

The Senate of The State of Texas



NOMINATIONS—CHAIRMAN
SUBCOMMITTEE ON
BORDER SECURITY—CHAIRMAN
FINANCE

STATE AFFAIRS
NATURAL RESOURCES &
ECONOMIC DEVELOPMENT
VETERANS AFFAIRS &
MILITARY INSTALLATIONS

BRIAN BIRDWELL

August 22, 2016

Mr. Tucker Royall
General Counsel, TCEQ
P.O. Box 13087 (MC 101)
Austin, TX 78711-3087

Via electronic mail

Re: Application of Brazos River Authority for Permit No. 5851;
TCEQ Docket No. 2005-1490-WR;
SOAH Docket No. 582-10-4184;
August 24, 2016 TCEQ Agenda Item 1

Dear Mr. Royall,

I respectfully request that my comments provided herein be read into the record at the appropriate time during the August 24, 2016 meeting of the Texas Commission on Environmental Quality (TCEQ).

First, please allow me to extend my thanks to the numerous individuals at the TCEQ involved in the application by the Brazos River Authority (BRA) for Permit No. 5851 (“permit”). Though I will outline serious concerns with the permit below, I can only imagine the amount of work that goes into an application that has been before the commission for nearly 11 years, including efforts from the past and present general counsels, executive directors and commissioners, among others. Likewise, I know a great amount of care, effort and resources from the affected parties have also gone into this process, all with the intent of protecting the Brazos River basin and their existing rights therein.

As you know, I have maintained a firm and detailed opposition to the approval of this permit for several years. During that time, I have repeatedly communicated the lingering concerns of the citizens throughout Senate District 22. Most recently, I spoke to Chairman Shaw and Commissioners Baker and Niermann at the January 20, 2016 meeting of the TCEQ, expressing my belief that this permit would lock up essentially all of the remaining unallocated water and return flows within the basin below Possum Kingdom Reservoir, doing so for the use of one single holder.

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Unfortunately, this and many other specific concerns of the citizens I represent are inapplicable to the decision pending before the commissioners today. Nevertheless, my staff and I have reviewed the exception and reply briefs filed by all parties, and I have briefly summarized my final concerns with the current version of the permit as follows:

- The objections to the BRA's position regarding service area limitation are practical and appropriate; I believe these should be supported.
- The allowance of individual and existing dischargers to obtain a bed-and-bank permit to market and use this water downstream is well founded; I believe this should be supported.
- I believe that BRA return flows should be treated as a bed-and-banks authorization, not as an appropriation, regardless of whether a qualifier is put in place.

I understand the extreme likelihood that the application for Permit No. 5851 will be approved today, and have held this view—like most—since the conclusion of the January meeting of the TCEQ. Thus, I will conclude with two thoughts.

First, I ask that the commissioners give serious consideration to the aforementioned points as submitted through the exception and reply process. Second, and more broadly, I would encourage the commissioners and the TCEQ staff to consider the precedent that will be set by the approval of a permit that is as dated, broadly scoped, and high in volume as Permit No. 5851. It is my sincere belief that the skyrocketing demand for the limited water resources of our state will hinder individuals, businesses and communities seeking to operate within the confines of water allocations like the one before you today.

I appreciate your assistance in communicating my comments to the commissioners, Mr. Royall, and sincerely appreciate all of the hard work that you and the commissioners do for the State of Texas.

Respectfully submitted,



Brian Birdwell
Senate District 22

CC: The Honorable Charles Perry, Chairman—Senate Committee on Agriculture, Water & Rural Affairs
TCEQ Commissioners
Mr. Richard A. Hyde, P.E., Executive Director—TCEQ