

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

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

**NATIONAL WILDLIFE FEDERATION'S RESPONSE TO EXCEPTIONS TO THE PROPOSAL
FOR DECISION AND TO LCRA'S MOTION TO ALLOCATE TRANSCRIPT COSTS**

In accordance with directions from the Administrative Law Judges and the General Counsel, the National Wildlife Federation (NWF) hereby files its Response to Exceptions to the Proposal for Decision (PFD) in this matter and to LCRA's Motion to Allocate Transcript Costs.

Reservoir Trigger Levels

Subject to the points noted immediately below, NWF supports the Colorado Water Issues Committee's recommendation, as explained in its Exceptions, for the entry of an order that would, with a few appropriately revised findings, modify the Executive Director's order to provide that current conditions do not support the release of interruptible stored water for irrigation in the Gulf Coast, Pierce Ranch, or Lakeside irrigation operations and provide that LCRA may deviate from the Water Management Plan and not make such releases during the term of the emergency order. That result would provide all of the protection that any party could reasonably seek to achieve through an emergency order under Section 11.139 and, because lake levels will remain far below 1.1 million acre-feet as of March 1, would do so without exceeding the scope of what LCRA sought in its application. It would do so while avoiding the need to address highly charged trigger level issues that actually will not have any relevance to the operations of any emergency order that might be issued. It would also avoid the need to address multiple proposed new findings of fact that, because of the constrained schedule, have not been adequately vetted.

It is a logical approach that would allow all of us to focus our attention on longer-term issues.

However, as discussed in NWF's exceptions, NWF does not believe the provision in the ED's order providing for automatic renewal should be retained. Similarly, NWF requests that any order issued include proposed Finding of Fact 1a and include the language of proposed Finding of Fact 2a as an Ordering Provision. No party has opposed the inclusion of those provisions.

Automatic Renewal

NWF disagrees with the City of Austin's and the Executive Director's arguments in support of automatic renewal of the emergency order at the end of the statutorily authorized initial term based on pre-

determined reservoir elevations. NWF does appreciate the desire to minimize workload. However, the Legislature structured Section 11.139 to require that emergency orders must be revisited after the initial 120-day term to determine if a 60-day renewal is appropriate. The Legislature could have chosen to authorize a single 180-day term for emergency orders but it did not do so. An automatic renewal would be inconsistent with the statutory structure.

Findings Related to Water Conservation and Drought Management

NWF supports the exceptions filed by the Executive Director related to proposed Findings of Fact Nos. 41a, 42f and 42g addressing water conservation and drought contingency. Those findings represent an overbroad characterization of water conservation and drought management measurements, which are essential to effective water supply management and to ensuring beneficial use of water, as posing a risk to public health and safety. In reality, those measures are essential for the protection of public health and safety, especially during serious droughts.

In addition, NWF supports the exceptions to proposed Finding of Fact No. 42i filed by Clive Runnells d.b.a. AP Ranch (AP Ranch). Again, the finding is overbroad and seems to suggest that, even in a severe drought, limitations on outdoor watering would be inconsistent with protection of human health. NWF also supports the AP Ranch exceptions to proposed FOF 42e. That Finding is not supported by the record and is overbroad in suggesting that the mere potential for affecting the City of Austin's ability to handle peak demands, which could be greatly limited by restrictions on outdoor watering, and fire flows poses an imminent threat to public health and safety. NWF does not question that water supplies could get low enough to affect fire flows but there has been no showing that fire flows for the City of Austin have been affected or that the potential for decreasing flows poses such a risk. NWF also supports the AP Ranch exceptions to proposed Findings 42f and 42g.

Finding of Fact 30g

NWF supports the exceptions filed by LCRA and CWIC related to this Finding of Fact. The Finding, if retained in the Order, should be revised to accurately reflect the provisions of the current Water Management Plan.

Response to Motion to Allocate Costs:

The basis for LCRA's proposed allocation of costs is unclear. NWF believes that the entity, or entities, seeking affirmative relief ordinarily should be required to shoulder the vast majority of the costs of the transcript. After all, it is the request for relief—for a change from the status quo—that necessitates Commission action. Collectively, the entities seeking affirmative relief—LCRA, City of Austin, CTWC, and HLFWCC—would be required to bear only 55% of the total cost of the transcript under LCRA's proposed formulation. Absent compelling circumstances, the allocation of costs to parties seeking affirmative relief should be increased to 75 to 85% of the transcript costs. Certainly, those are the entities that have the most to gain from the entry of an emergency order and from the existence of a transcript to support the entry of such an order. Two of those entities and the members of Highland Lakes Firm Water Customer Cooperative sell water and, accordingly, are able to generate revenues to help pay costs, which relates to their financial ability to pay the costs. NWF offers no opinion on how those costs should

be allocated among those four entities. Based on its limited participation in the hearing, presenting only one witness and engaging in limited cross-examination, and its status as a nonprofit entity that has no potential to gain monetary benefit from the outcome of the hearing, NWF should be assessed, at most, a very small portion of the transcript costs commensurate with the amount of time NWF's participation took up in the hearing.

Respectfully submitted,



Myron J. Hess
SBN: 09549415
Email: hess@nwf.org
Telephone: 512-610-7754
Fax: 512-476-9810
National Wildlife Federation
44 East Avenue, Suite 200
Austin, TX 78701

CERTIFICATE OF SERVICE

By my signature below, I certify that I sent, on February 25, 2013, a true and correct copy of the foregoing National Wildlife Federation's Response to Exceptions to the Proposal for Decision and to LCRA's Motion to Allocate Transcript Costs, which was filed with the State Office of Administrative Hearings and the Chief Clerk of the Texas Commission on Environmental Quality, by electronic mail to the parties on the service list reproduced below:



 Myron J. Hess

SERVICE LIST

PARTY	REPRESENTATIVE
Lower Colorado River Authority (LCRA)	Lynn Clancy lyn.clancy@lcra.org Greg Graml greg.graml@lcra.org
Executive Director (ED) of the TCEQ	Robin Smith robin.smith@teeq.texas.gov
Office of Public Interest Counsel (OPIC)	Vic McWherter Vic.McWherter@teeq.texas.gov
City of Austin	Mary K. Sahs marysahs@sahslaw.com Ross Crow ross.crow@austintexas.gov
Colorado Water Issues Committee (CWIC)	Carolyn Ahrens carolyn@baw.com
Central Texas Water Coalition	Cynthia C. Smiley cindy@smileylawfirm.com Shana Horton shana@smileylawfirm.com Frank Cooley frankjcooleyesq@gmail.com
Texas Parks & Wildlife Department	Colette Barron Bradsby colette.barron@tpwd.texas.gov James B. Murphy james.murphy@tpwd.texas.gov
Lehner/Lewis Interests & Garwood Irrigation	Molly Cagle molly.cagle@bakerbotts.com
Clive Runnels d/b/a AP Ranch	Mary Carter mary@blackburncarter.com
Highland Lakes Firm Water Customer Cooperative	Patricia Carls pcarls@emedlaw.com Carla Connolly cconnolly@emedlaw.com