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January 8, 2010

Mr. Steve Ramos, Project Manager  
Water Rights Permitting & Availability Section  
Texas Commission on Environmental Quality  
MC 160  
P.O. Box 13087  
Austin, TX 78711-3087

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---

Carter P. Smith  
Executive Director

Re: Lower Colorado River Authority; Application No. 5838 to Amend the LCRA Water Management Plan

Dear Mr. Ramos:

Texas Parks and Wildlife Department (TPWD) has reviewed the proposed Agreed Order Approving Amendments to the Lower Colorado River Authority (LCRA) Water Management Plan that was submitted by LCRA counsel Lyn Clancy via email to you on December 17, 2009. Based upon representations from respective legal counsel, TPWD believes that the applicant, all hearing requesters, and the Executive Director of the Texas Commission on Environmental Quality (TCEQ) have agreed to the proposed order. The provisions of the proposed Agreed Order address key concerns raised by TPWD regarding Application No. 5838. Accordingly, TPWD hereby withdraws its request for a contested case hearing on Application No. 5838.

It has come to my attention that the TCEQ General Counsel may set the proposed Agreed Order for consideration by the TCEQ commissioners. Should the Commission hear this matter and express the desire to substantively alter the proposed Agreed Order, TPWD retains its right to request that the Commission not act on the application and instead allow the applicant, the original hearing requesters, and the Executive Director additional time for settlement discussions and, if necessary, coordination regarding the TCEQ processing of Application No. 5838 and related hearing requests as required by Commission rules pursuant to Chapter 30 Texas Administrative Code Chapter 55.

Thank you for your consideration of this matter. Should you have any questions, please call me at 512 389 8899.

Sincerely,

Colette Barron Bradsby, Attorney  
Texas Parks and Wildlife Department  
Legal Division  
4200 Smith School Road  
Austin, TX 78744  
512 389 8899 Phone  
512 389 4482 Fax

cc: Shana Horton, Texas Commission on Environmental Quality



October 26, 2004

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WR

TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY

2004 OCT 26 AM 10:23

CHIEF CLERKS OFFICE

HR OPA  
OCT 26 2004

BY

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- ROBERT L. COOK  
EXECUTIVE DIRECTOR

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

Re: Application to Amend Lower Colorado River Authority Water Management Plan; Application No. 5838

Dear Ms. Castanuela:

Texas Parks and Wildlife Department (TPWD) respectfully requests a contested case hearing regarding the Application to Amend the Lower Colorado River Authority's (LCRA) Water Management Plan (WMP) (Application No. 5838). LCRA is seeking numerous changes to its WMP. Of particular interest to TPWD are the alterations to the allocation of water for environmental needs, including instream flows and freshwater inflows to the bay and estuary.

Background

TPWD is the state agency with primary responsibility for protecting the state's fish and wildlife resources.<sup>1</sup> TPWD's resource protection activities include providing recommendations on scheduling instream flows and freshwater inflows for the management of fish and wildlife resources.<sup>2</sup> TPWD has made such recommendations to the LCRA in the development of the revised WMP.

TPWD also has a statutory role in the hearing process and, upon request, shall be a full party in any hearing on water use permit applications.<sup>3</sup> The TCEQ, in making a final decision on any application to store, take or divert water, is required to consider all information, evidence and testimony presented by TPWD.<sup>4</sup> In addition, the TCEQ is required to consider the impacts on water quality, instream uses and freshwater inflows and all water use permits may be conditioned to protect those flows.<sup>5</sup>

<sup>1</sup> TEX. PARKS & WILD. CODE §12.001(a).  
<sup>2</sup> TEX. PARKS & WILD. CODE §12.001(b)(2).  
<sup>3</sup> TEX. WATER CODE §11.147(f); TEX. PARKS & WILD. CODE §12.024(c).  
<sup>4</sup> TEX. WATER CODE §11.147(f); TEX. PARKS & WILD. CODE §12.024(b).  
<sup>5</sup> TEX. WATER CODE §§11.147, 11.150, 11.152; 30 Tex. Admin. Code §§297.54-56.



Take a kid  
hunting or fishing

• • •

Visit a state park  
or historic site

Maintaining adequate instream flows and freshwater inflows to protect fish and wildlife resources is critical to the duties of TPWD. The quantity and timing of LCRA's releases of water for environmental needs under the WMP directly impact existing instream uses of the river and freshwater inflows to the bay and estuary. TPWD's main interest in the WMP revision process is to ensure that the WMP provides adequate instream flows and freshwater inflows to maintain ecologically healthy and productive ecosystems.

#### Freshwater Inflows

Under the current WMP when the combined reservoir storage for the Highland Lakes is above 1.7 million acre-feet (approximately 85% full), target levels for freshwater inflows for the bay and estuary are met. However, when the combined reservoir storage drops below 1.7 million acre-feet, the freshwater inflow requirements drop to significantly reduced "critical" levels.

The currently used critical inflow amount, as independently calculated by LCRA, is less than the historic minimum inflows to Matagorda Bay. LCRA has acknowledged that the basis used to determine the critical inflow needs is not sufficient and therefore does not represent a mechanism to truly address the critical needs of the bay and estuary. The critical inflow amount is based upon a salinity-inflow relation rather than ecological or biological modeling. Additionally, the inflow number chosen in the WMP revision does not reflect the best available data. More recent calculations by LCRA staff indicate that, to maintain the critical salinity-inflow relation, approximately three times the amount of inflow required under the current WMP is needed.

In addition, according to LCRA model results, under the current WMP, target inflows to the bay are met only 38% of the time and critical inflows are met only 90% of the time. This implies that 10% of the time the designated critical inflows will not be met. This would be unacceptable even if the designated critical inflow amount were accurate.

To help address these concerns, TPWD had requested that additional scenarios be modeled that incorporate a more gradual reduction in freshwater inflows to the bay as reservoir storage declines. TPWD also requested that additional firm water be dedicated to freshwater inflows. LCRA responded by recommending an additional intermediate stage (1.1 to 1.7 million acre-feet) in which 1.5 times the critical inflow would be passed to the estuary. LCRA also recommended an increase in the amount of firm water to meet freshwater inflows (3,090 ac-ft/year to 6,060 ac-ft/yr). However, TPWD is concerned that the decision to use the existing critical inflow number rather than the revised, more accurate, critical inflow number will result in continued increased bay salinity levels. Although the increase in the amount of firm water is a positive

move, it will not counteract the potential adverse impact of the use of a flawed critical inflow number.

Sufficient freshwater inflow in Matagorda Bay is vital for key species, such as blue crab and brown shrimp. The LCRA should utilize the best available information and change the WMP to reflect the revised critical inflow number.

#### Instream Flows

Also of concern are the proposed changes to the WMP regarding instream flows. Under the current WMP, instream flows are reduced to lower critical levels when the combined reservoir storage is at or below 1.1 million acre-feet. A proposed revision to the WMP would reduce instream flows from target levels to critical levels when reservoir storage equals 1.4 million acre-feet.

Our records indicate that even under the existing WMP, there are periods when instream flows fall below target levels. Because of the increased trigger amount, the critical level may be triggered more often resulting in greater reductions of instream flows. As a result, drought-like conditions may be imposed on fish and wildlife resources far more often than such conditions actually occur in Texas.

While TPWD is pleased to see an increase in the amount of firm water committed to protection of instream flows and inflows to Matagorda Bay (16,000 ac-ft/yr to 33,4000 ac-ft/yr), TPWD is concerned about the recommendation to change the trigger to drop from target to critical instream flow levels.

#### Conclusion

TPWD and LCRA have a long history of working together to address the common goal of assuring the ecological health of the Colorado River and Matagorda Bay system. In fulfilling its statutory obligations, TPWD has made recommendations for instream flows and freshwater inflows for the LCRA WMP since its inception, has participated in previous contested case hearings regarding the LCRA's WMP, and has been an active stakeholder in the WMP development and revision processes. In addition, TPWD has conducted joint technical studies regarding the Lower Colorado River's instream and freshwater inflow needs and, along with LCRA, TCEQ and the Water Development Board, TPWD is currently engaged in a new study of the freshwater inflow needs of Matagorda Bay.

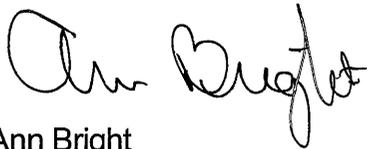
We are hopeful that LCRA will do everything possible to ensure the ecological health of the Colorado River and Matagorda Bay and that we will continue to work together to achieve this goal. The request for a hearing at this time is

Ms. LaDon Castanuela  
TPWD Request for Hearing  
Page 4  
October 26, 2004

not a conclusion that our joint efforts have failed, but is intended only to maintain appropriate options as mandated by the administrative process. TPWD may withdraw its hearing request if its concerns regarding instream flows and freshwater inflows can be met.

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 512/389-8558 or fax 512/389-4814. Thank you for your attention to this matter.

Sincerely,



Ann Bright  
General Counsel  
State Bar of Texas No. 08146200  
4200 Smith School Rd.  
Austin, Texas 78744  
Phone: 512/389-8558  
Fax: 512/389-4814

LAB:cas

cc: Mr. Robert L. Cook  
Mr. Joseph Fitzsimons  
Dr. Larry McKinney  
Mr. Phil Durocher  
Ms. Lyn Dean

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

CAROLYN AHRENS  
OF COUNSEL

January 8, 2010

**Via Email and Regular Mail**

Mr. Steve Ramos, Project Manager  
Water Rights Permitting & Availability Section  
Texas Commission on Environmental Quality  
MC 160  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Lower Colorado River Authority; Application No. 5838 to Amend the LCRA Water Management Plan

Dear Mr. Ramos:

STP Nuclear Operating Company (STPNOC) has reviewed the proposed Agreed Order Approving Amendments to the Lower Colorado River Authority (LCRA) Water Management Plan that was submitted by LCRA counsel Lyn Clancy via email to you on December 17, 2009. Based upon representations from respective legal counsel, STPNOC believes that the applicant, all hearing requesters, and the Executive Director of the Texas Commission on Environmental Quality (TCEQ) have agreed to the proposed order. The provisions of the proposed Agreed Order address key concerns raised by STPNOC regarding Application No. 5838. Accordingly, STPNOC hereby withdraws its request for a contested case hearing on Application No. 5838.

It has come to my attention that the TCEQ General Counsel may set the proposed Agreed Order for consideration by the TCEQ commissioners. Should the Commission hear this matter and express the desire to substantively alter the proposed Agreed Order, STPNOC retains its right to request that the Commission not act on the application and instead allow the applicant, the original hearing requesters, and the Executive Director additional time for settlement discussions and, if necessary, coordination regarding the TCEQ processing of Application No. 5838 and related hearing requests as required by Commission rules pursuant to Chapter 30 Texas Administrative Code Chapter 55.

Thank you for your consideration of this matter.

Sincerely,



Carolyn Ahrens,  
Legal Counsel of Record for STPNOC

cc via email:

Shana Horton, TCEQ  
Rick Gangluff, STPNOC  
Sandra Dannhardt, STPNOC  
Jon Wood, STPNOC General Counsel



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 "STP Owners," which include Texas Genco, LP., the City of San Antonio, acting by and through its City Public Service Board, the City of Austin and AEP Texas Central Company.

STPNOC is a Texas non-profit corporation created and financed by the STP Owners to maintain and operate the STP electric generating facilities in Matagorda County, Texas. STP facilities use water for cooling as a necessary component of the power generation process.

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 Texas Commission on Environmental Quality's ("TCEQ") predecessor agency. Proceedings on that application resulted in the STP Owners acquiring water rights for STP under Water Rights Permit No. 3233, superseded by Certificate of Adjudication No. 14-5437. 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 reversion and termination provisions. Contractual Permit No. CP-237 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. Water rights for STP include a special condition related to diversion of flows in excess of a percentage of flow at the diversion point. The ability to divert and use water for STP also is particularly affected by water quality at the diversion point. Two off-channel impoundments adjacent to the Colorado River are authorized for STP, and recirculation of water is authorized. CP-237 additionally evidences STPNOC's right to be supplied water from LCRA reservoirs.

To secure water supply for STP, STPNOC has filed Water Rights Application No. 14-5437A with the TCEQ, also relevant to use of water from the lower Colorado River. That application, which has been declared administratively complete, and the water rights and documents discussed above, are matters of record with the TCEQ.

Applicant Information:

Lower Colorado River Authority  
P.O.Box 222  
Austin, Texas 78767-0220

STPNOC's Standing to Protest:

Based on the proceedings on Water Use Permit No. 3233 for the STP and other information available regarding water supply in the lower Colorado River Basin, STPNOC believes that

granting LCRA's Application may impact STPNOC and the STP owners' interests in ways not common to the general public. This is true as to STPNOC's current water supply and interests, including, but not limited to, those directly related to the supply of water from LCRA's Certificates of Adjudication No. 14-5478 and 14-5482. Among other things, LCRA's Water Management Plan currently explains that it may understate the amount of water that it must hold in storage to meet its contractual commitments for the South Texas Project. LCRA's proposed amendment will impact the interests associated with STPNOC's pending water rights application, as well. STPNOC also is concerned regarding, and may be impacted by, changes in flow necessary to maintain acceptable water quality, and particularly salinity levels, at STPNOC's diversion facilities.

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).<sup>1</sup> 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 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 that application may be considered affected persons").

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<sup>1</sup> 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").

Location and Distance of Water Rights from the Proposed Activity:

STPNOC's diversion point in Matagorda County, in the lower Colorado River Basin, is a matter of record with the agency. LCRA's proposed amendments will affect the entire lower Colorado River Basin. With regard to proximity of the impact to STPNOC, that impact will occur as far upstream as the availability of water in LCRA's Highland Lakes reservoirs to supply water for the South Texas Project pursuant to contractual permit, and as far downstream as the availability and quality of water flows for the South Texas Project in Matagorda County.

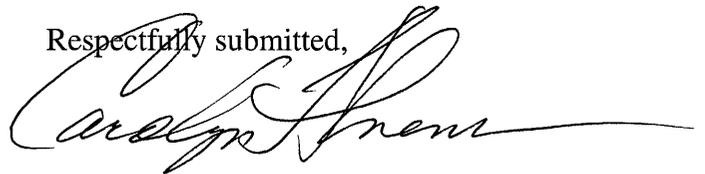
Conditions in Proposed Permit which may Satisfy Protestant's Concerns:

At this time, no draft permit amendment has been prepared, and the TCEQ staff have not yet performed the analyses necessary for the STPNOC to determine whether or not there are terms and provisions that would satisfy STPNOC's concerns regarding the impact of the proposed amendment. In this regard, STPNOC particularly is concerned with how consideration of the proposed amendment of the LCRA Water Management Plan will impact modeling of basin flows and water rights, which in turn will impact the consideration of several pending applications, including STPNOC's application.

Conclusion:

In consideration of the matters outlined above, STPNOC asks that this request be processed expeditiously and that the TCEQ convene a contested-case hearing regarding LCRA's application.

Respectfully submitted,



Carolyn Ahrens  
LAW OFFICES OF BOOTH, AHRENS  
& WERKENTHIN, P.C.  
515 Congress Avenue, Suite 1515  
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(512) 472-3262 (phone)  
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MICHAEL J. BOOTH  
FRED B. WERKENTHIN, JR.  
WIL GALLOWAY

OPA

CAROLYN AHRENS  
OF COUNSEL

FEB 09 2006

February 9, 2006

BY Jul

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

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61283

CHIEF CLERKS OFFICE

FEB 9 - 9 AM 10:08

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

**Re: Application No. 5838 by Lower Colorado River Authority (Water Management Plan)**

Dear Ms. Castañuela:

By letter signed by me and filed with your office on October 21, 2004, STP Nuclear Operating Co. ("STPNOC") requested a contested case hearing regarding Lower Colorado River Authority's ("LCRA") Application No. 5838. LCRA's Application No. 5838 seeks to amend LCRA's Water Management Plan, which defines its water management programs and policies, including, among other things, those for use of water from the Colorado River generally and from Certificate of Adjudication Nos. 14-5478 and 14-5482 specifically.

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. 5838 to the extent consistent with the settlement.

The settlement agreement expressly preserves STPNOC's right to participate in any proceedings on Application No. 5838 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..

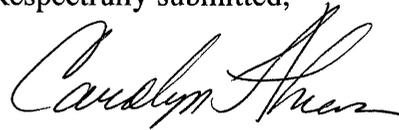
As part of STPNOC's settlement with LCRA, an Amended and Restated Contract and an Amended Partial Assignment and Transfer of Water Permit are entered between the parties pursuant to which STPNOC holds stated interests in Certificate of Adjudication No. 14-5437.

*[Handwritten mark]*

Certificate of Adjudication No. 14-5437 is referenced in STPNOC's request for hearing. For additional reasons stated in STPNOC's October 21, 2004 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. 5838 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)  
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Cc:

Rick Gangluff  
Jon Wood  
Lyn Dean  
Kellye Rila



SIERRA  
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Lone Star Chapter

January 8, 2010

Mr. Steve Ramos, Project Manager  
Water Rights Permitting & Availability Section  
Texas Commission on Environmental Quality  
MC 160  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Lower Colorado River Authority; Application No. 5838 to Amend the LCRA Water Mgmt. Plan

Dear Mr. Ramos:

The Sierra Club has reviewed the proposed Agreed Order Approving Amendments to the Lower Colorado River Authority (LCRA) Water Management Plan that was submitted by LCRA counsel Lyn Clancy via email to you on December 17, 2009. Based upon representations from respective legal counsel, Sierra Club believes that the applicant, all hearing requesters, and the Executive Director of the Texas Commission on Environmental Quality (TCEQ) have agreed to the proposed order. The provisions of the proposed Agreed Order address key concerns raised by Sierra Club regarding Application No. 5838. Accordingly, Sierra Club hereby withdraws its request for a contested case hearing on Application No. 5838.

It has come to my attention that the TCEQ General Counsel may set the proposed Agreed Order for consideration by the TCEQ commissioners. Should the Commission hear this matter and express the desire to substantively alter the proposed Agreed Order, Sierra Club retains its right to request that the Commission not act on the application and instead allow the applicant, the original hearing requesters, and the Executive Director additional time for settlement discussions and, if necessary, coordination regarding the TCEQ processing of Application No. 5838 and related hearing requests as required by Commission rules pursuant to Chapter 30 Texas Administrative Code Chapter 55.

Thank you for your consideration of this matter. Should you have any questions, please call me at 512-476-6962 (direct office line).

Sincerely,

Ken Kramer, Director  
Lone Star Chapter, Sierra Club

cc: Shana Horton, TCEQ

PO Box 1931, Austin, TX 78767    tel: (512) 477-1729    fax: (512) 477-8526    lonestar.chapter@sierraclub.org



**SIERRA CLUB**  
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Lone Star Chapter

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HR OPA  
NOV 10 2004  
BY [Signature]

CHIEF CLERKS OFFICE

NOV 10 AM 10:34

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

38219  
WR

November 9, 2004

VIA FAX AND MAIL

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

RE: Application #5838 – Application to Amend the LCRA Water Management Plan

Dear Ms. Castañuela:

The Lone Star Chapter of the Sierra Club (“Sierra Club”) submits this letter to request a contested case hearing on the Lower Colorado River Authority’s (“LCRA”) application to amend its Water Management Plan (“WMP”), Application 5838.

The Sierra Club has an historic interest in water management planning in the Lower Colorado River basin, including but not limited to participation in the advisory groups established by LCRA for the original and each subsequent revision of the WMP and participation as a party in contested case proceedings regarding previous versions of the WMP. In these matters the interests of the Sierra Club have included but are not limited to the maintenance of instream flows and freshwater inflows to the bay and estuary system to protect water quality, preserve habitat for fish and wildlife and plant species, and provide for recreational opportunities in and near the river and on the coast.

The interests of the Sierra Club in this matter go beyond the interests of the general public. The Sierra Club has approximately 25,000 members in Texas (including 6,000 members of the Austin Regional Group of the Sierra Club and several thousand members along the Texas coast), and many of these members recreate in and along the Colorado River and in the coastal areas adjacent to the River. Recreational activities engaged in by Sierra Club members in the affected region include hiking, canoeing, kayaking, fishing, birding, other wildlife viewing, and hunting, among others. The availability and quality of these recreational opportunities are dependent upon adequate instream flows and freshwater inflows to the bay and estuary system.

Explore, enjoy and protect the planet.

lonestar.chapter@sierraclub.org . www.texas.sierraclub.org . PO Box 1931, Austin, TX 78767  
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[Handwritten initials]

The WMP and the proposed revisions to the WMP impact the volume, timing, and duration of those instream flows and freshwater inflows, and thus they may materially affect the water quality, habitat, and recreational value of the river and bay system. The Sierra Club acknowledges and appreciates the fact that LCRA in its WMP and proposed revisions attempts to address instream and freshwater inflow needs. There are several issues and concerns about how well the WMP and the proposed revisions accomplish that task.

One such issue is that the proposed revisions are not based on the most current data available to LCRA at the time the revisions were developed and adopted – specifically data produced in part by LCRA itself that indicate higher levels of critical freshwater inflows are needed to maintain salinity balances in the bay system than previously thought. Indeed the LCRA staff provided information on this topic to the LCRA Water Management Plan Advisory Group for this round of revisions at the first meeting of the Advisory Group on March 22, 2001. Information was presented verbally and in the form of two papers: “Reevaluation of Salinity-Inflow Relationship for Matagorda Bay” (February 21, 2001) by Brian Cook and John Wedig, LCRA, and “Revisions to Matagorda Bay System Freshwater Inflow Needs from the Colorado River Basin “ (Draft – March 5, 2001) by Quentin Martin, LCRA.

An addendum (dated July 1, 2001) to the paper by Cook and Wedig was provided to Advisory Group members for the July 9, 2001 meeting of the Advisory Group that revised some of the information provided earlier as a result of including additional months of data on salinity in Matagorda Bay. Even that addendum, however, concluded that:

“The salinity in the eastern arm of Matagorda Bay has been quite variable since the diversion of the Colorado River. Estuary salinity quickly freshens in response to floods while evaporation and periods of reduced inflows increases salinity.” The 1997 FIS [Freshwater Inflow Study] equation did not predict the elevated salinities observed this past summer, especially those in excess of 25 ppt. ***Monthly inflows were above 14.26 (1000 acre-feet) throughout 1997-2000 when salinity frequently exceeded 25 ppt, indicating that the Critical Inflow need (specified in LCRA Water Management Plan, amended 1999) is inadequate to maintain desired salinity dynamics in the eastern arm of Matagorda Bay*** [emphasis added].”

“***The most accurate predictive equation developed for the salinity-inflow relationship is the Revised All Data Equation*** [emphasis added]. The equation used additional data from April 96-October 96 and January 2001 to April 2001. Additionally, the equation accounts for bias to the dryer condition and dropping the 60 day inflow term makes it the most statistically sound equation produced.”

Despite the fact that LCRA staff concluded that the Critical Inflow need specified in the 1999 revision of the WMP was inadequate to maintain desired salinity dynamics in the eastern arm of Matagorda Bay, it is our understanding that the Critical Inflow need specified in the 1999 revision of the WMP is the one used in the proposed revision of the WMP, which calls into question the appropriateness of the revised plan in maintaining the ecological health of Matagorda Bay.

The Sierra Club is aware that LCRA has been partnering with the Texas Parks and Wildlife Department (TPWD) and the Texas Water Development Board (TWDB) in further study of freshwater inflow needs through what is known as the Freshwater Inflow Needs Study (FINS) to verify the findings indicated in the earlier reevaluation of the salinity-inflow relationship for Matagorda Bay noted above. The Sierra Club is also cognizant of the position taken by LCRA staff during the Advisory Group process for the current round of revisions to the WMP that such further verification of the findings of the earlier reevaluation of the salinity-inflow relationship for Matagorda Bay was needed before revisions to the WMP should be made on that basis and that this further verification could not be made in the time frame needed for the current round of WMP revisions.

The Sierra Club believes that LCRA exercised an undue level of caution in not basing the current proposed WMP revisions on the reevaluation of the salinity-inflow relationship for Matagorda Bay. This belief is borne out by indications from LCRA staff at the August 5, 2004 Workshop on the Matagorda Bay Freshwater Inflow Needs Study and at the October 22, 2004 meeting of the LCRA-SAWS Water Project Advisory Group that the preliminary findings of the FINS effort confirm the earlier finding that the Critical Inflow need specified in the 1999 revision of the WMP is inadequate to maintain desired salinity dynamics in the eastern arm of Matagorda Bay. Thus, the proposed revision of the WMP currently before the TCEQ for approval is not based on the best available data in this regard and thus may not provide the necessary flows to maintain the ecological health of Matagorda Bay.

Other issues that need further consideration by TCEQ before a decision on approval of the proposed revisions to the WMP is made include but are not limited to the following:

- (1) the potential impact on instream flows and return flows of the anticipated interbasin transfer of 25,000 acre feet per year to public water suppliers in Williamson County in the Brazos River basin;
- (2) the impact on the calculation of combined firm annual yield of Lakes Buchanan and Travis of the stated intention by the City of Austin to use all of its return flows and the subsequent effect of a revised calculation of such yield on instream flows and freshwater inflows; and
- (3) whether the proposal by LCRA to increase the commitment of firm stored water for environmental flows actually results in a net benefit for environmental flows in light of other revisions being proposed to the WMP.

The Sierra Club acknowledges that the Lower Colorado River basin presents a complex challenge in terms of developing an appropriate water management plan that maintains necessary instream flows and freshwater inflows for the ecological health of the bay system while meeting the legitimate municipal, industrial, and agricultural needs in the basin. The LCRA is to be commended for attempting to achieve a workable WMP that incorporates a great deal of public input and tries to meet a number of sometimes conflicting goals.

In the final analysis, however, at a minimum the WMP must reflect the best available data and attempt to address appropriately all of the relevant issues that will affect its implementation in practice. The Sierra Club believes that the proposed revisions to the WMP currently before the TCEQ do not fully meet those criteria. As a consequence the Sierra Club respectfully requests that a contested case hearing on the WMP be conducted to explore these matters more thoroughly before TCEQ takes final action on the proposed revisions;

Sincerely,

A handwritten signature in cursive script that reads "Ken Kramer".

Ken Kramer, Director  
Lone Star Chapter, Sierra Club

Cc:

Lyn Dean, Lower Colorado River Authority  
Ann Bright, Texas Parks and Wildlife Department  
Kenneth Ramirez, Bracewell & Patterson, L.L.P.  
Myron Hess, National Wildlife Federation



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  
H NOV 09 2004  
BY KH

38219  
WR

CHIEF CLERKS OFFICE

2004 NOV -9 PM 3:16

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY

November 9, 2004

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

VIA FAX AND MAIL

RE: Application #5838 – Application to Amend the LCRA Water Management Plan

Dear Ms. Castañuela:

The Lone Star Chapter of the Sierra Club (“Sierra Club”) submits this letter to request a contested case hearing on the Lower Colorado River Authority’s (“LCRA”) application to amend its Water Management Plan (“WMP”), Application 5838.

The Sierra Club has an historic interest in water management planning in the Lower Colorado River basin, including but not limited to participation in the advisory groups established by LCRA for the original and each subsequent revision of the WMP and participation as a party in contested case proceedings regarding previous versions of the WMP. In these matters the interests of the Sierra Club have included but are not limited to the maintenance of instream flows and freshwater inflows to the bay and estuary system to protect water quality, preserve habitat for fish and wildlife and plant species, and provide for recreational opportunities in and near the river and on the coast.

The interests of the Sierra Club in this matter go beyond the interests of the general public. The Sierra Club has approximately 25,000 members in Texas (including 6,000 members of the Austin Regional Group of the Sierra Club and several thousand members along the Texas coast), and many of these members recreate in and along the Colorado River and in the coastal areas adjacent to the River. Recreational activities engaged in by Sierra Club members in the affected region include hiking, canoeing, kayaking, fishing, birding, other wildlife viewing, and hunting, among others. The availability and quality of these recreational opportunities are dependent upon adequate instream flows and freshwater inflows to the bay and estuary system.

The WMP and the proposed revisions to the WMP impact the volume, timing, and duration of those instream flows and freshwater inflows, and thus they may materially affect the water quality, habitat, and recreational value of the river and bay system. The Sierra Club acknowledges and appreciates the fact that LCRA in its WMP and proposed revisions attempts to address instream and freshwater inflow needs. There are several issues and concerns about how well the WMP and the proposed revisions accomplish that task.

One such issue is that the proposed revisions are not based on the most current data available to LCRA at the time the revisions were developed and adopted – specifically data produced in part by LCRA itself that indicate higher levels of critical freshwater inflows are needed to maintain salinity balances in the bay system than previously thought. Indeed the LCRA staff provided information on this topic to the LCRA Water Management Plan Advisory Group for this round of revisions at the first meeting of the Advisory Group on March 22, 2001. Information was presented verbally and in the form of two papers: “Reevaluation of Salinity-Inflow Relationship for Matagorda Bay” (February 21, 2001) by Brian Cook and John Wedig, LCRA, and “Revisions to Matagorda Bay System Freshwater Inflow Needs from the Colorado River Basin “ (Draft – March 5, 2001) by Quentin Martin, LCRA.

An addendum (dated July 1, 2001) to the paper by Cook and Wedig was provided to Advisory Group members for the July 9, 2001 meeting of the Advisory Group that revised some of the information provided earlier as a result of including additional months of data on salinity in Matagorda Bay. Even that addendum, however, concluded that:

“The salinity in the eastern arm of Matagorda Bay has been quite variable since the diversion of the Colorado River. Estuary salinity quickly freshens in response to floods while evaporation and periods of reduced inflows increases salinity.” The 1997 FIS [Freshwater Inflow Study] equation did not predict the elevated salinities observed this past summer, especially those in excess of 25 ppt. *Monthly inflows were above 14.26 (1000 acre-feet) throughout 1997-2000 when salinity frequently exceeded 25 ppt, indicating that the Critical Inflow need (specified in LCRA Water Management Plan, amended 1999) is inadequate to maintain desired salinity dynamics in the eastern arm of Matagorda Bay [emphasis added].*”

“*The most accurate predictive equation developed for the salinity-inflow relationship is the Revised All Data Equation [emphasis added].* The equation used additional data from April 96-October 96 and January 2001 to April 2001. Additionally, the equation accounts for bias to the dryer condition and dropping the 60 day inflow term makes it the most statistically sound equation produced.”

Despite the fact that LCRA staff concluded that the Critical Inflow need specified in the 1999 revision of the WMP was inadequate to maintain desired salinity dynamics in the eastern arm of Matagorda Bay, it is our understanding that the Critical Inflow need specified in the 1999 revision of the WMP is the one used in the proposed revision of the WMP, which calls into question the appropriateness of the revised plan in maintaining the ecological health of Matagorda Bay.

The Sierra Club is aware that LCRA has been partnering with the Texas Parks and Wildlife Department (TPWD) and the Texas Water Development Board (TWDB) in further study of freshwater inflow needs through what is known as the Freshwater Inflow Needs Study (FINS) to verify the findings indicated in the earlier reevaluation of the salinity-inflow relationship for Matagorda Bay noted above. The Sierra Club is also cognizant of the position taken by LCRA staff during the Advisory Group process for the current round of revisions to the WMP that such further verification of the findings of the earlier reevaluation of the salinity-inflow relationship for Matagorda Bay was needed before revisions to the WMP should be made on that basis and that this further verification could not be made in the time frame needed for the current round of WMP revisions.

The Sierra Club believes that LCRA exercised an undue level of caution in not basing the current proposed WMP revisions on the reevaluation of the salinity-inflow relationship for Matagorda Bay. This belief is borne out by indications from LCRA staff at the August 5, 2004 Workshop on the Matagorda Bay Freshwater Inflow Needs Study and at the October 22, 2004 meeting of the LCRA-SAWS Water Project Advisory Group that the preliminary findings of the FINS effort confirm the earlier finding that the Critical Inflow need specified in the 1999 revision of the WMP is inadequate to maintain desired salinity dynamics in the eastern arm of Matagorda Bay. Thus, the proposed revision of the WMP currently before the TCEQ for approval is not based on the best available data in this regard and thus may not provide the necessary flows to maintain the ecological health of Matagorda Bay.

Other issues that need further consideration by TCEQ before a decision on approval of the proposed revisions to the WMP is made include but are not limited to the following:

- (1) the potential impact on instream flows and return flows of the anticipated interbasin transfer of 25,000 acre feet per year to public water suppliers in Williamson County in the Brazos River basin;
- (2) the impact on the calculation of combined firm annual yield of Lakes Buchanan and Travis of the stated intention by the City of Austin to use all of its return flows and the subsequent effect of a revised calculation of such yield on instream flows and freshwater inflows; and
- (3) whether the proposal by LCRA to increase the commitment of firm stored water for environmental flows actually results in a net benefit for environmental flows in light of other revisions being proposed to the WMP.

The Sierra Club acknowledges that the Lower Colorado River basin presents a complex challenge in terms of developing an appropriate water management plan that maintains necessary instream flows and freshwater inflows for the ecological health of the bay system while meeting the legitimate municipal, industrial, and agricultural needs in the basin. The LCRA is to be commended for attempting to achieve a workable WMP that incorporates a great deal of public input and tries to meet a number of sometimes conflicting goals.

In the final analysis, however, at a minimum the WMP must reflect the best available data and attempt to address appropriately all of the relevant issues that will affect its implementation in practice. The Sierra Club believes that the proposed revisions to the WMP currently before the TCEQ do not fully meet those criteria. As a consequence the Sierra Club respectfully requests that a contested case hearing on the WMP be conducted to explore these matters more thoroughly before TCEQ takes final action on the proposed revisions.

Sincerely,



Ken Kramer, Director  
Lone Star Chapter, Sierra Club

Cc:

Lyn Dean, Lower Colorado River Authority  
Ann Bright, Texas Parks and Wildlife Department  
Kenneth Ramirez, Bracewell & Patterson, L.L.P.  
Myron Hess, National Wildlife Federation



# SIERRA CLUB

FOUNDED 1892

Lone Star Chapter

P.O. Box 1931

Austin, Texas 78767

512/477-1729

512/477-8526 (fax)

lonestar.chapter@sierraclub.org

http://www.texas.sierraclub.org

## FAX TRANSMITTAL COVER SHEET

To: OFFICE OF THE CHIEF CLERK

T.C.E.Q.

From: KEN KRAMER

Date: 11/9/2004

Number of Pages (including cover sheet): 5

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
ZIM NOV -9 PM 3:16  
CHIEF CLERKS OFFICE

If problems with this transmission occur, please call 512/477-1729

Comments:

**TCEQ Public Participation Form  
Lower Colorado River Authority  
Public Meeting on  
Application No. 5838 to Amend  
Water Management Plan**

**Monday, November 8, 2004**

**PLEASE PRINT:**

Name: KEN KRAMER, SIERRA CLUB

Address: P.O. BOX 1931

City/State: AUSTIN, TX Zip: 78767

Phone: (512) 476-6962

Please add me to the mailing list.

Are you here today representing a municipality, legislator, agency, or group?  Yes  No  
If yes, which one? \_\_\_\_\_

**IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓BELOW**

I wish to provide formal oral comments.

I wish to provide formal written comments at tonight's public meeting.

(Written comments may be submitted any time during the meeting.)

*Will file written comments by 11/09/04*

Please give this to the person at the information table. Thank you.



## NATIONAL WILDLIFE FEDERATION

SOUTH CENTRAL REGIONAL CENTER  
44 East Avenue, Suite 200  
Austin, Texas 78701

512.476.9805  
FAX 512.476.9810  
www.nwf.org

January 8, 2010

Mr. Steve Ramos, Project Manager  
Water Rights Permitting & Availability Section  
Texas Commission on Environmental Quality  
MC 160  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Lower Colorado River Authority; Application No. 5838 to Amend the LCRA Water Management Plan

Dear Mr. Ramos:

The National Wildlife Federation (NWF) has reviewed the proposed Agreed Order Approving Amendments to the Lower Colorado River Authority (LCRA) Water Management Plan that was submitted by LCRA counsel Lyn Clancy via email to you on December 17, 2009. Based upon representations from respective legal counsel, NWF believes that the applicant, all hearing requesters, and the Executive Director of the Texas Commission on Environmental Quality (TCEQ) have agreed to the proposed order. The provisions of the proposed Agreed Order address key concerns raised by NWF regarding Application No. 5838. Accordingly, NWF hereby withdraws its request for a contested case hearing on Application No. 5838.

It has come to my attention that the TCEQ General Counsel may set the proposed Agreed Order for consideration by the TCEQ commissioners. Should the Commission hear this matter and express the desire to substantively alter the proposed Agreed Order, NWF retains its right to request that the Commission not act on the application and instead allow the applicant, the original hearing requesters, and the Executive Director additional time for settlement discussions and, if necessary, coordination regarding the TCEQ processing of Application No. 5838 and related hearing requests as required by Commission rules pursuant to Chapter 30 Texas Administrative Code Chapter 55.

Thank you for your consideration of this matter. Should you have any questions, please call me at 512-610-7754.

Sincerely,

Myron J. Hess  
Manager, Texas Water Programs/Legal Counsel  
512-610-7754 Office  
512-476-9810 Fax  
[hess@nwf.org](mailto:hess@nwf.org)

cc: Shana Horton, TCEQ

2010 JAN -8 PM 4:59  
CHIEF CLERKS OFFICE

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Nov 08 04 04:44p

p. 2



NATIONAL WILDLIFE FEDERATION  
www.nwf.org™

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

38219  
WR

(512) 476-9805  
FAX (512) 476-9810  
http://www.nwf.org

H OPA  
NOV 09 2004  
BY KY

November 08, 2004

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

CHIEF CLERKS OFFICE

2004 NOV - 8 PM 4: 51

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY

Re: Request for Contested Case Hearing in the Matter of the Lower Colorado River Authority; Water Right Application No. 5838

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:

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](mailto:hess@nwf.org)

This is a **REQUEST FOR A CONTESTED CASE HEARING** on the Application to Amend the Lower Colorado River Authority's (LCRA) Water Management Plan, application number 5838.

The National Wildlife Federation would be affected in a way that is not common to the general public because NWF 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.<sup>1</sup>

<sup>1</sup> 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."

*Hearing Request of NWF  
Appl. No. 5838, LCRA  
Page 2*

NWF's approximately 38,000 members in Texas use and enjoy those resources both recreationally and for economic benefit. NWF's participation in the hearing does 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. NWF has been an active participant in the public participation process provided by LCRA for considering potential amendments to the WMP. NWF raised its concerns about the issues raised in this request at numerous points during that process.

The application by LCRA that is the subject of this hearing request has the potential to significantly affect the fish and wildlife resources of the Colorado River watershed, including Matagorda Bay, and NWF members. Through this application, LCRA seeks approval of amendments to the WMP that, among other things, determine when water will be passed through or released from the Highland Lakes to meet instream flow and freshwater inflow needs downstream. NWF acknowledges that, among other changes, the proposed amendments include an increase in the commitment of firm yield water for flow protection purposes over the amount committed in the previous version of the WMP.

On balance, NWF is concerned that the periods when only flows at, or below, "subsistence or critical" levels will be available may significantly exceed the times when true drought conditions exist, resulting in undue adverse impacts to fish and wildlife resources. NWF is particularly concerned that the salinity equations used as the basis for determinations about freshwater inflow needs reflected in this application, most importantly the critical inflow needs, do not accurately reflect available data.

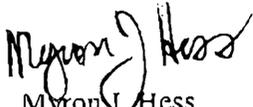
NWF fully expects that LCRA will prepare and submit a subsequent WMP amendment request based on the most current data about inflow and salinity relationships. However, given uncertainties about the timing of such a future request and about the approval process for such an amendment, NWF finds it necessary to file this request to ensure its ability to fully participate in relevant decision processes relating to protecting the fish and wildlife resources of the Colorado River watershed, including Matagorda Bay. Particularly because of the failure to use all available information in developing the proposed WMP amendments and because of the reduced inflow amounts resulting from that failure, NWF's interests in protecting fish and wildlife resources could be adversely affected by the granting of this application, as could its interests in protecting the ability of its members and others to recreate in and along the River and Matagorda Bay.

*Hearing Request of NWF*  
*Appl. No. 5838, LCRA*  
*Page 3*

NWF would enthusiastically support discussions designed to address the concerns noted in this request without the need for a formal contested case proceeding.

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

Sincerely,

  
Myron L. Hess  
Counsel



NATIONAL WILDLIFE FEDERATION®

NATIONAL WILDLIFE FEDERATION  
Gulf States Natural Resource Center  
44 East Avenue, Suite 200  
Austin, Texas 78701

Phone: 512/476-9805  
Fax: 512/476-9810

CHIEF CLERKS OFFICE

2004 NOV - 8 PM 4: 51

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

FACSIMILE TRANSMITTAL

TO:	FROM:
Chief Clerk's Office	Myron Hess
COMPANY:	DATE:
TCEQ	11/08/04
FAX NUMBER:	NO. PAGES INCLUDING COVER
239-3311	4
RE:	
Hearing Request on Appl. # 5838	
NOTES/COMMENTS:	



City of Austin

# Law Department

City Hall, 301 W 2nd Street, P.O. Box 1088  
Austin, Texas 78767-1088  
(512) 974-2268

Writer's Direct Line  
(512) 974-2159

Writer's Fax Line  
(512) 974-6490

January 8, 2010

Mr. Steve Ramos, Project Manager  
Water Rights Permitting & Availability Section  
Texas Commission on Environmental Quality  
MC 160  
P.O. Box 13087  
Austin, TX 78711-3087

Re: Lower Colorado River Authority; Application No. 5838 to Amend the LCRA Water Management Plan

Dear Mr. Ramos:

The City of Austin has reviewed the proposed Agreed Order Approving Amendments to the Lower Colorado River Authority (LCRA) Water Management Plan that was submitted by LCRA counsel Lyn Clancy via email to you on December 17, 2009. Based upon representations from respective legal counsel, the City of Austin believes that the applicant, all hearing requesters, and the Executive Director of the Texas Commission on Environmental Quality (TCEQ) have agreed to the proposed order. The provisions of the proposed Agreed Order address key concerns raised by the City of Austin regarding Application No. 5838. Accordingly, the City of Austin hereby withdraws its request for a contested case hearing on Application No. 5838.

It has come to my attention that the TCEQ General Counsel may set the proposed Agreed Order for consideration by the TCEQ commissioners. Should the Commission hear this matter and express the desire to substantively alter the proposed Agreed Order, the City of Austin retains its right to request that the Commission not act on the application and instead allow the applicant, the original hearing requesters, and the Executive Director additional time for settlement discussions and, if necessary, coordination regarding the TCEQ processing of Application No. 5838 and related hearing requests as required by Commission rules pursuant to Chapter 30 Texas Administrative Code Chapter 55.

Thank you for your consideration of this matter. Should you have any questions, please call me at 512 974-2159.

Sincerely,

A handwritten signature in black ink, appearing to read "Ross Crow", with a long horizontal flourish extending to the right.

Ross Crow  
Assistant City Attorney  
City of Austin

cc: Shana Horton, TCEQ

38219  
WR

Kenneth Ramirez  
Partner

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

October 26, 2004

Via Messenger

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

HR  
OPA  
OCT 27 2004  
BY [Signature]

CHIEF CLERKS OFFICE

2004 OCT 26 PM 2:32

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: Lower Colorado River Authority (LCRA)  
WRPERM 5838  
CN 600253637, RN 104252267  
Application NO. 5838 to Amend the LCRA Water Management Plan  
**Requesting Contested Case Hearing**

Dear Ms. Castañuela:

Attached please find the original and one copy of the City of Austin's request for a contested case hearing in the above-referenced matter.

**Please file the original, date-stamp the copy and return the copy to my messenger.**

If you have any questions, please do not hesitate to contact me at (512) 494-3611.

Very truly yours,

Bracewell & Patterson, L.L.P.

[Signature]

Kenneth Ramirez

MMJ/mk  
Enclosure

[Signature]



Kenneth Ramirez  
Partner

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

October 25, 2004

VIA MESSENGER

*HR* OPA  
OCT 27 2004  
BY *[Signature]*

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

Re: Lower Colorado River Authority (LCRA)  
WRPERM 5838  
CN 600253637, RN 104252267  
Application NO. 5838 to Amend the LCRA Water Management Plan  
**Requesting Contested Case Hearing**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
2004 OCT 26 PM 2:32  
CHIEF CLERKS OFFICE

Dear Ms. Castañuela:

The City of Austin ("City" or "Austin") files this letter to request a contested case hearing on the Lower Colorado River Authority's ("LCRA") Water Management Plan ("WMP"), Application No. 5838. The City can be reached by mailing or faxing correspondence to my address/fax number on this letterhead and by telephone at my direct number, 512-494-3611.

The City maintains over 300,000 acre-feet of water rights throughout the Colorado River Basin, especially those recognized by Certificates of Adjudication Nos. 14-5471 (as amended) and 14-5489 (as amended). Austin is a municipal corporation that owns, operates, and maintains facilities for providing recreation, electric power using steam electric water, and municipal, irrigation, and industrial service to its many citizens. All of the City's water resource operations are located within the area encompassed by LCRA's WMP.

LCRA seeks to amend its WMP to incorporate new concepts and language and to ratify or renew existing concepts and language. LCRA filed the application for the latest WMP revisions May 16, 2003; the application was declared administratively complete on May 7, 2004, and notice was published on September 27, 2004. All references to page numbers in this letter refer to the redlined version of the WMP that is currently on file with the Texas Commission on Environmental Quality ("TCEQ").



LaDonna Castañuela, Chief Clerk  
October 25, 2004  
Page 2

111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4061  
Phone: 512.472.7800  
Fax: 512.472.9123

The WMP is the LCRA's "blueprint" for how it will manage the Highland Lakes and the Colorado River above and below the Highland Lakes. WMP at P-2. As such, the WMP covers virtually all aspects of water supply, water quality and environmental flows, and the interplay among these issues in the Colorado Basin. As the second largest water rights holder in the Colorado Basin, Austin has a personal justiciable interest in ensuring the clarity and accuracy of the WMP's description of the existing status of water issues in the Basin and how these issues will be fairly and judiciously managed in the future. Without a clear understanding of LCRA's management scheme, the City cannot ensure that its water rights are being protected and that its rights and interests are being safeguarded.

For these reasons, on July 29, 2004, the City sent LCRA questions regarding the WMP and certain proposed amendments. LCRA's September 13, 2004 response is attached as Attachment A. While the City appreciates LCRA's response, and while that dialogue represented a positive step forward, it did not answer all of the City's questions or resolve all of its concerns.

The City's remaining concerns include the following:

**Calculation of the Combined Firm Yield**

- 1) The April 20, 1988 Final Judgment and Decree for the adjudication of water rights in the Lower Colorado River Segment of the Colorado River Basin ("Final Decree") required LCRA to determine the "Combined Firm Yield" of Lakes Buchanan and Travis. In calculating the Combined Firm Yield, LCRA failed to follow the terms of the Final Decree.

The Final Order directed that the Combined Firm Yield of the Lakes be calculated after water is passed through to satisfy downstream senior water rights, and required the calculation assume that those senior water rights are being fully exercised. Lakes Travis and Buchanan have a priority date of March 7, 1938. The City's downstream, run-of-river rights, with a priority dates of 1913 and 1914, are senior to both Travis and Buchanan. The City's water rights entitle it to use 100 percent of its water. Therefore, full use of the City's water rights means that the City has no legal obligation to return any flows. Despite this, in calculating the Combined Firm Yield, LCRA assumes that the City will not use all of its water, but will instead return all effluent to the River. Accordingly, LCRA mistakenly includes 137,300

LaDonna Castañuela, Chief Clerk  
October 25, 2004  
Page 3

111 Congress Avenue, Suite 2300  
Austin, Texas 78701-4061  
Phone: 512.472.7800  
Fax: 512.472.9123

acre-feet per year (“af/yr”) of the City’s return flows in its calculation of the Combined Firm Yield. See WMP at 5-14.

The inclusion of the City’s return flows in the Combined Firm Yield directly conflicts with the City’s pending bed and banks Application No. 5779, which is designed to allow the City to use its return flows for its own beneficial purposes. The current method of calculation of the Combined Firm Yield in the WMP not only has a seriously adverse affect on the City’s ability to fully utilize its rights, but violates the terms of the Final Decree. For these reasons alone, a contested case hearing is in order.

**Increase in the Level of Critical Flows in the Colorado River**

- 2) In its May 7, 2004 Request for Information (“RFI”), TCEQ requested that LCRA provide “technical justification to show that a critical flow of 120 cfs during the months of June through February provides adequate water quality conditions for the entire reach of river from Bastrop to Eagle Lake (approximately 117 river miles).” Previously, the 120 cfs flow level applied only to the reach between Austin and Bastrop. LCRA responded to this question (see also Attachment A, Question No. 5) by stating that the 120 cfs flow was extended based on the best information available. The source of this “best information” and the technical justification itself remains unclear, and therefore must be clarified through a contested case hearing.

**Interruptible Water**

- 3) In the WMP, firm water that is committed, but unused during a particular year is considered interruptible. It is not clear whether the maximum of 30,000 af/yr of interruptible water available for sale that is described on page 3-12 includes the previous year’s unused, but committed firm water. See Attachment A, Question No. 7. The WMP must be absolutely clear regarding issues of water availability. Currently, as this example shows, the WMP lacks such clarity.

**Incorrect Statement**

- 4) On page 2-15, LCRA’s statement regarding the City’s wastewater plant discharges is both incorrect and misleading. Specifically, LCRA states that “[s]ince all City of Austin wastewater plants discharge into the Colorado River



LaDonna Castañuela, Chief Clerk  
October 25, 2004  
Page 4

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downstream of Highway 183, return flows of treated effluent bypass the Austin gage, effectively de-watering parts of the river immediately downstream of Longhorn Dam when no releases are being made from the Dam.” In response to the City’s query as to the meaning of the phrase “effectively de-watering,” LCRA replied that the phrase “means that, because there are no inflows of water coming into the segment of the river and the flows in the segment of the river are naturally leaving the segment by gravity flow downstream, the net effect is the segment of the river has less and less flow.” See Attachment A, Question No. 4. This statement should be corrected to clarify that the lack of flow is not attributed to the City’s operations.

#### **Transfer of Water Out of Basin**

- 5) LCRA briefly discusses House Bill 1437, which provides for the sale by LCRA of up to 25,000 af/yr to public water suppliers in Williamson County such as the Brazos River Authority (“BRA”). See WMP at 3-17. It is unclear how the interbasin transfer to BRA will be factored into the WMP, particularly with respect to its potential effects on instream flows and return flows. If the transfer does affect instream flows or return flows, it could have a negative impact on the City’s run-of-river rights. It is also unclear why the export of water out of the basin is featured in the section of the WMP dealing with conservation since, as currently planned, the net result is the loss of 25,000 af/yr to the Colorado Basin. These concerns also raise questions about whether the detriment to the Colorado Basin outweighs the benefit to the Brazos Basin.

Overall, the City has a personal justiciable interest in fully understanding the WMP in order to make sure that its water rights and water supply are being protected and are not negatively impacted.

For the reasons set forth above, the City requests a contested case hearing. The City respectfully reserves the right to raise additional issues after the public meeting on the WMP, which is currently scheduled for November 8, 2004. If the above issues and others that may become apparent after the public meeting are addressed to the City’s satisfaction, the City would be willing to withdraw its protest and request for a contested case hearing.



LaDonna Castañuela, Chief Clerk  
October 25, 2004  
Page 5

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink, appearing to read 'Kenneth Ramirez'. The signature is fluid and cursive, with a long, sweeping tail on the 'y'.

Kenneth Ramirez

/mk

cc: Lyn Dean, Lower Colorado River Authority, Associate General Counsel  
Marty Terry, City of Austin, Law Department  
Chris Lippe, City of Austin, Director, Austin Water Utilities



September 13, 2004

**VIA FIRST CLASS MAIL**

Ms. Monica Jacobs  
Bracewell & Patterson, L.L.P.  
111 Congress Ave., Ste. 2300  
Austin, TX 78701-4043

Dear Monica:

This letter is in response to your list of questions posed in your July 29, 2004 email to me. For clarity purposes, your specific questions are listed in the same order as they were in your email and LCRA's responses follow each such question:

- 1. Page P-10 contains a portion of the drought contingency plan summary. What is the rationale for curtailing firm customers and instream flows before all interruptible supplies cease?**

Under LCRA's Water Management Plan (WMP), all interruptible supplies are to be curtailed completely prior to any curtailment of firm customers and firm water for instream flows. Based on the projections for the 2010 demand, the strategy simulated meets the firm demand when the January 1 supply is at 325,000 af and also when the supply drops to 200,000 af at any time. The interruptible supply is curtailed completely under either of these scenarios. This is explained again on pages 4-29 and 4-40. We will consider modifications to P-10 that will make this more clear.

- 2. In your June 10, 2004 response to TCEQ's May 7, 2004 request for information ("RFI Response"), you stated in answer to Question #8 that LCRA did not recompute the Combined Firm Yield ("CFY") as part of the proposed changes to the WMP. On page 2-6 of the Plan, there is a slight decrease in the CFY (from 536,312 af to 535,812 af). To what is the decrease due?**

The 1999 amendments to the WMP reflect LCRA's anticipated purchase of upstream senior water rights that would have increased the firm yield from 535,812 acre-feet to 536,312 acre-feet. Unfortunately, the purchase of these water rights never occurred, so the proposed change to the combined firm yield amount simply reflects that fact. The original combined firm yield amount of 535,812 acre-feet of water remains in place.

- 3. In your RFI Response (Question #11, page 14), you make reference to the "simulation for the selected strategy." I noticed similar references in the Plan itself. What does the term "selected strategy" describe, and precisely what is it?**

In LCRA's effort to maximize the beneficial use of the waters of the lower Colorado River Basin under its management, as well as to balance the several competing demands for the available water supply, LCRA runs a series of computer scenarios varying the assumptions and inputs to the model to help develop and determine the best strategy to achieve the above goals. All of these strategies begin with the fundamental understanding that firm water customers' demands over the next ten years must be protected through a repeat of the drought of record. During the stakeholder process LCRA employed to develop its recommended changes to the WMP, LCRA staff ran 42 different scenarios to evaluate the projected impacts of these various management alternatives on instream flows, freshwater inflows, irrigated acreage, and lake levels. Representatives from the City of Austin participated in the stakeholder process where LCRA staff discussed the results of the numerous scenarios that were considered for this update. As used in the WMP, the term "selected strategy" means the scenario that is being recommended by LCRA as the preferred approach to achieve the goals of maximizing the beneficial use of water and meeting the needs of competing demands for the water and is represented by the substantive amendments proposed to the WMP. I am attaching a copy of a LCRA Board agenda item summarizing the selected strategy that you might find helpful.

4. **On page 2 – 15, the statement is made that “[s]ince all City of Austin wastewater plants discharge into the Colorado River downstream of Highway 183, return flows of treated effluent bypass the Austin gage, effectively de-watering parts of the river immediately downstream of Longhorn Dam when no releases are being made from the Dam.” What is meant by this statement, particularly the “effectively de-watering” part?**

As used in the WMP, “effectively de-watering” means that, because there are no inflows of water coming into the segment of the river and the flows in the segment of the river are naturally leaving the segment by gravity flow downstream, the net effect is the segment of the river has less and less flow. As you know, LCRA releases stored water to meet minimum instream flow requirements below Longhorn Dam to avoid this circumstance. Sometimes, however, operations at Longhorn Dam can affect flow immediately downstream regardless of our releases.

5. **In your RFI Response regarding TCEQ's Question #22, you explain that “[t]he 120 cfs value was based on water quality modeling to maintain dissolved oxygen at 6.0 mg/L in upstream segments, where major dischargers are present. With no significant WWTP discharges downstream of Bastrop, the 120 cfs is assumed to maintain adequate water quality.” If 120 cfs is required to maintain 6.0 mg/L dissolved oxygen in the presence of major dischargers, why is 120 cfs also assumed to be necessary where no significant WWTP discharges occur?**

Critical Flows were extended to Eagle Lake primarily to protect spawning habitat for Blue Sucker, a state threatened fish. One of the most extensive rock outcrops between Austin and the Gulf of Mexico is located near Eagle Lake and provides significant spawning

habitat for the blue sucker. LCRA's 1992 instream flow study recommends that a flow of 500 cfs should be maintained from early March through May for successful spawning of *C. elongates*. The recommended flows are based on a technically sound, scientific instream flow study.

The 120 cfs flow was extended to Eagle Lake based on the best information available. This flow represents a balanced, long-term approach to instream flow requirements that takes into account both natural flow regimes and water quality conditions needed to support a healthy, diverse native fish community downstream of Austin.

Nearly half of the reach between Bastrop and Eagle Lake supports an exceptional aquatic life use with a dissolved oxygen standard of 6 mg/L. No data exists that indicates flows less than 120 cfs would be adequate to maintain dissolved oxygen concentrations necessary to meet state standards. The 120 cfs serves as a conservative measure to ensure adequate water quality conditions during drought conditions.

6. **In answer to TCEQ's question in its May 7 RFI regarding why LCRA's Application No. 5731 is not included in the Plan (Question #19), you responded that "[i]ncluding a pending application for water rights in the proposed 2003 WMP revisions is inappropriate." Yet, on pages 3 – 3 and 3 – 4, for example, the WMP includes a discussion of the Garwood water right being used to supply City of Austin and BRA commitments. LCRA's Application No. 14-5434E to add additional upstream diversion points to the Garwood right, which is presumably how LCRA would envision using the Garwood right to help satisfy its commitment to the City, is, like Application No. 5731, still pending at TCEQ. Do you see a discrepancy between the inclusion of the discussion of the Garwood right in the WMP and your answer to Question #19?**

We do not see any discrepancy. The WMP is a ten-year planning/operation tool of how LCRA intends to manage Lakes Buchanan and Travis during the ten-year period. Reference to the Garwood water supply is made because LCRA's contractual commitment to Austin specifically recognizes that water supplied to Austin may be from any other source available to LCRA, including the Garwood water right. This, in turn, may affect the demands made on Lakes Buchanan and Travis. Like LCRA's Application No. 5731, LCRA's application to amend the Garwood water right is not modeled in the WMP because no such permit exists at this time. Once these applications are approved by TCEQ, then LCRA will incorporate those permits and permit amendments and the demands for water under those permits into its modeling so that the resultant impact on the demand for water from Lakes Travis and Buchanan may be evaluated as part of any needed revision to the WMP.

7. **One page 3 – 12, Table 3 –3 shows the maximum interruptible stored water available for sale, exclusive of that for irrigation districts. Does this maximum of 30,000 af**

**include the previous year's unused, but committed firm water (I understand from the Plan that firm water that is committed but unused is considered interruptible water)?**

The determination of the amount of interruptible water available for sale exclusive of the irrigation districts is determined anew every six months and is specifically tied to level of the lakes on January 1 and July 1. The inclusion of the potential availability of water for this purpose in the WMP at all rests on a determination that the full firm yield of the system will not be used in the ten-year planning period covered by the proposed revisions. On a shorter term basis, the availability of water for this purpose is a function of several factors, including the: (1) amount of uncommitted water LCRA has available; (2) the projected ten-year demands for committed firm water; (3) actual rainfall over the last six months; and (4) actual demands for both firm and interruptible supply over the prior six months, all of which can significantly impact lake levels on this shorter-term basis.

- 8. The aggressive nature of the City's conservation program is mentioned on page 3-13. In the past, there has been some discussion between the City and LCRA regarding credit for conservation in the context of the pro rata cutbacks on firm customers during a drought worse than the drought of record. Does the Plan recognize conservation efforts, for example, by subtracting savings achieved from the amount that a firm user is cut back? If not, would LCRA favor such a measure?**

Under the WMP, during a drought worse than a drought of record, distribution of water to LCRA's customers will be in accordance with Texas Water Code § 11.039, which generally provides that water shall be divided among all customers on a pro rata basis. Similar language is actually incorporated into LCRA's water rights for Lakes Buchanan and Travis, so LCRA's flexibility to vary from this requirement and give credit for water savings is limited by statute and its own water rights. As you may know, section 11.039 was amended in 2001 such that it now allows an entity like LCRA to take into account the failure of a customer to implement its water conservation plan when determining how to divide available water in times of shortage. In other words, a customer's lack of water savings due to inadequate implementation of a water conservation plan would appear to allow LCRA to curtail a customer more than a pro rata amount. We recognize, of course, that this is the converse of giving credit to customers who have a more ambitious conservation program, such as the City, which the statute does not appear to allow. However, LCRA would nevertheless be very interested in hearing the City's ideas on how LCRA might most effectively implement section 11.039(b) if the need arises.

- 9. House Bill 1437, which provides for the sale by LCRA of up to 25,000 af per year to public water suppliers in Williamson County, is discussed on page 3 - 17. How does the HB 1437 deal fit into the drought contingency plan? Is BRA considered to be a firm customer subject to pro rata cutbacks?**

The Brazos River Authority (BRA) has a contract for firm water and, during a drought

worse than the drought of record, BRA will be subject to pro rata cutbacks like all other firm water customers.

10. **On page 4 – 24, the current estimate of drought-condition firm demand for stored water in 2005 is listed as being about 134,000 af annually. The projected firm demand for 2010 is shown as about 180,000 af annually, which represents an increase annually of approximately 34% in five years. To what is this projected increase due?**

About 16,000af of this projected increase is to meet increased demands for LCRA's own uses and contracts other than with Austin. The City of Austin's demands are projected to increase 17,000af. The remaining 17,000af is an additional firm commitment of water for instream flow and freshwater inflows.

11. **It is my understanding (as is repeatedly stated in the WMP) that the Final Decree requires that in calculating the Combined Firm Yield, it must be assumed that each senior water right will be exercised to the full extent authorized. Since use of the City's rights to the full extent authorized would entail 100% use of its water – i.e., no return flows – I don't understand the assumption that is included on page 5 – 14 that the City will return all effluent derived from the use of its rights or more specifically, the inclusion of 137,300 af per year of return flow in the calculation of the Combined Firm Yield. Do you see the inclusion of the City's return flows in the calculation of the Combined Firm Yield as conflicting with the above-referenced directive in the Final Decree? If not, please explain.**

We do not see any conflict. Full utilization of water rights does not mean "no return flows" in this context. Rather, it means that diversion of the full authorized amount was modeled. When the firm yield of Lakes Buchanan and Travis was determined in 1989 as requirement of LCRA's water rights for these lakes, the generally accepted approach to modeling full utilization of municipal water rights included assumptions about the volume of return flows that would be discharged back into the basin. As stated on p. 5 – 14, part of LCRA's assumptions is that about 55% of Austin's municipal diversions would be returned to the river as effluent. Consistent with the accepted modeling methodology at the time, once discharged into the river, the flows were treated as state water and made available to meet the needs of other downstream water rights. This approach is not only consistent with the accepted methodologies used at the time the Firm Yield was determined, it is also consistent with historic data regarding Austin's return flows and honors two critical elements of LCRA's water rights, which required it to manage the system to maximize the beneficial use of water derived from inflows below the Highland Lakes, and manage Lakes Buchanan and Travis and the Colorado River as a single system for water supply purposes.

12. **The municipal daily demand distribution is discussed on pages 5 – 10 and 5 – 11. The Plan states that the municipal distribution was derived using the historical City**

Ms. Monica Jacobs  
September 10, 2004  
Page 6

**of Austin diversions recorded during the years 1976 through 1985. Why were these years chosen?**

This was the data available at the time (1989) when the Combined Firm Yield was determined.

13. **On page 5 – 14, Table 5 – 2 is entitled “Monthly Distribution of Annual City of Austin Return Flow, Calendar Year 1978 – 1987.” Again, why were these particular years chosen?**

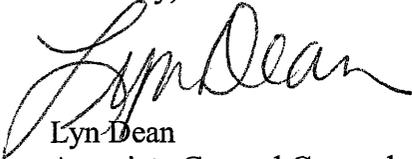
See our response to Question #12 above.

14. **The statement is made on page 5 – 33 that “[f]uture contractual relationships with the senior downstream water rights holders may also have significant impact on the Combined Firm Yield of Lakes Buchanan and Travis.” How?**

As reflected in the WMP, and consistent with state law, LCRA is required to pass inflows through Lakes Buchanan and Travis to the extent such inflows are needed to satisfy the water supply demands of senior downstream water rights. If LCRA is able to contractually reduce or eliminate the amount of water that must be passed through to meet demands of these senior downstream water rights, the Combined Firm Yield of Lakes Buchanan and Travis could effectively increase because LCRA could instead capture that water in the lakes.

I am hopeful that our responses to your questions will help the City reach a position of support of the proposed 2003 revisions to the WMP. Please feel free to contact me with any additional questions that you or the City may have.

Sincerely,



Lyn Dean

Associate General Counsel