State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

February 21, 2014

Anne Idsal, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: **SOAH Docket No. 582-14-2123; TCEQ Docket No. 2014-0124-WR; In Re: Application Of The Lower Colorado River Authority For Emergency Authorization**

Dear Ms. Isdal:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than **February 24, 2014 at 5:00 p.m.** Any replies to exceptions or briefs must be filed in the same manner no later than **February 25, 2014 at 5:00 p.m.**

This matter has been designated **TCEQ Docket No 2014-0124-WR; SOAH Docket No. 582-14-2123**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at http://www10.tceq.state.tx.us/epic/efilings/ or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TRAVIS VICKERY
ADMINISTRATIVE LAW JUDGE
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AGENCY: **Environmental Quality, Texas Commission on (TCEQ)**

STYLE/CASE: **LOWER COLORADO RIVER AUTHORITY**

SOAH DOCKET NUMBER: **582-14-2123**

REFERRING AGENCY CASE: **2014-0124-WR**

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CENTRAL TEXAS WATER COALITION

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

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

PROPOSAL FOR DECISION

I. INTRODUCTION

On December 10, 2013, the Lower Colorado River Authority (LCRA) filed an application (Application),[1] which it later supplemented,[2] seeking an emergency order to amend its 2010 Water Management Plan (WMP), Permit No. 5838, to change requirements for the release of water to irrigation operations downstream in 2014 due to persistent drought conditions in LCRA's five Highland Lakes (Lakes Buchanan, Inks, LBJ, Marble Falls, and Travis). LCRA requests the authority to provide no interruptible stored water to its Gulf Coast and Lakeside Divisions and Pierce Ranch if the combined storage of Lakes Buchanan and Travis is below 1.1 million acre-feet (AF). Additionally, it requests the stored water releases be smaller for combined storage levels above 1.1 million AF than those set forth in the 2010 WMP.

On January 27, 2014, after providing the required notice to the Governor,[3] the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) issued an emergency order (Emergency Order) granting LCRA's Application.[4] On February 10, 2014, the Colorado Water Issues Committee of the Texas Rice Producers Legislative Group (CWIC) requested that the Commission modify or overturn the Emergency Order or alternatively refer it for contested case hearing.[5]

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[1] LCRA Ex. 1.
[2] LCRA Exs. 2, 3.
[3] ED Ex. A.
[4] ED Ex. D.
[5] CWIC Ex. A, as substituted from SOAH's internet site.

After providing notice,[6] the Commission convened a hearing, on February 12, 2014, to consider whether the Emergency Order should be affirmed, modified, or set aside.[7] The Commission referred the case to the State Office of Administrative Hearings (SOAH) to complete the hearing and prepare a Proposal for Decision (PFD) by February 21, 2014. The TCEQ then recessed the hearing and announced that the SOAH Administrative Law Judge (ALJ) would reconvene it a few minutes later in another room at the TCEQ Headquarters in Austin, Texas.

ALJ William G. Newchurch was present when the Commission began the hearing. ALJ Newchurch and ALJ Travis Vickery, who has also been assigned to this case, reconvened the hearing as announced by the Commission. CWIC and several other parties intervened and recommend modifications of the Emergency Order.

No party proposes to set aside the Emergency Order, though every party recommends at least some modifications. The primary dispute concerns the "trigger level," the volume of combined storage in Lakes Buchanan and Travis below which LCRA would provide no interruptible stored water to customers within the LCRA Gulf Coast and Lakeside Divisions and Pierce Ranch. The Emergency Order set the trigger level at 1.1 million AF. CWIC believes the trigger level should be 850,000 AF, and the City of Austin (Austin) and other firm customers believe it should be 1.4 million AF.

The ALJs conclude that emergency conditions exist which present an imminent threat to the public health and safety and which override the necessity to comply with established statutory procedures and there are no feasible practicable alternatives to the emergency authorization. They recommend that the Commission adopt the attached proposed order, which would modify the Emergency Order to raise the trigger level to 1.4 million AF and makes other changes.

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[6] City of Austin (COA) Ex. A.
[7] Commission meeting, Feb. 12, 2014, Agenda item no. 4 Emergency Order, Excerpt Transcript.

II. APPLICABLE LAW

Texas Water Code § 11.139 authorizes the Commission to grant emergency orders and sets out related procedures. It provides:

> (a) Except as provided by Section 11.148 of this code, the commission may grant an emergency permit, order, or amendment to an existing permit, certified filing, or certificate of adjudication after notice to the governor for an initial period of not more than 120 days if the commission finds that emergency conditions exist which present an imminent threat to the public health and safety and which override the necessity to comply with established statutory procedures and there are no feasible practicable alternatives to the emergency authorization. Such emergency action may be renewed once for not longer than 60 days.
>
> (b) A person desiring to obtain an emergency authorization under this section shall submit to the commission a sworn application containing the following information:
>
> > (1) a description of the condition of emergency justifying the granting of the emergency authorization;
> >
> > (2) a statement setting forth facts which support the findings required under this section;
> >
> > (3) an estimate of the dates on which the proposed authorization should begin and end;
> >
> > (4) a description of the action sought and the activity proposed to be allowed, mandated, or prohibited; and
> >
> > (5) any other statements or information required by the commission.
>
> (c) If the commission finds the applicant's statement made under Subsection (b) of this section to be correct, the commission may grant emergency authorizations under this section without notice and hearing or with such notice and hearing as the commission considers practicable under the circumstances.
>
> (d) If the commission grants an emergency authorization under this section without a hearing, the authorization shall fix a time and place for a hearing to be held before the commission. The hearing shall be held as soon after the

emergency authorization is granted as is practicable but not later than 20 days after the emergency authorization is granted.

(e) At the hearing, the commission shall affirm, modify, or set aside the emergency authorization. Any hearing on an emergency authorization shall be conducted in accordance with Chapter 2001, Government Code, and rules of the commission.

(f) If an imminent threat to the public health and safety exists which requires emergency action before the commission can take action as provided by Subsections (a) through (c) of this section and there are no feasible alternatives, the executive director may grant an emergency authorization after notice to the governor. If the executive director issues an emergency authorization under this subsection, the commission shall hold a hearing as provided for in Subsections (d) and (e) of this section. The requirements of Subsection (b) of this section shall be satisfied by the applicant before action is taken by the executive director on the request for emergency authorization.

(g) The requirements of Section 11.132 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to a hearing held on an application for an emergency authorization under this section, but such general notice of the hearing shall be given as the commission, under Subsections (c) and (e) of this section, considers practicable under the circumstances.

. . .

(k) The commission may prescribe rules and adopt fees which are necessary to carry out the provisions of this section.

(l) An emergency authorization does not vest in the grantee any right to the diversion, impoundment, or use of water and shall expire and be cancelled in accordance with its terms.

In accordance with Texas Water Code § 11.139(c), the Commission's rules concerning requests for contested case hearings and the requirements to hold contested case hearings in certain circumstances do not apply to applications for emergency amendments to water use permits like the one at issue in this case. Instead, the Commission may conduct such hearings as

it deems appropriate.[8] In granting CWIC's hearing request, the Commission noted those provisions of its rules and did not order a contested case hearing. Instead, it granted a limited hearing before the ALJs on an expedited schedule.[9]

It is undisputed that LCRA has the burden of proving that an emergency order should be granted.[10]

III. PARTIES AND PROCEDURAL HISTORY

The following are parties in this case:

PARTY	REPRESENTATIVE
Lower Colorado River Authority (LCRA)	Lyn Clancy & Greg Graml
Executive Director (ED) of the TCEQ	Robin Smith
Office of Public Interest Counsel (OPIC)	Blas Coy & Vic McWherter
City of Austin	Ross Crow & Mary K. Sahs
Colorado Water Issues Committee (CWIC)	Carolyn Ahrens & Michael J. Booth
Central Texas Water Coalition (CTWC)[11]	Cynthia C. Smiley, Shana Horton, & Frank Cooley
Highland Lakes Firm Water Customer Cooperative (Highland)[12]	Patricia Carls & Carla Connolly
Texas Parks & Wildlife Department (TPWD)	Collette Baron Bradsby & James B. Murphy
National Wildlife Federation (NWF)	Myron Hess

[8] 30 Tex. Admin. Code § 295.174
[9] Commission meeting, Feb. 12, 2014, Agenda item no. 4 Emergency Order, Excerpt Tr. at 9-25.
[10] Prehearing conference, Feb. 12, 2014, Tr. at 58.
[11] Among CTWC's many members are Barton Creek Lakeside POA, Bonanza Beach POA, Burnet County Commissioners Court, Cassie Community Association, Cassie Property Owners Association, Council Creek Village POA, The Coves on Lake Travis HOA, Inc., Donall Estates POA, East Lake Buchanan Community Association (ELBCA), Granite Hills POA, Lago Vista POA, Lake Buchanan Conservation Corp., Lake Cliff POA, Llano County Commissioners Court, Morgan Creek Village POA, Ridge Harbor POA, Rivercliff POA, Rocky Point POA, Travis Lakeside Owners Association, Vanishing Texas River Cruise POA, Village of Volente, Windermere Oaks POA, Windermere Oaks Water Supply Corp, and Wolf Creek Ranch POA.
[12] The members of Highland are Cities of Burnet, Cedar Park, Lago Vista, Leander, Marble Falls, and Pflugerville; Hurst Creek MUD; Lakeway MUD; Travis County MUD 10; Travis County WCID No. 17; and West Travis County PUA.

PARTY	REPRESENTATIVE
Lehner/Lewis Interests & Garwood Irrigation (Garwood)	Molly Cagle & Samia Rogers
Clive Runnells d/b/a AP Ranch (AP Ranch)	Charles W. Irvine & Mary Carter

To allow the parties more time to prepare for the remainder of the hearing, the ALJs recessed the hearing on the merits until February 17, 2014. The hearing was reconvened on February 17, 2014, at the TCEQ Commission Office, 12100 Park 35 Circle, Room 201S, Building E, Austin, Texas. The hearing concluded and the record closed shortly after midnight on February 18, 2014. Parties provided written briefs and oral closing arguments at the end of the hearing.

IV. UNDISPUTED FACTS

The parties stipulated that most of the findings of fact (FOFs) in the Executive Director's Emergency Order are not disputed, and evidence proving all of those is in the record. After the hearing, however, LCRA and CTWC proposed very minor changes to a few of the undisputed findings, which are indicated below by underlines, strikethroughs, and record cites where appropriate. There is no indication that any party disputes the accuracy of these minor changes. The ALJs conclude that the changes LCRA and CTWC seek would make the order more accurate.

Given that these findings are undisputed, the ALJs recommend that the Commission adopt the undisputed FOFs set out below with the minor changes recommended by LCRA and CTWC.[13] Because the time available to prepare this PFD is very limited, the ALJs will not discuss or provide evidentiary citations for most of these undisputed findings. To maintain continuity and facilitate quick review, the undisputed findings are numbered below as in the ED's Emergency Order.

[13] In the proposed order, the ALJs will also include minor grammar and punctuation changes to these and other FOFs and COLs.

A. Application

1. On December 10, 2013, LCRA filed this request for an emergency order to amend its 2010 Water Management Plan to change requirements for the release of water to irrigation operations downstream in 2014 due to persistent drought conditions in LCRA's five Highland Lakes (Lakes Buchanan, Inks, LBJ, Marble Falls, and Travis). LCRA requests the authority to provide no interruptible stored water to Gulf Coast, Lakeside Division, and Pierce Ranch if the combined storage of Lakes Buchanan and Travis is below 1.1 million AF. Additionally, it requests the stored water releases be smaller for combined storage levels above 1.1 million AF than those set forth in the 2010 Water Management Plan.

B. LCRA'S Water Rights and 2010 Water Management Plan

2. LCRA has the right to divert and use up to 1.5 million AF from Lakes Buchanan and Travis under Certificates of Adjudication Nos. 14-5478 and 14-5482. By court order, LCRA has developed a Water Management Plan (WMP), Permit No. 5838, currently dated 2010, which is ~~part of~~ required by these certificates.[14]

3. The Certificates of Adjudication and the 2010 WMP govern LCRA's operation of Lakes Buchanan and Travis and dictate how LCRA makes water available from these lakes to help meet "firm" water customer needs, downstream interruptible irrigation demands, and environmental flow needs of the lower Colorado River and Matagorda Bay.

4. Certificates of Adjudication Nos. 14-5478 and 14-5482 state that "LCRA shall interrupt or curtail the supply of water . . . pursuant to commitments that are specifically subject to interruption or curtailment, to the extent necessary to allow LCRA to satisfy all demand for water under such certificate pursuant to all firm, uninterruptible water commitments." The WMP further describes how LCRA will manage and curtail supplies from the lakes during times of drought including through a repeat of the Drought of Record.

5. As established in the 2010 WMP, the combined firm yield of Lakes Buchanan and Travis is 535,812 acre feet per year (AFY). Of this amount, 90,546 AFY is committed to O.H. Ivie Reservoir, making 445,266 AFY of firm water supply available from Lakes Buchanan and Travis for LCRA's firm water customers.

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[14] LCRA Ex. 1 at Attachment C (Certificate of Adjudication No. 14-5478), Attachment D (Certificate of Adjudication No. 14-5482), and Attachment E (Excerpts from 2010 WMP).

8. To manage the supply, LCRA's 2010 WMP imposes several trigger points keyed to the total combined storage capacity of Lakes Buchanan and Travis that are intended to ensure the firm water supply is protected during droughts. The most relevant trigger points are set out in the following table:

Combined Storage of Lakes Buchanan and Travis	Date on Which Trigger is Decided	Action Taken
1.4 million acre feet	At any time	Request firm customers to implement voluntary drought response measures.
1.4 million acre feet	On Jan. 1	Environmental releases for instream flows reduced to meet critical needs for ecosystems for following year. Begin gradual curtailment of interruptible supply to four major irrigation operations.
900,000 acre feet	At any time	Request firm customers to implement mandatory water restrictions; develop firm customer curtailment plan.
600,000 acre feet	At any time	If criteria indicates a drought worse than the Drought of Record, then cease interruptible supply and begin curtailment of firm supply.

9. LCRA's 2010 WMP defines "Drought of Record" as "the drought that occurred during the critical drought period." "The Critical Drought Period" is defined as "the period of time during which the reservoir was last full and refilled, and the storage content was at its lowest minimum value."

10. Under the 2010 WMP, the LCRA Board may declare a Drought Worse than the Drought of Record (DWDR) if it finds that the following three conditions are simultaneously met:

    a. Duration of drought is more than 24 months, which is determined by counting the number of consecutive months since both Lakes Buchanan and Travis were last full;

    b. Inflows to the lakes are less than inflows during the drought of record; and

    c. Lakes Buchanan and Travis combined storage has less than 600,000 AF of water.

C. Current Conditions

13. The combined storage of Lakes Buchanan and Travis on December 1, 2013, was 746,000 AF, or 37% full. On ~~January 9,~~ February 1, 2014, the combined storage was ~~764,420~~ 764,000 AF, or 38% full. The combined storage fell to the lowest level in the current drought on September 19, 2013, which was 637,123 AF or 31.7% full.[15]

14. The inflows in to the lakes are at record lows. Annual inflows into Lakes Buchanan and Travis in four of the last five years are among the ten lowest years of inflow on record. Inflows into the lakes in 2011 were the lowest annual inflows on record, about 10% of average inflows. Inflows in 2012 were the fifth lowest on record, and inflows in 2013 were the second lowest on record. January 2014 inflows of 11,763 AF were the lowest since the 1950's.[16]

15. The inflows into Lakes Buchanan and Travis during the current drought have been lower for time periods ranging from 12 months to 72 months than the lowest inflows for periods of similar duration during the historic Drought of Record. The total inflows for the past 72 months were only about half of the lowest 72 month inflow period in the Drought of Record.

16. Extraordinary drought conditions in the form of rainfall and extreme heat have existed in much of Texas, including the Colorado River Basin for nearly three years. State Climatologist, Dr. John Nielsen-Gammon, recognized 2011 as the worst one year statewide drought on record. The summer of 2011 was the hottest on record in Texas, and 2011 was the hottest in Austin and second hottest statewide. Year 2012 tied with 1921 as the hottest on record statewide.

17. Annual evaporation from LCRA's five Highland Lakes plus Lake Austin for 2010 through 2013 is set forth below:

Year	Total Evaporation
2010	183,923 acre feet
2011	192,404 acre feet
2012	144,759 acre feet
2013	120,899 acre feet

18. Although there has been close to normal rainfall in some places in Central Texas since 2011, these events have failed to produce significant inflows into Lakes Buchanan and Travis. The rainfall has been sporadic, and the soils have not remained saturated enough

[15] LCRA Ex. 5B (Rowney Supplemental Affidavit) at 3.
[16] LCRA Ex. 3 (Anderson Second Supplemental Affidavit) at 1; LCRA Ex. 5B at 1-2.

to allow for runoff in substantial amounts. Widespread heavy rains in the past few months have failed to produce significant inflows into the lakes.

19. This low inflow total is symptomatic of the drought's severity, including dry soils that absorb most of the rainfall that does occur. For example, heavy, widespread rainfall in the Llano River and San Saba River watersheds above the Highland Lakes on September 19 and 20, 2013, averaged two to three inches with some rain gages reporting totals as high as six or seven inches. However, this rain event only yielded approximately 24,000 AF of inflow to the lakes. By comparison, an event in March 2007 with about 40% less rainfall yielded almost 100,000 AF of inflows to Lakes Buchanan and Travis.

20. The weather forecasts do not indicate significant rainfall in the near future. Recent atmospheric and oceanic observations continue to indicate ENSO-neutral conditions and the outlook calls for this to persist into summer of 2014. The latest National Weather Service precipitation forecast indicates that precipitation across the Texas Hill Country is likely to remain normal with equal chances for above, below, or near normal precipitation. These forecasts indicate that the western edge of a below-average precipitation forecast area encroaches on Central Texas. This boundary does not quite reach areas which could produce significant inflows to Lakes Buchanan and Travis. It is not expected that precipitation will be heavy enough to cause significant drought improvement.

21. The most recent U.S. Seasonal Drought Outlook indicates the persistence of drought conditions above Lakes Buchanan and Travis through the end of April 2014. It is not expected that precipitation will be heavy enough to cause significant drought improvement. Climatological outlooks also indicate that temperatures will trend above normal through the summer, which tends to correlate with higher evaporation rates and lower overall precipitation.

24. The current drought conditions are outside the range of hydrologic conditions that were considered during formulation of the 2010 WMP.

25. The Governor of Texas issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas. This proclamation has been renewed monthly, most recently on ~~January 14,~~ February 14, 2014, and includes nearly every county bordering or that contributes inflow to the Highland Lakes. These areas are in severe drought or worse. The Emergency Disaster Proclamation also states that "As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster."[17]

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[17] LCRA Ex. 9.

D. LCRA's Firm Customers

26. LCRA provides raw water out of the combined firm yield of Lakes Buchanan and Travis to over 60 retail and wholesale potable water suppliers that together serve over one million people. In addition, LCRA provides water to several electric utilities from the firm water supply of Lakes Buchanan and Travis. These electric utilities provide electricity into the electrical grid in Texas operated by the Electric Reliability Council of Texas (ERCOT) and provide electricity to customers in Texas. LCRA also provides firm raw water to several industries located downstream.

27. The 2010 WMP requires that firm customers (mainly cities and industries) be curtailed on a pro rata basis and that LCRA cease all releases for interruptible stored water (regardless of the impact on the crops) when a DWDR is declared.

31. Currently, LCRA owns four water systems that take raw water from Lakes Buchanan and Travis. LCRA also has 15 firm water customers that actively take raw water for municipal purposes from Lake Travis that are not a part of LCRA's utility facilities. The lowest pumping elevations of the intakes range from 555 feet mean sea level (msl) to 650 feet msl on Lake Travis. On January 9, 2014, the lake level at Travis was 628.45 msl. On February 15, 2014, the lake level at Lake Travis was 627.75 msl.

E. Conservation and Drought Contingency Plan

33. LCRA's water conservation plan complies with TCEQ rules. LCRA has required its municipal customers to adopt conservation plans before there was a state requirement.

34. LCRA provides conservation program planning support for its customers. In 2012, LCRA began a rebate program for certain irrigation technologies and a wholesale customer cost-share program focused on conservation. LCRA has supported significant improvements in water use efficiency in rice irrigation systems, including volumetric pricing and canal rehabilitation.

35. LCRA was originally required to develop a Drought Contingency Plan (DCP) as a direct result of the court order adjudicating LCRA's water rights and the Texas Water Commission 1989 WMP Order.

36. When TCEQ adopted the Chapter 288 rules for DCPs, LCRA adopted separate stand alone DCPs relating to irrigation, municipal, and industrial operations that more specifically addressed the requirements of the Chapter 288 rules. LCRA incorporated all of the same triggers and criteria from the WMP into its ~~Rule~~ Chapter 288 DCP. These DCPs were incorporated into Chapter 4 of the WMP.

37. LCRA adopted water use reduction targets including the following: water use reduction goals for firm water supply customers of 5 percent by asking firm customers to implement their voluntary water use reduction measures when the combined storage of Lakes Buchanan and Travis is less than 1.4 million AF; ten to twenty percent reduction goals by asking firm customers to implement their own mandatory water use reduction measures when combined storage levels fall below 900,000 AF, and a mandatory pro rata curtailment of firm water supplies for customers of 20 percent or more will be implemented when combined storage levels fall below 600,000 AF and other criteria are met for a drought more severe than the Drought of Record.

38. In August, 2011, LCRA called on its firm water customers to voluntarily implement mandatory water use restrictions under their DCPs to reduce water use by 10 to 20 percent.

39. LCRA has adopted additional changes to LCRA's raw water contract rules that include the procedures for implementing a pro rata curtailment of firm water customers. The rules also provide a surcharge to be set by the LCRA Board for unauthorized use of water (taking more water than authorized under a mandated curtailment of firm water supplies) and clarifying the drought contingency requirements related to golf course irrigation and recreational use.

40. LCRA's WMP requires LCRA to develop a stored water curtailment plan to be approved by the LCRA Board and TCEQ in response to combined storage dropping below 900,000 AF. TCEQ approved that plan for LCRA's firm customers in December of 2011.

F. Alternatives

43. LCRA has evaluated many alternatives to address the emergency conditions that the drought presents. Alternatives explored include: Utilizing water from LCRA's other lakes, aggressive conservation, securing the Garwood right for purposes other than agriculture, interbasin transfers, and trucking in water from other sources. LCRA has evaluated many other alternatives to address the emergency conditions that the drought presents.

45. Amending downstream run of the river rights to allow diversion for new uses and at new locations would provide some supply, but the use of these rights alone is not – by itself – a feasible and practicable alternative to the emergency relief related to the 2010 WMP. All of the rights would require amendments to add diversion points, additional places of use, and possible storage. Also, the downstream run-of-river water rights are highly variable in terms of availability and quantity, and do not provide by themselves a

sufficient quantity of water to eliminate the need for the emergency relief from the 2010 WMP as requested herein.

46. In 2012, LCRA supplied about 4,000 AF to firm customers downstream of Austin under temporary permits that would otherwise have been released from Lakes Buchanan and Travis. In 2013, LCRA supplied about 1,000 AF to such customers under such temporary permits. While this was beneficial, temporary permits are not sufficient replacement for water lost if releases are required.[18]

48. LCRA is pursuing a formal amendment to its 2010 WMP but that process will not be completed in time to address LCRA's requested relief. LCRA filed an application to amend its 2010 Water Management Plan on March 12, 2012. TCEQ prepared a draft permit for LCRA comment on October 12, 2012. Notice of the application was sent to all water right holders in the Colorado River Basin and published in local newspapers in April, 2013. May 28, 2013 was the last date to request a public meeting or a contested case hearing, or comment on the application. On June 3, 2013, the TCEQ Executive Director advised LCRA that he would not be forwarding the application to the Commission at this time, and that his staff would be conducting further review on the application.

G. Relief Requested

53. LCRA requests TCEQ to issue an emergency order to deviate from the 2010 WMP as it pertains to the determination of interruptible supply for 2014 and instead provide interruptible stored water based on the combined storage of Lakes Buchanan and Travis on March 1, 2014, at 11:59 p.m. as follows:

    a. Provide no interruptible stored water to customers within the LCRA Gulf Coast and Lakeside Divisions and Pierce Ranch if combined storage is below 1.1 million AF;

    b. Provide up to 100,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch if combined storage is at or above 1.1 million AF but below 1.2 million AF;

    c. Provide up to 124,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch if combined storage is at or above 1.2 million AF, but below 1.3 million AF;

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[18] LCRA Ex. 5B at 3; LCRA Ex. 8 (Wheelock Affidavit).

d. Provide up to 148,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch if combined storage is at or above 1.3 million AF but below 1.4 million AF; and

e. Provide up to 172,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch if combined storage is at or above 1.4 million AF.

H. Notice

55. Notice was provided to the Governor of Texas regarding the Executive Director's consideration of this emergency order.[19]

V. DISPUTED FINDINGS OF FACT

The ED's Emergency Order also contains a limited number of FOFs that are disputed. However, the greater weight of the evidence shows that they are accurate. Some parties propose minor changes to these disputed findings, which are supported by the preponderant evidence and would make the Emergency Order more accurate.

The ALJs recommend that the Commission adopt the following findings with the minor changes as indicated below.[20] They are numbered as in the Emergency Order and with citations to evidence showing that they are accurate. Due to time constraints and the fact that these findings are supported by the greater weight of the evidence, the ALJs will not provide a full discussion of the evidence for and against them.[21]

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[19] Language in the ED's Emergency Order concerning the February 12, 2014, hearing has been deleted from here, but a similar finding is included elsewhere in the Proposed Order.
[20] The ALJs make additional minor editorial changes in the Proposed Order.
[21] Due to time constraints, the ALJs have not cited all of the evidence in the record that supports these findings. The record cites are mostly general in nature and specific when possible.

A. LCRA'S Water Rights and 2010 Water Management Plan

6. As established in the 2010 WMP, ~~so long as~~ until firm demand for water equals the combined firm yield, LCRA can supply water for irrigated agriculture on an interruptible basis. The maximum historical annual amount of reported firm water use from the firm supplies of Lakes Buchanan and Travis during 2000 through 2010 was 247,000 AF in 2011. The maximum interruptible water released from Lakes Buchanan and Travis during this same period occurred in 2011 and totaled about 433,000 AF. The maximum total amount released or used from the Highland Lakes, about 714,000 AF, occurred in 2011.[22]

7. The firm water use in 2012 from Lakes Buchanan and Travis was about 148,000 AF. An amount of 31,000 AF was supplied for the environment, and 9,000 AF of interruptible was supplied to farmers in the Garwood Irrigation Division. The total use for 2012 was about 188,000 AF, and the total use in 2013 is expected to be similar.[23]

11. Under the 2010 WMP, once a drought has lasted more than 36 months and a Drought Worse than the Drought of Record (DWDR) has been declared by the LCRA Board, the interruptible stored water would be fully and immediately curtailed – making no stored water available for agricultural irrigation or other interruptible uses until lake levels recover or the inflows into the lakes increase substantially. Moreover, LCRA will implement pro rata curtailment of its firm water users once a DWDR is declared and after interruptible stored water (agriculture) uses have been curtailed.[24]

12. Prior to a declaration of a DWDR, LCRA is obligated by the 2010 WMP to provide at least some interruptible water to its four major irrigation operations.[25]

B. Current Conditions

22. The hydroclimatic conditions outlined above have created a circumstance where Lakes Buchanan and Travis have been unable to recover in any significant manner, even with an emergency cutoff of nearly all water supply for downstream irrigation in 2012 and 2013.[26]

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[22] The ED and LCRA recommend this change to FOF 6. LCRA Ex. 5A (Rowney Affidavit) generally and at 5 (Tr. at 39-106).
[23] LCRA Ex. 5A generally and at 5 (Tr. at 39-106).
[24] LCRA Ex. 1, Attachment E (Excerpts from 2010 WMP) at 4-34; LCRA Ex. 6A (Anderson Affidavit) generally and at 2-3 (Tr. at 118-154); LCRA Ex. 7 (Mullarkey-Miller Affidavit) generally and at 2-3 (Tr. at 154-187).
[25] LCRA Ex. 1, Attachment E at 3-7, 4-21, 4-24, 4-26.
[26] LCRA Ex. 4A (Rose Affidavit) (Tr. at 32-37); LCRA Ex. 5A generally and at 7-9 (Tr. at 39-106); LCRA Ex. 6A (Tr. at 118-154); LCRA Ex. 8 generally and at 4 (Tr. at 187-229).

23. The first and second criteria for a Drought Worse than the Drought of Record have been met. The drought has lasted for more than 24 months. Duration of drought is determined by counting the number of consecutive months since both Lakes Buchanan and Travis were last full, which was February 13, 2005. The cumulative inflow deficit has also been met.[27]

C. LCRA's Firm Customers

28. If LCRA is required to follow the 2010 Water Management Plan and the drought continues, LCRA and its firm customers may need to acquire or develop large quantities of alternative water supplies to meet essential needs of their respective potable water systems. LCRA's firm customers are working on plans to implement curtailment and secure alternative supplies; however many of LCRA's firm customers do not have any readily available alternative sources of water supply that could substitute for their reliance on the Colorado River, and these projects could take years to develop.[28]

29. If LCRA is required to follow the 2010 Water Management Plan and the drought continues, LCRA will almost certainly have to:

    a. Begin releases of interruptible stored water to meet demands in the four irrigation operations for the 2014 crop;

    b. Probably reach the third (and final) criteria for DWDR conditions;

    c. Declare a DWDR;

    d. Cut off stored water for interruptible contracts, thereby ruining the crop already planted; and

    e. Curtail cities' and industries' water use by 20% or more.[29]

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[27] LCRA Ex. 5A (*See specifically* page 9, regarding February 13, 2005, as the date Lakes Buchanan and Travis were last full) (Tr. at 39-106); LCRA Ex. 6A (Regarding cumulative inflow deficit) (Tr. at 118-154).

[28] LCRA Ex. 1, at Attachment A, 2011 Emergency Order Findings of Fact 30-31, 2013 Emergency Order Findings of Fact 31-33, and 2013 Emergency Order Extension Findings of Fact 15, 16; LCRA Ex. 7 (Tr. at 154-187); LCRA Ex. 8 generally and at 3 (Tr. at 187-229).

[29] LCRA Ex. 1, Attachment E at 4-32, 4-34; Attachment G (LCRA Water Contract Rules) Article 11; and Attachment H (Tex. Comm'n Envtl. Qual., Docket No. 2011-2097-WR, *Order Approving the Lower Colorado River Authority's Water Curtailment Plan for its Firm Water Customers* (Dec. 12, 2011); LCRA Ex. 5A (Tr. at 39-106); LCRA Ex. 6A (Tr. at 118-154); LCRA Ex. 8 (Tr. at 187-229).

29a Curtailments that would occur if combined storage drops substantially will result in reduced water supply to power plants, threatening their ability to generate electricity. Because LCRA's firm water customers would be required to cut back substantially if the drought persists under a DWDR declaration, municipal customers are likely to be forced to institute drought response measures that would include restrictions on indoor water use, resulting in threats to public health and safety.[30]

30. Based on recent lake levels and the forecast, there is a chance of reaching conditions triggering a declaration of a DWDR as soon as ~~April~~ May 2014 and ~~an almost one in three~~ greater than a one in two chance by late August.[31]

32. As lake levels drop, retail water suppliers are unable to pump water from the lakes. This causes wholesale raw water customers to either move intakes to reach the water, or obtain alternative sources. Smaller systems will likely have to haul water from a water utility with a viable source. If the lake levels drop more quickly than arrangements for alternative intakes or supplies can be implemented, LCRA water systems and its customers' water systems will have difficulty in meeting firm customers' water needs.[32]

D. Conservation and Drought Contingency Plan

41. LCRA has fully implemented its DCP. It requires all of its customers that currently divert and purchase water from LCRA to have a DCP. Most of these firm customers have stayed in some form of mandatory water restrictions, significantly limiting landscape irrigation. LCRA's industrial customers have worked to reduce non-essential water uses. Also, LCRA has had several meetings with firm customers in preparation for pro rata curtailment.[33]

42. The LCRA Board approved a no more than once per week watering restriction that would take effect in March 2014 if combined storage is below 1.1 million AF and interruptible stored water has been cut off. LCRA has not requested TCEQ approval of this action and this order does not address such action.[34]

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[30] LCRA recommends this change to FOF 29.
[31] LCRA recommends this change to FOF 30. LCRA Ex. 2 (Anderson Supplemental Affidavit) at 2; LCRA Ex. 3 generally and at 1-2 (Tr. at 118-154); LCRA Ex. 5A (Tr. at 39-106); LCRA Ex. 6A (Tr. at 118-154); LCRA Ex. 8 generally and at 4 (Tr. at 187-229).
[32] LCRA Ex. 1, Attachment A, 2011 Emergency Order Findings of Fact 30-31, 2013 Emergency Order Findings of Fact 31-33, and 2013 Emergency Order Extension Findings of Fact 15, 16; LCRA Ex. 5A (Tr. at 39-106); LCRA Ex. 8 (Tr. at 187-229).
[33] LCRA Ex. 7 generally and at 2-3 (Tr. at 154-187).
[34] LCRA Ex. 1, Attachment B (Nov. 19, 2013 LCRA Board Resolution).

E. Alternatives

44. None of the alternatives LCRA has identified would avert the projected water supply shortage because most of the supplies identified would produce insufficient or uncertain quantities of supply, would create other operational issues for customers, may involve a lengthy permitting process (if not implemented on an emergency basis), or would take years to develop. None of the alternatives identified are feasible or practicable alternatives to the emergency authorization.[35]

47. A twenty percent reduction in water use by firm customers will require some difficult measures. There may be dramatic reductions in outdoor water use. However, none of these measures will occur quickly enough to help lake levels. Some LCRA customers, such as the City of Austin, have achieved water savings through reductions in water use. Most industrial customers would have to implement the full twenty percent reduction more immediately and this likely means a curtailment in annual production.[36]

49. The emergency relief LCRA obtained in 2013 with an emergency order setting forth a trigger of 850,000 AF is not a reasonable alternative at this time because of the prolonged nature and persistence of the drought and the fact that the lakes have not recovered from this drought. If combined storage of the lakes recovers to 850,000 AF on March 1 and severe drought conditions return, combined storage could fall to 600,000 AF by the end of the first crop irrigation system, requiring declaration of a DWDR.[37]

50. LCRA staff performed analyses to determine whether lesser amounts of combined stored water than 100,000 AF could be supplied to Gulf Coast, Lakeside and Pierce Ranch at lower combined storage trigger levels. The results showed that these alternatives were not practicable because the small amount of water that could be made available would result in significant losses and difficulties maintaining the canal water levels for the movement of water.[38]

F. Relief Requested

51. LCRA's requested curtailment approach for 2014 is more restrictive than the curtailment triggers in emergency orders issued by the Commission in 2012 and 2013. The 850,000 AF trigger in effect in 2012 and 2013 was based on avoiding the potential for dropping

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[35] LCRA Ex. 5A generally and at 5-7 (Tr. at 39-106); LCRA Ex. 8 generally and at 3-4 (Tr. at 187-229).
[36] LCRA Ex. 7 (Tr. at 154-187).
[37] LCRA Ex. 1 at Attachment A, 2013 Emergency Order and 2013 Emergency Order Extension; LCRA Ex. 5A (Tr. at 39-106); LCRA Ex. 6A (Tr. at 118-154).
[38] LCRA Ex. 5A generally and at 2-3 (Tr. at 39-106); LCRA Ex. 6A (Tr. at 118-154).

below 600,000 AF during the first crop of the season. Under LCRA's current approach, before the releases for interruptible water users are made, LCRA requests a combined storage trigger increase to a level that puts off the possibility of storage falling below 600,000 AF until spring of 2015.[39]

52. LCRA has determined that if the combined storage is less than 1.1 million AF, providing even some stored water releases to Gulf Coast, Lakeside and Pierce Ranch operations amplifies the risk of a DWDR declaration before spring 2015.[40]

54. LCRA will also provide interruptible stored water to the Garwood Irrigation Division and Pierce Ranch, to the extent required by their contracts.

VI. ADDITIONAL RECOMMENDED MODIFICATIONS

A. Austin's Proposals

1. Trigger Level

Austin proposes numerous additions to the Emergency Order. They concern many matters, but primarily the need to raise the trigger level to 1.4 million AF. Austin, joined by CTWC and Highland, persuasively argues that the 1.1 million AF proposed by LCRA is inadequately protective of public health and safety. To illustrate the inordinate risk, Austin argues, as supported by the testimony of LCRA witness David Wheelock, that the combined storage volume staggeringly fell from 1.037 million AF to 637,000 AF in just 16 months, from May 22, 2012, to September 19, 2013. That was a period of time when no stored water was being released to Pierce Ranch, Gulf Coast, and Lakeside—although some limited water was being released to others—and conservation significantly increased in Austin.

Austin very reasonably argues, through its proposed FOFs, that a drop from just under 1.1 million AF to nearly the 600,000 AF, DWDR level establishes that such falls are possible,

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[39] LCRA Ex. 1, Attachment A, 2011 Emergency Order, 2013 Emergency Order, and 2013 Emergency Order Extension; LCRA Ex. 5A generally and at 2 (Tr. at 39-106); LCRA Ex. 6A (Tr. at 118-154).
[40] LCRA Ex. 6A (Tr. at 118-154).

even with restricted releases to interruptible customers. It is true that the Emergency Order would limit irrigation releases once storage surpassed 1.1 million acre feet. However, the ALJs conclude that the risk of dropping below levels that would threaten public health and safety would remain too high. The combination of a prolonged and severe drought, likely the worst in Texas's recorded history, that is predicted to continue indefinitely and a large and quickly growing metropolitan area of over one million people almost entirely dependent on the storage capacity of Lakes Buchanan and Travis leaves little margin for error. The ALJs agree with Austin that LCRA should not be required to release any water from storage to its Gulf Coast and Lakeside Divisions and Pierce Ranch if the combined storage of the lakes is less than 1.4 million AF.

NWF and CWIC argue that the Commission may not go beyond what LCRA has proposed in the Application, thus the Commission may not order a trigger level higher than 1.1 million AF. However, LCRA, Highland, CTWC, and Austin contend otherwise. They contend that an emergency when public health and safety are imminently threatened is far different from a routine application for a permit. The ALJs agree.

No law is cited prohibiting the Commission's setting a higher trigger level. Even if there were such a law, Texas Water Code § 11.139 would allow the Commission to act contrary to normal statutory procedures. It authorizes the Commission to grant an emergency order when it finds an imminent threat to the public health and safety and override the necessity to comply with established statutory procedures. Even in the absence of a constraining statute, one concern might be that affected persons would not have been given notice that the trigger level could be set higher. Section 11.139(c) specifically addresses that point; it authorizes the Commission to grant emergency authorizations without notice.

CWIC contends that even a 1.1 million AF trigger level, and certainly a 1.4 level, is irrational because it assumes very high inflows followed by an immediate and precipitous reduction to extremely low inflows. It argues that such an irrational scenario would not present

an imminent threat. The ALJs disagree. The steep climb from approximately 750,000 AF in January 2012, to 1.037 million AF on May 22, 2012, followed by steep drop to 637,000 AF on September 19, 2013, dramatically illustrates that such wild swings can occur in Central Texas in the midst of this historic drought. The Emergency Order should be crafted to deal with that possibility in order to reduce the threat to public health and safety.

The following FOFs were proposed by the City of Austin. With minor editorial changes included in the proposed order, the ALJs recommend that the Commission modify the Emergency Order by adding Austin's proposed FOFs after FOF 13 and FOF 30 respectively because they are supported by the preponderant evidence.[41]

13a. The primary factors affecting the current combined storage levels have been (1) unprecedented low inflows in this current drought, (2) the interruptible stored water amounts authorized for release under current LCRA 2010 WMP, particularly in 2011 and (3) emergency orders issued by the Commission in 2012 and 2013.[42]

13b. It is not merely the amount of inflows, but also the management of the system over a multiyear period that greatly affects the lake's combined storage. In recent years, emergency orders departing from the 2010 WMP have proven critical to that management.[43]

. . .

15b. A ranking of the top ten lowest calendar year historical inflows since the reservoirs went into operation in the early 1940's shows that five of those years—2008, 2009, 2011, 2012 and 2013 occur in the current drought, and the top three years for lowest inflows—2011, 2013 and 2008 are all from the current drought. It should be noted also that the recent year of 2006 is the fourth lowest.[44]

15b. The inflows for January 2014, at 11,763 AF, are lower than the inflows in either January 2011 (21,158 AF) or 2013 (15,117 AF), which are the two lowest inflow years

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[41] As with record cites to LCRA's disputed findings of fact, the ALJs have had insufficient time to cite all evidence in support of the City of Austin's proposed findings. These record cites are mostly general and reference witnesses who offered testimony and sponsored exhibits in support of these findings.
[42] Tr. at 240-321 (specifically 243-245); COA 23.
[43] Tr. at 240-321 (specifically 243-245); COA 23.
[44] LCRA Ex. 5B; COA Ex. 23.

on record. Historically a January with low inflows is usually followed by low inflows for both February and March. This data indicates a high likelihood of drought persistence in the near future.[45]

30a. A trigger level of 850,000 AF combined storage, below which there would be no interruptible stored water released to Lakeside, Gulf Coast or Pierce Ranch is not protective of human health and safety. This level was set in the 2012 and 2013 emergency orders, if storage had crested just above the 850,000 AF level in either 2012 or 2013 by March 1, triggering a release, the lakes would have subsequently fallen well below emergency levels in 2013 triggering a critical water situation. The March 1, 2012 combined storage was 847,000 AF and on March 1, 2013 was 822,000 AF. The interruptible stored water release would have been much greater than the relatively small amount to get storage above 850,000 AF and thus would have taken the reservoirs significantly lower in 2013 than the 637,000 AF level that was reached on September 19, 2013.[46]

30b. Because of the duration and increasing intensity of the drought, the included drought model results indicate that an 850,000 AF trigger for March 1, 2014 that would permit large interruptible releases would have serious consequences for combined storage. If 2014 experiences inflows similar to 2011, then combined storage would drop below 400,000 AF in just a year.[47]

30c. At 1.1 MAF,[48] with a continuation of the current hydrology, lake storage would drop within approximately a year to emergency levels and continue downward from there. Therefore, a refill amount of at least 1.4 MAF is necessary to avoid a rapid return to emergency levels.[49]

30d. In September 2013 the lakes came within 37,000 acre-feet of reaching the emergency level of 600,000 AF or 30% capacity and that there has actually been very little recovery since then. In May 2012 the lakes refilled to an amount close 1.1 MAF (to 1.033 MAF on May 22, 2012) and yet without any release to Lakeside, Gulf Coast and Pierce Ranch the lakes dropped to the second lowest level on record of 637,000 AF on September 19, 2013, and came very close to falling below emergency levels. An emergency order in place in 2012 prevented such a release, however, had a release occurred in 2012 after this modest refill to almost 1.1 MAF it can readily be deduced that

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[45] LCRA Ex. 3; LCRA Ex. 5B; COA Ex. 14.
[46] LCRA Ex. 8; Tr. at 187-229, 240-321 (specifically 226-227).
[47] COA Ex. 2; Tr. at 240-321, 321-361 (specifically 292-294, 329-331).
[48] Million acre-feet.
[49] Tr. at 240-321, 321-361.

combined storage levels would have been driven well below the 600,000 AF emergency level by 2013.[50]

30e. Water savings by the City of Austin of at least 86,000 AF over the past two years played a key role in preventing combined storage from reaching the 600,000 AF level in September 2013.[51]

30f. If storage had fallen below 600,000 AF in September 2013, LCRA's current WMP requires a refill to 1.4 MAF before resuming any interruptible stored water releases. Thus if the 600,000 AF trigger had been reached and the 1.4 MAF refill requirement had gone into effect, it is highly unlikely that any emergency order would have been needed in 2014.[52]

30g. The 1.4 MAF refill level is a requirement of the current WMP when a DWDR has been declared.[53]

30h. The extraordinary magnitude of change in inflows since the drought of record upon which the 2010 WMP is based, in terms of how much lower the inflows have been in recent years, signals the need for great caution to be taken with regard to decisions concerning large releases to interruptible customers because they make it more probable that lake levels will not quickly recover once such releases occur.[54]

2. Conservation and Drought Contingency Planning

Austin offered evidence to show that it has vigorously conserved water and planned for droughts. The ALJs agree, and recommend that the Commission add the following FOFs after FOF 42:

42a. Just in the past 2 years the City's conservation and drought measures have resulted in an estimated 86,000 AF savings. The City hired outside consultants and participated in a rigorous process with LCRA to determine its annual conservation savings in preparation for possible pro-rata curtailment. This resulted in an estimated savings of 26,000 AF a

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[50] LCRA Ex. 8; COA Ex. 3; Tr. at 187-229 (specifically 194-195, 211-213, 216), 240-321, 321-361.
[51] Tr. at 240-321 (specifically 269).
[52] LCRA Ex. 1, Attachment E at 4-32, 4-34.
[53] LCRA Ex. 1, Attachment E at 4-32, 4-34.
[54] CTWC Ex. 7; Tr. at 240-321, 321-361.

year from conservation measures in place (52,000 in two years). In addition the City has calculated its savings achieved from imposing drought measures for more than two years which includes a one-day a week watering schedule. This is estimated at 17,000 AF per year (34,000 AF in two years).[55]

42b. There has been a drop from the City of Austin's highest recent year of 190 GPCD, in 2006, to the most recent year of 136 GPCD due to its conservation and drought measures.[56]

42c. Because the planning, permitting and construction for developing large new water supplies for Austin and other large municipal areas is necessarily on a decades-long timeframe, a severe shortage in or total depletion of the already diminished supply within a few years due to an imminent release of interruptible stored water under LCRA's 2010 WMP is an imminent threat to public health and safety.

42d. Health and safety consequences from supply shortages can start to be experienced long before a municipal water supply is totally depleted.

42e. Water restrictions result in a drop in overall usage, which in turn impacts the amount of flow in the entire Austin Water Utility system. The AWU system has more than 3700 miles of water pipes and 39 storage tanks, which are designed to handle peak demands and fire flows. As flow decreases, AWU system's ability to handle peak demands and fire flows may be affected, which is an imminent threat to public health and safety.

42f. As flow decreases through the pipes due to deepening water restrictions, including possible cutoff of outdoor watering, conditions can occur with disinfection residuals dissipating and dropping below state minimum requirements, particularly in warmer weather. This has a potential health risk from biological growth of organisms in the system.

42g. With deepening watering restrictions, there is an increased risk of illegal cross connections, which are an extremely dangerous public health risk. Likewise, there is an increased risk of development of unregulated graywater systems, which carries health risks.

42h. Once combined storage levels have reached a point that will require Austin and other LCRA firm water customers, as a practical measure, to impose water rationing, then individual households will start to make choices in how to use that rationed amount of water. Over a vast population, some of those choices can be poor choices with regard to sanitation practices (for example deferring for too long certain sanitary uses of water) that

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[55] Tr. at 240-321 (specifically 269).
[56] Tr. at 240-321 (specifically 271).

can negatively impact public health and safety despite a utility's effort to educate its customers on safe practices.

42i. Outdoor watering in a drought is critical to preserving trees and tree canopy important to human health in an urban environment, preventing home foundations from cracking, and avoiding negative health effects from landscaping dying off.

3. Alternatives

Austin also offered evidence showing that it has no feasible alternatives to replace its water supply. The ALJs recommend adding the following FOF after FOF 48:

48a. There is no feasible practicable alternative for the City of Austin on short order to replace its water supply should it be depleted in a few years to the point of drastic shortages by large interruptible water releases during a period of record low inflows. Although the City has made very earnest efforts to identify alternative water supplies, a replacement water supply for 1 million people cannot be identified and developed in a few years. Austin has identified only very small amounts of water that may be able to be purchased for exorbitantly expensive prices. The small amounts do not sufficiently address the health and safety risks and the exorbitant prices do not make these a "practicable" alternative as required by §11.139.

B. Highland's Proposals

Highland proposes several new FOFs and conclusions of law (COLs) that are similar to those proposed by Austin and discussed above. Due to time constraints, and with apologies to Highland, the ALJs will not discuss those. However, Highland also proposes additional FOFs that are sufficiently different and important that they should be included in the modified Emergency Order.

Highland proposes adding a new FOF as follows:

LCRA is obligated under the 1988 Order and Certificates of Adjudication Nos. 14-5478 and 14-5482 to meet the demands of its firm, non-interruptible water supply customers

100% of the time without shortage through a repeat of the conditions in the Drought of Record.

This proposal correctly paraphrases the referenced certificates and the district court's final judgment and decree concerning the adjudication of LCRA's and Austin's water rights.[57] It is also a very important point that responds to CWIC's arguments that the Emergency Order must be strictly limited to minimize curtailment of water releases for interruptible customers and that firm customers should be required to engage in extreme conservation measures to ensure water can be released to interruptible customers. CWIC's claims are incorrect. As a matter of law, LCRA is legally obligated to first serve all demand from its firm customers; even if that means that no water is released for interruptible customers. The ALJs recommend that the Commission adopt Highland's proposal with one change; it is more properly a COL rather than an FOF and should be added as COL 1b.

Highland also proposes to add a new FOF after FOF 13, which the ALJs recommend, as follows:

13c. On September 19, 2013, the combined storage of these reservoirs fell to the second lowest point in the history of these lakes—637,000 AF —nearing 30% capacity and just shy of the record low at 621,000 AF. Thus in September the lakes rapidly approached the 600,000 AF emergency level at which the LCRA Board would have declared a Drought Worse than a Drought of Record (DWDR). Continuing to curtail interruptible stored water releases that would drive lake storage below 600,000 AF is critical to avoiding both an imminent threat to public health and safety and a situation whereby interruptible water supply releases would force declaration of a DWDR and drive firm customers into curtailment, in contravention of the 1988 Order and Certificates of Adjudication Nos. 14-5478 and 14-5482.[58]

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[57] LCRA Ex. 1, Attachment C at 4, Attachment D at 4, Attachment F at 5.
[58] LCRA Ex. 1, Attachments C and D; LCRA Ex. 8; COA Ex. 3; Tr. at 187-229 (specifically 194-195, 211-213, 216), 240-321, 321-361.

While this is similar to an FOF proposed by Austin, it contains significant additional information based on the preponderant evidence and should be added instead.[59]

Highland proposes FOFs after FOF 31 concerning the depths at which its members can intake raw water from Lake Travis and how setting a trigger level of 850,000 AF, as CWIC proposes, would make many of their intakes inoperable.[60] These demonstrate the imminent threat to public health and safety, and the ALJs recommend adding them, as follows:

31a. The lowest operating depths of the following raw water intakes owned and operated by LCRA's firm water customers on Lake Travis are as follows:

Brushy Creek Regional Utility Authority (BCRUA) = 620 ft-msl
Cedar Park (regular intake) = 615 ft-msl
Leander (regular intake) = 615 ft-msl
Lago Vista (Intake #1) = 612 ft-msl
Lago Vista (Intake #2) = 600 ft-msl
Jonestown WSC = 600 ft-msl
WCID 17 = 595 ft-msl
Lakeway MUD = 590 ft-msl
Cedar Park and Leander (joint emergency drought intake) = 590 ft-msl

31b. In the absence of an emergency order, the raw water intakes owned and operated by LCRA's firm water customers on Lake Travis are projected to become inoperable on the following dates:

BCRUA = already inoperable and will remain inoperable
Cedar Park (regular intake) = inoperable by June 2014
Leander (regular intake) = inoperable by June 2014
Lago Vista (Intake #1) = inoperable by July 2014
Lago Vista (Intake #2) = inoperable by August 2014
Jonestown WSC = inoperable by August 2014
WCID 17 = inoperable by October 2014
Lakeway MUD = inoperable by December 2014
Cedar Park and Leander (joint emergency drought intake) = inoperable by December 2014.

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[59] Tr. at 194-197, 211-214; 258-262.
[60] HLFWCC Ex. T; Tr. at 544-561.

31c. If a curtailment trigger of 850,000 AF is established, combined storage increases to that level and releases of 125,000 AF are made to interruptible water, the raw water intakes owned and operated by LCRA's firm water customers on Lake Travis are projected to become inoperable on the following dates:

BCRUA = already inoperable and likely to remain inoperable
Cedar Park (regular intake) = inoperable by July 2014
Leander (regular intake) = inoperable by July 2014
Lago Vista (Intake #1) = inoperable by August 2014
Lago Vista (Intake #2) = inoperable by February 2015
Jonestown WSC = inoperable by February 2015
WCID 17 = inoperable by August 2015
Lakeway MUD = inoperable by August 2015
Cedar Park and Leander (joint emergency drought intake) = August 2015.

Highland also proposes a new FOF after FOF 41, which the ALJs recommend adding as 41a, concerning the operational problems that the drought and conservation has caused LCRA's firm customers:[61]

41a. The conservation and drought contingency plan measures undertaken by LCRA's firm water customers have reduced water usage, but have also already caused operational problems for many utility systems such as low chlorine levels in the distribution system and the inability to perform system flushing, threatening public health and safety.[62]

Highland and the ALJs recommend inclusion of the following FOF showing that a 1.4 million AF trigger level is necessary to avoid drops below the 600,000 AF storage level in the near future if low inflows continue:[63]

45a. LCRA's analyses showed that if the interruptible stored water curtailment trigger is set at 850,000 AF, releases of 125,000 AF are made, and low inflows persist as predicted, combined storage in Lakes Travis and Buchanan falls to 600,000 AF sometime in the summer of 2014 and continues to decline at least through the end of 2015. LCRA's analyses showed that if the interruptible stored water curtailment trigger is set at 1.1

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[61] Tr. at 511-567 (Foster, Woerner, & Archer).
[62] Tr. at 240-321.
[63] LCRA Ex. 6A at tab 4.

MAF, releases of 125,000 AF are made, and low inflows persist as predicted, combined storage in Lakes Travis and Buchanan falls to 600,000 AF sometime in the summer of 2015 and continues to decline at least through the end of 2015. LCRA's analyses showed that if the interruptible stored water curtailment trigger is set at 1.4 MAF, combined storage in Lakes Travis and Buchanan does not fall to 600,000 AF before the end of 2015.

Finally, Highland recommends including FOFs after FOF 49 stating that, due to the drought, a 1.1 million AF trigger level is unreasonable, would likely lead to a DWDR declaration at 600,000 AF, and would not give firm customers time to make adjustments to their intake structures.[64] The ALJs agree in part, but find that the evidence demonstrates that 1.1 million AF is not sufficient, rather than not reasonable.

49a. LCRA expects that a trigger of 1.1 MAF would provide about 12-18 months of stored water in the Highland Lakes for firm water customers. That time period is not sufficient to allow the necessary adjustments to be made in raw water intake structures (if such adjustments are even feasible or practicable) or to secure alternative water supplies.

49b. An emergency order setting forth a trigger of 1.1 MAF is not a ~~reasonable~~ sufficient alternative at this time because of the prolonged nature and persistence of the drought and the fact that the lakes have not recovered from this drought. If combined storage of the lakes recovers to 1.1 MAF on March 1 and severe drought conditions return, analysis shows that combined storage could fall to 600,000 AF before the end of the first crop irrigation season in 2015 and before most firm water customers having raw water intakes on Lake Travis can make adjustments to their raw water intake structures (if such adjustments are even feasible or practicable), requiring declaration of a DWDR.

49c. A interruptible stored water curtailment trigger should be set to avert, rather than create, conditions that could require declaration of a DWDR.

C. Environmental Flows

LCRA proposes to add an FOF clarifying that it has not proposed to reduce the environmental inflow requirements. No party disputes that, and several would welcome that clarification. The ALJs recommend that the Commission add that finding, as set out below:

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[64] LCRA Ex. 6A at tab 4; Tr. at 511-567 (Foster, Woerner, & Archer).

1a. LCRA has not requested authorization to reduce the amount of water provided from Lakes Buchanan and Travis specifically for instream flow and freshwater inflow purposes below the levels required, in the absence of an emergency order, in the 2010 WMP.

Additionally, TPWD, NWF, and AP Ranch propose to add a related new ordering provision (OP) concerning instream flow and freshwater inflow. The ALJs agree and recommend adding the following new OP, as proposed by NWF:

2a. This emergency order does not alter LCRA's obligations to provide water specifically for instream flow or freshwater inflow purposes pursuant to the 2010 Water Management Plan.

D. Garwood and LCRA Agreements

LCRA proposes to add a COL 4, clarifying that the Commission is not construing agreements between itself and Garwood. Garwood advocates a similar change, and no party appears to oppose it. The ALJs recommend that the Commission add that conclusion, as set out below:

7. By entering this order, the Commission is not construing in any way either the 1987 Agreement or the 1998 Purchase Agreement between LCRA and Garwood Irrigation Company. Nothing in this Order shall be considered or construed in any way to support one construction or another of the 1987 Agreement and the 1998 Purchase Agreement between LCRA and Garwood Irrigation Company.

E. Commission's Jurisdiction

The ED also recommends adding an FOF concerning the Commission's authority to issue an emergency order. The proposal is similar to COL 1 in the Emergency Order, which concerns the ED's authority to issue an emergency order. It would seem more appropriate to add a COL concerning the Commission's legal authority, rather than a FOF. Moreover, the ALJs

recommend editorial changes to the ED's proposal. To address the ED's concerns, the ALJ recommends adding a COL 1a, as set out below:

1a. The Commission may issue an emergency order under Texas Water Code § 11.139 to amend a permit or certificate of adjudication for 120 days after notice to the Governor if the Commission finds that emergency conditions exist which present an imminent threat to the public health and safety and which override the necessity to comply with established statutory procedures and there are no feasible practicable alternatives to the emergency authorization.

VII. MODIFICATIONS PROPOSED BUT NOT RECOMMENDED

Several parties propose other modifications to the Emergency Order. For the reasons set out below, the ALJs do not recommend that the Commission adopt those.

A. Garwood's Proposals

Garwood notes that it has entered into certain agreements with LCRA, disputes have arisen concerning those agreements, and LCRA and Garwood are attempting, in good faith, to resolve those disputes. Out of caution, Garwood proposes several modifications of the Emergency Order to further clarify that the Commission is not intending to interpret the agreements between LCRA and Garwood.[65]

The ALJs do not recommend that the Commission modify the Emergency Order as Garwood requests. As discussed above, LCRA seeks and the ALJs recommend the addition of a COL clarifying that the Emergency Order is not intended to construe the agreements between LCRA and Garwood. That would seem to more simply and fully address Garwood's concern.

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[65] Garwood proposes to modify FOFs 7, 8, 12, 29, and 54; add new FOFs between 32 and 33 and 54 and 55; add a new COL 5; modify OP 2; and add a new OP between 2 and 3.

B. NWF's and AP Ranch's Proposals

NWF and AP Ranch propose additional modifications[66] to note that the Emergency Order, especially if the trigger level exceeded 850,000 AF, would indirectly impact instream flow and freshwater inflow. AP Ranch's changes would state that LCRA and its customers could do more to limit water use by retail customers of LCRA's wholesale firm customers, and even state that a mandatory 20-percent reduction in water use by those customers is reasonable, practicable, and could be immediately implemented. The ALJs do not recommend that the Commission make these modifications.

The proposals concerning indirect impact on instream flow and freshwater inflow are not necessary to support the Emergency Order, and do not indicate that the Emergency Order should be either modified or set aside. There is no evidence that by operating in compliance with the Emergency Order LCRA would fail to comply with LCRA's instream flow and freshwater inflow obligations.

There is evidence that LCRA's firm customers and their retail customers could do more to conserve water. However, the evidence also shows that further conservation could not be achieved immediately and that it is not a feasible and practicable alternative to the Emergency Order. Instead, the evidence shows that further conservation will be difficult, expensive, and disruptive, and a 20-percent reduction would require severe restrictions on water use, even inside homes.[67]

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[66] NWF proposes modifications to FOFs 6, 7, 13, 22, 28, 29, 30, 32, 41, 42, 45, 47, 50, & 51; addition of new FOFs between 19 & 20, & 52 & 53; a modification to COL 3; and modifications to OP 1, 4, 5, & 6. Due to number formatting changes, AP Ranch proposals cannot be as easily described.
[67] LCRA Ex. 7; Tr. at 154-186; Tr. at 532-545 (Woerner).

C. CWIC's Proposals

The rice producers near the Texas coast that CWIC represents would be more adversely and painfully affected by affirmation of the Emergency Order than any other party or interest represented in this case. This would be the third year that stored water would not be released by LCRA to its interruptible rice farming customers to use for irrigating their crops. Some would not have other sources of water for that irrigation. Some would not be able to continue farming rice.[68]

CWIC does not argue that failing to release water for interruptible rice farming customers would endanger public health or safety. Nor does it oppose the issuance of a modified Emergency Order that would set a trigger level of 850,000 AF. It does, however, seek extensive modification of the order, hoping to lessen its impact on the rice farmers. CWIC proposes two distinct sets of modifications, both of which are considered below.

1. CWIC's Minimal Proposal

The first would be a minimal order that would specify the level of combined storage on February 17, 2004, find that the level of combined storage is not expected to meaningfully recover before March 1, 2014, and find that following the 2010 WMP and releasing stored water to interruptible customers before or during the 120-day term of the Emergency Order would result in an unacceptable risk to human health and would almost certainly result in interruptible supplies being curtailed during the growing season. The modified Emergency Order would not, however, specify a trigger level.[69]

The ALJs do not recommend that the Commission modify the Emergency Order to comply with CWIC's minimal-order proposal. Such an order would not recognize the imminent

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[68] Tr. at 367-412.
[69] Tr. at 570.

threat to public safety, and provide no trigger level to protect those at risk. It would strip from the Emergency Order the specific findings of facts, proven by the great weight of the evidence, demonstrating that there is an imminent threat to the public health and safety and the feasible practicable alternatives to the Emergency Order are inadequate to address that threat. Without those findings of fact and due to its vagueness, an emergency order like this would be subject to attack on judicial review. Any action LCRA chose to take to respond to the threat would be subject to further delay, debate, and challenge.

2. CWIC's Extensive Proposal

CWIC's second set of proposed modifications would extensively rework the Emergency Order, but it does not adequately address imminent threat to public health and safety. Central to this set of modifications is CWIC's proposed modification of OP 1, which CWIC would change as shown below:[70]

1. LCRA may deviate from the 2010 WMP as it pertains to the determination of interruptible supply for 2014 and instead provide interruptible stored water based on the combined storage of Lakes Buchanan and Travis on March 1, 2014 at 11:59 p.m. as follows:

    a. If the combined storage in the lakes is below ~~1.1 million~~ 850,000 AF, provide no interruptible stored water to customers within the LCRA Gulf Coast and Lakeside Divisions ~~and Pierce Ranch~~.

    b. If the combined storage in the lakes is at or above ~~1.1 million~~ 850,000 AF but below ~~1.2 million~~ 920,000 AF, provide up to 100,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Division and Pierce Ranch.

    c. If the combined storage is at or above ~~1.2 million~~ 920,000 AF, ~~but below 1.3 million AF,~~ provide ~~up to 124,000~~ AF ~~of~~ interruptible stored water ~~for diversion by customers with LCRA's Gulf Coast and Lakeside Division and Pierce Ranch~~ in accordance with the then current Water Management Plan.

[70] Instead of quoting CWIC's proposal, the ALJs show how it would change from the language in the Emergency Order.

d. ~~If the combined storage is at or above 1.3 million AF but below 1.4 million AF, provide up to 148,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Division and Pierce.~~ Provide interruptible stored water for second crop only upon a determination by the LCRA Board that sufficient water is available.

~~e. If combined storage is at or above 1.4 million AF, provide up to 172,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch.~~

The ALJs recommend that the Commission not adopt these changes to OP 1. A modified emergency order with these changes would be inadequate in the face of the imminent threat to public health and safety because the preponderant evidence shows that 850,000 AF of combined storage is not adequate to avoid threats to public health and safety. As previously discussed, FOF 49, which CWIC proposes to delete, is supported by the great weight of the evidence and states:

49. The emergency relief LCRA obtained in 2013 with an emergency order setting forth a trigger of 850,000 AF is not a reasonable alternative at this time because of the prolonged nature and persistence of the drought and the fact that the lakes have not recovered from this drought. If combined storage of the lakes recovers to 850,000 AF on March 1 and severe drought conditions return, combined storage could fall to 600,000 AF by the end of the first crop irrigation system, requiring declaration of a DWDR.

The remaining changes that CWIC proposes should not be adopted by the Commission. Some are contrary to the preponderant evidence,[71] some are irrelevant,[72] one ignores a key provision of LCRA's water rights,[73] some are legally inapplicable,[74] and the rest are not necessary to support the modified Emergency Order that the evidence and law show should be issued.[75]

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[71] Modifications of FOFs 22, 28, 32, 47, 49, 50 (part), 51 (part), 52 & OP 4; new FOF after 54; & new COL after 1.
[72] Modification of FOF 10 & new FOFs after 29 & 32.
[73] New FOF after 12 (part).
[74] New FOF after 25 & new COLs after 1 & 2.
[75] Modifications of FOF 12, 29, 30, 42, 43, 44, 50 (part), 51 (part) & 53 & OP 5, new FOFs after 12 (part), 42 & 47 & new OP after 2.

VIII. TRANSCRIPT

LCRA paid the cost of transcribing the hearing and expediting delivery of the transcript. It has not asked for any part of that cost to be allocated among the other parties. The ALJs recommends that the Commission allocate the entire cost to LCRA.

IX. RECOMMENDED ORDERING PROVISIONS

Based on all of the above, the ALJs recommend that the Commission modify the Executive Director's Emergency Order and order the following:

1. LCRA may deviate from the 2010 WMP as it pertains to the determination of interruptible supply for 2014 and instead provide interruptible stored water based on the combined storage of Lakes Buchanan and Travis on March 1, 2014 at 11:59 p.m. as follows:

    a. If the combined storage in the lakes is below 1.4 million AF, provide no interruptible stored water to customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch.

    b. If combined storage is at or above 1.4 million AF, provide up to 172,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch.

2. LCRA may provide interruptible stored water to the Garwood Irrigation Division and Pierce Ranch, to the extent required by their contracts.

3. This modified emergency order is final and effective immediately.

4. This emergency order terminates on May 26, 2014. However, this emergency order may be renewed once for no more than 60 days. If the combined storage in Lakes Buchanan and Travis is below 1.4 million AF on May 26, 2014, this order is automatically renewed for another 60 days with no further action required by the LCRA or the TCEQ. If the combined storage in Lakes Buchanan and Travis is at or above 1.4 million AF on May 26, 2014, this order is automatically renewed for another 60 days applying the limits established in 1.b. above with no further action required by the LCRA or the TCEQ. With a 60-day extension, this emergency order will terminate on July 25, 2014.

5. This order only addresses the specific relief requested from LCRA and is not meant as precedent for amendments to LCRA's WMP or future emergency relief.

6. If any provision, sentence, clause, or phrase of this emergency order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of this emergency order.

7. LCRA shall pay the full cost of transcribing the hearing in this case.

X. PROPOSED ORDER

The ALJs recommend that the Commission adopt the attached proposed order, which modifies the Emergency Order issued by the ED as described above, adds procedural and jurisdictional FOFs and COLs, and makes minor editorial and organizational changes not discussed above.

SIGNED February 21, 2014.

WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TRAVIS VICKERY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

AN ORDER affirming in part and modifying in part the Executive Director's emergency order authorizing the Lower Colorado River Authority to amend its Water Management Plan, Permit No. 5838, pursuant to section 11.139 of the Texas Water Code

On January 27, 2014, the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) granted an application by the Lower Colorado River Authority (LCRA) for an Emergency Order to amend its 2010 Water Management Plan (WMP), Permit No. 5838, under Texas Water Code §§ 5.501, 11.138, and 11.139, and the Governor's Emergency Disaster Proclamation relating to drought. On February 26, 2014, the Commission considered whether to affirm, modify, or set aside the Emergency Order that the ED granted. A proposal for decision (PFD) was presented by William G. Newchurch and Travis Vickery, Administrative Law Judges (ALJs) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the application on February 12, 17, and 18, 2014, in Austin, Texas.

After considering the ALJs' PFD, the Commission adopts Findings of Fact and Conclusions of Law and affirms in part and modifies in part the Executive Director's Emergency Order, as set out below:

I. FINDINGS OF FACT

1. On December 10, 2013, LCRA filed a request for an emergency order to amend its 2010 WMP to change requirements for the release of water to irrigation operations downstream in 2014 due to persistent drought conditions in LCRA's five Highland Lakes (Lakes Buchanan, Inks, LBJ, Marble Falls, and Travis). LCRA requested the authority to provide no interruptible stored water to its Gulf Coast and Lakeside Divisions and Pierce Ranch if the combined storage of Lakes Buchanan and Travis is below 1.1 million acre feet (AF). Additionally, it requested the stored water releases be smaller for combined storage levels above 1.1 million AF than those set forth in the 2010 WMP.

1a. LCRA has not requested authorization to reduce the amount of water provided from Lakes Buchanan and Travis specifically for instream flow and freshwater inflow purposes below the levels required, in the absence of an emergency order, in the 2010 WMP.

LCRA'S Water Rights and 2010 Water Management Plan

2. LCRA has the right to divert and use up to 1.5 million AF from Lakes Buchanan and Travis under Certificates of Adjudication Nos. 14-5478 and 14-5482. By court order, LCRA has developed a WMP, Permit No. 5838, currently dated 2010, which is required by these certificates.

2a. This emergency order does not alter LCRA's obligations to provide water specifically for instream flow or freshwater inflow purposes pursuant to the 2010 WMP.

3. The Certificates of Adjudication and the 2010 WMP govern LCRA's operation of Lakes Buchanan and Travis and dictate how LCRA makes water available from these lakes to help meet "firm" water customer needs, downstream interruptible irrigation demands, and environmental flow needs of the lower Colorado River and Matagorda Bay.

4. Certificates of Adjudication Nos. 14-5478 and 14-5482 state that "LCRA shall interrupt or curtail the supply of water . . . pursuant to commitments that are specifically subject to interruption or curtailment, to the extent necessary to allow LCRA to satisfy all demand for water under such certificates pursuant to all firm, uninterruptible water commitments." The WMP further describes how LCRA will manage and curtail supplies from the lakes during times of drought including through a repeat of the Drought of Record.

5. As established in the 2010 WMP, the combined firm yield of Lakes Buchanan and Travis is 535,812 acre feet per year (AFY). Of this amount, 90,546 AFY is committed to O.H. Ivie Reservoir, making 445,266 AFY of firm water supply available from Lakes Buchanan and Travis for LCRA's firm water customers.

6. As established in the 2010 WMP, until firm demand for water equals the combined firm yield, LCRA can supply water for irrigated agriculture on an interruptible basis. The maximum historical annual amount of reported firm water use from the firm supplies of Lakes Buchanan and Travis during 2000 through 2010 was 247,000 AF in 2011. The maximum interruptible water released from Lakes Buchanan and Travis during this same period occurred in 2011 and totaled about 433,000 AF. The maximum total amount released or used from the Highland Lakes, about 714,000 AF, occurred in 2011.

7. The firm water use in 2012 from Lakes Buchanan and Travis was about 148,000 AF. An amount of 31,000 AF was supplied for the environment, and 9,000 AF of interruptible was supplied to farmers in the Garwood Irrigation Division. The total use for 2012 was about 188,000 AF, and the total use in 2013 is expected to be similar.

8. To manage the supply, LCRA's 2010 WMP imposes several trigger points keyed to the total combined storage capacity of Lakes Buchanan and Travis that are intended to ensure the firm water supply is protected during droughts. The most relevant trigger points are set out in the following table:

Combined Storage of Lakes Buchanan and Travis	Date on Which Trigger is Decided	Action Taken
1.4 million acre feet	At any time	Request firm customers to implement voluntary drought response measures.
1.4 million acre feet	On Jan. 1	Environmental releases for instream flows reduced to meet critical needs for ecosystems for following year. Begin gradual curtailment of interruptible supply to four major irrigation operations.
900,000 acre feet	At any time	Request firm customers to implement mandatory water restrictions; develop firm customer curtailment plan.
600,000 acre feet	At any time	If criteria indicate a drought worse than the Drought of Record, then cease interruptible supply and begin curtailment of firm supply.

9. LCRA's 2010 WMP defines "Drought of Record" as "the drought that occurred during the critical drought period." "The Critical Drought Period" is defined as "the period of time during which the reservoir was last full and refilled, and the storage content was at its lowest minimum value."

10. Under the 2010 WMP, the LCRA Board may declare a Drought Worse than the Drought of Record (DWDR) if it finds that the following three conditions are simultaneously met:

    a. Duration of drought is more than 24 months, which is determined by counting the number of consecutive months since both Lakes Buchanan and Travis were last full;

    b. Inflows to the lakes are less than inflows during the drought of record; and

    c. Lakes Buchanan and Travis combined storage has less than 600,000 AF of water.

11. Under the 2010 WMP, once a drought has lasted more than 36 months and a DWDR has been declared by the LCRA Board, the interruptible stored water would be fully and immediately curtailed – making no stored water available for agricultural irrigation or other interruptible uses until lake levels recover or the inflows into the lakes increase substantially. Moreover, LCRA will implement pro rata curtailment of its firm water users once a DWDR is declared and after interruptible stored water (agriculture) uses have been curtailed.

12. Prior to a declaration of a DWDR, LCRA is obligated by the 2010 WMP to provide at least some interruptible water to its four major irrigation operations.

Current Conditions

13. The combined storage of Lakes Buchanan and Travis on December 1, 2013, was 746,000 AF, or 37% full. On February 1, 2014, the combined storage was 764,000 AF, or 38% full. The combined storage fell to the lowest level in the current drought on September 19, 2013, which was 637,123 AF or 31.7% full.

13a. The primary factors affecting the current combined storage levels have been (1) unprecedented low inflows in this current drought, (2) the interruptible stored water amounts authorized for release under current LCRA 2010 WMP, particularly in 2011, and (3) emergency orders issued by the Commission in 2012 and 2013.

13b. It is not merely the amount of inflows, but also the management of the system over a multiyear period that greatly affects the lake's combined storage. In recent years, emergency orders departing from the 2010 WMP have proven critical to that management.

13c. On September 19, 2013, the combined storage of these reservoirs fell to the second lowest point in the history of these lakes—637,000 AF—nearing 30% capacity and just shy of the record low at 621,000 AF. Thus in September the lakes rapidly approached the 600,000 AF emergency level at which the LCRA Board would have declared a DWDR. Continuing to curtail interruptible stored water releases that would drive lake storage below 600,000 AF is critical to avoiding both an imminent threat to public health and safety and a situation whereby interruptible water supply releases would force declaration of a DWDR and drive firm customers into curtailment, in contravention of the 1988 Order and Certificates of Adjudication Nos. 14-5478 and 14-5482.

14. The inflows into the lakes are at record lows. Annual inflows into Lakes Buchanan and Travis in four of the last five years are among the ten lowest years of inflow on record. Inflows into the lakes in 2011 were the lowest annual inflows on record, about 10% of average inflows. Inflows in 2012 were the fifth lowest on record, and inflows in 2013 were the second lowest on record. January 2014 inflows of 11,763 AF were the lowest since the 1950's.

15. The inflows into Lakes Buchanan and Travis during the current drought have been lower for time periods ranging from 12 months to 72 months than the lowest inflows for periods of similar duration during the historic Drought of Record. The total inflows for the past 72 months were only about half of the lowest 72 month inflow period in the Drought of Record.

15a. A ranking of the top ten lowest calendar year historical inflows since the reservoirs went into operation in the early 1940's shows that five of those years—2008, 2009, 2011, 2012

and 2013 occur in the current drought, and the top three years for lowest inflows—2011, 2013, and 2008 are all from the current drought. The recent year of 2006 is the fourth lowest.

15b. The inflows for January 2014, at 11,763 AF, are lower than the inflows in either January 2011 (21,158 AF) or 2013 (15,117 AF), which are the two lowest inflow years on record. Historically a January with low inflows is usually followed by low inflows for both February and March. This data indicates a high likelihood of drought persistence in the near future.

16. Extraordinary drought conditions in the form of rainfall and extreme heat have existed in much of Texas, including the Colorado River Basin for nearly three years. State Climatologist, Dr. John Nielsen-Gammon, recognized 2011 as the worst one year statewide drought on record. The summer of 2011 was the hottest on record in Texas, and 2011 was the hottest in Austin and second hottest statewide. Year 2012 tied with 1921 as the hottest on record statewide.

17. Annual evaporation from LCRA's five Highland Lakes plus Lake Austin for 2010 through 2013 is set forth below:

Year	Total Evaporation
2010	183,923 acre feet
2011	192,404 acre feet
2012	144,759 acre feet
2013	120,899 acre feet

18. Although there has been close to normal rainfall in some places in Central Texas since 2011, these events have failed to produce significant inflows into Lakes Buchanan and Travis. The rainfall has been sporadic, and the soils have not remained saturated enough to allow for runoff in substantial amounts. Widespread heavy rains in the past few months have failed to produce significant inflows into the lakes.

19. This low inflow total is symptomatic of the drought's severity, including dry soils that absorb most of the rainfall that does occur. For example, heavy, widespread rainfall in the Llano River and San Saba River watersheds above the Highland Lakes on September 19 and 20, 2013, averaged two to three inches with some rain gages reporting totals as high as six or seven inches. However, this rain event only yielded approximately 24,000 AF of inflow to the lakes. By comparison, an event in March 2007 with about 40% less rainfall yielded almost 100,000 AF of inflows to Lakes Buchanan and Travis.

20. The weather forecasts do not indicate significant rainfall in the near future. Recent atmospheric and oceanic observations continue to indicate ENSO-neutral conditions and the outlook calls for this to persist into summer of 2014. The latest National Weather Service precipitation forecast indicates that precipitation across the Texas Hill Country is

likely to remain normal with equal chances for above, below, or near normal precipitation. These forecasts indicate that the western edge of a below-average precipitation forecast area encroaches on Central Texas. This boundary does not quite reach areas which could produce significant inflows to Lakes Buchanan and Travis. It is not expected that precipitation will be heavy enough to cause significant drought improvement.

21. The most recent U.S. Seasonal Drought Outlook indicates the persistence of drought conditions above Lakes Buchanan and Travis through the end of April 2014. It is not expected that precipitation will be heavy enough to cause significant drought improvement. Climatological outlooks also indicate that temperatures will trend above normal through the summer, which tends to correlate with higher evaporation rates and lower overall precipitation.

22. The hydroclimatic conditions outlined above have created a circumstance where Lakes Buchanan and Travis have been unable to recover in any significant manner, even with an emergency cutoff of nearly all water supply for downstream irrigation in 2012 and 2013.

23. The first and second criteria for a DWDR have been met. The drought has lasted for more than 24 months. Duration of drought is determined by counting the number of consecutive months since both Lakes Buchanan and Travis were last full, which was February 13, 2005. The cumulative inflow deficit has also been met.

24. The current drought conditions are outside the range of hydrologic conditions that were considered during formulation of the 2010 WMP.

25. The Governor of Texas issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas. This proclamation has been renewed monthly, most recently on February 14, 2014, and includes nearly every county bordering or that contributes inflow to the Highland Lakes. These areas are in severe drought or worse. The Emergency Disaster Proclamation also states that "As provided in Section 418.016 of the [Texas Government Code], all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster."

LCRA's Firm Customers

26. LCRA provides raw water out of the combined firm yield of Lakes Buchanan and Travis to over 60 retail and wholesale potable water suppliers that together serve over one million people. In addition, LCRA provides water to several electric utilities from the firm water supply of Lakes Buchanan and Travis. These electric utilities provide electricity into the electrical grid in Texas operated by the Electric Reliability Council of Texas (ERCOT) and provide electricity to customers in Texas. LCRA also provides firm raw water to several industries located downstream.

27. The 2010 WMP requires that firm customers (mainly cities and industries) be curtailed on a pro rata basis and that LCRA cease all releases for interruptible stored water (regardless of the impact on the crops) when a DWDR is declared.

28. If LCRA is required to follow the 2010 WMP and the drought continues, LCRA and its firm customers may need to acquire or develop large quantities of alternative water supplies to meet essential needs of their respective potable water systems. LCRA's firm customers are working on plans to implement curtailment and secure alternative supplies; however many of LCRA's firm customers do not have any readily available alternative sources of water supply that could substitute for their reliance on the Colorado River, and these projects could take years to develop.

29. If LCRA is required to follow the 2010 WMP and the drought continues, LCRA will almost certainly have to:

    a. Begin releases of interruptible stored water to meet demands in the four irrigation operations for the 2014 crop;

    b. Probably reach the third (and final) criteria for DWDR conditions;

    c. Declare a DWDR;

    d. Cut off stored water for interruptible contracts, thereby ruining the crop already planted; and

    e. Curtail cities' and industries' water use by 20% or more.

29a. Curtailments that would occur if combined storage drops substantially will result in reduced water supply to power plants, threatening their ability to generate electricity. Because LCRA's firm water customers would be required to cut back substantially if the drought persists under a DWDR declaration, municipal customers are likely to be forced to institute drought response measures that would include restrictions on indoor water use, resulting in threats to public health and safety.

30. Based on recent lake levels and the forecast, there is a chance of reaching conditions triggering a declaration of a DWDR as soon as May 2014 and greater than a one in two chance by late August.

30a. A trigger level of 850,000 AF combined storage, below which there would be no interruptible stored water released to Lakeside, Gulf Coast or Pierce Ranch is not protective of human health and safety. This level was set in the 2012 and 2013 emergency orders, if storage had crested just above the 850,000 AF level in either 2012 or 2013 by March 1, triggering a release, the lakes would have subsequently fallen well below emergency levels in 2013 triggering a critical water situation. The March 1, 2012 combined storage was 847,000 AF and on March 1, 2013 was 822,000 AF. The interruptible stored water release would have been much greater than the relatively small amount to get storage above 850,000 AF and thus would have taken the reservoirs

significantly lower in 2013 than the 637,000 AF level that was reached on September 19, 2013.

30b. Because of the duration and increasing intensity of the drought, model results indicate that an 850,000 AF trigger for March 1, 2014, that would permit large interruptible releases would have serious consequences for combined storage. If 2014 experiences inflows similar to 2011, then combined storage would drop below 400,000 AF in just a year.

30c. At 1.1 million AF, with a continuation of the current hydrology, lake storage would drop within approximately a year to emergency levels and continue downward from there. Therefore, a trigger level of 1.4 million AF is necessary to avoid a rapid return to emergency levels.

30d. In September 2013 the lakes came within 37,000 acre-feet of reaching the emergency level of 600,000 AF or 30% capacity and there has been very little recovery since then. In May 2012 the lakes refilled to an amount close 1.1 million AF (to 1.033 million AF on May 22, 2012) and yet without any release to Lakeside, Gulf Coast and Pierce Ranch the lakes dropped to the second lowest level on record of 637,000 AF on September 19, 2013, and came very close to falling below emergency levels. An emergency order in place in 2012 prevented such a release. However, had a release occurred in 2012 after this refill to almost 1.1 million AF, combined storage levels would have been driven well below the 600,000 AF emergency level by 2013.

30e. Water savings by Austin of at least 86,000 AF over the past two years played a key role in preventing combined storage from reaching the 600,000 AF level in September 2013.

30f. If storage had fallen below 600,000 AF in September 2013, LCRA's current WMP requires a refill to 1.4 million AF before resuming any interruptible stored water releases. Thus, if the 600,000 AF trigger had been reached and the 1.4 million AF refill requirement had gone into effect, it is highly unlikely that an emergency order would have been needed in 2014.

30g. A 1.4 million AF refill level is a requirement of the current WMP when a DWDR has been declared.

30h. The extraordinary magnitude of change in inflows since the drought of record upon which the 2010 WMP is based, in terms of how much lower the inflows have been in recent years, signals the need for great caution to be taken with regard to decisions concerning large releases to interruptible customers because they make it more probable that lake levels will not quickly recover once such releases occur.

31. Currently, LCRA owns four water systems that take raw water from Lakes Buchanan and Travis. LCRA also has 15 firm water customers that actively take raw water for municipal purposes from Lake Travis that are not a part of LCRA's utility facilities. The lowest pumping elevations of the intakes range from 555 feet mean sea level (msl) to 650

feet msl on Lake Travis. On January 9, 2014, the lake level at Travis was 628.45 msl. On February 15, 2014, the lake level at Lake Travis was 627.75 msl.

31a. The lowest operating depths of the following raw water intakes owned and operated by LCRA's firm water customers on Lake Travis are as follows:

Brushy Creek Regional Utility Authority (BCRUA) = 620 ft-msl
Cedar Park (regular intake) = 615 ft-msl
Leander (regular intake) = 615 ft-msl
Lago Vista (Intake #1) = 612 ft-msl
Lago Vista (Intake #2) = 600 ft-msl
Jonestown WSC = 600 ft-msl
WCID 17 = 595 ft-msl
Lakeway MUD = 590 ft-msl
Cedar Park and Leander (joint emergency drought intake) = 590 ft-msl

31b. In the absence of an emergency order, the raw water intakes owned and operated by LCRA's firm water customers on Lake Travis are projected to become inoperable on the following dates:

BCRUA = already inoperable and will remain inoperable
Cedar Park (regular intake) = inoperable by June 2014
Leander (regular intake) = inoperable by June 2014
Lago Vista (Intake #1) = inoperable by July 2014
Lago Vista (Intake #2) = inoperable by August 2014
Jonestown WSC = inoperable by August 2014
WCID 17 = inoperable by October 2014
Lakeway MUD= inoperable by December 2014
Cedar Park and Leander (joint emergency drought intake) = inoperable by December 2014.

31c. If a curtailment trigger of 850,000 AF is established, combined storage increases to that level and releases of 125,000 AF are made for interruptible water customers, the raw water intakes owned and operated by LCRA's firm water customers on Lake Travis are projected to become inoperable on the following dates:

BCRUA = already inoperable and likely to remain inoperable
Cedar Park (regular intake) = inoperable by July 2014
Leander (regular intake) = inoperable by July 2014
Lago Vista (Intake #1) = inoperable by August 2014
Lago Vista (Intake #2) = inoperable by February 2015
Jonestown WSC = inoperable by February 2015
WCID 17 = inoperable by August 2015
Lakeway MUD= inoperable by August 2015
Cedar Park and Leander (joint emergency drought intake) = August 2015.

32. As lake levels drop, retail water suppliers are unable to pump water from the lakes. This causes wholesale raw water customers to either move intakes to reach the water, or obtain alternative sources. Smaller systems will likely have to haul water from a water utility with a viable source. If the lake levels drop more quickly than arrangements for alternative intakes or supplies can be implemented, LCRA water systems and its customers' water systems will have difficulty in meeting firm customers' water needs.

Conservation and Drought Contingency Plan

33. LCRA's water conservation plan complies with TCEQ rules. LCRA has required its municipal customers to adopt conservation plans before there was a state requirement.

34. LCRA provides conservation program planning support for its customers. In 2012, LCRA began a rebate program for certain irrigation technologies and a wholesale customer cost-share program focused on conservation. LCRA has supported significant improvements in water use efficiency in rice irrigation systems, including volumetric pricing and canal rehabilitation.

35. LCRA was originally required to develop a Drought Contingency Plan (DCP) as a direct result of the court order adjudicating LCRA's water rights and the Texas Water Commission 1989 WMP Order.

36. When TCEQ adopted the Chapter 288 rules for DCPs, LCRA adopted separate stand alone DCPs relating to irrigation, municipal, and industrial operations that more specifically addressed the requirements of the Chapter 288 rules. LCRA incorporated all of the same triggers and criteria from the WMP into its Rule 288 DCP. These DCPs were incorporated into Chapter 4 of the WMP.

37. LCRA adopted water use reduction targets including the following: water use reduction goals for firm water supply customers of 5 percent by asking firm customers to implement their voluntary water use reduction measures when the combined storage of Lakes Buchanan and Travis is less than 1.4 million AF; ten to twenty percent reduction goals by asking firm customers to implement their own mandatory water use reduction measures when combined storage levels fall below 900,000 AF; and a mandatory pro rata curtailment of firm water supplies for customers of 20 percent or more will be implemented when combined storage levels fall below 600,000 AF and other criteria are met for a drought more severe than the Drought of Record.

38. In August, 2011, LCRA called on its firm water customers to voluntarily implement mandatory water use restrictions under their DCPs to reduce water use by 10 to 20 percent.

39. LCRA has adopted additional changes to LCRA's raw water contract rules that include the procedures for implementing a pro rata curtailment of firm water customers. The rules also provide a surcharge to be set by the LCRA Board for unauthorized use of water (taking more water than authorized under a mandated curtailment of firm water supplies)

and clarifying the drought contingency requirements related to golf course irrigation and recreational use.

40. LCRA's WMP requires LCRA to develop a stored water curtailment plan to be approved by the LCRA Board and TCEQ in response to combined storage dropping below 900,000 AF. TCEQ approved that plan for LCRA's firm customers in December of 2011.

41. LCRA has fully implemented its DCP. It requires all of its customers that currently divert and purchase water from LCRA to have a DCP. Most of these firm customers have stayed in some form of mandatory water restrictions, significantly limiting landscape irrigation. LCRA's industrial customers have worked to reduce non-essential water uses. Also, LCRA has had several meetings with firm customers in preparation for pro rata curtailment.

41a. The conservation and drought contingency plan measures undertaken by LCRA's firm water customers have reduced water usage, but have also already caused operational problems for many utility systems such as low chlorine levels in the distribution system and the inability to perform system flushing, threatening public health and safety.

42. The LCRA Board approved a no more than once per week watering restriction that would take effect in March 2014 if combined storage is below 1.1 million AF and interruptible stored water has been cut off. LCRA has not requested TCEQ approval of this action and this order does not address such action.

42a. Just in the past 2 years Austin's conservation and drought measures have resulted in an estimated 86,000 AF savings. Austin hired outside consultants and participated in a rigorous process with LCRA to determine its annual conservation savings in preparation for possible pro-rata curtailment. This resulted in an estimated savings of 26,000 AF a year from conservation measures in place (52,000 in two years). In addition Austin has calculated its savings achieved from imposing drought measures for more than two years which includes a one-day a week watering schedule. This is estimated at 17,000 AF per year (34,000 AF in two years).

42b. There has been a drop from Austin's highest recent year of 190 GPCD, in 2006, to the most recent year of 136 GPCD due to its conservation and drought measures.

42c. Because the planning, permitting, and construction for developing large new water supplies for Austin and other large municipal areas is necessarily on a decades-long timeframe, a severe shortage in or total depletion of the already diminished supply within a few years due to an imminent release of interruptible stored water under LCRA's 2010 WMP is an imminent threat to public health and safety.

42d. Health and safety consequences from supply shortages can start to be experienced long before a municipal water supply is totally depleted.

42e. Water restrictions result in a drop in overall usage, which in turn impacts the amount of flow in the entire Austin Water Utility (AWU) system. The AWU system has more than 3,700 miles of water pipes and 39 storage tanks, which are designed to handle peak demands and fire flows. As flow decreases, AWU system's ability to handle peak demands and fire flows may be affected, which is an imminent threat to public health and safety.

42f. As flow decreases through the pipes due to deepening water restrictions, including possible cutoff of outdoor watering, conditions can occur with disinfection residuals dissipating and dropping below state minimum requirements, particularly in warmer weather. This has a potential health risk from biological growth of organisms in the system.

42g. With deepening watering restrictions, there is an increased risk of illegal cross connections, which are an extremely dangerous public health risk. Likewise, there is an increased risk of development of unregulated graywater systems, which carries health risks.

42h. Once combined storage levels have reached a point that will require Austin and other LCRA firm water customers, as a practical measure, to impose water rationing, then individual households will start to make choices in how to use that rationed amount of water. Over a vast population, some of those choices can be poor choices with regard to sanitation practices (for example deferring for too long certain sanitary uses of water) that can negatively impact public health and safety despite a utility's effort to educate its customers on safe practices.

42i. Outdoor watering in a drought is critical to preserving trees and tree canopy important to human health in an urban environment, preventing home foundations from cracking, and avoiding negative health effects from landscaping dying off.

Alternatives

43. LCRA has evaluated many alternatives to address the emergency conditions that the drought presents. Alternatives explored include: Utilizing water from LCRA's other lakes, aggressive conservation, securing the Garwood right for purposes other than agriculture, interbasin transfers, and trucking in water from other sources. LCRA has evaluated many other alternatives to address the emergency conditions that the drought presents.

44. None of the alternatives LCRA has identified would avert the projected water supply shortage because most of the supplies identified would produce insufficient or uncertain quantities of supply, would create other operational issues for customers, may involve a lengthy permitting process (if not implemented on an emergency basis), or would take years to develop. None of the alternatives identified are feasible or practicable alternatives to the emergency authorization.

45. Amending downstream run of the river rights to allow diversion for new uses and at new locations would provide some supply, but the use of these rights alone is not – by itself – a feasible and practicable alternative to the emergency relief related to the 2010 WMP. All of the rights would require amendments to add diversion points, additional places of use, and possible storage. Also, the downstream run-of-river water rights are highly variable in terms of availability and quantity, and do not provide by themselves a sufficient quantity of water to eliminate the need for the emergency relief from the 2010 WMP as requested herein.

45a. LCRA's analyses showed that if the interruptible stored water curtailment trigger is set at 850,000 AF, releases of 125,000 AF are made, and low inflows persist as predicted, combined storage in Lakes Travis and Buchanan falls to 600,000 AF sometime in the summer of 2014 and continues to decline at least through the end of 2015. LCRA's analyses showed that if the interruptible stored water curtailment trigger is set at 1.1 million AF, releases of 125,000 AF are made, and low inflows persist as predicted, combined storage in Lakes Travis and Buchanan falls to 600,000 AF sometime in the summer of 2015 and continues to decline at least through the end of 2015. LCRA's analyses showed that if the interruptible stored water curtailment trigger is set at 1.4 million AF, combined storage in Lakes Travis and Buchanan does not fall to 600,000 AF before the end of 2015.

46. In 2012, LCRA supplied about 4,000 AF to firm customers downstream of Austin under temporary permits that would otherwise have been released from Lakes Buchanan and Travis. In 2013, LCRA supplied about 1,000 AF to such customers under such temporary permits. While this was beneficial, temporary permits are not sufficient replacement for water lost if releases are required.

47. A twenty percent reduction in water use by firm customers will require difficult measures. There may be dramatic reductions in outdoor water use. However, none of these measures will occur quickly enough to help lake levels. Some LCRA customers, such as Austin, have achieved water savings through reductions in water use. Most industrial customers would have to implement the full twenty percent reduction more immediately and this likely means a curtailment in annual production.

48. LCRA is pursuing a formal amendment to its 2010 WMP but that process will not be completed in time to address LCRA's requested relief. LCRA filed an application to amend its 2010 WMP on March 12, 2012. TCEQ prepared a draft permit for LCRA comment on October 12, 2012. Notice of the application was sent to all water right holders in the Colorado River Basin and published in local newspapers in April, 2013. May 28, 2013, was the last date to request a public meeting or a contested case hearing, or comment on the application. On June 3, 2013, the ED advised LCRA that he would not be forwarding the application to the Commission at this time, and that his staff would be conducting further review on the application.

48a. There is no feasible practicable alternative for Austin on short order to replace its water supply should it be depleted in a few years to the point of drastic shortages by large interruptible water releases during a period of record low inflows. Although Austin has made very earnest efforts to identify alternative water supplies, a replacement water supply for 1 million people cannot be identified and developed in a few years. Austin has identified only very small amounts of water that may be able to be purchased for exorbitantly expensive prices. The small amounts do not sufficiently address the health and safety risks and the exorbitant prices do not make these practicable alternatives.

49. The emergency relief LCRA obtained in 2013 with an emergency order setting forth a trigger of 850,000 AF is not a reasonable alternative at this time because of the prolonged nature and persistence of the drought and the fact that the lakes have not recovered from this drought. If combined storage of the lakes recovers to 850,000 AF on March 1 and severe drought conditions return, combined storage could fall to 600,000 AF by the end of the first crop irrigation system, requiring declaration of a DWDR.

49a. LCRA expects that a trigger of 1.1 million AF would provide about 12-18 months of stored water in the Highland Lakes for firm water customers. That time period is not sufficient to allow the necessary adjustments to be made in raw water intake structures (if such adjustments are even feasible or practicable) or to secure alternative water supplies.

49b. An emergency order setting forth a trigger of 1.1 million AF is not a sufficient alternative at this time because of the prolonged nature and persistence of the drought and the fact that the lakes have not recovered from this drought. If combined storage of the lakes recovers to 1.1 million AF on March 1 and severe drought conditions return, analysis shows that combined storage could fall to 600,000 AF before the end of the first crop irrigation season in 2015 and before most firm water customers having raw water intakes on Lake Travis can make adjustments to their raw water intake structures (if such adjustments are even feasible or practicable), requiring declaration of a DWDR.

49c. An interruptible stored water curtailment trigger should be set to avert, rather than create, conditions that could require declaration of a DWDR.

50. LCRA staff performed analyses to determine whether lesser amounts of combined stored water than 100,000 AF could be supplied to Gulf Coast, Lakeside, and Pierce Ranch at lower combined storage trigger levels. The results showed that these alternatives were not practicable because the small amount of water that could be made available would result in significant losses and difficulties maintaining the canal water levels for the movement of water.

Relief Requested

51. LCRA's requested curtailment approach for 2014 is more restrictive than the curtailment triggers in emergency orders issued by the Commission in 2012 and 2013. The 850,000 AF trigger in effect in 2012 and 2013 was based on avoiding the potential for dropping

below 600,000 AF during the first crop of the season. Under LCRA's current approach, before the releases for interruptible water users are made, LCRA requests a combined storage trigger increase to a level that puts off the possibility of storage falling below 600,000 AF until spring of 2015.

52. LCRA has determined that if the combined storage is less than 1.1 million AF, providing even some stored water releases to Gulf Coast, Lakeside, and Pierce Ranch operations amplifies the risk of a DWDR declaration before spring 2015.

53. LCRA requests TCEQ to issue an emergency order to deviate from the 2010 WMP as it pertains to the determination of interruptible supply for 2014 and instead provide interruptible stored water based on the combined storage of Lakes Buchanan and Travis on March 1, 2014 at 11:59 p.m. as follows:

    a. Provide no interruptible stored water to customers within the LCRA Gulf Coast and Lakeside Divisions and Pierce Ranch if combined storage is below 1.1 million AF;

    b. Provide up to 100,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch if combined storage is at or above 1.1 million AF but below 1.2 million AF;

    c. Provide up to 124,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch if combined storage is at or above 1.2 million AF, but below 1.3 million AF;

    d. Provide up to 148,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch if combined storage is at or above 1.3 million AF but below 1.4 million AF; and

    e. Provide up to 172,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch if combined storage is at or above 1.4 million AF.

54. LCRA will also provide interruptible stored water to the Garwood Irrigation Division and Pierce Ranch, to the extent required by their contracts.

Notice to the Governor

55. Notice was provided to the Governor of Texas regarding the ED's consideration of this emergency order.

Procedure

56. On January 23, 2014, LCRA filed with the ED a supplement to its request for an emergency order.

57. On January 27, 2014, the ED considered LCRA's December 10, 2013 request and January 23, 2014 Supplement and issued an order granting an emergency authorization to the LCRA to amend its WMP, Permit No. 5838, pursuant to section 11.139 of the Texas Water Code.

58. The January 27, 2014 ED's Emergency Order included notice that the Commission would hold a hearing on February 12, 2014, to affirm, modify, or overturn the Order.

59. On January 24, 2014, the Chief Clerk of the Commission mailed notice of the Commission's February 12, 2014 hearing as required by law. The mailed notice stated: "Under 30 Tex. Admin. Code § 295.174, there is no right to a contested case hearing on this emergency order."

60. On February 10, 2014, LCRA submitted a second supplement to its request for emergency authorization.

61. On February 12, 2014, the Commission convened a public hearing on this matter, Chairman Shaw presiding. Commissioner Baker participated. Commissioner Covar recused himself. ALJ Newchurch was present throughout the public hearing, at the Commission's request.

62. The Commission and ALJ Newchurch heard over four hours of unsworn public comments about the Executive Director's Emergency Order. At the end of the public comment, the Commission discussed the matter with ALJ Newchurch and offered their preliminary view on the matter. The Commission then voted to refer the matter to SOAH for an evidentiary hearing to convene immediately. They also instructed ALJ Newchurch to submit a PFD to the Commission no later than February 21, 2014. The Commission stated that consideration of the PFD would be on its February 26, 2014 agenda.

63. ALJs Newchurch and Vickery reconvened the hearing on February 12, 2014. They admitted parties and other procedural matters were considered.

64. The following are parties in this case:

PARTY	**REPRESENTATIVE**
Lower Colorado River Authority (LCRA)	Lyn Clancy & Greg Graml
Executive Director (ED) of the TCEQ	Robin Smith
Office of Public Interest Counsel (OPIC)	Blas Coy & Vic McWherter
City of Austin	Ross Crow & Mary K. Sahs
Colorado Water Issues Committee (CWIC)	Carolyn Ahrens & Michael J. Booth
Central Texas Water Coalition (CTWC)	Cynthia C. Smiley, Shana Horton, & Frank Cooley

PARTY	REPRESENTATIVE
Highland Lakes Firm Water Customer Cooperative (Highland)	Patricia Carls & Carla Connolly
Texas Parks & Wildlife Department (TPWD)	Collette Baron Bradsby & James B. Murphy
National Wildlife Federation (NWF)	Myron Hess
Lehner/Lewis Interests & Garwood Irrigation (Garwood)	Molly Cagle & Samia Rogers
Clive Runnells d/b/a AP Ranch (AP Ranch)	Charles W. Irvine & Mary Carter

65. LCRA paid the cost of transcribing the hearing and expediting delivery of the transcript, and has not asked for any part of that cost to be allocated among the other parties.

II. CONCLUSIONS OF LAW

1. The ED may issue an emergency order under Texas Water Code § 11.139 to amend a permit or certificate of adjudication for 120 days after notice to the Governor if the ED finds that emergency conditions exist which present an imminent threat to the public health and safety which requires immediate action before the Commission can take action and there are no feasible practicable alternatives to the emergency authorization.

1a. The Commission may issue an emergency order under Texas Water Code § 11.139 to amend a permit or certificate of adjudication for 120 days after notice to the Governor if the Commission finds that emergency conditions exist which present an imminent threat to the public health and safety and which override the necessity to comply with established statutory procedures and there are no feasible practicable alternatives to the emergency authorization.

1b. LCRA is obligated under a 1988 court order and Certificates of Adjudication Nos. 14-5478 and 14-5482 to meet the demands of its firm, non-interruptible water supply customers 100% of the time without shortage through a repeat of the conditions in the Drought of Record.

2. The Findings of Fact show that the requirements of Texas Water Code § 11.139 have been met. Following the 2010 Water Management Plan with the ongoing drought and its effect on the water supply constitute an emergency that presents an imminent threat to the public health and safety. There are no practicable alternatives to this action.

3. The ED had the authority to issue the Emergency Order.

4. The Commission must consider whether to affirm, modify, or set aside an emergency order issued by the ED under Section 11.139 of the Texas Water Code no later than 20 days after the ED issues the order.

5. LCRA has the burden of proving that an emergency order should be granted.

6. LCRA's application for an emergency order should be granted in part and the ED's Emergency Order should be affirmed in part and modified in part as set out below.

7. LCRA should pay the full cost of transcribing the hearing in this case.

8. By entering this order, the Commission is not construing in any way either the 1987 Agreement or the 1998 Purchase Agreement between LCRA and Garwood Irrigation Company. Nothing in this Order shall be considered or construed in any way to support one construction or another of the 1987 Agreement and the 1998 Purchase Agreement between LCRA and Garwood Irrigation Company.

NOW, THEREFORE, BE IT ORDERED BY THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. LCRA may deviate from the 2010 WMP as it pertains to the determination of interruptible supply for 2014 and instead provide interruptible stored water based on the combined storage of Lakes Buchanan and Travis on March 1, 2014 at 11:59 p.m. as follows:

    a. If the combined storage in the lakes is below 1.4 million AF, provide no interruptible stored water to customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch.

    b. If combined storage is at or above 1.4 million AF, provide up to 172,000 AF of interruptible stored water for diversion by customers within LCRA's Gulf Coast and Lakeside Divisions and Pierce Ranch.

2. LCRA may provide interruptible stored water to the Garwood Irrigation Division and Pierce Ranch, to the extent required by their contracts.

3. This modified emergency order is final and effective immediately.

4. This modified emergency order terminates on May 26, 2014. However, this modified emergency order may be renewed once for no more than 60 days. If the combined storage in Lakes Buchanan and Travis is below 1.4 million AF on May 26, 2014, this order is automatically renewed for another 60 days with no further action required by the LCRA or the TCEQ. If the combined storage in Lakes Buchanan and Travis is at or above 1.4 million AF on May 26, 2014, this order is automatically renewed for another 60 days applying the limits established in 1.b. above with no further action required by the LCRA or the TCEQ. With a 60-day extension, this emergency order will terminate on July 25, 2014.

5. This order only addresses the specific relief requested from LCRA and is not meant as precedent for amendments to LCRA's WMP or future emergency relief.

6. If any provision, sentence, clause, or phrase of this Emergency Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of this Emergency Order.

7. LCRA shall pay the full cost of transcribing the hearing in this case.

8. The effective date of this Order is the date the Order is final.

9. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief not expressly granted herein, are hereby denied for want of merit.

10. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

Issue Date:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., Chairman
For the Commission