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February 11, 2014

VIA ELECTRONIC COMMENT AND EMAIL TO chiefclk@tceq.texas.gov

Ms. Bridget C. Bohac, Chief Clerk
Office of the Chief Clerk (MC 105)
Texas Commission on Environmental Quality
12100 Park 35 Circle, Building F
Austin, Texas 78753

Re: Central Texas Water Coalition Comments in Support of Emergency Order Issued to Lower Colorado River Authority on January 27, 2014; February 12, 2014 Commission Agenda - Item 4; Docket No. 2014-0124-WR

Dear Ms. Bohac:

On behalf of the Central Texas Water Coalition, Inc. (CTWC), a Texas non-profit organization, we appreciate the opportunity to submit these comments regarding Item 4 on the Commission's February 12, 2014 Agenda. We urge the Commissioners to vote to affirm the Executive Director's Emergency Order issued on January 27, 2014 regarding the Lower Colorado River Authority's (LCRA's) Water Management Plan. Further, we request that the Order be modified to use 1.4 million acre-feet as the minimum combined storage volume for allowing any releases from reservoir storage to LCRA's interruptible customers.

I. The Legal Criteria for Issuance of Emergency Orders under Water Code §11.139 Have Clearly Been Met.

The LCRA's request for this Emergency Order is governed by Texas Water Code §11.139, which sets strict standards for issuance and approval of emergency actions. At the outset, an applicant must submit a sworn application containing the required information and justifying its request. The LCRA met and exceeded this requirement in its submittals dated December 10, 2013 and February 10, 2014, which include alarming data and analyses regarding the status of the Highland Lakes. On January 27, 2014, the Executive Director's issuance of an Emergency Order to the LCRA also met and exceeded the legal criteria for such an action. The CTWC urges the Commission to affirm this Emergency Order as properly issued and fully justified under the laws that entrust the TCEQ with jurisdiction over the state's water and the use

of state water under TCEQ-issued water rights. This action is essential to the conservation of the state's water resources, the recognition of state-issued water rights (and their superiority to interruptible, yearly contracts for an inexpensive alternative water supply) and the protection of human health and the environment.

The criteria for emergency orders are presented and further supported below:

- 1. Emergency conditions exist which present an imminent threat to the public health and safety.**
- **If LCRA manages firm and interruptible water supplies under the terms of its 2010 Water Management Plan, the results will be disastrous.**

Under the current LCRA Water Management Plan (WMP), which was approved by the TCEQ in 2010 based upon data submitted in 2003, LCRA is authorized to manage its firm and interruptible water supplies in Lakes Buchanan and Travis so that curtailment of interruptible stored water begins to occur when the combined storage of Lakes Buchanan and Travis falls from 2.01 million acre-feet (full lakes) to less than 1.4 million acre-feet. Supplies of interruptible water are not entirely "cut off" until the combined storage in Lakes Buchanan and Travis is less than or equal to 325,000 acre-feet. Clearly, the volumes of water envisioned in storage and in use by LCRA's customers ten years ago (which formed the basis for the existing WMP) are vastly different from the water volumes that are now in storage and in use by LCRA's customers. If LCRA operates the lakes using these grossly outdated criteria, without recognition of recent inflows to the lakes, the lakes will soon be empty.

This Commission has demonstrated its commitment to using the best possible data in making its decisions. The best data includes LCRA's firm customers' water needs and recent years' inflows into the Highland Lakes. The total volume of LCRA's firm water commitments greatly exceeds the total inflows to the lakes. Inflows to the Highland Lakes, as reported by the LCRA and noted by the Executive Director in his Order, are at record lows. Taking these facts into consideration, it is clear that the current WMP must be revised, not followed as written, before it is used to make critical decisions regarding releases of interruptible water supplies.

- **Inflows to the Highland Lakes have declined so significantly that emergency relief from LCRA's 2010 WMP is essential to maintaining firm water supply.**

Since the submittal of LCRA's request for emergency relief in early December 2013, the calendar year has ended and the gauged inflows from December 2013 have become available. Using that data, which shows a total of approximately 215,000 acre-feet of inflows in 2013, the year **2013** will go on record as the **second lowest year for inflows**. The "Top Ten" list of lowest inflow years since LCRA's records began in 1942 includes the years 2006, 2008, 2009, 2011, 2012 and 2013. These sobering facts cannot be ignored or downplayed by referring to long-term averages or the hope for rain.

As shown in the “Analysis of Highland Lakes Inflows Using Statistical Control Charts,” using the yearly inflows to the lakes from 1942 to 2013, the average inflow from 1942 to 2007 was 1,304,361 acre-feet per year. (This Report was submitted with the comments filed by CTWC member David Lindsay on February 9, 2014.) Acknowledging the statistical shift in the yearly inflows for the years 2008 to 2013, the average inflow from 2008 to the present is 416,166 acre-feet per year.

This average inflow number is even more alarming when compared to the 431,904 acre-feet number listed as the subtotal of firm water commitments in LCRA contracts as of February 6, 2014. When the annual inflows to the lakes are fully committed as firm water supplies, and there are other firm commitments and conditions that draw down the water supply, it is hard to imagine how the Highland Lakes will ever function as storage reservoirs. Without stored water, LCRA will be unable to meet the firm water commitments and demands that it is obligated to meet.

- **The Commission’s approval of emergency relief from LCRA’s 2010 WMP is needed to protect the health and safety of more than a million Texans.**

It is critically important to revise the existing LCRA WMP to allow the LCRA to provide stored water for interruptible customers downstream in 2014 only if the combined storage of Lakes Buchanan and Travis on March 1, 2014 is set at a threshold level of 1.4 million acre-feet or greater. As time has proven, it is essential for the new threshold trigger level to be set at a level that far exceeds the 850,000 acre-feet that was utilized in the TCEQ emergency orders in effect in 2012 and 2013. Under the previous emergency orders, stored water in the lakes has fallen to dangerously low levels and has not recovered to levels that provide any assurance that firm water commitments can be fully satisfied in 2015 or 2016 (or beyond). According to today’s data, the total water supplies in Lakes Buchanan and Travis remain at only 38% of capacity (~763,000 acre-feet) with no relief in sight.

LCRA’s water rights establish a system in which firm water commitments are fully satisfied, and this Emergency Order is necessary to allow LCRA to comply with that commitment. As stated in the legal documents governing LCRA’s management of water in Lakes Buchanan and Travis (including Certificates of Adjudication Nos. 14-5478 and 14-5482), LCRA must interrupt or curtail the supply of water pursuant to the terms of its interruptible commitments to the extent necessary to satisfy all firm, uninterruptible commitments. This is why LCRA must immediately be granted the authority to curtail or cease the release of stored interruptible water from the upstream reservoirs.

Drinking water supplies have been threatened by the historically low lake levels and drastically reduced inflows to the Highland Lakes, and there are no available alternatives to replace this water supply for over a million people. Using the latest numbers provided by LCRA’s experts in the February 10, 2014 submittal to the TCEQ, it appears that there may be only two or three years of water supply remaining in the lakes. There is no question that these conditions present an imminent threat to public health and safety, and the LCRA and the TCEQ are clearly justified in responding to these emergency conditions with emergency actions.

2. Emergency conditions override the necessity to comply with established statutory procedures.

Standard procedures for amendment of water rights are inadequate to address the immediate crisis. With water levels in Lakes Buchanan and Travis continuing to fall without measurable or beneficial amounts of rainfall or inflows, LCRA's compliance with the terms of its 2010 WMP will lead to even greater harm to the lakes and rivers. A change to the WMP triggers for interruptible water releases must occur prior to March 1, 2014, the date upon which the decision to release water for the first crop is to be made under the WMP currently in effect. Without the overriding directives of an emergency order, LCRA's request for relief will proceed under the agency's rules for permit amendments, with notice and comment and opportunity for public hearing. This process will take years, and a contested case hearing could take several years. As noted above, the current WMP was approved seven years after the application was submitted. The epic drought that we are experiencing in this area is continuing, and it would be a huge risk to the health and welfare of millions of people if LCRA's requested revisions to its 2010 WMP are required to be handled through the TCEQ's standard application review process. Given the diminishing volume of water in the lakes, the dry conditions of the watershed, and the provisions in the existing WMP that could allow releases of stored interruptible water from the lakes even under these dire conditions, there is no time to delay action for even a few weeks. This administrative process, using an emergency authorization for the actions that are needed immediately, is the only option available under TCEQ's governing statutes. The Commission is clearly justified in overriding the established statutory procedures to avert this crisis with an emergency order.

3. There are no feasible practicable alternatives to the emergency order.

As discussed in LCRA's application, most alternatives to the emergency order affecting the management of the water supply involve development of other water supplies. Such projects are long-term in scope and take years, if not decades, to come to fruition. LCRA's firm supply customers, however, need a solution that will be effective now, before LCRA is forced to declare a drought worse than the drought of record. As the LCRA application also notes, firm water customers have already implemented proactive conservation measures, and lawn watering has been limited for some time. Certainly, CTWC supports water conservation practices throughout the entire basin. However, the magnitude of this drought requires additional responses. Establishing higher combined storage trigger levels will assist the LCRA in meeting its directives for protection of firm water customers.

II. The LCRA Water Rights Require Emergency Action.

LCRA's Certificates of Adjudication envision a proper allocation of water in Lakes Buchanan and Travis, with certainty in LCRA's ability to meet its firm water commitments. LCRA's Water Management Plan, as currently written, will result in violations of Texas water laws and LCRA's other water rights if LCRA begins to release interruptible stored water to

downstream agricultural customers holding interruptible contracts in the midst of this historic drought.

Water rights holders may not waste state water, a public resource. However, a release of interruptible water under current conditions would likely result in huge water losses and no corresponding benefit. Without a certain level of water in the river and canals, the conveyance losses between the Highland Lakes and the irrigation canals and rice fields would outweigh any beneficial amount of water that might arrive at its ultimate destination in the rice fields. Interruptible water released from storage now could be completely wasted, and that is a risk that is far too great to consider at this time when the drinking water supply is at risk for more than a million people.

III. Current Conditions Indicate that a Trigger Level of 1.4 Million Acre-Feet is Necessary to Protect Firm Customers.

The CTWC agrees with the LCRA's conclusion that establishing a higher combined storage trigger level and limiting the total interruptible supply that may be made available if the combined storage volumes exceed a higher trigger level is necessary in light of the prolonged and uncertain duration of the epic drought that we are experiencing in the Colorado River basin. However, the CTWC believes the proposed 1.1 million acre-feet level is too low and may allow the water supply to decline below 600,000 acre-feet combined storage in only a few months. The CTWC's technical studies and modeling results have shown that a combined storage trigger level of 1.4 million acre-feet or higher is entirely justified by the current hydrologic and climatologic conditions. As the LCRA's December 10, 2013 application for emergency relief explains and substantiates in a thorough and technical manner, the drinking water for over one million people is at risk as the drought continues. In its supplemental filing dated February 10, 2014, LCRA further demonstrates the dire circumstances presented by this epic drought. Immediately effective revisions to LCRA's water management procedures are critically important to protection of human health and safety in the Central Texas area.

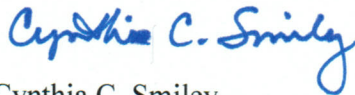
IV. Conclusion

As the TCEQ considers LCRA's requested emergency relief, we ask that the TCEQ carefully scrutinize any provisions in an emergency authorization that would be in conflict with the terms of LCRA's existing water rights. We are concerned that LCRA's proposed exceptions to the threshold trigger level, which would allow the release of stored water to certain interruptible customers at this time of unprecedented drought, are in conflict with the laws governing LCRA's management of water in the lower Colorado River basin.

The CTWC further asks the Commission to rule on this matter at its February 12, 2014 Agenda. As explained above and in the LCRA's requests for emergency relief, given these emergency conditions, there is no time to postpone or delay a decision on these critical issues. These decisions can be made by the Commissioners at the February 12, 2014 Agenda, without the need for a contested case hearing or referral of the matter to an administrative law judge, as the Commission has clear authority to take these actions at this time.

We respectfully request the Commission's affirmation of the Executive Director's Emergency Order authorizing emergency relief from certain provisions in LCRA's 2010 WMP and establishing new guidelines for providing interruptible stored water based on combined storage levels in Lakes Buchanan and Travis. Although the Emergency Order's 1.1 million acre-feet trigger level offers more protection for drinking water supplies than the trigger levels in the 2010 WMP and in previous emergency orders, it is clear that a 1.4 million acre-feet trigger level is entirely justified under the facts presented. Under the terms of LCRA's water rights for Lakes Buchanan and Travis, LCRA must curtail all stored interruptible supply to the extent necessary to allow LCRA to satisfy all firm water demands. The 1.4 million acre-feet trigger level provides greater assurance that LCRA can meet its water supply obligations under these continuing and unprecedented drought conditions. This is not a matter of compromise – it is a matter of protecting public health and safety in accordance with the best available science and the existing laws.

Sincerely,



Cynthia C. Smiley

cc: Ms. Jo Karr Tedder, President, CTWC