

Virginia State Corporation Commission eFiling CASE Document Cover Sheet

Case Number (if already assigned) CLK-2009-00012

Case Name (if known)

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Document Description Summary Objection to Motion to Dismiss

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VIRGINIA:

BEFORE THE STATE CORPORATION COMMISSION
At Richmond, June 9, 2009

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.

OBJECTION TO MOTION TO DISMISS

COMES NOW your Petitioner, Douglas Robert Johnson, pursuant to the Hearing Examiner's Ruling of June 2, 2009, and, for its objection to the motion to dismiss this cause, respectfully says as follows:

(1) That the Memorandum in Support of the Motion to Dismiss filed on behalf of the James River Water Authority and the Memorandum in Support of the Motion to Dismiss filed on behalf of the Fluvanna County Board of Supervisors, are both hereby adopted by Plaintiff only as related to below;

(2) That Mr. Payne brings to the Commission's attention, on page 3 of his Memorandum of Law, that the "orderly admission of justice demands that two courts do not have jurisdiction over the same parties and matter at the same time" and gives proper authority for that statement;

(3) That Mr. Payne failed to notice, however, that when he

applied for a charter or certificate of incorporation from the State Corporation Commission, he was violating that exact principle of law;

(4) That, when applying for the Charter for the James River Water Authority, Mr. Payne had full knowledge of two separate and distinct legal actions in the Fluvanna Circuit Court concerning the "same parties and matter";

(5) That, the action of the State Corporation Commission in the formation of the Joint Water Authority between Fluvanna and Louisa Counties was challenged with Plaintiff's fax to the Clerk of the SCC on April 17, 2009, but that document never found its way to those responsible at the Commission when the charter was granted as no mention of that fax was included with the official copy of all documents related to the formation of the James River Water Authority, a copy of which is attached hereto and incorporated herein as Exhibit A;

(6) That, when applying for the Charter for the James River Water Authority, Mr. Payne had legal and moral duty to reveal the fact of two separate and distinct legal actions in the Fluvanna Circuit Court concerning the "same parties and matter";

(7) That, when the Charter for the James River Water Authority was issued by the Commission, it was an innocent victim of an apparent fraud of concealment;

(8) That, Fortunately, Mr. Hodges brings forth the

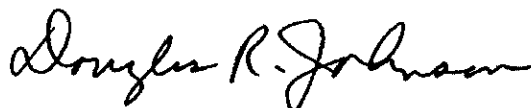
authorities that gives the Commission jurisdiction to correct this fraud on pages 6 and 7 of his Memorandum of Law where there is reference, "except for fraud";

(9) That, Douglas Robert Johnson has standing to bring this action based on his action with relation to the two petitions circulated in Fluvanna County and his Fluvanna Circuit Court case 09CL61, which was already on the court calendar;

(10) That, further details are given in Plaintiff Douglas Robert Johnson's Memorandum of Law in Opposition to Motion to Dismiss;

Wherefore this plaintiff respectfully moves that this cause be not dismissed and be not delayed.

DATED: June 9, 2009



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

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Objection to Motion to Dismiss, concerning petition to deem certificate of authority void *ab initio* and for injunctive relief, was mailed the 9th day of June, 2009, to:

DEFENDANT FLUVANNA COUNTY BOARD OF SUPERVISORS at:

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

and

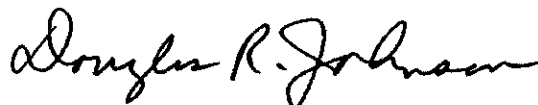
DEFENDANT LOUISA COUNTY BOARD OF SUPERVISORS at:

Gregory Hoffmann, Esquire
County Attorney for Louisa County
PO Box 160
1 Woolfolk Avenue
Louisa, VA 23093.

and

DEFENDANT JAMES RIVER WATER AUTHORITY at:

Robert L. Hodges, Esquire
McGuire Woods
James River Water Authority
One James Center
901 East Cary St.
Richmond, VA 23219-4030



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EXHIBIT A

DOCUMENTS FILED WITH SCC AS OF APRIL 21, 2009

**ARTICLES OF INCORPORATION
OF
JAMES RIVER WATER AUTHORITY**

The Board of Supervisors of Fluvanna County and the Board of Supervisors of Louisa County, having both signified their intention to create an authority pursuant to the Virginia Water and Waste Authorities Act (Chapter 51, Title 15.2, §§ 15.2-5100 *et seq.*, VA Code Ann.), which shall be a public body politic and corporate, hereby certify:

1. **Name.** The name of the Authority shall be the "James River Water Authority", and the address of its principal office shall be the Fluvanna County Office Building, Main Street, Palmyra, Virginia 22963.

2. **Incorporating Political Subdivisions.** The names of the incorporating political subdivisions are the County of Fluvanna, Virginia ("Fluvanna County"), and the County of Louisa, Virginia ("Louisa County"). Fluvanna County and Louisa County, as the incorporating political subdivisions, hereby acknowledge, covenant, and agree that these Articles of Incorporation shall not be further amended or changed without the express agreement of their governing bodies, as the incorporating political subdivisions. Furthermore none of the following actions shall be taken or permitted to occur by the Board of the Authority without the affirmative vote of a majority of the members appointed by the respective boards of supervisors of Fluvanna County and Louisa County on the Board of the Authority:

a. The inclusion of additional political subdivisions in the Authority;
b. Additional agreements with other political subdivisions, entities or persons, for the bulk sale of water or wholesale service of water.

3. **Authority Board.**

a. The powers of the Authority shall be exercised by a board of six (6) members consisting of the following:

1. John Y. Gooch, 362 Oliver Creek Road, Troy, Virginia 22974, Fluvanna County Board of Supervisors Member (Fluvanna County appointee)- four (4) year term subject to subsection 3.c. below.
2. G. Cabell Lawton, IV, 132 Main Street, Palmyra, Virginia 22963, Fluvanna County Administrator (Fluvanna County appointee) - four (4) year term subject to subsection 3.c. below.
3. Thomas E. Payne, 345 Paynes Lane, Troy, Virginia 22974, a citizen of Fluvanna County (Fluvanna County appointee) - four (4) year term.
4. John E. Thomasson, 125 West Street, Louisa, Virginia 23093, a citizen of Louisa County (Louisa County appointee) - two (2) year term.
5. Dale Mullen, 1 Woolfolk Avenue, Louisa, Virginia 23093, Louisa County Administrator (Louisa County appointee) - four (4) year term subject to subsection 3.c. below.
6. Goodman B. Duke, 304 Club Road, Louisa, Virginia 23093, a citizen of Louisa County (Louisa County appointee) - three (3) year term.

b. The terms of office of each of the initial members of the Board shall begin on the date of the issuance of a certificate of incorporation or charter for the Authority by the State Corporation Commission. The governing body of each of the participating counties shall appoint the members as set forth above.

c. The terms of the members of the board serving by virtue of their offices in their appointing county shall expire upon their ceasing to hold such offices or, after a term of four (4) years, whichever occurs first. The terms of the citizen appointees shall not exceed four (4) years. The governing body of each county is empowered to remove at any time, without cause, any member appointed by it and appoint a successor member to fill the unexpired term of the removed member's term. Each member of the board shall serve without compensation. However, each member shall be reimbursed by the Authority for the amount of actual expenses incurred in the performance of Authority duties.

d. No tiebreaker shall be appointed nor shall the number of members of the Board be changed without the concurrence of the respective Boards of Supervisors of Fluvanna County and Louisa County.

4. **Purpose and Powers.** The purpose for which the Authority is formed is to exercise those pertinent powers set forth in §§ 15.2-5100 *et seq.* VA Code Ann., to acquire, purchase, finance, construct, reconstruct, operate, and maintain facilities for developing a bulk or wholesale supply of potable water for the Counties of Fluvanna and Louisa, including without limitation sources of water supply, water intakes, reservoirs, filtration and purification plants, pumping stations, transmission lines, and storage facilities, together with all appurtenant equipment and appliances necessary or suitable thereto and all properties, rights, licenses, easements or franchises relating thereto and deemed necessary and convenient by the Authority for their operation.

The Authority may contract with any lawful entity to furnish water delivered to its facilities upon such terms as the Authority shall determine; provided, however, that any such contract shall include as a party thereto Fluvanna County and Louisa County (or any agency designated by either County for the purpose by its Board of Supervisors).

5. **Audit.** The Authority shall cause an annual audit of its books and records to be made by the State Auditor of Public Accounts or an independent certified public accountant at the end of each fiscal year and a certified copy thereof is to be filed promptly with the County Administrator of each of the participating counties.

6. **Estimates Impracticable.** Fluvanna County and Louisa County have determined it is not practicable to provide preliminary estimates of capital costs, proposals for specific projects to be undertaken by the Authority or preliminary estimates of initial wholesale rates for water services at the current time.

IN WITNESS WHEREOF, the Board of Supervisors of Fluvanna County and the Board of Supervisors of Louisa County have caused these Articles of Incorporation to be executed by their respective Chairmen, and their respective seals to be affixed, this 20th day of April, 2009.

COUNTY OF FLUVANNA

By: *Mark F. Moss*
Chairman
Board of Supervisors

(SEAL)
ATTEST:

Alici Jones
Clerk, Board of Supervisors

COUNTY OF LOUISA

By: *[Signature]*
Chairman
Board of Supervisors

(SEAL)
ATTEST:

Dale G. Miller
Clerk, Board of Supervisors

**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

CISDJD
TCP10109 CISM0180

CIS
CORPORATE DATA INQUIRY

04/27/09
12:35:31

CORP ID: 0708344 - 7 STATUS: 00 ACTIVE STATUS DATE: 04/21/09
CORP NAME: James River Water Authority_____

DATE OF CERTIFICATE: 04/21/2009 PERIOD OF DURATION: INDUSTRY CODE: 00
STATE OF INCORPORATION: VA VIRGINIA STOCK INDICATOR: N NON-STOCK
MERGER IND: CONVERSION/DOMESTICATION IND:
GOOD STANDING IND: Y MONITOR INDICATOR:
CHARTER FEE: CASE NO: CASE STATUS: HEARING DTE:
R/A NAME: EXEMPT FROM FILING

STREET: EXEMPT FROM FILING

AR RTN MAIL:

CITY: EXEMPT FROM FILING STATE : VA ZIP: 99999 9999
R/A STATUS: 9 EXEMPT EFF. DATE: 04/21/09 LOC.: 901
ACCEPTED AR#: 000 00 0000 DATE: FOREIGN CORP
CURRENT AR#: 000 00 0000 DATE: STATUS: ASSESSMENT INDICATOR: 2
YEAR FEES PENALTY INTEREST TAXES BALANCE TOTAL SHARES
00

COMMAND:

4AÛ

06,016

Commonwealth of Virginia



State Corporation Commission

I Certify the Following from the Records of the Commission:

The foregoing is a true copy of all documents constituting the charter of James River Water Authority on file in the Clerk's Office of the Commission.

Nothing more is hereby certified.



*Signed and Sealed at Richmond on this Date:
April 28, 2009*

Joel H. Peck
Joel H. Peck, Clerk of the Commission