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January 6, 2014

The Honorable William G. Newchurch
The Honorable Hunter Burkhalter
State Office of Administrative Hearings
300 W. 15th Street, Suite 502
Austin, Texas 78701
Facsimile 512-322-2061

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*; Proposal for Decision

Dear Judges Newchurch and Burkhalter:

In receipt of the Proposal for Decision (PFD) signed December 17, 2013 in the above referenced proceeding, the Brazos River Authority (BRA) maintains its neutrality with respect to your recommendations regarding the ultimate issue of watermaster appointment, and does not intend to file exceptions to the PFD with the Texas Commission on Environmental Quality.¹ However, upon review of the PFD and reference to the hearing record, BRA wishes to bring to your attention two specific matters on which BRA requests consideration of corrections to the PFD, as follows:

1. Within the discussion of evidence presented on the referred issue of threat to senior water rights, the PFD describes certain testimony presented by Dr. Robert Brandes regarding reservoir impoundments during the various priority calls, and characterizes Dr. Brandes' conclusion as being that "all of the reservoirs retained inflows that probably should have been passed through to comply with the priority calls." (PFD p. 33). Although other portions of this PFD paragraph directly and correctly recite aspects of Dr. Brandes' testimony on this issue, the PFD's description of his conclusion implies that BRA illegally impounded water during the calls in violation of TCEQ's curtailment orders. In fact, Dr. Brandes' prefiled testimony that is relied upon includes a direct question and answer in which he states that the impoundments he analyzed do not necessarily mean that these (BRA) reservoir water rights were being operated in violation of TCEQ call orders. (*See Dow Ex. 200 (Brandes prefiled)* at 39:1-7). BRA respectfully submits that, for clarity and full context, the discussion of this portion of Dr. Brandes' testimony should recognize that retention of such flows "did not necessarily violate TCEQ curtailment orders" (and in many cases was authorized by TCEQ's orders).

¹ BRA does, however, reserve the right to file a timely reply to exceptions or briefs that other parties may file regarding the PFD.

2. In the proposed TCEQ Order attached to the PFD, Finding of Fact No. 29 regarding Dow's fourth (2013) priority call states, in relevant part, that "the TCEQ suspended all water rights in the Basin below Possum Kingdom Lake (including municipal and power generation rights) junior to February 19, 1942." This fact statement is based on the prefiled testimony of the Executive Director's expert witness, Dr. Kathy Alexander. (See PFD p. 30, n. 97 (citing ED Ex. Alexander-1 at 13)). Reference to Dr. Alexander's prefiled testimony, however, reflects her statement that the July 2013 suspension order included "*specific* junior water rights that authorized municipal and power generation use." (ED Ex. Alexander-1 at 13:7-9) (emphasis added). That is, not all junior municipal and power generation rights were suspended during that fourth priority call. BRA respectfully suggests that, for accuracy and clarity, Dr. Alexander's qualifying reference to "specific" municipal and power generation rights be added to the parenthetical reference in proposed Finding of Fact No. 29.

BRA appreciates your consideration of these two proposed corrections to the PFD. A copy of this letter has been e-filed with the TCEQ, and a copy served on each of the parties on the attached service list.

Sincerely,

Handwritten signature in blue ink that reads "Susan Maxwell".

Douglas G. Caroom

CERTIFICATE OF SERVICE

I hereby certify, by my signature below, that a true and correct copy of the foregoing letter was forwarded via e-mail or facsimile on January 6, 2014 to the parties on the attached Service List.



Susan M. Maxwell

SERVICE LIST

**PETITION FOR THE APPOINTMENT OF A WATERMASTER
IN THE BRAZOS RIVER BASIN FILED BY THE BRAZOS RIVER COALITION
SOAH DOCKET NO. 582-13-3040
TCEQ DOCKET NO. 2013-0174-WR**

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Judges Newchurch and Burkhalter

January 6, 2014

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