

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 10, 2007

State Office of Administrative Hearings

Honorable Craig Bennett, Administrative Law Judge
William P. Clements Building
300 West 15th Street, Suite 502
Austin, Texas 78711-3025

Re: SOAH Docket No. 582-04-7557; TCEQ Docket No. 2004-0834-UCR;
Application of Campbellton Water Works, Inc. to Discontinue Water Utility
Service and Cancel Certificate of Convenience and Necessity/CCN No. 12581;
Executive Director's Reply to the Exception to the Proposal for Decision Filed by
intervener Joan Roane

Dear Honorable Craig Bennett:

The Executive Director of the Texas Commission on Environmental Quality files the following Response to intervener, Joan Roane's Exceptions to the Proposal for Decision for the Application of Campbellton Water Works, Inc. to Discontinue Water Utility Service and cancel CCN No. 12581. The following filing includes a certificate of service to all parties accompanied by an original and eleven copies furnished to the Chief Clerk of the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Gabriel Soto".

Gabriel Soto
Staff Attorney
Environmental Law Division
Texas Commission on Environmental Quality

CHIEF CLERK'S OFFICE

2007 MAY 10 PM 4: 27

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

SOAH Docket No. 582-04-7557
TCEQ Docket No. 2004-0834-UCR

2007 MAY 10 PM 4:27

APPLICATION OF CAMPBELLTON	§	
WATER WORKS, INC., TO	§	BEFORE THE
DISCONTINUE WATER UTILITY	§	
SERVICE AND CANCEL	§	TEXAS COMMISSION ON
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY NO. 12581	§	ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

**EXECUTIVE DIRECTOR'S REPLY TO INTERVENOR, JOAN ROANE'S,
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

COMES NOW, the Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ" or "Commission"), by and through attorney representative of the TCEQ Environmental Law Division, in support of the Administrative Law Judge's ("ALJ") Proposal for Decision and files the Executive Director's Reply to the Intervenor, Joan Roane's, Exceptions to the Proposal for Decision, as follows:

A. Application Constitutes a Breach of Receiver's Fiduciary Duty Under the Texas Water Code and Practices and Remedies Code.

As the Proposal for Decision ("PFD") concludes, and the ED concurs, the purpose of this proceeding is whether to grant the approval of the current application to discontinue and cancel Certificate of Convenience and Necessity No. 12581. The 53rd Judicial District Court ("District Court"), in Travis County, Texas, appointed William Thane as the receiver for Campbellton Water Works, Inc. ("Campbellton" or "CWW"). Today, the continued management by the receiver for the Campbellton system is subject to the jurisdiction of the District Court. Nevertheless, the ED will respond to the Joan Roane's ("Intervenor") exception on this point. The receiver has not breached a fiduciary duty under the Texas Water Code and any other statute or regulation. On July 19, 2006,

the representatives for the Intervenor and the receiver William Thane (“Receiver” or “William Thane”), the Assistant Attorney General, and District Judge presiding entered into an Order Partially Granting the Receiver’s Motion to Decertificate the Water Permit held by Campbellton, allowing the Receiver, William Thane, to “...seek all such relief before the TCEQ/SOAH [State Office of Administrative Hearings] to which he may be entitled by law.” *See*, attachment PFD I, July 21, 2006, ED Status Report, at 1, attachment A-1, 1-2.

Based on review of the record and evidence presented, the ED has not found evidence to support the assertion that the receiver has breached a fiduciary duty. The District Court bestowed the receiver with the authority to “...retain a certificated operator(s) for the system and pay the operator(s) and pay all other reasonably necessary operating expenses...,” and “...[to] take all measures necessary to pursue and/or consummate the sale/or transfer of the utility and associated water systems to a qualified buyer and/or a viable long-term water service provider...” *See*, ED Closing Argument at 9.

No other customers of Campbellton are protesting this application and there has been no evidence that McCoy was involved in any dishonest dealings with Campbellton customers. The evidence does show that customers left a failing Campbellton utility for a utility, McCoy, with a larger customer base. The Intervenor’s assertion that McCoy “poached” or stole Campbellton customers is not supported by the evidence in the record.

B. Record of Facts

The ED disagrees with the Intervenor’s exceptions with regard to the record of facts in this proceeding. The Intervenor argues that they presented an uncontroverted

plan of rehabilitation for the Campbellton system. Apparently, the Intervenor has disregarded all the evidence to the contrary submitted by the other parties. There are serious disagreements over the costs associated with bringing the Campbellton system into compliance. As the ALJ noted in the PFD, the cost estimates range from \$45,000 to over \$1,000,000. Notably, absent from the Intervenor's consultant estimate of costs are operating costs, including contract operators, maintenance costs, and other similar costs. Also, absent from the record is any timetable for bringing Campbellton into compliance with TCEQ rules and orders under the Intervenor's plan. Finally, as the evidence in the record shows and the ALJ is correct to conclude, the Intervenor's source of funding is speculative. This is hardly an uncontroverted plan of rehabilitation as the Intervenor claims in its exceptions.

C. Receiver has Presented No Evidence of any Attempt to Comply with Requirements of 30 Texas Administrative Code § 291.115(i).

The ED disagrees that the record presents no evidence of the receiver's efforts to satisfy 30 Texas Administrative Code ("TAC") § 291.115 (i). The receiver submitted the petition to cancel Campbellton's CCN, which started this proceeding. The ED concurs with the ALJ's Proposal for Decision, which discussed the current reality of the Campbellton system due to years of mismanagement and lack of invested capital improvements by the original owner long before the appointment of the receiver. This particular case presents a very unique and most ideal situation, since McCoy Water Supply Corporation is willing to assist with ensuring that the remaining Campbellton customers are provided continuous and adequate service upon approval of the following application herein.

From the record it is clear that the Campbellton system has suffered from utility violations through the late nineties ultimately culminating in the appointment of McCoy as the temporary manager in 2002 and then William Thane, as the appointed receiver in 2003. Even with a lack of revenue and operating expenses in the negative, the Receiver has continued to ensure that Campbellton's existing customer base is receiving continuous and adequate water service, and has made repairs out-of-pocket. After consideration of the criteria provided under 30 Texas Administrative Code § 291.115(i), the application should be granted, which would result, not in the sale of the system and use of the deteriorating Campbellton system, but rather the remaining Campbellton customer base being transferred to the McCoy's utility system in order to ensure that adequate and continuous water is forthcoming. As referenced in the Proposal for Decision, the ED maintains that the Applicant/Receiver has met the requirements of 30 TAC §291.115(i) as outlined in the ED's closing arguments, with concurrence in result by the TCEQ Office of Public Interest Counsel and the Applicant. *See*, Proposal for Decision ALJ Analysis at 9-13.

D. Application is an Attempt to Circumvent the Compensation Requirements of Texas Water Code §13.254.

The ED agrees with the ALJ that the compensation requirements of Texas Water Code §13.254 do not apply in this current decertification application. The ED cannot address such relief pursuant to Texas Water Code 13.254, because no petition has been brought under that section. *See*, Proposal For Decision at 8 and ED Reply to Closing Argument at 4.

Further, it is undisputed that the receiver, “Mr. Thane assumed title and control over CWW water utility assets, including the utility’s state-approved tariff.” *See*, Intervenor Exception at 7. In this instance a petition was not brought pursuant to Texas Water Code § 13.254, since the receiver, William Thane filed the current application to discontinue operations of the Campbellton system, which has been evaluated pursuant to the criteria prescribed under 30 Texas Administrative Code 291.115(i). Whether McCoy must provide compensation when it seeks to provide service in the decertificated area is not an issue in this proceeding. The valuation of the Campbellton system assets, if any, will be determined by the District Court that appointed the Receiver at the conclusion of the receivership.

E. Granting the Application Rewards McCoy for Violating Texas Water Code § 13.241(A).

The ED does not concur with this assertion by the Intervenor, since there are no outstanding enforcement violations for the McCoy Water Supply Corporation under §13.241(a) before the Commission or district court in conjunction with the current proceeding and Campbellton. The ED did recommend in its prefiled testimony that McCoy amend its CCN to serve the customers in the decertificated area. However, the ED does not believe that granting the decertification petition will violate Texas Water Code §13.241(a).

F. Alternate Receiver Willing to Comply with Texas Water Code and TCEQ Rules.

Any arguments about an alternative Receiver are outside the scope of the current application before the Commission. The Travis County District Court appointed William

Thane, as the Receiver for Campbellton. The District Court is the proper venue for arguments regarding any possible alternative Receiver for Campbellton.

CONCLUSION

The Executive Director supports the Proposal for Decision issued by the Administrative Law Judge, and denial of the Intervenor's Exceptions to the Proposal for Decision.

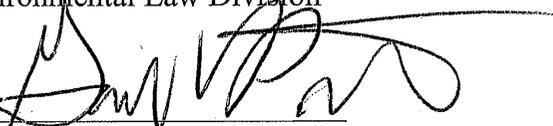
WHEREFORE, PREMISES CONSIDERED, the Executive Director respectfully requests that the Administrative Law Judge deny the Intervenor's Exceptions to the Proposal for Decision, so that the Commission may consider the final Proposal for Decision in rendering a decision on the application in this docketed case.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

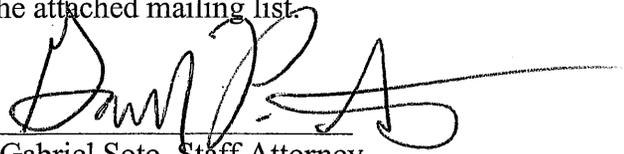
Glenn Shankle,
Executive Director

Robert Martinez, Director
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By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2007, a true and correct copy of the foregoing document was delivered via facsimile, hand delivery, interagency mail, or deposited in the U.S. Mail to all persons on the attached mailing list.



Gabriel Soto, Staff Attorney
Environmental Law Division
Texas Commission on
Environmental Quality

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2007 MAY 10 PM 4:27

CHIEF CLERKS OFFICE

MAILING LIST
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SOAH DOCKET NO. 582-04-7557
TCEQ DOCKET NO. 2004-0834-UCR

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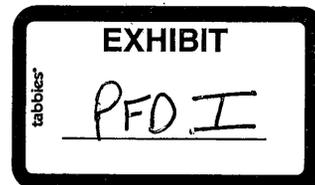
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R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 21, 2006

State Office of Administrative Hearings

Honorable Judge Mike Rogan
William P. Clements Building
300 West 15th Street, Suite 502
Austin, Texas 78701

CHIEF CLERKS OFFICE

2006 JUL 21 PM 4:09

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Application of Campbellton Water Works, Inc., to Discontinue Water Utility Service and to Cancel Certificate of Convenience and Necessity No. 12581

Dear Honorable Rogan:

The Executive Director ("ED") of the Texas Commission on Environmental Quality ("TCEQ") submits the following correspondence in response to Order No. 22, Suspending Conditional Order of Dismissal, provided by the State Office of Administrative Hearings ("SOAH").

The ED along with the Assistant State Attorney General, Lisa Richardson, have been working with attorney representative Robert Busselman, for Receiver William Thane of Campbellton Water Works, Inc. and attorney representative Mark Zeppa for Joan Roane.

On July 19, 2006, the 53rd Judicial District Court of Travis County, Texas, entered an order in Cause No. GV 300123 for the *State of Texas v. Campbellton Water Works, Inc., IRA Archie Roane, individually*, granting the Receiver, William Thane the authority to proceed and seek any such relief from the TCEQ and SOAH pursuant to the Texas Water Code, the Texas Health and Safety Code, and administrative rules, *see* attachment A-1.

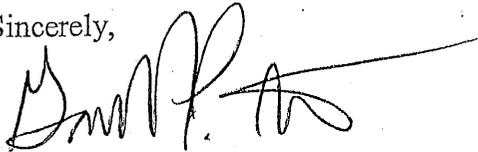
The ED requests that the State Office of Administrative Hearings discontinue the Conditional Order of Dismissal and permit the Application of Campbellton Water Works, Inc., to Discontinue Water Utility Service and Cancel Certificate of Convenience and Necessity, No. 12581, SOAH Docket No. 582-04-7557, TCEQ Docket No. 2004-0834-UCR, remain on the SOAH docket and proceed so that justice may be served. Further, the ED has conferred with Lisa Richardson and Robert Busselman they both support the case remaining on the SOAH docket.

The ED has provided a draft procedural schedule so that all parties may review in order to expedite the proceeding.

Accordingly, the ED requests that the Honorable Administrative Law Judge issue an order recommending that the case remain on the SOAH docket and that all parties submit alternative procedural schedules by August 4, 2006.

For further inquiries I may be reached by phone at 239-3668.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gabriel Soto', with a long horizontal flourish extending to the right.

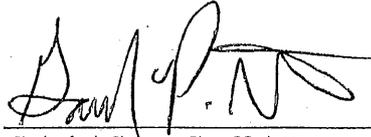
Gabriel Soto
Staff Attorney
Environmental Law Division
Texas Commission on Environmental Quality

EXECUTIVE DIRECTOR'S PROPOSED PROCEDURAL SCHEDULE

- August 3, 2006: All parties to the proceeding submit their own recommended procedural schedule or conflicting dates with ED's procedural by this date.
- August 4, 2006: All parties along with the Administrative Law Judge conference call to make a final determination of the procedural schedule by this date, if necessary.
- August 31, 2006: Discovery begins with all parties re-propounding requests.
- September 22, 2006: All parties shall designate expert witnesses by this date. Experts not so designated will not be permitted to testify, except for good cause shown.
- October 13, 2006: Discovery period ends. All depositions shall be conducted by this date.
- October 31, 2006: Deadline for applicant and protestant to pre-file direct cases, including all testimony and exhibits.
- November 22, 2006: Deadline for Executive Director to pre-file direct case, including all testimony and exhibits.
- November 30, 2006: Deadline for all dispositive motions, such as motions to dismiss and challenges to expert witness qualifications.
Deadline for parties to submit any proposals for adjusting time allocations for individual case presentations at hearing.
- December 5, 2006: Deadline to file with ALJ any objections to pre-filed evidence.
- December 12, 2006: Deadline for replies to any objections to pre-filed evidence.
- December 18, 2006: Telephone pre-hearing conference 10 a.m., if needed.
- December 28, 2006: One day hearing commence at 9 a.m. in SOAH facilities on the fourth floor at 300 W. 15th St., Austin, Texas.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July 2006, a true and correct copy of the foregoing document was delivered via facsimile, hand delivery interagency mail, or by deposit in the U.S. Mail to all persons on the attached mailing list.



Gabriel Soto, Staff Attorney
Environmental Law Division
Texas Commission on
Environmental Quality

CHIEF CLERKS OFFICE

2006 JUL 21 PM 4:10

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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SOAH Docket No. 582-04-7557
TCEQ Docket No. 2004-0834-UCR

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OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

FACSIMILE COVER SHEET

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Company: Attorney at Law
Fax: 830.780.3412

To: Gabriel Soto
Company: TCEQ
Fax: 512.239.0606

From: Lisa Sanders Richardson, Assistant Attorney General
Company: Natural Resources Division
Phone: 512/463-2012
Fax: 512/320-0911

Date: July 19, 2006

Pages (including Cover page): _____

Comments: Re: Cause No. GV300123; *State of Texas v. Campbellton Water Works, Inc., IRA Archie Roane, individually*, in the 53rd Judicial District Court, Travis County, Texas

**ORDER PARIALLY GRANTING RECEIVER'S MOTION TO
DECERTIFICATE THE WATER UTILITY PERMIT**

If you should have problems receiving this fax, please call Mary Iwabuchi, (512)475-4155.

CONFIDENTIALITY NOTICE

The information contained in this facsimile transmission is confidential. It may also be subject to the attorney-client privilege, work product or proprietary information. This information is intended for the exclusive use of the addressee named above. If you are not the intended recipient, you are hereby notified that any use, disclosure, dissemination, distribution (other than to the addressee named above), copying, or the taking of any action because of this information is strictly prohibited. If you have received this information in error, please immediately notify us by telephone to arrange for the return of the documents.

Filed in The District Court
of Travis County, Texas

JUL 19 2006

CAUSE NO. GV 300123

At 1:40p. M.
Amalia Rodriguez-Mendoza, Clerk

STATE OF TEXAS,
Plaintiff

v.

CAMPBELLTON WATER WORKS,
INC AND IRA ARCHIE ROANE,
Defendants

§
§
§
§
§
§
§

IN THE DISTRICT COURT

53rd JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

ORDER PARIALLY GRANTING RECEIVER'S MOTION TO
DECERTIFICATE THE WATER UTILITY PERMIT

On July 19, 2006 the Court considered the Receiver's Motion for Approval to Decertify the Water Utility Permit. All parties announced in open court that they had reached a mutually acceptable resolution to said Motion, which the Court has duly considered and finds appropriate in this cause.

The Court finds:

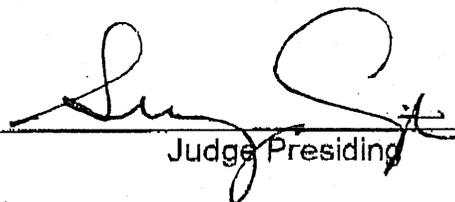
1. Primary jurisdiction over the principal issues in this cause is vested in the Texas Commission on Environmental Quality (TCEQ).
2. The TCEQ has an administrative docket pending at the State Office of Administrative Hearings (SOAH) that effects the issues before the Court in this cause - *Application of Campbellton Water Works, Inc. to Discontinue Water Utility Service and Cancel Certificate of Convenience and Necessity No. 12581*; SOAH Docket No. 582-04-7557; TCEQ Docket No. 2004-0834-UCR.
3. The parties have agreed that further proceedings in this cause should be abated indefinitely, but the docket not dismissed, so that administrative law issues and remedies may be litigated at the TCEQ/SOAH.
4. The Receiver, William Thane, shall be empowered to seek all such relief before the TCEQ/SOAH to which he may be entitled by law.

IT IS THEREFORE ORDERED that the all further proceedings in this docket shall be abated and the case shall be continued on the Court's docket until the TCEQ has entered a final and appealable order in *Application of Campbellton Water Works, Inc. to Discontinue Water Utility Service and Cancel Certificate of*

Convenience and Necessity No. 12581; SOAH Docket No. 582-04-7557; TCEQ Docket No. 2004-0834-UCR.

IT IS THEREFORE ORDERED that the Receiver, William Thane is authorized to seek such relief from the TCEQ/SOAH to which he may be entitled pursuant to Texas Water Code Chapter 12, Texas Health & Safety Code Chapter 341 and the administrative rules of those agencies.

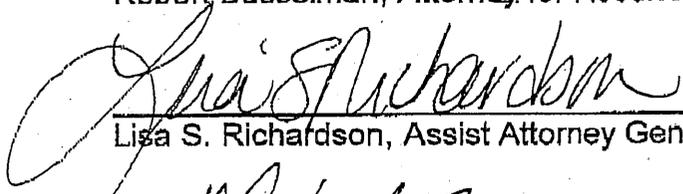
SIGNED on July 19, 2006.



Judge Presiding

AGREED AS TO FORM AND SUBSTANCE:

Robert Busselman, Attorney for Receiver



Lisa S. Richardson, Assist Attorney General



Mark H. Zeppa, Counsel for Joan Roane

Convenience and Necessity No. 12581; SOAH Docket No. 582-04-7557; TCEQ Docket No. 2004-0834-UCR.

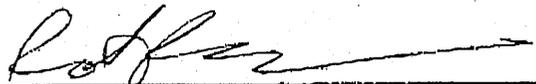
IT IS THEREFORE ORDERED that the Receiver, William Thane is authorized to seek such relief from the TCEQ/SOAH to which he may be entitled pursuant to Texas Water Code Chapter 12, Texas Health & Safety Code Chapter 341 and the administrative rules of those agencies.

RECEIVED

SIGNED on _____, 2006.

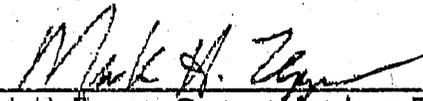
Judge Presiding.

AGREED AS TO FORM AND SUBSTANCE:



Robert Busselman, Attorney for Receiver

Lisa S. Richardson, Assist Attorney General



Mark H. Zeppa, Counsel for Joan Roarie