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APPLICATION OF TERRA	§	PUBLIC UTILITY COMMISSION
SOUTHWEST, INC. AND UNDINE	§	
TEXAS, LLC FOR SALE, TRANSFER,	§	OF TEXAS
OR MERGER OF FACILITIES AND	§	
CERTIFICATE RIGHTS IN DENTON	§	
COUNTY	§	

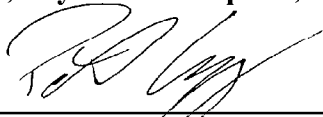
UNDINE’S RESPONSE TO ORDER NO. 7

Order No. 7 continued the abatement in this matter pending the resolution of the conflicting claims as to the utility that would be purchasing the assets of Terra. Undine and Terra maintain that Undine is the proper purchasing party. In support of that position, Undine provides the attached letter from Roger Key, counsel for Terra, to James Beckemeier, counsel for Central States Water Resources, Inc., dated July 16, 2021. The letter confirms Terra’s intention and authority to proceed with the transaction with Undine, to the exclusion of any rights CSWR purports to have relating to Terra’s assets. Undine asserts that the abatement in this matter should, accordingly, be lifted and that the applicants be allowed to proceed with the application.

Undine respectfully requests that the Administrative Law Judge enter an order consistent with this motion.

Respectfully submitted,

DuBois, Bryant & Campbell, LLP

By: 

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Attorneys for Undine Texas, LLC

CERTIFICATE OF SERVICE

I certify by my signature above that a true and correct copy of the foregoing document was served on the persons as indicated below on this the 28th day of July, 2021:

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July 16, 2021

Via Certified Return Receive Requested 7019 2280 0002 0491 0490 and

Via Email: jim@beckemeierlaw.com

Mr. James Beckemeier
Beckemeier LeMoine Law
13421 Manchester Road, Ste. 103
St. Louis, Missouri 63131

Re: Terra Southwest Inc.

Dear Beckemeier:

We represent Terra Southwest Inc. and its officers Jim Presley, President and Rovana Presley, Vice-President (“Terra”) in connection with a purported purchase and Sale Agreement (“PSA”) between our client and Central State Water Resources Inc. (“CSWR”) who we understand you represent based upon your letter to our client dated October 19, 2020. This letter is in response to your letter to our clients of October 19, 2020 as well as your letter of July 2nd of 2021.

As you are aware the purchase in Sale Agreement between our clients provides in section 7.01 that notices are to be sent to Joshua M. Cox with CSWR with address in St. Louis as well to you. Would you verify that you receive this letter on behalf of CSWR and waive notice directly to CSWR. If I do not receive a waiver within five days of this letter, we will assume you not waive notice and we will notify your client of the contents of this letter directly.

Jim Presley does not recall signing the Purchase and Sale Agreement dated June 15, 2020. He and his wife Rovana, and a representative of CSWR by the name of Shawn, met at a restaurant in the summer of 2020 and discussed the sale of the assets of Terra. Rovana states that Jim Presley did not signed the Purchase and Sale Agreement at that time. Jim Presley states that Shawn representing to him the only document his was signing was to authorize representatives of CSWR to enter Terra’s property and inspect the same. Furthermore, we are advised that Shawn never explained that the document which the client was being asked to sign was a Purchase of Sale Agreement, if in fact that is what our client signed. Although your client was allowed access on to our client’s property to inspect the plant, your client took no further actions after the initial inspection to fulfill its obligations under the PSA. The time period for due diligence and closing, under any construction of the contract, has long since expired.

We understand that CSWR never made the escrow for deposit called for in Section 1.03 of the PSA; has not, to the best of our client's knowledge, ever acquired the commitment for title insurance that provided for in Section 2.02 of the PSA; has not undertaken any due diligence within the feasibility period other than visiting the client plant on one occasion; has undertaken no action to obtain regulatory approval as from the Texas Public Utility Commission, other than Notice of Intent to determine fair market value of our client's utility; and has not otherwise undertaken any further action under the contract during (180) days feasibility period as provided under Section 2.04 of the PSA.

Furthermore, it does not appear as though your client has undertaken any action to close this transaction within (45) days after the expiration of the feasibility period required by section 4.01 (a) other than the limited actions mention in this letter. For the above and foregoing reasons it is our opinion that your client has abandoned, repudiated, breached, or otherwise is no longer position to enforce the PSA, and our client should be relieved of any further obligations to perform under that agreement. Please confirm that our client is released of any further obligation under the PSA.

If you client fails to acknowledge that our client no longer obligated to perform under the PSA, such action will only increase the damages our client will sustain by its inability to move forward with other offers to purchase to purchase its assets.

In the event your client elects to pursue litigation, we can assure you that it will be met with the counter claim including claims for declaratory judgment to the effect to the PSA is not effective or enforceable, will see to recover attorney's fees under the Texas Declaratory Judgment Act and will additionally seek damages for misrepresentation. If the PSA is held to be unenforceable it would appear your client would not have a claim for attorney's fees under the PSA.

Please let us know of your client's position within ten (10) days of this letter.

Sincerely yours,

Key Terrell & Seger LLP

A handwritten signature in black ink, appearing to read "Roger A. Key". The signature is fluid and cursive, with a large initial "R" and "K".

Roger A. Key

RAK/nm

c.c. Terra Southwest Inc. Attn. Jim and Rovana Presley