



**FLUVANNA COUNTY ATTORNEY**

*Frederick W. Payne*

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**Deputy County Attorneys:**

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*E-mail: fwpayne@paynehodous.com*

June 1, 2009

Hon. Joel H. Peck, Clerk  
State Corporation Commission  
Tyler Building  
1300 East Main Street  
Richmond, Virginia 23218

By hand

Re: *Johnson v. Fluvanna County Board of Supervisors, et al.*--CASE NO. CLK-2009-00012  
Our file 07-4767

Dear Sir:

Enclosed please find responsive pleadings filed on behalf of the Fluvanna County Board of Supervisors in the above-captioned case, along with an accompanying memorandum of law. Please cause these to be filed in due course. If you have any questions, please let me know.

Sincerely yours,

Frederick W. Payne  
County Attorney

Enclosures

Cc (w/enc.): Mr. Douglas R. Johnson  
Greg L. Hoffman, Esquire  
William G. Broaddus, Esquire  
Robert L. Hodges, Esquire

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**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
At Richmond**

**DOUGLAS ROBERT JOHNSON,**  
**Petitioner,**

v.

**CASE NO. CLK-2009-00012**

**FLUVANNA COUNTY BOARD OF SUPERVISORS,  
LOUISA COUNTY BOARD OF SUPERVISORS,  
and  
JAMES RIVER WATER AUTHORITY,**  
**Respondents.**

**ANSWER TO PETITION**

COMES NOW your respondent the Fluvanna County Board of Supervisors (“Fluvanna”), by counsel, pursuant to the State Corporation Commission’s (the “Commission”) Scheduling Order of May 8, 2009, and for its answer to the petition states the following:

1. That the allegations contained in numbered paragraphs 1., 2., 3., 10. and 11. are admitted;
2. That the allegations contained in numbered paragraphs 4., 6., 7., 8. and 9. are denied;
3. That the allegations contained in numbered paragraph 5. are not susceptible of response; but, to the extent that such allegations constitute allegations of fact against Fluvanna, the same are denied; and
4. That all allegations not specifically admitted herein are denied.

**Affirmative Defenses**

5. The Petitioner lacks standing to challenge the action of the Commission.
6. The petition fails to state a claim on which the relief requested can be granted.

7. The action of the Commission is issuing the certificate of incorporation to the James River Water Authority is conclusive as to Petitioner as a matter of law.

8. The petition is an impermissible collateral attack on the action of the Board of Supervisors of Fluvanna County which cannot properly be raised before the Commission.

9. The Commission is without jurisdiction to grant the relief sought by Petitioner.

WHEREFORE, your respondent, the Fluvanna County Board of Supervisors, prays that the Commission, to the extent it has jurisdiction in this matter, will deny the petition and grant such other and further relief as the ends of justice may require.

**RESPONSE OF FLUVANNA COUNTY BOARD OF SUPERVISORS  
TO AFFIDAVIT OF DOUGLAS JOHNSON**

1. The Fluvanna County Board of Supervisors (“Fluvanna”) admits the averments of ¶ 1.

2. Fluvanna admits the averments of ¶ 2.

3. In response to the averments of ¶ 3, Fluvanna states that ¶ 3 sets forth the subjective motivations of the Petitioner, and Fluvanna is without sufficient knowledge to admit or deny such matters.

4. In response to the averments of ¶ 4, Fluvanna admits that Petitioner sent a fax annexed to his affidavit as Exhibit B to the Clerk of the State Corporation Commission (the “Commission”) on April 17, 2009. Fluvanna does not make any admission with respect to the legal effect of such action.

5. In response to the averments of ¶ 5, Fluvanna states that the April 17, 2009 fax speaks for itself and denies any characterization inconsistent with its terms. Insofar as ¶ 5 contains assertions concerning Exhibit C to the petition, Fluvanna answers that Exhibit C speaks for itself and denies any characterization inconsistent with its terms.

6. Fluvanna admits the averments of ¶ 6.

7. In response to the averments of ¶ 7, Fluvanna admits that there was filed in the Circuit Court for the County of Fluvanna a proceeding identified as Case No. 09CL81. Fluvanna answers that Exhibit E speaks for itself and denies any characterization inconsistent with its terms.

8. In response to the averments of ¶ 8, Fluvanna admits that the complaint and motion in Case No. 09CL81 were filed with the Circuit Court of Fluvanna County and faxed to the county attorneys respectively on April 20, 2009. Fluvanna admits that April 20, 2009 was the day before the issuance of a certificate of incorporation by the Commission.

9. In response to the averments of ¶ 9, Fluvanna admits that it filed a motion to dismiss in Case No. 09CL81 on April 23, 2009 at 11:20 a.m. A true and correct copy is attached to the affidavit as Exhibit F. All other averments of ¶ 9 are denied.

10. In response to the averments of ¶ 10, Fluvanna admits that Petitioner filed his objection to the motion to dismiss on April 23, 2009 and that a copy of that motion is attached to his affidavit as Exhibit G.

11. All averments not specifically admitted are denied.

WHEREFORE, respondent the Fluvanna County Board of Supervisors answers that Petitioner states no claim to any relief whatsoever and that the Commission should, in due course, dismiss the petition and related affidavit and grant such other and further relief as the ends of justice may require.

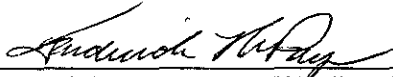
**MOTION TO DISMISS**

COMES NOW your respondent the Fluvanna County Board of Supervisors, by counsel, pursuant to the State Corporation Commission's (the "Commission") scheduling order entered in

this matter on May 8, 2009, and moves to dismiss the petition filed with the Commission for the reasons stated in the accompanying memorandum of law.

Respectfully Submitted,

FLUVANNA COUNTY BOARD OF SUPERVISORS  
By counsel



Frederick W. Payne (VSB # 14185)  
Fluvanna County Attorney  
414 East Jefferson Street  
Charlottesville, Virginia 22902  
Telephone: 434-977-4507  
Facsimile: 434-977-6574  
fwpayne@paynehodous.com  
*Counsel for Respondent Fluvanna County Board of Supervisors*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of June, 2009, I caused a true and correct copy of the foregoing pleading to be sent via first class U.S. mail, postage prepaid to the following:


Douglas R. Johnson, *pro se*  
571 Long Acre Road  
Palmyra, Virginia 22963  
*Petitioner*

Greg L. Hoffman, Esquire (VSB # 47763)  
Louisa County Attorney  
P.O. Box 160  
1 Woolfolk Avenue  
Louisa, Virginia 23093  
*Counsel for Respondent Louisa County Board of Supervisors*

William G. Broaddus (VSB# 5284)  
Robert L. Hodges (VSB # 31396)  
McGuireWoods LLP  
One James Center  
901 East Cary Street

Richmond, Virginia 23219  
*Counsel for Respondent James River Water Authority*

William H. Chambliss, General Counsel  
Office of General Counsel  
State Corporation Commission  
P.O. Box 1197  
Richmond, Virginia 23218-1197  
*General Counsel for the State Corporation Commission*

  
Frederick W. Payne

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
at Richmond**

**DOUGLAS ROBERT JOHNSON,**  
**Petitioner,**

v.

**CASE NO. CLK-2009-00012**

**FLUVANNA COUNTY BOARD OF SUPERVISORS,  
LOUISA COUNTY BOARD OF SUPERVISORS,  
and  
JAMES RIVER WATER AUTHORITY,**  
**Respondents.**

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

Respondents, including the James River Water Authority (the "Authority") and the Fluvanna County Board of Supervisors ("Fluvanna"), have moved to dismiss the petition filed in this matter. The grounds for this motion are that, as a threshold matter, Petitioner lacks standing to challenge the action of the State Corporation Commission (the "Commission"). Moreover, it is clear from his allegations that Petitioner actually seeks not to challenge the Commission's action, but to attack collaterally the action of Fluvanna in approving the creation of the Authority. The Commission has no jurisdiction to review the action of Fluvanna or otherwise to grant the relief sought in this cause. Nevertheless, the action of Fluvanna was entirely lawful and in accordance with all applicable statutes. The points and authorities in support of the motion to dismiss are set forth more fully below.

**STATEMENT OF UNCONTESTED FACTS**

Fluvanna hereby adopts the statement of facts contained in the memorandum in support the motion to dismiss filed on behalf of the Authority.

## ARGUMENT

Fluvanna hereby adopts the argument contained in the memorandum in support the motion to dismiss filed on behalf of the Authority.

In addition, Fluvanna notes the following:

**1. Petitioner is estopped to challenge the action of the Commission in this proceeding.**

Petitioner is attempting to seek review of the Commission's action in approving the formation of the Authority. Yet the Petitioner has himself alleged that the order of the Commission issuing the certificate of the incorporation is a "Final Order of the State Corporation [Commission]". See Notice of Appeal from the Commission to the Virginia Supreme Court in Case No. CLK-2009-00012, a copy of which is attached hereto. Because this allegation is made in a judicial proceeding, it constitutes a judicial admission which is binding on the Petitioner and entirely conclusive of the finality of the order. See Baughman v. Automated Horizons, Inc., 61 Va. Cir. 67, 72 (2003) and State Farm Mutual Automobile Insurance Co. v. Haines, et al., 250 Va. 71, 77 (1995).

This being the case, the Petitioner cannot be heard to allege that the Commission has any further authority to review the order in question.

**2. The Commission has no authority to entertain a collateral attack on the actions of the Fluvanna Board of Supervisors.**

It is clear from the contents of the petition and affidavit filed in support that Petitioner's grievance is with the action of Fluvanna. Indeed, the relief sought runs against Fluvanna, as well as the Authority. In other words, Petitioner's action at the Commission is merely an attempt to attack collaterally the action of Fluvanna. But just as the Commission has exclusive jurisdiction of matters within its purview, the Commission's jurisdiction is limited to those matters

committed to it by law. In this case, the authority of the Commission to review the articles of incorporation for the Authority extended to two, and only two, issues:

1. The articles of incorporation conform to law; and
2. The estimated costs and rates for services of the proposed projects are fair and equitable, and have been advertised under Virginia Code Section 15.2-5104.

See Virginia Code Section 15.2-5108. As the Commission can readily review from its own records, both the articles and the adopting resolutions of the two boards of supervisors, Fluvanna and the Louisa County Board of Supervisors, were before it and were reviewed by it prior to the issuance of the certificate.

By contrast, nowhere in the Petitioner's petition, affidavit or anywhere else has the Petitioner challenged the Commission's review on these issues. Rather, the sole issue raised by the Petitioner is whether Fluvanna should have petitioned the circuit court to order a referendum pursuant to Virginia Code Section 15.2-5105. Manifestly, this is a matter which is within the exclusive jurisdiction of the circuit court, and the Commission has no authority to address it.

- 3. The Commission's authority to review the propriety of the issuance of the Authority's certificate of incorporation has been terminated by Petitioner's pending appeal to the Virginia Supreme Court.**

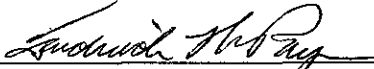
Petitioner is attempting to seek a review of the Commission's action in approving the formation of the authority by the Commission when Petitioner has already filed a Notice of Appeal to the Supreme Court of Virginia in the same case. See Notice of Appeal from the Commission to the Virginia Supreme Court in Case No. CLK-2009-00012, a copy of which is attached hereto. The orderly admission of justice demands that two courts do not have jurisdiction over the same parties and matter at the same time. See Allison's Executor v. Wood, 104 Va. 765, 767-768 (1906). When an appellate court acquires jurisdiction over the parties

involved in the litigation and the subject matter of their litigation, the jurisdiction of the trial court from which the appeal was taken must end. See Id. and Russell v. Russell, 2007 Va. App. LEXIS 47, 2 (2007). The purpose of this rule is to prevent possible confusion which could result from allowing multiple courts jurisdiction over the same matter at the same time. See Allison's Executor v. Wood, 104 Va. 765, 767-768 (1906). Therefore, since Petitioner has already filed his appeal to the Supreme Court of Virginia with the Commission the jurisdiction of the Commission in this action must cease as the Commission is divested of any jurisdiction over the parties and the subject matter of their controversy.

### CONCLUSION

For the reasons set forth hereinabove, and in the memorandum filed on behalf of the Authority, your respondent, Fluvanna County Board of Supervisors, prays that the Commission will dismiss the petition with prejudice and grant such other and further relief as the ends of justice may require.

Respectfully Submitted,  
FLUVANNA COUNTY BOARD OF SUPERVISORS  
By Counsel

  
\_\_\_\_\_  
Frederick W. Payne (VSB # 14185)  
Fluvanna County Attorney  
414 East Jefferson Street  
Charlottesville, Virginia 22902  
Telephone: 434-977-4507  
Facsimile: 434-977-6574  
fwpayne@paynehodous.com  
*Counsel for Respondent Fluvanna County Board of Supervisors*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1st day of June, 2009, I caused a true and correct copy of the foregoing pleading to be sent via first class U.S. mail, postage prepaid to the following:

Douglas R. Johnson, *pro se*  
571 Long Acre Road  
Palmyra, Virginia 22963  
*Petitioner*

Greg L. Hoffman, Esquire (VSB # 47763)  
Louisa County Attorney  
P.O. Box 160  
1 Woolfolk Avenue  
Louisa, Virginia 23093  
*Counsel for Respondent Louisa County Board of Supervisors*

William G. Broaddus, Esquire (VSB # 5284)  
Robert L. Hodges, Esquire (VSB # 31396)  
McGuireWoods LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219  
*Counsel for Respondent James River Water Authority*

William H. Chambliss, General Counsel  
Office of General Counsel  
State Corporation Commission  
P.O. Box 1197  
Richmond, Virginia 23218-1197  
*General Counsel for the State Corporation Commission*

  
\_\_\_\_\_  
Frederick W. Payne

VIRGINIA:

BEFORE THE STATE CORPORATION COMMISSION  
At Richmond


DOUGLAS ROBERT JOHNSON	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No.: CLK-2009-00012
	)	
VIRGINIA STATE CORPORATION	)	
COMMISSION	)	
	)	
and	)	
	)	
FLUVANNA COUNTY BOARD OF	)	
SUPERVISORS	)	
	)	
and	)	
	)	
LOUISA COUNTY BOARD OF	)	
SUPERVISORS	)	
	)	
and	)	
	)	
JAMES RIVER WATER	)	
AUTHORITY	)	
	)	
Respondent	)	
	)	
	)	
	)	

NOTICE OF APPEAL

Douglas Robert Johnson, pursuant to Virginia Supreme Court Rule 5:21(c), hereby gives his Notice of Appeal to the Supreme Court of Virginia from the attached Final Order of the State Corporation in issuing the Certificate of Incorporation to the James River Water Authority, effective April 21, 2009 and disputed

in the above captioned case. Douglas Robert Johnson further gives notice that pursuant to Supreme Court Rule 5:21(d)-(e), the clerk of the Commission shall certify and transmit the record of the proceeding to the clerk of the Supreme Court.

Respectfully submitted,

  
\_\_\_\_\_  
Douglas R. Johnson, Pro se

DOUGLAS R. JOHNSON, PRO SE  
571 Long Acre Road  
Palmyra, VA 22963  
(434) 286-6984 fax (206) 600-6984  
pro se

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION**

April 21, 2009

The State Corporation Commission has found the accompanying articles of incorporation submitted by the Boards of Supervisors of the Counties of Louisa and Fluvanna, Virginia on behalf of

**James River Water Authority**

to conform to law, and confirms payment of all related fees.

Therefore, it is ORDERED that this

**CERTIFICATE OF INCORPORATION**

be issued and admitted to record with the articles of incorporation in the Office of the Clerk of the Commission, effective April 21, 2009.

The corporation is granted the authority conferred on it by law in accordance with the articles, subject to the conditions and restrictions imposed by law.

STATE CORPORATION COMMISSION

By



Commissioner

CORPACPT  
CIS0322  
09-04-21-0500

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the NOTICE OF APPEAL was mailed the 8th day of May, 2009, to:

DEFENDANT FLUVANNA COUNTY BOARD OF SUPERVISORS at:

Frederick W. Payne, Esq.  
Fluvanna County Attorney  
414 East Jefferson Street  
Charlottesville, VA 22902

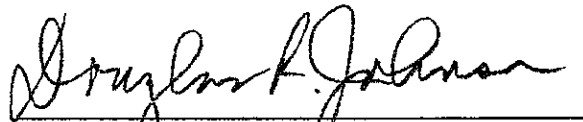
DEFENDANT LOUISA COUNTY BOARD OF SUPERVISORS at:

Greg L. Hoffmann  
Louisa County Attorney  
PO Box 160  
1 Woolfolk Avenue  
Louisa, VA 23093.

DEFENDANT JAMES RIVER WATER AUTHORITY at:

James River Water Authority  
Fluvanna County Office Building  
Main Street  
Palmyra, VA 22963

Service to VIRGINIA STATE CORPORATION COMMISSION is deemed completed with the filing with the SCC.

  
\_\_\_\_\_  
Douglas R. Johnson, Pro se

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pro se