



Control Number: 48650



Item Number: 17

Addendum StartPage: 0

PUC DOCKET NO. 48650

**PETITION FOR AN ORDER
APPOINTING A TEMPORARY
MANAGER TO BLUE CEREUS, LLC
WITHOUT A HEARING**

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**PUBLIC UTILITY COMMISSION
2018 FEB 26 PM 1:52
OF TEXAS**

**COMMISSION STAFF'S REQUEST FOR AN EMERGENCY ORDER EXTENDING
THE TERM OF THE COMMISSION ORDER APPOINTING A TEMPORARY
MANAGER TO BLUE CEREUS, LLC WITHOUT A HEARING**

The Staff of the Public Utility Commission of Texas (Commission Staff) files this Request for an Emergency Order Extending the Term of the Commission Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing (Request).

I. Introduction and Procedural History

On August 30, 2018, Commission Staff filed a petition for an emergency order appointing a temporary manager to Blue Cereus, LLC (Blue Cereus) without a hearing (Petition).¹ On the same day, the executive director, on behalf of the Commission, issued an emergency order appointing a temporary manager based on Commission Staff's Petition.² The Commissioners affirmed the emergency order at a September 14, 2018 open meeting, finding that Blue Cereus had abandoned the operation of its facilities under Texas Water Code (TWC) § 13.4132 and 16 Texas Administrative Code (TAC) § 24.412(a)(1).³ The six-month term for the temporary manager is set to expire on March 2, 2019.⁴

For the reasons discussed below, Commission Staff requests that the executive director of the Commission issue an emergency order extending the term of the temporary manager for Blue Cereus for an additional 180 days. Commission Staff also requests that the executive director appoint Lynn Sherman as the temporary manager for Blue Cereus to replace the current temporary

¹ *Petition for an Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing*, Docket No. 48650, Commission Staff's Request for an Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing (August 30, 2018) (Petition).

² Docket No. 48650, Emergency Order Appointing a Temporary Manager to Blue Cereus, LLC Pursuant to Tex. Water Code § 13.4132 and 16 TAC § 24.142 without a Hearing (August 30, 2018) (Emergency Order).

³ Docket No. 48650, Order Affirming and Modifying Emergency Order (September 17, 2018). The Commission renumbered 16 TAC Chapter 24 effective October 17, 2018. 16 TAC §§ 24.412 and 24.413 are renumbered 16 TAC §§ 24.355 and 24.357, respectively.

⁴ *Id.*

manager, Jane Whaley. The executive director should issue this emergency order and fix a time for a hearing that is as soon after the issuance of the emergency order as practicable.

In support of this Request, Commission Staff respectfully shows the following:

II. Jurisdiction and Legal Authority

The Commission has jurisdiction over this matter under TWC § 13.4132 and 16 TAC § 24.355 and 24.357. The Commission may authorize a willing person to temporarily manage and operate a utility if the utility has abandoned operations.⁵ TWC § 13.412(f) and 16 TAC § 24.355(c) enumerate actions that constitute abandonment, including, but not limited to, failure to pay a bill or obligation owed to a retail public utility resulting in the utility service provider's issuance of a notice of discontinuance of necessary services, failure to secure an alternative available water supply, and hostility towards the Commission.

16 TAC § 24.357 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.⁶ Compensation for the temporary manager comes from the utility revenues and will be set by the Commission at the time of appointment.⁷ 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.⁸ The temporary manager must submit a monthly report to the Commission on the income, summary of improvements or repairs, and any other information required by the Commission.⁹

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 Commission.¹⁰ 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

⁵ TWC § 13.4132 and 16 TAC § 24.355.

⁶ 16 TAC § 24.357(e).

⁷ 16 TAC § 24.357(f).

⁸ 16 TAC § 24.357(b).

⁹ 16 TAC § 24.357(h).

¹⁰ *See also* 16 TAC § 24.357(a).

with or without a hearing, as long as the Commission or executive director fixes a place and time for a hearing that is “as soon as practicable after the order issued.” The hearing may be held before the Commission or the State Office of Administrative Hearings.¹¹ Notice of the Commission’s action is adequate if the notice is mailed to the last known address of the utility’s headquarters.¹²

An application for emergency order must state whether the requesting person is also seeking or has obtained an emergency order from the Texas Commission on Environmental Quality (TCEQ).¹³ 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.¹⁴

Similarly, an emergency order must 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.”¹⁵ 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.¹⁶ TWC § 13.455 and 16 TAC § 24.14 limit the term of an emergency order to 180 days, but permit the Commission to renew it once for an additional 180 days.

III. Factual Allegations Relating to Abandonment

A. Background

Blue Cereus is a water utility as defined by TWC § 13.002(23)¹⁷ and holds certificate of convenience and necessity (CCN) number 11088 for the operation of two public water systems

¹¹ 16 TAC § 22.299(d).

¹² 16 TAC § 22.293(c).

¹³ 16 TAC § 22.295.

¹⁴ *Id.*

¹⁵ 16 TAC § 22.298.

¹⁶ *Id.*

¹⁷ TWC § 13.002(23) defines “water and sewer utility” as any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use

(PWS): La Caleta Estates (PWS TX2330063) and San Pedro Village (PWS TX2330046). Between these two water systems, Blue Cereus serves approximately 92 connections.¹⁸ Seguro Water Co., LLC (Seguro) and San Pedro Canyon Water Resources (San Pedro, collectively wholesalers) are the wholesale water suppliers for Blue Cereus.¹⁹ Jimmy Alan Hall manages Blue Cereus and acts as its president and registered agent.

Blue Cereus was organized and created in 2006, and Seguro and San Pedro have been the exclusive wholesale water suppliers since 2008 for the San Pedro PWS and since 2009 for the La Caleta PWS.²⁰ On June 1, 2018, the wholesalers sent Blue Cereus a Notice of Default and Notice of Termination (Notice) notifying it that the agreements between the parties to buy and sell water would terminate on August 30, 2018, absent arrangement for payment of delinquent bills.²¹ The wholesalers filed the Notice with the Commission on June 11, 2018 in Docket No. 48455.²² Blue Cereus has not paid the balances owed.

B. The Original Grounds for Abandonment Continue to Exist.

The Commission appointed Blue Cereus's operator, Jane Whaley, as temporary manager for Blue Cereus on September 14, 2018.²³ The Commission found that Blue Cereus abandoned operation of its facilities under TWC § 13.4132 and 16 TAC § 24.142(a)(1)²⁴ when its wholesale water suppliers notified the utility that they would discontinue wholesale water supply on August

or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

¹⁸ *Water and Wastewater Utilities Annual Report 2014*, Docket No. 43134, Blue Cereus's 2014 Annual Report (April 2, 2015).

¹⁹ *Request of Seguro Water Company, LLC and San Pedro Canyon Water Resources to Place Blue Cereus, LLC Under Temporary Management or Supervision*, Docket No. 48455, Petition (June 11, 2018). Seguro is a limited liability corporation organized under the laws of Texas, and San Pedro is a partnership between Kitty Lewis and Robert Ferguson.

²⁰ Docket No. 48650, T.r. at 24:20-28:9 (Hall Direct) (Sept. 14, 2018).

²¹ Docket No. 48455, Petition.

²² *Id.*

²³ Docket No. 48650, Order Affirming and Modifying Emergency Order. Ordering Paragraphs No. 2-7 (Sept. 14, 2018).

²⁴ As of October 17, 2018, the Commission renumbered 16 TAC Chapter 24. 16 TAC §§ 24.142 and 24.143 are now 16 TAC §§ 24.355 and 24.357, respectively.

30, 2018 after it failed to pay its wholesale water bills and when it failed to obtain an alternative water supply during an outage.²⁵

In the six months since the Commission appointed the temporary manager, Blue Cereus has not settled the alleged debt with its wholesale water providers, entered into a new contract for wholesale water supply, or found an alternative source of water. The wholesalers have represented to Commission Staff that they are willing to continue supplying water to Blue Cereus while a temporary manager is in place. However, they do not guarantee they will continue to do so if Mr. Hall resumes operation without settling Blue Cereus's past-due balances and negotiating contracts for the wholesale supply of water.

Currently, there are no written contracts in effect between Blue Cereus and its wholesale water suppliers. The only written contracts that have existed between the entities were executed in 2009, but Blue Cereus asserts that these contracts expired by their plain terms on December 31, 2014.²⁶ Alternatively, the wholesalers' Notice provided to Mr. Hall on June 1, 2018 expressly nullified the previous contracts if Blue Cereus did not address past due balances with them.²⁷ Finally, in a letter dated December 28, 2018, the wholesalers notified Blue Cereus that any oral contracts were null and would not be renewed in 2019.²⁸ Regardless of whether the contracts expired in 2014 or 2018, no contract between Blue Cereus and the wholesalers exists today.

On December 6, 2018 and December 28, 2018, TCEQ conducted investigations into the La Caleta and San Pedro water systems for potential violations of 30 TAC § 290.45(f)(1), which requires Blue Cereus to have an active contract of understanding with a wholesale water supplier. TCEQ issued a notice of violation to Blue Cereus for the San Pedro water system on January 18, 2019 and to the La Caleta water system on January 25, 2019 as a result of its investigations because Mr. Hall could not produce any current contracts.²⁹ Blue Cereus has not sought or secured contracts with any alternate wholesale water suppliers during the six-month temporary management.³⁰

²⁵ Docket No. 48650, Order Affirming and Modifying Emergency Order, Conclusions of Law Nos. 4 and 5 (Sept. 14, 2018).

²⁶ Docket No. 48650, T.r. at 25:13-28:10 (Hall Direct) (Sept. 14, 2018).

²⁷ *Request of Seguro Water Company, LLC and San Pedro Canyon Water Resources to Place Blue Cereus, LLC Under Temporary Management or Supervision*, Docket No. 48455, Petition (June 11, 2018).

²⁸ Letter from Jack R. Stern, attorney for Seguro, et al. (Dec. 28, 2018) (Attachment 1).

²⁹ TCEQ Investigation Report, Investigation No. 1539033 (Jan. 25, 2019); TCEQ Investigation Report, Investigation No. 1537604 (Jan. 18, 2019) (Attachment 2).

³⁰ Docket No. 48650, Blue Cereus, LLC's Response to Commission Staff's First Set of Request for Information No. 6 (Feb. 19, 2019).

Without a contract in place between Blue Cereus and a wholesale supplier, Blue Cereus cannot guarantee a continuous and adequate supply of water. Blue Cereus has only avoided an outage by the Commission's appointment of a temporary manager. Once the temporary management ends, an outage is likely to occur because Blue Cereus has not resolved its debts with the wholesale water suppliers and the parties have not executed a new, written contract for the wholesale supply of water. Blue Cereus has not secured an alternate source of wholesale water. Accordingly, an imminent threat continues to exist and the Commission's initial grounds cited for abandonment remain.³¹

C. New Grounds for Abandonment Exist.

While the original order appointing a temporary manager for Blue Cereus did not place specific requirements or prohibitions on Mr. Hall, his frustration of the purpose of the order appointing a temporary manager demonstrates hostility towards the Commission, a ground for abandonment under TWC §§ 13.4132 and 13.412(f)(6) as well as under 16 TAC § 24.355(c)(6). Specifically, Mr. Hall has failed to timely provide the temporary manager the following: complete customer contact information (until Commission Staff intervened), the financial records for Blue Cereus, or access to Blue Cereus bank accounts. In addition, Mr. Hall contacted Blue Cereus customers by email on February 7, 2019.³² In the email he did not identify Ms. Whaley as a Commission appointed temporary manager, but implied that she was a third-party vendor, and solicited information from customers about the quality of Ms. Whaley's service.

Ms. Whaley requested the customer contact information from Mr. Hall after the Commission appointed her temporary manager. However, Mr. Hall did not turn over the customer list with full contact information until after Commission Staff contacted his attorney. According

³¹ Blue Cereus and the wholesalers are currently involved in litigation in district court in Val Verde County, Texas. As part of the suit, Blue Cereus obtained a temporary restraining order (TRO) on September 28, 2018, prohibiting the wholesalers from terminating the water supply to the La Caleta and San Pedro systems pending a hearing on Mr. Hall's request for temporary injunction on the same issue. *Blue Cereus, LLC. v. Seguro Water Company, LLC., et al.*, Cause No. 34167, Order Granting Request for Temporary Restraining Order (83rd Dist. Ct. Val Verde County, Tex., Sept. 28, 2018). The judge extended the TRO on January 23, 2019. *Blue Cereus' Petition*, Order Granting Second Temporary Restraining Order (Jan. 23, 2019). The temporary injunction hearing is set for February 27, 2019. *Blue Cereus Petition*, Agreed Order Extending Temporary Restraining Order (Feb. 8, 2019). Any order compelling the wholesalers to continue providing water to Blue Cereus is tied to the contract dispute and would cease to exist as soon as the case is either resolved or dismissed. Because that could happen at any time, and because Blue Cereus still has not remedied any of the grounds for abandonment outlined by the Commission when it appointed the temporary manager, the threat to Blue Cereus' customers of losing their water supply remains imminent.

³² Blue Cereus Email to Customers (Feb. 7, 2019) (Attachment 3).

to Ms. Whaley, Mr. Hall has not turned over any other information or property related to Blue Cereus.

Commission Staff has obtained financial records for Blue Cereus through requests for information sent to Mr. Hall. The records indicate that the bank account for the San Pedro PWS has routinely seen deposits and withdrawals of money throughout the period of temporary management. Mr. Hall did not provide the temporary manager access to this account or even notify her of its existence or content. Commission Staff believes that Mr. Hall may have been collecting customer payments himself and not disclosing this information to Ms. Whaley. The matter is under investigation by Commission Staff at this time.

The Commission should consider this behavior hostility towards the Commission and an additional ground for abandonment.

Commission Staff is not seeking, nor has it obtained, an emergency order from TCEQ.

IV. Factual Allegations Relating to Replacing Jane Whaley as Temporary Manager

After consulting with both Blue Cereus and the wholesalers, Commission Staff initially recommended the Commission appoint Ms. Jane Whaley as the temporary manager for Blue Cereus because she was the utility's operator and had a preexisting professional relationship with the wholesalers. However, Ms. Whaley has failed to fully execute her duties as a temporary manager. Counsel for Blue Cereus and representatives of the wholesalers independently reported to Commission Staff that Ms. Whaley has not consistently issued bills to customers in compliance with 16 TAC § 24.357(g). The wholesalers have also indicated that Ms. Whaley has not timely paid them for the water they have supplied. Ms. Whaley has not submitted an inventory of the utility's assets to the Commission and the monthly reports required by the order and 16 TAC § 24.357(h).

Commission Staff is aware that Mr. Hall's failure to cooperate (as noted above) has contributed to Ms. Whaley's non-compliance. Specifically, Mr. Hall's failure to provide her any financial records for the utility or access to any bank accounts for the utility made it difficult for Ms. Whaley to provide the Commission with an accurate inventory of property for the utility and made it necessary for her to create her own bookkeeping system for Blue Cereus and a new bank account to manage the utility's funds. Mr. Hall's initial resistance to providing Ms. Whaley comprehensive contact information for the utility's customers likely caused some delay and confusion regarding billing.

However, even absent Mr. Hall's interference, Ms. Whaley has been unable to effectively manage Blue Cereus. She has failed to provide the Commission written reports on the information she does have, despite Commission Staff's repeated requests. She has also failed to consistently issue customer bills, even after Mr. Hall provided the customer contact information. She has failed to assess the need for a temporary rate increase to stabilize the utility. Finally, she has failed to keep current with the bills sent to the utility by the wholesale water suppliers. Commission Staff understands that Ms. Whaley has suffered health issues during her term as temporary manager that have affected her ability to perform the tasks required of a temporary manager.

V. Recommendation for Appointing a New Temporary Manager

The Commission's previous Order appointing Jane Whaley as a temporary manager for Blue Cereus expires on March 2, 2019. As stated above, the initial grounds for finding abandonment and appointing a temporary manager persist, and will continue to persist beyond the March 2, 2019 end date for the current temporary management. In addition, new grounds for abandonment have arisen during the term of the temporary manager. An extension is necessary to ensure continuous and adequate service.

Commission Staff recommends the Commission issue an order extending the term of the temporary manager for an additional 180 days,³³ or until the Commission orders otherwise, whichever occurs first. Commission Staff also recommends Lynn Sherman be appointed temporary manager in place of Jane Whaley, as Ms. Whaley has not fully complied with the requirements of a temporary manager under 16 TAC § 24.357. Mr. Sherman is an attorney licensed to practice law in Texas. He has practiced with Lynn Sherman Law Firm and Consulting since 2008 providing legal, strategic planning, and business consulting services pertaining to water projects, water and wastewater utilities, electric transmission projects, land and water conservation, and property rights. Over the past 30 years he has worked on worked on many of Texas' largest water projects and represented both public and private water utilities. He is experienced in water law and is willing and able to serve as temporary manager for Blue Cereus. He is prepared to employ a licensed water operator to assist him in the temporary management of the utility.

³³ The term of the order would therefore begin on March 3, 2019 and end on August 30, 2019.

A draft proposed emergency order identifying the terms of the appointment is Attachment 4 to this Request.

VI. Subsequent Hearing

Under 16 TAC § 24.357, an emergency order issued without a hearing is not subject to the requirements of the Administrative Procedure Act (APA).³⁴ 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.”³⁵ The hearing held to affirm, modify, or set aside an emergency order is subject to the APA.³⁶ In accordance with 16 TAC § 22.297(d)(2), Commission Staff will provide notice of the opportunity to participate in a hearing to affirm, modify, or set aside the 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 the last known address of Blue Cereus in the Commission’s records; Blue Cereus’ attorney of record, Steve Dickman; Jane Whaley; and Lynn Sherman:

Blue Cereus’s Last Known Address in Commission Records:

Blue Cereus, LLC
401 Green Acres Drive, Suite 100
Wimberly, Texas 78676

Steve Dickman
Law Office of Steve Dickman
6005 Upvalley Run
Austin, Texas 78731

Jane Whaley
247 Schwalbe Rd.
Del Rio, TX 78840

³⁴ Administrative Procedure Act, Tex. Gov’t Code §§ 2001.001-.902 (APA).

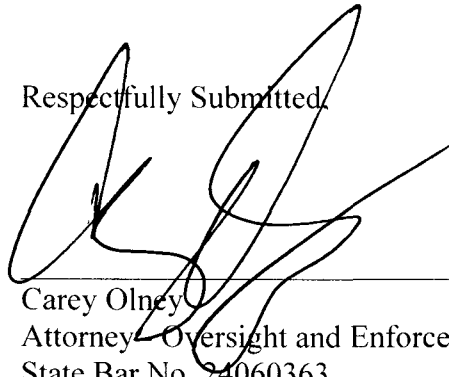
³⁵ 16 TAC § 22.299(d).

³⁶ 16 TAC § 22.299(b).

Lynn Sherman
P.O Box 5605
Austin, Texas 78763

Commission Staff respectfully requests that the Commission grant Commission Staff's Request for an Emergency Order Modifying and Extending the Term of the Commission Order Appointing a Temporary Manager to Blue Cereus, LLC Without a Hearing.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Carey Olney', is written over a horizontal line.

Carey Olney
Attorney Oversight and Enforcement Division
State Bar No. 24060363
(512) 936-7065
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
carey.olney@puc.texas.gov

CERTIFICATE OF SERVICE

I certify that on February 27, 2019, a copy of this document was sent certified mail, return receipt requested, to the last known address of the headquarters of Blue Cereus, LLC in the Commission's records; Blue Cereus' attorney of record, Steve Dickman; Jane Whaley; and Lynn Sherman.


Blue Cereus's Last Known Address in Commission Records:

Blue Cereus, LLC
401 Green Acres Drive, Suite 100
Wimberly, Texas 78676

Steve Dickman
Law Office of Steve Dickman
6005 Upvalley Run
Austin, Texas 78731

Jane Whaley
247 Schwalbe Rd.
Del Rio, TX 78840

Lynn Sherman
P.O Box 5605
Austin, Texas 78763



Carey Olney

Attachment 1

December 28, 2018 Letter from Wholesalers to Blue Cereus

**JACK R. STERN
ATTORNEY AT LAW**

**P.O. Box 4359
Del Rio, Texas 78841**

**Phone: 830.774.2920
Fax: 888.236.2839**

December 28, 2018

Mr. Jimmy Alan Hall
Blue Cereus, LLC
c/o F. David Ortiz, Esq.
Ortiz and Ortiz Attorneys
310 North Main Street
Del Rio, Texas 78840

Via Email: jahl1@fbjah.com

Via Email: ortizlaw0544@yahoo.com

Ref: No. 34,167
Blue Cereus vs. Seguro Water Co. et al; pending, 83rd Judicial District Court of Val
Verde County, Texas

Dear Mr. Hall:

1. Blue Cereus LLC has previously received a Notice of Default and Termination by letter dated June 1, 2018 from Kerry McGrath of the law firm *DUGGINS, WREN, MANN & ROMERO*.
2. Per page 2 of your sworn original petition in the above-referenced matter, Seguro Water Co. and San Pedro Water Resources (Seguro et al) have been selling water to Blue Cereus pursuant to yearly, negotiated oral contracts.
3. Per your sworn testimony before the Public Utility Commission on September 14, 2018, these oral contracts are annual in nature (so as to comply with the Statute of Frauds) and expire at the end of the calendar year.
4. Seguro et al dispute the allegations contained in your sworn petition as well as your testimony before the Public Utility Commission.

Based upon your understanding (not ours) of the putative oral contracts and dispute between the parties, I regret to inform that Seguro et al will not be entering into or renewing any such oral contracts for the provision of wholesale water to Blue Cereus, LLC for 2019. Any such putative contracts will expire on their own at midnight on December 31, 2018. That being said:

SEGURO et al WILL CONTINUE TO SUPPLY WATER TO THE TEMPORARY ADMINISTRATOR APPOINTED BY THE PUBLIC UTILITY COMMISSION TO ACT ON BEHALF OF BLUE CEREUS IN ACCORDANCE WITH THE ORDER AFFIRMING AND MODIFYING EMERGENCY ORDER DATED SEPTEMBER 19, 2018. SEGURO et al HAS NO INTENTION OF CUTTING OFF THE WATER SUPPLY TO THE RESIDENTS OF THE LA CALETA AND SAN PEDRO SUBDIVISIONS.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack R. Stern", with a stylized flourish at the end.

Jack R. Stern

Cc: Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

Attachment 2

February 7, 2019 Email from Blue Cereus

From: bluecereus <bluecereus@fbjah.com>
Date: February 7, 2019 at 4:07:46 PM CST
To: bluecereus <bluecereus@fbjah.com>
Subject: Billing Inquiry from Blue Cereus, LLC


This inquiry is for Blue Cereus, LLC customers who currently have an active account OR received water service between September 2018 and February 2019. If this does not apply to you, please disregard this message.

Valued Customer:

Effective September 1, 2018 water utility bills from Blue Cereus, LLC have been issued by a third party. Our office is currently requesting your assistance in determining if bills are being sent out/received in a timely manner. Below you will find a table which lists the months from September 2018 to current, along with a column to say if the bill was received and when. If possible, please fill out the information below by replying to this message and filling out the table. We are requesting this information be completed by 5:00pm on Friday, February 8th.

Customer Name	Property Address	Month	Bill Received (Yes/No)	Date Bill Received (If applicable)
		September		
		October		
		November		
		December		
		January		
		February		

We appreciate your assistance in this matter and please let us know if you have any questions or concerns.

 **Blue Cereus LLC**
Serious About WaterSM
Bill Payment Office 551 Green Acres Drive
Wimberley, Texas 78676-5033
BlueCereus@fbjah.com
Telephone 833-469-1835
Facsimile 512-857-9195
CCN No. 11088
Water Service Issues Call 833-719-2125 (WH-2C LLC)

Attachment 3
TCEQ Citations

PWS_2330063_CP_20181206_Investigation
Texas Commission on Environmental Quality
Investigation Report

The TCEQ is committed to accessibility. If you need assistance in accessing this document, please contact oee@teeq.texas.gov

Customer: Blue Cereus, LLC
Customer Number: CN603080011

Regulated Entity Name: LA CALETA ESTATES

Regulated Entity Number: RN105598908

Investigation # 1539033	Incident Numbers
Investigator: BIANCA LOZANO	Site Classification P 51-250 CONNECTION
Conducted: 12/06/2018 -- 12/06/2018	No Industry Code Assigned
Program(s): PUBLIC WATER SYSTEM/SUPPLY	
Investigation Type: Compliance Investigation	Location: W ON US 90 FROM DEL RIO TO EL LAGO CAMINO THEN APPROX 500 FT ON EL LAGO CAMINO
Additional ID(s): 2330063	

Address: , , ,	Local Unit: REGION 16 - LAREDO
	Activity Type(s): PWSCCIGWCD - CCI GROUNDWATER PURCHASE - COMMUNITY DISCRETIONARY

Principal(s):

Role	Name
RESPONDENT	BLUE CEREUS LLC

Contact(s):

Role	Title	Name	Phone
REGULATED ENTITY CONTACT	OPERATOR	MS JANE WHALEY	Phone (830) 719-2126
REGULATED ENTITY MAIL CONTACT	MEMBER	MR JIMMY A HALL	Work (512) 857-9195

Other Staff Member(s):

Role	Name
QA Reviewer	ELSA HULL
Supervisor	ARNALDO LANESE

Associated Check List

<u>Checklist Name</u>	<u>Unit Name</u>
PWS INVESTIGATION - EQUIPMENT MONITORING AND SAMPLING revised 06/2013	La Caleta
PWS STANDARD FIELD	La Caleta

Investigation Comments:

LA CALETA ESTATES - DEL RIO

12/6/2018 Inv. # - 1539033

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INTRODUCTION

A Public Water Supply (PWS) Comprehensive Compliance Investigation (CCI) was conducted on December 6, 2018 at La Caleta Estates by Laredo Region Office (LRO) investigator, Ms. Bianca Lozano. The CCI was scheduled with Operator, Ms. Jane Whaley on November 30, 2018 and a list of items to be reviewed was emailed to her on the same day. The investigation was conducted with Ms. Whaley. The investigation consisted of a records review (a list of records is attached to this report) and residual and pressure measurements in the distribution.

A notice of violation letter will be sent to the facility to the attention of Mr. Jimmy Hall, Director.

GENERAL FACILITY AND PROCESS INFORMATION

La Caleta Estates Water Distribution Company - Blue Cereus LLC, PWS 2330063, CCN 11088, purchases treated ground water through direct pressure from Seguro Water Company, PWS 2330051.

Operator:

Jane Whaley, Class C Groundwater, WG0012583, expires 02/12/2019;

Customer Service Inspector, CI00007464, expired 07/09/2017 (no CSIs were conducted after expiration)

WH2O, LLC, Water Operations Company, WC0000161, expires 10/24/2021

BACKGROUND

A previous PWS CCI (CCEDS #1331608) was conducted on May 10, 2016 by Ms. Lozano. No violations were issued during this investigation.

There have been no complaints or enforcement cases in the last 5 years.

ADDITIONAL INFORMATION

During the record review, all requested documentation was available for review. Ms. Lozano reviewed the purchase contract between Seguro Water and Blue Cereus. The purchase contract between the wholesaler and purchaser expired on December 31, 2014 and has not been renewed. This is a violation of 30 TAC 290.45(f)(1) for failure to obtain an active contract of understanding with the wholesale supplier.

The maximum purchase rate is as follows:

60 kgal/day, 2 MG/month, and 24 MG/year.

The production capacity requirement of 0.6 gpm/conn x 48 connections = 28.8 gpm and the maximum daily purchase rate is 41.6 gpm. All capacities for the purchasing system are provided and maintained by the wholesaler.

The following free chlorine and pressure measurements were collected during the investigation:

106 La Paloma - 1.71 mg/L free chlorine and 50 pounds per square inch (psi)

501 El Lago Camino - 1.62 mg/L free chlorine and 52 psi

The free chlorine level residuals and pressure within the system measure above the minimum 0.2 mg/L and 35 psi, respectively.

NOV Date	01/25/2019	Method	WRITTEN
OUTSTANDING ALLEGED VIOLATION(S)			
ASSOCIATED TO A NOTICE OF VIOLATION			

Track Number: 702531

Compliance Due Date: 02/25/2019

Violation Start Date: Unknown

30 TAC Chapter 290.45(f)(1)

Alleged Violation:

Investigation: 1539033

Comment Date: 01/15/2019

Failure to obtain an active contract of understanding with the wholesale supplier.

Specifically, during the investigation on December 6, 2018, it was documented that the agreement between the wholesale supplier and purchaser had expired on December 31, 2014 and there was no renewal of the agreement.

Recommended Corrective Action: The facility must maintain an active agreement with the wholesale supplier. A copy of the active agreement must be submitted to the Laredo Region Office.

Signed

Bianca Lozano

Environmental Investigator

Date

1/16/19

Signed

[Signature]
Supervisor

Date

1/16/19

Attachments: (in order of final report submittal)

___ Enforcement Action Request (EAR)

___ Maps, Plans, Sketches

___ Letter to Facility (specify type) : _____

___ Photographs

___ Investigation Report

___ Correspondence from the facility

___ Sample Analysis Results

___ Other (specify) :

___ Manifests

#1 system diagram

___ Notice of Registration

#2 DWW summary sheet

#3 TNET summary sheet

#4 list of records reviewed

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



Attachment

1

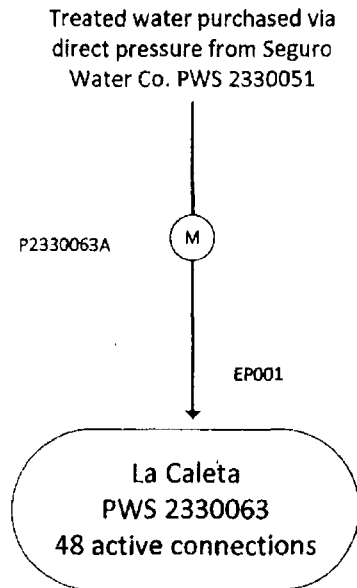
TCEQ ID	RN 105598908	Regulated Entity:	La Caleta Estates	County Name:	Val Verde
Date of Investigation	December 6, 2018	TCEQ Investigator:	Bianca Lozano		

System Diagram

La Caleta Estates, PWS 2330063

CCI date: December 6, 2018

Investigator: Bianca Lozano



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



Attachment

2

TCEQ ID	RN 105598908	Regulated Entity:	La Caleta Estates	County Name:	Val Verde
Date of Investigation	December 6, 2018	TCEQ Investigator:	Bianca Lozano		

DWW Summary Sheet

<u>Texas Commission on Environmental Quality</u>	<u>Office of Water</u>	<u>Public Drinking Water Section</u>
<u>County Map of TX</u>	<u>Water System Search</u>	<u>Office of Compliance and Enforcement</u>

11/30/2018

Texas Commission on Environmental Quality

10:11:02

DWW Water System Summary Sheet

PWS ID	PWS Name	Central Registry RN
TX2330063	LA CALETA ESTATES	RN105598908

Organization/Customer *	Central Registry CN
BLUE CEREUS LLC	CN603080011

*Regulatory mail will be addressed to this organization/person

All Water System Contacts			
Type	Contact	Communication	
AC - Administrative Contact - LAWYER	HALL, JIMMY, ALAN 401 GREEN ACRES DR WIMBERLEY, TX 78676-5025	Electronic Type	Value
		Phone Type	Value
		BUS - Business	512-722-3190
		FAX - Facsimile	512-857-9195
		EMERG - Emergency	830-469-1805
OW - Owner	BLUE CEREUS LLC 401 GREEN ACRES DR WIMBERLEY, TX 78676-5025		
PWS - Public Water System Contact - OPERATOR	WHALEY, JANE, MARIE 247 SCHWALBE RD DEL RIO, TX 78840-3458	Electronic Type	Value
		Phone Type	Value
		FAX - Facsimile	830-775-7500
		MOB - Mobile	830-719-2126

Operator Grade	Number
----------------	--------

Water Operator Licenses
No Licensing Data for this PWS

Jane Whaley Class C groundwater WG0012583

Owner Type	Owner Type Options: COUNTY, DISTRICT, FEDERAL GOVERNMENT, INVESTOR OWNED, MUNICIPALITY, NATIVE AMERICAN, PRIVATE, STATE GOVERNMENT, WATER SUPPLY CORPORATION
Investor Owned	

System Type	System Type Options: COMMUNITY, TRANSIENT/NON-COMMUNITY, NON-PUBLIC, NON-TRANSIENT/NON-COMMUNITY
C - Community	

Population Type	Population Served	# of Connect	# I/C w/other PWS
Residential	152	48	0

Total Product (MGD)	Average Daily Consump.	Max Daily Demand (MGD)	Total Storage (MG)	Elev. Storage (MG)	Service Pump Cap.	Max. Purchase Cap. (MGD/GPM)	Pressure Tank Cap. (MG)
	0.0110 MGD	0.0260 MGD					

0.0211 MGD
0.0260 MGD
4/15/2018

Activity Status	Inactivation Date
A - ACTIVE	

Last Survey Date	Surveyor	Survey Type	Region	County
05/10/2016	BIANCA GARCIA	Sanitary Survey	LAREDO	VAL VERDE
10/22/2012	ELSA, L HULL	Sanitary Survey	LAREDO	VAL VERDE
05/06/2010	ELSA, L HULL	Sanitary Survey	LAREDO	VAL VERDE

12/6/2018 Bianca Lozano

(Treatment Plant)
No Active Treatment Plant

(Entry Point)							
Distribution Point	Sample Point Name/Source Summation (Activity Status)	Entry Point Name (Activity Status)	Entry Point Num	Chemical Mon Type	Chem Sample Point	Distribution Mon Type	Dist Sample Point

DS01	TRT-TAP / Purchased Ground Water(A)	8 EL LAGO CAMINO, DEL RIO(A)	EP001		NO		NO
------	---	------------------------------------	-------	--	----	--	----

(Active Sources)

(Entry Point)							
Distribution Point	Sample Point Name/Source Summation (Activity Status)	Entry Point Name (Activity Status)	Entry Point Num	Chemical Mon Type	Chem Sample Point	Distribution Mon Type	Dist Sample Point
DS01	EWQP / Purchased Ground Water (A)	8 EL LAGO CAMINO; DEL RIO (A)	PBCU001		NO		NO

(Active Sources)

(Entry Point)							
Distribution Point	Sample Point Name/Source Summation (Activity Status)	Entry Point Name (Activity Status)	Entry Point Num	Chemical Mon Type	Chem Sample Point	Distribution Mon Type	Dist Sample Point
DS01	ELCR / Purchased Ground Water (A)	8 EL LAGO CAMINO; DEL RIO (A)	PBCU001		NO		NO

(Active Sources)

Code Explanations

Monitoring Type Codes: (GW) GROUNDWATER, (GUP) GROUNDWATER UNDER THE INFLUENCE - PURCHASED, (SWP) SURFACE WATER - PURCHASED, (GU) GROUNDWATER UNDER THE INFLUENCE OF SURFACE WATER, (N) NO SOURCES, (SW) SURFACE WATER

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



Attachment

3

TCEQ ID	RN-105598908	Regulated Entity:	La Caleta Estates	County Name:	Val Verde
Date of Investigation	December 6, 2018	TCEQ Investigator:	Bianca Lozano		

TNET Summary Sheet

PWS_2330046_CP_20181228_Investigation
Texas Commission on Environmental Quality
Investigation Report

The TCEQ is committed to accessibility. If you need assistance in accessing this document, please contact oee@teeq.texas.gov

Customer: Blue Cereus, LLC
Customer Number: CN603080011

Regulated Entity Name: SAN PEDRO VILLAGE

Regulated Entity Number: RN102672839

Investigation # 1537604	Incident Numbers
Investigator: BIANCA LOZANO	Site Classification P <=50 CONNECTION
Conducted: 12/28/2018 -- 12/28/2018	SIC Code: 4941
Program(s): PUBLIC WATER SYSTEM/SUPPLY	
Investigation Type: Compliance Invest File Review	Location: ON YELLOWSTONE OFF SAN PEDRO DRIVE
Additional ID(s): 2330046	
Address: ON YELLOWSTONE OFF SAN PEDRO DRIVE, DEL RIO, TX , 78840	Local Unit: REGION 16 - LAREDO Activity Type(s): PWSCRR - PWS Compliance Record Review

Principal(s):

Role	Name
RESPONDENT	BLUE CEREUS LLC

Contact(s):

Role	Title	Name	Phone
REGULATED ENTITY CONTACT	OPERATOR	MS JANE WHALEY	Phone (830) 719-2126
REGULATED ENTITY CONTACT	MEMBER	MR JIMMY A HALL	Phone (512) 722-3190

Other Staff Member(s):

Role	Name
QA Reviewer	ELSA HULL
Supervisor	ARNALDO LANESE

Associated Check List

<u>Checklist Name</u>	<u>Unit Name</u>
PWS GENERIC VIOLATIONS	San Pedro Village

Investigation Comments:

INTRODUCTION
A Public Water Supply (PWS) record review was conducted on December 28, 2018, by Laredo Region investigator Bianca Lozano. The investigation was conducted to evaluate the current purchase water agreement for San Pedro

SAN PEDRO VILLAGE - DEL RIO

12/28/2018 Inv. # - 1537604

Page 2 of 3

Village.

A notice of violation letter will be mailed to the attention of Mr. Jimmy Alan Hall, Director.

GENERAL FACILITY AND PROCESS INFORMATION

San Pedro Village-Blue Cereus Water Utilities is a community groundwater system which purchases treated, pressurized water from San Pedro Water Resources, PWS 2330064, through one master meter.

Operator:

Jane Whaley, Class C-Groundwater, WG0012583, expires 02/12/2019; Customer Service Inspector, C100007464, expired 07/09/2017 (no CSIs were conducted after expiration)

WH2O, LLC, Water Operations Company, WC0000161, expires 10/24/2021

BACKGROUND

A PWS Comprehensive Compliance Investigation (CCI) (#1466867) was conducted by Ms. Elsa Hull, LRO Environmental Investigator, on January 24, 2018. There were no violations issued.

A PWS CCI (#1227634) was conducted by Ms. Hull on January 28, 2015. One violation of 30 TAC 288.22 was issued for failure to adopt a drought contingency plan in Notice of Violation letter dated February 20, 2015. This violation has been resolved.

ADDITIONAL INFORMATION

On December 6, 2018, Ms. Whaley provided the purchase water agreement at the request of Ms. Lozano. The contract was evaluated by Ms. Lozano. The wholesaler, San Pedro Water Resources (PWS 2330064), is obligated to provide a maximum purchase rate to San Pedro Village (PWS 2330046) as follows:

60,000 gallons per day, two million gallons (MG) per month, and 24 MG per year.

The production capacity requirement of 0.6 gpm per connection for 34 connections is 21 gpm and the maximum daily purchase rate is 42 gallons per minute (gpm). Storage, pumping and pressure capacities are provided and maintained by the wholesaler. The contract stipulates that the minimum required pressure must be delivered by the wholesaler.

Ms. Lozano documented that the purchase water agreement had expired on December 31, 2014 and the agreement has not been renewed. This is a violation of 30 TAC 290.45(f)(1) for failure to obtain an active contract of understanding with the wholesale supplier.

NOV Date	01/18/2019	Method	WRITTEN
OUTSTANDING ALLEGED VIOLATION(S)			
ASSOCIATED TO A NOTICE OF VIOLATION			

Track Number: 701514

Compliance Due Date: 02/28/2018

Violation Start Date: Unknown

30 TAC Chapter 290.45(f)(1)

Alleged Violation:

Investigation: 1537604

Comment Date: 12/28/2018

Failure to obtain an active contract of understanding with the wholesale supplier.

Specifically, during the investigation on December 28, 2018, it was documented that the agreement between the wholesale supplier and purchaser had expired on December 31, 2014 and there was no renewal of the agreement.

Recommended Corrective Action: The facility must maintain an active agreement with the wholesale supplier. A copy of the active agreement must be submitted to the Laredo Region Office.

Signed Bianca Lozano
Environmental Investigator

Date 1/10/19

Signed [Signature]
Supervisor

Date 1/11/19

Attachments: (in order of final report submittal)

☐ Enforcement Action Request (EAR)
☐ Letter to Facility (specify type) : _____
Investigation Report
☐ Sample Analysis Results
☐ Manifests
☐ Notice of Registration

☐ Maps, Plans, Sketches
☐ Photographs
☐ Correspondence from the facility
☐ Other (specify) :
#1 purchase contract

Attachment 4
Proposed Emergency Order

DOCKET NO. 48650

PETITION FOR AN ORDER	§	PUBLIC UTILITY COMMISSION
APPOINTING A TEMPORARY	§	
MANAGER TO BLUE CEREUS, LLC	§	OF TEXAS
WITHOUT A HEARING	§	

**PROPOSED EMERGENCY ORDER EXTENDING THE TERM OF THE
COMMISSION ORDER APPOINTING A TEMPORARY MANAGER TO BLUE
CEREUS, LLC WITHOUT A HEARING**

This Order addresses the application filed by Commission Staff for an emergency order appointing a temporary manager to Blue Cereus, LLC (Blue Cereus), holder of CCN No. 11088. The Executive Director, on behalf of the Commission,¹ issues this emergency order without a hearing, and sets a hearing on this matter at the March 13, 2019 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, 7th Floor, Austin, Texas, 78701.
2. Blue Cereus holds CCN No. 11088 and operates two public water systems.
3. Blue Cereus currently serves approximately 92 connections.
4. Seguro Water Co., LLC and San Pedro Canyon Water Resources are the wholesale water suppliers for Blue Cereus under two, now expired, agreements to sell and purchase water.
5. On June 1, 2018, Seguro Water Co., LLC and San Pedro Canyon Water Resources sent Blue Cereus a Notice of Default and Notice of Termination (Notice) notifying it that the agreements would terminate on August 30, 2018, absent arrangements for payment of delinquent bills.

¹ Tex. Water Code (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.

6. Seguro Water Co., LLC and San Pedro Canyon Water Resources filed the Notice with the Commission on June 11, 2018 in Docket No. 48455.²
7. Prior to requesting the emergency order, Commission Staff confirmed that Blue Cereus and the wholesale water suppliers were unable to resolve their contract disputes and the wholesale water suppliers intended to shut off the water supply on August 30, 2018. Staff also confirmed that Blue Cereus had no other options for wholesale water supply. Therefore, the discontinuation of water was imminent.
8. On August 30, 2018, the Executive Director of the Commission signed an emergency order appointing Jane Whaley as a temporary manager for Blue Cereus for a term of 180 days to begin on August 30, 2018 and end on March 2, 2019.³ The Commission later affirmed the emergency order in a hearing held on September 14, 2018.⁴
9. In affirming the emergency order, the Commission found that Blue Cereus had abandoned the operation of its facilities under Tex. Water Code (TWC) § 13.412 and under 16 Tex. Admin. Code (TAC) § 24.142(a)(1)⁵ when its wholesale water suppliers notified the utility that they would discontinue wholesale water supply on August 30, 2018 after Blue Cereus failed to pay its water bills.⁶
10. The Commission also found that Blue Cereus had abandoned the operation of its facilities under TWC § 13.4132 and 16 TAC § 24.142(a)(1) when it failed to obtain an alternative water supply during an outage.
11. The original grounds for abandonment continue to exist. Blue Cereus has not satisfied its debts with the wholesale water suppliers. Blue Cereus and the wholesale water suppliers have not reached any agreements in their ongoing contract dispute and have not executed

² *Request of Seguro Water Company, LLC and San Pedro Canyon Water Resources to Place Blue Cereus, LLC Under Temporary Management or Supervision*, Docket No. 48455, Petition (June 11, 2018).

³ Emergency Order (Aug. 30, 2018).

⁴ Order Affirming and Modifying Emergency Order (Sept. 14, 2018).

⁵ As of October 17, 2018, the Commission renumbered 16 TAC Chapter 24. 16 TAC §§ 24.142 and 24.143 are now 16 TAC §§ 24.355 and 24.357, respectively.

⁶ Order Affirming and Modifying Emergency Order at 3 (Sept. 14, 2018).

any new contracts for the wholesale supply of water to Blue Cereus. Blue Cereus has not secured an alternate source of wholesale water.

12. The Commission appointed Jane Whaley as temporary manager of Blue Cereus and ordered that she had all the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate service to customers.⁷
13. The Commission ordered that, as temporary manager, Jane Whaley was to comply with all requirements in 16 TAC § 24.143.⁸
14. Since her appointment as temporary manager, Jane Whaley has not consistently issued monthly customer bills, provided the Commission with an inventory of all property received, or provided monthly reports to the Commission on the income and utility activities of the utility. In addition, she has not made a temporary rate filing.
15. New grounds for abandonment exist. Blue Cereus has frustrated the purpose of the order granting a temporary manager by failing to timely provide Jane Whaley the following: the financial records for Blue Cereus, complete customer contact information (requiring intervention by Commission Staff), and access to Blue Cereus bank accounts. In addition, Jimmy Alan Hall, on behalf of Blue Cereus, contacted the utility's customers by email, implied that Jane Whaley was a third-party vendor, and solicited information from customers about the quality of Ms. Whaley's service.
16. Commission Staff is not seeking, nor has it obtained, an emergency order from TCEQ.
17. Commission Staff requests that the Commission extend the term of the Commission order appointing a temporary manager to Blue Cereus without a hearing. Commission Staff requests an extension of the temporary manager for 180 days, beginning on March 3, 2019 and ending on August 30, 2019.
18. Commission Staff also recommends that the Commission appoint Lynn Sherman as a replacement temporary manager for Blue Cereus.

⁷ *Id.* at 4.

⁸ *Id.* This citation refers to a prior version of Chapter 16 of the TAC. The current citation falls under 16 TAC § 24.357.

II. Conclusions of Law

1. The Commission has jurisdiction over this docket under TWC § 13.041(d)(2) and 16 TAC §§ 24.355 and 24.357.
2. Under TWC § 13.4132 and 16 TAC § 24.355, the Commission may authorize a willing person to temporarily manage and operate a utility if the utility has abandoned operations.
3. TWC § 13.412 and 16 TAC § 24.355 enumerate actions that constitute abandonment, including but not limited to, failure to pay a bill or obligation to a retail public utility with the result that the utility service provider has issued a notice or discontinuance of necessary services;⁹ failure to obtain an alternative water supply during an outage;¹⁰ and hostility towards the Commission.¹¹
4. Blue Cereus continues to abandon the operation of its facilities under TWC § 13.412(f)(1) and 16 TAC § 24.355(c)(1) as it still has not resolved its conflict with the wholesale water providers regarding the past due balance, and the wholesale water suppliers continue to state they will discontinue wholesale water supply as stated in their June 1, 2018 letter.
5. Blue Cereus has also continued to abandon the operation of its facilities under TWC § 13.412(f)(5) and 16 TAC § 24.355(c)(5) as it has failed to obtain an alternative water supply during an outage.
6. Blue Cereus also abandoned the operation of its facilities under TWC § 13.412(f)(6) and 16 TAC § 24.355(c)(6) when it interfered with the temporary manager's ability to meet the conditions of an order.
7. Under 16 TAC § 24.357(g), as temporary manager, Jane Whaley was required to take reasonable steps, including collecting all assets of the utility, carrying on the business of the utility, and using the revenues and assets of the utility in the best interest of the customers to ensure the continued operation of the utility and the provision of continuous and adequate service to the customers.

⁹ TWC § 13.412(f)(1) and 16 TAC § 24.355(c)(1).

¹⁰ TWC § 13.412(f)(5) and 16 TAC § 24.355(c)(5)

¹¹ TWC § 13.412(f)(6) and 16 TAC § 24.355(c)(6).

8. Under 16 TAC §§ 24.357(e) and 24.357(h), as temporary manager, Jane Whaley was required to return an inventory to the Commission of all property received within 60 days after appointment, and to report to the Commission on a monthly basis on the income and utility activities of Blue Cereus.
9. Jane Whaley has not fully complied with the requirements of a temporary manager under 16 TAC § 24.357.
10. The temporary manager 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, including, but not limited to, reading meters, billing for utility service, collecting revenues, disbursing funds, requesting rate increases if needed, assessing 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 under 16 TAC § 24.357.
11. Once appointed, these powers and duties become exclusively those of the temporary manager under 16 TAC § 24.357.
12. Under 16 TAC § 22.299(d), emergency appointment of a temporary manager may be issued with or without a hearing.
13. Under TWC § 13.455 and 16 TAC § 24.14 an emergency order may be renewed once for a period not to extend 180 days.
14. Under 16 TAC § 22.299(d), an emergency order appointing a temporary manager may be issued with or without a hearing. This order sets a hearing on September 14, 2018, at 9:30 a.m. at the Commission's offices in Austin, Texas.

III. Ordering Paragraphs

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

1. Lynn Sherman is appointed temporary manager of Blue Cereus for a term of 180 days to begin on March 3, 2019 and end on August 30, 2019, or until the Commission orders otherwise, whichever occurs first.

2. As temporary manager, Lynn Sherman must take reasonable steps, including collecting all assets of the utility, carrying on the business of the utility, and using the revenues and assets of the utility in the best interest of the customers to ensure the continued operation of the utility and the provision of continuous and adequate service to customers.
3. Blue Cereus, or any agent acting on its behalf, must not interfere with Lynn Sherman's ability to collect all assets of the utility, carry on the business of the utility, or using the revenues and assets of the utility in the best interest of the customers to ensure the continued operation of the utility and the provision of continuous and adequate service to customers. To this end, Blue Cereus, or any agent acting on its behalf, must not collect any customer payments or make any withdrawals from business accounts for Blue Cereus and/or the individual public water systems. Blue Cereus must provide Lynn Sherman with all financial and business records necessary for Mr. Sherman to carry on the business of the utility. Blue Cereus must provide Lynn Sherman access to any and all financial accounts necessary for Mr. Sherman to carry on the business of the utility.
4. Blue Cereus, or any agent acting on its behalf, must not directly contact the customers of the utility regarding retail water service while the temporary manager is in place. "Retail water service" includes billing practices, the provision of water to individual customers, and/or any customer service inquiries regarding management of the Blue Cereus utility. Blue Cereus, or any agent acting on its behalf, also must not make any representations directly or indirectly to the utility's customers that the temporary manager is an agent, employee, or third-party contractor of Blue Cereus.
5. Lynn Sherman must return to the Commission an inventory of all property received within 60 days of appointment as required by 16 TAC § 24.357(e).
6. Blue Cereus must make all of the utility's property available to Lynn Sherman so that Mr. Sherman may comply with the inventory requirement.
7. Lynn Sherman must report to the Commission on a monthly basis. This report must 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.

8. Lynn Sherman must comply with all applicable requirements imposed by the Texas Commission on Environmental Quality.
9. Lynn Sherman is not required to post financial assurance.
10. Lynn Sherman must be compensated for his role as a temporary manager from Blue Cereus's revenues in the amount of six dollars per connection per month.
11. The Commission must provide notice of issuance of this emergency order to Blue Cereus as soon as practicable as required by 16 TAC § 22.293(c).
12. A hearing to affirm, modify or set aside this emergency order must be held at the March 13, 2019 Open Meeting currently scheduled for 9:30 a.m., at the offices of the Commission in Austin, Texas.
13. Commission Staff must provide notice of opportunity to participate in a hearing to affirm, modify, or set aside this emergency order to Blue Cereus no later than the tenth day before the date of the hearing and must provide that Blue Cereus 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 26th day of February 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

JOHN PAUL URBAN, EXECUTIVE DIRECTOR