup> Street, Suite 550  
McAllen, Texas 78503-1353

Glenn Jarvis  
Law Office of Glenn Jarvis  
1801 South 2<sup>nd</sup> Street, Suite 550  
McAllen, Texas 78503-1353

Robin A. Melvin  
Graves Dougherty Hearon & Moody  
401 Congress Avenue, Suite 2200  
Austin, Texas 78701-3744

Stephen Smith  
Executive Director  
TMRA  
111 Congress Avenue, Suite 1800  
Austin, Texas 78701-4050

Jean F. King  
P. O. Box 2367  
Glen Rose, Texas 76043-2367

Steve Morton  
401 Congress Avenue  
Austin, Texas 78701-3744

Wilson Synder  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826

Dan Kowalski  
Walnut Creek Mining Co.  
P. O. Box H  
Bremond, Texas 76629-0318

Richard I. Muller, Jr.  
3200 Southwest Freeway, Suite 2600  
Houston, Texas 77027-7537

Andrew L. Strong  
Pillsbury Winthrop Shaw Pittman LLP  
909 Fannin Street, 22<sup>nd</sup> Floor  
Houston, Texas 77010-1014

Pat Kultgen  
1503 Fair Haven Love  
College Station, Texas 77845

Debra and Raymond Pitts  
3030 County Road 312  
Rainbow, Texas 76077-2904

Jerry Swink  
P. O. Box 69  
Rainbow, Texas 76077-0079

R. Kip Lewis  
1102 Martin Avenue  
Round Rock, Texas 78681-7324

Phillip Poplin  
Henry & Poplin  
819 1/2 West 11<sup>th</sup> Street  
Austin, Texas 78701-2009

Linna and Scott Trees  
2932 County Road 312  
Glen Rose, Texas 76043-6060

Mary Lee Lilly  
P. O. Box 2857  
Glen Rose, Texas 76043-2857

John Ritchie  
Palo Pinto County Municipal  
Water District  
P. O. Box 98  
Mineral Wells, Texas 76068-0098

Joe Trouart  
P. O. Box 915  
Jewett, Texas 75846-0915

Jim Mathews  
Mathews & Freeland LLP  
P. O. Box 1568  
Austin, Texas 78767-1568

Martin C. Rochelle  
Lloyd Gosselink  
816 Congress Avenue, Suite 1900  
Austin, Texas 78701-2478

Joe Trungale  
2006 Ann Arbor Avenue  
Austin, Texas 78704-3232

Donald McArthur  
VP, Environmental Affairs  
Texas Genco LLP  
P. O. Box 4710  
Houston, Texas 77210-4710

Janet L. Saltgiver  
519 Woodrow Avenue  
Fort Worth, Texas 76105-1335

Ben Valdez, Jr.  
President  
Green's Furniture Co.  
606 Indiana Avenue  
Wichita Falls, Texas 76301-2502

Daniel Meadows  
P. O. Box 7000  
Bryan, Texas 77805-7000

Kenneth and Rita Schoen  
1437 Slawson Lane  
Killeen, Texas 76542-4271

H. Jane Vaughn  
12200 Mitchell Bend Court  
Granbury, Texas 76048-9600

Earl Medlin  
P. O. Box 387  
Mineral Wells, Texas 75068-0387

Terry Slade  
3401-A Dolphin Drive  
Austin, Texas 78704-6030

W.C. Walker  
5026 Bellaire Drive South  
Fort Worth, Texas 76109-3107

Larry Wilson  
P. O. Box 473  
Nemo, Texas 76070-0473

Lawrence A. Wilson  
Brazos River Authority  
P. O. Box 473  
Nemo, Texas 76070-0473

Nancy Stackhouse Wilson  
4500 Roland Avenue, Suite 303  
Dallas, Texas 75219-1628

Vinson & Elkins

Molly Cagle mcagle@velaw.com  
Tel 512.542.8552 Fax 512.236.3280

HR OPA  
MAY 24 2005

BY Jul

May 19, 2005

Via Facsimile (512.239.3311) &  
Certified Mail (No. 700-2510-0000-8168-4728)

WR  
44044

2005 MAY 23 PM 2:50  
CHIEF CLERKS OFFICE  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Office of the Chief Clerk  
Texas Commission on Environmental Quality  
Mail Code 105  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Public Comments & Request for Contested Case Hearing  
Application to Appropriate State Water No. 5851  
Brazos River Authority "System Operation Permit"

To Whom It May Concern:

The following public comments and Request for Contested Case Hearing are filed on behalf of the Matthews Land and Cattle Company ("**MLCC**").

MLCC respectfully requests a contested case hearing concerning Application No. 5851 by the Brazos River Authority ("**BRA**") for a Water Use Permit – designated BRA's "System Operation Permit" – authorizing, among other things, the appropriation of 421,449 acre-feet of water per year for multiple uses in the Brazos River Basin (the "**Application**").

MLCC owns and operates the historic Lamshead Ranch ("**Lamshead**"), a 39,000-acre tract located along the Clear Fork of the Brazos River thirteen miles north of Albany, Texas, on U.S. Highway 283. Lamshead is known throughout Texas and the U.S. for its cattle production; its preservation of native wildlife; and its restoration of the historic Matthews-Reynolds family ranch homes on the property. Covering sixty-two square miles in Throckmorton and Shackelford counties, Lamshead is one of the largest single ranches in the Brazos River Basin and one of the last, great Texas ranches.

mc

Lamshead owns approximately forty miles of riparian land on the Clear Fork of the Brazos River, including twelve miles where Lamshead owns land on both banks of the river. Water from the Clear Fork is critical to Lamshead's cattle, farming, hunting, and ecological operations, especially during times of extended drought. Since its creation in the 1850s, Lamshead has been using water from the Clear Fork for domestic and livestock purposes. Given that there is no source of potable groundwater on the ranch property, the Clear Fork and, to a much lesser extent, rainwater are Lamshead's sole sources of water.

The Application, if granted, will jeopardize Lamshead's right to domestic and livestock use of water in the Clear Fork of the Brazos River. It is inconceivable that BRA can appropriate an additional 421,449 acre-feet from the Brazos River Basin as it requests in the Application without adversely impacting the water available to Lamshead for domestic and livestock uses. In light of its concerns, MLCC wrote to the Texas Water Development Board ("**TWDB**"), advising the TWDB of Lamshead's requirements of 4,000 acre-feet of water per year from the Clear Fork, primarily to irrigate the ranch's hay, wheat, and other cattle-feed crops, and to support its ranching operations. A copy of MLCC's letter to TWDB is enclosed.

MLCC is hopeful that, by advising TWDB of its water needs, Lamshead's domestic and livestock uses and potential irrigation use will be taken into account and recognized in the ongoing revisions to Region G's Regional Water Plan (the "**Region G Plan**"). Even if MLCC prevails in this endeavor, the Region G Plan – which must address the water needs throughout 37 Texas counties – cannot, and is not designed to, adequately protect MLCC's specific, individual interests. The contested case hearing process is the appropriate forum to protect personal justiciable interests like that of MLCC. It is the means by which MLCC can ensure inclusion in any permit granted in response to the Application such terms and conditions as are necessary to provide an adequate supply of water to Lamshead for domestic and livestock purposes. BRA's Application threatens that water supply. Accordingly, MLCC requests, and is entitled to, a contested case hearing on the Application.

Lamshead stands to be uniquely affected by the Application in yet another way. Issuance of BRA's System Operation Permit is likely to result in the construction of a reservoir – currently referred to as the Breckenridge/Cedar Ridge Reservoir – on a portion of Lamshead. Under one proposal for the reservoir, which was unanimously approved by the Region G Regional Water Planning Group on February 15, 2004, the dam site for the reservoir would be on Lamshead and the western portion of the ranch would be partially inundated by reservoir waters. In another proposed location, the reservoir would inundate much of the central area of the ranch. While this latter proposal is reflected in some draft versions of the Region G Plan, under *every* version of the Region G Plan, Lamshead will be significantly impacted by the Breckenridge/Cedar Ridge Reservoir.

MLCC has a personal justiciable interest in any request to appropriate state water, such as BRA's application, that will promote or otherwise serve as a basis for the construction of a reservoir that will require the condemnation of a portion of the Lambshead Ranch. MLCC, as a protected domestic and livestock user of water in the Clear Fork of the Brazos River, has a unique interest in ensuring that the requested appropriations are supported by sound science and public policy.

Please note that I have been designated by MLCC as the person responsible for receiving all official communications and documents regarding this matter. If you have any questions regarding MLCC's comments or request, or if you need additional information, please do not hesitate to contact me.

Thank you for your consideration of these comments and MLCC's Request for Contested Case Hearing.

Very truly yours,

*Molly Cagle*  
Molly Cagle *By BJM*

Enclosure

cc: Mr. Phil Ford, BRA  
Ms. Lauralee Vallon, BRA  
Ms. Rebecca Hutcheson, MLCC

571077\_1.DOC

# Vinson & Elkins

Molly Cagle mcagle@velaw.com  
Tel 512.542.8552 Fax 512.236.3280

May 19, 2005

*Via Facsimile (512.475.2053) &  
Certified Mail (No. 7001-2510-0000-8168-4735)*

Mr. E.G. Rod Pittman, Chairman  
Texas Water Development Board  
Stephen F. Austin Bldg.  
P.O. Box 13231  
1700 N. Congress Avenue  
Austin, Texas 78711-3231

Re: Request for Recognition of Water Needs in Region G Plan – Lamshead Ranch

Dear Mr. Pittman:

The following request is submitted on behalf of the Matthews Land and Cattle Company (“*MLCC*”). *MLCC* owns and operates the historic Lamshead Ranch (“*Lamshead*”), a 39,000-acre tract located along the Clear Fork of the Brazos River thirteen miles north of Albany, Texas, on U.S. Highway 283. Lamshead is known throughout Texas and the U.S. for its cattle production; its preservation of native wildlife; and its restoration of the historic Matthews-Reynolds family ranch homes on the property.

Lamshead owns approximately forty miles of riparian land on the Clear Fork of the Brazos River, including twelve miles where Lamshead owns land on both banks of the river. Water from the Clear Fork is critical to Lamshead’s cattle, farming, hunting, and ecological operations, especially during times of extended drought. Since its creation in the 1850s, Lamshead has been using water from the Clear Fork for domestic and livestock purposes. Given that there is no source of potable groundwater on the ranch property, the Clear Fork and, to a much lesser extent, rainwater are Lamshead’s sole sources of water.

Primarily to irrigate hay, wheat, and other cattle-feed crops, and to support its ranching operations, Lamshead requires 4,000 acre-feet per year of water from the Clear Fork. *MLCC* has initiated informal discussions with the Brazos River Authority regarding its water supply needs and the rights necessary to secure the water on a firm basis annually. In

view of the anticipated need for a firm water supply from the Clear Fork, we respectfully request that Lamshead's water requirements be taken into account and recognized in the ongoing revisions to Region G's Regional Water Plan. If you have any questions regarding this request, please do not hesitate to contact me.

Very truly yours,



Molly Cagle

cc: Mr. Jack Hunt (Chairman, TWDB)  
Mr. Kevin Ward (Executive Administrator, TWDB)  
Ms. Suzanne Schwartz (General Counsel, TWDB)  
Mr. Bill Mullican (Deputy Executive Administrator, Office of Planning, TWDB)  
Mr. David Meesey (Brazos G Water Planning Group, TWDB)  
Mr. Michael Morrison (Chair, Brazos G Regional Water Planning Group)  
Ms. Teresa Clark (Brazos River Authority)  
Ms. Rebecca Hutcheson (MLCC)



V&amp;E

May 19, 2005 Page 2

Lambshead owns approximately forty miles of riparian land on the Clear Fork of the Brazos River, including twelve miles where Lambshead owns land on both banks of the river. Water from the Clear Fork is critical to Lambshead's cattle, farming, hunting, and ecological operations, especially during times of extended drought. Since its creation in the 1850s, Lambshead has been using water from the Clear Fork for domestic and livestock purposes. Given that there is no source of potable groundwater on the ranch property, the Clear Fork and, to a much lesser extent, rainwater are Lambshead's sole sources of water.

The Application, if granted, will jeopardize Lambshead's right to domestic and livestock use of water in the Clear Fork of the Brazos River. It is inconceivable that BRA can appropriate an additional 421,449 acre-feet from the Brazos River Basin as it requests in the Application without adversely impacting the water available to Lambshead for domestic and livestock uses. In light of its concerns, MLCC wrote to the Texas Water Development Board ("**TWDB**"), advising the TWDB of Lambshead's requirements of 4,000 acre-feet of water per year from the Clear Fork, primarily to irrigate the ranch's hay, wheat, and other cattle-feed crops, and to support its ranching operations. A copy of MLCC's letter to TWDB is enclosed.

MLCC is hopeful that, by advising TWDB of its water needs, Lambshead's domestic and livestock uses and potential irrigation use will be taken into account and recognized in the ongoing revisions to Region G's Regional Water Plan (the "**Region G Plan**"). Even if MLCC prevails in this endeavor, the Region G Plan – which must address the water needs throughout 37 Texas counties – cannot, and is not designed to, adequately protect MLCC's specific, individual interests. The contested case hearing process is the appropriate forum to protect personal justiciable interests like that of MLCC. It is the means by which MLCC can ensure inclusion in any permit granted in response to the Application such terms and conditions as are necessary to provide an adequate supply of water to Lambshead for domestic and livestock purposes. BRA's Application threatens that water supply. Accordingly, MLCC requests, and is entitled to, a contested case hearing on the Application.

Lambshead stands to be uniquely affected by the Application in yet another way. Issuance of BRA's System Operation Permit is likely to result in the construction of a reservoir – currently referred to as the Breckenridge/Cedar Ridge Reservoir – on a portion of Lambshead. Under one proposal for the reservoir, which was unanimously approved by the Region G Regional Water Planning Group on February 15, 2004, the dam site for the reservoir would be on Lambshead and the western portion of the ranch would be partially inundated by reservoir waters. In another proposed location, the reservoir would inundate much of the central area of the ranch. While this latter proposal is reflected in some draft versions of the Region G Plan, under *every* version of the Region G Plan, Lambshead will be significantly impacted by the Breckenridge/Cedar Ridge Reservoir.

V&amp;E

May 19, 2005 Page 3

MLCC has a personal justiciable interest in any request to appropriate state water, such as BRA's application, that will promote or otherwise serve as a basis for the construction of a reservoir that will require the condemnation of a portion of the Lambshead Ranch. MLCC, as a protected domestic and livestock user of water in the Clear Fork of the Brazos River, has a unique interest in ensuring that the requested appropriations are supported by sound science and public policy.

Please note that I have been designated by MLCC as the person responsible for receiving all official communications and documents regarding this matter. If you have any questions regarding MLCC's comments or request, or if you need additional information, please do not hesitate to contact me.

Thank you for your consideration of these comments and MLCC's Request for Contested Case Hearing.

Very truly yours,

*Molly Cagle*  
Molly Cagle *By B9M*

Enclosure

cc: Mr. Phil Ford, BRA  
Ms. Lauralee Vallon, BRA  
Ms. Rebecca Hutcheson, MLCC

571077\_1.DOC

# Vinson & Elkins

Molly Cagle mcagle@velaw.com  
Tel 512.542.8552 Fax 512.236.3280

May 19, 2005

*Via Facsimile (512.475.2053) &  
Certified Mail (No. 7001-2510-0000-8168-4735)*

Mr. E.G. Rod Pittman, Chairman  
Texas Water Development Board  
Stephen F. Austin Bldg.  
P.O. Box 13231  
1700 N. Congress Avenue  
Austin, Texas 78711-3231

CHIEF CLERKS OFFICE

2005 MAY 19 PM 4:44

Re: Request for Recognition of Water Needs in Region G Plan – Lamshead Ranch

Dear Mr. Pittman:

The following request is submitted on behalf of the Matthews Land and Cattle Company (“MLCC”). MLCC owns and operates the historic Lamshead Ranch (“Lamshead”), a 39,000-acre tract located along the Clear Fork of the Brazos River thirteen miles north of Albany, Texas, on U.S. Highway 283. Lamshead is known throughout Texas and the U.S. for its cattle production; its preservation of native wildlife; and its restoration of the historic Matthews-Reynolds family ranch homes on the property.

Lamshead owns approximately forty miles of riparian land on the Clear Fork of the Brazos River, including twelve miles where Lamshead owns land on both banks of the river. Water from the Clear Fork is critical to Lamshead’s cattle, farming, hunting, and ecological operations, especially during times of extended drought. Since its creation in the 1850s, Lamshead has been using water from the Clear Fork for domestic and livestock purposes. Given that there is no source of potable groundwater on the ranch property, the Clear Fork and, to a much lesser extent, rainwater are Lamshead’s sole sources of water.

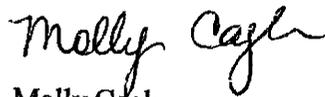
Primarily to irrigate hay, wheat, and other cattle-feed crops, and to support its ranching operations, Lamshead requires 4,000 acre-feet per year of water from the Clear Fork. MLCC has initiated informal discussions with the Brazos River Authority regarding its water supply needs and the rights necessary to secure the water on a firm basis annually. In

V&E

May 19, 2005 Page 2

view of the anticipated need for a firm water supply from the Clear Fork, we respectfully request that Lamshead's water requirements be taken into account and recognized in the ongoing revisions to Region G's Regional Water Plan. If you have any questions regarding this request, please do not hesitate to contact me.

Very truly yours,

  
Molly Cagle

cc: Mr. Jack Hunt (Chairman, TWDB)  
Mr. Kevin Ward (Executive Administrator, TWDB)  
Ms. Suzanne Schwartz (General Counsel, TWDB)  
Mr. Bill Mullican (Deputy Executive Administrator, Office of Planning, TWDB)  
Mr. David Meesey (Brazos G Water Planning Group, TWDB)  
Mr. Michael Morrison (Chair, Brazos G Regional Water Planning Group)  
Ms. Teresa Clark (Brazos River Authority)  
Ms. Rebecca Hutcheson (MLCC)

571055\_1.DOC

# Vinson & Elkins

# Facsimile

**Bryan J. Moore** bmoore@velaw.com  
Tel 512.542.8729 Fax 512.236.3257

<b>From:</b>		<b>Date:</b>	
Bryan J. Moore		May 19, 2005	
<b>Regarding:</b>		<b>Number of Pages:</b>	<b>Hard Copy Follows:</b>
MAT789/64000		6	Yes
<b>To:</b>		<b>Fax:</b>	<b>Phone:</b>
Office of the Chief Clerk Texas Commission on Environmental Quality		512.239.3311	
Mr. Phil Ford, BRA		254.761.3207	
Ms. Lauralee Vallon, BRA			

**Message:**

Please see the letter.

2005 MAY 19 PM 4:43  
 CHIEF CLERKS OFFICE  
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**Confidentiality Notice:** The information contained in this FAX may be confidential and/or privileged. This FAX is intended to be reviewed initially by only the individual named above. If the reader of this TRANSMITTAL PAGE is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this FAX or the information contained herein is prohibited. If you have received this FAX in error, please immediately notify the sender by telephone and return this FAX to the sender at the address below. Thank you.

LAW OFFICES OF  
BOOTH, AHRENS & WERKENTHIN, P.C.

A PROFESSIONAL CORPORATION  
515 CONGRESS AVENUE, SUITE 1515  
AUSTIN, TEXAS 78701-3503  
512/472-3263 • 512/473-2609

MICHAEL J. BOOTH  
FRED B. WERKENTHIN, JR.  
WIL GALLOWAY  
TREY NESLONEY

CAROLYN AHRENS  
OF COUNSEL

JOSEPH S. BABB  
OF COUNSEL

210 JAN 22 AM 10:06  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

January 21, 2010

**Via Facsimile & Regular Mail**

Ms. LaDonna Castañuela  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC-105  
Austin, Texas 78711-3087

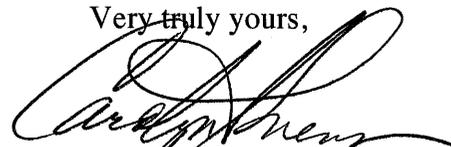
RE: Withdrawal of Booth, Ahrens & Werkenthin, P.C. as Legal Counsel of Record for  
NRG Texas Power LLC in Protest of Pending Water Rights Application No. 5851  
(Brazos River Authority)

Dear Ms. Castanuela:

By this letter, Booth, Ahrens & Werkenthin, P.C. withdraws as legal counsel of record for NRG Texas Power LLC in the matter referenced above. It is the firm's understanding that NRG's legal interests in this matter will be represented by the company's Regional General Counsel. Until such time as the agency is notified otherwise, all future correspondence should be directed to Ms. Catherine Callaway at the address below, as well as to other representatives of NRG as are currently on record with the agency for the matter.

Ms. Catherine Callaway  
Regional General Counsel, Texas  
NRG Energy, Inc.  
1301 McKinney  
Houston, TX 77010  
713-795-6235  
[Catherine.Callaway@nrgenergy.com](mailto:Catherine.Callaway@nrgenergy.com)

Very truly yours,



Carolyn Ahrens

Cc via email:  
Catherine Callaway  
Ted Long  
Ben Carmine



Carolyn Ahrens  
Booth, Ahrens & Werkenthin, P.C.  
515 Congress Avenue, Suite 1515  
Austin, Texas 78701  
(512) 472-3263  
(512) 473-2609 (fax)  
carolyn@baw.com

By copy of this letter to applicant's legal counsel of record, we are notifying the applicant of the changes explained above, with the assurance that NRG Texas Power LLC remains willing to discuss settlement of its protest at any time.

As always, thank you for your assistance.

Sincerely,



Ben Carmine  
Director of Environmental Operations  
NRG Texas Power LLC

cc: Brazos River Authority  
Mr. Bruce Wasinger  
Bickerstaff, Heath, Smiley  
816 Congress Avenue, Suite 1700  
Austin, Texas 78701-2478

cc: TCEQ's Water Rights Permitting Team  
Mr. David Koinm (MC 160)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

12301 Kurland  
Houston, Texas 77034

2005 MAY 17 PM 2:16

CHIEF CLERKS OFFICE

May 11, 2004

OPA *[Handwritten mark]*

MAY 18 2005

BY *[Handwritten signature]*

WR  
44044

Ms. LaDonna Castanuela  
Office of the Chief Clerk  
MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

RE: Request for Contested Case Hearing on Water Rights Application No. 5851

Dear Ms. Castanuela:

By this letter, Texas Genco II, LP ("Genco") submits the following comments and requests a contested case hearing on the above-referenced application.

Protestor Information

Mr. Donald M. McArthur  
Vice President, Environmental Affairs  
Texas Genco II, LP  
12301 Kurland  
Houston, Texas 77034  
Phone: 713-795-6007  
Fax: 713-795-7431

Texas Genco II, LP (Genco) is a Texas limited partnership having its principal place of business in Houston, Harris County, Texas. Genco was formerly part of CenterPoint Energy, Reliant Energy, and Houston Lighting & Power Company. Genco is engaged in the business of generating electric energy. Genco has invested greatly in its water supplies, including the water

*[Handwritten mark]*

supplies necessary for the continued operation of its facilities, and the continued provision of vital electrical generating services.

Genco has water rights under two Certificates of Adjudication that would provide water supply necessary for Genco's continued operation. Certificate of Adjudication No. 12-5325 authorizes Genco to impound water on Dry Creek (Smithers Lake), Brazos River Basin, and to use that water for industrial purposes. Smithers Lake is located in the Edward Jeffrey Grant, Abstract 38, and the John Jones Grant, Abstract 41, Fort Bend County, Texas. Certificate of Adjudication No. 12-5320 authorizes Genco to divert and use water from a point approximately 98 river miles from the mouth of the Brazos River in the John T. Edwards Grant, Abstract No. 23, in Fort Bend County for industrial and agricultural use. That certificate also authorizes use of the bed and banks of Dry Creek to transport water to Smithers Lake. Genco additionally holds four contractual rights to water from Brazos River Authority that involve the use of the bed and banks of the Brazos River and/or its tributaries to transport water from places of upstream impoundment to the place of Genco's diversion. The terms of Genco's current contracts continue through December 31, 2030; July 15, 2015; December 31, 2010; and December 31, 2009. Contractual Permit CP-235, as amended, Contractual Permit CP-255, and Water Supply Contract 1037 are associated with the above contracts.

Applicant Information

Brazos River Authority  
4600 Cobbs Drive  
Waco, Texas 76714

Applicant seeks authorization under a permit, designated as its "System Operation Permit", to allow: 1) appropriation of state water for multiple use purposes; 2) appropriation of current and future return flows; 3) exempt interbasin transfer of the water requested; 4) operational flexibility; 5) recognition that the System Operation Permit will prevail over inconsistent provisions in its existing water rights; and 6) the use of bed and banks of the Brazos River, its tributaries, and BRA's reservoirs for the storage, conveyance and subsequent diversion of state water appropriated pursuant to this application and from other sources.

#### Effect of Proposed Water Right Amendment

Brazos River Authority's application proposes many new changes to water supply in the Brazos River above Genco's diversion point. From information available regarding the application and water supply in the Brazos River Basin, Genco believes that granting the application may impact Genco's permitted and contractual water rights, by, among other things, reducing the amount of water available at Genco's diversion site and interfering with contractual deliveries. Genco believes granting the Brazos River Authority such a large volume of unappropriated water and not requiring pass through flows from its reservoirs, along with the appropriation of current and future return flows, even those originating from groundwater, would threaten the reliability and availability of Genco's senior water right. Exemption from interbasin transfers rules, which would be contrary to existing law, would also diminish Genco's senior water right availability. Any interruption of dependable water supply for Genco's operations would have critical adverse impact on Genco's business and the customers it serves. In these respects and others, granting the Brazos River Authority's application would directly affect

LaDonna Castanuela

May 11, 2005

Page 4

Genco's legal rights, duties, privileges, power and economic interests. Genco is an affected person with personal justiciable interests in the matters put at issue by the Brazos River Authority's application that are not common to the general public.

Conclusion

Genco requests that the Texas Commission on Environmental Quality convene a contested case hearing regarding the Brazos River Authority's Application No. 5851. In consideration of the matters discussed above, Genco asks that this request be processed expeditiously, and that a contested case hearing be granted.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald M. McArthur", with a long horizontal line extending to the right.

Donald M. McArthur  
Vice President, Environmental Affairs  
Texas Genco II, LP

DM/jrf

G:/BRA/BRA System Ops Protest Letter.doc



WR  
421044



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2009 FEB 10 PM 2:56

CHIEF CLERKS OFFICE

OPA

FEB 10 2009

H

BY BP

February 5, 2009

401 N. Park St.  
Granbury, TX 76048  
817-573-7030  
817-573-5591

Re: Brazos River Authority Application No. 5851 for a Water Use Permit

Dear Mr. Ellis,

After review of the Draft Permit, dated December 1, 2008, the City of Granbury submits the following public comment and objections:

1. The data listed in the table entitled "Return Flows Available to Permittee" on page 7 is not correct relative to The City of Granbury's Wastewater Plant (TX0105210).

Included below is a table showing wastewater treatment plant flows versus water production for 2008. This data indicates an annual average return flow from the wastewater treatment plant 1162 acre feet. As you can see on the attached table, Granbury's total water production is greater than the return flows from the wastewater plant. This is partly due to the fact that approximately 1000 (24%) customers that are served water are utilizing onsite sewage facilities (septic systems). The table also shows that 77% of the water production is from groundwater sources, leaving only 23% of water production attributed to surface water, not 100% as erroneously stated in the draft permit.

mw

	ACRE FEET WWTP RETURN FLOWS	ACRE FEET GROUNDWATER PRODUCTION	ACRE FEET SURFACE WATER PRODUCTION	ACRE FEET TOTAL WATER PRODUCTION
	1162	1492	449	1942
% WATER PRODUCTIONS		77%	23%	
AF GROUNDWATER RETURN FLOWS	895			
AF SURFACE WATER RETURN FLOWS	267			

Based on the information provided above, we respectfully request the data in the table on page 7 entitled "Return Flows Available to the Permittee" be amended to read as follows:

Adjusted Surface water return flows -  $1162 \times 23\% = 267$  AF

Adjusted Groundwater return flows -  $1162 \times 77\% = 895$  AF

Note that in reviewing the data there appears to be substantial error regarding the data submitted for other entities as well.

2. In addition the City of Granbury objects issuance of the permit regarding Special Conditions (6)(A)(1) applicable to diverting return flows. Any such diversion should be subject to due process rights of the City and other interested parties regarding any adoption or amendments to Applicants reuse accounting plan, such that before the Executive Director would be permitted to approve any modifications or changes to the reuse accounting plan, that interested parties must be provided copies of the proposed plan and supporting documents and have a reasonable opportunity for notice and input to the Executive Director, with applicable rights of appeal, and that any such diversion would constitute an amendment to the permit, with applicable due process rights of interested parties as to such amendment.

3. In addition the City of Granbury objects to issuance of the permit and its Special Conditions (6)(A)(2) related specifically the City of Granbury to the extent it would allow the Permittee to divert groundwater based return flows if that water is discharged from the treatments *plants owned by the City*, which effectively would convert the City's substantial groundwater to control of Permittee. As stated below, Special Conditions (6)(A)(4) does not provide the City of Granbury and its citizens adequate due process, with notice and reasonable opportunity for hearing on any applications, amendment, and accounting/delivery plan. Section (6)(A)(2) should be amended to delete the phrase, "except as may be authorized by Special Conditions 6.A.4." This same objection goes to paragraph 2, page 11 of the TCEQ Technical Memorandum dated November 25, 2008 which incorporates this language from the draft permit.

4. In addition the City of Granbury objects to issuance of the permit and its Special Conditions (6)(A)(4) related specifically the City of Granbury to the extent it would allow the Permittee to divert groundwater based return flows in the future if that water is "discharged from the treatments *plant owned by Permittee*," which effectively would convert the City's substantial

groundwater to control of Permittee. In the alternative, even if such future use is contemplated, the procedure noted in Special Conditions (6)(A)(4) does not provide the City of Granbury and its citizens adequate due process, with notice and reasonable opportunity for hearing on any applications, amendment, and accounting/delivery plan.

5. In addition, the City of Granbury objects to issuance of the permit to use the bed and banks of the Brazos River (page 6) to the extent it would compete with or limit in any way the City's right to seek and obtain a bed and banks permit within its corporate limits.

6. In addition, the chart on the page 5 of the TCEQ Technical Memorandum dated November 25, 2008 has incorrect data as to Granbury System.

The City of Granbury requests a hearing on these and other issues related to the permit applications.

If you have any questions or need additional information please call me at (817) 573-7030.

Sincerely,

A handwritten signature in black ink, appearing to read "Alva Cox". The signature is fluid and cursive, with the first name "Alva" and the last name "Cox" clearly distinguishable.

Alva Cox  
City of Granbury Public Works Director

OPA H

MAY 18 2005

BY g

44044  
WF

3002 CR 312

PO Box 2280

Glen Rose, TX 76043

254 898-1100

[mgenglish@hyperusa.com](mailto:mgenglish@hyperusa.com)

May 15, 2005

Texas Commission on Environmental Quality  
Office of Chief Clerk, MC 105  
PO Box 13087  
Austin, Texas 78711-3087

To Whom It May Concern:

We are writing in regards to the Brazos River Authority's system operation permit #5851. We request a contested case hearing.

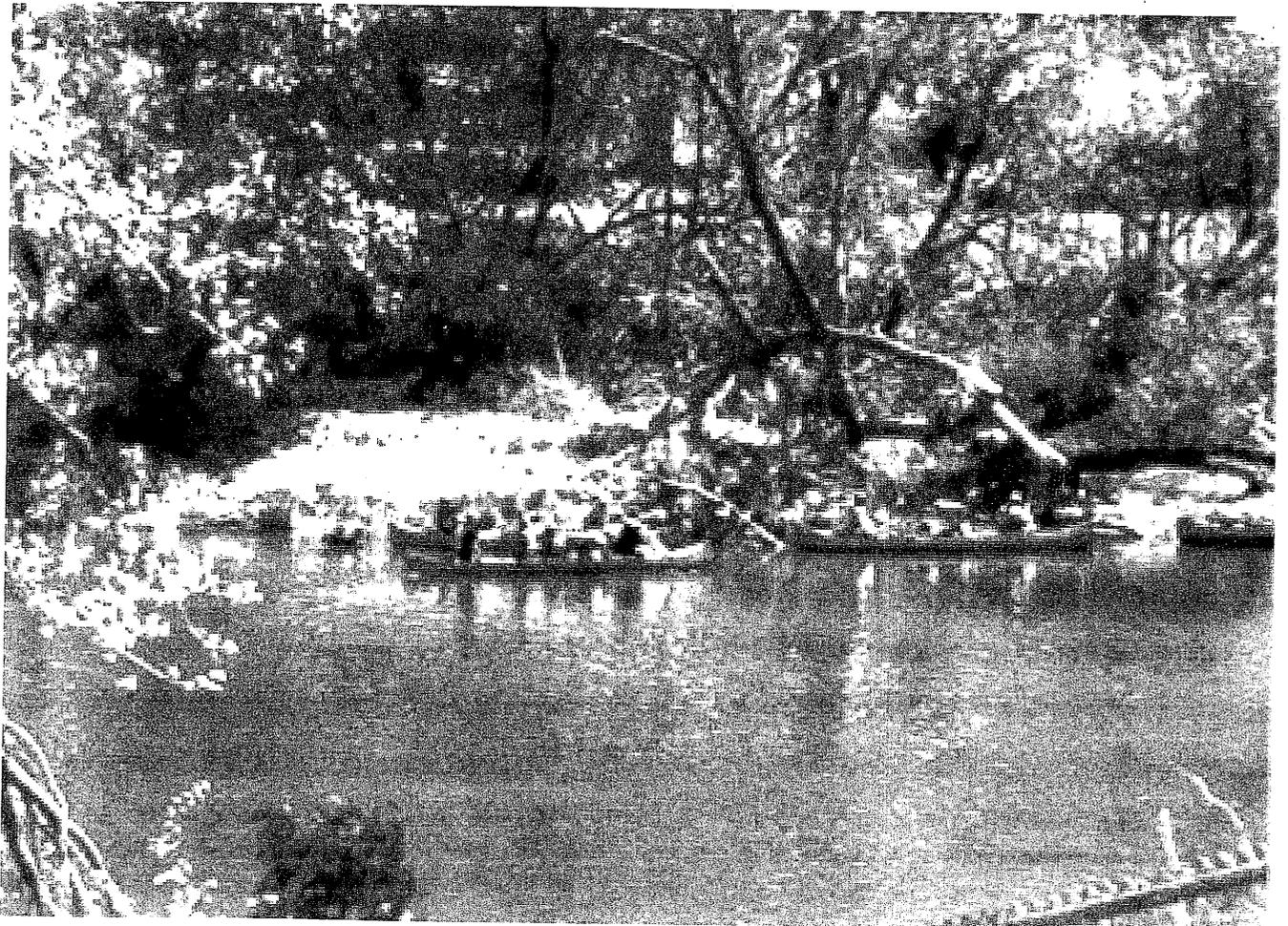
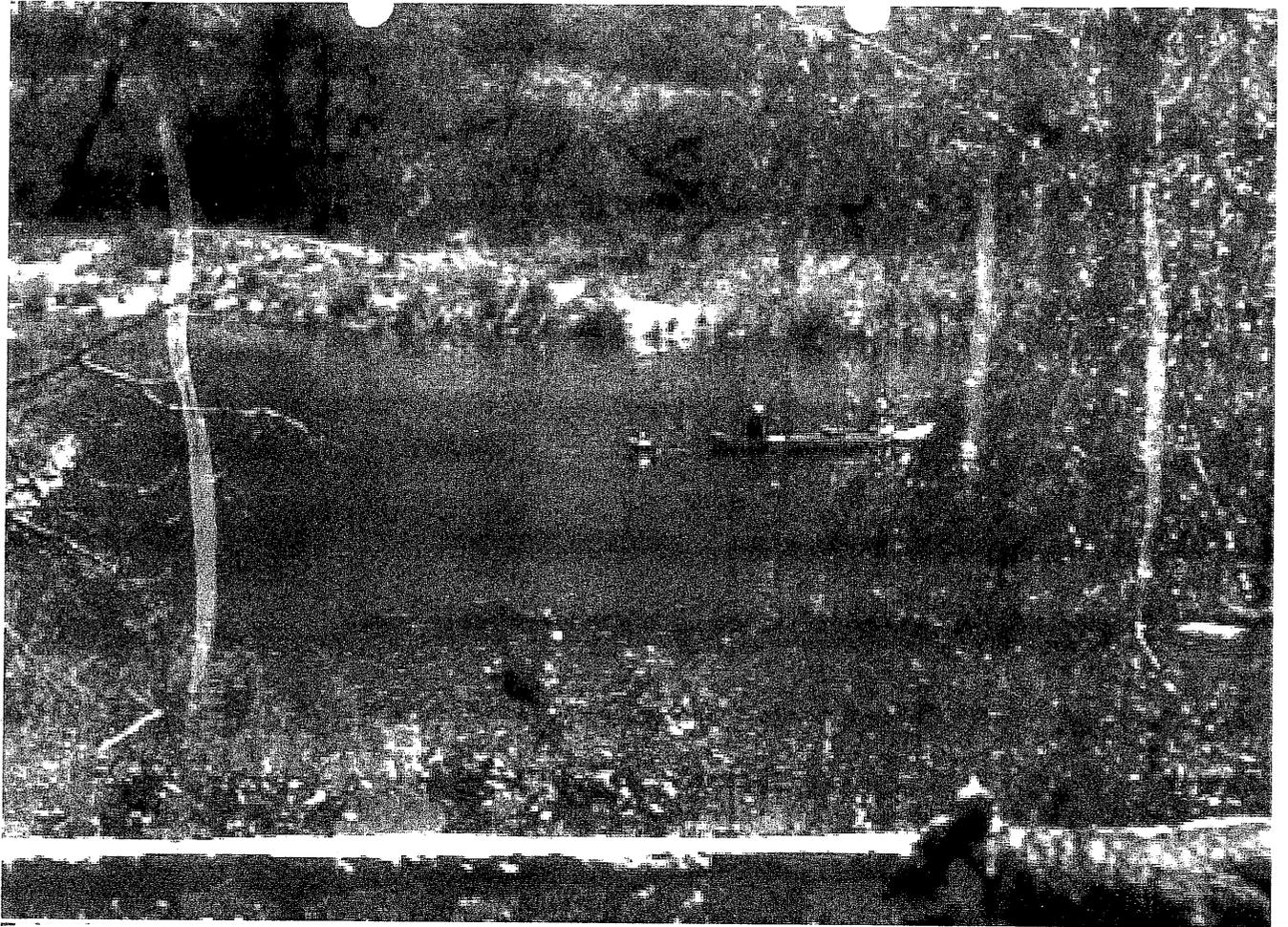
We are concerned about the amount of water being released upstream into the Brazos River. As you can see in the pictures on the back of this letter, taken from our back yard, we are enjoying a day on the river. This was on a day when the BRA decided that we could have enough water to do this activity. Lately this would be impossible. We live in Tres Rios Estates on the Brazos that is upstream from the confluence of the Paluxy River.

When the water is low as it has been lately it becomes stagnant and is unsafe for people to get in. It also causes the fish to die and is harmful to the many beautiful birds that inhabit our area.

Therefore, we are asking you to increase the flow in the river so that the eco-system may flourish.

Sincerely,

  
Ginger English  
Maurice & Ginger English





May 16, 2005

TCEQ  
Office of Chief Clerk MC105  
P. O. Box 13087  
Austin, Texas 78711-3087

Dorothy Gibbs  
P. O. Box 636  
Glen Rose, Texas 76043  
Phone - (254) 897-2292  
Fax - (254) 897-9707

OPA *H*

MAY 18 2005

BY *js*

*WR*  
*44044*

CHIEF CLERKS OFFICE

2005 MAY 18 AM 9:48

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

This letter is respectfully submitted to TCEQ concerning the contested case hearing for the Brazos River Authority's Application # 5851. I would like to officially protest the approval of this application.

I am a landowner on the Brazos River. The land has been in my family for four generations. The Brazos has provided a beautiful, natural place for my children and grandchildren to enjoy. My interest is to maintain a constant flow in the river to protect fish, and Riparian wildlife and plant life.

Thank you for your consideration of this concern.

Sincerely,



Dorothy Gibbs  
Member of Friends of the Brazos River, Inc.



May 16, 2005

Texas Commission on Environmental Quality  
c/o Office of Chief Clerk, MC105,  
P. O. Box 13087  
Austin, Texas 78711-3087

OPA

44044  
WR

MAY 18 2005

Gentlemen and Ladies,

BY g

My contact information is as follows:

Richard L. Giesecke  
3205 Cornell Ave.  
Dallas, Texas 75205  
Office # 214-522-9777  
Cell # 214-850-4480  
Email [r.giesecke@sbcglobal.net](mailto:r.giesecke@sbcglobal.net) <<mailto:r.giesecke@sbcglobal.net>>

CHIEF CLERKS OFFICE

2005 MAY 17 PM 2:24

CONFIDENTIAL

I am contacting you regarding the Brazos River Authority application No. 5851, System Operation Permit. I wish to request a contested case hearing regarding this application because I believe that this permit will adversely affect my property on the Brazos River.

My property is approximately three miles down river from Glen Rose, Texas off Somervell County Road 412 just past the White Church and White Church Cemetery.

We have owned our 90 acre ranch for over 20 years. It has over two thirds of a mile of Brazos River frontage and many 100 + year old trees along the river. I am very concerned about the minimum water flows in the Brazos River in recent years, especially as it affects fish, wildlife, trees, erosion, water quality and quantity, and amebic meningoencephalitis (PAM) and other diseases. In addition I believe that my recreational use of the river and of my property is being affected adversely by this permit and its potential impact on water flow in the river.

Please respond to my letter with suggestions and directions as to what else I can do to make my position heard as it relates to this application No. 5851 and to Brazos River quality in general.

Sincerely,



Richard L. Giesecke

A concerned Brazos River frontage owner



**JOHN GRAVES**  
**POST OFFICE BOX 667**  
**GLEN ROSE, TEXAS 76043**  
**TEL. 254-897-4688**  
**FAX 254-897-3119**

*of*

*WRPerm 5851*

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2005 MAY 27 PM 4:39

CHIEF CLERKS OFFICE  
May 12, 2005

Texas Commission on Environmental Quality  
c/o Office of Chief Clerk, MC 105  
P. O. Box 13087  
Austin, TX 78711-3087

*H* **OPA**

**MAY 31 2005**

**BY** *[Signature]*

*WR  
4/10/05*

To whom it may concern:

I am nearly 85 years old and have had close links to the Brazos River since the 1920s and 1930s, when I was growing up in Fort Worth and used to make frequent use of Brazos waters for fishing, boating, hunting, and other activities. Later, in 1960, I published a book, *Goodbye to a River*, about a canoe trip I made down the upper-middle part of the river. This work has been well-received and is still in print 45 years after its publication.

In recent years, while living and working in Somervell County only a few miles from the river on a Brazos tributary stream called White Bluff Creek, I have been mainly aware of conditions in the stretch of the Brazos from the Lake Granbury Dam to Lake Whitney, where an increasingly great and damaging shrinkage in flow has been taking place as more and more water-use rights have been extended to various entities by the Brazos River Authority. In my opinion the granting of even more widespread authority to the BRA in accord with their Application No. 5851, System Operation Permit, would have still further adverse effects on the Brazos drainage basin in terms of river flow, as well as esthetic, ecological, historic, and recreational values. And it would ultimately affect the use of White Bluff Creek's water on my own land by myself and my heirs.

Therefore I join with others in opposing issuance of the above-mentioned permit to the BRA, and request that a Contested Case Hearing be held in relation to their permit application.

Sincerely,

*[Signature]*  
John Graves

*[Handwritten mark]*



# WINSTEAD

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

June 10, 2005

2005 JUN 10 PM 12: 19

CHIEF CLERKS OFFICE

direct dial: 512.370.2862  
phaag@winstead.com

VIA COURIER

WR  
44044

OPA

Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
12100 Park 35 Circle  
Austin, Texas 78753

HR JUN 10 2005

BY     

Re: Request for Contested Case Hearing  
Application No. 5851 to Appropriate State Water by the Brazos River Authority

Dear Sir or Madam:

On behalf of the City of Lubbock, Texas (the "City"), we hereby file this request for a contested case hearing concerning Application No. 5851 to Appropriate State Water (the "BRA Application") filed by the Brazos River Authority (the "BRA").

Communications regarding this matter may be addressed to the undersigned attorney using the contact information set forth above. For your records, the mailing address for the City of Lubbock is the City of Lubbock (attn: Tom Adams, Deputy City Manager), P.O. Box 2000, Lubbock, Texas, 79547; and the fax number is (806) 775-3344.

The water supplies currently used by the City are comprised almost exclusively of developed water (i.e., water that would not be in a particular state watercourse, in this instance – the Brazos River and its tributaries, but for the efforts of the developer). The sources of developed water currently used by the City include without limitation: surface water transported via an interbasin transfer from Lake Meredith in the Canadian River Basin, and groundwater produced from Roberts County, Bailey County, Lamb County, and Lubbock County. As demonstrated below, the City is in the process of implementing a strategic plan that directs the City to expand its use of developed water from these and other sources in the future.

The City is the owner of TPDES Permit No. 10353-002, which authorizes the discharge of treated effluent into the North Fork of the Double Mountain Fork of the Brazos River (the "North Fork"), and Water Use Permit No. 3985, which authorizes the reuse of 22,910 acre-feet of treated wastewater effluent derived from municipal water supplies purchased by the City from the Canadian River Municipal Water Authority (CRMWA). In addition, the City has filed Application No. 3985A, which is pending before the TCEQ and, if granted, will authorize, among other things, the City's use of the bed and banks of the North Fork to transport discharges of wastewater effluent derived from developed water and to divert and use such water in Lubbock and Lynn Counties.

The City also is the owner of several permits which authorize the City to impound water in, to discharge groundwater water into, and to divert and use water from a series of reservoirs on the North Fork, sometimes referred to as the Jim Bertram Lake System (the "JBL System"). These permits include without limitation: Certificate of Adjudication Nos. 12-3705 and 12-3705A, and TPDES Permit No. 04599. In addition, the City has filed Application No. 12-3705B, which is pending before the TCEQ and,

SUITE 2100  
401 CONGRESS AVENUE  
AUSTIN, TEXAS 78701

PH 512.370.2800  
FAX 512.370.2850  
WINSTEAD.COM

WINSTEAD SILCHREST & MINICK  
Attorneys and Counselors  
A Professional Corporation

Austin, Dallas, Fort Worth,  
Houston, Mexico City, San Antonio,  
The Woodlands, Washington DC

MW

if granted, will authorize, among other things, the City's use of the bed and banks of the North Fork to transport groundwater discharged into the JBL System and to divert and use such water in Lubbock and Lynn Counties.

The City also is the owner of Water Use Permit No. 4146, which authorizes the City to impound water in and to divert, use, and reuse water from Lake Alan Henry on the South Fork of the Double Mountain Fork of the Brazos River (the "South Fork"). Although this permit was assigned to the BRA by the City pursuant to the terms of a water supply agreement entered into by the City and the BRA in 1989 (the "Water Supply Agreement"), the permit will soon be reassigned by the BRA to the City once the City pays an amount sufficient to fully discharge all bond obligations relating to the project's construction. Notably, the BRA has advised the City that the System Operation Permit sought by the BRA will not impact the City's water supplies in Lake Alan Henry. In fact, Lake Alan Henry may not have been included in the modeling of the System Operation Permit sought in the BRA Application. However, Lake Alan Henry is still identified as part of the BRA system of reservoirs covered by the System Operation Order sought in the BRA Application.

In addition to the foregoing, the City recently completed a significant portion of a stormwater drainage system, which connects playa lakes that serve as collection points for stormwater runoff around the City and directs their overflow, which would otherwise cause flooding until evaporated, to a discharge point on the North Fork near the City's wastewater treatment plant. The stormwater drained by this system is developed water, which the City is in the process of taking the appropriate steps to secure as a water supply.

All in all, the City of Lubbock and its strategic plan go to great lengths to implement the State's policy objectives of conjunctive use, conservation, and reuse – objectives that are particularly important in the arid High Plains. However, based upon the City's review of the BRA Application, it appears that the System Operations Permit sought by the BRA could: threaten the City's existing permits and rights; impede appropriate development and reuse of water supplies in the arid, upper reaches of the Brazos River basin; and jeopardize the City's ability to fully implement its strategic water plan.

It is the City's understanding that the System Operations Permit sought in the BRA Application targets all flows and return flows in the Brazos River Basin -- current or future. The City also understands that the BRA is seeking recognition that the System Operations Permit will prevail over inconsistent provisions even in existing water rights.

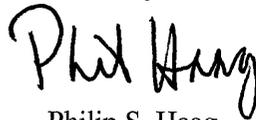
As a result, the BRA Application, if granted, will adversely impact the supply and availability of water that is the subject of the water rights, permits, applications, strategic plan, and strategic objectives of the City. In fact, it appears that the BRA Application seeks to appropriate and/or obtain the right to use some of the very same water for which the City already has a permit or is currently seeking a permit. In addition, the BRA Application seeks to appropriate and/or obtain the right to use water which is the subject of the City's strategic water plan, but with respect to which the City has not yet had time to commence or complete the requisite administrative and/or regulatory processes, which would not be a problem but for the fact that the BRA is attempting to "lock up" all remaining water in the Brazos River basin for now and forever despite the original source of supply. The adverse impact of the BRA Application on the City is exacerbated by the fact that the BRA Application lists Lake Alan Henry as part of the BRA's proposed System Operations Plan despite the fact that the City has allocated capacity rights in Lake Alan Henry.

Office of the Chief Clerk  
Texas Commission on Environmental Quality  
June 10, 2005  
Page 3

In an effort to resolve these and other issues, the City has endeavored to negotiate a mutually satisfactory agreement with the BRA. Unfortunately, no such agreement has yet been reached, leaving the City no choice but to submit this request for a contested case hearing on the above-referenced Application No. 5851. If such an agreement is subsequently reached, the City will immediately notify the TCEQ.

We appreciate your attention to this matter.

Sincerely,



Philip S. Haag

PH/pd

cc: Ms. Anita Burgess  
Mr. Thomas Adams  
Mr. Lynn Sherman

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
Office of the Chief Clerk, MC105  
P.O. Box 13087  
Austin, TX 78711 - 3087

OPAK

May 14, 2005

MAY 18 2005

BY gr

CHIEF CLERKS OFFICE

2005 MAY 17 PM 2:17

44044  
MCD  
TEXAS  
COMMISSION ON ENVIRONMENTAL QUALITY

Hello,

**My name is Bridges Hague and I am writing to request a contested case hearing on the Brazos River Authority's Application number 5851, Systems Operation Permit.**

Our family enterprise, MW FARM AND RANCH, is 650 acres located in Somervell County, six miles east of Glen Rose on a three mile bend of the Brazos River. We have farmed and ranched here for over 50 years.

**We rely on the quantity and quality of the water in the Brazos River to irrigate corn, commercial grass and nursery products. The Brazos provides drinking water for our cattle and horses, acts as a natural livestock boundary and is the under-ground source of water for several hundred mature pecan trees that are commercially managed.**

It is my opinion that the **Brazos River Authority has not proven competent** at managing the responsibilities they already possess, and that giving them **further control of Texas water** will lead to additional **negative impact to citizens** along the river.

Having grown up on the Brazos, I have a special appreciation for the joy that natural waterways bring to so many Texans and visitors to our state. I have swum, rafted, canoed, fished, hunted and camped along these parts of the river for forty years. I feel well qualified to suggest to you that since the construction of the De Cordova Bend Dam in Granbury the 'quality of life' along this part of the Brazos River has been in steady decline. What started out as an interruption of flow has turned into what feels like sheer water piracy, with no regard for economic or environmental impact to Texans downstream. The results of whatever management policies guide the BRA with respect to the Brazos River between Lake Granbury and Lake Whitney include but are not limited to the following:

**Dramatic reduction in the flow of water in the river, leading to diminished water quality, and:**

- Loss of human life**
- Loss of fish and wildlife**
- Loss of natural boundary and thus loss of livestock**
- Poor irrigation capture/flows**
- Health Hazard for livestock**
- Health Hazard for humans**
- Risk to tourism, especially in "dangerous" months of July and August**
- Inability to swim, fish, canoe, etc.**

**Dramatic variance in level, leading to:**

- Heavy silting of the river**
- Introduction of fish killing algae with devastating effect**
- Issues of tributary 'cross-bank' erosion**

I watch as the economy of this county and many parts of our state continues to shift from a base driven by farming to an economy dependent upon the tourism that our natural waterways in part attract, and I wonder who in Austin is looking out for either interest in cases like this. I hope it is the TCEQ, because I do not feel the BRA to be fair, aware, impartial or wise.

I look forward to seeing you in Waco on the 17<sup>th</sup> of May.

Regards,

Bridges Hague  
MW Ranch, P.O. Box 2857, Glen Rose, TX 76043

254-898-1914

*8 Any formal oral comments*

**TCEQ Public Participation Form**  
**Brazos River Authority**  
**Public Meeting**  
**Proposed Application to Appropriate State Water**  
**Permit No. 5851**  
**Tuesday, May 17, 2005**

**OPA RECEIVED**

**MAY 17 2005**

**PLEASE PRINT:**

**AT PUBLIC MEETING**

Name: Bridges Hague

Address: PO Box 2857

City/State: Glen Rose TX Zip: 76043

Phone: (254) 898-1910

CHIEF CLERKS OFFICE

2005 MAY 19 PM 4:38

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Are you here today representing a municipality, legislator, agency, or group?  Yes  No

If yes, which one? \_\_\_\_\_

Persons whose names and addresses appear legibly on the sign in sheet at the public meeting and persons who submitted written comments to the TCEQ will be notified by the TCEQ's Office of Chief Clerk of the executive director's decision and provided the final technical summary on which the decision was based.

Please give this to the person at the information table. Thank you.

*Handwritten mark*

44044

# LOWERRE & FREDERICK

ATTORNEYS AT LAW

44 East Avenue, Suite 100

Austin, Texas 78701

(512) 469-6000 • (512) 482-9346 (facsimile)

Mail@LF-LawFirm.com

OPA

October 26, 2007

OCT 29 2007

Ms. LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711

*Via facsimile and first class mail*

Re: **Notice of Appearance** in the matter of the Application of Brazos River Authority  
for System Operation Permit, Application No. 5851

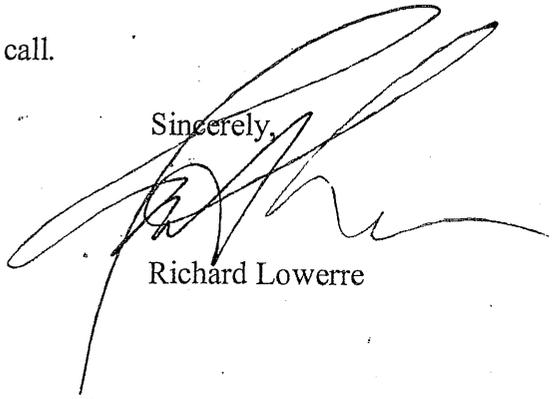
Dear Ms. Castañuela,

The Friends of the Brazos River (FBR) previously submitted comments and a request for a contested case hearing on the above-referenced application. FBR is transferring counsel from the law firm of Henry & Poplin to our firm, Lowerre & Frederick.

Please adjust your records to reflect this change and direct all future correspondence intended to the Friends of the Brazos River to me at the above address.

If you have any questions please call.

Sincerely,



Richard Lowerre

- xc: Bruce Wasinger
- David Klein
- David Koinm
- Blas J. Coy, Jr.
- Bridget Bohac

**HENRY & POPLIN**

Attorneys At Law  
819 1/2 W. 11<sup>th</sup> St.  
Austin, Texas 78701

(512) 708-1549  
(512) 708-1297 fax

May 27, 2005

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2005 MAY 27 PM 4:10  
CHIEF CLERKS OFFICE

*H* OPA

MAY 31 2005

BY *[Signature]*

Texas Commission on Environmental Quality  
C/O Office of Chief Clerk, MC105  
P. O. Box 13087  
Austin, Texas 78711-3087

*WR  
44044*

Re: Application No. 5851, by  
Brazos River Authority for  
System Operation Permit

Dear Commissioners:

**Friends of the Brazos River, Inc.** requests a contested case hearing on the Brazos River Authority's ("BRA") Application No. 5851 for a system operation permit ("sop").

Friends of the Brazos River, Inc. ("FBR") is a Texas non-profit corporation made up of members who own land on the Brazos River, downstream of Lake Granbury and upstream of Lake Whitney ("that segment"). FBR is organized to protect and if possible restore that segment of the Brazos River to what it once was; a stream segment with ample flowing water to support many opportunities for recreation, such as fishing, swimming, canoeing, and other forms of more leisure recreation. FBR is organized to protect the fish and wildlife of that segment of the Brazos River and the associated riparian habitat. FBR is organized to assist its members in protecting their use and enjoyment of their lands adjacent to that segment of the Brazos River.

FBR President Ed Lowe owns land on the Brazos River and conducts many canoeing trips on that segment of the River and is concerned that granting BRA more authority to manage the remaining water in the River will further diminish the flows which already appear to be severely reduced by the way BRA now makes releases from Lake Granbury or sells water to other entities. Mr. Lowe is

*clerk*

concerned that opportunities for canoeing will be significantly reduced if the TCEQ grants BRA more authority to manage the remaining water in the River.

FBR member Mary Lee Lilly owns some three miles of land along that segment of the River and holds a water right to use water from the River. She has noticed the dwindling flows of the River over these last several years and is concerned that if the BRA gets more authority to manage the River that the flow in that segment of the River will only get worse and will impair her use of her water right and her enjoyment of the River.

FBR member Jane Vaughn is a landowner on that segment of the River and has water rights and concerns similar to Mrs. Lilly.

FBR members Jack and Kathy Cathey operate a commercial canoeing business on that segment of the River and due to the increasing low flow of the River in that segment over the last few years, they are concerned that granting the BRA more control of the water in the River will adversely affect their business more severely than it has been affected in the past.

Many other FBR members are concerned that their rights as riparian landowners will be adversely affected by the BRA Application if granted as requested. Many FBR members are concerned that further appropriation of the waters of the River, as represented in the BRA Application, will impact that segment of the River to the extent that the fish and wildlife in that area will be severely harmed.

Due to the extreme vagueness of the Application, FBR cannot provide a more detailed explanation of its concerns and how the proposed permit might adversely affect the interests of its members. The location of the amounts and diversion points of the additional water sought by the BRA are not detailed in the application. The details of the system operation are not provided. The change of flows and the timing of releases of water in that segment of the River are not provided. The environmental impacts associated with the new water appropriated and the shifting of the water in a system-wide manner is not analyzed. The impacts on downstream water rights and the natural environment associated with the appropriation of all the return flows in the Basin are not detailed. These details will supposedly be supplied in the Water Management Plan to be submitted at a later date, after the sop is granted.

Without more details on how the so-called system operation would be managed by the BRA, FBR submits that TCEQ may not grant the Application. FBR has many

questions the answers to which can only be gained through the process of a contested case hearing. How much additional water will be diverted, where, when and how? What will be the specific beneficial uses for the new water? Can other water providers in the basin supply some of the future water needs of the basin more efficiently than BRA? Is granting the BRA a permit for almost all of the remaining, unappropriated water in the River in the public interest or merely in BRA's interest? Will future water needs in the basin only be met by contracting with BRA for the water needed or for BRA not to protest a water right request of another entity? Why isn't the Application accompanied with a more detailed Water Management Plan so that the permit, if granted, is conditioned by the Water Management Plan, not the reverse? Is the Application even administratively complete without a Water Management Plan, which contains the details necessary to preliminarily determine whether unappropriated water is available? Why is it in the public interest for the TCEQ to relinquish most of its jurisdiction over the public waters in the basin to BRA? What jurisdiction will remain with TCEQ if BRA is granted the Application as requested? Why shouldn't BRA be required to do a comprehensive environmental impact statement before the Application is considered further?

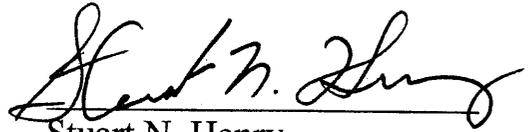
FBR also has concerns that the notice provided by BRA does not meet the minimum requirements of the Texas Water Code. Several members of FBR received mail notice of the public hearing and Application and FBR does not question the sufficiency of the notice it received. However a deficient notice will entail a lot of wasted time and effort by everyone. The Application appears to seek to appropriate some amount of return flows of numerous discharges of sewage treatment plant effluent yet those individual dischargers do not seem to have been notified of the Application.

Without question, TCEQ has the jurisdiction to consider and protect the claimed environmental and water rights interests of the members of FBR in a contested case hearing on BRA's Application No. 5851. Ed Lowe, Mary Lee Lilly, Jane Vaughn, Jack and Cathy Cathey and many other members of FBR have standing to request a contested case hearing in their own right. FBR organized precisely for the purpose of protecting the interests of its members claimed here. The claims asserted and relief requested here does not require any FBR member to participate as an individual, but only as a member of FBR.

For the reasons set out above, Friends of the Brazos River respectfully request of the TCEQ Commissioners that it be granted a contested case hearing on the BRA's Application No. 5851.

Should you have any questions please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart N. Henry". The signature is written in a cursive style with a horizontal line underneath it.

Stuart N. Henry,  
Henry & Poplin, Attorneys for  
Friends of the Brazos River

**HENRY & POPLIN**

Attorneys At Law  
819 1/2 W. 11<sup>th</sup> St.  
Austin, Texas 78701

(512) 708-1549  
(512) 708-1297 fax

May 27, 2005

Texas Commission on Environmental Quality  
C/O Office of Chief Clerk, MC105  
P. O. Box 13087  
Austin, Texas 78711-3087

*WR  
44044*

*H OPA*

MAY 31 2005

BY *[Signature]*

CHIEF CLERKS OFFICE

2005 MAY 27 PM 4:10

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Application No. 5851, by  
Brazos River Authority for  
System Operation Permit

Dear Commissioners:

**Friends of the Brazos River, Inc.** requests a contested case hearing on the Brazos River Authority's ("BRA") Application No. 5851 for a system operation permit ("sop").

Friends of the Brazos River, Inc. ("FBR") is a Texas non-profit corporation made up of members who own land on the Brazos River, downstream of Lake Granbury and upstream of Lake Whitney ("that segment"). FBR is organized to protect and if possible restore that segment of the Brazos River to what it once was, a stream segment with ample flowing water to support many opportunities for recreation, such as fishing, swimming, canoeing, and other forms of more leisure recreation. FBR is organized to protect the fish and wildlife of that segment of the Brazos River and the associated riparian habitat. FBR is organized to assist its members in protecting their use and enjoyment of their lands adjacent to that segment of the Brazos River.

FBR President Ed Lowe owns land on the Brazos River and conducts many canoeing trips on that segment of the River and is concerned that granting BRA more authority to manage the remaining water in the River will further diminish the flows which already appear to be severely reduced by the way BRA now makes releases from Lake Granbury or sells water to other entities. Mr. Lowe is

*[Handwritten mark]*

concerned that opportunities for canoeing will be significantly reduced if the TCEQ grants BRA more authority to manage the remaining water in the River.

FBR member Mary Lee Lilly owns some three miles of land along that segment of the River and holds a water right to use water from the River. She has noticed the dwindling flows of the River over these last several years and is concerned that if the BRA gets more authority to manage the River that the flow in that segment of the River will only get worse and will impair her use of her water right and her enjoyment of the River.

FBR member Jane Vaughn is a landowner on that segment of the River and has water rights and concerns similar to Mrs. Lilly.

FBR members Jack and Kathy Cathey operate a commercial canoeing business on that segment of the River and due to the increasing low flow of the River in that segment over the last few years, they are concerned that granting the BRA more control of the water in the River will adversely affect their business more severely than it has been affected in the past.

Many other FBR members are concerned that their rights as riparian landowners will be adversely affected by the BRA Application if granted as requested. Many FBR members are concerned that further appropriation of the waters of the River, as represented in the BRA Application, will impact that segment of the River to the extent that the fish and wildlife in that area will be severely harmed.

Due to the extreme vagueness of the Application, FBR cannot provide a more detailed explanation of its concerns and how the proposed permit might adversely affect the interests of its members. The location of the amounts and diversion points of the additional water sought by the BRA are not detailed in the application. The details of the system operation are not provided. The change of flows and the timing of releases of water in that segment of the River are not provided. The environmental impacts associated with the new water appropriated and the shifting of the water in a system-wide manner is not analyzed. The impacts on downstream water rights and the natural environment associated with the appropriation of all the return flows in the Basin are not detailed. These details will supposedly be supplied in the Water Management Plan to be submitted at a later date, after the sop is granted.

Without more details on how the so-called system operation would be managed by the BRA, FBR submits that TCEQ may not grant the Application. FBR has many

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2015 JUN 27 11:41:10  
CHIEF CLERK'S OFFICE

questions the answers to which can only be gained through the process of a contested case hearing. How much additional water will be diverted, where, when and how? What will be the specific beneficial uses for the new water? Can other water providers in the basin supply some of the future water needs of the basin more efficiently than BRA? Is granting the BRA a permit for almost all of the remaining, unappropriated water in the River in the public interest or merely in BRA's interest? Will future water needs in the basin only be met by contracting with BRA for the water needed or for BRA not to protest a water right request of another entity? Why isn't the Application accompanied with a more detailed Water Management Plan so that the permit, if granted, is conditioned by the Water Management Plan, not the reverse? Is the Application even administratively complete without a Water Management Plan, which contains the details necessary to preliminarily determine whether unappropriated water is available? Why is it in the public interest for the TCEQ to relinquish most of its jurisdiction over the public waters in the basin to BRA? What jurisdiction will remain with TCEQ if BRA is granted the Application as requested? Why shouldn't BRA be required to do a comprehensive environmental impact statement before the Application is considered further?

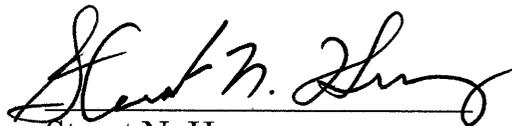
FBR also has concerns that the notice provided by BRA does not meet the minimum requirements of the Texas Water Code. Several members of FBR received mail notice of the public hearing and Application and FBR does not question the sufficiency of the notice it received. However a deficient notice will entail a lot of wasted time and effort by everyone. The Application appears to seek to appropriate some amount of return flows of numerous discharges of sewage treatment plant effluent yet those individual dischargers do not seem to have been notified of the Application.

Without question, TCEQ has the jurisdiction to consider and protect the claimed environmental and water rights interests of the members of FBR in a contested case hearing on BRA's Application No. 5851. Ed Lowe, Mary Lee Lilly, Jane Vaughn, Jack and Cathy Cathey and many other members of FBR have standing to request a contested case hearing in their own right. FBR organized precisely for the purpose of protecting the interests of its members claimed here. The claims asserted and relief requested here does not require any FBR member to participate as an individual, but only as a member of FBR.

For the reasons set out above, Friends of the Brazos River respectfully request of the TCEQ Commissioners that it be granted a contested case hearing on the BRA's Application No. 5851.

Should you have any questions please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink, appearing to read "Stuart N. Henry". The signature is written in a cursive style with a horizontal line underneath the name.

Stuart N. Henry,  
Henry & Poplin, Attorneys for  
Friends of the Brazos River

OPA

MAY 30 2006

**HENRY & POPLIN**

ATTORNEYS AT LAW  
819½ WEST 11<sup>TH</sup> STREET  
AUSTIN, TEXAS 78701

(512) 708-1549 PHONE  
(512) 708-1297 FAX

BY     *ll*    

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2006 MAY 30 AM 10:21  
CHIEF CLERKS OFFICE

May 26, 2006

LaDonna Castañuela  
Chief Clerk MC-105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

*Henry  
Poplin  
2/26*

Ms. Castañuela,

I represent the Friends of the Brazos River (FBR). It is a group comprised of residents and landowners on the John Graves segment of the Brazos River downstream of Lake Granbury near Glen Rose, Texas. These citizens coalesced because of their concern over the current status and future health of the River. The group members have noticed low and reduced instream flows in their stretch of the Brazos in recent years. The Friends of the Brazos believe that the reduction in flows in their segment of the River is due to over-allocation and mismanagement of surface water by the Brazos River Authority (BRA). All of the members have vested interests in sustaining the flow of their beloved River, whether it is for riparian, recreational, agricultural, economic or aesthetic purposes. The low flows in the segment coupled with BRA's pending application for appropriation of approximately 1 million acre feet of water per year (system of operations permit #5851) gives FBR cause for immense concern over the health and the future of their segment of the River.

The filing requirements of 30 TAC §295.101 and §297 Sub-Chapter J state that water supply contracts be submitted for approval to the executive director before deliveries or diversions under the contract may be made lawfully. I would like to respectfully request clarification of the approval process for submitted water supply contracts. Additionally, because of the valid concerns expressed by the Friends of the Brazos regarding flows and the amount of water in the basin, I would like to know if any

*ll*

component of the water supply contract review process might include a period for public comments. If so, the Friends of the Brazos request that the Texas Commission on Environmental Quality notify them through their attorney Stuart Henry of the law firm Henry & Poplin prior to the approval of any water supply contracts made by the Brazos River Authority in the basin segment between Lake Possum Kingdom and Lake Whitney, so that FBR may comment on that contract.

Thank you for your time and cooperation on this matter. If I can offer any clarification as to my request please feel free to contact me.

Respectfully Submitted,



Cole Garrett  
Legal Assistant

**HENRY & POPLIN**  
819½ West 11<sup>th</sup> Street  
Austin, Texas 78701  
(512) 708-1549 tel.  
(512) 708-1297 fax

**Attorneys for Friends of the  
Brazos River**

9) Have formal oral comment.

**TCEQ Public Participation Form**  
**Brazos River Authority**  
**Public Meeting**  
**Proposed Application to Appropriate State Water**  
**Permit No. 5851**  
**Tuesday, May 17, 2005**

**OPA RECEIVED**

**MAY 17 2005**

**AT PUBLIC MEETING**

**PLEASE PRINT:**

Name: Stuart N. Henny

Address: 819 1/2 W. 11th St

City/State: Austin, Tx Zip: 78701

Phone: (512) 708-1549

CHIEF CLERKS OFFICE

2005 MAY 19 PM 4:38

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Are you here today representing a municipality, legislator, agency, or group?  Yes  No

If yes, which one? Friends of Brazos River

Persons whose names and addresses appear legibly on the sign in sheet at the public meeting and persons who submitted written comments to the TCEQ will be notified by the TCEQ's Office of Chief Clerk of the executive director's decision and provided the final technical summary on which the decision was based.

Please give this to the person at the information table. Thank you.

Handwritten mark

May 12, 2005

James R and Melodie Isham  
P. O. Box 84  
Rainbow TX 76077

Texas Commission on Environmental Quality c/c  
Office of Chief Clerk, MC105  
P. O. Box 13087  
Austin TX 78711-3087

2005 MAY 27 PM 4:30  
X OPA  
MAY 31 2005  
CHIEF CLERKS OFFICE  
BY 20

*WR*  
*44044*

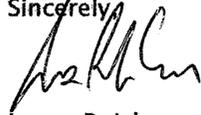
Re: Brazos River Flow

Please accept this letter as our formal protest concerning proposed action being considered to reduce or eliminate flow down the Brazos River. We want a contested case hearing because of the following reasons.

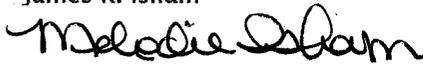
We purchased our property, 2624 County Road 312, Tres Rios Addition, Somervell County, because it was located on a beautiful place on the Brazos River. Each year we endure less and less water. This means wading instead of swimming, tubing and/or canoeing. We have had increasingly less fish in the river each year. The river flow level has much to do with the fish being able to come upstream in order to spawn. They can not do this in ankle-deep, stagnant, mosquito larvae water. This fishing season we caught absolutely zero fish.

Applicant: Brazos River Authority  
Application # 5851  
System Operation Permit

Sincerely,



James R. Isham



Melodie Isham

Members "Friends of the Brazos River, Inc."

*dup*

*W/R Perm 5851*

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

May 12, 2005

*H* OPA

James R and Melodie Isham  
P. O. Box 84  
Rainbow TX 76077

MAY 31 2005

2005 MAY 27 PM 4:30

Texas Commission on Environmental Quality c/c  
Office of Chief Clerk, MC105  
P. O. Box 13087  
Austin TX 78711-3087

BY *[Signature]*

CHIEF CLERKS OFFICE

*W/R  
44044*

Re: Brazos River Flow

Please accept this letter as our formal protest concerning proposed action being considered to reduce or eliminate flow down the Brazos River. We want a contested case hearing because of the following reasons.

We purchased our property, 2624 County Road 312, Tres Rios Addition, Somervell County, because it was located on a beautiful place on the Brazos River. Each year we endure less and less water. This means wading instead of swimming, tubing and/or canoeing. We have had increasingly less fish in the river each year. The river flow level has much to do with the fish being able to come upstream in order to spawn. They can not do this in ankle-deep, stagnant, mosquito larvae water. This fishing season we caught absolutely zero fish.

Applicant: Brazos River Authority  
Application # 5851  
System Operation Permit

Sincerely,

*[Signature]*

James R. Isham

*[Signature]*

Melodie Isham

Members "Friends of the Brazos River, Inc."

*[Handwritten mark]*

16 May 2005

2005 MAY 27 PM 4:39

Texas Commission of Environmental Quality  
c/o Office of Chief Clerk  
P. O. Box 3087  
Austin, TX 79711-3087

CHIEF CLERKS OFFICE

Re: Brazos River Authority  
Application Number 5851, System Operation BY Permit

502  
44044  
# OPA  
MAY 31 2005

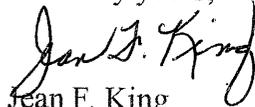
I am writing to request a contested case hearing on the above referenced request by the BRA for a system operation permit – Application 5851.

I have been a resident of Somervell County for almost 15 years. I live less than ¼ a mile from the Paluxy River, which flows into the Brazos about five miles from my home. During my residence here what has happened to the Brazos River, which flowed at one time throughout the county, is devastating. The release of water from Lake Granbury into the lower Brazos has diminished enormously during the period of time I have resided here. No longer can the residents of the county and river front property owners enjoy the pleasures of fishing, swimming, boating, etc. The economical impact of the lack of the flow of water to property owners and the environmental impact of the lack of water has to my knowledge yet to be calculated. Trees are dying, banks eroding and plants and animals dependent on the River for survival are disappearing. The ecology of a once majestic River has been drastically altered and changed perhaps forever.

In late August of 1998 a child died as a result of contacting PAM after swimming in the River. The water was stagnant. As a result of this incident, recreational activities on the River came to a virtual standstill. Tourism is the number one industry in this county. The Brazos River has been a major part of this industry. The River for those interested also has a marvelous and fascinating history.

I respectfully urge the Texas Commission on Environmental Quality to deny this permit request. Surface and ground water are our most precious resources.

Sincerely yours,



Jean F. King  
P.O. Box 2367  
703 Crockett (place of residence)  
Glen Rose, TX 76043

Telephone: (254)897-3688



16 May 2005

2005 MAY 27 PM 4:39

Texas Commission of Environmental Quality  
c/o Office of Chief Clerk  
P. O. Box 3087  
Austin, TX 79711-3087

WOP  
4/10/04

CHIEF CLERKS OFFICE

H OPA

MAY 31 2005

Re: Brazos River Authority  
Application Number 5851, System Operation Permit

BY ①

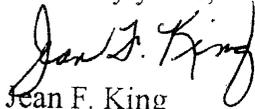
I am writing to request a contested case hearing on the above referenced request by the BRA for a system operation permit – Application 5851.

I have been a resident of Somervell County for almost 15 years. I live less than ¼ a mile from the Paluxy River, which flows into the Brazos about five miles from my home. During my residence here what has happened to the Brazos River, which flowed at one time throughout the county, is devastating. The release of water from Lake Granbury into the lower Brazos has diminished enormously during the period of time I have resided here. No longer can the residents of the county and river front property owners enjoy the pleasures of fishing, swimming, boating, etc. The economical impact of the lack of the flow of water to property owners and the environmental impact of the lack of water has to my knowledge yet to be calculated. Trees are dying, banks eroding and plants and animals dependent on the River for survival are disappearing. The ecology of a once majestic River has been drastically altered and changed perhaps forever.

In late August of 1998 a child died as a result of contacting PAM after swimming in the River. The water was stagnant. As a result of this incident, recreational activities on the River came to a virtual standstill. Tourism is the number one industry in this county. The Brazos River has been a major part of this industry. The River for those interested also has a marvelous and fascinating history.

I respectfully urge the Texas Commission on Environmental Quality to deny this permit request. Surface and ground water are our most precious resources.

Sincerely yours,



Jean F. King  
P.O. Box 2367  
703 Crockett (place of residence)  
Glen Rose, TX 76043

Telephone: (254)897-3688

*Handwritten mark*

Three Rios Ltd.  
1102 Martin Avenue  
Round Rock, Texas 78681

TCEQ  
Office of Chief Clerk  
MC 105  
P.O. Box 13087  
Austin Texas 78711-3087

WR  
44044

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY

2005 MAY 16 AM 9:57 BY

CHIEF CLERKS OFFICE

OPA H

MAY 16 2005



Re: Brazos River Release Flow, and Tres Rios Campground and surrounding business.

To Whom It May Concern:

Please accept this letter as our formal protest concerning proposed action being considered to reduce or eliminate flow down the Brazos River. Tres Rios Campground, which I own, relies heavily upon the tourism created by the flow of water from the Brazos. Eliminating or slowing the flow further would have devastating effects on our business and surrounding businesses. Specific to our property, long time customers who come to Tres Rios year after year, will not be able to fish, swim, canoe, tube, or enjoy the aesthetic beauty of the river front. Tres Rios stands for three rivers and is located at the junction of the Brazos, Paluxy and Squaw Creek. This site has enjoyed a long storied history based upon the unique situation regarding the junction of these bodies of water.

As a business owner, if this type action is taken and directly effects my business, I will immediately take legal action to demand reimbursement for damages.

Further pertinent information:

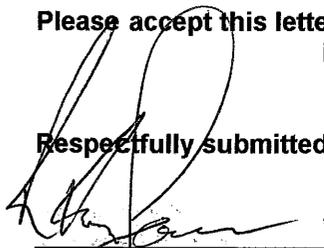
TCEQ Application #: 5851  
Name of Applicant: Brazos River Authority

My Company Information:

Name of Property: Tres Rios Campground, Glen Rose, Texas  
Legal Owner: Three Rios, Ltd., Dos Hombres, Inc. General Partner, R. Kip Lewis is President of Dos Hombres  
Owner Address: 1102 Martin Avenue, Round Rock, Texas 78681  
512-246-2858  
512-244-1200 fax  
Property Manager: Mitchell George  
254-897-4253

Please accept this letter as our official notification requesting a CONTESTED CASE HEARING. Please contact me when the hearing will be scheduled.

Respectfully submitted,

  
R. Kip Lewis

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
Office of the Chief Clerk, MC105  
P.O. Box 13087  
Austin, TX 78711 - 3087

May 14, 2005

OPA H

MAY 18 2005

WR  
44044  
2005 MAY 17 PM 2:16  
CHIEF CLERKS OFFICE

TELEPHONE ROOM  
OFFICE OF THE CHIEF CLERK

Hello,

**My name is Mary Lee Lilly and I am writing to request a contested case hearing on the Brazos River Authority's Application number 25851 Systems Operation Permit.**

Our family enterprise, MW FARM AND RANCH, is 650 acres located in Somervell County, six miles east of Glen Rose on a three mile bend of the Brazos River. We have farmed and ranched here for over 50 years.

**We rely on the quantity and quality of the water in the Brazos River to irrigate corn, commercial grass and nursery products. The Brazos provides drinking water for our cattle and horses, acts as a natural livestock boundary and is the under-ground source of water for several hundred mature pecan trees that are commercially managed.**

I have serious concerns about the Brazos River Authority's ability to take on any additional responsibilities, and I would like to use this opportunity to make the TCEQ aware of what I believe is negligence on the part of the BRA with respect to its track record on our part of the river, between Lake Granbury and Lake Whitney.

Having spent most of my 73 years close to this river, I feel well qualified to suggest to you that since the construction of the De Cordova Bend Dam in Granbury the 'quality of life' along our part of the Brazos River has been in steady decline. What started out as a manageable interruption of flow has turned into a nightmare of inconsistency and an almost complete loss of water quality for extended parts of the summer. Worse than the economic impact, I find it disheartening that I must prevent my three grandchildren from going near the Brazos at times because it might poison them.

The impact of BRA management policies to the Brazos River between Lake Granbury and Lake Whitney include but are not limited to the following:

**Dramatic reduction in the flow of water in the river, leading to diminished water quality, and:**

- Loss of human life**
- Loss of fish and wildlife**
- Loss of natural boundary and thus loss of livestock**
- Poor irrigation capture/flows**
- Health Hazard for livestock**
- Health Hazard for humans**
- Risk to tourism, especially in "dangerous" months of July and August**
- Inability to swim, fish, canoe, etc.**

**Dramatic variance in level, leading to:**

- Heavy silting of the river**
- Introduction of fish killing algae with devastating effect**
- Issues of tributary 'cross-bank' erosion**

I watch as the economy of this county and many parts of our state continues to shift from a base driven by farming to an economy dependent upon the tourism that our natural waterways in part attract, and I wonder who in Austin is looking out for either interest in cases like this. I hope it is the TCEQ.

I look forward to seeing you in Waco on the 17<sup>th</sup> of May.

Regards,

Mary Lee Lilly  
MW Ranch, P.O. Box 2857, Glen Rose, TX 76043

254-898-1914

*Wants to be on mail list*

*Filed written comments*

**TCEQ Public Participation Form  
Brazos River Authority  
Public Meeting  
Proposed Application to Appropriate State Water  
Permit No. 5851  
Tuesday, May 17, 2005**

**OPA RECEIVED**

**MAY 17 2005**

**AT PUBLIC MEETING**

**PLEASE PRINT:**

Name: Mary Lee Hilly

Address: Box 7 C

City/State: Glen Rose TX Zip: 76043

Phone: (254) 897-4262

CHIEF CLERKS OFFICE

2005 MAY 19 PM 4:38

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Are you here today representing a municipality, legislator, agency, or group?  Yes  No

If yes, which one? Friends of the Brazos

Persons whose names and addresses appear legibly on the sign in sheet at the public meeting and persons who submitted written comments to the TCEQ will be notified by the TCEQ's Office of Chief Clerk of the executive director's decision and provided the final technical summary on which the decision was based.

Please give this to the person at the information table. Thank you.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
Office of the Chief Clerk, MC105  
P.O. Box 13087  
Austin, TX 78711 - 3087

OPA RECEIVED

MAY 17 2005

AT PUBLIC MEETING

44044  
WR  
HR  
BEB

Hello,

**My name is Mary Lee Lilly and I am writing to request a contested case hearing on the Brazos River Authority's Application number 5851, Systems Operation Permit.**

Our family enterprise, MW FARM AND RANCH, is 650 acres located in Somervell County, six miles east of Glen Rose on a three mile bend of the Brazos River. We have farmed and ranched here for over 50 years.

**We rely on the quantity and quality of the water in the Brazos River to irrigate corn, commercial grass and nursery products. The Brazos provides drinking water for our cattle and horses, acts as a natural livestock boundary and is the under-ground source of water for several hundred mature pecan trees that are commercially managed.**

I have serious concerns about the Brazos River Authority's ability to take on any additional responsibilities, and I would like to use this opportunity to make the TCEQ aware of what I believe is negligence on the part of the BRA with respect to its track record on our part of the river, between Lake Granbury and Lake Whitney.

Having spent most of my 73 years close to this river, I feel well qualified to suggest to you that since the construction of the De Cordova Bend Dam in Granbury the 'quality of life' along our part of the Brazos River has been in steady decline. What started out as a manageable interruption of flow has turned into a nightmare of inconsistency and an almost complete loss of water quality for extended parts of the summer. Worse than the economic impact, I find it disheartening that I must prevent my three grandchildren from going near the Brazos at times because it might poison them.

The impact of BRA management policies to the Brazos River between Lake Granbury and Lake Whitney include but are not limited to the following:

**Dramatic reduction in the flow of water in the river, leading to diminished water quality, and:**

- Loss of human life**
- Loss of fish and wildlife**
- Loss of natural boundary and thus loss of livestock**
- Poor irrigation capture/flows**
- Health Hazard for livestock**
- Health Hazard for humans (documented deaths)**
- Risk to tourism, especially in "dangerous" months of July and August**
- Inability to swim, fish, canoe, etc.**

**Dramatic variance in level, leading to:**

- Heavy silting of the river**
- Introduction of fish killing algae with devastating effect**
- Issues of tributary 'cross-bank' erosion**

I watch as the economy of this county and many parts of our state continues to shift from a base driven by farming to an economy dependent upon the tourism that our natural waterways in part attract, and I wonder who in Austin is looking out for either interest in cases like this. I hope it is the TCEQ.

I look forward to seeing you in Waco on the 17<sup>th</sup> of May.

Regards,

Mary Lee Lilly  
MW Ranch, P.O. Box 2857, Glen Rose, TX 76043

254-898-1914

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
CHIEF CLERKS OFFICE  
2005 MAY 19 PM 4:38

Home Draft



IN RE APPLICATION No. 5851                   §                   BEFORE THE TEXAS  
BY BRAZOS RIVER AUTHORITY               §  
FOR PERMIT TO APPROPRIATE               §                   COMMISSION ON  
PUBLIC WATER (“SYSTEM                   §  
OPERATION PERMIT”)                       §                   ENVIRONMENTAL QUALITY

THE CITY OF BRYAN’S AND THE CITY OF COLLEGE STATION’S  
REQUEST FOR CONTESTED CASE HEARING AND COMMENTS

The City of Bryan and the City of College Station (collectively, the "Cities") request a contested case hearing on the referenced Brazos River Authority (“BRA”) application. Contact information for the Cities is provided below.

City of Bryan  
c/o City Manager  
300 S. Texas Ave.  
Bryan, Texas 77803  
Telephone: (979) 209-5100

City of College Station  
c/o City Manager  
1101 Texas Ave.  
College Station, Texas 77840  
Telephone: (979) 764-3500

The Cities have authorized the undersigned to receive all correspondence and notices on their behalf regarding this request for a contested case hearing.

I. BACKGROUND

The Cities rely solely on groundwater supplies to provide retail water utility service to their customers. After the Cities’ groundwater is used and then treated at their wastewater treatment plants, it is discharged into tributaries of the Brazos River. The discharges are “developed” water by virtue of the fact that they are derived from groundwater owned by the Cities that would not be present in the Brazos River but for the efforts of the Cities. The Cities

have invested significant amounts of capital to produce, transport, and treat their groundwater before it is discharged into the tributaries of the Brazos River. Both Cities are in the process of completing applications to be filed with the TCEQ seeking authority to transport their current and future return flows derived from privately owned groundwater (“Return Flows”) through watercourses for subsequent diversion and reuse.

II. BRAZOS RIVER AUTHORITY APPLICATION

On June 25, 2004 the BRA filed its application with the TCEQ seeking, among other things, authorization to appropriate the current and future return flows (treated sewage effluent and brine bypass/return) being discharged into the bed and banks of the Brazos River, its tributaries, and the BRA’s reservoirs. As part of its application, BRA filed a June 14, 2004 Report in Support of System Operation Permit Application prepared by Freese and Nichols, Inc. and Espey Consultants, Inc. (the “Report”). Table D-3 in Appendix D of the Report specifically identifies the Cities’ Return Flows as a source of water that BRA seeks to appropriate. BRA seeks to appropriate the following Return Flows of each city:

	Current (A.F./yr)	Future (2060) (A.F./yr)
Bryan	7,255	13,314
College Station	<u>6,108</u>	<u>12,186</u>
Totals	13,363	25,500

At no time did BRA seek the Cities’ permission to appropriate their Return Flows. Furthermore, the Cities have not entered into an agreement with BRA authorizing it to use their Return Flows.

III. THE CITIES’ JUSTICIABLE INTEREST

The Cities’ would be affected by a decision to grant BRA’s application in a manner not common to members of the general public because they have authority under Section 11.042 (b)

of the Texas Water Code to indirectly reuse their Return Flows. In fact, BRA acknowledges in its Comments on "Indirect" Reuse document submitted to the TCEQ on April 15, 2005 that "[s]ection 11.042(b) is an express recognition of the reuse right of the owner of groundwater-based effluent." BRA's Comments at 5. Nonetheless, BRA proposes to appropriate the Cities' Return Flows at the point where they are discharged into tributaries of the Brazos River. If the TCEQ grants BRA's application, the Cities' right to indirectly reuse their Return Flows would be adversely affected because BRA is seeking authority to appropriate those Return Flows.

#### IV. COMMENTS

Granting BRA's request to appropriate the Cities' Return Flows contravenes legislative intent and would be detrimental to the public welfare because the Cities' right to indirectly reuse their Return Flows would be adversely affected.

#### V. REQUESTED RELIEF

The Cities request that the Commission direct the Chief Clerk to refer BRA's application to the State Office of Administrative Hearings ("SOAH") for a contested case hearing.

Respectfully submitted,

Mathews & Freeland, L.L.P.  
327 Congress Avenue, Ste. 300  
Austin, Texas 78701  
Telephone (512) 404-7800  
Fax (512) 703-2785

By: 

Jim Mathews  
SBN 13188700  
Robert Pressley  
SBN 00784788

ATTORNEYS FOR  
CITY OF BRYAN  
AND CITY OF COLLEGE STATION

# MATHEWS & FREELAND, L.L.P.

JIM MATHEWS  
JOE FREELAND  
ATTORNEYS AT LAW  
P.O. Box 1568  
AUSTIN, TEXAS 78768-1568

(512) 404-7800  
FAX: (512) 703-2785

June 10, 2005

*Via Facsimile (512/239-3311) and U.S. Mail*

*WR  
424044*

**OPA** *H*

LaDonna Castañuela  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

JUN 13 2005

BY *gr*

CHIEF CLERKS OFFICE

2005 JUN 10 PM 4:26

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**Re: Application No. 5851 by Brazos River Authority for Permit to Appropriate Public Water ("System Operation Permit")**

Dear Ms. Castañuela:

Attached for filing pursuant to 30 TAC §1.10 (c), please find a request for a contested case hearing on the referenced matter by the City of Bryan and the City of College Station. Because this is being filed by facsimile, an original and 11 copies of this request are being forwarded to you by mail.

Sincerely,



Jim Mathews

cc: Harvey Cargill  
Hugh Walker



IN RE APPLICATION No. 5851 § BEFORE THE TEXAS  
 BY BRAZOS RIVER AUTHORITY §  
 FOR PERMIT TO APPROPRIATE § COMMISSION ON  
 PUBLIC WATER ("SYSTEM §  
 OPERATION PERMIT") § ENVIRONMENTAL QUALITY

THE CITY OF BRYAN'S AND THE CITY OF COLLEGE STATION'S  
 REQUEST FOR CONTESTED CASE HEARING AND COMMENTS

The City of Bryan and the City of College Station (collectively, the "Cities") request a contested case hearing on the referenced Brazos River Authority ("BRA") application. Contact information for the Cities is provided below.

City of Bryan  
 c/o City Manager  
 300 S. Texas Ave.  
 Bryan, Texas 77803  
 Telephone: (979) 209-5100

City of College Station  
 c/o City Manager  
 1101 Texas Ave.  
 College Station, Texas 77840  
 Telephone: (979) 764-3500

OPA<sup>H</sup>  
 JUN 13 2005  
 BY js

CHIEF CLERKS OFFICE

2005 JUN 10 PM 4:26

TEXAS  
 COMMISSION ON  
 ENVIRONMENTAL  
 QUALITY

The Cities have authorized the undersigned to receive all correspondence and notices on their behalf regarding this request for a contested case hearing.

I. BACKGROUND

The Cities rely solely on groundwater supplies to provide retail water utility service to their customers. After the Cities' groundwater is used and then treated at their wastewater treatment plants, it is discharged into tributaries of the Brazos River. The discharges are "developed" water by virtue of the fact that they are derived from groundwater owned by the Cities that would not be present in the Brazos River but for the efforts of the Cities. The Cities

have invested significant amounts of capital to produce, transport, and treat their groundwater before it is discharged into the tributaries of the Brazos River. Both Cities are in the process of completing applications to be filed with the TCEQ seeking authority to transport their current and future return flows derived from privately owned groundwater ("Return Flows") through watercourses for subsequent diversion and reuse.

II. BRAZOS RIVER AUTHORITY APPLICATION

On June 25, 2004 the BRA filed its application with the TCEQ seeking, among other things, authorization to appropriate the current and future return flows (treated sewage effluent and brine bypass/return) being discharged into the bed and banks of the Brazos River, its tributaries, and the BRA's reservoirs. As part of its application, BRA filed a June 14, 2004 Report in Support of System Operation Permit Application prepared by Freese and Nichols, Inc. and Espey Consultants, Inc. (the "Report"). Table D-3 in Appendix D of the Report specifically identifies the Cities' Return Flows as a source of water that BRA seeks to appropriate. BRA seeks to appropriate the following Return Flows of each city:

	Current (A.F./yr)	Future (2060) (A.F./yr)
Bryan	7,255	13,314
College Station	<u>6,108</u>	<u>12,186</u>
Totals	13,363	25,500

At no time did BRA seek the Cities' permission to appropriate their Return Flows. Furthermore, the Cities have not entered into an agreement with BRA authorizing it to use their Return Flows.

III. THE CITIES' JUSTICIABLE INTEREST

The Cities' would be affected by a decision to grant BRA's application in a manner not common to members of the general public because they have authority under Section 11.042 (b)

of the Texas Water Code to indirectly reuse their Return Flows. In fact, BRA acknowledges in its Comments on "Indirect" Reuse document submitted to the TCEQ on April 15, 2005 that "[s]ection 11.042(b) is an express recognition of the reuse right of the owner of groundwater-based effluent." BRA's Comments at 5. Nonetheless, BRA proposes to appropriate the Cities' Return Flows at the point where they are discharged into tributaries of the Brazos River. If the TCEQ grants BRA's application, the Cities' right to indirectly reuse their Return Flows would be adversely affected because BRA is seeking authority to appropriate those Return Flows.

#### IV. COMMENTS

Granting BRA's request to appropriate the Cities' Return Flows contravenes legislative intent and would be detrimental to the public welfare because the Cities' right to indirectly reuse their Return Flows would be adversely affected.

#### V. REQUESTED RELIEF

The Cities request that the Commission direct the Chief Clerk to refer BRA's application to the State Office of Administrative Hearings ("SOAH") for a contested case hearing.

Respectfully submitted,

Mathews & Freeland, L.L.P.  
327 Congress Avenue, Ste. 300  
Austin, Texas 78701  
Telephone (512) 404-7800  
Fax (512) 703-2785

By: 

Jim Mathews  
SBN 13188700  
Robert Pressley  
SBN 00784788

ATTORNEYS FOR  
CITY OF BRYAN  
AND CITY OF COLLEGE STATION

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

# MATHEWS & FREELAND, L.L.P.

ATTORNEYS AT LAW  
P.O. Box 1568  
Austin, Texas 78768-1568

Jim Mathews  
Joe Freeland

2005 JUN 10 PM 4: 26

CHIEF CLERKS OFFICE  
(512) 404-7800  
FAX: (512) 703-2785

---

## FACSIMILE TRANSMITTAL SHEET

---

To:	Company	Fax	Phone
<b>Chief Clerk</b>	<b>TCEQ</b>	<b>512/239-3311</b>	
Cc:	Company	Fax	Phone
<b>Hugh Walker</b>	<b>Bryan</b>	<b>979/209-5106</b>	
<b>Harvey Cargill</b>	<b>College Station</b>	<b>979/764-3481</b>	
From:		Fax	Phone
<b>Jim Mathews</b>		<b>512/703-2785</b>	<b>512/404-7800</b>

Number of Pages (including this one): 5      Date: **June 10, 2005**

To confirm receipt, or if you do not receive all pages, please call: Lesley Stalvey

Reference: **Application No. 5851 by Brazos River Authority for Permit to Appropriate Public Water ("System Operation Permit") (1516.04)**

- Urgent**   
 **For Review**   
 **Please Comment**   
 **Please Reply**   
 **Please Recycle**

•Comments:

MATHEWS & FREELAND, L.L.P.

ATTORNEYS AT LAW  
P.O. Box 1568  
AUSTIN, TEXAS 78767-1568

JIM MATHEWS  
JOE FREELAND

*WJR*  
*44044*

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

210 FEB 22 AM 10: 22  
(512) 404-7800  
CHIEF CLERK'S OFFICE

February 19, 2010

LaDonna Castañuela  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin, TX 78711-3087

OPA  
FEB 22 2010  
BY EB

Re: Brazos River Authority – Water Rights Application No. 5851

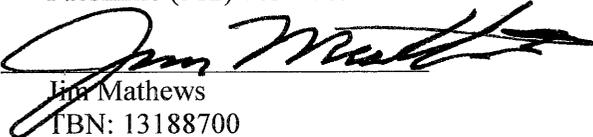
Dear Ms. Castañuela,

We represent the City of College Station, a protestant in the above referenced matter, which, as originally filed, sought to appropriate the City's groundwater based return flows. The City also filed its own application pursuant to Tex. Water Code §11.042(b) seeking authorization to discharge, convey, and subsequently divert and reuse its groundwater based return flows and that application has now been granted.

Pursuant to the terms of a settlement agreement between the City and Brazos River Authority (BRA), BRA recently notified the Executive Director that it was amending its pending application to clarify that it is not applying to appropriate or divert any return flows that are subject to a bed and banks authorization granted now or hereafter by TCEQ pursuant to Texas Water Code §11.042(b). Based on this amendment and as required by the settlement agreement, the City of College Station hereby conditionally withdraws its protest to BRA's Application No. 5851. The City, however, reserves the right to participate in a contested case hearing on BRA's application if a draft permit is recommended by the Executive Director that would authorize BRA to appropriate, divert, or use return flows that are subject to a §11.042(b) authorization issued to the City.

Respectfully submitted,

Mathews & Freeland, L.L.P.  
327 Congress Ave., Ste. 300  
Austin, Texas 78701  
Telephone (512) 404-7800  
Facsimile (512) 703-2785

By: 

Jim Mathews  
IBN: 13188700  
email: jmathews@mandf.com  
ATTORNEYS FOR CITY OF COLLEGE STATION

JM/ndh

cc: Mary Ann Powell  
David Coleman  
Doug Caroom  
Ron Ellis

*MJC*

MATHEWS & FREELAND, L.L.P.

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

JIM MATHEWS  
JOE FREELAND

*WRB*  
*440-44*

ATTORNEYS AT LAW  
P.O. Box 1568  
AUSTIN, TEXAS 78767-1568

2010 FEB 22 AM 10:22  
(512) 404-7800  
FAX: (512) 703-2785  
CHIEF CLERKS OFFICE

February 19, 2010

LaDonna Castañuela  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin, TX 78711-3087

BY \_\_\_\_\_  
OPA  
FEB 22 2010  
BY EB  
OPA

Re: Brazos River Authority – Water Rights Application No. 5851

Dear Ms. Castañuela,

We represent the City of Bryan, a protestant in the above referenced matter, which, as originally filed, sought to appropriate the City’s groundwater based return flows. The City also filed its own application pursuant to Tex. Water Code §11.042(b) seeking authorization to discharge, convey, and subsequently divert and reuse its groundwater based return flows and that application has now been granted

Pursuant to the terms of a settlement agreement between the City and Brazos River Authority (BRA), BRA recently notified the Executive Director that it was amending its pending application to clarify that it is not applying to appropriate or divert any return flows that are subject to a bed and banks authorization granted now or hereafter by TCEQ pursuant to Texas Water Code §11.042(b).Based on this amendment and as required by the settlement agreement, the City of Bryan hereby conditionally withdraws it protest to BRA’s Application No. 5851. The City, however, reserves the right to participate in a contested case hearing on BRA’s application if a draft permit is recommended by the Executive Director that would authorize BRA to appropriate, divert, or use return flows that are subject to a §11.042(b) authorization issued to the City.

Respectfully submitted,

Mathews & Freeland, L.L.P.  
327 Congress Ave., Ste. 300  
Austin, Texas 78701  
Telephone (512) 404-7800  
Facsimile (512) 703-2785

By: *Jim Mathews*

Jim Mathews  
TBN: 13188700  
email: jmathews@mandf.com  
ATTORNEYS FOR CITY OF BRYAN

JM/ndh

cc: Janis Hampton  
Jayson Barfknecht  
Doug Caroom  
Ron Ellis

*CM*



**GRAVES DOUGHERTY HEARON & MOODY**  
A PROFESSIONAL CORPORATION

**Robin A. Melvin**  
512.480.5688  
512.480.5888 (fax)  
rmelvin@gdhm.com

MAILING ADDRESS:  
P.O. Box 98  
Austin, TX 78767

*WR  
THOM*

**OPA**

June 7, 2005

*HR* JUN 08 2005

**VIA TELECOPY AND HAND-DELIVERY**

BY *ll*

CHIEF CLERKS OFFICE

205 JUN -7 PM 4:29

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

LaDonna Castañuela  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Application No. 5851 of the Brazos River Authority

Dear Chief Clerk:

I represent the Texas Chapter of the Coastal Conservation Association ("CCA Texas"). On behalf of CCA Texas, I request a contested case hearing on the Brazos River Authority's Application No. 5851.

CCA Texas is a nonprofit organization of sportfishing enthusiasts and conservationists working to save the natural resources of Texas coastal waters. Since its founding in 1977, CCA Texas has had a strong interest in maintaining the freshwater flows that are necessary to support natural marine breeding habitats.

CCA Texas has 40,000 members. Some of these members fish in and around the mouth of the Brazos River and have a strong interest in maintaining natural marine breeding habitats in that area. Allen Williams is a member of the CCA who lives in the Freeport, Texas area who regularly fishes in and around the mouth of the Brazos River. If granted, the Brazos River Authority's application will decrease freshwater flows at the mouth of the Brazos River Authority, which will have a detrimental impact on natural marine habitat and Mr. Williams' recreational fishing opportunities.

CCA requests a contested case hearing on: (1) whether the proposed appropriation is intended for a beneficial use; and (2) the effect of the issuance of the permit on fish and wildlife habitats and water quality.

*WR*

June 7, 2005

Page 2

I am the person who will be responsible for receiving all official communications and documents for the CCA.

Thank you for your attention to this matter. Please do not hesitate to call me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Robin A. Melvin". The signature is written in a cursive style with a large, sweeping flourish at the end.

Robin A. Melvin

cc: Venable Proctor  
Ben F. Vaughan, III

RAM/mas

P. 02  
TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY



**GRAVES DOUGHERTY HEARON & MOODY**  
A PROFESSIONAL CORPORATION

Robin A. Melvin  
512.480.5088  
512.480.5888 (fax)  
rmelvin@gdhm.com

2005 JUN -7 PM 3:47

MAILING ADDRESS:  
P O Box 99  
Austin, TX 78767

CHIEF CLERKS OFFICE

*WR  
/ 2/20/04*

June 7, 2005

VIA TELECOPY AND HAND-DELIVERY

OPA

HR JUN 08 2005

BY     *RM*    

LaDonna Castañuela  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Application No. 5851 of the Brazos River Authority

Dear Chief Clerk:

I represent the Texas Chapter of the Coastal Conservation Association ("CCA Texas"). On behalf of CCA Texas, I request a contested case hearing on the Brazos River Authority's Application No. 5851.

CCA Texas is a nonprofit organization of sportfishing enthusiasts and conservationists working to save the natural resources of Texas coastal waters. Since its founding in 1977, CCA Texas has had a strong interest in maintaining the freshwater flows that are necessary to support natural marine breeding habitats.

CCA Texas has 40,000 members. Some of these members fish in and around the mouth of the Brazos River and have a strong interest in maintaining natural marine breeding habitats in that area. Allen Williams is a member of the CCA who lives in the Freeport, Texas area who regularly fishes in and around the mouth of the Brazos River. If granted, the Brazos River Authority's application will decrease freshwater flows at the mouth of the Brazos River Authority, which will have a detrimental impact on natural marine habitat and Mr. Williams' recreational fishing opportunities.

CCA requests a contested case hearing on: (1) whether the proposed appropriation is intended for a beneficial use; and (2) the effect of the issuance of the permit on fish and wildlife habitats and water quality.

*RM*

June 7, 2005  
Page 2

I am the person who will be responsible for receiving all official communications and documents for the CCA.

Thank you for your attention to this matter. Please do not hesitate to call me if you have any questions.

Sincerely,



Robin A. Melvin

cc: Venable Proctor  
Ben F. Vaughan, III

RAM/mas



**GRAVES DOUGHERTY HEARON & MOODY**

A PROFESSIONAL CORPORATION

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY  
401 Congress Ave., Suite 2200  
Austin, TX 78701  
512 480 5600  
www.gdhm.com

MAILING ADDRESS  
CHIEF CLERKS OFFICE  
P.O. Box 98  
Austin, TX 78767

2005 JUN -7 PM 3:47

FAX TRANSMITTAL

TO: **LaDonna Castanuela** FAX #: 239-3311  
Office of the Chief Clerk File: A10200.2  
Texas Commission on Environmental Quality  
(Bldg. F, Room 1101)

FROM: **Robin Melvin** FAX #: 480-5888

RE: Application No. 5851 of the Brazos River Authority

DATE: June 7, 2005

TIME: 3:45p TOTAL PAGES INCLUDING COVER: 3

Notes, comments, special instructions:

PLEASE SEE ATTACHED:

LETTER RE: CONTESTED HEARING REQUEST

PLEASE NOTE

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL AND IS INTENDED ONLY FOR THE RECIPIENT NAMED ABOVE. YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OTHER THAN BY THE INTENDED RECIPIENT IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE AND PLEASE RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE.

If there are problems concerning this fax, please contact \_\_\_\_\_ at 512.480.\_\_\_\_\_

800

L A W O F F I C E S O F  
BOOTH, AHRENS & WERKENTHIN, P.C.

A PROFESSIONAL CORPORATION  
515 CONGRESS AVENUE, SUITE 1515  
AUSTIN, TEXAS 78701-3503  
512/472-3263 • 512/473-2609

MICHAEL J. BOOTH  
FRED B. WERKENTHIN, JR.  
WIL GALLOWAY  
TREY NESLONEY

CAROLYN AHRENS  
OF COUNSEL

JOSEPH S. BABB  
OF COUNSEL

January 20, 2010

Ms. LaDonna Castañuela  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

VIA FACSIMILE & REGULAR MAIL

**Re: Change of Legal Counsel for the Dow Chemical Company in Application No. 5851 for a Water Use Permit**

Dear Ms. Castañuela:

The Dow Chemical Company requests that you remove Ms. Rina W. Chang from your list of representatives and hereby designates the following as legal counsel in the above-referenced matter:

Fred B. Werkenthin, Jr.  
Booth, Ahrens & Werkenthin, P.C.  
515 Congress Avenue, Suite 1515  
Austin, Texas 78701  
(512) 472-3263 Phone  
(512) 473-2609 Facsimile  
[fbw@baw.com](mailto:fbw@baw.com)

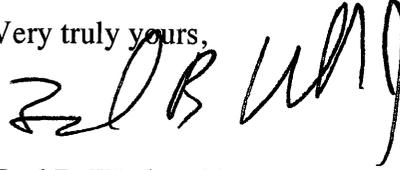
Paul Bork  
EHS Legal – Mergers & Acquisitions  
Federal Communications Commission  
1790 Building  
Midland, Michigan 48674  
(989) 636-4399 Phone  
(989) 696-9527 Facsimile  
[PBork@dow.com](mailto:PBork@dow.com)

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 JAN 21 AM 9:32  
CHIEF CLERKS OFFICE

Ms. LaDonna Castañuela  
January 20, 2010  
Page 2

Please do not hesitate to contact me should you have any questions.

Very truly yours,



Fred B. Werkenthin, Jr.

FBW/cd

cc: Mr. Paul Bork

VIA E-MAIL

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 JAN 21 AM 9:32  
CHIEF CLERKS OFFICE



# Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

401 CONGRESS AVENUE  
SUITE 2500  
AUSTIN, TX 78701-3799

(512) 499-3800  
FACSIMILE (512) 499-3810

www.jenkins.com

May 25, 2005

Steve Morton  
(512) 499-3856  
smorton@jenkens.com

CHICAGO, ILLINOIS  
(312) 425-3900  
DALLAS, TEXAS  
(214) 855-4500  
HOUSTON, TEXAS  
(713) 951-3300  
LOS ANGELES, CALIFORNIA  
(310) 820-8800  
PASADENA, CALIFORNIA  
(626) 578-7400  
SAN ANTONIO, TEXAS  
(210) 246-5000  
WASHINGTON, D.C.  
(202) 326-1500

*WR*  
*44044*

*HR*  
**OPA**  
**MAY 26 2005**

BY *Jug*

CHIEF CLERKS OFFICE  
MAY 25 PM 4:50  
TEXAS  
COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICE OF THE CHIEF CLERK

## VIA HAND DELIVERY

Texas Commission on Environmental Quality  
Office of the Chief Clerk  
Building F  
12100 Park 35 Circle  
Austin, TX 78753

Re: Request for a Contested Case Hearing on Water Right Application No. 5851

Dear Ms. LaDonna Castañuela:

Pursuant to 30 Tex. Admin. Code § 55.251, The Dow Chemical Company ("Dow") hereby requests a contested case hearing on Water Rights Application No. 5851 filed by the Brazos River Authority ("Application"). The contact information for Dow is through the attorney of record indicated on this letterhead and:

Rina W. Chang  
The Dow Chemical Company  
2301 N. Brazosport Blvd.  
APB Bldg. #2029  
Freeport, TX 77541  
ph 979/238-4183  
fax 979/238-3587  
rwchang@dow.com

### Overview of Application

The Application filed by the Brazos River Authority ("BRA") has been designated by BRA as a request for a "System Operation Permit" for BRA's system of reservoirs in the Brazos River Basin. The various water rights and related authorities BRA seeks by means of this Application are extensive, and will substantially alter the very nature of the availability, use, and management of

*Jug*

# Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

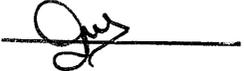
**OPA**

**MAY 26 2005**

Texas Commission on Environmental Quality

May 25, 2005

Page 2

BY 

surface water in the entire Brazos River Basin. The direct, significant impact of granting this Application on current water right(s) holders in the Brazos River Basin is unquestionable.

The TCEQ's Notice of the Application divides BRA's requests for water rights/authorizations into eight categories, plus additional special conditions. Critical to the entire Application is the ability of BRA to operate its current and future water rights through a "system operation" of BRA's reservoirs. The Application seeks generally:

1. The diversion of 421,449 acre-feet of newly appropriated water for multiple use ("firm supply").
2. An ability to divert the newly appropriated water at existing diversion points as authorized in BRA's existing water rights.
3. Use of up to 90,000 acre feet from the firm supply, plus other unappropriated flows to produce an interruptible water supply of 670,000 acre-feet of interruptible water. This would amount to a total of 1,001,449 acre-feet of water (331,449 acre-feet of firm supply and 670,000 of interruptible water).
4. An "exempt" interbasin transfer authorization with respect to adjacent coastal basins (San Jacinto-Brazos Coastal Basin and the Brazos-Colorado Coastal Basin).
5. Appropriation of current and returns flows of treated sewage effluent and brine bypass/returns in some unknown amount to be determined as part of a future BRA Water Management Plan.
6. Approval for BRA to use its discretion to determine which reservoir or water supply could be used to meet a demand of a senior water rights holder, and to release, pump, and/or transport water from any of BRA's reservoirs for subsequent use throughout BRA's service area at BRA's discretion.
7. Allow this System Operations Permit to prevail over BRA's previous water rights.
8. Authorization to use the bed and banks of the Brazos River for conveyance, storage, and subsequent diversion of essentially any water right held by BRA. Points of discharge and diversion are unknown, to be determined later as part of a future BRA Water Management Plan.

In addition, the Application seeks special conditions until the proposed Allens Creek Reservoir is completed, including: (1) the appropriation of 1,204,099 acre-feet per year of water consisting of "firm supply" and "interruptible water" and, (2) an "exempt" interbasin transfer

# Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Texas Commission on Environmental Quality

May 25, 2005

Page 3

authorization to transfer and use both firm and interruptible water in the San Jacinto-Brazos Coastal Basin and the Brazos-Colorado Coastal Basin, and the ability to transfer that water to any county or municipality that has a retail service area within the Brazos River Basin for use in all retail service areas of that county or municipality, including those retain service areas not within the Brazos River Basin.

## Request for a Contested Case Hearing

Dow holds Certificate of Adjudication No. 12-5328 authorizing diversion of water from the Brazos River Basin at locations in and around Freeport, Texas near the mouth of the Brazos River for use at its Texas Operations facility in Freeport, Texas. Based on a review of the Application and other information available regarding the water supply in the Brazos River, Dow is concerned that the Application will negatively impact the availability of water in the lower Brazos River Basin to meet Dow's more senior water rights. The granting of the Application without clear safeguards to protect Dow's senior water rights would directly affect the legal rights, privileges, and economic interests of Dow. As a downstream senior water rights holder, Dow is clearly an affected person with a personal justiciable interest in the Application not shared by members of the general public. Specifically, Dow has a personal justiciable interest in insuring that its current water rights in the Brazos River Basin are protected and are not negatively affected by the granting of permits that would reduce the water legally available to Dow from the Brazos River.

Critical to this Application is BRA's belief that a "system operation" of its water rights will result in an additional firm yield of water. Dow has concerns as to whether this underlying assumption is correct from a technical standpoint. While BRA appears to have used the Water Availability Model ("WAM") to support its assertion that "system operation" will result in an increase in firm yield of available water, BRA substantially modified that model in its calculations. Assuming BRA's modifications are not substantiated technically, Dow's ability to divert the full amount of water rights it holds could be impaired. Indeed, even as modified, BRA's model appears to predict negative impacts on the amount of water entering the coastal estuaries and bays or coastal wetlands adjacent to the Brazos River. It is essential that Dow be allowed the opportunity to formally question BRA's modeling in a contested case hearing in order to protect its senior water rights.

Dow is further concerned that this Application essentially grants BRA the ability to manage the water in the Brazos River Basin at its own discretion, leaving Dow (and other senior downstream water rights holders) with little opportunity to protect its rights. The Application calls for BRA to develop a Water Management Plan, but Dow, as a major senior water rights holder in the Basin, would have virtually no input into the development of this Plan. The application proposes a very complex, very flexible permit, and assumes the Water Management Plan will be sufficient to meet the management challenges posed by such a complex and flexible permit. Dow is

# Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Texas Commission on Environmental Quality

May 25, 2005

Page 4

concerned that it will prove very difficult, if not impossible, for BRA to independently assess when senior rights (including Dow's) are being infringed upon. The "self-policing" nature of the Water Management Plan, on its face, cannot be considered a reliable mechanism for assuring the protection of senior water rights.

Dow further believes that appropriating return flows from treated sewage effluent and brine bypass/returns to BRA would be detrimental to Dow. These return flows have historically been needed to satisfy more senior water rights downstream, such as Dow's. Further, BRA's Application does not even specify the amount of acre feet of return flows it is requesting, but instead leaves that determination to be made as part of the BRA Water Management Plan.

As noted previously, Dow's diversion points associated with its water rights are generally near the mouth of the Brazos River. Since the 1960's, Dow has increasingly suffered from what is known as a "saltwater intrusion" from the waters of the Gulf of Mexico into the Brazos River at Dow's diversion points. Because of the salinity of the water during seasonal low flows, the intrusion already deprives Dow of its beneficial use of the water to which it is entitled. This phenomenon is not unknown to the TCEQ or to BRA. The State Water Plan for 2002 recommends support of efforts to protect water supply sources from salt water intrusion. (*See* 2002 State Water Plan, Appendix I, page 151). The Region H Plan identifies seasonal low flows as an area of concern for the Lower Brazos River, and indicates that these seasonal low flows allow the tidal salt-wedge to reach municipal and industrial freshwater intakes in Freeport (*see* Region H Water Management Plan, Section 1.5 Water Quality and Natural Resources, page 26). Dow is concerned that the BRA Application fails to fully and properly take into account the increasing salt water intrusion problem faced by Dow, and that granting BRA its requested permit will only exacerbate an already dire situation.

Finally, the Application suffers from more general defects. As submitted, the application denies the public the proper and full participation it is entitled to. The Water Management Plan is critical to the granting of a permit to BRA, yet BRA proposes that the TCEQ act on its application before the Water Management Plan is even developed. This means that the Water Management Plan eventually adopted by BRA will not be subject to a contested case hearing. Dow asserts that the Water Management Plan must be submitted to TCEQ and subject to public scrutiny prior to TCEQ taking any action on BRA's application. The application also fails to identify actual diversion points, and does not show beneficial use (unmet future demands predicted in Regional Plans is not sufficient to satisfy the beneficial use requirement).

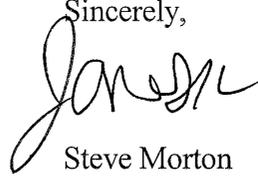
In summary, Dow seeks a contested case hearing to protect its senior water rights in the Brazos River Basin because Dow believes that the Application does not contain appropriate restrictions or other parameters sufficient to protect its rights.

Jenkins & Gilchrist  
A PROFESSIONAL CORPORATION

Texas Commission on Environmental Quality  
May 25, 2005  
Page 5

Please let me know if you need additional information, and please contact me with the date that a hearing will be scheduled.

Sincerely,

  
Steve Morton

James Glenn for  
Steve Morton  
w/  
permission

SM/jmg



Pillsbury  
Winthrop  
Shaw  
Pittman<sub>LLP</sub>

2 Houston Center  
909 Fannin 22nd Floor  
Houston, TX 77010

Tel 713.425.7300  
Fax 713.425.7373  
www.pillsburylaw.com

WR  
44044

H OPA  
JUN 15 2005  
BY KY

June 13, 2005

Andrew L. Strong  
Phone: 713.425.7377  
Fax: 713.425.7373  
andrew.strong@pillsburylaw.com

VIA FACSIMILE 512-239-3311 and FedEx

Office of the Chief Clerk, MC-105  
ATTN: Ladonna Castañuela  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

CHIEF CLERKS OFFICE  
JUN 14 PM 2:47

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Supplemental Objection to and Request for Contested Case Hearing on  
Application No. 5851 (Brazos River Authority "System Operation  
Permit")

Dear Ms. Castañuela:

Through this letter, we seek to supplement the objection and request for contested case hearing submitted June 9, 2005, by Mr. Richard L. Muller of Allen Boone Humphries Robinson LLP on behalf of the following political subdivisions of the State of Texas:

Fort Bend County Levee Improvement District No. 11 ("LID 11")  
Ron McCann, President

Fort Bend County Levee Improvement District No. 15 ("LID 15")  
Dana Koy, President

Fort Bend County Municipal Utility District No. 106 ("FBCMUD 106")  
Robert DeForest, President

Pecan Grove Municipal Utility District ("PGMUD")  
Holly Zarate, President

Sienna Plantation Municipal Utility District No. 1 ("SPMUD")  
Carl Bowles, President

June 13, 2005

Page 2

The objections and statements contained herein are supplemental to and in no way waive or alter the previously raised objections and statements in Mr. Muller's June 9, 2005, letter.

The official office and mailing address of each of these political subdivisions (collectively, the "Districts") remains c/o Allen Boone Humphries Robinson LLP, 3200 Southwest Freeway, Suite 2600, Houston, Texas 77027. All correspondence related to this matter should be sent as well to the undersigned at Pillsbury Winthrop Shaw Pittman LLP, 909 Fannin St., 22<sup>nd</sup> Floor, Houston, TX 77010.

### **The Districts will be Directly Affected by the Issuance of the Permit**

The Notice of an Application to Appropriate State Water, Application No. 5851 ("Public Notice") states that the permit seeks to appropriate "current and future return flows (treated sewage effluent and brine bypass/return) to the extent that such return flows continue to be discharged or returned into the bed and banks of the Brazos River, its tributaries, and applicant's reservoirs." (Public Notice, p. 3). The Districts object to the application to the extent that the permit would give the applicant superior rights to the District's effluent.

The MUDs are located immediately adjacent to the Brazos River and/or a tributary thereof, and would be directly affected by the terms of the proposed permit if granted as requested by the Brazos River Authority. For instance, SPMUD has three wastewater treatment permits ("WWTP") that discharge under the authority of TCEQ issued permits into tributaries of the Brazos River (WWTP #1, Permit No. 13854-001, permitted to 0.5 MGD, discharges into the Cow River; WWTP #2, Permit No. WQ0014118001, permitted to 0.90 MGD, discharges into Channel 3-3; and WWTP #3, Permit No. WQ0014100001, permitted to 0.902 MGD, discharges into Upper Oyster Creek); PGMUD has one WWTP that discharges to the Brazos River (Permit Number WQ0011655001, permitted to 1.9 MGD, outfalls to Jones Creek, thence to Brazos River below Navasota River in Segment No. 1202 of the Brazos River Basin); FBCMUD 106 also has one WWTP that discharges to the Brazos River (Permit Number WQ0013355001 is permitted to discharge no more than an annual average of 1.35 MGD, outfalls via a pipeline to Rabbs Bayou; thence to a diversion channel; thence to Middle Bayou; thence to the Brazos River, below Navasota River in Segment No. 1202 of the Brazos River Basin).

Further, based upon the public notice of the permit issued by the TCEQ on April 22, 2005, it appears that the permittee has provided a "carve out" for certain municipalities (referred to as "discharging entity's city limits...". See Public Notice, p.

June 13, 2005

Page 3

3, last Paragraph. This apparent “carve out” was also noted in the June 9, 2005 letter<sup>1</sup> in that it appears to only cover municipalities and holders of Certificates of Convenience and Necessity (“CCN”). If this is, in fact, the case, conservation and reclamation districts, including the Districts represented in this objection and request for contested case hearing, would not be included in this “carve out.” The geographical limitations contained in this language would also function to restrict the Districts, cities and other water and/or wastewater suppliers from entering into regional or cooperative agreements with others outside of their respective jurisdictions.

As noted in the June 9, 2005 letter, the Districts have invested considerable capital in designing and constructing systems to produce this effluent, and recognize, like the applicant, that the effluent is a valuable commodity which may be used to reduce groundwater dependence as is required by the mandate contained in the Fort Bend Subsidence District’s Regulatory Plan. If the permit is issued, the Districts will be required to expend taxpayer money to keep effluent out of the receiving streams. As such, the Districts are affected entities that should be afforded the opportunity to have an evidentiary hearing on the permit request.

### **Public Notice of the Proposed Permit Was Inadequate**

Under 30 Texas Administrative Code (“TAC”) §295.153(b)(1)-(3), the Commission must mail notice of an application for a permit to appropriate state water under Texas Water Code (“TWC”) §11.121 to, among other entities, “other persons who, in the judgment of the commission, might be affected.” Given the scope of the application to appropriate state water, including the appropriation of current and future return flows, the Commission, “in its judgment,” should have surely notified all entities holding a wastewater permit on the Brazos River. This notification would not have been difficult given the fact that the addresses of each of the Districts was on file with the TCEQ. Despite the fact that the Districts have a clear economic interest in the treated effluent, the Districts were not notified by the Commission.

### **The Application for Appropriation is Detrimental to the Public Welfare**

Under TWC §11.134(b)(3)(C), the Commission may not grant an application if it is detrimental to the public welfare. As was noted above, the Districts have invested

---

<sup>1</sup> Public Notice, p. 3 states that return flows would be “subject to interruption by the direct use or indirect use within the discharging entity’s city limits, extraterritorial jurisdiction, or contiguous water certificate of convenience and necessity boundary.”

June 13, 2005

Page 4

considerable capital in designing and constructing systems to produce the effluent that would be appropriated by the applicant should its permit be granted. If such were to occur, the Districts will be required to expend large amounts of taxpayer money to keep effluent out of the receiving streams. Alternatively, if taxpayer money cannot be used for this purpose, or if construction of a containment facility is cost-prohibitive, the Districts will be ultimately lose all rights to the effluent and thus lose the right to sell the effluent for profit at the benefit of taxpayers. Further, without access to effluent, the Districts may be forced to buy effluent or other water sources to reduce groundwater dependence as required by the Fort Bend County Subsidence District's Regulatory Plan. This cost would be entirely borne by the taxpayers. The expenditure of taxpayer money and loss of taxpayer revenue which would result from the issuance of this permit is harmful to the public. Thus, the permit should not be granted due to what will undoubtedly be adverse effects on the public welfare.

#### **The Commission Must Take Into Account Existing Instream Uses Before Issuing the Permit**

Under TWC § 11.134(b)(3)(D) and § 11.147(d), the Commission shall, "in its consideration of an application to store, take, or divert water...include in the permit, to the extent practicable when considering all public interests, *those conditions considered by the commission necessary to maintain existing instream uses* and water quality of the stream or river to which the application applies."

As has been noted extensively above, the application seeks to improperly appropriate the Districts current and/or future use of effluent. The Districts therefore request that the Commission to take into account the instream uses of the Districts should it determine that the permit application is meritorious and should be issued. Furthermore, the Commission should not impair or otherwise diminish the Districts rights and privileges to use the effluent for whatever purposes they see fit.

#### **Conclusion and Request for Relief**

The application seeks to appropriate effluent - a valuable asset of the Districts that can only be protected through the construction of off-channel storage and transportation systems to keep the effluent out of the receiving streams. This expenditure of funds through use of taxpayer's money is detrimental to the public welfare. Alternatively, the permit, if issued, should in the Commission's discretion, be amended to reflect the Districts already existing use and control of effluent. The Districts only request continued use and control of treated effluent.

June 13, 2005

Page 5

Finally, notice given to the Districts was inadequate as the Commission should have known by the nature of the application that any person holding a wastewater discharge permit to the Brazos River or its tributaries would be affected by the scope of the proposed permit. Despite this, the Districts were not given notice of this permit. Moreover, the public notice is deficient in that it does not provide the public the opportunity to obtain a copy of the permit application and related supporting documents, including, for example, the BRA's Water Management Plan.

The Districts reiterate their request for a contested case hearing on the permit application. The Districts further reiterate their request that after such hearing, the permit application be denied for the reasons specified herein. In the alternative, the Districts request that the permit be revised to exclude any appropriation of return flows, including treated sewage effluent.

If you have any questions in this matter, please do not hesitate to contact me at your earliest convenience at (713) 425-7377.

Respectfully Submitted,

 (with permission)

Andrew L. Strong  
Texas Bar No.: 00791749  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
909 Fannin St., 22<sup>nd</sup> Floor  
Houston, Texas 77010  
Telephone: (713) 425-7300  
Facsimile: (713) 425-7373

**Attorney for Applicant**

cc: Richard Muller, Allen Boone Humphries Robinson, LLP



Pillsbury  
Winthrop  
Shaw  
Pittman LLP

2 Houston Center  
809 Fannin 22nd Floor  
Houston, TX 77010

Tel 713 425 7300  
Fax 713 425 7373  
www.pillsburylaw.com

WR  
44044

OPA  
H JUN 15 2005  
BY RS

June 13, 2005

Andrew L. Strong  
Phone: 713.425.7377  
Fax: 713.425.7373  
andrew.strong@pillsburylaw.com

VIA FACSIMILE 512-239-3311 and FedEx

Office of the Chief Clerk, MC-105  
ATTN: Ladonna Castañuela  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

2005 JUN 13 PM 4:50  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Supplemental Objection to and Request for Contested Case Hearing on  
Application No. 5851 (Brazos River Authority "System Operation  
Permit")

Dear Ms. Castañuela:

Through this letter, we seek to supplement the objection and request for contested case hearing submitted June 9, 2005, by Mr. Richard L. Muller of Allen Boone Humphries Robinson LLP on behalf of the following political subdivisions of the State of Texas:

Fort Bend County Levee Improvement District No. 11 ("LID 11")  
Ron McCann, President

Fort Bend County Levee Improvement District No. 15 ("LID 15")  
Dana Koy, President

Fort Bend County Municipal Utility District No. 106 ("FBCMUD 106")  
Robert DeForest, President

Pecan Grove Municipal Utility District ("PGMUD")  
Holly Zarate, President

Sienna Plantation Municipal Utility District No. 1 ("SPMUD")  
Carl Bowles, President

June 13, 2005

Page 2

The objections and statements contained herein are supplemental to and in no way waive or alter the previously raised objections and statements in Mr. Muller's June 9, 2005, letter.

The official office and mailing address of each of these political subdivisions (collectively, the "Districts") remains c/o Allen Boone Humphries Robinson LLP, 3200 Southwest Freeway, Suite 2600, Houston, Texas 77027. All correspondence related to this matter should be sent as well to the undersigned at Pillsbury Winthrop Shaw Pittman LLP, 909 Fannin St., 22<sup>nd</sup> Floor, Houston, TX 77010.

#### **The Districts will be Directly Affected by the Issuance of the Permit**

The Notice of an Application to Appropriate State Water, Application No. 5851 ("Public Notice") states that the permit seeks to appropriate "current and future return flows (treated sewage effluent and brine bypass/return) to the extent that such return flows continue to be discharged or returned into the bed and banks of the Brazos River, its tributaries, and applicant's reservoirs." (Public Notice, p. 3). The Districts object to the application to the extent that the permit would give the applicant superior rights to the District's effluent.

The MUDs are located immediately adjacent to the Brazos River and/or a tributary thereof, and would be directly affected by the terms of the proposed permit if granted as requested by the Brazos River Authority. For instance, SPMUD has three wastewater treatment permits ("WWTP") that discharge under the authority of TCEQ issued permits into tributaries of the Brazos River (WWTP #1, Permit No. 13854-001, permitted to 0.5 MGD, discharges into the Cow River; WWTP #2, Permit No. WQ0014118001, permitted to 0.90 MGD, discharges into Channel 3-3; and WWTP #3, Permit No. WQ0014100001, permitted to 0.902 MGD, discharges into Upper Oyster Creek); PGMUD has one WWTP that discharges to the Brazos River (Permit Number WQ0011655001, permitted to 1.9 MGD, outfalls to Jones Creek, thence to Brazos River below Navasota River in Segment No. 1202 of the Brazos River Basin); FBCMUD 106 also has one WWTP that discharges to the Brazos River (Permit Number WQ0013355001 is permitted to discharge no more than an annual average of 1.35 MGD, outfalls via a pipeline to Rabbs Bayou; thence to a diversion channel; thence to Middle Bayou; thence to the Brazos River, below Navasota River in Segment No. 1202 of the Brazos River Basin).

Further, based upon the public notice of the permit issued by the TCEQ on April 22, 2005, it appears that the permittee has provided a "carve out" for certain municipalities (referred to as "discharging entity's city limits...". See Public Notice, p.

June 13, 2005

Page 3

3, last Paragraph. This apparent "carve out" was also noted in the June 9, 2005 letter<sup>1</sup> in that it appears to only cover municipalities and holders of Certificates of Convenience and Necessity ("CCN"). If this is, in fact, the case, conservation and reclamation districts, including the Districts represented in this objection and request for contested case hearing, would not be included in this "carve out." The geographical limitations contained in this language would also function to restrict the Districts, cities and other water and/or wastewater suppliers from entering into regional or cooperative agreements with others outside of their respective jurisdictions.

As noted in the June 9, 2005 letter, the Districts have invested considerable capital in designing and constructing systems to produce this effluent, and recognize, like the applicant, that the effluent is a valuable commodity which may be used to reduce groundwater dependence as is required by the mandate contained in the Fort Bend Subsidence District's Regulatory Plan. If the permit is issued, the Districts will be required to expend taxpayer money to keep effluent out of the receiving streams. As such, the Districts are affected entities that should be afforded the opportunity to have an evidentiary hearing on the permit request.

#### **Public Notice of the Proposed Permit Was Inadequate**

Under 30 Texas Administrative Code ("TAC") §295.153(b)(1)-(3), the Commission must mail notice of an application for a permit to appropriate state water under Texas Water Code ("TWC") §11.121 to, among other entities, "other persons who, in the judgment of the commission, might be affected." Given the scope of the application to appropriate state water, including the appropriation of current and future return flows, the Commission, "in its judgment," should have surely notified all entities holding a wastewater permit on the Brazos River. This notification would not have been difficult given the fact that the addresses of each of the Districts was on file with the TCEQ. Despite the fact that the Districts have a clear economic interest in the treated effluent, the Districts were not notified by the Commission.

#### **The Application for Appropriation is Detrimental to the Public Welfare**

Under TWC §11.134(b)(3)(C), the Commission may not grant an application if it is detrimental to the public welfare. As was noted above, the Districts have invested

---

<sup>1</sup> Public Notice, p. 3 states that return flows would be "subject to interruption by the direct use or indirect use within the discharging entity's city limits, extraterritorial jurisdiction, or contiguous water certificate of convenience and necessity boundary."

June 13, 2005

Page 4

considerable capital in designing and constructing systems to produce the effluent that would be appropriated by the applicant should its permit be granted. If such were to occur, the Districts will be required to expend large amounts of taxpayer money to keep effluent out of the receiving streams. Alternatively, if taxpayer money cannot be used for this purpose, or if construction of a containment facility is cost-prohibitive, the Districts will be ultimately lose all rights to the effluent and thus lose the right to sell the effluent for profit at the benefit of taxpayers. Further, without access to effluent, the Districts may be forced to buy effluent or other water sources to reduce groundwater dependence as required by the Fort Bend County Subsidence District's Regulatory Plan. This cost would be entirely borne by the taxpayers. The expenditure of taxpayer money and loss of taxpayer revenue which would result from the issuance of this permit is harmful to the public. Thus, the permit should not be granted due to what will undoubtedly be adverse effects on the public welfare.

#### **The Commission Must Take Into Account Existing Instream Uses Before Issuing the Permit**

Under TWC § 11.134(b)(3)(D) and § 11.147(d), the Commission shall, "in its consideration of an application to store, take, or divert water... include in the permit, to the extent practicable when considering all public interests, *those conditions considered by the commission necessary to maintain existing instream uses and water quality of the stream or river to which the application applies.*"

As has been noted extensively above, the application seeks to improperly appropriate the Districts current and/or future use of effluent. The Districts therefore request that the Commission to take into account the instream uses of the Districts should it determine that the permit application is meritorious and should be issued. Furthermore, the Commission should not impair or otherwise diminish the Districts rights and privileges to use the effluent for whatever purposes they see fit.

#### **Conclusion and Request for Relief**

The application seeks to appropriate effluent - a valuable asset of the Districts that can only be protected through the construction of off-channel storage and transportation systems to keep the effluent out of the receiving streams. This expenditure of funds through use of taxpayer's money is detrimental to the public welfare. Alternatively, the permit, if issued, should in the Commission's discretion, be amended to reflect the Districts already existing use and control of effluent. The Districts only request continued use and control of treated effluent.

June 13, 2005

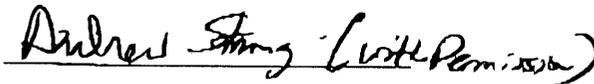
Page 5

Finally, notice given to the Districts was inadequate as the Commission should have known by the nature of the application that any person holding a wastewater discharge permit to the Brazos River or its tributaries would be affected by the scope of the proposed permit. Despite this, the Districts were not given notice of this permit. Moreover, the public notice is deficient in that it does not provide the public the opportunity to obtain a copy of the permit application and related supporting documents, including, for example, the BRA's Water Management Plan.

The Districts reiterate their request for a contested case hearing on the permit application. The Districts further reiterate their request that after such hearing, the permit application be denied for the reasons specified herein. In the alternative, the Districts request that the permit be revised to exclude any appropriation of return flows, including treated sewage effluent.

If you have any questions in this matter, please do not hesitate to contact me at your earliest convenience at (713) 425-7377.

Respectfully Submitted,

 Andrew Strong (with permission)

Andrew L. Strong  
Texas Bar No.: 00791749  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
909 Fannin St., 22<sup>nd</sup> Floor  
Houston, Texas 77010  
Telephone: (713) 425-7300  
Facsimile: (713) 425-7373

**Attorney for Applicant**

cc: Richard Muller, Allen Boone Humphries Robinson, LLP



Pillsbury  
Winthrop  
Shaw  
Pittman LLP

2 Houston Center  
909 Fannin 22nd Floor  
Houston, TX 77010  
Tel 713 425.7300 | Fax 713.425.7373  
www.pillsburylaw.com

**FACSIMILE**

Total Pages (including cover): **6**

- CENTURY CITY
- HOUSTON
- LONDON
- LOS ANGELES
- NEW YORK
- NORTHERN VIRGINIA
- ORANGE COUNTY
- SACRAMENTO
- SAN DIEGO
- SAN DIEGO-NORTH COUNTY
- SAN FRANCISCO
- SILICON VALLEY
- STAMFORD
- SYDNEY
- TOIKYO
- WASHINGTON DC

Date: **June 13, 2005** Must Be Sent By:

To: **Ladonna Castanuela** Fax No: **512.239.3311**  
**MC-105**

Company: **Chief Clerk of TCEQ** Phone No:

Confirm: Confirmed By:

---

From: **Kim D. McNamara** Phone No: **713.425.7385**

User No: **15873** C/M No:

Comments:

Re: Supplemental Objection to and Request for Contested Case Hearing on Application No. 5851 (Brazos River Authority "System Operation Permit")

**Confidentiality Note**  
The documents accompanying this facsimile transmission may contain confidential information which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, or the person responsible for delivering it to the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any of the information contained in this transmission is strictly PROHIBITED. If you have received this transmission in error, please immediately notify us by telephone and mail the original transmission to us. Thank you.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
 JUN 13 PM 4:50  
 CHIEF CLERKS OFFICE

# ALLEN BOONE HUMPHRIES ROBINSON LLP

ATTORNEYS AT LAW

PHOENIX TOWER  
3200 SOUTHWEST FREEWAY  
SUITE 2600  
HOUSTON, TEXAS 77027  
TEL (713) 860-6400  
FAX (713) 860-6401  
abhllp.com

Direct Line: (713) 860-6415  
Direct Fax: (713) 860-6615

rmuller@abhllp.com

OPA  
H JUN 15 2005  
BY RM

Richard L. Muller  
Sr. Associate

June 9, 2005

Via Certified Mail RRR

Office of the Chief Clerk  
MC 105  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

WR  
THORNTON

CHIEF CLERKS OFFICE

2005 JUN 13 PM 3:18

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Objection to and Request for Contested Case Hearing on Application No. 5851 (Brazos River Authority "System Operation Permit")

Office of the Chief Clerk:

We are writing on behalf of the following political subdivisions of the State of Texas to object to the above referenced permit and to request a contested case hearing on the permit application:

Fort Bend County Levee Improvement District No. 11 ("LID 11")  
Ron McCann, President

Fort Bend County Levee Improvement District No. 15 ("LID 15")  
Dana Koy, President

Fort Bend County Municipal Utility District No. 106 ("FBCMUD 106")  
Robert DeForest, President

Pecan Grove Municipal Utility District  
Holly Zarate, President

Sienna Plantation Municipal Utility District No. 1  
Carl Bowles, President

The official office and mailing address of each of these political subdivisions (collectively, the "Districts") is c/o Allen Boone Humphries Robinson LLP, 3200 Southwest Freeway, Suite 2600, Houston, Texas 77027. All correspondence related to this matter should be sent to the undersigned at this address.

### **Nature of the Districts**

All of the Districts are conservation and reclamation districts created pursuant to Article XVI Section 59 of the Texas Constitution and operate pursuant to Texas Water Code Chapters 49, and 54 or 57. Each of the Districts has jurisdiction over a large master-planned development in Fort Bend County including, Greatwood (LID 11 and FBCMUD 106), Riverstone (LID 15), Sienna Plantation and Pecan Grove Plantation. Each of the Districts has authority to supply or store water for use inside and outside its boundaries. Each District is located immediately adjacent to the Brazos River and/or a tributary thereof. The Districts are governed by a board of directors that is either elected by its residents (in the case of the MUDs) or appointed by Fort Bend County Commissioners Court (in the case of the LIDs).

### **Groundwater Reduction Mandates and Effluent Reuse**

Each of the Districts is located in Area A of the Fort Bend Subsidence District's Regulatory Plan and is under a mandate to reduce groundwater usage. Each of the Districts anticipates that it will, among other things, construct an effluent reuse system as one of the methods to reduce the use of groundwater. The Districts may also capture, treat and utilize storm water run-off to reduce groundwater consumption. It is further anticipated that the Districts will utilize the bed and banks of the Brazos River and its tributaries to transport this effluent/storm water to storage ponds, or retail or wholesale customers.

The Notice of an Application to Appropriate Brazos River Authority State Water ("Public Notice") for this permit application suggests that the ("Applicant") is seeking an appropriation of current and future return flows, including treated effluent. The Districts object to the application to the extent the permit would give the applicant superior water rights to the District's effluent.

Treated effluent is a valuable asset to the Districts. These Districts have invested sustainable amounts of money to develop the water wells, water distribution, and waste water collection and treatment facilities to produce this effluent. The Districts can use this effluent or sell it to other users to reduce groundwater dependence.

The Applicant clearly recognizes the value of the asset by stating that return flows would be "subject to interruption by the direct use or indirect use within the discharging entity's city limits, extraterritorial jurisdiction, or contiguous water certificate of convenience and necessity boundary." (Public Notice p. 3). However, this "carve out" does not go far enough. First, the carve out is limited to municipalities and holders of CCNs. Conservation and reclamation districts are not included. Second, the carve out is limited to the geographical area of the municipality or CCN. This limitation would restrict the Districts, cities and other water and wastewater suppliers from entering into regional or cooperative arrangements with other entities that are outside their jurisdiction.

If the permit is issued, the Districts will be forced to construct off channel storage and transportation systems to keep the effluent out of the receiving streams. Therefore, the permit would result in an unnecessary waste of taxpayers' money.

### **Other Objections to The Application**

We have not had the opportunity to review the draft permit. Therefore, the Districts reserve the right to object to the application on additional grounds after a full and complete review of the draft permit.

Without limiting the generality of the foregoing, the Districts object to the permit on the following additional grounds: 1) the TCEQ lacks the statutory authority to grant the permit as requested; and 2) the Brazos River Authority lacks the statutory authority to hold or implement the permit as requested.

### **Conclusion and Request for Relief**

The application seeks to appropriate to the Applicant a valuable asset of the Districts. The Districts only desire is that the use and control of this valuable asset be left to the local control of the Districts.

Therefore, the Districts request a contested case hearing on the permit application. The Districts further request that after such hearing the permit application be denied. In the alternative, the Districts request that the permit be revised to exclude any appropriation of return flows, including treated sewage effluent.

TCEQ - Office of the Chief Clerk

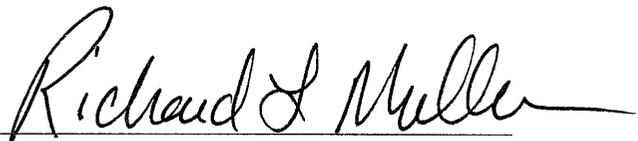
June 9, 2005

Page 4 of 4

If you have any questions on this matter, please do not hesitate to contact me at the above phone number or email address. Thank you for your consideration of this matter.

Sincerely,

ALLEN BOONE HUMPHRIES ROBINSON LLP  
Attorneys for the Districts

By:   
Richard L. Muller

cc: Boards of Directors

Fort Bend County Levee Improvement District No. 11  
Fort Bend County Levee Improvement District No. 15  
Fort Bend County Municipal Utility District No. 106  
Pecan Grove Municipal Utility District  
Sienna Plantation Municipal Utility District No. 1

Lynne Humphries (Firm)

Doug Caroom - Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel

Bruce Wasinger - Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel

Enclosure



*WR 44044*

Mr. Rochelle's Direct Line: (512) 322-5810  
Email: mrochelle@lglawfirm.com

FEB 14 AM 10:31

CHIEF CLERKS OFFICE

February 13, 2007

H OPA

FEB 14 2007

BY *RG*

VIA FACSIMILE  
AND FIRST-CLASS MAIL

Ms. LaDonna Castañuela (MC 105)  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Gulf Coast Water Authority's Protest of the Brazos River Authority's Application for a Systems Operations Permit, Application No. 5851; TCEQ Docket No. 2005-1490-WR

Dear Ms. Castañuela:

On December 13, 2006, my client, the Gulf Coast Water Authority ("GCWA"), purchased Certificates of Adjudication ("COA") No. 11-5357 and No. COA 12-5322, and Water Permit No. CP-299, from the Chocolate Bayou Water Company ("CBWC"). On January 25, 2007, GCWA filed change of ownership forms with the Texas Commission on Environmental Quality ("TCEQ" or "Commission"), pursuant to the provisions of Title 30 Texas Administrative Code §§ 297.81-.83, so as to notify the Commission of these conveyances and to be listed as the owner of record for these water rights in the files maintained by the TCEQ. In addition to the transfer of these three water rights, CBWC also specifically conveyed to GCWA all of its interest and right as a protestant and contested case hearing requestor to any and all pending applications at the TCEQ or contested case hearings at the State Office of Administrative Hearings. The transfer specifically included, but was not limited to, CBWC's status as a protestant and/or contested case hearing requestor to the Brazos River Authority's System Operations Permit Application, Application No. 5851, TCEQ Docket No. 2005-1490-WR. A copy of CBWC's initial request for contested case hearing is attached hereto as Attachment "A".

Thus, as the new owner of COA No. 11-5357 and COA No. 12-5322, and Permit No. CP-299, GCWA hereby requests that the TCEQ update its service list in this matter to reflect GCWA as a protestant/contested case hearing requestor for Application No. 5851. To be clear, GCWA does not seek to alter the basis of CBWC's protest of the Brazos River Authority's application. As counsel for GCWA, we also request that you add us to your service list on behalf of GCWA in this matter. Thank you for your attention to this matter, and do not hesitate to contact me if you have any questions.

Sincerely,

*Martin C. Rochelle*  
Martin C. Rochelle

*mcw*

Ms. LaDonna Castañuela  
February 13, 2007  
Page 2

MCR:ldp  
2438/00/tr070208  
ENCLOSURE

cc: Mr. Doug Caroom  
Mr. Robert Istre  
Ms. Kellye Rila  
Ms. Robin Smith  
Mr. David Klein



H OPA  
FEB 14 2007

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CLERKS OFFICE  
FEB 13 PM 3:15

BY [Signature]

WR  
44044

Mr. Rochelle's Direct Line: (512) 322-5810  
Email: mrochelle@lglawfirm.com

February 13, 2007

**VIA FACSIMILE  
AND FIRST-CLASS MAIL**

Ms. LaDonna Castañuela (MC 105)  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Gulf Coast Water Authority's Protest of the Brazos River Authority's Application for a Systems Operations Permit, Application No. 5851; TCEQ Docket No. 2005-1490-WR

Dear Ms. Castañuela:

On December 13, 2006, my client, the Gulf Coast Water Authority ("GCWA"), purchased Certificates of Adjudication ("COA") No. 11-5357 and No. COA 12-5322, and Water Permit No. CP-299, from the Chocolate Bayou Water Company ("CBWC"). On January 25, 2007, GCWA filed change of ownership forms with the Texas Commission on Environmental Quality ("TCEQ" or "Commission"), pursuant to the provisions of Title 30 Texas Administrative Code §§ 297.81-.83, so as to notify the Commission of these conveyances and to be listed as the owner of record for these water rights in the files maintained by the TCEQ. In addition to the transfer of these three water rights, CBWC also specifically conveyed to GCWA all of its interest and right as a protestant and contested case hearing requestor to any and all pending applications at the TCEQ or contested case hearings at the State Office of Administrative Hearings. The transfer specifically included, but was not limited to, CBWC's status as a protestant and/or contested case hearing requestor to the Brazos River Authority's System Operations Permit Application, Application No. 5851, TCEQ Docket No. 2005-1490-WR. A copy of CBWC's initial request for contested case hearing is attached hereto as Attachment "A".

Thus, as the new owner of COA No. 11-5357 and COA No. 12-5322, and Permit No. CP-299, GCWA hereby requests that the TCEQ update its service list in this matter to reflect GCWA as a protestant/contested case hearing requestor for Application No. 5851. To be clear, GCWA does not seek to alter the basis of CBWC's protest of the Brazos River Authority's application. As counsel for GCWA, we also request that you add us to your service list on behalf of GCWA in this matter. Thank you for your attention to this matter, and do not hesitate to contact me if you have any questions.

Sincerely,  
[Signature]  
Martin C. Rochelle

mw

Ms. LaDonna Castañuela  
February 13, 2007  
Page 2

MCR:ldp  
2438/00/tr070208  
ENCLOSURE

cc: Mr. Doug Caroom  
Mr. Robert Istre  
Ms. Kellye Rila  
Ms. Robin Smith  
Mr. David Klein



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

**TELECOPIER COVER SHEET**

February 13, 2007

PLEASE DELIVER THE FOLLOWING PAGES:

CHIEF CLERKS OFFICE  
 2007 FEB 13 PM 3:15  
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**To:** Ms. LaDonna Castañuela (MC 105)  
**Firm:** Texas Commission on Environmental Quality  
**Telecopy No.:** 239-3311  
**Verification No.:** 239-3300

**Client No.:** 2438-1  
**From:** Martin C. Rochelle

**No. of Pages:** 8 + cover sheet  
**Comments:**

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. THE REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION TO ANYONE OTHER THAN THE INTENDED ADDRESSEE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US AS SOON AS POSSIBLE AT (512) 322-5800.

Mr. Rochelle's Direct Line: (512) 322-5810  
mrochelle@lglawfirm.com

June 10, 2005

Ms. LaDonna Castañuela (MC 100)  
Texas Commission on Environmental Quality  
Bldg. F, Room 1101  
Austin, Texas 78711-3087

**VIA HAND DELIVERY**

Re: Request for Contested Case Hearing  
Water Rights Application No. 5851 (1664-01)

Dear Ms. Castañuela:

Please find enclosed the original and twelve copies of a request for hearing on the above-referenced matter filed on behalf of my client, the Texas Westmoreland Coal Company. I have enclosed one additional copy to be file stamped and returned to me via my messenger. Should you have any questions regarding this matter, please feel free to call either me or Brad Castleberry (512-322-5856) at your convenience.

Sincerely,



Martin C. Rochelle

MCR/ldp  
1664\01\ltr050609bbc  
ENCLOSURES

cc: Ms. Joel Trouart  
Mr. Doug Caroom  
Mr. Brad B. Castleberry

2005 JUN 10 PM 12:31  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**Lloyd Gosselink**  
ATTORNEYS AT LAW



111 Congress Avenue, Suite 1800  
Austin, Texas 78701  
Telephone: (512) 322-5800  
Facsimile: (512) 472-0532  
www.lglawfirm.com

711 N. Carancahua, Suite 700\*  
Corpus Christi, Texas 78475  
Telephone: (361) 654-3200  
Facsimile: (361) 654-3203  
\*By Appointment Only

*WR  
440414*

Mr. Rochelle's Direct Line: (512) 322-5810  
mrochelle@lglawfirm.com

June 10, 2005

**OPA**

**JUN 10 2005**

**BY** *[Signature]*

**VIA HAND DELIVERY**

Ms. LaDonna Castañuela (MC 100)  
Texas Commission on Environmental Quality  
Bldg. F, Room 1101  
Austin, Texas 78711-3087

Re: Request for Contested Case Hearing  
Water Rights Application No. 5851 (1664-01)

Dear Ms. Castañuela:

Please find enclosed the original and twelve copies of a request for hearing on the above-referenced matter filed on behalf of my client, the Texas Westmoreland Coal Company. I have enclosed one additional copy to be file stamped and returned to me via my messenger. Should you have any questions regarding this matter, please feel free to call either me or Brad Castleberry (512-322-5856) at your convenience.

Sincerely,

*[Signature of Martin C. Rochelle]*

Martin C. Rochelle

MCR/ldp  
1664\01\ltr050609bbc  
ENCLOSURES

cc: Ms. Joel Trouart  
Mr. Doug Caroom  
Mr. Brad B. Castleberry

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
2005 JUN 10 PM 12:31  
CHIEF CLERKS OFFICE

*[Handwritten initials]*

IN THE MATTER OF THE WATER § BEFORE THE TEXAS COMMISSION  
RIGHTS APPLICATION OF §  
THE BRAZOS RIVER AUTHORITY § ON  
OF TEXAS §  
APPLICATION NO. 5851 § ENVIRONMENTAL QUALITY

**REQUEST FOR CONTESTED CASE HEARING**

NOW COMES, Texas Westmoreland Coal Company ("TWCC" or "Protestant"), and hereby requests a contested case hearing on the above-referenced application and for cause would show the following:

1. The full name and address of the Protestant is Texas Westmoreland Coal Company, P.O. Box 915, Jewett, Texas, 75846, represented in this matter by its undersigned counsel.

2. The application being protested is Application No. 5851 (the "Application"), filed by the Brazos River Authority ("BRA"). The Application seeks to appropriate a maximum of 1,204,099 acre-feet of water per annum from various locations within the Brazos River Basin (the "Basin"). The Application seeks to appropriate firm and interruptible water supplies within the Basin, including those water supplies the source of which is return flows from others.

3. Because TWCC will be affected by the granting of the Application, it hereby requests a hearing on the Application.

4. TWCC holds Water Use Permit No. 5319 (the "Permit" or "TWCC's Water Rights"), which authorizes TWCC to store state water in a number of impoundments on various tributaries of the Navasota River. Additionally, the Permit authorizes the use of the bed and banks of certain tributaries of the Navasota River to convey privately owned groundwater. As filed, the Application will adversely affect TWCC inasmuch as it seeks to appropriate surface waters within Leon County in the Navasota River watershed, specifically interruptible supplies

that are tied to high flow events. Granting the Application may impact TWCC's ability to impound state water pursuant to the Permit. Additionally, because the Application seeks to indirectly reuse a significant amount of return flows in the Basin, among which include discharges of groundwater-based effluent by others, including TWCC, TWCC seeks to protect its own privately developed groundwater authorized for conveyance pursuant to the Permit.

In addition to the impact to TWCC's Water Rights, TWCC is concerned that the Application, if granted, will affect TWCC's economic interests as well as its duties to comply with the Texas Surface Coal Mining and Reclamation Act (the "Act"), including the Act's associated regulations, as administered by the Railroad Commission of Texas ("RCT"). Specifically, if granted, the Application may force TWCC to spend additional money to i) purchase water supplies to keep impoundments that are required to be maintained by the Act and TWCC's RCT Surface Mining and Reclamation Permit No. 32, as amended, full; and/or ii) breach existing or proposed impoundments that are required to be maintained by the Act and Permit No. 32, as amended. As such, TWCC is concerned that its duties and obligation to address surface water resources pursuant to the Act, applicable RCT regulations, and RCT Surface Mining and Reclamation Permit No. 32, as amended, will be more difficult to comply with should the Application be granted.

Because TWCC's interests will be affected by the granting of the Application, it hereby respectfully requests that the Commission set this matter for a contested case hearing to decide the impacts of granting the Application on TWCC, and whether the Application is in the public interest and authorized by law.

5. TWCC's Water Rights are located in Leon County, Texas. The Application seeks, in part, the appropriation of surface waters throughout the Basin, the source of which is, in part,

surface waters in Leon County. Additionally, because the Application seeks to use the bed and banks of all streams within the Brazos River Basin, including streams traversing property leased or owned by TWCC, this portion of BRA's request is immediately adjacent to TWCC's property interests, including TWCC's Water Rights.

Respectfully submitted,

**LLOYD GOSSELINK BLEVINS  
ROCHELLE & TOWNSEND, P.C.**  
111 Congress Avenue  
Suite 1800  
Austin, Texas 78701  
(512) 322-5810  
FAX: (512) 472-0532

By:   
MARTIN C. ROCHELLE  
State Bar No. 17126500

**ATTORNEY FOR PROTESTANT,  
TEXAS WESTMORELAND COAL  
COMPANY**

1984 ~~25 Years~~ 2009

Mr. Rochelle's Direct Line: (512) 322-5810  
mrochelle@lglawfirm.com

WR  
44044

OPA

JUN 24 2009

June 23, 2009

BY DR

Ms. LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

VIA FACSIMILE TRANSMISSION  
AND FIRST-CLASS MAIL

Re: Water Right Application No. 5851 by the Brazos River Authority

Dear Ms. Castañuela:

On behalf of the City of Lubbock, Texas (the "City"), please consider this letter as a conditional withdrawal of the City's request for a contested case hearing concerning Application No. 5851 to Appropriate State Water filed by the Brazos River Authority (the "BRA"). The City's withdrawal is contingent upon our review of the final draft permit prepared by the Executive Director in connection with this Application.

Thank you in advance for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

  
Martin C. Rochelle

MCR/ldp  
2020\02\Lubbock\BRA\tr090623

cc: Ms. Kellye Rila  
Mr. Douglas G. Caroom  
Mr. Aubrey Spear  
Mr. Tom Adams

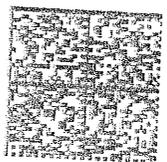
TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 JUN 24 AM 10:15  
CHIEF CLERKS OFFICE



RECEIVED

JUN 24 2009

TCEQ MAIL CENTER  
MM



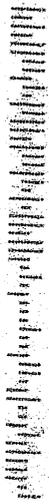
UNITED STATES POSTAGE  
FIRST CLASS  
\$01.05  
0004274116 JUN 23 2009  
MAILED FROM ZIP CODE 78701

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 JUN 24 AM 10:15  
CHIEF CLERK'S OFFICE

**Lloyd Gosselink**  
ATTORNEYS AT LAW

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

**To:** Ms. LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087





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

www.lglawfirm.com

1984 *25 Years* 2009

*WR  
44044*

**OPA**

**JUN 24 2009**

Mr. Rochelle's Direct Line: (512) 322-5810  
mrochelle@lglawfirm.com

June 23, 2009

**BY** *DR*

Ms. LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**VIA FACSIMILE TRANSMISSION  
AND FIRST-CLASS MAIL**

Re: Water Right Application No. 5851 by the Brazos River Authority

Dear Ms. Castañuela:

On behalf of the City of Lubbock, Texas (the "City"), please consider this letter as a conditional withdrawal of the City's request for a contested case hearing concerning Application No. 5851 to Appropriate State Water filed by the Brazos River Authority (the "BRA"). The City's withdrawal is contingent upon our review of the final draft permit prepared by the Executive Director in connection with this Application.

Thank you in advance for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

*M. C. Rochelle*  
Martin C. Rochelle

MCR/ldp  
2020\02\lubbock\BRA\tr090623

cc: Ms. Kellye Rila  
Mr. Douglas G. Caroom  
Mr. Aubrey Spear  
Mr. Tom Adams

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2009 JUN 23 PM 3:48  
CHIEF CLERKS OFFICE

*DR*



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

www.lglawfirm.com

1984 *25 Years* 2009

**TELECOPIER COVER SHEET**

June 23, 2009

PLEASE DELIVER THE FOLLOWING PAGES:

<b>To: Ms. LaDonna Castañuela (MC 105)</b>	<b>Firm: TCEQ</b>
<b>Verification Phone No.: 239-3300</b>	<b>Telecopy No.: 239-3311</b>
<b>To: Ms. Kellye Rila (MC 160)</b>	<b>Firm: TCEQ</b>
<b>Verification Phone No.: 239-4612</b>	<b>Telecopy No.: 239-4770</b>
<b>To: Mr. Douglas G. Caroom</b>	<b>Firm: Bickerstaff, Heath, Delgado &amp; Acosta</b>
<b>Verification Phone No.: 404-7829</b>	<b>Telecopy No.: 320-5638</b>
<b>To: Mr. Aubrey Spear</b>	<b>Firm: City of Lubbock -- Public Works</b>
<b>Verification Phone No.: 806/775-2585</b>	<b>Telecopy No.: 806/775-3027</b>
<b>To: Mr. Tom Adams</b>	<b>Firm: City of Lubbock</b>
<b>Verification Phone No.: 806/775-2015</b>	<b>Telecopy No.: 806/775-2228</b>
<b>Client No.: 2020-2</b>	<b>No. Pages: 1</b>
<b>Documents transmitted: Withdrawal Letter of the City of Lubbock</b>	
<b>From: Martin C. Rochelle</b>	
<b>Comments:</b>	

2009 JUN 23 11:05:18  
 CHIEF CLERK  
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. THE REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION TO ANYONE OTHER THAN THE INTENDED ADDRESSEE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US AS SOON AS POSSIBLE AT (512) 322-5800.

Lloyd Gosselink Rochelle & Townsend, P.C.

Texas Commission on Environmental Quality  
C/o Office of Chief Clerk, MC105  
P.O. Box 13087  
Austin, Texas 78711-3087

OPA

MAY 19 2005

BY js CHIEF CLERKS OFFICE

Subject: Request a Contested Case Hearing on the Brazos Water Control.

WRPERM 5851

Sir's/Madam's

My wife and I are owner of property that front's highway 67 and it backs up to the Brazos River. We have a country store on the highway and campgrounds, cabins, RV sites and many pecan trees along the Brazos River.

WR  
44044

We are concerned with the Brazos River water flows between Granbury and Whitney. The flow of the Brazos River affects the businesses and hurts the employment of many people in this area.

Glen Rose/Somervell County provides a much-needed service of giving a place to get away from the rush and worry of people living and working in the Fort Worth/Dallas metro area. A place where they can camp, swim, fish, boat, hunt, bird-watch or just get close to nature.

But the sale of upriver water is effecting the environment along the river in Somervell County. The lack of flow; is drying up the fishing holes, making boating and tubing, impossible due to low water and unsafe because of algae and slime build-up.

We are amazed at the giving and selling of up-stream river water by the Brazos River Authority (BRA), without an environmental impact study by the Texas Natural Resource Commission (TNRC, now the Texas Commission on Environment Quality, or TCEQ). This is poor management of our state and nation's resources.

Your attention to this important matter of the Brazos River flow will be deeply appreciated.

Jerry Swink  
P.O. Box 69  
Rainbow, Texas 76077

BY H  
MAY 20 2005

OPA

js

May 15, 2005

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
Office of Chief Clerk, MC 105  
P.O. Box 13087  
Austin, TX 78111-3087

44044  
WR  
OPA #

MAY 18 2005

CHIEF CLERKS OFFICE

2005 MAY 17 PM 2:24

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY  
DIRECTOR

BY g

RE Brazos River Authority Systems Operation Permit # 5851

To Whom It May Concern,

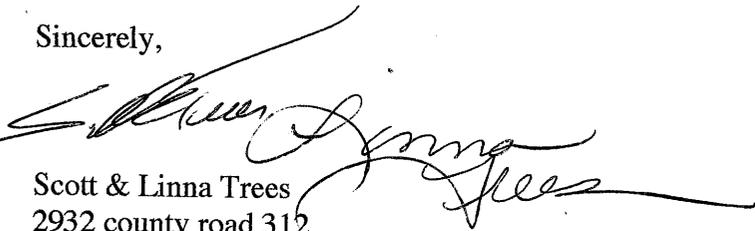
We are writing to express our strong concern regarding the above listed permit and to request a case hearing in contest of this permit.

Our home fronts the Brazos river and was purchased in large part because of the aesthetic beauty of the river. We note with dismay the adverse effect of the reduced water release to the river. In particular we are concerned how it impacts our pecan trees, ability to fish, and utilize the recreational aspects of the river for swimming and canoeing. In certain times of the year, the water flow is virtually nonexistent creating stagnant and hazardous environmental conditions in the water itself. This in turn impacts wildlife and humans alike.

An attached image will show the level of the river across from my house the morning of May 15<sup>th</sup> .2005 The sand dunes visible in this picture have never been this large. Also attached is another picture taken May 14<sup>th</sup> 2005. You will note the river is used for recreational canoeing, and you can see large sand dunes that force people to actually get out and push their canoes due to such low water levels. This is all due to a reduced level of water flow to the river.

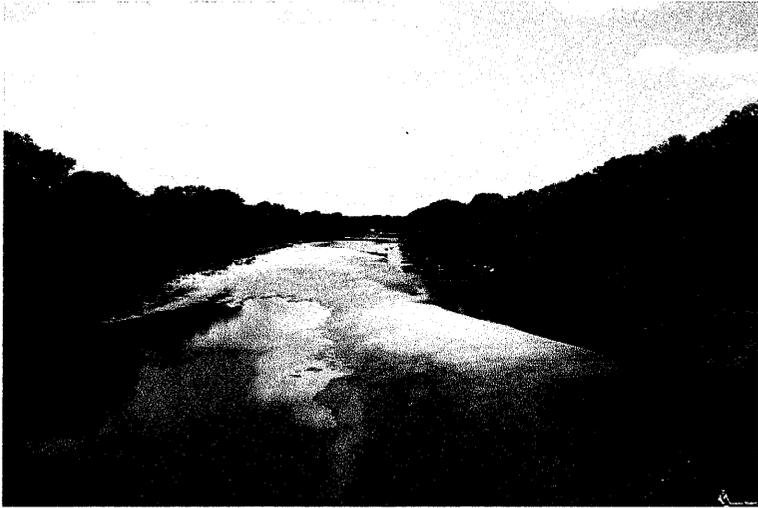
This permit, and all of its ramifications on the Brazos River must be seriously reviewed and studied thoroughly for its potentially devastating impact on the river.

Sincerely,



Scott & Linna Trees  
2932 county road 312  
Glen rose, TX 76043  
254-898-0764  
[scott@treesmedia.com](mailto:scott@treesmedia.com)  
[linnatrees@aol.com](mailto:linnatrees@aol.com)





987V9090.JPG



987V9093.JPG



987V9100.JPG



987V9108.JPG

5851  
**H Jane Vaughn**

12200 Mitchell Bend Court Granbury TX 76048

817-279-7827

janevaughn@starband.net

44044  
WR

HR OPA

MAY 26 2005

BY 

May 23, 2005

Texas Commission on Environmental Quality c/o  
Office of Chief Clerk, MC105,  
P.O.Box13087  
Austin, Texas 78711-3087

Re: Contested case hearing

To Whom It May Concern:

My property lies in the Northern portion of Somervell County and includes acreage along the Brazos River in the Mitchell Bend.

My concern is with the continued decline in the amount of water flowing and in the health of the water itself.

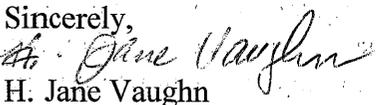
My objection to the plan for the Brazos River Authority to control the use of the water is that they will make decisions that do not favor those of us downstream from Lake Granbury. For example, the contract with AES Wolf hollow to provide an enormous amount of water that simply was not available. The consequences are dire and must be dealt with conscious consideration for one of the greatest natural resources the state of Texas has.

The property I own and manage uses the river for crop irrigation. It makes the farm economically viable and without the amount and quality of water we would not be able to operate. The river impacts every aspect of the farm.

The fishery in the Brazos River has been on a steady decline, especially in the past five years. The water quality is poor and not properly oxygenated. Game species of fish are suffering and numbers are falling rapidly. The only fish that have really adapted to the conditions are non-game species like carp and gar.

Swimming in the river is still my favorite pastime. I would like to swim without concern with health issues from the quality of the water. It is a peaceful and a beautiful natural setting. It must be protected and conserved for the benefit of all of us.

Sincerely,

  
H. Jane Vaughn

Cc: J. Kevin Ward, Ed Lowe

2005 MAY 26 11:09 AM  
OFFICE OF CHIEF CLERK  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**BRAZOS OLD FIELDS**

Post Office Box 473  
Nemo, Texas 76070  
254-897-2237 • 214-965-1204

May 16, 2005

Office of Chief Clerk, MC105  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, TX 78711-3087

Subject: Brazos River Authority Application #5851

I reside at 1818 County Road 405 in the Nemo area of Somervell County and have approximately three quarters of a mile of frontage on the Brazos River. It is my understanding the Brazos River authority has applied for an expansive Systems Operations Permit and the purpose of this letter is to record notice that I am opposed to any expansion of the Brazos River Authority in the Brazos River water shed.

With all due respect to the Brazos River Authority, which serves a number of good purposes, their management of the flow from the dam at Lake Granbury is appalling. Regardless of wet times or dry times they don't or can't seem to be able to maintain reasonable flow in the river. The results at my property alone of their failure to maintain a reasonable flow of water includes:

- Continued loss of mature pecan trees in the bottom along the river.
- Inability to enjoy the river because often the water is not only too low in which to canoe or boat but stagnant and highly polluted and unfit for swimming and fishing.
- Loss of a natural slough that until approximately five years ago always held water and was not only a source of water for stock but an excellent habitat for all kinds of birds, waterfowl and wildlife.
- The increasingly too often bloom of "golden algae", which I don't know but strongly suspect, is related to runoff and river flows and results in massive fish kills, the latest being in March/April of 2005.

The limestone in the river bed at my ranch contains the footprints of dinosaurs. Because of the extremely low water on several occasions the last few years these tracks have been exposed for extended lengths of time. I am told by paleontologists that this exposure can lead to the deterioration and ultimate loss of these rare artifacts.

CHIEF CLERK'S OFFICE

2005 MAY 19 PM 9:40

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY  
CLERK

OPA

MAY 19 2005

BY

WR  
44044

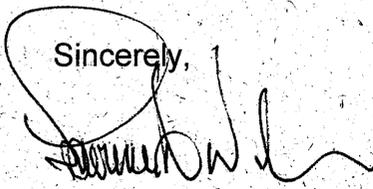
*[Signature]*

*[Handwritten mark]*

Office of Chief Clerk, MC105  
Texas Commission on Environmental Quality  
May 16, 2005  
Page 2

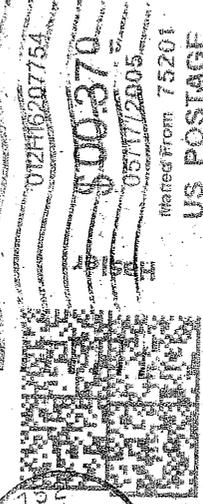
I hope that the Texas Commission on Environmental Quality can understand why I'm concerned about how the Brazos River Authority carries out its responsibilities and why I am opposed to any expansion of their jurisdiction and rights. It is because of these concerns that I request a contested case hearing in order that I and others in this unfortunate situation can express our concerns. Thank you for your consideration.

Sincerely,



Lawrence A. Wilson

**BRAZOS OLD FIELDS**  
Post Office Box 473  
Nemo, Texas 76070



US POSTAGE

**Office of Chief Clerk, MC105**  
**Texas Commission on Environmental**  
**Quality**  
**P. O. Box 13087**  
**Austin, TX 78711-3087**

RECEIVED

MAY 19 2005

TCEQ MAIL CENTER



CHIEF CLERK'S OFFICE

2005 MAY 19 11:02 AM

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY

78711-3087

Have formal oral comment.

44

TCEQ Public Participation Form  
Brazos River Authority  
Public Meeting  
Proposed Application to Appropriate State Water  
Permit No. 5851  
Tuesday, May 17, 2005

AT PUBLIC MEETING

MAY 17 2005

PLEASE PRINT:

Name: LARRY WILSON  
Address: PO BOX 473  
City/State: WEMO TX Zip: 76070  
Phone: (254) 897-2237

OPA RECEIVED

CLERKS OFFICE

MAY 19 PM 4:35

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Are you here today representing a municipality, legislator, agency, or group?  Yes  No  
If yes, which one? FRIENDS OF THE BRAZOS

Persons whose names and addresses appear legibly on the sign in sheet at the public meeting and persons who submitted written comments to the TCEQ will be notified by the TCEQ's Office of Chief Clerk of the executive director's decision and provided the final technical summary on which the decision was based.

Please give this to the person at the information table. Thank you.

CLERKS OFFICE

MAY 19 PM 4:39

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*[Handwritten mark]*