APPENDIX C

LOWER COLORADO RIVER AUTHORITY
PRO RATA CURTAILMENT RULES
FOR WATER USE BY FIRM WATER CUSTOMERS
DRAFT – For Planned Board Consideration Feb. 2027 ~~November 2022~~

TABLE OF CONTENTS

		Page
1.1	Purpose and Overview	1
1.2	Definitions	2
1.3	Time Periods and Billing Cycles	2
1.4	LCRA Transmittal of Current Demand and Request for Curtailment Plan	3
1.5	Determination of Customer's Baseline Amount and Annual Allotment	3
1.6	Development and Implementation of Customer Curtailment Plans	4
1.7	Updates to Customer Drought Contingency Plans	5
1.8	Board Action Implementing Pro Rata Curtailment	5
1.9	Monitoring, Reporting and Water Rates	6
1.10	Incentives	7
1.11	Trading	7
1.12	Enforcement	8
1.13	Cessation of Pro Rata Curtailment	8
1.14	Variance to the Pro Rata Curtailment	8
1.15	Appeal of General Manager's Decision on a Request for a Variance	9

1.1 Purpose and Overview

(a) The purpose of this chapter is to define the process and requirements under which LCRA will make water available to firm water customers during a pro rata curtailment in accordance with Texas Water Code §11.039 when, consistent with LCRA's Water Management Plan, the LCRA Board of Directors has declared a drought worse than the Drought of Record or other water emergency that drastically reduces the available firm supply.

(b) **Process Overview**

The following steps outline the process for preparing for, and implementing pro rata curtailment of firm customers:

1) Consistent with the Water Management Plan, when projections indicate the potential for reaching the trigger for initiation of pro rata curtailment of firm water customers within six months, LCRA will provide each customer with its Current Demand information and request that Customer prepare a Curtailment Plan;
2) Customer may request adjustments to its Baseline Amount, from which pro rata curtailment would be applied, or a variance to the Annual Allotment;
3) Customer updates its Drought Contingency Plan, if necessary;
4) Customer develops a Curtailment Plan to achieve the Percentage Curtailment(s), including the monthly pattern of use, and the measures to achieve the necessary reduction(s);
5) After the trigger for pro rata curtailment of firm customers is reached, LCRA issues a resolution directing customers to implement their Curtailment Plans;
6) LCRA may also direct customers to update their Curtailment Plans to include measures for possible higher levels of pro rata curtailment, and may subsequently

take action directing customers to implement Curtailment Plans for higher or lower levels of curtailment; and

7) Consistent with the Water Management Plan and the Board action implementing pro rata curtailment, when water supply conditions improve sufficiently, LCRA will issue a resolution ending the firm customer curtailment.

1.2 Definitions

In addition to the definitions provided in Article 3, the following definitions shall apply to terms when used in this Article. To the extent that there is any conflict with the definitions contained in Article 3 of the Water Contract Rules, the definitions contained in this section shall apply in this Article.

(a) Annual Allotment – the amount of water from LCRA supplies that would be made available to Customer in a 12-month billing period based upon Customer's Baseline Amount and the Percentage Curtailment currently in effect.

(b) Baseline Amount – Customer's projected reasonable demand which will be subject to pro rata curtailment. The calculation of Baseline Amount is provided in Section 1.5(a) below.

(c) Current Demand – Customer's diversion and beneficial use of LCRA water supplies as determined by LCRA staff from its billings for the Reference Year, unless modified to reflect conveyance losses, or as otherwise provided in a contract with LCRA.

(d) Curtailment Plan – a plan developed by Customer which includes the water use reduction measures that Customer will employ in order to achieve one or more percentage reductions in use. The Curtailment Plan should reference drought response measures already found in Stage 4 of Customer's Drought Contingency Plan plus supplemental information necessary for implementation of pro rata curtailment if needed. LCRA's receipt of a Curtailment Plan (or any comments regarding water use reduction measures) does not affect the requirement that Customer achieve the Percentage Curtailment or be subject to higher rates or restrictions on the supply of water as described in this Article.

(e) Curtailment Year – A 12-month period beginning with the initiation of pro rata curtailment and continuing for 12 billing months; and each subsequent 12-month period. The Curtailment Year may be a 12-month period that does not correspond to a calendar year.

(f) Drought Coordinator - A person designated by Customer who is responsible for implementing Customer's Drought Contingency Plan and Pro Rata Curtailment Plan and coordinating with LCRA.

(g) General Manager – the General Manager of the Lower Colorado River Authority, or his or her designee.

(h) Monthly Distribution – the distribution of Customer's Annual Allotment into individual months.

(i) Percentage Curtailment – the percentage reduction(s) by which each customer is required to reduce its Baseline Amount.

(j) Reference Year – the most recent dry year for which there is a full and accurate record of water use as determined by the General Manager. In the event that the most recent dry year included voluntary watering restrictions that impacted water use, the General Manager may choose another recent dry year as the Reference Year. The Reference Year may be a 12-month period that does not correspond to a calendar year. The Reference Year will be set no later than 30 days after Combined Storage of Lakes Buchanan and Travis falls below 900,000 acre-feet.

(k) Quarterly Allotment – the amount of water that would be made available to Customer in any three-month calendar billing period based upon Customer's Annual Allotment, and Customer's Monthly Distribution. The specific three-month periods may start in any particular month based upon when the LCRA Board determines that Pro Rata Curtailment shall be implemented.

1.3 Time Periods and Billing Cycles

(a) Computation of Days. Unless stated otherwise, all time periods are in calendar days, not billing days. In the event that a time period ends on a weekend or LCRA holiday, the time period shall extend to the following business day.

(b) Billing Periods. “Billing periods” or “billing months” do not necessarily correspond to calendar months and are based upon the month in which the billing cycle ends. For example, the March billing period could be from Feb. 15 to March 15.

1.4 LCRA Transmittal of Current Demand and Request for Curtailment Plan

Prior to Board action calling for the implementation of pro rata curtailment, the General Manager shall provide each customer, by ~~certified mail~~ email or regular mail if requested, with:

(a) its Current Demand, which will be the default Baseline Amount;
(b) Customer’s monthly billing data for the Reference Year;
(c) the potential Percentage Curtailment(s), the proposed Annual Allotment, and Customer’s monthly use percentages from the billing data for the Reference Year;
(d) the date by which any request to modify the Baseline Amount or Annual Allotment shall be submitted; and
(e) the date by which Customer’s initial Curtailment Plan shall be submitted to LCRA.

1.5 Determination of Customer’s Baseline Amount and Annual Allotment

(a) The Baseline Amount shall be determined by the General Manager and shall be equal to Customer’s Current Demand unless Customer demonstrates and the General Manager agrees that the Current Demand was not reflective of Customer’s current reasonable demand because:
  1) the implementation of water conservation and/or drought management measures by Customer in the Reference Year resulted in a reduction of Customer’s water demand;
  2) the water demand in the Reference Year does not reflect ~~new~~ growth that has occurred between the Reference Year and the date the plan is submitted and a corresponding increase in Customer’s reasonable water demands;
  3) Customer experienced a plant outage or other incident in the Reference Year that reduced the water demand for that year;
  4) Customer’s demand in the Reference Year does not represent its reasonable demand because Customer is a new customer and did not receive LCRA supplied water for the entire year; a modification under this subsection 1.5(a)(4) is conditioned upon Customer implementing all applicable LCRA-recommended drought response measures included in LCRA’s Drought Contingency Plan Rules; or
  5) any other affirmative action or program by Customer that resulted in a reduction of water demand in the Reference Year.

(b) The Annual Allotment shall be determined by the General Manager and shall be equal to the Baseline Amount minus the Percentage Curtailment. In the event that Customer takes action which reduces delivery losses, or Customer’s contract contains special provisions related to the delivery of water, the General Manager may adjust the Annual Allotment to reflect actual water saved.

(c) If Customer seeks to request a modification of the Baseline Amount or Annual Allotment, Customer shall submit a request to the General Manager for such modification within thirty (30) days of receipt of Customer’s Baseline Amount and proposed Annual Allotment. Customer shall submit with the request all supporting documentation including, but not limited to:
  1) for water savings as a result of water conservation and/or drought management measures, Customer must be able to demonstrate that real, not expected, savings have occurred. Such savings shall be normalized for weather and other factors, e.g. growth or type of use, and show comparison of use between recent or similar years of diversion;
  2) for new customers (regardless of use type) established since the Reference Year, any available use data for recent full or partial years, extrapolated to other months based on an appropriate seasonal distribution;

3) for municipal customers, data such as the current number of Living Unit Equivalents (LUEs) versus the number of LUEs in a previous year; and

4) for modifications related to outages, historical use that does not result in a modified baseline amount higher than any previous 12-month period unless that demand is related to energy generation.

5) any other appropriate information that may be presented by Customer or requested by the General Manager demonstrates that the Baseline Amount or Annual Allotment should be adjusted.

(d) Neither the Baseline Amount nor the Annual Allotment shall exceed Customer's contractual quantity (maximum annual quantity). For a customer that has a new contract or has amended its contract in the most recent calendar year to a reduced maximum annual quantity (MAQ), the Baseline Amount shall be determined as if it was a new customer, or using the Current Demand from the Reference Year data, whichever is higher, subject to the foregoing limitation.

(e) If Customer has requested modification of its Baseline Amount or Annual Allotment, the General Manager will review the request within 30 days of such request and provide Customer with plan deficiencies if applicable or notify Customer that the plan is accepted.

1.6 Development and Implementation of Customer Curtailment Plans

(a) Each customer shall provide the General Manager with its Curtailment Plan(s) as requested no later than 90 days after Customer's receipt of its Current Demand and proposed Baseline Amount, or, in the event that Customer has requested a modification to its Baseline Amount, no later than 30 days after the final determination of Customer's Baseline Amount. If storage increases above 1.1 million acre-feet, the submission of the curtailment plan may be deferred until storage drops below 900,000 acre-feet. The plan shall:

1) identify Customer's Drought Coordinator and the coordinator's contact information (phone number, email and mailing address), as well as the contact information for any other person to whom LCRA shall provide materials and information during the period in which a curtailment is in effect;

2) reference Customer's current Drought Contingency Plan including adoption date to document the specific measures which will be implemented by Customer to achieve the Percentage Curtailment(s) as identified by LCRA. ~~Customer must submit updated Drought Contingency Plans to LCRA upon adoption; include the specific measures which will be implemented by Customer…if Customer has received a modification based on section 1.5(a)(4), Customer shall include all applicable LCRA-recommended drought response measures from the Drought Contingency Plan Rules~~; and

3) include a Monthly Distribution of the proposed Annual Allotment. In the event that the Curtailment Plan addresses more than one level of Percentage Curtailment, Customer may have separate Monthly Distributions for each Percentage Curtailment.

(b) The General Manager will not accept a Curtailment Plan that does not include a reasonable Monthly Distribution of Customer's Annual Allotment, with such reasonableness to be determined by the General Manager. In determining whether the Monthly Distribution is reasonable, the General Manager will consider: the monthly diversion and use distribution from the Reference Year; a typical distribution based upon Customer's purpose of use; other sources of supply available to Customer; and any other relevant information.

(c) Within 30 days of receipt of Customer's Curtailment Plan, the General Manager will review the plan and notify Customer as to whether Customer's Curtailment Plan is accepted or not.

(d) If Customer's Curtailment Plan is not accepted, Customer shall have 30 ~~20~~ days from receipt of the General Manager's notice of deficiency to remedy the elements of Customer's Curtailment Plan that are not acceptable.

(e) In the event that Customer has not submitted a plan or the General Manager has not accepted a Curtailment Plan for Customer prior to initiation of a Curtailment, Customer's Baseline Amount shall be based upon the Current Demand from the Reference Year, Customer's Annual Allotment shall be Customer's Baseline Amount less the Percentage Curtailment, and Customer's Monthly Distribution shall be 1/12 of the Annual Allotment per month.

(f) Customer may alter its Monthly Distribution for subsequent Curtailment Years or update established new growth by submitting a revised Monthly Distribution and modified Baseline Amount if applicable, subject to review following section 1.5 at least 30 days prior to the beginning of the subsequent Curtailment Year with the revised Monthly Distribution and Annual Allotment becoming effective beginning in the subsequent Curtailment Year.

(g) The implementation and cancellation of a pro rata curtailment will coincide with Customer's billing months rather than specified days. If pro rata curtailment commences after the beginning of a year, the curtailment shall apply over a 12-month "Curtailment Year." If the pro rata curtailment is cancelled prior to the end of the Curtailment Year, Customer shall be responsible for meeting the Annual Allotment as pro-rated for the applicable portion of the Curtailment Year. In the event the Percentage Curtailment changes during the Curtailment Year, Customer's Annual Allotment will be determined based upon the months in which each Percentage Curtailment was in effect. See also section 1.9 regarding potential surcharges in the event of pro rata ceased within 6 months of the start of a Curtailment Year.

(h) A pro rata curtailment plan shall be in effect for 12 months following the execution date for the plan. After 12 months, if LCRA is still within 120 days of possibly implementing Curtailment, the plan must be updated and re-executed consistent with these rules.

1.7 Updates to Customer Drought Contingency Plans

(a) Prior to submittal of its Curtailment Plan, Customer shall update its Drought Contingency Plan (including, where appropriate, obtaining approval of its governing body) as necessary, to ensure that the appropriate measures can be implemented and enforced consistent with rules of the Texas Commission on Environmental Quality (TCEQ) contained in Chapter 288 of Title 30, Texas Administrative Code and LCRA Drought Contingency Plan Rules for Water Sale Contracts. A copy of the updated Drought Contingency Plan shall be provided to LCRA and, where required, TCEQ.

1.8 Board Action Implementing Pro Rata Curtailment

(a) If the LCRA Board issues a resolution calling for the implementation of pro rata curtailment of water use by firm water customers, the resolution will:

1) provide for the cessation of interruptible water supply prior to pro rata curtailment of water use by firm water customers;
2) establish the Percentage Curtailment applicable to LCRA firm water customers and applied to LCRA's commitment of firm water for environmental flow needs and the time period for which the Percentage Curtailment and Annual Allotment will initially apply; the initial curtailment will start no earlier than 120 days from the date customers are provided the information in section 1.4;
3) define any additional level(s) of Percentage Curtailment for which customers shall prepare amended Curtailment Plans for implementation in the event that water supply conditions worsen, as determined by LCRA;
4) direct all firm water customers to implement their Curtailment Plans and achieve the pro rata reduction of water use;
5) establish criteria for the cancellation of pro rata curtailment. Such criteria may be based upon the Combined Storage in Lakes Buchanan and Travis reaching a specified amount, or any other criteria the Board deems appropriate; and

6) authorize LCRA staff to take any and all other necessary action for the implementation and enforcement of the pro rata curtailment and these rules.

(b) In addition, the Board may:

1) reevaluate the rates to be assessed against a customer for diverting water in excess of the amount allotted during the pro rata curtailment;

i) In establishing a graduated set of rates, the Board may consider the number of times that a customer exceeds its Quarterly Distribution under its Curtailment Plan and the degree to which the customer exceeds such distribution.

2) establish any incentives the Board deems appropriate that would apply to any customer that would result in the use of less water than the customer's Annual Allotment;

(c) In the event water supply conditions worsen, the LCRA Board may issue subsequent resolutions to implement amended Curtailment Plans and direct customers to develop subsequent Curtailment Plan(s) for higher level(s) of Percentage Curtailment. In the event that water supply conditions improve, but LCRA determines that pro rata curtailment should not be ceased entirely, the LCRA Board may issue subsequent resolutions to implement amended Curtailment Plans and direct customers to develop subsequent Curtailment Plan(s) for lower level(s) of Percentage Curtailment.

1.9 Monitoring, Reporting and Water Rates

(a) LCRA staff will monitor Customer's use of water on a monthly basis and will send to Drought Coordinator each quarter information including:

1) the Customer's actual use;
2) the Monthly Distribution and Quarterly Distribution amounts (based upon the then-current Percentage Curtailment) that will be used for purposes of tracking applicable water use exceedances and/or credits;
3) the current Board adopted rates and available incentives; and
4) the current accrued amount of exceedances or credits for purposes of tracking how customer's water use compares to its Curtailment Plan; and any other applicable pro rata related information.

(b) At the end of each quarterly billing period, LCRA staff will aggregate the monthly amounts made available to Customer into a quarterly use total. LCRA staff will compare the quarterly use total to the Quarterly Distribution for the corresponding quarterly period.

(c) Except as otherwise provided by the Board in its resolution implementing pro rata curtailment, exceedances and credits will be tracked beginning with the first full quarter following issuance of the Board's resolution.

(d) In the event that the amount of water used within a quarter is less than the Quarterly Distribution, a credit will be recorded for that quarter in units of acre-feet. The credit can be carried forward into subsequent quarters within the same Curtailment Year but cannot be used in a subsequent Curtailment Year.

(e) Within a Curtailment Year, if there is a quarter in which the amount diverted exceeds the Quarterly Distribution, an available credit from a prior quarter could apply.

(f) In the event that the amount used in a quarter is greater than the Quarterly Distribution in Customer's Curtailment Plan (and no "credits" are available from a prior quarter), an exceedance will be accrued.

(g) Credits and exceedances will be pro-rated for a billing quarter in which pro rata curtailment is ceased.

(h) Each customer's exceedances will be determined and tracked on a quarterly basis; however, exceedances can be offset by credits in subsequent periods within the Curtailment Year; surcharges would only be assessed on exceedances remaining at the end of the Curtailment Year, after accounting for any variances provided under section 1.14, or at such time that pro rata curtailment is ceased. If pro rata ceased within 6 months, surcharges would be assessed only if use exceeded both: 1) the Monthly Distribution for the months in which pro

rata curtailment was in effect; and 2) the Annual Allotment, pro-rated by the number of months pro rata curtailment was in effect.

(i) For water made available or used in amounts in excess of Customer's Annual Allotment or portion thereof, the following rates apply:
   1) For water made available or diverted in an amount up to 5.0 percent greater than the Annual Allotment or portion thereof, the rate shall be two-times the then-current base firm water rate;
   2) For water made available or diverted in an amount from 5.01 percent to 10.0 percent greater than the Annual Allotment or portion thereof, the rate shall be four-times the then-current base firm water rate;
   3) For water made available or diverted in an amount more than 10.0 percent greater than the Annual Allotment or portion thereof, the rate shall be six-times the then-current base firm water rate; however, if Customer has exceeded its Annual Allotment by greater than 10.0 percent in a prior Curtailment Year, the rate shall be ten-times the then-current base firm water rate.

(j) On a monthly basis, the amount due will be limited to one-times the base firm water rate, with the remainder based on subsection (i), if any, due following the end of the Curtailment Year or when pro rata curtailment is ceased.

(k) LCRA may establish recommended drought response measures for one or more customer types for one or more stages of pro rata curtailment, with such measures defined in the Drought Contingency Plan Rules. In the event such measures have been established for the customer type and stage, if the General Manager finds that Customer fully implemented all such measures for the stage in effect at the time, Customer is not subject to the rates specified in subsection (i) for any exceedance of up to 10 percent of Customer's Allotment. In the event that Customer received a modification based on section 1.5(a)(4), Customer must implement such drought response measures in order for the modification to be applicable.

(l) Notwithstanding any rates applicable to the use of water in amounts greater than the Annual Allotment, LCRA reserves the right to cut off delivery of water in amounts that would exceed Customer's Annual Allotment.

1.10 Incentives

The LCRA Board in its resolution implementing pro rata curtailment, may establish incentives that would apply to any customer that uses less water than its Annual Allotment.

1.11 Trading

(a) A customer may transfer all or part of its Annual Allotment to another customer during all or part of a Curtailment Year.

(b) The following customers may not transfer all or part of their Annual Allotments:
   1) a customer with a contract quantity based upon its firm yield impact rather than actual diversions; and
   2) a customer that received an adjustment to its Baseline Amount to a value that is higher than its Current Demand.

(c) Transfer agreements must be received and accepted by the General Manager at least 30 days prior to the effective date of the proposed transfer. In the event that pro rata curtailment is lifted, transfer agreements received after curtailment is lifted will not be considered.

(d) For any agreement to be recognized by LCRA for purposes of compliance with the pro rata curtailment, the transfer must be accepted by the General Manager prior to its implementation and shall:
   1) identify the amount of the Annual Allotment that would transfer to the purchaser for each Percentage Curtailment addressed in Customer's Curtailment Plan, including a distribution of such amount over the 12 billing months;
   2) specify the time period(s) in which the transfer would apply, however the transfer cannot apply retroactively;

3) identify the party responsible for payment of water use and/or reservation charges associated with the transferred amount;
4) identify the party responsible for payment of the reservation charges for the remainder of a year in the event that curtailment ends in the middle of a calendar year or Curtailment Year; and
5) be consistent with the overall pro rata curtailment and applicable contracts.

(e) A copy of the executed agreement shall be filed with the LCRA. The copy shall be submitted to: LCRA; Attn: ~~Executive Manager of Water Resources~~Raw Water Sales; P. O. Box 220 – R317; Austin, TX 78767-0220.

(f) In the event the transfer agreement is accepted, the General Manager will provide each party to the agreement an acknowledgement of the acceptance. Each of the affected customer's Annual Allotments will be adjusted based upon LCRA's understanding of the parties' transfer agreement. Such adjustments may be pro-rated in the event that a curtailment is initiated or ends in the middle of a Curtailment Year.

(g) Any rates or incentives affecting the seller or purchaser would be based upon their adjusted Annual Allotments.

(h) In the event that pro rata curtailment is lifted, the purchaser of a customer's Annual Allotment shall identify for LCRA and the seller the amount of water used under the agreement so that the remaining amount available for the seller to use in the remainder of the calendar year is known.

1.12 Enforcement

(a) LCRA staff will monitor Customer's compliance with its Curtailment Plan and the General Manager shall take enforcement action as necessary in the event that Customer is noncompliant.

(b) LCRA's enforcement actions may include:
1) increasing rate structures;
2) assessments of surcharges;
3) any other remedy available at law.

(c) Implementation of the measures contained in Customer's pro rata Curtailment Plan shall not excuse Customer's failure to achieve the Percentage Curtailment ordered by the Board.

(d) Monitoring and enforcement of water use restrictions at the end-user level will generally be Customer's responsibility. Customer is responsible for providing documentation to LCRA that water use restrictions outlined in the Customer's Drought Contingency Plan are enforced at the end-user level within 90 days of the declaration of curtailment and subsequently on an annual basis.

1.13 Cessation of Pro Rata Curtailment

(a) During pro rata curtailment, LCRA staff will continue to monitor water supply conditions and provide updates to the LCRA Board, LCRA customers, and to the public.

(b) Prior to cancellation of pro rata curtailment, the Board will re-evaluate the criteria for cancellation identified in the Board resolution implementing the curtailment to determine if a different criteria should be used in canceling pro rata curtailment.

(c) In the event that the Board determines that pro rata curtailment shall be lifted, the Board shall issue a resolution specifying the date at which pro rata curtailment shall end.

1.14 Variance to the Pro Rata Curtailment

(a) Variances from the Annual Allotment may be granted:
1) upon written request by email or regular mail submitted by the Customer prior to or with the submission of its Curtailment Plan, including a subsequent Curtailment Plan to address a higher level of Percentage Curtailment; or
2) upon written request by email or regular mail submitted by the Customer no later than 10 days after a triggering event which serves as the basis of the request, supported

by necessary documentation in support of such request submitted within 30 days of the triggering event.

(b) Variances related to power generation

1) Variances from the Annual Allotment will be provided, without the need for prior written request, for Customers who consume water for power generation on days when the Electric Reliability Council of Texas (ERCOT):

i) provided a day-ahead load forecast for the day on which water was used that exceeded:

a) 62,000 MW during the months of June through September, or

b) 45,000 MW during the months of November through March, or

ii) declared an Energy Emergency Alert (EAA) for a short supply condition.

2) Eligibility for a variance under this section will be determined based on data provided by the Customer that demonstrated daily water consumption during the period of pro rata curtailment. Customer shall provide such data on a quarterly basis on a schedule established by the LCRA.

(c) For purposes of section 1.14(a), the LCRA General Manager may grant a variance to the Annual Allotment under Customer's Curtailment Plan if it is determined that:

1) failure to grant such a variance would cause an emergency condition adversely affecting the public health, welfare or safety; or

2) compliance with the plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the ordered curtailment plan is in effect.

3) Increased projected demand associated with growth in connections resulting in an increase in current water demand that has occurred after the current curtailment plan was executed.

(d) A Request for Variance submitted pursuant to section 11.14(a) shall include the following:

1) name and address of the customer seeking the variance;

2) detailed statement with supporting data and information as to how the Annual Allotment of water under the policies and procedures established by the LCRA's Firm Water Curtailment Procedures would cause the impacts as described in 11.14(c).

3) description of the relief Customer is requesting;

4) period of time for which the variance is sought; and

5) other pertinent information as provided by Customer or requested by the General Manager.

(e) Variances granted by the LCRA General Manager pursuant to section 11.14(a) shall be subject to the following conditions:

1) variances shall include a timetable for compliance unless the Customer has demonstrated that the threat to public health, safety and welfare addressed by the Customer's variance cannot be eliminated through any action by the Customer; and

2) variances granted shall expire when pro rata reduction requirements are no longer in effect; however, any outstanding obligations of Customer related to the granting of the variance must be fulfilled.

(f) A variance granted pursuant to this section shall not justify a violation of the LCRA drought contingency rules or requirements occurring prior to the issuance of the variance(s). Further, variances granted pursuant to Section 11.14(a)(1) shall not be retroactive.

(g) The General Manager shall issue a written decision to Customer on variances requested pursuant to Section 11.14(a) within 20 days of receipt of a Request for Variance and all required supporting materials.

1.15 Appeal of General Manager's Decision on a Request for a Variance

(a) Only a decision by the General Manager denying a Request for Variance to the Annual Allotment may be appealed to the LCRA Board.

(b) Only the customer seeking the variance may appeal the decision by the General Manager.

(c) A customer eligible to file an appeal and who wishes to appeal must file the appeal within 15 days after the date of the General Manager's written decision. The appeal shall be filed with the LCRA General Counsel in accordance with the procedures outlined in this section.

(d) The LCRA General Counsel shall send written notice of receipt of any appeal to the Board, General Manager, LCRA staff, and Customer within five business days after expiration of the date for filing appeals. Such notice shall generally describe and summarize the issues raised by an appeal, and advise Customer of the prohibition against unlawful ex parte contacts. In addition, the LCRA General Counsel may advise the Board of the receipt of an appeal at any time prior to the expiration of the date for filing appeals as necessary to prevent unlawful ex parte contacts.

(e) An appeal must be in writing, timely filed, submitted as an original and two copies, and shall not exceed 15 pages in length including exhibits or attachments. The appeal shall include the following information:

1) the name and address of the customer filing the request for appeal;
2) a concise statement of how the customer requesting the appeal is affected by the granting or denial of the variance.

(f) Within 10 business days from receipt of an appeal, the General Counsel shall determine the validity or invalidity of the Request for Appeal. For an appeal to be valid, the Request for Appeal must: 1) be filed in accordance with this section; and 2) only raise issues that were presented in Customer's Request for Variance to the General Manager. The General Counsel's determination of the invalidity or validity shall be final. Upon a determination that an appeal is invalid, the General Manager's variance decision shall become final.

(g) The General Counsel shall immediately provide written notice of his decision regarding the validity of the appeal to staff and send such notice by first class mail to Customer.

(h) Within 10 business days after the receipt of the written notice of the validity of an appeal, staff shall prepare a written response to the appeal. The response shall not exceed 15 pages in length including exhibits and attachments, and shall be submitted to the LCRA General Counsel and mailed by certified mail, return-receipt requested to Customer.

(i) Upon expiration of the deadline for staff to submit a response, the LCRA General Counsel shall forward to the Chair of the Water Operations Committee a copy of Customer's request for variance, the General Manager's variance decision, Customer's appeal, and the staff response.

(j) Water Operations Committee Consideration of a Valid Appeal

1) Taking into consideration the complexity of the issues, and the need to develop an adequate evidentiary record, the Committee Chair shall determine the most appropriate forum for consideration of an appeal. The Committee Chair may:
    i) consider all of the written information forwarded by the LCRA General Counsel and direct staff to issue the variance;
    ii) forward the appeal to the Committee with a recommendation that the Committee consider all of the written information submitted and allow Customer and staff a period of time to present oral argument;
    iii) forward the appeal to the Committee with a recommendation that the Committee consider all of the written information submitted, and allow each party to the proceeding to submit additional evidence and present oral argument; or
    iv) forward the appeal to the Committee with a recommendation that it consider the appeal using another method agreed to by all of the parties.
2) Upon the direction of the Committee Chair, as specified in this subsection, a hearing before the Committee may be held to consider a valid appeal. Such hearing shall be scheduled by the Committee Chair no later than 45 calendar days after receipt of the valid appeal from the General Counsel.
3) The hearing shall be open to the public.
4) Only Customer, LCRA staff, or any of their representatives, shall be entitled to participate in the hearing.

5) The Committee shall deliberate in open session taking into consideration the presentations of staff and the parties, if any, and all written materials submitted to the Committee as a valid part of the appeal process. Notwithstanding the foregoing, the Committee may confer with the LCRA General Counsel in executive session for the purpose of receiving legal advice concerning the appeal.

6) The appeal shall be decided from the written information provided to the Committee prior to the hearing, documents contained in Customer's file, and any other evidence or information submitted at the hearing, if recommended by the Committee Chair to be considered by the Committee. The Committee may:
   i) direct staff to issue the variance;
   ii) recommend modification of the variance as requested; or
   iii) recommend denial of the variance as requested.

   Any materials provided to the Committee for purposes of deciding the appeal, including documents in Customer's file, shall be provided to Customer prior to the hearing.

7) The Committee may alter the procedures set forth in this section, if necessary to develop an adequate record, to afford full opportunity for public participation or comment by Customer, appellants, or staff, or if in the public interest.

8) Any decision by the Committee Chair or the Committee that directs staff to grant a variance as requested by Customer is final and may not be appealed to the LCRA Board. If the Committee recommends that a variance be granted which is modified from Customer's request, Customer may accept the variance or appeal to the Board within 10 days by filing a request for Board consideration with the General Counsel.

(k) Board Consideration of a Variance Denial. If the Committee recommends denial of the Request for Variance, the Committee shall forward the decision to the full LCRA Board for consideration within 45 days or at its next regularly scheduled meeting, whichever is later. The Board shall consider the Committee's recommendation and may allow, at its discretion, Customer and staff time to present oral argument in support their respective positions. The Board may take the following action:

1) direct staff to issue the variance as requested;
2) direct staff to issue the variance as modified by the Board; or
3) deny the Request for Variance.

(l) Ex Parte Communications.

1) Any communication by a customer requesting an appeal, LCRA staff member, or any other party in interest, or their representatives, with Committee or other member(s) of the LCRA Board on the merits of any pending appeal or decision affecting a variance request from the date Customer files a variance request with the General Manager until the date the appeal is decided, other than at a hearing or in a public meeting of the Committee, or the Board, is strictly prohibited, unless sufficient notice and opportunity to be present and to present evidence and/or oral argument is provided to all parties. Notwithstanding the foregoing, the LCRA General Counsel may consult with the Board or any of its Directors regarding any procedural or legal issues regarding the appeal.

2) Any person who violates this provision may be subject to sanctions, which may include return of the variance request if the violation is from the customer seeking the variance or his/her representative.