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July 25, 2025

VIA CERTIFIED MAIL NO. 9589 0710 5270 0020 8159 26
RETURN RECEIPT REQUESTED

Kelly Keel
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Complaint that the City of Houston and the San Jacinto River Authority Are Diverting Water from Lake Conroe in Violation of Certificate of Adjudication No. 10-4963A, the Texas Water Code, and the Rules and Policies of the Texas Commission on Environmental Quality.

Dear Ms. Keel:

This complaint is filed on behalf of the Lake Conroe Association (“LCA”) regarding the diversion of surface waters by the City of Houston and the San Jacinto River Authority (“SJRA”) from Lake Conroe in violation of Certificate of Adjudication No. 10-4963A¹ (the “Amended Certificate”) and state law. Specifically, Houston has called for the diversion of surface water—almost 2.5 billion gallons in 2024 alone—from Lake Conroe pursuant to a Houston/SJRA policy now known as the “2024 Active Storm Management Protocols for Lake Conroe and Lake Houston”² (the “Protocol”) in violation of the Amended Certificate and several provisions of the Texas Water Code. As discussed in LCA’s meeting with Deputy Executive Director of the Texas Commission on Environmental Quality (“TCEQ”) Steven Schar and other senior TCEQ staff on April 8, 2025, and as will be discussed in more detail below, while Houston has represented to TCEQ that these diversions are for municipal use, they are not. Instead, they are in furtherance of the Protocol, the sole purpose of which is to lower water levels in Lake Conroe and Lake Houston in the spring and fall in anticipation of potential rainfall, *i.e.*, anticipatory flood control. Flood control is neither a “municipal use” nor a “beneficial use,” as those terms are used in the Texas Water Code, and thus, the diversion of water from Lake Conroe is in violation of the Amended Certificate and state law and undermines the very purpose of a drinking water reservoir like Lake Conroe and the responsibilities and duties of drinking water providers such as Houston and SJRA. This unauthorized diversion from Lake

¹ TCEQ, Amendment to a Certificate of Adjudication, Certificate No. 10-4963A issued to Owners SJRA & Houston (July 20, 2010), *available at* gisweb.tceq.texas.gov/WRRRetrieveRights/?ID=ADJ4963 [hereinafter the “Amended Certificate”].

² SJRA, “Active Storm Management Protocols” in *San Jacinto River Authority Latest News for April 2024* at 2, *available at* <https://www.sjra.net/wp-content/uploads/2024/06/SJRA-Latest-News-April-2024.pdf> [hereinafter the “Protocol”], attached hereto as Attachment 1; *see also* SJRA, Bd. of Dir’s, Minutes of Regular Meeting at Item 6.d. at 4 (Apr. 25, 2024).

Conroe poses a threat to the primary water supply for Montgomery County and to the backup water supply for the greater Houston metropolitan area.

In the aftermath of the devastating floods that have taken so many lives throughout central Texas, it is important to note that while the stated purpose of the Protocol is to prevent flooding in areas downstream of Lake Conroe, the Protocol, and its predecessor policies discussed below, do not provide the perceived protection from flooding. As was discussed in detail in LCA's previous complaints filed with TCEQ and as will be outlined briefly below, the lowering of Lake Conroe as described in the Protocol, does not provide material flood mitigation benefits downstream in the Lake Houston area. Areas downstream of Lake Conroe do indeed have flooding problems that will require significant infrastructure improvements to alleviate, as identified in studies of the problem, but the Protocol is, at best, only a placebo that provides a false sense of security to downstream individuals and businesses, while wasting tens of billions of gallons of freshwater in violation of the Amended Certificate and state law.

Background

In 2020, LCA filed two separate complaints regarding similar violations. At that time, Houston and SJRA were implementing a program known as the "Seasonal Lake Lowering Program (the "SLLP") to lower water levels in Lake Conroe in anticipation of potential flooding events.³ Pursuant to the SLLP, at Houston's call water was diverted, or released, from the conservation pool of Lake Conroe (*i.e.*, from water allocated for beneficial use under the Amended Certificate) through the dam on the south end of the lake during specific months in the spring and fall for no identified "beneficial use," as that term is defined in the Texas Water Code. Once diverted, the water flows from Lake Conroe downstream in the San Jacinto River to Lake Houston and then flows over the spillway or through the dam gates from Lake Houston to Galveston Bay and the Gulf.⁴ Due to the physical design of facilities at Lake Houston, whenever water flows over the spillway or through the dam gates at Lake Houston—the resulting action when Lake Conroe water has been released pursuant to the Protocol or SLLP—it is impossible to sequester or divert the Lake Conroe water for any beneficial use. Instead, it simply passes through Lake Houston and is wasted, as opposed to being used for "municipal/domestic use" as reported by Houston.

³ See Press Release, SJRA, "SJRA Board of Directors Recommends Renewing Flood Mitigation Strategy at 1 (Feb. 25, 2020), *available at* <https://www.sjra.net/wp-content/uploads/2020/02/02-25-2020-Press-Release-Board-Recommendation-Lake-Conroe.pdf>; *see also* SJRA, Bd. of Dir's, Minutes of Special Meeting at Item 2 at 1 (Feb. 20, 2020), *available at* https://www.sjra.net/wp-content/uploads/2020/04/2020-Minutes_022020.pdf.

⁴ Attached are two slides from the presentation made by LCA during its April 8, 2025 meeting with TCEQ Executive Staff. These slides graphically demonstrate how Houston diverts water from Lake Conroe over the spillway or through the dam gates at Lake Houston, simply wasting that water to the Gulf. *See* Slides 13 & 14 from PowerPoint Presentation "Lake Conroe, Texas, Lake Conroe Association, Meeting with TCEQ, April 8, 2025" (Apr. 8, 2025), attached hereto as Attachment 2.

In response to LCA's complaint dated June 30, 2020,⁵ TCEQ, relying solely on the Water Use Reports ("WURs") submitted by Houston, determined that Houston was diverting water from Lake Conroe for municipal use.⁶ LCA's second complaint, dated December 28, 2020, went into great detail explaining the relationship between Houston's SLLP diversions from Lake Conroe and how they occurred concurrently with Houston's diversions from Lake Houston.⁷ LCA presented evidence that Houston was calling for surface water to be released from Lake Conroe's conservation pool, purportedly for municipal purposes, but because there was already such an overabundance of water in Lake Houston, Houston was concurrently releasing even greater volumes of water from Lake Houston to the Gulf. TCEQ's response to LCA's second complaint found that Houston had exceeded the maximum diversion rate established in the Amended Certificate, but it did not address LCA's more serious allegations.⁸ TCEQ provided no information that it disagreed with the information in LCA's more detailed complaint, it simply failed to act on the new information.

Houston's Diversions from Lake Conroe Pursuant to the Protocol Violate the Amended Certificate and State Law

Since 2020, Houston has continued to divert surface water from Lake Houston, most recently in May and June of 2024. While steadfastly objecting to the SLLP and the Protocol, LCA has attempted to work with SJRA and Houston to at least place some reasonable limitations on their wasting of Lake Conroe water, but LCA's efforts have been frustrated at every turn. The 2024 diversions were arguably made pursuant to the Protocol (although still in violation of the Amended Certificate and state law), but Houston, by calling for releases from Lake Conroe in June 2024, proceeded to ignore and violate the terms of the very Protocol it and SJRA had just recently adopted.

The Protocol defines Houston and SJRA's current policy for lowering the level of Lake Conroe as a means of anticipatory flood control. It provides:

Spring

- Beginning April 1 through June 1, the City of Houston may request diversions to lower Lake Conroe from normal pool of 201' [feet] msl [mean sea level] to create up to six inches of storage capacity for forecasted storm event inflows (to 200.5' msl). The decision of when, how, and whether to initiate diversions will be guided by climate conditions, weather patterns and available water supply.
- Resume normal recapturing after each storm event that triggered any diversion between April 1 and June 1.

⁵ Letter from Erich Birch, Birch, Becker & Moorman, LLP, to Toby Baker, Exec. Dir., TCEQ (June 30, 2020).

⁶ Letter from Toby Baker, Exec. Dir., TCEQ, to Erich Birch, Birch, Becker & Moorman, LLP (July 20, 2020).

⁷ Letter from Erich Birch, Birch, Becker & Moorman, LLP, to Toby Baker, Exec. Dir., TCEQ (Dec. 28, 2020).

⁸ TCEQ Investigation Report, Investigation No. 1706224 at 2 (Mar. 25, 2021).

- In the event a major rainfall is forecasted to impact our region, active storm management protocols of the City of Houston could initiate a diversion to create up to an additional six inches of storage capacity for storm inflows (to 200.0' msl). It is acknowledged that under extraordinary weather circumstances, additional diversions to create capacity below 200.0' msl could occur.

Fall

- Beginning on August 1 through October 1, the City of Houston may request diversions to lower Lake Conroe if actual lake levels are at normal pool of 201 msl to create up to six inches of storage capacity for storm inflows (to 200.5' msl). After Labor Day, storage capacity may be increased an additional six inches (to 200.0' msl). Diversion volumes requested to reach intended levels will be dependent on the actual lake levels. The decision of when, how, and whether to initiate diversions will be guided by climate conditions, weather patterns, and available water supply.
- Resume normal recapturing after each storm event that triggered any diversion between August 1 and October 1.
- If a named storm is predicted to impact our region, active storm water management protocols of the City of Houston could initiate a diversion to create up to an additional six inches of storage capacity for storm inflows (to 199.5' msl). It is acknowledged that under extraordinary weather circumstances, additional diversions to create capacity below 199.5' msl could occur.⁹

The Protocol also includes provisions to initiate diversions/releases from Lake Houston prior to forecasted rainfall events.¹⁰

All releases pursuant to the Protocol are clearly in violation of the Amended Certificate because they are not for municipal purposes or for any other beneficial purpose. LCA's 2020 complaints addressed, in detail, the applicable provisions of the Amended Certificate and state law.

In summary, when surface water is appropriated, the right to use state water "is limited not only to the amount specifically appropriated *but also to the amount which is being or can be beneficially used for the purposes specified in the appropriation.*"¹¹ The term "beneficial use" is defined as "use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose and

⁹ Protocol, *supra* note 2.

¹⁰ *See id.*

¹¹ TEX. WATER CODE § 11.025 (emphasis added).

shall include conserved water.”¹² Texas Water Code Section 11.023 defines the purposes for which surface water may be appropriated, diverted, or stored, and provides the following descriptions of municipal, industrial, mining, agricultural, and recreation beneficial uses:

- domestic and municipal uses, including water for sustaining human life and the life of domestic animals;
- agricultural uses and industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;
- mining and recover of minerals;
- recreation and pleasure.¹³

With regard to the uses of appropriated water, Section 11.023 continues, in part: “The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated for that purpose, subject to the preferences prescribed in Section 11.024 of this code.”¹⁴

Lake Conroe was authorized and constructed as a “water supply reservoir.”¹⁵ Lake Conroe’s use as a water supply reservoir is supported by the surface water rights appropriated to SJRA and Houston pursuant to the Amended Certificate, which states:

In lieu of the previous authorization to divert or release and use not to exceed 100,000 acre-feet of water per year for municipal purposes (66,000 acre-feet), industrial purposes (28,500 acre-feet), and mining purposes (5,500 acre-feet), Owners are now authorized *to divert or release and use* not to exceed 100,000 acre-feet of water per year for municipal, industrial, mining, and agricultural purposes.¹⁶

In addition, the Amended Certificate provides: “Owners are also authorized to use the impounded water for recreation purposes.”¹⁷ The Amended Certificate makes clear that Houston and SJRA are bound by its terms, including the following provisions:

- Owners *agree to be bound* by the terms, conditions and provisions contained herein and *such agreement is a condition precedent to the granting of this amendment.*¹⁸

¹² *Id.* § 11.002(4).

¹³ *Id.* § 11.023(a)(1)-(3)&(6).

¹⁴ *Id.* § 11.023(e).

¹⁵ See SJRA, “History of Lake Conroe” at <https://www.sjra.net/lakeconroe/history/>; see also Tex. Water Dev. Bd., “Volumetric and Sedimentation Survey of Lake Conroe: June – August 2010 Survey” at 1 (July 2012).

¹⁶ Amended Certificate, *supra* note 1, ¶ 1.A. at 2 (emphasis added).

¹⁷ *Id.* ¶ 1.C. at 2.

¹⁸ *Id.* at 3 (emphasis added).

- This amendment is issued *subject to the Rules of the Texas Commission on Environmental Quality and to the right of continuing supervision of State water resources* exercised by the Commission.”¹⁹

In May and June 2024, at Houston’s direction, SJRA released 818 and 6,791 acre-feet, respectively. Houston represented in the WURs submitted to TCEQ that these releases were for municipal uses.²⁰ But, as identified in the 2020 complaints and as is still true, Houston’s diversions from Lake Conroe are not for municipal uses. Instead, as is made clear by the Protocol, the releases are strictly for anticipatory flood control. As stated in the Protocol:

Houston may request diversions to lower Lake Conroe from normal pool of 201' msl to create up to six inches of storage capacity for forecasted storm event inflows (to 200.5' msl). The decision of when, how, and whether to initiate diversions will be guided by climate conditions, weather patterns, and available water supply.²¹

The Protocol specifically refers to “active storm management protocols” as the reason to “initiate a diversion” to create storage capacity in Lake Conroe.²²

This is not the language of “municipal use” or any other “beneficial use” defined by the Water Code. Instead, it describes a policy of simply discharging water from Lake Conroe and sending it downstream through Lake Houston and finally to the Gulf for anticipatory flood control purposes only. Neither the Amended Certificate nor state water law authorizes the diversion of state water from Lake Conroe for flood control purposes. “Release of water from the conservation pool [of Lake Conroe] strictly for flood control purposes, with no documented beneficial use downstream constitutes an unauthorized use of water as per the terms and conditions of the water right.”²³

In June 2024, Houston’s diversions from Lake Conroe violated the Amended Certificate and its own Protocol. The Protocol only authorizes spring releases in April and May, but from June 14 through 19, 2024, Houston diverted 6,791 acre-feet from the conservation pool of Lake Conroe, lowering the

¹⁹ *Id.* (emphasis added).

²⁰ See Email from Ray Keaton, TCEQ, to Crystal Bolden, Birch, Becker & Moorman, LLP (Mar. 22, 2025, 3:24 p.m.) (TCEQ Official Response PIR – 101984) [hereinafter “TCEQ PIA Response”].

²¹ Protocol, *supra* note 2.

²² *Id.*

²³ Letter from Carlos Rubinstein, Principal, & Herman R. Settemeyer, P.E., Partner, RSAH₂O, to Erich Birch, Birch, Becker & Moorman, LLP at 2 (June 29, 2020).

lake level over 5.5 inches to 200.55' above msl.²⁴ This discharge occurred even though the anticipated rainfall at Lake Conroe was forecast as only one to two inches. The more than 5.5-inch decrease in the lake level of Lake Conroe turned out to be significantly greater than the actual rainfall of 0.48-inch in the area of the Lake Conroe dam.²⁵ Again, Houston categorized this release as municipal use, but the water was only diverted for potential flood control purposes in violation of the Amended Certificate and the Texas Water Code.

The Protocol Does Not Prevent or Mitigate Downstream Flooding

While Houston and SJRA have repeatedly claimed that the Protocol, and the SLLP before it, minimize downstream flooding, both entities know that the flood minimization claims are not supported by engineering studies. The only studies completed on behalf of SJRA to evaluate the likelihood of success of the SLLP did not demonstrate that it would work as a flood reduction measure. Two engineering studies evaluating the potential flood minimization benefits were conducted on behalf of SJRA, and both concluded that any possible benefits would be marginal at best, and one noted that if there were a major storm event such as Hurricane Harvey, the SLLP could actually **increase** downstream flooding.²⁶ The significance of this statement in SJRA's own engineering study has been conveniently ignored by advocates of the SLLP and Protocol, *i.e.*, that under certain conditions additional homes and businesses in the Lake Houston area will flood even though they would not have flooded but for the policies adopted by Houston and SJRA.

²⁴ TCEQ PIA Response, *supra* note 20; *see also* SJRA, "USGS Bubbler" (showing water levels in Lake Conroe) (June 14-19, 2024) from SJRA Website, Lake Conroe Dashboard, Lake Level, at https://sanjacinto.onerain.com/sensor/?time_zone=US%2FCentral&site_id=13189&site=b6f6df4e-f5a5-4398-a2e9-1a3508c4e9b5&device_id=15&device=28823576-054f-43ef-bff3-c1acb76595f2&data_start=2024-06-14%2000%3A00%3A00&data_end=2024-06-19%2023%3A59%3A59&bin=86400&range=Custom%20Range&markers=false&legend=true&thresholds=true&refresh=off&show_raw=true&show_quality=true, attached hereto as Attachment 3; SJRA, "City of Houston Usage" (June 14-19, 2024), from SJRA Website, Lake Conroe Dashboard, at https://sanjacinto.onerain.com/sensor/?time_zone=US%2FCentral&site_id=13189&site=b6f6df4e-f5a5-4398-a2e9-1a3508c4e9b5&device_id=23&device=130e3e6f-4040-444f-8260-99da894a0d3c&bin=86400&range=Custom%20Range&markers=false&legend=true&thresholds=true&refresh=off&show_raw=true&show_quality=true&data_start=2024-06-14%2000%3A00%3A00&data_end=2024-06-19%2023%3A59%3A59, attached hereto as Attachment 4.

²⁵ Harris County Flood Warning System, Rainfall Data for June 14-20, 2024, *available at* <https://www.harriscountyfws.org/GageDetail/Index/43306?From=6/20/2024%207:11%20PM&span=7%20Days&r=14&v=rainfall&selIdx=1>, attached hereto as Attachment 5.

²⁶ Freese & Nichols, Inc., Technical Memorandum from Jeremy D. Dixon, P.E., CFM, to Michael V. Reedy, P.E. § 6.00 at 11 (Apr. 10, 2018) ("For storm events larger than a 500-year event, it is anticipated that the addition of extra flood capacity will likely yield no additional benefit upstream and could potentially increase the flood hazard downstream of the dam . . .").

In addition, the 2018 Harris County Flood Control Harvey Summary report and the 2020 Bleyl Engineering study, both found the benefits of lowering Lake Conroe to be negligible.²⁷ By contrast, the designed flood control purpose of Lake Conroe is to reduce the uncontrolled flow of floodwaters into the West Fork of the San Jacinto River during major rain events. All of these studies show that preemptively lowering water levels in Lake Conroe will not provide material flood mitigation benefits thirty to thirty-five miles downstream, whereas other potential projects will, in fact, mitigate flooding along the West Fork and in the Lake Houston area.

For example, the \$2.5 million San Jacinto Regional Watershed Master Drainage Plan, sponsored by SJRA, Houston, the Harris County Flood Control District, and Montgomery County recommended, based on updated modeling, that significant flood mitigation can be achieved from sixteen different projects within the watershed. None of these sixteen projects involves lowering the level of Lake Conroe, nor does the study cite lowering of Lake Conroe as an effective flood mitigation measure.²⁸

Continuing to use the Protocol as a flood mitigation program is not supported by any past or current study, and clearly other identified measures are effective and do not waste precious water supplies. Wasting water for ineffective flood mitigation without any supporting technical study and without the appropriate TCEQ authorization should not be allowed to continue. Both TCEQ and the SJRA are on the record indicating that any form of “pre-release” at Lake Conroe should not occur for multiple reasons.²⁹

LCA understands that many people in the Lake Houston area support the Protocol and believe that it will protect their homes and businesses during future flood events. LCA’s purpose in filing this

²⁷ See Memorandum from Jeff Lindner, Dir. of Hydrologic Ops./Meteorologist, & Steve Fitzgerald, Chief Eng., Harris County Flood Control Dist., to HCFCFD Flood Watch/Partners (June 4, 2018) (finding that Lake Conroe releases contributed only 16% of the total water flow into the Lake Houston basin), *available at* <https://www.hcfcfd.org/Portals/62/Harvey/immediate-flood-report-final-hurricane-harvey-2017.pdf>; *see also* Letter from Ryan Londeen, PE, Bleyl Eng., to Kevin Lacy, LCA (Feb. 14, 2020). The Bleyl Study determined that lowering Lake Conroe by two feet [as required by the SLLP] could result in a maximum reduction in floodwaters in the Lake Houston area of three inches at a point where the floodwaters were already 17 feet high (less than a 1.5% reduction in the height of the flood waters). *Id.* at 5.

²⁸ See Halff Assoc., Inc. & Freese & Nichols, Inc., San Jacinto Regional Watershed Master Drainage Plan Report (Dec. 2020), *available at* <https://hctxdnndev.blob.core.windows.net/hcfcfd/01%20-%20San%20Jacinto%20River%20Master%20Drainage%20Plan%20Report.pdf?sv=2017-04-17&sr=b&si=DNNFileManagerPolicy&sig=gUmzt0XEXUhmMZhlGl%2FF%2BwiJPWxYzzqk2p33ptBvFuk%3D>.

²⁹ See, e.g., Letter from Warren D. Samuelson, P.E., Mgr., Dam Safety Sect., TCEQ, to Bret Raley, Div. Mgr., Lake Conroe Div., SJRA (Apr. 24, 2017), attached hereto as Attachment 6; *see also* Raley, Bret, “Why Not Pre-Release?,” DOCK LINE MAGAZINE – LAKE CONROE EDITION 44 (Sept. 2019), attached hereto as Attachment 7 (The same article is *available at* [https://www.sjra.net/2019/09/why-not-pre-release/#lightbox\[gallery_image_1\]/2](https://www.sjra.net/2019/09/why-not-pre-release/#lightbox[gallery_image_1]/2)); SJRA, “Frequently Asked Questions regarding SJRA/COH Temporary, Flood Mitigation Strategy for Lake Houston and Lake Conroe,” *available at* https://www.sjra.net/wp-content/uploads/2019/11/SJRA-COH-Temporary-Flood-Mitigation-Strategy-FAQ_Final.pdf.

complaint is not to minimize the harm that flooding in the Lake Houston area has caused. Instead, LCA's purpose is to identify that not only is the Protocol in violation of the Amended Certificate and state law, but it also does not provide the perceived protection from future flooding on which people in that area are relying. The Protocol is, at best a placebo that provides a false sense of security to individuals and businesses. Unfortunately, as SJRA's own reports show, if another Hurricane Harvey were to hit the Houston area this fall, the Protocol would not reduce flooding, and there is the potential that the anticipatory lowering of Lake Conroe could actually increase downstream flooding.

The trust that residents of the Lake Houston area place in Houston, SJRA, and the Protocol is clearly misplaced. As was described in detail in LCA's previous complaints, Houston's and SJRA's decisions to implement the SLLP and then the Protocol have been driven by politicians with little experience and few qualifications in flood control or reservoir management over the advice and concerns of the SJRA and Houston technical staff and in light of the contrary findings of engineering studies. The Protocol is a red herring solution to placate downstream landowners who have been devastated by previous flood events, misleading them into thinking that these entities are providing protections from future flooding. Unfortunately, the Protocol, while it allows Houston to continue to waste billions of gallons of water, will not protect these downstream landowners if another devastating storm hits the Houston area. LCA and those in the Lake Houston area have a common interest in responsible water management, and the Protocol is not the right answer for either group.

Conclusion

The 2020 complaints include significantly more detail regarding the legal and technical issues with Houston's diversions from Lake Conroe, and LCA incorporates those arguments into this complaint. The policy of lowering the level of Lake Conroe started as a temporary, short-term remedy while dredging activities were taking place on the San Jacinto River. That was in 2018. Those dredging activities were fully completed by September 2019, yet Houston and SJRA continue to waste water from Lake Conroe. In 2018 TCEQ temporarily acquiesced to the SLLP, stating:

The issue of lowering the levels of Lakes Conroe and Houston while the dredging takes place over the next one to three years has been identified by the San Jacinto River Authority (SJRA), City of Houston (COH), and the Texas Department of Emergency Management as being critical to the effort of mitigating flood risk. . . .

As TCEQ understands, SJRA, in coordination with the COH, have developed an emergency driven seasonal strategy for managing the water reservoirs during periods

of heavy rainfall. TCEQ further understands that *these measures would be utilized only on a temporary basis to mitigate flooding while dredging activities are completed. . . .*

* * *

The TCEQ appreciates the *challenges with mitigating flood risks during the time in which the San Jacinto River will be dredged* while managing the region's water supply.³⁰

TCEQ's "enforcement discretion" over that one-to-three-year period was based on its understanding that the lake lowering measures would be temporary while dredging activities were completed.³¹ While LCA acknowledges there was a documented reason for lowering the level of Lake Conroe during the emergency dredging of the San Jacinto River, *i.e.*, to take any measure that might possibly help, those short-term reasons for the lake lowering program are no longer present; in fact, studies have shown there is no flood control benefit to lowering Lake Conroe. There is no benefit to lowering Lake Conroe and TCEQ should require Houston and SJRA to comply with the Amended Certificate, TCEQ rules, and state law.

To establish that Houston and SJRA are in compliance with the Amended Certificate, TCEQ rules, and state law, TCEQ would be required to find that Houston and/or SJRA are diverting water from Lake Conroe for an authorized beneficial use. The language of the Protocol makes clear that the purpose is for anticipatory flood control, not for municipal or any other authorized beneficial use. Instead, pursuant to the Protocol, Houston and SJRA are simply discharging water from Lake Conroe downstream for no use whatsoever. Allowing the authorized Owners of a water supply reservoir like Lake Conroe to artificially lower the lake for flood control on an ongoing basis—seasonally for over six years—establishes bad precedent for the management of other reservoirs in Texas. This is particularly true in a year when Governor Abbott has recognized the scarcity of water in Texas and

³⁰ Letter from Stephanie Bergeron Purdue, Interim Exec. Dir., TCEQ, to Jace A. Houston, Gen. Mgr., SJRA, & Carol Haddock, Dir., Houston Pub. Wks., at 1-2 (June 15, 2018) (emphasis added).

³¹ TCEQ appears to have also relied on a letter from W. Nim Kidd, Chief of the Texas Division of Emergency Management, who referenced the "acute need to dredge portions of the west fork of the San Jacinto River" and identified that the "temporary, seasonal, systematic lowering" of Lake Conroe was "not a long-term solution, but an emergency driven measure that is needed temporarily." Letter from W. Nim Kidd, CEM, Chief, Tex. Div. of Emer. Mgmt., Div. Dir., Tex. Dep't of Pub. Safety, to the Honorable Greg Abbott, Governor, St. of Tex., at 2 (June 12, 2018).

declared investment in water to be an emergency item during this legislative session.³² TCEQ is the statutory-steward of state water. While the State of Texas continues to grapple with how to address the long-term water needs of Texas, entities such as Houston and SJRA cannot be allowed to openly violate the terms of their TCEQ-issued certificates of adjudication, TCEQ rules, and state law. Water is too valuable to simply allow it to drain to the Gulf wasted.

Based on the information contained in this complaint and the 2020 complaints, it is clear that the following violations of state law, TCEQ rules, and the Amended Certificate have occurred:

- (1) Houston's and SJRA's releases from Lake Conroe are not for municipal, industrial, mining, or agricultural purposes in violation of Section 1.A. of the Amended Certificate;
- (2) Houston and SJRA are failing to prevent the loss or waste of water in violation of Section 2 of the Amended Certificate;
- (3) Houston's and SJRA's releases from Lake Conroe have not been for the appropriated purposes identified in the Amended Certificate in violation of Texas Water Code Section 11.023(e).
- (4) Houston's and SJRA's releases have not been beneficially used for the purposes specified in the Amended Certificate in violation of Texas Water Code Section 11.025.
- (5) Diverting or appropriating state water for any purpose not in compliance with Chapter 11 of the Texas Water Code is a violation of Texas Water Code Section 11.081;
- (6) Intentionally or knowingly making or causing to be made false material statements or representations in a submittal to TCEQ, *e.g.*, Houston's representations on WURs, is a violation of Texas Penal Code Section 37.10; and
- (7) Releases from Lake Conroe are a waste of water in violation of Texas Administrative Code Title 30, Section 297.48(a).

LCA respectfully requests that TCEQ investigate Houston's and SJRA's illegal lowering of Lake Conroe through the diversion of billions of gallons of water from the conservation pool of Lake Conroe in violation of the Amended Certificate, TCEQ rules, and state law, focusing on the fact that their diversions pursuant to the Protocol are not for any beneficial purpose as identified in the Amended Certificate and as defined in state law. LCA requests that, following this investigation,

³² In his State of the State Address, Governor Abbott stated:

Another issue that effects every family and every business is water. Some of our water supplies are drying up. Many communities have leaking and broken water lines. Agriculture producers in the Rio Grande Valley and West Texas do not have enough water to grow their crops.

Last session, we invested \$1 billion in water projects and infrastructure. This session, we will Texas-size that investment.

Working with Senator Perry and Representative Cody Harris, we will put Texas on a path to have plenty of water for the next 50 years. We will make the largest investment in water in the history of Texas. We will tap into new water supplies and ***repair pipes to save billions of gallons of water each year.***

This generational investment in water is so important, I am declaring it an emergency item.

The Honorable Greg Abbott, Gov., St. of Tex., "State of the State Address" (Feb. 2, 2025).

Kelly Keel
Executive Director
Texas Commission on Environmental Quality
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TCEQ require Houston and SJRA to cease this illegal, misguided, ineffective, wasteful, and destructive policy.

Thank you for your attention to this matter, and please let me know if you have any questions or if you need additional information from LCA.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Birch", with a stylized flourish at the end.

Erich M. Birch
Attorney for the Lake Conroe Association

Attachments

cc: Mr. Kevin Lacy, President, Lake Conroe Association, via *U.S. Mail*



San Jacinto River Authority Latest News for April 2024

SJRA Takes Home Multiple Awards at Texas Water Conference 2024



SJRA's Utility Enterprise Manager, Chris Meeks, receives the Sidney L. Allison award for making significant contributions to the operation and maintenance of wastewater collection and pumping stations.



SJRA Project Manager, Nabeel Khan, wins the Texas Section - AWWA Young Professionals Maverick Award and the AWWA Five Under 35 Award.



SJRA's Public Communications Department wins a Texas Watermark Award for excellence in Public Communications efforts in creating an educational one-pager.

SJRA's GRP Division places in the top three for the best tasting drinking water in Texas.

Active Storm Management Protocols

On April 25th, SJRA Board of Directors approved the 2024 Active Storm Management Protocols for Lake Conroe and Lake Houston. The updated protocols formalize SJRA and the City of Houston's shift from Seasonal Lake Lowering to Active Storm Management. Each weather event has its own set of circumstances and its own footprint. Active Storm Management allows for the flexibility needed to assess each event's potential impact to Lake Conroe. Lake Conroe is managed to a pool level of 201 mean sea level (msl).

A summary of the updated protocols can be found below:

Protocol – Lake Conroe

Spring

- Beginning April 1 through June 1, the City of Houston may request diversions to lower Lake Conroe from normal pool of 201' msl to create up to six inches of storage capacity for forecasted storm event inflows (to 200.5' msl). The decision of when, how, and whether to initiate diversions will be guided by climate conditions, weather patterns, and available water supply.
- Resume normal recapturing after each storm event that triggered any diversion between April 1 and June 1.
- In the event a major rainfall is forecasted to impact our region, active storm management protocols of the City of Houston could initiate a diversion to create up to an additional six inches of storage capacity for storm inflows (to 200.0' msl). It is acknowledged that under extraordinary weather circumstances, additional diversions to create capacity below 200.0' msl could occur.

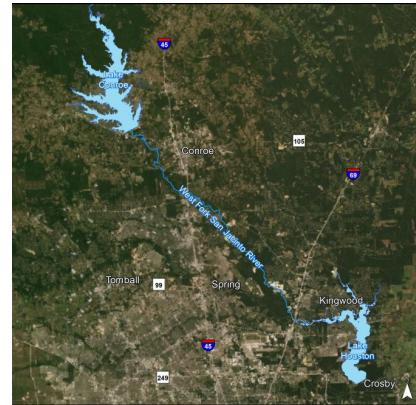
Fall

- Beginning August 1 through October 1, the City of Houston may request diversions to lower Lake Conroe if actual lake levels are at normal pool of 201 msl to create up to six inches of storage capacity for storm inflows (to 200.5' msl). After Labor Day, storage capacity may be increased an additional six inches (to 200.0' msl). Diversion volumes requested to reach intended levels will be dependent on the actual lake levels. The decision of when, how, and whether to initiate diversions will be guided by climate conditions, weather patterns, and available water supply.
- Resume normal recapturing after each storm event that triggered any diversion between August 1 and October 1.
- If a named storm is predicted to impact our region, active storm management protocols of the City of Houston could initiate a diversion to create up to an additional six inches of storage capacity for storm inflows (to 199.5' msl). It is acknowledged that under extraordinary weather circumstances, additional diversions to create capacity below 199.5' msl could occur.

Flood Management Project Updates

Lake Conroe - Lake Houston Joint Reservoir Operations Study

The City of Houston is currently performing a project to add additional spillway gates to increase the controlled release capacity of the Lake Houston dam. This study is planned to develop a joint reservoir operations and communications strategy for both Lake Conroe and Lake Houston, with the goal of determining the most efficient and safe operation of the two reservoirs in series. The study is planned to include evaluation of synced operations protocols, joint notification protocols and public communication strategies, and pre-releases and related impacts on water supply, as well as development of a forecasting tool for Lake Houston. The cost of the study is estimated at \$1,000,000. City of Houston and City of Humble (the Partners) have each agreed to fund a portion of the fifty percent local match (\$500,000) required by the Texas Water Development Board (TWDB) grant SJRA has received for the study. SJRA will perform in-kind services in an effort to reduce the local match amount to be funded by the Partners. The remaining fifty percent (\$500,000) of the study cost will be funded by grant funds.



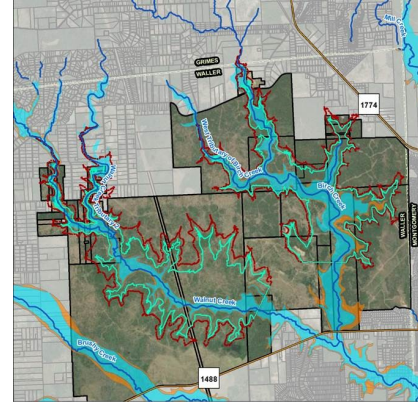
Sediment Removal and Sand Trap Study

House Bill 1824, approved by the 86th Texas Legislature, allows SJRA and Harris County Flood Control District (HCFCD) to remove material from the San Jacinto River and its tributaries to restore, maintain, or expand storm flow capacity without the need for state permitting or a royalty payment to the state. SJRA is working with HCFCD and City of Houston to plan, design, and construct one or more “sand traps” along the West Fork of the San Jacinto River to reduce future sedimentation accumulation with the goal of reducing the risk of flooding. A major component of the project is coordinating with Aggregate Production Operations (APOs) along the river in an attempt to establish a public/private partnership which would provide for operation and maintenance of the proposed sand trap(s). A conceptual design effort to select the most feasible site(s) for installation of sand trap(s) has been completed, and preliminary design is anticipated to begin in the near future.

Spring Creek Flood Control Dams Feasibility Study

This ongoing study is a continuation of the Spring Creek Siting Study, a sub-task of the San Jacinto Regional Watershed Master Drainage Plan project (SJMDP) led by Harris County Flood Control District (HCFCD) with SJRA as one of multiple partners. The Spring Creek Siting Study explored multiple

alternative projects and detention siting locations to provide flood mitigation benefits to the Spring Creek watershed. Two of the more cost-effective alternatives identified in the Spring Creek watershed – dams on Walnut Creek and Birch Creek – were recommended for implementation in the SJMDP. This study includes a conceptual-level design for each of the dams, as well as definition of benefits and costs for each dam and a combination of the two. The outcome of this study will allow project sponsors to determine the most feasible and economical alternative(s) for design and construction. The cost of the study is estimated at \$1,000,000. City of Humble, HCFCD, and five (5) Municipal Utility Districts (the Partners) have each agreed to fund a portion of the fifty percent local match (\$500,000) required by the Texas Water Development Board (TWDB) grant SJRA has received for the study. SJRA is performing in-kind services in an effort to reduce the local match amount to be funded by the Partners. The remaining fifty percent (\$500,000) of the study cost is being funded by grant funds.



Upper San Jacinto River Basin Regional Sedimentation Study

This ongoing study will provide an evaluation of sedimentation in the Upper San Jacinto River Basin, including identification of which sub-watersheds in the basin produce and store the most sediment, prioritization of individual watersheds/locations for improvements, and development of conceptual sedimentation solutions. Conceptual solutions could include future infrastructure projects or non-construction best management practices, with the ultimate goal of mitigating the loss of floodway conveyance in the basin. The cost of the study is estimated at \$750,000. City of Houston, City of Humble, and Harris County Flood Control District (the Partners) have each agreed to fund a portion of the fifty percent local match (\$375,000) required by the Texas Water Development Board grant SJRA has received for the study. SJRA is performing in-kind services in an effort to reduce the local match amount to be funded by the Partners. The remaining fifty percent (\$375,000) of the study cost is being funded by grant funds.

[#BestWaterInTexas](#)



Industrial customers in East Harris County depend on the SJRA to maintain 27 miles of canal that help push water to places that provide our region with energy, jobs and a vibrant economy! The Best Water in Texas helps keep the Texas energy industry strong!



June is the beginning of hurricane season, so now is the time to know how to be weather aware in case of a storm event. It is very important to pay attention to the forecast, become familiar with your location in the watershed, and know where to get quick but accurate information.

Be on the lookout for our SJRA Weather Aware Resource Guide article in [Dock Line Magazine](#).

SJRA is Recruiting!



Check out open positions [here](#).

SJRA.net QR Code

Scan the QR code to get
information on Lake Conroe,
all five operational divisions,
and how
We work for *your* Water!



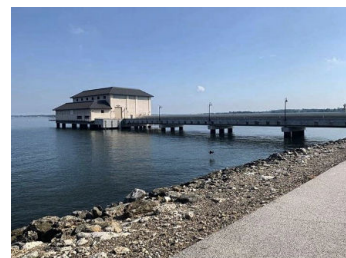
Important Dates



**SJRA Board of Directors
Meeting**
1577 Dam Site Road
Conroe, Texas



**SJRA GRP Review Committee
Meeting**
1577 Dam Site Road
Conroe, Texas



Live Streaming Coverage of SJRA Meetings

If you are unable to attend the monthly SJRA Board of Director and GRP Review Committee Meetings, you can still stay up to date by watching the live streaming coverage on the SJRA website.

Click [HERE](#) to visit www.sjra.net to watch SJRA meetings live.

Scroll down to the embedded video box and click the appropriate tab and link.

To request a tour of any operational facility, visit [SJRA's Tour Request Form](#) page on sjra.net.



Tell Us How We're Doing!

SJRA values your opinions and thoughts.

We would love to hear from you on how we are doing. Please submit questions, concerns, or other feedback here.

[Contact Us](#)

The San Jacinto River Authority (SJRA) receives no money from the state, nor does it collect any type of taxes.

SJRA's mission is to develop, conserve, and protect the water resources of the San Jacinto River basin. Covering all or part of seven counties, the organization's jurisdiction includes the entire San Jacinto River watershed, excluding Harris County. The SJRA is one of two dozen river authorities in the State of Texas, and like other river authorities, its primary purpose is to implement long-term, regional projects related to water supply and wastewater treatment.

If you would like to know more about SJRA, what we do, and how we work for the community, check out our website www.sjra.net and follow us on social media [@SanJacintoRiverAuthority](#), [@SJRA_1937](#), [@sanjacintoriverauthoritysjra](#), [@San Jacinto River Authority](#).



San Jacinto River Authority | PO Box 329 | Conroe, TX 77305 US

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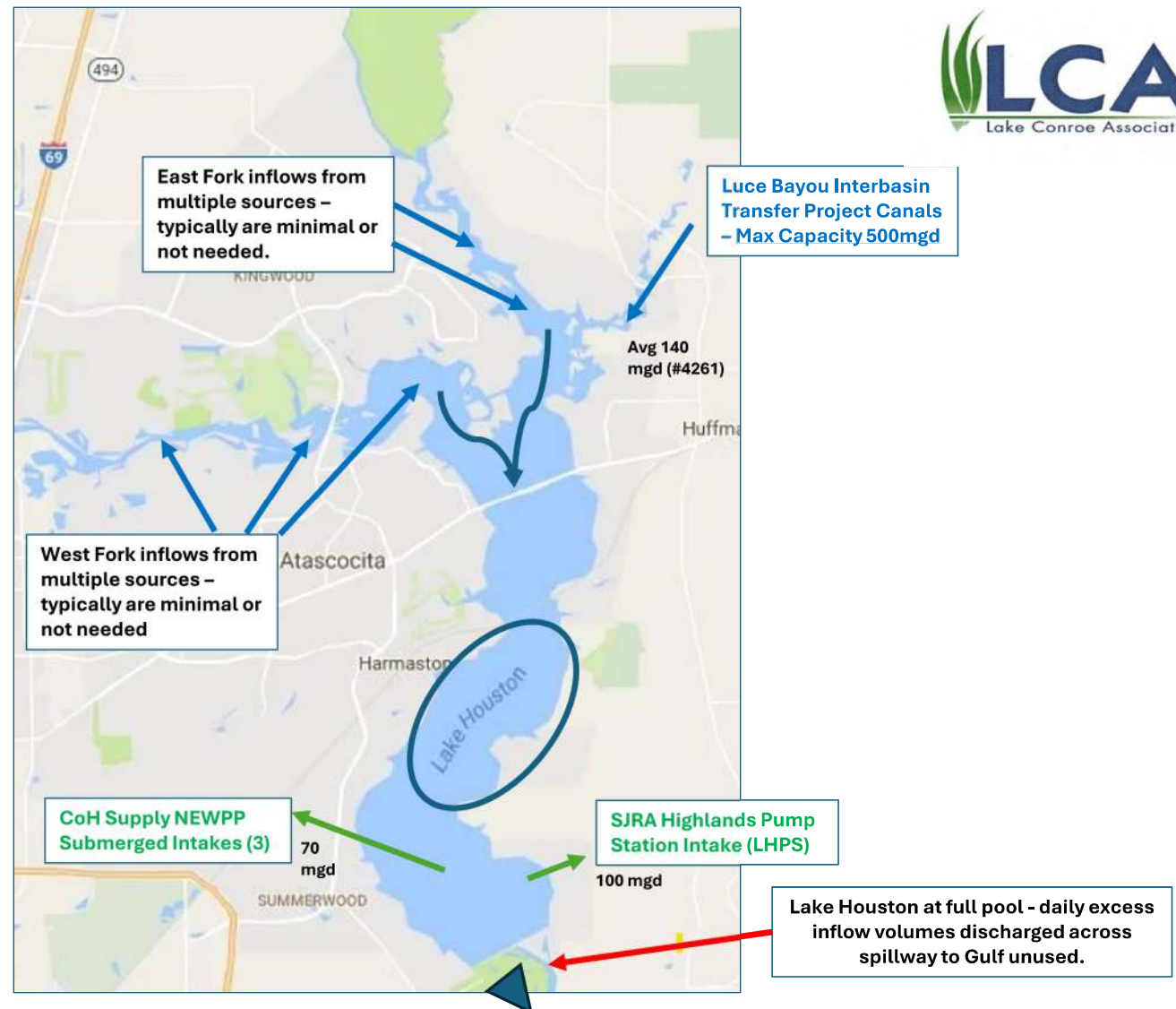
Try email marketing for free today!

Lake Houston daily normal inflows and typical volumes used as permitted.

Lake Conroe water supply diverted to Lake Houston was intended as a supplemental supply and built pre-Luce Bayou.

City of Houston has only called upon Lake Conroe once in 50 years for water supply due the 2011 drought.

All other inflows to Lake Houston are uncontrolled and usually account for 65-95% of the storm inflows depending on watershed rainfall.



City of Houston Diversion call on Lake Conroe water permit showing TCEQ permitted rates.

Permitted CoH Call for diversion from
Lake Conroe 700 cfs for *beneficial use* -
max permitted diversion rate = 420mgd

Lake Conroe – Water Use Permit

The San Jacinto River Authority and City of Houston are joint permittees under Certificate 10-4963 for impounding up to 430,260 acre-feet of state waters, and annual use of up to 100,000 acre-ft for municipal, industrial, and mining purposes, with a maximum diversion rate of 700 cfs, and use of all impounded water for recreational purposes.

Flood risk reduction is not an authorized use per the TCEQ permit.

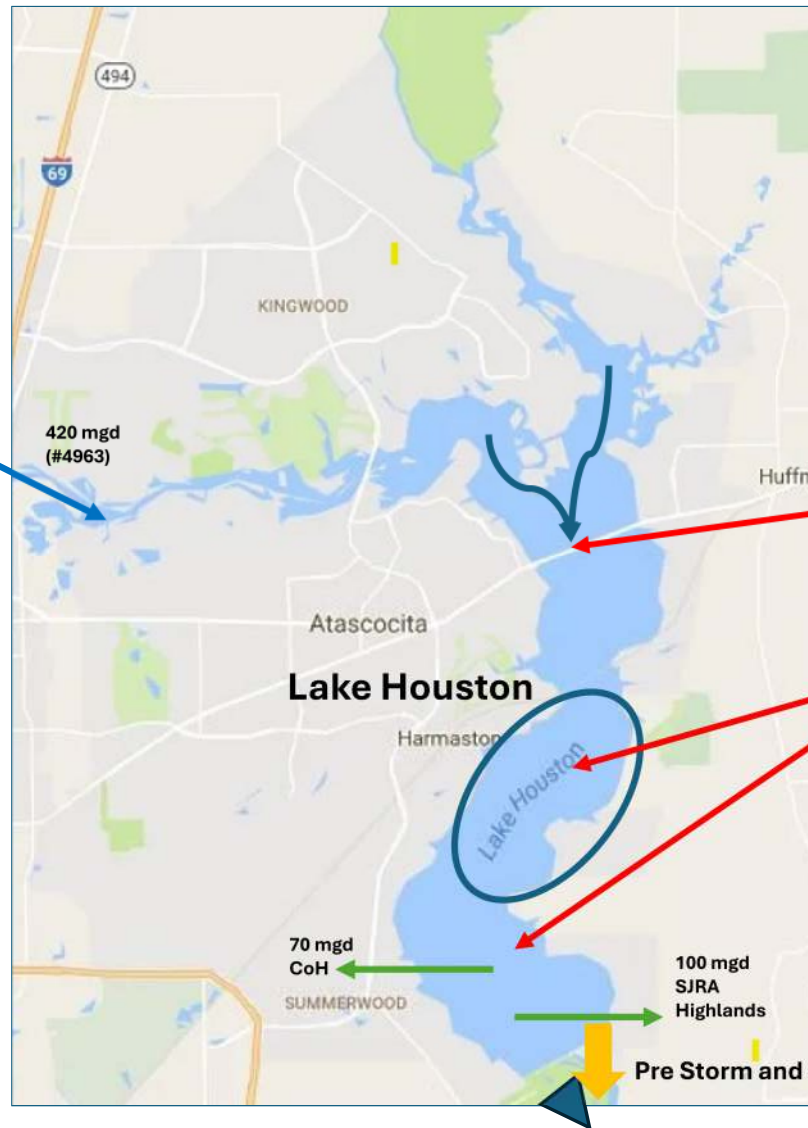


TCEQ Permit #4963 does not allow for a CoH rain event-based call for LC water diversions

No means to segregate or divert the specific Lake Conroe volumes from other incoming volumes which are often 2X to 12X times greater.

Lake Conroe max permitted diversion rate of 420 mgd significantly exceeds (by 2.5X) CoH and SJRA daily needed beneficial use volumes.

All excess water exits and is wasted via Lake Houston Spillway / Dam to Gulf.



Pre Storm and Storm Release Mode 950-5400 mgd unused

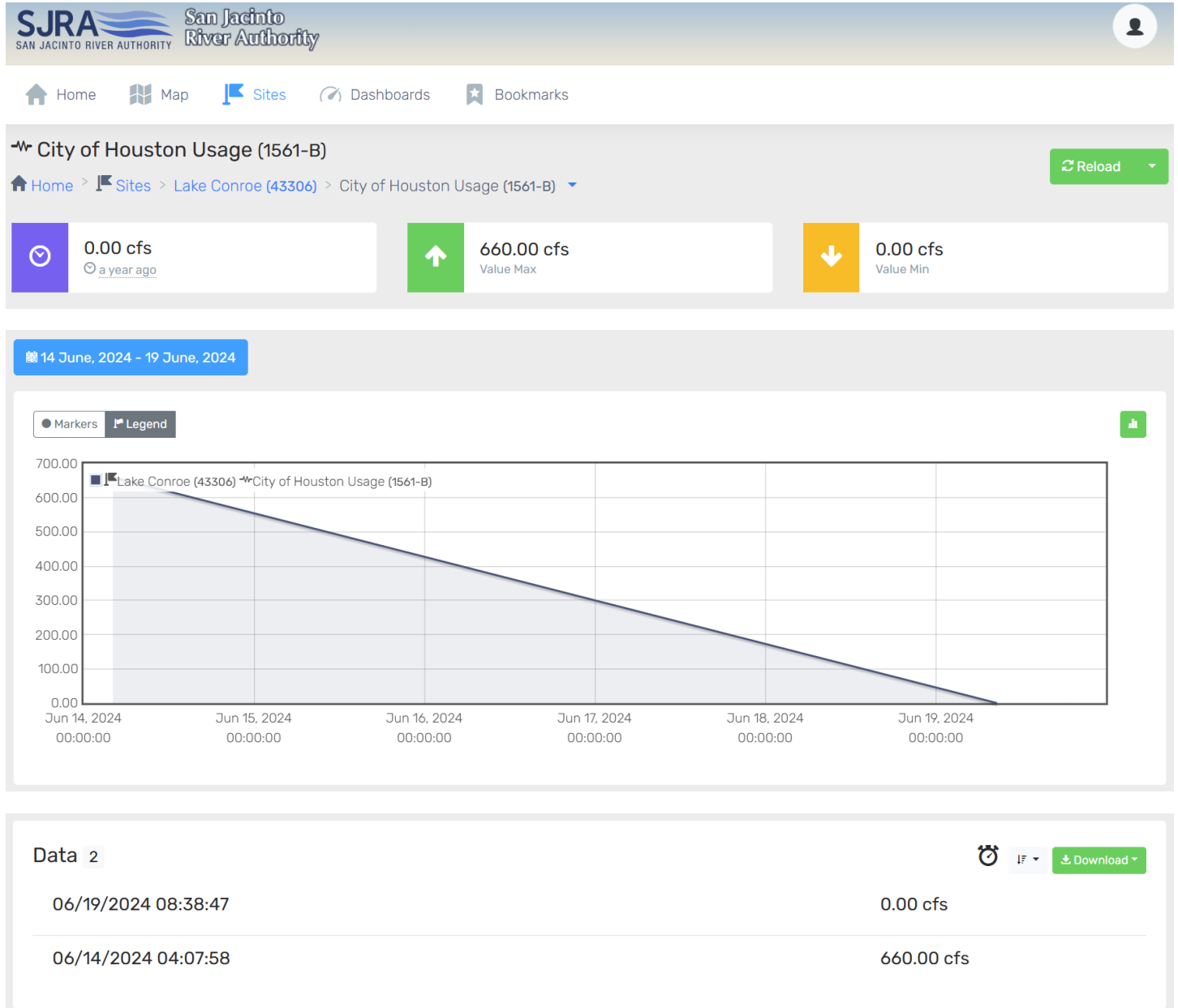
Attachment 3

SJRA, “USGS Bubbler” (showing water levels at Lake Conroe (June 14-19, 2024) from SJRA Website, Lake Conroe Dashboard, Lake Level, at https://sanjacinto.onerain.com/sensor/?time_zone=US%2FCentral&site_id=13189&site=b6f6df4e-f5a5-4398-a2e9-1a3508c4e9b5&device_id=15&device=28823576-054f-43ef-bff3-clacb76595f2&data_start=2024-06-14%2000%3A00%3A00&data_end=2024-06-19%2023%3A59%3A59&bin=86400&range=Custom%20Range&markers=false&legend=true&thresholds=true&refresh=off&show_raw=true&show_quality=true.



Attachment 4

SJRA, “City of Houston Usage” (June 14-19, 2024), from SJRA Website, Lake Conroe Dashboard, at https://sanjacinto.onerain.com/sensor/?time_zone=US%2FCentral&site_id=13189&site=b6f6df4e-f5a5-4398-a2e9-1a3508c4e9b5&device_id=23&device=130e3e6f-4040-444f-8260-99da894a0d3c&bin=86400&range=Custom%20Range&markers=false&legend=true&thresholds=true&refresh=off&show_raw=true&show_quality=true&data_start=2024-06-14%2000%3A00%3A00&data_end=2024-06-19%2023%3A59%3A59.





LOGIN/REGISTER



Agency San Jacinto River Authority

Location 43306: Lake Conroe

Last 7 Days

Reported from 6/20/2024 7:04 PM

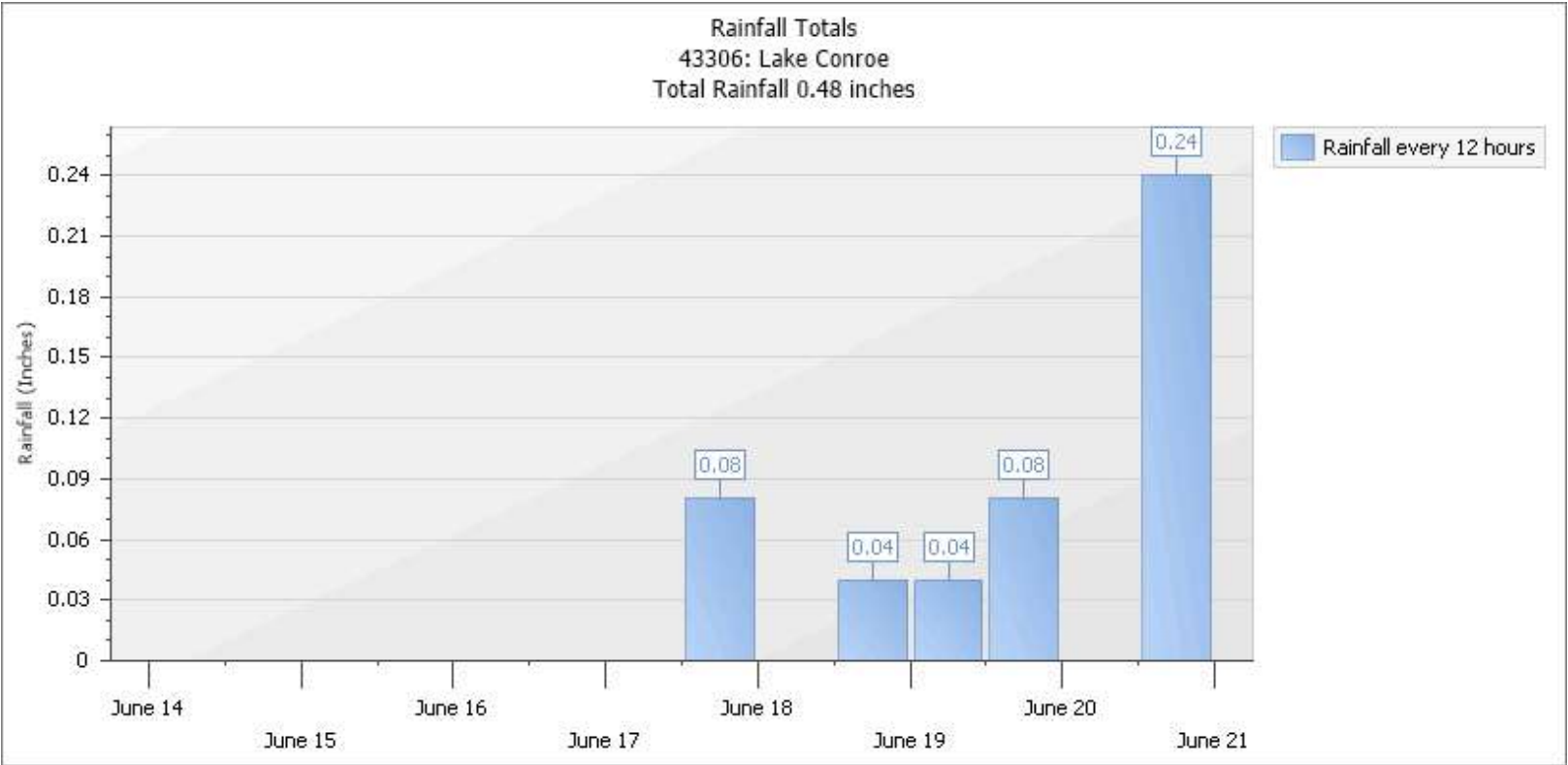
Subscribe to Real-time Alerts

Show Current Conditions

Information made possible by the San Jacinto River Authority

Lake Conroe Elevation Rainfall Weather

Showing rainfall totals from 6/14/2024 12:00 AM to 6/21/2024 12:00 AM CDT



Data not verified

The following detail shows the rainfall that has fallen by the selected time span. The default selection matches the Rainfall totals in the graph above.

Export to Excel 12 Hours

Reading Date From	Reading Date To	Rain
-------------------	-----------------	------

6/20/2024 12:00 PM	6/21/2024 12:00 AM	0.24"
6/20/2024 12:00 AM	6/20/2024 12:00 PM	0.00"
6/19/2024 12:00 PM	6/20/2024 12:00 AM	0.08"
6/19/2024 12:00 AM	6/19/2024 12:00 PM	0.04"
6/18/2024 12:00 PM	6/19/2024 12:00 AM	0.04"
6/18/2024 12:00 AM	6/18/2024 12:00 PM	0.00"
6/17/2024 12:00 PM	6/18/2024 12:00 AM	0.08"
6/17/2024 12:00 AM	6/17/2024 12:00 PM	0.00"
6/16/2024 12:00 PM	6/17/2024 12:00 AM	0.00"
6/16/2024 12:00 AM	6/16/2024 12:00 PM	0.00"
6/15/2024 12:00 PM	6/16/2024 12:00 AM	0.00"
6/15/2024 12:00 AM	6/15/2024 12:00 PM	0.00"
6/14/2024 12:00 PM	6/15/2024 12:00 AM	0.00"
6/14/2024 12:00 AM	6/14/2024 12:00 PM	0.00"

The Harris County Flood Control District (HCFCFCD) provides information via this website as a public service. While HCFCFCD makes every effort to ensure information is up-to-date, accurate and complete, HCFCFCD makes no representations, guarantees, or warranties as to the availability, accuracy, completeness, currency or suitability of the information provided via this website. HCFCFCD specifically disclaims any and all liability for any claims or damages that may result from providing the website or the information it contains. All liability with respect to actions taken or not taken based on the contents of this site is hereby expressly disclaimed.

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 24, 2017

Mr. Bret Raley
San Jacinto River Authority
Division Manager, Lake Conroe Division
P. O. Box 329
Conroe, Texas 77305

Re: **Pre-Release from Reservoirs**

Dear Mr. Raley:

During our telephone conversation on April 19, 2017, you requested our comments on pre-release from reservoirs before a predicted large rain event. Here are our comments.

We would not recommend pre-release based on weather forecasts. Meteorologists cannot precisely predict how much it is going to rain or exactly where it is going to rain. If pre-release from a reservoir was started based on a prediction of rain upstream of a dam and the rain actually fell downstream of the dam on top of the water that was released, the dam owner could be liable for causing any flooding and water supply would have been wasted.

The general rule in this country is that the operator of a dam may permit floodwaters to pass through the dam in an amount equal to the inflow, but will be liable if any excess amount is discharged. This is the reason the gate operation procedures as prepared by your engineer must be followed every time the gates are operated.

In the case of large rainfalls, it would be difficult to release enough water in advance of the storm, without causing flooding, to allow storage without release during the event.

If you have questions, please feel free to call (512/239-5195).

Sincerely,

A handwritten signature in cursive script that reads "Warren D. Samuelson".

Warren D. Samuelson, P. E.
Manager, Dam Safety Section
Critical Infrastructure Division, MC-177



Why Not Pre-Release?

By: Bret Raley, SJRA Lake Conroe Division Manager

Attachment 7

The San Jacinto River Authority (SJRA) receives inquiries from the public on a wide variety of issues. Regardless of whether the questions are received via email, webmail, social media, or telephone, there is one particular question that continues to be asked time and time again, "Why don't you let water out of the reservoir in advance of a storm?" Or put another way, "Why doesn't SJRA pre-release?" There are a number of reasons why officials from across the state, including SJRA, make it a policy not to pre-release from a reservoir in advance of a storm.

It would take several weeks to safely

let water out of Lake Conroe at a rate that does not cause or exacerbate flooding downstream. Unfortunately, weather forecasts are not accurate enough, especially several weeks in advance, to accomplish a meaningful decrease in lake elevation. A pre-release of water would prematurely fill the river leaving less storage capacity to accept natural rainfall and runoff. If rains subsequently fell primarily downstream of the dam, we could potentially make downstream conditions worse having pre-filled the river.

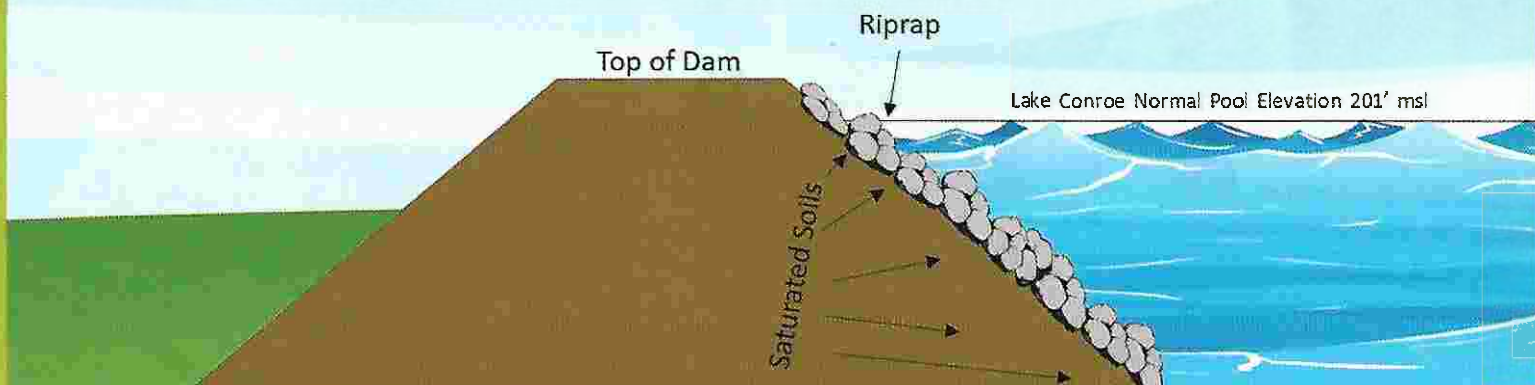
Preserving the structural integrity of the earthen embankment also contributes



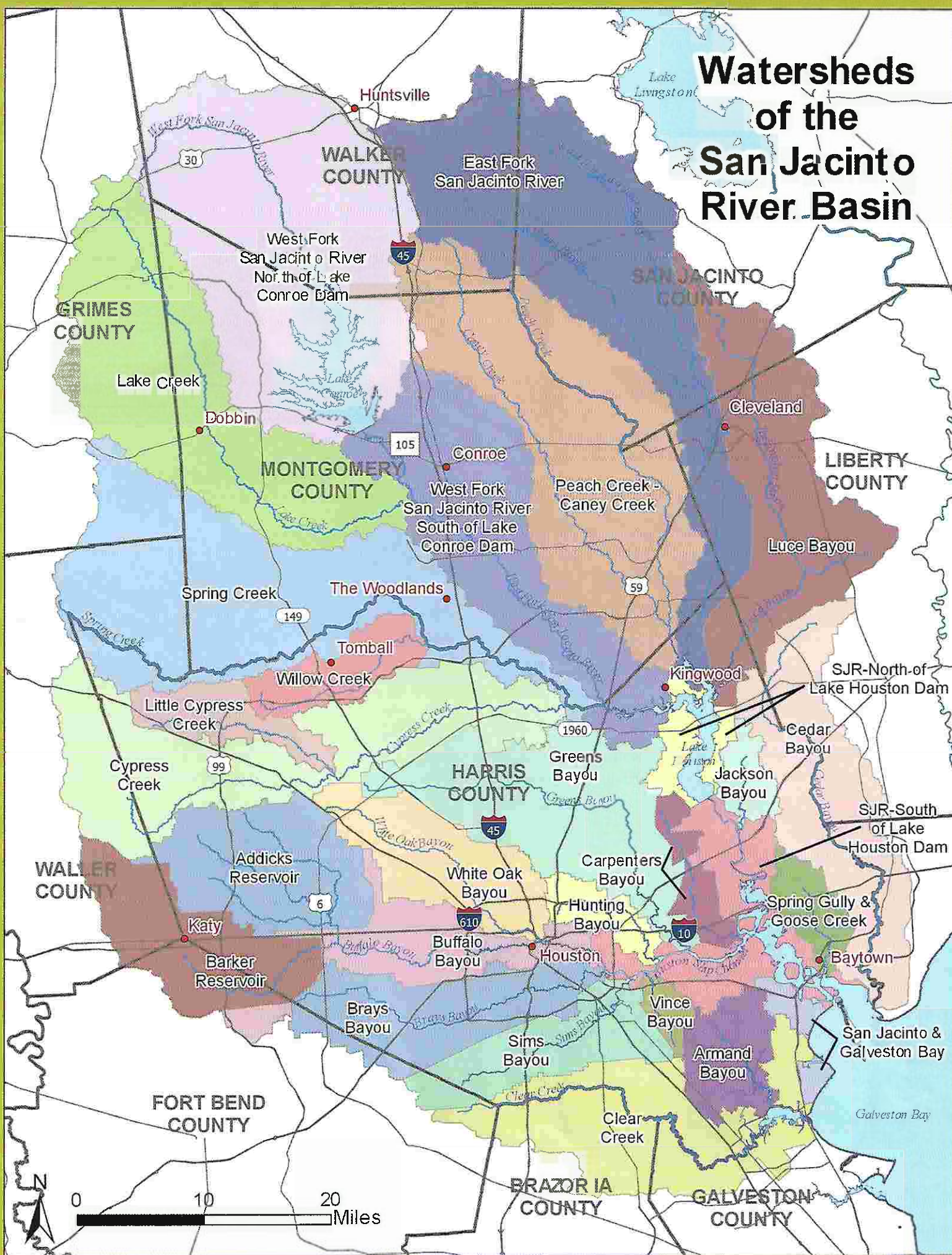
to the decision. The dam at Lake Conroe consists of an engineered earthen embankment that is approximately two

Continued on page 46

Cross Section of the Lake Conroe Dam



Watersheds of the San Jacinto River Basin





miles long and includes five tainter gates where water is released during storm events. The earthen embankment portion of the dam was never intended to be overtopped, and the tainter gates are also not designed for water to flow over the top of the gates. That's why the gates are gradually raised during storms to allow water to pass underneath. The engineered earthen material that makes up the dam is saturated below the surface of the water. If the lake were to be lowered too quickly, the reduction of water pressure against the dam could cause instability of those saturated soils. This is a concept known as rapid drawdown, and it is a serious concern of dam safety engineers. Furthermore, if water is pre-released from the reservoir and the area does not receive the predicted rainfall, precious supplies of water will have been unnecessarily depleted. Dam safety officials from the Texas Commission on Environmental Quality do not recommend pre-release for these reasons and more.

People also ask, "Why does Lake Houston Pre-Release?" There are sev-

eral differences between pre-release from Lake Houston and pre-release from Lake Conroe:

1. Proximity to the coast with limited downstream urban development compared to Lake Conroe.

2. Water released from Lake Houston has a much shorter distance in river miles to the coast compared to Lake Conroe. This short reach to the coast affords them the opportunity to pre-fill the river downstream of the Lake Houston spillway with minimal potential for causing flooding issues. The water has a much shorter distance to get to Galveston Bay.

3. Lake Houston is much smaller in size than Lake Conroe, so Houston has the ability to reduce the level of Lake Houston a couple of feet at a safe release rate because the reservoir is much smaller.

4. Lake Houston is much smaller in size compared to Lake Conroe, but the contributing watershed for Lake Houston is much larger than the contributing watershed for Lake Conroe. So if the water level in Lake Conroe were to be lowered

and the rainfall predicted over our watershed did not materialize, it is very difficult to replenish the water in Lake Conroe – a water supply reservoir. Alternatively, if the City of Houston lowers Lake Houston prior to a storm event, and the rainfall event does not materialize, it only takes a small amount of rainfall over Lake Houston's 3,000 sq mile watershed to replenish the water in this smaller reservoir.

One of the major river authorities in Texas, SJRA's mission is to develop, conserve, and protect the water resources of the San Jacinto River. Covering all or part of seven counties, the organization's jurisdiction includes the entire San Jacinto River watershed, excluding Harris County. For additional information on SJRA visit our website at www.sjra.net, like SJRA on Facebook @SanJacintoRiverAuthority, and follow us on Twitter @SJRA_1937. ♦