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**DOCKET NO. 46262**

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PUBLIC UTILITY COMMISSION

PUBLIC UTILITY COMMISSION  
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PETITION FOR AN ORDER §  
APPOINTING A TEMPORARY §  
MANAGER TO PEACH CREEK DAM §  
AND LAKE CLUB, INC. PURSUANT §  
TO TEX. WATER CODE ANN. §  
13.4132 AND 16 TAC § 24.142 §  
§

OF TEXAS

**COMMISSION STAFF'S APPLICATION FOR AN EMERGENCY ORDER AMENDING  
THE COMMISSION ORDER APPOINTING A TEMPORARY MANAGER TO PEACH  
CREEK DAM AND LAKE CLUB WITHOUT A HEARING**  
**AND**  
**FOR AN EMERGENCY ORDER EXTENDING THE TERM OF THE COMMISSION  
ORDER APPOINTING A TEMPORARY MANAGER TO PEACH CREEK DAM AND  
LAKE CLUB**

NOW COMES the Staff of the Public Utility Commission of Texas (Commission) and files this Application for an emergency order amending the Commission Order appointing a temporary manager to Peach Creek Dam and Lake Club, Inc. (Peach Creek), holder of CCN 12574<sup>1</sup>, and for an emergency order extending the term of the Commission Order appointing a temporary manager to Peach Creek.

**I. INTRODUCTION AND PROCEDURAL HISTORY**

On September 9, 2016, Commission Staff filed an Amended Request for an Emergency Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club without a Hearing (Petition).<sup>2</sup> An Emergency Order granting that Petition was issued on September 23, 2016.<sup>3</sup> The Commission issued an Order affirming the Emergency Order on October 7, 2016.<sup>4</sup>

For the reasons discussed below, the emergency order appointing a temporary manager to

<sup>1</sup> The area covered by this certificate is located entirely within the City of Patton Village, approximately 19 miles southeast of downtown Conroe, Texas on U.S. Highway 59.

<sup>2</sup> *Petition for an Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. in Montgomery County*, Docket No. 46262, Commission Staff's Amended Request for an Emergency Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club without a Hearing (September 9, 2016).

<sup>3</sup> *Petition for an Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. in Montgomery County*, Docket No. 46262, Emergency Order (September 23, 2016).

<sup>4</sup> *Petition for an Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. in Montgomery County*, Docket No. 46262, Order Affirming Emergency Order (October 7, 2016).

Peach Creek should be amended so as to substitute a new temporary manager to serve in the stead of the original temporary manager for the remainder of the term originally approved by the Commission. Further, a second emergency order should be issued to extend the term of the order appointing a temporary manager for an additional 180 days.<sup>5</sup>

The Commission should issue both emergency orders and fix a time for hearings that are as soon after the issuance of the emergency orders as practicable. In support of this Application, the Commission Staff respectfully shows the following:

## **II. JURISDICTION AND LEGAL AUTHORITY**

The Commission may authorize a willing person to temporarily manage and operate a utility if the utility has abandoned operations.<sup>6</sup> Texas Water Code § 13.412 (TWC) and 16 Texas Administrative Code § 24.142 (TAC) enumerate actions that constitute abandonment, including but not limited to “failure to adequately maintain facilities, resulting in potential health hazards.” A temporary manager appointed under TWC § 13.4132 and 16 TAC §§ 24.142 and 24.143 has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers. This includes conducting required sampling and making necessary repairs.

16 TAC § 24.143 outlines the duties of the temporary manager and requires the temporary manager to post financial assurance with the Commission, unless the executive director asks for a waiver of the financial assurance or requests substitution of another means of collateral. Within 60 days of appointment, a temporary manager should make and return to the Commission an inventory of all property received. Compensation for the temporary manager comes from the utility revenues and will be set by the Commission at the time of appointment.<sup>7</sup> 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 interest of the customers to ensure that continuous and adequate service is provided.<sup>8</sup> The temporary manager is required to report to the Commission on a monthly basis on

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<sup>5</sup> In order to keep to this time limitation, Commission Staff has attached two proposed emergency orders that should be considered separately.

<sup>6</sup> TEX. WATER CODE ANN. § 13.4132 and 16 TEX. ADMIN. CODE § 24.142.

<sup>7</sup> 16 TAC § 24.143(f). This compensation agreement can be changed with the Commission’s approval.

<sup>8</sup> 16 TAC § 24.143(g)

the income; summary of improvements or repairs; and any other information required by the Commission.<sup>9</sup>

TWC § 13.4132 gives the Commission the authority to appoint a temporary manager by emergency order.<sup>10</sup> 16 TAC § 22.299(d) describes the procedures for an emergency order and states that an emergency order to appoint a temporary manager may be issued with or without a hearing, so long as the Commission or executive director fixes a place and time for a hearing that is “as soon as practicable after the order is issued.”<sup>11</sup> The hearing may be held before the Commission or the State Office of Administrative Hearings, unless the person affected by the order waives the right to a hearing.<sup>12</sup> Notice of the commission’s action is adequate if the notice is mailed to the last known address of the utility’s headquarters.<sup>13</sup>

An application for emergency order must state whether the requesting person is also seeking or has obtained an emergency order from the TCEQ.<sup>14</sup> It must also contain information sufficient to identify the facility and location to be affected by the order; describe the conditions of the emergency that justify the issuance of the order; allege facts supporting any findings required to appoint a temporary manager; “estimate the dates on which the proposed order should begin and end”; “describe the action sought and the activity proposed to be allowed, mandated, or prohibited”; and estimate the dates on which the action sought and activity proposed to be allowed, mandated, or prohibited should begin and end.<sup>15</sup>

An emergency order has similar requirements to contain “a description of the condition justifying the issuance of the order”; “any finding of fact required under this subchapter”; “a statement of the term of the order, including the dates on which it shall begin and end”; and “a description of the action sought.”<sup>16</sup> If the order is issued without a hearing, the order should contain a statement to that effect and the procedure by which a person waives a right to a hearing.<sup>17</sup>

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<sup>9</sup> 16 TAC § 24.143(h).

<sup>10</sup> See also 16 TAC § 24.143(a). The Commission may also delegate to the Executive Director of the Commission the authority to issue emergency orders to appoint a temporary manager, pursuant to TWC § 13.451(b). This delegation was made on December 4, 2015 in Docket No. 43517.

<sup>11</sup> 16 TAC § 22.294(e).

<sup>12</sup> *Id.* and TWC § 13.451(a).

<sup>13</sup> 16 TAC § 22.294(g).

<sup>14</sup> 16 TAC § 22.295.

<sup>15</sup> *Id.*

<sup>16</sup> 16 TAC § 22.298.

<sup>17</sup> *Id.*

Pursuant to TWC § 13.455 and 16 TAC § 24.14 an emergency order is limited to a term of 180 days and can be renewed once for up to an additional 180 days.

### III. FACTUAL ALLEGATIONS

On July 5, 1991, Peach Creek was granted CCN No. 12574. Peach Creek is comprised of one public water system.<sup>18</sup> Peach Creek was owned by Harold Bradham.<sup>19</sup>

Mr. Bradham intended to transfer the utility and CCN to the City of Patton Village (Patton Village). Patton Village and Mr. Bradham filed an application for transfer of the system on September 16, 2014.<sup>20</sup> Patton Village assumed operation of the utility, employing an operator and obtaining a permit from the Lone Star Groundwater Conservation District (LSGCD) for the well serving Peach Creek. Approval of the sale relied on a federal Housing and Urban Development (HUD) grant administered by the Texas Department of Agriculture. In 2016, Patton Village learned that a recently redrawn flood map placed Peach Creek in a floodway. HUD rules and regulations prohibited the use of the grant on projects in a floodway. Without the grant, Patton Village could no longer meet the Commission's financial, managerial, and technical requirements to acquire the system. On March 24, 2016, Patton Village withdrew its application to acquire the system.

While the application was still pending for the transfer of Peach Creek to Patton Village, Mr. Bradham passed away. The Bradham estate is the current owner of Peach Creek. To ensure that customers did not experience an interruption in service, Patton Village continued to pay the electric bill and employ an operator for Peach Creek, even though the CCN remained in the name of Peach Creek, until the Commission appointed a temporary manager on September 23, 2016. This arrangement likely violated the TWC.

Patton Village is currently installing sewer systems throughout its territory, which includes Peach Creek. Because Peach Creek's water lines are not properly marked, these water lines are often cut or damaged.

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<sup>18</sup> PWS ID No: 1700064. The Texas Commission on Environmental Quality (TCEQ) uses the term public water system (PWS) to describe facilities used for providing potable water service to "at least 15 service connections or serve at least 25 individuals at least 60 days out of the year." 30 TAC § 290.38(66) (Tex. Comm'n. Envtl. Quality). A CCN may be comprised of a single or multiple PWSs.

<sup>19</sup> *Application of Peach Creek Dam & Lake Club Water System and the City of Patton Village for Sale, Transfer or Merger of Facilities and Certificate of Convenience and Necessity in Montgomery County*, Docket 43132 (March 30, 2016).

<sup>20</sup> *Id.*

On March 11, 2016, Peach Creek incurred an overpumping penalty of \$25,823.39 from the LSGCD for year 2015. This penalty was later raised to \$35,000 to include estimated 2016 overpumping. In order to better ameliorate the underlying causes of this overproduction, Patton Village invested \$25,000 into updating and maintaining Peach Creek's retail water systems. This money has nearly been exhausted. Patton Village has begun applying for grant money to acquire the system, and it plans to submit a STM application with the Commission to acquire the system as soon as is practicable.

On February 9, 2017, after discussions with Commission Staff, the current temporary manager informed Commission Staff that he would agree to be replaced as temporary manager due to the mounting costs of maintaining and repairing the system. Because the sewer system installation is expected to take another 3-4 weeks and during this time, it is impossible to guarantee that no damage will be done to the existing water lines of Peach Creek, it is vital to replace the current temporary manager with an entity that has already invested and plans to invest money into repairs and restoration of service. These repairs will require significant investment, and the current temporary manager would likely be unable to recoup any funds invested into the system during his term. The current temporary manager agreed to continue serving as a temporary manager until midnight, February 9, 2017.

Commission Staff is not seeking, nor has it obtained an emergency order from TCEQ in regards to either request.

#### **IV. RECOMMENDATION FOR AMENDING THE COMMISSION ORDER APPOINTING A TEMPORARY MANAGER**

The Commission should amend its previous Order so as to appoint Patton Village as a substitute temporary manager of Peach Creek through an emergency order because the utility is incapable of providing continuous and adequate service. The original conditions constituting abandonment, including the death of the CCN holder, have not been and will not be fully addressed until the system acquires new ownership. Moreover, the temporary manager who was maintaining the system has agreed to be replaced effective February 9, 2017 at midnight.

Commission Staff recommends the Commission appoint Patton Village as a replacement temporary manager. As Patton Village is currently installing sewer lines for its customers, it will

be well-equipped to make any necessary repairs to the water lines of Peach Creek that may be damaged by the sewer system installation.

An emergency order amending the Commission Order appointing a temporary manager to Peach Creek should begin immediately and should be in effect for the remainder of the full term of the Commission's original Order appointing the temporary manager, said term ending on March 21, 2017 or when a utility is certified to provide service to Peach Creek's customers, whichever is the earlier occurrence. The emergency order should include in its terms a requirement for the temporary manager to employ a licensed operator and to comply with TCEQ rules. A draft proposed emergency order identifying a temporary manager and the terms of the appointment is included in this Application.

16 TAC § 24.143 also requires the temporary manager to post financial assurance with the Commission, unless the executive director asks for a waiver of the financial assurance or requests substitution of another means of collateral. Staff requests that the requirement for financial assurance be waived as the utility is in desperate need of repair and will require a significant investment. The cost of operating the utility and the water system often exceeds the revenues collected. Additionally, Staff understands that TCEQ routinely waived this financial assurance requirement.

## **V. RECOMMENDATION FOR EXTENDING THE COMMISSION ORDER APPOINTING A TEMPORARY MANAGER**

Patton Village has indicated that it is willing to acquire the system, but it will only have approximately one month to manage the system before the current order approving a temporary manager expires. While Patton Village has already invested heavily into this system and plans on investing further, more time is needed for Patton Village to complete a STM application for the system. Commission Staff requests an extension of 180 days, extending the original Commission order appointing a temporary manager through September 17, 2017 to provide additional time to complete the STM process. A draft proposed emergency order identifying the terms of the appointment is included in this Application. Commission Staff believes that the provision of notice and opportunity for a hearing is practicable for this extension request. The emergency order issued should provide notice and opportunity for a hearing at the March 9, 2017 Open Meeting.

## VI. SUBSEQUENT HEARING

16 TAC § 22.297 states that an emergency order issued without a hearing is not subject to the requirements of the Administrative Procedure Act (APA).<sup>21</sup> If an emergency order is issued without a hearing, "the commission or executive director shall set a time and place for a hearing to be held before the commission or SOAH to affirm, modify, or set aside the order as soon as practicable after the order is issued."<sup>22</sup> The hearing held to affirm, modify, or set aside an emergency order is subject to the APA.<sup>23</sup> Pursuant to 16 TAC § 22.297(d)(2), Commission Staff will provide notice of the opportunity to participate in an evidentiary hearing to affirm, modify, or set aside each emergency order issued by the Commission no later than the tenth day before the date of the hearing. This notice will also include information on how an affected person may waive the right to a hearing.

Commission Staff will provide a copy of this request by certified mail, return receipt requested, to last known address of Peach Creek's in the Commission's records:

Peach Creek Dam and Lake Club, Inc.  
P.O. Box 559  
Splendora, Texas 77372

Commission Staff will also provide a copy of this request by certified mail, return receipt requested, to Patton Village and Patton Village's attorney:

City of Patton Village  
16940 Main Street  
Splendora, Texas 77372

cc: Alan Petrov, Attorney for the City of Patton Village  
JOHNSON PETROV LLP  
2929 Allen Parkway, Suite 3150  
Houston, TX 77019

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<sup>21</sup> Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

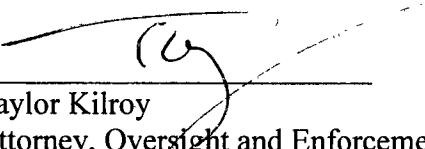
<sup>22</sup> 16 TAC § 22.299(d)

<sup>23</sup> 16 TAC § 22.297



WHEREFORE, PREMISES CONSIDERED, Commission Staff respectfully requests that the Commission grant Commission Staff's application for an emergency order amending the Commission Order appointing a temporary manager to Peach Creek and for an emergency order extending the term of the Commission Order appointing a temporary manager to Peach Creek.

Respectfully Submitted,



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### **CERTIFICATE OF SERVICE**

I certify that on February 9, 2017, a copy of this document was sent certified mail, return receipt requested, to the last known address of the headquarters of Peach Creek Dam and Lake Club Inc. in the Commission's records and to the City of Patton Village:

Peach Creek Dam and Lake Club, Inc.'s Last Known Address in Commission Records:

Peach Creek Dam and Lake Club, Inc.

P.O. Box 559

Splendora, Texas 77372

Address for the City of Patton Village:

City of Patton Village

16940 Main Street

Splendora, Texas 77372

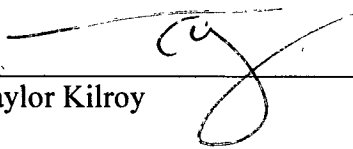
Attorney for the City of Patton Village:

Alan Petrov

JOHNSON PETROV LLP

2929 Allen Parkway, Suite 3150

Houston, TX 77019

  
Taylor Kilroy

**DOCKET NO. 46262**

<b>PETITION FOR AN ORDER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>APPOINTING A TEMPORARY</b>	<b>§</b>	
<b>MANAGER TO PEACH CREEK DAM</b>	<b>§</b>	<b>OF TEXAS</b>
<b>AND LAKE CLUB, INC. PURSUANT</b>	<b>§</b>	
<b>TO TEX. WATER CODE ANN. §</b>	<b>§</b>	
<b>13.4132 AND 16 TAC § 24.142</b>		

**PROPOSED EMERGENCY ORDER AMENDING THE COMMISSION ORDER  
APPOINTING A TEMPORARY MANAGER TO PEACH CREEK DAM AND LAKE  
CLUB, INC.**

This Order addresses the application of the Public Utility Commission of Texas (Commission) Staff for an emergency order amending the Commission order appointing a temporary manager to Peach Creek Dam and Lake Club, Inc. (Peach Creek) in Montgomery County. The Executive Director, on behalf of the Commission,<sup>1</sup> grants this emergency order without a hearing, and sets a hearing on this matter at the March 9, 2017 Open Meeting currently scheduled for 9:30 a.m. at the Commission's offices in Austin, Texas.

The Commission adopts the following findings of fact and conclusions of law:

**I. Findings of Fact**

1. Commission Staff, as the requesting party, is located at 1701 N. Congress Avenue, 7<sup>th</sup> Floor, Austin, Texas 78701.
2. Peach Creek is a retail public utility previously owned and operated by Harold Bradham.
3. Peach Creek was granted Certificate of Convenience and Necessity (CCN) number 12574 on July 5, 1991.
4. Peach Creek is comprised of one public water system. The Texas Commission on Environmental Quality (TCEQ) uses the acronym PWS to describe facilities used for providing potable water service.

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<sup>1</sup> Tex. Water Code § 13.451(b) (TWC) states that the Commission may, by order or rule, delegate to the Executive Director the authority to receive and issue emergency orders under Subchapter K-1 of the TWC. The delegation was made by Commission order on December 4, 2015 in Docket No. 43517.

5. On September 16, 2014, Mr. Bradham filed an application for transfer of the utility and CCN to the City of Patton Village (Patton Village).<sup>2</sup>
6. Patton Village assumed operation of the utility, employing an operator and obtaining a permit from the Lone Star Groundwater Conservation District (LSGCD) for the well serving Peach Creek.
7. Approval of the sale to Patton Village relied on approval of a federal Housing and Urban Development (HUD) grant administered by the Texas Department of Agriculture to provide Patton Village the funds necessary to meet the Commission's managerial and technical requirements to acquire the system.
8. In 2016, Patton Village learned that Peach Creek is located in a floodway and that HUD rules and regulations do not allow the expenditure of funds on projects in a floodway.
9. On March 24, 2016, Patton Village withdrew its application to acquire the Peach Creek system.
10. While the application was still pending for the transfer, Mr. Bradham passed away. The Bradham estate is the current owner of Peach Creek.
11. Patton Village continued to pay the electric bill and employ an operator for Peach Creek until the Commission appointed a temporary manager on September 23, 2016.
12. Patton Village is currently installing sewer systems throughout its territory, which includes Peach Creek. Because Peach Creek's water lines are not properly marked, these water lines are often cut or damaged.
13. On March 11, 2016, Peach Creek incurred an overpumping penalty of \$25,823.39 from LSGCD for year 2015. This penalty was later raised to \$35,000 to include estimated 2016 overpumping. In order to better ameliorate the underlying causes of this overproduction, Patton Village invested \$25,000 into updating and maintaining Peach Creek's retail water systems. This money has nearly been exhausted.

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<sup>2</sup> *Application of Peach Creek Dam and Lake Club Water System and City of Patton Village for Sale, Transfer, or Merger of Facilities and Certificate of Convenience and Necessity in Montgomery County (37915-S), Docket No. 43132 (Sep. 16, 2014).*

14. Patton Village has begun applying for new grant money to acquire this system, and it plans to submit a STM application with the Commission to acquire the system as soon as is practicable.
15. On February 8, 2017, after discussions with Commission Staff, the current temporary manager informed Commission Staff that he would agree to be replaced as temporary manager due to the mounting costs of maintaining and repairing the system. Because the sewer system installation is expected to take another 3-4 weeks and during this time, it is impossible to guarantee that no damage will be done to the existing water lines of Peach Creek, it is vital to replace the current temporary manager with an entity that has already invested and plans to invest money into repairs and restoration of service. These repairs will require significant investment, and the current temporary manager would likely be unable to recoup any funds invested into the system during his term. The current temporary manager agreed to continue serving as a temporary manager until midnight, February 9, 2017.
16. Without a temporary manager that can make and recoup significant investments into repairs, the likely damage to the system caused by the installation of the sewer system could not be remedied to maintain continuous and adequate service. The need to replace the manager with one that is able to make such recoupable investments justifies the immediate need to issue an emergency order. Further, the original conditions constituting abandonment, including the death of the CCN holder, have not been and will not be fully addressed until new ownership acquires the system.
17. On February 9, 2017, Commission Staff filed the application for an emergency order amending the Commission order appointing a temporary manager to Peach Creek.
18. Commission Staff recommended Patton Village as a temporary manager of Peach Creek as a replacement temporary manager. As Patton Village is currently installing sewer lines for its customers, it will be well-equipped to make any necessary repairs to the water lines of Peach Creek that may be damaged by the sewer system installation.

19. The petition was sent by certified mail to last known address of Peach Creek's headquarters in the Commission's records. A copy of the petition was also sent by certified mail to Patton Village and Patton Village's attorney.

## II. Conclusions of Law

1. The Commission has jurisdiction over this docket pursuant to TWC § 13.041.
2. Under TWC § 13.002(19) and 16 TAC § 24.3(58) a retail public utility is defined as any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.
3. Under TWC § 13.4132 and 16 TAC § 24.142, the Commission may authorize a willing person, municipality, or political subdivision to temporarily manage and operate a utility if the utility has abandoned operations.
4. Under TWC § 13.451(b), the Commission may, by order or rule, delegate to the Executive Director the authority to receive and issue emergency orders under Subchapter K-1 of the TWC. The delegation was made by Commission order on December 4, 2015 in Docket No. 43517.
5. TWC § 13.412 and 16 TAC § 24.142 enumerate actions that constitute abandonment, including, but not limited to, failure to provide appropriate water treatment so that a potential health hazard results, failure to adequately maintain facilities, resulting in potential health hazards, or repeatedly failing to respond to the utility commission or the commission.
6. Peach Creek failed to adequately maintain facilities resulting in potential health hazards.
7. Peach Creek is incapable of managing and operating as a utility in a way that ensures continuous and adequate service in the area covered by CCN number 12574.
8. Peach Creek has abandoned operations of its facilities.

9. Under 16 TAC § 22.299(d), an emergency order to appoint a temporary manager may be issued with or without a hearing. The Commission or the executive director will set a hearing as soon as practicable after the order is issued.<sup>3</sup>

### III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. Commission Staff's application for an emergency order amending the Commission order appointing a temporary manager to Peach Creek Dam and Lake Club, Inc. is granted.
2. Effective the date of this Order, Patton Village is appointed temporary manager of Peach Creek for the remainder of the term of the Commission's original Order appointing the temporary manager, said term ending on March 21, 2017 or when a utility is certified to provide service to Peach Creek's customers, whichever is the earlier occurrence.
3. Patton Village has all the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate services to customers.
4. As temporary manager, Patton Village shall comply with all requirements in 16 TAC § 24.143, including but not limited to reading meters, billing for service, collecting revenues, disbursing funds, requesting rate increases if needed, accessing all system components, conducting required sampling, making necessary repairs; and performing other acts necessary to assure continuous and adequate utility service as authorized by the Commission.
5. Patton Village shall return to the Commission an inventory of all property received within 60 days of appointment, pursuant to 16 TAC § 24.143(e).
6. Patton Village shall report to the Commission on a monthly basis. This report shall include an income statement for the reporting period; a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water

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<sup>3</sup> 16 TAC § 22.294(e).

- produced or treated; and any other information required by the Commission, pursuant to 16 TAC § 24.143(h).
7. Patton Village shall comply with all applicable requirements imposed by the TCEQ.
  8. Patton Village is not required to post financial assurance.
  9. Patton Village shall be compensated for its role as temporary manager from Peach Creek's revenues in the amount of fifteen dollars per connection per month, and shall bill for this amount in addition to the regular authorized rates of Peach Creek.
  10. Commission Staff shall provide notice of issuance of this emergency order to Peach Creek as soon as practicable pursuant to 16 TAC § 22.293(c).
  11. A hearing to affirm, modify or set aside this emergency order shall be held at the March 9, 2017 Open Meeting currently scheduled for 9:30 a.m., at the offices of the Commission in Austin, Texas.
  12. Commission Staff shall provide notice of opportunity to participate in an evidentiary hearing to affirm, modify, or set aside this emergency order to Peach Creek no later than the tenth day before the date of the hearing and shall provide that Peach Creek may waive the right to this hearing either by written notice to the Commission or by failing to attend the hearing.

Signed at Austin, Texas the \_\_\_\_\_ day of February 2017.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**BRIAN H. LLOYD, EXECUTIVE DIRECTOR**



**DOCKET NO. 46262**

<b>PETITION FOR AN ORDER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>APPOINTING A TEMPORARY</b>	<b>§</b>	
<b>MANAGER TO PEACH CREEK DAM</b>	<b>§</b>	<b>OF TEXAS</b>
<b>AND LAKE CLUB, INC. PURSUANT</b>	<b>§</b>	
<b>TO TEX. WATER CODE ANN. §</b>	<b>§</b>	
<b>13.4132 AND 16 TAC § 24.142</b>		

**PROPOSED EMERGENCY ORDER EXTENDING THE TERM OF THE  
COMMISSION ORDER APPOINTING A TEMPORARY MANAGER TO PEACH  
CREEK DAM AND LAKE CLUB, INC.**

This Order addresses the application of the Public Utility Commission of Texas (Commission) Staff for an emergency order extending the term of the Commission order appointing a temporary manager to Peach Creek Dam and Lake Club, Inc. (Peach Creek) in Montgomery County for an additional 180 days. The Executive Director, on behalf of the Commission,<sup>1</sup> grants this emergency order without a hearing, and sets a hearing on this matter at the March 9, 2017 Open Meeting currently scheduled for 9:30 a.m. at the Commission's offices in Austin, Texas.

The Commission adopts the following findings of fact and conclusions of law:

**I. Findings of Fact**

1. Commission Staff, as the requesting party, is located at 1701 N. Congress Avenue, 7<sup>th</sup> Floor, Austin, Texas 78701.
2. Peach Creek is a retail public utility previously owned and operated by Harold Bradham. Peach Creek was granted Certificate of Convenience and Necessity (CCN) number 12574 on July 5, 1991.
3. Peach Creek is comprised of one public water system.

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<sup>1</sup> Tex. Water Code § 13.451(b) (TWC) states that the Commission may, by order or rule, delegate to the Executive Director the authority to receive and issue emergency orders under Subchapter K-1 of the TWC. The delegation was made by Commission order on December 4, 2015 in Docket No. 43517.

4. On September 9, 2016, Commission Staff filed an Amended Request for an Emergency Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club without a Hearing.
5. An Emergency Order granting that Petition was issued on September 23, 2016.
6. The Commission issued an Order affirming the Emergency Order on October 7, 2016.
7. On February 9, 2017, Commission Staff filed an Application for an Emergency Order Amending the Commission Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club without a Hearing and for an Emergency Order Extending the Term of the Commission Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club without a Hearing (Commission Staff's Application for an Emergency Order).
8. On February 9, 2017, the Executive Director, on behalf of the Commission, issued an emergency order amending the Commission Order appointing a temporary manager to Peach Creek to appoint Patton Village as a substitute temporary manager.
9. Patton Village's term as temporary manager expires on March 21, 2017.
10. Continuity of the temporary manager is necessary to maintain continuous and adequate service. An emergency order is justified in order to meet deadlines imposed by statute and rule so that a timely extension may be made.
11. Commission Staff reported that Patton Village has begun applying for grant money to acquire this system, and it plans to submit a STM application with the Commission to acquire the system as soon as is practicable.
12. Commission Staff determined that until new ownership acquires the system, a temporary manager will be needed.

## II. Conclusions of Law

1. The Commission has jurisdiction over this docket pursuant to Tex. Water Code §§ 13.4132 and 13.451 (TWC) and 16 Tex. Admin. Code § 24.142 (TAC).
2. Peach Creek is a public utility as defined in TWC § 13.002.

3. Under 16 TAC § 24.143(d), the Commission may grant an extension of the term of the temporary manager at the request of Commission Staff.
4. TWC § 13.451(b) states that the Commission may, by order or rule, delegate to the Executive Director the authority to receive and issue emergency orders under Subchapter K-1 of the TWC. The delegation was made by Commission order on December 4, 2015 in Docket No. 43517.
5. Under 16 TAC § 22.299(d), an emergency order to extend the term of a temporary manager may be issued with or without a hearing. The Commission or the executive director will set a hearing as soon as practicable after the order is issued.

### **III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. Commission Staff's request for an emergency order is granted and the term for the temporary manager of Peach Creek is extended for 180 days from March 21, 2017, or until September 17, 2017.
2. As temporary manager, Patton Village shall comply with all requirements in 16 TAC § 24.143, including but not limited to reading meters, billing for service, collecting revenues, disbursing funds, requesting rate increases if needed, accessing all system components, conducting required sampling, making necessary repairs; and performing other acts necessary to assure continuous and adequate utility service as authorized by the Commission.
3. Patton Village shall return to the Commission an inventory of all property received within 60 days of appointment, pursuant to 16 TAC § 24.143(e).
4. Patton Village shall report to the Commission on a monthly basis. This report shall include an income statement for the reporting period; a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and any other information required by the Commission, pursuant to 16 TAC § 24.143(h).

5. Patton Village shall comply with all applicable requirements imposed by the TCEQ.
6. Patton Village is not required to post financial assurance.
7. Patton Village shall be compensated for its role as temporary manager from Peach Creek's revenues in the amount of fifteen dollars per connection per month, and shall bill for this amount in addition to the regular authorized rates of Peach Creek.
8. Commission Staff shall provide notice of issuance of this emergency order to Peach Creek as soon as practicable pursuant to 16 TAC § 22.293(c).
9. A hearing to affirm, modify or set aside this emergency order shall be held at the March 9, 2017 Open Meeting currently scheduled for 9:30 a.m., at the offices of the Commission in Austin, Texas.
10. Commission Staff shall provide notice of opportunity to participate in an evidentiary hearing to affirm, modify, or set aside this emergency order to Peach Creek no later than the tenth day before the date of the hearing and shall provide that Peach Creek may waive the right to this hearing either by written notice to the Commission or by failing to attend the hearing.

Signed at Austin, Texas the \_\_\_\_\_ day of February 2017.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**BRIAN H. LLOYD, EXECUTIVE DIRECTOR**