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July 20, 2010

Ms. LaDonna Castenuela
Chief Clerk
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, TX 78711-3087

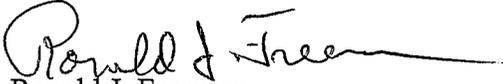
Re: TCEQ Docket No. 2009-0356-WR; Application No. 12-5322E to Amend
Certificate of Adjudication No. 12-5322 of Gulf Coast Water Authority

Dear Ms. Castenuela:

Enclosed please find the original and eleven copies of Applicant Gulf Coast Water Authority's Response to the Motion to Dismiss with Prejudice filed by Anthony Duke and Carolyn Duke (the "Dukes") in this matter.

Copies of this letter are being sent to all parties of record per the attached certificate of service.

Very truly yours,


Ronald J. Freeman

cc: Robert D. Istre, General Manager, GCWA

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2010 JUL 20 PM 4: 26

CHIEF CLERKS OFFICE

TCEQ DOCKET NO. 2009-0356-WR

2010 JUL 20 PM 4: 27

APPLICATION BY GULF COAST §
WATER AUTHORITY FOR AMEND- §
MENT TO CERTIFICATE OF §
ADJUDICATION NO. 12-5322E §

BEFORE THE TEXAS
COMMISSION ON CHIEF CLERKS OFFICE
ENVIRONMENTAL QUALITY

**RESPONSE TO THE MOTION TO DISMISS WITH PREJUDICE FILED BY
ANTHONY DUKE AND CAROLYN DUKE**

COMES NOW, Gulf Coast Water Authority (“Applicant” or “GCWA”) and files this Response to the Motion to Dismiss with Prejudice filed by Anthony Duke and Carolyn Duke (the “Dukes”) and in support thereof respectfully shows as follows:

I.

The Dukes Motion to Dismiss with Prejudice raises no issues which have not already been addressed by GCWA in its response to the Dukes Motion for Continuance filed in this Docket last week. Again, the Dukes allege that the Executive Director has previously dismissed with prejudice on October 16, 2006 an application filed by Chocolate Bayou Water Company and GCWA and that no motion to overturn such dismissal was filed. And, again, the Dukes are referring to a completely separate and different application that was filed by Chocolate Bayou Water Company (not GCWA). As shown by the October 16, 2006 letter attached to the Duke’s Motion to Dismiss, the docket which that dismissal related to was TCEQ Docket 2004-1997-WR. That prior application was filed solely by Chocolate Bayou Water Company, not by GCWA, and it asked for a totally different amendment to CA 12-5322 that in no way was, or is, related to the current Application pending in this Docket. Attached to this response is the actual order of dismissal in that docket dated Sept. 27, 2006. As the Commissioners can see from reviewing that dismissal order, it pertained to an application filed by Chocolate Bayou Water Company to add a diversion point on the Brazos River in Waller County (near Hempstead). The current application filed by GCWA in this Docket asks for a new, additional diversion point far downstream of that point.

II.

The Dukes again allege that no public meeting has been held on the GCWA application. It has, however. That public meeting was held on January 25, 2007. And, contrary to the Duke’s allegation that GCWA had not purchased the Canal C assets from Chocolate Bayou at that time, in fact GCWA had completed that purchase in December of 2006.

III.

The Dukes again allege that the forfeiture and cancellation provisions of the Water Code allow the TCEQ to deny an Application. The cancellation statutes only allow TCEQ to cancel water rights for specific reasons and only after notice and hearing regarding the alleged

cancellation. The issue of cancellation of any of GCWA's CA 2-5322 is simply not part of, nor is it related to, this Application.

IV.

Finally, the Dukes allege that they are holders of riparian rights on Chocolate Bayou and they attach an affidavit they prepared and signed to claim such rights. They then state that the Application will impair their rights as riparian landowners. However, the Dukes' Motion states that their land was patented by Mexico. Accordingly, no riparian rights attach to that land, nor do any equitable water rights. See *In Re: The Adjudication of Water Rights in the Cibolo Creek Watershed of the San Antonio River Basin*, 568 S.W.2d 155 (Tex. Civ. App.—1978).

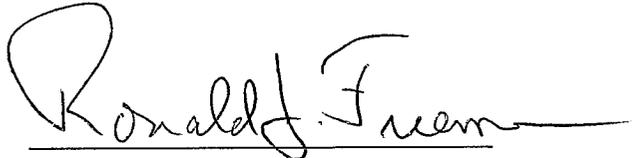
Wherefore, premises considered, GCWA respectfully requests that the Commission:

1. deny the Motion to Dismiss with Prejudice; and
2. for such other relief to which GCWA may be entitled.

Respectfully submitted,

Freeman & Corbett

By:

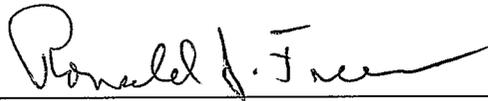

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was delivered on July 20, 2010, by over-night mail, fax, first-class mail and/or hand-delivery to persons on the attached service list.



Ronald J. Freeman

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2010 JUL 20 PM 4: 27
CHIEF CLERKS OFFICE

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**TCEQ DOCKET NO. 2004-1997-WR
SOAH DOCKET NO. 582-05-9443**

**APPLICATION BY CHOCOLATE § BEFORE THE TEXAS
BAYOU WATER COMPANY TO § COMMISSION ON
AMEND CERTIFICATE OF § ENVIRONMENTAL QUALITY
ADJUDICATION NO. 12-5322 §**

ORDER

On August 10, 2005, the Texas Commission on Environmental Quality considered hearing requests regarding an application by Chocolate Bayou Water Company to amend its Certificate of Adjudication No. 12-5322 to add a diversion point to its water right on the Brazos River in Waller County, Texas. The Commission granted the hearing requests of some requestors in an Interim Order dated August 15, 2005, and referred the application to the State Office of Administrative Hearings (SOAH) for a contested case hearing on the merits.

On October 3, 2005 a preliminary hearing was held in which jurisdiction of the matter was taken at SOAH.

On December 16, 2005, Chocolate Bayou Water Company filed a motion with SOAH requesting the withdrawal of its application. The Honorable Sharon Cloninger, presiding administrative law judge (ALJ), considered the Applicant's Motion to Withdraw, the response filed on December 16, 2005 by the City of Houston, the Brazos River Authority, and the Texas Water Development Board, and the Applicant's Reply to the response filed December 20, 2005. The ALJ issued Order No. 3 on December 21, 2005, which ordered that the Applicant's application be withdrawn with prejudice and the matter dismissed from the docket of SOAH and remanded back to the Executive Director for final disposition pursuant to 30 TEX. ADMIN. CODE § 80.25(a) and (b).

NOW, THEREFORE, BE IT ORDERED BY THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

Pursuant to 30 TEX. ADMIN. CODE §§ 80.25(a) and 80.101, the petition by Chocolate Bayou Water Company for an amendment to Certificate of Adjudication No. 12-5322 is dismissed with prejudice.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: **SEP 27 2006**

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


For the Executive Director