

PRESENTED AT
2016 Texas Water Law Institute

November 3 - 4, 2016
Austin, Texas

Recent rule-makings, actions, and decisions of the TCEQ relating to Water Availability

Ross Henderson

Ross Henderson, Technical Specialist
TCEQ, Office of Water, Water Availability Division
Austin, TX
ross.henderson@tceq.texas.gov
512.239.4735

I. Commission Decisions

a. Overview of Recent Activity

For Fiscal Year 2016 the Water Availability Division issued 99 permits. A few of these water rights issued will be discussed below. An additional 47 applications were withdrawn or returned. Of the issued water rights, TCEQ continues to see significant numbers of reuse applications and increased permitting activity in the coastal areas for saline diversions.

On the horizon, as of September 15, 2016 there are 7 applications pending at the State Office of Administrative Hearings (SOAH) and an additional 20 contested applications that are technically complete and awaiting referral to SOAH.

b. Notable Contested Case Decisions

i. Lower Colorado River Authority (LCRA); Application for Amendment to its Water Management Plan (WMP); Water Use Permit No. 5838; Docket No. 2015-1444-WR

On November 4, 2015, the Commission considered proposed amendments to LCRA's WMP to: reduce interruptible supplies to offset the increase in firm water demand; change the procedure for supplying water to help meet instream flow needs at certain locations downstream of Lady Bird Lake and incorporate specific instream flow values based on the most recent scientific studies; and change the combined firm yield of Lakes Buchanan and Travis.

At the meeting, the Commission had 16 outstanding hearing requests before it. Seventy hearing requests were previously withdrawn. The Commission decided to deny the outstanding hearing requests and issue the amendment on the basis that the

application satisfied all of the conditions of Texas Water Code § 11.122(b).¹ Specifically, the Commission found that, “consistent with the *City of Marshall v. City of Uncertain*, 206 S.W.3d 97 (Tex. 2006), the Commission must evaluate an application to determine whether it meets the five [Texas Water Code § 11.122(b)] criteria.”² The Commission outlined the criteria as being:

1. Whether there is an increase in the amount of water authorized to be diverted;
2. Whether there is an increase in the authorized rate of diversion;
3. Whether there will be an adverse impact on other water rights of greater magnitude than under circumstances in which the permit, certified filing, or certificate of adjudication that is sought to be amended was fully exercised according to its terms and conditions as they existed before the requested amendment;
4. Whether there will be an adverse impact on the environment on the stream of greater magnitude than under circumstances in which the permit, certified filing, or certificate of adjudication that is sought to be amended was fully exercised according to its terms and conditions as they existed before the requested amendment; and
5. Whether the application meets all other applicable requirements of Texas Water Code Chapter 11.

The Commission found that the five criteria were met and issued an order amending the WMP, thus denying all of the hearing requests.

ii. Brazos River Authority (BRA); Application for new Water Use Permit No. 5851 and Amendment to its Water Management Plan (WMP); Water Use Permit No. 5851; Docket No. 2005-1490-WR; SOAH Docket No. 582-10-4184

On January 20, 2016, the Commission considered the Administrative Law Judges’ Proposal for Decision on Remand regarding BRA’s application for a new Permit No. 5851

¹ *Commission Order Approving Amendments LCRA’s Water Management Plan (WMP); Water Use Permit No. 5838; Docket No. 2015-1444-WR*, p. 15 (Nov. 18, 2015)

² *Id.*

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Recent Rule-Makings, Actions, and Decisions of the TCEQ Relating to Water Availability

Also available as part of the eCourse

[2016 Texas Water Law eConference](#)

First appeared as part of the conference materials for the
2016 Texas Water Law Institute session
"TCEQ: Regulatory Update"