



WATER CONTRACT RULES
 (October 2015)
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WATER CONTRACT RULES

ARTICLE 1. PURPOSE

The purpose of these rules is to provide guidance and establish procedures for the administration of the Lower Colorado River Authority's (LCRA's) water contracts and related activities, consistent with LCRA Board Policy and State law. The LCRA Board of Directors may amend these rules from time to time. These rules apply to LCRA's various water contracts, as well as resolutions passed by the LCRA Board of Directors for the supply of water under water rights and from water supplies owned or otherwise controlled by LCRA. Except as set forth in Article 9 of these Rules, these rules do not apply to LCRA's Agricultural Interruptible Water Service Contracts. Sales of water by LCRA are subject to, among other things, water availability, the policies and directives of LCRA including the Water Management Plan, and the requirements of the Texas Water Code and rules of TCEQ.

ARTICLE 2. AUTHORITY

- (a) These rules are promulgated in accordance with state law, including the LCRA enabling legislation and the Texas Water Code, LCRA's existing water rights, LCRA's Water Management Plan, and LCRA policies and rules.
- (b) As a Texas conservation and reclamation district and owner of major water rights in the lower Colorado River watershed, LCRA makes water available from its water rights to purchasers in accordance with State laws, rules and permits and applicable LCRA policies and rules on terms that are just, reasonable and without discrimination to the extent that water is available based on LCRA's water rights.

ARTICLE 3. DEFINITIONS

The following definitions shall apply to terms used in these administrative rules and in LCRA's water contracts, unless such terms are otherwise defined in the water contracts.

- 3.1 **Acre-foot of water:** A quantity of water equal to 325,851 U.S. gallons. Such quantity of water would cover one acre of land to a depth of one foot.
- 3.2 **Agriculture or agricultural:** These terms mean any of the following activities:
 - a) Cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
 - b) The practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or non-soil media by a nursery grower;
 - c) Raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
 - d) Raising or keeping equine animals;
 - e) Wildlife management;
 - f) Planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure, and
 - g) Aquaculture, as defined by Section 134.001 of the Texas Agriculture Code.

- 3.3 **Agricultural Interruptible Water Service Contract:** Contracts issued typically on a seasonal term for water diverted and delivered to Purchasers by LCRA's Irrigation Operations. Except for Article 9 of these rules, these rules do not apply to Agricultural Irrigation Service Contracts.
- 3.4 **Agricultural Use:** Any use or activity involving Agriculture, including Irrigation.
- 3.5 **Applicant:** A person, association of persons, or other entity who has submitted an application for a contract to purchase water from LCRA, and who has provided all information required under these rules.
- 3.6 **Beneficial Use:** Use of that amount of water that is economically necessary for the purpose authorized in the contract, when reasonable intelligence and reasonable diligence are used in applying the water to the purpose.
- 3.7 **Certificate of Adjudication:** An instrument evidencing a water right issued to each person adjudicated a water right in conformity with the provisions of the Texas Water Code.
- 3.8 **Conveyance, Delivery or System Loss:** That amount of additional water needed to transport water downstream using the bed and banks of a stream or watercourse, through a canal system or other similar conveyance system to meet the requested or ordered amount of water at the point or location of delivery under the contract; or that amount of water that is reasonably expected to be lost due to evaporation, transpiration, recharge, seepage, leakage or other similar losses in the transportation of the water from the source of supply to the Point of Delivery or Point(s) of Availability under the contract
- 3.9 **Customer:** A person, association of persons, or other entity to whom a water contract has been issued (*see* Purchaser).
- 3.10 **Demand Schedule.** A demand or use schedule that reflects Applicant's best estimate of the scheduled initiation of diversions, initial usage, annual water usage, and any increases to it over time (at 5, 10, and 20 year intervals). Such schedule shall also include Applicant's anticipated diversion rate(s) over this period, including the Applicant's maximum diversion rate.
- 3.11 **Domestic Use:** Use of water by an individual or a household to support domestic activity. Such use may include water for drinking, washing, or culinary purposes; for irrigation of lawns, or of a family garden and/or orchard; for watering of domestic animals; and for water recreation including aquatic and wildlife enjoyment. If the water is diverted, it may be diverted solely through the efforts of the user or may be diverted using facilities that are shared by other domestic users, so long as the water that is diverted does not receive any treatment prior to receipt by individual users or households. Domestic use does not include water used to support activities for which consideration is given or received or for which the product of the activity is sold.
- 3.12 **Drought Contingency Plan:** A plan prepared by an Applicant or Purchaser, in accordance with LCRA's Drought Contingency Plan Rules (included in these Water Contract Rules as Appendix B), which includes a strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies.
- 3.13 **Firm water supply:** A supply of water available for Beneficial Uses including domestic, municipal, agricultural, industrial, mining, aquifer storage and recovery, wildlife management, livestock use, instream flows, and bays/estuaries inflows that could be provided during a repetition of: i) the historical drought for the lower Colorado River specified in the Water Management Plan or other written determination of Highland Lakes firm water supply approved by TCEQ; or, ii) the most severe historical drought – according to TCEQ, the Texas Water Development Board or applicable groundwater conservation district permit, water management plan and/or rules and regulations for any other source of supply from which LCRA makes water available.
- 3.14 **Highland Lakes:** Lakes Austin, Travis, Marble Falls, LBJ, Inks, and Buchanan.

- 3.15 **Industrial Use:** The use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, and the development of power by means other than hydroelectric, but does not include agricultural use.
- 3.16 **Interruptible water supply:** A supply of water available for irrigation, instream flows, bays/estuaries inflows, and other non-firm water supply uses that is subject to interruption or curtailment pursuant to published policies and procedures as established in LCRA's Water Management Plan.
- 3.17 **Irrigation Use:** The use of nonpotable water, not including reclaimed water or sewage effluent distributed through a municipal distribution system, for the irrigation of crops, trees, and pasture land including, but not limited to, golf courses and parks.
- 3.18 **Livestock use:** The use of water for the open-range watering of livestock, exotic livestock, game animals, or fur-bearing animals. For purposes of this definition, the terms "livestock" and "exotic livestock" are to be used as defined in §142.001 of the Agriculture Code, and the terms "game animals" and "fur-bearing animals" are to be used as defined in §63.001 and §71.001, respectively, of the Parks and Wildlife Code.
- 3.19 **Maximum Annual Quantity (MAQ):** The maximum amount of water to be made available from LCRA supplies to a Purchaser in any year under a water contract.
- 3.20 **Mining Use:** The use of water for mining processes including hydraulic use, drilling, washing sand and gravel, and oil field repressuring.
- 3.21 **Municipal Use:** The use of potable water within a community or municipality and its environs for domestic, residential (including multi-family), recreational, institutional, commercial or industrial purposes or for the watering of golf courses, parks and parkways. Such use also includes all non-revenue uses and the volume lost during the conveyance, treatment or transmission of the water. Such use further includes the use of reclaimed water in lieu of potable water for the preceding purposes or the application of municipal sewage effluent on land, under a Texas Water Code, Chapter 26, permit where:
- a) the application site is land owned or leased by the Chapter 26 permit holder; or
 - b) the application site is within an area for which the TCEQ has adopted a no-discharge rule.
- 3.21 **Non-potable Water.** Water that is not suitable for direct human consumption.
- 3.22 **Point(s) of Delivery:** The point or points where the Secondary Purchaser's water conveyance system is connected to a Primary Purchaser's water conveyance system.
- 3.23 **Point(s) of Availability:** The point or points from which water is diverted, pumped, impounded or otherwise withdrawn, from a reservoir, watercourse, stream or other water source.
- 3.24 **Potable Water.** Water that is suitable for direct human consumption.
- 3.25 **Primary Purchaser:** A Purchaser who receives water directly from LCRA's firm water supply and delivers all or a part of that water to a Secondary Purchaser.
- 3.26 **Purchaser:** A person, association of persons, or other entity to whom a water contract has been issued (*see* Customer).
- 3.27 **Recreational Use:** The use of water impounded in or diverted or released from a reservoir or watercourse for fishing, swimming, water skiing, boating, hunting, and other forms of water recreation, including aquatic and wildlife enjoyment, and aesthetic land enhancement of a subdivision, golf course or similar development by addition of water features such as amenity ponds or water traps from which no water is withdrawn for other purposes.
- 3.28 **Return Water or Return Flow:** That portion of water diverted from a source of water supply and put to Beneficial Use, which portion is not consumed as a consequence of that use and is returned to the source of supply. Return flow includes sewage effluent.
- 3.29 **Reuse or Direct Reuse:** The authorized use of water obtained pursuant to a water contract, for the Beneficial Use identified in and within the service area of the water contract, which water remains unconsumed after the water is used for the original purpose of use but before that water is either

disposed of or discharged or otherwise allowed to flow into a stream, watercourse, lake or other body of state-owned water.

- 3.30 **Secondary Purchaser:** A Purchaser who receives firm water under contract with LCRA through delivery from a Primary Purchaser.
- 3.31 **Standard Contract:** A contract that may be issued by the General Manager or his/her designee without specific approval of the Board of Directors in accordance with these rules. The General Manager may, at his or her discretion, recommend that any request for a Standard Contract be considered by the Board if the General Manager determines there are extenuating circumstances.
- 3.32 **Surplus Water:** Water taken from any source in excess of the initial or continued Beneficial Use of the appropriator for the purpose or purposes authorized by law. Water that is recirculated within a reservoir for cooling purposes shall not be considered to be surplus water.
- 3.33 **Temporary water contract:** A contract issued for any of the various Beneficial Uses of water authorized in LCRA's Certificates of Adjudication or any other water right associated with water under LCRA's control when a small volume of water is needed for a short period of time.
- 3.34 **TCEQ:** The Texas Commission on Environmental Quality or any of its predecessor or successor agencies.
- 3.35 **Water Conservation.** Water conservation includes, but is not limited to, those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water, and increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.
- 3.36 **Water Conservation Plan:** A plan prepared by an Applicant or Purchaser, in accordance with LCRA's Water Conservation Plan Rules (attached hereto as Appendix A), which is intended to, among other things, promote efficiency in a Purchaser's use of water.
- 3.37 **Water Contract Rules:** The rules promulgated by LCRA's Board of Directors which provide guidance and establish procedures for the administration of LCRA's water contracts and related activities, including LCRA's Water Conservation Plan Rules and LCRA's Drought Contingency Plan Rules.
- 3.38 **Water Management Plan:** A plan required in specific water rights held by LCRA and approved by the TCEQ that defines LCRA's reservoir operations, water management program and policies under those water rights.
- 3.39 **Water right:** A right acquired under the laws of the State of Texas to impound, divert, or use state water.
- 3.40 **Water Contract or Water Sale Contract:** A contractual agreement between LCRA and a Purchaser for the sale of water from the source of supply as specified in Section 6.3 of these rules.

ARTICLE 4. APPLICATION PROCEDURES

- 4.1 Application submittal.
 - (a) The Applicant shall submit to LCRA for review and approval a water contract application and associated materials as described in Article 5 of these rules. Prior to submittal of the application, the Applicant (or the Applicant's representative) may request a meeting with LCRA staff to discuss the application procedure and various requirements.
 - (b) An application for a single contract for multiple purposes of use may be submitted unless the General Manager or his/her designee finds that a separate application and contract for each category of use is required for accounting, reporting, or consistency with any underlying LCRA water right.
 - (c) The timelines in these rules for LCRA staff to conduct its administrative and technical review of an application are intended as guidance to be followed in good faith and are not enforceable by the Applicant or any other party against LCRA. Failure by LCRA to complete

review within the timelines provided in these rules shall not constitute a waiver by LCRA of any of its rights. The timelines in these rules are not applicable to review of an application that requires a non-standard contract.

- (d) An application is considered filed on the date the Applicant delivers the application to LCRA or deposits the Application with the United States Postal Service by certified mail addressed to LCRA at the following address: Lower Colorado River Authority, c/o Firm Raw Water Sales, 3700 Lake Austin Blvd., Austin, TX 78767.

4.2 Administrative Review.

- (a) LCRA staff shall use reasonable efforts to conduct a review of the application for administrative completeness and provide written notice to the Applicant within ten (10) business days after the date the application is filed that specifies the necessary documents or other information needed to consider the application administratively complete. Such notice shall also specify the date on which the application will expire if the documents or other information is not provided. To be determined administratively complete, Applicant must submit all information required under Article 5 of these rules.
- (b) If the application is determined to be administratively incomplete on its face, LCRA staff shall notify the Applicant in writing of the deficiencies. After receipt of such notice from LCRA, the Applicant shall have fifteen (15) business days to file additional information as requested to correct such deficiencies.
- (c) If the information subsequently provided by Applicant does not allow LCRA staff to determine that the application is administratively complete, or if Applicant does not provide additional information, then LCRA staff shall return the application to Applicant as administratively incomplete.
- (d) In the event that LCRA determines that it has insufficient supplies of firm water to meet the requested needs of competing contract applications for firm water, LCRA shall use the order of preferred uses contained in Texas Water Code (currently, section 11.024) in determining the preference in contracting to assign to requests that are deemed administratively complete on the same date.

4.3 Technical Review.

- (a) Once the application has been declared administratively complete, LCRA staff shall use reasonable efforts to conduct a technical review of the application material within forty-five (45) business days of the declaration of administrative completeness.
- (b) The review of the Applicant's proposed water conservation plan and any applicable drought contingency plan shall be conducted as part of the technical review in accordance with the procedures published in LCRA's Water Conservation Plan Rules, attached hereto as Appendix A; LCRA's Drought Contingency Plan Rules, attached hereto as Appendix B; and TCEQ rules governing water conservation plans and drought contingency plans. Contracts will not be presented to the LCRA Board of Directors and/or approved by LCRA staff without LCRA staff approving Applicant's water conservation and drought contingency (if applicable) plans.
- (c) If necessary, an extended technical review period shall be provided to determine: (i) the source of supply, infrastructure, water right permits or other authorizations needed to supply water under the contract; (ii) the time frames in which water may be developed under the contract; and, (iii) the appropriate share of the costs to be contributed by the Purchaser, or charged to the Purchaser through surcharges, in addition to the rates, fees and charges under a Standard Contract. Such extended technical review shall be necessary for: (i) any contract request for an amount of 1,500 acre-feet of water or greater; (ii) any contract request for

which the water supply would be inconsistent with the most recently approved Lower Colorado Regional Water Plan; or, (iii) any contract request for which staff determines that the request seeks a supply for which water may not be immediately available from existing supplies without additional water right permits, infrastructure, or firm water supplies. Technical review of all other aspects of the application material will be conducted in accordance with the procedures herein.

- (d) After the appropriate technical review has been completed, the Applicant shall be notified of the approval or rejection of the application. In addition, staff shall provide to Applicant proposed non-standard terms for inclusion in the contract. If additional information is needed to complete the technical review of the application, LCRA shall notify the Applicant in writing and the Applicant shall have thirty (30) business days from receipt of such notification to submit the additional information to LCRA.
- (e) If the Applicant fails to submit the requested information within the requested timeframe, the application will be returned.
- (f) If Applicant provides the requested information and LCRA staff reviews it and approves, LCRA shall provide Applicant a final draft of the proposed contract. If Applicant accepts the terms of the final draft, then Applicant shall provide public notice in accordance with Section 4.4.
- (g) No reservation of water or other consideration shall be made for the requested water until execution of the contract.

4.4 Notice of Application.

- (a) Upon notice by staff of the completion of the technical review of an application for which Board approval is required and acceptance by Applicant of LCRA's proposed contract terms, including preparation of all necessary exhibits, the Applicant shall cause to have published at its own expense in a newspaper of general circulation in the county or counties where the water will be impounded, diverted, or otherwise used notice of the application and proposed Board action.
- (b) Notice of the application and proposed Board action shall contain:
 - 1) the name and address of the Applicant;
 - 2) the date on which the application was received by LCRA;
 - 3) the proposed amount, purpose of use and location of the requested water;
 - 4) a description of the diversion works and impoundment(s) and their locations;
 - 5) the time and location where the Board will consider the application; and
 - 6) information on where a person may obtain a copy of the application from the Applicant.
- (c) The date of publication of notice of the application and Board action shall not be less than 30 days prior to the date set for Board consideration of the application.
- (d) An affidavit of publication from the publisher shall be submitted by the Applicant to the General Manager or his or her designee within five (5) business days of publication.
- (e) The Applicant also shall provide mailed notice by certified mail of the application and proposed Board action to the Commissioner's Court of the county or counties in which the requested water is proposed for impoundment, diversion, or use. Such notice shall contain the information as provided for publication in this section and shall be received by the Commissioner's Court not less than 30 days prior to the date set for Board consideration of the application. Receipt of delivery of certified mail shall be provided by the Applicant to the General Manager or his/her designee within five (5) business days of Applicant's receipt of the delivery receipt.
- (f) LCRA shall not take action on an application for which notice is required until notice is given

as required by this section and proof of publication and delivery is provided to LCRA in accordance with this section.

- (g) If action on the application is delayed to a Board meeting held within 6 months of the date for which notice was provided, the Applicant shall not be required to renotece.

4.5 Board Approval Required.

- (a) The following contracts and contract amendments are subject to approval by the LCRA Board of Directors:
 - 1) all proposed water contracts, whether a Standard Contract or not, with a Maximum Annual Quantity of at least 500 acre-feet per annum;
 - 2) amendments to existing contracts with a MAQ of at least 500 acre-feet per annum that increase the term of the contract;
 - 3) amendments to existing contracts that increase the MAQ to at least 500 acre-feet; and,
 - 4) any non-standard water contracts or substantive amendments to non-standard water contracts.
- (b) All other contracts and contract amendments may be approved by LCRA's General Manager or his/her designee in accordance with these rules.

4.6 Expiration of Application.

An application shall expire without further action by LCRA forty-five (45) days after it is filed if: (1) the Applicant fails to provide documents or other information necessary to comply with LCRA's technical requirements relating to the form and content of the application; (2) the LCRA provides notice to the Applicant as required by Rule 4.2; and (3) the Applicant fails to provide the specified documents or other information within the time provided in the notice.

4.7 Action on an Application by the General Manager or Designee.

- (a) Upon completion of staff technical review, if staff determines that a contract can be approved by the General Manager or his/her designee as provided by these rules, staff will prepare the contract for execution and send such contract to the Applicant for signature.
- (b) Within thirty (30) days of receipt, the proposed contract(s) shall be signed by the Applicant or the Applicant's duly authorized representative, and returned to LCRA. If the Applicant is a corporation, partnership, public district, county, municipality, or other corporate entity, the contract shall be signed by a duly authorized official. Written evidence in the form of bylaws, charters, resolutions or other written documentation that specifies the authority of the official to take such action shall be submitted with the signed contract. A corporation may file a corporate affidavit as evidence of the official's authority to sign.
- (c) Upon LCRA's receipt of the proposed contract signed by the Applicant or the Applicant's duly authorized representative and all other documentation requested as part of the application process, the proposed contracts will be delivered to LCRA's General Manager or his/her designee for signature.

4.8 Action on an Application by the Board

- (a) Following public notice of the application provided in accordance with Section 4.4., LCRA staff shall schedule the proposed contract request for consideration by the Board. If approved by the LCRA Board, staff will prepare the contract for execution and send such contract to the Applicant for signature.
- (b) Within thirty (30) days of receipt, the proposed contract(s) shall be signed by the Applicant or the Applicant's duly authorized representative, and returned to LCRA. If the Applicant is a

corporation, partnership, public district, county, municipality, or other corporate entity, the contract shall be signed by a duly authorized official. Written evidence in the form of bylaws, charters, resolutions or other written documentation that specifies the authority of the official to take such action shall be submitted with the signed contract. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

- (c) Upon LCRA's receipt of the proposed contract signed by the Applicant or the Applicant's duly authorized representative and all other documentation requested as part of the application process, the proposed contracts will be delivered to LCRA's General Manager or his/her designee for signature.

4.9 Application Following Default.

LCRA reserves the right to reject an application for a water contract or renewal of a water contract by a person or entity that has defaulted on another water contract with LCRA. LCRA reserves the right to reject an application for a water contract by an entity for which the majority interest is controlled by a person or entity that has defaulted on another water contract.

4.10 Retention in Central Records and Transmittal to Purchaser.

Following execution of the water contract by the LCRA General Manager or his/her designee the contract will be incorporated into LCRA's Central Records where an original executed contract will be retained as a public record. Another original executed contract will be transmitted to the Purchaser for its records as soon as reasonably possible following the approval of the contract.

4.11 TCEQ filing requirements.

LCRA staff shall file with the TCEQ a copy of any newly executed water contracts as may be required by TCEQ's substantive and procedural rules for water rights.

ARTICLE 5. APPLICATION CONTENT REQUIREMENTS

5.1 Elements of an administratively complete application.

An application for a water contract shall be considered administratively complete upon the receipt by LCRA of the following information:

- (a) The full name, physical address, mailing address (if different than physical address), telephone number, and social security or taxpayer identification number for each Applicant, as follows:
 - 1) A corporation shall be designated by the firm name followed by the words "corporation" or "Inc." Corporate applications shall include a listing of all corporate executives, titles, and social security numbers. A partnership shall be designated by the firm name and the words "a partnership." Partnership applications shall include a listing of all partners, titles, and social security or taxpayer identification numbers. A joint venture shall be designated by the joint venture's name followed by the words "Joint Venture." Joint venture applications shall include a listing of all ventures, titles, and social security or taxpayer identification numbers. A trust shall be designated by the trust's name, the trustee's name, followed by the word "trustee." Trust applications shall include the taxpayer identification number and/or social security number of the trustee;
 - 2) If someone other than the named Applicant executes the application, the name, position, mailing address and telephone number of the person executing the

application shall be given as well as documentation evidencing the authority of the person to sign the contract on behalf of the named Applicant.

- (b) Documentation describing the Applicant's organizational structure (e.g., if the Applicant is a corporation, provide a certificate from the Secretary of State);
- (c) All information requested by LCRA to establish:
 - 1) the Applicant's intended water use, including a Demand Schedule of the water to be made available by LCRA under the proposed contract;
 - 2) whether the application is for a firm or interruptible supply of water;
 - 3) the amount, or Maximum Annual Quantity, of water that Applicant requests LCRA to supply, including a detailed description of how Applicant determined the amount necessary for the proposed Beneficial Use;
 - 4) the appropriate water source and any necessary infrastructure or water rights amendments that may be required to supply the water requested (based on Applicant's proximity to water source, topographic, hydraulic, hydrologic and jurisdictional constraints);
 - 5) the Applicant's intended method of wastewater disposal, and the estimated amount and location of Return Flow;
 - 6) whether the Applicant intends to request a renewal or amendment of the contract upon its termination and any related future long-term water supply requests by the Applicant to LCRA; and
 - 7) the Applicant's compliance with any applicable rules of any regulatory agencies.
- (d) The application fee as provided in the amount described in Section 5.8 of these rules;
- (e) Maps showing the Point(s) of Availability, point of delivery (as appropriate), point of Return Flow (if any), and the legal description of the service area in the manner required in these rules. (Applicants for domestic use contracts not to exceed 10 acre-feet per year need only supply such maps upon request by LCRA);
- (f) A copy of any water rights or permits, or applications for water rights or permits, associated with the Point(s) of Availability or service area upon which Applicant may rely;
- (g) If the Applicant is a corporation, partnership or joint venture, documentation showing the Applicant's legal rights with regard to the property included in the service area (e.g., deed, lease);
- (h) A draft Water Conservation Plan and Drought Contingency Plan, unless these rules or LCRA's Water Conservation Plan Rules or LCRA's Drought Contingency Plan Rules do not require such a plan for the type of contract sought by Applicant;
- (i) An analysis of how the requested amount of water was determined by the Applicant to be necessary for the proposed use when considering the Beneficial Use of the water without waste and the full implementation of the Applicant's water conservation plan;
- (j) If Applicant has an alternate source of water supply that it will also be diverting from the same facilities used to divert water under the requested contract, Applicant shall provide a proposed accounting plan setting forth how it intends to account for and report water used from the various sources of supply;
- (k) An estimate, prepared and sealed by a Texas-registered professional engineer, of conveyance, delivery or system losses that are expected to be incurred to make the amount of water requested available at the Point(s) of Availability under the contract. Upon approval by LCRA staff of appropriate estimates, conveyance, delivery or system losses amounts shall be incorporated into the requested MAQ, as appropriate;
- (l) For a contract for water upstream of any of the Highland Lakes, or water from a tributary of the Colorado River downstream of the Highland Lakes, a technical analysis performed and sealed by a Texas-registered professional engineer, of the potential maximum impact of the

proposed sale on LCRA's Combined Firm Yield of Lakes Buchanan and Travis or any other senior downstream water rights that the LCRA staff may designate. Upon acceptance and approval of appropriate estimates by LCRA, such analysis shall be used to establish the MAQ of the contract. Applicant also shall include such estimates in its application for the Permit to Use State Water necessary to use the water sought in the contract request;

- (m) Any other information required by the General Manager, these rules, the application form, or otherwise by law; and,
- (n) The notarized signature of a representative authorized to sign the application on behalf of the Applicant.

5.2 Maps and descriptions required.

The Applicant shall submit four (4) copies of the items listed below, except that an Applicant for a domestic use contract not to exceed 10 acre-feet per year shall only submit such items upon request by LCRA. All maps should be of reasonable size and scale to permit attachment to the contract as exhibits and must be legible and readable when reduced to 8.5" x 11" size. The items below will be attached to the water contract and incorporated by reference.

- (a) Point(s) of Availability map. The Applicant shall provide a map identifying the location of all Points of Availability (points of diversion and/or impoundment) and points for discharge of Return Flow, if any. The map shall be a 7-½ minute United States Geological Survey topographic map indicating the bearing and distance from an original county survey, or from abstracts or surveys in the State of Texas Stream Adjudication Map, to the Points of Availability or its latitude and longitude. The Applicant shall also provide GPS coordinates of any intakes or impoundments.
- (b) Legal description. The Applicant shall provide the legal description of the service area. A complete metes and bounds survey of the service area, or other legal documentation filed with county, state, or federal agencies (e.g., a plat filed in county public records; a Certificate of Convenience and Necessity map filed with the TCEQ) will be accepted. The Applicant may submit as a service area only that area for which it has a legal right and requisite authority to serve. The service area for a city shall not extend outside of the city's extraterritorial jurisdiction absent documentation showing the city's authority to serve the area. Service area as defined in a Certificate of Convenience and Necessity (CCN) or service areas of officially recognized political subdivisions should appear exactly as they appear in the documentation of any applicable regulating authority. If an Applicant has applied for but not yet been granted a CCN or similar right to serve a particular area, the service area proposed in the contract shall be that area that is included in the filing for a certified service area. If no CCN or other right to serve is required, the service area shall be that area where the Applicant intends to provide water.
- (c) Service area map. The Applicant shall provide a map delineating the service area in relation to the surrounding landmarks, established cities, and major thoroughfares. This map should reflect the legal description provided above.

5.3 Water Conservation, Drought Contingency Plans.

- (a) The Applicant shall submit for review and approval four (4) copies each of a water conservation plan and a drought contingency plan (where applicable) in accordance with the LCRA Water Conservation Plan Rules (attached hereto as Appendix A), LCRA Drought Contingency Plan Rules (attached hereto as Appendix B) and any applicable TCEQ

regulations for drought contingency plans. The plans must address the requirements of the rules in regard to conservation and drought contingency.

- (b) LCRA staff will review each plan to determine whether it is consistent with the LCRA Water Conservation Rules, LCRA Drought Contingency Plan Rules and applicable state law or rules. Any required plans approved by LCRA staff will be attached to the proposed contract and will be incorporated into the contract by reference.
- (c) LCRA, through written notice to Purchaser, may require a Purchaser from time to time to amend its Water Conservation Plan or its Drought Contingency Plan to reflect changes in LCRA's Water Conservation Plan Rules, LCRA's Drought Contingency Plan Rules, or state law or rules. If Purchaser subsequently fails to amend its plans in accordance with such amended rules or changes in applicable state law, or fails to implement its conservation plan, LCRA may terminate the water contract following written notice to Purchaser and opportunity to cure of not more than thirty (30) days.

5.4 Purchasers with multiple contracts.

In the event that the Applicant has a pre-existing water supply contract with LCRA for a different use or service area than the proposed contract, and the Applicant desires to designate some or all of the same Point(s) of Availability for its proposed contract, the Applicant must provide four (4) copies of the following additional information:

- (a) A map of reasonable size and scale, showing the Point(s) of Availability to be shared and the Points of Delivery on the Purchaser's water conveyance system for Purchaser's existing and proposed contracts. Such map will be incorporated into the proposed contract(s) by reference.
- (b) At the Points of Delivery, Purchaser shall install appropriate water measuring devices in order to determine the amount of water being supplied under each contract. The map submitted pursuant to subsection (a) shall show the location of such measuring devices.

5.5 Secondary water sales.

In the event the Applicant, as a Secondary Purchaser, desires to procure a contract for water from LCRA but have another of LCRA's water sale customers, the Primary Purchaser, divert, and deliver that water from LCRA's firm supply, or the Applicant is a Primary Purchaser that will divert and deliver water to a Secondary Purchaser, the Applicant must provide four (4) copies of the following additional information:

- (a) A map of reasonable size and scale, showing the point where the Secondary Purchaser's water conveyance system is connected to the Primary Purchaser's water conveyance system. Such map will be incorporated into the proposed contract by reference. At the Point of Delivery, the Secondary Purchaser shall install an appropriate water measuring device in order to determine the amount of water being supplied to the Secondary Purchaser such that the Primary Purchaser is not charged for that water.
- (b) A written agreement between the Secondary Purchaser and the Primary Purchaser for the supply of water.

5.6 Non-Standard Application.

Any application for a contract that, in staff's determination, would require terms in addition to, or a variance from, the Standard Contract terms shall provide the information and fees requested in this Article and shall provide any additional technical information or data that the General Manager or his/her designee determines is necessary for the evaluation of the contract application, including but not limited to any information related to the infrastructure, water right or other authorizations, estimated costs and schedules that may be needed for LCRA to supply the water sought by the

application. The General Manager or his/her designee will work with the Applicant to develop a proposed schedule for having the Applicant or a third party (on which third party Applicant and the General Manager or his/her designee must agree) develop any additional technical or other information needed for LCRA to evaluate the contract application. In the event that the Applicant does not provide the requested additional technical or other information within a reasonable timeframe as outlined in the proposed schedule, then said application shall be returned to Applicant as administratively incomplete with the deficiencies duly noted.

5.7 Application Forms.

LCRA staff shall furnish, upon written request, an application form(s) and instructions for preparing such application. The use of the application form is not mandatory; however, the Applicant must submit all the information required by these rules and requested in the application form. Should an Applicant choose not to use the form provided by LCRA, the Applicant shall provide all data requested in the application form and by these rules in such a manner that the information is separated into paragraphs numbered to correspond with those on the printed form. All applications shall be typewritten or printed legibly in ink. Illegible applications will be returned to the Applicant.

5.8 Application fees and Deposit.

(a) Deposit

Except as set forth in this section, any Applicant seeking a contract for 500 acre-feet per year or more shall provide a deposit equal to the Reservation Rate in effect on the date the application is submitted multiplied by the Maximum Annual Quantity. Upon approval and execution of any proposed contract, LCRA shall use funds on deposit as a credit towards the customer's Reservation Fees. If no contract is issued, LCRA shall refund the deposit within three (3) business days of any final LCRA action regarding such contract request, less any additional expenses incurred by LCRA in reviewing such application, if the Application Fees were insufficient to cover such expenses. A deposit is not required for applications submitted by existing customers in good standing or governmental authorities that are exercising taxing authority (including contract tax pledges in support of the raw water contract).

(b) Application Fees.

A non-refundable application fee shall be charged for all applications for firm and interruptible water contracts (except those governed by Article 9), including contract renewals, as described below. The fee must be submitted with the application. Applicants requesting more than one water contract must submit the appropriate application fee for each application. The LCRA Board of Directors reserves the right to from time to time modify the fees associated with water contract applications.

(1) Temporary contract	\$100
(2) Contract for Domestic Use (≤ 10 acre-feet/year)	no charge
(3) Landscape irrigation or recreational use contract (≤ 20 acre-feet/year following standard water conservation and drought contingency plans)	\$500
(4) Standard contracts other than (1), (2) or (3), above	
i. Application for a Replacement Standard Contract or Substantive Amendment (< 500 acre-feet/year)	\$2,000
ii. Application for a Replacement Standard Contract or Substantive Amendment (≥ 500 acre-feet/year) of additional water	\$2,000 plus \$1.00 per acre-foot/year

above 500 acre-feet/year	
iii. Application for a New Contract	
<500 acre-feet/year	\$2,000
≥500 acre-feet/year and <5,000 acre-feet/year	\$2,000 plus \$1.00 per acre-foot/year of additional water above 500 acre-feet/year
≥5,000 or more acre-feet/year	\$10,000 plus \$1.00 per acre-foot/year of additional water above 500 acre-feet/year
iv. Application for a Nonsubstantive Amendment to a Standard Contract or a Substantive Amendment not increasing the MAQ or duration or requiring a replacement contract or an update to the water conservation or drought contingency plan	\$500

* In the event that the General Manager or his/her designee determines that the application fee filed with an application for a non-standard contract is not sufficient to cover the costs of LCRA staff evaluating the technical information provided by the Applicant, the General Manager or his/her designee may, at his/her sole discretion, require the Applicant to: (1) provide additional funds to LCRA in advance of LCRA conducting further evaluation of the application, or (2) reimburse LCRA for any such costs. LCRA may also negotiate an agreement with the Applicant to allow for such evaluation to take place by a third party chosen by the General Manager or his/her designee at the expense of the Applicant. Applicant's refusal to provide additional funds necessary for LCRA to complete its technical evaluation within thirty (30) days of receiving a request from LCRA for such funds shall be grounds for rejecting the application.

ARTICLE 6. STANDARD CONTRACT PROVISIONS

6.1 Required Standard Contract Terms Regarding Water Use.

The proposed contract must address the following elements regarding the Applicant's proposed use of the water:

- (a) Purpose. Classification of the purpose for which the water will be used shall be determined in accordance with the definitions in Article 3. The General Manager or his/her designee may issue contracts for multiple purposes provided the Maximum Annual Quantity is less than 500 acre-feet per annum. A proposed contract for multiple purposes with a Maximum Annual Quantity of 500 acre-feet per annum or more must be approved by the LCRA Board of Directors.
- (b) Amount. The contract shall specify the Maximum Annual Quantity of water to be supplied by LCRA. LCRA shall determine the reasonableness of the MAQ requested by the Applicant by evaluating the availability of water, LCRA's current water commitments, the amount necessary for the Beneficial Use of the water without waste for the proposed use, Purchaser's Water Conservation Plan, the amount of conveyance, delivery or system losses for the proposed contract, and any impact to LCRA's water rights. Agency and industry standards shall be used in LCRA's assessment under this section including, but not limited to, the Water

Conservation Implementation Task Force Report to the 79th Legislative (TWDB November 2004); Texas Water Development Board Water Conservation Task Force Best Management Practices; and, other best management practices, standards and guidance commonly used by the same industries. To the extent that Purchaser proposes a MAQ that is based on standards other than those provided in this section, Purchaser shall submit a written justification describing the reasons the standards were not employed in the calculation of the MAQ. In addition, LCRA shall use the following criteria in determining the reasonableness of the MAQ:

- 1) Temporary Uses:
Shall not exceed ten (10) acre-feet per year or any lower limitations provided by these rules for specific types of temporary uses.
- 2) Municipal Uses:
 - (i) Shall not be less than the average annual quantity required by the TCEQ under its safe yield requirements for public drinking water systems.
 - (ii) Shall not result in an average per capita consumption greater than the lesser of:
 - (a) the average per capita consumption of adjacent and similar water users; or,
 - (b) the average per capita consumption recommended in the current approved and applicable Regional Water Plan.
- 3) Irrigation Uses:
 - (i) Shall be determined by consideration of crop type, soil characteristics, topography, method of irrigation, average annual precipitation, and average annual evaporation.
 - (ii) Shall not result in an average per acre water demand greater than the average per acre water demand of adjacent and similar water users.
- 4) Industrial Uses:
 - (i) Shall be justified, in a written report, by a registered professional engineer's estimate of the water demands of the specific industrial process being used.
 - (ii) Shall not result in an average daily consumption greater than the average daily demand of similar water users in the same region.
- 5) Firm or Interruptible. The Contract shall specify whether the contract is for a firm or interruptible supply of water.

Notwithstanding the above, for contract purposes, the MAQ shall be no less than 0.75 acre-feet per annum.

6.2 Surplus Water and Return Flows.

In accordance with state law and Board Policy 501, water that Purchaser diverts but does not use for Beneficial Use in accordance with the contract shall be returned to the Colorado River or a tributary of the Colorado River unless otherwise provided in a Board-approved non-standard contract.

6.3 Source of Supply.

- (a) Unless specifically provided otherwise in the contract, LCRA may make available water under a contract from any existing or future source of firm water supply available to LCRA.
- (b) It is the Purchaser's sole responsibility to obtain access to the source of supply. A contract does not convey any express or implied easements.

6.4 Terms of contracts.

- (a) The standard terms for firm water contracts are as follows:

(i) Temporary Contracts	Maximum	Minimum
	3 years	30 days

(ii) Domestic Use Contracts (≤ 10 ac-ft)	10 years	1 year
(iii) Landscape Irrigation and Recreational Contracts (≤ 20 ac-ft)	10 years	3 years
(iv) Municipal or Industrial Contracts	40 years	5 years
(v) Industrial Contracts (< 500 acre-feet)	40 years	1 year
(vi) Other Firm Contracts	10 years	5 years

The standard terms for interruptible water contracts are a minimum of 1 year and a maximum duration through year 2018.

- (b) Purchaser may terminate or reduce the MAQ of a temporary contract or interruptible water supply contract, to be effective after the completion of the minimum term defined in Section 6.4(a), subject to a minimum of one year's written notice. For firm contracts of less than 500 acre-feet, Purchaser may terminate or reduce the MAQ only after the five-year anniversary of the Effective Date of the contract and after providing a minimum of one year's written notice to LCRA of its intent to terminate the contract or reduce its MAQ. For firm, non-temporary contracts of 500 acre-feet or more, Purchaser's ability to terminate or reduce the MAQ is limited as follows: beginning with the five-year anniversary of the Effective Date of the contract, Purchaser may: (a) reduce its MAQ by up to 25 percent of the original contract quantity once every five years; or (b) if LCRA's other firm, non-temporary commitments have increased in an amount greater than projected under LCRA's Water Supply Resource Plan, Purchaser may terminate the contract or reduce the MAQ by a quantity greater than 25 percent.
- (c) A Purchaser pursuant to a municipal or industrial use contract based on LCRA's standard form executed on or after January 1, 2001 or a contract that results from an application filed before November 16, 2011, may: i) reduce the MAQ provided under the contract after the first anniversary of the date the contract takes effect by an amount up to, but not to exceed a total of, twenty-five percent (25%) of the contract's original MAQ; or, ii) terminate the contract after the third anniversary of the date the contract takes effect provided that LCRA has received administratively complete applications for a total amount that exceeds the MAQ of the contract to be terminated. Any such reduction or termination shall be made by a written amendment to the contract or termination instrument on a form approved by LCRA staff and shall be subject to the minimum notice requirements defined in Section 6.4(b).
- (d) LCRA's General Manager, or his/her designee, in his/her discretion, may approve a term in excess of the maximum term provided in this rule if a Purchaser requests a longer term that coincides with the terms of loans, bonds, or other financial instruments, as required by governmental entity or financial institution or for other good cause. The Purchaser, to justify the longer term, must provide, in writing, a letter from that governmental entity or financial institution requesting such extension or other special circumstances or compelling reasons in support of the request for an extended term for good cause. In determining whether to grant a longer term, the General Manager or his/her designee shall consider the priority for firm water for municipal and domestic use provided in these rules.
- (e) If customer has not used at least ten (10) percent of its contract quantity on an annual basis within the first ten (10) years, LCRA may require that customer demonstrate that water will be put to use within the next two years. If customer does not demonstrate such progress, or if at least 10 percent of the contract quantity is not put to use on an annual basis within the two year period, LCRA may terminate the contract or reduce the contract quantity to an amount LCRA deems reasonable under its water contract rules in effect at the time.
- (f) No continuation of the service obligation under any contract after the expiration of the contract term shall be expressed or implied. The terms of a contract may expressly provide that the Purchaser is required to develop alternative or replacement supplies prior to the expiration of the contract and may further provide for the enforcement of such terms by

penalties, fees, or other such provision. LCRA, however, in its sole discretion, may extend the term of an existing contract for a specified period of time pending issuance of a new contract to the same customer provided that the customer has submitted an application for renewal contract prior to the expiration of the existing contract.

6.5 Notices required.

A Purchaser shall notify LCRA in writing of certain activities throughout the term of a Purchaser's contract, which notice requirements shall include those listed below, unless otherwise required by law, in addition to those listed in the contract:

- (a) Related water rights permit. In the event the Purchaser is required by state law to obtain a water right permit or water right permit amendment – including but not limited to contractual, term, or temporary water right permits – from TCEQ related to water that is reserved or purchased pursuant to an LCRA water contract, Purchaser shall provide LCRA both (i) a copy of the application for the water right permit or water right permit amendment within five (5) business days of its filing with TCEQ; and, (ii) a copy of the water right permit or water right permit amendment promptly following the issuance of the water right permit or water right permit amendment. Purchaser also shall provide LCRA two copies of any notice or action by TCEQ of a violation or termination of the water right permit or water right permit amendment within ten (10) days of Applicant receiving notice from TCEQ. By March 15th of each year, Purchaser shall also provide LCRA a copy of its annual water use reports filed with TCEQ.
- (b) Notice of intent to divert. A Purchaser shall notify LCRA in writing of its intentions to initiate diversions of water under the Purchaser's contract not more than eight (8) weeks, nor less than four (4) weeks, prior to Purchaser's initiation of diversions. Such notice shall include Purchaser's anticipated diversion rate, not to exceed the Maximum Diversion Rate. If diversions of water are being continued from a previous contract or other right to divert, and no change in diversion rate is anticipated, no notice is necessary. Purchaser shall notify LCRA in writing not more than two (2) weeks prior to making any change in its planned diversion rate, not to exceed the Maximum Diversion Rate specified in this Contract.
- (c) Reuse. A Purchaser shall notify LCRA in writing not more than eight (8) weeks, nor less than four (4) weeks, prior to implementing a program for Reuse for water that is reserved or purchased pursuant to an LCRA water contract;
- (d) Transfer to Secondary Purchaser. A Primary Purchaser shall notify LCRA in writing of any agreement it has made to divert or deliver water for a Secondary Purchaser. Such notice shall be provided at least thirty (30) days prior to any diversions or deliveries from the Primary Purchaser to the Secondary Purchaser and shall include the information required by Section 5.5 of these rules.
- (e) Termination of contract. A Purchaser shall notify LCRA pursuant to the Purchaser's contract of its desire to cancel said contract. A Purchaser shall remain liable for all fees and charges accruing under the contract through the effective date of termination of the contract. Termination of the contract does not release a Purchaser of its obligation to pay in full all fees and charges that have accrued prior to the contract being terminated;
- (f) Change of ownership. A Purchaser shall provide LCRA prior written notice of any change of ownership of Purchaser or the sale, conveyance, merger, or dissolution of the corporate entity or Service Area identified in the Purchaser's contract. Such notice does not constitute the assignment of Purchaser's rights or duties under Purchaser's contract;
- (h) Change of address or executive staff. A Purchaser shall notify LCRA of any change of address or change of executive staff that was provided in Purchaser's application within ten (10) days of the change;

- (i) Annual reports of due diligence. Purchaser is required to report to LCRA, on a yearly basis, progress made toward obtaining any and all necessary authorizations (e.g. TCEQ permits, Army Corps of Engineers permits, etc.) as well as progress towards commencing and completing construction of facilities which will be used to divert, impound, and/or convey water under Purchaser's contract; and
- (j) As-built plans and location of facilities. Purchaser shall provide to LCRA "as-built" drawings and plans (including GPS coordinates of any intakes or impoundments) for facilities which were actually built and will be used to divert, impound, and/or convey water under Purchaser's contract within thirty (30) days of completion of construction.

6.6 Provision of Regulatory Approvals.

Except for water rights permits governed by Section 6.5 (a) of these rules, a Purchaser shall provide LCRA copies of any approvals received from federal, state or local agencies that relate to water reserved or purchased pursuant to Purchaser's contract or to facilities intended to divert, transport or use water provided under Purchaser's contract within a reasonable amount of time following a written request by LCRA staff.

ARTICLE 7. AMENDMENTS

7.1 Amendments to Standard Contract terms.

When it is necessary to amend the Standard Contract terms to more accurately define specific circumstances related to the Applicant's particular location, intended use, etc., LCRA's General Manager or his/her designee may amend the standard form water contract, unless the amendment is a substantive amendment requiring other actions or approval as provided herein.

7.2 Amendments to existing contracts.

(a) If a Purchaser desires to amend an existing contract, the following conditions apply:

- 1) No amendments will be made to contracts with unpaid account balances.
- 2) Substantive amendments (as determined by the General Manager or his/her designee except as otherwise provided herein) may be made to existing contracts based on the most current LCRA standard form water contract. Substantive amendments shall include, at a minimum:
 - (i) assignment of the contract;
 - (ii) increasing the contract's term;
 - (iii) increasing the MAQ; and,
 - (iv) service area amendments that (regardless of the amount of the current service area that may be removed) add additional service area not within the current service area in the amount of at least: a) fifty (50) acres; or, b) ten percent (10%) of the current service area.

Substantive amendments shall require approval by either LCRA's General Manager or the LCRA Board as specified in section 4.5 of these rules.

- (b) Only contracts based on the most current LCRA Standard Contract terms may be amended for substantive amendments. If the contract sought to be substantively amended does not contain the most current LCRA Standard Contract terms, the Purchaser will be required to submit an application for a new water contract to replace the existing non-conforming water contract in accordance with these rules.
- (c) Nonsubstantive corrections and amendments may be made by LCRA's General Manager, or his/her designee, without LCRA Board of Directors approval. Sufficient documentation shall be supplied by the Purchaser to justify such amendments.

7.3 Contract assignments.

- (a) Water Contracts do not convey with the title of the property in the contract service area.
- (b) If a Purchaser desires to assign the rights and duties under its contract the following conditions apply:
 - 1) Water contracts may only be assigned as specified in the contract; and
 - 2) LCRA may reject any assignment not made with LCRA's consent, which consent must be obtained in advance of the sale, trade or transfer.
- (c) If a Purchaser desires to assign a contract and such assignment is permitted under the terms of that contract, the following conditions apply:
 - (1) LCRA will not authorize the assignment of any contract that has an unpaid account balance;
 - (2) LCRA will not authorize the assignment of any contract that is not based on the most current Standard Contract form. LCRA may, however, authorize the assignment of an existing contract if that assignment incorporates all the language and policies reflected in the most current Standard Contract form.;
 - (3) the Purchaser must submit legal documentation validating the sale, trade, or transfer of the property covered by the contract's service area; and,
 - (4) both assignor and assignee must execute a written instrument of assignment that clearly discloses the assignee, or new Purchaser, and states that the assignee agrees to abide by all terms and conditions contained in the referenced contract.
- (d) If the property covered by the contract's service area is foreclosed upon, and the entity exercising its lien desires to continue to supply water to the property, LCRA may at its discretion allow a temporary assignment of rights and duties under the contract to the lien holder for a period not to exceed one year. Such assignment will allow the lien holder as the property owner to continue operation of the system until either: (1) it can negotiate a new water contract with LCRA on its behalf; or, (2) the property can be sold to a subsequent owner. In the event that the property is sold, the subsequent owner must negotiate a new water contract within sixty (60) calendar days of the close of the sale of the property if it desires to continue to purchase water from LCRA.

ARTICLE 8. SUPPLEMENTAL REQUIREMENTS

8.1 Water measurement.

- (a) If the water purchased under a contract is to be diverted from a source of supply, Purchaser must measure water diverted with a measuring device approved by LCRA unless otherwise provided in the contract. For all contracts executed on or after January 1, 2016, Purchaser shall be required to measure water use and self-report such use to LCRA on a monthly basis or at such other frequency that may be specified in Purchaser's contract. Measurement of water purchased under contract that does not solely involve the diversion of water from the source of supply (e.g., impoundment of water for recreation or livestock watering) may be accomplished through an alternative method approved by LCRA and included in the contract.
- (b) Meters and measuring devices acceptable to LCRA include the following types: displacement, venturi, multi-jet, turbine (various), propeller, proportional, compound, or other appropriate water meters as recognized by the American Water Works Association. Other measuring devices that may be proposed by a Purchaser must be approved in writing by LCRA. All acceptable meters or measuring devices must, unless otherwise approved in writing by LCRA:

- 1) Be installed on Purchaser's system as near to the water source as practical and upstream of any connections, taps, faucets or other appurtenances where water may be withdrawn.
 - 2) Be installed in a location that provides LCRA with reasonably safe access to the meter for the purpose of making meter readings, testing, and/or periodic inspections and that does not disrupt the periodic reading of LCRA's other customers' meters. A Purchaser must provide LCRA's representatives access across Purchaser's property for inspection, testing and reading of the meter. A Purchaser must provide an all-weather road to facilitate access to meter. LCRA shall have the right to approve both the design of the meter as well as the location of its installation.
 - 3) Be accurate within $\pm 5\%$ of the indicated flow over the range of possible flows. In the case of a contract issued for an on-channel impoundment, an alternative measuring device or methodology with a 5% accuracy may be used with prior approval from LCRA.
 - 4) Be able to measure and register quantities of water in increments of 1,000 gallons or less.
 - 5) Be capable of measuring volumetric flow rates and registering total volumetric quantity.
 - 6) Be installed in accordance with the manufacturer's specifications and consistent with standard engineering practices.
 - 7) Be properly screened to prevent debris from causing meter malfunctions.
 - 8) Be of suitable material and of proper construction to withstand a surface water environment.
 - 9) Have serial number easily visible in its installed location.
 - 10) When installed outdoors be in a covered vault or other solid enclosure.
 - 11) Have hermetically sealed registers or other means to prevent the occurrence of condensation on register glass.
 - 12) Be installed in a manner to prevent flooding of the meter enclosure.
- (c) A Purchaser must repair, replace or make necessary improvements to a meter or other approved measuring device that is not in compliance with these rules promptly after Purchaser becomes aware of the deficiency that causes the measuring device to not comply with these rules. Prior to or immediately following the time that a meter or other approved measuring device goes out of service, Purchaser and LCRA shall agree on an alternative method for determining the amount of water diverted and/or used.
- (d) LCRA, in its sole discretion, may rely on measurements reported to LCRA by a Purchaser but doing so shall not relieve Purchaser from any requirements in these rules relating to meters or measuring devices.
- (e) LCRA, in calculating fees due under a firm water contract, may base fees on a measurement of the amount of water made available from the December meter reading date to the next December meter reading date.

8.2 Testing of Measuring Device.

Periodic testing as required under the terms of a water contract must be performed in accordance with testing specifications as published by the American Water Works Association.

- (a) Where and when possible such testing is to be performed *in situ* (in place). Measuring device testing should be accomplished for those contracts that require periodic testing every 12 months for contracts with a MAQ of greater than 20 acre-feet per year or every 24 months for

contracts with a MAQ up to 20 acre-feet per year. All testing should be performed by qualified personnel familiar with American Water Works Association testing procedures and with a background in such procedures.

- (b) All contracts or contract amendments approved following the effective date of these rules must include the following, or a substantially similar, paragraph:

“In the event PURCHASER fails to test the meter for a period of fifteen (15) consecutive months, [for contracts with a MAQ up to 20 acre-feet per year, substitute “25 consecutive months”] PURCHASER agrees: (1) to provide LCRA reasonable access to the meter so that LCRA may test the meter; and, (2) to pay LCRA for the actual cost of testing the meter plus a fifty dollar (\$50) administrative fee. LCRA will provide PURCHASER a written statement of the cost of testing the meter, and said statement will subject to the payment terms of this contract.”

8.3 Water audit and unaccounted-for water loss.

The Purchaser shall conduct water loss audits in accordance with the Texas Water Development Board rules (Texas Administrative Code, Title 31, Chapter 358).

8.4 Water intakes, diversion works, and impoundments.

- (a) All intakes should be designed by a registered professional engineer using standard engineering practices and should be able to facilitate the diversion of water at various water surface elevations. Intake structures or their appurtenances must not pose a threat to public safety or navigability of the Colorado River or LCRA’s Highland Lakes. Municipal use intakes should be designed in accordance with the TCEQ rules for public water systems. Any and all markers, buoys, floating intake structures or appurtenances must be approved by LCRA. Information relating to the elevations and depth of the intake shall be submitted with the application if the Highland Lakes are the source of supply.
- (b) LCRA representatives shall be provided with reasonable access to any impoundment, storage facility, intake or diversion works for the purpose of inspection and monitoring for compliance with the contract. The diversion works, impoundments, or intake structures shall be equipped or designed in a manner that allows LCRA to access and lock or otherwise prevent Purchasers’ continued diversion or other use of water as a result of a default under the contract and after notice to the Purchaser as provided in the contract.
- (c) It shall be the Purchaser’s responsibility to have the capability to take the water at the Point(s) of Availability. No implied easement to access the source of supply is provided by the contract.
- (d) Table 1 provides reference elevations for designing intakes on the Highland Lakes. However, these elevations should not be construed as a guarantee of any minimum lake elevation.

8.5 Use of LCRA property.

Purchasers are required to secure from LCRA, separate from a Purchaser’s water contract, any leases, easements, or permits necessary to construct and/or operate any facility on, over, or under any LCRA owned property, including but not limited to the water surface of all of LCRA owned reservoirs.

8.6 Exceedance of MAQ.

If the amount of water made available for a Purchaser for any reason exceeds the Maximum Annual Quantity stated in Purchaser’s contract during two (2) consecutive years, or in two (2) out of any four (4) consecutive years, the Purchaser will be required to submit a new application for a replacement contract, including applicable fees, and negotiate a new standard contract for an adjusted MAQ, the reasonableness of which shall be determined consistent with these rules, to the extent LCRA has additional water supplies available.

- 8.7 Upstream or Downstream Tributary Contracts.
A Purchaser for the use of water upstream of any of the Highland Lakes or for use of water from a tributary downstream of the Highland Lakes must also obtain a term or temporary permit from the TCEQ as required by TCEQ's substantive and procedural rules for water rights.
- 8.8 Returned Instrument Fee.
In the event a Purchaser attempts to pay LCRA by check, draft, credit card or any other similar instrument and the instrument is returned or refused by the bank or other similar institution as insufficient or non-negotiable for any reason, Purchaser shall be assessed and must pay to LCRA, per each returned instrument, LCRA's current returned instrument fee. The LCRA returned instrument fee is currently \$25.00 per returned instrument.
- 8.9 Pro rata reduction during water shortage.
- (a) During a water shortage, the water supply provided by LCRA under a water contract is subject to curtailment in accordance with section 11.039 of the Texas Water Code, LCRA's water rights, LCRA's Drought Contingency Plan, and any curtailment plan developed with customers as required by LCRA's Water Management Plan.
 - (b) Consistent with state law and these plans, and to effectively address the water shortage, the curtailment shall be based on the customers' reasonable water needs during the curtailment period, and not the contracted amount, after consideration of the customers' implementation of their water conservation and drought contingency plans.
 - (c) In the event the supply of water provided to a Purchaser is limited because of a curtailment imposed by LCRA or state law in accordance with these rules to an amount less than the Purchaser's MAQ, then the Purchaser shall pay a surcharge, in excess of the firm water rate, to be set by the LCRA Board of Directors multiplied by any amount of water diverted by Purchaser in excess of the amount Purchaser is authorized to divert during the curtailment. Unless otherwise specifically provided under the contract, a curtailment of water under this provision shall not result in a reduction or suspension of the Reservation Charge for the unused portion of the full Maximum Annual Quantity under the contract.
- 8.10 Implementation of Water Conservation Plan, Drought Contingency Plan and Demand Schedule.
Purchaser shall adopt and implement the approved Water Conservation Plan and Drought Contingency Plan for the duration of the water contract. In addition, Purchaser must periodically report on progress made in implementation of its water conservation plan according to LCRA's Water Conservation Plan Rules. At least once every five (5) years, a Purchaser must submit an updated Drought Contingency Plan to LCRA, provided that any amended Drought Contingency Plan shall not be effective until reviewed and approved in writing by LCRA. At least once every five (5) years, a Purchaser must submit an updated Demand Schedule to LCRA.

ARTICLE 9. AGRICULTURAL INTERRUPTIBLE WATER SERVICE CONTRACTS

- 9.1 Applicability.
Notwithstanding any other provision of these Rules, this Article 9 controls requests for contracts for Agricultural Interruptible Water Service.
- 9.2 Deadline for Applications and Contracts.
LCRA shall not enter in a contract if the request for a contract is received after March 1 in any year except where:
- (a) a curtailment of interruptible supply has not been declared by the LCRA Board;
 - (b) provision of water under the requested contract would not appreciably increase LCRA's operation costs nor unreasonably interfere with LCRA operations;

- (c) provision of water under the requested contract would not impair LCRA's ability to deliver water to other customers who made request for contracts on or before March 1; and,
- (d) the request for a contract is caused by a failure of the customer's other water supply (i.e. groundwater pump failure) or other emergency need for water.

9.3 Unpaid Account Balances.

LCRA shall not execute a Agricultural Interruptible Water Service Contract with a prospective customer if that customer has an unpaid account balance under a prior Agricultural Interruptible Water Service Contract.

ARTICLE 10. VARIANCES

Where special conditions or compelling circumstances exist, the LCRA Board of Directors may consider and approve requests for variances from the requirements of these rules on a case-by-base basis upon recommendation by LCRA staff.

ARTICLE 11. PRO RATA CURTAILMENT OF WATER USE BY FIRM WATER CUSTOMERS

11.1 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 (6) 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.

11.2 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 11.5(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 may consist of drought response stages already found in Customer’s Drought Contingency Plan plus supplemental information necessary for implementation of pro rata curtailment. 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 twelve-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.
- (k) Quarterly Allotment – the amount of water that would be made available to Customer in any 3-month calendar billing period based upon Customer’s Annual Allotment, and Customer’s Monthly Distribution. The specific 3-month periods may start in any particular month based upon when the LCRA Board determines that Pro Rata Curtailment shall be implemented.

11.3 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 February 15 to March 15.

11.4 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, 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.

11.5 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 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 11.5(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), 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) any other appropriate information that may be presented by Customer or requested by the General Manager that 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 and make a final determination with thirty (30) days of such request.

11.6 Development and Implementation of Customer Curtailment Plans

- (a) Each customer shall provide the General Manager with its Curtailment Plan(s) as requested not later than ninety (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, not later than thirty (30) days after the final determination of Customer's Baseline Amount. The plan shall:
- 1) identify Customer's Drought Coordinator and the coordinator's contact information (phone number, email, fax number 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) include the specific measures which will be implemented by Customer to achieve the Percentage Curtailment(s) as identified by LCRA; if Customer has received a modification based on section 11.5(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 thirty (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 twenty (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 by submitting a revised Monthly Distribution at least 30 days prior to the beginning of the subsequent Curtailment Year with the revised Monthly Distribution 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.

11.7 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 contained in Chapter 288 of Title 30, Texas Administrative Code. A copy of the updated Drought Contingency Plan shall be provided to LCRA and, where required, the Texas Commission on Environmental Quality.

11.8 Board Action Implementing Pro Rata Curtailment

- (a) If the LCRA Board of Directors 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 11.4;
 - 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.

11.9 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 11.14, or at such time that pro rata curtailment is ceased.
- (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 11.5(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.

11.10 Incentives

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

11.11 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; P. O. Box 220; Austin, TX 78767.
- (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.

11.12 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.

11.13 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 of Directors, 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.

11.14 Variance to the Pro Rata Curtailment

- (a) Variances from the Annual Allotment may be granted:
 - 1) upon written request 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 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 11.14(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.
- (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.

11.15 Appeal of General Manager's Decision on a Request for a Variance from the Pro Rata Curtailment

- (a) Only a decision by the General Manager denying a Request for Variance to the Annual Allotment may be appealed to the LCRA Board of Directors.
- (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 fifteen (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 (5) 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 (2) copies, and shall not exceed fifteen (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 ten (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 ten (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 fifteen (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 forty-five (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 ten (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 forty-five 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.

ARTICLE 12. REQUIREMENTS FOR INTERBASIN WATER SALES TO WILLIAMSON COUNTY

12.1 Applicability.

This article sets forth additional requirements that apply to interbasin water sales to any person or entity within Williamson County that did not have a water sale contract with LCRA on or before May 1, 1997, consistent with the requirements of Section 8503.029, Texas Special District Local Laws Code. In the event of a conflict between a requirement set forth in this Article 12 and any other requirement in these rules, the requirements in this Article 12 control.

12.2 Definitions.

- (a) **Adverse Effects of the Transfer:** The reduction in availability of sufficient Surface Water to meet the needs of LCRA's interruptible irrigation customers within Colorado, Wharton, and Matagorda counties resulting from water contracts entered into pursuant to Section 8503.029(a)(3)(B), Texas Special District Local Laws Code.
- (b) **Average Annual Volume:** The arithmetical average volume of water over a contiguous 3-year period.
- (c) **Conserved Water:** The Average Annual Volume of water made available under Section 8503.029(a)(3)(B), Texas Special District Local Laws Code from conservation projects and demand reduction projects within the water service areas of LCRA's irrigation operations within Colorado, Wharton, and Matagorda counties. Conserved Water can be classified as firm, interruptible or any combination thereof.
- (d) **Developed Water:** The Average Annual Volume of additional water made available for use within the water service areas of LCRA's irrigation operations within Colorado, Wharton, and Matagorda counties under Section 8503.029(a)(3)(B), Texas Special District Local Laws Code that may include: (1) groundwater, or (2) surface water resources that are not presently under the control of LCRA. Such water may originate inside or outside the boundaries of the Colorado River basin and may be firm, interruptible or any combination thereof.

- (e) **No Net Loss:** A hydrologic condition where the volume of Transferred Water is equivalent to, or less than, the combined volume of Conserved Water, Developed Water, and Returned Water resulting in a reduced reliance on Surface Water for agricultural irrigation.

$$\text{Transferred Water} \leq \text{Conserved Water} + \text{Developed Water} + \text{Returned Water}$$

- (f) **Returned Water:** The Average Annual Volume of water that is imported to the lower Colorado River basin with the specific intent to meet the condition of Section 8503.029(a)(3)(B), Texas Special District Local Laws Code. Such water may be firm, interruptible or any combination thereof.
- (g) **Surface Water:** Water from the Colorado River or Highland Lakes. This water can be classified as either firm, interruptible water, or any combination thereof.
- (h) **Transferred Water:** The Average Annual Volume of Surface Water exported from the lower Colorado River basin to Williamson County under Section 8503.029(a)(3)(B), Texas Special District Local Laws Code.

12.3 Conservation Charge.

In addition to the standard rates and charges, any customer subject to the requirements of this Article shall pay a Conservation Charge, as set by the Board pursuant to Section 8503.029(c), Texas Special District Local Laws Code, which shall be sufficient to cover the costs of mitigating Adverse Effects of the Transfer.

12.4 No Net Loss.

Prior to any diversion of water, the means to conserve, develop, or return water to satisfy the No Net Loss condition shall be identified that would be sufficient based on an Average Annual Volume to conserve, develop or return the necessary volumes of water.

TABLE 1

**HIGHLAND LAKES
REFERENCE ELEVATIONS**

(in feet above mean sea level, based on the 1988 North American Vertical Datum)

Lake Buchanan

Spillway	1,020.76
Flood Gate Sill at 15.5 foot	1,005.76
Flood Gate Sill at 25.5 foot	995.76
Penstock Intake at bottom	937.76

Inks Lake

Spillway	888.63
Penstock Intake at bottom	845.2

Lake LBJ

Top of Normal Operating Pool	825.68
Flood Gate Sill	795.68
Penstock Intake at bottom	793.38

Lake Marble Falls

Top of Normal Operating Pool	737.69
Flood Gate Sill	725.69
Penstock Intake at bottom	710.69

Lake Travis

Spillway	714.52
Top of Conservation Pool	681.6
Penstock Intake at bottom	552.7
Flood Gate Conduits at bottom	536.5

Lake Austin

Spillway	493.11
Flood Gate Sill at 12 foot	480.31
Flood Gate Sill at 18 foot	475.31
Penstock Intake at bottom	462.31

APPENDIX A
LCRA WATER CONSERVATION PLAN RULES

APPENDIX B
LCRA DROUGHT CONTINGENCY PLAN RULES