



Control Number: 51091



Item Number: 45

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SOAH DOCKET NO. 473-21-0246.WS  
PUC DOCKET NO. 51091

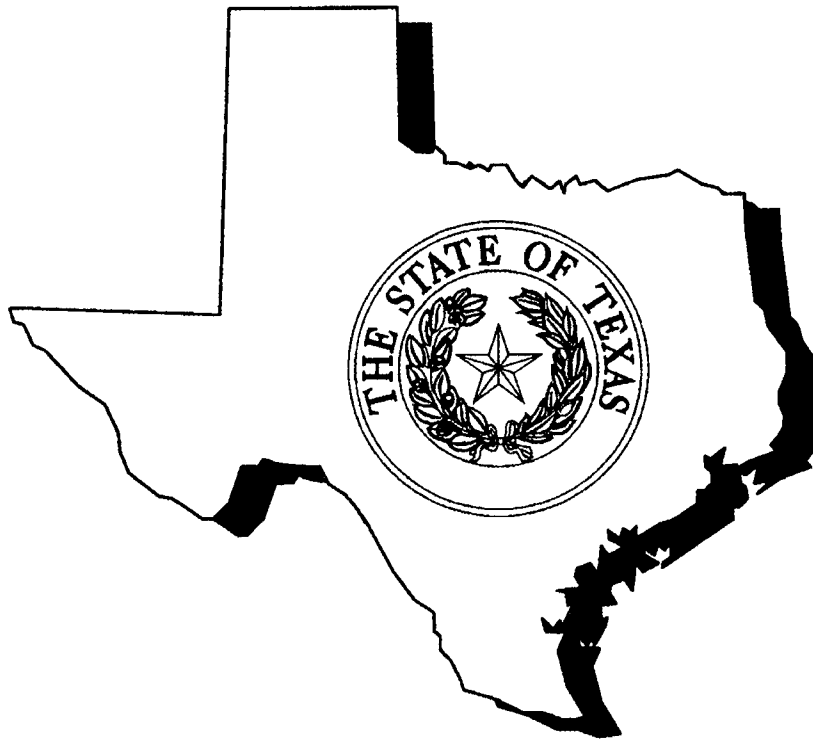
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COMPLAINT OF CERTAIN MEMBERS  
OF RIO ANCHO HOMEOWNERS  
ASSOCIATION AGAINST AQUA  
TEXAS, INC.

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BEFORE THE STATE OFFICE  
PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF  
ADMINISTRATIVE HEARINGS



DIRECT TESTIMONY OF HEIDI GRAHAM  
INFRASTRUCTURE DIVISION  
PUBLIC UTILITY COMMISSION OF TEXAS  
JUNE 28, 2021

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### Attachments

Attachment HG-1	List of Previous Testimonies
Attachment HG-2	Resume
Attachment HG-3	Declaration of Covenants, Conditions, Easements & Restrictions, Rio Ancho Subdivision, Section I

**I. PROFESSIONAL QUALIFICATIONS**

**Q. Please state your name and business address.**

A. Heidi Graham, Public Utility Commission of Texas, 1701 N. Congress Avenue, Austin, Texas 78711-3326.

**Q. By whom are you currently employed and in what capacity?**

A. I have been employed by the Public Utility Commission of Texas (Commission) since September 1, 2014. I am a Lead Engineering Specialist in the Engineering Section of the Infrastructure Division.

**Q. What are your principal responsibilities at the Commission?**

A. My responsibilities include reviewing applications to obtain or amend certificates of convenience and necessity; reviewing applications to obtain or amend rates; providing testimony and participating in settlement negotiations for contested cases; and participating in rulemakings and form development.

**Q. Please state your educational background and professional experience.**

A. I have provided a summary of my educational background and professional regulatory experience in Attachment HG-2 to my direct testimony.

**Q. Have you testified as an expert before the Commission or the State Office of Administrative Hearings (SOAH)?**

A. Yes. Attachment HG-1 provides a summary of the dockets in which I have filed direct testimony or memoranda in lieu of testimony.

**Q. On whose behalf are you testifying?**

A. I am testifying on behalf of the Staff (Staff) of the Public Utility Commission of Texas (Commission).

**II. PURPOSE AND SCOPE OF TESTIMONY**

**Q. What is the purpose of your testimony in this proceeding?**

A. The purpose of my testimony is to address whether Aqua Texas, Inc.'s (Aqua) is providing a continuous and adequate supply of water to the Rio Ancho Subdivision.<sup>1</sup>

**Q. What issues identified by the Commission in the Preliminary Order for this docket will you address?**

A. In my testimony, I will address the following issues identified in the preliminary order issued on November 5, 2021:

4. What is the daily and monthly peak demand for the Rio Ancho system customers?

5. Was Aqua's production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water to the customers of the Rio Ancho subdivision water system (PWS ID number 0270141) for all reasonable customer uses?

6. Did Aqua impose water-use restrictions on water usage in the Rio Ancho subdivision between July 20, 2018, through July 20, 2020?

7. Has Aqua used water-usage restrictions in lieu of providing facilities which meet the minimum capacity requirements of 30 TAC §§ 290.38 through 290.275, or reasonable local demand characteristics during normal use periods, or when Aqua is not making all immediate and necessary efforts to repair or replace malfunctioning equipment under 16 TAC § 24.205(2)? If not, what is the appropriate remedy?

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<sup>1</sup> See, <http://www.puc.texas.gov/agency/rulesnlaws/subrules/water/CH24Complete.pdf>.

1 **Q. What have you relied upon in making your evaluation and arriving at your**  
2 **conclusions and recommendations in the present proceeding?**

3 A. I reviewed the formal complaint filed by the Rio Ancho Homeowners Association and its  
4 individual members, David and Doreen Meyers, and the additional customers listed in  
5 Exhibit 1 of the formal complaint (Complainants), the responses to discovery requests, and  
6 the direct testimony along with the exhibits filed by Aqua and the Complainants.  
7

8 **Q. If you do not address an issue or position in your testimony, should that be interpreted**  
9 **as Staff supporting Aqua's or the Complainants' position on that issue?**

10 A. No. The fact that I do not address an issue or position in my testimony should not be  
11 construed as agreeing with, endorsing, or consenting to any position taken by another party.  
12

13 **Q. Have you prepared any attachments to your testimony?**

14 A. Yes. Attachments HG-1 and HG-2 were prepared by me.  
15

16 **III. ANALYSIS**

17 **Q. Please summarize the Commission's requirement for providing a continuous and**  
18 **adequate supply of water and your opinion about whether Aqua is meeting this**  
19 **requirement.**

20 A. A retail public utility such as Aqua must "plan, furnish, operate, and maintain production,  
21 treatment, storage, transmission, and distribution facilities of sufficient size and capacity  
22 to provide a continuous and adequate supply of water for all reasonable consumer uses."<sup>2</sup>  
23 As part of meeting this requirement, Aqua must meet the minimum standards of the Texas  
24 Commission of Environmental Quality (TCEQ) and must have additional capacity beyond

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<sup>2</sup> 16 Texas Administrative Code (TAC) § 24.205.

those minimum standards “to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock.” In my opinion, Aqua is not meeting the reasonable local demand characteristics of the Rio Ancho Subdivision.

**Q. What are the requirements in the deed restrictions for the Rio Ancho Subdivision?**

A. According to the restrictions, all residences must have well maintained grass, from the rear building projection line of the house, to include side yards, to the street.<sup>3</sup>

**Q. What is your impression of the size of the lots in the Rio Ancho Subdivision?**

A. I reviewed several realtor websites advertising homes in the Rio Ancho Subdivision and the lots appear to be large according to the descriptions, varying from approximately a half-acre to an acre. Residents of the Rio Ancho subdivision also indicated the lots in the subdivision are approximately one acre.<sup>4</sup>

**Q. Does the TCEQ have a requirement for a water utility to provide adequate water utility service during periods of peak demand?**

A. Yes. TCEQ rule, 30 TAC § 290.41(b), requires that sources of supply have a safe yield capable of supplying the maximum daily demands of the distribution system during extended periods of peak usage and critical hydrologic conditions. The pipelines and pumping capacities to treatment plants or distribution systems must also meet this requirement.<sup>5</sup>

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<sup>3</sup> Attachment HG-3, Declaration of Covenants, Conditions, Easements & Restrictions, Rio Ancho Subdivision, Section I at 23.

<sup>4</sup> Direct Testimony of Don Kevin Hay at 5 (April 16, 2021).

<sup>5</sup> See, <https://www.tceq.texas.gov/assets/public/legal/rules/rules/pdflib/290d.pdf>

**Q. What are the definitions of peak month and peak day demand?**

A. Monthly peak demand is the highest usage month during a specific period of time and the peak daily demand is the highest usage day during a specific period of time.

**Q. What was the monthly and daily peak demands for the Rio Ancho system customers that occurred during the period of July 20, 2018, through 2020?**

A. Aqua witness William Peña provided the peak month and peak day usage for years 2018 through 2020.<sup>6</sup> I have summarized the amounts in the tables below.

	Peak Month usage June (Gallons)	Peak Day usage June (Gallons)	Connections	GPD/connection	Peak Day/Connection
2020	4,073,000	152,714	158	921	967

	Peak Month Usage July (Gallons)	Peak Day Usage July (Gallons)	Connections	GPD/connection	Peak Day/Connection
2018	3,318,000	119,400	137	865	872
2019	4,319,000	156,600	149	1,035	1,051

	Peak Month Usage August (Gallons)	Peak Day Usage August (Gallons)	Connections	GPD/connection	Peak Day/Connection
2019	4,237,000	172,571	150	1,009	1,150
2020	4,003,000	143,571	164	872	875

<sup>6</sup> Direct Testimony of William Peña, Attachment WP-3 at Bates 41 (Peña Direct) (May 21, 2021).

1  
2 **Q. In what circumstances do you consider usage abnormally high with regard to the use**  
3 **of a drought contingency plan (DCP)?**

4 A. It is my opinion that high usage does not occur on a regular basis and would be abnormal.  
5 As shown in the peak demand information that I previously provided on page 7 of my  
6 testimony, peak usage has occurred in July 2018, July 2019, August 2019, August 2020,  
7 and June 2020. It appears that there is a pattern for this particular public water system of  
8 high usage in the summer months, which, therefore, would not be considered abnormal  
9 usage. A pattern of high usage during the summer months is normal, not abnormal.  
10

11 **Q. Is a DCP required to be approved by TCEQ?**

12 A. No. According to TCEQ's website, retail public water suppliers with less than 3,300  
13 connections must prepare and adopt an updated drought contingency plan and make the  
14 plan available for inspection by TCEQ, but they are not required to submit the plans to  
15 TCEQ for review or approval.<sup>7</sup>  
16

17 **Q. Has Aqua imposed water-use restrictions in the Rio Ancho subdivision?**

18 A. Yes. Mr. Peña stated in his direct testimony that, beginning July 20, 2018, Aqua imposed  
19 water-use restrictions using Aqua's adopted DCP and continues that practice today.<sup>8</sup>  
20

21 **Q. Why did Aqua implement water use restrictions in the Rio Ancho Subdivision**  
22 **through its DCP?**

23 A. According to Aqua witness Scott Fultz, Aqua utilizes the DCP to maintain an adequate

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<sup>7</sup> See, [https://www.tceq.texas.gov/permitting/water\\_rights/wr\\_technical-resources/contingency.html](https://www.tceq.texas.gov/permitting/water_rights/wr_technical-resources/contingency.html)

<sup>8</sup> Peña Direct at 5.

1 supply of water during the various stages of drought conditions or other water supply  
2 emergencies, which may occur from time to time, and to enable Aqua to comply with the  
3 requirements of a court, government agency, ground water district, wholesale provider or  
4 other authority.<sup>9</sup> According to Mr. Peña, “with the system improvements made in 2020,  
5 the system exceeds TCEQ minimum capacity requirements and is projected to through  
6 build-out”. However, he also indicated that the current system is only adequate to provide  
7 a continuous and adequate supply of water to Rio Ancho System customers for all  
8 reasonable uses if the outdoor water use is restricted to 1,523 gallons per day (GPD) per  
9 lot (connection) per irrigation day based on Aqua’s prescribed twice weekly watering  
10 schedule.<sup>10</sup>

11  
12 **Q. What temporary restrictions exist on Aqua’s use of the DCP to limit water use in the**  
13 **Rio Ancho Subdivision?**

14 A. Under the Commission’s rule, 16 TAC § 24.205(2), a retail public utility such as Aqua may  
15 limit water usage using its DCP in cases of drought, periods of abnormally high usage, or  
16 extended reduction in ability to supply water due to equipment failure, or to comply with  
17 a state agency or court order on conservation or other reasons identified in the utility’s  
18 approved DCP. In addition, the use of the restrictions must be temporary. Furthermore,  
19 unless specifically authorized by TCEQ, a retail public utility may not use water use  
20 restrictions in lieu of providing facilities that meet the minimum capacity requirements of  
21 TCEQ’s rules, 30 TAC Chapter 290 (relating to Public Drinking Water), or reasonable  
22 local demand characteristics during normal use periods, and may not use water use  
23 restrictions if it is not making all immediate and necessary efforts to repair or replace

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<sup>9</sup> Direct Testimony of Scot W. Foltz at 16 (Foltz Direct) (May 21, 2021).

<sup>10</sup> Peña Direct at 22.

malfunctioning equipment.<sup>11</sup>

**Q. Is Aqua's production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water to the customers of the Rio Ancho subdivision water system (PWS ID number 0270141) for all reasonable customer uses?**

A. No. Aqua is not providing a continuous and adequate supply of water to meet the reasonable customer usage in the Rio Ancho subdivision. While Aqua's water system meets the minimum TCEQ standards for production, treatment, storage, transmission, and distribution facilities for household usage, it does not provide the capacity required to meet the reasonable local demand for outside usage in the Rio Ancho Subdivision.

**Q. What is your opinion regarding Mr. Foltz's testimony that the Rio Ancho Water System production is limited because the wells are subject to a maximum allowable withdrawal limits set by the local groundwater conservation district?**

A. It appears that not all of the wells' production are limited by the local groundwater conservation district. Mr. Foltz stated that two of the three water system wells are in Burnet County and are regulated by the Central Texas Ground Water Conservation District (CTGCD).<sup>12</sup> The well production permit for these two wells was issued by the CTGCD's board of directors in 2018 and are permitted to withdraw 81.65 acre feet per year which is 72,853 gallons per day (26,609,735/365.25=72,853). The permit expired on September 11, 2020, and an updated permit was not provided by Aqua in its witnesses' testimony. Per Mr. Fultz, the third well is located in Williamson County and is therefore outside the

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<sup>11</sup> See, <http://www.puc.texas.gov/agency/rulesnlaws/subrules/water/CH24Complete.pdf>.

<sup>12</sup> Foltz Direct at 7.

CTGCD's jurisdiction.<sup>13</sup> According to Complainants witness Donald Rauschuber, during his site inspection on December 10, 2019, the Aqua operator stated that Well No. 3 only operates between the hours of 2:00 AM and 6:00 AM of each day and is off during all other hours of the day. Per Mr. Rauschuber's testimony, no explanation for the Well No. 3 production restriction was provided.<sup>14</sup> Because Well No. 3's withdrawal is not restricted by the CTGCD, it may have the ability to provide the capacity during peak periods if its production is not restricted to the hours between 2:00 AM and 6:00 AM. In addition, Aqua has not shown that it cannot drill another well if it is needed to meet customer demand.

**Q. What remedy do Commission rules provide when a retail public utility does not meet the Commission's requirements relating to the adequacy of water utility service?**

A. 16 TAC § 24.247(b) states that after notice and hearing, the Commission may order any retail public utility that is required by law to possess a certificate of public convenience and necessity to provide specified improvements in its service in a defined area if service in that area is inadequate as set forth in 16 TAC § 24.205. In my opinion, the water service provided by Aqua in the Rio Ancho Subdivision is inadequate with regard to the requirement to provide the capacity needed to meet local demand.

**Q. Are you addressing how Aqua should recover reasonable and necessary costs to supply water to the Rio Ancho Subdivision?**

A. No. That issue will be addressed in a future rate case.

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<sup>13</sup> Foltz Direct at 8.

<sup>14</sup> Direct Testimony of Donald G. Rauschuber at 16 (April 16, 2021).

**IV. RECOMMENDATIONS**

**Q. Please summarize your recommendations.**

A. I recommend that the Commission order Aqua to:

- Expand its capacity to meet the demand characteristics of the Rio Ancho Subdivision, with a deadline of 12 months from the Commission's order for the expansion to be operational; and
- Discontinue using its DCP in lieu of expanding its capacity to serve the Rio Ancho Subdivision once the expanded capacity is operational.

**Q. Please explain the deadline you are recommending for the capacity expansion to be operational.**

A. According to 30 TAC § 290.39, public water systems are required to submit plans and specifications prepared by a Texas professional engineer for construction approval to TCEQ before the facilities may be constructed.<sup>15</sup> The typical review period for a submittal is 60 days. In addition to construction approval, a public water supply well must also be approved for use by the TCEQ before it may supply water to the public. If exceptions are required, they must be submitted to the TCEQ and approved before requesting construction approval. The typical exception review period is 100 days. Construction may take up to 6 months or longer.

**V. CONCLUSION**

**Q. Does this conclude your direct testimony?**

A. Yes.

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<sup>15</sup> 30 TAC § 290.39

**Heidi Graham**  
**Public Utility Commission of Texas (PUCT)**  
**List of Previous Testimonies**

**Testimonies for TCEQ Staff**

Docket	Company	Application Type
SOAH 582-08-4354	James Maib dba H2O Systems Plus	Rate application - Water
SOAH 582-08-2863	Lower Colorado River Authority	Rate Appeal - Water
SOAH 582-08-4353	Interim-La Ventana	Sale, Transfer, Merger - Water
SOAH 582-09-0660	North San Saba WSC	Rate Appeal - Water
SOAH 582-09-0592	City of Nixon	CCN Amendment - Water
SOAH 582-10-3422	Denton Co. WCID No. 1	Rate Appeal - Water
SOAH 582-10-5999	City of Kerrville	CCN Amendment - Water
SOAH 582-13-4616	HHJ dba Decker Utilities	Rate Application - Water and Sewer
SOAH 582-13-4616	M.E.N. WSC	Cost of Service Appeal - Water

**Testimonies for PUCT Staff**

PUC Docket	SOAH Docket	Company	Application Type
42858	473-14-0366	SJWTX, Inc.	Rate Application - Water
42857	473-14-5138	City of Austin	Wholesale Appeal
42866	473-14-5144.WS	West Travis County PUA	Wholesale Appeal
42862	473-14-5139	Town of Woodloch	Rate Appeal – Water and Sewer
42860	473-14-5140	Douglas Utility Company	Rate Settlement – Water and Sewer
42864	473-14-5146	Enchanted Harbor	Rate Application - Water
42919	473-15-0372	Double Diamond	Rate Application - Water
42924	473-15-0371	Crystal Springs Water Co. Inc.	CCN Amendment - Water
42942	473-15-0623.WS	Castle Water, Inc.	Rate Application - Water
43554	473-15-1230.WS	Mansions of Turkey Creek	Rate Appeal – Water and Sewer
44046	473-15-4390.WS	Laguna Vista/Laguna Tres	Sale Transfer Merger
44657	473-16-0927.WS	Interim-La Ventana	Sale Transfer Merger
43076	473-16-2094.WS	Consumers Water, Inc.	Rate Application - Water
45570	473-16-2873.WS	Monarch Utilities I, LP	Rate Application – Water and Sewer
46256	473-17-1641.WS	Liberty Utilities	Rate Application –Sewer
46662	473-17-4964.WS	North Texas MWD	Wholesale Appeal
47814	473-18-1344.WS	City of Forney	Wholesale Appeal
50944	473-20-4709.WS	Monarch Utilities I, LP	Rate Application – Water and Sewer
50788	473-20-4071.WS	Windermere Oaks WSC	Rate Appeal – Water and Sewer

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**Work Experience**

**Program Specialist VII, Lead Engineering Specialist**

4/2020 – Present, Public Utility Commission of Texas, Austin, Texas

Review applications to obtain or amend certificates of convenience and necessity (CCN); review applications to increase rates; provide testimony for contested cases, participating in negotiating settlements for those cases; and participate in rulemakings and application and form development.

**Program Specialist VII, Director of the Water Utility Engineering Section**

5/2016 – 4/2020, Public Utility Commission of Texas, Austin, Texas

Lead a team of experts who review applications to obtain or amend certificates of convenience and necessity (CCN); review applications to increase rates; provide testimony for contested cases and participating in negotiating settlements for those cases; and participate in rulemakings and application and form development.

**Engineering Specialist V**

9/2014 – 5/2016, Public Utility Commission, Austin, Texas

Process Convenience and Necessity (CCN) applications. Perform depreciation studies, quality of service evaluations, design rates for rate applications and testify in hearings.

**Engineering Specialist V**

12/2006 – 8/2014, Texas Commission on Environmental Quality, Austin, Texas

Review plans, specifications, and engineering reports for new or modified public water systems to ensure compliance with Federal and State standards. Process Convenience and Necessity (CCN) applications. Perform depreciation studies, quality of service evaluations, design rates for rate applications and testify in hearings.

**Education**

8/1983 - 5/1988, University of Missouri, Rolla, Missouri

Bachelor's Degree in Mechanical Engineering

Declaration of Covenants, Conditions, Easements & Restrictions  
Rio Ancho Subdivision, Section I