

**TCEQ DOCKET NO. 2016-0531-WR  
APPLICATION NO. 14-5434E**

**APPLICATION OF THE LOWER  
COLORADO RIVER AUTHORITY  
TO AMEND CERTIFICATE OF  
ADJUDICATION NO. 14-5434**

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§

**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

**APPLICANT LOWER COLORADO RIVER AUTHORITY'S  
RESPONSE TO REQUESTS FOR CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS:

The Lower Colorado River Authority (LCRA) submits this response to requests made to the Texas Commission on Environmental Quality (TCEQ) for a contested case hearing on LCRA's Application to Amend Certificate of Adjudication No. 14-5434 (Application)<sup>1</sup> pursuant to 30 Tex. Admin. Code § 55.254, and in support thereof would respectfully show the Commissioners the following:

**1. BACKGROUND**

The LCRA's Application was filed pursuant to Tex. Water Code § 11.122 and the TCEQ's rules, 30 Tex. Admin. Code chs. 295 & 297. The LCRA owns Certificate of Adjudication No. 14-5434C, which presently authorizes the diversion of up to 133,000 acre-feet/year at a rate of 600 cfs, from a single location on the lower Colorado River in Colorado County, at a priority date of November 1, 1900. The water right is authorized for municipal, industrial, and agricultural purposes and is authorized for use within six counties (Colorado, Wharton, Travis, Bastrop, Fayette and Matagorda) within the Colorado, Lavaca, Guadalupe and Brazos River basins and the Colorado-Lavaca and Brazos-Colorado coastal basins. The LCRA has traditionally used this water right to supply water for agricultural purposes (mainly rice irrigation) to customers within its

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<sup>1</sup> LCRA intends for the term "Application" to refer to the application filed by LCRA in August 2002 and declared administratively complete in February 2003, as well as all responses to requests for information and supplemental information filed by LCRA related to the Application.

Garwood irrigation division, consistent with the terms and conditions of the purchase agreement by which it acquired the water right in 1998. The LCRA's Application seeks to enhance the value of this senior water right for all of LCRA's customers by adding multiple additional authorized points of diversion both upstream and downstream of the existing authorized point of diversion, at existing locations where LCRA has authorized diversion points under separate water rights. This Application, if granted, would allow the LCRA to use this senior water right to meet customer demands when the water right is not needed to honor the LCRA's contractual commitment to the Garwood farmers and, in many cases, would allow the LCRA to make more efficient use of the state waters that the LCRA is authorized to manage by reducing the need to release stored water from lakes Buchanan and Travis to meet those demands. Special conditions included in the draft permit help ensure that other water rights are not adversely affected by the requested amendment by limiting the amount of water the LCRA may divert upstream of the existing diversion point. Other special conditions address impacts to instream flows that may result from upstream diversion of this water right that are consistent with criteria included in the LCRA's recently approved Water Management Plan (WMP), and as it may be amended in the future, which also have the added benefit of providing more uniformity in LCRA's day-to-day river management.

## **2. PROCEDURAL HISTORY**

The Application was received by the Commission on August 29, 2002, and was declared administratively complete on February 5, 2003. On May 22, 2003, the TCEQ Chief Clerk's Office provided certified mailed notice of the Application to the 415 interjacent water right holders between Lake Buchanan and the existing downstream diversion point on the Colorado River, and also to the nine (9) water right holders downstream of the existing diversion point to the coast on

the Colorado River, in the Colorado River basin.<sup>2</sup> The comment period ended on June 23, 2003. Six requests for contested case hearing were timely filed.

The LCRA entered into agreements with STP Nuclear Operating Company in 2006 and the City of Austin in 2007 regarding several matters, including their respective protests of this Application. On June 23, 2009, the Executive Director (ED) mailed a draft permit amendment to the LCRA and all persons filing requests for hearing or public comment.<sup>3</sup> Thereafter, the ED made further revisions to the draft permit to incorporate comments from the LCRA and to reflect updated instream flow conditions and adjustments to reflect updated hydrology. The final draft permit amendment that is the subject of this proceeding was released on January 21, 2016, and mailed to all parties that provided comments or requested a contested case hearing on the Application. On August 3, 2016, the LCRA received notice that its draft permit amendment and all timely filed hearing requests would be considered by the Commission at the September 7, 2016 agenda.

### 3. DETERMINATION OF AFFECTED PERSONS

The requirement for establishing standing is to ensure that there is a real controversy between the parties which will actually be determined by the judicial declaration sought.<sup>4</sup> 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 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.<sup>5</sup>

The TCEQ's 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) an "affected

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<sup>2</sup> TCEQ issued certified mailed notice pursuant to 30 TEX. ADMIN. CODE § 295.158(c)(2)(E) and TEX. WATER CODE § 11.132(a), as they were in effect at that time.

<sup>3</sup> This Application was deemed administrative complete and underwent public notice at a time when the TCEQ issued its public notice *prior* to completion of technical review and a release of a draft permit.

<sup>4</sup> Tex. Ass'n of Bus. v. Texas Air Control Bd., 852 S.W.2d 440, 446 (Tex. 1993).

<sup>5</sup> TEX. WATER CODE § 5.115(a). See also 30 TEX. ADMIN. CODE § 55.256(a).

person".<sup>6</sup> The critical question with respect to contested case hearing requests is whether the person requesting the hearing is an "affected person."<sup>7</sup> An interest that is common to members of the general public does not qualify as a personal justiciable interest.<sup>8</sup> Accordingly, a request for a contested case hearing must include a brief, but specific, description of the person's location and distance relative to the activity that is the subject of the Application.<sup>9</sup> In addition, the person must do more than just provide a conclusory statement in the request that he or she will be harmed by the proposed change. The person must describe briefly, but specifically, how and why he or she will be affected by the change proposed in the Application in a manner not common to members of the general public.<sup>10</sup>

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.<sup>11</sup>

In this case, two hearing requests have been filed by organizations. For an organization to be granted a contested case hearing, its request must meet the following specific requirements: 1) at least one member of the group or association must have standing to request a hearing in his or her own right; 2) the interests the group or association seeks to protect are germane to the

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<sup>6</sup> 30 TEX. ADMIN. CODE § 55.251(a).

<sup>7</sup> *Tex. Comm'n on Env'tl. Quality v. Sierra Club*, 455 S.W.3d 228, 234 (Tex. App.—Austin, 2014).

<sup>8</sup> 30 TEX. ADMIN. CODE § 55.256(a).

<sup>9</sup> *Id.* § 55.251(c)(2).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* § 55.256(c).

group's purpose; and 3) neither the claim asserted nor the relief sought would require the presence of the individual members.<sup>12</sup>

In performing its review of hearing requests, the Commission enjoys the discretion to weigh and resolve matters that may go to the merits of the underlying Application, such as the likely impact of the regulated activity on the health, safety, and use of property by the requestor and on the use of natural resources.<sup>13</sup> In considering whether to grant a request for a hearing, the Commission may review the administrative record to evaluate whether the concerns raised are common to all or whether the concerns have been addressed in the review of the Application and reflected in various conditions of the draft permit.<sup>14</sup> The Application before the Commission was filed under Chapter 11 of the Texas Water Code, and as such, only interests that relate to issues governed by Chapter 11 are justiciable in this matter.

#### **4. EVALUATION OF HEARING REQUESTS FOR APPLICATION NO. 14-5434E**

Six hearing requests were timely filed. LCRA believes the draft permit amendment adequately protects against potential adverse impacts to the environment and other water rights, consistent with Texas Water Code section 11.122 and is hopeful that, upon further review and consideration of the draft permit amendment's special conditions and the required accounting plan, the protestants will withdraw their requests for hearing. In the event that this does not occur prior to the Commission's consideration of these requests, however, LCRA offers the following response to each request.

##### **4.1. National Wildlife Federation**

National Wildlife Federation (NWF) submitted a request for contested case hearing on the Application on June 23, 2003, generally raising concerns regarding the impacts of the Application

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<sup>12</sup> *Id.* § 55.252(a).

<sup>13</sup> *See Sierra Club*, 455 S.W.3d at 234 (noting the discretion to be afforded TCEQ in determining whether to grant a hearing request, including consideration of the likely impact of the activity on the health, safety, and use of property by the requestor and on the use of natural resources); *Tex. Comm'n on Envtl. Quality v. City of Waco*, 413 S.W.3d 409, 419-420 (Tex. 2013).

<sup>14</sup> *See Sierra Club*. 455 S.W.3d at 239-40.

on instream flows. To the extent that the Commission determines that the Application affects instream flows and NWF is able to present a member or members of its organization with a specific, rather than common, interest in the Application, the LCRA does not object to NWF's hearing request.

#### **4.2. Sierra Club (Lone Star Chapter)**

The Sierra Club submitted a request for contested case hearing on the Application on June 23, 2003, generally raising concerns regarding the impacts of the Application on instream flows. To the extent that the Commission determines that the Application affects instream flows and the Sierra Club is able to present a member or members of its organization with a specific, rather than common, interest in the Application, the LCRA does not object to the Sierra Club's hearing request.

#### **4.3. Colorado River Municipal Water District**

The Colorado River Municipal Water District (CRMWD) submitted a request on June 23, 2003, for a contested case hearing on the Application. Pursuant to a March 26, 1998 Letter Agreement between CRWMD and the LCRA (attached hereto as **Exhibit A**), LCRA agreed that, as the new owner of the Garwood water right, it would not require CRMWD to pass any more inflows than would have been required if the full Garwood water right for 133,000AF were used for irrigation at its original diversion point to the fullest extent possible. The LCRA believes the special conditions included in the draft permit amendment, as well as the required accounting plan, honors that agreement. The LCRA is willing, however, to include an additional special condition if the Commission determines it is necessary to address CRMWD's interests and, as such, does not object to CRMWD's request for a hearing.

#### **4.4. STP Nuclear Operating Company (STPNOC)**

STP Nuclear Operating Company (STPNOC) submitted a request on June 23, 2003, for a contested case hearing on the Application. A conditional withdrawal letter was filed by STPNOC

on February 9, 2006 (attached hereto as **Exhibit B**). Should a hearing be granted in response to another request, the LCRA does not object to STPNOC's participation in the hearing consistent with the Settlement Agreement between the LCRA and STPNOC, referenced in STPNOC's February 9, 2006 letter.

#### **4.5. City of Austin**

The City of Austin (Austin) submitted a request for a contested case hearing on the Application on June 23, 2003. As indicated in a letter filed by the LCRA dated November 28, 2007 (attached hereto as **Exhibit C**), and a letter filed by the City of Austin dated August 24, 2009 (attached hereto as **Exhibit D**), the LCRA and Austin have reached a settlement agreement regarding this Application. The draft permit amendment addresses comments received from the LCRA and Austin consistent with the parties' agreement. Should a hearing be granted in response to another request, the LCRA does not object to the City of Austin's participation in the hearing consistent with the parties' agreement.

#### **4.6. Keith and Helen Weber**

Keith and Helen Weber submitted a joint request for a contested case hearing on the Application on June 23, 2003. At the time notice of the Application was published, the Webers had filed Application No. 5792 with the Commission under Chapter 11.121 of the Texas Water Code seeking a new appropriation of "underflow" from the Colorado River, to be diverted through a well located on the Webers' property several miles away from the Colorado River in southeast Travis County. The Webers subsequently withdrew that application on September 15, 2003. The Webers do not own property along nor hold any water rights to divert from the Colorado River. The Webers have no present interest affected by the Application different from the general public. Therefore, the hearing request submitted by Keith and Helen Weber should be denied.

## 5. CONCLUSION

For the foregoing reasons, the LCRA respectfully requests that the Commission find that the Webers are not “affected persons” entitled to a hearing, and grant the remaining requests to the extent the Commission deems such hearing is warranted, consistent with the Commission’s rules.

Respectfully submitted,

LYN E. CLANCY  
State Bar No. 00796448  
Managing Associate General Counsel

GREG GRAML  
State Bar No. 24059846  
Associate General Counsel

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By:   
Lyn E. Clancy

**ATTORNEYS FOR THE LOWER  
COLORADO RIVER AUTHORITY**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2016, the *Lower Colorado River Authority's Response to Requests for Contested Case Hearing* was served by electronic filing with the Chief Clerk of the Texas Commission on Environmental Quality. In addition, a true and correct copy was served by hand delivery, electronic mail, or by first-class mail to all persons on the attached Mailing List.

  
\_\_\_\_\_  
Lyn E. Clancy

**MAILING LIST**  
**LOWER COLORADO RIVER AUTHORITY**  
**DOCKET NO. 2016-0531-WR; CERT. OF ADJ. NO. 14-5434**

FOR THE APPLICANT:

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FOR ALTERNATIVE DISPUTE RESOLUTION

Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
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FOR THE CHIEF CLERK:

Via: <http://www.tceq.texas.gov/goto/eFilings>

Bridget Bohac  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC-105  
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Austin, Texas 78711-3087  
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REQUESTER(S):

See attached list.

REQUESTER(S):

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Director, Sierra Club, Lone Star Chapter  
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Kenneth Ramirez  
Law Office of Ken Ramirez  
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Austin, TX 78746

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Austin, TX 78767-1088

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Webb & Webb  
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Austin, TX 78767-1329

Fred B. Werkenthin, Jr.  
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INTERESTED PERSON(S):

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Austin, TX 78701-2733

Lee Munz  
Texas State Soil & Water Conservation Bd.  
P.O. Box 658  
Temple, TX 76503-0658

Coleman Rowland  
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Cynthia C. Smiley  
Smiley Law Firm PC  
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Austin, TX 78730-4910



## Colorado River Municipal Water District

400 EAST 24TH • P.O. BOX 869  
Big Spring, Texas 79721-0869  
PHONE 915-267-6341  
FAX 915-267-3121

### OFFICERS

John Currie, President  
R.E. Yorgason, Vice President  
Charles R. Perry, Vice President  
Jim Bill Little, Secretary-Treasurer  
John W. Grant, General Manager  
C.L. Wingert, P.E., Assistant General Manager

March 26, 1998

### DIRECTORS

John Currie, Big Spring  
R.E. Yorgason, Snyder  
Charles R. Perry, Odessa  
Jim Bill Little, Big Spring  
Richard D. Gatham, Odessa  
John A. Faght, Snyder  
Rod Walker, Snyder  
Ed Barham, Odessa  
Ted Crenswelge, Snyder  
Wade Choate, Big Spring  
James T. Weaver, Big Spring  
W.R. "Bert" Hill, Odessa

Mr. Mark Rose  
General Manager  
Lower Colorado River Authority  
PO Box 220  
Austin, TX 78767-0220

Dear Mr. Rose:

This letter is to summarize the meeting held on March 10, 1998, between the staffs of LCRA and CRMWD and our subsequent discussions. When executed by LCRA, this letter will evidence the agreements in principle between the staffs of the Lower Colorado River Authority and the Colorado River Municipal Water District.

### Combined System Operation / Water Availability

Both LCRA and CRMWD agree that it may be possible to operate the LCRA series of Highland Lakes and CRMWD's three main Reservoirs in a coordinated manner in order to maximize the amount of water available for beneficial use within the Colorado River Basin. In order to accomplish this, CRMWD and LCRA will work together to perform studies and develop strategies to meet this goal, while still meeting the purpose for which each organization was created.

Items to be included in the studies and strategies are: evaluation of new critical drought periods, water availability to meet each organization's basic needs, possible increases in water supplies from combined operation, water quality, blending water, regulatory and permitting requirements, and additional revenue created by hydroelectric generation or other uses of water.

### LCRA Purchase of Garwood - LCRA / CRMWD Settlement Agreement

The LCRA has made an offer to purchase the Garwood Irrigation Company, including 133,000 acre-feet of water presently permitted for irrigation, and all of the company's assets. Prior to closing of the Garwood contract, LCRA intends to seek approval from the TNRCC to add municipal and industrial use, multiple diversion points (both upstream and downstream from the current permitted diversion point), and maintain the priority date of November 1, 1900. LCRA intends to use and sell the Garwood water or water rights within the Colorado River Basin.

**Exhibit A**

Mr. Mark Rose

Page 2

March 26, 1998

CRMWD will support LCRA's request as stated above provided that:

- 1) LCRA and CRMWD amend the Settlement Agreement dated February 1985, to eliminate the provisions for releases from the O.H. Ivie Reservoir (Section II) and those portions of Section III relating to the Section II release provisions and restrictions on use of water from Ivie Reservoir. Sections I and IV, and the remaining parts of Section III of the settlement agreement will remain unchanged and will be reaffirmed.
- 2) LCRA will not require CRMWD to pass through any more inflows than would have been required had the 133,000 acre-feet per year Garwood irrigation water right remained at its original diversion point and been used for irrigation purposes to the full extent possible.
- 3) LCRA will not make a priority call for water to be released from storage in CRMWD's reservoirs to satisfy the Garwood water rights as acquired and amended by LCRA.
- 4) Any inflows to be passed through CRMWD reservoirs needed to satisfy the Garwood water rights acquired by LCRA will only be made (a) in accordance with state law and (b) at the direction of the TNRCC.
- 5) CRMWD and LCRA will individually and simultaneously petition the Texas Natural Resource Conservation Commission regarding LCRA's acquisition of the Garwood water rights with LCRA's proposed amendments and amending CRMWD's permits for the O.H. Ivie and E.V. Spence Reservoirs.
- 6) LCRA will support CRMWD's proposed amendments to modify the permits for the E.V. Spence and O.H. Ivie Reservoirs to remove the special conditions allowing LCRA to call for the release of stored water from the E.V. Spence and O.H. Ivie Reservoirs.
- 7) CRMWD agrees that any amendments to its permits for the E.V. Spence and O.H. Ivie Reservoirs to allow for multiple withdrawal points around the perimeter of the Spence Reservoir and to add the right to use water from both reservoirs for beneficial purposes which are not currently permitted will not result in any additional impacts to LCRA's water rights greater than would occur had the rights been used to their full extent possible for the uses currently authorized in CRMWD's water rights for Spence and Ivie Reservoirs.

Specific details of any agreements between the Lower Colorado River Authority and the Colorado River Municipal Water District must be approved by their respective Boards of Directors and above-mentioned amendments requested by LCRA and CRMWD must be approved by TNRCC before the agreements become final. If this letter correctly states the

COLORADO RIVER MUNICIPAL WATER DISTRICT  
400 EAST 24TH STREET PHONE 915/267-6341 P. O. BOX 869  
BIG SPRING, TEXAS 79721-0869

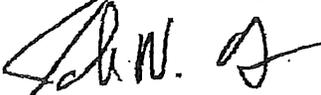
Mr. Mark Rose

Page 3

March 26, 1998

terms of the agreements in principle between ours staffs, please execute below and return to us the duplicate original of this letter.

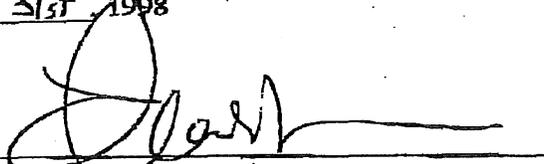
Sincerely,



John W. Grant, General Manager  
Colorado River Municipal Water District

Agreed and Accepted:  
March 31st 1998

By



Mark Rose, General Manager  
Lower Colorado River Authority

JWG/csm

LAW OFFICES OF  
BOOTH, AHRENS & WERKENTHIN, P.C.

A PROFESSIONAL CORPORATION  
515 CONGRESS AVENUE, SUITE 1515  
AUSTIN, TEXAS 78701-3603  
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MICHAEL J. BOOTH  
FRED B. WERKENTHIN, JR.  
WIL GALLOWAY

CAROLYN AHRENS  
OF COUNSEL

*DO NOT WRITE*  
OPA

February 9, 2006

FEB 09 2006

BY *Jess*

CHIEF CLERKS OFFICE

2006 FEB -9 AM 10:08

*ADD  
26878*

Via Hand Delivery

LaDonna Castañuela, Chief Clerk  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13807, MC-105  
Austin, Texas 78711-3087

**Re: Water Rights Application No. 14-5434E by Lower Colorado River Authority  
(Garwood)**

Dear Ms. Castañuela:

By letter signed by me and filed with your office on June 23, 2003, STP Nuclear Operating Co. ("STPNOC") requested a contested case hearing regarding Lower Colorado River Authority's ("LCRA") Water Rights Application No. 14-5434E and stated various objections to the application. As noticed, the application requests, among other things, authorization to add additional diversion points both upstream and downstream of the existing diversion point referenced in LCRA's Garwood water rights and with no change of priority date.

STPNOC and LCRA recently entered into a settlement agreement to resolve various matters of dispute, including STPNOC's objections to several LCRA water rights applications pending before the Texas Commission on Environmental Quality. Pursuant to that settlement agreement, STPNOC withdraws its objections to, and documents its support for, Application No. 14-5434E to the extent consistent with the settlement.

The settlement agreement expressly preserves STPNOC's right to participate in any proceedings on Application No. 14-5434E to the extent necessary to protect interests obtained in the settlement agreement. For the limited purpose of exercising that right, STPNOC maintains its request for contested case hearing on the application at this time, recognizing that there are various uncertainties remaining in the administrative process including requests for contested case hearing filed by other parties. It is STPNOC's intent that if a draft permit is agreed to that is consistent with STPNOC's interests under the settlement agreement with LCRA and all other parties withdraw their request for contested case hearing, then STPNOC would do the same.

As part of STPNOC's settlement with LCRA, an Amended and Restated Contract and an Amended Partial Assignment and Transfer of Water Permit are entered between the parties

**Exhibit B**

pursuant to which STPNOC holds stated interests in Certificate of Adjudication No. 14-5437. Certificate of Adjudication No. 14-5437 is referenced in STPNOC's request for hearing. For additional reasons stated in STPNOC's June 23, 2003 letter, STPNOC remains a party affected by LCRA's application in ways not common to the general public and has a personal justiciable interest in the application that entitles STPNOC to be a party in any uncontested case that does proceed.

In consideration of the matters outlined above, STPNOC asks that this letter be placed in the agency's files regarding Application No. 14-5434E and that STPNOC continue to receive all notices and correspondence related to that application. Please let me know if there is any additional information required of STPNOC at this time.

Respectfully submitted,



Carolyn Ahrens  
LAW OFFICES OF BOOTH, AHRENS  
& WERKENTHIN, P.C.  
515 Congress Avenue, Suite 1515  
Austin, Texas 78701  
(512) 472-3262 (phone)  
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Cc:

Rick Gangluff  
Jon Wood  
Lyn Dean  
Kellye Rila



November 28, 2007

Via U.S. Mail

Ms. Kathy Hopkins  
Water Rights Permitting Team, MC-160  
Water Supply Division  
Texas Commission on Environmental Quality  
12100 Park 35 Circle  
Building F, 3rd Floor  
Austin, Texas 78711-3087

Re: Lower Colorado River Authority's (LCRA's) Permit Application to Amend  
Certificate of Adjudication No. 14-5434; TCEQ Application No. 14-5434E

Dear Ms. Hopkins:

I am pleased to inform you that the City of Austin and LCRA have reached a settlement concerning a variety of water rights matters pending before the Commission, including the above-referenced application. In accordance with the Settlement Agreement, LCRA wishes to clarify, as necessary, the intended scope of the above-referenced application specifically as it relates to return flows that may be discharged by the City of Austin. Unless the Parties otherwise agree, LCRA has no intention of enhancing its right to divert any water under this permit by making priority calls upon return flows discharged by Austin during times when and to the extent that such return flows may be authorized for indirect reuse as contemplated by the Settlement Agreement. Further, LCRA does not seek to restrict Austin's direct reuse. To the extent considered necessary by TCEQ, LCRA would request a condition to this effect be included in any permit that may be issued.

LCRA and the City of Austin would welcome the opportunity to discuss the details of our Settlement Agreement with you if you have further questions. Please feel free to call me anytime at 473-3378.

Regards,

A handwritten signature in black ink, appearing to read "Lyn Clancy", with a long, sweeping flourish extending to the right.

Lyn Clancy  
Associate General Counsel

cc: Ken Ramirez, Attorney for the City of Austin

Brown | McCarroll  
L.L.P.

111 Congress Avenue, Suite 1400, Austin, Texas 78701-4043  
512-472-5456 fax 512-479-1101

KENNETH RAMIREZ  
DIRECT: (512) 479-9711  
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August 24, 2009

**VIA HAND DELIVERY**

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Project Manager, MC-160  
Water Rights Permitting Team  
Water Rights Permitting and Availability Section  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin, TX 78711-3087

RE: Lower Colorado River Authority; ADJ 5434; CN 600253637, RN 104090089;  
TWC 11.122 Requiring Limited Mailed Notice; Colorado River, Colorado River  
Basin; Bastrop, Fayette, Wharton, Matagorda, Travis and Colorado Counties

Dear Mr Ramos:

I am writing on behalf of the City of Austin (the "City" or "Austin") regarding the Lower Colorado River Authority ("LCRA") permit amendment application referenced above, and the Texas Commission On Environmental ("TCEQ") draft permit and accompanying Interoffice Memoranda transmitted by letter dated June 23, 2009. Today's letter follows up on my June 23, 2003 request for contested case hearing written on behalf of the City (attached) in which I discuss the many reasons why Austin maintains a personal and justiciable interest in this permit amendment proceeding.

In 2007, Austin and the LCRA negotiated and executed a comprehensive settlement agreement that set the parties on a new course of cooperation and partnership regarding water rights matters in the Lower Colorado Basin. As part of that settlement, however, the parties also agreed to maintain their interest in the contested permits pending at the TCEQ at the time of settlement, including this one. Accordingly, the primary purpose of today's letter is to inform the TCEQ that the City of Austin continues to assert its request for contested case hearing and its status as affected party in these proceedings. We are currently in consultation with the LCRA about this draft permit, and those discussions will continue.

Esteban (Steve) Ramos  
August 24, 2009  
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While Austin continues to evaluate the potential impacts of this draft permit on the City's water rights, and while we do not waive our right to raise valid issues in the future, we do wish to point out one specific provision that is troubling. Special Condition 3. F. requires that new or modified intake structures authorized by the draft permit must provide "fish screen on the intake structures with a maximum through screen velocity of 0.5 feet per second." While Austin agrees with the important goal of minimizing potential impacts due to entrainment and impingement of fishery resources, we are not convinced that the specificity outlined in Special Condition 3. F. is the most efficient way to achieve that goal. We believe that the LCRA, and possibly other permittees seeking future amendments to their water rights in the Lower Colorado Basin, should be given the flexibility to design entrainment and impingement apparatus that accommodate both the need to protect fishery resources and the efficient operation of water intake facilities.

Thank you for your attention to this matter, and we look forward to working with the TCEQ and other parties in this proceeding as this permit amendment moves forward. Please feel free to call either me or Mr. Ross Crow in the City's Law Department if you should have any questions or concerns. My direct dial number is 479-9711 and Mr. Crow's number is 974-2159.

Sincerely,

  
KENNETH RAMIREZ

KR:gw  
Attachment

cc: Lyn Clancy, LCRA

Ross Crow, City of Austin