



## Filing Receipt

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

**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, 7<sup>th</sup> 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,<sup>1</sup> (2) Plott Acres,<sup>2</sup> (3) Cox Addition Water System,<sup>3</sup> and (4) Town North Estates.<sup>4</sup>

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<sup>1</sup> Town North Village Water System, PWS ID No. 1520094.

<sup>2</sup> Plott Acres, PWS ID No. 1520062.

<sup>3</sup> Cox Addition Water System, PWS ID No. 1520106.

<sup>4</sup> 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 April 18, 2022, 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:

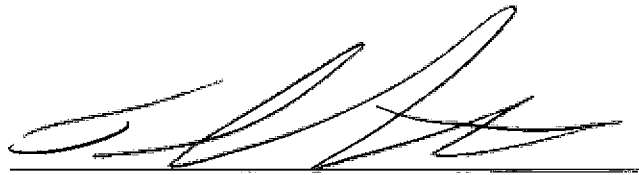
1. Commission Staff's request for an order appointing Intermediary Solutions Holdings, LLC to temporarily manage and operate Marion J. Smith dba Smith Management Services is granted.
2. Intermediary Solutions is appointed temporary manager for Town North Village Water System, Plott Acres, Cox Addition 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 19<sup>th</sup> day of April, 2022.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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

**Thomas Gleeson, Executive Director**