

LAW OFFICES OF
BOOTH, AHRENS & WERKENTHIN, P.C.
A PROFESSIONAL CORPORATION
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MICHAEL J. BOOTH
CAROLYN AHRENS
FRED B. WERKENTHIN, JR.
ROSS RICHARD-CROW
WIL GALLOWAY

June 23, 2003

Hand Delivery

LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Natural Resources
Conservation Commission
P.O. Box 13807, MC-105
Austin, Texas 78711-3087

**Re: Water Rights Application No. 14-5434E (Lower Colorado River Authority);
Request of STP Nuclear Operating Co. for Contested Case Hearing**

Dear Ms. Castañuela:

By this letter, STP Nuclear Operating Co. ("STPNOC") requests a contested case hearing regarding Lower Colorado River Authority's ("LCRA") Water Rights Application No. 14-5434E. STPNOC makes this request in its capacity as the operator of the South Texas Project ("STP") on its own behalf and on behalf of the four "STP Owners": (1) Texas Genco, LP.; (2) the City of Austin; (3) the City of San Antonio, acting by and through its City Public Service Board; and (4) AEP Texas Central Company.

Protestant Information:

STP Nuclear Operating Company
ATTN: R. A. Gangluff
P.O. Box 289
Wadsworth, Texas 77483
(361) 972-7879

c/o Carolyn Ahrens
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
(512) 472-3263
(512) 473-2609 (fax)
carolyn@baw.com

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JUN 24 2003
BY Jay
26878 WR
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
7:03 JUN 23 PM 4:03
CHIEF CLERKS OFFICE

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

STPNOC succeeds Houston Lighting & Power Co. (“HL&P”) as the operator of STP on behalf of and as agent for the STP Owners. In 1974, HL&P was Project Manager of STP and filed an application for water rights that was accepted for filing by the Texas Commission on Environmental Quality’s (“TCEQ”) predecessor agency. Proceedings on that application resulted in the STP Owners acquiring water rights for STP under Water Rights Permit No. 3233, superseded by Certificate of Adjudication No. 14-5437. In 1976, HL&P also entered into a water supply contract with LCRA (“Contract”) on behalf of the STP Owners and a Partial Assignment and Transfer of Water Permit between HL&P, City of San Antonio, Central Power & Light, City of Austin, and LCRA (“Partial Assignment”). The Contract and Partial Assignment include reversion and termination provisions. Contractual Permit No. CP-237 also was issued by the TNRCC’s predecessor agency for the STP Owners.

Considered together, the documents listed above authorize, for supply of water to STP, the diversion of 102,000 acre-feet of water per annum from the Colorado River in Matagorda County for industrial purposes, including development of power by means other than hydroelectric. Water rights for STP include a special condition related to diversion of flows in excess of a percentage of flow at the diversion point. The ability to divert and use water for STP also is particularly affected by water quality at the diversion point. Two off-channel impoundments adjacent to the Colorado River are authorized for STP, and recirculation of water is authorized. Consumptive use of up to 80,125 acre-feet of water per annum is authorized.

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

Applicant Information:

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

STPNOC’s Standing to Protest:

Based on the proceedings on Water Use Permit No. 3233 for STP and other information available regarding water supply in the lower Colorado River Basin, STPNOC believes that granting LCRA’s application may impact STPNOC and the STP Owners’ interests in ways not common to the general public. This is true as to STPNOC’s current water supply and interests as well as to the interests arising under STPNOC’s pending water-rights application.

STPNOC believes that granting LCRA’s Application No. 14-5434E alone and / or taken in conjunction with LCRA’s other pending applications, may impact STPNOC and the STP

STP Nuclear Operating Co.
Request for Hearing/App. No. 14-5434E

Owner's present rights under Certificate of Adjudication No. 14-5437, Contractual Permit No. CP-327 and under the Contract and Partial Assignment identified above in this request. LCRA's application seeks authorization to add numerous additional diversion points both far upstream and downstream on the Colorado River, in six or more counties, additional diversion authority from anywhere on the perimeter of three or more upstream lakes, and the right to retain original priority.

The changes in diversion currently proposed to facilitate more extensive use of water in distant locations, and the improper "piece-mealing" of the proposed and previous amendments of LCRA's existing water right to change purpose and area of use, separately and together, constitute a significant expansion of the underlying water right. The conversion of irrigation-use water rights, including water rights that were not historically perfected, to non-irrigation use and the transfer of such use to new and distant places significantly injures STPNOC's and the STP Owners' rights and interests. To the extent it is argued that such changes are authorized by amendments to the Water Code subsequent to the granting of water rights for STP, those amendments of the Water Code and such application would be unconstitutional and constitute a taking of the STP Owners' property.

Without regard to the injury to the STP Owners and STPNOC from the change of purpose and place of use, or by violation of contract, injury also may be anticipated from the addition of diversion points themselves. STPNOC's rights may be directly affected by interference with diversions of water for the STP, by a reduction in water available for diversion, including consideration of the instream-flow restrictions on diversion for STPNOC. STPNOC also is concerned regarding, and may be impacted by, a reduction in flow necessary to maintain acceptable water quality, and particularly salinity levels, at STPNOC's diversion facilities.

The current application also proposes to convert run-of-the river water rights to stored water rights, an additional expansion of use that creates adverse impact on other water rights and on the environment of greater magnitude than if the water right was exercised under the terms and conditions of the water right as they exist today.

Any interruption of dependable water of acceptable quality for STP would have adverse consequences for the supply of power to the STP Owners and the customers they serve. The supply of power at a reasonable cost from STP is necessary to support economic growth and protect the living standards of the citizens in the area that STPNOC serves. To impair the use of water needed for electric generation would be adverse to the public welfare. An interruption of dependable water supply for STP also would adversely affect the STP Owners' investments related to STP's facilities. In these respects and others, granting LCRA's Application would directly affect the legal rights, duties, privileges, powers and economic interests of STPNOC and the STP Owners, who are dependent on the Colorado River for present and future water supplies for STP.

Each of the STP Owners and STPNOC are affected persons with personal justiciable interests in the matters put at issue by LCRA's Application that are not common to the general public and have standing to make this request as contemplated in TEX. WATER CODE ANN. §5.115 (Vernon

2000) and 30 TEX. ADMIN. CODE §55.256(a) (West 2001).¹ See also 30 TEX. ADMIN. CODE §55.256(c) (West 2001) (for determining who is an affected person, all relevant factors should be considered, including but not limited to whether the interest claimed is one protected by the law under which the application will be considered, the relationship between the interests claimed and the application, the likely impact of granting the application on the health, safety, and use of property of the person, the likely impact of granting the application on use of the impacted natural resource by the person, and, for governmental entities, their statutory authority over or interest in the issues relevant to the application). Those STP Owners that are governmental entities (the City of Austin and the City of San Antonio, acting by and through its City Public Service Board) also have the kind of responsibility, authority and interest in the issues relevant to the application that is contemplated of affected persons under TNRCC Rules, 30 TEX. ADMIN. CODE §55.256(b) (West 2001) (“Governmental entities, including local governments and public agencies, with authority under state law over issues contemplated by that application may be considered affected persons”).

Location and Distance of Water Rights from the Proposed Activity:

STPNOC’s diversion point in Matagorda County is a matter of record with the agency for purposes of determining proximity to the numerous additional diversion points that LCRA proposes. However, STPNOC also notes that one of the proposed diversion points under LCRA’s application is STPNOC’s own diversion point. Water also is proposed to be diverted above STPNOC’s diversion point but below the point at which water would be released under contract for delivery to STP such that contract deliveries must pass the increased diversions that LCRA’s application proposes.

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

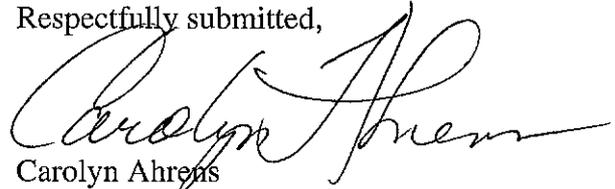
At this time, no draft permit amendment has been prepared, and the TCEQ staff have not yet performed the hydrologic and environmental analyses necessary for the STPNOC to determine whether or not there are terms and provisions that would satisfy STPNOC’s concerns regarding the impact of the proposed amendment. If LCRA’s application is to be granted in any respect, however, an acceptable accounting procedure will need to be imposed to assure that no impacts to STPNOC’s rights and interests occur, including its rights to water provided under contract. STPNOC also proposes that consideration be given to consolidating consideration of LCRA’s proposed amendment of water rights with its application to appropriate additional state water, which STPNOC also has protested. Concurrently with this request for contested-case hearing, STPNOC will remain amenable to a negotiated settlement of its protest.

¹ See also *Heat Energy Advanced Tech., Inc. v. West Dallas Coalition for Env’tl. Justice*, 962 S.W.2d 288 (Tex. App.—Austin 1998, writ den’d) (the standard regarding affected persons does not require that a party show it will ultimately prevail on the merits, but simply that it potentially will suffer harm or have a justiciable interest that will be affected); *Texas Rivers Protection Ass’n v. Texas Natural Resource Conservation Comm’n*, 910 S.W.2d 147, 151 (Tex. App.—Austin 1995, writ den’d) (“the right to participate in proceedings is construed quite liberally to encourage varying points of view”).

Conclusion:

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

Respectfully submitted,



Carolyn Ahrens
LAW OFFICES OF BOOTH, AHRENS
& WERKENTHIN, P.C.
515 Congress Avenue, Suite 1515
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(512) 472-3262 (phone)
(512) 473-2609 (facsimile)

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

CAROLYN AHRENS
OF COUNSEL

~~CONFIDENTIAL~~
OPA

February 9, 2006

FEB 09 2006

BY _____

[Handwritten Signature]

CHIEF CLERKS OFFICE

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*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

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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
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& WERKENTHIN, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
(512) 472-3262 (phone)
(512) 473-2609 (facsimile)

Cc:

Rick Gangluff
Jon Wood
Lyn Dean
Kellye Rila

OPA

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BY

JS



NATIONAL WILDLIFE FEDERATION
www.nwf.org

People and Nature: Our Future is in the Balance
NATIONAL WILDLIFE FEDERATION

GULF STATES NATURAL RESOURCE CENTER
44 East Avenue, Suite 200
Austin, Texas 78701

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

26878
WR

June 23, 2003

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

Re: Request for Contested Case Hearing in the Matter of Application No. 14-5434E
by the Lower Colorado River Authority to amend Certificate of Adjudication No.
14-5434

Dear Ms. Castañuela:

The National Wildlife Federation ("NWF") hereby requests a contested case hearing on the above-referenced application. NWF provides the following information in support of that request.

This request for a contested case hearing is submitted on behalf of the National Wildlife Federation through its Gulf States Natural Resource Center. The contact information for NWF in this matter is as follows:

Myron J. Hess, Counsel
National Wildlife Federation
44 East Avenue, Suite 200
Austin, TX 78701
Ph: 512-476-9805
Fax: 512-476-9810
email: hess@nwf.org

This is a **REQUEST FOR A CONTESTED CASE HEARING** on water rights amendment application number 14-5434E, which was filed by the Lower Colorado River Authority. The National Wildlife Federation would be affected in a way that is not common to the general public because the National Wildlife Federation is a national, non-profit organization dedicated, among other things, to protecting natural resources and the right of people to use and enjoy those resources. NWF's membership is composed of people who share the goals of protecting fish and wildlife resources and the right of people to use and enjoy those resources.¹ NWF has

¹ The formal mission of the National Wildlife Federation "is to educate, inspire and assist individuals and organizations of diverse cultures to conserve wildlife and other natural resources and to protect the earth's environment in order to achieve a peaceful, equitable and sustainable future."

JS

*Hearing Request of NWF
Appl. No. 14-5434E, LCRA
Page 2*

wildlife resources and the right of people to use and enjoy those resources.¹ NWF has approximately 38,000 members in Texas many of whom use and enjoy those resources, including the resources of the Colorado River, both recreationally and, in some cases, for economic benefit. NWF's participation in the hearing does not require the participation of individual members in any capacity other than possibly to establish standing.

The Gulf States Natural Resource Center is a regional office of NWF and is located in Austin, Texas. One of the primary functions of the office is the implementation of a program to ensure adequate protection of stream and river flows to support fish and wildlife resources in Texas. NWF is pursuing that goal through a variety of avenues, including the filing of this hearing request.

The application by LCRA that is the subject of this hearing request has the potential to significantly affect the fish and wildlife resources of the Colorado River watershed and to affect NWF members. Through this application, LCRA basically seeks authority to divert some, and perhaps all, of the water authorized for diversion under Certificate 14-5434 much further upstream than has historically been authorized. As a result of such diversions, a large stretch of the Colorado River would experience significantly reduced flows. Unless appropriately controlled, that would result in reductions in water quality and in adverse impacts to fish and wildlife resources and to the ability of people, including NWF members, to use and enjoy those resources.

The changes sought by this application also have the potential to significantly affect the assumptions underlying the "Water Management Plan for the Lower Colorado River Basin" (Water Management Plan). In particular, the Water Management Plan's discussion of protection of instream flows assumes that water to satisfy Certificate 14-5434 will be present in the River for much of the reach below Austin. Even without the upstream diversions sought in the application, LCRA's projections, as prepared in connection with proposed revisions to the Water Management Plan, indicate that fish and wildlife resources may not be adequately protected. Those projections indicate that target instream flows, which are designed to provide reasonable conditions for reproduction and health of fish and wildlife resources, would be expected to be met only about 60% of the time overall. That percentage would be much lower during drought periods (about 33% of the time). Similarly, it would decline as water demands under existing rights increase over time. The upstream diversions for which authorization is sought pursuant to this application would cause those already low percentages to decline even further.

LCRA recently submitted an amended version of the Water Management Plan to TCEQ for

¹ The formal mission of the National Wildlife Federation "is to educate, inspire and assist individuals and organizations of diverse cultures to conserve wildlife and other natural resources and to protect the earth's environment in order to achieve a peaceful, equitable and sustainable future."

*Hearing Request of NWF
Appl. No. 14-5434E, LCRA
Page 3*

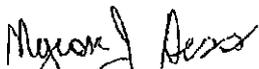
review and approval. Because the Water Management Plan is required to consider and address the impacts of water management on water quality and on fish and wildlife resources, this application and the review of the Water Management Plan are integrally related. Accordingly, TCEQ should provide for a combined review of this application and the Water Management Plan. In addition, TCEQ should provide the opportunity for a consolidated hearing proceeding on both matters.

Obviously, the movement of water diversions upstream, as sought pursuant to the current application, would decrease river flows and worsen the already unacceptable conditions. Those reduced flows would reduce water quality in the river and would diminish river flows below levels necessary to protect fish and wildlife resources. Accordingly, NWF's interests in protecting fish and wildlife resources would be adversely affected by the granting of this application, as would its interests in protecting the ability of its members and others to recreate in and along the River.

NWF is concerned about the potential for the additional upstream diversion points to reduce river flows, particularly during dry periods. NWF is particularly interested in participating in the development of special conditions to be included in any amended certificate to limit additional adverse impacts to fish and wildlife resources, water quality, and recreational activities resulting from the requested amendments.

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

Sincerely,


Myron J. Hess
Counsel



NATIONAL WILDLIFE FEDERATION®

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

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

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TO:	FROM:
Chief Clerk's Office	Myron Hess
COMPANY:	DATE:
	6/23/03
FAX NUMBER:	NO. PAGES INCLUDING COVER
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RE:	
Hearing request	
NOTES/COMMENTS:	



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JUN 25 2003
BY [Signature]
CHIEF CLERKS OFFICE

2003 JUN 24 AM 9:24

TEXAS
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ON ENVIRONMENTAL
QUALITY

June 23, 2003

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

Re: Request for Contested Case Hearing in the Matter of Application No. 14-5434E by the Lower Colorado River Authority to amend Certificate of Adjudication No. 14-5434

Dear Ms. Castañuela:

The Lone Star Chapter of the Sierra Club (Sierra Club) hereby requests a contested case hearing on the above-referenced application. The Sierra Club provides the following information in support of that request.

The contact information for the Sierra Club in this matter is as follows:

Ken Kramer, Director
Lone Star Chapter, Sierra Club
P.O. Box 1931
Austin, TX 78767
Ph: 512-476-6962
Fax: 512-477-8526
email: kenwkramer@aol.com

This is a **REQUEST FOR A CONTESTED CASE HEARING** on water rights amendment application number 14-5434E, which was filed by the Lower Colorado River Authority. The Sierra Club would be affected in a way that is not common to the general public because the Sierra Club is a non-profit organization dedicated to protecting natural resources and the right of people to use and enjoy those resources. Sierra Club's members share the goals of protecting fish and wildlife resources and the right of people to use and enjoy those resources. Sierra Club's members use and enjoy the fish and wildlife resources of Texas, including the resources of the Colorado River. The Sierra Club's participation in the hearing does not require the participation of individual members in any capacity other than possibly to establish standing.

The application by LCRA that is the subject of this hearing request has the potential to significantly affect the fish and wildlife resources of the Colorado River watershed and to affect Sierra Club's members. Through this application, LCRA basically seeks authority to divert some, and perhaps all, of the water authorized for diversion under Certificate 14-5434 much further upstream than has historically been authorized. As a result of such diversions, a large stretch of the Colorado River would experience significantly reduced flows. Unless appropriately controlled, that would result in reductions in water quality and in adverse impacts to fish and wildlife resources and to the ability of people, including Sierra Club's members, to use and enjoy those resources.

The changes sought by this application also have the potential to significantly affect the assumptions underlying the "Water Management Plan for the Lower Colorado River Basin" (Water Management Plan). In particular, the Water Management Plan's discussion of protection of instream flows assumes that water to satisfy Certificate 14-5434 will be present in the River for much of the reach below Austin. Even without the upstream diversions sought in the application, LCRA's projections, as prepared in connection with proposed revisions to the Water Management Plan, indicate that fish and wildlife resources may not be adequately protected. Those projections indicate that target instream flows, which are designed to provide reasonable conditions for reproduction and health of fish and wildlife resources, would be expected to be met only about 60% of the time overall. That percentage would be much lower during drought periods (about 33% of the time). Similarly, it would decline as water demands under existing rights increase over time. The upstream diversions for which authorization is sought pursuant to this application would cause those already low percentages to decline even further.

LCRA recently submitted an amended version of the Water Management Plan to TCEQ for review and approval. Because the Water Management Plan is required to consider and address the impacts of water management on water quality and on fish and wildlife resources, this application and the review of the Water Management Plan are integrally related. Accordingly, TCEQ should provide for a combined review of this application and the Water Management Plan. In addition, TCEQ should provide the opportunity for a consolidated hearing proceeding on both matters.

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The Sierra Club is particularly interested in participating in the development of special conditions to be included in any amended certificate to limit additional adverse impacts to fish and wildlife resources, water quality, and recreational activities resulting from the requested amendments.

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

Sincerely,

A handwritten signature in cursive script that reads "Ken Kramer". The letters are fluid and connected, with a prominent initial "K".

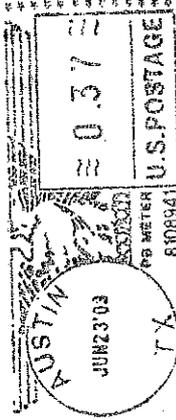
Ken. Kramer, Ph.D.
Director
Lone Star Chapter
Sierra Club

SIERRA CLUB
FOUNDED 1892



Lone Star Chapter
P.O. Box 1931 Austin, TX 78767

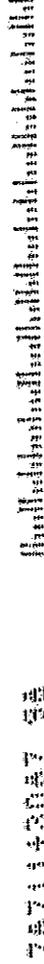
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CHIEF CLERKS OFFICE



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TNRCC

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





Lone Star Chapter

P. O. Box 1931
Austin, TX 78767
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512-477-8526 (fax)
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OPA
JUN 24 2003
BY [Signature]

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WRC

June 23, 2003

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

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Explore, enjoy and protect the planet.
lonestar.chapter@sierraclub.org . www.texas.sierraclub.org . PO Box 1931, Austin, TX 78767
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The application by LCRA that is the subject of this hearing request has the potential to significantly affect the fish and wildlife resources of the Colorado River watershed and to affect Sierra Club's members. Through this application, LCRA basically seeks authority to divert some, and perhaps all, of the water authorized for diversion under Certificate 14-5434 much further upstream than has historically been authorized. As a result of such diversions, a large stretch of the Colorado River would experience significantly reduced flows. Unless appropriately controlled, that would result in reductions in water quality and in adverse impacts to fish and wildlife resources and to the ability of people, including Sierra Club's members, to use and enjoy those resources.

The changes sought by this application also have the potential to significantly affect the assumptions underlying the "Water Management Plan for the Lower Colorado River Basin" (Water Management Plan). In particular, the Water Management Plan's discussion of protection of instream flows assumes that water to satisfy Certificate 14-5434 will be present in the River for much of the reach below Austin. Even without the upstream diversions sought in the application, LCRA's projections, as prepared in connection with proposed revisions to the Water Management Plan, indicate that fish and wildlife resources may not be adequately protected. Those projections indicate that target instream flows, which are designed to provide reasonable conditions for reproduction and health of fish and wildlife resources, would be expected to be met only about 60% of the time overall. That percentage would be much lower during drought periods (about 33% of the time). Similarly, it would decline as water demands under existing rights increase over time. The upstream diversions for which authorization is sought pursuant to this application would cause those already low percentages to decline even further.

LCRA recently submitted an amended version of the Water Management Plan to TCEQ for review and approval. Because the Water Management Plan is required to consider and address the impacts of water management on water quality and on fish and wildlife resources, this application and the review of the Water Management Plan are integrally related. Accordingly, TCEQ should provide for a combined review of this application and the Water Management Plan. In addition, TCEQ should provide the opportunity for a consolidated hearing proceeding on both matters.

Obviously, the movement of water diversions upstream, as sought pursuant to the current application, would decrease river flows and worsen the already unacceptable conditions. Those reduced flows would reduce water quality in the river and would diminish river flows below levels necessary to protect fish and wildlife resources. Accordingly, the Sierra Club's interests in protecting fish and wildlife resources would be adversely affected by the granting of this application, as would its interests in protecting the ability of its members and others to recreate in and along the River.

The Sierra Club is particularly interested in participating in the development of special conditions to be included in any amended certificate to limit additional adverse impacts to fish and wildlife resources, water quality, and recreational activities resulting from the requested amendments.

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

Sincerely,



Ken. Kramer, Ph.D.
Director
Lone Star Chapter
Sierra Club



H
OPA
JUN 24 2003
BY Jay

Kenneth Ramirez
Partner

26878
WR

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

June 23, 2003

VIA FACSIMILE AND HAND DELIVERY

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2003 JUN 23 PM 12:12
CHIEF CLERK'S OFFICE

Re: Lower Colorado River Authority Application No. 14-5434E to Amend Certificate of Adjudication No. 14-5434, as Amended

Dear Ms. Castañuela:

The City of Austin ("City") requests a contested case hearing on the application of the Lower Colorado River Authority ("LCRA") for an amendment to Certificate of Adjudication No. 14-5434, as amended. The City can be reached by mailing or faxing correspondence to my address/fax number on this letterhead and by telephone to my direct number, 512/494-3611.

Applicant seeks to amend Certificate of Adjudication No. 14-5434 to add additional diversion points both upstream and downstream of the existing diversion point. LCRA also seeks to divert and use the water from anywhere on the perimeter of Town Lake, Lake Austin, and Lake Travis, posing a particular concern to the City of Austin's ability to keep diverting and using its own water resources.

The City is a municipal corporation that owns, operates, and maintains facilities for providing electric power and potable water service to its many citizens. As such, the City enjoys its own water rights and all of those water rights have diversion points located between the LCRA's existing diversion point and the diversion points LCRA seeks to add in this permit application.

The City has a personal justiciable interest that would be affected by the amendment to Certificate of Adjudication No. 14-5434 announced in the Texas Commission on Environmental Quality's ("TCEQ") Public Notice issued May 22, 2003. The Certificate currently includes, among other things, authorization for LCRA to divert up to 133,000 acre-feet of water per annum from a specific point on the Colorado River at a maximum rate of 600 cfs for irrigation of 32,000 acres of land within the "Garwood Service Area" in Colorado and Wharton Counties, as well as for municipal and industrial purposes

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LaDonna Castañuela, Chief Clerk
June 23, 2003
Page 2

anywhere within Travis, Bastrop, Fayette, Colorado, Wharton, and Matagorda Counties, in the Colorado, Lavaca, Guadalupe, and Brazos River Basins, and the Colorado-Lavaca and Brazos-Colorado Coastal Basins. The Certificate has a time priority of November 1, 1900.

The proposed amendment would dramatically impact hydrological conditions in the Colorado Basin—especially the area in and around Austin—by adding countless diversion points hundreds of miles upstream of the existing diversion point, at Town Lake, Lake Austin and Lake Travis. If granted, this amendment would permit the LCRA additional diversion points that bypass all the City's existing diversion points in the Basin while maintaining the 1900 priority date.

The TCEQ's well-established policy is that diversion points added or changed upstream automatically become junior in time priority to all of the water rights with diversion points between the existing and proposed diversion points. This policy stems from the "first in time, first in right" concept, a bedrock tenet in Texas water law. In abrogation of this policy, however, the LCRA now seeks an exemption from that time priority, insisting instead that LCRA's time priority at these additional new diversion points remain November 1, 1900.

In order for the LCRA to maintain the November 1, 1900 priority date, the City would have to subordinate its rights to the LCRA at every single diversion point the City owns in the Colorado Basin. The City's existing water rights will be substantially injured by this subordination because it will adversely affect the City's ability to divert water. In addition, such subordination decreases the value of the City's water rights.

Moving LCRA's diversion points upstream could alter hydrological conditions and injure City's water rights in at least the following ways:

- (a) Reduced Colorado River flows at Austin could require the City's current return flows be used to maintain instream flows and bay and estuary needs.
- (b) Reduced Colorado River flows at Austin could, under extreme conditions, force City wastewater discharges into noncompliance.
- (c) By diverting water, and possibly other flows from Highland Lakes with the same 1900 priority dates, the City's run-of-river rights will be adversely impacted.



LaDonna Castañuela, Chief Clerk
June 23, 2003
Page 3

The City's water right under Certificate of Adjudication 14-5471, as amended, has a priority date of June 27, 1914. When the Fayette Power Project Point was added to the City's Certificate of Adjudication 14-5471 on July 30, 1999, however, one of the stated conditions was that the City's right at that point, in accordance with TCEQ policy, be junior in time priority to all the existing water rights (as of January 28, 1999) with diversion points in the watershed between the existing diversion point and the requested diversion points. As a matter of policy, fairness, and equal protection, the LCRA must be held to the same fundamental standards of fairness.

Please schedule this hearing request for a Commission meeting and advise me of the time and date of the meeting.

Very truly yours,

Bracewell & Patterson, L.L.P.

A handwritten signature in black ink, appearing to read 'Kenneth Ramirez', with a long horizontal stroke extending to the right.

Kenneth Ramirez

KR/jcb

cc: *(Via Facsimile and Regular Mail)*
Toby Hammett Futrell, City Manager
Joe Canales, Deputy City Manager
Andrew Covar, Assistant Director, Water & Wastewater Utility
Michael Sullivan, Ph.D.

WEBB & WEBB

ATTORNEYS AT LAW

1514 BANK OF AMERICA CENTER, 515 CONGRESS AVENUE

P.O. DRAWER 1329

AUSTIN, TEXAS 78767-1329

26828
WR

OPA

JUN 25 2003

201 JUN 24 9:23
CHIEF CLERK OFFICE
TELEPHONE: (512) 472-9990
FACSIMILE: (512) 472-3183
COMMISSION ON ENVIRONMENTAL QUALITY

STEPHEN P. WEBB
GWENDOLYN HILL WEBB

June 23, 2003

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

**RE: Application No. 14-5434E by Lower Colorado River Authority
for amendment to Certificate of Adjudication No. 14-5434**

Dear Ms. Castañuela:

Keith and Helen Weber, by and through their attorney, submits the following comments and requests for a contested case hearing on the above-referenced application.

Protestant Information:

Keith and Helen Weber
20100 Belinda Lane
Manor, Texas 78653

c/o Gwendolyn Hill Webb
Webb & Webb
P.O. Drawer 1329
Austin, Texas 78767
512/472-9990 Telephone
512/473-3183 Fax

Protestants have applied to the Texas Commission on Environmental Quality, the Commission (the "Commission"), for a water rights permit to appropriate 9 acre-feet of water per annum, Application No. 5792, which application was declared administratively complete on January 2, 2003, before applicant Lower Colorado River Authority ("LCRA").

Applicant Information:

Application No. 14-5434E by:

Lower Colorado River Authority
P.O. Box 220
Austin, Texas 76767-0220

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2003 JUN 24 PM 9:23
CHIEF CLERKS OFFICE

Hearing/Public Comment Request:

Protestants Keith and Helen Weber request a contested case hearing.

Effect of Proposed Water Right:

Applicant proposes to amend its existing senior water right to locate additional diversion points upstream and downstream of Protestants. Should the Commission grant the amendment to LCRA's certificate of adjudication as proposed and without giving the amendment a new priority date, the effect of the additional diversion points would have an adverse impact on the Webers' pending application. Under the prior appropriation doctrine, the requested amendment to Applicant LCRA's certificate of adjudication would authorize LCRA to use water which is now available to downstream water users, such as Protestants, having priority dates later than LCRA's Certificate of Adjudication No. 14-5434. Similarly, the earlier priority date of LCRA's Certificate of Adjudication No. 14-5434 would allow LCRA to call for water now available at the Protestants' proposed diversion point to satisfy Applicant's requested downstream diversion points.

The Commission staff has applied this analysis as to other senior water rights holders' requests for amendment to add diversion points. The amendments were granted with priority dates based on the date of filing under Texas Water Code §11.141.

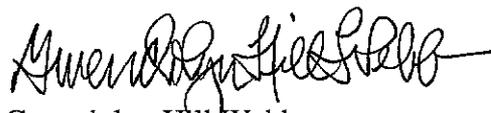
Location of the LCRA's Water Right:

LCRA's water right, which it seeks to amend, covers an area that is located upstream of the Webers' proposed diversion point.

Conclusion:

If LCRA is granted the amendment requested in Application No. 14-5434E, without making the priority date of the changes in diversion points the date the amendment application was administratively complete, the Webers' ability to exercise their water rights under their pending water rights Application No. 5792 will be harmed. Less water would be available to the Protestants at their proposed diversion points and the water physically present at Protestants' proposed diversion points would be subject to call. Therefore, the Webers' are affected persons, potentially adversely impacted by the proposed grant of Application No. 14-5434-E, and have an administratively cognizable interest in Application No. 14-5434-E.

Sincerely,



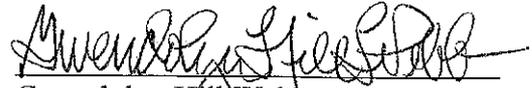
Gwendolyn HNL Webb
ATTORNEY FOR PROTESTANTS

cc: Lower Colorado River Authority

Certificate of Service

I hereby certify that I have served a copy of the foregoing document to Lyn Dean of the Lower Colorado River Authority at the address below by facsimile and First Class U.S. Mail on this 23rd day of June, 2003.

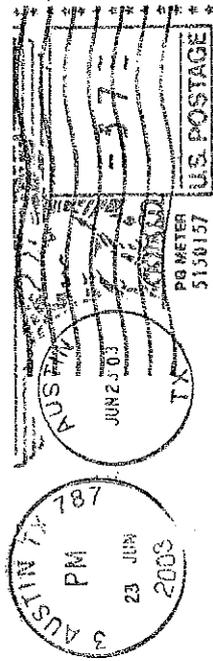
Lyn Dean, Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220
512/473-3200 x 3378 Tel.
512/473-4010 Fax



Gwendolyn Hill Webb

ATTORNEY FOR PROTESTANT

WEBB & WEBB
ATTORNEYS AT LAW
P.O. DRAWER 1329
AUSTIN, TEXAS 78767-1329



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

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2003 JUN 24 AM 9:29
CHIEF CLERKS OFFICE

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JUN 24 2003

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WEBB & WEBB

ATTORNEYS AT LAW

1514 BANK OF AMERICA CENTER, 515 CONGRESS AVENUE

P.O. DRAWER 1329

AUSTIN, TEXAS 78767-1329

STEPHEN F. WEBB
GWENDOLYN HILL WEBB

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JUN 24 2003
BY [Signature]
TELEPHONE: (512) 472-9990
FACSIMILE: (512) 472-3183

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WR

June 23, 2003

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

**RE: Application No. 14-5434E by Lower Colorado River Authority
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Keith and Helen Weber
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Manor, Texas 78653

c/o Gwendolyn Hill Webb
Webb & Webb
P.O. Drawer 1329
Austin, Texas 78767
512/472-9990 Telephone
512/473-3183 Fax

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Applicant Information:

Application No. 14-5434E by:

Lower Colorado River Authority
P.O. Box 220
Austin, Texas 76767-0220

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Letter to LaDonna Castañuela
June 23, 2003
Page 2

Hearing/Public Comment Request:

Protestants Keith and Helen Weber request a contested case hearing.

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Conclusion:

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Sincerely,



Gwendolyn HND Webb
ATTORNEY FOR PROTESTANTS

cc: Lower Colorado River Authority

Certificate of Service

I hereby certify that I have served a copy of the foregoing document to Lyn Dean of the Lower Colorado River Authority at the address below by facsimile and First Class U.S. Mail on this 23rd day of June, 2003.

Lyn Dean, Associate General Counsel
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220
512/473-3200 x 3378 Tel.
512/473-4010 Fax


Gwendolyn Hill Webb
ATTORNEY FOR PROTESTANT

Webb & Webb*Attorneys at Law***1514 Bank of America Center, 515 Congress Avenue****P.O. Drawer 1329****Austin, Texas 78767-1329**Stephen P. Webb
Gwendolyn Hill WebbTelephone: 512/ 472-9990
Fax: 512/ 472-3183**TELECOPIER COVER SHEET**

Please deliver the following facsimile pages to:

NAME:	REPRESENTING:	TELEPHONE NO.:	FAX NO.:
LaDonna Castañuela, Chief Clerk	TCEQ Office of Chief Clerk	512/239-3300	512/239-3311
Lyn Dean Associate General Counsel	Lower Colorado River Authority	512/473-3200 x 3378	512/473-4010

FROM: Gwendolyn Hill Webb**DATE:** June 23, 2003**4** pages including cover page**REMARKS****Letter of Protest on Application No. 14-5434E by LCRA for Amendment to Certificate of Adjudication**

Please Note: The original of this document will be sent via:

First Class Mail
 Certified Mail, Return Receipt Requested
 Overnight Mail/Federal Express
 Courier
 This will be the only form of delivery of this document

The information contained in this facsimile message is privileged and confidential and is intended only for the use of the individual/entity named. Dissemination, duplication, or other use of this communication by anyone besides the intended recipient is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us by mail at the above address. Thank you.

LAW OFFICES OF
BOOTH, AHRENS & WERKENTHIN, P.C.
A PROFESSIONAL CORPORATION
515 CONGRESS AVENUE, SUITE 1515
AUSTIN, TEXAS 78701-3503
512 / 472-3263 • FAX 512 / 473-2609

MICHAEL J. BOOTH
CAROLYN AHRENS
FRED B. WERKENTHIN, JR.
ROSS RICHARD-CROW
WIL GALLOWAY

June 23, 2003

Via Facsimile: 239-3311

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

RE: Hearing Request of Colorado River Municipal Water District regarding Notice of an Application to Amend Certificate of Adjudication No. 14-5434E of Lower Colorado River Authority ("LCRA")

Dear Ms. Castanuela:

The Colorado River Municipal Water District ("CRMWD") submits the following comments and request for a contested case hearing on the above-referenced application.

PROTESTANT INFORMATION

Colorado River Municipal Water District
P.O. Box 869
Big Spring, Texas 79721-0869

c/o Fred B. Werkenthin, Jr.
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
(512) 472-3263
(512) 473-2609 (fax)
fbw@baw.com

CRMWD is a political subdivision of the State of Texas created by the Legislature in 1949 under Article XVI § 59 of the Texas Constitution. CRMWD owns and operates three municipal water supply reservoirs and other facilities upstream of LCRA's Garwood rights in the Colorado River Basin, including Lake J.B. Thomas, under Certificate of Adjudication No. 14-1002; E.V. Spence Reservoir, under Certificate of Adjudication No. 14-1008A; and O.H. Ivie Reservoir, under Permit No. 3676.

APPLICANT INFORMATION

Lower Colorado River Authority
Application No. 14-5434E

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OPA
JUN 24 2003
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BY
2003 JUN 23 PM 4:09
CHIEF CLERKS OFFICE
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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HEARING / PUBLIC COMMENT REQUEST

CRMWD requests a contested case hearing.

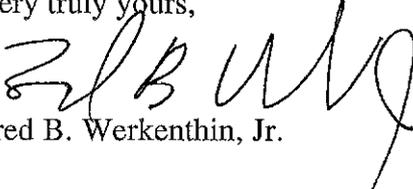
EFFECT OF PROPOSED WATER RIGHT

Without the inclusion of special conditions, adding upstream diversion points could increase the effect of this water right on CRMWD water rights. In 1998, CRMWD and LCRA entered into an agreement regarding LCRA's purchase and amendment of Certificate of Adjudication No. 14-5434. Among other things, CRMWD and LCRA agreed that "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 fullest extent possible."

CONCLUSION

CRMWD files these comments and requests that the Texas Commission on Environmental Quality convene a contested case hearing regarding LCRA's Application to Amend Certificate of Adjudication No. 14-5434E. Upon inclusion of a special condition implementing the CRMWD / LCRA 1998 Agreement, CRMWD will withdraw its comments and hearing request.

Very truly yours,


Fred B. Werkenthin, Jr.

FBW/db
270-030611-Garwood-prot-CC-ltr

cc: John Grant