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DATE: 10/21/2013  
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REGARDING: ORDER NO. 21 - CERTIFY QUESTIONS TO THE COMMISSION  
DOCKET NUMBER: 582-10-4184

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**SOAH DOCKET NO. 582-10-4184  
TCEQ DOCKET NO. 2005-1490-WR**

<b>CONCERNING THE APPLICATION</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>BY THE BRAZOS RIVER</b>	<b>§</b>	
<b>AUTHORITY FOR WATER USE</b>	<b>§</b>	<b>OF</b>
<b>PERMIT NO. 5851 AND RELATED</b>	<b>§</b>	
<b>FILINGS</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

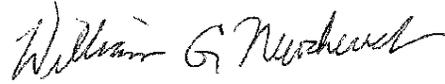
**ORDER NO. 21  
CERTIFY QUESTIONS TO THE COMMISSION**

On the motion of the Brazos River Authority (BRA) and pursuant to 30 Texas Administrative Code § 80.131(b), the State Office of Administrative Hearings (SOAH) Administrative Law Judges (ALJs) are certifying the following questions to the Texas Commission on Environmental Quality (Commission) for answers:

1. Commission interpretation of the deadlines established by the Environmental Flows Advisory Committee and Texas Water Code § 11.147(e-3) is needed: Are the timing requirements of these provisions mandatory?
2. Does Texas Water Code § 11.147(e-3) require that newly adopted environmental flow standards be applied immediately, or may their implementation be addressed under a §11.147(e-1) “reopener” provision?
3. Assuming that timing requirements are directory or that application of new environmental flow standards may be addressed through a “reopener” provision, which environmental flow standard should be applied to BRA’s pending application?
4. As a matter of policy, should the Commission consider establishing a “transition rule” for all applications that have been processed through technical review or referred to SOAH for contested case hearing, by which preexisting environmental flow standards might be applied to pending applications, with SB 3 standards subsequently implemented through Texas Water Code § 11.147(c-1)’s “reopener” provision?

On the motion of several parties, the ALJs have abated the case schedule while the Commission considers the certified questions.

**SIGNED October 21, 2013.**



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**WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**



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**HUNTER BURKHALTER  
ADMINISTRATIVE LAW JUDGE  
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**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** BRAZOS RIVER AUTHORITY  
**SOAH DOCKET NUMBER:** 582-10-4184  
**REFERRING AGENCY CASE:** 2005-1490-WR

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**ADMINISTRATIVE LAW JUDGE  
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