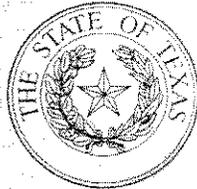


State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 19, 2013

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-08-4353; TCEQ Docket No. 2008-1185-UCR; In Re:
Application of Interim-La Ventana, LLC to Acquire Facilities and Transfer CCN
No. 12920 of La Ventana Water Company Located in Hays County, Texas

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than **March 11, 2013**. Any replies to exceptions or briefs must be filed in the same manner no later than **March 21, 2013**.

This matter has been designated **TCEQ Docket No. 2008-1185-UCR; SOAH Docket No. 582-08-4353**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink that reads "William G. Newchurch".

William G. Newchurch
Administrative Law Judge

WGN:nl
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 322-2061

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: INTERIM-LA VENTANA, LLC
SOAH DOCKET NUMBER: 582-08-4353
REFERRING AGENCY CASE: 2008-1185-UCR

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ WILLIAM G. NEWCHURCH

REPRESENTATIVE / ADDRESS

PARTIES

ERIN SELVERA
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
MC-173 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-6033 (PH)
(512) 239-0606 (FAX)
eselvera@tceq.state.tx.us

TCEQ EXECUTIVE DIRECTOR

DEREK L. SEAL
ATTORNEY
WINSTEAD, SECHREST & MINICK, PC
401 CONGRESS AVENUE, STE. 2100
AUSTIN, TX 78701
(512) 370-2807 (PH)
(512) 370-2850 (FAX)
dseal@winstead.com

INTERIM-LA VENTANA

ELI MARTINEZ
PUBLIC INTEREST COUNSEL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
12100 PARK 35 CIRCLE, MC-103, BUILDING F
AUSTIN, TX 78753
(512) 239-3974 (PH)
(512) 239-6377 (FAX)
eli.martinez@tceq.texas.gov

OFFICE OF PUBLIC INTEREST COUNSEL

RUTH TAKEDA
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENVIRONMENTAL LAW DIVISION
P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-6635 (PH)
(512) 239-0606 (FAX)
rtakeda@tceq.state.tx.us

TCEQ EXECUTIVE DIRECTOR

WILLIAM D. DAVIS
P.O. BOX 1093
DRIPPING SPRINGS, TX 78620
(512) 585-9910 (PH)

ROBERT & KAY HUGHES

MIKE PERDUE

PHYLLIS FINNEMORE

MARK LICH

MR. & MRS. WILLIAM DAVIS

MR. & MRS. MANLEY CRIDER

MR. & MRS. JOHN CZOP

ALLEN & CINDY BUTT
3061 LA VENTANA PARKWAY
DRIFTWOOD, TX 78619
(512) 917-2829 (PH)

ALLEN & CINDY BUTT

BRIAN ZIMMERMAN
ZIMMERMAN, AXELRAD, MEYER, STERN & WISE, P.C.
3040 POST OAK BLVD., SUITE 1300
HOUSTON, TX 77056
(713) 552-1234 (PH)
(713) 212-2750 (FAX)

INTERIM-LA VENTANA

JON L. TANKERSLEY
ZIMMERMAN, AXELRAD, MEYER, STERN & WISE, P.C.
3040 POST OAK BLVD., SUITE 1300
HOUSTON, TX 77056
(713) 552-1234 (PH)
(713) 212-2750 (FAX)

INTERIM-LA VENTANA

**SOAH DOCKET NO. 582-08-4353
TCEQ DOCKET NO. 2008-1185-UCR**

APPLICATION OF INTERIM-LA	§	BEFORE THE STATE OFFICE
VENTANA, LLC TO ACQUIRE	§	
FACILITIES AND TRANSFER CCN	§	OF
NO. 12920 OF LA VENTANA WATER	§	
COMPANY LOCATED IN HAYS	§	ADMINISTRATIVE HEARINGS
COUNTY, TEXAS		

PROPOSAL FOR DECISION

I. INTRODUCTION

Interim-La Ventana, LLC (Applicant) has applied to the Texas Commission on Environmental Quality (TCEQ or Commission) to acquire Certificate of Convenience and Necessity (CCN) No. 12920 (the CCN) and all of the water system (System) providing service under the CCN (Application).¹ The CCN is currently held by La Ventana Water Company, L.P. (Incumbent), which provides water service to 144 connections in the La Ventana Subdivision (Subdivision) in Hays County, Texas.²

The Executive Director (ED) recommends that the Commission grant the Application. William D. Davis and several other customers currently receiving water service from the System (Protestants) ask the Commission to deny the Application. They contend that the Application is unclear, the Applicant has been misleading, the Applicant has failed to seek approval under the pertinent statute, and the evidence does not show that the Applicant is financially stable and capable of providing continuous and adequate water service.

The State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) finds that the Application is clear, complies with all requirements, and approval of the Application will serve the public interest. He recommends that the Commission grant the Application.

¹ Applicant Ex. 203 at 000278.

² Applicant Ex. 100 at 5; ED Ex. 1 at 4-5.

II. PARTIES

The following are the parties in this case:

PARTY	REPRESENTATIVE
Applicant	Derek Seal
ED	Ruth Takeda
William and Jill Davis, Judy and John Czop, Anna and Manley Crider, Phyllis Finnemore, Mike Perdue, and Mark Lich (Protestants)	William Davis
Cindy and Allen Butt	<i>pro se</i>
Office of Public Interest Counsel (OPIC)	has not participated

Although they remain parties, Cindy and Allen Butt did not participate in the hearing, prefile evidence, or a file a statement of position. Carol and Rudolph Villarreal, Jerry Asselin and Laura Engdahl, Kay and Robert Hughes, Greg Carter, Mr. and Mrs. Kenneth Hamburger, Bonita and Terry Suelman, Anita and Glenn Rosilier, and Donna and Richard Sproles were admitted as parties but later withdrew from the case.

III. PROCEDURAL HISTORY

The following are the principal case events:

DATE	EVENT
September 7, 2007	Application filed.
March 24 and 31, 2008	Notice of intent and Application to the TCEQ to sell facilities and transfer the CCN from the Incumbent to the Applicant and of right to a hearing was mailed to customers and other affected entities. ³
August 21, 2008	Referral to SOAH for hearing.
August 28, 2008	Notice of preliminary hearing mailed to Applicant, hearing requesters, and the ED. ⁴
October 28, 2008	Preliminary hearing.

³ ED Exs. A, B, C, & D.

⁴ ED Ex. E.

October 28, 2008	At request of the parties, the case was stayed for settlement negotiations.
March 1, 2011	Referred to a SOAH mediator.
August 10, 2012	Applicant announced parties could not agree on a settlement and asked that a case schedule be set.
August 29, 2012	Case schedule proposed by Applicant was set.
November 27, 2012	Prehearing conference to rule on any objections and motions to strike prefiled evidence.
November 28, 2012	Hearing on the merits of the case.
December 13, 2012	Transcript filed.
December 26, 2012	Deadline for parties to file closing briefs and arguments.
January 4, 2013	Deadline for parties to file responses to closing briefs and arguments. Record closed.

IV. BURDEN OF PROOF

The Parties agree that the Applicant has the burden of proof by a preponderance of the evidence.⁵

V. BACKGROUND FACTS

Following a dizzying array of financial transactions related to a loan to develop the Subdivision, the Applicant acquired all rights, titles, and interests relating to the Incumbent. This was explained in detail by the Applicant's witness Greg Davis,⁶ who is the Applicant's Business Manager.⁷

The Incumbent is a limited partnership. As of March 31, 2006, Riata Interest, LLC, (Riata) was the Incumbent's General Partner; and Jerry Thompson (Thompson), Kenneth Martin (Martin), and Kelly Wilnes (Wilnes) were its limited partners.⁸ On May 3, 2006, the ED

⁵ 30 Texas Administrative Code (TAC) § 80.17(a).

⁶ Applicant Ex. 100.

⁷ Applicant 100 at 3.

⁸ Applicant Ex. 107 at 000059-000065.

approved Riata's application "for the sale and transfer of 100% of the [Incumbent's] stock only," noting that Riata was the "Stockholder" and Thompson, Martin, and Wilnes were the "New Contact Person" [sic].⁹

On March 6, 2007, the Applicant foreclosed on Driftwood Development, LP (Driftwood).¹⁰ Driftwood had defaulted on a promissory note¹¹ that was secured by a deed of trust¹² that was previously assigned to the Applicant.¹³ To further secure payment of the promissory notes, Riata, Thompson, Martin, and Wilnes (Thompson Group) and Driftwood had assigned their rights in the Incumbent to the Applicant's predecessor in interest.¹⁴

On April 8, 2008, the Thompson Group, which collectively held all partnership interests in the Incumbent, entered into a settlement agreement with the Applicant.¹⁵ The members of the group agreed to "take all steps necessary to obtain approval of the transfer, assignment, and conveyance of all of their right, title, interest, benefits and privileges in and relating to [the Incumbent] to effectuate the transfer of control and all right, title and interest of [the Incumbent], including [the CCN], to [Applicant]"¹⁶

On October 17, 2008, the 250th Judicial District Court, Travis County, Texas, (District Court) entered a Final Judgment in a dispute between the Thompson Group, the Applicant, and another party.¹⁷ The District Court found that the Applicant had

⁹ Applicant Ex. 108 at 000067. Strictly speaking, a limited partnership has no stock.

¹⁰ Applicant Ex. 100 at 5 & Ex. 104.

¹¹ Applicant Ex. 102.

¹² Applicant Ex. 103.

¹³ Applicant Ex. 100 at 5.

¹⁴ Applicant Ex. 106.

¹⁵ Applicant Ex. 110.

¹⁶ Applicant Ex. 110 at 000073.

¹⁷ Applicant Ex. 109.

acquired any and all rights, titles, and interests of [the Thompson Group] relating to [the Incumbent and the Subdivision], including equitable rights in, to, and under any and all contracts, licenses, permits, and rights, specifically the Water Rights . . . whether such rights are now or at any time hereafter existing, relating to . . . entitlements for water, wastewater, and other utility services, whether executed granted or issued by private person or entity or a governmental quasi-governmental agency, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the La Ventana Subdivision, including without limitation, any and all rights of the living unit equivalents with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no action letters from each governmental authority required¹⁸

Further, the District Court ordered the Thompson Group to take the necessary steps as required by the TCEQ to perfect the Applicant's obtaining of water and partnership rights relating to the Incumbent. It also ordered the Incumbent's temporary receiver to transition management and operation of the Incumbent to the Applicant.¹⁹

VI. JURISDICTION

A. Parties' Positions

The Protestants do not directly question SOAH's jurisdiction. However, they contend that the Application is unclear and misleading; the Applicant should have, but failed to, apply for approval under Texas Water Code (Water Code) § 13.302; and the Applicant failed to provide the notice that § 13.302 requires. They allege that the Applicant has been misleading and unspecific about the approval it seeks in order to inappropriately obtain higher rates in the future. For these reasons, they argue that the Application should be denied until the Applicant amends it to be more correct and specific and seek approval under Water Code § 13.302.²⁰

¹⁸ Applicant Ex. 109 at 000070.

¹⁹ Applicant Ex. 109 at 000070-000071.

²⁰ Protestants' Closing at 2-11.

The Applicant and the ED do not object to the Commission's or SOAH's jurisdiction. The Applicant responds that its Application is clear, and the ED does not question its clarity. The ED contends that the standards for approval of the Application are set out in Water Code § 13.301 and rules adopted under it.²¹ The Applicant seems to agree with the ED that § 13.301, not § 13.302, applies to its application,²² although there is some ambiguity in the Applicant's position on this legal point.²³

The Protestants' proposal to dismiss the Application suggests they believe that the Commission has no jurisdiction to approve it. The ALJ will analyze the Protestants' arguments as objections to jurisdiction. The ALJ concludes that the Application is sufficiently clear, rates are not at issue, Water Code § 13.301 applies and gives the Commission jurisdiction to approve the Application, and all required notices were given.

B. Clarity of Application

The Protestants claim that the Applicant has not clarified whether it seeks a transfer of the CCN or merely transfer of an interest in the Incumbent, whether it seeks to separate ownership of the CCN and the utility assets, which entity would be the water utility moving forward, and which entity would be subject to a financial analysis in this case.

The Applicant maintains that it has been clear concerning the approval it seeks.²⁴ The ED generally agrees with the Applicant.²⁵ The ALJ agrees with the Applicant and the ED.

²¹ ED's Closing at 3.

²² Applicant's Closing at 10, 11 & 14 (citing portions of Water Code § 13.301).

²³ See Applicant's Reply at 13 & 14 (disagreeing with the Protestants while arguing, apparently due to typographical errors, that Water Code § 13.302, not § 13.301, applies).

²⁴ Applicant's Reply at 2-12.

²⁵ ED's Reply at 1-3.

The approval the Applicant seeks is clear from the Application. On September 7, 2007, the Applicant filed an “Application for Sale, Transfer, or Merger of a Retail Public Utility.”²⁶ The Application was prepared on a TCEQ form, which did not ask for citations to the law under which the approval was sought. In the Application, the Applicant asked the Commission to transfer CCN No. 12920 from the Incumbent to the Applicant and for the Commission’s approval to acquire “[a]ll of the . . . water system(s) under CCN No. 12920.”²⁷

By asking the Commission to transfer CCN No. 12920 to it, the Applicant has unambiguously asked to be made the utility under the CCN. Granting the Application would make the Applicant the utility because, with limited exceptions, possession of a CCN imposes an obligation to provide service in the holder’s certificated area.²⁸

Further, by asking to acquire the water system, the Applicant has unambiguously asked for permission to acquire all interests in the Incumbent and all of its assets. That conclusion is discussed in greater detail below where the ALJ determines the applicable law. Analysis of the Applicant’s financial capability and stability are also addressed below.

The Protestants seem to want greater clarity as to whether the Applicant would transfer the Incumbent’s assets directly to itself or would continue to use the Incumbent as a separate entity to provide service. However, the Applicant wishes to retain the option of deciding that later.²⁹ The ALJ agrees that need not be decided in this case. Ms. Lookerman testified that some utilities hold a CCN and provide service through a subsidiary.³⁰

²⁶ Applicant Ex. 200 at 10 & Ex. 203 at 000275.

²⁷ Applicant Ex. 203 at 000278-000279.

²⁸ Water Code § 13.250.

²⁹ Tr. 141.

³⁰ Tr. 149-150

C. Rates Are Not At Issue

The Protestants claim that the Applicant is seeking an advantage in a future rate case. The Applicant and the ED respond that rates are not at issue in this case.

The Applicant has not asked to increase its rates, and all parties have stipulated that rates are not at issue in this case.³¹ Moreover, the Applicant stipulated during the hearing that it was not seeking to establish in this case what its invested capital, rate base, cost of service, or debt-to-equity ratio were or whether there should be an acquisition adjustment for purposes of setting its rates in the future. It also agreed that this case would not be *res judicata* for any issue in a future rate case.³²

The ALJ finds that the Applicant's future rates are not even indirectly at issue in this case.

D. The Applicant Has Not Been Misleading

The Protestants contend that the Applicant has incorrectly asserted that it has already obtained an equity interest in the Incumbent and owns the Incumbent's assets. According to them, the Applicant has obtained no more than a provisional interest in the Incumbent's assets.³³ Citing limited-partnership law, the Protestants further object that the Applicant would not own the Incumbent's assets even if it were both the Incumbent's general and only limited partner, as the Applicant claims.³⁴

³¹ Prehearing Conf. (Nov. 27, 2012) Tr. at 10-11; Tr. 119-120; ED's Closing at 4.

³² Tr. 14, 89-90, 115.

³³ Protestants' Closing at 8-9.

³⁴ Protestants' Closing at 6-11.

The ALJ does not find that the Applicant has been misleading. It is true, as the Protestants note, that Greg Davis testified that the prior owner of the Incumbent was Driftwood and the Applicant acquired the Incumbent and its assets when it foreclosed on Driftwood.³⁵ While that was not quite correct, the ALJ does not agree with the Protestant's contention that the Applicant and Greg Davis were being deceptive.

As previously discussed, the Applicant foreclosed on Driftwood on March 6, 2007, after it defaulted on a promissory note³⁶ assigned to the Applicant³⁷ and secured by a deed of trust.³⁸ Payment of the promissory note was further secured by an assignment of the rights of Driftwood, the Incumbent's general partner (Riata), and its limited partners (Thompson, Martin, and Wilnes).³⁹ Mr. Davis later clarified that when referring to "Driftwood" he sometimes meant the entire borrowing group associated with Driftwood, including Riata, Thompson, Martin, and Wilnes.⁴⁰

It is true that the assignment of rights to the Applicant specified that certain rights, including partnership interests in the Incumbent, could not be transferred until approved by the Commission.⁴¹ Thus, Greg Davis was incorrect when he said that the Applicant had already acquired the Incumbent through the foreclosure. However, the ALJ sees no effort to mislead. To the extent Mr. Davis was saying that the Applicant had acquired all rights to the Incumbent and its assets through the foreclosure process and the assignment of rights, he was correct.

³⁵ Applicant Ex. 100 at 5.

³⁶ Applicant Ex. 102.

³⁷ Applicant Ex. 100 at 5 & Ex. 104.

³⁸ Applicant Ex. 103.

³⁹ Applicant Ex. 106; Ex. 107 at 000059-000065; Ex. 108 at 000067.

⁴⁰ Tr. 22.

⁴¹ Applicant Ex. 106 at 000047.

While attempting to describe a mind-numbingly complex series of legal and business transactions involving many parties in multiple and overlapping roles, Greg Davis occasionally abbreviated and may have miswrote and misspoke on fine points. That was reasonable under the circumstances. The ALJ was not misled and found Greg Davis to be a credible witness.

E. Applicable Law

1. Parties' Positions

The ED contends that the standards for approval of the Application are set out in Water Code § 13.301 and rules adopted under it.⁴² The Protestants do not agree; they contend that the Applicant must seek permission under Water Code § 13.302 to acquire a controlling interest in the Incumbent. They argue that the Application should be denied until the Applicant amends it to be more correct and specific and to seek approval under Water Code § 13.302.⁴³

The Applicant seems to agree with the ED that § 13.301, not § 13.302, applies to its application.⁴⁴ There is, however, some ambiguity in the Applicant's position on this legal point.⁴⁵

2. ALJ'S Analysis

The ALJ finds that the Application may and should be reviewed under Water Code § 13.301. Pertinently, § 13.301(a) states

⁴² ED's Closing at 3.

⁴³ Protestants' Closing at 2-11.

⁴⁴ Applicant's Closing at 10, 11 & 14 (citing portions of Water Code § 13.301).

⁴⁵ See Applicant's Reply at 13 & 14 (disagreeing with the Protestants while arguing, apparently due to typographical errors, that Water Code § 13.302, not § 13.301, applies).

A utility or a water supply or sewer service corporation, on or **before** the 120th day before the effective date of a sale, **acquisition**, lease, or rental **of a water** or sewer **system that is required by law to possess a certificate of public convenience and necessity** or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, **shall**:

- (1) **file a written application with the commission . . .**

. . . .

(Emphasis added.)

In contrast, Water Code § 13.302(a), on which the Protestants rely, states

A utility may not purchase voting stock in another utility doing business in this state and a person may not acquire a controlling interest in a utility doing business in this state unless the person or utility files a written application with the commission not later than the 61st day before the date on which the transaction is to occur.

(Emphasis added.)

As emphasized by the above boldface words, § 13.301 applies to an acquisition of a “water system” required to have a CCN, while § 13.302 focuses on an acquisition of “voting stock” or “a controlling interest” in a utility. Words and phrases in a code must be read in context and construed according to the rules of grammar and common usage unless they have acquired a technical or particular meaning by legislative definition or otherwise.⁴⁶ Chapter 13 of the Water Code does not define the phrase “water system,” but the phrase and its variants are frequently used in the chapter to refer to an entity providing water service and all of the physical assets that it uses to provide that service.⁴⁷ The TCEQ’s utility regulations⁴⁸ use the phrase “water

⁴⁶ Tex. Gov’t Code § 311.011(a) & (b).

⁴⁷ *E.g.* Water Code §§ 13.145(1); 13.187(p); 13.241(d); 13.246(b), & (h); 13.247(d); 13.252; 13.253(b); 13.254(h); 13.301(a), (b), (c), & (e)(2) and (3) & (4); 13.412(a)(2); 13.4132(c)(5); & 13.515.

⁴⁸ 30 TAC ch. 30.

system” and its variants in that same way.⁴⁹

Based on that context and common usage, the ALJ concludes that the phrase “water system” as used in § 13.301 means an entire entity providing water service and all of its assets. In contrast, § 13.302 focuses on acquisition of voting stock or a controlling interest, which could be something less than full ownership of a water system.

The standards for granting an application under § 13.301 are set out below:

(b) The commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, the commission may require that the person provide a bond or other financial assurance in a form and amount specified by the commission to ensure continuous and adequate utility service is provided.

(d) The commission shall, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest.

(e) Before the expiration of the 120-day notification period, the executive director shall notify all known parties to the transaction of the executive director's decision whether to request that the commission hold a public hearing to determine if the transaction will serve the public interest. The executive director may request a hearing if:

(1) the application filed with the commission or the public notice was improper;

(2) the person purchasing or acquiring the water or sewer system has not demonstrated adequate financial, managerial, and technical capability for

⁴⁹ *E.g.* 30 TAC §§ 291.3(35), (36), & (53); 291.8(c); 291.31(d)(1)(B), (C), and (E); 291.93(1), (2), (3), & (5); 291.102(b), & (c); 291.103(e); 291.105(a)(14)(A), & (d)(3); 291.115(i); & 291.143(b)(6).

providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the person;

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of:

(A) noncompliance with the requirements of the commission or the Texas Department of Health; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system; or

(5) there are concerns that the transaction may not serve the public interest, after the application of the considerations provided by Section 13.246(c) for determining whether to grant a certificate of convenience and necessity.

(f) Unless the executive director requests that a public hearing be held, the sale, acquisition, lease, or rental may be completed as proposed:

(1) at the end of the 120-day period; or

(2) at any time after the executive director notifies the utility or water supply or sewer service corporation that a hearing will not be requested.

(g) If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, or rental may not be completed unless the commission determines that the proposed transaction serves the public interest.

(h) A sale, acquisition, lease, or rental of any water or sewer system required by law to possess a certificate of public convenience and necessity that is not completed in accordance with the provisions of this section is void.

The § 13.301 standards are not substantively different from the standards of § 13.302. Section 13.302(b) and (c) are worded nearly identically to § 13.301(b) and (c). Section 13.302(d) actually refers to § 13.301(e), and both provide that the ED may request a

hearing if the criterion in § 13.301(e) exist, or the ED believes they apply. Each section provides that a transaction to which it applies must be in the public interest, §§ 13.301(d) and (g) and 13.302(f) respectively, and is void unless completed in accordance with them, §§ 13.301(h) and 13.302(f) respectively. Each provides for an opportunity for a hearing, §§ 13.301(g) and 13.302(f).

The ALJ concludes that §§ 13.301 and 13.302 are complimentary. Taken together they require the Commission's approval before a utility acquires any interest in another utility or a person acquires controlling interest in a utility. Moreover, the standards set out in § 13.301 for approval of the Application are equal to or more rigorous than those set out in § 13.302.

Based on the above, the ALJ concludes that § 13.301 applies to the Application in this case. It applies to an acquisition of an entire water system required to have a CCN, unlike § 13.302, which applies to an acquisition of less than full ownership of a utility.

F. Public Notice

The Protestants claim that there is no evidence that the Applicant provided notice to the Commission at least 61 days before acquiring a controlling interest in the Incumbent as required by Water Code § 13.302(a).⁵⁰ As discussed above, however, § 13.302 does not apply to the Application. Section 13.301 applies and imposes a requirement somewhat similar to § 13.302(a)'s. It requires an application to be filed 120 days before the effective date of the proposed acquisition of a water system. Additionally, it requires an applicant to give public notice of the proposed action, unless the ED waives that requirement for good cause.

⁵⁰ Protestants' Closing at 13-14 and Reply at 11.

The Applicant filed the Application on September 7, 2007.⁵¹ On March 24 and 31, 2008, the Applicant sent notices to the Incumbent's customers and potentially affected utilities indicating the Incumbent intended, and had applied to the TCEQ for permission under Water Code § 13.301, to sell the Incumbent's facilities and transfer the CCN to the Applicant.⁵² The notices also informed the recipients that they had a right to a hearing concerning the Application. Several customers, including William Davis, requested a hearing.

In the Application, the Applicant confusingly proposed an effective date of April 27, 2007,⁵³ which had passed before the Application was even filed. In any event, the acquisition of the Incumbent's water system remains pending. The ALJ concludes that the Application was filed over five years ago, far more than 120 days before any effective date that might eventually be approved in this case. Further, affected parties were notified of the proposed acquisition in March 2008, nearly five years ago. The ALJ concludes that the Applicant has complied with the notice requirements of Water Code § 13.301(a).

On August 27, 2008, notice of a preliminary hearing was mailed to the Applicant, the hearing requesters, and the ED.⁵⁴ It indicated that the hearing would be conducted in accordance with "Chapter 13, Texas Water Code," as well as several other statutes and rules. As indicated in the notice, the preliminary hearing was convened on October 28, 2008, by SOAH ALJ Carol Wood. She admitted the March 24 and 31, 2008 notices of intent and application and the August 27, 2008 notice of hearing and found that proper notice had been given.⁵⁵

The ALJ concludes that notice of the hearing was given as required by Texas Government Code §§ 2001.051 and 2001.052. No party contends otherwise.

⁵¹ Applicant Ex. 200 at 10 & Ex. 203 at 000275.

⁵² ED Ex. A, B, C & D.

⁵³ Applicant Ex. 203 at 000278.

⁵⁴ ED Ex. E.

⁵⁵ Order No. 1 (Nov. 7, 2008).

G. Jurisdictional Conclusion

Based on the above, the ALJ concludes that the Commission has jurisdiction to consider approval of the Application, and SOAH has jurisdiction to conduct a hearing and prepare this Proposal for Decision (PFD).

V. CAPABILITY AND PUBLIC INTEREST CONSIDERATIONS

As previously quoted in the discussion of applicable law, Water Code § 13.301(b) allows the Commission to require a person acquiring a water system to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person. Additionally, Water Code § 13.301(d) and (g) require the Commission to determine whether a proposed system acquisition will serve the public interest.

Water Code § 13.301(e) and 30 TAC § 291.109(e) indicate that in determining whether the acquisition is in the public interest the Commission should consider several factors. Because § 13.301(e) was previously quoted in full, the ALJ will not repeat all of the factors here.

However, § 13.301(e)(5) adopts by reference the considerations in Water Code § 13.246(c), which are

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;

- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity;
- (8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and
- (9) the effect on the land to be included in the certificated area.

A. Managerial and Technical Capability, Adequacy of Service, and Compliance History

No party questions the adequacy of the service provided by the Applicant since the foreclosure or that the Applicant has the technical and management capability to provide continuous and adequate service. Nor does any party allege that the Applicant's compliance history is unacceptable. Nevertheless, the ALJ will briefly describe the evidence concerning these factors as a prelude to considering Applicant's financial capability and stability.

Both the Applicant's expert witness, Donald R. Rauschuber, and the ED's expert witness, Heidi Graham, agreed that the Applicant has the technical and management capability to provide service.⁵⁶ Since it foreclosed in March 2007, the Applicant has been operating the System. It has retained Professional General Management Services, Inc. (PGMS) to manage and operate the System.⁵⁷ A Commission rule requires a water system that has reached 85% of any capacity limit to submit a plan to the ED explaining how it will continue meeting expected service

⁵⁶ Applicant Ex. 200 at 15-19; ED Ex. HG-1 at 4-7.

⁵⁷ Applicant Ex. 200 at 15.

demands.⁵⁸ The System currently has 144 connections and is providing water service that meets the Commission's minimum requirements. The System is using only 41.9% of its production capacity, 8.9% of its storage capacity, 65.5% of its service-pump capacity, and 57.6% of its pressure-tank capacity. No additional service is needed at this time.⁵⁹

The System has been compliant since the foreclosure. The Incumbent has not failed to comply with a Commission order.⁶⁰ The System is compliant with the requirements of the Texas Department of State Health Services,⁶¹ the Texas Department of Health's successor. On September 16, 2010, the TCEQ Regional Staff visited the System and alleged it did not have a sanitary control easement for Well No. 1. Subsequently, a recorded sanitary control easement, dated September 7, 2000, was provided. The ED does not question the Applicant's ability to comply with applicable requirements if the Application is approved.⁶²

Another ED expert witness, Debi Loockerman, concluded that the Applicant had the managerial capability to provide adequate and continuous service. She testified that the Applicant's management capability is demonstrated by its retaining PGMS, an acceptable operator, to run the System. Additionally, the System has lost less than 12% of the water entering it over the last three years, which is an acceptably low percentage and indicative of good management. Ms. Loockerman conceded that the Applicant's relations with some customers appeared strained. She attributed that strain to litigation involving some of the customers, the Subdivision's homeowner's association, and the Applicant or its affiliates. She did not attribute the strain to poor management, because she found PGMS's responses to customers' questions and concerns were adequate.⁶³

⁵⁸ 30 TAC § 291.93.

⁵⁹ ED HG-1 at 5-6.

⁶⁰ ED Ex. HG-1 at 8.

⁶¹ Applicant Ex. 200 at 17.

⁶² ED Ex. HG-1 at 4; Applicant Ex. 200 at 16-17; Applicant Ex. 211.

⁶³ ED Ex. DL-1 at 11-13.

The ALJ concludes that the Applicant has the managerial and technical capability to provide continuous and adequate water service and since the foreclosure it has provided that service in compliance with the laws that the Commission and the Texas Department of State Health Services administer.

B. Financial Capability & Stability & Management of Utility Revenues

The Applicant and the ED contend that the uncontroverted evidence shows that the Applicant has the financial capability and stability to provide continuous and adequate service to the area covered by the Incumbent's water system and CCN. In fact, they contend that the Applicant has fully demonstrated that capability and stability while its Application has been pending. They also note that the Protestants offered no evidence to show otherwise.

The Protestants argue that the evidence the Applicant and the ED offered is insufficient to show that the Applicant is financially capable and stable. They claim that the evidence incorrectly focuses on Incumbent's financial capability and stability, not the Applicant's.

The Applicant's expert witness, Nelisa Heddin, and Ms. Loockerman, testified that the Applicant is financially capable of providing adequate water service.⁶⁴ To reach her conclusion, Ms. Lookerman partially relied on Ms. Graham's conclusion that the existing water service was continuous and adequate and no capital improvements were necessary to meet standards.⁶⁵ Ms. Heddin reached those same underlying conclusions on her own.⁶⁶

After reviewing the Incumbent's tax returns and financial statements between March 2007, when the Applicant foreclosed, and July 31, 2012, Ms. Heddin concluded that the

⁶⁴ Applicant Ex. 300 at 14-24; ED Ex. DL-1.

⁶⁵ ED Ex. DL-1 at 5.

⁶⁶ Applicant Ex. 300 at 21-22.

System's revenues were sufficient to cover its normal reasonable and necessary operating expenses.⁶⁷ Since 2007, operations and cash for operations have been adequately maintained,⁶⁸ and the Applicant has invested significant capital in the System.⁶⁹ The Incumbent has almost no long-term debt and can easily pay for its existing debt with existing revenue, which indicates financial stability.⁷⁰ The Applicant has paid for improvements and operating expenses so that water operations would continue. The annual losses were absorbed by an affiliate of the Applicant.⁷¹

Ms. Heddin testified that it was not necessary to review the Applicant's separate financial records because its financial capability and stability can be determined solely by reviewing the Incumbent's records. She testified that the Incumbent is self-sustaining, now that the Applicant has provided additional capital to it, and there is no need to make additional improvements to the System. She noted that the Applicant and Incumbent file separate tax returns, and the Applicant's stand-alone financial records might include entries totally unrelated to the Incumbent.⁷² Ms. Lookerman agreed that there was no need to look beyond the Incumbent's books because the System has been operated in compliance for five years and has no need for additional capital.⁷³

The ALJ concludes that the Applicant has the financial capability and stability to provide continuous and adequate service and has neither mismanaged nor misused utility revenues from the System. First, the Applicant has acquired any and all rights, titles, and interests relating to

⁶⁷ Applicant Ex. 300 at 15-17 & Exs. 304-311. Ms. Heddin claimed that the revenues were not sufficient to also allow the utility to recover its depreciation expense and earn a return on its investment. Applicant Ex. 300 at 17. Those are potential issues in a future rate case, but are not relevant to this case.

⁶⁸ ED Ex. DL-1 at 10.

⁶⁹ Applicant Ex. 300 at 22.

⁷⁰ Applicant Ex. 300 at 17-19 & Ex. 309; ED Ex. DL-1 at 10.

⁷¹ ED Ex. DL-1 at 12.

⁷² Applicant Ex. 300 at 14-15; Tr. 105 & 116.

⁷³ Tr. 125-126.

the Incumbent, meaning the Applicant's financial capability and stability are at least partly shown by the Incumbent's financial capability and stability. Second, the Incumbent's current revenues are sufficient to provide continuous and adequate service to its customers without additional capital infusions from the Applicant. Third, the Applicant has injected additional funds into the Incumbent to complete all improvements needed to provide water service within the certificated area since the foreclosure, indicating the Applicant has had access to funds sufficient for that purpose.

C. Other Public Interest Considerations

No party disputes that the remaining public interest factors weigh in favor of granting the Application. Both Mr. Rauschuber and Ms. Graham testified that obtaining service from another utility was not feasible because no other water utility is in close proximity to the Subdivision.⁷⁴ It logically follows that no other utility would be adversely affected if the Application is granted. Additionally, granting the Application would not adversely affect the land or landowners in the certificated area or the environment because the facilities needed to provide water service are already in place.⁷⁵ Although nothing would preclude a future rate change if warranted by law, customers would not be adversely affected by transferring the CCN and System to the Applicant because their existing rates and adequate and continuous service would remain in place under competent management.⁷⁶

Lastly, granting the Application would have a positive effect on the Applicant because it would be able to fully exercise the Incumbent's rights, titles, and interests that the Applicant acquired following the foreclosure. Its investment would be protected.⁷⁷

⁷⁴ Applicant Ex. 200 at 20; ED Ex. HG-1 at 6.

⁷⁵ Applicant Ex. 200 at 21; ED Ex. HG-1 at 6.

⁷⁶ Applicant Ex. 200 at 21-22; ED Ex. HG-1 at 6-7.

⁷⁷ Applicant Ex. 200 at 20; ED Ex. HG-1 at 8.

The ALJ concludes that transferring the Incumbent's CCN and System to the Applicant is in the public interest.

VI. TRANSCRIPT COSTS

The Applicant claims that it paid \$1,090.50 for the transcription of the prehearing conference and the hearing on the merits, as ordered by the ALJ subject to reimbursement from other parties upon assessment of costs in accordance with 30 TAC § 80.23(b)(4) and (5). The Applicant attached a copy of the court reporter's invoices⁷⁸ to its argument and asks that 50% of the cost be allocated to it and 50% be allocated to the Protestants. The Protestants ask that all of the cost be allocated to the Applicant and asks for an opportunity to present evidence to support that allocation.

The ALJ finds that holding a hearing to determine how the transcript costs should be allocated would likely cost the parties collectively as much or more than the cost of the transcript. Under these circumstances, the ALJ concludes that it would be just and reasonable to allocate the entire cost of the transcript to the Applicant, which may recover that cost through its rates.

VII. SUMMARY

The ALJ recommends that the Commission adopt the attached proposed order and approve the Application.

SIGNED February 19, 2013.



**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

⁷⁸ The court reporter's invoices are admitted as Applicant Ex. 400. Any objections to their admission should be filed as an exception to this PFD.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER
GRANTING THE APPLICATION OF INTERIM-LA VENTANA, LLC TO ACQUIRE
FACILITIES AND TRANSFER CCN NO. 12920 OF LA VENTANA WATER COMPANY
LOCATED IN HAYS COUNTY, TEXAS,
TCEQ DOCKET NO. 2008-1185-UCR
SOAH DOCKET NO. 582-08-4353**

On _____, the Texas Commission on Environmental Quality (Commission) considered the application of Interim-La Ventana, LLC (Applicant) to acquire facilities and transfer Certificate of Convenience and Necessity No. 12920 (the CCN) of La Ventana Water Company (Incumbent), located in Hays County, Texas (Application). 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 hearing concerning the Application on November 28, 2012, 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

1. On September 7, 2007, the Applicant filed with the Commission an Application for Sale, Transfer, or Merger of a Retail Public Utility.
2. In the Application, the Applicant asked the Commission to transfer the CCN from the Incumbent to the Applicant and approve the Applicant's acquisition of the water system (System) under the CCN.
3. The System currently provides water service to 144 connections in the La Ventana Subdivision (Subdivision) in Hays County, Texas.

4. Incumbent is a limited partnership.
5. As of March 31, 2006, Riata Interest, LLC, (Riata) was the Incumbent's General Partner; and Jerry Thompson (Thompson), Kenneth Martin (Martin), and Kelly Wilnes (Wilnes) were its limited partners.
6. On May 3, 2006, the Commission's Executive Director (ED) approved Riata's application for the sale and transfer of 100% of the Incumbent's ownership to Riata, Thompson, Martin, and Wilnes (Thompson Group).
7. On March 6, 2007, the Applicant foreclosed on Driftwood Development, LP (Driftwood), which had defaulted on a promissory note that was secured by a deed of trust that was previously assigned to the Applicant.
8. To further secure payment of the promissory note, the Thompson Group and Driftwood had assigned their rights in the Incumbent to the Applicant's predecessor in interest.
9. On April 8, 2008, the Thompson Group entered into a settlement agreement with the Applicant. The members of the group agreed to take all steps necessary to obtain approval of the transfer, assignment, and conveyance of all of their right, title, interest, benefits, and privileges in and relating to the Incumbent to effectuate the transfer of control and all right, title, and interest of the Incumbent, including the CCN, to the Applicant.
10. On October 17, 2008, the 250th Judicial District Court, Travis County, Texas, (District Court) entered a Final Judgment in a dispute between the Thompson Group, the Applicant, and another party. The District Court found that the Applicant had

acquired any and all rights, titles, and interests of [the Thompson Group] relating to [the Incumbent and the Subdivision], including equitable rights in, to, and under any and all contracts, licenses, permits, and rights, specifically the Water Rights . . . whether such rights are now or at any time hereafter existing, relating to . . . entitlements for water, wastewater, and other utility services, whether executed granted or issued by private person or entity or a governmental quasi-governmental agency, which are directly or indirectly related to, or connected with, the development, ownership, maintenance or operation of the La Ventana Subdivision, including without limitation, any and all rights of the living unit equivalents with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no action letters from each governmental authority required

11. Further, the District Court ordered the Thompson Group to take the necessary steps as required by the Commission to perfect the Applicant's obtaining of water and

partnership rights relating to the Incumbent. It also ordered the Incumbent's temporary receiver to transition management and operation of the Incumbent to the Applicant.

12. The Applicant has been operating the System since March 2007.
13. The Applicant has retained Professional General Management Services, Inc. (PGMS), an experienced and acceptable operator, to manage and operate the System.
14. PGMS has adequately responded to the questions and concerns of the System's customers.
15. The System is providing water service that meets the Commission's minimum capacity requirements.
16. The System has adequate capacity to provide service and is using only 41.9% of its production capacity, 8.9% of its storage capacity, 65.5% of its service-pump capacity, and 57.6% of its pressure-tank capacity.
17. No additional water service is needed from the System at this time.
18. Since the Applicant's foreclosure, the System has been compliant with the requirements of the Commission and the Texas Department of State Health Services, the Texas Department of Health's successor.
19. The System has lost less than 12% of the water entering it over the last three years, which is an acceptably low percentage and indicative of good management.
20. Because the Applicant has acquired any and all rights, titles, and interests relating to the Incumbent, the Applicant's financial capability and stability are partly shown by the Incumbent's financial capability and stability.
21. The Applicant and Incumbent file separate tax returns.
22. The Applicant's financial capability and stability can be determined solely by reviewing the Incumbent's records.
23. Since the foreclosure in 2007, the Applicant has invested significant capital in the System and its operations, and cash for the System's operations has been adequately maintained.
24. Since the foreclosure, the Applicant has paid for improvements and operating expenses so that water operations would continue. Annual losses were absorbed by an affiliate of the Applicant.

25. The Applicant has access to funds when needed to make necessary and reasonable improvements to the System.
26. Between March 2007 and July 31, 2012, the System's revenues were sufficient to cover its normal reasonable and necessary operating expenses.
27. The Incumbent has almost no long-term debt and can easily pay for its existing debt with its existing revenue.
28. The Incumbent is self-sustaining, now that the Applicant has provided additional capital to it, and there is no need to make additional improvements to the System.
29. The Incumbent's current revenues are sufficient to allow it to provide continuous and adequate service to its customers without additional capital infusions from the Applicant.
30. Obtaining water service for the Subdivision from another utility is not feasible because no other water utility is in close proximity to the Subdivision.
31. Granting the Application would not adversely affect the land or landowners in the certificated area or the environment because the facilities needed to provide water service are already in place.
32. Although nothing would preclude a future rate change if warranted by law, customers would not be adversely affected by transferring the CCN and the System to the Applicant because their existing rates and adequate and continuous service would remain in place under competent management.
33. Granting the Application would have a positive effect on the Applicant because it would be able to fully exercise the Incumbent's rights, titles, and interests that the Applicant acquired following the foreclosure. Its investment would be protected.
34. On March 24 and 31, 2008, the Applicant sent notices to the Incumbent's customers and potentially affected utilities indicating the Incumbent intended, and had applied to the TCEQ for permission under Texas Water Code (Water Code) § 13.301, to sell the Incumbent's facilities and transfer its CCN to the Applicant. The notices also informed the recipients that they had a right to a hearing concerning the Application.
35. Several customers requested a hearing.
36. On August 21, 2008, the Commission's Chief Clerk referred this case to SOAH for hearing.
37. On August 27, 2008, notice of a preliminary hearing was mailed to the Applicant, the hearing requesters, and the ED. It contained a statement of the time, place, and nature of

the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

- 38. As indicated in the notice, the preliminary hearing was convened on October 28, 2008, by a SOAH ALJ.
- 39. The following are the parties in this case:

PARTY	REPRESENTATIVE
Applicant	Derek Seal
ED	Ruth Takeda
William and Jill Davis, Judy and John Czop, Anna and Manley Crider, Phyllis Finnemore, Mike Perdue, and Mark Lich (Protestants)	William Davis
Cindy and Allen Butt	<i>pro se</i>
Office of Public Interest Counsel (OPIC)	has not participated

- 40. Carol and Rudolph Villarreal, Jerry Asselin and Laura Engdahl, Kay and Robert Hughes, Greg Carter, Mr. and Mrs. Kenneth Hamburger, Bonita and Terry Suelman, Anita and Glenn Rosilier, and Donna and Richard Sproles were admitted as parties but later withdrew from the case.
- 41. As ordered by the ALJ, the Applicant paid \$1,090.50 for the transcription of the prehearing conference and the hearing on the merits

II. CONCLUSIONS OF LAW

- 1. The Commission has jurisdiction to consider approval of the Application. Water Code § 13.301.
- 2. Notice of the Application was given as required by Water Code § 13.301(a)(2).
- 3. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law. Tex. Gov't Code, ch. 2003.
- 4. Notice of the hearing was given as required by Texas Government Code §§ 2001.051 and 2001.052.
- 5. The Applicant has the burden of proof by a preponderance of the evidence. 30 Tex. Admin. Code (TAC) § 80.17(a).
- 6. The Applicant has the technical and managerial capability to provide adequate and continuous service.

7. The Applicant has the financial capability and stability to provide continuous and adequate service and has neither mismanaged nor misused utility revenues from the System.
8. No other water utility would be adversely affected if the Application is granted.
9. Transferring the Incumbent's CCN and System to the Applicant is in the public interest.
10. The Application complies with the requirements of Water Code § 13.301 and 30 TAC §§ 291.109 and 291.109.
11. The Application should be granted.
12. It would be just and reasonable to allocate the entire cost of the transcription of the prehearing conference and the hearing on the merits to the Applicant, which may recover that cost through its rates. 30 TAC § 80.23.

III. 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 Interim-La Ventana, LLC to acquire facilities and transfer Certificate of Convenience and Necessity No. 12920 of La Ventana Water Company located in Hays County, Texas, is granted.
2. Certificate of Convenience and Necessity No. 12920 is transferred to Interim-La Ventana, LLC.
3. Interim-La Ventana, LLC, may complete its acquisition of the System used to provide water service under Certificate of Convenience and Necessity No. 12920.
4. The entire cost of the transcription of the prehearing conference and the hearing on the merits is allocated to Interim-La Ventana, LLC.
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 Texas Administrative Code § 80.273 and Texas Government Code § 2001.144.
7. The Commission's Chief Clerk shall forward a copy of this Order to 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:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman
For the Commission