

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*

May 20, 2011

Melissa Chao  
Acting Chief Clerk  
Office of the Chief Clerk  
P. O. Box 13087  
Austin, Texas 78711-3087

Re: Deer Creek Ranch Water Company, LLC, TCEQ Docket No. 2011-0726-UCR

Dear Ms. Chao:

Please find attached the "The Executive Director's Petition for Interim Rates". If you have any questions or comments please contact me at (512) 239-0750.

Sincerely,

A handwritten signature in cursive script that reads "Brian D. MacLeod".

Brian MacLeod  
Environmental Law

cc: Mailing list

Enclosures

APPLICATION OF DEER CREEK	§	BEFORE THE
RANCH WATER COMPANY, LLC, TO	§	TEXAS COMMISSION
CHANGE ITS WATER RATES AND	§	
TARIFF UNDER CERTIFICATE OF	§	ON
CONVENIENCE AND NECESSITY NO.	§	
11241 IN TRAVIS AND HAYS COUNTY	§	ENVIRONMENTAL QUALITY

**THE EXECUTIVE DIRECTOR'S PETITION FOR INTERIM RATES**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW the Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ) and files this Executive Director's Motion for Interim Rates.

***Preface***

The ED rarely requests interim rates from the Commission, but instead usually requests interim rates from the administrative law judge after the State Office of Administrative Hearings convenes the hearing. Because of the unique situation in this case, the ED is requesting that the Commission establish an interim rate as soon as possible. An interim rate is necessary because the proposed rate could remain in effect for several months before SOAH convenes the hearing which would result in an unjust or unreasonable rate. The proposed rate will go into effect on June 30, 2011.

## ***Factual and Procedural Background***

***Previous Case:*** On February 22, 2011, The Commission issued a final order on Deer Creek's previous rate change application. A copy of that order is attached as exhibit A.<sup>1</sup> Deer Creek's previous application came to the Commission's Agenda twice.

On September 29, 2010, the case came to Agenda for the first time. The Commission issued its order pursuant to that Agenda on October 5, 2010. A copy of that order is attached hereto as exhibit B. In that order the Commission generally approved of the findings and conclusions in the proposal for decision (PFD), but remanded the case for calculation of the refunds, filling in blanks, and recalculating depreciation with a different service life for the utility's truck. At that Agenda the protestants expressed concern that the utility would not have the funds to make refunds if it were allowed to continue to collect the proposed rate during the remand period. In fact, Deer Creek demonstrated in its exceptions to the PFD that it was in dire financial difficulty. Specifically, Deer Creek stated that if "the Commission ... adopts the ALJ's proposal, including the proposal for refunds, then the Water Co. will have to cease providing any water service to its 402 customers as it will not have funds to pay its operating expenses."

In order to ensure that refunds would be available after remand, the Commission included in its interim order a provision requiring the utility to escrow any amounts collected in excess of prior rate (the rate recommended in the PFD) during remand until the Commission's final order under the authority of TWC §13.187(i) and in accordance with 30 TAC § 291.30.

On October 15, 2010, when the hearing reconvened at SOAH, the ALJ issued an order setting out the details of how the escrow was to be handled and establishing an interim rate. A copy of that order is attached hereto as exhibit C. That order set an interim rate at the same rate the Commission had approved before the 2009 application was filed. The interim rates were to go into effect immediately and were required to be reflected in any bills sent after October 15, 2010. However, Deer Creek did not comply with that order, but instead billed the customers at its proposed rate in both November

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<sup>1</sup> Deer Creek filed its new rate change application 33 days after the Commission issued that order.

and December. Deer Creek based its refusal to comply on the unsupported position that the SOAH order was not final yet.<sup>2</sup>

The SOAH order also set out procedures to comply with the Commission's escrow order. Specifically, it required Deer Creek to provide all parties with a copy of the escrow agreement for deposit of all monies collected from customers in excess of the prior rate within 10 days. The utility was also ordered to file with the ED and the parties a monthly statement on that account by the 10<sup>th</sup> day of each month after establishment of the escrow account. The order also required the escrow account to specify that no withdrawals would be allowed from the account without approval of the ED. Furthermore, the order required the utility to act in accordance with all of the escrow requirements found in 30 TAC § 291.30. Deer Creek never complied with the details of that escrow order.

After the hearing on the merits convened following the remand, the parties agreed on all the remanded issues. On refunds, the parties agreed that the customers should be refunded or credited with \$52.65 per month for 17 months. Based on that agreement, the ALJ prepared a second PFD.

On February 9, 2011, the case came to Agenda for the second time and on February 22, 2011, the Commission issued its final order. In that order the Commission ordered that the rates revert to those that were in effect before the filing of the application. The Commission ordered Deer Creek to refund the customers \$52.65 per month for 17 months to begin with the first billing period after the order was signed. The order further provided that the utility was to submit status reports to the Commission's Water Supply Division every three (3) months regarding the refund/credit process and the outstanding refund amounts. The utility also was ordered to refund the amounts, if any collected in excess of the interim rates established in the ALJ's Order No. 8 after October 15, 2010, within thirty (30) days of the date the Commission signed the order.

***Failure to comply with escrow orders:*** The Utility never provided the information required by the SOAH order or the Commission's order regarding the escrow. Deer Creek provided screen prints regarding the escrow account and general

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<sup>2</sup> Interim rates are not appealable and are to remain in effect until the Commission issues a final order. 30 TAC § 291.29(f). Additionally, the very purpose of an interim rate is to set a rate that will be in effect while the case is pending.

statements from itself and the bank stating that the account had been established. However, the ED has never had any input into the disposition of funds from the purported escrow in 2006 or in the 2009 rate case. In fact, the account Deer Creek purported was the escrow account in the 2006 case was closed without any authorization from the ED. However, while Deer Creek has never provided any accounting of how the escrow funds were collected or distributed in the 2009 case, the customers have not complained that they did not receive any amounts collected in excess of the interim rate.<sup>3</sup> The ED does not recommend the future use of escrow in this case to protect funds dedicated to be refunded to the customers because the prior use of escrow has been unproductive.

***Failure to comply with the refund orders:*** The Commission's final order required Deer Creek to begin making refunds at the rate of \$52.65 per month for 17 months to begin with the first billing period after the order was signed. Deer Creek's billing period according to the notice issued in the 2009 rate case began on the last day of each month. Therefore, the first billing period after the signing of the order would have begun on February 28, 2011. The bills for February 28 to March 31 (mailed out in early April) should have included the refunds. As illustrated by the copies of bills the customers provided to the ED, no refunds occurred in this billing period or in the next billing period. Copies of these bills are attached hereto as exhibit D.

The ED surmises that Deer Creek's failure to make the refunds or to set up the escrow is the result of Deer Creek's financial predicament; however, Deer Creek cannot solve its financial difficulties by making its customers pay for its mismanagement. Deer Creek argued throughout the proceeding that it needed the rate increase to be at least large enough to cover its loan payments or its financial integrity would dissolve. Specifically, Deer Creek contended that the approved rates would not even allow it to service its debt. The Commission's February 22, 2011, order included the following Findings of Fact concerning these loans and the financial integrity of the utility:

224. The utility has negative equity.

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<sup>3</sup> Without having any sort of accounting from the utility, the ED cannot know for certain whether there are customers who paid the incorrect higher rate and never received any refund. The bills the customers sent to the ED reveal that some sort of refunds from the purported "escrow" appeared on the customers' January bills.

225. The evidence is insufficient to show that the Utility's shareholder equity has been wiped out due to low rates and high service costs or cash flow problems resulting from necessary construction of facilities not yet in rate base.

226. The evidence is insufficient to show that the Utility's current rates are significantly lower than necessary to cover its reasonable costs of service.

227. The largest liability on the Utility's balance sheet is for a \$1,596,816 loan from Frost Bank. That loan exceeds the total \$1,264,726 value that the Utility claims on its balance sheet for all of its facilities.

228. After the Frost bank loan, the next largest liabilities are \$202,119 owed to Mr. Hammett and \$193,132 owed to the Land Company, both of which are affiliates of the Utility.

229. Together Mr. Hammett and the Land Company completely control the Utility.

230. The evidence is insufficient to show why the affiliates authorized so much borrowing in the Utility's name, much less show that it was necessary to provide service.

231. The affiliates who control the utility have:

(a) acquired in the Utility's name far more assets than necessary to serve the Utility's customers now or in the reasonably foreseeable future.

(b) borrowed in the Utility's name very large amounts of money that were not necessary to provide service to the Utility's customers.

(c) borrowed in the utility's name more money that exceeds the value of all its assets, including those not currently necessary to provide service;

(d) borrowed very large amounts of money relative to the Utility's size and stockholder's invested capital; and

(e) borrowed a very large percentage of the above amounts from themselves.

232. The Utility's owners and managers have irresponsibly managed the Utility's finances.

Conclusion of Law number 14 also deals with the financial integrity issue. It provided as follows:

14. Water Code § 13.183(a)(2) does not require the Commission to fix a utility's overall revenues at a level that will preserve the financial integrity of a utility when the utility's owners have irresponsibly managed its finances.

**Current Case:** Deer Creek Ranch Water Company, LLC, (Deer Creek) filed an application for a rate to be set under an alternative rate method on March 29, 2011. Rule

291.34(a) provides that the Commission may utilize an alternate method of establishing rates “to ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities.” In utilizing alternative rate methods, rule 291.34(a) further provides that the “Commission shall assure that rates, operations, and service are just and reasonable to consumers and utilities.” A copy of the statement of intent to change rates is attached as exhibit E.

Because the notice included a new surcharge in the proposed rate<sup>4</sup> to cover rate case expenses, the ED sent a notice of deficiency to Deer Creek requiring them to re-notice and to remove the surcharge for rate case expenses from the proposed rate.<sup>5</sup> Deer Creek sent a new notice out to the customers on April 29, 2011. A copy of that notice is attached hereto as exhibit F.

## ***The Grounds for Establishing an Interim Rate***

***Jurisdiction:*** Rule 291.29(b) provides that any time after the filing of a statement of intent to change rates, the ED can petition the Commission to set an interim rate.

***The criteria for establishing an interim rate:*** Rule 291.29(d) provides as follows: “Interim Rates may be established by the Commission or judge in those cases under the Commission’s original or appellate jurisdiction where the proposed rates could result in unreasonable economic hardship on the utility’s customers, unjust or unreasonable rates, or the failure to set interim rates could result in unreasonable economic hardship on the utility.” There are two grounds which reveal that the proposed rates in the application would create an unjust or unreasonable rate. The first is that the proposed rate would result in the utility using the rate for achieving

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<sup>4</sup> The billing comparison does not reflect that the surcharge would have been charged in addition to the amounts listed in the 10,000 and 30,000 gallon comparison on the first page of the notice.

<sup>5</sup> Surcharges for rate case expenses need to be billed to the customers after the case is completed and not during its pendency.

the practical effect of not making refunds that the customers are entitled to.<sup>6</sup> The second ground is that the proposed rates are unjust and unreasonable because they are unsupportable in light of the February 2011 Order of the Commission.

**GROUND ONE: THE PROPOSED RATES ARE UNREASONABLE BECAUSE THEY NEGATE THE EFFECT OF THE REFUNDS TO WHICH THE CUSTOMERS ARE ENTITLED.**

The utility, the ED, OPIC, and the customers agreed that the customers should be refunded \$52.65 per month for 17 months. That means there is no dispute that the customers were overcharged \$895.05 each during the pendency of the prior case. It seems clear that Deer Creek is in financial difficulty and it appears probable that Deer Creek filed the new rate application so quickly in order to get a new proposed rate from which it could collect sufficient revenues to make the refunds. That would be consistent with its failure to make the refunds because the proposed rate is not yet in effect. While it is understandable that Deer Creek needs to raise money to make the refunds, such a proposed rate is unjust and unreasonable because it requires the customers to pay a new proposed rate in order to generate the revenue to refund their money to themselves. It is unreasonable to require the customers to take money out of their wallets and give it to the utility so that the utility can hand that same money back and claim that the customers have received their refunds. Because of the precarious financial position of Deer Creek, the customers have expressed doubts over whether they would ever receive refunds. The proposed rate is unreasonable and unjust because it could result in the customers never receiving the refunds to which they are entitled. This is a result that could very well occur if Deer Creek is allowed to collect its proposed rate. As discussed in the background section, Deer Creek has a documented history of not issuing refunds after the Commission has ordered that refunds be issued. As a result, the ED recommends that an interim rate be set at the previously approved rates to avoid the

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<sup>6</sup> It is possible that the proposed rate would also result in unreasonable economic hardship on the customers; however, because “unreasonable hardship” requires a subjective knowledge of the economic circumstances of the customers, and the ED has insufficient knowledge to explain those subjective circumstances, the ED is not proffering those grounds.

possibility that the customers will be overcharged an additional amount that they will not be able to recover.

**GROUND TWO: THE PROPOSED RATES ARE UNJUST OR UNREASONABLE BECAUSE THEY ARE UNSUPPORTABLE IN LIGHT OF THE FEBRUARY 2011 ORDER OF THE COMMISSION**

The provision for allowing alternate rate methods was never intended to be a safe haven for utilities to rescue themselves from financial hardship with no regard to whether the financial difficulties were due to mismanagement and no regard to the needs of the consuming public. The rules allowing alternative rate methods clearly state that, in considering an alternative rate method the “commission shall assure that rates, operations, and service are just and reasonable to consumers and utilities.” The cash needs approach taken by the utility will not result in a rate that is just to the customers. That is because the prior rate case already revealed what costs are reasonable and necessary for the utility to provide a continuous and adequate supply of water. In fact, the prior rate case found that the utility’s cost of service and a reasonable return would justify a lower rate than the rate that was charged before the 2009 rate case was filed. To protect the financial integrity of the utility, the February 2011 Order allowed the utility to charge its prior rate rather than the one justified by the findings of fact after the hearing on the merits.

The primary problems that caused the utility’s financial hardship were overbuilding the system to serve many more than its current or reasonably foreseeable number of customers and the large loans that could not be traced to funding any allowable expenses or invested capital that was used and useful in providing a continuous and adequate supply of water to its customers.<sup>7</sup>

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<sup>7</sup> See generally, the citation to the February 2011 order quoted above. The key finding of facts establishing the cause of the utility’s financial difficulties read as follows:

Deer Creek cannot transform unreasonable expenses and assets that are not used and useful into reasonable expenses and useful assets simply by using an alternative rate method with the same reality underneath it. The particular alternative rate method proposed by Deer Creek is the cash needs method. The cash needs method is described in 291.34(d). Simply put, this method allows a utility to collect from its customers the revenue necessary to meet the cash obligations of the utility only, with the utility collecting no return on investment. The primary component of expenses that a utility may recover under the cash needs method is the utility's debt. Thus it would appear that Deer Creek could rescue itself from its crippling debt load by utilizing this method. However, the rule states itself that the "cash needs method...allows a utility to recover reasonable and prudently incurred debt service." The Commission has already found that the debt service of this utility was not prudently incurred.<sup>8</sup>

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230. The evidence is insufficient to show why the affiliates authorized so much borrowing in the Utility's name, much less show that it was necessary to provide service.

231. The affiliates who control the utility have:

- (a) acquired in the Utility's name far more assets than necessary to serve the Utility's customers now or in the reasonably foreseeable future.
- (b) borrowed in the Utility's name very large amounts of money that were not necessary to provide service to the Utility's customers.
- (c) borrowed in the utility's name more money that exceeds the value of all its assets, including those not currently necessary to provide service;
- (d) borrowed very large amounts of money relative to the Utility's size and stockholder's invested capital; and
- (e) borrowed a very large percentage of the above amounts from themselves.

232. The Utility's owners and managers have irresponsibly managed the Utility's finances.

<sup>8</sup> Both finding of fact number 231 and conclusion of law number 14 support this proposition. They provided as follows:

231. The affiliates who control the utility have:

- (a) acquired in the Utility's name far more assets than necessary to serve the Utility's customers now or in the reasonably foreseeable future.
- (b) borrowed in the Utility's name very large amounts of money that were not necessary to provide service to the Utility's customers.
- (c) borrowed in the utility's name more money that exceeds the value of all its assets, including those not currently necessary to provide service;
- (d) borrowed very large amounts of money relative to the Utility's size and stockholder's invested capital; and
- (e) borrowed a very large percentage of the above amounts from themselves.

14. Water Code § 13.183(a)(2) does not require the Commission to fix a utility's overall revenues at a level that will preserve the financial integrity of a utility when the utility's owners have irresponsibly managed its finances.

Furthermore, conclusion of law number 10 provides as follows: “the doctrine of collateral estoppel or issue preclusion applies in administrative law cases and precludes the relitigation of identical issues of fact that have been actually litigated between the same parties or parties in privity with the original parties. *Coalition of Cities for Affordable Utility rates v. Public Util. Comm’n*, 798 S.W.2d 560, 564-65 (Tex. 1990).”

Possibly anticipating this argument, Deer Creek made some adjustments to the loan payments included in its 2011 application. However, a few adjustments to the numbers cannot transform assets into being used and useful and cannot make allowable expenses reasonable that were found to be unreasonable in the prior case. The 2011 Commission order found that the return on the used and useful invested capital and the allowable expenses of the utility were insufficient to justify the rate the utility was charging before it filed its 2009 rate case. It was only out of concern for the utility’s financial problems that the Commission allowed reversion to the prior rate rather than the lower rate the evidence supported. Deer Creek’s attempts to make some deductions from the loan payment amounts in order to address the concerns of the prior case are insufficient to change an imprudently obtained loan into a prudent one.

Deer Creek’s proposed rates in this case are fairly close to those it attempted to get in its “cost of service utility method” application filed in 2009. As that case discovered, the utility was attempting to recover through rates many unreasonable costs. The most significant unnecessary cost was the large loan. It cannot impose this unreasonable cost on the customers by simply re-titling the rate method in its application. The unreasonableness of the loans is already established and cannot be re-litigated. The proposed adjustments are insufficient to justify previously excluded loan payments, change the basic structure of the utility, or to transmute imprudent loans into prudent ones. Therefore, an interim rate is absolutely necessary in this case.

## ***Proposal for an Interim Rate***

Because the utility's customers will pay an unreasonable or unjust rate if the proposed rate has the practical effect of preventing them from getting refunds or if they are required to finance their own refunds through a proposed rate, and because the proposed rate is based on loans that were previously found by the Commission to be unreasonable, the ED recommends that an interim rate be set at the previously approved rate. Additionally, the change in the form of the application cannot change imprudent loans into prudent ones. Prudent loans are used to finance capital that is used and useful in delivering water services and the Commission's February 2011 Order established what portion of Deer Creek's capital was used and useful. Because Deer Creek appears to be in severe economic difficulty (due to the reasons outlined in the previous rate case, including but not limited, to financial mismanagement), and because Deer Creek has already threatened to abandon the utility, and because Deer Creek has not complied with past escrow and refund orders of the Commission and SOAH, the ED believes that an interim rate is the best way to ensure that the customers get the refunds to which they are entitled and to prevent the customers from incurring additional charges during the pendency of this case that may need to be refunded at the conclusion of this case. The interim rate is necessary to avoid the unreasonable economic hardship imposed on the customers by delaying or perhaps eliminating any possibility of obtaining the nearly one thousand dollars in refunds to which each of them are entitled. The proposed rates in this case could result in the customers financing their own refunds with an unreasonable rate that is more than what is necessary to cover the utility's cost of service and the financing of an appropriately sized plant. Therefore an interim rate is justified.

## ***Prayer***

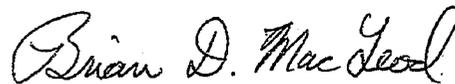
WHEREFORE, PREMISES CONSIDERED, the ED requests that the Commission set this petition for Agenda at the earliest possible date in order to ensure that the customers do not pay the unreasonable rates and start to get the refunds that are long

overdue. Furthermore, the ED requests that the Commission enter an order establishing an interim rate equal to the rate authorized by the Commission's February 2011 Order.

Respectfully Submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

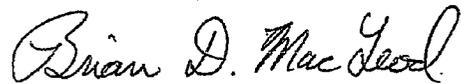
Robert Martinez, Director  
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# CERTIFICATE OF SERVICE

This is to certify that all parties on the attached mailing list have been sent a copy of the foregoing document in by US first Class mail, electronic transmission, and email as applicable and indicated by the information provided in the mailing list on May 20, 2011.



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Brian D. MacLeod  
Staff Attorney  
Environmental Law Division

**Mailing List**  
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**TCEQ DOCKET NO. 2011-0726-UCR**

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**EXHIBIT A**  
**The Commission's February 22,**  
**2011, Order**

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** GRANTING IN PART AND DENYING IN PART THE APPLICATION OF DEER CREEK RANCH WATER CO., LLC TO INCREASE ITS WATER RATES UNDER CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 11241 IN TRAVIS AND HAYS COUNTIES, TEXAS; TCEQ DOCKET NO. 2009-0929-UCR; SOAH DOCKET NO. 582-09-5328

On February 9, 2011, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Deer Creek Ranch Water Co., LLC to increase its water rates under Certificate of Convenience and Necessity No. 11241 in Travis and Hays Counties, Texas. A Proposal for Decision (PFD) was presented by William G. Newchurch, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a contested case hearing concerning the application on March 22 and 23 and November 5, 2010, in Austin, Texas.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

## I. FINDINGS OF FACT

### Introduction

1. Deer Creek Ranch Water Co., LLC (Applicant or Utility) has applied to increase its rates for the water service it provides under its Certificate of Convenience and Necessity (CCN) No. 11241 in Travis and Hays Counties, Texas.

2. The following are the parties in this case:

<b>PARTY</b>	<b>REPRESENTATIVE</b>
Applicant	Randall B. Wilburn
Executive Director (ED)	Brian D. MacLeod
Office of Public Interest Counsel (OPIC)	James B. Murphy
AGX, Inc.	David M. Gottfried
Anne Hawken	David M. Gottfried
Jennifer Jones	self
Cristina Chavez	self
Royce H. Henderson	self
Chris Elder	self
Jonathan McCabe	self
Bradley and Stephanie Weaver	selves

3. Except as otherwise noted, AGX, Inc.; Anne Hawken; Jennifer Jones; Cristina Chavez; Royce H. Henderson; Chris Elder; Jonathan McCabe; and Bradley and Stephanie Weaver are referred to collectively as Protestants.

4. The following are the key events in this case:

<b>DATE</b>	<b>EVENT</b>
February 27, 2009	Application filed.
February 28, 2009	Notice of rate increase mailed to customers.
May 1, 2009	Effective date of rate increase.
July 31, 2009	Notice of preliminary hearing mailed to customers.
August 13, 2009	Preliminary hearing.
September 4, 2009	Discovery began.
September 11, 2009	Parties identified applicable statutory and regulatory law.
October 2, 2009	Deadline to serve written discovery requests.
November 6, 2009	Applicant to prefile its direct case in writing, including all testimony and exhibits.
November 20, 2009	Parties other than Applicant and ED to prefile their direct cases in writing, including all testimony and exhibits.
December 23, 2009	ED files his direct case in writing, including all testimony and exhibits.
January 8, 2010	Deadline to take depositions.
January 22, 2010	Deadline to file objections to and motions to strike any prefiled evidence.
January 29, 2010	Deadline to file responses to objections and motions to strike prefiled evidence.

February 5, 2010	Mediated settlement conference. Agreement was not reached during the mediation.
February 12, 2010	Prehearing conference to set times and orders of witnesses and rule on pending objections and motions.
March 22, 2010	Hearing on the merits (HOM) of case began.
March 23, 2010	End of HOM.
April 6, 2010	Transcript delivered.
April 27, 2010	Deadline to file written closing arguments.
May 4, 2010	Deadline to file replies to closing arguments.
July 1, 2010	PF.D.
October 5, 2010	Remand to SOAH
November 5, 2010	Remand Hearing

### **Affiliates**

5. Deer Creek Ranch, Inc. (Land Company) is the managing member of the Utility.
6. Sam Hammett is the General Manager of the Utility. He also is president of and owns shares in the Land Company.
7. As defined by TEX. WATER CODE ANN. (Water Code) § 13.002(2), the Land Company and Sam Hammett are affiliates of the Utility.

### **Overview of Revenue Requirement Dispute**

8. The Applicant originally claimed that its adjusted test year revenue requirement was \$498,225, but ultimately revised that downward to \$403,236.
9. As set out below, the Utility's just and reasonable revenue requirement is \$176,473.

### **Operational Expenses Post-Test Year Inflation Adjustments**

10. The test year for this case is July 1, 2007, through June 30, 2008.

11. The Utility proposed a post-test year inflation adjustment of 10% for many expense items.
12. In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes may be considered. 30 TEX. ADMIN. CODE (TAC) §291.31(a) and (b).
13. "Test year" means the most recent 12-month period for which representative operating data for a retail public utility are available. Water Code § 13.002(22).
14. There is not sufficient evidence to show that the Applicant's proposed 10% adjustments for inflation are based on known and measurable changes.
15. All of the Applicant's proposed 10% inflation adjustments should be disallowed.

#### **Salaries and Wages**

16. The Applicant seeks \$51,600 for salaries and wages.
17. The salary and wages amount should be reduced to \$12,915.
18. The Applicant contends that it paid \$49,200 for salaries during the test year: \$24,600 to Chris Aaron, who is the Applicant's full time licensed water operator, and \$24,600 to Sam Hammett, the Chief Operations Officer.
19. The Utility also included a 5% post-test year adjustment to give each employee a merit and cost of living increase.
20. The Utility pays an independent contractor—Professional General Management Services, Inc. (PGMS)—for water operations, office administration, customer service, preparation of annual reports, *etc.*
21. During the test year, the Applicant paid PGMS \$57,489.93 for those services, which it included as a contract labor expense.

22. During the first half of 2007, the Land Company had a tax ID number, but the Utility did not. Since the second half of 2007, the Utility has had its own tax ID number.
23. In the first half of 2007, salary amounts for Mr. Hammett and Mr. Aaron were reported under the Land Company's tax ID number.
24. W2s for 2007 show that Chris Aaron and Sam Hammett were together paid only \$24,600.
25. Mr. Aaron had his own company, Aaron Maintenance, for which he worked ten hours a week during the test year.
26. The evidence is insufficient to show that Mr. Aaron worked full time for the Utility during the test year. One-half of the test year salary claimed for Chris Aaron, \$12,300, should be disallowed.
27. The 5% post-test year adjustment for a merit raise for Mr. Aaron is known and measurable and should be allowed.
28. The evidence is insufficient to show that the salary paid to Mr. Hammett was an appropriate affiliate transaction.
29. The \$24,600 claimed for Mr. Hammett's salary should be entirely disallowed.

#### **Contract Labor**

30. The Applicant seeks \$75,766 for contract labor. Of that amount, \$13,000 should be disallowed, and the remainder should be allowed as reasonable and necessary.
31. Of that contract labor amount, \$14,430 should be disallowed, and the remainder should be allowed as reasonable and necessary expenses of providing service.
32. The evidence is insufficient to show that \$2,000 paid to Aaron's Maintenance was a necessary and reasonable expense to provide water service, and it should be disallowed.

33. Jeanne Cutrer works for Cutrer Administration at the Utility's office and handles customer phone calls and billing for the Utility, but PGMS also handles those tasks.
34. The Utility's phone number and address do not appear on customer's bills. Instead, the phone number and address on the bills belong to PGMS.
35. The evidence is insufficient to show that it was necessary and reasonable to provide water service for the Utility, which had only 367 customers at the end of the test year, to have paid both PGMS and Cutrer Administration for similar and overlapping contract services.
36. The \$11,000 paid to Cutrer Administration should be disallowed.
37. Tank cleaning is not required every year.
38. A \$2,876 expense that the Utility paid for tank cleaning should be allowed as a reasonable and necessary annual expense.

#### **Water Purchased From LCRA**

39. The Utility claims \$158,732 should be included in its cost of service for water purchased from the Lower Colorado River Authority (LCRA). This entire amount should be disallowed.
40. During the test year, the Utility spent \$98,206.40 to purchase water from LCRA. All of that purchase was for water consumed from February 2008 through June 2008.
41. The \$158,732 sought by the Utility is based on post-test year adjustments projecting that water consumption from February 2008 through June 2008 would continue for a full year and that water costs would increase by 10% due to inflation.
42. The evidence is insufficient to show that these post-test year adjustments are based on known and measurable changes.

43. Pursuant to a settlement agreement in a prior case in February 2005, the Utility's customers are already paying a pass through charge for water the Utility purchases from LCRA.
44. There is no reason to include a component in cost of service and higher base rates based on estimated costs of purchasing LCRA water when the Applicant is already authorized to directly pass through and recover the exact costs and can seek to amend the surcharge calculation method if it is deficient.

#### **Water Testing / Chemicals**

45. The Applicant seeks \$5,131 for water testing and chemicals. This was a necessary and reasonable expense of providing water service.

#### **Utilities (Electrical)**

46. The Applicant claims an expense of \$8,693 for electric utility service. This was a necessary and reasonable expense to provide water service.

#### **Repair and Maintenance**

47. The Applicant seeks to include \$4,519 for repair and maintenance.
48. Of that claimed repair and maintenance expense, \$411 should be disallowed, and the remainder should be allowed.
49. During the test year, the Applicant incurred \$4,108 in repair and maintenance expenses, and the claimed amount includes a 10% post-test year inflation adjustment of \$411.
50. The evidence is insufficient to show that the inflation adjustment is based on a known and measurable change.

### **Materials and Supplies**

51. The Utility seeks \$13,147 for materials and supplies. This was a necessary and reasonable expense to provide water service.

### **Office Expense**

52. The Applicant claims \$4,066 for office expenses. This entire amount should be disallowed.
53. The expense is for office space in a building owned by Ward Energy.
54. Space for both the Utility and the Land Company are included in the same lease, though each has a physically distinct office. The square footage is nearly the same: 175 square feet for the Land Company and 170 square feet for the Utility. The Applicant split the lease expense equally between the Land Company and the Utility.
55. The Utility also owns a service building where the office could be moved, and the office expense could be eliminated.
56. PGMS, which already provides many contract management services for the Utility, could run the entire operation, which would mean no office space was needed.
57. Utility office space is not needed for Jeanne Cutrer of Cutrer Administration, since its services unreasonably duplicate PGMS's.
58. Utility office space is not needed for Sam Hammett. The evidence is insufficient to show that he works for the Utility halftime and his salary is an appropriate affiliate expense.
59. The evidence is insufficient to show that the expense of the office space was reasonable and necessary to provide service.

### **Auto Expense**

60. The Utility claims an auto expense of \$2,830. That is approximately 50% of the cost of a mortgage loan paid for a Ford F150 truck.
61. The truck is used by two affiliates of the Utility: the Land Company and Mr. Hammett.
62. It is reasonable to allocate 50% of the expense of the truck to the Utility.
63. The truck was purchased in 2006 and has a service life of five years.
64. After subtracting accumulated depreciation, the truck has a remaining net value of \$9,343.00.
65. The claimed \$2,830 expense for the truck should be disallowed, and the truck's \$9,343.00 remaining net value should be added to invested capital, with a service life of five years. That will yield a return on that value plus annual depreciation of \$3,398.04.

### **Auto Expense Gasoline**

66. The Applicant seeks \$1,525 in auto gasoline expenses for the Ford F150 truck.
67. To account for its use by the affiliates, the Utility claims 50% of the actual test year gasoline expense for the F150 truck.
68. The Applicant increased that test year gasoline cost by 10% to account for estimated post-test year inflation.
69. The evidence does not show that the inflation adjustment is based on known and measurable changes.
70. The inflation adjustment should be disallowed.

71. The reasonable and necessary cost of gasoline to provide water service is \$1,386.

### **Telephone Expense**

72. The Utility claims a telephone expense of \$3,861, which includes the cost of Chris Aaron's cell phone, an office phone, and internet and long distance services. No inflation adjustment was included.

73. The \$3,861 was a necessary and reasonable expense to provide water service.

### **Printing Expense**

74. The Utility claims a \$352 printing expense, which includes the test year amount of \$320 and a 10%, \$30 inflation adjustment.

75. The evidence does not show that the inflation adjustment was based on a known and measurable change in costs.

76. The \$30 inflation adjustment should be disallowed.

### **Equipment Rental Expense**

77. The Applicant seeks to include \$5,083 for equipment rented during the test year to repair and maintain its water system. It proposes no inflation adjustment to this expense.

78. The evidence is insufficient to show that the Utility spent \$5,082.68 for equipment rental and that it was reasonably needed to provide water service.

79. The entire \$5,083 claimed by the Applicant for equipment rental should be disallowed.

## Insurance Expense

80. The Applicant claims an insurance expense of \$14,559 for health insurance for the Utility's employees and for general and facility damage insurance. That includes an upward adjustment of 10% to account for anticipated post-test year inflation.
81. Of the claimed amount, \$7,751 should be allowed as a reasonable and necessary expense and the remainder should be disallowed.
82. The general and facilities damages insurance, which totals \$2,266.06 paid to Galloway Insurance, was a necessary and reasonable cost of providing water service.
83. The evidence does not show that the inflation adjustment of \$1,324 is based on a known and measurable post-test year change.
84. The Utility paid \$3,417 during the test year to Union Insurance for vehicle insurance for the F150 truck previously discussed.
85. Fifty percent of the auto insurance expense, or \$1,709, should be disallowed due to the use of the truck by the Utility's affiliates that was not necessary or reasonable to provide water service.
86. The claimed test year expense for health insurance is \$7,552.55.
87. The health insurance policy covers Susan and Sam Hammett and Chris Aaron.
88. There is no evidence that Susan Hammett is an employee of the Utility.
89. The evidence is insufficient to show that Mr. Aaron worked full time for the Utility during the test year.
90. The evidence is insufficient to show that Mr. Hammett worked full time for the Utility during the test year.

91. Based on the above, it would be reasonable to disallow 50% of the claimed health insurance expense, or \$3,776.

#### **Postage Expense**

92. The Applicant seeks to include \$423 in its cost of service for postage expense. This includes the \$385 that it actually spent during the test year and a 10% inflation adjustment.
93. The evidence is insufficient to show that the inflation adjustment is a known and measurable post-test year change; hence, it should be disallowed.
94. Expenses for postage totaling \$385 are reasonable and necessary.

#### **Payroll Tax Expense**

95. The Applicant seeks to include \$4,030 in its cost of service for its payroll taxes. This includes a claimed actual test year expense of approximately \$3,840 and an adjustment to account for post-test year salary inflation that it anticipates.
96. The payroll tax amount should be 7.65% of the salary amount.
97. As discussed above, the necessary and reasonable adjusted salary amount is \$12,915.
98. Based on the above, the Utility's necessary and reasonable payroll tax expense to provide service is \$988.

#### **Property and Other Taxes**

99. The Utility claims \$7,110 for property taxes. That includes claimed test year taxes of \$6,470 and a 10% inflation adjustment of \$640.

100. The evidence is insufficient to show that the inflation adjustment is a known and measurable change. It should be disallowed.
101. The evidence is insufficient to show that the Utility's test year property taxes were \$6,470.
102. The Utility's necessary and reasonable test year property tax expense to provide water service was \$6,152, which should be allowed.

### **Miscellaneous Expense**

103. During the test year, the Utility had minor miscellaneous expenses of \$683 for supplies, TCEQ inspections, and solid waste disposal that were necessary and reasonable to provide water service.

### **Loans**

104. The Applicant originally sought to include \$13,932 in cost of service for interest payments to Wells Fargo Bank and interest and principle payments to Mr. Hammett for loans allegedly borrowed to pay for operation and maintenance expenses.
105. The Utility also originally included \$95,809 for interest payments on funds allegedly borrowed from Frost Bank for capital projects.
106. The Utility has withdrawn both of the above requests and neither the \$13,932 nor the \$95,809 should be included in its costs of service.

### **Professional Fees**

107. The Applicant seeks \$13,380 in cost of service for professional fees that it incurred during the test year. That includes \$2,560 for accounting fees and \$9,330 for routine

legal fees. It also includes \$1,520 for five years to recover \$7,588 spent on legal fees related to the Applicant last rate case, which was settled.

108. The accounting work was performed during the test year, July 1, 2007, through June 30, 2008, but concerned a tax return for a prior tax year.
109. Prior to the second half of 2007, the Utility did not have its own tax ID number and used the tax ID number for the Land Company because they were treated as one entity for tax purposes.
110. Based on the above, the tax work performed for a year before the test year must have been for the Land Company and the Utility as a combined entity, not just for the Utility.
111. Fifty percent, or \$1,280, of the accounting fees should be disallowed because the accounting work was performed for both the Utility and the Land Company. The remaining \$1,280 should be allowed as a necessary and reasonable expense.
112. Of the routine legal fees, \$6,612 was for non-recurring work related to a transmission line improvement, which should be removed from cost of service and recovered through an amortization charge of \$1,322 per year for five years. The remaining \$2,718 in routine legal expenses should be allowed as a reasonable and necessary expense.
113. Rate case expenses for a prior case for which the Commission approved a settlement should not be recoverable in a subsequent rate case unless the settlement specifically provided for that possible recovery.
114. The \$1,520 for five years that the Utility seeks to include for legal expenses for a prior rate case should be disallowed.

### Lease for the Pre-1985 Assets

115. On March 1, 2005, the Utility and its affiliated Land Company entered into a surface and facilities lease agreement (Lease). It gave the Utility the right to use certain assets that were constructed prior to July 1985 (Pre-1985 Assets).
116. The Utility originally claimed that the Pre-1985 Assets should be included in its rate base, but it has withdrawn that request.
117. The rent stated in the Lease was \$1,125 per month for the first year, and the Lease included a rent adjustment clause for subsequent years.
118. The Applicant seeks to include an annual amount of \$13,500 in cost of service for the Lease.
119. The entire \$13,500 should be disallowed.
120. At one time, the Land Company held the CCN that the Utility now holds, used the Pre-1985 Assets to provide water service then, and still owns those assets.
121. On October 4, 1985, the Land Company still held the CCN and filed a rate change application with the Commission's predecessor agency, hereafter also referred to as "the Commission."
122. On April 15, 1986, the Commission issued an order approving that application in part and denying it in part.
123. In that 1986 order, the Commission found the original costs of certain assets, including the Pre-1985 Assets, which are set out below:

Asset	Original Costs 1986 Order
Well	\$16,523.58
100000-gallon storage tank	\$35,000
Distribution system	\$120,170
Office furniture and equipment	\$253
<b>TOTAL</b>	<b>\$171,946.58</b>

124. In the 1986 Order, the Commission also found that:
- a) Only 50% of the distribution system, or \$60,085, was used and useful;
  - b) \$3,000 of the 100,000-gallon tank's cost was unreasonable;
  - c) Customers had contributed \$105,560, which had to be deducted from rate base; and
  - d) \$7,988 in depreciation had accumulated.
125. After make those deductions, the Commission found in the 1986 Order that the Land Company only had \$18,882 in net plant that was used and useful to provide service. The Commission also found that the depreciation expense was \$3,092 per year.
126. On July 15, 2005, the Commission approved the transfer of the CCN from the Land Company to the Utility (CCN Transfer Order).
127. The CCN Transfer Order did not generally authorize the Utility to lease facilities and lines from the Land Company and did not approve the specific March 1, 2005, Lease.
128. The CCN Transfer Order stated, "... Certificate of Convenience and Necessity No. 11241 [was] transferred in accordance with the terms and conditions set forth in the certificate." The certificate stated, "[The Land Company's] facilities and lines were transferred to [the Utility] (CCN No. 11241) in Hays and Travis Counties."
129. The Pre-1985 Assets that were found used and useful in Commission's 1986 Order would have been fully depreciated and had no remaining net value if they had been transferred to the Utility as directed in the CCN Transfer Order.

130. Circumstances have changed since the 1986 Order was issued, and the entire distribution system is now used and useful. Thus, the other 50% of the distribution system assets, with an original cost of \$60,085, is now used and useful.
131. Additionally, the following Pre-1985 Assets are also used and useful now: electric and control facilities with a projected original cost of \$2,000 and a hydropneumatic tank with a projected original cost of \$12,600.
132. Those additional Pre-1985 Assets, worth \$72,685, have accumulated depreciation since they were put into use.
133. The annual payment of \$13,500 to lease the Pre-1985 Assets gave the Utility's affiliated Land Company more than an 18.57% annual return on those assets with an original cost of \$72,685. Once depreciation was subtracted from the original costs of those assets, the return would be even higher.
134. The evidence is insufficient to show that the Lease is an appropriate affiliate transaction.

#### **Working Cash Allowance**

135. The Utility should be allowed a working cash allowance equal to one-eighth of its total annual operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments (operations and maintenance expense does not include depreciation, other taxes, or federal income taxes).  
30 TEX. ADMIN. CODE (TAC) § 291.31(c)(2)(B)(iii).
136. The Utility reasonable and necessary working cash allowance is \$15,805.

#### **Return on Investment**

137. The Applicant seeks a total return on investment of \$111,910.

### **Invested Capital**

#### **Assets Owned by Others Not Included**

138. The Applicant claims that it is entitled to earn a return on \$2.71 million in assets that Mr. Hammett personally owns (Hammett Assets) and has pledged as collateral for a \$1.6 million loan to the Utility from Frost Bank to the Applicant.
139. These include two of Mr. Hammett's brokerage accounts with Frost Brokerage Services, his shares in the Land Company, and certain real estate lots at the Land Company's development.
140. All of the Hammett Assets should be removed from the Utility's rate base because they are not the Utility's assets.

#### **Assets Owned by the Utility**

141. The Applicant claims that it has used and useful capital assets that were constructed after June 2000 with an original cost of \$1,325,069.
142. As set out below, the original cost of the Utility's in-plant assets that are used and useful to provide service is \$1,043,135. After deducting accumulated depreciation, the net plant is \$1,035,372.

#### **New Ground-Storage Water Tank**

143. The Utility has a new 109,500-gallon, ground-storage water tank (New Tank).
144. Eighty-eight percent of the New Tank is not reasonably useful to provide service.
145. Eighty-eight percent of the New Tank's original cost, or \$78,945.78, should be disallowed, and the remainder should be allowed.

146. In addition to the New Tank, the Utility still uses a 100,000-gallon ground storage tank that was built before July 1985 (Old Tank). The Old Tank is one of the Pre-1985 Assets that is owned by the Land Company and Leased by the Utility.
147. Under 30 TAC § 290.45(b)(2)(E), a utility must have a storage capacity of 200 gallons per connection.
148. The Utility had 367 connections at the end of the test year.
149. The Old Tank's 100,000-gallon volume provides significantly more than the 73,400 gallons of storage necessary to achieve the required 200 gallons per connection.
150. Two areas that the Utility may serve in the future have 131 and 67 lots.
151. To serve its 565 current and possible future connections would eventually require 113,000 gallons of ground storage capacity, which are 13,000 more than the Old Tank provides.
152. The difference between the 367 end of test year customers and 565 customers is a very large 54% post-test year increase.
153. The 200 gallons per connection storage requirement is only a minimum. 30 TAC § 290.45(a)(1).
154. Greater capacity may be required if a normal operating pressure of 35 psi, or 20 psi during unusual conditions, cannot be maintained. 30 TAC § 290.45(a)(2).
155. Alternative capacity requirements, in lieu of the required minimums, may be allowed upon a detailed showing that is approved by the ED. 30 TAC § 290.45(g).
156. There is no evidence to show that more than the minimum storage capacity is necessary to maintain a pressure of 35 psi, or 20 psi in unusual conditions.

157. There is no evidence to show that more than the required minimum storage capacity has been approved by the ED or that the Utility has even applied for such approval.
158. Only 13,000 gallons, or 12%, of the New Tank's capacity is used and useful to provide storage.
159. The LCRA contract requires a physical separation (air gap) between LCRA's wholesale water supply and the Applicant's retail water supply.
160. An air gap prevents backflow of water to the LCRA.
161. There is no air gap at the site of the Old Tank.
162. The New Tank provides the air gap. Water from LCRA is piped to the top of the tank and allowed to fall to the bottom, so the empty upper portion of the tank space is the physical separation between the LCRA inflow and the Utility's water at the bottom of the tank.
163. The Old and New Tanks are approximately one mile apart.
164. The air gap could not be placed near the Old Tank because the Utility's internal plumbing would have to be used to pump water there, thus the Utility's system would not be physically separated from LCRA's.
165. A 50,000-gallon tank could have been used to supply the air gap.
166. The evidence is insufficient to show that the full \$89,711.11 expense of the New Tank was reasonable to provide an air gap.

#### **Plugging of South and North Wells**

167. The Utility seeks to include in its rate base \$1,794.33 that it spent to plug its South well and \$2,116.83 that it spent to plug its North well.

168. The plugging expenses for the North and South wells were incurred on June 29 and 30, 2005, which were before the test year.
169. The wells had already been fully depreciated; hence, they are no longer used and useful to provide service.
170. A plugged well can no longer be used for a backup water supply.
171. The costs of plugging the wells were neither capital investments with ongoing useful lives that are used and useful to provide service nor test year operational expenses.
172. The expenses of plugging the North and South wells should be entirely disallowed.

#### **Well Pumps**

173. In its requested rate base, the Utility included \$4,282.41 for a well pump put in service on June 9, 2000, and \$12,208.34 for a well pump put in service on August 18, 2003.
174. The evidence does not show that these well pumps are used and useful to provide water service.
175. These costs of the well pumps should be disallowed.

#### **Fire Hydrants**

176. In its requested rate base the Utility included \$23,800 that was paid to install seven fire hydrants.
177. Fire protection is not retail water service.
178. The cost of the fire hydrants should be disallowed.

## **Truck**

179. As discussed above in this Order, no portion of the cost of the 2006 F150 truck should be allowed as an operating expense.
180. The \$9,343 remaining net value of the 2006 F150 truck should be included in invested capital, with a service life of five years and annual depreciation expense of \$3,398

## **Invested Capital Reduction Due To Customer Contribution**

181. As of April 30, 2009, the Utility's customers had paid \$167,781 under a surcharge adopted in settlement of a rate case in 2005.
182. The Commission approved a settlement agreement in that case, which authorized the Utility to collect a surcharge of \$12.00 per month per customer for five years to collect sufficient revenue to pay for improvements to the water system.
183. The Utility's invested capital should be reduced by the entire \$167,781 that the customers have paid in accordance with the surcharge provided for in the settlement of the rate case in 2005.

## **Return on Investment**

184. The Utility claims that the reasonable rate of return on its invested capital is 12.5%.
185. The reasonable rate of return on the Utility's invested capital is 6.0%.

## **Cost of Equity**

186. The Commission has adopted a rate of return worksheet and included that in its rate change application instructions. Starting with the most current average return on Baa

rated public utility bonds as a base, the worksheet provides for upward adjustments of up to 8.0% for certain systems.

187. The rate of return worksheet is consistent with and applies rate of return principles set out in the Water Code and the current rules. Water Code § 13.184 and 30 TAC § 291.31(c)(1).
188. The rate of return worksheet ensures access to credit by starting with the current rate of return on publicly traded bonds, which reflect debt with a zero risk of return.
189. The rate of return worksheet ensures access to equity markets by allowing for upward adjustments to reflect systems with higher risks to capital, including systems with small numbers of customers, low growth, unstable populations, and aging facilities.
190. Upward adjustments are also allowed when the Utility's management conserves water resources and provides high quality of service and good management.
191. The Commission has approved a 12% rate of return for some utilities in the past, but not higher.
192. The average rate of return on Baa public utility bonds for the last 12 months, according to Moody's, was 7.45%.
193. Given the current 7.45% Baa bond rate and the possibility of upward adjustments totaling 8.0%, the calculation methodology set out in the worksheet allows for the possibility of a 15.45% rate of return.
194. The rate of return worksheet is reasonably consistent with the Commission's historical practice and potentially more generous to a utility.
195. No upward adjustments to the Utility's rate of return are warranted under the Commission's rate of return worksheet.

196. The evidence is insufficient to show that a rate of return on equity higher than 7.45% would be necessary and reasonable.
197. Using the rate of return worksheet method of calculation, the Utility's reasonable return on equity would be 7.45%.

#### **Cost of Debt**

198. At the end of the test year, the Utility owed Frost Bank \$1,596,816 for loans with an annual interest rate of 6.0%.
199. The Utility also had an auto loan of \$18,860 at 7.49% interest. That should be reduced by \$9,430, to reflect the allocation of 50% of the auto debt to the Utility and 50% to the non-utility.

#### **Using a Weighted Cost of Capital Is Not Reasonable In This Case**

200. The net value of the Utility's used and useful assets is \$1,035,372; however, its total debt is \$1,606,246.
201. The Utility has negative equity; it owes \$568,006 more than the net value of its used and useful invested capital.
202. When a utility has negative equity, all of its invested capital has been financed with debt.
203. When a utility has outstanding debt and positive equity, using a weighted cost of capital properly prevents the utility receiving a greater than reasonable rate of return on its invested capital.
204. Using a weighted cost of capital approach for a utility with negative equity would not be reasonable because it would result in a return that was lower than the cost of the debt that the utility used to acquire its used and useful invested capital.

205. Because the Utility has borrowed at 6.0% interest more than the net value of its currently used and useful invest capital, the Utility's reasonable rate of return on its invested capital is 6.0%.
206. Because the net value of the Utility's used and useful assets is \$1,038,240 and its reasonable rate of return in 6.0%, the Utility's reasonable and necessary return on investment is \$63,071.

### **Annual Depreciation**

207. Based on the above Findings of Fact, the Utility's reasonable and necessary annual depreciation expense is \$31,278.

### **Other Expenses**

#### **Federal Income Taxes**

208. The Applicant has requested that \$9,519 be included in the cost of service for the payment of federal income taxes. This amount should be disallowed.
209. The annual interest that the Utility owed on its debt during the test year exceeded the reasonable return on its invested capital that was used and useful to provide service.
210. The Utility will have negative income and owe no federal income tax.
211. The Utility's reasonable expense for federal income tax is zero.

### **Rate Case Expense**

212. The Applicant contends that its expenses for this rate case as of the time it filed its application totaled \$27,230. This amount should be disallowed.
213. The Utility also claims that it had approximately another \$100,000 in rate case expenses, but there is no evidence in the record to support that claim.

214. The Utility applied to increase its revenue by \$104,000 per year.
215. The Utility's just and reasonable rates would generate \$177,575 of revenue per year.
216. The evidence does not show that the increase in revenue generated by the Utility's just and reasonable rates would be at least 51% of the increase in revenue that would have been generated by the Utility's proposed rates.

#### **Cost of Service**

217. Based on the above, the Utility's necessary and reasonable cost of service is \$227,925.

#### **Other Revenues**

218. The Utility's other revenues must be subtracted from its total expenses to determine the Utility's net cost of service.
219. The Utility properly included \$50,350 of other revenue in its rate calculation, thus reducing the amount it would need to recover through rates.
220. Additionally, the Utility included \$145,921 in other revenue to account for its revenue from the LCRA pass-through surcharge that its customers paid during the test year. This amount should be deleted from other revenue due to the disallowance of \$158,732 that the Applicant included in its cost of service for water purchased from LCRA.

#### **Financial Integrity**

221. To preserve its financial integrity, the Applicant claims that the Commission must: (1) approve all of the known and measurable changes it claims, (2) include an amount to allow it to make its entire loan payment—not just pay interest, and (3) allow its investors to make some profit.

222. The evidence is sufficient to allow the Utility's rates to be set at higher levels than they otherwise would be in order to protect the Utility's financial integrity.
223. To the extent that the Utility's claimed post-test year changes have not been shown known, measurable, and otherwise appropriate, they should not be approved.
224. The Utility has negative equity.
225. The evidence is insufficient to show that the Utility's shareholder equity has been wiped out due to low rates and high service costs or cash flow problems resulting from necessary construction of facilities not yet in rate base.
226. The evidence is insufficient to show that the Utility's current rates are significantly lower than necessary to cover its reasonable costs of service.
227. The largest liability on the Utility's balance sheet is for a \$1,596,816 loan from Frost Bank. That loan exceeds the total \$1,264,726 value that the Utility claims on its balance sheet for all of its facilities.
228. After the Frost Bank loan, the next largest liabilities are \$202,119 owed to Mr. Hammett and \$193,132 owed to the Land Company, both of which are affiliates of the Utility.
229. Together Mr. Hammett and the Land Company completely control the Utility.
230. The evidence is insufficient to show why the affiliates authorized so much borrowing in the Utility's name, much less to show that it was necessary to provide service.
231. The affiliates who control the Utility have:
  - a) acquired in the Utility's name far more assets than necessary to serve the Utility's customers now or in the reasonably foreseeable future;
  - b) borrowed in the Utility's name very large amounts of money that were not necessary to provide service to the Utility's customers;

- c) borrowed in the Utility's name more money that exceeds the value of all of its assets, including those not currently necessary to provide service;
- d) borrowed very large amounts of money relative to the Utility's size and stockholder's invested capital; and
- e) borrowed a very large percentage of the above amounts from themselves.

232. The Utility's owners and managers have irresponsibly managed the Utility's finances.

**Rate Design**

233. The Utility has only residential customers with 3/4-inch or smaller meters. There is no evidence that it will have other types of customers in the future.

234. The Utility's monthly rates currently, as originally proposed, and as it finally revised them during this case are set out below:

Monthly Rates	Current	Originally Proposed	Revised
Base rate (1/2"x3/4" inch meter)	\$35.00	\$64.00	\$61.00
0 to 2000 gal.	\$0	\$5.00	\$5.00
2001 to 10000 gal.	\$3.00	\$6.00	\$6.00
10001 to 20000 gal	\$4.00	\$7.00	\$7.00
20001 gal thereafter	\$5.00	\$8.00	\$8.00

**Transcription Costs**

235. Because the hearing was scheduled for more than one day, the ALJ ordered the Applicant to arrange for and pay a court reporter to record and transcribe the hearing on the merits and to deliver the original transcript to the ALJ and two copies to the TCEQ's Chief.

236. The Applicant paid for the court reporter as ordered and the transcript was delivered. Thus, the Applicant can pay for the cost of the transcript.

237. Because the ALJ ordered the transcript, no party requested it, though a party may have ordered one or more copies for its own use.

238. The Applicant and the Protestants fully participated and benefited from the transcript, as evidenced by their post-hearing briefs.
239. Because the evidence does not show that an increase of at least 51% of the revenue that the Applicant applied for is warranted, it would be more just for the Applicant to be assessed the entire cost of the transcript, except for the cost of copies that the Protestants ordered, if any, for their own use.

## II. CONCLUSIONS OF LAW

1. Applicant is a public utility as defined in Water Code § 13.002(23).
2. The Commission has jurisdiction to consider an application for a rate increase filed by a public utility, pursuant to Water Code § 13.181.
3. The ALJ conducted a contested case hearing and issued a proposal for decision on the Applicant's proposed water rate changes under TEX. GOV'T. CODE ANN. (Government Code) ch. 2003, Water Code ch. 13, and 30 TAC chs. 80 and 291.
4. Proper notice of the Application was given by the Applicant as required by Water Code § 13.187, 30 TAC §§ 291.22 and 291.28, and Government Code §§ 2001.051 and 2001.052.
5. The Applicant has the burden of proof on all issues in this case. Water Code § 13.184(c).
6. The invested capital amounts set forth in the Findings of Fact above are based on the original cost of property used by and useful to the Applicant in providing service, less depreciation, in accordance with Water Code § 13.185.
7. The revenue requirements are based on Applicant's reasonable and necessary operating expenses, within the meaning of Water Code §§ 13.183 and 13.185 and the Commission's rules.

8. The revenue requirements are sufficient to provide Applicant with a reasonable opportunity to earn a fair and equitable return on its invested capital while preserving its financial integrity, within the meaning of Water Code §§ 13.183 and 13.184.
9. The rates and fees to be charged by Applicant, as approved by the Commission in this Order, are just and reasonable, not unreasonably preferential, prejudicial, or discriminatory, and sufficient, equitable, and consistent in application to each class of customer in accordance with Water Code §§ 13.182, 13.189, and 13.190.
10. The doctrine of collateral estoppel or issue preclusion applies in administrative law cases and precludes the relitigation of identical issues of fact that have been actually litigated between the same parties or those in privity with the original parties. *Coalition of Cities for Affordable Util. Rates v. Public Util. Comm'n*, 798 S.W.2d 560, 564-65 (Tex. 1990).
11. Those in privity with a party may include persons who exert control over the action, persons whose interests are represented by the party, or successors in interest to the party. *Dairyland County Mutual Ins. Co. of Texas v. Childress*, 650 S.W.2d 770, 773-74 (Tex. 1983).
12. Within the context of this case, the affiliated Utility and Land Company are in privity with one another.
13. The doctrine of collateral estoppel applies and bars the relitigation of the Commission's determinations in the 1986 Order concerning the Pre-1985 Assets.

#### **Financial Integrity**

14. Water Code § 13.183(a)(2) does not require the Commission to fix a utility's overall revenues at a level that will preserve the financial integrity of a utility when the utility's owners have irresponsibly managed its finances.

15. The Commission may allow the reversion to the Utility's existing rates instead of establishing the rates proven by the Utility in a hearing based on financial integrity concerns.

### Approved Rates

16. The findings of fact listed above support the following rates:

Monthly Rates	Approved
Base rate (½" x ¾" inch meter)	\$33.16
0 to 2000 gal	\$0
2001 to 10000 gal	\$3.00
10001 to 20000 gal	\$4.00
20001 gal thereafter	\$5.00

However, because this rate is below the Utility's previously approved rates, the application is denied in its entirety and the rates are set at the Utility's previously approved rates as listed in Finding of Fact number 234. The reversion to the Utility's existing rates instead of establishing the rates proven by the Utility in this hearing is based on financial integrity concerns.

17. The claimed rate case expenses should be disallowed, in accordance with 30 TAC § 291.28(8).

### Refunds

18. Unless otherwise agreed to by the parties to the rate proceeding, the utility shall refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered, plus interest, as determined by the regulatory authority. Water Code § 13.187(i).
19. The Utility has been collecting the proposed rates since they went into effect on May 1, 2009.

20. After accounting for interest, the total refunds due customers for overcharges would be \$ 52.65 per customer per month if paid back over 17 months.
21. The reasonable rate of interest on the overcharge balance until repaid is 0.61%.
22. The Utility should refund or credit to customers all sums collected since May 1, 2009, which was the effective date of the rates at issue in this case, that exceed the rates finally approved by the Commission in this case plus 0.61% interest on the over-collection.

#### **Transcript Costs**

23. In accordance with the factors set out in 30 TAC § 80.23, the costs of the recording and transcribing the hearings in this case should be assessed against the Applicant.

### **III. EXPLANATION OF CHANGES**

1. The Commission determined to incorporate the ED's and the OPIC's exceptions following remand into this Order, as agreed to by the ALJ. The ED recommended deleting the ALJ's proposed Conclusion of Law No. 23 and replacing it with the following: "In accordance with the factors set out in 30 TAC § 80.23, the costs of the recording and transcribing the hearings in this case should be assessed against the Applicant." The OPIC requested additional factual language on page 3 of the PFD regarding the OPIC's procedural filings during the remand period which did not necessitate a change to this Order.
2. The Commission determined to modify Finding of Fact No. 222 and Conclusion of Law Nos. 15 and 16 to state that reversion to Utility's existing rates instead of establishing the rates proven by the Utility in this hearing is based on financial integrity concerns.
3. The Commission determined to add an ordering provision to require the Utility to submit status reports to the Commission's Water Supply Division every three (3) months

regarding the refund/credit process and outstanding refund amounts. The Commission included this provision in Ordering Provision No. 2.

4. The Commission determined to add an ordering provision to require the Utility to refund the amounts, if any, collected over the interim rates established in the ALJ's Order No. 8 after October 15, 2010, within thirty (30) days of the date the Commission signs this Order. The Commission added this provision as Ordering Provision No. 3 and renumbered the remaining ordering provisions.

#### IV. ORDERING PROVISIONS

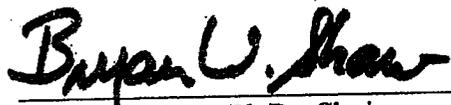
**NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. The application of Deer Creek Ranch Water Co., LLC to increase its water rates under Certificate of Convenience and Necessity No. 11241 in Travis and Hays Counties, Texas, is denied in its entirety and the rates are set at the Utility's previously approved rates as listed in Finding of Fact No. 234.
2. The Utility should refund or credit to customers all sums collected since May 1, 2009, which was the effective date of the rates at issue in this case, that exceed the rates finally approved by the Commission in this case plus 0.61% interest on the over-collection. The refund of \$52.65 per customer per month shall be made over a 17-month period to begin with the first billing period after this order is signed. The Utility shall submit status reports to the Commission's Water Supply Division every three (3) months regarding the refund/credit process and outstanding refund amounts.

3. The Utility to refund the amounts, if any, collected over the interim rates established in the ALJ's Order No. 8 after October 15, 2010, within thirty (30) days of the date the Commission signs this Order.
4. In accordance with the factors set out in 30 TAC § 80.23, the costs of recording and transcribing the hearings in this case should be paid by the Applicant.
5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
6. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Gov't Code § 2001.144.
7. The Commission's Chief Clerk shall forward a copy of this Order to each of the parties.
8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED: FEB 22 2011

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
Bryan W. Shaw, Ph.D., Chairman

**EXHIBIT B**  
**The Commission's October 5,  
2010, Interim Order**

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN INTERIM ORDER** concerning the Administrative Law Judge's Proposal for Decision and proposed Order regarding the application of Deer Creek Ranch Water Co., LLC, to change its water rates and tariff; TCEQ Docket No. 2009-0929-UCR; SOAH Docket No. 582-09-5328.

On September 29, 2010, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered during its open meeting the Administrative Law Judge's ("ALJ's") Proposal for Decision and proposed Order regarding the application of Deer Creek Ranch Water Co., LLC ("Utility"), to change its water rates and tariff; TCEQ Docket No. 2009-0929-UCR; SOAH Docket No. 582-09-5328.

After considering the ALJ's Proposal for Decision and recommended Order, the evidence in the record, the parties' exceptions and replies, the ALJ's reply to the parties' exceptions and replies and final recommendation, and the oral arguments at the September 29, 2010 Agenda, the Commission determined to remand the matter to SOAH to allow the ALJ to reopen the record for the purpose of analyzing any additional evidence needed to allow the parties and the ALJ to calculate and report the missing amounts left blank in the ALJ's recommended Order, including the total refund/credit amounts due to the customers to cover over-charges plus interest over 17 months for the customer refund. The Commission directed that the ALJ should use 0.61% for the interest rate. The Commission determined that the ALJ and the parties were to make their final calculations based on the ALJ's recommendations in his Proposal for Decision and reply to exceptions to set the Utility's existing rates; but the Commission directed the parties and the ALJ to re-run all calculations to address any additional changes that may result from the ALJ's recommended truck depreciation change to five years. The Commission also directed the ALJ to take any necessary evidence to determine whether or not the Protestants ordered a copy of the

transcript, the specific cost, provide a specific amount, if any, that the Protestants need to pay to the Applicant to reimburse their portion of the transcript costs and include the amount in Ordering Provision No. 3. The Commission directed the ALJ to modify Conclusion of Law 16 and Ordering Provision No. 1 to incorporate the ALJ's recommendation in his reply to exceptions to deny the Utility's application and set rates to the Utility's previously approved rates. The Commission determined to instruct the ALJ to issue a revised Order that incorporates the Commission's rate decisions and the additional calculations. Finally, the Commission determined to include an ordering provision to require the Utility to escrow any additional amounts collected over its previously approved rates during the pendency of the case during remand until the Commission's final order under the authority of TWC § 13.187(i) and in accordance with 30 TAC § 291.30(a).

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

This matter is hereby REMANDED to SOAH for the purpose of analyzing any additional evidence needed to allow the parties and the ALJ to calculate and report the missing amounts left blank in the ALJ's recommended Order, including the total refund/credit amounts due to the customers to cover over-charges plus interest over 17 months for the customer refund. The Commission directed that the ALJ use 0.61% for the interest rate.

The ALJ and the parties are directed to make their final calculations based on the ALJ's recommendations in his Proposal for Decision and reply to exceptions to set the Utility's existing rates; but the parties and the ALJ are directed to re-run all calculations to address any additional changes that may result from the ALJ's recommended truck depreciation change to five years.

The ALJ is directed to take any necessary evidence to determine whether or not the Protestants ordered a copy of the transcript, the specific cost, provide a specific amount, if any, that the Protestants need to pay to the Applicant to reimburse their portion of the transcript costs and include the amount in Ordering Provision No. 3.

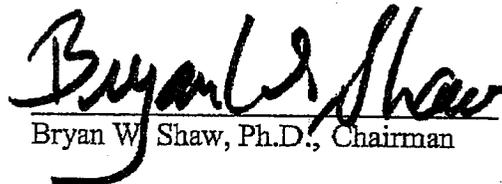
The ALJ is directed to modify Conclusion of Law 16 and Ordering Provision No. 1 to incorporate the ALJ's recommendation in his reply to exceptions to deny the Utility's application and set rates to the Utility's previously approved rates.

The ALJ is instructed to provide his recommendations a revised proposed Order that incorporates the Commission's rate decisions and the additional calculations.

The Utility is ordered to escrow any additional amounts collected over its previously approved rates during the pendency of the case during remand until the Commission's final order under the authority of TWC § 13.187(i) and in accordance with 30 TAC § 291.30(a).

Issue Date: **OCT 05 2010**

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
Bryan W. Shaw, Ph.D., Chairman

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*

October 7, 2010

TO: Persons on the attached mailing list.

RE: Deer Creek Ranch Water Co., LLC  
TCEQ Docket No. 2009-0929-UCR; SOAH Docket No. 582-09-5328

Enclosed is a copy of an interim order issued by the Commission regarding the above-referenced matter.

Should you have any questions, please contact Melissa Schmidt of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3317.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela".

LaDonna Castañuela  
Chief Clerk

LDC/ms

Enclosure

MAILING LIST  
for  
Deer Creek Ranch Water Co., LLC  
TCEQ Docket No. 2009-0929-UCR; SOAH Docket No. 582-09-5328

FOR THE APPLICANT:

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Cristina Chavez  
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via electronic mail:

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LaDonna Castañuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk MC-105  
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Austin, Texas 78711-3087

FOR THE STATE OFFICE OF  
ADMINISTRATIVE HEARINGS

\* The Honorable William G. Newchurch  
Administrative Law Judge  
State Office of Administrative Hearings  
P. O. Box 13025  
Austin, Texas 78711-3025

**EXHIBIT C**

**SOAH's October 15, 2010, Order  
establishing interim rates and  
requiring escrow**

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

SOAH DOCKET NO. 582-09-5328  
TCEQ DOCKET NO. 2009-0929-UCR

2010 OCT 15 PM 4: 49

APPLICATION OF DEER CREEK  
RANCH WATER CO., LLC, TO  
CHANGE ITS WATER RATES AND  
TARIFF UNDER CERTIFICATE OF  
CONVENIENCE AND NECESSITY NO.  
11241 IN TRAVIS AND HAYS COUNTY

CHIEF CLERKS OFFICE  
BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**ORDER NO. 8  
SETTING INTERIM RATES,  
SETTING PROCEDURES TO COMPLY WITH COMMISSION'S ESCROW ORDER,  
AND SETTING HEARING ON REMAND**

**I. INTRODUCTION**

On October 15, 2010, a telephonic prehearing conference was held in this case, which the Texas Commission on Environmental Quality (TCEQ) has remanded to the State Office of Administrative Hearings (SOAH). The following appeared:

PARTY	REPRESENTATIVE
Deer Creek Ranch Water Co., LLC (Applicant)	Randall B. Wilburn
Executive Director (ED)	Brian D. MacLeod
Office of Public Interest Counsel (OPIC)	James B. Murphy
AGX, Inc. and Anne Hawken	David M Gottfried
Jennifer Jones	self

**II. INTERIM RATES**

The ED filed a motion to set interim rates equal to the rates that the Commission had approved before the Application in this case was filed. The Applicant opposes the motion, but all other parties support it. After hearing the oral arguments of the parties and pursuant to the Administrative Law Judge's (ALJ's) authority set out in 30 TEX. ADMIN. CODE (TAC) § 291.29, the ED's motion to set interim rates is granted.

SOAH Docket No. 582-09-5328  
TCEQ Docket No. 2009-0929-UCR

Order No. 8

Page 2

The interim rates will be the same as the rates that the Commission had approved before the Application in this case was filed. Those interim rates will go into effect immediately and will be reflected in any rate bill sent to the Applicant's customers on or after today's date. The interim rates will remain in effect until a final decision is made in this case.

Based on the evidence presented at the hearing on the merits, the ALJ has concluded that the proposed rates are unjust and unreasonable, the Application should be denied, the rates should revert to those approved before the Application was filed, and the customers should be refunded the difference between the proposed and those previously approved rates. This has been set forth at length in the Proposal for Decision (PFD) as modified by the ALJ's letter concerning exceptions to the PFD and his PFD presentation to the Commission. In its Interim Order of October 5, 2010, the Commission concurred with those recommendations.

Given that, the ALJ finds—for purposes of ruling on the motion for interim rates—that the Applicant's continuing to collect the proposed rates would be unjust and unreasonable and would result in an unreasonable economic hardship on the utility's customers.

### III. PROCEDURES TO COMPLY WITH COMMISSION'S ESCROW ORDER

In its October 5, 2010, Interim Order, the Commission ordered the Applicant to escrow any additional amounts collected over its previously approved rates during the pendency of the case during remand until the Commission's final order. The ED has filed a motion asking the ALJ to order the Applicant to take certain actions to implement the Commission's escrow order. Pursuant to the ALJ's authority set out in 30 TAC § 291.29, that motion is also granted and shall apply to all proposed rate amounts that the Applicant has collected prior to the interim rates going into effect.

SOAH Docket No. 582-09-5328  
TCEQ Docket No. 2009-0929-UCR

Order No. 8.

Page 3

The Applicant shall provide all parties with a copy of the escrow agreement for deposit of all monies collected from customers in excess of the prior rate within 10 days. The Applicant shall also file with the ED and the parties the monthly statement on that account by the 10th day of each month after the establishment of the escrow account. The escrow account shall be the repository for all rates collected from customers after the Agenda date (September 29, 2010) in excess of the rates authorized before the filing of the Application in this proceeding. The escrow account shall specify that no withdrawals are allowed from the account without approval of the Executive Director. The Applicant must act in compliance with all of the escrow requirements found in 30 TAC § 291.30.

#### IV. HEARING ON THE MERITS OF THE REMAND

The hearing on the merits of the remand will commence at 9:00 a.m., November 5, 2010, at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. All evidence will be presented live and is not required to be prefiled. The parties are encouraged to stipulate to uncontested facts and to admission of exhibits so as to minimize the length of the hearing or even make it unnecessary. In its evidence, each party shall include a revised version of the ALJ's last proposed order that reflects that party's position on the remanded issues.

SIGNED October 15, 2010.

  
\_\_\_\_\_  
WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE  
300 West 15th Street Suite 502  
Austin, Texas 78701  
Phone: (512) 475-4993  
Fax: (512) 475-4994

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)  
STYLE/CASE: DEER CREEK RANCH WATER CO LLC  
SOAH DOCKET NUMBER: 582-09-5328  
REFERRING AGENCY CASE: 2009-0929-UCR

STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

ADMINISTRATIVE LAW JUDGE  
ALJ WILLIAM G. NEWCHURCH

REPRESENTATIVE / ADDRESS

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DEER CREEK RANCH WATER CO., LLC

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2010 OCT 15 PM 4: 49  
CHIEF CLERKS OFFICE

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JONATHAN MCCABE

10/15/2010 16:58 FAX

Received:

Oct 15 2010 04:49pm

007/007

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BRADLEY AND STEPHANIE WEAVER

---

xc: Docket Clerk, State Office of Administrative Hearings

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 475-4994

DATE:

10/15/2010

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

7

REGARDING:

ORDER NO. 8 - SETTING INTERIM RATES, SETTING PROCEDURES TO COMPLY WITH COMMISSIONS ESCROW ORDER, AND SETTING HEARING ON REMAND

DOCKET NUMBER:

582-09-5328

JUDGE WILLIAM G NEWCHURCH

Table with 2 columns: Recipient Name and Contact Information. Includes entries for DAVID M. GOTTFRIED, BRIAN MACLEOD, JAMES B. MURPHY, RANDALL B WILBURN, CRISTINA CHAVEZ, CHRIS ELDER, ROYCE H. HENDERSON, JENNIFER JONES, JONATHAN MCCABE, BRADLEY AND STEPHANIE WEAVER, and Kennedy Court Reporting Services.

TCEQ Docket Clerk, Fax Number 512/239-3311

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT SHAYLA CLAY(scl) (512) 475-4993

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2010 OCT 15 PM 4: 49
CHIEF CLERKS OFFICE

## **EXHIBIT D**

**Billing Information from the customers establishing the failure to make the \$52.65 refunds and failure to implement SOAH's interim rate for two months**

1/18/2011  
1:10:41PM

DEER CREEK WATER SUPPLY CO.

# AUDIT HISTORY

Program Version 10.7.100

Page 1 of 1

Account:

WEAVER, STEPHANIE

Date	Amount	Description	Balance
		Beginning Month Balance	\$141.99
10/13/2010	(\$141.99)	Payment Check # 3400	\$0.00
10/26/2010	\$110.39	Usage of 5300 Water	\$110.39
10/26/2010	\$11.02	LCRA P/T For Conn	\$121.41
10/26/2010	\$6.63	LCRA P/T For Wate	\$128.04
10/26/2010	\$1.10	Regulatory Fee	\$129.14
		Beginning Month Balance	\$129.14
11/17/2010	(\$129.14)	Payment Check # 3417	\$0.00
11/29/2010	\$124.54	Usage of 6850 Water	\$124.54
11/29/2010	\$10.91	LCRA P/T For Conn	\$135.45
11/29/2010	\$6.54	LCRA P/T For Wate	\$141.99
11/29/2010	\$1.25	Regulatory Fee	\$143.24
		Beginning Month Balance	\$143.24
12/10/2010	(\$67.95)	Payment Check # 3483	\$75.29
12/20/2010	\$7.53	Late Fee	\$82.82
12/23/2010	(\$7.53)	Manually Entered Late Fee	\$75.29
12/23/2010	(\$75.29)	Adjustment-Rate code adjustment	\$0.00
12/30/2010	\$47.84	Usage of 6280 Water	\$47.84
12/30/2010	\$10.85	LCRA P/T For Conn	\$58.69
12/30/2010	\$6.51	LCRA P/T For Wate	\$65.20
12/30/2010	\$0.48	Regulatory Fee	\$65.68
		Beginning Month Balance	\$65.68
1/5/2011	(\$65.12)	Adjustment-Rate code adjustment	\$0.56
1/5/2011		October rate code adjustment	\$0.56

Totals for Water	282.77
Totals for Adjustments	-140.41
Totals for LCRA P/T For Conn	32.78
Totals for LCRA P/T For Wate	19.68
Totals for Regulatory Fee	2.83
Payments Received	339.08

Qualified By: Account  
Professional General Management

*5300*  
*2000*  
*3300 = 4,000 @ 3/1,000*

*35.00*  
*12.00*  
*1.47*  
*11.02*  
*6.63*  

---

*65.12*

*129.14 -*

*1.402 Overcharge*

*6850*  
*2000*  
*4850 = 5,000 @ 3/1,000*

*November*

*35.00*  
*15.00*  
*1.50*  
*10.91*  
*6.54*  

---

*67.95*  
*-143.24*  

---

*75.29 Overcharge*

01/18/11

Stephanie --

When we talked the other day I thought you understood that I had not finished adjustments for both October and November billings. I have made the adjustment for the October bill and you don't owe anything (actually .56) at this time. I credited you with \$1.10 too much on October but I'm not going to change it!

I am returning your check. You will not owe anything until the bills go out the end of this month.

I will be so glad to get all of this out of the way -- It's giving me an ulcer I think.

Regards,

  
Thelma Rhodes

TOTAL ON/BEFORE PENALTY DATE
\$ 129.14
PAY NOW - SAVE \$11.04
TOTAL AFTER PENALTY DATE
\$ 140.18

**Billing Statement**

**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

ACCOUNT NO.

STEPHANIE WEAVER

PENALTY DATE 11/16/2010

IF YOUR MAILING ADDRESS HAS CHANGED PLEASE CORRECT  
 PLEASE RETURN TOP PORTION WITH PAYMENT

Route #1  
 Rate Code #1  
 Reading Date  
 10/25/2010

BILLING PERIOD	FROM	TO	ACCOUNT NO.
Service From	9/27/2010	TO 10/25/2010	STEPHANIE WEAVER

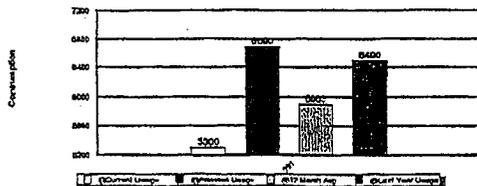
SERVICE ADDRESS:  
 17202 PANORAMA DRIVE

PRESENT READING
779750
PREVIOUS READING
774450

	Charges
Water	110.39
Regulatory Fee	1.10
LCRA P/T For Conn	11.02
LCRA P/T For Wate	6.63

Usage 5,300

Monthly Usage



**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

Base Rate - \$64.00 for ~0-usage  
 LCRA pass through charge - \$11.02  
 LCRA water charge - \$6.63  
 number of active meters - 378

Account #

TOTAL DUE NOW	129.14
---------------	--------

SAVE THIS PENALTY	PAY THIS AMOUNT AFTER
\$11.04	11/16/2010
	140.18

Dec 08 10 01:40p SS

Received:

Dec 8 2010 12:12pm  
512-291-7446

p.1

**Billing Statement**

**DEER CREEK WATER SUPPLY CO.**  
26550 RANCH ROAD 12, SUITE 1  
DRIPPING SPRINGS, TX 78620  
(512) 894-3322

TOTAL DUE BEFORE PENALTY DATE	
\$	123.60
PAY NOW - SAVE \$9.68	
TOTAL AFTER PENALTY DATE	
\$	133.28

ACCOUNT NO.

JENNIFER JONES

12/16/2010

PENALTY DATE

IF YOUR MAILING ADDRESS HAS CHANGED PLEASE CORRECT  
PLEASE RETURN TOP PORTION WITH PAYMENT

Route #1  
Rate Code #1  
Reading Date  
11/27/2010

BILLING PERIOD Service From 10/25/2010 TO 11/27/2010

ACCOUNT NO. JENNIFER JONES

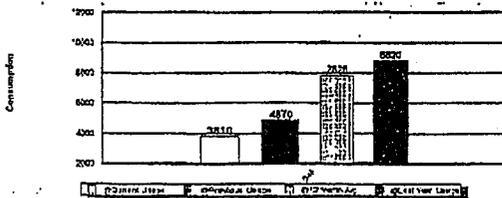
SERVICE ADDRESS:  
740 GREEN OAK DRIVE

PRESENT READING
1212390
PREVIOUS READING
1208580

	Charges
Water	96.79
Late Fee	10.65
Regulatory Fee	0.97
LCRA P/T For Conn	10.91
LCRA P/T For Wate	6.54
Credit	(2.26)

Usage 3,810

Monthly Usage



**DEER CREEK WATER SUPPLY CO.**  
26550 RANCH ROAD 12, SUITE 1  
DRIPPING SPRINGS, TX 78620  
(512) 894-3322

Base Rate - \$64.00 for -0- usage  
LCRA pass through charge - \$10.91  
LCRA water charge - \$6.54  
number of active meters - 382

Account #

TOTAL DUE BEFORE PENALTY DATE	123.60
PAY NOW - SAVE \$9.68	
TOTAL DUE AFTER PENALTY DATE	133.28

**Billing Statement**

**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

TOTAL DUE BEFORE PENALTY DATE	\$ 143.24
PAY NOW - SAVE	\$12.45
TOTAL AFTER PENALTY DATE	\$ 155.69

ACCOUNT NO.

STEPHANIE WEAVER

12/16/2010

PENALTY DATE

IF YOUR MAILING ADDRESS HAS CHANGED PLEASE CORRECT

PLEASE RETURN TOP PORTION WITH PAYMENT

Route #1

Rate Code #1

Reading Date  
11/27/2010

BILLING PERIOD Service From 10/25/2010 TO 11/27/2010

ACCOUNT NO. --- STEPHANIE WEAVER ---

SERVICE ADDRESS:  
17202 PANORAMA DRIVE

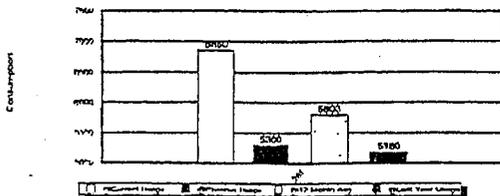
**Charges**

PRESENT READING	786600
PREVIOUS READING	779750

Water	124.54
Regulatory Fee	1.25
LCRA P/T For Conn	10.91
LCRA P/T For Wate	6.54

Usage 6,850

Monthly Usage



**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

Base Rate - \$64.00 for 0- usage  
 LCRA pass through charge - \$10.91  
 LCRA water charge - \$6.54  
 number of active meters - 382

Account #

TOTAL DUE NOW 143.24

SAVE THIS PENALTY 12/16/2010  
 PAY THIS AMOUNT AFTER 155.69

TOTAL DUE BEFORE PENALTY DATE	\$ 65.68
PAY NOW - SAVE	\$5.00
TOTAL AFTER PENALTY DATE	\$ 70.68

**Billing Statement**

**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

*\$67.86*

*based on formula in blue box*

ACCOUNT NO.

PENALTY DATE

1/16/2011

STEPHANIE WEAVER

*billed for \$140.97 (minus \$75.29 credit)*

*65.68 + 75.29 = 140.97*

*How Melina, this amount (credit) was deducted from my total bill.*

IF YOUR MAILING ADDRESS HAS CHANGED PLEASE CORRECT  
 PLEASE RETURN TOP PORTION WITH PAYMENT

Route #1

Rate Code #1

Reading Date  
 12/27/2010

BILLING PERIOD Service From 11/27/2010 TO 12/27/2010

ACCOUNT NO. STEPHANIE WEAVER

SERVICE ADDRESS:  
 17202 PANORAMA DRIVE

PRESENT READING	792880
PREVIOUS READING	786600

Usage 6,280

Water

*credit →*

Rate code adjustment  
 Regulatory Fee  
 LCRA P/T For Conn  
 LCRA P/T For Wate

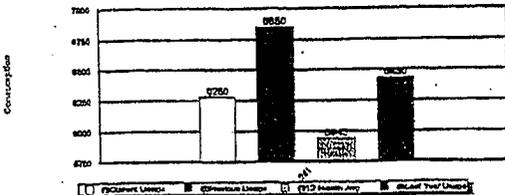
Charges

47.84  
~~(75.29)~~  
 0.48  
 10.85  
 6.51

*act. \$65.12*

*per pgms: bills are being calculated/credited differently.*

*base rate \$35  
 usage for 4280 gal: \$15.00  
 LCRA PT \$10.85  
 LCRA water \$6.51*



**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

Base Rate - \$35.00 for 2,000 gallons, 2001-10,000 @ \$3/1000, 10,001 - 20,000 @ \$4/1000, LCRA pass through charge - \$10.85, LCRA water charge - \$6.51  
 Number of active meters - 384

Account #

TOTAL DUE NOW

65.68

SAVE THIS PENALTY

\$5.00

PAY THIS AMOUNT AFTER

1/16/2011

70.68

Rate Code #1

Reading Date  
1/27/2011

BILLING PERIOD FROM Service From 12/27/2010 TO 1/27/2011

AMOUNT DUE TO: STEPHANIE WEAVER

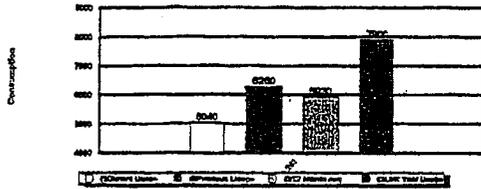
SERVICE ADDRESS:  
17202 PANORAMA DRIVE

PRESENT READING
797920
PREVIOUS READING
792880

Usage 5,040

	Charges
Water	44.12
Rate code adjustment	(65.12)
Regulatory Fee	0.44
LCRA P/T For Corn	10.76
LCRA P/T For Water	6.46
Previous Charges	65.68

Monthly Usage



DEER CREEK WATER SUPPLY CO.  
26550 RANCH ROAD 12, SUITE 1  
DRIPPING SPRINGS, TX 78620  
(512) 894-3322

Base Rate - \$35.00 for 2,000 gallons, 2001-10,000 @  
\$3/1000, 10,001 - 20,000 @ \$4/1000, LCRA pass through  
charge - \$10.76, LCRA water charge - \$6.46  
Number of active meters - 387

Account #

TOTAL DUE NOW 62.34

SAVE THIS PENALTY

\$5.00

PAY THIS AMOUNT AFTER

2/16/2011

67.34

Billing Statement

TOTAL DUE BEFORE PENALTY DATE	\$ 67.72
PAY NOW - SAVE	\$5.00
TOTAL AFTER PENALTY DATE	\$ 72.72

2/4/11  
online

**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

ACCOUNT NO.

K.H. WYNN

PENALTY DATE

2/16/2011

IF YOUR MAILING ADDRESS HAS CHANGED PLEASE CORRECT

PLEASE RETURN TOP PORTION WITH PAYMENT

Route #1

Rate Code #1

Reading Date  
1/27/2011

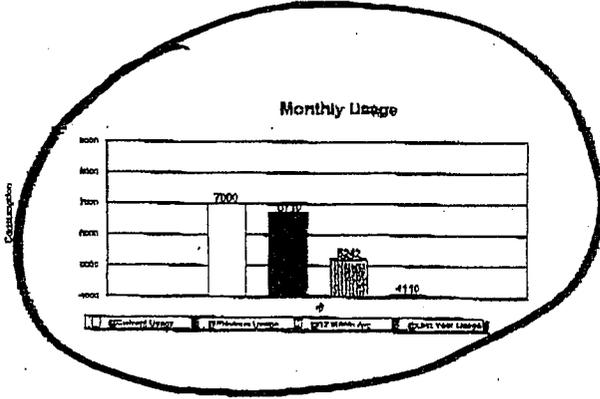
BILLING PERIOD	FROM Service From 12/27/2010 TO 1/27/2011	TO	ADD NO.	K.H. WYNN
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SERVICE ADDRESS:	10016 LONGHORN SKYWY.
------------------	-----------------------

PRESENT READING	668310
PREVIOUS READING	661310

	Charges
Water	50.00
Regulatory Fee	0.50
LCRA P/T For Conn	10.76
LCRA P/T For Wate	6.46

Usage 7,000



**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

use Rate - \$35.00 for 2,000 gallons; 2001-10,000 @ \$/1000; 10,001-20,000 @ \$4/1000; LCRA pass through charge - \$10.76; LCRA wheel charge - \$6.46  
 number of active meters - 332

Account #

TOTAL DUE NOW	67.72
---------------	-------

SAVE THE PENALTY	PAY THIS AMOUNT AFTER
\$5.00	2/16/2011
	72.72

**Billing Statement**

**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

TOTAL DUE BEFORE PENALTY DATE	\$ 63.22
PAY NOW - SAVE	\$5.00
TOTAL AFTER PENALTY DATE	\$ 68.22

STEPHANIE WEAVER

ACCOUNT NO.

3/16/2011

PENALTY DATE

IF YOUR MAILING ADDRESS HAS CHANGED PLEASE CORRECT

PLEASE RETURN TOP PORTION WITH PAYMENT

Route #1

Rate Code #1

Reading Date  
2/24/2011

BILLING PERIOD FROM TO  
Service From 1/27/2011 TO 2/24/2011

ACCOUNT NO. STEPHANIE WEAVER

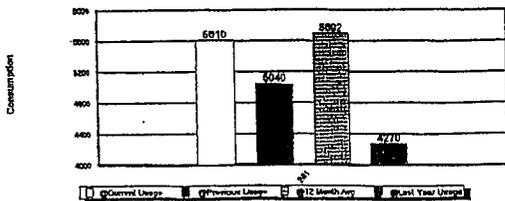
SERVICE ADDRESS:  
17202 PANORAMA DRIVE

PRESENT READING	803530
PREVIOUS READING	797920

Usage 5,610

	Charges
Water	45.83
Regulatory Fee	0.46
LCRA P/T For Conn	10.58
LCRA P/T For Wate	6.35

Monthly Usage



**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

**TOTAL DUE NOW 63.22**

SAVE THIS PENALTY

\$5.00

PAY THIS AMOUNT AFTER

3/16/2011

68.22

Base Rate - \$35.00 for 2,000 gallons, 2001-10,000 @ \$3/1000, 10,001 - 20,000 @ \$4/1000, LCRA pass through charge - \$10.58, LCRA water charge - \$6.35  
 Number of active meters - 394

Account #

**Billing Statement**

**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

TOTAL DN/BEFORE PENALTY DATE	\$ 72.67
PAY NOW - SAVE	\$5.52
TOTAL AFTER PENALTY DATE	\$ 78.19

K.H WYNN

ACCOUNT NO.

PENALTY DATE **3/16/2011**

IF YOUR MAILING ADDRESS HAS CHANGED PLEASE CORRECT  
 PLEASE RETURN TOP PORTION WITH PAYMENT

Route #1  
 Rate Code #1  
 Reading Date  
 2/24/2011

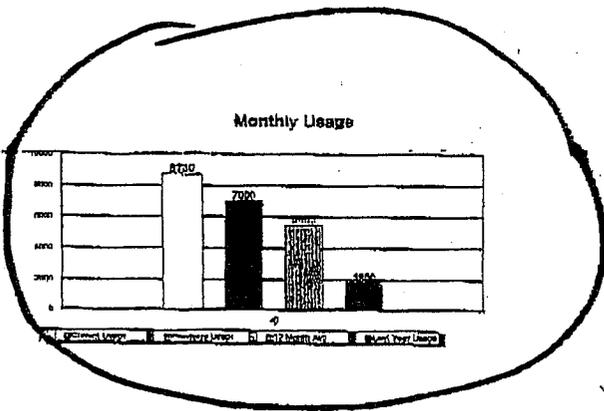
BILLING PERIOD	FROM	TO	AD. DUN. NO.
	Service From	1/27/2011 TO 2/24/2011	K.H. WYNN

SERVICE ADDRESS:  
 10016 LONGHORN SKYWY.

PRESENT READING	677040
PREVIOUS READING	668310

	Charges
Water	55.19
Regulatory Fee	0.55
LCRA P/T For Conn	10.58
LCRA P/T For Wate	6.35

Usage 8,730



**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

Base Rate - \$35.00 for 2,000 gallons, 2001-10,000 @ \$3/1000; 10,001 - 20,000 @ \$4/1000, LCRA pass-through charge - \$10.58, LCRA water charge - \$6.35  
 Number of active meters - 394

TOTAL DUE NOW	72.67
SAVE THE PENALTY.	PAY THIS AMOUNT AFTER
\$5.52	3/16/2011 78.19

Account #

3/17/11

**Billing Statement**

TOTAL DUE BEFORE PENALTY DATE	\$ 70.69
PAY NOW - SAVE	\$5.33
TOTAL AFTER PENALTY DATE	\$ 76.02

**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

ACCOUNT NO.

K.H. WYNN

4/16/2011

PENALTY DATE

IF YOUR MAILING ADDRESS HAS CHANGED PLEASE CORRECT  
 PLEASE RETURN TOP PORTION WITH PAYMENT

Route #1  
 Rate Code #1  
 Reading Date  
 3/28/2011

BILLING PERIOD FROM 2/24/2011 TO 3/28/2011

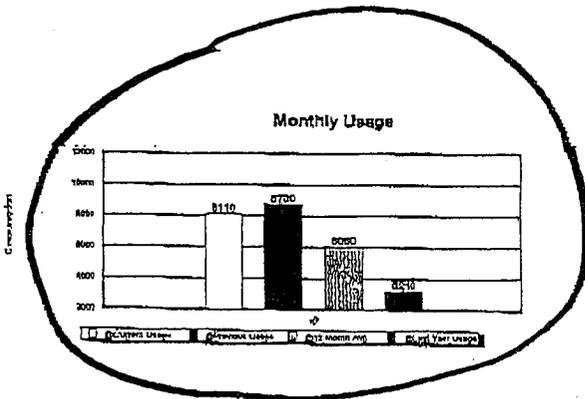
ACCOUNT NO. K.H. WYNN

SERVICE ADDRESS:  
 10016 LONGHORN SKY WY.

PRESENT READING	685150
PREVIOUS READING	677040

	Charges
Water	53.33
Regulatory Fee	0.53
LCRA P/T For Conn	10.52
LCRA P/T For Wate	6.31

Usage 8,110



**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

4/5/11

Base Rate - \$35.00 for 2,000 gallons, 2001-10,000 @  
 \$3/1000, 10,001 - 20,000 @ \$4/1000, LCRA pass through  
 charge - \$10.52, LCRA water charge - \$6.31  
 Number of active meters - 396

TOTAL DUE NOW	70.69
---------------	-------

SAVE THIS PENALTY	\$5.33	PAY THIS AMOUNT AFTER	4/16/2011
			76.02

Account #

**Billing Statement**

**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

TOTAL DN/BEFORE PENALTY DATE	
\$	67.24
PAY NOW - SAVE \$5.00	
TOTAL AFTER PENALTY DATE	
\$	72.24

STEPHANIE WEAVER

ACCOUNT NO.

4/16/2011

PENALTY DATE

IF YOUR MAILING ADDRESS HAS CHANGED PLEASE CORRECT

PLEASE RETURN TOP PORTION WITH PAYMENT

Route #1

Rate Code #1

Reading Date  
3/28/2011

BILLING PERIOD FROM Service From 2/24/2011 TO 3/28/2011

ACCOUNT NO. STEPHANIE WEAVER

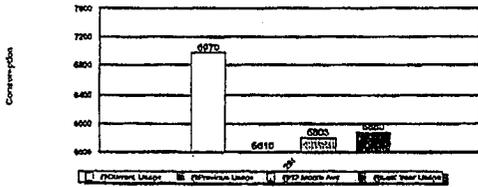
SERVICE ADDRESS:  
17202 PANORAMA DRIVE

PRESENT READING	810500
PREVIOUS READING	803530

Usage 6,970

	Charges
Water	49.91
Regulatory Fee	0.50
LCRA P/T For Conn	10.52
LCRA P/T For Wate	6.31

Monthly Usage



**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

Base Rate - \$35.00 for 2,000 gallons, 2001-10,000 @ \$3/1000, 10,001 - 20,000 @ \$4/1000, LCRA pass through charge - \$10.52, LCRA water charge - \$6.31  
 Number of active meters - 396

Account #

**TOTAL DUE NOW 67.24**

SAVE THIS PENALTY  
**\$5.00**

PAY THIS AMOUNT AFTER  
4/16/2011  
**72.24**

TOTAL ON/BEFORE PENALTY DATE
\$ 90.26
PAY NOW - SAVE \$7.28
TOTAL AFTER PENALTY DATE
\$ 97.54

**Billing Statement**

**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

STEPHANIE WEAVER

ACCOUNT NO

PENALTY DATE **5/16/2011**

IF YOUR MAILING ADDRESS HAS CHANGED PLEASE CORRECT  
 PLEASE RETURN TOP PORTION WITH PAYMENT

Route #1  
 Rate Code #1  
 Reading Date  
 4/26/2011

BILLING PERIOD	FROM	TO	ACCOUNT NO
Service from 3/28/2011 TO 4/26/2011			STEPHANIE WEAVER
SERVICE ADDRESS:			
17202 PANORAMA DRIVE			

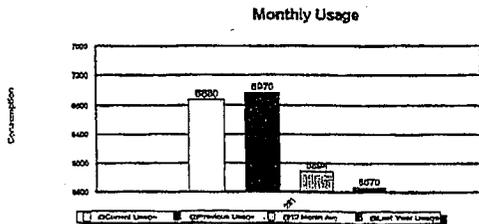
PRESENT READING
817380
PREVIOUS READING
810500

Water	49.64
LCRA Fee	23.19
Regulatory Fee	0.50
LCRA P/T For Conn	10.58
LCRA P/T For Wate	6.35

Charges

Usage 6,880

Usage on 03/28 bill 6970  
 billed for \$67.24



**DEER CREEK WATER SUPPLY CO.**  
 26550 RANCH ROAD 12, SUITE 1  
 DRIPPING SPRINGS, TX 78620  
 (512) 894-3322

Account #

TOTAL DUE NOW	90.26
SAVE THIS PENALTY	PAY THIS AMOUNT AFTER
\$7.28	5/16/2011
	97.54

## **EXHIBIT E**

**Deer Creek's First Notice of Rate  
Change that included a surcharge  
for rate case expense**

**NOTICE OF PROPOSED RATE CHANGE**

Deer Creek Ranch Water Company, LLC

11241

Company Name

CCN Number

has submitted a rate change application to the Texas Commission on Environmental Quality (Commission). The proposed rates listed on the next page will apply to service received after the effective date provided below. If the Commission receives protests to the proposed increase from 10 percent of the ratepayers or from any affected municipality before the 91st day after the proposed effective date, a public hearing will be scheduled to determine if the proposed rates are reasonable. Protests should be mailed to:

**Texas Commission on Environmental Quality  
Water Supply Division  
Utilities & Districts Section, MC 153  
P. O. Box 13087  
Austin, Texas 78711-3087**

Unless protests are received from 10 percent of the ratepayers or the Commission staff requests a hearing, no hearing will be held and rates will be effective as proposed. Please read the following information carefully:  
Hill Top Manor, Deer Creek Ranch Section One, Hill Creek West, Highland Creek Lakes, Mountain Creek Lakes, Twin Lake Hills, and Valley Lake Hills

**Subdivisions or Systems Affected by Rate Change**

P. O. Box 436	Dripping Springs	Texas	78620	512-894-0434
Company Address	City	State	Zip	Telephone
\$135,000			March 29, 2011	
Annual Revenue Increase			Date Customer Notice Mailed	
July 1, 2007			25th Day of Each Month	
Date of Last Rate Change			Date Meters Typically Read	

**EFFECTIVE DATE OF PROPOSED INCREASE:** May 31, 2011

**BILLING COMPARISON**

Water:	Existing	10,000 gallons:	<u>\$ 59.00 /mo</u>	Existing	30,000 gallons:	<u>\$ 149.00 /mo</u>
	Proposed	10,000 gallons:	<u>\$ 103.25 /mo</u>	Proposed	30,000 gallons:	<u>\$ 228.25 /mo</u>
Sewer:	Existing	10,000 gallons:	<u>\$ N.A. /mo</u>	Proposed	30,000 gallons:	<u>\$ N.A. /mo</u>

The proposed rates will apply to all service rendered after the effective date and will be reflected on the bill you receive approximately 30 to 45 days after the effective date.

In the event that the application is set for hearing, the specific rates requested by the utility may be decreased or increased by order of the Commission. If the Commission orders a lower rate to be set, the utility may be ordered to refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest. You may inspect a copy of the rate change application at your utility's office or at the Commission's office at Park 35 - Building F, 12015 Park 35 Circle, Suite 3101, Austin, Texas, west side of IH-35, south of Yager Lane. Additional information about the application can be obtained by contacting the Utilities and Districts Section at 512/239-4691. Information about how you can participate in the rate setting process can be obtained by contacting the Public Interest Counsel at 512/239-6363.

CURRENT RATES		PROPOSED RATES	
Monthly base rate including <u>2,000</u> gallons		Monthly base rate including <u>0</u> gallons	
Meter Size:		Meter Size:	
Residential		Residential	
5/8" or 3/4"	\$ 35.00	5/8" or 3/4"	\$ 56.25
1"	\$	1"	\$ 95.63
1 1/2"	\$	1 1/2"	\$ 185.63
2"	\$	2"	\$ 298.13
3"	\$	3"	\$ 562.50
Other: _____"	\$	Other: <u>4</u> "	\$ 928.13
Gallonge Charge:		Gallonge Charge:	
\$ _____ for each additional 1000 gallons over the minimum \$3.00 per 1,000 gallons 2,001 - 10,000 \$4.00 per 1,000 gallons 10,001 - 20,000 \$5.00 per 1,000 gallons 20,001 thereafter		\$ _____ for each additional 1000 gallons, over the minimum \$2.00 per 1,000 gallons 0 - 2,000 \$4.00 per 1,000 gallons 2001 - 4,000 \$5.00 per 1,000 gallons 4,001 - 6,000 \$6.25 per 1,000 gallons 6,001 thereafter	
<u>Miscellaneous Fees</u>		<u>Miscellaneous Fees</u>	
Tap fee	\$ 1,200.00	Tap fee	\$ 1,200.00
Reconnection fee	\$	Reconnection fee	
Non-payment (Maximum - \$25.00)	\$ 25.00	Non-payment (Maximum - \$25.00)	\$ 25.00
Customer's request	\$ 50.00	Customer's request	\$ 50.00
Transfer fee	\$ 50.00	Transfer fee	\$ 50.00
Late charge	\$ 10% Of Bill	Late charge - \$ 5.00 or 10% (Choose one)	\$ 10% Of Bill
Returned check charge	\$ 25.00	Returned check charge	\$ 33.00
Deposit	\$ 50.00	Deposit (Maximum \$50.00)	\$ 50.00
Meter test fee	\$ 25.00	Meter test fee	\$ 25.00

Regulatory Assessment of 1% is added to base rate and gallonage charges

Tap Fee (Unique Cost) Actual Cost  
 Large Meter Tap Fee Actual Cost  
 Commercial & Non-Residential  
 Deposit 1/6th of Estimated Annual Bill

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SEE ATTACHED PAGE FOR ADDITIONAL CURRENT  
 TARIFF PROVISIONS

SEE ATTACHED PAGE FOR ADDITIONAL PROPOSED  
 TARIFF PROVISIONS

ADDITIONAL EXISTING TARIFF LANGUAGE

MONTHLY SURCHARGE (monthly fee to be collected until March 1, 2010).....\$12.00

This fee will be charged to each customer on a monthly on a monthly basis for five years to collect sufficient revenue to pay for improvements to the water system. All funds collected from the surcharge will be escrowed and handled in accordance to 30 TAC 291.30 (Escrow of Proceeds Received Under Rate Increase).

LCRA Annual Fee Surcharge = \$50,000/(number of customers at the beginning of the monthly billing cycle divided by the number of months in the billing year. The LCRA annual fee surcharge will terminate when Deer Creek Ranch Water System's obligation to pay the \$50,000/year charge terminates. All funds collected from the surcharge will be maintained in a separate escrow account.

PURCHASE WATER AND/OR DISTRICT FEE PASS THROUGH CLAUSE:

Changes in fees imposed by any the non-affiliated third party water supplier or underground water district having jurisdiction over the Utility shall be passed through as an adjustment to the water gallonage charge according to the following formula:

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B	=	change in purchased water/district gallonage charge (per 1,000 gallons);
L	=	system average line loss for preceding 12 months not to exceed 0.15;
BR	=	approved base rate;
C	=	number of customers;
N	=	number of 1,000 gallons in base rate;
LBR	=	LCRA monthly base rate;
ABR	=	adjusted base rate;
ABR	=	$BR + (LBR/C) + [B*N]/[1-L]$

To implement the Temporary Water Rate, the utility must comply with all notice and other requirements of 30 T.A.C. 291.21(h).

### ADDITIONAL PROPOSED TARIFF PROVISIONS

LCRA Annual Fee Surcharge =  $\$50,000 / (\text{number of customers at the beginning of the monthly billing cycle} / \text{number of months in the billing year})$ . The LCRA annual fee surcharge will terminate when Deer Creek Ranch Water System's obligation to pay the \$50,000/year charge terminates. All funds collected from the surcharge will be maintained in a separate account.

LCRA Annual Reservation Fee Surcharge =  $\text{LCRA Annual Reservation True Up Fee At End of Accounting Period} / (\text{number of customers at the beginning of the monthly billing cycle} / \text{number of months in the billing year})$ . The LCRA annual reservation fee surcharge will terminate when Deer Creek Ranch Water System's obligation to pay the LCRA annual reservation fee terminates. All funds collected from the surcharge will be maintained in a separate account.

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#### RATE CASE EXPENSES ASSOCIATED WITH PREPARATION AND FILING OF APPLICATION FOR A RATE/TARIFF CHANGE:

Rate Case Monthly Customer Surcharge = \$2.37 per month per water customer. The Rate Case Monthly Customer Surcharge will terminate when Deer Creek Ranch Water System has collected a sum of \$21,250.00 from this surcharge.

## **EXHIBIT F**

**Deer Creek's Second Notice of  
Rate Change that deleted the  
surcharge for rate case expense**

**NOTICE OF PROPOSED RATE CHANGE**

Deer Creek Ranch Water Company, LLC

11241

Company Name

CCN Number

has submitted a rate change application to the Texas Commission on Environmental Quality (Commission). The proposed rates listed on the next page will apply to service received after the effective date provided below. If the Commission receives protests to the proposed increase from 10 percent of the ratepayers or from any affected municipality before the 91st day after the proposed effective date, a public hearing will be scheduled to determine if the proposed rates are reasonable. Protests should be mailed to:

**Texas Commission on Environmental Quality  
Water Supply Division  
Utilities & Districts Section, MC 153  
P. O. Box 13087  
Austin, Texas 78711-3087**

Unless protests are received from 10 percent of the ratepayers or the Commission staff requests a hearing, no hearing will be held and rates will be effective as proposed. Please read the following information carefully: Hill Top Manor, Deer Creek Ranch Section One, Hill Creek West, Highland Creek Lakes, Mountain Creek Lakes, Twin Lake Hills, and Valley Lake Hills

Subdivisions or Systems Affected by Rate Change				
P. O. Box 436	Dripping Springs	Texas	78620	512-894-0434
Company Address	City	State	Zip	Telephone
\$135,000			April 29, 2011	
Annual Revenue Increase			Date Customer Notice Mailed	
July 1, 2007			29 <sup>th</sup> day of each month	
Date of Last Rate Change			Date Meters Typically Read	

**EFFECTIVE DATE OF PROPOSED INCREASE:** June 30, 2011

*Note: Prior Notice Included Incorrect Date of 25<sup>th</sup>*

**BILLING COMPARISON**

Water:	Existing	10,000 gallons:	<u>\$ 59.00 /mo</u>	Existing	30,000 gallons:	<u>\$ 149.00 /mo</u>
	Proposed	10,000 gallons:	<u>\$ 103.25 /mo</u>	Proposed	30,000 gallons:	<u>\$ 228.25 /mo</u>
Sewer:	Existing	10,000 gallons:	<u>\$ N.A. /mo</u>	Proposed	30,000 gallons:	<u>\$ N.A. /mo</u>

The proposed rates will apply to all service rendered after the effective date and will be reflected on the bill you receive approximately 30 to 45 days after the effective date.

In the event that the application is set for hearing, the specific rates requested by the utility may be decreased or increased by order of the Commission. If the Commission orders a lower rate to be set, the utility may be ordered to refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest. You may inspect a copy of the rate change application at your utility's office or at the Commission's office at Park 35 - Building F, 12015 Park 35 Circle, Suite 3101, Austin, Texas, west side of IH-35, south of Yager Lane. Additional information about the application can be obtained by contacting the Utilities and Districts Section at 512/239-4691. Information about how you can participate in the rate setting process can be obtained by contacting the Public Interest Counsel at 512/239-6363.

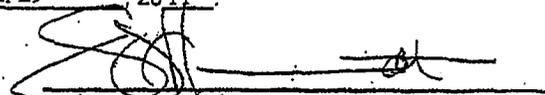
AFFIDAVIT

STATE OF TEXAS

COUNTY OF Travis

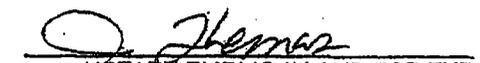
I, Sam Hammett, being duly sworn, file this NOTICE OF PROPOSED RATE CHANGE as Owner (indicate relationship to Utility, that is, owner, member of partnership, title as officer of corporation, or other authorized representative of Utility); that, in such capacity, I am qualified and authorized to file and verify such NOTICE; and that all statements made and matters set forth herein are true and correct.

I further represent that a copy of the attached notice was provided by Mail to each customer or other affected party on or about April 29, 2011 (mail or hand delivery)

  
Affiant (Utility's Authorized Representative)

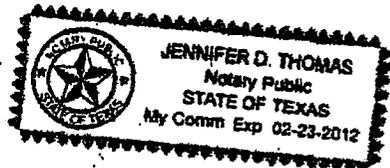
If the Affiant to this form is any person other than the sole owner, partner, officer of the Utility, or its attorney, a properly verified Power of Attorney must be enclosed.

Subscribed and sworn to before me this the 27<sup>th</sup> day of April, 2011, to certify which witness my hand and seal of office.

  
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

Jennifer Thomas  
PRINT OR TYPE NAME OF NOTARY

MY COMMISSION EXPIRES 2-23-2012



SEAL

CURRENT RATES		PROPOSED RATES	
Monthly base rate including <u>2,000</u> gallons		Monthly base rate including <u>0</u> gallons	
Meter Size:		Meter Size:	
Residential		Residential	
5/8" or 3/4"	\$ 335.00	5/8" or 3/4"	\$ 56.25
1"	\$	1"	\$ 95.63
1 1/2"	\$	1 1/2"	\$ 185.63
2"	\$	2"	\$ 298.13
3"	\$	3"	\$ 562.50
Other: _____ "	\$	Other: <u>4</u> "	\$ 928.13
Gallonge Charge:		Gallonge Charge:	
\$ _____ for each additional 1000 gallons over the minimum		\$ _____ for each additional 1000 gallons over the minimum	
\$3.00 per 1,000 gallons 2,001 - 10,000		\$2.00 per 1,000 gallons 0 - 2,000	
\$4.00 per 1,000 gallons 10,001 - 20,000		\$4.00 per 1,000 gallons 2001 - 4,000	
\$5.00 per 1,000 gallons 20,001 thereafter		\$5.00 per 1,000 gallons 4,001 - 6,000	
<u>Miscellaneous Fees</u>		<u>Miscellaneous Fees</u>	
Tap fee	\$ 1,200.00	Tap fee	\$ 1,200.00
Reconnection fee	\$	Reconnection fee	
Non-payment (Maximum - \$25.00)	\$ 25.00	Non-payment (Maximum - \$25.00)	\$ 25.00
Customer's request	\$ 50.00	Customer's request	\$ 50.00
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# *Professional General Management Services, Inc.*

*utility district management, project management*

*planning, training, consulting*

26550 Ranch Road 12, Suite 1 \* Dripping Springs, Texas 78620 \* phone (512) 894-3322 \* fax (512) 894-3310

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April 28, 2011

Fee Schedule for Deer Creek Water  
Effective with Bill Going Out  
On April 29, 2011

Water Charges	Deer Creek Water	LCRA	Total
0 - 2000 gallons	35.00	3.37/1000	Will vary with usage
2001 - 8000 gallons	3.00/1000 gal	3.37/1000	\$6.37/1000 gal
8001 - 10,000 gallons	4.00/1000 gal	3.37/1000	\$7.37/1000 gal
Over 10,000	5.00/1000 gal	3.37/1000	\$8.37/1000 gal

LCRA = \$50,000 / 12 months / number of active customers

LCRA = \$2500/month / number of active customers