

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## **NOTICE OF A HEARING TO AFFIRM, MODIFY, OR SET ASIDE THE EXECUTIVE DIRECTOR'S EXTENSION OF AN EMERGENCY ORDER**

The Executive Director has extended an emergency order issued pursuant to Tex. Water Code § 11.139 to the Lower Colorado River Authority to amend its Water Management Plan (WMP), Permit No. 5838. The Commission will hold a hearing to affirm, modify, or set aside this emergency order extension on June 5, 2013.

**BACKGROUND AND APPLICATION:** The Lower Colorado River Authority (LCRA) filed a request on November 21, 2012, for an emergency order to temporarily amend its WMP, Permit No. 5838, under Sections 5.501, 11.138, and 11.139 of the Texas Water Code and Texas Commission on Environmental Quality rules 30 TAC §§ 295.1, *et seq.* LCRA filed an amended and supplemental request for emergency relief on January 11, 2013. LCRA requested the authority to amend its WMP to change the curtailment triggers for interruptible water supply customers. The WMP is required under LCRA's Certificates of Adjudication Nos. 14-5478 and 14-5482, which provide for the impoundment in and diversion of state waters from Lakes Buchanan and Travis on the Colorado River in Burnet, Llano, and Travis Counties, Texas.

LCRA's Certificates of Adjudication Nos. 14-5478 and 14-5482 require LCRA to prepare a WMP to describe how LCRA makes water available from these lakes to help meet firm water customer needs, downstream interruptible irrigation demands, and environmental flow needs of the lower Colorado River and Matagorda Bay. LCRA must also provide in its WMP how it will curtail its firm and interruptible water commitments from the lakes during times of drought including a repeat of the Drought of Record.

LCRA established the following curtailment plan for interruptible water in its 2010 WMP, approved by the commission on January 27, 2010:

<b>Combined Storage of Lakes Buchanan and Travis</b>	<b>Date on Which Trigger is Decided</b>	<b>Action Taken</b>
1.4 million acre feet	At any time	Request firm customers to implement voluntary drought response measures.
1.4 million acre feet	On January 1	Environmental releases for instream flows reduced to meet critical needs for ecosystems for following year.  Begin gradual curtailment of interruptible supply to four major irrigation operations.
900,000 acre feet	At any time	Request firm customers to implement mandatory water restrictions; develop firm customer curtailment plan.
600,000 acre feet	At any time	If criteria indicates a drought worse than the Drought of Record, then cease interruptible supply and begin curtailment of firm supply.

LCRA requested that its WMP be amended to temporarily establish a different process for curtailment of interruptible stored water that would:

- a. Provide interruptible stored water for first crop based on the combined storage of Lakes Buchanan and Travis on March 1, 2013 (11:59 p.m.), as follows:
  1. Provide no interruptible stored water to customers within Gulf Coast and Lakeside Divisions if the combined storage is below 850,000 acre-feet.
  2. Provide up to 121,500 acre-feet of interruptible stored water for diversion for the customers within Gulf Coast, Lakeside, Garwood, and Pierce Ranch Operations if the combined storage is at or above 850,000 acre-feet and less than 920,000 acre-feet.
  3. Provide interruptible stored water in accordance with the then current Water Management Plan if the combined storage is at or above 920,000 acre-feet based on March 1 storage instead of January 1 storage.

- b. Provide interruptible stored water for second crop based on the combined storage of Lakes Buchanan and Travis, as follows:
  - 1. If the combined storage is at or above 850,000 acre-feet and below 920,000 acre feet on March 1, 2013 (11:59 p.m.), and combined storage is below 950,000 acre feet on July 1, 2013 (11:59 p.m.), provide no interruptible stored water to customers within Gulf Coast and Lakeside Divisions.
  - 2. If the combined storage is at or above 850,000 acre-feet and below 920,000 acre-feet on March 1, 2013 (11:59 p.m.), and the combined storage is at or above 950,000 acre feet on July 1, 2013 (11:59 p.m.), provide up to 50,000 acre feet of interruptible stored water for diversion for customers in Gulf Coast, Lakeside, Garwood and Pierce Ranch Operations.
  - 3. If combined storage is at or above 920,000 acre-feet on March 1, 2013 (11:59 p.m.), provide interruptible stored water for the second crop in accordance with the then current Water Management Plan based on March 1 storage instead of January 1 storage.
  
- c. Provide interruptible stored water to Garwood and Pierce Ranch, in accordance with their contracts.

On January 29, 2013, the Executive Director issued an emergency order granting the relief requested by LCRA. On February 13, 2013, the Commission held an open meeting to affirm, modify, or set aside the Executive Director's emergency order. The Commission issued an order on February 19, 2013 that modified Findings of Fact Nos. 33 and 35, Ordering Provision No. 3, and deleted Ordering Provision No. 4.

On May 6, 2013, LCRA requested that the emergency order be extended for 60 days, pursuant to Tex. Water Code § 11.139. On May 17, 2013, the Executive Director granted the extension as requested by LCRA.

**STATUTORY AUTHORITY:** Tex. Water Code § 11.139 provides that the Commission may grant an emergency order to amend an existing permit after notice to the Governor if the Commission finds that emergency conditions exist which present an imminent threat to the public health and safety and which override the necessity to comply with established statutory procedure and there are no feasible practicable alternatives to the emergency authorization.

Under section 11.139, the Executive Director may issue the emergency order without notice except to the Governor, if he finds that an imminent threat to the public health and safety exists which requires emergency action before the Commission takes action. In such case, the Commission must hold a hearing to

affirm, modify, or set aside the Executive Director's order as soon as practicable but not later than 20 days after the emergency authorization is granted. The notice of the Commission hearing shall be given as the Commission considers practicable under the circumstances.

An emergency order issued under section 11.139 may extend for a period of not more than 120 days. Such emergency action may be extended once for not longer than 60 days.

**EXECUTIVE DIRECTOR'S EMERGENCY ORDER EXTENSION:** The Executive Director has found that an imminent threat to public health and safety exists which requires emergency action before the Commission can take action, and that emergency conditions exist which present an imminent threat to the public health and safety and which override the necessity to comply with established statutory procedures, and there are no feasible practicable alternatives to the emergency authorization. The Executive Director provided notice to the Governor on May 16, 2013, and extended LCRA's emergency order on May 17, 2013. Notice of the Commission's hearing to affirm, modify, or set aside is being mailed to all water right holders in the Colorado River Basin.

**HEARING:** The Commission's hearing to affirm, modify, or set aside will be at:

9:30 a.m., Wednesday, June 5, 2013  
TCEQ Commission Office  
12100 Park 35 Circle, Room 201S, Building E,  
Austin, Texas

**PUBLIC COMMENT:** Written public comments should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <http://www.tceq.state.tx.us/about/comments.html>. Persons may attend the public hearing and make oral comment. Under 30 Tex. Admin. Code § 295.174, there is no right to a contested case hearing on this emergency order.

**INFORMATION:** For additional information, individual members of the general public may contact Small Business and Environmental Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our website at [www.tceq.tx.us](http://www.tceq.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.state.tx.us>.

Issued: May 20, 2013



Bridget C. Bohac  
Chief Clerk