



COMMENTS OF THE CENTRAL TEXAS WATER COALITION ON THE LOWER COLORADO RIVER AUTHORITY'S PROPOSED AMENDED WATER MANAGEMENT PLAN

APPLICATION NO. 5838B

THURSDAY, OCTOBER 24, 2019

SUBMITTED ELECTRONICALLY AND VIA HAND-DELIVERY TO THE OFFICE OF THE CHIEF CLERK, TCEQ, AT THE PUBLIC MEETING CONVENED IN AUSTIN ON OCTOBER 24, 2019

The Central Texas Water Coalition (CTWC) appreciates the opportunity to provide these comments on the proposed Lower Colorado River Authority (LCRA) Water Management Plan (WMP or Plan) that was submitted to the Texas Commission on the Environment (TCEQ) in February 2019. Thank you for convening a Public Meeting for further discussion on this important Plan. The management of the water in the Highland Lakes is critically important to the CTWC, a nonprofit organization supported by over 3,000 concerned citizens, businesses, organizations, property owners and property owner associations, local government representatives, and environmental interests. The TCEQ's decisions regarding the LCRA's WMP have significant consequences for the CTWC's supporters, for the Central Texas region, and the Lower Colorado River Basin. In our view, LCRA's responsible management of the state water in Lakes Buchanan and Travis, under the terms of a TCEQ-approved WMP, is essential to the successful future of this region and this state.

These comments are offered for careful consideration by the TCEQ and the LCRA, and, in the interest of facilitating the timely implementation of the proposed WMP, we are not requesting a contested case hearing on this Application at this time. We will continue to stay actively engaged in this process and in other matters relating to LCRA's operation and management of the Highland Lakes.

I. Comments on TCEQ's Proposed Order Approving the LCRA WMP

The Importance of Providing Reliable Water Supplies. We acknowledge and support the proposed revisions in the proposed WMP that will assist LCRA in satisfying its commitments to provide reliable supplies of firm water from Lakes Buchanan and Travis in times of drought, and that should allow greater responsiveness in water management decision-making when relevant conditions are changing. It is noteworthy that the proposed WMP extends the hydrologic period of record to 2016 and incorporates newer scientific studies into some analyses. At the same time, we remain concerned that the WMP relies too heavily upon historic data to make assumptions regarding water availability for a steadily growing population with increasing demands in one of the fastest-growing areas of the country. As a result, it is important for LCRA and the TCEQ to continue performing detailed reviews of the hydrologic conditions, updated demands, and overall water management of this increasingly limited surface water resource.

The Need for Greater Emphasis on Water Conservation by All Water Users. The proposed WMP and the TCEQ Order approving it should include additional provisions relating to the importance of water conservation by all LCRA customers and in all LCRA operations under the terms of the relevant Certificates of Adjudication for this WMP. This is not a new issue, as it was a subject that was clearly addressed in the first LCRA WMP that the TCEQ approved.

In the September 1989 Texas Water Commission Order approving the first WMP (the 1989 Agency Order), LCRA states that its water conservation programs are directed at the two largest users of water, irrigated agriculture and municipal.¹ These conservation programs seek to promote water use efficiency, increase beneficial re-use of water, and minimize the waste of water.² Such tools as "water rate design" and "conservation-oriented water rates and other economic incentives" are specifically included as major elements of LCRA's municipal water conservation programs.³ For irrigated agriculture, the 1989 Agency Order envisioned significant improvements in the operating efficiencies of irrigation water delivery systems and on-farm water use, with reductions of water losses in canals and on farms of 25 to 30 percent.⁴ Importantly, the 1989 Agency Order describes the "inclusion of water conservation stipulations in LCRA's standard irrigation water sale contract" as a major element of its on-farm water conservation program.⁵

Now, 30 years later, LCRA's municipal customers have demonstrated impressive results in achieving conservation goals, while LCRA's irrigated agriculture customers continue to be the largest water users in the Lower Colorado River Basin. We respectfully request that LCRA be required to take a more proactive approach toward achieving conservation goals for irrigated agriculture. While LCRA has included provisions in its agricultural irrigation contracts that impose higher water rates when excessive amounts of water are used on a crop, there is much more to be done.

Since we know that the price of water impacts a customer's motivation to conserve it, it is time for LCRA to cease the use of unreasonably low, discriminatory water rates for its agricultural irrigation customers and to commence the use of rates that will recover LCRA's costs and incentivize water conservation. We request additional language in the TCEQ Order to acknowledge the important correlation between the price of water and the efforts to conserve it, and to clarify that higher water rates for agricultural irrigation water should be utilized as a tool for promoting conservation.

Under its statutory directives to facilitate the conservation of natural resources and the beneficial use of state water, the TCEQ should require LCRA to account for and seek reimbursement for all water that is released from storage in the Highland Lakes in response to an order from LCRA's downstream interruptible customers, but not then diverted or purchased by that customer. LCRA should also be required to recover the value of the water losses associated with the releases from lake storage for diversion by customers located hundreds of miles downstream. In stark contrast, LCRA's firm customers are not given the benefit

¹ *In Re: Consideration of the Lower Colorado River Authority's Water Management Plan and Amendments to Certificates of Adjudication Nos. 14-5478 and 14-5482*; Texas Water Commission Order Approving LCRA's Water Management Plan and Amending Certificates of Adjudication Nos. 14-5478 and 14-5482 (September 1989); Finding of Fact No. 64.

² *Id.*; Finding of Fact No. 63.

³ *Id.*; Finding of Fact No. 72.

⁴ *Id.*; Findings of Fact Nos. 65, 66, 68, and 70.

⁵ *Id.*; Finding of Fact No. 69.

of these practices – they must pay something for the entire quantity of water set forth in their contracts, including water that is "reserved" but not diverted.

The Order should re-affirm the recitals of text from the 1989 Agency Order and subsequent TCEQ Orders approving the WMP regarding the 5.25 acre-feet/acre duty for rice irrigation as a maximum, non-wasteful number. Further, LCRA should state its commitment to measures that will assure that this maximum volume of rice irrigation water on a per-acre basis is not exceeded **when measured at the diversion points on the Colorado River**.

Assuring Public Notice, Opportunity for Comment, and Rights to a Contested Case Hearing on the WMP.

The opportunity for a contested case hearing on major amendments to the WMP must be provided as a matter of law under the terms of the 1988 Adjudication Order. Please add language acknowledging this fact in the proposed Order.

In addition, prior TCEQ Orders approving a WMP have provided more guidance on the triggering events for the Applicant's requirement to begin to update its WMP and have been more specific on the Applicant's obligation to allow meaningful participation by stakeholders during the WMP revision process. Please add language providing more specific details on the triggering events for a WMP update and add provisions assuring that interested stakeholders can participate in the Applicant's development of its next WMP.

Maintaining Inflows and Lake Levels. Please include provisions that will encourage LCRA to acknowledge and act regarding the alarming nature of the low inflows to the upper basin. More specifically, research on the cause of the reduced inflows should be a high priority for LCRA.

The TCEQ should assure that LCRA's efforts toward system-wide water management do not obviate LCRA's obligations to maintain minimum protective lake levels. In the September 1989 Texas Water Commission Order approving the first WMP (the 1989 Agency Order), such minimum (yet not guaranteed) lake levels were stated to be 660 feet above mean sea level for Lake Travis and 1012 feet above mean sea level for Lake Buchanan.

TCEQ Oversight of LCRA Actions. In September 2019, the LCRA Board voted to extend the deadline for sales of its Agricultural Interruptible water from October 15 to October 31. In October 2019, the LCRA Board voted to reduce its 50,000 acre-feet reserve to 45,000. Please explain how the LCRA Board was able to make such decisions without review by the TCEQ.

II. Comments on Findings of Fact in the Proposed Order

Finding of Fact No. 3: Please explain the reference to "the policies of the Lower Colorado River Authority's Board of Directors" as one of the authorities forming the basis for the WMP. Which Board policies are used to guide the LCRA's WMP operations? How often are those policies changed by the Board? Are changes in those Board policies subject to prior public notice and opportunity for comment?

Finding of Fact No. 13: Please clarify the sentence ending with the reference to "water rights, including Arbuckle Reservoir." Should the phrase at the end of the sentence say "water rights, including water stored in or diverted from Arbuckle Reservoir"?

Finding of Fact No. 18: Please provide details on how demands will be evaluated and interruptible stored water will be curtailed for Garwood and Pierce Ranch. In addition, please explain how this reference to

Pierce Ranch operations can be reconciled with the terms of Provision No. 26, which also mentions the availability of water for diversion in Pierce Ranch.

Finding of Fact No. 21: Please explain why Combined Storage that is "at or above 98 percent of the combined managed conservation storage capacity..." is defined as "Full" for purposes of this WMP. Why does it appear that 98% is equivalent to 100% for purposes of this provision?

III. Comments on Ordering Provisions in the Proposed Order

Ordering Provision 2: This provision is extremely important, since it determines when the Applicant will "initiate a process" to update the WMP. Certainly, we support the use of specific dates and deadlines for commencing this process. However, we have concerns about the proposed text as currently drafted. First, CTWC requests that Provision 2.a. be revised to change the triggering date **from five to four** years. Since Provision 4. allows the LCRA two years to submit an amendment application after a triggering event occurs in Provision 2, this could mean that LCRA may not submit its next amended WMP application for seven years after the proposed WMP becomes effective. In other words, if the proposed WMP is approved in the next few months, it appears that LCRA could wait until March 1, 2027 to submit its next WMP amendment application. In view of the uncertainties of future inflows to the lakes and the continually increasing demands for water in this rapidly growing area, this is too long to operate under this WMP without updating the hydrology and other key elements of the Plan. We respectfully request that the TCEQ shorten the triggering date in Provision 2.a. to state "The March 1 following four years from the date of this Order."

Second, we suggest further clarification and specific reference numbers in the triggering criteria proposed under Provision 2.b.1. and 2.b.2., since it is not readily apparent where to find the "Normal/Average Projected 2025 Demand" or the "High/Max Projected 2025 Firm Water Demand" in order to compare then against the referenced water use reports and the WMP report. It is unclear whether those documents are publicly accessible, or whether an interested person must become an investigative expert in order to locate them and then make the specified calculations about water use. In the interest of transparency, it would be preferable to set forth these criteria in terms that interested persons can understand and evaluate without extensive research.

Third, since these criteria differ from the criteria used in the 2015 WMP, please explain the differences and describe whether these criteria are more or less likely to occur within five years than the criteria utilized in the prior WMP Order. CTWC remains concerned that too much time may elapse before LCRA reacts to a worsening drought or low inflows. If the triggering events for updating a WMP are overly optimistic with respect to the harsh realities of water shortages. At a minimum, the TCEQ should require LCRA to update the Combined Firm Yield no later than four years after the effective date of this Order approving the proposed WMP.

Ordering Provision No. 4. This provision requires LCRA to submit an application to amend its WMP no later than two years from the date it "initiates a process" to update the WMP. It is unclear what "process" is envisioned, and we respectfully request that it be designed to include numerous opportunities for public participation, stakeholder review and comments, and the facilitation of open dialogue among stakeholders.

IV. Recommendations for Next WMP

There were several issues left pending at the end of the LCRA's invitations for public input on this draft WMP. For example, LCRA was asked to develop a method for recognizing the volumes of water remaining in lake storage due to the conservation efforts of its firm customers. This accounting method for firm water savings would assure that the water saved as a result of the efforts and investments of firm water customers in the Highland Lakes region would not be included within the total available supply in storage. In other words, a firm customer's conservation savings should not be counted toward the "pool" of extra water available for release to downstream interruptible customers. Such actions would punish the firm customers who worked to conserve the water, serve as a deterrent to conservation, and result in a windfall to downstream interruptible customers relying on higher total volumes of water in lake storage as a source of water.

The Firm Yields of Lakes Buchanan and Travis should be re-evaluated and re-calculated with greater frequency. Because these lakes supply water for millions of Texans and visitors to the area, the quantification of that water supply should be a high priority that is constantly under review. The concept of a "Safe Yield" should also be considered for the next WMP.

The "less than 600,000 acre-feet" Combined Storage criterion for declaring a Drought Worse than the Drought of Record (DWDOR) should be higher. This volume of water has been the reference number for declaring a DWDOR for more than 20 years. Clearly, the population growth and increasing water demands in the Highland Lakes region, as well as recent experiences with epic, extended droughts and flash droughts, justify a much larger safety net and more cautious trigger levels for reaction in times of worsening drought conditions.

V. Conclusion

The CTWC participated in the stakeholder meetings that LCRA sponsored during 2018 and submitted comments as the proposed WMP was developed. While CTWC is generally supportive of this WMP and does not wish to delay its implementation, we also note that the 1988 Adjudication Order expressly states that amendments to a WMP shall be made pursuant to contested case hearing procedures. If a contested case hearing is held on this Application, CTWC respectfully requests the opportunity to demonstrate its justiciable interest for purposes of participating in the proceeding. Alternatively, CTWC suggests that the TCEQ facilitate a mediation session to address unresolved issues. In such a case, the CTWC will demonstrate its justiciable interest at that time.

Thank you for your thoughtful consideration of these comments, and please call on us if we can provide further explanations of our comments.



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