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VIRGINIA:

BEFORE THE STATE CORPORATION COMMISSION
At Richmond, July 15, 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.

**RESPONSE TO FLUVANNA COUNTY BOARD OF SUPERVISORS' AND JAMES RIVER
WATER AUTHORITY'S OBJECTIONS (RESPONSES) TO PETITIONER'S MOTION
FOR SUMMARY JUDGEMENT**

COMES NOW your Petitioner, Douglas Robert Johnson, for its Response to Fluvanna County Board of Supervisors' and James River Water Authority's Objections (Responses) to Petitioner's Motion for Summary Judgement, respectfully says as follows:

(1) This document deals with the five Points, four numbered and one in the Summary paragraph, of Argument in the filing made by the Fluvanna County Board of Supervisors and the three "obstacles" of the James River Water Authority.

(2) The actions of the Fluvanna Circuit Court that have transpired since the incorporation of the James River Water Authority are not relevant to this action as this action is based on the facts that existed at the time of incorporation (April 21, 2009).

(3) The matter brought before the Commission on April 21,

2009 was the filing of articles of incorporation under the Virginia Water and Waste Authorities Act where the exact language says that the Commission must determine if those articles "conformed to law", namely that Virginia Water and Waste Authorities Act.

(4) The matter, which was already in the Fluvanna Circuit Court in two separate actions, was whether those articles of incorporation did or did not conform to that same law, the Virginia Water and Waste Authorities Act.

(5) There is no dispute that if the citizen petitions were valid, the articles of incorporation would not conform to that law, the Virginia Water and Waste Authorities Act.

(6) Items 2, 3, 4, and 5 above clearly and conclusively prove that the same matter was before the Fluvanna Circuit Court on April 21, 2009, when the matter came before the Commission. This refutes Point 1 of Respondent Fluvanna County Board of Supervisors' Argument.

(7) Whether or not the Commission has the authority to decide on the validity of the citizen petitions is not material because the matter was already before the Fluvanna Circuit Court in two actions, 09CL61 and 09CL81. This refutes Point 2.

(8) The actions of the Circuit Court since April 21, 2009 are not relevant because the issuance of the certificate of incorporation needs to be reversed before any such action in the Fluvanna Circuit Court can continue. This refutes Point 3.

(9) When Virginia Code Sec. 13.1-813 does not apply, as Respondent Fluvanna Board of Supervisors acknowledges in its Point 4, then Commission Rule 5 VAC 5-20-220 applies. This refutes Point 4.

(10) On May 5, 2009, Petitioner wrote to the commission stating: "Kindly either accept jurisdiction for this SCC Petition or forward it to the Supreme Court." When Petitioner did not get a response, he then filed the Notice of Appeal to the Virginia Supreme Court on May 8, 2009 at 11:29 AM. At 4:20 PM on that same day, the Commission issued its Scheduling Order apparently accepting jurisdiction. If the Commission confirms jurisdiction, that Notice of Appeal may be considered moot and then, should the Petitioner still wish to Appeal, he would expect to file another Notice of Appeal. This refutes the unnumbered point made in the summary paragraph.

(11) The actions of the Petitioner, both in this Commission action and with the Fluvanna Circuit Court, are being done using the *Morrisette v. McGinniss*, 246 Va. 378; 378 S.E.2d 433 (1993) Supreme Court Decision as a "Play Book":

Of greater significance, however, is the effect of the Commission's order issuing the Authority's corporate charter. As we have noted, Code § 15.1-1246 provides that when the charter is issued, "such authority [***8] shall be conclusively deemed to have been lawfully and properly created and established and authorized to exercise its powers." That order was unchallenged and became final. Therefore, no subsequent act of the Registrar or the County Board could affect the force of the Commission's order or undo the creation of the Authority once the conclusive presumption of

§ 15.1-1246 attached. [*383] Thus, the trial court correctly ruled that mandamus would not lie under the circumstances of this case. [Emphasis added]

Step 1 was (is) to challenge the action of the Commission before it became final so that the "conclusive presumption" would NOT "attach". Step 2 is to have the Circuit Court rule by the way of a Declarative Judgement on whether or not the citizen petitions were valid. This should be relatively simple as the standard mentioned in that Supreme Court Decision is "substantial compliance." It is anticipated that no further legal action would then be needed.

(12) Petitioner first challenged the issuance of the certificate or charter in his letter to the Clerk of the Commission on April 17, 2009 and is given as Exhibit B of the Affidavit filed by Petitioner with the Commission on April 30, 2009. The letter included:

It is my understanding that Fluvanna County and Louisa County are filing for a certificate of incorporation or charter for a Joint Water Authority according to § 15.2-5108. Issuance of certificate or charter.

I object to the issuance of said charter. Fluvanna County acted improperly and there is already a court hearing scheduled for May 15, 2009.

I hereby serve notice of my objection and herewith serve you with attached notice of said hearing.

My specific objection is that said articles of incorporation DO NOT conform to law. That non-conformance with law will be adjudicated at the scheduled May 15, 2009 hearing.

(13) Respondent correctly states that Petitioner did file actions both in the Fluvanna Circuit Court and with the State Corporation Commission but a brief rundown of the timing is

important:

March 18, 2009 - Citizen Petition containing over 2,000 signatures was filed with Fluvanna Board of Supervisors. County Attorney Fred Payne stated his opinion that the Petition form should have been presented first to the Fluvanna Circuit Court but the Board voted to review the citizen petitions.

March 19, 2009 - Based on the concern of Mr. Payne, Petitioner Douglas Robert Johnson filed a copy of the blank petition form with the Fluvanna Circuit Court and received official acceptance on March 24, 2009 which specified filing of Petitions with the Court. A copy of that form is attached as Exhibit A.

April 15, 2009 - A second petition, also containing over 2,000 signatures, was filed with the Court as required by the March 24, 2009 Certificate of Receipt and Acceptance. A full copy of all petition pages was also filed with the Fluvanna Board of Supervisors at the beginning of their April 15, 2009 meeting.

April 16, 2009 - Judge Berry issued Order Setting A Hearing on May 15, 2009.

April 17, 2009 - Petitioner sent letter to Clerk of Commission described above as item 12.

April 20, 2009 - A separate action was filed with the Fluvanna Circuit Court by a group of citizens that did NOT include Petitioner Douglas Johnson and is given as Exhibit D of the Affidavit filed by Petitioner with the Commission on April 30, 2009.

April 21, 2009 - Commission issued certificate or charter.

April 24, 2009 - Petitioner started action with Commission.

(14) Respondent James River Water Authority's first "obstacle" makes the obvious point that if the action is dismissed for lack of standing, then the Motion for Summary Judgement is of no effect.

(15) The second "obstacle" simply shows a lack of understanding of the logic involved. The merits issue was already before the Fluvanna Circuit Court on April 21, 2009. At that point

in time, the Commission did not have jurisdiction to act. The fact that it did act does not take the jurisdiction away from the Circuit Court, it simply caused the "confusion" warned about in Allison¹. The Commission, by the way of Rule 5 VAC 5-20-220, has the authority to correct its decisions for some 21 days².

(16) Contrary to repeated assertions by the Respondents, the citizen petition was not rejected until the April 15, 2009 meeting of the Fluvanna Board of Supervisors. The minutes of the March 18, 2009 meeting clearly state that there was to be a "review of citizen petitions" and thus they were not rejected until done so by a 4 to 2 vote on April 15, 2009. The actions described in item 13 above, therefore, can thus be considered "immediate".

(17) The purpose of voiding the charter is simply to allow the action already started in the Fluvanna Circuit Court to be completed based on the merits. The only argument presented so far is that the action of the Commission on April 21, 2009 ends the action in the Circuit Court.

(18) The second "obstacle" is overcome by items 11 through 13

¹The orderly admission of justice demands that two courts do not have the jurisdiction over the same parties and matter at the same time. See Allison's Executor v. Wood, 104 Va. 765, 767-768 (1906). 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.

²Final judgments, orders, and decrees of the commission ... shall remain under the control of the commission and subject to modification or vacation for 21 days after the date of entry. [5 VAC 5-20-220. Balance of text omitted for brevity.]

and items 15 through 17.

(19) Perhaps Petitioner's description of "concurrent jurisdiction" was not clear. There are many actions which the Commission is authorized to take that are quite independent of any possible litigation which may be occurring in a Circuit Court. This matter is not one of those cases. For the Articles of Incorporation to be lawful, they must have conformed to all of the appropriate provisions of Virginia Water and Waste Authority Act. Respondents all agree that such determination is best resolved in the Circuit Court. Once that action started in the Fluvanna Circuit Court, no injunction was required as the principle of Allison prevails keeping the jurisdiction with that Circuit Court.

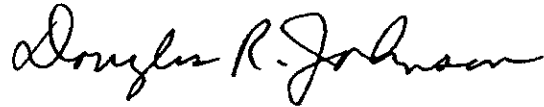
(20) Respondent misstates the purpose of this action before the Commission. Petitioner simply wants the Commission to remove itself from the process until the merits are decided in the jurisdiction where in the matter was started, namely the Fluvanna Circuit Court. Certainly, if the Commission wants to decide the issue of the citizen petitions, I will agree. But if the Commission accepts the argument made by the Respondents that the merits should be decided in the Circuit Court, then the Summary Judgement is both reasonable and a very practical solution.

(21) All of the points raised by respondents do not contradict the basis for the Motion of Summary Judgement. The case was already in the Circuit Court and the Commission does have the right

to correct its action of April 18, 2009.

Wherefore this Petitioner respectfully moves that Petitioner's Motion for Summary Judgement be granted.

DATED: July 15, 2009

A handwritten signature in cursive script that reads "Douglas R. Johnson".

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 15th day of July, 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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FLUVANNA COUNTY BOARD OF SUPERVISORS,
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EXHIBIT A

CERTIFICATE OF RECEIPT AND ACCEPTANCE
LOCAL REFERENDUM

**VIRGINIA: IN THE CLERK'S OFFICE
OF THE CIRCUIT COURT OF FLUVANNA COUNTY**

**CERTIFICATE OF RECEIPT AND ACCEPTANCE
LOCAL REFERENDUM**

TO: Douglas Robert Johnson
571 Long Acre Road
Palmyra, Virginia 22963

Case No. 09CL61

I, Bouson E. Peterson, Jr., Clerk of the Circuit Court of Fluvanna County, Virginia,

certify that:

Douglas Robert Johnson, filed with me as required by Section 24.2-684.1 of the Code of Virginia, a copy of a petition for a referendum on the following subject:

"Shall Fluvanna County join Louisa County in the formation of a joint Water Authority?",
the issue for which the petition will be circulated. A statement also was filed setting forth the filer's name and residence address. That statement:

did not indicate that the filer is representing an organization; or

indicated that the filer is representing the following organization: _____; and

did; or
 did not

set forth a mailing address different from the filer's residence address.

I further certify that I accept these documents and petitions now may be circulated. Petitions must be circulated, completed and filed with the Court within nine (9) months of the date of this certification. The filing deadline for any specific election also must be met if the referendum is to be held at that election.

Bouson E. Peterson, Jr., Clerk
Bouson E. Peterson, Jr., Clerk
Circuit Court of Fluvanna County, Virginia

Date: March 24, 2009

Filed
3-24-09
S.E. D.C.

CIVIL ORDER BOOK 5
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