

Draft Permit – Post WMP

WATER USE PERMIT

PERMIT NO. 5851		TYPE §§ 11.121, 11.042, 11.085, & 11.1381
Permittee:	Brazos River Authority	Address: P.O. Box 7555 Waco, Texas 76714-7555
Filed:	October 15, 2004	Granted:
Purposes:	Domestic, Municipal, Agricultural, Industrial, Mining, and Recreation	Counties: 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
Watercourses:	Multiple Tributaries of the Brazos River and the Brazos River	Watersheds: Brazos River Basin, Trinity River Basin, Red River Basin, Colorado River Basin, San Jacinto River Basin, San Jacinto-Brazos Coastal Basin, Brazos-Colorado Coastal Basin, Lavaca River Basin, Guadalupe River Basin

WHEREAS, the Brazos River Authority, Applicant, owns the water rights and reservoirs authorized by Certificate of Adjudication (Certificate) No. 12-5155 (Possum Kingdom Lake), Certificate No. 12-5156 (Lake Granbury), Certificate No. 12-5165 (Lake Limestone), and Water Use Permit No. 2925A (Allens Creek Reservoir in conjunction with the Texas Water Development Board and the City of Houston); and

WHEREAS, Applicant also owns the water rights and has contracts with the United States Army Corps of Engineers for storage authorized by Certificate No. 12-5157 (Lake Whitney), Certificate No. 12-5158 (Lake Aquilla), Certificate No. 12-5159 (Lake Proctor), Certificate No. 12-5160 (Lake Belton), Certificate No. 12-5161 (Lake Stillhouse Hollow), Certificate No. 12-5162 (Lake Georgetown), Certificate No. 12-5163 (Lake Granger), and Certificate No. 12-5164 (Lake Somerville); and

WHEREAS, Applicant also owns the water rights authorized by Certificate Nos. 12-5166 and 12-5167, which authorize various uses of water within Applicant's other certificates and permits; and

WHEREAS, Applicant is authorized, pursuant to the 1964 System Operation Order (System Order), as amended, to manage and operate its tributary reservoirs as elements of a system, coordinating releases and diversions from the tributary reservoirs with releases and diversions from Applicant's mainstem reservoirs to minimize waste, and to conserve water in reservoirs in which the supply is short by making releases from tributary reservoirs in which the supply is more abundant; and

Added a reference to the "System Order" to refer to the "System Operation Order" to avoid confusion with the "System Operation Permit."

WHEREAS, Applicant's service area includes all or part of the following counties: 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, Burlinson, Travis, Lee, Washington, Bastrop, Fayette, Waller, Harris, Austin, Colorado, Fort Bend, Galveston, Matagorda, Wharton, and Brazoria; and

WHEREAS, Applicant initially applied for a new appropriation of state water in the amount of 421,449 acre-feet per year for multiple uses, including domestic, municipal, agricultural, industrial, mining, and other beneficial uses on a firm basis in the Brazos River Basin. The amount of the new appropriation of water included the current and future return flows requested in Applicant's application. Applicant also requested an appropriation of an interruptible supply of 670,000 acre-feet of water per year utilizing 90,000 acre-feet of water per year of the firm supply plus other unappropriated flows. The entire annual amount of

1,001,449 acre-feet of water (331,449 acre-feet of firm water and 670,000 acre-feet of interruptible water) is available only if all of it is diverted at the mouth of the Brazos River, and can only be made available by Applicant through the system operation of its water rights; and

WHEREAS, Applicant amended its initial application with the filing of its Water Management Plan and applied for this Water Use Permit to authorize:

- A new appropriation of non-firm state water in the amount of 1,001,449 acre-feet of water per year for multiple uses, including domestic, municipal, agricultural, industrial, mining, and other beneficial uses in the Brazos River Basin. This new appropriation of water can only be made available by Applicant through the system operation of its water rights, with the maximum amount of the water being available at the mouth of the Brazos River. To the extent water is diverted upstream, the amount of the water available under the new appropriation downstream is reduced and will itself vary depending upon the location of its diversion and use;
- Diversion of the water authorized by this permit from: (i) the existing diversion points authorized by Applicant's existing water rights; (ii) the Brazos River at the Gulf of Mexico; and (iii) at such other diversion points that are identified and included in Applicant's Water Management Plan (WMP);
- An exempt interbasin transfer authorization to transfer and use, on a firm and non-firm basis, such water in the adjoining San Jacinto-Brazos Coastal Basin and the Brazos-Colorado Coastal Basin, and to transfer such water to any county or municipality or the municipality's retail service area that is partially within the Brazos River Basin for use, on a firm and non-firm basis, in that part of the county or municipality and the municipality's retail service area not within the Brazos River Basin;
- An appropriation of return flows (treated sewage effluent and brine bypass/return) to the extent that such return flows continue to be discharged or returned into the bed and banks of the Brazos River, its tributaries, and Applicant's reservoirs. The appropriation of return flows would be subject to interruption by direct reuse or termination by indirect reuse within the discharging entity's city limits, extraterritorial jurisdiction, or

Several "WHEREAS" clauses were shortened or deleted to help eliminate confusion. While the previous statements were correct, what was requested in 2004 and what the proposed permit is providing for are different.

We have changed "interruptible" to be "non-firm" throughout the document.

We deleted the references to "current and future" return flows to avoid confusion.

contiguous water certificate of convenience and necessity boundary;

- Operational flexibility to (i) use any source of water available to Applicant to satisfy the diversion requirements of senior water rights to the same extent that those water rights would have been satisfied by passing inflows through Applicant's reservoirs on a priority basis; and (ii) release, pump and transport water from any of Applicant's reservoirs for subsequent storage, diversion and use throughout Applicant's service area. (Applicant's "service area" includes all counties listed above);
- Use of the bed and banks of the Brazos River, its tributaries and Applicant's reservoirs for the conveyance, storage, and subsequent diversion of (i) the appropriated water; (ii) waters that are being conveyed via pipelines and subsequently discharged into the Brazos River, its tributaries or stored in Applicant's reservoirs; (iii) surface water imported from areas located outside the Brazos River Basin for subsequent use; (iv) in-basin surface water and groundwater subject to Applicant's control; (v) waters developed from future Applicant projects; and (vi) reuse of surface and groundwater based return flows appropriated in this permit;
- A term permit, pursuant to Texas Water Code § 11.1381, for a term of thirty (30) years from the issued date of this permit, or until the ports are closed on the dam impounding Allens Creek Reservoir, whichever is earlier, to allow Applicant use the water appropriated under Water Use Permit No. 2925B until the construction of the Allens Creek Reservoir. Applicant requested a term authorization to impound, divert, and use not to exceed 202,650 acre-feet of water per year at the Gulf of Mexico; and

We added this WHEREAS clause about Allens Creek to explain that BRA is seeking a term permit. We deleted the other clauses to avoid confusion. While the clauses accurately reflected what was originally requested in the application, how Allens Creek is handled in the draft permit is different now. (see ¶ 1.E.)

WHEREAS, the Texas Commission on Environmental Quality (Commission) finds that jurisdiction over the application is established; and

WHEREAS, based on the Executive Director's recommendations, the Commission finds that specific stream flow restrictions should be included in the permit to maintain the instream uses and water quality conditions of the Brazos River; and

WHEREAS, as additional factual and scientific information becomes available, it is anticipated that the environmental flows conditions will be revised, through Commission-approved revisions of

We made these the Commission's findings, rather than the ED's findings.

the WMP, to incorporate environmental flow standards adopted by the Commission, to better provide for the environmental instream flow needs of the Brazos River and its tributaries, and to make the maximum amount of water available for beneficial use that is consistent with those needs; and

WHEREAS, the Commission adopted environmental flow standards for the Brazos River Basin on _____; however, the new standards could not be considered in a timely fashion to be included in this permit; and

This WHEREAS clause may need to be changed depending on what happens.

WHEREAS, based on the Executive Director's recommendations, the Commission finds that in order to protect senior and superior water rights owners, special conditions should be included in the permit; and

WHEREAS, to avoid ambiguities between this system operation authorization and Applicant's previous system operation authorizations reflected by the System Order and existing permits, based on the Executive Director's recommendations, the Commission concludes that this permit is subject to all provisions included in the Commission's July 23, 1964 System Order, as amended, authorizing system operation of certain reservoirs in the Brazos River Basin, and to all terms and conditions of Applicant's authorizations in Certificates Nos. 12-5155, 12-5156, 12-5165, 12-5157, 12-5160, 12-5159, 12-5164, 12-5161, 12-5163, 12-5162, 12-5158, 12-5166 and 12-5167 and Water Use Permit No. 2925B except to the extent specifically provided otherwise by conditions in this permit regarding the total amount of water appropriated and available for storage, use and diversion and purpose of use, and as may be modified in the future by Commission approval of amendments to Applicant's WMP; and

WHEREAS, the application supporting this permit is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP goals and policies; and

WHEREAS, the Commission finds that the issuance of this permit is consistent with the goals and policies of the Texas CMP; 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 permit;

NOW, THEREFORE, Water Use Permit No. 5851 is issued to the Brazos River Authority (Permittee), subject to the following terms and conditions:

1. USE
 - A. APPROPRIATION

Permittee is authorized to impound, divert, and use not to exceed 1,001,449 acre-feet of both firm and non-firm water per year at the Gulf of Mexico for domestic, municipal, agricultural, industrial, mining and recreation use within its service area subject to special conditions.

We propose deleting the stair-step appropriation amounts to avoid confusion. Allens Creek is addressed in the Term Permit section. (§ 1.E.)

B. USE OF BED AND BANKS

Permittee is authorized to use the bed and banks of the Brazos River below Possum Kingdom Lake, the Brazos River tributaries and Permittee's authorized reservoirs for the conveyance, storage, and subsequent diversion of the water authorized herein, subject to identification of specific losses and to special conditions.

C. INTERBASIN TRANSFER

Permittee is hereby granted an exempt interbasin transfer authorization to transfer and use the water authorized herein in Permittee's service area in the adjoining San Jacinto-Brazos Coastal Basin and the Brazos-Colorado Coastal Basin and to transfer such water to any county or municipality or the municipality's retail service area that is partially within the Brazos River Basin, San Jacinto-Brazos Coastal Basin, or Brazos-Colorado Coastal Basin for use on a firm and non-firm basis in that part of the county or municipality and the municipality's retail service area within the Trinity, Red, Colorado, Guadalupe, Lavaca and San Jacinto River Basins.

D. RETURN FLOWS

Permittee is authorized to impound, divert and use return flows discharged into the Brazos River Basin subject to special conditions to protect water rights granted based on the presence of those return flows as well as other senior rights. The storage and diversion of return flows is subject to the requirements set out in Special Condition 5.A. and to environmental flow conditions set out in Special Condition 5.E.

E. TERM AUTHORIZATION

Pursuant to Texas Water Code § 11.1381, for a term of thirty (30) years from the issued date of this permit, or until the ports are closed on the dam impounding Allens Creek Reservoir, whichever is earlier, Permittee may use the water appropriated under Water Use Permit No. 2925B. In addition to the amount appropriated in Paragraph 1.A., during the term of this authorization Permittee may impound, divert, and use not to exceed

We are proposing to address Allens Creek as a term permit as recommended by the ALJs.

202,650 acre-feet of water per year at the Gulf of Mexico, subject to Special Conditions 5.C.1 through 5.C.7.

2. DIVERSION

Permittee is authorized to divert and use the water authorized by this permit as follows:

A. POINTS

- 1) At the diversion points authorized by Permittee's existing water rights, as amended.
- 2) At the mouth of the Brazos River at the Gulf of Mexico at Latitude 28.8783°N, Longitude 95.379111°W in Brazoria County.
- 3) At other such locations identified and included in Permittee's WMP.

We are proposing to eliminate Glen Rose, Highbank and Richmond points for clarity.

B. RATES

- 1) At the diversion rates authorized by Permittee's Certificates of Adjudication and Water Use Permit, as amended, authorizing each of the reservoirs comprising the system operation as defined in this permit; and
- 2) At rates specified in Permittee's WMP.

3. PRIORITY

The priority date for the rights authorized by this permit, including diversion of return flows, is October 15, 2004.

4. CONSERVATION

- A. Permittee shall implement water conservation plans that provide for the utilization of those reasonable practices, techniques, and technologies that will reduce on a per unit basis the consumption of water, prevent or reduce the loss or waste of water, improve the efficiency in the use of water, increase the recycling and reuse of water, and prevent the pollution of water, so that a water supply is made available for future or alternative uses. The practices, techniques, and technologies used shall be designed to achieve a level of efficiency of use that is equal to or greater than the level provided for in Permittee's most recent water conservation plans on file with the Commission as of the date of the issuance of

this permit. Such plans shall include a requirement that in every wholesale water supply contract entered into on or after the date of this permit, including any contract extension or renewal, each successive wholesale customer develop and implement conservation measures meeting the requirements of this provision. 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 is required to implement water conservation measures meeting the requirements of this provision.

- B. At least once every ten years after the issuance date of this permit and in connection with an application for reconsideration or amendment of the WMP, Permittee shall submit for review and approval updated water conservation plans and drought contingency plans demonstrating compliance with the requirements of the Commission rules then in effect for applications for new water rights and with the requirements of this Paragraph 4, applied as of the date of the filing of the application under consideration.

From Page 136 of the PFD and pg. 184 of the PFD. Modified to reflect changed circumstances.

5. SPECIAL CONDITIONS

Unless expressly otherwise provided, the requirements of the Special Conditions of this permit apply only to diversion and storage under the authority of this permit and do not address or limit diversion or storage of water authorized by other water rights held by Permittee.

We moved this requirement out of the e-flows section because we think it applies to the whole permit, not just the e-flows special conditions.

A. SPECIAL CONDITIONS RELATIVE TO USE OF RETURN FLOWS

- 1) Permittee's authorization to divert and use return flows under this permit is limited to return flows that are authorized for discharge by Texas Pollutant Discharge Elimination System (TPDES) Permits in effect as of the issuance date of this permit, and as authorized by future modifications of this permit or the WMP.
- 2) Permittee shall maintain a record of return flows as a part of its accounting plan required by Special Conditions 5.C and 5.D (return flow accounting plan). The return flow accounting plan must account, by source, for all return flows discharged. The return flow accounting plan shall include amounts discharged by outfall. Computation of the amount of additional water supply available due to return flows actually

This revised provision is intended to address the Commissioner's concern about issuing a water right based on future, unpermitted wastewater discharges.

We deleted in this section the references to maintaining the return flow accounting plan electronically and requiring it to be made available to the general public because it is already required by Special Condition C.1.

discharged is determined in the WMP, taking into account environmental flow conditions and demands of senior water rights. Permittee's use of additional water supply attributable to the presence of return flows is limited to the amount shown to be available, based upon amounts discharged as determined in the WMP. The return flow accounting plan shall be included as part of Permittee's accounting/delivery plan.

- 3) Permittee's storage, diversion and use of that portion of the appropriation based on return flows is dependent upon potentially interruptible return flows. Permittee's storage, diversion and use of that portion of the appropriation based on return flows will be interrupted by direct reuse or will be terminated by indirect reuse within the discharging entity's corporate limits, extraterritorial jurisdiction, or contiguous water certificate of convenience and necessity boundary, provided the discharging entity has applied for and been granted authorization to reuse the return flows.
- 4) Permittee's storage, diversion and use of groundwater based return flows is subject to interruption by direct reuse or indirect reuse upon issuance of a bed and banks authorization pursuant to Texas Water Code § 11.042(b) by TCEQ to the discharging entity.
- 5) Permittee shall, at a minimum, use the return flow (effluent discharges) volumes reported monthly to the Commission by wastewater dischargers that have permitted discharges of greater than or equal to one (1) million gallons per day, and by other wastewater dischargers as provided by the accounting plan, to verify the available return flows for the accounting plan.

We deleted the section regarding measurements at the wastewater discharge point. First, BRA does not own or operate many of the facilities. Second, effluent flow measurement devices on these plants are already required and controlled by 30 TAC 217.33.

No. 5 is intended to match what was described in the WMP.

B. SPECIAL CONDITIONS RELATIVE TO USE OF BED AND BANKS

- 1) The use of the bed and banks of Allens Creek from below Allens Creek Reservoir to the Brazos River is not authorized until Permittee applies for and is granted an amendment to Water Use Permit No. 2925B authorizing such use.
- 2) Permittee is authorized to use the following reaches, authorized in Permittee's certificates

and amendments, for conveyance of water previously appropriated to Permittee and water authorized by this permit, downstream for diversion within these reaches in accordance with the WMP:

- a. Brazos River from Possum Kingdom Lake to the Gulf of Mexico;
- b. Leon River from Lake Proctor to the confluence with the Little River;
- c. Lampasas River from Lake Stillhouse Hollow to the confluence with the Little River;
- d. Little River from the junction of Leon and Lampasas Rivers to the confluence with the Brazos River;
- e. Yegua Creek from Lake Somerville to the confluence with the Brazos River;
- f. Navasota River from Lake Limestone to the confluence with the Brazos River;
- g. San Gabriel River from Lake Granger to the confluence with the Little River and downstream to its confluence with the Brazos River;
- h. North Fork San Gabriel River from Lake Georgetown to the confluence with the San Gabriel River, to its confluence with the Little River and downstream to its confluence with the Brazos River;
- i. Aquilla Creek from Lake Aquilla downstream to its confluence with the Brazos River; and
- j. Allens Creek, following construction of Allens Creek Reservoir, downstream from Allens Creek Reservoir to its confluence with the Brazos River, subject to Special Condition 5.B.1.

- 3) Permittee shall maintain an accounting/delivery plan that describes the procedure to estimate daily deliveries of water using the bed and banks identified in Special Condition 5.B.2. above. This procedure should be in electronic format and detail by source, type and priority date, the amounts to be conveyed and delivered, losses associated with the conveyance, specific points of diversion, associated travel times, and times of commencement and termination of transit for conveyed waters. Documentation of actual deliveries as well as the accounting/delivery plan shall be maintained by Permittee in

electronic format and made available to the general public during normal business hours and to the Executive Director upon request. Modifications to the accounting/delivery plan must be approved by the Executive Director.

- 4) Before using the bed and banks of streams and tributaries in the Brazos River Basin not identified in the WMP for conveyance of water appropriated under this permit, or other sources available to Permittee, Permittee shall obtain approval by the Commission of an application by Permittee that identifies specific sources and types of water, specific points of discharge and diversion, and conveyance and other losses, and that satisfies the requirements of Texas Water Code § 11.042.

C. SPECIAL CONDITIONS RELATIVE TO APPROPRIATION

- 1) Permittee shall maintain an accounting/delivery plan as part of its WMP. Permittee shall maintain the accounting/delivery plan in electronic format and make it available to the general public during normal business hours and to the Executive Director upon request. Modifications to the plan must be approved by the Executive Director.
- 2) Permittee may not exercise a priority call on water rights in the Brazos River Basin with priority dates senior to October 15, 2004 for purposes of refilling storage in Permittee's system reservoirs where Permittee's system reservoir storage was emptied by diversion of water under this permit.
- 3) Permittee may use any source of water available to Permittee to satisfy the diversion requirements of senior water rights to the same extent that those water rights would have been satisfied by passing inflows through the Permittee's system reservoirs on a priority basis. Permittee's use of water previously stored in Permittee's reservoirs or available for appropriation by Permittee's senior water rights shall be documented in the accounting/delivery plan. Use of this option shall not cause Permittee to be out of compliance with the accounting/delivery plan or Special Condition 5.C.2.

We removed the laundry list of what is required to be in the accounting plan since those things are now in the accounting plan.

As written previously, this section was confusing because of the words "except as follows."

- 4) Permittee may divert water from storage in its permitted reservoirs and store that water in Permittee's other reservoirs for use within Permittee's service area so long as all diversions and storage are included in the accounting/delivery plan.
- 5) Permittee shall maintain, at a minimum, the release schedule from Possum Kingdom Lake at or above the appropriate value in the following table, except when inflow to Possum Kingdom Lake is less than the defined release value. In such instances, the release may be adjusted downward to match inflow. Additionally, temporary deviations from this release requirement may be made to accommodate maintenance or operational issues associated with Possum Kingdom Lake's Morris Sheppard Dam:

Reservoir Elevation	March – June	July – September	October - February
Above 994.5 msl	100 cfs	75 cfs	50 cfs
990 msl – 994.5 msl	50 cfs	37.5 cfs	25 cfs
Below 990 msl	Leakage (≈20 cfs)	Leakage (≈20 cfs)	Leakage (≈20 cfs)

- 6) Permittee shall not divert or impound water under this permit if such diversions or impoundments would cause the flow at USGS Gage 081166550 (Brazos River near Rosharon) to fall below the lesser of 630 cfs, or Dow Chemical's projected daily pumping rate. This provision is not effective if (a) Dow Chemical has not provided fourteen (14) days advance notice of its projected daily pumping rate to Permittee, or (b) a watermaster having jurisdiction over the lower Brazos River has been appointed.

D. WATER MANAGEMENT PLAN SPECIAL CONDITIONS

- 1) Permittee shall maintain the Water Management Plan (WMP), which is attached to and incorporated into this permit, and which shall include, in addition to the specific requirements listed in Special Condition 5.D.4, such studies and other information as may be required by the

This provision was added per page 118 and 119 of the PFD but has been revised to address maintenance and operational issues.

This provision was added as part of what BRA agreed to do for DOW and recommended by the PFD based on that agreement.

We deleted C.9, which required the submission of a method to extend certain conditions past the Richmond gage. This method is included in the WMP.

Commission to demonstrate Permittee's compliance with and its ability to comply with all of the Special Conditions included in this permit.

- 2) Proceedings to consider any major amendment of the WMP shall be pursuant to contested case procedures. Any proceeding to consider a major amendment of the WMP shall be preceded by notice and opportunity to request a hearing, in accordance with the Commission's regulations applicable to water rights permitting proceedings. The WMP shall provide an adaptive management strategy for instream flow requirements and water supply and thus may be amended from time to time upon the request of Permittee, in accordance with the schedule set out in Special Condition 5.D.3 below, or on the Commission's own motion.
- 3) At a minimum, every ten years after the issued date of this permit, Permittee shall submit to the Executive Director an application for reconsideration or amendment of the WMP.
- 4) Permittee shall maintain an approved WMP that includes the following:
 - a. Accounting/delivery plans;
 - b. Environmental flow conditions, a specific adaptive management strategy for meeting instream flow requirements consistent with providing water supplies, and a Brazos River Basin environmental flow study program;
 - c. Maximum diversion rates for diversions of water authorized in this permit, and a method to determine the amounts of firm and non-firm water available at any location, subject to the limitations on permit amounts in this permit.
- 5) Upon notification to Permittee, Texas Parks and Wildlife Department (TPWD) may petition the Commission to amend any WMP provisions related to environmental flow protection.

Many of the changes in this section D. were made because the items were included in the WMP.

E. SPECIAL CONDITIONS RELATIVE TO ENVIRONMENTAL FLOWS

- 1) Environmental flow conditions for this permit shall be included in the WMP. In accordance with the procedures outlined in Special Condition 5.E.4, the environmental flow conditions in the WMP shall be updated as needed to ensure the conditions are consistent with the environmental flow standards adopted by the Commission.
- 2) Permittee, in cooperation with TPWD and the Commission, shall conduct monitoring studies to assess instream flow protection at locations identified in the WMP. These monitoring studies shall collect baseline data on the biology, habitat, water quality, hydrology, ecosystem health and other environmental factors of the stream segment between the points with environmental flow conditions in the WMP. If the results of the monitoring studies indicate that additional study is needed, instream flow studies shall be conducted to determine appropriate instream flow protections at points identified in the WMP and the results of such instream flow studies shall be used to refine the environmental flow conditions in the WMP consistent with the environmental flow standards adopted by the Commission.
- 3) The environmental flow conditions in the WMP are subject to adjustment by the Commission if the Commission determines, through an expedited public review process, that such adjustment is appropriate to achieve compliance with applicable environmental flow standards adopted pursuant to Texas Water Code § 11.1471. Any adjustment shall be made in accordance with the provisions of Texas Water Code § 11.147(e-1).
- 4) Within 3 years after this permit is final and non-appealable, or within 3 years after the adoption by the Commission of environmental flow standards for the Brazos River Basin pursuant to Texas Water Code § 11.1471, whichever is later, Permittee shall file an application to amend this permit if any amendments are required to ensure that this permit and the WMP are consistent with the adopted environmental flow standards for the

We propose eliminating all of the references to “interim” environmental flow provisions from this section since they are now in the WMP. We think this simplifies the permit and will help avoid confusion in the future as to which provisions apply.

Brazos River Basin.

This permit is issued subject to all superior and senior 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 by this permit are denied.

This permit 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

ISSUED: