

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2008 OCT 20 PM 4:18

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHIEF CLERKS OFFICE

Protecting Texas by Reducing and Preventing Pollution

October 20, 2008

Ms. LaDonna Castañuela, Chief Clerk
Office of the Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC-105
Austin, Texas 78711-3087

Re: **TCEQ Docket No. 2008-1646-UCR.** Consideration of a Petition by Customers Requesting an Emergency Order Compelling Continuous and Adequate Water Service by East Rio Hondo Water Supply Corporation (WSC)

Dear Ms. Castañuela:

Enclosed for filing with the Texas Commission on Environmental Quality is the original plus seven copies of the following backup materials for the November 5, 2008, agenda item on the above referenced matter:

1. Agenda Executive Summary;
2. Caption;
3. Petition requesting an emergency order compelling East Rio Hondo WSC to provide continuous and adequate service filed by Carl and Janel Parker and Carolina Ruiz on September 26, 2008;
4. Correspondence between Executive Director staff and East Rio Hondo WSC dated October 1, 2008; and
5. Proposed Order.

Please do not hesitate to contact me at 239-0575 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stefanie Skogen".

Stefanie Skogen
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing List
Lisa Fuentes, Water Supply Division, MC-153

Texas Commission on Environmental Quality
INTEROFFICE MEMORANDUM

TO: Texas Commission on Environmental Quality **DATE:** October 20, 2008
THRU: LaDonna Castañuela, Chief Clerk
FROM: Stefanie Skogen, Environmental Law Division
SUBJECT: **TCEQ Docket No. 2008-1646-UCR.** Consideration of a Petition by Customers Requesting an Emergency Order Compelling Continuous and Adequate Water Service by East Rio Hondo Water Supply Corporation

DESCRIPTION OF PETITION

Petitioners: Carl and Janel Parker and Carolina Ruiz
Regulated Activity: Retail water utility service
Type of Petition: Request for a Commission order compelling service
Commission Action: Hearing regarding whether the TCEQ can compel service
Authority: Texas Water Code § 13.041(d)(1) and 30 Texas Administrative Code § 291.14(a)(1)

FACTUAL BACKGROUND

Carl and Janel Parker and Carolina Ruiz are water service customers of East Rio Hondo Water Supply Corporation (WSC), water certificate of convenience and necessity (CCN) No. 11552. Earlier this year, East Rio Hondo WSC requested a new right-of-way easement across the Parkers' and Ms. Ruiz's properties. When the customers did not agree to the easements, the WSC terminated their water service on July 29, 2008. The Parkers service was temporarily restored but was terminated shortly thereafter. They filed suit in district court and obtained a temporary restraining order directing the WSC to restore the Parkers' service on August 21, 2008. On September 4, 2008, the district court refused to convert the restraining order into a temporary injunction because it believed the Texas Commission on Environmental Quality (TCEQ or Commission) has primary jurisdiction over this issue. The restraining order lapsed, and East Rio Hondo WSC sent another termination notice to the Parkers, stating their service would be terminated on September 30, 2008.

The Parkers and Ms. Ruiz filed a petition requesting an emergency order compelling East Rio Hondo to provide continuous and adequate service on September 26, 2008. ED staff sent a letter to the WSC asking that it restore Ms. Ruiz's service and not terminate the Parkers' service while the ED investigated the matter. The WSC did restore Ms. Ruiz's service and did not terminate

the Parkers' service but requested a Commission order on this issue. On October 13, 2008, the petitioners' attorney told ED staff that both services were still on.

LEGAL AUTHORITY

Under section 13.250(a) of the Texas Water Code, a retail public utility that possesses or is required to possess a CCN shall provide continuous and adequate service within its CCN area.¹ The CCN holder may only terminate service due to nonpayment of charges, nonuse, or other similar reasons in the usual course of business.² The Commission may issue an emergency order to compel a water service provider that has or is required to have a CCN to provide continuous and adequate service if the discontinuance of the service is imminent because of the service provider's actions.³

There is a provision in the TCEQ rules that allows a WSC to require an applicant for service to grant an easement,⁴ but there is no similar provision in the rules or the Texas Water Code that says a WSC can terminate the service of a current customer for failing to grant an easement.

BASIS FOR STAFF RECOMMENDATION

The following items were considered in developing the staff's recommendation:

1. Request for an emergency order compelling continuous and adequate water service by East Rio Hondo WSC filed by Carl and Janel Parker and Carolina Ruiz on September 26, 2008, (Application No. 36192-C) and
2. Correspondence between East Rio Hondo WSC and ED staff dated October 1, 2008.

STAFF RECOMMENDATION

The ED recommends that the Commission grant the customers' request to compel East Rio Hondo WSC to provide them with continuous and adequate service. The ED's understanding is that East Rio Hondo WSC believes that the customers violated their service agreements by not granting the easements and, therefore, it had the right to terminate their service. While this may be a contractual issue that would allow East Rio Hondo WSC to pursue a contractual remedy, it does not mean that the WSC can violate its CCN by terminating service. This does not involve a nonpayment of charges or nonuse, nor can it be categorized as a similar reason in the usual course of business. While the TCEQ rules do permit a WSC to require a service applicant to grant an easement before providing the applicant with service, nothing in the rules or Texas Water Code permits them to terminate a current customer's service for failing to grant an easement. The WSC has various avenues available to it, such as trying to work out an agreement

¹ A WSC is a retail public utility, as defined in section 13.002(19) of the Texas Water Code.

² TEX. WATER CODE ANN. § 13.250(b) (Vernon 2008).

³ *Id.* § 13.041(d)(1).

⁴ 30 TEX. ADMIN. CODE § 291.85(d)(3) (West 2008).

with the customers or using its eminent domain power, but terminating the customers' service is not one of them.

STAFF CONTACTS

Stefanie Skogen, Environmental Law Division (239-0575)
Lisa Fuentes, Water Supply Division (239-6117)

CAPTION
EAST RIO HONDO WSC
Application No. 36192-C

TCEQ Docket No. 2008-1646-UCR. Consideration of a request for a Commission emergency order compelling the provision of continuous and adequate service by East Rio Hondo Water Supply Corporation (WSC) in Cameron County, Texas, pursuant to section 13.041 of the Texas Water Code. (Stefanie Skogen, Lisa Fuentes)



R L WILSON, P.C.
PROFESSIONAL LEGAL SERVICES

RECEIVED
TCEQ
WATER SUPPLY DIV.

September 25, 2008

2008 SEP 26 AM 9 26

Tammy Benton
TCEQ
12100 Park Circle Bldg 5
San Antonio, Texas 78753

Via Hand Delivered

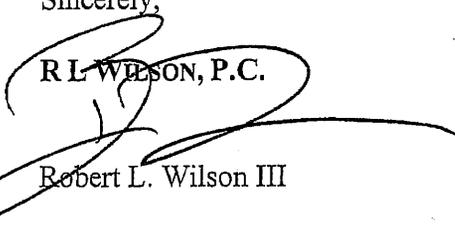
Re: East Rio Hondo Water Supply Corporation, CCN NO. 11552

Ms. Benton:

Please find enclosed the Application for Emergency Order along with a check in the amount of \$100.00, regarding the above named matter. Please file this Application with the commission for consideration on an emergency basis with out hearing.

Thank you for your attention to this matter. Please feel free to contact me should you have any questions.

Sincerely,


R L WILSON, P.C.

Robert L. Wilson III

HARTMAN CENTRE II
1202 W. BITTERS, BLDG 1, SUITE 1204
SAN ANTONIO, TX 78216
PHONE: 210.223.4100
FAX: 210.223.4200
WWW.SA-LAW.COM

RECEIVED
TCEQ
WATER SUPPLY DIV.

TCEQ Docket No. _____

2008 SEP 26 AM 9 26

IN RE:

EAST RIO HONDO WATER
SUPPLY CORPORATION,
CCN NO. 11552

§
§
§
§
§

BEFORE THE TEXAS
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

APPLICATION FOR EMERGENCY ORDER, WITHOUT HEARING, TO COMPEL
CONTINUOUS and ADEQUATE WATER SERVICE BY A CERTIFICATE HOLDER

COME NOW, Applicants CARL & JANEL PARKER and CAROLINA S. RUIZ, who, in accordance with 30 T.A.C § 291.14(a)(1), move the Texas Commission on Environmental Quality ("TCEQ") to issue an emergency order, without hearing, compelling the EAST RIO HONDO WATER SUPPLY CORPORATION ("ERHWSC") to provide continuous and adequate water service, and to immediately cease and desist in all efforts to discontinue water service to qualified customers situated with ERHWSC's certificated area. In support hereof, Applicants show as follows:

NATURE OF THIS APPLICATION

1. As recognized by the Texas Legislature, "[c]ontinuous service by a public utility is essential to the life, health, and safety of the public. A person's wilful interruption of that service is a public calamity that cannot be endured." TEX UTIL. CODE § 186.002(a) (emphasis added). Applicants bring this Application for emergency action by the TCEQ as the result of ERHWSC's willful interruption of their retail water service. More particularly, Applicants seek an emergency order from the TCEQ declaring that certain past, present and threatened future actions of ERHWSC are unlawful insofar as they violate the provisions of

TEX. WATER CODE § 13.250(b-c) and 31 T.A.C. § 291.88.¹ In short, Applicants seek an emergency TCEQ Order compelling ERHWSC to provide them with continuous and adequate water service until further Order of the Commission.

PARTIES

2. All Applicants are individuals residing near Los Fresnos, Cameron County, Texas. At all times material hereto, Applicants were residential retail water service customers of ERHWSC, with their respective residences situated within ERHWSC's certificated water service area. Further, all Applicants are "elderly individuals" as that term is defined by § 102.001 of the Texas Human Resources Code.

3. Respondent, **EAST RIO HONDO WATER SUPPLY CORPORATION**, is a domestic corporation, which regularly conducts business in Cameron County, Texas. Its principal office is located at 206 Industrial Pkwy, PO Box 621, Rio Hondo, TX 78583 USA. ERHWSC is the water utility providing retail water service to residential and commercial customers pursuant to Certificate of Convenience and Necessity 11552 issued by the Texas Commission on Environmental Quality ("TCEQ") or its predecessors. By and through its CCN, ERHWSC maintains a State-granted monopoly on retail water utility service within its certificated area. As such, ERHWSC is the *sole source* of domestic and potable water to Applicants' homes, which are situated within ERHWSC's certificated area.

¹ As a regulated water utility, Defendant's ability to interrupt water service is limited to those situations prescribed by the provisions of TEX. WATER CODE § 13.250(b-c) and 31 T.A.C. § 291.88 (a portion of the TCEQ's Administrative Rules). The relevant portions of those provisions are set-forth at the end of this Petition.

JURISDICTION

4. ERHWSC is a Texas non-profit water supply corporation formed pursuant to Chapter 67 of the Texas Water Code, and holds a TCEQ-issued certificate of convenience and necessity. As such, the TCEQ maintains jurisdiction over ERHWSC's operations pursuant to TEX WATER CODE § 13.401(d).

5. Moreover, pursuant to 30 T.A.C § 291.14(a), the TCEQ maintains jurisdiction to issue emergency orders in this matter, with or without hearing, because discontinuance of water service by ERHWSC has occurred because of ERHWSC's actions.

NOTICE BEFORE FILING NOT GIVEN

6. There is good cause to believe that immediate and irreparable injury, loss, or damage would occur as a result of a delay in obtaining an emergency order from the TCEQ compelling ERHWSC to restore water service to Applicants and enjoining said water service provider from continued violations of the Texas Water Code, and the provisions of its Certificate of Convenience & Necessity.

7. If ERHWSC is not immediately compelled to provide continuous and adequate service to Applicants, it will continue to engage in unlawful water service interruptions and thereby cause immediate and irreparable injury, loss, or damage to Applicants, whose water service is wrongly disconnected. Namely, Applicants will continue to be deprived the use of water for drinking, sanitation, food preparation, and personal hygiene. Moreover, because Applicants are elderly individuals, the water service interruption

FACTUAL ALLEGATIONS

8. ERHWSC is a non-profit water supply corporation, incorporated for the purpose of furnishing potable water utility service to customers situated in Cameron County, Texas. As a CCN holder, ERHWSC is required by Texas Water Code § 13.250(a) to "serve every consumer within its certified area and... render continuous and adequate service within the area."
9. Pursuant to Chapter 67 of the Texas Water Code, ERHWSC's operating policies, rates, tariffs, and regulations are formulated and effected by a Board of Directors, elected by the members of the corporation. Consumers arrange with ERHWSC to obtain water service for their homes and businesses, with the terms of such service dictated by both the Texas Water Code, and a written "Service Agreement." The Service Agreement constitutes a written contract, and contains various agreements concerning ERHWSC's provision of water. This contract, and all of ERHWSC's operations are regulated by the TCEQ, which was granted regulatory control over all CCN holders by and through the Texas Water Code and TCEQ's Administrative Rules located in Chapters 30 and 31 of the Texas Administrative Code.
10. Applicants reside within ERHWSC's service area, and are retail customers and "members" of ERHWSC. Applicants, *Carl & Janel Parker*, first became members/customers of ERHWSC on or about August 3, 1994, when they entered a "Service Agreement" with the utility, and began receiving retail water service therefrom. Applicant, *Carolina Ruiz* first became a member/customer of ERHWSC on or about January 24, 1990, when she entered a "Service Agreement" with the utility, and began receiving retail water service therefrom. Copies of said Agreements are attached hereto as "*Exhibit A*," and incorporated herein as if fully set-forth at length.

11. For fourteen (14) and eighteen (18) years, respectively, Applicants have received and paid for water service from ERHWSC without incident. However, in early 2008, ERHWSC requested from Applicants a "Right of Way Easement" across their residential lots.

12. ERHWSC's proposed easements across Applicants' lots are overly burdensome, unreasonably destructive and excessive given ERHWSC's existing right-of-way easement abutting FM 510. For these reasons, Applicants initially declined to grant ERHWSC the proposed easement location.² However, at no time have Applicants ever refused to grant an easement to ERHWSC, and their offer to grant ERHWSC a less burdensome and destructive easement remains open.³

13. When ERHWSC first learned of Applicants' denial of the requested easement location, it began threatening to terminate Applicants' water service in retaliation. When these threats failed to coerce Applicants to acquiesce to ERHWSC's extortion, the utility made good on its threats, and terminated all Applicants' water service on **July 29, 2008**. *Carolina Ruiz has been without water service since that time – approximately 60 days.*

14. Upon having their water service terminated on July 29, 2008, Applicants Carl & Janel Parker retained the undersigned, who persuaded ERHWSC to resume service. However, ERHWSC, again interrupted the Parkers' water service on or About August 13, 2008. Said service remained discontinued until August 21, 2008, when the undersigned filed suit in the District Court of Cameron County, Texas, and obtained a *Temporary Restraining Order* directing that water service be restored to the Parker home until at least September 4, 2008. *See*

² Since that time, Applicants Carl & Janel Parker have agreed to grant the easement, but required certain conditions from ERHWSC relating to destruction of trees and related concerns. Because ERHWSC has refused to engage in any dialogue with her, Carolina Ruiz has had no opportunity to discuss alternate easement locations.

³ Applicants do not request TCEQ intervention in the easement dispute, and recognize TCEQ's limited jurisdiction as it relates to water service interruption. The factual allegations related to the easements are provided solely for informational purposes, and to demonstrate the lack of any legal basis for ERHWSC's present refusal to provide continuous and adequate service.

Exhibit B. On September 4, 2008, the Presiding District Judge declined to convert the Parkers' TRO into a Temporary Injunction, because he was convinced that the doctrine of primary jurisdiction required that the TCEQ assert initial jurisdiction over this matter, as prescribed by TEX WATER CODE § 13.401(d). Although he did not sign an Order, the Judge allowed the TRO to dissolve based upon what he stated was a limitation of his jurisdiction.

15. On September 17, 2008 even in the face of their pending lawsuit, ERHWSC issued another "Disconnect Notice" to the Parkers, advising that water service will be disconnected on September 30, 2008, unless the "properly executed easement" is received. *See Exhibit C.*

16. This Emergency Application is filed for the purpose of obtaining a TCEQ Order prohibiting ERHWSC from impairing, interrupting, terminating or otherwise interfering with Applicants' retail water service, and compelling ERHWSC to provide continuous and adequate water service to Applicants until further Order of the TCEQ.

17. Applicants, all of whom are elderly individuals, have endured extreme hardship as the result of ERHWSC's actions, which amounts to extortion by the utility in violation of Texas law, and of ERHWSC's Certificate of Convenience and Necessity.

REQUEST FOR EMERGENCY ORDER

18. Pursuant to 30 T.A.C § 291.14(a)(1) Applicants request an emergency order, without hearing, from the Texas Commission on Environmental Quality finding and declaring that:

- a. ERHWSC's interruption of Applicants' water service violates the terms of ERHWSC's State-issued Certificate of Convenience and Necessity (Number 11552), which requires ERHWSC to provide Applicants with "continuous and adequate" water service.
- b. ERHWSC's interruption of Applicants' water service as described herein is unlawful insofar as such interruption violates the provisions of TEX. WATER CODE § 13.250(b-c).

- c. ERHWSC's interruption of Applicants' water service as described herein is unlawful insofar as such interruption violates the provisions of 31 T.A.C. § 291.88.
- d. ERHWSC is compelled to provide to Applicants continuous and adequate water service, irrespective of whether Applicants agree to execute an easement in the form and location requested by ERHWSC.

19. Immediate and irreparable injury, loss, or damage will result to Applicants a hearing can be held on this Application because of the following specific facts: Applicants' health, safety and welfare, as elderly individuals, is severely jeopardized by the fact that there is no running water in their homes, and there exist no alternate sources of domestic and/or potable water service.

20. The injury the applicants will suffer if ERHWSC is not ordered to provide continuous and adequate water service to them is severe loss sanitation, safety, and possibly of their health. In addition, Applicants are unable to bathe, cook or use toilet facilities in their home essentially rendering their residences uninhabitable. This injury is irreparable. The order should be granted without notice in that ERHWSC has wholly refused to voluntarily resume water service.

21. Applicants do not have an adequate remedy at law because there exists no alternate means of obtaining water service to their homes, and the absence of such service has rendered their homes uninhabitable. Additionally, monetary damages cannot compensate Applicants for the jeopardy to their health, safety and welfare posed by ERHWSC's actions.

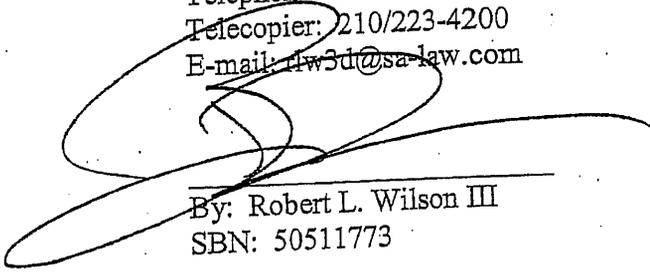
22. ERHWSC will suffer no harm, cost or burden associated with re-instating service to Applicants' homes instant. ERHWSC's facilities and water delivery infrastructure is in place at Applicants homes, and will so remain. Only ERHWSC has access to and control over such facilities.

PRAYER

23. WHEREFORE, Premises Considered, Applicants, *Carl and Janel Parker and Carolina Ruiz*, pray that, in accordance with 30 T.A.C § 291.14(a)(1), move the Texas Commission on Environmental Quality ("TCEQ") to issue an emergency order, without hearing, compelling the **EAST RIO HONDO WATER SUPPLY CORPORATION** ("ERHWSC") to provide continuous and adequate water service, and to immediately cease and desist in all efforts to discontinue water service to qualified customers situated with ERHWSC's certificated area; and adjudge against ERHWSC reasonable attorney's fees and costs, together with all relief to which they may be entitled either at law or in equity.

Respectfully Submitted,

RL WILSON, P.C.
Hartman Centre II
1202 W. Bitters, Suite 1204
San Antonio, Texas 78216
Telephone: 210/223-4100
Telecopier: 210/223-4200
E-mail: rlw3d@sa-law.com



By: Robert L. Wilson III
SBN: 50511773

*Attorney for Applicants,
Carl & Janel Parker and
Carolina S. Ruiz*

EXHIBIT A

SERVICE AGREEMENT

AGREEMENT made this 3 day of August, 1984, between
EAST RIVINGTON WATER SUPPLY CORP., a corporation organized under the

Laws of the State of Texas (hereinafter called the Corporation) and
Carl Parker, (hereinafter called the Member)

Witnesseth:

The Corporation agrees to sell and deliver water and/or sewer service to the Member and Member agrees to purchase and receive water and/or sewer service from the Corporation, in accordance with the bylaws and rules and regulations of the Corporation as amended from time to time by the Corporation.

The Member shall pay the Corporation for service hereunder at the rates and upon the terms and conditions set forth in the rate schedule adopted from time to time by the Corporation's Board of Directors.

The Board of Directors shall have the authority to sell the membership of any member in the event of nonpayment of any charges or assessments owing by said member within thirty (30) days after demand for payment by mail, properly addressed to such delinquent Member. The proceeds of any sale of membership over and above the amount due the Corporation shall be paid to the delinquent Member. In lieu of such sale of membership, the Board of Directors may purchase the membership on behalf of the Corporation at a price determined by the Board to be fair value of the membership, provided that in the event of either a sale of the membership or the purchase thereof by the Corporation the proceeds shall first be applied to the payment of any indebtedness due the Corporation by the delinquent Member.

In the event the Member shall breach this agreement by (1) refusing or failing, without just cause, to connect to the Corporation's facility and use same as soon as the facility is available, or (2) refusing or failing, without just cause, to pay the minimum monthly water rate as established by the Corporation, upon the occurrence of either of said events the Member agrees to pay the Corporation a lump sum of Three Hundred Dollars (\$300.00) as liquidated damages.

All water shall be metered by meters to be furnished and installed by the Corporation. The meter and/or connection is for the sole use of the member or customer and is to serve water to only one dwelling or only one business, and does not permit the extension of pipe or pipes to transfer water from one property to another, nor share, resell, or sub-meter water to any other persons, dwelling, business, property, etc.

In the event the total water supply be insufficient to meet all of the needs of the Members, or in the event there is a shortage of water the Corporation may prorate the water available among the various Members on such basis as is deemed equitable by the Board of Directors, and may also prescribe a schedule of hours covering the use of water for garden purposes by particular Members and require adherence thereto to prohibit the use of water for garden purposes; provided that, if at any time the total water supply be insufficient to all of the needs of all Members, the Corporation must first satisfy all of the needs of all Members for domestic purposes before supplying any water for livestock purposes and must satisfy all the needs of the Members for both domestic and livestock purposes before supplying any water for gardening purposes.

The Member shall install at his own expense a service line from the water meter and or sewer connection to the point of use.

The Member shall hold the Corporation harmless from any and all claims or demands for damage to real or personal property occurring from the point the Member ties on to the sewer line and/or water meter to the final destination of the line installed by Member. ~~The member shall be responsible for the installation and maintenance of the sewer line, including the pipe, manholes, valves, and any other equipment which may be deemed necessary for the Corporation from such installation.~~

The Corporation shall have the right to locate a sewer service connection and/or water service meter and the pipe necessary to connect the meter on the property of the Members at a point to be chosen by the Corporation, and shall have access to its property and equipment located upon Member's premises at all reasonable times for any purpose connected with or in the furtherance of its business operations; and upon discontinuance of service shall have the right to remove any of its property from the Member's premises.

Carroll Parker
Member

ACCEPTED AND APPROVED

President

Form FHA TX 442-11
(Rev. 10-22-71)

SERVICE AGREEMENT

AGREEMENT made this 24 day of January, 19 90 between,
EAST RIO HONDO WATER SUPPLY CORP., a corporation organized under the

laws of the State of Texas (hereinafter called the Corporation) and _____

Arnelio C. Ruiz, (hereinafter called the Member)
Witnesseth:

The Corporation agrees to sell and deliver water and/or sewer service to the Member and Member agrees to purchase and receive water and/or sewer service from the Corporation, in accordance with the bylaws and rules and regulations of the Corporation as amended from time to time by the Corporation.

The Member shall pay the Corporation for service hereunder at the rates and upon the terms and conditions set forth in the rate schedule adopted from time to time by the Corporation's Board of Directors.

The Board of Directors shall have the authority to sell the membership of any member in the event of nonpayment of any charges of assessments owing by said member within thirty (30) days after demand for payment by mail, properly addressed to such delinquent Member. The proceeds of any sale of membership over and above the amount due the Corporation shall be paid to the delinquent Member. In lieu of such sale of membership, the Board of Directors may purchase the membership on behalf of the Corporation at a price determined by the Board to be fair value of the membership, provided that in the event of either a sale of the membership or the purchase thereof by the Corporation the proceeds shall first be applied to the payment of any indebtedness due the Corporation by the delinquent Member.

In the event the Member shall breach this agreement by (1) refusing or failing, without just cause, to connect to the Corporation's facility and use same as soon as the facility is available, or (2) refusing or failing, without just cause, to pay the minimum monthly water rate as established by the Corporation, upon the occurrence of either of said events the Member agrees to pay the Corporation a lump sum of Three Hundred Dollars (\$300.00) as liquidated damages.

All water shall be metered by meters to be furnished and installed by the Corporation. The meter and/or connection is for the sole use of the member or customer and is to serve water to only one dwelling or only one business, and does not permit the extension of pipe or pipes to transfer water from one property to another, nor share, resell, or sub-meter water to any other persons, dwelling, business, property, etc.

Form FHA TX 442-11
(Rev 10-22-71)

In the event the total water supply be insufficient to meet all of the needs of the Members, or in the event there is a shortage of water the Corporation may prorate the water available among the various Members on such basis as is deemed equitable by the Board of Directors, and may also prescribe a schedule of hours covering the use of water for garden purposes by particular Members and require adherence thereto to prohibit the use of water for garden purposes; provided that, if at any time the total water supply be insufficient to all of the needs of all Members, the Corporation must first satisfy all of the needs of all Members for domestic purposes before supplying any water for livestock purposes and must satisfy all the needs of the Members for both domestic and livestock purposes before supplying any water for gardening purposes.

The Member shall install at his own expense a service line from the water meter and or sewer connection to the point of use.

The Member shall hold the Corporation harmless from any and all claims or demands for damage to real or personal property occurring from the point the Member ties on to the sewer line and/or water meter to the final destination of the line installed by Member. ~~The member agrees to grant to the Corporation an easement of right of way for the purpose of installing, maintaining and operating such pipe lines, meters, valves, and any other equipment which may be deemed necessary for the Corporation on such form as is required by the Corporation.~~

The Corporation shall have the right to locate a sewer service connection and/or water service meter and the pipe necessary to connect the meter on the property of the Members at a point to be chosen by the Corporation, and shall have access to its property and equipment located upon Member's premises at all reasonable times for any purpose connected with or in the furtherance of its business operations, and upon discontinuance of service shall have the right to remove any of its property from the Member's premises.

Carolinda S. Hwy
Member

ACCEPTED AND APPROVED

President

EXHIBIT B

CERTIFIED COPY

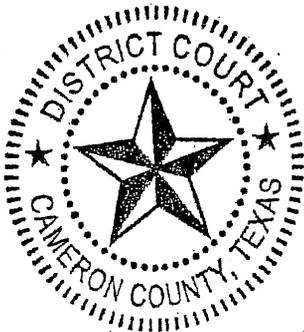
- e. Plaintiffs' injury if the *restraining order* is not issued will outweigh any injury to defendant that may occur if this restraining order is issued.
- f. The restraining order will not disserve the public interest.
- g. The status quo should be maintained in the public interest.
- h. A bond in the amount of \$ 500,000 executed by plaintiffs or their representatives will fully protect defendant's rights until a hearing can be held on plaintiff's application for a temporary injunction.

3. The clerk of this court is therefore ordered to issue a temporary restraining order operative until the date of the hearing hereinafter ordered, ordering *East Rio Hondo Water Supply Corporation, its Board of Directors, employees, agents and/or attorneys to immediately reinstate water service to Plaintiffs' residence located at the West 4.62 acres of Block Two (2), Section Sixteen (16), Unit Number Four (4) Bayview Citrus Groves Subdivision, and cease and desist from impairing, interrupting, terminating or otherwise interfering with Plaintiffs' retail water service to such address* upon the posting by the plaintiff prior to issuance of a bond in the amount of \$ 500,000, payable to defendant, approved and conditioned as required by law.

4. It is, further, ORDERED that Plaintiff's Application for Temporary Injunction be and is hereby set for hearing on the 4th day of Sept., 2008, at 8:30 A.M., in the 357th District Court of Cameron County, Texas.

5. Signed on August 21st, 2008 at _____ o'clock ____ M.

JUDGE PRESIDING



A TRUE COPY I CERTIFY
 AURORA DE LA GARZA CLERK
 DISTRICT COURT CAMERON COUNTY, TEXAS

FILED 1:50 O'CLOCK P M
 AURORA DE LA GARZA, CLERK

AUG 21 2008
 BY Samantha Espinoza
 DEPUTY

AUG 21 2008
 DISTRICT COURT OF CAMERON COUNTY, TEXAS
 DEPUTY

EXHIBIT C

East Rio Hondo Water Supply Corporation
P.O. Box 621 * 206 Industrial Parkway * Rio Hondo, Texas 78583-0521 * (956) 748-3633
"This institution is an equal opportunity provider and employer"

DISCONNECT NOTICE

CERTIFIED MAIL NO. 7007 0710 8000 4653 3187

To: Carl & Janel Parker

Account Number: D-3832

Date: September 17, 2008

Date of Scheduled Disconnection: ~~September 17, 2008~~

You are hereby notified that East Rio Hondo Water Supply Corporation (ERHWSC) has not received an executed Right-of-Way Easement, as requested on numerous occasions. **If our office does not receive the properly executed easement by Tuesday, September 30, 2008, your water service will be disconnected.** To regain service after disconnection, you must provide ERHWSC with the Right-of-Way Easement and pay a \$25.00 reconnect fee under the terms of the Corporation's Tariff. After disconnection, once the Right-of-Way Easement and the \$25.00 are received, your service will be restored. Remember, ERHWSC will gladly meet with you to notarize your document at no charge.

ERHWSC MANAGEMENT
Signed by: Sandy Walcott

Enclosures : Right-of-Way Easement

✓ Via Facsimile: Mr. Trey Wilson
RL Wilson PC

SEP 19 2008 TUE 03:33 PM

CORD ATTORNEYS

P. 002

EAST RIO HONDO WATER SUPPLY CORPORATION

P.O. BOX 621, RIO HONDO, TEXAS 78583
CONTACT PERSON: Sandy Walsdorf, Records Agent (956) 748-3633, Ext. 212

DISCONNECT NOTICE

CERTIFIED MAIL NO. 7007 0710 0000 4652 4326

To: CAROLINA S. RUIZ, ROSE V. & CONRADO L. RODRIGUEZ

Account Number: C-0918

Date: 17 July 2008

Date of Scheduled Disconnection: **TUESDAY, JULY 29, 2008**

You are hereby notified that East Rio Hondo Water Supply Corporation (ERHWSC) has not received an executed Right-of-Way Easement, as requested in three (3) previous letters, the latest dated May 30, 2008. **If our office does not receive the properly executed easement by Monday, July 28, 2008, your water service will be disconnected.**

To regain service after disconnection, you must provide ERHWSC with the Right-Of-Way Easement and pay a \$25.00 reconnect fee under the terms of the Corporation's Tariff. After disconnection, once the Right-of-Way Easement and the \$25.00 are received, your service will be restored.

Remember, ERHWSC will gladly meet with you to notarize your document(s) at no charge.

ERHWSC MANAGEMENT

Signed by: Sandy Walsdorf

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 1, 2008

J. W. Dyer
Dyer & Associates
3700 North Tenth Street, Suite 105
McAllen, Texas 78501

Re: Petition by Customers Requesting an Emergency Order Compelling Continuous and Adequate Water Service by East Rio Hondo Water Supply Corporation (WSC) in Cameron County, Texas, Application No. 36192-C

Dear Mr. Dyer:

On September 26, 2008, the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) received a petition from Carl and Janel Parker and Carolina Ruiz, customers and members of East Rio Hondo WSC, requesting that the TCEQ issue an emergency order compelling the WSC to provide continuous and adequate water service to their properties. According to their petition, the WSC terminated or has stated it will terminate their water service for failure to grant a utility easement across their properties. Ms. Ruiz's service was terminated on July 29, 2008, and the Parkers' service is scheduled to be terminated today.

Because the ED just received the petition four days ago, he has not had the opportunity to fully examine the facts and law involved in this matter nor explore all the options for resolving it. While the matter is being investigated, the Parkers and Ms. Ruiz will be without water service if the WSC carries out its current plan to have service terminated for both properties. Therefore, the ED respectfully requests that East Rio Hondo WSC not terminate the Parkers' water service and restore Ms. Ruiz's water service until the ED has had time to investigate this matter. If you have any questions, please contact Stefanie Skogen in the Environmental Law Division at (512) 239-0575 or by mail using Mail Code 173 in the letterhead address.

Sincerely,

A handwritten signature in cursive script that reads "Doug Holcomb".

Doug Holcomb
Manager, Utilities and Districts Section
Water Supply Division

DH/LF/as

cc: Mailing List

Mailing List for Application No. 36192-C

Mr. Brian E. MacManus, Director of Water and Wastewater
East Rio Hondo WSC
P. O. Box 621
205 Industrial Parkway
Rio Hondo, Texas 78583-0521
Fax: 956/748-0408

Mr. J. W. Dyer
Dyer & Associates
3700 North Tenth Street, Suite 105
McAllen, Texas 78501
Fax: 956/686-6601

Representing: East Rio Hondo WSC

Mr. Robert L. Wilson, III
R. L. Wilson, P.C.
Hartman Centre II
1202 W. Bitters, Suite 1204
San Antonio, Texas 78216
Fax: 210/223-4200

Representing: Carl and Janel Parker
and Carolina Ruiz

J. W. Dyer
J.D., P.E., R.P.L.S.
Member, College of the State Bar of Texas

DYER & ASSOCIATES
Law Firm
3700 North Tenth Street, Suite 105
McAllen, Texas 78501

Telephone 956-686-6606
Telefax 956-686-6601
email@TheDyerFirm.com

October 1, 2008

via Facsimile Transmission Only

(512) 239-6972

Doug Holcomb
Manager, Utilities and Districts Section
Water Supply Division
Texas Commission on Environmental Quality ("TCEQ")
P. O. Box 13087
Austin, Texas 78711-3087

RE: Petition by Customers Requesting an Emergency Order Compelling Continuous and Adequate Water Service by East Rio Hondo Water Supply Corporation (WSC) in Cameron county, Texas; Application No. 36192-C

Dear Mr. Holcomb:

Thank you for your letter in the referenced matter. Please be advised that neither East Rio Hondo Water Supply Corporation nor this office has been provided a copy of the Petition in the referenced matter. Accordingly, please provide me with a copy of the Petition in order that East Rio Hondo Water Supply Corporation might avail itself of the opportunity to respond.

With respect to the TCEQ's request for continued water service related to the Parker and Ruiz properties, the water service will be restored to Ms. Ruiz's property and East Rio Hondo Water Supply Corporation will not terminate service to the Parker property at this time. However, East Rio Hondo Water Supply Corporation reserves the right to terminate such service after 12:00 o'clock noon on October 8, 2008, if the matter has not been resolved. This is to allow the TCEQ sufficient time for investigation and to explore all options for resolving the matter.

By copy of this letter, notice is being given to counsel for the Parkers and Ms. Ruiz of this action and potential termination of service.

I stand ready to assist you in this matter and look forward to receiving a copy of the Petition. Thank you.

Very truly yours,

/s/

J. W. Dyer

cc: Stefanie Skogen
Environmental Law Division
TCEQ - Mail Code 173
via Facsimile Transmission
(512) 239-6972

Trey Wilson
R. L. Wilson, P.C.
Hartman Centre II
12023 W. Bitters, Bldg. 1, Suite 1204
San Antonio, Texas 78216
via Facsimile Transmission Only
(210) 223-4200

Brian Macmanus
Director of Water and Wastewater
East Rio Hondo Water Supply Corporation
via Facsimile Transmission Only
(956) 748-0408

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN EMERGENCY ORDER

granting a request to compel the provision of continuous and adequate service pursuant to section 13.041 of the Texas Administrative Code; TCEQ Docket No. 2008-1646-UCR.

A request for a Commission emergency order to compel East Rio Hondo Water Supply Corporation (WSC), water certificate of convenience and necessity (CCN) No. 11552, to provide continuous and adequate water service to Carl and Janel Parker and Carolina Ruiz in Cameron County, Texas, was presented to the Texas Commission on Environmental Quality (Commission) for approval pursuant to section 13.041(d)(1) of the Texas Water Code and title 30, section 291.14(a)(1) of the Texas Administrative Code.

In early 2008, East Rio Hondo WSC requested a right-of-way easement from the Parkers and Ms. Ruiz across their respective properties. When the customers did not agree to the easements, East Rio Hondo WSC sent them a termination notice and then terminated their water service on July 29, 2008. The Parkers service was temporarily restored and then terminated again around August 13, 2008. The Parker filed suit in district court and obtained a temporary restraining order on August 21, 2008, which required East Rio Hondo WSC to restore service. On September 4, 2008, the district court refused to convert the restraining order into an injunction, stating that the Commission has primary jurisdiction over this issue. The restraining order expired, and East Rio Hondo WSC issued another termination notice to the Parkers, stating it would terminate service without approval of the easement on September 30, 2008.

On September 26, 2008, the Parkers and Ms. Ruiz filed a petition with the Executive Director (ED) of the Commission, requesting that the Commission issue an emergency order to compel East Rio Hondo WSC to provide them with continuous and adequate service. ED staff requested that East Rio Hondo WSC restore Ms. Ruiz's service and not terminate the Parkers service until the matter could be investigated. East Rio Hondo WSC did restore Ms. Ruiz's service and did not terminate the Parkers' service but requested an order from the Commission on this issue.

A retail public utility that possesses or is required to possess a CCN must provide continuous and adequate service in its CCN area. TEX. WATER CODE § 13.250(a). Service may be terminated only where there has been a nonpayment of charges, nonuse, or other similar reason in the usual course of business. TEX. WATER CODE § 13.250(b). The Commission may issue an emergency order to compel a water service provider that has or is required to have a CCN to provide continuous and adequate service if the discontinuance of the service is imminent because of the service provider's actions. TEX. WATER CODE § 13.041(d)(1).

A WSC may require an applicant for service to grant an easement as allowed under applicable law. 30 TEX. ADMIN. CODE § 291.85(d)(3). No where in chapter 13 of the Texas Water Code or title 30, chapter 291 of the Texas Administrative Code does it state that a WSC may terminate a current customer's service for refusing to grant an easement.

The Commission held a hearing on the request at its November 5, 2008, Agenda meeting and found the request has merit.

A CCN holder cannot terminate a current customer's service due to their failure to grant a right-of-way easement across their property. A CCN holder is required to provide continuous and adequate service within its CCN area, and terminating service in that area due to the refusal to

grant an easement is not a termination due to nonpayment, nonuse, or another similar reason in the usual course of business. A WSC may require an applicant for service to grant an easement but may not require the same of a current customer in exchange for the provision of continuous and adequate service.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. East Rio Hondo WSC shall reinstate if it has terminated and/or continue to provide continuous and adequate service to Carl and Janel Parker and Carolina Ruiz.
2. This order shall expire in 180 days, unless extended.
3. The provisions of this order shall be binding on Carl and Janel Parker, Carolina Ruiz, and East Rio Hondo WSC. East Rio Hondo WSC shall give notice of this order to personnel who maintain day-to-day control over the operations referenced in this order.
4. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this order to the parties.
5. If any provision, sentence, clause, or phrase of this order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the order.

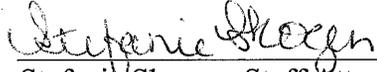
Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

For the Commission

CERTIFICATE OF SERVICE

I certify that on October 20, 2008, a copy of the foregoing document was sent by first class, agency mail, and/or facsimile to the persons on the attached Mailing List.



Stefanie Skogen, Staff Attorney
Environmental Law Division

**Mailing List
East Rio Hondo WSC
TCEQ Docket No. 2008-1646-UCR**

REPRESENTING EAST RIO HONDO

WSC:

J.W. Dyer
Dyer & Associates
3700 North Tenth Street, Suite 105
McAllen, Texas 78501
Phone: (956) 686-6606
Fax: (956) 686-6601

OFFICE OF THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-3300
Fax: (512) 239-3311

REPRESENTING THE PETITIONERS:

Robert L. Wilson III
R L Wilson, P.C.
Hartman Centre II
1202 West Bitters, Building 1, Suite 1204
San Antonio, Texas 78216
Phone: (210) 223-4100
Fax: (210) 223-4200

**REPRESENTING THE OFFICE OF
PUBLIC INTEREST COUNSEL:**

Blas J. Coy, Jr.
Texas Commission on Environmental Quality
Office of Public Interest Counsel, MC-103
P. O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-6363
Fax: (512) 239-6377

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CHIEF CLERKS OFFICE
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QUALITY