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April 19, 2010

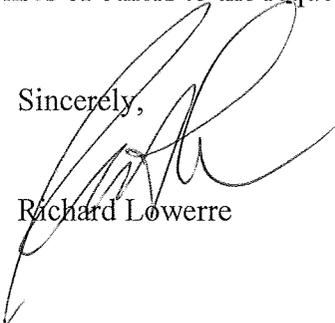
Ms. LaDonna Castañuela, Chief Clerk, MC-105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78811

Re: Reply to Responses to Request for Contested Case Hearing on the Application for an Water Rights Permit # 5251 filed by the Brazos River Authority

Dear Ms. Castañuela:

On behalf of the Friends of the Brazos River (BRA) Mary Lee Lilly, Jane Vaughn and Lawrence Wilson, I am filing the attached Reply to the Responses of others to the requests for a contested case hearing on the above referenced application.

Sincerely,



Richard Lowerre

CC Service List

TCEQ DOCKET NO. 2005-1490-WR

APPLICATION OF THE BRAZOS RIVER AUTHORITY FOR WATER RIGHTS PERMIT NO. 5251 §
 §
 § **BEFORE THE TEXAS COMMISSION OF ENVIRONMENTAL QUALITY**

REPLY OF THE FRIENDS OF THE BRAZOS RIVER, MARY LEE LILLY, JANE VAUGHN AND LAWRENCE WILSON TO THE REPOSSES OF THE EXECUTIVE DIRECTOR, OPIC AND BRA

TO THE HONORABLE COMMISSIONERS

The Friends of the Brazos River, Mary Lee Lilly, Jane Vaughn and Lawrence Wilson file this, their reply to the responses of others to their requests for a contested case hearing and would respectfully show the following:

I. INTRODUCTION

The Friends of the Brazos River (FBR), Mary Lee Lilly^a, Jane Vaughn and Lawrence Wilson continue to seek a hearing on the BRA application. The will agree to be aligned together for purpose of this hearing.

Jack Weldon Bridges, also listed as H. Bridges III, and Perry and Margie Adams are also associated with FBR, but they are withdrawing their individual requests to support FBR's request and to participate through FBR. FBR will continue to seek information from others who filed hearing requests to advise the Commission on their plans.

The following individuals Jane Vaughn, Mary Lee Lilly, Ed Lowe and Jack and Kathy Cathey were identified as the representatives of FBR for standing purposes, since they own land along the Brazos River or use the River for economic purposes, and/or have water rights in the River. They all use the Brazos for recreational purposes.

^a Ms. Lilly is also seeking party status for her family enterprise MW Farms and Ranch. The undersigned is not the legal representative for those three entities, but has been asked to advise the Commission that all three want to be named as parties and they are willing to be aligned with FBR

The Executive Director and OPIC recommend granting the hearing requests of FBR, Mary Lee Lilly for MW Farms and herself, Lawrence Wilson, and Jane Vaughn. FBR Mary Lee Lilly, Jane Vaughn and Lawrence Wilson support the ED and OPIC's recommendations.

BRA recommends denial of all four requests. Thus, BRA's response will be addressed specifically below.

II. THE HEARING REQUESTS

BRA is incorrect in its position that the following individuals and FBR are not affected persons who should be granted a hearing.

Jane Vaughn: Ms Vaughn owns land along the shores of the Brazos River in both Somervell and Hood Counties. She has a water right issued by TCEQ for water for irrigation, and uses or has used that water for farming turf grass, peanuts, hay and wheat. The water right is for use in Somervell County and appears on TCEQ records under the name of her Husband FL Vaughn. She and her family have used and continue to use the river for recreation. Water in the River also enhances the value of their property. The lack of flow in the River has harmed her use of her land and the water in the River, and, if issued, the water right sought by BRA in this proceeding as proposed would do further damage to her property and other interests.

Mary Lee Lilly: Ms. Lilly is a member of the Board of Directors of FBR and requests that it be named a party. Because of her interests and that of her family enterprise, MW Farm and Ranch (MWFR), she also asks for party status for herself and MWFR. Her land in Somervell County is on the Brazos River, where she and her family have used and continue to use the River for recreation and other uses. Ms Lilly has the right to take water from the river for limited purposes and does so periodically. MWFR and she also lease their land for farming, and water is taken from the River by lessee for farming this land. Thus, Ms Lilly has sufficient recreational and economic interests, given her property interests on the River to seek to protect the flow in the River and assure that the

River has water at the time and place needed by them or their lessees through the contested case hearing process. The lack of flow in the River has harmed her use of her land and the water in the River, and, if issued, the water right sought by BRA in this proceeding as proposed would do further damage to her property and other interests.

Lawrence Wilson: Mr. Wilson is also a member of FBR Board of Directors and seeks to participate individually, based on his hearing request.^b He has owned land on the Brazos River in Somervell County for many years. He uses the river for water supply for livestock and for recreation, including fishing, wading and canoeing. He continues to desire the use of the River for those purposes. The lack of flow in the River has harmed his land and his uses of the water and, if issued, the water right sought by BRA in this proceeding as proposed would do further damage to his property and other interests.

FBR: Given Jane Vaughn's right to take state water from the Brazos River, there should be no question that she is an affected person with standing to be the basis of FBR's hearing request. The description of the interests of three other FBR individuals in the original FBR hearing request is also sufficient to support the request.

FBR has the same interests in denial or changes to the draft permit as do these four individuals. There is no need for their participation individually. In fact, it saves time and money for all affected parties to participate together in an organization such as FBR. FBR's goals and purposes include participation in government actions to protect the interest of such individuals.

III. REQUESTED HEARING

The BRA application was filed some 5 years ago, and staff processing and party negotiations have taken considerable time. Moreover, BRA has a priority date set for any water right that may be issued here. There has been no showing or indication of any immediate need for

^b The hearing request was filed on the letterhead of Brazos Old Field on May 16, 2005

the water right, and TCEQ can direct the State Office of Administrative Hearings (SOAH) to hold a hearing in the most efficient way for all parties.

FBR supports the approach of the National Wildlife Federation and any other approach that can reduce demands on SOAH, TCEQ, or any party. In fact, there are a number of significant legal issues, which if resolved before evidence is taken, would save many days of hearing and thousands, if not tens of thousands, of dollars for state taxpayers and parties.

FBR requests that the Commission seek to avoid costs of taking evidence that may not be needed through bifurcation of the hearing or through the use of Certified Questions. For example, the Commission should refer this matter to SOAH with the following recommendation:

The hearing should be conducted to minimize the costs to all parties. Thus, legal issues that the SOAH Judge or all parties agree need to be resolved by the Commission to facilitate the hearing, should be returned to the Commission through certified questions. Those questions can include pure issues of law, or issues of law where there have been stipulations of facts or there are no facts in dispute.

Among the issues that may need to be returned to the Commission for its consideration are:

1. Whether the application seeks to amend any existing BRA water rights or certificates of adjudication;
2. Whether the application seeks any type of water for which there is, or can be, no showing of a beneficial use;
3. Whether an issue or set of issues needs to be resolved in the permitting process rather than postponed to a later Water Management Plan process.

IV. CONCLUSION

Therefore, FBR, Mary Lee Lilly, Jane Vaughn and Lawrence Wilson request that a contested case hearing be granted and that they be named parties to that hearing. They further request the Commission recommend to SOAH that it find ways to avoid costs of taking evidence that may not be needed, through bifurcation of the hearing or through the use of certified questions.

Respectfully Submitted,

**LOWERRE, FREDERICK, PERALES,
ALLMON & ROCKWELL**

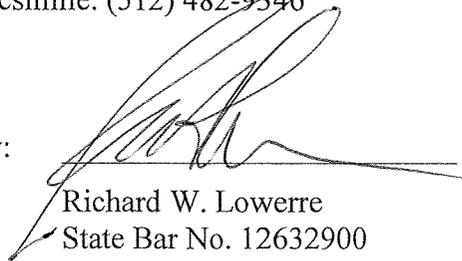
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By:

A handwritten signature in black ink, appearing to read 'Richard W. Lowerre', written over a horizontal line.

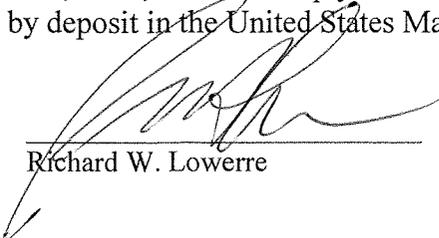
Richard W. Lowerre

State Bar No. 12632900

For FBR, Mary Lee Lilly, Jane Vaughn
and Lawrence Wilson

CERTIFICATE OF SERVICE

I hereby certify by my signature below that on April 19, 2010, the above reply was served on all parties listed below via facsimile transmission and by deposit in the United States Mail.



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