

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

April 18, 2023

Megan Grace, TCEQ Staff Attorney

VIA EFILE TEXAS

R. Brian Daniel, Attorney for Respondent

VIA EFILE TEXAS

Garrett Arthur, OPIC Staff Attorney

VIA EFILE TEXAS

RE: SOAH Docket Number 582-22-07515.TCEQ; Texas Commission on Environmental Quality No. 2022-0010-PWS-E; in Re: 2022-0010-PWS-E

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

CC: Service List

SOAH Docket No. 582-22-07515

Suffix: TCEQ

TCEQ Docket No. 2022-0010-PWS-E

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

v.

**BLUE CEREUS, LLC D/B/A LA CALETA ESTATES AND
BLUE CEREUS, LLC D/B/A SAN PEDRO VILLAGE**

PROPOSAL FOR DECISION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) alleges that Blue Cereus, LLC d/b/a La Caleta Estate and Blue Cereus, LLC d/b/a San Pedro Village (Respondent) violated 30 Texas Administrative Code section 290.45(f)(1) by failing to maintain a water purchase contract. The ED requests that the Commission assess an administrative penalty of \$210 for these violations and order Respondent to take corrective actions.

Respondent contends that the rule does not apply to Respondent and no customer has suffered any harm.

The Administrative Law Judge (ALJ) finds that Respondent committed the alleged violations and recommends that the Commission assess an administrative penalty of \$210 and order the corrective actions recommended by the ED.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Neither notice nor jurisdiction were contested. Therefore, those matters are addressed in attached proposed order without further discussion here.

The hearing convened via videoconference on January 26, 2023, before ALJ Linda Brite of the State Office of Administrative Hearings (SOAH). The ED was represented by attorney Megan Grace. Respondent was represented by attorney Brian Daniel. The Office of Public Interest Counsel (OPIC) was represented by attorney Garrett Arthur. The record closed on March 7, 2023, upon filing of closing briefs.

II. APPLICABLE LAW

The Commission is charged with ensuring that public drinking water systems supply safe drinking water in adequate quantities and are technically sound.¹ The Commission has enforcement jurisdiction over violations of the state's drinking water program.² A public water system (PWS) is a system for provision to the public of water for human consumption through pipes or other constructed conveyances that has at least 15 service connections or serves at least 25 individuals at least 60 days out of the year.³

The ED alleges that Respondent violated 30 Texas Administrative Code section 290.45(f)(1) (Rule Provision), which applies to systems which purchase treated water to meet all or part of their production, storage, service pump, or pressure maintenance capacity requirements.⁴ The Rule Provision requires a water purchase contract to be available to the ED in order that production, storage, service pump, or pressure maintenance capacity may be properly evaluated.⁵ In this context, a contract is defined as a signed written document of specific terms agreeable to the water purchaser and the water wholesaler, or in its absence, a memorandum or letter of understanding between the water purchaser and the water wholesaler.⁶

¹ Tex. Health & Safety Code § 341.0315(a), (c).

² Tex. Health & Safety Code § 341.049; Tex. Water Code § 5.013.

³ 30 Tex. Admin. Code § 290.38(71).

⁴ 30 Tex. Admin. Code § 290.45(f).

⁵ 30 Tex. Admin. Code § 290.45(f)(1).

⁶ 30 Tex. Admin. Code § 290.45(f)(1).

The Commission is authorized to assess a penalty against a person who causes, suffers, allows, or permits a violation of an administrative rule.⁷ In determining the amount of the penalty, the Commission shall consider:

1. The nature of the circumstances and the extent, duration, and gravity of the prohibited acts or omissions;
2. with respect to the alleged violator:
 - A. the history and extent of previous violations;
 - B. the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;
 - C. the person's demonstrated good faith, including actions taken by the person to correct the cause of the violation;
 - D. any economic benefit gained through the violation; and
 - E. the amount necessary to deter future violation; and
3. any other matters that justice requires.⁸

The ED has the burden to prove the violations in this case by a preponderance of the evidence. Respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. Any party submitting facts

⁷ Tex. Health & Safety Code § 341.049(a)

⁸ Tex. Health & Safety Code § 341.049. The Commission's Penalty Policy was developed for purposes of calculating an administrative penalty. ED Ex. 10.

relevant to the penalty determination factors has the burden of proving those facts by a preponderance of the evidence.⁹

III. EVIDENCE AND ARGUMENT

The ED had 15 exhibits admitted and presented the testimony of Elsa Hull and Ecko Beggs. Respondent had four exhibits admitted and presented the testimony of president Jimmy Alan Hall.

A. ED’S EVIDENCE AND ARGUMENT

1. Alleged Violations

Respondent owns public water systems La Caleta Estates and San Pedro Village (collectively, “Facilities”), which, according to TCEQ records, have approximately 48 and 34 service connections respectively and each serve at least 25 people per day for at least 60 days per year.¹⁰ La Caleta Estates is located approximately 500 feet north of the intersection of United State Highway 90 and El Lago Camino near Del Rio, Val Verde County, Texas.¹¹ San Pedro Village is located at 109 Yellowstone Drive near Del Rio, Val Verde County, Texas.¹²

⁹ 30 Tex. Admin. Code § 80.17(b).

¹⁰ ED Ex. 2 at 10-11; ED Ex. 5 at 52; ED Ex. 6 at 53.

¹¹ ED Ex. 2.

¹² ED Ex. 5.

On December 6, 2018, Bianca Lozano of TCEQ conducted a routine compliance investigation at La Caleta Estates.¹³ Ms. Lozano requested records related to maintenance and operational requirements and collected residual and pressure measurements. During her review of the records, Ms. Lozano observed that the water purchase contract between Respondent and its wholesale water supplier for La Caleta Estates had expired on December 31, 2014, and had not been renewed.¹⁴ On January 25, 2019, a Notice of Violation (NOV) was issued to Respondent, including a deadline to come into compliance by providing an active water purchase contract by February 25, 2019.¹⁵

On December 28, 2018, Ms. Lozano conducted a routine compliance investigation at San Pedro Village.¹⁶ Ms. Lozano requested records and collected residual pressure measurements. During her review of the records, she observed that the San Pedro Village water purchase contract between Respondent and its wholesale water supplier had expired by its own terms on December 31, 2014.¹⁷ On January 18, 2019, an NOV was issued to Respondent with a deadline to come into compliance by providing an active water purchase contract by February 28, 2019.¹⁸

On December 6, 2021, Ms. Hull performed follow-up record-review investigations on the Facilities. She noted that for both facilities, Respondent had

¹³ ED Ex. 2.

¹⁴ ED Ex. 2 at 5.

¹⁵ ED Ex. 2 at 18.

¹⁶ ED Ex. 5.

¹⁷ ED Ex. 5 at 36.

¹⁸ ED Ex. 5 at 49.

not provided an active water purchase contract to TCEQ to review.¹⁹ Having concluded that the violations were not resolved, Ms. Hull referred the cases to the TCEQ Enforcement Division.²⁰

The ED alleges that Respondent's failure to maintain a water purchase contract for each facility is a violation of the Rule Provision. Ms. Hull testified that the Facilities are subject to the Rule Provision because they are purchase water systems that purchase treated water to meet all or part of their production, storage, service pump, or pressure maintenance capacity requirements.²¹ Ms. Hull stated that the Rule Provision still applies to purchased water systems that do not have any storage, service pumps, or pressure maintenance components, because the system is purchasing treated water to meet those requirements. Ms. Hull explained that providing a current, written purchase water contract verifies that the PWS has a source of water and has secured enough water to meet its customers' demands. Without such a contract, the ED is unable to determine whether the PWS is providing an adequate water supply.

2. Penalty Amount and Corrective Actions

Ms. Beggs testified that the recommended administrative penalty amount of \$210 is based on adding identical penalties for each of the two facilities: the total base penalty of \$100, with a compliance history enhancement of \$5.²² Ms. Beggs testified

¹⁹ ED Ex. 3 at 22; ED 7 at 56.

²⁰ ED Exs. 4, 8.

²¹ ED Ex. 2 at 5; ED Ex. 5 at 36.

²² ED Exs. 11, 13.

that the recommended penalties were calculated using the TCEQ Penalty Policy.²³ Based on the Penalty Policy, previous NOV's are assessed at 5% for each NOV to determine the compliance history enhancement to the administrative penalty.²⁴ The Compliance History Reports indicate one NOV for each facility.²⁵ Therefore, there a 5% enhancement (equating to \$5) was applied to the administrative penalty for each facility.²⁶

The ED recommends as corrective action that within 180 days after the effective date of a Commission Order for this matter, Respondent shall secure water purchase contracts for both facilities. Additionally, the ED recommends that within 195 days after the effective date of a Commission Order, Respondent shall submit a written certification to the ED stating that Respondent has performed the actions as described. According to Ms. Beggs, these are the typical actions required to obtain compliance with 1 Texas Administrative Code § 290.45(f)(1) and typically ordered by the Commission for purchased water systems like Respondent's facilities.

B. RESPONDENT'S EVIDENCE AND ARGUMENT

1. Applicability of the Rule

Respondent argues that the Rule Provision is not enforceable against it because Respondent's facilities do not include any production, storage, service

²³ ED Ex. 10.

²⁴ ED Ex. 10 at 91.

²⁵ ED Ex. 12 at 103; ED Ex. 14 at 110.

²⁶ ED Ex. 11 at 99; ED Exx 13 at 106.

pumps, or pressure maintenance components as referenced within the provision. Respondent asserts that it purchases treated, potable water from Seguro Water Co, LLC and San Pedro Water Resources through master meters that discharge the water through Respondent's water mains. According to Respondent, the Rule Provision only applies to public water utilities that operate production, storage, service pumps, or pressure maintenance components and not pure distribution systems like Respondent.

Respondent also contends that the statutory authority of the Rule Provision is Texas Water Code section 13.144, which provides:

A district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the utility commission and the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract. . . .

Respondent argues that the five entities identified at the beginning of the sentence are all modified by the phrase “providing a retail public utility with a whole water supply.” Because it does not provide a retail public utility with a whole water supply, Respondent posits that it is not subject to this statute or the Rule Provision and that the Rule Provision is unenforceable because it does not conform with the statute. According to Respondent, the Rule Provision is void because it lacks specific or implied statutory authority.²⁷

²⁷ *Office of Pub. Util. Counsel v. Public Util. Comm'n*, 104 S.W.3d 225, 232-33 (Tex. App.—Austin 2003, no pet.).

2. Alleged Violations

Respondent further contends that it was not operating the facilities on the investigation dates, December 6, 2018, and December 28, 2018, because the Public Utility Commission (PUC) placed Respondent under temporary management.²⁸

Additionally, Respondent asserts that for each facility, it and the wholesale water suppliers continued to follow and abide by the terms of the agreements, long after they had expired by their written terms on December 31, 2014. As such, Respondent contends that the parties expressly or impliedly ratified the written agreements with modifications to the payment amounts. Mr. Hall testified that Respondent and the wholesale providers continued to enforce or comply with all the provisions of the written agreements after its expiration on December 31, 2014, other than the provisions regarding purchase price of the delivered potable water. According to Mr. Hall, he and the wholesalers orally agreed to the modified purchase price.²⁹ Respondent asserts that the continued payment and receipt of funds, and provision of services for the funds evidence an implied agreement to the continuation of the terms and conditions of the 2009 contract.³⁰ According to Respondent, the continuing mutual obligations by the parties furnishes sufficient consideration to support a binding modified contract.³¹

²⁸ See Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC under Texas Water Code § 13.4132 and 16 TAC § 24.142, PUC Docket No. 48650 (August 30, 2018).

²⁹ See Resp. Exs. 3, 4. See also *BPX Operating Co. v. Strickhausen*, 629 S.W.3d 189 (Tex. 2021) (discussing ratification).

³⁰ See *Enserch Corp. v. Rebich*, 925 S.W.2d 75, 83 (Tex. App. — Tyler 1996, writ dismissed) (concluding that contract with gas price, significant reductions in payments over many years, and three letters advising that the price paid was below the contract price, together raised an issue of material fact about whether the price modifications were impliedly accepted).

³¹ *Texas Gas Utilities Co. v. Barrett*, 460 S.W.2d 409, 412-13 (Tex. 1970) (concluding mutually imposed obligations in

Respondent claims the doctrine of impossibility/*force majeure* is an affirmative defense relieving it of any liability related to the alleged violations, because it was impossible for Respondent to comply with the Rule Provision. According to Respondent, it could not comply with the Rule Provision because: (1) the wholesalers refused to agree to the terms of a new wholesale water supply contract; and (2) SOAH Order No. 12 Approving Interim Rates superseded any wholesale water supply contract.³²

C. OPIC’S POSITION

OPIC posits that Respondent is a PWS and therefore subject to the Rule Provision because La Caleta Estates and San Pedro Village are each considered a PWS pursuant to 30 Texas Administrative Code § 290.38. OPIC contends that it is the responsibility of the owner of a PWS to comply with Commission rules by providing a source of purchased water in sufficient amounts to service their customers, in the form of a contract as described in the Rule Provision.

OPIC rejected Respondent’s position that the ratifications through continued orders and payments, amendments to the contract, and modifications by SOAH order constitute an agreement to purchase water sufficient to meet the Rule Provision requirements. OPIC points out that in Respondent’s petition for review of

gas contract made contract enforceable); *Morgan v. Stover*, 511 S.W.2d 362 (Tex. App.—Eastland 1974, writ ref’d n.r.e.) (concluding that agreement existed where one party signed and the other filed it and made payments in accordance with it).

³² See SOAH Order No. 12 Approving Interim Rates and Adopting Procedural Schedule, SOAH Docket No. 473-20-3261.WS, PUC Docket No. 50239 (December 10, 2021).

rates at PUC, Respondent denied the existence of an ongoing agreement.³³ For these reasons, OPIC concluded the ED proved by a preponderance of the evidence that Respondent violated the Rule Provision and recommended a \$210 administrative penalty and corrective action.

IV. ANALYSIS

A. ALLEGED VIOLATIONS

A PWS is defined as “a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water . . . having at least 15 service connections or serving at least 25 individuals at least 60 days out of the year.”³⁴ The record establishes that La Caleta Estates and San Pedro Village have approximately 48 and 34 service connections respectively and each serve at least 25 people per day for at least 60 days per year. Therefore, La Caleta Estates and San Pedro Village are each a PWS as defined by TCEQ rules.

The Rule Provision is found under Chapter 290 (Public Drinking Water), Subchapter D (Rules and Regulations for Public Water Systems). The ALJ disagrees with Respondent’s contention that the Rule Provision applies only to systems which include production, storage, service pumps, or pressure maintenance equipment. The Rule Provision provides, “The following requirements apply only to systems

³³ ED Ex. 15 at 6.

³⁴ 30 Tex. Admin. Code § 290.38(71).

which purchase treated water to meet all or part of their production, storage, service pump, or pressure maintenance capacity requirements.”³⁵ As a purchase water system, Respondent still has production, storage, service pump, and pressure maintenance requirements.³⁶ Here, Respondent purchased treated water to meet these requirements. Therefore, Respondent is subject to the Rule Provision, which requires a written water purchase contract between the water purchaser—Respondent—and the water wholesaler.³⁷

Contrary to Respondent’s argument, the Rule Provision is not derived from the statutory authority of Texas Water Code § 13.144, because the Rule Provision pre-dates the statute.³⁸ As noted upon adoption of the Rule Provision, the statutory authority for this rule is Texas Water Code § 5.103 and Texas Health and Safety Code chapter 341.³⁹

As owner of the Facilities, Respondent was responsible for negotiating with the wholesalers to reach an agreement while the temporary managers were installed. The role of the temporary manager (first appointed in 2018) includes what is necessary to keep the PWS running such as billing for utility service, conducting sampling, and making necessary repairs.⁴⁰ Respondent even engaged in mediation

³⁵ 30 Tex. Admin. Code § 290.45(f).

³⁶ See 30 Tex. Admin. Code § 290.45(b), (f)(2), (4), (5), (6).

³⁷ See 30 Tex. Admin. Code § 290.45(f)(1).

³⁸ 30 Texas Administrative Code § 290.45 was adopted in 1992. Texas Water Code § 13.144 was enacted in 1997.

³⁹ 17 Tex. Reg. 6458 (September 18, 1992).

⁴⁰ See 16 Tex. Admin. Code § 24.357(b).

with the wholesale water suppliers on September 18, 2020, and January 15, 2021, while the Facilities were being operated by the temporary manager.⁴¹

The issue of whether the contracts were ratified or modified by oral discussions and continued acceptance of payment is not dispositive to this enforcement proceeding. As an initial matter, the contracts each provide that it may only be modified in writing and may only be renewed in writing prior to its end date.⁴² Further, the Rule Provision defines “contract” as a signed written document or memorandum of agreement of specified terms agreeable to water purchaser and the wholesaler.⁴³ Regardless of the weight oral ratification or modification may have on the contractual obligations of the parties in a breach-of-contract proceeding, the oral discussions and ratification argued by Respondent do not satisfy the Rule Provision’s requirement of a written agreement or memorandum of understanding between the water purchaser and water wholesaler. In addition, Respondent represented to PUC in December 2021 that the contracts expired by their own terms on December 31, 2014, without being renewed.⁴⁴

Insufficient evidence was presented to substantiate Respondent’s impossibility and *force majeure* arguments. The record lacks evidence regarding Respondent’s attempts to enter into a contract with its wholesalers or any refusal by the wholesalers to enter into a contract. Order No. 12 in SOAH Docket

⁴¹ Mediators’ Report, Application of Blue Cereus, LLC for Authority to Change Rates, SOAH Docket No. 473-20-3261.WS (February 26, 2021).

⁴² Resp. Ex. 1 at 7-9; Resp. Ex. 2 at 17-18.

⁴³ 30 Tex. Admin. Code § 290.45(f)(1).

⁴⁴ ED Ex. 15 at 6.

No. 473-20-3261.WS states that interim rates “will remain in effect until Blue Cereus and the Wholesalers are able to execute [] written wholesale purchased water contracts.”⁴⁵ The SOAH Order does not prevent Respondent and its wholesalers from entering a purchase water contract. Neither is the ALJ convinced that a *force majeure* “event that was caused solely by an act of God, war, strike, riot, or other catastrophe” took place.⁴⁶

Therefore, the preponderance of evidence establishes that Respondent violated the Rule Provision by failing to maintain a written water purchase contract for each of its two facilities.

B. PROPOSED PENALTY AND CORRECTIVE ACTION

TCEQ must consider certain statutory factors that are further explained in the Penalty Policy.⁴⁷ The administrative penalty recommended by the ED is \$210 for both violations. For each of the two violations, the total base penalty was \$100, plus a compliance history enhancement of \$5 dollars. A penalty of \$105 was recommended for each of Respondent’s two violations, totaling \$210. Respondent did not present evidence or argument disputing the administrative penalty amount. The ALJ finds that \$210 is an appropriate administrative penalty amount for this case.

⁴⁵ SOAH Order No. 12 Approving Interim Rates and Adopting Procedural Schedule, SOAH Docket No. 473-20-3261.WS, PUC Docket No. 50239 (December 10, 2021) at 4.

⁴⁶ 30 Tex. Admin. Code § 70.7(a).

⁴⁷ Tex. Health & Safety Code § 341.049; ED Ex. 10.

The ED also seeks corrective action by requiring Respondent to secure a water purchase contract for both Facilities in accordance with the Rule Provision within 180 days after the effective date of the Commission Order, and to submit written certification to the Commission demonstrating compliance within 195 days after the effective date of the Commission Order. The ALJ finds that corrective actions are appropriate and necessary to address Respondent's violations.

V. RECOMMENDATION

The ALJ recommends that the Commission adopt the attached proposed order, assessing Respondent a total of \$210 in administrative penalties for the violations proven in this case and requiring Respondent to take the corrective actions necessary to correct the violations.

Signed April 18, 2023.

ALJ Signature(s):



Linda Brite,

Presiding Administrative Law Judge



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**AN ORDER ASSESSING ADMINISTRATIVE PENALTIES AGAINST
BLUE CEREUS, LLC D/B/A LA CALETA ESTATES AND
BLUE CEREUS, LLC D/B/A SAN PEDRO VILLAGE
TCEQ DOCKET NO. 2022-0010-PWS-E
SOAH DOCKET NO. 582-22-07515**

On _____, the Texas Commission on Environmental Quality (TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against Blue Cereus, LLC d/b/a La Caleta Estates and Blue Cereus, LLC d/b/a San Pedro Village (Respondent). State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Linda Brite conducted an evidentiary hearing by videoconference on January 26, 2023.

After considering the ALJ's proposal for decision, the Commission adopts the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. Respondent owns public water systems La Caleta Estates and San Pedro Village in Val Verde County, Texas.
2. La Caleta Estates and San Pedro Village have approximately 48 and 34 service connections respectively and each serve at least 25 people per day for at least 60 days per year.
3. A TCEQ investigator conducted a routine investigation of La Caleta Estates on December 6, 2018, and a follow-up record review investigation on December 6, 2021.
4. A TCEQ investigator conducted a routine investigation of San Pedro Village on December 28, 2018, and a follow-up record review investigation on December 6, 2021.
5. On January 18, 2019, a Notice of Violation was issued to Respondent d/b/a San Pedro Village for failure to provide a water purchase contract between Respondent and its wholesale water supplier.
6. On January 25, 2019, a Notice of Violation was issued to Respondent d/b/a La Caleta Estates for failure to provide a water purchase contract between Respondent and its wholesale water supplier.
7. In the TCEQ investigations, the investigators determined Respondent failed to provide written water purchase contracts for La Caleta Estates and San Pedro Village.
8. Respondent's latest water purchase contracts with the wholesalers for La Caleta Estates and San Pedro Village expired on December 31, 2014.

9. The expired water purchase contracts each state that it may only be modified in writing and may only be renewed in writing prior to its end date.
10. Respondent continued to pay for services, and the wholesalers continued to accept payment and provide services, with oral modifications to the expired purchase contracts.
11. The ED recommended the imposition of a \$210 administrative penalty and corrective actions to bring Respondent into compliance.
12. On June 1, 2022, the ED sent Respondent an EDPRP recommending that the Commission enter an enforcement order assessing administrative penalties and requiring corrective actions against Respondent.
13. Respondent requested a contested case hearing on the allegations in the EDPRP.
14. On July 29, 2022, the case was referred to the State Office of Administrative Hearings (SOAH) for a hearing.
15. On August 10, 2022, the ED issued a Notice of Hearing.
16. SOAH Order No. 3, issued on October 26, 2022, set the hearing and provided participation instructions.
17. Together, the Notice of Hearing and SOAH Order No. 3 contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
18. SOAH ALJ Linda Brite convened the hearing via videoconference on January 26, 2023. The ED was represented by attorney Megan Grace. Respondent was represented by attorney Brian Daniel. The Office of Public

Interest Counsel appeared and was represented by Garrett Arthur. The record closed on March 7, 2023, upon filing of closing briefs.

II. CONCLUSIONS OF LAW

1. The Commission has enforcement jurisdiction over violations of the state's drinking water program. Tex. Health & Safety Code § 341.049; Tex. Water Code § 5.013.
2. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Respondent was properly notified of the hearing on the alleged violations and the proposed penalties and corrective action. Tex. Gov't Code §§ 2001.051-.052; Tex. Water Code § 7.058.
4. The ED has the burden of proof by a preponderance of the evidence in an enforcement proceeding. Respondent has the burden of proving by a preponderance of the evidence all elements of any affirmative defense asserted. 30 Tex. Admin. Code § 80.17(b).
5. La Caleta Estates and San Pedro Village are public water systems. 30 Tex. Admin. Code § 290.38(71).
6. Respondent violated 30 Texas Administrative Code section 290.45(f)(1) by failing to provide water purchase contracts to the ED for review.
7. The Commission is authorized to impose administrative penalties and order corrective measures to ensure compliance with the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction provided by Texas Water Code section 5.013 and rules adopted under these provisions. Tex. Water Code § 7.002.
8. In determining the amount of an administrative penalty, the Commission must consider several factors. Tex. Health & Safety Code § 341.049(b).

9. Based on the above Findings of Fact and Conclusions of Law, a total administrative penalty of \$210 is justified and should be assessed against Respondent, and Respondent should be required to implement the corrective actions set out below.

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

1. A \$210 administrative penalty is imposed on Respondent.
2. Within 180 days after the effective date of this Order, Respondent shall secure water purchase contracts for both La Caleta Estates and San Pedro Village.
3. Within 195 days after the effective date of this Order, Respondent shall submit a written certification to the ED stating that Respondent has performed the actions as described, in accordance with 30 Texas Administrative Code section 290.45.
4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.
5. The effective date of this Order is the date the Order is final as provided by 30 Texas Administrative Code section 80.273 and Texas Government Code section 2001.144.
6. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

**TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY**

Jon Niermann, Chairman for the Commission