



Brazos River Authority

RESOLUTION OF THE BOARD OF DIRECTORS OF THE BRAZOS RIVER AUTHORITY JULY 27-28, 2009

Agenda Item 11C Executive Session

“WHEREAS, the Brazos River Authority possesses a license to operate a hydroelectric generation facility at Possum Kingdom Lake, subject to Federal Energy Regulatory Commission (FERC) rules and regulations; and

WHEREAS, certain land located around Possum Kingdom Lake has been designated FERC Project Area, including a shoreline control strip established by the FERC Order Amending License issued May 15, 1980; and

WHEREAS, the Brazos River Authority leases land around Possum Kingdom Lake for residential purposes, and portions of these leases are located within the FERC Project Area and the shoreline control strip; and

WHEREAS, the FERC License generally prohibits construction of improvements and structures within the FERC Project Area and the shoreline control strip; and

WHEREAS, it has been determined that numerous improvements owned by Brazos River Authority residential lessees encroach into the FERC Project Area; and

WHEREAS, the Brazos River Authority is in the process of divesting of the residential leases and specific commercial leases at Possum Kingdom, and in coordination with the divestiture process a comprehensive survey is being conducted which will identify all existing encroachments in the FERC Project Area; and

WHEREAS, the Brazos River Authority, on or before January 2, 2012, intends to submit an application to FERC requesting that certain categories of encroachments be permitted to remain in place, and

asking FERC to provide guidance regarding whether existing unapproved encroachments should also be permitted to remain in place; and

WHEREAS, in consideration of the foregoing, until such time as the FERC response to the aforementioned application has been received, the Brazos River Authority has determined it is willing to allow all existing encroachments to remain in place, subject to the provisions of this resolution.

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the Brazos River Authority hereby directs the General Manager/CEO to take the following actions regarding encroachments into the FERC Project Area:

1) Except as otherwise provided herein, and subject to health, safety, and/or welfare matters, and compliance with any local, state or federal laws, Brazos River Authority staff shall take no action to require the removal of any encroachments existing as of the date of this resolution pending a ruling by FERC on the Brazos River Authority's application to address existing encroachments;

2) Upon receipt of the survey results from the comprehensive survey being conducted for divestiture purposes, Brazos River Authority staff shall compile a list of all existing encroachments, and notify lessees of any encroachment discovered on their lease. Such lessees shall then have thirty (30) days from the date of such notice to submit to the Authority written documentation as to the categorization of such encroachment. Encroachments shall be categorized as follows:

a) "Pre-1980 Encroachments," consisting of Improvements constructed within the FERC Project Area, upon land leased for residential purposes on or before May 15, 1980, which as of May 15, 1980, were under construction, construction was explicitly approved by the Brazos River Authority, or for which financing was approved, and any alterations of such improvements, to the extent such alterations do not encroach further toward the shoreline than the original improvement;

b) "Residential Encroachments," consisting of improvements constructed within the FERC Project Area, which are enclosed, habitable, residential structures, whether expressly approved in writing by the Brazos River Authority or not, including any improvements for which a Property Use Agreement has been previously executed;

c) "Pre-Approved Encroachments," consisting of improvements constructed within the FERC Project Area, which have been expressly approved in writing by the Brazos River Authority, including any improvements for which a Property Use Agreement has been previously executed; and

d) "Unapproved Encroachments," consisting of improvements constructed within the FERC Project Area which were not expressly approved in writing by the Brazos River Authority. For purposes of this Brazos River Authority Encroachment Policy, approval of a lease assignment by the Brazos River Authority shall not be considered an express, written approval of an encroachment; and

3) Any encroachments for which the Authority does not receive acceptable written documentation shall, in the sole discretion of the Brazos River Authority, be treated as Unapproved Encroachments. The Brazos River Authority shall determine the acceptability of written documentation in its sole discretion.

4) On or before January 2, 2012, Brazos River Authority staff shall submit an application to FERC requesting that Pre-1980 Encroachments, Residential Encroachments, and Pre-Approved Encroachments be permitted to remain in place, and asking FERC to provide guidance regarding whether existing Unapproved Encroachments should also be permitted to remain in place;

5) Until such time as the Brazos River Authority has received guidance from FERC regarding encroachments, encroachments existing as of the date of this resolution will be addressed as follows:

a) Pre-1980 Encroachments will be permitted to remain in place with no further action being required on the part of the lessee;

b) Residential Encroachments, Pre-Approved Encroachments and Unapproved Encroachments will be permitted to remain in place and leasehold assignments will be authorized only if the lessee (or assignee in the event of an assignment) signs a Property Use Agreement in a form consistent with the requirements of this Resolution, which acknowledges the existence of the encroachment and provides that the lessee (or assignee) will remove or modify the encroachment if FERC so requires;

6) Notwithstanding any provision in this resolution to the contrary, in the event a lessee declines to execute a Property Use Agreement regarding an applicable encroachment, the Brazos River Authority may, in its sole discretion, either require the removal of such

encroachment or in the alternative treat such encroachment as an Unapproved Encroachment in its application to FERC. Additionally, encroachments that are constructed after the date of this resolution without the prior written approval of the Brazos River Authority shall, at the sole discretion of the Brazos River Authority, be subject to immediate removal and shall not be included in the Brazos River Authority's application to FERC regarding encroachments."


The aforementioned resolution was approved by the Board of Directors of the Brazos River Authority on **July 27, 2009**, to certify which witness my hand and seal.



Christopher DeCluitt
Presiding Officer

SUBSCRIBED AND SWORN TO BEFORE ME on this the 27th day of July, 2009, to certify which witness my hand and official seal.




Notary Public in and for the
State of Texas