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April 16, 2010

**VIA HAND DELIVERY**

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

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

Dear Ms. Castañuela:

Enclosed please find an original and eight copies of Matthews Land and Cattle Company's Reply to Other Parties' Responses to Hearing Requests to be filed in the above-referenced matter. Please file mark the remaining copy and return it to me via our courier delivering same.

Thank you for your assistance in this matter.

Sincerely,

Leonard H. Dougal

LHD:pjs

cc: Mailing List

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 APR 16 AM 11:10  
CHIEF CLERKS OFFICE

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

**TCEQ DOCKET NO. 2005-1490-WR**

**APPLICATION OF BRAZOS  
RIVER AUTHORITY FOR  
WATER RIGHTS PERMIT NO. 5851**

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§  
§

**BEFORE THE**  
**TEXAS COMMISSION ON**  
**ENVIRONMENTAL QUALITY**

2010 APR 16 AM 11:11

CHIEF CLERK'S OFFICE

**MATTHEWS LAND AND CATTLE COMPANY'S  
REPLY TO OTHER PARTIES' RESPONSES TO HEARING REQUESTS**

TO THE HONORABLE COMMISSIONERS:

Matthews Land and Cattle Company ("Matthews Land"), pursuant to the Chief Clerk's letter dated March 25, 2010 and applicable Commission rules, files this its Reply to Other Parties' Response to Hearing Requests.

I.

By letter dated May 19, 2005, Matthews Land timely filed its request for hearing regarding the Brazos River Authority's application, which is generally known as the application for the BRA "System Operations Permit." The letter specifically set forth the personal justiciable interests of Matthews Land, which interests distinguish it from the general public, including rights to domestic and livestock use of water in the Clear Fork branch of the Brazos River. *See Exhibit "A" hereto.*

Matthews Land agrees with the Executive Director of TCEQ and the Office of Public Interest Counsel responses to hearing requests, at least to the extent that each state that Matthews Land's interests are sufficient to establish an affected person status in this matter.

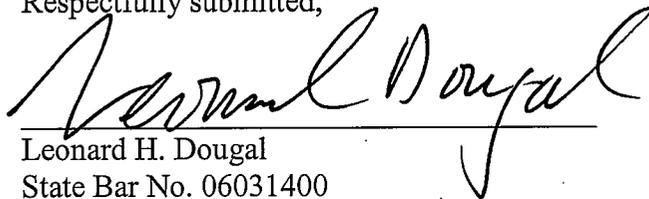
Matthews Land would further note that in TCEQ Docket Nos. 2006-1831-WR and 2006-1832-WR (concerning the Applications for Water Rights Permits Nos. 5912 and 5913 by the Cities of Bryan and College Station), an Order was issued by the Commission on October 28, 2009 which granted Wellborn Special Utility District standing to challenge the referenced cities'

water rights applications, in part, due to the Commission's recognition of Wellborn's domestic and livestock ownership rights based upon its ownership of a 24-acre tract of land fronting on the Navasota River. Matthews Land's standing is further supported by the holding in *Texas Rivers Protection Association v. Upper Guadalupe River Authority*, 912 S.W.2d 147, 151 (Tex. App.—Austin 1995, writ denied) which held that riparian ownership alone sufficiently distinguishes a person's injury from that of the public at large.

II.

WHEREFORE, PREMISES CONSIDERED, Matthews Land states that it is an affected person under applicable law, that it has a personal justiciable interest which is not common to members of the general public, and that its hearing request should be granted on the subject water rights permit application.

Respectfully submitted,



Leonard H. Dougal  
State Bar No. 06031400

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**CERTIFICATE OF SERVICE**

This is to certify that on this 16th day of April, 2010, a true and correct copy of the foregoing document was served via hand delivery or via U.S. Mail on the parties listed on the attached Mailing List.

  
\_\_\_\_\_  
Leonard H. Dougal

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 APR 16 AM 11:12  
CHIEF CLERKS OFFICE

**MAILING LIST  
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HR OPA  
MAY 24 2005

BY Jub

May 19, 2005

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RECEIVED  
MAY 24 2005

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.

**ATTACHMENT "A"**

Handwritten initials: *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 BSM*

Enclosure

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

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