

TCEQ DOCKET NO. 2024-0078-WR

APPLICATION OF LOWER	§	BEFORE THE TEXAS COMMISSION
COLORADO RIVER AUTHORITY	§	
TO AMEND CERTIFICATE OF	§	
ADJUDICATION NO. 14-5434C, AS	§	
AMENDED	§	ON ENVIRONMENTAL QUALITY

LOWER COLORADO RIVER AUTHORITY RESPONSE TO MOTION OF GARWOOD IRRIGATION COMPANY, LLC REQUESTING THAT THE EXECUTIVE DIRECTOR WITHDRAW THE RECENT AMENDMENT TO CERTIFICATE 14-5434C AND ISSUE A CORRECTED/CLARIFIED AMENDMENT OR, ALTERNATIVELY, THAT THE COMMISSION OVERTURN FOR CORRECTION/CLARIFICATION

The Lower Colorado River Authority, owner of Certificate of Adjudication 14-5434C (“COA 14-5434C”), as amended and applicant in this matter, files this response to the Motion of Garwood Irrigation Company Requesting that the Executive Director Withdraw the Recent Amendment to COA 14-5434C and Issue a Corrected/Clarified Amendment or, Alternatively, Requesting that the Commission Overturn for Clarification/Correction filed January 16, 2024 (“Motion”).

Although LCRA believes the clarification sought by the Motion is unnecessary, LCRA is not opposed to the clarification, which is narrowly tailored and does not change the authorizations nor the requirements imposed in COA 14-5434G.

DISCUSSION

On December 15, 2023, the Texas Commission on Environmental Quality (“Commission”) issued COA 14-5434G which is an amendment to the portion of COA 14-5434 that LCRA acquired from the Garwood Irrigation Company in 1999.¹ The portion acquired by LCRA was designated COA 14-5434C. That water right has a single diversion point located at the intake for LCRA’s Garwood irrigation division (which is referred to as the Canal System Diversion Point in the Motion and herein). In 2018, the Commission issued an amendment to LCRA’s water right, designated as COA 14-5434E. This amendment added diversion points both upstream and downstream of the Canal System Diversion Point and included various special conditions. In 2023, LCRA submitted an application to further amend the water right to allow diversion anywhere within a river segment, as well as the right to divert at the specific diversion points as previously authorized by COAs 14-5434C and 14-5434E. COA 14-5434G was issued as requested by LCRA on December 15, 2023. The special conditions of COA 14-5434G, which include instream flow

¹ The City of Corpus Christi owns the other portion of Certificate of Adjudication No. 14-5434.

requirements, were carried forward nearly verbatim from COA 14-5434E. LCRA had no intent to change the operation or applicability of the special conditions. COA 14-5434G is an important component of LCRA's water supply, which provides LCRA with increased flexibility to meet the water needs of its firm customers. Since its issuance, LCRA has relied on COA 14-5434G to meet demands of customers located below the Highland Lakes that previously would have required releases from Lake Travis.

The Motion raises concerns with the way the instream flow obligations are described in Special Condition 4.E in COA 14-5434G, which refers to the "Wharton reach" without articulating in Special Condition 4.E an exception for diversions at or below the Canal System Diversion Point. However, this special condition must be read in concert with Special Condition 4.B, which makes clear that the instream flow limits only apply upstream of the Canal System Diversion Point. Special Condition 4.B provides:

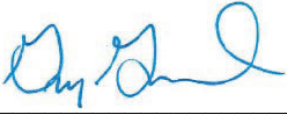
Diversions of water from the Colorado River downstream of USGS Gage No. 08158000, Colorado River at Austin, Texas, **and upstream of the existing diversion point authorized under Certificate of Adjudication No. 14-5434C** shall not occur when streamflow is below the applicable instream flow requirement at the gage immediately downstream of the diversion, as set forth in Paragraphs C.- E. below, which shall apply as follows:... [Emphasis added.]

LCRA did not intend nor does it believe that COA 14-5434E or the nearly identical provisions in COA 14-5434G impose *any* instream flow requirements at or below the Canal System Diversion Point. This interpretation is further supported by the approved Accounting Plan, which imposes no such requirements. LCRA believes the addition of the clarification sought by the Motion is unnecessary as the requested clarification to Special Condition 4.E sought by the Motion does not substantively change in any manner LCRA's interpretation of the instream flow obligations under COA 14-5434G. As such, LCRA also is not opposed to the clarification sought by the Motion.

CONCLUSION

For the reasons above, LCRA is not opposed to the clarification sought in Motion. In the event the Commission determines it is appropriate to reissue the COA, LCRA requests that, in order to allow continued reliance on COA 14-5434G consistent with Commission rule 30 Tex. Admin. Code 50.139(d), COA 14-5434G as issued Dec. 15, 2023 not be withdrawn unless and until a clarified COA 14-5434G can be simultaneously be reissued.

Respectfully submitted,

By: 

Gregory Graml
Associate General Counsel

LOWER COLORADO RIVER
AUTHORITY
P.O. Box 220
Austin, Texas 78767-0220
(512) 730-6849
Greg.Graml@LCRA.org
State Bar No. 24059846

Lyn Clancy
V.P. Natural Resources Law & Policy
(512) 578-3378
Lyn.Clancy@LCRA.org
State Bar No. 00796448

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of January, 2024, I caused to be filed with the Chief Clerk of the Texas Commission on Environmental Quality via electronic filing the foregoing Response of the Lower Colorado River Authority, and I also served a true and correct copy of the foregoing via US Mail and email on the following:

FOR THE EXECUTIVE DIRECTOR:

Ryan Vise, Deputy Director
Texas Commission on Environmental Quality
External Relations Division
Public Education Program MC 108
P.O. Box 13087
Austin, Texas 78711-3087
Email: Ryan.Vise@tceq.texas.gov

Todd Galiga, Senior Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC 173
P.O. Box 13087
Austin, Texas 78711-3087
Email: todd.galiga@tceq.texas.gov

Sarah Henderson, Technical Staff
Texas Commission on Environmental Quality
Water Availability Division MC 160
P.O. Box 13087
Austin, Texas 78711-3087
Email: sarah.henderson@tceq.texas.gov

FOR PUBLIC INTEREST COUNSEL:

Garrett T. Arthur, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC 103
P.O. Box 13087
Austin, Texas 78711-3087
Email: garrett.arthur@tceq.texas.gov

FOR THE CHIEF CLERK:

Laurie Gharis, Chief Clerk
Texas Commission on Environmental Quality
Office of Chief Clerk MC 105
P.O. Box 13087
Austin, Texas 78711-3087
Email: Laurie.Gharis@tceq.texas.gov

FOR GARWOOD IRRIGATION
COMPANY, LLC:

Molly Cagle
Baker Botts
401 South 1st Street, Suite 1300
Austin, Texas 78704-1296
Email: Molly.Cagle@Bakerbotts.com

Samia Broadaway
Baker Botts
401 South 1st Street, Suite 1300
Austin, Texas 78704-1296
Email: Samia.Broadaway@Bakerbotts.com



Greg Graml