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VIA E-MAIL

May 16, 2004

Ms. Teresa Clark
Administrative Agent for Brazos G Regional Water Planning Group
Brazos River Authority
P.O. Box 7555
Waco, Texas 76714-7555

RE: May 18, 2004, Water Policy Workgroup Meeting

Dear Teresa:

Unfortunately, I am going to be forced to miss your meeting. Please apologize to the members of the workgroup for me. The Executive Committee of the Far West Texas Water Planning Group will be meeting in El Paso on Monday, and I had intended to fly from El Paso to Austin Monday evening and drive to Waco Tuesday morning. However, now it looks like I am going to have to drive to Fort Davis for a groundwater conservation district meeting Monday night. Logistically, I simply cannot get there in time.

Having reviewed my memo of February 16 and the Resolution passed by our planning group, I am not sure what additional information or argument I could add anyway. The main point of both, taking away the sense of outrage we felt at the time because no one had told us that this plan even existed, is that a proposed strategy of the magnitude of the Rio Nuevo proposal makes regional water planning irrelevant if the strategy develops and proceeds outside of the planning process. Trace Findley will tell you that Commissioner Patterson and the General Land Office intend to require Rio Nuevo and all of its off-spring to participate in the planning process, and I certainly take them at their word. I must observe, however, that they have not done so yet, even though the Rio Nuevo proposal has been germinating for almost three years that we know of.

I also note that the Rio Nuevo's of the world do not, by law, have to participate in the water planning process. Only if an entity expects to seek funding from the Water Development Board do they have to participate in order to have their strategy included in the regional water plan. A private entity that will utilize private funding does not have to have its strategy included. On the other hand, if a 100-billion gallon strategy does not need to be incorporated in the plan, what is the value of the plan?

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Further, although I have not seen the most recent version of the GLO's lease template, the only one that I have seen talks in terms of consistency with the existing State water plan "to the extent that such requirements [of the State water plan or of the Texas Administrative Code] are applicable to the production of groundwater resources from the Leased Premises and not in conflict with the provisions of this Lease." For Rio Nuevo, "Home Free!"

Why? Well, if the lease takes precedence over the State water plan and the regulations legally promulgated, that means the lease and the lessee win. After all, the purpose of the lease is to produce water and make money for the State of Texas. That is understandable since that is the constitutional duty of the Commissioner of the General Land Office.

Additionally, your workgroup members should be aware that the lease template talks about consistency with the "existing" state water plan. But the "existing" state water plan includes the regional water plans only by implication since the state plan is based on the regional plans. Worse, the existing state water plan is out of date.

"Out of date?" Yes. The lease talks about consistency with the State water plan adopted in December, 2001. That's done. That's over. And, given the Water Development's stringent requirements for amending it, it is probably not going to be amended. So how can a GLO lessee's Project Development Plan possibly be consistent with a 2001 water plan that never contemplated a screwy deal like Rio Nuevo's anyway? By definition, it cannot be. It is not in the plan, it is not provided for in the plan, and it is not going to be included in the 2001 plan retroactively. Not going to happen. Home Free.

The temptation is to blame this conclusion on sloppy draftsmanship in the template. That may be. Yet the Far West Texas Water Planning Group is not content to hope that sloppy draftsmanship will be corrected or that the Travis County district court says it doesn't really say what it clearly seems to say. We think that the only acceptable solution is that all of the proposers of significant water strategies must participate in the regional water planning process.

I would expect Trace Findley to agree with that. He is a reasonable and logical man, as is his boss. If the GLO intends for its lessees to participate in the regional water planning process, why not simply require that they do so and ensure the integrity of the process? And why not have the GLO join the Far West Texas Water Planning Group in recommending that Brazos Region G pass a resolution in support of the integrity of the water planning process?

Trace may say that there are circumstances where it is appropriate for the State to lease its water rights and that a resolution in favor of the integrity of the regional water planning process might be interpreted as opposition to the sale of any state water rights. But this is not our position, and that is not the position we are asking Brazos Region G to take. The Far West Texas Water Planning Group believes that water marketing is an appropriate tool, in many instances, in dealing with water allocation and scarcity. We are doing it already when we export cotton, cattle,

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and cantaloupes. We are not against water marketing. We are in favor of the water planning process and believe that all water marketers, including the GLO and its assignees, like everyone else, should participate in it.

Again, I apologize for not being able to be at your meeting to see if Trace and I can agree on the wording of a resolution in favor of the regional water planning process. Our resolution was specific to Far West Texas and the Rio Nuevo scheme. It is probably not appropriate, verbatim, for Brazos Region G. However, the Far West Texas Water Planning Group submits to your policy working group that some resolution is appropriate. There are other rivers in Texas besides the Rio Grande, and you have several. And there are many water marketers besides Rio Nuevo; I do not know whether or not any are interested in your region. Do you? If not, you definitely need a resolution telling the marketers to participate in your planning process. If so, you need it even more.

As an aside, a majority of the planning groups have passed resolutions, although that is neither here nor there relative to whether or not you should do so. Please let me know if I can supply any additional information or suggested wording for your resolution.

Please give my regards to Trace and ask him to convey them to Commissioner Patterson. Working together, we can work through any problems with water demand and supply. The regional water planning process was visionary, and we should all support it as the basis for effective statewide planning.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "Tom Beard".

TOM BEARD
Chairman