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Via Facsimile: (210) 227-4323 and U.S. First Class Mail

South Central Texas Regional Water Planning Group
San Antonio River Authority
Attn: Steven J. Raabe, P.E.
100 East Guenther Street
P.O. Box 839980
San Antonio, TX 78283-9980

Re: Comments on the 2011 Regional Water Plan Study 1 Lower Guadalupe Water Supply Project for GBRA Needs

Dear Mr. Raabe:

I am writing on behalf of Texans for a Sound Energy Policy Alliance (TSEPA) to provide comments on the 2011 Regional Water Plan Study 1 of the Lower Guadalupe Water Supply Project for GBRA Needs.

Initially, TSEPA challenges the legality of the actions by Region L in going forward with the development of a 2011 Regional Water Plan without having an approved 2006 plan. Section 16.053(a) of the Texas Water Code is crystal clear. "The regional water planning group in each region shall prepare a regional water plan. . .". This mandate is repeated in § 16.053(e) which states, "Each regional water planning group shall submit to the board a regional water plan . . .". Among the requirements of the regional water plan is that it shall be consistent with the requirements of § 16.051(d) of the Code that requires regional compliance with the rules of the Texas Water Development Board. These rules implement § 16.051(a) that requires, among other things, adoption of a comprehensive state water plan.

As you well know, Region L failed to submit a plan for the 2006 state water plan in a timely manner. A special dispensation was granted by the Texas Legislature to allow Region L to file a late plan in accord with the requirements of House Bill 3776. To date, Region L has chosen not to seek approval of a 2006 plan. Instead, Region L is moving forward to develop a 2011 plan. TSEPA believes this action is illegal, arbitrary and capricious and is subject to possible legal action.

I do not believe Region L would be able to point to any authority that allows this planning body to ignore state law requirements to develop a 2006 regional water plan. Such authority cannot be found in HB 3776 that was passed to enable Region L to submit a plan after the statutory deadline. There were several conditions associated with HB 3776, § 1(b), including specific elements to be included in the Lower Guadalupe Water Supply Project for GBRA Needs. Among those elements are (1) the diversion of 60,000 acre feet of river water from existing water rights from below Victoria to upstream points, (2) the reservation of 100,000 acre feet of surface water for the lower basin, (3) a prohibition on the use of fresh groundwater for the project, (4) the development of off-stream storage reservoirs only with landowner consent, and (5) provide for freshwater inflows to San Antonio Bay in an amount sufficient to meet the consensus criteria of the Texas Parks and Wildlife Department, the Texas Water Development Board and Texas Commission on Environmental Quality. In fact, Section 1(c) of HB 3776 orders the Texas Water Development Board to conform the State Water Plan to the requirements of Section 1(b).

To date, we are not aware of any plan meeting these requirements that has been developed by Region L or any such proposal that has been put forward for consideration by Region L. By this letter, TSEPA is asking the Region L Board to act to adopt the requirements of HB 3776 as the elements of the Lower Guadalupe Water Supply Project for GBRA Needs. At this time, such is the only action that is authorized by HB 3776.

This is an important issue. The development of a regional water plan is the reason that Region L was created. It is simply irresponsible for Region L to fail to act on a 2006 regional water plan. As stated in the Texas Water Code, a regional water plan is to be prepared to provide for “the orderly development, management, and conservation of water resources and preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety and welfare; further economic development; and protect the agricultural and natural resources of that particular region.” Texas Water Code § 16.053(a).

The Texas Water Development Board is clear that the 2006 plan for Region L has not been approved. The members of the Region L planning group have let down the people of Region L by failing to obtain approval of a 2006 regional water plan for Region L. We are being denied the protection that is being provided to every other water-planning region in Texas. We do not have a plan for the most important natural resource in our region – a plan that we are guaranteed under State law and would have but for the irresponsible actions of the Region L planning group.

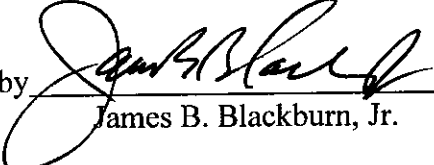
This situation is becoming serious. At this time, Exelon has submitted a Combined Operating License Application (COLA) that includes an off-channel storage reservoir for the GBRA. This appears to be the first step in the implementation of the Lower Guadalupe Water Supply Project for GBRA Needs. Such a proposal is not consistent with any approved regional plan.

Additionally, the water needs of the Exelon project are not included or accounted for in the LGWSP for GBRA needs study currently under review. Inasmuch as there is a contractual obligation between GBRA and Exelon, the implications and impacts of that project must be factored into the LGWSP for GBRA needs. It does not appear that there is enough water available for both projects. Such information must be publicly available and fully disclosed. Please see attached letter from Trungale Engineering & Science discussing this issue.

We believe Region L is operating outside of the law. The actions are illegal. I urge you to reconsider the decision not to seek approval of a 2006 regional water plan consistent with HB 3776. Region L's failure to submit a 2006 regional water plan deprives the area's citizens of their constitutional rights.

Sincerely,

BLACKBURN CARTER, P.C.

by 
James B. Blackburn, Jr.

Attachment

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South Central Texas Regional Water Planning Group - Region L Members