

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

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

**THE LEHRER/LEWIS INTERESTS & GARWOOD IRRIGATION COMPANY’S
RESPONSE TO EXCEPTIONS TO THE PROPOSED ORDER
OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

The Lehrer/Lewis Interests¹ (“Lehrer/Lewis”) and Garwood Irrigation Company (“Garwood”) appreciate the proposal by LCRA, and the recommendation of Administrative Law Judges (“ALJs”) William Newchurch and Travis Vickery, to include Conclusion of Law No. 8 in the Emergency Order. As written, Conclusion of Law No. 8 recognizes that the Emergency Order does not construe in any way either the 1987 Agreement or the 1998 Purchase Agreement between LCRA and Garwood Irrigation Company. This Conclusion of Law should be adopted as recommended without changes.

Lehrer/Lewis and Garwood respond to the Exceptions filed by three parties that propose modifications of the ALJs’ Proposed Order, as follows:

¹ The Lehrer/Lewis interests consist of five distinct ownership interests of lands within the Service Area of LCRA’s Garwood Division: (1) The William Paul Lehrer Residuary Trust, the Gretchen L. McMenimen Residuary Trust, the Nancy Lehrer Boyd Residuary Trust, and the Mary Lehrer Armour Residuary Trust (such residuary trusts were created under the will of William Neal Lehrer admitted to probate in Cause No. 9,227 in the County Court of Colorado County, Texas, and such residuary trusts are together referred to herein as the “Lehrer Trusts”); (2) The Dorothy Lewis Estate Trust (such trust was created under the Last Will and Testament of Dorothy Jane Lehrer Lewis dated October 3, 1983 and First Codicil dated February 12, 2002, and such trust is referred to herein as the “Lewis Trust”); (3) El Seven Ranch, Inc., a Texas corporation; (4) the Lehrer-Lewis 1967 Trusts; and (5) the Lehrer-Lewis Joint Venture. William Neal Lehrer and Dorothy Jane Lehrer Lewis, both deceased, were brother and sister, and their descendants/heirs are the beneficiaries of the Lehrer Trusts, the Lewis Trust, and the Lehrer-Lewis 1967 Trusts, as well as stockholders of El Seven Ranch, Inc.

1. The Commission Should Reject Proposed Modifications to Conclusion of Law No. 8

Lehrer/Lewis and Garwood respectfully urge the Commission to reject Central Texas Water Coalition's (CTWC's) proposed addition to Conclusion of Law No. 8.² Especially in the context of a Conclusion of Law, the proposed addition is wrong. The record contains ample evidence of the fact that the 1987 Agreement and the 1998 Purchase Agreement between LCRA and Garwood exist, the fact that LCRA supplies water for irrigation within the Garwood Division service area pursuant to these two agreements, and the fact that there exists a dispute between LCRA on the one hand and Garwood Irrigation Company and Lehrer/Lewis on the other hand regarding the construction of the two agreements. *See, e.g.*, Tr. at 57:3 (Rowney); 57:8; 450:8-9 (Alexander); and 450:17-18. None of these facts was disputed at the hearing. Tr. at 57:3 (Rowney); 450:8-9 (Alexander). Although Conclusion of Law No. 8 alone – *without* CTWC's proposed addition – is clearly adequate, if the Commission believes that the Emergency Order should contain a separate finding that expressly addresses these facts, Lehrer/Lewis and Garwood suggest adding the following new Finding of Fact No. 54a:

“54a. LCRA supplies water for irrigation within the Garwood Division service area pursuant to two agreements in effect between LCRA and Garwood Irrigation Company: the Agreement dated December 10, 1987 (the “1987 Agreement”); and the Purchase Agreement dated July 20, 1998 (the “1998 Purchase Agreement”). There exists a dispute between LCRA on the one hand and Garwood Irrigation Company and Lehrer/Lewis on the other hand regarding the construction of the two agreements.”

2. The Commission Should Reject Proposed Modifications to Ordering Provision No. 2

² CTWC suggests adding the following sentence to the end of Conclusion of Law No. 8: “There is no evidence in the record regarding either the 1987 Agreement or the 1998 Purchase Agreement between LCRA and the Garwood Irrigation Company.”

Similarly, consistent with Conclusion of Law No. 8, Lehrer/Lewis and Garwood respectfully urge the Commission to reject the Highland Lakes Firm Water Customer Cooperative's (Highland's) erroneous interpretation of law and proposed additions to Ordering Provision No. 2.³ Highland accurately notes that the contracts between Garwood and LCRA are not in evidence. Because, by entering this Emergency Order, the Commission explicitly does not purport to construe the terms and conditions of these or any other contracts, however, no contract need be in evidence. *Cf. White v. Bath*, 825 S.W.2d 227, 231 (Tex. App. – Houston [14th Dist.] 1992, writ denied) (holding that “when the document and its contents are only collaterally related to the issues in the case, the best evidence rule does not apply”); TEX. R. EVID. 1002. The fact that the 1987 Agreement and the 1998 Purchase Agreement exist, and the fact that LCRA supplies water for irrigation within the Garwood Division service area pursuant to these two agreements, are amply supported by evidence in the record; no more is needed, or relevant.

Nothing in the record, much less in Highland's record citations – to Garwood's opening statement and to Dr. Kathy Alexander's testimony on cross examination – support Highland's requested revisions. *See* Tr. at 30:14-25 (Garwood's opening statement); 31:1-7; 450:4-21 (Alexander). This Commission does not claim to interpret existing contracts between LCRA and Garwood through the Emergency Order. *See* Tr. at 450:15-21 (Alexander).⁴ Further, LCRA

³ Highland proposes that Ordering Provision No. 2 be modified by adding the underlined text, as follows: “LCRA may provide interruptible stored water to Garwood Irrigation District and Pierce Ranch to the extent required by and consistent with (a) the Order Adjudicating LCRA's Water Rights for Lakes Buchanan and Travis, In re The Exceptions of the Lower Colorado River Authority and the City of Austin to the Adjudication of Water Rights in the Lower Colorado River Segment of the Colorado River Basin, No. 115, 414-A-1 (264th Dist. Ct., Bell County, Tex. April 20, 1988), (b) LCRA's Certificates of Adjudication Nos. 14-5478, as amended and 14-5482, as amended, (c) prior orders of this Commission, and (d) their contracts.” The City of Austin also supports Highland's proposed modification to Ordering Provision No. 2. *See* City of Austin Exceptions to PFD and Proposed Order at 4.

⁴ Garwood and Lehrer/Lewis are aware of no express grant of authority to the Commission to interpret contracts between private parties. Unlike courts, “there is no presumption that administrative agencies are authorized to resolve disputes. Rather, they may exercise only those powers the law, in clear and express statutory language, confers upon them.” *Subaru of Am., Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 220 (Tex. 2002). Moreover, contractual interpretation is “inherently judicial in nature.” *In re Cano Petroleum, Inc.*, 277 S.W.3d 470

does not enjoy “unfettered discretion” to comply or not comply with its contracts – its obligations are controlled by the terms of the contracts and relevant underlying law. By proposing that the Commission revise Ordering Provision No. 2 to add vague and unnecessary references, Highland may be seeking to fabricate support for a later argument that the Commission, by entering this or some previous order, has required or authorized LCRA to breach its existing agreements with Garwood Irrigation Company. LCRA has certainly never sought such an order or authorization;⁵ the record provides no evidence to the contrary. Accordingly, consistent with Conclusion of Law No. 8, Lehrer/Lewis and Garwood respectfully urge the Commission to reject Highland’s proposed modifications. Moreover, in order to make it absolutely clear that the Commission is not in the business of interfering with or impairing contracts, the Commission may want to consider adding a new ordering provision in this Emergency Order (and perhaps as boilerplate in subsequent orders in this and other matters), as follows:

“2a. Neither this Emergency Order nor any prior order of the Commission requires or authorizes LCRA to breach any of its contractual commitments to supply water.”

3. The Commission Should Reject Proposed Modifications to Ordering Provision No. 7

Lehrer/Lewis and Garwood object to LCRA’s proposed modification to Ordering Provision No. 7, which would apportion transcription costs among the parties. Lehrer/Lewis and Garwood agree with the ALJs that LCRA should bear these costs. Lehrer/Lewis and Garwood respectfully urge the Commission to reject LCRA’s proposed modification.

(Tex. App.—Amarillo 2009, no pet.). When an action is inherently judicial, a court “retains jurisdiction to determine the controversy” in the absence of an explicit statute granting exclusive jurisdiction to the administrative agency. *Id.*
⁵To the contrary, LCRA has repeatedly made it clear that it intends to honor all of its obligations under all of its agreements.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing The Lehrer/Lewis Interests and Garwood Irrigation Company's Response to Exceptions to the Proposed Order of the State Office of Administrative Hearings was served via email on all parties whose names appear on the attached mailing list on this 25th day of February, 2014.

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