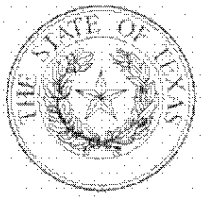
State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

January 31, 2014

Anne Idsal, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

VIA FACSIMILE NO. (512) 239-5533

Re: SOAH Docket No. 582-13-3040; TCEQ Docket No. 2013-0174-WR; Petition for the Appointment of a Watermaster in the Brazos River Basin Filed by the Brazos River Coalition

Dear Ms. Idsal:

These are our recommendations concerning the exceptions to our Proposal for Decision (PFD) that have been filed in the above case. We recommend that the Commission sustain the following exceptions:

- Aligned Parties' exceptions to Findings of Fact (FOFs) 3, 5, 7, 8, 10, 12, 34, 36, and 79;
- Aligned Parties' exceptions to Conclusions of Law (COLs) 2, and 3;
- Aligned Parties' exceptions proposing to add new FOFs between FOFs 29 and 30, and between FOFs 79 and 80;
- Executive Director's (ED's) exceptions to FOF 23, 27, 28, 29, and 49;
- ED's exception to PFD page 27, first paragraph, such that the first sentence reads as follows: "When it receives a priority call, Regular Staff performs an analysis ~~using the agency's Water Availability Model (WAM)~~ to determine . . . .";
- Upper Brazos Coalition's exception to FOF 17, in part, by changing it to a COL; and

- Brazos River Authority's (BRA's) exception to PFD page 33, last paragraph, such that the following is added to footnote 116: "Dr. Brandes conceded that retention of such flows did not necessarily violate TCEQ curtailment orders."

We recommend that the Commission overrule all other exceptions and replies.

Sincerely,

William G. Newchurch
Administrative Law Judge

Hunter Burkhalter
Administrative Law Judge

HB/WGN/mle/ls
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

SERVICE LIST

AGENCY: **Environmental Quality, Texas Commission on (TCEQ)**

STYLE/CASE: **PETITION FOR BRAZOS RIVER WATERMASTER**

SOAH DOCKET NUMBER: **582-13-3040**

REFERRING AGENCY CASE: **2013-0174-WR**

STATE OFFICE OF ADMINISTRATIVE HEARINGS	**ADMINISTRATIVE LAW JUDGE** **ALJ HUNTER BURKHALTER**
REPRESENTATIVE / ADDRESS	**PARTIES**
MOLLY CAGLE ATTORNEY PARTNER, BAKER BOTTS, L.L.P. 1500 SAN JACINTO CENTER 98 SAN JACINTO BLVD. AUSTIN, TX 78701 (512) 322-2535 (PH) (512) 322-2501 (FAX) molly.cagle@bakerbotts.com	GULF COAST WATER AUTHORITY (GCWA)
FRED B WERKENTHIN, JR. BOOTH, AHRENS & WERKENTHIN, P.C. 515 CONGRESS AVENUE, SUITE 1515 AUSTIN, TX 78701-3503 (512) 472-3263 (PH) fbw@baw.com	THE DOW CHEMICAL CO. (DOW)
ROSS W. HENDERSON STAFF ATTORNEY TEXAS COMMISSION ON ENVIRONMENTAL QUALITY MC-173 P.O. BOX 13087 AUSTIN, TX 78711-3087 (512) 239-6257 (PH) (512) 239-0626 (FAX) ross.henderson@tceq.texas.gov	EXECUTIVE DIRECTOR

DOUG G. CAROOM
ATTORNEY
BICKERSTAFF HEATH DELGADO ACOSTA, LLP
3711 S. MOPAC EXPRESSWAY, BUILDING ONE, SUITE 300
AUSTIN, TX 78746
(512) 472-8021 (PH)
(512) 201-4515 (FAX)
dcaroom@bickerstaff.com

BRAZOS RIVER AUTHORITY

JOE FREELAND
ATTORNEY AT LAW
MATHEWS & FREELAND, L.L.P.
8140 N. MOPAC EXPWY., WESTPARK II, SUITE 260
AUSTIN, TX 78759-8884
(512) 404-7800 (PH)
(512) 703-2785 (FAX)
jfreeland@mandf.com

NRG TEXAS POWER LLC

SCOTT R. SHOEMAKER
ATTORNEY
THE TERRILL FIRM, P.C.
810 WEST 10TH STREET
AUSTIN, TX 78701
(512) 474-9100 (PH)
(512) 474-9888 (FAX)
sshoemaker@terrill-law.com

R.E. JANES GAVEL CO. (JANES GAVEL)

GWENDOLYN HILL WEBB
WEBB & WEBB
P. O. BOX 1329
AUSTIN, TX 78767
(512) 472-9990 (PH)
(512) 472-3183 (FAX)
g.hill.webb@webbwebblaw.com

BRADLEY B. WARE

ELI MARTINEZ
PUBLIC INTEREST COUNSEL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
12100 PARK 35 CIRCLE, MC-103, BUILDING F
AUSTIN, TX 78753
(512) 239-3974 (PH)
(512) 239-6377 (FAX)
eli.martinez@tceq.texas.gov

OFFICE OF PUBLIC INTEREST COUNSEL

SUSAN M. MAXWELL
ATTORNEY AT LAW
BICKERSTAFF HEATH DELGADO ACOSTA, LLP
3711 S. MOPAC EXPRESSWAY, BUILDING ONE, SUITE 300
AUSTIN, TX 78746
(512) 472-8021 (PH)
(512) 320-5638 (FAX)
smaxwell@bickerstaff.com

BRAZOS RIVER AUTHORITY

JASON HILL
LLOYD, GOSSELINK, ROCHELLE & TOWNSEND, P.C.
816 CONGRESS AVENUE, SUITE 1900
AUSTIN, TX 78701
(512) 322-5855 (PH)
(512) 874-3955 (FAX)
jhill@lglawfirm.com

UPPER BRAZOS COALITION

DAVID TUCKFIELD
ATTORNEY AT LAW
THE AL LAW GROUP, PLLC
12400 HIGHWAY 71 WEST, SUITE 350-150
AUSTIN, TX 78738
(512) 576-2481 (PH)
(512) 366-9949 (FAX)
david@allawgp.com

CITY OF COPPERAS COVE

BELL COUNTY WCID NO. 1

CITY OF HARKER HEIGHTS

CITY OF KILLEEN

CITY OF BELTON

JAMES B. MURPHY
ASSISTANT PUBLIC INTEREST COUNSEL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P. O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-6363 (PH)
(512) 239-6377 (FAX)
james.murphy@tceq.texas.gov

OFFICE OF PUBLIC INTEREST COUNSEL

EDMOND MCCARTHY
JACKSON, SJOBERG, MCCARTHY & WILSON, LLP
711 W. 7TH STREET
AUSTIN, TX 78701
(512) 472-7600 (PH)
(512) 225-5565 (FAX)

CITY OF HOUSTON

W. THOMAS BUCKLE
SCANLAN, BUCKLE & YOUNG, P.C.
602 WEST 11TH STREET
AUSTIN, TX 78701-2099
(512) 478-4651 (PH)
(512) 478-7750 (FAX)

MIRANDA LEONARD TRUST III

MARTHA LEONARD TRUST III

MADELON LEONARD TRUST III

JPMORGAN CHASE BANK, N.A. AS TRUSTEE OF THE

MARY LEONARD CHILDRENS TRUST

GEORGE SIDNEY KACIR
1821 EVERTON DRIVE
TEMPLE, TX 76504
(254) 773-2171 (PH)
(254) 773-2173 (FAX)
kacirlaw@sbcglobal.net

GEORGE SIDNEY KACIR

DAN KACIR
1821 EVERTON DR.
TEMPLE, TX 76504
(254) 493-1307 (PH)
(254) 773-2171 (WK)
(877) 835-6321 (FAX)
dkatty2000@yahoo.com

DAN KACIR

DAVID WHEELER
401 N. 9TH STREET
TEMPLE, TX 76501
(512) 924-0312 (PH)
(254) 773-2173 (FAX)

KACIR WHEELER, LLC

ALDREDGE & SHANAHAN, LP
1345 S. FM 908
ROCKDALE, TX 76567-4476

ALDREDGE & SHANAHAN, LP

CITY OF CLEBURNE
P.O. BOX 677
CLEBURNE, TX 76033

CITY OF CLEBURNE

RICHARD D. LUNDBERG
LUNDBERG FARMS
P.O. BOX 329
CLIFTON, TX 76634

RICHARD D. LUNDBERG

MARGIE KRAEMER
KRAEMER FARMS
296 CR 100
ROGERS, TX 76569

KRAEMER FARMS

HUGH DAVIS
2025 CHARBONEAU DR.
WACO, TX 76710-2651

HUGH DAVIS

CHESTER E. DIXON
24 W. RIVERCREST DR.
HOUSTON, TX 77042

CHESTER E. DIXON

PAULINA WILLIAMS
BAKER BOTTS LLP
98 JACINTO BLVD, SUITE 1500
AUSTIN, TX 78701-4078
(512) 322-2543 (PH)
(512) 322-3643 (FAX)
paulina.williams@bakerpotts.com

GULF COAST WATER AUTHORITY (GCWA)

ELIZABETH A. TOWNSEND
JACKSON, SJOBERG, MCCARTHY & TOWNSEND, LLP
711 W. 7TH STREET
AUSTIN, TX 78701
(512) 225-5585 (PH)
(512) 225-5565 (FAX)
btownsend@jacksonsjoberg.com

LUMINANT GENERATING COMPANY

JASON M. CORDOBA
208 PARKING WAY
LAKE JACKSON, TX 77566
(979) 297-2854 (PH)
(979) 299-6440 (FAX)
jason@maurolaw.com

BRAZOSPORT WATER AUTHORITY (BWA)

I J TALBOT
104 CATALPA ST.
LAKE JACKSON, TX 77566-6004

I J TALBOT