



March 3, 1998

Via Federal Express

Blanca Bayo
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 970657-WS; Application for certificates to operate a water and wastewater utility in Charlotte and DeSoto Counties by Lake Suzy Utilities, Inc.

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket please find an original and fifteen copies of the following documents:

- Objection of Florida Water Services Corporation to Application(s) for Territory Amendment & Original Certificates by Lake Suzy Utilities, Inc. and Petition of Florida Water Services Corporation for Leave to Intervene.
Florida Water Services Corporation's Notice of Service of First Request for Production of Documents to Lake Suzy Utilities, Inc.
Florida Water Services Corporation's Notice of Service of First Set of Interrogatories to Lake Suzy Utilities, Inc.

Handwritten file numbers: 02843-98, 02845-98, 02844-98

ACK [checked] A diskette containing the Objection of Florida Water and Petition to Intervene formatted in Word Perfect 8.0 is also enclosed.
AFA
APP Please acknowledge filing of these documents by date stamping the enclosed copy of this letter and returning it in the postage paid envelope provided.
CAP
CMU If you have any questions or comments, please contact me at (407) 880-0058, ext. 260.
CTR
EAG Sincerely yours,

Handwritten signature of Matthew J. Feil

Matthew J. Feil
Staff Attorney

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

Doc. # 02843-98

Handwritten initials: Redemann, NL-Brad

Florida Water Services Corporation / P.O. Box 609520 / Orlando, Florida 32860-9520 / Phone 407/880-0058

Water For Florida's Future

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for	)	
certificates to operate a water	)	
and wastewater utility in	)	Docket No. 970657-WS
Charlotte and DeSoto Counties	)	
by Lake Suzy Utilities, Inc.	)	Filed: March 4, 1998
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**OBJECTION OF FLORIDA WATER SERVICES CORPORATION TO APPLICATION(S) FOR TERRITORY AMENDMENT & ORIGINAL CERTIFICATES BY LAKE SUZY UTILITIES, INC.**

**AND**

**PETITION OF FLORIDA WATER SERVICES CORPORATION FOR LEAVE TO INTERVENE**

COMES NOW, Florida Water Services Corporation ("Florida Water"), by and through its undersigned attorney, pursuant to Sections 120.569, 120.57, and 367.045, Florida Statutes, and Rules 25-22.036 and 25-22.039, Florida Administrative Code, and hereby files its objection to Lake Suzy Utilities, Inc.'s Application for Amendment of Certificates and Application for Original Certificates in Charlotte and DeSoto Counties and, in the alternative, hereby petitions for leave to intervene in the above-styled proceeding. In support hereof, Florida Water states as follows:

1. The name and address of the Objecting Party/Petitioner is as follows:

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

02843 MAR -4 88

FPSC-RECORDS/REPORTING

Florida Water Services Corporation  
P. O. Box 609520  
Orlando, FL 32860-9520

Documents relating to this proceeding should be served on:

Matthew J. Feil, Esq.  
Florida Water Services Corporation  
P. O. Box 609520  
Orlando, FL 32860-9520

2. According to the Commission's Division of Records and Reporting, Lake Suzy Utilities, Inc. ("Lake Suzy") filed an Application for Amendment of Certificates Nos. 480-W and 416-S to Add and Delete Territory in Charlotte and DeSoto Counties ("Application for Amendment") on June 3, 1997. At the direction of the Commission staff, Lake Suzy filed an Application for Certificates to Operate a Water and Wastewater Utility in Charlotte and DeSoto Counties ("Application for Original Certificates") on September 11, 1997. (Collectively, the Application for Amendment and the Application for Original Certificates will hereafter be identified as the "Applications.") Florida Water hereby objects to Lake Suzy's Applications and requests a hearing pursuant to Sections 120.569, 120.57, and 367.045, Florida Statutes.

3. Sections 367.045(1) and (2), Florida Statutes, and Rule 25-30.030, Florida Administrative Code, require utilities applying for original certificates or applying for amendments to existing certificates to "[p]rovide notice of the actual application filed by mail or personal delivery" to all Commission

regulated utilities within the county where the requested territory lies. Florida Water asserts that Lake Suzy did not provide written notice as required by the referenced statute sections.

4. Attached hereto and marked "Attachment A" is an affidavit of Mr. Charles L. Sweat, Vice President of Corporate Development for Florida Water. Mr. Sweat avers that Florida Water did not receive written notice of Lake Suzy's Application for Amendment or Lake Suzy's Application for Original Certificates. Both Charlotte County and DeSoto County filed untimely objections with the Commission and complained that they did not receive proper written notice of Lake Suzy's Application for Amendment. In light of this evidence, a sufficient factual basis exists for the Commission to find that Lake Suzy did not properly issue written notice in accordance with the law.<sup>1</sup> Commission staff has not yet completed its review and analysis of Lake Suzy's Applications, and the Commission has not yet voted on

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<sup>1</sup>Technical defects in Lake Suzy's Applications and supporting documents also cast doubt on the sufficiency and validity of the filing. Lake Suzy's Applications and supporting documents were not signed by an attorney or class B practitioner as required by Rule 25-22.008, Florida Administrative Code. This raises the issue of whether these items were properly submitted to begin with. Notably, the affidavits Lake Suzy filed as proof that it provided notice were previously cited by staff as deficient. Considering the circumstances of the case, Florida Water believes it necessary for it and the Commission to test the adequacy and accuracy of the original and corrected Lake Suzy affidavits.

the Applications. Therefore, Florida Water's objection should be considered valid.

5. Neither Section 367.045, Florida Statutes, nor Rule 25-30.030, Florida Administrative Code, directly authorize the Commission to consider issues of constructive notice in amendment or original certification proceedings. The statute and rule require the applicant utility to "[p]rovide notice of the actual application filed by mail or personal delivery" to PSC certificated utilities in the county; and the notice must include a legal description conforming to specific criteria set by rule. Even if constructive notice may be properly considered, Florida Water asserts that facts, if any, which may tend to establish a basis for constructive notice did not occur until after the 30-day objection period would have expired had written notice been properly given. In any event, Florida Water disputes all facts which may be asserted in an attempt to establish constructive notice and has identified such facts as anticipated disputed issues of material fact for the requested hearing.

6. Florida Water has a substantially affected interest in this proceeding. The Applications request that Lake Suzy be granted territory in Charlotte County adjacent to, abutting and, in part, overlapping Florida Water's existing Deep Creek service area. This "disputed area" is known as the Links Subdivision. Florida Water asserts it will suffer injury in fact of an

immediate nature if Lake Suzy's request for the disputed area is granted. Florida Water has already been granted authority by the Commission to serve a portion of the disputed area.<sup>2</sup> Florida Water has lines near or adjacent to the disputed area which are capable of providing service to the disputed area. These lines may not be fully utilized if Lake Suzy provides service. Further, Florida Water and its customers will not benefit from the economies of scale associated with a larger customer base if Lake Suzy provides service. The injuries Florida Water asserts are the type which the instant proceedings are designed to protect as evidenced by the statutes' and the rule's noticing requirements.

7. Florida Water also asserts that it has financial ability superior to that of Lake Suzy, is better able to provide service to the disputed area, and could provide service to the disputed area at a lower cost to the future customers in the disputed area. Upon investigation, Florida Water believes that Lake Suzy still operates its wastewater treatment and disposal facilities under a September 1994 consent order not disclosed in its

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<sup>2</sup>The area in Charlotte County which Lake Suzy seeks to add to its service area includes the Links Subdivision. The portion of the Links Subdivision lying in Charlotte County, Section 5, Township 40 South, Range 23 East, is already included in Florida Water's PSC-approved Deep Creek water and wastewater service areas. In re: Application for Grandfather Certificate to Provide Water and Wastewater Service in Charlotte County by Southern States Utilities, Inc., 95 F.P.S.C. 9:231, 238-248 (Docket No. 941301-WS, Order No. PSC-95-1164-FOF-WS, issued September 20, 1995).

Applications to the Commission. Lake Suzy's inability to timely comply with the terms and conditions of the consent order may subject Lake Suzy to fines, penalties and fees which may affect Lake Suzy's financial condition and its ability to provide service.

8. On February 19, 1998, Florida Water filed with the Commission an application to amend its Deep Creek service territories to include the disputed area. That application will be considered in Docket No. 980261-WS.

9. In prior cases, if the Commission determined that an objection to a certification matter was inappropriately filed/untimely, the Commission allowed the objecting party to participate as a party intervenor when the party asserted a substantially affected interest and the party's request was timely for intervention purposes (at least five days prior to hearing).<sup>3</sup> Therefore, if Florida Water's objection and request for hearing is not considered valid, Florida Water hereby requests, and asserts it is entitled to, a Commission order allowing it to intervene with full rights as a party.

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<sup>3</sup>In re: Objection to Notice of Joint Application to Transfer Water and Sewer Certificates in St. Johns County from St. Johns North Utility Corporation to Jacksonville Suburban Utilities Corporation, 89 F.P.S.C. 12:325 (Docket No. 891110-WS, Order No. 22342, issued December 26, 1989) and In re: Application for Amendment of Certificate No. 427-W to Add Territory in Marion County by Windstream Utilities Company, 97 F.P.S.C. 4:556 (Docket No. 960867-WU, Order No. PSC-97-0470-WU, issued April 23, 1997).

10. A statement of disputed issues of material fact known at this time is as follows:

- a. Whether Lake Suzy provided written notice of its Applications to Florida Water.
- b. Whether Lake Suzy has the requisite technical and financial capability to provide service to the disputed area.
- c. Whether Lake Suzy could provide service to the disputed area at a lower cost than Florida Water and is better able to provide service.
- d. Any facts suggesting Florida Water had constructive notice of Lake Suzy's Applications.
- e. Whether the disputed area overlaps Florida Water's existing Deep Creek service areas.

(Florida Water reserves the right to identify additional disputed issue of fact as the case progresses.)

11. A statement of ultimate facts alleged as well as rules and statutes entitling Florida Water to relief is as follows. As set forth above, Florida Water did not receive proper notice of Lake Suzy's Applications as required by Section 367.045, Florida Statutes, and Rule 25-30.030, Florida Administrative Code. Lake Suzy's Applications have not been ruled on by the Commission. Florida Water is a substantially affected party in this proceeding, and, as such, is entitled to a hearing on all



disputed issues of material fact and questions of law and policy. At a minimum, Florida Water is entitled to participate in this proceeding as a party intervenor. See Rule 25-22.039, Florida Administrative Code. Florida Water has the requisite technical and financial ability to provide service to the disputed area as required by Section 367.045, Florida Statutes. Lake Suzy does not. Florida Water's current Deep Creek service areas are adjacent to and, in part, overlap the disputed area, and Florida Water has lines near or abutting the disputed area. The Commission may not grant two investor owned utilities the same service area. Further, the Commission does not have jurisdiction over utility systems in DeSoto County whose service does not transverse the county's boundaries. See Section 367.171, Florida Statutes. Therefore, the Commission must deny Lake Suzy's Applications.

WHEREFORE, Florida Water requests that the Commission issue an order which (1) declares that Florida Water's objection to Lake Suzy's Applications is valid and grants Florida Water's request for a hearing or, in the alternative, (2) grants Florida Water's request for intervention with full rights as a party and schedules a hearing in this matter on the Commission's own motion. In either case, Florida Water requests that the Commission's order direct all parties and Commission staff to serve Florida Water with all documents and filings henceforward

filed with the Commission or served on any other party or staff.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Matthew J. Feil". The signature is written in black ink and is positioned above a horizontal line.

Matthew J. Feil, Esq.  
Florida Water Services Corporation  
P. O. Box 609520  
Orlando, FL 32860-9520  
(407) 880-0058

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by overnight delivery (\*) and U.S. Mail to the following this 3<sup>rd</sup> day of March, 1998:

Lake Suzy Utilities, Inc.\*  
Dallas Shepard, President  
12408 S. W. Sheri Avenue  
Lake Suzy, FL 33821

Gatlin, Schiefelbein &  
Cowdery, P.A.\*  
1709-D Mahan Drive  
Tallahassee, FL 32308

Charlotte County  
c/o County Attorney  
Attn: Ms. Martha Young Burton  
18500 Murdock Circle  
Port Charlotte, FL 33948

Florida Public Service Comm.  
Ms. Bobbie L. Reyes, Esq.  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Charlotte County  
Board of County Commissioners  
Administration Center  
18500 Murdock Circle  
Port Charlotte, FL 33948

DeSoto County  
Board of County Commissioners  
Robert Koncar, Administrator  
261 E. Oak Street  
Arcadia, FL 34266

Vorbeck & Vorbeck  
Frederick Bechtold  
207 Magnolia Street  
Arcadia, FL 34266



MATTHEW J. FEIL, ESQ.

STATE OF FLORIDA )  
COUNTY OF ORANGE )

**AFFIDAVIT**

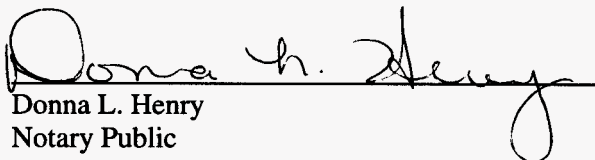
CHARLES L. SWEAT, having been duly sworn, deposes and states as follows:

1. I am employed as Vice President, Corporate Development, for Florida Water Services Corporation ("Florida Water").
2. I am responsible for monitoring the territorial expansions and deletions of privately and publicly owned utilities which provide water and wastewater service near Florida Water's service territories.
3. In the ordinary course of business, Florida Water receives notices of territorial expansions and deletions sent by the aforesaid private and public utilities.
4. The notice receipt files kept by Florida Water in the ordinary course of business reveal that Florida Water did not receive any written notice of amendment or written notice of application for original certificate in 1997 from Lake Suzy Utilities, Inc. ("Lake Suzy").
5. Florida Water became aware of Lake Suzy's pending Application for Amendment and Application for Certificates to Operate a Water and Wastewater Utility in Charlotte and DeSoto Counties with the Public Service Commission ("PSC") in Docket No. 970657-WS after the time for filing objection had passed.
6. Florida Water provides water and wastewater service in Charlotte County, Florida adjacent to and in part overlapping the area which Lake Suzy seeks to include in its territory, and Florida Water would be adversely affected if the PSC approved Lake Suzy's Application in Docket No. 970657-WS.



Charles L. Sweat  
Vice President,  
Corporate Development

The foregoing instrument was acknowledged before me this 2nd day of March, 1998, by Charles L. Sweat, as Vice President of Corporate Development for Florida Water Services Corporation, who is personally known to me and who did take an oath.



Donna L. Henry  
Notary Public  
State of Florida at Large  
My Commission Expires: 7-6-00

