

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

February 4, 2010

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 7060 4471
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 Certified Mail Return Receipt Requested Article No. 7002 2030 0005 7060 4488
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
Emergency Order Renewing the Appointment of a Temporary Manager of Water Utilities

Dear Mr. Winstead and Mr. Russell:

On February 4, 2010, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued an Emergency Order renewing the appointment of 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. The Emergency Order renews the appointment of Aqua Utilities, Inc. aka Aqua Texas, Inc. ("Aqua Texas") as temporary manager of the San Gabriel River Ranches, located at County Road 214, 3.3 miles north of Highway 29, north of Liberty Hill, Williamson County, Texas, and Indian Springs Subdivision, located North of Farm-to-Market Road 1431, 3.7 miles west of United States Highway 183, Travis County, Texas.

Mr. Darryl Winstead
Mr. Kerry Russell
February 4, 2010
Page 2

Pursuant to TEX. WATER CODE § 5.504 the Commission will consider whether to affirm, modify, or set aside the Emergency Order issued on February 4, 2010. Therefore, the Executive Director has scheduled this matter to be presented at the Commission's regular Agenda meeting on **March 10, 2010**. 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 March 10, 2010, should you so request. Should you have any questions, please contact the TCEQ Litigation Division at (512) 239-3400.

Sincerely,



Peipey Tang
Attorney
Litigation Division

Enclosures

cc: Carolyn Runyon, Austin Regional Office, MC R-11
Shea Cockrell, Austin Regional Office, MC R-11
Epi Villarreal, Enforcement Coordinator, MC R-14
James Sallans, Litigation Division, MC 175
Geoff Kirshbaum, Attorney, The Terrill Firm, 810 West 10th Street, Austin, Texas 78701
(Via Facsimile 474-9888)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY



2010 FEB -4 AM 10: 46

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
RENEWING THE APPOINTMENT OF A TEMPORARY MANAGER
OF WATER UTILITIES**

On February 4, 2010, 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(66).

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(66).
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. Aqua Utilities, Inc. aka Aqua Texas, Inc. (“Aqua Texas”) is currently serving as the temporary manager of the Utilities through an Emergency Order issued on August 10, 2009 and affirmed by the Commission on September 23, 2009. A temporary manager is necessary to continue 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 Texas has agreed to serve as temporary manager of the Utilities for an additional 180 days 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.

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.

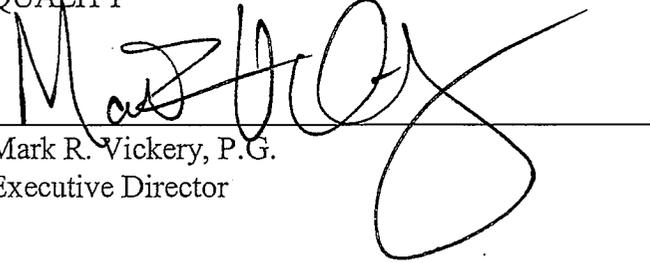
5. TEX. WATER CODE § 5.505 provides that the Commission may renew an emergency order once for a period not to exceed 180 days.
6. This Emergency Order may be issued without notice or hearing pursuant to TEX. WATER CODE § 5.501(b) and 30 TEX. ADMIN. CODE § 35.25.
7. TEX. WATER CODE § 5.501(c) and 30 TEX. ADMIN CODE §§ 35.12 and 291.143(a) authorize the TCEQ Executive Director to issue this Emergency Order.
8. 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.
9. 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.
10. 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.

III. ORDER

1. This Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. February 4, 2010.
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 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. August 3, 2010, whichever occurs first.
4. 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. 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. 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 San Gabriel Utility and Indian Springs 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 March 10, 2010 at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas. **At the March 10, 2010 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

1655 WILLIAMS DRIVE
BUILDING 2, SUITE 200
GEORGETOWN, TEXAS 78628

Email: krussell@txadminlaw.com

PHONE (512) 936-1317
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

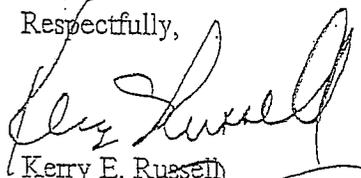
Dear Mr. Vickery:

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.

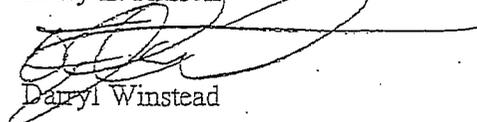
This letter also serves as Mr. Winstead's request that the TCEQ begin the process of having CCN No. 10320 placed into receivership through the Attorney General's Office since he is no longer able to operate the systems due to significant financial and operational issues. It is our understanding from 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 5, 2009
Page 2 of 2

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

R&RRUSSELL & RODRIGUEZ, L.L.P.
ATTORNEYS AT LAW1633 WILLIAMS DRIVE
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GEORGETOWN, TEXAS 78626

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August 5, 2009

VIA FACSIMILE AND U.S. FIRST CLASS MAILMr. Mark Vickery
Executive Director (MC-101)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

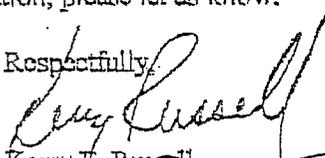
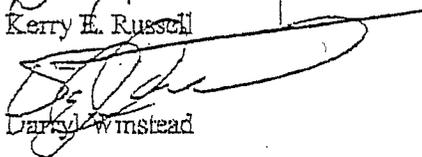
Re: CCN No. 10320

Dear Mr. Vickery:

Pursuant to a request yesterday by Ms. Kathleen Decker and Ms. Dinniah Chahin Tadmra, 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 Winsteadcc: 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

RUSSELL & RODRIGUEZ, L.L.P.

Attorneys at Law

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Fax (866) 925-1641

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 Chenoweth	Fax: (512) 239-2214

Client Number: 1400-00

From: Kerry E. Russell

Direct Phone: (512) 930-1317

Pages: (Including Cover Sheet)

Comments: CON No. 10320

Clarification of Notification of Abandonment

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