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DOCKET NO. 47796 RECEIVED

APPLICATION 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

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PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

**COMMISSION STAFF'S APPLICATION FOR AN ORDER APPOINTING A
TEMPORARY MANAGER TO PEACH CREEK DAM AND LAKE CLUB, INC.**

NOW COMES the Staff of the Public Utility Commission of Texas (Commission Staff) and files this Application for an Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. (Peach Creek).¹

I. INTRODUCTION

For the reasons discussed below, Commission Staff requests that the Commission issue an order appointing a temporary manager for Peach Creek.

In support of this Application, 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.² 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.

¹ 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. Peach Creek formerly held CCN No. 12574, which was revoked by the Commission in August 2017. See *Petition to Revoke Peach Creek Dam and Lake Club, Inc.'s Certificate of Convenience and Necessity pursuant to Tex. Water Code § 13.254 and 16 Tex. Admin. Code § 24.113*, Docket No. 47212, Default Order (August 17, 2017).

² TEX. WATER CODE ANN. § 13.4132 and 16 TEX. ADMIN. CODE § 24.142.

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.³ 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.⁴ The temporary manager is required to report to the Commission on a monthly basis on the income; summary of improvements or repairs; and any other information required by the Commission.⁵

TWC § 13.4132 gives the Commission the authority to appoint a temporary manager by either a standard order or an emergency order, after providing to the utility notice and an opportunity to be heard by the Commissioners.⁶

III. FACTUAL ALLEGATIONS

On July 5, 1991, Peach Creek was granted certificate of convenience and necessity (CCN) No. 12574. Peach Creek is comprised of one public water system. Peach Creek was owned by Harold Bradham.

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. Patton Village assumed operation of the utility, employed an operator, and obtained 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.⁷ Without the grant, Patton

³ 16 TAC § 24.143(f). This compensation agreement can be changed with the Commission's approval.

⁴ 16 TAC § 24.143(g)

⁵ 16 TAC § 24.143(h).

⁶ See also 16 TAC § 24.143(a).

⁷ The floodplain maps have since been redrawn, and Peach Creek is no longer in a floodway.

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 John Davis as temporary manager on September 23, 2016, for a term that expired on March 21, 2017.⁸ On February 9, 2017, Patton Village was substituted in as a replacement temporary manager, and its appointment was extended an additional six months until September 17, 2017.⁹ Commission Staff is not seeking, nor has it obtained an emergency order from the Texas Commission on Environmental Quality (TCEQ).

Patton Village is applying for grant money to acquire the system, and it plans to submit a Sale, Transfer, or Merger (STM) application with the Commission to acquire the system as soon as is practicable.

IV. RECOMMENDATION FOR APPOINTING A TEMPORARY MANAGER

The Commission should appoint a temporary manager to Peach Creek because the utility is incapable of providing continuous and adequate service. The original conditions constituting abandonment, including the death of the CCN holder and the subsequent revocation of that CCN, have not been and will not be fully addressed until the system acquires new ownership.

Commission Staff recommends the Commission appoint Patton Village as temporary manager. Patton Village has been serving the customers of Peach Creek as a temporary manager since February and is presently seeking funding so that it can acquire the system outright.

⁸ *Petition for an Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. in Montgomery County*, Docket 46262, Emergency Order (September 23, 2016). The Commission later affirmed this emergency order. See *Petition for an Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. in Montgomery County*, Docket 46262, Order Affirming Emergency Order (October 7, 2016).

⁹ See *Petition for an Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. in Montgomery County*, Docket 46262, Emergency Order Amending the Commission Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. (February 9, 2017); Emergency Order Extending the Term of the Commission Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. (February 9, 2017); and Order Affirming Emergency Orders (March 9, 2017).

An order appointing a temporary manager for Peach Creek should begin on the date the order is signed, and should be in effect for one year, said term ending on or about January 25, 2019 or when a retail public utility is able to legally provide service to Peach Creek's customers, whichever is the earlier occurrence. The 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 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 Patton Village has already demonstrated that it will manage this system responsibly. Additionally, Staff understands that TCEQ routinely waived this financial assurance requirement in previous matters.

V. STATEMENT RELATING TO PEACH CREEK'S RIGHTS

The Commission must provide to a utility notice and an opportunity to be heard by the Commissioners at a Commission meeting before appointing a temporary manager over a utility.

Pursuant to 16 TAC § 22.74, Commission Staff will provide a copy of this application by certified mail, return receipt requested, to the last known address of Peach Creek 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:

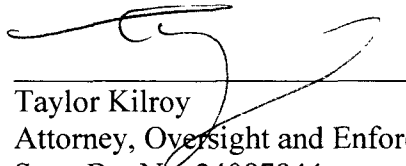
City of Patton Village
16940 Main Street
Splendora, Texas 77372

cc: Alan Petrov, Attorney for the City of Patton Village

JOHNSON PETROV LLP
2929 Allen Parkway, Suite 3150
Houston, TX 77019

WHEREFORE, PREMISES CONSIDERED, Commission Staff respectfully requests that the Commission grant Commission Staff's Application for an Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc.

Respectfully Submitted,



Taylor Kilroy
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1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that on November 21, 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.

P.O. Box 559

Splendora, Texas 77372

City of Patton Village

16940 Main Street

Splendora, Texas 77372

Alan Petrov

Johnson Petrov LLP

2929 Allen Parkway, Suite 3150

Houston, TX 77019


Taylor Kilroy

DOCKET NO. _____

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

**PROPOSED ORDER TO APPOINT 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 Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. (Peach Creek).

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, 7th 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, 1991.¹
4. Peach Creek is comprised of one public water system.
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).²

¹ CCN No. 12574 was revoked by the Commission in August 2017. *See Petition to Revoke Peach Creek Dam and Lake Club, Inc.'s Certificate of Convenience and Necessity pursuant to Tex. Water Code § 13.254 and 16 Tex. Admin. Code § 24.113*, Docket No. 47212, Default Order (August 17, 2017).

² *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). House Bill 1600 and Senate Bill 567 of the 83rd Legislature, Regular Session, transferred the functions relating to the economic regulation of water and sewer utilities from the TCEQ to the Commission effective September 1, 2014.

6. At that time, Patton Village assumed operation of the utility, employed an operator, and obtained 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 of Peach Creek to Patton Village, Mr. Bradham passed away. The Bradham estate is the current owner of Peach Creek.
11. 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 John Davis as temporary manager on September 23, 2016, for a term that expired on March 21, 2017.
12. On February 9, 2017, Patton Village was substituted in as a replacement temporary manager, and its appointment was extended an additional six months until September 17, 2017.
13. Commission Staff is not seeking, nor has it obtained an emergency order from the Texas Commission on Environmental Quality (TCEQ).
14. Patton Village is applying for grant money to acquire the system, and it plans to submit a Sale, Transfer, or Merger (STM) application with the Commission to acquire the system as soon as is practicable. The floodplain maps have since been redrawn, and Peach Creek is no longer within the floodway.
15. On November 21, 2017, Commission Staff filed an Application for an Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. (Application).

16. Commission Staff recommended that Patton Village be appointed as temporary manager of Peach Creek.
17. Commission Staff's Application was sent by certified mail to the last known address of Peach Creek's headquarters in the Commission's and TCEQ's records. A copy was also sent by certified mail to Patton Village.
18. Commission Staff's Application notified Peach Creek that it was entitled to an opportunity to be heard by the Commissioners at an Open Meeting of the Commission under Texas Water Code (TWC) § 13.4132(a).

II. Conclusions of Law

1. The Commission has jurisdiction over this docket pursuant to TWC § 13.4132 and 16 Tex. Admin. Code § 24.142 (TAC).
2. Under 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.
3. 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.
4. The original conditions constituting abandonment, including the death of the CCN holder and the subsequent revocation of that CCN, have not been and will not be fully addressed until the system acquires new ownership.
5. Peach Creek is incapable of managing and operating as a utility in a way that ensures continuous and adequate service in the area formerly covered by CCN number 12574.
6. Peach Creek has abandoned operations of its facilities.
7. Patton Village is presently operating Peach Creek, and being re-appointed as temporary manager would provide it with the legal authority to do so.

19. Peach Creek was given notice and an opportunity to be heard by the Commissioners at an Open Meeting of the Commission under Texas Water Code (TWC) § 13.4132(a).

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 Order Appointing a Temporary Manager to Peach Creek Dam and Lake Club, Inc. is granted.
2. Patton Village is appointed temporary manager of Peach Creek for a term of one year to begin on January 25, 2018 and end on January 25, 2019, or until a retail public utility is able to legally 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 service 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 utility 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 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 of the TWC as well as Commission and TCEQ rules.

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.

Signed at Austin, Texas the _____ day of January 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN WALKER, CHAIRMAN

BRANDY MARTY MARQUEZ, COMMISSIONER

ARTHUR C. D'ANDREA, COMMISSIONER