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

CHIEF CLERKS OFFICE
2009 MAY -1 AM 10:43
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

May 1, 2009

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 a 180-Day Extension of the Commission's 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 May 20, 2009, agenda item on the above referenced matter:

1. Agenda Executive Summary;

2. Caption;

3. Petition requesting a 180-day extension of the Commission's emergency order compelling East Rio Hondo WSC to provide continuous and adequate water service filed by Carl and Janel Parker and Carolina Ruiz on April 22, 2009; and

4. 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,

Stefanie Skogen

Stefanie Skogen
Staff Attorney
Environmental Law Division

Enclosure

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

Attachment 1

Agenda Executive Summary

Texas Commission on Environmental Quality
INTEROFFICE MEMORANDUM

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 APR 31 AM 10: 31
CHIEF CLERKS OFFICE

TO: Texas Commission on Environmental Quality **DATE:** May 1, 2009

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 a 180-Day Extension of the Commission's Emergency Order Compelling Continuous and Adequate Water Service by East Rio Hondo Water Supply Corporation (WSC).

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 MAY -1 AM 10: 45
CHIEF CLERKS OFFICE

DESCRIPTION OF PETITION

Petitioners:	Carl and Janel Parker and Carolina Ruiz
Regulated Activity:	Retail water utility service
Type of Petition:	Request for an extension of a Texas Commission on Environmental Quality (Commission) emergency order
Commission Action:	Hearing regarding whether the Commission should extend its emergency order
Authority:	Texas Water Code § 13.041(d)(1) and 30 Texas Administrative Code §§ 35.22 and 291.14(a)(1)

FACTUAL BACKGROUND

Carl and Janel Parker and Carolina Ruiz are water service customers of East Rio Hondo WSC, water certificate of convenience and necessity No. 11552. In 2008, 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 for various periods of time. 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. The Commission granted the customers' request and issued an emergency order compelling the provision of service on November 10, 2008, which will expire after 180 days.

On April 22, 2009, the customers filed a second petition requesting that the emergency order be continued for another 180 days. According to the petition, the easement dispute between East Rio Hondo WSC and the customers continues and has resulted in multiple district court cases,

two condemnation proceedings against both sets of customers and a suit for breach of contract and related damages against Ms. Ruiz. The customers request continued protection of their right to water service during the pendency of these district court cases by extending the expiration date of the emergency order previously issued by the Commission.

LEGAL AUTHORITY

Under title 30, section 35.22 of the Texas Administrative Code, an emergency order issued by the Commission can be renewed for an additional period not to exceed 180 days by submittal of a new application.

BASIS FOR STAFF RECOMMENDATION

The following item was considered in developing the staff's recommendation:

1. Request for a 180-day extension of the Commission's emergency order compelling continuous and adequate water service by East Rio Hondo WSC filed by Carl and Janel Parker and Carolina Ruiz on April 22, 2009 (Application No. 36390–C).

STAFF RECOMMENDATION

The ED recommends that the Commission grant the customers' request to extend the emergency order by 180 days. The easement dispute between the parties that is related to the emergency order is ongoing, and the emergency order provides guidance to the parties regarding the provision of water service by East Rio Hondo WSC to its customers while they attempt to resolve their dispute.

STAFF CONTACTS

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

Attachment 2

Caption

CAPTION
EAST RIO HONDO WSC
Application No. 36390-C

TCEQ Docket No. 2008-1646-UCR. Consideration of a request for a 180-day extension of the Commission's emergency order compelling the provision of continuous and adequate water service by East Rio Hondo Water Supply Corporation in Cameron County, Texas, pursuant to title 30, section 35.22 of the Texas Administrative Code. (Stefanie Skogen, Lisa Fuentes)

Attachment 3

Petition

TCEQ Docket No. 2008-1646-UCR

IN RE:	§	**BEFORE THE**
	§	
EAST RIO HONDO WATER	§	**TEXAS COMMISSION ON**
SUPPLY CORPORATION,	§	
CCN No. 11552	§	**ENVIRONMENTAL QUALITTY**

APPLICATION TO EXTEND EMERGENCY ORDER

COME NOW, Applicants, CARL & JANEL PARKER ("Parker") and CAROLINA S. RUIZ ("Ruiz"), who, pursuant to 30 T.A.C. § 35.22, 30 T.A.C. § 291.14(a)(1), and 30 T.A.C. § 291.114(b)(4), file this, their Application to Extend the Emergency Order issued by the Texas Commission on Environmental Quality ("TCEQ") on November 10, 2008. In support hereof, Applicants show as follows:

1. On November 10, 2008, the Honorable Buddy Garcia, Chairman of the TCEQ, signed the Emergency Order attached hereto as ***Exhibit A***. Said Order directed Respondent, East Rio Hondo Water Supply Corporation ("ERHWSC") to provide continuous and adequate water service to Applicants for a period of 180 days. As the Commission may recall, said Order was issued in response to ERHWSC's intentional interruption of Applicants' water service based upon Applicants' failure to grant an easement, as requested by ERHWSC. A hearing upon Applicants' request for said Emergency Order was conducted at the Commissioners' November 5, 2008 Agenda Meeting.

2. An easement dispute between Applicants and ERHWSC is at the heart of the prior water service interruption, and said dispute remains the subject of litigation pending in the 357th District Court of Cameron County, Texas under Cause No. 2008-08-4655, as well as two separate condemnation proceedings filed by ERHWSC under Cause Nos. 2008-CCL-01331-B (Parker) and 2008-CCL-01334-B (Ruiz), respectively.[1] In addition, ERHWSC has filed a suit for breach of contract and related damages against Ruiz, which suit is pending in the 197th District Court of Cameron County, Texas under Cause No. 2008-11-005967-C. This suit, too, arises from the easement dispute between ERHWSC and its customers.

3. Upon final judicial action, the foregoing bodies of litigation are expected to be dispositive of the easement dispute between ERHWSC and Applicants. However, such litigation does not encompass Applicants' *present right* to continuous and adequate water service during the pendency of the various suits. In recognition of this fact – and for the express reason of removing ERHWSC's leverage and "hammer" in the litigation – the Honorable Commissioners of the TCEQ unanimously moved to issue the Emergency Order attached hereto in November 2008.

[1] The condemnation suits are pending in the County Courts at law of Cameron County.

4. The above-referenced litigation has been prosecuted diligently. However, said suits will not be fully resolved within the 180 day period governed by the November 10, 2008 Commission Order. Accordingly, there remains a significant risk that – upon expiration of the Emergency Order but before final court action – ERHWSC will, once again, interrupt Applicants' water service in violation of Tex. Water Code § 13.250.

5. 30 T.A.C. § 35.22 provides:

> **"Unless otherwise provided by this chapter, an emergency order issued under this chapter is limited to a reasonable time specified by the order, which may not exceed 180 days and may be renewed once for an additional period not to exceed 180 days by submittal of a new application."**

6. So as to preserve the status quo during the pendency of the District Court litigation – and to ensure that ERHWSC does not willfully interrupt Applicants' water service before final resolution of such litigation – Applicants move the TCEQ to extend the expiration of its Emergency Order of November 10, 2008, for an additional period of 180 days.

7. This Application is made in the interests of justice, and not solely for the purposes of delay.

8. Applicants request IMMEDIATE consideration of this Application by the TCEQ so as to avoid any lapse in water service. However, in the event that Respondent, ERHWSC, is willing to enter into a written agreement – enforceable by Court Order pursuant to TEX.R.CIV.P. 11 – not to interrupt Applicants' water service until entry of Final, unappealable Orders of the Court, Applicants will voluntarily dismiss this Application to Extend.

9. Applicants respectfully pray for issuance of an Order by the TCEQ extending the expiration of the November 10, 2008 Emergency Order for a period of 180 days beyond its current term, and for all such further relief to which they may show themselves entitled.

Respectfully Submitted,

R L WILSON, P.C. LAW FIRM
Hartman Centre II
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Telephone: 210/223-4100
Telecopier: 210/223-4200
E-mail: rlw3d@sa-law.com

By: Robert L. Wilson III
SBN: 50511773

Attorney for Applicants

CERTIFICATE OF SERVICE

By my signature below, I certify that the foregoing document was, this 22nd day of April, 2009, sent to all counsel of record, in accordance with Texas Rule of Civil Procedure 21, by such method as is prescribed by Rule 21a.

FOR THE RESPONDENT:

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Jeffrey D. Roerig
Roerig, Oliveira & Fisher, L.L.P.
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Via facsimile: 956-542-0016

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Lisa Fuentes, Technical Staff
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FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
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FOR THE CHIEF CLERK:
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Texas Commission on Environmental Quality
P.O. Box 13087
Office of Chief Clerk MC-105
Austin, Texas 78711-3087

Robert L. Wilson III

EXHIBIT

A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

THE STATE OF TEXAS
COUNTY OF TRAVIS
I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality document, which is filed in the permanent records of the Commission.
Given under my hand and the seal of office on
NOV 12 2008
LaDonna Castanuela, Chief Clerk
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 Water 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: NOV 10 2008

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Buddy Garcia

Buddy Garcia, Chairman

MAILING LIST
for
East Rio Hondo Water Supply Corporation
TCEQ Docket No. 2008-1646-UCR

FOR THE RESPONDENT:

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Brian E. MacManus
Director of Water and Wastewater
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FOR THE PETITIONERS:

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FOR THE EXECUTIVE DIRECTOR:

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FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
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FOR THE CHIEF CLERK:

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

Attachment 4

Proposed Order

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER granting a request to extend a Commission emergency order by 180 days pursuant to title 30, section 35.22 of the Texas Administrative Code; TCEQ Docket No. 2008-1646-UCR.

A request for a 180-day extension of the Texas Commission on Environmental Quality's (Commission's) emergency order compelling East Rio Hondo Water Supply Corporation (WSC), water certificate of convenience and necessity 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 Commission for approval pursuant to section 13.041(d)(1) of the Texas Water Code and title 30, sections 35.22 and 291.14(a)(1) of the Texas Administrative Code.

The Commission originally issued an emergency order in this matter on November 10, 2008, for a period of 180 days. Due to ongoing litigation between the parties that is related to the emergency order, the Parkers and Ms. Ruiz filed an application on April 22, 2009, requesting that the emergency order be extended for another 180 days to provide continued protection of their water service.

An emergency order may be renewed once for an additional period not to exceed 180 days by submittal of a new application. 30 TEX. ADMIN. CODE § 35.22.

The Commission held a hearing on the request at its May 20, 2009, Agenda meeting and found the request has merit. Extending the emergency order for another 180 days will provide

guidance to all parties regarding the provision of water service by East Rio Hondo WSC to its customers while the parties attempt to resolve their dispute.

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

1. The emergency order issued on November 10, 2008, is renewed for an additional 180 days.
2. 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.
3. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this order to the parties.
4. 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 May 1, 2009, 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 MAY -1 AM 10:45
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