



March 2005  
RG-427 Revised

# Public Utility Receiverships and Temporary Management:

## A Guide for Receivers and Temporary Managers of Water or Wastewater Utilities



# Public Utility Receiverships and Temporary Management:

A Guide for Receivers and Temporary Managers of  
Water or Wastewater Utilities

Prepared by  
Water Supply Division

RG-427 (Revised)  
March 2005



**Kathleen Hartnett White, *Chairman***  
**R. B. “Ralph” Marquez, *Commissioner***  
**Larry R. Soward, *Commissioner***

**Glenn Shankle, *Executive Director***

Authorization to use or reproduce any original material contained in this publication—that is, not obtained from other sources—is freely granted. The commission would appreciate acknowledgment.

Copies of this publication are available for public use through the Texas State Library, other state depository libraries, and the TCEQ Library, in compliance with state depository law. For more information on TCEQ publications, call 512/239-0028 or visit our Web site at:

**[www.tceq.state.tx.us/publications](http://www.tceq.state.tx.us/publications)**

Published and distributed  
by the  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin TX 78711-3087

The TCEQ is an equal opportunity/affirmative action employer. The agency does not allow discrimination on the basis of race, color, religion, national origin, sex, disability, age, sexual orientation or veteran status. In compliance with the Americans with Disabilities Act, this document may be requested in alternate formats by contacting the TCEQ at 512/239-0028, Fax 239-4488, or 1-800-RELAY-TX (TDD), or by writing P.O. Box 13087, Austin, TX 78711-3087.

# Contents

CHAPTER 1: RECEIVERSHIP AND TEMPORARY MANAGEMENT FOR WATER AND WASTEWATER UTILITIES .....	1
Introduction .....	1
Terms Used in This Guide .....	1
The Law and Regulatory Authority .....	1
How to Use This Guide .....	2
Where to Get More Information .....	2
Frequently Asked Questions .....	3
Regulatory Roles and Responsibilities .....	3
Receiver or Temporary Manager Fees .....	4
Guidelines for Establishing Reasonable Fees .....	5
Benchmarks .....	5
Salary Analysis .....	6
Collecting Fees .....	6
Utility Assistance Resources .....	7
CHAPTER 2: ESTABLISHING THE RECEIVERSHIP OR TEMPORARY MANAGEMENT .....	9
Communicating with Customers .....	10
Initial Contact and Status Reports .....	11
Required Customer Notices .....	12
Communicating with the Court, TCEQ, and Others .....	12
Communications and Reports Required by the Court .....	12
Communications and Reports Required by the TCEQ .....	13
Establishing an Office .....	14
Addressing System Deficiencies .....	15
Scheduling Maintenance Items .....	16
Scheduling Required Improvements .....	16
Service Area (CCN) Issues .....	17
Exceptions to Minimum Capacity Requirements (Water) .....	17

CHAPTER 3: ACCOUNTING, RECORDS, AND REPORTS .....	19
Establishing System Accounts .....	19
Accounting Practices .....	19
Setting Up the Books .....	20
Customer Records .....	20
Billing Information .....	21
Deferred Payment Plans .....	21
Monthly Reports .....	22
CHAPTER 4: RATES AND FINANCES .....	23
Developing a Budget .....	23
Establishing Goals .....	23
Estimating Costs and Expenses .....	24
Estimating Income .....	24
Estimating Net Income and Evaluating Current Rates .....	25
Revising the Budget .....	26
Rate Increases .....	26
Financing Improvements .....	28
Increasing the Monthly Service Rate .....	28
Surcharge for Capital Improvements .....	28
Surcharge for Sampling, Testing, and Inspection Fees .....	29
Escrow Accounts for Surcharge Funds .....	30
CHAPTER 5: DISSOLVING A RECEIVERSHIP .....	31
Temporary Manager's Appointment Expiration .....	31

## **Appendixes**

Appendix A: Texas Water Code, Chapter 13, Subchapter K, Violations and Enforcement Rules .....	35
Appendix B: 30 TAC, Chapter 291, Subchapter J, Enforcement, Supervision, and Receivership .....	39
Appendix C: FMT Contract Utility Assistance Information and Assignment Task Listing .....	41
Appendix D: Business Plan Template .....	43
Appendix E: Example of Customer Notification Letter .....	47
Appendix F: Utility/System Deficiency Item Priority Listing .....	49
Appendix G: Monthly Report Template .....	51

## **Tables**

Table 1. Salary Ranges Used to Benchmark Expenses .....	5
---	---



# CHAPTER 1: RECEIVERSHIP AND TEMPORARY MANAGEMENT FOR WATER AND WASTEWATER UTILITIES

## Introduction

The information in this guide is intended to help temporary managers or receivers of water and wastewater utilities with the following tasks:

- getting started,
- managing and operating the utility, and
- dissolving the receivership or temporary management.

## ***Terms Used in This Guide***

In this guide the terms “receiver” and “temporary manager” may be used interchangeably. Information that is meant uniquely for one and not the other will be noted with distinguishing comments such as "court-appointed" receiver.

The terms are defined as follows:

- A *receiver* is a person with authority to collect the assets of, manage, and carry on the business of a utility owned by someone else.
- A *temporary manager* is a person or entity with the authority to manage a water and/or wastewater utility for a specified period of time, but does not have the authority to take over the utility assets.

## ***The Law and Regulatory Authority***

The Texas Water Code authorizes the Texas Commission on Environmental Quality (TCEQ) to seek receivership or temporary management for investor-owned or affected county water or sewer utilities.

State laws referenced in this publication can be found in Vernon's Texas Codes Annotated (VTCA), Water, Chapter 13. The TCEQ rules can be found in the Texas Administrative Code, Title 30 (30 TAC).

Under the law, a utility may be subject to receivership if the utility:

- has been abandoned or the intent to abandon has been communicated to the TCEQ;
- is in violation of a TCEQ final order; or
- has allowed any property under its control to be used in violation of the TCEQ rules and requirements of a final order.

Temporary management is intended for urgent management needs if the utility:

- has had operations discontinued or abandoned without approval;
- has been, or is being referred to the Attorney General for appointment of a receiver; or
- has violated TCEQ rules and requirements.

## ***How to Use This Guide***

This document is for general guidance only. It does not take the place of the official rules. A receiver or temporary manager is responsible for maintaining a general knowledge of the laws that govern utilities.

## ***Where to Get More Information***

Copies of rules and agency publications can be obtained by calling TCEQ Publications at 512/239-0028. Rules and publications also are available on the TCEQ's Web site, [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

For more information, contact the TCEQ's Water Supply Division as follows:

Phone: 512/239-4691  
Mail: Water Supply Division, MC 153  
TCEQ  
PO Box 13087  
Austin, TX 78711-3087  
Fax: 512/239-6050

## Frequently Asked Questions

*What is the difference between a receiver and a temporary manager?*

A receiver has control of the assets, is appointed by the district court, and reports to and is ultimately accountable to the district court. A temporary manager is appointed by the TCEQ and manages the system for a limited time set by the TCEQ.

*How long does a temporary manager or receiver appointment last?*

- Temporary manager—by rule is set at 180 days; may be extended by TCEQ.
- Receiver—until the receivership is dissolved by the district court.

*Can a customer, a nonprofit incorporated homeowner's association, a neighboring utility, or a local operator be appointed as the receiver or temporary manager?*

By law, a receiver must be an individual. Therefore, a customer or operator of a nearby utility could be appointed receiver. A temporary manager may be an individual, partnership, or corporation, so any of the entities or persons named in the question could be appointed temporary manager. The court and the TCEQ look for a person or entity with the knowledge to operate such a business.

*Are court-appointed receivers and temporary managers paid for their services? If so, by whom?*

Subject to the court's approval, a receiver is allowed to collect fees for services performed. The fees are paid from the utility's revenue, or in some cases, are paid when the receivership is dissolved. Temporary managers are paid in the same manner, but payments are subject to TCEQ approval.

*Will the receiver end up owning the utility?*

Laws currently in effect allow a receiver to purchase the utility in receivership, but only after obtaining approval from the court and the TCEQ.

## Regulatory Roles and Responsibilities

The TCEQ authority to ask a court to appoint a receiver is found in state law, the Water Code: VTCA, Chapter 13, Subchapter K, Violations and Enforcement (see Appendix A).

The TCEQ authority to appoint a temporary manager is found in Chapter 5 of the Water Code.

Some of the TCEQ rules on receiverships are in 30 TAC Chapter 291, Subchapter J, Enforcement, Supervision, and Receivership (see Appendix B).

Other TCEQ rules on public water systems (Chapter 290), utilities (Chapter 291), and wastewater systems (Chapters 305, 309, 317, and 319) still apply to a utility placed in receivership or temporary management.

The TCEQ asks the court, through the Office of the Attorney General (OAG), to appoint a receiver who will be responsible for ensuring:

- continuous and adequate service to utility customers;
- collection of assessments, fees, penalties, or interest owed to the utility; and
- corrective action taken on violations of a TCEQ Order.

A temporary manager authorized by the TCEQ is responsible for ensuring the continued operation of the utility and the provision of continuous and adequate service to the customers, including:

- meter reading,
- billing for services,
- collecting revenues,
- disbursing funds, and
- requesting rate increases.

A court-appointed receiver works with the following parties to define and meet specific responsibilities to the following: the district court; the OAG; the TCEQ; the utility owner; customer groups such as a homeowners' association; a city, if any portion of the system is inside the city limits; other local and state government agencies; and private businesses, as necessary in the usual course of business.

A temporary manager may also work with all entities, except for the court and the OAG.

## **Receiver or Temporary Manager Fees**

A receiver or temporary manager should have a general knowledge of how to run a utility and should have the resources to operate and manage the utility. The utility may have existing employees such as operators, field staff, and office workers to assist with and conduct the daily operations of

the utility. Engineering, legal, or accounting services may also be needed. Establishing a reasonable fee for the receiver involves identifying services the receiver will provide and those that will have to be contracted for and treated as a separate expense of running the utility.

Rate design methods used to determine reasonable cost of service expenses for salaries and contract labor can be used as guidelines for establishing a reasonable receiver's fee. Labor expenses typically include expenses for the day-to-day management, operations, and office services of the utility. Fees for professional services are usually treated as a separate expense category. Therefore, the receivership fee should be developed exclusive of a professional service such as an accountant, attorney, or engineer. This is especially important when professional services are substantial.

### ***Guidelines for Establishing Reasonable Fees***

To determine a reasonable expense in a rate case, the TCEQ staff uses one of the two tests: benchmarks and salary analysis. They are discussed in the following sections.

#### **Benchmarks**

Benchmarks are established by reviewing statistics from past rate cases, financial information provided annually to the TCEQ by utilities, survey results, and TCEQ staff experience with the finances and operations of utilities. Establishing a benchmark range recognizes that all utilities are not equal. For example, a smaller utility does not have the advantage of economies of scale, and therefore, higher costs per customer, per month, may be necessary.

In an effort to benchmark labor expenses, the following salary range table may be helpful. Although an appropriate fee for a receiver cannot be determined conclusively, the table provides a flexible guide that can be useful as a starting point.

<b>Number of Customers</b>	<b>Salary Range (per customer per month)</b>
>500	\$7.50
301–500	\$7.50– \$9.50
101–300	\$9.50–\$11.50
50–100	\$11.50–\$12.50
<50	\$12.50–\$15.00

If the labor expenses in a rate change application exceed the table amount for the given number of customers per month, then further analysis of the utility's resources may be necessary to determine whether those expenses are reasonable. This analysis may include, but is not limited to consideration of the following factors:

- Age, condition, and management situation of the system.
- Number of customers.
- Density of the connections.
- Number and proximity of systems (for a multi-system utility).
- Type of service provided (water, sewer, or both).
- Experience and qualifications of utility personnel.
- Number of customers with large meters that create an unusual demand; high customer usage resulting in unusual demand; and salaried personnel who perform professional services, such as accounting, bookkeeping, legal, or engineering, which are commonly performed by contractors and normally would be included in another expense category.

### **Salary Analysis**

Another test to determine the reasonableness of labor expenses is to analyze the salaries of a "projected" number of employees needed to manage and operate the utility. For example, it is generally assumed one full-time field employee is needed for every 200 customers. A smaller system might require only a fractional portion of a field employee's time.

### ***Collecting Fees***

The process and timing for collecting receiver or temporary manager fees are dependent on the utility's cash flow. The receiver should develop a budget and determine how much money is left over after all bills are paid. If money is not available to pay the full amount of the receiver's fee on a monthly basis, unpaid amounts can be accrued. The accrued fees can then be collected at a later date when funds are available because of improved management practices, a rate increase, or a combination of these. Funds may also become available when the utility is sold and the receivership is dissolved.

## Utility Assistance Resources

In an effort to improve the viability of a utility or system, the TCEQ provides assistance to utilities at no cost. The TCEQ offers this support through contractors to help systems solve financial, managerial, and technical (FMT) problems. Use of the contractors can help a system address existing compliance violations or prevent deficiencies. Specific areas of assistance include rate studies, water treatment optimization, and capital improvement assessments.

The TCEQ also offers consolidation assessments through its contractors. Evaluations are made of the feasibility of combining two or more neighboring systems. If consolidation appears to be possible, further assistance is given to help achieve that goal (see Appendix C).



## CHAPTER 2: ESTABLISHING THE RECEIVERSHIP OR TEMPORARY MANAGEMENT

Receivers and temporary managers are charged with the responsibility of continuing the business of the public utility. A receiver will be ordered by the court to furnish a bond in an amount set by the court to assure proper performance of duties. The TCEQ may require a bond from a temporary manager to assure performance of required duties.

The first act of business for the receiver or the temporary manager is to physically take over the utility. Doing so begins with getting the office keys from the owner, if possible, to gain access to the facility. Obtaining a customer list from the owner is also helpful. If the receiver or temporary manager encounters trouble from the owner while taking control of the utility, the TCEQ should be notified immediately. The owner should not be allowed to continue collecting payment for services rendered by the utility once a receiver or temporary manager has been appointed.

Once physical possession of the utility has been achieved, the receiver or temporary manager should focus efforts on providing continuous and adequate service to all customers. The first step may be to bring service back on line. System deficiencies should be corrected as soon as the utility revenues allow. After establishing service the receiver should:

- meet with utility personnel to discuss procedures;
- inspect, evaluate the condition of, and conduct an inventory of the facilities;
- establish a bank account for the utility in the receiver's or temporary manager's name; and
- transfer accounts such as telephone and electricity into the receiver's or temporary manager's name.

**Tip:** When setting up accounts for a utility in receivership, the suggested format is “John Doe, Court Appointed Receiver of ABC Water Company.” For a temporary manager it is “John Doe, Temporary Manager of ABC Water Company.”

Once the basics of operating the system have been accomplished, the temporary manager will continue to operate the system until a receiver is appointed, or for 180 days after appointment by the TCEQ. The term can be extended or shortened by the TCEQ.

For a court-appointed receiver, once the basics of operating the system have been accomplished, then evaluation of the overall financial and operational status of the utility should begin. The receiver should begin this process by:

- reviewing all available records from governmental agencies to determine if there are any notices of violations that have been issued against the utility;
- reviewing the utility records and determining if any bills are owed;
- assessing the utility's financial condition; and
- appraising the utility's inventory.

Using the assessments and reviews previously listed, a court-appointed receiver or temporary manager should next develop a business plan. (See Appendix D for a template business plan.)

The plan should include, but is not limited to:

- establishing a compliance schedule for completion of required improvements,
- setting up an operating budget and obtaining financing for improvements,
- making management changes for the utility, and
- establishing the receiver's goal for the utility.

In developing a business plan, the receiver or temporary manager can get assistance by hiring a consultant, such as an engineer, an experienced operator, or an accountant. (See Appendix C for assistance program information.)

## **Communicating with Customers**

Clear, concise communication with customers is a very important part of the job for the receiver and temporary manager. Community involvement is essential to the success of the receivership or temporary managership. Generally, the circumstances causing the need for the appointment of a receiver or temporary manager also result in customers who may be confused, concerned, angry, or demanding. Customers will be much more cooperative and understanding if they know what's going on and what to expect.

Making contact with a property owners group or a willing customer as soon as possible is a good way to open the lines of communication to all

customers. Information can be transmitted by existing newsletters or, in very small systems, by word of mouth. The receiver or temporary manager should be available to talk with the customers, especially during the first weeks of being appointed to operate the utility. If the utility does not have a local office, then the receiver or temporary manager may want to visit the system periodically and let the customers know they can meet to get answers to questions. The receiver, temporary manager, or a utility employee should respond in writing to all written inquiries or complaints from the customers and should return their phone calls promptly.

Suggestions for initial and follow-up contacts with customers are discussed in the following section. Specific required communications are also listed.

### ***Initial Contact and Status Reports***

An introductory letter should be sent to each customer at the address listed in the utility's records as soon as possible after the receiver or temporary manager takes over. Appendix E provides an example of a customer notification letter advising of the change in management.

Customers will need to know:

- the name, address, and phone number of the receiver or temporary manager (and the new operator's name, if applicable);
- the name and telephone number of the person to contact in case of an emergency and after regular business hours;
- the address where their payments should be mailed, or the location where the payments can be dropped off; and
- information on any special circumstances, such as the need to ration or boil water.

A receiver and temporary manager may also want to give customers:

- a brief explanation of what a receiver or temporary manager does;
- information about the receiver's or temporary manager's personal experience and qualifications;
- a status report on the system and any plans for corrective actions;
- a list of improvements already made and any planned improvements and cost estimates; and

- a report on any court hearings or rulings regarding the receivership (court-appointed receiver only).

## ***Required Customer Notices***

TCEQ rules require the receiver or temporary manager to provide a notice to the utility's customers in certain situations. The situations include:

- when there is low water pressure, or when test results from water samples indicate that the water must be boiled before it is used for human consumption (30 TAC Section 290.122);
- when test results from the water samples indicate that a chemical standard has been violated (30 TAC Section 290.122);
- when water allocation is about to begin (30 TAC Section 291.15);
- when an application for a rate increase or surcharge has been filed (30 TAC Section 291.22);
- when disconnection of a customer's service for nonpayment of the bill is planned (30 TAC Section 291.88 termination notice);
- when discontinuing utility service is planned (30 TAC section 291.143 petition to cease operations); and
- when a court-appointed receiver proposes selling the utility assets and/or transferring the utility's CCN (30 TAC Section 291.109).

## **Communicating with the Court, TCEQ, and Others**

It is important for a receiver to maintain communications and file reports with the court, the OAG, and the TCEQ. It is important for a temporary manager to maintain communications with and file reports with the TCEQ. Required and recommended communications are listed below:

### ***Communications and Reports Required by the Court***

#### **For the Court Appointed Receiver**

- Bond/financial assurance
- Monthly reports
- An inventory of the utility
- Request for major expenditure

- Request to sell or otherwise dispose of utility assets
- Request to dissolve the receivership

**Note:** The previous listed items typically are required in the appointment or order documents. A receiver should review the order to determine whether other requirements are included. The TCEQ receivership coordinator will assist with managing the various

## ***Communications and Reports Required by the TCEQ***

The following items must be provided to the TCEQ:

- Response to inspection report letters and notices of violation.
- Records on service interruptions.
- Copies of required notifications (for example, boil-water notice, or chemical standard violations).
- Monthly operating reports for surface water (and some groundwater) systems.
- Applications for surcharges, rate changes, or tariff revisions.
- Applications to sell the utility's assets and to cancel, transfer, or merge a CCN (receiver only, as the temporary manager is not authorized to sell the utility's assets or to cancel, transfer, or merge the utility's CCN).
- Water allocations.

At various times, the receiver or temporary manager will need to communicate with TCEQ staff at the Austin office and the appropriate TCEQ regional office, which is designated by the county where the utility is located. (For information on the regional offices, follow the “About TCEQ” navigation link on the TCEQ Web site, [www.tceq.state.tx.us](http://www.tceq.state.tx.us).) The TCEQ Water Supply Division can assist with providing contact information for involved offices and staff.

It is recommended that receivers and temporary managers contact both the receivership coordinator and regional staff to report emergencies. This helps prepare TCEQ staff to answer calls they may receive from the utility's customers. It also gives the staff an opportunity to offer any assistance.

For help with public health, safety, or security issues, the appropriate TCEQ regional office or the TCEQ's Public Drinking Water Section should be contacted at 512/239-4691.

For help with other regulatory issues (for example, rates, CCNs, billing), calling the water supply division is recommended.

Following are other suggestions for either or both the receiver and temporary manager:

- Communicate with the TCEQ receivership coordinator and the appropriate regional staff on a regular basis.
- The receiver should keep the OAG informed of all activities on a routine basis.
- The receiver should send copies of all written communications regarding the utility to the Court and the utility owner.
- The temporary manager should send copies of all written communications regarding the utility to the utility owner.

## **Establishing an Office**

A receiver or temporary manager will need an office for the following purposes:

- Storage of books, records, maps, inspection reports, correspondence, and memoranda required by the TCEQ and the court.
- A location where customers can make payments and pick up applications for service.
- Customer access to the CCN, tariff copies, or other necessary information that should be available for a customer's review. (If the customer requests a copy, a reasonable copying fee may be charged.)

In some cases, but not all, the utility's assets include an office that can be used by the receiver or temporary manager. If the utility does not have office space available, the receiver or temporary manager may use a private office. The receiver may also designate another office location from which the utility's business may be conducted. However, discretion should be used in selecting an office that is the appropriate size, based on the needs of the utility and the utility's budget.

At a minimum, the office should consist of:

- a telephone, with someone available to answer it during reasonable office hours;
- an address to which the customers can mail their payments;
- and

- a physical location (within 20 miles of the service area) where payments can be made by the customer in order to restore service, and where potential customers can pick up and return applications for new service.

**Note:** Unless a waiver is granted by the executive director, TCEQ rules require a utility office within 20 miles of the service area.

The last requirement can be met by making arrangements with a local store owner to collect the payments and to hand out and collect the new service applications. If 24-hour monitoring of the system is not practical, then the receiver or temporary manager must make available an answering machine that customers may call to report emergencies.

Another important aspect of setting up an office and operating the utility involves personnel considerations. The receiver or temporary manager should evaluate the personnel needs of the utility to determine if the number of existing employees is sufficient and if the employees are performing their jobs satisfactorily. It is important to remember existing and competent utility employees can help a receiver become familiar with the facilities and the day-to-day operations.

If there are no employees, or the utility is inadequately staffed, the receiver's business plan should address the consideration of hiring additional staff or using contract labor. The TCEQ encourages receivers and temporary managers to use competitive bidding when contract labor or professional services are needed. Bidders' estimates of the time involved, and the hourly rates charged for particular tasks can help the receiver develop the utility's budget. Salaries, contract labor costs, professional fees, and fees for the receiver or temporary manager can have a significant impact on the utility's budget and may result in the need for a rate increase.

## Addressing System Deficiencies

In most cases, utilities that are considered for the appointment of a receiver or a temporary manager have been abandoned, have faced many years of neglect and mismanagement, and have deteriorated facilities. If the system is in violation of the TCEQ rules or a commission order, the receiver or temporary manager may need to work with the utility's engineer or operator and the TCEQ staff to develop a schedule for implementing procedures or making improvements to move toward

bringing the system into compliance. Developing a compliance schedule is the receiver's responsibility, with input available from the TCEQ staff.

In order to start putting together information concerning any system deficiencies or TCEQ rule violations, the receiver or temporary manager should check:

- utility records,
- TCEQ enforcement records,
- TCEQ orders (which contain lists of the violations and any dates by which certain corrective actions must be taken), and
- TCEQ regional office investigation reports of the utility (which list any deficiencies found during the investigation).

The primary focus of the compliance schedule should be the protection of public health. Deficiencies requiring immediate attention include failure to sample, inadequate disinfection, inadequate pressure, and major leaks. See Appendix F for a priority listing of deficiency items.

## ***Scheduling Maintenance Items***

Historically, owners of water and sewer systems placed in receivership have often neglected utility facilities and have failed to perform proper maintenance.

Receivers and temporary managers should try to correct routine maintenance deficiencies that do not involve a large expenditure of money within the first 30 days of taking over the utility. Examples of these measures include caulking wellheads, installing vent screens, locking up the facilities, and putting up signs.

## ***Scheduling Required Improvements***

Required system improvements that involve significant expense or planning will take additional time to address. Some of these improvements may need to be scheduled well into the future and will require significant financial and technical input.

In establishing a compliance schedule, help can be obtained from utility employees, consultants, TCEQ staff, and this guide. The goal is to establish a schedule that is reasonable and attainable. However, delays often occur due to unforeseen circumstances, such as underestimated expenses, overestimated revenues, or incomplete items needed before additional steps can be taken. Therefore, flexibility should also be a

component of compliance schedules in order to prevent failure. The court and the TCEQ should be notified when delays are anticipated.

## **Service Area (CCN) Issues**

The receiver or temporary manager should review the service area maps and the Certificate of Convenience and Necessity (CCN) records on the utility's service area. The receiver should determine whether to request a CCN amendment to exclude unserved areas, or to include areas already receiving service outside the certified area.

When the receivership reaches a point where it can be dissolved, the CCN may need to be transferred or canceled. The specific action required will depend on what is done with the utility's assets and is, of course, subject to the TCEQ and court approval.

Application forms and instructions for amending, transferring, or canceling a CCN can be obtained by calling the TCEQ's Utilities and Districts Section at 512-239-4691. The forms are also available on the TCEQ's Web site.

## **Exceptions to Minimum Capacity Requirements (Water)**

Requests for requirement exceptions for minimum water system capacity must be sent in writing to the TCEQ Public Drinking Water Section: Water Supply Division, MC 155, PO Box 13087, Austin, Texas 78711-3087. All exception requests must meet requirements in the TCEQ rules on water hygiene, which can be found in 30 TAC Section 290.45(g). Exceptions that are granted will be reviewed when the system is routinely surveyed, and can be revoked at any time by the TCEQ.



# CHAPTER 3: ACCOUNTING, RECORDS, AND REPORTS

An important process for a receiver, temporary manager, or a utility owner is developing a system of record keeping. Typically with receiverships, few, if any, records are provided to the TCEQ, the court, or new management. Therefore, establishing good accounting processes will help to run the receivership and business as efficiently as possible. Another advantage of such an accounting process is that it allows for a more accurate assessment of the utility's assets and liabilities, and thus, viability.

## Establishing System Accounts

The utility's financial and accounting records help meet reporting requirements, determine future needs, recognize the need for a rate increase, and eventually demonstrate the utility's viability.

Information pertaining to the utility's revenues, expenses, and anticipated costs for future improvements or growth is critical to bringing the business back into compliance. More important, this information is needed to meet a number of regulatory requirements, such as the filing of annual reports with the TCEQ, justifying rate increases to the utility's customers and investors, and demonstrating to lenders the need for funds for expansion or to make improvements.

Keeping track of the business activities is a requirement of both the TCEQ and the judicial court that ordered the receivership.

## *Accounting Practices*

Keeping track of the business activities of a utility is a requirement of both the TCEQ and the judicial court that ordered the receivership. An appropriate accounting system for tracking the utility's finances will help meet the requirements on financial data. Remember the following basic business practices in setting up an accounting system:

- Keep all receipts, such as cash register tickets, invoices, and bills that have been paid. Don't mix business bank accounts with personal bank accounts.
- Keep written records of all utility transactions or dealings with other businesses owned by the same person or corporation. Don't mix utility's records with records of other businesses.
- Keep permanent files and records in a place where they can be found easily. Records include, but are not limited to deeds,

easements, other land records, invoices for plant installations and major improvements, and a copy of the utility's CCN tariff.

- Set up an organized bookkeeping system. Use the system to track where the utility's money is coming from and where it is going.
- Reconcile bank statements regularly and match them with the cash-received and cash-paid worksheets.
- Keep track of the receiver's or temporary manager's personal time invested in the water system and what was done, even though a paycheck may not be rendered for that time.
- Set up a separate bank account for the utility's operations.
- Keep all receipts, such as cash register tickets.

## Setting Up the Books

The Texas Water Code requires utilities to have a Texas office where all books, accounts, and records are available for examination by the TCEQ at reasonable hours. In setting up bookkeeping records, utilities are expected to follow these procedures:

- use specific forms, accounts, records, and memoranda of receipts and expenditures for money;
- keep accurate books that conform to the TCEQ rules;
- adhere to the system of accounts defined by the TCEQ; and
- keep uniform accounts in a required format for all business transactions.

## Customer Records

As a receiver or temporary manager, keep a monthly "Customer Account Summary Worksheet" itemizing the number of customers billed, the total gallons billed to all customers, and the total amount of billings for all customers. The worksheet will help demonstrate customer patterns in water volume used each month and how that affects the cash flow. It also allows for easier completion of similar information required in the TCEQ Annual Report and rate application.

Keep a permanent file that contains at least the following information:

- customer service agreement;

- customer deposit worksheet;
- meter serial number and replacement information; and
- notes on calls or complaints, resolutions reached, any special work performed, and deferred payment agreements.

## ***Billing Information***

TCEQ rules require a utility to issue bills on approximately the same day each month, and as soon as possible after meters are read. The due date for the bills must be at least 16 days after the day the bills are mailed. Any late fee owed must also appear on the bill if the payment isn't received by 5 p.m. on the due date.

**Note:** If the actual due date falls on a holiday or weekend, the due date is extended to the next working day. A late fee may be charged only once on any particular amount owed. A late fee for nonpayment of a late fee cannot be charged.

**Tip:** Deposit any cash or checks received as quickly as possible. Don't keep cash or checks in the office or pay bills out of cash received from customers. This will help in monitoring the cash flow and keeping track of payments.

Give prompt response to customers' questions about their bills or other customer service concerns. If a customer contacts the utility about a billing dispute before service is disconnected, ask the customer to pay any undisputed amount while an investigation is performed. In the meantime, service should not be disconnected. Review the customer's concerns and give a response as soon as possible.

Prepare a record of each complaint or dispute, and keep it in the worksheet described earlier under "Customer Records." This record must be kept for two years after resolution of the complaint.

## ***Deferred Payment Plans***

A deferred payment plan is any arrangement or agreement between the utility and a customer that allows the customer to pay an outstanding bill in installments. A customer must be offered a deferred payment plan in two situations:

- when a customer's bill is more than three times their average monthly bill (unless that customer has been given more than two disconnect notices in the previous 12 months), or
- when a customer has been back billed for more than \$25.

A deferred payment plan may be offered in other situations. Customer service requirements are outlined in 30 TAC Section 291, Subchapter E.

**Tip:** Get it in writing! This protects the utility and the customer by making the terms of a deferred payment plan clear. If a customer does not make a payment agreed to in a written plan, service can be disconnected after sending the required termination notice.

## Monthly Reports

The court and the TCEQ require a receiver to submit a monthly activity and operational report. The TCEQ requires a temporary manager to submit the same type of report. The report must be in the format provided by the TCEQ and must contain the following minimum information:

- an income and cash-flow statement for the reporting period;
- a summary of utility activities that includes improvements or major repairs, number of connections added or reduced, and amount of water produced or treated; and
- any other information required by the TCEQ, such as an inventory of all property, recent significant events, and customer complaint records.

See Appendix G for an example of the monthly activity report. Contact the Water Supply Division or the TCEQ receivership coordinator if you have questions or suggestions.

# CHAPTER 4: RATES AND FINANCES

## Developing a Budget

An early and important process step is the development of a budget for the utility. A budget is an expression of a business plan in monetary terms. It can also be used as an aid in developing a business plan, in monitoring progress, and in the development of a compliance schedule, if needed. A budget normally covers a 12-month period. However, a shorter period may be appropriate when records or data are lacking, when the utility's viability is uncertain, or when pressing needs and limited resources require attention early in the receivership. TCEQ staff or contractors may be able to assist, or it may be necessary to hire a financial consultant to develop a budget.

### *Establishing Goals*

To start the process, make a list of specific goals for a designated budget period. Rank each goal in order of priority. These goals will likely fall into three basic areas:

- Maintaining daily operations of utility systems, including:
  - routine monitoring, operation, and maintenance; and
  - services provided by the receiver, consultants, existing employees, or contract labor.
- Improving and maintaining quality of service, including:
  - repairs (short term) and maintenance (ongoing); and
  - capital improvements (long term).
- Improving customer service, administrative, and management operations, including:
  - meter reading, billing, and responding to calls and letters;
  - record keeping and reporting;
  - planning; and
  - employee supervision, if applicable.

To have a successful budgetary process, an effective and efficient accounting system must be in place. Take advantage of the following resources to establish a record-keeping and accounting system where none exists:

- TCEQ Uniform System of Accounts, 30 TAC Section 291.71

- Texas Rural Water Association, [www.trwa.org](http://www.trwa.org)
- Environmental Protection Agency, [www.epa.gov](http://www.epa.gov)
- National Association of Regulatory Utility Commissioners, [www.naruc.org](http://www.naruc.org)

## ***Estimating Costs and Expenses***

Each budgetary goal should be an estimate. Use the past year's expenses or recent invoices to make an estimate for a particular expense category. Previous expenses can also be used as documentation for the calculation. New operations, or improvements in existing operations, will require more detailed analysis to accurately estimate the costs involved.

Some improvements can be achieved with little initial cost. However, most improvements require at least an initial expenditure, as well as ongoing costs. Examples follow.

- Setting up a system for logging complaints, including:
  - buying an answering machine for the office, and would be an initial, one-time cost; and
  - hiring a person to respond to calls, a recurring labor cost.
- Chlorinating (disinfecting) the water system, including:
  - buying chlorinators and equipment, a one-time cost, part of which would be a capital improvement;
  - chlorine and supplies, an infrequent, irregular cost that would require continuing evaluation and estimating, based on experience; and
  - monitoring for the chlorine residual, a regular, recurring labor cost.

Be realistic in estimating expenses. Also, think of ways to reduce costs, especially if records suggest waste or mismanagement. Efficiency in utility operations is a must, since revenues probably will be limited.

## ***Estimating Income***

Future revenues are likely to be consistent with those received in the past under similar circumstances. However, certain factors can affect revenues and should be considered when estimating the utility's income. These factors may include:

- Production capacity and overall quality of service. Often when production capacity and service are upgraded, customer demand increases.
- Installation or maintenance, and routine reading of customer meters. Meter maintenance and routine meter reading could have the effect of decreasing the estimated demand.
- Seasonal variations in demand. Estimating seasonal demand on an annual basis is difficult, but the receiver can make a projection for a partial year by using the consumption records of the last season.
- Change in number of customers on the system. An increase or decrease in the number of customers on the system will obviously affect the revenue generated.
- Poor bookkeeping practices of the past. Revenues may have been misstated.
- Bad debts. The receiver may be able to collect on overdue accounts and reduce the utility's bad debt.
- General economic conditions. Economic conditions, including the convenience and cost of water, affect the customers' ability to pay bills and their desire to remain in the area.

The receiver should be sure to include revenues from all of the utilities' sources, such as miscellaneous fees. Again, experience suggests using conservative estimates when approximating income.

### ***Estimating Net Income and Evaluating Current Rates***

Estimated income should be compared to estimated costs. If the income is insufficient, the receiver or temporary manager should consider the need for a rate increase. An emergency rate increase can be requested if the shortfall is severe and the need for expenditures is immediate. See Appendix A for information on rate increases in the Water Code, Section 13.4133. Since emergency rate increases become effective immediately upon TCEQ approval, a receiver or temporary manager can then revise the budget to include increased revenues generated by increased rates or surcharges.

Other types of rate changes that can be considered include:

- Rate tariff change—30 TAC Section 291.21

- Alternative rate methods—30 TAC Section 291.34
  - single issue
  - phases and multiple-step process
- Sampling surcharge—30 TAC Section 291.21(k)

## ***Revising the Budget***

Budgeting for a utility is a continuous process. Therefore, plan to revise the budget as necessary when the system or operational improvements are made, or additional needs are recognized. Initially, the lack of the system's historical knowledge may cause a disadvantage to the receiver. As improvements are made to infrastructure and operations, the receiver will have a better idea of what a realistic budget for the utility will be.

## **Rate Increases**

If the receiver finds current rates are not generating the revenue needed for operations and improvements, a rate increase may be necessary. A utility manager can request for approval of a regular rate increase under the Texas Water Code Section 13.187, or for an emergency rate increase under Texas Water Code Section 13.4133. The procedures required under these two provision are discussed briefly in the following sections. The TCEQ Water Supply division can be contacted for application forms and assistance at (512-239-4691).

For any type of proposed rate increase, the receiver must keep good records of all expenses, separating capital items (assets) from regular maintenance (expenses). TCEQ staff normally use the utility basis cost-of-service method in setting rates. This method allows a utility to recover:

- reasonable operation and maintenance expenses,
- depreciation expenses, and
- return on the net plant in service that is "used and useful" in providing the utility service.

There is some flexibility in rate design methodology which allows for special measures to preserve the financial integrity of a utility in receivership. For more information about methodologies for determining a utility's revenue requirements, see the American Water Works Association's *Manual M1*. (For a copy of the manual or assistance, call AWWA at 1-800-926-7337, or visit their Web site at: [www.awwa.org](http://www.awwa.org)). TCEQ staff can provide a receiver with some assistance on the application, but it is the responsibility of the receiver to justify all information in the application.

**Tip:** The receiver or temporary manager should meet with the customers before filing for a rate increase to explain plans for the utility and to gain their support.

The usual method for a water or sewer utility to obtain a rate increase is through the process described under Texas Water Code Section 13.187. The main features of this process are:

- sending a notice to each ratepayer at least 60 days in advance of the effective date of the rate;
- filing a complete rate application with the TCEQ simultaneously;
- scheduling a hearing if protests are received from 10 percent of the customers within 90 days of the effective date;
- holding a preliminary hearing with TCEQ staff, the utility management, and the customers at the State Office of Administrative Hearings, with an administrative law judge presiding to determine whether a settlement can be reached through informal negotiations; and
- scheduling an evidentiary hearing if a settlement is not reached.

The rate application requires detailed cost-of-service data for a recent test year. This requirement to establish a pattern of costs may present a problem for a receiver or temporary manager who was provided either insufficient or no records. Therefore, the receiver may need to present a partial test year that has been annualized. While the review and hearing process continues, data from more recent months may be requested, especially if 10 percent of the customers file protests.

**Note:** The receiver or temporary manager must charge the approved (current) rates until a rate application is administratively approved and accepted for filing.

## ***Financing Improvements***

Most utilities in receivership or temporary management have pressing needs for system improvements. The needs may include expenses for general repairs and maintenance, sampling and testing, or major improvements to plant and equipment. Since a receivership or temporary management is meant to cover a short period of time, and the final ownership is unknown, obtaining a loan to finance improvements may be difficult. TCEQ staff are willing to discuss innovative financing. For some utilities in receivership or temporary management, the approach to financing improvements may be either an increase in the rates for service or a customer surcharge or both.

## ***Increasing the Monthly Service Rate***

The utility's cost of service should include expenses for repairs and maintenance-type improvements that are not classified as capital improvements. This cost can be estimated, as was done for the budget, and classified as a "known and measurable change" to the repairs and maintenance expense category. Other cost-of-service expense categories may need to be adjusted similarly, but all costs will have to be justified later in the hearing process. If these expenses are recurring, the amounts may become part of the utility's cost of service upon which the monthly service rates are set.

## **Surcharge for Capital Improvements**

For capital improvements, which tend to involve greater expense and a one-time expenditure, the receiver may decide to propose a customer surcharge. A surcharge is a fixed rate charged to each active connection, each month, for a limited time period. The surcharge is intended to generate revenue in excess of that generated using traditional rate-making practices. The surcharge should be designed to recover the actual cost of capital improvements. For example, if a loan is available, the customer surcharge might be set up to cover the debt service payments.

An important note is that surcharges for capital improvements are authorized by the TCEQ only when the following criteria are met:

- the improvements are required by regulatory standards; and
- no other source of funds for improvements is available.

The surcharge is approved for a specific purpose, which must be stated in the utility's tariff. Most surcharges are for a specified period of time or until the improvement is paid for.

A customer surcharge for capital improvements may be requested under either 30 TAC Section 291.21(k) or Section 291.32(d)(1). The information submitted for a surcharge application should explain the justification for the surcharge and how it was determined or calculated.

**Tip:** The customer surcharge does not require a rate application or prior notice to customers and can be approved administratively by TCEQ staff. Contact the TCEQ Utilities and Districts staff for more information on customer surcharges.

Because a receiver or temporary manager is operating the utility for the short term, long-term effects may not receive high-priority attention. However, the receiver or temporary manager should be aware of how financing capital improvements through surcharges is treated for regulatory and rate-making purposes.

These surcharge-financed improvements are defined by law and by rule as customer contributions in aid of construction (CIAC). CIAC cannot be included in the utility's original cost or invested capital. This means any plant purchased with surcharge revenues cannot be included in computations for depreciation expenses or return on investment. Whoever owns the utility in the future will not have the opportunity to earn a depreciation allowance for, or a profit on, these improvements. But the owner will still have to manage the assets for their full useful life.

**Note:** CIAC must be disclosed to a prospective buyer as part of the TCEQ process for approving the sale of a utility, or for the transfer or merger of its CCN.

Although customer surcharges may be useful in quickly rehabilitating a troubled utility, they can also adversely affect future revenues or the possibility of making the utility viable over time. Therefore, careful consideration should always be given before to proposing this type of surcharge.

## Surcharge for Sampling, Testing, and Inspection Fees

Customer surcharges may also be used to recover the cost of mandated inspections, testing, sampling, or other governmental requirements beyond the control of the utility. This type of fee does not require a rate application or prior notice to customers, and can be approved

administratively by TCEQ staff. TCEQ publication RG-247, *Passing through Increased Costs for Sampling and Inspection Fees*, contains more information on these types of surcharge or fees.

## **Escrow Accounts for Surcharge Funds**

Sometimes conditions are placed on surcharge revenues, especially if the surcharge is a major concern to the customers. In some rate cases, TCEQ orders have required special handling of revenues from surcharges, including:

- placement in escrow to prevent misuse,
- deposit in a separate bank account and accounted for by the utility in reports to TCEQ staff for confirmation that the money was used as intended, and
- spending only with prior approval of TCEQ staff or an escrow agent.

## CHAPTER 5: DISSOLVING A RECEIVERSHIP

When a receiver is appointed, the district court judge will issue an order that specifies the receiver's duties with regard to operating and dissolving the receivership. A receivership can be dissolved under various circumstances, as discussed below. The court will ask the receiver for a final accounting of the utility's properties upon the dissolution of the receivership.

One way of dissolving a receivership is for the receiver to petition the court to return the assets and control of the utility to its original owner based on a showing of "good cause." For example, if the circumstances justifying the appointment of a receiver no longer exist, the receiver might argue this is good cause to return the utility to its owner.

Another way to end a receivership is for the receiver to sell the utility, subject to the court's approval. The receivership would then be dissolved by the court. TCEQ approval is also required to sell a utility and transfer its CCN.

If the receiver finds the utility cannot be rehabilitated or made viable, the court may be asked to allow the receiver to discontinue utility operations and dissolve the receivership. TCEQ approval is also required for discontinuing utility service and canceling a CCN.

When TCEQ approval is required, such as in the transfer of a CCN or discontinuance of utility operations, the receiver is directed by the court to obtain those approvals. During the process, the court retains jurisdiction. The TCEQ approval process for discontinuing operations is initiated by the filing of an application by the receiver, and usually involves giving notice to current customers. The receiver may contact the TCEQ's Utilities and Districts Section at 512/239-4691 with questions about any required approvals or the need to obtain application forms and instructions.

### Temporary Manager's Appointment Expiration

When a temporary manager is appointed by the TCEQ, the order specifies the time period for which the temporary manager will serve. When that time period is up, the temporary manager returns management of the utility back to the owner, unless a receiver has been appointed or the temporary manager's period extended.

If the temporary manager returns management of the utility to the owner, then the temporary manager should work with the TCEQ and the utility

owner to address current issues. The issues may include the status of any emergency rates that have been approved, any compliance schedules that are in place, and any other related utility concerns.

## **Appendixes**

Appendix A: Texas Water Code, Chapter 13, Subchapter K, Violations and Enforcement Rules

Appendix B: 30 TAC, Chapter 291, Subchapter J, Enforcement, Supervision, and Receivership

Appendix C: FMT Utility Assistance Information and Assignment Task Listing

Appendix D: Business Plan Template

Appendix E: Customer Notification Letter Example

Appendix F: Utility/System Deficiency Item Priority Listing

Appendix G: Monthly Report Template



## Appendix A

Vernon's Texas Codes Annotated, Water  
Chapter 13, Water Rates and Services,  
Subchapter K, Violations and Enforcement  
(V.T.C.A, Water, Sections 13.411 through 13.413)

### §13.411. Action to Enjoin or Require Compliance

(a) If the commission has reason to believe that any retail public utility or any other person or corporation is engaged in or is about to engage in any act in violation of this chapter or of any order or rule of the commission entered or adopted under this chapter or that any retail public utility or any other person or corporation is failing to comply with this chapter or with any rule or order, the attorney general on request of the commission, in addition to any other remedies provided in this chapter, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission against the retail public utility or other person or corporation to enjoin the commencement or continuation of any act or to require compliance with this chapter or the rule or order.

(b) If the executive director has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the executive director shall immediately:

- (1) notify the utility's representative; and
- (2) initiate enforcement action consistent with:
  - (A) this subchapter; and
  - (B) procedural rules adopted by the commission.

### §13.412. Receivership

(a) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

- (1) has abandoned operation of its facilities;
- (2) informs the commission that the owner is abandoning the system;
- (3) violates a final order of the commission; or
- (4) allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if an appointment is necessary:

- (1) to guarantee the collection of assessments, fees, penalties, or interest;
- (2) to guarantee continuous and adequate service to the customers of the utility; or
- (3) to prevent continued or repeated violation of the final order.

(c) The receiver shall execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the court.

(d) After appointment and execution of bond, the receiver shall take possession of the assets of the utility specified by the court. Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the utility and shall strictly observe the final order involved.

(e) On a showing of good cause by the utility, the court may dissolve the receivership and order the assets and control of the business returned to the utility.

(f) For purposes of this section and Section 13.4132, abandonment may include but is not limited to:

- (1) failure to pay a bill or obligation owed to a retail public utility or to an electric or gas utility with the result that the utility service provider has issued a notice of discontinuance of necessary services;
- (2) failure to provide appropriate water or wastewater treatment so that a potential health hazard results;
- (3) failure to adequately maintain facilities, resulting in potential health hazards, extended outages, or repeated service interruptions;
- (4) failure to provide customers adequate notice of a health hazard or potential health hazard;
- (5) failure to secure an alternative available water supply during an outage;
- (6) displaying a pattern of hostility toward or repeatedly failing to respond to the commission or the utility's customers; and

(7) failure to provide the commission with adequate information on how to contact the utility for normal business and emergency purposes.

(g) Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may seek commission approval to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity. The receiver must apply in accordance with Subchapter H.

#### §13.413. Payment of Costs of Receivership

The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of all or part of the real or personal property of a water or sewer utility against which a proceeding has been brought under this subchapter to pay the costs incurred in the operation of the receivership. The costs include:

- (1) payment of fees to the receiver for his services;
- (2) payment of fees to attorneys, accountants, engineers, or any other person or entity that provides goods or services necessary to the operation of the receivership; and
- (3) payment of costs incurred in ensuring that any property owned or controlled by a water or sewer utility is not used in violation of a final order of the commission.

#### §13.4131. Supervision of Certain Utilities

(a) The commission, after providing to the utility notice and an opportunity for a hearing, may place a utility under supervision for gross or continuing mismanagement, gross or continuing noncompliance with this chapter or commission rules, or noncompliance with commission orders.

(b) While supervising a utility, the commission may require the utility to abide by conditions and requirements prescribed by the commission, including:

- (1) management requirements;
- (2) additional reporting requirements;
- (3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets; and
- (4) a requirement that the utility place the utility's funds into an account in a financial institution approved by the commission and use of those funds shall be restricted to reasonable and necessary utility expenses.

(c) While supervising a utility, the commission may require that the utility obtain commission approval before taking any action that may be restricted under Subsection (b) of this section. Any action or transaction which occurs without commission approval may be voided by the commission.

#### §13.4132. Operation of Utility that Discontinues Operation or is Referred for Appointment of Receiver

(a) The commission, after providing to the utility notice and an opportunity to be heard by the commissioners at a commission meeting, may authorize a willing person to temporarily manage and operate a utility if the utility:

- (1) has discontinued or abandoned operations or the provision of services; or
- (2) has been or is being referred to the attorney general for the appointment of a receiver under Section 13.412.

(b) The commission may appoint a person under this section by emergency order, and notice of the action is adequate if the notice is mailed or hand-delivered to the last known address of the utility's headquarters.

(c) A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers, including the power and duty to:

- (1) read meters;
- (2) bill for utility services;
- (3) collect revenues;
- (4) disburse funds;
- (5) access all system components; and
- (6) request rate increases.

(d) This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

§13.4133. Emergency Rate Increase in Certain Circumstances

(a) Notwithstanding the requirements of Section 13.187 of this code, the commission may authorize an emergency rate increase for a utility for which a person has been appointed under Section 13.4132 of this code or for which a receiver has been appointed under Section 13.412 of this code if the increase is necessary to ensure the provision of continuous and adequate services to the utility's customers.

(b) A utility that receives an emergency rate increase under this section shall provide to each ratepayer notice of the increase as soon as possible, but not later than the first utility bill issued at the new rate.

(c) The commission shall schedule a hearing to establish a final rate within 15 months after the date on which an emergency rate increase takes effect. The commission shall require the utility to provide notice of the hearing to each customer. The additional revenues collected under an emergency rate increase are subject to refund if the commission finds that the rate increase was larger than necessary to ensure continuous and adequate service.



## Appendix B

Title 30, Texas Administrative Code: Chapter 291, Water Rates  
Subchapter J: Enforcement, Supervision and Receivership  
(30 TAC Sections 291.141 through 291.143)

- §291.141. Supervision of Certain Utilities.
- (a) The commission may place a utility under supervision where:
    - (1) the utility has exhibited gross or continuing mismanagement; or
    - (2) the utility has exhibited gross or continuing noncompliance with Chapter 13 of the Water Code or commission rules; or
    - (3) the utility has exhibited noncompliance with commission orders; and
    - (4) notice has been provided to the utility advising the utility of the proposed commission action, the reasons for the action and giving the utility an opportunity to request a hearing.
  - (b) The commission may require the utility to abide by conditions and requirements, including but not limited to:
    - (1) management requirements;
    - (2) additional reporting requirements;
    - (3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets;
    - (4) a requirement that the utility place all or part of the utility's funds and revenues into an account in a financial institution approved by the executive director and restricting use of funds in that account to reasonable and necessary expenses;
    - (5) operational requirements;
    - (6) priority order of payments or obligations; and,
    - (7) limitation of payment for owner's or owner's family member's expenses or salaries or payments to affiliates.
  - (c) Any utility under supervision may be required to obtain the approval of the executive director before taking any action that may be restricted under subsection (b) of this section. If the commission in its order has required prior approval, any action or transaction which occurs without that approval may be voided by the executive director.
- §291.142. Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver.
- (a) The commission, after providing to the utility notice and an opportunity for a hearing, may authorize a willing person to temporarily manage and operate a utility that has:
    - (1) discontinued or abandoned operations or the provision of services; or
    - (2) is being referred to the attorney general for the appointment of a receiver under the Texas Water Code, §13.412 for:
      - (A) having abandoned operation of its facilities; or
      - (B) having violated a final order of the commission; or
      - (C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission.
  - (b) The commission may appoint a person under this section by emergency order, and notice of the action is adequate if the notice is mailed or hand-delivered to the last known address of the utility's headquarters. A corporation may be appointed a temporary manager.
  - (c) Abandonment includes but is not limited to:
    - (1) failure to pay utility bills; or
    - (2) failure to make necessary and timely repairs to maintain continuous and adequate service.
  - (d) This section does not affect the authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

- §291.143. Operation of a Utility by a Temporary Manager.
- (a) By emergency order under the Texas Water Code, §13.4132, the commission may appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations, or which is being referred to the Attorney General for the appointment of a receiver under the Texas Water Code, §13.412.
  - (b) A person appointed under this section has the powers necessary and shall ensure the continued operation of the utility and the provision of continuous and adequate services to customers. The duties of the temporary manager appointed by the commission will include:
    - (1) reading meters;
    - (2) billing for utility services;
    - (3) collecting revenues;
    - (4) disbursing funds;
    - (5) requesting rate increases if needed;
    - (6) sampling;
    - (7) making necessary repairs; and,
    - (8) performing other acts necessary to assure continuous and adequate utility service as authorized by the commission.
  - (c) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.
  - (d) The temporary manager shall serve a term of one year, unless:
    - (1) specified otherwise by the commission;
    - (2) an extension is requested by the executive director or the temporary manager and granted by the commission;
    - (3) the temporary manager is discharged from his responsibilities by the commission; or,
    - (4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the Attorney General.
  - (e) Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.
  - (f) Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement can be approved by the executive director.
  - (g) The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.
  - (h) The temporary manager shall report to the executive director on a monthly basis. This report shall include:
    - (1) an income statement for the reporting period;
    - (2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and,
    - (3) any other information required by the executive director.
  - (i) During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.

## Appendix C

# TCEQ Financial Managerial and Technical Assistance

In an effort to improve the viability of public drinking water and wastewater systems throughout Texas, the Texas Commission on Environmental Quality (TCEQ) offers contracted assistance at no charge for those water and wastewater systems needing help to solve financial, managerial, or technical (FMT) operational problems. This is accomplished using contractors. Many of these systems may have the potential to have regulatory compliance violations if corrections are not made.

The TCEQ also offers consolidation assessments for officials or owners of systems that may be looking into the possibility of getting out of the water or wastewater business by consolidating their system with a nearby system. In this instance, the TCEQ will assign the contractor to assess the feasibility of two or more systems consolidating into one. If consolidation is determined to be feasible and recommended, the TCEQ will then assign a contractor to assist all involved parties throughout the process to completion.

Requests for FMT assistance and consolidation assessment referrals have historically come from areas such as:

- TCEQ regional field operation staff
- Assistance requests directly from the utilities
- Texas Rural Water Association (TRWA) staff
- Drinking Water State Revolving Fund (DWSRF)
- Small Towns Environmental Project (STEP)
- TCEQ Staff
- Or the following risk assessment program processes:
  - \* Annual reports
  - \* Regulatory assessment fees
  - \* Compliance issues
  - \* Drought contingency plans
  - \* Customer complaints (for example, low pressure, no water, poor quality)
  - \* Identified assistance needs from previous utility assistance visits
  - \* Needs Surveys
  - \* Asbestos referrals
  - \* Drought Priority Lists
  - \* Enforcement prevention efforts
  - \* Community Resource Group (CRG)
  - \* Identified unregistered utilities
  - \* Consumer confidence reports
  - \* Abandonment threats
  - \* CCN and STM applications

Water or wastewater system officials may request FMT assistance, utility assessments, and consolidations for their system by phoning 512-239-4691, or e-mail at [UTILDIST@tceq.state.tx.us](mailto:UTILDIST@tceq.state.tx.us).

**Note:** No system currently in enforcement proceedings or in the process of being referred to enforcement for violations will be assigned assistance under these guidelines without the approval and involvement of the TCEQ Enforcement Division and Regional Field Operations Office.



# TCEQ FMT ASSISTANCE

## Assignment Task List

(Please note: This list is offered as a guideline and is not all inclusive. Other tasks may be assigned as warranted and approved.)

<b>I. FINANCIAL</b>	
1) - Billing and Accounting	9) - Funding Information/Sources
2) - Budget	10) - Metered Rate Implementation
3) - Business Plans	11) - Rate Change Application
4) - Collection Rate	12) - Rate Restructuring Options
5) - Debt Payment	13) - Rate Study
6) - DWSRF Application Assistance	14) - Reserve Account
7) - Financial Records	15) - Tariff Completion
8) - Financial Statements	
<b>II. MANAGERIAL</b>	
16) - 75%/90% Rule	34) - Operating Reports
17) - Audit Findings	35) - Petition to Cease Operations
18) - Bylaws Development/Implementation	36) - Record Keeping
19) - Capital Improvement Plan	37) - Regulatory Guidance
20) - CCN Applications/Service	38) - Restructuring
21) - Consultant Evaluation	39) - Staff/Board Training
22) - Consumer Confidence Reports	40) - STM Application
23) - Cross Connection Control Program	41) - SUD Conversion
24) - Customer Complaint Issues	42) - Tax Exempt Status
25) - Customer Service Agreements	43) - Termination Agreement
26) - Customer Service/Relations	44) - Termination Policy
27) - Drought Contingency Plan	45) - TCEQ Annual Report
28) - Emergency Planning	46) - Uncertified Utility Assistance
29) - Employee Policy Manual	47) - Unregistered Utilities
30) - HOA/POA Formation	48) - Water Conservation Plan
31) - Meeting Requirements	49) - WSC Conversion
32) - Meeting with HOA/POA/WSC	50) - Written Operating Policy
33) - Meter Installation Plan	
<b>III. TECHNICAL</b>	
51) - Alternate Source Evaluation	68) - Preventive Maintenance Program
52) - Analytical Techniques	69) - Proper Meter Reading
53) - Asbestos Evaluation	70) - Sampling Techniques
54) - Certified Operator	71) - Survey Deficiency Correction
55) - Compliance Violations (Address/Prevent)	72) - Tank Maintenance Program
56) - Corrosion Control Verification	73) - Taste and Odor
57) - Disinfection	74) - Wastewater Treatment Optimization
58) - Drought Assistance	75) - Water Audit
59) - Easement Compliance	76) - Water Contract(s)
60) - Flushing	77) - Water Loss Tracking
61) - General Rule Compliance Assistance	78) - Water Treatment Optimization
62) - Instrument Calibration	79) - Well Head Protection
63) - Interconnection Evaluation	80) - Well Production Tracking Method
64) - Log Pump Time	81) - Well Pumping Record
65) - MCL Violations (Address/Prevent)	82) - Lead & Copper Evaluation
66) - O&M Manual	83) - Security Checklist
67) - Pressure Maintenance	84) - Needs Survey

## Appendix D

### PROJECTED BALANCE SHEETS

	<u>START UP</u>	<u>YEAR 1</u>	<u>YEAR 2</u>	<u>YEAR 3</u>	<u>YEAR 4</u>	<u>YEAR 5</u>
<b>CURRENT ASSETS</b>						
Cash						
Accounts Receivable						
Inventories						
Income Tax Receivable						
Other						
<b>Total</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>FIXED ASSETS</b>						
Land						
Collection/Distribution System						
Buildings						
Equipment						
Other						
Less: Accum. Depreciation or Reserves						
<b>Total</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTAL ASSETS</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>CURRENT LIABILITIES</b>						
Accounts Payable						
Notes Payable, Current						
Accrued Expenses						
Other						
<b>Total</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>LONG TERM LIABILITIES</b>						
Notes Payable, Long-term						
Other						
<b>Total</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>OWNER'S EQUITY</b>						
Paid In Capital						
Retained Equity						
Other						
Current Period Profit or Loss						
<b>Total</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>WORKING CAPITAL</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>CURRENT RATIO</b>						
<b>DEBT TO EQUITY RATIO</b>						
<b>EQUITY TO TOTAL ASSETS</b>						

**PROJECTED INCOME AND EXPENSE STATEMENTS**

	<u>YEAR 1</u>	<u>YEAR 2</u>	<u>YEAR 3</u>	<u>YEAR 4</u>	<u>YEAR 5</u>	<u>TOTALS</u>
Existing Number of Taps						
New Taps per Year						
Total Meters at Year-End						
Average Annual:						
Fees Per Meter						
Cost Per Meter						
Operating Revenue Per Meter						
Gross Water Revenue						
Fees						
Other						
Gross Income	\$0	\$0	\$0	\$0	\$0	\$0
Operating Expenses						
General & Administrative						
Interest						
Other						
	\$0	\$0	\$0	\$0	\$0	\$0
<b>Net Income</b>	\$0	\$0	\$0	\$0	\$0	\$0

**SCHEDULE OF EXPENSES**

General & Administrative Expenses		
Salaries		
Office Expense		
Computer Expense		
Auto Expense		
Insurance Expense		
Telephone Expense		
Utilities Expense		
Depreciation Expense		
Property Taxes		
Professional Fees		
Other		
<b>TOTAL</b>	\$0	Subsequent years increased by ___% each year, or columns added.

Operational Expenses		
Salaries		
Auto Expense		
Utilities Expense		
Repair & Maintenance		
Supplies		
Other		
<b>TOTAL</b>	\$0	Subsequent years increased by ___% each year, or columns added.

ASSUMPTIONS:

Interest Rate/Terms:

Utility Cost/gal.:

Depreciation Schedule:

Other:

**PROJECTED SOURCES AND USES OF CASH STATEMENTS**

	<u>YEAR 1</u>	<u>YEAR 2</u>	<u>YEAR 3</u>	<u>YEAR 4</u>	<u>YEAR 5</u>	<u>TOTALS</u>
<b>Sources of Cash</b>						
Net Income						
Depreciation (If Funded)						
Loan Proceeds						
Other						
<b>Total Sources</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Uses of Cash</b>						
Net Loss						
Principal Portion of Pmts.						
Fixed Asset Purchase						
Reserve						
Other						
<b>Total Uses</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Net Cash Flow</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Debt Service Coverage:</b>						
Cash Available for Debt Service (CADS)						
Net Income (Loss)						
Depreciation, or Reserve						
Interest						
<b>Total</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Divided by:</b>						
Required Debt Service (RDS): Principal plus Interest						
<b>Debt Service Coverage Ratio</b>						
<b>CADS divided by RDS</b>						

## **Appendix E**

### **Customer Notification Letter Example**

Good X. Person  
Receiver/Temporary Manager For Sweet Taste Water System  
1010 Rapid Circle  
Good City, Texas 78777  
Telephone: (512) 555-5555

January 1, 2002

All Customers of  
Sweet Taste Water System

Dear Customer:

The purpose of this letter is to notify you that the Sweet Taste Water System has been put into receivership and I have been appointed the receiver for the system. On June 25, 2000 a district court judge in Sweet County signed an order appointing the receiver in Cause Number 99-20000, styled the State of Texas vs. Past Owner Enterprizes, Inc.

The order requires that I take over the operations of the Sweet Taste Water System, manage the system, attempt to bring the system into compliance with the rules and regulations of the Texas Commission on Environmental Quality's (TCEQ), and answer customer complaints. I am the person responsible for collecting all monies, making all expenditures, and overseeing the operations of the system. To assist me in the day to day operations, I have hired XYZ Service Company to be the operator and manager of the system, as well as to make any necessary repairs, connections, and to meet other customer service needs. You can reach me by letter or telephone at the address and phone numbers listed on this letterhead. However, in the event of any emergency, or for customer service requirements, please contact XYZ Service Company at (512) 555-1111.

Payments for water services should be made out to Sweet Taste Water System, and mailed to XYZ Service Company, 9999 Small Circle, Good City, TX 78777. XYZ Service Company will be handling all meter reading and customer accounts, but will be forwarding all payments to me to manage the finances of the system.

It is my intent, as receiver, to keep you informed of the status of the system, as well as plans for corrective actions and efforts to meet TCEQ requirements. If you have any specific concerns or questions for me, please feel free to contract me at the address listed above.

I look forward to working with each of you to resolve the current difficulties with your water supply system, and will attempt to do so as quickly and efficiently as possible.

Sincerely,

Good X. Person

cc: Assistant Attorney General  
TCEQ Receivership Coordinator



## Appendix F

### (Utility Deficiency Item Priority List) Water Hygiene Deficiency Items Grouped by Effort and Expense Needed to Comply with TCEQ Rules (Chapter 290)

The appearance of an action item or deficiency on a compliance schedule at a later date does not mean it is of lesser importance. Remember that each situation is unique, and the compliance schedule should be customized for each separate utility system.

<b><i>Items that can be corrected immediately or soon</i></b>
Monthly operational reports
Distribution line-ends flushed
Distribution map of the system
Ownership signs
Roof hatches locked
Intruder-resistant fences repaired
Pressure tank gauges provided
Well-sealing block repaired
Wellhead caulked
Well or storage-tank vents screened
Certified operator provided
Inspection ladder provided
DPD Test Kit
HTH
Chlorine scales
Disinfection injection point modifications
<b><i>Items requiring additional time and expense</i></b>
Well-flow meters
Storage-tank inspections
Storage-tank leaks repaired

Storage-tank water-level indicators installed
Storage-tank short circuiting repaired
Flap valves provided
Roof hatches provided
Pressure tank sight glass provided
Plumbing ordinance or agreement
Minimum distribution pressures established
Flush and gate valves provided
Gas chlorination room vents
Positive air-flow gas mask provided
<b><i>Items requiring significant expense and planning</i></b>
Capacity deficiencies
Intruder-resistant fences provided
Chemical violations addressed
Sanitary easements provided
Well contamination hazards corrected
Well construction violations corrected
Customer meters installed

## APPENDIX G

### RECEIVER'S MONTHLY REPORT

Docket No. ....

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
PLAINTIFF	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
(SYSTEM NAME)	§	
	§	250 <sup>TH</sup> JUDICIAL DISTRICT
DEFENDANT	§	

### RECEIVER'S REPORT

Mr. .. ("Receiver's Name") is pleased to provide the following report relating to (System Name) for the period ending January 31, 2002. The receivership was initiated on August 22, 2000.

- I. Inventory of All Property. The inventory has not changed since last reporting period.
- II. Business Transactions for this Period.
- A. Financial Statements have been prepared for the period ending ) January 2002, and include (1) Balance sheet, (2) Income and Expense report, and (3) check register.
  - B. For this period, income from the sale of water and wastewater services was received totaling \$4,567.80.
  - C. For this period, checks have been disbursed totaling \$3456.70 (please see attached check register)
  - D. This resulted in net operating capital remaining of \$1234.50
- III. Status of System's Accounts.
- A. Water bills were rendered on or about January 10, 2002, for the previous 30 day period, to 80 water customers and 31 wastewater customers. The total of current charges come to \$1,234.50.
- IV. Significant Events to Bring the System into Compliance.
- A. Sale of the Utility.  
  
There have been additional discussions with several of the System's customers to find out the customer's feelings on the final resolution of the system. The Receiver has indicated that a survey form will be sent out soon so that additional thought may be put into the sale of the utility. The Receiver anticipates a survey form will be sent out within the next 30 day period. Specifically, the customers will be asked their thoughts on obtaining a centralized wastewater collection system and whether or not to merge with a neighboring utility or to form a new water supply corporation. Once the results of the survey are obtained, additional information will be forthcoming.
  - B. The TCEQ Financial Managerial & Technical assistance contractors visited to offer assistance in a rate study and rate application process.

- C. Three line breaks were repaired during the month.
  - D. All bacteriological tests required were submitted. Results are no coliform bacteria present.
  - E. System is operating adequately but will need a new pump installed soon.
  - F. Distribution lines were flushed.
- V. Customer Complaint Record. In the month of January 2002, the following calls were received from customers of the (System Name) Water System/Utility:

No.#	(Item)
2 -	Calls regarding low water pressure
2 -	Calls regarding no water
0 -	Calls regarding water line leaks
4 -	Calls regarding color of water
5 -	Calls regarding sediment in water
1 -	Calls regarding water odor
1 -	Other

If I may provide additional information relating to (System Name), please do not hesitate to contact me at (512) 234-5678.

Respectfully submitted,

EXAMPLE

Mr. ...., Receiver  
(System Name)

Attachments/ Financial Statements, period ending January 31, 2002

cc: Mr. Michael Conway, Receivership Program Representative

## Water Accounting

Pumped through master meter (s) from : _____ to _____	<u>000,000</u>	Gallons
Total Gallons Flushed	<u>000</u>	Gallons
Total Gallons billed from : _____ to _____	<u>000,000</u>	Gallons
Gallons gain/loss	<u>000,000</u>	Gallons
Percentage gain/loss	<u>00.00 %</u>	Loss

# EXAMPLE

**Statement of Cash Flow**  
 for  
 (Name of Utility)  
 Receiver for (Name of Water System)  
 Month Ended January 31, 2002

Beginning cash balance \$ 0,000

Cash receipts

Water service billings	0,000	
Customer deposits	0,000	
Total cash available	\$ 0,000	

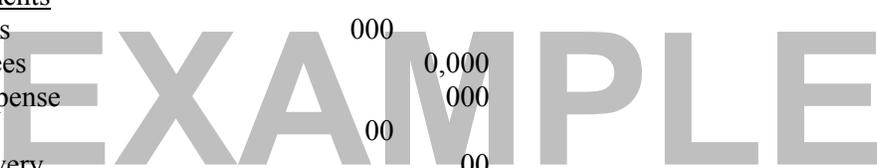
Cash disbursements

Accounting fees	000	
Receivership fees	0,000	
Automobile expense	000	
Office supplies	00	
Postage & delivery	00	
Utilities	000	
Repairs & maintenance - line repair	000	
TCEQ regulatory assessment fees	00	
Bank service charge	00	
Telephone	00	
Lab test fees	000	
Property taxes	000	
Customer deposit reimbursement	000	
Other	000	

Total disbursements 0,000

Net Receipt (Negative) (000)

Ending cash balance \$ 0,000



Current Assets & Current Liabilities  
for  
(Name of Utility)  
Receiver for (Name of Water System)  
January 31, 2002

Current Assets

Savings/Checking	\$ 0,000	
Accounts receivable - water revenues	<u>0,000</u>	
Total current assets		\$ <u>00,000</u>

Current Liabilities

Accounts payable		
Receiver escrow ( <u>9 months</u> )	0,000	
TCEQ regulatory assessment fee	00	
Water upgrades	<u>000</u>	
Total current liabilities		\$ <u>00,000</u>

EXAMPLE

