



P.O. Box 26322  
Austin, Texas 78755

Email: cindy@smileylawfirm.com  
Office Phone: 512.394.7121

January 6, 2023

**VIA ELECTRONIC SUBMITTAL**

Members of the Board of Directors  
Lower Colorado River Authority  
3700 Lake Austin Blvd.  
Austin, Texas 78703

Re: Comments of the Central Texas Water Coalition on LCRA's Proposed Changes to its 2023 Agricultural Interruptible Water Service Contract Rules, Contracts, and Rates

Dear Board Members:

On behalf of the Central Texas Water Coalition (CTWC), please accept these comments on LCRA's proposed Agricultural Interruptible Water Service Contract Rules (Contract Rules), proposed 2023 Interruptible Water Rates, and proposed First Season Water Service Contracts for the Garwood, Gulf Coast and Lakeside Divisions. The Board's decisions regarding these proposed documents have profound implications for LCRA's ability to successfully manage the state's water resources in a manner that promotes conservation and avoids waste, as well as LCRA's statutory obligations to establish water rates and fees that are reasonable, non-discriminatory, and sufficient to cover LCRA's expenses. CTWC respectfully requests the Board's thoughtful review of these comments prior to making its decisions regarding the 2023 water rates and contracts for its Agricultural Interruptible customers.

**Comments on the Proposed Contract Rules.** As the LCRA Board considers the proposed Contract Rules, we respectfully request the Board's consideration of how these 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 adopt rules that align with the goals of encouraging water conservation, prohibiting wasteful use of water, and achieving cost recovery in water sales.

We support the proposed change to Section II.E.6. of the Contract Rules for 2023, which inserts "in the event that CUSTOMER orders water but cancels the order" as an additional reason for LCRA's assessment of surcharges against a customer. This appears to be an effort to address the

issue of interruptible stored water that is "ordered but not diverted" (OND) and the losses of revenue and other negative consequences of such a practice. CTWC has been asking for LCRA's attention to this situation for several years. This rule change is a small step in the right direction, but it does essentially nothing toward recouping LCRA's actual financial losses for OND water and it does not prevent the irreversible loss of water stored in the Highland Lakes, since interruptible stored water that is released from storage is no longer available for any use above Mansfield Dam. CTWC respectfully requests LCRA's continuing work to avoid the negative consequences of current OND water management.

CTWC also supports the revision to Section III.B.4 of the proposed 2023 Contract Rules, which sets a maximum water per-acre amount for water purchased for Wildlife Management. The prior rule appeared to have no limit on Wildlife Management water used during the First Agricultural Season.

**Drought Contingency Plan.** We note that the Drought Contingency Plan was not part of this rulemaking package. Please explain whether there have been any changes to the 2022 Drought Contingency Plan that was approved last January. In addition, please provide comparative information on the average canal losses in the various irrigation divisions. How do the canal losses in 2022 compare to prior years?

**Comments on the Proposed 2023 Interruptible Water Rates.** In addition to the Contract Rules, the proposed Rates are critically important to LCRA's water stewardship and water management responsibilities. CTWC respectfully requests that LCRA require its Agricultural Interruptible customers to:

- Pay a rate that covers LCRA's costs of service to this customer group;
- Pay a proportionate and fair share of river management costs;
- Pay more than a nominal \$5 surcharge for water the Interruptible customer orders but later declines to take when the water is ready for delivery downstream;
- Pay a proportionate share of dam maintenance/rehabilitation costs and water development costs (which 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.

The current and proposed rates for Interruptible customers do not address any of the above requirements.

In addition, CTWC reiterates its opposition to LCRA's use of its multimillion-dollar Agriculture Reserve Fund to mitigate alleged rate shock to its Interruptible customers. LCRA acknowledges that full cost recovery rates for the Gulf Coast and Lakeside irrigation divisions are higher than the proposed rates charged to these customers. LCRA's use of the Agriculture Reserve Fund to bridge

that gap is clearly discriminatory and detrimental to its other customers, and setting prices below cost of service also promotes waste of water – all in conflict with Texas Water law.

CTWC appreciates the fact that the proposed 2023 Agricultural Interruptible Rates and Surcharges are a few dollars higher than they were during the 2022 irrigation season, and that some of the triggers for excess use surcharges have been lowered. These proposed changes are moving in the right direction, and CTWC supports them. At the same time, CTWC remains deeply concerned about the availability and reliability of the overall water supply in the Lower Colorado River Basin.

**Comments on Draft Irrigation Division Contracts.** CTWC supports the proposed revisions to the form for irrigation customer contracts to the extent that they reflect the corresponding increases in rates and surcharges set forth in the 2023 Rates. However, we encourage LCRA to continue working on a solution to the OND water issue. A mere \$5 per acre surcharge for water that is ordered but not diverted, with an exception for rain events, is inadequate to address the fact that water stored in the Highland Lakes has been irretrievably released from storage, its financial value has been discarded, and it is no longer available for sale or use to any customers upstream of Mansfield Dam.

**Additional Comments and Questions.** Please explain how the proposed 2023 Contract Rules and Rates will apply to the Pierce Ranch Irrigation Division. Although we may be mistaken, we didn't see draft sample Contracts for Pierce Ranch, or any Second Season contracts, on the LCRA website for this rulemaking. Please provide information on the 2023 rates and surcharges for these customers. In addition, please explain how LCRA determines the amount of water that Pierce Ranch may be allocated. And please explain how LCRA determines the amount of water that Garwood may be allocated in 2023 – from both run-of-river and stored water supplies. Also, please explain how water for Garwood, which appears to be essentially Firm water, is accounted for in LCRA's Firm Yield calculations.

Thank you for the opportunity to provide these comments. We always appreciate the chance to communicate with the LCRA Board, management, and staff, and we look forward to your responses to these comments and questions (either in writing or in a meeting with CTWC representatives).

Sincerely,

*Cindy Smiley*

Cynthia C. Smiley

cc: Jo Karr Tedder, President, CTWC  
Shannon Hamilton, Executive Director, CTWC