

**Order Type:**

Order Affirming Emergency Order Renewing the Appointment a Temporary Manager of a Water Utility

**Media:**

PWS

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

7916 County Road 5840 (Town North Village); 8604 County Road 6440 (Plott Acres); 5812 County Road 6150, (Cox Addition); 6823 County Road 1630 (Town North Estates), Lubbock County

**Type of Operation:**

retail public utility (the "Utility")

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:**

N/A

**Comments Received:**

Pursuant to Tex. Water Code § 7.075, publication is not required for an Emergency Order.

***Penalty Information***

**Total Penalty Assessed:** N/A

**Total Paid to General Revenue:** N/A

**Total Due to General Revenue:** N/A

**Compliance History Classifications:**

Person/CN - N/A  
Site/RN - N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** N/A

***Investigation Information***

**Complaint Date(s):** April 20, 2021

**Complaint Information:** Multiple complaints alleging public water system not providing water, not providing proper disinfectant, low water pressure, and inability to contact operator.

**Date(s) of Investigation:** April 20, 2021 and April 22, 2021

**Date(s) of NOV(s):** N/A

**Date(s) of NOE(s):** N/A

***Violation Information***

Abandoned operations [TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142(a) and (c)].

***Corrective Actions/Technical Requirements***

**Technical Requirements:**

1. This Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. November 2, 2021.
2. Immediately, Intermediary Solutions Holdings LLC (“Intermediary Solutions”) is hereby appointed to temporarily manage and operate the Utility.
3. Intermediary Solutions shall serve as Temporary Manager until 180 days after the effective date of this Order, i.e., May 1, 2022.
4. Intermediary Solutions 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. Intermediary Solutions shall give the Executive Director an inventory of all Utility property received within 60 days.
6. Intermediary Solutions’ 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. Intermediary Solutions’ compensation will come from Utility revenues in the amount of twelve dollars (\$12.00) per month per connection.
8. Intermediary Solutions shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).

***Background Information***

1. The Estate of Marion J. Smith owns the Utility.<sup>1</sup>
2. Marion J. Smith dba Smith Management Services holds the Certificate of Convenience and Necessity No. 11168.<sup>2</sup>
3. The Utility provides potable water service for compensation to approximately 120 service connections at Town North Village; approximately 68 service connections at Plott Acres; approximately 38 service connections at Cox Addition; and approximately 72 service connections at Town North Estates. Each system serves at least 25 people per day for at least 60 days per year, and provides water for human consumption.
4. On April 20, 2021, the TCEQ Lubbock Regional office received numerous complaints of a water outage at Town North Village; complainants also reported that they had been unable to get in contact with anyone representing the Utility in weeks.<sup>3</sup>
5. On the evening of April 20, 2021, a TCEQ investigator confirmed that there was a water outage at Town North Village and documented that there was no water pressure at the system. The investigator determined that the outage was caused when electric power was shut off to the

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<sup>1</sup> All real property that the Utility is located on is owned by either The Estate of Marion J. Smith or Smith Management Services, which is an assumed name of Marion J. Smith for business conducted as a sole proprietorship. The Lubbock County Court has named Margenell Smith as executor of The Estate of Marion J. Smith. At the time of this Order, probate of the estate is ongoing under the case number 2021-767/895 in Lubbock County. TCEQ has not received information indicating that the Utility has been distributed from the Estate.

<sup>2</sup> The CCN is held by Marion J. Smith dba Smith Management Services.

<sup>3</sup> Five separate complaints were received on April 20, 2021; the first complaint came in at approximately 10:00 am. Complaints were about water outages, low chlorine, low water pressure, and inability to contact an operator. Complaints were received for all four water systems.

system due to nonpayment of electric bills.

6. In response to the complaints, the Lubbock Regional office investigated the situation and found that the listed owner and operator of the Utility, Marion J. Smith, had passed away in January of 2021. Investigators also found that at the time of Marion Smith's death the Utility was being operated by Jimmy Midkiff, and that during the spring of 2021 Mr. Midkiff suffered a severe medical emergency causing him to cease operating the Utility completely.<sup>4</sup>
7. On April 22, 2021, a TCEQ investigator conducted investigations at all four public water systems of the Utility. The investigator documented that the Utility:
  - a. Failed to maintain a minimum disinfectant residual throughout the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.110(b)(4).
    - i. At Town North Village, the free chlorine residual at the time of the investigation was 0.03 milligram per liter (mg/L) at 7916 County Road 5840 in Shallowater, Texas; 0.04 mg/L at 8014 County Road 5840 in Shallowater, Texas; and 0.00 mg/L at 8226 County Road 5830 in Shallowater, Texas.
    - ii. At Plott Acres, the free chlorine residual at the time of the investigation was 0.13 mg/L at 8604 County Road 6440 near Lubbock, Texas; and 0.14 mg/L at 2103 North County Road 1440 near Lubbock, Texas.
    - iii. At Town North Estates, the free chlorine residual at the time of the investigation was between .001 and .002 mg/L at 6823 County Road 1630 in Shallowater, Texas; and .003 mg/L at 6909 County Road 6130 in Shallowater, Texas.
  - b. Failed to have a licensed operator on site, in violation of 30 TEX. ADMIN. CODE § 290.46(e). Investigators could not identify a person at any of the four public water systems that was serving as an operator.
8. The Utility failed to issue a Boil Water Notice (“BWN”) to the customers of Town North Village after the April 20, 2021 water outage, in violation of 30 TEX. ADMIN. CODE § 290.46(q).
9. On April 23, 2021, The Lubbock Regional Office posted BWNs at all four systems of the Utility due to the water outage at Town North Village and the failure to maintain minimum disinfectant residual at Town North Village, Town North Estates, and Plott Acres.
10. The TCEQ alleges that the Utility has (1) failed to provide appropriate water treatment resulting in potential health hazards; (2) failed to adequately maintain facilities, resulting in potential health hazards, extended outages, and repeated service interruptions; (3) failed to provide customers notice of a potential health hazard; and (4) demonstrated a pattern of failing to respond to the TCEQ or the Utility's customers.
11. No other source of water is available to the more than 25 people whose water is supplied by the Utility.
12. TCEQ appointed Intermediary Solutions Holdings LLC (“Intermediary Solutions”) as Temporary Manager for the Utility through an Emergency Order issued on May 5, 2021, and affirmed by the Commission on June 30, 2021, for the purpose of providing continuous and adequate water service to customers. Intermediary Solutions appointment as Temporary Manager expired on November 1, 2021.
13. During Intermediary Solutions' first term as Temporary Manager, Intermediary Solutions installed new self-contained chlorination systems at all four systems, started maintaining a minimum disinfectant residual throughout the distribution system of all four water systems, and made various repairs necessary for the maintenance of the systems. As Temporary Manager, Intermediary Solutions has provided continuous and adequate water service to the customers of the four water systems owned by the Estate of Marion J. Smith.
14. A potential health hazard exists as a result of the Utility's inability to provide continuous and adequate service. A licensed operator is immediately required to ensure the quality of the water in

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<sup>4</sup> Mr. Midkiff does not hold the CCN for the Utility nor has he submitted a Sale Transfer Merger application to the PUC to purchase the Utility.

the State and to ensure the Utility operates in a safe manner and meets requirements in the Texas Water Code, the Texas Health and 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 and Safety Code, and is safe for public use and consumption.

**Contact Information**

**TCEQ Attorneys:** Benjamin Warms, Litigation Division, (512) 239-3400  
Vic McWherter, Public Interest Counsel, (512) 239-6363

**TCEQ Litigation Agenda Coordinator:** Katherine McKenzie, Litigation (512) 239-2575

**TCEQ Public Drinking Water Section Manager:** Megan Hamilton, Enforcement Division, (512) 239-1582

**TCEQ Regional Contact:** Jason Lindeman, Water Program Work Leader, Lubbock Regional Office, (806) 796-7092

**Respondent Contacts:**

Margenell Smith  
Executor of the Estate of Marion J. Smith  
4406 9<sup>th</sup> Street  
Lubbock, Texas 79416

**Respondent's Attorney:** N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF  
AN ENFORCEMENT ACTION AGAINST  
MARGENELL SMITH, EXECUTOR OF THE  
ESTATE OF MARION J. SMITH;  
RN101272060; RN101451417;  
RN 101221117; RN 101270890;

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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

**ORDER AFFIRMING EMERGENCY ORDER  
RENEWING THE APPOINTMENT OF A TEMPORARY MANAGER OF A WATER UTILITY  
DOCKET NO. 2021-0574-UCR-E**

On January 12, 2022, the Texas Commission on Environmental Quality (“TCEQ” or “Commission”) considered whether to affirm, modify, or set aside an Emergency Order in the matter regarding Margenell Smith, Executor of the Estate of Marion J. Smith. The Emergency Order was issued by the Executive Director without a hearing on November 2, 2021. The Emergency Order and the notice of the January 12, 2022, agenda hearing to affirm, modify, or set aside the Emergency Order were sent by certified mail return receipt requested, and via first class mail, postage prepaid, to Margenell Smith’s last known addresses on November 3, 2021 and hand delivered to Margenell Smith on November 4, 2021. The Emergency Order was affixed to the fences surrounding Town North Village, Plott Acres, Cox Addition, and Town North Estates. The Commission finds that the Executive Director appropriately issued the Emergency Order and that the requirements for an emergency order found in Chapters 5 and 13 of the Texas Water Code have been satisfied.

**NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS  
THAT:**

The November 2, 2021, Emergency Order Renewing the Appointment of a Temporary Manager of a Water Utility, attached hereto as Exhibit A and incorporated into this Order by reference, is affirmed.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

\_\_\_\_\_  
Date

**Exhibit A**  
**EMERGENCY ORDER**  
**APPOINTING A TEMPORARY MANAGER**  
**OF A WATER UTILITY**

**Signed by the Executive Director on November 2, 2021**

Jon Niermann, *Chairman*  
Emily Lindley, *Commissioner*  
Bobby Janecka, *Commissioner*  
Toby Baker, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 3, 2021

### **Via First Class Mail, and Certified Mail, Return Receipt Requested**

Margenell Smith  
4406 9th Street  
Lubbock, Texas 79416  
Article No. 7020 1810 0000 2649 2659

### **Via Hand Delivery**

Town North Village, RN101272060; Plott Acres, RN101451417;  
Cox Addition, RN 1012211167; Town North Estates, RN 101270890

Re: MARGENELL SMITH, EXECUTOR OF THE ESTATE OF MARION J. SMITH  
TCEQ Docket No. 2021-0574-UCR-E  
Notice of Emergency Order and of Hearing to Modify, Affirm, or Set Aside

Dear Ms. Smith:

On November 2, 2021, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued an 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 the subject of this order is Margenell Smith, Executor of the Estate of Marion J. Smith. The Emergency Order appointed Intermediary Solutions Holdings LLC as temporary manager of the public water systems located in Lubbock County, Texas (the "Utility").

Pursuant to TEX. WATER CODE § 5.504 the Commission will consider whether to affirm, modify, or set aside the Emergency Order issued on November 2, 2021. Therefore, the Executive Director has scheduled this matter to be presented at the Commission's regular Agenda meeting on **January 12, 2022**. The Agenda begins at **9:30 a.m.** and will be held at **TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201 S, Austin, Texas**.

On March 16, 2020, in accordance with section 418.016 of the Texas Government Code, Governor Abbott suspended various provisions of the Open Meetings Act that require government officials and members of the public to be physically present at a specified meeting location. To confirm how the meeting will be held, please visit the Commissioner's Agenda webpage at: eight days before the Agenda.

<https://www.tceq.texas.gov/agency/decisions/agendas/comm>

The enclosed documentation is provided to you as a record of the materials that have been submitted to the Chief Clerk's Office and will be used in the Commission's Agenda process.

Additionally, please be advised that, pursuant to 30 TEX. ADMIN. CODE § 35.25(c), **at the January 12, 2022 Agenda meeting, you may request an evidentiary hearing on the issuance of the Emergency Order.**

MARGENELL SMITH, EXECUTOR OF THE ESTATE OF MARION J. SMITH  
TCEQ Docket No. 2021-0574-UCR-E  
November 3, 2021  
Page 2

If you have any questions, please contact the TCEQ Litigation Division at (512) 239-3400.

Sincerely,



Benjamin Warms, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality  
[Ben.Warms@tceq.texas.gov](mailto:Ben.Warms@tceq.texas.gov)

Enclosures

cc: John Henry Keith, Lubbock Regional Office  
Jason Lindeman, Lubbock Regional Office  
Dorothy Young, Water Supply Division  
Vic McWherter, Office of Public Interest Counsel  
Melissa Cordell, Enforcement Division  
Eleanor D'Ambrosio, Office of the Public Utility Commission  
Department of Utility Outreach, Office of the Public Utility Commission  
Intermediary Solutions Holdings LLC., Temporary Manager, 5 Sawgrass Court  
Frisco, Texas 75034-6806



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



TCEQ DOCKET NO. 2021-0574-UCR-E

IN THE MATTER OF  
AN ENFORCEMENT ACTION AGAINST  
MARGENELL SMITH, EXECUTOR OF THE  
ESTATE OF MARION J. SMITH;  
RN101272060; RN101451417;  
RN 101221117; RN 101270890

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BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

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

On November 2, 2021, 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 Emergency Order is Margenell Smith, Executor of the Estate of Marion J. Smith.

I. FINDINGS OF FACT

1. The Estate of Marion J. Smith owns the following public water systems: (1) Town North Village, located at 7916 County Road 5840, Lubbock County, Texas; (2) Plott Acres, located at 8604 County Road 6440, Lubbock County, Texas; (3) Cox Addition, located at 5812 County Road 6150, Lubbock County, Texas; and (4) Town North Estates located at 6823 County Road 1630 in Lubbock County, Texas (collectively, the “Utility”).<sup>1</sup>
2. The Utility operates pursuant to Certificate of Convenience and Necessity No. 11168 (“CCN 11168”).<sup>2</sup> (Exhibit A)
3. The Utility provides potable water service for compensation to approximately 120 service connections at Town North Village; approximately 68 service connections at Plott Acres; approximately 38 service connections at Cox Addition; and approximately 72 service connections at Town North Estates. Each system serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Utility consists of four public water systems as defined in 30 TEX. ADMIN. CODE § 290.38(71).
4. Commission records show that the last known mailing address for Margenell Smith, Executor of the Estate of Marion J. Smith is:

4406 9<sup>th</sup> Street  
Lubbock, Texas 79416

<sup>1</sup> All real Property that the Utility is located on is owned by either The Estate of Marion J. Smith or Smith Management Services, which is an assumed name of Marion J. Smith for business conducted as a Sole Proprietorship. The Lubbock County Court has named Margenell Smith as executor of The Estate of Marion J. Smith. At the time of this Order, probate of the estate is ongoing under the case number 2021-767/895 in Lubbock County. TCEQ has not received information indicating that the Utility has been distributed from the Estate.

<sup>2</sup> The CCN is held by Marion J. Smith dba Smith Management Services.

5. On April 20, 2021, the TCEQ Lubbock Regional office received numerous complaints of a water outage at Town North Village; complainants also reported that they had been unable to get in contact with anyone representing the Utility in weeks.<sup>3</sup>
6. On the evening of April 20, 2021, a TCEQ investigator confirmed that there was a water outage at Town North Village and documented that there was no water pressure at the system. The Investigator determined that the outage was caused when electric power was shut off to the system due to nonpayment of electric bills.
7. In response to the complaints, the Lubbock Regional office investigated the situation and found that the listed owner and operator of the Utility, Marion J. Smith, had passed away in January of 2021. Investigators also found that at the time of Marion Smith's death the Utility was being operated by Jimmy Midkiff, and that during the spring of 2021 Mr. Midkiff suffered a severe medical emergency causing him to cease operating the Utility completely.<sup>4</sup>
8. On April 22, 2021, a TCEQ investigator conducted investigations at all four public water systems of the Utility. The investigator documented that the Utility:
  - a. Failed to maintain a minimum disinfectant residual throughout the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.110(b)(4).
    - i. At Town North Village, the free chlorine residual at the time of the investigation was 0.03 milligram per liter (mg/L) at 7916 County Road 5840 in Shallowater, Texas; 0.04 mg/L at 8014 County Road 5840 in Shallowater, Texas; and 0.00 mg/L at 8226 County Road 5830 in Shallowater, Texas.
    - ii. At Plott Acres, the free chlorine residual at the time of the investigation was 0.13 mg/L at 8604 County Road 6440 near Lubbock, Texas; and 0.14 mg/L at 2103 North County Road 1440 near Lubbock, Texas.
    - iii. At Town North Estates, the free chlorine residual at the time of the investigation was between .001 and .002 mg/L at 6823 County Road 1630 in Shallowater, Texas; and .003 mg/L at 6909 County Road 6130 in Shallowater, Texas.
  - b. Failed to have a licensed operator on site, in violation of 30 TEX. ADMIN. CODE § 290.46(e). Investigators could not identify a person at any of the four public water systems that was serving as an operator.
9. The Utility failed to issue a Boil Water Notice ("BWN") to the customers of Town North Village after the April 20, 2021 water outage, in violation of 30 TEX. ADMIN. CODE § 290.46(q).
10. On April 23, 2021, The Lubbock Regional Office posted BWNs at all four systems of the Utility due to the water outage at Town North Village and the failure to maintain minimum disinfectant residual at Town North Village, Town North Estates, and Plott Acres.
11. The TCEQ alleges that the Utility has (1) failed to provide appropriate water treatment resulting in potential health hazards; (2) failed to adequately maintain facilities, resulting in potential health hazards, extended outages, and repeated service

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<sup>3</sup> Five separate complaints were received on April 20, 2021; the first complaint came in at approximately 10:00am. Complaints were about water outages, low chlorine, low water pressure, and inability to contact an operator. Complaints were received for all four water systems.

<sup>4</sup> Mr. Midkiff does not hold the CCN for the Utility nor has he submitted a Sale Transfer Merger application to the PUC to purchase the Utility.

- interruptions; (3) failed to provide customers notice of a potential health hazard; and (4) demonstrated a pattern of failing to respond to the TCEQ or the Utility's customers.
12. No other source of water is available to the more than 25 people whose water is supplied by the Utility.
  13. TCEQ Appointed Intermediary Solutions Holdings LLC ("Intermediary Solutions") as temporary manager for the Utility through an Emergency Order issued on May 5, 2021, and affirmed by the Commission on June 30, 2021, for the purpose of providing continuous and adequate water service to customers. Intermediary Solutions appointment as Temporary manager expired on November 1, 2021.
  14. During Intermediary Solutions' first term as Temporary Manager, Intermediary Solutions installed new self-contained chlorination systems at all four systems, started maintaining a minimum disinfectant residual throughout the distribution system of all four water systems, and made various repairs necessary for the maintenance of the systems. As Temporary Manager, Intermediary Solutions has provided continuous and adequate water service to the customers of the four water systems owned by the Estate of Marion J. Smith.
  15. A potential health hazard exists as a result of the Utility's inability to provide continuous and adequate service. A licensed operator is immediately required 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 and 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 and Safety Code, and is safe for public use and consumption.
  16. Intermediary Solutions has agreed to serve as temporary manager of the Utility. Intermediary Solutions has designated Mr. Brian Parker as their point of contact. Mr. Parker can be reached by telephone at (214) 799-5156, and by mail at 5 Sawgrass Court, Frisco, Texas 75034.<sup>5</sup>
  17. This Emergency 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.

## II. CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 through 3, The Estate of Marion J. Smith owns the retail public utility as defined in TEX. WATER CODE § 13.002(19).
2. Findings of Fact Nos. 5 through 15 show that as of the date of the signing of this Emergency Order the Utility has been abandoned 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 (a) and (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 as defined by TEX. WATER CODE § 13.412.

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<sup>5</sup> Intermediary Solutions operates a nearby water system in Lubbock County and Brian Parker is a TCEQ-licensed operator.

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.
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 Utility's headquarters, in accordance with TEX. WATER CODE § 5.507. The last known address for Margenell Smith, Executor of the Estate of Marion J. Smith is set forth in Finding of Fact No. 4.

### III. ORDER

1. This Emergency Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. November 2, 2021.
2. Immediately upon the effective date of this Emergency Order, Intermediary Solutions Holdings LLC is hereby appointed to temporarily manage and operate the Utility.
3. Intermediary Solutions shall serve as temporary manager until 180 days after the effective date of this Emergency Order i.e. May 1, 2022.
4. Intermediary Solutions 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. Intermediary Solutions shall give the Executive Director an inventory of all Utility property received within sixty (60) days of the effective date of this Emergency Order.
6. Intermediary Solutions' 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. Intermediary Solutions' compensation will come from Utility revenues in the amount of twelve dollars (\$12.00) per month per connection.
8. Intermediary Solutions 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 Emergency Order at its regular Agenda meeting on January 12, 2022 at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas.<sup>6</sup> **At the January 12, 2022 Agenda meeting, Margenell Smith, Executor of the Estate of Marion J. Smith, 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.**

10. The Chief Clerk shall provide a copy of this Emergency Order to each of the parties.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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Toby Baker  
Executive Director

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<sup>6</sup> On March 16, 2020, in accordance with section 418.016 of the Texas Government Code, Governor Abbott suspended various provisions of the Open Meetings Act that require government officials and members of the public to be physically present at a specified meeting location. To confirm how the meeting will be held, please visit the Commissioner's Agenda webpage at: <https://www.tceq.texas.gov/agency/decisions/agendas/comm> eight days before the Agenda.

# EXHIBIT A

MARION J. SMITH

CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 11168

THE STATE OF TEXAS  
TEXAS WATER COMMISSION TRAVIS



I hereby certify that this is a true and correct copy of a Texas Water Commission Document, the original of which is filed in the permanent records of the Commission.

Given under my hand and the seal of office on  
SEP 30 1991

*Gloria A. Vasquez*  
Gloria A. Vasquez, Chief Clerk  
Texas Water Commission

CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Water Service Under V.T.C.A., Water Code  
and Texas Water Commission Substantive Rules

Certificate No. 11168

I. Certificate Holder:

Name: Marion J. Smith dba Smith Management Services

Address: 4406 9th Street  
Lubbock, Texas 79416

II. General Description and Location of Service Area:

The Cox Addition Subdivision is located approximately 7.5 miles northwest of Lubbock, Texas. The service area is bounded on the west by Farm to Market Road 2528 and on the east by an unmarked, graded and drained road.

The Plott Acres Subdivision is located approximately 10 miles northwest of Lubbock, Texas. The service area is generally bounded on the west by Farm to Market Road 179 and on the north by an unmarked, graded and drained road.

The Town North Estates Subdivision is located approximately 9.5 miles northwest of Lubbock, Texas, on U. S. Highway 84. The service area is generally bounded on the north by Stonehill Street and on the west by North Saratoga Avenue in Lubbock County, Texas.

The Town North Village Subdivision is located approximately 12.5 miles northwest of Lubbock, Texas, and directly north of Shallowater, Texas. The service area is bounded on the east by an unnamed county road and is generally bounded on the southwest by the Atchison, Topeka and Santa Fe Railway.

III. Certificate Maps:

The certificate holder is authorized to provide water service in the area identified on the Commission's official service area map, WRS-152, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued under Application No. 8954-S and subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: SEP 23 1991

ATTEST: Blaine A. Vazquez John Hall  
For the Commission



## UNSWORN DECLARATION OF JASON LINDEMAN

"On November 4, 2021, on behalf of the Executive Director of the Texas Commission on Environmental Quality ("TCEQ"), I hand delivered the November 2, 2021, Emergency Order and the Notice of Hearing to Modify, Affirm, or Set Aside the November 2, 2021, Emergency Order set for the January 12, 2022, Commission Agenda to the Utility owned by the Estate of Marion J. Smith. I affixed a copy of the order to the fences surrounding each of the four water systems that make up the Utility: Town North Estates, Town North Village, Cox Addition, and Plott Acres.

On November 4, 2021, at approximately 4:15 p.m., on behalf of the Executive Director of the TCEQ, I arrived at the residence of Margenell Smith, Executor of the Estate of Marion J. Smith, to personally deliver the Emergency Order. I knocked on the door and Ms. Smith answered. The Emergency Order was hand delivered to Ms. Smith."

"My name is Jason Lindeman and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Lubbock County,  
State of Texas,  
on the 5<sup>th</sup> day of November, 2021

  
Declarant

**UNSWORN DECLARATION OF BENJAMIN WARMS**

“On November 3, 2021, on behalf of the Executive Director of the TCEQ, I sent via Certified Mail Return Receipt Requested (Article No. 7020 1810 0000 2649 2659), and via First Class Mail, postage prepaid to Margenell Smith, Executor of the Estate of Marion J. Smith, the November 2, 2021 Emergency Order and the Notice of Hearing to Modify, Affirm, or Set Aside the November 2, 2021 Emergency Order set for the January 12, 2022 Commission Agenda.”

“My name is Benjamin Warms and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.”

Executed in Travis County,  
State of Texas,  
on the 5<sup>th</sup> day of November, 2021



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Declarant