

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



Notice of an Application from the Lower Colorado River Authority For an Emergency Order Reducing Instream Flow Requirements for the Blue Sucker under its Water Management Plan

Permit No. 5838

On December 23, 2014, the Lower Colorado River Authority (LCRA) filed an application with the Texas Commission on Environmental Quality (TCEQ) for an emergency order under Tex. Water Code §§ 5.506, 11.139, or 11.148, and 30 Tex. Admin. Code (TAC) §§ 35.24, 35.25, 35.101, or 295.91, to amend its Water Management Plan (WMP) to reduce the requirement to maintain a minimum streamflow of 500 cubic feet per second (cfs) for six consecutive weeks between March and May from Bastrop to Eagle Lake for the Blue Sucker. LCRA's requested relief would reduce the requirement from 500 cfs to 300 cfs for this time period.

The TCEQ Executive Director will consider whether to grant this request and issue an emergency order on February 18, 2015. If the Executive Director issues an order, the Commission will hold a hearing to affirm, modify or set aside the order on March 4, 2015. See more information below.

Summary of LCRA's application:

LCRA has the right to divert and use up to 1.5 million acre feet (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), currently dated 2010, which is part of these certificates and has its own number, Permit No. 5838.

LCRA's WMP describes how LCRA will manage and curtail supplies from the lakes during times of drought including through a repeat of the Drought of Record. 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. Environmental flow needs include instream flows for the river, and bay and estuary freshwater inflows.

LCRA states in its application that:

The inflow conditions experienced in the last several years present an extreme drought situation that was not contemplated when the special conditions related to instream flows were incorporated into the 2010 WMP. LCRA may be required to make a declaration of a Drought Worse than the Drought of Record (DWDR) as soon as March 2015. Two of the three criteria for a DWDR have been met, leaving only a lake storage level of 600,000 acre-feet as the remaining criteria to be met. When LCRA makes a DWDR declaration, firm water customers are curtailed and firm water for environmental requirements is subject to a pro rata reduction.

Under the 2010 WMP, LCRA is required to maintain critical instream flows, including maintaining a minimum continuous instream flow of 120 cfs from Bastrop to Eagle Lake at all times, and a minimum flow of 500 cfs for a continuous six week period between March and May from Bastrop to Eagle Lake to provide higher flows to support habitat for Blue Sucker spawning. If the river is not supplying this amount during a six week period from March to May, stored water must be released. In 2012, this instream flow requirement resulted in releases of about 22,991 AF and in 2013, this instream flow requirement resulted in releases of about 15,678 AF from the lakes. In 2014, LCRA was granted emergency relief from the 500 cfs requirement and operated under the 300 cfs requirement it requests again in this application. From January to November 2014, the amount released from the Highland lakes for instream flows was approximately 4,600 AF; approximately 17,000 AF of water was preserved in storage due to the 2014 Blue Sucker Emergency Order.

Without emergency relief on or before the end of May 2015, LCRA could be required to release as much as 21,000 AF of water in storage in Lakes Buchanan and Travis to meet the Blue Sucker instream flow requirement in the 2010 WMP, further lowering lake levels.

LCRA monitoring has shown that water quality standards are maintained in the river segments between Bastrop and Eagle Lake if the flow levels have been near or lower than 300 cfs with few exceptions. The Blue Sucker is a State-Threatened Species. Based on instream flow studies evaluating the habitat of the Blue Sucker, LCRA states that at 500 cfs, the flow provides for 93 to 100% of the maximum available spawning habitat for the Blue Sucker, while at 300 cfs, at least 86 % of the habitat will be supported.

There are no reasonably available and feasible practicable alternative water supplies or water management or conservation strategies that could be obtained or implemented at this time that would replace the volume of water that LCRA might otherwise have to release from the lakes if the requested relief is not granted that LCRA is not already pursuing. It takes many years to develop new water supplies and transport them to the areas where they are needed. LCRA and its customers over the past three years have implemented the requirements in their water conservation plans and drought contingency plans to reduce demands. However, for the most part, LCRA's firm customers have also not been able to secure any readily available alternative sources of water supply that could substitute for their reliance on the Colorado River.

LCRA is seeking emergency relief from its Water Management Plan to curtail releases of interruptible stored water for most irrigated agriculture this year and has obtained authorizations for the temporary use of its downstream water rights to help meet firm customer demands in the lower basin. Those actions have delayed the timeframe for

reaching a DWDR declaration. As combined storage drops, it becomes more difficult and expensive for the retail water suppliers to pump water from lakes Buchanan and Travis. There is no readily available option that would immediately offset the irreversible impact of releasing additional stored water for instream flows.

Statute and Rule: The Commission or Executive Director may issue an emergency order under Tex. Water Code §§ 5.506 and 11.148 and 30 TAC § 35.101 to temporarily suspend conditions in water rights relating to beneficial inflows to bays and estuaries and instream uses during an emergency. The Commission or Executive Director must find that: (1) emergency conditions exist that present an imminent threat to public health, safety, and welfare, and that: (A) override the necessity to comply with general procedures and criteria for changing the conditions in a water right; or (B) override the need to maintain the balance between protecting environmental flow need and other public interests and relevant factors; and (2) there are no feasible, practicable alternatives to the emergency order.

Under 30 TAC § 35.25(c), an affected person may request an evidentiary hearing on issuance of the emergency order. Pursuant to 30 TAC § 35.101(g), the Commission may refer the application to the State Office of Administrative Hearings for an expedited hearing.

Executive Director and Commission Action: The Executive Director will consider LCRA's application on February 18, 2015. Pursuant to Tex. Water Code §§ 5.506 and 11.148, and 30 TAC § 35.101(i), the TCEQ is providing notice to the TPWD and the water right holders from the Highland Lakes downstream to Matagorda Bay that if the Executive Director issues an Emergency Order, the Commission will consider whether to affirm, modify, or set aside the order at a hearing on March 4, 2015 at 9:30 a.m. at:

Texas Commission on Environmental Quality
12100 Park 35 Circle
Building E, Room 201S
Austin Texas

Information: Persons may attend the Commission hearing and may file written comment no later than 5:00 p.m. on March 2, 2015 by filing it with the Office of Chief Clerk, MC 105, TCEQ, P. O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/eFilings.

For additional information, individual members of the general public may contact the Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea informacion en Espanol, puede llamar al 1-687-4040 o por el internet al www.tceq.texas.gov.

Issued: February 9, 2015