

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY 2010 JUL 19 PM 4: 08

TCEQ DOCKET CONTROL NO. 2009-0356 WR CHIEF CLERKS OFFICE

GCWA'S AMENDED APPLICATION NO. 12-5322E

PROTESTERS RESPONSE TO GCWA'S AMENDED APPLICATION

TO THE HONORABLE COMMISSIONERS OF TECEQ:

Anthony Duke Jr. and Cindy Duke, as Protesters and Requesters show the following grounds in support of their response:

I.

Protestors show that they are an affected person by attaching hereto their 2010 irrigation water contract as per 30 TAC § 55.256(a) and are entitled to a contested case hearing.

II.

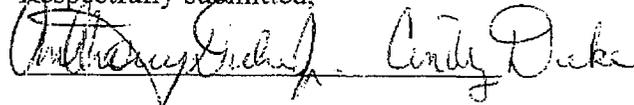
Protestors show that they are an affected person pursuant to § TWC 11.038 RIGHTS OF OWNERS OF LAND ADJOINING CANAL.

III.

Protesters show that TCEQ shall also apply TWC § 11.147, EFFECTS OF PERMITS ON BAYS AND ESTUARIES AND INSTREAM USES, § 11.1491 EVALUATION OF BAYS AND ESTUARIES DATA, and § 11.152 EFFECTS OF PERMITS ON FISH AND WILDLIFE, because the unused supply of irrigation water currently provides freshwater inflows to Chocolate Bay, Bastrop Bay, Christmas Bay, Halls Lake, Alligator Lake, Oyster Lake, Cox Lake, Lost Lake, Salt Lake, Wolf Lake and Nicks Lake.

If GCWA's application is approved the unused supply of irrigation freshwater will be transferred to Galveston County bypassing the above Bay's and Lake's in Brazoria County.

Respectfully submitted,



BY: Protesters/Requesters:

DATE: July 19, 2010

Anthony Duke Jr. and Cindy Duke

P.O. Box 607
Alvin, Texas 77512

Ph (281) 581- 2669

CC: COPY SENT TO ATTACHED LIST

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2010 JUL 19 PM 4:09

MAILING LIST
GULF COAST WATER AUTHORITY
DOCKET NO. 2009-0356-WR

CHIEF CLERKS OFFICE

FOR THE APPLICANT:

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Gulf Coast Water Authority
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Texas City, Texas 77591
Tel: 409-935-2438, ext. 17
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FOR ALTERNATIVE DISPUTE
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FOR THE CHIEF CLERK:

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2010 IRRIGATION WATER CONTRACT

RICE

The Gulf Coast Water Authority ("Authority") and Anthony and Cindy Duke J.V. ("Buyer") do hereby enter into an Irrigation Water Contract ("Contract") on tract(s) of "Land" as described in Exhibit "A" attached hereto.

Section 1. The water supplied by the Authority to the Buyer under this Contract shall only be used for the irrigation of rice crops.

Section 2. The Authority agrees to make water available in accordance with this Agreement to the Buyer during the course of the crop-growing season March 15, to September 15, 2010. If the system is capable of water delivery before or after the stated dates, the Authority will use its best efforts to make water available.

Section 3. Cost of Water

a. The cost of the water will be \$45.36 (Forty-five Dollars and thirty-six cents) per acre foot of water. A factor of 2.10 (Two point One Zero) will be applied to the cost per acre-foot to derive a cost of \$95.25 (Ninety-Five Dollars and Twenty-Five Cents) per acre watered.

b. *Cost of First Crop Water Service.*

| | |
|-----------------------------|--------------------|
| Water including first flush | Base Price |
| Each additional flush | 20 % of Base Price |
| Water leveling | 35 % of Base Price |
| Water planting | 35 % of Base Price |
| Water tilling/planting | 50 % of Base Price |

c. The Base Price for Second Crop rice will be the same as the Base Price set for First Crop rice as determined by Section 3.a.

d. *Cost of Second Crop Water Service*

The total cost of water for Second Crop shall be the certified acreage placed in second crop times 35% of Base Price. Should the Buyer waste water during any phase of Second Crop growing season, in the sole opinion of the Authority, the cost of water will be at the full Base Price.

e. The Buyer is obligated to pay to the Authority the full cost for each water service, once a Water Order has been initiated, whether water is taken in full or not.

Section 4. The Buyer will notify the Authority by executing a Water Order at least 72 (Seventy-Two) hours before water service is required. The Authority will use its best effort to provide the water service at the time requested. The Authority will determine and control the rate of flow for each water service. Cancellations for Water Orders will be accepted at the discretion of the Authority.

Should a Buyer require water service in less than 72 (Seventy-Two) hours, a fee of \$250 (Two Hundred Fifty Dollars) will be charged for that service. Should a Buyer require the water services outside the scheduled working hours of the Authority, the Buyer will be charged at the

rate of \$30 (Thirty Dollars) per hour for holding a Waterman over with a minimum charge of \$60 (Sixty Dollars).

Should a Buyer require water service that requires the Authority to call out a Waterman, the Buyer will be charged \$ 50 (Fifty Dollars) per hour with a minimum charge of \$200 (Two Hundred Dollars).

All overtime which exceeds 30 (Thirty) minutes will be charged a full hour.

Section 5. If replacement is required for water drained from the Land by the Buyer without permission of the Authority, the Buyer shall pay to the Authority twice (2) the Base Price per acre for replacement water.

Section 6. Payments under this Contract are due and payable in the office of the Authority on the date the rice is sold. **Payments received after NOVEMBER 1st shall accumulate interest at the rate of eighteen percent (18%) until payment is received.** The Buyer will execute a Security Agreement, UCC-1 Financing Statement, and Assignment of Payment, if requested by the Authority, whereby the Buyer grants to the Authority a security interest and guaranteed payment for water supplied under this Contract through the proceeds of the sale of said rice crop. These security agreements will serve to insure payments required to be made by this Contract.

The Authority will not enter into any future Contracts for water services until all accounts have been paid and settled in their entirety.

Section 7. The Buyer recognizes the need for conservation of water and agrees that, should wasteful practice or loss of water occur the Authority shall have the right to suspend water service until satisfactory corrective measures are enacted.

The Buyer will be held responsible for repairing all leaks within his watering system in a timely manner. To avoid penalty the Buyer must repair a leak in the system within twenty-four (24) hours after being notified of the leak by the Authority. If the leak is not repaired within the allotted time, the water service will be terminated and will not be restored until the leak is repaired. A fee of two hundred dollars (\$200) will be charged to restore service.

It may be that a lateral owned by others provides service to more than one Buyer. The Authority will not be obligated to determine who is responsible to maintain the lateral. Should a leak develop in that lateral, all Buyers receiving service from that lateral will be notified of the leak. If the leak is not repaired within the allotted time, water service to all those Buyers will be interrupted. The fee to restore water service will be prorated between all the Buyers served by the lateral.

Section 8. The Authority requires fifteen (15) working days to process a Contract. The Authority is not obligated to supply water service until three (3) days after the Authority or Buyer signs the Contract, which ever is later.

Section 9. The Buyer is obligated to furnish to the Authority a copy of the certified planted acreage from the Consolidated Farm Service Agency (CFSA) fifteen (15) days after the certification of his acreage and no later than July 1, 2010. **Should the Authority have to obtain this CFSA acreage certification after the 1st of July, a fee of two hundred fifty dollars (\$ 250) will be charged for each tract of Land.**

Section 10. The Authority will charge the Buyer for the fees to file and release liens with the Secretary of State of the State of Texas.

Section 11. The Authority shall never be liable to the Buyer for failure to make water available to the Buyer as provided in this Contract when such failure is caused by drought, flood, mechanical failure, fire, wind storm, strike or other labor problems, sabotage, explosion, act of God or other events beyond the control of the Authority. The Authority is not obligated to make releases from any stored water it may have to supply water under this Contract.

Section 12. Address of the Authority:

Gulf Coast Water Authority
3630 Highway 1765
Texas City, Texas 77591-4824

Address of Buyer:

Anthony & Cindy Duke, J.V.
PO Box 607
Alvin, TX 77512

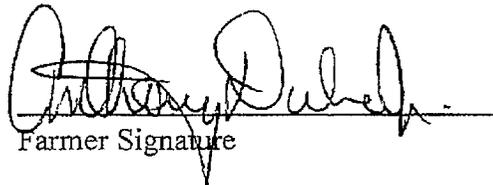
DATED AND SIGNED this 13th day of May, 2010.

GULF COAST WATER AUTHORITY



Robert Istre
General Manager

"BUYER"



Farmer Signature

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July 19, 2010

2010 JUL 19 PM 4:08

CHIEF CLERKS OFFICE

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

TO: Ms. LaDonna Castenuela, Chief Clerk

8 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,

Please file PROTESTORS RESPONSE with attachments thereto, consisting of 7 pages to file.

From Anthony Duke Jr. and Cindy Duke / Protestors-Responders