

January 31, 2002

Carol Kimbrell
LCRA Water Services
H-300
P.O. Box 220
Austin, TX 78767-0220

Via: mail, fax, and email

Re: Comments on "Definitive Agreement Between San Antonio's Water System and Lower Colorado River Authority"

Dear Ms. Kimbrell,

Environmental Defense appreciates the opportunity to submit these written comments on the proposed "Definitive Agreement Between San Antonio's Water System and Lower Colorado River Authority". A guiding principle for our comments is that the agreement should be structured such that LCRA is financially indifferent as to whether the project goes forward or not. This will help ensure that the LCRA keeps its promise that the environment is not sacrificed to the proposed project. We submit these comments with the hope that the provisions outlined below are incorporated into the contract, thus allowing for a process that complies with the legislative protections outlined in H.B. 1629.

Review the Option of Additional Water Conservation by SAWS

Environmental Defense believes that a fair analysis of the proposed project requires examination of all the alternatives available to meet water needs, including San Antonio's water conservation plan. This is necessary to determine the preferential method to meet San Antonio's water needs. We recognize that in comparison to other Texas cities, San Antonio has one of the better conservation records. However, cities in other states are even more efficient in their use of water, and thus it is reasonable to consider improved conservation by the city of San Antonio as a lower cost or less harmful alternative source of water to the proposed diversion from the Colorado.

Study Funding

The funding provisions in the proposed contracts raise two issues. The first issue is the ability of SAWS to restrict the scope of studies under this contract. SAWS has complete discretion to approve additional funding beyond the five hundred thousand dollars originally allotted in the contract for any studies. If SAWS decides that an environmental study suggested

by the LCRA is not to their liking, under this provision, SAWS can refuse to pay for it. We recognize that SAWS may feel it needs protection from large study expenses. However, LCRA needs the ability to undertake the studies required to properly evaluate the project. Therefore, if SAWS declines to pay for a study that LCRA deems important, LCRA should be able to terminate the contract without penalty.

A second provision of the contract requires the LCRA to reimburse SAWS for half the cost of the studies if the contract is terminated. This provision creates a financial disincentive for LCRA to terminate the study if it finds during the seven year period that the project will result in environmental harm

Statutory Findings Can be Made Only After the Study Period

H.B. 1629 requires seven findings that are designed to protect the interests of the people in the Colorado River Basin by ensuring that the natural resources of the basin will not be negatively impacted by the sale of water outside the basin. The contract as written makes it appear that these findings have already been made, and that the purpose of any further studies is merely to justify a decision that has already been made. Environmental Defense believes that the mechanism whereby these findings are initially made should be an independent scientific process in which the studies are used to determine whether the preconditions for the project contained in H.B. 1629 are satisfied.

The Public Process is Not Defined

H.B. 1629 requires that the contract allow for a "broad public and scientific review process designed to ensure that all information that can be practicably developed is considered". This language is mimicked in the contract, but no method to ensure this is described. There is no specific discussion of the mechanism whereby which these "findings" will be made. To meet the requirements of H.B. 1629, how the preconditions will be studied should be clearly defined in the contract.

Technical Advisory Committee

Paragraph 1.3 makes general reference to a public and scientific review process that will be used to develop information to be considered in establishing beneficial flows for the environment. Environmental Defense believes an independent technical advisory committee is required. The committee would consist of scientists with expertise in areas including, but not limited to, instream flow requirements, bay and estuary freshwater inflow needs,

riparian habitats, groundwater economics, and other areas of scientific relevance to this process. This committee would be used to determine needed studies, develop criteria for the studies, and evaluate the results. The structure, duties, and responsibility of the committee should be stated clearly in the contract.

Interim Decision Points

First and foremost, the contract needs to recognize that failure to meet the standard of "no environmental harm" automatically terminates the agreement, contract, and projects. Therefore, Sections 1.11B and 1.12B should be amended to give the LCRA the right to terminate the project if the scientific advisory committee determines that the project causes unmitigable environmental harm and/or the findings required by H.B. 1629 are being not being met. In addition, we believe that the contract should include specific interim decision making points, to preclude the project being advanced only because of inertia.. LCRA's ability to terminate the project should not be limited to the point in time when all the studies are concluded, but instead LCRA should be required to make a determination of the potential continued feasibility of the project upon the completion of each and every individual study, or in the alternative on specific interim dates based on the study information available at that time.

We appreciate the opportunity to provide these comments.

Sincerely,

Jim Marston
Director and Senior Attorney, Texas Office