

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 31, 2005

TO: Persons on the attached mailing list.

RE: Lower Colorado River Authority  
Permit No. 5838

Enclosed is the Executive Director's Response to Comments prepared under Texas Administrative Code Section 55.253(b) for the above-referenced matter. This response was prepared to the comments received at the public meeting on November 8, 2004, in Austin, Texas, and other comments received on this application.

Should you have any questions, please contact Irma Salazar of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-1328.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela".

LaDonna Castañuela  
Chief Clerk

LDC/is

Enclosure

MAILING LIST  
for  
Lower Colorado River Authority  
Permit No. 5838

FOR THE APPLICANT:

Lyn Dean, Associate General Counsel  
Lower Colorado River Authority  
P.O. Box 220  
Austin, Texas 78767-0220

Bruce Wassinger  
Bickerstaff, Heath, Smiley, Pollan, Keever  
& McDaniel, L.L.P.  
816 Congress Avenue, Suite 1700  
Austin, Texas 78701-2643

FOR THE EXECUTIVE DIRECTOR:

Robin Smith, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087

Iliana Delgado, Technical Staff  
Texas Commission on Environmental Quality  
Water Supply Division MC-160  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Jodena Henneke, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel MC-103  
P.O. Box 13087  
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

INTERESTED PERSONS:

See attached list.

CAROLYN AHRENS  
BOOTH AHRENS & WERKENTHIN PC  
STE 1515  
515 CONGRESS AVE  
AUSTIN TX 78701-3504

JENNIFER WALKER  
PO BOX 1931  
AUSTIN TX 78767-1931

ANN BRIGHT GEN COUNSEL  
TX PARKS & WILDLIFE  
4200 SMITH SCHOOL RD  
AUSTIN TX 78744

TYSON BROAD  
SIERRA CLUB  
PO BOX 1931  
AUSTIN TX 78767-1931

TERRI BUCHANAN  
5614 CLAY AVE  
AUSTIN TX 78756-1215

MYRON J HESS COUNSEL  
NATIONAL WILDLIFE FEDERATION  
STE 200  
44 EAST AVE  
AUSTIN TX 78701-4384

MONICA M JACOBS  
BRACEWELL & PATTERSON LLP  
STE 2300  
111 CONGRESS AVE  
AUSTIN TX 78701-4050

KEN KRAMER DIR  
SIERRA CLUB  
PO BOX 1931  
AUSTIN TX 78767-1931

TERESA LUTES  
PO BOX 1088  
AUSTIN TX 78767-1088

KENNETH RAMIREZ  
BRACEWELL & PATTERSON LLP  
STE 2300  
111 CONGRESS AVE  
AUSTIN TX 78701-4050

COLEMAN ROWLAND PRESIDENT  
HIGHLAND LAKES GROUP  
711 MARINER  
LAKEWAY TX 78734-4342

11 11

←

←

LOWER COLORADO RIVER §  
AUTHORITY'S APPLICATION §  
NO. 5838 FOR AMENDMENTS §  
TO WATER MANAGEMENT PLAN §

Before the  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

2005 NOV 29 PM 2:39

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

---

**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

---

The Texas Commission on Environmental Quality (TCEQ) held a public meeting on the Lower Colorado River Authority's Application No. 5838 to amend its Water Management Plan (WMP) on November 8, 2004 in Austin, Texas. The public meeting was not required by House Bill 801, (76<sup>th</sup> Legislature), but was conducted pursuant to the TCEQ's rules. The Executive Director also received written comments on the application. The following is a summary of the comments received during the public meeting and the Executive Director's Response, and a summary of the written comments, and the Executive Director's response.

**BACKGROUND:**

LCRA has a WMP that defines LCRA's water management programs and policies. LCRA has requested several amendments to its plan. First, LCRA wants to revise its curtailment policy for interruptible stored water supplies by changing the amount of combined storage in Lakes Buchanan and Travis which will trigger a reduction in supplies of interruptible water to begin when the storage level is below 1,400,000 acre feet. Gradual curtailment will occur in steps between 1.4 million and 1.15 million acre feet with steeper curtailments below 1.15 million acre feet.

The second amendment to the WMP is to provide an intermediate release schedule for estuarine freshwater inflows. This amendment would allow a slightly more gradual reduction of inflows to Matagorda Bay during low flow years. The increase in stored water released for the bays and estuaries would be provided in years when the January 1 storage level in Lakes Buchanan and Travis is between 1.1 and 1.7 million acre feet. In times of drought, more of the environmental protection releases would be met with firm, rather than interruptible stored water. The additional firm water commitment would be provided from available, but uncommitted supplies from Lakes Buchanan and Travis.

The third change would be to incorporate LCRA's Drought Contingency Plan into the WMP. And, the fourth change would be to update the appendices in the WMP to reflect revisions made to the LCRA Board polices since 1999 and changes in agreements between LCRA and the Colorado River Municipal Water District, to delete obsolete appendices, and update LCRA's standard form contracts and administrative rules for raw water contracts.

## PUBLIC MEETING COMMENTER

Ken Kramer  
Sierra Club  
Director of the Lone Star Chapter

### COMMENT:

Mr. Kramer stated that the Sierra Club's interest in this application goes beyond that of the general public's interests. Sierra Club is actively involved in planning in the Lower Colorado Basin, the amendments to LCRA's WMP, and region planning. Sierra Club's interests include the maintenance of instream flows to protect water quality, existing habitat, and recreation in the Lower Colorado. The Sierra Club has 25,000 members in Texas, and several thousand on the Texas coast including the Matagorda Bay area. Many of its members engage in recreational activities such as hiking, canoeing, fishing, birding, and wildlife viewing. Because of that, the quality of flows to the river and bay are very important to them

The Sierra Club is concerned that the WMP and revisions will impact volume, timing & duration of freshwater inflows and instream flows, which can impact habitat and quality of system. While the LCRA has taken steps to address instream flow and freshwater inflow needs, and is in fact in the forefront in addressing environmental needs, the Sierra Club still has issues with how well the WMP protects the environment. One thing that they want to point out is the issue of some of data that has been produced by LCRA itself which indicates that higher levels of freshwater inflows are needed to maintain salinity and balance. The Sierra Club was one of the original entities to work on the WMP, and was told at that time that LCRA had developed some data that indicated that critical needs of bays were higher than anticipated but that for this revision process the LCRA was not going to use those numbers. Rather, LCRA was going to engage in a more extensive study to try to confirm those figures.

The Sierra Club understands the need for caution and that these are preliminary figures, but it is a concern to us that the proposed revisions do not reflect the latest available data that might lead to different elements in the WMP for freshwater inflows and protection of the bays and estuaries. LCRA is engaged with Texas Parks & Wildlife Department and the Texas Water Development Board on what has been called the FINS study - the work is not complete, but preliminary indications are that LCRA staff seem to feel that some of the original preliminary figures are indeed well within ballpark. So the Sierra Club's concern is that TCEQ is being asked to amend WMP a few months before new data is available, and the current data is outmoded. Under adaptive management there will be future revisions to the WMP, but it is disconcerting that LCRA is not using the best data. The Sierra Club wants to red flag for TCEQ's staff what they see is a critical issue.

### RESPONSE:

The Executive Director understands that new data is being developed on flow needs for the streams and the bays and estuaries in the Colorado River. However, LCRA has not requested an amendment to the inflow or instream flow numbers in its WMP. LCRA is only requesting that an

intermediate trigger be added for reduction in supplies of interruptible water and release of inflows to the bays and estuaries. The TCEQ only considers the amendments requested in an application.

It is the Executive Director's understanding that LCRA will amend its WMP to change these values in the future.

**WRITTEN COMMENTERS:**

South Texas Nuclear Project Nuclear Operating Co. (STPNOC) along with owners, Texas Genco, L.P., the City of San Antonio, the City of Austin, and AEP Texas Central Company.  
Texas Parks & Wildlife  
National Wildlife Federation  
Sierra Club  
City of Austin

**COMMENT:**

STPNOC comments that LCRA's WMP currently states that it may understate the amount of water that it must hold in storage to meet its contractual commitments for the South Texas Nuclear Project. LCRA's proposed amendment will impact the interests associated with STPNOC's pending water rights application, and STPNOC is concerned that it may be impacted by changes in flow necessary to maintain acceptable water quality, and particularly salinity levels, at STPNOC's diversion facilities. STPNOC also requests a contested case hearing on this matter.

**RESPONSE:**

Concerning environmental issues, the Executive Director will review this application and consider the concerns STPNOC has enumerated. Concerning STPNOC's contractual needs, it is up to a water supplier to ensure that it has enough water in storage to meet its contractual commitments. All applications on the Colorado will be considered by the TCEQ in the order in which they are filed and based on the existing water rights and facts at that time. STPNOC's hearing request will be considered by the TCEQ at a later time.

**COMMENT:**

The City of Austin enumerates five concerns with LCRA's application. First, the City argues that the calculation of the Combined Firm Yield (CFY) in the WMP, which was required by the Final Decree on LCRA's adjudication, was calculated incorrectly. The City argues that the CFY was supposed to be calculated after LCRA satisfied downstream senior water rights and with the assumption that the downstream water rights were being fully exercised. LCRA included the City's return flows in its calculation of the CFY. The City believes that this was a violation of the Final Decree.

**RESPONSE:**

The calculation of the CFY was approved by the Commission when the WMP changes, including, the CFY number, was placed in the WMP. Any objection to how that number was calculated should have been made at that time, and is not part of this application proceeding. The Executive Director understands how the CFY was calculated, and will use the number with that understanding.

**COMMENT:**

The City's next concern is that LCRA has used 120 cfs as the "critical flow" level from Bastrop to Eagle Lake based on its assertion that this is the best information available. The City asserts that LCRA has not supported that statement.

**RESPONSE:**

This concern is being considered by the Executive Director's staff as it reviews the application.

**COMMENT:**

The City's third concern is that it is unclear in the WMP whether the maximum of 30,000 acre feet/year of interruptible water available for sale includes the previous year's unused, but committed water.

**RESPONSE:**

The Executive Director's staff will consider this comment in its review of the application. According to the WMP, each year's determination of interruptible stored water is calculated by using the portion of the CFY that is not yet committed and the water that is committed but not yet being used.

**COMMENT:**

The City's fourth concern is that LCRA's statement in its application that since all of the City of Austin's 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. The City asserts that this statement should be corrected to clarify that the lack of flow is not attributed to the City's operations.

**RESPONSE:**

The Executive Director understands the City's concern and the statement in LCRA's WMP.

**COMMENT:**

The City's fifth concern is that LCRA in its WMP discusses H.B. 1437 (76<sup>th</sup> Reg. Sess. 1999), which provides for the sale by LCRA of up to 25,000 acre feet/year to public water suppliers in Williamson County such as Brazos River Authority. It is unclear how this interbasin transfer should be factored in to the WMP. The City believes that this interbasin transfer should be considered in the review of this application.

**RESPONSE:**

The Executive Director's staff does not consider the interbasin transfer to be part of this application. It is staff's understanding that LCRA has already entered into a contract with the Brazos River Authority (BRA) for 25,000 acre feet of water and the BRA has a permit (Permit No. 5730) allowing the interbasin transfer of this water for use in the Brazos River Basin. Additionally, the 25,000 acre feet is part of the CFY, and this application does not request a change in the CFY.

**COMMENT:**

The City also requests a contested case hearing on this application.

**RESPONSE:**

The TCEQ will consider the City's hearing request at a later time.

**COMMENTS:**

The Sierra Club, Texas Parks & Wildlife Department, and National Wildlife Federation all contend that the new data that LCRA is obtaining as part of the FINS project, rather than the current critical numbers in the WMP, should be used in the review of this application. They both make similar arguments to those discussed above under the Public Meeting comments.

**RESPONSE:**

See the response above under the Sierra Club's comments at the Public Meeting.

**COMMENT:**

The Sierra Club and National Wildlife Federation request a contested case hearing on this application.

**RESPONSE:**

The Sierra Club's and National Wildlife Federation's hearing requests will be considered at a later time by the TCEQ.

Respectfully submitted,

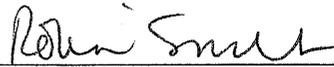
Texas Commission on Environmental Quality

Glenn Shankle  
Executive Director

Lydia González Gromatzky, Deputy Director  
Office of Legal Services

Stephanie Bergeron Purdue, Director  
Environmental Law Division

By:



Robin Smith, Staff Attorney  
State Bar No. 18645600  
Environmental Law Division  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087  
(512) 239- 0463  
Representing the Executive Director of the  
Texas Commission on Environmental Quality