

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 4, 2010

TO: Persons on the attached mailing list.

RE: Lower Colorado River Authority
Permit No. 5677

Enclosed is a courtesy copy of the Executive Director's response to comments.

Should you have any questions, please contact Emily Reyna of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3304.

Sincerely,

A handwritten signature in black ink that reads "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/ms

Enclosure

APPLICATION OF THE
LOWER COLORADO RIVER
AUTHORITY TO AMEND
PERMIT NO. 5677

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BEFORE THE
TEXAS COMMISSION
ON
ENVIRONMENTAL QUALITY
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CHIEF CLERKS OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO COMMENTS

The Executive Director of the Texas Commission on Environmental Quality files this Response to Comments for the public comments that were timely filed concerning the application of the Lower Colorado River Authority (LCRA) to amend its Permit No. 5677.

BACKGROUND

LCRA has an existing permit to use water from the Colorado River, Colorado River Basin and Travis County in an amount not to exceed 6,400 acre feet of water for municipal use within the service area of the City of Leander in Travis and Williamson Counties. The service area lies within the boundaries of both the Colorado and Brazos River Basins. LCRA seeks to amend Permit No. 5677 to increase the amount of water authorized for interbasin transfer (IBT) from 6,400 acre feet to 24,000 acre feet of water per year based on an August 21, 2007 Contract between LCRA and the City of Leander. The Executive Director has determined that this IBT is exempt under Tex. Water Code Section 11.085(v)(4), and therefore, the requirements of Section 11.085 do not apply to it.

LCRA also requests authorization to convey (utilizing the bed and banks of Brushy Creek, Brazos River Basin), capture, transfer, and reuse within the Colorado River Basin and within the City of Leander's service area in the Brazos River Basin, any return flows originating from the use of water authorized by this permit. This includes both historically discharged and future return flows from three waste water treatment plants on Brushy Creek, tributary of the San Gabriel River, tributary of the Little River, tributary of the Brazos River. The proposed diversion point is approximately 18.44 miles downstream of the City of Leander.

This Leander project is part of a larger project by the Brushy Creek Regional Utility Authority (BCRUA) to bring water from Lake Travis to Leander, Round Rock, and Cedar Park. Notice was mailed and published in the Colorado River Basin. The Executive Director held a public meeting on June 30, 2009, in Lakeway, Texas.

COMMENTERS

Honorable Kirk Watson
Honorable Donna Howard
Don't Empty Lake Travis Association
(DELTA)
Kay Adams
Merry Mattie Adams
Kay Andrews
W. H. Aydam Jr.
Mark J. Balok
Jean Bazar
Steve D. Beuerlin
Pete Bingham
Justine Blackmore-Hlista
Lucinda Johnstone Blow
James & Rebecca Bornhorst
Rebecca and Chris Buffum
Martin Rochelle, City of Cedar Park
Ken Ramirez, for City of Austin
Pete Clark
Fred Coogan III
Curtis Corbitt
Elinor V. Crank
Scott Dabney
Ann DuRapau
Gil and Candace Elsass
Cean Embry
Leslie Fallon
Andy and Susan Fogarasi
Elaine Garner
Donna Garrison
Barbara A. Gay
Michael Gonzalez
Judi Graci
Mark Guenther
Sylvia and Mario Guzman
Karen Hadden
Matthew Hammond
Andrew Hawkins, Save our Springs Alliance
Jim Hawkins
Thomas and Mary Kay Hunt
Todd Hynes
Dan Johnson
Judy B. Jurek
David Kesuck
David Kilbourne
Gay Klinger
Myron Klippert
Pam and Bruce Knierim
Kenneth Lang
Bob Leonard
Jeffrey C. Londa
Michael & Cheryl Long
Robert M. Lueck
Nate McDonald, Matagorda County Judge
Molly McFarland
Robert Mossman
Brian and Marilyn Nasky
Linda Nesmith
Petitioners (see list at end of RTC for persons
who signed a petition)
Jacqueline Potts
Willie Purvis
Paul and Virginia Quinn
Connie Ripley, DELTA (Don't Empty Lake
Travis Association)
Blake Robinson
Charles Robinson
Chris Roussel
Niki Sanders
Wade Sanders
Judy and John Schlotzhauer
Jack Schmitt
Mark Scott
Greg Sparks
Steve Swan
Faye Tessnow
Ed Trevis
W. Thomas Buckle for Village of Volente
Kenneth Beck for Volente Neighborhood
Association
Thomas E. Volick
Anne Ware
John W. Murrile, County of Wharton Judge
Patricia and Parrish Wilkinson
David Whittington
Diane Wiegrefe
Babs Yarbrough
Richard and Rebecca Yeater
Jan Yenewine
Linda Ziemann
Robert J. Ziemann
Michelle and Peter Zogas

COMMENTS AND RESPONSES

COMMENT NO 1. Senator Kirk Watson expressed that he wanted his constituents to be able to voice their concerns about this application, and requested a public meeting.

Representative Donna Howard commented that Tex. Water Code Section 11.085 was adopted more than a decade ago before she was elected. Due to the length of time since the legislation and the numerous water sales LCRA has subsequently entered into, she asks commission to review hearing requests carefully and ensure that issues raised in these requests are adequately reviewed and addressed.

RESPONSE TO COMMENT NO. 1. The Executive Director held a public meeting on June 30, 2009, in Lakeway, Texas. A number of persons commented at that public meeting, and many comments have been received from those persons and other persons who are interested in this application. This response is prepared for those comments. The Commission will consider the hearing requests at an open meeting. The requests will be reviewed in accordance with the relevant statutes and rules.

COMMENT NO. 2. One commenter opposes the application without further comment. (Roussel)

RESPONSE TO COMMENT NO. 2. The Executive Director acknowledges the opposition to this application.

Interbasin Transfer

Exemption

COMMENT NO. 3. Most of the comments that have been submitted concern the requirements of Section 11.085 of the Water Code. Section 11.085 contains many requirements for IBTs, including socio-economic impact statements, environmental review, notice in both basins, and strong conservation requirements. DELTA states that this application does not appear to fall within the exemption. All commenters state that this application should meet several criteria which are in Section 11.085. The IBT requirements should not be ignored because of one line in SB 1, and ignoring section 11.085 of the Texas Water Code is unscientific and imprudent at best. (Ripley) The exemptions and rubber stamp of this IBT would bypass the authority and primary purpose of the TCEQ. (Scott) Mandatory approval of an application would have such potentially negative impact and would be highly irresponsible if TCEQ proceeds without more in-depth analysis of the impacts. (Nesmith) No exemptions should be allowed from years of precedent in using a balancing test. Why bypass these now? There needs to be a socio-economic and environmental analysis, no exceptions. (Zogas , Aydam, and Volick) The people at the TCEQ feel there's nothing you can do to examine this permit in the bigger project, in the bigger picture on behalf of the citizens. If it feels like you don't need to look at this application and how it impacts everyone you've heard tonight, there's something wrong and each person at the TCEQ should make his or her best effort to see that it's set right. (Blackmore-Hlista)

RESPONSE TO COMMENT NO. 3. The Executive Director has determined that this application for an IBT falls under the exemption from the requirements of Section 11.085 in Section 11.085(v)(4). That section provides:

(v) The provisions of this section, except subsection (a), do not apply to:

- (4) A proposed transfer from a basin to a county or municipality or the municipality's retail service area that is partially within the basin for use in that part of the county, municipality and the municipality's retail service area not within the basin.

Subsection (a) requires an authorization from the TCEQ to take water from one basin to use in another basin.

This IBT request falls under the exemption because it is a transfer from the Colorado River Basin (a basin), to Leander (a municipality) or Leander's retail service area (a municipality's retail service area) that is partially within the Colorado River Basin (the basin) for use in that part of Leander (the municipality) and Leander's retail service area (the municipality's retail service area) not within the Colorado River Basin (the basin). TCEQ is limited by its statutory authority and cannot determine that a statute should not be followed for a particular application. However, if there is a contested case hearing on the interbasin transfer issue, these arguments can be made to the Administrative Law Judge and the Commissioners.

Notice

COMMENT NO. 4. The Executive Director should provide full basin notice in both basins, Colorado and Brazos River Basin, for this IBT application. (Ripley, Mattie Adams, Hawkins)

RESPONSE TO COMMENT NO. 4. Notice for this entire application, the IBT and the authorization to reuse return flows in the Brazos River Basin, was mailed and published in both basins. Although this notice is not required by Section 11.085, LCRA chose to provide this notice.

Balancing Detriments and Benefits

COMMENT NO. 5. Several commenters argue that the TCEQ and Executive Director must balance the detriments to the basin of origin and the benefits to the receiving basin, and not grant this application unless the benefits outweigh the detriments. Don't bypass TCEQ's history of utilizing the balancing test. (Ripley, Clark, N. Sanders, Nasky, Zogas, Aydam, Hunt)

RESPONSE TO COMMENT NO. 5. Section 11.085 of the Water Code requires the Commission to balance detriments and benefits for a non-exempt IBT. However, because this application is exempt from the requirements of Section 11.085 of the Water Code, the Executive Director does not have the authority to perform this balancing of interests. It is important to realize that while the applicant must obtain permission to use their authorized water in the Brazos River Basin, LCRA is authorized to take the water it is requesting from Lake Travis under its current certificates of adjudication and Commission approved Management Plan.

Economic Impacts

COMMENT NO. 6. Several commenters argue that a socio-economic analysis or study must be done on this transfer. Many commenters argue that there will be grave economic impact on the lake community from this project. Lake Travis is a major economic driver for Austin and Central Texas. Without the water, recreation will be adversely affected, property values will decline, businesses based on recreation will be lost, there will be unemployment and tax benefits will be lost. Many commenters pay high taxes now for lakefront property but are losing their lakefront property. This area is very dependent on recreation both socially and economically. The Colorado River Basin should not have to subsidize Leander's growth. Leander is not developing as rapidly as predicted, homes are overdeveloped, businesses are leaving and the project is not economically viable for Leander. (Long, Ripley, Londa,

Yeater, Klippert, Garrison, Corbitt, Fogarasi, Embry, Blow, Nesmith, Bornhorst, Crank, Nasky, Zogas, Bazar, Schmitt, Aydam, L. Ziemann, Balok, Beurlin, DELTA, Fallon, Garner, Gay, Gonzalez, Lueck, Johnson, Knierim, Long, Potts, Guzman, Thomas and Mary Kay Hunt, McFarland, Lang, Schlotzhauer, C. Robinson, DuRapau, Wiegrefe, Purvis, Kilbourne, N. Sanders, Mattie Adams, Petitioners, Hawkins, Clark, Hammond, Yenewine, Hadden, Kay Andrews, Corbitt, Matagorda Bay, Purvis). One commenter asserts that the economic value of commercial parts of Volente will be impacted. Volente relies solely on Lake Travis to support its commercial business – beach clubs, marinas, restaurants and other businesses associated with lake activities. (City of Volente)

RESPONSE TO COMMENT NO. 6. Section 11.085 of the Water Code requires for a non-exempt IBT that the Commission consider the projected impact that is reasonably expected to occur in each basin as a result of the transfer. However, because this application is exempt from the requirements of Section 11.085 of the Water Code, the Executive Director does not have the authority to perform a socio-economic impact analysis or require the applicant to do so.

COMMENT NO. 7. One commenter asks if TCEQ will reimburse landowners around the lake for high taxes if their property is no longer lake front? (B. Robinson)

RESPONSE TO COMMENT NO. 7. The TCEQ does not have the authority to refund taxes for lake property that is no longer near the lake.

Environmental Impact

COMMENT NO. 8. Commenters are concerned that issuing this permit will cause negative environmental impacts. Specific comments are: No USACE EIS on affect of this and deep water impacts will set a precedent for water supply intakes that can have far reaching detrimental effects. (Graci) This project needs strong socio-economic and environmental analysis in both basins. (Ripley) There are significant and unknown environmental impacts from this application and sustained low lake levels. (Londa, Trevis, Scott, Klippert, Garrison, Corbitt, Coogan, Bornhorst, Nasky, Wharton County, Bazar, Schmitt, Aydam, Volick, Balok, DELTA, N. Sanders, Petitioners, Hawkins, Purvis) It is generally poor environmental policy to take needed water from one part of the environment to allow another area to waste it. Leander is a small city and wants as much water as it can get. Land is being turned in to a desert by Leander's lust for huge amounts of water. (R. Ziemann) There needs to be dependable inflows into nursery system and the estuary system of Matagorda Bay may be harmed. (Matagorda Bay) When the lake is low, there are problems with siltation, and this should be analyzed for environmental impact. (Bingham) The loss of downstream flows, aquatic life uses, and recreational opportunities will impact Save Our Springs' members' enjoyment of regional surface waters such as Lake Travis. (Save Our Springs)

RESPONSE TO COMMENT NO. 8. For non-exempt transfers, Section 11.085 of the Water Code requires the Commission to consider the environmental impact that is reasonably expected to occur in each basin as a result of the transfer. However, because this application is exempt from the requirements of Section 11.085 of the Water Code, the Executive Director does not have the authority to perform an environmental review or require the applicant to do so.

COMMENT NO. 9. One commenter has lived on tree covered hillside for almost three decades. He lives on property that was once naturally irrigated by surface water in a tributary. Poor environmental planning while building the road long ago diverted the surface stream into a bar ditch. Land was still wet by subsurface flow. When first Leander permit was issued, damaged land and sub-surface flow stopped. (L. Ziemann) One commenter used to be able to sit in the evenings and hear the owls. She hasn't seen the osprey that used to fly across the cliffs, but still sees the blue heron. She still sometimes see and hear

the hawks but wonders how long those are going to last as the water continues to get lower and lower and wonders how it will continue to get lower and lower if this permit is approved. (Ware)

RESPONSE TO COMMENT NO. 9. For non-exempt transfers, Section 11.085 of the Water Code requires the Commission to consider the environmental impact that is reasonably expected to occur in each basin as a result of the transfer. However, because this application is exempt from the requirements of Section 11.085 of the Water Code, the Executive Director does not have the authority to perform an environmental review or require the applicant to do so.

Recreation

COMMENT NO. 10. Lake Travis is the primary recreation lake serving Austin. The lake is for recreation now, and is important to Austin, Central Texas, and the residents of the lake. Many commenters have boat docks and swim and recreate in and on the lake. (Whittington, Lang, Gonzalez, Lueck, Leonard, Gay, Balok, Londa, Yeater, Klippert, Fogarasi, Bornhorst, Volente, Beurlin, DELTA, Elsass, Johnson, Knierim, Long, Potts, McFarland, Schlotzhauer, Tessnow, C. Robinson, Wiegrefe, Petitioners, Hynes, Hawkins, Save Our Springs Alliance, Volente Neighborhood Association)

RESPONSE TO COMMENT NO. 10. The Executive Director realizes that Lake Travis is of great importance to the Central Texas area and the residents of the lake. However, because this application is exempt from the requirements of Section 11.085 of the Water Code, the Executive Director does not have the authority to consider this issue.

Alternatives

COMMENT NO. 11. Commenters believe that there are feasible and practicable alternatives to this project. (McFarland) The Simsboro Aquifer in Brazos gives a second source to Leander. The Simsboro has eight times the capacity of all the reservoirs in the State combined, and is so underutilized it rejects recharge. There is 200 million acre-feet of available stored supply. (Graci) Groundwater is an alternative supply for Leander. (Blackmore-Hlista, Hawkins, Balok, Nasky, Bornhorst, Coogan, Garrison, Quinn, Trevis, Bazar, Schmitt, Aydam, Volick, W. Sanders, Hunt, N. Sanders, Petitioners, Scott, Cahill, Ripley, Scott, M. Adams) Recycling is also an option. (Scott) Leander should have a second source in the Brazos River. (Long) Leander should have a second source of water. (M. Adams, Garrison, Bingham) There has been a lack of effort to develop sources in the Brazos River Basin. (Volente Neighborhood Association)

RESPONSE TO COMMENT NO. 11. For non-exempt transfers, Section 11.085 of the Water Code requires the Commission to consider whether there are feasible and practicable alternatives to this project. However, the Executive Director cannot review whether there are feasible and practicable alternatives to this project or require Leander to have a second source of supply because this IBT is exempt from those requirements.

Conservation

COMMENT NO. 12. Leander should be required to have the highest standards for water conservation. The area is not conserving water now, and if they have a plan, it is not adequate. Lake Travis residents conserve their water. Conservation can be an alternative to this project. (Schlotzhauer, Mossman, C. Robinson, DuRapau, Wiegrefe, Kilbourne, Ripley, Yeater, Klippert, Coogan, Bornhorst, Crank, Nasky, Wilkinson, Wharton, Bazar, Schmitt, Buffum, L. Ziemann, DELTA, N. Sanders, Petitioners, W. Sanders, Hawkins, Kay Andrews, Hammond, Save Our Springs Alliance, Volente Neighborhood Association)

RESPONSE TO COMMENT NO. 12. The Executive Director cannot review the conservation measures of Leander for this application. For non-exempt IBTs, Section 11.085 requires that the Commission must find that the applicant has a water conservation plan that will result in the highest practicable levels of water conservation and efficiency achievable within the jurisdiction of the applicant. This application, however, is exempt from that requirement. The City of Leander has a Water Conservation Plan that has been approved under the TCEQ rules as required in Texas Water Code Section 11.1271(b).

Need for Water in the Brazos River Basin

COMMENT NO. 13 The TWDB's regional population projections for Leander were increased ninety-seven percent. The regional population projection for Leander in 2050 is sixty-seven thousand people and the City of Leander's is two hundred and fifty thousand people, a four hundred percent difference. Leander's water usage in the first quarter of 06' is the same as the first quarter of 2009, two hundred and forty-two million gallons. Both years we were in drought conditions. How, with Leander's explosive growth, can this be? The LCRA just doubled the capacity of its existing Leander treatment plant. Is this a water need or greed? (Graci) Leander city council says they will have 250,000 people 2050; Region G Plan projects 81,000 by 2060. Leander's their projections have been wrong in the past (1985, projected 14.% growth, there was 4%). Leander says population is 31,000; DELTA thinks it is 26,500. Leander projects 166,000 to 190,000 in 2025. 47% of the project is being paid for by 12% of population. (Ripley) Leander is a small city and does not need this water. Their real reason is to build economic and political power in Williamson County. (R. Ziemann) There is no need for water, no need to hurry. There is no housing boom, no impending build out. Leander wants to become much larger and wealthier, but does not need the water they are requesting. They are confusing their actual public needs with their wants and desires for more than their fair share. (L. Ziemann, Kay Adams, Hammond, Crank, DELTA, Hynes, Clark, Schlotzhauer, N. Sanders, Ware)

Need for Water in the Colorado River Basin

Comment No. 14. Commenters are concerned about water availability in the Colorado River Basin in the future. Region K lost its major water management strategy with the LCRA's SAWS project. Without the LCRA's SAWS project, there is not much of a water management plan for Region K. (Graci, Kay Andrews) LCRA studies indicate possible 25% increase in water needs of the Colorado River Basin. LCRA has been using a simulated drought of record because 1950's drought may not be as bad as can be experienced. Are we experiencing it now? How far will Lake Travis fall & how much can Leander get during drought? Leander appears in 2007 State water plan (out of the blue) – estimate of project costs is too low. Water Management Strategies should require independent peer review. (Ripley) This project will directly affect access to water for life-sustaining needs and recreation. This may set a bad precedent for other areas outside of basin to get water from Lake Travis. It has not been adequately shown that water availability commitments to historical Lake Travis and downstream users of Colorado River water and those that have purchased access can be maintained now and into the reasonable future. (Fogarosi) Many persons who live around Lake Travis have to pump from the lake for water. If levels keep declining there will be no water for these domestic purposes. Small business owners around Lake Travis will go out of business, property values will drop, and our investments and retirements will be gone. (Blow) There are several projects in Matagorda County that need water from the Colorado. (Matagorda County) The Colorado River is a natural resource for the lower Colorado basin. There will be no water in the river. The TCEQ must impose conservation measures, streamflow restrictions, other limitations to protect water rights. (Wharton County) This application is for water currently allocated to the future needs of the municipalities and citizens of Travis County. (Volente) The state must look at needs of Colorado – economic, environmental, quality of life – before transferring water. Does it have enough water for next 50 years? LCRA has no conditions in the application to account for weather conditions.

(DELTA) The Colorado Basin has its own growth projections and it has its own needs. (Mattie Adams) TCEQ needs to figure out what water is needed downstream in the Colorado. (Yenewine)

RESPONSE TO COMMENT NOS. 13 and 14. These issues are related to other issues, such as balancing the needs and benefits with the detriments from the project. The Executive Director acknowledges the concerns of the landowners around and near Lake Travis. However, as stated above, the Executive Director has determined that this IBT is exempt from the requirements of Section 11.085, including a showing of need in the receiving basin, and a consideration of need in the basin of origin; and therefore he cannot consider those issues.

Pipeline

COMMENT NO. 15. Commenters state that the first IBT pipeline caused much damage. The installment of the pipeline for the first IBT created a great deal of damage and negatively impacted the quality of their groundwater and there were dramatic changes to drainage patterns and erosion. (Embry) Land has been drained of all but a trickle of the naturally flowing sub-surface water as a direct result of issuing the first permit to Leander without requiring adequate environmental studies or environmental protections. Seasonal flowing springs stopped, dried up, and the pipeline diverted all of the subsurface water flows. (R. Ziemann) The first pipeline interrupted and dried up natural water flow across the right of way and towards Lime Creek. (Bazar and Schmitt) When the first Leander permit was issued, it damaged land and sub-surface flow stopped. (L. Ziemann)

Commenters are also concerned about the new pipeline. Please consider the local environmental destruction going on along the proposed transmission route. The project will strip a sixty foot by four mile long path along Trails End Road of almost all living things. The environment will be irreparably damaged and much of the land will be comparable to land after it has been strip-mined. (R. Ziemann) The pipeline will ruin one of Texas' great natural resources. (Zogas, Aydam, Volick, Dabney, Petitioners) The pipeline will have serious environmental impact on this rural valley. New pipeline will negatively impact trees and vegetation. The clear cutting and bulldozing will affect property values. (Bazar and Schmitt) Village of Volente would be greatly impacted by construction of the deep water intake and pumping station on shore of Lake Travis within the Village boundaries. (Volente Neighborhood Association)

RESPONSE TO COMMENT NO. 15. The Executive Director's Water Utility Section reviews proposed pipelines to ensure that they meet the TCEQ's regulations regarding capacity requirements and sanitary practices. The Executive Director reviewed the planning materials for Segment 1, Phase 1A of the proposed pipeline and determined that all applicable requirements had been met.

LCRA/Contract Issues

COMMENT NO. 16. Commenters are concerned about LCRA selling water that they believe needs to stay in their lakes and in the Colorado River Basin. (Scott, Guenther Kesuck, DELTA, Hynes) One commenter is concerned that the project has been going forward without proper permits. (Graci) Issues with the Leander/LCRA water contract have not been adequately considered. (Fallon) They believe that LCRA has committed more water than Colorado River can provide to both cities and industry for years to come, is only out for money, and has not done an adequate job of managing the lake. (Jurek, C.Robinson, Wiegrefe) One commenter believes that the LCRA was actually out of firm water when it signed the water increase contract with Leander and LCRA should actually have that water available. (Hunt)

Other comments are that LCRA's recent study indicates a probable fifteen to twenty-five percent increase in water requirements for our basin over the previous estimates, as early as 2010. Is the requested additional water legally available for the LCRA to amend its inter-basin transfer permit? (Yarbrough) The LCRA talks about firm water, they have X amount of firm water in the bank that they can sell. They're required by law to sell it. (Yenewine) This contract is contingent upon this amendment or this permit. Sounds like double speech. (Ware) The LCRA was out of water when it signed the contract with Leander. The IBT should be required before this project becomes a water strategy. (Ripley)

RESPONSE TO COMMENT NO. 16. LCRA has a right to sell the water it is currently authorized to take from Lake Travis. The TCEQ only reviews contracts to determine if amendments to water rights are required. The fact that LCRA did not have the IBT authorization for the additional water when it entered into the contract with Leander is not a violation of the law. Contracts can be, and often are, contingent on obtaining permits. Determinations of whether the LCRA has sufficient water rights to support entering into the contract are made by the LCRA Board and are governed by the LCRA Water Management Plan. Unless the LCRA violates the provisions of their water rights, the Executive Director and the TCEQ have no authority to regulate the contracts of water right holders.

Sources

COMMENT NO. 17. LCRA's application asks to take water from the Colorado River from "any source" existing and into the future. How does TCEQ evaluate that? This application should be the actual source LCRA has. LCRA was out of firm water when it signed the contract with Leander. (Ripley) There are some ambiguous possible small waters upstream and then you have potentially the Pierce Ranch in Wharton County as a source of water, but any source is really too ambiguous. It needs to be tightened up in the language so that we really understand what we're getting ourselves into. (Hunt) The language in the contract that allows LCRA sources "and into the future" and entering into perpetuity contracts is very unappealing because you may not be able to predict how and what's going to happen into the future. (Hunt) This language in this permit effectively removes public oversight of Travis County resources in the Colorado River Basin, now and in the future. This should alarm citizens and legislators alike. (Blackmore-Hlista)

RESPONSE TO COMMENT NO. 17. The LCRA currently has rights to take water from Lake Travis under their existing authorization. TCEQ is currently processing applications to amend LCRA's Certificate of Adjudication 14-5434 to allow diversion of senior water at Lake Travis and LCRA's Water Management Plan. If LCRA seeks further amendments to these or other water rights, the applications would be subject to notice and comment pursuant to TCEQ rules. Unless the LCRA violates the provisions of their water rights, as they exist now, or may be amended in the future, the Executive Director and the TCEQ have no authority to regulate these contracts.

Costs

COMMENT NO. 18. Commenters believe that the costs of this project are too high. The total project cost was seventy-seven million. Now the cost is four hundred to five hundred million and Leander now wants the permit now. (Graci, Kay Andrews) The estimate of project costs is too low. (Ripley) Everyone will have to go to a deep water intake causing countless millions of more damage environmental whatever and cost to the tax payers or they'll have to buy water at retail from Leander, Cedar Park and Round Rock which are cornering the market. (R. Ziemann) Municipal water costs are high for highland lake municipalities. (Fallon) Lake Travis can't provide 100% of water – this project is committing Leander to high cost water that may never be available. (Schlotzhauer) There will be rate increases and extra liability where one entity may default. (Petitioners) The SAWS project shows that

it's very difficult and very potentially costly to enter into an agreement that is far out into the future without a certain time period. (Hunt, Yarbrough) Are we doing the proper financial due diligence on the project costs, and do we have the right projection numbers. Costs for this project keep changing. (W. Sanders) Do the people of Leander know what this water is going to cost them? They need to be informed. (Kay Andrews) (Yarbrough)

RESPONSE TO COMMENT NO. 18. Although costs of the project are considered for an application for a non-exempt IBT, the Executive Director has no authority to consider these costs for an exempt IBT.

Public Welfare

COMMENT NO. 19. This application is detrimental to the public welfare for many of the reasons discussed above. (Ripley, DELTA)

RESPONSE TO COMMENT NO. 19. Because this is an exempt IBT, the Executive Director cannot consider whether this application is detrimental to the public welfare.

COMMENT NO. 20. Several commenters ask what the priority date of the IBT will be, if it is granted. (Blackmore-Hlista, Ripley, Nasky, B. Robinson)

RESPONSE TO COMMENT NO. 20. Because the IBT is exempt from the junior provision of Section 11.085, the IBT will have the priority date of the LCRA's water right for this water.

Reuse

COMMENT NO. 21. Commenters are concerned about the impact of the reuse of this water. How can LCRA reuse water in Brazos when the system treats water for both basins? (Ripley) The reuse application may impact our water rights. (City of Austin, City of Cedar Park) Flows must be returned to Lake Travis without Leander being able to use any of the flows. (Volente). The application for reuse is an additional request to use surface water. There has been no showing of need for the 24,000. Return flows are critical for environmental flows, and even more important in future. It is inappropriate to grant this application without protecting instream flows. Authorizing city to consume all historical and future return flows contravenes Chapter 11 of the Water Code. We are concerned that the use of Brushy Creek to convey return flows will impact downstream water rights, water quality, instream flows, recreational use, and public welfare. (DELTA)

RESPONSE TO COMMENT NO. 21. The Executive Director will perform a technical review on the reuse portion of this application. The Executive Director will review the application to determine if water right holders and the environment (instream flows) should be protected and if there are or may be environmental impacts. If other water rights or the environment are affected, the Executive Director will recommend conditions be included in the permit to ensure adequate flows for the environment and other water rights. Water right holders in the Brazos River Basin must also be protected and cannot be impaired. Section 11.042(c) allows persons to obtain a water right to reuse surface-water based on return flows, both existing return flows and future return flows. The Executive Director will also examine whether the reuse application is detrimental to the public welfare.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division



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REPRESENTING THE EXECUTIVE DIRECTOR OF
THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2010, the Executive Director's Response to Comments" was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Robin Smith
Attorney
Environmental Law Division

CHIEF CLERKS OFFICE

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY