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LAW OFFICES OF
BOOTH, AHRENS & WERKENTHIN, P.C.
A PROFESSIONAL CORPORATION
515 CONGRESS AVENUE, SUITE 1515
AUSTIN, TEXAS 78701-3503
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MICHAEL J. BOOTH
CAROLYN AHRENS
FRED B. WERKENTHIN, JR.

OF COUNSEL
JOSEPH S. BABB

October 10, 2001

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
OCT 10 PM 2:52
CHIEF CLERKS OFFICE

Hand Delivery

LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Natural Resources
Conservation Commission
P.O. Box 13807, MC-105
Austin, Texas 78711-3087

OPA
OCT 10 2001

20515
WR

Re: Water Rights Application No. 5731 (Lower Colorado River Authority); Request of STP Nuclear Operating Co. for Contested Case Hearing

Dear Ms. Castañuela:

By this letter, STP Nuclear Operating Co. ("STPNOC") requests a contested case hearing regarding Lower Colorado River Authority's ("LCRA") Water Rights Application No. 5731. STPNOC makes this request in its capacity as the operator of the South Texas Project ("STP") on its own behalf and on behalf of the four owners of STP: (1) Reliant Energy, Inc.; (2) the City of Austin; (3) the City of San Antonio, acting by and through its City Public Service Board; and (4) Central Power & Light Company ("STP Owners"). STPNOC's mailing address is P.O. Box 289, Wadsworth, Texas, 77483, its telephone number is (361) 972-7879, and its number for facsimile transmissions is (361) 972-7760; however, as legal counsel for STPNOC and the STP Owners in this matter, we will be responsible for receiving all official communications and documents in this proceeding at the address, telephone, and facsimile number on this letterhead.

STPNOC is a Texas non-profit corporation created and financed by the STP Owners to maintain and operate the STP electric generating facilities, including the water supply necessary for continued operation of the STP power plants. STP facilities provide electric power for customers of the STP owners and use water for cooling as a necessary component of the power generation process. STP's facilities are located in Matagorda County, Texas.

STPNOC succeeds Houston Lighting & Power Co. ("HL&P") as the operator of STP on behalf of and as agent for the STP Owners. In 1974, HL&P was Project Manager of STP and filed an application for water rights that was accepted for filing by the TNRCC's predecessor agency. Proceedings on that application resulted in the STP Owners acquiring water rights for STP under Water Rights Permit No. 3233, superceded by Certificate of Adjudication No. 14-5437. These water rights include special conditions that reference minimum flow limitations. In 1976, HL&P

also entered into a water supply contract with LCRA ("Contract") on behalf of the STP Owners and a Partial Assignment and Transfer of Water Permit between HL&P, City of San Antonio, Central Power & Light, City of Austin, and LCRA ("Partial Assignment"). The Contract and Partial Assignment include provisions for reversion of certain interests to the STP Owners if the contract is terminated under certain circumstances. Contractual Permit No. CP-327 also was issued by the TNRCC's predecessor agency for the STP Owners.

Considered together, the documents listed above authorize, for supply of water to STP, the diversion of 102,000 acre-feet of water per annum from the Colorado River in Matagorda County for industrial purposes, including development of power by means other than hydroelectric. Permit No. 3233 included a special condition related to diversion of flows in excess of a percentage of flow at the diversion point. Two off-channel impoundments adjacent to the Colorado River are authorized for STP, and recirculation of water is authorized. Consumptive use of up to 80,125 acre-feet of water per annum is authorized. Express contractual arrangements with LCRA secure this supply until year 2030, unless those arrangements are terminated sooner.

LCRA's Application No. 5731 ("LCRA's Application") requests authorization to divert, store and use those excess flood waters and those unappropriated flows of the Colorado River Basin downstream of O.H. Ivie Reservoir and downstream of Lake Brownwood, in an amount not to exceed 853,514 acre-feet of water annually. LCRA's identified proposed diversion points are in Colorado, Wharton and Matagorda Counties. LCRA also is seeking authorization to construct an unspecified number of off-channel reservoirs within Colorado, Wharton and Matagorda Counties with a maximum combined storage capacity of 500,000 acre-feet of water. As noted above, STP's facilities and authorized points for diversion of water also are located in Matagorda County. Although LCRA's Application does not specifically state the location of the proposed off-channel reservoirs, it appears that most of LCRA's identified proposed diversion points and possible reservoir sites are upstream on the Colorado River from STP's facilities and authorized diversion points. LCRA is seeking authorization to use the water requested in its application anywhere within the applicant's authorized water service area and/or such other areas that hereinafter may by authorized by law. The intended use may be outside of the Colorado River Basin.

Based on proceedings on Water Right Permit No. 3233 for STP and other information available regarding water supply in the lower Colorado River Basin, it is possible that granting LCRA's Application may impact STPNOC and the STP Owners' present rights under Certificate of Adjudication No. 14-5437, Contractual Permit No. CP-327 and under the Contract and Partial Assignment identified above in this request. Any interruption of dependable water supply for STP would have adverse consequences for the supply of power to the STP Owners and the customers they serve. An interruption of dependable water supply for STP also would adversely affect investments related to STP's facilities. In these respects and others, granting LCRA's Application would directly affect the legal rights, duties, privileges, powers and economic interests of STPNOC and the STP Owners, who are dependent on the Colorado River for present and future water supplies for STP.

Each of the STP Owners and STPNOC are affected persons with personal justiciable interests in the matters put at issue by LCRA's Application that are not common to the general public and have standing to make this request as contemplated in TEX. WATER CODE ANN. §5.115

(Vernon 2000) and 30 TEX. ADMIN. CODE §55.256(a) (West 2001).[1] *See also* 30 TEX. ADMIN. CODE §55.256(c) (West 2001) (for determining who is an affected person, all relevant factors should be considered, including but not limited to whether the interest claimed is one protected by the law under which the application will be considered, the relationship between the interests claimed and the application, the likely impact of granting the application on the health, safety, and use of property of the person, the likely impact of granting the application on use of the impacted natural resource by the person, and, for governmental entities, their statutory authority over or interest in the issues relevant to the application). Those STP Owners that are governmental entities (the City of Austin and the City of San Antonio) also have the kind of responsibility, authority and interest in the issues relevant to the application that is contemplated of affected persons under TNRCC Rules, 30 TEX. ADMIN. CODE §55.256(b) (West 2001) ("Governmental entities, including local governments and public agencies, with authority under state law over issues contemplated by the application may be considered affected persons.").

In consideration of the matters discussed above, STPNOC asks that this request be processed expeditiously, and that a contested case hearing be granted.

Respectfully submitted,

Carolyn Ahrens
Michael J. Booth
LAW OFFICES OF BOOTH, AHRENS
& WERKENTHIN, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
(512) 472-3263 (phone)
(512) 473-2609 (facsimile)

[1] *See also Heat Energy Advanced Tech., Inc. v. West Dallas Coalition for Envtl. Justice,* 962 S.W.2d 288 (Tex. App.–Austin 1998, writ den'd) (the standard regarding affected persons does not require that a party show it will ultimately prevail on the merits, but simply that it potentially will suffer harm or have a justiciable interest that will be affected); *Texas Rivers Protection Ass'n v. Texas Natural Resource Conservation Comm'n,* 910 S.W.2d 147, 151 (Tex. App.–Austin 1995, writ den'd) ("the right to participate in proceedings is construed quite liberally to encourage varying points of view").

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on each of the following on this the 10 of October, 2001 via first-class mail:

Robin Smith
Texas Natural Resources Conservation Commission
Environmental Law Division
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-0606 (facsimile)

Blas Coy
Texas Natural Resources Conservation Commission
Public Interest Counsel
P.O. Box 113087, MC 103
Austin, Texas 78711-3087
(512) 239-6377 (facsimile)

Bruce Wasinger
Bickerstaff, Heath, Smiley, et al.
816 Congress Avenue, Suite 1700
Austin, TX 78701
(512) 320-5638 (facsimile)
(For Applicant)

Carolyn Ahrens

Carolyn Ahrens

LAW OFFICES OF
BOOTH, AHRENS & WERKENTHIN, P.C.
A PROFESSIONAL CORPORATION
515 CONGRESS AVENUE, SUITE 1515
AUSTIN, TEXAS 78701-3503
512 / 472-3263 • FAX 512 / 473-2609

MICHAEL J. BOOTH
FRED B. WERKENTHIN, JR.
WIL GALLOWAY

CAROLYN AHRENS
OF COUNSEL

February 9, 2006

OPA
FEB 09 2006
BY

2006 FEB -9 AM 10:09
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Via Hand Delivery

LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13807, MC-105
Austin, Texas 78711-3087

WR/20515

Re: Water Rights Application No. 5731 by Lower Colorado River Authority (For "Excess Flow")

Dear Ms. Castañuela:

By letter signed by me and filed with your office on October 10, 2001, STP Nuclear Operating Co. ("STPNOC") requested a contested case hearing regarding Lower Colorado River Authority's ("LCRA") Water Rights Application No. 5731 and stated various objections to the application. As noticed, the application requests, among other things, authorization to divert, store and use those excess flood waters and those unappropriated flows of the Colorado River Basin downstream of O.H. Ivie Reservoir and downstream of Lake Brownwood, in an amount not to exceed 853,514 acre-feet of water annually and to construct an unspecified number of off-channel reservoirs with a maximum combined storage capacity of 500,000 acre-feet of water.

STPNOC and LCRA recently entered into a settlement agreement to resolve various matters of dispute, including STPNOC's objections to several LCRA water rights applications pending before the Texas Commission on Environmental Quality. Pursuant to that settlement agreement, STPNOC withdraws its objections to, and documents its support for, Application No. 5731 to the extent consistent with the settlement.

The settlement agreement expressly preserves STPNOC's right to participate in any proceedings on Application No. 5731 to the extent necessary to protect interests obtained in the settlement agreement. For the limited purpose of exercising that right, STPNOC maintains its request for contested case hearing on the application at this time, recognizing that there are various uncertainties remaining in the administrative process including requests for contested case hearing filed by other parties. It is STPNOC's intent that if a draft permit is agreed to that is consistent with STPNOC's interests under the settlement agreement with LCRA and all other parties withdraw their request for contested case hearing, then STPNOC would do the same.

As part of STPNOC's settlement with LCRA, an Amended and Restated Contract and an Amended Partial Assignment and Transfer of Water Permit are entered between the parties pursuant to which STPNOC holds stated interests in Certificate of Adjudication No. 14-5437. Certificate of Adjudication No. 14-5437 is referenced in STPNOC's request for hearing. For additional reasons stated in STPNOC's October 10, 2001 letter, STPNOC remains a party affected by LCRA's application in ways not common to the general public and has a personal justiciable interest in the application that entitles STPNOC to be a party in any uncontested case that does proceed.

In consideration of the matters outlined above, STPNOC asks that this letter be placed in the agency's files regarding Application No. 5731 and that STPNOC continue to receive all notices and correspondence related to that application. Please let me know if there is any additional information required of STPNOC at this time.

Respectfully submitted,

Carolyn Ahrens
LAW OFFICES OF BOOTH, AHRENS
& WERKENTHIN, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
(512) 472-3262 (phone)
(512) 473-2609 (facsimile)

Cc:
Rick Gangluff
Jon Wood
Lyn Dean
Kellye Rila

TEXAS PARKS & WILDLIFE

October 10, 2001

OPA
OCT 1 0 2001

2001 OCT 10 PM 2:13
CHIEF CLERKS OFFICE

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

20515
WR

COMMISSIONERS

LEE M. BASS
CHAIRMAN, FT. WORTH

CAROL E. DINKINS
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CHAIRMAN-EMERITUS
FT. WORTH

ANDREW SANSOM
EXECUTIVE DIRECTOR

To manage and conserve the natural and cultural resources of Texas for the use and enjoyment of present and future generations.

Ms. LaDonna Castanuela
Office of the Chief Clerk
Texas Natural Resource Conservation Commission
MC 105
P.O. Box 13087
Austin, TX 78711-3087

Re: The Lower Colorado River Authority Application No. 5731

Dear Ms. Castanuela:

Texas Parks and Wildlife Department (TPWD) respectfully requests a contested case hearing regarding the Lower Colorado River Authority's (LCRA) Application No. 5731.

Pursuant to Texas Parks and Wildlife Code § 12.001, TPWD is the state agency charged with the primary responsibility for protecting the state's fish and wildlife resources. Under Texas Water Code § 11.147, the Texas Natural Resource Conservation Commission, in making a final decision on any application to store, take or divert water, shall consider all information, evidence and testimony presented by TPWD. Under the same provision, TPWD has the right to be a party in hearings on water use permit applications.

LCRA is seeking authorization to divert, store and use the unappropriated flows and excess flood waters of the Colorado River Basin downstream of O.H. Ivie Reservoir and downstream of Lake Brownwood. The applicant seeks an amount not to exceed 853,514 acre-feet of water annually.

The TNRCC must consider the impacts of LCRA's application on water quality, instream uses and freshwater inflows and all water use permits may be conditioned to protect those flows. (Tex. Water Code §§ 11.147, 11.150, 11.152; 30 Tex. Admin. Code § § 297.54-56.) TPWD's statutory obligation and ability to protect the fish and wildlife resources of the state are affected by the actions proposed under the current LCRA application. The diversion of the unappropriated flows and the excess flood waters from the Colorado River Basin directly impact the water quality, existing instream uses of the river and freshwater inflows to bays and estuaries. Maintaining adequate instream flows and freshwater inflows to protect fish and wildlife resources is critical to the duties of TPWD.

4200 SMITH SCHOOL ROAD
AUSTIN, TEXAS 78744-3291
512-389-4800
www.tpwd.state.tx.us

Under Texas Parks and Wildlife Code § 12.001, one of TPWD's activities is to provide the TNRCC with recommendations on scheduling instream flows and freshwater inflows for the management of fish and wildlife resources. With no information regarding the actual amount and rate of diversion from each of LCRA's proposed diversion points and unidentified reservoir sites, TPWD cannot assess the impacts of the application on water quality and fish and wildlife resources. TPWD is currently involved in a contested case hearing regarding the LCRA's Water Management Plan for the Lower Colorado River Basin wherein the Department's chief concern is the management of instream flows, particularly freshwater inflows to Matagorda Bay and its estuaries. (TNRCC Docket No. 95-1317-WR.) If LCRA intends to seek instream flow and freshwater inflow requirements similar to those contained in its Management Plan, TPWD will have the same objection as in the existing litigation. To protect TPWD's ability to participate in the development of permit conditions to protect environmental flows, TPWD must file this hearing request.

TPWD is also concerned that the application fails to identify the locations of the proposed off channel reservoirs, as required under the Water Code and the Commission's rules. (Tex. Water Code §§ 11.124-125, 11.132; 30 Tex. Admin. Code §§ 295.7, 295.41, 295.121, 295.124, 295.151.) LCRA proposes to build an unspecified number of reservoirs at undisclosed locations in Matagorda, Wharton and Colorado Counties. Without knowing the precise locations of the affected properties through maps and plats, the Commission, TPWD and other interested parties cannot determine the terrestrial impacts of the proposed reservoirs. Of specific interest to TPWD is the impact to fish and wildlife habitats caused by construction of the reservoirs and the inundation of lands. The Commission must assess the effects of the issuance of LCRA's permit on fish and wildlife habitats and may require an applicant to mitigate adverse impacts on the habitats. (Tex. Water Code §§ 11.147, 11.152; 30 Tex. Admin. Code § 297.53.) A major issue for reservoir siting is the presence of endangered or threatened species. The Houston Toad, Atwater's Greater Prairie Chicken and the Bald Eagle are federally listed endangered or threatened species in Colorado County. The Bald Eagle is listed as threatened in Matagorda and Wharton Counties. Since the application failed to disclose the affected properties, the impacts assessment for endangered species or any fish and wildlife habitat cannot be accomplished. TPWD's ability to protect fish and wildlife resources is affected by LCRA's omission of reservoir data as it prevents TPWD's ability to present evidence to the Commission regarding impacts to fish and wildlife habitats.

TPWD's final concern is the failure of the notice to identify whether the LCRA application seeks an interbasin transfer of water. The notice states that LCRA intends to use the water "anywhere within the applicant's authorized water service area and/or such other areas that hereinafter may be authorized by law." With the passage of HB 1629 by the 77th Legislature, LCRA is authorized to sell water under a written contract to a municipality outside of LCRA's water service area (the Lower Colorado River Basin Counties of Blanco, Burnet, Fayette, Colorado, Llano, Travis, Bastrop,

Wharton, San Saba and Matagorda). If LCRA is requesting authorization to transfer water into a basin other than the Lower Colorado River Basin, the application must comply with the legal requirements of Texas Water Code § 11.085 and its implementing Commission rules. In its current form, the application lacks the necessary information required by § 11.085. This deficiency prevents the TNRCC and TPWD from assessing impacts specific to interbasin transfers, including the projected impacts on existing water rights, instream uses, water quality, aquatic and riparian habitat, and bays and estuaries of both the originating and receiving basins.

TPWD is currently negotiating with LCRA and the Texas Water Development Board to develop and participate in a new study of the freshwater inflow needs of Matagorda Bay. While the study may take one to three years to complete, it may nonetheless prove helpful to alleviating TPWD's concerns about the pending excess flows application. TPWD and LCRA have a long history of working together to address the common goal of assuring the ecological health of the Colorado River. We are hopeful that LCRA will do everything possible to meet that goal and we will continue to work with them to achieve it. The request for a hearing at this time is not a conclusion that our joint efforts have failed; it is intended only to maintain appropriate options as mandated by the adminstrative process. TPWD may withdraw its hearing request if its concerns regarding instream uses and other environmental needs can be met by the inclusion of special protective or "placeholder" conditions in the permit or by other appropriate means.

Please use the information below to place TPWD on the official mailing list for this application. Should you have any questions, please call me at 512.912.7008. Thank you for your attention to this matter.

Sincerely,

Colette J. Barron

Colette J. Barron, Attorney
State Bar of Texas No. 00783607
Texas Parks and Wildlife Department
Resource Protection Division
3000 S. IH-35, Suite 320
Austin, TX 78704-6536
512 912 7008 Phone
512 707 1358 Fax

cc: Dr. Larry McKinney, TPWD
Cindy Loeffler, TPWD
David Bradsby, TPWD

Willard Keith Bessent, et ux
Christine Bessent, et al (915) 372-5567
FAX (915) 372-3079
Sloan Pool, et al
Rt 1 Box 142
San Saba TX 76877

September 20, 2001

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 SEP 28 AM 10: 18
CHIEF CLERKS OFFICE
OPA
SEP 28 2001
20515
WR

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

a) Existing adjudicated, permitted and senior riparian rights, particularly run-of-the-river rights, including mine, will not be adequately protected if the above-referenced permit is granted in the absence of specific quantification of total flows that are allocated to each of the tributaries and main stem of the Upper Colorado River under various rainfall and drought-condition scenarios.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 13 miles W of the City of San Saba.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its

operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

1859

Water Right No.

1861

1862

Christine Bessent

JIMMIE L. BRAY
10568 EAST FM 2092
MENARD, TEXAS 76859
TEL: 915 396 2760

OPA
SEP 28 2001

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 SEP 24 PM 4 14
CHIEF CLERKS OFFICE

September 20, 2001

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

20515
WR

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

a) Existing adjudicated, permitted and senior riparian rights, particularly run-of-the-river rights, including mine, will not be adequately protected if the above-referenced permit is granted in the absence of specific quantification of total flows that are allocated to each of the tributaries and main stem of the Upper Colorado River under various rainfall and drought-condition scenarios.

b) There are a total of approximately 10,000 acre-feet of water rights adjudicated or permitted in the San Saba River in Menard County. During many years there is not enough water in the river for many of the holders of water rights, including me, to fully utilize their right. The Menard County Water Control and Improvement District No. 1 is currently is in the process of entering into a contract with an engineering firm to study the feasibility of creating facilities to store water for the purpose of augmenting flows during drought years to enable water rights holders to more fully utilize their right. To implement this project for the purpose of assuring an adequate water supply to meet my adjudicated water right, the MCWCID No. 1 will require authorization from the TNRCC to divert and store a modest amount of excess flood waters.

c) the Menard County Water Control and Improvement District is in the process of creating a non-profit entity to purchase and/or lease existing water rights in the San Saba River in Menard County for the purpose of maintaining streamflows for environmental and agricultural purposes during times of drought. Grant of the above-referenced permit will impair my water right in that it will may prohibit my donation, sale, or lease of my water right to said entity.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 10 miles EAST of the City of Menard.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

Water Right No. 1832

JIMMIE L. BRAY
10568 EAST FM 2092
MENARD, TEXAS 76859

TEL: 915 396 2760

September 28, 2001

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 OCT -1 PM 4:05
CHIEF CLERKS OFFICE

Office of the Chief Clerk, MC 105
TNRCC
P. O. Box 13087
Austin, TX 78711-3087

20515
WR

OPA
OCT 02 2001

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River and the Colorado River Basin and request a contested case hearing in the above referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

a) Existing adjudicated, permitted and senior riparian rights, particularly run-of-the-river rights, including mine, will not be adequately protected if the above referenced permit is granted in the absence of specific quantification of total flows that are allocated to each of the tributaries and main stem of the Upper Colorado River under various rainfall and drought-condition scenarios.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 3 miles West of the City of San Saba.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

Sincerely yours,

Estate of Sara Jean Cameron

By: _____

James T. Cameron, Independent Executor

Water Right No. 1891 6 3

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 OCT -1 AM 10: 34
CHIEF CLERKS OFFICE

Office of the Chief Clerk, MC 105
TNRCC
P. O. Box 13087
Austin, TX 78711-3087

20515
WR

OPA KG
SEP 28 2001

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water right holder in the San Saba River Basin and believe that my water right will be seriously impaired by the agency's grant of the above-referenced permit application. Therefore, I am requesting a public meeting on the matter prior to any action being taken on it by the Commission.

Sincerely yours,

Estate of Sara Jean Cameron

By: James T. Cameron
James T. Cameron, Independent Executor

Water Right No. 1891 6 3

Date: September 28, 2001

305848.1/SPA/99999/9999/09282001

Wanda Ellis
2101 Wanda's Rd
Menard, TX 76859
(915) 396-4303

#

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 SEP 24 AM 10:54
CHIEF CLERKS OFFICE

September 20, 2001

OPA 9
20515 WR
SEP 28 2001

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

a) Existing adjudicated, permitted and senior riparian rights, particularly run-of-the-river rights, including mine, will not be adequately protected if the above-referenced permit is granted in the absence of specific quantification of total flows that are allocated to each of the tributaries and main stem of the Upper Colorado River under various rainfall and drought-condition scenarios.

b) There are a total of approximately 10,000 acre-feet of water rights adjudicated or permitted in the San Saba River in Menard County. During many years there is not enough water in the river for many of the holders of water rights, including me, to fully utilize their right. The Menard County Water Control and Improvement District No. 1 is currently is in the process of entering into a contract with an engineering firm to study the feasibility of creating facilities to store water for the purpose of augmenting flows during drought years to enable water rights holders to more fully utilize their right. To implement this project for the purpose of assuring an adequate water supply to meet my adjudicated water right, the MCWCID No. 1 will require authorization from the TNRCC to divert and store a modest amount of excess flood waters.

c) the Menard County Water Control and Improvement District is in the process of creating a non-profit entity to purchase and/or lease existing water rights in the San Saba River in Menard County for the purpose of maintaining streamflows for environmental and agricultural purposes during times of drought. Grant of the above-referenced permit will impair my water right in that it will may prohibit my donation, sale, or lease of my water right to said entity.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 6 miles EAST of the City of Menard.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

1823
Water Right No.

Sincerely,
Wanda Ellis

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 SEP 24 AM 10:53
CHIEF CLERKS OFFICE

H

MATAGORDA BAY FOUNDATION

OPA

OCT 1 0 2001

October 9, 2001

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 OCT 10 AM 8:15
CHIEF CLERKS OFFICE

Via CM/RRR #7000 1670 0006 3079 9717 and
Facsimile 512-239-3311
TNRCC Chief Clerk
Ms. LaDonna Castanuela
Mail Code 105
P. O. Box 13087
Austin, TX 78711-3087

20515
WR

Dear Ms. Castanuela:

This letter is a request by the Matagorda Bay Foundation (MBF) for a contested case hearing regarding the water rights application by the Lower Colorado River Authority (LCRA).

The group requesting this contested case hearing is the Matagorda Bay Foundation. The contact person is Henry Hamman. The address is 3270 West Main, Houston, Texas 77019. The daytime phone number is (713) 526-7417. The fax number is (713) 526-3068.

We are requesting this contested case hearing regarding the application of the Lower Colorado River Authority (LCRA) for water rights on the Colorado River. The permit application number is 5731.

The Matagorda Bay Foundation hereby requests a contested case application regarding application number 5731 by the LCRA.

The Matagorda Bay Foundation is a Texas non-profit, 501(c)(3) organization that is dedicated to the protection and preservation of Matagorda Bay. The purposes for which the Foundation were formed include promoting increased understanding and appreciation of the Matagorda Bay Estuarine system and its tributaries, promoting the conservation of the Matagorda Bay Estuarine system and its tributaries and contributing to the usefulness of the Bay for recreational and commercial purposes. The membership of the Matagorda Bay Foundation would be directly and profoundly affected by the granting of these water rights to the Lower Colorado River Authority. At the current time, much of the water that is the subject of this permit application flows into Matagorda Bay. Matagorda Bay's primary productivity is fueled by this freshwater inflow. We consider our mission to act as a steward of Matagorda Bay. We believe that this water right could impair Matagorda Bay in the long term if not the short term. Therefore, we request a contested case hearing.

3270 WEST MAIN, HOUSTON, TEXAS 77019; TELEPHONE 713.526.7417; TELECOPIER 713.526.3068

The membership of the Matagorda Bay Foundation is diverse, a coalition of the users of Matagorda, Espiritu Santo and San Antonio Bays. The freshwater inflow from the Colorado River flows directly into Matagorda Bay and affects the shrimp, crab, speckled trout, menhaden, red drum and virtually all other fisheries. The members of the Matagorda Bay Foundation live on Matagorda Bay and/or fish, birdwatch and otherwise recreate on Matagorda Bay. Matagorda Bay Foundation member Al Garrison is a fishing guide who operates out of Matagorda who is concerned that the recreational fishing in Matagorda Bay will be negatively affected. Matagorda Bay Foundation member Jim Blackburn is a frequent user of Matagorda Bay, fishing out of his kayak in Parker's Cut and the Mouth of the Colorado River and Oyster Lake. Matagorda Bay Foundation member Henry Hamman owns a house in Port O'Connor and is a recreational fisherman of the lower Matagorda Bay system. There are many additional members of the Foundation, all of whom fish and recreate on Matagorda Bay.

The basis of the concern of the membership of the Matagorda Bay Foundation is that all water rights could eventually be diverted to residential and commercial users, thereby depriving the Matagorda Bay system of freshwater inflows. Inflow studies by the State of Texas and LCRA clearly indicate the need for freshwater inflows. Therefore, until these freshwater inflow needs are accommodated, any additional water rights permits should not be issued. We are willing to work with LCRA to attempt to work out such inflow accommodations, but until such accommodations are arranged, we are opposed to the issuance of this permit and request the contested case hearing.

Stated otherwise, our concern about this application is the impact that the award of these water rights would have on the Matagorda Bay system, including loss of fish and shellfish productivity as well as loss of the phyto and zoo plankton that form the base of the food chain. In short, our concern is the disruption of the entire ecological system of Matagorda Bay.

Several members of the Matagorda Bay Foundation have property on Matagorda Bay. Al Garrison owns a fishing cabin on the banks of the Colorado River. Henry Hamman owns a home in Port O'Connor on the banks of Matagorda Bay. David Burrow has a home on Matagorda Bay. Jim Gann owns a home at Matagorda. Phil Fitzgerald owns a home in Port O'Connor. Bill Balboa owns a home in Palacios. All of these homeowners use Matagorda Bay for recreation and all of them are potentially harmed by this water rights application.

I thank you for considering this request for a hearing. Please let me know if you need any additional information.

Sincerely yours,

Henry Hamman by permission
Henry Hamman
Founding Board Member

Al Garrison by permission
Al Garrison
Founding Board Member

James B. Blackburn, Jr.
Founding Board Member

H

MATAGORDA BAY FOUNDATION

NATURAL RESOURCES CONSERVATION COMMISSION
OCT 11 PM 3:53
CHIEF CLERKS OFFICE

October 9, 2001

Via CM/RRR #7000 1670 0006 3079 9717 and
Facsimile 512-239-3311
TNRCC Chief Clerk
Ms. LaDonna Castanuela
Mail Code 105
P. O. Box 13087
Austin, TX 78711-3087

20515
WR

OPA
OCT 12 2001

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3270 WEST MAIN, HOUSTON, TEXAS 77019; TELEPHONE 713.526.7417; TELECOPIER 713.526.3068

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I thank you for considering this request for a hearing. Please let me know if you need any additional information.

Sincerely yours,

Henry Hamman by permission
Henry Hamman
Founding Board Member

Al Garrison by permission
Al Garrison
Founding Board Member

James B. Blackburn, Jr.
Founding Board Member

Riley C. Harkey
by Mrs Riley C. Harkey
Rt 1 Box 206
San Saba, Tx 76877
915-372-5339

NATURAL RESOURCE CONSERVATION COMMISSION
2001 SEP 26 PM 2:42
CHIEF CLERKS OFFICE

H

September 20, 2001

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

20515
WR

OPA 20
SEP 27 2001

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

a) Existing adjudicated, permitted and senior riparian rights, particularly run-of-the-river rights, including mine, will not be adequately protected if the above-referenced permit is granted in the absence of specific quantification of total flows that are allocated to each of the tributaries and main stem of the Upper Colorado River under various rainfall and drought-condition scenarios.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 5 miles W of the City of San Saba.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its

operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

14-1876 14-1878 14-1877
Water Right No.

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 SEP 26 PM 2:42
CHIEF CLERKS OFFICE

People and Nature: Our Future is in the Balance
NATIONAL WILDLIFE FEDERATION
GULF STATES NATURAL RESOURCE CENTER
44 East Avenue Suite 200
Austin Texas 78701
(512) 476-9805
FAX (512) 476-9810
http: www.nwf.org

OPA
OCT 11 2001

20515
WR

October 10, 2001

Ms. LaDonna Castañuela
Office of the Chief Clerk
MC 105, TNRCC
P.O. Box 13087
Austin, TX 78711-3087

Re: Request for Contested Case Hearing in the Matter of the Lower Colorado River Authority; Water Right Application No. 5731

Dear Ms. Castañuela:

The National Wildlife Federation ("NWF") hereby requests a contested case hearing on the above-referenced application. NWF provides the following information in support of that request.

This request for a contested case hearing is submitted on behalf of the National Wildlife Federation through its Gulf States Natural Resource Center. The contact information for NWF in this matter is as follows:

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 OCT 10 PM 3:56
CHIEF CLERKS OFFICE

Myron J. Hess, Counsel
National Wildlife Federation
44 East Avenue, Suite 200
Austin, TX 78701
Ph: 512-476-9805
Fax: 512-476-9810
email: hess@nwf.org

This is a **REQUEST FOR A CONTESTED CASE HEARING** on water rights application number 5731 which was filed by the Lower Colorado River Authority.

The National Wildlife Federation would be affected in a way that is not common to the general public because the National Wildlife Federation is a national, non-profit organization composed of people dedicated to protecting fish and wildlife resources and the right of people to use and enjoy those resources.[1] NWF's approximately 46,000 members in Texas use and enjoy those resources both recreationally and for economic benefit. NWF's participation in the hearing does

[1] The formal mission of the National Wildlife Federation "is to educate, inspire and assist individuals and organizations of diverse cultures to conserve wildlife and other natural resources and to protect the earth's environment in order to achieve a peaceful, equitable and sustainable future."

not require the participation of individual members in any capacity other than possibly to establish standing.

The Gulf States Natural Resource Center is a regional office of NWF and is located in Austin, Texas. One of the primary functions of the office is the implementation of a program to ensure adequate protection of stream and river flows to support fish and wildlife resources in Texas. NWF is pursuing that goal through a variety of avenues, including the filing of this hearing request.

The application by LCRA that is the subject of this hearing request has the potential to cause tremendous harm to the fish and wildlife resources of the Colorado River watershed, including Matagorda Bay, and to NWF members. Through this application, LCRA basically seeks authority to divert all of the unappropriated flows and a large percentage of flood flows, at least during non-major flood events, in the lower portions of the Colorado River. Even without the additional diversion authorization sought in the application that is the subject of this hearing request, LCRA's calculations, as currently available, indicate that previously determined target instream flows would be expected to be met only about 62% of the time, on average, with water demands at levels expected within the next 10 years. Those percentages would be lower during drought periods (about 38% of the time) and with higher water demands under existing water rights.

Obviously, increased water diversions, as sought pursuant to the current application, would decrease those flows and worsen the already unacceptable conditions even more. Those reduced flows would reduce water quality in the river and would diminish river flows necessary to protect fish and wildlife resources. Accordingly, NWF's interests in protecting fish and wildlife resources would be adversely affected by the granting of this application, as would its interests in protecting the ability of its members and others to recreate in and along the River. Al Garrison is one such person who owns property along the lower reaches of the River and who would be adversely affected by reduced flows.

The situation is even more dire with respect to bay and estuary inflows. Even without the additional diversion authorization sought by LCRA, currently available calculations indicate that previously determined target freshwater inflows into Matagorda Bay are projected to be met only about 36% of the time, on average, with water demands at levels expected within the next 10 years. Target inflow amounts are those expected to maintain good productivity of representative aquatic species. Those percentages would be even lower during a recurrence of critical drought conditions (about 15% of the time) and with higher water demands under existing water rights. Similarly, based on water demands expected during the next 10 years, previously determined critical inflow amounts (designed to provide a limited "refugium" area with reduced salinities to allow estuarine organisms to survive during lower inflow periods) would be expected to be met

only 85% of the time on average and 73% of the time during a recurrence of critical drought conditions.

Again, those percentages would be lessened as diversions pursuant to existing rights increase. Increased diversions authorized pursuant to this application would further reduce freshwater inflows and worsen conditions in the Matagorda Bay system. Accordingly, NWF's interests in protecting fish and wildlife resources would be adversely affected by the granting of this application, as would its interests in protecting the ability of its members and others to recreate in and along Matagorda Bay. One such NWF member who fishes and recreates in Matagorda Bay near the mouth of the Colorado River is James Blackburn. The ability of NWF members to protect their economic interests that are dependent on the health and productivity of the River and Matagorda Bay also would be adversely affected.

NWF is concerned with the amount of the requested diversion authorization and is particularly interested in participating in the development of special conditions to be included in any permit to limit additional adverse impacts to fish and wildlife resources. In particular, NWF believes that diversions, if authorized, should be limited only to periods of high inflows.

Please contact me at the phone number or address listed above if you have any questions or need additional information.

Sincerely,

Myron J. Hess

Myron J. Hess
Counsel

OPA

SEP 28 2001

September 20, 2001

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 SEP 24 AM 10:56
CHIEF CLERKS OFFICE

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

20515
WR

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

a) Existing adjudicated, permitted and senior riparian rights, particularly run-of-the-river rights, including mine, will not be adequately protected if the above-referenced permit is granted in the absence of specific quantification of total flows that are allocated to each of the tributaries and main stem of the Upper Colorado River under various rainfall and drought-condition scenarios.

b) There are a total of approximately 10,000 acre-feet of water rights adjudicated or permitted in the San Saba River in Menard County. During many years there is not enough water in the river for many of the holders of water rights, including me, to fully utilize their right. The Menard County Water Control and Improvement District No. 1 is currently is in the process of entering into a contract with an engineering firm to study the feasibility of creating facilities to store water for the purpose of augmenting flows during drought years to enable water rights holders to more fully utilize their right. To implement this project for the purpose of assuring an adequate water supply to meet my adjudicated water right, the MCWCID No. 1 will require authorization from the TNRCC to divert and store a modest amount of excess flood waters.

c) the Menard County Water Control and Improvement District is in the process of creating a non-profit entity to purchase and/or lease existing water rights in the San Saba River in Menard County for the purpose of maintaining streamflows for environmental and agricultural purposes during times of drought. Grant of the above-referenced permit will impair my water right in that it will may prohibit my donation, sale, or lease of my water right to said entity.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 5 miles E of the City of Menard.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

Leonard L. Hicks

Barbara A. Hicks

Water Right No. 001819

Donald L. and Bobby M. Huss
Box 426
Menard, Texas 76859
(915) 396-2195 day & night
FAX - none

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water right holder in the San Saba River Basin and believe that my water right will be seriously impaired by the agency's grant of the above-referenced permit application. Therefore I am requesting a public meeting on the matter prior to any action being taken on it by the Commission.

Sincerely yours,

Bobby M. Huss
Water Right No. 001819
Donald L. Huss

Date: 9-20-2001

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

2001 SEP 26 AM 11: 07

CHIEF CLERKS OFFICE

John + Katherine Kniffen
3170 E FM 2092
Menard, TX 76859

H

OPA 29

SEP 26 2001

September 20, 2001

20515
WR

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

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Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 2 1/2 miles E of the City of Menard.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

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3) That the LCRA permit will except the San Saba River in its entirety from its operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

177
Water Right No.

Katherine Griffin

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

2001 SEP 26 AM 11:07

CHIEF CLERKS OFFICE

John Kniffen
3170 E FM 2092
Menard, TX 76859

OPA

SEP 26 2001

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

20515
WR

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water right holder in the San Saba River Basin and believe that my water right will be seriously impaired by the agency's grant of the above-referenced permit application. Therefore I am requesting a public meeting on the matter prior to any action being taken on it by the Commission.

Sincerely yours,

John Kniffen

Water Right No. 177

Date: 9-20-01

SIERRA CLUB
FOUNDED 1892

P. O. Box 1931
Austin, TX 78767
512-477-1729 (phone)
512-477-8526 (fax)
lonestar.chapter@sierraclub.org

Lone Star Chapter

NATURAL RESOURCES CONSERVATION COMMISSION
OCT 12 PM 2:42
CHIEF CLERKS OFFICE

H
20515
WR

OPA 9
OCT 15 2001

October 11, 2001

Ms. La Donna Castanuela, Chief Clerk
MC 105, TNRCC
P. O. Box 13087
Austin, TX 78711-3087

Dear Ms. Castanuela:

Please accept this letter as a request from the Lone Star Chapter of the Sierra Club for a contested case hearing on Application No. 5731 by the Lower Colorado River Authority (LCRA) for a Water Use Permit to divert, store and use those excess flood waters and those unappropriated flows of the Colorado River Basin downstream of O.H Ivie Reservoir and downstream of Lake Brownwood, in an amount not to exceed 853,514 acre-feet of water annually.

As of this date the Lone Star Chapter of the Sierra Club has 29 members who live in the three counties (Colorado, Matagorda, and Wharton) considered as likely locations for potential off-channel reservoirs and an additional 51 members who live in Calhoun, Victoria, and Jackson Counties, which adjoin the bay system influenced by the Colorado River. Several of these members recreate on the Colorado River and/or along the coast in the areas adjacent to the mouth of the Colorado or other areas affected by freshwater inflows from the Colorado. Sierra Club members in these counties may have additional interests other than recreation that may be affected by the granting of the LCRA application. In addition the Lone Star Chapter of the Sierra Club has other members in other communities, especially Austin and Houston, who recreate on or adjacent to the Colorado River and/or in the coastal areas associated with the river. These members desire to recreate in these areas in the future and will do so if the opportunities for such recreational activities are not precluded or adversely affected by granting the application.

Please let me know if you need additional information.

Sincerely yours,

Ken Kramer

Ken Kramer, Director

SIERRA CLUB
FOUNDED 1892

P. O. Box 1931
Austin, TX 78767
512-477-1729 (phone)
512-477-8526 (fax)
lonestar.chapter@sierraclub.org

Lone Star Chapter

OPA KG
OCT 12 2001

October 11, 2001

Ms. La Donna Castanuela, Chief Clerk
MC 105, TNRCC
P. O. Box 13087
Austin, TX 78711-3087

20515
WR

Dear Ms. Castanuela:

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2001 OCT 11 PM 2:36
CHIEF CLERKS OFFICE
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Please let me know if you need additional information.

Sincerely yours,

Ken Kramer

Ken Kramer, Director

SIERRA CLUB
FOUNDED 1892
Lone Star Chapter

P. O. Box 1931
Austin, TX 78767
512-477-1729 (phone)
512-477-8526 (fax)
lonestar.chapter@sierraclub.org
www.texas.sierraclub.org

OPA
SEP 27 2006
BY

2006 SEP 27 AM 10 37
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

WR
20515

September 26, 2006

Office of the Chief Clerk
Texas Commission on Environmental Quality MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: LCRA Application No. 5731, Comments on Draft Permit

Dear Ms. Castañuela:

The Lone Star Chapter of the Sierra Club appreciates the opportunity to provide these comments on the draft permit for LCRA Application No. 5731. We concur with the comments, dated September 11, 2006, that were submitted to TCEQ by Myron Hess on behalf of the National Wildlife Federation (NWF). In addition, without waiving the right to contest any aspects of the permit application and the draft permit, the Sierra Club offers the following comments.

We are aware that this permit is one of several that will be required before the Lower Colorado River Authority (LCRA) is permitted to divert water from the Colorado River for transfer to the San Antonio River Basin for municipal water use by the San Antonio Water System (SAWS). As of this time LCRA has not finalized the location and intakes for off-channel reservoirs. Moreover, LCRA and SAWS have not reached a final decision to move forward with the project. In the interests of efficiency, we request that consideration be given to a process whereby issues related to this Application No. 5731 be reserved until such time that said decisions are finalized and that this draft permit be held in abeyance in the meantime.

Indeed we are quite surprised that TCEQ is moving this draft permit through the permitting process now, since TCEQ is well aware of the intensive environmental and other studies underway – but not yet complete – as part of the evaluation of the proposed LCRA/SAWS project. Those studies will provide valuable information that would be important and relevant to TCEQ's own environmental analysis of this permit application. Why, then, does the agency feel the necessity to move forward with this draft permit in the absence of the results of those studies – especially when, as best we are able to ascertain, the applicant has not been pushing nor expecting that this permit application would move through the TCEQ process before at least next year? At best, the release of a draft permit by TCEQ at this time was premature and illogical.

BG

The Sierra Club expresses great concerns regarding the vagueness of this draft permit in regards to the location, quantity, and manner in which water authorized by this permit would be used. For example, LCRA seeks authorization to divert, store, and use excess flood flows and those unappropriated flows of the Colorado River in an amount that is greater than three times the stated 250,000 acre-feet in the LCRA-SAWS Definitive Agreement. We feel that authorization of such an overallocation of water does not meet the test set forth in Section 11.134(b)(3)(E) of the Texas Water Code that TCEQ may approve an application for a water rights permit only if: "*the proposed appropriation addresses a water supply need in a manner that is consistent with the state water plan and the relevant approved regional water plan for any area in which the proposed appropriation is located, unless the commission determines that conditions warrant waiver of this requirement...*" As there seem to be no conditions that warrant such a waiver, we question whether TCEQ would be in compliance with the Texas Water Code if it issued this permit in its current form, given that the current Region K and Region L water plans do not call for this large a volume of water to be transferred from the Colorado to the San Antonio Basin as part of the LCRA/SAWS project.

It is also unclear how this permit is to be used for irrigation purposes. According to the LCRA-SAWS Project proposal and the approved Region K plan, none of the irrigation needs in Colorado, Wharton, and Matagorda Counties is to be met by excess flows stored in the off-channel reservoirs that are proposed under ***this*** permit.

Comments on Draft Permit and Permit Conditions:

2. **Use Authorization**: The magnitude of water contained in the draft permit far outstrips the amount of water that will be required for the LCRA-SAWS project. The SAWS terminal storage facilities are not being designed to handle 327,000 acre-feet. No justification has been provided for authorizing that large an appropriation of water through this permit.

3. **Diversion**: It is unclear how the diversion points identified in 3.A. (iii), (iv) and (vi) of the draft permit – which are described as drawing water from existing off-channel reservoirs or Eagle Lake fit the nature of this permit application, which seeks to divert water for storage in new off-channel reservoirs. It is also unclear how the Special Conditions associated with this Permit Application would apply to these Diversion Points. In addition, it is unclear how the diversion point identified in 3.A.(i) can be on the west bank of the Colorado, while the diversion point identified in 3.A.(v), described as being at the same latitude but at a longitude that is further west than the first diversion point, can be on the east bank of the Colorado.

4. **Conservation**: We commend the permit condition that requires the permit applicant and any successive wholesale customer to develop and implement conservation measures. However, this requirement is fairly boiler plate language, it is ambiguous, and most likely it is not enforceable as written. In order for this requirement to be meaningful specific requirements for permit compliance need to be developed and included in the permit. For example, HB1629 authorizes SAWS to resell water from the LCRA-SAWS

Project anywhere within the South Central Texas Region (Region L). While SAWS is to be commended on their water conservation efforts, there is no requirement in the permit that ensures that other customers of the waters obtained as a result of issuance of this permit will adopt water conservation measures or goals as aggressive as those that have been adopted by SAWS within its retail service areas. Moreover, since the water to be obtained through this permit is intended to be transferred eventually to another river basin the level of water conservation requirements included in the permit should be in the range of the "highest practicable levels of water conservation and efficiency achievable...."

Special Conditions:

6.A. (Target Instream Flows) It appears that six of the nine authorized diversion points identified in the draft permit are below the Wharton gage. With this in mind, there should be an addition to Table 1 of an appropriate target flow at an existing gage location downstream of the final point of diversion.

Compliance with target instream flow requirements should be met on an instantaneous measurement basis rather than a daily average.

The draft permit should make clear that no diversions are ever to take place unless the instantaneous flow measurement at the gage downstream of the diversion point is above target instream flows as listed in Table 1. We believe that this is the intent of the permit; however, there is room for misinterpretation of this requirement as stated in the draft.

6.B. (Channel Maintenance Flows) - River ecosystems require a variety of flow types and we are pleased to see the inclusion of channel maintenance flows in this application. However, special condition 6.B in the draft permit is quite vague and needs to be clarified as to whether or not the permitee can divert water if the flow is less that 27,000 cfs. The special condition only notes that permitee will make no diversion that will reduce flows below 27,000 cfs. We certainly hope that the intent is to set 27,000 cfs as a benchmark for channel maintenance flows. Furthermore, we again concur with NWF that the inclusion of the phrase "is forecast to occur" introduces uncertainly because there are no guidelines for how or when that forecast would occur.

6.C. (Freshwater Inflows) - The Sierra Club is generally supportive of this requirement, however, monthly target freshwater inflow amounts should come from the best available science and most current data. In this case the currently adopted and the pending LCRA Water Management Plans do not include the most recent data on freshwater inflow needs for Matagorda Bay. In addition it is not clear which version of the WMP the Commission contemplates using as a basis for freshwater inflow amounts.

In addition we agree with the comment in the September 11 letter from NWF that using a plan that is intended to guide the management of the Highland Lakes may not be appropriate in this case. It may be more appropriate to use the August 2006 Matagorda Bay Freshwater Inflow Needs Study to establish the criteria for this condition.

Again, compliance should be measured downstream of the lowermost authorized diversion point for any diverter on the Colorado River in order to insure that the required flows are indeed reaching the bay.

6.E. (Riparian Management Plan) – The Riparian Management Plan is a welcome inclusion in this permit. The RMP should include the riparian area from Columbus to the lowermost authorized diversion point, not just to Wharton. The permit should include more guidance on the contents of this RMP, the extent and components of the riparian corridor covered, and the performance criteria for evaluating plan implementation.

6.F. (Gage Locations) – As mentioned previously, just measuring flows at the Columbus and Wharton gages seems insufficient. Flows should be measured downstream of all authorized diversion point for purposes of permit compliance. Furthermore, flows should be measured down stream of any diverter on the Colorado River for means of assessing compliance with freshwater inflow requirements.

6.G. (Off-Channel Reservoirs) – The proposed issuance of this draft permit before the specific locations for the proposed off-channel reservoirs have been identified and evaluated emphasizes again the premature nature of this permit. Environmental analysis of the full impacts of the issuance of this permit require consideration of the terrestrial mitigation and other issues associated with off-channel reservoirs, and the permit should not move forward without information being provided on specific sites. If TCEQ does proceed regardless, then the agency needs to make explicit that the permit must be amended in the future to expressly authorize specific off-channel reservoirs (after full evaluation and mitigation) before any diversions take place under this permit.

Again, we appreciate the opportunity to comment on the draft permit, but we must firmly assert again that we consider TCEQ action on the permit at this time to be ill-advised, especially given the incomplete nature of the environmental and related studies that are meant to inform the decisions about whether to proceed with the project that is driving this permit application. We urge the agency to put this permit on hold at least until the completion of those studies. If the agency does move forward, however, we want to be clear that we have not withdrawn our request for a contested case hearing on the matter.

Sincerely,

Ken Kramer

Ken Kramer, Director
Lone Star Chapter, Sierra Club

cc: Ms. Lyn Dean, LCRA
Dr. Wendy Gordon, TCEQ
Ms. Colette Barron, TPWD
Mr. Doug Caroom, Bickerstaff, Heath, Pollan & Caroom
Mr. Myron Hess, National Wildlife Federation

Ricky Lambert
Lorena Lambert
2106 W. Commerce
San Saba, Tx, 76877
915-372-5408

NATURAL RESOURCE CONSERVATION COMMISSION
2001 OCT -1 AM 10: 28
CHIEF CLERKS OFFICE

September 20, 2001

OPA
SEP 28 2001

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

20515
WR

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

a) Existing adjudicated, permitted and senior riparian rights, particularly run-of-the-river rights, including mine, will not be adequately protected if the above-referenced permit is granted in the absence of specific quantification of total flows that are allocated to each of the tributaries and main stem of the Upper Colorado River under various rainfall and drought-condition scenarios.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 3 miles W of the City of San Saba.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its

operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

TEXAS NAT
RESOURC
CONSERVAT
COMMISSIO
OCT -1 AM
CHIEF CLERKS OFF

14-1886
Water Right No.

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water right holder in the San Saba River Basin and believe that my water right will be seriously impaired by the agency's grant of the above-referenced permit application. Therefore I am requesting a public meeting on the matter prior to any action being taken on it by the Commission.

Sincerely yours,
Ricky Lambert

Water Right No.
14-1886

Date:
Sept. 22, 2001

Gary P. Lano
PO Box 486
Menard, TX 76859
(915) 396-3074
Fax: same

H

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
SEP 24 AM 10:54
CHIEF CLERKS OFFICE

September 20, 2001

OPA 8

SEP 28 2001

20515
WR

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

a) Existing adjudicated, permitted and senior riparian rights, particularly run-of-the-river rights, including mine, will not be adequately protected if the above-referenced permit is granted in the absence of specific quantification of total flows that are allocated to each of the tributaries and main stem of the Upper Colorado River under various rainfall and drought-condition scenarios.

b) There are a total of approximately 10,000 acre-feet of water rights adjudicated or permitted in the San Saba River in Menard County. During many years there is not enough water in the river for many of the holders of water rights, including me, to fully utilize their right. The Menard County Water Control and Improvement District No. 1 is currently is in the process of entering into a contract with an engineering firm to study the feasibility of creating facilities to store water for the purpose of augmenting flows during drought years to enable water rights holders to more fully utilize their right. To implement this project for the purpose of assuring an adequate water supply to meet my adjudicated water right, the MCWCID No. 1 will require authorization from the TNRCC to divert and store a modest amount of excess flood waters.

c) the Menard County Water Control and Improvement District is in the process of creating a non-profit entity to purchase and/or lease existing water rights in the San Saba River in Menard County for the purpose of maintaining streamflows for environmental and agricultural purposes during times of drought. Grant of the above-referenced permit will impair my water right in that it will may prohibit my donation, sale, or lease of my water right to said entity.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately .1 miles W of the City of Menard.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

Water Right No. 14-1806

Gary P. Land
PO Box 486
Menard TX 76859
(915) 396-3074
Fax: Same

OPA

SEP 28 2001

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water right holder in the San Saba River Basin and believe that my water right will be seriously impaired by the agency's grant of the above-referenced permit application. Therefore I am requesting a public meeting on the matter prior to any action being taken on it by the Commission.

Sincerely yours,

Water Right No.
14-1806

Date:

Oct 2001

TEXAS NATURAL RESOURCE CONSERVATION

H

SEP 25 PM 3:47

CHIEF CLERKS OFFICE

September 20, 2001

ORA

20515 SEP 26 2001
WR

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

a) Existing adjudicated, permitted and senior riparian rights, particularly run-of-the-river rights, including mine, will not be adequately protected if the above-referenced permit is granted in the absence of specific quantification of total flows that are allocated to each of the tributaries and main stem of the Upper Colorado River under various rainfall and drought-condition scenarios.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 3-4 miles North East of the City of San Saba.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its

operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

001907

Water Right No.

Patsy McConnell
Box 265
San Saba Tx
76877

Chief Clerk, MC 105
T.N.R.C.C.
P.O. Box 13087
Austin Tx 78711-3087

H

OPA KG
SEP 28 2001
2001 OCT -1 AM 10:24
CHIEF CLERKS OFFICE
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Estate of Herbert H. Mears
2398 Mears Lane
Menard, Texas 76859

September 22, 2001

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

20515
WR

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

a) Existing adjudicated, permitted and senior riparian rights, particularly run-of-the-river rights, including mine, will not be adequately protected if the above-referenced permit is granted in the absence of specific quantification of total flows that are allocated to each of the tributaries and main stem of the Upper Colorado River under various rainfall and drought-condition scenarios.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 20 miles west of the city of Menard.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be

subject to the terms of the permit.

Lee Mears, Executor of the Estate of Herbert H. Mears

Water Right No. 1769

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2011 OCT -1 AM 10: 25
CHIEF CLERKS OFFICE

GRAVES, DOUGHERTY, HEARON & MOODY
A PROFESSIONAL CORPORATION

515 CONGRESS AVENUE
SUITE 2300
AUSTIN, TEXAS 78701
(512) 480-5600
FAX: (512) 478-1976

MAILING ADDRESS:
POST OFFICE BOX 98
AUSTIN, TEXAS 78767

WEB ADDRESS:
www.gdhm.com

WRITER'S DIRECT NUMBER:
(512) 480-5688

E-MAIL ADDRESS:
rmelvin@gdhm.com

OBA
OCT 11 2001

October 3, 2001

20515
WR

LaDonna Castañuela
Office of the Chief Clerk, MC 105
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

Hand-Delivery

2001 OCT -3 AM 10:54
CHIEF CLERKS OFFICE
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Re: Application No. 5731 of the Lower Colorado River Authority for a Water Use Permit Pursuant to Texas Water Code § 11.121

Dear Chief Clerk:

I represent the Texas Chapter of the Coastal Conservation Association ("CCA Texas"). On behalf of CCA Texas, I request a contested case hearing on the Lower Colorado River Authority's Application No. 5731.

CCA Texas is a nonprofit organization of sportfishing enthusiasts and conservationists working to save the natural resources of Texas coastal waters. Since its founding in 1977, CCA Texas has had a strong interest in maintaining the freshwater inflows to estuaries that are necessary to support natural marine breeding habitats. CCA Texas has participated in a fish tagging program in the Galveston Bay system designed to measure the effects of freshwater inflow and water salinity changes on recreational fish and with the Texas Parks and Wildlife Department in a study designed to evaluate the effects of water conditions in nine major Texas bay systems on marine life.

CCA Texas has 40,000 members. Many of these members fish in Matagorda Bay in and around the mouth of the Colorado River and have a strong interest in maintaining natural marine breeding habitats in Matagorda Bay, as is shown by the attached affidavit of CCA Texas member Venable Proctor.

The Lower Colorado River Authority proposes to divert 853,514 acre-feet of water from the Colorado River at diversion points in Colorado, Wharton and Matagorda Counties at a maximum diversion rate of 40,000 cfs. The diversion of this amount of water from the lower Colorado River basin has the potential to greatly impact the flow of freshwater into Matagorda Bay, and thus to impact the health of the marine breeding habitat in Matagorda Bay, to the detriment of CCA Texas and its members. Thus, CCA Texas has a justiciable interest in the Lower Colorado River Authority's application.

Thank you for your attention to this matter. Please do not hesitate to call me if you have any questions.

Sincerely,

Robin A. Melvin

Robin A. Melvin

RAM/
Enclosure

cc: Kevin Daniels
Executive Director
Coastal Conservation Association
4801 Woodway, Suite 220W
Houston, Texas 77056

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 OCT -3 AM 10: 54
CHIEF CLERKS OFFICE

AFFIDAVIT OF VENABLE B. PROCTOR

THE STATE OF TEXAS §
§
COUNTY OF VICTORIA §

BEFORE ME, the undersigned authority, personally appeared Venable B. Proctor, a person known to me, who being first duly sworn, deposed and stated as follows:

1. My name is Venable B. Proctor. I am over 21 years of age and fully competent to give this affidavit. I have personal knowledge of the matters contained in this affidavit.

2. I am a lawyer practicing in Victoria, Texas. My business address is One O'Connor Plaza, Suite 1100, Victoria, Texas 77901-6549.

3. CCA Texas is a nonprofit organization of sportfishing enthusiasts and conservationists working to protect the natural resources of Texas coastal waters, including the natural resources of Matagorda Bay.

4. I have been a member of the Texas Chapter of the Coastal Conservation Association ("CCA Texas") since its founding in 1977. I am presently the vice-president of CCA Texas and the chairman of the Governmental Affairs Committee. I am active in the local Mid-Coast Chapter of CCA Texas.

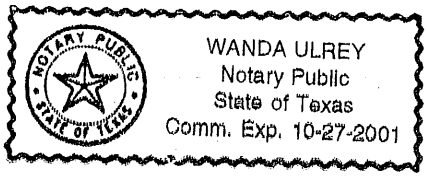
5. I have owned a second home in Port O'Connor, Texas for approximately 25 years. I spend well over one-half of my weekends there in any given year. While I am in Port O'Connor, I regularly fish in the area bays, including Matagorda Bay. I plan to continue to visit my home in Port O'Connor and fish in Matagorda Bay.

6. Other members of CCA Texas also fish in Matagorda Bay.

7. The foregoing is true and correct to the best of my knowledge and belief. Further, Affiant sayeth not.

Venable B. Proctor

SUBSCRIBED AND SWORN TO BEFORE ME on this the 2nd day of October, 2001.



Notary Public in and for
The State of Texas

H

Marjorie Ann O'Banon Altizer
P.O. Box 246
Cherokee, TX 76832
915-622-4236

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 OCT -1 AM 10:29
CHIEF CLERKS OFFICE

September 20, 2001

OPA KG
SEP 28 2001

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

20515
WR

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

a) Existing adjudicated, permitted and senior riparian rights, particularly run-of-the-river rights, including mine, will not be adequately protected if the above-referenced permit is granted in the absence of specific quantification of total flows that are allocated to each of the tributaries and main stem of the Upper Colorado River under various rainfall and drought-condition scenarios.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 10 miles E of the City of San Saba.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its

operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

1927

Water Right No.

JERRY M. RAMBO
HCR 35 BOX 14
MENARD, TX - 76859

H

TEXAS NATURAL
RESOURCE
CONSERVATION
COMMISSION

2001 OCT -1 PM 4: 12

CHIEF CLERKS OFFICE

September 20, 2001

OPA
OCT 02 2001

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

20515
WR

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

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b) There are a total of approximately 10,000 acre-feet of water rights adjudicated or permitted in the San Saba River in Menard County. During many years there is not enough water in the river for many of the holders of water rights, including me, to fully utilize their right. The Menard County Water Control and Improvement District No. 1 is currently is in the process of entering into a contract with an engineering firm to study the feasibility of creating facilities to store water for the purpose of augmenting flows during drought years to enable water rights holders to more fully utilize their right. To implement this project for the purpose of assuring an adequate water supply to meet my adjudicated water right, the MCWCID No. 1 will require authorization from the TNRCC to divert and store a modest amount of excess flood waters.

c) the Menard County Water Control and Improvement District is in the process of creating a non-profit entity to purchase and/or lease existing water rights in the San Saba River in Menard County for the purpose of maintaining streamflows for environmental and agricultural purposes during times of drought. Grant of the above-referenced permit will impair my water right in that it will may prohibit my donation, sale, or lease of my water right to said entity.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 3 1/2 miles EAST of the City of Menard.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

Water Right No. 001811 Type 6 USE 3 IRRIGATI

BRACEWELL & PATTERSON L.L.P.
ATTORNEYS AT LAW

Kenneth Ramirez
Partner

111 Congress Avenue, Suite 2300
Austin, Texas 78701-4043
Phone: 512.494.3611
Fax: 512.472.9123
kramirez@bracepatt.com

October 10, 2001

LaDonna Canstanuela, Chief Clerk
Office of the Chief Clerk
Texas Natural Resource Conservation Commission
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

OPA 9
OCT 11 2001
20515
WR

2001 OCT 10 PM 4:02
CHIEF CLERKS OFFICE
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Re: Permit Application No. 5731

Dear Ms. Castanuela:

The City of Austin ("City") requests a contested case hearing on the application of the Lower Colorado River Authority ("LCRA") for Water Use Permit, Application No. 5731. The City can be reached by mailing or faxing correspondence to my address/fax number on this letterhead and by telephone to my direct number, 512-494-3611.

LCRA seeks a Water Use Permit pursuant to § 11.121 of the Texas Water Code and § 295.1 of the Texas Natural Resource Conservation Commission Rules. LCRA seeks authorization to divert, store, and use those excess flood waters and those unappropriated flows of the Colorado River Basin downstream of O.H. Ivie Reservoir and downstream of Lake Brownwood, in an amount not to exceed 835,514 acre-feet of water annually. It seeks authorization to divert and use the requested appropriation of water at nine of its authorized existing diversion points downstream of the U.S.G.S. streamflow gage at Columbus in Colorado County.

The City maintains significant water rights throughout the Colorado River basin, particularly below O.H. Ivie Reservoir and above Matagorda Bay, especially those recognized by Certificates of Adjudication Nos. 14-5471 (as amended) and 14-5489 (as amended). The City is a municipal corporation that owns, operates, and maintains facilities for providing electric power and potable water service to its many citizens. The City has a personal justiciable interest that would be affected by the Application for Water Use Permit No. 5731, which was announced in various TNRCC Public Notice publications around the Colorado River Basin.

In Texas, one may obtain a contested case hearing to oppose an application if he or she is an "affected person" with a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest which is affected by the application. 30 TEX. ADMIN. CODE § 295.256(a) (2000). Showing that a person has standing as an affected person does not require a party to show that it will ultimately prevail in the contested case hearing; it requires a party only to show that it will *potentially* suffer harm or that it has a "justiciable interest" related to the proceedings. TEX. WATER CODE § 5.114(a) (Vernon 2000); *Heat Energy Advanced Tech. v. West Dallas Coalition for Environmental Justice*, 962 S.W.2d 288 (Tex. App.--Austin 2000, pet. dism'd).

An application for a water right permit will not be granted if it will cause adverse impact to an existing water right. 30 TEX. ADMIN. CODE § 297.45(a) (2000). The "no injury rule" does not require that the harm be substantial, or even that the harm be measurable; any injury whatsoever constitutes grounds to deny the

permit application. Further, the burden of proving that no adverse impact will result to other water rights holders is on the applicant. 30 TEX. ADMIN. CODE § 295.45(d) (2000).

In this case, the City maintains a personal justiciable interest in protecting its water rights throughout the Colorado River basin. LCRA has not specifically outlined the details of the permit, including the amount of water that will actually be diverted and used, the diversion points, or the intended uses. Therefore, it is difficult to quantify the exact impact on the City at this time. However, LCRA's permit would appropriate an enormous amount of water—835,514 acre-feet—which will have a huge and sweeping impact on the entire basin.

More specifically, LCRA's proposed permit will potentially harm the City's water rights in the following ways:

1. LCRA's permit will substantially affect the City's legal right to maintain and use its return flows. If LCRA is authorized to appropriate all "unappropriated" water in the basin, this may include the City's return flows unless specifically excluded. LCRA's permit will authorize the appropriation of 835,514 acre-feet of water, which appears to include the City's current and future return flows; this 835,514 number was derived using historical hydrology that include the City's return flows. The City, which has a reuse program and intends to reuse its return flows in the future, will be unable to do so because that water will already be appropriated to LCRA. A factor relevant to determining an affected person is whether the interest claimed is one protected by the law under which the application will be considered. 30 TEX. ADMIN. CODE § 55.256(c)(1) (2000). The City's interest in maintaining its return flows is protected by its legal right as a water rights holder to divert, use and reuse all of the water authorized in its permits.

2. In determining whether someone has a personal, justiciable interest, the commission weighs the likely impact of the regulated activity on the use of the impacted natural resource by the person. 30 TEX. ADMIN. CODE § 55.256(c)(5) (2000). The City's use of the water in the Colorado River basin will be adversely affected if LCRA is authorized to appropriate the City's return flows, therefore the impacted natural resource is the water the City is legally entitled to divert and use.

3. The proposed permit would deprive the City of an equivalent quantity of water that was available with the full, legal exercise of its existing water right before the change, and thereby violate 30 TEX. ADMIN. CODE § 295.45(a). The City has a legal right to divert and use all of the amount of water appropriated in its water rights, including its return flows. LCRA's permit would allow LCRA to appropriate the City's return flows, and would thereby reduce the amount of water available to the City in comparison with that available prior to the permit.

4. The City is the largest municipality in the basin, and will be unable to secure additional water rights if LCRA is granted all unappropriated flows. This will have a harmful impact on the City's ability to serve its growing population in the future.

5. LCRA's application may have a negative impact on basin-wide instream uses and bay and estuary flows. There may be associated instream flow and bay and estuary inflow impacts that may affect the City's ability to reuse its return flows even if the return flows are not included in the 835,514 acre-feet quantity.

BRACEWELL & PATTERSON L.L.P.
ATTORNEYS AT LAW

Because there are issues that have not been addressed by LCRA in its application—such as the amount of water that will be used; where and how the water will be diverted; and the number of off-channel reservoirs within Colorado, Wharton, and Matagorda Counties—the City is unable to fully assess the potential impact of this application on the City's water rights at this time. Accordingly, the City must reserve the right to raise additional issues as they present themselves.

Please schedule this hearing request for a Commission meeting and advise me of the time and date of the meeting.

Very truly yours,

Bracewell & Patterson, L.L.P.

Kenneth Ramirez

KR/jcb

George and Jean Sultemeier
12735 Treadwell Lane
Fort Mckavett, Texas 76841
Fax 915-396-3683

CPA

SEP 26 2001

2001 SEP 26 AM 11:13
CHIEF CLERKS OFFICE
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

September 20, 2001

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

20515
WR

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water rights holder in the San Saba River in the Colorado River Basin and request a contested case hearing in the above-referenced water rights application.

My water rights would be negatively affected by grant of a permit to the LCRA to divert, store and use excess flood waters and unappropriated flows in the Colorado River because:

a) Existing adjudicated, permitted and senior riparian rights, particularly run-of-the-river rights, including mine, will not be adequately protected if the above-referenced permit is granted in the absence of specific quantification of total flows that are allocated to each of the tributaries and main stem of the Upper Colorado River under various rainfall and drought-condition scenarios.

b) There are a total of approximately 10,000 acre-feet of water rights adjudicated or permitted in the San Saba River in Menard County. During many years there is not enough water in the river for many of the holders of water rights, including me, to fully utilize their right. The Menard County Water Control and Improvement District No. 1 is currently is in the process of entering into a contract with an engineering firm to study the feasibility of creating facilities to store water for the purpose of augmenting flows during drought years to enable water rights holders to more fully utilize their right. To implement this project for the purpose of assuring an adequate water supply to meet my adjudicated water right, the MCWCID No. 1 will require authorization from the TNRCC to divert and store a modest amount of excess flood waters.

c) the Menard County Water Control and Improvement District is in the process of creating a non-profit entity to purchase and/or lease existing water rights in the San Saba River in Menard County for the purpose of maintaining streamflows for environmental and agricultural purposes during times of drought. Grant of the above-referenced permit will impair my water right in that it will may prohibit my donation, sale, or lease of my water right to said entity.

Location of Water Right:

My water right is located on the San Saba River in the Colorado River Basin approximately 1 miles West of the City of Menard.

Proposed Conditions in the Requested Permit

1) That, prior to granting of the referenced permit, the quantity of water to be allocated to each main tributary and the main stem of the Upper Colorado under normal and varying rainfall and drought conditions, sufficient to meet existing water rights and foreseeable riparian rights through the year 2050, be quantified, based on annual flows passing certain gauges to be established for that purpose.

2) That there be a ten-year moratorium, from the date of grant of the application, on forfeiture of any existing water rights in the Upper Colorado River basin.

3) That the LCRA permit will except the San Saba River in its entirety from its operation, or, in the alternative, that the permit will specify that only flood waters and unappropriated flows in excess of 30,000 acre feet in the San Saba River basin will be subject to the terms of the permit.

14-1793
Water Right No.

Sincerely,

George Sullemeier

George and Jean Sultemeier
12735 Treadwell Lane
Fort Mckavett, Texas 76841
Fax 915-396-3683

OPA 9

SEP 28 2001

Office of the Chief Clerk, MC 105
TNRCC
P.O. Box 13087
Austin, TX 78711-3087

20515
WR

Re: Lower Colorado River Authority
Water Right Application No. 5731

I am a water right holder in the San Saba River Basin and believe that my water right will be seriously impaired by the agency's grant of the above-referenced permit application. Therefore I am requesting a public meeting on the matter prior to any action being taken on it by the Commission.

Sincerely yours,

Jean Sultemeier

Water Right No.

Date: September 22, 2001

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 SEP 28 AM 10:17
CHIEF CLERKS OFFICE

LAW OFFICES OF
BOOTH, AHRENS & WERKENTHIN, P.C.
A PROFESSIONAL CORPORATION
515 CONGRESS AVENUE, SUITE 1515
AUSTIN, TEXAS 78701-3503
512 / 472-3263 • FAX 512 / 473-2609

MICHAEL J. BOOTH
CAROLYN AHRENS
FRED B. WERKENTHIN, JR.

OF COUNSEL
JOSEPH S. BABB

OPA
OCT 16 2001

October 11, 2001

20515
WR

LaDonna Castanuela
Chief Clerk
TNRCC, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

RE: Hearing Request of Sand Supply; Application No. 5731 (LCRA)

Dear Ms. Castanuela:

Enclosed please find an original and twelve copies of the Motion for Denial or Dismissal of the Application and, Alternatively, Request for a Contested Case Hearing regarding the above-referenced application.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Fred B. Werkenthin, Jr.

FBW/db
Enclosures
366-010914-protest-CC-ltr

RECEIVED
OCT 11 2001
TNRCC
UTIL. ADMIN. ADMINISTRATION

CHIEF CLERKS OFFICE
2001 OCT 15 PM 3:00
TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

RECEIVED
OCT 11 2001
WATER RIGHTS PERMITTING

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
2001 OCT 15 PM 3:00
CHIEF CLERKS OFFICE
RECEIVED
OCT 11 20
WATER RIGHTS PERMITTING
OPA
OCT 16 2001

APPLICATION OF LOWER COLORADO RIVER AUTHORITY FOR A WATER RIGHT, APPLICATION NO. 5731	§ § § §	

MOTION FOR DENIAL OR DISMISSAL OF THE APPLICATION AND, ALTERNATIVELY, REQUEST FOR A CONTESTED CASE HEARING

TO THE HONORABLE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION:

COMES NOW Sand Supply, A Division of Campbell Concrete and Materials, L.P. ("Sand Supply") by and through its attorneys, and files this motion for dismissal or denial of Application No. 5731 of the Lower Colorado River Authority ("LCRA") and, in the alternative, requests a contested case hearing on the application.

SAND SUPPLY'S INTEREST

Sand Supply operates a gravel quarry near Columbus, Texas. Sand Supply currently uses groundwater for its water demands at the facility. Sand Supply would like to use surface water to supplement its groundwater supplies. Sand Supply has applied for a temporary permit to divert up to 250 acre-feet per year from the Colorado River (Application No. TA-8207). The draft permit for Application No. TA-8207 contains conditions that prevent Sand Supply from diverting water when, to do so, would impair existing water rights or reduce the flow in the river below the level needed to meet instream flow and bay and estuary freshwater inflow targets.

LCRA has protested Sand Supply's Application No. TA-8207. In its protest, LCRA states that Sand Supply's application for 250 acre-feet per year would adversely affect LCRA's existing water rights. Subsequently, LCRA has filed Application No. 5731 with the Texas Natural Resource Conservation Commission ("TNRCC") for up to 853,514 acre-feet of water per annum.

LCRA's application for 853,514 acre-feet of water is pursuant to TEX. WATER CODE ANN. § 11.121. Section 11.121 requires that unappropriated water in the amount of the proposed water right be available in the source of supply. LCRA, by its application, is asserting to the TNRCC that there is 853,514 acre-feet of unappropriated water at the same time it is asserting that there is insufficient water for the 250 acre-feet requested by Sand Supply. Note that a temporary permit is

not based on unappropriated water. A temporary permit can be issued in absence of unappropriated water if there are water rights that are not fully developed. A temporary permit can also be issued if there is sufficient unappropiated water to fulfill the water requested. If there is sufficient unappropriated water or appropriated water not needed for existing water rights during the term of Sand Supply's proposed permit, Sand Supply's permit should be granted. Obviously, if there is insufficient water for Sand Supply's 250 acre-foot application, there is most certainly insufficient unappropriated water for LCRA's 853,514 acre-foot application. As a result, Sand Supply and LCRA's applications are competing applications in spite of the fact that Sand Supply seeks only a small, temporary water right and LCRA seeks an immense, permanent water right.

LCRA'S APPLICATION MUST BE DISMISSED OR DENIED AS A MATTER OF LAW.

1.1. LCRA'S APPLICATION DOES NOT MEET APPLICABLE STATUTORY REQUIREMENTS

LCRA's application fails to provide information required by TEXAS WATER CODE § 11.125. This section requires an application for a water right to include maps that show the location of facilities, including reservoirs. LCRA has not included maps as required by § 11.125. In the notice for Application No. 5731, it is stated that LCRA does not now know the location for the proposed reservoirs.

In addition, LCRA seeks authorization to use the water subject to Application No. 5731 outside of the Colorado River Basin, but LCRA's application does not contain information required by TEXAS WATER CODE § 11.085. The notice states that LCRA is seeking to "use the water requested in this application anywhere within the applicant's authorized water service area and/or such other areas that hereinafter may be authorized by law." During the 2001 Legislative Session, House Bill 1629 was passed, which allows LCRA to provide water to the City of San Antonio, which is outside of the Colorado River Basin. LCRA's application, therefore, requests authorization to provide water outside the Colorado River Basin and is required to meet the requirements of TEXAS WATER CODE § 11.085.

1.2. APPLICATION NO. 5731 DOES NOT COMPLY WITH TNRCC RULES

30 TAC § 295.7 requires that an application shall state the location of dams and off-channel reservoirs. LCRA's application merely indicates the counties in which the reservoirs will be located. 30 TAC § 295.124 contains requirements specifically made applicable to applications for dam and reservoir projects, yet LCRA's application includes no plans, maps, or other required information.

As stated above, the place of use requested by LCRA includes areas not in the Colorado River Basin. Application No. 5731, therefore, is an application for an interbasin transfer of water. As a result, it must meet the requirements of 30 TAC § 295.13. LCRA failed to provide any of the information required by § 295.13. In addition, 30 TAC § 295.155 places specific requirements for notices for interbasin transfers. The notice issued for Application No. 5731 did not comply with these requirements.

1.3. LCRA SHOULD NOT BE HEARD TO SAY THAT THERE IS SUFFICIENT UNAPPROPRIATED WATER FOR APPLICATION NO. 5731

In LCRA's protest of Sand Supply's Application No. TA-8207, LCRA states that Sand Supply's application to divert 250 acre-feet of water per annum will harm LCRA. One element that LCRA must show for the approval of Application No. 5731 is that there is sufficient unappropriated water for an 853,514 acre-foot water right. LCRA should not be heard in Application No. 5731 to say there is 853,514 acre-feet per year of unappropriated water at the same time LCRA asserts in its protest of Sand Supply's Application No. TA-8207 that there is insufficient water for Sand Supply to divert 250 acre-feet per year without harming LCRA.

1.4. MOTION FOR DISMISSAL OR DENIAL

LCRA's Application No. 5731 does not comply with applicable statutory and regulatory requirements. Further, in Application No. 5731, LCRA is taking a position on a factual issue that is diametrically opposed to LCRA's position in Application No. TA-8207. The TNRCC must, therefore, dismiss or deny Application No. 5731 rather than proceed with a hearing on the merits.

REQUEST FOR A CONTESTED CASE HEARING

If the TNRCC does not dismiss or deny Application No. 5731, Sand Supply requests a contested case hearing and submits the following:

1.5. PROTESTOR INFORMATION

Sand Supply, A Division of Campbell Concrete and Materials, L.P.
Attention: Kevin May
P.O. Box 181
Thompsons, Texas 77481

9253 FM 2759
Richmond, Texas 77469

1.6. APPLICATION INFORMATION

Application No. 5731
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767

1.7. HEARING / PUBLIC COMMENT REQUEST

Sand Supply requests a contested case hearing.

1.8. EFFECT OF PROPOSED WATER RIGHT

Sand Supply has applied for and the TNRCC has declared administratively complete, Application No. TA-8207 to take 250 acre-feet per annum from the Colorado River near Columbus, Texas. The draft permit is limited such that Sand Supply can only divert water during relatively high flow episodes on the Colorado River. As described above, Application No. 5731 is, in effect, a competing application to Application No. TA-8207.

The diversion points requested by LCRA in Application 5731 are 59 to 156 miles below the diversion point in the Sand Supply Application No. TA-8207.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Sand Supply requests that TNRCC deny or dismiss Application No. 5731, or, in the alternative, grant Sand Supply's request for a contested case hearing.

Respectfully submitted,

BOOTH, AHRENS & WERKENTHIN, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
(512) 472-3263
(512) 473-2609 FAX

By: _____
FRED B. WERKENTHIN, JR.
State Bar No. 21182015

ATTORNEY FOR SAND SUPPLY