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ATTORNEYS AT LAW

February 24, 2014

*Via:* <http://www10.tceq.state.tx.us/epic/efilings>  
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**Re: SOAH DOCKET NO. 582-14-2123  
TCEQ DOCKET NO. 2014-0124-WR  
Application of Lower Colorado River Authority for Emergency Authorization**

Dear Docket Clerks:

Please accept for filing in the above-referenced dockets the attached Exceptions to the Administrative Law Judges' Proposal for Decision and Proposed Order filed by the Highland Lakes Firm Water Customer Cooperative.

If you have any questions, please do not hesitate to call.

Respectfully submitted,

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HIGHLAND LAKES FIRM WATER CUSTOMER  
COOPERATIVE

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

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

**HIGHLAND LAKES FIRM WATER CUSTOMER COOPERATIVE'S  
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGES'  
PROPOSAL FOR DECISION AND PROPOSED ORDER**

COMES NOW, Highland Lakes Firm Water Customer Cooperative (**Highland**) and files these Exceptions to the Administrative Law Judges' (**ALJs**) Proposal for Decision (**PFD**) and Proposed Order in the above-styled and referenced matter.

I.

Highland respectfully urges the Commission to adopt the PFD and Proposed Order issued by ALJs William G. Newchurch and Travis Vickery, with a minor modification (discussed below).

The ALJs correctly concluded that the Commission should grant the emergency order pursuant to Texas Water Code § 11.139 and 30 Tex. Admin. Code § 297.17 because notice to the Governor has been properly given and the evidence showed 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.

As directed by the Commission, the ALJs received, evaluated and weighed the factual and expert evidence put forward by 10 diverse parties, including approximately 16 hours of oral testimony. Oral and written testimony was presented, and each party had the opportunity to cross examine all witnesses. Per the Commission's direction, most of the evidence focused on

the appropriate combined storage “trigger level” for cutting off releases of stored water from Lakes Buchanan and Travis for the benefit of LCRA’s non-firm, interruptible customers. After hearing the testimony and considering all of the evidence presented by all of the parties, the ALJs correctly determined that the combined storage trigger level should be raised to 1.4 million acre feet (MAF). The ALJs also correctly determined that CWIC’s “Minimal Proposal” is an inappropriate attempt to strip findings of fact from the order that were supported by the great weight of the evidence demonstrating that there is an imminent threat to the public health and safety and that there are no feasible and practicable alternatives to the proposed emergency order to address that threat. The ALJs also correctly determined that CWIC’s “Extensive Proposal” requested findings of fact and conclusions of law that were not supported by the great weight and preponderance of the evidence, were irrelevant, ignored key provisions of LCRA’s water rights, were legally inapplicable, or were unnecessary. The ALJs also correctly determined that the Commission is authorized by the plain language in Tex. Water Code § 11.139 to modify an emergency order issued by the Executive Director, and compelled by the provisions in LCRA’s certificates of adjudication, the court order approving those certificates, and the evidence developed during the hearing, to increase the trigger level to a level greater than that initially requested by LCRA in its application.

## II.

Highland agrees with the ALJs’ Proposed Ordering Provisions #1(a) and (b) that no stored water be released from Lakes Travis or Buchanan for customers in LCRA’s Gulf Coast and Lakeside Divisions and Pierce Ranch if the combined storage in the lakes is below 1.4 MAF on March 1, 2014, and that if combined storage is at or above 1.4 MAF on March 1, 2014, LCRA may 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.

## III.

Highland does not agree, however, with Proposed Ordering Provision #2. Proposed Ordering Provision #2 states that LCRA may provide interruptible stored water to Garwood Irrigation Division and Pierce Ranch “*to the extent required by their contracts.*” Those contracts were never admitted into evidence and their terms are unknown. The record does not reveal how

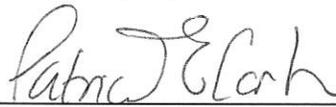
much water either of those entities might be entitled to (or allegedly entitled to). The TCEQ staff did not review those contracts as part of their review of the application. (Tr. at p. 31, ll. 1-7; and p. 450, ll. 4-21). Garwood's attorney stated that the terms of Garwood's contract with LCRA are in dispute, and that the dispute "centers in part around the definitions and the meanings of the Garwood contracts with respect to firm and interruptible." (Tr. at p. 30, ll. 14-25) The current terms of the Garwood contract and the disputed provisions relating to the meanings of the terms "firm and interruptible" seem very relevant to the subject of the emergency order. Because there was no evidence presented regarding the nature or contents of either the Garwood or the Pierce Ranch contracts, and because of the terms of the Garwood contract are disputed and subject to change through private "negotiations" between LCRA and Garwood, it is inappropriate to allow LCRA unfettered discretion to provide interruptible stored water to Pierce Ranch and to Garwood "to the extent required by their contracts." At the very least, as a matter of law, those contracts must be consistent with LCRA's Certificates of Adjudication Nos. 14-5478 and 14-5482, both as amended. The contracts must also be consistent with the Order Adjudicating LCRA's Water Rights for Lakes Buchanan and Travis, *In re The Exceptions of the Lower Colorado River Authority and the City of Austin to the Adjudication of Water Rights in the Lower Colorado River Segment of the Colorado River Basin*, No. 115, 414-A-1 (264th Dist. Ct., Bell County, Tex. April 20, 1988) (LCRA Exhibit A, Attachment F), and with the prior orders of this Commission (LCRA Exhibit A, Attachment A). For these reasons, Highland recommends that Ordering Provision #2 be revised to read as follows (underscored language added):

2. LCRA may provide interruptible stored water to the Garwood Irrigation Division and Pierce Ranch, to the extent required by and consistent with (a) the Order Adjudicating LCRA's Water Rights for Lakes Buchanan and Travis, *In re The Exceptions of the Lower Colorado River Authority and the City of Austin to the Adjudication of Water Rights in the Lower Colorado River Segment of the Colorado River Basin*, No. 115, 414-A-1 (264th Dist. Ct., Bell County, Tex. April 20, 1988), (b) LCRA's Certificates of Adjudication Nos. 14-5478, as amended, and 14-5482, as amended, (c) prior orders of this Commission, and (d) their contracts.

This requested revision is based solely on the record (see record citations above) and is a revision that the Commission is authorized to make under Section 2003.047(m) of the Texas Government Code.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that the foregoing "Highland Lakes Firm Water Customer Cooperative's Exceptions to the Administrative Law Judges' Proposal for Decision and Proposed Order" was transmitted via email to each of the parties on the attached mailing list and electronically filed with the TCEQ and SOAH docket clerks on Monday, February 24, 2014.

*(See attached service list)*



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TCEQ DOCKET NO. 2014-0124-WR  
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