

Bryan W. Shaw, Ph.D., *Chairman*  
Toby Baker, *Commissioner*  
Zak Covar, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 6, 2014

Bridget Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

**RE: PETITION FOR BRAZOS RIVER WATERMASTER  
SOAH DOCKET NO. 582-13-3040  
TCEQ DOCKET NO. 2013-0174-WR**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Exceptions to the Proposal for Decision and Order in the above-entitled matter.

Sincerely,

A handwritten signature in black ink that reads "Eli Martinez".

Eli Martinez, Attorney  
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

**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**

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**BEFORE THE STATE  
  
OFFICE OF  
  
ADMINISTRATIVE  
  
HEARINGS**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGES' PROPOSAL FOR DECISION AND ORDER**

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) does not find error in the Proposal for Decision (PFD) and Order recommended by the Administrative Law Judges (ALJs) in the above styled matter. The PFD issued by ALJs William Newchurch and Hunter Burkhalter on December 17, 2013 correctly concludes that (1) the Commission has jurisdiction over the matter despite the withdrawal of some petitioners, (2) senior water rights in the basin are threatened, and (3) a watermaster with jurisdiction over the entire basin is needed and should be appointed pursuant to Texas Water Code §11.451.

OPIC agrees that the PFD utilized the proper definition and standard to determine whether water rights are threatened in the basin—specifically, that senior water rights are threatened when a set of circumstances exists creating the possibility that senior water rights holders may be unable to fully exercise their rights. The petitioners demonstrated by a preponderance of the evidence that in times of water shortage, the rights of senior water rights holders in the basin are threatened by the situation of less available water

than appropriated water rights, and that there are instances of disregard of the prior appropriation doctrine by junior water rights holders.

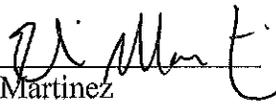
OPIC also agrees that a need for a watermaster was demonstrated at trial due to the increased efficiency and active management that a watermaster would bring to the Basin due to increased available information and enforcement efficacy. Furthermore, a watermaster would have the ability to anticipate and prevent shortages rather than reactively manage violations.

Finally, OPIC agrees that a watermaster should be appointed for the entire Basin because water rights are threatened throughout the Basin, hydrological connectivity exists throughout the Basin, and reduced jurisdiction would create distortions in the priority system.

OPIC therefore concurs with the PFD and does not except to its analysis or findings.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By   
Eli Martinez  
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**CERTIFICATE OF SERVICE**

I hereby certify that on January 6, 2014, seven true and correct copies of the Office of the Public Interest Counsel's Exceptions to the Proposal for Decision (PFD) and Order were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail or by deposit in the U.S. Mail.

  
Eli Martinez

MAILING LIST  
PETITION FOR BRAZOS RIVER WATERMASTER  
SOAH DOCKET NO. 582-13-3040  
TCEQ DOCKET NO. 2013-0174-WR

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