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May 27, 2013

VIA ELECTRONIC SUBMITTAL

Ms. Bridget C. Bohac, Chief Clerk  
Office of the Chief Clerk (MC 105)  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Submittal of Comments and Request for Contested Case Hearing from Central Texas Water Coalition, Inc. Regarding Application of Lower Colorado River Authority to Amend its Water Management Plan; Application No. 5838A; TCEQ Water Rights Permit No. 5838

Dear Ms. Bohac:

This letter transmits the comments and request for a contested case hearing from the Central Texas Water Coalition, Inc. ("CTWC"), a Texas nonprofit corporation, in response to the Texas Commission on Environmental Quality's ("TCEQ's") notice (issued on April 15, 2013) of the Lower Colorado River Authority's ("LCRA's") Application to amend its Water Management Plan ("WMP") and the draft TCEQ Order approving the amendments to the LCRA's WMP. This letter is timely submitted, as it is filed within the 30-day deadline (adjusted by holidays) from the date of the last newspaper publication of the TCEQ's Notice of this Application.

**I. Background Information on CTWC**

The CTWC has approximately 600 members, including individuals, businesses, home/property owners associations, business associations, marinas, water supply entities, ranchers, conservation organizations, property owners, and local governments.

As stated in the Certificate of Formation filed with the Texas Secretary of State, the CTWC was formed to address water issues of the Lower Colorado River Basin and to advocate for the preservation and conservation of the Highland Lakes' water supply and water levels for health, safety and recreation, and for recognition of the Highland Lakes as an irreplaceable economic engine for the State of Texas. The CTWC holds a Certificate of Filing dated June 22, 2011 from the Texas Secretary of State's Office and operates under bylaws that recite the

purposes of this entity, which focus on water supply and water management in the Highland Lakes. A copy of the Certificate of Filing is attached as ATTACHMENT A.

In addition, CTWC is a §501(c)(4) nonprofit corporation that was organized to address water needs and issues of the Lower Colorado River Basin and advocate for the preservation and conservation of the Highland lakes' water supply and water levels for health, safety, and recreation, as well as supporting property values, related businesses and associated tax base and for recognition of the Highland Lakes as an irreplaceable economic engine for the State of Texas. As an entity formed to facilitate research and advocacy on the preservation of the Highland Lakes as an irreplaceable natural resource and economic driver, the CTWC also assists in regional efforts to market the Highland Lakes as a tourist destination, focusing on the opportunities for fishing, camping, boating, cabins, lodges, inns, and dining that draw hundreds of thousands of visitors to the Highland Lakes each year.

## **II. CTWC is an “Affected Person” and CTWC’s Hearing Request Meets the Criteria for Granting a Contested Case Hearing**

Under the TCEQ rules governing eligibility for a hearing, 30 Texas Administrative Code (“TAC”) §55.205 lists three requirements that an association must meet in order to have standing to request a contested case hearing:

- (1) One or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) The interests the group or association seeks to protect are germane to the organization’s purpose; and
- (3) Neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

Standing of Individual Members. Many of the members of the CTWC have standing to request a hearing in their own right, and have taken the liberty to do so. These members include, but are not limited to, the Bonanza Beach Property Owner’s Association (“POA”) and the Windermere Oaks Water Supply Corporation, as a few examples. The Bonanza Beach POA represents property owners within its community located on the east side of Lake Buchanan. The POA has a firm water contract from LCRA for irrigation of its community park, and it has a boat ramp that is now more than 200 yards away from the water. The entity’s contact information is as follows:

Mr. Frank Closner, President  
Bonanza Beach POA  
101 CR 138  
Burnet, TX 78611  
Phone: (210) 872-1185

The Windermere Oaks Water Supply Corporation provides drinking water to its community with surface water from Lake Travis that it purchases from LCRA as a firm water

customer. If the surface water elevation of Lake Travis drops another 10 feet, its intake pumps will cease to pump water. The entity's contact information is as follows:

Mr. Pat Mulligan, President  
Windermere Oaks WSC  
424 Coventry Road  
Spicewood, TX 78669  
Phone: (512) 573-0311

Other CTWC members include the Barton Creek Lakeside POA and the Barton Creek Lakeside Irrigation Company, which holds a firm water contract with LCRA for the purchase of water from Lake Travis. In this community, many waterfront residents hold individual domestic use contracts with LCRA, but the property along the coves has been without lake water for one to two years. The Irrigation Company was formed to support domestic irrigation needs within the larger community and to provide a backstop for the community's drinking water and fire protection supplies. If Lake Travis drops to elevation 618' above mean sea level, the pumps will no longer have water. In addition to these water supply issues, the community's marina is unusable, the boat ramp has been dry for over two years, and the waterfront property values have declined significantly. This entity's contact information is as follows:

Mr. David Batchelor, President  
Barton Creek Lakeside Irrigation Company  
P.O. Box 58  
Spicewood, TX 78669  
Phone: (512) 750-1980

The CTWC membership also includes businesses, such as the Vanishing Texas River Cruise, a local business on the upper reaches of Lake Buchanan that operates a bird-watching and native wildlife tour for visitors to observe bald eagles, ducks, and other waterfowl and wildlife around the lake. As a result of the low lake levels, this business has experienced a dramatic decline. The Thunderbird Resort, also located on Lake Buchanan, reports that its lakefront property is now about 400 yards away from any water. Even more devastating has been the experience of businesses such as the Hi-Line Lake Resort on Lake Buchanan, which gained a reputation as an attractive waterfront location for guests, but which faced bankruptcy as its guests departed and its revenue declined below a subsistence level.

In addition to the CTWC members highlighted above, the marinas and boat slips on Lakes Buchanan and Travis have faced serious challenges to their continuing existence. According to the LCRA website, Lake Buchanan was about 29 feet below conservation pool and Lake Travis was about 53 feet below conservation pool on May 24, 2013. The Marina Association of Lake Travis, a CTWC member, reports that the lower lake levels have resulted in reduced revenues and increased expenses for these businesses, and some have paid hundreds of thousands of dollars to re-configure and re-locate these structures as the water recedes. The marinas on Lake Travis pay almost \$600,000 each year in marina fees and permits to the LCRA. These fees, which are based on the surface water "footprint" (in square footage) that the marina occupies, are flat fees that are assessed by LCRA regardless of whether the marina is in contact

with any water. On Lake Buchanan, LCRA continues to assess fees for boat dock facilities that have been without water for a year or more. Without any control over the lake levels, these businesses face financial hardships that are exacerbated by LCRA's continued assessment of fees, without reduction for current conditions, even when a facility is sitting on a dry lake bed. To further illustrate the conditions that now exist, visitors to Lake Travis have recently observed cars and trucks parked in the grounded boat slips near a restaurant. Such images bring an alarming reality to the severity of the conditions in this once thriving area of the lake. The contact information for this business association is as follows:

Mr. Doug Powell, President  
Marina Association of Lake Travis  
105 Calypso  
Lakeway, TX 78734  
Phone: (512) 266-1535

CTWC's Interests are Germane to its Purpose. Clearly, the interests that are affected by the pending LCRA Application governing its management of water in the Highland Lakes and the lower Colorado River system are the very same interests that CTWC was formed to protect and which it has been actively seeking to protect for several years. In other words, the CTWC's involvement in this proceeding, in which it seeks to assure the proper management of water in the Highland Lakes, is entirely germane to CTWC's mission of advocating for the conservation and preservation of the Highland Lakes' water supply and water levels, as demonstrated in its Certificate of Formation, its bylaws, and in its past and ongoing efforts to assure that the water resources of Central Texas are conserved and managed in accordance with the best available science and laws. Further, the focus on the economic interests of its members with businesses that rely upon reasonable levels of water in the lakes, such as lodges, marinas and tourist services, are well-within the mission statement of the CTWC. The economic benefits of the Highland Lakes and the negative impacts of declining lake levels are documented and validated in recent economic impact studies for the Upper Highland Lakes:

([http://www.burnetcountytexas.org/users/0006/HighlandLakes\\_Final\\_Report\\_092012.pdf](http://www.burnetcountytexas.org/users/0006/HighlandLakes_Final_Report_092012.pdf))

and for Lake Travis:

([http://www.co.travis.tx.us/commissioners\\_court/lake\\_travis\\_economic\\_impact\\_report.asp](http://www.co.travis.tx.us/commissioners_court/lake_travis_economic_impact_report.asp)).

CTWC Represents its Members. There is no participation required of CTWC's individual members for the claim asserted or the relief requested in this case. Proper management of the water in the Highland Lakes is a universal concern for its members, who support the CTWC leadership in their efforts to address and resolve these vital issues. Further, the attached Resolution memorializes the decision by CTWC's Board of Directors for CTWC to fully participate in any and all proceedings that arise out of the LCRA Application to amend its WMP (TCEQ Water Rights Permit No. 5838). The Board of Directors has chosen its President, Jo Karr Tedder, and whomever else she appoints, to act as the representative of CTWC. The Board of Directors has also chosen Smiley Law Firm, P.C. to act as legal representation for CTWC in these proceedings. The CTWC Board has taken specific action to file these comments

and request a hearing, as shown in the Board Resolution dated May 23, 2013 as ATTACHMENT B.

Upon review of the information presented above, we respectfully request the TCEQ's concurrence that the Central Texas Water Coalition, Inc. has successfully demonstrated its interests in this important proceeding on behalf of its members who are directly impacted by the LCRA's management of the water in the Highland Lakes in many different ways, including their increasingly limited ability to obtain water from Lakes Travis and Buchanan for drinking water, the increasingly limited operations of on-the-water businesses as the surface water area of Lakes Buchanan and Travis diminishes, the negative impacts on waterfront property values as lake levels decline, and the other impacts described in these comments. The CTWC seeks the TCEQ's determination that it is an affected person and its hearing request should be granted, so that it may become a party to the TCEQ proceedings on this LCRA Application.

### **III. Approval of the Proposed WMP Would Drive the Highland Lakes Into a Drought Worse than the Drought of Record and Bring Disastrous Consequences for Firm Water Customers and the Economic Strength of Central Texas**

The CTWC provides the following list of comments on the proposed WMP and the draft TCEQ Order approving the WMP. Additional comments may be offered as this matter proceeds.

#### **A. Comments on the LCRA Application to Amend its WMP**

1. The proposed WMP fails to recognize and utilize the latest scientific data available on the hydrology and water availability of the lower Colorado River Basin.
  - a. Average inflows to the lakes have significantly declined in recent years. The recent five-year average is approximately 450,000 acre-feet/year, while the LCRA appears to be assuming (and relying upon) an average historic inflow of over 1,200,000 acre-feet/year. This is a huge disconnect from reality, with serious consequences for water planning and management decisions.
  - b. The Water Availability Modeling performed by the LCRA and submitted to the TCEQ included a hydrologic period of record from 1940-2009. The hydrologic period of record should be extended through 2012, and reasonable projections of future inflows should be included in all calculations and modeling on water availability.
  - c. By omitting the hydrologic data from 2010, 2011 and 2012 in its calculations and modeling, the Applicant is proposing to move forward with critical water management decisions in the face of data showing that the hydrology of this river system experienced a downward shift in the natural flow regime that began in 1999. These concerns regarding the current drought and its implications have been validated in a technical report prepared by hydrologists at INTERA in Austin, Texas. A copy of the report, which includes

recommendations, is included as ATTACHMENT C to these comments.

2. The failure to recognize and utilize current hydrology and appropriate data leads to assumptions and conclusions with potentially devastating results.
  - a. The calculation of the Combined Firm Yield for Lakes Travis and Buchanan is very likely to be significantly lower than the 439,155 acre-feet/year that LCRA has proposed in its WMP.
  - b. Incorrectly assuming that the Combined Firm Yield is higher than the actual yield may allow LCRA to issue contractual commitments for firm water and potentially interruptible water sales that far exceed the water available for diversion and use under its water rights.
3. The proposed WMP makes inadequate provision for recovery of Lakes Buchanan and Travis, which were approximately 39% full on May 24, 2013, with a combined storage of 780,656 acre-feet. In view of the drought that now exists and is predicted by the State Climatologist to continue for as many as 10 more years, it is important to do everything possible to conserve the water in the lakes.
4. In order to assure 100% protection of firm customers under the terms of the court adjudication, the lakes should be allowed to refill and recover without the threat of releases of interruptible water. It is essential for the lakes to recover to a sustainable level prior to future releases of non-firm water from lake storage.
5. The proposed WMP includes drought triggers and drought responses that are inadequate to protect the firm customers in Central Texas and that rely upon outdated data and assumptions on the hydrology and water availability of the river system.
6. The proposed WMP lacks incentives for water conservation throughout the river basin.
  - a. Firm customers in Central Texas may conserve water so that it will remain in lake storage, but LCRA, through this proposed WMP, is allowed to release that water downstream to its interruptible customers. Therefore, the conservation efforts are nullified by the same entity that encouraged the conservation efforts.
  - b. The current policies for delivery of water to interruptible customers downstream seem to encourage downstream irrigation districts to continue diverting and using significant amounts of water from storage, without regard to drought conditions or other available water supplies, in order to maintain their current ways of doing business. A “use it or lose it” water policy has no place in today’s water management practices.
  - c. The huge disparity in LCRA’s water rates, which are set at \$151 per acre-foot for firm water (including domestic, municipal, and industrial customers) and \$6.50 per acre-foot for interruptible water (primarily agricultural customers) appears to increase the risk that interruptible water may not be handled with the same degree of care as water that is 23 times more expensive. The rates that LCRA charges for firm and interruptible water appear to have implications for water use, and those implications should be considered as part of

the water planning and water management activities proposed by LCRA in its WMP.

7. It is clear that the current WMP has fatal flaws that need to be corrected, as LCRA applied to and obtained Emergency Orders from the TCEQ to amend the terms of its existing WMP in 2012 and in 2013. In an application filed with the TCEQ on May 6, 2013, LCRA requested an extension of the Emergency Order issued by the TCEQ on February 19, 2013. However, the proposed WMP and draft TCEQ Order do not resolve the fatal flaws that continue to exist in the WMP. By using outdated hydrology to calculate an inflated firm yield, the quantity of water available to satisfy firm demands is at risk.
8. LCRA's proposed WMP fails to reflect and adhere to the legal requirements set forth in its surface water rights issued by the TCEQ, as established in the adjudication process, including the Certificates of Adjudication for Lakes Buchanan and Travis and the Water Management Plan Permit issued in 1989.
9. The proposed WMP does not properly evaluate the minimum combined storage in Lakes Buchanan and Travis that would be necessary or appropriate to protect firm water customers either during a repeat of the Drought of Record or under worse conditions.
  - a. This evaluation was required in the WMP approved by the TCEQ in January 2010.
  - b. LCRA cannot make a proper evaluation of the minimum combined storage without utilizing current hydrology and updated calculations.
10. The WMP should use multi-year planning and incorporation of inflows to effectively manage multi-year drought cycles. The proposed WMP utilizes a one-year planning basis and relies on high historical rainfall and inflow assumptions that are not realistic and may lead to over-commitment of interruptible water.
11. Current drought trigger points may result in very short-sighted and potentially risky water management decisions. Decisions to release water for interruptible customers should be made with caution, so that decisions like the one that allowed LCRA to release 433,251 acre-feet of water from the lakes in the summer of 2011 to interruptible agricultural customers downstream, in the face of one of the most extreme droughts in history, will not be repeated. In 2011, the total inflow to the lakes was approximately 127,000 acre-feet, and LCRA's website reports that the 2013 inflows to the Highland Lakes are on pace with the record low inflows of 2011.
12. The WMP should be drafted so that it avoids water management decisions that result in a manmade water crisis, such as the release of water in 2011 that expedited the impending declaration of a drought worse than the Drought of Record.
13. As part of LCRA's re-evaluation of the firm yield and the combined storage in the lakes, LCRA should clarify its water accounting numbers so that all of the water that LCRA may release from lake storage, including the total possible volume of releases for environmental flows, for instream uses, and for satisfaction of the Garwood Irrigation District's contractual rights, are properly and unequivocally counted in the total volume of firm water commitments that LCRA is required to satisfy under its WMP prior to allowing releases of stored water for non-firm customers.

## **B. Comments on the Draft TCEQ Order Approving the Amended WMP**

1. CTWC is opposed to any provision that would allow LCRA to continue under the current or the proposed WMP without immediately reviewing, incorporating, and recalculating the fundamental components of this document. As currently written, the draft TCEQ Order requires LCRA to submit an amendment to the WMP that includes updates to the hydrology of the Colorado River Basin and includes updated actual and projected firm demands. The CTWC strongly supports this requirement. However, we are vehemently opposed to any provision that would allow the LCRA to delay this work until January 30, 2020.
2. In addition to the TCEQ mandates to update the hydrology and the actual and projected firm demands, LCRA must also update its firm yield calculations. The Combined Firm Yield, which forms the foundation for many crucial decisions in the WMP, should be based upon the best available science and data. CTWC is concerned that the firm yield of the lakes is much lower than the number that LCRA has proposed in this WMP. While the Emergency Orders of 2012 and 2013 appear to be delaying the arrival of the 600,000 acre-feet combined storage number that can trigger the LCRA Board's declaration of a drought worse than the Drought of Record, the fundamental flaws in the underlying assumptions of the current and proposed WMPs lead to problems that cannot be overcome. Since a recalculation of the firm yield is a necessity, LCRA should be required to begin that process as soon as TCEQ's updated Water Availability Model is ready.
3. CTWC is opposed to any language within the Order that implies or suggests that the amended WMP will operate to supersede or replace any of the legal principles and foundations of the adjudication process or the legal obligations imposed upon LCRA under the terms of its existing water rights. While the WMP may describe reservoir operations and plans for water management within the Highland Lakes and the lower Colorado River system, we are opposed to any attempts to codify the LCRA's interpretation of its water rights in this WMP in a manner that does not comply with existing law.

## **C. Additional Comments and Concerns**

1. Water sales under firm and interruptible contracts in the entire lower Colorado River system should be conducted with all due care, with strict attention to previous firm commitments, the priority of firm customers, the protection of public health and safety, and the availability of other potential water sources for new customers. Before the LCRA commits to significant quantities of new contracts, it should be required to immediately update the hydrology, the combined firm yield of the lakes, and the actual and projected firm demands.
2. In the immediate future, as the TCEQ updates its Water Availability Model and the TCEQ and the LCRA perform these critical updates to the hydrology, the firm yield, the combined storage, and the actual and projected firm demands, LCRA should be required to operate in a manner that assures 100% protection of its firm customers. It is important to note that the 850,000 acre-foot combined storage number in the existing Emergency Order appears to be insufficient to protect firm customers, as



shown in LCRA's recent projections that the lakes will experience a drought worse than the Drought of Record in the next few months.

#### **IV. Contact Information for CTWC**

Please send all official communications and documents for CTWC relating to this proceeding to CTWC's legal counsel:

Cynthia C. Smiley  
Smiley Law Firm, P.C.  
6000 Shepherd Mountain Cove #2107  
Austin, Texas 78730  
Phone number (512) 394-7121  
Fax number (512) 394-7145  
Email: [cindy@smileylawfirm.com](mailto:cindy@smileylawfirm.com)

#### **V. Conclusions and Recommendations**

In closing, we appreciate the opportunity to provide these comments and participate in a hearing on the pending LCRA Application, as the management of the water in the Highland Lakes is critically important to the health and welfare of our members and the entire Highland Lakes region. As outlined above in our comments, the CTWC believes that the adoption of the proposed WMP would drive the Highland Lakes into a drought worse than the Drought of Record with disastrous consequences for all firm water customers and the future economic growth of Central Texas. The TCEQ should not allow the proposed WMP to move forward -- instead, the TCEQ should require the LCRA to manage the water in the Highland Lakes in a manner that will provide 100% protection to its firm water customers, while the TCEQ and the LCRA immediately undertake the updates, reviews, modeling and re-calculations to prepare a WMP that lacks the deficiencies identified in these comments.

We respectfully request the Commission's determination that the CTWC is an affected person and that its request for a contested case hearing should be granted. If you have any questions, please contact me at 512.394.7121.

Sincerely,

Cynthia C. Smiley  
Smiley Law Firm, P.C.  
*On Behalf of the Central Texas Water Coalition, Inc.*

ATTACHMENT A: Certificate of Formation for CTWC, Inc.  
ATTACHMENT B: CTWC Board Resolution Dated May 23, 2013  
ATTACHMENT C: INTERA Report Dated May 8, 2013

cc: Ms. Jo Karr Tedder, CTWC