CENTRAL TEXAS WATER COALITION

January 30, 2015

VIA E-MAIL to wras@tceq.texas.gov

Dr. Kathy Alexander
Office of Water
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

RE: LCRA WMP – Comments on the Application by the Lower Colorado River Authority to Amend Water Use Permit No. 5838

Dear Dr. Alexander:

On behalf of the Central Texas Water Coalition, Inc. (CTWC), a non-profit organization concerned with the protection of the Highland Lakes as the critical drinking water supply for over one million Central Texans, we respectfully request your consideration of these comments regarding the application by the Lower Colorado River Authority (LCRA) for an amended Water Management Plan (WMP) under Water Use Permit No. 5838 (the "Application"). This Application was filed with the Texas Commission on Environmental Quality (TCEQ) on October 31, 2014.

CTWC Generally Supports the Application.

The current, 2010 WMP has proven to be critically flawed. In combination with unprecedented drought, massive releases of stored water from the Highland Lakes as allowed under the LCRA's 2010 WMP led to the dangerously-low reservoir levels we see today. As of the date of this letter, Lakes Travis and Buchanan remain at a combined storage level of only thirty-five percent (35%). CTWC hopes that the Application will continue to move forward without delay so the basin will never again be governed by the flawed 2010 WMP and rule by Emergency Order can end.

Although CTWC generally supports the Application, concerns remain which must be clearly and directly addressed either in the proposed WMP (Exhibit A of the Application – the "Proposed WMP") or within the Commission Order approving the Application. CTWC's two primary concerns relate to the proposal to remove Drought Contingency Plans (DCPs) from the WMP and the need for re-evaluation of some basic underpinnings of the WMP in the immediate future due to the ongoing historic drought.

Drought Contingency Plans Should Remain Part of the WMP.

Currently, the Drought Management and Drought Contingency Plans are contained in Chapter 4 of the WMP. In its Application, the LCRA proposes to remove these from the WMP and into stand-alone documents. *See* Proposed WMP, pp. ES-3, 4-3. For technical and legal reasons, the DCPs should not be removed from the WMP – these DCPs are integral to it. CTWC agrees with what LCRA itself has said regarding the interaction between DCP curtailment provisions and the WMP at least three times in the past few years:

> **"Because the curtailment provisions of the DCP related to interruptible supplies are one of the most fundamental principles underlying the WMP, LCRA cannot unilaterally alter through changes to the DCP that which it cannot alter under the WMP without the TCEQ's permission."**
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> **-** *LCRA Request for Drought Relief from 2010 WMP, Dec. 2014, p. 8; LCRA Request for Drought Relief from 2010 WMP, July 2013, p. 5, incorporated by reference into July 26, 2013 TCEQ Order granting emergency relief, TCEQ Docket No. 2013-0225-WR; LCRA Request for Drought Relief from 2010 WMP, Nov. 2012, p. 7.*

A change to *any* DCP curtailment provision impacts the WMP. In addition to impacting curtailment provisions, changes to the DCP alter the modeling that provides the basis for a variety of the key provisions of the WMP. Altering a DCP alters the WMP. Allowing them to be considered separately by different governing agencies under different proceedings at different times is likely to result in a DCP that does not comport with the governing documents: the WMP, the LCRA's Certificates of Adjudication for Lakes Buchanan and Travis, and the 1988 Final Judgment and Decree regarding LCRA's water rights in the Highland Lakes.

Further, removing the DCPs from the WMP removes the procedural due process to which those affected by the WMP are entitled. This is a fundamental change – not a matter of mere administrative efficiency. Once removed from the WMP, the Water Code and TCEQ rules provide for minimal oversight and public participation for DCP amendment, and no opportunity for administrative appeal. The LCRA would only have to provide an opportunity for public comment on a new or amended DCP; then, the DCP would be placed on file with the TCEQ. This is in stark contrast to the current process in which, as part of the WMP, changes to the DCPs are subject to review and approval by the TCEQ and requests for contested case hearing by affected persons. CTWC urges the TCEQ not to cede its legal authority to administer and enforce the water rights governing LCRA's management of state water.

CTWC is concerned that by removing the DCPs from the WMP, the LCRA Board could vote to require curtailment of firm customers in a manner that does not fit with the approved WMP or comply with the 1988 Final Judgment and Decree. In fact, the LCRA Board may have already done so. An amendment to the firm customer DCP adopted by the Board in November 2013 and reaffirmed in November 2014 imposes a mandatory cutback on the use of firm water for landscape watering, but continues to allow releases of interruptible water supplies to one of the four irrigation districts. This appears to be contrary to the LCRA's legal requirement under the

1988 Final Judgment and Decree to provide for all firm customer commitments in their entirety before releasing water for interruptible water users. CTWC supports conservation measures by all water users, including firm water users such as residents of Central Texas urban areas – a group of customers which has demonstrated its commitment to conservation by reducing water usage dramatically in recent years. However, CTWC cannot support mandatory restrictions that appear to conflict with the LCRA's governing permits and court orders. Without TCEQ oversight or the procedures required for a permit amendment under administrative law, the checks and balances are removed from the process.

Given the inextricable relationship between the DCPs and the WMP, we urge the TCEQ to require the reinstatement of LCRA's DCP provisions into the WMP. If there are provisions of TCEQ's rules governing drought contingency plans (30 Texas Admin. Code Chapter 288) that raise questions or concerns for LCRA's water management under the terms of its WMP, we would not be opposed to regulatory changes or a TCEQ ordering provision in the agency's approval of the next WMP to acknowledge that LCRA has satisfied its regulatory obligations under Chapter 288 with the inclusion of DCPs in its WMP. The TCEQ rules expressly contemplate a circumstance in which DCPs are part of another water management document. *See* "drought contingency plan" definition in 30 Texas Admin. Code §288.1(6).

The TCEQ Should Provide a Date-Certain by which the Next WMP Revision Will Occur.

Although CTWC generally supports the Application and urges the TCEQ to continue toward issuance of a revised WMP, we are concerned that it is not based upon critical, very recent data. Additionally, research is underway to better understand the causes of the current hydrological drought and how it is impacting watersheds and reservoir inflows. The TCEQ is committed to using the best science to inform its decisions. As part of that commitment, it should require that the LCRA return by a date certain in the near future with a revised WMP that incorporates 2014 data, at a minimum, and considers the results of recent research on the hydrology of the watershed.

Several key portions of the WMP are likely to be affected by the use of 2014 data. For example, using data through 2013, the Proposed WMP presents a plan that, as modeled, keeps the combined storage of Lakes Travis and Buchanan above 600,000 acre-feet – thus avoiding the declaration of a "drought worse than the drought of record" – by a razor-thin margin. But as we all now know, inflows to those lakes in 2014 were the second-lowest ever in history. We are concerned that with the addition of 2014 hydrological data, the Proposed WMP will result in combined storage falling below 600,000 acre-feet, thus failing the Executive Director's minimum combined storage requirements. As the Executive Director indicated in his May 2014 report, the WMP cannot be designed to manage the lower Colorado River into a drought worse than the drought of record. As soon as the 2014 data is finalized, it should be applied to the WMP to determine if trigger levels or other parameters need to be adjusted to ensure absolute protection of firm water supplies, as required by law.

Additionally, as the drought continues, it appears that a re-evaluation of the firm yield of Lakes Travis and Buchanan will be necessary. By TCEQ rule, the combined firm yield is a measure of

that amount of water that Lakes Travis and Buchanan can produce annually during the "worst drought of record." As demonstrated in Chapter 3 of the Proposed WMP, the LCRA is using the drought of the 1950s as its benchmark. In its definitions, the LCRA defines the "Combined Firm Yield of Lakes Buchanan and Travis" as "the calculated firm yield of lakes Buchanan and Travis **when operated as a system, incorporating LCRA's agreements and operating assumptions regarding calls on the upper basin**. The Combined Firm Yield is based on the 1940s to 1950s historic Drought of Record." *See* Proposed WMP, p. ES-10. LCRA's proposed expanded definition of the "Combined Firm Yield" introduces a number of subjective, unquantified, and undisclosed elements into its "firm yield" equation, as emphasized in the quoted language above. Because by many objective measures, the current drought is already worse than the 1940s to 1950s Drought of Record, the use of that time period as the benchmark for determination of the Combined Firm Yield introduces further uncertainties into the calculation. As noted above, when the 2014 data is included in the next round of water availability modeling, this may also impact the calculation of the firm yield. For all of these reasons, LCRA's WMP should include a well-defined, objective, transparent, and reproducible method for calculating the Combined Firm Yield of Lakes Buchanan and Travis. Because the amounts of water the LCRA sells to firm customers and the amounts it releases to interruptible customers are based upon the Combined Firm Yield of the reservoirs, these calculations and determinations are critical to the protection of LCRA's firm water commitments and the proper management of LCRA's water rights under its WMP.

As this unprecedented drought continues, we are observing new hydrologic conditions. For example, rainfall events are not translating into the amount of reservoir inflows that we have seen in the past. Scientists have noted this trend in various Texas river basins. While we know that inflows have decreased, studies regarding the cause(s) for this change in hydrology are still underway, and further analyses are warranted. According to a preliminary analysis of the hydrology of the Highland Lakes watershed by CTWC's hydrologist, soils within the basin have become drier and there has been a hydrologic change in the frequency of rainfall events, coupled with a noticeable increase in the duration of dry periods between rain events. Additionally, the number of small, permit-exempt impoundments within the watershed has increased over time. Rainwater tends to enter the dry ground or be impounded in small ponds before flowing overland into creeks and entering the lakes as inflow. As acknowledged by the LCRA on the first page of the Proposed WMP, the WMP is not a static document and it is revised periodically to address changing conditions. *See* Proposed WMP, p. ES-1. We agree that the WMP is not a static document. When studies are complete and information becomes available, the WMP should be re-evaluated and amended, as appropriate, to apply new knowledge regarding changed conditions.

In addition to the incorporation of significant new hydrologic data during this time of historic drought, the continuing, rapid population growth within the LCRA's existing firm water customers also justifies a careful, near-term re-evaluation of the WMP. As more and more people and businesses move to Central Texas, firm demands are expected to continue to increase. The 600,000 acre-foot lake storage level selected as a benchmark for the drought worse than the drought of record should be increased as population and needs increase. If it is not, then that target level becomes less and less protective as the demands on the water supply increase.

To conclude, CTWC does not wish to delay the TCEQ's consideration of the Application due to these concerns, but it is critical that they be addressed in a timely manner. The WMP or the TCEQ's Order should include a specific date by which the LCRA is required to re-evaluate the WMP in light of new information (including, at the very least, the 2014 data); to re-calculate the firm yield using the most current data; and submit its evaluation to the TCEQ with an application to amend its WMP in response to this information. Allowing for a reasonable amount of time to collect and evaluate the 2014 data, we suggest that the TCEQ Order on the Proposed WMP require the LCRA to submit an application to amend its WMP to incorporate new data by no later than December 31, 2016.

CTWC appreciates the work of the LCRA and the TCEQ to get to this point in the process. We are especially appreciative of the agencies' efforts to provide opportunities for public engagement and input, such as this informal comment period. CTWC will remain engaged in the process as we work to resolve the concerns outlined above. Thank you for your consideration.

Sincerely,

Jo Karr Tedder

Jo Karr Tedder
President