

TCEQ DOCKET NO. 2024-0078-WR

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

REPLY OF GARWOOD IRRIGATION COMPANY, LLC TO THE RESPONSES TO GARWOOD’S MOTION 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

I. The Responses to Garwood’s Motion

There were three responses to the timely filed¹ Motion by Garwood Irrigation Company, LLC (“Garwood”)—one each from the Office of Public Interest Counsel (“OPIC”), the applicant Lower Colorado River Authority (“LCRA”), and the Executive Director (“ED”). Here is a summary of what each said about the clarification sought by Garwood:

OPIC: OPIC concluded that the clarification sought by Garwood “is reasonable, does not impact the protectiveness of the originally articulated permit,” and “effectuates a useful clarification to Special Condition 4.E.”² OPIC further notes that “LCRA does not object to the Motion and agrees that the requested change comports with the intent of the amended COA.” OPIC recommends that the Commission grant the motion.

LCRA: LCRA stated that the clarification to Special Condition 4.E. sought by Garwood “is narrowly tailored and does not change the authorizations nor the requirements imposed in COA 14-5434G.”³ It added that the clarification is unnecessary “as [meaning “because”] the requested clarification ... does not change in any manner LCRA’s interpretation of the instream flow obligations under COA 14-5434G.” Garwood views the statement by LCRA that the requested clarification is “unnecessary” to be confirmation that the requested clarification is, in fact, a clarification of (and not a substantive change to) what was intended: the current language of Special Condition 4.E. with the Garwood proposed clarification, is exactly how LCRA interprets the current language without the clarification. It is also exactly how Garwood interprets the current language without the clarification and, hypothetically, if the interpretation of Special Condition 4.E. ever became an issue in a judicial proceeding, exactly how Garwood (and we assume LCRA and the ED) would assert it should be interpreted there. Likewise, Garwood does not believe that, by saying the clarification is “unnecessary,” LCRA is disagreeing with OPIC’s assessment that the clarification is helpful, or with Garwood’s view that the clarification makes Special Condition 4.E. much easier for someone who was not involved in this permitting (e.g., the

¹ The Commission’s General Counsel acknowledged in her January 17, 2024 letter encouraging response briefs, and OPIC acknowledged in its response brief, the timeliness of Garwood’s initial filing. OPIC Response at p.3.

² OPIC Response at p.5.

³ LCRA Response at p. 1.

judge in the hypothetical judicial proceeding) to properly interpret. LCRA concludes by stating it is not opposed to the clarification and that, if the Commission determines it is appropriate to reissue the COA, LCRA requests that COA 14-5434G not be withdrawn unless and until a clarified COA 14-5434 can be simultaneously reissued. As discussed below, Garwood proposes such a simultaneous withdrawal and reissuance.

ED: Disappointingly, the ED staff that authored Special Condition 4.E. concluded it was “correct and clear” without in any way analyzing the words actually used in the provision or the potential that those words might easily be misconstrued. Garwood does so below and reaches just the opposite conclusion: Special Condition 4.E. is stunningly unclear, simply because it appears to be an off-the-shelf, general paragraph for river reaches between streamflow gages that was never intended to be used without tailoring to fit the facts applicable to the specific river reach at issue here. The condition requires many reads and much thought to arrive at an interpretation of the words actually written that aligns with the intent stated by LCRA in its Response and noted by the ED’s draft clarification letter attached to that Response.

The ED stood alone in objecting to the clarification solution Garwood offers. Garwood submits that the ED instead should have seized (and it still should seize) the opportunity to clarify Special Condition 4.E. on the ED’s own motion, pursuant to 30 TAC §50.145, because the addition suggested by Garwood is non-substantive⁴ and fits nicely under two of the listed items that qualify for revision under that rule.⁵

Attached as Attachment A is a copy of the January 26, 2024, email from the undersigned to counsel for the ED and LCRA explaining and transmitting a proposed new Certificate of Adjudication No. 14-5434H and showing changes made to Certificate 14-5434G. The new Certificate 14-5434H transmitted by that email is drafted so it can be signed by either the ED or the Commission. Upon signing, the new Certificate 14-5434H provides on its face that Certificate 14-5434G is withdrawn, consistent with the specific concern expressed by LCRA that the basic authorizations in the amended Certificate remain in effect at all times.

Given the relevant positions, only the ED Response warrants a more detailed reply, below.

II. Suggested “Defensive Writing” Standard

The real issue here is quite simple—should a person of average intellect who has not been involved in this permitting or is not an expert in water law (for example, a landowner within the LCRA Garwood Service Area, or an irrigator whose livelihood depends on getting sufficient water

⁴ LCRA and OPIC both agree in their Responses that Garwood’s proposed revision is non-substantive. LCRA Response at 2 (“requested clarification...does not substantively change in any manner...”); OPIC’s response at 5 (“clarification ...is reasonable and does not impact the protectiveness of the originally articulated permit”).

⁵ Specifically, the correction sought by Garwood is:

(b) (4) to describe more accurately in a water rights permit or certificate of adjudication the boundary of or the point, rate, or period of diversion of water; and

(b) (8) to state more accurately or update any provision in a permit without changing the authorizations or requirements addressed by the provision. *See* 30 TAC §50.145 (“Corrections to Permits”)

at a reasonable price from LCRA, or the hypothetical judge discussed above, etc.) be able to read Certificate of Adjudication No. 14-5434G and know *relatively quickly* whether streamflow conditions in the Certificate apply to LCRA's Garwood Canal System Diversion Point (as well as to diversion points downstream of the Garwood Canal System Diversion Point)? It isn't absolutely necessary that occur, but because it seems easy enough to accomplish, and because it would avoid entirely the risk that someone, like a hypothetical judge, might misinterpret a convoluted permit term, Garwood answers that question in the affirmative. Garwood's Motion and suggested replacement Certificate of Adjudication No. 14-5434H clarify a critical permit term and remove the risk of a challenge regarding the applicability of the streamflow restrictions to the original diversion point (and points downstream) of the most senior major water right on the Colorado River.

In high school, those of us with driver's licenses learned valuable lessons in our defensive driving course, often taught by one of the football coaches. If we were lucky, in our core high school curriculum or maybe college or our jobs, we also learned "defensive writing." The basic tenet of defensive writing is something like this—use just the words you need so that your meaning is understood, but above all, use words to ensure that no one could possibly misunderstand your intent. Like its driving counterpart, defensive writing is basically designed to avoid accidents by anticipating accidents. When translated to permit terms, defensive writing avoids ambiguity in what is and is not required by permit terms. What the staff of the Executive Director thinks a permit condition means is important, but not at all conclusive, especially as contests and litigation concerning the State's precious water resources continue to rise in frequency, duration, and profile. Neither Garwood, OPIC, LCRA, nor the ED want judges to try to construe a word-salad permit provision that could be subject to different constructions and interpretations, especially when the provision can be clarified so easily.

III. Special Condition 4.E.

Certificate 14-5434G contains, among other things, two special conditions—Conditions 4.B. and 4.E., that are addressed in Garwood's Motion and this Reply. Both conditions are related to diversion points. Garwood's interests relate exclusively to LCRA's Garwood Canal System Diversion Point, the diversion location where Colorado River water has been diverted for rice farmers in the Garwood Division irrigation service area for over 100 years.

The beginning of Special Condition 4.B. is a good example of defensive writing.⁶ It is very clear and concise. It plainly limits the imposition of streamflow restrictions to new, additional authorized diversions *upstream* of the Canal System Diversion Point. Here's what it says:

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** [the Canal System Diversion Point] 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).

Because of the highlighted language in the above quoted portion of Special Condition 4.B., there is no mistaking whether streamflow conditions imposed *under Special Condition 4.B.* apply to

⁶ Special Condition 4.B. is itself over a page long, cross references other special conditions such as 4.H.(1) and 4.C.- E. and specifies different options to determine what the applicable streamflow requirements are at certain time periods. See Attachment B.

diversions at and downstream of the Canal System Diversion Point. They do not, because they are geographically excluded **in Condition 4.B.** from the very long reach within which streamflow conditions apply under Special Condition 4.B (from the Austin Gage to the Wharton Gage).

But then there’s Special Condition 4.E. It covers the much shorter Wharton Reach (from the Columbus Gage to the Wharton Gage). The question is whether it could be misconstrued to **independently** impose streamflow restrictions on diversions at and downstream of the Canal System Diversion Point. Given the construction that LCRA and the ED agree was intended, this provision fails the test to use words so that the meaning of the provision could not possibly be misunderstood. Here’s Special Condition 4.E. in its entirety:

E. ***Diversions 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 |

(Emphasis added). The Canal System Diversion Point is in the Wharton reach, **miles** upstream of the Wharton Gage. Several of the newly defined diversion points, and a potentially infinite number of additional new diversion points, are located below the Canal System Diversion Point and upstream of the Wharton Gage. On first, maybe even second and third read of the provision, one could easily conclude that, without exception, at some time or another, diversions are prohibited, as in “shall not occur,” at **all** diversion points under Certificate of Adjudication No. 14-5434 within the **entire** Wharton reach, based on streamflow requirements. That erroneous conclusion is encouraged by the fact that Special Condition 4.E. uses the exact same wording used in Special Conditions 4.C. and 4.D., which apply to the two reaches of the Colorado River immediately upstream of the Wharton Reach, and in those two upstream reaches all diversion points are in fact intended to be covered by the streamflow requirements. It seems obvious that the wording used for all three reaches was developed for river segments in which **all** diversions in the reach are intended to have streamflow conditions. It seems equally obvious that here, the provision should have been tailored for use in the Wharton Reach by explicitly adding the geographic exclusion used in Special Condition 4.B.

Garwood respectfully asks the ED and the Commission to simply add the straightforward geographical exclusion that is set forth in Special Condition 4.B. to Special Condition 4.E. That fix eliminates any potential future misunderstanding.

IV. Reasons Given by the ED for its Position

The ED gives three reasons for its position; Garwood responds to each reason separately below:

Issue One. The ED says Garwood improperly relies on the contract between it and LCRA that cannot or should not be enforced by TCEQ. Neither LCRA nor OPIC was confused by Garwood’s summation of its contract with LCRA. Provisions of the contract were cited as

background information, explaining the importance to Garwood and all landowners and irrigators within the LCRA Garwood Service Area, of ensuring that the terms of the LCRA Certificate of Adjudication No. 14-5434G are crystal clear. Those landowners and irrigators retained a first priority to 100,000 af/yr of that very early priority run-of-river water, and as such hold a very significant beneficial interest in the water right, which is reflected by conditions and restrictions referenced by the Commission's predecessor on the face of Certificate of Adjudication No. 14-5434C, as well as in the deed itself by which Garwood conveyed the water right to LCRA (*see* Attachment C). Further, Garwood did not ask, nor does it need or want, the TCEQ to enforce its contract with LCRA. Garwood simply asks that the ED and the Commission clarify one Special Condition to make clear what LCRA and the ED say was the intent.

The ED also suggests that the Commission has no jurisdiction over Garwood's Motion, accusing Garwood of citing no authority in the Texas Water Code or applicable TCEQ rules as the basis for its Motion. Simply stated, TCEQ rules specify that the ED, a permit Applicant, and "**any other person**" may file with the chief clerk a motion to overturn the executive director's action on an application. . ." 30 TAC §50.139(a). "Person" is defined as "An individual, *corporation*, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity." 30 TAC §3.2 (25). As stated in its Motion, Garwood is a Texas corporation and thus a person qualified to file a motion to overturn.

Issue Two. The ED notes that no one, including Garwood, commented on or requested a contested case hearing on the properly noticed Application to Amend COA 14-5434C, as though that somehow renders Garwood's Motion without merit. This position is similar to Issue One, and equally wrong. Nothing in the law requires that comments be filed or a protest be lodged against a water right amendment application as a prerequisite to a motion to overturn. More importantly, Garwood does not "protest" or object to LCRA's requested amendment; Garwood merely seeks to ensure that the terms of the certificate are unambiguous and not subject to detrimental misconstruction.

Issue Three. Here is where the real disagreement lies: according to the ED, all terms of Certificate 14-5434G are "correct and clear."⁷ Garwood believes Special Condition 4.B. is clear and correct, but Special Condition 4.E. is anything but. Defensive writing could not be easier than it is in this instance. State in Special Condition 4.E. the same geographical exclusion that is expressly stated in Special Condition 4.B., as follows:

4.E. Diversions of water *upstream of the existing diversion point authorized under Certificate of Adjudication No. 14-5434C* 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:

⁷ LCRA's position on the very awkward Special Condition 4.E. is very different. LCRA diplomatically opines that correction is not necessary from LCRA's perspective because LCRA already interprets the provision that way, but it doesn't mind at all a bit of clarification.

By making the slight adjustment noted above, the scope of applicability of the streamflow condition is obvious to anyone, without any need to be, or “consult with others, experienced in water rights.”⁸

CONCLUSION

Certificate of Adjudication 14-5434C is the crown jewel in LCRA’s run-of-river water rights because of its size (133,000 af/year), and its very early priority date (November 1, 1900). For over a century and continuing to this day, landowners and irrigators within the LCRA Garwood Service Area have had first priority, under this water right, to run-of-river flows at the Canal System Diversion Point, without any streamflow restriction. Neither LCRA nor the ED intended to apply any streamflow restrictions under the recent amendments and yet, the wording of the Special Conditions does not pass the defensive writing test; that is, Special Condition 4.E. fails to use words to ensure that no one could possibly misunderstand the parties’ intent. For the reasons summarized above, Garwood respectfully requests that the ED issue the proposed clarified Certificate 14-5434H either in response to Garwood’s Motion or pursuant to the ED’s inherent authority under 30 TAC § 50.145(b). In the alternative, Garwood requests that the Commission itself issue the proposed clarified Certificate 14-5434H, or that it direct the ED to do so. In any case, upon signing, the proposed clarified Certificate 14-5434H provides on its face that Certificate 14-5434G is withdrawn, consistent with the specific concern expressed by LCRA that the basic authorizations in the amended Certificate remain in effect at all times.

Respectfully submitted,

By: 
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ATTORNEYS FOR GARWOOD
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⁸ ED Response at 3.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2024, I caused to be filed with the Chief Clerk of the Texas Commission on Environmental Quality in person the original and 7 true and correct copies of the foregoing Reply of Garwood Irrigation Company, LLC to the Responses to Garwood’s Motion 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, and I also served a true and correct copy of the foregoing Reply of Garwood Irrigation Company, LLC via both first class US mail and electronic mail to the following:

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Molly Cagle

Attachment A

From: Cagle, Molly

Sent: Friday, January 26, 2024 12:27 PM

To: ruth.takeda@tceq.texas.gov; Greg Graml (Greg.Graml@LCRA.ORG) <Greg.Graml@LCRA.ORG>

Subject: Certificate of Adjudication No. 14-5434H to replace Certificate 14-5434G - MARKUP SHOWING CHANGES TO CERTIFICATE 14-5434G - 1-24-2024

Ruth and Greg,

Thanks for the draft letter addressing the discrepancy in LCRA's Certificate #14-5434G. After reading the letter and looking at the Certificate amendment, I really believe that we should correct/clarify the amendment now. It doesn't make sense to try to correct/clarify the serious internal conflict on the face of the amendment by a post-permit-issuance letter signed by someone in the ED's staff (whom I adore and respect, but in a decade no one will know who she was, if the letter is in fact found) to fix a critical condition in the largest and oldest water right on the Colorado River. LCRA's Garwood water right likely will be subject to controversial amendments in the future long after those of us who sweated over the sale of the Garwood right are gone. We have the perfect opportunity right now to fix it--a small, simple tweak in the body of the Certificate amendment, and additional Whereas clauses to provide context and a brief explanation. See attached redline. One other change we think is necessary--rename the corrected/clarified Certificate amendment from "G" to "H", otherwise we would have the initial signed 5434G and the corrected signed 5434G out there at large. What could go wrong with that?

I am aware that the GC's office frowns on staff redrafts of permits, but this is not a redraft. We have the MTO process underway and it's timely to fix the Certificate amendment and do so transparently. I discussed our Motion with Tracy Gross, who signed the MTO letter from the Commissioner's GC office, and she seemed confident that if we agreed, the GC's office would not oppose.

We are glad to agree to an extension to your MTO briefing and likewise a rescheduling to a future Commission agenda if the ED needs more time to consider this approach. Our goal isn't to make you write briefs, it is to get this corrected/clarified on the face of the Certificate amendment, as simply as possible, for all the world to see and easily understand. I am glad to get on the phone with you both to try to resolve this informally.

Molly Cagle
Senior Counsel

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO A CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 14-5434GH

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 2024 |
| 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, on December 15, 2023, the Commission issued to the Lower Colorado River Authority the requested amendment to Certificate of Adjudication 14-5434, designated Certificate of Adjudication No. 14-5434G; and](#)

[WHEREAS, the Commission desires that Section 4.E. of Certificate of Adjudication No. 14-5434G be corrected/revised to make it clear that no instream flow requirements apply to diversions of water under Certificate of Adjudication No. 14-5434C, as amended, at or downstream of the existing diversion point authorized under Certificate of Adjudication No. 14-5434C, as such intent is expressed in Section 4.B.; and](#)

[WHEREAS, the correction/revision to Section 4.E. is made by the Commission withdrawing Certificate of Adjudication No. 14-5434G and in its place issuing this amendment, designated Certificate of Adjudication No. 14-5434H, containing the corrected/revised Section 4.E.; and](#)

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in [withdrawing Certificate of Adjudication No. 14-5434G and in its place](#) issuing this amendment, [designated Certificate of Adjudication No. 14-5434H](#);

NOW, THEREFORE, [Certificate of Adjudication No. 14-5434G is withdrawn and in its place](#) this amendment to Certificate of Adjudication No. 14-5434, designated Certificate of Adjudication No. 14-5434H, 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 Sylvanus 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 [upstream of the existing diversion point authorized under Certificate of Adjudication No. 14-5434C](#) 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** _____, **2024**

Attachment B

- 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,

Attachment C

This Deed is executed pursuant to the terms of that certain Purchase Agreement, dated July 20, 1998, between Garwood, as seller, and LCRA, as buyer (the "Purchase Agreement"). The water right now defined as Certificate of Adjudication No. 14-5434C is referred to in the Purchase Agreement as "Garwood's Remaining Right, as Amended." This Deed is subject to all commitments and conditions of LCRA set forth in the Purchase Agreement, including, without limitation, Section 7.08 of the Purchase Agreement. This Deed is further subject to all terms, provisions and special conditions contained within Certificate of Adjudication No. 14-5434C.

This Deed may be executed in any number of counterparts, each of which shall be valid and binding with respect to the signatories thereto.

This Deed shall bind and inure to the benefit of and be binding upon Garwood and LCRA and their respective successors and assigns.

IN WITNESS WHEREOF, this Deed has been executed by Garwood and LCRA as of the date first set forth above.

GARWOOD IRRIGATION COMPANY

By: William N. Lehrer
William N. Lehrer
Chairman and Chief Executive Officer

LOWER COLORADO RIVER AUTHORITY

By: Mark Rose
Mark Rose
General Manager

I, SANDRA K. SANDERS, County Clerk,
Wharton County, Texas, do hereby certify
that this is a true and correct copy as the
same appears of record in my office.
Witness my hand and Seal of Office
on JAN - 7 1998



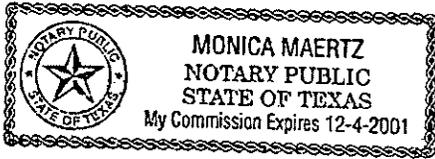
Sandra K. Sanders, County Clerk
By Barbara Syatek
Deputy
BARBARA SYATEK

THE STATE OF TEXAS §
§
COUNTY OF COLORADO §

VOL 307 PAGE 345

This instrument was acknowledged before me on January 7, 1999 by William N. Lehrer, Chairman and Chief Executive Officer of GARWOOD IRRIGATION COMPANY, a Texas corporation, on behalf of said corporation.

Monica Maertz
Notary Public in and for
The State of Texas



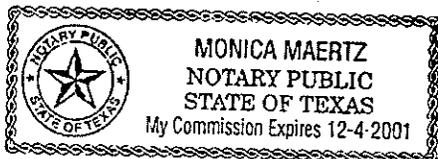
Printed Name of Notary Public:
Monica Maertz

My Commission Expires:
12-4-2001

THE STATE OF TEXAS §
§
COUNTY OF COLORADO §

This instrument was acknowledged before me on January 7, 1999 by Mark Rose, General Manager of the LOWER COLORADO RIVER AUTHORITY, a conservation and reclamation district created pursuant to Article 16, Section 59 of the Texas Constitution and a river authority, as that term is defined in Section 30.003 of the Texas Water Code, on behalf of said conservation and reclamation district and river authority.

Monica Maertz
Notary Public in and for
The State of Texas



Printed Name of Notary Public:
Monica Maertz

My Commission Expires:
12-4-2001

I, SANDRA K. SANDERS, County Clerk, Wharton County, Texas, do hereby certify that this is a true and correct copy as the same appears of record in my office. Witness my hand and Seal of Office on JAN - 7 1998



Sandra K. Sanders, County Clerk
By Barbara Svatek
Deputy

BARBARA SVATEK

irrigation, municipal and industrial purposes within the Garwood Service Area (which is located both within the Colorado River Basin and outside the Colorado River Basin) in addition to irrigation; and

WHEREAS, Certificate of Adjudication No. 14-5434, as amended, already authorizes an interbasin transfer of water out of the Colorado River Basin; and

WHEREAS, Certificate of Adjudication No. 14-5434, as amended by Certificate of Adjudication No. 14-5434A, is referred to as "Garwood's Right"; and

WHEREAS, by instrument entitled "Division of Water Right" dated as of January 30, 1997, Owner divided Garwood's Right into two separate and distinct portions, referred to as (1) "Corpus Christi's Right" and (2) "Garwood's Remaining Right"; and

WHEREAS, under Corpus Christi's Right, Owner is authorized to divert and use 35,000 acre-feet of water per year from the Colorado River for irrigation, municipal and industrial purposes, at a rate of diversion not to exceed 150 cubic feet per second; and

WHEREAS, under Garwood's Remaining Right, Owner is authorized to divert and use 133,000 acre-feet of water per year from the Colorado River for irrigation at a rate of diversion not to exceed 600 cubic feet per second, and to maintain the small dam and reservoir on the Colorado River; and

WHEREAS, pursuant to the aforesaid "Division of Water Right," Garwood submitted an application to the Commission on July 22, 1998, requesting that the Commission amend the "Garwood's Remaining Right" portion of Certificate No. 14-5434, as amended, to the extent necessary, and that it grant such authorizations as may be necessary, pursuant to any provision of the Texas Water Code that may be applicable including, without limitation, Sections 11.122 and 11.085, so that the 133,000 acre-feet of water per annum authorized to be diverted from the Colorado River under "Garwood's Remaining Right":

- a. is also authorized to be used for municipal and industrial purposes in any year, but only to the extent that the water is not needed for irrigation within the Garwood Service Area in that year, in accordance with the special conditions set forth in the application; and
- b. is also authorized to be used outside Garwood's service area in any year, anywhere within Travis, Bastrop, Fayette, Colorado, Wharton and Matagorda Counties, but only to the extent that the water is not needed for irrigation within the Garwood Service Area in that year, in accordance with the special conditions set forth in the application; and

WHEREAS, Garwood further requests that the Commission confirm that "Garwood's Remaining Right," if so amended, would retain the November 1, 1900 priority date of Certificate No. 14-5434, but that "Corpus Christi's Right" be subordinate, in time priority and all other respects, to Garwood's Remaining Right; and

- 2 -

I, SANDRA K. SANDERS, County Clerk,
Wharton County, Texas, do hereby certify
that this is a true and correct copy as the
same appears of record in my office.
Witness my hand and Seal of Office
on JAN - 7 1998



Sandra K. Sanders, County Clerk

By Barbara Svatek
Deputy

BARBARA SVATEK

WHEREAS, in order to facilitate the Commission's administration of water rights, Corpus Christi's Right, as amended, should be assigned a priority date of November 2, 1900; and

WHEREAS, assigning a priority date of November 2, 1900 to Corpus Christi's Right, as amended, would confirm both the early priority of Corpus Christi's Right, as amended, and the subordination of Corpus Christi's Right to Garwood's Remaining Right, as requested by Garwood; and

WHEREAS, the Executive Director's Instream Uses technical review has indicated that potential impacts resulting from the additional authorizations requested include the possible introduction of exogenous species into areas outside the Colorado River Basin; and

WHEREAS, the Executive Director recommends that in order to minimize the potential of incidental transfer of exogenous organisms into areas outside the Colorado River Basin, the method of conveyance from the Colorado River Basin for use in areas outside the Colorado River Basin, other than for irrigation in areas within the Lavaca River Basin or the Brazos-Colorado or Colorado-Lavaca Coastal Basins, should be restricted to an enclosed pipeline or similar device from the diversion point on the Colorado River to the intended water treatment facilities, including any intermediate storage, pumping, or other transportation devices, isolated from natural drainage, or other similar conveyance system; and

WHEREAS, Garwood and the Lower Colorado River Authority ("LCRA") entered into an agreement, dated as of July 20, 1998 (the "LCRA Purchase Agreement"), whereby Garwood agrees to sell to LCRA, and LCRA agrees to purchase, certain of Garwood's assets, generally consisting of the Garwood Canal System and Garwood's Remaining Right; and

WHEREAS, as set forth in Section 7.08 of the LCRA Purchase Agreement, Garwood has conditioned its sale to LCRA upon LCRA making numerous commitments that protect the interests of landowners and irrigators within the Garwood Service Area; and

WHEREAS, the LCRA Purchase Agreement provides that, from and after transfer of this Certificate No. 14-5434C to LCRA, LCRA shall comply, and cause any other person that uses, supplies, or is supplied water under this Certificate to comply, with the conditions and commitments set forth in Section 7.08 of the LCRA Purchase Agreement; and

WHEREAS, Owner has applied for amendments to both Corpus Christi's Right and Garwood's Remaining Right; and

WHEREAS, this Certificate of Adjudication No. 14-5434C is Garwood's Remaining Right, amended as requested by Owner; and

WHEREAS, Certificate of Adjudication No. 14-5434B, issued contemporaneously with this Certificate, is Corpus Christi's Right, amended as requested by Owner; and

- 3 -

I, SANDRA K. SANDERS, County Clerk,
Wharton County, Texas, do hereby certify
that this is a true and correct copy as the
same appears of record in my office.
Witness my hand and Seal of Office
on _____

JAN 7 1998



Sandra K. Sanders, County Clerk

By Barbara Svatek
Deputy

BARBARA SVATEK

WHEREAS, the Texas Natural Resource Conservation Commission finds that jurisdiction over the application is established.

NOW THEREFORE, this Certificate of Adjudication No. 14-5434C (Garwood's Remaining Right, as amended) is issued to the Garwood Irrigation Company, subject to the following terms and conditions:

1. IMPOUNDMENT

Owner is authorized to maintain an overflow type structure (low water dam) and reservoir on the Colorado River and temporarily impound therein not to exceed 86 acre-feet of water. The dam is located adjacent to the Samuel Kennelly Grant, Abstract 30, Colorado County, Texas.

2. USE AND PLACE OF USE

- a. Under this Certificate No. 14-5434C, Owner is authorized to divert and use not to exceed 133,000 acre-feet of water per annum from the Colorado River for irrigation of up to 32,000 acres of land in any year within the boundaries of Owner's service area in Colorado and Wharton Counties, both in the Colorado River Basin and outside the Colorado River Basin, in the Lavaca River Basin (the "Garwood Service Area").
- b. Under this Certificate No. 14-5434C, Owner is also authorized to use the water authorized under Paragraph 2.a., above, for municipal and industrial purposes.
- c. Under this Certificate No. 14-5434C, Owner is also authorized to use the water authorized under Paragraph 2.a., above, outside the boundaries of the Garwood Service Area, anywhere within Travis, Bastrop, Fayette, Colorado, Wharton and Matagorda Counties.

3. DIVERSION

- a. Location: At a point on the west bank of the Colorado River in the Samuel Kennelly Grant, Abstract 30, Colorado County, Texas.
- b. Maximum rate: 600.00 cfs (269,400 gpm).
- c. Transport of water under this Certificate for use in areas outside the Colorado River Basin, other than for irrigation in areas within the Lavaca River Basin or the Brazos-Colorado or Colorado-Lavaca Coastal Basins, is restricted to an enclosed pipeline or similar device from the diversion point on the

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I, SANDRA K. SANDERS, County Clerk,
Wharton County, Texas, do hereby certify
that this is a true and correct copy as the
same appears of record in my office.
Witness my hand and Seal of Office
on JAN - 7 1998



Sandra K. Sanders, County Clerk
By Barbara Svatek
Deputy

BARBARA SVATEK

Colorado River to the intended water treatment facilities, including any intermediate storage, pumping, or other transportation devices, isolated from natural drainage.

4. PRIORITY

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

5. WATER CONSERVATION

Certificate Owner shall maintain a water conservation plan that shall provide for the utilization of those practices, techniques and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plan shall include a requirement in every wholesale water supply contract entered into, on or after the issue date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement water conservation measures. If the customer intends to resell the water, then the contract for the resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water will be required to implement water conservation measures.

6. ADDITIONAL SPECIAL CONDITIONS

- a. Owner shall maintain a suitable outlet in the aforesaid small dam on the Colorado River authorized herein to allow the free passage of water that owner is not entitled to divert or impound.
- b. If the Owner of this Certificate of Adjudication No. 14-5434C should ever determine that it is no longer necessary or desirable for Certificate Owner to continue to maintain the small dam on the Colorado River authorized under this Certificate, then the owner of this Certificate shall give notice of such determination to the owner of Certificate of Adjudication No. 14-5434B. The owner of Certificate of Adjudication No. 14-5434B will be authorized to maintain the dam at that time if, but only if: (i) the owner of Certificate of Adjudication No. 14-5434B has the right at that time to divert water under that Certificate at a point on the reservoir created by the dam, and (ii) the Commission enters an order authorizing the owner of Certificate of Adjudication No. 14-5434B to maintain the dam.

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.

- 5 -

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Sandra K. Sanders, County Clerk
By Barbara Svatek
Deputy

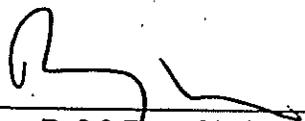
BARBARA SVATEK

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 Natural Resource Conservation Commission and to the right of continuing supervision of State water resources exercised by the Commission.

Date Issued: OCT 13 1998

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION



Barry R. McBee, Chairman

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Wharton County, Texas, do hereby certify
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on JAN - 7 1998



Sandra K. Sanders, County Clerk

By Barbara Svatek

Deputy

BARBARA SVATEK

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COMPARED

FILED FOR RECORD
 23 rdday of Oct 19 98
 at 10:52 o'clock AM
 DARLENE HAYEK
 CLERK, COUNTY COURT, COLORADO CO., TEX
 By Diane Kollmann
 Deputy
 DIANE KOLLMANN

Return: Roger P. Nevada
 P.O. Box 2103
 Austin, TX 78768

19.00 pd

STATE OF TEXAS COUNTY OF COLORADO
 I hereby certify that this instrument was FILED on the
 date and time stamped hereon by me; and was duly
 RECORDED to the Volume and Page of the OFFICIAL
 RECORDS of Colorado County, Texas and stamped
 hereon by me, on

OCT 23 1998



Darlene Hayek
 DARLENE HAYEK
 COUNTY CLERK, COLORADO COUNTY, TEXAS

I, SANDRA K. SANDERS, County Clerk,
 Wharton County, Texas, do hereby certify
 that this is a true and correct copy as the
 same appears of record in my office.
 Witness my hand and Seal of Office
 on JAN - 7 1998



Sandra K. Sanders, County Clerk
 By Barbara Svatek
 Deputy
 BARBARA SVATEK

VOL 307 PAGE 353

FILED FOR RECORD
at 2:20 o'clock P M

JAN - 7 1999

SANDRA K. SANDERS
COUNTY CLERK, WHARTON CO. TEXAS

By Barbara Svatek

Pd' 27.00

Bruce Wasinger

Lower Co. River Authority

3700 Lakecrest Blvd.

Austin Tx 78703

192125

I, SANDRA K. SANDERS, County Clerk,
Wharton County, Texas, do hereby certify
that this is a true and correct copy as the
same appears of record in my office.
Witness my hand and Seal of Office
on JAN - 7 1999



Sandra K. Sanders, County Clerk
By Barbara Svatek
BARBARA SVATEK Deputy