

**DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

CLIFFORD BOYNES, et al.,)	
)	
Plaintiffs,)	Civil Action No. 2021-0253
)	
v.)	
)	
LIMETREE BAY VENTURES, LLC, et al.,)	
)	
Defendants.)	
_____)	
HELEN SHIRLEY, et al.,)	
)	Civil Action No. 2021-0259
Plaintiffs,)	
)	
v.)	
)	
LIMETREE BAY VENTURES, LLC, et al.,)	
)	
Defendants.)	
_____)	
FRANCIS E. CHARLES and THERESA J. CHARLES,)	
)	Civil Action No. 2021-0260
Plaintiffs,)	
)	
v.)	
)	
LIMETREE BAY VENTURES, LLC, et al.,)	
)	
Defendants.)	
_____)	
BEECHER COTTON, et al.,)	
)	Civil Action No. 2021-0261
Plaintiffs,)	
)	
v.)	
)	
LIMETREE BAY VENTURES, LLC, et al.,)	
)	
Defendants.)	
_____)	

ORDER IMPLEMENTING WATER DISTRIBUTION PROGRAM

WHEREAS, this matter came before the Court on Plaintiffs’ “Amended Motion[s] for Temporary Restraining Order and Preliminary Injunction” (“Plaintiffs’ Motions”);¹ and

WHEREAS, after considering the submissions of the parties and conducting a first phase evidentiary hearing from March 2-7, 2023, and a second phase evidentiary hearing from June 6-9, 2023, the Court granted Plaintiffs’ Motions in part, finding that Plaintiffs and putative class members who cannot afford to purchase water without trading off other basic necessities are entitled to preliminary injunctive relief in the form of a water distribution program (the “Water Distribution Program”) by Limetree Bay Terminals, LLC (“Limetree Bay Terminals”); and

WHEREAS, the Court set forth the reasoning for its holding described above in its First Phase Memorandum Opinion, dated April 28, 2023;² and addressed the scope and structure of the Water Distribution Program in its Second Phase Memorandum Opinion, dated July 20, 2023;³ and

WHEREAS the provisions of the Water Distribution Program are set forth in this Order; and

NOW THEREFORE, it is hereby,

ORDERED that Limetree Bay Terminals shall establish, pay for, and operate the Water Distribution Program set forth below in a manner consistent with the Court’s Memorandum Opinions dated April 28, 2023 and July 20, 2023.

¹ See Civ. No. 2021-0253 (“*Boynes*”), Dkt. Nos. 141, 142; Civ. No. 2021-0260 (“*Charles*”), Dkt. Nos. 68, 68-1; Civ. No. 2021-0261 (“*Cotton*”), Dkt. Nos. 170, 171; Civ. No. 2021-0259 (“*Shirley*”), Dkt. No. 41.

² See *Boynes*, Dkt. Nos. 284, 285; *Charles*, Dkt. Nos. 199, 200; *Cotton*, Dkt. Nos. 334, 335; *Shirley*, Dkt. Nos. 139, 140.

³ See *Boynes*, Dkt. Nos. 388, 389; *Charles*, Dkt. Nos. 286, 287; *Cotton*, Dkt. Nos. 435, 436; *Shirley*, Dkt. Nos. 222, 223.

1. Water will be made available by Limetree Bay Terminals and at its cost to those residents of St. Croix who meet the following requirements:
 - A. who attest a belief that their residence was impacted by a release from the Limetree Bay Facility on February 4, 2021 or May 12, 2021 (the “Release Events”); **AND**
 - B. who attest that they rely or relied on cistern water; **AND**
 - C. who attest that they reside in the following estates: Adventure, Betty’s Hope, Cane, Cain Carlton, Campo Rico, Carlton 1 North, Carlton 1 South, Carlton 2, Clifton Hill, Concordia, Diamond, Enfield Green, Envy, Frederiksted, Golden Grove, Good Hope, Hannah’s Rest, Hesselberg, Hogensborg, La Grange, Mannings Bay, Mount Pleasant, Negro Bay, Paradise, Ruans Bay, Sandy Point, Smithfield, Stony Ground, Two Brothers, Upper Bethlehem, Wheel of Fortune/Mars Hill, Whim, Whites Bay, Whites Bay 2, and Williams Delight (the “Covered Area”⁴); **AND**
 - D. who show that they cannot afford to purchase water without trading off other basic necessities, by satisfying one of the criteria described in Section 3.D, below.

Those residents who meet these requirements, each discussed further below, are referred to as “Eligible Residents” and each individually as an “Eligible Resident.”

2. The requirements must be satisfied by any adult applicant (“Applicant”) to participate in the Water Distribution Program, and if the requirements are satisfied as to any adult, then they are

⁴ While the Court has defined the Covered Area in terms of estates above, the Court recognizes that labeling and defining the precise contours of estates on St. Croix is difficult. Accordingly, the Court includes the following equivalent description:

Together with Carlton 1 North, Clifton Hill, and Hogensborg:

- (A) Residences that are: (1) west of East Airport Road, *and* (2) south of Centerline Road; and
- (B) Residences that are (1) south of Mahogany Road, *and* (2) would be west of Whim Road if Whim Road was extended consistent with its current path up to Mahogany Road.

also deemed to have been satisfied by other members of that person’s household residing at the same address (*i.e.*, if an Applicant qualifies, then the household qualifies).

3. To satisfy the requirements, an Applicant must complete the Water Distribution Program Claim Form (“Claim Form”) that includes an attestation under penalty of perjury:

A. attesting that the Applicant resides in the Covered Area, and attaching reasonable proof of same which shall include the following:

i. **Proof of Applicant’s Identification:** A copy of an identification document such as a driver’s license or government identification card; **AND**

ii. **Attestation of Occupancy:** An attestation by Applicant that he/she currently resides in the Covered Area, and attesting to the Applicant’s address; **AND**

iii. **Reasonable Proof of Occupancy:** A copy of a lease, mortgage, recent utility bill, credit card statement, deed, or similar document showing that the Applicant resides in the Covered Area;

B. attesting that the Applicant’s current residence actively uses or used cistern water;

C. attesting that the Applicant has a belief that the Applicant’s current residence was impacted by a Release Event;

D. attesting and providing acceptable proof (as described in Section 4, below) that the Applicant meets one of the following criteria showing that the Applicant cannot afford to purchase water without trading off other basic necessities:

i. The Applicant or a member of the Applicant’s household is currently receiving public assistance through any of the following programs (together the “Listed Programs”)⁵: Medicaid; Supplemental Security Income (“SSI”); Social

⁵ For those programs that do not provide continuous annual benefits, it will be sufficient to demonstrate that the Applicant has been entitled to such benefits during the past six months.

Security Disability Insurance (“SSDI”); the Medical Assistance Program (“MAP”); the Children’s Health Insurance Program (“CHIP”); the Housing Choice Voucher Program (“HCVP”); the Supplemental Nutrition Assistance Program (“SNAP”); the Disaster Supplemental Nutrition Assistance Program (“D-SNAP”); the Supplemental Nutrition Assistance Program for Women, Infants and Children (“WIC”); Temporary Assistance for Needy Families (“TANF”); the Low-Income Home Energy Assistance Program (“LIHEAP”); the Low Income Household Water Assistance Program (“LIHWAP”); the Energy Crisis Assistance Program; or Aid to the Blind, Aid to the Disabled, Aid to the Old Aged; **OR**

ii. The Applicant or a member of the Applicant’s household would be eligible to qualify, based on the program’s financial eligibility criteria, for the benefits of one of the programs identified in Section 3.D.i, above, as determined by and to the satisfaction of the Administrator of the Water Distribution Program.

4. The following are acceptable forms of proof sufficient to satisfy the requirements of Section 3.D, above:

A. An Applicant may satisfy the proof required for the eligibility criteria associated with Section 3.D.i, above, by providing documentary proof of participation in a Listed Program. This documentary proof includes documents reasonably demonstrating admission into or participation in such program within the current calendar year, including program cards confirming admission into or participation in the program, emails from the program confirming admission into or participation in the program, internet website printouts confirming admission into or participation in the program, letters confirming admission into or participation in the program,

financial documents (including bank statements) reflecting payments from the program, or other similar documents evidencing admission into or participation in a Listed Program.

- B.** An Applicant may satisfy the proof required for the eligibility criteria associated with Section 3.D.ii, above, by providing documentary proof that is consistent with the documentary proof required by the particular program for which eligibility is being claimed by the Applicant.
5. Plaintiffs and Limetree Bay Terminals shall work cooperatively and in good faith and shall maintain an updated list of all Eligible Residents (hereinafter, the “Water Program List”).
6. The parties shall jointly propose to the Court for approval an individual to serve as Administrator, whose responsibilities shall include providing notice of, and administering, the Water Distribution Program. All fees and costs of the Administrator shall be paid by Limetree Bay Terminals.
7. The Administrator shall establish the website, www.LimetreeWaterProgram.com, which will provide information about the Water Distribution Program and have the capability of receiving Claim Forms submitted electronically through an online portal. The Administrator shall also accept Claim Forms via mail and email.
8. Beginning one week after the Administrator has been selected and is prepared to accept Claim Forms, residents of St. Croix who meet the above eligibility requirements can apply to participate in the Water Distribution Program by submitting a Claim Form using any of the following methods:
- A.** They can go to www.LimetreeWaterProgram.com to apply online via the submission of an online Claim Form, or can apply via U.S. mail or email; **OR**
- B.** They can apply through their retained counsel; **OR**

C. They can go to any Limetree Distribution Center set forth in Section 14, below, which shall have the capacity to accept Claim Forms and supporting materials on the spot, in which case copies of their Claim Form and supporting materials shall be promptly provided by Limetree Bay Terminals to the Administrator; **OR**

D. They can go to any of the following law offices located on St. Croix—which represent one or more groups of Plaintiffs in these actions—to fill out a Claim Form in person, in which case copies of their Claim Form and supporting materials shall be promptly provided by Plaintiffs’ Counsel to the Administrator:

Lee J. Rohn & Associates 56 King Street, Third Floor Hamilton House Christiansted, U.S.V.I (340) 778-8855 info@rohnlaw.com	Colianni and Leonard 2120 Company Street, Christiansted, St. Croix (340) 719-1766 marina@colianni.com	Dema Law 1236 Strand Street, Suite 103 Christiansted, St. Croix (340) 773-6142 dsugimura@demalaw.com
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9. The Administrator shall be the repository of all Claim Forms and shall review the submitted Claim Forms to determine whether the Applicant is eligible to participate in the Water Distribution Program. The Administrator shall record the reason that any Applicant’s claim is denied. If an Applicant is denied because of the submission of insufficient proof as required by Section 4, above, such Applicant shall be entitled to resubmit their Claim Form with additional proof.

10. On a daily basis, the Administrator shall provide Plaintiffs and Limetree Bay Terminals with an updated emailed list showing all Eligible Resident Households. Once included on the Water Distribution Program List, the Eligible Resident need not present qualifying proof at the Distribution Centers to receive water but need only show their ID to demonstrate that they are on the Water Distribution Program List.

11. Notice of the Water Distribution Program shall be provided to residents of St. Croix at Limetree

Bay Terminals' cost by the Administrator so that residents of the Covered Area are notified of: **(a)** the existence of and parameters of the Water Distribution Program; **(b)** the requirements to become an Eligible Resident and participate in the Water Distribution Program; and **(c)** the location and hours of operations of each of the Distribution Centers.

12. The notice will consist of daily advertisements of at least a quarter page size to be placed in the Virgin Islands Consortium and through its online website for seven (7) consecutive days (the "Notice Period"), beginning one (1) week after the Administrator has been selected and is prepared to accept Claim Forms.⁶
13. Additionally, during the Notice Period, the Administrator will acquire bundled advertisement time for public announcements or advertisements, including through JKC, Reef Broadcasting, and Da Vybe, which bundled advertising will include spots on the Poppy Pops Senior Show, the St. Claire Show, and the Chucky Hansen Show. After the first week, notice of any changes to the Water Distribution Program, including, without limitation, discontinuance of service, shall be provided, at least seven (7) days in advance of any such change, through www.LimetreeWaterProgram.com, the Virgin Islands Consortium, and at the applicable location.⁷
14. The Water Distribution Program will begin two weeks after the Administrator has been selected and is prepared to accept Claim Forms, and will occur at the previously used "Limetree Distribution Center" from 2:00 p.m. to 9:00 p.m., Monday through Saturday; the previously used "Sunshine Mall Distribution Center" from 7:00 a.m. to 4:00 p.m., Monday, Wednesday,

⁶ The Virgin Islands Consortium was chosen by agreement of the parties. Its inclusion here does not represent an endorsement by the Court.

⁷ JKC, Reef Broadcasting, Da Vybe, the Poppy Pops Senior Show, the St. Claire Show, the Chucky Hansen Show, and the Virgin Islands Consortium were chosen by agreement of the parties. Their inclusion here does not represent an endorsement by the Court.

and Friday; and the previously used “Frederiksted Ball Park Distribution Center” from 7:00 a.m. to 4:00 p.m., Tuesday, Thursday, and Saturday.

15. An updated copy of the Water Distribution Program List (which shall be emailed by the Administrator each morning) will be used by personnel working at each established Distribution Center to confirm an individual’s eligibility.
16. The personnel working at the Distribution Centers shall have no discretion to deny residents water and shall not discourage residents from obtaining water from the Distribution Centers if the resident’s name or household address is on the Water Distribution Program List. Each Eligible Resident is entitled to up to twelve (12) gallons of water per day per household, with a maximum amount per household of eighty-four (84) gallons of water per week.
17. Limetree Bay Terminals shall use commercially reasonable best efforts to distribute five-gallon sized reusable containers of water at the Distribution Centers, to the extent consistent with the needs of residents. Limetree Bay Terminals shall use commercially reasonable best efforts to make water pumps for five-gallon containers available for purchase at cost to those residents who wish to purchase them. Limetree Bay Terminals is not required to provide the pumps free of charge.
18. Any person on the Water Distribution Program List that affirms under penalty of perjury that they are unable to utilize a Distribution Center because they have a disability or medical infirmity which presents a sufficient hardship to their ability to pick up water from the Distribution Center, may make a written submission to the Administrator, including via an attorney, supported by medical documentation signed by a doctor or hospital, requesting that water be delivered to their residence by Limetree Bay Terminals. If deemed valid by the Administrator, such request will be noted on the Water Distribution Program List, and the Administrator shall so notify Limetree Bay Terminals. Limetree Bay Terminals will thereafter

have five (5) business days to file an appeal to oppose the request (“Home Delivery Appeals”), or otherwise shall arrange delivery of water to that person on a weekly basis.

19. Limetree Bay Terminals will use commercially reasonable best efforts to ensure that the Distribution Centers are set up and operational within two (2) weeks after the Administrator has been selected and is prepared to accept Claim Forms.
20. Plaintiffs shall have up to and including **August 4, 2023** to post an initial bond of \$50,000, or, in the alternative, to file a notice informing the Court that Plaintiffs withdraw their request for preliminary injunctive relief. Plaintiffs and Limetree Bay Terminals are required to file a joint notice every six (6) months to update the Court as to the number of households participating in the program. Following each six-month review, the Court will require Plaintiffs to post as bond an additional \$50 for each household that participates in the program over and above 1000 households.
21. The Water Distribution Program shall remain in full force and effect during this litigation or until further Order of the Court (the “Water Distribution Program Period”).
22. The Court will hold a status conference on the Water Distribution Program on **January 26, 2024 at 9:30 a.m.** in STX Courtroom 1 before the undersigned District Judge. Plaintiffs and Limetree Bay Terminals shall have up to an including **January 12, 2024** within which to each file a notice, not to exceed ten (10) pages, updating the Court as to the status of the Water Distribution Program and any issues associated therewith that require the Court’s attention. Any additional status conferences shall be set by further Order of the Court following the first status conference.
23. All Eligible Residents shall be required to certify to the Administrator every six (6) months after qualifying for the Water Distribution Program that their circumstances that made them eligible for the Water Distribution Program have not changed. Such certification can be

submitted to the Administrator via the website, mail, or by email to the Administrator.

- 24.** The parties shall jointly propose to the Court for approval an individual to serve as a Special Master. The responsibilities of the Special Master shall include, but not be limited to, serving as the initial decisionmaker on any appeals filed pursuant to Sections 27 and 28, below (“Eligibility Appeals”), and pursuant to Section 18, above (“Home Delivery Appeals”), and any other appeals over which the Special Master may be granted authority by agreement of the parties and approval of the Court. Any such appeals must be filed with the Special Master.
- 25.** The Special Master has the authority to meet separately and together with the Parties to facilitate communications, and to act as a facilitator of communications between the Parties on any issues relating to Eligibility Appeals, Home Delivery Appeals, and any other appeals over which the Special Master may be granted authority by agreement of the parties and approval of the Court. Communications with the Special Master do not waive privilege. Compensation, at rates mutually agreeable to the Special Master and the Parties, shall be paid to the Special Master on a periodic basis by the Parties. The cost of the Special Master shall be borne equally by Plaintiffs and Limetree Bay Terminals. However, if any Eligibility Appeals, Home Delivery Appeals, or other appeals is deemed unreasonable by the Special Master, the cost of such appeals shall be borne by the appealing party (“Unreasonable Appeals”).
- 26.** The Special Master shall retain all records relating to his or her resolution of Eligibility Appeals, Home Delivery Appeals, Unreasonable Appeals, and any other appeals over which the Special Master may be granted authority by agreement of the parties and approval of the Court.
- 27.** Any resident of St. Croix that is deemed by the Administrator to have not met the eligibility criteria to become an Eligible Resident from an Eligible Household, may, through their own counsel or *pro se*, file a Motion to be Declared an Eligible Resident with the Special Master. All responses shall be due within five (5) business days.

- 28.** Limetree Bay Terminals may also challenge the eligibility of any Applicant deemed to be an Eligible Resident by filing a motion to disqualify the Applicant as an Eligible Resident with the Special Master. In any such motion, Limetree Bay Terminals shall address each eligibility challenge on an individual basis, separately describing why each individual person or household is being challenged. All responses shall be due within five (5) business days.
- 29.** The Special Master shall decide any Eligibility Appeals within two (2) weeks from the filing of any responses.
- 30.** Any decisions on Eligibility Appeals, Home Delivery Appeals, or Unreasonable Appeals rendered by the Special Master may be appealed to the United States Magistrate Judge for the District Court of the Virgin Islands within fourteen (14) days of any such decision. All responses to any such appeals shall be due within five (5) business days. The decision of the United States Magistrate Judge for the District Court of the Virgin Islands relating to Eligibility Appeals, Home Delivery Appeals, or Unreasonable Appeals will be final and shall not be further appealable. Any issues not otherwise addressed pursuant to this paragraph shall be raised to this Court, to be addressed consistent with the Court's normal procedures.
- 31.** All Parties reserve all rights relating to the issues resolved by this Order and any other issues related to the class actions, including, but not limited to, the certifiability of any putative class in the class actions, and any and all defenses to the claims in those class actions. In addition, nothing in this Order shall be deemed an admission of any fact or as to any liability, including, but not limited to, the area impacted by the contamination incidents at the refinery or the necessity of the Water Distribution Program. All rights of the Parties are expressly reserved and preserved.

32. The Court shall retain jurisdiction to interpret and enforce this Order.

SO ORDERED.

Date: July 20, 2023

_____/s/_____
WILMA A. LEWIS
District Judge