

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Bickerstaff, Heath, Pollan & Caroom, L.L.P.

816 Congress Avenue Suite 1700 Austin, Texas 78701 (512) 472-8021 Fax (512) 320-5888 www.bickerstaff.com

CHIEF CLERKS OFFICE

September 27, 2006

Via Facsimile and U.S. Mail

Ms. LaDonna Castañuela
Office of the Chief Clerk, MC105
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

ADJ
5322E

H OPA

SEP 27 2006

BY

[Signature]

Re: Application No. 12-5322E by Chocolate Bayou Water Company

Dear Ms. Castañuela,

On behalf of the Brazos River Authority (BRA), I protest the above-referenced application and request that a contested case hearing be held on the application.

BRA holds the following water rights: Certificate No. 12-5155 (Possum Kingdom Lake); Certificate No. 12-5156 (Lake Granbury); Certificate No. 12-5157 (Lake Whitney); Certificate No. 12-5158 (Lake Aquilla); Certificate No. 12-5159 (Lake Proctor); Certificate No. 12-5160 (Lake Belton); Certificate No. 12-5161 (Lake Stillhouse Hollow); Certificate No. 12-5162 (Lake Georgetown); Certificate No. 12-5163 (Lake Granger); Certificate No. 12-5164 (Lake Somerville); Certificate No. 12-5165 (Lake Limestone); and Permit No. 2925A (proposed Allens Creek Reservoir). One or more of these rights may be impaired if the application is granted. While it is possible that special conditions may be included in the permit in order to prevent any such impairment, BRA must protest the application in order to ensure that its water rights are protected.

Thank you for your attention to this matter. I request that the Brazos River Authority be placed on all notice lists so that it may receive notice of all further actions with regard to this application.

Sincerely,

Doug Caroom
Douglas G. Caroom

cc: Lauralee Vallon
David Wheelock
Brazos River Authority

[Handwritten mark]

Bickerstaff, Heath, Pollan & Caroom, L.L.P.

A Registered Limited Liability Partnership

816 Congress Avenue, Suite 1700
Austin, Texas 78701-2443
Telephone: (512) 472-8021
<http://www.bickerstaff.com>

The information contained in this facsimile is privileged & confidential. It is intended only for the use of the individual or entity named below. If you have received this transmission in error, please notify us by telephone collect and return it to us at the above address. Thank you.

DATE: September 27, 2006

CLIENT #: 238600

TELECOPIER COVER SHEET

Fax Number: (512) 320-5638

TELECOPIER NUMBER: 239-3311

SEND TO: LaDonna Castañuela

FIRM/COMPANY: TCEQ - Chief Clerk

In case of transmission problems -

TELEPHONE NUMBER: 239-3300

FROM: Douglas G. Caroom

TOTAL PAGES INCLUDING COVER SHEET: 2

ORIGINAL WILL FOLLOW VIA U.S. MAIL ORIGINAL WILL NOT FOLLOW

TELECOPIER OPERATOR: _____ **TIME:** _____ a.m./p.m.

Please contact the fax center at 512-472-8021 if complete FAX is not received.

MESSAGE:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
SEP 27 11:54
CHIEF CLERK'S OFFICE

October 16, 2006

OPA

H OCT 19 2006

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

BY OCT 18 PM 3:46

TCEQ
Office of The Chief Clerk
Ladonna Castanuela
Austin, Texas 78711 -3087

CHIEF CLERKS OFFICE

FAX:(512) 239 -3311 *3 pages*

RE: We request a Public Hearing and a Contested Case Hearing on CBWC Application No. 12-5322

*ADD
5322*

Dear TCEQ Commissioners :

Our property is situated within the boundary of the CBWC Permit area, in Brazoria County, Texas. The application of CBWC to amend Certificate No. 12-5322 is opposed by Anthony and Carolyn Duke on the grounds that said Application Amendment is vague, ambiguous , mis-leading , deceptive, and what disturbs us most of all is what the Application Amendment does not say. It does not say that CBWC or it's successor , GCWA will continue to selling rice irrigation water to beneficial users from the Juliff Pumping Plant, and it's present canal system , as they have done in the past, nor does it state the amount of rice irrigation water that they intend to leave in Brazoria County for their previous customers, and future rice farmers.

Beneficial users are customers, whom have acquired "equity rights" to the CBWC WATER Permit , which are recognized by the Courts of Texas under the Irrigation Act of 1895 , and 1913, (Acts 1895, 24th leg. , p.21., ch. 21, and Acts 1913 ,33rd, leg. , p. 358 , ch. 171) , beneficial users are customers that have acquired equity rights to CBWC irrigation water , and their claims were cognizable in law of equity for purposes of determining their rights to the use of CBWC water for the time span of past years use for rice irrigation. See: State v. Hidalgo County Water Control and Imp. Dist. No. 18 (Civ. App. 1969) 443 S.W.2d 728 , ref. n.r.e.

It is our understanding that we have the right to make certain water rights claims , the same as riparin water rights pursuant to Vernon's Texas Code Annotated , Water Code § 5.301 under Water Rights Adjudication Act, and to have them recorded by TCEQ under Water Code § 5.303 :

(1) Claimants - Name and Address ;

Anthony & Carolyn Duke
P.O. Box 1047
Alvin, Texaz. 77512

BG

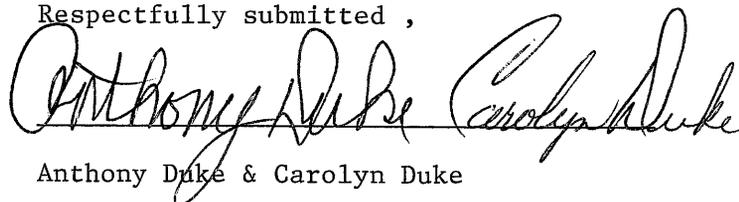
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- (3) The Brazos River Basin contains the following main creeks , bayous , drainage ditches , etc., starting with the largest Bayou: Chocolate Bayou , Oyster Creek , Austin Bayou , Flores Bayou , Mustang Bayou , Halls Bayou, Bastrop Bayou , Brushy Bayou , Pleasant Bayou , and Persimmon Bayou along with Drainage District Ditches all of which waters drain into West Galveston Bay through Chocolate Bay , and on into the Gulf of Mexico and the oceans of the world . It is our opinion that the CBWC Application Amendment No. 12-5322 , is **clearly not an interbasin transfer**, but is in fact a **transbasin transfer** .
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- (5) Present day owners and tenants of rice land as beneficial users , and customers are successors or assigns and are as relatives of those who came before us, all claim a chain of title encompassing more than seventy-one (71) years , of irrigation canal water use. The rice industry business cycles has had its' good and bad years reflecting a high irrigation volume of water in the amount of about 50,000 rice acres and downward to a low of less than 10,000 acres in any given year.

(5) Con't.

That volume of water does not include what CBWC sells to the industries in Brazoria County, Texas.

- (6) Back in the early 1950s', Texas suffered through several years of severe drought , and in 1956, most of the Rice Farmers from Fort Bend and Brazoria County built a toesack damm across the Brazos River, and Dow Chemical sued all the Rice Farmers . It was during that time period that STWC placed a drop water gate in it's main canal where it crosses Oyster Creek on Miller Road , about 2 miles West of Juliff , Texas for the benefit and use of Dow Chemical Company , because the Dow Pumping Plant near Brazoria , Texas began pumping salt water .
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- (8) If TCEQ grants CBWC their Application to Amend Certificate No. 12-5322 as written then the Rice Farmers on this canal system will be devasted if not destroyed economically .
- (9) All wildlife in Brazoria County will be adversely and disastrously impacted by the granting of the CBWC Application Amendment Certificate No.12-5322.
- (10) Numerouse cattle ranchers whose cattle depend on the CBWC water for survival will be adversely affected .

Respectfully submitted ,



Anthony Duke & Carolyn Duke

P.O. Box 1047 / Alvin, Tex. 77512
(832) 444- 7347 phone

Box 1047
Austin, TX

787512

RECEIVED

OCT 10 2006

TCEQ MAIL CENTER
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RECEIVED

OCT 18 2006

TCEQ MAIL CENTER
MM

Office of the Chief Clerk
MC 105. TCEQ
PO Box 1387
Austin, TX 78711-3087

October 16, 2006

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OCT 16 2006

BY JY

CHIEF CLERK'S OFFICE

OCT 16 11 00 AM '06

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TCEQ
Office of The Chief Clerk
Ladonna Castanuela
Austin, Texas 78711 -3087

FAX:(512) 239 -3311

3 pages

ADD TO 53529

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Anthony & Carolyn Duke
P.O. Box 1047
Alvin, Texas 77512

BG

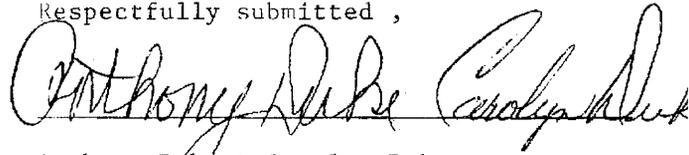
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Respectfully submitted,


Anthony Duke & Carolyn Duke

P.O. Box 1047 / Alvin, Tex. 77512
(832) 444-7347 phone

October 16, 2006

OPA # PM

OCT 16 2006

TCEQ
Office of The Chief Clerk
Ladonna Castanuela
Austin, Texas 78711 -3087

BY Jr

FAX: (512) 239 -3311

3 pages

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Anthony & Carolyn Duke
P.O. Box 1047
Alvin, Texaz 77512

CHIEF CLERK'S OFFICE

OCT 16 2006 11:11:11

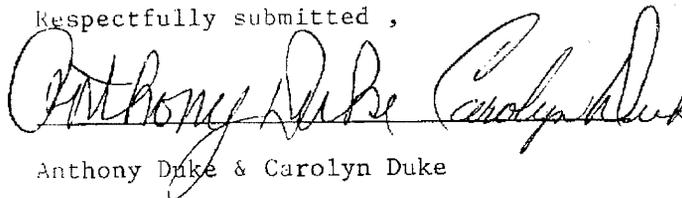
TEXAS
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Page 3.

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ADJ
53999

CID Item 53999

FEBRUARY 26, 2009

TEXAS COMMISSION OF ENVIRONMENTAL QUALITY
C/O CHIEF CLERK
FAX (512) 239-3311 / (512) 239-4770

OPA

MAR 02 2009

BY BP

CHIEF CLERKS OFFICE

2009 FEB 27 AM 9:43

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

ATTENTION : RON ELLIS, Project Manager

RE: Application No. 12-5322E for an Amendment to Certificate
of Adjudication No. 12-5322 ;
GULF COAST WATHORITY
ADJ 5322

Dear Sir/ Madame;

We remain opposed to the transfer of Water Rights from Brazoria County, by GCWA , and remain a contested opponent of the Application No 12-5322E.

As customers we are beneficial users claiming equity rights to our portions of said irrigation waters , which are recognized by the Courts of Texas , under the Irrigation Acts of 1895 and 1913. These claims are cognizable in the Laws of Equity for determining their rights to the use of STWC , CBWC, & GCWA water, for the time span of past years use for rice irrigation . SEE: State v. Hidalgo County Water Control and Imp. Dist. No.18 (Civ.App. 1969) 443 S.W. 2d 728,ref. n.r.e.

It is our understanding that we have the right to make certain water right claims , the same as riparian water rights pursuant to VTCA Water Code 5.301 under Water Rights Adjudication Act , and to have them recorded by TCEQ under Water Code 5.303 .

I have previously written opposition letters dated July 11, 2006 , and October 16, 2006, which are incorporated herein for all purposes at law or in equity thereof .

In response to your letter dated February 18, 2009, we are opposed to the revised draft for the foregoing reasons in addition which are;

1. GCWA is authorized to maintain three reservoirs , Juliff, Bonney , & Liverpool , and they should be required to maintain the three reservoirs.

2. It is our understanding that they do not own the Bonney Reservoir and it is being farmed and cultivated .

3. No transfer of the water rights should be allowed , only an Application for another diversion point up river of surplus water only.

Handwritten signature/initials

4. It takes 2 acre foot of water per acre of rice to raise a rice crop the amount of water 864 acre-feet for industrial and subsequent agricultural (irrigation) purposes; that is stated in the DRAFT would only water 432 acres of rice in Brazoria County, Texas, if it was all used for rice.

5. Furthermore the DRAFT does not address whether industry or rice farmers would get the water and how much if any.

6. It also does not address a shortage of water due to drought conditions such as we are now experiencing , so how would the water be allocated ?

It appears to us that GCWA is going to shut down the Juliff Pumping plant and it's canal , that would ruin over half of the Rice farmers in Brazoria County.

Please feel free to call me at (281) 581-2231 or (713) 291-9519 .

Sincerely .

ANTHONY & CAROLYN DUKE.

FAX (512) 239-4770

TO: TEXAS COMMISSION OF ENVIRONMENTAL QUALITY

ATT: MR. RON ELLIS/ Project Manager

From; ANTHONY & CAROLYN DUKE

Opposition to Feb. 18, 09. draft of Application No. 12-5322E
and Certificate of Adjuication No. 12-5322.

3 Pages including cover .

Anthony Duke Jr. & Cindy Duke
P.O. Box 607
Alvin, TX 77512
281-581-2669 FAX: 281-581-2669

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2006 OCT 18 AM 10:57

CHIEF CLERKS OFFICE

October 16, 2006

TCEQ
OFFICE OF THE CHIEF CLERK
LADONNA CASTANUELA
P.O. BOX 13087
AUSTIN, TX 78711-3087

PM
H
OCT 18 2006
BY DL

RE: Brazoria County Irrigation Water
CBWC Application #12-5322E

ADD
5/29/06

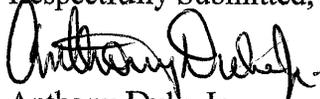
Ms. Castanuela,

We, Anthony Duke Jr. & Cindy Duke, do hereby respectfully request a Public Meeting and a Contested Case Hearing pertaining to CBWC Application No. 12-5322E.

I am a third generation rice farmer in Brazoria County, with a wife and four children, two of which are full time college students. I have been a water customer of CBWC since 1986. My wife and I own and operate a 1500 acre rice farm that adjoins CBWC irrigation canals which supplies water to our farm. We have no other source of water in which to irrigate our rice fields. If CBWC or their successors are allowed to transfer water to Galveston County we could be economically ruined because rice farming is our major source of income.

We believe we have acquired rights as a water customer and also as a landowner of a rice farm of which why CBWC's predecessor was granted this permit. CBWC historically has not furnished water to any customers in Galveston County. The approval of this application to divert and use this water in Galveston County will have a dramatic and negative impact on Brazoria County as a whole, including it's citizens, livestock, industry, agriculture, aquaculture, wildlife, waterfowl, and Brazoria County's bay's and estuaries.

Respectfully Submitted,


Anthony Duke Jr.


Cindy Duke

FROM :

FR. NO. :

ec. 08 2003 05:45PM P2

Anthony Duke Jr. & Cindy Duke
P.O. Box 607
Alvin, TX 77512
281-581-2669 FAX: 281-581-2669

October 16, 2006

OPA

TCEQ
OFFICE OF THE CHIEF CLERK
LADONNA CASTANUELA
P.O. BOX 13087
AUSTIN, TX 78711-3087

PM
H
BY

OCT 17 2006

CHIEF CLERKS OFFICE
OCT 16 11 11 AM '06
ON EMBROIDERY
T. J. W. 2006

RE: Brazoria County Irrigation Water
CBWC Application #12-5322E

EDS
53999

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Respectfully Submitted,

Anthony Duke Jr.
Anthony Duke Jr.

Cindy Duke
Cindy Duke

FROM :

FA. NO. :

Dec. 08 2003 05:45PM P1

FACSIMILE TRANSMISSION

Anthony & Cindy Duke J.V.
P.O. Box 607
Alvin, TX 77512
Telephone : 281-581-2669
Facsimile : 281-581-2663

CHIEF CLERKS OFFICE

OCT 16 11 14 15

TEXAS
COMMISSION ON ENVIRONMENTAL
QUALITY

TO: TCEQ - OFFICE OF THE CHIEF CLERK
LADONNA CASTANUELA

FAX NO: 512-239-3311

FROM: ANTHONY DUKE JR & CINDY DUKE

DATE: 10-16-2006

COMMENTS: REQUEST FOR PUBLIC MEETING

AND CONTESTED CASE HEARING

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET 2

This facsimile transmission is from Anthony & Cindy Duke J.V., and is intended only for the use of the individual or entity named above. Any disclosure, copying, distribution, or use of this information is expressly prohibited. If you have received this facsimile in error, please notify us immediately by telephone at the number listed above. Any facsimile erroneously transmitted to you should be immediately returned to the sender by U.S. Mail, or destroyed if authorization is granted by the sender.

10th

TCEQ Public Meeting Form

Thursday, January 25, 2007

Chocolate Bayou Water Company Certificate of Adjudication Application No. 12-5322E

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 FEB -7 PM 2:42
CHIEF CLERKS OFFICE

PLEASE PRINT:

Name: ANTHONY DUKE JR.

Address: PO BOX 607

City/State: ALVIN, TX. Zip: 77512

Phone: (281) 581-2669

Please add me to the mailing list.

Are you here today representing a municipality, legislator, agency, or group? Yes No

If yes, which one? _____

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓ BELOW

I wish to provide formal oral comments.

I wish to provide formal written comments at tonight's public meeting.

(Written comments may be submitted at any time during the meeting)

Please give this to the person at the information table. Thank you.

MW

OPA

H OCT 17 2006

TCEQ, Office of the chief clerk. Ladonna
 Castanuela P.O. Box 13087 Austin ,Texas 78711
 Re. Braz Co.Irragation water #12-5322E
 Ms.Castanuela My commercial waterfowl
 hunting operation leases many thousands of
 acres that we operate for hunting and bird
 watching operations here in Brazoria county and
 I have concerns about CBWC application #12-
 5322E. I Believe a public hearing should be held
 for CWBC application #12-5322E. Thanks..
 Capt. Scott Hickman Circle H Outfitters and
 Charters 3218 Coral Ridge ct. League City
 Texas 77573 281 535 1930
 Oct 16 2006

BY DL

ADD TO
5322E

THANKS

CHIEF CLERK'S OFFICE

OCT 16 10 16 57

COMMISSIONER OF ENVIRONMENTAL QUALITY TEXAS

PAGE 1 OF 2

70-(512) 239-3311

ATTN: LADONNA CASTANUELA

From 281 535 1935

CHIEF CLERKS OFFICE

2006 OCT 16 PM 4:57

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Terrance Hlavinka Cattle Co.
P.O. Box 1188
East Bernard, TX 77435
979-335-7528 FAX: 979-335-4389

October 16, 2006

TCEQ
OFFICE OF THE CHIEF CLERK
LADONNA CASTANUELA
P.O. BOX 13087
AUSTIN, TX 78711-3087

ADD
53999

PM OPA
H OCT 18 2006
BY pc

RECEIVED
ON 10/18/06
10/18/06 10:11 AM
CHIEF CLERKS OFFICE

RE: Brazoria County Irrigation Water
CBWC Application #12-5322E

Ms. Castanuela,

Farmers in Brazoria County have historically purchased irrigation water from Chocolate Bayou Water Company. My personal operations, as well as several tenant farmers, use this water to produce rice and other crops on my farms. I have legitimate concerns regarding CBWC Application #12-5322E.

I previously sent you a request for a public hearing regarding CBWC Application #12-5322E. I believe that a public meeting concerning this application should be held prior to a contested case hearing. Hopefully, we can resolve our issues through this process and subsequently withdraw our request for a contested case hearing.

I appreciate your cooperation in this matter.



Terry Hlavinka
Terrance Hlavinka Cattle Company
terry.hlavinka@hlavinka.com

df

BG

Terrance Hlavinka Cattle Co.
P.O. Box 1188
East Bernard, TX 77435
979-335-7528 FAX: 979-335-4389

July 27, 2006

HR
OPA
JUL 31 2006
BY *[Signature]*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2006 JUL 31 AM 10:17
CHIEF CLERKS OFFICE

TCEQ
OFFICE OF THE CHIEF CLERK
LADONNA CASTANUELA
P.O. BOX 13087
AUSTIN, TX 78711-3087

RE: Brazoria County Irrigation Water
CBWC Application #12-5322E

ADD
53999

Ms. Castanuela,

I operate multiple farming operations in Brazoria County, Texas. These farms are serviced by Chocolate Bayou Water Company. As a stakeholder, I want to know more about the proposal to transfer water from the current river basin.

I am requesting a public hearing regarding the CBWC Application #12-5322E. Please contact me with the date and time of the public hearing at:

Terrance Hlavinka Cattle Company
P.O. Box 1188
East Bernard, TX 77435

I appreciate your assistance,



Terry Hlavinka
Terrance Hlavinka Cattle Company
terry.hlavinka@hlavinka.com

df



TCEQ Public Meeting Form

Thursday, January 25, 2007

774

Chocolate Bayou Water Company Certificate of Adjudication Application No. 12-5322E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2007 FEB -7 PM 2:42
CHIEF CLERKS OFFICE

PLEASE PRINT:

Name: Terrance J Hlavinka
Address: PO BOX 1188
City/State: East Bernard TX Zip: 77435
Phone: (979) 335-7528

Please add me to the mailing list.

Are you here today representing a municipality, legislator, agency, or group? Yes No

If yes, which one? _____

IF YOU WANT TO GIVE FORMAL COMMENT PLEASE ✓ BELOW

I wish to provide formal oral comments.

I wish to provide formal written comments at tonight's public meeting.
(Written comments may be submitted at any time during the meeting)

No

Please give this to the person at the information table. Thank you.

mu

LAW OFFICES OF
BOOTH, AHRENS & WERKENTHIN, P.C.

A Professional Corporation
515 CONGRESS AVENUE, SUITE 1515
AUSTIN, TEXAS 78701-3503
512/472-3263 • 512/473-2609

MICHAEL J. BOOTH
FRED B. WERKENTHIN, JR.
WIL GALLOWAY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
OCT 16 11 41 13
CHIEF CLERK'S OFFICE
CAROLYN AHRENS
OF COUNSEL

October 16, 2006

ADVIS
LTP
53 CS

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk
12100 Park 35 Circle
Building F, First Floor
Austin, Texas 78753

VIA HAND DELIVERY
OPA

H OCT 17 2006
BY al

RE: Hearing Request of Dow Chemical Company regarding Application No. 12-5322E of Chocolate Bayou Water Company ("Chocolate Bayou")

Dear Ms. Castañuela:

The Dow Chemical Company ("Dow") submits the following comments and request for a Contested Case Hearing regarding the above-referenced application. Please file-stamp the copy and return to the courier for our records.

Protestor Information

Paul Bork
Dow Chemical – Texas Operations
1790 Building
The Dow Chemical Company
Midland, MI 48674
c/o Fred B. Werkenthin, Jr.
Booth, Ahrens & Werkenthin, P.C.
515 Congress Avenue, Suite 1515
Austin, Texas 78701
fbw@baw.com

Holder of Certificate of Adjudication No. 12-5328, as amended.

BG

LaDonna Castañuela
October 16, 2006
Page 2

Applicant Information

Chocolate Bayou Water Company
1920 FM 2917
Alvin, Texas 77511

Application No. 12-5322E

Hearing/Public Comment Request

We request a Contested Case Hearing.

Effect of Proposed Water Right

Under low flow conditions, Dow has difficulty obtaining the water it is entitled to because reduced flow in the Brazos River allows a salt wedge from the Gulf of Mexico to move upstream to the vicinity of Dow's diversion points. As a result, any expansion of use in upstream water rights adversely affects Dow's water rights.

Chocolate Bayou has applied to move its outfall upstream and to add Galveston County to the authorized places of use in its water right. Expansion of the place of use under Chocolate Bayou's water right, along with the previous change in purpose of use may reduce the amount of water available to Dow at its diversion points, which are downstream from the existing and proposed Chocolate Bayou's diversion points. Use in Galveston County would preclude the possibility of return flows being available to Dow.

In addition, the proposed change in use for this water right will change the usage pattern. The current use for Chocolate Bayou's water right is for irrigation. This usage occurs primarily in the Spring when the flow of the Brazos River is typically high. The proposed use in Galveston County will result in more water being used under the Chocolate Bayou's water right at other times of the year when the flow of the Brazos River is lower than it has been when the use of Chocolate Bayou's water rights have historically occurred.

Location of Dow's Water Right

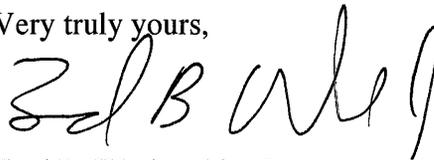
Chocolate Bayou's existing diversion point is located a few miles upstream of Dow's most upstream diversion point.

LaDonna Castañuela
October 16, 2006
Page 3

Conclusion

Dow files these comments and requests that the Texas Commission on Environmental Quality convene a Contested Case Hearing regarding Chocolate Bayou's Application No. 12-5322E.

Very truly yours,

A handwritten signature in black ink, appearing to read "Fred B. Werkenthin, Jr.", written in a cursive style.

Fred B. Werkenthin, Jr.

FBW/ram

cc: Paul Bork
Dow Chemical – Texas Operations
1790 Building
The Dow Chemical Company
Midland, MI 48674

VIA EMAIL