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April 21, 1998

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center
Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket Nos. **970657-WS** and 980261-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation ("Florida Water") are the following document:

1. Original and fifteen copies of Florida Water's Motion in Limine and Motion for Cease and Desist Order; and
2. A disk in Word Perfect 6.0 containing a copy of the document.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,



Kenneth A. Hoffman

ACK _____
AFA _____
APP _____
CAF _____
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SEC _____
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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
04473 APR 21 88
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

and

In Re: Application for)	
amendment of certificate nos.)	Docket No. 980261-WS
570-W and 496-S in Charlotte)	
County by Florida Water Services)	
Corporation)	
<hr/>		Filed: April 21, 1998

FLORIDA WATER SERVICES CORPORATION'S
MOTION IN LIMINE AND MOTION FOR CEASE AND DESIST ORDER

COMES NOW, Florida Water Services Corporation ("Florida Water"), by and through its undersigned attorney, and pursuant to Rule 25-22.037(2), Florida Administrative Code, and Sections 367.045(2) and 367.121(1)(g), Florida Statutes, files its Motion in Limine and Motion for Cease and Desist Order. In support of these motions, Florida Water states as follows:

1. 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

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Certificates") on September 11, 1997. (Collectively, the Application for Amendment and the Application for Original Certificates will hereafter be identified as "Lake Suzy's Applications.") Lake Suzy's Applications have been designated for consideration in Docket No. 970657-WS and are still pending.

2. Lake Suzy's Applications request that Lake Suzy be granted certain 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 has already been granted authority by the Commission to serve a portion of the disputed area.¹

3. On March 4, 1998, Florida Water filed its Objection to Lake Suzy's Applications and Petition for Leave to Intervene ("Florida Water's Objection") in Docket No. 970657-WS.

4. On February 19, 1998, Florida Water filed an application to amend its Deep Creek service territories to include the disputed area ("Florida Water's Application"). Florida Water's Application has been designated for consideration in Docket No. 980261-WS and is still pending.

¹The 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).

5. On March 20, 1998, Lake Suzy served its objection to Florida Water's Application ("Lake Suzy's Objection") in Docket No. 980261-WS.

6. In Lake Suzy's Application for Amendment filed June 3, 1997, Lake Suzy states that it had received a request to provide immediate water service to the owners of Lot 18 in the disputed area. In correspondence filed December 11, 1997 (document no. 12787) in response to a staff deficiency letter, Lake Suzy admits it began providing water service to Lot 18 prior to receiving Commission authorization to do so. In Lake Suzy's Objection filed in Docket No. 980261-WS, Lake Suzy again admits that it began providing service to Lot 18 in violation of Section 367.045, Florida Statutes.²

7. Florida Water does not advocate in favor or against the Commission's exercise of discretion to impose punitive measures against Lake Suzy for violating the statute. However, Florida Water asserts that it would be improper and unlawful for Florida Water's position in these proceedings to be prejudiced by virtue of Lake Suzy's violation of the statute. Therefore, Florida

² Lake Suzy explains that the owners of Lot 18 requested service on an emergency basis since the lot owner's well was experiencing taste and odor problems. Lake Suzy's Objection at p. 2. As a strict matter of principle, however, circumstances such as those Lake Suzy describes do not obviate the requirement of prior Commission approval. See 93 F.P.S.C. 6:57, Order No. PSC-93-0831-FOF-SU, issued June 3, 1993, in Docket No. 930418-SU (the Commission authorized interim, emergency service to one customer subject to final Commission approval of the utility's amendment application).

Water moves the Commission to issue an order which (1) determines that any evidence in the captioned matters showing that Lake Suzy Utilities, Inc. currently provides service to the disputed area is admissible only for the limited purpose of the Commission's disposition of show cause issues, if any, raised in these proceedings as a result of Lake Suzy Utilities, Inc.'s provision of service in violation of Section 367.045, Florida Statutes; and (2) requires Lake Suzy to cease and desist from providing service to any other customers in the disputed area until receiving Commission authorization to do so.

8. The Commission may not consider the fact that a utility currently provides service without lawful authorization as evidence of public convenience and necessity. McTyre v. Bevis, 300 So.2d 1 (Fla. 1974); Wytrwal v. Bevis, 300 So.2d 13 (Fla. 1974). It therefore stands to reason that the Commission should likewise not consider the fact that a utility currently provides service without lawful authorization as evidence of ability to serve or as evidence of the presence of duplicate facilities.³ To do differently would be to reward the utility that violated Commission requirements with an unjust advantage and to penalize competitor utilities which abide by Commission requirements.

9. Lake Suzy admits it unlawfully connected Lot 18 sometime between June 3, 1997, and December 11, 1997 -- during a portion of which time objections filed by Charlotte County and DeSoto

³ Florida Water reserves the right to request removal of Lake Suzy's unlawfully installed facilities from the disputed area.

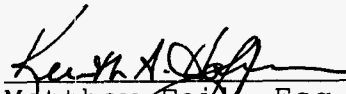
County were pending.⁴ In consideration of the foregoing, Florida Water reasonably believes that Lake Suzy may again bypass the Commission's requirements by connecting other customers in the disputed area in violation of the law and to the detriment of Florida Water's position in these proceedings. The Commission should therefore order Lake Suzy to cease and desist⁵ from connecting any additional customers in the disputed area until such time as the Commission authorizes Lake Suzy to do so.

WHEREFORE, Florida Water Services Corporation requests that the Commission issue an order which (1) determines that any evidence in the captioned matters showing that Lake Suzy Utilities, Inc. currently provides service to the disputed area is admissible only for the limited purpose of the Commission's disposition of show cause issues, if any, raised in these proceedings as a result of Lake Suzy Utilities, Inc.'s provision of service in violation of Section 367.045, Florida Statutes; and (2) requires Lake Suzy Utilities, Inc. to cease and desist from providing service to any other customers in the disputed area until receiving Commission authorization to do so.

⁴ Florida Water has served discovery on Lake Suzy soliciting information concerning the time and circumstances of Lake Suzy's connecting Lot 18, among other critical issues, but Lake Suzy has thus far undertaken a strategy of thwarting discovery and withholding the information from Florida Water and the Commission.

⁵ The Commission has the power to require a water and wastewater utility regulated by the Commission to cease and desist activities which violate statutes within the Commission's jurisdictional control and which the Commission is charged to enforce. See Section 367.121(1)(g), Florida Statutes.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Florida Water=s
Motion to Consolidate was furnished by hand delivery (*) and U.S.
Mail to the following this 21st day of April, 1998:

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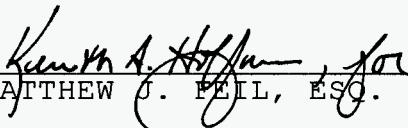
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