SAHS & ASSOCIATES, P.C.

a solo practice of law

February 24, 2014

Via: http://www10.tceq.state.tx.us/epic/efilings
Docket Clerk
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Office of Chief Clerk, MC 105
P.O. Box 13087
Austin TX 78711-3087

Via: https://cis.soah.state.tx.us/soahupload/
Docket Clerk (Monica Luna)
State Office of Administrative Hearings
300 W. 15th Street
Suite 504
Austin TX 78701-1649

Re: SOAH DOCKET NO. 582-14-2123
TCEQ DOCKET NO. 2014-0124-WR

Dear Docket Clerks:

Please accept for filing in the above-referenced dockets the attached City of Austin's Exceptions to the Administrative Law Judges' Proposal for Decision and Proposed Order.

If you have any questions, please do not hesitate to call.

Respectfully submitted,

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ATTORNEYS FOR
THE CITY OF AUSTIN

SOAH DOCKET NO. 582-14-2123
TCEQ DOCKET NO. 2014-0124-WR

APPLICATION OF THE LOWER	**§**	**BEFORE THE STATE OFFICE**
COLORADO RIVER AUTHORITY FOR	**§**	**OF**
EMEGENCY AUTHORIZATION	**§**	**ADMINISTRATIVE HEARINGS**

CITY OF AUSTIN'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGES' PROPOSAL FOR DECISION AND PROPOSED ORDER

COMES NOW, the City of Austin (City) and files these Exceptions to the Administrative Law Judges' (**ALJs**) Proposal for Decision (**PFD**) and Proposed Order in the above-styled and referenced matter.

I.

The City of Austin supports the February 21, 2014 Administrative Law Judges' Proposal for Decision (PFD) and urges that the Commission adopt their proposed order. The City supports the minor modification to Ordering Provision No. 2 as proposed in Highland Lakes Firm Water Customer Cooperative's Exceptions to the Administrative Law Judges' Proposal for Decision and Proposed Order.

The Commission's decision to send this matter to the State Office of Administrative Hearings (SOAH) for an expedited evidentiary hearing provided an opportunity for further examination of the facts and science essential to formulating a properly protective emergency order. The PFD summarizes many hours of testimony and key exhibits showing that utilities dependent on the Highland Lakes for water supply are already experiencing public health and safety issues with the current low level of the reservoirs. The evidence further shows that these problems threaten to become much more serious as reservoirs fall during the current drought, which is expected to continue. The ALJs also found the evidence convincing that the proposed cutoff trigger for interruptible stored water at 1.1 million acre-feet (MAF) did not sufficiently protect municipal supply in a continuation of the current drought hydrology and found that the evidence supports the need for the properly protective trigger of 1.4 MAF.

II.

The following key evidence supports the conclusion that an imminent threat to human health and safety exists and that a 1.4 MAF trigger is needed to prevent the situation from deteriorating further:

- communities relying on water from the lakes to fight fires are already having difficulty accessing water due to low lake levels and the threat caused by this situation is expected to increase as lake levels decline further;

- lower flows in water utility systems due to drought and conservation measures cause treated water to sit for longer periods in pipes and tanks such that the chlorine residuals begin to dissipate and health-threatening biological organisms begin to grow and the threat caused by this situation is expected to increase as the drought continues;

- some existing raw water intakes owned and operated by LCRA's firm water customers on Lake Travis are facing extreme hazards because as lake levels drop they are either inoperable or will become in operable within the 18 months and in general, they have no viable alternative sources of water and engineering solutions cannot be instituted quickly enough to respond to falling reservoir levels.

As further summarized below, evidence shows that the 850,000 AF trigger used in prior emergency orders was not an appropriately protective level; that recent experience with a refill almost to 1.1 MAF in 2012 shows 1.1 MAF is not the proper level because it threatens municipal supply; and that 1.4 MAF is the minimum level of protection needed in light of the current drought hydrology.

III.

The Evidence Shows that as the Drought Continues, 850,000 AF is Not an Appropriate Trigger. Some of the parties urge the Commission to again use the 850,000 acre-foot trigger that has been used in emergency orders during the past two years. The hearing shows that the Commission has new evidence about the hydrology of the ongoing drought since that trigger was first established in the fall of 2011. At that time the Commission did not know that 2011 would be the lowest year for inflows on record or that2012 would finish as the fifth lowest year. The Commission did not know that 2013 would finish as the second lowest year, making 2012 the sixth lowest year. Most importantly, the Commission did not know that there would be this very long period with record low inflows. This evidence was presented as well as evidence that the January 2014 inflows are lower than any January inflows since the drought of the 50s.

As the hearing record shows, none of this data was used in the modeling done two and a half years ago to determine that 850,000 acre-feet would protect municipal water supply. Evidence of three years of very low inflow data used in the modeling presented during the hearing show a much greater need to keep more water in the lakes to protect municipal supply in order to get through this drought, which is now known to be more intense and prolonged than was expected when the first emergency order was issued. In this matter, hind-sight is 20 - 20 because the evidence shows 850,000 acre-feet was the wrong trigger in 2012; if the water level had gone above 850,000 acre feet, which it almost did, it would have driven reservoirs below the emergency level of 600,000 acre feet.

IV.

The Evidence Shows that that 1.1 million is Not the Appropriate Trigger Level Under Current and Expected Conditions. As the ALJs noted in their PFD, it can be readily deduced that 1.1 MAF is not properly protective by the fact that the lakes almost refilled to 1.1 MAF in May 2012 and had there been even a limited release for interruptible stored water after that refill the lakes would have fallen below emergency levels by September 2013. In addition,

the City of Austin's evidence of extensive modeling shows the risks associated with a 1.1 MAF trigger with a continuation of the current drought hydrology.

V.

Based on Data of Record Low Inflows During the Last Several Years. Modeling Evidence Shows a Need for a Trigger of at Least 1.4 MAF. The City of Austin's modeling evidence shows that with a continuation of the current drought hydrology, there is a risk of storage falling to emergency levels within a year and a half, even with a 1.4 MAF trigger. Although still showing risk at a 1.4 MAF trigger level, that risk is more mitigated and allows more time for potential refill and emergency response by utilities.

Other evidence supports a minimum 1.4 MAF trigger, including the fact that lake combined storage was at 1.53 MAF on March 1 in 2011—a storage level higher than 1.4 MAF—and storage fell to around 745,000 AF by October 2011. As mentioned above, witnesses testified that the current lake level around 760,000 AF is already presenting health and safety problems. Although amounts proposed for release for interruptible stored water in the proposed emergency order at 1.4 MAF are less than the amounts authorized for release in 2011 by LCRA's 2010 Water Management Plan, those releases under the proposed order would start at a lower combined storage level.

Utilities dependent on the Highland Lakes for water supply are busy dealing with emergency conditions. Continued hearings on emergency orders divert attention and resources from emergency drought response measures. Setting a sufficiently protective trigger level and renewing the order for 60 days based on combined storage levels provides these utilities with the certainty they need so that they can return to the task of ensuring water supply to their customers during this enduring drought.

The City of Austin urges the Commission to adopt the ALJ's PFD and issue the order as proposed with the modification proposed by the Highland Lakes Firm Water Customer Cooperative. The decision is based on sound science and factual evidence in the record.

Respectfully submitted,

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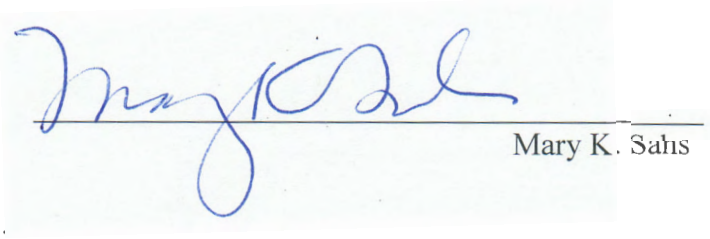
THE CITY OF AUSTIN

CERTIFICATE OF SERVICE

I certify that the foregoing "City of Austin's Exceptions to the Administrative Law Judges' Proposal for Decision and Proposed Order" was transmitted via email to each of the parties on the attached mailing list and electronically filed with the TCEQ and SOAH docket clerks on Monday, February 24, 2014 before 5:00 p.m..

(*See attached service list*)



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