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February 25, 2014

*Via Electronic Filing:*  
Docket Clerk  
TCEQ  
Office of Chief Clerk, MC 105  
P.O. Box 13087  
Austin TX 78711-3087

*Via Electronic Filing:*  
Docket Clerk  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> Street  
Suite 504  
Austin TX 78701-1649

Re: Lower Colorado River Authority's Request for Emergency Relief;  
SOAH DOCKET NO. 582-14-2123; TCEQ DOCKET NO. 2014-0124-WR

Dear Docket Clerks:

Please accept for filing in the above-referenced dockets the attached "Central Texas Water Coalition's Reply to the Exceptions to the Proposal for Decision."

If you have any questions, please contact me at 512.394.7121.

Respectfully submitted,

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ATTORNEYS FOR  
CENTRAL TEXAS WATER COALITION

**SOAH DOCKET NO. 582-14-2123  
TCEQ DOCKET NO. 2014-0124-WR**

<b>APPLICATION OF THE LOWER</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>COLORADO RIVER AUTHORITY</b>	<b>§</b>	<b>OF</b>
<b>FOR EMERGENCY AUTHORIZATION</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**CENTRAL TEXAS WATER COALITION'S  
REPLY TO THE EXCEPTIONS TO THE PROPOSAL FOR DECISION**

The Central Texas Water Coalition (CTWC), as one of 11 parties to a hearing on the merits held on Monday, February 17, 2014, files this "Reply to the Exceptions to the Proposal for Decision" in the above-referenced proceeding on the Lower Colorado River Authority's (LCRA's) request for emergency relief from certain provisions in its 2010 Water Management Plan. As requested by the TCEQ Commissioners, a Proposal for Decision (PFD) and proposed Order was issued by the Honorable Administrative Law Judges (the ALJs) on February 21, 2014. Exceptions to the PFD and Order were due on Monday, February 24, 2014, and CTWC received copies of the Exceptions filed by eight of the parties to the hearing. CTWC respectfully files this Reply to the Exceptions and urges the Commission to adopt the PFD and proposed Order in accordance with the comments below.

**Reply to Exceptions Urging a Lower or No Trigger Level**

Some parties continue to urge a PFD and Emergency Order with a lower storage level trigger or no storage level trigger at all, and instead a bare-bones order that no stored water will be released during the effective period of the Emergency Order, regardless of amounts of water in storage in the Highland Lakes.

This approach must be rejected because it ignores two important factors: (1) the science, and (2) the evidence of imminent threats to public health and safety.

The Executive Director's (ED's) expert, Dr. Kathy Alexander, reviewed the modeling provided by LCRA in its application and additional modeling by the City of Austin (COA). She found that the COA's modeling tracked the LCRA's modeling closely and that the information she reviewed showed an 850,000 acre-foot trigger to be inadequate to protect public health and safety from imminent threat and a 1.1 million acre-foot trigger to be supported. The ED's Order was issued based upon this analysis.

Since the ED's analysis and Order issued in January, additional scientific support for a trigger level of 1.4 million acre-feet was provided at the Hearing on the Merits. Separate hydrological modeling efforts presented by CTWC, the City of Austin (COA), and LCRA came to very similar conclusions:



- That a trigger level of 850,000 acre-feet could result in reaching the emergency level of 600,000 acre-feet in storage by summer of 2014;
- That a trigger level of 1.1 million acre-feet could result in reaching the emergency level of 600,000 acre-feet in storage by spring of 2015;
- That a trigger level of 1.4 million acre-feet could result in reaching the emergency level of 600,000 acre-feet in storage within one and a half to two years.

Additional inflow evidence was presented that supports 1.4 million acre-foot trigger level. This evidence included data on inflows since the ED's analysis was performed, which showed that inflows in January 2014 were the lowest monthly total for any January since the 1950s.

The ALJs considered the written and oral testimony of four separate, highly-credentialed experts in the field of hydrological modeling and relied upon that credible science in making their determination.

This approach also ignores ample evidence heard by the ALJs of imminent and current threats to public health and safety. These include the current lack of water sources for fire fighting; that some public water systems, which provide water to citizens for drinking, cooking, bathing, washing clothes and dishes, and other hygiene, have already had water sources dry up; and other public water systems, despite making changes to intake apparatus (some at great expense), could lose access to water in a matter of months if lake levels continue to drop. The ALJs heard testimony regarding each of these very real threats and others, and their PFD and proposed Order properly recognize and catalogue this evidence in support of their finding of an imminent threat to public health and safety and the response necessary to protect public health and safety.

The Colorado Water Issues Committee (CWIC) instead offers to concede "an *unacceptable* risk to human health and safety," which does not reflect any legal standard required for issuance of an emergency order. As noted by the ALJs, such an order would be subject to legal challenge.

After weighing the science and the evidence of imminent threat, the ALJs determined that an imminent threat exists now and that an adequate level of protection from that risk requires adequate lead time to respond to changing conditions, which the evidence shows can change wildly in short periods of time, and possibly allow for some recovery through inflows over that time period, which would help move the lakes away from the "99% line." A trigger level of 1.4 million acre-feet provides the level of water supply protection necessary for LCRA's firm customers, who are entitled to 100% of their water supply needs unless a Drought Worse than the Drought of Record (DWDR) is declared, and whose water supplies are used for basic human needs such as drinking and bathing. The no trigger level or lower trigger level orders advocated by some of the parties would simply sweep these valid findings, conclusions, and ordering provisions under the rug.



### **Reply to Exceptions Regarding the Renewal of the Emergency Order**

The ALJs' recommended Ordering Provision No. 4 would provide for the automatic renewal of the Emergency Order for the additional 60 days allowed by law if the combined storage in Lakes Buchanan and Travis is below 1.4 million AF on May 26, 2014. Contrary to the arguments of some parties, this Ordering Provision is not precluded by the law that governs this proceeding.

The plain language of the statute does not preclude Ordering Provision No. 4. The relevant statute provides that the Order "may be renewed." Tex. Water Code § 11.139(a). This reflexive construction does not require that any particular action be taken, nor is any procedure for renewal prescribed elsewhere in the law or rules.

Second, the relevant question in any renewal proceeding would turn completely upon the then-current water level in the Highland Lakes. All parties are clearly on notice regarding the limited issue that would be addressed at that time. It would be an absurd waste of resources to subject these 11 parties and the Commission to the possibility of yet another hearing proceeding in 120 days when the storage level contingencies can be adequately and fairly addressed in the current proceeding and order. Principles of judicial economy, especially in the context of an emergency proceeding, support Ordering Provision No. 4.

Finally, the policy behind the Emergency Order statute favors automatic renewal when reasonable under the particular circumstances of the case. Emergency Orders are designed to enable a quick and agile response to emergency conditions. Likewise, on February 14, 2014, the Governor once again renewed his Proclamation of a Drought Emergency for most of the counties affected by this Emergency Order; these Proclamations are also designed to remove impediments to agency action to respond to emergency conditions. An additional hearing procedure in 120 days would unnecessarily hamper the TCEQ's ability to respond to the drought emergency in a timely and efficient manner.

### **Allocation of Transcript Costs**

In its Exceptions, the Applicant, LCRA, has asked for an allocation of transcript costs among the various parties to the hearings that were held on the request for emergency relief. CTWC urges the Commission instead to allocate 100% of the costs of the transcript to CWIC. CWIC requested this hearing but wholly failed to persuade the ALJs of the merits of its position, as evidenced by the PFD.

CWIC's request caused ten other parties to expend copious amounts of time, energy and money over the past two weeks. CTWC is a non-profit organization of volunteers with limited funds. Its participation in these sudden, expedited formal legal proceedings was not expected or budgeted. Additional costs for the expedited transcripts of the February 12, 2014 Agenda, the February 12 prehearing conference, and the February 17, 2014 hearing on the merits, should be borne by the party who requested a contested case hearing on February 10, 2014. As the party who requested a contested case hearing in the midst of the Commission's consideration of an emergency order, CWIC should pay the entire cost of the transcript.

## **CONCLUSION AND PRAYER**

For the reasons given above, and in accordance with the substantial evidence in the record supporting the PFD and proposed Order recommended by the ALJs, CTWC renews its request that the Commission grant emergency relief to LCRA from compliance with its current Water Management Plan using a combined storage trigger level of 1.4 million acre-feet and other limitations on releases of stored interruptible water from the Highland Lakes, as recommended by the ALJs with the changes suggested by CTWC in its Exceptions and Clarifications to the Proposal for Decision and Proposed Order, filed yesterday.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing "Central Texas Water Coalition's Reply to the Exceptions to the Proposal for Decision" has been sent via electronic mail to each of the parties on the mailing list below and electronically filed with the docket clerks of SOAH and the TCEQ on the 25<sup>th</sup> day of February 2014:

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