

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

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

**BRAZOS RIVER AUTHORITY'S RESPONSE TO MOTION FOR EXTENSION
OF TIME TO FILE EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO TCEQ GENERAL COUNSEL TUCKER ROYALL:

Applicant, Brazos River Authority (BRA), hereby responds to the Motion for Extension of Time to File Exceptions to the Proposal for Decision filed by Protestants Friends of the Brazos River, H. Jane Vaughn, Lawrence Wilson, Mary Lee Lilly, Brazos River Alliance and Ken Hackett (collectively referred to as FBR) and the National Wildlife Federation (NWF), which was filed in the above docketed contested case on July 31, 2015. BRA is opposed to this eleventh-hour motion because an extension of time is simply unwarranted, for the following reasons:

As a threshold matter, some additional background regarding the recent procedural history and the present deadlines in this contested case over BRA's Application No. 5851 for the System Operation Permit is essential. The two SOAH Administrative Law Judges (ALJs) who have presided over this case since its referral from TCEQ in 2010 concluded the second evidentiary hearing, on BRA's remanded Application, on February 26, 2015. The very next day, they issued Order No. 32, captioned "Setting Out Post-Hearing Schedule and Briefing Requirements," in which they stated: "The Administrative Law Judges expect to issue a proposal for decision by July 17, 2015." Thus, counsel for FBR and NWF, like counsel for all other parties in this case, have been on notice *for five months* regarding the precise timing of the forthcoming Proposal for

Decision (PFD) on Remand. At no time during the parties' off-record discussions with the ALJs toward the end of the hearing, nor through any filing made over the months prior to the instant motion, have counsel for FBR or NWF raised an issue with this timeframe being unworkable, due to previously scheduled vacations or otherwise. Neither should the prescribed deadline of August 6, 2015 for all parties to file their exceptions and briefs to the PFD on Remand¹ have come as any surprise to FBR's or NWF's experienced counsel: The amount of time provided for such filings follows the precise number of days (20) provided in TCEQ's Rules, 30 TEX. ADMIN. CODE §80.257(a), and is the same amount of time allowed for FBR, NWF and all the other parties to file exceptions to the original PFD in 2011. Just as they had advised in Order No. 32, the ALJs issued their PFD on Remand on July 17, 2015. Now, just six days prior to the common deadline for parties' exceptions, FBR and NWF alone are seeking to extend that deadline by fourteen days.²

FBR and NWF's motion for extension should be denied for lack of any compelling, unforeseeable circumstance that would have prevented these parties' counsel from being prepared to file their exceptions to the PFD on Remand within the well-known timeframe for this next phase of this long-pending case. Counsel for FBR lists several other pending work projects, several of which have deadlines, over these next several weeks following her vacation – a type of work

¹ The deadline for all parties to file any replies to other parties' exceptions or briefs is August 17, 2015. However, FBR and NWF do not seek to lengthen the amount of reply time.

² Although FBR and NWF address in the motion their conference efforts and responses from counsel for various other parties, it appears that they have not complied with the TCEQ Rule requirement that such an extension request "must indicate whether *the judge and* the parties agree on the proposed dates." (Emphasis added). 30 TEX. ADMIN. CODE §80.257(b). The SOAH ALJs' calendars and workload are another important consideration in the timing of a PFD and exceptions thereto, as the ALJs will thereafter review the exceptions and briefs filed to determine whether any amendments to the PFD are warranted.

docket that is similar to the workloads and competing obligations of the undersigned counsel and presumably all the other parties and lawyers in this case. (The motion identifies no particular reasons specific to NWF or its counsel offered in support of the need for a two-week extension.) Given the magnitude and complexity of this contested case over BRA's Application No. 5851, as referenced by FBR and NWF,³ BRA submits that all parties – with the guidance of Order No. 32's PFD date and a five-month heads-up – should reasonably be expected to have coordinated their other work and vacations accordingly. This is particularly the case where nearly all parties participating in the evidentiary hearing on remand, including FBR and NWF, are each represented by multiple attorneys. For its part, BRA will have only eleven days within which to reply to exceptions – reasonably expected to come from as many as ten other parties responding to the 275-page PFD on Remand – but does not anticipate requesting any additional time.

Finally, BRA respectfully submits that delay at this point and for the reasons cited by FBR and NWF is not warranted particularly in light of the sustained, herculean effort BRA has maintained to meet each and every deadline required of it to proceed toward TCEQ's decision on its System Operation Permit and Water Management Plan (WMP). Since filing Application No. 5851 in 2004, BRA, as the applicant with the burden of proof, has worked diligently with the Commission staff and other parties and throughout the contested case process to facilitate the full development and consideration of its Application. Among many other hurdles crossed and deadlines met, most notably BRA has achieved the following, in keeping with the TCEQ

³ Counsel for FBR and NWF could not have been surprised by the extent of the issues or the length of the PFD on Remand – they all participated in the initial 2011 evidentiary hearing on Application No. 5851, briefing on the original 194-page PFD, and all of the proceedings since that time.

Commissioners' emphasis on moving toward resolution of this case: 1) upon TCEQ's order remanding Application No. 5851 for development and review of BRA's WMP (*see* Interim Order of January 30, 2012) BRA dedicated extensive financial and human resources to meet the Commission's directed deadline to complete and file that WMP within 10 months, accelerating a process that it had anticipated requiring three years; and 2) upon TCEQ's order determining that Application No. 5851 would need to incorporate TCEQ's adopted environmental flow standards for the Brazos River Basin (*see* Interim Order of December 17, 2013), BRA's team again worked diligently to ensure that the entire WMP was updated and resubmitted, within just ninety days of the rules' adoption. In short, BRA's sustained commitment of time and resources in seeking TCEQ's approval of its System Operation Permit and Water Management Plan should not be met with unjustified delay sought by a few Protestants at the eleventh hour. This case should now proceed with the deadlines established by the ALJs, so that TCEQ can decide this important matter.

For the reasons set forth above, BRA respectfully requests that the General Counsel deny FBR and NWF's motion for extension of time for lack of good cause, and allow Application No. 5851 to proceed on course for the Commission's consideration of the PFD on Remand.

Respectfully submitted,

Douglas G. Caroom
State Bar No. 03832700
dcaroom@bickerstaff.com

Susan M. Maxwell
State Bar No. 24026869
smaxwell@bickerstaff.com

Emily W. Rogers
State Bar No. 24002863
erogers@bickerstaff.com

BICKERSTAFF HEATH DELGADO ACOSTA LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, Texas 78746
Telephone: (512) 472-8021
Facsimile: (512) 320-5638

BY: 
Douglas G. Caroom *For*

Attorneys for Brazos River Authority

CERTIFICATE OF SERVICE

I hereby certify by my signature below that on the 3rd day of August, 2015, a true and correct copy of the above and foregoing BRA's Response to Motion for Extension was forwarded via email or First Class Mail to the parties on the attached Service List.


Susan M. Maxwell

SERVICE LIST
BRAZOS RIVER AUTHORITY APPLICATION NO. 5851
TCEQ DOCKET NO. 2005-1490-WR
SOAH DOCKET NO. 582-10-4184

FOR THE CHIEF CLERK:

(via e-filing)
Bridget Bohac
Office of the Chief Clerk, MC 105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
512-239-3300
512-239-3311 (fax)

FOR THE ADMINISTRATIVE LAW JUDGES:

(served via SOAH e-filing)
William G. Newchurch
Hunter Burkhalter
State Office of Administrative Hearings
300 W. 15th St., Suite 502
Austin, TX 78701
512-475-4993
512-322-2061 (fax)

FOR THE EXECUTIVE DIRECTOR:

Robin Smith, Staff Attorney
Ruth Ann Takeda
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
PO Box 13087
Austin, TX 78711-3087
512-239-0463
512-239-3434 (fax)
rsmith@tceq.state.tx.us
ruth.takeda@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL:

Eli Martinez, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, TX 78711-3087
512-239-3974
512-239-6377 (fax)
elmartin@tceq.state.tx.us

FOR TEXAS PARKS AND WILDLIFE

DEPARTMENT:
Colette Barron Bradsby
Texas Parks and Wildlife Department
4200 Smith School Rd.
Austin, TX 78744
512-389-8899
512-389-4482 (fax)
colette.barron@tpwd.state.tx.us

FOR THE NATIONAL WILDLIFE FEDERATION:

Myron J. Hess
Annie E. Kellough
44 East Ave., Suite 200
Austin, TX 78701
512-610-7754
512-476-9810 (fax)
hess@nwf.org
kellougha@nwf.org

FOR THE CITY OF LUBBOCK:

Brad B. Castleberry
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900
Austin, TX 78701
512-322-5800
512-472-0532 (fax)
bcastleberry@lglawfirm.com

FOR GULF COAST WATER AUTHORITY:

Molly Cagle
Paulina A. Williams
Baker Botts L.L.P.
98 San Jacinto Blvd., Suite 1500
Austin, TX 78701
512-322-2532
512-322-2501 (fax)
molly.cagle@bakerbotts.com
paulina.williams@bakerbotts.com

Ronald J. Freeman
Freeman & Corbett LLP
8500 Bluffstone Cove, Ste. B-104
Austin, TX 78759
512-451-6689
512-453-0865 (fax)
rfreeman@freemanandcorbett.com

FOR THE FRIENDS OF THE BRAZOS RIVER, H.
JANE VAUGHN, LAWRENCE WILSON, MARY LEE
LILLY, BRAZOS RIVER ALLIANCE, KEN W.
HACKETT:
Richard Lowerre
Marisa Perales
Lowerre Frederick Perales Allmon & Rockwell
707 Rio Grande St., Suite 200
Austin, TX 78701
512-469-6000
512-482-9346 (fax)
rl@lf-lawfirm.com
marisa@lf-lawfirm.com

FOR THE CITY OF BRYAN:
Jim Mathews
Mathews & Freeland LLP
8140 N. Mopac Expressway
Bldg. 2, Suite 260
Austin, TX 78759
512-404-7800
512-703-2785 (fax)
jmathews@mandf.com

FOR THE CITY OF COLLEGE STATION:
Jason Hill
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900
Austin, TX 78701
512-322-5855
512-874-3955 (fax)
jhill@lglawfirm.com

FOR THE CITY OF ROUND ROCK:
Steve Sheets
Sheets & Crossfield PC
309 E. Main St.
Round Rock, TX 78664
512-255-8877
512-255-8986 (fax)
steve@scrrlaw.com

FOR DOW CHEMICAL CO.:
Fred B. Werkenthin, Jr.
Booth, Ahrens & Werkenthin, PC
206 East 9th Street, Suite 1501
Austin, TX 78701
512-472-3263
512-473-2609 (fax)
fbw@baw.com

FOR BRADLEY B. WARE, THE COMANCHE
COUNTY GROWERS, AND WILLIAM & GLADYS
GAVRANOVIC:
Gwendolyn Hill Webb
Stephen P. Webb
Webb & Webb
P.O. Box 1329
Austin, TX 78767
512-472-9990
512-472-3183 (fax)
g.hill.webb@webbwebblaw.com
s.p.webb@webbwebblaw.com

LAKE GRANBURY COALITION (HOOD COUNTY,
THE CITY OF GRANBURY, AND LAKE GRANBURY
WATERFRONT OWNERS ASSOCIATION:
Jeff Civins
Haynes & Boone, LLP
600 Congress Ave., Suite 1300
Austin, TX 78701
(512) 867-8477
(512) 867-8460 (fax)
jeff.civins@haynesboone.com

John Turner
Andrew Guthrie
Haynes & Boone, LLP
2323 Victory Ave.
Dallas, TX 75202
(214) 651-5671
(214) 200-0780 (fax)
john.turner@haynesboone.com
andrew.guthrie@haynesboone.com

Ken Ramirez
Shana L. Horton
Law Offices of Ken Ramirez, PLLC
111 Congress Avenue, Suite 400
Austin, TX 78701
512-681-4456
512-279-7810 (fax)
ken@kenramirezlaw.com
shana@kenramirezlaw.com

FOR THE POSSUM KINGDOM LAKE
ASSOCIATION:

John J. Vay
Enoch Keever PLLC
600 Congress Ave., Ste. 2800
Austin, TX 78701
512-615-1231
512-615-1198 (fax)
jvay@enochkeever.com

FOR THE CITY OF HOUSTON:

Ed McCarthy, Jr.
Eddie McCarthy
Jackson, Sjoberg, McCarthy
& Townsend, L.L.P.
711 West 7th Street
Austin, TX 78701
512 472-7600
512-225-5565 (fax)
emccarthy@jacksonsjoberg.com
emc@jacksonsjoberg.com

FOR CHISHOLM TRAIL VENTURES, L.P.:

Monica Jacobs
Kelly Hart & Hallman, LLP
303 Colorado, Suite 2000
Austin, TX 78701
512-495-6405
512-495-6601 (fax)
monica.jacobs@kellyhart.com

FOR NRG TEXAS POWER, LLC:

Joe Freeland
Mathews & Freeland, L.L.P.
Westpark II, Suite 260
8140 North Mopac Expressway
Austin, TX 78759-8884
512-404-7800
512-703-2785 (fax)
jfreeland@mandf.com