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	**§ § § § § §**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

ALIGNED PARTIES' EXCEPTIONS TO THE PROPOSED ORDER OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

Gulf Coast Water Authority, The Dow Chemical Company, NRG Power Texas LLC and R.E. Janes Gravel Company (collectively, "Aligned Parties") respectfully urge the Commission to adopt Administrative Law Judges ("ALJs") William Newchurch and Hunter Burkhalter's Proposed Order with minor clarifications consistent with the ALJs' underlying Proposal for Decision ("PFD").

The PFD includes a thorough analysis of the procedural issue, the evidence, and the parties' arguments associated with the disputed issues in this matter; the Aligned Parties agree with the ALJs' analysis and conclusions as presented in the PFD. For reasons well-articulated therein, ALJs Newchurch and Burkhalter concluded that: (1) the Commission acquired the necessary jurisdiction when more than 25 holders of water rights in the Basin filed the formal written request with the Commission for the appointment of a watermaster, and thus challenges to this proceeding are rejected; (2) there is a threat to senior water rights in the Brazos River Basin; (3) there is a need for a watermaster; and (4) the appropriate geographic scope for the watermaster's jurisdiction is the entire Brazos River Basin.

The Aligned Parties suggest a few changes to the Proposed Order, and those are reflected in the attached Proposed Order in redline ~~strikeout~~ format. In particular, the Aligned Parties suggest changes to conform the Proposed Order to the ALJs' discussion in the PFD regarding the issue of the Commission's jurisdiction. In the PFD, the ALJs hold that the Commission acquired jurisdiction when more than 25 holders of water rights filed a formal written request, and that the Commission's jurisdiction does not require the continuing support of at least 25 holders of water rights.[1] The use of words implying comparative timing, such as "first" in Proposed Finding of Fact No. 11, and "originally" in Proposed Conclusion of Law No. 2, are thus extraneous; as such, they are potentially misleading or subject to misconstruction. To be consistent with the rationale in the PFD, the Aligned Parties suggest minor changes to Proposed Findings of Fact Nos. 10 and 11, and Conclusions of Law Nos. 2 and 3.

The other changes suggested by the Aligned Parties provide additional context (for example, new Finding of Fact No. 30 stating that the priority date for Possum Kingdom Reservoir is senior to the dates selected for the priority calls identified in Findings of Fact Nos. 27, 28 and 29, each of which note that in response to the referenced call, the Commission restricted diversions below Possum Kingdom Reservoir) or clarification consistent with discussion in the PFD (for example, the edit to Findings of Fact Nos. 3 and 12 clarifies that individual notices were sent on the specified occasions). These suggested edits, we believe, are self-explanatory.

[1] Proposal for Decision at 12.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been served on the following via e-mail on this 6th day of January, 2014:

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered a petition (Petition) by holders of water rights in the Brazos River Basin (Basin) asking the Commission to authorize its Executive Director (ED) to appoint a watermaster to monitor, regulate, and control water withdrawals from the Basin. A proposal for decision (PFD) was presented by William G. Newchurch and Hunter Burkhalter, Administrative Law Judges (ALJs) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the Petition on September 23 through 26, 2013, in Austin, Texas.

After considering the ALJs' PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. On January 7, 2013, 35 holders of water rights in the Basin (Petitioners) filed the Petition asking Commission to authorize its ED to appoint a watermaster to monitor, regulate, and control water withdrawals from the Basin.

2. The Petitioners claimed that a watermaster was needed because senior water rights in the Basin were threatened.

3. On January 29, 2013, the Commission's Chief Clerk sent notice to each of the Petitioners that the Commission would consider the Petition and determine whether to refer it to SOAH for hearing at its February 13,2013 meeting.

4. On February 13, 2013, the Commission found that the Petition was signed by more than 25 water right holders in the Basin and referred it to SOAH for hearing.

5. On March 13, 2013, the Commission's Chief Clerk mailed a notice of hearing to each of the Petitioners, all other holders of water rights in the Basin, the ED, and the Office of Public Interest Counsel (OPIC). It contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

6. As indicated in the notice of hearing, ALJ Newchurch conducted a preliminary hearing on April 17, 2013, at which jurisdiction was proven and parties were admitted.

7. Some parties later withdrew. The following are currently parties in this case and are generally grouped by their position on the granting of the Petition:

PARTIES	REPRESENTATIVES
Petitioners	
Gulf Coast Water Authority (GCWA)	Molly Cagle and Paulina Williams
The Dow Chemical Co. (Dow)	Fred B. Werkenthin, Jr.
NRG Texas Power LLC (NRG)	Joe Freeland
R. E. Janes Gravel Co. (Janes Gravel)	Scott R. Shoemaker
Brazosport Water Authority (BWA)	Ronald Woodruff
I. J. Talbott	self
City of Cleburne	not specified
Chester E. Dixon	self
Arledge & Shannon, LP	not specified
Protestants	
City of Lubbock, City of Abilene, City of Stamford, West Central Texas Municipal Water District, North Central Texas Municipal Water Authority, and White River Municipal Water District (Upper Brazos Coalition)	Jason Hill
Bell County WCID No.1, City of Harker Heights, City of Belton, City of Killeen, and City of Copperas Cove (Bell County Group)	David Tuckfield
Bradley B. Ware, and William and Gladys Gavranovic, Jr. (BFFR)	Gwendolyn Hill Webb and Stephen P. Webb
Kacir-Wheeler LLC	Brent Wheeler

PARTIES	REPRESENTATIVES
JPMORGAN Chase Bank, N.A., as Trustee of the Mary Leonard Children's Trust, Miranda Leonard Trust III, Martha Leonard Trust III, and Madelon Leonard Trust III (Leonard Trusts)	W. Thomas Buckle
Dan Kacir	self
George Sidney Kacir	self
Neutrals	
Brazos River Authority (BRA)	Doug Caroom
City of Houston	Edmond R. McCarthy Jr. and Edmond R. McCarthy III
Luminant Generation Company	Elizabeth Townsend
Statutory Parties	
OPIC	~~James B. Murphy and~~ Eli Martinez
ED	~~Ross Henderson~~ Robin Smith

8. GCWA, Dow, NRG, and Janes Gravel were aligned and are referred to as "the Aligned Parties."

9. Many of the Petitioners later withdrew their requests for appointment of a watermaster. The table below shows all of the original Petitioners and indicates the ones who continue to actively seek the appointment of a watermaster and those who have withdrawn as Petitioners:

Petitioner	**Status**	**Certificate of Adjudication Nos.**
Dow	active	12-5328, 12-5322 & 12-5171
NRG	active	12-5320 & 12-5325
BWA	active	12-5366
I. J. Talbott, Trustee	active	12-5329
GCWA	active	12-5168
Thomas Hicks	active	12-4133
Janes Gravel	active	12-3710
Richard D. Lundberg and Lundberg Farms	active	6-2294
Hugh W. Davis	active	2304
Jane H. Cravens	active	3460
Arledge & Shannon, LP	active	3773
Margie Kraemer, Kraemer Farms	active	4015
John Nigliazzo *et ux*	active	4145
Chester E. Dixon	active	2948 & 2949

Petitioner	Status	Certificate of Adjudication Nos.
City of Cleburne	active	4106A-C & 4258
Weldon S. Laas	withdrawn	12-5819
RichardT. Lietz Estate	withdrawn	12-4090
Charlie Ray Cockburn	withdrawn	12-4032
Don Weinacht	withdrawn	12-4023
Keith David Lemons	withdrawn	12-3677
Joe D. and John R. Moore	withdrawn	12-3651
Nellie Earline Brooks Tomme	withdrawn	12-2964
W. T. Crumley	withdrawn	12-2229
Jim Hering	withdrawn	2310
P. D. Gunter	withdrawn	2818
J. B. Gunter	withdrawn	2819
L. T. Warlick	withdrawn	2875
Barry Siebenlist	withdrawn	2946
Louis Pitcock Jr.	withdrawn	3457
Margaret Janes	withdrawn	3569
JFB Farn1s	withdrawn	3619
Frances Davis	withdrawn	3724
Harvest Quail, Inc.	withdrawn	4011
KHK Foggy Bottom Farms, Inc.	withdrawn	4016
Ted Higginbottom, AI David Kirk and Bill Kirk	withdrawn	4016
KL Nixon Estate	withdrawn	5278

10. None of the 35 valid ~~original~~ Petitioners withdrew before June 3, 2013.

11. There were more than 25 Petitioners when the Commission ~~first~~ evaluated and acted on the Petition on February 13, 2013.

12. On September 23, 2013, ALJs Newchurch and Burkhalter convened the hearing on the merits after providing notice to each of the parties through an order issued on April 18, 2013. The hearing on the merits concluded on September 26, 2013.

13. Because the hearing on the merits was scheduled for more than one day, the ALJs ordered the Petitioners to arrange for and pay a court reporter to record and transcribe the hearing and to deliver the original transcript to the ALJs and two copies to the TCEQ's Chief Clerk on an expedited basis. The total cost of the transcript was $10,196.

14. The Aligned Parties, the Bell County Group, the Upper Brazos Coalition, and BRA benefitted from the transcript and have the ability to pay a share of the cost.

15. The Aligned Parties have agreed to pay $7,196 of the transcript cost.

16. The following are the principal procedural events in this case:

DATE	EVENT
January 7, 2013	Petition filed with the Commission.
February 19, 2013	Commission referred the Petition to SOAH for hearing.
March 13, 2013	Notice of hearing mailed to all water right holders in the
April 17, 2013	Preliminary hearing and discovery began.
September 23, 2013	Hearing on the merits began.
September 26, 2013	Hearing on the merits ended.
October 16, 2013	Deadline to file closing briefs and arguments.
October 25, 2013	Deadline to file responses to closing briefs and arguments.
December 17, 2013	Deadline to issue PFD.

17. Pursuant to the prior appropriation doctrine, each water right holder may make his authorized diversions of water only if sufficient water would still be available to satisfy all senior downstream water rights.

18. Outside a watermaster area, it is difficult to administer and enforce the prior appropriation doctrine because there is little data available to enable each water right holder to know whether it can divert water without impairing senior rights.

19. Due to this paucity of data, in the absence of a watermaster or a TCEQ order enforcing a priority call, water right holders often exercise their water rights to the fullest extent possible, without regard to the needs of senior water rights or the requirements of the prior appropriation doctrine.

20. Outside of watermaster areas, the TCEQ does not actively enforce the prior appropriation doctrine on a day-to-day basis. Instead, the ED typically enforces only in a reactive mode, in response to a complaint or "priority call" by a water right holder who alleges it is the victim of out-of-priority diversions by junior water right holders.

21. In times of low flow, the water available in the Basin is not sufficient to satisfy all of the authorized water rights.

22. Dow holds Certificate of Adjudication No. 12-5328, which authorizes it to divert roughly 240,000 acre-feet of water per year from the Brazos River for use at the Freeport facility, with priority dates ranging from 1929 to 1976.

23. Dow's water right is the last major right on the Brazos River before it flows into the Gulf of Mexico. Because of its location, it is uniquely vulnerable, especially during low flow periods, to over-appropriations by junior diverters in the Basin.

24. In recent years, there have been repeated instances when there has been insufficient water in the river to fully satisfy Dow's water rights. In response, the company made

priority calls to the TCEQ in 2009, 2011, 2012, and 2013.

25. Dow's 2009 priority call was made on June 19, 2009, at a time when the river was flowing at a rate low enough to hinder Dow's ability to continue to pump from the river. More than 40 days after the priority call was made, the TCEQ suspended water rights junior to 1980 below certain BRA reservoirs.

26. Dow's next priority call was made on April 18, 2011, at a time when the river was flowing at a rate insufficient to enable Dow to divert enough water from the River as allowed by its water rights.

27. The ED took 41 days to respond to Dow's 2011 priority call, ultimately suspending all rights junior to August 8, 1960 (excluding municipal and power generation uses), and enlarging the area subject to the priority call to include all water rights in the Basin below Possum Kingdom Lake.

28. Dow made a third priority call on November 14, 2012. In response, the ED suspended all water rights in the Basin below Possum Kingdom Reservoir (other than municipal and power generation rights) junior to 1942.

29. Dow made a fourth priority call on June 26, 2013. In response, the TCEQ suspended all water rights in the Basin below Possum Kingdom Lake (including municipal and power generation rights) junior to February 19, 1942.

30. Possum Kingdom Lake has a priority date of April 6, 1938, which is senior in priority to each of the above referenced priority calls. [Subsequent renumbering not shown.]

30. None of the priority calls resulted in a significant increase in the amount of water available at Dow's facility.

31. Due to concerns about the reliability of its senior water rights, Dow purchased interruptible water from BRA pursuant to contract on multiple occasions since January 1, 2009. Dow has paid BRA more than $9 million for this interruptible water.

32. GCWA is a conservation and reclamation district that distributes water in Galveston, Brazoria, and Fort Bend Counties.

33. GCWA has water rights in the Basin totaling roughly 380,000 acre-feet with priority dates ranging from 1926 to 1983 that authorize GCWA to divert water at the lower end of the Basin near the Gulf of Mexico.

34. In recent years, GCWA has purchased water pursuant to contracts with BRA at an average cost of roughly $3.9 million per year because it was concerned about the reliability of its senior water rights.

35. In the years 2009, 2011, and 2013, river flows were inadequate to enable GCWA to fully exercise its water rights, thereby forcing GCWA to also rely on its contracted water from BRA.

36. In 2009, GCWA purchased an additional approximately 24,000 acre-feet of interruptible water from BRA, at a cost of $942,000.

37. In 2011, GCWA purchased an additional 91,486 acre-feet of interruptible water from BRA, at a cost of $4.8 million.

38. In mid-June 2013, flows in the Brazos River fell below 100 cubic feet per second (cfs) in the areas around GCWA's intake pumps, making it difficult for GCWA to make its authorized diversions. In response, GCWA submitted a priority call to the TCEQ on June 20, 2013.

39. In recent years, a number of junior water right holders in the Basin have made out-of-priority diversions or impoundments in violation of the prior appropriation doctrine.

40. A number of junior water right holders in the Basin made diversions in violation of the TCEQ's 2013 priority call order.

41. In this Order, the area of the Brazos River Basin above Possum Kingdom Lake is described as the Upper Basin, while the remainder (including Possum Kingdom Lake) is described as the Lower Basin.

42. Periods of low flow are persistent and recurrent in the Upper Basin.

43. A significant number of water rights in the Upper Basin are unreliable and rarely fully satisfied.

44. In recent years, at least two priority calls have been made by water right holders in the Upper Basin.

45. Senior water rights are threatened throughout the Basin, including the Upper Basin.

46. In times of water shortage, senior water right holders in the Basin are threatened by the situation of less available water than appropriated water rights.

47. In times of water shortage, senior water right holders in the Basin are threatened by the disregard of prior appropriation by junior water right holders.

48. In times of water shortage, senior water right holders in the Basin are threatened by

the storage of water by holders of junior rights.

49. In times of water shortage, senior water right holders in the Basin are threatened by the diversion, taking, or use of water in excess of the quantities to which other holders of water rights are lawfully entitled.

50. Under the current regime for managing water rights in the Basin without a watermaster, senior water right holders in low flow years cannot fully and reliably divert or impound
though junior water right holders are able to divert or impound water.

51. Watermasters have a full-time staff dedicated to the single task of managing water rights.

52. Watermasters have access to real-time data regarding stream flows and water usages, including information regarding what water is being diverted pursuant to what water rights.

53. A watermaster's access to real-time data enables a watermaster to quickly identify and stop illegal diversions.

54. Inside watermaster areas, each water right holder is required to:

    a. Install meters on their water pumps; and

    b. Submit to the watermaster a declaration of intent to divert (DOl) that states how much water the holder intends to divert and when it intends to divert it.

55. Watermasters can respond quickly and capably to water shortages and illegal diversions.

56. A watermaster's staff can perform frequent field investigations.

57. A watermaster can lock pumps for violations and allocate flows among priority users during water shortages.

58. A watermaster can continuously monitor stream flows, reservoir levels, and water use in a river basin.

59. A watermaster can coordinate diversions to ensure that all users get the best overall value from the available water, while still protecting senior rights.

60. A watermaster can anticipate a shortage before it reaches a crisis, and develop a strategy for proactively dealing with the anticipated shortage.

61. A watermaster can serve as an intermediary between water rights holders, thereby avoiding costly litigation.

62. A watermaster can provide valuable technical assistance to water users.

63. Watermasters can play a more active and day-to-day role in the management of water rights than can the TCEQ regular staff (Regular Staff).

64. Watermaster can efficiently address the timing of diversions, thereby reducing the possibility of waste.

65. Watermasters are better able to prevent interference with released water purchased from storage.

66. Watermasters are more aware of drought conditions as they develop.

67. Watermasters are proactive, not reactive.

68. Watermasters can take actions within hours of when an issue arises.

69. Watermasters can deal with shortages in a more nuanced and individualized basis than Regular Staff is able to do with a priority call order, thereby maximizing the use of water and avoiding waste while better enforcing the prior appropriation doctrine.

70. Watermasters can increase fairness and transparency with respect to water rights.

71. The total ongoing costs of a Brazos River watermaster would likely be between roughly $500,000 and $800,000 per year.

72. Approximately one-half of the cost of a watermaster for the Basin would be paid for by four water right holders who either support or take no position on the appointment of a watermaster for the entire Basin: BRA, NRG, GCWA, and Dow.

73. The ED's response to the 2009 priority call cost the Commission approximately $283,328.

74. The ED's response to the 2011 priority call cost the Commission approximately $513,874.

75. Significant TCEQ staff time and resources are diverted away from other program duties during the implementation of priority calls.

76. Outside watermaster areas, the costs of managing water rights are paid by the TCEQ using general revenues.

77. Inside a watermaster area, the financial costs incurred by a watermaster are paid by the holders of the water rights that are administered by the watermaster.

78. Since 2009, Dow has paid more than $9 million, and GCWA has paid over $5 million, to obtain additional interruptible water via contracts to offset low stream flow in the river at their diversion points, which was attributable in part to out-of-turn diversions and impoundment of inflows.

79. The financial cost of a watermaster program for ~~the Basin would be very low to~~ holders of water rights in the Basin would be approximately $0.16 per acre-foot for municipal rates and $0.13 per acre-foot for agricultural rates, plus a $50.00 base fee~~per acre-foot of water right that they hold~~.

80. Customers of the City of Abilene would pay approximately an additional $1.25 per year, or 10 cents per month in retail water rates. [Subsequent renumbering not shown.]

80. The cost of a watermaster program would be largely offset by enabling the TCEQ to avoid what it internally spends per year in dealing with priority calls in the Basin.

81. If a watermaster is appointed for the Basin, the costs of managing water rights in the Basin would be more fairly and equitably allocated among the holders of those rights, rather than being paid by all citizens of Texas.

82. With appointment of a watermaster, entities such as Dow and GCWA would likely find their water rights to be much more reliable, thereby enabling them to avoid or reduce the cost of purchasing contract water.

83. A watermaster is needed in the Basin because the appointment of a watermaster would be desirable and useful for the proper management of water rights in the Basin.

84. The Upper Basin is an integral part of the overall Brazos River system and should not be excluded from the watermaster's geographical and jurisdictional boundaries.

85. Possum Kingdom Lake is completely dependent upon water flows from the Upper Basin.

86. If the Upper Basin were excluded from the jurisdiction of a watermaster, BRA's large and relatively senior water rights associated with Possum Kingdom Lake would be less protected from the risk of out-of-priority diversions by upstream water right holders.

87. If the Upper Basin were excluded from the jurisdiction of a watermaster, BRA would pay watermaster fees associated with its Possum Kingdom Lake rights without getting the benefits and protections of the watermaster program for those rights.

88. The Basin includes numerous tributaries that are an integral part of the Brazos River system and should not be excluded from the watermaster's geographical and jurisdictional boundaries.

89. If a watermaster was appointed with jurisdiction over only a portion of the Basin, the watermaster's effectiveness would be impaired and the Commission's enforcement of the prior appropriation doctrine in the Basin would be more difficult, imprecise, inefficient, and expensive.

II. CONCLUSIONS OF LAW

1. On petition of 25 or more holders of water rights in a river basin or segment of a river basin or on its own motion the Commission may authorize the ED to appoint a watermaster for a river basin or segment of a river basin if the Commission finds that the rights of senior water rights holders in the basin or segment of the basin are threatened. Tex. Water Code § 11.451.

2. The Commission has jurisdiction to consider and act on the Petition because it was ~~originally~~ filed by more than 25 holders of water rights in the Basin. Tex. Water Code § 11.451.

3. The Commission did not ~~subsequently~~ lose jurisdiction after some Petitioners withdrew, leaving less than 25 remaining.

4. Notice of the hearing on the Petition was given as required by Texas Government Code §§ 2001.051 and 2001.052.

5. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a PFD with Findings of Fact and Conclusions of Law. Tex. Gov't Code ch. 2003.

6. The Petitioners have the burden of proof by a preponderance of the evidence. 30 Tex. Admin. Code § 80.17.

7. Water rights in Texas are subject to the prior appropriation doctrine, meaning that a water right with a given priority date is "junior" to all water rights with older priority dates and "senior" to all water rights with a later priority date. Tex. Water Code § 11.027.

8. The Commission may authorize the appointment of a watermaster if it finds that the rights of senior water right holders in a basin are threatened and a need exists for appointment of a watermaster for the basin or a segment of the basin. Tex. Water Code §§ 11.451 and 11.452.

9. Senior water rights are threatened throughout the Basin.

10. A need exists for the appointment of a watermaster throughout the Basin.

11. A watermaster should be appointed with jurisdiction over the entire Basin.

12. For any proceeding set to last longer than one day, a court reporter is generally required. 1 Tex. Admin. Code.§ 155.423(b).

13. Upon their own motion, ALJs may request an original and two copies of a transcript of a proceeding and may require the applicant to pay for the transcript in advance subject to reimbursement from other parties upon assessment of costs. 30 Tex. Admin. Code. § 80.23(b)(4) and (5).

14. The Commission will not assess transcript costs against the ED or the OPIC. 30 TAC § 80.23(d)(2).

15. Under 30 Tex. Admin. Code § 80.23(d)(1), the Commission will consider the following relevant factors in allocating reporting and transcription costs among the parties:

- the party who requested the transcript;
- the financial ability of the party to pay the costs;
- the extent to which the party participated in the hearing;
- the relative benefits to the various parties of having a transcript;
- the budgetary constraints of a state or federal administrative agency participating in the proceeding;
- in rate proceedings, the extent to which the expense of the rate proceeding is included in the utility's allowable expenses; and
- any other factor which is relevant to a just and reasonable assessment of costs.

16. The transcript cost should be allocated as follows: $7,196 to the Aligned Parties, $1,000 to the Bell County Group, $1,000 to the Upper Brazos Coalition, and $1,000 to the Brazos River Authority.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The Petition for the appointment of a watermaster in the Brazos River Basin is warranted.

2. The ED shall appoint a watermaster with jurisdiction over the entire Brazos River Basin.

3. The Aligned Parties shall pay $7,196 for the cost of the transcript, and the Bell County Group, the Upper Brazos Coalition, and the Brazos River Authority shall each pay $1,000 for the cost of the transcript.

4. The effective date of this Order is the date the Order is final.

5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief not expressly granted herein, are hereby denied for want of merit.

6. If any provision, sentence, clause, or phase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

7. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

Issue Date:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., Chairman
For the Commission