

Below is the caption for this application:

Consideration of an application by the Gulf Coast Water Authority (Applicant) to add a diversion point on the Brazos River in Fort Bend County and to add Galveston County as a place of use within Applicant's authorized service area in the San Jacinto-Brazos Coastal Basin via an exempt interbasin transfer. Certificate of Adjudication No. 12-5322 authorizes Gulf Coast Water Authority to divert and use not to exceed 155,000 acre-feet of water per year at a maximum combined diversion rate of 900 cfs (405,000 gpm) from the Brazos River, Brazos River Basin, for municipal, industrial, and agricultural (irrigation) purposes within the owner's service area in Fort Bend, Brazoria, and Harris Counties in the Brazos River Basin, San Jacinto River Basin, and San Jacinto-Brazos Coastal Basin pursuant to an exempt interbasin transfer. Applicant seeks to amend the Certificate to add a diversion point approximately 3.9 miles upstream of the currently authorized point on the east bank of the Brazos River in Fort Bend County. This proposed diversion point is also currently authorized by Certificates of Adjudication No. 12-5168 and No. 12-5171, owned by the Gulf Coast Water Authority, and Certificates of Adjudication No. 12-5166 and No. 12-5167, owned by the Brazos River Authority. Applicant also seeks an exempt interbasin transfer pursuant to Texas Water Code §11.085(v)(3) to authorize Galveston County as a place of use within its authorized service area in the San Jacinto-Brazos Coastal Basin. Applicant is not requesting an increase in the diversion amount or the diversion rate. The Commission will consider hearing requests, responses to the requests, and replies. (Ross Henderson, Ronald Ellis)

Attached is a draft notice for you to send.

Ron Ellis, Project Manager
Water Rights Permitting Team

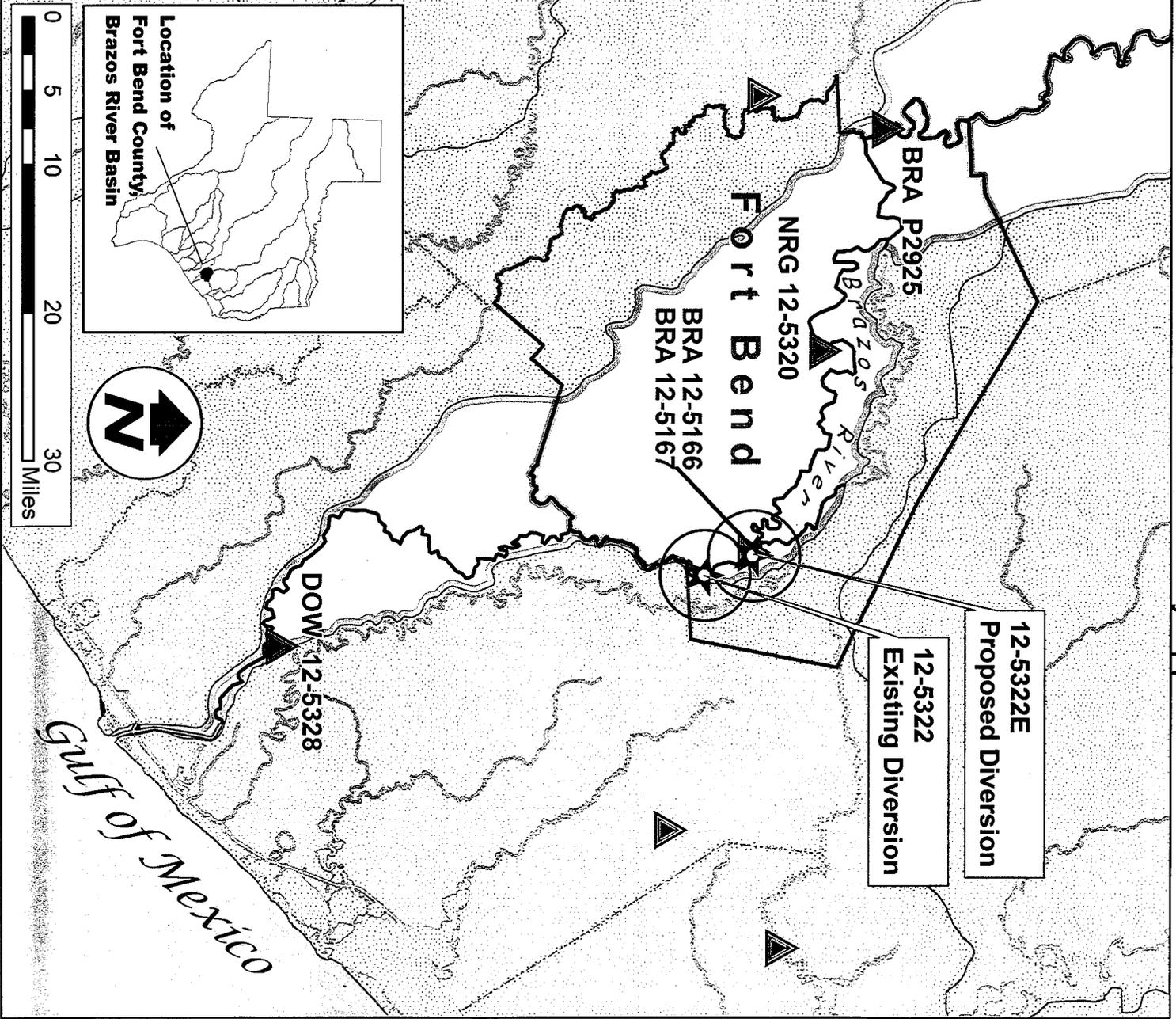
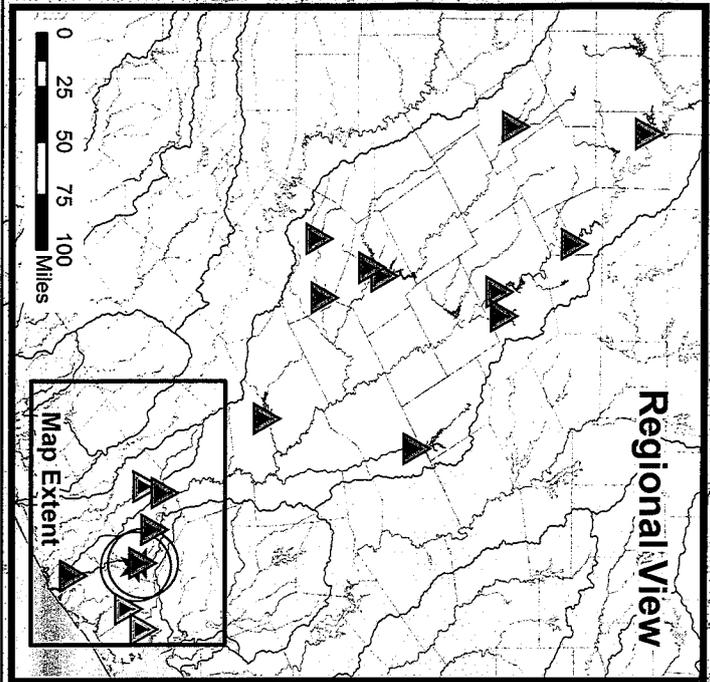
Enclosure

cc: Kellye Rila, TCEQ
Lann Bookout, TCEQ
Iliana Delgado, TCEQ
Chris Loft, TCEQ
Kristin Wang, TCEQ
Justin Degrate, TCEQ
Kathy Alexander, TCEQ
Ross Henderson, TCEQ

☆ Gulf Coast Water Authority
Existing and Proposed WR

▲ Protestants with Water Rights

▲ Protestants without Water Rights



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE
OF AN APPLICATION TO AMEND A
CERTIFICATE OF ADJUDICATION

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WATER RIGHTS PERMITTING

APPLICATION NO. 12-5322E

Chocolate Bayou Water Company has applied for an amendment to Certificate of Adjudication No. 12-5322 to add a diversion point upstream of the existing diversion point on the Brazos River and to clarify the place of use by including Galveston County as a portion of the owner's service area, thereby requesting an exempt interbasin transfer to the San Jacinto-Brazos Coastal Basin. More information on the application and how to participate in the permitting process is given below.

Application: Applicant, Chocolate Bayou Water Company (CBWC), P.O. Box 550, Alvin, Texas 77512-0550, seeks to amend Certificate of Adjudication No. 12-5322 pursuant to Texas Water Code §§11.122 and 11.085 and Texas Commission on Environmental Quality Rules 30 TAC § 295.1, et seq. Pursuant to TAC §295.158, notice is being mailed to the one water right holder of record with diversion points on the Brazos River between the existing and proposed diversion points.

Certificate of Adjudication No. 12-5322 authorizes the Owner to maintain and impound water in three off-channel reservoirs (Juliff, Bonney, and Liverpool Reservoirs). Owner is further authorized to divert and use from the Brazos River, Brazos River Basin, not to exceed 155,000 acre-feet of water per year for municipal, agricultural, and industrial purposes within the Owner's service area in Fort Bend, Brazoria and Harris Counties. Time priority is February 8, 1929 for diversion and use of the first 40,000 acre-feet at 400 cfs (180,000 gpm); March 14, 1955 for the next 40,000 acre-feet at 668 cfs (300,600 gpm) and July 25, 1983 for the remaining 75,000 acre-feet at 900 cfs (405,000 gpm). The diversion is subject to a special condition restricting diversion to streamflow exclusive of contract water released by the Brazos River Authority for downstream use.

The Certificate further authorizes the Owner to transfer water authorized from the Brazos River Basin to the adjoining San Jacinto-Brazos Coastal Basin for municipal, agricultural (irrigation), and industrial purposes within the Owner's service area.

Applicant seeks to amend Certificate of Adjudication No 12-5322 to add a diversion point approximately 3.9 miles upstream of the currently authorized point. The requested point will be on the east bank of the Brazos River in the Thomas Barnett Grant, Abstract 7, Fort Bend County at the diversion point authorized by Certificate of Adjudication No. 12-5168 owned by the Gulf Coast Water Authority, at a point bearing N 84°W, also being at Latitude 29.504°N and Longitude 95.551°W, in Fort Bend County.

No increase in the diversion amount or the diversion rate is being requested.

Applicant also seeks to specify Galveston County as a place of use in its authorized service area in the San Jacinto-Brazos Coastal Basin.

The amendment application was received on June 12, 2006. Additional information was received on August 1 and August 8, 2006. The application was determined to be administratively complete and filed with the Office of the Chief Clerk on August 24, 2006.

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, by October 16, 2006. 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 TCEQ may grant a contested case hearing on this application if a written hearing request is filed by October 16, 2006. The Executive Director may approve the application unless a written request for a contested case hearing is filed.

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 your proposed adjustments to the application/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 TCEQ will not issue the permit and will forward the application and hearing request to the TCEQ 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, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at 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 TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

Issued: September 26, 2006

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



REVISED NOTICE
OF AN APPLICATION TO AMEND A
CERTIFICATE OF ADJUDICATION

APPLICATION NO. 12-5322E

Chocolate Bayou Water Company applied for an amendment to Certificate of Adjudication No. 12-5322 to add a diversion point upstream of the existing diversion point on the Brazos River and clarify the place of use by including Galveston County as a portion of the owner's service area, thereby requesting an exempt interbasin transfer to the San Jacinto-Brazos Coastal Basin. During the processing of this application, Chocolate Bayou Water Company and the water rights belonging to Chocolate Bayou Water Company were sold to the Gulf Coast Water Authority. This revised notice is being provided to identify the new applicant for this application. More information on the application and how to participate in the permitting process is given below.

Application: Applicant, Gulf Coast Water Authority (GCWA), 3630 Highway 1765, Texas City, Texas 77591, seeks to amend Certificate of Adjudication No. 12-5322 pursuant to Texas Water Code §§11.122 and 11.085 and Texas Commission on Environmental Quality Rules 30 TAC § 295.1, et seq. Pursuant to TAC §295.158, notice is being mailed to the one water right holder of record with diversion points on the Brazos River between the existing and proposed diversion points.

Certificate of Adjudication No. 12-5322 authorizes the Owner to maintain and impound water in three off-channel reservoirs (Juliff, Bonney, and Liverpool Reservoirs). Owner is further authorized to divert and use from the Brazos River, Brazos River Basin, not to exceed 155,000 acre-feet of water per year for municipal, agricultural, and industrial purposes within the Owner's service area in Fort Bend, Brazoria and Harris Counties. Time priority is February 8, 1929 for diversion and use of the first 40,000 acre-feet at 400 cfs (180,000 gpm); March 14, 1955 for the next 40,000 acre-feet at 668 cfs (300,600 gpm) and July 25, 1983 for the remaining 75,000 acre-feet at 900 cfs (405,000 gpm). The diversion is subject to a special condition restricting diversion to streamflow exclusive of contract water released by the Brazos River Authority for downstream use.

The Certificate further authorizes the Owner to transfer water authorized from the Brazos River Basin to the adjoining San Jacinto-Brazos Coastal Basin for municipal, agricultural (irrigation), and industrial purposes within the Owner's service area.

Applicant seeks to amend Certificate of Adjudication No 12-5322 to add a diversion point approximately 3.9 miles upstream of the currently authorized point. The requested point will be on

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TCEQ
WATER SUPPLY DIVISION
2007 SEP 27 AM 7:48

the east bank of the Brazos River in the Thomas Barnett Grant, Abstract 7, Fort Bend County at the diversion point authorized by Certificate of Adjudication No. 12-5168 owned by the Gulf Coast Water Authority, at a point bearing N 84°W, also being at Latitude 29.504°N and Longitude 95.551°W, in Fort Bend County.

No increase in the diversion amount or the diversion rate is being requested.

Applicant also seeks to specify Galveston County as a place of use in its authorized service area in the San Jacinto-Brazos Coastal Basin.

The amendment application was received on June 12, 2006. Additional information was received on August 1 and August 8, 2006. The application was determined to be administratively complete and filed with the Office of the Chief Clerk on August 24, 2006. Documentation of the change of ownership was received January 25, 2007. The change of ownership was completed on July 27, 2007 as evidenced by a TCEQ staff memorandum.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting were received in response to the previously filed notice. A public meeting was held in Angleton, Texas on January 25, 2007. All previous timely filed public comments will be considered by the Commission. New 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, by October 15, 2007. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A second public meeting will be held if the Executive Director determines that there is a significant degree of newly expressed public interest in the application.

CONTESTED CASE HEARING. Several timely filed requests for a contested case hearing were received after the previous notice was submitted for this application. This notice will not affect any previous timely filed hearing requests. Those timely filed requests will be submitted to the Commission for consideration. The TCEQ may grant newly filed contested case hearing requests on this application if a written hearing request is filed by October 15, 2007. The Executive Director may not approve the application without a contested case hearing unless all previous timely filed contested case hearing requests are withdrawn and no new timely filed contested case hearing requests are received.

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 your proposed adjustments to the application/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 TCEQ will not issue the permit and will forward the application and

hearing request to the TCEQ 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, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at 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 TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

Issued: September 25, 2007

**AMENDMENT TO A
CERTIFICATE OF ADJUDICATION**

CERTIFICATE NO. 12-5322E

TYPE: §§11.122 & 11.085

Owner: Gulf Coast Water Authority Address: 3630 Highway 1765
Texas City, Texas 77591

Filed: August 24, 2006 Granted:

Purpose: Municipal, Industrial, and Counties: Fort Bend, Brazoria, Harris,
Agricultural (Irrigation) and Galveston

Watercourse: Brazos River Watershed: Brazos River Basin, San
Jacinto River Basin, and San
Jacinto-Brazos Coastal Basin

WHEREAS, Gulf Coast Water Authority (Owner or Applicant), is authorized to divert and use not to exceed 155,000 acre-feet of water per year a maximum combined diversion rate of 900 cfs (405,000 gpm) from the Brazos River, Brazos River Basin, at a point in the William Pettus Grant, Abstract No. 68 in Fort Bend County, for municipal, industrial, and agricultural (irrigation) purposes within the Owner's service area in Fort Bend, Brazoria, and Harris Counties in the Brazos River Basin, San Jacinto River Basin, and San Jacinto-Brazos Coastal Basin pursuant to an exempt interbasin transfer; and

WHEREAS, Owner is also authorized to maintain three off-channel reservoirs known as Juliff, Bonney, and Liverpool Reservoirs in Fort Bend and Brazoria Counties and impound therein a combined maximum of 864 acre-feet of water for industrial purposes and subsequent agricultural (irrigation) purposes; and

WHEREAS, Owner's time priority is February 8, 1929, for diversion and use of the first 40,000 acre-feet of water at 400 cfs (180,000 gpm); March 14, 1955, for the next 40,000 acre-feet of water at 668 cfs (300,600 gpm); and July 25, 1983, for the remaining 75,000 acre-feet of water at 900 cfs (405,000 gpm); and

WHEREAS, the maximum authorized combined diversion rate is 900 cfs (405,000 gpm); and

WHEREAS, diversion of the water authorized with time priorities of March 14, 1955 and July 25, 1983 is subject to a special condition restricting diversion to specific minimum streamflows exclusive of contract water released by the Brazos River Authority for downstream use; and

WHEREAS, Applicant seeks to amend Certificate of Adjudication No. 12-5322 to add a diversion point approximately 3.9 miles upstream of the currently authorized point on the east bank of the Brazos River in the Thomas Barnett Grant, Abstract 7 in Fort Bend County, located at Latitude 29.504°N and Longitude 95.551°W. This diversion point is also authorized by Certificates of Adjudication No. 12-5168 and No. 12-5171, owned by the Gulf Coast Water Authority, and Certificates of Adjudication No. 12-5166 and No. 12-5167, owned by the Brazos River Authority; and

WHEREAS, Applicant also seeks an exempt interbasin transfer pursuant to Texas Water Code §11.085(v)(3) to authorize Galveston County as a place of use within its authorized service area in the San Jacinto-Brazos Coastal Basin; and

WHEREAS, no increase in the diversion amount or the diversion rate is being requested; and

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

WHEREAS, the Executive Director recommends that special conditions be included in the amendment; and

WHEREAS, 10 hearing requests were received; and

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

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 12-5322, designated Certificate of Adjudication No. 12-5322E, is issued to the Gulf Coast Water Authority, subject to the following terms and conditions:

1. USE

In addition to the currently authorized place of use, Owner is also authorized an exempt interbasin transfer to use the 155,000 acre-feet of water per year in Galveston County, within it's authorized service area, in the San Jacinto-Brazos Coastal Basin.

2. DIVERSION

In addition to the authorization to divert water at a point on the Brazos River in the William Pettus Grant, Abstract No. 68 in Fort Bend County (Diversion Point 1), Owner is also authorized to divert water from a point on the east bank of the Brazos River in the Thomas Barnett Grant, Abstract 7, Fort Bend County, located at Latitude 29.504°N and Longitude 95.551°W (Diversion Point 2). This diversion point is also authorized by Certificates of Adjudication No. 12-5168 and No. 12-5171, owned by the Gulf Coast Water Authority, and Certificates of Adjudication No. 12-5166 and No. 12-5167, owned by the Brazos River Authority.

3. PRIORITY

- A. Time priority for diversion and use from Diversion Point 1 is February 8, 1929, for diversion and use of the first 40,000 acre-feet of water at 400 cfs (180,000 gpm); March 14, 1955, for the next 40,000 acre-feet of water at 668 cfs (300,600 gpm); and July 25, 1983, for the remaining 75,000 acre-feet of water at 900 cfs (405,000 gpm).
- B. Time priority for diversion and use of water from Diversion Point 2 is the same as Diversion Point 1, except that it is junior in time priority to the interjacent water rights between that point and Diversion Point 1 and to the existing water rights at those points, as those rights existed on August 24, 2006, the filing date of this amendment.

4. CONSERVATION

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

5. SPECIAL CONDITION

In addition to the special conditions already present in Certificate of Adjudication No. 12-5322, as amended, which remain in effect:

Prior to the diversion of water at the upstream diversion point authorized in this amendment, Owner shall apply for and be granted an amendment to this Certificate to add provisions providing that the Owner have an approved daily accounting plan and requiring maintenance of that daily plan. The plan must include, at a minimum, a method that accounts by priority date, diversion rate, restrictions and authorization number for all water diverted from the Brazos River at the upstream point pursuant to all authorizations to divert at that point. The plan must be provided in electronic format.

This amendment is issued subject to all terms, conditions, and provisions contained in Certificate of Adjudication No. 12-5322, as amended, except as specifically amended herein.

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

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

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

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

For the Commission

ISSUED:

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Ron Ellis, Application Manager
Water Rights Permitting Team

July 16, 2008

Through:  Blann Bookout, Team Leader
Surface Water Availability & Interstate Compacts Team

From: Kathy Alexander, Hydrologist
Surface Water Availability & Interstate Compacts Team

Subject: Gulf Coast Water Authority
ADJ5322
CN600566152
Brazos River, Brazos River Basin
Fort Bend, Harris, Brazoria, Galveston Counties

WATER AVAILABILITY ANALYSIS

Application Summary

Certificate of Adjudication No. 12-5322 authorizes Gulf Coast Water Authority (GCWA or Owner) to divert and use from the Brazos River not to exceed 155,000 acre-feet of water per year for multiple purposes within Fort Bend, Brazoria, and Harris Counties. The priority dates of the water are February 8, 1929 for the first 40,000 acre-feet, March 14, 1955 for the next 40,000 acre-feet and July 25, 1983 for the remaining 75,000 acre-feet. The maximum diversion rate authorized by the certificate is 900 cubic feet per second (cfs). GCWA is also authorized to transfer water from the Brazos River Basin to the San Jacinto-Brazos Coastal Basin and the San Jacinto River Basin. Several special conditions apply to the certificate including a flow restriction applied at the USGS gage at Rosharon for the purpose of protecting downstream diverters, and a restriction limiting diversions to streamflow exclusive of contract water released by the Brazos River Authority for downstream use.

GCWA seeks to amend Certificate of Adjudication No. 12-5322 to add a diversion point on the Brazos River approximately 3.9 river miles upstream of the currently authorized point. The proposed point is located at a diversion point authorized by Certificate of Adjudication No. 12-5168, also owned by GCWA. The owner also seeks an exempt interbasin transfer to add Galveston County in the San Jacinto-Brazos Coastal Basin as a place of use for the authorized water. No increase in the diversion amount of the diversion rate is requested.

No Injury Analysis

Resource Protection staff recommend that the amendment contain a special condition to prevent entrainment of aquatic organisms. Pursuant to TWC §11.085(v)(3), the request for an exempt interbasin transfer does not

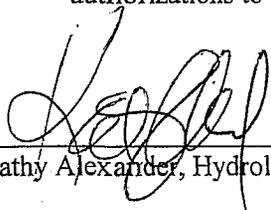
require a water availability analysis. The request for addition of an upstream diversion point also does not require a water availability analysis because the diversion of water is already authorized under Certificate 12-5322. However, the application must be reviewed to ensure that no water rights are affected by the requested change in location of the diversion point.

Staff modeled the application using the Full Authorization simulation of the Brazos WAM in which all water rights use their fully authorized amounts and return flows are not included. Moving the diversion point does not change the priority dates of Certificate 12-5322. Water diverted under the certificate can still be diverted under those priority dates before water can be diverted by more junior water rights. Simulation results indicate that diversions for Certificate 12-5322 are not 100% reliable at the new location. This is because the water right is based on river flows and not reservoir storage. Staff compared the pre- and post-application reliabilities of all water rights in the Brazos River Basin. The volume reliabilities of portions of Certificate 12-5322 and Certificate 12-5171 were negatively affected as a result of this application although the impact was minimal. The two rights are also owned by GCWA; therefore, in staff's opinion there are no practical effects on other water rights as a result of this application.

Conclusion

Staff can support the granting of this amendment to add an additional diversion point upstream of the existing point and to add Galveston County to the authorized place of use so long as all existing special conditions continue to apply and the amendment includes the recommendations of Resource Protection staff. Because of the multiple priority dates, flow restrictions and diversion rates associated with Certificate 12-5322, and the fact that other water rights divert at the requested diversion point under multiple priority dates and diversion rates, staff recommends that the amendment also include the following special condition:

1. Prior to the diversion of water at the upstream diversion point authorized in this amendment, Owner shall apply for and be granted an amendment to this certificate to add provisions providing that the Owner have an approved daily accounting plan and requiring maintenance of that daily plan. The plan must include, at a minimum, a method that accounts by priority date, diversion rate, restrictions and authorization number for all water diverted from the Brazos River at the upstream point pursuant to all authorizations to divert at that point. The plan must be provided in electronic format.


Kathy Alexander, Hydrologist

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Ron Ellis, Application Manager **Date:** December 19, 2008
Water Rights Team
Water Rights Permitting & Availability Section

Through: Chris Loft, Team Leader *CL 12/22/08*
Resource Protection Team
Water Rights Permitting & Availability Section

Dakus Geeslin, Aquatic Scientist *DG 12/22/08*
Resource Protection Team
Water Rights Permitting & Availability Section

From: Justin Degrate, Aquatic Scientist *JD 12-19-08*
Resource Protection Team
Water Rights Permitting & Availability Section

Subject: Gulf Coast Water Authority
ADJ 5322
CN 600539696
Brazos River, Brazos River Basin
Fort Bend, Harris, Brazoria, Galveston Counties

Environmental reviews of water right applications are conducted in accordance with §11.042, §11.147, §11.1491, §11.150, and §11.152 of the Texas Water Code and with TCEQ administrative rules which include 30 TAC §297.53 through §297.56. These statutes and rules require the TCEQ 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.

ENVIRONMENTAL ANALYSIS ADDENDUM

The applicant seeks to amend Certificate of Adjudication, COA No. 5322 to add a diversion point on the Brazos River approximately 3.9 river miles upstream of the currently authorized point. The proposed diversion point is located at the diversion point authorized by COA No. 5168 owned by the Gulf Coast Water Authority. The applicant also seeks to add Galveston County as a place of use in the authorized service area in the San Jacinto-Brazos Coastal Basin, thereby requesting an exempt inter-basin transfer from the Brazos River Basin to the San Jacinto-Brazos Coastal Basin. No increase in the diversion amount or the diversion rate is requested.

In the October 16, 2006 environmental analysis memo, Resource Protection staff recommended as a special condition the use of screens with a mesh size of 0.25 inches or smaller on the diversion structure at the new diversion point and to limit the maximum water velocity at the screen to 0.5 feet per second. However, after subsequent discussions with the applicant and further review of the application, Resource Protection staff have agreed to remove Special Condition B. The use of screens would not be practicable to this application due to the diversion structure being in existence prior to its inclusion as the additional diversion point for this application.

All other analyses and recommendations in the October 16, 2006 environmental memorandum remain unchanged unless specifically addressed in this addendum.

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: David Koinm, Application Manager **Date:** October 19, 2006
Water Rights Team
Water Rights Permitting & Availability Section

Through: Bill Billingsley, Team Leader *BS 10/19/06*
Resource Protection Team
Water Rights Permitting & Availability Section

Wendy Gordon, Ph.D., Aquatic Scientist *BS for wt 10/19/06*
Resource Protection Team
Water Rights Permitting & Availability Section

From: *JK* Joel Klumpp, Aquatic Scientist *10/19/06*
Resource Protection Team
Water Rights Permitting & Availability Section

Subject: Chocolate Bayou Water Company
COA 12-5322
CN 600539696
Application No. 12-5322E to Amend Certificate of Adjudication No. 12-5322
Brazos River, Brazos River Basin
Fort Bend, Harris, Brazoria, Galveston Counties

Environmental reviews of water right applications are conducted in accordance with §11.042, §11.147, §11.1491, §11.150, and §11.152 of the Texas Water Code and with TCEQ administrative rules which include 30 TAC §297.53 through §297.56. These statutes and rules require the TCEQ 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.

APPLICATION SUMMARY

Certificate of Adjudication No. 12-5322, as amended, authorizes Chocolate Bayou Water Company, owner, to maintain and impound water in three off-channel reservoirs (Juliff, Bonney, and Liverpool Reservoirs) used as buffer reservoirs to facilitate pumping and efficiency, with no right to use the reservoirs for storage of state water other than during the irrigation season. The owner is further authorized to divert and use from the Brazos River not to exceed 155,000 acre-feet (AF) of water per annum for municipal, agricultural, and industrial purposes within the owner's service area in Fort Bend, Brazoria, and Harris Counties. The maximum diversion rate authorized by the certificate, as amended, is 900 cubic feet per second (cfs). The owner is also authorized to transfer water from the Brazos River Basin to the adjoining San Jacinto-Brazos Coastal Basin. Several special conditions apply to the certificate, as amended, including a flow restriction applied at the USGS gage at Rosharon for the purpose of protecting downstream diverters, and a restriction limiting diversion to

streamflow exclusive of contract water released by the Brazos River Authority for downstream use.

The owner seeks to amend Certificate of Adjudication No. 12-5322 to add a diversion point on the Brazos River approximately 3.9 river miles upstream of the currently authorized point. The proposed diversion point is located at the diversion point authorized by Certificate of Adjudication No. 12-5168 owned by the Gulf Coast Water Authority. The owner also seeks to add Galveston County as a place of use in the authorized service area in the San Jacinto-Brazos Coastal Basin. No increase in the diversion amount of the diversion rate is requested.

ENVIRONMENTAL ANALYSIS: INSTREAM USES

Aquatic and Riparian Habitats: According to the *Handbook of Texas Online*, the lower Brazos River meanders through the coastal plain, with a total drainage area of 44,620 square miles. The stream valleys of the river and its tributaries in this location are wide and flat. According to USGS topographical maps, the portion of the Brazos River near the existing and proposed diversion points is a large, meandering, high-order stream. According to satellite imagery,¹ the portion of the river between the existing and proposed diversion points supports a forested riparian zone, ranging in width between approximately 10 and 400 meters. Photographs of the river at the pump house provided by the applicant show the banks of the river to be vegetated predominately in grasses and a mature, mixed forest beginning at the top of the banks.

According to the Texas Parks and Wildlife Department's (TPWD) *Hydrologic Database for Federally-Listed and Candidate Species in Texas*, a candidate fish and an endangered amphibian are found in or near this portion of the Brazos River. The Sharpnose Shiner (*Notropis oxyrhynchus*) is a candidate species that is endemic to the Brazos River Basin. According to a U.S. Fish and Wildlife Service (FWS) report from 2002,² the most significant threat to the Sharpnose Shiner is modification of its habitat attributable to anthropogenic factors, including water diversion. The Houston Toad (*Bufo houstonensis*), an endangered species, lives primarily in pine forests and prairies, utilizing ephemeral and permanent natural wetlands for breeding.³

Resource Protection staff are of the opinion that the diversion of water 3.9 river miles upstream of the existing diversion point should have minimal adverse environmental impact on the aquatic and riparian habitats of the Brazos River. However, the Gulf Coast Water Authority is currently authorized to divert at a maximum rate of 685 cfs under Certificate of Adjudication No. 12-5168, as amended, and may increase that rate up to 900 cfs for the water purchased from Chocolate Bayou Water Company and supplied by this amendment. This high of a diversion represents potential adverse impacts to the aquatic organisms due to entrainment and impingement at the diversion facilities. Therefore, staff recommend a special condition requiring screens be installed on the diversion structures and the flow-through screen velocity be reduced to a velocity of 0.5 feet per second.

1 <http://earth.google.com/>, accessed August 21, 2006

2 <http://www.fws.gov/arlingtontexas/pdf/notoxy.pdf#search=%22Notropis%20oxyrhynchus%22>

3 <http://www.tpwd.state.tx.us/huntwild/wild/species/htoad/>

Water Quality: According to the *Atlas of Texas Surface Waters*, this portion of the Brazos River is designated as Segment No. 1202, Brazos River Below Navasota River. According to the 2004 Texas Water Quality Inventory and 303(d) List, the designated uses of Segment No. 1202 are aquatic life use, contact recreation, general use, fish consumption use, and public water supply use. Available water quality data indicate that the aquatic life, contact recreation, general, and public water supply uses are all fully supported. The fish consumption use was not assessed. Upstream of the proposed diversion point, there is a concern of excessive algal growth and a threat to contact recreation use due to high concentrations of bacteria. The proposed amendment to the certificate should have negligible impacts to the water quality of the segment.

Bay and Estuary Freshwater Inflows: Freshwater inflows are critical for maintaining the historical productivity of bays and estuaries along the Gulf Coast. The proposed additional diversion point is located within 200 river miles from the Gulf of Mexico but lies outside the Coastal Management Program Boundary. The diversion of water 3.9 river miles upstream of the existing diversion point should have minimal impact to the Brazos River's estuary system.

Recreational Uses: According to the TPWD publication, *An Analysis of Texas Waterways*, the Brazos River throughout the lower sections is a very scenic coastal river. Here, the stream slowly meanders to the Gulf between wide, steep banks. The banks are lined with hardwood trees and many scenic bluffs and sand bars exist. Water levels for recreational use are sufficient year round. Strong southerly winds can create problems for boaters at times. The proposed changes to the certificate should have minimal impact on recreational uses.

SUMMARY

The Chocolate Bayou Water Company seeks to amend Certificate of Adjudication No. 12-5322 to add a diversion point on the Brazos River approximately 3.9 river miles upstream of the currently authorized point. The owner also seeks to add Galveston County as a place of use in the authorized service area in the San Jacinto-Brazos Coastal Basin. No increase in the diversion amount of the diversion rate is requested.

Resource Protection staff recommend including the following special condition in the amended certificate:

In order to minimize entrainment and impingement of aquatic organisms, the owner shall install screens with a mesh size of 0.25 inches or smaller on the diversion structures at the new diversion point and limit the allowable maximum water velocity at the screens to 0.5 feet per second. This mesh size and flow-through velocity are according to general permit guidelines established by the U.S. Army Corps of Engineers, Regulatory Branch, Fort Worth District.

This instream use assessment was conducted using current TCEQ operation procedures and policies and available data and information. The recommendations in this environmental analysis are intended for the protection of instream uses and do not necessarily provide protection to downstream water rights; that analysis is addressed in the hydrology memo and further restrictions may be

applicable as necessary. Authorizations granted to the permittee by the water rights permit shall comply with all rules of the Texas Commission on Environmental Quality, and other applicable State and Federal authorizations.

LITERATURE CITED

Ellis, L.T., W. Pohl and R. Tyler. 1997-2001. Handbook of Texas Online. Texas State Historical Association.

TCEQ. 2004. 2004 Texas Water Quality Inventory and 303(d) List. Texas Commission on Environmental Quality.

TCEQ. 2004. Atlas of Texas Surface Waters: Maps of the Classified Segments of Texas Rivers and Coastal Basins. Publication No. GI-316. Texas Commission on Environmental Quality. Austin, Texas.

TPWD. 1979. An Analysis of Texas Waterways. Texas Parks and Wildlife Department.

USACE. 1999. Regional and State Program General Permits and Letter of Permission Procedures in the Fort Worth District. U.S. Army Corps of Engineers.

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: David Koinm, Application Manager **Date:** January 29, 2008
Water Rights Permitting Team
Water Rights Permitting & Availability Section

Thru: Bill Billingsley, Team Leader
Resource Protection Team *DB 1/29/08*
Water Supply Division

From: Kristin Wang, Senior Water Conservation Specialist *KW 1/29/08*
Resource Protection Team
Water Rights Permitting & Availability Section

Subject: An addendum to the memorandum of August 8, 2006 for
Chocolate Bayou Water Company (now Gulf Coast Water Authority)
WR No. 5322E
CN 600539696

A memorandum for Chocolate Bayou Water Company has been completed on August 7, 2006.

While processing this application, Chocolate Bayou Water Company conveyed its water rights (Certificate of Adjudication No. 12-5322) to Gulf Coast Water Authority on December 13, 2006.

The 2005 Water Conservation and Drought Contingency Plan submitted by Gulf Coast Water Authority 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 288.5 and 288.22.

This application's request is not inconsistent with the adopted 2006 Region H Water Plan and 2007 State Water Plan.

The following standard water conservation language should be included in the permit:

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

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: David Koinm, Application Manager **Date:** August 7, 2006
Water Rights Permitting Team
Water Rights Permitting & Availability Section

Thru: Bill Billingsley, Team Leader
Resource Protection Team BB 8/7/06
Water Supply Division

From: Kristin Wang, Senior Water Conservation Specialist
Resource Protection Team KW 8/7/06
Water Rights Permitting & Availability Section

Subject: Chocolate Bayou Water Company
WR No. 5322D
CN 600539696
Review of Water Conservation Plan for Administrative Completeness

Certificate of Adjudication No. 12-5322 authorizes the owner to maintain and impound water in three off-channel reservoirs and use the reservoirs for in-place industrial purposes (fish farming) and irrigation, and to divert and use from the Brazos River, Brazos River Basin not to exceed 155,000 acre-feet per year for municipal, irrigation, and industrial purposes of use within the owner's service area in Fort Bend, Harris, and Brazoria Counties, and to transfer diverted water from the Brazos River Basin to the San Jacinto River Coastal Basin for the same purposes. Diversion, at a combined maximum rate of 900 cfs (405,000 gpm), is from a point on the Brazos River in the William Pettus Grant, Abstract 68 in Fort Bend County. Time priority is 2/8/29 for the first 40,000 acre-feet at 400 cfs (180,000 gpm), 3/14/55 for the next 40,000 acre-feet at 668 cfs (300,600 gpm) and 7/25/83 for the remaining 75,000 acre-feet at 900 cfs (405,000 gpm).

The applicant seeks to amend Certificate of Adjudication 12-5322 to add a diversion point 3.9 miles upstream on the Brazos River and to clarify the place of use by including Galveston County as a portion of the owner's service area, thereby requesting an exempt IBT Brazos-Colo Coastal Basin.

No increase of the diversion amount or rate is requested.

The 2006 water conservation plan for Chocolate Bayou Water Company was reviewed for administrative sufficiency for Irrigation Use. The submitted plan meets the minimum requirements for irrigation use as defined in the TCEQ Rules, Title 30 TAC Chapter 288.4.

The 2006 water conservation plan for Chocolate Bayou Water Company was reviewed for administrative sufficiency for Industrial Use. The submitted plan meets the minimum requirements for industrial use as defined in the TCEQ Rules, Title 30 TAC Chapter 288.3.

Chocolate Bayou Water Company is not certain at this time as to whether water will be sold and delivered on a wholesale basis or a sell/lease basis to customers for municipal uses.

Because this application is to add a diversion point and not a request for additional water, the conservation staff of the Resource Protection Team recommends a special condition in the amendment requiring the applicant to submit or require wholesale contract holders to prepare and adopt a water conservation and drought contingency plan within 180 days prior to the diversion of the water for municipal purposes authorized under the amendment. The wholesale water conservation and drought contingency plan would have to meet the minimum requirements as defined in Title 30 TAC Chapter 288.5 and 288.22 and would have to set forth strategies for ongoing conservation.

The following standard water conservation language should be included in the permit:

“Owners shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses.”

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
INTEROFFICE MEMORANDUM

TO : Records Management

Date: July 26 2007

Certificate of Adjudication No. 12-5322C
Fort Bend, Brazoria and Harris Counties
Brazos River Basin

FROM : Water Rights Permitting & Availability Section
Water Supply Division

SUBJECT : Change of Ownership

DELETE : Chocolate Bayou Water Company as owner

ADD : Gulf Coast Water Authority as owner

Water Rights Conveyance dated December 13, 2006, has been checked and found to cover all of the water right.

Ownership of Record with Addresses and Remarks:

Gulf Coast Water Authority
3630 Highway 1765
Texas City, Texas 77591

This certificate of adjudication authorizes the following:

- Impoundment of water in: 200.00 acre-foot capacity off-channel reservoir (Juliff Reservoir) located in the William Pettus Grant, Abstract 68, Fort Bend County; 144.00 acre-foot capacity off-channel reservoir (Bonney Reservoir) located in the Warren D. C. Hall Grant, Abstract 69, Brazoria County; and 520.00 acre-foot capacity off-channel reservoir (Liverpool Reservoir) located in the Day Land & Cattle Company Survey, Abstract 601, Brazoria County
- Use of 155,000 acre-feet of water per annum, from a diversion point located in the above mentioned William Pettus Grant in Fort Bend County on the Brazos River, for municipal, irrigation (of 41,200 acres of land) and industrial purposes within the owner's Service Area in Fort Bend, Brazoria and Harris Counties, including that part of its service area that lies within the San Jacinto Basin, by transferring the water from the Brazos River Basin to the San Jacinto-Brazos Coastal & the San Jacinto River Basins

MohamA Reddy

Data Entry Made: MC AUG 2007

WRP & A Section: _____

Change Noted: _____

Central Records/Date: _____

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 12-5322

OWNER: Chocolate Bayou Water
Company
P. O. Box 1305
Alvin, Texas 77511

COUNTIES: Fort Bend and Brazoria

PRIORITY DATES: February 8, 1929;
March 14, 1955
and July 25, 1983

WATERCOURSE: Brazos River

BASIN: Brazos River

WHEREAS, by final decree of the 21st Judicial District Court of Bastrop County, in Cause No. 18,762, In Re: The Adjudication of Water Rights in the Brazos IV Segment of the Brazos River Basin and the San Jacinto-Brazos Coastal Basin dated June 1, 1987 a right was recognized under Permit 1145E authorizing the Chocolate Bayou Water 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 Brazos River Basin is issued to the Chocolate Bayou Water Company, subject to the following terms and conditions:

1. IMPOUNDMENT

- A. Owner is authorized to maintain and impound water in an existing 200 acre-foot capacity off-channel reservoir (Juliff Reservoir). The reservoir is located in the William Pettus Grant, Abstract 68, Fort Bend County, Texas.
- B. Owner is authorized to maintain and impound water in an existing 144 acre-foot capacity off-channel reservoir (Bonney Reservoir). The reservoir is located in the Warren D. C. Hall Grant, Abstract 69, Brazoria County, Texas.
- C. Owner is authorized to maintain and impound water in an existing 520 acre-foot capacity off-channel reservoir (Liverpool Reservoir). The reservoir is located in the Day Land & Cattle Company Survey, Abstract 601, Brazoria County, Texas.

2. USE

Owner is authorized to divert and use not to exceed 155,000 acre-feet of water per annum from the Brazos River to irrigate a maximum of 41,200 acres of land within the Company's Service Area in Fort Bend and Brazoria Counties, Texas.

Certificate of Adjudication 12-5322

3. DIVERSION

- A. Location:
At a point on the Brazos River in the William Pettus Grant, Abstract 68, Fort Bend County, Texas.
- B. Maximum rate: 900.00 cfs (405,000 gpm).

4. PRIORITY

- A. The time priority of owner's right is February 8, 1929 for the diversion and use of the first 40,000 acre-feet of water at a maximum diversion rate of 400 cfs (180,000 gpm).
- B. The time priority of owner's right is March 14, 1955 for the diversion and use of the next 40,000 acre-feet of water at a maximum diversion rate of 668 cfs (300,600 gpm).
- C. The time priority of owner's right is July 25, 1983 for the diversion and use of the remaining 75,000 acre-feet of water at the maximum authorized diversion rate of 900 cfs (405,000 gpm).

5. SPECIAL CONDITIONS

- A. The 115,000 acre-feet of water diverted under priority dates of March 14, 1955 and July 25, 1983, may be diverted only under certain flow restrictions measured at the USGS gaging station No. 08116650 on the Brazos River at Rosharon, Texas, which is to be reinstated by owner and provided with remote interrogation facilities prior to diversion.
 - (1) Owner is authorized to divert water only when the flow of the Brazos River at the USGS gaging station at Rosharon, Texas, equals or exceeds 700 cfs; or when the gaging station is below 700 cfs but is at least 15 cfs during April through August and 5 cfs during all other months of the year and the diversions of water hereunder are not injurious to senior downstream appropriators; or when the water being diverted are waters lawfully purchased by the owner from the Brazos River Authority under existing legal contract between the two parties, or other waters lawfully purchased under any other legal contract.
 - (2) The aforesaid streamflow restrictions are exclusive of any releases dedicated by the Brazos River Authority from its conservation storage for subsequent use downstream. The Executive Director has established a procedure for advising owner when water, exclusive of Brazos River Authority's dedicated releases, is available for

diversion hereunder. Owner shall contact the Commission prior to diversion of water hereunder each irrigation season to be advised of this procedure.

- (3) Owner shall establish and maintain sufficient daily diversion and streamflow records to document which authorizations and appropriate restrictions are being exercised.
 - (4) In order to prevent distortions in assessing any streamflow restriction requirements in analyses of future applications to appropriate water from the Brazos River, the Commission may for the purposes of these hydrology analyses consider that a 406 cfs streamflow restriction is sufficient to provide substantial protection to existing water rights. In making such analyses, the Commission should utilize the 406 cfs streamflow restriction, rather than the 700 cfs restriction.
- B. Owner is authorized to transfer water diverted hereunder from the Brazos River Basin to the San Jacinto-Brazos Coastal Basin for irrigation purposes in said coastal basin.
- C. Owner is authorized the use of the aforesaid reservoirs solely as buffer reservoirs to facilitate pumping and efficiency, with no right to use the reservoirs for storage of State water other than during the irrigation season.

The location of pertinent features related to this certificate are shown on Pages 31 and 34 of the Brazos IV River Segment Certificates of Adjudication Maps, copies of which are located in the office of the Texas Water Commission, Austin, Texas.

This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 21st Judicial District Court of Bastrop County, Texas, in Cause No. 18,762, In Re: The Adjudication of Water Rights in the Brazos IV Segment of the Brazos River Basin and the San Jacinto-Brazos Coastal Basin dated June 1, 1987 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 Brazos River Basin.

Certificate of Adjudication 12-5322

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:

JAN 14 1938

ATTEST:

Karen A. Phillips

Karen A. Phillips, Chief Clerk

AMENDMENT TO
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO. 12-5322A

TYPE: AMENDMENT

Name: Chocolate Bayou
Water Company

Address: P.O. Box 550
Alvin, Texas 77512-0550

Filed: July 14, 1988

Granted: August 9, 1988

Purpose: Industrial

Counties: Fort Bend and Brazoria

Watercourse: Brazos River

Watershed: Brazos River Basin

WHEREAS, Certificate of Adjudication No. 12-5322 was issued to Chocolate Bayou Water Company on January 14, 1988 and authorizes owner to maintain and impound water in three off-channel reservoirs with impoundment capacities of 200, 144 and 520 acre-feet in Fort Bend and Brazoria Counties and to divert and use not to exceed 155,000 acre-feet of water per annum from the Brazos River at a maximum diversion rate of 900 cfs (405,000 gpm) to irrigate a maximum of 41,200 acres of land within the company's service area in Fort Bend and Brazoria Counties, Texas; and

WHEREAS, Special Condition C. of the certificate states that "Owner is authorized the use of the aforesaid reservoirs solely as buffer reservoirs to facilitate pumping and efficiency, with no right to use the reservoirs for storage of State water other than during the irrigation season"; and

WHEREAS, Chocolate Bayou Water Company has requested an amendment to Certificate No. 12-5322 to also allow the use of the reservoirs concurrently for industrial purposes (to raise fish on a commercial basis); and

WHEREAS, Chocolate Bayou Water Company has indicated that during periods other than the irrigation season the reservoirs will impound water from sources other than authorized under the certificate; and

NOW, THEREFORE, this amendment to Certificate No. 12-5322 is issued to Chocolate Bayou Water Company as follows:

1. USE

In addition to the authorization included in Paragraph 2., USE, of Certificate No. 12-5322, certificate owner is authorized to use water stored in the off-channel reservoirs for in-place industrial (fish farming) purposes.

2. SPECIAL CONDITION

In lieu of Special Condition C, contained in Certificate No. 12-5322, the following is substituted:

C. Certificate owner is authorized the use of the aforesaid reservoirs as buffer reservoirs to facilitate pumping and efficiency as part of owner's irrigation system and to concurrently use the impounded water for in-place industrial purposes.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 12-5322, except as specifically amended herein.

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

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

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

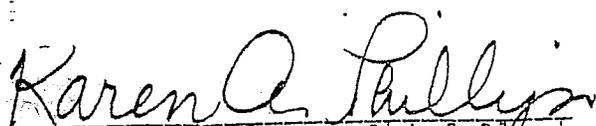
This amendment is issued subject to the Rules of the Texas Water Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS WATER COMMISSION


B. J. Wynne, III, Chairman

DATE ISSUED: August 16, 1988

ATTEST:


Karen A. Phillips, Chief Clerk

WHEREAS, Chocolate Bayou Water Company has requested an amendment to Certificate No. 12-5322, as amended, to convert water from irrigation purposes to industrial purposes; and to change Special Condition B. and C. for clarification purposes relating to the use change; and

WHEREAS, the Texas Water Commission finds that jurisdiction over the application is established; and

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

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

NOW, THEREFORE, this amendment to Certificate No. 12-5322, as amended, is issued to Chocolate Bayou Water Company, subject to the following provisions:

1. In lieu of uses previously authorized in Paragraph 2., USE, of Certificate No. 12-5322, as amended:

Owner is authorized to divert and use not to exceed 145,000 acre-feet of water per annum from the Brazos River to irrigate a maximum of 41,200 acres of land within the Company's Service Area in Fort Bend and Brazoria Counties, Texas and owner is authorized to divert and use not to exceed 10,000 acre-feet of water per annum for industrial purposes within the owner's service area.
2. In lieu of Special Condition C., contained in Certificate No. 12-5322A, owner is authorized the use of the aforesaid reservoirs to impound water for irrigation and industrial purposes.
3. In lieu of Special Condition B., contained in Certificate No. 12-5322, as amended, owner is authorized to transfer water diverted hereunder from the Brazos River Basin to the San Jacinto-Brazos Coastal Basin for irrigation and industrial purposes in said coastal basin.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate No. 12-5322, as amended, except as specifically amended herein.

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

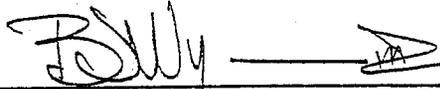
Certificate owner agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this amendment.

Certificate owner shall use those practices, techniques, and technologies that will reduce the loss or waste of water, improve the efficiency and use of water so that only so much water as can be beneficially used will be diverted. Furthermore, diversion and use will occur only when reasonably necessary because of prevailing climate conditions and subject to the terms and conditions of this certificate.

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 Water Commission and to the right of continuing supervision of State water resources exercised by the Commission.

TEXAS WATER COMMISSION



B. J. Wynne, III, Chairman

DATE ISSUED: OCT 29 1990

ATTEST:



Brenda W. Foster, Chief Clerk

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



AMENDMENT TO
CERTIFICATE OF ADJUDICATION

CERTIFICATE NO.	12-5322C	Type:	§11.122 & 11.085
Owner:	Chocolate Bayou Water Company	Address	P. O. Box 550 Alvin, Texas 77512-0550
Filed:	August 7, 2001	Granted:	SEP 12 2001
Purpose:	Municipal, Industrial Irrigation	County:	Fort Bend, Brazoria And Harris
Watercourse:	Brazos River	Watershed:	Brazos River Basin

WHEREAS, Certificate of Adjudication No. 12-5322 was issued to Chocolate Bayou Water Company (CBWC) on January 14, 1988 and authorizes owner to maintain and impound water in three off-channel reservoirs with respective impoundment capacities of 200, 144, and 520 acre-feet of water in Fort Bend and Brazoria Counties; and

WHEREAS, Certificate of Adjudication No. 12-5322 contains special stream flow conditions under which the authorized water may be diverted; and

WHEREAS, Certificate of Adjudication No. 12-5322, as amended, authorizes the owner to divert and use not to exceed 145,000 acre-feet of water per annum to irrigate 41,200 acres of land and not to exceed 10,000 acre-feet of water per annum for industrial purposes from a point on the Brazos River in the William Pettus Grant, Abstract No. 68, Fort Bend County, for use within the owner's service area in Fort Bend and Brazoria Counties; and

WHEREAS, the time priority is February 8, 1929 for the diversion and use of the first 40,000 acre-feet of water at a maximum diversion rate of 400 cubic feet per second (180,000 gallons per minute), March 14, 1955 for the diversion and use of the next 40,000 acre-feet of water at a maximum diversion rate of 668 cfs (300,600 gpm), and July 25, 1983 for the diversion and use of the remaining 75,000 acre-feet of water at a maximum diversion rate of 900 cfs (405,000 gpm); and

WHEREAS, Certificate of Adjudication No. 12-5322, as amended, authorizes the owner to use the aforesaid reservoirs to impound water for irrigation and industrial purposes; and

WHEREAS, Special Condition B to Certificate of Adjudication No. 12-5322, as amended, authorizes the owner to transfer water diverted from the Brazos River Basin to the San Jacinto-Brazos River Coastal Basin for irrigation and industrial purposes in said basin; and

WHEREAS, Chocolate Bayou Water Company seeks to amend Certificate of Adjudication No.12-5322 to authorize, pursuant to Texas Water Code (TWC) §44.023(e), multi-purpose use (irrigation, industrial, and/or municipal) for the 155,000 acre-feet of water per annum authorized for diversion, to add Harris County to the counties within the service area of CBWC, and to authorize the place of use to include that part of CBWC's service that lies within the San Jacinto Basin; and

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

WHEREAS, the diversion and use of water requested by this application lies within the Coastal Zone Management Plan area, and the application has been reviewed for and found to comply with the Coastal Zone Management Plan; and

WHEREAS no one protested the granting of the proposed amendment to Certificate of Adjudication No. 12-5322; and

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

NOW, THEREFORE, this amendment to Certificate of Adjudication No. 12-5322, as amended, designated as Certificate of Adjudication 12-5322C, is issued to the Chocolate Bayou Water Company subject to the following terms and conditions:

1. USE

In lieu of the purpose of use authorizations of Certificate Adjudication No. 12-5322, as amended, owner is authorized to divert and use not to exceed 155,000 acre-feet of water per annum for municipal, irrigation and industrial purposes for use within the owner's service area in Fort Bend, Brazoria and Harris Counties.

2. CONSERVATION

Certificate owner shall implement water conservation plans that provide for the utilization of those practices, techniques, and technologies that reduce or maintain the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water, so that a water supply is made available for future or alternative uses

3. SPECIAL CONDITIONS

- D. In lieu of the provisions of Special Condition 5B contained in Certificate of Adjudication No. 12-5322, as amended, owner may transfer water authorized herein from the Brazos River Basin to the San Jacinto-Brazos Coastal Basin and the San Jacinto River Basin for use within the owner's service area in Fort Bend, Brazoria, and Harris Counties.
- E. Owner shall submit, or require wholesaler contract holders to prepare and adopt, a wholesale water conservation and drought contingency plan within 180 days prior to the diversion of the water for the new purposes and places of use authorized under this amendment. The plan shall meet the minimum requirements as defined in Title 30 TAC Chapter §288.5 and §288.22 and shall set forth strategies for ongoing conservation.
- F. Permittee is required to record for reporting purpose the actual monthly amounts used for the individual purposes (municipal, irrigation and industrial) under the multi-purpose authorization.

This amendment is issued subject to all terms, conditions and provisions contained in Certificate of Adjudication No. 12-5322, as amended.

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

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

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

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

TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION



For the Commission

Date Issued: SEP 12 2001

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



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,

A handwritten signature in cursive script, appearing to read "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/lg

Enclosure

MAILING LIST

for

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

FOR THE APPLICANT:

Robert Istre, General Manager
Gulf Coast Water Authority
3630 Farm-to-Market Road 1765
Texas City, Texas 77591-3677

Lawrence L. Bellatti
Andrews & Kurth, LLP
600 Travis Street, Suite 4200
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Sabrina Finnegan, Vice President
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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

JUL 17 2007 4:22
CHIEF CLERK'S OFFICE

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 within 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 AVAILABLITY

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 Hlavinka 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. Furthermore, 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

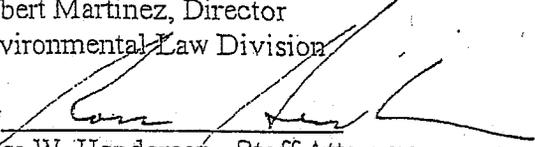
The Executive Director responds that US Army Corps of Engineers review under Section 404 of the Clean Water Act is only required in cases involving the discharge of dredged or fill material (e.g., resulting from construction or maintenance activities) into the navigable waters of the United States. Because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

Respectfully Submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

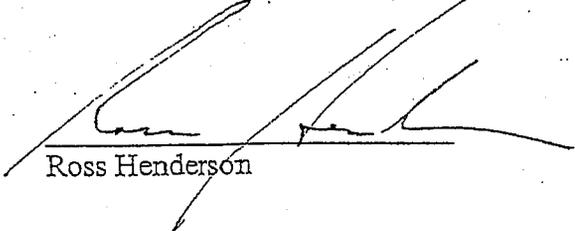
Mark R. Vickery, P.G., Executive Director

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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

CHIEF CLERKS OFFICE

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