

Bickerstaff Heath Delgado Acosta LLP

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June 15, 2009

Via Facsimile and U.S. Mail

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

Re: Application No. 5931 by TXU Mining Company LP (now Luminant Mining Co. LLC ("Luminant"))

Dear Ms. Castañuela:

On behalf of the Brazos River Authority (BRA), I unconditionally withdraw BRA's protest and request for a contested case hearing regarding the above-referenced application.

Thank you for your attention to this matter.

Sincerely,


Douglas G. Caroom

DGC/mmr

cc: Service List

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 JUN 15 PM 3: 09
CHIEF CLERKS OFFICE

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LaDonna Castanuela, TCEQ

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



WR
55107

P.O. Box 4710
Houston, Texas 77210

WHR OPA
SEP 06 2007
BY *[Signature]*

September 5, 2007

Via Regular Mail and Facsimile to 512.239.4770

Mr. Craig Mikes, Project Manager
Water Rights Permitting and Availability Section
Texas Commission on Environmental Quality
MC-160
P.O. Box 13087
Austin, TX 78711-3087

2007 SEP - 6 AM 9:13
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**RE: Application For Water Rights Permit No. 5931 (TXU Mining Company LP) /
Withdrawal of Request by NRG Texas**

Dear Mr. Mikes:

NRG Texas LP submitted a request for contested case hearing regarding the matter referenced above, by correspondence dated December 4, 2006. NRG Texas and TXU recently reached an agreement on an unrelated matter. In consideration of that agreement, NRG Texas withdraws its request.

NRG Texas asks that this letter be placed in the agency's files regarding Application No. 5931 and that Mr. Fluharty and Ms. Ahrens continue to receive all notices and correspondence related to that application. Please let me know if there is any additional information required of NRG Texas at this time.

Very truly yours,

B. C. Carmine

Ben Carmine
Director, Environmental Operations
NRG Texas Power LLC

cc via regular mail:

Gerald Johnson (for TXU Mining Company LP)
Fred B. Werkenthin, Jr. (for The Dow Chemical Co.)
Doug Caroom (for Brazos River Authority)

mcw

NRG Texas



FACSIMILE TRANSMITTAL SHEET

TO: Craig Mikes

FROM: Jason Fluharty

COMPANY: TCEQ

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- URGENT
- FOR REVIEW
- PLEASE COMMENT
- PLEASE REPLY
- PLEASE RECYCLE

NOTES/COMMENTS:

Application for Water Rights Permit No. 5931
Withdrawal of request by NRG Texas

3. Although the draft permit recitals mention the introduction of groundwater *during the initial years of the permit*, the draft is insufficient regarding the timing or consistency of such discharges. If groundwater is proposed as an alternative source of water, the introduction of the alternative source must coincide with any storage and/or withdrawal of water and evaporation as a strictly enforceable permit condition. For example, in a recent draft for proposed Permit No. 12023 (Kim Smith Logging), special conditions were included that "(A) Permittee shall use groundwater, as the alternative source of water, to maintain the reservoir at normal operating capacity in order to ensure that all inflows of State water will be passed downstream; (B) The impoundment authorized by this permit is contingent upon the existence and maintenance of alternate source(s) of water. Should the Permittee fail to maintain adequate alternate source(s), this permit shall expire and become null and void without further Commission action; and (C) The alternate sources shall have the capacity to release at least 286.3 acre-feet of water per year into the impoundment."

4. In addition to conditions regarding alternative water sources, each of the proposed reservoirs should be outfitted to allow the passage of all state water.

5. The source of alternative water after industrial use has concluded should be presently identified if, as proposed, this permit is to extend beyond the term of the industrial use. NRG also notes the absence of information on actual beneficial use for domestic and livestock purposes after industrial use ceases, or on the effect of conservation practices related to those uses.

6. NRG has questions regarding the hydrologic analysis of this application in light of analyses considered in other recent permit applications for the Brazos River Basin. One example is the application of Dean Mikeska to divert 700 acre-feet of water at 2.23 cfs for irrigation purposes. In that case, The Executive Director recommended denial based on insufficient unappropriated water. NRG requests additional information regarding how water is found to be available for the granting of this application.

7. In an application such as this one that involves multiple points of diversion and storage, an accounting plan should be required. NRG asks that an accounting plan be prepared and circulated to the protesting parties for review and comment in advance of a revised draft permit being proposed.

8. NRG additionally requests that an enforceable permit condition be included to protect NRG's diversion pursuant to CA 12-5320. Such a permit condition would prohibit upstream diversions unless flow measured at the Richmond Gage exceeds a specified minimum amount.

9. NRG objects generally to overappropriation of the Brazos River Basin, particularly in the absence of watermaster administration or other meaningful plan for enforcement of water rights by the agency. If it is the case that the impact of granting this application is viewed as de minimus (a view with which NRG would not agree), NRG points out that any reduction in flow creates a damage in dry times and that the cumulative impact of otherwise de minimus

Ms. Craig Mikes
April 23, 2007
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impoundments and diversions could be significant on the lower Brazos River even in times of relatively normal flow.

Thank you in advance for your consideration of NRG's comments. The company must also reserve the right to raise new issues as more information about the application becomes known. Please let us know if you have any questions regarding NRG's comments, and if the application is withdrawn or a new draft permit is proposed.

Very truly yours,

A handwritten signature in cursive script that reads "B. C. Carmine".

Ben Carmine,
Director - Environmental Operations
NRG Texas LP