

HUNTON & WILLIAMS

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RICHARD L. ADAMS
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EMAIL: radams@hunton.com

FILE NO: 88742.000106

WR
44044

WHR
OPA

APR 07 2008

BY *RA*

April 3, 2008

**Via Fax 512.239.3311
and U.S. Mail**

Ms. LaDonna Castanuela
Office of the Chief Clerk, MC105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Application No. 5851 by Brazos River Authority

Dear Ms. Castanuela:

On June 10, 2005, TXU Generation Company LP, TXU DeCordova Company LP, TXU Tradinghouse Company LP, and TXU Mining Company LP filed a request for a contested case hearing in the above-referenced Permit Application No. 5851. Luminant Generation Company LLC, DeCordova Power Company LLC, Tradinghouse Power Company LLC, and Luminant Mining Company LLC (together referred to as "Luminant"), as successors in interest to those entities, have determined that they no longer wish to oppose Permit Application No. 5851. Accordingly, Luminant hereby withdraws the request for a contested case hearing in Permit Application No. 5851.

Please contact me should you need further information regarding this matter.

Very truly yours,



Richard L. Adams

RLA:slm

cc: Service List

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 APR -7 AM 11:48
CHIEF CLERKS OFFICE

MW

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BY DM
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

April 3, 2008

Via Fax 512.239.3311
and U.S. Mail

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

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Richard L. Adams

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APR 04 2008

RICHARD L. ADAMS
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BY *WR*

FILE NO: 88742.000106

April 3, 2008

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Richard L. Adams

RIA:slm

cc: Service List

CHIEF CLERKS OFFICE

2008 APR -3 PM 1:19

TEXAS
COMMISSION
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Don Clevenger
Senior Counsel

Tel: 214 812 3008
Fax: 214 812 6032
dclevenger@txu.com

*WCP
44044*

H OPA
JUN 15 2005
BY *KG*

CHIEF CLERKS OFFICE
2005 JUN 13 PM 3:00
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

June 10, 2005

Via Fax (512.239.3311) and Certified Mail 7002 2030 0000 3681 7988

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

Re: Public Comment & Request for Contested Case Hearing Regarding Brazos River Authority Application for Permit to Appropriate State Water No. 5851

To Whom It May Concern:

TXU Generation Company LP, TXU DeCordova Company LP, TXU Tradinghouse Company LP, and TXU Mining Company LP (collectively "TXU Power") respectfully file this Public Comment and Request for Contested Case Hearing regarding Brazos River Authority's ("BRA") Application for a Permit to Appropriate State Water No. 5851 (the "Application") filed with the Texas Commission on Environmental Quality ("TCEQ"). The Application, designated as a "System Operation Permit," is requesting, among other things, authorization to appropriate 421,449 acre-feet of water per year for multiple uses in the Brazos River Basin (the "Basin") and to divert, transfer, and distribute waters throughout the BRA system of reservoirs at BRA's sole discretion. TXU Power will be directly affected by the requested permit if one is so granted.

TXU Power, a collection of subsidiaries of TXU Corp., owns and operates numerous facilities in the State of Texas for the purpose of producing electricity to sell in the State's competitive energy market. Specifically, TXU Power operates several facilities that are either located in or near the Basin. These facilities depend on water from the Basin for their safe and reliable operation. Those facilities include the following:

- the Comanche Peak Steam Electric Station ("Comanche Peak"), a nuclear generating facility, located in Somervell County;
- the DeCordova Steam Electric Station, a natural gas and oil fired generating facility, located in Hood County;
- the Tradinghouse and Lake Creek Steam Electric Stations, natural gas and oil fired generating facilities, located in McLellan County; and
- the Twin Oak Mine, a lignite mine located in Robertson and Limestone Counties that, when opened, will produce fuel for several TXU Power generating facilities.

10

- the Twin Oak Mine, a lignite mine located in Robertson and Limestone Counties that, when opened, will produce fuel for several TXU Power generating facilities.

The facilities listed above have been, and continue to be, reliable sources of electricity to customers in Texas, the generating facilities having a combined name plate capacity of more than 5044 MW.

These facilities are dependant on water from the Basin for their safe and reliable operation. TXU Power is currently a party to multiple contracts with BRA for the rights to more than 100,000 acre feet of water annually, to be withdrawn from various sources in the Basin including Possum Kingdom Lake, Lake Granbury, Lake Limestone, and the Brazos River. As part of their contractual rights, TXU Power has the ability to divert water from some of these sources to various points in the Basin at TXU Power's direction.

TXU Power uses the water obtained from BRA for various purposes, including generation and reclamation activities at the locations listed above. For example, Comanche Peak routinely uses significant amounts of water obtained from BRA for cooling operations that are vital to the safe production of electricity from the nuclear generating units at the plant. Also, for example, when opened, the Twin Oak Mine will routinely use large amounts of water for mining activities as well as for reclamation of areas where mining operations have been completed, as required by the Railroad Commission of Texas.

TXU Power's ability to divert volumes of water to different locations within the Basin gives TXU Power the flexibility to concentrate resources where they are needed most. For example, pursuant to the terms of at least one of the current contracts, if water is needed for activities at the Twin Oak Mine, TXU Power may divert water from the upper portion of the Basin that would typically be used for cooling purposes at a generating station to points downstream for mining-related purposes. The Application not only seems to put this flexibility at risk, but appears to put at risk additional water rights that may need to be acquired for expansion of or upgrades to generation facilities or completion of mandatory reclamation activities at the Twin Oak Mine.

TXU Power and BRA have a long history associated with negotiating water rights. While TXU Power and BRA have been able to come to mutually beneficial agreements in the past, TXU Power has always had the ability to seek a water rights permit from the TCEQ or one of its predecessor agencies outside of its relationship with BRA should the need present itself. If the Application is granted, BRA would seemingly retain the rights to virtually all of the remaining water in the Basin. There is no doubt that TXU Power will require additional rights to water in the future. This Application, if approved, will have a significant economic impact on TXU Power by eliminating the option of requesting appropriated water from the TCEQ and force TXU Power to purchase the water from BRA.

TXU Power's use of its existing water rights as well as any future water rights are affected by BRA's Application. The Application, if approved, will jeopardize the ability of TXU Power to not only operate its existing facilities, but will create an obstacle to future expansion of its generation fleet and development of the State's coal resources. It is not clear from the Application whether BRA's Water Management Plan that has yet to be submitted will adequately protect any of TXU Power's current or future interests. TXU Power is clearly an affected person who has a personal justiciable interest in the Application that is not common to members of the general public.

that duplicate communications and documents be sent to the attorneys whose information is as follows:

Mr. Richard L. Adams
Hunton & Williams LLP
1601 Bryan Street, 30th Floor
Dallas, Texas 75201
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214.880.0011 (fax)
radams@hunton.com

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Hunton & Williams LLP
1601 Bryan Street, 30th Floor
Dallas, Texas 75201
214.979.3069 (direct)
214.880.0011 (fax)
mreynolds@hunton.com

Please contact me at the phone number listed above if there is any additional information you may need regarding this Public Comment and Request for Contested Case Hearing.

Sincerely,



Don J. Clevenger, TXU Power

cc: Mr. Phil Ford, BRA
Dr. Paul A. Zweiacker, TXU Power
Mr. Richard L. Adams, Hunton & Williams LLP
Mr. Myles F. Reynolds, Hunton & Williams LLP



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dclevenger@txu.com

Don Clevenger
Senior Counsel

WR / HHOVY

OPA H

JUN 13 2005

BY *[Signature]*

June 10, 2005

2005 JUN 10 PM 4:09
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Via Fax (512.239.3311) and Certified Mail 7002 2030 0000 3681 7988

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

Re: Public Comment & Request for Contested Case Hearing Regarding Brazos River Authority Application for Permit to Appropriate State Water No. 5851

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Office of the Chief Clerk

Page 2

The facilities listed above have been, and continue to be, reliable sources of electricity to customers in Texas, the generating facilities having a combined name plate capacity of more than 50,000 MW.

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TXU Power uses the water obtained from BRA for various purposes, including generation and reclamation activities at the locations listed above. For example, Comanche Peak routinely uses significant amounts of water obtained from BRA for cooling operations that are vital to the safe production of electricity from the nuclear generating units at the plant. Also, for example, when opened, the Twin Oak Mine will routinely use large amounts of water for mining activities as well as for reclamation of areas where mining operations have been completed, as required by the Railroad Commission of Texas.

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Accordingly, TXU Power makes this formal Request for a Contested Case Hearing regarding the merits of the Application. Please note that I have been designated by TXU Power as the individual responsible for receiving all official communications and documents regarding the Application and any future proceedings related to the Application. In addition, I would ask

Office of the Chief Clerk

Page 3

that duplicate communications and documents be sent to the attorneys whose information is as follows:

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Hunton & Williams LLP
1601 Bryan Street, 30th Floor
Dallas, Texas 75201
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mreynolds@hunton.com

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Sincerely,



Don J. Cleverger, TXU Power

- cc: Mr. Phil Ford, BRA
- Mr. Paul A. Zwejacker, TXU Power
- Mr. Richard L. Adams, Hunton & Williams LLP
- Mr. Myles F. Reynolds, Hunton & Williams LLP



2005 JUN 10 PM 4: 09

Fax Cover

CHIEF CLERKS OFFICE

TXU Business Services
Legal Department
1601 Bryan Street, 6th Floor
Dallas, Texas 75201

Date: June 10, 2005

To: Office of the Chief Clerk

Company: Texas Commission on Environmental Quality Fax: 512.239.3311

From: Don Clevenger Phone: 214.812.3008

Dept: Legal Fax: 214.812.6032

Re: Public Comment & Request for Contested Case Hearing Regarding Brazos River Authority Application for Permit to Appropriate State Water No. 5851

Urgent For Review Please Reply Please Reply When Received

Resending due to pagination error.

If any pages are not received, please call: 214.812.6004

Number of pages (include cover page): 4

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1601 Bryan St, 6th Floor
Dallas, TX 75201-3411
Tel: 214 812 3008
Fax: 214 812 6032
dclevenger@txu.com

Don Cleverger
Senior Counsel

WR
4/20/04
OPA #
JUN 13 2005
BY *[Signature]*

CHIEF CLERKS OFFICE

2005 JUN 10 PM 3:05

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

June 10, 2005

Via Fax (512.239.3311) and Certified Mail 7002 2030 0000 3681 7988

Office of the Chief Clerk
Texas Commission on Environmental Quality
Mail Code 105
P.O. Box 13087
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Office of the Chief Clerk

Page 2

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Page 3

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214.979.3069 (direct)
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mreynolds@hunton.com

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Sincerely,



Don J. Clevenger, TXU Power

- cc: Mr. Phil Ford, BRA
- Mr. Paul A. Zweiacker, TXU Power
- Mr. Richard L. Adams, Hunton & Williams LLP
- Mr. Myles F. Reynolds, Hunton & Williams LLP



Fax Cover

TXU Business Services
Legal Department
1601 Bryan Street, 6th Floor
Dallas, Texas 75201

CHIEF CLERKS OFFICE

2005 JUN 10 PM 3:05

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Date: June 10, 2005

To: Office of the Chief Clerk

Company: Texas Commission on Environmental Quality Fax: 512.239.3311

From: Don Clevenger Phone: 214.812.3008

Dept: Legal Fax: 214.812.6032

Re: Public Comment & Request for Contested Case Hearing Regarding
Brazos River Authority Application for Permit to Appropriate State Water
No. 5851

- Urgent
- For Review
- Please Reply
- Please Reply When Received

If any pages are not received, please call: 214.812.6004

Number of pages (include cover page): 4

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American Electric Power
400 W. 15th Street, Suite 1520
Austin, TX 78701
AEP.com

2008 DEC 31 AM 10:26

CHIEF CLERKS OFFICE

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JAN 06 2009

BY KJ

December 30, 2008

VIA OVERNIGHT MAIL

Office of the Chief Clerk, Building F
Attn: LaDonna Castanuela
Texas Commission on Environmental Quality
Mail Code 105
12100 Park 35 Circle
Austin, TX 78753

Re: Withdrawal of Request for Contested Case Hearing
Application No. 5851 for a Water Use Permit 2005-1490-WR
Brazos River Authority

Dear Ms. Castanuela,

With regard to the above-reference Application for a Water Use Permit, AEP Texas North Company is in receipt of TCEQ's letter dated December 1, 2008 transmitting the draft Water Use Permit No. 5851 to Brazos River Authority. By letter dated June 13, 2005, AEP Texas North Company filed a request for a contested case hearing in this matter with TCEQ. At this time AEP Texas North Company is notifying TCEQ that it is withdrawing its request for a contested case hearing regarding this draft permit. Please let me know if you have any questions regarding this matter. I can be reached at (512) 481-3328.

Very truly yours,

Elizabeth Gunter

L. Elizabeth Gunter
Counsel for AEP Texas North Company

Cc: Joseph Karrasch, AEP
John Howard

CMW

Customer: This service area is provided for your internal use and convenience. Service must be marked on airbill.

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Page 1 of 2

From: Origin ID: AUSA (512) 481-4571
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AMERICAN ELECTRIC POWER
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SUITE 1520
AUSTIN, TX 78701

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SHIP TO: (512) 481-332F FZ
Attn: LaDonna C
TX Commission o
12100 Park 35 Circ
Office of the Chief C.
Austin, TX 78753

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Ref # Brazos River
Invoice #
PO #
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Dec: 31 2008

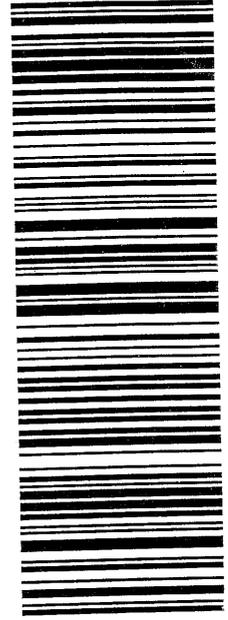
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2005 JUN 14 PM 2:58
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June 13, 2005

Via Facsimile (512.239.3311) and Federal Express

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Texas Commission on Environmental Quality
Mail Code 105
P.O. Box 13087
Austin, Texas 78711-3087

WR
44044

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

To whom it may concern:

AEP Texas North Company (TNC) respectfully files within the public comment period this Request for Contested Case Hearing on the Brazos River Authority's (BRA) Application No. 5851 for a Water Use Permit and System Operation Permit, which would, among other things, appropriate 421,449 acre-feet of water per year for multiple uses in the Brazos River Basin.

TNC, formerly the West Texas Utilities Company, owns three power plant facilities in the Brazos River Basin in the Abilene area: the Fort Phantom Power Station, in Jones County; the Abilene Power Station, in Taylor County; and the Paint Creek Power Station, in Haskell County. TNC holds rights and contracts to water from the Brazos River to serve each of these facilities, as described below.

TNC has an adjudicated right recognized in Certificate of Adjudication 12-4151 for 6,500 acre-feet of storage capacity and 2,500 acre-feet per year of water use in Lake Fort Phantom Hill (which is on Elm Creek, a tributary of the Clear Fork of the Brazos River), with a maximum diversion rate of 584 cfs. This adjudicated water right recognizes a 1949 contract between the City of Abilene and TNC, in which TNC agrees not to build a reservoir on property owned by TNC above Lytle Lake (in Abilene on Lytle Creek, a tributary of the Clear Fork of the Brazos River) and the City agrees to hold in Lake Fort Phantom Hill the water that would have been held by the unbuilt reservoir.

Handwritten initials or mark.

That 1949 contract and a 1969 contract are each recognized in Contractual Permit CP-411, which authorizes TNC to divert, circulate, and recirculate 1,534,000 acre-feet per year of water from Lake Fort Phantom Hill for industrial use. Of the water diverted, 10,324 acre-feet is authorized to be consumptively used at TNC's Fort Phantom Power Station and 1,513 acre-feet is authorized to be consumptively used at either TNC's Abilene Power Station or the Fort Phantom plant. The maximum diversion rate for the Abilene plant is 740 cfs and for the Fort Phantom plant is 2,120 cfs.

TNC holds Water Sales Contract 2347 with the City of Stamford (in Haskell and Jones Counties) for use at TNC's Paint Creek Power Station. The contract allows TNC to use water for direct circulation for condensing and surface cooling purposes from Lake Stamford on Paint Creek, a tributary of the Clear Fork of the Brazos River. The contract also allows TNC to consume up to half the annual safe yield of Lake Stamford, which in 2001 was estimated to be 4,400 acre feet per annum.

WSC 2347 also recognized that the City of Stamford was installing the California Creek diversion project in Haskell County to enhance the effective yield of Lake Stamford by diverting into Lake Stamford the floodwaters of California Creek, a tributary of the Clear Fork of the Brazos River. The City of Stamford has Contract 2327, dated March 13, 2000, with the BRA for an 1,820 acre-feet decrease in the yield of Possum Kingdom Lake due to the scalping agreement, which helps to firm up the City's water right and thus benefits TNC. In WSC 2347, TNC agreed to pay for half the operating and maintenance costs associated with the California Creek pump station and half of the expenses incurred under the City's contract with the BRA.

For the Commission to grant a request for contested case hearing, the request must meet two essential statutory criteria. First, the request must be filed by an affected person. An affected person is "a person who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing. An interest common to members of the general public does not qualify as a personal justiciable interest." Water Code § 5.115. Second, the issue for which the hearing is requested must involve a disputed question of fact that was raised during the public comment period and is relevant and material to the application's decision. Water Code §§ 5.556(c), (d). TNC meets each of these criteria for purposes of this Request for Contested Case Hearing.

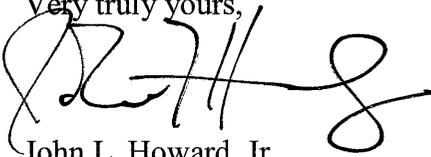
TNC is an affected person. It has a legal right and economic interest in the water in the Brazos River through its certificates of adjudication and contracts. Those water rights may be impacted by the BRA's attempts to appropriate the remaining waters in the Brazos River, which could impact the firm yield TNC relies upon for its facilities. TNC's interest is not common to the general public, as it is one of only a limited number of entities holding a

certificate of adjudication or contract to water in the Brazos River. TNC's interests are unique because it has invested significant financial and other resources over the years in these plants, all in reliance on the continued supply of water from waters in the Brazos River Basin under these rights and contracts. TNC is alone in its desire to assure a continued adequate supply to each of its plants, and no other person can adequately protect those interests.

BRA's application raises several disputed questions of fact that are relevant and material to the TCEQ's decision. TNC is particularly concerned with whether any of BRA's proposed actions under its application would make less firm any of TNC's water rights or contracts and thus adversely impact TNC's facilities and operations. TNC thus is concerned with TCEQ's decisions on BRA's applications regarding how much water actually remains to be appropriated in the Brazos River, how accurate BRA's new water availability model really is for determining whether and how much water may be available for appropriation, whether the return flows that BRA contemplates appropriating really are unappropriated, and whether BRA would be able to conduct interbasin transfers as a result of any new appropriations. How the Commission resolves these issues will impact TNC's facilities in the Brazos River Basin and possibly other of its facilities elsewhere in Texas, given the precedent-setting implications of this application. TNC is uniquely situated to be able to assess and protect its interests in addressing these issues.

For these reasons, TNC believes this Request for Contested Case Hearing meets the statutory requirements and thus respectfully asks the Commission to grant this Request. Please note that TNC has designated me as the person responsible for receiving all official communications and documents regarding this matter. Thank you for your consideration, and please contact me if you have any questions or need any additional information.

Very truly yours,



John L. Howard, Jr.

Vinson & Elkins

John L. Howard, Jr. jlhoward@velaw.com
Tel 512.542.8564 Fax 512.236.3247

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2005 JUN 13 PM 4:06
CHIEF CLERKS OFFICE

June 13, 2005

OPA
H JUN 15 2005
BY Ky

Via Facsimile (512.239.3311) and Federal Express

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

WR
424044

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

To whom it may concern:

AEP Texas North Company (TNC) respectfully files within the public comment period this Request for Contested Case Hearing on the Brazos River Authority's (BRA) Application No. 5851 for a Water Use Permit and System Operation Permit, which would, among other things, appropriate 421,449 acre-feet of water per year for multiple uses in the Brazos River Basin.

TNC, formerly the West Texas Utilities Company, owns three power plant facilities in the Brazos River Basin in the Abilene area: the Fort Phantom Power Station, in Jones County; the Abilene Power Station, in Taylor County; and the Paint Creek Power Station, in Haskell County. TNC holds rights and contracts to water from the Brazos River to serve each of these facilities, as described below.

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V&E

Office of the Chief Clerk June 13, 2005 Page 2

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TNC is an affected person. It has a legal right and economic interest in the water in the Brazos River through its certificates of adjudication and contracts. Those water rights may be impacted by the BRA's attempts to appropriate the remaining waters in the Brazos River, which could impact the firm yield TNC relies upon for its facilities. TNC's interest is not common to the general public, as it is one of only a limited number of entities holding a

V&E

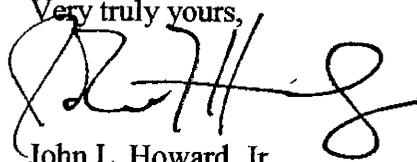
Office of the Chief Clerk June 13, 2005 Page 3

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For these reasons, TNC believes this Request for Contested Case Hearing meets the statutory requirements and thus respectfully asks the Commission to grant this Request. Please note that TNC has designated me as the person responsible for receiving all official communications and documents regarding this matter. Thank you for your consideration, and please contact me if you have any questions or need any additional information.

Very truly yours,



John L. Howard, Jr.

cc: Keith Courtney, Jenkins & Gilchrist, representing AECT
584207_1.DOC

Vinson & Elkins

Facsimile

John L. Howard, Jr. jlhoward@velaw.com
Tel 512.542.8564 Fax 512.236.3247

From:		Date:	
John L. Howard, Jr.		June 13, 2005	
Regarding:		Number of Pages:	Hard Copy Follows:
CEN349-71011		4	Yes
To:	Fax:	Phone:	
Office of the Chief Clerk Texas Commission on Environmental Quality	239.3311		
Message:			

TEXAS
 COMMISSION
 ON ENVIRONMENTAL
 QUALITY
 2005 JUN 13 PM 4:05
 CHIEF CLERKS OFFICE

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.

Mr. Klein's Direct Line: (512) 322-5818
E-mail: dklein@lglawfirm.com

OPA

September 10, 2007

SEP 11 2007

BY DL

*WR
44044*

2005-1490-WR

WH

Ms. LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
12100 Park 35 Circle, Building F
Austin, Texas 78753

VIA FACSIMILE & HAND DELIVERY

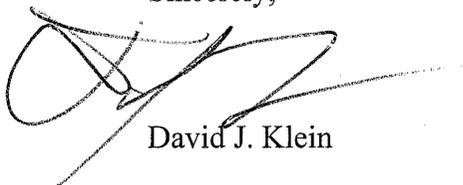
RE: Withdrawal of Hearing Request to WR Application No. 5851 (2445-00)

Dear Ms. Castañuela:

Please find enclosed, correspondence from Palo Pinto County Municipal Water District No. 1, withdrawing its protest to Brazos River Authority Application No. 5851.

Thank you for your time and attention to this matter.

Sincerely,



David J. Klein

DJK:jlw
2445/00/ldr070910jlw

Enclosure

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2007 SEP 10 PM 4: 54
CHIEF CLERKS OFFICE

DL

**PALO PINTO COUNTY MUNICIPAL
WATER DISTRICT No. 1
P.O. Box 387
MINERAL WELLS, TEXAS 76068**

September 4, 2007

*WR
4/10/44*

WH

OPA

SEP 11 2007

BY *RL*

CHIEF CLERKS OFFICE

2007 SEP 10 PM 4:55

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Ms. LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
12100 Park 35 Circle, Building F
Austin, Texas 78753

RE: Protest of Palo Pinto County Municipal Water District No. 1 Application No. 5851;
TCEQ Docket No. 2005-1490-WR

Dear Ms. Castañuela:

On June 25, 2004, the Brazos River Authority ("BRA") filed an application (Application No. 5851) with the Texas Commission on Environmental Quality ("TCEQ") for a System Operation Permit, which was deemed administratively complete by the TCEQ on October 15, 2004. Pursuant to a resolution adopted by the Palo Pinto County Municipal Water District No. 1 (the "District"), the District filed a protest to Application No. 5851 and requested a contested case hearing on or about June 2, 2005. Since filing its protest, however, the District and BRA have negotiated their respective interests and entered into a settlement agreement. As a result, the District hereby withdraws its protest to Application No. 5851.

Thank you for your time and attention to this matter.

Sincerely,

Earl Medlin

Earl Medlin,
President

cc: Kellye Rila
Robin Smith
Ken Choffel
Martin Rochelle
David Klein
Doug Caroom
Jim Forte
John P. Ritchie

RL

PALO PINTO COUNTY MUNICIPAL
WATER DISTRICT No. 1
P.O. Box 387
MINERAL WELLS, TEXAS 76068

OPA
HR JUN 07 2005

BY *su*

CERTIFIED MAIL 7003 1680 0007 2051 1490

June 2, 2005

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

WR
44044

2005 JUN -6 PM 2:35
CHIEF CLERKS OFFICE
TEXAS COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Request for Contested Case Hearing – Application No. 5851

Dear Sir:

The Palo Pinto County Municipal Water District No. 1 (District) has received the Notice of Application (Notice) to Appropriate State Water (Application No. 5851) by the Brazos River Authority (BRA). In this matter, the District requests a contested case hearing. The following is submitted as required in the Notice:

(1) name of an official representative, mailing address, daytime phone number, fax number, if any;

Mr. Earl Medlin
President, Board of Directors
Palo Pinto County Municipal Water District No. 1 (District)
P. O. Box 387
Mineral Wells, Texas 76068

Mr. John P. Ritchie
Attorney for the District
P. O. Box 98
Mineral Wells, Texas 76068
940-325-6228
940-325-5711 (fax)

(2) applicant's name and application number;

Brazos River Authority
Application No. 5851

su

(3) the statement “[I/we] request a contested case hearing;”

The Palo Pinto County Municipal Water District No. 1 requests a contested case hearing.

(4) a brief and specific description of how you would be affected by the application in a way not common to the general public;

The District is the owner of Certificate of Adjudication No. 12-4031 and Permit No. 5447 which authorize the diversion and use of water located in the Brazos River Basin. The granting of BRA’s proposed application will impact the District’s water rights and District’s projects to be included in the Brazos G Regional Water Plan unless specific language is included in the Permit to mitigate impacts.

(5) the location and distance of your property relative to the proposed activity;

The District owns four reservoirs and associated diversion facilities on Palo Pinto Creek, Rock Creek, and an unnamed tributary of the Brazos River in Palo Pinto and Parker Counties. BRA’s proposed application seeks to appropriate water from these watersheds.

(6) proposed adjustments to the application/permit which would satisfy our concerns.

District proposes that a special condition similar to SPECIAL CONDITION F, in Certificate of Adjudication 08-4248 (Lake Livingston) be included in any permit that may be granted to BRA. District recommends the following special condition;

“BRA’s right is subordinate to any current and future claims on waters of the Brazos River Basin imported into and/or originating in and above Lake Palo Pinto, Lake Mineral Wells, the District’s channel dam on Palo Pinto Creek (located in T. & P. RR Survey 49, Abstract 744, Palo Pinto County) and District’s dam located on an unnamed tributary of the Brazos River (located in the J. Dimkins Survey, Abstract No. 162, Palo Pinto County), and shall not constitute any limitation upon the granting of permits by the Commission for the impoundment and use of waters above the four named reservoirs.”

Our District continues to meet with BRA in an attempt to resolve the above issues. We are hopeful that these issues can be resolved in the near future and that we will be able to withdraw our request. However, in the meantime, we respectfully request a contested case hearing.

Sincerely,



Earl Medlin
President, Board of Directors

cc: Mr. Phillip J. Ford, General Manager/CEO
Brazos River Authority

Mr. Jim Forte, Planning & Development Manager
Brazos River Authority

Mr. Kent Rindy, Regional Manager – Upper Basin
Brazos River Authority

Mr. Michael Morrison, Chair
Brazos G Regional Water Planning Group

Mr. Ken Choffel
HDR Engineering, Inc.

Attachment: Resolution of District Board of Directors dated May 27, 2005

WR
440914

WH

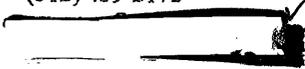
OPA

APR 17 2009

MOLTZ MORTON O TOOLE LLP

BY KG

Steve Morton
(512) 439-2172



The Littlefield Building
106 East 6th Street, Suite 700
Austin, TX 78701
(512) 439-2170
Facsimile (512) 439-2165

April 17, 2009

Office of the Chief Clerk
Attn: LaDonna Castañuela
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F/1, MC-105
Austin, Texas 78753

Via Facsimile

RE: Contested Case Request Withdrawal; Brazos River Authority's Application for a Water Rights Permit #5851 and Draft Permit

Dear Ms. Castañuela:

By correspondence dated June 13, 2005, the Association of Electric Companies of Texas, Inc. ("AECT") requested a contested case hearing on Water Rights Application No. 5851 filed by the Brazos River Authority ("Application"). AECT is in receipt of the draft permit issued by the Texas Commission on Environmental Quality ("TCEQ") with respect to the Application.

Please consider this as AECT's withdrawal of its prior request for a contested case hearing on this matter. AECT would like to remain on the mailing list as an interested party so that it may continue to monitor the contested case hearing process. The contact information for AECT is through the attorney of record indicated on this letterhead and:

John W. Fainter, Jr.
1005 Congress, Suite 600
Austin, Texas 78701
Phone: (512) 474-6725
Fax: (512) 474-9670

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 APR 17 AM 11:00
CHIEF CLERKS OFFICE

Very truly yours,

Steve Morton

SM/pjp
cc: Douglas G. Caroom (via email)
Keith Courtney (via email)

CM

MOLTZ | MORTON | O'TOOLE LLP

The Littlefield Building
106 East Sixth Street, Suite 700
Austin, Texas 78701

(512) 439-2170
Facsimile (512) 439-2165
www.mmotlaw.com

FROM THE DESK OF:
Steve Morton
(512) 439-2172
smorton@mmotlaw.com

	RECIPIENT	COMPANY	FAX NO.	PHONE NO.
1.	LaDonna Castañuela	TCEQ	239-3311	239-3000
2.				

- MESSAGE -

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 APR 17 AM 11:00
CHIEF CLERKS OFFICE

NOTICE OF CONFIDENTIALITY

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Time: ~~11:00 AM~~ C/M: 54026-4 Date: 04/17/2009

Total Pages (+ Cover): 2

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

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

*WR
/ 7/14/04*

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

June 13, 2005

VIA HAND DELIVERY

Office of the Chief Clerk
Attn: LaDonna Castañuela
Texas Commission on Environmental Quality
12100 Park 35 Circle
Building F/1, MC-105
Austin, TX 78753

OPA

H JUN 15 2005
BY RY

2005 JUN 13 PM 3:51
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Re: Request for a Contested Case Hearing on Brazos River Authority Water Rights Application No. 5851

Dear Ms. Castañuela:

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

John W. Fainter, Jr.
1005 Congress, Suite 600
Austin, Texas 78701
Phone: (512) 474-6725
Fax: (512) 474-9670
john@aect.net

Request for a Contested Case Hearing

The Application seeks a permit amendment to, among other things, significantly increase BRA's water rights in the Brazos River Basin, and to manage both BRA's existing and proposed new water rights via a "system operation permit," rather than on a reservoir-by-reservoir basis.

ad

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of the Chief Clerk

June 13, 2005

Page 2

AECT is a trade organization representing electric companies in Texas. Organized in 1978, one of AECT's purposes is to represent the interests of its members in all environmental matters, including water rights. Water rights are critical to AECT members because their electric generating facilities need significant amounts of water to operate. In fact, AECT member companies are some of the largest water rights/contracts holders in the state. Several AECT members currently hold water rights in the Brazos River Basin. AECT member companies with existing water rights in the Brazos River Basin are TXU and AEP Texas North Company. In fact, TXU, through its affiliates, is one of the largest water rights holders through contracts in the Brazos River Basin. TXU's affiliates owning water rights in the Basin include, for example: (a) TXU Tradinghouse Company LP owns adjudicative and contractual rights for the Tradinghouse Power Plant, located near Waco, Texas; TXU Generation Company LP owns contractual water rights for its Comanche Peak power plant located near Glen Rose, Texas, and TXU DeCordova Company LP owns contractual water rights for its DeCordova Power Plant located near Lake Granbury, Texas. AEP Texas North Company (TNC), formerly West Texas Utilities, holds water rights or water contracts for its power plants in the Brazos basin, including but not limited to (a) Certificate of Adjudication and contractual rights for water use in Lake Fort Phantom Hill near the City of Abilene and (b) a water sales contract for water use at its Paint Creek Power Plant near Stamford, Texas.

Therefore, issuance of the permit amendment requested by BRA through the Application would clearly have a direct effect on the legal rights, privileges, and economic interests of members of AECT. As such, these members are affected parties with a personal justiciable interest in protecting their water rights not common to the general public, and, thus, would have standing to request a contested case hearing in their own right. In addition, the Application presents significant issues that, once decided in this case, may set precedents in other cases both within and outside the Brazos River Basin.

AECT has reviewed the Application and is particularly concerned that granting BRA its requested permit amendment will have negative impacts on the availability of water in the Brazos River Basin, so that the senior water rights of members of AECT will be impaired. AECT's concerns with the Application are numerous, and a few of them are outlined below.

First, BRA's application is based in large part on BRA's assertion that there is a significant amount of water in the Brazos River Basin that remains to be appropriated. In the Application, BRA requests that the alleged unappropriated water rights be granted to it. AECT does not believe that BRA has sufficiently demonstrated that such unappropriated water is actually available.

Second, AECT does not believe that BRA has sufficiently demonstrated that the modified water availability model it uses in support of its Application is accurate.

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of the Chief Clerk

June 13, 2005

Page 3

Third, the Application contemplates appropriation of return flows from various cities and other sources in the Brazos River Basin. BRA has not demonstrated that such return flows are unappropriated or that the appropriation of such return flows would not impair senior water rights.

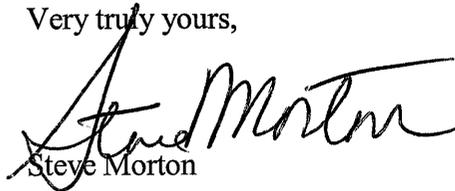
Fourth, the Application requests that BRA receive broad management powers over its water rights through what it terms its "Water Management Plan." To date, there is no such Plan included in the Application. In fact, it appears that the Plan will not be finalized until after the permit is issued to BRA. AECT is concerned that the Plan would not be subject to sufficient input from affected parties, unless (a) it is an issue to be addressed at the contested case hearing, or (b) the Plan requires the input and consent of affected persons, such as AECT.

Finally, the Application indicates that BRA intends to make interbasin transfers of water from the Brazos River Basin to other basins. Without question, this could have a negative impact on current water rights holders in the Brazos River Basin, such as AECT member companies.

For the reasons stated above, AECT hereby requests a contested case hearing.

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

Very truly yours,



Steve Morton

SM/pjp

cc: AECT Members

Mr. Castleberry's Direct Line: (512) 322-5856
bcastleberry@lglawfirm.com

WR
44044

WH OPA
APR 22 2008
BY *el*

April 18, 2008

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 APR 21 PM 2:14
CHIEF CLERKS OFFICE

Ms. LaDonna Castañuela (MC 100)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA FACSIMILE
AND FIRST-CLASS MAIL

Re: Withdrawal of Request for Contested Case Hearing
Water Rights Application No. 5851 (444-06)

Dear Ms. Castañuela:

On behalf of the Texas Municipal Power Agency ("TMPA"), please accept this letter as notice that TMPA hereby withdraws its request for a contested case hearing and protest of the above-referenced application.

A copy of this letter is being served on counsel for the applicant. Please feel free to contact me if you have any questions or concerns.

Sincerely,
[Signature]
Brad B. Castleberry

BBC/jdg
444\06\ltr080414bbc

cc: Mr. David Koinm
Mr. Jan Horbaczewski
Mr. Douglas G. Caroom

MW



WH OPA
APR 18 2008
BY RB

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

www.lglawfirm.com

Mr. Castleberry's Direct Line: (512) 322-5856
bcastleberry@lglawfirm.com

WR
44044

April 18, 2008

Ms. LaDonna Castañuela (MC 100)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2008 APR 18 PM 2:07
CHIEF CLERKS OFFICE
VIA FACSIMILE AND FIRST-CLASS MAIL

Re: Withdrawal of Request for Contested Case Hearing
Water Rights Application No. 5851 (444-06)

Dear Ms. Castañuela:

On behalf of the Texas Municipal Power Agency ("TMPA"), please accept this letter as notice that TMPA hereby withdraws its request for a contested case hearing and protest of the above-referenced application.

A copy of this letter is being served on counsel for the applicant. Please feel free to contact me if you have any questions or concerns.

Sincerely,

Brad B. Castleberry

BBC/jdg
444\06\tr080414bbc

cc: Mr. David Koinm
Mr. Jan Horbaczewski
Mr. Douglas G. Caroom

MW



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Austin, Texas 78701
Telephone: (512) 322-5800
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TELECOPIER COVER SHEET

April 18, 2008

PLEASE DELIVER THE FOLLOWING PAGES:

To: Ms. LaDonna Castañuela

Firm: TCEQ (MC 105)

Telecopy No.: 239-3311

Verification No.:239-3300

Client No.: 444-6

From: Brad B. Castleberry

No. of Pages: 1 + cover sheet

Documents Transmitted: TMPA's Withdrawal of Request for Contested Case Hearing

Comments:

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BY DM

April 8, 2009

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

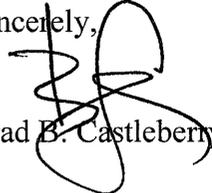
VIA FACSIMILE
AND FIRST-CLASS MAIL

Re: Withdrawal of Request for Contested Case Hearing
Water Rights Application No. 5851 (1486-01)

Dear Ms. Castañuela:

On behalf of the Walnut Creek Mining Company ("WCMC"), please accept this letter as notice that WCMC hereby withdraws its request for a contested case hearing and protest of the above-referenced application.

A copy of this letter is being served on counsel for the applicant. Please feel free to contact me if you have any questions or concerns.

Sincerely,

Brad B. Castleberry

BBC/jdg
1486\01\ltr090406bbc

cc: Mr. Ron Ellis
Mr. Dan Kowalski
Mr. Douglas G. Caroom

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 APR -9 AM 10:03
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1984 ~~to Now~~ 2009

Mr. Castleberry's Direct Line: (512) 322-5856
bcastleberry@lglawfirm.com ✓

April 8, 2009

WHR OPA
APR 09 2009

BY *JM*

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44044

VIA FACSIMILE
AND FIRST-CLASS MAIL

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

Re: Withdrawal of Request for Contested Case Hearing
Water Rights Application No. 5851 (1486-01)

Dear Ms. Castañuela:

On behalf of the Walnut Creek Mining Company ("WCMC"), please accept this letter as notice that WCMC hereby withdraws its request for a contested case hearing and protest of the above-referenced application.

A copy of this letter is being served on counsel for the applicant. Please feel free to contact me if you have any questions or concerns.

Sincerely,

Brad B. Castleberry

BBC/jdg
148601\tr090406bbc

cc: Mr. Ron Ellis
Mr. Dan Kowalski
Mr. Douglas G. Caroom

TEXAS
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ON ENVIRONMENTAL
QUALITY
2009 APR -8 PM 4: 02
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April 8, 2009

PLEASE DELIVER THE FOLLOWING PAGES:

To: Ms. LaDonna Castañuela (MC 105)	Firm: TCEQ
Verification Phone No.: 239-3300	Telecopy No.: 239-3311
To: Mr. Ron Ellis (MC 160)	Firm: TCEQ
Verification Phone No.: 239-1282	Telecopy No.: 239-4770
To: Mr. Dan Kowalski	Firm: Walnut Creek Mining Company
Verification Phone No.: 254/746-7334	Telecopy No.: 254/746-7795
To: Mr. Douglas G. Caroom	Firm: Bickerstaff, Heath, Delgado & Acosta
Verification Phone No.: 404-7829	Telecopy No.: 320-5638
Client No.: 1486-1	No. Pages: 1
Documents transmitted:	Notice of Withdrawal by Walnut Creek Mining Company
From:	Brad B. Castleberry
Comments:	

2009 APR - 8 PM 4:02
CHIEF CLERKS OFFICE

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



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Telephone: (512) 322-5800
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www.lglawfirm.com

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

WR
44044

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

OPA

JUN 10 2005

BY *de*

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 (1486-03)

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 Walnut Creek Mining 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
1486\03\ltr050609bbc
ENCLOSURES

cc: Mr. Dan Kowalski
Mr. Doug Caroom
Mr. Brad B. Castleberry

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2005 JUN 10 PM 12:34
CHIEF CLERKS OFFICE

MW

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, Walnut Creek Mining Company ("WCMC" 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 Walnut Creek Mining Company, P.O. Box H, Bremond, Texas 76629, 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 WCMC will be affected by the granting of the Application, it hereby requests a hearing on the Application.
4. WCMC holds interests in Water Use Permit Nos. 5326, 5482 and 5512 (the "Permits" or "WCMC's Water Rights"), which authorize WCMC to store state water in numerous impoundments on unnamed tributaries of Walnut Creek, tributary of the Little Brazos River, tributary of the Brazos River. As filed, the Application will adversely affect WCMC inasmuch as it seeks to appropriate surface water within Robertson County in the Little Brazos River watershed, specifically interruptible water supplies that are tied to high flow events. Granting the Application may impact WCMC's ability to impound state water pursuant to the Permits.

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 WCMC, WCMC seeks to protect its own privately developed groundwater discharges.

In addition to the potential impact of the Application to WCMC's Water Rights and its privately developed groundwater discharges, WCMC is concerned that the Application, if granted, will affect WCMC'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 WCMC to spend additional money to i) purchase water supplies to keep impoundments that are required to be maintained by the Act and WCMC's RCT Surface Mining and Reclamation Permit No. 27, as amended, full; and/or ii) breach existing or proposed impoundments that are required to be maintained by the Act and Permit No. 27, as amended. As such, WCMC 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. 27, as amended, will be more difficult to comply with should the Application be granted.

Because WCMC'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 WCMC, and whether the Application is in the public interest and authorized by law.

5. WCMC's Water Rights are located in Robertson 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 Robertson 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 WCMC, this portion of BRA's request is immediately adjacent to WCMC's property interests, including WCMC'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

**ATTORNEYS FOR PROTESTANT,
WALNUT CREEK MINING COMPANY**