

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

DOUGLAS ROBERT JOHNSON,
Petitioners,

APR 30 09:46

v.

CASE NO: CLK-2009-00012

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

CLERK'S RESPONSE TO PETITION

Comes now the Office of the Clerk of the State Corporation Commission ("Clerk") and for his Response to the "Petition to Deem Certificate of Authority Void *Ab Initio* and for Injunctive Relief" ("Petition") filed herein states as follows:

1. The Clerk lacks sufficient knowledge to admit or deny the allegations contained in paragraphs 1, 7, 8, 9, and 10 of the Petition and calls for strict proof thereof.
2. The Clerk admits the allegations contained in paragraphs 2, 3, 4 and 5 of the Petition, with the exception that the Clerk has no knowledge of the identity of the persons upon whom process must be served in order to impart notice of this proceeding to the named respondents.
3. The Clerk denies that either authority cited in paragraph 6 of the Petition confers jurisdiction of this matter upon the State Corporation Commission ("Commission").
4. With respect to the allegations in paragraph 11 of the Petition, the Clerk states that the articles of incorporation for Respondent James River Water Authority ("James River") were tendered to the Clerk for filing on April 21, 2009, lawfully accepted for filing on that date, and the Commission duly issued a certificate of incorporation to that Respondent on that date.

5. In connection with the tender of the aforesaid articles of incorporation to the Clerk for filing, Louisa County, by its counsel, requested, paid for, and received expedited service in accordance with the Commission's established procedures for providing expedited service with respect to business entity documents, as shown by Exhibit A attached hereto and incorporated herein.

6. The aforesaid articles of incorporation contemplated, and resulted in, the formation of a domestic nonstock corporation under Chapter 10 of Title 13.1 of the Code of Virginia, as shown by a true copy of the aforesaid articles of incorporation marked Exhibit B attached hereto and incorporated herein.

7. The aforesaid articles of incorporation complied with requirements of law applicable to such articles. Accordingly, the Commission was legally bound under § 13.1-820 of the Code of Virginia, and did, issue a certificate of incorporation for James River on April 21, 2009.

ARGUMENT

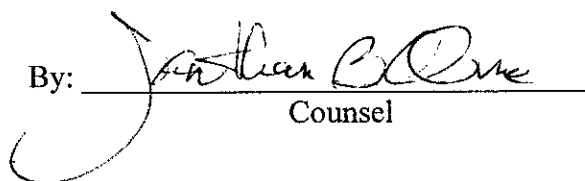
Inasmuch as James River was issued a certificate of incorporation as a domestic nonstock corporation and the Petitioner seeks a hearing related to that certificate, the Commission's power to afford any relief to the Petitioner is constrained and governed by the terms of § 13.1-813 of the Code of Virginia. The certificate became effective upon its issuance under § 13.1-806 A of the Code of Virginia and the Petition was filed within the 30-day period applicable when a claim is made, as in the instant case, of non-compliance with statutory requirements under subsection A of § 13.1-813 of the Code of Virginia. That subsection, however, confers standing to file a petition only upon a member or director of the corporation.

A review of the articles of incorporation in this instance reveals that James River has only two "members," as that term is defined in § 13.1-803 of the Code of Virginia, having any right to vote for members of its board of directors or any other matter relating to its operations; namely, the two counties that elected to form the corporation. In addition, all members of the corporation's initial board of directors are named in the articles of incorporation and the Petitioner is not one of the board members so named and claims no such status. Inasmuch as the corporation opposes the Petition, it is unnecessary to consider the availability of relief under subsection C of the statute.

Accordingly, the Clerk moves the Commission that the Petition be denied and dismissed for lack of standing in the Petitioner to bring this case.

Respectfully submitted,

OFFICE OF THE CLERK

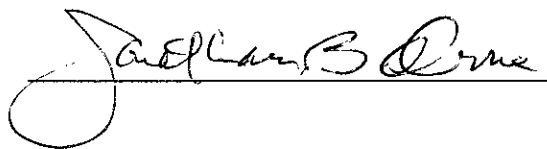
By: 
Counsel

Jonathan B. Orne, Senior Counsel
VSB # 12457
Office of General Counsel
P.O. Box 1197
Richmond, Virginia 23218
(804) 371-9671

June 30, 2009

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2009, a copy of the foregoing "Clerk's Response to Petition" was mailed first class, postage prepaid, to: Douglas Robert Johnson, 571 Long Acre Road, Palmyra, Virginia 22963; Frederick W. Payne, Esquire, Fluvanna County Attorney, 414 East Jefferson Street, Charlottesville, Virginia 22902; Gregory L. Hoffman, Esquire, Louisa County Attorney, P.O. Box 160, Louisa, Virginia 23093; and Robert L. Hodges, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030.

A handwritten signature in cursive script, reading "Jonathan B. Orme", is written over a horizontal line. The signature is positioned to the right of the main text block.



SCC21.2
(04/09)

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
CLERK'S OFFICE
1300 E MAIN ST
RICHMOND, VA 23219
(804) 371-9733
(866) 722-2551 Toll-free in Virginia

Expedited Service Request Business Entity Filing

Read Information & Instructions pages before completing this form

This form MUST be completed and placed on top of EACH document submission (so it can be readily identified as a request for expedited review and processing).

Entity Name: James River Water Authority	Entity's SCC ID No. (if known):
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Return Evidence of Filing To:
(Correspondent's name and address)

County of Louisa
1 Woolfolk Avenue
Post Office Box 160
Louisa, VA 23093

Contact Person: Gregory L. Hoffman
Phone Number: (540) 894-3709
Fax Number: (540) 967-4545
E-mail: ghoffman@louisa.org

Return Evidence of Filing By:
(mark all that apply)

Hold for Pickup (Available at 4:00 p.m.)

First-Class Mail

USPS Express Mail
(Prepaid envelope required.)

Overnight via UPS Fed Ex
(Completed airbill with account number required.)

Fax (Additional charge of \$25. Only available for Expedited Filings, Categories A and C.)

Complete, if not correspondent:

Name: _____
Fax No.: () _____

--- See Information & Instructions for description of categories. ---

Expedited Service(s) Requested: (mark service requested)	***Expedite Fee(s): ***(does not include filing fees) - see footnote)
<input checked="" type="checkbox"/> Category A Expedite Business Entity Document listed in Schedule A	
<input checked="" type="checkbox"/> Same Day Service (In by Noon)	\$ 200
<input type="checkbox"/> Next Day Service (In by 4:00 p.m.)	\$ 100
<input type="checkbox"/> Category B Preliminary Review of a Document listed in Schedule A (2 nd Business Day Service Only - In by 4:00 p.m.) (Note: No fee if document is a preliminary review resubmission within 30 days of initial submission.)	\$ 50
<input type="checkbox"/> Category C Expedite Business Entity Document listed in Schedule C (Next Day Service Only - In by 4:00 p.m.)	\$ 50
<input type="checkbox"/> Reinstatement Packet	\$ 50

FOR OFFICE USE ONLY

030421-0500

1/0

*** Remember to include payment for all applicable fees (e.g., charter/entrance, reinstatement, filing, tax and expedite fees)

COMMONWEALTH OF VIRGINIA



MARK G. CHRISTIE
COMMISSIONER

JAMES C. DINTRI
COMMISSIONER

JUDITH WILLIAMS JAGDMANN
COMMISSIONER

JOEL H. PECK
CLERK OF THE COMMISSION
P.O. BOX 1187
RICHMOND, VIRGINIA 23218-1187

STATE CORPORATION COMMISSION
Office of the Clerk

April 21, 2009

GREGORY L. HOFFMAN
COUNTY OF LOUISA
1 WOOLFOLK AVE
PO BOX 160
LOUISA, VA 23093

RE: James River Water Authority
ID: 0708344 - 7
DCN: 09-04-21-0500

Dear Customer:

This is your receipt for \$25.00, to cover the fees for filing articles of incorporation with this office.

This is also your receipt for \$200.00 to cover the fee(s) for expedited service(s).

The effective date of the certificate of incorporation is April 21, 2009.

If you have any questions, please call (804) 371-9733 or toll-free in Virginia, 1-866-722-2551.

Sincerely,

Joel H. Peck
Clerk of the Commission

CORPRCPT
NEWCD
CIS0322

Tyler Building, 1300 East Main Street, Richmond, VA 23219-3638
Clerk's Office (804) 371-9733 or (866) 722-2551 (toll-free in Virginia) www.scc.virginia.gov/clk
Telecommunications Device for the Deaf-TDD/Voice: (804) 371-9206

EXHIBIT A, PAGE 2

**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

EXHIBIT A, PAGE 3

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: M. J. Moss
Chairman
Board of Supervisors

(SEAL)
ATTEST:

Alice Jones
Clerk, Board of Supervisors

COUNTY OF LOUISA

By: [Signature]
Chairman
Board of Supervisors

(SEAL)
ATTEST:

D. G. Miller
Clerk, Board of Supervisors