

Ron Freeman  
RECEIVED  
JUN 08 2000  
NEPTUNE-WILKINSON  
ASSOCIATES INC.

MEMORANDUM OF UNDERSTANDING

Between

U.S. Department of the Interior  
U.S. Fish and Wildlife Service

and

The Lower Colorado River Authority

for

THE PURPOSE OF PROVIDING SURFACE WATER  
FOR RESIDENTS IN  
WESTERN TRAVIS AND NORTHERN HAYS COUNTIES

I. BACKGROUND AND OBJECTIVES

1. The Lower Colorado River Authority (LCRA) is a conservation and reclamation district organized in the State of Texas with statutory authority and responsibility to provide water service to the portion of the Colorado River watershed lying generally within the Central Texas region and below (*i.e.*, LCRA's water service area).

2. LCRA, as part of its mission within its statutory district, has the authority and responsibility to take measures to protect and benefit the environment.

3. The mission of the U.S. Fish and Wildlife Service (USFWS) is to work with others to conserve, protect, and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people. The USFWS's major responsibilities are for migratory birds, endangered and threatened species, certain marine mammals, and freshwater and anadromous fish.

4. USFWS leads the federal effort to protect and restore animals and plants that are in danger of extinction both in the United States and worldwide. Under Section 2(c)(2) of the Endangered Species Act, it states that it is a "policy of Congress that Federal Agencies shall cooperate with the State and local agencies to resolve water resource issues in concert with the conservation of endangered species."

5. In fulfillment of its statutory mission, LCRA is proposing to construct a treated surface water pipeline (the "Water Pipeline") in western Travis and northern Hays counties to alleviate demand on inadequate water supplies from the area aquifers.

6. Due to recent drought conditions, an emergency condition exists in the area that can be served by the Water Pipeline. Municipal and domestic water supply wells are currently becoming unreliable due to draw down of the area aquifers. If predicted drought conditions continue, public health, safety and welfare will suffer from the lack of an adequate water supply.

7. Because of the emergency condition that currently exists LCRA believes that it is necessary to initiate construction of the Water Pipeline immediately. USFWS agrees to expedite section 7 consultation to ensure Endangered Species Act compliance for the Water Pipeline.

8. LCRA anticipates completion of the environmental impact study identified in paragraph III. 2., below, prior to completion of construction of the Water Pipeline, making information from the study available prior to actually initiating service to New Development. Therefore, LCRA will delay service to New Development, until the earlier of (i) 90 days after the date on which the environmental impact study is complete or (ii) January 1, 2002.

## II. DEFINITIONS

1. Water Pipeline means the treated water transmission line that will serve customers in western Travis and northern Hays counties, as generally shown in Exhibit A, to the extent such service is to the recharge and contributing zones of the Barton Springs segment of the Edwards Aquifer.

2. Existing Development means a) any area served or to be served by the Water Pipeline pursuant to an agreement with LCRA executed on or prior to the effective date of this MOU; b) any house, commercial business, building, or other structure or improvement that exists or the construction of which has commenced on or prior to the effective date of this MOU; or c) any platted lot or approved residential development containing platted lots that has readily available electric utility service and direct access to an existing street or road on or prior to the effective date of this MOU.

3. New Development means a) any area, not existing development, served by the Water Pipeline pursuant to an agreement with LCRA executed after the effective date of this MOU; b) any house, commercial business, building, or other structure or improvement, not qualifying as Existing Development, that comes into existence or the construction of which commences after the effective date of this MOU; or c) any platted lot or approved development not qualifying as Existing Development.

## III. AREAS OF COOPERATION AND PROCEDURES

1. LCRA agrees to participate, with the U.S. Army Corps of Engineers (Corps), in a formal section 7 consultation, as outlined in the Endangered Species Act, on the impact of pipeline construction and service to Existing and New Development with USFWS prior to initiation of pipeline construction.

2. LCRA agrees, with USFWS oversight, to commission and complete by October 1, 2001 an environmental impact study, the initial scope of which is shown in Exhibit B, to evaluate the impacts of New Development served by the water pipeline on water quality and the Barton Springs Salamander.

3. LCRA agrees to provide treated water service through the Water Pipeline only after completion of section 7 consultation. Water service to New Development will be provided only in conformity with the water quality protection measures approved by USFWS as part of section 7 consultation, unless USFWS has independently determined that the New Development will be in compliance with the Endangered Species Act.

4. The environmental impact study identified in paragraph 2 will fully evaluate the water quality protection measures approved during section 7 consultation, which measures may be modified with USFWS approval based on the environmental impact study, within 90 days following completion of the study.

5. After completion of section 7 consultation, USFWS if requested to do so by LCRA will provide written assurance to the Texas Water Development Board or other interested parties that the construction of, and the supply of water from, the Water Pipeline, as subject to the terms of this MOU, does not violate the Endangered Species Act.

6. Local governments are encouraged to initiate an effort to develop a regional solution for water quality protection in the Barton Springs watershed that will assure that New Development will be in compliance with the Endangered Species Act with respect to the Barton Springs Salamander. If such a regional solution, acceptable to USFWS, is developed, LCRA may provide service to New Development in compliance with approved regional standards, without the necessity of completing the environmental impact study identified in paragraph 2.

7. During section 7 consultation with the Corps, LCRA will submit as part of its project description and biological assessment the water quality protection measures attached as Exhibit C. USFWS, as part of its biological opinion, will review these water quality protection measures for New Development to be served from the Water Pipeline.

8. LCRA reserves the right, following section 7 consultation, to determine that it will not construct the water pipeline. If LCRA determines not to construct the water pipeline, this memorandum of understanding will be of no further force and effect and LCRA will be under no obligation to complete the environmental impact study.

#### IV. GENERAL PROVISIONS

1. The effective date of this Memorandum of Understanding (MOU) shall be the date of the latter signature below, and it shall remain in effect until the capacity of the Water Pipeline is committed and fully in service.

2. This MOU is a contract between the parties, made by LCRA under the authority of section 13 of the Lower Colorado River Authority Act, Section 2, Chapter 7, Acts of the 43<sup>rd</sup> Leg., 4<sup>th</sup> Called Session, 1934, as amended.

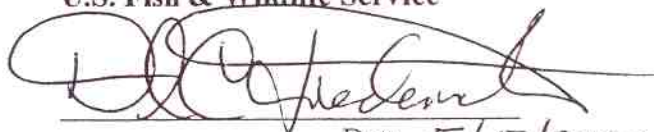
3. This MOU may be modified only upon the written agreement of both parties.

4. This MOU is binding upon successors in interest to LCRA and USFWS during the term of the MOU.

5. This MOU is subject to all valid rules, regulations and laws applicable hereto passed or promulgated by the United States of America, the State of Texas or any governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them. The parties agree that their obligations under this MOU shall include, and are conditioned upon, compliance with requirements made under said laws, and any rules and regulations issued pursuant thereto. Each party represents, warrants, covenants and agrees that it has full power and authority to enter into this agreement and that it has taken all requisite action provided by law.

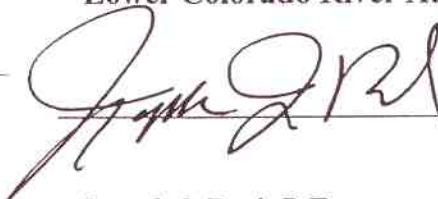
6. The provisions of this MOU are severable, and if any provision or part of this MOU or the application thereof to any person or circumstance shall ever be held by any governmental agency or court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this MOU and the application of such provision or part of this MOU to other persons or circumstances shall not be affected thereby. However, if upon invalidation of any part of this MOU, either party believes that the purposes of the MOU have been frustrated, the parties agree to utilize best efforts to develop new provisions that will achieve the purposes of the MOU. If the parties cannot agree on new provisions, either party may cancel this agreement by 30 days written notice to the other party. Provided, however, if the MOU is cancelled, LCRA's ability to serve Existing Development shall survive cancellation of the MOU.

**U.S. Fish & Wildlife Service**

  
Date 5/17/2000

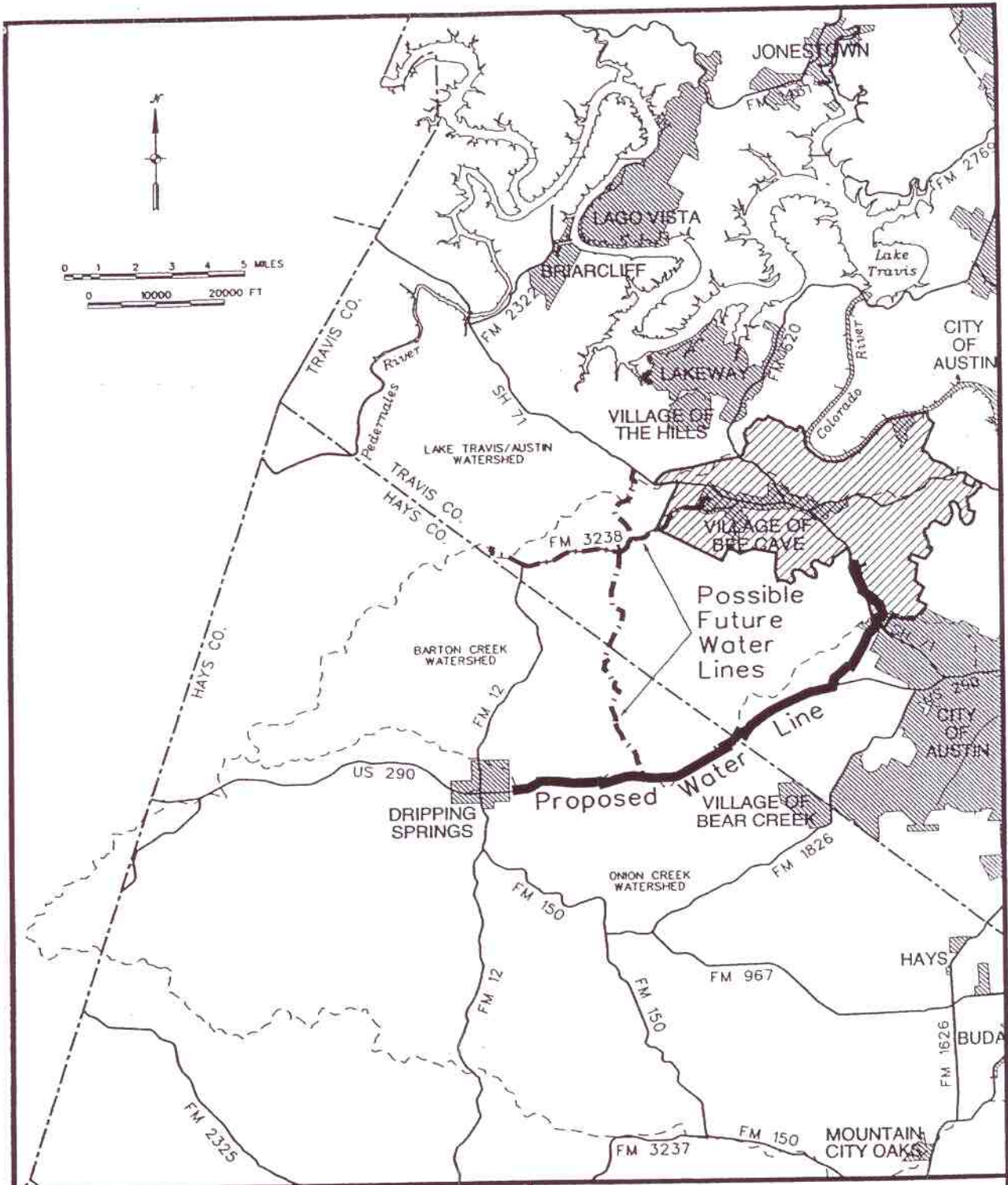
David C. Frederick  
Supervisor






**Lower Colorado River Authority**

  
Date 29 May 00

Joseph J. Beal, P.E.  
General Manager





-  Existing Service Area
-  Proposed Water Line
-  Possible Future Water Lines
-  Watershed Boundary
-  Incorporated City Area (City of Austin, Planning Dept., 1999)

## EXHIBIT A

LOWER COLORADO RIVER AUTHORITY



Scale: See Bar Scale

Date: 5-16-2000

# EXHIBIT "B"

## PRELIMINARY SCOPE OF WORK

### LCRA WEST TRAVIS/HAYS COUNTY WATER TRANSMISSION LINE PROJECT

#### 1.0 GENERAL INFORMATION

- 1.1 PURPOSE AND NEED
- 1.2 PROJECT DESCRIPTION

#### 2.0 EXISTING ENVIRONMENT

##### 2.1 GEOLOGICAL ELEMENTS

- 2.1.1 Physiography
- 2.1.2 Geology
- 2.1.3 Energy and Mineral Resources
- 2.1.4 Soils
- 2.1.5 Prime Farmland

##### 2.2 HYDROLOGICAL ELEMENTS

- 2.2.1 Surface Water
- 2.2.2 Ground Water
- 2.2.3 Edwards Aquifer Recharge and Contributing Zones

##### 2.3 FLOODPLAINS AND WETLANDS

- 2.3.1 Floodplains
- 2.3.2 Wetlands and Jurisdictional Waters

##### 2.4 CLIMATIC ELEMENTS

- 2.4.1 Climate
- 2.4.2 Air Quality

##### 2.5 BIOLOGICAL ELEMENTS

- 2.5.1 Vegetation
- 2.5.2 Fish and Wildlife
- 2.5.3 Endangered and Threatened Species

2.5.3.1 Plant Species

2.5.3.2 Fish and Wildlife Species

2.6 HISTORICAL OR ARCHEOLOGICAL RESOURCES

2.6.1 Regional Overview

2.6.2 Records Review and Results

2.7 SOCIAL AND ECONOMIC CONDITIONS

2.7.1 Population

2.7.1.1 Current Data

2.7.1.2 Existing Population

2.7.1.3 Future Population Without Project

2.7.2 Social Characteristics

2.7.2.1 Social Characteristics of Population

2.7.2.2 Housing Characteristics

2.7.3 Economics

2.7.3.1 Leading Economic Sectors

2.7.3.2 Labor Force and Employment

2.7.3.3 Personal Income

2.7.4 Financial Conditions

2.7.5 Community Need

2.8 LAND USE, LAND USE PLANNING AND CONTROLS

2.8.1 Current Land Use

2.8.1.1 Urban Development

2.8.1.2 Agriculture

2.8.1.3 Parks and Recreation

2.8.1.4 Transportation

2.8.1.5 Residential

2.8.1.6 Schools

2.8.1.7 Water Service

2.8.2 Land Use Controls

2.8.2.1 TNRCC

2.8.2.2 The City of Dripping Springs

2.8.2.3 The City of Austin/Travis County

2.8.2.4 Hays County

2.8.3 Land Planning

2.9 OTHER PROGRAMS AND PROJECTS

3.0 ALTERNATIVES EVALUATION

3.1 ALTERNATIVE WATER SUPPLY SOURCES

3.2 PIPELINE ROUTING

3.3 NO PROJECT ALTERNATIVE

4.0 EVALUATION OF POTENTIAL IMPACTS

4.1 GEOLOGICAL ELEMENTS

4.1.1 Physiography

4.1.2 Geology

4.1.3 Energy and Mineral Resources

4.1.4 Soils

4.1.5 Prime Farmland

4.2 HYDROLOGICAL ELEMENTS

4.2.1 Surface Water

4.2.2 Ground Water

4.3 FLOODPLAINS AND WETLANDS

4.3.1 Floodplains

4.3.2 Wetlands and Jurisdictional Waters

4.4 AIR QUALITY

4.5 BIOLOGICAL ELEMENTS

4.5.1 Vegetation

4.5.2 Fish and Wildlife

4.5.3 Endangered and Threatened Species

4.6 HISTORICAL OR ARCHAEOLOGICAL RESOURCES

4.6.1 Direct Impacts

4.7 SOCIAL AND ECONOMIC CONDITIONS



- 4.7.1 Population
- 4.7.2 Social Characteristics
- 4.7.3 Economic Characteristics

- 4.7.4 Financial Conditions
- 4.7.5 Community Need

4.8 LAND USE, LAND USE PLANNING AND CONTROLS

4.9 OTHER PROGRAMS AND PROJECTS

4.10 SECONDARY IMPACTS ASSOCIATED WITH THE PROJECT

4.10.1 Social and Economic Conditions

- 4.10.1.1 Population
- 4.10.1.2 Economic Characteristics
- 4.10.1.3 Financial Conditions

4.10.2 Land Use

- 4.10.2.1 Residential
- 4.10.2.2 Commercial/Industrial

4.10.3 Surface Water

- 4.10.3.1 Floodplains
- 4.10.3.2 Water Quality

4.10.4 Groundwater

- 4.10.4.1 Groundwater Demand
- 4.10.4.2 Groundwater Availability
- 4.10.4.3 Changes to Stream Base Flow
- 4.10.4.4 Edwards Aquifer Recharge
- 4.10.4.5 Groundwater Quality
- 4.10.4.6 Mitigation of Impacts

4.10.5 Evaluation of Water Quality Protection Scenarios

- 4.10.5.1 Existing Rules and Regulations
- 4.10.5.2 Current Water Quality Measures (Exhibit C to MOU)
- 4.10.5.3 Non-Degradation Measures (Attached as an appendix hereto)

4.10.6 Ecological Resources

4.10.6 Cultural Resources

- 5.0 PROJECT BENEFICIARIES, NON-BENEFICIARIES, AND PUBLIC ACCEPTABILITY
- 6.0 AGENCY COORDINATION/PUBLIC COMMENTS
- 7.0 UNAVOIDABLE ADVERSE IMPACTS
- 8.0 FUTURE OF THE ENVIRONMENT WITHOUT THE PROJECT
- 9.0 SHORT-TERM ENVIRONMENTAL LOSSES VERSUS LONG-TERM GAINS
- 10.0 REFERENCES

