

TCEQ Interoffice Memorandum

TO: Office of the Chief Clerk
Texas Commission on Environmental Quality

THRU: ^{#1} For Chris Kozlowski, Team Leader
Water Rights Permitting Team

FROM: Sarah Henderson, Project Manager
Water Rights Permitting Team

DATE: October 16, 2024

SUBJECT: Brazos River Authority
WRPERM 2925
CN600506794, RN106195787
Application for an Extension of Time to Commence and Complete
Construction for Water Use Permit No. 2925B
Texas Water Code § 11.145, Not Requiring Notice
Allens Creek, Brazos River Basin
Austin County

The application was received on October 3, 2024 and fees were received on October 7, 2024. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on October 16, 2024. No notice is required pursuant to Title 30 Texas Administrative Code § 295.159(c).

All fees have been paid and the application is sufficient for filing.

Sarah Henderson

Sarah Henderson, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section

OCC Mailed Notice Required YES X NO

Jon Niermann, *Chairman*
Bobby Janecka, *Commissioner*
Catarina R. Gonzales, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 16, 2024

Ms. Destiny Rauschhuber, Staff Counsel
Brazos River Authority
4600 Cobbs Drive
Waco, TX 76710-3008

VIA E-MAIL

RE: Brazos River Authority
WRPERM 2925
CN600506794, RN106195787
Application for an Extension of Time to Commence and Complete Construction for
Water Use Permit No. 2925B
Texas Water Code § 11.145, Not Requiring Notice
Allens Creek, Brazos River Basin
Austin County

Dear Ms. Rauschhuber:

This acknowledges receipt of the application on October 3, 2024, and of fees on October 7, 2024, in the amount of \$2,012.50 (Receipt No. M541091, copy attached).

The application was declared administratively complete and filed with the Office of the Chief Clerk on October 16, 2024. Staff will continue processing the application for consideration by the Executive Director.

Please be advised that additional information may be requested during the technical review phase of the application process.

If you have any questions concerning this matter, please contact me via email at sarah.henderson@tceq.texas.gov or by telephone at (512) 239-2535.

Sincerely,

Sarah Henderson

Sarah Henderson, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section

Attachment



07-OCT-24 01:51 PM

TCEQ - A/R RECEIPT REPORT BY ACCOUNT NUMBER

<u>Fee Description</u>	<u>Fee Code</u> <u>Account#</u>	<u>Ref#1</u> <u>Ref#2</u> <u>Paid In By</u>	<u>Check Number</u> <u>Card Auth.</u> <u>User Data</u>	<u>CC Type</u> <u>Tran Code</u> <u>Rec Code</u>	<u>Slip Key</u> <u>Document#</u>	<u>Tran Date</u>	<u>Tran Amount</u>
WTR USE PERMITS	WUP	M541091	270015		B500111285	07-OCT-24	-\$2,012.50
	WUP	2925B	100724	N	D5800267		
WATER USE PERMITS		BRAZOS	VHERNAND	CK			
		RIVER					
		AUTHORITY					

Total (Fee Code) : -\$2,012.50

Grand Total: -\$88,566.62

RECEIVED
OCT 08 2024
Water Availability Division

RECEIVED
OCT 08 2024
Water Availability Division

Sarah Henderson

From: Destiny Rauschhuber [REDACTED]
Sent: Thursday, October 3, 2024 2:38 PM
To: WRPT
Cc: Sarah Henderson
Subject: Brazos River Authority 10203 Form Application
Attachments: BRA Final Application Form 10203 - App. to Ext Time.pdf

To whom it may concern,

Please find the attached application, filed by the Brazos River Authority, for an Extension to Commence and Complete Construction on Allens Creek Reservoir Permit No. 2529B. A paper copy and check for the filing fees are in the mail as well.

Please let me know if you have any questions regarding our application.

Best,
Destiny

Destiny Rauschhuber

Staff Counsel | Legal Services

p: +1 (254) 761-3247 | **f:** [REDACTED]

Brazos River Authority

4600 Cobbs Drive, Waco, TX 76710

www.brazos.org

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and may contain privileged, confidential, and/or proprietary information that is entitled to protection and/or exemption from disclosure under applicable law. The information contained in this email is for the exclusive use of the intended recipient. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by reply e-mail or by telephone at (254) 761-3100 and delete the e-mail on your computer.



Brazos River Authority

QUALITY • CONSERVATION • SERVICE

Texas Commission on Environmental Quality
Water Availability Division, MC 160
P.O. Box 13087
Austin, Texas 78711-3088

VIA HAND DELIEVERY
AND ELECTRONIC MAIL

RE: Application for an Extension of Time to Commence and/or Complete Construction of an Authorized Project, by the Brazos River Authority as the sole Permittee of Allen's Creek Reservoir, Water Use Permit No. 2925B.

To Whom It May Concern,

Please find enclosed one (1) copy of the above referenced Application for an Extension of Time to Commence and/or Complete Construction of an Authorized Project, filed by the Brazos River Authority for Water Use Permit No. 2925B.

A check in the amount of two thousand twelve dollars and fifty cents (\$2,012.50) for the filing, recording, and extension fees has been delivered to the Financial Administration Division Cashier's Office. Please note that this application does not include mailed notice fees as this Authorized Project is exempt from mailed notice under 30 TAC § 295.159(c).

If you have any questions, please do not hesitate to contact me by phone (254) 761-3247 or by email [REDACTED]

Sincerely,

Destiny Rauschhuber

Destiny Rauschhuber

RECEIVED
OCT 03 2024
Water Availability Division



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Water Availability Division - MC-160, P.O. Box 13087 Austin, Texas 78711-3087

Telephone (512) 239-4691, FAX (512) 239-2214

APPLICATION FOR AN EXTENSION OF TIME TO BEGIN AND/OR COMPLETE CONSTRUCTION OF AN AUTHORIZED PROJECT

Texas Water Code Section §11.145
TO BE SUBMITTED PRIOR TO EXPIRATION DATE

1. Applicant Information

Permittee/Owner Name: Brazos River Authority

Point of Contact name: Destiny Rauschhuber, Staff Counsel, Brazos River Authority

Mailing Address: 4600 Cobbs Dr. Waco, TX 76710

Phone Number: 254-761-3247 Email Address: [REDACTED]

2. Fees or penalties

The application will not be processed unless all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol by all applicants/co-applicants. If you need assistance determining whether you owe delinquent penalties or fees, please call the Water Rights Permitting Team at (512) 239-4691, prior to submitting your application.

Does Applicant or Co-Applicant owe any **fees** to the TCEQ?

Yes or No: No

If yes, provide the following information:

Account number: _____ Amount past due: _____

Does Applicant or Co-Applicant owe any **penalties** to the TCEQ?

Yes or No: No

If yes, please provide the following information:

Enforcement order number: _____ Amount past due: _____

3. Project Data

Certificate of Adjudication No.: 3194B or Permit No.: 2925B

and,

River Basin: Brazos

4. **Project Dates**

BEGINNING CONSTRUCTION DATE:

Original (Date in water right): September 1, 2018

Current (From last extension granted,
if applicable): September 1, 2025

Proposed: September 1, 2035

COMPLETION DATE:

Original: September 1, 2021

Current: September 1, 2030

Proposed: September 1, 2040

5. **Reason(s) for delay and why the proposed dates requested are necessary**

Under 30 TAC 295.72(b) the applicant must include* why the extension should be granted and why the permit should not be forfeited if the commission finds that sufficient due diligence to begin and/or complete construction of the authorized project has not been demonstrated. Reasonable causes for delay include, but are not limited to, the operation of legal proceedings or other causes which were not within the reasonable control of the permittee and which were reasonably unforeseeable at the time of the appropriation or the last extension. Financial hardship shall not, by itself, constitute sufficient cause for the granting of an extension. Notice of the application, if required, will also indicate that the Commission will consider whether the appropriation shall be forfeited by the applicant, if the extension is denied.

** Please provide a statement setting forth the reasons why construction work could not be commenced or completed in the space below or attach a statement entitled*

"Reasons Why Construction Work Could not be Commenced or Completed."

Please refer to document entitled, "Reasons Why Construction Work Could Not be Commenced or Completed," attached hereto as Attachment 1.

6. **Application Fees**

(Please make checks payable to the Texas Commission on Environmental Quality or TCEQ)

A. All requests for extension of time require payment of the following fees:

Type	Description	Amount (\$)
Filing Fee	Circle fee correlating to the total amount of water requested for any new appropriation and/or impoundment. Enter corresponding fee under Amount (\$).	1,000
	<u>In Acre-Feet</u>	
	a. Less than 100 \$100.00	
	b. 100 - 5,000 \$250.00	
	c. 5,001 - 10,000 \$500.00	
	d. 10,001 - 250,000 \$1,000.00	
	e. More than 250,000 \$2,000.00	
Recording Fee		\$12.50
	TOTAL	\$1,000

B. Extensions of time that require mailed and published notice require additional fees. Mailed and published notice of the application is required if a new beginning date for construction is more than four years past the original issue date of the water right, or a new completion date for construction is more than five years past the original completion date. If the application requires mailed and published notice, pay the following fees in addition to the fees in section (A) above:

Type	Description	Amount (\$)
Extension Fee	Pursuant to 30 TAC §295.138, extension fees are equivalent to one-time use fees established under §295.133 not to exceed \$1,000 . Enter corresponding extension fee under Amount (\$). Using the one-time use fees as follows:	1,000
	Agriculture Use Fee - Only for those with an Irrigation Use. Multiply 50¢ x ____ Number of acres that will be irrigated with State Water.	
	Use Fee - Required for all Use Types, excluding Irrigation Use. Multiply \$1.00 x <u>99,650</u> Maximum annual diversion of State Water in acre-feet.	
	Recreational Storage Fee - For those with Recreational storage. Multiply \$1.00 x ____ acre-feet of in-place Recreational Use State Water to be stored at normal max operating level.	
	Storage Fee - For Storage, excluding Recreational Storage. Multiply 50¢ x <u>202,000</u> acre-feet of State Water to be stored at normal max operating level.	
	Note - if the total extension fees in this column above exceed \$1,000 - enter \$1,000 under Amount (\$).	
Mailed Notice	Cost of mailed notice to all water rights in the basin. Contact Staff to determine the amount (512) 239-4691. (Different for each basin and the applicant will publish the notice in a locally circulated newspaper at its expense)	N/A
	TOTAL	\$2,012.50

7. **Applicant Signature**


I, David Collinsworth, General Manager/CEO of the Brazos River Authority
(Typed or printed name) (Title)

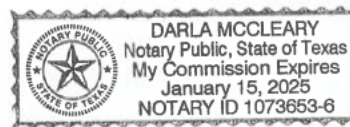
certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I further certify that I am authorized under Title 30 Texas Administrative Code §295.14 to sign and submit this document and I have submitted written evidence of my signature authority.

Signature:  Date: 10/3/2024
(Use blue ink)

Subscribed and Sworn to before me by the said
on this 3rd day of October, 2025.
My commission expires on the 15th day of January, 2025.


Notary Public
McLennan
County, Texas



If the Application includes Co-Applicants, each Applicant and Co-Applicant must submit an original, separate signature page.

County, Texas

REASONS WHY CONSTRUCTION WORK COULD NOT BE COMMENCED OR COMPLETED

Brazos River Authority | Attachment 1

Texas Water Code § 11.145

Allens Creek Reservoir ("Allens Creek"), authorized by Permit No. 2925B, is a proposed water supply storage reservoir planned for construction near the City of Wallis in Austin County by the Brazos River Authority ("BRA"). Allens Creek is needed to provide additional water supplies within and adjacent to the lower Brazos River basin to support municipal, industrial, and irrigation purposes. Permit No. 2925 was originally issued to the Houston Lighting & Power Company ("HL&P", a predecessor of Reliant Energy) on May 15, 1974, to provide cooling water for a proposed nuclear power plant. The power plant was never built, and on January 4, 1984, upon request from HL&P, the Permit was canceled by the Texas Natural Resource Conservation Commission ("Commission").

On September 1, 1999, the Texas Legislature passed Senate Bill 1593, recommending Allens Creek as a water supply project in *Water for Texas*, the State Water Plan effected September 1, 1999. The Legislature directed the Commission to reissue Permit No. 2529 to the Texas Water Development Board ("TWDB") pursuant to § 11.1311 of the Texas Water Code.

In 2000, BRA and the City of Houston ("the City") jointly purchased, via financing from the TWDB State Participation Program, 9,559 acres from Reliant Energy as the site location for Allens Creek. BRA, the City, and TWDB planned to jointly share the costs of building Allens Creek and split the resulting water supply yield on a seventy percent (70%) to the City and a thirty percent (30%) BRA basis. In addition, BRA would build and operate Allens Creek.

In 2002, Permit No. 2529 was amended (Permit No. 2925A) to include the BRA and the City of Houston as additional Permittees, along with TWDB. Permit No. 2925A required construction to begin no later than September 1, 2018. However, construction could not begin immediately as the conditions of the Permit required the Permittees to undertake a series of pre-permitting requirements. In 2011, the Texas Commission on Environmental Quality ("TCEQ") granted the City's and BRA's request for an extension of time to continue these pre-permitting requirements, as well as other amendments to the Permit (now Permit No. 2925B), and the current deadline for commencement of construction of Allens Creek is now September 1, 2025.

Following TCEQ's approval of BRA's most recent extension request, issued August 31, 2011, BRA and the City did attempt to advance the development of the project. However, since the City held a majority ownership in Allens Creek, all decisions regarding the project had to be approved by both entities. Due to differences in the timing of need for the reservoir between the BRA and the City, development of other water supply strategies by the City, and funding availability, the project began to stall. In 2019, the Texas Legislature passed HB 2846, which instructed Houston to transfer its entire interest in Allens Creek to BRA. The City of Houston promptly filed suit arguing that HB 2846 was unconstitutional.

In 2020, the District Court ruled in favor of the City, agreeing that the Legislature could not mandate that the City sell its interest in Allens Creek and on subsequent appeal, in June 2021, the Appeals Court affirmed the District Court's ruling. Thus, the City and BRA undertook three years' worth of negotiations to determine how to properly transfer the ownership of Allens Creek to BRA. Whereby in May

2022, BRA was able to purchase full rights to Allens Creek from TWDB by a Sufficiency Certificate and from the City by a Quitclaim Deed, Bill of Sale, and Assignment and Assumption Agreement. BRA is now the sole owner of Allens Creek and sole Permittee of Permit No. 2925B. Following this purchase, preliminary data gathering activities were initiated to support the future permitting and design for Allens Creek.

In early 2024, BRA completed the necessary solicitation process to select a consulting firm for the development of Allens Creek. BRA is currently in scope and fee negotiations with the selected firm and shall begin the full permitting and design process once a contract is successfully negotiated. The entire Allens Creek development shall be conducted in phases, whereas the permitting, including but not limited to the environmental studies necessary for completion of the 404 permitting process and design process, should last between five and ten years and the actual construction phase, after all applicable permits are issued, should last between four to seven years.

Despite the delays, BRA has remained diligent in its commitment and efforts to begin construction on Allens Creek and is determined to provide the necessary water supply support needed in the region. Therefore, BRA should be granted an extension in time to commence construction because the aforementioned delays have now been quashed, by BRA becoming sole owner, and BRA is making significant efforts to accomplish the overarching goals of this project. BRA appreciates TCEQ's consideration of this Application and will continue using its best efforts to timely complete this vital project.



Brazos River Authority

RESOLUTION OF THE BOARD OF DIRECTORS OF THE BRAZOS RIVER AUTHORITY SEPTEMBER 30, 2024

Agenda Item No. 9

Application for an Extension of Time to Commence and Complete Construction of Allens Creek Reservoir

“WHEREAS, the Allens Creek Water Use Permit contains an existing deadline for initiating construction on or before September 1, 2025, and completing construction on or before September 1, 2030, which is inconsistent with the anticipated project timeframe;

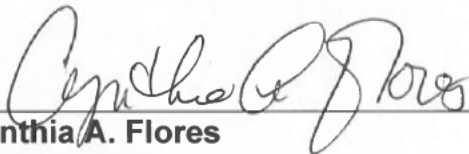
WHEREAS, under Texas Water Code § 11.145, BRA may request authorization from TCEQ for an extension of the existing deadlines to commence and complete construction of Allens Creek Reservoir;

WHEREAS, the BRA desires to request an extension of time to initiate construction on or before September 1, 2035, and complete construction on or before September 1, 2040; and

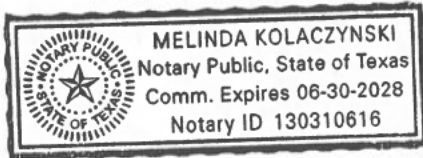
WHEREAS, authorization is requested for the General Manager/CEO, on behalf of BRA, to facilitate the execution of and pursue an application for an extension of the existing deadlines for commencement and completion of construction on the Allens Creek Reservoir.

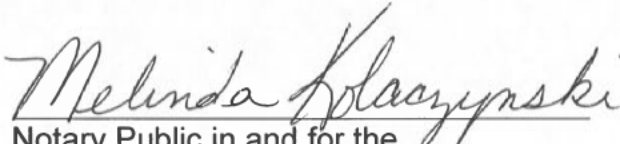
BE IT RESOLVED that the Board of Directors hereby authorizes and directs the General Manager/CEO to execute and facilitate the pursuit of an application for an extension of the existing deadlines for commencement and completion of construction on the Allens Creek Reservoir.”

The aforementioned resolution was approved by the Board of Directors of the Brazos River Authority on September 30, 2024, to certify which witness my hand and seal.


Cynthia A. Flores
Presiding Officer

SUBSCRIBED AND SWORN TO BEFORE ME on this the 30 day of September, 2024, to certify which witness my hand and official seal.




Notary Public in and for the
State of Texas

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



PERMIT TO APPROPRIATE AND USE STATE WATER

APPLICATION NO. 3194

PERMIT NO. 2925

TYPE: 11.121

Permittee : Texas Water Development Board Address : P.O. Box 13231
Austin, TX 78711
Received : October 19, 1999 Granted : **FEB 02 2000**
Purpose : Industrial County : Austin
Watercourse : Allens Creek, tributary of the Watershed: Brazos River Basin
Brazos River

WHEREAS, Senate Bill No. 1593, 76th Texas Legislature directed the Texas Natural Resource Conservation Commission (Commission) to reissue without notice or hearing Water Appropriation Permit No. 2925 previously issued for the Allens Creek Reservoir upon application by the Texas Water Development Board (Board) pursuant to Section 11.1311, Texas Water Code; and

WHEREAS, the bill provides that the permit is to bear a priority date of September 1, 1999, and a date to commence construction of the reservoir not later than September 1, 2018; and

WHEREAS, Texas Water Code Section 11.1311, as added by S.B. 1593, provides that if a permit has been abandoned, voluntarily canceled or forfeited for failure to commence construction within the time specified by law, the Commission may reissue the same permit with a new priority date to the Board without notice or hearing upon submission of an application by the Board; and

WHEREAS, this section also provides that the reservoir project site must be owned by a municipality, river authority, other political subdivision or water supply corporation; and

WHEREAS, Allens Creek Reservoir is recommended as a water supply project in *Water For Texas*, the state water plan in effect September 1, 1999; and

WHEREAS, Permit No. 2925 was issued on May 15, 1974 to Houston Lighting & Power Company, and was canceled by the Commission on January 4, 1984 upon request by Houston Lighting & Power Company; and

WHEREAS the Allens Creek Reservoir site is now wholly owned by the Brazos River Authority, a river authority organized and operating under the laws of the State of Texas; and

WHEREAS, on October 19, 1999 an application was received by the Commission from the Texas Water Development Board requesting the reissuance of Permit No. 2925 for Allens Creek Reservoir; and

WHEREAS, pursuant to Texas Water Code Section 11.131 the Texas Natural Resource Conservation Commission finds that jurisdiction of the application is established.

NOW, THEREFORE, this permit to appropriate and use State water is issued to the Texas Water Development Board subject to the following terms and conditions:

1. IMPOUNDMENT

Permittee is authorized to construct, and before acquiring any right hereunder shall construct, a dam and reservoir on Allens Creek and impound therein not to exceed 138,441 acre-feet of water at a normal operating elevation of 118 feet above mean sea level. Station 232 + 50 on the centerline of the dam will be N 58° 30' E, 13,750 feet from the east corner of the Jesse Boykin Heirs Survey, Abstract No. 131, Austin County, Texas, 23 miles SE of Bellville, Texas.

2. USE

- (a) Permittee is authorized to impound, divert, circulate and recirculate, and to consumptively use from the reservoir for industrial purposes not to exceed 46,256 acre-feet of water per annum from the stream flows of Allens Creek and other water as may be provided by contract from Brazos River Authority and impounded in the reservoir.
- (b) Permittee is further authorized to divert and use 500 acre-feet of water from the unappropriated waters of Allens Creek and/or the Brazos River for construction of the dam and reservoir authorized by this permit.
- (c) Permittee is further authorized to divert and use 189,181 acre-feet of water from Allens Creek and/or the Brazos River over a three-year period during the initial filling of the reservoir.

3. DIVERSION

- (a) Point of Diversion: From any point on the perimeter of the reservoir.
- (b) Maximum Diversion Rate: 8,889 cfs (4,000,000 gpm).

4. POINTS OF RETURN

- (a) Water diverted but not consumptively used will be returned to the reservoir.
- (b) Surplus water not beneficially used will be returned to the Brazos River at a point N 60° 30' E, 16, 350 feet from the aforesaid survey corner.

5. TIME LIMITATIONS

- (a) Construction or installation of all works herein authorized shall be in accordance with plans approved by the Executive Director and shall commence by September 1, 2018 and shall be completed by September 1, 2021.
- (b) Failure to commence and/or complete construction or installation of all works herein authorized with the periods stated above shall cause this permit to expire and become null and void without further Commission consideration unless permittee applies for an extension of time to commence and/or complete construction prior to these deadlines and the application is subsequently granted.

6. SPECIAL CONDITIONS

- (a) Permittee is responsible for the continuing maintenance and repair of the dam authorized herein.
- (b) Permittee shall provide a means to pass inflows of State water past the reservoir in such quantities as may be necessary to satisfy the rights of downstream domestic and livestock users and senior and superior rights of other authorized users.

- (c) Diversions from the Brazos River authorized by this permit for construction purposes or for the initial filling of the reservoir shall be limited to such times as the flow rate at the Richmond gaging station (when corrected to deduct upstream reservoir releases by the Brazos River Authority to provide water under contract downstream of the Richmond gage) does not reduce the flow rate below 1100 cfs at said gaging station.
- (d) Inflow from Allens Creek Watershed shall be passed through the reservoir whenever flow at the Richmond gaging station (when corrected to deduct upstream reservoir releases by the Brazos River Authority to provide water under contract downstream of the Richmond gage) is less than 1100 cfs, provided, however, permittee is authorized to substitute for inflow from Allens Creek an equal quantity of water released by Brazos River Authority from upstream reservoirs for this purpose.

7. TIME PRIORITY

This permit has a time priority of September 1, 1999.

This permit is issued subject to senior and superior water rights in the Brazos River Basin.

Permittee agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted to this permit are denied.

This permit is issued subject to the Rules of the Texas Natural Resource Conservation Commission and the right of continuing supervision of State water resources exercised by the Commission.

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION


Jeff Saitas, Executive Director

DATE ISSUED: FEB 02 2000

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



RECEIVED

JAN 23 2002

WATER RIGHTS PERMITTING

AMENDMENT TO
WATER USE PERMIT

APPLICATION NO. 3194A

PERMIT NO. 2925A

TYPE: §§11.122 & 11.085

Permittee:	Texas Water Development Board;	Address:	P. O. Box 13231, Capitol Station, Austin, Texas 78711
	City of Houston; and,		P.O. Box 1562 Houston, Texas 77251
	Brazos River Authority		P.O. Box 7555 Waco, Texas 76714-7555
Filed:	June 30, 2000	Granted:	JAN 16 2002
Purposes:	Municipal, Industrial, Irrigation, Recreational	County:	Austin, Brazoria, Fort Bend, Galveston, Harris, and Waller
Watercourse:	Allens Creek, tributary of the Brazos River and Brazos River	Watershed:	Brazos River Basin

WHEREAS, Water Use Permit No. 2925, (the Permit) with a priority date of September 1, 1999, authorized permittee to construct and maintain a dam and reservoir on Allens Creek, tributary of the Brazos River, in Austin County, approximately 23 miles southeast of Bellville, Texas, with an impoundment volume not to exceed 138,441 acre-feet of water at a normal operating elevation of 118 feet above mean sea level; and

WHEREAS, the Permit authorizes diversion, at a maximum rate of 8,889 cubic feet per second (c.f.s.) [4,000,000 gallons per minute (g.p.m.)], from any point on the perimeter of the reservoir, and circulation and re-circulation of reservoir water, so as to consumptively use from the reservoir for industrial purposes not to exceed 46,256 acre-feet of water per year from the stream flow of Allens Creek and other water as may be provided by contract from the Brazos River Authority (BRA); and

WHEREAS, the Permit authorizes the use of 500 acre-feet of unappropriated water from Allens Creek or the Brazos River for dam and reservoir construction, and the diversion and use of up to 189,181 acre-feet of water from Allens Creek or the Brazos River over a three-year period during the initial filling of the reservoir; and

WHEREAS, the Permit authorizes the return of surplus water to the Brazos River at a point N 60.5° E, 16,350 feet from the east corner of the Jesse Boykin Heirs Survey, Abstract No. 131, Austin County Texas; and

WHEREAS, the Permit contains conditions that diversion of water for construction and initial filling of the reservoir be limited to times when the flow at the Richmond United States Geological Survey streamflow gage on the Brazos River 37.5 miles downstream from the mouth of Allens Creek is greater than 1,100 c.f.s. (when corrected to deduct upstream reservoir releases by the Brazos River Authority to provide water under contract downstream of the Richmond gage) after the diversion; and a requirement that all water inflows from the Allens Creek watershed be released through the reservoir when flow at the U.S.G.S. gage at Richmond, not including water released by the Brazos River Authority for use downstream of the Richmond gage, is less than 1,100 c.f.s.; and

WHEREAS, pursuant to §11.122 of the Texas Water Code, on June 6, 2000 an application was received by the Commission from the Texas Water Development Board (TWDB), BRA, and the City of Houston (COH) (applicants) to amend the Permit to: 1) increase storage up to 145,533 acre-feet in Allens Creek Reservoir at a maximum water surface elevation of 121.0 feet above mean sea level; 2) authorize diversion from Allens Creek Reservoir of up to 99,650 acre-feet per year for municipal, industrial, and irrigation purposes in lieu of the 46,256 acre-feet originally authorized for industrial purposes; 3) authorize in-place use of Allens Creek Reservoir for recreational purposes; 4) authorize the right to divert up to 202,000 acre-feet of water per year from the Brazos River into Allens Creek Reservoir in lieu of the original authorization to divert 189,181 acre-feet of water from the Brazos River over a three-year period during the initial filling of the reservoir; 5) authorize a diversion point on the Brazos River on the river bottom lands at Latitude 29.650° N, Longitude 96.026° W, and a point immediately east of the dam, about 1,600 feet west of the Brazos River at Latitude 29.670° N, Longitude 96.053° W with authorization for a combined maximum diversion rate of 2,200 cfs (987,380 g.p.m.) from those points; 6) include monthly flow requirements at the Richmond gage for diversions from the Brazos River to safeguard downstream water rights and provide environmental flows; 7) authorize the right to impound runoff from Allens Creek watershed conditionally on the same monthly flow requirements dependent upon streamflows at the Richmond gage as those requirements for diversions from the Brazos River; 8) authorize the right to release water through the outlet works of the dam by gravity at a maximum rate of 700 cfs (314,160 g.p.m.); 9) limit the maximum diversion rate from the perimeter of the reservoir to 300 cfs (134,640 g.p.m.); 10) authorize the right for interbasin transfers of water released from Allens Creek Reservoir from the Brazos River Basin to San Jacinto-Brazos Coastal Basin and the San Jacinto River Basin for use in Harris, Galveston, Brazoria, Fort Bend, Austin, and Waller Counties; 11) authorize points of return for surplus water created by the requested use of water under this water right, to be discharged at the locations of wastewater treatment plants that may be located in the Brazos River Basin, San Jacinto-Brazos Coastal Basin, and San Jacinto River Basin, in Harris, Galveston, Brazoria, Fort Bend, Austin, and Waller Counties; 12) authorize the right to reuse all return flows generated from this project for municipal, industrial, and irrigation purposes within the areas of use authorized under this amendment, and as may be authorized by future amendments of the permit, in Harris, Galveston, Brazoria, Fort Bend, Austin, and Waller Counties; and

WHEREAS, the Texas Legislature passed Senate Bill 1593, 76th Legislature (1999), which act contained specific provisions related to Allens Creek Reservoir, the priority of amendments, time to construct Allens Creek Reservoir, and processing and issuing any amendments; and

WHEREAS, the San Jacinto-Brazos Coastal Basin is adjacent to the Brazos River Basin, the basin of origin of the interbasin transfer authorization requested by the applicants; and

WHEREAS, the municipal service area of one of the applicants, the COH, includes Harris and Fort Bend Counties, both of which are partially located within the Brazos River Basin; and

WHEREAS, the proposed interbasin transfer is exempted from the requirements of Water Code §11.085(b)-(u) under Water Code §11.085(v)(3) and (4); and

WHEREAS, the TWDB currently owns the Permit, and the BRA and the COH jointly own the land at the authorized location of the reservoir and dam site, and the applicants have indicated that the BRA and the COH will acquire an ownership interest from the TWDB, of the water rights authorized in the Permit, and that TWDB, BRA and COH shall share in the acquisition, financing, ownership, construction, and operation of the reservoir site and the reservoir project; and

WHEREAS, Station 232 +50 on the centerline of the dam for the reservoir authorized in the Permit was to be N 58.5° E, 13,750 feet from the east corner of the Jesse Boykin Heirs Survey, Abstract No. 131, Austin County Texas, 23 miles SE of Bellville, Texas, and applicants have submitted plans with the application for amending the Permit, describing a different dam location reducing the area to be inundated from 8,250 acres to 7,003 acres and avoiding an area known as Alligator Hole, a wetland that would be inundated under the original Permit; and

WHEREAS, Station 234+50 on the centerline of the dam for the reservoir proposed by the applicants is N 6.717° E, 12,400 feet from the southernmost corner of the Milburn Davis Survey, Abstract No. 71 in Austin County, Texas approximately at Latitude 29.658°N, Longitude 96.050° W; and

WHEREAS, based upon the results of the hydrological analysis, the Executive Director has concluded that the application is consistent with the State Water Plan, and that there is adequate streamflow and unappropriated water available to provide recommended instream flow requirements and support a perpetual water right in the amount of diversion of not to exceed 99,650 acre-feet per annum diverted from the reservoir, with this diversion being dependent upon the diversion of not to exceed 202,000 acre feet of water per annum from the Brazos River, and;

WHEREAS, the hydrological analysis for this amendment was based on the best available hydrology tools available and any applications to amend this amended permit will be analyzed based on the current best available hydrological techniques, and;

WHEREAS, the Executive Director has determined that in order to protect downstream water

rights, water quality, and aquatic habitats, diversions of the additional state water requested will include limitations; and

WHEREAS, the Executive Director indicates that a mitigation plan for the environmental impacts of the entire project embodied in the application must be prepared and approved by the U.S. Army Corps of Engineers prior to construction of the reservoir, which plan will include mitigation for impacts related to wetlands and wildlife habitat associated with this amendment; and

WHEREAS, the applicants, Texas Parks and Wildlife Department (TPWD) and the Executive Director have agreed that a site-specific instream flow study of the Brazos River below the authorized points of diversion will be undertaken, have agreed that this amended permit, may be amended to add streamflow diversion restrictions based on the results of that study, and have agreed that the Permittees, TPWD, or the Executive Director may file an application to amend the permit based upon the results of the study; and

WHEREAS, the Executive Director further recommends that in order to determine the firm yield of the project in the absence of a site specific comprehensive instream flow study, streamflow restrictions based on the consensus based planning criteria will be used and that this permit may be further amended to replace the interim stream flow restrictions of this amended permit following completion of the site specific field study of the segment of the Brazos River impacted by this project and prior to placing the project into operation; and

WHEREAS, applicants have requested authorization for use of return flows for surplus water generated by this project at various unspecified locations, and has made the general request to use all return flows generated by this project; and

WHEREAS, the Commission acknowledges the applicants' intent to use these surplus waters and return flows; and that the requested reuse authorization can be granted at this time; however additional future authorization must be obtained pursuant to Water Code §11.042 in order to use the bed and banks of state watercourses to deliver water for reuse, and this authorization cannot be obtained until discharge and diversion points have been identified by applicants and all statutory requirements satisfied; and

WHEREAS, the Executive Director has determined that the BRA and COH conservation plans do not include the diversion included in this amendment and has thus recommended that the permit, as amended, include a special condition that requires owners to submit to the Executive Director, revised water conservation and drought contingency plans within 180 days prior to the diversion of the water, subject to evaluation and approval by the Executive Director; and

WHEREAS, pursuant to Texas Water Code §§11.122 and 11.085 the Commission finds that jurisdiction of the application is established, and further finds that the application to amend the Permit is subject to the Texas Coastal Management Program (CMP) pursuant to Title 31, Part 16, Chapter 501 through Chapter 506 of the Texas Administrative Code and §33 of the Texas Natural Resources Code and is consistent with the CMP goals and policies; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Natural Resource Conservation Commission in issuing this amendment;

NOW, THEREFORE, this amendment to Water Use Permit 2925 is issued to the Texas Water Development Board, City of Houston, and Brazos River Authority, subject to the following terms and conditions:

1. IMPOUNDMENT

In lieu of the previous authorization to store water in Allens Creek Reservoir, owners are authorized to store, at normal maximum operating capacity, not to exceed 145,533 acre-feet at a maximum water surface elevation of 121.0 feet above mean sea level. Station 234+50 on the centerline of the dam for the reservoir is North 6.717° East bearing, 12,400 feet from the southernmost corner of the Milburn Davis Survey, Abstract No. 71 in Austin County, Texas, at Latitude 29.658°N, Longitude 96.050° W.

2. USE

- a) In lieu of the previous authorizations in §§2(a) and 2(c) of Water Use Permit No. 2925, to divert and use consumptively not to exceed 46,256 acre-feet of water per annum from Allens Creek Reservoir for industrial use, and to use contract water from Brazos River Authority, and to divert 189,181 acre-feet of water per annum from the Brazos River over a three-year period for initial filling of the reservoir, owners are herein authorized to divert not to exceed 202,000 acre-feet of water per annum from the Brazos River for storage in the Allens Creek Reservoir, and to subsequently divert and use 99,650 acre-feet of water per annum from the reservoir for municipal, industrial, and irrigation purposes within the Brazos River Basin. Interbasin transfers of this water are herein authorized, from the basin of origin, the Brazos River Basin, to the San Jacinto-Brazos Coastal Basin and the San Jacinto River Basin for use of that water in Harris, Galveston, Brazoria, Fort Bend, Austin, and Waller Counties.
- b) The owners are authorized to use the water impounded in Allens Creek Reservoir for recreational purposes.
- c) The owners are authorized to reuse water appropriated by this permit subject to obtaining future authorizations, after identifying specific points of discharge and diversion and satisfying the requirements of Water Code §11.042, for use of bed and banks for delivery of reuse water.

3. DIVERSION

- a) In addition to the existing authorization to divert from any point on the perimeter of the reservoir, owners are herein authorized to divert water from two points on the Brazos

River:

- i A point on the Brazos River at Latitude 29.650° N, Longitude 96.026° W also bearing N, 44.217° E, 13,300 feet from the southernmost corner of the Milburn Davis Survey, Abstract No. 71, in Austin County Texas;
- ii A point on the Brazos River at Latitude 29.670° N, Longitude 96.053° W also bearing N, 2.00° E, 16,600 feet from the southernmost corner of the Milburn Davis Survey, Abstract No. 71, in Austin County Texas;
- b) Maximum combined diversion rate from the Brazos River: 2,200 c.f.s. (987,360 g.p.m.);
- c) Maximum diversion from any point on the perimeter of the reservoir is herein reduced from the previously authorized maximum of 8,889 cfs (4,000,000 g.p.m.) to a maximum combined rate of 300 cfs (134,640 g.p.m.);
- d) Water stored in Allens Creek Reservoir may be released through the outlet works by gravity at a maximum rate of 700 cfs (314,160 g.p.m.).

4. SPECIAL CONDITIONS

- a) The owners, in cooperation with the Executive Director, and TPWD, shall undertake a site specific study of instream flow requirements of the Brazos River below the authorized points of diversion. Following completion of the study, either the Permittees, TPWD, or the Executive Director may file an application to amend this amended permit to implement streamflow diversion restrictions based upon the results of the study. Modification of streamflow diversion restrictions in that amendment may not increase or decrease the firm yield of the project authorized under this permit in paragraph 2(a) by more than 6.4%.
- b) In order to protect in-stream uses, water quality, and aquatic habitat, owners shall not divert water from the Brazos River in such a way that will cause streamflows immediately downstream of the permitted diversion points, excluding water released to meet downstream contracts, to fall below the following trigger levels:
 - i) For any given month, when flow in the Brazos River before diversions is greater than the naturalized median flow given in the table in 4(c), below, diversions shall not cause flow in the Brazos River to fall below that naturalized median flow;
 - ii) For any given month, when flow in the Brazos River before diversions is less than the naturalized median flow given in the table in 4(c), below, but greater than the naturalized 25th percentile flow, diversions shall not cause flow in the Brazos River to fall below that naturalized 25th percentile flow;

- iii) For any given month, when the flow in the Brazos River before diversions is less than the naturalized 25th percentile flow given in the table in 4(c), below, diversions shall not cause flow in the Brazos River to fall below 734 cfs;
- iv) At no time will diversions cause flow in the Brazos River to fall below 734 cfs.
- c) The naturalized median, 25th percentile, and water quality protection flows are as follows:

Month	Naturalized Median Flow (cfs):	Naturalized 25 th Percentile Flow (cfs)	Water Quality Protection Flow (cfs)
JAN	2,566	964	734
FEB	4,315	1,773	734
MAR	3,241	1,343	734
APR	4,601	1,835	734
MAY	9,059	3,159	734
JUN	5,576	2,596	734
JUL	2,512	1,139	734
AUG	1,379	709*	734
SEP	2,293	1,104	734
OCT	2,224	1,098	734
NOV	2,437	1,100	734
DEC	3,048	1,055	734

*Since 25th percentile is less than water quality protection flow, water quality protection flow (734 cfs) would apply.

- d) In order to protect downstream senior water rights, for any given month owners shall not divert water from the Brazos River in such a way that will cause streamflows immediately downstream of the permitted diversion points, excluding water released to meet downstream contracts, to fall below the following instantaneous flow rates measured in cfs:

Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
795	795	812	882	882	1017	1017	1017	882	812	812	795

- e) The higher of the environmental flow restrictions of subparagraph 4 (b) and 4(c) and the flows to protect downstream senior water rights of subparagraph 4 (d) shall control.
- f) Notwithstanding the streamflow restrictions of subparagraph 4 (d) to protect downstream senior water rights, downstream senior and superior water rights may exercise their lawful rights, including the right to call for the curtailment of upstream junior rights if downstream senior and superior water rights are not able to divert and use their full lawful right.

- g) As authorized by Special Condition 6(c) in Permit 2925, diversions from the Brazos River authorized for construction purposes or for the initial filling of the reservoir shall be limited to such times as the flow rate at the Richmond gaging station (when corrected to deduct upstream reservoir releases by the Brazos River Authority to provide water under contract downstream of the Richmond gage) does not reduce the flow rate below 1100 cfs at said gaging station.
- h) As authorized by Special Condition 6(d) in Permit 2925, inflow from Allens Creek Watershed shall be passed through the reservoir whenever flow at the Richmond gaging station (when corrected to deduct upstream reservoir releases by the Brazos River Authority to provide water under contract downstream of the Richmond gage) is less than 1100 cfs, provided, however, Permittees are authorized to substitute for inflow from Allens Creek an equal quantity of water released by Brazos River Authority from upstream reservoirs for this purpose.
- i) The owners, in cooperation with the Executive Director and Texas Parks and Wildlife Department, shall undertake a habitat mitigation study and develop a wetland and wildlife habitat mitigation plan, to be approved by the U.S. Army Corps of Engineers prior to initiating construction.
- j) The owners will provide a means to pass inflows downstream from the reservoir to provide water to downstream domestic and livestock water users and senior downstream water right holders, and inflows will be passed downstream when required by the Executive Director.
- k) Construction of the dam creating Allens Creek Reservoir, will be in accordance with standard engineering practices, and will include a means to pass inflows past the dam in such quantities as may be necessary to satisfy Special Condition 4(j). The dam authorized under this amendment will be designed and constructed to safely pass the probable maximum flood, and meet the appropriate minimum hydrological requirements of Title 30 Texas Administrative Code §299.14. The owners shall advise the Executive Director upon reaching significant milestones during the project's design process, including the 50% and 75% completion stages of the final plans and specifications. Final construction plans and specifications shall be submitted to the Executive Director for approval prior to commencement of construction of the project.
- l) At least 180 days prior to diversion and use of water authorized in this amendment, owners shall submit to the Executive Director revised conservation and drought contingency plans incorporating the water use authorized in this amendment. The drought contingency and conservation plans shall meet the minimum requirements of Title 30 TAC Chapter 288, and will be subject to evaluation and approval by the Executive Director.
- m) This permit, as amended, does not authorize use of the bed and banks downstream of the

reservoir to convey water for subsequent diversion.

5. CONSERVATION

Owners shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

6. TIME PRIORITIES

- (a) The time priority for the additional water authorized for diversion and use of water under this amendment, and for all other authorizations included in this amendment, is September 1, 1999.
- (b) The time priority for impoundment of inflows in the first 138,441 acre-feet of conservation storage and diversion of 46,256 acre-feet per year remains September 1, 1999.

7. TIME LIMITATIONS

- (a) Construction of the dam herein authorized shall be in accordance with plans approved by the Executive Director and shall be commenced not later than September 1, 2018 and completed within three years thereafter.
- (b) Failure to commence or complete construction of the dam within the period stated above shall cause this permit to expire and become null and void, unless Permittees apply for an extension of time to commence or complete construction prior to the respective deadlines for commencement or completion, and the application is subsequently granted.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

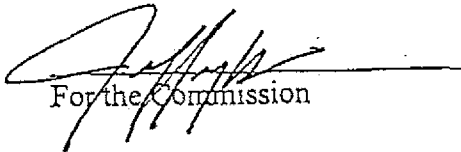
Permittees agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Natural Resource Conservation Commission and to the right of continuing supervision of State water resources exercised by the Commission.

Texas Natural Resource
Conservation Commission

DATE ISSUED: JAN 16 2002


For the Commission

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO
A WATER USE PERMIT

APPLICATION NO. 3194B PERMIT NO. 2925B TYPE: 11.122 & 11.085

Permittees:	Texas Water Development Board	Address:	P.O. Box 13231 Austin, TX 78711
	City of Houston		Dept. of Public Works 611 Walker Houston, TX 77002
	Brazos River Authority		P.O. Box 7555 Waco, TX 76714-7555
Filed:	July 27, 2011	Granted:	August 31, 2011
Purpose:	Municipal, Industrial, Irrigation, Recreational	Counties:	Austin, Brazoria, Fort Bend, Galveston, Harris, and Waller
Watercourses:	Allens Creek, tributary of the Brazos River and the Brazos River	Watershed:	Brazos River Basin

WHEREAS, the Texas Legislature passed Senate Bill 1132, 82nd Texas Legislature, which states the Texas Commission on Environmental Quality (the Commission) shall reissue without notice or hearing Permit No. 2925A to amend Time Limitation No. 7a in Permit No. 2925A to require that construction of the Allens Creek Reservoir commence on or before September 1, 2025, and be completed not later than the fifth anniversary of the date construction of the reservoir commences; and

WHEREAS, Permit No. 2925A, issued to the Texas Water Development Board, the City of Houston, and the Brazos River Authority, amended the original permit and contains numerous terms and conditions; and

WHEREAS, the Executive Director recommends Permit No. 2925A be reissued as Permit No. 2925B including the new construction time limitations and all terms and conditions of Permit No. 2925A; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, Water Use Permit No. 2925B is issued to the Texas Water Development Board, the City of Houston, and the Brazos River Authority, subject to the following terms and conditions:

1. IMPOUNDMENT

Permittees are authorized to store, at normal maximum operating capacity, not to exceed 145,533 acre-feet at a maximum water surface elevation of 121.0 feet above mean sea level. Station 234+50 on the centerline of the dam for the reservoir bears N 6.717° E, 12,400 feet from the southernmost corner of the Milburn Davis Survey, Abstract No. 71 in Austin County, Texas, also being at Latitude 29.658° N, Longitude 96.050° W.

2. USE

- a) Permittees are authorized to divert not to exceed 202,000 acre-feet of water per year from the Brazos River for storage in the Allens Creek Reservoir, and to subsequently divert and use 99,650 acre-feet of water per year from the reservoir for municipal, industrial, and irrigation purposes within the Brazos River Basin. Interbasin transfers of this water are authorized from the Brazos River Basin to the San Jacinto-Brazos Coastal Basin and the San Jacinto River Basin for use of that water in Harris, Galveston, Brazoria, Fort Bend, Austin, and Waller Counties.
- b) Permittees are authorized to use the water impounded in Allens Creek Reservoir for recreational purposes.
- c) Permittees are authorized to reuse water appropriated by this permit subject to obtaining future authorizations, after identifying specific points of discharge and diversion and satisfying the requirements of Texas Water Code (TWC) §11.042, for use of bed and banks for delivery of reuse water.

3. DIVERSION

- a) Permittees are authorized to divert from any point on the perimeter of the reservoir and from two points on the Brazos River:
 - i) A point on the Brazos River at Latitude 29.650° N, Longitude 96.026° W, also bearing N 44.217° E, 13,300 feet from the southernmost corner of the Milburn Davis Survey, Abstract No. 71, in Austin County, Texas;

- ii) A point on the Brazos River at Latitude 29.670° N, Longitude 96.053° W, also bearing N 2.00° E, 16,600 feet from the southernmost corner of the Milburn Davis Survey, Abstract No. 71, in Austin, County, Texas.
- b) Maximum combined diversion rate from the Brazos River: 2,200 cfs (987,360 gpm).
- c) Maximum diversion from any point on the perimeter of the reservoir is herein reduced from the previously authorized maximum of 8,889 cfs (4,000,000 gpm) to a maximum combined rate of 300 cfs (134,640 gpm),
- d) Water stored in Allens Creek Reservoir may be released through the outlet works by gravity at a maximum rate of 700 cfs (314,160 gpm).

4. SPECIAL CONDITIONS

- a) The Permittees, in cooperation with the Executive Director, and Texas Parks and Wildlife Department (TPWD), shall undertake a site specific study of instream flow requirements of the Brazos River below the authorized points of diversion. Following completion of the study, either the Permittees, TPWD, or the Executive Director may file an application to amend this amended permit to implement streamflow diversion restrictions based upon the results of the study. Modification of streamflow diversion restrictions in that amendment may not increase or decrease the firm yield of the project authorized under this permit in paragraph 2(a) by more than 6.4%.
- b) In order to protect in-stream uses, water quality, and aquatic habitat, Permittees shall not divert water from the Brazos River in such a way that will cause streamflows immediately downstream of the permitted diversion points, excluding water released to meet downstream contracts, to fall below the following trigger levels:
 - i) For any given month, when flow in the Brazos River before diversions is greater than the naturalized median flow given in the table in 4(c), below, diversions shall not cause flow in the Brazos River to fall below that naturalized median flow;
 - ii) For any given month, when flow in the Brazos River before diversions is less than the naturalized median flow given in the table in 4(c), below, but greater than the naturalized 25th percentile flow, diversions shall not cause flow in the Brazos River to fall below that naturalized 25th percentile flow.

- iii) For any given month, when flow in the Brazos River before diversions is less than the naturalized 25th percentile flow given in the table in 4(c), below, diversions shall not cause flow in the Brazos River to fall below 734 cfs;
 - iv) At no time will diversions cause flow in the Brazos River to fall below 734 cfs.
- c) The naturalized median, 25th percentile, and water quality protection flows are as follows:

Month	Naturalized Median Flow (cfs)	Naturalized 25 th Percentile Flow (cfs)	Water Quality Protection Flow (cfs)
JAN	2,566	964	734
FEB	4,315	1,773	734
MAR	3,241	1,343	734
APR	4,601	1,835	734
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NOV	2,437	1,100	734
DEC	3,048	1,055	734

*Since 25th percentile is less than water quality protection flow, water quality protection flow (734 cfs) would apply.

- d) In order to protect downstream senior water rights, for any given month Permittees shall not divert water from the Brazos River in such a way that will cause streamflows immediately downstream of the permitted diversion points, excluding water released to meet downstream contracts, to fall below the following instantaneous flow rates measure in cfs:

Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
795	795	812	882	882	1017	1017	1017	882	812	812	795

- e) The higher of the environmental flow restrictions of subparagraph 4(b) and 4(c) and the flows to protect downstream senior water rights of subparagraph 4(d) shall control.

- f) Notwithstanding the streamflow restrictions of subparagraph 4(d) to protect downstream senior water rights, downstream senior and superior water rights may exercise their lawful rights, including the right to call for the curtailment of upstream junior rights if downstream senior and superior water rights are not able to divert and use their full lawful right.
- g) As authorized by Special Condition 6(c) in Permit 2925, diversions from the Brazos River authorized for construction purposes or for the initial filling of the reservoir shall be limited to such times as the flow rate at the Richmond gaging station (when corrected to deduct upstream reservoir releases by the Brazos River Authority to provide water under contract downstream of the Richmond gage) does not reduce the flow rate below 1,100 cfs at said gaging station.
- h) As authorized by Special Condition 6(d) in Permit 2925, inflow from Allens Creek Watershed shall be passed through the reservoir whenever flow at the Richmond gaging station (when corrected to deduct upstream reservoir release by the Brazos River Authority to provide water under contract downstream of the Richmond gage) is less than 1,100 cfs, provided, however, Permittees are authorized to substitute for inflow from Allens Creek an equal quantity of water released by the Brazos River Authority from upstream reservoirs for this purpose.
- i) The Permittees, in cooperation with the Executive Director and TPWD, shall undertake a habitat mitigation study and develop a wetland and wildlife habitat mitigation plan, to be approved by the U.S. Army Corps of Engineers prior to initiating construction.
- j) Permittees will provide a means to pass inflows downstream from the reservoir to provide water to downstream domestic and livestock water users and senior downstream water right holders, and inflows will be passed downstream when required by the Executive Director.
- k) Construction of the dam creating Allens Creek Reservoir, will be in accordance with standard engineering practices, and will include a means to pass inflows past the dam in such quantities as may be necessary to satisfy Special Condition 4(j). The dam authorized under this amendment will be designed and constructed to safely pass the probable maximum flood, and meet the appropriate minimum hydrological requirements of Title 30 Texas Administrative Code (TAC) §299.14. The Permittees shall advise the Executive Director upon reaching significant milestones during the project's design process, including the 50% and 75% completion stages of the final plans and specifications. Final construction plans and specifications shall be submitted to the Executive Director for approval prior to commencement of construction of the project.

- l) At least 180 days prior to diversion and use of water authorized in this amendment, Permittees shall submit to the Executive Director revised conservation and drought contingency plans incorporating the water use authorized in this amendment. The drought contingency and conservation plans shall meet the minimum requirements of Title 30 TAC Chapter 288, and will be subject to evaluation and approval by the Executive Director.
- m) This permit, as amended, does not authorize use of the bed and banks downstream of the reservoir to convey water for subsequent diversion.

5. CONSERVATION

Permittees shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

6. TIME PRIORITY

The time priority for this right is September 1, 1999.

7. TIME LIMITATIONS

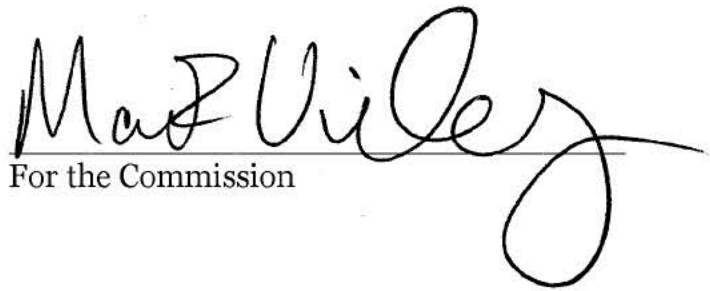
- (a) Construction of the dam herein authorized shall be in accordance with plans approved by the Executive Director and shall be commenced on or before September 1, 2025 and be completed not later than the fifth anniversary of the date construction of the reservoir commences.
- (b) Failure to commence or complete construction of the dam within the period stated above shall cause this permit to expire and become null and void, unless Permittees apply for an extension of time to commence or complete construction prior to the respective deadlines for commencement or completion, and the application is subsequently granted.

This amendment is issued subject to all superior and senior water rights in the Brazos River Basin.

Permittees agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.


For the Commission

Date Issued: **August 31, 2011**