

# Message from the Presiding Officer Brazos River Authority

## Statement regarding Morris Sheppard Dam at Possum Kingdom Lake



To the people of Senate District 22 and others in the Brazos River basin, as the Presiding Officer of the Board of Directors of the Brazos River Authority (Authority), I have recently been made aware of several disturbing allegations that have been made regarding the Brazos River Authority and more specifically our management of the hydroelectric facility located on Morris Sheppard Dam at Possum Kingdom Lake. To that end, I would like to take the opportunity to address some of the accusations.

Prior to addressing the allegations, it is important to have a brief understanding of the history of the hydroelectric plant at Possum Kingdom Lake. The facility was built in 1941, making it nearly 70 years old. Since 1991, the Authority has operated the facility under a contractual agreement with Brazos Electric Power Cooperative (BEPC). Under this agreement, the Authority generated electricity for the benefit of BEPC. The rate to be paid to the Authority by BEPC was supposed to be adjusted every five years by the Public Utility Commission of Texas (PUCT). However, in 2000, the Texas Legislature removed the jurisdiction of the PUCT to adjust the rate under the contract. As a result, by 2003, the Authority had accumulated write-offs of \$4.2 million dollars in operating deficits related to operation of the hydroelectric facility. Also, due to the age and antiquated nature of the facility, it was no longer prudent for the Authority to operate. In accordance with provisions of the existing agreement, the Authority advised BEPC that it was no longer practicable to continue operations under the existing agreement. In an effort to afford BEPC the option to continue generation at the facility, the Authority began negotiations with BEPC on a new contractual arrangement.

The Authority recognized that BEPC possessed specialized expertise in the area of electric generation and could best determine the viability of future operations of this facility; therefore, the BRA offered BEPC the opportunity to lease the facility and assume operations. The Authority negotiated with BEPC in good faith for nearly three years on a new agreement. Eventually, a new operating agreement was executed that would allow BEPC to lease the facility from the Authority for an annual fee of \$475,000, with the first year being free of charge and a three year due diligence window during which BEPC could assess the facility and walk away from the agreement with no penalty if they determined that continued operations were not viable. The final step was for BEPC and the Authority to seek federal regulatory approval for the agreement (the Authority was to get approval from the Federal Energy Regulatory Commission (FERC) and BEPC from Rural Utility Services (RUS)). The Authority obtained FERC approval, subject to one minor change that would clarify the Authority's right of access to the facility. BEPC, on the other hand, never obtained RUS approval and instead chose to sue the Authority for millions of dollars.

In reference to the condition of the facility, the Authority had multiple outside engineering firms assess its condition. Upon the recommendation of outside engineering firms and prudent operational guidelines, the Authority took unit #1 off-line in May of 2007 and took unit #2 off-line in August of 2007. The new contractual agreement was executed in November of 2007, with the contemplation that BEPC would ultimately evaluate the facility during its 3 year due diligence window and determine whether renewed operations were practicable. BEPC understood that the facility was no longer operational when the agreement was executed and would remain inoperable until such time as BEPC could assume operations and make any needed repairs. Under the new agreement, the ultimate decisions regarding hydroelectric generation at this facility vested with BEPC. Unfortunately, BEPC chose to litigate, as opposed to honoring the new agreement.

With that information in mind, I would now turn to some of the misinformation that seems to be circulating:

1. The Authority Board has definitively made the decision to decommission and close the hydroelectric facility at Possum Kingdom Lake.
2. The Authority issued millions of dollars in bonds related to the hydroelectric facility but misappropriated these public funds to another purpose.
3. The Authority has refused to provide information on this issue, as well as the issue of lake levels at Lake Granbury.

First, let me set the record straight. The Authority Board has not made a final decision to decommission and shut down the hydroelectric facility. At our regular public Board meeting in July of 2009, the Board directed Authority staff to "investigate and initiate the process" of surrendering our FERC license and decommissioning the hydroelectric facility. This was not a directive to actually file a decommissioning application with FERC. Rather, the Board directed staff to investigate decommissioning, which requires a deliberative cost-benefit analysis of decommissioning vs. continuing operations. Staff was directed to study the issue and bring options back to the Board for deliberation prior to moving forward. With that detailed information, the Board will be able to make an informed decision. The bottom line is, the Authority Board has not made a final decision to decommission and completely shut down the hydroelectric facility.

As to the second claim that the Authority has issued bonds related to the hydroelectric facility, but has somehow decided to misappropriate those funds to another project, this could not be further from the truth. In May 2001, the Authority issued the Series 2001A Water Supply Revenue Refunding and Improvement Bonds in the amount of \$8,925,000. The purpose of these bonds was to fund the replacement of spillway gates on the Morris Sheppard Dam, work that was required regardless of whether the hydroelectric facility continued to operate or not. The proceeds from this issue were completely expended for that purpose during the period from 2001 through 2005. In December 2005, the Authority issued the Series 2005A Water Supply System Revenue Bonds in the amount of \$12,875,000. The purpose of these bonds were to fund the completion of the replacement of spillway gates on the Morris Sheppard Dam, and dam related facilities including some associated with the hydro-generation operations. Subsequent to this issuance, negotiations were begun between the Authority and BEPC to contract for a new agreement for hydroelectric generation. Planned hydroelectric improvements were deferred until negotiations were completed. To date, there are remaining proceeds from this issuance of approximately \$3,800,000. These funds have not been spent on any other project. The other bond proceeds have been spent on the authorized improvements for which they were issued.

In regard to the third allegation, that the Authority has refused to provide information on the hydroelectric plant and the issue of lake levels at Lake Granbury, this statement is also false. As a public entity, the Authority strives to be transparent and open at all times. Authority staff maintains an informative website and constantly provides information and documents regarding our operations to the public as well as local, state, and federal elected officials. We also hold town-hall meetings throughout the basin and maintain a speaker's bureau program through which our staff provides briefings to local community groups throughout the entire Brazos River basin. Our Board meetings are held in accordance with the Texas Open Meetings Act and the public is encouraged to attend.

In contemplating the concerns regarding the future of hydroelectric generation at Possum Kingdom Lake, it has become clear that many individuals are becoming involved as a result of perceived impacts on Lake Granbury. The Lake Granbury Waterfront Owners Association (LGWOA) has demonstrated a great interest in this subject, with concerns stemming from the thought that the water level at Lake Granbury is lower because the hydroelectric plant is not operating. They would like to see the facility reopened so as to keep Lake Granbury at a constant full level. Their organization has become more vocal since last summer, during which time Lake Granbury dropped three to four feet (this is at a time when our state was experiencing a severe drought and other lakes in Texas were 40 to 50 feet lower than normal). The fact is that Lake Granbury was built primarily to supply water to the people of the Brazos River basin, not for recreational enjoyment, which is a secondary benefit.

Regarding communications, the Authority held a town-hall meeting in Granbury last year, and is sending Authority staff to the next LGWOA meeting in April to present information on Authority lake management and other topics of interest. In addition, the Authority has made numerous offers to meet with the LGWOA to discuss these issues. The only information the BRA has refused to provide is that which is related to our current pending litigation with BEPC. We have done this as a way of protecting the Authority and its customers in this lawsuit. Everything we have chosen to withhold has been in accordance with the Texas Open Records Act, which allows public entities to keep certain information confidential if it is the subject of litigation so as to protect the public interest. A public entity cannot and should not be forced to give out sensitive information that could easily end up in the hands of its opponent in a lawsuit. This is just basic common sense. In fact, before deciding to withhold the information related to this lawsuit, the Authority asked the Texas Attorney General if doing so was correct and in accordance with the law. The Attorney General agreed with our decision to keep the information confidential. That is the exact reason that entities like the Authority are afforded the ability to withhold certain documents in litigation, to protect our organization and the public from those wishing to do harm to us and the customers we represent.

As Presiding Officer of the Board of Directors of the Brazos River Authority, it is important for the public to know what is really going on at the Authority, and more importantly what is not. The Authority has done nothing improper or underhanded. We have attempted, in all our dealings, to be upfront and honest. More importantly, we have kept as our motivation a standard of integrity and the legal obligation we have to do what is best for the entirety of the Brazos River basin. This will continue to drive our actions.

Sincerely,

**Christopher D. DeCluitt**  
**Presiding Officer**  
**Brazos River Authority**