TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER granting an extension of an emergency order issued to the Lower Colorado River Authority to amend its Water Management Plan, Permit No. 5838, pursuant to Section 11.139 of the Texas Water Code

On February 26, 2014, the Texas Commission on Environmental Quality (Commission or TCEQ) considered a request from the Lower Colorado River Authority (LCRA) for an emergency order to amend its Water Management Plan under Texas Water Code §§ 5.501, 11.138, and 11.139, and the Governor's Emergency Disaster Proclamation relating to drought. The Commission's emergency order, issued on February 27, 2014, expires on May 26, 2014. The February 27, 2014 emergency order is attached to this order as Exhibit A.

LCRA filed an application and brief for a 60-day extension of the February 27, 2014 emergency order on May 5, 2014. LCRA's extension request is attached to this order as Exhibit B. LCRA requests an extension of the February 27, 2014 emergency order through July 25, 2014.

The Executive Director has jurisdiction to consider this matter and makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The following Findings of Fact in the Commission's February 27, 2014 emergency order are incorporated by reference into this emergency order: 2-18, 20-25, 28-30, 32-34, 36, 38-42, and 44-73. The other Findings of Fact from the February 27, 2014 emergency order have not been incorporated due to the outdated nature of the information or the fact that it is not directly applicable to this order.

2. LCRA filed an application and brief for a 60-day extension of the February 27, 2014 emergency order on May 5, 2014. LCRA requests an extension of the February 27, 2014 emergency order through July 25, 2014.

3. Severe drought conditions continue in the area, including record-low inflows to the Highland Lakes, dry conditions upstream of the Highland Lakes, and low rainfall.

4. As of May 22, 2014, the combined storage of Lakes Buchanan and Travis is approximately 711,768 acre feet or 35% full.

5. Inflows to the Highland Lakes continue at record-low levels. Inflows in the first four months of 2014 are the lowest for these first four months in the historical record for the lakes, including the 1950's. The flows for those four months were only 10.3 percent of the historical average inflows for that period.

6. Monthly inflows into the Highland Lakes for this year have been 12,270, 9,489, 8,102, and 5,669 acre feet for January through April. Monthly inflows have been below average in 47 of the past 48 months.

7. As of May 1, 2014, the inflow deficit was 37 percent worse than the Drought of Record deficit reference (a requirement of declaring a Drought Worse than the Drought of Record).

8. The National Weather Service's three month lookout is for the drought to persist through July throughout the Texas Hill Country and to the west. The National Weather Service has issued an El Nino Watch, indicating that there is a greater than 50 percent chance an El Nino will develop within the next six months, which could cause a pattern of above-normal rainfall across Texas. If an El Nino develops this summer, its effects will not be felt across Texas until sometime in the fall or winter.

9. The Climate Prediction Center (CPC) monthly and seasonal outlooks call for equal chances of above, near, or below median precipitation across the central and southern Great Plains during May – July. The CPC monthly and seasonal temperature outlooks call for enhanced odds for above-normal temperatures which could intensify drought conditions.

10. LCRA's meteorologist, Bob Rose, expects a pattern of hotter than normal temperatures and below normal rainfall during June through August.

11. If severe drought conditions continue, the criteria for declaration of a Drought Worse than the Drought of Record may be met as early as June, 2014. There is a 38 percent chance that a DWDR will be declared by the end of October 2014.

12. The Governor of Texas issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas. This proclamation has been renewed monthly, most recently on May 9, 2014, and includes nearly all of the counties that contribute flows into or contain the Highland Lakes. These counties are in severe to extreme drought.

13. There is uncertainty as to what obligation LCRA may have to provide interruptible stored water after expiration of the February 27, 2014 emergency order. In May, crops that were started with groundwater could be switched to

surface water. LCRA may receive requests for water for supplemental uses such as row crops and later, for wildlife management. During a curtailment year, those requests are only considered if water is available in the canal system.

14. Notice regarding the Executive Director's consideration of this order was provided to the Governor of Texas by letter dated May 21, 2014.

II. CONCLUSIONS OF LAW

1. The Commission may issue an emergency order under Texas Water Code § 11.139 to amend a certificate of adjudication 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 procedures and there are no feasible practicable alternatives to the emergency authorization. The order may be issued for 120 days, and may be extended for 60 days.

2. The Executive Director may issue an emergency order pursuant to Texas Water Code § 11.139 after notice to the Governor if an imminent threat to the public health and safety exists which requires emergency action before the Commission can take action and there are no feasible alternatives. The Executive Director can extend the order for 60 days.

3. A hearing to affirm, modify, or set aside the order for extension of the initial emergency order must be held by the Commission as soon as practicable, but not later than 20 days after the extension to the emergency order is granted.

4. The Findings of Fact in this order, including those Findings of Fact incorporated from the Commission's February 27, 2014 emergency order, show that the requirements of Texas Water Code § 11.139 continue to be met. Following the 2010 Water Management Plan with the ongoing drought and its effect on the water supply constitute an emergency that presents an imminent threat to the public health and safety. There are no practicable alternatives to this action.

5. Because conditions have remained the same or worsened since the Commission issued its emergency order on February 27, 2014, renewal of this emergency order is appropriate under the facts and the law.

6. A Commission hearing to affirm, modify, or set aside this order extending the February 27, 2014 emergency order will be held on June 4, 2014.

NOW, THEREFORE, BE IT ORDERED BY THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The February 27, 2014 emergency order amending LCRA's Water Management Plan, Permit No. 5838, is extended through July 25, 2014.

2. This order extending the February 27, 2014 emergency order was issued without a hearing. A hearing to affirm, modify, or set aside this order extending the February 27, 2014 emergency order will be held before the Commission on June 4, 2014 at 9:30 a.m. The location of the hearing will be:

   Texas Commission on Environmental Quality
   12100 Park 35 Circle
   Building E, Room 210S
   Austin, Texas

3. The Chief Clerk of the Commission shall forward a copy of this order to all parties.

4. If any provision, sentence, clause, or phrase of this order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of this order.

Issue Date:

May 22, 2014

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Richard A. Hyde, P.E.
Executive Director