

TCEQ DOCKET NO. 2023-0617-WR

APPLICATION BY	§	BEFORE THE TEXAS
	§	
THE CITY OF LUBBOCK	§	COMMISSION ON
	§	
WATER USE PERMIT NO. 5921	§	ENVIRONMENTAL QUALITY

**REPLY TO RESPONSES TO BRAZOS RIVER AUTHORITY'S
REQUEST FOR CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS:

The City of Lubbock (“City” or “Applicant”), the Executive Director of the Texas Commission on Environmental Quality (“TCEQ”), and the Office of Public Interest Counsel (“OPIC”) submitted their responses to the requests for contested case hearings on the above-referenced application. The Brazos River Authority (“BRA”), who has timely requested a contested case hearing on the above referenced application, herein requests to respectfully reply to those responses and show the TCEQ Commissioners the following:

I. BACKGROUND

BRA owns the following water rights and permits on the mainstem of the Brazos River: Certificate of Adjudication (“CA”) CA No. 12-5155 (Possum Kingdom Lake), CA No. 12-5156 (Lake Granbury), CA No. 12-5157 (Lake Whitney), and CA No. 2925A (Allen’s Creek Reservoir). The City owns certain rights and permits along the upper Brazos River Basin, including CA No. 12-3705 and CA No. 12-3705A, authorizing the maintenance of the Jim Bertram Lake System for recreational and industrial purposes. BRA also maintains water right Permit No. 5851, colloquially referred to as BRA’s System Operations Permit. The City had timely filed protest to BRA’s System Operations Permit after the Permit was declared administratively complete on October 15, 2004.

The City’s application for permit No. 5921, was declared administratively complete on April 17, 2006. The permit seeks to impound, divert, use and reuse developed water discharged into the North Fork, unappropriated State Water, developed stormwater, reclaimed water, and return flows resulting from the use of such water sources, and also requests authorization to transport such water through the bed and banks of state streams. BRA timely protested the City’s permit application citing potential downstream impacts to BRA’s aforementioned water rights and BRA’s System Operations Permit.

To resolve the concerns of both entities’ regarding BRA’s System Operation Permit, and the City’s permit No. 5921, the BRA and the City entered into an Interlocal Agreement

that outlined the terms and conditions by which the two entities could pursue, in a coordinated manner, both entities' pending and future water supply projects in the Brazos River Basin. The Interlocal Agreement became effective on May 14, 2009. The BRA's System Operations Permit was granted on November 30, 2016, and deemed incontestable on August 20, 2018. On June 17, 2009, BRA withdrew its protest of the City's permit application on the condition that BRA would be able to review the City's final draft permit, which had not yet been prepared by the Executive Director, to ensure that the permit complies with the terms of the Interlocal Agreement, at which time BRA would unconditionally withdraw its protest.

II. BRA'S REVIEW OF THE DRAFT PERMIT AND PENDING CONCERNS

A technical review of the City's permit application was not completed by the TCEQ until November 10, 2021. The BRA received a copy of the City's draft permit in February 2023, at which time BRA conducted an internal review of the draft permit and met with the City directly to discuss potential concerns.

Based on internal assessments of the draft permit as well as the Interlocal Agreement, BRA has determined that only one minor change to draft permit No. 5921 is necessary to satisfy the terms and conditions of the Interlocal Agreement. Specifically, BRA is requesting to move the WHEREAS condition that requires the City to pass State Water through Jim Bertram Lake No. 7 when the water surface elevation of Possum Kingdom Lake is below 1,000 feet and inflows exceed 5 cfs, from its current place in the WHEREAS section and into special condition L.

BRA has already communicated this request to the City; however, such request was not made until after the application was set for Commissioner's agenda. Due to this outstanding issue, BRA is unable to unconditionally withdraw its protest of this application at this time and believes that an alternative dispute resolution between the City and BRA would be the most efficient and effective way to resolve this issue.

III. SUPPORT OF THE EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director in its response to BRA's request for a contested case hearing has recommended that the Commission grant BRA's request because BRA's request complies with 30 Tex. Admin. Code § 55.251 and that the water rights identified within BRA's initial protest are "located downstream of the Applicant's proposed Lake No. 7." BRA agrees with this recommendation and emphasizes that BRA has only one outstanding issue with the City's draft permit and that issue can be rectified through alternative dispute resolution.

III. REPLY TO THE OPIC'S RECOMMENDATION

The OPIC did not respond to BRA's request for a contested case hearing, citing BRA's conditional withdrawal. BRA would like to emphasize that since its withdrawal was conditional upon review of the draft permit and the permit's compliance with the Interlocal Agreement, BRA is still entitled to a contested case hearing to ensure that the draft permit complies with the terms of the Interlocal Agreement. However, BRA believes alternative dispute resolution would be the more appropriate measure to resolve this one remaining issue rather than pursuing a contested case hearing.

IV. REPLY TO THE CITY'S RECOMMENDATION

Within the City's response to contested case hearing requests, the City noted that it is working with BRA to secure an unconditional withdrawal of BRA's hearing request. BRA agrees with this statement and wishes to articulate that such unconditional withdrawal would be given once the outstanding issue, cited within this reply, has been addressed. Thereby, BRA respectfully requests the opportunity to resolve the issue with the City in alternative dispute resolution.

V. CONCLUSION

Following a thorough review of Draft Permit No. 5921 and the Interlocal Agreement between the BRA and the City, BRA believes that there is only one outstanding issue which must be resolved prior to BRA's unconditional withdrawal. Thereby, BRA respectfully requests the opportunity to continue ongoing discussions with the City in alternative dispute resolution to efficiency and effectively facilitate an amicable resolution.

Respectfully submitted,

BRAZOS RIVER AUTHORITY
4600 Cobbs Dr.
Waco, TX 76710
(254) 761-3247 (phone)

By: *Destiny Rauschhuber*
DESTINY RAUSCHHUBER
State Bar No. 24125937

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply to Responses to Brazos River Authority's Request for Contested Case Hearing was sent by hand delivery, United States Postal Service ("USPS"), or electronic mail to the individuals identified below on this, the 15th day of September 2023.

Destiny Rauschhuber
Destiny Rauschhuber

FOR THE EXECUTIVE DIRECTOR:

Ruth Takeda, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
ruth.takeda@tceq.texas.gov

Sarah Henderson, Technical Staff
Texas Commission on Environmental
Quality
Water Availability Division, MC-160
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-2535
sarah.henderson@tceq.texas.gov

Ryan Vise, Deputy Director
Texas Commission on Environmental
Quality
External Relations Division
Public Education Program, MC-108
P.O. Box 13087
Austin, Texas 78711
Tel: (512) 239-4000
pep@tceq.texas.gov

REQUESTORS/INTERESTED

PERSONS

VIA USPS, CERTIFIED MAIL RRR:

See attached list.

FOR ALTERNATIVE DISPUTE RESOLUTION:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087 Austin, Texas 78711
Tel: (512) 239-0687
kyle.lucas@tceq.texas.gov

FOR THE CHIEF CLERK:

Docket Clerk
Texas Commission on Environmental
Quality
Office of Chief Clerk, MC-105
P.O. Box 13087 Austin, Texas 78711
Tel: (512) 239-3300
<https://v.rww14.tceq.texas.gov/epic/eFiling/>

FOR PUBLIC INTEREST COUNSEL:

Garrett T. Arthur
Texas Commission on Environmental
Quality
Public Interest Counsel, MC-103
P.O. Box 13087 Austin, Texas 78711
Garrett.arthur@tceq.texas.gov

ALLISON, JAMES P
ALLISON BASS & MAGEE LLP
402W 12THST
AUSTIN TX 78701-1817

CARMONY, LISA & WILLIAM R
11609 PRIVATE ROAD 3530
SLATON TX 79364-7%1

CARMONY, WILLIAM R
11609 PRIVATE ROAD 3530
SLATON TX 79364-7%1

SARA THORNTON
LLOYD GOSSELINK
ROCHELLE, & TOWNSEND
P.C.
816 CONGRESS AVE., SUITE
1900
AUSTIN, TX 78701

CLANCY, LYNE
LCRA
H429
POBOX220
AUSTIN TX 78767-0220

CROFOOT, TERRY
PO BOX 53188
LUBBOCK TX 79453-3188

FORREST DAVIS, AMBER
12019 E COUNTY ROAD 7300
SLATON TX 79364-7959

GRAF, DON
POBOX6170
LUBBOCK TX 79493-6170

HALIBURTON, KERRY ATTORNEY
NAMAN HOWELL SMITH & LEE
PO BOX 1470
WACO TX 76703-1470

LIGON, KATHLEEN
TEXAS WATER DEVELOPMENT BOARD
PO BOX 13231
AUSTIN TX 78711-3231

LOVELESS, JOHN & MARIANNE
710632ND ST
LUBBOCK TX 79407-2706

MCCLENDON, MICHAEL
BRAZOS RIVER AUTHORITY
4600COBBDR
WACOTX76710

MORENO, MR CARLOS J
THE DOW CHEMICAL COMPANY
APB BLDG 4A016
322IDGHWAY322E
LAKE JACKSON TX 77566-5044

MORTON, STEVE
MOLTZ MORTON O'TOOLE LLC
2801 VIA FORTUNA STE 350
AUSTIN
TX 78746-7596

MORTON, STEVE
MOLTZ MORTON O'TOOLE LLC
5113 SOUTHWEST PKWY STE
120
AUSTIN TX 78735-8969

NELSON, GEORGE
H 1501 AVENUEK
LUBBOCK TX 79401-5039

TERRILL III, PAUL M
TERRILL & WALDROP
810W 10THST
AUSTIN TX 78701-
2005