

TCEQ DOCKET NO. 2024-0078-WR

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

EXECUTIVE DIRECTOR’S RESPONSE TO THE MOTION OF GARWOOD IRRIGATION COMPANY, LLC

TO THE HONORABLE COMMISSIONERS:

The Executive Director (or ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this response to what is styled as “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” (Motion).

INTRODUCTION

The Motion is without merit for at least three reasons. First, the Executive Director does not agree that any correction or clarification is necessary because the provisions contained in Certificate of Adjudication 14-5434G (COA 14-5434G), issued on December 15, 2023, are correct and clear. Second, the Executive Director disagrees that Garwood Irrigation Company, LLC (the movant) has any legal basis within TCEQ jurisdiction for its Motion. Third, the Executive Director asserts that the application to amend COA 14-5434 was appropriately noticed and that no one, including the movant, commented on the application or requested a contested case hearing on the requested amendment.

BACKGROUND

COA 14-5434C is a water right currently held by the Lower Colorado River Authority (LCRA). In 1998 the prior holder - Garwood Irrigation Company - applied to a TCEQ predecessor agency and requested division of COA 14-5434 into COA 14-5434B, styled as “Corpus Christi ‘s Right,” and COA 14-5434C, styled as “Garwood’s Remaining Right.”

Both COA 14-5434B and COA 14-5434C have been subsequently amended by its subsequent holders, the City of Corpus Christi (COA 14-5434F, issued April 30, 2015) and LCRA (COA 14-5434E, issued May 7, 2018; COA 14-5434G, issued December 15, 2023).

On January 3, 2023, LCRA applied to amend COA 14-5434E by adding a diversion reach from the existing diversion point on Lady Bird Lake to Bay City Dam. Notice of the application was mailed to downstream water right holders of record on October 31, 2023. The comment period and hearing request period closed on November 17, 2023. No comments or contested case hearing requests on the application were filed with the TCEQ. The Executive Director approved the application and issued COA 14-5434G on December 15, 2023.

The movant's counsel contacted TCEQ program staff and verbally requested revision to this water right in early January 2024. Program staff did not agree that revision was necessary but offered to follow standard procedure and address the movant's concerns in a letter. The movant rejected the draft letter, which was emailed by the undersigned. The email and its draft letter are attached as Attachment A.

ARGUMENT

First, COA 14-5434G is correct and clear.

COA 14-5434G on page 2, paragraph 1. DIVERSION, states "In addition to the previous authorization in 14-5434C and in lieu of the previous authorization in Paragraph 1. DIVERSION, 14-1434E, Owners is authorized to divert at:..." The newly authorized diversion reach is described in added subparagraph I, "Owner is authorized to divert at any point along the Colorado River from Longhorn Dam, Latitude 30.250484° N, Longitude 97.713573° W to Bay City Dam, located on the Colorado River in the Thomas Cayce Grant, Abstract 14, Matagorda County, Texas, located at 28.977167° N Latitude, 96.012254° W Longitude." Subparagraphs 1.A through 1.H are exactly the same as in ADJ 14-5434E.

The movant focuses on the special conditions in COA 14-5434G, contained in paragraph 4., subparagraphs 4.A. through 4.M. Other than incorporating changes required by the addition of the newly authorized diversion reach, subparagraphs 4.A. through 4.M remain substantially the same as in COA 14-5434E, which was issued in 2018.

The movant argues that an unidentified “...someone with no or little background who is trying to understand Special Condition 4.E...” would have to devote “...a significant amount of time analyzing the relevant provisions of Certificates 14-5434C and 14-5434G...” and “...could easily misconstrue Special Condition 4.E. to be inconsistent with the highlighted language of Special Condition 4.B.” The Executive Director responds that water rights can require study and analysis and is not persuaded that this duly issued water right should be revised for the sake of a hypothetical reader who could contact TCEQ program staff or who could consult with others experienced in water rights in order to understand the authorizations in COA 14-5434G.

Second, the motion lacks legal basis.

The movant does not cite any authority in the Tex. Water Code or applicable TCEQ rules in Title 30 of the Tex. Admin. Code as the basis for its motion. The Motion recites provisions from a contract between LCRA and the movant. In section VIII of its motion, the movant points to that contract as a legal basis for its motion. The Executive Director disagrees that the contract can or should be enforced at TCEQ, and notes that the movant can seek relief based on the contract in civil court.

Third, no one commented on the application or requested a contested case hearing on it.

Notice of the application was mailed pursuant to applicable TCEQ rules on October 31, 2023. The public comment and hearing request period closed on November 17, 2023. Neither the movant nor anyone else commented on this application, nor did the movant or anyone else request a contested case hearing on this application.

The Executive Director granted the application and issued the amended water right, COA 14-5434G, on December 15, 2023. It was mailed on December 21, 2023.

The Executive Director reviewed the application for COA 14-5434G, reviewed the draft COA 14-5434G before issuing the water right, and reviewed the issued COA 14-5434G again when contacted by movant’s counsel. The Executive Director declined to make any revision to COA 14-5434G because it is her position that the water right is correct and clear.

CONCLUSION

WHEREFORE, the Executive Director respectfully requests that the Commission deny the Motion and for such other relief as deemed proper and just.

Respectfully Submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Kelly Keel
Executive Director

Erin E. Chancellor, Director
Office of Legal Services

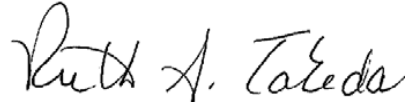
Charmaine Backens, Deputy Director
Environmental Law Division

By 

Ruth Ann Takeda, Staff Attorney
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CERTIFICATE OF SERVICE

I certify that on this 1st day of February 2024, this *Executive Director's Response to the Motion of Garwood Irrigation Company, LLC* was delivered as indicated on the attached Service List.



Ruth Ann Takeda
Staff Attorney
Environmental Law Division

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TCEQ Docket No. 2024-0078-WR

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Attachment A

From: [Ruth Takeda](#)
To: [Greg Graml](#); [Cagle, Molly](#)
Cc: [Broadaway, Samia](#); [Kathy Alexander](#)
Subject: RE: Motion of Garwood
Date: Friday, January 19, 2024 1:11:00 PM
Attachments: [DRAFT Ltr ADJ14-5434G 01.12.2024.docx](#)

Good afternoon, Counselors.

The ED will not be initiating a permit correction because it isn't warranted. In similar circumstances, the program practice has been to clarify permit provisions by letter.

I've attached the program's draft letter regarding ADJ 14-5434G for discussion, since it may negate the need to proceed with the MTO filed on Tuesday.

Regards,

Ruth

Ruth Takeda

Texas Commission on Environmental Quality
Environmental Law Division
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512-239-6635, Fax 512-239-0606
ruth.takeda@tceq.texas.gov

From: Greg Graml <Greg.Graml@LCRA.ORG>
Sent: Tuesday, January 16, 2024 10:58 AM
To: Cagle, Molly <molly.cagle@bakerbotts.com>; Ruth Takeda <Ruth.Takeda@tceq.texas.gov>
Cc: Broadaway, Samia <samia.broadaway@bakerbotts.com>; Kathy Alexander <Kathy.Alexander@tceq.texas.gov>
Subject: RE: Motion of Garwood

Thanks Ruth. LCRA certainly has no concerns with a clarification letter.

I'm also available this afternoon (except 2-3).

From: Cagle, Molly <molly.cagle@bakerbotts.com>
Sent: Tuesday, January 16, 2024 9:12 AM
To: Ruth Takeda <ruth.takeda@tceq.texas.gov>
Cc: Broadaway, Samia <samia.broadaway@bakerbotts.com>; Greg Graml <Greg.Graml@LCRA.ORG>; Kathy Alexander <kathy.alexander@tceq.texas.gov>
Subject: Re: Motion of Garwood

CAUTION - EXTERNAL EMAIL
Phishing? **Click the fish** in Outlook

Thanks Ruth. Much appreciated.
Sent from my iPhone

On Jan 16, 2024, at 7:45 AM, Ruth Takeda <ruth.takeda@tceq.texas.gov> wrote:

[EXTERNAL EMAIL]

Good morning, Molly.

Your may decide to file the motion anyway, but my understanding is that the program is willing to send you a clarification letter that should sufficiently address your client's concerns.

I'll be in meetings all morning but am available this afternoon.

Ruth

Ruth Takeda

Texas Commission on Environmental Quality
Environmental Law Division
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MC-173, P.O. Box 13087, Austin TX 78711-3087
512-239-6635, Fax 512-239-0606
ruth.takeda@tceq.texas.gov

From: Cagle, Molly <molly.cagle@bakerbotts.com>

Sent: Monday, January 15, 2024 3:43 PM

To: Greg Graml (Greg.Graml@LCRA.ORG) <Greg.Graml@LCRA.ORG>; Kathy Alexander <kathy.alexander@tceq.texas.gov>; Ruth Takeda <ruth.takeda@tceq.texas.gov>

Cc: Broadaway, Samia <samia.broadaway@bakerbotts.com>

Subject: Motion of Garwood

Hey folks,

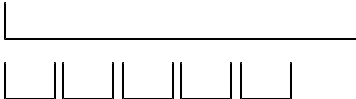
Hope you all have power, heat and plenty of water. We are good.
Here is what I think is a final version of a motion suitable for filing. The requested change is really discreet, but really critical.

Can we visit in the morning? I will be around all day.

Best, Molly

Molly Cagle
Senior Counsel

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Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Kelly Keel, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January XX, 2024

Molly Cagle, Esq.
Baker Botts LLP
401 South 1st Street, Suite 1300
Austin, Texas 78704-1296

Subject: Certificate of Adjudication No. 14-5434G

Dear Ms. Cagle:

I am writing because I understand that your client, the Garwood Irrigation District, expressed concerns regarding language in paragraph 4 (special conditions) of the water right referenced above. You requested clarification.

As specified in special condition 4.B, the instream flow criteria identified in special condition 4.E only applies to diversion points upstream of the existing diversion point authorized under Certificate of Adjudication No. 14-5434C. Special condition 4.E. in turn references special condition 4.B. The program does not believe a permit correction is warranted because these special conditions do not apply to your client's Canal System diversion point.

I hope that this clarifies the streamflow requirement applicable to this water right and addresses your client's concerns.

Sincerely,

[Signature or electronic signature]

Kim Nygren, Director, Water Availability Division

Cc: Leonard Oliver, LCRA, PO Box 220, L200, Austin, Texas 78767