

**TCEQ DOCKET NO. 2024-0078-WR**

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| <b>APPLICATION OF LOWER<br/>COLORADO RIVER AUTHORITY<br/>TO AMEND CERTIFICATE OF<br/>ADJUDICATION NO. 14-5434C, AS<br/>AMENDED</b> | §<br>§<br>§<br>§<br>§ | <b>BEFORE THE TEXAS COMMISSION<br/><br/><br/><br/><br/><br/><br/><br/><br/><br/>ON ENVIRONMENTAL QUALITY</b> |
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**MOTION OF GARWOOD IRRIGATION COMPANY, LLC REQUESTING  
THAT THE EXECUTIVE DIRECTOR WITHDRAW THE RECENT AMENDMENT TO  
CERTIFICATE 14-5434C AND ISSUE A CORRECTED/CLARIFIED AMENDMENT  
OR, ALTERNATIVELY, THAT THE COMMISSION OVERTURN FOR  
CORRECTION/CLARIFICATION**

Garwood Irrigation Company, LLC (“Garwood”), a Texas corporation and successor to Garwood Irrigation Company, previous owner of Certificate of Adjudication No. 14-5434C issued to Garwood on October 13, 1998 (“Certificate 14-5434C”), files this Motion Requesting that the Executive Director Withdraw the Recent Amendment to Certificate 14-5434C (“Certificate 14-5434G”) and Issue a Corrected/Clarified Certificate 14-5434G or, Alternatively, Requesting that the Commission Overturn for Correction/Clarification (this “Motion”). Withdrawal and issuance of a corrected/clarified Certificate 14-5434G by the Executive Director could be accomplished by a nunc pro tunc action or other similar mechanism available to the Executive Director.

**I**

As discussed in more detail below, Garwood requests that a very simple, yet extremely important, correction/clarification be made to Special Condition 4.E. of Certificate 14-5434G, as shown below (the added text is found verbatim in Special Condition 4.B., which is referenced in Special condition 4.E.):

- 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: ....

The Staffs of both the TCEQ and LCRA have advised Garwood that there was no intent to impose any instream flow restrictions on diversions at and downstream of the existing diversion point authorized under Certificate 14-5434C, and that Special Condition 4.E. should be construed as if the added text from Special Condition 4.B. is already written into Special Condition 4.E. as shown above.

## II

A copy of Certificate 14-5434C as issued to Garwood in 1998 is attached as Exhibit A. A copy of the previous amendment to Certificate 14-5434C as issued to LCRA by the Executive Director in 2018, designated Certificate of Adjudication No. 14-5434E (“Certificate 14-5434E”), is attached as Exhibit B. A copy of the recent amendment issued by the Executive Director on December 15, 2023 that is the subject of this Motion, designated Certificate of Adjudication No. 14-5434G (“Certificate 14-5434G”), is attached as Exhibit C.

## III

Structurally, Certificate 14-5434E, the first amendment to Certificate 14-5434C, added a total of 14 specific existing diversion points and reservoirs, both upstream and downstream of the one diversion point for the Garwood Canal System authorized under Certificate 14-5434C (the “Canal System Diversion Point”), as authorized diversion points of water under Certificate 14-5434C, as amended, but it left the authorizations applicable to diversions at the Canal System Diversion Point under Certificate 14-5434C *intact and unmodified*. Certificate 14-5434G continued to leave the authorizations applicable to diversions at the Canal System Diversion Point under Certificate 14-5434C *intact and unmodified*; Certificate 14-5434G replaced entirely the additional diversion authorizations contained within Certificate 14-5434E and added to that replacement of Certificate 14-5434E a potentially infinite number of authorized additional diversion points within a segment of the Colorado River from Longhorn Dam in Travis County to Bay City Dam in Matagorda County. Thus, Certificates 14-5434C and 14-5434G now contain all terms and conditions of Certificate 14-5434C, as amended.

## IV

Garwood first and foremost asks that the convoluted Special Condition 4.E. of Certificate 14-5434G be corrected/clarified to confirm that *no* special in-stream flow conditions apply to diversions of water from the Colorado River at the Canal System Diversion Point. Both the Staff of the TCEQ and LCRA concur that there was no intent to have any in-stream flow conditions apply to diversions at that point. Water diverted at the Canal System Diversion Point by Garwood and its predecessors, and now by LCRA, has been supplied for over 100 years to landowners and rice farmers within what is now referred to as LCRA’s Garwood Division irrigation service area. LCRA’s applications to amend Certificate 14-5434C asked only for authorization to divert at additional diversion points water authorized for diversion at the century old Canal System Diversion Point under Certificate 14-5434C and did not ask for any new or increased diversion authorizations – and certainly no instream flow restrictions – at the Canal System Diversion Point. For those reasons alone, there should be no doubt that instream flow restrictions could not have been intended to be imposed on diversions at the Canal System Diversion Point. There are other reasons, discussed below, that also support that conclusion.

## V

When Garwood asked LCRA if there was any intent to impose any instream flow restrictions on diversions at the Canal System Diversion Point, LCRA confirmed there was no such intent, and it more broadly stated that the intent was to impose streamflow restrictions *only*

on additional authorized diversions *upstream* of the Canal System Diversion Point, pointing to the language in Special Condition 4.B. and the reference to 4.B. in Special Condition 4.E. as evidence of that broader exclusion. Garwood concurs with LCRA’s interpretation of Certificate 14-5434G. The analysis is summarized as follows:

Special Condition 4.B. clearly limits the imposition of streamflow restrictions to additional authorized diversions upstream of the Canal System Diversion Point:

- 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: .... [Emphasis added.]

But then there is Special Condition 4.E., which states:

- 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: .... [Emphasis added.]

On a quick read, 4.E. appears to limit *all* additional authorized diversions in the *entire* Wharton (Egypt) reach. But that interpretation would conflict with the clear limitation set forth in 4.B. because “the existing diversion point authorized under Certificate of Adjudication No. 14-5434C” (the Canal System Diversion Point) is located in the Wharton reach, miles upstream of the USGS Gage at Wharton Texas, which is the point that defines the downstream boundary of the Wharton reach. The correct construction is that the reference in 4.E. back to 4.B. captures only the “***applicable requirements as determined pursuant to Special Condition 4.B.***” and, in the case of the Wharton reach, 4.B. makes stream flow restrictions under 4.E. ***inapplicable in that portion of the Wharton reach at and downstream of the Canal System Diversion Point.*** Special Condition 4.B. also means that there are *no* stream flow restrictions applicable to *any* additional authorized diversions in the entire final reach of the Colorado River (the reach downstream of the USGS Gage at Wharton), which includes all of Matagorda County, even though Certificate 14-5434G adds both a specific number of defined additional authorized diversion points and a potentially infinite number of undefined additional authorized diversion points in that reach; that interpretation is consistent with the fact that there is no Special Condition in Certificate 14-5434G addressing that reach comparable to Special Conditions 4.C. for the Bastrop reach, 4.D. for the Columbus (Eagle Lake) reach, or 4.E. for the Wharton (Egypt) reach. In contrast, Special Condition 4.B. also means that there are stream flow restrictions applicable to *all* additional authorized diversions in both the *entire* Bastrop reach and the *entire* Colorado (Eagle Lake) reach; that interpretation means that there is no conflict between 4.B. and the quick-read apparent meanings of Special Conditions 4.C. and 4.D.

In any case, it is easy to see that, unless someone with no or little background who is trying to understand Special Condition 4.E. devotes a significant amount of time analyzing the relevant provisions of Certificates 14-5434C and 14-5434G and studying relevant facts and history of the Garwood water right and canal system (such as the facts summarized in this Motion), that person could easily misconstrue Special Condition 4.E. to be inconsistent with the highlighted language of Special Condition 4.B. This false and unnecessary ambiguity can be readily corrected simply by adding into Special Condition 4.E. at the appropriate place the exact highlighted language in Special Condition 4.B., as shown above in Section I and below in the Conclusion (Section XII).

## VI

The remaining Sections of this Motion prior to the Conclusion (Section XII) address Garwood's standing to file and pursue this Motion and the reasons it is so important to Garwood that Special Condition 4.E. of Certificate 14-5434G be corrected/clarified on its face as discussed above.

## VII

As reflected on the face of Certificate 14-5434C issued to Garwood in 1998, Garwood has standing to file and pursue this Motion in order to protect the interests of landowners and irrigators within the Garwood Service Area. Set forth below are the last eight introductory clauses of Certificate 14-5434C found on pages 3 and 4 of the certificate, all of which address protection of the interests of such landowners and irrigators and the scope of the proceeding before the agency at the time Certificate 14-5434C was issued:

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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

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:

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### VIII

A copy of the body of the 1998 LCRA Purchase Agreement is attached as Exhibit D. As set forth in Section 13.07(a)(i), landowners and irrigators within Garwood's Service Area are designated as third party beneficiaries that, in addition to Garwood, "shall have the right to enforce the obligations of LCRA set forth in Section 7.08."

### IX

The provisions of Section 7.08 of the LCRA Purchase Agreement are designed to protect landowners and irrigators within the Garwood Service Area in a variety of different ways, including the following:

- The 133,000 af/yr authorized to be diverted under Certificate 14-5434C is defined as "Garwood's Remaining Right" (Garwood's Remaining Right is the remainder of the original 168,000 af/yr water right after severance of a lower priority 35,000 af/yr portion that was ultimately conveyed to Corpus Christi).
- LCRA is obligated to reserve 100,000 af/yr (the "Reserved Portion") of the 133,000 af/yr and supply that water for irrigation within the Garwood Service Area. The Reserved Portion shall come first from the run-of-river flow under Certificate No. 14-5434C, firmed up and supplemented by stored water from the Highland Lakes at no cost to Garwood or landowners and irrigators in the Garwood Service Area.
- Pursuant to the December 10, 1987 Contract with LCRA (Exhibit F to the 1998 Purchase Agreement), LCRA is obligated to supply in any given year an amount of stored water from the Highland Lakes to firm up and supplement the run-of-river water available to the Garwood Service area under Certificate 14-5434C and the terms and conditions of Section 7.08, up to a total amount of water each year equal to the Reserved Portion, to satisfy the "Unrestricted Demand" for irrigation during that year. A copy of the 1987 Contract is attached as Exhibit E.

- The Reserved Portion may be reduced based on an analysis of the total amount of water supplied and the Unrestricted Demand during each year over the previous ten years. There has thus far been no reduction and the Reserved Portion today – 25 years after the Purchase Agreement was executed – remains 100,000 af/yr, meaning LCRA may not commit to supply more than 33,000 af/yr (the “Surplus Amount”) to other diversion points without having to condition the supply on curtailment to the extent needed to satisfy the Unrestricted Demand for irrigation within the Garwood Service Area, up to the Reserved Portion in any given year.
- The priority of the Surplus Portion shall be subordinate in time priority and all other respects to the Reserved Portion.
- LCRA is prohibited from amending the Reserved Portion (the 100,000 af/yr) to impair in any way the November 1, 1900 priority of the right to divert water at the Canal System Point of Diversion for use for irrigation within the Garwood Service Area.
- LCRA is prohibited from amending the Reserved Portion (the 100,000 af/yr) to impair in any way the relative seniority and superiority of the Reserved Portion over the Surplus Portion.
- LCRA is obligated to provide Garwood within defined deadlines a copy of each of the following: (i) each contract or other commitment to supply water under the Surplus Portion of Garwood’s Remaining Right; (ii) each contract or other commitment to supply water under the Reserved Portion for purposes other than irrigation within Garwood’s Service Area; (iii) each contract for the conveyance of, and each instrument conveying, Garwood’s Remaining Right or any portion thereof or the Canal System or any portion thereof; and (iv) each application to amend Garwood’s Remaining Right, any of the underlying water rights for the Gulf Coast Service Area, and any of the underlying water rights for the Lakeside Service Area.
- LCRA is obligated to include the following provision in each contract or other commitment and each conveyance instrument identified above:

“This [Contract/Agreement/Conveyance/etc.] is subject to the commitments and conditions set forth in Section 7.08 of that certain Purchase Agreement, dated July 20, 1998, between Garwood Irrigation Company, as seller, and the Lower Colorado River Authority, as buyer (the “LCRA Purchase Agreement”), and is further subject to all terms, provisions and special conditions contained within that certain water right identified as Certificate of Adjudication No. 14-5434C, issued to Garwood by the Texas Natural Resource Conservation Commission (“TNRCC”) on \_\_\_\_\_, a copy of which is attached hereto as Exhibit \_\_\_\_ (such water right is referred to herein as “Garwood’s Remaining Right, as Amended”). Garwood’s Remaining Right, as Amended, is described in the LCRA Purchase Agreement as “Garwood’s Remaining Right” (as defined in the LCRA Purchase Agreement), as amended by the TNRCC in response to that certain application to amend defined in the LCRA Purchase Agreement as “Garwood’s Application.” By executing this [Contract/Agreement/etc.] of by accepting this [Conveyance/etc.]

{Purchaser/Buyer/etc.] hereby acknowledges receipt of copies of the LCRA Purchase Agreement and Garwood’s Remaining Right, as amended.”

- Section 7.08(l) provides that the commitments and conditions set forth in Section 7.08 shall remain in effect for so long as the Canal System is used to supply any water for any purpose of use.

## X

A shorthand way to describe one of the most important objectives of Section 7.08 is a requirement that LCRA not take any action that impairs in any way, shape or form the availability to the Garwood Service Area of the run-of-river flow of the Colorado River pursuant to the terms of Certificate of Adjudication 14-5434C and Section 7.08. For various reasons, it seems clear that LCRA’s intent was to avoid taking any such action in connection with its two applications to amend Certificate 14-5434C. Most importantly, LCRA’s counsel Greg Graml confirmed that was not LCRA’s intent. Additionally, the following also support the conclusion that LCRA never intended to alter the conditions applicable to the Canal System Diversion Point: (i) An amendment to Certificate 14-5434C that imposes new in-stream flow restrictions on diversions at the century-old Canal System Diversion Point would be in violation of Section 7.08 because that would impair the availability of that run-of-river supply; (ii) LCRA never provided to Garwood a copy of any application by LCRA seeking imposition of new conditions at the Canal System Diversion Point, which would have been required under Section 7.08(k)(iv) if LCRA had applied for that in any way, in either of the applications it filed to initiate the amendment process, or by amending the initially filed application in any way during the amendment process such as by reaching a settlement agreement with the Executive Director staff and/or other party or parties during the amendment process; and (iii) it seems clear that one of the objectives behind the structure of both amendments (Certificates 14-5434E and 14-5434G) was to avoid that impairment by addressing only *new* additional diversion points in both amendments and leaving the authorizations applicable to diversions at the century-old Canal System Diversion Point under Certificate 14-5434C *intact and unmodified*.

## XI

Imposing new conditions on diversions at the existing Canal System Diversion Point would be wrong as a matter of law and policy and, if the convoluted Special Condition 4.E. of Certificate 14-5434G is not corrected/clarified as Garwood asks, there could easily be future disputes over the meaning of 4.E. that lead to costly litigation, especially as more time passes and memories fade. Garwood would of course assert in any such dispute that, if Special Condition 4.E. should ever be construed in a way that impairs in any way, shape or form the availability to the Garwood Service Area of the run-of-river flow of the Colorado River pursuant to the terms of Certificate of Adjudication 14-5434C and Section 7.08 of the LCRA Purchase Agreement, LCRA would be required pursuant to the terms of Section 7.08 to make landowners and irrigators within the Garwood Service Area whole – by, for example, supplying more stored water from the Highland Lakes, at no cost, to firm up and supplement the supply of run-of-river water to the same extent that the supply would be firm under the terms of Certificate 14-5434C and Section 7.08. Garwood assumes the Commission and all parties want to avoid unnecessary litigation or increasing the risk

of unnecessary litigation occurring. The proposed correction/clarification to Special Condition E of Certificate 14-5434G is all that is needed to address this issue.


## XII CONCLUSION

For the reasons summarized above, Garwood respectfully requests that Certificate 14-5434G be corrected/clarified to confirm that no instream flow requirements apply to diversions of water from the Colorado River at the Canal System Diversion Point or at any diversion point downstream. Specifically, Garwood requests that Special Condition 4.E. be corrected/clarified by inserting in the appropriate place the exact language found in Special Condition 4.B., as shown below:

- 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: ....

Withdrawal and issuance of a corrected/clarified Certificate by the Executive Director could be accomplished by a nunc pro tunc action or other similar mechanism available to the Executive Director. Alternatively, the Commission could overturn the issuance of Certificate 14-5434G for correction/clarification.

Respectfully submitted,

By: 

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ATTORNEYS FOR GARWOOD  
IRRIGATION COMPANY, LLC



AFFIDAVIT

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §


BEFORE ME, the undersigned, personally appeared Molly Cagle, who is personally know to me, and after first being duly sworn on her oath, states as follows:

1. My name is Molly Cagle. I am over 21 years of age, of sound mind, and fully competent to make this affidavit.
2. I have read the foregoing Motion of Garwood Irrigation Company, LLC including the accompanying attached Exhibits (“Motion”) and am familiar with the contents. The facts stated in the Motion are true and correct to the best of my knowledge and belief.

  
MOLLY CAGLE

Subscribed and sworn to before me this 16<sup>th</sup> day of January 2024 by MOLLY CAGLE.



  
Notary Public, State of Texas

My Commission Expires: 8-2-2026

## CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of January, 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 Motion of Garwood Irrigation Company, LLC, and I also served a true and correct copy of the foregoing Motion of Garwood Irrigation Company, LLC via both first class US mail and electronic mail to the following:

FOR THE APPLICANT:

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Molly Cagle

**EXHIBIT A**  
**TO**  
**MOTION OF GARWOOD IRRIGATION COMPANY, LLC**

**Certificate of Adjudication No. 14-5434C**  
**(Garwood's Remaining Right)**

Issued to Garwood Irrigation Company  
October 13, 1998



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



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

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

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.

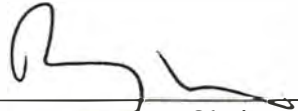


All other matters requested in the application which are not specifically granted by this amendment are denied.

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



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Barry R. McBee, Chairman

242

5965

COMPARED

FILED FOR RECORD  
23rd day of Oct 19 98  
at 10:50 o'clock A M  
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

**EXHIBIT B**  
**TO**  
**MOTION OF GARWOOD IRRIGATION COMPANY, LLC**

**Certificate of Adjudication No. 14-5434E**

Issued to Lower Colorado River Authority  
May 7, 2018

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## AMENDMENT TO A CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 14-5434E

TYPE: § 11.122

Owner: Lower Colorado River Authority Address: P.O. Box 220  
Austin, Texas 78767-0220

Filed: February 5, 2003 Granted: May 7, 2018

Purpose: 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  
and the Colorado River Watershed: Colorado River Basin,  
Lavaca River Basin,  
Guadalupe River Basin,  
Colorado-Lavaca Coastal  
Basin, and 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, 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 also authorizes the LCRA to divert and use not to exceed 133,000 acre-feet of water per year from a point on the Colorado River 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. 14-5434 to add additional diversion points both upstream and downstream of the existing diversion point on the Colorado River and described as follows:

- Two diversion points authorized in Certificate of Adjudication No. 14-5473:

- A. At a point on the Colorado River in the Isaac Harris Grant, Abstract 38, Bastrop County, Texas, and located at 30.15240° N Latitude, 97.34650° W Longitude.
- B. On the perimeter of Lake Bastrop on Spicer Creek, tributary of the Colorado River, in Bastrop County, Texas, and located at 30.15475° N Latitude, 97.29339° W Longitude.
- Two diversion points authorized in Certificate of Adjudication No. 14-5474:
  - A. At a point on the east bank of the Colorado River in the J.M. Hensley Survey, Abstract 54, Fayette County, Texas, and located at 29.86770° N Latitude, 96.77560° W Longitude.
  - B. 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, and located at 29.91920° N Latitude, 96.75110° W Longitude.
- Three diversion points authorized in Certificate of Adjudication No. 14-5476:
  - A. 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, and located at 29.1936° N Latitude, 96.07210° W Longitude.
  - B. 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, and located at 28.98400° N Latitude, 96.00020° W Longitude.
  - C. At a point on the west bank of a reservoir (known as Bay City Dam), on the Colorado River located in Thomas Cayce Grant, Abstract 14, Matagorda County, Texas, and located at 28.98060° N Latitude, 96.01150° W Longitude.
- Two diversion points authorized in Certificate of Adjudication No. 14-5475:
  - A. At a point on the east bank of the Colorado River in the A.W. McLain and James McNair Grant, Abstract 33, Colorado County, and located at 29.56990° N Latitude, 96.40200° W Longitude.
  - B. At a point located on the perimeter of Eagle Lake on Moores Branch of the Colorado River in Colorado County, Texas, and located at 29.55830° N Latitude, 96.33410° W Longitude.
- Diversion point authorized in Certificate of Adjudication No. 14-5477, on the south bank of the Colorado River, in the Robert Kuykendall Grant, Abstract 39, Wharton County, Texas, and located at 29.30727° N Latitude, 96.13401° W Longitude.

- Diversion point authorized in Certificate of Adjudication No. 14-5437, 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; 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 added as part of a settlement agreement, 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 also seeks to divert and use the 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. Water diverted from these reservoirs 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, 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. 14-5434E, is issued to the Lower Colorado River Authority, subject to the following terms and conditions:

1. DIVERSION

In addition to the previous authorization, Owner is also 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, in 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 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 located in 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 located 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 and located at 28.77580° N Latitude, 95.99700° W Longitude; and
- I. 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 14- 5434C.

2. PRIORITY DATE

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

3. CONSERVATION

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 contract 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

- A. Diversion of water from the perimeter of Lake Travis, Lake Austin, and Lady Bird Lake (formerly known as Town Lake) shall not occur when the flow of water is below 50 cfs in the Austin reach of the Lower Colorado River below the Longhorn Dam and upstream of USGS Gage No. 08158000, Colorado River at Austin, Texas, as measured at such gage, 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 Lady Bird Lake 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 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 | Oct. 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 | APRIL | 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   | APRIL | 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   | APRIL | 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 (ac-ft) |
|---|---|
| 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                                 |

- (2) In addition, at the additional points authorized in Paragraph 1. DIVERSION 1.A. through 1.D. 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. 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. 14-5434E*. 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. 14-5434E* 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 made 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.

  
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For the Commission

Date issued: **May 7, 2018**

**EXHIBIT C**  
**TO**  
**MOTION OF GARWOOD IRRIGATION COMPANY, LLC**

**Certificate of Adjudication No. 14-5434G**

Issued to Lower Colorado River Authority  
December 15, 2023

# 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<br>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.

  
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For the Commission

Date Issued: **December 15, 2023**



**EXHIBIT D**  
**TO**  
**MOTION OF GARWOOD IRRIGATION COMPANY, LLC**

**PURCHASE AGREEMENT**

**by and between**

**Garwood Irrigation Company,  
as Seller,**

**and**

**Lower Colorado River Authority,  
as Buyer**

**Dated July 20, 1998**

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**PURCHASE AGREEMENT**

**by and between**

**Garwood Irrigation Company,**

**as Seller,**

**and**

**Lower Colorado River Authority,**

**as Buyer,**

**Dated July 20, 1998**

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## PURCHASE AGREEMENT

This PURCHASE AGREEMENT (this "*Agreement*"), dated July 20, 1998 (the "*Execution Date*"), is by and between Garwood Irrigation Company, a Texas corporation ("*Garwood*"); and 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 ("*LCRA*"). Garwood and LCRA are sometimes collectively referred to herein as the "*Parties*" or, individually, as a "*Party*."

### RECITALS

LCRA desires to purchase from Garwood, and Garwood desires to sell to LCRA, upon the terms and conditions contained herein, the Assets at the Closing.

NOW, THEREFORE, in consideration of the recitals, agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and in reliance upon the mutual representations and warranties contained herein, Garwood and LCRA agree, upon the terms and subject to the conditions contained herein, as follows:

### ARTICLE 1

#### Definitions

1.01 Defined Terms. Capitalized terms used herein shall have the meaning ascribed to them in Schedule 1.01 unless such terms are defined elsewhere in this Agreement.

1.02 Other Definitional Provisions: Construction. The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms. Unless the context requires otherwise: (a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine and neuter; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; (c) references to Schedules or Exhibits refer to the Schedules and Exhibits attached to this Agreement, each of which is made a part hereof for all purposes; (d) references to Laws refer to such Laws as are in effect from time to time prior to the Closing Date; (e) references to money refer to legal currency of the United States of America; and (f) the word "including" means "including, without limitation."

## ARTICLE 2

### Purchase and Sale

#### 2.01 Sale of Assets.

(a) Upon the terms and subject to the conditions of this Agreement, at the Closing, Garwood shall sell, assign, convey, transfer and deliver to LCRA the following assets (collectively, the "Assets"):

(i) Garwood's Remaining Right, as amended by the TNRCC in response to Garwood's Application;

(ii) the real property owned in fee by Garwood and described on Schedule 2.01(a)(ii) (collectively, the "Fee Property");

(iii) the system comprised of Garwood's main pumping plant on the Colorado River (the "Pumping Plant"), the small dam on the Colorado River (the "Colorado Dam"), and all other dams, pumps, canals, laterals, ditches and other facilities, as such may currently exist or be modified in the future, that are owned by Garwood and used for the purpose of supplying water within Garwood's Service Area, all as more fully shown on the map attached hereto as Schedule 2.01(a)(iii) (collectively, the "Canal System");

(iv) to the extent assignable, the easements, rights-of-way and other enforceable legal rights of access and use that are described on Schedule 2.01(a)(iv) (collectively, the "Easements");

(v) to the extent assignable, the contracts and agreements described on Schedule 2.01(a)(v) (collectively, the "Contracts"); and

(vi) to the extent assignable, the governmental permits, licenses, orders and approvals described on Schedule 2.01(a)(vi) (collectively, the "Permits").

(b) Notwithstanding anything in this Agreement to the contrary, the assets listed on Schedule 2.01(b) (the "Excluded Assets") shall be (i) excluded from the sale hereunder, (ii) retained by Garwood and (iii) deemed not to constitute any portion of the "Assets" (or any of the other terms that are defined in Section 2.01(a)). The Excluded Assets shall include the LCRA Agreement, Corpus Christi's Right (whether or not the Corpus Christi Agreement is terminated), the Corpus Christi Agreement (to the extent it is not terminated), and all rights arising out of, and any assets subject to, the Corpus Christi Agreement.

2.02 Purchase Price. (a) Subject to the terms and conditions of this Agreement, the consideration to be paid by LCRA to Garwood for the Assets shall be \$75,000,000, less the total of all payments paid by LCRA pursuant to Sections 2.03 and 2.04 (the "Purchase Price").



(b) If this Agreement is terminated prior to Closing for any reason, Garwood shall be entitled to retain or collect, as applicable, all amounts paid or payable prior to termination under Sections 2.03 and 2.04.

2.03 Initial Payment. Simultaneously with the execution of this Agreement, LCRA shall pay Garwood the product of \$600,000 multiplied by a fraction, the numerator of which shall be the number of days during the period from February 6, 1998 through the last day of the month in which this Agreement is executed, inclusive, and the denominator of which shall be 365.

2.04 Monthly Payments.

(a) LCRA shall pay Garwood \$50,000 per calendar month until Closing. Each such payment shall be due and payable on the first day of each calendar month beginning the first day of the calendar month following the calendar month in which this Agreement is executed.

(b) If LCRA fails to pay when due and payable all or any portion of a payment required to be made under this Section 2.04, then LCRA shall be liable for a late payment charge (the "*Late Payment Charge*"). The Late Payment Charge shall be equal to an additional 18% of the amount due and not timely paid. Garwood may give written notice to LCRA stating both the amount due and not timely paid and the Late Payment Charge. If LCRA fails to pay within 20 days after receipt of such notice both the amount due and not timely paid and the Late Payment Charge, Garwood may, in addition to all other remedies available under law, terminate this Agreement without recourse. LCRA shall be liable for reasonable attorneys fees and other costs of collection or litigation incurred by Garwood in seeking payment of amounts due under this Section 2.04.

### ARTICLE 3

#### Closing

3.01 Time and Place of Closing. Subject to the conditions stated in this Agreement, the closing of the purchase and sale of the Assets (the "*Closing*") shall occur sixty (60) days following the satisfaction or waiver of the conditions set forth in Article 8, (except for the payment of the Purchase Price by LCRA) in accordance with the applicable provisions of such Article, or on such other date as may be mutually agreed upon by the parties to this Agreement. The date Closing actually occurs is herein called the "*Closing Date*." The Closing shall be held at the offices of Garwood's legal counsel in Houston, Texas, or at such other location as may be mutually agreed upon by Garwood and LCRA.

3.02 Deliveries by Garwood.

(a) Delivery of Documents by Garwood. At Closing, Garwood shall deliver to LCRA:

(i) A Water Right Deed, and a Deed, General Conveyance and Assignment, in the forms attached hereto as Exhibit A, conveying the Assets to LCRA; and

(ii) All other documents, instruments, and writings required to be delivered by Garwood at Closing pursuant to the provisions of Section 8.02.

(b) Delivery of Certain Records. On the Closing Date (or as soon thereafter as practicable), Garwood will deliver to LCRA at Garwood's offices in Garwood, Texas, the originals of all Deliverable Records.

3.03 Deliveries by LCRA. At or prior to Closing:

(a) LCRA shall deliver to Garwood the Purchase Price.

(b) LCRA shall deliver to Garwood all documents, instruments and writings required to be delivered by LCRA at Closing pursuant to the provisions of Section 8.01.

(c) LCRA shall deliver to Garwood copies of all data, analyses, evaluations, reports, and other information acquired or developed by or on behalf of LCRA in connection with any inspections or tests of the Assets, either before the Execution Date or from the Execution Date through the Closing Date, either pursuant to Section 6.01 or otherwise.

#### ARTICLE 4

##### Representations and Warranties of Garwood

Garwood represents and warrants to LCRA as follows:

4.01 Corporate Existence and Qualification. Garwood is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Texas.

4.02 Authority, Approval and Enforceability. Garwood has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. The execution and delivery of this Agreement by Garwood and the performance of the transactions contemplated hereby by Garwood have been duly and validly approved by such action, if any, necessary on behalf of Garwood. This Agreement has been duly executed and delivered on behalf of Garwood and constitutes the legal, valid and binding obligation of Garwood, enforceable against Garwood in accordance with its terms, subject to Creditor's Rights. At the Closing, all documents required hereunder to be executed and delivered by Garwood will have been duly authorized, executed and delivered by Garwood and will constitute legal, valid and binding obligations of Garwood enforceable in accordance with their terms, subject to Creditor's Rights.

4.03 No Default or Consents. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein will:

(a) entitle any Person to exercise any preferential purchase right, option to purchase or similar right with respect to any material Asset; or

(b) result in the creation of any lien, charge or other encumbrance upon any material Asset;

which, with respect to the matters specified in each of clauses (a) and (b), above, would have a Material Adverse Effect.

4.04 Contracts. Garwood is not in default under, nor has any event occurred that with the giving of notice or the passage of time or both would constitute such a default under, any Contracts, other than exceptions to the foregoing that would not have a Material Adverse Effect.

4.05 Title. Garwood has good and marketable title to Garwood's Remaining Right and to the Fee Property, free and clear of all liens and mortgages, except as disclosed on Schedule 2.01(a)(ii).

4.06 Proceedings. Schedule 4.06 contains a true and complete list of all pending Proceedings filed against Garwood with respect to any of the Assets as of the date seven days prior to the Execution Date or, to the Knowledge of the executive officers of Garwood, threatened to be filed against Garwood with respect to any of the Assets as of the date seven days prior to the Execution Date, in either case that, if adversely determined, could have a Material Adverse Effect.

4.07 Compliance With Laws. Except as disclosed in Schedule 4.07, during the ten-year period immediately preceding the Execution Date, Garwood has not received any order, notice, or other written communication from any Governmental Authority alleging any actual or potential violation of or failure to comply with any Environmental Law with respect to any of the Assets.

4.08 Permits. Garwood holds the Permits.

4.09 Property Taxes. Except for filings and payments of assessments the failure of which to file or pay will not have a Material Adverse Effect, all Property Taxes that have become or will become due with respect to Assets for the period ending on the Closing Date, have been or will be timely paid in full.

4.10 Brokers or Finders. Garwood and its agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders fees or agent's commissions or similar payment in connection with the transactions contemplated by this Agreement.

4.11 Employees. Attached hereto as Schedule 4.11 is a complete and accurate list of the following information for each employee of Garwood who is also listed on Schedule 7.10(a), including each such listed employee on leave of absence or layoff status: job title; current compensation paid or payable and changes in compensation since December 31, 1997; vacation accrued; sick leave accrued; vesting and eligibility for Garwood's employee benefit plans; and claims pending or threatened by any such listed employee against Garwood.

**4.12 NO LIABILITY FOR REPRESENTATIONS AND WARRANTIES. REGARDLESS OF WHETHER THE CLOSING OCCURS, NEITHER GARWOOD NOR ANY GARWOOD PARTY SHALL HAVE ANY LIABILITY UNDER THIS AGREEMENT**

(PRIOR TO, AT OR AFTER THE CLOSING) FOR ANY BREACH OF GARWOOD'S REPRESENTATIONS OR WARRANTIES CONTAINED IN THIS AGREEMENT, OR IN ANY CERTIFICATE OR OTHER INSTRUMENT REQUIRED TO BE DELIVERED BY OR ON BEHALF OF GARWOOD PURSUANT TO THIS AGREEMENT.

## ARTICLE 5

### Representations and Warranties of LCRA

LCRA represents and warrants to Garwood as follows:

5.01 Existence and Qualification of LCRA. LCRA is a duly formed and validly existing 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. LCRA has all requisite power and authority to own, operate and lease its properties and to carry on its business as presently conducted.

5.02 Authority, Approval and Enforceability With Respect to LCRA. LCRA has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. The execution and delivery of this Agreement by LCRA and the performance of the transactions contemplated hereby by LCRA have been duly and validly approved by the Board of Directors of LCRA and by any other action necessary on behalf of LCRA. This Agreement has been duly executed and delivered on behalf of LCRA and constitutes the legal, valid and binding obligation of LCRA enforceable in accordance with its terms. At the Closing, all documents required hereunder to be executed and delivered by LCRA will have been duly authorized, executed and delivered and will constitute legal, valid and binding obligations of LCRA, enforceable in accordance with their terms.

5.03 No Default or Consents With Respect to LCRA. Neither the execution and delivery of this Agreement nor the consummation by LCRA of the transactions contemplated herein will:

- (a) conflict with or result in a breach, default or violation of the organizational documents of LCRA or any Law applicable to LCRA;
- (b) conflict with or result in a breach, default or violation of any agreement, document, instrument, judgment, decree, order, governmental permit, certificate or license to which LCRA is a party or to which LCRA is subject or by which its property is bound; or
- (c) require LCRA to obtain or make any waiver, consent, action, approval, clearance or authorization of, or registration, declaration or filing with, any Governmental Authority (other than the approvals required by the terms of this Agreement);

which, with respect to the matters specified in each of clauses (b) and (c) above, would have an LCRA Material Adverse Effect.

## ARTICLE 6

### Covenants of Garwood

6.01 Access to Certain Records and Inspections. From the Execution Date through the Closing Date, Garwood shall permit LCRA and its authorized employees, agents, accountants, legal counsel, and other representatives to have reasonable access, at LCRA's sole expense, risk and cost, during normal business hours, to the Deliverable Records. From the Execution Date through the Closing Date, LCRA shall have the right to elect to perform or have performed, at LCRA's sole expense, risk and cost, one or more inspections and tests of the Assets; provided, however, that such inspections or tests (a) shall be conducted during Garwood's normal business hours, (b) shall not be disruptive of Garwood's normal business operations, and (c) shall not cause damage to any of the Assets or Excluded Assets; and provided further, however, that no employee, agent or other representative of LCRA shall enter upon or perform any inspection or test of any of the Assets unless LCRA first gives Garwood written notice of the proposed entry, inspection or test at least 24 hours in advance of such entry, inspection or test. Garwood shall have the right to have one or more of its employees, agents or other representatives accompany LCRA's representatives at all times during any entry upon or inspection or test of any of the Assets, and Garwood shall have the further right to have any sample taken by LCRA split, one-half being under the control of LCRA and one-half being under the control of Garwood. All data, analyses, evaluations, reports, and other information acquired or developed by or on behalf of LCRA in connection with any inspections or tests of the Assets, either before the Execution Date or from the Execution Date through the Closing Date, either pursuant to this Section 6.01 or otherwise, shall be subject to the provisions of Sections 3.03(c) and 7.06.

6.02 Reasonable Efforts. From the Execution Date through the Closing Date, Garwood will use its Reasonable Efforts to obtain the satisfaction of the conditions to Closing set forth in Section 8.02.

6.03 LCRA's Application. From the Execution Date through the Closing Date and except as set forth in this Agreement, Garwood shall support in all respects the application attached hereto as Exhibit B ("*LCRA's Application*"), requesting authorization from the TNRCC for LCRA to use for irrigation purposes water under Garwood's Remaining Right, as may be required pursuant to Section 2(u) of the Lower Colorado River Authority Act.

6.04 LCRA's Bond Application. From the Execution Date through the Closing Date and except as set forth in this Agreement, Garwood shall support in all respects (a) LCRA's Bond Application (as defined in Section 7.07(a)), and (b) if applicable, the Bond Validation Suit (as defined in Section 7.07(a)).

6.05 Garwood's Application. Immediately following the execution of this Agreement, Garwood shall file with the TNRCC the application attached hereto as Exhibit C ("*Garwood's Application*"). From the Execution Date through the Closing Date and except as set forth in this Agreement, Garwood shall pursue Garwood's Application diligently and to seek final action by the TNRCC regarding such application at the earliest practicable date.

6.06 NO LIABILITY FOR PRE-CLOSING COVENANTS. REGARDLESS OF WHETHER THE CLOSING OCCURS, NEITHER GARWOOD NOR ANY GARWOOD PARTY SHALL HAVE ANY LIABILITY UNDER THIS AGREEMENT (PRIOR TO, AT OR AFTER THE CLOSING) FOR ANY FAILURE OF GARWOOD TO HAVE PERFORMED ANY OF ITS COVENANTS AND AGREEMENTS UNDER THIS AGREEMENT (INCLUDING UNDER THIS ARTICLE 6 AND ARTICLE 10) PRIOR TO THE CLOSING; provided, however, that this Section 6.06 shall not impair any rights that LCRA may have under Section 13.08 to enforce specific performance by Garwood of any such covenant or agreement.

## ARTICLE 7

### Covenants of LCRA

7.01 Reasonable Efforts. LCRA shall use its Reasonable Efforts to obtain the satisfaction of the conditions to Closing for which it is responsible as set forth in Section 8.01.

7.02 Corpus Christi Application. LCRA agrees to file, immediately upon the execution of this Agreement, with the TNRCC a letter in the form attached hereto as Exhibit D, by which LCRA withdraws all opposition to the Corpus Christi Application and LCRA's request for a public hearing on such application. From and after the Execution Date, (a) LCRA shall not oppose the Corpus Christi Application in any way, directly or indirectly, publicly or privately, and (b) LCRA's publicly-stated position with respect to such application shall be that it does not oppose such application.

7.03 Garwood's Application. From the Execution Date through the Closing Date, LCRA shall support Garwood's Application in all respects. If and to the extent requested to do so by Garwood, LCRA shall assume all responsibility to pursue Garwood's Application or any portion thereof.

7.04 LCRA's Application. Immediately following the execution of this Agreement, LCRA shall file with the TNRCC LCRA's Application. From the Execution Date through the Closing Date, LCRA shall pursue LCRA's Application diligently and seek final action by the TNRCC at the earliest possible date.

7.05 Consolidation and Other Actions.

(a) From and after the Execution Date, Garwood, in its sole discretion, may request that the TNRCC consolidate proceedings on the Corpus Christi Application and Garwood's Application. LCRA shall support any such request in all respects.

(b) From and after the Execution Date, LCRA, in its sole discretion, may request that the TNRCC consolidate proceedings on Garwood's Application and LCRA's Application, and that the TNRCC issue one notice of the consolidated proceedings. Garwood shall support any such request in all respects.

(c) From and after the Execution Date, Garwood, in its sole discretion, may take any and all actions with respect to the Application to Amend Garwood's Remaining Right that Garwood determines to be necessary or desirable, consistent with the limitation set forth in the second proviso in Section 10.01. LCRA shall support any request by Garwood to the TNRCC to abate further processing and consideration of the Application to Amend Garwood's Remaining Right until Garwood gives notice that it desires proceedings on the Application to go forward.

7.06 Confidentiality. The provisions of this Section 7.06 shall apply to the Deliverable Records and any other information, books, records and files regarding Garwood obtained by LCRA or its representatives pursuant to this Agreement or otherwise in connection with this Agreement or the transactions contemplated hereby or previously contemplated by the Parties (collectively, "*Confidential Information*").

(a) From and after the Execution Date, unless the Closing occurs, in which case from the Execution Date through the Closing Date, LCRA shall, and shall cause its representatives to, (i) maintain all Confidential Information in strict confidence, (ii) not divulge or disclose any Confidential Information to any other Person, and (iii) not use the Confidential Information in any manner that would be adverse or prejudicial to Garwood or any of the Garwood Parties or any of the Third-Party Beneficiaries.

(b) From and after the Closing, LCRA shall, and shall cause its representatives to, not use the Confidential Information in any manner that would be adverse or prejudicial to Garwood or any of the Garwood Parties or any of the Third-Party Beneficiaries.

The provisions of this Section 7.06 are subject to the following exceptions: (A) information that is, or may become, public knowledge (other than through (I) a breach of this Section 7.06, or (II) a breach by another Person of a confidentiality obligation if LCRA is aware of such breach by such other Person); (B) disclosures or uses that may be required by Laws, provided, however, that before making any disclosure or use described in this clause (B), LCRA shall give Garwood reasonable advance notice and take such reasonable actions as Garwood may propose to minimize the required disclosure or to seek confidential treatment thereof; and (C) disclosures and uses that may be required for LCRA to enforce its rights under this Agreement.

#### 7.07 LCRA's Bonds.

(a) Immediately following the execution of this Agreement, LCRA shall file with the Texas Attorney General the application attached hereto as Exhibit E ("*LCRA's Bond Application*"), requesting preliminary approval from the Texas Attorney General for LCRA to issue and sell its bonds or other securities in an aggregate amount sufficient to finance its payment of the Purchase Price ("*LCRA's Bonds*"). From the Execution Date through the Closing Date, LCRA shall pursue LCRA's Bond Application diligently and seek the preliminary approval of the Texas Attorney General at the earliest possible date. If the Texas Attorney General does not deliver a letter granting such preliminary approval within 90 days after the Execution Date, (i) LCRA shall immediately file, in a court of competent jurisdiction, a bond validation suit seeking judicial approval of LCRA's Bonds (the "*Bond Validation Suit*"); and (ii) from the filing of the Bond Validation Suit through the

Closing Date, LCRA shall pursue the Bond Validation Suit diligently and seek final action by such court at the earliest possible date.

(b) After receiving the preliminary approval of the Attorney General or a final and nonappealable judgment in the Bond Validation Suit, and through the Closing Date, LCRA shall authorize, and pursue diligently the issuance and sale, of LCRA's Bonds so that it will have the proceeds of LCRA's Bonds available on or before the Closing Date to pay the Purchase Price.

7.08 Protection of Landowners and Irrigators Within Garwood's Service Area. From and after the Closing, LCRA shall comply, and cause any other Person that uses, supplies, or is supplied water under Garwood's Remaining Right to comply, with the following provisions of this Section 7.08.

(a) Garwood's Remaining Right shall be divided into two distinct portions at any time, the Reserved Portion (hereinafter defined), and the Surplus Portion (hereinafter defined). The "*Reserved Portion*" of Garwood's Remaining Right at any time shall be that portion of the total amount of water authorized to be used annually under Garwood's Remaining Right at that time equal to the Reserved Amount (hereinafter defined) in effect at that time. The "*Surplus Portion*" of Garwood's Remaining Right at any time shall be that portion of the total amount of water authorized to be used annually under Garwood's Remaining Right at that time in excess of the Reserved Portion at that time. The Reserved Portion of Garwood's Remaining Right shall authorize the diversion of all of the water authorized to be used annually under such portion at the existing point of diversion on the Colorado River (the "*Point of Diversion*") at a rate of diversion of 600 cfs for the irrigation of up to 32,000 acres of land in any year within Garwood's Service Area with a priority date of November 1, 1900. The Surplus Portion of Garwood's Remaining Right may also authorize the diversion of all of the water authorized under such portion at a rate of diversion of 600 cfs with a priority date of November 1, 1900; provided, however, that the combined rate of diversion at any time under the Reserved Portion and the Surplus Portion may never exceed 600 cfs; and provided further, however, that the priority of the Surplus Portion shall be subordinate in time priority and all other respects to the Reserved Portion. The Reserved Portion of Garwood's Remaining Right shall not be amended at any time: (i) to reduce the amount of water authorized to be diverted at the Point of Diversion and used for irrigation within Garwood's Service Area in any year below the Reserved Amount in effect for that year; (ii) to remove any lands from Garwood's Service Area unless such lands had not been irrigated at all at any time during the Historical Period (hereinafter defined) in effect at that time, or the owner of such lands first authorizes such removal in writing; (iii) to reduce the number of acres authorized to be irrigated in any year within Garwood's Service Area below 32,000 acres, or below the total number of acres in Garwood's Service Area at that time, whichever is less; (iv) to reduce the authorized rate of diversion at the Point of Diversion below 600 cfs; (v) to impair in any way the November 1, 1900 priority of the right to divert water at the Point of Diversion for use for irrigation within Garwood's Service Area; or (vi) to impair in any way the relative seniority and superiority of the Reserved Portion over the Surplus Portion. The "*Reserved Amount*" in effect for any calendar year shall be the maximum amount of water used for irrigation within Garwood's Service Area during any one calendar year within the Historical Period in effect at that time as measured at the Point of Diversion, inclusive of all evapotranspiration, seepage and other losses incurred after diversion; provided, however, that the Reserved Amount in effect for every year during the period consisting of the calendar year in which Closing occurs and the ten calendar years



immediately following that year shall be 100,000 acre-feet; and provided further, however, that the Reserved Amount in effect for any year shall never exceed the Reserved Amount in effect for the previous year. The "Historical Period" in effect for any calendar year shall be the period consisting of the ten calendar years immediately preceding that year.

(b) From and after the Closing, LCRA shall maintain, repair and replace the Pumping Plant, the Colorado Dam, and all other dams, pumps, canals, laterals, ditches and other facilities comprising the Canal System, as it exists on the Execution Date, as necessary and keep all such facilities operable in conditions at least as good and at capacities at least as great as those that exist on the Execution Date.

(c) The December 10, 1987 agreement between LCRA and Garwood (the "LCRA Agreement"), a copy of which is attached as Exhibit F, shall remain in full force and effect, and LCRA shall continue to honor the terms of the LCRA Agreement. Pursuant to the terms of the LCRA Agreement, LCRA shall supply stored water from the Highland Lakes as may be necessary at any time to firm up and supplement the supply of run-of-river water available under the Reserved Portion of Garwood's Remaining Right at that time, for use for irrigation within Garwood's Service Area, with no charges for stored water to any landowner or irrigator within Garwood's Service Area. The supply of stored water for irrigation within Garwood's Service Area shall be interruptible, but only if and to the extent provided in the LCRA Agreement, and then only under assumptions and criteria that are at least as favorable to landowners and irrigators within Garwood's Service Area as those assumptions and criteria used by LCRA in its proposed Water Management Plan (as such proposed Water Management Plan is defined by filings submitted by LCRA to the TNRCC dated as of and prior to December 29, 1997), as discussed and illustrated in the excerpt of such proposed Water Management Plan attached as Exhibit G. As set forth in Subsection (b), above, LCRA is now responsible for maintaining the Colorado Dam, which is identified in the LCRA Agreement as "Garwood's low water dam."

(d) The demand for water for irrigation within Garwood's Service Area at all times from and after the Closing Date, up to the Reserved Amount in effect for each year, shall be satisfied by diversions of water from the Colorado River at the Point of Diversion by use of the Pumping Plant, and then by distribution and supply of that water via the Canal System. Except to the extent provided otherwise below in this subsection (d) and in subsection (e), below, the demand at any time may be satisfied by diversions of water available in the Colorado River at the Point of Diversion at that time under any right or combination of rights and from any source or combination of sources available at that time, so long as the amount of water available for diversion from the Colorado River for irrigation within Garwood's Service Area from the alternative supply at any time is equal to or greater than the amount that would be available at that time under the Reserved Portion of Garwood's Remaining Right and the LCRA Agreement, assuming no other uses of water under the Reserved Portion. To the extent that the alternative supply does not provide the required amount of water at any time, the demand shall be satisfied from the supply available under the Reserved Portion of Garwood's Remaining Right and the LCRA Agreement.

(e) In any calendar year during the period consisting of the calendar year in which Closing occurs and the ten calendar years immediately following that year, the demand for water for irrigation within Garwood's Service Area, up to the Reserved Amount for that year, shall be satisfied

entirely from the supply available under the Reserved Portion of Garwood's Remaining Right and the LCRA Agreement. During this period of time, no water may be used under the Reserved Portion for any use other than irrigation within Garwood's Service Area.

(f) At any time that the demand for water for irrigation within Garwood's Service Area is required to be satisfied from the supply available in the Colorado River under the Reserved Portion of Garwood's Remaining Right and the LCRA Agreement, the demand will be satisfied first from the supply of run-of-river water available at the Point of Diversion under the Reserved Portion of Garwood's Remaining Right at that time based on a priority date of November 1, 1900, and all other uses of water under the Reserved Portion, if any, shall cease to the extent required to satisfy such demand. Any diversion and use of water under the Surplus Portion of Garwood's Remaining Right, or under the Corpus Christi Right, shall be subordinate, in time priority and all other respects, to the diversion and use under the Reserved Portion of Garwood's Remaining Right of water for irrigation within Garwood's Service Area. If the demand for water for irrigation within Garwood's Service Area at any time is not fully satisfied from the supply of run-of-river water available under the Reserved Portion of Garwood's Remaining Right as set forth above in this subsection (f), the supply shall be firmed up and supplemented by releases of stored water from the Highland Lakes to the extent provided in the LCRA Agreement.

(g) The rates charged for the supply of water for irrigation within Garwood's Service Area in every year during the period consisting of the calendar year in which Closing occurs and the five calendar years immediately following that year shall not exceed the rates last established by Garwood as of December 31, 1997. The rates charged after the five-year period shall not exceed rates based on the reasonable cost of service for the supply of water via the Canal System for irrigation within Garwood's Service Area for that year. The cost of service for water supplied via the Canal System for irrigation within Garwood's Service Area for any year shall not include any charges or costs attributable in any way to payment of any amount of money to Garwood pursuant to this Agreement, or payment of any amount of money for any subsequent transfer of ownership of Garwood's Remaining Right or any portion thereof or the Canal System or any portion thereof, or any debt service charges for or attributable to any facilities comprising the Canal System or any other facilities, or any charges whatsoever for maintaining, repairing, modifying or replacing the Colorado Dam, or any charges whatsoever for any additional pumps, canal extensions or other facilities not part of the Canal System as it exists on the Execution Date, or any charges for the installation of any meters or any modifications that improve the efficiency of the system, or any charges for any water supplied to the Point of Diversion for the Canal System including any run-of-river water supplied under the Reserved Portion of Garwood's Remaining Right, any water supplied from storage in the Highland Lakes, and any water supplied under any other right or from any other source other than the Reserved Portion of Garwood's Remaining Right and the Highland Lakes. The cost of service for water supplied via the Canal System for irrigation within Garwood's Service Area for any year may include costs of keeping the Pumping Plant and all dams (other than the Colorado Dam), pumps, canals, laterals, ditches and other facilities comprising the Canal System, as it exists on the Execution Date, maintained, repaired and replaced as necessary and operable in conditions as good and at capacities as great as those that exist on the Execution Date, and the costs of operating those facilities, to the extent they are used to supply water for irrigation within Garwood's Service Area; provided, however, if such facilities are also used to supply water for municipal or industrial purposes, then the cost of service for water supplied via the Canal System for irrigation within

Garwood's Service Area shall be limited to the incremental costs of maintenance, repair, replacement, and operation of such facilities in excess of the costs needed to supply the water used for municipal and industrial purposes.

(h) No fees, assessments or other charges of any kind shall be made upon any landowner or irrigator within Garwood's Service Area for any meters, improvements to the system, or other modifications to improve the efficiency of the system or that otherwise results in less water being needed per acre irrigated.

(i) Any contract or other commitment to supply water under the Surplus Portion of Garwood's Remaining Right, and any contract or other commitment to supply water under the Reserved Portion of Garwood's Remaining Right for purposes other than irrigation within Garwood's Service Area, and any contract for the conveyance of or instrument conveying Garwood's Remaining Right or any portion thereof or the Canal System or any portion thereof, shall be subject to the commitments and conditions set forth in this Section 7.08 and to all terms, provisions and special conditions contained within the amendment to Garwood's Remaining Right pursuant to the TNRCC's order granting Garwood's Application. Each such contract or other commitment, and each such conveyance instrument, shall contain the following provision:

"This [Contract/Agreement/Conveyance/etc.] is subject to the commitments and conditions set forth in Section 7.08 of that certain Purchase Agreement, dated July 20, 1998, between Garwood Irrigation Company, as seller, and the Lower Colorado River Authority, as buyer (the "LCRA Purchase Agreement"), and is further subject to all terms, provisions and special conditions contained within that certain water right identified as Certificate of Adjudication No. 14-5434 \_\_, issued to Garwood by the Texas Natural Resource Conservation Commission ("TNRCC") on \_\_\_\_\_, a copy of which is attached hereto as Exhibit \_\_ (such water right is referred to herein as "Garwood's Remaining Right, as Amended"). Garwood's Remaining Right, as Amended, is described in the LCRA Purchase Agreement as "Garwood's Remaining Right" (as defined in the LCRA Purchase Agreement), as amended by the TNRCC in response to that certain application to amend defined in the LCRA Purchase Agreement as "Garwood's Application." By executing this [Contract/Agreement/etc.], or by accepting this [Conveyance/etc.], [Purchaser/Buyer/etc.] hereby acknowledges receipt of copies of the LCRA Purchase Agreement and Garwood's Remaining Right, as amended."

(j) No action may be taken, even if such action is otherwise permitted by the other provisions of this Section 7.08, if such action would result in landowners and irrigators within either the Gulf Coast Service Area or the Lakeside Service Area being treated, or being perceived as being treated, more favorably at any time than those within Garwood's Service Area with respect to any matter relating to amendments of the underlying water right or rights for that service area, including amendments to reduce the amount of water authorized to be used for irrigation within the service area or remove lands from the service area or reduce the number of acres within the service area that may be irrigated in any one year, the amounts and firmness of water reserved for supply, the supply of that water, or the rates charged for the supply of that water. Without in any way limiting the generality of the foregoing provision of this Subsection (j), Garwood's Remaining Right may not be

amended to reduce the amount of water authorized to be used for irrigation within Garwood's Service Area or remove lands from Garwood's Service Area or reduce the number of acres within Garwood's Service Area that may be irrigated in any one year, unless the underlying water rights for both the Gulf Coast Service Area and the Lakeside Service Area are also amended using the same criteria used as a basis for, and to the same extent as, the amendment to Garwood's Remaining Right. If, notwithstanding full compliance with the foregoing provisions of this subsection (j) and the other commitments and conditions set forth in this Section 7.08, landowners and irrigators within either the Gulf Coast Service Area or the Lakeside Service Area are being treated more favorably at any time than those within Garwood's Service Area with respect to any such matter, then LCRA agrees to take whatever actions may be necessary to improve the position of landowners and irrigators within Garwood's Service Area so that they are treated at least as favorably as landowners and irrigators within the Gulf Coast and Lakeside Service Areas.

(k) Garwood shall be provided a copy of each of the following:

(i) each contract or other commitment to supply water under the Surplus Portion of Garwood's Remaining Right;

(ii) each contract or other commitment to supply water under the Reserved Portion of Garwood's Remaining Right for purposes other than irrigation within Garwood's Service Area;

(iii) each contract for the conveyance of, and each instrument conveying, Garwood's Remaining Right or any portion thereof or the Canal System or any portion thereof; and

(iv) each application to amend Garwood's Remaining Right, any of the underlying water rights for the Gulf Coast Service Area, and any of the underlying water rights for the Lakeside Service Area;

within 10 days after any such contract or other commitment is entered into by the parties, any such conveyance instrument is delivered to the transferee, or any such application is filed with the TNRCC.

(l) The commitments and conditions set forth in this Section 7.08 shall remain in effect for so long as the Canal System is used to supply any water for any purpose of use.

7.09 Surplus Water. Nothing in this Agreement shall be construed as requiring LCRA to reserve or supply any water under the Surplus Portion of Garwood's Remaining Right for irrigation, or for use within Garwood's Service Area.

#### 7.10 Garwood's Employees.

(a) LCRA to Hire Garwood's Employees. From and after the Closing, LCRA shall hire the employees of Garwood listed on Schedule 7.10(a) to operate the Canal System if such employees are legally authorized to work in the United States.

(b) LCRA's Salaries and Benefits. From and after the Closing, employees of Garwood who are hired by LCRA shall receive at any time salaries and other taxable compensation comparable to the greater of (i) the salaries and other taxable compensation being paid to that employee by Garwood immediately prior to Closing (not to exceed 110% of the salaries and other taxable compensation of such employee as of December 31, 1997 as shown in Schedule 4.11) or (ii) the salaries and other taxable compensation then being paid to LCRA's employees with similar responsibilities at LCRA's other irrigation operations. Each employee hired by LCRA also shall receive standard employee benefits of LCRA and shall be subject to LCRA's standard employment conditions, practices and terms for employees. For all purposes relating to any employee benefits provided by LCRA, except for accrual of benefits under LCRA's Retirement Plan, but including determining eligibility to participate in LCRA's Retirement Plan and determining a Participant's Vested interest in his or her Accrued Retirement Benefit under LCRA's Retirement Plan, as those terms are defined in such Plan, a former employee of Garwood who is hired by LCRA shall be given credit for service while employed by Garwood.

## ARTICLE 8

### Conditions to Closing

8.01 Conditions to Obligations of Garwood. The obligations of Garwood to proceed with the Closing are subject to the satisfaction at or prior to Closing of all of the following conditions, any one or more of which may be waived in writing in whole or in part by Garwood (which waiver shall be deemed to constitute a waiver of any liability LCRA may have under this Agreement with respect to the event or condition causing such condition not to be satisfied at Closing). Nothing in this Section 8.01 shall limit any of Garwood's rights under Article 11.

(a) Compliance. LCRA shall have complied in all material respects with its covenants and agreements contained herein, and LCRA's representations and warranties contained herein, or in any certificate or similar instrument required to be delivered by or on behalf of LCRA pursuant hereto, shall be true and correct in all material respects on and as of the Closing Date, with the same effect as though made at such time; provided, however, that Section 8.01(h), rather than this Section 8.01(a), shall exclusively govern the failure of any of LCRA's representations and warranties to be true and correct on and as of the Closing Date, or any breach by LCRA of any of its covenants or agreements in this Agreement, in each case as a result of any event occurring, or any matter arising, between the Execution Date and the Closing Date.

(b) Certificate. Garwood shall have received a certificate or certificates dated as of the Closing Date and signed by LCRA's Secretary or the Assistant Secretary, certifying the accuracy and completeness of the copies of, as well as the current effectiveness of, the resolutions to be attached thereto of the appropriate authorizing authority (or any committee thereof) of LCRA authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated herein, as well as to the incumbency of the officers executing this Agreement on behalf of LCRA and any documents to be executed and delivered by LCRA at Closing.

(c) No Orders. No order, writ, injunction or decree shall have been entered and be in effect by Governmental Authority, and no Law shall have been promulgated or enacted and be in effect, that restrains, enjoins or invalidates the transactions contemplated hereby.

(d) No Proceedings. No Proceeding shall be pending or threatened by any Person (other than a Garwood Party) seeking substantial damages against any of the Garwood Parties in connection with the transactions contemplated by this Agreement, unless LCRA shall have agreed in writing to indemnify, defend, protect, hold harmless and release the Garwood Parties from and against any and all Losses arising out of, resulting from, or related to such Proceeding.

(e) Corpus Christi Application. The TNRCC shall have issued such orders granting the Corpus Christi Application as deemed necessary by Garwood, whether or not the Corpus Christi Agreement is in effect at that time, and such orders shall have become final and nonappealable.

(f) Garwood's Application. The TNRCC shall have issued such orders granting Garwood's Application as deemed necessary by Garwood, including, without limitation, an order directing issuance of an amendment to Garwood's Remaining Right containing all terms, provisions and special conditions as requested in Garwood's Application.

(g) LCRA's Application. The TNRCC shall have issued such orders granting LCRA's Application as deemed necessary by Garwood, and such orders shall have become final and nonappealable.

(h) Material Adverse Change.

(i) No event shall have occurred, or matter arisen, between the Execution Date and the Closing Date that shall have a Material Adverse Effect, including any such event or matter that would (A) cause any representation or warranty of LCRA not to be true and correct on and as of the Closing Date, or (B) constitute a breach by LCRA of any of its covenants or agreements in this Agreement. Before relying on the provisions of this Section 8.01(h), however, Garwood shall first notify LCRA of the event or matter that it believes has a Material Adverse Effect. LCRA shall have a reasonable period (not to exceed 10 days in the case of the case of a failure to pay money, or 30 days in the case of any other failure) in which to attempt (I) to cure such event or matter or (II) to cause it not to have a Material Adverse Effect. If LCRA is successful in its efforts, then the closing condition in this Section 8.01(h) shall be deemed satisfied with respect to such event or matter. If LCRA is unsuccessful in its efforts, then the closing condition in this Section 8.01(h) shall not be deemed satisfied with respect to such event or matter, and Garwood may terminate this Agreement pursuant to Section 11.01(a)(vii) and exercise the rights of Garwood under Article 11 with respect thereto. Except for the closing conditions in Section 8.01(b) through (g), this Section 8.01(h) shall constitute the exclusive closing condition for any event occurring, or matters arising, between the Execution Date and the Closing Date (including any such event or matter that would (x) cause any representation or warranty of LCRA not to be true and correct on and as of the Closing Date, or (y) constitute a breach by LCRA of any of its covenants or agreements in this Agreement).

(ii) To ensure consistency with the provisions of Section 11.01, (A) an uncured breach by LCRA of its covenants in Section 2.03, 2.04, 7.02, 7.03, 7.04, 7.05, 7.06 or 7.07 shall be conclusively deemed to have a Material Adverse Effect for purposes of such Section 8.01(h)(i); and (B) the requirements in Section 8.01(h)(i) that Garwood notify LCRA of a breach, and afford them an opportunity to cure the breach, shall not apply in the case of a breach by LCRA of its covenants in Section 7.02.

8.02 Conditions to Obligations of LCRA. The obligations of LCRA to proceed with the Closing are subject to the satisfaction at or prior to Closing of all of the conditions set forth in this Section 8.02, any one or more of which may be waived in writing in whole or in part by LCRA (which waiver shall be deemed to constitute a waiver of any liability Garwood may have under this Agreement with respect to the event or condition causing such condition not to be satisfied at Closing). Nothing in this Section 8.02 shall limit any of LCRA's rights under Article 11.

(a) Compliance. Garwood shall have complied in all material respects with its covenants and agreements contained herein, and Garwood's representations and warranties contained herein, or in any certificate or similar instrument required to be delivered by or on behalf of Garwood pursuant hereto, shall be true and correct in all material respects on and as of the Closing Date, with the same effect as though made at such time; and provided, that Section 8.02(g), rather than this Section 8.02(a), shall exclusively govern the failure of any of Garwood's representations and warranties to be true and correct on and as of the Closing Date, or any breach by Garwood of any of its covenants or agreements in this Agreement, in each case as a result of any event occurring, or any matter arising, between the Execution Date and the Closing Date.

(b) Certificates. LCRA shall have received a certificate or certificates dated as of the Closing Date and signed by Garwood's Secretary or Assistant Secretary (i) certifying the accuracy and completeness of the copies of, as well as the current effectiveness of the resolutions to be attached thereto of the Board of Directors (or any committee thereof) of Garwood authorizing the execution, delivery and performance of this Agreement and the consummating of the transactions contemplated herein; and (ii) certifying to the incumbency of the officers executing this Agreement on behalf of Garwood and any documents to be executed and delivered by Garwood at Closing.

(c) No Orders. No order, writ, injunction or decree shall have been entered and be in effect by any Governmental Authority, and no Law shall have been promulgated or enacted and be in effect, that restrains, enjoins or invalidates the transactions contemplated hereby.

(d) LCRA's Application. The TNRCC shall have issued such orders granting LCRA's Application as deemed necessary by LCRA, and such orders shall have become final and nonappealable.

(e) Garwood's Application. The TNRCC shall have issued such orders granting Garwood's Application as deemed necessary by LCRA, and such orders shall have become final and nonappealable.



(f) LCRA's Bonds.

(i) The Texas Attorney General shall have approved the issuance of LCRA's Bonds in accordance with the provisions of Article 717k-8 or Article 717q, Vernon's Annotated Texas Civil Statutes; or, if the Bond Validation Suit is filed, a court of competent jurisdiction shall have issued a judgment approving LCRA's Bonds, and such judgment shall have become final and nonappealable.

(ii) LCRA shall have issued and sold LCRA's Bonds.

(g) Material Adverse Change.

(i) No event shall have occurred, or matter arisen, between the Execution Date and the Closing Date that shall have a Material Adverse Effect, including any such event or matter that would (A) cause any representation or warranty of Garwood not to be true and correct on and as of the Closing Date, or (B) constitute a breach by Garwood of any of its covenants or agreements in this Agreement. Before relying on the provisions of this Section 8.02(g), however, LCRA shall first notify Garwood of the event or matter that it believe has a Material Adverse Effect. Garwood shall have a reasonable period (not to exceed 10 days in the case of the case of a failure to pay money, or 30 days in the case of any other failure) in which to attempt (I) to cure such event or matter or (II) to cause it not to have a Material Adverse Effect. If Garwood is successful in its efforts, then the closing condition in this Section 8.02(g) shall be deemed satisfied with respect to such event or matter. If Garwood is unsuccessful in its efforts, then the closing condition in this Section 8.02(g) shall not be deemed satisfied with respect to such event or matter, and LCRA may terminate this Agreement pursuant to Section 11.01(a)(viii) and exercise its rights under Article 11 with respect thereto. Except for the closing conditions in Sections 8.02(b) through (f), this Section 8.02(g) shall constitute the exclusive closing condition for any event occurring, or matters arising, between the Execution Date and the Closing Date (including any such event or matter described in clauses (A) or (B) of the first sentence of this Section 8.02(g)(i)).

(ii) To ensure consistency with the provisions of Section 11.01, an uncured breach by Garwood of its covenants in Section 6.03, 6.04 or 6.05 shall be conclusively deemed to have a Material Adverse Effect for purposes of Section 8.02(g)(i).

## ARTICLE 9

### Additional Agreements of LCRA and Garwood

9.01 Preservation of Books and Records; Access. For a period of seven years after the Closing Date, LCRA shall (a) preserve and retain the Deliverable Records and all other information, books, records and files of Garwood within the possession of LCRA relating to the ownership or operation of the Assets prior to the Closing Date and (b) permit Garwood and its authorized representatives to have access thereto, during normal business hours, and to meet with employees of LCRA on a mutually-convenient basis in order to obtain additional information and explanations



with respect to such books and records. Notwithstanding the foregoing, during such seven-year period, LCRA may dispose of any such Deliverable Records or other materials that are offered in writing to, but not accepted by, Garwood. Notwithstanding any provision of this Agreement to the contrary, no Party waives the attorney-client privilege and shall not be required to release or disclose information protected thereby.

9.02 Further Assurances. From and after the Closing, Garwood and LCRA shall take all appropriate action and execute any documents, instruments or conveyances of any kind that may be reasonably necessary to effectuate the intent of this Agreement.

9.03 Indemnification Regarding Certain Covenants.

(a) Subject to the remaining provisions of this Section 9.03, LCRA shall indemnify, defend, protect, hold harmless and release Garwood, its Affiliates and its and their respective directors, officers, shareholders, partners, members, employees, successors, assigns permitted under this Agreement and representatives, if any, and all landowners and irrigators within the Garwood Service Area (collectively, the "*Garwood Parties*") from and against any and all Losses arising out of, resulting from, or related to any one or more of the following: (i) a breach of any of LCRA's representations or warranties in this Agreement; (ii) the failure of LCRA to perform any of its covenants or agreements under this Agreement; and (iii) the failure of LCRA to comply with any term, condition or special condition set forth in Garwood's Remaining Right, as amended.

(b) Subject to the other provisions of this Section 9.03, a Person that is indemnified under this Section 9.03 may submit to LCRA a claim for Losses, specifying the amount thereof and setting forth in reasonable detail the basis for such claim (a "*Claim*"). Any Claim (or portion thereof) that LCRA agrees to is hereinafter referred to as an "*Approved Claim*." Any Claim (or portion thereof) that LCRA objects to is hereinafter referred to as an "*Unapproved Claim*." With respect to any Unapproved Claim, LCRA shall deliver to the Person seeking indemnification, as soon as reasonably practicable, a written notice detailing LCRA's reasons for objecting to such Unapproved Claim. If LCRA and the Person seeking indemnification are unable to resolve such dispute, either may seek resolution thereof through a Proceeding brought in a court of competent jurisdiction in the venue selected in Section 13.05. Any final and nonappealable judgment by such court of competent jurisdiction shall conclusively determine whether such Unapproved Claim should or should not become an Approved Claim. If a Claim becomes an Approved Claim pursuant to this 9.03(b), LCRA shall, within 20 days thereof, pay the indemnified Person the amount of such Approved Claim, subject to the other provisions of this Section 9.03.

## ARTICLE 10

### Operations of the Assets Prior To Closing

10.01 Amendments to Garwood's Right. Notwithstanding anything in this Agreement to the contrary, LCRA agrees that, except to the extent provided below in this Section 10.01, nothing in this Agreement shall prohibit or restrict Garwood in any way or at any time from seeking whatever amendments to Garwood's Remaining Right or Corpus Christi's Right that Garwood may desire; provided, however, that until either Garwood or LCRA gives notice of termination of this Agreement

pursuant to any of the provisions of Section 11.01(a), Garwood will not, without first obtaining LCRA's written consent (which consent shall not be unreasonably withheld), amend or withdraw Garwood's Application in any way; and provided further, however, that until the earlier to occur of (a) Independence Day, or (b) either Garwood or LCRA giving notice of termination of this Agreement pursuant to any of the provisions of Section 11.01(a), Garwood will not, without first obtaining LCRA's written consent (which consent shall not be unreasonably withheld), amend the Application to Amend Garwood's Remaining Right to seek a reduction in any current authorization under that right, or file any additional separate application to amend Garwood's Remaining Right, seeking a reduction in any current authorization under that right.

10.02 No Solicitation. Until the earlier to occur of (a) Independence Day, or (b) either Garwood or LCRA giving notice of termination of this Agreement pursuant to any of the provisions of Section 11.01(a), Garwood will not, and will cause each of their representatives, attorneys and agents, not to, directly or indirectly, solicit from or make to any Person, any offer to buy or sell the Assets (other than in the Ordinary Course of Business), or any offer relating to merger, consolidation, business combination, or similar transaction involving Garwood.

10.03 No Assignment of Rights Under LCRA Agreement. Until the earlier to occur of (a) Independence Day, or (b) either Garwood or LCRA giving notice of termination of this Agreement pursuant to any of the provisions of Section 11.01(a), Garwood will not enter into any agreement, or amend or take any discretionary action pursuant to any existing agreement, that would assign to any Person or Persons any of Garwood's rights under the LCRA Agreement.

10.04 No Contracts for Diversion or Delivery of Water. Until the earlier to occur of (a) Independence Day, or (b) either Garwood or LCRA giving notice of termination of this Agreement pursuant to any of the provisions of Section 11.01(a), Garwood will not enter into any agreement, or amend or take any discretionary action pursuant to any existing agreement, that would commit Garwood to divert or deliver any water via the Canal System for a term in excess of one year.

10.05 Effect of Occurrence of Independence Day. In addition to any other applicable provisions of this Agreement, the following provisions shall apply in the event of the occurrence of Independence Day, whether or not Garwood or LCRA give notice of termination of this Agreement pursuant to any of the provisions set forth in Section 11.01(a):

(a) Upon the occurrence of Independence Day, whether or not Garwood or LCRA also gives notice of termination of this Agreement pursuant to any of the provisions of Section 11.01(a), the restriction set forth in Section 10.02 shall be removed, and Garwood and its representatives, attorneys and agents shall be free to immediately solicit from and make to any Person, offers relating to any transaction involving the sale of the Assets, or any merger, consolidation, business combination, or similar transaction involving Garwood.

(b) Upon the occurrence of Independence Day, whether or not Garwood or LCRA also gives notice of termination of this Agreement pursuant to any of the provisions of Section 11.01(a), the restriction set forth in the second proviso in Section 10.01 shall be removed, and Garwood shall be free to immediately amend the Application to Amend Garwood's Remaining Right to seek a reduction in any current authorization under that right

that Garwood may desire, and to immediately file any separate application to amend Garwood's Remaining Right seeking a reduction in any current authorization under that right that Garwood may desire.

(c) Upon the occurrence of Independence Day, whether or not Garwood or LCRA also gives notice of termination of this Agreement pursuant to any of the provisions of Section 11.01(a), the restriction set forth in Section 10.03 shall be removed, and Garwood shall be free to immediately enter into any agreement, or amend or take any action pursuant to any existing agreement, that would assign to any Person or Persons any of Garwood's rights under the LCRA Agreement as may be desired by Garwood.

(d) Upon the occurrence of Independence Day, whether or not Garwood or LCRA also gives notice of termination of this Agreement pursuant to any of the provisions of Section 11.01(a), the restriction set forth in Section 10.04 shall be removed, and Garwood shall be free to immediately enter into any agreement, or amend or take any action pursuant to any existing agreement, that would commit Garwood to divert or deliver any water via the Canal System, as may be desired by Garwood.

10.06 Litigation. Garwood will give written notice to LCRA within 10 days of the date of receipt of any of the following: (i) service of any Proceeding filed by or against Garwood with respect to any of the Assets, accompanied by copies of the pleadings and (ii) Knowledge by Garwood of any threatened Proceeding against Garwood with respect to any of the Assets.

10.07 No Material Rate Reduction. Garwood will not reduce its rates for irrigation water below the rates or change the methodology for determining such rates in effect on December 31, 1997.

## ARTICLE 11

### Termination

#### 11.01 Termination.

(a) This Agreement and the transactions contemplated hereby may be terminated:

(i) at any time prior to Closing, by mutual consent of Garwood and LCRA;

(ii) at any time prior to Closing, by Garwood, or by LCRA, if the Closing shall not have occurred on or before July 4, 2000 ("*Independence Day*");

(iii) at any time prior to Closing, by Garwood, if LCRA fails to comply with the provisions of Sections 2.03, 2.04, 7.03, 7.04, 7.05, 7.06 or 7.07; subject, however, to the provisions of Section 11.01(b);

(iv) at any time prior to Closing, by Garwood, if LCRA fails to comply with the provisions of Section 7.02;

(v) at any time prior to Closing, by LCRA, if Garwood fails to comply with the provisions of Section 6.03, 6.04 or 6.05; subject, however, to the provisions of Section 11.01(b);

(vi) at any time prior to Closing, by Garwood, if LCRA shall not have obtained the preliminary approval of the Attorney General or a final and nonappealable judgment in the Bond Validation Suit, as described in Section 7.07, on or before the 270th day after the Execution Date;

(vii) at any time prior to Closing, by Garwood, if termination is permitted under Section 8.01(h);

(viii) at any time prior to Closing, by LCRA, if termination is permitted under Section 8.02(g);

(ix) at any time prior to Closing, by Garwood, if the TNRCC sets either Garwood's Application or LCRA's Application for the TNRCC's consideration and action for a date or time earlier than the date or time for which it sets the Corpus Christi Application for its consideration and action;

(x) at any time prior to Closing, by Garwood, if the TNRCC acts on either Garwood's Application or LCRA's Application before it acts on the Corpus Christi Application;

(xi) at any time prior to Closing, by Garwood, if the TNRCC enters an order denying or dismissing, in whole or in part, the Corpus Christi Application, whether or not the Corpus Christi Agreement is in effect at that time;

(xii) at any time prior to Closing, by Garwood, if the TNRCC sets the Application to Amend Garwood's Remaining Right for the TNRCC's consideration and action without Garwood requesting that it do so, or for a date or time earlier than the date or time requested by Garwood;

(xiii) at any time prior to Closing, by Garwood, if the TNRCC acts on the Application to Amend Garwood's Remaining Right without Garwood requesting that it do so, or on a date or time earlier than the date or time requested by Garwood;

(xiv) at any time prior to Closing, by Garwood, if any one or more of the provisions contained in this Agreement or in any document delivered pursuant hereto shall, for any reason, be held to be invalid, illegal or unenforceable in any material respect; or

(xv) at any time prior to Closing, by LCRA, if LCRA is not satisfied with the results of any investigation or test of any of the Assets performed after the Execution Date pursuant to Section 6.01; provided, however, in recognition of the fact that LCRA has had access to the Assets for a substantial period of time prior to the Execution Date, LCRA agrees to pay Garwood a termination fee of \$1,000,000 if LCRA terminates for such reason,

unless LCRA demonstrates at that time that there was a material adverse change in condition of the Assets after the Execution Date and that the results of the investigation or test in question would have been substantially more favorable had the change in condition not occurred.

(b) Termination by either Party pursuant to any of the provisions set forth above in Subsection (a) shall be effective immediately upon that Party giving written notice of termination to the other Party. Before relying on the provisions of Section 11.01(a)(iii) or (v), however, the Party desiring to terminate this Agreement shall first notify the other Party of the event or matter that it believes constitutes a failure to comply with a provision listed in such Section 11.01(a)(iii) or (v). The other Party shall have a reasonable period (not to exceed 10 days in the case of the case of a failure to pay money, or 30 days in the case of any other failure) in which to attempt to cure such failure. If such Party is successful in its efforts, then termination shall not be permitted under such Section 11.01(a)(iii) or (v) with respect to such failure. If such Party is unsuccessful in its efforts, then the other Party may exercise its right to terminate this Agreement under Section 11(a)(iii) or (v) with respect to such failure.

11.02 Effect of Termination. In addition to any other applicable provisions of this Agreement, the following provisions shall apply in the event of Garwood or LCRA giving notice of termination of this Agreement pursuant to any of the provisions set forth in Section 11.01(a), whether or not the other Party agrees that this Agreement is thereby terminated:

(a) Upon either Garwood or LCRA giving notice of termination of this Agreement pursuant to any of the provisions set forth in Section 11.01(a), Garwood shall be free to enjoy immediately all rights of ownership of the Assets and to sell, transfer, encumber and otherwise dispose of the Assets to any Person without any restriction under this Agreement.

(b) Upon either Garwood or LCRA giving notice of termination of this Agreement pursuant to any of the provisions set forth in Section 11.01(a), the restriction set forth in Section 10.02 shall be removed (unless such restriction had previously been removed pursuant to Section 10.05(a)), and Garwood and each of its representatives, attorneys and agents shall be free to immediately solicit from and make to any Person, offers relating to any transaction involving the sale of the Assets, or any merger, consolidation, business combination, or similar transaction involving Garwood.

(c) Upon either Garwood or LCRA giving notice of termination of this Agreement pursuant to any of the provisions set forth in Section 11.01(a), the restriction set forth in the first proviso in Section 10.01 shall be removed, and Garwood shall be free to immediately amend or withdraw Garwood's Application in any way that Garwood may desire.

(d) Upon either Garwood or LCRA giving notice of termination of this Agreement pursuant to any of the provisions set forth in Section 11.01(a), the restriction set forth in the second proviso in Section 10.01 shall be removed (unless such restriction had previously been removed pursuant to Section 10.05(b)), and Garwood shall be free to

immediately file any separate application to amend Garwood's Remaining Right seeking a reduction in any current authorization under that right that Garwood may desire.

(e) Upon either Garwood or LCRA giving notice of termination of this Agreement pursuant to any of the provisions set forth in Section 11.01(a), the restriction set forth in Section 10.03 shall be removed (unless such restriction had previously been removed pursuant to Section 10.05(c)), and Garwood shall be free to immediately enter into any agreement, or amend or take any action pursuant to any existing agreement, that would assign to any Person or Persons any of Garwood's rights under the LCRA Agreement as may be desired by Garwood.

(f) Upon either Garwood or LCRA giving notice of termination of this Agreement pursuant to any of the provisions set forth in Section 11.01(a), the restriction set forth in Section 10.04 shall be removed (unless such restriction had previously been removed pursuant to Section 10.05(d)), and Garwood shall be free to immediately enter into any agreement, or amend or take any action pursuant to any existing agreement, that would commit Garwood to divert or deliver any water via the Canal System, as may be desired by Garwood.

(g) Garwood and LCRA hereby agree that the provisions of this Section 11.02 and Sections 2.02(b), 7.02, 7.05, 7.06, 13.01, and 13.02 shall survive any termination of this Agreement pursuant to this Article 11.

## ARTICLE 12

### Scope of Representations; Limitations

12.01 Independent Investigation. LCRA acknowledges and affirms that: (a) prior to the Execution Date, it has had access to the Assets, Deliverable Records, personnel, officers, professional advisors, and operations of Garwood; (b) from the Execution Date through the Closing Date, it will continue to have access to the Assets, Deliverable Records, personnel, officers, professional advisors, and operations of Garwood; and (c) in making its decision to enter into this Agreement and its decision to consummate the transactions contemplated hereby, it has relied on the representations, warranties, covenants and agreements of Garwood set forth in this Agreement but, other than such reliance, it has relied solely on its own independent investigation, testing, analysis and evaluation of the Assets, information that is of public record or otherwise public knowledge, and information in LCRA's own files or otherwise available to LCRA.

12.02 Scope of Representations. Except to the extent expressly set forth in this Agreement, Garwood makes no representations or warranties whatsoever and disclaims all liability and responsibility for any other representation, warranty, statement or information made or communicated (orally or in writing) to LCRA. Without limiting the generality of the foregoing, except as expressly set forth in this Agreement, Garwood makes no representation or warranty of any type as to the Assets (even as to the return of any portion of the Purchase Price) and **GARWOOD EXPRESSLY DISCLAIMS AND NEGATES ANY IMPLIED OR EXPRESS WARRANTY**

OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, AND OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS.

ARTICLE 13

Miscellaneous

13.01 Brokers. Regardless of whether the Closing shall occur, (a) Garwood shall indemnify, defend, protect, hold harmless and release the LCRA Parties from and against any and all Losses, including brokers' or finders' fees, arising out of, resulting from, or related to any brokers or finders retained or engaged by Garwood in respect of the transactions contemplated by this Agreement, and (b) LCRA shall indemnify, defend, protect, hold harmless and release the Garwood Parties from and against any and all Losses, including brokers' or finders' fees, arising out of, resulting from, or related to any brokers or finders retained or engaged by LCRA or any of its Affiliates in respect of the transactions contemplated by this Agreement.

13.02 Expenses. Except as specifically provided herein, each Party shall pay all legal and other costs and expenses incurred by such Party or any of its Affiliates in connection with this Agreement and the transactions contemplated hereby.

13.03 Notices. Any notice, request, instruction, correspondence or other communication to be given or made hereunder by either Party to the other (herein collectively called "*Notice*") shall be in writing and (a) delivered by hand, (b) mailed by certified mail, postage prepaid and return receipt requested, (c) sent by facsimile transmission, or (d) sent by Express Mail, Federal Express, or other express delivery service, as follows:

If to Garwood, addressed to:

Garwood Irrigation Company  
Attn: William N. Lehrer  
P.O. Box 428  
Garwood, Texas 77442  
Fax Number: (409) 758-3844

If to LCRA:

Lower Colorado River Authority  
Attn: General Manager  
3701 Lake Austin Blvd.  
Austin, Texas 78703  
Fax Number: (512) 473-3551

Notice given by hand, Express Mail, Federal Express or other express delivery service or by mail shall be effective upon actual receipt. Notice given by facsimile transmission shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next Business Day after receipt if not received during the recipient's normal business

hours. All Notices by facsimile transmission shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any Party may change any address to which Notice is to be given to it by giving Notice as provided above of such change of address.

**13.04 GOVERNING LAW. THE PROVISIONS OF THIS AGREEMENT, THE SCHEDULES AND EXHIBITS HERETO, AND THE DOCUMENTS DELIVERED PURSUANT HERETO SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF TEXAS (EXCLUDING ANY CONFLICTS-OF-LAW RULE OR PRINCIPLE THAT MIGHT REFER SUCH MATTERS TO THE LAWS OF ANOTHER JURISDICTION), EXCEPT TO THE EXTENT THAT SUCH MATTERS ARE MANDATORILY SUBJECT TO THE LAWS OF ANOTHER JURISDICTION PURSUANT TO THE LAWS OF SUCH OTHER JURISDICTION.**

13.05 Venue.

(a) The obligations of LCRA under Sections 7.08 and 9.03 shall be performed, or deemed to be performed, in Colorado County, Texas. If and to the extent a Proceeding involving any such obligations brought by a Party to this Agreement, or by any landowner or irrigator within Garwood's Service Area, may be brought in Colorado County, Texas, the Proceeding shall be brought only in Colorado County, Texas.

(b) The obligations of LCRA under Section 7.09 shall be performed, or deemed to be performed, in Colorado County, Texas. If and to the extent a Proceeding involving any such obligations brought by a Party to this Agreement, or by any employee of Garwood as of the Closing Date, may be brought in Colorado County, Texas, the Proceeding shall be brought only in Colorado County, Texas.

(c) The obligations of LCRA under Section 7.02 shall be performed, or deemed to be performed, in Nueces County, Texas. If and to the extent a Proceeding involving any such obligations brought by a Party to this Agreement, or by Corpus Christi, may be brought in Nueces County, Texas, the Proceeding shall be brought only in Nueces County, Texas.

(d) Except as provided otherwise in Sections 13.05(a), (b) and (c), the obligations of the Parties under this Agreement shall be performed, or deemed to be performed, in Travis County, Texas. Except as provided otherwise in Sections 13.05(a), (b) and (c), if and to the extent a Proceeding involving any such obligations may be brought in Travis County, Texas, the Proceeding shall be brought only in Travis County, Texas.

**13.06 Entire Agreement; Amendments and Waivers. This Agreement, together with all Schedules and Exhibits hereto, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (regardless of whether similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.**



13.07 Binding Effect, Assignment and Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Neither this Agreement nor any of the rights, benefits or obligations hereunder shall be assigned, by operation of law or otherwise, by either Party prior to the Closing without the prior written consent of the other Party.

(a) Nothing in this Agreement is intended to confer upon any Person other than the parties hereto and their respective permitted successors and assigns, any rights, benefits or obligations hereunder, except for the following third-party beneficiaries of certain rights under this Agreement:

(i) from and after the Closing, landowners and irrigators within Garwood's Service Area shall have the right to enforce the obligations of LCRA set forth in Section 7.08;

(ii) from and after the Closing, Garwood's employees as of the Closing Date shall have the right to enforce the obligations of LCRA set forth in Section 7.10;

(iii) from and after the Closing, any of the Garwood Parties shall have the right to enforce the obligations of LCRA set forth in Section 9.03.

(iv) Garwood shall have the right and option, in its sole, unilateral discretion to be exercised by written addendum to this Agreement (the "*Optional Beneficiary Notice*"), signed by Garwood and delivered to LCRA, to add Corpus Christi as a third-party beneficiary, with the right, from and after delivery of the *Optional Beneficiary Notice*, to enforce the obligations of LCRA set forth in Section 7.02

As used herein, the term "*Third-Party Beneficiary*" means (A) the third-party beneficiaries named in Section 13.07(a)(i), (ii), and (iii); and (B) if Garwood delivers the *Optional Beneficiary Notice* in accordance with Section 13.07(a)(iv), Corpus Christi.

(b) The Third-Party Beneficiaries may exercise their respective rights under this Agreement without the necessity of joining any Party (other than the Party against whom such rights are being exercised) or any other Third-Party Beneficiary or Person. Each Party hereby waives any provision of applicable law that may require a Third-Party Beneficiary to accept, or consent to, the provisions of this Agreement, such acceptance and consent hereby being deemed to have occurred.

(c) There are no third-party beneficiaries or other Persons entitled to rely upon this Agreement except the Parties and the Third-Party Beneficiaries.

13.08 Specific Performance. Because of the unique nature of the Assets and the difficulty of calculating damages for breach of this Agreement, each Party and each Third-Party Beneficiary shall have the right to enforce specific performance by the other Party of its obligations under this Agreement.

13.09 Severability. If any one or more of the provisions contained in this Agreement or in any other document delivered pursuant hereto shall, for any reason, be held to be invalid, illegal or unenforceable in any material respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such document.

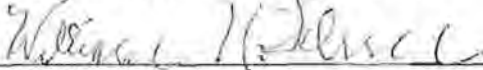
13.10 Headings, Schedules and Exhibits. The headings of the several Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The Schedules and Exhibits referred to herein are attached hereto and incorporated herein by this reference. Garwood may revise or supplement the Schedules at any time prior to Closing.

13.11 Holidays. In the event that the time for any payment or performance under this Agreement shall fall on a Saturday, Sunday or legal holiday of the State of Texas, the time for such payment or performance shall be extended until the next day that is not a Saturday, Sunday or legal holiday.

**EXECUTED** on the Execution Date.

**GARWOOD:**

GARWOOD IRRIGATION COMPANY


By: 

William N. Lehrer

Chairman and Chief Executive Officer

**LCRA:**

LOWER COLORADO RIVER AUTHORITY

By: 

Mark Rose

General Manager

**EXHIBIT E**  
**TO**  
**MOTION OF GARWOOD IRRIGATION COMPANY, LLC**

**AGREEMENT BETWEEN THE LOWER**  
**COLORADO RIVER AUTHORITY AND**  
**GARWOOD IRRIGATION COMPANY**

December 10, 1987



# Lower Colorado River Authority

Post Office Box 220 Austin, Texas 78767 AC 512 473-3200

## AGREEMENT BETWEEN THE LOWER COLORADO RIVER AUTHORITY AND GARWOOD IRRIGATION COMPANY

This Agreement is entered into as of the 10<sup>th</sup> day of December, 1987, by and between the Lower Colorado River Authority ("LCRA") and Garwood Irrigation Company ("Garwood").

### W I T N E S S E T H

Garwood holds rights to use the waters of the Colorado River under Certified Filing No. 398, as amended ("C.F. 398"), as reflected in the Final Determination entered by the Texas Water Commission (the "Commission") on July 29, 1985 in the Adjudication of the Lower Colorado River Segment of the Colorado River Basin (the "Adjudication"). Garwood has the independent right under C.F. 398 to divert and use 168,000 acre-feet of water per year of the run-of-river flow of the Colorado River at a maximum diversion rate of 750 cubic feet per second for the irrigation of 32,000 acres of land within acres T-2000 and T-2010 (as such areas are defined in the Final Determination), with a priority date of November 1, 1900. LCRA holds rights to the Highland Lakes, including rights to Lakes Buchanan and Travis under Permit Nos. 1259 and 1260, respectively. LCRA also holds other rights to use the waters of the Colorado River and its tributaries downstream of the Highland Lakes.

LCRA, Garwood, Lakeside Irrigation Company ("Lakeside") and Gulf Coast Water Company ("Gulf Coast") entered into an agreement in 1937 (the "1937 Contract") regarding their respective water rights. LCRA and Garwood subsequently entered into other agreements, which have expired under their own terms. Pursuant to the 1937 Contract, Garwood obtained from the Texas Board of Water Engineers, predecessor to the Commission, Permit No. 1506, providing for the supply of stored water by LCRA. Garwood also obtained Permit No. 1790, amending Permit No. 1506. Permits Nos. 1506 and 1790 have been renumbered to Certified Filings Nos. 398A and 398B, respectively.

By Interim Agreement dated as of February 27, 1986 (the "Interim Agreement"), Garwood and LCRA agreed to suspend the 1937 Contract. Prior to the Interim Agreement, Garwood paid LCRA a cumulative total of more than \$2,000,000 pursuant to the 1937 Contract.

The facts and circumstances upon which the 1937 Contract was based have changed significantly, and certain assumptions upon which such Contract was based have been shown to be incorrect. For example, the Commission has issued its Final determination in the Adjudication, and it is now clear that Garwood's C.F. 398 has the earliest priority date of all significant water rights in the Colorado River Basin. Additionally, Lakeside and Gulf Coast have been acquired by LCRA, and are now referred to as LCRA's Lakeside and Gulf Coast Divisions. Moreover, others holding water rights similar to Garwood's have never entered into similar contracts with LCRA, as contemplated by the parties to the 1937 Contract. And, Garwood has at a cost to itself of approximately \$1,000,000 built a low water dam on the river just downstream of Garwood's diversion point. Such low water dam is authorized under Certified Filing No. 398D. Garwood's low water dam makes it possible to operate the river more efficiently, for the benefit of LCRA and others in the Colorado River Basin.

LCRA and Garwood now wish to redefine their relationship to take into consideration the benefits provided by Garwood's low water dam, the previous payments made by Garwood to LCRA, and the facts and circumstances as they exist today. To the extent that Garwood may need stored water from Lakes Travis and Buchanan to firm up the supply of water available under C.F. 398, LCRA desires to provide such water on a non-firm, interruptible basis. Garwood is willing to be provided stored water on that basis, subject to conditions that assure Garwood that any reduction in supply of stored water to Garwood will be fair, reasonable and non-discriminatory. However, LCRA is not able to make a commitment to supply stored water on a non-firm, interruptible basis until it is assured that it has the necessary rights to supply water from Lakes Travis and Buchanan on that basis. Such rights are presently being determined in the proceeding styled In re: The Exceptions of the Lower Colorado River Authority and the City of Austin to the Adjudication of Water Rights in the Lower Colorado River Segment of the Colorado River Basin, Cause No. 115,414-A-1 in the District Court of Bell County, Texas, 264th Judicial District ("Cause No. 115,414-A-1").

NOW, THEREFORE, in consideration of the mutual benefits and covenants contained herein, Garwood and LCRA hereby agree as follows:

1. The Interim Agreement shall remain in effect until the Effective Date (hereinafter defined), and shall terminate on such date. The 1937 Contract also shall terminate on the Effective Date. Promptly after the Effective Date, Garwood agrees to submit Permits Nos. 1506 and 1790 (Certified Filing Nos. 398A and 398B, respectively) to the Commission for cancellation; provided, however, that such cancellation shall not in any way affect Garwood's independent rights to the run-of-river flow of

the Colorado River, as set forth above. The "Effective Date" is the date that the Court enters an LCRA Judgment (hereinafter defined) in Cause No. 115,414-A-1, or the date which LCRA by written notice to Garwood deems to be the Effective Date, whichever occurs first. An "LCRA Judgment" is any final judgment, partial or otherwise, entered in Cause No. 115,414A-1, which reflects that LCRA is authorized to use a maximum aggregate amount of water from Lakes Travis and Buchanan in peak-use years of not less than 1,500,000 acre-feet for purposes other than the generation of hydroelectric power.

2. Based on the information currently available, it appears that Garwood's demands for water may be able to be satisfied, to the full extent of the limits of C.F. 398, entirely from the run-of-river supply available under C.F. 398. In that regard, LCRA acknowledges that inflows must be allowed to pass through the Highland Lakes to the extent necessary to satisfy demands under C.F. 398. The extent to which run-of-river water is available under C.F. 398 at any given time ultimately will be determined by the Commission.

3. To the extent that stored water from Lakes Travis and Buchanan under Permits Nos. 1260 and 1259 may be required to firm up the supply of water available under C.F. 398 to satisfy demands under C.F. 398, LCRA agrees to release stored water, at Garwood's request, at such times and rates as may be necessary to allow Garwood to divert the amounts required, within the limits of C.F. 398, utilizing Garwood's diversion facilities; provided, however, that LCRA's commitment under this Agreement to supply stored water under Permits Nos. 1260 and 1259 shall not take effect until the Effective Date.

4. The amount of stored water that LCRA must release from Lakes Travis and Buchanan for Garwood and all other users of stored water supplied by LCRA is reduced because of Garwood's low water dam. Based upon current information available, LCRA agrees that, on the average over time, the amount of stored water required to firm up the supply of water available under C.F. 398 will not exceed the amount of stored water saved because of Garwood's low water dam. Additionally, Garwood has paid LCRA significant amounts of money pursuant to the 1937 Contract for water diverted and used by Garwood prior to the Interim Agreement, and others who were supplied stored water by LCRA prior to such time were not charged for such water. Accordingly, LCRA agrees not to charge Garwood for any stored water that may be needed to firm up the supply of water available under C.F. 398 within the limits of C.F. 398, for so long as Garwood maintains its low water dam.

5. LCRA's commitment under this Agreement to supply stored water under Permits Nos. 1260 and 1259 is subject to interruption or curtailment on the basis set forth below. LCRA may supply Garwood less stored water in any year than Garwood's Unrestricted Demand (hereinafter defined) for that year only if LCRA also restricts and reduces the supply of stored water to all users of water for irrigation, including LCRA's Lakeside Division and LCRA's Gulf Coast Division, and to all users of water under all non-firm, interruptible commitments of LCRA for irrigation other than LCRA's commitment hereunder. If LCRA does reduce the supply of stored water to Garwood in any year below Garwood's Unrestricted Demand for that year, then the percentage that Garwood's Unrestricted Demand is reduced, and the timing, notification and other procedures applicable to such reduction, shall be at least as favorable to Garwood as the percentage and procedures applied by LCRA to any user of water for irrigation, including LCRA's Lakeside Division or LCRA's Gulf Coast Division, or to any user of water under any non-firm, interruptible commitment of LCRA for irrigation other than LCRA's commitment hereunder. "Garwood's Unrestricted Demand" for any year is the amount of stored water needed that year to firm up the supply of water available under C.F. 398 during that year to the extent necessary to satisfy Garwood's unrestricted demand for that year.

6. The parties are entering into this Agreement solely for the benefit of themselves and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto.

7. Nothing herein shall in any way be considered as a waiver or abandonment by either of the parties of any of their respective water rights, or their respective rights, remedies and positions in the Adjudication process.

8. The parties may by mutual agreement modify this Agreement from time to time in the future based on their evaluation of the facts and circumstances as they exist at the time.

9. LCRA and Garwood agree to file jointly a copy of this Agreement with the Executive Director of the Texas Water Commission, P. O. Box 13087, Capitol Station, Austin, Texas 78711, it being fully recognized by LCRA and Garwood that the effectiveness of this contract is dependent upon compliance with the Rules of the Texas Water Commission.

IN WITNESS WHEREOF, this Agreement is executed on behalf of LCRA and Garwood by their respective authorized officers, in multiple counterparts, each of which shall constitute an original.

LOWER COLORADO RIVER AUTHORITY

By *S. David Freeman*  
S. David Freeman  
General Manager

ATTEST:

*Marsha E. Furlow*

GARWOOD IRRIGATION COMPANY

By *William N. Lehrer*  
William N. Lehrer  
President

ATTEST:

*James P. Christensen*