

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

April 15, 2011

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

Re: **SOAH Docket No. 582-11-3401; In Re: In the Matter of an Enforcement of Action Concerning Thunderbird Bay Water Services, Inc.; RN102688371 and RN102685773; TCEQ Docket No. 2010-0912-UCR-E**

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 **May 5, 2011**. Any replies to exceptions or briefs must be filed in the same manner no later than **May 16, 2011**.

This matter has been designated **TCEQ Docket No. 2010-0912-UCR-E; SOAH Docket No. 582-11-3401**. 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 cursive script that reads "Richard R. Wilfong".

Richard R. Wilfong  
Administrative Law Judge

RRW/ljg  
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:** THUNDERBIRD BAY WATER SERVICES, INC  
**SOAH DOCKET NUMBER:** 582-11-3401  
**REFERRING AGENCY CASE:** 2010-0912-UCR-E

---

**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ RICHARD WILFONG**

---

**REPRESENTATIVE / ADDRESS**

**PARTIES**

BLAS J. COY, JR.  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
OFFICE OF PUBLIC INTEREST COUNSEL  
P.O. BOX 13087, MC-103  
AUSTIN, TX 78711-3087  
(512) 239-6363 (PH)  
(512) 239-6377 (FAX)  
bcoy@tceq.state.tx.us

OFFICE OF PUBLIC INTEREST COUNSEL

---

PEIPEY TANG  
ATTORNEY  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
LITIGATION DIVISION, MC 175  
PO BOX 13087  
AUSTIN, TX 78711-3087  
(512) 239-0654 (PH)  
(512) 239-3434 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

---

WILLIAM PALMER  
ATTORNEY  
18568 FORTY SIX PARKWAY, SUITE 2002  
SPRING BRANCH, TX 78070  
(210) 381-6923 (PH)  
(210) 679-4761 (FAX)

THUNDERBIRD BAY WATER SERVICES, INC.

---

xc: Docket Clerk, State Office of Administrative Hearings

**SOAH DOCKET NO. 582-11-3401  
TCEQ DOCKET NO. 2010-0912-UCR-E**

<b>IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING THUNDERBIRD BAY WATER SERVICES, INC.; RN102688371 AND RN102685773</b>	<b>§ § § § § §</b>	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
--	--	---

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

At its Agenda Meeting on February 23, 2011, the Texas Commission on Environmental Quality (TCEQ or Commission) considered whether to modify, affirm, or set aside the November 30, 2010, Emergency Order Renewing the Appointment of a Temporary Manager of a Water Utility. That Order affirmed and renewed the Emergency Order issued June 4, 2010, by the TCEQ Executive Director (ED) to address the discontinuation of retail water service by Thunderbird Bay Water Services, Inc. (Utility), to ensure the continued operation of the Utility, and to provide continuous and adequate water service to the customers of the Utility. The November 30, 2010, Emergency Order will expire if not further extended by the Commission prior to May 29, 2011.

The Utility appeared at the Agenda Meeting through counsel and requested an evidentiary hearing regarding this matter. The Commission immediately referred the matter to the State Office of Administrative Hearings (SOAH) for a contested case hearing. The hearing was convened on the same day before Administrative Law Judge (ALJ) Richard R. Wilfong at the TCEQ offices. The record remained open and the hearing was reconvened at SOAH on April 4, 2011.

Based on the evidence presented, the ALJ recommends that the Commission affirm and renew the Emergency Order.

## II. PROCEDURAL HISTORY

At the contested hearing convened on February 23, 2011, the ED was represented by attorneys Peipey Tang and Marshall Coover. The Utility appeared through its attorney William Palmer. The Office of Public Interest Counsel (OPIC) was represented by Vic McWherter. The ED offered Exhibits ED-1 through ED-14 that were admitted into evidence and official notice was taken of ED Exhibits ED-15 through ED-19. The ED also presented the testimony of Jennelle Crane, Environmental Investigator in the TCEQ Abilene Regional Office. At the conclusion of the testimony of Ms. Crane, the hearing was recessed. In accordance with the agreement of the parties, and following proper notice, the hearing was reconvened on April 4, 2011, at the SOAH hearing facility in the William P. Clements Building, Fourth Floor, 300 West 15<sup>th</sup> Street, Austin, Texas. The ED and OPIC again appeared through counsel. The Utility failed to appear.

## III. EVIDENCE SUMMARY

The Utility provides potable water service for compensation to approximately 767 service connections pursuant to Certificate of Convenience and Necessity (CCN) No. 11243 issued on May 26, 2000. No other source of water is available to more than 2,301 people whose water is supplied by the Utility.

On June 2, 2009, TCEQ and the Utility entered into an Agreed Final Judgment and Permanent Injunction requiring the Utility to: (1) fulfill its service obligations pursuant to its CCN; (2) take corrective action regarding more than 30 violations of TCEQ's rules applicable to water utilities; and (3) maintain regulatory compliance. On August 18, 2010, the Utility and its president, Charles E. Schram, III, were found in contempt of the Final Judgment and Permanent Injunction. Mr. Schram was found to have willfully and knowingly violated the order of the

Court, and he was held personally responsible for the contemptuous conduct of the Utility. He was sentenced to 15 days confinement at the Collin County Detention Facility.<sup>1</sup>

During a complaint inspection at the Utility conducted on September 15, 2009, 38 violations were found, including failure to maintain a chlorine residual of 0.2 mg/L in the distribution system,<sup>2</sup> failure to maintain an up-to-date chemical and microbiological monitoring plan,<sup>3</sup> failure to calibrate the bench-top turbidity meter every 90 days,<sup>4</sup> failure to calibrate the manual disinfectant residual analyzer with current standards,<sup>5</sup> failure to maintain the distribution system in water-tight condition,<sup>6</sup> and failure to provide water service to customers in accordance with the Utility's CCN.<sup>7</sup>

Ms. Crane testified that TCEQ has logged 57 complaints against the Utility in the last six years. She also stated that TCEQ has cited the Utility eight times since 2009 for failure to keep the distribution system water-tight. She further described an extended outage when the Utility totally failed to serve any of its customers from May 30, 2010, to June 4, 2010. Ms. Crane noted that on several occasions the Utility was without polymer necessary to treat the water for turbidity. On one occasion turbidity was measured at 20 Nephelometric Turbidity Units (NTU). Another time the turbidity was 54.6 NTU.<sup>8</sup> The Utility's online turbidimeter was also observed to be not working. She explained that high turbidity means the water may contain viruses and other organics that present a significant potential health hazard. She further explained that the Utility's failure to fix distribution system leaks not only causes low water pressure and service outages, it also causes potential health hazards by allowing debris like soil and mosquito larvae to be drawn into the system. Ms. Crane emphasized that the lack of proper maintenance is

---

<sup>1</sup> Cause No. D-1-GV-04-003188, 201<sup>st</sup> Judicial District Court, Travis County, Texas.

<sup>2</sup> Violation of 30 TEX. ADMIN. CODE (TAC) § 290.46(d).

<sup>3</sup> Violation of 30 TAC § 290.121(a).

<sup>4</sup> Violation of 30 TAC § 290.46(s)(2)(B)(ii).

<sup>5</sup> Violation of 30 TAC § 290.46(s)(2)(C)(i).

<sup>6</sup> Violation of 30 TAC § 290.46(m)(4).

<sup>7</sup> Violation of 30 TAC § 291.85(a) and Tex. Water Code §§ 13.139(a) and 13.250(a).

<sup>8</sup> Maximum allowable turbidity level is 0.3 NTU.

evident from the absence of a certified operator that led to the issuance of a “boil water” notice that remained in effect from July 2008 to February 2010.

The failure of the Utility to meet its service obligations under its CCN as described above caused the ED to issue the June 4, 2010, Emergency Order that the Commission approved on August 11, 2010, and renewed on November 30, 2010. Since the temporary manager was put in place pursuant to the Emergency Order, 25 of the 38 violations have been brought into compliance, proper turbidity control has been established, and reliable water service has been restored.

In the interest of achieving a permanent resolution of this deplorable situation, the Attorney General of the State of Texas has taken action to place the Utility into receivership. The receivership hearing is scheduled for the week of May 23, 2011.

#### **IV. ALJ'S FINDINGS AND RECOMMENDATIONS**

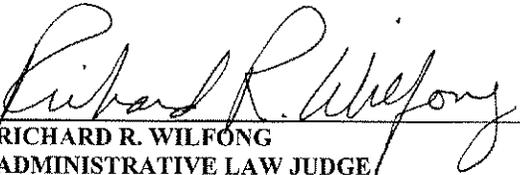
The ALJ finds that under the management of Mr. Schram the Utility has flagrantly, and in callous disregard for the health and welfare of its customers, committed numerous on-going violations of the TEX. WATER CODE, the TEX. HEALTH & SAFETY CODE, and TCEQ rules applicable to water utilities. Even being held in contempt and incarcerated for 15 days has failed to dissuade Mr. Schram from continuing an undaunted course of willfully and knowingly violating the law in a manner that deprives the customers of the Utility of adequate water service and exposes them to serious health hazards. The clear preponderance of the evidence shows that the Emergency Order appointing the temporary manager is critically needed and should be affirmed. Moreover, Mr. Schram has abandoned any challenge to the Commission's renewal of the Emergency Order by failing to appear at the second day of the evidentiary hearing.

#### **V. SUMMARY**

The ALJ recommends that the Commission affirm and renew the Findings of Fact, Conclusions of Law, and Ordering Paragraphs set forth in the attached June 4, 2010, Emergency

Order Appointing a Temporary Manager of a Utility, and the attached November 30, 2010, Emergency Order Renewing the Appointment of a Temporary Manager of a Water Utility, collectively marked Exhibit ED-1.

**SIGNED April 15, 2011.**

  
RICHARD R. WILFONG  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



TCEQ DOCKET NO. 2010-0912-UCR-E

CHIEF CLERKS OFFICE

2010 JUN -4 PM 3:56

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF §  
AN ENFORCEMENT ACTION AGAINST §  
THUNDERBIRD BAY WATER §  
SERVICES, INC.; §  
RN102688371 §  
RN102685773 §

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

EMERGENCY ORDER  
APPOINTING A TEMPORARY MANAGER  
OF A WATER UTILITY

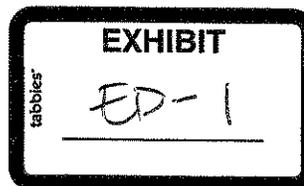
On June 4, 2010, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued this Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made subject to this order is Thunderbird Bay Water Services, Inc. ("Thunderbird").

I.  
FINDINGS OF FACT

1. Thunderbird owns and operates a public water system referred to as Thunderbird Bay Subdivision, located on Phantom Hill Circle, Lot 362, May, Brown County, Texas (the "Utility").
2. The Utility provides potable water service for compensation to approximately 767 service connections, serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Utility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
3. The Utility operates pursuant to Certificate of Convenience and Necessity No. 11243.
4. The TCEQ alleges that the Utility has discontinued the provision of service and necessary repairs to ensure continuous and adequate water service. The TCEQ alleges that the Utility has failed to adequately maintain its facilities or to provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions.

STATE OF TEXAS  
COUNTY OF TRAVIS

JUL 29 2010



I hereby certify this is a true and correct copy of a Texas Commission on Environmental Quality (TCEQ) document, which is filed in the Records of the Commission Given under my hand and the seal of office.

*Rick Thomas*

Rick Thomas, Custodian of Records

5. Commission records show that the mailing address for Thunderbird's registered agent, Charles E. Schram III, is 100 Oak Point Dr., May, Texas 76857. Commission records show that the mailing address for Thunderbird's headquarters, is P.O. Box 795399, Dallas, Texas 75379.
6. No other source of water is available to the more than 2301 people whose water is supplied by the Utility.
7. During a complaint inspection at the Utility conducted on September 15, 2009, a TCEQ Abilene Regional Office investigator documented and alleges that Thunderbird:
  - a. Failed to monitor the Utility in accordance with TCEQ approved Disinfection Contact Time (CT) Analysis, in violation of 30 TEX. ADMIN. CODE § 290.110(c)(1)(B);
  - b. Failed to apply for a formal exception from the TCEQ's Water Supply Division for a contact time study regarding switching disinfection methods (from Chlorine to Chloramine) to meet disinfection byproducts, in violation of 30 TEX. ADMIN. CODE § 290.39(j) and (j)(i)(B);
  - c. Failed to maintain a chlorine residual of 0.2 mg/L in the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.46(d);
  - d. Failed to maintain the 0.200 MG ground storage tank at the plant site in strict accordance with American Water Works Association (AWWA) standards, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(8);
  - e. Failed to maintain the 0.038 MG standpipe at Tamarack Mountain in strict accordance with AWWA standards, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(8);
  - f. Failed to provide the Utility with automatic shutdown or provide a Class "C" or higher operator at all times the Utility is running, in violation of 30 TEX. ADMIN. CODE § 290.46(e)(6)(C);
  - g. Failed obtain certification by the Hach Company that the online chlorine residual analyzer is in good working condition, in violation of TEX. WATER CODE § 7.101;
  - h. Failed to maintain the 0.020 MG ground storage tank at pump station 1 in strict accordance with AWWA standards, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(8);
  - i. Failed to maintain the 0.047 MG standpipe at the plant site in strict accordance with AWWA standards, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(8);

- j. Failed to provide a raw water intake that is not located within 1,000 feet of a boat launching ramp and failed to provide a 200 foot restricted access around the raw water tank, in violation of 30 TEX. ADMIN. CODE § 290.41(e)(2)(B) and (e)(2)C);
- k. Failed to provide a raw water pump capacity of 0.6 gallons per minute (GPM) per connection with the largest pump out of service, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(2)(A);
- l. Failed to provide a treatment plant capacity of 0.6 GPM per connection under normal rated design flow, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(2)(B);
- m. Failed to provide a transfer pump capacity of 0.6 GPM per connection with the largest pump out of service, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(2)(C);
- n. Failed to provide sanitary facilities at the Utility, in violation of 30 TEX. ADMIN. CODE § 290.42(h);
- o. Failed to provide water service to customers within the Utility's CCN, in violation of 30 TEX. ADMIN. CODE § 291.85(a), TEX. WATER CODE §§ 13.139(a) and 13.250(a);
- p. Failed to submit a quarterly operational report for the second quarter 2009, in violation of TEX. WATER CODE § 7.101;
- q. Failed to submit written certification within 5 days after obtaining compliance with each injunctive provision, in violation of TEX. WATER CODE § 7.101;
- r. Failed to test the backflow prevention devices at the Harbor Point Community Center and the Tamarack Mountain Community Center in the past year, in violation of 30 TEX. ADMIN. CODE § 290.44(h)(4)(A)(i);
- s. Failed to maintain a record of the amount of chemicals used each day, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(3)(A)(i)(I);
- t. Failed to maintain an up-to-date chemical and microbiological monitoring plan, in violation of 30 TEX. ADMIN. CODE § 290.121(a);
- u. Failed to conduct annual tank inspections in the past year, in violation of 30 TEX. ADMIN. CODE § 290.46(m)(1);
- v. Failed to maintain an up-to-date plant operations manual, in violation of 30 TEX. ADMIN. CODE § 290.42(l);
- w. Failed to flush dead-end mains and keep a flushing log, in violation of 30 TEX.

- ADMIN. CODE § 290.46(l) and (f)(3)(A)(iv);
- x. Failed to maintain a complaint log, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(3)(A)(iii);
  - y. Failed to label chemical feed lines, in violation of 30 TEX. ADMIN. CODE § 290.42(d)(13);
  - z. Failed to provide jar testing equipment for determining the optimum coagulant dose, in violation of 30 TEX. ADMIN. CODE § 290.42(d)(15)(C)(vi);
  - aa. Failed to provide adequate ventilation in the chlorine room, in violation of 30 TEX. ADMIN. CODE § 290.42(e)(4)(C);
  - bb. Failed to provide an overflow that reaches ground level or provide a location for inspection purposes at the 0.020 MG GST, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(3);
  - cc. Failed to provide a 30-inch roof hatch at the 0.020 MG GST, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(2);
  - dd. Failed to provide a device that indicated the amount of chemical remaining in the facility or day tank, in violation of 30 TEX. ADMIN. CODE § 290.42(f)(1)(C);
  - ee. Failed to return the decant backwash water upstream of raw water sample tap and coagulant feed point, in violation of 30 TEX. ADMIN. CODE § 290.42(d)(3)(A);
  - ff. Failed to maintain the ground of the water system, in violation of 30 TEX. ADMIN. CODE § 290.46(m);
  - gg. Failed to calibrate the bench-top turbidity meter once every 90 days with primary standards and re-standardize the secondary standards at that time, in violation of 30 TEX. ADMIN. CODE § 290.46(s)(2)(B)(ii);
  - hh. Failed to check the calibration of the manual disinfectant residual analyzer with standards that are not out-of-date, in violation of 30 TEX. ADMIN. CODE § 290.46(s)(2)(C)(i);
  - ii. Failed to provide a thermometer that has a minimum accuracy of plus or minus 0.5 degrees Celsius, in violation of 30 TEX. ADMIN. CODE § 290.111(d)(4)(B);
  - jj. Failed to provide a functional standby unit for the disinfection unit, in violation of 30 TEX. ADMIN. CODE § 290.42(e)(3)(C);

- kk. Failed to maintain the distribution system in water-tight condition, in violation of 30 TEX. ADMIN. CODE § 290.46(m)(4); and
  - ll. Failed to provide a finished water meter, in violation of 30 TEX. ADMIN. CODE § 290.42(d)(5).
8. On May 31, 2010, TCEQ Abilene Regional Office investigators responded to complaints of water outages at the Utility. The TCEQ investigators arrived at the Utility around 4 p.m. and were unable to locate the Utility operator. The Utility was non-operational. The Utility also lacked polymer. The Brown County Emergency Management provided potable water, available at the Harbor Point Volunteer Fire Department. (See "Attachment A")
  9. On June 1, 2010, TCEQ Abilene Regional Office investigators documented that water was out for all service areas of the Utility. The TCEQ investigator observed that polymer was not available and measured a turbidity reading of 20 Nephelometric Turbidity Units (NTU) at the Utility. The TCEQ investigator documented that the high service pumps were turned off over night to let the tanks at the Utility fill up. (See "Attachment A")
  10. On June 2, 2010, a TCEQ Abilene Regional Office investigator documented that water was out for all service areas of the Utility. The TCEQ investigator documented that polymer was not available and the measured a turbidity reading from the bench top turbidity meter of 54.6 NTU at the Utility. The TCEQ investigator also reviewed the raw water pumping data and found no readings from May 24, 2010 to May 29, 2010 and on June 1, 2010. The TCEQ investigator also documented that the Utility had been without a second raw water pump since September 2009, leaving the Utility with one 7740 GPH pump. (See "Attachment A")
  11. On June 3, 2010, a TCEQ Abilene Regional Office investigator documented at 10:30 a.m., that the Utility had 8 feet of water in the ground storage tank, 18 feet of water in the Tamarack Mountain Stand pipe, and 22 feet of water in the plant stand pipe. The TCEQ investigator documented a turbidity reading of 57 NTU. At 12:30 p.m. the TCEQ investigator documented that the Utility had 1 foot of water in the ground storage tank, 53 feet of water in the Tamarack Mountain stand pipe, and 23 feet of water in the plant stand pipe. The TCEQ investigator documented that Thunderbird turned off the high service pumps to let the ground storage tank build back up. (See "Attachment A")
  12. On June 4, 2010, a TCEQ Abilene Regional Office investigator observed that the Utility could not provide water to the Thunderbird Bay Subdivision. The TCEQ investigator observed that the Utility had 9.5 feet of water in the ground storage tank at the plant site, 50 feet of water in the Tamarack Mountain standpipe, and 28 feet of water in the standpipe at the plant site. (See "Attachment A")
  13. From June 1, 2010 to June 4, 2010, TCEQ Abilene Regional Office investigators responded to complaints of water outages at the Utility. Some service areas of the Utility have been continuously out of water since May 31, 2010. Brown County provided bottled water and the

Department of Public Safety's Department of Emergency provided non-potable water to the Utility during this time period. (See "Attachment A")

14. A potential health hazard exists as a result of the Utility's failure to provide continuous and adequate service. Immediate repairs on the Utility are necessary to ensure the quality of the water in the State and to ensure the Utility operates in a safe manner and meets requirements in the Texas Water Code, the Texas Health & Safety Code, and TCEQ rules. Therefore, a temporary manager is necessary to assume operations of the Utility to ensure the quality of the water meets TCEQ rule requirements and complies with the Texas Water Code as well as the Texas Health & Safety Code, and is safe for public use and consumption.
15. John M. Fultz ("Mr. Fultz") has agreed to serve as temporary manager of the Utility and his mailing address is P.O. Box 868, Navasota, Texas 77868. His telephone number is (936) 825-4570.
16. This Order is necessary to ensure that continuous and adequate water service is provided to the customers of the Utility to effectuate the purposes of the Texas Water Code and the Texas Health and Safety Code.
17. Because Thunderbird has discontinued the provision of service and necessary repairs to ensure continuous and adequate water service, this matter has been referred to the Attorney General's Office so that a petition may be filed to appoint a receiver under TEX. WATER CODE § 13.412 to guarantee continuous and adequate service to customers of the Utility.

## II. CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1, 2, and 3, Thunderbird owns and operates the retail public utility as defined in TEX. WATER CODE § 13.002(19).
2. Findings of Fact Nos. 4, 7, 8, 9, 10, 11, 12, and 13 show that the Utility has discontinued providing service and that the appointment of a temporary manager is justified as defined in TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142(c).
3. TEX. WATER CODE § 13.4132 authorizes the Commission to appoint a willing person to temporarily manage and operate a utility if the utility has discontinued service or abandoned operations or the provision of services or has been or is being referred to the Attorney General for the appointment of a receiver under TEX. WATER CODE § 13.412.
4. TEX. WATER CODE § 5.507 provides that the Commission may issue an emergency order appointing a willing person to temporarily manage and operate a utility under TEX. WATER CODE § 13.4132.

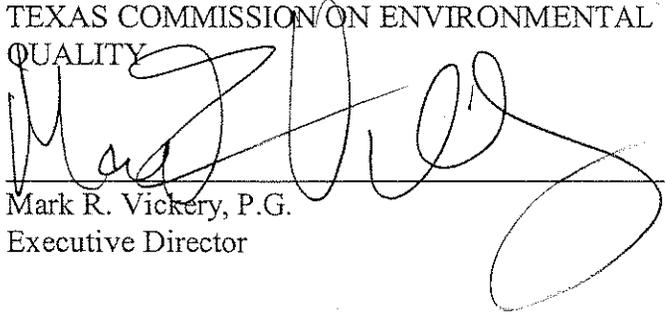
5. This Emergency Order may be issued without notice or hearing pursuant to TEX. WATER CODE § 5.501(b) and 30 TEX. ADMIN. CODE § 35.25.
6. TEX. WATER CODE § 5.501(c) and 30 TEX. ADMIN CODE §§ 35.12 and 291.143(a) authorize the TCEQ Executive Director to issue this Emergency Order.
7. TEX. WATER CODE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

### III. ORDER

1. This Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. June 4, 2010.
2. Immediately upon the effective date of this Emergency Order, Mr. Fultz is hereby appointed to temporarily manage and operate the Utility.
3. Mr. Fultz shall serve as temporary manager of Thunderbird until such time as a receiver is appointed to operate the Utility by a court of proper jurisdiction, or 180 days after the effective date of this Order i.e. December 1, 2010, whichever occurs first.
4. Mr. Fultz is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utility and the provision of continuous and adequate services to customers, including the powers and duties set forth in TEX. WATER CODE § 13.4132.
5. Mr. Fultz shall give the Executive Director an inventory of all Utility property received within sixty (60) days of the effective date of this Order.

6. Mr. Fultz 's requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c).
7. Mr. Fultz's compensation will come from Utility revenues in the amount of eight dollars (\$8.00) per month per connection.
8. Mr. Fultz shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).
9. Pursuant to TEX. WATER CODE § 5.504, the Commission will consider whether to affirm, modify or set aside this Order at its regular Agenda meeting on August 11, 2010 at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas. **At the August 11, 2010 Agenda meeting, Thunderbird may request an evidentiary hearing pursuant to 30 TEX. ADMIN. CODE § 35.25(c) for the purpose of presenting evidence and cross-examining witnesses regarding whether to affirm, modify, or set aside this Emergency Order. An Administrative Law Judge will be present at the Agenda to immediately hear the matter should a hearing be requested.**
10. The Chief Clerk shall provide a copy of this Order to each of the parties.

TEXAS COMMISSION ON ENVIRONMENTAL  
QUALITY

  
Mark R. Vickery, P.G.  
Executive Director

Attachment A

AFFIDAVIT OF JENNELLE CRANE

STATE OF TEXAS            }  
   }  
 COUNTY OF TAYLOR        }

BEFORE ME, the undersigned authority, on this day personally appeared Jennelle Crane a person whose identity is known to me. After I administered an oath to her, upon her oath, she said:

1. My name is Jennelle Crane, and I am an Environmental Investigator for the Abilene Regional office of the Texas Commission on Environmental Quality ("TCEQ"). I am over the age of twenty-one years and of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein, which are true and correct.
2. In my capacity as an Environmental Investigator for the TCEQ, I have authority to make this Affidavit. As part of my job responsibilities as an Environmental Investigator for the TCEQ, I conduct compliance and complaint investigations.
3. On May 31, 2010, I responded to complaints of water outages at the Thunderbird Bay Water Services, Inc (the "Utility").
4. On June 1, 2010, I responded to complaints of water outages at the Utility and arrived at the utility at approximately 2:25 p.m. I observed the polymer was not available and measured a turbidity reading of 20 Nephelometric Turbidity Units (NTU). I documented that the high service pumps were turned off over night to let the tanks at the Utility fill up. I observed that water was out in all areas of the Utility. The Brown County Emergency Management provided potable water, available at the Harbor Point Volunteer Fire Department.
5. On June 2, 2010, I returned to the Utility at approximately 8:35 am and observed that water was out in all areas of the Utility. I observed that polymer was not available and the Utility measured a turbidity reading from the bench top turbidity meter of 54.6 NTU. I also reviewed the raw water pumping data and found no readings from May 24, 2010 to May 29, 2010 and on June 1, 2010. I documented that the Utility had been without a second raw water pump since September 2009, leaving the Utility with one 7740 GPH pump. I also documented that the system's online turbidimeter was not working.
6. On June 3, 2010, I returned to the Utility at 10:30 a.m. and observed that the Utility had 8 feet of water in the ground storage tank, 18 feet of water in the Tamarack Mountain Standpipe, and 22 feet of water in the plant standpipe. I documented a turbidity reading of 57 NTU. At 12:30 p.m. I observed that the Utility had 1 foot of water in the ground storage tank at the plant site, 53 feet of water in the Tamarack Mountain Stand pipe, and 23 feet of water in the plant stand pipe. I observed that Thunderbird turned off the high service pumps to let

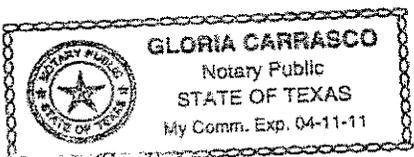
Affidavit of Jennelle Crane

the ground storage tank build back up.

- 7. On June 4, 2010, I returned to the Utility at 10:30 a.m. and observed that the Utility had 9.5 feet of water in the ground storage tank at the plant site, 50 feet of water in the Tamarack Mountain Standpipe and 28 feet of water in the Standpipe at the plant site. I observed that the Utility could not provide water to the Thunderbird Bay Subdivision area.
- 8. From June 1, 2010 to June 4, 2010, I responded to complaints of water outages at the Utility. Some service areas of the Utility have been continuously out of water since May 31, 2010. Brown County provided bottled water and the Department of Public Safety's Department of Emergency Management provided non-potable water to the Utility during this time period.

*Jennelle Crane*  
 \_\_\_\_\_  
 Jennelle Crane  
 Environmental Investigator  
 Abilene Regional Office  
 Texas Commission on Environmental Quality

SUBSCRIBED AND SWORN TO before me on June 4, 2010, to certify which witness may hand and official seal.



(Seal)

*Gloria Carrasco*  
 \_\_\_\_\_  
 NOTARY PUBLIC IN AND FOR  
 THE STATE OF TEXAS



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



TCEQ DOCKET NO. 2010-0912-UCR-E

IN THE MATTER OF	§	BEFORE THE
AN ENFORCEMENT ACTION	§	
AGAINST THUNDERBIRD BAY	§	TEXAS COMMISSION ON
WATER SERVICES, INC.;	§	
RN102688371	§	ENVIRONMENTAL QUALITY
RN102685773	§	

**EMERGENCY ORDER  
RENEWING THE APPOINTMENT OF A TEMPORARY MANAGER  
OF A WATER UTILITY**

On November 30, 2010, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued this Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made subject to this order is Thunderbird Bay Water Services, Inc. ("Thunderbird").

**I.  
FINDINGS OF FACT**

1. Thunderbird owns and operates a public water system, located on Phantom Hill Circle, Lot 362, May, Brown County, Texas (the "Utility").
2. The Utility provides potable water service for compensation to approximately 767 service connections, serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Utility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
3. The Utility operates pursuant to Certificate of Convenience and Necessity No. 11243.
4. The TCEQ alleges that the Utility has discontinued the provision of service and necessary repairs to ensure continuous and adequate water service. The TCEQ alleges that the Utility has failed to adequately maintain its facilities or to provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions.
5. Commission records show that the mailing address for Thunderbird's registered agent, Charles E. Schram III, is 100 Oak Point Dr., May, Texas 76857. Commission

records show that the mailing address for Thunderbird's headquarters, is P.O. Box 795399, Dallas, Texas 75379.

6. No other source of water is available to the more than 2301 people whose water is supplied by the Utility.
7. During a compliance and complaint inspection at the Utility conducted on September 15, 2009, a TCEQ Abilene Regional Office investigator documented and alleges that Thunderbird:
  - a. Failed to monitor the Utility in accordance with TCEQ approved Disinfection Contact Time (CT) Analysis, in violation of 30 TEX. ADMIN. CODE § 290.110(c)(1)(B);
  - b. Failed to apply for a formal exception from the TCEQ's Water Supply Division for a contact time study regarding switching disinfection methods (from Chlorine to Chloramine) to meet disinfection byproducts, in violation of 30 TEX. ADMIN. CODE § 290.39(j) and (j)(1)(B);
  - c. Failed to maintain a chlorine residual of 0.2 milligrams per liter (mg/L) in the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.46(d);
  - d. Failed to maintain the 0.200 million gallon (MG) ground storage tank at the plant site in strict accordance with American Water Works Association (AWWA) standards, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(8);
  - e. Failed to maintain the 0.038 MG standpipe at Tamarack Mountain in strict accordance with AWWA standards, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(8);
  - f. Failed to provide the Utility with automatic shutdown or provide a Class "C" or higher operator at all times the Utility is running, in violation of 30 TEX. ADMIN. CODE § 290.46(e)(6)(C);
  - g. Failed to obtain certification or calibration by the Hach Company that the online chlorine residual analyzer is in good working condition, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(3)(F);
  - h. Failed to maintain the 0.020 MG ground storage tank at pump station 1 in strict accordance with AWWA standards, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(8);
  - i. Failed to maintain the 0.047 MG standpipe at the plant site in strict accordance with AWWA standards, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(8);

- j. Failed to provide a raw water intake that is not located within 1,000 feet of a boat launching ramp and failed to provide a 200 foot restricted access around the raw water intake, in violation of 30 TEX. ADMIN. CODE § 290.41(e)(2)(B) and (e)(2)(C);
- k. Failed to provide a raw water pump capacity of 0.6 gallons per minute (GPM) per connection with the largest pump out of service, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(2)(A);
- l. Failed to provide a treatment plant capacity of 0.6 GPM per connection under normal rated design flow, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(2)(B);
- m. Failed to provide a transfer pump capacity of 0.6 GPM per connection with the largest pump out of service, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(2)(C);
- n. Failed to provide sanitary facilities at the Utility, in violation of 30 TEX. ADMIN. CODE § 290.42(h);
- o. Failed to provide water service to customers within the Utility's CCN, in violation of 30 TEX. ADMIN. CODE § 291.85(a), TEX. WATER CODE §§ 13.139(a) and 13.250(a);
- p. Failed to submit a quarterly operational report for the second quarter 2009, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(4);
- q. Failed to submit written certification within 5 days after obtaining compliance with each injunctive provision, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(4);
- r. Failed to test the backflow prevention devices at the Harbor Point Community Center and the Tamarack Mountain Community Center in the past year, in violation of 30 TEX. ADMIN. CODE § 290.44(h)(4);
- s. Failed to maintain a record of the amount of chemicals used each day, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(3)(A)(i)(I);
- t. Failed to maintain an up-to-date chemical and microbiological monitoring plan, in violation of 30 TEX. ADMIN. CODE § 290.121(a);
- u. Failed to conduct annual tank inspections in the past year, in violation of 30 TEX. ADMIN. CODE § 290.46(m)(1);
- v. Failed to maintain an up-to-date plant operations manual, in violation of 30 TEX. ADMIN. CODE § 290.42(l);

- w. Failed to flush dead-end mains and keep a flushing log, in violation of 30 TEX. ADMIN. CODE § 290.46(l) and (f)(3)(A)(iv);
- x. Failed to maintain a complaint log, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(3)(A)(iii);
- y. Failed to label chemical feed lines, in violation of 30 TEX. ADMIN. CODE § 290.42(d)(13);
- z. Failed to provide jar testing equipment for determining the optimum coagulant dose, in violation of 30 TEX. ADMIN. CODE § 290.42(d)(15)(C)(vi);
- aa. Failed to provide adequate ventilation in the chlorine room, in violation of 30 TEX. ADMIN. CODE § 290.42(e)(4)(C);
- bb. Failed to provide an overflow that reaches ground level or provide a location for inspection purposes at the 0.020 million gallon ground storage tank (MG GST), in violation of 30 TEX. ADMIN. CODE § 290.43(c)(3);
- cc. Failed to provide a 30-inch roof hatch at the 0.020 MG GST, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(2);
- dd. Failed to provide a device that indicated the amount of chemical remaining in the facility or day tank, in violation of 30 TEX. ADMIN. CODE § 290.42(f)(1)(C);
- ee. Failed to return the decant backwash water upstream of raw water sample tap and coagulant feed point, in violation of 30 TEX. ADMIN. CODE § 290.42(d)(3)(A);
- ff. Failed to maintain the grounds of the water system, in violation of 30 TEX. ADMIN. CODE § 290.46(m);
- gg. Failed to calibrate the bench-top turbidity meter once every 90 days with primary standards and re-standardize the secondary standards at that time, in violation of 30 TEX. ADMIN. CODE § 290.46(s)(2)(B)(i);
- hh. Failed to check the calibration of the manual disinfectant residual analyzer with standards that are not out-of-date, in violation of 30 TEX. ADMIN. CODE § 290.46(s)(2)(C)(i);
- ii. Failed to provide a thermometer that has a minimum accuracy of plus or minus 0.5 degrees Celsius, in violation of 30 TEX. ADMIN. CODE § 290.111(d)(4)(B);
- jj. Failed to provide a functional standby unit for the disinfection equipment, in

violation of 30 TEX. ADMIN. CODE § 290.42(e)(3)(C);

- kk. Failed to maintain the distribution system in water-tight condition, in violation of 30 TEX. ADMIN. CODE § 290.46(m)(4); and
  - ll. Failed to provide a finished water meter, in violation of 30 TEX. ADMIN. CODE § 290.42(d)(5).
8. On May 31, 2010, TCEQ Abilene Regional Office investigators responded to complaints of water outages at the Utility. The TCEQ investigators arrived at the Utility around 2 p.m. and were unable to locate the Utility operator. The Utility was running but was unable to meet water production demands. (See "Attachment A")
  9. On June 1, 2010, TCEQ Abilene Regional Office investigators documented that water was out for all service areas of the Utility. The TCEQ investigator observed that polymer was not available and documented a turbidity reading of 22 Nephelometric Turbidity Units (NTU) at the Utility. The TCEQ investigator documented that the high service pumps were turned off over night to let the tanks at the Utility fill up. The investigator noted that Brown County Emergency Management provided bottled water and the Volunteer Fire Department provided non-potable water. (See "Attachment A")
  10. On June 2, 2010, a TCEQ Abilene Regional Office investigator documented at 8:35 a.m. that water was out for all service areas of the Utility checked by the investigator. The TCEQ investigator documented that polymer was not available and the Utility measured a turbidity reading from the bench top turbidity meter of 54.6 NTU. The TCEQ investigator also reviewed the raw water pumping data and found no readings from May 24, 2010 to May 29, 2010 and on June 1, 2010. The TCEQ investigator also documented that the Utility had been without a second raw water pump since October 2009, leaving the Utility with one 7740 gallons per hour (GPH) pump. The TCEQ investigator also documented that the online turbidimeter was not working. The investigator noted that Brown County Emergency Management provided bottled water, available at the Harbor Point Volunteer Fire Department. (See "Attachment A")
  11. On June 3, 2010, a TCEQ Abilene Regional Office investigator documented at 10:30 a.m., that water was out for all service areas of the Utility checked by the investigator. The TCEQ investigator documented that the Utility had 8 feet of water in the ground storage tank, 18 feet of water in the Tamarack Mountain stand pipe, and 22 feet of water in the plant stand pipe. The TCEQ investigator documented a turbidity reading of 57 NTU. At 12:30 p.m. the TCEQ investigator documented that the Utility had 1 foot of water in the ground storage tank, 53 feet of water in the Tamarack Mountain stand pipe, and 23 feet of water in the plant stand pipe. The TCEQ investigator documented that Thunderbird turned off the high service pumps to let the ground storage tank build back up. The State Operations Center provided bottled water through Brown County Emergency Management. (See "Attachment

A”)

12. On June 4, 2010, a TCEQ Abilene Regional Office investigator observed at 10:30 a.m. that the Utility could not provide water to the Thunderbird Bay Subdivision. The TCEQ investigator observed that the Utility had 9.5 feet of water in the ground storage tank at the plant site, 50 feet of water in the Tamarack Mountain stand pipe, and 23 feet of water in the stand pipe at the plant site. (See “Attachment A”)
13. From May 31, 2010 to June 4, 2010, TCEQ Abilene Regional Office investigators responded to complaints of water outages at the Utility. Some service areas of the Utility have been continuously out of water since May 31, 2010. Brown County and the Department of Public Safety’s Department of Emergency Management provided bottled water to the customers of the Utility from June 1, 2010 to June 4, 2010. (See “Attachment A”)
14. A potential health hazard exists as a result of the Utility’s failure to provide continuous and adequate service. Immediate repairs on the Utility are necessary to ensure the quality of the water in the State and to ensure the Utility operates in a safe manner and meets requirements in the Texas Water Code, the Texas Health & Safety Code, and TCEQ rules. John M. Fultz (“Mr. Fultz”) is currently serving as the temporary manager of the Utility through an Emergency Order issued on June 4, 2010 and affirmed by the Commission on August 11, 2010. A temporary manager is necessary to continue operations of the Utility to ensure the quality of the water meets TCEQ rule requirements and complies with the Texas Water Code as well as the Texas Health & Safety Code, and is safe for public use and consumption.
15. Mr. Fultz has agreed to serve as temporary manager of the Utility for an additional 180 days and his mailing address is P.O. Box 868, Navasota, Texas 77868. His telephone number is (936) 825-7833.
16. This Order is necessary to ensure that continuous and adequate water service is provided to the customers of the Utility to effectuate the purposes of the Texas Water Code and the Texas Health and Safety Code.
17. Because Thunderbird has discontinued the provision of service and necessary repairs to ensure continuous and adequate water service, this matter has been referred to the Attorney General’s Office so that a petition may be filed to appoint a receiver under TEX. WATER CODE § 13.412 to guarantee continuous and adequate service to customers of the Utility.

## II. CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1, 2, and 3, Thunderbird owns and operates

the retail public utility as defined in TEX. WATER CODE § 13.002(19).

2. Findings of Fact Nos. 4, 7, 8, 9, 10, 11, 12, and 13 show that the Utility has discontinued providing service and that the appointment of a temporary manager is justified as defined in TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142(c).
3. TEX. WATER CODE § 13.4132 authorizes the Commission to appoint a willing person to temporarily manage and operate a utility if the utility has discontinued service or abandoned operations or the provision of services or has been or is being referred to the Attorney General for the appointment of a receiver under TEX. WATER CODE § 13.412.
4. TEX. WATER CODE § 5.507 provides that the Commission may issue an emergency order appointing a willing person to temporarily manage and operate a utility under TEX. WATER CODE § 13.4132.
5. This Emergency Order may be issued without notice or hearing pursuant to TEX. WATER CODE § 5.501(b) and 30 TEX. ADMIN. CODE § 35.25.
6. TEX. WATER CODE § 5.501(c) and 30 TEX. ADMIN. CODE §§ 35.12 and 291.143(a) authorize the TCEQ Executive Director to issue this Emergency Order.
7. TEX. WATER CODE §§ 5.501 and 5.507 and 30 TEX. ADMIN. CODE § 291.143(a) authorize the Executive Director to appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations or which is being referred to the office of the Attorney General for the appointment of the receiver.
8. TEX. WATER CODE § 13.4132 provides to the temporary manager the powers and duties necessary to ensure continued operation of the utility and the provision of continuous and adequate services to customers including the power and duty to read meters, bill for services, collect revenues, disburse funds, access all system components, and request rate increases.
9. Notice of the emergency order, once it has been issued, is adequate if the notice is mailed or hand delivered to the last known address of the Thunderbird's registered agent and headquarters, in accordance with TEX. WATER CODE § 5.507. The last known address of Thunderbird's headquarters is set forth in Finding of Fact No. 5.

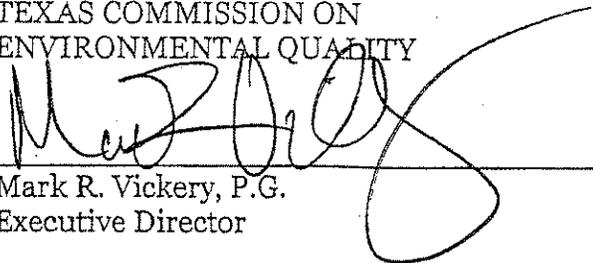
### III. ORDER

1. This Order shall be effective on the date it is executed by the TCEQ Executive

Director, i.e. November 30, 2010.

2. Immediately upon the effective date of this Emergency Order, Mr. Fultz is hereby appointed to temporarily manage and operate the Utility.
3. Mr. Fultz shall serve as temporary manager of Thunderbird until such time as a receiver is appointed to operate the Utility by a court of proper jurisdiction, or 180 days after the effective date of this Order i.e. May 29, 2011, whichever occurs first.
4. Mr. Fultz is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utility and the provision of continuous and adequate services to customers, including the powers and duties set forth in TEX. WATER CODE § 13.4132.
5. Mr. Fultz shall give the Executive Director an inventory of all Utility property received within sixty (60) days of the effective date of this Order.
6. Mr. Fultz's requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c).
7. Mr. Fultz's compensation will come from Utility revenues in the amount of eight dollars (\$8.00) per month per connection.
8. Mr. Fultz shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).
9. Pursuant to TEX. WATER CODE § 5.504, the Commission will consider whether to affirm, modify or set aside this Order at its regular Agenda meeting on February 23, 2011 at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas. **At the February 23, 2011 Agenda meeting, Thunderbird may request an evidentiary hearing pursuant to 30 TEX. ADMIN. CODE § 35.25(c) for the purpose of presenting evidence and cross-examining witnesses regarding whether to affirm, modify, or set aside this Emergency Order. An Administrative Law Judge will be present at the Agenda to immediately hear the matter should a hearing be requested.**
10. The Chief Clerk shall provide a copy of this Order to each of the parties.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY



\_\_\_\_\_

Mark R. Vickery, P.G.  
Executive Director

Attachment A

AFFIDAVIT OF JENNELLE CRANE

STATE OF TEXAS            }  
  }  
COUNTY OF TAYLOR        }

BEFORE ME, the undersigned authority, on this day personally appeared Jennelle Crane a person whose identity is known to me. After I administered an oath to her, upon her oath, she said:

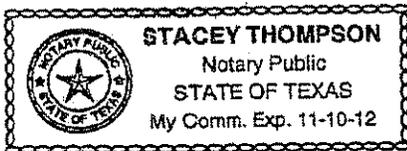
1. My name is Jennelle Crane, and I am an Environmental Investigator for the Abilene Regional office of the Texas Commission on Environmental Quality ("TCEQ"). I am over the age of twenty-one years and of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein, which are true and correct.
2. In my capacity as an Environmental Investigator for the TCEQ, I have authority to make this Affidavit. As part of my job responsibilities as an Environmental Investigator for the TCEQ, I conduct compliance and complaint investigations.
3. On May 31, 2010, I responded to complaints of water outages at Thunderbird Bay Water Services, Inc. (the "Utility"). I could discern that the Utility was running, but was unable to meet water production demands.
4. On June 1, 2010, I responded to complaints of water outages at the Utility and arrived at the utility at approximately 2:25 p.m. I observed the polymer was not available and measured a turbidity reading of 22 Nephelometric Turbidity Units (NTU). I documented that the high service pumps were turned off over night to let the tanks at the Utility fill up. I observed that water was out in all areas of the Utility. Brown County Emergency Management provided bottled water and the Volunteer Fire Department provided non-potable water.
5. On June 2, 2010, I returned to the Utility at approximately 8:35 am and observed that water was out in all areas of the Utility I checked. I observed that polymer was not available and the Utility measured a turbidity reading from the bench top turbidity meter of 54.6 NTU. I also reviewed the raw water pumping data and found no readings from May 24, 2010 to May 29, 2010 and on June 1, 2010. I documented that the Utility had been without a second raw water pump since October 2009, leaving the Utility with one 7740 GPH pump. I also documented that the system's online turbidimeter was not working. Brown County Emergency Management provided bottled water, available at the Harbor Point Volunteer Fire Department.
6. On June 3, 2010, I returned to the Utility at 10:30 a.m. and observed that

water was out for all service areas of the Utility I checked. The Utility had 8 feet of water in the ground storage tank, 18 feet of water in the Tamarack Mountain stand pipe, and 22 feet of water in the plant stand pipe. I documented a turbidity reading of 57 NTU. At 12:30 p.m. I observed that the Utility had 1 foot of water in the ground storage tank at the plant site, 53 feet of water in the Tamarack Mountain stand pipe, and 23 feet of water in the plant stand pipe. I observed that Thunderbird turned off the high service pumps to let the ground storage tank build back up. The State Operations Center provided bottled water through Brown County Emergency Management.

7. On June 4, 2010, I returned to the Utility at 10:30 a.m. and observed that the Utility had 9.5 feet of water in the ground storage tank at the plant site, 50 feet of water in the Tamarack Mountain standpipe and 23 feet of water in the standpipe at the plant site. I observed that the Utility could not provide water to the Thunderbird Bay Subdivision area.
8. From May 31, 2010 to June 4, 2010, TCEQ Abilene Regional Office investigators responded to complaints of water outages at the Utility. From June 1, 2010 to June 4, 2010, I responded to complaints of water outages at the Utility. Some service areas of the Utility have been continuously out of water since May 31, 2010. Brown County and the Department of Public Safety's Department of Emergency Management provided bottled water to the customers of the Utility during this time period.

Jennelle Crane  
Jennelle Crane  
Environmental Investigator  
Abilene Regional Office  
Texas Commission on Environmental Quality

SUBSCRIBED AND SWORN TO before me on NOV. 22  
2010, to certify which witness may hand and official seal.



Stacey Thompson  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

(Seal)