

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO: Chief Clerk DATE: May 16, 2008

THRU: Iliana Delgado, Team Leader
Water Rights Permitting Team

FROM: Kathy C. Hopkins, Project Manager
Water Rights Permitting Team

SUBJECT: American Rice Growers Cooperative Association-Dayton Division and City of Houston
Houston
Docket # 2006-1723-WR
ADJ 4277A
CN602526725 and CN600128995
RN104090014, RN104553839, RN104553847, RN104553813, RN104553805
Application No. 08-4277A to Amend Certificate of Adjudication No. 08-4277
TWC §§11.122, Requiring Mailed and Published Notice
Big Ditch, the East Prong Old River, and the Trinity River, Trinity River Basin,
San Jacinto River Basin, Trinity-San Jacinto Coastal Basin, Neches River Basin,
Neches-Trinity Coastal Basin, and San Jacinto-Brazos Coastal Basin
Liberty, Chambers, Harris, Galveston, Brazoria, Fort Bend, San Jacinto, Walker,
Grimes, Waller, Montgomery, and Jefferson Counties

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2008 MAY 19 PM 4: 54
CHIEF CLERKS OFFICE

An application was received from the American Rice Growers Cooperative Association-Dayton Division and City of Houston seeks to amend Certificate of Adjudication No. 08-4277 pursuant to Texas Water Code §§ 11.122 and 11.085 and Texas Commission on Environmental Quality Rules 30 TAC §§295.1, *et seq.*

The application was received on August 29, 1997. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 1, 2000. The notice of the application was filed with the Chief Clerk on May 29, 2002, and notice was subsequently published and mailed to the water right holders in the Trinity River Basin, San Jacinto River Basin, Trinity-San Jacinto River Coastal Basin, and San Jacinto-Brazos Coastal Basin. Several requests for a public hearing were received. All but one has withdrawn.

Because this application was declared administratively complete after September 1, 1999, the rules in Chapter 55, Subchapter G, Section 55.250 - 55.256 apply. The Chief Clerk shall mail notice to the applicant, executive director, public interest counsel, and timely hearing requestors not later than 35 days prior to the agenda setting. Applicants, the public interest counsel, and the executive director shall file a response no later than 23 days before agenda, and the hearing requestors shall reply no later than nine days before agenda.

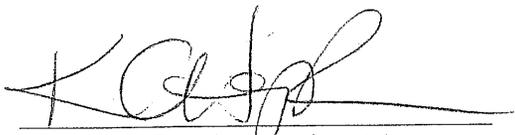
The application is now technically complete and the staff has recommended that the application

be granted based on the analysis in the technical review memos. Therefore, we request that the application be set on the July 9, 2008 Commission's Contested agenda.

Below is the caption for this application:

Consideration of the application of American Rice Growers Cooperative-Dayton Division and the City of Houston for an amendment to Certificate of Adjudication No. 08-4277 to authorize additional places of use (interbasin transfer from the Trinity Basin to the San Jacinto River Basin, Trinity-San Jacinto Coastal, the Neches River Basin, and the Neches-Trinity Coastal Basin for use in Liberty, Chambers, Harris, Galveston, Brazoria, Fort Bend, San Jacinto, Walker, Grimes, Waller, Montgomery, and Jefferson Counties); to add municipal, industrial, and mining use to the current agricultural (irrigation) use; to add an additional diversion point downstream of the current diversion point in Liberty County on the Trinity River, Trinity River Basin; to increase the diversion rate; and to change the ownership of the Certificate to the City of Houston once the amendment has been granted. Existing Certificate of Adjudication No. 08-4277 authorizes, with a time priority of August 25, 1969, the maintenance of a dam and reservoir on Big Ditch, tributary of the Trinity River in Liberty County and the diversion and use of not to exceed 5,000 acre-feet of water per annum from the perimeter of the reservoir at a maximum rate of 35.56 cubic feet per second (cfs) for agricultural purposes to irrigate 9,238.04 acres of land within American Rice Growers Cooperative Association-Dayton Diversion service area. The reservoir impounds a maximum of 65 acre-feet of water and the dam for the reservoir is in the Louis Davis Grant, Abstract No. 18, Liberty County. The Certificate also authorizes, with a time priority of July 2, 1913, the diversion and use of not to exceed a total of 33,000 acre-feet of water per annum from a point on the Trinity River, a point on the East Prong Old River, tributary of the Trinity River and a point on Big Ditch for agricultural (irrigation) purposes of the above-described land. The commission will also consider hearing requests and any responsive filings. (Kathy Hopkins, Robin Smith)

Attached is a draft notice for you to send.



Kathy C. Hopkins, Project Manager
Water Rights Permitting Team

Enclosure

cc: Todd Chenoweth, TCEQ
Lann Bookout, TCEQ
Kellye Rila, TCEQ
Kristin Wang, TCEQ
Chris Loft, TCEQ
Robin Smith, TCEQ
Kathy Alexander, TCEQ



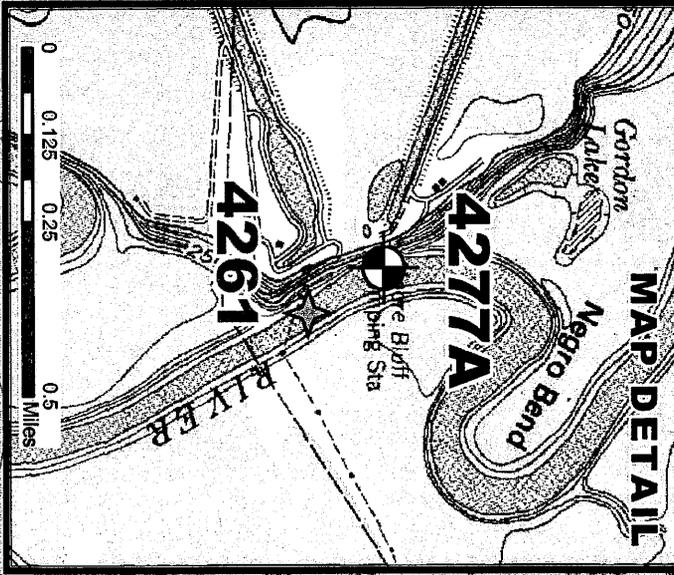
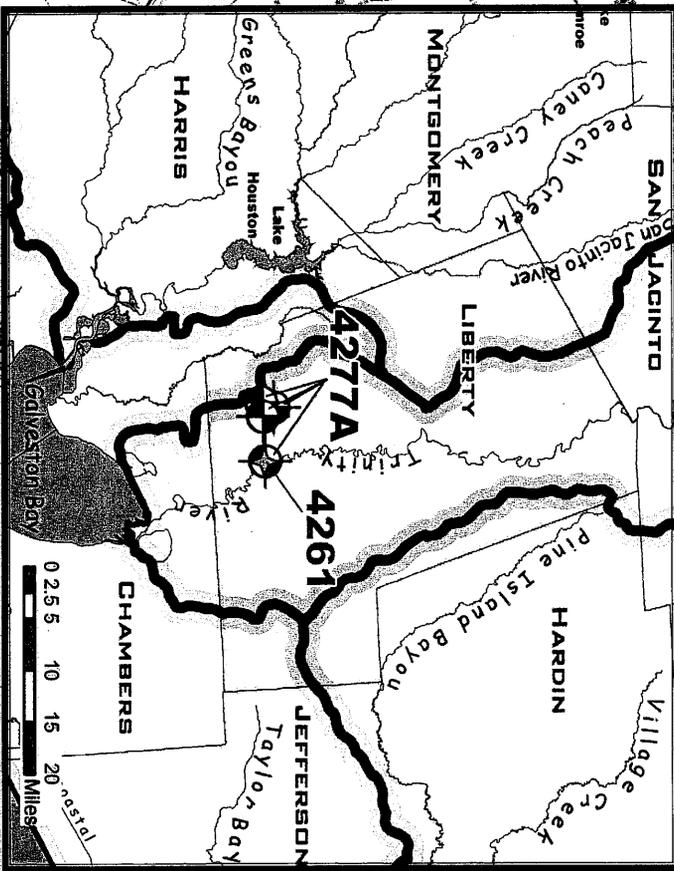
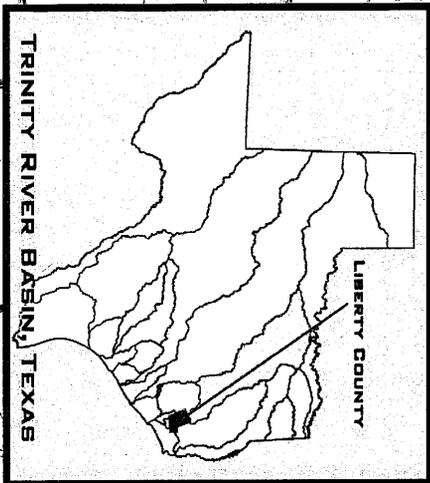
APPLICANTS
 American Rice Growers Cooperative Assoc.
 Application No. 08-4277A

City of Houston- 08-4261
 Proposed Location for
 American Rice Diversion

PROTESTANT

● Alders Group

0 0.5 1 Miles



AMENDMENT TO
A CERTIFICATE OF ADJUDICATION

CERTIFICATE NO.08-4277A

TYPE: 11.122 & 11.085

Owner:	American Rice Growers Cooperative Association-Dayton Division	Address:	P.O. Box 129 Dayton, Texas 77535
Accepted for Filing:	March 1, 2000	Granted:	
Purposes:	Municipal, Industrial, Mining, and Agricultural (Irrigation)	Counties:	Liberty, Chambers, Harris, Galveston, Brazoria, Fort Bend, San Jacinto, Walker, Grimes, Waller, Montgomery, and Jefferson
Watercourse:	Big Ditch and the East Prong Old River, Tributaries of the Trinity River and the Trinity River	Watersheds:	Trinity River Basin, San Jacinto River Basin, Trinity-San Jacinto Coastal Basin, Neches River Basin, Neches-Trinity Coastal Basin, and San Jacinto-Brazos Coastal Basin

WHEREAS, Certificate of Adjudication No. 08-4277 is owned by the American Rice Growers Cooperative-Dayton Division (American Rice) and authorizes, with a time priority of August 25, 1969, the maintenance of a dam and reservoir with a capacity of 65 acre-feet on Big Ditch, tributary of the Trinity River in the Louis Davis Grant, Abstract No. 18, Liberty County and the diversion and use of not to exceed 5,000 acre-feet of water per year from the perimeter of the reservoir at a maximum rate of 35.56 cubic feet per second (cfs) for the irrigation of 9,238.04 acres of land within its service area; and

WHEREAS, the Certificate also authorizes, with a time priority of July 2, 1913, the diversion and use of not to exceed a total of 33,000 acre-feet of water per year from a point on the Trinity River; a point on the East Prong Old River, tributary of the Trinity River; and a point on Big Ditch for irrigation of the above-described land; and

WHEREAS, the point on the Trinity River is in the John A. Williams Grant, Abstract No.119, Liberty County and includes a maximum diversion rate of 140 cfs; and

WHEREAS, the point on the East Prong Old River is in the William D. Smith Grant, Abstract No. 106, Liberty County and includes a maximum diversion rate of 22.22 cfs; and

WHEREAS, the point on Big Ditch is in the William Bloodgood Grant, Abstract No. 3, Liberty County and includes a maximum diversion rate of 17.78 cfs; and

WHEREAS, the Certificate includes a special condition requiring the Owner to maintain a suitable outlet in the dam on Big Ditch to allow passage of water that the Owner is not entitled to divert or impound and a special condition requiring the Owner to notify the Texas Commission on Environmental Quality of any changes in their service area; and

WHEREAS, pursuant to an August 21, 1997 agreement between the Owner and the City of Houston, which includes Owner's agreement to sell the water rights authorized by Certificate of Adjudication No. 08-4277 to the City subject to certain conditions, the Owner and the City of Houston seek to amend the certificate to:

- (1) authorize additional places of use for all of the water authorized in the Certificate to anywhere within the following areas (interbasin transfer):
 - (a) Liberty, Harris, Galveston, Brazoria, Fort Bend and Chambers Counties;
 - (b) the Trinity-San Jacinto Coastal Basin;
 - (c) the San Jacinto River Basin; and
 - (d) the San Jacinto-Brazos Coastal Basin;
- (2) authorize the use of all water included in the Certificate for municipal, industrial, mining and agricultural purposes;
- (3) authorize the diversion of all water included in the Certificate at an additional diversion point on the Trinity River included in the City of Houston's Certificate of Adjudication No. 08-4261, as amended, which is immediately downstream of the point currently authorized on the river;
- (4) authorize the diversion of all of the water included in the Certificate at the requested additional diversion point at a maximum rate of 215.6 cfs with a condition that diversion under the certificate at all authorized points of diversion would not exceed a combined maximum rate of 215.6 cfs at any time;
- (5) confirm, expressly on the face of the amendment, that the amended Certificate retains for all purposes the July 2, 1913 priority date currently included for the authorization to divert and use 33,000 acre-feet of water per year from the Trinity River, Big Ditch and East Prong Old River and the August 25, 1969 priority date currently included for the authorization to divert and use 5,000 acre-feet of water per year from the reservoir on Big Ditch; and
- (6) reflect that upon Closing as provided in the aforesaid August 21, 1997 agreement between the applicants, the amended Certificate, will be owned by the City of Houston; and

WHEREAS, the place of use requested by the applicants includes land in Liberty, Chambers, San Jacinto, Walker, Grimes, Waller, Harris, Fort Bend, Montgomery, Jefferson, Galveston and Brazoria Counties and in the Trinity River Basin, the San Jacinto River Basin, the Neches River Basin, the Trinity-San Jacinto Coastal Basin, the San Jacinto-Brazos Coastal Basin and the Neches-Trinity Coastal Basin; and

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

WHEREAS, upon Closing as provided in the aforesaid August 21, 1997 agreement between the applicants, this amended Certificate will be owned by the City of Houston, Texas; and

WHEREAS, this application is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP goals and policies; and

WHEREAS, when the diversion of water is intended for an interbasin transfer, the Executive Director recommends that special conditions be included in order to maintain downstream environmental conditions during times of low flow;

WHEREAS, the Texas Commission on Environmental Quality finds that the issuance of this amendment is consistent with the goals and policies of the Texas Coastal Management Plan; 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; and

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 08-4277, designated as Certificate of Adjudication No. 08-4277A, is issued to American Rice Growers Cooperative Association-Dayton Division, subject to the following terms and conditions:

1. USE

- A. In addition to the previous authorization in Certificate of Adjudication No. 08-4277, Use paragraph 2, A & B, Owner is now authorized to use the 38,000 acre-feet of water per year for agricultural, municipal, industrial, and mining purposes.
- B. In addition to the previous place of use, Owner is now authorized an interbasin transfer for diversion and use of the 38,000 acre-feet of water per year within the City of Houston's service area Liberty, Chambers, San Jacinto, Walker, Grimes, Waller, Harris, Fort Bend, Montgomery, Jefferson, Galveston and Brazoria Counties within the Trinity River Basin, the San Jacinto River Basin, the Neches River Basin, the Trinity-San Jacinto Coastal Basin, the San Jacinto-Brazos Coastal Basin and the Neches-Trinity Coastal Basin.

2. DIVERSION

In addition to the previously authorized diversion points, Owner is authorized:

- A. Diversion Point No. 5, at a point on the Trinity River in the John A. Williams Grant, Abstract 119, Liberty County, Texas which is also authorized in

Certificate of Adjudication No. 08-4261, as amended. Said point also being Located at 29.962°N Latitude and 94.809°W Longitude.

B. The maximum combined diversion rate is 215.6 cfs (96,761.28 gpm).

3. PRIORITY

The time priority of the Owner's Right under this Certificate of Adjudication No. 08-4277A is July 2, 1913 for the 33,000 acre-feet of water and August 25, 1969 for 5,000 acre-feet of water.

4. CONSERVATION

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.

5. SPECIAL CONDITION

- A. Prior to diversion, from Diversion Point No. 5 authorized herein, of water for transport and use outside the Trinity River Basin, Owner shall install a reference marker, with an accuracy of +/- 5%, immediately downstream of that diversion point.
- B. For transport and use outside the Trinity River Basin, Owner shall only divert authorized water when the remaining streamflow of the Trinity River equals or exceeds 404 cfs at the referenced point downstream of Diversion Point No. 5. This special condition is subject to adjustment by the Commission if the Commission determines, through an expedited public review process, that such adjustment is appropriate to achieve compliance with applicable environmental flow standards adopted pursuant to Texas Water Code § 11.1471. Any adjustment shall be made in accordance with the provisions of Texas Water Code § 11.147(e-1).
- C. Unless written waiver of this restriction is obtained from the Executive Director, transport of water under this Certificate for use in areas outside the Trinity River Basin, other than areas within the Neches-Trinity Coastal Basin and the Trinity - San Jacinto Coastal Basin, is restricted to a canal, pipeline or similar conveyance facility from a diversion point authorized under this Certificate to the intended water treatment facilities, including any intermediate storage, pumping, or other transportation devices, isolated from natural drainage.
- D. Owner shall submit the proper ownership documents to reflect the City of Houston as the Owner of this amendment to Certificate of Adjudication No. 08-4277 within 90 days of issuance of this amendment.

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 resource exercised by the Commission.

For the Commission

Date Issued:

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



NOTICE OF APPLICATION TO AMEND A CERTIFICATE OF ADJUDICATION

Application No. 08-4277A

American Rice Growers Cooperative-Dayton Division and The City of Houston has applied for an amendment to Certificate of Adjudication No. 08-4277 to authorize additional places of use (interbasin transfer); to add municipal, industrial, and mining use to the current irrigation use; to add an additional diversion point downstream on the Trinity River, Trinity River Basin; to increase the diversion rate; and to change the ownership of the Certificate to the City of Houston, once the amendment has been granted. More information on the application and how to participate in the permitting process is given below.

APPLICATION: American Rice Growers Cooperative-Dayton Division, P.O. Box, Dayton, Texas 77535 and The City of Houston, P.O. Box 1562, Houston, Texas 77251-1562, applicants, seek to amend Certificate of Adjudication No. 08-4277 pursuant to §§11.122 and 11.085 of the Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. Notice is given pursuant to 30 TAC 295.155 (prior to the changes made by Senate Bill 1), to all the water right holders in the Trinity River Basin, San Jacinto River Basin, Trinity-San Jacinto Coastal Basin, and San Jacinto-Brazos Coastal Basin.

Certificate of Adjudication No. 08-4277 is owned by the American Rice Growers Cooperative-Dayton Division and authorizes, with a time priority of August 25, 1969, the maintenance of a dam and reservoir on Big Ditch, tributary of the Trinity River in Liberty County and the diversion and use of not to exceed 5,000 acre-feet of water per annum from the perimeter of the reservoir at a maximum rate of 35.56 cubic feet per second (cfs) for the irrigation of 9,238.04 acres of land within its service area. The reservoir impounds a maximum of 65 acre-feet of water and the dam for the reservoir is in the Louis Davis Grant, Abstract No. 18.

The Certificate also authorizes, with a time priority of July 2, 1913, the diversion and use of not to exceed a total of 33,000 acre-feet of water per annum from a point on the Trinity River, a point on the East Prong Old River, tributary of the Trinity River and a point on Big Ditch for irrigation of the above-described land. All of these diversion points are in Liberty County. The point on the Trinity River is in the John A. Williams Grant, Abstract No. 119 and includes a maximum diversion rate of 140 cfs. The point on the East Prong Old River is in the William D. Smith Grant, Abstract No. 106 and includes a maximum diversion rate of 22.22 cfs. The point on Big Ditch is in the William Bloodgood Grant, Abstract No. 3 and includes a maximum diversion rate of 17.78 cfs.

The Certificate includes a special condition requiring the owner to maintain a suitable outlet in the dam on Big Ditch to allow passage of water that the owner is not entitled to divert or impound and a special condition requiring the owner to notify the TNRCC of any changes in their service area.

Pursuant to an August 21, 1997 agreement between the Certificate owner and the City of Houston, which includes owner's agreement to sell the water rights authorized by Certificate of Adjudication No. 08-4277 to the City subject to certain conditions, the applicant and the City of Houston seek to amend the certificate to:

- (1) authorize additional places of use for all of the water authorized in the Certificate to anywhere within the following areas (interbasin transfer):
 - (a) Liberty, Harris, Galveston, Brazoria, Fort Bend and Chambers Counties;
 - (b) the Trinity-San Jacinto Coastal Basin;
 - (c) the San Jacinto River Basin; and
 - (d) the San Jacinto-Brazos Coastal Basin;
- (2) authorize the use of all water included in the Certificate for municipal, industrial, mining and irrigation purposes;
- (3) authorize the diversion of all water included in the Certificate at an additional diversion point on the Trinity River included in the City of Houston's Certificate of Adjudication No. 08-4261, as amended, which is immediately downstream of the point currently authorized on the river;
- (4) authorize the diversion of all of the water included in the Certificate at the requested additional diversion point at a maximum rate of 215.6 cfs with a condition that diversion under the certificate at all authorized points of diversion would not exceed a combined maximum rate of 215.6 cfs at any time;
- (5) confirm, expressly on the face of the amendment, that the amended Certificate retains for all purposes the July 2, 1913 priority date currently included for the authorization to divert and use 33,000 acre-feet of water per year from the Trinity River, Big Ditch and East Prong Old River and the August 25, 1969 priority date currently included for the authorization to divert and use 5,000 acre-feet of water per year from the reservoir on Big Ditch; and
- (6) reflect that, based on conditions included in the aforesaid August 21, 1997 agreement between the applicants, the amended certificate, if granted will be owned by the City of Houston.

The place of use requested by the applicants includes land in Liberty, Chambers, San Jacinto, Walker, Grimes, Waller, Harris, Fort Bend, Montgomery, Jefferson, Galveston and Brazoria Counties and in the Trinity River Basin, the San Jacinto River Basin, the Neches River Basin, the Trinity-San Jacinto Coastal Basin, the San Jacinto-Brazos Coastal Basin and the Neches-Trinity Coastal Basin.

This application is subject to the Texas Coastal Management Program (CMP) and must be consistent with the CMP goals and policies.

Application No. 08-4277A was received on August 29, 1997, and was declared to be administratively complete on March 1, 2000 by the Executive Director.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

Issued: May 29, 2002

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Kathy Hopkins, Application Manager
Water Rights Permitting Team

Through: ^{16/AN/2} Lann Bookout, Team Leader
Surface Water Availability & Interstate Compacts Team

From: Shiyun Jiang, Hydrologist
Surface Water Availability & Interstate Compacts Team

Subject: American Rice Growers Cooperative Association (ARGCA)
& City of Houston, Application No. 08-4277A
Trinity River
Trinity River Basin
Liberty County

May 19, 2003

WATER AVAILABILITY ANALYSIS

Application Summary

The applicant, ARGCA is the owner of Certificate of Adjudication No.08-4277. The certificate authorizes the maintenance of an existing dam and on-channel reservoir on Big Ditch, tributary of the Trinity River impounding 65 acre-feet of water and diversion of 5,000 acre-feet of water per year from the reservoir for irrigation purposes. The certificate also authorizes ARGCA to divert additional 33,000 acre-feet per year from the Trinity River, Big Ditch, and East Prong Old River, tributary of the Trinity River for irrigation purposes. The combined maximum diversion rate is 180 cfs.

The applicants are seeking to change ownership of the certificate from ARGCA to City of Houston, to add municipal, industrial and mining uses, and to add a new diversion point on the Trinity River for diversion of the entire 38,000 acre-feet of water at a maximum diversion rate of 180 cfs. The new diversion point is included in the City of Houston's Certificate No. 08-4261 and located about 0.2 miles downstream of the current diversion point on the Trinity River under COA 08-4277. The applicants are also seeking to authorize interbasin transfer of this water to the Trinity-San Jacinto Coastal Basin, the San Jacinto River Basin, and the San Jacinto-Brazos Coastal Basin.

Water Availability Analysis

The Commission's Water Availability Model (WAM) for the Trinity River Basin protects

existing water rights based on the prior appropriation doctrine. The period of record for the model is from 1940 through 1997. The priority dates of this certificate are July 2, 1913 for 33,000 acre-feet per year and August 25, 1969 for 5,000 acre-feet per year.

Relative to the inter-basin transfer of the 38,000 acre-feet of water the TCEQ Resource Protection Staff has recommended the following instream flow restrictions (see Environmental Analysis - Addendum for American Rice Cooperative Association, April 23, 2003):

"In order to maintain downstream environmental conditions during times of low flow, TCEQ Staff recommend that water diversions authorized under the proposed amendment intended for interbasin transfer and use outside the Trinity River Basin be limited to times when the remaining streamflow of the Trinity River equals or exceeds 404 cfs at a reference point downstream of the proposed diversion points."

Hydrology Staff modeled this application using the Full Authorization Simulation, where all basin water rights use their maximum authorization, for two scenarios: 1) the original condition of this certificate without any instream flow restriction; and 2) the requested condition of this certificate that the instream flow restriction of 404 cfs was imposed for the 38,000 acre-feet of water under the assumption that this was all being diverted out of basin.

For Scenario 1, the simulation results indicated that a) for 5,000 acre-feet per year, 100 percent and at least 75 percent of the annual demand from the on-channel reservoir would be met in zero and 16 percent of the years, respectively, while the monthly demand would be met in 58 percent of the months; b) for 33,000 acre-feet per year, 100 percent and at least 75 percent of the annual demand from the Trinity River would be met in 83 and 97 percent of the years, respectively, while the monthly demand would be met in 98 percent of the months.

For Scenario 2, the simulation results indicated that a) for the 5,000 acre-feet per year, 100 percent and at least 75 percent of the annual demand would be met in zero and 11 percent of the years, respectively, while the monthly demand would be met in 49 percent of the months; b) for the portion of 33,000 acre-feet per year, 100 percent and at least 75 percent of the annual demand would be met in 58 and 91 percent of the years, respectively, while the monthly demand would be met in 94 percent of the months.

Conclusion

Hydrology analysis shows that under Scenario 1 (the original condition) the reliability is 98 percent of the months for 33,000 acre-feet per year and 58 percent of the months for 5,000 acre-feet per year; under Scenario 2 (the requested condition) the reliability is 94 percent of the months for 33,000 acre-feet per year and 49 percent of the months for 5,000 acre-feet per year. Staff can support issuance of the amendment allowing the diversion of the water at the downstream diversion point for interbasin use. However, should this water be transferred interbasin for use then a special condition is necessary to protect downstream environmental conditions as

HYDROLOGY UNIT ANALYSIS FACT SHEET

Applicants: American Rice Growers Cooperative Association (ARGCA) & City of Houston
 Water Right: 08-4277A
 Stream: Trinity River
 Basin: Trinity River County: Liberty
 Requested Amount: 33,000 AF/Y

Full Authorization Simulation

American Rice Growers Cooperative Association & City of Houston
 Trinity River Basin

RELIABILITY SUMMARY FOR SELECTED WATER RIGHTS FOR SCENARIO 1
 (the original condition of this certificate without any instream flow restriction)

NAME	TARGET DIVERSION (AC-FT/YR)	MEAN SHORTAGE (AC-FT/YR)	*RELIABILITY* (%)	PERIOD VOLUME (%)	PERCENTAGE OF MONTHS WITH DIVERSIONS EQUALING OR EXCEEDING							PERCENTAGE OF YEARS PERCENTAGE OF TARGET DIVERSION AMOUNT					
					100%	95%	90%	75%	50%	25%	>0%	100%	98%	95%	90%	75%	50%
60804277001	33000.0	894.8	98.10	97.29	98.1	98.1	98.1	98.2	98.7	98.7	100.0	82.5	82.5	87.7	91.2	96.5	98.2
60804277002	5000.0	2602.9	57.46	47.94	57.5	57.9	58.3	60.2	63.9	68.7	100.0	0.0	0.0	1.8	3.5	15.8	40.4

RELIABILITY SUMMARY FOR SELECTED WATER RIGHTS FOR SCENARIO 2
 (the requested condition of this certificate that a new diversion point on the Trinity River is added for all water of 380,000 at a maximum diversion rate of 180 cfs under the instream flow restriction of 404 cfs)

NAME	TARGET DIVERSION (AC-FT/YR)	MEAN SHORTAGE (AC-FT/YR)	*RELIABILITY* (%)	PERIOD VOLUME (%)	PERCENTAGE OF MONTHS WITH DIVERSIONS EQUALING OR EXCEEDING							PERCENTAGE OF YEARS PERCENTAGE OF TARGET DIVERSION AMOUNT					
					100%	95%	90%	75%	50%	25%	>0%	100%	98%	95%	90%	75%	50%
60804277001	32999.6	2108.0	93.57	93.61	93.6	93.6	93.6	93.6	93.6	93.7	100.0	57.9	57.9	57.9	78.9	91.2	100.0
60804277002	5000.5	2545.6	49.12	49.09	49.1	49.1	49.1	49.1	49.1	49.4	100.0	0.0	0.0	0.0	3.5	10.5	47.4

Changes made to trin3.dat:

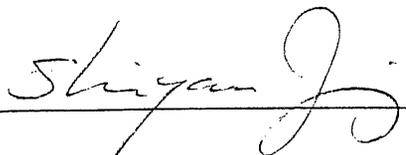
For Scenario 1

```
**
WRB4277D 5000 LTIRR19690825 6080427700260804277
WS B4277 65 0.7476 0.6936 0
WRB4277A 33000 LTIRR19130702 6080427700160804277
**
```

For Scenario 2

```
** New diversion cards to reflect the amendment to 4277 - see readme file.
IFB4261A 292413 MONTH19130702 2 60804277IF1
WRB4261A 33000 MONTH19130702 6080427700160804277
IFB4261A 0 MONTH19130702 2
IFB4261A 292413 MONTH19690825 2 60804277IF2
WRB4261A 5000 MONTH19690825 6080427700260804277
IFB4261A 0 MONTH19690825 2
IFB4261A 292413 MONTH20000301 2 60804277IF3
**
```

Remarks: Resource Protection staff recommend instream flow restrictions of 404 cfs at the applicant's additional diversion location

Signature:  Date: 5/2/03

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Kathy Hopkins, Project Manager
Water Rights Permitting Team

Date: April 24, 2003

Thru: *JS 4/24/03*
Lann Bookout, Senior Hydrologist
Surface Water Availability & Interstate Compacts Team

DMM 25/APR/03
Doyle Mosier, Aquatic Scientist
Resource Protection Team

From: *JB 4-25-03*
John Botros, Aquatic Scientist
Resource Protection Team

Subject: American Rice Growers Cooperative Association,
Dayton Division, and the City of Houston
Application 08-4277A to Amend Certificate of Adjudication 08-4277
Trinity River, Big Ditch, & East Prong Old River, Trinity River Basin

ENVIRONMENTAL ANALYSIS - ADDENDUM

The purpose of this addendum is to clarify the scope of staff's review and to modify the recommended flow restrictions from the January 2, 2001 environmental review memorandum. Staff's recommendations for permit conditions in this analysis apply to only to the diversions proposed under the amendment intended for interbasin transfer and use outside the Trinity River Basin.

Aquatic and Riparian Habitats: In the January 2, 2001 memo, staff recommended that diversions be limited to times when the streamflow of the Trinity River downstream of the proposed diversion point equals or exceeds the following minimum flow values in Table 1.

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1517	2300	3620	3620	6479	3620	1517	673	673	673	673	1517

In the absence of a site specific instream flow study for this section of the river, the recommended flows restrictions were derived using a combination of the TCEQ default methodology for

April 24, 2003

determining environmental flows referred to as the Lyons Method and consideration of the seven day, two-year low flow average or 7Q2 calculated at USGS gage 08066500 at Romayor, Texas. Standard agency practice is to increase the recommended flow restriction when the Lyons monthly values do not exceed the 7Q2 value for the stream. According to Appendix B of the State Surface Water Quality Standards (30 TAC 307.1), 732.3 cfs, calculated for the period 1971-1996, is the 7Q2 value for the Trinity River at Romayor. Observations of the streamflow record from the USGS at Romayor indicate that low flows during the 1971 to 1996 period are consistently higher than historic lows presumably due to the significant flow regulation from Lake Livingston particularly during the summer months. At the time of the original environmental analysis, staff felt the statistical 7Q2 calculation may have yielded an inflated value and recommended 673 cfs during the months August through November, as derived by the Lyons Method.

However, after further evaluation of the proposed application, staff is of the opinion that the recommended flows derived by the Lyons approach are not applicable to this location on the Trinity River. The Lyons Method, which sets the minimum flows to maintain aquatic habitat at 60 and 40 percent of monthly median flows for March-September and October-February, respectively, is applied mainly on small to medium-sized streams. The Trinity River downstream of the proposed diversion is a large high-order meandering river with an extensive network of sloughs and bayous and associated freshwater and brackish riparian wetlands which provide the majority of aquatic habitat in the downstream areas. These wetlands and marshes require periodic flooding with freshwater, nutrients, and sediments in order to maintain their functions and values, but it is unclear if the above recommended flows, implemented into the permit as minimum flow restrictions, will provide the necessary stage for adequate inundation of riparian wetlands and marshes. Such flooding events occur during high flow events due to spring rains or hurricanes and should not be considered a constant need during times of normal to low flow.

Since the Lyons Method is not an appropriate method to calculate the environmental flows at this location to maintain the types of aquatic habitats found in the Trinity River delta and the reported 7Q2 value seems to be inflated due to significant flow regulation by Lake Livingston, further analysis was performed on the flow record to recalculate a 7Q2 value at the USGS gage at Romayor prior to the influence of Lake Livingston in 1968. Staff calculated the 7-day average minimum flow with a 2-year recurrence during the 1925-1968 period as 404.3 cfs. Staff modify the recommended environmental flow restrictions to a minimum flow of 404 cfs during all months to maintain critical water quality conditions downstream during times of low flows.

Coastal Management Plan (CMP) Consistency: The proposed project is subject to the goals and policies of the CMP in accordance with the regulations of the Coastal Coordination Council (CCC). Applications for water appropriations for 5,000 acre-feet per year or more within the coastal boundary zone or 10,000 acre-feet per year or more within 200 stream miles of the coast require a determination that the proposed action is consistent with the State's Coastal Zone Management Program. Resource Protection staff have determined the proposed application is subject to the Texas CMP, in accordance with 31 TAC §505.11(a)(6)(H).

The goals of the CMP are identified in 31 TAC §501.12 and include protecting, preserving, and enhancing the diversity, quality, functions, and values of the coastal natural resource areas. The applicable policy of the CMP is given at 31 TAC §501.14(r), relating to Appropriations of Water.

The coastal policies specifically addressed in the environmental analysis memoranda are: 31 TAC §501.14(r)(1)(C),(D),(E),(G), and (H). Based on the analysis in these memoranda in the subsections on Aquatic and Riparian Habitats, Water Quality, and Bays and Estuaries, if staff's recommendations are accepted, the permit will not have a significant adverse impact upon coastal natural resources areas, and the permit will be consistent with the applicable goals and policies of the CMP.

Conclusion: In order to maintain downstream environmental conditions during times of low flow, TCEQ staff recommend that water diversions authorized under the proposed amendment intended for interbasin transfer and use outside the Trinity River Basin be limited to times when the remaining streamflow of the Trinity River equals and exceeds 404 cfs at a reference point downstream of the proposed diversion points. This recommendation is based on the assumption that high flow events will continue to occur in the lower Trinity River Basin and provide the necessary periodic inundation of wetlands and marshes in the Trinity River delta, as well as the necessary freshwater inflows to maintain estuarine productivity in the Trinity-San Jacinto estuary.

cc: Todd Chenoweth, Manager, Water Rights Permitting & Availability Section, TCEQ
Bill Billingsley, Team Leader, Resource Protection Team, TCEQ
Shiyan Jiang, Hydrologist, Surface Water Availability & Interstate Compacts Team, TCEQ

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Kathy Hopkins, Project Manager
Water Rights Permitting Team

Date: January 2, 2001

Thru: JB 1/7/01
Lann Bookout, Senior Hydrologist
Surface Water Availability and Interstate Compacts Team

SA
1/11/01
OSJ-2001
Doyle Mosier, Team Leader
Instream Uses Team

From: John Botros, Aquatic Scientist
Instream Uses Team

Subject: American Rice Growers Cooperative Association,
Dayton Division, and the City of Houston
Application to Amend Certificate of Adjudication No. 08-4277
Trinity River, Big Ditch, & East Prong Old River, Trinity River Basin
Liberty, Chambers, San Jacinto, Walker, Grimes, Waller, Harris, Fort Bend,
Montgomery, Jefferson, Galveston, and Brazoria Counties

Environmental reviews of water right applications are conducted in accordance with §11.147, §11.1491, §11.150, and §11.152 of the Texas Water Code and with TNRCC administrative rules which include 30 TAC §261.21 through §261.26, §261.41 through §261.43, and §297.53 through §297.56. These statutes and rules require the TNRCC to consider the possible impacts of the granting of a water right on fish and wildlife habitat, water quality, and instream uses associated with the affected body of water. Possible impacts to bays and estuaries are also addressed. Examples of significant impacts are those that affect natural resources; result in deterioration of water quality or flood protection; result in unallowable reduction of identifiable instream uses; endanger species of plant and animal life and their habitat; significantly reduce productivity of the bay and estuary systems; or contribute to a series of related projects that involve individually minor but collectively significant adverse impacts.

ENVIRONMENTAL ANALYSIS

Application Summary

Certificate of Adjudication No. 08-4277 authorizes the owner to maintain an existing dam and 65 acre-foot reservoir on Big Ditch; to divert and to use 5,000 acre-feet of water per year from the reservoir for irrigation of 9,238.04 acres of land within the applicant's service area and to divert and use 33,000 acre-feet of water per year from the Trinity River, Big Ditch and the East Prong Old River at a combined maximum rate of 180 cfs for irrigation of the aforesaid land.

The applicant seeks authorization to amend the water right to: 1) change ownership of the Certificate from American Rice Growers to the City of Houston, which is contingent upon the amendment being granted; 2) allow multipurpose use (municipal, industrial, mining, and irrigation) of the water; 3) add a diversion point for all the water authorized by this Certificate at the identical point authorized by Certificate No. 08-4261 (owned by the City of Houston) on the Trinity River which is located immediately downstream of the existing diversion point on the river; 4) establish the maximum diversion rate for this new point at 180 cfs, provided that all water diverted from the authorized diversion points does not exceed a combined maximum of 180 cfs at any time; 5) authorize inter-basin transfers to Liberty and Chambers Counties, the Trinity-San Jacinto Coastal Basin, the San Jacinto River Basin, and the San Jacinto-Brazos Coastal Basin; and 6) maintain the priority dates.

INSTREAM USES

Recreational Uses

The Trinity River below Liberty, Texas is used for canoeing, camping, and viewing wildlife. This section of the river is scenic and most of the section remains in a natural state. The river and surrounding habitat is swamp-like, but boating is not difficult because of the river's well defined banks which mark the channelized area (*An Analysis of Texas Waterways*, 1979). Contact recreation is only partially supported in the lower 7 miles of this river segment due to elevated fecal coliform bacteria levels (*State of Texas Water Quality Inventory*, 1996).

Aquatic and Riparian Habitats

Freshwater and brackish marshes are abundant in the vicinity and downstream of the proposed diversion point on the Trinity River. Forested wetlands, dominated by bald cypress, also occur in the Trinity River alluvial valley. Associated forested wetland species in this area include button bush, water-elm, and water hickory (*Wetland Plant Communities, Galveston Bay System*, 1992). The portion of the river downstream of Interstate Highway 10 has many sloughs and bayous which provide habitat for alligators, beavers, waterfowl, and other wildlife. Bald eagles have been known to nest in this area and are often sited in the winter months (*Ecologically Significant River & Stream Segments of Region H, Regional Water Planning Area*, 1999).

The proposed amendments to Certificate No. 08-4277, specifically the changes in purpose and place of use, may have a net adverse impact upon the aquatic and riparian habitats of the Trinity River downstream of the diversion point. Water historically diverted from the Trinity River (up to 33,000 acre-feet per year) has been used for irrigation purposes, mainly rice crops. The irrigation of rice produces large volumes of return water which was allowed to flow back into the Trinity River a short distance downstream of the point of diversion. Under the proposed amendments, water will be diverted from the river at a more uniform annual demand distribution, conveyed to the City of Houston, and consumed for mostly municipal and industrial purposes. Any return flows subsequent to use would be discharged into the San Jacinto River Basin as wastewater effluent from treatment plants in the Houston area and would not be available downstream for aquatic habitat in the Trinity River. Therefore, special conditions for environmental flow protection should be included in the

amended Certificate, and flow restrictions should be applied to the entire 38,000 acre-feet of water per year authorized by the Certificate.

The proposed diversion point is located approximately 63 river miles downstream of USGS gage #08066500 at Romayor, Texas. Monthly median flows, calculated at the Romayor gage from 1940 to 1995, were prorated to the applicant's proposed diversion point by a drainage area factor of 1.0188. The historical median flow values range from a low of 1,065 cfs in October to a high of 10,799 cfs in May (Table 1).

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
3999	5751	5751	5807	10799	6541	2343	1345	1212	1065	1834	3861

TNRCC default methodology for determining flow restrictions is referred to as the Lyons Method (*Bounds & Lyons, 1979*). Lyons recommends minimum flows of 40% of the monthly median flows for October through February and 60% of the monthly median flows for March through September to protect fisheries habitat. Applying the Lyons method to the median flows at the applicant's location on Trinity River yields the following monthly recommendations (Table 2).

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1600	2300	3451	3484	6479	3925	1406	807	727	426	734	1544

Grouping and averaging similar monthly flow recommendations after applying the Lyons approach reduces the marginal variation in monthly restrictions. Implementation of the following flow restrictions should provide sufficient maintenance flows to the aquatic and riparian habitats in the downstream segment of the Trinity River (Table 3).

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1517	2300	3620	3620	6479	3620	1517	673	673	673	673	1517

Water Quality

The Trinity River Tidal, designated as Segment No. 0801 in the "State of Texas Water Quality Inventory (1998)," is 37 miles in length starting at the confluence of the Anahuac Channel in Chambers County to a point 1.9 miles downstream of US 90 in Liberty County. This segment is classified as an effluent limited segment, indicating that water quality standards are being maintained. There are ten wastewater facilities permitted to discharge a combined total of 6.93

MGD. Designated water uses for Segment No. 0801 include contact recreation, and high aquatic life use. The 1998 Inventory reports data collected during the evaluation period indicate attainment of uses and criteria.

For determining minimum flows which would sustain water quality, the seven day, two-year low flow (7Q2) is used. The 7Q2 is defined as the lowest average flow for seven consecutive days that is expected to recur every two years. The 7Q2 is statistically derived from historical daily gaged flow data. The 7Q2 flow reported in Appendix B of the Texas Water Quality Standards (30 TAC §307.10) at USGS gage #08066500 for the period of record 1971-1996 is 732.3 cfs.

The recommended restriction of 673 cfs for August through November is below 7Q2 flow. Standard agency practice is to increase the recommended flow restriction when the Lyons monthly values do not exceed the 7Q2 value for the stream. However due to significant regulation of flow from Lake Livingston, the streamflow measured at USGS gage #08066500 at Romayor does not normally fall to very low levels except during times of drought. Thus, the statistical 7Q2 calculation may have yielded a slightly inflated value. Therefore, recommending the 7Q2 as a flow restriction of the amendment may not be applicable in this case, and the recommended flow of 673 cfs during August through November should provide adequate water quality maintenance downstream of the proposed diversion point during these months.

Bays and Estuaries

The proposed diversion point is located approximately 20 river miles from the mouth of the river where it enters Upper Trinity Bay. Therefore, the freshwater inflow needs for the Trinity-San Jacinto Estuary and Galveston Bay System must be considered. The total yearly inflow needs for the Galveston Bay System from the Trinity River are 2.817 million acre-feet for target needs (referred to as Max H), which are adjusted according to historical monthly inflow patterns (TPWD, Draft Report, 1998). Harvest target needs represent the value at which mean historical harvests for nine key species are met within the model constraints. The Min Q inflows represent the value at which only the constraints are met in the freshwater inflow models. The annual Min Q inflow needs from the Trinity River are lower than the Max H harvest target needs at 2.27 million acre-feet per year (Table 4).

Table 4. Monthly Min Q and Max H Flows from the Trinity River, represented as 1000's of acre-feet per month.												
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Max H	81.3	83.8	352.3	341.6	687.8	453.4	114.2	75.6	55.6	42.4	189.8	338.5
Min Q	81.3	117.0	196.5	190.4	367.0	242.0	125.6	83.2	178.3	136.0	189.8	338.5

Monthly inflow needs presented in Table 4 are values far greater than can be reasonably implemented into an individual permit action. However, large diversions and/or impoundments of freshwater can have an adverse impact on the biological productivity of the Galveston Bay System. As previously mentioned, the proposed amendments to Certificate No. 08-4277, if granted, will

authorize the diversion of up to 38,000 acre-feet of water from the Trinity River and result in a reduction or cessation of return flows at this location. The loss of these large volumes of return flows will have an impact on salinity gradients in the Upper Trinity Bay. Based on the freshwater inflow studies developed by the Texas Water Development Board (TWDB) and TPWD, the most important freshwater inflows occur in the spring and early summer months induced by significant rainfall events. Assuming seasonal rain events will continue to provide the needed peak flow events into the bay system, the instream flow restrictions recommended in Table 3 should provide adequate base flow to maintain the freshwater inflow needs during the remainder of most months.

SUMMARY

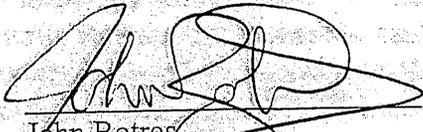
The applicant seeks to amend Certificate of Adjudication No. 08-4277 to: 1) change ownership of the Certificate from American Rice Growers to the City of Houston; 2) allow multipurpose use (municipal, industrial, mining, and irrigation) of the water; 3) add a diversion point at the identical point included in Certificate No. 08-4261 on the Trinity River; 4) establish the maximum diversion rate for this new point at 180 cfs; 5) authorize inter-basin transfers to Liberty and Chambers Counties, the Trinity-San Jacinto Coastal Basin, the San Jacinto River Basin, and the San Jacinto-Brazos Coastal Basin; and 6) maintain the priority dates.

Instream Uses staff have reviewed the application and assessed that the proposed changes will have an impact upon the instream uses the Trinity River supports. In order to provide maintenance flows for existing instream uses and for bay and estuary freshwater inflow needs, staff recommends that diversions be limited to times when the streamflow of the Trinity River downstream of the proposed diversion point equals or exceeds the following minimum flow values.

Recommended Monthly Flow Restrictions (cfs)											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1517	2300	3620	3620	6479	3620	1517	673	673	673	673	1517

Furthermore, the applicant's maximum diversion rate should not reduce streamflow of Trinity River below the recommended monthly restriction. In order to insure that the instream and freshwater inflow needs are met, streamflows must be monitored at a site downstream of the proposed diversion point. Staff recommend that the Wallisville Saltwater Barrier, located approximately 15 stream miles downstream, be utilized as this point of reference.

This instream assessment was conducted using current TNRCC operating procedures and policies, and available existing data. The recommended flow restrictions are for the protection of instream uses and freshwater inflows. The recommended flow restrictions do not necessarily provide protection to downstream senior water rights; that analysis is addressed in the hydrology memo and further restrictions may be applicable as necessary.



John Botros
Aquatic Scientist
Instream Uses Team

LITERATURE CITED

- Bounds, R.L., and B.W. Lyons. 1979. Existing reservoir and stream management recommendations statewide minimum streamflow recommendations. Federal Aid Project F-30-R-4.
- GBNEP. 1992. Wetland Plant Communities, Galveston Bay System. Pub. No. GBNEP-16. Galveston Bay National Estuary Program, Webster, Texas.
- Norris, C.W., and G.W. Linam. 1999. Ecologically Significant River & Stream Segments of Region H, Regional Water Planning Area. Texas Parks and Wildlife Department.
- TPWD. 1979. An Analysis of Texas Waterways. Texas Parks and Wildlife Department.
- TPWD. 1998. DRAFT: Freshwater Inflow Recommendations by Texas Parks and Wildlife Department for the Trinity-San Jacinto Estuary. May, 1998.
- TNRCC. 1996 & 1998. State of Texas Water Quality Inventory. Pub. No. SFR-50. Texas Natural Resource Conservation Commission.

cc: Todd Chenoweth, Water Rights Permits and Availability Section, TNRCC
Shiyang Jiang, Surface Water Availability and Interstate Compacts Team, TNRCC
David Bradsby, Resource Protection Division, TPWD

Texas Natural Resource Conservation Commission

INTEROFFICE MEMORANDUM

To: Kathy Hopkins, Application Manager
Water Rights Permitting Team

Date: February 20, 2002

Thru: Bill Billingsley, Team Leader
Resource Protection Team
Water Supply Division

BB 2/20/02

From: Kristin Wang, Senior Water Conservation Specialist
Resource Protection Team
Water Supply Division

KW 2/20/02

Subject: Water Conservation Plan for the City of Houston
Region H Water Plan for the City of Houston's long-term water supplies

The review was conducted pursuant to the pending application to grant the water rights amendment to American Rice Growers Cooperative Association, Dayton Division, and the City of Houston. Certificate of Adjudication No. 08-4277 is owned by the American Rice Growers Cooperative Association-Dayton Division and authorizes the diversion and use of not to exceed 5,000 acre-feet of water per annum from the perimeter of the reservoir on Big Ditch, tributary of the Trinity River in Liberty County. The certificate also authorizes the diversion and use of not to exceed a total of 33,000 acre-feet of water per annum from a point on the Trinity River, a point on the East Prong Old River, tributary of the Trinity River and a point on Big Ditch in Liberty County.

Pursuant to an August 21, 1997 agreement between the certificate owner and the City of Houston, which indicates the agreement to sell the water rights authorized by Certificate No. 08-4277 to the City subject to certain conditions. The applicant and the City of Houston seek to amend the certificate for municipal, industrial/mining, and irrigation purposes. The review includes the evaluation of the following: (1) Water Conservation Plan for the City of Houston, and (2) Review the Region H Water Plan to assess the surface water supplies for the City of Houston.

The Water Conservation Plan for the City of Houston was reviewed to determine the Plan's compliance with Title 30 of the Texas Administrative Code, Chapter 288.2 and 288.5, which contains the minimum requirements for water conservation and drought contingency plans. The technical review fulfills Texas Water Code Chapter 11.134 (b)(4). The City's plan meets the Chapter 288 minimum requirements for municipal and wholesale water suppliers that were in effect at the time the application was received.

The 38,000 acre-feet of water per year authorized under Certificate of Adjudication No. 08-4277 is considered an integral component of the City of Houston's long-term surface water supplies, and this water is included within the Region H Plan as a current City of Houston supply.

The requested 38,000 acre-feet of water per year for municipal use by the City of Houston and the City's water conservation plan are not inconsistent with the approved 2002 State Water Plan and January 2001 Region H Water Plan.

Based on the review, TNRCC staff recommend authorization of the amendment for American Rice Growers Cooperative Association, Dayton Division, and the City of Houston.

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION
INTEROFFICE MEMORANDUM

TO : Records Management

DATE: September 9, 1997

Certificate of Adjudication No. 08-4277
Liberty County
Trinity River Basin

FROM : Water Uses & Availability Section
Water Quantity Division

SUBJECT : Change of Ownership

DELETE : Dayton Canal Company as owner

ADD : American Rice Growers Cooperative Association-Dayton Division as owner

Ownership of Record with Addresses and Remarks:

American Rice Growers Cooperative Association-Dayton Division
P. O. Box 129
Dayton, Texas 77535

This change is based on Conveyance of Water Rights and Letter Agreement, both dated March 26, 1997, and on Amendment to Letter Agreement dated August 22, 1997.

Mohan A Reddy

Data Entry Made: _____

WU & A Section: _____

Change Noted: _____

Central Records/Date: _____

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 08-4277 OWNER: Dayton Canal Company
P. O. Box 128
Dayton, Texas 77535

COUNTY: Liberty PRIORITY DATES: July 2, 1913 and
August 25, 1969

WATERCOURSE: Big Ditch and East Prong BASIN: Trinity River
Old River, tributaries of
the Trinity River and the
Trinity River

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 Certified Filing 553AB authorizing the Dayton Canal Company to appropriate waters of the State of Texas as set forth below;

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

1. IMPOUNDMENT

Owner is authorized to maintain an existing dam and reservoir on Big Ditch and impound therein not to exceed 65 acre-feet of water. The dam is located in the Louis Davis Grant, Abstract 18, Liberty County, Texas.

2. USE

A. Owner is authorized to divert and use not to exceed 5,000 acre-feet of water per annum from the aforesaid reservoir on Big Ditch for the irrigation of 9238.04 acres of land within the service area of the Dayton Canal Company.

B. Owner is further authorized to divert and use not to exceed 33,000 acre-feet of water per annum from the Trinity River, Big Ditch and the East Prong Old River for the irrigation of 9238.04 acres of land within the service area of the Dayton Canal Company.

C. The 9238.04 acres of land is the maximum number of acres authorized to be irrigated from all sources of State water as set forth in Paragraphs A and B above.

3. DIVERSION

A. Location:

- (1) Diversion Point No. 1: At a point on the Trinity River in the John A. Williams Grant, Abstract 119, Liberty County, Texas.
- (2) Diversion Point No. 2: At a point on the East Prong Old River in the William D. Smith Grant, Abstract 106, Liberty County, Texas.
- (3) Diversion Point No. 3: At a point on Big Ditch in the William Bloodgood Grant, Abstract 3, Liberty County, Texas.
- (4) Diversion Point No. 4: At a point on the perimeter of the aforesaid reservoir.

B. Maximum rates are as shown:

- (1) Maximum rate from Diversion Point No. 1: 140.00 cfs
(63,000 gpm).
- (2) Maximum rate from Diversion Point No. 2: 22.22 cfs
(10,000 gpm)
- (3) Maximum rate from Diversion Point No. 3: 17.78 cfs
(8,000 gpm)
- (4) Maximum rate from Diversion Point No. 4: 35.56 cfs
(16,000 gpm)

4. PRIORITY

- A. The time priority of owner's right is July 2, 1913 for the diversion and use of 33,000 acre-feet of water per annum from the Trinity River, the East Prong Old River and Big Ditch and all of the diversion rate at Diversion Points No. 1, 2 and 3 for the irrigation of 9238.04 acres of land.
- B. The time priority of owner's right is August 25, 1969 for the impoundment of water in the reservoir on Big Ditch and the diversion and use of 5,000 acre-feet of water per annum therefrom and all of the diversion rate at Diversion Point No. 4 for irrigation purposes.

5. SPECIAL CONDITIONS

- A. Owner shall maintain a suitable outlet in the aforesaid dam authorized herein to allow the free passage of water that owner is not entitled to divert or impound.
- B. The authorized irrigated area under this certificate of adjudication shall be coterminous with the service area of the Dayton Canal Company. The company shall notify the Commission of all changes in its service area.

The locations of pertinent features related to this certificate are shown on Page 18 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 Liberty County Clerk.

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:

JUN 9 1956

ATTEST:

Mary Ann Hefner

Mary Ann Hefner, Chief Clerk