

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

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

**PROTESTANT BRAZOS FAMILY FARMERS AND RANCHERS'  
REPLY TO EXCEPTIONS TO THE SUPPLEMENT TO THE PROPOSAL FOR  
DECISION ON REMAND**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW, Brazos Family Farmers and Ranchers (“BFFR”), including Bradley B. Ware (“Ware”) and William and Gladys Gavranovic (“Gavranovic”), Protestants in the above styled and docketed water rights contested case hearing before the Texas Commission on Environmental Quality (“TCEQ” or (“Commission”) and the State Office of Administrative Hearings (“SOAH”) regarding the Application for Water Rights Permit No. 5851 by the Brazos River Authority (hereafter “BRA”) and respectfully files the following Reply to Exceptions to the Supplement to the Proposal for Decision on Remand. BFFR respectfully states as follows:

**I. BRAZOS FAMILY FARMERS AND RANCHERS**

When this case began in 2010, BFFR included the following Comanche County Growers: George E. Bingham, Juanita Sue Bingham, Brian Bingham, Kellie Bingham, Carey Bingham; Neil Carroll on behalf of William D. “Dwayne” Carroll and Mary L. Carroll; Dusty and Donna Clark Jones on behalf of Mary Frazier Clark, Don Frazier Clark, Donna Clark Jones; and Robert Starks, all of whom had pending water rights application for extension or removal of water rights permit terms. Since the issuance of the first Proposal for Decision and the subsequent remand, the Comanche County Growers have not participated actively in further proceedings and are pursuing their water rights through different counsel. Accordingly, BFFR as represented by Webb & Webb, Attorneys at Law, continues to include the Comanche County Growers nominally based on their participation in the Application for Water Use Permit No. 5851, but now also specifically includes

Bradley B. Ware and William and Gladys Gavranovic, agricultural users in the Brazos River Basin, as set forth in the BFFR briefing on the Proposal for Decision on Remand.

## II. PROCEDURAL BACKGROUND

1. A Second Hearing on the Merits (“Second Hearing”) was conducted from February 17, 2015 through February 26, 2015 before the Administrative Law Judges (“ALJs”) Honorable William B. Newchurch and Honorable Hunter Burkhalter to consider BRA’s Water Management Plan for proposed Permit No. 5851.
2. The ALJs issued the Proposal for Decision (“PFD”) on July 17, 2015.
3. On January 20, 2016, the ALJ’s PFD, Exceptions and Replies to Exceptions were considered by the Commissioners at the January 20, 2016 TCEQ Agenda Meeting.
4. On January 29, 2016 the Commission entered an Interim Order (“the January 29, 2016 Commission Order”) remanding certain matters back to SOAH as specified in the Interim Order.
5. On February 19, 2016 the ALJs issued SOAH Order No. 36 Setting Schedule for Remand. In that Order, the Parties were directed to submit their stipulations of undisputed issues and list of disputed issues on or before March 11, 2016. The Parties’ Briefs on Disputed issues were due on or before March 28, 2016.
6. On March 10, 2016, BFFR, filed their Comments on BRA’s Proposed Stipulation on Remand Issues.
7. On March 28, 2016, the following parties filed Notices of Participation:
  - a. Brazos Family Farmers and Ranchers;
  - b. National Wildlife Federation; and
  - c. Lake Granbury Coalition.

8. On March 28, 2016, the following parties filed Briefs on Disputed Issues:
  - a. The Executive Director of the TCEQ;
  - b. Brazos River Authority;
  - c. Texas Parks and Wildlife Department;
  - d. DOW Chemical Company;
  - e. City of College Station and City of Lubbock;
  - f. City of Bryan; and
  - g. Friends of the Brazos River;
  
9. On April 5, 2016 BRA filed an Unopposed Motion for Extension of Time requesting one additional business day for any submissions by parties to file reply briefs. Of the parties that responded to BRA's request, no party objected to BRA's request.
  
10. On April 7, 2016 the ALJs issued SOAH Order No. 36 Granting [BRA's Unopposed] Motion to Amend Briefing Schedule.
  
11. On April 11, 2016, the following parties filed Reply Briefs on Disputed Issues:
  - a. The Executive Director of the TCEQ;
  - b. Brazos River Authority;
  - c. Texas Parks and Wildlife Department;
  - d. DOW Chemical Company;
  - e. City of College Station and City of Lubbock;
  - f. City of Bryan;
  - g. Friends of the Brazos River; and
  - h. Brazos Family Farmers and Ranchers.
  
12. On June 3, 2016, the ALJs issued a Supplement to the Proposal for Decision on Remand.
  
13. On June 23, 2016, the following parties filed Exceptions to the Supplement to the Proposal for Decision on Remand:
  - a. The Executive Director of the TCEQ;
  - b. Brazos River Authority;
  - c. Texas Parks and Wildlife Department;
  - d. DOW Chemical Company;
  - e. City of Bryan;
  - f. Friends of the Brazos River; and
  - g. Brazos Family Farmers and Ranchers.

14. On June 24, 2016, the Brazos River Authority filed its Unopposed Motion for Extension of Time to File Replies to Exceptions to the Supplement to the Proposal for Decision on Remand.

15. On June 28, 2016, General Counsel for the TCEQ, Tucker Royall, extended the time for filing any replies from July 5, 2016 to July 12, 2016.

### **III. BFFR's REPLIES TO EXCEPTIONS**

The parties who filed exceptions noted a number of issues—procedural, policy, and evidentiary—which are presented in the Revised Proposal for Decision on Remand. In accordance with the Texas Administrative Procedure Act, these issues cannot be addressed properly in an ex parte fashion as the January 29, 2016 Order suggests. Accordingly, in order to bring this proceeding to a lawful closure, the parties should be afforded an opportunity to participate in a proceeding which allows them to present a recommended order to the Commission which is not clearly voidable and subject to remand. Friends of the Brazos River have suggested a mediation, and that option appears to be an efficient and less costly alternative to further contested case hearing procedures. At the same time, mediation avoids the taint of an ex parte proceeding with no opportunity to confront evidence or witnesses on the record. Accordingly, BFFR restates its request for mediation as a means of resolving the remaining issues raised by the parties.

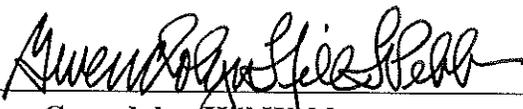
### **IV. REQUESTED RELIEF**

CONSIDERING THE FOREGOING, BFFR RESPECTFULLY REQUESTS that the Honorable Texas Commission on Environmental Quality take the following actions:

1. Initiate and complete rulemaking applicable to TWC Section 11.042 and Section 11.046;
2. Proceed to mediation to resolve pending issues so as to avoid additional commitment of contested case hearing resources which could only result in a legally voidable decision; and
3. Ultimately issue any Permit No. 5851 to Brazos River Authority in accordance with existing Commission policy and the Parties' agreements.

Respectfully submitted,

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WILLIAM AND GLADYS GAVRANOVIC

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested on all parties whose names appear on the attached mailing list on this the 12<sup>th</sup> day of July, 2016.

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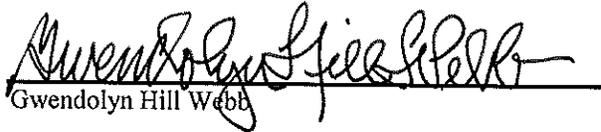
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