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2016 SEP 26 P 3: 32
WATER AVAILABILITY DIV.

September 19, 2016

Ms. Iliana Delgado
Team Lead, Water Rights Permitting Team
Water Rights Permitting & Availability Section
Texas Commission on Environmental Quality
P.O. Box 13087, MC-160
Austin, Texas 78711-3087

Re: Application to Amend Certificate of Adjudication No. 12-5268

Dear Ms. Delgado:

Enclosed for filing is an application by Bryan Texas Utilities (BTU) to amend Certificate of Adjudication No. 12-5268. The application consists of a completed Texas Commission on Environmental Quality (TCEQ) form for Application for Amendment to a Water Right and a Supplemental Statement.

Pursuant to discussions during our August 31, 2016 pre-application meeting, a check in the amount of \$101.25 is enclosed for initial payment of fees. Please contact me regarding any additional fees due now or in the future.

Should you need additional information regarding this application, please contact me at your earliest convenience.

Sincerely,

Wesley Williams
Division Manager, Power Generation
Bryan Texas Utilities

Enclosures

Cc: Joe Freeland, Mathews & Freeland, LLP
Sam Vaughn, HDR Engineering, Inc.



Texas Commission on Environmental Quality

PO Box 13087, MC-160, Austin, Texas 78711-3087

Telephone (512) 239-4691, FAX (512) 239-4770

APPLICATION FOR AMENDMENT TO A WATER RIGHT

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

Customer Reference Number (if issued): CN600373310

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

1. Name: City of Bryan, Bryan Texas Utilities
Address: P.O. Box 1000
Bryan, Texas 77805
Phone Number: 979.821.5944 Fax Number:
Email Address: weswilliams@btutilities.com

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2016 SEP 26 P 3:33
WATER AVAILABILITY

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

3. Permit No. Certificate of Adjudication No. 12-5268

Stream: Unnamed tributaries of Thompsons Creek Watershed: Brazos River
Reservoir (present condition, if one exists): Bryan Utilities Reservoir
County: Brazos

4. Proposed Changes To Water Right Authorizations:
See attached Supplemental Statement.
(Attach additional page as necessary, attach map/plot depicting project location, diversion point, place of use, and other pertinent data).

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

Name (sign)
Name (print) Paul Turney

Name (sign)
Name (print) GARY D. MILLER

Subscribed and sworn to me as being true and correct before me this 19th day of September, 2016

Notary Public, State of Texas



Supplemental Dam/Reservoir Information Sheet

Dam (structure), Reservoir and Watercourse Data

A. Type of Storage Reservoir (Indicate by checking (✓) all applicable)

on-channel off-channel existing structure proposed structure* exempt structure**

* Applicant shall provide a copy of the notice that was mailed to each member of the governing body of each county and municipality in which the reservoir, or any part of the reservoir, will be located as well as copies of the certified mailing cards.

** TWC Section 11.143 for uses of water for other than domestic, livestock, or fish and wildlife from an existing, exempt reservoir with a capacity of 200 acre-feet or less. Please complete Paragraph 6 below if proceeding under TWC 11.143.

Date of Construction 1974

B. Location of Structure No. TX-1869.

1) Watercourse: Unnamed tributaries of Thompeons Creek, Brazos River Basin

2) Location from County Seat: 5.47 miles in a northwest direction from Bryan, Brazos County, Texas.

Location from nearby town (if other than County Seat): _____ miles in a _____ direction from _____, a nearby town shown on county highway map.

3) Zip Code: 77805

4) The dam is located in the Thomas Henry Survey, Abstract No. 127; Samuel Johnson Survey, Abstract No. 147; H. Mitchell Survey, Abstract 182; Francis W. Smith; and Ozwin Wilcox Survey, Abstract 234 in Brazos County, Texas.

5) Station 0+42 on the centerline of the dam is N 59° 46' 38" W (bearing) 2041.8 feet (distance) from the North corner of O.C. Phelps Survey, Abstract No. 196, in Brazos County, Texas, also being at Latitude 30.709444°N, Longitude 96.454269°W. (Google Earth)

(Provide the latitude and longitude coordinates in decimal degrees, to at least six decimal places. Indicate the method used to calculate the diversion point location).

C. Reservoir:

1) Acre-feet of water impounded by structure at normal maximum operating level: 15,227

2) Surface area in acres of reservoir at normal maximum operating level: 748

D. The drainage area above the dam is 1246 acres or 1.95 square miles.

E. Other:

1) If this is a U.S. Natural Resources Conservation Service (NRCS) (formerly Soil Conservation Service (SCS)) floodwater-retarding structure, provide the Site No. _____ and watershed project name _____

2) Do you request authorization to close the "ports" or "windows" in the service spillway?

Yes No

APPLICATION TO AMEND CERTIFICATE OF ADJUDICATION NO. 12-5268

Supplemental Statement

Purpose of the Application

The City of Bryan, Texas, acting through Bryan Texas Utilities, ("Bryan" or "BTU" or "Owner")¹ is seeking an amendment to Certificate of Adjudication Number 12-5268 to increase the authorized total annual volume of water diverted, circulated, and recirculated for industrial (power generation) purposes from 55,708 acre-feet to 161,300 acre-feet of water from Bryan Utilities Reservoir and to relieve the requirement to maintain "a normal maximum water level of 355.5 ft-msl" in this reservoir. These changes will allow for efficient long-term operations of the Dansby Power Plant and compliance with current dam safety requirements. BTU is simply seeking to make the annual recirculating flow maximum consistent with the current maximum diversion rate of 222.22 cubic feet per second (100,000 gallons per minute or 161,300 acre-feet per year). BTU is not seeking an increase in its authorized consumptive use of state water (850 acre-feet per year). Furthermore, BTU proposes to offset impoundment of state water resulting from maintenance of a reservoir level less than full by commitment to discharge an equivalent volume of groundwater-based effluent.

Existing Facilities

The Dansby Power Plant (the "Plant") is a gas-fired electric generating facility on Mumford Road immediately north of and adjacent to Bryan Utilities Reservoir a few miles northwest of Bryan, Texas. Deliberate impoundment in Bryan Utilities Reservoir began in 1974 and operations of the Plant using cooling water from the reservoir began within a few years thereafter. Plant generating capacity (and associated heat dissipation capacity) assumed for design of the reservoir has never been installed, hence, it has not been necessary to maintain the reservoir level at full to facilitate efficient Plant operations. Water sources for the Plant and reservoir include rainfall and runoff within the 1246 acre reservoir watershed and groundwater. A principal spillway tower and outlet conduit are located on the southeast edge of the reservoir with discharge to an unnamed tributary of Thompsons Creek, a tributary of the Brazos River.

Current Certificate of Adjudication

Certificate of Adjudication (COA) No. 12-5268 authorizes the Owner to maintain an existing dam and reservoir, known as Bryan Utilities Reservoir, on unnamed tributaries of the Brazos River and to impound therein not to exceed 15,227 acre-feet of water at the normal maximum operating level of elevation 355.5 feet above mean sea level.

COA No. 12-5268 authorizes Owner to divert, circulate, and recirculate not to exceed 55,708 acre-feet per year at a maximum diversion rate of 222.22 cubic feet per second ("cfs") (100,000 gallons per minute or 161,300 acre-feet per year) from the reservoir for industrial (power generating) purposes. Consumptive use is limited to 850 acre-feet of water per year of which not more than 85 acre-feet may be State water. The priority date for the Owner's right is May 30, 1972. A map of Bryan Utilities Reservoir and its watershed is provided as Attachment

¹ Certificate of Adjudication No. 12-5268 was issued to City of Bryan on January 14, 1988.

September 13, 2016

A and photographs showing BTU facilities and the Dansby Power Plant are provided as Attachment B. No changes to the currently authorized diversion location, reservoir storage capacity, consumptive use, or instantaneous maximum diversion rate are requested.

Estimated historical annual water consumption for the Dansby Power Plant since 2003 is summarized in Figure 1. Annual water consumption in this figure is calculated from reported net generation² multiplied by a standard consumption factor for Texas natural gas power plants with steam turbine technology and once-through cooling of 0.44 gallons per kilowatt hour (gal/kwh)³. Converting units, this consumption factor is 1.35 acre-feet per gigawatt hour. As is apparent in Figure 1, historical consumptive water use has never approached the authorized annual maximum of 850 acre-feet. Again, BTU is not requesting a change in its authorized consumptive use through this amendment. BTU is, however, seeking an increase in authorized annual circulating flow volume. Figure 2 summarizes historical annual water consumption and associated circulating flow volume for the Dansby Power Plant for the 2003-2015 period, along with simple equations derived by linear regression relating these parameters. Observations upon review of Figure 2 include the following:

- a) The relationship between circulating flow volume and water consumed has clearly changed since the 2011 installation of new equipment facilitating operation of the plant at a minimum load of 15 megawatts, rather than 30 megawatts.
- b) Using the relationship based on the new equipment installed and operations for the last five years, water consumed at the amended annual circulating flow volume of 161,300 acre-feet would be less than 340 acre-feet per year. This is substantially less than the authorized annual maximum consumptive use of 850 acre-feet.
- c) Without the new equipment and operational procedures typical of the last five years, estimated water consumed at the amended annual circulating flow volume of 161,300 acre-feet is within five percent of the authorized annual maximum consumptive use of 850 acre-feet.
- d) Increase of the annual circulating flow volume to 161,300 acre-feet will not result in annual water consumption in excess of the 850 acre-feet currently authorized.

² Energy Information Administration,

<https://www.eia.gov/opendata/qb.cfm?category=3294&scid=ELEC.PLANT.GEN.6243-NG-ST.A>

³ Scanlon, B.R., Reedy, R.C., Duncan, I., Mulligan, W.F., & Young, M., "Controls on Water Use for Thermoelectric Generation: Case Study Texas, U.S.," American Chemical Society, Journal of Environmental Science & Technology, August 12, 2013.

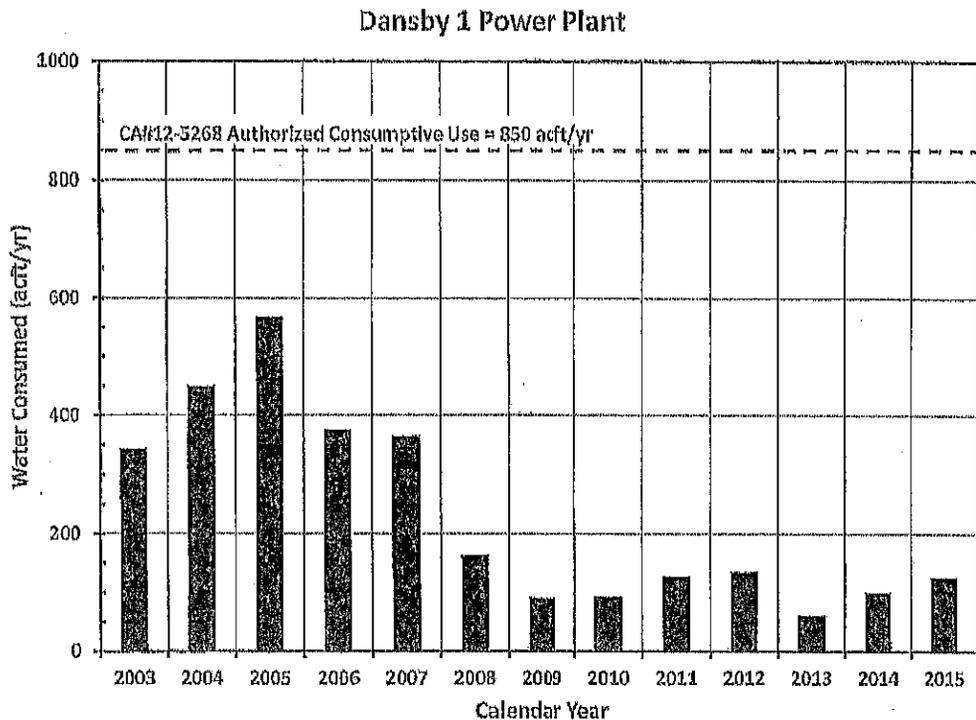


Figure 1

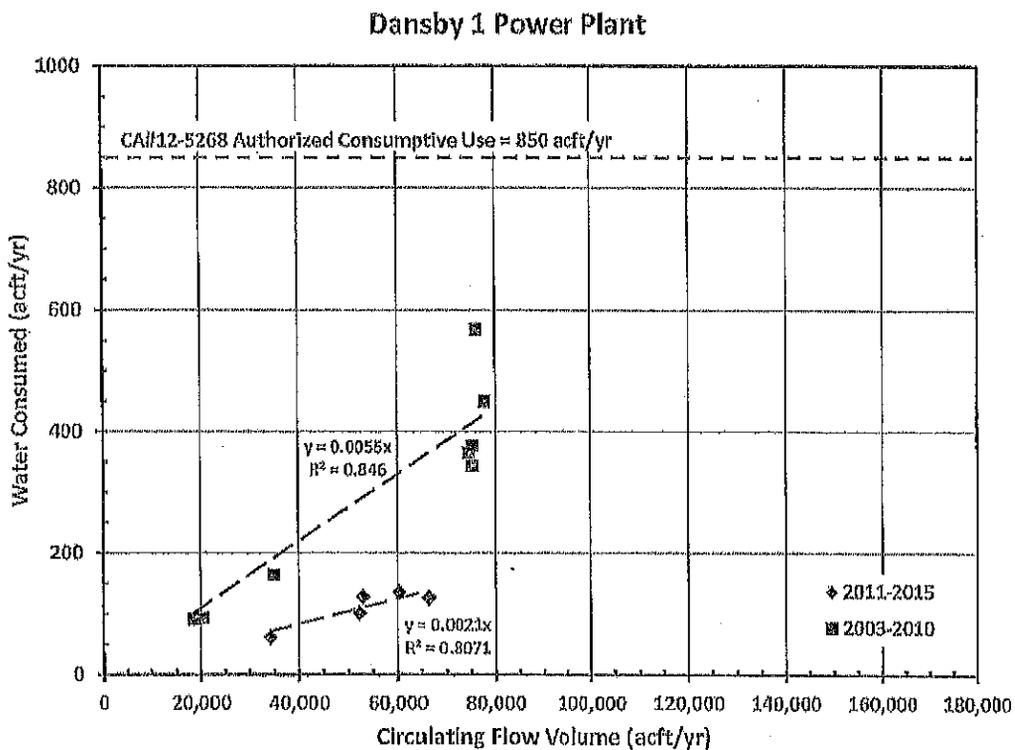


Figure 2

Elements of Requested Amendment

1. *Increase Annual Circulating Flow Volume Diverted from Reservoir.* BTU requests to amend COA No. 12-5268 to increase the annual maximum authorization to divert, circulate, and recirculate water from Bryan Utilities Reservoir to 161,300 acre-feet per year. BTU submits that the requested annual maximum volume of circulating flow from the reservoir is consistent with the instantaneous maximum diversion rate from the reservoir and currently authorized consumptive use.

2. *Remove Requirement to Maintain Reservoir at a Specified Normal Maximum Level.* BTU requests to amend COA No. 12-5268 to remove the portion of Special Condition 5(B) requiring Owner to maintain the reservoir at a normal maximum level of 355.5 feet above mean sea level (i.e. full). As reservoir levels less than full will periodically result in impoundment of state water, BTU proposes to offset such impoundment with commitment to discharge an equivalent volume of groundwater-based treated effluent into Thompsons Creek and/or the Brazos River. A location map showing Bryan Utilities Reservoir, Bryan wastewater treatment facilities, and relevant streams is included as Attachment C. A draft Alternate Source of Water Agreement between BTU and the City of Bryan is included as Attachment D.

Rules Related to Notice

BTU submits that the requested amendment can be issued without notice under 30 TAC § 295.158(c)(2)(F) which allows the TCEQ "to increase the rate or period for diversion from a storage reservoir" and/or under 30 TAC § 295.158(c)(1) because the amendment (including the groundwater-based effluent offset for impoundment of state water) "does not contemplate an additional consumptive use of state water" and "has no potential for harming any other existing water right."

Water Code

This application for an amendment to an existing water right is governed by Texas Water Code § 11.122. Subsection (a) requires a water right holder to obtain a water right amendment if the holder is going to change the purpose of use or "otherwise alter a water right."

Section 11.122(b) sets out the scope of the Commission's authority in reviewing applications to amend a water right. Section 11.122(b) states that, as long as the amendment meets all other applicable requirements, the amendment shall be authorized, unless the amendment seeks to increase the amount of water authorized to be diverted or the authorized rate of diversion, "if the requested change will not cause adverse impact on other water right holders or the environment on the stream of greater magnitude than under circumstances in which the permit, certified filing, or certificate of adjudication that is sought to be amended was fully exercised according to its terms and conditions as they existed before the requested amendment." The clause is frequently referred to as the "full use assumption" and requires the Commission to compare the requested amendment to the existing permit as if the existing permit was fully exercised.

In order to meet the other applicable requirements, BTU's amendment application must be reviewed under the "public interest criteria."

September 13, 2016

Evaluation of Factors Enumerated in *City of Marshall* Opinion

On June 9, 2006 the Texas Supreme Court issued an opinion in the case of the *City of Marshall v. City of Uncertain*⁴ that addresses factors the TCEQ must consider when determining if public notice is required of an application for amendment of a water right under 30 TAC § 295.158(c). To evaluate whether public notice is required the TCEQ must consider whether the amendment could adversely impair other water rights or the environment beyond or irrespective of the full use assumption. The court also held that the TCEQ must determine if the application could have an adverse impact on the following public interest criteria: beneficial use, public welfare, groundwater effects, consistency with the state and regional water plan, compliance with administrative requirements and conservation. BTU addresses each of the factors below and submits that this application for amendment of COA No. 12-5268 is consistent with all of the factors such that public notice of the application for amendment is not required.

Adverse Impact on Water Right Holders and the Environment. The requested amendment, including BTU's commitment to offset impoundment of state water with discharge of an equivalent volume of groundwater-based treated effluent into Thompsons Creek and/or the Brazos River, will not impair any other water rights or the environment. Both before and after the amendment, BTU will only be authorized to consume 850 acre-feet of water per year from the reservoir, of which only 85 acre-feet per year may be state water, under COA No. 12-5268. There are no water rights of record on Thompsons Creek or its tributaries between Bryan Utilities Reservoir and Bryan's Thompsons Creek Wastewater Treatment Plant. Therefore, the amendment will not adversely affect other water right holders. The amendment will increase the annual volume of diversion of water from Bryan Utilities Reservoir, but this water is simply recirculated back to the Reservoir.

The requested amendment to COA No. 12-5268 will not adversely affect the environment. As BTU has reportedly operated Bryan Utilities Reservoir at levels less than full since deliberate impoundment began over 40 years ago, the downstream flow regime to the Brazos River has been and will remain essentially unchanged except to the extent that discharge of groundwater-based effluent has enhanced streamflow.

Administrative Requirements. BTU has submitted a complete application that meets the administrative requirements of the Water Code and 30 TAC § 281, 295, and 297. The amendment application includes all required documents, including a sworn application, maps, fees, etc.

Beneficial Use. *City of Marshall* states that proposed appropriations of state water must be for a beneficial use. Under Texas Water Code § 11.002, "Beneficial use" means "use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose and shall include conserved water."

BTU seeks to use the entire authorized consumptive use of 850 acre-feet of water per year for industrial purposes, including forced evaporation of cooling water, for steam electric

⁴ *City of Marshall et. al. v. City of Uncertain et. al.*, No. 03-1111 (Tx. June 9, 2006).

September 13, 2016

power generation. Industrial uses are recognized as beneficial uses by Texas Water Code § 11.023(a)(2) regardless of the annual volume of water diverted, circulated, and recirculated.

Protection of Public Welfare. A proposed appropriation of state water must not be detrimental to the public welfare. The Texas Water Code does not define "detriment to public welfare" and the TCEQ has wide discretion in determining what constitutes a benefit or detriment to the public welfare. BTU submits that the requested amendment to its water right, which will allow it generate power throughout the year and maintain reservoir levels in compliance with current dam safety and monitoring requirements without an increase in authorized consumptive use of water, is protective of the public welfare.

Groundwater Effects. A proposed appropriation of state water must consider effects of the proposed permit on groundwater or groundwater recharge. As a key element of the requested amendment is to eliminate a requirement that groundwater be used to keep Bryan Utilities Reservoir full, approval of the requested amendment could result in reduction of local groundwater use. This reduction in groundwater use and exposure of groundwater to free surface evaporation in the reservoir should result in groundwater conservation, incrementally higher aquifer levels, and enhanced regional groundwater supply. Therefore, the requested amendment should not have an adverse effect on groundwater supply.

Consistency with Regional and State Plan. The requested water right amendment is consistent with the 2017 State Water Plan and the 2016 Brazos G Regional Water Plan. As projected demands for steam electric generation are based, in part, on historical generation at the Dansby Power Plant and historical generation was, at times, supported by annual diversion, circulation, and recirculation volumes greater than that presently in the COA, these plans count on Dansby Power Plant operations throughout the calendar year. Amendment of COA No. 12-5268 to ensure that operations throughout the year can continue to occur is consistent with the regional and state water plans.

Avoidance of Waste and Achievement of Water Conservation. State water will continue to be beneficially used for industrial (power generation) purposes. Thus, BTU submits that it will avoid waste of state water and achieve water conservation. Through this amendment, BTU will not increase the amount of the appropriation, extend the term of the appropriation, change the place of use of the appropriated water, or change the purpose or use of the appropriation. Therefore, no water conservation or drought contingency plan must accompany the amendment application pursuant to 30 TAC § 295.9(4).

Accounting Plan

Average annual runoff from the Bryan Utilities Reservoir watershed area is estimated at about 500 acre-feet per year. If the requested amendment is granted and the reservoir level is typically less than full, the majority of this amount will be impounded. As BTU is authorized by COA No. 12-5268 to consume up to 85 acre-feet per year of state water, BTU proposes a commitment to discharge 415 (500-85=415) acre-feet per year (0.37 million gallons per day) of Bryan's groundwater-based treated effluent to Thompsons Creek to offset the impoundment. Discharge and conveyance of this groundwater-based treated effluent are authorized, in part, in

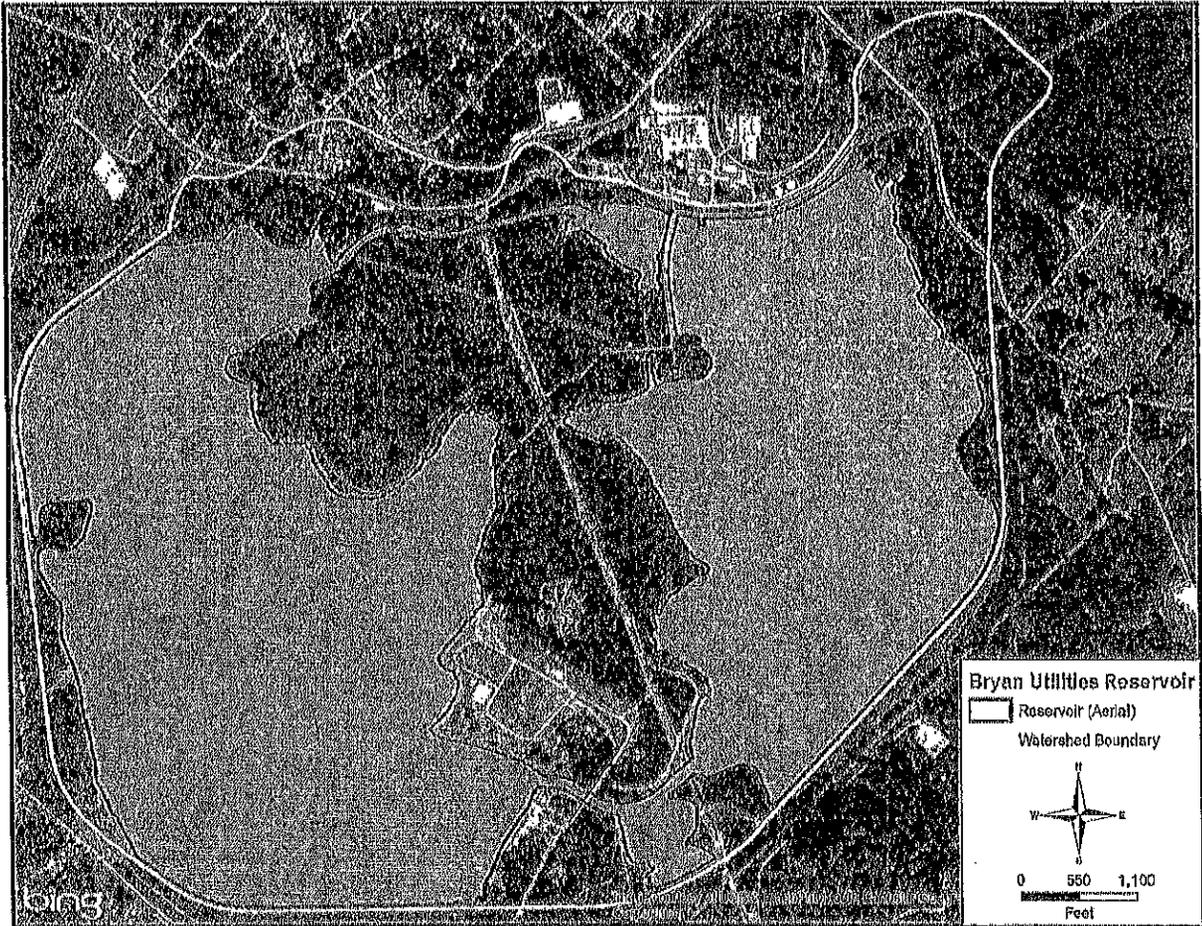
September 13, 2016

Water Use Permit No. 5912 and BTU's offset commitment will be appropriately reflected in the accounting plan required therein.

September 13, 2016

Attachment A

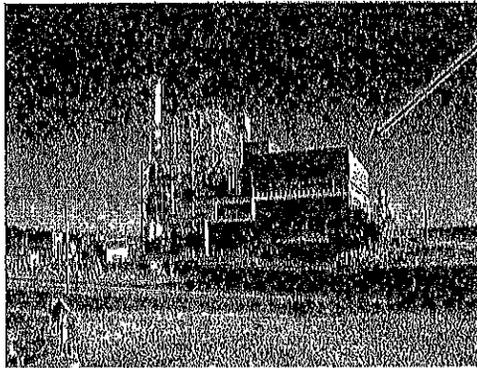
Bryan Utilities Reservoir & Watershed



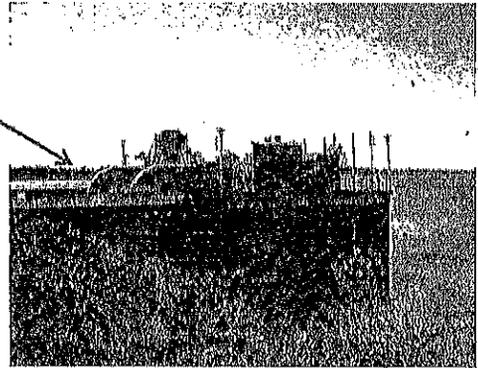
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Attachment B

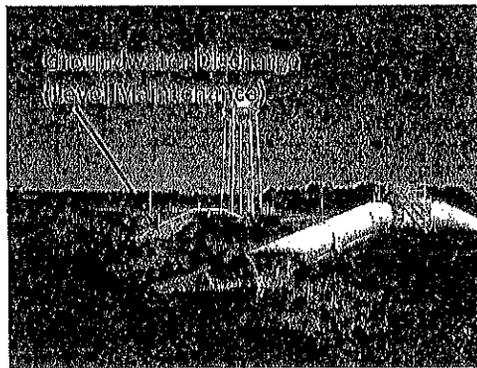
BTU Facilities at Dansby Power Plant



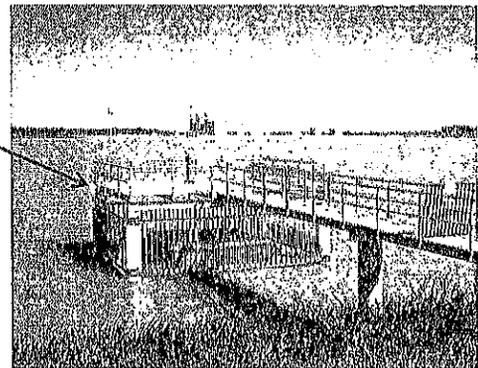
Power Plant



Circulating Flow Intake (Cool Water)



Spillway w/ Crest @ 355.5 ft-msl



Circulating Flow Discharge (Hot Water)

Attachment C

Location Map



September 13, 2016

Attachment D

**Draft Alternate Source of Water Agreement
Bryan Texas Utilities and the City of Bryan**

September 13, 2016

STATE OF TEXAS
BRAZOS COUNTY

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2016 SEP 26 P 3:33

WATER AVAILABILITY DIV.

**ALTERNATE SOURCE OF WATER AGREEMENT
BRYAN TEXAS UTILITIES AND THE CITY OF BRYAN**

This Alternate Source of Water Agreement (the "Agreement") is entered into by the City of Bryan (the "City") and the Bryan Texas Utilities ("BTU"), collectively the Parties.

RECITALS

WHEREAS, BTU is an enterprise activity of the City that operates the Roland C. Dansby Power Plant and the adjacent Bryan Utilities Lake, which is authorized by Certificate of Adjudication 12-5268 ("CA 12-5268");

WHEREAS, BTU, on behalf of the City, intends to apply to the Texas Commission on Environmental Quality ("TCEQ") to amend CA 12-5268 to increase the amount of water authorized to be diverted, circulated, and recirculated from 55,708 acre-feet per year to 161,300 acre-feet per year and to modify the special conditions to allow BTU to operate Bryan Utilities Lake at a normal elevation of less than 355.5 feet above mean sea level that CA 12-5268 currently requires;

WHEREAS, to obtain the amendment to CA 12-5268, BTU needs an alternate source of water to offset the additional state water that will be impounded and used as a result of changes to BTU's water right;

WHEREAS, the City treats and discharges groundwater-based return flows ("Return Flows") as authorized by the City's TPDES permits;

WHEREAS, the City has obtained from the Texas Commission on Environmental Quality ("TCEQ") authorization to convey its Return Flows down various watercourses in the Brazos River Basin for subsequent diversion and reuse under Water Use Permit No. 5912;

WHEREAS Water Use Permit No. 5912 provides that the City's Return Flows do not have a priority date and are not subject to a water rights priority call;

WHEREAS, the City agrees, as provided herein, to obligate a portion of its Return Flows as an alternate source of water to offset BTU's additional use of state water; and

WHEREAS, BTU desires to obtain from the City 415 acre-feet per year of Return Flows as provided herein, to be discharged into the Brazos River basin and become state water subject to diversion and use by water right holders in the basin;

NOW, THEREFORE, in consideration of the mutual promises, covenants and considerations set forth herein, the Parties agree as follows.

**ARTICLE I.
DEFINITIONS**

1.1 The term "Annual Contracted Amount" shall mean the total volume of Return Flows that the City agrees to make available to BTU and that BTU agrees to purchase. For this Agreement, the Annual Contracted Amount is 415 acre-feet per year.

1.2 The term "Contract Year" shall mean that period beginning on the Effective Date and ending on the anniversary date of the Effective Date, and each additional one year period beginning on the anniversary date of the Effective Date, throughout the term of this Agreement.

1.3 The term "Effective Date" shall mean the date by which both Parties have signed this Agreement.

1.4 The term "Party" shall mean either BTU or the City, as appropriate.

1.5 The term "Point of Delivery" shall mean the location at which title, possession, ownership, control and responsibility for the Return Flows shall pass from the City to BTU. For purposes of this Agreement, the Point of Delivery is the point at which the City discharges its Return Flows pursuant to its TPDES permits.

1.6 The term "System Rate" shall mean the charge per acre-foot of water established by Brazos River Authority ("BRA") from time to time under its system-wide pricing methodology for firm supplies of water for municipal use. On the Effective Date the System Rate is \$70.50

**ARTICLE II.
AVAILABILITY OF WATER**

2.1 While this Agreement remains in force, the City agrees to make available to BTU Return Flows at the Annual Contracted Amount to be used by BTU as an alternate source of water to offset BTU's additional use of state water. Such Return Flows will be discharged into the Brazos River and its tributaries at the Point of Delivery at which point they will become state water subject to diversion and use by water right holders in the basin.

2.2 The City will make Return Flows available to BTU in amounts and at such times selected by the City, provided that the City will make available the Annual Contracted Amount subject to the provisions of CA-5268, as amended.

2.3 BTU's use of the Return Flows will be subject to the terms and conditions of the City's Water Use Permit No. 5912, including the approved accounting plan, the approvals or authorizations of the Brazos River Watermaster and the terms of this Agreement.

2.4 The City shall have the right to account for discharges made on behalf of BTU in any manner complying with the City's Water Use Permit and CA 12-5268.

September 13, 2016

2.5 BTU acquires no property right in the Return Flows made available to it under this Agreement beyond the right to have the Return Flows made available to it under the terms of this Agreement. Utilization of the Return Flows for other purposes shall be deemed a breach of this contract and grounds for termination of this Agreement. The City agrees to make Return Flows available to BTU, and BTU agrees that it acquires no rights or interests in any of the Return Flows other than those specifically authorized by this Agreement.

**ARTICLE III.
UNCONDITIONAL NATURE OF PAYMENT OBLIGATION/RATES AND
PAYMENTS**

3.1 BTU agrees to pay the City annually for the Annual Contracted Amount at a price equal to the product of multiplying ___% of System Rate times the Annual Contracted Amount.

3.2 BTU's first annual payment for Return Flows shall be due and payable on the Effective Date. Following its first annual payment, BTU's subsequent annual payments shall be due and payable on or before the first day of the succeeding Contract Year.

3.3 Payments to be made hereunder shall be made to:

Finance Department
City of Bryan
P.O. Box 1000
Bryan, Texas

3.4 Amounts due and payable by BTU shall be adjusted to conform to changes in the BRA System Rate. When BRA changes its System Rate, BTU's rate calculated as provided in 3.1 above shall adjust effective on the first day of the Contract Year following the date of BRA's rate change.

**ARTICLE IV.
REPORTING**

4.1 The City agrees that it shall keep accurate records of the discharges made available to BTU. These records shall be subject to inspection by BTU at reasonable times and places during regular business hours.

4.2 The City shall provide BTU with reports identifying the quantity of Return Flows made available to BTU at such frequency as needed by BTU to comply with the terms of CA 12-5268 and any other reporting requirement imposed by the Texas Commission on Environmental Quality.

4.3 The City shall submit records and reports to BTU as required to allow BTU to comply with CA 12-5268, as amended.

September 13, 2016

4.4 The City shall provide BTU with a copy of all reports and other documents filed with the Brazos River Watermaster regarding water made available to BTU within 3 business days of BTU requesting such documents.

**ARTICLE V.
WATER SURPLUS TO BTU'S NEEDS**

5.1 BTU may not unilaterally cancel this Agreement or reduce the amounts of Return Flows agreed to be made available to it and for which availability it is obligated to pay under this Agreement.

5.2 BTU may not sell or make available to others the Return Flows agreed to be made available to it under this Agreement.

**ARTICLE VI.
OPERATION OF TREATMENT PLANTS; OTHER SUPPLY CONTRACTS**

6.1 The right of the City to maintain and operate its wastewater treatment plants at any and all times in the future to impound, release and make available Return Flows therefrom in any lawful manner and to any lawful extent the City may see fit is recognized by BTU; and, except as otherwise provided herein, there shall be no obligation hereunder upon the City to discharge, release and make available or not to discharge, release or make available any amount of Return Flows at any time or to maintain any Return Flows at any specified level or to operate its wastewater treatment plans in any manner not in compliance with applicable laws or regulations, and the City's Water Use Permit No. 5912. The City may enter into agreements with other parties regarding the provision of Return Flows. The City makes no representation as to the quality of the Return Flows.

**ARTICLE VII.
FORCE MAJEURE**

7.1 Notwithstanding anything herein to the contrary, neither Party hereto shall be under any liability or be deemed in default with respect to its obligations under this Agreement for any failure to perform or for delay in performing such Party's obligations hereunder (except for the obligation to pay money) where such failure or delay is due to force majeure, while and to the extent that such performance is prevented by such cause. The term force majeure means acts of God, fire, storm, flood, war, terrorist activity, riots, sabotage, mechanical malfunction or failure, drought, lack of availability of water due to sedimentation, low inflows of water to, or lack of water supply, strikes or other differences with labor (whether or not within the power of the Parties to settle same), decrees or orders of the courts or other governmental authority, or other similar or dissimilar causes not within the reasonable control of such Party and not due to negligence of such Party. Each Party shall use due diligence to resume performance of any obligation suspended by force majeure at the earliest practicable time.

September 13, 2016

**ARTICLE VIII.
NOTICES AND CERTIFICATIONS**

8.1 Notices and communications provided for in this Agreement shall be in writing. The same shall be delivered by mailing certified mail, postage paid, return receipt requested, or hand delivered, to the respective parties at the following addresses:

The City: City Manager
City of Bryan
P.O. Box 1000
Bryan, Texas 77805-1000
Fax: (979) 209-5106

BTU: General Manager
Bryan Texas Utilities
P.O. Box 8000
Bryan TX 77805-8000
Fax: (979) 821-5795

Either Party may change its address as shown above by written notice to the other Party.

**ARTICLE IX.
OTHER REQUIREMENTS**

9.1 This Agreement is subject to all conditions, provisions, and limitations included in the City's Water Use Permit No. 5912 and its water accounting plan. Further, this Agreement is subject to all applicable Federal, State and local laws, and any applicable ordinances, rules, orders and regulations of any local, State or Federal governmental authority having jurisdiction. However, nothing contained in this Agreement shall be construed as a waiver of any right to question or contest any law, ordinance, order, rule, or regulation of any governmental authority.

**ARTICLE X.
SEVERABILITY**

10.1 The provisions of this Agreement are severable, and if for any reason any one or more of the provisions contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal, or unenforceable provision had never been contained in the Agreement.

September 13, 2016

**ARTICLE XI.
TERM OF AGREEMENT**

11.1 The term of this Agreement shall begin on the Effective Date and shall terminate twenty five (25) years thereafter.

11.2 The term of this Agreement may be extended by mutual agreement of the City and BTU.

**ARTICLE XII.
MISCELLANEOUS**

12.1 This Agreement constitutes the sole and only agreement of the Parties regarding the purchase of Return Flows as defined herein and supersedes any prior understanding or oral or written agreements between the City and BTU respecting the subject matter of this Agreement.

12.2 This Agreement, and the rights and obligations of the Parties pursuant to this Agreement, shall be governed by the laws of the State of Texas. Venue for legal actions arising hereunder shall lie exclusively in Brazos County, Texas.

12.3 The Parties represent that they are authorized by their respective governing bodies to enter into this Agreement.

BRYAN TEXAS UTILITIES

CITY OF BRYAN

By: _____

By: _____

Date: _____

Date: _____

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 12--5268

OWNER: City of Bryan
P. O. Box 1000
Bryan, Texas 77801

COUNTY: Brazos

PRIORITY DATE: May 30, 1972

WATERCOURSE: unnamed tributaries of
Thompsons Creek and un-
named tributary of the
Little Brazos River, tribu-
taries of the 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 2792 authorizing the City of Bryan 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 City of Bryan, subject to the following terms and conditions:

1. IMPOUNDMENT

Owner is authorized to maintain an existing dam and reservoir on unnamed tributaries of Thompsons Creek and the Little Brazos River and impound therein not to exceed 15,227 acre-feet of water. The dam is located in the Thomas Henry Survey, Abstract 127; the Samuel Johnson Survey, Abstract 147; the H. Mitchell Survey, Abstract 182; the Francis W. Smith Survey, Abstract 219 and the Ozwin Wilcox Survey, Abstract 234, Brazos County, Texas.

2. USE

- A. Owner is authorized to divert, circulate and recirculate not to exceed 55,708 acre-feet of water per annum from the aforesaid reservoir and to consume not more than 850 acre-feet of the water per annum, of which amount not more than 85 acre-feet may be State water, for industrial (power generating) purposes.
- B. Owner is also authorized to use the water impounded in the aforesaid reservoir for recreation purposes.

Certificate of Adjudication 12-5268

3. DIVERSION

- A. Location:
At the perimeter of the aforesaid reservoir.
- B. Maximum rate: 222.22 cfs (100,000 gpm).

4. PRIORITY

The time priority of owner's right is May 30, 1972.

5. SPECIAL CONDITIONS

- A. Owner shall maintain a suitable outlet in the aforesaid dam authorized herein to allow the free passage of water that owner is not entitled to divert or impound.
- B. Owner shall use ground water from wells to maintain the aforesaid reservoir at a normal maximum level of 355.5 feet above mean sea level.
- C. Owner shall return all water which is diverted but not consumed to the reservoir in accordance with plans on file with the Commission.

The location of pertinent features related to this certificate are shown on Page 2 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.

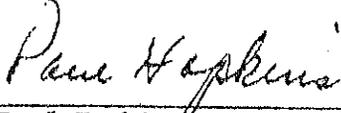
This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 21st Judicial District Court of Bastrop County, Texas, in Cause No. 18,762, In Re: The Adjudication of Water Rights in the Brazos IV Segment of the Brazos River Basin and the San Jacinto-Brazos 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 12-5268

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.

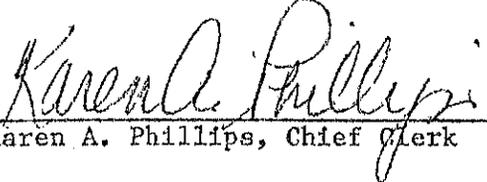
TEXAS WATER COMMISSION



Paul Hopkins, Chairman

DATE ISSUED:

JAN 24 1968
ATTEST:



Karen A. Phillips, Chief Clerk

Maintain res level w/ gw

City: Brazos

Endorsement may be required

Amendment may be required

Data Collection

Basin Name or No. 12

Application No. _____

Permit No. _____

Certificate No. 5268

Amendments: (N) Y Most Recent Amendment Letter: _____

Number of On-Channel Div. Points Authorized: 1 (see attached page for Lat/Lon/RON of DPs)

Number of Off-Channel Div. Points Authorized: 0 (see attached page for Lat/Lon of DPs)

Number of Return Flows/Surplus Flows Discharge Point: 1 (see attached page for Lat/Lon/RON of discharge points, if available) (ID IBT discharge points)

Number of On-Channel Reservoirs Authorized: 1 (see attached page for Lat/Lon/RON of centerpoints)(ID IBT discharge points)

Number of Off-Channel Reservoirs Authorized: 0 (see attached page for Lat/Lon of centerpoints)

Purpose(s) of Use: Industrial (Power generation) (2) Recreation (1)

Amount Authorized for each type: Use: 2 Amt. (ac-ft): 55,708 Priority Date: May 30, 1972

Use: 1 Amt. (ac-ft): 15,227 Priority Date: 5-30-1972

Use: improving Amt. (ac-ft): 15,227 Priority Date: _____

Use: 1 Amt. (ac-ft): _____ Priority Date: _____

Use: _____ Amt. (ac-ft): _____ Priority Date: _____

Amount of land to be irrigated: _____ acres out of _____ acres

Reservoir # : 1 Storage Cap.(ac-ft): 15,227 Name: Bryan Wilkes Lake Type: _____

Reservoir # : _____ Storage Cap.(ac-ft): _____ Name: 0 Type: _____

Reservoir # : _____ Storage Cap.(ac-ft): _____ Name: _____ Type: _____

Reservoir # : _____ Storage Cap.(ac-ft): _____ Name: _____ Type: _____

Reservoir # : _____ Storage Cap.(ac-ft): _____ Name: _____ Type: _____

Special auths. assoc. w/ use (ex 10,000 ac-ft for mun., but up to 2,000 ac-ft can be used for ind. or 12,000 ac-ft for mining with a consumptive limit of 1,200 ac-ft) direct, circulate, & recirculate 55,708 ac-ft

not to consume more than 850 ac-ft which 85 ac-ft or less can be stored

Diversion Rate(s): DP #: 1 Rate(cfs): 122.22 Combined w/: DP#: _____ WR#: _____
DP #: _____ Rate(cfs): _____ Combined w/: DP#: _____ WR#: _____
DP #: _____ Rate(cfs): _____ Combined w/: DP#: _____ WR#: _____
DP #: _____ Rate(cfs): _____ Combined w/: DP#: _____ WR#: _____
DP #: _____ Rate(cfs): _____ Combined w/: DP#: _____ WR#: _____

County(ies) of Use: Brazos

Special Authorizations: (ex. Saline/IBT) gw

Diversion Restrictions: Streamflow: _____
Reservoir: 0

Term: N Y
Type: Contract Expiration Basin Fully Approp. Lease Other
Expiration Date: _____

Subordination Agreement: N Y, with whom: _____
Date Signed: _____

Reservoir: None Existing New
Construction Commencement Date: _____
Construction Completion Date: _____
Extension Order(s): N Y Number of Orders: _____

Other Special Conditions: N Y (see WR/Amendment) Spec Cond A/B

IBT Authorization: N Y
Basins Authorized: _____

Amount Authorized by Basin: _____

Discharge Point(s): (see above for Lat/Lon/ROn)

Other Special Conditions: N Y (see WR/Amendment)

DIVERSION POINT/DAM INFORMATION

Application No: 5268

Applicant: City of Bryan

Current A/F: _____

Basin No: 12

Requested A/F: _____

Diversions Point Information

Unique ID #	Latitude	Longitude	R.O.N.	Stream
61205268001			1204500000	Per of Kes

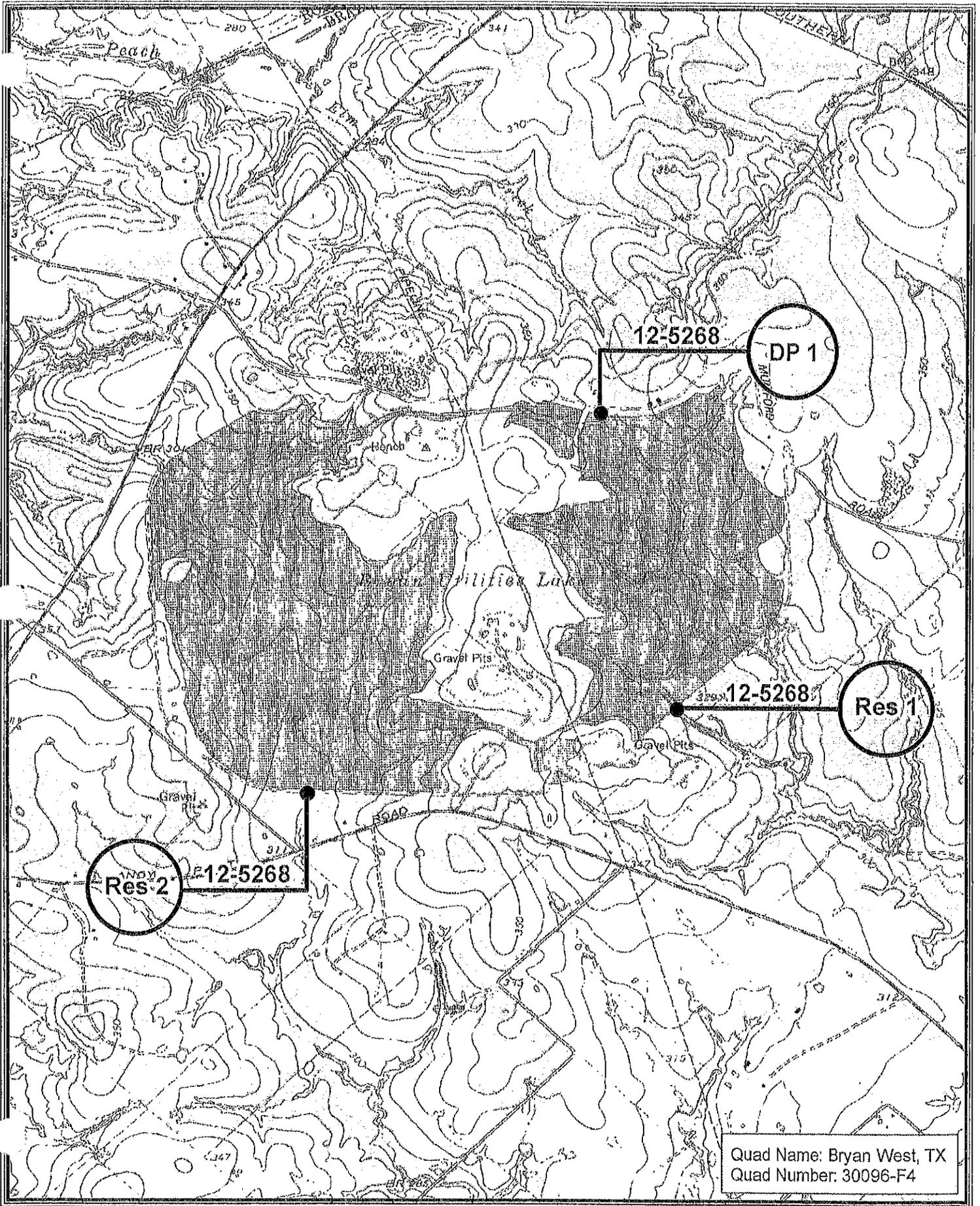
30.707817

96.457298

Dam Information

Unique ID #	Latitude	Longitude	R.O.N.	Stream
61205268301			1204500000	Trib of Thompson Creek + Little Brazos River

Technical Manager: _____



12-5268
Res 2

12-5268
DP 1

12-5268
Res 1

Quad Name: Bryan West, TX
Quad Number: 30096-F4

