

TCEQ DOCKET NO. 2016-0162-WR

**IN THE MATTER OF THE
APPLICATION OF NEW
BRAUNFELS UTILITIES
FOR WATER USE
PERMIT NO. 12469**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**LOWER COLORADO RIVER AUTHORITY'S REPLY
TO REPONSES TO REQUESTS FOR CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS:

The Lower Colorado River Authority (LCRA) files this Reply to the Responses to hearing requests on the above-referenced application. For the reasons set forth below, the LCRA vigorously disputes the Executive Director's and New Braunfels Utilities' (NBU) assertion that LCRA lacks standing in this matter. In this Reply, LCRA clarifies the information provided in its timely-filed request for a contested case hearing by providing further relevant information and reurges its request insofar as surface water rights continue to be an issue in this matter.

**1. LCRA HAS STANDING IN THIS MATTER
IF CERTIFICATE OF ADJUDICATION NO. 18-3824 IS IN PLAY**

For a party to have standing to challenge a governmental action, as a general rule, it "must demonstrate a particularized interest in a conflict distinct from that sustained by the public at large." *South Tex. Water Auth. v. Lomas*, 223 S.W.3d 304, 307 (Tex.2007); see *Brown v. Todd*, 53 S.W.3d 297, 302 (Tex.2001) ("Our decisions have always required a plaintiff to allege some injury distinct from that sustained by the public at large."); *Tri County Citizens Rights Org. v. Johnson*, 498 S.W.2d 227, 228-29 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.) ("It is an established rule ... that '... sufficiency of a plaintiff's interest (to maintain a lawsuit) comes into question when he intervenes in public affairs.") For purposes of contested case hearings on water rights applications, more particularly, the legislature has defined an "affected person" as one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the administrative hearing, and has directed the TCEQ to establish rules

identifying factors for making a determination of whether a person is an affected person in a contested case hearing.¹

TCEQ rules make clear that a contested case hearing can only be requested by: 1) the TCEQ Commissioners, 2) the TCEQ Executive Director, 3) the Applicant, and 4) any “affected person”.² The critical question with respect to contested case hearing requests is whether the person requesting the hearing is an “affected person.”³ An interest that is common to members of the general public does not qualify as a personal justiciable interest.⁴ When determining whether an individual or entity is an “affected person,” all relevant factors are to be considered by the Commission, including: 1) whether the interest claimed is one protected by the law under which the application will be considered; 2) distance restrictions or other limitations imposed by law on the affected interest; 3) whether a reasonable relationship exists between the interest claimed and the activity regulated; 4) the likely impact of the regulated activity on the health, safety, and use of property of the person; and 5) the likely impact of the regulated activity on use of the impacted natural resource by the person.⁵

The Lower Colorado River Authority (LCRA) and New Braunfels Utilities (NBU) have a long-term lease of land and other assets, which has been amended over time. *See* Exhibit A. (collectively “Lease Agreement”). This Lease Agreement also includes specific provisions related to water rights that are presently the subject of pending litigation in civil court,⁶ and which LCRA asserts have the potential to be affected by this pending application. Curiously, after spending pages and pages making the same arguments to the Commission that it made in district court,

¹ TEX. WATER CODE § 5.115(a). *See also* 30 TEX. ADMIN. CODE § 55.256(a).

² 30 TEX. ADMIN. CODE § 55.251(a).

³ *Tex. Comm’n on Env’tl. Quality v. Sierra Club*, 455 S.W.3d 228, 234 (Tex. App.—Austin, 2014).

⁴ 30 TEX. ADMIN. CODE § 55.256(a).

⁵ *Id.* § 55.256(c).

⁶ *New Braunfels Utilities v. Lower Colorado River Authority et al.*, Cause No. C2015-1358B in the 207th District Court, Comal County, Texas.

NBU fails to acknowledge that LCRA vigorously disputes NBU's arguments and that the case remains unresolved while on appeal.⁷

Briefly, the agreements between NBU and LCRA provide for the option for the water rights to revert to LCRA upon termination of the Lease Agreement in March 20, 2037. These are the same water rights that are presently reflected in Certificate of Adjudication No. 18-3824, as amended. Certificate of Adjudication No. 18-3824B authorizes NBU to use 5,658 acre-feet/year of water from the Guadalupe River for municipal, industrial and other uses, and is specifically identified in the application that is the basis of this proceeding as a source of some of the surface water-based effluent to which NBU has sought indirect reuse rights. NBU's Response Brief contains many of the same legal arguments regarding the *contract* that is the subject of the lawsuit and which the LCRA vigorously disputes. NBU itself has also stated on the record that the reversionary interest under the lease "by definition, is an existing property right."⁸ Resolution of that contract dispute is clearly within the court's exclusive jurisdiction, however, and there is no need to re-argue those points here for the Commission to conclude that LCRA is an affected person.

The Office of Public Interest Counsel (OPIC) correctly recognizes that LCRA's interests are affected by the application filed by NBU. Indeed, it is surprising that the Executive Director claims that LCRA's interests are common to the general public or too remote to be affected. The mere fact that there is ongoing litigation brought by NBU regarding the meaning of the Lease Agreement's water rights language belies the argument that the rights are too remote to confer standing on the LCRA as an affected person in this matter. And, as stated above, NBU recognizes that a reversionary interest is an *existing* property right.

⁷ *Lower Colorado River Authority General Manager and Directors v. New Braunfels Utilities*, Cause No. 03-16-00077-CV, in the Third Court of Appeals, Austin, Texas.

⁸ See Exhibit B, Plaintiff's (NBU's) Response to the LCRA General Manager's and Directors' Plea to the Jurisdiction at 3, *New Braunfels Utilities v. Lower Colorado River Authority et al.*, Cause No. C2015-1358B in the 207th District Court, Comal County, Texas.

Because of LCRA's asserted contractual right, the fact that LCRA is not the current holder of the water rights does not diminish its particularized interest in this proceeding in any way because a right to own the water right in the future is an interest distinct from the general public. TCEQ lacks jurisdiction to resolve the parties' contract dispute and respective interests in the lease and the water right.⁹ However, until that issue is finally resolved, and so long as Certificate of Adjudication No. 18-3824 is in any way at issue in this proceeding, the LCRA asserts a particularized interest in the water right that – contrary to the Executive Director's Response – is clearly *not* common to the general public and which could be adversely affected by the pending proceeding. LCRA has provided sufficient detail regarding its rights under the disputed Lease Agreement to demonstrate its right to standing in this case if Certificate of Adjudication No. 18-3824 remains or resurfaces as an issue in this proceeding.

As clearly shown in the ongoing litigation between the LCRA and NBU, the LCRA's ownership interest in Certificate of Adjudication No. 18-3824 under the Lease Agreement is a justiciable interest that could be affected if indirect reuse of effluent derived from that water right remains an open issue in this application. Notably, however, the LCRA has not sought a hearing on this application if no other requests are granted. This is because the LCRA's distinct interest in this proceeding is not *necessarily* adverse to NBU's interest in this proceeding – both NBU and the LCRA presumably have the same interest in preserving the full use and reuse of the water appropriated under Certificate of Adjudication No. 18-3824 to the fullest extent allowed under the law. To have standing, LCRA has “to show only that they will potentially suffer harm **or** have a ‘justiciable interest’ related to the proceedings.”¹⁰ In other words, though it may be uncommon in permit proceedings, a person need not be adverse to the applicant to be “affected.”

⁹ *See, e.g., Harris County Fresh Water Supply Dist. No. 61 v. FWO Development, Ltd.*, 396 S.W.3d 639, 647 (Tex. App.—Houston [14th Dist.] 2013, no pet.)(Commission not vested with exclusive jurisdiction to determine breach of contract claim.).

¹⁰ *Heat Energy Advanced Tech. v. West Dallas Coalition for Env'tl. Justice*, 962 S.W.2d 288, 295 (Tex. App.—Austin 1998, pet. denied) (emphasis added).

2. LCRA IS NOT INTERESTED IN NBU'S INDIRECT REUSE OF GROUNDWATER

The LCRA recognizes and appreciates that NBU now claims that its application no longer seeks any rights to indirectly reuse water that originates from the Guadalupe River, including water appropriated under Certificate of Adjudication No. 18-3824.¹¹ If the Commission's order of referral to the State Office of Administrative Hearings (SOAH) specifically limits the proceeding to issues related to that portion of NBU's application to indirectly reuse only effluent derived from groundwater, then the LCRA acknowledges that it is not affected by the application in a manner distinct from other water rights holders in this state with a general interest in the Commission's handling of applications to indirectly reuse groundwater-based effluent.

Should the Commission, however, keep alive any portion of NBU's request that could be interpreted to allow the SOAH judge to re-open consideration of NBU's request to indirectly reuse *state* water, and specifically any effluent derived from Certificate of Adjudication No. 18-3824B, the LCRA urges the Commission to recognize the LCRA's status as an affected person entitled to participate in any contested case hearing on this application so that LCRA can ensure the value of the water rights that are the subject of the Lease Agreement are not diminished.

3. CONCLUSION

For the reasons set forth above, LCRA requests that: (1) the Commission formally accept NBU's withdrawal of its request to reuse state water derived from Certificate of Adjudication No. 18-3824 and expressly limit any hearing on the merits to those related to NBU's application under Tex. Water Code § 11.042(b) such that LCRA's participation is not needed; or (2) affirm LCRA's personal justiciable interest in the Lease Agreement affecting Certificate of Adjudication No. 18-3824 and grant LCRA's request to participate in any hearing that is granted on this matter.

¹¹ See, e.g., NBU's Response to Requests for Contested Case Hearing at 1-2, fn. 1; 11-12.

Respectfully submitted,

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**ATTORNEYS FOR THE LOWER
COLORADO RIVER AUTHORITY**

CERTIFICATE OF SERVICE

I hereby certify that on July 25, 2016, the original and seven true and correct copies of the Lower Colorado River Authority's Reply to Responses to Requests for Contested Case Hearing were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, electronic mail, or by deposit in the U.S. Mail.



Lyn E. Clancy

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DOCKET NO. 2016-0162-WR; WATER RIGHTS PERMIT NO. 12469

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LEASE INDENTURE

This LEASE INDENTURE supercedes and stands in the place of that existing lease executed the 20th day of July, 1978, between LOWER COLORADO RIVER AUTHORITY (hereinafter called "LCRA"), an agency of the State of Texas, and NEW BRAUNFELS UTILITIES (hereinafter called "UTILITIES"), its successors and assigns, a subdivision of the City of New Braunfels, Texas:

W I T N E S S E T H

I. The Leased Premises

LCRA does hereby demise and lease unto UTILITIES, its successors and assigns, for the term hereof the property described as Tracts I and II of Exhibit "A" attached hereto effective April 1, together with the property described in Paragraph XV hereof subject to the reservation of rights by LCRA set forth on said exhibit and to the further terms and conditions hereof.

II. Terms and Rent

UTILITIES does hereby hire the leased premises for and during the term of fifty (50) years from April 1, 1987, and hereby covenants and agrees to pay in advance to LCRA at its offices in Austin, Travis County, Texas, a net annual rental of Six Percent (6%) of the fair valuation of the land comprised in the premises, exclusive of any structures thereon, said fair valuation being hereby fixed for the first twenty (20) years of the term hereof to be ONE HUNDRED THIRTY-NINE THOUSAND DOLLARS (\$139,000.00). Said fair valuation shall be determined for each subsequent ten (10) year period, or part thereof, in advance of such period by agreement of LCRA and UTILITIES or, if they cannot agree, by an independent appraiser, qualified as M.A.I. or equivalent appointed by the Governor of the State of Texas. If

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the parties are unable to agree upon such fair valuation within ninety (90) days of the beginning of the period to which such valuation would be applicable, either party may request the appointment of such appraiser. The decision of the appraiser so appointed shall be final and conclusive and shall be made within sixty (60) days after appointment. The expense associated with such appraisal shall be shared equally by the parties. In no event shall the annual rental under any circumstances be less than EIGHT THOUSAND THREE HUNDRED FORTY DOLLARS (\$8,340.00) net to LCRA. For such renewal periods all of the terms, other than the lease rental, shall remain the same. The total rental provided in this section shall be subject to payment in the following sequence.

III. Time and Form of Payment

During the term of this lease, all payments of rent shall be paid in equal installments in advance, in lawful money of the United States on April 1, July 1, October 1, and January 1, the first installment being due and payable on April 1, 1987. Any installment of rent accruing under the provisions of this lease, which shall not be paid when due, shall bear interest at the rate of Nine Percent (9%) per annum from the date when the same shall be payable.

IV. Net Return

The purpose and intent of this lease is that the rental provided for in Section II shall be an absolute net return to LCRA and that all expenses, costs and charges of every kind and nature in connection with the ownership, use, maintenance, upkeep and preservation of the premises, except such provision thereof which may be used by LCRA under the provisions of Section X(1) hereof, shall be borne and paid for by UTILITIES.

V. Condition of Premises

The premises consist of an electric generating plant site on which are located buildings, structures, generating equipment and appurtenant facilities formerly used for hydro as well as steam powered electric generation, but now out of service and no longer capable of being operated for such purpose. UTILITIES has made a thorough inspection of the premises, has observed the condition of the improvements thereon, is aware that potentially dangerous conditions exist at many locations on the premises and that the structures thereon are in various stages of disrepair. UTILITIES accepts the premises in its present existing condition except as to existing asbestos condition on the leased premises, and LCRA makes no representation or warranty of any kind or character as to the safety, fitness or condition of the premises and the improvements thereon whatsoever.

VI. Assumption of Responsibility by UTILITIES

UTILITIES, as part of the consideration for this lease, assumes total responsibility for the following:

(1) The safety of all persons and their property that may at any time be using, occupying or visiting the leased premises and does hereby agree to indemnify and hold LCRA harmless against any claims or demands on account of any loss, injury, death or damage to such persons or their property which may at any time be suffered during the term hereof, ^{*}except for the existing asbestos condition aforesaid, UTILITIES shall not be liable for negligence or misconduct of LCRA, its employees, agents or contractors. At the time of execution of this lease UTILITIES has outstanding a policy or policies of insurance in the amount of THREE MILLION DOLLARS (\$3,000,000.00), the terms of which UTILITIES shall cause to be expanded to cover the assumption of responsibility by UTILITIES provided for in this section and shall furnish to LCRA

evidence satisfactory to LCRA that such insurance is in full force and effect and adequate to cover such assumed responsibility.

The parties agree that in the future it may be financially necessary for UTILITIES to reduce the coverage of such policy or policies of insurance because of the premium costs thereof or laws or regulations which may be promulgated. In the event UTILITIES determines in the future to reduce such insurance coverage, then written notice of such intention shall be furnished to LCRA at least six (6) months in advance of any such reduction, with full particulars of what the reduction will be.

In no event shall UTILITIES carry less than ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000.00) in such coverage and in any event UTILITIES agrees to indemnify and hold LCRA harmless against any claims or demands on account of any loss, injury, damage or death to persons or property which at any time may be suffered during the term hereof, ⁺except for the existing asbestos condition aforesaid, UTILITIES shall not be liable for negligence or misconduct of LCRA employees, agents, or contractors.

(2) The operation of all water controls on the leased premises that affect the flow of the Comal River.

VII. Use of the Leased Premises

UTILITIES covenants that during the term hereof it will, in the use of the leased premises, conform to and observe all applicable laws of any governmental entity of the State of Texas and the United States, or any agency thereof, and will not in any way use or permit the use of the leased premises in any way contrary to Article 8280-107, V.A.T.S., under which LCRA was established and now exists.

VIII. Maintenance of Existing Structures - New Construction

UTILITIES will not during the term hereof have any obligation to maintain or repair any existing structures on the leased premises. UTILITIES shall have the right, subject to the provisions of Section X hereof, at its sole cost, risk and expense, to demolish and remove such structures as it may desire. UTILITIES may construct or cause to be constructed at its sole cost, risk and expense such new structures and improvements on the leased premises as it sees fit so long as such action by utilities does not in any way interfere with or impair the exercise of any right reserved by LCRA.

IX. Default by UTILITIES - LCRA's Rights on Termination

If at any time there shall be a default upon the part of UTILITIES in the payment of rent or in the performance of any other covenant or agreement herein contained and such default continues for a period of thirty (30) days after LCRA has notified UTILITIES in writing of such default, LCRA may at its option forthwith declare this lease terminated in all respects.

Upon the termination of this lease, whether by expiration of its term or otherwise, all buildings and other structures, whether improved or constructed by UTILITIES or not, shall belong to LCRA and no compensation shall be due UTILITIES therefor and upon such termination UTILITIES shall at once surrender and deliver up the leased premises together with all improvements thereon to LCRA.

X. Reservation of Rights by LCRA

(1) LCRA reserves the right to relocate its existing substation to the leased premises described as Tract I of Exhibit "A" and to maintain all present transmission or distribution lines located on the leased premises and the right to construct

new and additional necessary transmission or distribution lines and appurtenances on, over and across the leased premises; provided, however, that should additional lines be contemplated to be built or installed by the LCRA, the UTILITIES will be advised and the LCRA will discuss with the UTILITIES the proposed project and location so that the additions shall be designed to cause as little interference with the UTILITIES' use of the property as may be economically feasible to the LCRA, and the LCRA retains the full right of access to the leased premises for the purpose of constructing, reconstructing, inspecting, patrolling, operating, maintaining and removing such facilities.

UTILITIES' right to salvageable material does not apply to any personal property used or useful in connection with LCRA's transmission and distribution of electric power and energy as described above.

XI. Water Rights

LCRA reaffirms the transfer and assignment to UTILITIES during the existence of this lease as an appurtenance to the leased premises the following water rights that were previously transferred and assigned under the prior lease indenture dated July 20, 1978, including:

(1) All rights held by LCRA under Certified Filing No. 135 and No. 136;

(2) All rights held by LCRA as described in Claim No. 1551, as shown by the permanent records of the Texas Water Commission.

Upon the termination of this lease, the foregoing water rights shall revert to LCRA, at the option of LCRA.

In the event the UTILITIES should determine that it no longer wishes to maintain all or any part of the above water rights, then it shall promptly notify the LCRA in writing and cooperate with LCRA in transferring such water rights back to it at the LCRA's choice.

XII. Sale or Transfer of Rights

UTILITIES agrees that it will not sell or transfer all or any part of its rights hereunder without prior written consent of LCRA and shall furnish to LCRA full details of any request for transfer or assignment as a predicate for its consideration in making its determination for approval. Such consent shall not be unreasonably withheld.

XIII. Water Well and Equipment

This lease shall, in addition to the property described in Exhibit "A" attached hereto, and in paragraph XV hereof, also include a tract of land approximately 34 feet by 26 feet conveyed by deed from Meta Penshorn to Comal Power Company, dated November 2, 1925, together with the water well, pump, and appurtenances located thereon, all as more particularly described in Exhibit "B" attached hereto, under the terms and conditions of this lease; provided, however, that for the property and equipment described in Exhibit "B" UTILITIES shall pay the LCRA the sum of ONE THOUSAND TWO HUNDRED DOLLARS (\$1,200.00) annually, to be paid in quarterly installments of THREE HUNDRED DOLLARS (\$300.00) each beginning April 1, 1987; for the term of this lease. This payment shall be in addition to the amount provided in Section II.

XIV. Notice of Intention to Sell

In the event LCRA or its successors or assigns determines to sell the leased premises upon the termination of this lease, for whatever reason, the UTILITIES shall be advised six (6) months in advance of any such proposed sale and UTILITIES shall be accorded the opportunity to purchase such property under the laws and regulations of the LCRA Board or bond indentures or resolutions as may then be applicable to any such sale.

XV. Acknowledgment of Sublease

LCRA does hereby acknowledge and ratify that one certain sublease agreement executed October 27, 1978, between UTILITIES and Wursthfest Association of New Braunfels, for a term of fifty (50) years to be in full force and effect, according to its terms and conditions, on the following described property:

the tract containing approximately 7.64 acres together with all improvements thereon situated (except as reserved in Section X hereof of the aforementioned lease located across the Landa Park main entrance roadway from the Comal Plant tract and being all of the lands described as "Tract No. 2", and that part of "Tract No. 3" owned by Lower Colorado River Authority along the Comal River between North Seguin Street (Landa Street) and the confluence of the said Comal River and the old bed of said river, which Tracts 2 and 3 are described in deed from Landa Milling Company, et al, to Comal Power Company, dated August 17, 1925, recorded in Volume 51, pages 374-389 of the Deed Records of Comal County, Texas, and subject to the reservations and restrictions in said instrument and in this agreement, and further subject to the rights of any adjoining property owners as to ingress and egress based on the laws of the State of Texas or permission and agreements previously authorized to said adjoining land owners by the Lower Colorado River Authority.

XVI. Capital Improvements

low UTILITIES to have a credit applied to the : is obligated to pay LCRA under Clause No. II all capital improvements made during any year that the lease is in force. Capital improvement means money spent by UTILITIES for all permanent improvements to the leased premises over and above the cost of the new substation. It does not include the relocation, operation and maintenance cost of the new substation to be located on the leased premises which will be used jointly by UTILITIES and LCRA. The cost of relocation including operation and maintenance of any electric transmission

or distribution line which is for the use, and benefit of UTILITIES and LCRA shall not be deemed a capital improvement.

XVII. Access to Adjoining Property

UTILITIES, including LCRA, shall have access and over and across the entire property described in Exhibit "C" which is under lease to the City of New Braunfels, by LCRA, including the right of ingress, regress, and egress for the operation and maintenance of all electrical wires that cross the above described property. This includes access for operation and maintenance of the substation presently located on the property described in Exhibit "C". LCRA and UTILITIES shall have an easement over, and across, the property described in Exhibit "D", the City of New Braunfels shall have the right to use said easement. LCRA and UTILITIES shall also have an access easement, Exhibits "D" and "E", which is over, and across, the property described in Exhibit "C".

XVIII. Right of First Refusal

LCRA is contemporaneously with the execution of this lease entering into a lease with the City of New Braunfels to Lease approximately 17.930 acres of land, more or less, to be utilized by the City of New Braunfels as additional park land for Landa Park, which was previously under lease to NBU by LCRA. In the event LCRA or the City of New Braunfels terminates its lease to the aforesaid 17.930 acres, NBU will have the right to lease back said 17.930 acres under terms and conditions of the July 20, 1978, Lease, with the lease rental to be based upon 17.930 acres only.

XIX. Permanent Easement

LCRA and NBU plan to improve and make additions to the existing NBU substation on the leased premises to be used jointly by NBU and LCRA. The need for this substation by NBU may continue past the expiration of this lease. Therefore, in recognizing NBU's future needs, LCRA agrees to grant and hereby grants unto NBU a permanent easement to that portion of the real property on the leased premises that will be used for the new substation. This easement shall continue after the expiration of this lease so long as that portion of the real property of the leased premises is being used for the substation. Should the substation be discontinued, the easement shall terminate and it, as well as all improvements, shall revert back to LCRA.

XX. Fencing

LCRA and NBU agrees to divide the cost of fencing the new substation with NBU being allowed to have a capital credit for its portion of the cost which may be carried over during the term of the lease, from one year to the next until such credit is fully used.

IN WITNESS WHEREOF, this lease has been executed in duplicate originals by the parties hereto this 24th day of February, 1987.

NEW BRAUNFELS UTILITIES

LOWER COLORADO RIVER AUTHORITY

By: _____

Bob Sohn
Bob Sohn, P. E.
General Manager

By: _____

S. David Freeman
S. David Freeman
General Manager

STATE OF TEXAS

§

COUNTY OF COMAL

§

Before me, the undersigned authority, on this day personally appeared S. David Freeman, General Manager of the Lower Colorado River Authority, an agency of the State of Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal this 24th day of February, 1987.

Rita Mae Doern
Notary Public in and for
The State of TEXAS

My commission expires: 9/17/88

STATE OF TEXAS

§

COUNTY OF COMAL

§

Before me, the undersigned authority, on this day personally appeared Bob Sohn, P.E., General Manager of New Braunfels, Texas, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal this 24th day of February, 1987.

Rita Mae Doern
Notary Public in and for
The State of TEXAS

My commission expires: 9/17/88

Field note description of 10.15 acres, more or less, out of a 32.846 acre tract being the remaining portion of the original 33.74 acre tract after previous conveyances, said 33.74 acre tract being out of the Juan Martin Veramendi Two League Grant, Survey No. 1, Abstract No. 2, Comal County, Texas, located in the City of New Braunfels, described in deed from the City of San Antonio to the Lower Colorado River Authority, dated January 27, 1972, recorded in Volume 192, page 957 of the Comal County Deed Records. Said 10.15 acres being more particularly described by metes and bounds as follows:

BEGINNING at a $\frac{1}{4}$ " iron rod set for the Northwest corner of this tract and from which said point a $\frac{1}{4}$ " iron rod set at the original Northeast corner of said 33.74 acre tract, also being the Northeast corner of said 32.855 acre tract, bears N 60°23'50" E, a distance of 655.91 feet;

THENCE, with the following 8 courses and distances for corners of this tract;

- 1.) S 05°59'08" W a distance of 21.50 feet to a $\frac{1}{4}$ " iron rod set,
- 2.) S 21°14'00" E, a distance of 40.00 feet to a $\frac{1}{4}$ " iron rod set,
- 3.) S 48°27'08" E, a distance of 40.00 feet to a $\frac{1}{4}$ " iron rod set,
- 4.) S 75°40'16" E, a distance of 40.00 feet to a $\frac{1}{4}$ " iron rod set,
- 5.) S 21°14'00" E, a distance of 931.40 feet to a point,
- 6.) N 65°38'00" E, a distance of 30.60 feet to a point,
- 7.) S 24°22'00" E, a distance of 51.60 feet to a point,
- 8.) S 65°09'00" W, a distance of 33.50 feet to a point,

THENCE, S 21°14' E, a distance of 75.00 feet to a $\frac{1}{4}$ " iron rod set in the North line of Landa Street, also being in the North line of a 0.269 acre Right-of-Way tract deeded to the State of Texas, recorded in Volume 133, page 228, of the Comal County Deed Records;

THENCE, N 89°39" W, along the North line of Landa Street and North line of said 0.269 acre tract a distance of 272.72 feet to a $\frac{1}{4}$ " iron rod set for a corner of this tract;

THENCE, S 79°00' W, along the North line of Landa Street and North line of said 0.269 acre tract, a distance of 57.40 feet to a $\frac{1}{4}$ " iron rod set for a corner of this tract;

THENCE, N 89°39' W, with the North line of Landa Street and original South line of said original 33.74 acre tract, a distance of 132.09 feet to a $\frac{1}{4}$ " iron rod set for the Southwest corner of this tract at the intersection of the North line of Landa Street and the East line of Fredricksburg Avenue;

THENCE, N 18°01' W, along the East line of Fredricksburg Avenue, a distance of 1021.20 feet to a $\frac{1}{4}$ " iron rod set for the Northwest corner of this tract;

THENCE, N 69°10' E, parallel to and 100 feet perpendicular distance South of the original North line of said 33.74 acre tract a distance of 334.62 feet to th POINT OF BEGINNING, said tract contains 10.15 acres more or less.

EXHIBIT "A"
TRACT I

072556
EXHIBIT A

Field note description of 3.930 acres, more or less, out of a 32.846 acre tract being the remaining portion of the original 33.74 acre tract after previous conveyances, said 33.74 acre tract being out of the Juan Martin Veramendi Two League Grant, Survey No. 1, Abstract No. 2, Comal County, Texas, Located in the City of New Braunfels, described in deed from the City of San Antonio to the Lower Colorado River Authority, dated January 27, 1972, recorded in Volume 192, Page 957 of the Comal County Deed Records. Said 3.930 acre tract being more particularly described by metes and bounds as follows:

COMMENCING at a $\frac{1}{2}$ " iron rod set at the Southeast corner of said 32.846 acre tract and the Southwest corner of a 0.049 acre Right-of-Way dedication to the City of New Braunfels recorded in Volume 169, Page 439, also being in the North line of a 0.269 acre Right-of-Way tract deeded to the State of Texas, recorded in Volume 133, Page 228 all of the Comal County Deed Records;

THENCE N 89°39' W, along the North line of Landa Street and the North line of said 0.269 acre tract, a distance of 84.50 feet to a $\frac{1}{2}$ " iron rod set for the BEGINNING POINT of this tract;

THENCE N 89°39' W, along the North line of Landa Street and North line of said 0.269 acre tract, a distance of 280.50 feet to a nail set in concrete for a corner of this tract;

THENCE S 87°06' W, along the North line of Landa Street and North line of said 0.269 acre tract, a distance of 30.10 feet to a $\frac{1}{2}$ " iron rod set for a corner of this tract;

THENCE N 89°39' W, along the North line of Landa Street and North line of said 0.269 acre tract, a distance of 72.3 feet to point for a corner of this tract;

THENCE N 24°20' W, a distance of 127.5 feet to a point for the most Westerly corner of this tract in chain link fence;

THENCE N 65°21'41" E, along said fence a distance of 151.03 feet to a point for an interior corner of this tract;

THENCE N 24°23' W, along said fence a distance of 229.90 feet to a point for a corner of this tract;

THENCE N 64°12' E, along said fence a distance of 7.00 feet to a point for an interior corner of this tract;

THENCE N 24°17' W, along said fence a distance of 109.70 feet to a point for the Northwest corner of this tract, from which said point a chain link corner post bears N 24°17' W, a distance of 6.3 feet;

THENCE N 65°38' E, a distance of 254.15 feet to a nail set in concrete for the Northeast corner of this tract;

THENCE S 24°22' E, a distance of 400.00 feet to a $\frac{1}{2}$ " iron rod set for a corner of this tract;

THENCE S 08°37'32" E, a distance of 235.35 feet to the POINT OF BEGINNING, said tract contains 3.93 acres, more or less.

EXHIBIT "A"
TRACT II

072556

EXHIBIT A

EXHIBIT "B"

That portion of a certain tract of land known as the Peshorn Property and conveyed by deed from Meta Peshorn, a feme sole, to Comal Power Company, dated November 2, 1925, recorded in Volume 51, Pages 572-573, Deed Records, Comal County, Texas, more particularly described as follows:

Commencing at the Northwest corner of said Peshorn Property;

Thence Southerly down the West line of said property 34 feet to an existing corner post;

Thence Easterly at right angles to said West line along existing fence line 26 feet to an existing corner post of said fenced location on the East line of said Peshorn Property;

Thence Northerly along existing fence line and the East line of said Peshorn Property 34 feet to the Northeast corner of said Peshorn Property;

Thence Westerly along the north line of said Peshorn Property to the place of beginning.

together with the water well and all surface equipment, pipe, pumps, motors, fences, buildings located thereon; provided, however, that the LCRA reserves the right to maintain, reconstruct or rebuild electric power lines over, across or above said property as in its sole judgment shall be necessary or proper.

072556

EXHIBIT A

Field note description of 17.930 acres, more or less, out of a 32.846 acre tract being the remaining portion of the original 33.74 acre tract after previous conveyances, said 33.74 acre tract being out of the Juan Martin Veramendi Two League Grant, Survey No. 1, Abstract No. 2, Comal County, Texas, located in the City of New Braunfels, described in deed from the City of San Antonio to the Lower Colorado River Authority, dated January 27, 1972, recorded in Volume 192, page 957 of the Comal County Deed Records. Said 17.930 acres being more particularly described by metes and bounds as follows:

BEGINNING at a $\frac{1}{2}$ " iron rod set for the Northeast corner of this tract same being the Northeast corner of said 33.74 acre tract;

THENCE, along the West line of Landa Park Drive the following 13 courses and distances for corners of this tract;

- 1.) S 29° 44' 57" E, a distance of 150.87 feet to a concrete monument found,
- 2.) S 44° 30' 43" E, a distance of 146.55 feet to a concrete monument found,
- 3.) S 33° 41' 15" E, a distance of 41.42 feet to a $\frac{1}{2}$ " iron rod set,
- 4.) S 20° 36' E, a distance of 194.82 feet to a $\frac{1}{2}$ " iron rod set,
- 5.) S 14° 21' E, a distance of 144.79 feet to a $\frac{1}{2}$ " iron rod set,
- 6.) S 24° 20' E, a distance of 202.08 feet to a $\frac{1}{2}$ " iron rod set,
- 7.) S 20° 08' E, a distance of 245.70 feet to a $\frac{1}{2}$ " iron rod set,
- 8.) S 35° 44' E, a distance of 75.52 feet to a $\frac{1}{2}$ " iron rod set,
- 9.) S 25° 58' E, a distance of 62.42 feet to a $\frac{1}{2}$ " iron rod set,
- 10.) S 04° 26' 10" E, a distance of 122.86 feet to a $\frac{1}{2}$ " iron rod set, being the North corner of a 0.049 acre Right-of-Way dedication to the City of New Braunfels, recorded in Volume 169, page 439, of the Comal County Deed Records,
- 11.) S 11° 44' 58" W, along the West line of said 0.049 acre tract a distance of 50.00 feet to a $\frac{1}{2}$ " iron rod found,
- 12.) S 05° 42' 32" E, along the West line of said 0.049 acre tract a distance of 99.83 feet to a $\frac{1}{2}$ " iron rod found,
- 13.) S 35° 24' 28" W, along the West line of said 0.049 acre tract a distance of 15.10 feet to a $\frac{1}{2}$ " iron rod set for the Southeast corner of this tract in the North line of Landa Street, also being in the North line of a 0.269 acre Right-of-Way tract deeded to the State of Texas, recorded in Volume 133, page 228 of the Comal County Deed Records.

THENCE, N 89° 39' W, along the North line of Landa Street and North line of said 0.269 acre tract, a distance of 84.50 feet to a $\frac{1}{2}$ " iron rod set for an exterior corner of this tract;

THENCE, N 08° 37' 32" W, a distance of 235.35 feet to a $\frac{1}{2}$ " iron rod set for a corner of this tract;

THENCE, N 24° 22' W, a distance of 400.00 feet to a nail set in concrete for a corner of this tract;

THENCE, S 65° 38' W, a distance of 254.15 feet to a point for the Northwest corner of this tract from which said point a chain link corner post bears N 24° 17' W, a distance of 6.3 feet;

Thence S 24° 17' E, along a chain link fence a distance of 109.70 feet to a point for an interior corner of this tract;

THENCE S 64° 12' W, along said fence a distance of 7.00 feet to a point for a corner of this tract;

THENCE S 24° 23' E, along said fence a distance of 229.90 feet to a point for an interior corner of this tract;

THENCE S 65° 21' 41" W, along said fence a distance of 151.03 feet to a point for an exterior corner of this tract;

THENCE S 24° 20' E, a distance of 127.50 feet to a point in the North line of Landa Street for an exterior corner of this tract;

EXHIBIT "C"

072556

EXHIBIT A

THENCE N 89°39' W, along the North line of Landa Street and North line of said 0.269 acre tract, a distance of 183.48 feet to a $\frac{1}{2}$ " iron rod set for the Southwest corner of this tract in the North line of Landa Street;

THENCE N 21°14' W, a distance of 75.00 feet to a point for an exterior corner of this tract;

THENCE N 65°09' E, a distance of 33.50 feet to a point for an interior corner of this tract;

THENCE N 2°22' W, a distance of 51.60 feet to a point for an interior corner of this tract;

THENCE S 6°38' W, a distance of 30.60 feet to a point for an exterior corner of this tract;

THENCE N 21°14' W, a distance of 931.40 feet to a $\frac{1}{2}$ " iron rod set for a corner of this tract;

THENCE with the following six courses and distances to $\frac{1}{2}$ " iron rods set for corners of this tract;

- 1.) N 75°40'16" W, a distance of 40.00 feet,
- 2.) N 48°27'08" W, a distance of 40.00 feet,
- 3.) N 21°14'00" W, a distance of 40.00 feet,
- 4.) N 05°59'08" E, a distance of 40.00 feet,
- 5.) N 33°12'16" E, a distance of 40.00 feet,
- 6.) N 21°14'00" W, a distance of 60.00 feet to a $\frac{1}{2}$ " iron rod set for the Northwest corner of this tract in the North line of said 33.74 acre tract;

THENCE N 69°10' E, along the North line of said 33.74 acre tract a distance of 607.94 feet to the POINT OF BEGINNING, said tract contains 17.930 acres more or less.

Field note description of a 100 foot wide access area consisting of 0.833 acres, more or less, out of a 32.846 acre tract being the remaining portion of the original 33.74 acre tract being out of the Juan Martin Veramendi Two League Grant, Survey No. 1, Abstract No. 2, Comal County, Texas, located in the City of New Braunfels, described in deed from the City of San Antonio to the Lower Colorado River Authority, dated January 27, 1972, recorded in Volume 192, Page 957 of the Comal County Deed Records. Said 0.833 acres being more particularly described by metes and bounds as follows:

BEGINNING at a $\frac{1}{4}$ " iron rod set for the Northeast corner of this tract in the North line of said 32.846 acre tract, from which said point a $\frac{1}{4}$ " iron rod set at the original Northeast corner of said 33.74 acre tract also being the Northeast corner of said 32.846 acre tract, bears N 69°10' E, a distance of 607.94 feet;

THENCE with the following 4 courses and distances for corners of this tract;

- 1.) S 21°14' E, a distance of 60.00 feet to a $\frac{1}{4}$ " iron rod set,
- 2.) S 33°12'16" W, a distance of 40.00 feet to a $\frac{1}{4}$ " iron rod set,
- 3.) S 05°59'08" W, a distance of 18.50 feet to a $\frac{1}{4}$ " iron rod set,
- 4.) S 69°10' W, a distance of 334.62 feet to a $\frac{1}{4}$ " iron rod set in the Easterly line of Fredericksburg Avenue,

THENCE N 18°01' W, along the easterly line of Fredericksburg Avenue a distance of 100.12 feet to a $\frac{1}{4}$ " iron rod set for the Northwest corner of this tract same being the Northwest corner of said 32.846 acre tract;

THENCE N 69°10' E, along the original North line of said 33.74 acre tract a distance of 370.00 feet to the POINT OF BEGINNING, said tract contains 0.833 acres, more or less.

EXHIBIT "D"

072556
EXHIBIT A

Field note description of a 60 foot wide easement consisting of 0.229 acres, more or less, out of a 32.846 acre tract being the remaining portion of the original 33.74 acre tract after previous conveyances, said 33.74 acre tract being out of the Juan Martin Veramendi Two League Grant, Survey No. 1, Abstract No. 2, Comal County, Texas, located in the City of New Braunfels, described in deed from the City of San Antonio to the Lower Colorado River Authority, dated January 27, 1972, recorded in Volume 192, page 957 of the Comal County Deed Records. Said 0.229 acres being more particularly described by metes and bounds as follows:

COMMENCING at a $\frac{1}{2}$ " iron rod set at the Southeast corner of said 32.846 acre tract and the Southwest corner of 0.049 acre Right-of-Way dedication to the City of New Braunfels recorded in Volume 169, page 439, also being in the North line of a 0.269 acre Right-of-Way tract deeded to the State of Texas, recorded in Volume 133, page 228 all of the Comal County Deed Records;

THENCE, N 89° 39' W, along the North line of Landa Street and North line of said 0.269 acre tract, a distance of 365.00 feet to a nail set in concrete;

THENCE, S 87° 06' W, along the North line of Landa Street and North line of said 0.269 acre tract, a distance of 30.10 feet to a $\frac{1}{2}$ " iron rod set;

THENCE, N 89° 39' W, along the North line of Landa Street and North line of said 0.269 acre tract, a distance of 72.30 feet to a point;

THENCE, N 24°20' W, a distance of 62.75 feet to the POINT OF BEGINNING, being the Southeast corner of said 0.229 acre easement;

THENCE, S 74° 04' 18" W, a distance of 167.77 feet to a point for a corner of this easement;

THENCE, N 21° 14' W, a distance of 60.26 feet to a point for a corner of this easement;

THENCE, N 74° 04' 18" E, a distance of 164.48 feet to a point for a corner of this easement;

THENCE, S 24° 20' E, a distance of 60.65 feet to the POINT OF BEGINNING, said easement contains 0.229 acres more or less.

EXHIBIT "E"

072550
EXHIBIT A

8/c

FIRST MODIFICATION OF LEASE INDENTURE

1. **Date.** The effective date of this Agreement is 27 March '98.
2. **Parties.** The parties to this Agreement are the LOWER COLORADO RIVER AUTHORITY ("LCRA"), whose address is P.O. Box 220, Austin, Texas 78767, and NEW BRAUNFELS UTILITIES ("Utilities"), whose address is 263 Main Plaza, New Braunfels, Texas 78130.
3. **Recitals.** LCRA and Utilities entered into a Lease Indenture dated February 24, 1987 (the "Lease Indenture") by the terms of which Utilities leased certain property therein described from LCRA. LCRA and Utilities desire to reduce the size of the leased premises and make other modifications in the Lease Indenture as provided in the following paragraphs.
4. **Leased Premises.** Article I of the Lease Indenture is hereby amended so that from and after the effective date of this Agreement, the Leased Premises are those certain tracts of land located in Comal County, Texas, being (i) a 4.573 acre tract, more or less, out of the Juan Martin Veramendi Two League Survey, No. 1, Abstract No. 2, more particularly described in Exhibit "A" attached, and (ii) a 34 foot x 26 foot tract of land more particularly described in Exhibit "B" attached (the "Well Site"), together with all improvements and equipment located thereon.
5. **Rent.** Article II of the Lease Indenture is hereby amended to reduce the rent payable thereunder for the balance of the first 20 year term of the Lease Indenture so that from and after the effective date of this Agreement until March 31, 2007, the net annual rental of the 4.573 acre tract will be six percent (6%) of its fair value, that value being \$27,438.00. In addition to the annual rental for the 4.573 acre tract, the rent for the Well Site will continue to be \$1,200.00 per annum. In no event will the total annual rent for the Leased Premises be less than \$2,846.00 per year until March 31, 2007. After March 31, 2007, the \$1,646.00 annual rental for the 4.573 acre tract will be adjusted as provided in Article II of the Lease Indenture.
6. **Condition of Premises.** Utilities acknowledges receipt of an Asbestos Survey Report dated August 21, 1995, with respect to the hydroelectric generating building situated on the 4.573 acre tract subject of the Lease Indenture as hereby amended. This report suggests that braided electric wire located in the building is damaged and in friable condition and presents a high potential for asbestos fiber release if disturbed. LCRA acknowledges that Utilities has no obligation with respect to removal or remediation of any asbestos or asbestos containing materials of any sort.

Within (ninety) 90 days of the effective date of this Agreement, LCRA shall, at its sole cost and expense, obtain a Phase II Environmental Site Assessment covering the 4.573 acre tract. LCRA agrees to bear all costs associated with remediation of asbestos conditions which may be disclosed by the Phase II Assessment. Once the results of the assessment have been made available, LCRA and Utilities shall negotiate the terms of an agreement to cover the level, cost and responsibility for non asbestos-related environmental remediation of the 4.573 acre tract, based on the appropriate concentration standards and criteria for health-based closure and remediation. Due to the potentially hazardous conditions currently present in the hydroelectric generating facility, neither Utilities nor its sublessee will use such facility until such time as the assessment has been performed and appropriate remediation has been completed. Furthermore, Utilities agrees that it will not store, place or locate asbestos or asbestos containing materials in the hydroelectric generating building. Utilities agrees to provide LCRA such exclusive access to the hydroelectric facility on the 4.573 acre tract as is appropriate for remediating environmental hazards disclosed in the Phase II Assessment. No

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rent for such 4.573 acre tract will be due during the period of LCRA exclusive access provided in this paragraph. LCRA agrees to make all reasonable efforts to remediate on a schedule and in an area or areas that will not unduly interfere with Utilities' or its sublessee's use of the balance of the 4.573 acre tract. The parties intend that the provisions of this paragraph 6 only supplement and amend Article V of the Lease Indenture and do not replace the provisions of that Article.

7. **Environmental Risk Allocation.** If required by applicable law, LCRA is responsible for remediation of any environmental contamination of the Leased Premises unless the same was caused by Utilities or Utilities' invitees or agents. For the purpose of this provision, the term "Leased Premises" means the entire premises described in the Lease Indenture and the term "environmental contamination" means the presence on the Leased Premises or in any building situated on the Leased Premises of any hazardous, toxic, or other like material regulated under any state, federal or local law dealing with hazardous substances, protection of the environment, or similar matters in excess of lawfully permitted levels. It is the intent of this provision that responsibility for environmental contamination with respect to the Leased Premises is allocated as follows: (i) to Utilities for environmental contamination caused by Utilities and/or its invitees or agents' actions and (ii) to LCRA for environmental contamination caused by LCRA or pre-existing in the Leased Premises or any building located thereon at the time of execution of the Lease Indenture. This allocation is only as between LCRA and Utilities and is without prejudice to the rights that either party may have against other parties actually causing environmental contamination.

8. **Responsibilities of Utilities.**

a. Article VI of the Lease Indenture is hereby amended to reflect that Utilities must provide, at a minimum, the following forms of coverage in the amount specified:

Comprehensive General Liability:

- (a) \$ 500,000 bodily injury, each person
- (b) \$1,000,000 bodily injury, each occurrence
- (c) \$ 300,000 property damage; and
- (d) \$1,000,000 umbrella coverage

Fire and Extended Coverage:

Not less than 80% of the cost of replacement of all insurable improvements within the Leased Premises, with water damage and debris clean-up provisions included.

In all other respects Article VI(1) of the Lease Indenture remains effective.

b. Article VI(2) is amended to read in its entirety as follows:

The operation of all water controls which affect the flow of the Comal River (i) through the bypass tunnel which runs under Landa Park Drive and across the 4.573 acre part of the Leased Premises and (ii) through the forebay of the hydroelectric generating facility situated on the 4.573 acre tract. LCRA will grant Utilities such nonexclusive access to LCRA property as may be reasonably necessary to perform this function.

9. **Reservation of Rights by LCRA.** Article X of the Lease Indenture is hereby amended to read as follows:

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LCRA reserves the right to construct new and necessary transmission or distribution lines and appurtenances on, over and across the leased premises; provided, however, that should such lines be contemplated to be built or installed by the LCRA, the Utilities will be advised and the LCRA will discuss with the Utilities the proposed project and location so that the facilities are designed to cause as little interference with the Utilities' use of the leased premises as may be economically feasible to the LCRA, and the LCRA retains the full right of access to the leased premises for the purposes of constructing, reconstructing, inspecting, patrolling, operating, maintaining and removing such facilities. Any actions taken by LCRA pursuant to this Article X shall be at LCRA's cost and expense.

Utilities' right to salvageable material does not apply to any personal property used or useful in connection with LCRA's transmission and distribution of electric power and energy as described above.

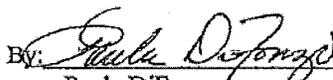
- 10. **Inapplicable Articles.** The Lease Indenture is amended to delete Article XVII, Article XVIII, Article XIX, and Article XX,
- 11. **Wurstfest Association Sublease.** Article XV is hereby amended to acknowledge the existence of a Sublease Agreement between Utilities and the Wurstfest Association of New Braunfels dated October 27, 1978, but that the part of the Leased Premises subject of the Sublease Agreement is in fact the 4.573 acre tract instead of 7.64 acres as described in the Lease Indenture. LCRA acknowledges the rights of the Wurstfest Association of New Braunfels to use and occupy the subleased premises in accordance with the aforesaid Sublease Agreement.
- 12. **Parking Rights.** The effect of this Agreement is to terminate the Lease Indenture insofar as it applies to the 3.93 acre tract on which the old Comal Power Plant building is located and the 10.15 acre tract on which LCRA and Utilities have substation facilities. LCRA hereby grants to Utilities an easement for the term of the Lease Indenture for parking 15 vehicles on paved parking areas on the 3.93 acre tract or, at LCRA's option, the 10.15 acre tract in an area designated by LCRA, provided such parking area thereon (i) is paved and (ii) has paved access not less than 20 feet wide to a public thoroughfare.
- 13. **Ratification.** The parties hereby ratify and confirm all the provisions of the Lease Indenture as modified hereby and agree that the Lease Indenture and this Agreement constitute the lease agreement between the parties. In the event of a conflict between this Agreement and the Lease Indenture, the provisions of this Agreement control.

LOWER COLORADO
RIVER AUTHORITY

NEW BRAUNFELS UTILITIES

By: 
 Name: DONNA BRASHER
 Title: MANAGER, COMMUNITY SERVICES



By: 
 Paula DiFonzo,
 General Manager

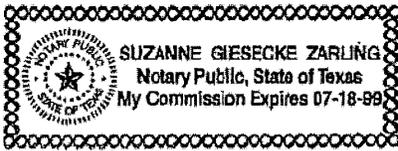
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THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me this 27th day of MARCH, 1998,
by DONNA BRASHER as MANAGER OF COMMUNITY SERVICES of the LOWER COLORADO
RIVER AUTHORITY.



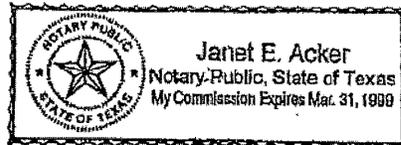
Suzanne Giesecke Zarling
Notary Public, State of Texas

THE STATE OF TEXAS §

COUNTY OF COMAL §

This instrument was acknowledged before me this 16th day of March, 1998,
by PAULA DiFONZO, as General Manager of NEW BRAUNFELS UTILITIES.

Janet E. Acker
Notary Public, State of Texas



After recording return to:
Christine Rothe H-424
LCRA
P.O. Box 220
Austin TX 78767

914212

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COMAL COUNTY, TEXAS
 JUAN MARTIN VERAMENDI
 TWO LEAGUE SURVEY NO. 1

LCRA HYDRO PLANT
 4.573 ACRES
 PAGE 1 OF 3

"EXHIBIT A"

FIELD NOTE DESCRIPTION OF 4.573 ACRES OF LAND LOCATED IN THE CITY OF NEW BRAUNFELS, COMAL COUNTY, TEXAS, AND BEING OUT OF THE JUAN MARTIN VERAMENDI TWO LEAGUE SURVEY NO. 1, ABSTRACT NO. 2, COMAL COUNTY, TEXAS, AND BEING ALL OF THAT SAME LAND CONVEYED FROM THE CITY OF SAN ANTONIO TO THE LOWER COLORADO RIVER AUTHORITY AND DESIGNATED AS TRACT 2, "LANDA MILL PROPERTY", BY DEED DATED JANUARY 27, 1972 AND RECORDED IN VOLUME 192, PAGES 957-960 OF THE DEED RECORDS OF COMAL COUNTY, TEXAS, SAME BEING ALL THAT PROPERTY DESCRIBED IN A DEED FROM LANDA MILLING COMPANY, ET AL, TO COMAL POWER COMPANY, DATED AUGUST 17, 1925 AND DESIGNATED AS TRACT #2 AND RECORDED IN VOLUME 51, PAGES 374-382 OF THE DEED RECORDS OF COMAL COUNTY, TEXAS, SAID 4.573 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS, TO WIT:

BEGINNING at a P-K nail found at the southwest corner of said Tract #2, and said P-K nail being the southeast corner of the Lower Colorado River Authority 32.846 acre tract of land as recorded in Volume 192, Pages 957-960 of the Deed Records of said Comal County, said P-K nail being found on the north line of Landa Street, and for the southwest corner of the herein described tract of land;

THENCE, along the west line of said Lower Colorado River Authority Tract 2, being the east line of said Lower Colorado River Authority (LCRA) 32.846 acre tract of land, the following four (4) courses;

- 1) N 08°35'55" W, a distance of 169.51 feet to a 1/2" iron rod found;
- 2) N 03°45'55" W, a distance of 128.51 feet to a 1/2" iron rod found;
- 3) N 26°11'13" W, a distance of 62.32 feet to a 1/2" iron rod found;
- 4) N 36°22'55" W, a distance of 45.42 feet to a 1/2" iron rod found for a westerly corner of said LCRA Tract 2 being the southerly southwest corner of the City of New Braunfels tract of land as recorded in Volume 84, Pages 293-295 of the Deed Records of said Comal County, Texas, said 1/2" iron rod found being the most westerly corner of the herein described tract of land;

THENCE, S 84°32'55" E, a distance of 94.17 feet, to a 1/2" iron rod found for an interior corner of said LCRA Tract 2 and the southerly southeast corner of said City of New Braunfels tract of land, said 1/2" iron rod being an interior corner of the herein described tract of land;

THENCE, N 06°10'05" E, a distance of 244.60 feet to a cotton spindle found for the northwest corner of said LCRA Tract 2 being an interior corner of said City of New Braunfels tract of land, said cotton spindle being the northwest corner of the herein described tract of land;

THENCE, S 83°47'55" E, a distance of 401.56 feet to a 1/2" iron rod set for the northeast corner of said LCRA Tract 2 being the southeast corner of said City of New Braunfels tract of land, and being in the west line of the Missouri, Kansas, and Texas Railway Company of Texas tract of land as recorded in Book Z, Pages 214-216 of the Deed Records of said Comal County, Texas, and said 1/2" iron rod being the northeast corner of the herein described tract of land;

THENCE, along the east line of said LCRA Tract 2 and the west line of said Missouri, Kansas, and Texas Railway Company tract of land the following two (2) courses;

- 1) S 23°28'55" E, a distance of 141.49 feet to a 1/2" iron rod set;
- 2) S 25°02'55" E, a distance of 161.30 feet to a 1/2" iron rod found for the most easterly southeast corner of said LCRA Tract 2, being the northeast corner of the Wurstfest Association of New Braunfels, Inc. Tract as recorded in Volume 266, Pages 965-966 of the Deed Records of Comal County, Texas, and said 1/2" iron rod found for the most easterly southeast corner of the herein described tract of land;

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100518

EXHIBIT A

COMAL COUNTY, TEXAS
JUAN MARTIN VERAMENDI
TWO LEAGUE SURVEY NO. 1

LCRA HYDRO PLANT
4.573 ACRES
PAGE 2 OF 3

THENCE, along the southerly line of said LCRA Tract 2 and the northerly line of said Wurstfest Association of New Braunfels, Inc. tract of land, the following fourteen (14) courses;

- 1) N 83°26'02" W, a distance of 147.48 feet to a 1/2" iron rod found;
- 2) S 73°10'05" W, a distance of 141.18 feet to a 1/2" iron rod found;
- 3) N 87°48'55" W, a distance of 16.54 feet to a 1/2" iron rod found;
- 4) S 56°13'05" W, a distance of 35.28 feet to a 1/2" iron rod found;
- 5) S 02°30'05" W, a distance of 140.46 feet to a 1/2" iron rod found;
- 6) S 79°32'05" W, a distance of 15.00 feet to a x mark in concrete found;
- 7) S 77°35'05" W, a distance of 29.08 feet to a 1/2" iron rod found;
- 8) S 2°30'05" W, a distance of 140.46 feet to a pk nail found;
- 9) S 44°31'05" W, a distance of 6.90 feet to a 1/2" iron rod found;
- 10) S 84°51'04" W, a distance of 34.95 feet to a 1/2" iron rod found;
- 11) S 37°34'05" W, a distance of 6.98 feet to a 1/2" iron rod found;
- 12) S 88°18'05" W, a distance of 54.38 feet to a 1/2" iron rod found;
- 13) N 57°53'55" W, a distance of 41.51 feet to a 1/2" iron rod found;
- 14) N 44°42'55" W, a distance of 49.48 feet to a 1/2" iron rod found for an interior corner of said LCRA

Tract 2 being the most westerly northwest corner of said Wurstfest Association of New Braunfels, Inc. tract of land, and being an interior corner of the herein described tract of land;

THENCE, S 07°48'55" E, a distance of 155.30 feet along the east line of said LCRA Tract 2 and the west line of said Wurstfest Association of New Braunfels, Inc. tract of land to a P-K nail set for the most southerly southeast corner of said LCRA Tract 2 being the southwest corner of said Wurstfest Association of New Braunfels, Inc. tract of land, and being on the north line of Landa Street, said P-K nail being the most southerly southeast corner of the herein described tract of land;

THENCE, along the south line of said LCRA Tract 2 being the north line of said Landa Street, the following two (2) courses;

- 1) N 87°27'55" W, a distance of 20.81 feet to a P-K nail found;
- 2) S 89°42'04" W, a distance of 11.00 feet to the Point of Beginning and containing within these metes and bounds, 4.573 acres of land more or less.

The foregoing description and plat attached hereto is a true and accurate representation of a survey made and monumented on the ground during May 1996, under the direction and supervision of Fredrick E. Crawford, Registered Professional Land Surveyor, No. 4670, State of Texas.

Fredrick E. Crawford 5-10-96
Fredrick E. Crawford
Registered Professional Land Surveyor
No. 4670 - State of Texas

Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767



WP: GCOM006A.001
ACAD: GCOM006A\001A.dwg

214212

100015

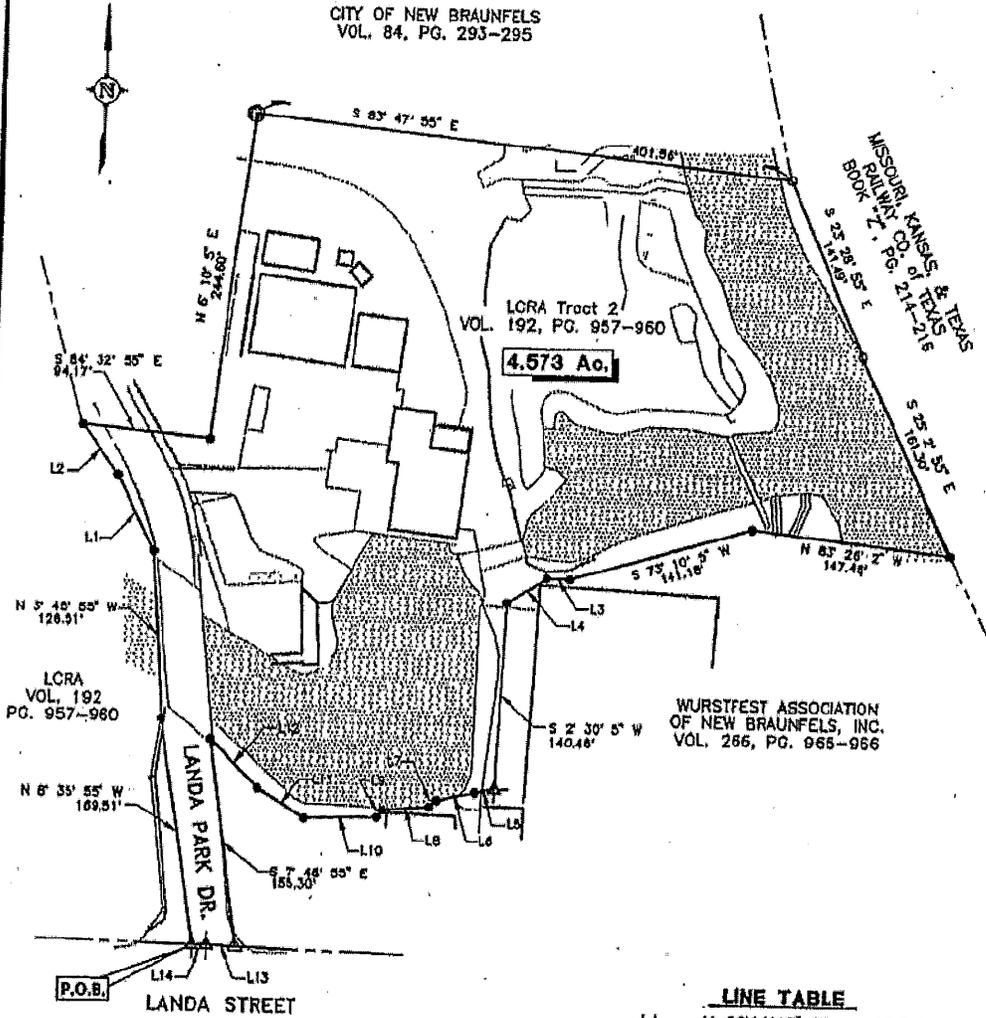
**COMAL COUNTY, TEXAS
JUAN MARTIN VERAMENDI SURVEY NO. 1**

Doc# 200406019384



LEGEND

- IRON ROD FOUND
- ⊕ P-K NAIL FOUND
- IRON ROD SET
- △ P-K NAIL SET
- ⊙ COTTON SPINOLE FOUND



LINE TABLE

L1	N 26°11'13" W	62.32'
L2	N 36°22'55" W	45.42'
L3	N 87°48'55" W	16.54'
L4	S 56°13'05" W	35.28'
L5	S 79°32'05" W	15.00'
L6	S 77°35'05" W	29.08'
L7	S 44°31'05" W	6.90'
L8	S 84°51'04" W	34.95'
L9	S 37°34'05" W	6.98'
L10	S 88°18'05" W	54.38'
L11	N 57°53'55" W	41.51'
L12	N 44°42'55" W	49.48'
L13	N 87°27'55" W	20.81'
L14	S 89°42'04" W	11.00'

BEARING BASIS: Texas State Plane, South Central Zone, NAD 83

<p>LOWER COLORADO RIVER AUTHORITY 4.573 Acres out of the JUAN MARTIN VERAMENDI SURVEY No. 1 COMAL COUNTY, TEXAS</p>	FIELD BOOK:		
	WP FILE: GCOM06A.001		
	WA NO.:		
	DRAWN BY: F.CRAWFORD SURVEYING & MAPPING DEPT.		
SCALE: 1" = 100'	05/06/96	GCOM06A\001A	

214913

100754

EXHIBIT "B"

That portion of a certain tract of land known as the Penshorn Property and conveyed by deed from Meta Penshorn, a feme sole, to Comal Power Company, dated November 2, 1925, recorded in Volume 51, Pages 572-573, Deed Records, Comal County, Texas, more particularly described as follows:

Commencing at the Northwest corner of said Penshorn Property;

Thence Southerly down the West line of said property 34 feet to an existing corner post;

Thence Easterly at right angles to said West line along existing fence line 26 feet to an existing corner post of said fenced location on the East line of said Penshorn Property;

Thence Northerly along existing fence line and the East line of said Penshorn Property 34 feet to the Northeast corner of said Penshorn Property;

Thence Westerly along the north line of said Penshorn Property to the place of beginning.

together with the water well and all surface equipment, pipe, pumps, motors, fences, buildings located thereon: provided, however, that the LCRA reserves the right to maintain, reconstruct or rebuild electric, power lines over, across or above said property as in its sole judgment shall be necessary or proper.

Doc# 200406019384
Pages 8
05/25/2004 09:25:58 AM
Filed & Recorded in
Official Records of
COMAL COUNTY
JOY STREATER
COUNTY CLERK
Fees \$28.00

Doc# 200406019384 100515

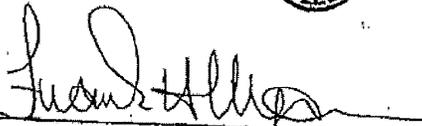
914212

SECOND MODIFICATION OF LEASE INDENTURE

1. **Date:** The effective date of this *Second Modification of Lease Indenture* (the "Agreement") is October 28, 2010.
2. **Parties:** The parties to this Agreement are the LOWER COLORADO RIVER AUTHORITY ("LCRA"), whose address is P.O. Box 220, Austin, Texas 78767, and NEW BRAUNFELS UTILITIES ("Utilities"), whose address is 263 Main Plaza, New Braunfels, Texas 78130.
3. **Recitals:** LCRA and Utilities entered into (i) a Lease Indenture dated February 24, 1987 (the "Lease") by the terms of which Utilities leased certain property therein described from LCRA and (ii) the First Modification of Lease Indenture dated March 27, 1998 (the "Modification") by the terms of which the parties amended the Lease to, among other things, redefine the leased property. LCRA is conveying a portion of the leased premises to Wurstfest Association, Inc. ("Wurstfest"), and Utilities has agreed to such conveyance. LCRA and Utilities desire to again redefine the leased property to exclude the 0.099 acre tract to be conveyed to Wurstfest that is fully identified and described in Exhibit A, which is attached hereto and incorporated herein for all purposes.
4. **Leased Premises:** Article I of the Lease, as previously modified, is hereby further amended to exclude the 0.099-acre tract described on Exhibit A.
5. **Ratification:** The parties, acting through their authorized representatives, hereby ratify and confirm all the provisions of the amended Lease as hereby modified and agree that the Lease, the Modification, and this Agreement constitute the lease documents and taken together are the entire agreement between the parties. All terms and conditions not expressly modified by this Agreement shall remain in full force and effect.

LOWER COLORADO
RIVER AUTHORITY



By: 
Frank Morgan, Manager
Community Services

NEW BRAUNFELS UTILITIES

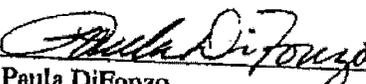
By: 
Paula DiFonzo
Chief Executive Officer

EXHIBIT A

Sherwood Surveying, L.L.C.



Residential - Commercial

6477 FM311
P.O. Box 992
Spring Branch, Texas 78070
830-228-5446 OFFICE
830-885-2170 FAX

L.C.R.A.
0.099 ACRE TRACT
(4,333 Sq. Ft.)
10WANB001.DWG

FN NO. 10WANB001
JULY 22, 2010
JOB NO. 10WANB001

FIELDNOTE DESCRIPTION
0.099 ACRES

BEING A 0.099 ACRE TRACT OF LAND OUT OF THAT CERTAIN 4.573 ACRE TRACT OF LAND DESCRIBED BY DEED DOCUMENT FROM THE CITY OF SAN ANTONIO TO THE LOWER COLORADO RIVER AUTHORITY DATED JANUARY 27, 1972 AND RECORDED IN VOLUME 192, PAGE 957, OFFICIAL PUBLIC RECORDS OF COMAL COUNTY, TEXAS; SAID 0.099 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING, AT A FOUND $\frac{1}{2}$ " IRON ROD SITUATED ON THE NORTHWESTERLY LINE OF THAT CERTAIN 3.616 ACRE TRACT OF LAND DESCRIBED IN VOLUME 266, PAGE 905, OFFICIAL PUBLIC RECORDS OF COMAL COUNTY, TEXAS, AND SITUATED ON THE SOUTHEASTERLY BOUNDARY LINE OF SAID 4.573 ACRE TRACT OF LAND MARKING AN INTERIOR CORNER OF SAID 4.573 ACRES;

THENCE, N $56^{\circ} 27' 15''$ E, ALONG THE COMMON NORTHWESTERLY BOUNDARY LINE OF SAID 3.616 ACRE TRACT AND SOUTHEASTERLY BOUNDARY LINE OF SAID 4.573 ACRE TRACT, A DISTANCE OF 35.28 FEET TO A SET $\frac{1}{2}$ " IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING" MARKING THE WESTERLY CORNER AND **POINT OF BEGINNING** OF SAID 0.099 ACRE TRACT OF LAND; (P.O.B. GRID COORDINATES. N.=13805314.8898, E.=2244464.3190)

THENCE, INTO AND ACROSS SAID 4.573 ACRE TRACT OF LAND, ALONG THE WATER'S EDGE THE FOLLOWING COURSES:

- N $67^{\circ} 02' 40''$ E, A DISTANCE OF 39.40 FEET TO A POINT;
- N $64^{\circ} 37' 42''$ E, A DISTANCE OF 24.39 FEET TO A POINT;
- N $70^{\circ} 30' 56''$ E, A DISTANCE OF 40.10 FEET TO A POINT;
- N $61^{\circ} 42' 18''$ E, A DISTANCE OF 31.04 FEET TO A POINT;
- N $60^{\circ} 42' 06''$ E, A DISTANCE OF 35.62 FEET TO A POINT;

Page 1 of 3

Exhibit A

EXHIBIT A

N 81° 32' 20" E, A DISTANCE OF 20.11 FEET TO A POINT;

S 71° 24' 01" E, A DISTANCE OF 20.11 FEET TO A POINT;

S 58° 30' 44" E, A DISTANCE OF 17.85 FEET TO A POINT;

S 11° 42' 18" E, A DISTANCE OF 15.70 FEET TO A POINT;

S 16° 50' 06" E, A DISTANCE OF 11.63 FEET TO A SET 1/2" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING" MARKING THE EASTERLY CORNER OF SAID 0.099 ACRE TRACT;

THENCE, ALONG THE COMMON NORTHERLY BOUNDARY LINE OF SAID 3.616 ACRE TRACT AND SOUTHERLY BOUNDARY LINE OF SAID 4.573 ACRE TRACT, THE FOLLOWING COURSES:

N 83° 11' 52" W, A DISTANCE OF 63.87 FEET TO A SET 1/2" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

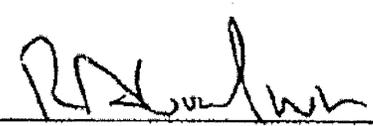
S 73° 24' 15" W, A DISTANCE OF 141.18 FEET TO A SET 1/2" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SHERWOOD SURVEYING";

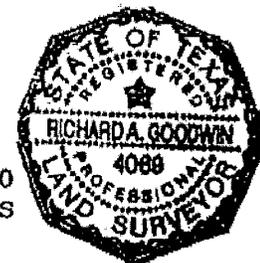
N 87° 34' 45" W, A DISTANCE OF 16.54 FEET TO THE WESTERLY CORNER AND **POINT OF BEGINNING**, CONTAINING AN AREA OF 0.099 ACRES OF LAND, MORE OR LESS.

I, RICHARD A. GOODWIN, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED FROM A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION.

A SURVEY EXHIBIT WAS PREPARED ON THIS SAME DATE. BASIS OF BEARING IS NAD 83 TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE.

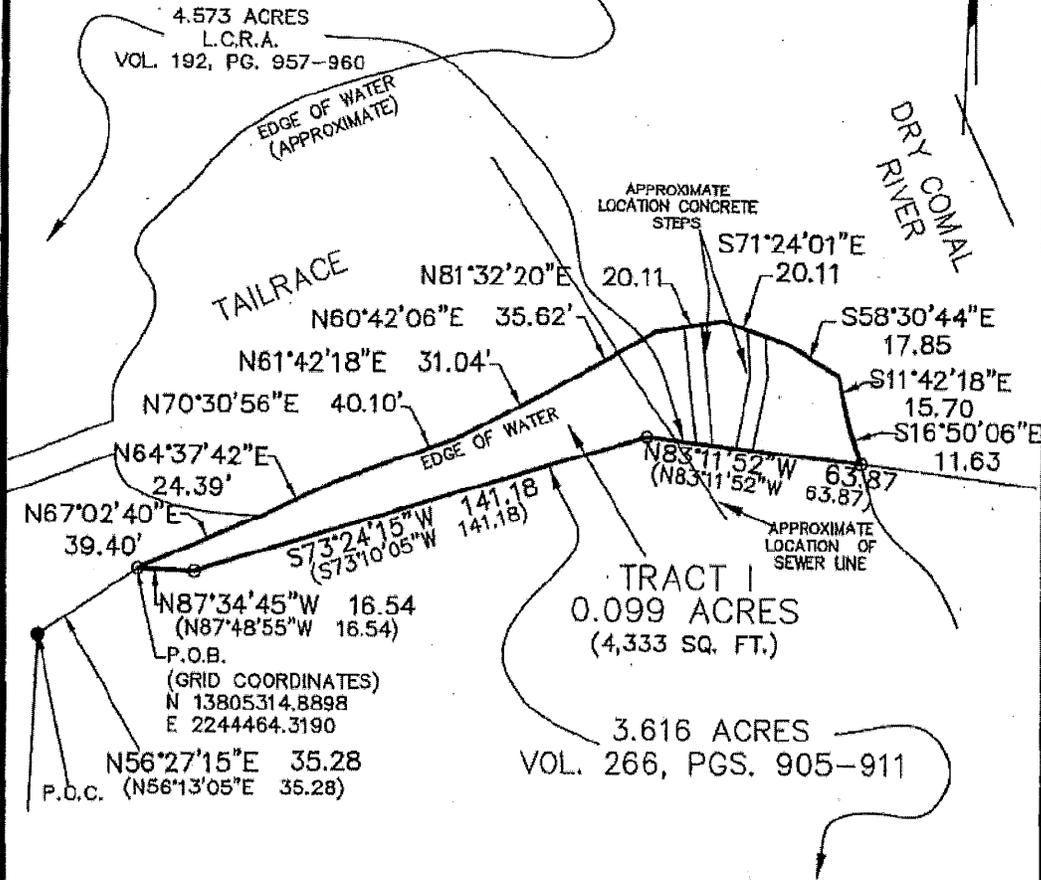
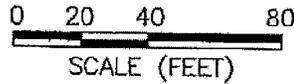
SHERWOOD SURVEYING, LLC
P.O. BOX 992
SPRING BRANCH, TEXAS 78070


RICHARD A. GOODWIN 7/22/10
R.P.L.S #4069 STATE OF TEXAS



LEGEND

- 1/2" IRON ROD SET
- 1/2" IRON ROD FOUND
- P.O.B. POINT OF BEGINNING
- P.O.C. POINT OF COMMENCING



THIS BOUNDARY SURVEY WAS COMPLETED WITHOUT ADDITIONAL RESEARCH TO DETERMINE IF OTHER MATTERS OF RECORD, IF ANY, MIGHT AFFECT THIS PROPERTY, SUCH AS EASEMENTS, SETBACKS, OR OTHER ENCUMBRANCES.

BASIS OF BEARING IS NAD83 TEXAS STATE PLANE COORDINATES, SOUTH CENTRAL ZONE

A PORTION OF THE TRACT SHOWN HEREON LIES WITHIN ZONE "AE", AS IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, AS SHOWN ON MAP NO. 48091C0435F, DATED: SEPTEMBER 2, 2009, FOR COMAL COUNTY, TEXAS INCORPORATED AREAS.

IF THIS SITE IS NOT WITHIN AN IDENTIFIED SPECIAL FLOOD HAZARD AREA, THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE, THIS FLOOD STATEMENT SHALL NOT CREATE LIABILITY ON THE PART OF THE SURVEYOR.



SURVEYORS CERTIFICATE

EXCLUSIVELY TO WURSTFEST ASSOCIATION OF NEW BRAUNFELS, INC.:

I, RICHARD A. GOODWIN, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, REGISTRATION NUMBER 4069, HEREBY STATE THAT DURING THE MONTH OF JUNE, 2010, A SURVEY OF THE REAL PROPERTY SHOWN HEREON WAS MADE UPON THE GROUND UNDER MY DIRECTION AND SUPERVISION, AND COMPLIES WITH THE CURRENT TEXAS SOCIETY OF PROFESSIONAL SURVEYORS STANDARDS AND SPECIFICATIONS FOR A CATEGORY 1A, CONDITION II LAND TITLE SURVEY IN THE STATE OF TEXAS PREPARED BY THE TEXAS SOCIETY OF PROFESSIONAL SURVEYORS, 2006 REVISED ELEVENTH EDITION, DATED FEBRUARY, 2006

RICHARD A. GOODWIN JULY 22, 2010
REGISTERED PROFESSIONAL
LAND SURVEYOR NO. 4069

WURSTFEST ASSOCIATION OF NEW BRAUNFELS, INC.

5477 FM 811
P.O. BOX 892
SPRING BRANCH, TEXAS 78070
PHONE * (830) 228-5446
FAX * (830) 865-2170

SHERWOOD



SURVEYING, L.L.C.

BOUNDARY SURVEY

A TRACT OF LAND CONTAINING 0.099 OF AN ACRE BEING OUT OF 4.573 ACRES SITUATED IN THE J. M. VERAMENDI SURVEY NO. ONE, COMAL COUNTY, TEXAS, DESCRIBED IN VOL. 192, PAGES 957-960 OF THE DEED RECORDS OF COMAL COUNTY, TEXAS.

DATE: 07/22/10

DRAWN BY: VLH

FILE: I:\SURVEY\10WANB001.dwg

FN NO.

PROJECT No. 10WANB001

Under Texas law, when a plea to the jurisdiction challenges the pleadings, the court determines if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. *See Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). The court must construe the pleadings liberally in favor of the plaintiff and look to the plaintiff's intent. *See id.* If the pleadings do not contain sufficient facts to affirmatively demonstrate the trial court's jurisdiction, but do not affirmatively demonstrate incurable defects in jurisdiction, the issue is one of pleading sufficiency and the plaintiff should be afforded the opportunity to amend. *See id.* at 226-27. A plea to the jurisdiction should be granted without allowing the plaintiff an opportunity to amend only if the pleadings affirmatively negate the existence of jurisdiction. *See id.* at 227.

The LCRA Officials assert that NBU's title claims do not constitute an *ultra vires* suit. This is an incorrect statement of the law. According to the Texas Supreme Court, suits to try a governmental entity's title may be maintained against governmental officials acting in their official capacities.

A suit against a state official for acting outside his authority is not barred by sovereign immunity. While suits to try the State's title are barred by immunity, in some instances a party may maintain a trespass to try title action against governmental officials acting in their official capacities. . . . If a government official acting in his official capacity possesses property without authority, then possession is not legally that of the sovereign. Under such circumstances, a defendant official's claim that title or possession is on behalf of the State will not bar the suit. A suit to recover possession of property unlawfully claimed by a state official is essentially a suit to compel a state official to act within the officer's statutory or constitutional authority, and the remedy of compelling return of land illegally held is prospective in nature.

Tex. Parks & Wildlife Dep't v. Sawyer Trust, 354 S.W.3d 384, 393 (Tex. 2011) (citations omitted).

Therefore, officials of a governmental entity are not immune from claims that their assertion of title is unfounded. Moreover, the trial court cannot grant a plea to the jurisdiction

against such title claims without first fulfilling its duty to hear evidence on the issues of title and possession. *See id.* at 394 (quoting *State v. Lain*, 349 S.W.2d 579, 582 (Tex. 1961)). As a result, because the LCRA Official's Plea to the Jurisdiction challenges only the pleadings and not the evidence, the plea to the jurisdiction must be denied. By asserting title claims based on the LCRA Officials' claim to a reversionary interest that the LCRA does not actually own, NBU has pleaded sufficient facts to affirmatively demonstrate this Court's jurisdiction.

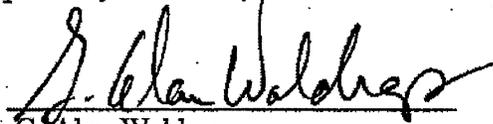
The LCRA Officials also assert that NBU lacks a ripe claim for prospective relief in this lawsuit because the LCRA's alleged reversionary interest would not be triggered unless and until the Lease between the parties were terminated and the LCRA exercised its discretionary option under that Lease to assert such an interest. This is also an incorrect statement of the law. A reversionary interest, by definition, is an *existing* property right. *See El Dorado Land Co. v. City of McKinney*, 395 S.W.3d 798, 802-04 (Tex. 2013) (holding that reversionary interest is property interest capable of being taken by condemnation); *Jupiter Oil Co. v. Snow*, 819 S.W.2d 466, 468 n.2 (Tex. 1991) ("A reversion exists in a grantor whenever something less than a full fee simple has been conveyed."); *BP Am. Production Co. v. Laddex, Ltd.*, 458 S.W.3d 683, 686-87 (Tex. App.—Amarillo 2015, pet. filed) (reversionary interest "came into existence and was presently vested" upon execution of lease); *718 Assocs., Ltd. v. Sunwest N.O.P., Inc.*, 1 S.W.3d 355, 361 (Tex. App.—Waco 1999, pet. denied) (defining "reversion" as "a present right to a future interest in property" (quoting BLACK'S LAW DICTIONARY at 1320 (6th ed. 1990))); *Bagby v. Bredthauer*, 627 S.W.2d 190, 196-97 (Tex. App.—Austin 1981, no writ) ("Once a reversion, possibility of reverter or right of entry is created, that interest is 'vested' in interest at the time of its creation."). Thus, the LCRA Officials are asserting a present property right, and NBU's

requested relief that such assertion be declared invalid by this Court is prospective in nature. *See Sawyer Trust*, 354 S.W.3d at 393.

THEREFORE, Plaintiff New Braunfels Utilities respectfully prays that this Court deny the LCRA General Manager's and Directors' Plea to the Jurisdiction or, alternatively, afford Plaintiff New Braunfels Utilities the opportunity to amend its pleadings, and that this Court grant Plaintiff New Braunfels Utilities all such other and further relief to which it may be entitled at law or in equity.

Respectfully submitted,

By:



G. Alan Waldrop

State Bar No. 20685700

Ryan D. V. Greene

State Bar No. 24012730

THE WALDROP FIRM

810 West 10th Street

Austin, Texas 78701

(512) 982-9950

(512) 474-9888 (Facsimile)

awaldrop@awaldroplaw.com

rgreene@awaldroplaw.com

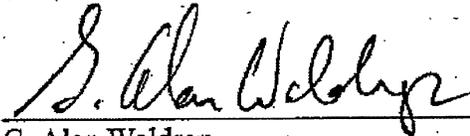
ATTORNEYS FOR NEW BRAUNFELS
UTILITIES

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served as indicated on this 11th day of January, 2015, to the following:

VIA FACSIMILE (512) 473-4010 AND ELECTRONIC CASE FILING SYSTEM

James N. Rader
Lower Colorado River Authority
3700 Lake Austin Blvd.
Austin, TX 78703



G. Alan Waldrop