

PERALES, ALLMON & ICE, P.C.

ATTORNEYS AT LAW

1206 San Antonio Street
Austin, Texas 78701
(512) 469-6000 • (512) 482-9346 (facsimile)
info@txenvirolaw.com

Of Counsel:
David Frederick
Richard Lowerre
Brad Rockwell

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Gregory Ellis, Special Counsel for
Lost Pines Groundwater Conservation District
Board of Directors
Via email: greg@gmellis.law

Re: Motion for Rehearing filed by Lower Colorado River Authority in the matter of
*Application of Lower Colorado River Authority for Operating and Transport
Permits for Eight Wells in Bastrop County, Texas*; SOAH Docket No. 952-19-
0705

Dear Mr. Ellis:

As you know, my firm represents Environmental Stewardship, a party in the above-referenced matter. On behalf of Environmental Stewardship, I submit this brief response to the arguments raised in LCRA's Motion for Rehearing, filed November 22, 2021. More specifically, by this letter, Environmental Stewardship will address, briefly, the arguments raised by LCRA concerning the requirement that LCRA monitor impacts of its groundwater pumping on surface water resources—a requirement that was recommended by the Administrative Law Judges ("ALJs") in their Proposal for Decision ("PFD") in this matter and that was ultimately included in the Board's final decision in this matter. For the reasons listed below, Environmental Stewardship urges the Board to overrule or deny LCRA's Motion for Rehearing.

First, the surface water monitoring requirement is consistent with and supported by the Board's governing statutes. Section 36.113(d)(2) of the Water Code requires that before granting or denying a permit, the District shall consider whether "the proposed use of water unreasonably affects existing groundwater and surface water resources or existing permit holders." Tex. Water Code § 36.113(d)(2). Having considered that "the GAMs show potential impacts to surface water resources caused by LCRA and District-wide pumping," the ALJs recommended that "any monitoring well system must include

monitoring wells that could monitor effects on surface water resources.”¹ The Board agreed, as was within their discretion.

Second, the surface water monitoring requirement is supported by evidence in the record, developed during the SOAH administrative hearing. That evidence revealed that LCRA’s proposed pumping is likely to impact surface water resources, based on the best available science—the “new” GAM.

No party disputed that the GAM was the best available science for assessing impacts on surface water resources resulting from LCRA’s proposed pumping. In fact, LCRA’s expert consultant relied on the same model as did Environmental Stewardship’s and the GM’s expert witnesses to evaluate predicted impacts on surface water resources as a result of LCRA’s proposed pumping. And the 3 parties’ experts reached similar results. The results are summarized well by the GM’s testifying expert, Dr. Hutchison: “The results of my analysis are clear that the model predicts impacts to the surface water system as a result of the proposed LCRA pumping.”² While the impacts could not be quantified with any specificity, experts for these 3 parties (LCRA, the GM, and Environmental Stewardship) all agreed that the GAM demonstrated, qualitatively, that LCRA’s proposed pumping would have impacts on surface water resources. According to Dr. Hutchison, “It is unreasonable to summarily dismiss the potential for impact [on surface water resources].”³

Further, Environmental Stewardship is the only party that presented an expert regarding the reasonableness of the impacts on surface water, as predicted by the GAM.⁴ And that expert witness, Mr. Trungale, opined that LCRA’s proposed pumping would result in unreasonable impacts to surface water resources.⁵

This evidence is more than sufficient to support the ALJs’ recommendation and the District’s decision to require surface water monitoring as a condition of the permit issued to LCRA.

Finally, Environmental Stewardship offers that LCRA did not agree to the surface water monitoring requirement included as a condition to the permits; this was a

¹ PFD, p. 54.

² Dr. Hutchison’s prefiled testimony, p. 26, ll. 4-5.

³ Dr. Hutchison’s prefiled testimony, p. 26, ll. 8-9.

⁴ Dr. Young, who testified on behalf of LCRA, admitted that he is “not an expert to determine [whether] the impact would be an unreasonable impact on the river,” Tr. V. 2, p. 459, ll. 17-19, and that he does “not have the qualifications to determine what that substantial change [to surface water flows] would be.” Tr. v. 2, p. 458, ll. 1-6.

⁵ See Trungale prefiled testimony, p. 6.

requirement recommended by the ALJs in their PFD—a requirement that LCRA objected to in its exceptions.⁶ LCRA argues, in point of error 6 of its motion for rehearing, that the District erred by including a monitoring well agreement as a condition of the permits, because LCRA did not acquiesce to the inclusion of such a requirement absent the phased-in approach to pumping proposed in the draft permits, totaling 25,000 acre/feet per year. To be clear, LCRA never acquiesced to the surface water monitoring requirement, which the ALJs recommended be included in the monitoring well agreement. Thus, this requirement was never based on the acquiescence or agreement of LCRA.

For the reasons described above, Environmental Stewardship urges the District to deny LCRA’s motion for rehearing, particularly the issues that complain about the special condition requiring LCRA to monitor impacts of its pumping on surface water resources. Environmental Stewardship reserves the right to submit additional substantive arguments and comments in response to LCRA’s motion for rehearing, should the District request such a response or consider taking action on LCRA’s motion for rehearing.

Respectfully submitted,
/s/ Marisa Perales
Marisa Perales
State Bar No. 24002750
Eric Allmon
State Bar No. 24031819
PERALES, ALLMON & ICE, P.C
1206 San Antonio
Austin, Texas 78701
512-469-6000 (t)
512-482-9346 (f)

CC: Attached service list.

⁶ See LCRA’s Exceptions to the PFD, pp. 2-3.

SERVICE LIST
SOAH DOCKET NO. 952-19-0705

Lost Pines Groundwater District
Special Counsel to the Board of Directors

Gregory M. Ellis
GM Ellis Law Firm, PC
2104 Midway Court
League City, TX 77573
greg@gmellis.law

Lower Colorado River Authority

Emily W. Rogers
Douglas G. Caroom
Bickerstaff Heath Delgado Acosta LLP
3711 S. Mopac Expressway
Bldg 1, Suite 300
Austin, TX 78746
erogers@bickerstaff.com
dcaroom@bickerstaff.com

Lyn Clancy
Lower Colorado River Authority
PO Box 220 H429
Austin, TX 78703
lyn.clancy@lcra.org

Lost Pines Groundwater Conservation District

Natasha J. Martin
Mary A. Keeney
Hailey L. Suggs
Graves, Dougherty, Hearon, & Moody
401 Congress Avenue, Suite 2700
Austin, TX 78701
nmartin@gdhm.com
mkeeney@gdhm.com
hsuggs@gdhm.com

Elvis and Roxanne Hernandez

Elvis and Roxanne Hernandez
644 Herron Trail
McDade, TX 78650
ranchozunzun@gmail.com

Brown Landowners

Donald H. Grissom
Grissom & Thompson, LLP
William W. Thompson, III
509 West 12th Street
Austin, Texas 78701
don@gandtlaw.com
bill@gandtlaw.com

Charles W. Carver
PO Box 49402
Austin, TX 78765
charles@cwcarverlaw.com

Recharge Water, LLP

Paul Terrill
Shan Rutherford
Terrill & Waldrop
810 West 10th Street
Austin, TX 78701
pterrill@terrillwaldrop.com
srutherford@terrillwaldrop.com

Stacey V. Reese
Stacey V. Reese Law, PLLC
910 West Avenue, Suite 15
Austin, TX 78701
stacey@staceyreese.law

City of Elgin & Aqua Water Supply Corp.

Michael A. Gershon
C. Cole Ruiz
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
mgershon@lglawfirm.com
cruiz@lglawfirm.com

Verna L. Dement

Verna L. Dement
9621 N. Hwy 77
Lexington, TX 78947
vernal01@yahoo.com