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**

EXCEPTIONS TO THE PROPOSAL FOR DECISION BY JPMORGAN CHASE BANK, N.A., TRUSTEE OF THE MARY LEONARD CHILDREN'S TRUST, THE MIRANDA LEONARD TRUST III, THE MARTHA LEONARDTRUST III AND THE MADELON LEONARD TRUST III ("LEONARD TRUSTS")

NOW COMES JPMORGAN CHASE BANK, N.A. (hereinafter, "JPMORGAN"), as Trustee of the MARY LEONARD CHILDREN'S TRUST, MIRANDA LEONARD TRUST III, MARTHA LEONARD TRUST III, and MADELON LEONARD TRUST III ("LEONARD TRUSTS") and files these Exceptions to the Proposal for Decision and would show as follows:

I.

SUBJECT MATTER JURISDICTION

JPMORGAN excepts to the Proposal for Decision that rejects the position that the Commission lost jurisdiction when less than twenty-five Petitioners appeared in person or by attorney when the hearing in this matter commenced on September 23, 2013. No party and neither hearing examiner disputes that a petition signed by at least twenty-five holders of water rights in the Brazos River Basin has to be before the Commission before the Commission can appoint a watermaster pursuant to Texas Water Code §11.451, after the Commission finds both a threat and a need supporting the appointment of a watermaster. The only issue in dispute is when that petition needs to be proven in the

proceeding. The Aligned Parties and the Hearing Examiners contend the petition is "proven" when filed. The Protestants contend the petition needs to be "proven" on the first day of the evidentiary hearing. There is no dispute that on the September 23, 2013, the first day of the evidentiary hearing, less than twenty-five petitioners remained as parties in this proceeding. Consequently, the Petitioners were unable to prove up that the requisite number of holders of water rights were requesting a watermaster for the Brazos River Water Basin in the evidentiary record and this proceeding should be dismissed on the basis the Commission does not have jurisdiction to appoint a watermaster under petition provisions of Texas Water Code §11.451.

II.

THREAT

JPMORGAN excepts to the Proposal for Decision that adopts the definition of "threat" as used in the Concho River Case. Under that definition, "threatened" means the "possibility of harm" but does not require a "showing of actual harm". That is way too lenient a standard of proof to replace the existing regulatory system with an appointed water master. The better definition which would be consistent with the statutory provisions for appointment of a watermaster is the definition advocated by the BFFR "a set of demonstrated circumstances where existing senior water rights holders are unable to reliably utilize their water rights using all administrative tools now available from the TCEQ". A watermaster should only be appointed when there has been a clear showing that the existing TCEQ system of water rights management has failed to provide sufficient protection for senior water rights holders in a particular basin to the point

where such water rights holders had failed to acquire adequate water under their water rights.

III.

NEED

JPMORGAN excepts to the Hearing Examiners analysis of need agrees with the Executive Director's contention that the test of need should include a cost/benefit analysis of replacing the existing TCEQ regulatory system with a watermaster. JPMORGAN urges the Commission to adopt the following three prong test advocated by the BFFR:

1) What can a Watermaster actually provide that the existing system cannot provide?

2) Can a Watermaster function in the Brazos River Basin given the known and unknown variable unique to the Brazos River Basin?

3) Are the additional costs of a Watermaster worth the imposition of an additional layer of Government?

IV.

GEOGRAPHICAL SCOPE OF A WATERMASTER

JP MORGAN excepts to the recommendation that the entire Brazos River Basin be under the jurisdiction of a watermaster because releases from the reservoir owned by the Leonard Trusts cannot reach the Brazos River in drought conditions.

The Leonard Trusts own the Starr Hollow Ranch and Golf Club which contains approximately 3,800 acres in northwestern Hood County, Texas, approximately 7 miles northwest of Tolar, Texas. (Martha Leonard, P. 3, L. 1-3). The Starr Hollow Ranch improvements include the Leonard Family residence, the ranch foreman's residence,

various ranch related barns, corrals and fences, and stock ponds and cultivated fields. The Golf Club improvements include a golf clubhouse, golf club manager's residence, superintendent's residence, maintenance facilities, 9-hole golf course (and irrigation system) and a lake ("Starr Hollow Lake") (Martha Leonard, P. 3, L. 6-10).

Starr Hollow Lake is approximately 90+/- acres in surface area when the water surface elevation is at the spillway level of 960.4 feet of elevation (MSL). The dam is an engineered, compacted fill, earthen gravity dam, and it impounds water from two main creeks and two or more smaller tributaries which intersect in the lake area upstream of the dam. The spillway is an rock and earthen overflow area approximately 135 feet wide on the north end of the dam. The dam was constructed in 1967 and was first filled to full capacity in 1967. The approximate volume of full storage of the lake is 1,454 acre-feet and a maximum capacity of 1,959 acre feet. The upstream drainage area or watershed of Starr Hollow is approximately 1,836 acres. (Thomas Davies, P. 5, L. 10-17; P. 6, L. 1-2; P. 6, L. 10-11). Starr Hollow Lake is approximately 7.3 miles west southwest of the nearest point on Lake Granbury and approximately 13 creek meander miles from Lake Granbury and about 15 miles from the center line of the Brazos River. (Thomas Davies, P. 5, L. 19-21).

Research has shown brush-through-canopy interception, litter interception, runoff or reduced inflation and plant growth consume a vast amount of water that is not available in well managed properties. Through proper range management and various bush control methods the Star Hollow Ranch has increased the water yield annually in excess of 200 acre feet of water, more than is used annually by the Star Hollow Golf Club for irrigation of the golf course. (John Menzies, P. 4, L. 16-21).

The Leonard Trusts have spent significant monies on their conservation efforts. Cedar clearing, brush control and ranch conservation through grazing management efforts cost on an annual basis approximately $15,000.00. Golf course sprinkler maintenance and repairs cost on an annual basis approximately $6,000.00. The new automated sprinkler system installed in 2013 on the golf course cost in excess of $800,000.00. (Martha Leonard, P. 4, L. 10-13)

Robinson Creek is downstream of Starr Hollow Dam and is a tributary of the Brazos River. Immediately downstream of the spillway and discharge pipe, Robinson Creek is extremely rugged, with large drops or waterfalls and many deep storage depressions, which are low spots in the stream bed area that will fill up with and store water that runs downstream. The bed contains sand and gravel material. There is also significant and dense vegetation growing in the stream channel. This is typical of the upper portions of the creek. The entire length of the creek to Lake Granbury is similar to this upper portion, except it is less steep and the flood plain is more open pasture land but the creek bank is heavily brush-covered along its entire length. The stream bed appears to be either rugged fractured solid limestone rock or sand and gravel with a large number of meanders within the larger creek alignment, with very dense vegetation along the whole length. (Thomas Davies, P. 6, L. 21-23; P. 7, L. 1-8). Photographs depicting Robinson Creek downstream of Starr Hollow Dam were admitted into evidence as LT-P-001-012.

The Starr Hollow Dam Emergency Action Plan, LT-004, provides evidence that even if there were a total dam failure when Robinson Creek was experiencing a drought, none of the water in Starr Hollow Lake would reach the Brazos River as all of the water

would either be absorbed into the streambed or impounded in the many storage depressions. Consequently, any release from the Starr Hollow Dam would be futile on alleviating a drought condition in the Brazos River.

Simply stated, given their distant location from the Brazos River and the foregoing factors evidenced in the record in this case, further regulation of Starr Hollow Lake and Dam by a Watermaster for the Brazos River Watershed will not help to protect the rights of senior water rights holders. Therefore, JPMORGAN on behalf of the Leonard Trusts requests that the watershed above the Starr Hollow Dam be excluded from the jurisdiction of a Watermaster in the event a Watermaster is appointed for the Brazos River Watershed.

Respectfully submitted,

SCANLAN, BUCKLE & YOUNG, P.C.
602 West 11th Street
Austin, TX 78701
Tel. (512) 478-4651
Fax. (512) 478-7750
email: tbuckle@sbylaw.com

W. Thomas Buckle

W. Thomas Buckle
Texas Bar No. 03299000
Jeff Tippens
Texas Bar No. 24009121

ATTORNEYS FOR JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE "TRUSTS"

CERTIFICATE OF SERVICE

I certify that on January 3, 2014, a true and correct copy of the foregoing Exceptions to Proposal for Decision was served on the following by e-mail.

W. Thomas Buckle

The Dow Chemical Company
Represented by: Fred B. Werkenthin, Jr.
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, TX 78701-3503
fbw@baw.com

Gulf Coast Water Authority
Represented by: Molly Cagle
Baker & Botts, L.L.P.
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, TX 78701
molly.cagle@bakerbotts.com

NRG Texas Power LLC
Represented by: Joe Freeland
Mathews & Freeland, L.L.P.
327 Congress Avenue, Suite 300
Austin, Texas 78701
jfreeland@mandf.com

R.E. Janes Gravel Co.
Represented by: Scott R. Shoemaker
The Terrill Firm, P.C.
810 West 10th Street
Austin, Texas 78701
sshoemaker@terrill-law.com

Executive Director
Ross W. Henderson
Staff Attorney
Texas Commission on Environmental Quality
MC-173, P. 0. Box 13087
Austin, TX 78711-3087
rhenders@tceq.texas.gov

Office of Public Interest
Eli Martinez
Texas Commission on Environmental Quality
Office of Public Interest Counsel
P.O. Box 13087, MC-103
Austin, TX 78711-3087
eli.martinez@tceq.texas.gov

Brazos River Authority
Represented by: Doug G. Caroom
Represented by: Susan M. Maxwell
Bickerstaff Heath Delgado Acosta, LLP
3711 S. MoPac Expressway, Bldg One
Suite 300
Austin, TX 78746
dcaroom@bickerstaff.com
smaxwell@bickerstaff.com

City of Houston
Represented by: Edmond McCarthy
711 W. 7th Street
Austin, TX 78701
emccarthy@jacksonsjoberg.com

William & Gladys Gavranovic, Jr.
Bradley B. Ware
Represented by: Gwendolyn Hill Webb
Attorney at Law
Webb & Webb
211 E. 7th Street, Suite 712
P.O. Box 1329
Austin, TX 78767
gwen.hill.webb@sbcglobal.net

Upper Brazos Coalition
Represented by: Jason Hill
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, TX 78701-2478
jhill@lglawfirm.com

George Sidney Kacir
1821 Everton Drive
Temple, Texas 76504
kacirlaw@sbcglobal.net

Dan Kacir
1821 Everton Drive
Temple, TX 76504
dkatty2000@yahoo.com

The City of Temple
Represented by: Kayla Landeros
Deputy City Attorney
City of Temple
2 N. Main Street, Suite 308
Temple, TX 76501
klanderos@templetx.gov

Kacir Wheeler, LLC
Represented by: David Wheeler
401 N. 9th Street
Temple, TX 76501
uk@dlair.net

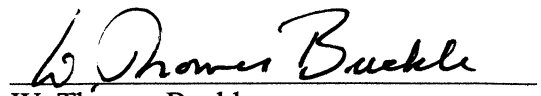
Brazosport Water Authority
Represented by: Jason M. Cordoba
208 Parking Way
Lake Jackson, TX 77566
jason@maurolaw.com

City of Copperas Cove
439 Water Supply Corporation
City of Killeen
City of Belton
City of Harker Heights
Bell County WCID No. 1
Represented by: David Tuckfield
The AL Law Group, PLLC
12400 Highway 71 West, Suite 350-150
Austin, Texas 78738
david@allawgp.com

Luminant Generation Company
Represented by: Elizabeth A. Townsend
Jackson, Sjoberg, McCarthy & Townsend, LLP
711 W. 7th Street
Austin, Texas 78701
btownsend@jacksonsjoberg.com

Gulf Coast Water Authority
Represented by: Paulina Williams
Baker Botts LLP
98 San Jacinto Blvd., Suite 1500
Austin, Texas 78701-4078
paulina.williams@bakerbotts.com

I certify that on January 3, 2014, a true and correct copy of the foregoing Exceptions to Proposal for Decision was served on the following by first class U.S. Mail.



W. Thomas Buckle

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

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

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

MARGIE KRAEMER
KRAEMER FARMS
296 CR 100
ROGERS, TX 76569

JFB FARMS
P.O. BOX 221
DE LEON, TX 76444

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

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

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