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(040000)

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND FOR PUTNAM COUNTY, FLORIDA
CASE NO. 03-0377-CA-53

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CAROLYN ELIZABETH REHBAUM,
Plaintiff,

vs.

THE HOUCK HOLDING LIMITED PARTNERSHIP, a Florida Limited Partnership, FLORIDA WATER SERVICES CORPORATION, a Florida Corporation,
Defendants.

NOTICE OF LIS PENDENS

TO Defendants, FLORIDA WATER SERVICES CORPORATION, a Florida Corporation and *The Houck Holding Limited Partnership*, a Florida Limited Partnership; and to those indicated by the *Notice of Application For Sale of Facilities*, published in the Palatka Daily News on August 28, 2004, to wit: **Florida Public Service Commission and Aqua Utilities Florida, Inc.**, and all persons or corporations having or claiming any right, title or interest, lien or encumbrance in and to the following described land in Putnam County, Florida, to-wit:

Lot 1 of HIRE'S SUBDIVISION in the Gardner Grant, **Section 37**, Township 13 South, Range 26 East, according to plat recorded March 6, 1875 in Deed Book "E", page 412. EXCEPT those lands described in Official Records Book 250, page 654, Official Records Book 276, page 632 and Official Records Book 306, page 389 of the Public Records of Putnam County, Florida. Also described in Carolyn Elizabeth Rehbaum's deed recorded in O. R. Book 792, page 597 of the Public Records of Putnam County, Florida.

Florida Water Services Corporation's water distribution system (variously known to Carolyn Elizabeth Rehbaum as "Wootens", "Wootens (water)", "Wooten", "Wooten Mobile Home Park", "Wooten MHP", "Potable Water System No. 2541280", "PWS# 2541280", "Wooten's Subdivision", "Wootens System (water), Township 13 South, Range 26 East, **Section 41**", Township 12 South, Range 26 East, **Section 39**, Putnam County, Fl.; and "PSC certificate No. 76-W; Wootens (Township 13 South, Range 26 East, **Section 41**)", lies upon the lands of Carolyn Elizabeth Rehbaum, (in said **Section 37**), in whole or in part, even though *Florida Water Services Corporation's legal description (more particularly described below)* indicates that it's water system is in said **Section 41** and even though Florida Water Services Corporation's *Lease Agreement for Utility Site* (described below) indicates that it's water system is in said **Section 37** and said **Section 39**, [all references are to Putnam County, FL].

The **Public Service Commission** document, Application for Amendment of Certificates Nos 76-W and 284-S in Putnam County by *Southern States Utilities, Inc.*, Docket No. 930443-WS, Order No. PSC-93-1293-FOF-WS, issued: September 7, 1993, at Page 10, describes WOOTENS as follows:

Township 13 South, Range 26 East, **Section 41**, Putnam County, FL, Point

- CMP _____
- COM _____
- CTR _____
- ECR 1
- GCL 1
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH _____

of Beginning being at the Southwest corner of Section 41, Township 13 South, Range 26 East, Putnam County, Florida, thence running 3,370 feet more or less along the South line of Section 41 up to the Southwesterly right-of-way of C.R. 309, thence continue running 2,000 feet more or less in the Northwesterly direction along the right-of-way of C.R. 309 to the corner where the Westerly right-of-way of C.R. 309 and the Southerly right-of-way Brown's Fish Camp Road, also known as Sunset Drive intersect, thence running 2,250 feet more or less in the Northwesterly direction up to the water's edge of the St. Johns River, thence 1,950 feet more or less along the water's edge of said river, to the Point of Beginning.

Florida Water Services Corporation's "Lease Agreement for Utility Site", recorded in O. R. Book 727, page 1074 of the Public Records of Putnam County, Florida, describes the lands covered by the lease, as follows:

A tract of land situated in Lot 10, D.H. Causey's Subdivision of a part of the Hudnal Grant, **Section 39**, Township 12 South, Range 26 East, recorded in Map Book 1, page 90 and in Lot 1, J.M. Hires Subdivision of part of the William Gardner Grant, **Section 37**, Township 13 South, Range 26 East recorded in Deed Book E, page 412, being part of Fourth Easement for ingress and egress described in Official Records Book 626, page 737 of the public records of Putnam County, Florida and being more particularly described as follows:

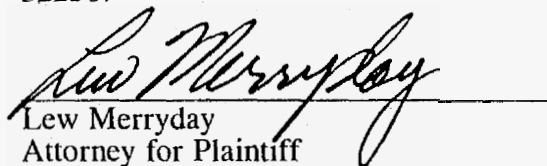
Commencing at a 6" X 6" concrete monument at the Northwesterly corner of the William Gardner Grant, Section 37, Township 13 South, Range 26 East and run thence S 60° 37' 08.9" E, along the Northerly line of said Grant, a distance of 22.375 feet to intersect with the Westerly right-of-way of Fourth Easement for ingress and egress described in Official Records Book 626, page 737 of the public records of Putnam County, Florida at a point on a curve concave to the Northwest, having a radius of 31.0 feet and the point of beginning of this description. From point of beginning (1) run thence Northerly, along said curve and said Westerly right-of-way, an arc distance of 0.86 feet to the P.C. of said curve. (2) Thence run S 79° 20' 22" E, radial to said 31.0 foot radius curve, a distance of 18.0 feet to the P.C. of a curve, concave to the Northwest, having a radius of 49.0 feet and a central angle of 104° 20' 26.7". (3) Thence Southwesterly, along said curve, an arc distance of 45.83 feet to intersect with the tangent of a curve concave to the Northwest, having a radius of 31.0 feet and a central angle of 104° 20' 26.7". (4) Thence run N 64° 59' 55.3" W, along said tangent, a distance of 6.80 feet. (5) Thence run N 10° 39' 38" E, a distance of 16.425 feet to intersect with the Westerly right-of-way of Fourth Easement for ingress and egress described in Official Records Book 626, page 737 at a point on a curve concave to the Northwest, having a radius of 31.0 feet. (6) Thence Northeasterly, along said curve and said Westerly right-of-way, an arc distance of 22.655 feet to the point of beginning and to close. Containing 763.49 square feet, more or less.

AND ALL OTHERS WHOM IT MAY CONCERN:

YOU ARE NOTIFIED of the institution of this action by plaintiff against said Defendants, seeking a Declaratory Judgment as to the rights of the parties with regard to the above described lands of Carolyn Elizabeth Rehbaum, upon which the Defendant, *The Houck Holding Limited Partnership*, claims certain rights of access and upon which the Defendant, *Florida Water Services Corporation*, has located its well and water distribution equipment.

You are further notified that, should you hold an unrecorded interest or lien on the above described lands of Carolyn Elizabeth Rehbaum and fail to intervene in these proceedings within 20 days from the filing and recording hereof, all such interests and liens shall be forever barred. F.S. 48.23.

I hereby certify that a copy hereof was mailed, postage prepaid, September 23, 2004, to Attorneys for *Florida Water Services Corporation*: Wayne E. Flowers, Esquire, Lewis, Longman & Walker, P.A., 9428 Baymeadows Road, Suite 625, Jacksonville, Florida 32256 and Melissa Taylor, Esquire, P. O. Box 609620, Orlando, Florida 32860-9520; Kathy L. Pape, Esquire, Attorney for Aqua Utilities Florida, Inc. 762 West Lancaster Avenue, Bryn Mawr, Pa. 19010; Ms. Blanca Bayo, Director, Division of the Commission, Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850; and Todd Watson, Esquire, Attorney for *The Houck Holding Limited Partnership*, 7785 Baymeadows Way, Suite 107, Jacksonville, Florida 32256.



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CAROLYN ELIZABETH REHBAUM,
Plaintiff,

vs.

THE HOUCK HOLDING LIMITED
PARTNERSHIP, a Florida Limited
Partnership, FLORIDA WATER
SERVICES CORPORATION, a
Florida Corporation,
Defendants.

COMPLAINT

Plaintiff, Carolyn Elizabeth Rehbaum, hereinafter sometimes referred to as "Rehbaum", sues Defendants, *The Houck Holding Limited Partnership*, hereinafter sometimes referred to as "Houck", and *Florida Water Services Corporation*, hereinafter sometimes referred to as "Florida Water", and alleges:

**COUNT 1
DECLARATORY JUDGMENT AGAINST HOUCK**

1. This is an action for a Declaratory Judgment as to the ownership and rights of ingress and egress, over, across, and through, certain lands in Putnam County, Florida, owned by the Plaintiff.

2. *The Houck Holding Limited Partnership*, is a Florida Limited Partnership, that owns lands in Putnam County, hereafter described.

3. Rehbaum recently purchased and owns the following lands, in Putnam County, Florida, to-wit:

Lot 1 of HIRE'S SUBDIVISION in the Gardner Grant, Section 37, Township 13 South, Range 26 East, according to plat recorded March 6, 1875 in Deed Book "E", page 412. EXCEPT those lands described in Official Records Book 250, page 654, Official Records Book 276, page 632 and Official Records Book 306, page 389 of the Public Records of Putnam County, Florida.

4. Houck owns the following lands in Putnam County, Florida, via Warranty Deed recorded in O. R. Book 857, page 1668 of the Public Records of Putnam County, Florida,

Property Appraiser's Parcel Number: 41-13-26-7310-0010-0000, to-wit:

Lots 1 through 47, inclusive, of Point Pleasant, as filed in Map Book 5, page 34 of the Public Records of Putnam County, Florida.

5. Houck appears to be accessing it's described property by means of a certain dirt road or drive that runs over the Northwest corner of Rehbaum's lands.

6. Rehbaum is in doubt as to the possible rights, if any, of Houck to pass and repass over, across and through her lands to gain access to it's lands.

7. In the event that Houck has some right or privilege to pass and repass over, across and through the lands of Rehbaum, in the manner described, then Rehbaum is in doubt as to exact location of any *Prescriptive Easement* or other right that may exist and is in doubt as to the exact width of any *Prescriptive Easement* or other right that may exist and is in doubt as to the present burden to which Houck's land is subjecting Rehbaum's land. In particular, Rehbaum is in doubt as to how many vehicles may pass over, across, and through the easement per day or other period of time, and what manner of vehicle and the weight of said vehicles that Rehbaum must suffer to pass and repass over her said lands, both now and in the future, such that any *Prescriptive Easement* or other right will not increase the burden upon her lands with time.

8. For the reasons alleged, Rehbaum's rights, duties, and privileges as to her lands are in doubt and jeopardy and there is a bona fide dispute between Rehbaum and Houck, and Rehbaum has a justiciable question as to the existence or nonexistence of some right, status, immunity, power, or privilege, or as to some fact upon which the existence of such right, status, immunity, power or privilege does or may depend. Rehbaum is in doubt as to a right, status, immunity, power or privilege and there is a bona fide, actual, and present need for the declaration of the court in this cause. There is a bona fide dispute between Rehbaum and Houck as to the right of Houck and their successors and assigns to increase the burden over Rehbaum's lands with time and Rehbaum's rights and privileges are in jeopardy.

Wherefore, Rehbaum, prays that this court will take jurisdiction of the cause and

declare the existence or non-existence of any prescriptive easement or other rights of ingress and egress that Houck may have over the lands of Rehbaum and if Houck has such right, then to determine the exact size and location of such prescriptive easement or other right and further to declare the burden to which Rehbaum's land is subject (number and kind of vehicles per day) and for such other and further relief to which Rehbaum may be entitled.

COUNT 2
DECLARATORY JUDGMENT AGAINST *FLORIDA WATER*

9. This is an action for a Declaratory Judgment as to the ownership of Water Rights and an Easement over Rehbaum's lands to exercise such rights and an Easement to maintain a building and equipment for such purpose on the lands of Rehbaum and the existence and effect of a *Lease Agreement for Utility Site*, dated March 28, 1997, between Charles and Dena Pitts and *Florida Water Services Corporation*, and the rights and liabilities of the parties resulting therefrom.

10. *Florida Water Services Corporation*, is a Florida corporation, that is doing business and in Putnam County, and on the lands of Rehbaum, hereafter described.

11. Rehbaum recently purchased and owns the following lands, in Putnam County, Florida, to-wit:

Lot 1 of HIRE'S SUBDIVISION in the Gardner Grant, Section 37, Township 13 South, Range 26 East, according to plat recorded March 6, 1875 in Deed Book "E", page 412. EXCEPT those lands described in Official Records Book 250, page 654, Official Records Book 276, page 632 and Official Records Book 306, page 389 of the Public Records of Putnam County, Florida.

12. Florida Water claims some right, title, or interest in said land by reason of it's *Lease Agreement for Utility Site*, recorded in O. R. Book 727, page 1074 of the Public Records of Putnam County, Florida, which contains therein a legal description, a copy of the Lease being attached hereto or claims some other or additional unknown rights, title, or interest therein.

13. Florida Water is selling water from Rehbaum's Water Well and is apparently going on to Rehbaum's lands to service it's equipment and operate the Water Well and piping water

to others for a fee or charge. Florida Water also appears to be using that certain dirt road or drive that runs over the Northwest corner of Rehbaum's lands to further its operations as aforesaid.

14. Rehbaum is in doubt as to the possible rights of Florida Water to operate the Water Well and take her water without payment to her and to service and maintain the equipment and the Water Well and the ownership of said equipment and Water Well and their rights to pass and repass over, across and through her lands, to gain access to the Water Well and the equipment.


15. In the event that Florida Water has some right or privilege to take water from Rehbaum's Water Well and maintain equipment on her land and pass and repass over, across and through the lands of Rehbaum, in the manner described and otherwise, then Rehbaum is in doubt as to exact location, size, and extent of any such right or privilege that may exist and she is in doubt as to the continuing burden to which her Water Well and her land is subject. In particular, Rehbaum is in doubt, if Florida Water has some right or privilege to use her land and take her water, as to how many gallons of water that may be taken from her Water Well, over a period of time, and what lands are serviced by Rehbaum's Water Well, such that any prescriptive rights to the water will not be increased and her lands burdened with a future increase.

16. For the reasons alleged, Rehbaum's rights, duties, and privileges as to her lands, are in doubt and jeopardy and there is a bona fide dispute between Rehbaum and Florida Water, and Rehbaum has a justiciable question as to the existence or nonexistence of some right, status, immunity, power, or privilege, or as to some fact upon which the existence of such right, status, immunity, power or privilege does or may depend. Rehbaum is in doubt as to a right, status, immunity, power or privilege and there is a bona fide, actual, and present need for the declaration of the court in this cause. There is a bona fide dispute between Rehbaum and Florida Water as to the validity of said Lease and the legality and propriety of

Florida Water's actions and threatened actions as aforesaid, and Rehbaum's rights and privileges are in jeopardy under said Lease and Florida Water's taking of her property as aforesaid.

17. Rehbaum is in doubt as to her rights under her deed as aforesaid.

Wherefore, Rehbaum, prays that this court will take jurisdiction of this cause and declare the existence or non-existence of any water rights lease or other rights with regard to the Water Well and if Florida Water has any such rights, and to declare what lands are entitled to be served by the Water Well, if any, and the number of gallons of water being taken and the burden to which Rehbaum's land is subject, both now and in the future, and for such other and further relief to which Rehbaum may be entitled.



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IN THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
IN AND FOR PUTNAM COUNTY,
FLORIDA

CAROLYN ELIZABETH REHBAUM,

Plaintiff,

Case No. 03-377-CA-53

vs.

THE HOUCK HOLDING LIMITED
PARTNERSHIP, a Florida Limited
Partnership, FLORIDA WATER SERVICES
CORPORATION, a Florida Corporation,

Defendants.

ANSWER OF FLORIDA WATER SERVICES CORPORATION

Comes now Defendant, Florida Water Services Corporation, and for answer to the complaint filed herein says:

Count I

1. Florida Water Services Corporation is not a named Defendant in Count I of the complaint and, therefore, states that it is without knowledge as to the truth or falsity of allegations contained in paragraphs 1 – 8 thereof.

Count II

2. Florida Water Services Corporation denies the allegations of paragraphs 9 – 17 of the complaint.

3. Florida Water Services Corporation affirmatively states that Plaintiff's complaint merely seeks a legal opinion from the Court and, therefore, declaratory judgment is an inappropriate remedy in this instance.



Wayne E. Flowers
Florida Bar No. 207020
Lewis, Longman & Walker, P.A.
9428 Baymeadows Road, Suite 625
Jacksonville, Florida 32256

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Lew Merryday, Esquire, Attorney for Plaintiff, 425 North Palm Avenue, Palatka, Florida 32177 by U. S. Mail this 27th day of August, 2003.



Attorney

IN THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
IN AND FOR PUTNAM COUNTY,
FLORIDA

CAROLYN ELIZABETH REHBAUM,

Case No. 03-377-CA-53

Plaintiff,

vs.

THE HOUCK HOLDING LIMITED
PARTNERSHIP, a Florida Limited
Partnership, FLORIDA WATER SERVICES
CORPORATION, a Florida Corporation,

Defendants.

**DEFENDANT FLORIDA WATER SERVICES CORPORATION'S
AMENDED ANSWER AND COUNTERCLAIM**

Comes now Defendant, Florida Water Services Corporation ("Florida Water") and files this Amended Answer and Counterclaim in response to the Complaint filed by Plaintiff Carolyn Elizabeth Rehbaum ("Rehbaum") herein and states:

AMENDED ANSWER

Count I

1. Defendant Florida Water is not a named Defendant in Count I of the Complaint and, therefore, states that it is without knowledge as to the truth or falsity of allegations contained in paragraphs 1 – 8 thereof.

Count II

2. As to Paragraph 9 of the Complaint, Defendant Florida Water admits that this is an action for Declaratory Judgment seeking to determine the existence of an easement or other rights over lands owned by Rehbaum and the rights of Defendant Florida Water to continue to withdraw water for public supply from an existing groundwater well allegedly located thereon. Defendant Florida Water denies the remainder of said paragraph, including any allegation that this Court has the jurisdiction, or that it is legally possible under Florida law, to determine "ownership of Water Rights."

3. As to the allegations set forth in Paragraph 10 of the Complaint, Defendant Florida Water admits that it is a Florida corporation doing business in Putnam County and that there is a controversy over whether or not Florida Water is doing business on land owned by Plaintiff Rehbaum. Defendant Florida Water denies the remaining allegations in said paragraph.

4. Defendant Florida Water admits that Rehbaum purchased and owns the lands described in Paragraph 11 of the Complaint, but denies that such purchase was "recent."

5. Defendant Florida Water admits the allegations in Paragraph 12 of the Complaint.

6. As to Paragraph 13 of the Complaint, Defendant Florida Water admits that it is withdrawing groundwater from a well for public supply, servicing and operating equipment for transmission of said water, and accessing said well and equipment through a dirt road, all of which may or may not be located on lands owned by Plaintiff Rehbaum. Defendant Florida Water denies the remaining allegations in said paragraph, including any allegation that said well and associated equipment, pipes and structures, is

“Rehbaum’s Water Well,” or that Plaintiff Rehbaum has any cognizable claim of ownership over said well and associated equipment.

7. As to the allegations in Paragraph 14 of the Complaint, Defendant Florida Water admits that there is a controversy over whether or not the well, pump and associated structures is located on property owned by Plaintiff Rehbaum and the rights and liabilities of the parties in the event that said structures are, in fact, located on property owned by Plaintiff Rehbaum. Defendant Florida Water denies the remaining allegations in said paragraph including any allegations that Plaintiff Rehbaum has any ownership interest in the water that is withdrawn from the well, the well itself, or the pump, building, fencing, pipes and appurtenances associated with said well.

8. Defendant Florida Water admits the allegation in Paragraph 15 of the Complaint except to the extent that said paragraph alleges that Defendant Florida Water Services’ actions constitute a “taking,” or that Rehbaum has an ownership interest in the water that is withdrawn from the well, the well itself, or the pump, building, fencing, pipes and appurtenances associated with said well.

9. Defendant Florida Water admits the allegations set forth in Paragraph 16 of the Complaint.

10. Defendant Florida Water admits the allegations set forth in Paragraph 17 of the Complaint.

AFFIRMATIVE DEFENSE

11. The well, pump, building, fencing, pipes and associated appurtenances at issue in this case are known as the “Wootens System.” If this Court determines that Plaintiff Rehbaum does, in fact, own the lands where the Wootens System is located, then

Defendant Florida Water states that it has, together with its predecessors in title, used such land to withdraw water from, operate, maintain and access the Wootens System for more than twenty years prior to commencement of this action.

12. Said use has been actual, open, continuous and uninterrupted for the twenty-year prescriptive period and has been hostile to any right claimed by Plaintiff Rehbaum, or any of her predecessors in title.

13. An easement for use of a well may be acquired by prescription. Farley v. Hiers, 668 So. 2d 248, 250-51 (Fla. 1st DCA 1996).

COUNTERCLAIM

Defendant Florida Water counterclaims against Plaintiff Rehbaum and alleges:

i4. This is an action for Declaratory Judgment as to the existence of a prescriptive easement in favor of Defendant Florida Water to withdraw water from, operate, maintain and access an existing groundwater well, pump, building, fencing, pipes and associated appurtenances (hereinafter referred to as the "Wootens System"), located on land, adjacent to Hess Road in the Georgetown area of Southwest Putnam County, which land may be owned by Plaintiff Rehbaum.

15. Defendant Florida Water provides potable water to existing customers in Putnam County through the Wootens System, which is regulated by the Florida Department of Environmental Protection (PWS ID: 2541280) and Florida Public Service Commission (Certificate No. 76-W).

16. On August 15, 1983, the Wootens System was acquired by Southern States Utilities, Inc, now known as Florida Water Services Corporation (collectively referred to

herein as "Defendant Florida Water"), from Charles C. Merritt and Edna M. Merritt d/b/a Merritt Pump Service ("Merritt").

17. The Wootens System was accessed by Merritt, and subsequently Defendant Florida Water, via a road ("Access Road") located immediately adjacent to Hess Road, which is a residential street in the Georgetown area of Southwest Putnam County.

18. A portion of the Access Road may be located on lands owned by Plaintiff Rehbaum.

19. The Wootens System and Access Road are plainly visible from Hess Road.

20. Merritt began operation of the Wootens System on or about August 4, 1972 and withdrew water from, operated, maintained and accessed the Wootens System actually, continuously, openly, obviously, and without permission from Plaintiff Rehbaum, or her predecessors in title, until transferring it to Defendant Florida Water on August 15, 1983.

21. Defendant Florida Water has withdrawn water from, operated, maintained and accessed the Wootens System actually, continuously, openly, obviously, and without permission from Plaintiff Rehbaum, or her predecessors in title, from August 15, 1983 until the present date.

22. Therefore, Defendant Florida Water, together with its predecessors in title, has used the land where the Wootens System is located to withdraw water from, operate, maintain and access said Wootens System to provide public water supply for more than twenty years before commencement of this action.


23. An easement for use of a well may be acquired by prescription. Farley v. Hiers, 668 So. 2d 248, 250-51 (Fla. 1st DCA 1996).

24. As evidenced by Plaintiff's Complaint, there is a presently existing controversy over the ownership and rights associated with the land where the Wootens System is located. Therefore, a judicial declaration of whether Defendant Florida Water has acquired prescriptive rights to withdraw water from, operate, maintain and access the Wootens System is necessary and appropriate at this time. In addition, a judicial declaration may serve to prevent future controversies between the parties over the ownership and rights associated with the Wootens System which could endanger the delivery of potable water to customers served by the Wootens System.

WHEREFORE, Defendant Florida Water demands judgment against Plaintiff Rehbaum as follows:

1. For a judgment declaring that Defendant Florida Water has acquired an easement by prescription to withdraw water from, operate, maintain and access the Wootens System, to provide public water supply, without compensation to, or interference from, Plaintiff Rehbaum.
2. For other and further relief as this Court deems proper.

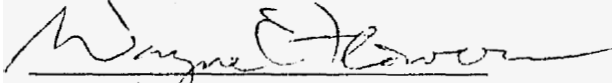
Respectfully submitted this 25th day of April, 2004.



Wayne E. Flowers
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Attorney for Defendant Florida Water
Services Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Defendant's Amended Answer and Counterclaim has been furnished by facsimile and U.S. Mail to Lew Merryday, Esquire, Attorney for Plaintiff, 425 North Palm Avenue, Palatka, Florida 32177, (386) 325-8086 (facsimile); and to Todd Watson, Esquire, 7785 Baymeadows Way, Suite 107, Jacksonville, FL 32256, (904) 739-9748 (facsimile), Attorney for Defendant The Houck Holding Limited Partnership, this 17th day of April, 2004.



Attorney

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