

**Possum Kingdom Lake Association
P.O. Box 492
Graford, Texas 76449**

July 25, 2013

Ms. Bridget C. Bohac
Office of the Chief Clerk
MC 105
TCEQ
P.O. Box 13087
Austin, TX 78711-3087

RE: WATER USE PERMIT; APPLICATION NO. 5851

Dear Ms Bohac:

The following are the Formal Comments of the Possum Kingdom Lake Association (PKLA), submitted in response to your notice of Public Meeting on Water Use Permit Application No. 5851 (Application). We understand that these Formal Comments will become part of the official record and that the Executive Director will summarize the formal comments and prepare a written response. The written response will be considered by the Commissioners in their decision-making process. With this letter, we request a copy of the Executive Director's written response to Formal Comments as soon as available. Contact information for the PKLA is:

Possum Kingdom Lake Association
P.O. Box 492
Graford, Texas 76449

Official representative's address and contact information:

James Lattimore
President
1755 Park Road 36
Graford, Texas 76449

Daytime phone number: 817-312-6347
FAX number: 443-339-2345
Email contact: jim@lattimorecompany.com

The PKLA represents the interests of property owners with property abutting the Possum Kingdom Lake shoreline and surrounding areas. In addition, we have a number of members who are interested either through ownership or other connections with Possum Kingdom Lake. The members pay annual fees for their membership. Our paid membership is currently just under 1,000 which represents well over half of the

property owners at Possum Kingdom Lake (Lake). We are governed by a nine-member board of directors who are elected by the membership annually.

Our members will be directly affected, should this application be approved because we depend on water levels in Possum Kingdom Lake for access to the Lake. Our ownership ends at the 1,000 foot (mean sea level) contour which is the full level for the Lake. By permit issued by the Brazos River Authority (BRA), we are allowed access to the surface of the lake for water, recreation and other purposes. The BRA has generally denied all requests to extend the permittee's facilities in the current situation of low water levels. As a result, many of our member's normally on-water facilities such as docks and walkways are now sitting on the dry lake bed. Should the current drought ease and this application be denied, then the lake may fill and these property owners may again be able to use their facilities.

One of our many concerns with Application No. 5851 is that the BRA is asking for authority to sell extraordinary volumes of water with the result being that Possum Kingdom and other reservoirs in the Basin would see much lower water levels. Should this be allowed, our members will be denied access to the Lake and the value of their property will be significantly impaired. We believe this is sufficient reason to show our justiciable interest in the proceedings. We request a contested case hearing.

Beyond these initial comments, the following are our Formal Comments:

1. In reviewing the Application, we find that the BRA has requested permission to sell as much as 1,001,449 acre feet of water per year. This amount is over 8 times the amount (125,000 acre-ft/yr) BRA has stated they currently intend to sell under the proposed permit. BRA has not provided justification or statements of benefit to the People of Texas or even the residents of the Brazos River Basin. It appears that all economic benefit would accrue to the Brazos River Authority for its own use. This permit, if approved, should provide broad benefit to the people of the State of Texas and the benefit should be clearly demonstrated.
2. In reviewing the Application, we do not find any control points or guarantees that the BRA will not sell to the maximum of its permit without regard to maintaining water levels in the Basin reservoirs. Under the Water Management Plan developed in support of Application No 5851, the BRA will have full authority to lower Possum Kingdom Lake to levels not seen historically, including completely emptying the reservoir. The BRA should provide assurances that it will not exercise this "Blank Check" as it alone will benefit.
3. In reviewing the Application, it appears that the BRA will be placed in a classic conflict of interest. The Water Management Plan does not address priorities of water rights. The authority granted in this application would essentially set up the Brazos River Authority as the Water Master with control over all of the water in the Basin. The conflict would occur when the BRA exercises its ability to sell water to

the benefit of BRA and to the detriment of other water rights holders. The interests of various water right holders must be balanced against the BRA's interest to maximize its financial benefits. The Water Management Plan must be modified to ensure compliance with the prior-appropriation doctrine used in Texas water right management.

4. According to the Application, the Water Management Plan would be open for full review only every 10 years. We believe a more appropriate timeframe is 3 years. Opportunities for public input and vetting of any proposed changes should be incorporated into the Water Management Plan and incorporated into the permit. We further believe oversight of BRA's activities should be much tighter than this. The TCEQ must exercise its full authority to ensure that the BRA abides with the conditions of the permit on a continuous basis, should it be approved. It will be imperative that violations to the water use permit and incorporated Water Management Plan be quickly identified and timely enforced.
5. The hydrologic modeling forming a part of the Application considers only the period from 1940 through 1997. Although PKLA understands this has been TCEQ's historical timeframe for assessing water permits, PKLA believes the period of 1998 to present must be included in an analysis of this Application, particularly in light of the potential for a new drought of record coupled with the extraordinary water volume being requested by BRA.
6. The hydrologic modeling calculates water availability as if history will repeat itself perfectly. If we are in fact seeing a new drought of record or, more importantly, if the current conditions are the new normal water flows, it is imperative that these new hydrologic and meteorological conditions be contemplated in the Application.
7. The BRA has stated that the Water Management Plan incorporated into the Application limits BRA water sales to 125,000 acre feet per year. The Water Management Plan does not create this limit. If this permit is issued, all limits must be clearly communicated in the permit and all limits must be timely enforced.
8. In another instance, the BRA has stated that the Water Management Plan in the Application limits BRA water sales to 421,449 acre feet per year. The Water Management Plan does not create this limit. If this permit is issued, all limits must be clearly communicated in the permit and all limits must be timely enforced.
9. The Water Management Plan in the Application allows the BRA to sell over 1 million acre feet of water per year and there are no conditions in the Water Management Plan that prohibit the BRA from selling over 1 million acre feet of water per year. If the BRA chooses to exercise its full authority provided it by the TCEQ, then under certain flow management scenarios, the impact to the Lake as a resource would be devastating.

10. The TCEQ should either deny or defer action on this Application until the matter of a Water Master for the Brazos River Basin can be fully explored and resolved, the impacts of the current drought are better understood, and the current hydrologic condition of Brazos River Basin reduced inflows are better understood and characterized. If the Application were to be approved, in its current form, the BRA would be acting as the Water Master with a clear conflict of interest.
11. The BRA should agree and make a part of the Water Management Plan the following:
 - a. A system of control-check locations in the Basin where water flow rates and reservoir elevations would be measured and available for public review.
 - b. Appropriate language stating minimum flow rates and reservoir elevations for each of these control-check locations.
 - c. A written agreement in the Water Management Plan that unless the agreed conditions at all control-check locations are met, BRA will not sell water under permit 5851.
 - d. A written agreement in the Water Management Plan that the BRA will submit periodic, auditable evidence of compliance with the agreed conditions at all control-check locations at timeframes that ensure permit limits are strictly complied with on a regular basis.

The Possum Kingdom Lake Association thanks the TCEQ for allowing us to make comments. We further thank the TCEQ technical and legal staff for all of their tremendous effort in processing the BRA Application and the Water Management Plan. We look forward to the opportunity to work with TCEQ, the BRA and other interested parties in finding a solution that balances the needs within the Brazos River Basin and throughout Texas. If you have any questions, do not hesitate to contact me at my contact information provided above.

Sincerely,

A handwritten signature in cursive script, appearing to read "James P. Lattimore, Jr.", written in black ink.

James P. Lattimore, Jr.
President