



February 24, 2014

Ms. Bridget Bohac, Chief Clerk
Office of the Chief Clerk, MC105
TCEQ
P.O. Box 13087
Austin, TX 78711-3087

Re: SOAH Docket No. 582-14-2123; TCEQ Docket No. 2014-0124-WR
Lower Colorado River Authority's Application for Emergency Authorization
related to its Water Management Plan

Dear Ms. Bohac:

Enclosed for filing are one original and seven (7) copies of the Lower Colorado River Authority's Exceptions to the Administrative Law Judges' Proposal for Decision and Order and Motion for Allocation of Transcript Expenses in the above-entitled matter.

Sincerely,

A handwritten signature in blue ink that reads "Lyn Clancy". The signature is fluid and cursive, written in a professional style.

Lyn Clancy
Managing Associate General Counsel & Senior Water Policy Advisor

cc: Parties on attached Service List
Barham Richard, TCEQ Office of General Counsel

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

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

**LCRA’S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGES’
PROPOSAL FOR DECISION AND ORDER
AND MOTION FOR ALLOCATION OF TRANSCRIPT EXPENSES**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

COMES NOW, the Lower Colorado River Authority (“LCRA”), Applicant in the above styled and docketed hearing before the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) and the State Office of Administrative Hearings (“SOAH”) regarding LCRA’s Application for Emergency Authorization and respectfully files the following Exceptions to the Proposal for Decision and Order and Motion for Allocation of Transcript Expenses. To that end, Applicant would respectfully state the following:

I. INTRODUCTION

LCRA urges the Commission to adopt an Emergency Order, with modifications as proposed below, that establishes a trigger for curtailing releases of stored water for most interruptible irrigation purposes at 1.1 million acre-feet (MAF), consistent with LCRA’s original application. LCRA further urges the Commission to modify the proposed order to more clearly confirm the effect of this order as it may affect future water rights applications by noting that this order is specific to the exceptional facts presented by this drought and not intended to establish precedent that would bind the Commission in its evaluation of regular amendments to LCRA’s Water Management Plan (WMP) or future emergency orders. LCRA further requests the

Commission to allocate expenses for reporting and transcribing the Commission's consideration of LCRA's requested relief at its February 12, 2014 agenda, February 12, 2014 preliminary hearing, and the hearing on the merits held on February 17, 2014, as proposed below, recognizing the unique and expedited nature of this proceeding that prompted LCRA to incur such expenses yet benefitted all involved.

II. EXCEPTIONS TO SPECIFIC PROPOSED FINDINGS OF FACT

For the reasons set forth below, LCRA excepts to specific Findings of Fact and requests modifications as follows:

A. FINDING OF FACT No. 2a

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.

Consistent with the Proposal for Decision (p. 30), LCRA agrees that this statement should be added as a new Ordering Provision 2a instead of a Finding of Fact. LCRA believes that, in light of the expedited nature of this proceeding, the placement of this statement as a Finding of Fact was likely a clerical error.

B. FINDING OF FACT No. 7

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.

Although this Finding of Fact was undisputed, LCRA introduced evidence of the water use total for 2013 through the testimony and supplemental affidavit of Ryan Rowney, dated February 7, 2014, LCRA Ex. 5B; Testimony of Ryan Rowney, Tr. at 40. LCRA requests that Finding of Fact No. 7 be modified as follows:

7. The firm water use by LCRA firm customers 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. The firm water use by LCRA firm customers in 2013 from lakes Buchanan and Travis was about 173,500 AF; about 33,500 AF was supplied for the environment; and about 22,000 AF was supplied for the Garwood Irrigation Division. The total use in 2013 was about 229,000 AF.

C. FINDING OF FACT No. 13c

- 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.**

Consistent with the Proposed Ordering Provision No. 5, which recognizes that this order addresses the specific relief requested and is not intended to establish precedent for amendments to the LCRA's WMP or future emergency relief, LCRA requests that Finding of Fact No. 13c be further qualified to recognize that this statement is specific to the exceptional facts presented by this drought. Moreover, as written, this Finding of Fact could be read to suggest that *any* releases of interruptible stored water for agriculture are precluded unless the lakes are full and lake inflows equal or exceed the releases; otherwise, any releases necessarily bring storage closer to 600,000 AF and could "drive firm customers into curtailment." This is clearly an untenable interpretation of the conditions in LCRA's water rights, which have long been interpreted to require LCRA to provide interruptible supply so long as reasonable firm demands could be satisfied without shortage in Drought of Record circumstances. The 1988 Adjudication Order provides that "[w]ater from conservation storage may be available for supply on an interruptible basis at any

time that the actual demand for stored water under firm, uninterruptible commitments is less than the Combined Firm Yield. To the extent that a demand for water may exist on a non-firm basis, such stored water should be made available.” LCRA Ex. 1, Attachment F, Lake Buchanan Finding 19.e and Lake Travis Finding 26.e. Firm demands are those that must be met through a repeat of the Drought of Record without shortage. LCRA Ex. 1, Attachment E, Texas Water Comm’n 1989 Order Approving Lower Colorado River Authority’s Water Management Plan and Amending Certificates of Adjudication Nos. 14-5478 and 14-5482, Finding of Fact No. 81. LCRA is to insure that there is no shortage of stored water to meet firm demands during a repeat of the Drought of Record; however, a particular drought could be worse than the Drought of Record and LCRA developed a drought monitoring procedure under which firm customers would be subject to mandatory curtailments. LCRA Ex. 1, Attachment E (2010 WMP at 4-31, 4-32). The Adjudication Order should not be read to require triggers that preclude *any* releases of interruptible water that could *possibly* lead to a DWDR declaration happening sooner than if the interruptible releases had not been made—as noted above, this interpretation would eliminate the concept of interruptible water unless the lakes were spilling.

In light of the exceptional drought, which may ultimately prove to be worse than the Drought of Record, LCRA’s evidence and argument support a conclusion that delaying conditions under which releases of interruptible stored water to the Gulf Coast and Lakeside irrigation divisions and Pierce Ranch could drive storage to 600,000 AF within 12 months is an appropriate interpretation of LCRA’s obligations. A trigger of 1.1 MAF provides an appropriate level of protection to firm customers who may have to take more drastic measures should extremely low inflow conditions persist and provides an appropriate condition under which limited releases for

interruptible stored water could resume. Testimony of Ryan Rowney, Tr. at 49-50, 88; Testimony of David Wheelock, Tr. at 191-94; 200-01; 209-10; 221-22; LCRA Ex. 8 at 4. Consistent with these concerns, LCRA requests that this Finding of Fact be modified 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 DWDR. Continuing to curtail interruptible stored water releases under the exceptional circumstances presented by this drought, which ~~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 within the next 12 months and drive firm customers into curtailment, in contravention of the 1988 Order and Certificates of Adjudication Nos. 14-5478 and 14-5482.

D. FINDING OF FACT No. 23

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.

LCRA proposes minor clarifications to this Finding of Fact to more precisely reflect the significance of the DWDR criteria discussed in this Finding. The WMP criteria for declaring a DWDR are indicator criteria that can be evaluated in real time to assess whether an ongoing drought might be worse than the 1950s Drought of Record. LCRA Ex. 1 at 5, n.9 & Attachment E (2010 WMP at 4-34). These criteria are not dispositive that we *are* experiencing a DWDR, but instead trigger certain drought response measures, such as curtailment of firm customers. The following changes to Finding of Fact No. 23 are recommended:

23. The first and second criteria for declaring a DWDR have been met. The drought has lasted for more than 24 months. Duration of drought for purposes of a DWDR declaration 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 criterion has also been met.

E. FINDING OF FACT No. 30a

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.

Consistent with the Proposed Ordering Provision No. 5, which recognizes that this order addresses the specific relief requested and is not intended to establish precedent for amendments to the LCRA's WMP or future emergency relief, LCRA requests that Finding of Fact No. 30.a. be further qualified to recognize that this statement is specific to the exceptional facts presented by this drought. Specifically, LCRA requests that this Finding of Fact be modified as follows:

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 under the exceptional circumstances presented by this drought. 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.

F. FINDINGS OF FACT No. 30c

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.

Consistent with LCRA's requested emergency relief using a trigger level of 1.1 MAF and recommended changes to ordering provisions as discussed herein, Finding of Fact No. 30c is altogether unnecessary and should be struck. Alternatively, LCRA's evidence (LCRA Ex. 6.A, Affidavit of Ron Anderson at 3 & Fig. 4)¹ supports revision of the Finding of Fact No. 23 to read as follows:

30c. At 1.1 million AF, with a continuation of the current hydrology, lake storage would drop to 600,000 AF no sooner than spring 2015. ~~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.~~

G. FINDING OF FACT No. 30d

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.

LCRA proposes a clarification to this finding related to the timeframe by which combined storage might have dropped below 600,000 acre-feet (AF). As drafted, it suggests that combined storage might have fallen below 600,000 by 2013, i.e. by *January* 2013 (at a time that combined storage was over 800,000 AF, and even with additional releases would have still been above 600,000 AF). The evidence, however, supports a conclusion that combined storage may have fallen below 600,000 AF by *September 19, 2013*. Accordingly, LCRA requests that Finding of Fact No. 30d be modified as follows:

¹ See also LCRA's Ex. 1, LCRA's Application filed Dec. 10, 2013, Brief and Attachments in Support of Application, at 14-15.

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 September 19, 2013.

H. FINDING OF FACT No. 30e

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.

LCRA proposes a clarification to this finding to read consistently with Finding of Fact 42a, which identifies the quantities as estimates, rather than minimum savings amounts. LCRA requests that this Finding of Fact be modified as follows:

30e. Water savings by Austin of ~~at least~~ an estimated 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.

I. FINDINGS OF FACT Nos. 30f & 30g

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.

LCRA agrees that, if a Drought Worse than Drought of Record (DWDR) had been declared in the Fall of 2013, the emergency relief sought under this application would likely have been unnecessary. However, these two Findings of Fact mischaracterize the conditions under which a DWDR declaration may be cancelled. The evidence offered in support of LCRA's

Application support modification of these two new Findings of Fact to correctly state the conditions under which the WMP allows releases of interruptible stored water to resume after declaration of a DWDR. Specifically, the WMP provides that that LCRA will cancel a DWDR declaration if: (a) the cumulative inflow deficit since the beginning of the drought is less than the envelope curve for cumulative inflow deficits by at least 5% for six consecutive months; or (b) the combined storage in Lakes Buchanan and Travis is greater than 1.4 MAF of water. Further, the WMP provides discretion to the LCRA Board of Directors to re-evaluate this threshold level to determine if a more accurate conservation storage level in lieu of 1.4 MAF can be determined, leaving open the possibility that a lower or higher storage condition may be appropriate. LCRA Ex. 1, Attachment E, WMP Chapter 4, at 4-34. Consistent with this provision, LCRA requests that Findings of Fact No. 30f and 30g be modified as follows:

- 30f. If storage had fallen below 600,000 AF in September 2013, before LCRA may resume releases of interruptible stored water, LCRA must cancel its declaration of a Drought Worse than Drought of Record consistent with the terms of the LCRA's current WMP. The current WMP specifies that such declaration will be cancelled if any of the following conditions are met: (a) the cumulative inflow deficit since the beginning of the drought is less than the envelope curve for cumulative inflow deficits by at least 5% for six consecutive months; or (b) the combined storage in Lakes Buchanan and Travis is greater than 1.4 million acre-feet of water. Moreover, the current WMP provides discretion to the LCRA to determine whether a different storage level in lieu of 1.4 million acre-feet may be appropriate. requires a refill to 1.4 million AF before resuming any interruptible stored water releases. Thus, if LCRA had declared a DWDR in 2013, 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 at this time because releases for interruptible stored water would have been precluded unless substantial recovery in storage or inflows had occurred.
- ~~30g. A 1.4 million AF refill level is a requirement of the current WMP when a DWDR has been declared.~~

J. FINDINGS OF FACT No. 31b and 31c

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: ...

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: ...

Collectively, the exhibits and testimony offered at the hearing that support Findings of Fact Nos. 31b & c support modification to these findings to indicate that the dates specified in Findings of Fact Nos. 31b & c actually reflect the *earliest* dates that the intakes are projected to be inoperable if no emergency relief is granted (31b), or if a trigger of 850,000 AF is established and combined storage increases to that level (31c). Testimony of Ron Anderson, Tr. at 138-42, Testimony of Aaron Archer, Tr. at 549-54; Highland Exs. R, S, & T. LCRA therefore requests that these Findings of Fact be modified as follows:

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~~as early as the following dates: ...

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~~as early as the following dates: ...

K. FINDING OF FACT No. 36

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.

Consistent with the Proposal for Decision (p. 11), LCRA requests that this Finding of Fact be corrected as set forth below. LCRA believes that, in light of the expedited nature of this proceeding, this was likely a clerical error.

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.

L. FINDING OF FACT No. 42

- 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.**

The LCRA Board action described in this Finding of Fact is triggered “if combined storage of lakes Buchanan and Travis is below 1.1 million acre-feet on March 1, 2014 and TCEQ has issued an order that results in the cutoff of interruptible stored water supply to the Gulf Coast, Lakeside and Pierce Ranch irrigation operations...” LCRA Ex. 1, Attachment B at ¶ 2. Consistent with this action, LCRA proposes that the finding be modified as follows:

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 to the Gulf Coast and Lakeside irrigation divisions and Pierce Ranch has been cut off. LCRA has not requested TCEQ approval of this action and this order does not address such action.

M. FINDING OF FACT No. 45a

- 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.

As drafted, this finding suggests that “low” inflows could result in the outcomes stated. The evidence, however, supports modification of this Finding of Fact to reflect that the outcomes noted would result only if inflows are exceptionally low, similar to those that have been experienced during the past three years of this persistent drought. LCRA Ex. 3, Ex. 6.C, Fig. A-1, A-5, Testimony of Ron Anderson, Tr. at 121-23. Further, as noted in Findings of Fact Nos. 15 and 21, the expectation of drought persistence is on a relatively short-term. The evidence that shows how exceptionally low inflows can produce these outcomes did not reflect LCRA’s “prediction” for 2015 and beyond. Highland Ex. R, Testimony of Ron Anderson, Tr. at 138-39. Rather, LCRA’s evidence supports the LCRA Board’s determination that, with a forecast that shows no clear signs of relief, it is appropriate to establish a higher curtailment trigger for interruptible stored water to ensure that releases for Gulf Coast, Lakeside, and Pierce Ranch do not drive storage below 600,000 AF within 12 months should such inflows persist. LCRA Ex. 4.B (Supp. Affidavit of Bob Rose at ¶ 6); Testimony of Bob Rose, Tr. at 32-24; Testimony of Ryan Rowney, Tr. at 49-50, 88; Testimony of David Wheelock, Tr. at 191-94; 200-01; 209-10; 221-22; LCRA Ex. 8 at 4. LCRA proposes that the finding be modified as follows:

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 exceptionally 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 exceptionally 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.

N. FINDINGS OF FACT Nos. 49a-c

- 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.**

LCRA offered expert opinion and evidence that the 1.1 MAF curtailment trigger sought in its application was an appropriate and prudent response to the emergency condition presented by the current drought. Testimony of Ryan Rowney, Tr. at 49-50, 88; Testimony of David Wheelock, Tr. at 191-94; 200-01; 209-10; 221-22; LCRA Ex. 8 at 4. Although LCRA agrees that some of its firm customers may face difficulties in extending their intakes or finding alternate water supplies over a 12-18 month period, the evidence provided at the hearing also demonstrated that LCRA's customers are already taking action to address these circumstances in light of the very real possibility that lake storage will drop to record low levels this summer, even without releases of interruptible stored water. LCRA is concerned that adoption of a 1.4 MAF trigger, when lakes are over 70% full, establishes an expectation that it would never be appropriate to release interruptible

stored water under any circumstance if storage were less than 1.4 MAF. The evidence in the record certainly does not support that conclusion. In fact, it is the testimony of LCRA's Ron Anderson that provides scientific and statistical support that, if the trigger for combined storage is set at 1.1 MAF on March 1, 2014, and storage increased to that level by March 1, 2014 and LCRA supplied interruptible stored water based on its requested relief, the risk of triggering a declaration of Drought Worse than Drought of Record is delayed to April 2014 at the earliest. LCRA Ex. 6A at ¶ 14.1. Indeed, to rely solely on the length of time it might take some LCRA firm customers to secure longer intakes or alternative supplies, which appears to be the basis of the ALJs' findings and recommendations, would suggest that a trigger set at full conservation storage would be equally appropriate since many customers will never be able to extend their intakes to reach the water as storage drops due to other physical or geographic limitations. Moreover, this approach would have the Commission inconsistently interpret relative contractual rights and obligations between LCRA and its firm customers, which clearly acknowledge that LCRA has no obligation to ensure that the water levels will be maintained at any particular elevation. Testimony of David Wheelock, Tr. at 224; *see also, e.g.*, Highland Ex. C at 4-5, ¶ G; Highland Ex. D at 6, ¶¶ 4 & 6.

Accordingly, LCRA requests the order establish a curtailment trigger at 1.1 MAF. Further, LCRA requests the Commission modify Findings of Fact 49.a-c, as follows:

LCRA requests that Finding of Fact 49.a be stricken altogether or, in the alternative, modified as follows:

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 under persistent drought conditions prior to combined storage falling below 600,000 AF. 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.~~

LCRA requests modification to Findings of Fact 49.b & 49.c. as follows:

- 49.ab. An emergency order setting forth a trigger of 1.1 million AF is an appropriate response to the conditions presented by ~~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 a trigger of 1.1 million AF would delay reaching a DWDR declaration for at least 12 months, thus providing additional time~~ ~~combined storage could fall to 600,000 AF before the end of the first crop irrigation season in 2015 and before most~~ for LCRA's firm water customers having raw water intakes on Lake Travis ~~can~~ to make adjustments to their raw water intake structures (if such adjustments are even feasible or practicable), ~~requiring declaration of a DWDR.~~
- 49.be. In light of the exceptional conditions presented by this drought, ~~A~~an interruptible stored water curtailment trigger should be set to avert, ~~rather than create,~~ conditions that could require declaration of a DWDR as a result of releases of interruptible stored water within the next 12 months.

III. EXCEPTIONS TO SPECIFIC PROPOSED CONCLUSIONS OF LAW & MOTION TO ALLOCATE EXPENSES

For the reasons set forth below, LCRA excepts to specific Conclusions of Law and requests an allocation of expenses as follows:

A. CONCLUSION OF LAW No. 1.b

- 1.b. 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.**

LCRA is concerned that, as written, Conclusion of Law No. 1.b suggests that LCRA must meet *all* firm customers demands, *even if* those demands are unreasonable or would otherwise constitute waste. This ignores LCRA's authority and obligation to adopt reasonable rules related to the use and distribution of water and water conservation and prevent waste of water. *See generally* Tex. Water Code § 11.037, Tex. Spec. Dist. Local Laws Code § 8503.004(a), Tex. Water Code §

49.004(a). Accordingly, to avoid this implication, LCRA requests Conclusion of Law 1.b be modified as follows:

1b. LCRA is obligated under a 1988 court order and Certificates of Adjudication Nos. 14-5478 and 14-5482 to meet the reasonable 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.

B. CONCLUSION OF LAW No. 7.

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

The transcribing of hearings is addressed in 30 Tex. Admin. Code § 80.23 of the Commission’s contested case hearings rules. Specifically, “a party, may, at its own expense, furnish a certified court reporter who the commission may designate as the official reporter for the proceeding.” 30 Tex. Admin. Code § 80.23(a). Commission rules also authorize an ALJ to request an original and two copies of a transcript of a proceeding and require the applicant to pay for the transcript subject to reimbursement from other parties upon assessment of costs. *Id.* § 80.23(b)(4) & (5). The ALJs in this matter requested an original transcript and two copies “by the day after the hearing ends” pursuant to 30 Tex. Admin. Code § 80.23(b)(4) & (5). *See* Order No. 1, Section IX, Transcript.

Section 80.23(d)(3) only authorizes an administrative law judge to include a recommendation for the assessment of costs. It also provides for the parties to agree upon the allocation or assessment of any reporting and transcription costs. 30 Tex. Admin. Code § 80.23(d)(4). Due to the fact that the hearings on LCRA’s requested relief were expedited, there was clearly no time to address the allocation of the reporting and transcription costs on the day of the hearing.

LCRA obtained the services of a court reporter to be present and transcribe the February 12, 2014, Commission agenda item relating to LCRA's requested emergency relief. LCRA was not aware that a request for a contested case hearing had been filed until early afternoon on February 11, 2014. The fact that LCRA had obtained the services of a reporting service for the Commission agenda benefitted all parties as the matter was referred to the State Office of Administrative Hearings (SOAH). This allowed for a preliminary hearing to be held within minutes of the Commission referral to SOAH.

At the request of the ALJs assigned to the hearing on the merits, LCRA requested expedited transcripts from the reporting service to provide the ALJs with transcripts after the morning and afternoon sessions of the hearing on the merits. This was necessary as the ALJs were required to provide a proposal for decision four days after the hearing on the merits. Providing the ALJs with this expedited transcript was more expensive than the cost for a transcript in the normal course of an administrative hearing. Yet, this additional cost and expedited transcript also benefitted all of the parties to the hearing by providing the ALJs with the references to testimony necessary to produce a proposal for decision within four days and allowing the parties access to the transcript to prepare exceptions and replies prior to the Commission's consideration of the proposal for decision on February 26th.

The cost for transcription of LCRA's item on the Commissioners' Agenda on February 12, 2014 with normal delivery of the transcript was \$1,900.30 (*See Attachment 1A*). Transcription of the prehearing conference later that day with expedited production of the transcript was \$1,012.50 (*See Attachment 1B*). Finally, the cost for transcription with rough draft production throughout

the hearing on the merits on February 17, 2014 and expedited delivery of the final transcript was \$8,102.50 (*See* Attachment 1C). This brings the total cost to \$11,015.30.

The Commission's rules clearly intend for the allocation of costs for recording and transcribing to be determined by the Commission. *Id.* This is further supported by SOAH Order No. 1 which states, "[W]hen the Commission makes a final decision in this case, the costs of the recording and transcription shall be allocated among the parties." *See* Order No. 1, Section IX, Transcript.

Based on the circumstances and conditions for the hearing on the merits as described above and the fact that the hearing on the merits was at the last minute request of CWIC, LCRA urges the Commission to allocate costs between the parties modify Conclusion of Law No. 7 as follows:

7. The costs of the recording and transcription of the February 12, 2014 Commission Agenda, the February 12, 2014 preliminary hearing, and the hearing on the merits held on February 17, 2014, shall be allocated among the parties as follows:
 - LCRA shall pay 20 % of the transcription costs;
 - CWIC shall pay 20 % of the transcription costs;
 - City of Austin shall pay 15 % of the transcription costs;
 - CTWC shall pay 10 % of the transcription costs;
 - Highland Lakes Firm Water Customer Cooperative shall pay 10 % of the transcription costs;
 - Garwood Irrigation Company & Lehrer/Lewis shall pay 15 % of the transcription costs;
 - AP Ranch shall pay 5 % of the transcription costs; and
 - National Wildlife Federation shall pay 5 % of the transcription costs.

IV. EXCEPTIONS TO ORDERING PROVISIONS

For the reasons set forth below, LCRA excepts to specific Ordering Provisions and requests modifications as follows:

A. ORDERING PROVISION No. 1

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.**

Consistent with LCRA's original application and the other proposed modified findings of fact and conclusions of law, LCRA requests the Commission replace Ordering Provision No. 1 with the original language from the Executive Director's order, as follows:

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 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 AF but below 1.2 million 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 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.
 - 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.
 - 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.

B. NEW ORDERING PROVISION No. 2a

As discussed under LCRA’s Exception to Finding of Fact No. 2a, LCRA believes the Proposed Order contains a clerical error and that Finding of Fact No. 2a. should be deleted and inserts as a new Ordering Provision 2a, to read as follows

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.

C. ORDERING PROVISION No. 7

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

Consistent with LCRA’s exception to Conclusion of Law No. 7, LCRA requests Ordering Provision No. 7 be replaced with the following:

7. The costs of transcribing the February 12, 2014 Commission Agenda, the February 12, 2014 Preliminary Hearing and the February 17, 2014 Hearing on the Merits shall be paid as follows:

- LCRA shall pay 20 % of the transcription costs;
- CWIC shall pay 20 % of the transcription costs;
- City of Austin shall pay 15 % of the transcription costs;
- CTWC shall pay 10 % of the transcription costs;
- Highland Lakes Firm Water Customer Cooperative shall pay 10 % of the transcription costs;
- Garwood Irrigation Company & Lehrer/Lewis shall pay 15 % of the transcription costs;
- AP Ranch shall pay 5 % of the transcription costs; and
- National Wildlife Federation shall pay 5 % of the transcription costs.

IV. SUMMARY AND CONCLUSIONS

For the reasons set forth above, and in consideration of LCRA’s prior legal briefing regarding the merits of its request on file with the Commission, LCRA urges that the Commission modify the order consistent with LCRA’s Exceptions to Proposal for Decision and Order and Motion for Allocation of Expenses.

Respectfully submitted,

LYN CLANCY
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Managing Associate General Counsel
GREG GRAML
State Bar No. 24059846
Associate General Counsel
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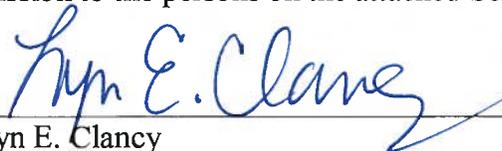
By:


Lyn E. Clancy

**ATTORNEYS FOR THE LOWER COLORADO
RIVER AUTHORITY**

CERTIFICATE OF SERVICE

I hereby certify that on February 24, 2014, seven true and correct copies of the Lower Colorado River Authority's LCRA's Exceptions to Proposal for Decision and Order and Motion for Allocation of Expenses were filed with the Chief Clerk of the Texas Commission on Environmental Quality; and were also served by electronic filing with the Chief Clerk of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings. In addition, a copy was served by e-mail transmission to the persons on the attached Service List.


Lyn E. Clancy

SERVICE LIST

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

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Administrative Law Judge
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Cooperative (HLFWCC)

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Lehrer/Lewis Interests and
Garwood Irrigation Company

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(512) 474-2233 (Tel)
(512) 474-6704 (Fax)
order@kennedyreporting.com

Kennedy Reporting Services, Inc.

Attachments 1A – 1C
*Invoices from Kennedy
Reporting Services, Inc.*

INVOICE

Kennedy Reporting Service, Inc.
13101 NW Freeway, Suite 210
Houston, TX 77040
Phone:512.474.2233 Fax:512.474.6704

Invoice No.	Invoice Date	Job No.
179136	2/24/2014	115414
Job Date	Case No.	
2/12/2014	SOAH 482-14-2123 TCEQ 2014-0124-W	
Case Name		
Application of the Lower Colorado River Authority for Emergency Authorization		
Payment Terms		
Due upon receipt		

Tabetha Jaske
Lower Colorado River Authority (LCRA)
3700 Lake Austin Blvd.
Austin, TX 78703

Charge for Preparing Excerpt from the:		
Commission Mtg.- No. 4	26.00 Pages	299.00
ADMINISTRATION/ ORIG	0.50	17.50
Charge for Preparation of Original Transcript for:		
Commission Mtg.- No. 4*	227.00 Pages	1,566.30
ADMINISTRATION/ ORIG	0.50	17.50
TOTAL DUE >>>		\$1,900.30

INVOICE(S) DUE UPON RECEIPT AND IS NOT CONTINGENT UPON YOUR CLIENT'S PAYMENT.

ANY QUESTIONS ABOUT BILLING SHOULD BE RAISED WITHIN 15 DAYS OF RECEIPT OF INVOICE OTHERWISE THE BILLING WILL BE DEEMED ACCEPTED AS PRESENTED AND PAID IN FULL.

WE APPRECIATE YOUR BUSINESS.

(-) Payments/Credits:	0.00
(+) Finance Charges/Debits:	0.00
(=) New Balance:	\$1,900.30

Tax ID: 74-1837735

Phone: 512-473-3200 Fax:512-473-4010

Please detach bottom portion and return with payment.

Tabetha Jaske
Lower Colorado River Authority (LCRA)
3700 Lake Austin Blvd.
Austin, TX 78703

Invoice No. : 179136
Invoice Date : 2/24/2014
Total Due : \$ 1,900.30

Remit To: **Kennedy Reporting Service, Inc.**
13101 NW Freeway, Suite 210
Houston, TX 77040

Job No. : 115414
BU ID : 21-KRS
Case No. : SOAH 482-14-2123 TCEQ 2014-0124-WR
Case Name : Application of the Lower Colorado River
Authority for Emergency Authorization

Attachment 1A

INVOICE

Kennedy Reporting Service, Inc.
13101 NW Freeway, Suite 210
Houston, TX 77040
Phone:512.474.2233 Fax:512.474.6704

Invoice No.	Invoice Date	Job No.
179137	2/24/2014	115435
Job Date	Case No.	
2/12/2014	SOAH 482-14-2123 TCEQ 2014-0124-W	
Case Name		
Application of the Lower Colorado River Authority for Emergency Authorization		
Payment Terms		
Due upon receipt		

Tabetha Jaske
Lower Colorado River Authority (LCRA)
3700 Lake Austin Blvd.
Austin, TX 78703

Charge for Preparation of Original Transcript for:
Prehearing Conference*
ADMINISTRATION/ ORIG

85.00 Pages 977.50
35.00

TOTAL DUE >>> \$1,012.50

INVOICE(S) DUE UPON RECEIPT AND IS NOT CONTINGENT UPON YOUR CLIENT'S PAYMENT.

ANY QUESTIONS ABOUT BILLING SHOULD BE RAISED WITHIN 15 DAYS OF RECEIPT OF INVOICE OTHERWISE THE BILLING WILL BE DEEMED ACCEPTED AS PRESENTED AND PAID IN FULL.

WE APPRECIATE YOUR BUSINESS.

(-) Payments/Credits: 0.00
(+) Finance Charges/Debits: 0.00
(=) New Balance: **\$1,012.50**

Tax ID: 74-1837735

Phone: 512-473-3200 Fax:512-473-4010

Please detach bottom portion and return with payment.

Tabetha Jaske
Lower Colorado River Authority (LCRA)
3700 Lake Austin Blvd.
Austin, TX 78703

Invoice No. : 179137
Invoice Date : 2/24/2014
Total Due : \$ 1,012.50

Remit To: **Kennedy Reporting Service, Inc.**
13101 NW Freeway, Suite 210
Houston, TX 77040

Job No. : 115435
BU ID : 21-KRS
Case No. : SOAH 482-14-2123 TCEQ 2014-0124-WR
Case Name : Application of the Lower Colorado River
Authority for Emergency Authorization

Attachment 1B

INVOICE

Kennedy Reporting Service, Inc.
13101 NW Freeway, Suite 210
Houston, TX 77040
Phone:512.474.2233 Fax:512.474.6704

Invoice No.	Invoice Date	Job No.
179135	2/24/2014	115439
Job Date	Case No.	
2/17/2014	SOAH 482-14-2123 TCEQ 2014-0124-W	
Case Name		
Application of the Lower Colorado River Authority for Emergency Authorization		
Payment Terms		
Due upon receipt		

Tabetha Jaske
Lower Colorado River Authority (LCRA)
3700 Lake Austin Blvd.
Austin, TX 78703

Charge for Preparation of Original Transcript for:

HOM	601.00 Pages	6,911.50
ADMINISTRATION/ ORIG		35.00
Rough Draft/Rough ASCII	578.00 Pages	1,156.00
TOTAL DUE >>>		\$8,102.50

INVOICE(S) DUE UPON RECEIPT AND IS NOT CONTINGENT UPON YOUR CLIENT'S PAYMENT.

ANY QUESTIONS ABOUT BILLING SHOULD BE RAISED WITHIN 15 DAYS OF RECEIPT OF INVOICE OTHERWISE THE BILLING WILL BE DEEMED ACCEPTED AS PRESENTED AND PAID IN FULL.

WE APPRECIATE YOUR BUSINESS.

(-) Payments/Credits:	0.00
(+) Finance Charges/Debits:	0.00
(=) New Balance:	\$8,102.50

Tax ID: 74-1837735

Phone: 512-473-3200 Fax:512-473-4010

Please detach bottom portion and return with payment.

Tabetha Jaske
Lower Colorado River Authority (LCRA)
3700 Lake Austin Blvd.
Austin, TX 78703

Invoice No. : 179135
Invoice Date : 2/24/2014
Total Due : \$ 8,102.50

Remit To: **Kennedy Reporting Service, Inc.**
13101 NW Freeway, Suite 210
Houston, TX 77040

Job No. : 115439
BU ID : 21-KRS
Case No. : SOAH 482-14-2123 TCEQ 2014-0124-WR
Case Name : Application of the Lower Colorado River
Authority for Emergency Authorization

Attachment 1C