

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

December 21, 2023

TO: Persons on the attached mailing list.

RE: Lower Colorado River Authority
Certificate of Adjudication No. 14-5434G

This letter is your notice that the Texas Commission on Environmental Quality (TCEQ) executive director (ED) has acted on the above-named application. According to 30 Texas Administrative Code (TAC) Section 50.135 the ED's action became effective on December 15, 2023, the date the ED signed the permit or other action unless otherwise specified in the permit or other action.

For certain matters, a **motion to overturn**, which is a request that the commission review the ED's action on an application, may be filed with the chief clerk. Whether a motion to overturn is procedurally available for a specific matter is determined by Title 30 of the Texas Administrative Code Chapter 50. According to 30 TAC Section 50.139, an action by the ED is not affected by a motion to overturn filed under this section unless expressly ordered by the commission.

If a motion to overturn is filed, the motion must be received by the chief clerk within 23 days after the date of this letter. An original and 7 copies of a motion must be filed with the chief clerk in person, or by mail to the chief clerk's address on the attached mailing list. On the same day the motion is transmitted to the chief clerk, please provide copies to the applicant, the ED's attorney, and the Public Interest Counsel at the addresses listed on the attached mailing list. If a motion to overturn is not acted on by the commission within 45 days after the date of this letter, then the motion shall be deemed overruled.

You may also request **judicial review** of the ED's action. The procedure and timelines for seeking judicial review of a commission or ED order are governed by Texas Water Code Section 5.351.

Individual members of the public may seek further information by calling the Public Education Program, toll free, at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink that reads "Laurie Gharis". The signature is written in a cursive style with a large, prominent initial "L".

Laurie Gharis
Chief Clerk

LG/km

Enclosure

MAILING LIST
for
Lower Colorado River Authority
Certificate of Adjudication No. 14-5434G

FOR THE APPLICANT:

Leonard Oliver
Lower Colorado River Authority
P.O. Box 220, L200
Austin, Texas 78767

PROTESTANTS/INTERESTED PERSONS:

See Attached List

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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FOR THE CHIEF CLERK
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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO A CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 14-5434G

TYPE: §§ 11.122, 11.085

Owner:	Lower Colorado River Authority	Address:	P.O. Box 220 Austin, Texas 78767-0220
Filed:	May 9, 2023	Granted:	December 15, 2023
Purposes:	Municipal, Industrial, and Agricultural	Counties:	Colorado, Wharton, Travis, Bastrop, Fayette and Matagorda
Watercourse:	Spicer Creek, tributary of the Colorado River; Cedar Creek, tributary of the Colorado River, Moores Branch of the Colorado River, tributary of the Colorado River and the Colorado River	Watersheds:	Colorado River Basin, Lavaca River Basin, Guadalupe River Basin, Colorado-Lavaca Coastal Basin, and the Brazos-Colorado Coastal Basin

WHEREAS, the Lower Colorado River Authority (LCRA) owns a portion of Certificate of Adjudication No. 14-5434, issued as 14-5434C, as amended (14-5434E), which authorizes the Owner to maintain an overflow type structure and a reservoir on the Colorado River, Colorado River Basin, and temporarily impound therein not to exceed 86 acre-feet of water in Colorado County; and

WHEREAS, Certificate of Adjudication No. 14-5434C, as amended, also authorizes the LCRA to divert and use not to exceed 133,000 acre-feet of water per year from multiple points on the Colorado River, Lake Travis, Lake Austin, and Lady Bird Lake for municipal, industrial, and agricultural purposes in Colorado, Wharton, Travis, Bastrop, Fayette, and Matagorda counties within the Colorado River Basin, Lavaca River Basin, Guadalupe River Basin, Colorado-Lavaca Coastal Basin, and the Brazos-Colorado Coastal Basin at a maximum rate of 600.00 cfs (269,400 gpm); and

WHEREAS, multiple special conditions apply; and

WHEREAS, the time priority of the Owner's right is November 1, 1900; and

WHEREAS, an application was received from LCRA to amend Certificate of Adjudication No. 14-5434C, as amended, to add a diversion reach from the existing diversion point on Lady Bird Lake to Bay City Dam; and

WHEREAS, LCRA indicates that, so long as LCRA owns Certificate of Adjudication No. 14-5437, as amended, jointly with the STP Nuclear Operating Company on behalf of the STP owners, LCRA agrees to certain limitations on the right to divert water pursuant to this amendment from locations that are authorized in both this amendment and Certificate of Adjudication No. 14-5437, as amended; and

WHEREAS, the Conservation provision was agreed to by LCRA as part of a settlement agreement prior to issuance of Certificate of Adjudication No. 14-5434E, and it may not reflect TCEQ's interpretation of applicable requirements and is not intended to set a precedent for future special conditions; and

WHEREAS, the LCRA diversion and use of water from anywhere on the perimeter of Lady Bird Lake (formerly known as Town Lake) and Lake Austin, authorized by Certificate of Adjudication No. 14-5471, as amended, and Lake Travis, authorized by Certificate of Adjudication No. 14-5482 will not be diverted from storage in the reservoirs; and

WHEREAS, the amendment the applicant is requesting does not represent a new appropriation of water nor an increase in the amount of water authorized to be stored, taken, or diverted; therefore, Texas Water Code § 11.1471(d) does not apply to this application; and

WHEREAS, LCRA requests that Certificate of Adjudication No. 14-5434E be replaced with a new amendment that includes all of the authorizations from Certificate of Adjudication No. 14-5434E and the requested diversion reach; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the Executive Director recommends special conditions be included; and

WHEREAS, in March 1998, the staffs of LCRA and the Colorado River Municipal Water District ("CRMWD") entered into an agreement in principle that, among other things, this amendment would "not require CRMWD to pass through any more inflows than would have been required had the 133,000 acre-feet per year Garwood irrigation right remained at its original diversion point and been used for irrigation purposes to the full extent possible"; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 14-5434, designated Certificate of Adjudication No. 14-5434G, is issued to Lower Colorado River Authority, subject to the following terms and conditions:

1. DIVERSION

In addition to the previous authorization in 14-5434C and in lieu of the previous authorization in Paragraph 1. DIVERSION, 14-5434E, Owner is authorized to divert at:

- A. Any point on the perimeter of Lake Travis, authorized by Certificate of Adjudication No. 14-5482.
- B. Any point on the perimeter of Lady Bird Lake (formerly known as Town Lake) and Lake Austin, authorized by Certificate of Adjudication No. 14-5471, as amended.

- C. Two diversion points authorized in Certificate of Adjudication No. 14-5473:
- (1) At a point on the Colorado River, Colorado River Basin in the Isaac Harris Grant, Abstract 38, Bastrop County, Texas, located at 30.15240° N Latitude, 97.34650° W Longitude.
 - (2) On the perimeter of Lake Bastrop on Spicer Creek, tributary of the Colorado River, Bastrop County, Texas, located at 30.15475° N Latitude, 97.29339° W Longitude.
- D. Two diversion points authorized in Certificate of Adjudication No. 14-5474:
- (1) At a point on the east bank of the Colorado River in the J.M. Hensley Survey, Abstract 54, Fayette County, Texas, located at 29.86770° N Latitude, 96.77560° W Longitude.
 - (2) On the perimeter of Cedar Creek Reservoir on Cedar Creek, tributary of the Colorado River in the J.M. Hensley Survey, Abstract 54, Fayette County, Texas, located at 29.91920° N Latitude, 96.75110° W Longitude.
- E. Three diversion points authorized in Certificate of Adjudication No. 14-5476:
- (1) At a point on the east bank of a reservoir, known as Lane City Dam, on the Colorado River in the Sylvenus Castleman Grant, Abstract 11, Wharton County, Texas, located at 29.1936° N Latitude, 96.07210° W Longitude.
 - (2) At a point on the east bank of a reservoir, known as Bay City Dam, on the Colorado River in the John F. Bowman and Henry Williams Grant, Abstract 9, Matagorda County, Texas, located at 28.98400° N Latitude, 96.00020° W Longitude.
 - (3) At a point on the west bank of a reservoir, known as Bay City Dam, on the Colorado River in the Thomas Cayce Grant, Abstract 14, Matagorda County, Texas, located at 28.98060° N Latitude, 96.01150° W Longitude.
- F. Two diversion points authorized in Certificate of Adjudication No. 14-5475:
- (1) At a point on the east bank of the Colorado River in the A.W. McLain and James McNair Grant, Abstract 33, Colorado County, Texas, located at 29.56990° N Latitude, 96.40200° W Longitude.
 - (2) At a point located on the perimeter of Eagle Lake on Moores Branch of the Colorado River in Colorado County, Texas, located at 29.55830° N Latitude, 96.33410° W Longitude.
- G. The diversion point authorized in Certificate of Adjudication No. 14-5477, which is at a point on the south bank of the Colorado River in the Robert Kuykendall Grant, Abstract 39, Wharton County, Texas, located at 29.30727° N Latitude, 96.13401° W Longitude.
- H. The diversion point authorized in Section 3.A. (DIVERSION) of Certificate of Adjudication No. 14-5437, as amended, which is at a point on the west bank of the Colorado River in the Cornelius H. Vanderveer Grant, Abstract 95, Matagorda County, Texas, located at 28.77580° N Latitude, 95.99700° W Longitude.

- 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.
- J. A maximum combined diversion rate of 600 cfs (269,400 gpm), inclusive of all diversions under this amendment and all diversions previously authorized under Certificate of Adjudication No. 14-5434C.

2. PRIORITY DATE

The time priority of the Owner's right under this Certificate of Adjudication No. 14-5434G is November 1, 1900.

3. CONSERVATION

In lieu of Paragraph 3. CONSERVATION, in Certificate of Adjudication No. 14-5434E, Owner is subject to the following:

Owner shall implement a water conservation plan that continues to provide for the utilization of reasonable practices, techniques and technologies, for each category of authorized use, that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, improve efficiency in the use of water, and increase the recycling and reuse of water, so that a water supply is made available for future or alternative uses. The practices and technologies used shall be designed to achieve a level of efficiency of use for each category of authorized use that is equal to or greater than the level provided for in Owner's most recent water conservation plan on file with the Commission as of the date of the issuance of this amendment. In selecting practices, techniques, and technologies to be used, Owner shall consider any appropriate best management practices that are identified in the most recent version of the Water Conservation Best Management Practices Guide produced by the Texas Water Development Board or any successor document. In every wholesale water contact or contract extension or renewal entered into on or after this amendment is issued, Owner shall continue to include a requirement that each successive wholesale customer develop and implement conservation measures consistent with the requirements of this provision. If the customer intends to resell the water, then the contract for resale of the water shall have water conservation requirements so that each successive wholesale customer in the resale of the water is required to implement water conservation measures consistent with the requirements of this provision. Those requirements include insuring that each successive wholesale customer will have a publicly accessible water conservation plan with specific, quantified 5- year and 10- year targets for water savings and will provide publicly accessible reports to the Owner at five-year intervals summarizing the progress toward meeting those targets.

4. SPECIAL CONDITIONS

In lieu of Paragraph 4. SPECIAL CONDITIONS, in Certificate of Adjudication No. 14-5434E, the following special conditions apply:

- A. Diversion of water from the perimeter of Lake Travis, Lake Austin, Lady Bird Lake (formerly known as Town Lake), or from the Colorado River between Longhorn Dam and USGS Gage No. 08158000, Colorado River at Austin, Texas, shall not occur when the flow of water is below 50 cfs at USGS Gage No. 08158000, Colorado River at Austin,

Texas, or when flow at the USGS Gage No. 08159200, Colorado River at Bastrop, Texas is below the applicable instream flow requirement for the Bastrop reach as further defined in Paragraphs B.- C. below.

- B. 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:

- (1) At times when diversions within the volume limits established under Special Condition 4.H.(1) and occurring at diversion points located upstream of the existing diversion point authorized under Certificate of Adjudication No. 14-5434C do not exceed a total combined diversion rate of 150 cfs, Owner has the option of determining the applicable instream flow requirement as either:
 - a. the monthly instream flow requirement that would otherwise apply pursuant to Special Condition 4.B.(2); or
 - b. the limitation on an instantaneous basis of the diversion rate within each individual reach to no more than 50% of the amount by which flow in the individual reach, as calculated on a daily-average basis without any diversions occurring under this Amendment in the reach, would exceed the Subsistence flow for the month and reach at the relevant gage.

For purposes of this Provision 4.B.(1), individual reaches are defined as follows: the reach upstream of the Bastrop gage starting at Lake Travis, using USGS Gage No. 08159200 as the relevant gage with the subsistence flow values set out in Special Condition 4.C.; the reach and subsistence flow values described in Special Condition 4.D., using USGS Gage No. 08161000 as the relevant gage; and the reach and subsistence flow values defined in Special Condition 4.E., using USGS Gage No. 08162000 as the relevant gage.

- (2) At all other times, the applicable monthly instream flow requirement for diversions within a reach under Special Conditions 4.C.-E. during the relevant Seasonal Period is based on the combined storage in lakes Buchanan and Travis as determined on the Measurement Date, as follows:

Seasonal Period	Measurement Date
March - June	Last day of February
July - October	June 30
November - February	October 31

Storage on Measurement Date (acre-feet)	Applicable Instream Flow Requirement
< 1,103,700	Subsistence
≥ 1,103,700 and ≤ 1,737,460	Base-Dry
> 1,737,460	Base-Average

- C. Diversion of water in the Bastrop reach, between USGS Gage No. 08158000, Colorado River at Austin, Texas and USGS Gage No. 08159200, Colorado River at Bastrop, Texas,

shall not occur when streamflow in the Bastrop reach is below the applicable requirements as determined pursuant to Special Condition 4.B. and measured at USGS Gage No. 08159200, Colorado River at Bastrop, Texas:

Cfs	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Subsistence	208	274	274	184	275	202	137	123	123	127	180	186
Base-Dry	313	317	274	287	579	418	347	194	236	245	283	311
Base-Average	433	497	497	635	824	733	610	381	423	433	424	450

D. Diversion of water in the Columbus (Eagle Lake) reach, between USGS Gage No. 08159200, Colorado River at Bastrop, Texas and USGS Gage No. 08161000, Colorado River at Columbus, Texas, shall not occur when streamflow in the Columbus reach is below the applicable requirements as determined pursuant to Special Condition 4.B. and measured at USGS Gage No. 08161000, Colorado River at Columbus, Texas:

Cfs	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Subsistence	340	375	375	299	425	534	342	190	279	190	202	301
Base-Dry	487	590	525	554	966	967	570	310	405	356	480	464
Base-Average	828	895	1,020	977	1,316	1,440	895	516	610	741	755	737

E. Diversion of water in the Wharton (Egypt) reach, between USGS Gage No. 08161000, Colorado River at Columbus, Texas and USGS Gage No. 08162000, Colorado River at Wharton, Texas, shall not occur when streamflow in the Wharton reach is below the applicable requirements as determined pursuant to Special Condition 4.B. and measured at USGS Gage No. 08162000, Colorado River at Wharton, Texas:

Cfs	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Subsistence	315	303	204	270	304	371	212	107	188	147	173	202
Base-Dry	492	597	531	561	985	984	577	314	410	360	486	470
Base-Average	838	906	1,036	1,011	1,397	1,512	906	522	617	749	764	746

F. Diversion of water from Lake Bastrop, Cedar Creek Reservoir, or Eagle Lake as set forth in this amendment, which is diverted from natural inflows into these reservoirs from the Spicer Creek, Cedar Creek, or Eagle Lake watersheds, shall be limited to times when the applicable instream flow requirements for the corresponding main stem reach are met. Further, such diversions shall not result in the complete cessation of flow downstream of any of the respective impoundments.

G. INTAKE STRUCTURES

(1) If Owner makes significant modifications to an existing intake structure that it solely owns and operates at diversion points that authorize diversion of water under this amendment, Owner shall implement reasonable measures to minimize potential adverse impacts due to entrainment and impingement of fishery resources. This requirement shall not apply to routine maintenance or replacement of existing intake facilities that do not result in any increase in the diversion rates or intake velocities of the existing facilities. Regardless of whether Owner subsequently conveys a portion of its ownership or operational responsibility in an intake structure that was solely owned and operated by Owner at the time of issuance of this amendment, each such existing intake structure remains subject to this requirement if it is used to divert water under this amendment.

- (2) If Owner intends to construct new intake facilities that it will own and operate at the authorized diversion points below Longhorn Dam for purposes of diverting water authorized under this amendment, Owner shall seek and obtain an amendment to this certificate prior to commencing construction of such facilities for the purpose of establishing special conditions, if any, needed to address any specific adverse impacts due to entrainment and impingement of fishery resources from the proposed new intake facilities.
- (3) Notwithstanding that the STP Nuclear Operating Company, on behalf of the STP Owners, is a joint owner with LCRA of Certificate of Adjudication No. 14-5437, as amended, the provisions of subparagraphs (1) or (2) above do not apply to existing or new structures and facilities that are solely owned and operated by the STP Nuclear Operating Company, on behalf of the STP Owners, at points of diversions also authorized in Certificate of Adjudication No. 14-5437, as amended.

H. DIVERSION LIMITS

- (1) Except as set forth in subparagraphs (2), (3) and (4) the maximum amount of water available for annual diversion at the additional points authorized in Paragraph 1. DIVERSION is as follows:

Location	Maximum Annual Diversion Amount (acre-feet)
DIVERSION Paragraph 1.A.	79,733
DIVERSION Paragraph 1.B.	91,925
DIVERSION Paragraph 1.C.	104,776
DIVERSION Paragraph 1.D.	128,241
DIVERSION Paragraphs 1.E.,F.,G. and H.	133,000

For purposes of DIVERSION Paragraph 1.I., the maximum annual diversion amount specified for DIVERSION Paragraph 1.B. also applies to diversions located between the diversion points authorized DIVERSION Paragraphs 1.B. and 1.C. The maximum annual diversion amount specified for DIVERSION Paragraph 1.C. also applies to diversions located between the diversion points authorized DIVERSION Paragraphs 1.C. and 1.D. The maximum annual diversion amount specified for DIVERSION Paragraph 1.D. also applies to diversions located between the diversion points authorized DIVERSION Paragraphs 1.D. and the point of diversion authorized under Certificate of Adjudication No. 14-5434C. The maximum annual diversion amount at or below the point of diversion authorized under Certificate of Adjudication No. 14-5434C is 133,000 acre-feet.

- (2) In addition, at the additional points authorized in Paragraph 1. DIVERSION 1.A. through 1.D. and 1.I. of this amendment, Owner may divert amounts in excess of those amounts specified in subparagraph (1), up to a maximum amount of 133,000 acre-feet per year at any additional point of diversion to the extent that such water is available at the additional diversion point(s) without the Owner exercising a priority call on junior water rights to support the excess diversion.
- (3) Nothing in subparagraphs (1) or (2) allows Owner to divert water to the extent that diversion would reduce the availability of water under any other water right, including water for meeting instream flow requirements under any other water

rights, beyond the reduction that would have otherwise occurred with the full, legal exercise of this water right before the changes authorized in this amendment and amendment 14-5434E. Further, in accordance with the March 26, 1998 Agreement between LCRA and CRMWD, LCRA shall not require CRMWD to pass through any more inflows than would have been required had the 133,000 acre-feet per year Garwood irrigation right remained at its original diversion point and been used for irrigation purposes to the full extent possible.

- (4) In no event may Owner divert more than 133,000 acre-feet per year, at any diversion point or combination of diversion points, pursuant to this certificate as amended.
- I. To the extent that diversions occur at upstream point(s) of diversion, the amount available at downstream points is reduced accordingly based on run of the river flows at those locations. Owner shall document diversions of water authorized by Certificate of Adjudication No. 14-5434 at each diversion point and include the volume of water diverted at each point in Owner's annual Water Use Report.
- J. Diversion of water appropriated under this certificate at any point in Lake Travis is limited to Lake Travis inflows.
- K. Diversion of water appropriated under this certificate in the reach downstream of Lake Travis and upstream of USGS Gage No. 08158000, Colorado River at Austin, Texas is limited to run of the river flows.
- L. Owner shall only divert and use water pursuant to this amended certificate in accordance with the most recent approved *Accounting Procedures Water Rights Application No. 14-5434G*. Owner shall maintain the accounting plan and supporting information in electronic format and make the data available to the Executive Director and the public upon request. If Owner seeks to modify its accounting plan, Owner shall submit a request to the Executive Director for a determination of whether such modification requires an amendment to this certificate, along with copies of the appropriate documents reflecting such a modification. Any modifications to *Accounting Procedures Water Rights Application No. 14-5434G* that the Executive Director determines would change the certificate terms must be submitted in the form of an application to amend the certificate. If an amendment is required, Owner shall not make any diversions pursuant to the modified accounting plan until an amendment is issued. Should Owner fail to maintain the accounting plan or timely notify the Executive Director of any modifications to the accounting plan, Owner shall immediately cease diversion pursuant to Paragraph 1. DIVERSION, and either apply to amend the certificate or forfeit the additional diversion points. If Owner fails to amend the certificate or forfeit the additional diversion points, then TCEQ may begin proceedings to cancel authorization to use the point. Owner shall immediately notify the Commission upon modification of the accounting plan and provide copies of the appropriate documents effectuating such changes.
- M. So long as LCRA owns Certificate of Adjudication No. 14-5437, as amended, jointly with the STP Nuclear Operating Company, on behalf of the STP Owners, diversions pursuant to this amendment from locations that are authorized in both this amendment and Certificate of Adjudication No. 14-5437, as amended, are limited by the following conditions, except to the extent STP Nuclear Operating Company provides prior and specific written consent:

- (1) Diversions pursuant to this amendment at the location authorized in Paragraph 1.H. DIVERSION of this amendment shall not diminish the amount of water otherwise available for diversion at that time and location pursuant to Certificate of Adjudication No. 14-5437, as amended, and may be only for purposes of supplying water to STP Nuclear Operating Company consistent with Contractual Permit No. 327A using physical facilities that STP Nuclear Operating Company owns and operates, or that are owned by or operated on behalf of the STP Owners; and
- (2) Diversions pursuant to this amendment at the location authorized in Paragraph 1.E.(3) DIVERSION of this amendment for the purpose of supplying water to STP Nuclear Operating Company shall not diminish the amount of water otherwise available for diversion at that time and location pursuant to Certificate of Adjudication No. 14-5437, as amended, and shall be consistent with Contractual Permit No. 327A.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 14-5434, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Colorado River Basin.

Owner agrees to be bound by the terms, conditions, and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

This amendment is issued subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources exercised by the Commission.



For the Commission

Date Issued: **December 15, 2023**