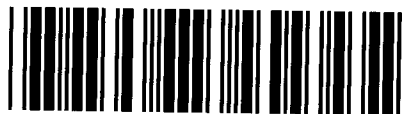


Control Number: 46219



Item Number: 1

Addendum StartPage: 0

46219

# West Oaks Phoenix Corporation

PO Box 1567  
Terrell, TX 75160

July 20, 2016

Public Utility Commission  
PO Box 13326  
Austin, Texas 78711-3326

RECEIVED  
2016 JUL 27 AM 9:37  
PUBLIC UTILITY COMMISSION  
FILING CLERK

Re: Notice of Temporary Rate for Services Provided for a Nonfunctioning Utility

Dear PUC,

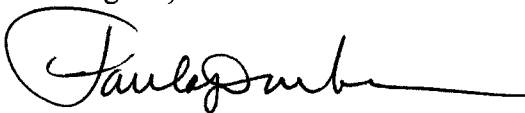
As the Temporary Manager, (see TCEQ Docket No 2016-0997- UCR-E) for the West Oaks Phoenix Corporation, I am providing notice that I will immediately begin charging a temporary rate under Texas Water Code § 13.046 and 16 Texas Administrative Code §24.147. The temporary rate increase for this utility is based on the following information and is necessary to provide continuous and adequate service.

There are approximately 18 water users. The current rate is \$30.00 including 1,000 gallons and \$5.00 per thousand thereafter. The estimated revenues for the utility is \$6,984.00.

After inspection of the facility and preparing a budget, I will begin charging a temporary minimum bill rate of \$61.50. I will be providing notice to customers on July 25, 2016, which is prior to the first bill at the temporary rate.

The estimated annual revenue with the new rates is \$13,802.00. This is an annual increase of \$6,818.00. The increase rates will be used to provide continuous and adequate service and will help meet compliance issues of the TCEQ. Therefore, I am requesting that the temporary rate remain in effect until this utility is in compliance.

Regards,



Paula Weber, Temporary Manager

**TCEQ DOCKET NO. 2016-0997-UCR-E**

**IN THE MATTER OF  
AN ENFORCEMENT ACTION AGAINST  
WEST OAKS PHOENIX CORP.;  
RN101246346;**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

CHIEF CLERK  
2016 JUN 30 11:07

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

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

On June 30, 2016, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued this Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made subject to this order is WEST OAKS PHOENIX CORP. ("West Oaks Phoenix").

**I.  
FINDINGS OF FACT**

1. West Oaks Phoenix owns a public water system located 1.4 miles west of Farm-To-Market Road 986 on County Road 2320, Hunt County, Texas (the "Utility"). Ms. Sandra Barbey operates the Utility as Receiver.
2. The Utility provides potable water service for compensation to approximately 13 service connections, serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Utility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(69).
3. West Oaks Phoenix's sole shareholder and only officer died in 2004 and it subsequently forfeited its existence as a Texas corporation on February 11, 2005.
4. Ms. Barbey was appointed Receiver for the Utility on April 27, 2015, by the 53<sup>rd</sup> District Court of Travis County for the purpose of providing continuous and adequate water service to the customers. ("Exhibit A").
5. Ms. Barbey's Receivership will terminate on June 30, 2016. ("Exhibit B").
6. The Utility will be abandoned once the Receivership is terminated since West Oaks Phoenix is a defunct Texas corporation and is unable to operate the Utility to provide continuous and adequate service to the customers. Additionally, the Utility has failed to adequately maintain the Facility resulting in potential health hazards and a licensed operator is immediately required to ensure continuous and adequate water service.
7. Commission records and the Secretary of State database show that the mailing address for West Oaks Phoenix is 10433 Coleridge, Dallas, Texas

75218.

8. No other source of water is available to the more than 25 people whose water is supplied by the Utility.
9. On May 19, 2016, TCEQ and its contractor, the Texas Rural Water Association, held a community meeting for the Utility's customers to discuss potential options for receiving continuous and adequate water service after termination of the Receivership. The customers expressed interest in forming a nonprofit water supply corporation and attaining proper licensing for the purpose of acquiring the Utility to continue water service.
10. 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.
11. Paula Weber has agreed to serve as temporary manager of the Utility in order to allow the Utility customers enough time to form and organize a water supply corporation and attain proper operator licenses. Ms. Weber can be reached by telephone at (972) 563-9704 and her mailing address is P.O. Box 1567, Terrell, Texas 75161.
12. This Order is necessary to ensure that continuous and adequate water service is provided to the customers of the Utility to effectuate the purposes of the Texas Water Code and the Texas Health and Safety Code.

## II.

### CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, West Oaks Phoenix owns and Ms. Barbey, as Receiver, operates the retail public utility as defined in TEX. WATER CODE § 13.002(19).
2. Findings of Fact Nos. 3 through 6 and 8 through 10 show that as of the date of the signing of this Emergency Order the Utility is being 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 or has been or is being referred to the Attorney General for the appointment of a receiver under TEX. WATER CODE § 13.412.

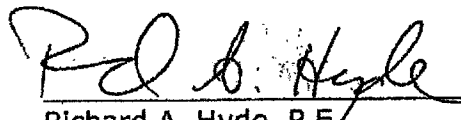
4. TEX. WATER CODE § 5.507 provides that the Commission may issue an Emergency Order appointing a willing person to temporarily manage and operate a utility under TEX. WATER CODE § 13.4132.
5. This Emergency Order may be issued without notice or hearing pursuant to TEX. WATER CODE § 5.501(b) and 30 TEX.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

### **III. ORDER**

1. This Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. June 30, 2016.
2. Immediately upon the effective date of this Emergency Order, Ms. Weber is hereby appointed to temporarily manage and operate the Utility.
3. Ms. Weber shall serve as temporary manager until such time as a receiver is appointed to operate the Utility by a court of proper jurisdiction, or 180 days after the effective date of this Order i.e. December 27, 2016, whichever occurs first.
4. Ms. Weber 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. Ms. Weber shall give the Executive Director an inventory of all Utility property received within sixty (60) days of the effective date of this Order.
6. Ms. Weber's requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c).
7. Ms. Weber's compensation will come from Utility revenues in the amount of twelve dollars (\$12.00) per month per connection.
8. Ms. Weber shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).
9. Pursuant to TEX. WATER CODE § 5.504, the Commission will consider whether to affirm, modify or set aside this Order at its regular Agenda meeting on August 3, 2016 at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas. **At the August 3, 2016 Agenda meeting, West Oaks Phoenix may request an evidentiary hearing pursuant to 30 TEX. ADMIN. CODE § 35.25(c) for the purpose of presenting evidence and cross-examining witnesses regarding whether to affirm, modify, or set aside this Emergency Order. An Administrative Law Judge will be present at the Agenda to immediately hear the matter should a hearing be requested.**
10. The Chief Clerk shall provide a copy of this Order to each of the parties.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

  
Richard A. Hyde, P.E.  
Executive Director

No. D-1-GV-03-004755

STATE OF TEXAS, and the  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Plaintiffs,

v.

W. OAKS PHOENIX CORP.,  
Defendant.

IN THE DISTRICT COURT OF  
TRAVIS COUNTY, TEXAS

53<sup>rd</sup> JUDICIAL DISTRICT

Filed in The District Court  
of Travis County, Texas

APR 21 2015  
2 17  
M.  
At Dallas, Texas District Clerk

**AMENDED ORDER APPOINTING RECEIVER AND REPLACING RECEIVER**

ON THIS DAY, came on to be heard the motion to amend order appointing receiver and to replace receiver of the State of Texas, Plaintiff, acting through the Texas Commission on Environmental Quality to modify the Court's original order dated May 24, 2004, and its December 17, 2007 amended order, appointing LONZO GALE, Receiver of W. Oaks Phoenix Corp., by replacing the Receiver and limiting the term of the Receivership.

The State appeared through counsel of record while the Defendant failed to appear. The Court, having considered the motion and the arguments of counsel, finds that the State's motion should be GRANTED.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** as follows:

A. That Ms. Sandra Barbey is hereby appointed Receiver of all property described in the May 24, 2004 Order Appointing Receiver and the December 17, 2007 Amended Order Appointing Receiver and that upon filing the bond and taking the oath required by law Ms. Barbey shall be authorized, subject to the control of the Court, to do any and all acts

necessary to the proper and lawful conduct of the Receivership, including, but not limited to, those duties enumerated in the May 24, 2004 Order Appointing Receiver and the December 17, 2007 Amended Order Appointing Receiver;

B. That the term of the Receivership shall end on June 30, 2016, unless extended by the Court; and

C. That the Receiver shall investigate long-term options for the provision of water utility service to the customers of W. Oaks Phoenix Corp., and file a report with the Court no later than December 31, 2015, advising what options, if any, exist.

**IT IS FURTHER ORDERED** that the other provisions contained in the original May 24, 2004 Order Appointing Receiver and the December 17, 2007 Amended Order Appointing Receiver should remain unaltered and in full effect.

SIGNED this 27<sup>th</sup> day of April, 2015.



JUDGE PRESIDING



APPROVED AS TO FORM AND ENTRY REQUESTED BY:

KEN PAXTON  
Attorney General of Texas

CHARLES E. ROY  
First Assistant Attorney General

JAMES E. DAVIS  
Deputy Attorney General for Civil Litigation

JON NIERMANN  
Chief, Environmental Protection Division



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ANTHONY W. BENEDICT  
Assistant Attorney General  
State Bar No. 02129100  
Office of the Attorney General  
Environmental Protection Division  
P.O. Box 12548 (MC-066)  
Austin, Texas 78711-2548  
Tel: (512) 475-4153  
Fax: (512) 320-0911

ATTORNEYS FOR THE STATE OF TEXAS

No. D-1-GV-03-004755

STATE OF TEXAS, and the  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Plaintiffs,

v.

W. OAKS PHOENIX CORP.,  
Defendant.

§ IN THE DISTRICT COURT OF  
§  
§  
§  
§ TRAVIS COUNTY, TEXAS  
§  
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§  
§ 53<sup>rd</sup> JUDICIAL DISTRICT

**ORDER GRANTING MOTION TO TERMINATE RECEIVERSHIP**

On this day, the Court heard the Motion to Terminate the Receivership, filed by the State of Texas. The State of Texas and the Texas Commission on Environmental Quality appeared through counsel, Matthew Miller and Jane Atwood. Defendant, West Oaks Phoenix Corporation did not appear. The Court-appointed Receiver, Sandra Barbey, appeared *pro se*.

The Court, having heard the argument of counsel and considering the pleadings on file in this matter, finds that good cause exists to grant the State of Texas's Motion to Terminate the Receivership.

Therefore, the Court hereby GRANTS the State's Motion to Terminate the Receivership. The Court ORDERS Sandra Barbey to render and submit to this Court a full, final, and complete accounting for all system assets, revenues, and expenses on or before June 30, 2016. Upon compliance with that order, Sandra Barbey is hereby released from her duties as Receiver on June 30, 2016.

Filed in the District Court  
of Travis County, Texas

MAY 23 2016

At 2:30 P M. C.M.  
Velva L. Price, District Clerk

All property held by the receivership is hereby returned to the Defendant, West  
Oaks Phoenix Corporation.

May 23, 2016  
Date

Charles Ramsay  
Honorable Judge Presiding