

THE STATE OF TEXAS  
COMMISSIONER OF TRAVIS

I hereby certify that this is a true and correct copy of a Texas Water Commission Document, BEFORE THE ORIGINAL of which is filed in the permanent records of the Commission. TEXAS WATER COMMISSION and the seal of office on

IN RE: INTERIM ORDER  
ESTABLISHING OPERATIONAL  
PROCEDURES PERTAINING TO  
SPECIAL CONDITION 5.B.,  
CERTIFICATE OF ADJUDICATION  
NO. 21-3214, HELD BY THE  
CITY OF CORPUS CHRISTI,  
NUECES RIVER AUTHORITY, AND  
THE CITY OF THREE RIVERS

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*Gloria A. Vasquez*  
Gloria A. Vasquez, Chief Clerk  
Texas Water Commission

AN AGREED ORDER amending the interim operational procedures and establishing an Advisory Council pertaining to Special Condition 5.B., Certificate of Adjudication No. 21-3214

On March 4, 1992, came to be considered before the Texas Water Commission ("Commission") the "Settlement of the Parties to the Proceedings in the Matter of an Order Establishing Interim Operating Procedures and the Establishment of an Advisory Council Pertaining to Special Condition 5.B., Certificate of Adjudication No. 21-3214, held by the City of Corpus Christi, the Nueces River Authority, and the City of Three Rivers" (the Settlement shall be referred herein as the "Settlement Agreement" and the two cities and river authority shall be referred herein as "Certificate Holders").

After hearing and considering the Settlement Agreement and the presentations of the parties, the Commission finds that it has authority to establish operational procedures under Special Condition 5.B. of Certificate of Adjudication No. 21-3214, and that interim operational procedures which have been established should be amended. The Commission also finds that, because of the need to:

continue to monitor the ecological environment and health of related living marine resources of the estuaries to assess the effectiveness of freshwater inflows provided by interim requirements contained in this Agreed Order relating to releases and spills from Choke Canyon Reservoir and Lake Corpus Christi (collectively referred to as the Reservoir System), as well as return flows;

develop additional, necessary studies and data relating to such inflow requirements;

develop a comprehensive, coordinated, regional water management plan for the area served by the Reservoir System;

establish such operational procedures as necessary within five years of issuance of this Agreed Order which fulfill the purposes of Special Condition 5.B.; and

evaluate potential impacts which may occur to the reservoirs as well as to the availability of water to meet the needs of the Certificate Holders and their customers which may result from those operational procedures,

an advisory council should be established to consider such additional information and related issues and to formulate recommendations for the Commission's review and action not later than five years from issuance of this Agreed Order.

For the purposes of this order, the Commission finds that return flows, other than to Nueces Bay and Rincon Bayou, that are delivered to Corpus Christi Bay and other receiving estuaries are currently in the assumed amount of 54,000 acre-feet per annum (per calendar year), and that they shall be credited at this amount during the term of this Order.

This Agreed Order is not intended, nor shall it be construed in any way, as a definition or interpretation of Special Condition 5.B. contained in Certificate of Adjudication No. 21-3214. Nor is it intended to constitute the permanent operational procedures as provided by Special Condition 5.B. By consenting to the issuance of this Agreed Order, no party admits or denies any claim, nor waives with respect to any subsequent proceeding any interpretation or argument which may be contrary to the provisions of this Agreed Order. The Commission specifically notes the contention of the Certificate Holders that the provisions

contained in this Agreed Order infringe on the water rights of the Certificate Holders. The Certificate Holders may at any time, in accordance with applicable Commission rules, procedures, and other State law, assert their rights and privileges and, by agreeing to the entry of this Agreed Order, they are not waiving or surrendering any portion of their rights under Certificate of Adjudication No. 21-3214.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS WATER COMMISSION THAT:

1. a. The City of Corpus Christi, as operator of the Choke Canyon/Lake Corpus Christi reservoirs (the "Reservoir System"), shall provide not less than 151,000 acre-feet of water per annum (per calendar year) for the estuaries by a combination of releases and spills from the Reservoir System at Lake Corpus Christi Dam and return flows to Nueces and Corpus Christi Bays and other receiving estuaries, as computed and to the extent provided for herein. Of the foregoing amount at least 97,000 acre-feet is to be delivered to Nueces Bay and/or Rincon Bayou area by a combination of releases and spills from the Reservoir System as well as diversions and return flows. The remaining amount, consisting of return flows other than to Nueces Bay and/or Rincon Bayou area, may be delivered to Corpus Christi Bay and other receiving estuaries. In accordance with the monthly schedule and except as provided otherwise in

this Agreed Order, inflows to Nueces Bay and/or Rincon Bayou shall be in acre-foot amounts as follows:

January	2,500	July	4,500
February	2,500	August	5,000
March	3,500	September	11,500
April	3,500	October	9,000
May	23,500	November	4,000
June	23,000	December	4,500

b. The amounts of water required in subparagraph 1.a. shall consist of return flows, and intentional diversions, as well as spills and releases from the Reservoir System. For purposes of compliance with monthly amounts prescribed above, the spills and releases described in this paragraph shall be measured at the U. S. Geological Survey stream monitoring station on the Nueces River at Calallen, Texas (USGS Station No. 08211500). Any inflows, including measured wastewater effluent and rainfall runoff meeting lawful discharge standards which are intentionally diverted to the upper Nueces Bay or its associated Rincon Bayou region, shall be credited toward the total inflow amount delivered to Nueces Bay and/or Rincon Bayou.

c. The releases necessary to meet the monthly allocation may be distributed over the calendar month. Relief from the release requirements shall be available under either

subparagraph (1) or (2) below at the option of the City of Corpus Christi. However, releases may only be reduced under one of those subparagraphs for any given month.

(1) Inflows to Nueces Bay and/or Rincon Bayou in excess of the required monthly amount may be credited for up to fifty (50) percent of the requirement for the following month, based on the amount received.

(2) When the mean salinity in Upper Nueces Bay (Lat. 27°51'02", Long. 97°28'52") for a 10-day period, measured during the calendar month for which the reduction of the release is sought, is below the SUB, releases from the reservoir system for that same calendar month may be reduced as follows:

(a) For any month other than May, June, September and October, if 5 ppt below the SUB for the month, a reduction of 25% of the current month's release;

(b) If 10 ppt below the SUB for the month, a reduction of 50% of the current month's release, except that credit under this provision is limited to 25% during the months of May, June, September and October;

(c) If 15 ppt below the SUB for that month, a reduction of 75% of the current month's release.

d. The City of Corpus Christi shall submit weekly reports to the Executive Director containing daily inflow amounts provided to the Nueces Estuary in accordance with this Agreed Order through releases, spills, return flows and other freshwater inflows. Return flow amounts shall be reported as soon as that information is available.

2. a. Certificate holders are to provide in any future contracts or any amendments, modifications or changes to existing contracts the condition that all wholesale customers and any subsequent wholesale customers shall develop and implement water conservation and drought contingency measures. Certificate holders shall comply with all applicable rules of the Commission dealing with water conservation. The City of Corpus Christi shall solicit from its customers and report to the Commission annually the result of conservation under the City's plan, the customers' plans, and the feasibility of implementing conservation plans and programs for all users of water from the reservoir system. This report shall be submitted with the Certificate Holder's annual water use report as provided by 31 T.A.C. § 295.202. Within 30 days of this Order, the City will respond to the Commission review of its conservation plan.

2. b. The Certificate Holders may obtain relief from releases during times of prolonged drought in accordance with subparagraphs b(1) - b(3).

(1) In any month when water impounded in the Reservoir System is less than 40 percent but equal to or greater than 30 percent of storage capacity, the City of Corpus Christi may reduce inflows to Nueces Bay by up to 50 percent of the monthly allocation as set out in paragraph 1 if the Certificate Holders and all users and customers implement Condition II - Drought Watch as described in the City of Corpus Christi's "Water Conservation and Drought Contingency Plan" ("Plan").

(2) In any month when water impounded in the Reservoir System is less than 30 percent of the storage capacity, the City of Corpus Christi may suspend releases from the Reservoir System for inflow purposes to Nueces Bay if the Certificate Holders and all users and customers implement Condition III - Drought Warning as described in the Plan. However, return flows directed into Nueces Bay and/or Rincon Bayou shall continue to be made.

(3) It is expressly understood that the Certificate Holders' rights to obtain whole or partial suspension of reservoir releases is

contingent upon the Certificate Holders' and their customers' implementation of water conservation measures and levels of drought management, and diminished reservoir system levels, as set forth in subparagraphs b(1) and b(2). However, the decision whether to avail itself of relief from releases, through the initiation of drought management levels, is solely that of the Certificate Holders. The initiation of drought management levels set forth in subparagraph b(1) shall not be a prerequisite to the Certificate Holders' rights to avail themselves of complete suspension of releases as provided for in subparagraph b(2). However, suspension of releases pursuant to subparagraph b(2) shall not be available unless Condition III is implemented during the month water impounded in the Reservoir System drops below 30 percent.

- c. For purposes of this Agreed Order, Reservoir System storage capacity shall be determined by the figures contained in the "Regional Water Supply Planning Study - Phase I Nueces River Basin (December 1990)" by HDR and based on 1990 sedimentation conditions. According to the Study, the storage capacity for Choke Canyon Reservoir is 689,314 acre-feet (220.5 feet mean sea level) and the storage capacity for Lake Corpus Christi is 237,473 acre-feet (34 feet

mean sea level), making total Reservoir System storage capacity equal to 926,787 acre-feet.

- d. Percentage of the Reservoir System capacity shall be determined on a daily basis and shall govern, in part, the quantities released during the remaining days of the month. For example, if on August 15 the City of Corpus Christi has already passed 2,000 acre-feet in inflows and on that day the Reservoir System capacity falls below 40 percent, and the City elects to implement Condition II in subparagraph b(1), then the City shall provide 50 percent of the remaining 3,000 acre-feet monthly allocation amount, or 1,500 acre-feet, for the remainder of the month. If, on a subsequent day of the month, the Reservoir System capacity rises back above 40 percent, then the City must pass the proportional amount of the remaining monthly allocation necessary to meet the amount required under paragraph 1.a. of this Agreed Order. For example, if the Reservoir System capacity for the first fifteen days of August is below 40 percent, and on August 15 increases above 40 percent, the City shall provide 1/30th of the total allotment for each day remaining in the month, unless the capacity drops below 40 percent, when releases are again reduced.

- e. Within the first seven days of each month, the City of Corpus Christi shall submit to the chairman of the Advisory Council a monthly report containing the daily capacity of the Reservoir System in percentages and mean sea levels as recorded for the previous month as well as reservoir surface areas. The report shall indicate which gages or measuring devices were utilized to determine Reservoir System capacity.
3. a. The City of Corpus Christi, with the assistance and/or participation of federal, state and local entities, shall develop and implement a monitoring program as described in the Technical Advisory Committee's final report to assess what effects the release schedule has on Nueces Bay. The cornerstone of this program is the development of a salinity monitoring program. The program shall include at least two monitoring stations, one in upper Nueces Bay (Lat. 27°51'02", Long. 97°28'52") and one in mid Nueces Bay (Lat. 27°51'25", Long. 97°25'28") with the capability of providing continuous salinity and/or conductivity data, temperature, pH, and dissolved oxygen levels. Additional stations may be established at the recommendation of the Advisory Council (established by paragraph 5 of this Agreed Order) to assess inflow effects throughout the estuarine system, but the City

shall not be obligated to establish such additional stations except to the extent authorized by its City Council.

- b. The City of Corpus Christi or its designated representatives shall monitor salinity levels in Upper Nueces Bay. The lower (SLB) and upper (SUB) salinity bounds (in parts per thousand-ppt) developed for application of the Texas Estuarine Mathematical Programming Model and considered appropriate for use herein, are as follows:

	SLB	SUB		SLB	SUB
January	5	30	July	2	25
February	5	30	August	2	25
March	5	30	September	5	20
April	5	30	October	5	30
May	1	20	November	5	30
June	1	20	December	5	30

- c. When the average salinity for the third week of any given month is at or below the subsequent month's established SLB for upper Nueces Bay (Lat. 27°51'02", Long. 97°28'52"), no releases from the Reservoir System storage shall be required for that subsequent month.

- d. All data collected as a result of the monitoring program required by paragraph 3 of this Agreed Order shall be

submitted monthly to the Executive Director within the first ten days of the immediately following month. The Nueces Estuary Advisory Council shall study the feasibility of developing a method of granting credits for inflows which exceed the required amounts to replace the credits that are set out in subparagraph 1.c. and make recommendations to the Commission for possible implementation. That method shall have as its goal the maintenance of the proper ecological environment and health of related living marine resources and the provision of maximum reasonable credits towards monthly inflow requirements.

4. The City of Corpus Christi, which has management control of the Reservoir System, shall operate the Reservoir System in accordance with State law and rules of the Commission.
5. a. To assist the Texas Water Commission in monitoring implementation of this Order and making recommendations to the Commission relating to any changes to this Agreed Order and the establishment of future operating procedures, the Executive Director shall establish the Nueces Estuary Advisory Council whose members shall include, but are not limited to, a qualified representative chosen by each of the following entities or groups: the Executive Director of the Texas Water Commission, whose representative shall serve as chair;

the Texas Water Development Board; the Texas Parks & Wildlife Department; the Texas Department of Health; the General Land Office; the holders of Certificate of Adjudication No. 21-3214 (Cities of Corpus Christi and Three Rivers, Nueces River authority); the University of Texas Marine Science Institute; Corpus Christi State University; Save Lake Corpus Christi; the Corpus Christi Economic Development Corporation; the City of Mathis; a commercial bay fishing group; a recreational fishing and hunting group; a conservation group (e.g., the Sierra Club, and the Coastal Bend Bays Foundation); wholesale water suppliers who are customers of the Certificate Holders (e.g., the South Texas Water Authority and the San Patricio Municipal Water District); and a representative of industry. Representatives should have experience and knowledge relating to current or future water use and management or environmental and economic needs of the Coastal Bend Area.

- b. Proposed changes to this Agreed Order submitted by the Executive Director to the Commission for the Commission's review and action shall take into consideration any new information provided by pertinent studies performed by members of the Nueces Estuary Advisory Council ("Council") or submitted to the Council for its review, and any recommendations by the Council resulting from its review of such information. Such

proposed changes shall be submitted by the Executive Director to the Commission immediately upon completion of the Council's deliberation and formulation of a recommendation but not later than four years from issuance of this Agreed Order or otherwise provided in this subparagraph. The objective of this review shall be to determine the appropriateness of prescribed measures and the effect they are having on the ecosystem and the public welfare. Unless determined to be an emergency by the Commission, a request for modification of this Order shall first be submitted to the Council, which shall have ninety (90) days to review the request and formulate a recommendation. After passage of the ninety (90) day period, with or without review and recommendation by the Council, a Council member or entity may petition the Texas Water Commission for the change. Nothing in this subparagraph or this Agreed Order shall prevent a Certificate Holder from directly applying to the Texas Water Commission for a change, modification or amendment to its water rights.

- c. Matters to be studied by the Nueces Estuary Advisory Council and upon which the Executive Director shall certify recommendations to the Commission shall include, but are not limited to:

- (1) the effectiveness of the inflow requirements contained in this Agreed Order on Nueces estuary and any recommended changes;
- (2) the effect of the releases from the Reservoir System upon the aquatic and wildlife habitat and other beneficial and recreational uses of Choke Canyon Reservoir and Lake Corpus Christi;
- (3) the development and implementation of a short and long-term regional water management plan for the Coastal Bend Area;
- (4) The salinity level to be applied in Paragraphs 1c. and 3c., at which releases in the subsequent month may be suspended;
- (5) the feasibility of discharges at locations where the increased biological productivity justifies an inflow credit computed by multiplying the amount of discharge by a number greater than one; and
- (6) any other matter pertinent to the conditions contained in this Agreed Order.

6. Certificate Holders shall provide for sediment deposition studies, for the purpose of developing area-capacity curves, to be conducted on Choke Canyon Reservoir and Lake Corpus Christi every ten years.

determine the amount of reduction in water storage capacity as a result of sediment accumulation. The first such study shall be provided to the Executive Director not later than January 1, 2001. Subsequent reports shall be submitted by January 1 of each tenth year following the submission of the first report. This provision shall be contained in any subsequent Order.

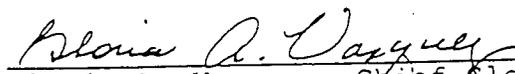
7. This Agreed Order shall expire five years from the date of issuance. The Commission intends that a subsequent Order shall be in place prior to the expiration of this Agreed Order and there shall be no period in which an Order is not in effect.

Issued date: MAR 9 1992

TEXAS WATER COMMISSION

  
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John Hall, Chairman

ATTEST:

  
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Gloria A. Vasquez, Chief Clerk