



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) 974-2894

October 26, 2015

VIA Electronic Filing

Bridget C. Bohac, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality ("TCEQ")
P.O. Box 13087, MC-105
Austin, TX 78711-3087

Re: Docket No. 2015-1444-WR
WRPERM5838
Lower Colorado River Authority ("LCRA") Water Management Plan
City of Austin Reply to Responses to Hearing Requests

Dear Ms. Bohac:

Attached for filing please find the City of Austin's Reply to Responses to Hearing Requests in the above referenced matter. Please feel free to contact me if you have any questions.

Sincerely,

Ross Crow
Assistant City Attorney
City of Austin

cc: Robert Goode, Assistant City Manager
Greg Meszaros, Director, Austin Water
Teresa Lutes, Managing Engineer, Austin Water

TCEQ DOCKET NO. 2015-01444-WR

APPLICATION OF THE	§	BEFORE THE
LOWER COLORADO RIVER AUTHORITY	§	
TO AMEND ITS	§	TEXAS COMMISSION ON
WATER MANAGEMENT PLAN	§	
PERMIT NO. 5838A	§	ENVIRONMENTAL QUALITY

**CITY OF AUSTIN'S REPLY TO
RESPONSES TO HEARING REQUESTS**

The City of Austin (City or Austin) files this reply to the responses to hearing requests filed by the Lower Colorado River Authority (LCRA), the Texas Commission on Environmental Quality's (TCEQ's) Executive Director (ED), and TCEQ's Office of Public Interest Counsel (OPIC).

1. The City is prepared to withdraw its hearing request based on the Executive Director's Revised Draft Order.

The City of Austin submitted a letter to TCEQ on September 18, 2015, indicating that the City would be prepared to withdraw its hearing request on the above-referenced matter upon certain conditions. (See attached Exhibit A). Subsequently, TCEQ's ED, in Response to Comments on October 1, 2015, provided a Revised Draft Order for LCRA's Water Management Plan (WMP). The ED's Revised Draft Order meets the City's first two conditions for withdrawal, which concern the content of this Order. There remain only the City's conditions related to the withdrawal of all persons' hearing requests and no additional process which would require the City's participation.

2. The City requests the Commission conduct its November 4, 2015 agenda in a manner that would facilitate possible full resolution of the matter at the November 4th agenda.

The City believes that there exists some possibility that this matter could be entirely resolved at the Commission's agenda on November 4, 2015 in the event that (1) the Commission makes a determination of all the affected persons in this matter, (2) all such persons have a representative present and (3) all such persons then indicate to the Commission the withdrawal of their hearing requests (effective upon all those with affected person status withdrawing). The City requests that the Commission conduct this item on the agenda in a manner that would facilitate this possible outcome, including providing a brief time and location for all those determined to be affected persons to confer and return to Commission during the November 4 agenda to indicate if they are all prepared to withdraw at that time, with the understanding that the Commission would adopt the ED's Revised Draft Order. In the event that hearing requests are not withdrawn by all affected persons at Commission, the City agrees with the ED's and Office of Public Interest Counsel's recommendation that the Commission grant the City's hearing request and refer the matter to the State Office of Administrative Hearings (SOAH) where there would be another opportunity to resolve the matter without a full hearing.

3. The City supports LCRA's request for an expedited preliminary hearing process at SOAH.

The City supports the Applicant's request to the Commission in its Response to Hearing Requests submitted on October 9, 2015, that a referral of this matter to SOAH ask SOAH to convene a preliminary hearing on an expedited basis. At a preliminary hearing, the Administrative Law Judge can designate the parties. Then, under 30 TAC §80.101, if the parties withdraw all hearing requests, at the request of the Applicant the judge shall remand the application to the ED. The City supports LCRA's request that the

Commission, in their order, delegate to the ED authority to sign the Revised Draft Order should this occur.

The City further asks that the Commission request that SOAH conduct a preliminary hearing within a timeframe such that if this matter or any issues need to be referred back to the Commission, that these could be included in the Commission's December 9, 2015 agenda. LCRA's current WMP sets January 1 as the date for deciding the amount of water available to interruptible customers, and although a new plan may be adopted after this January 1 date, as was the case with the 2010 WMP adopted on January 27, 2010, to avoid confusion it is preferable to resolve this matter prior to January 1, 2016 if at all possible.

4. The City requests direction from the Commission to SOAH that facilitates full resolution of this matter prior to the 2016 crop season.

In addition, the City asks that in referring the matter to SOAH, the Commission request that in the event SOAH must conduct a full hearing on this matter, that SOAH provide a Proposal for Decision to the Commission in time to be considered on a Commission agenda prior to March 1, 2016, and the commencement of the 2016 crop season for LCRA's interruptible stored water customers. The City makes this request in hopes of avoiding the need for consideration of any further emergency relief from LCRA's current Water Management Plan and to avoid by all means LCRA ever operating again under the current 2010 WMP, which is widely acknowledged to be insufficient to protect municipal firm water supplies.

Again the City wishes to indicate its willingness to continue working with other hearing requestors on this matter to secure the withdrawal of all hearing requests in the interest of having the revised WMP move forward and be in operation for the 2016 crop season. As discussed herein, the City appreciates any assistance and direction the Commission can provide on this matter to achieve this end, which we believe would be of benefit to the entire basin.

Respectfully submitted,

ROSS CROW
State Bar No. 05159000
Assistant City Attorney

MARY SAHS
State Bar No. 17522300
Outside Counsel for City

CITY OF AUSTIN
301 West 2nd Street, Box 1088
Austin, Texas 78767-1088
Telephone: (512) 974-2159
Facsimile: (512) 974-2894
ross.crow@austintexas.gov
marysahs@sahslaw.com

By: _____

Ross Crow

ATTORNEYS FOR CITY OF AUSTIN

CERTIFICATE OF SERVICE

I certify that on the 26th day of October 2015, the foregoing *City of Austin's Reply to Responses to Hearing Requests* was filed electronically with the Chief Clerk of the Texas Commission on Environmental Quality in Austin, Texas, and that a true and correct copy was delivered by electronic mail, by facsimile, or by first-class mail to the Executive Director, Public Interest Counsel and the Applicant.

A handwritten signature in cursive script, appearing to read "Ross Crow", is written over a horizontal line.

Ross Crow
Assistant City Attorney
City of Austin

EXHIBIT A



City of Austin

Austin Water P.O. Box 1088 Austin, Texas 78767 (512) 972-0101

September 18, 2015

VIA Electronic Filing

Bridget C. Bohac, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality ("TCEQ")
P.O. Box 13087, MC-105
Austin, TX 78711-3087

Re: Lower Colorado River Authority ("LCRA")
WRPERM5838
CN 600253637, RN 104252267
Application NO. 5838A to Amend the LCRA Water Management Plan
City Prepared to Withdraw Contested Case Hearing Request Upon Conditions

Dear Ms. Bohac:

The applicant, LCRA, has adequately addressed certain key concerns of the City regarding this application in LCRA's proposed modifications to the draft Order submitted to TCEQ on August 17, 2015. As a result, the City of Austin ("City" or "Austin") submits this letter to indicate that the City would be prepared to withdraw its pending request for a contested case hearing on the LCRA Water Management Plan ("WMP"), Application No. 5838A submitted by the City on May 24, 2013 upon certain conditions, which are:

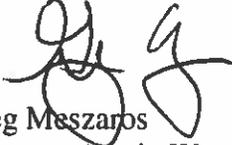
- TCEQ modifies the WMP Order in the manner proposed by LCRA in its comment letter submitted to TCEQ on August 17, 2015 (See attached as Exhibit A),
- there are no further changes made to the Order that are objectionable to the City,
- all other hearing requestors have withdrawn their requests or indicated their willingness to withdraw at the same time as the City of Austin consistent with these conditions, and
- no persons or parties raise any additional protests or issues, in a manner which would require the City of Austin to participate in any process related to this application to protect its position.

The City indicates its preparation to withdraw its request for a hearing in the interest of having the revised WMP move forward and be in operation for the 2016 crop season. The City is optimistic that the applicant will continue to work with the City to address any other outstanding concerns without the City seeking a hearing on the application and the City preserves for the future its rights and remedies on any unresolved issues.



We appreciate the Commission's attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'GM', written over a circular stamp or mark.

Greg Meszaros
Director, Austin Water
City of Austin

cc: Robert Goode, Assistant City Manager
Teresa Lutes, Managing Engineer, Austin Water
Ross Crow, Assistant City Attorney