

**Diamond Williams**

100085-WU

**From:** Trina Collins [TCollins@RSBattorneys.com]  
**Sent:** Tuesday, March 08, 2011 3:35 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Marsha Rule; Erik Sayler; Patti Daniel; Lazaan@aol.com; Martin Friedman; Christian W. Marcelli; Trina Collins  
**Subject:** Filing in Docket No.: 100085-WU; Black Bear Reserve Water Company, Inc.'s Application for certificate to operate water utility in Lake County, Florida  
**Importance:** High  
**Attachments:** PSC Clerk 02 (Filing Joint Motion Requesting Commission Approval of Stipulation and Settlement Agreement.03-08-2011.pdf

- a. Martin S. Friedman, Esq.  
Christian W. Marcelli, Esq.  
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- b. Docket No.: 100085-WU; Black Bear Reserve Water Company, Inc.'s Application for certificate to operate water utility in Lake County, Florida - Filing a Joint Motion Requesting Commission Approval of Stipulation and Settlement Agreement.
- c. Black Bear Reserve Water Company, Inc.
- d. 7 Pages.
- e. Letter to Commission Clerk - 1 page; Joint Motion Requesting Commission Approval of Stipulation and Settlement Agreement - 3 pages; and Stipulation and Settlement Agreement - 3 pages.

3/8/2011

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01515 MAR-8 =  
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LAW OFFICES

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March 8, 2011

ROBERT M.C. ROSE, (1924-2006)

**E-FILING**

Ann Cole, Commission Clerk  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

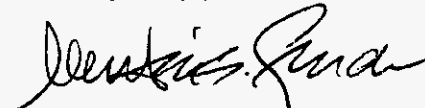
Re: Docket No. 100085-WU; Black Bear Reserve Water Company, Inc.  
Application for certificate to operate water utility in Lake County, Florida  
Our File No.: 38052.08

Dear Ms. Cole:

Enclosed for filing in the above-referenced docket is a Joint Motion Requesting Commission Approval of Stipulation and Settlement Agreement.

Should you or members of the Staff have any questions regarding this filing, please do not hesitate to give me a call.

Very truly yours,



MARTIN S. FRIEDMAN  
For the Firm

MSF/tlc  
Enclosures

cc: Marsha E. Rule, Esquire (w/enclosures) (via e-mail and U.S. Mail)  
Erik L. Saylor, Esquire, Senior Attorney, Office of the General Counsel (w/enclosures)  
(via e-mail and U.S. Mail)  
Ms. Patricia Daniel, Division of Economic Regulation (w/enclosures) (via e-mail)  
Mrs. Lee Ann Carson (w/enclosures) (via e-mail)

M:\1 ALTAMONTE\CARSON (Black Bear Reserve)\(.08) Protest of PSC Application\PSC Clerk 02 (Filing Joint Motion Requesting Commission Approval of Stipulation and Settlement Agreement).ltr.doc

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Certificate to operate  
Water Utility in Lake County, Florida by  
Black Bear Reserve Water Company, Inc.

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DOCKET NO. 100085-WU  
DATE: March 8, 2011

**JOINT MOTION REQUESTING COMMISSION APPROVAL OF  
STIPULATION AND SETTLEMENT AGREEMENT**

Petitioner, BLACK BEAR RESERVE WATER CORPORATION ("BBRWC"), and Objector, UPSON DOWNS LIMITED PARTNERSHIP ("UPSON DOWNS"), by and through their respective undersigned counsel, file this Joint Motion requesting the Florida Public Service Commission ("Commission") to approve the attached Stipulation and Settlement Agreement. In support of this Joint Motion, the parties' state:

1. BBRWC and UPSON DOWNS have entered into a Stipulation and Settlement Agreement resolving UPSON DOWNS'S protest of BBRWC's Application filed in this Docket in accordance with the terms of the Stipulation and Settlement Agreement. A copy of the Stipulation and Settlement Agreement is attached hereto as Exhibit "A".

2. BBRWC and UPSON DOWNS have entered into the Stipulation and Settlement Agreement to avoid the time, expense and uncertainty associated with adversarial litigation, in keeping with the Commission's long-standing policy and practice of encouraging parties in protested proceedings to settle issues whenever possible. For these reasons, BBRWC and UPSON DOWNS request the Commission to expeditiously issue a Final Order approving the Stipulation and Settlement Agreement without modification and close Docket No. 100085-WU.

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3. Pending Commission consideration of the Stipulation and Settlement Agreement, BBRWC and UPSON DOWNS request the Commission to suspend discovery and all events currently scheduled in the CASR for this Docket until such time as the Commission acts on this Motion.

WHEREFORE, BLACK BEAR RESERVE WATER CORPORATION and UPSON DOWNS LIMITED PARTNERSHIP respectfully request the Commission to approve without modification the attached Stipulation and Settlement Agreement and to suspend discovery and other events scheduled in this proceeding until a Final Order is issued closing this Docket.



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*Attorneys for BBRWC*



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*Attorneys for Upson Downs*

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 100085-WU**

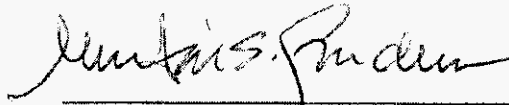
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-filing and U. S. Mail to the following parties this 8<sup>th</sup> day of March, 2011:

Marsha E. Rule, Esquire  
RUTLEDGE, ECENIA & PURNELL, P.A.  
P.O. Box 551  
Tallahassee, Florida 32302  
*Attorneys for Black Bear Reserve Water Corporation*

Eric L. Saylor, Esquire  
Senior Attorney, Office of the General Counsel  
FLORIDA PUBLIC SERVICE COMMISSION  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
*Attorneys for Florida Public Service Commission*

Respectfully submitted this 8<sup>th</sup> day of  
March, 2011, by:

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Florida Bar No.: 0199060  
For the Firm  
*Attorneys for Upson Downs*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Certificate to operate  
Water Utility in Lake County, Florida by  
Black Bear Reserve Water Company, Inc.

DOCKET NO. 100085-WU

**STIPULATION AND SETTLEMENT AGREEMENT**

Petitioner, BLACK BEAR RESERVE WATER CORPORATION ("BBRWC"), and Objector, UPSON DOWNS LIMITED PARTNERSHIP ("UPSON DOWNS"), by and through their respective undersigned counsel, hereby enter into this Stipulation and Settlement Agreement.

**Recitals**

- A. BBRWC filed an application to provide water service in Lake County, Florida, (the "Application"), which included rates for an irrigation system.
- B. UPSON DOWNS asserts that it is the owner of the irrigation system, and has filed a protest of BBRWC's application. BBRWC contests UPSON DOWNS'S claims of ownership.
- C. The Commission lacks jurisdiction to determine ownership of the irrigation system, which ultimately must be determined in Circuit Court.

NOW THEREFORE, for and in consideration of the mutual covenants set forth herein, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Irrigation service will not be provided by BBRWC as it has or will transfer any

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rights which it may have in the irrigation system to the a related corporate entity.

3. Any irrigation system revenues, expenses, and facilities reflected in prior filings in this docket are hereby removed from this Application as irrigation service will not be provided by BBRWC.

4. The irrigation system is not a part of BBRWC's Application and all references to the irrigation system in BBRWC's Application and related filings are hereby deleted.

5. UPSON DOWNS, upon acceptance of this Stipulation and Settlement Agreement withdraws its objection to BBRWC's Application, and as such stipulates and does not further contest the following issues:

- 5.1 BBRWC has the financial ability to serve the requested territory.
- 5.2 BBRWC has the technical ability to serve the requested territory.
- 5.3 BBRWC, by virtue of the Corrective Warranty Deed from Upson Downs Limited Partnership recorded April 1, 2005 in Official Records Book 2795, Page 1820 of the Public Records of Lake County, Florida owns the real property upon which the water treatment plant is located.
- 5.4 It is in the public interest to grant BBRWC a water certificate for the proposed territory.
- 5.5 The existing rates and charges are appropriate for BBRWC to charge for water service.

6. The submission of this Stipulation and Settlement Agreement by the parties is in the nature of an offer to settle. Consequently, if this Stipulation and Settlement Agreement is not accepted and approved without modification by Commission Order, then this Stipulation and Settlement Agreement is rejected and shall be considered null and void and neither Party may use the attempted agreement in this or any other proceeding.

7. UPSON DOWNS and BBRWC expressly agree that all activity relating to this

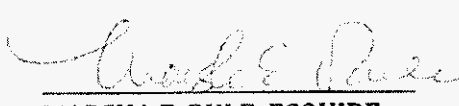
docket should be suspended until the Commission disposes of the Joint Motion Requesting Commission Approval of Stipulation and Settlement Agreement.

8. This Stipulation and Settlement Agreement will become effective on the date the Commission enters a Final Order approving the Agreement in total. Upon the Commission issuing a Final Order approving this Stipulation and Settlement Agreement, UPSON DOWNS protest and BBRWC's Application shall be deemed resolved, in accordance with the terms of this Stipulation and Settlement Agreement.

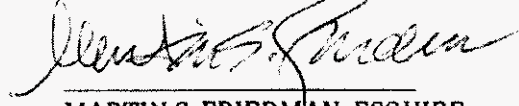
9. The Parties have evidenced their acceptance and agreement with the provisions of this Stipulation and Settlement Agreement by their signatures, and personally represent that they have authority to execute this Stipulation and Settlement Agreement on behalf of their respective Parties.

10. This Stipulation and Settlement Agreement is executed for purposes of settlement of BBRWC's certificate application in Docket No. 100085-WU only, and is without prejudice to claims of ownership of the irrigation system.

WHEREFORE, BBRWC and UPSON DOWNS request that this Commission enter a Final Order approving the Stipulation and Settlement Agreement, granting a Water Certificate to BBRWC and approve the existing rates and charges.

  
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Attorneys for BBRWC

Dated: 03-08, 2011.

  
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Attorneys for Upson Downs

Dated: March 8, 2011.