

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2010 JUL 16 AM 11:45

CHIEF CLERKS OFFICE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TCEQ DOCKET CONTROL NO. 2009-0356 WR

GCWA'S AMENDED APPLICATION NO. 12-5322E

PROTESTERS MOTION TO DISMISS WITH PREJUDICE GCWA'S AMENDED APPLICATION
WITH COMPROMISE SETTLEMENT OFFER

TO THE HONORABLE COMMISSIONERS OF TCEQ :

Anthony and Carolyn Duke , as Protesters and Requesters show the following grounds in support of their Motion named above :

I.
BACKGROUND - HISTORY

Gulf Coast Water Authority herein referred to as GCWA seeks to Amend Certificate of Adjudication No. 12-5322 , by GCWA Amended Application No. 12-5322E . GCWA seeks to transfer all of their water rights totaling 155,000. acre feet to a diversion point 3.9 miles upriver from the present location at the Juliff Pumping Plant on the Brazos River , thereby leaving the Brazoria County municipal , industrial , agricultural , and domestic etc. users without any future water rights, and "HIGH AND DRY", all of which will create hardships to everyone who is presently using the water in Brazoria Co. and in the future .

II.
IMPROPER PROCEDURE

1. Protesters show that the prior water right holder was Chocolate Bayou Water Company (CBWC) who filed their Application to Amend their Certificate of Adjudication , No. 12-5322 , on June 12, 2006.

2. Protesters show that , on October 18, 2006 , the Executive Director dismissed with prejudice Chocolate Bayou Water Company's Application , and CBWC never filed a Motion to Overturn thereafter.

3. Protesters show that CBWC published a PUBLIC NOTICE of a TCEQ PUBLIC HEARING , for January 25, 2007 , in The Brazosport Facts Newspaper , to be held in Angleton, Texas.

4. Protesters show that CBWC **didnot attend** the TCEQ Public Hearing on January 25, 2007, this was improper procedure by CBWC and TCEQ , who should have adjurned the Public Hearing .

5. Protesters show that at the Public Hearing , on January 25, 2007, GCWA improperly appeared and falsely claimed that they had purchased CBWC's Permit No. 12-5322 , when in fact said purchase was not completed until well after January 25, 2007, and in fact three(3) months after the CBWC Application had been dismissed with prejudice.

6. Protesters show that GCWA has re-filed said Amended application under a new number 12-5322E , and GCWA has never published a Public Notice for a Public Hearing on said new Amended Application No. 12-5322E , to be held by TCEQ , which bars GCWA from proceeding with the July 28, 2010 Hearing Date and in fact GCWA is barred on their Amended Application until they hold the TCEQ Public Hearing, and that is one reason why Protesters filed their Motion For Continuance of the July 28, 2010 Hearing date of at least six (6) months .

7. Protesters show that GCWA is in violation of TWC § 5.144 , Titled Forfeitures and Cancellation of Permit for Inaction, for not using the Bonney Reservoir for the past several years, in fact ~~GCWA doesn't~~ own or have the right to use said Reservoir. Therefore, their Amended Application No.12-5322E should be dismissed with prejudice by TCEQ for GCWA's Inaction .

8. Protesters show that TWC § 5.038 , Titled Rights of Owners of Land Adjoining Canal , etc. , bars GCWA from transferring all of their 155,000. acre feet of water rights to another diversion point upriver 3.9 miles from the present location , at the Juliff Pumping Plant , which is located at the end of Miller Rd. on the Brazos River , approximately four(4) miles West of Juliff , Texas , thereby taking all the water rights away from Brazoria County , in violation of all their existing irrigation water contracts now held with the Brazoria County Rice Farmers and other users .

9. Protesters show that GCWA cannot agree on a price for a permanent water right for all the Agricultural Irrigation users , and therefore will be in violation of TWC § 5.038 for not leaving the Agricultural Irrigation Users with any future water , even though the TWC § 5.038 requires GCWA to furnish the agricultural irrigation users water necessary for their purposes at reasonable and non-discriminatory prices .

10. Protesters show that GCWA's Amended Application No. 12-5322E is scheduled for the TCEQ Commissioners to hear on July 28, 2010 , said Hearing should be cancelled for all the reasons stated herein or said GCWA Amended Application should be dismissed with prejudice to avoid the severe hardships which everyone Brazoria County will experience .

11. Protesters show that they are interjacent water right holders , as shown in DUKE EXHIBIT "B" , copy of which is attached hereto and incorporated herein for all purposes .

12. Protesters show that GCWA'S Amended Application No. 12-5322E would impair the existing water rights or vested riparian water rights which the Commission should not grant the Application if it will impair existing water rights or vested Riparian water rights of interjacent land owners to the GCWA's canal , whom have established such water rights .

13. Protesters show that the Executive Director's Recommendation to Exclude Requesters from the Contested Case Hearing is prejudicial and discriminatory and should be denied.

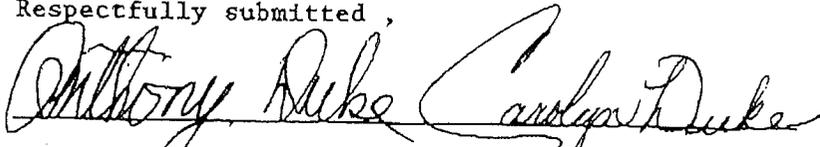
14. Protesters show that GCWA has contracted approximately 80,000 acre feet of water to agricultural irrigation users, which they are committed to furnish , therefore , TCEQ would be interfering with contractual rights which may make TCEQ and GCWA liable for interference and Breach of Contract, therefore , TCEQ should consider leaving 80,000 acre feet at the Juliff Pumping Plant and only transfer 75,000 acre feet upriver to their desired diversion point as requested in their application . Protesters feel like that would be an acceptable compromise which would satisfy everyone involved .

WHEREFORE PREMISES CONSIDERED , Protesters request that the Honorable Commissioners grant their Motion to Dismiss With Prejudice GCWA'S Amended Application and for any other and further relief at law or in equity thereof to which Protesters may show themselves justly entitled .

Respectfully submitted ,

BY: Protesters/Requesters ;

DATE: July 16, 2010


Anthony Duke and Carolyn Duke

P.O. BOX 1047
Alvin, Texas 77512

ph (713)291-9519

CC: COPY SENT TO ATTACHED LIST .

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY**MAILING LIST
GULF COAST WATER AUTHORITY
DOCKET NO. 2009-0356-WR**

2010 JUL 16 AM 11:46

CHIEF CLERKS OFFICE

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**FOR ALTERNATIVE DISPUTE
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FOR THE CHIEF CLERK:

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Martin A. Hubert, *Commissioner*
Glenn Shanley, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 18, 2006

TO: Persons on the attached mailing list.

RE: Chocolate Bayou Water Company
TCEQ Docket No. 2004-1997-WR; Certificate of Adjudication No. 12-5322

This letter is your notice that the Texas Commission on Environmental Quality (TCEQ) executive director has dismissed with prejudice the above-named application.

You may file a **motion to overturn** with the chief clerk. A motion to overturn is a request for the commission to review the TCEQ executive director's decision. Any motion must explain why the commission should review the TCEQ executive director's decision.

A motion to overturn must be received by the chief clerk within 23 days after the date of this letter. An original and 11 copies of a motion must be filed with the chief clerk in person, or by mail to the chief clerk's address on the attached mailing list. On the same day the motion is transmitted to the chief clerk, please provide copies to the applicant, the Executive Director's attorney, and the Public Interest Counsel at the addresses listed on the attached mailing list. If a motion to overturn is not acted on by the commission within 45 days after the date of this letter, then the motion shall be deemed overruled.

Individual members of the public may seek further information by calling the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040.

Sincerely,


LaDonna Castañeda
Chief Clerk

LDC/cz

DUKE EXHIBIT "A"

Doc# 2010027973

DEED

STATE OF TEXAS I

KNOW ALL MEN BY THESE PRESENTS :

COUNTY OF BRAZORIA I

THAT Anthony and Carolyn Duke, herein make and claim, Vested Riparian Water Rights out of Chocolate Bayou, pursuant to their ownership of 183.511 acres of land situated in the Stephen F. Austin League Grant, which Stephen F. Austin acquired from Mexico in 1828, said land is situated and adjoining Chocolate Bayou , about two an one half miles Northeast of Liverpool , Texas, in the Stephen F. Austin 13/4 League Grant , Abstract 37 , Brazoria County, Texas .

Anthony Duke and Carolyn Duke are herein making and claiming said water rights through a Mexican Land Grant under Spanish Law, pursuant to Texas Law as shown in Vernon's TEXAS CODES ANNOTATED , Water , Vol. 1, Section] 5.001, Water Code under Paragraph 3, p. 12 ,Title Water rights - In general ;

The Dukes claim Water Rights to riparian waters out of Chocolate Bayou acquired under the law of Mexico are vested Rights , See Texas Water Rights Commission v. Wright (Sup. 1971) 464 S.W. 2d 642 .

Riparian rights were superior to any right of appropriation under Rev. Civ. St.1911, arts. 4993, 4995. SEE: Matagorda Canal Co. v. Markham Irr. Co. (Civ.App. 1913) 154 S.W. 1176 .

Subject to the foregoing claim , the Dukes make and claim their equity water right by and through rice canal corporations whom proceeded us with the first being The South Texas Water Co. who began in 1929, then the Brazoria County Rice Company , then the Chocolate Bayou Rice Canal Company , then the

Chocolate Bayou Water Company, and finally the Gulf Coast Water Authority ,
organized as a political sub-division of State of Texas ,

We are making the foregoing claims to protect our existing water rights
for agricultural use and domestic use for the future, which are being put
in jeopardy .

The Dukes are claiming at least 2,975 acre feet of water rights per annum out
of Chocolate Bayou, Brazoria County , Texas on their property which is located
about 2 1/2 miles Northeast of Liverpool, Texas , this is based upon our history
of purchasing that amount from Chocolate Bayou Water Company for many years .

Anthony Duke

Anthony Duke / Claimant

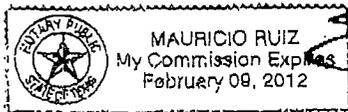
Carolyn Duke

Carolyn Duke / Claimant

STATE OF TEXAS }
COUNTY OF BRAZORIA }

BEFORE ME , the undersigned authority on this day personally appeared
ANTHONY DUKE and CAROLYN DUKE , known to me to be the persons whose name is
subscribed to the foregoing instrument and acknowledged to me that they have
executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE the 15th day of July 2010.



Mauricio Ruiz

NOTARY PUBLIC IN AND FOR THE STATE OF T E X A S

JULY 16, 2010

TO: (512) 239-3311
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

TO: MS. LaDonna Castenuela , Chief Clerk

10 PAGES INCLUDING THIS COVER .

RE: TCEQ DOCKET NO 2009-0356-WR
APPLICATION No. 12-5322E to Amend Certificate of Adjudication No.12-5322
OF Gulf Coast Water Authority

Dear Ms. Castenuela ;

Pease file PROTESTERS MOTION TO DISMISS WITH PREJUDICE GCWA'S AMENDED APPLICATION
with attachments thereto, consisting of 9 pages to file.

FROM; Anthony & Carolyn Duke / Protesters-Responders

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2010 JUL 16 AM 11:45
CHIEF CLERKS OFFICE