

TCEQ Docket Control No. 2009-0356 WR

<u>Application by Gulf Coast</u>)	<u>Before the Texas</u>
<u>Water Authority For Amendment</u>)	<u>Commission on</u>
<u>To Certificate of Adjudication No. 12-5322E</u>)	<u>Environmental</u>
		<u>Quality</u>

TO THE HONORABLE COMMISSIONERS:

Terrance Hlavinka Cattle Co., a Texas General Partnership, Terrance Hlavinka, et al (hereinafter collectively referred to as Hlavinka) hereby request that Texas Commission of Environmental Quality (hereinafter referred to as TCEQ) allow a *Motion for Continuance for at least an additional Six Months* to consider the amendment to Certificate of Adjudication No.12-5322. It is also requested that the TCEQ consider Hlavinka as an affected person as evidenced herein.

BACKGROUND

Gulf Coast Water Authority (hereinafter referred to as GCWA) seeks to amend Certificate of Adjudication NO. 12-5322, by GCWAS Amended Application No. 12-5322E. GCWA seeks to transfer the diversion point of all water rights totaling 155,000 acre feet to a point up stream 3.9 miles even though no argument or evidence for the requirement can substantiate a need to move such diversion point. Farmers and industry in Brazoria County have relied upon water provided by GCWA and its predecessors for generations. Hlavinka and/or its affiliates operate approximately 13,000 acres of mostly irrigated farmland in Brazoria County. This property was purchased from an affiliate of Chocolate Bayou Water Company which is a predecessor of GCWA. It was reasonably anticipated that irrigation water would be available to service said property. GCWA now has substantial operations in Brazoria County with the addition of Chocolate Bayou Water Company's assets. However, the directors and administrators are appointed by Galveston County interests and Galveston County governmental authorities thereby creating a management structure within GCWA that does not fairly represent all interests within the area served by the utility.

NEW PROCEDURAL INFORMATION

A Six Months Continuance will allow time to investigate the number of new procedural issues have surfaced. It should be definitely determined whether the Amended Application filed by Chocolate Bayou Water Company and GCWA was properly reopened after the Executive Director or TCEQ *dismissed with prejudice* said application. The Notice from Chief Clerk, Ms. LaDonna Castenuela on October 18, 2006 stated that TCEQ Executive Director *dismissed with prejudice* an amended application from applicant.

HEARING REQUESTS

All relevant factors must be considered to determine whether a person is an affected person according to 30 TEX. ADMIN. CODE 55.256 (c). The relevant factors are:

1. whether the interest claimed is one protected by the law under which the application will be considered;
2. distance restrictions or other limitations imposed by law on the affected interest;
3. whether a reasonable relationship exists between the interest claimed and the activity regulated;
4. the likely impact of the regulated activity on the health, safety, and use of the property of the person;
5. the likely impact of the regulated activity on the use of the impacted natural resource by the person; and
6. for governmental entities, their statutory authority over or interest in the issues relevant to the application.

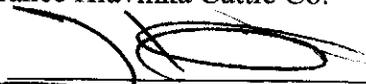
Hlavinka and /or its affiliates or its tenants currently purchase water from GCWA on a contract basis. There have been no assurances made that the water that is *currently contracted* (see item 3) to irrigation customers will not be at risk. It is reasonable to expect that in the event that this water is unavailable, it will affect the property of Hlavinka (see item 4) by *altering its usage from irrigated cropland* to another application and *lowering its value*. Finally, the water supplied to rice farmers has a definite *beneficial impact to wildlife and natural resources*. Hlavinka meets the criteria to be considered an affected person.

CONCLUSIONS

For reasons stated above, Hlavinka requests TCEQ grant a motion for at least six months continuance prior to acting on this application and recognize Hlavinka as an affected person.

Respectfully and timely submitted on this the 19th day of July, 2010:

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Cc: See attached lists

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