

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

September 4, 2009

Via Certified Mail, Return Receipt Requested
Via First Class Mail, Postage Pre-Paid

Darryl Winstead, Owner
San Gabriel River Ranches and Indian Springs Subdivision
P.O. Box 728
Liberty Hill, Texas 78642-0728
Article Number 7003 0500 0002 9942 1334

Kerry Russell, Attorney
Russell & Rodriguez, L.L.P.
1633 Williams Drive
Building 2, Suite 200
Georgetown, Texas 78628
Article Number 7003 0500 0002 9942 1341

Re: Darryl Winstead dba San Gabriel River Ranches and dba Indian Springs Subdivision
Docket No. 2009-1017-UCR-E

Dear Mr. Winstead and Mr. Russell:

On August 10, 2009, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued an Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13; TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made subject to this order is Darryl Winstead dba San Gabriel River Ranches and dba Indian Springs Subdivision. The Emergency Order appoints Aqua Utilities, Inc. aka Aqua Texas, Inc. as temporary manager of the public water systems located at County Road 214, 3.3 miles north of Highway 29, north of Liberty Hill, Williamson County, Texas and North of Farm-to-Market Road 1431, 3.7 miles west of United States Highway 183, Travis County, Texas.

Pursuant to TEX. WATER CODE § 5.504 the Commission will consider whether to affirm, modify, or set aside the Emergency Order issued on August 10, 2009. **Therefore, the Executive Director has scheduled this matter to be presented at the Commission's regular Agenda meeting on September 23, 2009.** The Agenda begins at **9:30 a.m.** and will be held at **TCEQ Park 35**

Mr. Winstead and Mr. Russell
September 4, 2009
Page 2

Complex, 12118 North I-35, Building E, Room 201 S, Austin, Texas. The enclosed documentation is provided to you as a record of the materials which have been submitted to the Chief Clerk's Office and will be used in the Commission's Agenda process.

Additionally, please be advised that, pursuant to 30 TEX. ADMIN. CODE § 35.25(c), **you may request at the time of the Agenda on September 23, 2009 an evidentiary hearing on the issuance of the Emergency Order.** An Administrative Law Judge will be available to conduct a hearing at Agenda on **September 23, 2009**, should you so request. Should you have any questions, please contact the TCEQ Litigation Division at (512) 239-3400.

Sincerely,



Dinniah C. Tadema
Litigation Division MC 175

Enclosures

cc: Mr. Paul M. Terrill, Attorney, The Terrill Firm, 810 West 10th Street, Austin, Texas 78701
Ms. Carolyn Runyon, Austin Regional Office, MC R-11
Mr. Epifanio Villarreal, Enforcement Division, R-14
Mr. Terence Webb, Receivership Coordinator, MC 153
Mr. Blas Coy, Public Interest Counsel, MC 103
Office of the Chief Clerk, MC 105
Ms. Lena Roberts, Agenda Coordinator, Litigation Division, MC 175

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1017-UCR-E TCEQ ID: RN101250306; RN100825082; RN101282986 CASE NO.: 35264
RESPONDENT NAME: DARRYL WINSTEAD DBA SAN GABRIEL RIVER RANCHES AND DBA INDIAN SPRINGS SUBDIVISION

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input checked="" type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITES WHERE VIOLATIONS OCCURRED: County Road 214, 3.3 miles north of Highway 29, north of Liberty Hill, Williamson County (San Gabriel Utility) and North of Farm-to-Market Road 1431, 3.7 miles west of United States Highway 183, Travis County (Indian Springs Utility)</p> <p>TYPE OF OPERATION: Public water supply and retail public utility (Utilities)</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: Eleven complaints were received alleging that water outages were occurring at the San Gabriel Utility between June 24, 2009 and July 1, 2009. There is no record of additional pending enforcement actions regarding these Utilities.</p> <p>INTERESTED PARTIES: The complainants have not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: Pursuant to TEX. WATER CODE § 7.075, publication is not required for an Emergency Order.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Dinniah C. Tadema, Litigation Division, MC 175, (512) 239-0617 TCEQ Enforcement Coordinator: Epifanio Villarreal, Water Enforcement Section, MC R-14, (361) 825-3425 TCEQ Regional Contact: Carolyn Runyon, Austin Regional Office, MC R-11, (512) 339-7065 Respondent: Darryl Winstead, P.O. Box 728, Liberty Hill, Texas 78642-0728 Respondent's Attorney: Kerry Russell, Russell & Rodriguez, L.L.P., 1633 Williams Drive, Building 2, Suite 200, Georgetown, Texas 78628</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: June 24, 2009</p> <p>Dates of Investigation Relating to this Case: June 25, 2009</p> <p>Date of NOVs Relating to this Case: July 10, 2009</p> <p>Background Facts: On August 3, 2009 and August 5, 2009, Darryl Winstead submitted letters to the TCEQ stating that he is abandoning the San Gabriel Utility and the Indian Springs Utility.</p> <p>During an inspection at the San Gabriel Utility conducted on June 25, 2009, a TCEQ Austin Regional Office investigator documented that Mr. Winstead: 1) failed to provide the minimum required pressure of 35 pounds per square inch ("psi"); 2) failed to provide continuous and adequate supply of water for all reasonable consumer uses; and 3) failed to employ an operator with an applicable, valid license issued by the Commission to operate the production, treatment, and distribution facilities at the San Gabriel Utility.</p> <p>On June 30, 2009, Mr. Winstead appeared in an Emergency Agenda before the Commission and requested an Emergency Order to compel Chisholm Trail Special Utility District to provide an emergency interconnection for temporary water service for the San Gabriel River Ranches subdivision. Mr. Winstead alleged that the groundwater pump systems that supply water to the San Gabriel River Ranches subdivision ceased operating due to low levels of water and that the customers in the subdivision are no longer receiving any water service from the San Gabriel Utility.</p> <p>A potential health hazard exists as a result of the abandonment of the Utilities. Immediate repairs on the Utilities are necessary to ensure the quality of the water in the State and to ensure the Utilities operate in a safe manner and meet requirements in the Texas Water Code, the Texas Health & Safety Code, and TCEQ rules. Therefore, a temporary manager is necessary to assume operations of the Utilities to ensure the quality of the water meets TCEQ rule requirements and complies with the Texas Water Code as well as the Texas Health & Safety Code, and is safe for public use and consumption.</p> <p>On August 10, 2009, the Executive Director issued an Emergency Order appointing Aqua Utilities, Inc. aka Aqua Texas, Inc. (Aqua Texas) as the Temporary Manager of the Utility.</p> <p>The Executive Director is requesting approval of the Emergency Order appointing Aqua Texas as the Temporary Manager for 180 days.</p> <p>UCR:</p> <p>Abandoned operations [TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142(c)].</p>	<p>N/A</p>	<p>Ordering Provisions:</p> <ol style="list-style-type: none"> 1. Immediately upon the effective date of this Order, Aqua Texas shall serve as temporary manager until 180 days after the effective date of the Emergency Order, i.e. February 6, 2010. 2. Aqua Texas is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utilities and the provision of continuous and adequate services to customers, including the powers and duties set forth in TEX. WATER CODE § 13.4132. 3. Aqua Texas shall give the Executive Director an inventory of all property received for the San Gabriel Utility and Indian Springs Utility within sixty (60) days of the effective date of this Order. 4. Aqua Texas's requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c). 5. Aqua Texas's compensation will come from San Gabriel Utility revenues and Indian Springs Utility revenues in the amount of eleven dollars and fifty cents (\$11.50) per month per connection. 6. Aqua Texas shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF	§	BEFORE THE
AN ENFORCEMENT ACTION AGAINST	§	
DARRYL WINSTEAD DBA SAN	§	
GABRIEL RIVER RANCHES AND DBA	§	
INDIAN SPRINGS SUBDIVISION;	§	TEXAS COMMISSION ON
RN101250306	§	
RN100825082	§	
RN101282986	§	
CCN10320	§	ENVIRONMENTAL QUALITY

**ORDER MODIFYING EMERGENCY ORDER
DOCKET NO. 2009-1017-UCR-E**

On September 23, 2009 the Texas Commission on Environmental Quality ("TCEQ" or "Commission") considered whether to affirm, modify, or set aside an Emergency Order in the matter regarding Darryl Winstead dba San Gabriel River Ranches and dba Indian Springs Subdivision ("Mr. Winstead"). The Emergency Order was issued by the Executive Director without a hearing on August 10, 2009. The Emergency Order and the notice of the September 23, 2009 agenda hearing to affirm, modify, or set aside the Emergency Order were sent by certified mail return receipt requested, and first class mail, postage prepaid to the last known address of Mr. Winstead, on August 10, 2009. The Emergency Order and the notice of the September 23, 2009 agenda hearing to affirm, modify, or set aside the Emergency Order were sent by facsimile, UPS Express Delivery, certified mail return receipt requested, and first class mail, postage prepaid to the last known address of Kerry Russell, Mr. Winstead's attorney, on August 10, 2009. The Commission finds that the Executive Director appropriately issued the Emergency Order and that the requirements for an emergency order found in Chapters 5 and 13 of the Texas Water Code have been satisfied.

**THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ORDERS THAT:**

The August 10, 2009 Emergency Order, attached hereto as Exhibit A and incorporated into this Order by reference, is affirmed with the following modifications:

1. Findings of Fact, Paragraph 14 shall be changed to reference the Utilities instead of the Utility. The new paragraph shall read as follows, "Because the Utilities have been abandoned, this matter will be referred to the Attorney General's office so that a petition may be filed to appoint a receiver under TEX. WATER CODE § 13.412 to guarantee continuous and adequate service to customers of the Utilities."

2. Conclusion of Law, Paragraph 9 shall be changed to reference the Utilities' headquarters instead of the Utility's headquarters. The new paragraphs shall read as follows, "Notice of the emergency order, once it has been issued, is adequate if the notice is mailed or hand delivered to the last known address of the Utilities' headquarters, in accordance with TEX. WATER CODE § 5.507. The last known address of Mr. Winstead is set forth in Finding of Fact No. 6."

3. Order, Paragraph 3 shall be changed to reference the San Gabriel Utility, the Indian Springs Utility, and the Utilities instead of the Utility. The new paragraph shall read as follows, "Aqua Texas shall serve as temporary manager of the San Gabriel Utility and Indian Springs Utility until such time as a receiver is appointed to operate the Utilities by a court of proper jurisdiction, or 180 days after the effective date of this Order i.e. February 6, 2010, whichever occurs first."

4. Order, Paragraph 4 shall be changed to reference the Utilities instead of the Utility. The new paragraph shall read as follows, "Aqua Texas is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utilities and the provision of continuous and adequate services to customers, including the powers and duties set forth in TEX. WATER CODE § 13.4132."

5. Order, Paragraph 5 shall be changed to reference both the San Gabriel Utility and Indian Springs Utility instead of the Utility. The new paragraph shall read as follows, "Aqua Texas shall give the Executive Director an inventory of all property for the San Gabriel Utility and Indian Springs Utility received within sixty (60) days of the effective date of this Order."

6. Order, Paragraph 7 shall be changed to reference the San Gabriel Utility revenues and the Indian Springs Utility revenues instead of the Utility revenues. The new paragraph shall read as follows, "Aqua Texas's compensation will come from San Gabriel Utility revenues and Indian Springs Utility revenues in the amount of eleven dollars and fifty cents (\$11.50) per month per connection."

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Exhibit A

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

August 10, 2009

Darryl Winstead, Owner
San Gabriel River Ranches and Indian Springs Subdivision
P.O. Box 728
Liberty Hill, Texas 78642-0728
Via Certified Mail Return Receipt Requested Article No. 7002 2030 0005 7057 8819
Via First Class Mail, Postage Pre-Paid

Kerry Russell, Attorney
Russell & Rodriguez, L.L.P.
1633 Williams Drive
Building 2, Suite 200
Georgetown, Texas 78628
Via Facsimile (866) 929-1641
Via UPS Express Delivery, Tracking No. 1Z 894 9WR 22 1000 0496
Via Certified Mail Return Receipt Requested Article No. 7002 2030 0005 7057 8826
Via First Class Mail, Postage Pre-Paid

Re: Darryl Winstead dba San Gabriel River Ranches and dba Indian Springs Subdivision
Docket No. 2009-1017-UCR-E
Notice of Emergency Order and of Hearing to Modify, Affirm, or Set Aside

Dear Mr. Winstead and Mr. Russell:

On August 10, 2009, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued an emergency order appointing Aqua Utilities, Inc. aka Aqua Texas, Inc. ("Aqua Texas") as temporary manager of San Gabriel River Ranches and Indian Springs Subdivision Utilities pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291 a copy of which is enclosed. The party made the subject to this order is Darryl Winstead dba San Gabriel River Ranches and dba Indian Springs Subdivision.

Pursuant to TEX. WATER CODE § 5.504 the Commission will consider whether to affirm, modify, or set aside the Emergency Order issued on August 10, 2009. Therefore, the Executive Director has scheduled this matter to be presented at the Commission's regular Agenda meeting on

Mr. Darryl Winstead
Mr. Kerry Russell
August 10, 2009
Page 2

September 23, 2009. The Agenda begins at **9:30 a.m.** and will be held at **TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201 S, Austin, Texas.** A copy of the record of the materials which have been submitted to the Chief Clerk's Office and will be used in the Texas Commission on Environmental Quality Agenda process will be provided to you at a later time.

Additionally, please be advised that, pursuant to 30 TEX. ADMIN. CODE § 35.25(c), **you may request at the time of the Agenda an evidentiary hearing on issuance of the Emergency Order.** An Administrative Law Judge will be available to conduct a hearing at Agenda on September 23, 2009, should you so request. Should you have any questions, please contact the TCEQ Litigation Division at (512) 239-3400.

Sincerely,



Dimmiah C. Tadema
Attorney
Litigation Division

cc: Carolyn Runyon, Austin Regional Office, MC R-11
Shea Cockrell, Austin Regional Office, MC R-11
Epi Villarreal, Enforcement Coordinator, MC R-14
Paul M. Terrill, Attorney, The Terrill Firm, 810 West 10th Street, Austin, Texas 78701
(Via Facsimile 474-9888)

Enclosures

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY



2009 AUG 10 PM 1:39

CHIEF CLERKS OFFICE

TCEQ DOCKET NO. 2009-1017-UCR-E

IN THE MATTER OF	§	BEFORE THE
AN ENFORCEMENT ACTION AGAINST	§	
DARRYL WINSTEAD DBA SAN	§	
GABRIEL RIVER RANCHES AND DBA	§	
INDIAN SPRINGS SUBDIVISION;	§	TEXAS COMMISSION ON
RN101250306	§	
RN100825082	§	
RN101282986	§	
CCN10320	§	ENVIRONMENTAL QUALITY
	§	

**EMERGENCY ORDER
APPOINTING A TEMPORARY MANAGER
OF A WATER UTILITY**

On August 10, 2009, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued this Emergency Order pursuant to TEX. WATER CODE §§ 5.501, 5.507, and 13.4132, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made subject to this order is Darryl Winstead dba San Gabriel River Ranches and dba Indian Springs Subdivision ("Mr. Winstead").

**I.
FINDINGS OF FACT**

1. Mr. Winstead owns and operates two public water systems referred to collectively as (the "Utilities"). Mr. Winstead owns San Gabriel River Ranches which is located at County Road 214, 3.3 miles north of Highway 29, north of Liberty Hill, Williamson County, Texas (the "San Gabriel Utility"). In addition, Mr. Winstead owns Indian Springs Subdivision which is located North of Farm-to-Market Road 1431, 3.7 miles west of United States Highway 183, Travis County, Texas ("Indian Springs Utility").
2. The San Gabriel Utility provides potable water service for compensation to approximately 205 service connections, serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the San Gabriel Utility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(63).

3. The Indian Springs Utility provides potable water service for compensation to approximately 51 service connections, serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Indian Springs Utility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(63).
4. The Utilities operate pursuant to Certificate of Convenience and Necessity No. 10320.
5. The TCEQ alleges that Mr. Winstead refuses to make necessary repairs to the Utilities to ensure continuous and adequate water service. (See "Attachment A")
6. Commission records show that the mailing address for the Utilities' headquarters is P.O. Box 728, Liberty Hill, Texas, 78642-0728.
7. No other source of water is available to the more than 768 people whose water is supplied by Mr. Winstead.
8. During an inspection at the San Gabriel Utility conducted on June 25, 2009, a TCEQ Austin Regional Office investigator documented and now alleges that Mr. Winstead:
 - a. Failed to provide the minimum required pressure of 35 pounds per square inch ("psi") in violation of 30 TEX. ADMIN. CODE § 290.46(r). Specifically, the pressure was 20 psi at one location and 23 psi at a second location.
 - b. Failed to provide continuous and adequate supply of water for all reasonable consumer uses in violation of 30 TEX. ADMIN. CODE § 291.93. Specifically, well production is less than the required minimum production and water outages were documented for more than 4 hours each day from June 20, 2009 through June 29, 2009.
 - c. Failed to employ an operator with an applicable, valid license issued by the Commission to operate the production, treatment, and distribution facilities at the San Gabriel Utility, in violation of 30 TEX. ADMIN. CODE 290.46(e). Specifically, Mr. Winstead's license to operate a water system expired on May 16, 2009.
9. On June 30, 2009, Mr. Winstead appeared in an Emergency Agenda before the Commission and requested an Emergency Order to compel Chisholm Trail Special Utility District to provide an emergency interconnection for temporary water service for the San Gabriel River Ranches subdivision. Mr. Winstead alleged that the groundwater pump systems that supply water to the San Gabriel River Ranches subdivision have ceased operating due to low levels of water and that the customers in the subdivision are no longer receiving any water service from the San Gabriel Utility.

10. On August 3, 2009 and August 5, 2009, Mr. Winstead submitted letters to the TCEQ stating that he is abandoning the San Gabriel Utility and the Indian Springs Utility. ("Attachment A").
11. A potential health hazard exists as a result of the abandonment of the Utilities. Immediate repairs on the Utilities are necessary to ensure the quality of the water in the State and to ensure the Utilities operate in a safe manner and meet requirements in the Texas Water Code, the Texas Health & Safety Code, and TCEQ rules. Therefore, a temporary manager is necessary to assume operations of the Utilities to ensure the quality of the water meets TCEQ rule requirements and complies with the Texas Water Code as well as the Texas Health & Safety Code, and is safe for public use and consumption.
12. Aqua Utilities, Inc. aka Aqua Texas, Inc. ("Aqua Texas") has agreed to serve as temporary manager of the Utilities and its mailing address is 1106 Clayton Lane, Suite 400W, Austin, Texas, 78723. Its telephone number is (512) 990-4400 ext. 104.
13. This Order is necessary to ensure that continuous and adequate water service is provided to the customers of the Utilities to effectuate the purposes of the Texas Water Code and the Texas Health and Safety Code.
14. Because the Utilities have been abandoned, this matter will be referred to the Attorney General's office so that a petition may be filed to appoint a receiver under TEX. WATER CODE § 13.412 to guarantee continuous and adequate service to customers of the Utility.

II. CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1, 2, 3, and 4, Mr. Winstead operates two retail public utilities as defined in TEX. WATER CODE § 13.002(19).
2. Findings of Fact Nos. 5, 7, 8, 9, 10, and 11 show that the Utilities have been abandoned and that the appointment of temporary manager is justified as defined in TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142(c).
3. TEX. WATER CODE § 13.4132 authorizes the Commission to appoint a willing person to temporarily manage and operate a utility if the utility has discontinued or abandoned operations or the provision of services or has been or is being referred to the attorney general for the appointment of a receiver under TEX. WATER CODE § 13.412.

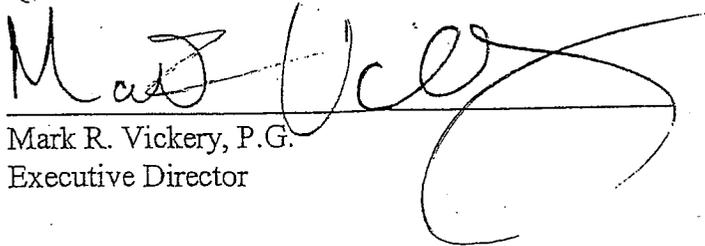
4. TEX. WATER CODE § 5.507 provides that the Commission may issue an emergency order appointing a willing person to temporarily manage and operate a utility under TEX. WATER CODE § 13.4132.
5. This Emergency Order may be issued without notice or hearing pursuant to TEX. WATER CODE § 5.501(b) and 30 TEX. ADMIN. CODE § 35.25.
6. TEX. WATER CODE § 5.501(c) and 30 TEX. ADMIN CODE §§ 35.12 and 291.143(a) authorize the TCEQ Executive Director to issue this Emergency Order.
7. TEX. WATER CODE §§ 5.501 and 5.507 and 30 TEX. ADMIN. CODE § 291.143(a) authorize the Executive Director to appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations or which is being referred to the office of the Attorney General for the appointment of the receiver.
8. TEX. WATER CODE § 13.4132 provides to the temporary manager the powers and duties necessary to ensure continued operation of the utility and the provision of continuous and adequate services to customers including the power and duty to read meters, bill for services, collect revenues, disburse funds, access all system components, and request rate increases.
9. Notice of the emergency order, once it has been issued, is adequate if the notice is mailed or hand delivered to the last known address of the Utility's headquarters, in accordance with TEX. WATER CODE § 5.507. The last known address of Mr. Winstead is set forth in Finding of Fact No. 6.

III. ORDER

1. This Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. August 10, 2009.
2. Immediately upon the effective date of this Order, Aqua Texas is hereby appointed to temporarily manage and operate the Utilities.
3. Aqua Texas shall serve as temporary manager until such time as a receiver is appointed to operate the Utility by a court of proper jurisdiction, or 180 days after the effective date of this Order i.e. February 6, 2010, whichever occurs first.
4. Aqua Texas is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utility and the provision of continuous and adequate services to customers, including the powers and duties set forth in TEX. WATER CODE § 13.4132.

5. Aqua Texas shall give the Executive Director an inventory of all Utility property received within sixty (60) days of the effective date of this Order.
6. Aqua Texas's requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c).
7. Aqua Texas's compensation will come from Utility revenues in the amount of eleven dollars and fifty cents (\$11.50) per month per connection.
8. Aqua Texas shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).
9. Pursuant to TEX. WATER CODE § 5.504, the Commission will consider whether to affirm, modify or set aside this Order at its regular Agenda meeting on September 23, 2009 at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas.
At the September 23, 2009 Agenda meeting, Mr. Winstead may request an evidentiary hearing pursuant to 30 TEX. ADMIN. CODE § 35.25(c) for the purpose of presenting evidence and cross-examining witnesses regarding whether to affirm, modify, or set aside this Emergency Order. An Administrative Law Judge will be present at the Agenda to immediately hear the matter should a hearing be requested.
10. The Chief Clerk shall provide a copy of this Order to each of the parties.

TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY



Mark R. Vickery, P.G.
Executive Director

Attachment A

R&R
RUSSELL & RODRIGUEZ, L.L.P.
ATTORNEYS AT LAW

1633 WILLIAMS DRIVE
BUILDING 2, SUITE 200
GEORGETOWN, TEXAS 78628

Email: krussell@txadminlaw.com

PHONE (512) 930-1317
FAX (866) 929-1641
WWW.TXADMINLAW.COM

August 3, 2009

VIA HAND DELIVERY

Mr. Mark Vickery
Executive Director (MC-101)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: CCN No. 10320

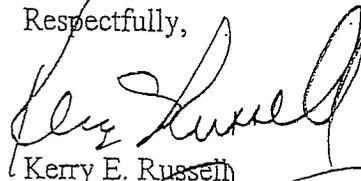
Dear Mr. Vickery:

As you are aware, we represent Darryl Winstead in regard to the above referenced CCN. Based on our meeting with your staff on July 30, 2009, this letter is Mr. Winstead's request that you appoint a Temporary Manager, under Tex. Water Code § 13.4132, to operate the two water systems covered by this CCN. Specifically, this request applies to both the San Gabriel River Ranches system and the Indian Springs Subdivision system. Since Mr. Winstead has reached an agreement in principle for Aqua Texas to take over these systems, we request that you designate Aqua Texas as the Temporary Manager.

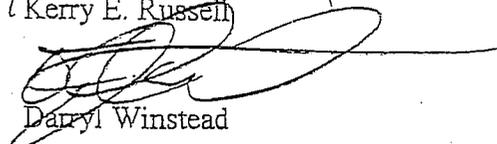
This letter also serves as Mr. Winstead's request that the TCEQ begin the process of having CCN No. 10320 placed into receivership through the Attorney General's Office since he is no longer able to operate the systems due to significant financial and operational issues. It is our understanding from extensive discussions with your staff that this is the only option available whereby Mr. Winstead can give the systems to a new operator if the deal with Aqua Texas is not finalized. If the deal with Aqua Texas is finalized, then an STM application will be filed and the receivership action will not be necessary.

We would appreciate your immediate attention to this matter so both subdivisions can continue to receive water service. Both Mr. Winstead and I appreciate the time you and your staff have spent in responding to this situation.

Respectfully,



Kerry E. Russell



Darryl Winstead

Mr. Mark Vickery
August 3, 2009
Page 2 of 2

cc: Representative Dan Gattis
Williamson County Judge Dan Gattis
Williamson County Commissioner Cynthia Long
Mr. Jim Sallans
~~Ms. Dinniah Chahin~~
Mr. Todd Chenowith
Mr. Doug Holcomb
Mr. Glen Lewis
Mr. Geoffrey Kirchbaum

R&R
RUSSELL & RODRIGUEZ, L.L.P.
ATTORNEYS AT LAW

1633 WILLIAMS DRIVE
BUILDING 2, SUITE 200
GEORGETOWN, TEXAS 78628

Email: krussell@txadminlaw.com

PHONE (512) 930-1317
FAX (866) 929-1641
WWW.TXADMINLAW.COM

August 5, 2009

VIA FACSIMILE AND U.S. FIRST CLASS MAIL

Mr. Mark Vickery
Executive Director (MC-101)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

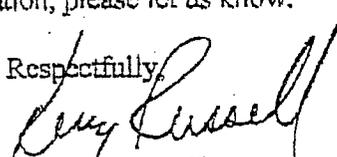
Re: CCN No. 10320

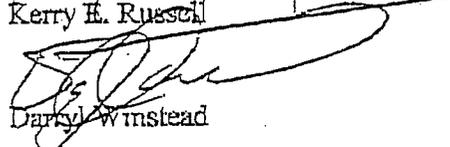
Dear Mr. Vickery:

Pursuant to a request yesterday by Ms. Kathleen Decker and Ms. Dinniah Chahin Tadema, we are sending this letter to clarify our letter filed on August 3, 2009, in regard to the above referenced CCN. Under Tex. Water Code § 13.4132, Mr. Winstead is abandoning both systems covered by this CCN, now and in the future.

We appreciate your favorable response to our request that Aqua Texas be appointed Temporary Manager of the systems during the process of transferring the CCN to Aqua Texas. If you, or your staff, need additional information, please let us know.

Respectfully,


Kerry E. Russell


Darryl Winstead

cc: Representative Dan Gattis
Williamson County Judge Dan Gattis
Williamson County Commissioner Cynthia Long
Mr. Jim Sallans
Ms. Dinniah Chahin
Mr. Todd Chenoweth
Mr. Doug Holcomb
Mr. Glen Lewis
Mr. Geoffrey Kirchbaum

RUSSELL & RODRIGUEZ, L.L.P.
Attorneys at Law
1633 Williams Drive, Building 2, Suite 200, Georgetown, Texas 78628
Phone (512) 930-1317 E-mail: krussell@txadminlaw.com Fax (866) 929-1641

FACSIMILE COVER PAGE

Date: August 5, 2009

Please Deliver the Following pages to:

Mr. Mark Vickery	Fax: (512) 239-5533
Ms. Stephanie Bergeron Perdue	Fax: (512) 239-0330
Mr. Jim Sallans	Fax: (512) 239-0606
Ms. Dinniah Chahin Tadema	Fax: (512) 239-3434
Mr. Todd Chenowith	Fax: (512) 239-2214

Client Number: 1400-00

From: Kerry E. Russell

Direct Phone: (512) 930-1317

Pages: (Including Cover Sheet)

Comments: CCN No. 10320

Clarification of Notification of Abandonment

NOTICE: The following material is intended for the use of the individual or entity to which it is addressed. The material may contain information that is attorney-client privileged, or otherwise confidential and exempt from disclosure under law. If you are not the specified recipient, do not read this material. Any use, dissemination or copying of this material is strictly prohibited. If you have received this material in error, please notify us by telephone at the above number and return to us by U.S. Mail.

AFFIDAVIT OF DINNIAH C. TADEMA

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

My name is Dinniah C. Tadema. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On August 10, 2009, I, Dinniah C. Tadema on behalf of the Executive Director of the Texas Commission on Environmental Quality, sent via Certified Mail Return Receipt Requested (Article No. 7002 2030 0005 7057 8819), and via First Class Mail, postage prepaid to Darryl Winstead ("Mr. Winstead"), the August 10, 2009 Emergency Order and the Notice of Hearing to Modify, Affirm, or Set Aside the August 10, 2009 Emergency Order set for the September 23, 2009 Commission Agenda.

Additionally, on August 10, 2009, I, Dinniah C. Tadema, on behalf of the Executive Director of the Texas Commission on Environmental Quality, sent via Facsimile ((866) 929-1641), UPS Express Delivery (Tracking No. 1Z 894 9WR 22 1000 0496), via Certified Mail Return Receipt Requested (Article No. 7002 2030 0005 7057 8826), and via First Class Mail, postage prepaid, to Kerry Russell, Mr. Winstead's attorney, the August 10, 2009 Emergency Order and the Notice of Hearing to Modify, Affirm, or Set Aside the August 10, 2009, Emergency Order set for the September 23, 2009 Commission Agenda.

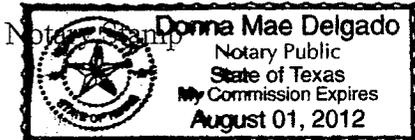
Dinniah C. Tadema

Dinniah C. Tadema
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Dinniah C. Tadema, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 4th day of September, A.D., 2009.

Donna Mae Delgado
Notary Signature



Compliance History Report

Customer/Respondent/Owner-Operator: CN600708770 WINSTEAD, DARRYL Classification: Rating:
 Regulated Entity: RN101250306 SAN GABRIEL RIVER RANCHES Classification: Site Rating:
 ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2460046
 WATER LICENSING LICENSE 2460046
 Location: On CR 214 3.3 miles north of HWY 29 North of Liberty Hill
 TCEQ Region: REGION 11 - AUSTIN
 Date Compliance History Prepared: September 04, 2009
 Agency Decision Requiring Compliance History: Information Request
 Compliance Period: August 10, 2004 to August 10, 2009
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Dinniah Tadema Phone: 512-239-0617

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A

6.

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	06/27/2006	(538187)
N/A		
2	09/25/2006	(538692)
3	11/21/2006	(538703)
4	12/21/2006	(539012)
5	03/15/2007	(644306)
6	04/15/2007	(644468)
7	06/01/2007	(644810)
8	07/01/2007	(645111)
9	04/10/2008	(670341)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 06/27/2006 (538187) CN600708770
 N/A

Self NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)
 Description: Failure to collect any routine monitoring sample(s) for 05/2006.
 Self NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
 Description: Failure to post PN for not collecting any routine monitoring sample(s) in 05/2006.
 Date: 09/25/2006 (538692) CN600708770
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)
 Description: Sent in copies of routine monitoring sample(s) for 08/2006.
 Date: 11/21/2006 (538703) CN600708770
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)
 Description: Failure to collect any routine monitoring sample(s) for 10/2006.
 Date: 12/21/2006 (539012) CN600708770
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)
 Description: Failure to collect any routine monitoring sample(s) for 11/2006.
 Date: 03/15/2007 (644306) CN600708770
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(4)
 Description: BACT - MONITORING/REPORTING VIOLATIONS
 Date: 04/15/2007 (644468) CN600708770
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(4)
 Description: BACT - MONITORING/REPORTING VIOLATIONS
 Date: 04/26/2007 (541072) CN600708770
 Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)
 30 TAC Chapter 290, SubChapter F 290.121(b)
 Description: Failed to compile and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements.
 Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.110(e)(4)
 Description: Failed to prepare and submit a Disinfectant Level Quarterly Operating Report ("DLQOR") to the Commission each quarter by the tenth day of the month following the end of each quarter for 2007.
 Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)(A)
 Description: Failed to conduct an annual inspection of the water system's ground storage tank.
 Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)
 Description: Failed to provide sanitary control easements that cover the land within 150 feet of the water system's two wells.
 Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)
 Description: Failed to compile and maintain a plant operations manual for operator review and reference.
 Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(iii)
 5A THSC Chapter 341, SubChapter A 341.0315(c)
 Description: Failed to provide two or more service pumps having a total capacity of 2.0 gallons per minute ("gpm") per connection at each pump station or pressure plane.
 Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(J)
 Description: Failed to provide a concrete sealing block that extends at least three feet in all directions from the well casing.
 Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(i)
 5A THSC Chapter 341, SubChapter A 341.0315(c)

Description: Failed to meet the minimum well capacity requirement of 0.6 gallons per minute ("gpm") per connection.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(1)
 Description: Failed to calibrate the water system's two well meters once every three years.
 Date: 06/01/2007 (644810) CN600708770
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(b)(1)(A)
 Description: PUBLIC NOTICE
 Date: 07/01/2007 (645111) CN600708770
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(b)(1)(A)
 Description: PUBLIC NOTICE
 Date: 04/10/2008 (670341) CN600708770
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(4)
 Description: BACT - MONITORING/REPORTING VIOLATIONS
 Date: 10/20/2008 (702534) CN600708770
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter F 290.104(f)(2)
 Description: The water system failed to maintain a residual disinfectant concentration within the distribution system of at least 0.2 milligrams per liter free chlorine.
 Date: 07/10/2009 (761109) CN600708770
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(r)
 Description: Failure to provide the minimum required operating pressure of 35 pounds per square inch (psi).
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 291, SubChapter F 291.93
 Description: Failure to provide a continuous and adequate supply of water for all reasonable consumer uses.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)
 Description: Failure to employ an operator with an applicable, valid license issued by the Commission to operate the production, treatment, and distribution facilities at the San Gabriel River Ranch water system.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

Compliance History Report

Customer/Respondent/Owner-Operator: CN600708770 WINSTEAD, DARRYL Classification: Rating:
 Regulated Entity: RN100825082 INDIAN SPRINGS SUBDIVISION Classification: Site Rating:
 ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2270210
 Location: N OF RM 1431 3.7 MILES WEST OF US 183
 TCEQ Region: REGION 11 - AUSTIN
 Date Compliance History Prepared: September 04, 2009
 Agency Decision Requiring Compliance History: Information Request
 Compliance Period: August 10, 2004 to August 10, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Dinniah Tadema Phone: 512-239-0617

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	02/06/2007	(535474)
---	------------	----------

 N/A

2	02/05/2008	(617103)
3	02/29/2008	(637506)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	02/06/2007 (535474)	CN600708770
-------	---------------------	-------------

 N/A

Self	NO	Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter D 290.46(e)(3)(A)	
Description:	Failure to employ a certified operator.	
Self	NO	Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter F 290.121(a)	
Description:	Failed to develop and maintain an up-to-date chemical and microbiological monitoring plan.	

Date:	02/06/2008 (617103)	CN600708770
-------	---------------------	-------------

Self	NO	Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter F 290.121(a)	
Description:	Failed to develop and maintain an up-to-date chemical and microbiological monitoring plan.	

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

Compliance History Report

Customer/Respondent/Owner-Operator: CN600708770 WINSTEAD, DARRYL Classification: Rating:
Regulated Entity: RN101282986 WINSTEAD DARRYL & MARJORIE Classification: Site Rating:
ID Number(s): UTILITIES REGISTRATION 10320
Location:
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: September 04, 2009
Agency Decision Requiring Compliance History: Information Request
Compliance Period: August 10, 2004 to August 10, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Dinniah Tadema Phone: 512-239-0617

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

