

STATE OF TEXAS and  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY,  
Plaintiffs,

v.

THUNDERBIRD BAY WATER  
SERVICES, INC.,  
Defendant.

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

201st JUDICIAL DISTRICT

**STATE OF TEXAS'S MOTION FOR CONTEMPT**

The State of Texas files this Motion for Contempt against Defendant Thunderbird Bay Water Services, Inc. and Charles Schram, III, individually, and in support thereof would show the following:

**1. NATURE OF ACTION**

1.1. The State requests the Court hold both Defendant Thunderbird Bay Water Services, Inc. and Charles E. Schram, III, in his individual capacity, in contempt of court for failing to comply with the orders set forth in the *Agreed Final Judgment and Permanent Injunction* (Agreed Final Judgment) this Court signed on June 5, 2009. The Agreed Final Judgment was entered in a civil enforcement case under the environmental and human health protection laws of Texas for public drinking water facilities.

1.2. This motion involves Thunderbird Bay Water Services, Inc. and Charles Schram's total nonfeasance and intransigent behavior with regard to the injunctive provisions of the Agreed Final Judgment and operation of a public drinking water system that serves more than 2,301 people.

1.3. As a result of continued noncompliance with the public drinking water supply

rules and continued water outages, the Texas Commission on Environmental Quality (TCEQ) issued an emergency order appointing a temporary manager for the Facility on June 4, 2010. A true and correct copy of the TCEQ Emergency Order Appointing a Temporary Manager of a Water Utility is provided as **Exhibit A** and is incorporated by reference the same as if fully copied and set forth at length.

## **2. PARTIES**

2.1. Plaintiff, **the State of Texas** (Plaintiff or the State), is authorized to bring this suit at the request of the TCEQ.<sup>1</sup>

2.2. **Thunderbird Bay Water Services, Inc.** (Defendant or Thunderbird) is a registered corporation and may be served with process by serving its registered agent, Charles E. Schram III, at 100 Oak Point Drive, May, Texas 76857 or 5801 Brush Creek Trail, Dallas, Texas 75252, or wherever he may be found.

2.3. **Charles E. Schram, III** (Schram) is an individual who may be served with process by serving him at his place of business at 100 Oak Point Drive, May, Texas 76857 or or 5801 Brush Creek Trail, Dallas, Texas 75252 or wherever he may be found.

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<sup>1</sup> Tex. R. Civ. Proc. 692; Tex. Health & Safety Code § 341.048(e) and Tex. Water Code §§ 13.411(a) and 13.414(c).

### **3. JURISDICTION AND VENUE**

3.1. This Court has continuing jurisdiction over this suit.<sup>2</sup>

3.2. Venue for this suit is proper in Travis County pursuant to Tex. Water Code § 13.419.

### **4. BACKGROUND**

4.1. The TCEQ is the administrative agency in Texas primarily responsible for the regulation of safe drinking water in public water systems.<sup>3</sup>

4.2. The TCEQ is also the state agency charged with the promulgation of rules and enforcement of laws relating to water and sewer service provided by water and sewer utilities.<sup>4</sup>

4.3. To maintain the public health, safety, and welfare, the TCEQ must ensure that public drinking water systems supply adequate quantities of safe drinking water and are financially stable and technically sound.<sup>5</sup>

4.4. On September 30, 2004, the State filed a civil enforcement case against Defendant Thunderbird for violations of Chapter 341 of the Health and Safety Code, and Chapter 13 of the Texas Water Code, and to enforce rules adopted by the TCEQ under the authority of the Texas Water Code.

4.5. Schram has been the President and one of two directors of Thunderbird since the

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<sup>2</sup> Tex. R. Civ. Proc. 692.

<sup>3</sup> See generally Tex. Health & Safety Code §§ 341.031-341.050 (Vernon Supp. 2009) and 30 Tex. Admin. Code §§ 290.38-290.275 (2009)(Tex. Comm'n on Env'tl. Quality, Public Drinking Water).

<sup>4</sup> Tex. Water Code § 13.041 (Vernon Supp. 2009) and 30 Tex. Admin. Code § 290.39 (2009) (Tex. Comm'n on Env'tl. Quality, General Provisions).

<sup>5</sup> Tex. Health & Safety Code § 341.0315(a) (Vernon Supp. 2009).

suit was filed in 2004.

4.6. On October 8, 2004, Schram, on behalf of Thunderbird, filed a waiver of service. A true and correct copy of Defendant's waiver of service is provided as **Exhibit B**.

4.6. On June 5, 2009, the Court signed and entered an Agreed Final Judgment that contained mandatory and prohibitory injunctive relief directed to and binding upon Defendant Thunderbird Bay Water Services, Inc. A true and correct copy of the Agreed Final Judgment is provided as **Exhibit C** and is incorporated by reference the same as if fully copied and set forth at length.

4.7. In Paragraph 4.2 of the Agreed Final Judgment, Defendant waived the necessity of the issuance and service of any writ of injunction.

4.8. The permanent injunction included in the Agreed Final Judgment set forth several clear, unambiguous orders of the Court as fully described herein:

- Paragraph 1.1 of the Judgment sets out the following definitions to be applied in interpreting the Judgement:
  - A. "State" shall mean the State of Texas.
  - B. "TCEQ" shall mean the Texas Commission on Environmental Quality and its predecessor and/or successor agencies.
  - C. "Thunderbird" means Defendant Thunderbird Bay Water Services, Inc., all its agents, attorneys, servants, employees, and persons acting in concert with it, on its behalf, or under its control.
  - D. "Facility" means the public water system currently located on Phantom Hill Circle, Lot 362, May, Brown County, Texas, and providing potable water service to approximately 746 active service connections. The "Facility" is currently identified in the Records of the TCEQ under Certificate of Convenience and Necessity ("CCN") No. 11243 and currently includes Thunderbird Bay, Harbor Point, Tamarack Mountain, Oak Point, and Woodbridge Estates subdivisions.

- E. “Defendant” shall mean Thunderbird Bay Water Services, Inc.
- F. “T.A.C.” shall mean the Texas Administrative Code.
- G. “Day” or “Days” shall mean calendar days.
- H. “Parties” shall mean Defendant and the State, collectively.
- I. “Effective Date” shall mean the date the Court signs this Judgment.
- J. “Judgment” shall mean this Agreed Final Judgment and Permanent Injunction.
- K. “Certified Area of Service” shall mean the area served by Defendant – as defined by the most current maps on file with the TCEQ – for Certificate of Convenience and Necessity (“CCN”) No. 11243 which at the present time includes Thunderbird Bay, Harbor Point, Tamarack Mountain, Oak Point, and Woodbridge Estates subdivisions, incorporated herein by reference (*See* Exhibit A of the Agreed Final Judgment).

- Paragraph 5.1 Upon the effective date of the Judgment Defendant shall:

- A. Monitor the Facility in accordance with the TCEQ approved Disinfection Contact Time Analysis dated June 1, 2006, incorporated herein by reference (*See* Exhibit B of the Agreed Final Judgment). If Defendant submits and receives approval of a new Disinfection Contact Time Analysis, Defendant shall immediately begin operating and monitoring in accordance with the new provisions;
- B. Accept any written applications for service within the service area covered by its Certified Area of Service. All applications received by the Defendant shall be replied to in writing and shall identify any deficiencies in the application, the cost to connect to the system, and the estimated date of connection. If the Defendant makes a “refusal to service” determination, the Defendant shall provide a basis for the refusal in writing and include information regarding the applicant’s right to appeal to the TCEQ. This written response shall be mailed to the applicant within 30 days of receipt;
- C. Collect and submit bacteriological samples at the Facility in accordance with 30 T.A.C. § 290.109, incorporated herein by reference (*See* Exhibit C of the Agreed Final Judgment);
- D. Cease backbilling customers in excess of 12 months, in accordance with

30 T.A.C. 291.87(h), incorporated herein by reference (*See Exhibit D of the Agreed Final Judgment*);

- E. Cease all discharges from the sludge lagoons;
- F. Apply for a formal exception, if not already completed, from the TCEQ's Water Supply Division for a contact time study regarding switching disinfection methods (from chlorine to chloramine) to meet the disinfection byproducts requirements;
- G. Maintain at all times a free chlorine residual of 0.2 mg/L or a chloramine residual of 0.5 mg/L (if using ammonia) in the finished water storage tank and throughout the distribution system in accordance with 30 T.A.C. § 290.46(d), incorporated herein by reference (*See Exhibit M of the Agreed Final Judgment*);
- H. Submit to the TCEQ, if not already completed, documents establishing that when the Facility's 0.038 MG standpipe and the 0.200 MG clearwell were repainted, they were done so in accordance with the AWWA standards and 30 T.A.C. § 290.43(c)(8), incorporated herein by reference (*See Exhibit E of the Agreed Final Judgment*);
- I. Calibrate the raw water meter in accordance with suggested manufacturer requirements and 30 T.A.C. § 290.46(s)(1), incorporated herein by reference (*See Exhibit F of the Agreed Final Judgment*);
- J. Calibrate the recycled water meter in accordance with suggested manufacturer requirements and 30 T.A.C. § 290.46(s)(1), incorporated herein by reference (*See Exhibit F of the Agreed Final Judgment*);
- K. Calibrate the filter backwash system meter in accordance with suggested manufacturer requirements and 30 T.A.C. § 290.46(s)(1), incorporated herein by reference (*See Exhibit F of the Agreed Final Judgment*);
- L. Calibrate the treated water discharge meter in accordance with suggested manufacturer requirements and 30 T.A.C. § 290.46(s)(1), incorporated herein by reference (*See Exhibit F of the Agreed Final Judgment*);
- M. Remove and dispose of accumulated sludge from lagoons in accordance with 30 T.A.C. § 312, subchapter F, incorporated herein by reference (*See Exhibit G of the Agreed Final Judgment*);
- N. Maintain lagoons so that accumulated sludge does not cause wastewater overflows;

- O. Keep employed an operator who holds a Class “B” or higher surface water license in accordance with 30 T.A.C. § 290.46(e)(6)(A), incorporated herein by reference (*See Exhibit H of the Agreed Final Judgment*);
- P. Keep employed an operator who holds a Class “C” or higher surface water operator to be on duty at the Facility when it is in operation, or equip the Facility with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the Commission’s drinking water standards during periods when the Facility is not staffed in accordance with 30 T.A.C. § 290.46(e)(6)(C), incorporated herein by reference (*See Exhibit H of the Agreed Final Judgment*); and
- Q. Submit fully completed Surface Water Monthly Operating Reports for the Facility in accordance with 30 T.A.C. § 290.110(e)(2), incorporated herein by reference (*See Exhibit H of the Agreed Final Judgment for 30 T.A.C. §290.110 and See Exhibit I of the Agreed Final Judgment for Surface Water Monthly Operating Report Form*).

- Paragraph 5.2 Within 15 days of the effective date of the Judgment

Defendant shall:

- A. Replace or repair the on-line residual analyzer (Hach CL17). If Thunderbird repairs the online residual analyzer, the instrument shall be certified by the Hach Company as in good working condition; and
- B. Reimburse customers for any amounts that were paid as a result of backbilling in excess of 12 months in accordance with 30 T.A.C. 291.87(h), incorporated herein by reference (*See Exhibit D of the Agreed Final Judgment*).

- Paragraph 5.3 Within 60 days of the effective date of the Judgment

Defendant shall:

- A. Repaint and maintain the 0.020 MG ground storage tank in accordance with 30 T.A.C. § 290.43(c)(8), incorporated herein by reference (*See Exhibit E of the Agreed Final Judgment*).

- Paragraph 5.4. Within 120 days of the effective date of the Judgment

Defendant shall:

A. Submit a surface overflow rate exception for the proposed water treatment facility as required by Requirement 2 in the February 5, 2009 letter (*See Exhibit L of the Agreed Final Judgment*) from David Laughlin, TCEQ, Utilities Technical Review Team to Stanley Ross Hayes, Hayes Engineering, incorporated herein by reference. The exception may be submitted by either submission of alternative site data, which is representative of the proposed water quality conditions and proposed treatment process or submission of a completed pilot study, with at least 90 days of data, in accordance with 30 T.A.C. § 290.42(g), incorporated herein by reference (*See Exhibit N of the Agreed Final Judgment*) and TCEQ Guidance Document *Exception Procedure - Reviewing Requests to Use Unitized/Package Water Treatment Systems*, incorporated herein by reference (*See Exhibit O of the Agreed Final Judgment*), to the TCEQ Public Drinking Water Technical Review and Oversight Team, MC155.

- Paragraph 5.5 Within 270 days of the effective date of the Judgment

Defendant shall:

- A. Submit signed and sealed engineering plans and specifications to the TCEQ Utilities Technical Review Team, MC 153, for a new public water treatment facility to supply water to all four subdivisions (Thunderbird Bay, Harbor Point, Tamarack Mountain, and Oak Point). The submitted plans shall meet the requirements in 30 T.A.C. ch. 290 – Rules and Regulations for Public Water Systems – (*See Exhibit K of the Agreed Final Judgment*), incorporated herein by reference, and the requirements listed in the February 5, 2009 letter (*See Exhibit L of the Agreed Final Judgment*) from David Laughlin, TCEQ, Utilities Technical Review Team to Stanley Ross Hayes, Hayes Engineering, incorporated herein by reference; and
- B. Remove or repaint and maintain the 0.047 MG standpipe in accordance with 30 T.A.C. § 290.43(c)(8), incorporated herein by reference (*See Exhibit E of the Agreed Final Judgment*).

- Paragraph 5.6 Within 365 days of the effective date of the Judgment

Defendant shall:

- A. Meet the disinfection by-product requirement of maintaining a running annual average of TTHM at or below the MCL of 0.080 mg/L; and
- B. Meet the disinfection by-product requirement of maintaining a running annual average of HAA5 at or below the MCL of 0.060 mg/L.

- Paragraph 5.7 Within 455 days of the effective date of the Judgment and continuously thereafter, Defendant shall either provide purchased water for the Facility in accordance with 30 T.A.C. ch. 290, incorporated herein by reference (*See Exhibit K of the Agreed Final Judgment*), **or**:
  - A. Provide a raw water intake for the Facility that is no less than 1,000 feet from any boat launching ramp accessible to the public;
  - B. Provide a raw water pump capacity of 0.6 gallons per minute per connection with the largest pump out of service;
  - C. Provide a treatment plant capacity of 0.6 gallons per minute per connection under normal rated design flow;
  - D. Provide a transfer pump capacity of 0.6 gallons per minute per connection with the largest pump out of service;
  - E. Maintain a minimum pressure of 35 psi throughout the distribution system under normal operating conditions. Maintain the distribution system so that it can provide a minimum pressure of 20 psi during emergencies such as fire fighting;
  - F. Provide sanitary facilities for toilet and hand washing activities; and
  - G. Provide continuous and adequate water service to all residents located within its Certified Area of Service, including residents in the Oak Point Subdivision.
- Paragraph 5.8 Immediately upon the effective date of the Judgment, Defendant shall begin submitting quarterly operational reports beginning January 1, 2009, and continuing each quarter of the year for three (3) years after the effective date of the Judgment or until the Defendant complies fully with all injunctions contained herein, whichever is later. These reports shall be due 30 days from the last day of each quarter. The reports shall detail all developments of importance that occur in the relevant quarter at the Facility, and shall include, but not be limited to, the following:

- A. Any change in the operational status of key equipment;
  - B. Any change in compliance with the terms of the Injunction or applicable TCEQ rules and regulations;
  - C. Any new construction at the Facility;
  - D. Any change in the management of the Facility;
  - E. A list of all submittal(s) to the TCEQ; and
  - F. Copies of bank statements showing all withdrawals and the remaining balance in the surcharge account.
  - G. Quarterly Reports shall be submitted in accordance with Section 14 of this Judgment.
- Paragraph 5.9 Within five (5) days after obtaining initial compliance with each injunctive provision, submit written certification of compliance in accordance with Section 14 of this Judgment.

## **5. POST-JUDGMENT INVESTIGATIONS**

5.1. On July 21, 2009, the TCEQ conducted a complaint investigation at the Facility. Affidavit of Jennelle Crane, attached as **Exhibit D**. During the complaint investigation, the TCEQ investigator observed that the water in the distribution system had a chlorine residual ranging from 0.01 to 0.02 milligrams per liter (mg/L).

5.2 On September 15, 2009, the TCEQ conducted a compliance investigation at the Facility. Affidavit of Jennelle Crane, attached as **Exhibit D**. During the compliance investigation, the TCEQ investigator observed the following conditions at the Facility:

- A. The free chlorine residual at the Tamarack Mountain Community Center was 0.06 mg/L. The investigator flushed the line for approximately 5 minutes and did not observe a rise in the chlorine residual.

- B. The online chlorine residual analyzer was working, but had not been certified to be in good working condition by the Hach Company.
- C. The 0.020 MG ground storage tank at pump station number 1 was in a deteriorated condition and had not been painted or maintained in accordance with AWWA standards.
- D. The 0.047 MG standpipe was in a deteriorated condition and had not been painted or maintained in accordance with AWWA standards.

5.3 Since the date of the Judgment on June 5, 2009, through at least June 4, 2010, Defendant has not applied for a formal exception from the TCEQ's Water Supply Division for a contact time study regarding switching disinfection methods (from chlorine to chloramine) to meet the disinfection byproducts requirements. Affidavit of Jennelle Crane, attached as **Exhibit D**; Affidavit of Jack Schulze, attached as **Exhibit E**; Affidavit of Mike Meyer, attached as **Exhibit F**; Affidavit of Gilbert Angelle, attached as **Exhibit G**.

5.4. Since the date of the Judgment on June 5, 2009, through at least June 4, 2010, Defendant has not submitted documents to the TCEQ establishing that when the Facility's 0.038 MG standpipe and the 0.200 MG clearwell were repainted, they were done so in accordance with then AWWA standards and 30 T.A.C. § 290.43(c)(8). Affidavit of Jennelle Crane, attached as **Exhibit D**; Affidavit of Jack Schulze, attached as **Exhibit E**; Affidavit of Mike Meyer, attached as **Exhibit F**; Affidavit of Gilbert Angelle, attached as **Exhibit G**.

5.5. Since the date of the Judgment on June 5, 2009, through at least June 4, 2010, Defendant has not submitted a surface overflow rate exception for the proposed water treatment facility as required by Requirement 2 in the February 5, 2009 letter from David Laughlin, TCEQ, Utilities Technical Review Team to Stanley Ross Hayes, Hayes Engineering. Affidavit of Jennelle Crane, attached as **Exhibit D**; Affidavit of Mike Meyer, attached as **Exhibit F**;

Affidavit of Gilbert Angelle, attached as **Exhibit G**; Affidavit of David Laughlin, attached as **Exhibit H**.

5.6. Since the date of the Judgment on June 5, 2009, through at least June 4, 2010, Defendant has not submitted signed and sealed engineering plans and specifications to the TCEQ Utilities Technical Review Team, MC 153, for a new public water treatment facility to supply water to all five subdivisions (Thunderbird Bay, Harbor Point, Tamarack Mountain, Oak Point, and Woodbridge Estates). Affidavit of Jennelle Crane, attached as **Exhibit D**; Affidavit of Mike Meyer, attached as **Exhibit F**; Affidavit of Gilbert Angelle, attached as **Exhibit G**; Affidavit of David Laughlin, attached as **Exhibit H**.

5.7. As of June 7, 2010, the Facility does not meet the disinfection by-product requirement of maintaining a running annual average of TTHM below the MCL of 0.080 mg/L. Affidavit of Alicia Diehl, attached as **Exhibit I**.

5.8. Since the Court's signing of the Judgment on June 5, 2009, through at least June 5, 2010, the TCEQ has not received any quarterly operational reports as required by Paragraph 5.8 of the Agreed Final Judgment nor has the TCEQ received written certification of compliance with any provisions of the Agreed Final Judgment. Affidavit of Jennelle Crane, attached as **Exhibit D**; Affidavit of Mike Meyer, attached as **Exhibit F**; Affidavit of Gilbert Angelle, attached as **Exhibit G**.

## **6. FAILURE TO COMPLY WITH INJUNCTION**

6.1. Thunderbird has failed and refused, and continues to fail and refuse, to obey the clear and unambiguous commands of the Court in the Permanent Injunction. In particular Thunderbird committed the following separate violations of the Court's Permanent Injunction:

- A. Failure to apply for a formal exception from the TCEQ's Water Supply Division for a contact time study regarding switching disinfection methods. No documents have been received by the TCEQ's Water Supply Division regarding switching disinfection methods from chlorine to chloramine to meet the disinfection byproducts requirements;<sup>6</sup>
- B. Failure to maintain at all times the specified free chlorine residual. During a July 21, 2009 complaint investigation and a September 15, 2009 compliance investigation, a TCEQ investigator observed a free chlorine residual of 0.2 mg/L or a chloramine residual of 0.5 mg/L (if using ammonia) in the finished water storage tank and throughout the distribution system were not maintained.<sup>7</sup>
- C. Failure to submit to the TCEQ documents establishing standpipe and clearwell repainting were done in compliance with AWWA standards. No documents have been received by the TCEQ establishing that when the Facility's 0.038 MG standpipe and the 0.200 MG clearwell were repainted, they were done so in accordance with the then AWWA standards and 30 Tex. Admin. Code § 290.46(c)(8).<sup>8</sup>
- D. Failure to submit documentation certified by the Hach Company. TCEQ has received no documentation and no documentation was present at a September 15, 2009 TCEQ inspection, showing the replacement or repair of the on-line residual analyzer was certified by the Hach Company as in good working condition.<sup>9</sup>
- E. Failure to repaint, maintain, and submit to the TCEQ documents establishing the 0.020 MG ground storage tank repainting was done in compliance with AWWA standards. During a September 15, 2009 TCEQ inspection, the TCEQ investigator observed that the 0.020 MG ground storage tank was in a deteriorated condition and had not been painted or maintained. Further, no documents have been received by the TCEQ establishing that when the Facility's 0.020 MG ground storage tank was repainted, it was done so in accordance with the AWWA standards and 30 Tex. Admin. Code § 290.43(c)(8).<sup>10</sup>

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<sup>6</sup> Paragraph 5.1(F), Agreed Final Judgment and Permanent Injunction.

<sup>7</sup> Paragraph 5.1(G), Agreed Final Judgment and Permanent Injunction.

<sup>8</sup> Paragraph 5.1(H), Agreed Final Judgment and Permanent Injunction.

<sup>9</sup> Paragraph 5.2(A), Agreed Final Judgment and Permanent Injunction.

<sup>10</sup> Paragraph 5.3(A), Agreed Final Judgment and Permanent Injunction.

- F. Failure to submit a surface overflow rate exception. No documents have been received by the TCEQ regarding a surface overflow rate exception for the proposed water treatment facility.<sup>11</sup>
- G. Failure to submit signed and sealed engineering plans and specifications. No engineering plans and specifications have been received by the TCEQ for a new public water treatment facility to supply water to Thunderbird Bay, Harbor Point, Tamarack Mountain, and Oak Point.<sup>12</sup>
- H. Failure to repaint, maintain, and submit to the TCEQ documents establishing the 0.047 MG standpipe repainting was done in compliance with AWWA standards. No documents have been received by the TCEQ establishing that when the Facility's 0.047 MG standpipe was repainted, it was done so in accordance with the AWWA standards and 30 Tex. Admin. Code § 290.43(c)(8).<sup>13</sup>
- I. Failure to meet TTHM disinfection by-product requirements. TCEQ record reviews have determined that the Facility does not meet the disinfection by-product requirement of a running annual average of TTHM at or below the MCL of 0.080 mg/L.<sup>14</sup>
- J. Failure to submit quarterly reports. TCEQ has received no quarterly operational reports from Defendant.<sup>15</sup>
- K. Failure to submit written certification of compliance. TCEQ has received no written certification of compliance detailing the initial compliance with each injunctive provision.<sup>16</sup>

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<sup>11</sup> Paragraph 5.4(A), Agreed Final Judgment and Permanent Injunction.

<sup>12</sup> Paragraph 5.5(A), Agreed Final Judgment and Permanent Injunction.

<sup>13</sup> Paragraph 5.5(B), Agreed Final Judgment and Permanent Injunction.

<sup>14</sup> Paragraph 5.6(A), Agreed Final Judgment and Permanent Injunction.

<sup>15</sup> Paragraph 5.8, Agreed Final Judgment and Permanent Injunction.

<sup>16</sup> Paragraph 5.9, Agreed Final Judgment and Permanent Injunction.

## **7. CONTEMPT OF PERMANENT INJUNCTION BY SCHRAM**

7.1. The Texas Supreme Court stated that a corporation is only able to act through its agents, and that the corporation is capable of violating a court order only if its agents act or refrain from acting.<sup>17</sup> Thus, an order directed at a corporation is binding on agents authorized to act on the corporation's behalf, whether or not the agents are specifically named in the order.<sup>18</sup> “[A] command to the corporation is in effect a command to those who are officially responsible for the conduct of its affairs.”<sup>19</sup> A corporate agent that has knowledge of an order directed against a corporation, and that personally participates in or encourages violation of that order, may be held individually in contempt of court.<sup>20</sup>

7.2. As established above in Paragraph 5.1., Thunderbird failed and refused to obey several of the Court's orders in the Permanent Injunction. Schram is the president of Thunderbird and is one of only two directors of Thunderbird Bay. Schram has knowledge of the Permanent Injunction against Thunderbird because he personally signed the Agreed Final Judgment and actively participated in negotiations leading up to the Agreed Final Judgment entered by the Court on June 5, 2009. Thus, Schram was capable of compelling Thunderbird Bay to obey the Court's orders in the Permanent Injunction.<sup>21</sup> Thunderbird's disobedience of the Permanent Injunction is due to Schram's personal failure and refusal to act.

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<sup>17</sup> *Ex parte Chambers*, 898 S.W.2d 257, 260 (Tex. 1995) (citations omitted).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* (citation omitted).

<sup>20</sup> *Id.* at 261 (citations omitted).

<sup>21</sup> *Ex parte Chambers*, 898 S.W.2d at 261.

7.3. The Court may infer that Schrams's non-compliance with the Permanent Injunction is willful because the Permanent Injunction is unambiguous, and Schram has notice of the Permanent Injunction.<sup>22</sup>

7.4. Because Schram has willfully violated the Court's clear and unambiguous orders in the Permanent Injunction, Schram, individually, should be held in contempt of court.

## **8. JUDICIAL AUTHORITY TO PUNISH CONTEMPT**

8.1. Rule 692 of the Texas Rules of Civil Procedure sets forth the procedure for punishment for contempt of court. The rule provides that a judge may issue a show cause order requiring a person to appear on such date as may be designated and show cause why he should not be adjudged in contempt of court. On return of such show cause order, the judge shall proceed to hear proof, and if satisfied that such person has disobeyed the injunction, either directly or indirectly, may commit such person to jail without bail until he purges himself of such contempt, in such manner and form as the judge may direct.

8.2. Furthermore, Section 21.002(b) of the Texas Government Code, provides that the punishment for contempt of an order of this Court is a fine of not more than \$500 or confinement in the county jail for not more than six months, or both a fine and confinement in jail.

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<sup>22</sup> See *Ex parte Chambers*, 896 S.W.2d at 261 ("Noncompliance with an unambiguous order of which one has notice will ordinarily raise an inference that the noncompliance was willful.").

## **9. AUTHORITY FOR ATTORNEY'S FEES**

9.1. Section 7.108 of the Texas Water Code provides that the State is entitled to recover reasonable attorney's fees, investigative costs, and court costs incurred in relation to this cause.

### **PLAINTIFF'S REQUESTS**

ACCORDINGLY, for the reasons set forth in this Motion and pursuant to the statutory authority cited herein, Plaintiff the State of Texas requests of the Court the following:

- A. That the Court order Defendant Thunderbird Bay Water Services, Inc., and Charles E. Schram, III, an individual, to appear before the Court at a designated date and time;
- B. That, upon hearing, the Court find that Defendant Thunderbird Bay Water Services, Inc., and Charles E. Schram, III an individual, be held in contempt of court for violations of the *Agreed Final Judgment and Permanent Injunction* issued in this matter;
- C. That the Court punish Thunderbird Bay Water Services, Inc., and Charles E. Schram, III, an individual, for their contemptuous acts as set out above in Paragraph 5.1., by fine of \$500.00 and confinement to jail, in accordance with Rule 692 of the Texas Rules of Civil Procedure and Section 21.002(b) of the Texas Government Code; and
- D. That the Court award to the State its reasonable attorney's fees, investigative costs, and court costs incurred in relation to this cause.

Respectfully submitted,

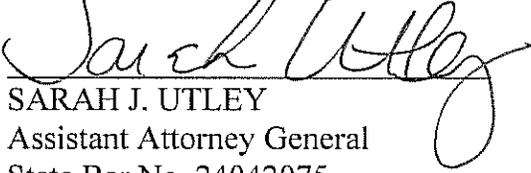
GREG ABBOTT  
Attorney General of Texas

C. ANDREW WEBER  
First Assistant Attorney General

DAVID S. MORALES  
Deputy Attorney General for Civil Litigation

BARBARA B. DEANE  
Chief, Environmental Protection and Administrative  
Law Division

DAVID PREISTER  
Chief, Environmental Protection Section

  
SARAH J. UTLEY  
Assistant Attorney General  
State Bar No. 24042075

KELLIE E. BILLINGS  
Assistant Attorney General  
State Bar No. 24042447

Environmental Protection and  
Administrative Law Division  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
Tel: (512) 463-2012  
Fax: (512) 320-0052

ATTORNEYS FOR THE STATE OF TEXAS