

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## **NOTICE OF A HEARING TO AFFIRM, MODIFY, OR SET ASIDE THE EXECUTIVE DIRECTOR'S EXTENSION OF AN EMERGENCY ORDER**

The Executive Director has extended an emergency order issued pursuant to Tex. Water Code § 11.139 to the Lower Colorado River Authority to amend its Water Management Plan ("WMP"), Permit No. 5838. The Commission will hold a hearing to affirm, modify, or set aside this emergency order extension on June 4, 2014.

**BACKGROUND AND APPLICATION:** LCRA filed a request on December 10, 2013, for an emergency order to temporarily amend its 2010 WMP, Permit No. 5838, under Sections 5.501, 11.138, and 11.139 of the Texas Water Code and the Governor's Emergency Disaster Proclamation related to the drought. Specifically, LCRA sought an emergency order to amend its WMP to change requirements for the release of water to irrigation operations downstream in 2014 due to persistent drought conditions in the Highland Lakes.

LCRA's Certificates of Adjudication Nos. 14-5478 and 14-5482, which provide for the impoundment in and diversion of state waters from Lakes Buchanan and Travis on the Colorado River in Burnet, Llano, and Travis Counties, Texas, requires LCRA to prepare and follow a WMP to describe 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. LCRA's WMP also provides how firm and interruptible water commitments from the lakes will be curtailed during times of drought including a repeat of the Drought of Record.

In its December 10, 2013 request, LCRA sought the authority to provide no interruptible stored water to Gulf Coast Division, Lakeside Division, and Pierce Ranch if the combined storage of Lakes Travis and Buchanan is below 1.1 million acre feet (AF) on the trigger date of March 1, 2014. Additionally, it requested that the stored water releases be smaller for combined storage levels above 1.1 million AF than that set forth by the 2010 Water Management Plan.

On January 24, 2014, the Executive Director issued an emergency order granting the relief requested by LCRA. On February 12, 2014, the Commission held an open meeting to affirm, modify, or set aside the Executive Director's emergency order. After hearing public comment and party presentations, the Commission

referred the matter to the State Office of Administrative Hearings (“SOAH”) so that additional evidence could be considered.

After establishing the participating parties and holding expedited discovery, SOAH held a hearing on the merits on February 17, 2014. The administrative law judges (“ALJs”) issued their proposal for decision (“PFD”) on February 21, 2014, which closely resembled the relief requested by LCRA, but recommended full curtailment should combined storage levels in Lakes Buchanan and Travis be below 1.4 million acre feet on March 1, 2014.

At its February 26, 2014 Agenda meeting, the Commission considered the ALJs’ PFD, the Executive Director’s emergency order, LCRA’s request, and the evidence in the record. The Commission determined that, given the current combined storage levels and the close proximity of the March 1 trigger date, the interruptible customers in Pierce Ranch and the Gulf Coast and Lakeside Divisions should be completely curtailed. Therefore, the Commission affirmed the Executive Director’s emergency order, but modified it so that the interruptible customers were curtailed regardless of the combined storage levels.

On May 5, 2014, LCRA requested that the emergency order be extended for 60 days, pursuant to Tex. Water Code § 11.139. On May 22, 2014, the Executive Director granted the extension as requested by LCRA.

**STATUTORY AUTHORITY:** Tex. Water Code § 11.139 provides that the Commission may grant an emergency order to amend an existing permit 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 procedure and there are no feasible practicable alternatives to the emergency authorization.

Under section 11.139, the Executive Director may issue the emergency order without notice except to the Governor, if he finds that an imminent threat to the public health and safety exists which requires emergency action before the Commission takes action. In such case, the Commission must hold a hearing to affirm, modify, or set aside the Executive Director’s order as soon as practicable but not later than 20 days after the emergency authorization is granted. The notice of the Commission hearing shall be given as the Commission considers practicable under the circumstances.

An emergency order issued under section 11.139 may extend for a period of not more than 120 days. Such emergency action may be extended once for not longer than 60 days.

**EXECUTIVE DIRECTOR’S EMERGENCY ORDER RENEWAL:** The Executive Director has found that an imminent threat to public health and safety exists which requires emergency action before the Commission can take action, and 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. The Executive Director provided notice to the Governor on May 21, 2014, and extended LCRA's emergency order on May 22, 2014.

The Executive Director's extension of the emergency order can be found on TCEQ's website at [www.tceq.texas.gov/agency/lcra-emergency-order](http://www.tceq.texas.gov/agency/lcra-emergency-order). This notice of the Commission's hearing to affirm, modify, or set aside is being mailed to all water right holders in the Colorado River Basin.

**HEARING:** The Commission's hearing to affirm, modify, or set aside will be at:

9:30 a.m., Wednesday, June 4, 2014  
TCEQ Commission Office  
12100 Park 35 Circle, Room 201S, Building E,  
Austin, Texas

**PUBLIC COMMENT:** Persons may attend the public hearing and make oral comment. Written public comments should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at [www.tceq.texas.gov/goto/eFilings](http://www.tceq.texas.gov/goto/eFilings). In order for a comment to be included in the record, it must be filed by 5:00 p.m. on Tuesday June 3, 2014.

**INFORMATION:** For additional information, individual members of the general public may contact Small Business and Environmental Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our website at [www.tceq.tx.us](http://www.tceq.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.state.tx.us>.

Issued: May 23, 2014



Bridget C. Bohac  
Chief Clerk