

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

APPLICATION OF LOWER COLORADO RIVER AUTHORITY TO AMEND CERTIFICATE OF ADJUDICATION NO. 14-5434	§ § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
---	-----------------------	---

**STP NUCLEAR OPERATING COMPANY'S REPLY TO
LCRA'S RESPONSE TO REQUESTS FOR CONTESTED CASE HEARING**

TO THE HONORABLE COMMISSIONERS:

STP Nuclear Operating Company, having previously requested a hearing in this matter, submits this reply to Lower Colorado River Authority's Response to Requests for Contested Case Hearing. In support of its standing as an affected person entitled to hearing, STP Nuclear Operating Company respectfully shows the Commission the following.

1. BACKGROUND AND PROCEDURAL HISTORY

STP Nuclear Operating Company ("STPNOC") maintains and operates the South Texas Project ("STP") electric generating facilities in Matagorda County, Texas. STPNOC diverts, stores, and uses water from the lower Colorado River for cooling as a necessary component of the power generation process. Both the quantity and the quality of water available for diversion at the STP intake facilities are vitally important for this purpose and for STPNOC's ability to provide power that is essential for human health and safety.

STPNOC is a Texas non-profit corporation created and financed by the "STP Owners," currently City of San Antonio acting through the City Public Service Board, the City of Austin, and NRG South Texas LP. STPNOC filed its request for hearing on June 23, 2003, on its own behalf as the operator of STP and on behalf of the STP Owners.¹ Additional

¹ STPNOC's June 23, 2003, letter requesting a contested case hearing is appended as an Exhibit. STPNOC subsequently withdrew the water rights application referenced on the second page of its hearing request.

references in this reply to STPNOC and its interests are intended to be inclusive of those of the STP Owners. References to "LCRA" are to the Lower Colorado River Authority.

By letter dated February 9, 2006, STPNOC notified the Texas Commission on Environmental Quality ("TCEQ") that it withdrew its objection to Application No. 14-5434E, and supported the application, *but only to the extent consistent with the settlement*. STPNOC also iterated in that 2006 letter that STPNOC remains a party affected by Lower Colorado River Authority's ("LCRA") application in ways not common to the general public and has a personal justiciable interest in the application. The letter explains that the settlement agreement between STPNOC and LCRA expressly preserves STPNOC's right to participate in any proceedings on Application No. 14-5434E to protect those interests.² STPNOC understands that its hearing request is left pending before the Commission until it is withdrawn unconditionally. By letter dated August 21, 2009, STPNOC objected to certain provisions in the June 23, 2009, version of the Executive Director's draft permit and expressly reserved the right to supplement its comments to other matters in the draft permit as appropriate.³

As explained more fully below, STPNOC is entitled to have its request for hearing affirmatively granted. STPNOC's entitlement to hearing is not impacted by whether other requests for hearing are granted or denied. LCRA's Response to Hearing Requests suggests no reason why STPNOC would not be an affected person fully entitled to hearing within the meaning of that term in rule and law. In his Response to Hearing Requests submitted on August 15, 2016, the Executive Director recommends that STPNOC's hearing request *be granted*. The Office of Public Interest Counsel also recommends that STPNOC's hearing request *be granted*.

² STPNOC's February 9, 2006, letter is appended as an Exhibit.

³ STPNOC's August 21, 2009, letter is appended as an Exhibit.

2. STPNOC'S RIGHT TO PARTY STATUS AND HEARING

Affected persons are authorized to submit hearing requests for water rights applications under Texas Water Code § 11.132(a). STPNOC timely submitted its request for hearing, pursuant to a right to contested case hearing provided by law. STPNOC's request complied fully with 30 Texas Administrative Code § 55.251(c). No participant has suggested otherwise. When such a request is submitted by an affected person who presents real controversies, as does STPNOC, the Commissioners must grant that person a hearing.

STPNOC's request for hearing explains how and why STPNOC is affected by the application and draft permit under consideration in this matter, in ways not common to the general public. Some, but not all, factors for identifying affected persons are set out in the agency's rules at 30 Texas Administrative Code § 55.256(c) and in the TCEQ Executive Director's Response to Hearing Requests. As the generation of electricity at STP is dependent on the continued availability and quality of water for diversion at its authorized intake facilities, STPNOC is entitled to protections provided under Texas Water Code Chapter 11. In addition, two of the STP Owners are governmental entities, with interest in the water supply necessary for providing power for its citizens and others.

The location of STP operations in Matagorda County is identified further by reference to diversion and water use authority in Certificate of Adjudication No. 14-5437A. That location is downstream of the point of diversion that is authorized currently in the certificate of adjudication that LCRA seeks to amend.⁴ Certificate of Adjudication No. 14-5437A is issued jointly to STPNOC and to LCRA, with language addressing the certain rights of each. The authority to transport, store and use water under the certificate belongs alone to STPNOC as "Owner." The certificate authorizes both STPNOC and LCRA to divert water from the river pursuant to the certificate, as "Owners." As between STPNOC and LCRA, the

⁴ Certificate of Adjudication No. 14-5437A, as amended in 2009, is appended as an Exhibit. Amendment A was granted, "in lieu of" the previous certificate, such that it contained all of the terms of authorization that existed at the time the amendment was granted. A subsequent amendment that was granted in 2012, specifically addressing perimeter diversions at STPNOC's off-channel reservoirs, is not necessary to this reply and is not attached.

diversion rights under Certificate of Adjudication No. 14-5437A are dedicated exclusively for the sole use of STPNOC so long as electric generating facilities are operated at STP.

The respective interests of STPNOC and LCRA in Certificate of Adjudication No. 14-5437A have been the subjects of conflict between those parties dating back to 1974 when STPNOC's predecessor first applied for the right to divert water from the Colorado River. A settlement agreement following litigation in 2006 has been the gateway to a more cooperative relationship between the parties, including through a water delivery plan for contract deliveries of water from LCRA that will supplement STPNOC's river diversions, joint amendments of Certificate of Adjudication No. 14-5437, and other matters.

STPNOC's and LCRA's interests in this and other water rights proceedings in the basin are *not* the same, however. STPNOC's authorized diversions and uses pursuant to Certificate of Adjudication No. 14-5437A may compete with LCRA's independent water rights for limited available water supply. For that reason and others, the agreements between the parties are explicit in preserving STPNOC's independent right to participate when necessary to protect the interests STPNOC reserved under Certificate of Adjudication No. 14-5437 and obtained in the settlement. Special Condition 6.G. of Certificate of Adjudication No. 14-5437A records that Owners STPNOC and LCRA have joint *and several* authority to enforce the time priority of the river diversion rights. Subject to conditions in its settlement, it may be necessary for STPNOC to defend that time priority against LCRA's other water rights and operations.

STPNOC is mindful of its obligations under the Settlement Agreement and intends to honor them in all respects. However, this agency is not the arbiter of the parties' contractual obligations to one another. The only issue that arises for the Commission at this time is recognition of STPNOC's status as a person affected by LCRA's application and the draft permit that the Executive Director proposes, and by the complex accounting plan that now is approved within that draft.

3. IMPACT OF THE PROPOSED AMENDMENT AS IT RELATES TO STPNOC STANDING

The total package of application and supplemental materials, and the Executive Director's analysis, have evolved in various ways during the fourteen years that the matter being considered has been pending with the agency, and even since 2006. The fundamental factors of STPNOC's right to hearing have remained the same, however. The 2003 request for hearing describes the STP diversion rights downstream, with time priority junior to that of the water right that LCRA seeks to amend. In addition to time priority, STPNOC's river diversions at existing intake facilities continue to be limited by environmental conditions that predate the LCRA Water Management Plan and operate independently of it. STPNOC's 2003 request for hearing also describes the particular challenge that the company faces with regard to water quality at the STP intake facilities. Low flows allow saltwater intrusion upstream that can affect the suitability for diversion of water available at STPNOC's intake facilities.

Both the original and the current draft permit being considered would grant LCRA independent and unilateral diversion authority at the same location authorized for STPNOC's diversion at existing intake facilities for STP – presumably for, *but not apparently limited to*, providing water to STPNOC under contract.⁵ In their support of granting STPNOC's request for contested case hearing, both the Executive Director and the Office of Public Interest Counsel cited inclusion of the STP diversion location as a new location of diversion of the water right being amended, among other factors. As reflected in Certificate of Adjudication No. 14-5437A, amended by joint application with LCRA, STPNOC also now has sole discretion to divert water at the Bay City Dam diversion location also included in the draft permit as a new point of diversion.

Real controversies, within the meaning of that term in rule and law, do exist from STPNOC's perspective and can be resolved only after referral to hearing and with changes in the proposed draft permit. STPNOC anticipates seeking changes to the draft permit to

⁵ As filed, LCRA's application asked for independent authority to divert also from STPNOC's off-channel reservoirs; however, STPNOC does not consider that request to remain part of the application today.

eliminate the potential that diversions under the amended water right may interfere with STPNOC's diversions at the same points authorized for STPNOC's use under Certificate of Adjudication No. 14-5437A; further clarification of provisions in Special Condition G. related to the use of facilities for diversion of water so that those provisions do not apply to the diversion of water through STPNOC's facilities under any conditions, leaving those facilities subject only to appropriate federal regulation; changes to the diversion limits set out in Special Condition H.(1) such that they are "maximums" rather than a "total"; changes to Special Condition H.(2) such that the language is specific to a "combined" amount of water rather than to an amount *additional* to the maximum previously authorized diversion; assurance that new streamflow conditions do not have a negative potential impact on priority calls in the basin; changes in Special Condition H.(3) so that the draft permit no longer implies that those downstream rights which are not among those identified for special protection *may be* impaired beyond that which would have occurred otherwise under the right being amended; and changes to Special Condition J. to clarify whether those provisions apply to storage of the water appropriated in off-channel reservoirs, such as those STPNOC owns and controls exclusively.

Among those controversies that are new since 2006, and new since the draft permit that was made available for comment in 2009, is Special Condition M., approving and incorporating a complex water accounting plan for the amended water right. Whether the authorizations sought by LCRA are, in combination, an expansion of the underlying Garwood water right may be determined in reference to that plan and in ways that are not readily apparent. The expression on the face of the permit of upstream diversion limits expressed as annual diversion amounts, albeit with instantaneous streamflow restrictions for the environment, makes it difficult to determine whether the water right being amended has been over-diverted. The draft permit does not address how the very senior time priority of the water rights under the certificate sought to be amended will be assigned when water is diverted under multiple diversion rights at the same location. The STP water right is junior to the time priority of the right being amended, but it may be

senior to other rights in the basin now or in the future, such that attributing water rights priority to diversions affects when STPNOC is entitled to make a call.

STPNOC reserves the right to raise additional issues after its understanding of the proposed draft permit and accounting plan develops further through discovery or otherwise and also in relation to issues raised by other parties.

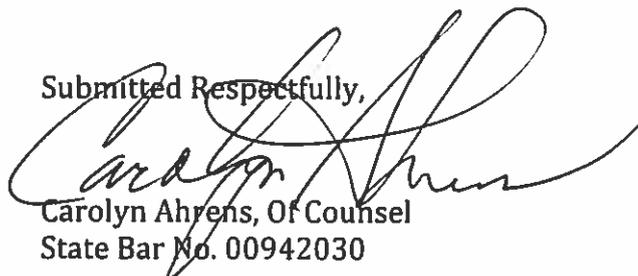
4. ALTERNATIVE DISPUTE RESOLUTION

To the extent that STPNOC's request for hearing is the only request that the Commission grants, STPNOC asks that this matter subsequently be referred to the agency's alternative dispute resolution staff to determine if LCRA and STPNOC together with the agency's Executive Director and the Office of Public Interest Council can resolve STPNOC's concerns regarding the draft permit and accounting plan that is currently proposed to be authorized. Given the procedural status of this matter, LCRA and STPNOC cannot adequately resolve STPNOC's issues without the joinder of the Executive Director and other potential parties.

5. CONCLUSION

For the foregoing reasons, STPNOC respectfully asks the Commission to affirmatively find that STPNOC is an affected person, on its own behalf and that of the STP Owners, and to grant STPNOC's request for contested case hearing, and for alternative dispute resolution as appropriate.

Submitted Respectfully,

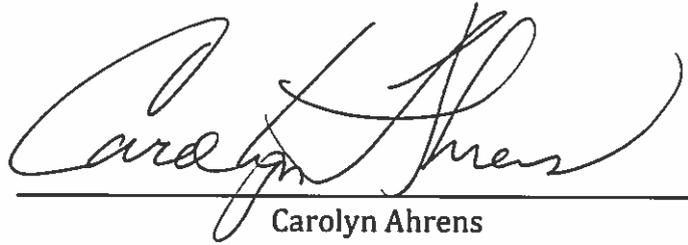


Carolyn Ahrens, Of Counsel
State Bar No. 00942030

BOOTH, AHRENS & WERKENTHIN, P.C.
206 East 9th Street, Suite 1501
Austin, Texas 78701
512.472.3263
ATTORNEYS FOR
STP NUCLEAR OPERATING COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2016, STP Nuclear Operating Company's Reply to LCRA'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.



Carolyn Ahrens

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

FOR THE APPLICANT:

Via E-Mail

Lyn Clancy, Managing Associate General Counsel
Lower Colorado River Authority
P.O. Box 220, H429
Austin, TX 78767-0220
Tel: (512) 578-3378 Fax: (512) 473-4010
lynclancy@lcra.org

David Wheelock, Manager
Water Supply Planning &
Water Resource Management
Lower Colorado River Authority
P.O. Box 220, RBC316
Austin, TX 78767-0220
Tel: (512) 730-6822
david.wheelock@lcra.org

FOR THE EXECUTIVE DIRECTOR:

Via E-Mail

Todd Galiga, Senior Attorney
TCEQ, Environmental Law Division
MC-173
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-0600 Fax: (512) 239-0606
todd.galiga@tceq.texas.gov

Via E-Mail

Sarah Henderson, Technical Staff
TCEQ, Water Availability Division
MC-160
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-2535
shenders@tceq.state.tx.us

Via E-Mail

Brian Christian, Director
TCEQ, Environmental Assistance Division
MC-108
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-4000 Fax: (512) 239-5678
brian.christian@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL:

Via E-Mail

Vic McWherter
TCEQ, Office of Public Interest Counsel
MC-103
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-6363 Fax: (512) 239-6377
vic.mcwherter@tceq.texas.gov

**FOR ALTERNATIVE DISPUTE
RESOLUTION:**

Via E-Mail

Kyle Lucas
TCEQ, Alternative Dispute Resolution
MC-222
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-4010 Fax: (512) 239-4015
klucas@tceq.state.tx.us

FOR THE CHIEF CLERK:

Via E-filing

Bridget Bohac
TCEQ, Office of the Chief Clerk
MC-105
P.O. Box 13087
Austin, TX 78711-3087
Tel: (512) 239-3300 Fax (512) 239-3311

REQUESTER(S):

Via E-Mail

Fred B. Werkenthin Jr.
Booth, Ahrens & Werkenthin, P.C.
206 East 9th Street, Suite 1501
Austin, TX 78705
fbw@baw.com

Via E-Mail

Myron J. Hess, Counsel
National Wildlife Federation
505 E. Huntland Dr., Ste 485
Austin, TX 78752
hess@nwf.org

Via E-Mail

Gwendolyn Hill Webb
Webb & Webb
2028 E. Ben White Boulevard, Ste 425
Austin, TX 78741
Tel: (512) 472-9990 Fax: (512) 472-3183
g.hill.webb@webbwebblaw.com

Via E-Mail

Reggie James, Director
Sierra Club, Lone Star Chapter
1202 San Antonio St.
Austin, TX 78701
reggie.james@sierraclub.org

Via E-Mail

Kenneth Ramirez
Law Office of Ken Ramirez, PLLC
901 Mopac Expressway South / Barton Oaks
Plaza One / Suite 300
Austin, TX 78746
ken@kenramirezlaw.com

Via E-Mail

Ross Richard Crow
City of Austin
301 W. 2nd St., Box 1088
Austin, TX 78767-1088
ross.crow@austintexas.gov

INTERESTED PERSON(S):

Via E-Mail

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

Via E-Mail

David Frederick
Lowerre, Frederick, Perales, Allmon &
Rockwell
707 Rio Grande St., Ste 200
Austin, TX 78701-2733
Tel: (512) 469-6000
dof@lf-lawfirm.com

Via E-Mail

Cynthia Smiley
Smiley Law Firm P.C.
6000 Sheperd Mountain Cv., Unit 2107
Austin, TX 78730-4910
cindy@smileylawfirm.com

Via E-Mail

Patricia Carls
Carls McDonald & Dalrymple LLP
901 S Mopac Expy., Bldg. 2, Suite 500
Austin, TX 78746
tcarls@cmcdlaw.com

Via Regular Mail

Coleman Rowland, President
Highland Lakes Group
12501 Longhorn Parkway, Apt A466
Austin, TX 78732-1267

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

APPLICATION OF LOWER COLORADO RIVER AUTHORITY TO AMEND CERTIFICATE OF ADJUDICATION NO. 14-5434	§ § § § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
---	----------------------------------	---

**STP NUCLEAR OPERATING COMPANY'S REPLY TO
LCRA'S RESPONSE TO REQUESTS FOR CONTESTED CASE HEARING**

EXHIBITS

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

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

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

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, superceded 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
Page 2 of 5

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:

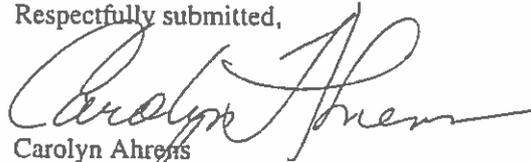
At this time, no draft permit amendment has been prepared, and the TCEQ staff have not yet performed the hydrologic and environmental analyses necessary for the STPNOC to determine whether or not there are terms and provisions that would satisfy STPNOC's concerns regarding the impact of the proposed 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 Envtl. 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
Austin, Texas 78701
(512) 472-3262 (phone)
(512) 473-2609 (facsimile)

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

A PROFESSIONAL CORPORATION
515 CONGRESS AVENUE, SUITE 1515
AUSTIN, TEXAS 78701-3503
512 / 472-3283 • FAX 512 / 473-2609

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

CAROLYN AHRENS
OF COUNSEL

February 9, 2006

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, STPNOC 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

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)
(512) 473-2609 (facsimile)

Cc:
Rick Gangluff
Jon Wood
Lyn Dean
Kellye Rila

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
<http://www.baw.com>

MICHAEL J. BOOTH
FRED B. WERKENTHIN, JR.
WIL GALLOWAY
TREY NESLONEY
RYAN J. SULLIVAN

CAROLYN AHRENS
Of Counsel

August 21, 2009

Via Facsimile to 512.239.4770 and Regular Mail

Mr. Steve Ramos, Project Manager
Water Rights Permitting and Availability Section
Texas Commission on Environmental Quality
MC-160
P.O. Box 13087
Austin, TX 78711-3087

RE: STPNOC's Comments to Draft Amendment regarding Certificate of Adjudication No. 14-5434 (LCRA/Garwood)

Dear Steve:

Thank you for the opportunity to review and respond to the Executive Director's draft amendment and technical memoranda regarding Lower Colorado River Authority's ("LCRA") Application to Amend Certificate of Adjudication No. 14-5434. The application is for amendment "E" to the certificate, and primarily relates to the establishment of multiple additional diversion points. The comments provided are submitted on behalf of the STP Nuclear Operating Company ("STPNOC").

As you know, STPNOC protested LCRA's application on June 23, 2003. STPNOC and LCRA subsequently entered into a settlement agreement that, among other things, called on STPNOC to withdraw its objections to the application with conditions. STPNOC did so by correspondence, dated February 9, 2006, expressing its 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.

The draft amendment and memoranda to which STPNOC now responds were sent to us under cover correspondence, dated June 23, 2009. Subsequent e-mail correspondence with you, dated July 23, 2009, confirmed an extension of time, until August 24, 2009, for providing comments.

Mr. Steve Ramos
August 21, 2009
Page 2

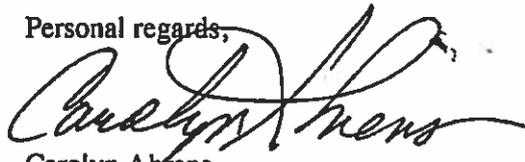
By this letter, STPNOC objects to Special Condition 3.F of the current draft, as it relates to intake screens on new or modified intake structures at diversion points authorized under the amendment. The diversion points described in Paragraph 1.E.3 and 1.H of the certificate also are the diversion points authorized to STPNOC pursuant to Certificate of Adjudication No. 14-5437, as amended; however, STPNOC is not a party-applicant for the authorizations at issue here.

Special condition 3.F may be wholly inappropriate under the circumstances, and if it is removed from the draft completely, that would resolve STPNOC's concerns. However, STPNOC specifically requests that, at a minimum, Special Condition 3.F. be modified to remove any possibility of implication that the requirement therein applies to (1) new or modified facilities that are not owned or to be owned exclusively by LCRA or to (2) new or modified facilities at the described diversion locations that are used to divert water under other water rights.

Please let us know if you have any questions regarding STPNOC's concerns and also how the Executive Director proposes to proceed with regard to them. STPNOC may supplement its comments, as appropriate.

We would appreciate the opportunity also to review and comment on any revised draft permit that the Executive Director may prepare. As always, we appreciate your continuing assistance with this matter. An additional copy of this letter is enclosed for file-stamping and return to us in the self-addressed and postage-paid envelope, also enclosed.

Personal regards,



Carolyn Ahrens

cc via e-mail:

Ms. Lyn Clancy
Mr. James Kowis
Mr. Rick Gangluff
Ms. Sandra Dannhardt
Mr. Jon Wood

cc via regular mail:

Attached Mailing List

CAROLYN AHRENS
BOOTH AHRENS & WERKENTHIN PC
STE 1515
515 CONGRESS AVE
AUSTIN TX 78701-3504

MYRON J HESS COUNSEL
NATIONAL WILDLIFE FEDERATION
STE 200
44 EAST AVE
AUSTIN TX 78701-4384

KEN KRAMER DIR
SIERRA CLUB
PO BOX 1931
AUSTIN TX 78767-1931

LEE MUNZ
TX STATE SOIL & WATER CONSERVATION
PO BOX 658
TEMPLE TX 76503-0658

KENNETH RAMIREZ
BROWN MCCARROLL LLP
111 CONGRESS AVE STE 1400
AUSTIN TX 78701-4093

GWENDOLYN HILL WEBB ATTORNEY AT L
WEBB & WEBB
PO BOX 1329
AUSTIN TX 78767-1329

FRED B WERKENTHIN JR
BOOTH AHRENS & WERKENTHIN PC
STE 1515
515 CONGRESS AVE
AUSTIN TX 78701-3504

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



THE STATE OF TEXAS
COUNTY OF TRAVIS
I hereby certify that this is a true and correct copy of a
Texas Commission on Environmental Quality document,
which is filed in the permanent records of the Commission.
Given under my hand and the seal of office on
LaDonna Castanuela MAR 24 2009
LaDonna Castanuela, Chief Clerk
Texas Commission on Environmental Quality

AMENDMENT TO
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 14-5437A

TYPE: §11.122 and 11.085

Owners: STP Nuclear Operating Company
Lower Colorado River Authority

Address: P.O. Box 289
Wadsworth, Texas 77483
3700 Lake Austin Blvd.
Austin, Texas 78703

Filed: February 9, 2007

Granted: MAR 17 2009

Purpose: Industrial

County: Matagorda

Watercourse: Colorado River

Watershed: Colorado River Basin,
Colorado-Lavaca Coastal Basin

WHEREAS, Certificate of Adjudication No. 14-5437 was issued to Houston Lighting & Power Company (HLPC), as project manager of the South Texas Project (STP), and Lower Colorado River Authority (LCRA), authorizing the Owners to divert and use not to exceed 102,000 acre-feet of water per year from the Colorado River, Colorado River Basin for industrial purposes in Matagorda County. Certificate of Adjudication No. 14-5437 further authorizes the transportation to and storage of the diverted water in two existing off-channel reservoirs, impounding 202,600 acre-feet of water in the Colorado-Lavaca Coastal Basin and 388 acre-feet of water in the Colorado-Lavaca Coastal Basin, and subsequent diversions from the perimeter of the off-channel reservoirs; and

WHEREAS, the diverted water is used for industrial purposes including development of power by means other than hydroelectric; and

WHEREAS, the authorized maximum diversion rate from the Colorado River is 1,200 cfs (540,000 gpm); and

WHEREAS, HLPC is also authorized to divert, circulate, and recirculate water from the two off-channel reservoirs and to consumptively use water appropriated pursuant to this certificate through forced evaporation and other miscellaneous industrial uses an amount of water not to exceed 80,125 acre-feet per year; and

WHEREAS, the time priority of the Owners' right is June 10, 1974 for all authorizations except for the storage of 46 acre-feet of water in the 388 acre-foot capacity reservoir which has a time priority of March 25, 1986; and

WHEREAS, STP Nuclear Operating Company (STPNOC) currently is the agent for the owners of the South Texas Project; and

WHEREAS, the participants in the South Texas Project are: (1) City Public Service Board of The City of San Antonio, Texas, holders of an undivided 40.0% interest; (2) the City of Austin, Texas holder of an undivided 16.0% interest; and (3) NRG South Texas LP, holder of an undivided 44.0% interest; and

WHEREAS, the respective ownership interests and the agreements of the Owners with respect to their rights recognized herein are set forth in the following instruments: (1) Amended and Restated Contract by and Between the Lower Colorado River Authority and STP Nuclear Operating Company, effective January 1, 2006; (2) Amended and Restated Partial Assignment and Transfer of Water Permit filed in the Official Records of Matagorda County as Instrument No. 064811; and (3) Contractual Permit No. 327, as amended; and

WHEREAS, STPNOC and LCRA (Applicants and Owners) seek to amend Certificate of Adjudication No. 14-5437 to add authorization to divert from an existing upstream diversion point on the Colorado River, Colorado River Basin in Matagorda County; and

WHEREAS, the proposed upstream diversion point is authorized by Certificate of Adjudication No. 14-5476, owned by LCRA and is described as a point located at 28.98060° N Latitude, 96.01156° W Longitude, on the west bank of a reservoir and known as Bay City Dam on the Colorado River located in the John F. Bowman and Henry Williams League, Abstract No. 9 and the Thomas Cayce Grant, Abstract No. 14, Matagorda County, Texas; and

WHEREAS, Applicants seek to divert the authorized water only at such times or in such quantities as will not affect existing water rights senior or superior to Certificate of Adjudication No. 14-5437; and

WHEREAS, Applicants indicate that no increase in the maximum rate of diversion or the maximum annual quantity to be diverted and consumptively used under Certificate of Adjudication No. 14-5437 is being requested; and

WHEREAS, the Applicants indicate that diversions from the upstream point will not exceed 561 cfs (252,450 gpm); and

WHEREAS, STPNOC and LCRA request that the time priority of June 10, 1974 for the right to divert water authorized under Certificate of Adjudication No. 14-5437 also apply at the additional proposed upstream diversion point; and

WHEREAS, Applicants further seek to amend the Certificate to revise various provisions to reflect current ownership and contracts and to clarify existing special conditions in the Certificate, described as follows:

1. Replace all references to Houston Lighting & Power Company as Project Manager of the South Texas Project with references to STP Nuclear Operating Company as Agent for the South Texas Project Owners. STPNOC's mailing address is P.O. Box 289, Wadsworth, Texas 77483.

Also, in the Recitals, the statement of authority for STPNOC to act as Agent should be revised to reflect the following:

This Certificate of Adjudication, as amended, to among other things, appropriate waters of the State of Texas in the Colorado River Basin is issued to the STP Nuclear Operating Company, as Agent for the Owners of the South Texas Project under the Amended and Restated South Texas Project Participation Agreement among the Owners and the Operating Agreement between the Owners and STP Nuclear Operating Company, both effective as of November 17, 1997 and the LCRA, subject to the following terms and conditions.

2. Revise Paragraph 2.B. (USE) to clarify that STPNOC's authority to store water in its off-channel reservoirs is not limited to water diverted from the Colorado River.
3. Revise Paragraph 2.C. (USE) to clarify that the referenced condition applies to water appropriated under the Certificate.
4. Revise Special Condition 5.A. of the original certificate to clarify that the referenced condition applies to water appropriated under the Certificate.
5. Revise Special Condition 5.C. of the original certificate to reflect those instruments that currently establish the respective ownership interests of STPNOC and LCRA in the Certificate as follows:

The respective ownership interests and the agreements of Owners with respect to their rights recognized herein are set forth in the following instruments: (1) Amended and Restated Contract By and Between The Lower Colorado River Authority and STP Nuclear Operating Company effective January 1, 2006; (2) Amended and Restated Partial Assignment and Transfer of Water Permit as recorded in the Official Records of Matagorda County as Instrument No. 064811; and (3) Contractual Permit No. CP-327, as amended.

6. Revise Special Condition 5.D. of the original certificate by inserting the words "of water appropriated under this Certificate of Adjudication" between "Colorado River" and "shall be limited." This request is intended only to clarify that diversions of water from other sources, including water purchased under the Amended and Restated Contract from other sources of supply provided by the LCRA but diverted from the same authorized points are not subject to the stated condition.
7. Revise Special Condition 5.E. of the original certificate to reflect current ownership of the South Texas Project and the proper statement of authority for STPNOC to act as Agent, as follows:

This Certificate of Adjudication is issued to the STP Nuclear Operating Company, as Agent for the Owners of the South Texas Project under the Amended and Restated South Texas Project Participation Agreement among the Owners and the Operating Agreement between the Owners and STP Nuclear Operating Company, and to the Lower Colorado River Authority. At the present time the participants in the South Texas Project are: (1) City Public Service Board of the City of San Antonio, Texas, holder of an undivided 40.0% interest; (2) the City of Austin, Texas, holder of an undivided 16.0% interest; and (3) NRG South Texas LP, holder of an undivided 44.0% interest. References to "Owner STP Nuclear Operating Company," are to such company in its capacity as Agent on behalf of and for the proportionate benefits of the participants in the

South Texas Project; references herein to "Owners" encompasses STP Nuclear Operating Company in such capacity and the Lower Colorado River Authority.

8. Revise Special Condition 5.F. of the original certificate to clarify that the referenced condition is not intended to limit the sources of water stored in the South Texas Project reservoirs and that STPNOC is authorized to store water at levels "up to and including" the two stated elevations.
9. Add a new special condition to reflect that STPNOC and LCRA have joint and several authority with regard to enforcement of the time priority of river diversion rights under the Certificate for so long as use of the river diversions remain committed to performance of the Amended and Restated Contract By and Between The Lower Colorado River Authority and STP Nuclear Operating Company and for the sole use of STPNOC. This right of enforcement is expressly retained to STPNOC under the terms of the Amended and Restated Partial Assignment and Transfer of Water Permit referenced above relative to Special Condition 5.C.
10. Update references to the Texas Commission on Environmental Quality; and

WHEREAS, the application for this amendment was declared administratively complete by the Executive Director on February 9, 2007; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director acknowledges that in addition to water that is diverted pursuant to this certificate and that is subject to the special conditions stated herein, water is transported and/or released, to the authorized off-channel reservoirs, from other sources, including from permitted groundwater wells and as supplied pursuant to the Amended and Restated Contract by and Between the Lower Colorado River Authority and STP Nuclear Operating Company referenced above; and

WHEREAS, the Executive Director recommends special conditions be included in the amendment; and

WHEREAS, the Applicants request that special conditions 5. A., C., D., E., and F. of the original certificate be modified and those modifications were reviewed by the Executive Director; and

WHEREAS, the Executive Director included the requested modifications of 5.C. and 5.E. in the recitals of this amendment and deleted special conditions 5.C. and 5.E. of the original certificate; and

WHEREAS, the Executive Director modified special conditions 5.A., 5.D. and 5.F. of the original certificate as requested, and these are now reflected as 6.A., 6.C. and 6.E. respectively in the amended certificate; and

WHEREAS, the applicants submitted an accounting plan, accounting procedures, and Water Rights application No. 14-5437A, which was approved by the Executive Director; and

WHEREAS, no one protested the granting of this application; and

WHEREAS, the applicants have requested that Certificate of Adjudication No. 14-5437 should be rewritten and superseded with Certificate of Adjudication No. 14-5437A; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment; and

NOW, THEREFORE, in lieu of Certificate of Adjudication No. 14-5437, this amended Certificate designated as Certificate of Adjudication No. 14-5437A to, among other things, appropriate water of the State of Texas in the Colorado River Basin is issued to the STP Nuclear Operating Company, as Agent for the Owners of the South Texas Project under the Amended and Restated South Texas Project Participation Agreement among the Owners and the Operating Agreement between the Owners and STP Nuclear Operating Company, both effective as of November 17, 1997 and the Lower Colorado River Authority, subject to the following terms and conditions:

1. IMPOUNDMENT

- A. Owner, STP Nuclear Operating Company (STPNOC), is authorized to maintain an existing 202,600 acre-foot capacity off-channel reservoir (Principal Reservoir) and impound therein not to exceed 202,600 acre-feet of water. The reservoir is located in the John Raney Grant, Abstract No. 80; and the Cornelius H. Vanderveer Grant, Abstract No. 95; and the Abram Sheppard Survey, Abstract No. 383, Matagorda County, Texas, in the Colorado-Lavaca Coastal Basin.
- B. Owner, STPNOC, is authorized to maintain an existing 388 acre-foot capacity off-channel reservoir (Second Reservoir) and impound therein not to exceed 388 acre-feet of water. The reservoir is located in the Raney Grant, Abstract No. 80, Matagorda County, Texas, in the Colorado-Lavaca Coastal Basin.

2. USE

- A. Owners, STPNOC and LCRA, are authorized to divert and use not to exceed 102,000 acre-feet of water per year from the Colorado River for industrial purposes, including development of power by means other than hydroelectric.
- B. Owner, STPNOC, is authorized to transport water lawfully diverted from the Colorado River into the two reservoirs for storage and subsequent use as authorized herein.
- C. Owner, STPNOC, is authorized to divert, circulate, and recirculate water from the two off-channel reservoirs for industrial purposes, including development of power by means other than hydroelectric, except that it may not consumptively use through forced evaporation and other miscellaneous industrial use more than 80,125 acre-feet of water per year appropriated under this Certificate.

3. DIVERSION

- A. Location: At a point on the west bank of the Colorado River in the Cornelius H. Vanderveer Grant, Abstract No. 95, Matagorda County, Texas.

Rate: not to exceed 1,200 cfs (540,000 gpm) from the Colorado River
- B. Location: At a point at 28.98060° N Latitude, 96.01156° W Longitude in the Thomas Cayce Grant Abstract 14, Matagorda County on the west bank of

reservoir authorized under Certificate of Adjudication No. 14-5476, as amended, and known as the Bay City Dam on the Colorado River located in the John F. Bowman and Henry Williams League Abstract No. 9 and the Thomas Cayce Grant, Abstract No. 14, Matagorda County, Texas.

Rate: not to exceed 561 cfs (252,450 gpm) for the Bay City Dam.

C. The combined maximum diversion rate for Diversion Paragraph 3.A. and 3.B. is 1,200 cfs (540,000 gpm).

D. Location: at a point on the north shore of Principal Reservoir.

Rate: not to exceed 8,087.00 cfs (3,639,150.00 gpm).

E. Location: at a point on the west shore of the Second Reservoir.

Rate: not to exceed 287.00 cfs (129,150 gpm).

4. TIME PRIORITY

The time priority of Owners' right is June 10, 1974, for all authorizations contained herein, except for the storage of 46 acre-feet of water in the aforesaid 388 acre-foot capacity second reservoir which is March 25, 1986.

5. CONSERVATION

Owners, STPNOC and LCRA, shall implement a water conservation plan that provides for the utilization of those practices, techniques and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this permit, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

6. SPECIAL CONDITIONS

A. Water appropriated under this Certificate and diverted from the Principal Reservoir but not consumed as a result of the uses authorized herein shall be returned to said Principal Reservoir, while water appropriated under this Certificate and diverted from the Second Reservoir but not consumed as a result of the uses authorized herein shall be returned either to said Principal Reservoir or said Second Reservoir.

B. Surplus water not beneficially used will be returned to the Colorado River through a spillway discharge channel and outlet structures located in the William Selkirk Grant, Abstract 87, Matagorda County, Texas.

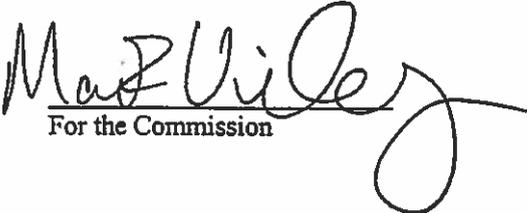
- C. Diversions from the Colorado River at the points authorized in Diversion Paragraph 3.A., of water appropriated under this Certificate, shall be limited to fifty-five percent of the flows of the Colorado River in excess of 300 cfs at the point authorized in Diversion Paragraph 3.A. on the Colorado River.
- D. Diversions from the Colorado River at the diversion point authorized in Diversion Paragraph 3.B. shall be made only when water would otherwise be available for diversion at the point authorized in Diversion Paragraph 3.A.
- E. Owner, STPNOC, is authorized to store not to exceed 202,600 acre-feet of water in the Principal Reservoir up to and including the elevation of 49.0 feet above mean sea level and 388 acre-feet of water in the Second Reservoir up to and including the elevation of 26.0 feet above sea level.
- F. Owners, STPNOC and LCRA, shall only divert and use water pursuant to Paragraphs 2. USE and 3.B. DIVERSION, in accordance with the most recent approved *Accounting Procedures Water Rights Application 14-5437A*. Owners shall maintain the accounting plan in electronic format and make the data available to the Executive Director and the public upon request. Any modifications to *Accounting Procedures Water Rights Application 14-5437A* shall be approved by the Executive Director. Any modification to the plan that changes the certificate terms must be in the form of an amendment to the certificate. Should Owners fail to maintain the accounting plan or notify the Executive Director of any such modifications to the plan, Owners shall immediately cease diversion pursuant to Paragraph 3.B. DIVERSION, and either apply to amend the certificate, or voluntarily forfeit this diversion point. If Owners fail to amend the certificate or forfeit this diversion point, the TCEQ may begin proceedings to cancel the authorization to use the point. The Commission shall be notified immediately by Owners upon modification of the accounting plan and provided with copies of the appropriate documents effectuating such changes.
- G. Owners, STPNOC and LCRA, have joint and several authority with regard to enforcement of the time priority of river diversion rights under the Certificate for so long as use of the river diversions remain committed to performance of the Amended and Restated Contract by and between The Lower Colorado River Authority and STP Nuclear Operating Company and for the sole use of STPNOC. This right of enforcement is expressly retained to STPNOC under the terms of the Amended and Restated Partial Assignment and Transfer of Water Permit.

This amendment is issued subject to all superior and senior water rights in the Colorado River Basin.

Owners agree to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.


For the Commission

Date Issued: MAR 17 2009