

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

September 4, 2009

TO: All Persons on Mailing List

RE: **TCEQ Docket No. 2009-0914-WR, Application No. 08-4248D to Amend COA No. 08-4248; In the matter of an amendment to a water right by the Trinity River Authority of Texas.**

The above-referenced matter is scheduled to be considered by the Texas Commission on Environmental Quality on **September 23, 2009 at 9:30 A.M.** in Room 201S, Building E, 12100 Park 35 Circle, Austin, Texas. The Commission will consider whether notice is required for this application, and if so, what type of notice will be required. The Executive Director's memorandum and recommendation and other documents related to this matter may be found at http://www.tceq.state.tx.us/permitting/water_supply/water_rights/wran.html.

Should you need any additional information, please contact Melissa Chao at the Texas Commission on Environmental Quality, Office of the Chief Clerk, (512) 239-3300.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/mc

MAILING LIST
TRINITY RIVER AUTHORITY OF TEXAS
TCEQ DOCKET NO. 2009-0914-WR

FOR THE APPLICANT:

Fred B. Werkenthin, Jr.
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701-3503

FOR THE EXECUTIVE DIRECTOR:

Robin Smith, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division, MC-173
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

Iliana Delgado, Team Leader
Texas Commission on Environmental Quality
Water Supply Division, MC-160
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3678
Fax: (512) 239-2214

Steve Ramos, Project Manager
Texas Commission on Environmental Quality
Water Supply Division, MC-160
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6538
Fax: (512) 239-2214

FOR PUBLIC INTEREST COUNSEL:

Mr. Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

FOR OFFICE OF PUBLIC ASSISTANCE:

Ms. Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance, MC-108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE
RESOLUTION:

Mr. Kyle Lucas
Texas Commission on Environmental Quality
Alternative Dispute Resolution, MC-222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

Ms. LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-3300
Fax: (512) 239-3311

INTERESTED PERSON(S):

Lyn Clancy
Associate General Counsel
LCRA
P.O. Box 220 H424
Austin, Texas 78767

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Commissioners

THRU: Todd Chenoweth, Director
Water Supply Division

FROM: Kellye Rila, Section Manager
Water Rights Permitting & Availability Section

Robin Smith, Attorney
Environmental Law Division

SUBJECT: Trinity River Authority
Docket # 2009-0914-WR
Application No. 08-4248D to Amend Certificate of Adjudication No. 08-4248
Trinity River, Trinity River Basin
Trinity, Polk, San Jacinto, and Walker Counties

DATE: June 24, 2009

2009 SEP -3 PM 4:55
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

On June 9, 2006 the Texas Supreme Court issued an opinion in the case of *Marshall v Uncertain*.¹ The Court in that opinion considered the Commission's practices regarding notice and hearing for applications to amend a water right under Texas Water Code (TWC) § 11.122(b). The Court held that it could not determine under the record in that case whether notice and a hearing would be required. The Court remanded the case to the Commission.

The Court held that when reviewing the type of notice required for an amendment to a water right, the Commission must determine whether there could be an adverse impact from the application on other water rights or the environment beyond or irrespective of the full use assumption, explained below. The Court also held that the Commission must determine if the application could have an adverse impact on the public interest criteria: beneficial use, public welfare, groundwater effects, consistency with the state and regional water plan, compliance with administrative requirements, and conservation.

The types of amendments that come within the *Marshall* decision are those amendments that do not already have a specific notice requirement in a rule for that type of amendment and that do not change the amount of water to be taken or the diversion rate. These amendments include changes in use, changes in place of use, or non-substantive changes in a water right.

¹ City of Marshall et. al. v. City of Uncertain et. al., No. 03-1111 (Tx. June 9, 2006).

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The purpose of this memo is to discuss the public notice that should be given in the above referenced application by Trinity River Authority in light of agency rules and the Court's decision in the case of *Marshall*.

Current Authorization and Application for Amendment

The Trinity River Authority (TRA) owns Certificate of Adjudication No. 08-4248, which authorizes the TRA, in conjunction with the City of Houston (Owner of Certificate of Adjudication No. 08-4261), to maintain an existing dam and reservoir (Lake Livingston) on the Trinity River, Trinity River Basin, impounding 1,750,000 acre-feet of water.

TRA is authorized to divert and use not to exceed 351,600 acre-feet of water per year for multiple purposes (domestic, municipal, agricultural (irrigation)), and industrial purposes from multiple points with a maximum combined diversion rate, exclusive of release through Lake Livingston Dam, of 1,032.49 cfs (463,381.512 gpm). TRA is authorized an interbasin transfer of the authorized water to the San Jacinto River Basin, the Neches River Basin and the Neches-Trinity Coastal Basin. TRA is also authorized to impound in Lake Livingston and divert up to 246,219 acre-feet of documented return flows from three wastewater treatment plants.

Many special conditions apply which include conditions for releases from Lake Livingston, the subordination of this certificate to numerous other rights in the Trinity River Basin, limitations on irrigation and mining use, and conditions related to the reuse of return flows.

TRA seeks to amend Certificate of Adjudication No. 08-4248 to add non-consumptive hydroelectric power generation as an additional authorized use for the water rights in Lake Livingston authorized by the certificate. TRA indicates hydroelectric power generation will only be conducted when water is released from Lake Livingston for another authorized purpose(s) such as water released from Lake Livingston for downstream use, to meet priority calls, or to pass inflows when the conservation storage of Lake Livingston is full.

Rules Related to Notice

The Commission has rules concerning what notice is required for applications to amend a water right in 30 Texas Administrative Code (TAC) § 295.158. There are no rules that specifically provide notice for adding a purpose of use. Under 30 TAC § 295.158(c), no notice is required if no additional consumptive use is contemplated, no increase in diversion rate or period will be granted, and in the judgment of the Commission there is no potential for harming another water right. This application falls under this rule and does not require notice for the reasons set out below.

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Texas Water Code

This application for an amendment to an existing water right is governed by TWC § 11.122. TWC § 11.122(a) requires a water right holder, except as discussed above, to obtain a water right amendment if the holder is going to change the purpose of use or “otherwise alter a water right.”

TWC § 11.122(b) sets out the scope of the Commission’s authority in reviewing applications to amend a water right. Staff notes that, in the application, TRA is not asking for either an increase in the amount of water authorized for diversion or an increase in the rate of diversion. With that understanding of the application, it then becomes a duty of the Commission to approve the application “*if the requested change will not cause adverse impact on other water right holders or the environment on the stream of greater magnitude than under circumstances in which the permit . . . that is sought to be amended was fully exercised according to its terms and conditions as they existed before the requested amendment,*” and the application must meet, “*all other applicable requirements,*” of Chapter 11 of the TWC. The clause that requires the Commission to compare the requested amendment to the existing water right as if the existing water right was fully exercised is often referred to as the “full use assumption.”

Adverse Impact on Water Right Holders and the Environment

Under the *City of Marshall* opinion, the Commission must evaluate whether an amendment can adversely impair other water rights or the environment beyond the full use assumption. Under the full use assumption, the addition of hydroelectric use can have no greater impact on other water right holders or the environment than the impacts to those interests under the existing certificate because TRA is merely seeking to add a non-consumptive purpose of use to Certificate of Adjudication No. 08-4248 and the current special conditions in the certificate will still apply. Adding hydroelectric use would not change the amount of water released or the amount of water authorized for diversion by the certificate. Both before and after the amendment the amount of water diverted or released will be the same. Because there is no specific pattern of use in the certificate, the full use assumption requires the Commission to consider the existing certificate and the proposed amended certificate as potentially exercised under all lawful patterns of use.

It makes no difference to other water right holders or the environment, whether the water right holder is adding hydroelectric use to their rights in Lake Livingston. The effect on streamflow, and therefore water available for downstream water right holders or the downstream aquatic environment, will be the same; hydroelectric use is non-consumptive and no additional diversions or releases will be made, therefore, with the full use assumption, the proposed amendment will not cause adverse impact to other water right holders or the environment.

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Concerning whether there are impacts to water rights or the environment beyond the full use assumption, the Executive Director believes that there are none for adding a purpose of use. This amendment is to add hydroelectric use to the certificate and does not change a non-consumptive use to a consumptive use. In fact, the application would add a non-consumptive use.

Unless the existing permit requires a specific pattern of use, the Executive Director does not believe that this is a proper factor to consider because patterns of use change due to weather, time of use, and needs of the applicant, and it cannot be determined ahead of time how an applicant will use its water.

Another issue is whether the Executive Director should consider if the applicant is using all of the water authorized in the existing water right. The Executive Director does not believe that this is a proper factor to consider because it would discourage conservation and future water planning.

Other Applicable Requirements

Under TWC § 11.122(b), the proposed amendment must also satisfy all other applicable requirements of TWC Chapter 11. The Supreme Court in the *Marshall* case itemized those other requirements. We turn now to a consideration of the requested amendments and those other requirements that the Supreme Court has told us are applicable.

Administrative Requirements

Staff has reviewed the application and has found that it meets all administrative requirements of the TWC Chapter 11. Notice fees have not been requested or paid. Therefore, this application has not been declared administratively complete. In the event the Commission recommends that notice is required, appropriate notice fees will be requested at that time and upon payment of notice fees the application will be declared administratively complete and accepted for filing with the Chief Clerk.

Beneficial Use

Proposed appropriations of state water must be for a beneficial use. Beneficial use is defined in TWC § 11.002(4) as “the 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 shall include conserved water.” TRA has asked that hydroelectric use be added as an authorized use in their certificate. Hydroelectric use is recognized as a beneficial use by TWC § 11.023(a)(4). TRA will only use water for this purpose when it is released for another purpose to efficiently use its water.

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Concerning whether an applicant should only be allowed to change the use for water that is being used, the Executive Director believes that due to the nature of this application the additional use is being limited to water that is already being used, as requested by the applicant. However, in general, the Executive Director believes that limiting the change or additional use to the amount of water currently being used is inappropriate. The fact that the applicant may not be using all of their appropriated water does not mean that there has not been or will not be a beneficial use of the water. In addition, this factor would discourage conservation and future water planning. The cancellation statutes, TWC §§ 11.171 - 11.186, provide that the Commission, in determining whether non-use is justified, will consider whether the purpose of use is consistent with the approved regional water plan. Also, TWC § 11.173(b)(3) exempts from cancellation a water right that was obtained to meet demonstrated long-term public water supply or electric generation needs as evidenced by a water management plan and is consistent with projections of future water needs contained in the state water plan.

We will consider whether the use is non-wasteful under "Avoidance of Waste and Achievement of Water Conservation" below.

Protection of Public Welfare

A proposed appropriation of state water must not be detrimental to the public welfare. No definition of "detriment to public welfare" is provided in the law. Therefore, the Commission has wide discretion in determining benefits or detriments to the public welfare. TRA seeks to add hydroelectric use to their existing certificate. This type of multi-use certificate is authorized by TWC § 11.023(e). A multi-use certificate in this situation would allow TRA to more efficiently and effectively utilize their existing water supply. The TRA states that the amendment to Certificate of Adjudication No. 08-4248 to add hydroelectric generation as an additional use will not be detrimental to the public welfare. In fact, the proposed amendment will actually benefit the public welfare by allowing TRA to more efficiently and effectively utilize the existing water supply. There are no specific facts that would indicate that this use is not in the public welfare.

The Executive Director does not believe that an applicant should only be allowed to amend the purpose of use for the water that is being used. The Executive Director believes that limiting the change or additional use to the amount of water currently being used is inappropriate for the reasons stated above.

Another issue is whether the applicant should show that the additional use is as beneficial as some other use of the water. The Executive Director believes that this is inappropriate because TWC § 11.024 of the Texas Water Code, which provides for a preference of use, only applies

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when there are two pending applications for the same water.² Also, a law that required the Texas Commission on Environmental Quality (TCEQ) to give preference to municipal use was repealed several years ago. If the TCEQ is to weigh uses in granting permits, and deny permits that it does not think are the best use of the water, this would be a major change in TCEQ policy.

The Executive Director's opinion is that there is no detriment to the public welfare by granting this application.

Groundwater Effects

A proposed appropriation of state water must consider effects of the proposed permit on groundwater or groundwater recharge. The Commission's Water Availability Model (WAM) is used to evaluate the availability of unappropriated water for new appropriations and takes into account both contributions to river flow caused by groundwater coming to the surface in the river (springs) and decreases in river flow caused by the river flowing over recharge features and losing surface water to groundwater recharge. The WAM contains channel loss factors that account for the gain or loss of river flow. These channel loss factors were developed by the expert engineering contractors hired by the Commission to develop the WAMs.

The Trinity WAM includes the segment of the Trinity River (Lake Livingston) where the diversions under this permit occur. The Trinity WAM includes channel loss factors, however there are no channel losses associated with the Trinity River at the permitted diversion point.

Concerning use of the Texas Water Development Board Groundwater Availability Models (GAMs) and information from the University of Texas Bureau of Economic Geology to assess groundwater impact, predictive simulations using the GAMs do not account for streamflow changes associated with permitted surface water withdrawals or return flows. GAMs were not originally designed to address groundwater-surface water interactions and there are issues with using these models for that purpose.³ The GAMs are regional in nature and are not able to simulate groundwater-surface water interaction in detail.⁴ Both the WAMs and the GAMs have

² Although there are no cases directly in point on this issue, *see*, *City of San Antonio v. Texas Water Commission*, 407 S.W.2d 752, 764 (Tex. 1966) (discussing preferences of use in the context of competing water rights). *See also*, Tex. Water Code § 11.147(c)(6), which provides that a factor for determining beneficial inflow requirements in an application is "the declarations as to preferences for competing uses of water as found in TWC § 11.024."

(<http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW8.11&ifm=NotSet&fn=top&sv=Split&tc=-1&docname=TXWAS11.024&ordoc=1034726&findtype=L&db=1000186&vr=2.0&rp=%2ffind%2fdefault.wl&mt=Texas>)

³ Bureau of Economic Geology. 2005. Groundwater-Surface Water Interactions in Texas. August 2005.

⁴ Mace, R., Austin, B. Angle, E. and R. Batchelder. 2007. Surface Water and Groundwater Together Again. Paper presented at State Bar of Texas 8th Annual Changing Face of Water Rights in Texas. San Antonio, Texas.

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issues related to quantifying groundwater-surface water interaction; however, the WAMs were developed as a tool for surface water permitting.

The Bureau of Economic Geology provides information about aquifer recharge rates.⁵ In general, these rates, where quantified, are applicable to aquifers or portions of aquifers. As such, they do not provide sufficient detail to determine interaction between surface and groundwater at discrete points. The application is located in the Lower Trinity Groundwater Conservation District (LTGCD).⁶ The Region H Water Planning Group 2006 Regional Water Plan does not indicate issues with groundwater or groundwater recharge directly related to the application.⁷

The amount of water diverted and released by the owner will be the same whether that water is drawn from the Trinity River for the existing or proposed use. Thus, the diversion and release of the full authorized volume of water for the existing uses (domestic, agricultural (irrigation), municipal, industrial purposes) will have no greater impact on groundwater resources or groundwater recharge than the non-consumptive use of water for hydroelectric power generation. Therefore, the Executive Director concludes that there is no potential groundwater issue involved with this application.

Consistency with Regional and State Plans

Water right applications are only granted if the application addresses a water supply need in a manner that is consistent with the state water plan and the relevant regional water plan, unless the Commission determines that conditions warrant a waiver of this requirement. The purpose of the state and regional water plans is to assess the likely future use of water and to develop strategies for meeting water supply shortfalls. The state and regional water plans generally do not address every possible change in individual water rights. According to the approved regional water plan, hydroelectric generation is important to the economy in the area. Therefore, the Executive Director concludes that because of this statement in the regional water plan and because the state and regional water plans are not designed to cover this specific type of amendment, the requested amendment is consistent with the relevant regional water plan and the state water plans. If the Commission determines that the amendment is not consistent with the relevant regional water plan and the state water plan, the Executive Director believes that it would warrant a waiver of the consistency requirement.

⁵ Scanlon, B., Dutton, A. and M. Sophocleous. 2002. Groundwater Recharge in Texas. Water Research Fund Grant Contract No. 2000-483-340

⁶ http://www.twdb.state.tx.us/mapping/maps/pdf/gcd_only_8x11.pdf

⁷ 2006 Regional Water Plan. Prepared as joint venture by Kellogg Brown & Root and Truner Collie & Braden for the Region H Water Planning Group for the Texas Water Development Board. December 2005.

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In addition, the TRA states that the proposed amendment will not affect issues involving water supply. TRA's water rights will still be available to meet demand projections found in the state and regional water plans just as they were prior to this proposed amendment.

Avoidance of Waste and Achievement of Water Conservation

The Commission has adopted rules to specify the type of water conservation plans that will be required for amendments to existing water rights in 30 TAC § 295.9(4). TRA is not increasing the amount of the appropriation. TRA is adding hydroelectric use to make more efficient use of the water already authorized. TRA has submitted a water conservation plan covering all of their current uses. The plan has been reviewed and declared administratively sufficient. Staff finds that the applicant can achieve water conservation and avoid waste.

Conclusion

This application seeks an amendment to add hydroelectric use to the existing domestic, agricultural (irrigation), municipal, and industrial uses. The application does not seek an increase in either the amount of water diverted, or the rate of diversion. Under the full use assumption, the amendment will not have an adverse impact on other water right holders or the environment, and there are no negative impacts to other water rights or the environment beyond the full use assumption. The application does not raise any issues of beneficial use, detriment to the public welfare, groundwater effects, consistency with the state and regional water plans, compliance with administrative requirements, or avoidance of waste and achievement of water conservation. Commission rules, statutes, and case law allow this application to be processed without notice. Therefore, the Executive Director recommends that no notice be issued for this application.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Chief Clerk

DATE: June 24, 2009

THRU: Iliana Delgado, Team Leader
Water Rights Permitting Team

FROM: Esteban (Steve) Ramos, Project Manager
Water Rights Permitting Team

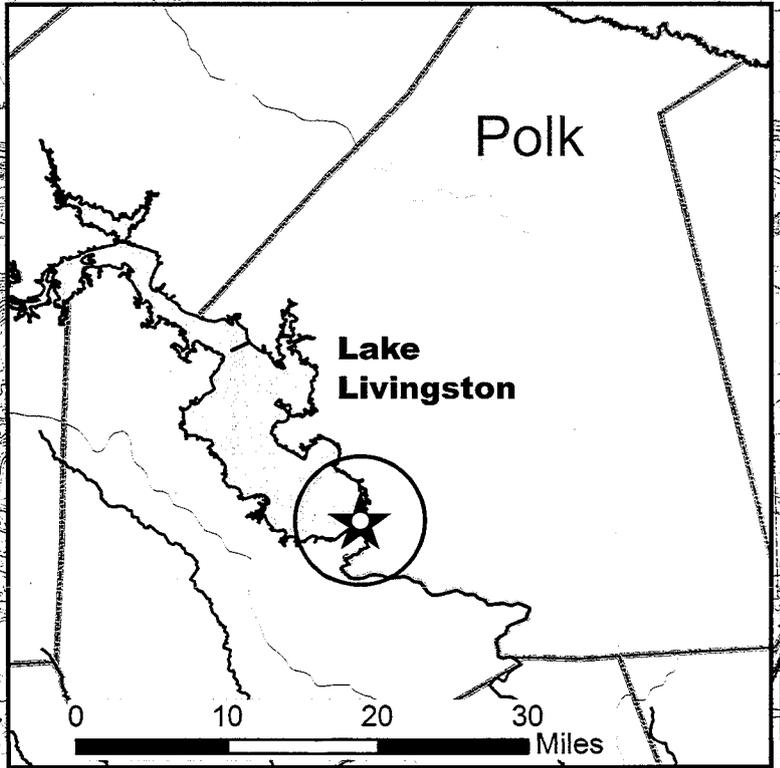
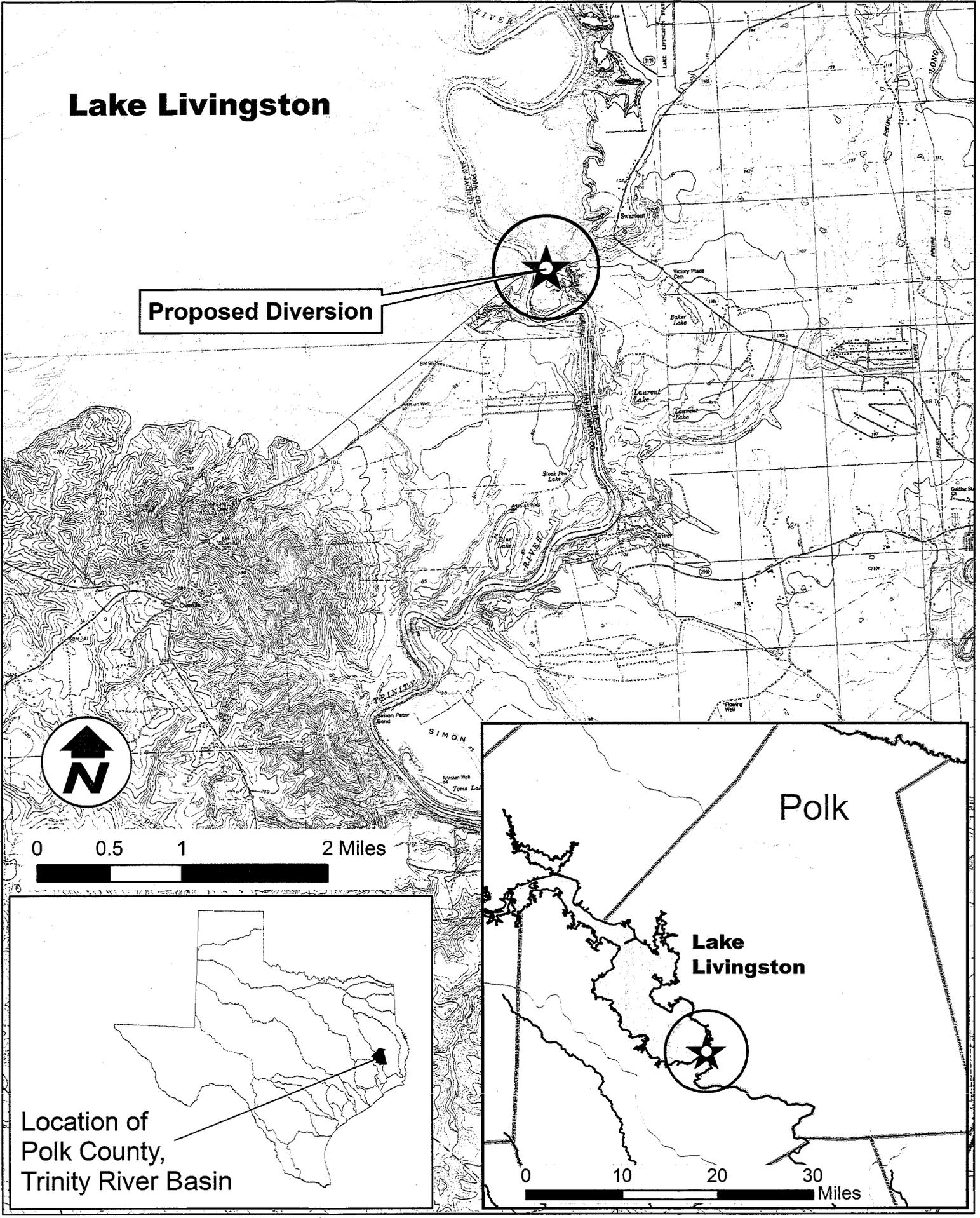
SUBJECT: Trinity River Authority
Docket # 2009-0914-WR
ADJ 4248
Application No. 08-4248D to Amend Certificate of Adjudication No. 08-4248
Trinity River, Trinity River Basin
Trinity, Polk, San Jacinto, Walker, Counties

Below is the caption for this application:

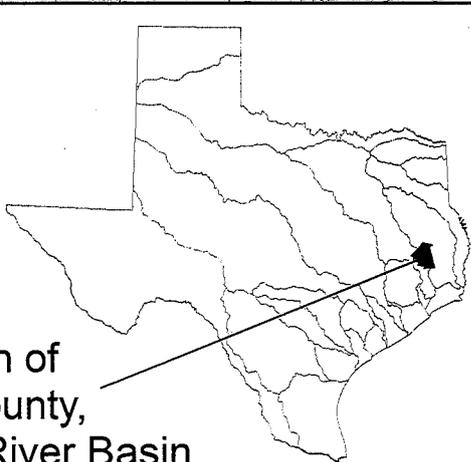
Consideration of the notice required for the application by The Trinity River Authority to amend its Certificate of Adjudication No. 08-4248 to add hydroelectric use to their rights in Lake Livingston. Certificate of Adjudication No. 08-4248 currently authorizes the Trinity River Authority in conjunction with the City of Houston (Owner of Certificate of Adjudication No. 08-4261) to maintain an existing dam and reservoir (Lake Livingston) on the Trinity River, Trinity River Basin, and impound therein not exceed 1,750,000 acre-feet of water. Certificate of Adjudication No. 08-4248 also authorizes Trinity River Authority to divert and use not to exceed 351,600 acre-feet of water per year for domestic, municipal, agricultural, and industrial purposes from multiple points. Trinity River Authority is authorized to use the water from Lake Livingston in Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Galveston, Leon, Houston, Walker, Grimes, Freestone and Madison Counties in the Trinity River Basin, the San Jacinto River Basin, the Neches River Basin and the Neches-Trinity Coastal Basin. The Executive Director has prepared a memorandum that recommends no notice is required. (Steve Ramos, Robin Smith)

Lake Livingston

Proposed Diversion



Location of
Polk County,
Trinity River Basin



CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 08-4248

OWNER: Trinity River Authority
of Texas
P. O. Box 60
Arlington, Texas 76010

COUNTIES: Polk, Liberty, Chambers
San Jacinto, Jefferson and
Galveston

PRIORITY DATES:

February 26, 1917,
September 8, 1926,
December 12, 1929,
September 24, 1936,
and September 23, 1959.

WATERCOURSE: Lake Livingston and
the Trinity River

BASIN: Trinity River
COQST α

WHEREAS, by final decree of the 344th Judicial District Court of Chambers County, in Cause No. 344-10865, In Re: The Adjudication of Water Rights in the Lower Trinity River Segment of the Trinity River Basin and the western portion of the Neches-Trinity Coastal Basin dated October 30, 1985 a right was recognized under Permit 173, Permit 992, Permit 1132, Permit 1243A, Permit 1970ABDEFG and Permit 1974A authorizing the Trinity River Authority of Texas to appropriate waters of the State of Texas as set forth below;

WHEREAS, by an amendment to Permit 1970ABDEFG issued on August 18, 1982, the Texas Water Commission authorized a change in the use of 7000 acre-feet of water from industrial to mining purposes within Liberty and Chambers Counties, Texas, with an expiration date of September 1, 1986;

NOW, THEREFORE, this certificate of adjudication to appropriate waters of the State of Texas in the Trinity River Basin is issued to the Trinity River Authority of Texas, subject to the following terms and conditions:

1. IMPOUNDMENT

A. Owner, in conjunction with the City of Houston under Certificate of Adjudication 08-4261, is authorized to maintain an existing dam and reservoir (Lake Livingston) on the Trinity River and impound therein not to exceed 1,750,000 acre-feet of water. The east end of the dam is located in the Thomas Bradley Survey, Abstract 98, Polk County, Texas.

B. Owner, in conjunction with the City of Houston under Certificate of Adjudication 08-4261, is authorized to complete construction of a dam and reservoir (Lake Wallisville) on the Trinity River and impound not to exceed 51,600 acre-feet of water. Station 0 + 00 on the centerline of the dam bears S 32°29'54"W, 13,906.24 feet from the northwest corner of the S. Burney Grant, Abstract 7, Chambers County, Texas.

C. Owner is authorized to maintain an existing 1000 acre-foot capacity off-channel reservoir. The levee creating said reservoir is located in the Washington County RR Company Survey 11, Abstract 413, Liberty County, Texas.

D. Owner is authorized to maintain an existing 195 acre-foot capacity off-channel reservoir. The levee creating said reservoir is located in the H. A. Nolte Survey, Abstract 607, Chambers County, Texas.

2. USE

A. Owner is authorized to divert and use not to exceed 181,950 acre-feet of water per annum for the irrigation of 79,000 acres of land within the service area of the Trinity River Authority of Texas in Trinity, Polk, San Jacinto, Liberty, Chambers and Jefferson Counties. The water authorized herein shall be diverted from the following sources:

- (1) Trinity River 47,500 acre feet *(P-5111)*
- (2) Lake Livingston 104,450 acre-feet
- (3) Lake Wallisville
(when constructed) 30,000 acre-feet

B. Owner is authorized to divert and use not to exceed 40,000 acre-feet of water per annum from Lake Livingston and 10,000 acre-feet of water per annum from Lake Wallisville (when constructed) for domestic and municipal purposes.

C. Owner is authorized to divert and use not to exceed 222,750 acre-feet of water per annum for industrial purposes. The water authorized herein shall be diverted from the following sources:

- (1) Trinity River 4,000 acre-feet *P-5111*
- (2) Lake Livingston 207,150 acre-feet
- (3) Lake Wallisville
(when constructed) 11,600 acre-feet

D. Owner is authorized to temporarily convert the use of the 4000 acre-feet of water authorized under Paragraph 2 C(1) above from industrial to mining purposes in Chambers, Liberty and Jefferson Counties, Texas. *(work? if any)*

E. Owner is authorized to temporarily convert the use of 7000 of the 207,150 acre-feet of water authorized under Paragraph 2 C(2) above from industrial to mining purposes in Liberty and Chambers Counties, Texas.

F. Owner is authorized to divert and use not to exceed 7000 acre-feet of water per annum from the Trinity River for mining purposes. *P-5111*

G. Owner is further authorized to use the water impounded in the aforesaid on-channel reservoirs for recreation purposes.

3. DIVERSION

A. Location and Rate:

- (1) At a point on the Trinity river in the Manuel Rionda Grant, Abstract 25, Freestone County, Texas at a maximum rate of not to exceed 66.67 cfs (30,000 gpm), located in the Middle Trinity River Segment of the Trinity River Basin.
- (2) At the outlet works on Lake Livingston dam in the William Pace Survey, Abstract 60, Polk County, Texas, at an unspecified diversion rate.
- (3) At a point on the Trinity River in the Samuel Neathery Survey, Abstract 325, Liberty County, Texas, to a relief station located in the Jacob E. Self Survey, Abstract 104, Liberty County, Texas at a maximum rate of not to exceed 813.00 cfs (365,850 gpm).
- (4) At various points on the perimeter of the aforesaid Lake Livingston at a maximum combined diversion rate of 71.79 cfs (32,305 gpm).

B. Maximum combined diversion rate: 951.49 cfs (428,171 gpm) exclusive of release through Lake Livingston Dam.

4. PRIORITY

A. The time priority of owner's right is February 26, 1917 for the diversion and use of the first 7500 acre-feet of water per annum for irrigation purposes. *P-5111*

*domestic
municipal
industrial
mining*

- B. The time priority of owner's right is September 8, 1926 for the diversion and use of the next 20,000 acre-feet of water per annum for irrigation purposes.
- C. The time priority of owner's right is December 12, 1929 for the diversion and use of the next 20,000 acre-feet of water per annum for irrigation purposes.
- D. The time priority of owner's right is September 24, 1936 for the diversion and use of 4000 acre-feet of water per annum for industrial purpose and 7000 acre-feet of water per annum for mining purposes.
- E. The time priority of owner's right is September 23, 1959, for the impoundment of 1,750,000 acre-feet of water in Lake Livingston; to divert and use 500 acre-feet of water per annum for domestic purposes; 39,500 acre-feet of water per annum for municipal purposes; 207,150 acre-feet of water per annum for industrial purposes and 104,450 acre-feet of water per annum for irrigation purposes at a maximum combined diversion rate of 951.49 cfs (428,171 gpm).
- F. Upon completion of Lake Wallisville Dam and Reservoir, the time priority of owner's right is September 23, 1959 for the diversion of the additional 10,000 acre-feet of water per annum for domestic and municipal purposes; 30,000 acre-feet of water per annum for irrigation purposes and 11,600 acre-feet of water per annum for industrial purposes.

5. SPECIAL CONDITIONS

- A. Owner shall maintain a sluiceway in the aforesaid Lake Livingston dam at a bottom elevation of not more than seventy (70) feet above mean sea level, having an opening of not less than ninety-six (96) inches in diameter and equipped with a regulating gate for the purpose of allowing the free passage through the dam at all times of those waters to which lower users are lawfully entitled. Whenever the Commission finds that owners are storing any waters to which downstream appropriators or lawful diverters are entitled, the owners shall release same to said appropriators or lawful diverters on the order of the Texas Water Commission.
- B. Owners are authorized and required to operate the Lake Livingston dam and reservoir described in this certificate of adjudication in conjunction with the Lake Wallisville dam and reservoir which are required to be constructed on the Trinity River in Chambers County, Texas. The total water available from both projects shall be divided between the owners so that the City shall receive seventy per cent (70%) and the Authority shall receive thirty per cent (30%) thereof and that the specific quantities for each shall, if necessary, be adjusted so as to divide the total available water between the owners in such proportions.
- C. Owner shall install a metering instrument at each diversion point which will automatically record the total amount of water diverted. Owner shall make determinations of water surface elevations in Lake Livingston reservoir by means of recording gauges set to U. S. Coast and Geodetic Survey datum, each of which shall be protected by a well house designed for such purposes and the Commission shall be furnished complete records of such determinations. Owner shall relocate, or cause to be relocated, all existing stream flow stations which may be inundated or impaired by the reservoir and establish, or cause to be established, such other record in stream flow stations as this Commission may deem necessary to record inflows into the reservoir. Owner shall maintain daily records of waters released through the reservoir authorized herein for downstream use. All stream flow stations shall be

set to the same datum described above and the Commission shall be furnished complete records of the data herein required to be kept. The metering instruments, the gauges with well houses and the stream flow stations and the installation, design and operation thereof shall be subject to approval of the Commission.

- D. Owner is authorized to use the bed and banks of the Trinity River, below the aforesaid dams (Lake Livingston and Lake Wallisville) to convey and deliver water to be appropriated hereunder to downstream diversion points.
- E. Owners shall make no diversions of water from the diversion points downstream of the Lake Livingston dam under priority date of September 23, 1959, except to the extent that water for such diversions is released from the aforesaid reservoir.
- F. Owner's right is subordinate to any claim on waters of the Trinity River Basin imported into and/or originating in and above Lake Lewisville Reservoir, Grapevine Reservoir, Lake Worth Reservoir and Lake Ray Hubbard Reservoir, and shall not constitute any limitation upon the granting of permits by the Commission for the impoundment and use of waters above the said four named reservoirs.
- G. This certificate is further subordinate to any claim on waters imported and/or originating in the Trinity River Basin above Lake Livingston Reservoir authorized herein, that could be impounded by: 1) existing reservoirs; 2) by reservoirs for which permits have been granted or certificates of adjudication issued and the construction of such reservoirs is incomplete; 3) by reservoirs for which applications are pending before the Commission; 4) by the following proposed reservoirs as shown in the Master Plan Report of the Trinity River Authority of Texas dated April 18, 1958, but only to the extent necessary to insure a dependable yield from each such proposed reservoir as shown opposite the respective names, to-wit:

<u>Reservoir Name</u>	<u>Dependable Yield (MGD)*</u>
Big Fossil	0.5
Tehuacana	61.0
Tennessee Colony	362.0
Upper Keechi	13.6
Lower Keechi	20.5
Big Elkhart	11.0
Little Elkhart	6.2
Hurricane Bayou	15.6
Bedias	95.5
Nelson	14.6
Harmon	7.4
Gail	16.6
Mustang	13.2
Caney	13.5
Long King	18.5

*Million Gallons per Day

It is the intent herein that this certificate of adjudication shall not constitute a prior claim against upstream flows necessary to produce dependable yields in the aggregate amount from future reservoirs hereinabove listed. Except for the Tennessee Colony Reservoir, nothing herein shall prohibit the construction of future reservoirs at different locations, of different dimensions, or the combination of reservoirs as substitutes for the above-listed future reservoirs; provided, however, that such modifications in dimensions, locations or the combination of reservoirs shall not diminish the dependable yield of the reservoir authorized herein in excess of the

diminution which would be occasioned by the construction of such reservoirs with the respective dependable yields as hereinabove listed. Tennessee Colony Reservoir may be modified as to location and dimension provided that any such modification shall likewise not further diminish the dependable yield of the reservoir authorized herein.

- H. This certificate of adjudication is specifically subordinate to the present and future use and reuse and consumptive use of any return flows from waters impounded in each of the existing and above described proposed reservoirs and the return flows from water imported into the river basin, for municipal and industrial purposes within the Trinity River Basin above Lake Livingston authorized herein and notwithstanding the re-entry of such return flows into a public stream they may nevertheless be used again, diverted and routed through such treatment facilities as may be considered necessary for their purification, under authority of permits heretofore or hereafter issued by the Texas Water Commission for such purposes in the upstream watershed. And this certificate of adjudication is subordinate to the present and future use and reuse for navigation purposes of the return flows from the metropolitan areas of Dallas and Fort Worth in their natural flowing state and by impoundment in pools created by locks and appurtenances within the river and navigation channels; and further, such return flows shall be allowed to pass through the reservoir authorized herein to the extent necessary to provide navigation below said reservoir and the rights hereby acquired shall be subordinate to such uses.
- I. The amount of water which owner is authorized to divert and use in any one year under priority date of February 26, 1917, for irrigation, shall not exceed 1.5 acre-feet on any acre of land actually irrigated.
- J. The amount of water which owner is authorized to divert and use in any one year, under priority dates of September 8, 1926 and December 12, 1929, for irrigation, shall not exceed 2.0 acre-feet on any acre of land actually irrigated.
- K. The authority to divert and use water authorized under Paragraphs 2D and 2E for mining purposes will expire and become null and void on September 1, 1986, after which date the use of water will revert to industrial purposes.
- L. Owner shall maintain suitable outlets in the aforesaid dams authorized herein to allow the free passage of water that owner is not entitled to divert or impound.
- M. Construction of the Wallisville dam, reservoir and related facilities authorized or required by this certificate of adjudication shall be in accordance with plans approved by the Texas Water Commission and shall be started and completed within the time limits established by the Commission.
- N. Owner may not exercise the right to divert and use that portion of the water authorized herein which is to be diverted from Lake Wallisville for any purposes until construction of the aforesaid reservoir is complete and owner applies for and is granted a diversion point or points and a rate of diversion.
- O. Owner may divert all or any portion of the water authorized herein from the Trinity River Basin and use same on the Coastal Watersheds of Eastern Liberty County, Eastern and Southeastern Chambers County and Bolivar Peninsula in Galveston County. The waters authorized to be appropriated hereunder shall be made available for beneficial uses without discrimination and owner's right to supply water to the aforesaid areas shall not be exclusive.

The locations of pertinent features related to this certificate are shown on Pages 16, 18, 19, 21 and 25 of the Lower Trinity River Segment Certificates of Adjudication Maps, copies of which are located in the offices of the Texas Water Commission, Austin, Texas and the Polk, Liberty, Chambers, Trinity, San Jacinto, Jefferson and Galveston County Clerks.

This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 344th Judicial District Court of Chambers County, Texas, in Cause No. 344-10865, In Re: The Adjudication of Water Rights in the Lower Trinity River Segment of the Trinity River Basin and the western portion of the Neches-Trinity Coastal Basin dated October 30, 1985 and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to senior and superior water rights in the Trinity River Basin.

This certificate of adjudication is issued subject to the Rules of the Texas Water Commission and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.

TEXAS WATER COMMISSION

Paul Hopkins
Paul Hopkins, Chairman

DATE ISSUED:

11th 9 1986

ATTEST:

Mary Ann Zefner
Mary Ann Zefner, Chief Clerk

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



AMENDMENT TO
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO.	08-4248A	TYPE:	AMENDMENT
Name:	Trinity River Authority of Texas	Address:	P.O. Box 60 Arlington, TX, 76004 76004
Filed:		Granted:	JUL 27 1998
Purposes:	Domestic, Municipal, Industrial and Irrigation	Counties:	Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Leon, Houston, Walker, Galveston, Grimes, Freestone and Madison
Watercourse:	Trinity River	Watersheds:	Trinity River Basin, San Jacinto River Basin, Neches River Basin and the Neches- Trinity Coastal Basin

WHEREAS, Certificate of Adjudication No. 08-4248 includes authorization, with a time priority of September 23, 1959, for impoundment of water in Livingston Reservoir and use of water from the reservoir for domestic, municipal, industrial and irrigation purposes; and

WHEREAS, the Certificate specifically indicates that the water may be used within owner's service area in Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson and Galveston Counties; and

WHEREAS, the Certificate indicates the water included in the Certificate may be used in the Trinity River Basin and the Coastal Watersheds of Eastern Liberty County, Eastern and Southeastern Chambers County and Bolivar Peninsula in Galveston County; and

WHEREAS, the actual and historical statutory service area of the Trinity River Authority and places of use of the water authorized in the Certificate include Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Galveston, Leon, Houston, Walker, Grimes, Freestone and Madison Counties; and

WHEREAS, pursuant to Texas Water Codes Sections 11.122 and 11.085(v) an application was received from the Trinity River Authority of Texas on June 26, 1998 requesting an amendment to Certificate No. 08-4248 to authorize and reflect the actual and historical use of the water included in the Certificate as being in Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Galveston, Leon, Houston, Walker, Grimes, Freestone and Madison Counties in the Trinity, San Jacinto and Neches River Basins and in the Trinity-Neches Coastal Basin; and

WHEREAS, Leon, Houston, Walker, Grimes, Freestone and Madison counties are located partially in the Trinity River Basin and partially in the San Jacinto River Basin, the Neches River Basin or the Trinity-Neches Coastal Basin; and

WHEREAS, the City of Houston, the only other water right owner for Lake Livingston, and the Chambers-Liberty Counties Navigation District have submitted letters to the Commission indicating that they do not object to the granting of this application; and

WHEREAS, the Texas Natural Resource Conservation Commission finds that jurisdiction over the application is established; and

WHEREAS, no person protested the granting of this application; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Natural Resource Conservation Commission in issuing this amendment.

NOW, THEREFORE, this amendment to Certificate No. 08-4248 is issued to the Trinity River Authority of Texas, subject to the following provisions:

1. PLACE OF USE

Owner is authorized to use the water included in the Certificate for diversion and use from Lake Livingston in Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Galveston, Leon, Houston, Walker, Grimes, Freestone and Madison Counties in the Trinity River Basin, the San Jacinto River Basin, the Neches River Basin and the Trinity-Neches Coastal Basin.

2. CONSERVATION

- A. Certificate owner shall maintain a water conservation plan that provides for the utilization of those practices, techniques and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such a plan shall include a requirement in every wholesale water supply contract entered into on or after the effective date of this amendment and including any contract extension or renewal, that each successive wholesale customer develop and implement water conservation measures. If the customer intends to resell the water, the contract for the resale of the water must

measures. If the customer intends to resell the water, the contract for the resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water will be required to implement water conservation measures.

- B. Within 1 (one) year of the date of issuance of this amendment, Certificate owner shall submit a written report to the Executive Director of the Texas Natural Resource Conservation Commission responding to the TNRCC technical memos dated July 29, 1994, September 8, 1994 and July 16, 1998 regarding the River Authority's conservation plans and providing a progress report on the River Authority's effort to update its water conservation plans to cover the River Authority's entire service area and to officially adopt its conservation plan(s) in accordance with agency rule 30 Texas Administrative Code §288.5 (1) (I).

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 08-4248 except as specifically amended herein.

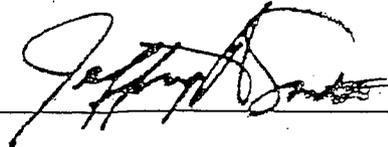
This amendment is issued subject to all superior and senior water rights in the Trinity River Basin.

Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

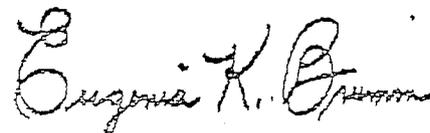
This amendment is issued subject to the Rules of the Texas Natural Resource Conservation Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION



For the Commission

DATE ISSUED: JUL 27 1998

ATTEST: 

Eugenia K. Brumm, Ph.D., Chief Clerk

TEXAS WATER COMMISSION



AN ORDER issuing Permit No. 5271
to Boyt Realty Company

On September 19, 1990, the Texas Water Commission (Commission) considered the application of Boyt Realty Company for authorization to sever the rights now authorized for the company by Certificate of Adjudication No. 08-4248 from the Certificate and to modify its authority.

Leslie A. Limes, Attorney, a Commission Hearings Examiner, designated the following as parties to the proceeding at a preliminary hearing on April 24, 1990: Boyt Realty Company; Trinity Water Reserve; Trinity River Authority; Ford and J. M. Frost; Devers Canal Rice Producers Association; Galveston Bay Foundation; Sierra Club; the Executive Director of the Commission; and the Commission's Public Interest Counsel. Dr. E. A. Henderson was subsequently granted party status.

After considering the Hearings Examiner's Proposal for Decision and the evidence and arguments presented, the Texas Water Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Boyt Realty Company has applied to the Texas Water Commission for authorization pursuant to Section 11.122 of the Texas Water Code and 31 TAC §295.1 to sever the rights now authorized for the company by Certificate of Adjudication

No. 08-4248 from the Certificate and to modify its authority.

2. Boyt Realty's application was filed with the Texas Water Commission on October 6, 1989, and determined to be administratively complete on November 29, 1989.

3. Proper notice of the adjudicative public hearing held on the application was given pursuant to Section 11.132, Texas Water Code, as amended.

a. Notice of the public hearing was published in the following newspapers, more than thirty days prior to the first hearing date of April 24, 1990:

- (1) Trinity Standard, a newspaper published in Trinity County and having a general circulation in Trinity and Polk Counties, on January 18, 1990.
- (2) Beaumont Enterprise, a newspaper published in Jefferson County and having a general circulation in Jefferson and Chambers Counties, on January 24, 1990.
- (3) Polk County Enterprise, a newspaper published in Polk County and having a general circulation in Polk County, on January 18, 1990.
- (4) San Jacinto News Times, a newspaper published in San Jacinto County and having a general circulation in San Jacinto County, on January 18, 1990.
- (5) Vindicator, a newspaper published in Liberty County and having a general circulation in Liberty County, on January 21, 1990.

- b. Notice of the hearing was transmitted by first-class mail on January 18, 1990, to persons with a potential interest in the application.
4. Public hearings were held on the application on April 24 and May 30, 1990.
 5. The Devers Canal System (Canal System) is located in Liberty, Chambers and Jefferson Counties.
 6. The Trinity River Authority conveyed all right, title and interest in the Canal System to Boyt Realty Company in December, 1986.
 7. The water rights associated with the Canal System (Permits Nos. 173, 992, 1132, 1243) are currently merged with the Trinity River Authority's other water rights (Permits Nos. 1970 and 1974) under Certificate of Adjudication No. 08-4248.
 8. The water rights associated with the Canal System should be severed from Certificate of Adjudication No. 08-4248 and a permit should be issued to Boyt Realty Company.
 - a. The application conforms to all requirements of Chapter 11 of the Texas Water Code.
 - b. Severance of the water rights to Boyt Realty Company would not be detrimental to the public welfare.
 - (1) No additional appropriation of water is authorized by this Order.
 - (2) Commission regulation does not require the Commission to approve the transfer of a water right.

- (3) Ownership of the Canal System should be reflected in the corresponding water rights.
 - (4) If the water rights correspond to current ownership of the Canal System, then more accurate reporting of water use will occur.
9. Special Condition No. 5(b) of draft permit No. 5271 should be amended to delete the nonexclusive language regarding the right to provide water.
- a. Deleting the language dealing with nonexclusiveness will make Special Condition No. 5(b) consistent with the language contained in the underlying permits upon which the Certificate of Adjudication was based.
 - b. Removal of the language dealing with nonexclusiveness in Special Condition No. 5(b) would not render Boyt Realty Company an exclusive provider of raw water, because the delineation of a service area does not prevent water users within the delineated service area from obtaining water for irrigation from other sources.
 - c. Texas Water Commission regulations allow the Commission to change errors, ambiguities and ineffective provisions without published notice.
10. Special Conditions Nos. 5(i) and 5(j) of the Certificate of Adjudication should not be included in the draft permit.
- a. Special Conditions Nos. 5(i) and 5(j) both relate to a water duty, which is the quantity of irrigation water required to fill the needs of the area for a particular

- crop.
- b. The deletion of these provisions will remove a cap on the volume of water which may be supplied.
 - c. Removing the duty of water will be beneficial to farmers in the area.
 - d. Duty of water provisions are no longer included in water permits as special conditions.
11. Special Condition No. 5(k) in Certificate of Adjudication No. 08-4248, which related to diversion and water use for mining purposes, expired under its own terms on September 1, 1986.
 12. Certificate of Adjudication No. 08-4248 adjudicated the water rights of the Trinity River Authority relative to Permit No. 1970 (Livingston Reservoir), Permit No. 1974 (Wallisville Reservoir), and Permits Nos. 173, 992, 1132 and 1243.
 13. Trinity Water Reserve contracted to purchase the Canal System from Boyt Realty in January, 1990.

CONCLUSIONS OF LAW

1. The public hearing was held under the authority of and in accordance with Chapter 11 of the Texas Water Code, as amended, and the applicable provisions of the Texas Water Commission Permanent Rules.
2. The Texas Water Commission has jurisdiction to consider the application and is authorized to approve a severance of water rights from a Certificate of Adjudication.
3. This application meets all requirements of Section 11.134 of

the Texas Water Code, and the applicable provisions of the Texas Water Commission Permanent Rules.

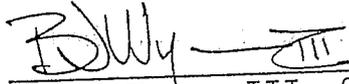
WHEREAS Chairman B. J. Wynne, III and Commissioners J. E. Birdwell and Cliff Johnson unanimously vote to issue this Order;

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS WATER COMMISSION THAT:

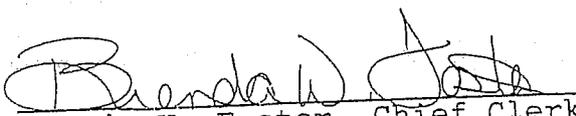
1. The application of Boyt Realty Company to sever the rights authorized for the company by Certificate of Adjudication No. 08-4248 from the Certificate and to modify its authority be approved.
2. A copy of this Order and attached permit shall be sent by the Chief Clerk by mail to all parties.
3. If any provision, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Signed this 24th day of September, 1990.

TEXAS WATER COMMISSION


B. J. Wynne III, Chairman

ATTEST:


Brenda W. Foster, Chief Clerk

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 08-4248B APPLICATION 08-4248B TYPE §§ 11.121, 11.122,
11.042 & 11.046

Owner:	Trinity River Authority of Texas	Address:	P. O. Box 60 Arlington, Texas 76004
Filed:	September 7, 2000	Granted:	OCT 12 2006
Purpose:	Domestic, Municipal, Mining, Industrial, and Agriculture	Counties:	Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Leon, Houston, Walker, Galveston, Grimes, Freestone, Madison
Watercourse:	Trinity River	Watershed:	Trinity River Basin, San Jacinto River Basin, Neches River Basin, and the Neches-Trinity Coastal Basin

WHEREAS Certificate of Adjudication No. 08-4248 authorizes the Trinity River Authority (TRA or Applicant), in conjunction with the City of Houston, owner of Certificate of Adjudication No. 08-4261, to maintain an existing dam and reservoir (Lake Livingston) on the Trinity River, Trinity River Basin, and impound therein not to exceed 1,750,000 acre-feet of water, and to construct and maintain a dam and reservoir (Lake Wallisville) on the Trinity River and impound therein not to exceed 51,600 acre-feet of water; and

WHEREAS, Certificate of Adjudication No. 08-4248 also authorizes Applicant to divert and use not to exceed 351,600 acre-feet of water per annum from Lake Livingston and 51,600 acre-feet of water per annum from Lake Wallisville for domestic, municipal, industrial and agriculture (irrigation) purposes within Applicant's service area; and

WHEREAS, by Texas Water Commission, now Texas Commission on Environmental Quality, Order issued September 24, 1990, a portion of the water right authorized by Certificate of Adjudication No. 08-4248 was severed from the Certificate and re-authorized as Water Use Permit No. 5271 with a priority date of February 23, 1917, which includes the maintenance of two off-channel reservoirs and the diversion and use of 58,500 acre-feet of water per year at a combined diversion rate of 813 cfs (365,850 gpm) for agricultural (irrigation), mining and industrial purposes from a diversion point on the Trinity River in the Samuel Neathery Survey, Abstract No. 325, Liberty County, Texas, to a relief station located in the Jacob E. Self Survey, Abstract No. 104, Liberty County; and

WHEREAS, the Certificate authorizes recreation use of the water impounded in Lakes Livingston and Wallisville; and

WHEREAS, Applicant is authorized to divert a portion of the water at a point on the Trinity River in the Manuel Rionda Grant, Abstract 25, at a maximum rate of 66.67 cfs (30,000 gpm), a portion at the outlet works on Lake Livingston in the William Pace Survey, Abstract No. 60 at an unspecified diversion rate, and a portion at various points on the perimeter of Lake Livingston at a combined maximum rate of 71.79 cfs (32,305 gpm); and

WHEREAS, the priority date for the diversion and use of the water is September 23, 1959, and for the impoundment of water in Lake Livingston is September 23, 1959; and

WHEREAS, the Certificate authorizes the Trinity River Authority to use the water authorized for diversion and use from Lake Livingston in Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Galveston, Leon, Houston, Walker, Grimes, Freestone, and Madison Counties in the Trinity River Basin, the San Jacinto River Basin, the Neches River Basin and the Neches-Trinity Coastal Basins; and

WHEREAS, special conditions in the certificate include authorization to use the bed and banks of the Trinity River downstream of the dams and reservoirs to convey water, and to subordinate the authorization of the certificate to present and future use and reuse, and consumptive use of certain return flows within the Trinity River Basin upstream of Lake Livingston, as well as other conditions; and

WHEREAS, Applicant seeks authorization to impound, in its share of the storage capacity of Lake Livingston (30%), the return flows from TRA's wastewater treatment plants (WWTPs) located upstream from the lake, except return flows from TRA's Denton Creek Regional Wastewater Treatment Plant, under any theory recognized in Texas Law, including those of developed water, unappropriated return flows from whatever source, release of stored water, use of bed and banks, and unappropriated state water that will not cause adverse impact on other water right holders of a greater magnitude than under circumstances in which the certificate to be amended was fully exercised according to its terms and conditions that existed prior to the amendment; and

WHEREAS, the wastewater treatment plants are identified as TRA's Central Regional, Red Oak Creek, and Ten Mile Creek Wastewater Treatment Plants in Dallas, and Ellis Counties; and

WHEREAS, whenever the natural flow of the Trinity River is insufficient to fill and refill TRA's storage space in Lake Livingston, Applicant will impound its return flows, however characterized, in its Lake Livingston storage space and will divert and use this water as authorized in Certificate of Adjudication No. 08-4248, as amended; and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, six (6) requests for a contested case hearing were received, but all were subsequently withdrawn; and

WHEREAS, Applicant requested that all references to the Denton Creek Regional Wastewater Treatment Plant and the effluent related thereto be removed from the application; and

WHEREAS, the Executive Director has determined that, in order to protect existing water rights and aquatic habitat in the Trinity River Basin, a special condition limiting Applicant's diversions and reuse of water to actual discharges from the WWTPs, less carriage losses, be included in the permit; and

WHEREAS, the Executive Director has determined that existing water rights will not be impacted by the discharge, conveyance, storage and redirection of TRA's historic and future return flows if appropriate accounting is made pursuant to an accounting plan that measures discharges and adjusts available amounts by losses to prohibit TRA from diverting return flows that physically and legally would have been available for impoundment, diversion, and use by water rights issued prior to the filing of this application; and

WHEREAS, the Texas Commission on Environmental Quality finds that granting this amendment will benefit the public welfare; and

WHEREAS, the Texas Commission on Environmental Quality's current rules provide that a water right may be granted upon the availability of return flows or discharges, however a water right granted based on return flows or discharges will be granted with the express provision that the water available to the water right is dependent upon potentially interruptible return flows and discharges; and

WHEREAS, TRA's application for this amendment was declared administratively complete by the Executive Director on September 7, 2000, and therefore the time priority for the appropriation of additional state water under this amendment is September 7, 2000; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 08-4248, designated Certificate of Adjudication No. 08-4248B, is issued to Trinity River Authority of Texas, subject to the following terms and conditions:

1. IMPOUNDMENT

TRA is authorized to impound, in its share of the storage capacity of Lake Livingston (30% of total capacity), the return flows, less carriage loss, that are discharged by TRA's Central Regional, Red Oak Creek Regional, and Ten Mile Creek Regional Wastewater Treatment Plants in Dallas, and Ellis Counties.

2. USE

In addition to the current diversion authorization, the Trinity River Authority is also authorized to divert the amount of documented return flows, less carriage and evaporative losses, discharged by the TRA's Central Regional, Red Oak Creek Regional, and Ten Mile Creek Regional Wastewater Treatment Plants and conveyed to Lake Livingston from the Lake for use within its service area for the purposes authorized by Certificate of Adjudication No. 08-4248. The maximum amount of effluent currently authorized for discharge from each identified WWTP (as of 7/22/2004) is as follows:

Wastewater Treatment Plant	Permit Amount	Per Annum
Central Regional WWTP	193 MGD	215,774 Acre-feet
Red Oak Creek WWTP	3.5 MGD	3,913 Acre-feet
Ten Mile Creek WWTP	24.0 MGD	26,832 Acre-feet
Total	220.5 MGD	246,219 Acre-feet

3. RELEASE POINTS

- A. Central Regional WWTP - approximately Latitude 32.776° N, Longitude 96.939° W on the right bank of the West Fork Trinity River approximately 0.55 river miles upstream of the confluence with Mountain Creek.

- B. Red Oak Creek Regional WWTP - approximately Latitude 32.483° N, Longitude 96.800° W on the left bank of Red Oak Creek approximately 0.7 stream miles upstream of the confluence with Sanger Branch.
- C. Ten Mile Creek Regional WWTP - approximately Latitude 32.563° N, Longitude 96.623° W on the left bank of Ten Mile Creek approximately 3 stream miles upstream of the confluence with the Trinity River.

4. TIME PRIORITY

The time priority for the use of the water authorized by this amendment is September 7, 2000.

5. CONSERVATION

- A. Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses.
- B. Every wholesale water supply contract entered into or renewed after official adoption of the water conservation plan, including any contract extension, must ensure that each successive wholesale customer develop and implement a water conservation plan or water conservation measures that incorporate elements of Title 30, Texas Administrative Code Chapter 288.

6. SPECIAL CONDITIONS

- A. TRA is authorized to use the bed and banks of the West Fork Trinity River, Red Oak Creek, Ten Mile Creek, and the Trinity River to convey treated effluent from the three identified WWTPs downstream to Lake Livingston.
- B. Prior to diversion of the water authorized herein, TRA shall install and maintain a measuring devices at the discharge point of each WWTP, capable of measuring within plus or minus 5% accuracy, to record the amount of water discharged into the Trinity River for conveyance downstream to Lake Livingston.
- C. Prior to the diversion of the water authorized herein, TRA shall prepare, implement, and follow an accounting plan, approved by the Commission, designed to determine

the combined total amount of divertible return flows present each month, based on measured discharges less calculated carriage losses resulting from the conveyance of the treated effluent from the WWTPs to Lake Livingston.

- D. TRA shall maintain electronic records (in spreadsheet or database format) of the records of discharges of each of the specified WWTPs used in the return flow accounting, the calculations of carriage and evaporative losses, and diversions of the return flows from Lake Livingston and make them available to the public during normal business hours and shall submit them to the Executive Director upon request.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 08-4248 except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Trinity River Basin.

Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

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.



Executive Director, Texas Commission on Environmental Quality

DATE ISSUED: **OCT 12 2006**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AMENDMENT TO
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 08-4248C

APPLICATION 08-4248C

TYPE § 11.122

Owner: Trinity River Authority
of Texas

Address: P. O. Box 60
Arlington, Texas 76004

Filed: September 23, 2005

Granted: **DEC 12 2005**

Purpose: Multiple Use (Domestic,
Municipal, Industrial,
Mining, and Agriculture)

Counties: Trinity, Polk, San Jacinto,
Liberty, Chambers, Jefferson,
Leon, Houston, Walker,
Galveston, Grimes, Freestone,
Madison

Watercourse: Trinity River

Watershed: Trinity River Basin, San Jacinto
River Basin, Neches River
Basin, and Neches-Trinity
Coastal Basin

WHEREAS, Certificate of Adjudication No. 08-4248 authorizes the Trinity River Authority (TRA, Applicant), in conjunction with the City of Houston (owner of Certificate of Adjudication No. 08-4261) to maintain an existing dam and reservoir (Lake Livingston) on the Trinity River, Trinity River Basin, and impound therein not to exceed 1,750,000 acre-feet of water, and to construct and maintain a dam and reservoir (Lake Wallisville) on the Trinity River and impound therein not to exceed 51,600 acre-feet of water; and

WHEREAS, Certificate of Adjudication No. 08-4248 also authorizes the TRA to divert and use 461,700 acre-feet of water per year from three separate locations (a point on the Trinity River and from Lake Livingston and Lake Wallisville) at a maximum combined diversion rate of not to exceed 951.49 cfs (428,171 gpm) for domestic, agricultural (irrigation), municipal, and mining purposes within the Owner's service area in the Trinity River Basin; and

WHEREAS, of the total amount of water authorized for diversion, Certificate of Adjudication No. 4248 authorizes TRA to divert and use not to exceed 104,450 acre-feet of water per year from Lake Livingston for agriculture (irrigation) purposes, 40,000 acre-feet of water per year

for domestic and municipal purposes, and 207,150 acre-feet of water per year for industrial purposes within the applicant's service area; and

WHEREAS, TRA is authorized to divert water from Lake Livingston at the outlet works of the dam at an unspecified diversion rate and at various points on the perimeter of Lake Livingston at a combined maximum rate of not to exceed 71.79 cfs (32,305 gpm); and

WHEREAS, TRA is authorized to use the water from Lake Livingston in Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Galveston, Leon, Houston, Walker, Grimes, Freestone, and Madison Counties in the Trinity River Basin, the San Jacinto River Basin, the Neches River Basin and the Neches-Trinity Coastal Basin; and

WHEREAS, the priority date for the impoundment, diversion, and use of the water from Lake Livingston is September 23, 1959; and

WHEREAS, Applicant seeks authorization to add multiple use [domestic, municipal, industrial, and agricultural (irrigation)] purposes to the water authorized for diversion from Lake Livingston, and to increase the diversion rate authorized from Lake Livingston from 71.79 cfs (32,305 gpm) to 152.79 cfs (68,572.152 gpm); and

WHEREAS, the Texas Commission on Environmental Quality finds that jurisdiction over the application is established; and

WHEREAS, the City of Houston provided a letter of consent to the application and, therefore notice was not mailed; and

WHEREAS, the Commission has complied with the requirements of the Texas Water Code and Rules of the Texas Commission on Environmental Quality in issuing this amendment;

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 08-4248, designated Certificate of Adjudication No. 08-4248C, is issued to the Trinity River Authority of Texas, subject to the following terms and conditions:

1. USE

In lieu of the previous purposes of use for the water authorized for diversion from Lake Livingston, the Trinity River Authority is now authorized to divert and use not to exceed 351,600 acre-feet of water per year for multiple use [domestic, municipal, agricultural (irrigation), and industrial] purposes.

2. DIVERSION

A. In lieu of the previous diversion rate from various points on the perimeter of Lake Livingston of 71.79 cfs (32,305 gpm), Owner is now authorized to divert the water from various points on the perimeter of Lake Livingston at a maximum rate of not to exceed 152.79 cfs (68,572.152 gpm).

B. In lieu of the previous maximum combined diversion rate authorized by Certificate of Adjudication No. 08-4248 of not exceed 951.49 cfs (428,171 gpm), exclusive of release through Lake Livingston Dam, the maximum combined diversion rate authorized by the Certificate, exclusive of release through Lake Livingston Dam, shall not exceed 1,032.49 cfs (463,381.512 gpm).

3. CONSERVATION

Owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses. Such plans shall include a requirement that in every wholesale water contract entered into, on or after the effective date of this amendment, including any contract extension or renewal, that each successive wholesale customer develop and implement conservation measures. If the customer intends to resell the water, then the contract for resale of the water must have water conservation requirements so that each successive wholesale customer in the resale of the water be required to implement water conservation measures.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 08-4248, as amended, except as specifically amended herein.

This amendment is issued subject to all superior and senior water rights in the Trinity River Basin.

Owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

All other matters requested in the application which are not specifically granted by this amendment are denied.

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.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


For the Commission

DATE ISSUED: DEC 12 2005



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

P.O. Box 13088, MC-160
Austin, Texas 78711-3088
Telephone No. (512) 239-4691 FAX (512) 239-4770

APPLICATION FOR AMENDMENT TO A WATER RIGHT

- REQUIRING MAILED AND PUBLISHED NOTICE
NOT REQUIRING MAILED AND PUBLISHED NOTICE CE

Reference Texas Administrative Code § 295.158(b) or (c)

Notice: This form will not be processed until all delinquent fees and/or penalties owed to the TCEQ or the Office of the Attorney General on behalf of the TCEQ are paid in accordance with the Delinquent Fee and Penalty Protocol.

Customer Reference Number (if issued): CN602409468

Note: If you do not have a Customer Reference Number, complete Section II of the Core Data Form (TCEQ-10400) and submit it with this application.

1. Name: Trinity River Authority
Address: P.O. Box 60
Arlington, Texas 76010
Email Address: Fax:

2. Applicant owes fees or penalties? NO
Yes No
If yes, provide the amount and the nature of the fee or penalty as well as any identifying number:

3. Permit No. Certificate of Adjudication No. 04-4248C
Stream: Trinity River Watershed: Trinity River Basin
Reservoir (present condition, if one exists):
County: Trinity

4. Proposed Changes To Water Right Authorizations:
Add additional use for the purpose of hydroelectric power

RECEIVED
TCEQ
WATER SUPPLY DIV.
2008 APR 18 PM 8 38

(ATTACH ADDITIONAL PAGE AS NECESSARY, ATTACH MAP/PLAT DEPICTING PROJECT LOCATION, DIVERSION POINT, PLACE OF USE AND OTHER PERTINENT DATA)

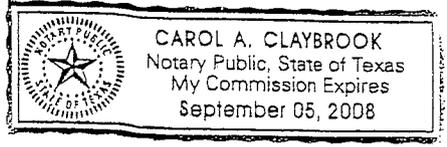
5. I understand the Agency may require additional information in regard to the requested amendment before considering this application.

6. I have NOT submitted the required fees herewith. Please calculate any required fees and notify us of the amount.

Danny F. Vance
Name (sign)
DANNY F. VANCE
Name (print)

Name (sign)
Name (print)

Subscribed and sworn to me as being true and correct before me this 27th day of December, 2007.



Carol A. Claybrook
Notary Public, State of Texas

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

June 4, 2008

Fred B. Werkenthin, Jr.
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701-3503

CERTIFIED MAIL

RE: Trinity River Authority
ADJ 4248
CN601265945, RN104072194, RN10468097
Application No. 08-4248D to Amend Certificate of Adjudication No. 08-4248
TWC §11.122
Trinity River, Trinity River Basin, San Jacinto River Basin, Neches River Basin
and Neches-Trinity Coastal Basin
Trinity, Polk, San Jacinto, Liberty, Chambers, Jefferson, Leon, Houston, Walker,
Galveston, Grimes, Freestone, Madison Counties

Dear Mr. Werkenthin:

This acknowledges receipt, on April 18, 2008, of the referenced application.

The Commission is reviewing notice requirements for water right amendment applications pursuant to Texas Water Code (TWC) §11.122(b). On Friday, January 18, 2008, the Commission decided that in order to determine if an amendment application requires notice, staff must consider how an application addresses the relevant public interest criteria described in TWC §11.134 and outlined by the Texas Supreme Court in the case of *Marshall v. Uncertain* as well as how the proposed amendment will or will not impact water right holders or the environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

Therefore, staff is requesting responses to Items 1-7 below. In lieu of providing responses, the applicant may agree to the issuance of published notice and mailed notice to the water right holders of record in the Trinity River Basin.

Staff acknowledges that the applicant addressed or partially addressed Items 1-7 in the application submitted. Please confirm whether the applicant chooses to supplement its previous response

If you elect to proceed without agreeing to published and mailed notice, additional information is required.

1. Confirm whether this application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) §§ 281, 295, and 297. An amendment application should include, but is not limited to, a sworn application, maps, completed conservation plan, fees, etc.
2. Discuss how the proposed amendment is a beneficial use of the water right as defined in TWC §11.002 and listed in TWC §11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.
3. Explain how the proposed amendment is not detrimental to the public welfare. Consider any public welfare matters you think might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.
4. Discuss the effects, if any, of the proposed amendment on groundwater or groundwater recharge.
5. Describe how the proposed amendment addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement. The state and regional water plans are available for download at this website: http://www.twdb.state.tx.us/RWPG/planning_page.asp.
6. Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC §11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC §288.
7. Explain how the proposed amendment will or will not impact water right holders or the environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

The responses will be reviewed by the Executive Director's staff to make a determination of the application's notice requirement. The staff-recommended notice determination may then be set on Commissioner's Agenda for consideration. In lieu of responding to Items 1-7 above, the applicant may agree to published notice and mailed notice to the water right holders of record in the Trinity River Basin.

If you elect to proceed with published notice and mailed notice, please remit fees in the amount of \$576.89 described below.

Filing Fee	\$ 100.00
Recording Fee	\$ 1.25
Notice Fee (Trinity River Basin)*	\$ 475.64
TOTAL FEES DUE	\$ 576.89
FEES PAID	\$ 0.00
BALANCE DUE	\$ 576.89

(*If you elect not to proceed with published notice and mailed notice and have provide a response to items 1-7 listed above please remit application fees in the amount of \$101.25)

In addition to the information and fees requested above the following information is required before the application can be declared administratively complete.

1. Clarify how the applicant intends to address the priority dates associated with the multiple sources of water authorized under Certificate of Adjudication No. 08-4248. After reviewing the existing permit and amendments, it appears that there are multiple sources of the water stored in Lake Livingston. Certificate of Adjudication 08-4248B authorizes storage and subsequent diversion of return flows for multiple use (domestic, municipal, agricultural (irrigation) and industrial) purposes with a priority date of September 7, 2000. Indicate how the applicant's portion of the water stored in Lake Livingston from all authorized sources will be accounted for to ensure that hydropower is not generated from spilled return flows.
2. Provide a conceptual drawing of the project showing the limits of the project and any impacts on the dam, including geotechnical and structural.

Please provide the requested information by **July 7, 2008**, or the application may be returned pursuant to 30 TAC §281.18.

If you have any questions concerning this matter, please contact me at (512) 239-6538 or by e-mail at sramos@tceq.state.tx.us.

Sincerely,



Esteban (Steve) Ramos, Project Manager, MC-160
Water Rights Permitting Team
Water Rights Permitting & Availability Section

LAW OFFICES OF
BOOTH, AHRENS & WERKENTHIN, P.C.

A PROFESSIONAL CORPORATION

515 CONGRESS AVENUE, SUITE 1515
AUSTIN, TEXAS 78701-3503
512/472-3253 • 512/473-2609

MICHAEL J. BOOTH
FRED B. WERKENTHIN, JR.
WIL GALLOWAY
TREY NESLONEY

CAROLYN AHRENS
OF COUNSEL

July 21, 2008

Mr. Steve Ramos
Project Manager, MC-160
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

VIA E-MAIL AND REGULAR MAIL

**RE: Trinity River Authority; Application No. 08-4248D to Amend
Certificate of Adjudication No. 08-4248**

Dear Mr. Ramos:

The following is Trinity River Authority's ("TRA") response to your request for information, dated June 4, 2008:

1. Confirm whether this application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TCA) §§ 281, 295, and 297. An Amendment application should include, but is not limited to, a sworn applications, maps, completed conservation plan, fees, etc.

This application complies with the administrative requirements for an amendment to a water use permit pursuant to Chapter 11 of the Texas Water Code and Title 30 of the Texas Administrative Code (TAC) §§ 281, 295, and 297, which includes a sworn application, resolution, maps, conservation plan, and fees.

2. Discuss how the proposed amendment is a beneficial use of the water right as defined in TWC §11.002 and listed in TWC §11.023. Identify the specific proposed use of the water (e.g. road construction, hydrostatic testing, etc.) for which the amendment is requested.

Certificate of Adjudication No. 08-4248, as amended, authorizes TRA to divert and use, not to exceed, 351,600 acre-feet of water to use for domestic, municipal, industrial, and agricultural purposes. TRA seeks to add hydroelectric generation as an additional use of Certificate of Adjudication No. 08-4248, as amended. "Hydropower use" is defined as "[t]he use of water for hydroelectric and hydromechanical power for other mechanical devices of like nature." 30 Tex. Admin. Code §297.1(23) (2008) (Tex Comm'n on Env'tl. Quality, Water Rights, Substantive).

The Texas Water Code requires that TCEQ grant an application only if the proposed appropriation "is intended for a beneficial use." TEX. WATER CODE § 11.134(b)(3)(A) (Vernon 2008). "Beneficial use" of water is defined as "use of the amount of water which is economically necessary for a purpose authorized" by Chapter 11 of the Texas Water Code. TEX. WATER CODE §11.002(4) (Vernon 2008). Use of water for hydroelectric power has been recognized as a beneficial use. See TEX. WATER CODE §11.024(4) (Vernon 2008).

3. Explain how the proposed amendment is not detrimental to the public welfare. Consider any public welfare matters you think might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.

The Texas Water Code requires that TCEQ grant an application only if the proposed appropriation "is not detrimental to the public welfare." TEX. WATER CODE §11.134(b)(3)(C) (Vernon 2008). TRA's amendment to Certificate of Adjudication No. 08-4248 to add hydroelectric generation as an additional use will not be detrimental to the public welfare. In fact, the proposed amendment will actually benefit the public welfare by allowing TRA to more efficiently and effectively utilize the existing water supply. This addition of a new non-consumptive use for this water will create a renewable, beneficial, lower cost energy source with less environmental impacts to other natural resources. A renewable energy source achieved through a non-consumptive use of non-potable water is beneficial to the public welfare. There will be no changes to the existing amount, diversion point, rate of diversion, and pattern of diversions in Certificate of Adjudication No. 08-4248, as amended; therefore, the proposed amendment will not result in environmental impacts that will be detrimental to the public welfare.

4. Discuss the effects, if any, of the proposed amendment on groundwater or groundwater recharge.

The proposed amendment will not change the volume of water released, the diversion point, the rate of diversion, or usage patterns in Certificate of Adjudication No. 08-4248, as amended; therefore, the proposed amendment

will have no effect on groundwater or groundwater recharge. Adding hydroelectric power, a non-consumptive use, as a purpose of use to TRA's water right will have no effect on groundwater resources or groundwater recharge to any greater degree than would TRA's existing use of water. Groundwater resources and groundwater recharge are not affected by this amendment application.

5. Describe how the proposed amendment addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement. The state and regional water plans are available for download at this website: http://www.twdb.state.tx.us/RWPG/planning_page.asp.

TRA's proposed amendment is consistent with the applicable state and regional water plans. This amendment will enable TRA to more efficiently and effectively use the state water authorized by Certificate of Adjudication No. 08-4248, as amended. The proposed amendment will not affect issues involving water supply. TRA's water right will still be available to meet demand projections found in the state and regional water plans just as it was prior to this proposed amendment.

6. Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC §11.002. Examples of evidence include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC §288.

TRA will continue to use reasonable diligence to avoid waste and achieve water conservation if this proposed amendment is granted. "Conservation" is defined as "the development of water resources" and "those practices, techniques, and technologies that will...improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses." TEX. WATER CODE § 11.002(8) (Vernon 2008). This amendment to Certificate of Adjudication No. 08-4248 will add hydroelectric generation as an additional use, allowing TRA to make more efficient use of the water already authorized under Certificate of Adjudication No. 08-4248, as amended. This increased efficiency, along with TRA's current water conservation and drought contingency plans, will allow TRA to address its water supply needs in a way that avoids waste and achieves water conservation.

TRA's current water conservation and drought contingency plans include provisions that allow TRA to enforce conservation measures on customers,

thereby reducing the consumption of water, and the loss or waste of water, so that a water supply is made available for future or alternative uses. TRA's water conservation and drought contingency plan have been approved by the Texas Water Development Board. There is no need for TRA to amend its plan because hydroelectric power use is a non-consumptive use; TRA's drought contingency plan is applicable to all consumptive uses. Additionally, as noted above, this hydroelectric power use enhances the beneficial use of TRA's existing water right, as well as conservation of those water rights.

7. Explain how the proposed amendment will or will not impact water right holders or the environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

TRA's proposed amendment to add hydroelectric generation as an additional use to Certificate of Adjudication No. 08-4248, as amended, will not have an impact on other water right holders or the on-stream environment on the Trinity River. Approving hydroelectric generation as an additional use to TRA's water right will not result in the consumption of water; therefore, this will not cause an adverse impact on other water right holders or the on-stream environment. By this amendment, TRA does not seek to move the point of diversion "upstream above senior right holder," or change the purpose of use from a "non-consumptive use to a consumptive one," as discussed in the *City of Marshall v. City of Uncertain* decision. TRA merely seeks to add a non-consumptive purpose of use to Certificate of Adjudication No. 08-4248, as amended. This will only enhance the efficient use of the water supply within the current parameters of Certificate of Adjudication No. 08-4248, as amended.

Responses to Additional Information:

1. Clarify how the applicant intends to address the priority dates associated with the multiple sources of water authorized under Certificate of Adjudication no. 08-4248. After reviewing the existing permit and amendments, it appears that there are multiple sources of the water stored in Lake Livingston. Certificate of Adjudication 08-4248B authorizes storage and subsequent diversions of return flows for multiple use (domestic, municipal, agricultural (irrigation) and industrial) purposes with a priority date of September 7, 2000. Indicate how the applicant's portion of the water stored in Lake Livingston from all authorized sources will be accounted for to ensure that hydropower is not generated from spilled return flows.

The water that TRA proposes to generate electricity from will be water currently authorized under the Lake Livingston water rights (TRA's water right Application No. 08-4248, as amended and Houston's water right

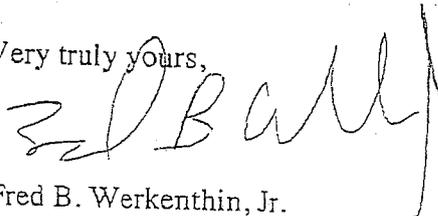
Application No. 08-4261) for consumptive use. In addition, spills not associated with any of TRA's or Houston's water rights will also be routed through the powerhouse. The powerhouse has a rated capacity of 4,800 cfs. To the extent flood flows or spills are available, up to 4,800 cfs will be routed through the powerhouse. It is TRA's understanding that hydro rights can be priority rights or non-priority rights. TRA assumes that some sort of notice would be required for a priority hydro right. What type of notice, if any, is required for a non-priority hydro right? Moreover, is an authorization even necessary to re-route spills from the floodgate to a hydro powerhouse?

2. Provide a conceptual drawing of the project showing the limits of the project and any impacts on the dam, including geotechnical and structural.

We have attached materials containing a conceptual drawing and schematics of the project. One issue that has been identified is the proximity of the hydro tailrace to the dam. It is planned to angle the tailrace further downstream than shown in the conceptual drawing.

Page 000002 of the attached is the initial drawing. Page 000005 of the attached is the revised drawing showing the hydro tailrace angled further downstream.

Very truly yours,



Fred B. Werkenthin, Jr.
Attorney for Trinity River Authority

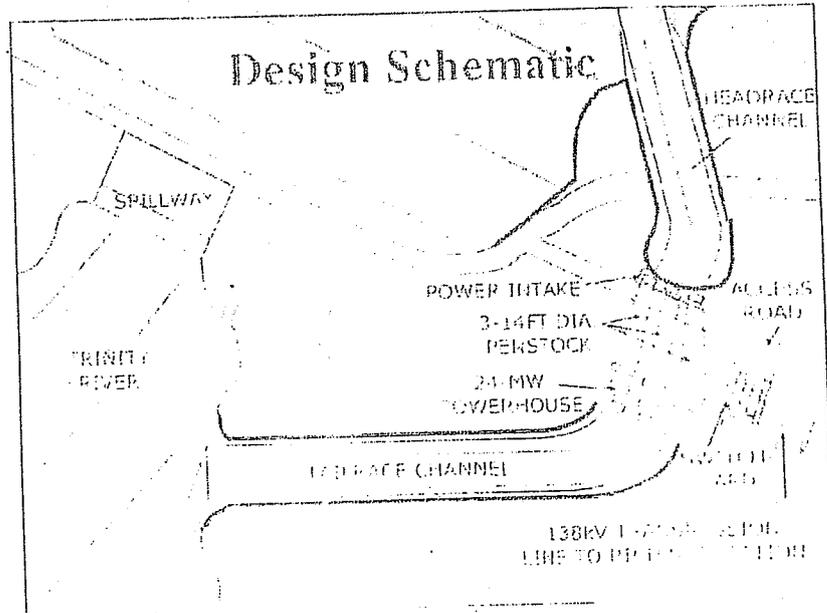
FBW/THN
Enclosures

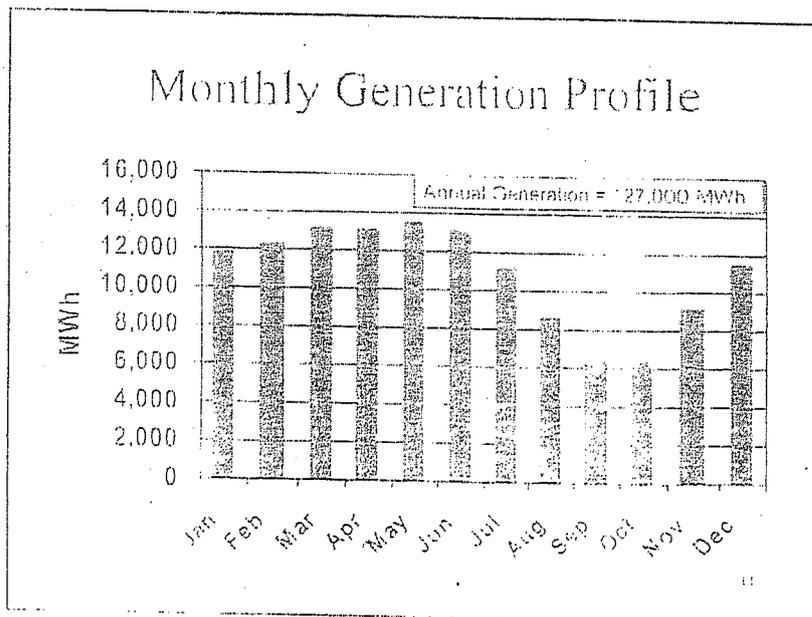
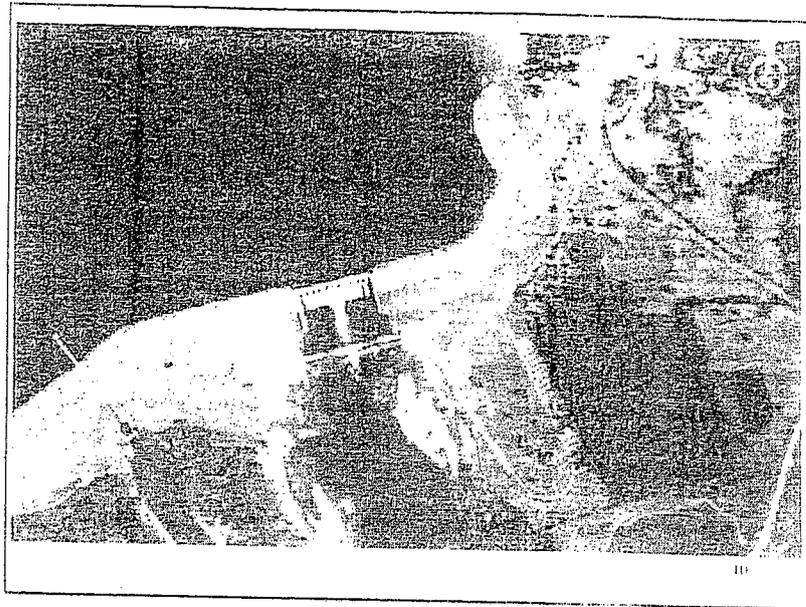
Cc: Danny Vance

(VIA E-MAIL)

Project Description

- Type of Operation: Run of River
- Number of Units: 3 (8 MW each)
- Installed Capacity: 24 MW
- Annual Energy: 127 GWH
- Capacity Factor: 60%
- Expected COD: 2012





Proposed Operation

- “Run-of-river” operation
 - Project operation will not affect lake levels on reservoir
 - Project will use TRA’s existing water release regime and will not interfere with current reservoir operations
 - Divert up to 5,000 cfs of release through turbines that would otherwise be released over the spillway
-

