COMMENTS OF THE CENTRAL TEXAS WATER COALITION (CTWC) ON THE LOWER COLORADO RIVER AUTHORITY'S (LCRA'S) PROPOSED AGRICULTURAL INTERRUPTIBLE WATER SERVICE CONTRACT RULES; PROPOSED DROUGHT CONTINGENCY PLAN FOR INTERRUPTIBLE AGRICULTURAL CUSTOMERS (DCP); AND PROPOSED 2020 INTERRUPTIBLE WATER RATES

Submitted to the LCRA on January 17, 2020

The Central Texas Water Coalition appreciates the opportunity to provide the following comments on LCRA's proposed Agricultural Interruptible Water Service Contract Rules (Contract Rules), proposed Drought Contingency Plan for Interruptible Agricultural Customers (DCP), and proposed 2020 Interruptible Water Rates. The Rates charged to LCRA's Interruptible customers, as assessed under the terms of the various documents under consideration for Board approval in 2020, directly impact LCRA's ability to manage the state's water resources in a manner that promotes conservation and avoids waste. However, in our view, the proposed Rates and associated documents for Interruptible customers in 2020 need significant revisions in order to achieve these objectives.

Comments on the Proposed Contract Rules. As the LCRA Board reviews the proposed Contract Rules and considers them for approval, we respectfully request the Board's consideration of how these Contract Rules promote LCRA's water stewardship mission and its obligations for management of the valuable and limited water resources in the Lower Colorado River Basin. We urge LCRA to re-consider the text of the provisions that appear inconsistent with these objectives and to revise those provisions to better align with the goals of encouraging water conservation, prohibiting wasteful use of water, and achieving cost recovery in water sales.

Provisions that contribute toward the overall problems in LCRA's operations to provide water to its downstream agricultural irrigation customers include Section II.B.5 (which sets the Point of Delivery for calculating the amount of water use at the Customer's fields or property (and thereby ignores the substantial water losses that occur in the river and in the canals prior to reaching that point)); and Section II.C (which states that Customers agree not to cause or allow water furnished by LCRA to be wasted, used carelessly, or used in quantities that "significantly exceed those amounts used (on an acre-feet per acre basis) by similarly situated agricultural water users in the area"). Importantly, Section II.C does not mention waste caused by a Customer's application of groundwater in addition to water furnished by LCRA, or the waste associated with the use of water that far exceeds the per-acre duty that was envisioned when

the water rights for rice irrigation were first issued for this area in the 1980s. LCRA should add language to Section II.C acknowledging that Customers should closely monitor the total volumes of water applied for irrigation purposes and assure that such volumes are not excessive, regardless of whether the water was furnished by LCRA or obtained from other sources.

The volumes of water triggering LCRA surcharges in Section II.E.6 should be based on updated, geographically based scientific research on reasonable amounts of water to grow each specific crop being irrigated with LCRA-furnished water, and the triggering amounts for surcharges should be far lower than the amounts proposed in the proposed Contract Rules. For example, under Section III.B.4, Customers growing rice in the Gulf Coast Division can use 3.75 acre-feet per acre for first season, and another 2.5 acre-feet per acre during the second season (*see* Section III.C.7). Two crops of rice using 6.25 acre-feet per acre of water is well-beyond what the State's agricultural irrigation experts estimated in the 1980s, and well-beyond the 5.25 acre-feet per acre standard established during the Adjudication of these water rights. LCRA should not continue to furnish irrigation water for excessive water uses at any price, and state laws and the decisions adjudicating irrigation water rights provide strong support for this position. To do this, the volumes of water triggering surcharges must therefore be significantly lower in the 2020 Contract Rules. In addition, LCRA should use its authority to cease delivery of water to Customers that exceed the revised trigger levels for water use – and not rely solely on surcharges as a method of eliminating waste.

Comments on the Proposed Drought Contingency Plan. Please consider these questions and comments regarding the proposed DCP, including questions relating to provisions that existed in the prior version of the DCP.

In Section 7.3.2, please explain why LCRA provides as much as 30,000 acre-feet of water per year to the Pierce Ranch agricultural division at "no charge."

In Section 7.3.3, please explain the following language included within the Section: 1) the intent of the new language regarding the allocation of additional interruptible stored water for the Gulf Coast and Lakeside Divisions; 2) how the first sentence of the third paragraph operates in determining the total amount of interruptible water available for on-farm use. In other words, please explain the equation involving system delivery losses, amounts available at river pump stations, and amounts of water available for on-farm use; and 3) the reason for the proposed reduction in average losses in the Gulf Coast and Lakeside Divisions.

Comments on the Proposed 2020 Interruptible Water Rates. In conjunction with the terms of the Contract Rules and the DCP, the proposed Rates are critically important to LCRA's water stewardship and water management responsibilities. However, it appears that the proposed Contract Rules and Rates suffer from the same deficiencies as the prior rules and rates. Among

the substantive shortcomings, the 2020 proposals fail to require that Agricultural Interruptible (Interruptible) customers:

- Pay a rate that covers LCRA's cost of service to this customer group;
- Pay a proportionate and fair share of river management costs;
- Pay for water the Interruptible customer orders but later declines to take when the water is ready for delivery at the farmer's fields;
- Pay a proportionate share of dam rehabilitation costs that benefit all LCRA customers; and
- Pay for water that is lost in the river or canals that is directly associated with the deliveries to the Interruptible customers.

As a result of these deficiencies, the Contract Rules and the Rates LCRA proposes for 2020 are not sufficient to recover the costs of serving its Interruptible customers. Our review indicates that the proposed Rates are unreasonably preferential, prejudicial, and discriminatory. These deficiencies and issues are explained in greater detail below.

LCRA's Statutory Duty to Set Nondiscriminatory Rates and Cover its Expenses

Under Texas law, LCRA is required to set water rates that are reasonable and nondiscriminatory. This legal obligation is plainly stated in LCRA's enabling legislation, which states: *"The Board shall establish and collect rates and other charges for the sale or use of water, water connections, power, electric energy, or other services sold, furnished, or supplied by the authority. The fees and charges must be reasonable and nondiscriminatory and sufficient to produce revenues adequate to pay… [all expenses necessary to the operation and maintenance of LCRA's properties and facilities and all LCRA debt obligations]."*[1]

LCRA's enabling legislation further makes clear that, in setting water rates, LCRA is subject to the state statutes regulating the setting of wholesale water rates. *See* Sec. 8503.011(c), which states: *"Nothing in this chapter shall be construed as depriving this state of its power to regulate and control fees or charges to be collected for the use of water, water connections, power, electric energy, or other service..."*

The state laws regulating wholesale water rates are found in Chapters 11 and 13 of the Texas Water Code. Consistent with LCRA's enabling legislation, these laws provide that a wholesale water provider like LCRA is required to set water rates that are just, reasonable and nondiscriminatory. For example, Section 11.036 of the Texas Water Code states that *"the price*

[1] Chap. 8503, Texas Special District Local Laws Code, Sec. 8503.011(a). (emphasis added)

and terms of the [water supply] contract shall be just and reasonable and without discrimination." Similarly, Section 11.041 of the Texas Water Code allows a water purchaser to appeal to the Public Utility Commission of Texas (PUC) a water supply contract rate that is *"not reasonable and just, or is discriminatory."* Similarly, under Section 13.043, which applies when LCRA sells water to a retail public utility (e.g., a city, district or water supply corporation that sells LCRA water to homeowners and commercial businesses), the PUC *"shall ensure that every rate made, demanded, or received by any retail public utility … shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable and consistent in application to each class of customer."* (emphasis added).

As described above, LCRA's enabling legislation and Texas laws regulating wholesale water rates direct LCRA to set rates that are fair, non-discriminatory, and non-prejudicial as among all classes of customers. CTWC respectfully requests that LCRA revise its proposed Interruptible Rates to avoid the discriminatory and prejudicial impacts of its Interruptible Rates on its Firm customers and to include the rate components that its non-agricultural customers are paying in the rates paid by its agricultural customers.

According to CTWC's review of background documents for the latest proposed rates, the proposed rates for the various irrigation divisions do not fully cover the costs of providing service to those customers. LCRA's background documents indicate that full cost recovery rates for the Gulf Coast and Lakeside irrigation divisions would be $101 per acre-foot and $81 per acre-foot, respectively. However, the LCRA Board is now considering an Interruptible rate of $63 per acre-foot for the customers in both of these districts. To cover the shortages, LCRA proposes to utilize sizeable amounts of money from its Agricultural Reserve Fund. It is hard to understand how these proposed rates are fair and reasonable with respect to LCRA's other customers.

Of great concern is the impact of the proposed Interruptible rates (only $63 per acre-foot for Gulf Coast and Lakeside irrigators) on water conservation efforts. Agricultural customers can purchase inexpensive water from LCRA that is delivered directly to their fields without contributing to the costs of the water that is lost in the river and the canals on the way to their fields – and the consequences for declining to take the water they have ordered for release from upstream storage are negligible or nonexistent. In comparison, LCRA's Firm customers pay $145 per acre-foot for raw water diverted at an authorized diversion point (at the Firm customer's sole expense), and the Firm customer bears the financial burden of all costs and losses incurred from that point forward. Thus, LCRA's Interruptible rate promotes waste of water and undermines the state's water conservation policies and goals. It is clearly not in the public interest for LCRA to price agricultural water in a manner that conflicts with the state's water conservation requirements.

Interruptible Customers Do Not Pay A Fair Share of LCRA's River Management Costs

In 2015, LCRA determined that it would phase in what it determined were the Interruptible customer's share of river management costs. Despite the fact that Interruptible customers had received full deliveries in almost every year, LCRA decided that the interruptible nature of the service to these customers justified charging them only 20% of LCRA's river management costs. Moreover, LCRA decided that there should be a phase in period that was initially determined to be 7 years and was later extended to 8 years. During the 8-year phase in period, LCRA's Firm customers continue to subsidize the unpaid portion of the 20% of the river management costs.

All customers receive the benefits of LCRA's river management operations. Given the high degree of reliability of water deliveries to Interruptible customers, the decision to allocate only 20% of those costs to Interruptible customers and to phase in that cost over multiple years amounts to a massive subsidy from Firm customers to Interruptible customers. In recent years, Interruptible customers have taken about 40% of LCRA's total water deliveries and their reliability will increase with the addition of Arbuckle Reservoir. LCRA's new Water Management Plan estimates that Interruptible customers will receive water for their first and second crops 75% of the time. In the face of this increased reliability, the proposed 2020 Interruptible customer rates not only continue the previously granted subsidy, but they actually increase the amount of the subsidy. In addition, according to our review of background documents for the rate-setting work, the $63.00 rate proposed for the Gulf Coast division includes a $32.77 subsidy from the Agricultural Reserve Fund, which exceeds that division's $32.61 share of allocated river management costs. In other words, Gulf Coast customers are actually not paying any river management costs at all.

LCRA's 2020 Business Plan indicates that, assuming the 8-year phase-in, by 2020 Interruptible customers in Gulf Coast should be paying $83.03 per acre-foot for water. However, LCRA's proposed rate for Gulf Coast for 2020 is only $63.00 per acre foot. Similarly, the Business Plan for Lakeside showed a rate of $71.11 per acre foot, but the proposed 2020 rate for Lakeside is only $63.00 per acre foot. These discounts from the Business Plan's expected rates raise questions regarding the basis for the discounts and appear to contradict prior indications that LCRA intended to move toward full cost recovery for this customer group. We would like to understand the basis for these differences.

The Contract Rules Do Not Require Interruptible Customers to Pay A Penalty for Water They Order but Decline to Take When It Is Delivered

The Contract Rules and LCRA's practices require that Interruptible customers place an order advising LCRA when they want water to be delivered.[2] Water that is released from storage in the Highland Lakes takes several days to reach the customer's fields. Like all other water that is released from storage, as the water travels downstream some of it is lost to evaporation and

[2] Contract Rules, Section IV.A, Page 18 of 21.

seepage. Once the water reaches its intended diversion point on the river, there are further losses in the canals before the water reaches the farmer's fields. These losses are significant. In total, the losses after release from Mansfield Dam amount to 15 to 20% in the river and an additional 20 to 30% in the canals. Under the proposed 2020 Contract Rules (as in prior years), the Interruptible customer can decline to take the water it has ordered at any time after it is released from storage before it reaches the farmer's fields. There is no penalty whatsoever for the declined water. This "free option" for the Interruptible customer is not actually free at all. LCRA and its other customers incur losses in the river and in the canals. Those are permanent losses. Some of the water may fill environmental needs in Matagorda Bay or be recovered in Arbuckle Reservoir. However, if the Interruptible customer declined the water it ordered due to a welcome rain event, the same rain would likely benefit Matagorda Bay and Arbuckle Reservoir. Meanwhile, the Interruptible stored water that was released from upstream storage is no longer available for any upstream uses.

LCRA should implement a method to recover at least some of the costs associated with the Interruptible water that is "ordered but not diverted." Importantly, LCRA recovers a substantial "reservation fee" ($72.50) for every acre-foot of water that a Firm customer does not use from its contracted amount. Interruptible customers should also pay for water they request and then decline to take. This could be accomplished by increasing Interruptible rates to allow LCRA to recover conveyance losses, or by including fees for ordering water. CTWC certainly respects the Interruptible customer's decision to decline the diversion of stored water that is no longer needed downstream (LCRA's downstream service area has average annual rainfall amounts that are about 15 to 20 inches higher than the upstream service area), but we believe those customers should pay for the water that was reserved for them. That water is no longer available in an upstream storage reservoir, and it cannot flow uphill to an upstream location. In addition to LCRA's responsibility to assure that state water is beneficially used, LCRA should recover the value of the water that is released from storage at a customer's request. Please include methods of addressing this issue in this rulemaking and rate-setting process.

[Note: Firm customers pay more for water they don't use than Interruptible customers pay for water that is delivered directly to their fields.]

Interruptible Customers Pay Nothing for Dam Rehabilitation Costs

Among its many responsibilities, LCRA owns and operates multiple upstream dams that form the Highland Lakes. Like all such structures, the dams require constant repair and maintenance, at substantial costs. All LCRA customers benefit from the presence and operation of the Highland Lakes dams, yet only Firm customers contribute toward the costs of their upkeep and maintenance. This is an LCRA policy that should be reversed, so that Interruptible customers also contribute toward these costs. The rates LCRA proposes for Interruptible customers in 2020 (as in prior years) do not cover the debt service and coverage for dam operations and maintenance, and this provides another example of LCRA failing to recover costs that are properly and justly allocable to the Interruptible customers.

Interruptible Customers Do Not Pay for Water Lost in Making Their Deliveries

Interruptible customers do not pay anything for water that is lost between the Highland Lakes and their fields; yet the river and canal losses are significant. LCRA itself acknowledges that between 15 and 20% of water that is released from the Highland Lakes is lost in the river. On average, an additional 20 to 30% is lost in the distribution canals within the irrigation divisions before it reaches the farmer's fields. Inexplicably, Firm customers above Mansfield Dam are burdened with covering these losses through their rates. LCRA should employ a method of rate-setting that allows it to recover the value of the water lost on the way to its downstream Interruptible customers in a fair and reasonable manner, without discriminating against the Firm customers by ignoring such losses. Further, with revenues from its Interruptible customers that exceed its costs of service, LCRA could use that money to invest in infrastructure projects such as methods of minimizing water losses from hundreds of miles of unlined canals within the irrigation divisions.

Again, thank you for the opportunity to provide these comments. We look forward to working with LCRA as it addresses these issues.

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