

**TCEQ DOCKET NO. 2016-0531-WR**

<b>APPLICATION OF THE LOWER</b>	<b>§</b>	<b>BEFORE THE</b>
<b>COLORADO RIVER AUTHORITY</b>	<b>§</b>	
<b>FOR AN AMENDMENT TO</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>CERTIFICATE OF ADJUDICATION</b>	<b>§</b>	
<b>NO. 14-5434</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**NATIONAL WILDLIFE FEDERATION’S REPLY TO  
RESPONSES TO HEARING REQUESTS AND NOTICE OF CHANGE OF ADDRESS**

The National Wildlife Federation (NWF) hereby files its Reply to the Applicant Lower Colorado River Authority’s (LCRA), the Executive Director’s (ED) and the Office of Public Interest Counsel’s (OPIC) responses to hearing requests filed on the above-referenced matter and would respectfully show the Commissioners the following.

**I. Introduction**

In this Reply, the National Wildlife Federation supplements the information provided in its undisputedly timely filed hearing request, dated June 23, 2003, by providing information for a specific NWF member who is an affected person pursuant to 30 Tex. Admin. Code Section 55.256(c). Under 30 Tex. Admin. Code Section 55.256(a), “For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.”

LCRA states in its Response, “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.”<sup>1</sup> The ED and OPIC do not question whether the Application affects instream flows. This application for an amendment to add upstream diversion points to a permit will affect instream flows. Diversions of water at different, upstream locations along a river will, undoubtedly, affect the flows within that river downstream of the requested diversion locations.

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<sup>1</sup> See *Applicant Lower Colorado River Authority’s Response to Requests for Contested Case Hearing* at Page 6.

## **II. Supplemental Information**

While NWF believes its initial hearing request, timely filed on June 23, 2003, complied with all necessary requirements, the supplemental information provided in this Reply should assuage the concerns of the ED, OPIC and LCRA, and prove complete compliance with required regulations regarding affected person status.

30 Tex. Admin. Code Section 55.252(b) states, “The executive director, the public interest counsel, or the applicant may request that a group or association provide an explanation of how the group of association meets the requirements of subsection (a) of this section.” NWF’s Reply serves to provide further explanation of how it has met the requirements of 30 Tex. Admin. Code Section 55.252(a).

In its Response, OPIC agrees that “the interests NWF seeks to protect are germane to the organization’s purpose.” The ED and Applicant do not claim otherwise. Additionally, none of the Responses filed question that neither the claim asserted nor the relief requested requires the participation of the individual member in the case. NWF hereby provides additional information regarding compliance with Subsection 55.252(a)(1).

NWF has many members who live along the stretch of the river where flows will be decreased by the proposed diversions LCRA seeks, who are concerned about those fish and wildlife resources, as well as the impact additional diversions will have on their property value and their use and enjoyment of the river. Harvey Hayek is one such member of NWF. Mr. Hayek owns property with one mile of riverfront on the Colorado River in Fayette County, downstream of the confluence of the Colorado River and Cedar Creek. His address is 6148 Baca Road, Fayetteville, Texas 78940. Mr. Hayek’s property is located upstream of the existing LCRA diversion points under Certificate of Adjudication 14-5434, but it is located downstream of many of the requested diversion points sought to be added under LCRA’s application to amend Certificate of Adjudication 14-5434E (the Amendment). Mr. Hayek is concerned about the issuance of the Amendment because of its potential to adversely affect his use and enjoyment of his property as a result of the additional diversions draining the water from the river at his property, does not believe that the need for the additional diversions has been demonstrated adequately, and believes that the additional diversions will result in unnecessary adverse effect on fish and wildlife resources. Additionally, Mr. Hayek believes that lowering flows within the river will definitely decrease his

property value. Keeping the river in good condition is incredibly important to the value of his property.

Mr. Hayek recreates along the banks of the Colorado River. His family has been hunting ducks along the Colorado River on their property going back to the 1800's. Mr. Hayek is concerned that reduced flows of the river will negatively affect his enjoyment of the river and his property.

Because Mr. Hayek meets the test for standing individually and because he is a member of the National Wildlife Federation and is concerned about issues germane to the purposes of the National Wildlife Federation, NWF has met the test for a valid hearing request. Participation of Mr. Hayek in the hearing, beyond establishing standing, is not required for NWF to pursue the claims asserted or relief requested through participation in this hearing.

### **III. Notice of Change of Address**

NWF Counsel, Myron J. Hess and Annie E. Kellough, additionally inform Counsel for all parties in this matter that the address for the Austin office of NWF has changed and request TCEQ's docket in the above referenced cause be updated accordingly.

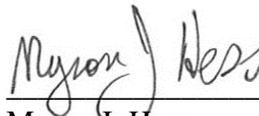
Counsel's new address is:

National Wildlife Federation  
505 E. Huntland Dr.  
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### **IV. Conclusion**

ACCORDINGLY, the National Wildlife Federation requests that the Commission grant its request for a contested case hearing and update its address on record.

Respectfully submitted,



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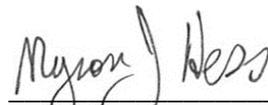
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FEDERATION**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed with the Chief Clerk of the Texas Commission on Environmental Quality and sent via electronic mail to the individuals listed on the following Service List on August 29, 2016.

  
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Myron J. Hess

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