

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

DOCKET NO. 2010-0025-WR

APPLICATION NO. 5838 OF THE	§	BEFORE THE
LOWER COLORADO RIVER	§	
AUTHORITY (LCRA) AND	§	
PROPOSED AGREED ORDER	§	TEXAS COMMISSION ON
AMENDING LCRA'S WATER	§	
MANAGEMENT PLAN AND	§	
RELATED FILINGS	§	ENVIRONMENTAL QUALITY

LOWER COLORADO RIVER AUTHORITY'S
COMMENTS IN SUPPORT OF PROPOSED AGREED ORDER

COMES NOW, the Lower Colorado River Authority (LCRA), and files these comments in support of the Commission's prompt approval of the proposed agreed order regarding Application No. 5838, which relate to proposed amendments to LCRA's Water Management Plan. The proposed agreed order reflects the earnest efforts of the hearing requesters,¹ other stakeholders, and TCEQ staff, working together with LCRA over the last few weeks to resolve outstanding differences so that the revised plan may be put into effect prior to February 1, 2010.

Over the last several months, this basin has been grappling with a drought that, in many respects, is more intense in its character than any drought on record. This drought has highlighted that the WMP currently in effect is not responsive enough to stretch LCRA's water supply during a severe drought. As discussed more fully below, timely approval of this proposed agreed order is crucial to enabling LCRA to better manage its supplies in a way that strikes a reasonable balance between the many competing needs for water in the lower Colorado River basin. Although rains this autumn have brought water supply levels up to 59 percent of capacity from a low of 39 percent in early September, the drought is not over from a water supply perspective. Indeed, LCRA has less water in storage than it had at this same time last year. And,

¹ The hearing requesters, who have all filed withdrawals in support of the proposed agreed order, include: South Texas Project Nuclear Operating Company (STPNOC), National Wildlife Federation (NWF), Sierra Club, Texas Parks and Wildlife Department (TPWD) and the City of Austin.

LCRA continues to operate at deficit, meaning the lakes have received significantly less inflow than during a comparable period of time in the Drought of Record.²

I. History of the Water Management Plan

LCRA has the right to divert and use up to 1.5 million acre-feet (MAF) from lakes Buchanan and Travis, pursuant to Certificates of Adjudication Nos. 14-5478 and 14-5482 and the conditions and criteria set forth in the Water Management Plan (WMP). The WMP was required by court order³ and is incorporated into LCRA's Certificates of Adjudication Nos. 14-5478 and 14-5482.⁴ The Certificates of Adjudication and the WMP govern LCRA's operation of lakes Buchanan and Travis and dictate how LCRA makes water available from these lakes to help meet "firm" water⁵ customer needs, downstream interruptible irrigation demands, and environmental flow needs of the lower Colorado River and Matagorda Bay. Certificates of Adjudication Nos. 14-5478 and 14-5482 state that "LCRA shall interrupt or curtail the supply of water ... to the extent necessary to allow LCRA to satisfy all demand for water under such certificate[s] pursuant to all firm, uninterruptible water commitments."⁶ Thus, until firm demand for water equals the combined firm yield (445,266 AFY), LCRA can supply water for irrigated agriculture on an interruptible basis and the WMP describes how LCRA will do this through management and curtailment of supplies from the lakes during times of drought.⁷

The WMP is developed and maintained by LCRA, working with key stakeholders, but each update of the document must be reviewed and approved by the Texas Commission on Environmental Quality (TCEQ). The review and approval of the plan is essentially an

² Drought of Record refers to the worst hydrologic drought that has occurred since detailed records have been kept. This drought for the lower Colorado River basin is the drought that occurred from 1947-1957. The WMP states that the Drought of Record occurred between 1947 and 1956. The reservoirs, however, did not recover until mid-1957. See 1999 Water Management Plan at p. 69.

³ *In re The Exceptions of the Lower Colorado River Authority and the City of Austin to the Adjudication of Water Rights in the Lower Colorado River Segment of the Colorado River Basin*, No. 115, 414-A-1 (264th Dist. Ct., Bell County, Tex. April 20, 1988).

⁴ See *In re Consideration of the Lower Colorado River Authority's Application to Amend its Water Management Plan including its Drought Management Plan*, TNRCC Docket No. 98-1387-WR (March 1, 1999) ("1999 WMP Order").

⁵ Firm water refers to the amount of water that would be available on a consistent or firm basis through a Drought of Record after honoring all senior water rights.

⁶ Certificates of Adjudication Nos. 14-5478 & 14-5482 at p. 4 (¶ 2.B.(7)).

⁷ 1999 WMP Order at FOF 12. The WMP also sets forth criteria for declaring a drought worse than the Drought of Record.

amendment to LCRA's water rights for lakes Buchanan and Travis. The first WMP was developed and approved by TCEQ's predecessor, the Texas Water Commission, in 1989. The WMP has been amended several times to incorporate the results of new environmental studies and drought management strategies. Indeed, the orders approving prior versions of the plan expressly recognize that the curtailment process set forth in the plan will require modification as firm demands increase and as hydrologic conditions change in the Colorado River basin. The plan in current use received state approval in 1999.

II. The Water Management Plan Amendments Requested in 2003

In 2003, LCRA requested approval from TCEQ to modify the plan to address curtailment of interruptible supplies during drought so as to ensure availability of supply to meet higher projected firm water demands than addressed by the 1999 plan. The request also sought to alter the amount of firm water committed for environmental purposes and to adjust the criteria under which LCRA provides water for environmental needs. Finally, the request sought to incorporate the LCRA Drought Contingency Plan (DCP) into the WMP so as to provide a consolidated document for LCRA customers and stakeholders to rely upon.

LCRA staff developed the proposed amendments over a year of working with a Water Management Plan Revision Advisory Committee composed of twenty-six (26) invited members representing all major stakeholder interests. These included but were not limited to municipal and industrial users, irrigators, the conservation community, representatives of lake and river recreation and commercial interests, and state and federal agencies.

III. The Proposed Agreed Order

Since LCRA first received notice of the TCEQ staff proposed order in late October, it has worked diligently with the hearing requesters to address their interests in a manner that allows the plan to be put into effect for 2010. Importantly, these changes do not affect the curtailment trigger points for interruptible supply or the firm water commitment for environmental flow needs that were included in LCRA's request in 2003. However, the proposed changes do provide significant and important assurances to stakeholders with regard to how LCRA will manage its water supplies and how it will address additional revisions to the

WMP to incorporate new information, better science, and settlement agreements. **The recently negotiated changes to the order address the following substantive issues:**

1) Providing Certainty for 2010

February 1st is fast approaching and represents a critical date. The proposed order would allow LCRA to use February 1st as the date for determining the availability of interruptible supply for irrigation in 2010.⁸ It also establishes that LCRA's obligations for meeting environmental flow requirements from February 1, 2010 through the end of the year would be based on February 1 storage.⁹ Downstream rice farmers need certainty regarding their water supply as they make planting decisions and field preparations for first crop rice over the next few weeks. To provide this certainty, LCRA must begin its contracting process with these customers in the very near future.

2) New Amendments to the Water Management Plan

The Proposed Agreed Order reflects LCRA's commitment to incorporating the lessons learned from the ongoing drought and new studies regarding environmental flow needs by setting a specific timeframe and scope for additional revisions to the WMP.¹⁰ As steward of the Colorado River, LCRA has a responsibility to plan for the water future of our basin. LCRA will live up to this responsibility. Indeed, LCRA staff has already started work to begin the next revision process. Notably, this next revision to the WMP represents what will likely be the most complex revision to the WMP since the first plan was developed and approved by the Commission in 1989. Consistent with LCRA's past approach to revisions of the WMP and the Proposed Agreed Order, LCRA is committed to using a robust stakeholder process to develop recommendations for any further amendments to the WMP – one that is reasonably calculated to

⁸ In past years, consistent with the 1999 WMP and as requested by these customers, LCRA has made the decision regarding the availability of supply from these reservoirs for irrigated agriculture in November, based on projections of January 1st storage. This year, responding to input from these same customers, the LCRA Board agreed to make its decision based on combined water storage in lakes Buchanan and Travis on February 1st, in hopes that additional rains resulting in run-off to lakes Buchanan and Travis might come in January. Rainfall in January has been about average, contributing about 30,000 acre-feet in additional water supply since January 1.

⁹ Proposed Agreed Order, Ordering Provision ¶1(b).

¹⁰ Proposed Agreed Order, Ordering Provision ¶1(f).

allow meaningful participation by interested basin stakeholder groups and to achieve regional consensus, where possible.

3) Instream Flows

Under the revised WMP, when combined water storage in lakes Buchanan and Travis on January 1 is at or above 1.4 million acre-feet, and to the extent that inflows are legally available for storage in lakes Buchanan and Travis, LCRA is required to release these inflows to help meet a higher ‘target’ level of instream flows at certain downstream locations.¹¹ These flows are measured on a mean daily basis. If combined storage is less than 1.4 million acre-feet on January 1, LCRA must release stored water to maintain certain minimum or ‘critical’ instream flows. These requirements generally apply on a mean daily basis except at the Austin and Bastrop gages, which have some instantaneous requirements as well.

Changes have been made to the proposed order to ensure that, if LCRA has sufficient inflows into its reservoirs to meet the daily average target flow requirement in a ‘target’ year, LCRA will schedule its releases to maintain certain minimum flows at the Bastrop gage and consider more recent instream flow science.¹² This change would not affect the total amount of supply LCRA is obligated to release for instream flows, but could affect the scheduling of those releases in some instances in a manner that addresses concerns raised by Texas Parks and Wildlife Department, National Wildlife Federation, and Sierra Club.

III. Conclusion

For the reasons set forth above, LCRA respectfully requests the Commission to approve the proposed agreed order as submitted.

¹¹ Under the 1999 WMP, ‘target’ requirements apply at or above January 1 combined storage of 1.1 million acre-feet.

¹² Proposed Agreed Order, Ordering Provision ¶1(c).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2010, a true and correct copy of this document was filed electronically with the TCEQ Chief Clerk at <http://www10.tceq.state.tx.us/epic/efilings>, and copies were served to all parties listed on the attached mailing list via deposit in U.S. Mail.



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