



May 30, 2014

VIA E-FILING

Ms. Bridget C. Bohac, Chief Clerk
Office of the Chief Clerk (MC 105)
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Austin, Texas 78753

Re: Central Texas Water Coalition Comments in Support of Issuance of a Revised Emergency Order to the Lower Colorado River Authority; Agenda Item No. 2; June 4, 2014 Commissioners Agenda (Docket No. 2014-0124-WR)

Dear Ms. Bohac:

On behalf of the Central Texas Water Coalition, Inc. (CTWC), a non-profit organization with approximately 3,000 members, we appreciate the opportunity to submit these comments regarding Agenda Item No. 2 on the Commissioners Agenda of Wednesday, June 4, 2014 regarding emergency management of water supplies by the Lower Colorado River Authority (LCRA). We urge the Commissioners to affirm the Executive Director's Emergency Order of May 22, 2014, extending the Emergency Order issued by the Commission on February 27, 2014; however, we respectfully request that the Emergency Order be modified to include the use of 1.4 million acre-feet (MAF) as the minimum combined storage volume in Lakes Buchanan and Travis at which releases may be allowed from storage to interruptible customers for the duration of the Emergency Order. This trigger level was recommended by the Administrative Law Judges as fully supported by the evidence following the hearing convened on February 17, 2014 (at the direction of the Commissioners) on the LCRA's application for an emergency order. The urgent need for a minimum combined storage volume and the use of a 1.4 million acre-feet (or higher) trigger level is also supported by the Executive Director's recent re-evaluation of appropriate, safe trigger levels under this intense level of drought.

I. Emergency Conditions Continue to Exist. At the February 26, 2014 Agenda, the Commissioners expressed a desire to revisit the need for this Emergency Order at the end of its 120-day term, so that they could review current conditions and respond accordingly. It is clear that the conditions that existed on February 26 have not improved. The numbers tell the story:

Combined Storage in Lakes Travis and Buchanan

Date	Event	Combined Storage (acre-feet)
Dec. 10, 2013	LCRA applies for emergency relief	752,425
Feb. 17, 2014	Evidentiary hearing on requested emergency relief	762,115
Feb. 26, 2014	Commission Agenda on Emergency Order	761,774
May 5, 2014	LCRA applies for 60-day extension of Emergency Order	724,413
May 22, 2014	Executive Director issues extension of Emergency Order	711,768
May 26, 2014	Emergency order issued in February expires	721,611
May 29, 2014	Yesterday	766,568

NOTE: Lake Travis is full at 1,134,956 acre-feet, and Lake Buchanan is full at 875,588 acre-feet. When these lakes are full, the Combined Storage is 2,010,544 acre-feet. Yesterday's Combined Storage volume is only 38 % of that number (even after Central Texas experienced significant, repeated rainfall events over the last week).

Lake Levels in Lakes Travis and Buchanan

Date	Event	Lake Travis (msl)	Lake Buchanan (msl)
Dec. 10, 2013	LCRA applies for emergency relief	628.11	988.31
Feb. 17, 2014	Evidentiary hearing on requested emergency relief	627.73	989.36
Feb. 26, 2014	Commission Agenda on Emergency Order	627.72	989.34
May 5, 2014	LCRA applies for 60-day extension of Emergency Order	625.44	987.94
May 22, 2014	Executive Director issues extension of Emergency Order	625.00	987.21
May 26, 2014	Emergency Order issued in February expires	625.68	987.54
May 29, 2014	Yesterday	628.41	989.23

NOTE: Lake Travis is full at an elevation of 681 feet above mean sea level (msl). Lake Buchanan is full at an elevation of 1,020 feet above msl. Despite recent rains, as of yesterday, the lakes remain down 52.59 feet and 30.77 feet, respectively.

Inflows into Lakes Travis and Buchanan

Average Inflows for Months of January – April (1942 to present)	343,320 acre-feet
Inflows for Months of January – April (2014)	35,529 acre-feet (only 10% of average)

II. Emergency Conditions Continue to Present an Imminent Threat to Public Health and Safety. The Commission may grant emergency relief when it finds, among other things, that emergency conditions exist which present an imminent threat to the public health and safety. Tex. Water Code § 11.139(a). The Executive Director’s Emergency Order of May 22, 2014 correctly recognized these conditions in issuing a 60-day extension of the 120-day Emergency Order.

During the February 17-18, 2014 hearing on LCRA’s request for emergency relief from the terms of its existing Water Management Plan, CTWC and other parties presented compelling evidence of the emergency conditions currently threatening public health and safety, including a lack of water necessary for firefighting and diminishing access to water supplies for drinking, cooking, bathing, and other essential purposes. The threat to human health and safety caused by these conditions is well-documented in the Proposal for Decision (Findings of Fact Nos. 29a, 31d, 32, 32a, 41a, and 42c-42i) and in the Commission Order issued on February 27, 2014 (Findings of Fact Nos. 44 - 46). These conditions are directly tied to dropping lake levels. As shown in the Lake Levels chart above, lake levels have not changed significantly since the hearing on the February 2014 Emergency Order -- as of yesterday, Lake Travis’ level had increased by 0.68 feet and Lake Buchanan decreased by 0.13 feet. Although recent rains in the vicinity of the Highland Lakes have caused a rise in lake levels this week, the LCRA’s May 5, 2014 application provides clear warnings that the Texas Hill Country will experience drier than normal weather conditions in the hotter than normal summer months ahead (Supplemental Affidavit of Bob Rose (meteorologist)).

As LCRA’s Emergency Order renewal application also shows, the severity of the drought has intensified. Unquestionably, existing emergency conditions presenting an imminent threat to the public health and safety have likewise intensified. There is no doubt that emergency conditions continue to exist, and that such conditions justify the extension of the Emergency Order.

III. The Commission Should Modify the Emergency Order to Set a Trigger Level of 1.4 MAF. CTWC urges the Commission to reconsider its decision declining to set a level below which releases of stored water for interruptible contract-holders is prohibited. The evidence developed at hearing in February clearly supported the finding by the Administrative Law Judges that “(a)t 1.1. MAF, with a continuation of the current hydrology, lake storage would drop within approximately one year to emergency levels and continue downward from there. Therefore, a refill amount of at least 1.4 MAF is necessary to avoid a rapid return to emergency levels.” (Proposal for Decision, Finding of Fact No. 30c.). Likewise, the Executive Director’s own recent re-evaluation of appropriate, safe trigger levels under this intense level of drought concluded that a trigger level of 1.4 million-acre feet is necessary to protect firm drinking water supplies. *Draft Naturalized Streamflows Updates and Modeling Report, Colorado River*

Basin, p. 7 (May 16, 2014) (hereinafter "ED's Draft Report"). The Executive Director's Order should be modified to include the level of protection his staff determined necessary to protect drinking water users.

CTWC notes that in its deliberations and in the subsequent written Order issued on Feb. 27, 2014, the Commissioners apparently applied a new standard for emergency orders. In Conclusion of Law No. 8, the Commission Order states:

The Commission in issuing an emergency order under Texas Water Code § 11.139 must ensure that the relief granted is adequate and tailored to address the imminent threat to public health and safety [*emphasis added*].

This new "adequate and tailored" standard is not included in the text of the Texas Water Code, yet it appeared to influence the actions taken during the February 26, 2014 Agenda on the Emergency Order. More specifically, it appeared that the Commission felt constrained in its response to the unquestionably serious emergency conditions that it had been presented with. However, we are not aware of an "adequate and tailored" criterion under Section 11.139 of the Water Code, and, in our view, the Commissioners have the authority and the duty to look at the complete picture when issuing emergency orders to address an imminent threat to public health and safety.

The evidence presented to the Commission in February and in LCRA's May 5, 2014 application to renew this Emergency Order provides a strong foundation for the issuance of emergency orders granting relief from the LCRA's existing Water Management Plan using minimum combined storage trigger levels that will assist in the protection of drinking water supplies for the people of Central Texas. We urge the Commission to re-visit and reconsider any suggestion that its decisions may only be based on a narrow snapshot in time, without regard to larger, overriding issues such as: 1) the need to plan for continuing drought conditions; 2) the need to acknowledge that extensive, multi-year efforts have already been taken by Central Texas water utilities to find additional water supplies and to extend raw water intakes as the lakes receded; 3) the recognition that Central Texas municipalities have already implemented successful water conservation programs, and those efforts have slowed the decline in available stored water in recent months; and 4) the need to acknowledge the enormous challenges that will be imposed upon Central Texas water utilities if the TCEQ and the LCRA do not act to protect the very limited quantities of water that remain in storage as we enter another hot, dry summer. In addition to the facts presented at a specific point in time, CTWC respectfully urges the Commission to consider all of these wide-ranging and critical issues as part of the whole picture, and to grant the emergency relief that will best accomplish the protection of public health and safety. In this case, the Executive Director's Emergency Order dated May 22, 2014 should be affirmed, but modified to include a 1.4 million acre-feet combined storage trigger level, as recommended in the Proposal for Decision on this issue and supported by the ED's Draft Report.

IV. An Additional Hearing on this Renewal is Unnecessary and Would be Unduly Burdensome. The issues under consideration for this Agenda item were the subject of the hearing before the State Office of Administrative Hearings in February 2014. Information arising since that hearing has been provided in the LCRA's May 5, 2014 application for renewal of the Emergency Order, and additional information can be adequately communicated to the Commission through written and oral comments. An additional evidentiary hearing would be extremely costly and time-consuming and would not provide a corresponding level of utility. Another contested hearing would substantially add to the workload of the Executive Director's staff, who are already handling several major, ongoing water rights matters. For

these reasons, CTWC requests that the Commission not refer this matter for a contested hearing. We urge the Commissioners to decide the matter before them at the Agenda on June 4th.

V. The ED's Draft Report is a Step in the Right Direction. The ED's Draft Report presents a solution that appears to be on the right track. Its three sets of conditions, from normal conditions to extraordinary drought, provide for management decisions that consider current circumstances. This is a vast improvement over the one-size-fits-all-scenarios approach of the current LCRA Water Management Plan. This self-adjusting approach could help break the cycle of managing the Lower Colorado River Basin from emergency order to emergency order – a pattern that strains TCEQ, LCRA, and stakeholder resources, frustrates planning efforts, and benefits no one. It recognizes what we have all learned the hard way over the past few years: that we must be increasingly conservative with our drinking water supplies as drought continues and intensifies. Anything less fails to protect public health and safety and may result in violation of LCRA's water rights, which require that LCRA provide all of the firm water it has committed to its firm water customers through a drought worse than the drought of record.

VI. Conclusion. For the reasons discussed above, CTWC respectfully requests that the Commission affirm the Executive Director's extension of the Emergency Order, but modify the Emergency Order to reflect a trigger level of 1.4 million acre-feet for releases to interruptible contract-holders, as supported by the evidentiary hearing on the issue and Proposal for Decision issued in February 2014, as well as the Executive Director's recent re-evaluation of appropriate trigger levels in light of the most recent data. If you have any questions, please feel free to contact me at 512.755.4805.

Sincerely,

Jo Karr Tedder

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President, Central Texas Water Coalition

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