

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

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

**CLIVE RUNNELLS d.b.a. AP RANCH's EXCEPTIONS
TO THE PROPOSAL FOR DECISION**

Pursuant to the instructions of the TCEQ General Counsel on February 14, 2014, and the instructions of the ALJs in this matter, Clive Runnells d.b.a. AP Ranch (hereafter "AP Ranch") files these exceptions to the Proposal for Decision ("PFD") issued on February 24, 2014. AP Ranch notes that all the parties to the hearing operated under extremely tight deadlines, and applauds the ALJs, as well as the other parties, for their handling of the hearing.

Background and Central Issue

The central issue addressed by the PFD is whether, on March 1, 2014 at 11:59 p.m., the combined storage in Lakes Buchanan and Travis will be at a level that requires LCRA to release water for downstream interruptible irrigation uses. No party to the hearing argued that such releases should be required at the current combined storage levels. Therefore AP Ranch accepts that some emergency authorization is required to allow LCRA to deviate from its approved 2010 Water Management Plan.

Exceptions

1. General Exception: No interruptible irrigation releases are a plausible scenario under any trigger level.

When the TCEQ meets at 9:30 a.m. on February 26, 2014, it will decide whether to affirm, modify, or set aside the ED's Emergency Authorization. After that decision is made, the LCRA and other parties will only have to wait for three days and a few hours to find out whether

the combined storage will reach whatever trigger level is approved in the final order. It matters little whether that trigger level is set at 850,000 AF (as in previous emergency orders), or 1.1 million AF (as in the ED's proposed order) because no party presented any evidence that it expects that either of these two trigger levels will be met on March 1. The CWIC, representing the downstream interruptible irrigation users, testified that they do not expect surface water deliveries from LCRA this year. In short, for the third year in a row, there will be no rice crop irrigated by surface water provided by LCRA to Lakeside and Gulf Coast.

Therefore setting any trigger level reasonably above the current storage will have the immediate effect of curtailing releases for downstream interruptible irrigation uses. The rice farmers that rely on those releases will not plant their first crop, and there will be no customers for a second round of releases because without a first crop, there will be no second (ratoon) crop.

2. Exception to FOF 42i: There is no credible threat to public health and safety regarding landscape watering.

The application of LCRA requested, and the ED's emergency authorization set, the trigger level at 1.1 million AF. The PFD proposes setting the trigger level at 1.4 million AF, relying upon the arguments and testimony of the City of Austin ("City"), Central Texas Water Coalition ("CTWC") and the Highland Lakes Firm Water Customer Cooperative ("Highland"). These entities argued that their water conservation efforts to date are the most that they can do during the drought. The City, CTWC and Highland maintained that continued outdoor watering of landscapes and recreational areas for up to 15 hours a week was necessary to prevent an "imminent threat to public health and safety." Their witnesses variously argued that continued outdoor watering was required to avoid fire risks, dusty conditions, injuries to small children on

hard ground, economic harm to the landscape irrigation industry and landscapers in general. None of these purported threats to public health and safety were backed up by specific examples.

Thus, AP Ranch excepts to proposed FOF 42i, because it is unsupported by the record. AP Ranch also excepts to proposed FOF 42i, because it is not credulous, as it is not reasonably possible that there are serious public threats to children based on “dry” or “firm” ground. Maintaining the economic benefits to the landscape industry does not implicate safety or health.

3. Exceptions to FOFs 41a, 42e, 42f, and 42g: The emergency order will not alleviate existing water supply concerns caused by the parties following their drought contingency plans.

The City and Highland presented witnesses testifying that their **existing water systems were currently unsafe**. They relied upon examples of water stagnating in the storage tanks, low disinfectant levels in the pipelines, and the risk of illegal cross connections from homeowners drilling and connecting their own groundwater wells. However, this testimony related entirely to measures implemented by the water systems **as part of their existing drought management plans**.

These drought contingency measures are in place because of the existing lake storage levels, and will remain in place regardless of the details of this emergency authorization. For example, the City’s Drought Contingency Plan will require the current Stage 2 measures until combined storage reaches 900,000 AF. The testimony also established that no party had sought emergency variances from TCEQ to deviate from their approved drought/conservation plans. In short, this emergency authorization will not alleviate the purported “imminent threat to public health and safety” if the testimony is true. Short of building a better water supply system, the City seems to be arguing that **the only way to alleviate the purported threat is to increase the**

rate at which water moves through their system by increasing demand beyond that allowed in their Drought Contingency Plan. It is this mindset that caused the precipitous decline in lake storage between May 22, 2012, to September 19, 2013 discussed by the ALJs (PFD at 22). During that time period “combined storage volume staggeringly fell from 1.037 million AF to 637,000 AF in just 16 months, ... **That was a period of time when no stored water was being released to Pierce Ranch, Gulf Coast, and Lakeside...**” (PFD at 22).

In other words, the action authorized by this emergency order will not alleviate these particular threats to public health and safety, because the only thing that alleviates the threats discussed by the City and Highland is more rain and increased storage in the lakes. Merely preventing further declines in stored water due to releases for interruptible irrigation uses does nothing to address these threats. AP Ranch excepts to FOFs 41a, 42e, 42f, and 42g as immaterial and irrelevant.

3. Exceptions to FOFs 30c, 49(b) and COLs 1(a) & (b), 4: The notion that an imminent threat exists at 1.4 million AF is unsupportable.

AP Ranch excepts to all FOFs and COLs that relate to the 1.4 million AF trigger level, including FOFs 30c, 49b as well as COLs 1(a) & (b), 4. For the TCEQ to affirm a finding that an “imminent threat to public health and safety” exists all the way up to 1.4 million AF of combined storage indicates that something has gone seriously awry with the notion of what constitutes an emergency.

At 1.4 million AF, Lakes Buchanan and Travis will be seventy percent full. The City of Austin will have long ago lifted its Stage 2 drought restrictions and up to 30 hours a week of landscape watering will be allowed by its nearly one million residents. Many other LCRA

municipal customers will have entirely cancelled all drought restrictions and unlimited water use will be the norm. As the drought continues, the practical impact of the ALJs proposed increase to a 1.4 million AF trigger point is unclear. However, despite the proposed ordering provision No. 5 (“... is not meant as precedent” for future actions), parties will undoubtedly look to this decision and attempt to argue in future proceedings that the findings are established precedent.

An emergency finding that releases for downstream interruptible irrigation uses during the duration of the order would cause or increase the likelihood of combined storage levels reaching 600,000 AF is all that is required. The ordering provision to implement this finding should simply state that no releases for downstream interruptible irrigation uses are permitted during the duration of the order.

4. Adoption of exceptions filed by the National Wildlife Federation.

Finally, AP Ranch adopts and incorporates the exceptions filed by the National Wildlife Federation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this 24th day of February, 2014, a true and correct copy of the foregoing instrument was served on all attorneys of record by the undersigned via the method designated below.

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