

TCEQ DOCKET NO. 2005-1490-WR

APPLICATION OF BRAZOS § BEFORE THE OFFICE
RIVER AUTHORITY FOR § OF
PERMIT NO. 5851 § ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR'S RESPONSE TO COMMENTS
AFTER REMAND**

The Executive Director (ED) files this response to comments timely filed in response to notice or made at the July 24, 2013, public meeting in Hewitt, Texas, on Brazos River Authority's (BRA) application for a water right, Permit No. 5851.

BACKGROUND

BRA's filed an application with the TCEQ on June 24, 2004. The application was declared administratively complete on October 15, 2004 and notice was mailed to all water right holders in the basin on April 22, 2005. Notice was published in 27 newspapers on May 11 and 12, 2005.

A hearing was held in February and March, 2011. In an Interim Order issued on January 30, 2012, the Texas Commission on Environmental Quality (Commission or TCEQ) remanded the application back to SOAH for consideration of a Water Management Plan (WMP). The ED completed technical review of the WMP on June 1, 2013. Notice was mailed to water right holders on July 3, 2013. Notice was published in 27 newspapers on July 6 - 12, 2013.

A public meeting was held on July 25, 2013, and a preliminary hearing was held August 26, 2013. Several new parties were named at the preliminary hearing. On October 21, 2013, the Administrative Law Judges (ALJs) continued the schedule and at BRA's request sent four Certified Questions on whether BRA had to meet S.B. 3 requirements for this application. On December 17, 2013, the Commission issued an Interim Order stating that BRA had to meet the S.B. 3 requirements. On January 7, 2014, the ALJs revised the schedule and issued an order that included a hearing beginning on February 17, 2015.

APPLICATION

The original application requested the following:

A new appropriation of state water in the amount of 421,449 acre-feet per year for multiple use purposes, including domestic, municipal, agricultural, industrial, mining, and other beneficial uses on a firm basis in the Brazos River Basin. The entire 421,449 acre-feet available only if all is diverted at the mouth of the Brazos River, and can only be made available by the BRA through the system operation of its water rights

Diversion of the water to be authorized from:

- the existing diversion points authorized by BRA's existing water rights;
- the Brazos River at the USGS gage No. 08091000 near Glen Rose, Texas;

- the Brazos River at USGS gage No. 08098290 near Highbank, Texas;
- the Brazos River at the Gulf of Mexico
- diversion points identified and included in BRA's proposed Water Management Plan

Use of up to 90,000 acre-feet of water per year of its firm supply to produce and appropriate an interruptible water supply of 670,000 acre-feet per year

Exempt interbasin transfer, on a firm and interruptible basis, to the adjoining San Jacinto-Brazos Coastal Basin and the Brazos-Colorado Coastal Basin, service areas not within the Brazos River Basin.

an appropriation of current and future return flows (treated sewage effluent and brine bypass/return). Specified discharge points and amounts of water will be accounted for on a monthly basis as part of BRA's Water Management Plan

Operational flexibility to:

- use any source of water available to the applicant to satisfy the diversion requirements of senior water rights
- release, pump and transport water from any of the applicant's reservoirs for subsequent storage, diversion and use throughout the applicant's service area.

Use of the bed and banks of the Brazos River, its tributaries and BRA reservoirs for conveyance, storage, and diversion of:

- water appropriated by this application
- waters conveyed via pipelines and subsequently discharged into the Brazos River system
- surface water imported from outside the Brazos River Basin for subsequent use;
- in-basin surface water and groundwater subject to the applicant's control;
- waters developed from future applicant projects
- current and future reuse of surface and groundwater based effluent requested by this application.

Bed and banks authorization to be subject obtaining future authorizations, points to be identified and included in BRA's proposed Water Management Plan

BRA amended its application after the January 30, 2012 Order to change its request to:

- A Water Management Plan, including a Technical Report in Support of the Water Management Plan and Technical Appendices. The information in the technical report and technical appendices provides the basis and support for the regulatory requirements

in the WMP.

- Accounting plans for: (1) its reservoirs; (2) stream reaches of the Brazos River and its tributaries where water will be delivered and/or water authorized under Permit 5851 will be diverted; (3) application of environmental flow requirements; and (4) reference and summary information.
- A request for a new appropriation of 1,001,449 acre-feet of water, which represents the total amount of water that could be appropriated if all of the water was taken at the Brazos River's outlet at the Gulf of Mexico. The new appropriation is a non-firm supply and the amount of water BRA may divert at upstream locations varies depending on demands.
- Specification of diversion points for the new appropriation as follows: (1) the diversion points authorized in BRA's existing water rights; (2) the Brazos River at the Gulf of Mexico; and (3) specific diversion points and reaches identified in BRA's WMP and associated technical documents, and accounting plans. Diversion rates at these diversion points are set out in BRA's WMP and associated technical documents and BRA's accounting plans.
- A request for an authorization under TWC §11.1381 for a term permit to use an additional 202,650 acre-feet of water per year for thirty years or until the ports are closed on the dam impounding Allens Creek Reservoir, whichever occurs earlier. The additional 202,650 acre-feet of water is not a new appropriation but represents an additional amount of water based on the amount of water previously appropriated under Water Use Permit 2925.
- A request for request use of the bed and banks of the Brazos River and its tributaries to convey water as specified in BRA's WMP and accounting plans. BRA provided channel losses and estimated travel times for water deliveries under Permit 5851 and the WMP.

The BRA owns the following water rights, which comprise BRA's system of reservoirs for the purposes of this application: Certificate of Adjudication (Certificate) No. 12-5155 (Possum Kingdom Lake), Certificate No. 12-5156 (Lake Granbury), Certificate No. 12-5165 (Lake Limestone), and Water Use Permit 2925, as amended, (Allens Creek Reservoir) along with the Texas Water Development Board and the City of Houston. The BRA also owns the water rights and has contracts with the United States Army Corps of Engineers for storage authorized by Certificate No. 12-5157 (Lake Whitney), Certificate No. 12-5158 (Lake Aquilla), Certificate No. 12-5159 (Lake Proctor), Certificate No. 12-5160 (Lake Belton), Certificate No. 12-5161 (Lake Stillhouse Hollow), Certificate No. 12-5162 (Lake Georgetown), Certificate No. 12-5163 (Lake Granger), and Certificate No. 12-5164 (Lake Somerville). The BRA also owns Certificate Nos. 12-5166, as amended, and 12-5167, which authorize various uses of water within the applicant's other certificates and permits.

The applicant is currently authorized, pursuant to the 1964 System Operation Order, as amended (System Order), to manage and operate its tributary reservoirs as elements of a system, coordinating releases and diversions from the tributary reservoirs with releases and diversions from the applicant's main-stem reservoirs to minimize waste, and to conserve water in reservoirs in which the supply is short by making releases from tributary reservoirs in which the supply is more abundant.

BRA has modified its application to comply with S.B. 3 requirements, which were adopted on February 12, 2014. These rules are in Chapter 298, Subchapter G.

COMMENTERS

Commenters at the public meeting (written or oral):

Patricia Ann Waddell

Alida Pollard

Wes Leifeste

Steve Fortner

Ivan Langford, Gulf Coast Water Authority

Mert Fewell, Director of the Possum Kingdom Lake Association

Mickey Parsons, City of Granbury Councilman

Nin Hulett, Mayor Pro Tem, Granbury

Ken Hackett, president of the Brazos River Alliance

Melissa Arney

Jim Longbothom

Tracy Johnson

Gary Wells

Keith Favre

Tommy Warford (for Thomas H. Burkhart III)

David and Patricia Waddell

Charles Peoples

Keith Parten

Charles and Dominique Inge

Randy Hood

Wayne McKethan

James Lattimore, Possum Kingdom Lake Association

Charles Inge

Commenters after notice:

Mary and Richard Arnold

Annette and Herman Stoddard

Jeff Rogers

Marcia Taylor

Wes Leifeste
Betty and Lloyd Leifeste
David and Leslie Bauer
Mark Bisett
Jeff Blanton
John Ben Bloomer
Dr. Rickie Jo Bonner
Rene Broussard
Donald Brown
Dallas E. and Alice B. Coate
Charles Cunningham
Wade and Lisa Erickson
Mrs. Judith Etheredge
Lester and Effie Fable
Edward P. Ferrero, Jr.
Charles Gray
McDonald Hamlin
Daryl Gee
Marcia G. and Robert Johnson
Chris Jones
Chad Martin
Amanda Miller
Mark Miller
William and Leslie Moyer
William A. Murphy
Brian Riley
Kelly Rogers
Kristi Rogers
Ed and Ruth Schwille
Nancy Sims
David A. Walton
Jan Young
Francis A. Rembert

RESPONSE TO COMMENTS

CONDITION OF LAKES

Comment No. 1. A commenter says that he has been a beach front property owner, like most of the people in Lake Granbury, or in many cases it's more like a mud hole.

Response No. 1. The ED agrees that lake levels have been low at Lake Granbury during the recent drought.

Comment No. 2. A commenter says that BRA proposes to continue operating the dam and reservoir in a similar manner as it operated the dam and reservoir when it had a power plant and a FERC license. In its surrender of the FERC permit application, BRA indicates that there will be no significant changes to water quality, water quantity, buffer land use or recreation at the project as a result of this surrender. This particular paragraph seems to be violated by the Brazos River Authority Water Treatment Study, page 54 of Appendix D1, which shows that the current flow is approximately 158,000 acre feet per year and when the hydro power plant was operating, was approximately 333,000. From 1985 to 2007 Lake Granbury was essentially a constant level lake at 692.5 feet, but starting in 2007 when the BRA closed the hydro plant, it kind of fell off a cliff and it's been down every year.

Response No. 2. BRA did surrender its FERC license but did not abandon the portion of its water right that authorizes hydropower use at Lake Possum Kingdom. BRA is not required to operate the plant. Special Condition 5.C.5 of the ED's August 18, 2014 draft permit requires BRA to continue to release streamflows downstream based on inflows to Lake Possum Kingdom.

APPLICATION/WMP CONCERNS

Comment No. 3. Several commenters state that BRA should have included a study of the economic impact of the proposed permit on the economy of the area in its application. The draft permit allows BRA to add new diversion points without any additional or economic impact analysis and without any additional authorizations from TCEQ. The TCEQ should require additional analysis and public input.

Response No. 3. TCEQ rules or applicable statutes do not require BRA to perform an economic impact analysis for this application. Under TCEQ rules, new diversion points must be permitted by the TCEQ, unless they are diversion points for contracts downstream of a reservoir. Some additional diversion points, such as those located on a reservoir or in a stream reach where BRA delivers water, may not require public notice under TCEQ rules. These new diversion points would be subject to limitations in the proposed Water Management Plan (WMP) and could be subject to TCEQ rules relating to water supply contracts.

Comment No. 4. BRA did not address the potential loss of recreational use by the taxpayers and citizens of the State of Texas by taking additional water from the lakes.

Response No. 4. The primary purpose of BRA's reservoirs is water supply. BRA's WMP states that an effort is made to coordinate water supply releases to benefit or avoid negatively impacting recreational activities, when possible (Water

Management Plan Technical Report Section 4.1.3.5). However, for this application BRA must prove the elements of Texas Water Code §11.134, which do not expressly include recreational interests that are not included in a water right.

Comment No. 5. BRA does not specify the specific needs and allocations for the additional water requested, nor does it list the amounts to be extracted at specific diversion points.

Comment No. 6. I object to the 42% increase in water they are requesting as they have not clearly identified the need, the diversion points, the volumes associated with any new diversion points, and the intended use of the water.

Response to Comments No. 5 and 6. Under the proposed WMP, BRA provides specific diversion points and rates as well as combined maximum diversion amounts and rates for different reaches. BRA can divert water anywhere within those reaches for any of its authorized uses as long as it meets the limits and conditions in the proposed WMP. BRA does not have to show a specific immediate need for the water, but does have to show that it will beneficially use the water and that the use is consistent with the State and Regional Plans. BRA has shown that the water BRA is granted under this permit will be used in areas that have water shortages, and that the use is consistent with the State and Regional Water Plans.

BRA has shown that the water BRA is granted under this permit will be used in areas that have water shortages.

Comment No. 7. BRA should agree to 1) control check locations where water flow and reservoir elevations would be measured and available to the public; appropriate language for minimum flow rates and reservoir elevations for these control-check locations; WMP should say that unless the control-check locations show the minimums, BRA will not sell water under the permit; BRA should submit periodic auditable compliance evidence with the conditions at all control-check locations.

Response No. 7. There is no statutory authority requiring the TCEQ to require that reservoir elevations to be maintained at certain levels in a water supply reservoir for the benefit of property owners around the reservoir. Elevations and minimum flow rates may be required to protect the environment or other water right holders. BRA's proposed WMP includes minimum flow rates for downstream river diversions.

Comment No. 8. One commenter states that in the meeting in Austin in January of 2012, the TCEQ commissioners asked the BRA spokesman how long it would take to do a water management plan. The BRA spokesperson said to do a proper water management plan it would take approximately 2 years. By the end of the summer of 2012, the BRA was holding public meetings to get comments on the water management plan and a meeting in Glen Rose. That they should be applauded for the herculean task of preparing a two year study in seven months, or maybe the answer in Austin was an attempt to try to avoid doing a water management plan which appeared to be their approach at that meeting, or that the water management plan that they did in seven months that should've taken two years was not their proper water management plan.

Response No. 8. At the Commissioner's January 2012 meeting, the Commission ordered BRA to prepare a WMP within ten months. BRA timely completed the

plan. The ED was given seven months to review the plan. The ED timely reviewed the application, including the proposed WMP and found it to be administratively and technically complete. Subsequently the Commission ordered BRA to add the Senate Bill 3 environmental flow standards to its WMP.

Comment No. 9. The permit should clearly state that BRA cannot withdraw any additional volumes of water during the terms of this permit to meet future demand.

Response No. 9. The ED disagrees. The recommendations for projects in the State and Regional Water Plans include additional needs in the future in the Brazos River Basin. Industrial and municipal water suppliers need to prepare for the future by obtaining water supplies that are in excess of their current needs, or to prepare for droughts by firming up their existing water supplies.

Comment No. 10. There should be no additional water taken from Lake Limestone because the lake has a very limited drainage area which feeds it.

Response No. 10. Lake Limestone is part of BRA's system of reservoirs and is permitted for municipal use. Under BRA's proposed WMP, additional water may be taken from Lake Limestone from time to time if the water is needed.

ECONOMIC ISSUES

Comment No. 11. How much water was the BRA allowed to sell from Lake Granbury? How much was contracted to sell? How much water was collected for? Did the BRA contract and collect funds for more water than they were allowed to sell? I suggest they did and are guilty of fraud.

Response No. 11. Under its Lake Granbury water right, BRA is authorized to divert 64,712 acre-feet per year. However, total diversions under BRA's existing System Order from the lake can be up to 100,000 acre-feet per year. BRA currently has contracts for around 85,000 acre-feet of water that is diverted from Lake Granbury. Under its existing permits, BRA could sell as much water from Lake Granbury as it needed as long as the amount was within its authorized amount under its water right.

Comment No. 12. Several commenters are concerned about the economic impact of the application, and make the following comments:

Public boat ramps have been built, public parks, the lake has developed into a recreational area with high home values and taxes. The intent of the lake is no longer for industrial users. While the drought has impacted the low flows, BRA selling too much water has made and will continue to make matters worse.

We own property near Lake Limestone and are concerned that the potential adverse impacts of the permit would devalue our property.

Several commenters state that they have invested a lot of money in their retirement homes on the lake, and will lose the property's value if their rights are not protected. BRA will ruin the lakes and destroy the lake if it sells more water. Granting this permit would also affect the economy of the community and all of the property values.

There are broad economic and environmental reasons to deny this request, which taken together suggest that TCEQ should take a hard look at turning over this amount of water of an entire river basin to one agency whose primary goal is to sell as much water as possible without regard to stakeholders.

The permit should be denied until a full economic analysis is conducted and impacts mitigated. This could include extending personal boat docks for access during low flows.

The Possum Kingdom Lake Association depends on lake levels for water, recreation, and other purposes. If BRA is authorized to sell extraordinary amounts of water, members of the association will see lower lake levels, affecting property values.

We understand the drought, and that the water level depends on rainfall. We ask that BRA take this into consideration when it sells water downstream. Selling water when the lake is already depleted makes no sense.

A Resolution from the City of Granbury states that Lake Granbury adds to real estate values, beauty, and recreational benefits in the area, golden algae may be worse under BRA's sys ops, and requests that TCEQ postpone any decision on BRA's application until such a time as all of the studies needed to evaluate the impacts of this proposal on the local economy of Granbury, property interests of its citizens, and the water levels in Lake Granbury are completed, and Lake Granbury residents have an opportunity to comment on them.

One of the most important factors here is the economics and our school district, our city, the hospital district, fire departments, and those types of people are dependent on those property taxes.

Right now you can say that a Lake Limestone lot is worth about 70,000 and up and the city of Groesbeck and the country side it might be 5 to 20,000 at the very highest. Obviously in a few years if any of this continues then those lots in Lake Limestone will be worth 5 to 10,000 and you'll be having mass sales.

People who live on the lake have been paying more in taxes while the value of their home and land decreases, and are still having to pay dock fees to BRA even though they can't use the dock.

We realize the purpose of these reservoirs is water supply, but this purpose is changing and evolving into a bigger than intended purpose with little regard for those affected by these changes.

As a property owner around Lake Limestone, I have rights to the water too.

The water belongs to everyone and should be treated as such.

Response No. 12. Lakes Granbury, Possum Kingdom, and Limestone are permitted for municipal and industrial water supply. TCEQ's rules and statutes do not require BRA or TCEQ to evaluate economic impact on the community for an application to take more surface water for water supply. Although the state owns state water in trust for the people, the people have no right to use the water except

for domestic and livestock use, and a few other exemptions, unless they obtain a permit to use the water from the state.

Domestic and livestock use is not allowed on a lake unless the person taking the water owns the land down to where the river was before the impoundment.

Comment No. 13. BRA already has the right to approximately 700,000 acre-feet per year, and about half of this goes unused, even in 2011 which was the worst drought on record.

Response No. 13. According to BRA's proposed WMP, as of November 1, 2012, BRA has 146 long term water supply contracts for diversion and use of 696,716 acre-feet per year. BRA also sells interruptible water on a short term basis, which can come from sources such as unused water from prior years remaining in storage and water reserved for future sediment accumulation. Information on BRA's contracts is included in the proposed WMP.

Comment No. 14. One commenter states that it would be good to use the money that the BRA is going to make if they get this permit to do some work on boat ramps and do some dredging of the lake.

Response No. 14. The TCEQ does not have the authority to require BRA to do this work.

Comment No. 15. One commenter asks who would grant the authority to build a constant level lake and then tell you that that wasn't going to be, that those facilities would not be usable. We think that the management plan that the BRA as it relates to the draw down for Possum Kingdom Lake is flawed and it does not represent the true economic impact of that.

Response No. 15. BRA's water rights do not state that BRA's reservoirs are constant level lakes. Reservoirs for public water supply are generally kept full during wet times so that they can be used during droughts.

Comment No. 16. How is it that counties that take water from Lake Limestone continue to run fountains and water public golf courses, using water for other than necessity, while landowners around the lake continue to lose the value of their homes and have to try to sell their property?

Response No. 16. Water suppliers such as counties that buy water from BRA and sell it to their customers have to meet the same water conservation and drought contingency provisions that are in BRA's Water Conservation Plan and its Drought Contingency Plan. These entities may use water for municipal needs such as fountains and golf courses if allowed by their approved Water Conservation Plan and Drought Contingency Plan.

Comment No. 17. Reviews should be done of the current water usage by the BRA versus prior years and the impact that this has on the entire Brazos River Basin.

Response No. 17. BRA provides water use reports to the TCEQ annually, and the report contains monthly use amounts. According to these reports, BRA is not using more water than it is authorized to use.

Comment No. 18. BRA is not managing their resources they have right now. They are overselling the water capability they have and what they want to do is sell more.

What is it with the CEO of the BRA that is making almost \$400,000 a year and I don't know how he is getting that much but a bunch of it is due to a bonus and what is his bonus based on? They brought in over \$45 million in revenue last year and that is a lot of money and this was a profit in that, they didn't spend that much so for a non-profit, that is a pretty big return. I highly recommend that you do not grant this without some checks and balances with this organization.

After nearly 40 years with the lake (Limestone), a community full of recreational and economic benefits has evolved along the shores, all under the full approval of the BRA. The community must assure that all in the community are treated fairly and equitably by local state and federal authorities. Lake Limestone is a treasure, held in trust for all Texans. BRA sold 60 – 70% of its permitted water in 2011. This area is in the worst drought in 50 years. Why are they asking for a 5-fold increase? Oil and gas exploration, drilling and fracking? Is BRA willing to risk the lake's ecosystem, damage to infrastructure, including pipelines and the dam, ruining the economic well-being of the area?

Response No. 18. TCEQ's rules and statutes do not require BRA or TCEQ to evaluate economic impact on the community for an application to take more surface water. Also, TCEQ does not regulate who BRA contracts with to provide water, or review BRA's finances. In its proposed WMP, BRA has to show TCEQ how it will manage and use the water authorized in the ED's draft permit. This is necessary to show TCEQ that BRA is complying with permit conditions and the law.

Comment No. 19. Also I would like to see an audit of the monies received by the BRA, their expenses including the monies that are paid to the board members and their executives.

Without a formal audit of their operations and a transparent review of their charter, it appears that BRA operates without accountability and on the wrong side of social and ethical responsibility.

Response No. 19. In the 83rd Legislative Session in 2013, the legislature authorized the Legislative Budget Board to audit river authorities, including BRA.

BRA's AUTHORITY

Comment No. 20. A commenter states that BRA has been allowed to use as much water as it just said right now (in the public meeting on July 25, 2013) they can take all of the water with no oversight and no authority.

A commenter states that granting this permit would allow BRA to take the place of TCEQ in determining how water should be used. This would violate the constitution because the water is held in trust for all the people of Texas, with TCEQ acting as Trustee.

Response No. 20. BRA cannot use as much water as it wants with no oversight and authority. BRA will be limited by the amounts of water and the special conditions in any permit issued to it, as well as by the permit's WMP. The TCEQ will still

regulate all water right holders in the Brazos River, including BRA, which are all subject to the conditions of their water rights and the law.

Comment No. 21. A commenter believes that BRA has a conflict of interest because BRA's draft WMP basically sets up BRA as watermaster without addressing priorities of water rights. It can act solely for its own benefit. The WMP must be modified to ensure compliance with the prior appropriation doctrine.

Response No. 21. BRA's proposed WMP does not set up the BRA as a watermaster, or violate the prior appropriation doctrine. The TCEQ has enforcement authority over BRA's water rights and may enforce its statutes, rules, or the water rights. BRA's water rights are subject to senior water rights in the river. Additionally, a watermaster was appointed for the Brazos River from Possum Kingdom Lake downstream on April 21, 2014. BRA's reservoirs are all included in the watermaster area. This watermaster is scheduled to begin operating this year.

BRA'S MANAGEMENT

Comment No. 22. Commenters express the following concerns with BRA's management of the lakes:

BRA's request for operational flexibility is also disturbing, particularly in light of its election to close the hydro-electric plant at PK, thereby decreasing water levels further. BRA should have repaired or updated those facilities instead of imposing a ten times greater cost on downstream lake and riverfront owners whose installations and equipment have become virtually worthless. BRA has been collecting annual fees on these facilities.

Due to the current BRA policies and management practices that are clearly evident throughout the upper basin and we feel like this permit needs to be either suspended or removed until a complete audit can be made of the Brazos River Authority as its current river authority audit bill was recently passed.

Currently the water is about 40 feet from the back of my dock. Last May the lake was full. When BRA people were talking they indicated it's been a 2-3 year drought. Well it got cured last May and it was fullBRA indicates in the newspaper articles that I've read that the lake level is due to the drought. The water in the lake got to be a problem soon after the BRA sold the land around Possum Kingdom Lake. They also say that once the power plant at PK was closed, they were unable to release water in the same amount from PK. If the BRA knew the plant would be closed what was their plan for water to go downstream. They indicated that many more acre feet of water runs into the Gulf of Mexico than they even have rights to sell. If that's the case, why would the BRA not have reinvested the money from the sale of land at PK to develop reservoirs, pumps and pipelines to capture part of the water and return it upstream?

In 2012 in April Lake Limestone was full. Then it dropped drastically in May and June. How did that happen? It wasn't just the drought.

Additionally the water that the nuclear plant uses could be pumped back in to Lake Granbury so it's not lost downstream. They could've taken some of that money and built a pipeline and brought it back and pumped it into Lake Granbury.

They continually, people come with sound information and all we hear is drought. It's evaporating. Well that's not the case. There is improper management. Why I'm against this is they don't have a plan.

How could BRA ask for more water rights if they don't even have a plan for the water they have sold if the drought continues? I feel based on their reason for the lakes current level the BRA should be denied any future water rights and they should be mandated to show a plan where they're going to manage the water they have.

Due to the current BRA policies and management practices that are clearly evident throughout the upper basin and we feel like this permit needs to be either suspended or removed until a complete audit can be made of the Brazos River Authority as it current river authority audit bill was recently passed.

Response No. 22. BRA's reservoirs are water supply reservoirs. The TCEQ's authority is to consider whether the permit application should be granted because it meets the requirements of the applicable statutes and rules. The TCEQ will also enforce the storage and diversion of state water. BRA has to show how it will manage and use the water in the ED's draft permit so that TCEQ can ensure that BRA is complying with its permit, if granted.

BRA has prepared a WMP describing how it will manage its water rights permit, if granted. The proposed plan:

- **Explains how BRA will operate its reservoirs. The proposed WMP will be for no more than ten years, at which time BRA would have to amend the WMP to update the information in the plan.**
- **Governs BRA's operations and details how decisions are made for diversion, storage, and use of water under the ED's draft permit and BRA's other water rights throughout the Brazos River Basin.**
- **Describes how much water will be diverted under contracts, where it will be diverted from, and who the current contract holders are. BRA also submitted accounting spreadsheets which BRA will use to show that it is in compliance with its permit. BRA will account for the amount and place of its water use diversions.**
- **Includes several scenarios for future water supply. These scenarios considered water supply for a future expansion of the Comanche Peak Nuclear Power Plant and water supply depending on when Allens Creek Reservoir in the lower basin is constructed. Includes the S.B. 3 environmental flow standards for the new water.**

Also, a watermaster was created for the Brazos River Basin from Possum Kingdom down on April 21, 2014.

Comment No. 23. A commenter states that efforts should be implemented to sunset BRA's authority over the basin and have the TCEQ take responsibility to management and they could use the monies from the sale of the water in permit fees and provide a feasible plan for manage the water we have.

The City of Granbury requests that TCEQ make the City part of BRA's Water Management Plan if it's approved. The city should be granted a contractual right to another 20,000 acre feet so we could supply our people with water.

Response No. 23. The TCEQ does not have the authority to manage a river authority or require BRA to contract with any specific entity including the City. BRA's water use will be subject to the conditions of its permits and WMP (including streamflow requirements and the priority doctrine).

Comment No. 24. WMP should be open for full review every 3 years, not 10. There should be more public input and vetting on any change and the TCEQ must exercise its full authority over BRA.

Response No. 24. The ED has determined that requiring BRA to review its WMP every ten years is reasonable. These proceedings are lengthy and complicated and usually involve contested case hearings. The proposed WMP includes provisions allowing BRA to submit applications to amend or modify portions of its WMP during the 10 year period.

VOLUME OF BRA'S REQUEST

Comment No. 25. Based on my research, I believe that the amount of additional water that the Brazos River Authority is requesting is far in excess of even what their own statistical forecasts predict will be needed in the year 2050.

BRA is attempting to "bank" water for projected future use with too few conditions to protect the economic, beneficial, recreational and other non-industrial/commercial uses of the waters of the state.

Response No. 25. Concerning future needs, the ED's review shows that BRA's request is consistent with the State and Regional Water Plans. These plans show a need for more water. In addition, water available as a result of BRA's application is included as a water management strategy in these plans.

Comment No. 26. BRA has said at meetings that they may not need the water they are requesting, and that if they do, it would not be from Lake Limestone. BRA has said it must have flexibility to move water from Lake Limestone to meet needs elsewhere "that may crop up." What does this mean?

Response No. 26. BRA's existing permits, the ED's draft permit, and BRA's proposed WMP, allow it to take water from Lake Limestone. BRA cannot know with any certainty what climatic conditions will exist in the Brazos River at any given time. Depending on how much water is in Lake Limestone, BRA may need to provide some of this water to other users.

Comment No. 27. We are expressing grave concern that BRA be given the authority to take 1.1 million acre feet out of Lake Limestone when Lake Limestone only holds 228,000 acre feet.

Response No. 27. BRA's system operation permit application and proposed WMP do not request authorization to take 1.1 million acre feet out of Lake Limestone.

BRA is requesting authorization to use all of its reservoirs as a system and to take water from the river downstream of its reservoirs during higher flow conditions.

Comment No. 28. BRA has requested permission to sell as much as 1,001,449 acre feet of water per year. This amount is over 8 times the amount BRA has stated they currently intend to sell under the proposed permit.

I would also submit that if the water permit is developed, it appears to me that from what I've heard tonight that the BRA has already pre-sold the majority of the 400,000 acre feet. We know that they've already sold 100,000 feed to Luminant, our Comanche peak power plant. With the amount of the water that Comanche Peak has now, that's 144,000 acre feet that the Comanche peak would have right to an annual basis.

I would also submit its known fact that BRA has currently about 700,000 acre feet which 100% of that is sold and then there's periods of drought or just in the last few years, BRA has reduced the maximum of 435,000 acre feet so they have a 300,000 range there that they can't even produce today. How are they going to produce an additional 400,000 acre feet?

The permit is for a very large amount of water and granting of the permit for that amount of water would affect drought water right permits in the Brazos river basins. It would leave very few water rights available in the basin for farmers and ranchers and therefore he is opposed to the permit.

The WMP says that BRA may sell over a million acre feet a year, and there is no prohibition on this.

The size of the requested appropriation is troubling, with little specificity concerning utilization beyond its desire to control and sell as much of BR basin water as possible.

Response No. 28. Because of the complexity of the draft permit, BRA has prepared a Water Management Plan to state how they will manage the water and how they will show that they are in compliance with the permit. TCEQ may not "save" water for unknown future appropriations by others if there is an existing applicant that can show that it meets the statutory requirements including beneficial use. If an entity meets all of the requirements, the state is obligated to issue the requested permit. The relative size of the permit notwithstanding, the ED believes the request is consistent with the State Water Plan.

Comment No. 29. The period used for the hydrology for this permit is 1940 – 1997. The period with the potential 1998 to present must be considered, especially for a new drought of record. The model assumes that history will repeat itself perfectly. If the current flows are the new normal, new data must be obtained.

Response No. 29. The TCEQ Water Availability Model (WAM) for the Brazos River Basin has a period of record from 1940 through 1997, which includes the drought of the 1950s. This was a very severe multi-year drought. At this time TCEQ has not updated the Brazos River WAM to include additional years. Once the current drought is over and Possum Kingdom reservoir spills, BRA will perform a detailed evaluation of whether the current drought represents a drought worse than the drought of record and submit the results of its analysis to TCEQ.

Comment No. 30. This permit will allow BRA and TCEQ authority to impound inappropriate amounts of water in these lakes which will result in lowering stream flows to a point that no one can pump except Dow Chemical when they make a call. Also, please curtail our water rights in stages so that our crops won't die. And, it would be inappropriate for BRA to get any new permit that is back dated to 1942.

Response No. 30. These concerns are primarily related to how the TCEQ suspends or adjusts water rights in response to a senior call, not BRA's application.

Any new water that BRA appropriates in this permit will not be back dated to 1942, but will have the priority date of 2004, the date the application was filed.

Comment No. 31. The TCEQ has cut off our irrigation rights for the last three years. This tells us that there is not enough water in the Brazos River for all existing permit holders. How can BRA get a million acre feet more?

Response No. 31. Whether there is enough water for an applicant to obtain new water is case specific for each application. BRA can use more water by operating its reservoirs as a system. BRA's use of water from the river under the proposed WMP is limited by streamflow restrictions and water availability, which means that BRA may not be able to divert from the river when flows are low. Under the proposed WMP, when BRA cannot divert river water it can release stored water from its reservoirs.

OTHER ALTERNATIVES

Comment No. 32. BRA should have considered and analyzed viable alternatives to the proposed project.

BRA should consider filing an application requesting a graduated or stepped water allotment, while considering all impacts, including secondary beneficial uses. This would allow a more investigation of overall impacts of the permit, and allow time for drought conditions to heal all reservoirs within the basin by recharge.

BRA should not be allowed to contract for any more water until the lake levels are restored to full and reservoirs be built downstream.

It is my request to the TCEQ that they deny this application at this time until the BRA can come up with more reservoirs up north so that these Possum Kingdom and Lake Granbury won't be in the dire straits that they are and it also trickles down to lake limestone.

I think that they should be looking at reservoirs downstream from Lake Limestone and look at reservoirs that are on the Brazos. My understanding may be Somerville, I know where the Brazos goes past Bryan college station, I know where Somerville is so I assume that lake Somerville is not on the Brazos itself. Build some more lakes in those areas.

Hardin and Associates when Groesbeck was within 14 days of running out of water. Hardin and Associates assured us you could go to Rockdale Texas and you could put a straw underground wherever you want to and you hit all the water you want to and so maybe BRA ought to be looking at the possibility of participating in the Carrizo Wilcox or in that area.

BRA should clean up the shore line of Lake Limestone by digging it out and hauling it away to get more storage water in the future to use the permit that they already have.

BRA should have studied other potential water resource availability such as building off channel reservoirs to capture excess water during times of high water availability and evaluated all of the BRA's existing water delivery contracts for and lower the water amounts where feasible either through customer conservation or customer underuse.

Response No. 32. The ED encourages alternative sources for water suppliers. However, the fact that there may be or are alternative strategies for BRA to take more state water does not prevent BRA from obtaining this permit if it meets all the statutory and rule criteria. Its application must also be consistent with the State and Regional Water Plans, and BRA's application is included as a strategy in the State and Regional Water Plans.

Comment No. 33. I encourage the commission to be bold and look to new sources of water in the form of new off-channel reservoirs to meet future water needs instead of permitting the last drops of water in the Brazos basin.

Response No. 33. The TCEQ does not propose projects for state water. It reviews requests from others that want to divert or store state water. Off-channel reservoirs that rely on diversions of state water from the river require a finding that water is available for appropriation, just as on-channel reservoirs do. An off-channel reservoir that would only take surface-water runoff (before it enters a watercourse) could be built without a TCEQ water right permit. Also the ED does not agree that BRA is taking the last drops of water in the basin. Whether surface water is available depends on the specific location of the diversion and the information in the application.

Comment No. 34. Gulf Coast Water Authority supports the water management plan that Brazos river authority has proposed but wants to make the point is that it is looking at multiple alternatives, including talking about the drought, how long it's lasting and could last. GCWA is looking for other alternatives besides the Brazos River, trying to bring water from other sources, whether it's from East Texas. It is not sitting back waiting on the BRA or TCEQ to make more water. It is making a conservative effort to look for the water sources to fill our customer needs.

Response No. 34. The ED acknowledges the comment.

ENVIRONMENTAL CONCERNS

Comment No. 35. There was a study done by the EPA on 75 Texas reservoirs specific to chlorophyll levels, Lake Granbury failed. The EPA disapproves of this reservoirs specific chlorophyll level. The EPA is concerned about algae blooms, toxic bacteria and taste in order issues. This is a major concern for residents in Granbury.

There are some reports from citizens with bacterial skin infections from the lake water now. We believe the solution to the pollution is dilution. If more water is allowed to be sold, this would only compound the problem.

Until a full blown ecological study is made of the actions of the BRA, I find it repugnant that we'd allow this to continue. The fish kills are not accidental. The policies they've set have now attracted the attention of Washington DC as they have now agreed to take on this case. No ecological study has been produced to the BRA to show the ramifications to the decisions that they have made with that either a scientific or public input.

There are broad economic and environmental reasons to deny this request, which taken together suggest that TCEQ should take a hard look at turning over this amount of water of an entire river basin to one agency whose primary goal is to sell as much water as possible without regard to stakeholders.

BRA has not adequately addressed all of the adverse effects on existing reservoir level, fish and wildlife, socioeconomics, reservoir landowners, and water quality. Expert witnesses testified during the earlier hearing that BRA's operations under the proposed permit could have significant adverse impacts on reservoir levels and flows from rivers and stream, resulting in damage to fish and wildlife and water quality.

A commenter states that the lake (Granbury) is a health hazard at this point.

As a certified biologist fishing the lake for over ten years, I have seen a significant decline in quality and quantity of fish caught over the years. Due to the drought, fish are most likely not making it to spawning grounds or they simply dry and appropriate habitat is not available. Increased use of water in Lake Limestone will adversely impact lake levels.

We were lured to the lake by research we had done regarding the relatively constant level of Lake Granbury. BRA and Luminant Electric Company's web sites reverberated the constant level of the lake. Now they are attempting to change the rules.

The City of Granbury requests that the TCEQ please give the quality of life of our citizens the same priority you give to stream beds, fish and other environmental issues.

At the least the TCEQ should require an Environmental Impact Statement to understand the localized and cumulative effects of the proposed action.

A Resolution from the City of Granbury states that Lake Granbury adds to real estate values, beauty, and recreational benefits in the area, golden algae may be worse under BRA's sys ops, and requests that TCEQ postpone any decision on BRA's application until such a time as all of the studies needed to evaluate the impacts of this proposal on the local economy of Granbury, property interests of its citizens, and the water levels in Lake Granbury are completed, and Lake Granbury residents have an opportunity to comment on them

Response No. 35. When considering an application to divert or store water, the Texas Water Code requires that the commission, among other things, "consider any applicable environmental flow requirements established under Section 11.1471 ...".

In 2007, Senate Bill 3 was passed. That bill added Sections 11.0235 (d)(1) – (f), 11.0236 – 11.0237, 11.147(e-1) – (e-3), and 11.1471 into the Water Code. The bill set up a procedure for local basin and bay groups to recommend environmental flow standards for their basins and bays, and ultimate rulemaking by the TCEQ based on their information and recommendations, as well as other information. The

TCEQ has established these rules for the Brazos River in 2013. BRA amended its permit application to comply with these rules and submitted its amended application to the Executive Director on May 13, 2014.

TCEQ rules and statutes do not require a water rights permit applicant to submit an environmental impact statement. BRA's WMP application complies with the adopted environmental flow standards for the Brazos Basin. These standards can be changed in a future rulemaking process as set out in Texas Water Code §§11.02362(p) and 11.1471(f).

MISCELLANEOUS

Comment No. 36. BRA says the WMP limits BRA water sales to 125,000 acre feet per year, and at other times has said sales are limited to 421,449 acre feet per year, but there is no such limit in the permit or WMP.

Comment No. 37. BRA is asking for 1,001,499 acre feet of water per year, but is telling the public and elected officials that it is taking an additional 125,000 acre feet per year.

Response to Comment Nos. 36 and 37 BRA's system operation permit application requests a new appropriation of 1,001,449 acre-feet per year at the Gulf Mexico. This amount of water is not available all of the time. BRA's proposed WMP contains information on how and where BRA will use water in the next ten years, including how much firm water it will use.

Comment No. 38. A commenter states that BRA has destroyed the lake, housing markets, and local tourism. He hopes a new Governor makes a few heads roll at the BRA, its Board of Directors, and TCEQ.

Response No. 38. Severe drought conditions in the Brazos Basin over the past few years have caused a great deal of damage. BRA and the TCEQ must operate in accordance with the rules and statutes relevant to their authority.

Comment No. 39. Commenters state that BRA has not provided justification for this much water or stated how it will benefit the people of Texas or residents of BR basin. To be approved, BRA should prove that there will be a broad benefit to people of Texas.

Response No. 39. The ED believes that BRA has shown that it can beneficially use its requested amount of water. BRA does not have to show that this application, if granted, would be a broad benefit for the people of Texas. It does have to show that granting the application would not be detrimental to the public welfare. Considering the need for water supply in the future, particularly in light of the continuing severe drought in the basin and in the state, the ED does not believe that this application is detrimental to the public welfare.

Comment No. 40. Commenters state that under BRA's WMP, Possum Kingdom may be totally emptied. BRA can sell the maximum amount of its permit without considering lake levels.

Response No. 40. BRA can sell the maximum amount of water authorized in its permit as long as it does not violate any conditions in its water rights, including

any condition of the Water Management Plan (if granted.) BRA has to meet environmental flow restrictions before it can divert water under any new permit. There are no lake level conditions in the draft permit and draft Water Management Plan (WMP) because the Water Code and TCEQ rules do not require water supply reservoirs to keep certain water elevation levels as long as the other conditions of the water rights are met.

Comment No. 41. The TCEQ should deny or defer action until the petition for watermaster on the Brazos River is resolved, impacts of current drought are better understood, and the current hydrologic condition of the basin is better understood.

Response No. 41. A watermaster was created under the petition discussed in the comment. Whether there is a watermaster does not change BRA's duty to comply with its water rights and the law.

Droughts are part of the hydrologic cycle. Once the current drought is over and Possum Kingdom reservoir spills, BRA will perform a detailed evaluation of whether the current drought represents a drought worse than the drought of record and submit the results of its analysis to TCEQ.

Comment No. 42. Is BRA willing to discuss options that will serve all stakeholders equitably?

Response No. 42 This question is more properly addressed to the BRA. The ED encourages basin-wide cooperation.

Comment No. 43. The TCEQ should provide an open forum in our community for local homeowners, landowners, business owners, recreational users, State and County government representative and other interested stakeholders to voice their concerns and be address by the TCEQ.

Response No. 43 The TCEQ had such a meeting on July 25, 2013, in Hewitt, Texas.

Comment No. 44. When will downstream needs accommodate upstream needs?

Response No. 44. Upstream needs could be at a disadvantage because it is much easier and less expensive to send water downstream than upstream. However, allowing BRA to meet some of its downstream needs from water in the river could allow BRA to maintain more water in its upstream reservoirs for upstream needs in those areas.

Comment No. 45. What is the current appropriation that BRA has authority to take? What are total volumes of water in each of the three lakes (PK, Granbury, and Whitney) and what are the volumes of water being taken from each?

Response No. 45. Certificate of Adjudication 12-5155 (Lake Possum Kingdom) authorizes the storage of 724,739 acre-feet of water and the diversion of 230,750 acre-feet of water. Certificate of Adjudication 12-5156 (Lake Granbury) authorizes the storage of 155,000 acre-feet of water and the diversion of 64,712 acre-feet of water. Certificate of Adjudication 12-5157 (Lake Whitney) authorizes the storage of

50,000 acre-feet of water within Lake Whitney and the diversion of 18,336 acre-feet of water.

All of these water rights include authorizations and special conditions relating to BRA's existing system operation order. These additional authorizations include the right to take additional water from each of these reservoirs at certain times.

Comment No. 46. Have recent discussions between BRA and local officials followed the Open Meetings Act? Is content being shared with public?

Response No. 46. If BRA, or certain local officials, take action on public business or public policy over which they have supervision and control, and it is non-confidential matter, they must comply with the Open Meetings Act.

Comment No. 47. A commenter states that the Governor said that there is a new law that will give the LBB the authority to perform efficiency reviews of the BRA. The LBB is now going to be BRA's oversight.

Response No. 47. The legislature passed H.B. 2362 in the last regular Session, 2013. This bill provides that the Legislative Budget Board may audit river authorities. The LBB is currently auditing the Brazos River Authority and the Lower Colorado River Authority. The audit is to "review and analyze the effectiveness and efficiency of the policies, management, fiscal affairs, and operations of a river authority."

Comment No. 48. A commenter states that his lawyer advised him that TCEQ has such a mess with water being over permitted already; they don't know what they are doing. Farmers already have stopped irrigating so Dow Chemical can use their water so don't grant them their permit.

Response No. 48. The ED does not agree with the comment. Dow Chemical Company has made a several senior calls in the Brazos River and many water rights with junior priority dates in the Brazos River (including farmers) were suspended, as allowed by statute.

Comment No. 49. A commenter asks if BRA owns the water, now that there is no water, is that land ours to build on? Do we get to clean it up, do we get to just mow that stuff off and build on it?

Response No. 49 Even if the lake is dry, the lakebed may not be built upon because BRA has the right to impound water on that land when there are inflows to the reservoir due to contract deliveries or rainfall.

Comment No. 50. The Possum Kingdom Lake Association comments that it looks forward to the opportunity to work with TCEQ and BRA and other interested parties and find a solution that balances the needs within the river basin and throughout Texas.

Response No. 50. The ED acknowledges the comment.

Respectfully submitted,

TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

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CERTIFICATE OF SERVICE

I certify that on the 26th day of January, the foregoing document was filed electronically with the Chief Clerk of the Texas Commission on Environmental Quality.

By Robin Smith
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