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September 12, 2013

Mr. Frank Burleson, Manager
Program Support Section
Office of Compliance and Enforcement
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA ELECTRONIC TRANSMISSION

Re: City of Cleburne Pass-Through Plan
Certificate of Adjudication: 12-4106 (Lake Pat Cleburne)

Dear Mr. Burleson:

This letter is submitted on behalf of the City of Cleburne (the "City") in continuing response to Ordering Provision No. 19 of the Executive Director's Order (the "Order") suspending, adjusting or partially suspending surface water diversions in the Brazos River Basin, dated September 4, 2013. The following responses are numbered in accordance with the inquiries included in the Commission's September 4, 2013 letter.

Response to Question No. 1:

Modify the pass through plan to clearly indicate that flows at USGS gage 08091000, Brazos River near Glen Rose are considered first in determining whether inflows would need to be passed through the reservoir. Staff could agree that flows at USGS gage 08091500 can also be considered, provided the pass through plan is modified to state exactly how this gage would be considered.

1. The City has revised the Plan to numerically designate that flows at USGS gage 08091000, Brazos River near Glen Rose will be used as the first trigger.

Response to Question No. 2:

Modify the pass through plan to remove the adjustment for operation of Lake Whitney. The City has a water right that is junior to the priority call and must pass all inflows downstream.

2. The City has not modified the Plan as requested because of the futile call doctrine. However, the City is aware that the United States Army Corps of Engineers ("USACE") is operating Lake Whitney in pass-through mode, which essentially proves the trigger to be true. The City has 5,000 acre-feet of water it purchased from the Brazos River Authority ("BRA") for future supplies from Lake Whitney as documented in the attached contract (the "Contract"). To the extent the City is required to pass inflows from Lake Pat Cleburne, it will do so by requesting BRA to deliver water from the Contract by discharging same from Lake Whitney. Once the 5,000 acre-feet of water has been fully utilized, the City will begin to physically pass inflows from Lake Pat Cleburne.

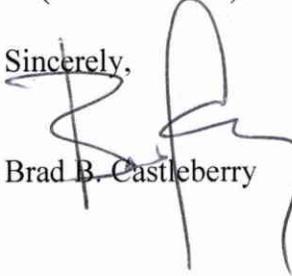
Response to Question No. 3:

Modify the pass through plan to remove the 300 cubic feet per second flow requirement as a condition for passing water. Unless the plan accounts for Dow's released water in its calculations, water would need to pass through Lake Pat Cleburne in accordance with the Executive Director's July 2, 2013 order, as affirmed and modified by the Commission. As part of this accounting the City would need to include consideration of travel times from its location to USGS gage 08116650, Brazos River near Rosharon.

3. The City has revised the Plan in accordance with the July 17, 2013 version it submitted.

We trust that this letter and the responses and data included herein are sufficient to respond to the Order. Should you have any other questions or need additional information, please feel free to call either me or Jeff Reed at (512-322-5835).

Sincerely,


Brad B. Castleberry

BBC/ldp
ENCLOSURES

Cc: Mr. David Esquivel
Mr. Charles Vokes
Mr. Jon Albright
Mr. Jeff Reed

TO: Brad Castleberry – Lloyd Gosselink Rochelle & Townsend
Charles Vokes, David Esquivel – City of Cleburne

CC: File

FROM: Jon S. Albright and Thomas C. Gooch, P.E.

SUBJECT: Pass-Through Plan for Lake Pat Cleburne

DATE: September 10, 2013

The purpose of the Pass-Through Plan for Lake Pat Cleburne is to determine when flows should be passed during a potential priority call, determine the amount of flow to be passed, and track the passage of those flows. The proposed Pass-Through Plan:

- Determines on a daily basis conditions when pass-through of inflows would be appropriate;
- Calculates daily inflows into Lake Pat Cleburne; and
- Determines the volume of water that should be released from the reservoir based on the previous week of inflow, less the inflow needed to protect human health and safety.

Approach

Conditions for Pass-Through

Conditions for a pass-through occur when all of the following conditions have been met:

1. A priority call has been made by a water right senior to some or all of Cleburne's Lake Pat Cleburne water rights and TCEQ has notified the city that it must be in pass-through operation.
2. Flows at the Brazos River at Glen Rose (USGS 08091000) stream gage are below the 33rd percentile.
3. Flows at the Paluxy River at Glen Rose (USGS 08091500) stream gage are below the 33rd percentile.
4. If the priority call is made by Dow Chemical Company, flows at the USGS stream gage at Rosharon (USGS 08116650) are below 630 cfs. (This assumes that Dow is the only

priority call in effect. Other criteria may be required if other water rights make priority calls.)

5. Lake Pat Cleburne has sufficient storage to protect human health and safety.

TCEQ has set the Brazos River near Glen Rose gage (USGS 080910000) as indicative of drought conditions for Lake Pat Cleburne. However, flows at this gage are largely affected by the operation of Lake Granbury. During dry conditions, higher flows are likely not to reach this gage as Lake Granbury fills. It is also possible that during a priority call the Brazos River Authority, which owns and operates Lake Granbury, would meet at least some of its obligation to pass inflows from reservoirs other than Lake Granbury. The Paluxy River at Glen Rose gage (USGS 08091500) is only minimally affected by the operations of others and is therefore indicative of actual flow conditions in this portion of the Brazos Basin if the BRA is not passing inflows through Lake Granbury. The Paluxy at Glen Rose gage is therefore considered in addition to the Brazos River at Glen Rose gage. Based on records from June 1, 1947 to April 10, 2013, the 33rd percentile flow for the Paluxy gage is 8.6 cfs.

Inflow Calculation

Inflows to Lake Pat Cleburne are calculated on a daily basis based on a mass balance of the reservoir. Occasionally inflow calculations result in negative inflows. Negative inflows are set to zero.

The mass balance inflow calculation uses the following data:

- Diversion data and reservoir outflow data from the City of Cleburne;
- Pan evaporation reported by the Corps of Engineers for Lake Whitney (<http://www.swf-wc.usace.army.mil/cgi-bin/rcshtml.pl?page=Hydrologic>);
- Reservoir elevation data from the USGS (http://waterdata.usgs.gov/tx/nwis/dv/?site_no=08091900&agency_cd=USGS&refered_module=sw); and
- Pan factors from the Texas Water Development Board and weighting factors for the pan coefficients from the Brazos WAM.

In these calculations precipitation on the reservoir is considered as part of the inflows.

Pass-Through Calculation

The Pass-Through plan sets outflows from Lake Pat Cleburne on a weekly rolling average of flows. Once pass-through operations have been initiated, inflows into Lake Pat Cleburne are accumulated over a one-week period. Accumulated flows are limited to times when all criteria for a pass-through have been met. Pat Cleburne will release the accumulated pass-through flows during the next week. At the end of each week, the weekly average will be recalculated and the release adjusted as needed. This operation continues until the priority call has been rescinded.

The City has a contract with the Brazos River Authority (BRA) for 5,000 acre-feet of water from Lake Whitney. To the extent the City is required to pass inflows from Lake Pat Cleburne, it will do so by requesting BRA to deliver water from the Contract by discharging the same from Lake Whitney. Once the 5,000 acre-feet of water has been fully utilized, the City will begin to physically pass inflows from Lake Pat Cleburne.

Protection of Human Health and Safety

According to TCEQ rules, in the event of a priority call TCEQ can exempt water rights holders to protect human health and safety. The amount of water needed to protect human health and safety is the water needed after all non-essential uses have been eliminated. Outdoor water use accounts for the majority of non-essential water use in the State of Texas. In November 2012, the Texas Water Development Board published Technical Note 12-01 *The Grass is Always Greener... Outdoor Residential Water Use in Texas*. This report analyzed outdoor residential use for cities across Texas, but did not include the City of Cleburne. The report did include the City of Alvarado, a nearby city in the same county (Johnson County). According to this study, outdoor water use for the City of Alvarado was 26% of the total use from 2004 to 2008. The statewide average was 31%. Based on this information, essential water use, which would be the water needed to protect human health and safety, should be somewhere between 69% and 74% of the total water use for the City of Cleburne.

Between December 2011 and November 2012, the City of Cleburne used 7,387 acre-feet of water, an average of 20.18 acre-feet per day. Assuming that 30% of the average annual water use was used for non-essential purposes, the amount needed to protect human health and safety is 14.13 acre-feet per day (4.6 MGD or 7.1 cfs).

In order to protect the ability of the city to divert water, pass-through operation will cease when the reservoir reaches elevation 719.1 feet. At this point, there is 8,442 acre-feet of water in

storage, or approximately 365 days of supply at 14.13 acre-feet per day, plus 9 acre-feet per day allowance for evaporative losses.

Adjustment to Pass-Throughs to Account for Operation of Lake Whitney

The Brazos River Authority (BRA) has a contract with the U.S. Army Corps of Engineers (USACE) for 22.017 percent of the storage space in Lake Whitney between 520 feet above mean sea level and 533 feet above mean sea level. In the operation of the project, USACE and BRA allocate inflows to the reservoir in the same proportion as the storage (22.017 percent to BRA and 77.983 percent to USACE). BRA is developing a Reservoir Pass Through Plan for Lake Whitney and its other reservoirs. It is our understanding that the USACE is also passing their share of Lake Whitney inflows. As long as this operation is in place, the City of Cleburne will pass inflows as needed. Cleburne will notify BRA and USACE of the amount of the pass through and that it is making this pass through in response to the order from TCEQ.

SYSTEM WATER AVAILABILITY AGREEMENT

*Brazos River Authority
P. O. Box 7555
Waco, Texas 76714-7555
(254) 761-3100*



CITY OF CLEBURNE

CITY OF CLEBURNE

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**SYSTEM WATER AVAILABILITY AGREEMENT
BETWEEN
BRAZOS RIVER AUTHORITY
AND
CITY OF CLEBURNE**

AGREEMENT made and entered into this the 3rd day of February 2008, by and between **BRAZOS RIVER AUTHORITY** ("BRA"), a river authority of the State of Texas, and **CITY OF CLEBURNE** ("Purchaser") of Johnson County, Texas.

1. RECITALS. BRA owns and operates various lakes in the Brazos River Basin. BRA also has entered into contracts with the United States of America by virtue of which it has obtained the right to utilize for water supply purposes a portion of the usable storage space in various lakes owned and operated by the United States Army Corps of Engineers. BRA is authorized by the State of Texas to store State waters in the lakes owned by BRA and various lakes owned and operated by the United States Army Corps of Engineers in the Brazos River Basin, hereinafter collectively called the "System", and to make such stored waters available for beneficial use.

BRA is authorized to operate the System as a hydrologic unit pursuant to an order of the Texas Water Commission (formerly, Texas Natural Resource Conservation Commission "TNRCC", now Texas Commission on Environmental Quality "TCEQ") issued on July 23, 1964 ("System Operation Order"). The Final Determination of All Claims of Water Rights in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin Maintained by the Brazos River Authority, Fort Bend County W.C.I.D. No. 1 and Galveston County Water Authority ("Final Determination") issued on June 26, 1985, by TCEQ clarified and amplified the System Operation Order. Under the System Operation Order as adjudicated by the Final Determination, BRA is authorized to operate the System as a hydrologic unit to more efficiently utilize the reservoirs that make up the System to make water available to meet the needs of BRA's customers.

Purchaser wishes to contract for BRA to make available 5,000 acre-feet of water per Fiscal Year under the terms of this Agreement pursuant to the System-wide pricing methodology, and BRA agrees to make water available to Purchaser pursuant to the terms and conditions herein provided.

Purchaser has an existing System Water Availability Agreement with BRA for 10,000 AF that was entered into on the 30th of March, 1993 and is not modified in any way by this Agreement.

2. DEFINITIONS.

- a) The term "Agreement" means this agreement.
- b) The term "Annual Contracted Amount" shall mean the total volume, expressed in acre-feet per Fiscal Year, which BRA agrees to make available and Purchaser agrees to purchase. For this Agreement, the amount is 5,000 acre-feet.
- c) The term "BRA" shall mean Brazos River Authority.
- d) The term "Board" shall mean the Board of Directors of Brazos River Authority.
- e) The term "Budgeted Cost of Service" shall mean all reasonable economic requirements to develop, operate, maintain, protect and/or expand the System. Specific costs include, but are not limited to, personnel, operations, capital, infrastructure, financing, administration and overhead.
- f) The term "Fiscal Year" shall mean BRA's fiscal year from September 1 through August 31, or such other annual fiscal year period as BRA may later determine.
- g) The term "Industrial Use" shall mean the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial feedlot operations, commercial fish production, and the development of power by means other than hydroelectric.
- h) The term "Irrigation Use" shall mean the use of water for the irrigation of crops, trees, and pastureland, including, but not limited to, golf courses and parks which do not receive water through a municipal distribution system.
- i) The term "Mining Use" shall mean the use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.
- j) The term "Municipal Use" shall mean the use of potable water within a community or municipality and its environs for domestic, recreational, commercial, or industrial purposes or for the watering of golf courses, parks and parkways.
- k) The term "Overuse" shall mean withdrawal or release of water in excess of the amount contracted.
- l) The term "Purchaser" shall mean City of Cleburne.
- m) The term "Reuse" shall mean the use of any portion of any of the water sold hereunder that remains unconsumed after the water is used for the purpose authorized herein.
- n) The term "System" shall mean BRA's Water Supply System and shall include the BRA's facilities, infrastructure and properties insofar as they are related to making water available from the BRA together with all future extensions, improvements, enlargements, and additions to and replacements of the System, and all replacements thereof whether from surface water supplies, groundwater, or a combination thereof, unless specifically excluded from the System by resolution of the Board.
- o) The term "System Operation Order" shall mean that certain order of the TCEQ or its predecessor dated July 23, 1964, as adjudicated by order of the TCEQ or its predecessor on June 26, 1985, in the Final Determination of all Claims of Water Rights in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin Maintained by the Brazos River Authority, Fort Bend County W.C.I.D. No. 1 and Galveston County Water Authority.
- p) The term "System Rate" shall mean the rate per acre-foot of water established by BRA from time to time under the system-wide pricing methodology for water made available to Purchaser from the System under this Agreement.

3. **EFFECTIVE DATE.** The effective date of this Agreement is **March 1, 2008.**

4. **AVAILABILITY OF WATER.** While this Agreement remains in force, BRA agrees to make available to Purchaser for withdrawal from the System an amount of water not to exceed the Annual Contracted Amount. Such water will be withdrawn from the System and accounted for by BRA as provided by the System Operation Order, as modified by the Final Determination. Purchaser agrees that it is contracting to have water made available to it in amounts and at such times and locations as are provided for herein and that the water to be provided under this Agreement is subject to local availability. Purchaser acquires no property right in the water made available to it under this Agreement beyond the right to have the water made available to it for diversion and use under the terms of this Agreement. BRA agrees to make water available from the System, and Purchaser acquires no rights or interests in any of the water supply sources that comprise the System above and beyond those rights that accrue to it as a customer of the System under this Agreement. Purchaser represents, and BRA relies on such representation, that all water to be made available by BRA under this Agreement to Purchaser shall be used solely for municipal, mining & industrial purposes. Utilization of water supplied under this agreement for other purposes shall be deemed a breach of contract and grounds for termination of contract.

5. **DATE AND PLACE OF PAYMENTS.** Payments to be made hereunder shall be made at BRA's office in Waco, McLennan County, Texas. BRA contemplates that by the first day of each Fiscal Year (currently September 1) it will have adopted budgets for BRA for said Fiscal Year and established the System Rate for said Fiscal Year. Payments for water made available each Fiscal Year may be made under one of three payment options from which Purchaser will select at the beginning of each Fiscal Year. Annual payments shall be made on or before September 15 of each year. Quarterly payments shall be made on or before September 15, December 15, March 15, and June 15 of each year. Monthly payments shall be made on or before the fifteenth of each month each year. Quarterly payments or monthly payments shall include a multiplier to be applied to the annual payment to allow BRA to recover interest lost on any unpaid balance plus a service charge for administrative costs, including but not limited to costs involving the billing, accounting, and collecting for the quarterly or monthly payments. The multiplier to recover lost interest revenue and the service charge for administrative costs shall be determined on an annual basis using the method approved by the Board and shall be just and reasonable. Because the effective date of this Agreement is **March 1, 2008**, the amount of water available to Purchaser and the payment owed by Purchaser will be prorated for the remaining **six (6) months** of Fiscal Year 2008.

If, in accordance with Section 6b) of this Agreement, BRA increases the payment due from Purchaser during a Fiscal Year, it shall notify Purchaser of any increased amount of payment due for the remainder of the Fiscal Year and the increased amount shall be paid by Purchaser (i) within 30 days after receipt of notice of the increase if Purchaser has already paid all amounts otherwise due to BRA for such Fiscal Year, or (ii) in approximately equal installments added to any further installment amounts owed by Purchaser for the remainder of such Fiscal Year if Purchaser has selected a payment

option which resulted in Purchaser still having payments due to BRA during the remainder of such Fiscal Year.

6. UNCONDITIONAL NATURE OF PAYMENT OBLIGATION; PRICE.

a) Purchaser unconditionally agrees to pay BRA annually for the water agreed to be made available to Purchaser hereunder at a price equal to the product of multiplying the System Rate times the Annual Contracted Amount regardless of whether the full Annual Contracted Amount of water is diverted and used by Purchaser.

b) The System Rate shall be established annually by the Board; it shall be calculated by utilizing a Budgeted Cost of Service basis considering the water supply System costs and the acre-feet of long term water sold under contract; and it shall be just reasonable and non-discriminatory. Purchaser shall be provided 15 days notice of the proposed amount and the meeting date at which the System Rate shall be established and shall be provided an invoice before the payment is due and payable. The System Rate has been established by the Board at a rate of \$54.50 per acre-foot of water agreed to be made available annually to Purchaser for the current Fiscal Year. BRA shall not increase the System Rate other than on a Fiscal Year basis, which determines the system rate for the following Fiscal Year under this Agreement, except for unforeseeable reasons of a serious or substantial nature. Such reasons include Force Majeure, government legislation or regulations, or permit requirements.

7. SOURCE OF PAYMENTS. The payments to be made hereunder by Purchaser shall constitute operating expenses of Purchaser's water works system or Purchaser's combined water works and sewer system. Purchaser shall charge rates for services of its water works system or its combined water works and sewer systems that will be sufficient to pay the operating and maintenance expenses thereof, including the payments provided for hereunder, and the interest on and principal of, as the same come due and mature, obligations issued by Purchaser now or hereafter payable from the revenues of said system or systems.

8. INTEREST ON PAST DUE PAYMENT. In the event of failure of Purchaser to make any payment to BRA provided to be made in this Agreement at the time when same shall be due, the past due payment shall bear interest at the lesser of the highest rate allowed by applicable law or 18 percent per year.

9. REMEDIES FOR NONPAYMENT OR DEFAULT. Should Purchaser fail to make any payment to BRA when due hereunder or otherwise be in default under this Agreement, BRA at its sole option and in addition to and without impairing any other remedy available to it on account of the default, may elect to either (i) suspend its duty to make available water to Purchaser under this Agreement or (ii) terminate this Agreement; by providing written notice of such termination delivered to Purchaser on or before 30 days before the date specified in said notice of termination, provided that the nonpayment or other default with respect to which notice of termination of this Agreement has been given, shall not be cured by the date specified in such notice. Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

10. REMEDIES FOR OVERUSE. Purchaser recognizes that any diversion of water in excess of its Annual Contracted Amount may impact BRA's ability to make available water to BRA's other raw water customers. Purchaser agrees that if for any reason it needs to exceed the Annual Contracted Amount, Purchaser will give written notice to BRA 30 days in advance of the need for such additional water and in such notice will state the reason for the additional need, the amount of water needed to be made available, and the duration of the need. BRA, in its sole discretion, may make all or a portion of the requested water available. Nothing contained herein shall obligate the BRA to provide water in excess of the Annual Contracted Amount nor should Purchaser rely on additional water being made available in excess of the Annual Contracted Amount except as approved by BRA under the terms stated herein.

In the event that BRA determines that it can make all or a portion of the requested water available without adversely impacting its ability to make water available to its other customers, Purchaser shall pay for such water to be made available in advance of diversion at a rate that is equal to twice the current System Rate.

In the event Purchaser fails to notify BRA of its need for additional water to be made available, and exceeds the Annual Contracted Amount or should Purchaser, after notification of BRA and BRA's determination that additional water is not available for Purchaser's use, nonetheless exceeds the Annual Contracted Amount, BRA may, at its option, charge the Purchaser for the overuse at a rate of three times the System Rate and/or cancel this Agreement by providing written notice of such cancellation delivered to Purchaser on or before thirty (30) days before the date specified in said notice of cancellation.

In the event Purchaser uses water in excess of its Annual Contracted Amount twice in any five-year period, BRA may, if such additional water can be made available on a long-term basis, cause this Agreement to be amended to increase the Annual Contracted Amount to the maximum total annual amount requested by Purchaser in any one Fiscal Year. Such Amendment shall not excuse Purchaser from paying for any water used in excess of the amount agreed to be made available under this Agreement prior to amendment of this Agreement at the appropriate rate under the paragraph above. Following any such amendment, Purchaser shall pay for all water to be made available to Purchaser under this Agreement and such amendment at the System Rate.

Nothing in this Agreement shall be construed in any manner so as to abridge, limit, or deprive either party hereunto of any means which it would otherwise have of enforcing any right or remedy either in law or in equity for breach of any of the provisions hereof.

11. DIVERSION RATE. The water to be made available to Purchaser under this Agreement may be diverted from System at daily rates desired by Purchaser provided that BRA shall not be required to make water available for diversion by Purchaser at a daily rate in excess of five times the average daily rate which would result in diversion during a Fiscal Year of the total number of acre-feet of water per year then agreed to be made available for diversion by Purchaser.

12. WITHDRAWAL FACILITIES. The provision of facilities for diversion of the water agreed to be made available by BRA to Purchaser hereunder shall be solely the responsibility of Purchaser. Where applicable, BRA may allow the construction of such facilities on and across BRA land, subject to the conditions that the design and location of such facilities are approved by BRA, that Purchaser prepare and furnish all documents necessary for approving the easement, and that Purchaser operate the facilities located on BRA land in a manner acceptable to BRA. At the termination of this Agreement, all facilities must be removed and the land restored to its original condition in a manner acceptable to BRA. Upon execution of this Agreement, the BRA and the Purchaser shall agree on a point of diversion which shall be attached hereto in the form of a map as Exhibit "A". Any Subsequent change of the point of diversion must be approved in writing by the BRA.

13. METERING. Purchaser agrees that, at its sole cost and expense, it shall own, install, operate and maintain meters for the accurate measuring of all water diverted by Purchaser under this Agreement in order to aid BRA in accurately reporting water usage to the TCEQ as required by applicable law or regulation. Such meter or meters shall be tested and calibrated for accuracy by and at the expense of Purchaser once each Fiscal Year at intervals of approximately 12 months, and a report of such test and calibration shall be furnished to BRA. BRA shall be given at least two prior days notice of the time of any test and calibration of Purchaser's meters, or any of them, and BRA shall have the right to have a representative present at each test to observe the test and any adjustments found thereby to be necessary. BRA shall have the right to inspect and check the accuracy of Purchaser's meter or meters at any time during usual business hours after not less than one nor more than five (5) days notice. In the event any question arises at any time as to the accuracy of any such meter, such meter shall be tested promptly upon demand of BRA, the expense of such test to be borne by BRA if the meter is found to be correct and by Purchaser if it is found to be incorrect. Readings within 5% of accuracy, plus or minus, shall be considered correct. If, as a result of any test, any meter is found to be registering inaccurately (i.e., in excess of 5% of accuracy, plus or minus), the readings of such meter shall be corrected at the rate of its inaccuracy for any period which is definitely known and agreed upon, but in case the period is not definitely known and agreed upon, the period shall be extended back 180 days from the date of the initial BRA demand for meter testing, and the records of readings shall be adjusted accordingly. Following each test of a meter, Purchaser shall cause the same to be calibrated to register accurately.

14. REPORTING. Purchaser agrees that it will keep accurate records of the daily readings from the meter or meters installed pursuant to Section 13., Metering, above. These records shall be subject to inspection by BRA at reasonable times and places. Purchaser shall submit reports to BRA by the 10th day of each month showing the amount of water diverted under this Agreement each day during the preceding month. Failure to comply with this reporting requirement will be deemed a breach of this Agreement and may result in termination of Agreement.

15. SYSTEM EXPANSION. Purchaser and BRA understand that BRA may desire to make water available to other customers in a manner or in an amount which may necessitate expansion or enlargement of or additions to the System and that in

connection with any such expansion, enlargement or addition, BRA will incur additional costs. The reasonable costs incurred by BRA related to such expansion, enlargement, or addition shall be costs of the System.

16. CONSERVATION OF WATER. It is the intent of the parties to this Agreement to provide to the maximum extent practicable for the conservation of water, and Purchaser agrees that it is a condition of this Agreement that it shall maintain and operate its facilities in a manner that will prevent unnecessary waste of water. BRA, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water conservation. Purchaser agrees to abide by the "Brazos River Authority Drought Contingency Policy" adopted by the Board on January 16, 1989, or any subsequent Drought Contingency Policy duly adopted by the Board and any Drought Contingency Plans developed under the Drought Contingency Policy. If required by applicable law or regulation or by BRA, Purchaser agrees to implement a water conservation and drought management program in accordance with a water conservation plan and that the water made available and diverted by Purchaser pursuant to this Agreement will be used in accordance with such conservation plan. If required by applicable law or regulation Purchaser agrees that, in the event Purchaser furnishes water or water services to a third party that in turn will furnish the water or services to the ultimate consumer, the requirements relative to water conservation shall be met through contractual agreements between Purchaser and the third party providing for the establishment and implementation of a water conservation program in compliance with such applicable law or regulation.

17. WATER QUALITY. As a further condition of this Agreement, Purchaser also agrees that it will comply with applicable water quality standards of the State in the diversion, use, or discharge of water made available hereunder. Should Purchaser be determined by any competent legal authority to have degraded the quality of water of the State or to have violated any water quality standard established by law or lawfully adopted regulation, and subsequently fail to take action with reasonable diligence to correct such deficiency as directed by competent legal authority, such failure shall constitute breach under this Agreement and may result in termination of this Agreement.

BRA, in accordance with applicable law or regulation, may from time to time adopt reasonable rules and regulations relating to water quality protection. If required by applicable law or regulation, Purchaser agrees to implement appropriate water quality protection measures including, without limitation, a non-point source water pollution abatement program in accordance with a non-point source water pollution abatement plan.

18. WATER SURPLUS TO PURCHASER'S NEEDS. Purchaser may not unilaterally cancel this Agreement or reduce the amounts of water agreed to be made available to it and for which availability it is obligated to pay under the terms of Sections 4., 6., and 10. above. Purchaser may not sell or make available to others the water agreed to be made available to it under this Agreement, except in the case of municipal uses, as potable treated water. However, should Purchaser determine that it has water surplus to its anticipated needs from the water to be made available by BRA under this

Agreement, Purchaser may notify BRA as to the amount of water no longer needed to be made available to it. BRA will use reasonable efforts to find a third party who is able and willing to pay for such availability for a period to the end of or beyond the term of this Agreement. If BRA is successful in finding such a third party suitable to it to acquire Purchaser's interest in its available surplus for a period of time to the end of or beyond the term of this Agreement, this Agreement will be amended to reduce the amount of water to be made available to Purchaser by the amount of availability paid for by such third party, and Purchaser will be relieved of the obligation to make payments for such availability of water.

19. REUSE. All rights to reuse treated wastewater effluent or untreated water made available under this Agreement that is either disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water ("Reuse Water") shall remain with the BRA. Purchaser may not use, sell, or make available to others, any form of Reuse Water without the express written consent of the BRA. However, Purchaser may directly reuse treated wastewater effluent or untreated water provided that such water has not been previously disposed of or discharged or otherwise allowed to flow into a watercourse, lake, or other body of state-owned water.

20. INTERBASIN TRANSFER. Water made available under this Agreement shall not be transferred or used outside of the Brazos River Basin unless Purchaser obtains the express written consent of BRA and obtains all required governmental approvals.

21. SHORTAGES AND YEARLY REPORTS. BRA makes no guarantee that any lakes or other sources of supply in the System will be maintained at any specific level at any particular time. Purchaser bears all transportation losses prior to final diversion. It is fully understood by the parties hereto that the level of lakes or other sources of supply in the System will vary as a result of weather conditions beyond the control of BRA, the use of water from the System by other water customers of BRA, and in Federal Reservoirs, as a result of releases made by the U.S. Army Corps of Engineers and that this instrument is merely an agreement to require BRA to make available water when and if water is present in the System, and to allow Purchaser to make withdrawals of the water subject to the general law on distribution and allocation of water during shortages of supply and in conformity with BRA's water rights from the TCEQ and the System Order.

BRA covenants that it will use its best reasonable efforts in accordance with accepted hydrological engineering practices to provide the quantities of water agreed to be provided herein. In the event of a drought of greater severity than that previously experienced, or if for any other reason water in the System becomes in short supply, BRA agrees, and Purchaser covenants, that BRA may fairly and equitably apportion and ration the available water supply from the System among all its several customers, including Purchaser. Purchaser herein acknowledges that it shall hold BRA harmless from any and all liability, damages, claims or actions which may exist as a result of shortages of water to be made available.

22. OPERATION OF SYSTEM; BRA'S OTHER CONTRACTS. The right of BRA to maintain and operate the System and at any and all times in the future to impound, release and make available waters therefrom in any lawful manner and to any lawful extent BRA may see fit is recognized by Purchaser; and, except as otherwise provided herein, there shall be no obligation hereunder upon BRA to pump or not pump, store or not to store, or to release and make available or not to release or make available any waters at any time or to maintain any waters at any specified level or to operate the System in any manner not in compliance with applicable laws or regulations, BRA's water rights and System Operation Order. BRA may enter into agreements with other parties regarding the System, including its operation and maintenance and the storage, release and making available water therefrom. BRA makes no representation as to the quality of the water in the System.

23. FORCE MAJEURE. Notwithstanding anything herein to the contrary, neither party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such party's obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, terrorist activity, riots, sabotage, drought, lack of availability of water due to sedimentation, low inflows of water to, or lack of water supply in the System, strikes or other differences with labor (whether or not within the power of the parties to settle same), decrees or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such party and not due to negligence of such party. Each party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

24. WAIVER. Any waiver at any time by any party of its rights with respect to default or any right granted under this Agreement shall not be deemed a waiver of such rights with respect to any subsequent default or matter.

25. NOTICES AND CERTIFICATIONS. Notices and certifications provided for in this Agreement shall be in writing. The same shall be delivered by mailing certified mail, postage paid, return receipt requested, or hand delivered, to the respective parties at the following addresses:

BRA: Brazos River Authority
P.O. Box 7555
Waco, Texas 76714-7555
Telephone: (254) 761-3100
Fax: (254) 761-3207

Purchaser: City of Cleburne
10 North Robinson
Cleburne, Texas 76033
Telephone: 817-645-0901
Fax: 817-556-8848

Either party may change its address as shown above by written notice to the other party.

26. OTHER REQUIREMENTS. This Agreement is subject to all conditions, provisions, and limitations included in BRA's water rights from the applicable State agency and the System Operation Order. Further, this Agreement is subject to all applicable Federal, State and local laws, and any applicable ordinances, rules, orders and regulations of any local, State or Federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation of any governmental authority.

27. SEVERABILITY. The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

28. TERMINATION. This Agreement may be terminated by either party for material breach of the terms of this Agreement or as provided herein. Upon receipt of notice of termination by BRA, the Purchaser shall immediately discontinue all diversions of use of water made available hereunder.

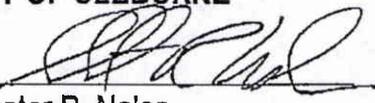
29. INDEMNITY/HOLD HARMLESS CLAUSE. The Purchaser shall comply with the requirements of all applicable laws, rules and regulations and shall exonerate, indemnify and hold BRA harmless from any and all liability or damages resulting from failure to do so. In addition, the Purchaser agrees to keep, save and hold BRA harmless from any and all actions, liabilities, damages, judgments, costs and expenses including reasonable attorney's fees, in case an action is filed or does in any way accrue against BRA, its' officials, officers, and employees in consequence of this Agreement or for any negligent act or omission of the Purchaser related to the provision of water made available under this Agreement or that may result from the carelessness or lack of skill of the Purchaser or the Purchaser's agents, subconsultant, or employees.

30. ASSIGNMENT. This Agreement may be assigned by BRA at its discretion. This Agreement may be assigned by Purchaser only with the written consent of BRA. Assignment of a portion of the water made available to Purchaser, or any assignment which requires change in diversion location, type of use or change in the service area must be authorized under Section 18., Water Surplus to Purchaser's Needs, or as stated above.

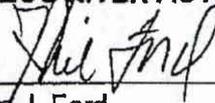
31. CANCELLATION OF NONPAYMENT. Should Purchaser fail to make any payment to BRA when due hereunder, BRA may cancel this Agreement by written notice of such nonpayment and statement of BRA's election to cancel this Agreement by reason thereof delivered to Purchaser on or before 30 days before the date specified in said notice for cancellation, provided that the nonpayment with respect to which notice has been given shall not be cured by the date thus specified in such notice.

32. TERM OF AGREEMENT. The term of this Agreement shall begin on the Effective Date, Section 3., and shall end on August 31, 2032. This Agreement shall be extended thereafter at the written request of Purchaser under the terms and conditions of BRA's standard long-term water availability contract at that time for so long as, and to the extent that, BRA continues to have the right and ability to make available the amount of water to be made available to Purchaser hereunder. The amount of water to be made available under any extension of this Agreement may be pro rated to account for loss of System yield over time.

CITY OF CLEBURNE

By 
Chester R. Nolen
City Manager

BRAZOS RIVER AUTHORITY

By 
Phillip J. Ford
General Manager/CEO

ATTEST:



ATTEST:



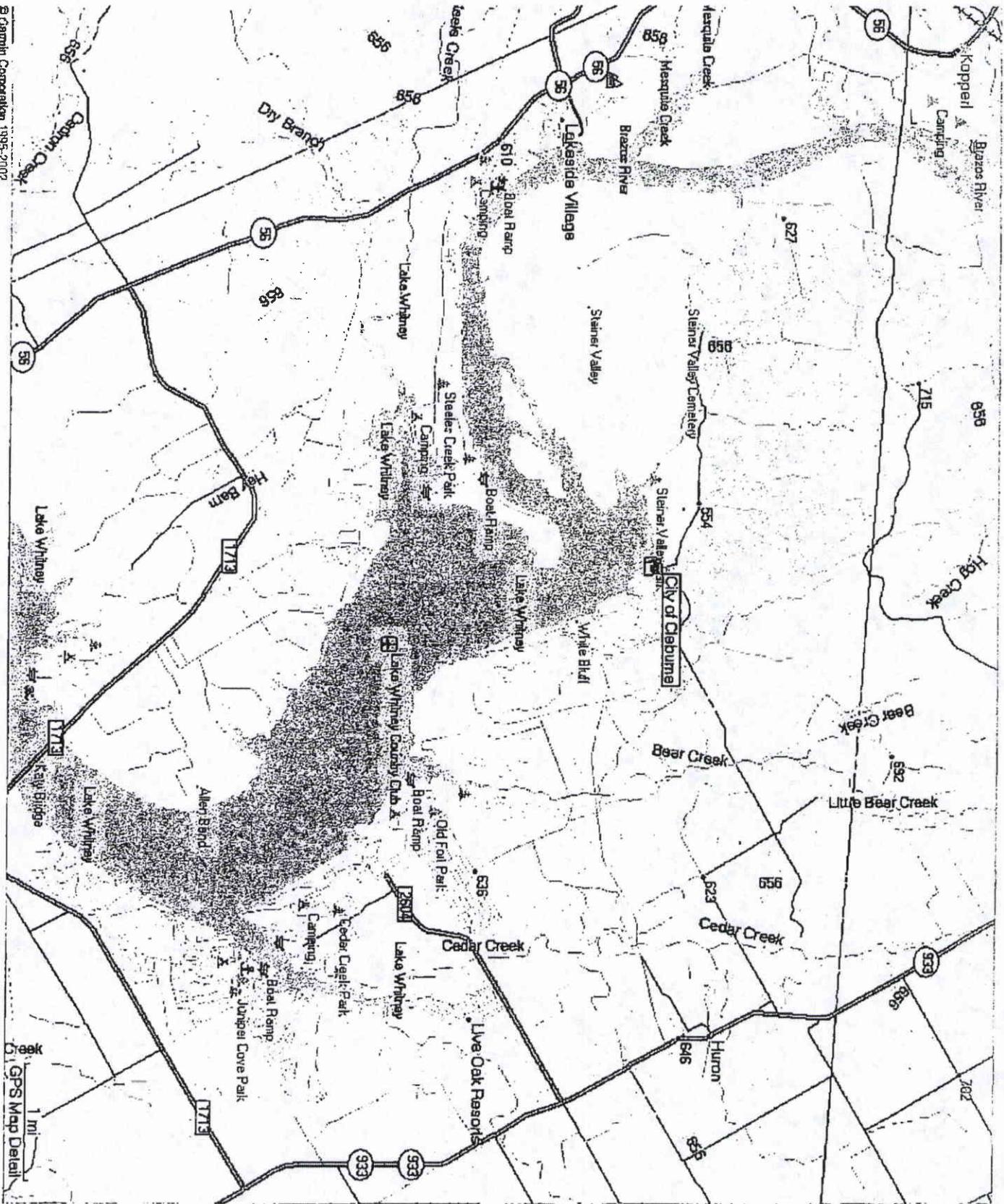


EXHIBIT A - CITY OF CLEBURNE
LAKESIDE - WHITNEY LAKE - N32 01 57.32 W97 25 42.99 - 5000ACFT