

CPNPPCOLEISCEm Resource

From: jacson99@aol.com
Sent: Tuesday, October 19, 2010 10:14 AM
To: Comanche COLEIS Resource
Subject: Fwd: LGWOA Response to NRC Environmental Impact Study
Attachments: Trungale_Report_Commanche_Peak.pdf; downstream_letter_.pdf.pdf; 05[1].06.10_BRA_Interim_Order(4).pdf; 06[1].08.10_Order_No._1(2).pdf

Dear Mr. Willingham,

The Lake Granbury Waterfront Owners Association (LGWOA) was formed in 2007 to monitor water quantity and quality on Lake Granbury, oversee property tax evaluations, and seek economic stability for the city of Granbury. LGWOA has several hundred members along with thousands of Hood County and statewide contacts regarding Lake Granbury.

We have thoroughly reviewed the U.S. Commission's Draft Report for Comment, published in August 2010, concerning Luminant's application for licensing of the Comanche Peak Expansion 3 and 4. Our research here at LGWOA, finds that the water level impact study on Lake Granbury and the Brazos River Basin has not been thoroughly reviewed, and there were other studies that were not considered.

Here our are findings:

- 1) Upon review of the study regarding water level impact on Lake Granbury, there was no research that includes the Brazos River Basin such as the Trungale Study (see attached). The Trungale Study researches the impact of the Comanche Peak Expansion and shows the sizable impact, not only on Lake Granbury but on the Brazos River Basin. This study gives a complete analysis of the deeper drought periods that would occur with the addition of the Expansion and the longer times of recovery. This would have a tremendous destructive impact on marine life and the surrounding environment.
- 2) The NRC study has no water level impact that has occurred since the closing of the Morris Shepherd Hydroelectric Plant at the Possum Kingdom dam in 2007. This closure has had a significant impact on the water flow from Possum Kingdom Lake to Lake Granbury. The BRA has taken **NO STEPS** in the resolution of the working status of this facility and continues to **not** be a good steward of the Brazos River Basin in the management of this facility. Also in this matter, the BRA is in litigation with Brazos Electric (<http://www.supreme.courts.state.tx.us/ebriefs/files/20100611.htm>); in the Texas Supreme Court which has allowed the answers to Morris Shepherd to go unresolved.
- 3) The NRC study shows no research in regards to proposed reservoirs to be built upstream that would have an additional detrimental effect on Lake Granbury and its water levels. In 2006, the construction of the Cedar Ridge reservoir (see attached) was proposed. The new reservoir would be located north of Abilene, and would be built on the Clear Fork of the Brazos River which currently flows into Possum Kingdom Lake. Studies have now shown that Cedar Ridge would actually prohibit more water from reaching Possum Kingdom. This would be due to increased evaporation losses (est. 5000-20,000 acre ft.) and losses from the selling of water rights to the city of Abilene and other power plant facilities. This loss of Possum Kingdom water would have additional negative water level impact on Lake Granbury which has not been factored into the environmental impact study.
- 4) The NRC report considers no study in regards to the impact downstream that the additional water losses that would occur with the Comanche Peak Expansion. Currently, the BRA is seeking an increase in water rights with TCEQ in the amount of 500,000 acre ft. 100,000 acre ft would be needed for the Comanche Peak Expansion. Dow Chemical, Friends of the Brazos, and others have filed an injunction (see attached) to temporarily prevent the BRA from being awarded all the water rights that they seek. Along with the Trungale Study, many of the plaintiffs are concerned about the impact that the water losses would have on the Brazos River Basin including surrounding environment, loss of marine life, and overall long term viability of the Brazos River Basin.

LGWOA believes that other factors of consideration that have not been fully studied include excessive water temperature increases on Lake Granbury and availability of other water resources such as Lake Whitney. Also, the economic impact of lower water levels on the city of Granbury and Hood County such as loss of tourism needs to be fully taken into consideration.

In the light of the rapid population growth affecting this area, along with ongoing depletion of the Trinity aquifer. Lake

Granbury will increasingly serve as the principal source of area water supplies. The authorities responsible for the protection and allocation of our natural resources must be certain of the projected water withdrawal and its environmental impacts.

LGWOA believes that the short term gains such as temporary jobs and negligible tax revenues for Hood County will fall short of long term losses due to the impacts of low water levels for Lake Granbury and the surrounding community.

Therefore, LGWOA **rejects** the current NRC Environmental Impact Study until further review of all studies are taken into consideration.

Lake Granbury Waterfront Owners Association

Judy McHugh
President

Sue Williams
Secretary

Ann Jalbert
Treasurer

Pete Jalbert
Director of Govt. Relations

Joe Williams
Membership and Govt. Relations

Federal Register Notice: 75FR48998
Comment Number: 53

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Effects of diversions for the Comanche Peak Nuclear Project on the ecological health of the Brazos River

Trungale Engineering & Science
April 4, 2009

The Comanche Peak application fails to adequately address the instream flow water needs necessary for the protection the ecological health of the Brazos River. The proposed diversion would result in an increase in the severity, frequency and duration of “man made” drought conditions, potentially leading to an alteration in the ecosystem structure by either reducing overall fisheries abundance or by favoring one fisheries species at the expense of others, thereby reducing biodiversity. Specifically, the increased diversion could result in a decrease in suitable habitat conditions for the aquatic organisms that depend on the natural variability of the flows in the Brazos River to provide instream habitat, transport sediments and nutrients and maintain water quality to support diverse plant and wildlife assemblages. (SAC 2004)

This conclusion is based on a comparison between the instream flow needs for the Brazos River at Glen Rose recently determined as part of the Brazos River Authorities Systems Operation (SysOps) Permit and the flows that would result under future management plans including the Comanche Peak Nuclear Plant water diversions. Flows were simulated using a Water Availability Model (WAM) developed by the Texas Commission on Environmental Quality (TCEQ) and employed by the Brazos G Regional Water Planning Group (Region G) and the Brazos River Authority (BRA) to support long term water planning in the Basin. As indicated in Comanche Peak Nuclear Power Plant, Units 3 & 4 COL Application. Section 5.2.2.3.1 future water supply for this project is dependent on the approval by TCEQ of BRA’s SysOps water right application. The statement in section 5.2.2.1 that impacts are “small” is not based on a quantitative assessment of the effect of a new consumptive use of 61,617 acre feet per year. As the following quantitative analysis will demonstrate, the proposed operations needed to supply water for the Comanche Peak Project would result a significant increase in the failure to maintain flow necessary to protect the health of the Brazos River. While it is true that naturally occurring periods of low flows in the Brazos result in events in which target flow are not satisfied, there is substantial evidence in scientific literature (Annear, et al 2004,. Arthington, et al 2006, BIO-WEST. 2008 NRC 2005 Poff, et al 1997, Poff, et al 1989, Richter, et al 1997) to conclude that there are ecological limits to hydrologic alteration beyond which an increase in the severity, frequency, or duration of drought flows will alter the ecosystem structure by either reducing overall fisheries production or by favoring one fisheries species production at the expense of others, thereby reducing biodiversity. The operations of the Comanche Peak project would result in a significant increase in the severity, frequency and duration of these “man made” drought conditions.

1. Operations of the Comanche Peak Project will result in significant decrease in instream inflows as compared to the natural and current conditions.

As part of the Brazos River System Operations permit application preliminary instream flow recommendations to protect the sound ecological health of the Brazos River have been determined. (TQEC 2009) Instream flows are considered “master” variable in their role in maintaining ecosystem health. Their primary functions are to provide instream habitat, transport sediments and nutrients and maintain water quality to support diverse plant and wildlife assemblages. Quantification of the magnitudes, frequencies, durations, timing and variability of the flow needed to protect instream uses is a complex undertaking requiring the expertise of multiple disciplines including hydrology, hydraulics, aquatic and riparian biology, geomorphology and water chemistry among others. Decades of research in the science of instream flows has arrived at a generally accepted principle that maintenance of critical components of a natural flow regime encompassing a full range of flows including subsistence low flows, normal base flow, and occasional high flow pulses and bankfull events, all of which should include appropriate inter and intra annual variability are needed to maintain a sound ecological environment. Based on this understanding the state of Texas has developed an approach (TIFP 2008) which has been approved by the National Academy of Sciences (NRC 2005) to conduct instream flow studies on Texas Rivers. The Brazos River was selected as one of the top priority streams for study, largely in response to the number of large water development projects proposed in the basin that have been identified as being needed to meet the long term demands for water. State agencies have conducted a stakeholder process and are currently developing a study design for

the Brazos that will, within the next several years, develop a flow recommendation based on the principles described above. The 77th Texas Legislature recognizing the significant time and resources necessary to conduct these types of evaluations passed SB3; (which creates a process to convene bay and basin expert science teams to develop instream and freshwater inflow targets based on readily available data), that will guild permitting and planning until the more detailed studies are completed. The approach developed for the BRA systems operation permit is currently serving as one of the more significant models guiding the SB3 process. The BRA working with water resource agencies developed flow recommendations based primarily on pre-development flow records and expert opinion for six locations in the Brazos Basin including the Brazos River at Glen Rose a site immediately downstream of the proposed diversion for the Comanche Peak project. The draft permit for this application is very complex. It includes targets for the full range of flows as well as an accounting plan to be used for its implementation. A full review and critique of this permit and the special conditions presented within is beyond the scope of this analysis. Rather it is presented as the best available evaluation of the instream needs for this location. The evaluation of the impacts of new diversions including the Comanche Peak project is presented in the following sections based on the effect that these diversions will have on severity, duration and frequency of not meeting these target base flows. This evaluation considers just one part of the flow recommendation; that is the base flow requirement which includes daily flow targets for dry, average and wet conditions (Table 1). A more complex analysis would be required to assess the projects potential impact on the high flow part of the regime. The reader should be aware that that the results presented herein are based on model simulations and a management plan that ties target conditions to overall storage in the basin so as to provide the recommended flow at desired frequencies. The details regarding the implementation of this systems operation plan have yet to be determined. These results should be viewed relative to one another rather than as predictions of future conditions in an absolute sense.

Table 1 Low flow instream flow requirements for the Brazos River at Glen Rose

Instream Flow (cfs)	BRAZOS RIVER NEAR GLEN ROSE - USGS #08091000			
	Winter	Spring	Summer	Fall
Subsistence (7Q2)	15.3	15.3	15.3	15.3
Dry	39.0	45.0	33.3	62.0
Average	92.0	138.0	101.5	150.0
Wet	234.0	292.8	249.5	332.0

Given the above flow targets the first step in assessing the potential impacts of the new water diversion on the ecological health of the Brazos River is to develop estimates of flows under a range a management scenarios. These include estimates of natural, current and future conditions. Estimates of natural conditions serve as a baseline against which to evaluate existing and proposed alterations. Natural systems have evolved in response to the magnitude, duration, frequency of inter and intra annual variations in inflow conditions. Alteration of these conditions beyond some point will likely lead to a shift in ecosystem structure. Therefore some understanding of these conditions is an important starting point in any evaluation. Unfortunately there is rarely data available to evaluate how species responded to conditions prior to human alteration of natural systems; therefore evaluation of the ecosystem response to changing conditions also requires an evaluation of existing conditions. Finally, responsible planning requires that some effort be made to predict the instream flow conditions based on reasonable estimates of proposed future diversions.

Estimates of instream flows under natural, current and future water use scenarios are determined through the application a Water Availability Model (WAM). WAMs have been developed for each of the 23 river basins in Texas at the direction of the 75th Texas Legislature (SB1). The primary purpose of these models is to apply water use scenarios to historic flow conditions to predict water availability for existing and future water rights permits. WAMs are essentially accounting models that track stream flow and diversions throughout a river basin. The Brazos WAM has also been modified and used for long term water planning by the Senate Bill 1 Brazos G Water Planning Group (Region G). Most recently it has been used to evaluate a new water right application submitted to the TCEQ in October, 2004 by the BRA which would allow the

BRA to divert almost 1 million additional acre feet of water to meet future water needs in the basin. Water made available under this permit will be used for the Comanche Peak Project.

Naturalized inflows are flows for which the effects of human alterations have been removed. These include surface water diversions, wastewater return flows and water impounded in reservoirs and the evaporation associated with these impoundments. Current conditions is the description used to define TCEQs WAM that includes existing water use and return flow rates. So the current conditions runs for 1940, simulates the status of the system assuming a repeat of 1940 hydrology but with present water use. Model simulations for the recent past suggest that under current conditions water uses represent an annual average reduction from natural to current of about 250,000 acre feet per year and a maximum of over 500,000 acre feet per year in the Brazos River downstream of Lake Granbury.

Proposed water management strategies needed to supply water for the Comanche Peak project will result in additional reductions in instream flows. It is unclear whether special conditions requiring pass through for instream flow needs would be required as a condition in these diversions but commitment of water for the Comanche Peak project and other future demands has made it necessary for BRA to seek an application for additional diversions under the Systems Operation Permit. The present analysis utilizes the WAM developed by BRA and the TCEQ to simulate flows resulting from this new water right. Average annual flow would be reduced over 300,000 acre feet per year from current to proposed conditions. A total average reduction from natural on the order of a half a million acre feet and a maximum of over 1 million acre feet.

2. These decreases will result in significant increased in the severity, frequency and duration of drought conditions.

Time series analysis of flows under natural, current and proposed conditions demonstrates marked increase in the severity, frequency and duration of drought resulting from human alterations of flows in the Brazos River.

Severity of failing to meet targets is defined as the shortfall or magnitude by which flows fall below the level that has been determined to be necessary to protect the sound ecological environment. Table 2 shows the average and maximum shortfalls under the three flow scenarios. The average shortfalls under natural conditions range from 79 cfs to 2,206 cfs. Under the proposed diversions these shortfall increase to between 3,765 to 7,543. A similar pattern is seen with respect to the maximum shortfalls, if fact in many of the most sever months, the Brazos River could be effectively dewatered. These results clearly demonstrate an increase in the severity of drought conditions beyond those that would be expected under natural conditions.

Table 2 Severity of failing to meet targets under natural, current and proposed flow conditions

Month	Average			Maximum		
	Natural	Current	Proposed	Natural	Current	Proposed
JAN	534	2,670	4,346	5,657	13,448	14,031
FEB	253	2,452	3,763	6,240	12,936	12,948
MAR	485	5,017	5,717	5,259	8,485	9,908
APR	600	4,442	6,250	4,473	17,117	17,132
MAY	268	2,613	6,245	4,090	8,485	16,156
JUN	68	1,370	4,696	910	14,846	14,846
JUL	461	3,946	5,287	6,241	14,951	14,676
AUG	1,122	3,862	5,056	6,241	15,141	15,239
SEP	1,368	3,399	6,350	7,921	8,926	18,198
OCT	1,336	4,083	6,998	8,509	9,223	9,223
NOV	1,765	4,818	7,130	8,926	13,760	16,624
DEC	335	2,315	4,180	4,290	5,657	14,064
All Months	747	3,475	5,446	8,926	17,117	18,198

The duration of drought events would also be expected to substantially increase under the water management plan that includes the proposed Comanche Peak project. A drought event is defined as the continuous period of time during which flows remain below recommended targets. Table 2 shows the duration of individual periods when flows fail to meet targets. While it is true that the number of events when the flow target are not meet would increase significantly from natural to proposed conditions, what is perhaps more striking is the duration of these event. Under natural conditions only two drought events lasted more than 3 months and none any longer than 4 months. Under the proposed plans there are more than 20 events in which flows fails to meet the targets for more than 4 continuous months and one event that lasts for 17 continuous months.

Table 3 Duration of failing to meet targets conditions under natural, current and proposed flow conditions

Duration (months)	Natural	Current	Proposed
1	47	47	40
2	7	21	20
3	4	15	16
4	2	6	5
5		5	6
6		2	4
7		1	3
8		4	6
9		1	
10		1	5
11			1
12			1
13			
14			
15			
16			
17			2
Total	60	103	109

Finally the frequency of failing to meet the necessary flow conditions would be substantially increased with the implementation of the proposed water development plans need to supply water for the Comanche Peak project. Frequency of drought conditions is defined as the number of months in which the target flows are not meet. These frequencies are presented in Figure 1 as the percent of months over the 56 year WAM simulation period during which the flows would be expected to be below recommended levels. Clearly there are times when even under natural conditions the targets would not be satisfied, however these occurrence which would have been relatively infrequent (about 10% of the time) under the natural flows will become the dominate condition under the proposed plans.

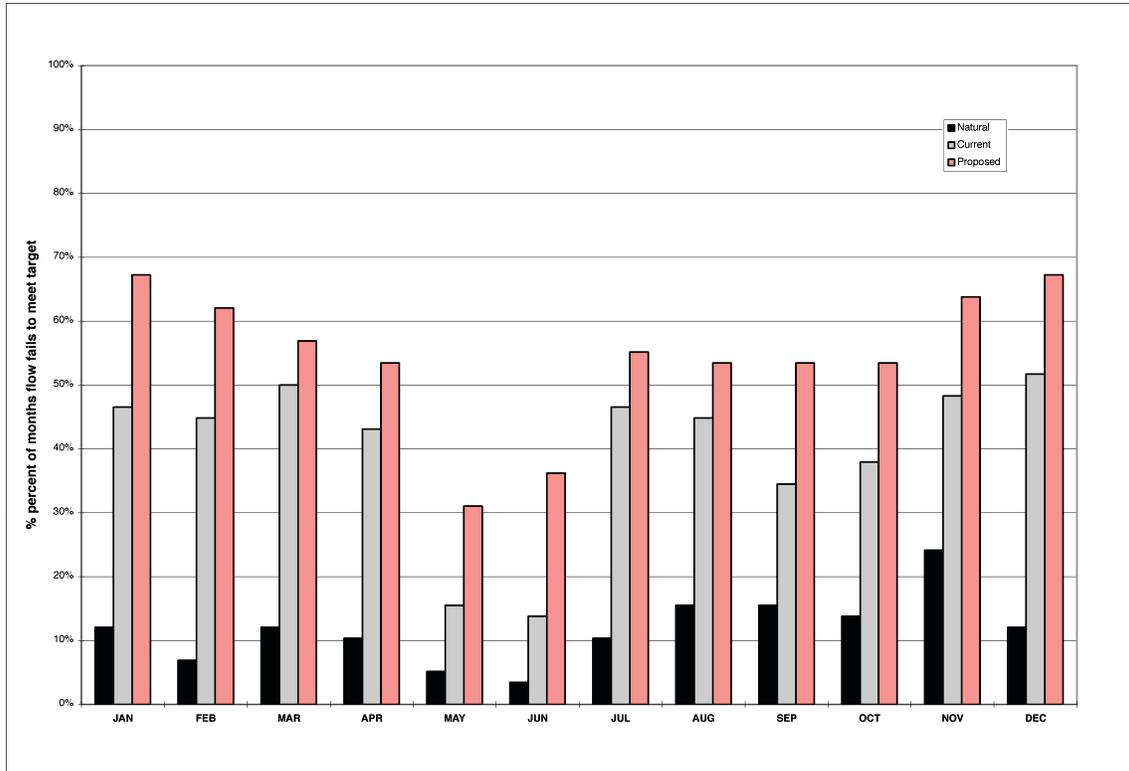


Figure 1 Frequency of failing to meet targets under natural, current and proposed flow conditions

Conclusion

As the preceding analysis demonstrates, the consumptive water use needed to expand the Comanche Peak project will result substantial increases in the frequency, duration and severity of failing to meet target environmental flow needs. Rather than resulting in a small impact as the applicant contends, increase diversions have the potential to have significant, negative impacts on the ecological health of the Brazos River.

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- Poff, N.L. and Ward, J.V. 1989. *Implications of Streamflow Variability and Predictability for Lotic Community Structure: a Regional Analysis of Streamflow Patterns*. *Canadian Journal of Fisheries and Aquatic Sciences*. v46. pp. 1805-1818.
- Richter, B.D., Baumgartner, J.V., Wigington, R., and Braun, D.P. 1997. *How Much Water Does a River Need?* *Freshwater Biology*. v37. pp. 231-249.
- SAC (Science Advisory Committee). 2004. *Final Report, Science Advisory Committee Report on Water for Environmental Flows*. Texas Senate Bill 1639, 78th Legislature. October 26, 2004. Prepared for Study Commission on Water for Environmental Flows. www.twdb.state.tx.us/EnvironmentalFlows/pdfs/SAC%20FINAL%20REPORT_102704.pdf.
- TCEQ (Texas Commission on Environmental Quantity) 2009 Draft Water Use Permit Brazos River Authority Systems Operation #5851.
- TIFP (Texas Instream Flow Program). 2008. *Texas Instream Flow Studies: Technical Overview*. Prepared by Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, and Texas Water Development Board. TWDB Report No. 369, May 2008, Austin, Texas.



PROTECTING THE CLEAR FORK

protecttheclearfork@yahoo.com

September 7, 2010

Dear Fellow Landowner,

As landowners on the Clear Fork upstream of you, we want to be sure you are aware of a proposal by the City of Abilene to dam the Clear Fork of the Brazos River near the Shackelford and Throckmorton county line, to create a 6,635-acre reservoir called Cedar Ridge. (Please see the attached map for the location of the proposed Cedar Ridge Reservoir.)

Because a substantial portion of our land will be inundated, we have studied very carefully the details of the Cedar Ridge Reservoir project, and what we found has us very concerned about other impacts as well as our own land. We would like to share with you the detrimental effects we fear that damming the Clear Fork of the Brazos will have on downstream landowners.

Abilene would obtain the rights to withdraw up to 24,480 acre-feet per year (AFY), which would be on average 21.9 million gallons per day (MGD), from the proposed lake. Evaporation from the reservoir, when full, is estimated at an additional 20,000 acre-feet per year (the equivalent of 18 million gallons per day). This would result in a substantial reduction in flow downstream of the dam.

Please see attached Table 4B.12.1-2 (Median Monthly Streamflow: Cedar Ridge Reservoir) and Figure 4B.12.1-3, "Cedar Ridge Reservoir – Median Streamflow Comparison." This information is taken from the Initially Prepared 2011 Brazos G Regional Water Plan submitted to the Texas Water Development Board (www.twdb.state.tx.us). These tables show the *median* (not the average) flows for the Clear Fork. The median means that flow levels are above the median half the time and below the median half the time. Operators of the dam would be required to match the historic *minimum* flows of the river, which drop to 0.73 cubic feet per second (cfs) 16% of the time and to zero flow 8.9% of the time. The tables show, however, that withdrawing 22 million gallons per day from the Clear Fork would significantly reduce flows above that historic minimum.

The Brazos G Regional Water Plan states, "*These lower stream flows would have substantial impacts on the instream biological community in areas downstream of the project site. Substantial reductions in July, August, and September would be particularly detrimental as a result of high temperatures and the high likelihood of impairment of other water quality parameters during this time of year.*" The Plan further states that, "*The anticipated impact of this project would be lower variability in and significant reductions in the quantity of median monthly flows.*" Additionally, the Plan says that "*Variability in flow is important to the instream biological community as well as riparian species and this reduction could influence the timing*

and success of reproduction as well as modify the current composition of species by favoring some and reducing habitat suitability for others.”

The Brazos G Plan clearly states that there is no *current* demand for the proposed Cedar Ridge Reservoir. Indeed, although it's hard to believe in our dry country, the projections made by the state's official water planning agency, the Texas Water Development Board, show that Abilene already has enough water to easily meet its projected *municipal* demands for the next fifty years.

Further, we have learned that if more water is needed in the future by Abilene and the nearby cities it provides with water, there are several sources of water that could be purchased at a similar or lower cost, some of them at much lower cost, than building a new reservoir.

The water projections made for this region (Brazos G), which can be found on the Texas Water Development Board website (www.twdb.state.tx.us), reflect that the only substantial demand projected for the next fifty years which has not already been met is for cooling water for hypothetical steam electric generating plants. Companies building power plants typically provide for the water they need for cooling – it is not done for them with municipal funds. The only plant actually proposed for the area, the Tenaska plant in Nolan County, is committed to dry cooling for the plant.

Of course additional water would always be good for irrigation purposes, but the cost of the water in the proposed Cedar Ridge Reservoir would be approximately ten times greater than what would be economically feasible for irrigation.

When we first learned of the proposed Cedar Ridge Reservoir, we were heartbroken that our land would be inundated, but we did not feel we could stand in the way of providing needed water to the people of Abilene and nearby communities. Consequently, we did not plan to oppose it.

When we looked at the details, however, we began to question who the beneficiaries of the project would be and what their motives are. It is *not* the most economical source of future water for the people of Abilene. It would flood nearly 7,000 acres of productive land. It would reduce the amount of water available to downstream landowners along the Clear Fork. Residents on Possum Kingdom Reservoir are very concerned about potential impacts on salinity and lake levels of Possum Kingdom. Who would it benefit?

Protecting the Clear Fork is planning to host a meeting in Breckenridge, Texas on **Thursday, October 7, 2010**. This meeting will be at 7 p.m. at the *Marketplace* (phone: 254.559.2424) restaurant located at 117 North Breckenridge Avenue, Breckenridge, Texas. At the meeting we will provide additional information about the proposed Cedar Ridge Reservoir and the potential effects it could have on your land. We will also talk about how to get involved in the issue. Feel free to contact us at protecttheclearfork@yahoo.com. Even if you cannot attend the meeting, please e-mail us, and we will be happy to keep you informed.

One thing you can do immediately is to contact State Representative Jim Keffer (Shackelford and Stephens counties), State Representative Rick L. Hardcastle (Young), and Senator Craig Estes (Shackelford, Stephens, and Young). Encourage Senator Estes and Representatives Keffer and Hardcastle to use their influence to protect the Clear Fork of the Brazos River and help you determine how it would affect you and your land. Ask them to push for an *independent* study of impacts, not conducted by a firm that would benefit financially by constructing the dam. The legislators' contact information is as follows:

Representative Jim Keffer
P.O. Box 857
Eastland , TX 76448
(800) 586-4515
(512) 478-8805 Fax
Can be emailed from his website

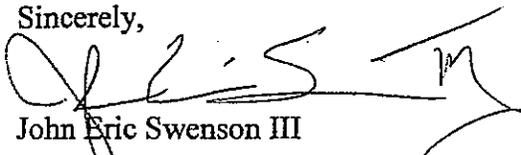
Senator Craig Estes
2716 Commerce Street, Suite 101
Wichita Falls , Texas 76301
(940) 689-0191
(940) 689-0194 Fax
Can be emailed from his website

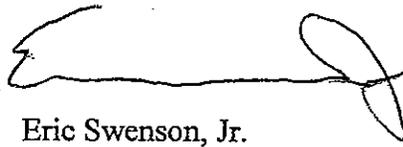
Representative Rick L. Hardcastle
1930 Fannin Street
Vernon, TX 76384
(940) 553-3825
(940) 553-3861 Fax
Can be emailed from his website

We are also including a letter from the *Texas Parks and Wildlife Department* dated June 25, 2010 to Mr. Trey Buzbee, Brazos G Administrative Agent, in care of the Brazos River Authority. This letter expresses the concern that Texas Parks and Wildlife Department has about the potential detrimental impact of the proposed Cedar Ridge Reservoir.

We hope to meet you in Breckenridge on October 7.

Sincerely,


John Eric Swenson III
Landowner


Eric Swenson, Jr.
Landowner


Randy Rodgers
Landowner

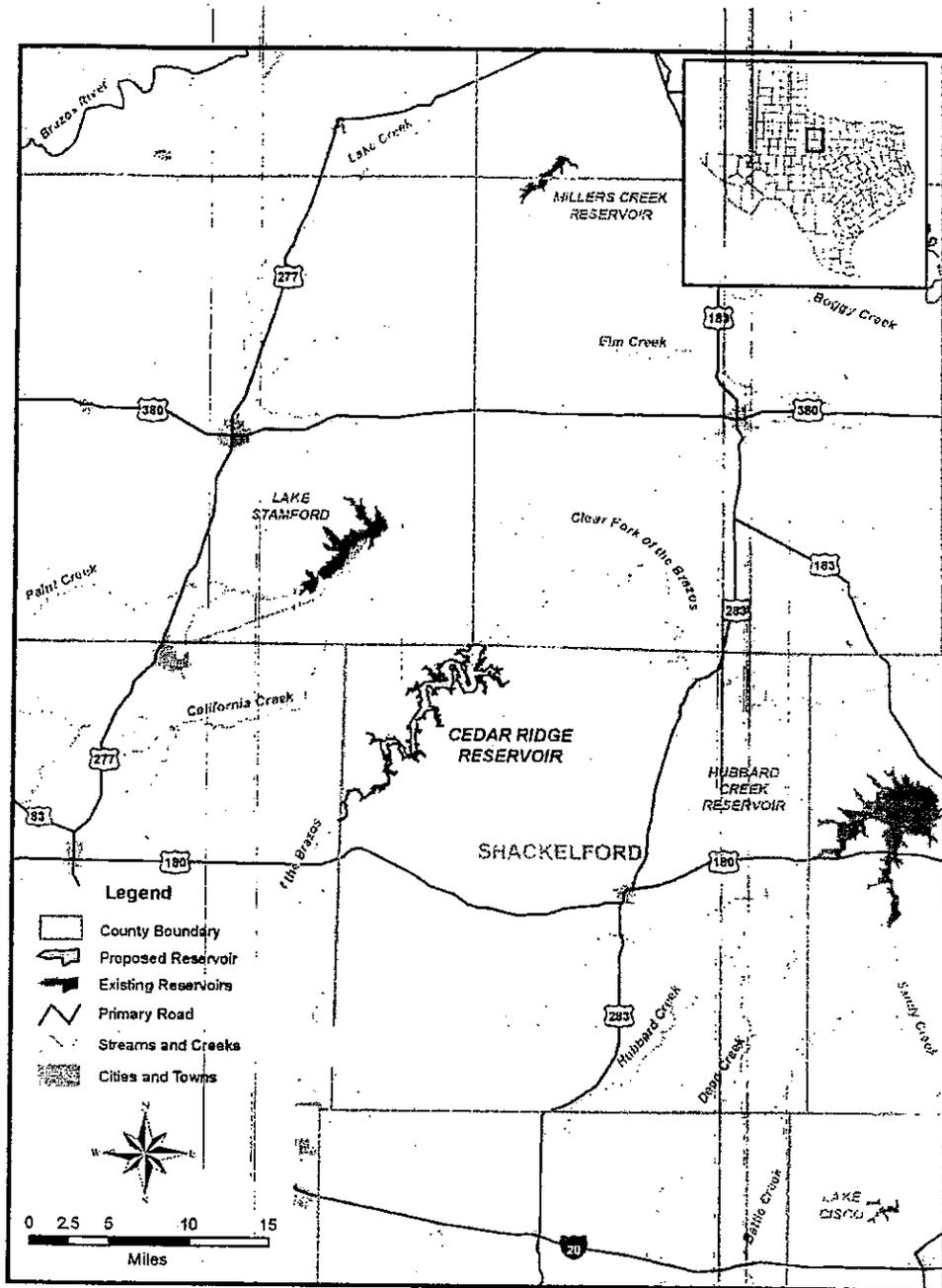
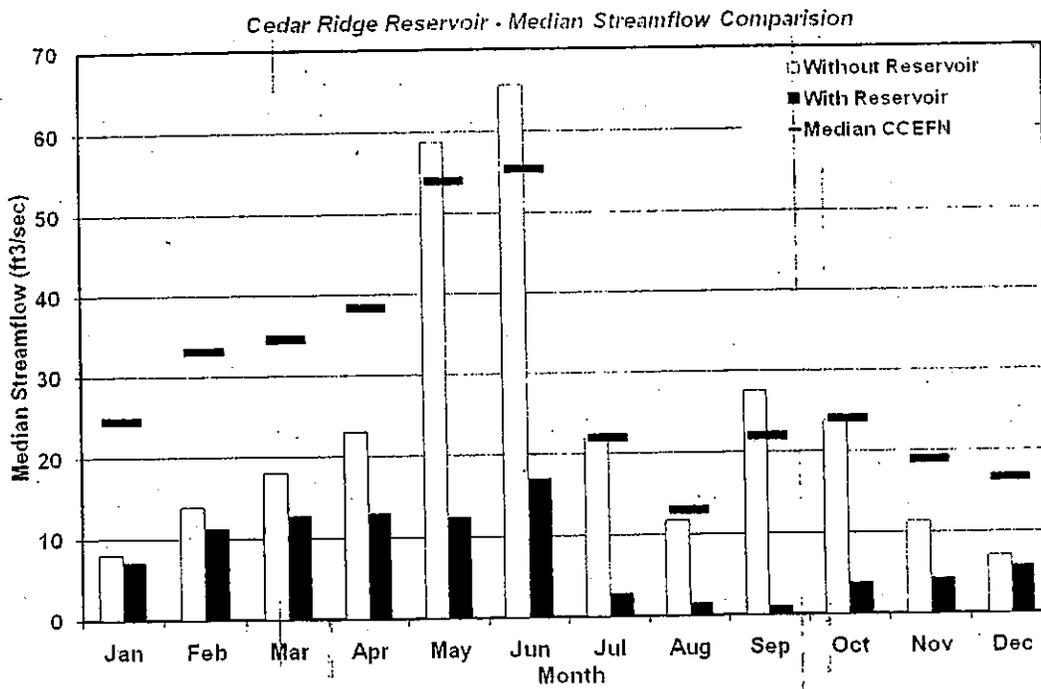


Figure 4B.12.1-1. Cedar Ridge Reservoir

**Table 4B.12.1-2.
Median Monthly Streamflow: Cedar Ridge Reservoir**

Month	Without Project (cfs)	With Project (cfs)	Difference (cfs)	Percent Reduction
January	8.0	7.1	1.0	12%
February	13.9	11.3	2.6	19%
March	18.1	12.8	5.3	29%
April	23.0	13.0	10.0	44%
May	58.7	12.4	46.4	79%
June	65.6	17.1	48.5	74%
July	22.3	2.8	19.5	88%
August	11.7	1.5	10.2	87%
September	27.6	1.0	26.6	96%
October	23.9	3.8	20.1	84%
November	11.4	4.3	7.1	63%
December	7.0	5.8	1.3	18%





Life's better outside.™

June 25, 2010

Mr. Trey Buzbee
Brazos G Administrative Agent
c/o Brazos River Authority
P.O. Box 7555
Waco, Texas 76714-7555

Re: 2010 Brazos G Initially Prepared Regional Water Plan

Dear Mr. Buzbee:

Thank you for seeking review and comment from the Texas Parks and Wildlife Department ("TPWD") on the 2010 Initially Prepared Regional Water Plan for the Brazos G Region (IPP).

As you may know, the Texas Parks and Wildlife Commission recently issued a new and updated Land and Water Resources Conservation and Recreation Plan. One of the cornerstones of the Land and Water Plan calls for TPWD to promote and protect healthy aquatic ecosystems, including the establishment of cooperative strategies to incorporate long-term plant, fish and wildlife needs in all statewide, regional and local watershed planning, management and permitting processes. As you will see in this letter, TPWD has some serious questions about the IPP and in particular, new reservoirs that are under active consideration.

TPWD understands that regional water planning groups are required by TAC §357.7(a)(8)(A) to perform quantitative reporting of environmental factors including effects on environmental water needs, wildlife habitat, cultural resources, and effects of upstream development on bays, estuaries and arms of the Gulf of Mexico when evaluating water management strategies. TPWD believes this quantification is a critical step in the process of attempting to plan for future water needs yet at the same time, protecting environmental resources, including fresh water inflows to current reservoirs and the Gulf of Mexico. Accordingly, TPWD staff reviewed the IPP with a focus on the following questions:

- Does the IPP include a quantitative reporting of environmental factors including the effects on environmental water needs and habitat?
- Does the IPP include a description of natural resources and threats to natural resources due to water quantity or quality problems?
- Does the IPP discuss how these threats will be addressed?
- Does the IPP describe how it is consistent with long-term protection of natural resources?
- Does the IPP include water conservation as a water management strategy? Reuse?

Commissioners

Peter M. Holt
Chairman
San Antonio

T. Dan Friedman
Vice-Chairman
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Ralph H. Duggins
Fort Worth

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San Antonio

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Margaret Martin
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Lee M. Bass
Chairman-Emeritus
Fort Worth

Carter P. Smith
Executive Director

Mr. Trey Buzbee

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June 25, 2010

- Does the IPP recommend any stream segments be nominated as ecologically unique?
- If the IPP includes strategies identified in the 2006 regional water plan, does it address concerns raised by TPWD in connection with the 2006 Water Plan.

The Brazos G planning region encompasses 37 counties making it the largest water-planning region in the state. It is also a complex region with 189 municipal water user groups. Since the 2006 Regional Water Plan, population projections were revised upwards by the Texas Water Development Board (TWDB) for 35 municipal water user groups. Twenty-nine counties have projected water shortages for one or more of those groups. All non-municipal water demands used in the IPP are identical to those used in the 2006 RWP, with the exception of steam-electric demands. The IPP identifies potential new water supplies of 587,278 acre feet/year at current projected costs that exceed \$3 billion.

An important part of these projected new supplies comes from conservation (39,363 ac-ft/yr) and reuse (69,044 ac-ft/yr). TPWD agrees that conservation and reuse strategies must be a part of future water planning.

The IPP also considers the expansion of current reservoirs and the construction of new reservoirs. The largest of the proposed new reservoirs are Millican Panther Creek on the Navasota River in Grimes, Brazos, Madison and Robertson counties and Cedar Ridge Reservoir on the Clear Fork Brazos River in Haskell, Shackelford and Throckmorton counties.

The proposed Millican Panther Creek Reservoir would inundate approximately 71,032 surface acres at the conservation pool elevation. An approximation of the ecological systems inundated is provided in Figure 1 and Table 1. Millican Panther Creek Reservoir would also result in substantial negative impacts to downstream flows and could potentially impact multiple threatened and endangered species. Such impacts are recognized and discussed in the IPP; however, 7 of the 13 mollusks listed as Species of Concern in Table 4B.12.8-3 are now listed as threatened by the state of Texas.

The proposed Cedar Ridge Reservoir (with a slightly different footprint) was a water management strategy in the 2006 Brazos G Water Plan. The current proposed footprint is slightly upstream of the previous footprint and would inundate 6,635 surface acres at the conservation pool elevation. Detailed vegetation data similar to that shown in Figure 1 for Millican Panther Creek are not yet available for Cedar Ridge Reservoir. The IPP notes this reservoir would likely have substantial negative impacts to downstream flows and could potentially affect up to 28 threatened, endangered, and rare species. The IPP

Mr. Trey Buzbee
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indicates that the City of Abilene believes Cedar Ridge to be necessary in order to meet two principal water demands:

(1) Steam electric demands predicted for a former West Texas Utilities power plant on Lake Fort Phantom Hill. The plant is currently shut down. TPWD staff is not aware of plans to reopen this power plant; and

(2) Steam electric demands for the proposed Tenaska Trailblazer Power Plant in Nolan County. While the demands in the IPP assume that this power plant will be water-cooled, the project's webpage states that "Tenaska will use dry cooling technology..."¹ This commitment was recently reinforced through an April 19, 2010 agreement with the Environmental Defense Fund.²

TPWD has concerns about Cedar Ridge. If constructed, the current plans would permit the impoundment of approximately 230,000 acre feet of fresh water from the Clear Fork of the Brazos, reducing fresh water inflow into Possum Kingdom. Possum Kingdom presently experiences issues arising from golden algae. A number of scientists believe there is a link between high levels of salinity and golden algae. The Clear Fork of the Brazos contains lower levels of dissolved salts and minerals than the Salt Fork and the Double Mountain Fork. Without the current flows from the Clear Fork, TPWD expects concentrations of dissolved salts and minerals in Possum Kingdom and releases from Possum Kingdom to increase. If Cedar Ridge is constructed, it would also appear that lake levels at Possum Kingdom will experience greater fluctuations. The IPP does not address these issues and we believe it should. Finally, the Clear Fork is only 180 miles long with no major dams.

Environmental Water Needs Impacts of Miller's Creek Augmentation (new dam and reservoir option) are described as "moderate impact" even though Miller's Creek is predicted to be dry approximately 85% of the time with the project compared to less than 20% of the time without the project.

Pg 4B.11-7 of the IPP discusses the transfer of uncommitted water from the Highland Lakes to Williamson County. TPWD has concerns regarding environmental flow impacts that could result from increased interbasin transfers from the Colorado River Basin to the Brazos River Basin and recommends an analysis of these potential impacts be undertaken.

TPWD staff recognizes the water supply constraints caused by natural salt brine springs (pg. ES-10). These water sources contribute to environmental conditions

¹ <http://www.tenaskatrailblazer.com/trailblazer.html>

² <http://www.edf.org/pressrelease.cfm?contentID=11010>

Mr. Trey Buzbee
Page 4 of 4
June 25, 2010

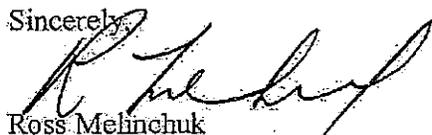
in the upper Brazos drainages that support a unique prairie stream ecosystem. Alterations in hydrologic and water quality conditions due to reservoir construction and operation, water diversions, control of brine sources, and consequent effects may disrupt the dynamics of the unique ecosystem and render habitat unsuitable for species adapted to prairie streams, including pupfish, killifish and minnows. Once known from throughout the Brazos River and its major tributaries, two prairie stream minnows, small-eye shiner *Notropis buccula* and sharpnose shiner *Notropis oxyrinchus*, are now largely restricted to the drainages of the upper Brazos River (upstream of Lake Possum Kingdom) and are now candidates for listing by the U.S. Fish and Wildlife Service.

Regarding water conservation, the 2006 Regional Water Plan and the IPP state, "Targets identified in specific conservation plans for water user groups in the Brazos G Area should be included in future water planning efforts." As a result of the lack of new information, much of the language and decisions related to water conservation in the IPP are identical to those included in the 2006 Regional Water Plan. TPWD encourages Brazos G to make water conservation a priority early in the next planning cycle.

The Brazos G IPP does not recommend nomination of any stream segments as ecologically unique. No explanation is provided for the lack of recommendations. TPWD understands that Salado Creek was initially considered for recommendation and encourages the planning group to consider this creek, and other rivers and streams, in the next planning cycle.

TPWD hopes the Brazos G Regional Water Planning Group will consider and address our questions and concerns before finalizing the IPP. While we value and appreciate the need to meet future water supply demands, we must do so in a thoughtful and sound manner that ensures the ecological health of our state's aquatic and natural resources. We look forward to hearing from you. If you have any questions, or if we can be of any assistance, please feel to contact Cindy Loeffler at 512-389-8715. Thank you.

Sincerely,



Ross Melnychuk
Deputy Executive Director, Natural Resources

RM:CL:ch

Enclosure

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN INTERIM ORDER concerning the application by the Brazos River Authority for Water Use Permit No. 5851, and related filings; TCEQ Docket No. 2005-1490-WR.

On April 28, 2010, the Texas Commission on Environmental Quality (TCEQ or Commission) considered in open meeting the application of the Brazos River Authority (BRA) for Water Use Permit No. 5851 seeking to authorize: 1) A new appropriation of state water for multiple uses, including domestic, municipal, agricultural, industrial, mining, and other beneficial uses on a firm basis in the Brazos River Basin, 2) Diversion of the water from existing and other diversion points, 3) Use of up to 90,000 acre-feet of water per year of its firm supply to produce, along with other unappropriated flows, an interruptible water supply of 670,000 acre-feet per year and the appropriation of that interruptible water supply, 4) The exemption of certain interbasin transfer authorizations, 5) An appropriation of current and future return flows, 6) Operational flexibility, 7) Recognition that the System Operation Permit will prevail over inconsistent provisions in BRA's existing water rights regarding system operation, 8) Use of the bed and banks of the Brazos River, its tributaries, and BRA's reservoirs for the conveyance, storage, and subsequent water diversion, and 9) Specific requirements and conditions that address water use once the Allens Creek Reservoir is completed. BRA's service area includes Parmer, Castro, Swisher, Bailey, Lamb, Hale, Floyd, Cochran, Hockley, Archer, Lubbock, Crosby, Baylor, Dickens, King, Knox, Jack, Terry, Lynn, Mitchell, Chambers, Young, Garza, Throckmorton, Kent, Haskell, Stonewall, Parker, Palo Pinto, Dawson, Scurry, Borden, Fisher, Stephens, Jones, Shackelford, Johnson, Hood, Nolan, Erath, Eastland, Taylor, Callahan, Somervell, Hill, Comanche, Bosque, Brown, Freestone, Hamilton, McLennan, Limestone, Mills, Coryell, Leon, Falls, Lampasas, Robertson, Bell, Madison, Milam, Burnet, Brazos, Grimes,

Williamson, Burleson, Travis, Lee, Washington, Bastrop, Fayette, Waller, Harris, Austin, Colorado, Fort Bend, Galveston, Matagorda, Wharton, and Brazoria Counties. The Commission considered numerous requests for a contested case hearing; the responses to requests filed by BRA, the Executive Director, and the Office of Public Interest Counsel; related filings; and the timely filed replies to responses. The permit application and related requests and filings were evaluated under the requirements in the applicable statutes and Commission rules, including 30 Texas Administrative Code Chapter 55, Subchapter G.

After considering these matters, the Commission determined to grant several requests for a contested case hearing and refer BRA's permit application to the State Office of Administrative Hearings (SOAH) for a contested case hearing.

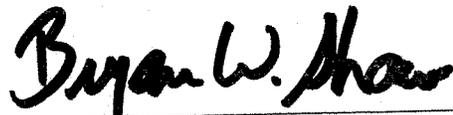
NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The requests for a contested case hearing submitted by George Bingham, Dow Chemical Company, Gulf Coast Water Authority, Texas Westmoreland Coal Company, Texas Genco or NRG Texas LP, Fort Bend County Levee Improvement Districts Nos. 11 and 15, Sienna Plantation MUD No. 1, the Cities of Bryan and College Station, the City of Lubbock, Perry and Margaret Adams, Jack Weldon Bridges, Rick and Christie Clark, Maurice and Ginger English, Dorothy Gibbs, Richard Giesecke, John Graves, James and Melodie Isham, Raymond and Debra Pitts, Jerry Swink, Scott and Linna Trees, H. Jane Vaughn, Lawrence Wilson, Rhino Ridge Outfitters, Inc. and Adam Eyres, Tres Rios Ltd. and R. Kip Lewis, Matthews Land and Cattle Company, MW Farm and Ranch, Bridges Hague, and Mary Lee Lilly, Friends of the Brazos River, and the National Wildlife Federation are GRANTED.
2. The Brazos River Authority's application for Water Use Permit No. 5851 is REFERRED to the State Office of Administrative Hearings for a contested case hearing.

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

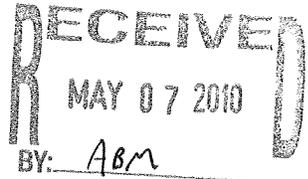
Issue Date: **MAY 05 2010**

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

A handwritten signature in black ink that reads "Bryan W. Shaw". The signature is written in a cursive style with a large initial "B".

Bryan W. Shaw, Ph.D., Chairman

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 6, 2010

TO: Persons on the attached mailing list.

RE: Brazos River Authority
TCEQ Docket No. 2005-1490-WR; Water Use Permit No. 5851

Enclosed is a copy of an interim order issued by the Commission regarding the above-referenced matter.

Should you have any questions, please contact Melissa Schmidt of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3317.

Sincerely,

A handwritten signature in cursive script that reads "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/ms

Enclosure

MAILING LIST
for
Brazos River Authority
TCEQ Docket No. 2005-1490-WR
Water Use Permit No. 5851

FOR THE APPLICANT:

Douglas G. Caroom
Bickerstaff Heath Delgado Acosta LLP
3711 South MoPac Expressway
Building One, Suite 300
Austin, Texas 78746

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Eli Martinez, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

INTERESTED PERSONS:

See attached list.

FOR ALTERNATIVE DISPUTE
RESOLUTION via electronic mail:

Kyle Lucas, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-222
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Robin Smith, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Ron Ellis, Technical Staff
Texas Commission on Environmental Quality
Water Supply Division MC-160
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

ADAMS , MARGIE & PERRY
PO BOX 400
NEMO TX 76070-0400

ADAMS , PERRY J
PO BOX 400
NEMO TX 76070-0400

ADAMS , RICHARD L
STE 3700
1445 ROSS AVE
DALLAS TX 75202-2711

BELLATTI , LAWRENCE L
ANDREWS KURTH LLP
STE 4200
600 TRAVIS ST
HOUSTON TX 77002-3009

BINGHAM , GEORGE E
2191 HIGHWAY 2247
COMANCHE TX 76442-4316

BORK , PAUL EHS LEGAL MERGERS &
AQUISITIONS
FEDERAL COMMUNICATIONS COMMISSION
1790 BUILDING
MIDLAND MI 48674-0001

BOWER , JUSTIN WATER RESOURCES
CITY OF SUGAR LAND
PO BOX 110
SUGAR LAND TX 77487-0110

BOWER , JUSTIN
111 GILLINGHAM LN
SUGAR LAND TX 77478-3150

BRIDGES III , H
PO BOX 7233
GLEN ROSE TX 76043-7233

BRIDGES , JACK WELDON
PO BOX 7233
GLEN ROSE TX 76043-7233

CAGLE , MOLLY
VINSON & ELKINS LLP
STE 100 THE TERRACE 7
2801 VIA FORTUNA
AUSTIN TX 78746-7567

CALLAWAY , MS CATHERINE
NRG ENERGY
STE 2300
1301 MCKINNEY ST
HOUSTON TX 77010-3031

CARMINE , BEN
NRG TEXAS POWER LLC
STE 2300
1301 MCKINNEY ST
HOUSTON TX 77010-3031

CAROOM , DOUGLAS G.
BICKERSTAFF HEATH DELGADO ACOSTA LLP
BLDG 1, STE 300
3711 S MOPAC EXPY
AUSTIN TX 78746-8013

CASTLEBERRY , BRAD B
LLOYD GOSSELINK
STE 1900
816 CONGRESS AVE
AUSTIN TX 78701-2442

CATHEY , JACK
PO BOX 420
NEMO TX 76070-0420

CLARK , CHRISTIE & RICK
2776 COUNTY ROAD 312
GLEN ROSE TX 76043-6061

CLEVINGER , DON
TXU POWER
6TH FLOOR
1601 BRYAN ST
DALLAS TX 75201-3430

COX , ALVA
116 W BRIDGE ST
GRANBURY TX 76048-2160

DOUGAL , LEONARD H ATTORNEY
JACKSON WALKER LLP
STE 1100
100 CONGRESS AVE
AUSTIN TX 78701-4072

ENGLISH , GINGER & MAURICE
PO BOX 2280
GLEN ROSE TX 76043-2280

EYRES , ADAM PRESIDENT
RHINO RIDGE OUTFITTERS INC
PO BOX 2027
GLEN ROSE TX 76043-2027

FAINTER , JOHN
STE 600
1005 CONGRESS AVE
AUSTIN TX 78701-2463

FREEMAN , RONALD
FREEMAN & CORBETT LLP
8500 BLUFFSTONE CV STE B104
AUSTIN TX 78759-7811

GARRETT , COLE LEGAL ASSISTANT
HENRY & POPLIN
819 1/2 W 11TH ST
AUSTIN TX 78701-2009

GAVRANOVIC , WILLIE
5713 COUNTY ROAD 156
WHARTON TX 77488-5362

GIBBS , DOROTHY
PO BOX 636
GLEN ROSE TX 76043-0636

GIESECKE , RICHARD L
3205 CORNELL AVE
DALLAS TX 75205-2933

GRAVES , JOHN
PO BOX 667
GLEN ROSE TX 76043-0667

GUNTER , L ELIZABETH
STE 1520
400 W 15TH ST
AUSTIN TX 78701-1600

HENRY , STUART N ATTY AT LAW
HENRY & POPLIN
1350 INDIAN SPRINGS TRCE
DRIPPING SPRINGS TX 78620-4044

HUDDLESTON , BOB
1133 N TEXAS ST
DE LEON TX 76444-1109

JARVIS , MR GLENN ATTORNEY AT LAW
LAW OFFICE OF GLENN JARVIS
INTERNATIONAL BANK BLDG
1801 S 2ND ST STE 550
MCALLEN TX 78503-1353

KLEIN , DAVID J
STE 1900
816 CONGRESS AVE
AUSTIN TX 78701-2442

LLOYD , WESLEY D
NAMAN HOWELL SMITH & LEE LLP
PO BOX 1470
WACO TX 76703-1470

MATHEWS , JIM ATTORNEY
MATHEWS & FREELAND LLP
PO BOX 1568
AUSTIN TX 78767-1568

MELVIN , ROBIN A
GRAVES DOUGHERTY HEARON & MOODY
PO BOX 98
AUSTIN TX 78767-0098

PITTS , DEBRA & RAYMOND
3030 COUNTY ROAD 312
RAINBOW TX 76077-2904

SALTSGIVER , JANET L
519 WOODROW AVE
FORT WORTH TX 76105-1335

SMITH , STEPHEN EXEC DIR
TMRA
STE 1900
816 CONGRESS AVE
AUSTIN TX 78701-2442

HESS , MYRON J COUNSEL
NATIONAL WILDLIFE FEDERATION
STE 200
44 EAST AVE
AUSTIN TX 78701-4384

ISHAM , JAMES & MELODIE
PO BOX 84
RAINBOW TX 76077-0084

JARVIS , GLENN
LAW OFFICES OF GLENN JARVIS
1801 S 2ND ST STE 550
MCALLEN TX 78503-1353

KOWALSKI , DAN
WALNUT CREEK MINING CO
PO BOX H
BREMONT TX 76629-0318

LONG , TED VP ENV AFFAIRS
NRG TEXAS POWER LLC
1301 MCKINNEY ST STE 2300
HOUSTON TX 77010-3035

MEADOWS , DANIEL
PO BOX 7000
BRYAN TX 77805-7000

MORTON , STEVE
MOLTZ MORTON O'TOOLE LLC
THE LITTLEFIELD BLDG, STE 700
106 E 6TH ST
AUSTIN TX 78701-3659

RITCHIE , JOHN ATTORNEY
PALO PINTO COUNTY MUNICIPAL WATER DIST
PO BOX 98
MINERAL WELLS TX 76068-0098

SHEETS , STEPHAN
SHEETS & CROSSFIELD PC
309 E MAIN ST
ROUND ROCK TX 78664-5246

SNYDER , WILSON
6801 SANGER AVE STE 2500
WACO TX 76710-7826

HOWARD , JO ANN
PO BOX 160130
AUSTIN TX 78716-0130

ISTRE , ROBERT GENERAL MANAGER
GULF COAST WATER AUTHORITY
3630 FM 1765
TEXAS CITY TX 77591-4824

KING , JEAN F
PO BOX 2367
GLEN ROSE TX 76043-2367

LEWIS , R KIP
1102 MARTIN AVE
ROUND ROCK TX 78681-7324

LOWERRE , RICHARD
LOWERRE FREDERICK PERALES ALLMON & RO
STE 200
707 RIO GRANDE ST
AUSTIN TX 78701-2719

MEDLIN , EARL
PO BOX 387
MINERAL WELLS TX 76068-0387

MULLER JR , MR RICHARD L
3200 SOUTHWEST FWY STE 2600
HOUSTON TX 77027-7537

ROCHELLE , MARTIN C ATTORNEY
LLOYD GOSSELINK ROCHELLE & TOWNSEND
STE 1900
816 CONGRESS AVE
AUSTIN TX 78701-2442

SLADE , TERRY
3401A DOLPHIN DR
AUSTIN TX 78704-6030

STRONG , ANDREW L
PILLSBURY WINTHROP SHAW PITTMAN LLP
22ND FLOOR
909 FANNIN ST
HOUSTON TX 77010-1014

SWINK, JERRY
PO BOX 69
RAINBOW TX 76077-0069

TREES, LINNA & SCOTT
2932 COUNTY ROAD 312
GLEN ROSE TX 76043-6060

TROUART, JOEL
PO BOX 915
JEWETT TX 75846-0915

TRUNGALE, JOE
2006 ANN ARBOR AVE
AUSTIN TX 78704-3232

VAUGHN, H JANE
12200 MITCHELL BEND CT
GRANBURY TX 76048-9600

WALKER, W C
5026 BELLAIRE DR S
FORT WORTH TX 76109-3107

WERKENTHIN JR, FRED B
BOOTH AHRENS & WERKENTHIN PC
STE 1515
515 CONGRESS AVE
AUSTIN TX 78701-3504

WILSON, LARRY
PO BOX 473
NEMO TX 76070-0473

WILSON, LAWRENCE A
BRAZOS RIVER AUTHORITY
PO BOX 473
NEMO TX 76070-0473

WILSON, NANCY STACKHOUSE
303
4500 ROLAND AVE
DALLAS TX 75219-1640

**SOAH DOCKET NO. 582-10-4184
TCEQ DOCKET NO. 2005-1490-WR**

CONCERNING THE APPLICATION BY THE BRAZOS RIVER AUTHORITY FOR WATER USE PERMIT NO. 5851 AND RELATED FILINGS	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
---	-----------------------	---

**ORDER NO. 1
MEMORIALIZING PRELIMINARY HEARING; AND SETTING HEARING
SCHEDULE**

On June 7, 2010, the undersigned Administrative Law Judges (ALJs) convened a preliminary hearing in the above-referenced matter and considered the following items.

Jurisdiction

The ALJs admitted into evidence Exhibits ED A, B, and C for the limited purpose of proving jurisdiction. The ALJs determined that the Commission and the State Office of Administrative Hearings (SOAH) have jurisdiction over the matter. The objection to jurisdiction raised by the Friends of the Brazos River (FBR) was overruled, without prejudice to FBR's ability to re-raise the jurisdictional challenge at a later time.

Party status

The following persons or entities are admitted as parties to these proceedings:

Party	Representative(s)
Executive Director (ED) of the Texas Commission on Environmental Quality (Commission)	Robin Smith
Commission's Office of Public Interest Counsel (OPIC)	Eli Martinez
Brazos River Authority (BRA or Applicant)	Doug Caroom, Susan Maxwell, and Emily Rogers
Matthews Land and Cattle Company (Matthews)	Leonard Dougal
Dow Chemical Company (Dow)	Fred B. Werkenthin, Jr.

SOAH DOCKET NO. 582-10-4184
TCEQ DOCKET NO. 2005-1490-WR

ORDER NO. 1

PAGE 2

Texas Westmoreland Coal Company and the City of Lubbock ¹	Brad Castleberry
Ft. Bend County Levee Improvement District No. 11; Ft. Bend County Levee Improvement District No. 15; and Sienna Plantation MUD No. 1 ²	Gindi Eckel Vincent
City of Bryan and City of College Station ³	Jim Matthews
Friends of the Brazos River (FBR), Helen Jane Vaughn, D. Wilson, and Mary Lee Willey ⁴	Richard Lowerre
National Wildlife Federation (NWF)	Myron Hess
Texas Parks and Wildlife Department (TPWD) ⁵	Collette Barron Bradsby
Gulf Coast Water Authority (GCWA)	Molly Cagle and Ron Freeman
City of Round Rock	Steve Sheets
Bradley B. Ware (Ware)	Stephen and Gwendolyn Webb
George Bingham, Mike Bingham, William D. and Mary L. Carroll, Frasier Clark, and Robert Starks ⁶	George Bingham

Hearing Schedule

The following schedule was agreed upon by the parties and is hereby adopted to govern these proceedings:

<u>DATE</u>	<u>ACTIVITY</u>
June 7, 2010	Commencement of formal discovery
July 7, 2010	Deadline for Applicant to:

¹ At the prehearing conference, these two entities agreed to be aligned. They will be treated as a single side, with Mr. Castleberry serving as their designated representative.

² At the prehearing conference, these three entities agreed to be aligned. They will be treated as a single side, with Ms. Vincent serving as their designated representative.

³ These entities are aligned and will be treated as a single side, with Mr. Matthews serving as their designated representative.

⁴ At the prehearing conference, these parties agreed to be aligned. They will be treated as a single side, with Mr. Lowerre serving as their designated representative.

⁵ TPWD was admitted as a party for the limited purpose of addressing the legal treatment of return flows and the reuse of water.

⁶ At the prehearing conference, these individuals agreed to be aligned. They will be treated as a single side, with George Bingham serving as their designated representative.

SOAH DOCKET NO. 582-10-4184
TCEQ DOCKET NO. 2005-1490-WR

ORDER NO. 1

PAGE 3

	<ul style="list-style-type: none"> provide, electronically, complete copy of its application to each party; file pleadings initially identifying: disputed issues of fact and law (including any proposed certified questions); applicable laws, rules and policies;⁷ fact witnesses for direct case;⁸ and relief requested; and
	<ul style="list-style-type: none"> serve disclosures as provided by TRCP 194
July 21, 2010	<p>Deadline for other parties to:</p> <ul style="list-style-type: none"> file pleadings initially identifying: disputed issues of fact and law (including any proposed certified questions); applicable laws, rules and policies;⁹ fact witnesses for direct case;¹⁰ and relief requested; and serve disclosures as provided by TRCP 194
August 4, 2010	Deadline for all parties to file any responses to the lists of disputed issues of fact and law, applicable laws, rules and policies, and requested relief that have previously been filed by other parties
September 22, 2010	Prehearing conference to consider pending motions, if any
December 10, 2010	Deadline for Applicant to prefile direct evidence (testimony and exhibits)
January 31, 2011	Deadline for all parties except the Applicant and the ED to prefile direct evidence (testimony and exhibits)
February 22, 2010	Deadline for ED to prefile direct evidence (testimony and exhibits)

⁷ All parties may supplement or amend disputed issues of fact and law, applicable laws, rules and policies, and relief requested, if necessary, as soon as reasonably possible, but no later than 10 days following the conclusion of discovery.

⁸ All parties are under a duty to supplement fact and expert witness identification, if necessary, as soon as reasonably possible, but no later than 30 days prior to the applicable deadline for prefiled testimony.

⁹ All parties may supplement or amend disputed issues of fact and law, applicable laws, rules and policies, and relief requested, if necessary, as soon as reasonably possible, but no later than 10 days following the conclusion of discovery.

¹⁰ All parties are under a duty to supplement fact and expert witness identification, if necessary, as soon as reasonably possible, but no later than 30 days prior to the applicable deadline for prefiled testimony.

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TCEQ DOCKET NO. 2005-1490-WR

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February 28, 2011	Deadline for Applicant to identify rebuttal witnesses, including TRCP 194.2(f) disclosures
April 8, 2011	All discovery concludes
April 12, 2011	Deadline for filing any objections to a party's prefiled direct evidence, and for filing any dispositive motions
April 26, 2011	Deadline for filing responses to any dispositive motions and/or objections to prefiled direct evidence
May 3, 2011	Prehearing conference (for consideration of prehearing matters, including setting time limits for case presentations, ruling on objections to prefiled evidence, and other procedural matters)
May 9-20, 2011	Evidentiary hearing; all parties should be prepared to provide to the other parties, on the first day of the hearing, clean prefiled testimony (<i>i.e.</i> reflecting rulings on any dispositive motions and/or objections)

The pre-hearing conference(s) will commence at 10:00 a.m. and the hearing on the merits will commence at 9:00 a.m., and will take place at the William B. Clements Building, 300 W. 15th St., Fourth Floor, Austin, Texas 79701.

The parties have agreed that e-filing of all papers is acceptable service, and the ALJ authorizes service by email. However, filing with SOAH must conform to SOAH's rules.

SIGNED June 8, 2010.



WILLIAM NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS**AUSTIN OFFICE**

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 475-4994

SERVICE LIST**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)**STYLE/CASE:** BRAZOS RIVER AUTHORITY**SOAH DOCKET NUMBER:** 582-10-4184**REFERRING AGENCY CASE:** 2005-1490-WR**STATE OFFICE OF ADMINISTRATIVE
HEARINGS****ADMINISTRATIVE LAW JUDGE****ALJ HUNTER BURKHALTER****REPRESENTATIVE / ADDRESS****PARTIES**

MOLLY CAGLE
 ATTORNEY
 VINSON & ELKINS
 2801 VIA FORTUNA, STE. 100
 AUSTIN, TX 78746
 (512) 542-8400 (PH)
 (512) 542-8612 (FAX)
 MCAGLE@VELAW.COM

GULF COAST WATER AUTHORITY

RICHARD LOWERRE
 ATTORNEY
 LOWERRE, FREDERICK, PERALES, ALLMON &
 ROCKWELL
 707 RIO GRANDE, SUITE 200
 AUSTIN, TX 78701
 (512) 469-6000 (PH)
 (512) 482-9346 (FAX)
 Mail@LF-LawFirm.com

HELEN JANE VAUGHN

FRIENDS OF THE BRAZOS RIVER

D. WILSON

MARY LEE WILEY

FRED B WERKENTHIN, JR.
BOOTH, AHRENS & WERKENTHIN, P.C.
515 CONGRESS AVENUE, SUITE 1515
AUSTIN, TX 78701-3503
(512) 472-3263 (PH)
(512) 473-2609 (FAX)
fbw@baw.com

DOW CHEMICAL COMPANY

DOUG G. CAROOM
ATTORNEY
BICKERSTAFF HEATH DELGADO ACOSTA, LLP
3711 S. MOPAC EXPRESSWAY, BUILDING ONE SUITE
300
AUSTIN, TX 78746
(512) 472-8021 (PH)
(512) 320-5638 (FAX)
dcaroom@bickerstaff.com

BRAZOS RIVER AUTHORITY

BRAD CASTLEBERRY
LLOYD GOSSELINK ROCHELLE & TOWNSEND, P.C.
816 CONGRESS AVENUE, SUITE 1900
AUSTIN, TX 78701-2478
(512) 322-5800 (PH)
(512) 472-0532 (FAX)

TEXAS WESTMORELAND COAL COMPANY

CITY OF LUBBOCK

LEONARD H DOUGAL
ATTORNEY AT LAW
JACKSON WALKER, L.L.P.
100 CONGRESS AVENUE, SUITE 1100
AUSTIN, TX 78701
(512) 236-2000 (PH)
(512) 391-2112 (FAX)
ldougal@jw.com

MATTHEWS LAND AND CATTLE COMPANY

COLETTE BARRON BRADSBY
TEXAS PARKS AND WILDLIFE DEPARTMENT
LEGAL DIVISION
4200 SMITH SCHOOL ROAD
AUSTIN, TX 78744
(512) 389-8899 (PH)
(512) 389-4482 (FAX)
colette.barron@tpwd.state.tx.us

TEXAS PARKS AND WILDLIFE DEPARTMENT

EJ MARTINEZ
PUBLIC INTEREST COUNSEL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
12100 PARK 35 CIRCLE, MC-103. BUILDING F
AUSTIN, TX 78753
(512) 239-3974 (PH)
(512) 239-6377 (FAX)
elmartin@tceq.state.tx.us

OFFICE OF PUBLIC INTEREST COUNSEL

GINDI ECKEL VINCENT
PILLSBURY WINTHROP SHAW PITTMAN, LLP
909 FANNIN STREET, 21ST FLOOR
HOUSTON, TX 77010
(713) 276-7678 (PH)
(281) 582-6456 (FAX)

FT. BEND COUNTY LEVEE IMPROVEMENT DISTRICT
NO. 15

FT. BEND COUNTY LEVEE IMPROVEMENT DISTRICT
NO. 11

SIENNA PLANTATION MUD NO. 1

ROBIN SMITH
STAFF ATTORNEY
TCEQ
LITIGATION DIVISION
P O BOX 13087, MC 173
AUSTIN, TX 78711
(512) 239-0463 (PH)
(512) 239-3434 (FAX)
rsmith@tceq.state.tx.us

EXECUTIVE DIRECTOR

STEPHEN P. WEBB
GWENDOLYN WEBB
WEBB & WEBB ATTORNEYS AT LAW
211 E. 7TH STREET, SUITE 712
AUSTIN, TX 78701
(512) 472-9990 (PH)
(512) 472-3183 (FAX)
webbwebblaw@sbcglobal.net

BRADLEY B. WARE

JIM MATHEWS
ATTORNEY AT LAW
MATHEWS & FREBLAND, L.L.P.
P. O. BOX 1568
AUSTIN, TX 78767-1568
(512) 404-7800 (PH)
(512) 703-2785 (FAX)
jmathews@mandf.com

CITY OF COLLEGE STATION

CITY OF BRYAN

GEORGE BINGHAM
2191 HWY 2247
COMANCHE, TX 76442
(254) 842-4840 (PH)
sueb@cgtc.net

MIKE BINGHAM

WILLIAM D. AND MARY L. CARROLL

FRASIER CLARK

ROBERT STARKS

GEORGE BINGHAM

MYRON HESS
44 EAST AVENUE, SUITE 200
AUSTIN, TX 78701
(512) 610-7754 (PH)
(512) 476-9810 (FAX)
hess@nwf.org

NATIONAL WILDLIFE FEDERATION

RON FREEMAN
ATTORNEY
8500 BLUFFSTONE COVE, SUITE B.104
AUSTIN, TX 78759
(512) 451-6689 (PH)
(512) 453-0865 (FAX)
rfreeman@freemanandcorbett.com

GULF COAST WATER AUTHORITY

STEVE SHEETS
ATTORNEY
309 E. MAIN STREET
ROUND ROCK, TX 78664
(512) 255-8877 (PH)
(512) 255-8986 (FAX)
slsheets@sheets-crossfield.com

CITY OF ROUND ROCK

xc: Docket Clerk, State Office of Administrative Hearings

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 475-4994

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FAX TO: GEORGE BINGHAM	FAX TO: VIA REGULAR MAIL
	VIA REGULAR MAIL
RON FREEMAN	(512) 453-0865
MYRON HESS	(512) 476-9810
STEVE SHEETS	(512) 255-8986
DOUG G. CAROOM	(512) 320-5638
FRED B WERKENTHIN, JR.	(512) 473-2609
LEONARD H DOUGAL	(512) 391-2112
BRAD CASTLEBERRY (LLOYD GOSSELINK ROCHELLE & TOWNSEND, P.C.)	(512) 472-0532
RICHARD LOWERRE	(512) 482-9346
JIM MATHEWS	(512) 703-2785
GINDI ECKEL VINCENT (PILLSBURY WINTHROP SHAW PITTMAN, LLP)	(281) 582-6456
ROBIN SMITH	(512) 239-3434
ELI MARTINEZ (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)	(512) 239-6377
COLETTE BARRON BRADSBY (TEXAS PARKS AND WILDLIFE DEPARTMENT)	(512) 389-4482
MOLLY CAGLE (VINSON & ELKINS)	(512) 542-8612
STEPHEN P. WEBB (WEBB & WEBB ATTORNEYS AT LAW)	(512) 472-3183
GEORGE BINGHAM	VIA REGULAR MAIL
Kennedy Court Reporting Services	(512) 474-6704

TCEQ Docket Clerk, Fax Number 512/239-3311

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