



6000 Shepherd Mountain Cove
Suite 2107
Austin, Texas 78730

Telephone: 512.394.7121
Facsimile: 512.394.7145
cindy@smileylawfirm.com
shana@smileylawfirm.com

August 18, 2014

VIA EMAIL TO COMMENT@LCRA.ORG

Mr. Tim Timmerman, Chairman
Members of the LCRA Board of Directors
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767

RE: Comments on Item No. 10, August 20, 2014 LCRA Board Agenda: LCRA Staff's
Proposed Framework to Amend the Water Management Plan

Dear Chairman Timmerman and Members of the Board:

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. 10 on the Board's Agenda of Wednesday, August 20, 2014, regarding the proposed revision of the LCRA's Water Management Plan (WMP). We urge the Board Members to approve the submission of the WMP framework proposed by LCRA Staff to the Texas Commission on Environmental Quality (TCEQ) without delay.

Based on our preliminary review, the LCRA Staff's proposed framework appears to utilize and build upon the TCEQ's May 16, 2014 *Draft Naturalized Streamflow Updates and Modeling Report, Colorado River Basin* (the "TCEQ Report"), which CTWC supports, and provides a solid framework to work with as we continue to move through the WMP revision process. In-depth review is not necessary at this time as there is ample opportunity for public input after the application has been filed.

The updating of the WMP presents you with the unenviable challenge of juggling a variety of important issues – scientific issues, financial issues, political issues, and emotional issues, among them. **But the specific issue before you on Wednesday is a legal issue.** A Board vote to move forward with your staff's proposed WMP framework is a vote to honor the LCRA's legal obligations under the water rights granted to it by the State of Texas.

I. LCRA Staff's Proposed Framework Appears to Recognize LCRA's Clear Legal Obligations.

As you are well aware, the court order granting LCRA its right to control the waters of the Highland Lakes requires LCRA to satisfy *all existing and projected demands for stored water pursuant to all firm, uninterruptible commitments* before supplying water for non-firm, interruptible commitments.¹ LCRA's WMP must be designed to meet this clear legal obligation.

In the ongoing effort to meet this legal obligation, an indisputable truth has emerged:

The latest hydrological data has changed the equation.

According to the TCEQ Report, "(b)ased on the updated models, the curtailment curves in the 2012 WMP application would not be sufficient to protect firm customers during extraordinary drought conditions such as those experienced in the 1950s or the current drought, or less severe droughts." TCEQ Report, Executive Summary, p. i. TCEQ's modeling demonstrated that "the curtailment curves in LCRA's 2012 WMP could cause the combined storage to drop below 600,000 AF and a higher combined storage trigger level of 1.4 MAF would be needed during extraordinary drought conditions in order to prevent the combined storage from dropping below 600,000 AF." (TCEQ Report, p. 8).

In fact, those curtailment curves, by design, would have plunged us into a Drought Worse than the Drought of Record (DWDOR), and well beyond. Inclusion of the hydrologic data through the year 2013 in models of the 2012 WMP shows combined storage falling below 300,000 acre-feet in a repeat of current extreme drought conditions (less than half of the combined storage trigger for declaration of a DWDOR).

To move forward under the 2012 WMP proposal would require you to ignore the best data available and essentially result in a plan to manage the region into a DWDOR. The law requires that the LCRA WMP be designed to meet its firm commitments. With the benefit of additional data, we now know that the LCRA's 2012 WMP application would not meet that legal standard.

II. LCRA Staff's Proposed Framework Appears to Recognize the Need for a Margin of Safety Adequate to Protect Firm Water Customers.

Under the terms of the TCEQ's 2010 agreed order approving the current WMP, LCRA committed to begin the next WMP revision process and address several specific issues, including:

¹ "The supply of stored water pursuant to non-firm, interruptible commitments should be interrupted or curtailed to the extent necessary to allow LCRA to satisfy all existing and projected demands for stored water pursuant to all firm, uninterruptible commitments." Paragraph 19.f., Final Judgment and Decree, *In re the Exceptions of the Lower Colorado River Authority and the City of Austin to the Adjudication of Water Rights in the Lower Colorado River Segment of the Colorado River Basin*, No. 115, 414-A-1 (264th Dist. Ct., Bell County, Tex., Apr. 20, 1988).

1. Interruptible curtailment procedures needed to ensure that LCRA can satisfy projected firm customer demand should intense drought conditions such as those experienced over the past several decades recur; and
2. An evaluation of the minimum combined storage of water in Lakes Buchanan and Travis necessary or appropriate to protect firm customers through a repeat of the drought of record or under conditions worse than a drought of record.

These agreed-upon legal directives ask LCRA to establish an acceptable margin of safety to ensure the availability of firm water supplies through the most severe drought, as required by law.

It has already been established that water supplies are seriously threatened at 600,000 acre-feet of combined storage in Lakes Buchanan and Travis. At that point, despite its legal obligations to supply water to firm customers, LCRA would impose mandatory water use cutbacks, including water for drinking and washing, by at least 20 percent. As previously noted, it is well-settled that LCRA must manage water in a way that is designed to prevent dipping below this critical level.

The criteria included in the TCEQ Report recognize the critical importance of inflows to the Highland Lakes and the volatility of inflows from year to year. Even as the lakes refill, LCRA must continue to manage water conservatively because of the very real possibility that inflows may quickly return to critically-low levels during a multi-year drought. History has taught us that even a significant rise in combined storage levels due to a short period of high inflows does not mean a drought has ended. Utilization of inflow data in developing trigger levels and transition criteria is critical to providing an adequate margin of safety for firm water supplies.

LCRA Staff's proposed framework appears to recognize that a margin of safety is critical to a workable WMP. The precise level of the margin of safety necessary for the LCRA to meet its legal obligations to firm water customers is an issue to be considered as we continue through the process.

III. LCRA Staff's Proposed Trigger Levels Appear to be Designed to Protect Inflows to Matagorda Bay.

Some are concerned that higher trigger levels such as those included in the TCEQ Report and LCRA Staff's proposed framework could result in harm to Matagorda Bay. It is easy to see the reason for this misconception – it seems intuitive. However, as demonstrated by modeling performed by the City of Austin, the trigger levels proposed by the TCEQ Report result in **more water flowing into the bay and lower salinity levels in the bay than results from the 2012 WMP submittal**. Higher trigger levels ensure that water is available for environmental releases at the time and in the amounts required to meet the inflow needs previously agreed upon by a variety of stakeholders, including representatives of the Sierra Club and National Wildlife Federation.

Rather than hoping that interruptible irrigation water will be available, released, *and* actually arrive in Matagorda Bay in the quantities and at the time needed, water for Matagorda Bay

would be released specifically for Matagorda Bay. Water would not be “hoarded” or “cut off” in the inflammatory terms used by some; it would be stored and earmarked for its intended purpose.

Although it seems counterintuitive, **higher trigger levels, in-and-of-themselves, will not result in lower inflows to the bay.** CTWC supports efforts to keep Matagorda Bay healthy. For this reason, CTWC supports moving forward with the trigger levels in LCRA Staff’s proposed framework, which closely tracks the TCEQ Report trigger levels that have been shown by modeling to be protective of the bay.

IV. LCRA Staff’s Proposal is the Result of the Hard Work and Collaboration of TCEQ and LCRA Staff.

CTWC wishes to take this opportunity to thank LCRA’s Staff for its hard work over the past several months. In addition to the workload of repeated emergency order requests, we understand that LCRA’s Staff has met with TCEQ numerous times and literally thousands of hours have been spent to develop the proposal before you today. We are also grateful for the speed with which LCRA’s Staff accomplished this task as we are eager to move forward in the process that aims to deliver us from living under the serial emergency order regime.

CTWC has great respect for the staffs of both TCEQ and LCRA and the product of their combined expertise and effort. The proposal before you today was thoughtfully prepared by some of the most qualified people to take on the task, from hydrologists to attorneys. We ask you to consider the work of your expert staff in your decision.

Moving forward with the LCRA Staff’s proposed framework today does not set a negative precedent; to the contrary, it continues the positive, cooperative collaboration between the LCRA and the TCEQ in stewardship of a critical state-owned resource. As you know, the State of Texas, through the issuance of water rights, grants the right to use the water in the lakes and rivers of the Lower Colorado River Basin and it retains the ultimate authority over its use and management. In fact, pursuant to LCRA’s state-issued water rights, the WMP may be amended from time to time upon the request of LCRA *or on the TCEQ’s own motion*. Continued cooperation and collaboration between LCRA and TCEQ is the best path toward a WMP that is workable for all.

V. Conclusion.

You will receive comments from a variety of concerned parties regarding specific scientific and financial issues. You will hear about history and tradition and the effects of water scarcity on business and commerce throughout the Lower Colorado River Basin. You will hear theories about the effects of the TCEQ and LCRA proposals on the environment. These myriad concerns are important and deserve attention in the proper forum.

Right now, the issue is a legal one. In accepting its authority over the waters of the Lower Colorado River Basin, the LCRA also accepted the legal obligation to satisfy all existing and projected demands for stored water pursuant to all firm, uninterruptible commitments before supplying water for non-firm, interruptible commitments, even through the worst of droughts.


With the benefit of new data, we now know that the 2012 WMP proposal clearly fails to meet that basic legal requirement. Conversely, the LCRA Staff's current proposal, which appears to consider and build upon the TCEQ's Report, provides a viable framework for meeting that requirement. A vote for the LCRA Staff's proposal honors the promises the LCRA made to the people of the State of Texas in exchange for the LCRA's great powers.

You know what happens next after your vote: the proposal you approve will again be reviewed by TCEQ and then opened up to additional opportunities for public participation. This is not the end of the road, but it is a critical junction. We urge you to vote to approve your staff's proposal so that we can all move forward together toward improved resource management.

Sincerely,



Shana L. Horton



Cynthia C. Smiley

SMILEY LAW FIRM, P.C.
ATTORNEYS FOR CENTRAL TEXAS WATER COALITION