

By: Burnam

H.C.R. No. 161

HOUSE CONCURRENT RESOLUTION

1           WHEREAS, The Benbrook Water Authority, a governmental  
2 subdivision of the State of Texas:

3                   (1) is a party in the lawsuit *Benbrook Water Authority*  
4 *v. Carter & Burgess, et al.*, Cause No. 352-207733-04 in Tarrant  
5 County, Texas, in which a witness in the litigation, John Cook, has  
6 been threatened with liability by the opposing parties to the  
7 Benbrook Water Authority in the litigation if Mr. Cook comes  
8 forward with factual and expert testimony in the case on behalf of  
9 Benbrook Water Authority;

10                   (2) in an effort to protect John Cook from any legal  
11 liability to the opposing parties in the above-referenced  
12 litigation, now or at any time, however remote the possibility of  
13 liability on John Cook's part might be, wishes to hold John Cook  
14 harmless by contractually indemnifying Mr. Cook against any claims  
15 he may face as a consequence of his truthful testimony offered in  
16 the cited litigation;

17                   (3) to be certain of the enforceability of a  
18 contractual agreement, the terms of which are disclosed below,  
19 wishes to have its immunity from suit waived to the extent John Cook  
20 is compelled to enforce the terms of the agreement in a court of  
21 law; and

22                   (4) has executed a Hold Harmless and Indemnity  
23 Agreement between Benbrook Water Authority and John Cook, that  
24 reads as follows:

1           (1) "This Indemnification Agreement is by  
2           and between Benbrook Water Authority ("Indemnitor")  
3           and John Cook ("Indemnified Party") and is effective  
4           the 13th day of March, 2009.

5           (2) The Texas Board of Professional  
6           Engineers Licensing Requirements for engineers who  
7           practice engineering in the State of Texas contain the  
8           following provision:

9           "§137.55 Engineers Shall Protect the Public

10           (a) Engineers shall be entrusted to  
11           protect the health, safety, property and welfare of  
12           the public in the practice of their profession. The  
13           public as used in this section and other rules is  
14           defined as any individual(s), client(s), business or  
15           public entities, or any member of the general  
16           population whose normal course of life might  
17           reasonably include an interaction of any sort with the  
18           engineering work on the license holder.

19           (b) Engineers shall not perform any  
20           engineering function which, when measured by generally  
21           accepted engineering standards or procedures, is  
22           reasonably likely to result in the endangerment of  
23           lives, health, safety, property or welfare of the  
24           public. Any act or conduct which constitutes  
25           incompetence or gross negligence, or a criminal  
26           violation of law, constitutes misconduct and shall be  
27           censurable by the board.

1                   (c) Engineers shall first notify  
2 involved parties of any engineering decisions or  
3 practices that might endanger the health, safety,  
4 property or welfare of the public. When, in an  
5 engineer's judgment, any risk to the public remains  
6 unresolved, that engineer shall report any fraud,  
7 gross negligence, incompetence, misconduct, unethical  
8 or illegal conduct to the board or to proper civil or  
9 criminal authorities.

10                   (d) Engineers should strive to  
11 adequately examine the environmental impact of their  
12 actions and projects, including the prudent use and  
13 conservation of resources and energy, in order to make  
14 informed recommendations and decisions."

15                   (3) In consideration of the preceding  
16 regulation, and of Indemnified Party's voluntary  
17 testimony in the above cause in fulfillment of his  
18 duties as embodied in the regulation, Indemnitor and  
19 Indemnified Party have entered into this Agreement.

20                   (4) Indemnitor agrees to indemnify,  
21 defend, and hold harmless the Indemnified Party from  
22 and against any and all claims, demands, causes of  
23 action, damages and rights of recovery of any type or  
24 description (collectively, the "claims"), which may be  
25 asserted against the Indemnified Party by any person,  
26 arising directly or indirectly from Indemnified  
27 Party's testimony in whatever form in the above styled

1 and numbered cause against Carter & Burgess, Inc.  
2 Indemnitor expressly acknowledges that the  
3 indemnification obligation created hereby includes,  
4 without limitation, the obligation to indemnify the  
5 Indemnified Party with respect to claims which may  
6 arise out of the Indemnified Party's testimony herein,  
7 but shall not extend to claims caused by the  
8 Indemnified Party's willful misconduct.

9 (5) Indemnitor and Indemnified Party  
10 believe that, based upon allegations made in open  
11 Court by the representatives of Carter & Burgess, Inc.  
12 in the above styled and numbered cause to the effect  
13 that Indemnified Party is a "disgruntled ex-employee,"  
14 that Carter & Burgess, Inc. may choose to attempt to  
15 sue Indemnified Party for coming forward in this cause  
16 to effectively intimidate Indemnified Party from  
17 testifying truthfully herein. The purpose of this  
18 Agreement is to avoid such intimidation by Carter &  
19 Burgess, Inc. in the ensuing weeks and months.

20 (6) Indemnitor hereby waives any and all  
21 immunity from suit and immunity from liability which  
22 may impair the enforceability of this agreement by Mr.  
23 John Cook, his heirs or representatives.

24 (7) This Agreement is performable in  
25 Tarrant County, Texas. Benbrook Water Authority";

26 now, therefore, be it

27 RESOLVED by the Legislature of the State of Texas, That Mr.

1 John Cook, his heirs, and representatives are, in the event a legal  
2 dispute arises with Benbrook Water Authority over the terms of the  
3 Hold Harmless and Indemnity Agreement entered into between Benbrook  
4 Water Authority and John Cook effective on March 13, 2009, granted  
5 permission to sue the Benbrook Water Authority; and, be it further

6       RESOLVED, That any immunity from suit that might shield the  
7 Benbrook Water Authority is hereby waived; and, be it further

8       RESOLVED by the Legislature of the State of Texas, That John  
9 Cook is granted permission to sue the Benbrook Water Authority  
10 subject to Chapter 107, Civil Practice and Remedies Code; and, be it  
11 further

12       RESOLVED, That the president of the board of directors of the  
13 Benbrook Water Authority shall be served process as provided by  
14 Section 107.002(a)(3), Civil Practice and Remedies Code.