



Filing Receipt

Received - 2022-04-18 02:26:44 PM
Control Number - 53500
ItemNumber - 2

DOCKET NO. 53500

REQUEST FOR AN EMERGENCY	§	PUBLIC UTILITY COMMISSION
ORDER APPOINTING A TEMPORARY	§	
MANAGER FOR MARION J. SMITH	§	OF TEXAS
DBA SMITH MANAGEMENT	§	
SERVICES WITHOUT A HEARING	§	

**COMMISSION STAFF’S REQUEST FOR AN EMERGENCY ORDER APPOINTING A
TEMPORARY MANAGER FOR MARION J. SMITH DBA SMITH MANAGEMENT
SERVICES WITHOUT A HEARING**

For the reasons discussed below, Commission Staff requests that the executive director of the Public Utility Commission of Texas issue an emergency order appointing Intermediary Solutions Holdings, LLC to temporarily manage and operate Marion J. Smith dba Smith Management Services. The executive director should issue this emergency order and set 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:

I. JURISDICTION AND LEGAL AUTHORITY

Under Texas Water Code (TWC) § 13.4132(a) and 16 Texas Administrative Code (TAC) § 24.355(a)(1), the Commission may appoint a willing person to temporarily manage and operate a utility if the utility has abandoned operations. Under 16 TAC § 24.355(c), actions constituting abandonment can include, but are not limited to, a utility’s “failure to adequately maintain facilities or provide sufficient facilities resulting in potential health hazards, extended outages, or repeated service interruptions;”¹ a utility’s “failure to secure an alternative available water supply during an outage;”² or a utility “repeatedly failing to respond to the commission or the utility’s customers.”³ Under TWC § 13.4132(b) and 16 TAC § 24.357(a), the Commission may appoint a temporary manager by emergency order.

A person appointed as temporary manager under TWC § 13.4132(c) and 16 TAC § 24.357(b) has the powers and duties necessary to ensure the continued operation of the utility

¹ 16 TAC § 24.355(c)(3).

² 16 TAC § 24.355(c)(5).

³ 16 TAC § 24.355(c)(6).

and the provision of continuous and adequate services to customers. One such duty requires a temporary manager to post financial assurance with the Commission, unless the temporary manager or the Commission's executive director asks for a waiver of the financial assurance or requests substitution of another means of collateral.⁴ Within 60 days of appointment, a temporary manager must make and return to the Commission an inventory of all property received.⁵ Compensation for the temporary manager comes from the utility revenues and is set by the Commission at the time of appointment.⁶ The temporary manager must collect the assets and carry on the business of the utility and use the revenues and assets of the utility in the best interests of the customers to ensure the provision of continuous and adequate service.⁷ The temporary manager is required to report to the Commission on a monthly basis the following items: an income statement for the reporting period; a summary of utility activities, such as improvements or repairs made, number of connections added, and the amount of water produced or treated; as well as any other information required by the Commission.⁸

The Commission has the authority to appoint a temporary manager by emergency order without notice or an opportunity for a hearing.⁹ Under TWC § 13.451(b), the Commission may delegate to the Commission's executive director the authority to issue emergency orders under Subchapter K-1 of the TWC, and the Commission did delegate such authority in an order issued on December 4, 2015, in Project No. 43517. Notice required under the Administrative Procedures Act¹⁰ does not apply to an emergency order issued under Subchapter K-1 of the TWC.¹¹ However, 16 TAC § 22.293(c) requires the Commission to provide notice to the affected utility "as soon as practicable," and, under 16 TAC § 22.297(d)(2), the Commission or executive director must set a time and place for a hearing held in accordance with 16 TAC § 22.299 to affirm, modify, or set aside the emergency order.

⁴ 16 TAC § 24.357(c).

⁵ 16 TAC § 24.357(e).

⁶ 16 TAC § 24.357(f).

⁷ 16 TAC § 24.357(g).

⁸ 16 TAC § 24.357(h).

⁹ TWC § 13.451(a) and 16 TAC §§ 24.14(a)(1) and 24.355(b).

¹⁰ Administrative Procedures Act, Tex. Gov't. Code §§ 2001.001-.902 (APA).

¹¹ TWC § 13.451(c).

An emergency order issued under Subchapter P of 16 TAC § 22 must contain a description of the condition justifying the issuance of the order; any findings of fact required; a statement on the term of the order, including the dates on which the order will begin and end; and a description of the action sought.¹² The term of an emergency order issued in accordance with 16 TAC § 24.14(a)(1) is limited to 180 days, though it may be renewed once for a period not to exceed 180 days.¹³

II. FACTUAL ALLEGATIONS

Marion J. Smith dba Smith Management Services (SMS) holds certificate of convenience and necessity number 11168, issued by the Texas Water Commission on September 30, 1991.¹⁴ SMS operates four public water systems in Lubbock County: (1) Town North Village Water System,¹⁵ (2) Plott Acres,¹⁶ (3) Cox Addition Water System,¹⁷ and (4) Town North Estates.¹⁸ Collectively, the four public water systems serve approximately 298 connections. As a person or corporation owning or operating for compensation facilities for the distribution, sale, or provision of potable water to the public, SMS is a utility as defined by the TWC and Commission rules.¹⁹

On April 20, 2021, the Texas Commission for Environmental Quality's Lubbock Regional office received five separate complaints of a water outage at Town North Village Water System.²⁰ Complainants also informed TCEQ Staff that they were unable to contact utility representatives of SMS for weeks. In response to the complaints, TCEQ Staff determined that the listed owner and operator of SMS, Marion J. Smith, passed away in January 2021.²¹ At the time of his death, the

¹² 16 TAC § 22.298(2)-(5).

¹³ 16 TAC § 24.14(f) and (g).

¹⁴ See Attachment 1.

¹⁵ PWS ID No. 1520094.

¹⁶ PWS ID No. 1520062.

¹⁷ PWS ID No. 1520106.

¹⁸ PWS ID No. 1520152.

¹⁹ TWC § 13.002(23) and 16 TAC § 24.3(39).

²⁰ *In the Matter of An Enforcement Action Against Margenell Smith, Executor of the Estate of Marion J. Smith*; RN101272060; RN101451417; RN 101221117; RN 101270890, Docket No. 2021-0574-UCR-E, Order Modifying Emergency Order Appointing a Temporary Manager of a Water Utility, Findings of Fact No. 5 (July 7, 2021). Attachment 2.

²¹ *Id.* at Findings of Fact No. 7.

utility was being operated by Jimmy Midkiff, who, during the spring of 2021, suffered a serious medical emergency which caused him to stop operating the utility completely. TCEQ Staff determined that the water outage was caused when electric power was shut off to the system due to nonpayment of electric bills.²²

Additionally, on April 21, 2021, TCEQ Staff documented SMS' failures to maintain appropriate water treatment at Town North Village Water System, Plott Acres, and Town North Estates, and found that no licensed operator could be identified at any of the four public water systems.²³ SMS failed to notify its customers of potential health hazards²⁴ and did not secure an alternative water supply during the April 20, 2021 outage.²⁵

Finally, TCEQ's investigation found that all real property associated with SMS is owned by the Estate of Marion J. Smith, and that Lubbock County Court named Margenell Smith as executor of the Estate of Marion J. Smith.²⁶ As of April 14, 2022, probate of the estate remained ongoing under case number 2021-767/895 in Lubbock County.

On May 5, 2021, the executive director of TCEQ issued an emergency order appointing Intermediary Solutions Holdings LLC as temporary manager of SMS.²⁷ On July 7, 2021, TCEQ modified the emergency order appointing Intermediary Solutions as temporary manager for a term that expired on November 1, 2021.²⁸ On November 2, 2021, the executive director of TCEQ issued a second emergency order renewing the appointment of Intermediary Solutions as temporary manager.²⁹ On January 19, 2022, TCEQ affirmed Intermediary Solution's re-appointment for a term set to expire on May 1, 2022.³⁰

²² *Id.* at Findings of Fact No. 6.

²³ *Id.* at Findings of Fact No. 8.

²⁴ *Id.* at Findings of Fact No. 9.

²⁵ *Id.* at Findings of Fact No. 12.

²⁶ *Id.* at Findings of Fact No. 1.

²⁷ Docket No. 2021-0574-UCR-E, Emergency Order Appointing a Temporary Manager of a Water Utility, (May 5, 2021).

²⁸ Docket No. 2021-0574-UCR-E, Order Modifying Emergency Order Appointing a Temporary Manager of a Water Utility, (July 7, 2021).

²⁹ Docket No. 2021-0574-UCR-E, Emergency Order Renewing the Appointment of a Temporary Manager of a Water Utility, (Nov. 2, 2021).

³⁰ Docket No. 2021-0574-UCR-E, Order Affirming Emergency Order Renewing the Appointment of a Temporary Manager of a Water Utility, (Jan. 19, 2022). Attachment 3.

III. RECOMMENDATION FOR APPOINTMENT OF A TEMPORARY MANAGER

Commission Staff recommends that the executive director appoint a temporary manager for SMS under TWC § 13.4132 and 16 TAC §§ 24.355 and 24.357. The utility has abandoned operations by failing to pay a bill to an electric utility with the result of discontinuance of service,³¹ failing to provide appropriate water treatment so that a potential health hazard results,³² failing to provide customers adequate notice of a health hazard or potential health hazard,³³ failing to secure an alternative available water supply during an outage,³⁴ and repeatedly failing to respond to the utility's customers.³⁵

Commission Staff recommends that the executive director appoint Intermediary Solutions as temporary manager. Intermediary Solutions has served as temporary manager since May 5, 2021 and is willing to continue serving as temporary manager.

Commission Staff requests that the emergency order appointing a temporary manager for SMS become effective May 2, 2022 and remain in effect for 180 days or until Intermediary Solutions is discharged from these responsibilities by the Commission or a superseding action is taken by an appropriate court, whichever occurs earlier. Commission Staff further requests that the order include a requirement that Intermediary Solutions maintain its operator licenses and comply with TCEQ rules for the duration of its appointment as temporary manager. Finally, Commission Staff requests a waiver of the requirement in 16 TAC § 24.357(c) regarding the temporary manager's duty to post financial assurance with the Commission. A proposed emergency order is included with this request as Attachment 4.

³¹ 16 TAC § 24.355(c)(1). Commission Staff notes that "electric utility" is not defined in the TWC, and absent a direct reference to the more limited definition contained in the Tex. Util. Code, Commission Staff interprets "electric utility" in line with the Texas Code Construction Act, particularly Tex. Gov't Code § 311.011, which states that terms should be "construed according to the rules of grammar and common usage." Commission Staff believes that, for the purpose of interpreting TWC § 13.412(f) and 16 TAC § 24.355(c)(1), the common usage of "electric utility" would include any entity selling electric energy under a retail contract.

³² 16 TAC § 24.355(c)(2).

³³ 16 TAC § 24.355(c)(4).

³⁴ 16 TAC § 24.355(c)(5).

³⁵ 16 TAC § 24.355(c)(6).

IV. TEMPORARY MANAGER COMPENSATION

Under 16 TAC § 24.357(f), a temporary manager may be compensated for its services. The compensation amount is to come from utility revenues and is set by the Commission at the time of appointment. Commission Staff respectfully requests that the executive director establish a rate of \$12.00 per connection per month as Intermediary Solutions' compensation for its work as temporary manager for SMS. This is the same amount authorized in the two emergency orders issued by TCEQ.³⁶

V. HEARING TO AFFIRM, MODIFY OR SET ASIDE THE ORDER

Under 16 TAC § 22.297(d)(1), an emergency order issued without a hearing is not subject to the requirements of the APA. However, the executive director must set a time and place for a hearing to be held before the Commission or the State Office of Administrative Hearings to affirm, modify, or set aside the order as soon as practicable.³⁷ Commission Staff recommends that the hearing to affirm, modify, or set aside should be set for the Commission's open meeting currently scheduled for May 12, 2022, at the Commission's offices in Austin, Texas.

VI. NOTICE

Commission Staff will deliver a copy of this request by certified mail, return receipt requested, to the last known addresses of SMS' headquarters.³⁸

Margenell Smith
Executor of Estate of Marion J. Smith
4406 9th Street
Lubbock, TX 79416

Commission Staff will also provide a copy of this request by regular mail to Intermediary Solutions' last known address in the Commission's records:

³⁶ Docket No. 2021-0574-UCR-E, Order Modifying Emergency Order Appointing a Temporary Manager of a Water Utility, Ordering Paragraph No. 7, (July 7, 2021), and Docket No. 2021-0574-UCR-E, Order Affirming Emergency Order Renewing the Appointment of a Temporary Manager of a Water Utility, Ordering Paragraph No. 7, (Jan. 19, 2022).

³⁷ 16 TAC § 22.299(d).

³⁸ 16 TAC § 22.293(c).

Brian Parker
Intermediary Solutions Holdings, LLC
P.O. Box 8
Frisco, TX 75034

VII. CONCLUSION

For the reasons detailed above, Commission Staff respectfully requests that the executive director issue an emergency order to appoint Intermediary Solutions as temporary manager of SMS.

Dated: April 18, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
DIVISION OF COMPLIANCE AND ENFORCEMENT**

/s/
Barksdale English
Division Director
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7365
(512) 936-7268 (facsimile)
barksdale.english@puc.texas.gov

ATTACHMENT 1

THE STATE OF TEXAS
TEXAS WATER COMMISSION TRAVIS



I hereby certify that this is a true and correct copy of a Texas Water Commission Document, the original of which is filed in the permanent records of the Commission.

Given under my hand and the seal of office on
SEP 30 1991

Gloria A. Valquez
Gloria A. Valquez, Chief Clerk

CERTIFICATE OF CONVENIENCE AND NECESSITY, Water Commission

To Provide Water Service Under V.T.C.A., Water Code
and Texas Water Commission Substantive Rules

Certificate No. 11168

I. Certificate Holder:

Name: Marion J. Smith dba Smith Management Services
Address: 4406 9th Street
Lubbock, Texas 79416

II. General Description and Location of Service Area:

The Cox Addition Subdivision is located approximately 7.5 miles northwest of Lubbock, Texas. The service area is bounded on the west by Farm to Market Road 2528 and on the east by an unmarked, graded and drained road.

The Plott Acres Subdivision is located approximately 10 miles northwest of Lubbock, Texas. The service area is generally bounded on the west by Farm to Market Road 179 and on the north by an unmarked, graded and drained road.

The Town North Estates Subdivision is located approximately 9.5 miles northwest of Lubbock, Texas, on U. S. Highway 84. The service area is generally bounded on the north by Stonehill Street and on the west by North Saratoga Avenue in Lubbock County, Texas.

The Town North Village Subdivision is located approximately 12.5 miles northwest of Lubbock, Texas, and directly north of Shallowater, Texas. The service area is bounded on the east by an unnamed county road and is generally bounded on the southwest by the Atchison, Topeka and Santa Fe Railway.

III. Certificate Maps:

The certificate holder is authorized to provide water service in the area identified on the Commission's official service area map, WRS-152, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued under Application No. 8954-S and subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: SEP 23 1991

ATTEST: Blanca A. Vazquez John Hall
For the Commission

ATTACHMENT 2

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF
AN ENFORCEMENT ACTION
AGAINST
MARGENELL SMITH, EXECUTOR OF
THE ESTATE OF MARION J. SMITH;
RN101272060; RN101451417;
RN 101221117; RN 101270890**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**ORDER MODIFYING EMERGENCY ORDER
APPOINTING A TEMPORARY MANAGER OF A WATER UTILITY
DOCKET NO. 2021-0574-UCR-E**

On June 30, 2021, the Texas Commission on Environmental Quality ("TCEQ" or "Commission") considered whether to affirm, modify, or set aside an Emergency Order in the matter regarding Margenell Smith, Executor of the Estate of Marion J. Smith. The Emergency Order was issued by the Executive Director without a hearing on May 5, 2021. The Emergency Order and the notice of the June 30, 2021, agenda hearing to affirm, modify, or set aside the Emergency Order were hand delivered to Margenell Smith on May 6, 2021, and sent by certified mail return receipt requested, and first class mail, postage prepaid, to Margenell Smith's last known addresses on May 12, 2021. The Emergency Order was affixed to the fences surrounding Town North Village, Plott Acres, Cox Addition, and Town North Estates. The Commission finds that the Executive Director appropriately issued the Emergency Order and that the requirements for an emergency order found in Chapters 5 and 13 of the Texas Water Code have been satisfied.

**NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY ORDERS THAT:**

The May 5, 2021, Emergency Order Appointing a Temporary Manager of a Water Utility, attached hereto as Exhibit A and incorporated into this Order by reference, is affirmed with the following modification:

In order to correct a typographical error, the number "4409" in Findings of Fact No. 4 shall be replaced with the number "4406".

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

Exhibit A
EMERGENCY ORDER
APPOINTING A TEMPORARY MANAGER
OF A WATER UTILITY

Signed by the Executive Director on May 5, 2021

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 12, 2021

Via First Class Mail, and Certified Mail, Return Receipt Requested,

Margenell Smith
4406 9th Street
Lubbock, Texas 79416
Article No. 7019 2280 0000 0669 7230

Via Hand Delivery

Town North Village, RN101272060; Plott Acres, RN101451417;
Cox Addition, RN 1012211167; Town North Estates, RN 101270890.

Re: MARGENELL SMITH, EXECUTOR OF THE ESTATE OF MARION J. SMITH
TCEQ Docket No. 2021-0574-UCR-E
Notice of Emergency Order and of Hearing to Modify, Affirm, or Set Aside

Dear Ms. Smith:

On May 5, 2021, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued an Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made the subject of this order is Margenell Smith, Executor of the Estate of Marion J. Smith. The Emergency Order appointed Intermediary Solutions Holdings LLC as temporary manager of the public water systems located in Lubbock County, Texas (the "Utility").

Pursuant to TEX. WATER CODE § 5.504 the Commission will consider whether to affirm, modify, or set aside the Emergency Order issued on May 5, 2021. Therefore, the Executive Director has scheduled this matter to be presented at the Commission's regular Agenda meeting on **June 30, 2021**. The Agenda begins at **9:30 a.m.** and will be held at **TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201 S, Austin, Texas.**

On March 16, 2020, in accordance with section 418.016 of the Texas Government Code, Governor Abbott suspended various provisions of the Open Meetings Act that require government officials and members of the public to be physically present at a specified meeting location. To confirm how the meeting will be held, please visit the Commissioner's Agenda webpage at:
https://www.tceq.texas.gov/agency/decisions/agenda/comm/comm_agendas.html eight days before the Agenda.

MARGENELL SMITH, EXECUTOR OF THE ESTATE OF MARION J. SMITH
TCEQ Docket No. 2021-0574-UCR-E
May 12, 2021
Page 2

The enclosed documentation is provided to you as a record of the materials that have been submitted to the Chief Clerk's Office and will be used in the Commission's Agenda process.

Additionally, please be advised that, pursuant to 30 TEX. ADMIN. CODE § 35.25(c), **at the June 30, 2021 Agenda meeting, you may request an evidentiary hearing on the issuance of the Emergency Order.**

If you have any questions, please contact the TCEQ Litigation Division at (512) 239-3400.

Sincerely,



Benjamin Warms, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality
Ben.Warms@tceq.texas.gov

Enclosures

cc: John Henry Keith, Lubbock Regional Office
Jason Lindeman, Lubbock Regional Office
Nima Momtahan, Water Supply Division
Vic McWherter, Office of Public Interest Counsel
Melissa Cordell, Enforcement Division
Eleanor D'Ambrosio, Office of the Public Utility Commission
Department of Utility Outreach, Office of the Public Utility Commission
Intermediary Solutions Holdings LLC., Temporary Manager, 5 Sawgrass Court
Frisco, Texas 75034-6806

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



TCEQ DOCKET NO. 2021-0574-UCR-E

IN THE MATTER OF	§	BEFORE THE
AN ENFORCEMENT ACTION AGAINST	§	
MARGENELL SMITH, EXECUTOR OF	§	TEXAS COMMISSION ON
THE ESTATE OF MARION J. SMITH;	§	
RN101272060; RN101451417;	§	ENVIRONMENTAL QUALITY
RN 101221117; RN 101270890	§	

**EMERGENCY ORDER
APPOINTING A TEMPORARY MANAGER
OF A WATER UTILITY**

On May 5, 2021, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued this Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made subject to this Emergency Order is Margenell Smith, Executor of the Estate of Marion J. Smith.

I. FINDINGS OF FACT

1. The Estate of Marion J. Smith owns the following public water systems: (1) Town North Village, located at 7916 County Road 5840, Lubbock County, Texas; (2) Plott Acres, located at 8604 County Road 6440, Lubbock County, Texas; (3) Cox Addition, located at 5812 County Road 6150, Lubbock County, Texas; and (4) Town North Estates located at 6823 County Road 1630 in Lubbock County, Texas (collectively, the "Utility")¹
2. The Utility operates pursuant to Certificate of Convenience and Necessity No. 11168 ("CCN 11168").² (Exhibit A)
3. The Utility provides potable water service for compensation to approximately 120 service connections at Town North Village; approximately 68 service connections at Plott Acres; approximately 38 service connections at Cox Addition; and approximately 72 service connections at Town North Estates. Each system serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Utility consists of four public water systems as defined in 30 TEX. ADMIN. CODE § 290.38(71).

¹ All real Property that the Utility is located on is owned by either The Estate of Marion J. Smith or Smith Management Services, which is an assumed name of Marion J. Smith for business conducted as a Sole Proprietorship. The Lubbock County Court has named Margenell Smith as executor of The Estate of Marion J. Smith. At the time of this Order, probate of the estate is ongoing under the case number 2021-767/895 in Lubbock County. TCEQ has not received information indicating that the Utility has been distributed from the Estate.

² The CCN is held by Marion J. Smith dba Smith Management Services.

4. Commission records show that the last known mailing address for Margenell Smith, Executor of the Estate of Marion J. Smith is:

4409 9th Street
Lubbock, Texas 79416
5. On April 20, 2021, the TCEQ Lubbock Regional office received numerous complaints of a water outage at Town North Village; complainants also reported that they had been unable to get in contact with anyone representing the Utility in weeks.³
6. On the evening of April 20, 2021, a TCEQ investigator confirmed that there was a water outage at Town North Village and documented that there was no water pressure at the system. The Investigator determined that the outage was caused when electric power was shut off to the system due to nonpayment of electric bills.
7. In response to the complaints, the Lubbock Regional office investigated the situation and found that the listed owner and operator of the Utility, Marion J. Smith, had passed away in January of 2021. Investigators also found that at the time of Marion Smith's death the Utility was being operated by Jimmy Midkiff, and that during the spring of 2021 Mr. Midkiff suffered a severe medical emergency causing him to cease operating the Utility completely.⁴
8. On April 22, 2021, a TCEQ investigator conducted investigations at all four public water systems of the Utility. The investigator documented that the Utility:
 - a. Failed to maintain a minimum disinfectant residual throughout the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.110(b)(4).
 - i. At Town North Village, the free chlorine residual at the time of the investigation was 0.03 milligram per liter (mg/L) at 7916 County Road 5840 in Shallowater, Texas; 0.04 mg/L at 8014 County Road 5840 in Shallowater, Texas; and 0.00 mg/L at 8226 County Road 5830 in Shallowater, Texas.
 - ii. At Plott Acres, the free chlorine residual at the time of the investigation was 0.13 mg/L at 8604 County Road 6440 near Lubbock, Texas; and 0.14 mg/L at 2103 North County Road 1440 near Lubbock, Texas.
 - iii. At Town North Estates, the free chlorine residual at the time of the investigation was between .001 and .002 mg/L at 6823 County Road 1630 in Shallowater, Texas; and .003 mg/L at

³ Five separate complaints were received on April 20, 2021; the first complaint came in at approximately 10:00am. Complaints were about water outages, low chlorine, low water pressure, and inability to contact an operator. Complaints were received for all four water systems.

⁴ Mr. Midkiff does not hold the CCN for the Utility nor has he submitted a Sale Transfer Merger application to the PUC to purchase the Utility.

6909 County Road 6130 in Shallowater, Texas.

- b. Failed to have a licensed operator on site, in violation of 30 TEX. ADMIN. CODE § 290.46(e). Investigators could not identify a person at any of the four public water systems that was serving as an operator.
9. The Utility failed to issue a Boil Water Notice ("BWN") to the customers of Town North Village after the April 20, 2021 water outage, in violation of 30 TEX. ADMIN. CODE § 290.46(q).
10. On April 23, 2021, The Lubbock Regional Office posted BWNs at all four systems of the Utility due to the water outage at Town North Village and the failure to maintain minimum disinfectant residual at Town North Village, Town North Estates, and Plott Acres.
11. The TCEQ alleges that the Utility has (1) failed to provide appropriate water treatment resulting in potential health hazards; (2) failed to adequately maintain facilities, resulting in potential health hazards, extended outages, and repeated service interruptions; (3) failed to provide customers notice of a potential health hazard; and (4) demonstrated a pattern of failing to respond to the TCEQ or the Utility's customers.
12. No other source of water is available to the more than 25 people whose water is supplied by the Utility.
13. A potential health hazard exists as a result of the Utility's inability to provide continuous and adequate service. A licensed operator is immediately required to ensure the quality of the water in the State and to ensure the Utility operates in a safe manner and meets requirements in the Texas Water Code, the Texas Health and Safety Code, and TCEQ rules. Therefore, a temporary manager is necessary to assume operations of the Utility to ensure the quality of the water meets TCEQ rule requirements and complies with the Texas Water Code as well as the Texas Health and Safety Code, and is safe for public use and consumption.
14. Intermediary Solutions Holdings LLC ("Intermediary Solutions") has agreed to serve as temporary manager of the Utility. Intermediary Solutions has designated Mr. Brian Parker as their point of contact. Mr. Parker can be reached by telephone at (214) 799-5156, and by mail at 5 Sawgrass Court, Frisco, Texas 75034.⁵
15. This Emergency Order is necessary to ensure that continuous and adequate water service is provided to the customers of the Utility to effectuate the purposes of the Texas Water Code and the Texas Health and Safety Code.

II. CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 through 3, The Estate of Marion J.

⁵ Intermediary Solutions operates a nearby water system in Lubbock County and Brian Parker is a TCEQ-licensed operator.

Smith owns the retail public utility as defined in TEX. WATER CODE § 13.002(19).

2. Findings of Fact Nos. 5 through 13 show that as of the date of the signing of this Emergency Order the Utility has been abandoned and that the appointment of a temporary manager is justified as defined in TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142 (a) and (c).
3. TEX. WATER CODE § 13.4132 authorizes the Commission to appoint a willing person to temporarily manage and operate a utility if the utility has discontinued service or abandoned operations or the provision of services as defined by TEX. WATER CODE § 13.412.
4. TEX. WATER CODE § 5.507 provides that the Commission may issue an Emergency Order appointing a willing person to temporarily manage and operate a utility under TEX. WATER CODE § 13.4132.
5. This Emergency Order may be issued without notice or hearing pursuant to TEX. WATER CODE § 5.501(b) and 30 TEX. ADMIN. CODE § 35.25.
6. TEX. WATER CODE § 5.501(c) and 30 TEX. ADMIN CODE §§ 35.12 and 291.143(a) authorize the TCEQ Executive Director to issue this Emergency Order.
7. TEX. WATER CODE §§ 5.501 and 5.507 and 30 TEX. ADMIN. CODE § 291.143(a) authorize the Executive Director to appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations.
8. TEX. WATER CODE § 13.4132 provides to the temporary manager the powers and duties necessary to ensure continued operation of the utility and the provision of continuous and adequate services to customers including the power and duty to read meters, bill for services, collect revenues, disburse funds, access all system components, and request rate increases.
9. Notice of the Emergency Order, once it has been issued, is adequate if the notice is mailed or hand delivered to the last known address of the Utility's headquarters, in accordance with TEX. WATER CODE § 5.507. The last known address for Margenell Smith, Executor of the Estate of Marion J. Smith is set forth in Finding of Fact No. 4.

III. ORDER

1. This Emergency Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. May 5, 2021.
2. Immediately upon the effective date of this Emergency Order, Intermediary Solutions Holdings LLC is hereby appointed to temporarily manage and operate the Utility.

3. Intermediary Solutions shall serve as temporary manager until 180 days after the effective date of this Emergency Order i.e. November 1, 2021.
4. Intermediary Solutions is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utility and the provision of continuous and adequate services to customers, including the powers and duties set forth in TEX. WATER CODE § 13.4132.
5. Intermediary Solutions shall give the Executive Director an inventory of all Utility property received within sixty (60) days of the effective date of this Emergency Order.
6. Intermediary Solutions' requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c).
7. Intermediary Solutions' compensation will come from Utility revenues in the amount of twelve dollars (\$12.00) per month per connection.
8. Intermediary Solutions shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).
9. Pursuant to TEX. WATER CODE § 5.504, the Commission will consider whether to affirm, modify or set aside this Emergency Order at its regular Agenda meeting on June 30, 2021 at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas.⁶ **At the June 30, 2021 Agenda meeting, Margenell Smith, Executor of the Estate of Marion J. Smith, may request an evidentiary hearing pursuant to 30 TEX. ADMIN. CODE § 35.25(c) for the purpose of presenting evidence and cross-examining witnesses regarding whether to affirm, modify, or set aside this Emergency Order.**
10. The Chief Clerk shall provide a copy of this Emergency Order to each of the parties.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



Toby Baker
Executive Director

⁶ On March 16, 2020, in accordance with section 418.016 of the Texas Government Code, Governor Abbott suspended various provisions of the Open Meetings Act that require government officials and members of the public to be physically present at a specified meeting location. To confirm how the meeting will be held, please visit the Commissioner's Agenda webpage at: https://www.tceq.texas.gov/agency/decisions/agendas/comm/comm_agendas.html eight days before the Agenda.

EXHIBIT A

MARION J. SMITH

CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 11168

THE STATE OF TEXAS
TEXAS WATER COMMISSION TRAVIS



I hereby certify that this is a true and correct copy of a Texas Water Commission Document, the original of which is filed in the permanent records of the Commission.

Given under my hand and the seal of office on
SEP 30 1991

Gloria A. Valquez
Gloria A. Valquez, Chief Clerk

CERTIFICATE OF CONVENIENCE AND NECESSITY, Water Commission

To Provide Water Service Under V.T.C.A., Water Code
and Texas Water Commission Substantive Rules

Certificate No. 11168

I. Certificate Holder:

Name: Marion J. Smith dba Smith Management Services
Address: 4406 9th Street
Lubbock, Texas 79416

II. General Description and Location of Service Area:

The Cox Addition Subdivision is located approximately 7.5 miles northwest of Lubbock, Texas. The service area is bounded on the west by Farm to Market Road 2528 and on the east by an unmarked, graded and drained road.

The Plott Acres Subdivision is located approximately 10 miles northwest of Lubbock, Texas. The service area is generally bounded on the west by Farm to Market Road 179 and on the north by an unmarked, graded and drained road.

The Town North Estates Subdivision is located approximately 9.5 miles northwest of Lubbock, Texas, on U. S. Highway 84. The service area is generally bounded on the north by Stonehill Street and on the west by North Saratoga Avenue in Lubbock County, Texas.

The Town North Village Subdivision is located approximately 12.5 miles northwest of Lubbock, Texas, and directly north of Shallowater, Texas. The service area is bounded on the east by an unnamed county road and is generally bounded on the southwest by the Atchison, Topeka and Santa Fe Railway.

III. Certificate Maps:

The certificate holder is authorized to provide water service in the area identified on the Commission's official service area map, WRS-152, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued under Application No. 8954-S and subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: SEP 23 1991

ATTEST: Blanca A. Vazquez John Hall
For the Commission

ATTACHMENT 3

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF
AN ENFORCEMENT ACTION AGAINST
MARGENELL SMITH, EXECUTOR OF THE
ESTATE OF MARION J. SMITH;
RN101272060; RN101451417;
RN 101221117; RN 101270890;

§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY


ORDER AFFIRMING EMERGENCY ORDER RENEWING THE APPOINTMENT OF A TEMPORARY MANAGER OF A WATER UTILITY DOCKET NO. 2021-0574-UCR-E

On January 12, 2022, the Texas Commission on Environmental Quality ("TCEQ" or "Commission") considered whether to affirm, modify, or set aside an Emergency Order in the matter regarding Margenell Smith, Executor of the Estate of Marion J. Smith. The Emergency Order was issued by the Executive Director without a hearing on November 2, 2021. The Emergency Order and the notice of the January 12, 2022, agenda hearing to affirm, modify, or set aside the Emergency Order were sent by certified mail return receipt requested, and via first class mail, postage prepaid, to Margenell Smith's last known addresses on November 3, 2021 and hand delivered to Margenell Smith on November 4, 2021. The Emergency Order was affixed to the fences surrounding Town North Village, Plott Acres, Cox Addition, and Town North Estates. The Commission finds that the Executive Director appropriately issued the Emergency Order and that the requirements for an emergency order found in Chapters 5 and 13 of the Texas Water Code have been satisfied.

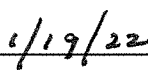
NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS THAT:

The November 2, 2021, Emergency Order Renewing the Appointment of a Temporary Manager of a Water Utility, attached hereto as Exhibit A and incorporated into this Order by reference, is affirmed.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



For the Commission



Date

Exhibit A
EMERGENCY ORDER
APPOINTING A TEMPORARY MANAGER
OF A WATER UTILITY

Signed by the Executive Director on November 2, 2021

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



TCEQ DOCKET NO. 2021-0574-UCR-E

IN THE MATTER OF
AN ENFORCEMENT ACTION AGAINST
MARGENELL SMITH, EXECUTOR OF THE
ESTATE OF MARION J. SMITH;
RN101272060; RN101451417;
RN 101221117; RN 101270890

§
§
§
§
§
§

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

EMERGENCY ORDER
RENEWING THE APPOINTMENT OF A TEMPORARY MANAGER
OF A WATER UTILITY

On November 2, 2021, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued this Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made subject to this Emergency Order is Margenell Smith, Executor of the Estate of Marion J. Smith.

I. FINDINGS OF FACT

1. The Estate of Marion J. Smith owns the following public water systems: (1) Town North Village, located at 7916 County Road 5840, Lubbock County, Texas; (2) Plott Acres, located at 8604 County Road 6440, Lubbock County, Texas; (3) Cox Addition, located at 5812 County Road 6150, Lubbock County, Texas; and (4) Town North Estates located at 6823 County Road 1630 in Lubbock County, Texas (collectively, the "Utility").¹
2. The Utility operates pursuant to Certificate of Convenience and Necessity No. 11168 ("CCN 11168").² (Exhibit A)
3. The Utility provides potable water service for compensation to approximately 120 service connections at Town North Village; approximately 68 service connections at Plott Acres; approximately 38 service connections at Cox Addition; and approximately 72 service connections at Town North Estates. Each system serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Utility consists of four public water systems as defined in 30 TEX. ADMIN. CODE § 290.38(71).
4. Commission records show that the last known mailing address for Margenell Smith, Executor of the Estate of Marion J. Smith is:

4406 9th Street
Lubbock, Texas 79416

¹ All real Property that the Utility is located on is owned by either The Estate of Marion J. Smith or Smith Management Services, which is an assumed name of Marion J. Smith for business conducted as a Sole Proprietorship. The Lubbock County Court has named Margenell Smith as executor of The Estate of Marion J. Smith. At the time of this Order, probate of the estate is ongoing under the case number 2021-767/895 in Lubbock County. TCEQ has not received information indicating that the Utility has been distributed from the Estate.

² The CCN is held by Marion J. Smith dba Smith Management Services.

5. On April 20, 2021, the TCEQ Lubbock Regional office received numerous complaints of a water outage at Town North Village; complainants also reported that they had been unable to get in contact with anyone representing the Utility in weeks.³
6. On the evening of April 20, 2021, a TCEQ investigator confirmed that there was a water outage at Town North Village and documented that there was no water pressure at the system. The Investigator determined that the outage was caused when electric power was shut off to the system due to nonpayment of electric bills.
7. In response to the complaints, the Lubbock Regional office investigated the situation and found that the listed owner and operator of the Utility, Marion J. Smith, had passed away in January of 2021. Investigators also found that at the time of Marion Smith's death the Utility was being operated by Jimmy Midkiff, and that during the spring of 2021 Mr. Midkiff suffered a severe medical emergency causing him to cease operating the Utility completely.⁴
8. On April 22, 2021, a TCEQ investigator conducted investigations at all four public water systems of the Utility. The investigator documented that the Utility:
 - a. Failed to maintain a minimum disinfectant residual throughout the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.110(b)(4).
 - i. At Town North Village, the free chlorine residual at the time of the investigation was 0.03 milligram per liter (mg/L) at 7916 County Road 5840 in Shallowater, Texas; 0.04 mg/L at 8014 County Road 5840 in Shallowater, Texas; and 0.00 mg/L at 8226 County Road 5830 in Shallowater, Texas.
 - ii. At Plott Acres, the free chlorine residual at the time of the investigation was 0.13 mg/L at 8604 County Road 6440 near Lubbock, Texas; and 0.14 mg/L at 2103 North County Road 1440 near Lubbock, Texas.
 - iii. At Town North Estates, the free chlorine residual at the time of the investigation was between .001 and .002 mg/L at 6823 County Road 1630 in Shallowater, Texas; and .003 mg/L at 6909 County Road 6130 in Shallowater, Texas.
 - b. Failed to have a licensed operator on site, in violation of 30 TEX. ADMIN. CODE § 290.46(e). Investigators could not identify a person at any of the four public water systems that was serving as an operator.
9. The Utility failed to issue a Boil Water Notice ("BWN") to the customers of Town North Village after the April 20, 2021 water outage, in violation of 30 TEX. ADMIN. CODE § 290.46(q).
10. On April 23, 2021, The Lubbock Regional Office posted BWNs at all four systems of the Utility due to the water outage at Town North Village and the failure to maintain minimum disinfectant residual at Town North Village, Town North Estates, and Plott Acres.
11. The TCEQ alleges that the Utility has (1) failed to provide appropriate water treatment resulting in potential health hazards; (2) failed to adequately maintain facilities, resulting in potential health hazards, extended outages, and repeated service

³ Five separate complaints were received on April 20, 2021; the first complaint came in at approximately 10:00am. Complaints were about water outages, low chlorine, low water pressure, and inability to contact an operator. Complaints were received for all four water systems.

⁴ Mr. Midkiff does not hold the CCN for the Utility nor has he submitted a Sale Transfer Merger application to the PUC to purchase the Utility.

- interruptions; (3) failed to provide customers notice of a potential health hazard; and (4) demonstrated a pattern of failing to respond to the TCEQ or the Utility's customers.
12. No other source of water is available to the more than 25 people whose water is supplied by the Utility.
 13. TCEQ Appointed Intermediary Solutions Holdings LLC ("Intermediary Solutions") as temporary manager for the Utility through an Emergency Order issued on May 5, 2021, and affirmed by the Commission on June 30, 2021, for the purpose of providing continuous and adequate water service to customers. Intermediary Solutions appointment as Temporary manager expired on November 1, 2021.
 14. During Intermediary Solutions' first term as Temporary Manager, Intermediary Solutions installed new self-contained chlorination systems at all four systems, started maintaining a minimum disinfectant residual throughout the distribution system of all four water systems, and made various repairs necessary for the maintenance of the systems. As Temporary Manager, Intermediary Solutions has provided continuous and adequate water service to the customers of the four water systems owned by the Estate of Marion J. Smith.
 15. A potential health hazard exists as a result of the Utility's inability to provide continuous and adequate service. A licensed operator is immediately required to ensure the quality of the water in the State and to ensure the Utility operates in a safe manner and meets requirements in the Texas Water Code, the Texas Health and Safety Code, and TCEQ rules. Therefore, a temporary manager is necessary to assume operations of the Utility to ensure the quality of the water meets TCEQ rule requirements and complies with the Texas Water Code as well as the Texas Health and Safety Code, and is safe for public use and consumption.
 16. Intermediary Solutions has agreed to serve as temporary manager of the Utility. Intermediary Solutions has designated Mr. Brian Parker as their point of contact. Mr. Parker can be reached by telephone at (214) 799-5156, and by mail at 5 Sawgrass Court, Frisco, Texas 75034.⁵
 17. This Emergency Order is necessary to ensure that continuous and adequate water service is provided to the customers of the Utility to effectuate the purposes of the Texas Water Code and the Texas Health and Safety Code.

II. CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 through 3, The Estate of Marion J. Smith owns the retail public utility as defined in TEX. WATER CODE § 13.002(19).
2. Findings of Fact Nos. 5 through 15 show that as of the date of the signing of this Emergency Order the Utility has been abandoned and that the appointment of a temporary manager is justified as defined in TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142 (a) and (c).
3. TEX. WATER CODE § 13.4132 authorizes the Commission to appoint a willing person to temporarily manage and operate a utility if the utility has discontinued service or abandoned operations or the provision of services as defined by TEX. WATER CODE § 13.412.

⁵ Intermediary Solutions operates a nearby water system in Lubbock County and Brian Parker is a TCEQ-licensed operator.

4. TEX. WATER CODE § 5.507 provides that the Commission may issue an Emergency Order appointing a willing person to temporarily manage and operate a utility under TEX. WATER CODE § 13.4132.
5. This Emergency Order may be issued without notice or hearing pursuant to TEX. WATER CODE § 5.501(b) and 30 TEX. ADMIN. CODE § 35.25.
6. TEX. WATER CODE § 5.501(c) and 30 TEX. ADMIN. CODE §§ 35.12 and 291.143(a) authorize the TCEQ Executive Director to issue this Emergency Order.
7. TEX. WATER CODE §§ 5.501 and 5.507 and 30 TEX. ADMIN. CODE § 291.143(a) authorize the Executive Director to appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations.
8. TEX. WATER CODE § 13.4132 provides to the temporary manager the powers and duties necessary to ensure continued operation of the utility and the provision of continuous and adequate services to customers including the power and duty to read meters, bill for services, collect revenues, disburse funds, access all system components, and request rate increases.
9. Notice of the Emergency Order, once it has been issued, is adequate if the notice is mailed or hand delivered to the last known address of the Utility's headquarters, in accordance with TEX. WATER CODE § 5.507. The last known address for Margenell Smith, Executor of the Estate of Marion J. Smith is set forth in Finding of Fact No. 4.

III. ORDER

1. This Emergency Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. November 2, 2021.
2. Immediately upon the effective date of this Emergency Order, Intermediary Solutions Holdings LLC is hereby appointed to temporarily manage and operate the Utility.
3. Intermediary Solutions shall serve as temporary manager until 180 days after the effective date of this Emergency Order i.e. May 1, 2022.
4. Intermediary Solutions is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utility and the provision of continuous and adequate services to customers, including the powers and duties set forth in TEX. WATER CODE § 13.4132.
5. Intermediary Solutions shall give the Executive Director an inventory of all Utility property received within sixty (60) days of the effective date of this Emergency Order.
6. Intermediary Solutions' requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c).
7. Intermediary Solutions' compensation will come from Utility revenues in the amount of twelve dollars (\$12.00) per month per connection.
8. Intermediary Solutions shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).
9. Pursuant to TEX. WATER CODE § 5.504, the Commission will consider whether to affirm,

modify or set aside this Emergency Order at its regular Agenda meeting on January 12, 2022 at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas.⁶ **At the January 12, 2022 Agenda meeting, Margenell Smith, Executor of the Estate of Marion J. Smith, may request an evidentiary hearing pursuant to 30 TEX. ADMIN. CODE § 35.25(c) for the purpose of presenting evidence and cross-examining witnesses regarding whether to affirm, modify, or set aside this Emergency Order.**

10. The Chief Clerk shall provide a copy of this Emergency Order to each of the parties.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



Toby Baker
Executive Director

⁶ On March 16, 2020, in accordance with section 418.016 of the Texas Government Code, Governor Abbott suspended various provisions of the Open Meetings Act that require government officials and members of the public to be physically present at a specified meeting location. To confirm how the meeting will be held, please visit the Commissioner's Agenda webpage at:
<https://www.tceq.texas.gov/agency/decisions/agendas/comm> eight days before the Agenda.

EXHIBIT A

MARION J. SMITH

CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 11168

✓
THE STATE OF TEXAS
TEXAS WATER COMMISSION



I hereby certify that this is a true and correct copy of a Texas Water Commission Document, the original of which is filed in the permanent records of the Commission.

Given under my hand and the seal of office on
SEP 30 1991

Gloria A. Vazquez
Gloria A. Vazquez, Chief Clerk
Texas Water Commission

CERTIFICATE OF CONVENIENCE AND NECESSITY

To Provide Water Service Under V.T.C.A., Water Code
and Texas Water Commission Substantive Rules

Certificate No. 11168

I. Certificate Holder:

Name: Marion J. Smith dba Smith Management Services

Address: 4406 9th Street
Lubbock, Texas 79416

II. General Description and Location of Service Area:

The Cox Addition Subdivision is located approximately 7.5 miles northwest of Lubbock, Texas. The service area is bounded on the west by Farm to Market Road 2528 and on the east by an unmarked, graded and drained road.

The Plott Acres Subdivision is located approximately 10 miles northwest of Lubbock, Texas. The service area is generally bounded on the west by Farm to Market Road 179 and on the north by an unmarked, graded and drained road.

The Town North Estates Subdivision is located approximately 9.5 miles northwest of Lubbock, Texas, on U. S. Highway 84. The service area is generally bounded on the north by Stonehill Street and on the west by North Saratoga Avenue in Lubbock County, Texas.

The Town North Village Subdivision is located approximately 12.5 miles northwest of Lubbock, Texas, and directly north of Shallowater, Texas. The service area is bounded on the east by an unnamed county road and is generally bounded on the southwest by the Atchison, Topeka and Santa Fe Railway.

III. Certificate Maps:

The certificate holder is authorized to provide water service in the area identified on the Commission's official service area map, WRS-152, maintained in the offices of the Texas Water Commission, 1700 North Congress, Austin, Texas with all attendant privileges and obligations.

This certificate is issued under Application No. 8954-S and subject to the rules and orders of the Commission, the laws of the State of Texas, conditions contained herein and may be revoked for violations thereof. The certificate is valid until amended or revoked by the Commission.

Issued Date: SEP 23 1991

ATTEST: Blaine A. Vazquez John Hall
For the Commission

ATTACHMENT 4

DOCKET NO. 53500

REQUEST FOR AN EMERGENCY	§	PUBLIC UTILITY COMMISSION
ORDER APPOINTING A TEMPORARY	§	
MANAGER FOR MARION J. SMITH	§	OF TEXAS
DBA SMITH MANAGEMENT	§	
SERVICES WITHOUT A HEARING	§	

EMERGENCY ORDER APPOINTING A TEMPORARY MANAGER FOR MARION J. SMITH DBA SMITH MANAGEMENT SERVICES WITHOUT A HEARING

This Order addresses the request filed by the Staff of Public Utility Commission of Texas for an emergency order appointing a temporary manager to Marion J. Smith dba Smith Management Services. The executive director, on behalf of the Commission, issues this emergency order without a hearing, and sets a hearing on this matter to be held as soon as practicable at the Open Meeting scheduled for May 12, 2022, to be held at the Commission's offices in Austin, Texas.

I. Findings of Fact

The Commission makes the following findings of fact:

1. Commission Staff, as the requesting party, is located at 1701 N. Congress Avenue, 7th Floor, Austin, Texas 78701.
2. Marion J. Smith dba Smith Management Services owns and operates for compensation facilities and equipment for the transmission, storage, distribution, sale or provision of water service to the public.
3. Smith Management Services owns and operates four public water systems: Town North Village Water System,¹ (2) Plott Acres,² (3) Cox Addition Water System,³ and (4) Town North Estates.⁴

¹ Town North Village Water System, PWS ID No. 1520094.

² Plott Acres, PWS ID No. 1520062.

³ Cox Addition Water System, PWS ID No. 1520106.

⁴ Town North Estates, PWS ID No. 1520152.

4. On September 30, 1991, the Texas Water Commission granted certificate of convenience and necessity number 11168 to Smith Management Services.
5. The four public water systems currently serve approximately 298 connections.
6. On April 20, 2021, the Texas Commission for Environmental Quality received five separate complaints of a water outage at Town North Village Water System.
7. The complainants also reported that they had been unable to contact anyone representing Town North Village Water System for weeks.
8. On April 20, 2021, TCEQ staff confirmed the water outage at Town North Village Water System and determined the cause to be related to disconnection of electric service due to unpaid bills.
9. On April 22, 2021, TCEQ staff conducted investigations at all four public water systems and found that Smith Management Services failed to have a licensed operator at each of the system's facilities.
10. TCEQ's investigation determined that Smith Management Services failed to maintain minimum disinfectant residual throughout the distribution systems of Town North Village Water System, Plott Acres, and Town North Estates.
11. TCEQ's investigation determined that Smith Management Services failed to issue a boil water notice to the customers of Town North Village Water System.
12. TCEQ's investigation discovered that the listed owner and operator of Smith Management Services, Mr. Marion J. Smith, had passed away in January 2021, and that, at the time of his death, Mr. Jimmy Midkiff was operating the systems on his behalf without certification.
13. TCEQ's investigation discovered that Mr. Midkiff suffered a severe medical emergency during the spring of 2021, which caused him to stop operating the water systems completely.
14. TCEQ's investigation determined that no other source of water was available to more than 25 people whose water is supplied by Smith Management Services.

15. On May 5, 2021, the executive director of TCEQ issued an emergency order appointing Intermediary Solutions Holdings, LLC as temporary manager of Smith Management Services and its four public water systems for a term that expired on November 1, 2021.
16. On July 7, 2021, TCEQ issued an order modifying the May 5, 2021 emergency order and maintained Intermediary Solutions' appointment as temporary manager.
17. On November 2, 2021, the executive director of TCEQ issued an emergency order renewing Intermediary Solutions' appointment as temporary manager for a term set to expire on May 1, 2022.
18. On January 12, 2022, TCEQ issued an order affirming the November 2, 2021 emergency order and maintained Intermediary Solutions' appointment as temporary manager.
11. On DATE, Commission Staff filed a request for an emergency order appointing a person to temporarily manage Smith Management Services and its four public water systems.
12. In its request, Commission Staff recommended the executive director appoint Intermediary Solutions Holdings, LLC as temporary manager.
13. Intermediary Solutions is the owner of North University Estates Water Company, which provides retail water service in Lubbock County under certificate of convenience and necessity number 12179.
14. Intermediary Solutions employs a TCEQ-licensed water operator who will operate Smith Management Services' four public water systems.
15. Intermediary Solutions is willing to serve as temporary manager.
16. In its request, Commission Staff recommended that Intermediary Solutions receive compensation of \$12.00 per connection per month for its services as temporary manager.
17. Commission Staff recommended the emergency order appointing Intermediary Solutions as temporary manager begin on May 2, 2022 and end on November 1, 2022, or when Intermediary Solutions is discharged from these responsibilities by the Commission or a superseding action is taken by an appropriate court, whichever occurs first.

II. Conclusions of Law

The Commission makes the following conclusions of law:

1. The Commission has jurisdiction over this matter under Texas Water Code (TWC) § 13.4132(b) and 16 Texas Administrative Code (TAC) § 24.14(a)(1).
2. Under TWC § 13.451(b), the Commission may, by order or rule, delegate to the executive director the authority to issue an emergency order under Subchapter K-1 of the TWC. The delegation was made by Commission order on December 4, 2015, in Docket No. 43517.
3. Marion J. Smith dba Smith Management Services is a water utility as defined in TWC § 13.002(23) and 16 TAC § 24.3(39).
4. Under TWC § 13.4132 and 16 TAC § 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, which include but are not limited to, failure to pay a bill to an electric utility with the result of discontinuance of service, failure to provide appropriate water treatment so that a potential health hazard results, failure to provide customers adequate notice of a health hazard or potential health hazard, failure to secure an alternative available water supply during an outage, and repeated failure to respond to the utility's customers
6. Smith Management Services abandoned the operation of its facilities under TWC § 13.412(f)(1) and 16 TAC § 24.355(c)(1) when it failed to pay a bill to an electric utility which resulted in the discontinuance of necessary services.
7. Smith Management Services abandoned the operation of its facilities under TWC § 13.412(f)(2) and 16 TAC § 24.355(c)(2) when it failed to maintain minimum disinfectant residuals throughout its distribution systems.
8. Smith Management Services abandoned the operation of its facilities under TWC § 13.412(f)(4) and 16 TAC § 24.355(c)(4) when it failed to issue a boil water notice to customers affected by a water outage.
9. Smith Management Services abandoned the operation of its facilities under TWC § 13.412(f)(5) and 16 TAC § 24.355(c)(5) when it failed to secure an alternative available water supply during an outage.

10. Smith Management Services abandoned the operation of its facilities under TWC § 13.412(f)(6) and 16 TAC § 24.355(c)(6) when it repeatedly failed to respond to the utilities' customers.
11. Under 16 TAC § 24.357(f), compensation for the temporary manager will come from utility revenues and will be set by the Commission at the time of appointment.
12. Under TWC § 13.451(a) and 16 TAC §§ 24.14(a)(1), 24.355(b), and 22.299(d), an emergency order to appoint a temporary manager may be issued with or without a hearing.

III. Ordering Paragraphs

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

1. Commission Staff's request for an order appointing Intermediary Solutions Holdings, LLC to temporarily manage and operate Marion J. Smith dba Smith Management Services is granted.
2. Intermediary Solutions is appointed temporary manager for Town North Village Water System, Plott Acres, Cox Addition Water System, and Town North Estates public water systems for a term of 180 days to begin on May 2, 2022 and to end on November 1, 2022, or when Intermediary Solutions is discharged from these responsibilities by the Commission or a superseding action is taken by an appropriate court, whichever occurs first.
3. Intermediary Solutions has all the powers and duties necessary to ensure the continued operation of Town North Village Water System, Plott Acres, Cox Addition Water System, and Town North Estates and the provision of continuous and adequate service to their customers.
4. As temporary manager, Intermediary Solutions must comply with all requirements in 16 TAC § 24.357, 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 ensure continuous and adequate utility service as authorized by the Commission.

5. Intermediary Solutions must return to the Commission an inventory of all property received within 60 days of its appointment in accordance with 16 TAC § 24.357(e).
6. Intermediary Solutions 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 in accordance with 16 TAC § 24.357(h).
7. Intermediary Solutions must maintain employment of a TCEQ-licensed water operator for the duration of its appointment as temporary manager.
8. Intermediary Solutions must comply with all applicable requirements imposed by the Texas Commission on Environmental Quality.
9. Intermediary Solutions is not required to post financial assurance.
10. Intermediary Solutions will be compensated \$12.00 per connection per month for its services as temporary manager.
11. Commission Staff must provide notice of issuance of this emergency order to Town North Village Water System, Plott Acres, Cox Addition Water System, and Town North Estates as soon as practicable in accordance with 16 TAC § 22.293(c).
12. Intermediary Solutions must provide notice of issuance of this emergency order to the customers of Town North Village, Plott Acres, Cox Addition, and Town North Estates in accordance with 16 TAC § 24.293(e).
13. A hearing to affirm, modify, or set aside this emergency order will be held during the Commission's Open Meeting scheduled for May 12, 2022, to be held at the Commission's offices in Austin, Texas.
14. Commission Staff must provide notice of the opportunity to participate in an evidentiary hearing to affirm, modify, or set aside this emergency order to Smith Management Services no later than the tenth day before the date of the hearing, and the notice must provide that

Smith Management Services may waive the right to this hearing by written notice to the Commission or by failing to attend the hearing.

Signed at Austin, Texas the ____ day of April, 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

Thomas Gleeson, Executive Director