

TCEQ Interoffice Memorandum

TO: Office of the Chief Clerk
Texas Commission on Environmental Quality

THRU: Chris Kozlowski, Team Leader
Water Rights Permitting Team

FROM: Jenna Rollins, Project Manager
Water Rights Permitting Team

DATE: January 20, 2023

SUBJECT: Big Brown Power Company LLC
ADJ 5040
CN603263872, RN108446709
Application No. 08-5040A to Amend Certificate of Adjudication No. 08-5040
Texas Water Code § 11.122, Not Requiring Notice
Big Brown Creek, Trinity River Basin
Freestone County

The application and fees were received on September 13, 2022. Additional information was received on September 16, 2022. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on January 20, 2023. Notice is not required pursuant to Title 30 Texas Administrative Code § 295.158 (c)(2)(A) and § 295.158 (c)(3)(A).

All fees have been paid and the application is sufficient for filing.

Jenna Rollins

Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section

OCC Mailed Notice Required ☐ YES ☒ NO

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Erin Chancellor, *Interim Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 20, 2023

Mr. Ryan M. Bayle, P.G.
Environmental Manager
Luminant Generation Company LLC
6555 Sierra Drive
Irving, TX 75039

VIA E-MAIL

RE: Big Brown Power Company LLC
ADJ 5040
CN603263872, RN108446709
Application No. 08-5040A to Amend Certificate of Adjudication No. 08-5040
Texas Water Code § 11.122, Not Requiring Notice
Big Brown Creek, Trinity River Basin
Freestone County

Dear Mr. Bayle:

This acknowledges receipt, on September 13, 2022, of the referenced application and fees in the amount of \$112.50 (Receipt No. M300344, copy attached) and additional information on September 16, 2022.

The application was declared administratively complete and filed with the Office of the Chief Clerk on January 20, 2023. Staff will continue processing the application for consideration by the Executive Director.

Please be advised that additional information may be requested during the technical review phase of the application process.

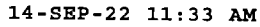
If you have any questions concerning the application, please contact me via email at jenna.rollins@tceq.texas.gov or by phone at 512-239-1845.

Sincerely,

A handwritten signature in cursive script that reads "Jenna Rollins".

Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section

Attachment



TCEQ - A/R RECEIPT REPORT BY ACCOUNT NUMBER

<u>Fee Description</u>	<u>Fee Code</u> <u>Account#</u>	<u>Ref#1</u> <u>Ref#2</u> <u>Paid In By</u>	<u>Check Number</u> <u>Card Auth.</u> <u>User Data</u>	<u>CC Type</u> <u>Tran Code</u> <u>Rec Code</u>	<u>Slip Key</u> <u>Document#</u>	<u>Tran Date</u>	<u>Tran Amount</u>
WTR USE PERMITS	WUP	M300344	1010214332		BS00097317	14-SEP-22	-\$112.50
Jenna Rollins	WUP	ADJ085040	091422	N	D3800063		
WATER USE PERMITS		VISTRA	VHERNAND	CK			
		CORPORATE					
		SERVICES					
		COMPANY					
					Total (Fee Code):		-\$112.50
					Grand Total:		-\$2,362.50

RECEIVED
SEP 15 2022
Water Availability Division

TCEQ Interoffice Memorandum

FROM: Jenna Rollins, Project Manager
Water Rights Permitting Team

DATE: January 20, 2023

SUBJECT: Big Brown Power Company LLC
Application No. 08-5040A to amend Certificate of Adjudication No. 08-5040
Big Brown Creek, Trinity River Basin
Freestone County

On June 9, 2006, the Texas Supreme Court issued an opinion in the case of *Marshall v Uncertain*.² The Supreme Court in that opinion considered the Commission's practices regarding notice and hearing for applications to amend a water right under Texas Water Code (TWC) § 11.122(b). The Court held that it could not determine under the record in that case whether notice and a hearing would be required. The Court remanded the case to the Commission.

The court in *Marshall* held that when reviewing the type of notice required for an amendment to a water right, the Commission must determine whether there could be an adverse impact from the application on other water rights or the environment beyond or irrespective of the full use assumption, explained below. The Court also held that the Commission must determine if the application could have an adverse impact on the public interest criteria: beneficial use, public welfare, groundwater effects, consistency with the state and regional water plan, compliance with administrative requirements, and conservation.

The types of amendments that come within the *Marshall* decision are those amendments that do not already have a specific notice requirement in a rule for that type of amendment, and that do not change the amount of water to be taken or the diversion rate.

The purpose of this memo is to discuss the public notice that should be given in the above referenced application by the Big Brown Power Company LLC in light of agency rules and the Court's decision in the case of *Marshall*.

Current Permit and Application for Amendment

Certificate of Adjudication No. 08-5040 (Certificate) was originally issued to Texas Utilities Electric Company and authorizes the maintenance of an existing dam and reservoir on Big Brown Creek (Lake Fairfield), Trinity River Basin and impoundment therein of not to exceed 50,600 acre-feet of water.

² City of Marshall et. al. v. City of Uncertain et al., No. 03-1111 (Tx. June 9, 2006).

The Certificate also authorizes the diversion and consumptive use of not to exceed 14,150 acre-feet of water per year, at a maximum diversion rate of 2,680 cfs (1,206,000 gpm), from Lake Fairfield for industrial (thermal-electric power generation) purposes in Freestone County. The time priority of this right is December 18, 1967. Multiple special conditions apply including:

Paragraph 5.B. which states "Owner may store water to be diverted from the Trinity River as authorized by Contractual Permit 377 in the aforesaid reservoir for subsequent diversion and use"; and

Paragraph 5.E. which states "No diversions shall be made from the Trinity River when such diversion will reduce the stream flow at the Trinity River stream gage near Oakwood Texas, below 100 cfs".

Big Brown Power Company LLC (Owner/Applicant) acquired Certificate of Adjudication No. 08-5040 and seeks to amend the Certificate to add municipal, domestic, agricultural, and recreational purposes of use and to remove "thermal-electric power generation" limited use language from the 14,150 acre-feet of water currently authorized for industrial purposes.

Applicant also seeks to revise Paragraph 5.B. to remove the reference to Contractual Permit 377 and to remove Paragraph 5.E.

Rules Related to Notice

The Commission has rules concerning what notice is required for applications to amend a water right in Title 30 Texas Administrative Code (TAC) § 295.158.

Adding Purposes of Use

Under 30 TAC § 295.158(c)(2)(A), no notice is required, except to the record holder, to add a purpose of use that does not substantially alter the nature of the water right from a water right authorizing only non-consumptive use to a water right authorizing consumptive use; or a pattern of use that is explicitly authorized by or required by the original water right. This application falls under that rule and does not require notice except to the record holder.

There are no additional owners of Certificate of Adjudication No. 08-5040; therefore, no notice will be provided.

Removing/Revising a Special Condition

30 TAC § 295.158(c)(3)(A) allows the commission to amend water rights provisions that are ambiguous or ineffective without notice. The Executive Director finds that revising Paragraph 5.B. and removing Paragraph 5.E. in the Certificate have no

potential for harming other water rights because the revision to Paragraph 5.B. would remove a reference to an expired contractual permit and removing Paragraph 5.E. would remove an ineffective provision limiting diversion from the Trinity River since the Certificate itself does not authorize any such diversions.

The notice recommendation for the applicant's request to modify Paragraph 5.B. to remove a reference to Contractual Permit 377, and to remove Paragraph 5.E. will be discussed below.

Texas Water Code

This application for an amendment to an existing water right is governed by TWC § 11.122. TWC § 11.122(a) requires a water right holder, except as discussed above, to obtain a water right amendment if the holder is going to change the place of use, purpose of use, point of diversion, rate of diversion, or "otherwise alter a water right."

TWC § 11.122(b) sets out the scope of the Commission's authority in reviewing applications to amend a water right. Staff notes that in the application, the Applicant is not asking for either an increase in the amount of water authorized for diversion, or an increase in the rate of diversion. With that understanding of the application, it then becomes a duty of the Commission to approve the application "*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 . . . that is sought to be amended was fully exercised according to its terms and conditions as they existed before the requested amendment,*" and the application meets, "*all other applicable requirements,*" of Chapter 11 of the Texas Water Code. The clause that requires the Commission to compare the requested amendment to the existing permit as if the existing permit was fully exercised is often referred to as the "full use assumption."

Adverse Impact on Water Right Holders and the Environment

Under the *City of Marshall* opinion, the Commission must evaluate whether an amendment can adversely impact other water rights or the environment both under and beyond the full use assumption.

Under the full use assumption, revising a special condition to remove a reference to an expired contractual permit, and deleting an ineffective special condition can have no greater impact on other water right holders or the environment than the impacts to those interests under the existing Certificate because the application will not increase the amount of water authorized for impoundment and diversion by the Certificate.

The Executive Director has determined that there are no impacts to water rights or the environment beyond the full use assumption. This amendment requests to

revise Paragraph 5.B. to remove the specific reference to Contractual Permit 377, and to remove Paragraph 5.E.. This application does not change a non-consumptive use to a consumptive use. Also, there is no specific pattern of use required in the existing permit that will be changed. Another issue is whether the Executive Director should consider the Applicant's use of all of the water authorized in the existing water right. The Executive Director has determined that this is not a proper factor to consider because it would discourage conservation and future water planning.

Other Applicable Requirements

Under TWC § 11.122(b) the proposed amendment must also satisfy all other applicable requirements of TWC Chapter 11. The Supreme Court in the *Marshall* case itemized those other requirements, which are discussed below.

Administrative Requirements

Staff has reviewed the application and has found that it meets the administrative requirements of TWC Chapter 11. The application has been declared administratively complete and filed with the Office of the Chief Clerk on January 20, 2023.

Beneficial Use

Proposed appropriations of state water must be for a beneficial use. Beneficial use is defined in TWC § 11.002(4) as "the 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." The authorized use in the Certificate is industrial which is recognized as a beneficial use by TWC § 11.023(a)(6) and was already found to be a beneficial use when the Commission issued the Certificate. The request to revise a special condition to remove a reference to an expired contractual permit, and the request to remove a special condition does not change the authorized use in the Certificate.

The Executive Director is aware of no other facts that would make revising a special condition to remove a reference to an expired contractual permit, and removing a special condition non-beneficial.

Detriment to Public Welfare

A proposed appropriation of state water must not be detrimental to the public welfare. No definition of "detriment to public welfare" is provided in the law. Therefore, the Commission has wide discretion in determining benefits or detriments to the public welfare. The Applicant seeks to revise a special condition to remove a reference to an expired contractual permit, and to remove a special

condition. There are no specific facts known to the Executive Director that would indicate that this is detrimental to the public welfare.

The Executive Director's opinion is that nothing in the application raises an issue on detriment to the public welfare by granting this application.

Groundwater Effects

A proposed appropriation of state water must consider effects of the proposed Permit on groundwater or groundwater recharge. The Commission's Water Availability Model (WAM) is used to evaluate the availability of unappropriated water for new appropriations and takes into account both contributions to river flow caused by groundwater coming to the surface in the river (springs) and decreases in river flow caused by the river flowing over recharge features and losing surface water to groundwater recharge. The WAM contains channel loss factors that account for the gain or loss of river flow. These channel loss factors were developed by the expert engineering contractors hired by the Commission to develop the WAMs.

The Trinity WAM includes Big Brown Creek where the impoundment and diversion under this Certificate occur. The Trinity WAM does not include channel loss factors at the Applicant's location.³

Concerning use of the Texas Water Development Board Groundwater Availability Models (GAMs) and information from the University of Texas, Bureau of Economic Geology (BEG) to assess groundwater impact from the proposed amendment, predictive simulations using the GAMs do not account for streamflow changes associated with permitted surface water withdrawals or return flows. GAMs were not originally designed to address groundwater-surface water interaction and there are issues with using these models for that purpose.³ The GAMs are regional in nature and are not able to simulate groundwater-surface water interaction in detail.⁴ The BEG provides information about aquifer recharge rates.⁵

Both the WAMs and the GAMs have issues related to quantifying groundwater-surface water interaction; however, the WAMs were developed as a tool for surface water permitting. In general, recharge rates, where quantified, are applicable to aquifers or portions of aquifers. As such they do not provide sufficient detail to determine interaction between surface and groundwater at discrete points. Therefore, the Executive Director concludes that neither the GAMs nor aquifer

³ Bureau of Economic Geology. 2005. Groundwater-Surface Water Interactions in Texas. August 2005.

⁴ Mace, R., Austin, B. Angle, E. and R. Batchelder. 2007. Surface Water and Ground Water Together Again. Paper presented at State Bar of Texas 8th Annual Changing Face of Water Rights in Texas. San Antonio, Texas.

⁵ Scanlon, B., Dutton, A. and M. Sophocleous. 2002. Groundwater Recharge in Texas. Water Research Fund Grant Contract No. 2000-483-340.

recharge rates should be used to assess groundwater/surface water interaction for water right applications.

Concerning information available from groundwater conservation districts and the Regional Water Plan, the application is located in the Mid-East Texas Groundwater Conservation District⁶, and the Region C Water Planning Area.⁷ The Mid-East Texas Groundwater Conservation District Groundwater Management Plan⁸ and the 2021 Region C Water Plan⁹ did not contain additional information related to effects on groundwater or groundwater recharge in the area of the application.

Revising a special condition to remove a reference to an expired contractual permit and removing an ineffective provision limiting diversion from the Trinity River since the Certificate itself does not authorize any such diversions do not change the amounts authorized for impoundment and diversion under the certificate. Therefore, the Executive Director concludes that there is no potential groundwater issue involved with this application.

Consistency with Regional and State Plans

Pursuant to TWC § 11.134(b)(3)(E), water right applications are only granted if the application addresses a water supply need in a manner that is consistent with the state water plan and the relevant regional water plan, unless the Commission determines that conditions warrant a waiver of this requirement. The purpose of the state and regional water plans is to assess the likely future use of water and to develop strategies for meeting water supply shortfalls. The state and regional water plans generally do not address every possible change in individual water rights. The Executive Director concludes that the requested amendment is consistent with the relevant regional water plan and the state water plan because there is nothing in the state and regional water plans that conflict with issuing this amendment.

Avoidance of Waste and Achievement of Water Conservation

The Commission has adopted rules in 30 TAC § 295.9(4) that specify which applications to amend existing water rights require the submittal of water conservation plans. The requests to revise a special condition to remove a reference to an expired contractual permit and removing an ineffective provision limiting diversion from the Trinity River since the Certificate itself does not authorize any such diversions do not require submittal of water conservation plans.

⁶ https://www.twdb.texas.gov/mapping/doc/maps/GCDs_8x11.pdf

⁷ <https://www.twdb.texas.gov/waterplanning/rwp/index.asp>

⁸ Mid-East Texas Groundwater Conservation District Management Plan. Approved July 30, 2019.

⁹ 2021 Region C Water Plan. Prepared by Region C Water Planning Group. November 2020.

Conclusion

Applicant's requests in this application are to revise Paragraph 5.B. to remove a reference to Contractual Permit 377 and to remove an ineffective special condition. These requests do not seek to increase either the amount of water diverted, the rate of diversion or the impoundment capacity. Under the full use assumption, the request to revise a special condition to remove a reference to an expired contractual permit, and to remove a special condition will not have an adverse impact on other water right holders and the environment, and there are no negative impacts to other water rights and the environment beyond the full use assumption. Revising a special condition to remove a reference to an expired contractual permit, and removing a special condition do not raise any issues of beneficial use, detriment to the public welfare, groundwater effects, consistency with the state and regional water plans, compliance with administrative requirements, or avoidance of waste and achievement of water conservation. As such, Commission rules, statutes, and case law allow the requests to revise a special condition to remove a reference to an expired contractual permit, and to remove a special condition to be processed with no notice.

Therefore, the Executive Director recommends no notice for this application.

Texas Commission on Environmental Quality
TELEPHONE MEMO TO THE FILE

Call to: Mr. Ryan Bayle	Call from: Jenna Rollins
Date: 1/17/23	Project No: 08-5040A
<i>Information for File follows:</i> This was a phone call to the applicant to discuss the application status and a potential change to the application.	
Signed: <i>Jenna Rollins</i> Date: 1/17/23	

Jenna Rollins

From: Jenna Rollins
Sent: Tuesday, January 17, 2023 8:47 AM
To: 'Bayle, Ryan'
Subject: RE: Application to Amend Certificate of Adjudication No. 08-5040

Good morning Mr. Bayle,

We are working to finalize the notice required for the Big Brown Power Company application No. 08-5040A. Once that is finalized, the application can move forward in the process of being declared administratively complete.

What would you like to have changed in the application? Depending on the change you may have to withdraw the current application and resubmit.

Best,
Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section
512-239-1845

From: Bayle, Ryan [REDACTED]
Sent: Monday, January 16, 2023 2:05 PM
To: Jenna Rollins <Jenna.Rollins@tceq.texas.gov>
Subject: RE: Application to Amend Certificate of Adjudication No. 08-5040

Good afternoon Jenna,

Just wanted to touch base again to check on the status of the Declaration of Admin Complete for Application to Amend Certificate of Adjudication No. 08-5040.

I am pretty sure I know the answer but I also wanted to ask (because my senior management is asking me), If we were to initiate any changed to the application at this stage of the process, would that "reset the clock"?

Thank you,

Ryan Bayle, P.G.
Environmental Manager

[REDACTED]
Luminant

6555 Sierra Drive | Irving, Texas, 75039
O 214.875.8294 | M 214.212.2777

From: Jenna Rollins <Jenna.Rollins@tceq.texas.gov>
Sent: Thursday, October 27, 2022 4:00 PM
To: Bayle, Ryan [REDACTED]
Subject: RE: Application to Amend Certificate of Adjudication No. 08-5040

EXTERNAL EMAIL

Good afternoon Mr. Bayle,

We are still working to declare the Big Brown Power Company application No. 08-5040A administratively complete. If you have any additional questions please let me know!

Best regards,
Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section
512-239-1845

From: Bayle, Ryan [REDACTED]
Sent: Thursday, October 27, 2022 1:28 PM
To: Jenna Rollins <Jenna.Rollins@tceq.texas.gov>
Subject: RE: Application to Amend Certificate of Adjudication No. 08-5040

Good afternoon Jenna,

Just wanted to touch base again to check on the status of the Declaration of Admin Complete for Application to Amend Certificate of Adjudication No. 08-5040.

Thank you,

Ryan Bayle, P.G.
Environmental Manager
[REDACTED]
Luminant

6555 Sierra Drive | Irving, Texas, 75039
~~O 214.875.8294~~ | M 214.212.2777

From: Jenna Rollins <Jenna.Rollins@tceq.texas.gov>
Sent: Thursday, October 6, 2022 2:25 PM
To: Bayle, Ryan [REDACTED]
Subject: RE: Application to Amend Certificate of Adjudication No. 08-5040

EXTERNAL EMAIL

Good afternoon Mr. Bayle,

We are currently working to declare the Big Brown Power Company application No. 08-5040A administratively complete and do not need any additional information at this time. Please let me know if you have any additional questions.

Best regards,
Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section
512-239-1845

From: Bayle, Ryan [REDACTED]
Sent: Thursday, October 6, 2022 8:09 AM
To: Jenna Rollins <Jenna.Rollins@tceq.texas.gov>
Subject: RE: Application to Amend Certificate of Adjudication No. 08-5040

Good morning Jenna,

I just wanted to touch base to check on the status of the Declaration of Admin Complete for Application to Amend Certificate of Adjudication No. 08-5040 and see if you have any questions or require any additional information.

Thank you,

Ryan Bayle, P.G.
Environmental Manager
[REDACTED]

Luminant

6555 Sierra Drive | Irving, Texas, 75039
~~O 214.875.8294~~ | M 214.212.2777

From: Bayle, Ryan
Sent: Friday, September 16, 2022 7:29 AM
To: Jenna.Rollins@tceq.texas.gov
Cc: Hal Bailey <Hal.Bailey@tceq.texas.gov>
Subject: Application to Amend Certificate of Adjudication No. 08-5040

Good morning Jenna,

Hal Bailey contacted me the other day and let me know that you are the PM that has been assigned the Application to Amend Certificate of Adjudication No. 08-5040. Hal also informed me that I mistakenly included the wrong evidence of signatory authority in the application. Attached to this email is the correct signatory documentation for Big Brown Power Company LLC.

If you have any questions, or need any additional information, please do not hesitate to contact me.

Thank you,

Ryan Bayle, P.G.
Environmental Manager
[REDACTED]

Luminant

6555 Sierra Drive | Irving, Texas, 75039
~~O 214.875.8294~~ | M 214.212.2777

Confidentiality Notice: This email message, including any attachments, contains or may contain confidential information intended only for the addressee. If you are not an intended recipient of this message, be advised that any reading, dissemination, forwarding, printing, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply message and delete this email message and any attachments from your system.

Confidentiality Notice: This email message, including any attachments, contains or may contain confidential information intended only for the addressee. If you are not an intended recipient of this message, be advised that any reading, dissemination, forwarding, printing, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply message and delete this email message and any attachments from your system.

Confidentiality Notice: This email message, including any attachments, contains or may contain confidential information intended only for the addressee. If you are not an intended recipient of this message, be advised that any reading, dissemination, forwarding, printing, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply message and delete this email message and any attachments from your system.

Jenna Rollins

From: Jenna Rollins
Sent: Thursday, October 27, 2022 4:00 PM
To: Bayle, Ryan
Subject: RE: Application to Amend Certificate of Adjudication No. 08-5040

Good afternoon Mr. Bayle,

We are still working to declare the Big Brown Power Company application No. 08-5040A administratively complete. If you have any additional questions please let me know!

Best regards,
Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section
512-239-1845

From: Bayle, Ryan [REDACTED]
Sent: Thursday, October 27, 2022 1:28 PM
To: Jenna Rollins <Jenna.Rollins@tceq.texas.gov>
Subject: RE: Application to Amend Certificate of Adjudication No. 08-5040

Good afternoon Jenna,

Just wanted to touch base again to check on the status of the Declaration of Admin Complete for Application to Amend Certificate of Adjudication No. 08-5040.

Thank you,

Ryan Bayle, P.G.
Environmental Manager

[REDACTED]
Luminant

6555 Sierra Drive | Irving, Texas, 75039
~~O 214.875.8294~~ | M 214.212.2777

From: Jenna Rollins <Jenna.Rollins@tceq.texas.gov>
Sent: Thursday, October 6, 2022 2:25 PM
To: Bayle, Ryan [REDACTED]
Subject: RE: Application to Amend Certificate of Adjudication No. 08-5040

EXTERNAL EMAIL

Good afternoon Mr. Bayle,

We are currently working to declare the Big Brown Power Company application No. 08-5040A administratively complete and do not need any additional information at this time. Please let me know if you have any additional questions.

Best regards,
Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section
512-239-1845

From: Bayle, Ryan [REDACTED]
Sent: Thursday, October 6, 2022 8:09 AM
To: Jenna Rollins <Jenna.Rollins@tceq.texas.gov>
Subject: RE: Application to Amend Certificate of Adjudication No. 08-5040

Good morning Jenna,

I just wanted to touch base to check on the status of the Declaration of Admin Complete for Application to Amend Certificate of Adjudication No. 08-5040 and see if you have any questions or require any additional information.

Thank you,

Ryan Bayle, P.G.
Environmental Manager
[REDACTED]

Luminant

6555 Sierra Drive | Irving, Texas, 75039
~~O 214.875.8294~~ | M 214.212.2777

From: Bayle, Ryan
Sent: Friday, September 16, 2022 7:29 AM
To: Jenna.Rollins@tceq.texas.gov
Cc: Hal Bailey <Hal.Bailey@tceq.texas.gov>
Subject: Application to Amend Certificate of Adjudication No. 08-5040

Good morning Jenna,

Hal Bailey contacted me the other day and let me know that you are the PM that has been assigned the Application to Amend Certificate of Adjudication No. 08-5040. Hal also informed me that I mistakenly included the wrong evidence of signatory authority in the application. Attached to this email is the correct signatory documentation for Big Brown Power Company LLC.

If you have any questions, or need any additional information, please do not hesitate to contact me.

Thank you,

Ryan Bayle, P.G.
Environmental Manager
Ryan.Bayle@Luminant.com
Luminant

6555 Sierra Drive | Irving, Texas, 75039
~~O 214.875.8294~~ | M 214.212.2777

Confidentiality Notice: This email message, including any attachments, contains or may contain confidential information intended only for the addressee. If you are not an intended recipient of this message, be advised that any reading, dissemination, forwarding, printing, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply message and delete this email message and any attachments from your system.

Confidentiality Notice: This email message, including any attachments, contains or may contain confidential information intended only for the addressee. If you are not an intended recipient of this message, be advised that any reading, dissemination, forwarding, printing, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply message and delete this email message and any attachments from your system.

Jenna Rollins

From: Jenna Rollins
Sent: Thursday, October 6, 2022 2:25 PM
To: Bayle, Ryan
Subject: RE: Application to Amend Certificate of Adjudication No. 08-5040

Good afternoon Mr. Bayle,

We are currently working to declare the Big Brown Power Company application No. 08-5040A administratively complete and do not need any additional information at this time. Please let me know if you have any additional questions.

Best regards,
Jenna Rollins, Project Manager
Water Rights Permitting Team
Water Rights Permitting and Availability Section
512-239-1845

From: Bayle, Ryan [REDACTED]
Sent: Thursday, October 6, 2022 8:09 AM
To: Jenna Rollins <Jenna.Rollins@tceq.texas.gov>
Subject: RE: Application to Amend Certificate of Adjudication No. 08-5040

Good morning Jenna,

I just wanted to touch base to check on the status of the Declaration of Admin Complete for Application to Amend Certificate of Adjudication No. 08-5040 and see if you have any questions or require any additional information.

Thank you,

Ryan Bayle, P.G.
Environmental Manager

[REDACTED]
Luminant

6555 Sierra Drive | Irving, Texas, 75039
~~O 214.875.8294~~ | M 214.212.2777

From: Bayle, Ryan
Sent: Friday, September 16, 2022 7:29 AM
To: Jenna.Rollins@tceq.texas.gov
Cc: Hal Bailey <Hal.Bailey@tceq.texas.gov>
Subject: Application to Amend Certificate of Adjudication No. 08-5040

Good morning Jenna,

Hal Bailey contacted me the other day and let me know that you are the PM that has been assigned the Application to Amend Certificate of Adjudication No. 08-5040. Hal also informed me that I mistakenly included the wrong evidence of

signatory authority in the application. Attached to this email is the correct signatory documentation for Big Brown Power Company LLC.

If you have any questions, or need any additional information, please do not hesitate to contact me.

Thank you,

Ryan Bayle, P.G.
Environmental Manager
Ryan.Bayle@Luminant.com
Luminant

6555 Sierra Drive | Irving, Texas, 75039
~~O 214.875.8294~~ | M 214.212.2777

Confidentiality Notice: This email message, including any attachments, contains or may contain confidential information intended only for the addressee. If you are not an intended recipient of this message, be advised that any reading, dissemination, forwarding, printing, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply message and delete this email message and any attachments from your system.

Jenna Rollins

From: Bayle, Ryan [REDACTED]
Sent: Friday, September 16, 2022 7:29 AM
To: Jenna Rollins
Cc: Hal Bailey
Subject: Application to Amend Certificate of Adjudication No. 08-5040
Attachments: 2022-08-05 Certificate of Incumbency.pdf; Big Brown Power Company - 2nd Amended and Restated LLC Agreement.pdf; Vistra Org. Chart Excerpt -- Big Brown Power Company LLC.pdf

Good morning Jenna,

Hal Bailey contacted me the other day and let me know that you are the PM that has been assigned the Application to Amend Certificate of Adjudication No. 08-5040. Hal also informed me that I mistakenly included the wrong evidence of signatory authority in the application. Attached to this email is the correct signatory documentation for Big Brown Power Company LLC.

If you have any questions, or need any additional information, please do not hesitate to contact me.

Thank you,

Ryan Bayle, P.G.
Environmental Manager

[REDACTED]
Luminant

6555 Sierra Drive | Irving, Texas, 75039
~~O 214.875.8294~~ | M 214.212.2777

Confidentiality Notice: This email message, including any attachments, contains or may contain confidential information intended only for the addressee. If you are not an intended recipient of this message, be advised that any reading, dissemination, forwarding, printing, copying or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by reply message and delete this email message and any attachments from your system.

BIG BROWN POWER COMPANY LLC

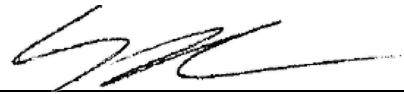
CERTIFICATE OF INCUMBENCY

I, Seth Rasmussen, Assistant Secretary of Big Brown Power Company LLC (the "Company"), do hereby certify that the persons whose names and titles appear below are the duly elected and qualified officers of the Company and that each holds, on the date of this certificate, the office designated opposite his or her name:

Big Brown Power Company LLC

James A. Burke	President and Chief Executive Officer
Kristopher E. Moldovan	Executive Vice President, Chief Financial Officer, and Treasurer
Carrie L. Kirby	Executive Vice President and Chief Administrative Officer
Stephanie Zapata Moore	Executive Vice President, General Counsel, and Chief Compliance Officer
Stephen J. Muscato	Executive Vice President and Chief Commercial Officer
Barry T. Boswell	Executive Vice President-Generation Operations and Services
Carla A. Howard	Senior Vice President and General Tax Counsel
Tom Farrah	Senior Vice President and Chief Information Officer
Christy Dobry	Senior Vice President and Controller
Daniel J. Kelly	Senior Vice President and Deputy General Counsel
Cynthia Vodopivec	Senior Vice President
Matthew A. Goering	Senior Vice President
Yuki Whitmire	Vice President, Associate General Counsel, and Corporate Secretary
Ben Elliott	Vice President
Sam Siegel	Vice President
Paul H. Reyes	Vice President
Ruben Garcia Espejo	Vice President of Finance and Assistant Treasurer
Seth Rasmussen	Assistant Secretary

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of August, 2022.



Seth Rasmussen
Assistant Secretary

**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
BIG BROWN POWER COMPANY LLC**

This Second Amended and Restated Limited Liability Company Agreement (this “Agreement”) of Big Brown Power Company LLC (the “Company”), effective as of July 19, 2022, is entered into by Vistra Asset Company LLC, a Delaware limited liability company, as the sole member of the Company (the “Member”), for the purpose of governing the affairs of the Company.

WHEREAS, a previous sole member entered into a Limited Liability Company Agreement for the Company on October 1, 2007 (the “Original Agreement”); and

WHEREAS, the previous sole member entered into an Amended and Restated Limited Liability Company Agreement for the Company on September 15, 2011 (the “Prior Agreement”); and

WHEREAS, this Agreement amends and restates the Prior Agreement in all respects, and constitutes the governing instrument of the Company.

ARTICLE I

LIMITED LIABILITY COMPANY

Section 1.1 *Name.* The name of the limited liability company is Big Brown Power Company LLC.

Section 1.2 *Filing of Certificates.* The Member, as an authorized person within the meaning of the Texas Business Organizations Code, as amended from time to time (the “Code”), shall execute, deliver and file all certificates (and any amendments and/or restatements thereof) required or permitted to be filed with the Secretary of State of the State of Texas. The Member is authorized to execute, deliver and file any other certificates, notices or documents (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business. The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Code.

Section 1.3 *Purposes.* The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Code.

Section 1.4 *Powers.* In furtherance of its purposes, but subject to all of the provisions of this Agreement, the Company, and the officers of the Company on behalf of the Company, shall have and may exercise (i) all the powers now or hereafter conferred by Texas law on limited liability companies formed under the Code and (ii) all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 1.3.

Section 1.5 *Principal Business Office.* The principal business office of the Company shall be located at 6555 Sierra Drive, Irving, Texas 75039, or such other location as may hereafter be determined by the Company.

Section 1.6 *Registered Office.* The address of the registered office of the Company in the State of Texas is c/o Capitol Services, Inc., 1501 S. MoPac Expy., Ste. 220, Austin, TX, 78746, or such other location as may hereafter be determined by the Company.

Section 1.7 *Registered Agent.* The name of the registered agent of the Company for service of process on the Company in the State of Texas is Capitol Services, Inc.

Section 1.8 *Admission of Member.* The Member is deemed admitted as a member of the Company upon its execution and delivery of this Agreement

Section 1.9 *Foreign Qualifications.* An officer of the Company shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any foreign jurisdiction in which the Company may wish to conduct business.

Section 1.10 *Capital Contributions.* The Member has made certain capital contributions to the Company, and may make such other capital contributions to the Company as it may determine appropriate in its sole discretion. The provisions of this Agreement, including this Section 1.10, are intended solely to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Member shall have no duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 1.11 *Allocation of Profits and Losses.* The Company's profits and losses shall be allocated to the Member; provided, however, that no allocation of any loss to the Member shall create any obligation on the Member to make any capital contribution to the Company to offset such loss (or otherwise), the Member having no obligation to make any such capital contribution, as provided in Section 1.10 above.

Section 1.12 *Distributions.* Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member or, if the Member subsequently appoints a board of managers, the board of managers. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to the Member on account of its interest in the Company if such distribution would violate the Code or other applicable law.

Section 1.13 *Other Business.* The Member and any Affiliate of the Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

When used in this Agreement, “Affiliate” means, with respect to any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association joint-stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, or any governmental authority (“Person”), any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person, and “Control” means the possession, directly or indirectly, or the power to direct or cause the direction, of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. “Controlling” and “Controlled” have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

ARTICLE II

MANAGEMENT

Section 2.1 *Management.*

(a) *Member Managed.* The business and affairs of the Company shall be managed by or under the direction of the Member.

(b) *Powers.* The Member shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. The Member has the authority to bind the Company.

(c) *Action by Consent.* The Member may act by written consents.

Section 2.2 *Officers; Delegation.* The Member may, from time to time as it deems advisable, select natural persons who are employees or agents of the Company and designate them as officers of the Company (the “Officers”). Any delegation pursuant to this Section 15 may be revoked at any time by the Member. An Officer may be removed with or without cause by the Member. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Member not inconsistent with this Agreement, are agents of the Company for the purpose of the Company’s business and the actions of the Officers taken in accordance with such powers shall bind the Company.

Section 2.3 *Limitation of Liability.* Except as otherwise expressly provided by the Code, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and no (a) Member or Affiliate of a Member or their respective members, officers, directors, employees, agents, stockholders or partners, (b) Manager, officer, employee or agent of the Company or (c) Person who serves on behalf of the Company as a partner, manager, member, officer, director, employee or agent of any other entity (collectively, with all such Persons that are or have been, at any time from and after the date of formation of the Company, among the Persons listed in subsections (a), (b) or (c), the “Covered Persons”) shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Covered Person.

(a) The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of the Company or its affairs under this Agreement or the Code shall not be grounds for imposing personal liability on any Covered Person for liabilities of the Company.

(b) Such protections from personal liability shall apply to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide greater or broader indemnification rights than such law permitted the Company to provide prior to such amendment).

(c) To the extent that, at law or in equity, a Covered Person or any other person has duties (including fiduciary duties) to the Company or to another Member or Manager or to another person that is a party to or is otherwise bound by this Agreement, those duties are hereby eliminated to the fullest extent allowed under Texas law and the Code. All liabilities for breach of contract and breach of duties (including fiduciary duties) of a Covered Person or any other person to the Company or to another Member or Manager or any other person that is a party to or is otherwise bound by this Agreement are hereby eliminated to the fullest extent allowed under Texas law and the Code. The elimination of duties and liabilities set forth in this Section 2.3(c) shall be deemed to apply from and after the formation of the Company.

ARTICLE III

MEMBERS

Section 3.1 *Sole Member.* The Member is the sole member of the Company. The mailing address of the Member is: 6555 Sierra Drive, Irving, Texas 75039. The Company has issued all of the limited liability company interests in the Company to the Member. Additional members may be admitted only by written amendment of this Agreement, executed by the Member.

Section 3.2 *Assignments.* The Member may assign in whole or in part its limited liability company interests in the Company. If the Member transfers all of its interests pursuant to this Section 3.2 the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the transfer, and, immediately following such admission, the transferor Member shall cease to be a member of the Company.

Section 3.3 *Admission of Additional Members.* One or more additional members of the Company may be admitted to the Company with the written consent of the Member.

Section 3.4 *Resignation.* A Member may resign from the Company with the written consent of all of the Members. If a Member is permitted to resign pursuant to this Section 3.4, an additional member of the Company shall be admitted to the Company, subject to Section 3.3, upon its execution of an instrument signifying its agreement to be bound by the terms and

conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation, and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

ARTICLE IV

DISSOLUTION

Section 4.1 *Events of Dissolution.*

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the retirement, resignation or dissolution of the last remaining Member or the occurrence of any other event which terminates the continued membership of the last remaining Member in the Company unless the business of the Company is continued in a manner permitted by the Code or (ii) the entry of a decree of judicial dissolution under the Code.

(b) Except to the extent set forth in Section 4.1(a) of this Agreement, the occurrence of any event that terminates the continued membership of a Member in the Company shall not cause the dissolution of the Company, and, upon the occurrence of such an event, the business of the Company shall continue without dissolution.

(c) The bankruptcy of the Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

(d) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in the Code.

ARTICLE V

INDEMNIFICATION

Section 5.1 *Right to Indemnification.* Subject to the limitations and conditions as provided in this Article V, each Covered Person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action or other proceeding, whether civil, criminal, administrative, arbitral or investigative, or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding (hereafter a "Proceeding"), by reason of any actions or omissions or alleged acts or omissions of such Covered Person relating to the Company, shall be indemnified by the Company to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys' fees) (all collectively the "Indemnification Amounts") actually incurred by such Covered Person at the time any such Indemnification Amounts are incurred in connection with such Proceeding.

Indemnification under this Article V shall continue as to a Covered Person who has ceased to serve in the capacity which initially entitled such Covered Person to indemnity hereunder. Without limiting the generality of the foregoing, it is expressly acknowledged that the indemnification provided in this Article V could involve indemnification for negligence or under theories of strict liability.

Section 5.2 *Limitation on Indemnification.* Subject to applicable law, notwithstanding any language in this Article V to the contrary, in no event shall any Person be entitled to indemnification pursuant to this Article V if it is established or admitted either (a) in a final judgment of a court of competent jurisdiction or (b) by such Person in any affidavit, sworn statement, plea arrangement or other cooperation with any government or regulatory authority that the Person's acts or omissions that would otherwise be subject to indemnification under this Article V constituted fraud.

Section 5.3 *Advancement of Expenses.* The right to indemnification conferred in this Article V shall include the right to be paid or reimbursed by the Company the reasonable expenses incurred by a Covered Person of the type entitled to be indemnified above who was, is or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding, without any determination as to such Covered Person's ultimate entitlement to indemnification under, upon receipt of a written affirmation by such Covered Person of such Covered Person's good faith belief that such Covered Person has met the standard of conduct necessary for indemnification under applicable law and this Article V and a written undertaking by or on behalf of such Covered Person to repay all amounts so advanced if it shall ultimately be determined that such Covered Person is not entitled to be indemnified by the Company under this Article V or if such indemnification is prohibited by applicable law.

Section 5.4 *Appearance as a Witness.* Notwithstanding any other provision of this Article V, the Company may pay or reimburse expenses incurred by a Covered Person in connection with his or her appearance as a witness or other participation in a Proceeding at a time when such Covered Person is not a named defendant or respondent in the Proceeding.

Section 5.5 *Non-exclusivity of Rights.* The indemnification and advancement and payment of expenses provided by this Article V shall not be deemed exclusive of any other rights to which a Covered Person indemnified pursuant to this Article V may have or hereafter acquire under any law (common or statutory), provision of this Agreement, any agreement or otherwise.

Section 5.6 *Contract Rights.* The rights granted pursuant to this Article V shall be deemed to be contract rights, and no amendment, modification or repeal of this Article V shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal.

Section 5.7 *Insurance.* The Company may purchase and maintain insurance or another arrangement, at its expense, on behalf of itself, any Covered Person, any Manager, officer, employee or agent of the Company, or any Person who serves on behalf of the Company as a partner, manager, member, officer, director, employee or agent of any other entity against any liability, expense or loss, whether or not the Company would have the power to indemnify such Person against such liability, expense or loss under the provisions of this Article V.

Section 5.8 *Savings Clause.* If this Article V or any portion of this Agreement shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Covered Person indemnified pursuant to this Article V as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the fullest extent permitted by any applicable portion of this Article V that shall not have been invalidated and to the fullest extent permitted by applicable law.

Section 5.9 *Consultation with Counsel.* The right to indemnification conferred in this Article V on any Covered Person shall include the right to consult with legal counsel, financial advisors and accountants selected by such Covered Person, and any act or omission suffered or taken by such Covered Person on behalf of the Company or in furtherance of the interests of the Company in good faith in reliance upon and in accordance with the advice of such counsel, financial advisors or accountants will be full justification for any such act or omission, and each such Covered Person will be fully protected in so acting or omitting to act; provided that such counsel, financial advisors or accountants were selected with reasonable care.

Section 5.10 *Other Indemnities.*

(a) The Company acknowledges and agrees that the obligation of the Company under this Agreement to indemnify or advance expenses to any Covered Person for the matters covered thereby shall be the primary source of indemnification and advancement of such Covered Person in connection therewith and any obligation on the part of any Covered Person under any Other Indemnification Agreement to indemnify or advance expenses to such Covered Person shall be secondary to the Company's obligation and shall be reduced by any amount that the Covered Person may collect as indemnification or advancement from the Company. If the Company fails to indemnify or advance expenses to a Covered Person as required or contemplated by this Agreement, and any Person makes any payment to such Covered Person in respect of indemnification or advancement of expenses under any Other Indemnification Agreement on account of such Unpaid Indemnity Amounts, such other Person shall be subrogated to the rights of such Covered Person under this Agreement in respect of such Unpaid Indemnity Amounts.

(b) The Company, as an indemnifying party from time to time, agrees that, to the fullest extent permitted by applicable law, its obligation to indemnify Covered Persons under this Agreement shall include any amounts expended by any other Person under any Other Indemnification Agreement in respect of indemnification or advancement of expenses to any Covered Person in connection with any Proceedings to the extent such amounts expended by such other Person are on account of any Unpaid Indemnity Amounts.

"Other Indemnification Agreement" means one or more certificate or articles of incorporation, by-laws, limited liability company operating agreement, limited partnership agreement and any other organizational document, and insurance policies maintained by any Member or Manager or Affiliate thereof providing for, among other things, indemnification of and advancement of expenses for any Covered Person for, among other things, the same matters that are subject to indemnification and advancement of expenses under this Agreement.

“Unpaid Indemnity Amounts” means any amount that the Company fails to indemnify or advance to a Covered Person as required by Article V of this Agreement.

For purposes of this Article V, the term “Company” shall include any predecessor of the Company and any constituent entity (including any constituent of a constituent) absorbed by the Company in a consolidation or merger; the term service “on behalf of the Company” shall include service as an officer, Manager, Member or employee of the Company which imposes duties on, or involves services by, such officer, Manager, Member or employee with respect to an employee benefit plan, its participants or beneficiaries; any excise taxes assessed on a Person with respect to an employee benefit plan shall be deemed to be indemnifiable expenses; and action by a Person with respect to an employee benefit plan which such Person reasonably believes to be in the interest of the participants and beneficiaries of such plan shall be deemed to be action not opposed to the best interests of the Company.

ARTICLE VI

EXCULPATION

Section 6.1 *Exculpation.* To the fullest extent permitted by applicable law, no Covered Person shall be liable or accountable in damages or otherwise to the Company or to any Member for any loss or liability arising from any act or omission of such Covered Person relating to the Company unless, and only to the extent that, such act or omission constituted fraud.

ARTICLE VII

GENERAL PROVISIONS

Section 7.1 *Amendment.* This Agreement may not be modified, altered, supplemented or amended except by written instrument signed by the Member.

Section 7.2 *Applicable Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

Section 7.3 *Benefits of Agreement; No Third-Party Rights.* None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of any Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third person.

Section 7.4 *Severability of Provisions.* Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

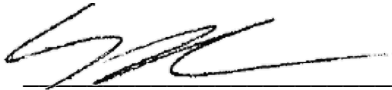
Section 7.5 *Entire Agreement.* This Agreement constitutes the entire agreement of the Member with respect to subject matter hereof.

[Remainder of Page Intentionally Left Blank; Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement effective as of the 19th day of July, 2022.

MEMBER:

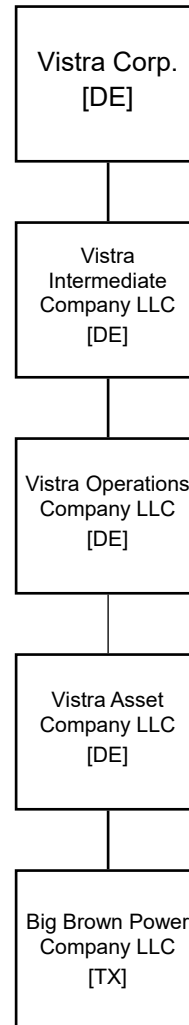
VISTRA ASSET COMPANY LLC

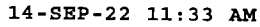
By: 
Seth Rasmussen
Assistant Secretary

Vistra Corp.

Subsidiary Ownership Structure Chart Excerpt

All listed entities are wholly owned subsidiaries of Vistra Corp., which is publicly traded on the New York Stock Exchange (VST)





TCEQ - A/R RECEIPT REPORT BY ACCOUNT NUMBER

<u>Fee Description</u>	<u>Fee Code</u> <u>Account#</u>	<u>Ref#1</u> <u>Ref#2</u> <u>Paid In By</u>	<u>Check Number</u> <u>Card Auth.</u> <u>User Data</u>	<u>CC Type</u> <u>Tran Code</u> <u>Rec Code</u>	<u>Slip Key</u> <u>Document#</u>	<u>Tran Date</u>	<u>Tran Amount</u>
WTR USE PERMITS	WUP	M300344	1010214332		BS00097317	14-SEP-22	-\$112.50
Jenna Rollins	WUP	ADJ085040	091422	N	D3800063		
WATER USE PERMITS		VISTRA	VHERNAND	CK			
		CORPORATE					
		SERVICES					
		COMPANY					
						Total (Fee Code):	-\$112.50
						Grand Total:	-\$2,362.50

RECEIVED
SEP 15 2022
Water Availability Division



Ryan M. Bayle, P.G.
Environmental Manager

Luminant
Environmental Services
6555 Sierra Drive
Irving, Texas 75039

T 214.875.8294
C 214.212.2777

Via FedEx

September 12, 2022

Mr. Hal Bailey
Texas Commission on Environmental Quality
Water Availability Division, MC-160
12100 Park 35 Circle
Austin, Texas 78753

RE: Application to Amend Certificate of Adjudication No. 08-5040
Pursuant to Texas Water Code § 11.122
Applicant: Big Brown Power Company LLC

Dear Mr. Bailey,

Enclosed with this letter one original copy of an application to amend Certificate of Adjudication No. 08-5040 filed on behalf of Big Brown Power Company LLC. Also enclosed is a check for the application fee in the amount of \$112.50.

If you have any questions, or require additional information, please do not hesitate to contact me at 214-212-2777 or via e-mail at ryan.bayle@luminant.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan M. Bayle", is written over a blue circular stamp.

Ryan M. Bayle

Enclosure

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TCEQ WATER RIGHTS PERMITTING APPLICATION

ADMINISTRATIVE INFORMATION CHECKLIST

Complete and submit this checklist for each application. See Instructions Page. 5.

APPLICANT(S): Big Brown Power Company LLC

Indicate whether the following items are included in your application by writing either Y (for yes) or N (for no) next to each item (all items are not required for every application).

<u>Y</u>	Administrative Information Report	<u>N</u>	Worksheet 3.0
<u>N</u>	Additional Co-Applicant Information	<u>N</u>	Additional W.S 3.0 for each Point
<u>N</u>	Additional Co-Applicant Signature Pages	<u>N</u>	Recorded Deeds for Diversion Points
<u>Y</u>	Written Evidence of Signature Authority	<u>N</u>	Consent For Diversion Access
<u>Y</u>	Technical Information Report	<u>N</u>	Worksheet 4.0
<u>N</u>	USGS Map (or equivalent)	<u>N</u>	TPDES Permit(s)
<u>N</u>	Map Showing Project Details	<u>N</u>	WWTP Discharge Data
<u>N</u>	Original Photographs	<u>N</u>	Groundwater Well Permit
<u>N</u>	Water Availability Analysis	<u>N</u>	Signed Water Supply Contract
<u>Y</u>	Worksheet 1.0	<u>N</u>	Worksheet 4.1
<u>N</u>	Recorded Deeds for Irrigated Land	<u>N</u>	Worksheet 5.0
<u>N</u>	Consent For Irrigation Land	<u>N</u>	Addendum to Worksheet 5.0
<u>N</u>	Worksheet 1.1	<u>Y</u>	Worksheet 6.0
<u>N</u>	Addendum to Worksheet 1.1	<u>N</u>	Water Conservation Plan(s)
<u>Y</u>	Worksheet 1.2	<u>N</u>	Drought Contingency Plan(s)
<u>N</u>	Additional W.S 2.0 for Each Reservoir	<u>N</u>	Documentation of Adoption
<u>N</u>	Dam Safety Documents	<u>N</u>	Worksheet 7.0
<u>N</u>	Notice(s) to Governing Bodies	<u>N</u>	Accounting Plan
<u>N</u>	Recorded Deeds for Inundated Land	<u>Y</u>	Worksheet 8.0
<u>N</u>	Consent For Inundation Land	<u>Y</u>	Fees

ADMINISTRATIVE INFORMATION REPORT

The following information is **required** for all new applications and amendments.

*****Applicants are strongly encouraged to schedule a pre-application meeting with TCEQ Staff to discuss Applicant's needs prior to submitting an application. Call the Water Rights Permitting Team to schedule a meeting at (512) 239-4600.**

1. TYPE OF APPLICATION (Instructions, Page. 6)

Indicate, by marking X, next to the following authorizations you are seeking.

☐ New Appropriation of State Water

☒ Amendment to a Water Right *

☐ Bed and Banks

****If you are seeking an amendment to an existing water rights authorization, you must be the owner of record of the authorization. If the name of the Applicant in Section 2, does not match the name of the current owner(s) of record for the permit or certificate or if any of the co-owners is not included as an applicant in this amendment request, your application could be returned. If you or a co-applicant are a new owner, but ownership is not reflected in the records of the TCEQ, submit a change of ownership request (Form TCEQ-10204) prior to submitting the application for an amendment. See Instructions page. 6. Please note that an amendment application may be returned, and the Applicant may resubmit once the change of ownership is complete.***

Please summarize the authorizations or amendments you are seeking in the space below or attach a narrative description entitled "Summary of Request."

- Add domestic, municipal, agricultural and recreational consumptive uses;
- Delete "thermal-electric power generation" from the currently authorized industrial use;
- Revise Special Condition 5.B. to remove the specific reference to Contractual Permit 377.
- Delete Special Condition 5.E. to remove the limitation on diversions from the Trinity River.

3. APPLICATION CONTACT INFORMATION (Instructions, Page. 9)

If the TCEQ needs additional information during the review of the application, who should be contacted? Applicant may submit their own contact information if Applicant wishes to be the point of contact.

First and Last Name: Ryan Bayle, P.G.

Title: Environmental Manager

Organization Name: Luminant Generation Company LLC

Mailing Address: 6555 Sierra Drive

City: Irving State: TX ZIP Code: 79039

Phone Number: 214-875-8294

Fax Number: _____

E-mail Address: [REDACTED]

4. WATER RIGHT CONSOLIDATED CONTACT INFORMATION (Instructions, Page. 9)

This section applies only if there are multiple Owners of the same authorization. Unless otherwise requested, Co-Owners will each receive future correspondence from the Commission regarding this water right (after a permit has been issued), such as notices and water use reports. Multiple copies will be sent to the same address if Co-Owners share the same address. Complete this section if there will be multiple owners and all owners agree to let one owner receive correspondence from the Commission. Leave this section blank if you would like all future notices to be sent to the address of each of the applicants listed in section 2 above.

I/We authorize all future notices be received on my/our behalf at the following:

First and Last Name: N/A

Title: _____

Organization Name: _____

Mailing Address: _____

City: _____ State: _____ ZIP Code: _____

Phone Number: _____

Fax Number: _____

E-mail Address: _____

5. MISCELLANEOUS INFORMATION (Instructions, Page. 9)

- a. The application will not be processed unless 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 by all applicants/co-applicants. If you need assistance determining whether you owe delinquent penalties or fees, please call the Water Rights Permitting Team at (512) 239-4600, prior to submitting your application.

1. Does Applicant or Co-Applicant owe any fees to the TCEQ? **Yes / No** N

If **yes**, provide the following information:

Account number: _____ Amount past due: _____

2. Does Applicant or Co-Applicant owe any penalties to the TCEQ? **Yes / No** N

If **yes**, please provide the following information:

Enforcement order number: _____ Amount past due: _____

- b. If the Applicant is a taxable entity (corporation or limited partnership), the Applicant must be in good standing with the Comptroller or the right of the entity to transact business in the State may be forfeited. See Texas Tax Code, Subchapter F. Applicants may check their status with the Comptroller at <https://mycpa.cpa.state.tx.us/coa/>

Is the Applicant or Co-Applicant in good standing with the Comptroller? **Yes / No** Y

- c. The commission will not grant an application for a water right unless the applicant has submitted all Texas Water Development Board (TWDB) surveys of groundwater and surface water use - if required. See TWC §16.012(m) and 30 TAC § 297.41(a)(5). Applicants should check survey status on the TWDB website prior to filing:

https://www3.twdb.texas.gov/apps/reports/WU/SurveyStatus_PriorThreeYears

Applicant has submitted all required TWDB surveys of groundwater and surface water?

Yes / No Y

6. SIGNATURE PAGE (Instructions, Page. 11)

Applicant:

I, Matthew Goering

(Typed or printed name)

Senior Vice President Asset Closure

(Title)

certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I further certify that I am authorized under Title 30 Texas Administrative Code §295.14 to sign and submit this document and I have submitted written evidence of my signature authority.

Signature: _____



(Use blue ink)

Date: 9-12-22

Subscribed and Sworn to before me by the said

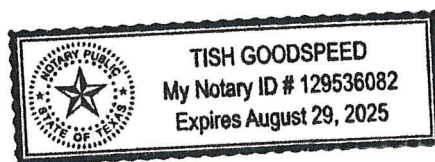
on this 12th day of September, 2022.

My commission expires on the 29th day of August, 2025.

Tish Goodspeed

Notary Public

Dallas
County, Texas



[SEAL]

If the Application includes Co-Applicants, each Applicant and Co-Applicant must submit an original, separate signature page

TECHNICAL INFORMATION REPORT

WATER RIGHTS PERMITTING

This Report is required for applications for new or amended water rights. Based on the Applicant's responses below, Applicants are directed to submit additional Worksheets (provided herein). A completed Administrative Information Report is also required for each application.

Applicants are REQUIRED to schedule a pre-application meeting with TCEQ Permitting Staff to discuss Applicant's needs and to confirm information necessary for an application prior to submitting such application. Please contact the Water Availability Division at (512) 239-4600 or WRPT@tceq.texas.gov to schedule a meeting.

Date of pre-application meeting: 08/24/2022

1. New or Additional Appropriations of State Water. Texas Water Code (TWC) § 11.121 (Instructions, Page. 12)

State Water is: *The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state. TWC § 11.021.*

- a. Applicant requests a new appropriation (diversion or impoundment) of State Water? Y / N N
- b. Applicant requests an amendment to an existing water right requesting an increase in the appropriation of State Water or an increase of the overall or maximum combined diversion rate? Y / N N (If yes, indicate the Certificate or Permit number: _____)

If Applicant answered yes to (a) or (b) above, does Applicant also wish to be considered for a term permit pursuant to TWC § 11.1381? Y / N _____

- c. Applicant requests to extend an existing Term authorization or to make the right permanent? Y / N _____ (If yes, indicate the Term Certificate or Permit number: _____)

If Applicant answered yes to (a), (b) or (c), the following worksheets and documents are required:

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir requested in the application)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for each diversion point and/or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach requested in the application)
- **Worksheet 5.0 - Environmental Information Worksheet**
- **Worksheet 6.0 - Water Conservation Information Worksheet**
- **Worksheet 7.0 - Accounting Plan Information Worksheet**
- **Worksheet 8.0 - Calculation of Fees**
- **Fees calculated on Worksheet 8.0** - see instructions **Page. 34.**
- **Maps** - See instructions **Page. 15.**
- **Photographs** - See instructions **Page. 30.**

Additionally, if Applicant wishes to submit an alternate source of water for the project/authorization, see Section 3, Page 3 for Bed and Banks Authorizations (Alternate sources may include groundwater, imported water, contract water or other sources).

Additional Documents and Worksheets may be required (see within).

2. Amendments to Water Rights. TWC § 11.122 (Instructions, Page. 12)

This section should be completed if Applicant owns an existing water right and Applicant requests to amend the water right. ***If Applicant is not currently the Owner of Record in the TCEQ Records, Applicant must submit a Change of Ownership Application (TCEQ-10204) prior to submitting the amendment Application or provide consent from the current owner to make the requested amendment. If the application does not contain consent from the current owner to make the requested amendment, TCEQ will not begin processing the amendment application until the Change of Ownership has been completed and will consider the Received Date for the application to be the date the Change of Ownership is completed. See instructions page. 6.***

Water Right (Certificate or Permit) number you are requesting to amend: 08-5040

Applicant requests to sever and combine existing water rights from one or more Permits or Certificates into another Permit or Certificate? Y / N N (if yes, complete chart below):

List of water rights to sever	Combine into this ONE water right

- a. Applicant requests an amendment to an existing water right to increase the amount of the appropriation of State Water (diversion and/or impoundment)? Y / N N

If yes, application is a new appropriation for the increased amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.

- b. Applicant requests to amend existing Term authorization to extend the term or make the water right permanent (remove conditions restricting water right to a term of years)?
Y / N N

If yes, application is a new appropriation for the entire amount, complete Section 1 of this Report (PAGE. 1) regarding New or Additional Appropriations of State Water.

- c. Applicant requests an amendment to change the purpose or place of use or to add an additional purpose or place of use to an existing Permit or Certificate? Y / N Y
If yes, submit:

- **Worksheet 1.0 – Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 1.2 - Notice: “Marshall Criteria”**

- d. Applicant requests to change: diversion point(s); or reach(es); or diversion rate? Y / N N
If yes, submit:

- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for each diversion point or one worksheet for the upstream limit and one worksheet for the downstream limit of each diversion reach)
- **Worksheet 5.0 – Environmental Information** (Required for any new diversion points that are not already authorized in a water right)

- e. Applicant requests amendment to add or modify an impoundment, reservoir, or dam? Y / N N

If yes, submit: Worksheet 2.0 - Impoundment/Dam Information Worksheet (submit one worksheet for each impoundment or reservoir)

- f. Other - Applicant requests to change any provision of an authorization not mentioned above? Y / N N *If yes, call the Water Availability Division at (512) 239-4600 to discuss.*

Additionally, all amendments require:

- **Worksheet 8.0 - Calculation of Fees; and Fees calculated - see instructions Page. 34**
- **Maps - See instructions Page. 15.**
- **Additional Documents and Worksheets may be required (see within).**

3. Bed and Banks. TWC § 11.042 (Instructions, Page 13)

- a. Pursuant to contract, Applicant requests authorization to convey, stored or conserved water to the place of use or diversion point of purchaser(s) using the bed and banks of a watercourse? TWC § 11.042(a). Y/N N

If yes, submit a signed copy of the Water Supply Contract pursuant to 30 TAC §§ 295.101 and 297.101. Further, if the underlying Permit or Authorization upon which the Contract is based does not authorize Purchaser's requested Quantity, Purpose or Place of Use, or Purchaser's diversion point(s), then either:

- 1. Purchaser must submit the worksheets required under Section 1 above with the Contract Water identified as an alternate source; or*
- 2. Seller must amend its underlying water right under Section 2.*

- b. Applicant requests to convey water imported into the state from a source located wholly outside the state using the bed and banks of a watercourse? TWC § 11.042(a-1). Y / N N

If yes, submit worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps and fees from the list below.

- c. Applicant requests to convey Applicant's own return flows derived from privately owned groundwater using the bed and banks of a watercourse? TWC § 11.042(b). Y / N N

If yes, submit worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.

- d. Applicant requests to convey Applicant's own return flows derived from surface water using the bed and banks of a watercourse? TWC § 11.042(c). Y / N N

If yes, submit worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 6.0, 7.0, 8.0, Maps, and fees from the list below.

****Please note, if Applicant requests the reuse of return flows belonging to others, the Applicant will need to submit the worksheets and documents under Section 1 above, as the application will be treated as a new appropriation subject to termination upon direct or indirect reuse by the return flow discharger/owner.***

- e. Applicant requests to convey water from any other source, other than (a)-(d) above, using the bed and banks of a watercourse? TWC § 11.042(c). Y / N N

If yes, submit worksheets 1.0, 2.0, 3.0, 4.0, 5.0, 7.0, 8.0, Maps, and fees from the list below.

Worksheets and information:

- **Worksheet 1.0 - Quantity, Purpose, and Place of Use Information Worksheet**
- **Worksheet 2.0 - Impoundment/Dam Information Worksheet** (submit one worksheet for each impoundment or reservoir owned by the applicant through which water will be conveyed or diverted)
- **Worksheet 3.0 - Diversion Point Information Worksheet** (submit one worksheet for the downstream limit of each diversion reach for the proposed conveyances)

- Worksheet 4.0 – Discharge Information Worksheet (for each discharge point)
- Worksheet 5.0 – Environmental Information Worksheet
- Worksheet 6.0 – Water Conservation Information Worksheet
- Worksheet 7.0 – Accounting Plan Information Worksheet
- Worksheet 8.0 – Calculation of Fees; and Fees calculated – see instructions Page. 34
- Maps – See instructions Page. 15.
- Additional Documents and Worksheets may be required (see within).

4. General Information, Response Required for all Water Right Applications (Instructions, Page 15)

- a. Provide information describing how this application addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement (*not required for applications to use groundwater-based return flows*). Include citations or page numbers for the State and Regional Water Plans, if applicable. Provide the information in the space below or submit a supplemental sheet entitled “Addendum Regarding the State and Regional Water Plans”:

The Region C Regional Water Plan and the State Water Plan include water supply demands in the Trinity River Basin for domestic, municipal, agricultural, recreational, and industrial purposes. The proposed amendments seek to add flexibility to help meet those needs. The proposed amendments are not inconsistent with, and does not conflict with, any projects in the Region C or State Water Plans.

- b. Did the Applicant perform its own Water Availability Analysis? Y / N N

If the Applicant performed its own Water Availability Analysis, provide electronic copies of any modeling files and reports.

- c. Does the application include required Maps? (Instructions Page. 15) Y / N N

WORKSHEET 1.0

Quantity, Purpose and Place of Use

1. New Authorizations (Instructions, Page. 16)

Submit the following information regarding quantity, purpose and place of use for requests for new or additional appropriations of State Water or Bed and Banks authorizations:

Quantity (acre- feet) <i>(Include losses for Bed and Banks)</i>	State Water Source (River Basin) or Alternate Source <i>*each alternate source (and new appropriation based on return flows of others) also requires completion of Worksheet 4.0</i>	Purpose(s) of Use	Place(s) of Use <i>*requests to move state water out of basin also require completion of Worksheet 1.1 Interbasin Transfer</i>

_____ Total amount of water (in acre-feet) to be used annually *(include losses for Bed and Banks applications)*

If the Purpose of Use is Agricultural/Irrigation for any amount of water, provide:

a. Location Information Regarding the Lands to be Irrigated

- i) Applicant proposes to irrigate a total of _____ acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of _____ acres in _____ County, TX.
- ii) Location of land to be irrigated: In the _____ Original Survey No. _____, Abstract No. _____.

A copy of the deed(s) or other acceptable instrument describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds.

If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other documentation supporting Applicant's right to use the land described.

Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.

2. Amendments - Purpose or Place of Use (Instructions, Page. 12)

- a. Complete this section for each requested amendment changing, adding, or removing Purpose(s) or Place(s) of Use, complete the following:

Quantity (acre-feet)	Existing Purpose(s) of Use	Proposed Purpose(s) of Use*	Existing Place(s) of Use	Proposed Place(s) of Use**
14,150	Industrial (thermal-electric power generation)	Add domestic, municipal, agricultural and recreational consumptive uses		
		Delete "thermal-electric power generation" from the currently authorized industrial use		
		Delete Special Condition 5.E. to remove the limitation on diversions from the Trinity River.		

**If the request is to add additional purpose(s) of use, include the existing and new purposes of use under "Proposed Purpose(s) of Use."*

***If the request is to add additional place(s) of use, include the existing and new places of use under "Proposed Place(s) of Use."*

Changes to the purpose of use in the Rio Grande Basin may require conversion. 30 TAC § 303.43.

- b. For any request which adds Agricultural purpose of use or changes the place of use for Agricultural rights, provide the following location information regarding the lands to be irrigated:
- Applicant proposes to irrigate a total of TBD acres in any one year. This acreage is all of or part of a larger tract(s) which is described in a supplement attached to this application and contains a total of _____ acres in Freestone County, TX.
 - Location of land to be irrigated: In the _____ Original Survey No. _____, Abstract No. _____.

A copy of the deed(s) describing the overall tract(s) with the recording information from the county records must be submitted. Applicant's name must match deeds. If the Applicant is not currently the sole owner of the lands to be irrigated, Applicant must submit documentation evidencing consent or other legal right for Applicant to use the land described.

Water Rights for Irrigation may be appurtenant to the land irrigated and convey with the land unless reserved in the conveyance. 30 TAC § 297.81.

- Submit Worksheet 1.1, Interbasin Transfers, for any request to change the place of use which moves State Water to another river basin.
- See Worksheet 1.2, Marshall Criteria, and submit if required.
- See Worksheet 6.0, Water Conservation/Drought Contingency, and submit if required.

WORKSHEET 1.2

NOTICE. “THE MARSHALL CRITERIA”

This worksheet assists the Commission in determining notice required for certain **amendments** that do not already have a specific notice requirement in a rule for that type of amendment, and *that do not change the amount of water to be taken or the diversion rate*. The worksheet provides information that Applicant **is required** to submit for amendments such as certain amendments to special conditions or changes to off-channel storage. These criteria address whether the proposed amendment will impact other water right holders or the on- stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

*This worksheet is **not required** for Applications in the Rio Grande Basin requesting changes in the purpose of use, rate of diversion, point of diversion, and place of use for water rights held in and transferred within and between the mainstems of the Lower Rio Grande, Middle Rio Grande, and Amistad Reservoir. See 30 TAC § 303.42.*

*This worksheet is **not required** for amendments which are only changing or adding diversion points, or request only a bed and banks authorization or an IBT authorization. However, Applicants may wish to submit the Marshall Criteria to ensure that the administrative record includes information supporting each of these criteria*

1. The “Marshall Criteria” (Instructions, Page. 21)

Submit responses on a supplemental attachment titled “Marshall Criteria” in a manner that conforms to the paragraphs (a) – (g) below:

- a. Administrative Requirements and Fees. Confirm whether application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) Chapters 281, 295, and 297. An amendment application should include, but is not limited to, a sworn application, maps, completed conservation plan, fees, etc.
- b. Beneficial Use. Discuss how proposed amendment is a beneficial use of the water as defined in TWC § 11.002 and listed in TWC § 11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.
- c. Public Welfare. Explain how proposed amendment is not detrimental to the public welfare. Consider any public welfare matters that might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.
- d. Groundwater Effects. Discuss effects of proposed amendment on groundwater or groundwater recharge.

- e. State Water Plan. Describe how proposed amendment addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement. The state and regional water plans are available for download at:
<http://www.twdb.texas.gov/waterplanning/swp/index.asp>.
- f. Waste Avoidance. Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC § 11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC Chapter 288.
- g. Impacts on Water Rights or On-stream Environment. Explain how the proposed amendment will not impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.

WORKSHEET 6.0

Water Conservation/Drought Contingency Plans

This form is intended to assist applicants in determining whether a Water Conservation Plan and/or Drought Contingency Plans is required and to specify the requirements for plans.
Instructions, Page 31.

The TCEQ has developed guidance and model plans to help applicants prepare plans. Applicants may use the model plan with pertinent information filled in. For assistance submitting a plan call the Resource Protection Team (Water Conservation staff) at 512-239-4600, or e-mail wras@tceq.texas.gov. The model plans can also be downloaded from the TCEQ webpage. Please use the most up-to-date plan documents available on the webpage.

1. Water Conservation Plans

- a. The following applications must include a completed Water Conservation Plan (30 TAC § 295.9) for each use specified in 30 TAC, Chapter 288 (municipal, industrial or mining, agriculture – including irrigation, wholesale):

1. Request for a new appropriation or use of State Water.
2. Request to amend water right to increase appropriation of State Water.
3. Request to amend water right to extend a term.
4. Request to amend water right to change a place of use.
**does not apply to a request to expand irrigation acreage to adjacent tracts.*
5. Request to amend water right to change the purpose of use.
**applicant need only address new uses.*
6. Request for bed and banks under TWC § 11.042(c), when the source water is State Water.
**including return flows, contract water, or other State Water.*

- b. If Applicant is requesting any authorization in section (1)(a) above, indicate each use for which Applicant is submitting a Water Conservation Plan as an attachment:

1. X Municipal Use. See 30 TAC § 288.2. **
2. Industrial or Mining Use. See 30 TAC § 288.3.
3. X Agricultural Use, including irrigation. See 30 TAC § 288.4.
4. Wholesale Water Suppliers. See 30 TAC § 288.5. **

**If Applicant is a water supplier, Applicant must also submit documentation of adoption of the plan. Documentation may include an ordinance, resolution, or tariff, etc. See 30 TAC §§ 288.2(a)(1)(J)(i) and 288.5(1)(H). Applicant has submitted such documentation with each water conservation plan? Y / N N/A

- c. Water conservation plans submitted with an application must also include data and information which: supports applicant's proposed use with consideration of the plan's water conservation goals; evaluates conservation as an alternative to the proposed

appropriation; and evaluates any other feasible alternative to new water development.
See 30 TAC § 288.7.

Applicant has included this information in each applicable plan? Y / N_____

2. Drought Contingency Plans

- a. A drought contingency plan is also required for the following entities if Applicant is requesting any of the authorizations in section (1) (a) above - indicate each that applies:
1. X Municipal Uses by public water suppliers. See 30 TAC § 288.20.
 2. X Irrigation Use/ Irrigation water suppliers. See 30 TAC § 288.21.
 3. Wholesale Water Suppliers. See 30 TAC § 288.22.
- b. If Applicant must submit a plan under section 2(a) above, Applicant has also submitted documentation of adoption of drought contingency plan (*ordinance, resolution, or tariff, etc. See 30 TAC § 288.30*) Y / N N

See Attachment A: Supplemental Information for Water Conservation Plan and/or Drought Contingency Plan requirements

WORKSHEET 8.0 CALCULATION OF FEES

This worksheet is for calculating required application fees. Applications are not Administratively Complete until all required fees are received. **Instructions, Page. 34**

1. NEW APPROPRIATION

	Description	Amount (\$)
Filing Fee	Circle fee correlating to the total amount of water* requested for any new appropriation and/or impoundment. Amount should match total on Worksheet 1, Section 1. Enter corresponding fee under Amount (\$) . <u>In Acre-Feet</u> a. Less than 100 \$100.00 b. 100 - 5,000 \$250.00 c. 5,001 - 10,000 \$500.00 d. 10,001 - 250,000 \$1,000.00 e. More than 250,000 \$2,000.00	
Recording Fee		\$25.00
Agriculture Use Fee	<i>Only for those with an Irrigation Use.</i> Multiply 50¢ x _____ Number of acres that will be irrigated with State Water. **	
Use Fee	<i>Required for all Use Types, excluding Irrigation Use.</i> Multiply \$1.00 x _____ Maximum annual diversion of State Water in acre-feet. **	
Recreational Storage Fee	<i>Only for those with Recreational Storage.</i> Multiply \$1.00 x _____ acre-feet of in-place Recreational Use State Water to be stored at normal max operating level.	
Storage Fee	<i>Only for those with Storage, excluding Recreational Storage.</i> Multiply 50¢ x _____ acre-feet of State Water to be stored at normal max operating level.	
Mailed Notice	Cost of mailed notice to all water rights in the basin. Contact Staff to determine the amount (512) 239-4600.	
TOTAL		\$

2. AMENDMENT OR SEVER AND COMBINE

	Description	Amount (\$)
Filing Fee	Amendment: \$100	100.00
	OR Sever and Combine: \$100 x _____ of water rights to combine	
Recording Fee		\$12.50
Mailed Notice	Additional notice fee to be determined once application is submitted.	
TOTAL INCLUDED		\$ 112.50

3. BED AND BANKS

	Description	Amount (\$)
Filing Fee		\$100.00
Recording Fee		\$12.50
Mailed Notice	Additional notice fee to be determined once application is submitted.	
TOTAL INCLUDED		\$

ATTACHMENT A

Supplemental Information

SUPPLEMENTAL INFORMATION

INTRODUCTION AND BACKGROUND

Big Brown Power Company LLC ("Big Brown") owns Certificate of Adjudication 08-5040 (the "Certificate"), which authorizes it to: (1) maintain an existing dam and reservoir on Big Brown Creek (Lake Fairfield) and impound therein not to exceed 50,600 acre-feet of water; and (2) divert and consumptively use not to exceed 14,150 acre-feet of water per annum from the aforesaid reservoir for industrial (thermal-electric power generation) purposes. The Certificate is attached hereto as Attachment B.

The Certificate is the source of water for cooling and operating needs at the Big Brown Steam Electric Station (BBSES). At this time, BBSES has been retired and all operations at the facility have ceased; however, development of the site may resume in the future. In the meantime, Big Brown wishes to have the ability to sell or lease water appropriated under the Certificate to others so that the water is beneficially used to satisfy water needs in the region.

Through this application ("Application"), Big Brown respectfully requests that the Texas Commission on Environmental Quality (the "Commission") amend the Certificate to 1) authorize additional beneficial purposes of use for the water appropriated under the Certificate. 2) Request the deletion of the modifying phrase "thermal-electric power generation" to ensure that water may be used under the Certificate for all industrial uses, including, but not limited to, power generation. Big Brown requests this amendment to increase the flexibility of the water right, maximizing Big Brown's ability to efficiently put to beneficial use the water appropriated to it. 3) Request the revision of Special Condition 5.B. to remove the specific reference to Contractual Permit 377 to allow Big Brown, or others, to obtain additional contracts for water diverted from the Trinity River. 4) Request the deletion of Special Condition 5.E. to remove the limitation on diversions from the Trinity River, since the Certificate itself does not authorize such diversions from the Trinity River. Both the revision of Special Condition 5.B. and the deletion of Special Condition 5.E. would cure and ambiguous and ineffective provisions within the Certificate.

No other amendment to the Certificate is requested.

SUPPLEMENTAL INFORMATION

WORKSHEET 1.0

Section 2: Amendments – Purpose or Place of Use

- b. *For any request which adds Agricultural purpose of use or changes the place of use for Agricultural rights, provide the following location information regarding the lands to be irrigated:*

Big Brown's purpose in requesting this amendment is to enable Big Brown to sell or lease water appropriated under the Certificate that Big Brown is not currently using for its own purposes. Should the Certificate or a portion of it be sold or leased, Big Brown will require as a condition of the lease that the lessee provide information regarding the total number of acres to be irrigated, location of irrigated lands and any necessary supporting documentation.

SUPPLEMENTAL INFORMATION

MARSHALL CRITERIA

- a. Administrative Requirements and Fees. Confirm whether application meets the administrative requirements for an amendment to a water use permit pursuant to TWC Chapter 11 and Title 30 Texas Administrative Code (TAC) Chapters 281, 295, and 297. Amendment application should include, but is not limited to, a sworn application, maps, completed conservation plan, fees, etc.

The sworn Application provides all required information necessary to comply with the administrative requirements for amendment of a water rights permit, including Title 30, Texas Administrative Code Chapter 295 (related to water rights procedural rules) and the requirements of Chapter 11 of the Texas Water Code. Pursuant to Title 30, Texas Administrative Code Section and other TCEQ rules related to fees, a check for \$112.50 is enclosed. Big Brown respectfully requests a determination of any additional fees that are due. Big Brown will remit payment of additional fees upon receipt of the TCEQ's determination.

- b. Beneficial Use. Discuss how proposed amendment is a beneficial use of the water as defined in TWC § 11.002 and listed in TWC § 11.023. Identify the specific proposed use of the water (e.g., road construction, hydrostatic testing, etc.) for which the amendment is requested.

The proposed amendments include requests that would increase the flexibility of the water right, maximizing Big Brown's ability to efficiently put to beneficial use the water appropriated to it. Each of the uses proposed for the amended Certificate is specifically enumerated in Texas Water Code Section 11.023 as a beneficial use for which state water may be appropriated, stored, or diverted. The amendments also seek to cure ambiguous and ineffective provisions within the Certificate.

- c. Public Welfare. Explain how proposed amendment is not detrimental to the public welfare. Consider any public welfare matters that might be relevant to a decision on the application. Examples could include concerns related to the well-being of humans and the environment.

The proposed amendment would add flexibility to the beneficial purposes to which the appropriated water can be applied. The increased flexibility will allow Big Brown to use the water it has been appropriated in the most efficient manner possible and to sell or lease water that it is not currently using under the Certificate. Maximizing efficiency of surface water use in the Trinity River Basin is in the public interest and is not detrimental to the public welfare.

- d. Groundwater Effects. Discuss effects of proposed amendment on groundwater or groundwater recharge.

Under Texas Water Code Section 11.151, the Commission must consider the potential effects of the Application, if any, on groundwater or groundwater recharge. The Application requests only amendments that would add flexibility and clarification to the existing Certificate of Adjudication. It will have no impact on groundwater resources, either by withdrawal or recharge.

- e. State Water Plan. Describe how proposed amendment addresses a water supply need in a manner that is consistent with the state water plan or the applicable approved regional water plan for any area in which the proposed appropriation is located or, in the alternative, describe conditions that warrant a waiver of this requirement. The state and regional water plans are available for download at: <http://www.twdb.texas.gov/waterplanning/swp/index.asp>.

As required by Texas Water Code Section 11.134(b)(3)(E), the proposed amendment addresses a water supply need in a manner that is consistent with the State Water Plan and the relevant approved regional water plan. The Region C Regional Water Plan and the State Water Plan include water supply demands in the Trinity River Basin for domestic and municipal, agricultural, recreational, and industrial purposes. The proposed amendment seeks to add flexibility to the Certificate so that it can be used to meet those needs. The proposed amendment is not inconsistent with, and does not conflict with, any project in the Region C Regional Water Plan or the State Water Plan.

- f. Waste Avoidance. *Provide evidence that reasonable diligence will be used to avoid waste and achieve water conservation as defined in TWC § 11.002. Examples of evidence could include, but are not limited to, a water conservation plan or, if required, a drought contingency plan, meeting the requirements of 30 TAC Chapter 288.*

Big Brown's purpose in requesting this amendment is to enable Big Brown to sell or lease water appropriated under the Certificate that Big Brown is not currently using for its own purposes. Should the Certificate or a portion of it be sold, the Commission will have the authority to require the new owner to submit a water conservation and/or drought contingency plan, as appropriate. For any water leases under the Certificate, Big Brown will require as a condition of the lease that the lessee provide a water conservation and/or drought contingency plan that is appropriate to the use to which the lessee intends to put the water.

- g. Impacts on Water Rights or On-stream Environment. *Explain how proposed amendment will not impact other water right holders or the on-stream environment beyond and irrespective of the fact that the water right can be used to its full authorized amount.*

In its decision in City of Marshall, the Texas Supreme Court held that the Commission should evaluate whether a proposed amendment will affect other water rights holders or the environment "beyond or irrespective of" the full-use assumption. The Court gave some examples of changes that could have such potential effects, including moving a diversion point upstream from a senior water right holder or changing a use from a non-consumptive use to a consumptive use. The proposed amendments do not request a change in the existing diversion points, all of which are from an existing storage reservoir. And the proposed additional authorized uses are, if anything, likely to be less consumptive than the existing use (cooling and operating for an electric generation facility). The Application does not request any amendment that creates a potential adverse impact on other water rights holders or the environment beyond or irrespective of the full-use assumption.

SUPPLEMENTAL INFORMATION

WORKSHEET 6.0

Big Brown's purpose in requesting this amendment is to enable Big Brown to sell or lease water appropriated under the Certificate that Big Brown is not currently using for its own purposes. Should the Certificate or a portion of it be sold, the Commission will have the authority to require the new owner to submit a water conservation and/or drought contingency plan, as appropriate. For any water leases under the Certificate, Big Brown will require as a condition of the lease that the lessee provide a water conservation and/or drought contingency plan that is appropriate to the use to which the lessee intends to put the water.

ATTACHMENT B

Certificate of Adjudication No. 08-5040

CERTIFICATE OF ADJUDICATION

CERTIFICATE OF ADJUDICATION: 08-5040

OWNER: Texas Utilities Electric
Company
Attention: Environmental
Services
400 North Olive Street
Lockbox 81
Dallas, Texas 75201

COUNTY: Freestone

PRIORITY DATE: December 18, 1967

WATERCOURSE: Big Brown Creek, tribu-
tary of Tawakoni Creek,
tributary of the Trinity
River

BASIN: Trinity River

WHEREAS, by final decree of the 66th Judicial District Court of Hill County, in Cause No. 28,952 In Re: The Adjudication of Water Rights in the Middle Trinity River Segment of the Trinity River Basin dated September 4, 1986 a right was recognized under Permit 2351A authorizing the Texas Utilities Electric Company to appropriate waters of the State of Texas as set forth below;

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

1. IMPOUNDMENT

Owner is authorized to maintain an existing dam and reservoir on Big Brown Creek (Lake Fairfield) and impound therein not to exceed 50,600 acre-feet of water. The dam is located in the Juan Nepomuceno Acosta Grant, Abstract 1 and the Ezekiel Weaver Survey, Abstract 642, Freestone County, Texas.

2. USE

Owner is authorized to divert and consumptively use not to exceed 14,150 acre-feet of water per annum from the aforesaid reservoir for industrial (thermal-electric power generation) purposes.

3. DIVERSION

A. Location

At the perimeter of the aforesaid reservoir.

B. Maximum rate: 2680.00 cfs (1,206,000 gpm).

Certificate of Adjudication 08-5040

4. PRIORITY

The time priority of owner's right is December 18, 1967.

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 may store water to be diverted from the Trinity River as authorized by Contractual Permit 377 in the aforesaid reservoir for subsequent diversion and use.
- C. The Commission shall approve any structural modifications and downstream embankment protection of the dam and the allocation of costs therefor, which may become necessary by construction of the proposed Tennessee Colony Dam and Reservoir.
- D. Owner shall maintain the following: 1) A continuous reservoir content and lake level measuring station; 2) A record of all discharges through the reservoir; 3) A daily record of diversion from the Trinity River; and 4) A monthly estimate of consumptive use. All records shall be compiled monthly and reported annually to the Commission.
- E. No diversions shall be made from the Trinity River when such diversion will reduce the stream flow at the Trinity River stream gage near Oakwood, Texas, below 100 cfs.

The locations of pertinent features related to this certificate are shown on Page 20 of the Middle Trinity River Segment Certificates of Adjudication Maps, copies of which are located in the office of the Texas Water Commission, Austin, Texas.

Certificate of Adjudication 08-5040

This certificate of adjudication is issued subject to all terms, conditions and provisions in the final decree of the 66th Judicial District Court of Hill County, Texas, in Cause No. 28,952 In Re: The Adjudication of Water Rights in the Middle Trinity River Segment of the Trinity River Basin dated September 4, 1986 and supersedes all rights of the owner asserted in that cause.

This certificate of adjudication is issued subject to senior and superior water rights in the Trinity River Basin.

This certificate of adjudication is issued subject to the Rules of the Texas Water Commission and its continuing right of supervision of State water resources consistent with the public policy of the State as set forth in the Texas Water Code.

TEXAS WATER COMMISSION

Paul Hopkins

Paul Hopkins, Chairman

DATE ISSUED:

MAY 05 1987

ATTEST:

Mary Ann Hefner

Mary Ann Hefner, Chief Clerk

ATTACHMENT C

Evidence of Signature Authority

LUMINANT GENERATION COMPANY LLC


CERTIFICATE OF INCUMBENCY

I, Seth Rasmussen, Assistant Secretary of Luminant Generation Company LLC (the "Company"), do hereby certify that the persons whose names and titles appear below are the duly elected and qualified officers of the Company and that each holds, on the date of this certificate, the office designated opposite his or her name:

Luminant Generation Company LLC

James A. Burke	Manager
Kristopher E. Moldovan	Manager
James A. Burke	President and Chief Executive Officer
Kristopher E. Moldovan	Executive Vice President, Chief Financial Officer, and Treasurer
Carrie L. Kirby	Executive Vice President and Chief Administrative Officer
Stephanie Zapata Moore	Executive Vice President, General Counsel, and Chief Compliance Officer
Stephen J. Muscato	Executive Vice President and Chief Commercial Officer
Barry T. Boswell	Executive Vice President of Renewables, Battery Storage, and Fossil Operations and Services
Stacey Doré	Chief Strategy and Sustainability Officer & Executive Vice President External Affairs
Carla A. Howard	Senior Vice President and General Tax Counsel
Tom Farrah	Senior Vice President and Chief Information Officer
Kenneth J. Peters	Senior Vice President and Chief Nuclear Officer
Christy Dobry	Senior Vice President and Controller
Daniel J. Kelly	Senior Vice President and Deputy General Counsel
Cynthia Vodopivec	Senior Vice President
Matthew A. Goering	Senior Vice President
Ben Elliott	Senior Vice President, Renewables Storage & Generation Services
Yuki Whitmire	Vice President, Associate General Counsel, and Corporate Secretary
Randall Talley	Vice President
Thomas P. McCool	Vice President
Paul H. Reyes	Vice President
Sam Siegel	Vice President
Charles Koudelka	Vice President, Plant Closures
Steven Sewell	Senior Director Engineering & Regulatory Affairs
Alan Jay Marzloff	Plant Manager
Ruben Garcia Espejo	Vice President of Finance and Assistant Treasurer

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of August, 2022.

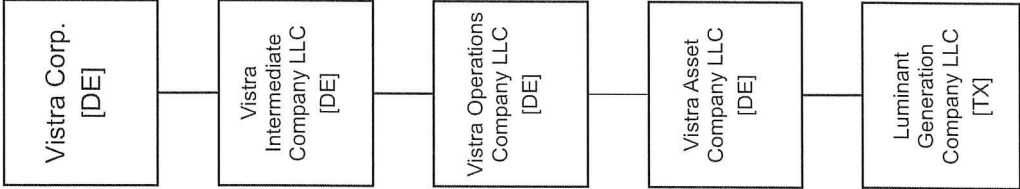


Seth Rasmussen
Assistant Secretary

Vistra Corp.

Subsidiary Ownership Structure Chart Excerpt

All listed entities are wholly owned subsidiaries of Vistra Corp., which is publicly traded on the New York Stock Exchange (VST)



**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
LUMINANT GENERATION COMPANY LLC**

This Second Amended and Restated Limited Liability Company Agreement (this "Agreement") of Luminant Generation Company LLC (the "Company"), effective as of July 19, 2022, is entered into by Vistra Asset Company LLC, a Delaware limited liability company, as the sole member of the Company (the "Member"), for the purpose of governing the affairs of the Company.

WHEREAS, a previous sole member entered into a Limited Liability Company Agreement for the Company on October 9, 2007 (the "Original Agreement"); and

WHEREAS, the previous sole member entered into an Amended and Restated Limited Liability Company Agreement for the Company on September 15, 2011 (the "Prior Agreement"); and

WHEREAS, this Agreement amends and restates the Prior Agreement in all respects, and constitutes the governing instrument of the Company.

ARTICLE I

LIMITED LIABILITY COMPANY

Section 1.1 *Name.* The name of the limited liability company is Luminant Generation Company LLC.

Section 1.2 *Filing of Certificates.* The Member, as an authorized person within the meaning of the Texas Business Organizations Code, as amended from time to time (the "Code"), shall execute, deliver and file all certificates (and any amendments and/or restatements thereof) required or permitted to be filed with the Secretary of State of the State of Texas. The Member is authorized to execute, deliver and file any other certificates, notices or documents (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business. The existence of the Company as a separate legal entity shall continue until cancellation of the Certificate of Formation as provided in the Code.

Section 1.3 *Purposes.* The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company is, engaging in any lawful act or activity for which limited liability companies may be formed under the Code.

Section 1.4 *Powers.* In furtherance of its purposes, but subject to all of the provisions of this Agreement, the Company, and the officers of the Company on behalf of the Company, shall have and may exercise (i) all the powers now or hereafter conferred by Texas law on limited liability companies formed under the Code and (ii) all powers necessary, convenient or incidental to accomplish its purposes as set forth in Section 1.3.

Section 1.5 *Principal Business Office.* The principal business office of the Company shall be located at 6555 Sierra Drive, Irving, Texas 75039, or such other location as may hereafter be determined by the Company.

Section 1.6 *Registered Office.* The address of the registered office of the Company in the State of Texas is c/o Capitol Services, Inc., 1501 S. MoPac Expy., Ste. 220, Austin, TX, 78746, or such other location as may hereafter be determined by the Company.

Section 1.7 *Registered Agent.* The name of the registered agent of the Company for service of process on the Company in the State of Texas is Capitol Services, Inc.

Section 1.8 *Admission of Member.* The Member is deemed admitted as a member of the Company upon its execution and delivery of this Agreement

Section 1.9 *Foreign Qualifications.* An officer of the Company shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in any foreign jurisdiction in which the Company may wish to conduct business.

Section 1.10 *Capital Contributions.* The Member has made certain capital contributions to the Company, and may make such other capital contributions to the Company as it may determine appropriate in its sole discretion. The provisions of this Agreement, including this Section 1.10, are intended solely to benefit the Member and, to the fullest extent permitted by law, shall not be construed as conferring any benefit upon any creditor of the Company (and no such creditor of the Company shall be a third-party beneficiary of this Agreement) and the Member shall have no duty or obligation to any creditor of the Company to make any contribution to the Company or to issue any call for capital pursuant to this Agreement.

Section 1.11 *Allocation of Profits and Losses.* The Company's profits and losses shall be allocated to the Member; provided, however, that no allocation of any loss to the Member shall create any obligation on the Member to make any capital contribution to the Company to offset such loss (or otherwise), the Member having no obligation to make any such capital contribution, as provided in Section 1.10 above.

Section 1.12 *Distributions.* Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member or, if the Member subsequently appoints a board of managers, the board of managers. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to the Member on account of its interest in the Company if such distribution would violate the Code or other applicable law.

Section 1.13 *Other Business.* The Member and any Affiliate of the Member may engage in or possess an interest in other business ventures (unconnected with the Company) of every kind and description, independently or with others. The Company shall not have any rights in or to such independent ventures or the income or profits therefrom by virtue of this Agreement.

When used in this Agreement, "Affiliate" means, with respect to any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association joint-stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, or any governmental authority ("Person"), any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person, and "Control" means the possession, directly or indirectly, or the power to direct or cause the direction, of the management or policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise. "Controlling" and "Controlled" have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, a majority of the ownership interests.

ARTICLE II

MANAGEMENT

Section 2.1 *Board of Managers.*

(a) Management of the Company shall be vested in a Board of Managers. The Board of Managers shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by managers of a limited liability company under the laws of the State of Texas. The number of managers shall be determined from time to time by the Member or the resolution of the Board of Managers.

(b) Vacancies on the Board of Managers from whatever cause shall be filled by the remaining managers or, if there be none, by the Member. Managers shall serve until they resign or are removed. Managers may be removed with or without cause by the Member.

(c) The Board of Managers of the Company may hold meetings, both regular and special, within or outside the State of Texas. Regular meetings of the Board of Managers may be held without notice at such times and at such places as shall from time to time be determined by the Board of Managers. Special meetings of the Board of Managers may be called by the Chairman of the Board, if any, or by the President on not less than twenty-four (24) hours notice to each Manager by telephone, facsimile, mail, telegram or any other means of communication, and special meetings shall be called by the President or the Secretary in like manner and with like notice upon the written request of any one or more of the Managers.

(d) At all meetings of the Board of Managers, a majority of the Managers shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Managers present at any meeting at which there is a quorum shall be the act of the Board of Managers. If a quorum shall not be present at any meeting of the Board of Managers, the Managers present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Any action required or permitted to be taken at any meeting of the Board of Managers or of any committee thereof may be taken without a meeting if at least a majority of the members of the Board of Managers or such committee, as the case may be,

consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Managers or such committee and a copy of such writing or writings is promptly furnished to any member of the Board of Managers or such committee, as the case may be, who did not sign such writing or writings.

(e) No contract or transaction between the Company (or its subsidiaries) and one or more of its Managers or officers, or between the Company (or its subsidiaries) and any other company, corporation, partnership, association, or other organization in which one or more of its Managers or officers, are directors, managers, partners or officers (or serve in a similar capacity), or have a financial interest, shall be void or voidable solely for this reason, or solely because the Manager or officer is present at or participates in the meeting of the Board of Managers or committee which authorizes the contract or transaction, or solely because any such Manager's or officer's votes are counted for such purpose, if:

(i) The material facts as to the Manager's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Managers or the committee, and the Board of Managers or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Managers, even though the disinterested Managers be less than a quorum; or

(ii) The material facts as to the Manager's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Member, and the contract or transaction is specifically approved in good faith by the Member; or

(iii) The contract or transaction is fair as to the Company as of the time it is authorized, approved or ratified, by the Board of Managers, a committee or the Member.

(f) Interested Managers may be counted in determining the presence of a quorum at a meeting of the Board of Managers or of a committee which authorizes the contract or transaction.

(g) The Managers, or any committee designated by the Board of Managers, may participate in a meeting of the Board of Managers, or of such committee, by means of telephone conference or similar communications equipment, and such participation in a meeting shall constitute presence in person at such meeting. If all the participants are participating by telephone conference or similar communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

(h) The Board of Managers may, with the unanimous approval of the Managers, designate one or more committees, with each committee to consist of one or more of the Managers of the Company. The Board of Managers may, with the unanimous approval of the Managers, designate one or more Managers as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. Any such committee, to the extent provided in the resolution of the Board of Managers, shall have and may

exercise all of the powers and authority of the Board of Managers in the management of the business and affairs of the Company. Each committee shall have such name as may be determined from time to time by resolution adopted by the Board of Managers. Each committee shall keep regular minutes of its meetings and report the same to the Board of Managers when required by the Board of Managers.

Section 2.2 *Officers; Delegation.* The Company shall have such officers and employees as are designed within this Agreement or as subsequently designed by the Board of Managers. The Board of Managers may, from time to time as they deem advisable, appoint officers and assign titles (including, without limitation, President, Vice President, Secretary, and Treasurer) to any such person. Unless the Board of Managers decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Code, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. Any delegation pursuant to this Section 2.2 may be revoked at any time by the Member or Board of Managers.

Section 2.3 *Limitation of Liability.* Except as otherwise expressly provided by the Code, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be the debts, obligations and liabilities solely of the Company, and no (a) Member or Affiliate of a Member or their respective members, officers, directors, employees, agents, stockholders or partners, (b) Manager, officer, employee or agent of the Company or (c) Person who serves on behalf of the Company as a partner, manager, member, officer, director, employee or agent of any other entity (collectively, with all such Persons that are or have been, at any time from and after the date of formation of the Company, among the Persons listed in subsections (a), (b) or (c), the "Covered Persons") shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Covered Person.

(a) The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of the Company or its affairs under this Agreement or the Code shall not be grounds for imposing personal liability on any Covered Person for liabilities of the Company.

(b) Such protections from personal liability shall apply to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide greater or broader indemnification rights than such law permitted the Company to provide prior to such amendment).

(c) To the extent that, at law or in equity, a Covered Person or any other person has duties (including fiduciary duties) to the Company or to another Member or Manager or to another person that is a party to or is otherwise bound by this Agreement, those duties are hereby eliminated to the fullest extent allowed under Texas law and the Code. All liabilities for breach of contract and breach of duties (including fiduciary duties) of a Covered Person or any other person to the Company or to another Member or Manager or any other person that is a party to or is otherwise bound by this Agreement are hereby eliminated to the fullest extent allowed under Texas law and the Code. The elimination of duties and liabilities set forth in this Section 2.3(c) shall be deemed to apply from and after the formation of the Company.

ARTICLE III

MEMBERS

Section 3.1 *Sole Member.* The Member is the sole member of the Company. The mailing address of the Member is: 6555 Sierra Drive, Irving, Texas 75039. The Company has issued all of the limited liability company interests in the Company to the Member. Additional members may be admitted only by written amendment of this Agreement, executed by the Member.

Section 3.2 *Assignments.* The Member may assign in whole or in part its limited liability company interests in the Company. If the Member transfers all of its interests pursuant to this Section 3.2 the transferee shall be admitted to the Company as a member of the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the transfer, and, immediately following such admission, the transferor Member shall cease to be a member of the Company.

Section 3.3 *Admission of Additional Members.* One or more additional members of the Company may be admitted to the Company with the written consent of the Member.

Section 3.4 *Resignation.* A Member may resign from the Company with the written consent of all of the Members. If a Member is permitted to resign pursuant to this Section 3.4, an additional member of the Company shall be admitted to the Company, subject to Section 3.3, upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation, and, immediately following such admission, the resigning Member shall cease to be a member of the Company.

ARTICLE IV

DISSOLUTION

Section 4.1 *Events of Dissolution.*

(a) The Company shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the retirement, resignation or dissolution of the last remaining Member or the occurrence of any other event which terminates the continued membership of the last remaining Member in the Company unless the business of the Company is continued in a manner permitted by the Code or (ii) the entry of a decree of judicial dissolution under the Code.

(b) Except to the extent set forth in Section 4.1(a) of this Agreement, the occurrence of any event that terminates the continued membership of a Member in the Company shall not cause the dissolution of the Company, and, upon the occurrence of such an event, the business of the Company shall continue without dissolution.

(c) The bankruptcy of the Member shall not cause the Member to cease to be a member of the Company and upon the occurrence of such an event, the business of the Company shall continue without dissolution.

(d) In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, set forth in the Code.

ARTICLE V

INDEMNIFICATION

Section 5.1 *Right to Indemnification.* Subject to the limitations and conditions as provided in this Article V, each Covered Person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action or other proceeding, whether civil, criminal, administrative, arbitral or investigative, or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding (hereafter a "Proceeding"), by reason of any actions or omissions or alleged acts or omissions of such Covered Person relating to the Company, shall be indemnified by the Company to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys' fees) (all collectively the "Indemnification Amounts") actually incurred by such Covered Person at the time any such Indemnification Amounts are incurred in connection with such Proceeding. Indemnification under this Article V shall continue as to a Covered Person who has ceased to serve in the capacity which initially entitled such Covered Person to indemnity hereunder. Without limiting the generality of the foregoing, it is expressly acknowledged that the indemnification provided in this Article V could involve indemnification for negligence or under theories of strict liability.

Section 5.2 *Limitation on Indemnification.* Subject to applicable law, notwithstanding any language in this Article V to the contrary, in no event shall any Person be entitled to indemnification pursuant to this Article V if it is established or admitted either (a) in a final judgment of a court of competent jurisdiction or (b) by such Person in any affidavit, sworn statement, plea arrangement or other cooperation with any government or regulatory authority that the Person's acts or omissions that would otherwise be subject to indemnification under this Article V constituted fraud.

Section 5.3 *Advancement of Expenses.* The right to indemnification conferred in this Article V shall include the right to be paid or reimbursed by the Company the reasonable expenses incurred by a Covered Person of the type entitled to be indemnified above who was, is or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding, without any determination as to such Covered Person's ultimate entitlement to indemnification under, upon receipt of a written affirmation by such Covered Person of such Covered Person's good faith belief that such Covered Person has met the standard of conduct necessary for indemnification under applicable law and this Article V and a

written undertaking by or on behalf of such Covered Person to repay all amounts so advanced if it shall ultimately be determined that such Covered Person is not entitled to be indemnified by the Company under this Article V or if such indemnification is prohibited by applicable law.

Section 5.4 *Appearance as a Witness.* Notwithstanding any other provision of this Article V, the Company may pay or reimburse expenses incurred by a Covered Person in connection with his or her appearance as a witness or other participation in a Proceeding at a time when such Covered Person is not a named defendant or respondent in the Proceeding.

Section 5.5 *Non-exclusivity of Rights.* The indemnification and advancement and payment of expenses provided by this Article V shall not be deemed exclusive of any other rights to which a Covered Person indemnified pursuant to this Article V may have or hereafter acquire under any law (common or statutory), provision of this Agreement, any agreement or otherwise.

Section 5.6 *Contract Rights.* The rights granted pursuant to this Article V shall be deemed to be contract rights, and no amendment, modification or repeal of this Article V shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal.

Section 5.7 *Insurance.* The Company may purchase and maintain insurance or another arrangement, at its expense, on behalf of itself, any Covered Person, any Manager, officer, employee or agent of the Company, or any Person who serves on behalf of the Company as a partner, manager, member, officer, director, employee or agent of any other entity against any liability, expense or loss, whether or not the Company would have the power to indemnify such Person against such liability, expense or loss under the provisions of this Article V.

Section 5.8 *Savings Clause.* If this Article V or any portion of this Agreement shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless each Covered Person indemnified pursuant to this Article V as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the fullest extent permitted by any applicable portion of this Article V that shall not have been invalidated and to the fullest extent permitted by applicable law.

Section 5.9 *Consultation with Counsel.* The right to indemnification conferred in this Article V on any Covered Person shall include the right to consult with legal counsel, financial advisors and accountants selected by such Covered Person, and any act or omission suffered or taken by such Covered Person on behalf of the Company or in furtherance of the interests of the Company in good faith in reliance upon and in accordance with the advice of such counsel, financial advisors or accountants will be full justification for any such act or omission, and each such Covered Person will be fully protected in so acting or omitting to act; provided that such counsel, financial advisors or accountants were selected with reasonable care.

Section 5.10 *Other Indemnities.*

(a) The Company acknowledges and agrees that the obligation of the Company under this Agreement to indemnify or advance expenses to any Covered Person for the

matters covered thereby shall be the primary source of indemnification and advancement of such Covered Person in connection therewith and any obligation on the part of any Covered Person under any Other Indemnification Agreement to indemnify or advance expenses to such Covered Person shall be secondary to the Company's obligation and shall be reduced by any amount that the Covered Person may collect as indemnification or advancement from the Company. If the Company fails to indemnify or advance expenses to a Covered Person as required or contemplated by this Agreement, and any Person makes any payment to such Covered Person in respect of indemnification or advancement of expenses under any Other Indemnification Agreement on account of such Unpaid Indemnity Amounts, such other Person shall be subrogated to the rights of such Covered Person under this Agreement in respect of such Unpaid Indemnity Amounts.

(b) The Company, as an indemnifying party from time to time, agrees that, to the fullest extent permitted by applicable law, its obligation to indemnify Covered Persons under this Agreement shall include any amounts expended by any other Person under any Other Indemnification Agreement in respect of indemnification or advancement of expenses to any Covered Person in connection with any Proceedings to the extent such amounts expended by such other Person are on account of any Unpaid Indemnity Amounts.

"Other Indemnification Agreement" means one or more certificate or articles of incorporation, by-laws, limited liability company operating agreement, limited partnership agreement and any other organizational document, and insurance policies maintained by any Member or Manager or Affiliate thereof providing for, among other things, indemnification of and advancement of expenses for any Covered Person for, among other things, the same matters that are subject to indemnification and advancement of expenses under this Agreement.

"Unpaid Indemnity Amounts" means any amount that the Company fails to indemnify or advance to a Covered Person as required by Article V of this Agreement.

For purposes of this Article V, the term "Company" shall include any predecessor of the Company and any constituent entity (including any constituent of a constituent) absorbed by the Company in a consolidation or merger; the term service "on behalf of the Company" shall include service as an officer, Manager, Member or employee of the Company which imposes duties on, or involves services by, such officer, Manager, Member or employee with respect to an employee benefit plan, its participants or beneficiaries; any excise taxes assessed on a Person with respect to an employee benefit plan shall be deemed to be indemnifiable expenses; and action by a Person with respect to an employee benefit plan which such Person reasonably believes to be in the interest of the participants and beneficiaries of such plan shall be deemed to be action not opposed to the best interests of the Company.

ARTICLE VI

EXCULPATION

Section 6.1 *Exculpation.* To the fullest extent permitted by applicable law, no Covered Person shall be liable or accountable in damages or otherwise to the Company or to any Member

for any loss or liability arising from any act or omission of such Covered Person relating to the Company unless, and only to the extent that, such act or omission constituted fraud.

ARTICLE VII

GENERAL PROVISIONS

Section 7.1 *Amendment.* This Agreement may not be modified, altered, supplemented or amended except by written instrument signed by the Member.

Section 7.2 *Applicable Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of Texas.

Section 7.3 *Benefits of Agreement; No Third-Party Rights.* None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditor of the Company or by any creditor of any Member. Nothing in this Agreement shall be deemed to create any right in any Person (other than Covered Persons) not a party hereto, and this Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any third person.

Section 7.4 *Severability of Provisions.* Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

Section 7.5 *Entire Agreement.* This Agreement constitutes the entire agreement of the Member with respect to subject matter hereof.

[Remainder of Page Intentionally Left Blank; Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement effective as of the 19th day of July, 2022.

MEMBER:

VISTRA ASSET COMPANY LLC

By: 

Seth Rasmussen
Assistant Secretary

ATTACHMENT D

Water Right Amendment Filing Fee