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Chairman

Kenneth W. Anderson, Jr.
Commissioner

Brandy Marty Marquez
Commissioner

Brian H. Lloyd
Executive Director



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PUBLIC UTILITY COMMISSION
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Public Utility Commission of Texas

TO: Donna L. Nelson, Chairman
Kenneth W. Anderson, Jr., Commissioner
Brandy Marty Marquez, Commissioner

All Parties of Record

FROM: Jeffrey J. Huhn *JTH*
Administrative Law Judge

RE: **Open Meeting of September 8, 2016**
Docket No. 46262 – *Petition for an Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. in Montgomery County*

DATE: August 31, 2016

Enclosed is a copy of the Proposed Emergency Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Thursday, September 8, 2016, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Emergency Order before Friday, September 2, 2016.

The need to address the absence of a properly authorized operator for a public water system presents good cause pursuant to 16 TAC § 22.5(b) to waive the 20-day requirement of 16 TAC § 22.35(b)(2), and have this proceeding considered at the Commission's next regularly scheduled Open Meeting of September 8, 2016.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 46262

PETITION FOR AN ORDER	§	PUBLIC UTILITY COMMISSION
APPOINTING A TEMPORARY	§	
MANAGER TO PEACH CREEK DAM	§	OF TEXAS
AND LAKE CLUB, INC. IN	§	
MONTGOMERY COUNTY	§	

PROPOSED EMERGENCY ORDER

This Order addresses the petition filed by the Oversight and Enforcement Division of the Public Utility Commission of Texas (Commission) for an emergency order appointing a temporary manager to Peach Creek Dam and Lake Club, Inc. (Peach Creek) in Montgomery County. The Commission grants this emergency order without a hearing, and sets a hearing on this matter for September 22, 2016 at the Commission's offices in Austin, Texas.

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

I. Findings of Fact

Procedural History

1. Peach Creek is a retail public utility previously owned and operated by Harold Bradham.
2. Peach Creek was granted Certificate of Convenience and Necessity (CCN) number 12574.
3. 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.
4. On September 16, 2014, Mr. Bradham filed an application for transfer of the utility and CCN to the City of Patton Village (Patton Village).¹
5. Patton Village assumed operation of the utility, employing an operator and obtaining a permit from the Lone Star Groundwater Conservation District for the well serving Peach Creek.

¹ *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).

6. 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.
7. 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.
8. On March 24, 2016, Patton Village withdrew its application to acquire the Peach Creek system. During this time period, Mr. Bradham passed away.
9. Patton Village has continued to pay the electric bill and employ an operator for Peach Creek.
10. The Peach Creek water system remains in violation of TCEQ rules regarding capacity and suffers from leaks which are causing the well associated with the utility to overproduce, placing its permit status with the Lone Star Ground Water Conservation District in jeopardy.
11. The TCEQ enforcement action supports that Peach Creek failed to adequately maintain facilities resulting in potential health hazards meeting the threshold for abandonment pursuant to Tex. Water Code § 13.412 (TWC).²
12. Peach Creek is currently without a properly authorized operator and is incapable of conducting the business of the utility and continuing to provide adequate service.
13. On August 4, 2016, Commission Staff filed the petition for an emergency order appointing a temporary manager to Peach Creek.
14. Commission Staff recommended John Davis, owner of Benry Utility Services, as a temporary manager of Peach Creek. Mr. Davis is the operator currently contracted by Patton Village to operate Peach Creek. Benry Utility Services operates five other water and wastewater facilities in the area and is licensed by the TCEQ as a water operations company and employs licensed B, C, and D operators for water and wastewater operations.

² *In the Matter of an Enforcement Action Concerning Peach Creek Dam & Lake Club; RN101193027*, Texas Commission on Environmental Quality, Docket No. 2010-1807-PWS-E (Mar. 7, 2012).

15. The petition was sent by certified mail to Peach Creek's last known address in the Commission's records. A copy of the petition was also sent by certified mail to Patton Village and Patton Village's attorney.
16. In order to address the absence of a properly authorized operator for the Peach Creek system, the Commission finds good cause to waive the 20-day requirement in 16 Tex. Admin. Code § 22.35(b)(2) (TAC), and consider this matter at the next regularly scheduled open meeting of September 8, 2016.

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 to temporarily manage and operate a utility if the utility has abandoned operations.
4. 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.
5. Peach Creek failed to adequately maintain facilities resulting in potential health hazards.
6. 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.
7. Peach Creek has abandoned operations of its facilities.

8. Under 16 TAC § 22.294 an emergency order to appoint a temporary manager may be issued with or without a hearing, so long as the order sets a place and time for a hearing “that is as soon after issuance of the emergency order as practicable.”³
9. Under 16 TAC § 22.5(b), good cause exists to waive the 20-day requirement of 16 TAC § 22.35(b)(2).

III. Ordering Paragraphs

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

1. Commission Staff’s petition for an order appointing a temporary manager to Peach Creek Dam and Lake Club, Inc. is granted.
2. A hearing to affirm, modify or set aside this emergency order shall be held at 9:30 a.m., on September 22, 2016, at the offices of the Commission in Austin, Texas.
3. Effective the date of this Order, John Davis, owner of Benry Utility Services, is appointed temporary manager of Peach Creek for a term of one year or until another utility is certified to provide service to Peach Creek’s customers, whichever is the earlier occurrence.
4. John Davis 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.
5. As temporary manager, John Davis 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.
6. John Davis shall comply with all applicable requirements imposed by the TCEQ.
7. John Davis is not required to post financial assurance.

³ 16 TAC § 22.294(e).

8. John Davis shall be compensated for his role as temporary manager from Peach Creek's revenues in the amount of twelve dollars per connection per month, and shall bill for this amount in addition to the regular authorized rates of Peach Creek.
9. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or special relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the _____ day of September 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER

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