

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

**CONCERNING THE APPLICATION § BEFORE THE TEXAS COMMISSION
BY THE BRAZOS RIVER §
AUTHORITY FOR WATER USE § ON
PERMIT NO. 5851 AND RELATED §
FILINGS § ENVIRONMENTAL QUALITY**

**BRIEF BY THE CITY OF COLLEGE STATION AND THE CITY OF BRYAN
ON THE PROPOSAL FOR DECISION ON REMAND**

TO THE HONORABLE COMMISSIONERS:

The City of College Station and the City of Bryan (the “*Cities*”) are each a party to this hearing.¹ Accordingly, the Cities respectfully submit this brief pursuant to TCEQ Rule 80.257² to address certain ambiguities in the recommendation made by the Administrative Law Judges (the “*ALJs*”) regarding groundwater-based treated effluent diversion and reuse rights in the Brazos River Basin, and to seek clarification from the Texas Commission on Environmental Quality regarding those ambiguities as they exist in the ALJs’ proposed Water Use Permit No. 5851 (the “*Draft Permit*”).³ In support of their position on this matter, the Cities respectfully show the following:

¹ Order No. 18 at 1.

² 30 Tex. Admin. Code § 80.257(a); *see also* Order No. 12 (recognizing the propriety of allowing the Cities full participation in this hearing). The Commission’s General Counsel granted a 30 day extension to the 20 day deadline, such that this brief is due to be filed with the Commission August 20, 2015.

³ The Cities and the Brazos River Authority entered into Settlement Agreements in this case in January 2010. The terms of the Settlement Agreements authorize the Cities to participate in this contested case hearing if a draft permit recommended by the Executive Director would authorize BRA to appropriate, divert, or use return flows that are subject to a bed and banks authorization issued to the Cities under Section 11.042(b) of the Texas Water Code. The ALJs recommended that the Draft Permit as proposed by BRA as BRA Exh. 132B, which differs from the Executive Director’s recommended draft permit, be adopted by the Commission with the ALJs’ suggested modifications. However, Special Conditions relative to use of return flows in the Draft Permit recommended by the ALJs are identical to the same conditions recommended by the Executive Director.

I.
BACKGROUND

A. The Cities' Bed and Banks Authorizations

The City of College Station owns Water Use Permit No. 5913, as amended by Permit No. 5913A. The City of Bryan owns Water Use Permit No. 5912. Water Use Permit No. 5913, as amended, and Water Use Permit No. 5912 (the “**Cities' Bed and Banks Authorizations**”), authorize the City of College Station and the City of Bryan, respectively, to each use the bed and banks of various watercourses in the Brazos River Basin to transport and divert their groundwater-based treated wastewater effluent discharges at specified diversion points on the Brazos River downstream of the Cities' respective corporate limits, extraterritorial jurisdiction, or contiguous water certificate of convenience and necessity boundaries. The Cities' Bed and Banks Authorizations were issued by the TCEQ pursuant to Section 11.042(b) of the Texas Water Code during the pendency of the application by the Brazos River Authority for Water Use Permit No. 5851 (the “**Application**”). A true and correct copy of the Cities' Bed and Banks Authorizations are attached for reference as Attachment 1.

B. The Application Amendment

In January 2010, the Cities and the Brazos River Authority (“**BRA**”) entered into settlement agreements in this case, where BRA agreed to clarify that the Application was not a request to divert or use the return flows that are the subject the Cities' Bed and Banks Authorizations. On July 14, 2010, BRA filed what it referred to as a “Supplement to Complete Application” that included correspondence from BRA to the TCEQ dated

December 22, 2009 amending the Application. The Application amendment (the “**Amendment**”) provides the following:

[BRA] is not applying to appropriate or divert *any* return flows that are subject to a bed and banks authorization granted now or hereafter by TCEQ pursuant to Texas Water Code § 11.042(b).⁴

C. The BRA Stipulation

In addition, BRA stipulated on record during a May 3, 2011 prehearing conference in this matter that:

BRA does not seek to appropriate, divert, or use the [Cities’] return flows.⁵

BRA went on to stipulate that, to the extent a BRA witness testified that BRA could use the Cities’ groundwater based-return flows under the Draft Permit until it was needed:

... once it was permitted in a bed and banks permit, it was needed.⁶

D. The Water Management Plan Limitations

Furthermore, BRA’s Water Management Plan (“**WMP**”) developed in support of the Application, as it reads today, purports to restrict BRA diversions under the Draft Permit to only those return flows “that are not authorized for use by the discharger or some other party.”⁷ BRA’s Technical Report in Support of the WMP (the “**Technical Report**”) goes on to explain that “[r]eturn flows for currently permitted indirect reuse

⁴ *In re the Application by the Brazos River Authority for Water Use Permit No. 5851 and Related Filings*; SOAH Docket No. 582-10-4184; TCEQ Docket No. 2005-1490-WR; Before the State Office of Administrative Hearings; Brazos River Authority’s Supplement to Complete Application, July 14, 2010, Attachment at 1 (emphasis added); BRA Exh. 7-M.

⁵ *In re the Application by the Brazos River Authority for Water Use Permit No. 5851 and Related Filings*; SOAH Docket No. 582-10-4184; TCEQ Docket No. 2005-1490-WR; Before the State Office of Administrative Hearings; Prehearing Conference, May 3, 2011, Transcript at 83-84.

⁶ *Id.* at 84.

⁷ BRA Exh. 113, Water Management Plan at 6 (emphasis added).

projects were also not included as part of [the calculated flows available for diversion under the Draft Permit].”⁸

II. THE DRAFT PERMIT

The Cities’ Bed and Banks Authorizations do not restrict the Cities to diverting within their respective corporate limits, extraterritorial jurisdiction, or contiguous water certificate of convenience and necessity boundaries. The BRA stipulation on record reflects that BRA does not seek the legal ability to divert or use the groundwater-based return flows that are the subject of the Cities’ Bed and Banks Authorizations—as those authorizations allow for the diversion and use of the Cities’ groundwater-based treated effluent discharges outside of the their respective corporate limits, extraterritorial jurisdiction, or contiguous water certificate of convenience and necessity boundaries. And the categorical language of the Amendment reflects that the Application is not a request to appropriate or divert *any* return flows that are subject to a bed and banks authorization granted now or hereafter by TCEQ pursuant to Texas Water Code § 11.042(b)—without reference to geographic limitations that are not otherwise articulated in the bed and banks authorizations themselves.

A. Special Conditions Relative to Use of Return Flows

1. Special Condition 5.A.1

The Draft Permit does not clearly reflect these important limitations to BRA’s ability to divert return flows. Special Condition 5.A.1 would authorize BRA to divert and use return flows that are discharged into the Brazos River Basin pursuant to a TPDES

⁸ BRA Exh. 113, Technical Report at 4-41 (emphasis added).

Permit that exists as of the date the Draft Permit is issued, “and as authorized by future modifications of... the WMP.” Special Condition 5.A.1 by itself is categorical. If a limit on BRA’s ability to divert and use existing return flows is to be found in the Draft Permit, that limit will have to come from another special condition.

2. Special Condition 5.A.3

Special Condition 5.A.3 might be seen as one such limitation. It would allow BRA to divert, store, and use “potentially interruptible return flows.” But under terms of the provision, BRA’s right under the Draft Permit to divert return flows seems otherwise unlimited *unless* the discharging entity is:

(1) actually indirectly reusing the return flows, and

(2) actually placing the diverted return flows to use “within the discharging entity’s corporate limits, extraterritorial jurisdiction, or contiguous water certificate of convenience and necessity boundary.”

Read another way, Special Condition 5.A.3 seems to say that if the discharging entity is not actually reusing its return flows indirectly, BRA maintains a right to divert, store and use those flows—irrespective of whether the return flows are the subject of a pre-existing bed and banks authorization. But BRA acknowledged that to the extent the Draft Permit allowed BRA to divert groundwater-based return flows until they were needed, “once it was *permitted* in a bed and banks permit, it was needed.”⁹ The BRA stipulation makes permit *issuance*—not permit exercise—the triggering event. Permit issuance—not permit exercise—is also the triggering event in the Application Amendment, the WMP, and the Technical Report. This component of Special Condition

⁹ Tr. at 83-84.

5.A.3 creates unneeded confusion; it does not appear to be consistent with key components of the evidentiary record. It also appears to directly implicate the Cities' rights under the Cities' Bed and Banks Authorizations.

Special Condition 5.A.3 is problematic for other reasons, as well, however. It would seem to give BRA a right to divert, store, and use another discharging entity's return flows unless the discharging entity is actually using the return flows "within the discharging entity's corporate limits, extraterritorial jurisdiction, or contiguous water certificate of convenience and necessity boundary." Again, this condition is written without respect to any pre-existing bed and banks authorizations that provide otherwise. The Cities' Bed and Banks Authorizations, as examples, do not restrict reuse to the Cities' corporate limits, extraterritorial jurisdiction, or contiguous water certificate of convenience and necessity boundary. The geographic use restriction in Special Condition 5.A.3 is also not consistent with the BRA stipulation, the Application Amendment, the WMP, or the Technical Report. This component of the special condition also creates unnecessary confusion and it directly implicates the Cities' rights under the Cities' Bed and Banks Authorizations.

3. Special Condition 5.A.4

Special Condition 5.A.4 adds to the confusion created by Special Condition 5.A.3. Special Condition 5.A.3 purports to *terminate* BRA's right to divert, store and use return flows upon the existence of conditions that draw no reference to the issuance of bed and banks authorizations. Special Condition 5.A.4, however, says BRA's right to divert, store and use return flows is *subject to interruption* upon the issuance of a bed and banks authorization. It is unclear how Special Condition 5.A.4 is modified by Special

Condition 5.A.3, or *vice versa*. But the reference to BRA's *termination* of rights to return flows if they are actually used, compared to making BRA's rights to return flows only *subject to interruption* upon the issuance of a bed and banks authorization, suggests that the Draft Permit would allow BRA to divert groundwater-based return flows under certain circumstances even where the return flows are the subject of an another entity's bed and banks authorization.

III. THE WATER MANAGEMENT PLAN

As recognized in Special Condition 5.A.1, the proposed authorization to divert and use return flows is subject to modifications of either the Draft Permit or the WMP—not necessarily both.¹⁰ The Commission's rules make certain water rights amendments subject to public notice requirements, as provided for in the Texas Water Code.¹¹ However, there is no such rule requirement for water management plans or other operational plans that are developed in support of water rights applications, like the WMP and the Technical Report. The Draft Permit incorporates the WMP into the permit terms, but it does not incorporate the Technical Report or any of its appendices.¹² The Draft Permit provides that major amendments to the WMP shall be subject to contested case procedures.¹³ However, the WMP states that modifications to the water availability models to address changed conditions could be considered minor amendments.¹⁴

¹⁰ Proposal for Decision, Attachment BRA Exhibit 132B at 6.

¹¹ 30 Tex. Admin. Code § 295.158(b).

¹² Proposal for Decision, Attachment BRA Exhibit 132B at 9.

¹³ *Id.* at 9.

¹⁴ BRA Exh. 113, Water Management Plan at 2.

Significantly, the WMP includes modifications to the amount of available return flows in a category of changes that could be considered minor amendments not requiring notice and hearing.¹⁵ Even though the WMP, in its current form, omits the Cities' return flows from what BRA would be authorized to divert if the Draft Permit is issued, the Draft Permit as currently framed leaves open the possibility that the Executive Director could, at some future date, administratively approve a modification to the Technical Report removing such omission without public notice or an opportunity for hearing.

The most effective way to resolve the ambiguities created by the current wording of Special Conditions 5.A.1, 5.A.3, and 5.A.4, is to remove the ambiguities from the Draft Permit terms—not to rely on the flexible terms of the WMP and/or its supporting Technical Report and appendices. The Draft Permit recognizes that BRA's use of return flows is limited "as authorized by future modifications of this permit *or the WMP*."¹⁶ This provision is appropriate only if the remaining conditions of the Draft Permit make clear that BRA has no right to divert groundwater-based return flows that are subject to existing bed and banks authorizations, like the Cities' Bed and Banks Authorizations.

IV.

PROPOSED ALTERNATIVE SPECIAL CONDITIONS

The Cities propose that Special Condition 5.A.3 be reworded as follows:

- 3) Permittee's storage, diversion and use of that portion of the appropriation based on return flows is dependent upon potentially interruptible return flows. Permittee's storage, diversion and use of that portion of the appropriation based on return flows will be interrupted by direct reuse [~~or will be terminated by indirect reuse~~] within the discharging entity's corporate limits, extraterritorial

¹⁵ *Id.* at 2.

¹⁶ Proposal for Decision, Attachment BRA Exhibit 132B at 6 (emphasis added).

jurisdiction, or contiguous water certificate of convenience and necessity boundary, ~~[provided the discharging entity has applied for and been granted authorization to reuse the return flows]~~ or will be terminated upon the issuance of a bed and banks authorization issued by the Commission to the discharging entity pursuant to Texas Water Code § 11.042.

The Cities propose that Special Condition 5.A.4 be reworded as follows:

- 4) Permittee's storage, diversion and use of groundwater based return flows is subject to interruption by direct reuse ~~[or indirect reuse]~~ and is terminated upon issuance of a bed and banks authorization pursuant to Texas Water Code § 11.042(b) by the Commission to the discharging entity.

These modest changes will resolve the ambiguities that current exist in the Draft Permit regarding BRA's right to divert and use return flows. The changes adequately protect the Cities' existing rights under the Cities' Bed and Banks Authorizations from potential future confusion or conflict with BRA's otherwise lawful exercise of its rights under the remaining terms of the Draft Permit. The suggested changes should also aid the Brazos River Basin Watermaster and the Commission by more clearly guiding management of water rights in the Brazos River Basin generally.

V.

CONCLUSION

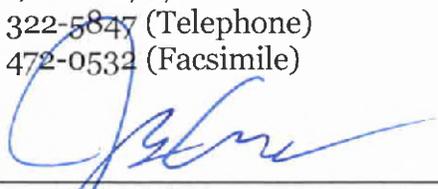
The Cities do not protest or oppose issuance of the Draft Permit so long as it protects the Cities' Bed and Banks Authorizations. The Cities respectfully request that the Commission adopt the proposed modifications to Special Condition 5.A.3 and Special Condition 5.A.4 as proposed herein, and include the revisions in any final permit

that may be issued to BRA pursuant to the Application. The Cities do not oppose issuance of the Draft Permit with the modifications requested herein.

Respectfully submitted,

**LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5847 (Telephone)
(512) 472-0532 (Facsimile)

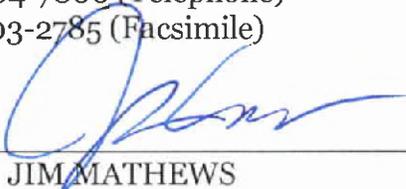
By: 

JASON HILL
State Bar No. 24046075
JAMES T. ALDREDGE
State Bar No. 24058514

**ATTORNEYS FOR
THE CITY OF COLLEGE STATION**

MATHEWS AND FREELAND

8140 N Mopac, Bldg.2, Suite 260
Austin, Texas 78759
512-404-7800 (Telephone)
512-703-2785 (Facsimile)

By: 

JIM MATHEWS
State Bar No. 13188700

*for
with permission*

**ATTORNEYS FOR
THE CITY OF BRYAN**

CERTIFICATE OF SERVICE

I certify that an original and seven true and correct copies of the City of College Station's Brief on the Proposal for Decision on Remand was filed with the Office of the Chief Clerk and that the same was served on the following by electronic mail or certified mail on this 20th day of August, 2015.

Doug G. Caroom
Susan Maxwell
Emily Rogers
Bickerstaff Heath Delgado Acosta, LLP
3711 S. Mopac Expressway, Bldg. One,
Ste. 300
Austin, Texas 78746
dcaroom@bickerstaff.com
smaxwell@bickerstaff.com
erogers@bickerstaff.com

Robin Smith
Ruth Takeda
Texas Commission on Environmental
Quality
P.O. Box 13087, MC 173
Austin, Texas 78711
robin.smith@tceq.texas.gov
ruth.takeda@tceq.texas.gov

Eli Martinez
Texas Commission on Environmental
Quality
P.O. Box 13087, MC-103
Austin, Texas 78711
eli.martinez@tceq.texas.gov

Molly Cagle
Paulina Williams
Baker Botts, L.L.P.
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701
molly.cagle@bakerbotts.com
paulina.williams@bakerbotts.com

Mike Bingham
1251 C.R. 184
Comanche, Texas 76422

Fred B. Werkenthin, Jr.
Booth, Ahrens & Werkenthin, P.C.
206 East 9th Street, Suite 1501
Austin, Texas 78701
fbw@baw.com

Richard Lowerre
Marisa Perales
Lowerre, Frederick, Perales, Allmon &
Rockwell
707 Rio Grande, Suite 200
Austin, Texas 78701
rl@lf-lawfirm.com
marisa@lf-lawfirm.com

Ken Ramirez
Shana Horton
Law Offices of Ken Ramirez, PLLC
Barton Oaks Plaza One
901 Mopac Expressway South, Ste. 300
Austin, Texas 78746
ken@kenramirezlaw.com
shana@kenramirezlaw.com

Jeff Civins
Haynes & Boone, LLP
600 Congress Avenue, Suite 1300
Austin, Texas 78701
jeff.civins@haynesboone.com

John Turner
Haynes & Boone, LLP
2323 Victory Ave.
Dallas, Texas 75202
john.turner@haynesboone.com

Joe Freeland
Mathews & Freeland, L.L.P.
8140 N. Mopac Expressway
Westpark II, Suite 260
jfreeland@mandf.com

Gwendolyn Hill Webb
Stephen P. Webb
Webb & Webb
P.O. Box 1329
Austin, Texas 78767
g.hill.webb@webbwebblaw.com
s.p.webb@webbwebblaw.com

Monica Jacobs
Diana Nichols
Kelly, Hart & Hallman, P.C.
303 Colorado, Suite 2000
Austin, Texas 78701-2944
monica.jacobs@kellyhart.com
Diana.nichols@kellyhart.com

Colette Barron Bradsby
Texas Parks and Wildlife Department
Legal Division
4200 Smith School Road
Austin, Texas 78744
colette.barron@tpwd.state.tx.us

Jim Mathews
Mathews & Freeland, L.L.P.
P.O. Box 1568
Austin, Texas 78767-1568
jmathews@mandf.com

Myron Hess
Annie E. Kellough
National Wildlife Federation
44 East Ave., Suite 200
hess@nwf.org
kellougha@nwf.org

Ron Freeman
Freeman and Corbett, LLP
8500 Bluffstone Cove, Suite. B.104
rffreeman@freemanandcorbett.com

Steve Sheets
Sheets & Crossfield, P.C.
309 E. Main Street
Round Rock, Texas 78664
slsheets@sheets-crossfield.com

Ed McCarthy
Jackson, Sjoberg, McCarthy & Townsend,
LLP
711 W. 7th Street
Austin, Texas 78701
emc@jacksonsjoberg.com

The Honorable Charles Perry
Texas State Senate
Capitol Station P.O. Box 12068
Austin, Texas 78711
scott.hutchison@senate.state.tx.us

John J. Vay
Enoch Kever PLLC
One American Center
600 Congress Avenue, Suite 2800
Austin, Texas 78701
jvay@enochkever.com



JAMES T. ALDREDGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



WATER USE PERMIT

PERMIT NO. 5913

TYPE §11.042

Permittee: City of College Station

Address: P.O. Box 9960
College Station, TX 77842-0960

Filed: February 12, 2007

Granted:

FEB 05 2010

Purpose: Municipal, Industrial,
and Agricultural

County: Brazos, Grimes,
Washington, Waller, Austin,
Fort Bend, and Brazoria

Watercourse: Carters Creek and Lick Creek,
Tributaries of the Navasota River,
Tributary of the Brazos River

Watershed: Brazos River Basin

WHEREAS, the applicant seeks authorization to use the bed and banks of several watercourses to transport the current and future groundwater-based return flows discharged from two discharge points downstream and to subsequently divert and reuse up to 12,881 acre-feet (less losses) of those return flows per year for municipal, industrial, and agricultural purposes in whole or in part of Brazos, Grimes, Washington, Waller, Austin, Fort Bend, and Brazoria Counties within the Brazos River Basin; and

WHEREAS, Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10024006 (Carters Creek Wastewater Treatment Plant) currently authorizes the discharge of 10,641 acre-feet of water per year (9.5 mgd), and TPDES Permit No. 10024003 (Lick Creek Wastewater Treatment Plant) currently authorizes the discharge of 2,240 acre-feet of water per year (2.0 mgd) for a total annual authorized discharge equaling 12,881 acre-feet; and

WHEREAS, the proposed two discharge points in Brazos County and the requested watercourses to be used for the bed and banks authorization are as follows:

Carters Creek Discharge Point – discharges into Carters Creek, for subsequent conveyance down the Navasota River, tributary of the Brazos River, Brazos River Basin, approximately 6.9 miles southeast of the Brazos County courthouse being at Latitude 30.6151°N, Longitude 96.2766°W and bearing S85.9894°W, 6,568.2 feet from the east corner of the Morgan Rector League, Abstract 46. The applicant indicates the outfall is 295 river miles upstream of the diversion point, and

Lick Creek Discharge Point – discharges into Lick Creek for subsequent conveyance down the Navasota River, tributary of the Brazos River, Brazos River Basin, approximately 12.6 miles southeast of the Brazos County courthouse being at Latitude 30.5589°N, Longitude 96.2062°W and bearing S25.1311°W, 6,585.1 feet from the northeast corner of the S.W. Robertson League, Abstract 202. The applicant indicates the outfall is 286 river miles upstream of the diversion point; and

WHEREAS, the applicant seeks to divert at a maximum diversion rate of 17.29 cfs (7,758 gpm) from the Brazos River, Brazos River Basin at a point approximately 4.7 miles from the Brazoria County courthouse being at Latitude 28.9467°N, Longitude 95.3801°W, also bearing S23.4439°E, 3,760 feet from the northwest corner of the John G. McNeel League, Abstract 335, Brazoria County; and

WHEREAS, the loss rate and travel time will vary, but the applicant indicates an approximate carriage loss of 9.4% and an average estimated travel time from the discharge points to the proposed diversion point of 8.24 days. Deliveries of water will be made to the diversion point throughout the year on a daily basis; and

WHEREAS, the Wellborn Special Utility District (WSUD) filed a protest and request for hearing on the application; the Texas Commission on Environmental Quality granted the request and referred the application to the State Office of Administrative Hearings for a contested case hearing; and WSUD and the Permittee subsequently entered into a Settlement Agreement in January, 2010, pursuant to which WSUD withdrew its protest and request for hearing and as part of the settlement the Permittee agreed to the following terms: Permittee will not seek to hold WSUD liable for its diversions of water pursuant to the terms of its March 15, 2004 System Water Availability Agreement (the Agreement) between Brazos River Authority (BRA) and WSUD, as such Agreement may be amended or renewed (including amendments to increase the volume of water), if WSUD provides BRA notice of planned diversions as required by Section 11 of such Agreement, as amended or renewed, and so long as the terms of any amendment or renewal of the Agreement are not inconsistent with BRA's water rights and the types of terms BRA includes in similar raw water contracts; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be included in the permit; and

WHEREAS, the applicant has provided and the Executive Director has approved, the *City of College Station Groundwater Based Effluent Water Balance Accounting Plan Water Use Permit Application 5913*; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this Water Use Permit No. 5913 is issued to The City of College Station, subject to the following terms and conditions:

1. USE

Permittee is authorized to use the bed and banks of Carters Creek, Lick Creek, the Navasota River, and the Brazos River in the Brazos River Basin to convey current and future groundwater-based return flows for subsequent diversion and use of up to 12,881 acre-feet

(less losses) of those return flows per year for municipal, industrial, and agricultural purposes in whole or in part of Brazos, Grimes, Washington, Waller, Austin, Fort Bend, and Brazoria Counties within the Brazos River Basin.

2. DISCHARGE

The TPDES permits authorize the Permittee to discharge groundwater-based return flows at each of the following locations:

- A. Carters Creek Discharge Point – discharges up to 10,641 acre-feet of water per year (9.5 mgd) pursuant to TPDES Permit No. 10024006 into Carters Creek for subsequent conveyance down the Navasota River, thence to the Brazos River, Brazos River Basin, approximately 6.9 miles southeast of the Brazos County courthouse being at Latitude 30.6151°N, Longitude 96.2766°W and bearing S85.9894°W, 6,568.2 feet from the east corner of the Morgan Rector League, Abstract 46. The applicant indicates the outfall is 295 river miles upstream of the diversion point.
- B. Lick Creek Discharge Point – discharges up to 2,240 acre-feet of water per year (2.0 mgd) pursuant to TPDES Permit No. 10024003 into Lick Creek for subsequent conveyance down the Navasota River, thence to the Brazos River, Brazos River Basin, approximately 12.6 miles southeast of the Brazos County courthouse being at Latitude 30.5589°N, Longitude 96.2062°W and bearing S25.1311°W, 6,585.1 feet from the northeast corner of the S.W. Robertson League, Abstract 202. The applicant indicates the outfall is 286 river miles upstream of the diversion point.

3. DIVERSION

Permittee is authorized to divert water at a point a maximum diversion rate of 17.29 cfs (7,758 gpm) from the Brazos River, Brazos River Basin at a point approximately 4.7 miles from the Brazoria County courthouse being at Latitude 28.9467°N, Longitude 95.3801°W, also bearing S23.4439°E, 3,760 feet from the Northwest corner of the John G. McNeel League, Abstract 335, Brazoria County.

4. TIME PRIORITY

The groundwater-based return flows authorized to be conveyed via the bed and banks of a State watercourse in this permit do not have a priority date and are not subject to priority calls from senior water rights.

5. SPECIAL CONDITIONS

- A. Permittee shall install a screen with a mesh size of 0.25 inches or smaller on the diversion structure with a maximum through screen velocity of 0.5 feet per second in order to minimize entrainment and impingement of aquatic organisms.
- B. A change in the location of the diversion point shall require an amendment to the permit and additional special conditions could be required.

- C. The City of College Station shall only divert and use groundwater-based return flows pursuant to Paragraph 1. USE and Paragraph 3. DIVERSION in accordance with the most recently approved *City of College Station Groundwater Based Effluent Water Balance Accounting Plan Water Use Permit Application 5913*. The City shall maintain the plan in electronic format and make the data available to the Executive Director and the public upon request. Any modifications to *City of College Station Groundwater Based Effluent Water Balance Accounting Plan Water Use Permit Application 5913* shall be approved by the Executive Director. Any modification to the accounting plan that changes the permit terms must be in the form of an amendment to the permit. Should the City fail to maintain the accounting plan or notify the Executive Director of any modifications to the plan, the City shall immediately cease diversion pursuant to Paragraph 3. DIVERSION, and either apply to amend the permit, or voluntarily forfeit the permit. If the City fails to amend the accounting plan or forfeit the permit, the TCEQ may begin proceedings to cancel the permit. The Commission shall be notified immediately by the City upon modification of the accounting plan and provided with copies of the appropriate documents effectuating such changes.
- D. Permittee shall only divert the actual daily amount groundwater-based return flows discharged from the two treatment plants less the estimated losses after accounting for travel times between the discharge and diversion points.
- E. Prior to diversion of groundwater-based return flows in excess of the amount currently authorized by TPDES Permit Nos. 10024006 and 10024003, described in Paragraph 2. DISCHARGE, Permittee shall apply for and be granted the right to reuse those return flows. Permittee shall amend the accounting plan to include future discharges of groundwater-based return flows prior to diverting said return flows.
- F. The diversions authorized by this permit are dependant upon potentially interruptible return flows or discharges and are conditioned on the availability of those discharges. The right to divert the discharged return flows is subject to revocation if discharges become permanently unavailable for diversion and may be subject to reduction if the return flows are not available in quantities and qualities sufficient to fully satisfy the permit. Should the discharges become permanently unavailable for diversion, Permittee shall immediately cease diversion under this permit and either apply to amend the permit, or voluntarily forfeit the permit. If Permittee does not amend or forfeit the permit, the TCEQ may begin proceedings to cancel this permit. Permittee shall only divert its return flows that are actually discharged and if there is a permanent reduction in available return flows, Permittee shall immediately seek an amendment to the permit to reflect the reductions.

- G. Permittee is not authorized to divert water released by the Brazos River Authority out of storage in reservoirs upstream of Permittee's diversion point for use by the Authority or its customers downstream of Permittee's diversion point. Permittee may demonstrate compliance with this special condition by establishing that it has diverted its groundwater based return flows in accordance with its approved accounting plan.

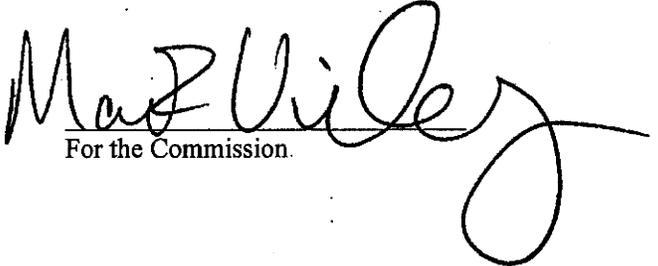
This permit is issued subject to all superior water rights in the Brazos River Basin.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this permit are denied.

This permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

Date issued: **FEB 05 2010**


For the Commission.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO CERTIFICATE OF ADJUDICATION

PERMIT NO. 5913A	TYPE §§	11.042 and 11.122
Permittee: City of College Station	Address:	P.O. Box 9960 College Station, Texas 77842-7960
Filed: July 19, 2011	Granted:	August 11, 2011
Purpose: Municipal, Industrial and Agricultural	County:	Brazos
Watercourse: Carters Creek	Watershed:	Brazos River Basin

WHEREAS, Water Use Permit No. 5913 authorizes the Permittee to use the bed and banks of Carters Creek, Lick Creek, the Navasota River, and the Brazos River in the Brazos River Basin to convey current and future groundwater-based return flows for subsequent diversion and use of up to 12,881 acre-feet (less losses) of those return flows per year for municipal, industrial, and agricultural purposes in whole or in part of Brazos, Grimes, Washington, Waller, Austin, Fort Bend and Brazoria Counties within the Brazos River Basin. The Permittee is authorized to divert the water at a maximum diversion rate of 17.29 cfs (7,758 gpm) from the Brazos River, Brazos River Basin in Brazoria County; and

WHEREAS, the groundwater-based return flows authorized to be conveyed via the bed and banks of a State watercourse in this permit do not have a priority date and are not subject to priority calls from senior water rights; and

WHEREAS, Special Condition 5.B. of Water Use Permit No. 5913 states a change in the location of the diversion point shall require an amendment to the permit and additional special conditions could be required; and

WHEREAS, Water Use Permit No. 5329 owned by Pebble Creek Country Club (PCCC) authorizes PCCC to maintain an existing dam and reservoir on an unnamed tributary of Lick Creek and impound therein not to exceed 16 acre-feet of water. PCCC is further authorized to divert not to exceed 325 acre-feet of water per year from Carters Creek for storage in the reservoir and subsequent diversion for agricultural purposes to irrigate 130 acres of land within five tracts in Brazos County, Texas; and

WHEREAS, pursuant to a *Groundwater based Return Flow Supply Contract* between the City of College Station (City) and PCCC, the City seeks to amend Water Use Permit No. 5913 to add a diversion point on Carters Creek, within the segment authorized for conveyance of the City's groundwater based return flows, being the same point authorized by Water Use Permit No. 5329; and

WHEREAS, the proposed downstream diversion point on Carters Creek is located at Latitude 30.589036°N, Longitude 96.225367°W, also bearing S50°W, 600 feet from the east corner of the Thomas Caruthers League Original Survey No. 46, Abstract No. 9 in Brazos County, Texas; and

WHEREAS, PCCC indicated that it will not divert state water under the authority of Water Use Permit No. 5329/5329A when it is diverting groundwater-based return flows under the authority of this amendment; and

WHEREAS, the Texas Commission on Environmental Quality (TCEQ or Commission) finds that jurisdiction over the application is established; and

WHEREAS, the City submitted the *City of College Station Groundwater Based Effluent Water Balance Accounting Plan* on July 15, 2011; and

WHEREAS, review of the *City of College Station Groundwater Based Effluent Water Balance Accounting Plan* dated July 15, 2011, has been conducted and said plan was approved by the Executive Director; and

WHEREAS, no requests for a contested case hearing were received for this application; and

WHEREAS, this amendment has no potential to harm existing water rights if diversion and use occur in accordance with the City's approved accounting plan; and

WHEREAS, the Executive Director recommends special conditions be included in the amendment; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the TCEQ in issuing this amendment; and

NOW, THEREFORE, this amendment to Water Use Permit No. 5913, designated Water Use Permit No. 5913A, is issued to the City of College Station subject to the following terms and conditions:

1. DIVERSION AND USE

Pursuant to a *Groundwater Based Return Flow Supply Contract*, Permittee is authorized to divert not to exceed 325 acre-feet per year of the currently authorized groundwater-based return flows per year from a diversion point on Carters Creek, tributary of the Navasota River, tributary of the Brazos River, Brazos River Basin, located at Latitude 30.589036°N, Longitude 96.225367°W, also bearing S50°W, 600 feet from the east corner of the Thomas Caruthers League Original Survey No. 46, Abstract No. 9 in Brazos County, to be used in accordance with the terms and conditions of Water Use Permit No. 5329.

2. SPECIAL CONDITIONS

A. Diversion and use of return flows under this amendment, pursuant to Paragraph 1. DIVERSION AND USE, shall only occur in accordance with the most recently approved *City of College Station Groundwater Based Effluent Water Balance Accounting Plan Water Use Permit Application 5913*. Permittee shall maintain the accounting plan in electronic format and make the data available to the Executive Director and the public upon request. Any modifications to the *City of College Station Groundwater Based Effluent Water Balance Accounting Plan Water Use*

Permit Application 5913 shall be approved by the Executive Director. Any modification of the plan that changes the permit terms in any way must be in the form of an amendment to the permit. Should Permittee fail to maintain the accounting plan or notify the Executive Director of any modifications to the plan, Permittee shall immediately cease diversion pursuant to Paragraph 1. DIVERSION AND USE, and either apply to amend the permit, or voluntarily forfeit this amendment. If Permittee fails to amend the accounting plan or forfeit this amendment, the Commission may begin proceedings to cancel the amendment. Permittee shall immediately notify the Executive Director if the accounting plan is modified and provide copies of the appropriate documents effectuating such changes.

- B. The authorizations described in Paragraph 1. DIVERSION AND USE are subject to the continued maintenance of the *Groundwater Based Return Flow Supply Contract* between Permittee and the owner of Permit 5329. Diversions are subject to the continued maintenance of the contract, as such contract may be extended or amended from time to time. Should the contract be amended in a manner that changes the amount of water, or the diversion rate, type or location of use of water by Permittee under the contract, Permittee shall submit an application to amend this permit to conform to the terms of the amended contract. Upon expiration of the contract, diversion of that contract water pursuant to Paragraph 1. DIVERSION AND USE shall cease and Permittee shall either apply to amend the permit with a new contract, or voluntarily forfeit the amendment. Permittee shall notify the Commission immediately upon amendment or expiration of the contract and provide the Commission with copies of appropriate documents effectuating such changes.

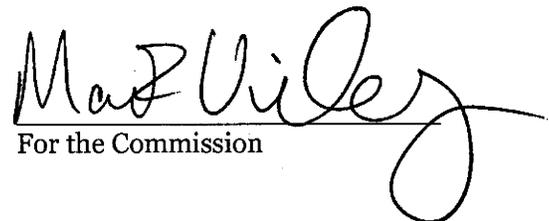
This permit is issued subject to all superior water rights in the Brazos River Basin.

This amendment is issued subject to all terms, conditions and provisions contained in Water Use Permit No. 5913 except as specifically amended herein.

Permittee agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the TCEQ and to the right of continuing supervision of State water resources exercised by the Commission.


For the Commission

Date issued: **August 11, 2011**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



WATER USE PERMIT

PERMIT NO. 5912

TYPE §11.042

Permittee: City of Bryan

Address: P.O. Box 1000
Bryan, TX 77805-1000

Filed: February 12, 2006

Granted: **FEB 05 2010**

Purpose: Municipal, Industrial,
and Agricultural

Counties: Brazos, Grimes, Washington,
Waller, Austin, Fort Bend, and
Brazoria

Watercourse: Unnamed Tributary of Burton Creek,
Burton Creek, Tributary of Carters
Creek, Tributary of the Navasota River,
Tributary of the Brazos River; Still
Creek, Tributary of Thompsons Creek,
Tributary of the Brazos River; and an
Unnamed Tributary of Turkey Creek,
Turkey Creek, Tributary of the Brazos River

Watershed: Brazos River Basin

WHEREAS, The applicant seeks authorization to use the bed and banks of several watercourses to transport the current and future groundwater-based return flows discharged from three discharge points downstream and to subsequently divert and reuse up to 14,282.1 acre-feet (less losses) of those return flows per year for municipal, industrial, and agricultural purposes in whole or in part of Brazos, Grimes, Washington, Waller, Austin, Fort Bend, and Brazoria Counties within the Brazos River Basin; and

WHEREAS, Texas Pollutant Discharge Elimination System (TPDES) Permit No. 10426001 (Burton Creek Wastewater Treatment Plant) currently authorizes the discharge of 8,961 acre-feet of water per year (8.0 mgd), TPDES Permit No. 10426002 (Still Creek Wastewater Treatment Plant) currently authorizes the discharge of 4,481 acre-feet of water per year (4.0 mgd), and TPDES Permit No. 10426003 (Turkey Creek Wastewater Treatment Plant) currently authorizes the discharge of 840.1 acre-feet of water per year (0.75 mgd) for a total annual authorized discharge equaling 14,282.1 acre-feet; and

WHEREAS, the proposed three discharge points in Brazos County and the requested watercourses to be used for the bed and banks authorization are as follows:

Burton Creek Discharge Point – discharges into an unnamed tributary of Burton Creek for subsequent conveyance down Carters Creek, tributary of the Navasota River, tributary of the Brazos River, Brazos River Basin, approximately 3.71 miles southeast of the Brazos County courthouse being at Latitude 30.6414°N, Longitude 96.3210°W and bearing N64.2861°E, 21,834.21 feet from the intersection of the southwest corner of the Zeno Phillips League, Abstract 45 and the northwest corner of the Joseph E. Scott League, Abstract 50. The applicant indicates the outfall is 297 river miles upstream of the diversion point, and

Still Creek Discharge Point – discharges into Still Creek for subsequent conveyance down Thompsons Creek, tributary of the Brazos River, Brazos River Basin, approximately 2.58 miles west-southwest of the Brazos County courthouse being at Latitude 30.6681°N, Longitude 96.4133°W and bearing N28.5547°W, 21,351.09 feet from the intersection of the southwest corner of the Zeno Phillips League, Abstract 45 and the northwest corner of the Joseph E. Scott League, Abstract 50. The applicant indicates the outfall is 300 river miles upstream of the diversion point, and

Turkey Creek Discharge Point - discharges into an unnamed tributary of Turkey Creek for subsequent conveyance down the Brazos River, Brazos River Basin, approximately 3.88 miles south-southwest of the Brazos County courthouse being at Latitude 30.6198°N, Longitude 96.3879°W and bearing N45.2833°W, 2,791.21 feet from the intersection of the southwest corner of the Zeno Phillips League, Abstract 45 and the northwest corner of the Joseph E. Scott League, Abstract 50. The applicant indicates the outfall is 295 river miles upstream of the diversion point; and

WHEREAS, the applicant seeks to divert at a maximum diversion rate of 17.95 cfs (8,057 gpm) from the Brazos River, Brazos River Basin at a point approximately 4.7 miles from the Brazoria County courthouse being at Latitude 28.9467°N, Longitude 95.3801°W, also bearing S23.4439°E, 3760 feet from the northwest corner of the John G. McNeel League, Abstract 335, Brazoria County; and

WHEREAS, the loss rate and travel time will vary, but the applicant indicates an approximate carriage loss of 9% and an average estimated travel time from the discharge points to the proposed diversion point of 8.24 days. Deliveries of water will be made to the diversion point throughout the year on a daily basis; and

WHEREAS, the Wellborn Special Utility District (WSUD) filed a protest and request for hearing on the application; the Texas Commission on Environmental Quality granted the request and referred the application to the State Office of Administrative Hearings for a contested case hearing; and WSUD and the Permittee subsequently entered into a Settlement Agreement in January, 2010, pursuant to which WSUD withdrew its protest and request for hearing and as part of the settlement the Permittee agreed to the following terms: Permittee will not seek to hold WSUD liable for its diversions of water pursuant to the terms of its March 15, 2004 System Water Availability Agreement (the Agreement) between Brazos River Authority (BRA) and WSUD, as such Agreement may be amended or renewed (including amendments to increase the volume of water), if WSUD provides BRA notice of planned diversions as required by Section 11 of such Agreement, as amended or renewed, and so long as the terms of any amendment or renewal of the Agreement are not inconsistent with BRA's water rights and the types of terms BRA includes in similar raw water contracts; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be included in the permit; and

WHEREAS, the applicant has provided and the Executive Director has approved, the *City of Bryan Groundwater Based Effluent Water Accounting Plan Water Use Permit Applicant No. 5912*; and

WHEREAS, The Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this Water Use Permit No. 5912 is issued to The City of Bryan, subject to the following terms and conditions:

1. USE

Permittee is authorized to use the bed and banks of an unnamed tributary of Burton Creek, Burton Creek, Carters Creek, the Navasota River, the Brazos River, Still Creek, Thompsons Creek, an unnamed tributary of Turkey Creek, and Turkey Creek in the Brazos River Basin to convey current and future groundwater-based return flows for subsequent diversion and use of up to 14,282.1 acre-feet (less losses) of those return flows per year for municipal, industrial, and agricultural purposes in whole or in part of Brazos, Grimes, Washington, Waller, Austin, Fort Bend, and Brazoria Counties within the Brazos River Basin.

2. DISCHARGE

The TPDES permits authorize the Permittee to discharge groundwater-based return flows at each of the following locations:

- A. Burton Creek Discharge Point – discharges up to 8,961 acre-feet of water per year (8.0 mgd) pursuant to TPDES Permit No. 10426001 into an unnamed tributary of Burton Creek for subsequent conveyance down Carters Creek, tributary of the Navasota River, tributary of the Brazos River, Brazos River Basin, approximately 3.71 miles southeast of the Brazos County courthouse being at Latitude 30.6414°N, Longitude 96.3210°W and bearing N64.2861°E, 21,834.21 feet from the intersection of the southwest corner of the Zeno Phillips League, Abstract 45 and the northwest corner of the Joseph E. Scott League, Abstract 50. The applicant indicates the outfall is 297 river miles upstream of the diversion point.

- B. Still Creek Discharge Point – discharges up to 4,481 acre-feet of water per year (4.0 mgd) pursuant to TPDES Permit No. 10426002 into Still Creek for subsequent conveyance down Thompsons Creek, tributary of the Brazos River, Brazos River Basin, approximately 2.58 miles west-southwest of the Brazos County courthouse being at Latitude 30.6681°N, Longitude 96.4133°W and bearing N28.5547°W, 21,351.09 feet from the intersection of the southwest corner of the Zeno Phillips League, Abstract 45 and the northwest corner of the Joseph E. Scott League, Abstract 50. The applicant indicates the outfall is 300 river miles upstream of the diversion point.

- C. Turkey Creek Discharge Point - discharges up to 840.1 acre-feet of water per year (0.75 mgd) pursuant to TPDES Permit No. 10426003 into an unnamed tributary of Turkey Creek for subsequent conveyance down the Brazos River, Brazos River Basin, approximately 3.88 miles south-southwest of the Brazos County courthouse being at Latitude 30.6198°N, Longitude 96.3879°W and bearing N45.2833°W, 2,791.21 feet from the intersection of the southwest corner of the Zeno Phillips League, Abstract 45 and the northwest corner of the Joseph E. Scott League, Abstract 50. The applicant indicates the outfall is 295 river miles upstream of the diversion point.

3. DIVERSION

Permittee is authorized to divert at a maximum diversion rate of 17.95 cfs (8,057 gpm) from the Brazos River, Brazos River Basin at a point approximately 4.7 miles from the Brazoria County courthouse being at Latitude 28.9467°N, Longitude 95.3801°W, also bearing S23.4439°E, 3760 feet from the northwest corner of the John G. McNeel League, Abstract 335, Brazoria County.

4. TIME PRIORITY

The groundwater-based return flows authorized to be conveyed via the bed and banks of a State watercourse in this permit do not have a priority date and are not subject to priority calls from senior water rights.

5. SPECIAL CONDITIONS

- A. Permittee shall install a screen with a mesh size of 0.25 inches or smaller on the diversion structure with a maximum through screen velocity of 0.5 feet per second in order to minimize entrainment and impingement of aquatic organisms.

- B. A change in the location of the diversion point shall require an amendment to the permit and additional special conditions could be required.

- C. The City of Bryan shall only divert and use groundwater-based return flows pursuant to Paragraph 1. USE and Paragraph 3. DIVERSION in accordance with the most recently approved *City of Bryan Groundwater Based Effluent Water Accounting Plan Water Use Permit Applicant No. 5912*. The City shall maintain the plan in electronic format and make the data available to the Executive Director and the public upon request. Any modifications to *City of Bryan Groundwater Based Effluent Water Accounting Plan Water Use Permit Application No. 5912* shall be approved by the Executive Director. Any modification to the accounting plan that changes the permit terms must be in the form of an amendment to the permit. Should the City fail to maintain the accounting plan or notify the Executive Director of any modifications to the plan, the City shall immediately cease diversion pursuant to Paragraph 3. DIVERSION, and either apply to amend the permit, or voluntarily forfeit the permit. If the City fails to amend the accounting plan or forfeit the permit, the TCEQ may begin proceedings to cancel the permit. The Commission shall be notified immediately by the City upon modification of the accounting plan and provided with copies of the appropriate documents effectuating such changes.
- D. Permittee shall only divert the actual daily amount of groundwater-based return flows discharged from the three treatment plants less the estimated losses after accounting for travel times between the discharge and diversion points.
- E. Permittee shall only divert the actual annual amount of groundwater-based return flows discharged from the Still Creek outfall less up to 935 acre-feet as authorized in Certificate of Adjudication 12-5269 when Certificate of Adjudication 12-5269 is being used.
- F. Prior to diversion of groundwater-based return flows in excess of the amount currently authorized by TPDES Permit Nos 10426001, 10426002 and 10426003, described in Paragraph 2. DISCHARGE, Permittee shall apply for and be granted the right to reuse those return flows. Permittee shall amend the accounting plan to include future discharges of groundwater-based return flows prior to diverting said return flows.
- G. The diversions authorized by this permit are dependant upon potentially interruptible return flows or discharges and are conditioned on the availability of those discharges. The right to divert the discharged return flows is subject to revocation if discharges become permanently unavailable for diversion and may be subject to reduction if the return flows are not available in quantities and qualities sufficient to fully satisfy the permit. Should the discharges become permanently unavailable for diversion, Permittee shall immediately cease diversion under this permit and either apply to amend the permit, or voluntarily forfeit the permit. If Permittee does not amend or forfeit the permit, the TCEQ may begin proceedings to cancel this permit. Permittee shall only divert its return flows that are actually discharged and if there is a permanent reduction in available return flows, Permittee shall immediately seek an amendment to the permit to reflect the reductions.

- H. Permittee is not authorized to divert water released by the Brazos River Authority out of storage in reservoirs upstream of Permittee's diversion point for use by the Authority or its customers downstream of Permittee's diversion point. Permittee may demonstrate compliance with this special condition by establishing that it has diverted its groundwater based return flows in accordance with its approved accounting plan.

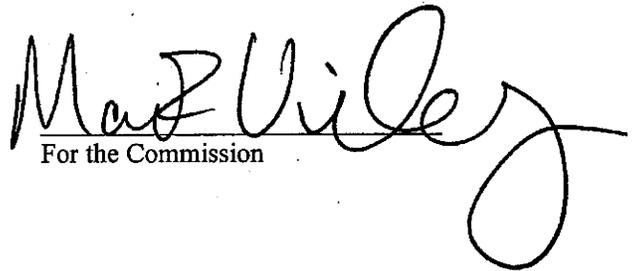
This permit is issued subject to all superior water rights in the Brazos River Basin.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this permit are denied.

This permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.

Date issued: **FEB 05 2010**


For the Commission