

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 28, 2011

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: TCEQ Docket No. 2011-0050-WR
Certificate of Adjudication No. 11-5170
Application by Fort Bend County WCID No. 1 to amend water right

Dear Ms. Castañuela:

Enclosed for filing, please find an original and 7 copies of the *Executive Director's Response to Hearing Request*.

If you have any questions, please do not hesitate to contact me at (512) 239-2496.

Sincerely,

A handwritten signature in cursive script, appearing to read "James Aldredge".

James Aldredge
Staff Attorney
Environmental Law Division

CC: Mailing List

Enclosure

MAILING LIST
FORT BEND COUNTY WCID NO. 1
DOCKET NO. 2011-0050-WR; PERMIT NO. 11-5170

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For the Hearing Requestor:

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TCEQ DOCKET NO. 2011-0050-WR

APPLICATION BY FORT BEND	§	BEFORE THE
COUNTY WATER CONTROL	§	
AND IMPROVEMENT DISTRICT	§	TEXAS COMMISSION ON
NO. 1 TO AMEND CERTIFICATE	§	
OF ADJUDICATION NO. 11-5170	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or commission) files this response to the hearing request filed in the application by Fort Bend County Water Control and Improvement District No. 1 (the District) to amend Certificate of Adjudication No. 11-5170. One hearing request was received from the Gulf Coast Water Authority (GCWA or the Authority). Attached for commission consideration are the following:

- Attachment A – Two responses, dated April 28, 2008 and August 1, 2008, to Requests for Information received from the District
- Attachment B – Excerpt from the Final Determination of All Claims of Water Rights in the Brazos River Basin and the San Jacinto-Brazos Coastal Basin Maintained by the Brazos River Authority, Fort Bend County W.C.I.D. No. 1 and Galveston County Water Authority dated June 26, 1985

Based on the information provided by GCWA in its hearing request, the Executive Director respectfully recommends that the hearing request be denied.

I. Background

The District owns Certificate of Adjudication No. 11-5170 which authorizes the District, along with GCWA, to maintain seven dams and reservoirs on Jones Creek tributary of Oyster Creek, tributary of the Intracoastal Waterway, San Jacinto-Brazos Coastal Basin; and Oyster Creek, tributary of the Intracoastal Waterway, San Jacinto-Brazos Coastal Basin; and impound therein not to exceed a combined total of 8,925.48 acre-feet of water for in-place recreational purposes. The District may divert and use not to exceed 159.27 acre-feet of water per year from Oyster Creek for industrial or agricultural purposes to irrigate 35 acres within the District boundaries in the Samuel M. Williams Grant, and 18,000 acre-feet per year from the impounded waters of Jones and Oyster Creeks for municipal and industrial purposes. Diversion is authorized at a maximum rate of 71.56 cfs (32,200 gpm) from a point on the perimeter of the reservoir created by Dam 2. The time priority of this right is June 27, 1914 for the 159.27 acre-foot portion of water and May 14, 1948 for the 18,000 acre-foot portion of water.

The District has filed an application for an amendment to the Certificate to add agricultural (irrigation) use within the portion of the City of Sugar Land that is within

the District boundaries to the 18,000 acre-foot portion of water in the San Jacinto-Brazos Coastal Basin in Fort Bend County. The application also requests authorization to divert water at “points on the perimeter of, or anywhere between, Dam 1 and Dam 3” as identified in the application. In its response dated August 1, 2008 to a request for information from Water Supply Division staff, the Applicant clarified that the application seeks authorization to divert the 18,000 acre-foot portion from the perimeters of the reservoirs created by Dams 1, 2, and 3, and the Horseshoe Lake Control Dam. The draft permit reflects an authorization to that effect. Additionally, in its response dated April 28, 2008 to a separate request for information, the City requested that the permit be amended to authorize an exempt interbasin transfer pursuant to Tex. Water Code §11.085 (a) and (v). The April 28, 2008 and August 1, 2008 letters are included as Attachment 1 to this Response.

II. Procedural History

This application was received January 28, 2008. The application was declared administratively complete on November 3, 2008. Notice for this amendment application was filed with the Chief Clerk on February 17, 2009 and subsequently mailed to the water rights holders in the San Jacinto-Brazos Coastal Basin. The comment and hearing request period for this application closed on April 6, 2009. One request for a contested case hearing was received. The request was timely filed.

Following the Texas Supreme Court decision in *City of Marshall v. City of Uncertain*, the Commission issued guidance on new standards for notice determinations in water availability matters in a work session on January 18, 2008. Notice for this application was given pursuant to guidance provided at the commission’s agenda hearings held August 20, 2008 and September 24, 2008.

III. Legal Authority

The following may request a contested case hearing on water rights applications: the commission, the Executive Director, the applicant, and affected persons when authorized by law. Affected persons are authorized to submit hearing requests for water rights permit applications by Texas Water Code §11.132(a). The commission, on the request of any affected person, shall hold a public hearing on an application to amend a water right permit. TEX. WATER CODE §11.132(a). The application is subject to the procedures for determining whether a hearing requestor is an affected person and whether a document submitted on an application constitutes a valid request. Those procedures for applications declared administratively complete on or after September 1, 1999 are located at 30 Texas Admin. Code, Chapter 55, Subchapter G (Sections 55.250-55.256).

An “affected person” is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to the general public does not constitute a justiciable interest. 30 TEX. ADMIN. CODE §55.256(a). Governmental entities, including local governments and public

agencies, with authority under state law over issues contemplated by the application may be considered affected persons. 30 TEX. ADMIN. CODE §55.256(b).

To determine whether a hearing requestor is an affected person, all relevant factors must be considered, including but not limited to:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) the likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) the likely impact of the regulated activity on the use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TEX. ADMIN. CODE §55.256(c).

Title 30, Sections 55.251(b) and (c) of the Texas Administrative Code specify that a hearing request must:

- (1) be in writing and be filed with the Office of the Chief Clerk during the public comment period
- (2) give the name, address, and daytime telephone number of the person who files the request;
- (3) identify the person's personal justiciable interest affected by the application including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the activity that is the subject of the application and how and why the requestor believes he or she will be affected by the activity in a manner not common to members of the general public; and
- (4) request a contested case hearing.

A hearing request must strictly comply with requirement (1) above and must "substantially comply" with requirements (2) through (4). 30 TEX. ADMIN. CODE §55.251(c).

A request for a contested case hearing must be granted if the request is made by an affected person and the request:

- (1) complies with the requirements of 30 TEX. ADMIN. CODE §55.251;
- (2) is timely filed; and

- (3) is pursuant to a right to hearing authorized by law.

30 TEX. ADMIN. CODE §55.255(b)(2).

A hearing request is considered timely if it is submitted to the Commission within 30 days after the publication of the notice of application if the commission has not extended the period for hearing requests. 30 TEX. ADMIN. CODE §295.171.

IV. Hearing Request

The Authority timely filed a hearing request stating that GCWA owns Certificate of Adjudication No. 11-5169 which authorizes impoundment of water in the same reservoirs authorized by Certificate of Adjudication No. 11-5170. The Authority is successor to the Brazos River Authority in ownership of Certificate of Adjudication No. 11-5169. The Authority states that it is an “inter-adjacent diverter within the diversion reach requested by the applicant” and that the “subject application directly impacts the reliability of” GCWA’s water rights authorized by Certificates of Adjudication No. 11-5169 in the San Jacinto-Brazos Basin, and Nos. 12-5171 and 12-5178 in the Brazos Basin. GCWA states that it conveys water under its Brazos Basin certificates along with contract water via Jones and Oyster Creeks to a diversion point located at Dam 3.

The hearing request delineates five separate issues of concern under the heading “Effect of Proposed Water Right Amendment on Gulf Coast Water Authority[.]” They are listed in the request as paraphrased and quoted below:

- (1) The parent water rights permit (Permit No. 1467 as amended) of Certificate of Adjudication Nos. 11-5169 and 11-5170 was amended to reverse the shares of a total diversion volume of 30,000 acre-feet authorized to the permit holders. The original permit authorized 12,000 acre-feet to the District and 18,000 acre-feet to GCWA. The request claims that this amendment was made in error and states that granting amendment 11-5170A would propagate that error thus affecting GCWA’s water right.
- (2) The Authority is authorized to use any portion of the 18,000 acre-feet authorized to the District under Certificate of Adjudication No. 11-5170 that is “not actually consumed for municipal and industrial purposes.” The addition of agricultural use will result in an increase in actual use by the District and will, therefore, adversely affect the current rights of GCWA.
- (3) The volume of the reservoirs authorized under the two San Jacinto-Brazos Coastal Basin certificates has been substantially reduced since the priority dates of the water rights due to a loss of depth from siltation. There is no ability to increase the elevation of the reservoirs due to neighboring development, subsidence, and flood control strategies. Therefore, the current actual maximum capacity of the reservoirs is only enough to allow for the conveyance of water by GCWA. All water contained in the reservoirs is water owned and actively conveyed by GCWA. Continued

- diversion of water by the District except during rain events affects GCWA.
- (4) Because, as indicated in issue (3), continued diversion by the District from the reservoirs authorized by its water right will constitute a taking of water owned by GCWA, the draft amendment is in conflict with the State Water Plan which includes GCWA's 12,000 acre-feet "to meet municipal and industrial use."
 - (5) The addition of agricultural (irrigation) use "is a lower benefit and in addition takes water away from beneficial municipal and industrial uses" already authorized.

The Authority comments that it is willing to discuss the addition of permit conditions which it feels would relieve it from the stated effects of the application.

V. Executive Director's Recommendation

The Executive Director respectfully recommends that the Commission deny the hearing request. The hearing request does not demonstrate that GCWA is an affected person in this matter. The Authority is a governmental entity with authority under state law over issues which may potentially be impacted by this application. Therefore, GCWA is eligible for affected person status. *See* 30 TEX. ADMIN. CODE §55.256(b). However, while GCWA states that it owns Certificate of Adjudication No. 11-5169 which effectively grants co-ownership of the reservoirs, the request as submitted does not state how and why the proposed change in the regulated activity of the District will affect GCWA. *See* 30 TEX. ADMIN. CODE §§55.251(c)(2) and 55.256(c)(4)-(5). There is no demonstration that any likely impact on GCWA's use of property or the impacted natural resource will result from this amendment. *See* 30 TEX. ADMIN. CODE §55.256(c)(4)-(5). Because the hearing request does not show that any legal right, duty, privilege, power, or economic interest will be affected by the application, it is insufficient to support a determination that GCWA has a personal justiciable interest not common to members of the general public. *See* 30 TEX. ADMIN. CODE §§55.251(c)(2) and 55.256(a).

As indicated in Section IV, above, GCWA outlines five specific ways in which it perceives its interest will be affected by this application. First, GCWA asserts that by granting this amendment, the Commission will propagate an erroneous amendment granted in 1985 and memorialized during the adjudication process. The final determination issued by the Texas Water Commission on June 26, 1985 references a "pending application for an amendment" that would authorize the District to divert 18,000 acre-feet of water. It goes on to state that

"Permit No. 1467C was amended by Permit No. 1467D (Application No. 1563E, filed January 29, 1985) to revise the allocations of water authorized under the permit for BRA and the District...This amended permit is specifically made subject to the Final Determination of the adjudication of Permit No. 1467."

TEXAS DEP'T OF WATER RESOURCES, TEXAS WATER COMM'N, FINAL DETERMINATION

OF ALL CLAIMS OF WATER RIGHTS IN THE BRAZOS RIVER BASIN AND THE SAN JACINTO
– BRAZOS COASTAL BASIN MAINTAINED BY THE BRAZOS RIVER AUTHORITY, FORT BEND
COUNTY W.C.I.D. NO. 1 AND GALVESTON COUNTY WATER AUTHORITY. 17 (1985).

The Final Determination concludes that the District is authorized to divert a total of 18,000 acre-feet (17,805 acre-feet shown to have been historically used and 195 acre-feet the District showed it would diligently continue developing) and that the owner of Certificate of Adjudication No. 11-5169 is authorized to divert 12,000 acre-feet with a right to divert the unused portion of the District's 18,000 acre-feet. There is no indication in the final determination that the transposition of the diversion amounts was made in error. Presumably no such claim was made at the time the water right permit was adjudicated. Efforts to cure any defect or mistake in any permit made prior to the adjudication process should have been made at the hearing on the adjudication of the contested permit, or before the district court with which the final determination was filed and from which the final decree was issued. The commission has neither the jurisdiction nor the authority to retrospectively alter determinations made pursuant to the Water Rights Adjudication Act. The commission must defer to the determination made by the court. The Authority's claim has no relation to the regulated activity at question in this application.

Secondly, GCWA states that its water right authorizes it to divert portions of the 18,000 acre-feet authorized to the District "not actually consumed for municipal and industrial purposes." The Executive Director recognizes that Certificate of Adjudication No. 11-1569 authorizes GCWA to divert unused portions of the 18,000 acre-feet, but disagrees that this authorization limits the District only to municipal and industrial use. The full authorization in Certificate of Adjudication No. 11-1569 reads as follows:

"The Brazos River Authority is authorized to divert and use for municipal, industrial, and irrigation purposes with a priority date of May 14, 1948 any portion of the 18,000 acre-feet of water per annum, allocated to the Fort Bend County W.C.I.D. No. 1, under Certificate of Adjudication 12-5170 [sic], that is not actually consumed by the District."

Certificate of Adjudication No. 11-5169. The authorization does not reference the purposes of use authorized to the District. As a water right owner, the District may apply for change of use or for an additional purpose of use at any time. Nothing in Certificate of Adjudication No. 11-5169 limits the uses for which the District may apply. The nature of GCWA's interest in the 18,000 acre-feet is such that GCWA's use is subject entirely to the District's prior use. The District, irrespective of which specific use or uses authorized in its water right, has a right to beneficially use the entirety of the water authorized for diversion.

The Authority goes on to claim that the addition of agricultural use to the District's water right will result in increased consumption of the 18,000 acre-feet by the District, thus limiting GCWA's future share of the District's water. The commission does not consider whether an amendment will result in an increase in use by the applicant of

water it is already authorized to use. While Texas Water Code §11.046 requires water rights owners to return surplus water to the stream if the owner will not be putting that water to beneficial use, no authority restricts any owner of a legal, consumptive water right from using the maximum amount of water authorized in the water right permit for the beneficial uses provided for and conditioned therein. Further, an analysis of potential impacts of an application to amend a water rights permit on other water rights owners requires a presumption of full use of the diversion right authorized in the permit. TEX. WATER CODE §11.122(b); *City of Marshall v. City of Uncertain*, 206 S.W.2d 97, 100, 107-08, 112 (Tex. 2006). While Certificate of Adjudication No. 11-5169 identifies some interest in water diverted by the District, the interest is subject to the District's right to use the entirety of the water and is not one protected by the laws under which this application is considered. See 30 TEX. ADMIN. CODE §55.256(c)(1).

Thirdly, GCWA asserts that the capacity of the reservoirs authorized to the District and GCWA has been reduced to a point where the reservoirs can no longer be used for storage but rather have only enough capacity to be used to physically convey water. The Authority claims that it has the sole ability to convey water through the reservoirs and that, consequently, it owns the entirety of the water present therein. The Executive Director is unaware of any legal authorization to use the bed and banks of Jones and Oyster creeks within the reach authorized by Certificates of Adjudication Nos. 11-5169 and 11-5170 for the conveyance and reuse of water. Therefore, the commission cannot consider what impact this application might have on any such conveyance.

Fourth, GCWA asserts that because the affect described in the third issue raised in the request will essentially constitute a taking of its privately-owned water, this amendment will create a conflict with the State Water Plan which recognizes GCWA's rights. While the State Water Plan may recognize GCWA's consumptive water right, no authorization currently exists for the conveyance of private water through the reach of Jones and Oyster creeks at issue in this application. Consequently, the commission cannot consider whether this application will create an impact on any claim to private water conveyed within the bed and banks of these reservoirs.

Lastly, GCWA claims that granting this amendment would be improper because the addition of agricultural or irrigation use is of a lower benefit relative to, and will reduce the availability of water for, municipal and industrial uses to which the water in the reservoirs is currently employed. While Texas Water Code §11.024 does acknowledge a preference for municipal use to all other uses including agricultural, there is no restriction on whether a particular use can be granted if it does not interfere with preferable uses. Because this amendment does not authorize an increase in the amount of water that may be diverted above that which is already appropriated by the District, it cannot be said that any water right owner, including the District, will be deprived or limited in its ability to continue using water currently authorized for any beneficial purpose, including domestic and municipal uses. The degree to which agricultural use is more or less beneficial than any other use is not a consideration in this matter.

For the above-stated reasons, and based upon all information provided by GCWA in its hearing request, the Executive Director concludes that GCWA has not demonstrated that it is an affected person for purposes of reviewing the District's application. The Executive Director recommends that the commission deny the hearing request on that basis and only refer this matter to hearing if it finds, in its discretion, that a hearing would be in the public interest. 30 TEX. ADMIN. CODE §§55.255(c).

Respectfully submitted,
Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

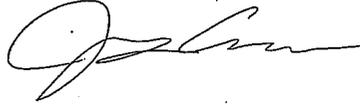
Robert Martinez, Director
Environmental Law Division



By _____
James Aldredge, Staff Attorney
Environmental Law Division
State Bar No. 24058514
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Representing the Executive Director of the
Texas Commission on Environmental Quality

CERTIFICATE OF SERVICE

I certify that on March 28, 2011, an original and seven copies of the "Executive Director's Response to Hearing Requests" was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, was electronically filed with the same, and a complete copy was transmitted by electronic mail, facsimile, or hand-delivery to all persons on the attached mailing list.



James Aldredge, Staff Attorney
Environmental Law Division
State Bar No. 24058514

Attachment A

Responses to Requests for Information
April 28, 2008 and August 1, 2008

KELLY HART & HALLMAN LLP

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August 1, 2008

VIA HAND DELIVERY

Mr. Ron Ellis
Texas Commission on Environmental Quality
12100 Park 35 Circle
Bldg. F, Room 3101
Austin, Texas 78753

Re: Fort Bend County W.C.I.D. No. 1; Application No. 11-5170A
to Amend Certificate of Adjudication No. 11-5170; TWC §11.122;
Jones and Oyster Creek, San Jacinto-Brazos Coastal Basin; Fort Bend County

Dear Ron:

This letter is submitted on behalf of the Fort Bend County W.C.I.D No. 1 (the "District") in response to your June 24, 2008 request for information ("RFI") regarding the above-referenced application (the "Application") to amend Certificate of Adjudication No. 11-5170 (the "Certificate"). The District appreciates your attention to this important matter, and hereby offers the following responses to your RFI inquiries. These responses are numbered in accordance with your June 24, 2008, letter.

1. Update the *System Inventory and Water Conservation Plan for Agricultural Water Suppliers Providing Water to More Than One User* that was submitted on May 1, 2008, to include the following information pursuant to 30 Texas Administrative Code (TAC) §288.4.

Response:

- a. **Specific, quantified five-year and ten-year targets for water savings including maximum allowable losses for the storage and distribution system.**
 - 1a. The District has amended its *System Inventory and Water Conservation Plan for Agricultural Water Suppliers Providing Water to More Than One User (WCP)* to include quantified five- and ten-year targets and has revised the section regarding maximum allowable losses. A copy of the WCP is provided as Attachment No. 1.

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- b. A provision calling for a requirement in every wholesale water supply contract entered into or renewed after official adoption of the plan (by either ordinance, resolution, or tariff), and including any contract extension, that each successive wholesale customer develop and implement a water conservation plan or water conservation measures using the applicable elements in this chapter. If the customer intends to resell the water, the contract between the initial supplier and customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provisions of this chapter.

- 1b. This provision is included in section X, subsection 1 of the District's amended WCP (Attachment No. 1).

2. **Submit official adoption of the updated *System Inventory and Water Conservation Plan for Agricultural Water Suppliers Providing Water to More Than One User*, by ordinance, rule, resolution, or tariff, indicating that the plan reflects official policy of the supplier.**

Response:

2. The District adopted its amended Water Conservation Plan on July 15, 2008 by formal resolution of the Board of Directors, Resolution # 2008-2. Please refer to Attachment No. 2 for a copy of this resolution.

3. **Provide documentation of coordination with the regional water planning groups in order to ensure consistency with appropriate approved regional water plans.**

Response:

3. The District has initiated communication with the coordinating engineering consultant for the Region H Water Planning Group, Mr. Mike Reedy. Please refer to Attachment No. 3 for a copy of the letter sent to Mr. Reedy.

4. **Verify the latitude and longitude provided for Dam 1. Staff review indicates that the latitude and longitude submitted with the response is for a dam located upstream of the site the applicant identified as Dam 1.**

Response:

4. The latitude and longitude of the centerline of Dam 1 are as follows:
a. Longitude: W 95 degrees, 38 minutes, 50.52 seconds
b. Latitude: N 29 degrees, 37 minutes, 14.66 seconds

5. Provide the individual surface area and capacity for Reservoirs 1 through 3 and the contributing drainage area for each individual reservoir. Staff recognizes that the certificate authorizes impoundments of 8,925.48 acre-feet of water in a system of reservoirs. However, because the application requests the right to divert water from reservoirs 1 and 3, the individual capacities of the reservoirs will be needed.

Response:

5. The capacity of each reservoir is identified in the report from City of Sugar Land Engineering Department provided hereto as Attachment No. 4. The delineation of the contributing drainage area for the system of reservoirs is also provided in a map included with this report. The surface area of each reservoir is identified in the Supplemental Dam/Reservoir Information Sheet for each dam which are provided as Attachment No. 5.

6. In addition to diversion points identified on the reservoirs impounded by Dams 1 through 3, Exhibit 4 identifies diversion points on Cleveland Lake, Oyster Creek offshoot, Lake Pointe, Alkire Lake, Horseshoe Lake and Eldridge Lake. The application states that the proposed diversion points will be on the perimeter of the reservoirs impounded by Dams 1 through 3 or between Dams 1 through 3. Confirm that the applicant is requesting diversion from the perimeter of the six additional reservoirs and provide Supplemental Diversion Point information sheets (enclosed) and Supplemental Dam and Reservoir Sheets (enclosed) for each additional reservoir and point.

Response:

6. Attachment No. 5 includes revised Supplemental Dam and Reservoir information sheets for the diversion reach locations. The District has requested to divert from the reach identified in the Application, which includes the perimeters of the reservoirs created by Dams 1, 2, and 3, and the Horseshoe Lake Control Dam. Therefore no Supplemental Diversion Point information sheets are appropriate for this application. The "additional reservoirs" so noted by the TCEQ are actually part of the Oyster Creek Reservoir system. These reservoirs are simply arms of Oyster creek, directly connected to Oyster Creek. They are not separate water bodies but are part of the original reservoir system requested and authorized pursuant to Certificate of Adjudication No. 11-5170. The use of the terms "offshoot" and "lake(s)" are not intended to designate separate water bodies, but rather serve as a colloquial designation of the general areas along Oyster Creek. It should also be noted that, based on information accessed for the purpose of this RFI response, the reservoir created by Dam 1 actually extends upstream to the Harlem Prison Farm Dam, as referenced and delineated in the maps accompanying the adjudication process for the Certificate. The District previously provided maps with the Application depicting the reservoir as a small pool area upstream of Dam 1. However, it is clear that the reservoir created by Dam 1 extends much further upstream. Regardless, as per the Application, the District only seeks to divert from the perimeter of this reservoir so long as the diversion

Mr. Ron Ellis
August 1, 2008
Page 4 of 4

points lie within the District's boundaries or those of the City of Sugar Land and its ETJ. Therefore, only a portion of the Dam 1 reservoir has been included in this assessment and this request. All data is provided in the mapping associated with the report submitted as Attachment No. 4.

7. Provide a USGS topographic quadrangle with the area of inundation for each of the reservoirs clearly marked.

Response:

7. As indicated in the response to Question No. 5 above, the area of inundation for the reservoirs is delineated in the report provided as Attachment No. 4.

If you have any questions or concerns regarding the information provided herein, please do not hesitate to call at your convenience. Thank you for your attention to this important matter.

Sincerely,



Stephen C. Dickman

SCD/ow

Enclosures as noted

cc: Mr. Leon Anhaiser
Mr. Brad B. Castleberry
Ms. SuEllen Staggs

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April 28, 2008

VIA HAND DELIVERY

Mr. Ron Ellis
Texas Commission on Environmental Quality
12100 Park 35 Circle
Bldg. F, Room 3101
Austin, Texas 78753

Re: Fort Bend County W.C.I.D. No. 1; Application No. 11-5170A
to Amend Certificate of Adjudication No. 11-5170; TWC §11.122;
Jones and Oyster Creek, San Jacinto-Brazos Coastal Basin; Fort Bend County

Dear Ron:

This letter is submitted on behalf of the Fort Bend County W.C.I.D. No. 1 (the "District") in response to your March 26, 2008 request for information ("RFI") and fees regarding the above-referenced application (the "Application") to amend Certificate of Adjudication No. 11-5170 (the "Certificate"). The District appreciates your attention to this important matter, and hereby offers the following responses to your RFI inquiries. These responses are numbered in accordance with your March 26, 2008, letter.

In response to Item Nos. 1-7 on pages 1 and 2 of the RFI (i.e., those questions addressing the *Marshall v. Uncertain* notice issues), the District hereby elects to publish notice in lieu of further supplementing the Application. Enclosed please find a check in the amount \$58.90 to cover the notice fees in this case. Responses to the remaining questions are provided as follows:

1. *Provide evidence indicating that Gulf Coast Water Authority, owner of Certificate of Adjudication No. 11-5169, consents to this amendment.*

Response to Question No. 1:

The District, the City of Sugar Land, and the Gulf Coast Water Authority ("GCWA") have all been in discussions regarding the Application. At this time, however, the District cannot provide written consent from GCWA. The failure of the District to provide such consent should not impede the Executive Director's review and processing of this application since under

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TCEQ's procedural rules GCWA can at the appropriate time file a protest or request for hearing if it objects in any way to the District's application.

2. Describe the current operation of Reservoirs 1 through 3. Include operations under any water rights authorized to divert from these reservoirs. Indicate which entity operates and maintains Reservoirs 1 through 3.

Response to Question No. 2:

The District and GCWA jointly operate and maintain Reservoirs 1 through 3 pursuant to the terms and conditions of their respective Certificates of Adjudication. Under an agreement with the District, GCWA is responsible for day-to-day operation and maintenance of the dams and for ensuring that dam levels are appropriate for meeting the water diversion needs of the District and GCWA under their respective Certificates of Adjudication.

3. Clarify the source of supply for this application. The application states that the sources of water associated with the amendment are the District's dams and reservoirs. Certificate of Adjudication No. 11-5170 only authorizes diversion from Reservoir 2.

Response to Question No. 3:

The source of supply for the Application is state water from the drainage area associated with the respective reservoirs authorized pursuant to the District's Certificate of Authority No. 11-5170. The sole diversion point utilized by the District is from Reservoir No. 2 as authorized by Certificate of Adjudication No. 11-5170. In stating in the application that sources of water associated with this amendment are the District's dams and reservoirs, the District was not implying that water was being diverted from any diversion point other than as authorized in Certificate of Adjudication No. 11-5170.

4. Clarify the place of use for all of the water that will be used by the City of Sugarland under the Surface Water Supply Agreement with Fort Bend County WCID #1. The application states that the place of use would be within the corporate boundaries of the City, which are within the boundaries of the District. The map submitted as Exhibit 4 of the application indicates that the corporate boundaries of the City extend beyond the boundaries of the District.

Response to Question No. 4:

Certificate of Adjudication No. 11-5170 authorizes appropriation of 18,000 acre-feet of water in the San Jacinto-Brazos Coastal Basin, but the water right does not limit the place of use of the 18,000 acre-feet to areas within the District's boundaries. The only limitation on place of use is that the additional 159.27 acre-feet of the District's water right must be used within the District's boundaries. The application amendment requests a change in purpose of use of the 18,000 acre-feet of water to add an agricultural/irrigation purpose of use. The application amendment also requests, for the first time, a limitation on the place of use for the 18,000 acre-feet of water which place would be within the City's corporate boundaries. The fact that the City's boundaries may cover some areas not located within the District does not violate any current place of use restriction in Certificate of Adjudication No. 11-5170. Also note that the

statement on page 2 of Attachment ("Amount and Purpose of Diversion and Use") of the application should be revised as follows: "The place(s) of use would be within the corporate boundaries of the City, which place(s) of use are mostly ~~also~~ within the boundaries of the District."

5. *Indicate whether the application requests an interbasin transfer of water. The map submitted as Exhibit 4 indicates that the City's corporate boundary includes land that is located in the adjacent Brazos and San Jacinto River Basins. Certificate of Adjudication No. 11-5170 authorizes use of the 18,000 acre-feet of water in the San Jacinto-Brazos Coastal Basin. If the application does not request an interbasin transfer, explain how water diverted from the San Jacinto-Brazos Coastal Basin under Certificate of Adjudication No. 11-5170 will be segregated within the City's distribution system so that none of the water will be conveyed to the City's customers for municipal or industrial use or used for irrigation of land located in either the Brazos River Basin or the San Jacinto River Basin.*

Response to Question No. 5:

The place of use of all water under Certificate of Adjudication No. 11-5170 under the amended water right as requested by the District would be areas within the City's corporate limits which areas are mostly within the District's boundaries. To the extent that the City's corporate boundaries may cover areas outside the San Jacinto-Brazos Coastal River Basin boundaries, the District requests authorization for an interbasin transfer pursuant to TEX. WATER CODE § 11.085(v)(3) and (4).

6. *Provide Supplemental Dam and Reservoir Information Sheets (enclosed) for Reservoirs 1 through 3.*

Response to Question No. 6:

Supplemental Dam and Reservoir Sheets for Reservoirs 1 through 3 are provided herewith as Exhibit No. 1.

7. *Verify that the outlets on each of the three reservoirs (Reservoirs 1 through 3) are in good working order.*

Response to Question No. 7:

Mr. Leon Anhaizer has been authorized by the District Board to take whatever actions are necessary to respond to TCEQ's requests for information on this application in order to secure the requested amendment. See the Board resolution attached as Exhibit No. 2. Based on his prior six years as President of the District's Board of Directors and current status as a consultant for the District's Board, Mr. Anhaizer is very familiar with the operation and maintenance history of the three dam structures. Mr. Anhaizer personally inspected the three dams on April 25, 2008 and has verified that all three dam structures are in good working order. Dam Nos. 2 and 3 are in excellent condition structurally and in all other respects. Dam No. 1 is in excellent condition in all respects except that a bridge going over the top of the dam experienced a fire and some of the wooden boards making up the bridge are partially burned. However, the bridge on

top of Dam No.1 does not present any public safety concerns as no members of the public utilize the bridge.

8. *Explain how the applicant will account for the unused portion of the 18,000 acre-feet that can be diverted under Certificate of Adjudication No. 11-5169.*

Response to Question No. 8:

See response to RFI Question No. 2 which describes the working relationship between the District and GCWA under their respective certificates of adjudication. Whatever surface water that is not diverted by the District under the amended water right is available for diversion by GCWA. The District and GCWA account for and report their diversions pursuant to their respective certificates of adjudication so all water used by both parties will be properly reported and accounted for to TCEQ.

9. *Indicate whether any of the water diverted from Reservoir #3 will be diverted from the point authorized by Certificate of Adjudication No. 11-5169. If multiple rights will be diverting from the same point, clarify the maximum diversion rate that will apply at that point. Indicate if the rate will be the same rate as authorized under Certificate of Adjudication No 11-5169, or if the diversion rate be the combined rate of the two certificates.*

Response to Question No. 9:

The District's diversion points under the amended water right will be as described in the application which are at points on the perimeter of, or anywhere in between, Dams 1 and 3. However, the District will not be diverting water from the diversion point authorized by Certificate of Adjudication No. 11-5169.

10. *Indicate whether the applicant is currently using the water right for municipal purposes.*

Response to Question No. 10:

The District is not currently diverting and using state water for municipal purposes.

11. *Provide a Water Conservation Plan for a System Providing Agricultural Water to More Than One User (enclosed) pursuant to 30 TAC §288.4(3).*

Response to Question No. 11:

Attached hereto as Exhibit No. 3 is an adopted Water Conservation Plan for a System Providing Agricultural Water to More Than One User.

12. *Provide a Water Conservation Plan for Industrial/Mining Purposes (enclosed) pursuant to 30 TAC §288.3.*

Mr. Ron Ellis
April 28, 2008
Page 5 of 5

Response to Question No. 12:

The District is only seeking to add an agricultural purpose of use in order for the City to utilize raw water (rather than more expensive treated water) for irrigation thus conserving potable water supplies, assisting in meeting the goals of the Fort Bend Subsidence District, and resulting in savings to ratepayers. The District is not currently diverting and using state water for industrial purposes and the District has not used any water for industrial purposes since the Imperial Sugar plant shut down in 2003, nor does the District have any plans to use water for industrial purposes. If and when any water is used for industrial purposes, the District will submit a water conservation plan for industrial/mining purposes pursuant to 30 TAC §288.3.

13. Provide color photographs of the proposed diversion reach. Photographs should be referenced to the topographic map indicating the location and direction of the shot.

Response to Question No. 13:

The District is submitting color photographs of the proposed diversion reach, along with a key map as Exhibit No. 4.

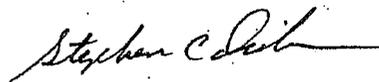
14. Indicate if screens will be used on the diversion equipment.

Response to Question No. 14:

The diversion works will be equipped with screens.

If you have any questions or concerns regarding the information provided herein, please do not hesitate to call at your convenience. Thank you for your attention to this important matter.

Sincerely,



Stephen C. Dickman

SCD/ow

Enclosures as noted

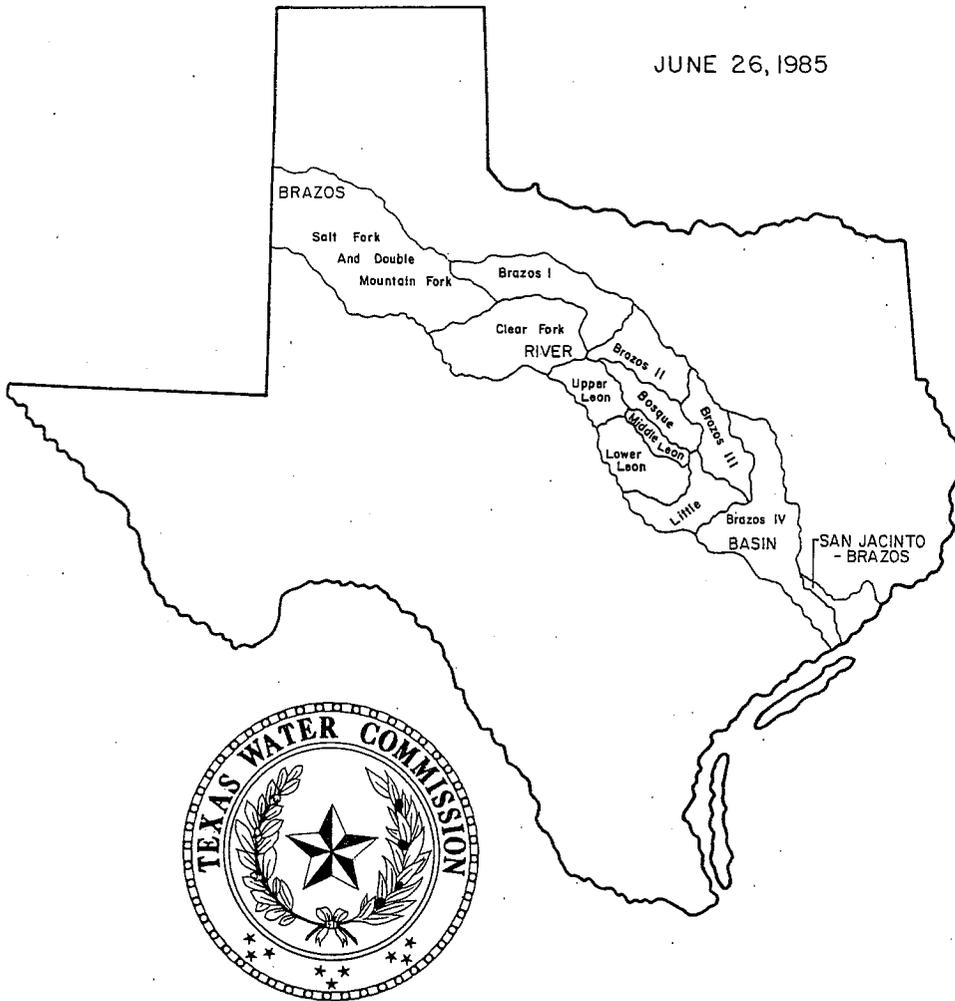
cc: Mr. Leon Anhaiser
Mr. Brad B. Castleberry
Ms. SuEllen Staggs
Mr. Robert Istre

Attachment B

Excerpt from the Final Determination
of All Claims of Water Rights in the Brazos River Basin
and the San Jacinto-Brazos Coastal Basin
Maintained by the Brazos River Authority,
Fort Bend County W.C.I.D. No. 1
and Galveston County Water Authority
June 26, 1985

FINAL DETERMINATION OF ALL
CLAIMS OF WATER RIGHTS IN
THE BRAZOS RIVER BASIN AND THE
SAN JACINTO - BRAZOS COASTAL BASIN.
MAINTAINED BY THE BRAZOS RIVER
AUTHORITY, FORT BEND COUNTY
W.C.I.D. NO. 1 AND GALVESTON COUNTY
WATER AUTHORITY.

JUNE 26, 1985



PAUL HOPKINS, Chairman
LEE B.M. BIGGART, Commissioner
RALPH ROMING, Commissioner

3. Claimant may diligently develop a diversion and use of not to exceed 200,000 acre-feet of water per year (30,000 acre-feet for municipal purposes and 170,000 acre-feet for industrial purposes) from reservoirs authorized under Permits Nos. 2107, 2108, 2109, 2110, 2366, 2367, 1262, 2111, 2950, 3403, and 3940, all as amended, for use in the San Jacinto-Brazos Coastal Basin. Diversions from the Brazos River Basin to the San Jacinto-Brazos Coastal Basin are authorized at diversion points D-3200 at a maximum diversion rate of 444 cfs and D-3250 at a maximum diversion rate of 467 cfs. Permit No. 2661, as amended, confers no priority date.

DIVERSION POINTS NOS: 3200, 3810 and 3200A
TRACTS NOS: 2380, 2390, 2400 and 2410

OWNERSHIP: Brazos River Authority and Galveston County Water Authority
IR: 29-30
APP: 14, 16, 18, 20
II SF 122-169

SECTION 11.307 CLAIM: For claimant Brazos River Authority (BRA) under Permit No. 1040, as amended, to divert and use 99,932 acre-feet of a reservoir of water per year for irrigation (49,966 acres), industrial, and municipal purposes from the Brazos River at a maximum diversion rate of 685 cfs, with a priority date of January 15, 1926. (Exh. 33)

SECTION 11.307 CLAIM: For claimant Galveston County Water Authority (GCWA) under Permits Nos. 1040D and 1040G to impound water provided by the Brazos River Authority in a 7308 acre-foot capacity reservoir located near Texas City, with no claimed priority date. (Exh. 34)

FINDINGS:

1. The BRA is successor in interest to the Brazos Valley Irrigation Company and the American Canal Company with respect to Permit No. 1040. (II SF 168)
2. The GCWA is successor in interest to Industrial Water Company with respect to Permit No. 1040. (Exh. 38, page 30; II SF 168)
3. The BRA and the GCWA are owners of separate interests in Permit No. 1040, as amended, with the only interest of the GCWA being the right to construct and operate a reservoir. (Exhs. 35A-X)
4. On January 15, 1926, Brazos Valley Irrigation Company filed a "Presentation of Desire to Investigate Feasibility of Irrigation Project." (Exh. 35B)
5. Permit No. 1040 was issued on September 27, 1927. The application, Application No. 1108, was filed on July 15, 1927. (Exh. 35G)
6. Permit No. 1040 (Exh. 35G) includes the following provisions and conditions:
 - a. Permittee is authorized to appropriate and use 99,932 acre-feet of water per year from the Brazos River at a diversion rate of not to exceed 685 cfs.
 - b. The purpose of use is irrigation for three tracts of land totalling 49,966 acres.
 - c. Irrigation is restricted to two acre-feet of water per acre.
 - d. The permit is granted subject to provisions of an agreement entered into on September 26, 1927 (Exh. 35F) with G. M. Jackson and W. S. Lehrer which specified that permittee could not pump at a rate in excess of one-third the capacity set out in the permit (685 cfs) for more than seven days a month during the irrigation season, with three full weeks to elapse between each period of pumping at full capacity except when flows at the point of diversion exceeded the diversion authorized in the Jackson-Lehrer permit. Richmond Irrigation Company and Houston Lighting and Power Company have succeeded to the rights of Lehrer and Jackson under the agreement. (Letter of Roberts of December 3, 1984)
7. Permit No. 1040 was amended by Permit No. 1040A on June 16, 1936, by application filed on April 23, 1936, to authorize the use for manufacturing or commercial purposes of any part of the water authorized under Permit No. 1040. (Exh. 35I)
8. Permit No. 1040A was amended by Permit No. 1040B (Application No. 1416, filed August 21, 1941) to change the place of use for irrigation of 44,851 acres of land. (Exh. 35J)
9. Permit No. 1040B was amended by Permit No. 1040C (Application No. 1428, filed April 14, 1942) to change the place of use of 3328 acres of land. (Exh. 35K)
10. Permit No. 1040C was amended by Permit No. 1040D (Application No. 1508, filed March 17, 1947) to authorize the American Canal Company to divert and use for manufacturing and municipal purposes water not required under Permit No. 1040 for irrigation. Facilities for impounding water in a reservoir near Texas City were also approved. (Exh. 35L)
11. Permit No. 1040D was amended by Permit No. 1040E (Application No. 1632, filed September 13, 1949) to change areas of irrigation. (Exh. 35M)

18. The one reservoir associated with Permit No. 1040, as amended, is owned and operated by GCWA. It is located in the San Jacinto-Brazos Coastal Basin and is designated as D-3200A. The diversion points associated with Permit No. 1040, as amended, are D-3200 located on the Brazos River in Abstract No. 29 in Fort Bend County and D-3810 which is a lift station off Oyster Creek in Abstract No. 89 in Fort Bend County. (II SF 126)

19. Four tracts are associated with Permit No. 1040, as amended. These tracts are designated as T-2380, T-2390, T-2400, and T-2410. (II SF 126)

20. Acreage locations and amounts irrigated under Permit No. 1040, as amended, vary each year. (II SF 142)

21. The maximum diversion rate utilized out of the authorized 685 cfs has been 444 cfs. (II SF 147)

22. Diversion rates of above 444 cfs have not been necessary in the past because most diversion was for irrigation; however, as the area served by Permit No. 1040, as amended, becomes more industrialized, higher diversion rates will be needed. (Exh. 77; Contest SF)

23. The maximum acres irrigated out of the authorized 49,965.8 acres was 27,249.8 acres in 1954. (II SF 156; Exh. 4, page 31)

24. The maximum amount of state water diverted and used for all authorized purposes in any calendar year since the issuance of the permit was 100,727 acre-feet in 1963. This exceeded the authorized amount of 99,932 acre-feet of state water used for the individual authorized purposes is as follows: irrigation - 95,641 acre-feet in 1963; industrial - 21,377 acre-feet in 1980; and, municipal - 6425 acre-feet in 1956. (Exh. 8, sub-exh. 7, page 1; II SF 153-154)

25. Claimant BRA has 253,368.65 acre-feet of water per year committed contractually from Permits Nos. 1040, 1299, and 1467, backed up by water provided by Permits Nos. 1262, 2111, 2107, 2108, 2109, 2110, 2366, and 2367. (Exh. 8, sub-exh. 6)

26. Claimant GCWA owns and operates the 7308 acre-foot capacity reservoir authorized by Permits Nos. 1040D and 1040G. (Exh. 38, page 3)

a. The reservoir is located at the terminus of the Industrial Canal which is fed by Canal System A and Canal System B. (Exh. 37, page 5)

b. The reservoir was constructed in 1948 and has been in continuous use since its construction. (Exh. 38, pages 3 and 4)

c. The supply of water stored in the reservoir is authorized by Permits Nos. 1040, 1467 and 1299, all as amended, held by the BRA and by water released from storage by the BRA pursuant to Permit No. 2661, as amended, and Contractual Permit No. CP-137. (Exh. 38, page 5)

27. Permit No. 1040H was amended by Permit No. 1040I (Application 1108J, filed January 29, 1984) to clarify that claimant may divert and use for municipal, industrial, and irrigation purposes a maximum of 99,932 acre-feet of water per year, with the maximum land to be irrigated being 42,123.7 acres out of two tracts in Fort Bend, Brazoria, Harris, and Galveston Counties. A new diversion point is also authorized on the east, or left, bank of the Brazos River, approximately 14 miles southeast of Richmond - this point being the same diversion point authorized by Permit No. 1299. This additional diversion point does not increase the authorized diversion rate under Permit No. 1040, or the diversion rate authorized under Permit No. 1299. This amended permit is specifically made subject to the final determination of the adjudication of Permit No. 1040. (Exh. 79)

CONCLUSIONS:

1. Claimant BRA is recognized a right under Permit No. 1040, as amended, to divert and use an aggregate amount of 99,932 acre-feet of water per year from diversion points D-3200, located on the Brazos River in Abstract No. 26 in Fort Bend County, and D-3250, located on the Brazos River in Abstract No. 7 in Fort Bend County, at a maximum combined diversion rate of 444 cfs for municipal, industrial, and irrigation purposes, with a priority date of January 15, 1926.
2. Claimant BRA is recognized a right to irrigate a maximum of 42,123.7 acres of land out of two tracts in Fort Bend, Brazoria, Harris, and Galveston Counties, which tracts are described in an attachment submitted with the application (No. 1108J) for Permit No. 1040I.
3. Claimant BRA may continue the diligent development of diversion rates up to a maximum of 685 cfs.
4. The rights recognized Claimant BRA under Permit No. 1040, as amended, are subject to the terms of that agreement entered into September 26, 1927 between Brazos Valley Irrigation Company and G. M. Jackson and W. S. Lehrer.
5. Claimant GCWA is recognized a right to impound 7308 acre-feet of water in a 7308 acre-foot capacity reservoir located at diversion point D-3200A at the termination of the Industrial Canal which is fed by Canal System A and Canal System B, with a priority date of March 17, 1947.

- it No. 1467, as in a series of led; to use the divert and use from diversion diversion rate ipal purposes,
- ent and use of industrial and, 1948, and may p to a maximum
- No. 1467, as n a series of led; to use the divert and use -feet of water located on the municipal, and l, 1948.
- maximum of 5462 acres in Fort ch tracts are plication (No.
- and use for th a priority l acre-feet of ct by Permit sd by claimant
- iversion rates
12. Permit No. 1040F (formerly Permit No. 1040D), issued on May 29, 1963, was subsequently voided by court proceedings. (Exhs. 35 O-R)
 13. Permit No. 1040E was amended by Permit No. 1040G (Application 1108H, filed June 10, 1974) to authorize GCWA to impound 7308 acre-feet of water. Permit No. 1040G states that no additional use of water or increased rate of diversion is contemplated. Permit No. 1040G also specifies that it amends Permit No. 1040A which authorized GCWA to construct an 8412 acre-foot reservoir. The Permit 1040A referenced in Permit No. 1040G was subsequently relabelled and is presently Permit No. 1040D. (Exh. 35U; Exhs. 35 A-X)
 14. Permit No. 1040G was amended by Permit No. 1040H (Application 1108I, filed November 24, 1980) to delete the restriction on use of more than two acre-feet of water per acre for irrigation. (Exh. 35W)
 15. Permit No. 2661, as amended, authorizes claimant BRA to release water from eleven reservoirs for use in the San Jacinto-Brazos Coastal Basin. The permit authorizes the diversion and use of a total of 200,000 acre-feet of water for municipal and industrial purposes in the San Jacinto-Brazos Coastal Basin. (Exhs. 57A-C)
 16. Permit No. 2661, as amended (Exhs. 57A-C), contains the following special conditions:
 - a. Nothing in this permit shall be construed as authorizing an appropriate right in excess of those presently held by permittee as evidenced by the aforementioned permits. Those public waters diverted pursuant to this permit shall consist wholly of waters previously authorized to be diverted by permittee, which waters shall be released from upstream storage and transported to the points of diversion as hereafter specified.
 - b. Permittee is authorized to use the beds and banks of the Lampasas River, Leon River, Little River, North San Gabriel River and San Gabriel River, and the beds and banks of Yegua Creek and the Brazos River for the purpose of transporting stored waters from the place of storage to the points of diversion from the Brazos River.
 17. Claimant BRA is also the owner of an order authorizing system operation of certain reservoirs in the Brazos River Basin which was issued by the Commission on July 23, 1964 (hereinafter called the System Operation Order). The System Operation Order, as amended, authorizes claimant to operate certain reservoirs as elements of a system to minimize waste and to conserve water in reservoirs in which the supply is short by making releases from reservoirs in which the supply is more abundant. (Exhs. 62A-E)

DIVERSION POINTS NOS: 3225, 3720, 3740, 3760, 3770, 3790, 3800, 3810, and 3820
TRACTS NOS: 2780, 2790, 2800, 2810, 2820, 2825 and 2830

OWNERSHIP: Brazos River Authority and Fort Bend County Water Control and Improvement District No. 1

IR: 33-36
APP: 15-16
II SF 170-212

SECTION 11.307 CLAIM: For claimant Brazos River Authority, (BRA) under Permit No. 1467, as amended, to divert and use 30,000 acre-feet of water per year for domestic, municipal, industrial, irrigation (5462 acres), and recreational purposes from Jones Creek and Upper Oyster Creek and a series of small lakes which impound water in a system of small, interconnected lakes having an aggregate capacity of 8925.48 acre-feet, with a priority date of November 17, 1947. (Exh. 41)

SECTION 11.307 CLAIM: For Claimant Fort Bend County Water Control and Improvement District No. 1 (District) under Permit No. 1467, as amended, to divert and use 12,000 acre-feet of water per year (or up to 18,000 acre-feet of water per year as authorized pursuant to a pending application for an amendment to Permit No. 1467) for domestic, municipal, industrial (including generation of electric power) and recreational purposes from Jones Creek and Upper Oyster Creek and a series of small lakes at a maximum diversion rate of 21,000 gpm (46.7 cfs) [or up to 32,200 gpm (71.87 cfs) as authorized pursuant to a pending application for an amendment to Permit No. 1467] and to impound water in a system of small, interconnected lakes with an aggregate capacity of 8925.48 acre-feet with a priority date of November 17, 1947. (Exh. 39)

SECTION 11.307 CLAIM: For claimant District under Certified Filing No. 756 to divert and use 168 acre-feet of water per year from Oyster Creek and a series of small lakes for industrial and irrigation (35 acres) purposes at a maximum diversion rate of 21,000 gpm (46.7 cfs) and to impound water in a system of small lakes having an aggregate capacity of 8925.48 acre-feet, with a priority date of 1912 or earlier. (Exh. 40)

FINDINGS:

1. BRA is the successor in interest to the American Canal Company with respect to Permit No. 1467. (Exh. 41)

2. Permit No. 1467 (Exh. 42A) includes the following provisions and conditions:
 - a. Permittee District is authorized to use not to exceed 12,000 acre-feet of water per year for domestic and municipal uses and to convert materials of lower order of value into forms having greater usability and commercial value.
 - b. Permittee American Canal Company is authorized to use up to 18,000 acre-feet of water per year for irrigation with a maximum of two acre-feet to be applied per acre.
 - c. Permittee American Canal Company is authorized to use any of the 12,000 acre-feet per year not used by permittee District and any of the 18,000 acre-feet per year not used for irrigation by permittee American Canal Company for domestic and municipal uses and to convert materials of a lower order of value into forms having greater usability and commercial value.
 - d. Permittees are authorized to obtain the 30,000 acre-foot total by impounding water in a system of reservoirs having a total capacity of 8843.95 acre-feet.
 - e. Permittees are authorized to use and maintain six dams described in the permit.
 - f. Permittee District is authorized to maintain a pump station located at a point which bears south 22°30' W, 10,100 feet distant from the northeast corner of the S. M. Williams League, Original Grant, on the west bank of Upper Oyster Creek with a maximum diversion rate of 6000 gpm.
 - g. Permittee American Canal Company is authorized to maintain a pumping station located at a point which bears south 31° E, 9350 feet from the northwest corner of the William Stafford 1-1/2 League, Original Grant, and 2000 feet distant from the east bank of Oyster Creek with a maximum diversion rate of 114,000 gpm.
 - h. A total of 5462 acres comprised of land from twelve different tracts are authorized to be irrigated.
3. Application No. 1563 for Permit No. 1467 was accepted for filing on May 14, 1948, and the permit was issued on January 13, 1949. (Exh. 42A)
4. Permit No. 1467 was amended by Permit No. 1467A (formerly Permit No. 1967) (Application No. 2165, filed May 30, 1960) to authorize construction of another dam which would create an additional 1447 acre-feet of impounding capacity in the lake system and to authorize recreational use. (Exh. 42B)
5. Permit No. 1467A was amended by Permit No. 1467B (Application No. 1563C, filed December 1, 1980) to authorize:
 - a. Deletion of a 2 acre-foot per acre restriction on irrigation.
 - b. Authorization of increase of lake capacity by 28 acre-feet.
 - c. Authorization of impoundment of a total of 8871.95 acre-feet of water.
 - d. Deletion of reference to Lake Venice.
 - e. Extension of recreational use to entire reservoir system.
 - f. A time priority for these amendments of December 1, 1980. (Exh. 42D)
6. Permit No. 1467B was amended by Permit No. 1467C (Application No. 1563D, filed January 3, 1984) to authorize two extensions to a lake which increased that lake's capacity by 53.53 acre-feet and the total impounding capacity of the lake system to 8925.48 acre-feet, with a time priority of January 3, 1984. (Exh. 42E)
7. Claimants BRA and District are co-owners of Permit No. 1467, as amended. (Exh. 42E)
8. Claimant District is the owner of Certified Filing No. 756, which was originally issued to Imperial Sugar Company but was assigned to the District in about 1937. The time priority for Certified Filing No. 756 is June 27, 1914. (Exh. 43A)
 - a. Certified Filing No. 756 authorizes the use of water for irrigation, manufacturing, and waterworks. (Exh. 43A)
 - b. Certified Filing No. 756 authorizes a dam and 2,000,000

16. Recreational use has been made of the reservoir system. (II SF 182)
17. BRA is the entity that actually operates and maintains the reservoir system. (II SF 190)
18. Under Certified Filing No. 756, the maximum diversion rate used has been 21,000 gpm (46.7 cfs). (Exh. 44A, page 11)
 - a. The maximum water used in any one calendar year and claimed under CF-756 was 159.27 acre-feet in 1914 for industrial purposes. (Contest SF)
 - b. The maximum acres ever irrigated in any one calendar year under CF-756 was 35 acres in 1918. (Exh. 4, page 42; Exh. 44A, page 10)
 - c. Water has been impounded under CF-756 at D-3790, a dam which forms part of an 8925.48 capacity reservoir system. The District does not seek to perfect under CF-756 the impoundment right of water which is now part of a reservoir system authorized by Permit No. 1467, as amended. (Exh. 4, page 41; II SF 175, 200)
 - d. The tract associated with CF-756 is T-2850 which is now largely residential development. (II SF 177)
19. Under Permit No. 1467, as amended, the District has shown:
 - a. The maximum diversion rate was equal to the authorized maximum rate of 6000 gpm at D-3770. (Exh. 44A, page 11)
 - b. The maximum use of 17,805 acre-feet of water for industrial purposes was in 1983. (Exh. 44A, pages 12 and 13, and Attachment No. 1; II SF 191)
 - c. Claimants have impounded 8925.48 acre-feet of water in a system of reservoirs authorized by Permit No. 1467, as amended. (II SF 180-182)
20. Under Permit No. 1467, as amended, BRA has shown:
 - a. The maximum water used in any one calendar year was 19,521 acre-feet in 1954. The maximum ever used for irrigation purposes was 16,441 acre-feet in 1954; for industrial purposes was 5406 acre-feet in 1982; and for municipal purposes was 2827 acre-feet in 1960. (Exh. 8, sub-exh. 7, page 4)
 - b. The maximum acreage reported irrigated in any one year was 7461 acres in 1961 which exceeds the authorized 5462 acres. (II SF 209, 210)
 - c. Claimants have impounded 8925.48 acre-feet of water in a system of reservoirs authorized by Permit No. 1467, as amended. (II SF 180-182)
21. Permit No. 1467C was amended by Permit No. 1467D (Application No. 1563E, filed January 29, 1985) to revise the allocations of water authorized under the permit for BRA and the District and to authorize a maximum diversion rate of 71.87 cfs for the District. This amended permit is specifically made subject to the Final Determination of the adjudication of Permit No. 1467. (Exh. 81)
22. Permit No. 1467D establishes that claimant District has shown justification for lack of previous utilization and intent of future utilization of 195 acre-feet of water per year and justification for an increase in diversion rate, and establishes that claimant BRA has shown justification for the right to develop the current diversion rate established under Permit No. 1467, as amended. (Exh. 81)
23. The respective rights and obligations of BRA and District under Permit No. 1467, as amended, are set forth in said permit, as amended, and in the following agreements: that lease dated March 17, 1937, between Imperial Sugar Company, et al., as lessors, and Brazos Valley Irrigation Company, as lessee (the "1937 Lease"); that agreement dated May 17, 1947, between District, et al., as lessors, and American Canal Company, as lessee (the "1947 Agreement"); that agreement executed in 1957 between District, et al., as lessors, and American Canal Company, as lessee, and numerous other parties called "Remaining Lot Owners" (the "1957 Agreement"); that agreement dated January 10, 1966, between District, et al., as lessors, and American Canal Company of Texas, as lessee (the "1966 Agreement"); and that agreement dated January 31, 1967, between District, et al., as lessors, and American Canal Company of Texas, as lessee (the "1967 Agreement"). (Exhs. 44A, pp. 7-9; 44B, tabs 6-10; 46; 47; 48; 49; 50; II SF 183-6)

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9. An additional statement filed under the General Irrigation Bill was filed on June 23, 1914 on behalf of the Imperial Sugar Company. This statement claimed a diversion rate of 0.22 cfs and the use of 54,750,000 gallons (168 acre-feet) for manufacturing and waterworks for both of the years 1912 and 1913. (Exh. 43B)
10. Permit No. 2661, as amended, authorizes claimant BRA to release water from eleven reservoirs for use in the San Jacinto-Brazos Coastal Basin. The permit authorizes the diversion and use of a total of 200,000 acre-feet of water for municipal and industrial purposes in the San Jacinto-Brazos Coastal Basin. (Exhs. 57A-C)
11. Permit No. 2661, as amended (Exhs. 57A-C), contains the following special conditions:
 - a. Nothing in this permit shall be construed as authorizing an appropriate right in excess of those presently held by permittee as evidenced by the aforementioned permits. Those public waters diverted pursuant to this permit shall consist wholly of waters previously authorized to be diverted by permittee, which waters shall be released from upstream storage and transported to the points of diversion as hereafter specified.
 - b. Permittee is authorized to use the beds and banks of the Lampasas River, Leon River, Little River, North San Gabriel River and San Gabriel River, and the beds and banks of Yegua Creek and the Brazos River for the purpose of transporting stored waters from the place of storage to the points of diversion from the Brazos River.
12. Claimant BRA is also the owner of an order authorizing system operation of certain reservoirs in the Brazos River Basin which was issued by the Commission on July 23, 1964 (hereinafter called the System Operation Order). The System Operation Order authorizes claimant to operate certain reservoirs as elements of a system to minimize waste and to conserve water in reservoirs in which the supply is short by making releases from reservoirs in which the supply is more abundant. (Exhs. 62A-E)
13. Seven on-channel dams are associated with Permit No. 1467, as amended, and Certified Filing No. 756. The diversion points are as follows: D-3225 is a dam across Jones Creek in Abstract No. 46 in Fort Bend County; D-3720 is a dam located between Oyster Creek and Jones Creek in Abstract No. 42 in Fort Bend County; D-3749 is a dam across Oyster Creek in Abstract No. 96 in Fort Bend County; D-3760 is a dam across Oyster Creek in Abstract No. 32 in Fort Bend County; D-3790 is a dam across Oyster Creek in Abstract No. 97 in Fort Bend County (this dam is also authorized under CF-756; all other dams including this one are authorized under P-1467, as amended); D-3800 is a dam across an unnamed tributary of Oyster Creek in Abstract No. 15 of Fort Bend County; D-3820 is a dam across Oyster Creek in Abstract No. 89 in Fort Bend County; diversion points authorized under Permit No. 1467, as amended, are designated as D-3770 and D-3810 (D-3770 is also authorized under CF-756, and D-3810 is located off the perimeter of the reservoir created by the dam at D-3820 and is in Abstract No. 89 in Fort Bend County). (II SF 175, 176)
14. The permit area designated under Permit No. 1467, as amended, has seven tracts associated with it: T-2780, T-2790, T-2800, T-2810, T-2820, T-2825, and T-2830. The tract associated with Certified Filing No. 756 is T-2850 and is located in Abstract No. 97. (II SF 177)
15. Acreage locations and amounts irrigated under Permit No. 1467, as amended, and Certified Filing No. 756 vary every year. (II SF 177)

CONCLUSIONS:

1. Claimant District is recognized a right under Certified Filing No. 756 to divert and use not to exceed an aggregate amount of 159.27 acre-feet of water per year from D-3770 on Oyster Creek at a maximum diversion rate of 21,000 gpm (46.7 cfs) for industrial purposes and/or the irrigation of 35 acres located in tract T-2850, with a priority date of June 27, 1914.
2. Claimant District is recognized a right under Permit No. 1467, as amended, to impound 8925.48 acre-feet of water in a series of reservoirs authorized by Permit No. 1467, as amended; to use the impounded waters for recreational purposes; and to divert and use not to exceed 17,805 acre-feet of water per year from diversion point D-3770 located on Oyster Creek at a maximum diversion rate of 6000 gpm (13.4 cfs) for industrial and municipal purposes, with a priority date of May 14, 1948.
3. Claimant District may continue diligent development and use of not to exceed 195 acre-feet of water per year for industrial and municipal purposes, with a priority date of May 14, 1948, and may continue diligent development of diversion rates up to a maximum of 32,290 gpm (71.87 cfs).
4. Claimant BRA is recognized a right under Permit No. 1467, as amended, to impound 8925.48 acre-feet of water in a series of reservoirs authorized by Permit No. 1467, as amended; to use the impounded waters for recreational purposes; and to divert and use not to exceed an aggregate amount of 12,000 acre-feet of water per year from diversion point D-3810, which is located on the reservoir formed by dam D-3820, for industrial, municipal, and irrigation purposes, with a priority date of May 14, 1948.
5. Claimant BRA is recognized a right to irrigate a maximum of 5462 acres of land out of two tracts totalling 42,123.7 acres in Fort Bend, Brazoria, Galveston, and Harris Counties, which tracts are described in an attachment submitted with the application (No. 1563E) for Permit No. 1467D.
6. Claimant BRA is recognized a right to divert and use for municipal, industrial, or irrigation purposes, with a priority date of May 14, 1948, any portion of the 18,000 acre-feet of water per year allocated for claimant District by Permit No. 1467, as amended, that is not actually consumed by claimant District.
7. Claimant BRA may continue diligent development of diversion rates up to a maximum of 114,000 gpm (253.4 cfs).