

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



WATER USE PERMIT

PERMIT NO. 5851

TYPE §§ 11.121, 11.042, 11.046,
11.085, & 11.1381

Permittee: Brazos River Authority

Address: P.O. Box 7555
Waco, Texas 76714-7555

Filed: October 15, 2004

Granted: **11-30-16**

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. 2925, as amended, (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, as amended, 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

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, Burleson, 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 or termination by direct reuse or indirect reuse;
- 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 to use the water appropriated under Water Use Permit No. 2925, as amended, until the construction of the Allens Creek Reservoir. Applicant requested a term authorization to impound, divert, and use not to exceed 202,000 acre-feet of water per year at the Gulf of Mexico; and

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

WHEREAS, the Commission adopted environmental flow standards for the Brazos River Basin on February 12, 2014, which are required to be followed in any water right permit for new appropriation issued following that adoption; and

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. 2925, as amended, 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 or these water rights; 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 finds that 47,322 acre-feet of Applicant's own return flows consists of discharges from facilities authorized under the following Texas Pollutant Discharge Elimination Permits as those permits existed on the date this permit was granted: WQ0002789000, WQ0002461000, WQ0010178002, WQ0002889000, WQ0014211001, WQ0014212001, WQ0004288000, WQ0010630001, WQ0004167000, WQ0010219002, WQ0010110002, WQ0010078001, WQ0010405001, WQ0014445001, WQ0014544001, WQ0010492002, WQ0010045005, WQ0010176004, WQ0010176002, WQ0010045004, WQ0010225001, WQ0010351001, WQ0010205002, WQ0010045003, WQ0010155001, WQ0010351003, WQ0010351002, WQ0011318001, WQ0011090001, WQ0011091001, WQ0010797001, WQ0010489002, WQ0010489003, WQ0010489005, WQ0010264001, WQ0010264002, WQ0010299001, WQ0010897001, WQ0011324001, WQ0010731001, and WQ0010388001; and

WHEREAS, the Commission finds that 50,076 acre-feet of the return flows of others consists of discharges from facilities authorized under the following Texas Pollutant Discharge Elimination Permits as those permits existed on the date this permit was granted: WQ0010040001, WQ0010487001, WQ0011557003, WQ0010585004, WQ0010585001, WQ0010177001, WQ0011408002, WQ0010423001, WQ0010290001, WQ0010188001, WQ0010113002, WQ0010043001, WQ0010307001, WQ0010544001, WQ0003466000, WQ0010637001, WQ0010944001, WQ0013358001, WQ0014477001, WQ0010004001, WQ0012308001, WQ0012644001, WQ0010880001, WQ0010046002, WQ0010095001, WQ0010470002, WQ0011263001, WQ0010016001, WQ0010658001, WQ0010456001, WQ0010813001, WQ0010717001, WQ0010300001, WQ0010222001, WQ0010182001, WQ0010231001, WQ0010968003, WQ0010371001, WQ0002585000, WQ0013743001, WQ0012458002, WQ0003821000, WQ0004784000, WQ0010385002, WQ0010276001, WQ0010607003, WQ0011275002, WQ0010001001, WQ0002443000, WQ0013051002, WQ0010948001, WQ0010765001, WQ0013314001, WQ0010607002, WQ0010258003, WQ0010258004, WQ0011317001, WQ0011655001, WQ0012833002, WQ0010986001, WQ0011475003, WQ0011971001, WQ0013355001, WQ0013628001, WQ0011475001, WQ0013873001, WQ0011046001, WQ0014118001, WQ0010047001, WQ0010312001, and WQ0010882001; and

WHEREAS, the Commission finds facilities that discharge Applicant's own return flows may also discharge return flows of others and portions of the return flows from those facilities were included in the 50,076 acre-feet of return flows of others. Those facilities are authorized under the following Texas Pollutant Discharge Elimination Permits as those permits existed on the date this permit was granted: WQ0010178002, WQ0014211001, WQ0014212001, WQ0010219002, WQ0010110002, WQ0010045005, WQ0010176004, WQ0010176002, WQ0010045004, WQ0010225001, WQ0010045003, WQ0011090001, WQ0011091001, WQ0010489002, WQ0010489003, WQ0010489005, WQ0010897001, and WQ0011324001; and

WHEREAS, this permit, if granted, is subject to the requirements and orders of the Brazos Watermaster; 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 divert and use, for domestic, municipal, agricultural, industrial, mining and recreation use, water in the applicable amount shown below, as further described, defined, and limited by the Water Management Plan (WMP), within its service area, subject to special conditions:

- (1) Not to exceed 333,736 acre-feet per year at all times prior to: (1) an expansion of the Comanche Peak Nuclear Power Plant (CPNPP) in a manner that results in the plant needing at least 90,000 acre-feet per year of additional water; and (2) the point when the ports are closed on the dam impounding Allens Creek Reservoir. Of the total amount, 50,076 acre-feet constitutes the return flows of others pursuant to Texas Water Code §§ 11.046(c) and 11.121. This 50,076 acre-feet is subject to Special Conditions in Permit Paragraph 5.A.
- (2) Not to exceed 297,293 acre-feet per year at all times when: (1) CPNPP has been expanded in a manner that results in the plant needing at least 90,000 acre-feet per year of additional water; but (2) the ports on the dam impounding Allens Creek Reservoir have not yet been closed. Of the total amount, 50,076 acre-feet constitutes the return flows of others pursuant to Texas Water Code §§ 11.046(c) and 11.121. This 50,076 acre-feet is subject to Special Conditions in Permit Paragraph 5.A.
- (3) Not to exceed 469,623 acre-feet per year at all times when: (1) CPNPP has not yet been expanded in a manner that results in the plant needing at least 90,000 acre-feet per year of additional water; but (2) the ports have been closed on the dam impounding Allens Creek Reservoir. Of the total amount, 50,076 acre-feet constitutes the return flows of others pursuant to Texas Water Code §§ 11.046(c) and 11.121. This 50,076 acre-feet is subject to Special Conditions in Permit Paragraph 5.A.
- (4) Not to exceed 434,703 acre-feet per year at all times after: (1) CPNPP has been expanded in a manner that results in the plant

needing at least 90,000 acre-feet per year of additional water; and (2) the ports on the dam impounding Allens Creek Reservoir have been closed. Of the total amount, 50,076 acre-feet constitutes the return flows of others pursuant to Texas Water Code §§ 11.046(c) and 11.121. This 50,076 acre-feet is subject to Special Conditions in Permit Paragraph 5.A.

B. USE OF BED AND BANKS

- (1) Permittee is authorized, pursuant to Texas Water Code § 11.042(a), 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 as a new appropriation herein, subject to identification of specific losses and to special conditions.
- (2) Permittee is authorized, pursuant to Texas Water Code § 11.042(b) and (c), 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 47,322 acre-feet of Permittee's own return flows and as a new appropriation 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 the part of the geographic area of any county or municipality or a retail public utility'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 geographic area of the county or municipality or that contiguous part of the utility'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. 2925, as amended. As part of the amount appropriated in Paragraph 1.A., during the term of this authorization Permittee may divert and use not to exceed 202,000 acre-feet of water per year, subject to Special Conditions 5.C.1-7.

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.

B. RATES

- 1) At the diversion rates authorized by Permittee's Certificates of Adjudication and Water Use Permit, No. 2925, 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.

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.

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) Subject to approval by the Executive Director, Permittee shall revise the WMP Accounting Plan to account for return flows authorized under Texas Water Code § 11.042(b) and (c) in accordance with the Brazos River Authority Accounting Plan, Executive Director's Approach to Return Flows and to account for return flows authorized under Texas Water Code §§ 11.046(c) and 11.121 in accordance with the Brazos River Authority Accounting Plan BRA Approach to Return Flows.
- 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 may not subsequently assert

that this water right was granted based on the permanent use or availability of such return flows. Permittee's storage, diversion and use of that portion of the appropriation based on surface water based return flows is interrupted by direct reuse and is terminated by indirect reuse upon the issuance of a bed and banks authorization pursuant to Texas Water Code § 11.042(c) by the Commission to the discharging entity.

- 4) Permittee's storage, diversion and use of groundwater based return flows is interrupted by direct reuse and is terminated by indirect reuse upon issuance of a bed and banks authorization pursuant to Texas Water Code § 11.042(b) by the Commission 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.

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; to its confluence with the San Gabriel River, to its confluence with the Little River and downstream to its

- confluence with the Brazos River;
 - h. Aquilla Creek from Lake Aquilla downstream to its confluence with the Brazos River; and
 - i. 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. The Commission shall consider the amount of water impounded at the October 15, 2004 priority date, consistent with the WMP and approved accounting plans, in analyses of future applications to appropriate water from the Brazos River Basin.

- 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, or prevent the achievement of environmental flow requirements that would have otherwise been achieved.
- 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 -	July -	October - February
Above 994.5	100 cfs	75 cfs	50 cfs
990 msl - 994.5 msl	50 cfs	37.5 cfs	25 cfs
Below 990	Leakage (\approx 20 cfs)	Leakage (\approx 20 cfs)	Leakage (\approx 20 cfs)

- 6) Permittee shall not divert or impound water pursuant to the authorizations in the 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 Company's projected daily pumping rate. This provision is not effective if: (a) Dow Chemical Company has not provided its projected daily pumping rate to Permittee; or (b) a watermaster having jurisdiction over the lower Brazos River has been appointed and continues to function.
- 7) In recognition of current drought conditions, BRA shall perform a detailed evaluation of whether the recently-ended drought: (1) represents a drought worse than the drought of record of the 1950s

in the Brazos River Basin; and (2) decreases the amount of water available for appropriation under this permit. BRA shall provide a report to the TCEQ documenting its findings within nine months after issuance of this permit. If the report concludes that the recently-ended drought decreases the amount of water available for appropriation under this permit, then the amount of that reduction shall be determined and the appropriation amounts specified in Paragraph 1.A. and 5.D.5 of this permit shall be correspondingly reduced.

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 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.
- 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 that comply with adopted environmental flow standards for the Brazos River Basin; and
 - 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)
 - a. Permittee's diversion and use under this permit and WMP shall be immediately reduced by 14% of the amounts authorized in

Paragraph 1.A. USE due to sedimentation in Permittee's reservoirs, as follows:

1. not to exceed 287,013 acre-feet per year at all times prior to: (1) an expansion of the Comanche Peak Nuclear Power Plant (CPNPP) in a manner that results in the plant needing at least 90,000 acre-feet per year of additional water; and (2) the point when the ports are closed on the dam impounding Allens Creek Reservoir;
 2. Not to exceed 255,672 acre-feet per year at all times when: (1) CPNPP has been expanded in a manner that results in the plant needing at least 90,000 acre-feet per year of additional water; but (2) the ports on the dam impounding Allens Creek Reservoir have not yet been closed;
 3. Not to exceed 403,876 acre-feet per year at all times when: (1) CPNPP has not yet been expanded in a manner that results in the plant needing at least 90,000 acre-feet per year of additional water; but (2) the ports have been closed on the dam impounding Allens Creek Reservoir; and
 4. Not to exceed 373,845 acre-feet per year at all times after: (1) CPNPP has been expanded in a manner that results in the plant needing at least 90,000 acre-feet per year of additional water; and (2) the ports on the dam impounding Allens Creek Reservoir have been closed.
- b. If Permittee, as a subsequent major amendment of the WMP, is able to demonstrate the availability of sufficient additional sources of supply to offset these reductions in storage capacity, the amount of water authorized for diversion and use may increase up to the appropriated amount in Use Paragraph 1.A.

E. ENVIRONMENTAL FLOWS SPECIAL CONDITION

Environmental flow conditions for this permit shall be included in the WMP, and are subject to adjustment by the Commission pursuant to Texas Water Code §11.147(e-1) and 30 TAC §298.25.

F. BRAZOS WATERMASTER SPECIAL CONDITIONS

Upon implementation of the Brazos Watermaster Program, the diverter, as defined in 30 TAC §304.3(9), shall comply the rules and orders of the watermaster. Specifically, the diverter shall comply with

the following special conditions pursuant to 30 TAC §304, Subchapter B.

- 1) Diverter shall install a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the diversion point. Diverter shall allow representatives of the TCEQ Brazos Watermaster reasonable access to the property to inspect the measuring device.
- 2) Diverter shall contact the Brazos Watermaster prior to diversion of water authorized by this permit.

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.

ISSUED: 11-30-16


For the Commission