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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 24, 2008

TO: Persons on the attached mailing list.

RE: Chocolate Bayou Water Company / Gulf Coast Water Authority
Certificate of Adjudication No. 12-5322

Enclosed is a copy of the Executive Director's response to comments regarding the above-referenced matter.

Should you have any questions, please contact Leslie Gann of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3319.

Sincerely,

LaDonna Castañuela
Chief Clerk

LDC/lg

Enclosure

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Certificate of Adjudication No. 12-5322

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TEXAS
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CHIEF CLERK'S OFFICE

APPLICATION BY CHOCOLATE BAYOU WATER COMPANY/ GULF COAST WATER AUTHORITY TO AMEND CERTIFICATE OF ADJUDICATION NO. 12-5322	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO COMMENTS

The Executive Director of the Texas Commission on Environmental Quality (TCEQ) files this Response to Comments made at the January 25, 2007 public meeting on the Chocolate Bayou Water Company (CBWC) /Gulf Coast Water Authority (GCWA) application No. 12-5322E (the "application"). The Executive Director responds to the written and verbal comments made at the meeting and received prior to that meeting.

BACKGROUND

BACKGROUND

Chocolate Bayou Water Company filed an application with the TCEQ on June 12, 2006 for an amendment to Certificate of Adjudication No. 12-5322 to add a diversion point approximately 3.9 miles upstream of the existing diversion point on the Brazos River and to add Galveston County as a place of use in its authorized service area in the San Jacinto-Brazos Coastal Basin. This addition of a service area constitutes an exempt interbasin transfer to the San Jacinto-Brazos Coastal Basin.

The application was declared administratively complete on August 24, 2006 and notice was mailed on September 26, 2006. Fourteen requests for a public meeting were received by the TCEQ. A public meeting was held on January 25, 2007 at 7:00 p.m. at the Angleton Recreation Center, 1601 North Valderas Street, Angleton, Texas 77515. At the public meeting, representatives from Gulf Coast Water Authority appeared and announced that Gulf Coast Water Authority had purchased Chocolate Bayou Water Company and Chocolate Bayou Water Company's water rights. Subsequently, Gulf Coast Water Authority applied to the TCEQ to change the ownership records for the water right. On September 25, 2007, mailed notice was sent to water right holders and the public informing them that the application would proceed in the name of Gulf Coast Water Authority.

The technical review for this application was complete when this Response to Comments was prepared.

COMMENTERS

The following persons provided written or oral comment:

The Honorable Dennis H. Bonnen
The Honorable Mike O'Day
Commissioner Donald "Dude" Payne, Precinct 1, Brazoria County
Anthony Duke, Jr.
Cindy Duke
Terrance Hlavinka
Texas Gulf Bank
Tome C. Bielstein
Rice Tec
Jerry Locke
John Spoor
Brazoria County Groundwater Conservation District
Robert Balcells
Jacko Garrett
NRG Texas
Mark Walker
Sea Grant Marine Advisory Service
Richard E. Tillman
Corrie Bowen

RESPONSE TO COMMENTS

COMMENTS FROM STATE ELECTED OFFICIALS

Comment No. 1
Representative Bonnen comments that the applicant's statement that the amendment will be beneficial during a drought needs scrutiny. He states that the reliability of the water supply is only 42% during a drought and that this water will likely go to the financiers of the sale of the water from CBWC to GCWA during a drought. Representative Bonnen requests information regarding the impact that the transaction will have during a drought on downstream users.

Response No. 1
The Executive Director responds that this water right is a run-of-the-river right and agrees that it may have limited availability during drought conditions. During a drought, or any water shortage, water will go first to the most senior water rights. A senior water right holder may exercise a "call" on those water rights junior to them in priority. For the water rights at issue in this amendment application, CBWC was entitled to take its water before any water right with priority dates later than February 8, 1929 for the first 40,000 acre-feet of water, March 14, 1955 for the next 40,000 acre-feet and July 25, 1983 for the remaining

75,000 acre-feet. GCWA retained CBWC's existing priority dates when it acquired CBWC's rights. Therefore, there should be no greater impact on other water rights than if the amendment is not granted and the water stays with CBWC.

The Executive Director's staff performed an analysis of this application and found that adding the upstream diversion point would have a minimal impact on water rights owned by GCWA and no impact on other water users if GCWA appropriately accounts for the water. The draft permit requires that an accounting plan be approved by the Executive Director prior to use of the water at the new diversion point.

Comment No. 2

Representative Bonnen comments that the Applicant has provided no evidence that it has given consideration to future growth and future needs in Brazoria County, especially in the area south of highway 6 and has only showed interest in the growth and in adding customers in a northern market that the Applicant would like to serve. Representative Bonnen comments that it is vital for Pearland's water needs to be met, but he does not believe that denial of this application will greatly impair Pearland's ability to meet its water needs.

Response No. 2

The Commission and the Executive Director must review and issue applications for water rights based only upon the statutory criteria applicable to the agency. Chapter 11 of the Water Code, relating to water rights permitting, does not specifically allow the agency to consider who will be supplying water in an area or who a water right owner will sell their water to when reviewing or considering a permit unless the State or relevant Regional Water Plan recommends this as a strategy. In this application, neither CBWC, the original applicant, nor GCWA provided enough information for staff to analyze future growth and future needs in Brazoria County. To the extent that these issues may relate to the public welfare, the Commission may consider this in deciding whether to issue the permit. At a contested case hearing, parties may raise these issues and the Administrative Law Judge and the Commission will decide whether the issues are relevant to the application and/or public welfare or any other criteria.

Comment No. 3

Representative Bonnen comments that GCWA is a public entity and as such, it should have done an environmental study. Representative Bonnen requests that the TCEQ reopen the public comment period after an environmental study has been performed.

Response No. 3:

The Executive Director responds that there is no general requirement in the Water Code that a public entity conduct an environmental study for a water rights application. Staff conducted an environmental review of the proposed new diversion point in accordance with statutory requirements, particularly TWC §§ 11.147, 11.150 and 11.152. Staff found that diversion of water from the new diversion point would result in minimal adverse impact to the four miles of river between it and the current diversion point. Possible

impacts resulting from the exempt interbasin transfer were not reviewed pursuant to Tex. Water Code §11.085 (v)(3). If the application is referred to the State Office of Administrative Hearings for a contested case hearing, parties will be able to raise this or any other issue for consideration by the Commission.

Neither Chapter 11 of the Texas Water Code nor Agency water right procedural rules provide for reopening public comment following technical review. If all protests are not withdrawn affected parties will be able to litigate remaining issues in the contested case process.

Comment No. 4
Representative Dennis Bonnen requests information regarding who financed the purchase of CBWC's water right by GCWA and information regarding who will receive the water due to having financed the transaction.

Response No. 4
The Executive Director responds that under the Water Code, financial arrangements regarding the sale of water rights are not a factor that must be considered in determining whether a requested water right amendment should be granted. This information was not submitted as part of the application and was not considered during technical review of the application.

Comment No. 5
Representative Bonnen requests that a clear statement be made on the record from the Commission regarding what the substance of this permit amendment will be. Representative Bonnen believes that the significance of this permit is that GCWA cannot move the water to Galveston County without this permit amendment. Representative Bonnen requests a statement on the record that without the amendment, the water must stay in Brazoria County.

Response No. 5
The Executive Director responds that the original certificate authorized use of the water in Brazoria and Fort Bend Counties in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin. The certificate was later amended (12-5322C) to add Harris County, located in the San Jacinto River Basin, to the previously authorized places of use. The current amendment requests that Galveston County in the San Jacinto-Brazos Coastal Basin be specifically added as a place of use. If the amendment is not granted, the water must be used in accordance with the existing terms and conditions of the certificate, which does not include use in Galveston County.

Comment No. 6
Representative Bonnen comments that GCWA does not have the power of eminent domain outside of Galveston County, nor may they use the power over any other provider of water in Galveston County unless their enabling legislation has been amended.

Response No. 6:
Gulf Coast Water Authority's enabling legislation can be found in H.B. 1172 of the 59th Legislature. Section 3 of that law states that the Galveston County Water Authority (GCWA's previous name) shall not have the power of eminent domain outside of Galveston County and that GCWA may not use the power as to all or any part of the water supply, property, works or facilities of any one engaged in the business of supplying water in Galveston County except that GCWA is not restricted from using the power to acquire necessary crossing easements and rights-of-way.

Comment No. 7
Representative Bonnen comments that the City of Surfside has had salt water intrusion into their water supply and asks what impact the approval of the permit would have on the City of Surfside regarding salt water intrusion and asks whether salt water intrusion will occur in other coastal communities in Brazoria County as a result of the permit approval.

Response No. 7
The Executive Director responds that staff review of the application indicates there would be no greater impact on downstream flows under the conditions proposed in the amendment than would have existed if the water right was fully used under its currently authorized conditions. Therefore, salt water intrusion into water supply systems cannot be affected as a result of this application.

Comment No. 8
Representative Bonnen comments that the County should be allowed to be a contestant in the contested case hearing should they so choose.

Response No. 8:
The Executive Director responds that the Commission will consider any hearing requests filed with the agency, and will decide whether the requestors are affected persons and whether to grant or deny those hearing requests at an open meeting. If the Commission grants one or more hearing requests, the application will be sent to the State Office of Administrative Hearings for a contested case hearing.

Comment No. 9
Representative Bonnen comments that energy production and shortfalls are currently a big issue and approval of the permit could have a significant impact on the supply of energy in the ERCOT grid and in this region. Correspondence with the Public utility Commission (PUC) is necessary to thoroughly investigate this issue.

Response No. 9
The Executive Director responds that TCEQ staff analyzed the application for effects on other water rights and found that moving the diversion point should have no greater impact on other water users, including existing power plants, so long as GCWA appropriately accounts for the water. The recommended draft permit requires that an accounting plan be submitted by GCWA and approved by the Executive Director prior to use of the water at the new diversion point.

TCEQ staff met with staff of the PUC on February 26, 2007. The ERCOT power grid is a network for electrical power distribution that covers most of the state of Texas and practically all of the major population centers. The ERCOT grid allows electrical power to be generated anywhere with in the grid area and supplied to any other grid area. Complete loss of power from the NRG Parrish Power Plant would have a significant negative impact on available power to the ERCOT grid. PUC staff does not have information on the amount of cooling water needed to generate a given amount of electrical power. The availability of an adequate supply of cooling water would be a factor in location of a new power plant. PUC staff did not know of a situation where the lack of available cooling water had led to a rejection of a purposed power plant site.

Comment No. 10
Representative Mike O'Day comments that he is concerned about downstream uses not having enough water and specifically is concerned about sustaining downstream aquaculture.

Response No. 10
The Executive Director responds that staff's analysis of the application indicates that moving the diversion point should have no impact on other water users if GCWA appropriately accounts for the water. The recommended draft permit includes special conditions requiring GCWA to submit an accounting plan prior to diversion of water at the upstream point. The accounting plan is subject to the approval of the Executive Director.

Comment No. 11
Representative O'Day asks how CBWC will regulate the amount of water that is moved to another basin under the permit amendment. He does not want to see water leave the basin.

Response No. 11
The Executive Director responds that the recommended draft permit includes special conditions requiring GCWA to submit an accounting plan prior to diversion of water at

the new upstream diversion point. The accounting plan must account by priority date, diversion rate, restrictions and authorization number for all water diverted by GCWA at the upstream point pursuant to all of GCWA's authorizations to divert water at that point. Further, the accounting plan is subject to the approval of the Executive Director.
The Executive Director also responds that the request for an exempt interbasin transfer will be processed in accordance with statutory law governing interbasin transfers and TCEQ rules. The review of an exempt interbasin transfer is limited by statute.

Comment No. 12
Representative O'Day comments that he is concerned whether the City of Pearland will have an opportunity to take the water being transferred.

Response No. 12
The Executive Director responds that which entity will be supplying water in an area or who a water right owner will sell their water to is not a factor when reviewing or considering a permit unless the State or relevant Regional Water Plan recommends this as a strategy. The Executive Director did not consider who would be the end user of the water when determining whether to recommend that the permit be issued.

IMPACTS ON FARMERS/RANCHERS

Comment No. 13
Commissioner Donald "Dude" Payne, Precinct 1 of Brazoria County (Commissioner Payne) is concerned that rice farmers will lose their water. Anthony Duke, Jr. and Cindy Duke (the Dukes) are concerned that neither CBWC nor GCWA will continue selling rice irrigation water to its present and future customers in Brazoria County from the Juliff Pumping Plant and present canal system and that in the future irrigation water from Brazoria County will be transferred to other counties for monetary reasons. They ask whether TCEQ will provide oversight and implement safeguards to prevent this from happening.

Response No. 13
The Commission and Executive Director must review and issue applications for water rights based on the statutory criteria applicable to the agency. The entity supplying water in a particular area to specific customers in the future is not a factor which is considered in determining whether a permit should be issued, unless the State or relevant Regional Water Plan recommends this as a strategy. The TCEQ's jurisdiction is limited to its statutory authority. Chapter 11 of the Water Code, relating to water right permitting, does not allow the agency to consider economic loss when reviewing or considering a permit.

However, one requirement of an application for a water right is that it not be detrimental to the public welfare. The Executive Director does not believe that this application is detrimental to the public welfare because the application is for a beneficial use and is allowed by the Water Code. However, if the application is referred to a contested case hearing, the commenters can raise any issue they believe bears on the public welfare.

Comment No. 14
The Dukes, Rice Tec, Jerry Locke and John Spoor comment that granting this application to amend the certificate will be economically devastating to rice farmers on this canal system. The Dukes also comment that the application will adversely impact cattle ranchers who depend on CBWC water. Terrance Hlavinka and Terrance Hlavinka Cattle Company (Mr. Hlavinka) comments that he is concerned about their ability, and their tenants' ability, to use water purchased from the CBWC to produce rice and other crops on their farms. Texas Gulf Bank and Tome C. Bielstein state that they are concerned about how the sale and transfer of the water system to Gulf Water Company will affect the agricultural and industrial future of Brazoria County.

Response No. 14
The Executive Director recognizes the importance of this water to the rice farmers and other users of the water on the canal system. Further, The Executive Director responds that the entity supplying contract water in an area to meet water user needs is not a factor which must be considered in determining whether a permit should be issued, unless the State or relevant Regional Water Plan recommends this as a strategy. The TCEQ cannot consider impact on the economy of an area in water rights permitting except as it may bear on the public welfare. Also, see response to Comment No. 13.

WATER AVAILABLITITY

Comment No. 15
Commissioner Payne comments that this application will give Galveston County a chance to get a third to more of the water. Nearby cities are putting in municipal utility districts (MUDs) and using ground water, but in the future these cities are going to need this surface water. Commissioner Payne believes this water should not be allowed to leave Brazoria County.

Response No. 15
See response to Comments 5, 11, and 13. The Executive Director further responds that which entity will be supplying water to an area in the future is not a factor which must be considered in determining whether a permit should be issued, unless the State or relevant Regional Water Plan recommends this as a strategy. The transfer of water is not inconsistent with the adopted 2006 Region H Water Plan.

CONSERVATION / LEGAL

Comment No. 16
Robert Balcells and Brazoria County Groundwater Conservation District (BCGCD) are concerned that potential water resources will be allocated to other counties. BCGCD comments that long-term needs of Brazoria County should be considered when deciding shifts in surface water allocations. BCGCD also states that according to the Region H plan, growth in Brazoria County has been significantly underestimated and there will be a population growth fifteen percent more than expected and an accompanying underestimated demand for water resources. BCGCD asks TCEQ to consider the impact of this water being diverted to Galveston County on the Region H plan, specifically in 2030, when the plan projects significant inputs are to come from the Brazos River.

Response No. 16:
The Executive Director responds that based on the adopted 2006 Region H Water Plan, both Brazoria and Galveston Counties are projected to have water shortages and the recommended water management strategies will satisfy the future water demands for two counties. The 2006 Region H Water Plan also addresses the fact that water is currently imported from Brazos River to meet the demands in Galveston County. The transfer of water is not inconsistent with the adopted 2006 Region H Water Plan. Both GCWA and CBWC are listed as wholesale water providers in the 2006 Region H Water Plan and the water plan also lists recommended water management strategies for the two providers, respectively. However, this project is not explicitly listed as a recommended strategy in the water plan at the time.

Comment No. 17
Jacko Garrett asks for a detailed study of future use of the water by the people who would be distributing it. He comments that there is a fiduciary duty for the Applicant to explain where the water will be in the future.

Response No. 17
The Executive Director responds that the applicant is not required to conduct these types of studies by the statutes or TCEQ rules relating to water rights. See responses above.

Comment No. 18
Mark Walker Director of regulatory affairs of NRG Texas (NRG) is concerned that the piecemeal nature of the application deprives the commission and the public from evaluating the totality of proposed water uses.

Response No. 18
The Executive Director responds that he must review applications as submitted. This application requests the addition of an upstream diversion point pursuant to Tex. Water Code § 11.122. The application further requests authorization to add Galveston County in the San Jacinto-Brazos Coastal Basin as a place of use for the water. The TCEQ processes

applications in accordance with Texas statutes and agency rules.

Comment No. 19
The Dukes comment that GCWA has stated that there is a permitted surplus of 72,000 acre feet in the Chocolate Bayou and Gulf Coast Canal systems and asks why TCEQ is entertaining a furtherance of the surplus by way of this application.

Response No. 19:
The Executive Director responds that the Texas Water Code requires a water right holder to submit a Water Conservation and Drought Contingency Plan and show that it is beneficially using the water. The 2005 Water Conservation and Drought Contingency Plan submitted by GCWA was reviewed for administrative sufficiency for Wholesale Water Suppliers. The submitted plan meets the minimum requirements for wholesale water suppliers as defined in the TCEQ Rules, Title 30 TAC Chapter 288. Based on long term water planning information included in the 2006 Region H Water Plan, GCWA is considered to have a projected water shortage in 2060. Based on the adopted 2006 Region H Water Plan, both Brazoria and Galveston Counties are projected to have water shortages and the recommended water management strategies will satisfy the future water demands for two counties.

Comment No. 20
Sea Grant Marine Advisory Service and Richard E. Tillman (Sea Grant) comment that they have conducted freshwater needs assessments for Brazoria County and they are concerned about the large volume of surface water leaving Brazoria County and the effects it will have on its residents.

Response No. 20:
The Executive Director responds that based on the adopted 2006 Region H Water Plan, Brazoria County is projected to have water shortages and the recommended water management strategies listed on the 2006 Region H Water Plan will satisfy future water demands.

Comment No. 21
Terrance Hlavincka comments that there is not an excess of water in the system which could be moved. In 2005 he had two tenants that went out of business because CBWC could not supply enough water and it was not a drought of record. He further states that peak time for the treatment plant in Texas City is Labor Day and July 4th which typically coincides with peak times for irrigation for customers in Brazoria County. Mr. Hlavinka is concerned about the amount of water available and necessary for meeting future growth in Brazoria County.

Response No. 21:
The Executive Director responds that based on the adopted 2006 Region H Water Plan, the recommended water management strategies listed on the 2006 Region H Water Plan will meet the future municipal water demands for Brazoria County. Futhermore, this

application is for an exempt interbasin transfer, for which TCEQ review is limited.

Comment No. 22
John Spoor comments that his water permit 5341 will be affected by the approval of the permit. He asks whether hydrology flow studies have been done from the Chocolate Bayou water flow meter at 1462 to determine the impact of moving 100% of the water in this permit out of Brazoria County.

Response No. 22
The Executive Director's staff used the TCEQ Water Availability Model (WAM) for the Brazos River Basin, which assumes that all basin water rights divert their maximum authorized amount, to determine whether the application affected other basin water rights. For the change in diversion point, the results of the analysis indicate that there was no effect on Water Use Permit 5341. In addition, Water Use Permit 5341 is located on Bastrop Bayou in the San Jacinto-Brazos Coastal Basin. As such, this water right cannot be impacted by an application to relocate a diversion point in the Brazos River Basin. For the interbasin transfer, a water availability analysis is not required under Tex. Water Code Section 11.085 because the water is already appropriated to GCWA.

ENVIRONMENT/WILDLIFE ISSUES

Comment No. 23
The Dukes, Sea Grant, and Terrance Hlavincka comment that granting this application to amend the certificate will adversely impact the coastal areas, the coastal marshes, bays and estuaries, and wildlife in Brazoria County. Terrance Hlavincka requests an environmental study to determine the impact of moving water from one basin to another. Sea Grant comments (submitted by Corrie Bowen) that the fresh water inflows to the estuaries in Brazoria County are vitally important to sustaining in-stream and marine ecological systems in the county which are important to the economic and social vitality of the state. Sea Grant is concerned that decreased fresh water inflows will have a negative economic impact on crops, the seafood industry, as well as recreation industries such as hunting and sport fishing.

Response No. 23:
The Executive Director responds that the statutes and TCEQ rules exempt this application from an environmental review of the impacts that could result from the exempt interbasin transfer.

OWNERSHIP/FINANCING OF THE PERMIT

Comment No. 24
The Dukes comment that Chocolate Bayou Water Company is the named applicant and asks whether it is administratively correct for them to have no representatives present at the public meeting. Terrance Hlavincka asks who currently owns GCWA and how the Chocolate Bayou System purchase is being financed.

Response No. 24
The Executive Director acknowledges that CBWC did not have representatives at the public meeting. Representatives from GCWA appeared at the public meeting and announced that they had purchased Chocolate Bayou Water Company and Chocolate Bayou Water Company's water rights. Subsequently, an application was made to the TCEQ to change the ownership records of the CBWC water right.

Regarding ownership of GCWA, it is a statutorily created governmental entity. The Executive Director is not privy to the details regarding the financing of the purchase of the Chocolate Bayou System as this information was not part of the application. Therefore, under TCEQ statutes and rules, the information was not considered by staff during the technical review.

INTERBASIN TRANSFER ISSUES

Comment No. 25
The Dukes comment that CBWC application amendment is not an inter-basin transfer, but it is a trans-basin transfer.

Response No. 25
The Executive Director responds that the water code does not have definition for a "trans-basin transfer." This application requests the use of water in another county that is in an adjoining coastal basin. Transfer of water from one basin to another is an interbasin transfer. This interbasin transfer is an "exempt" interbasin transfer under Tex. Water Code § 11.085(a) & (v) and therefore is not subject to a full Commission review. This provision allows interbasin transfers without meeting all of the requirements of Section 11.085 if the water is going to an adjoining coastal basin.

Comment No. 26
Terrance Hlavincka asks whether Certificate 12-5322 provides any previous or current right for Chocolate Bayou to move this water into Galveston County.

Response No. 26
The Executive Director responds that the original certificate authorized use of the water in the San Jacinto-Brazos Coastal Basin in which Galveston County is located. The certificate did not specify Galveston County as a place of use.

Comment No. 27
Terrance Hlavincka comments that while coastal counties are exempt from the inter-basin transfer law, the permit application violates the intent of current law because Fort Bend County is not a coastal county.

Response No. 27
The Executive Director responds that this application is to transfer water to Galveston County. Galveston County is located in the San Jacinto-Brazos Coastal Basin, which is an adjoining basin to the Brazos River Basin.

This application requests to use the water within GCWA's service area in other basins and the transfer is exempt pursuant to Tex. Water Code §11.085 (v)(3). This provision allows interbasin transfers without meeting all of the requirements of Section 11.085 if the water is going to an adjoining coastal basin.

SUBSIDENCE ISSUES/RECHARGE

Comment No. 28
Robert Balcells and Brazoria County Groundwater Conservation District (BCGCD) are concerned that long-term demands for water will outpace groundwater resources for Brazoria County. Groundwater resources in the area are limited and are currently stressed by the surrounding counties where there has been a lot of growth. As a result subsidence has occurred. BCGCD is also concerned that the application will affect the recharge of the Brazoria County aquifers

Response No. 28
The Executive Director responds that this surface water right application is to add a diversion point approximately 3.9 miles upstream of the existing diversion point and to authorize an exempt interbasin transfer to the San Jacinto-Brazos Coastal Basin. Long term demands for groundwater in Brazoria County, and any resulting subsidence, will be the same regardless of the diversion point of this surface water. The transfer portion of this application is exempt from a full review under Section 11.085 because the water is going to an adjoining coastal basin.

The Executive Director has not performed any specific investigation into recharge of Brazoria County aquifers. The Executive Director does recognize, in theory, that a shift in use of surface water for agricultural irrigation in Brazoria County to municipal supply outside of Brazoria County may have an effect on aquifer recharge in Brazoria County. However, this application only concerns an upstream move of a diversion point that will not have a substantial impact on aquifer recharge and an interbasin transfer that is exempt from technical review.

IMPACTS ON ELECTRICAL POWER GENERATION

Comment No. 29

Mark Walker Director of regulatory affairs of NRG Texas (NRG) is concerned about the impairment of its senior water rights which NRG relies upon for the operation of the W.A. Parish power plant. Parish is the largest fossil fuel fired power plant in North America and is critical to reliable service of electricity in the ERCOT grid. The plant represents about 5% of generation capacity of the ERCOT grid which services most of the state. NRG comments that the proposed amendment combines junior and senior water rights at a common diversion point, which without an adequate accounting plan will jeopardize their senior water rights. Specifically, NRG is concerned about what will happen in the event of a call up river of senior rights, which typically happens when the grid needs the power the most.

Response No. 29

The Executive Director responds that staff performed an analysis of this application and found that moving the diversion point would have no impact on other water users so long as GCWA appropriately accounts for the water. Under its current permit, GCWA is not required to submit an accounting plan. However, the recommended draft permit includes a special condition requiring GCWA to submit an accounting plan for Executive Director approval prior to diversion of water at the new upstream diversion point. The accounting plan must account by priority date, diversion rate, restrictions and authorization number for all water diverted by GCWA at the upstream point pursuant to all of GCWA's authorizations to divert water at that point. The Water Code and TCEQ rules require that water rights be administered in accordance with the prior appropriation doctrine relating to who can get their water first. If GCWA has violated its water rights or statutes within the TCEQ's jurisdiction or TCEQ rules, persons may contact the Region 12 office (Houston) at 713-767-3500

IMPACTS ON NAVIGABLE WATERS

Comment No. 30

The Dukes comment that a reduction in water level in Chocolate Bayou will cause navigation problems for tug-boat barge traffic and ask whether the United States Army Corps of Engineers has been notified regarding the amendment to the application since the waters are United States navigable waters.

Response No. 30

The Executive Director responds that US Army Corps of Engineers review under Section 404 of the Clean Water Act is only required in cases involving the discharge of dredged or fill material (e.g., resulting from construction or maintenance activities) into the navigable waters of the United States. Because this proposed permit application involves neither, review by the Corps is not required.

Respectfully Submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G., Executive Director

Robert Martinez, Director
Environmental Law Division

By _____
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2008, a true and correct copy of the foregoing document was filed with the Chief Clerk of the Texas Commission on Environmental Quality.

_____
Ross Henderson

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
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CHIEF CLERKS OFFICE