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February 4, 2008

Via Hand-Delivery

Ms. Tammy Benter, Team Leader
Utilities & Districts Section (MC-153)
Water Supply Division
Texas Commission on Environmental Quality
Building F, 3rd Floor
Austin, Texas 78711-3087

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RE: Application from Double Diamond Utilities, Co., Certificate of Convenience and Necessity No. 12087, to Decertify a Portion of CCN No. 12362 from Northwest Grayson County WCID 1 and to Amend CCN No. 12087, in Grayson County, Texas; Application No. 35903-C

Dear Ms. Benter:

This letter provides a response to the Notice of Deficiency (NOD) dated January 10, 2008. Your requests, along with our responses are provided below. You will also find enclosed documentation that notice was provided in accordance with applicable requirements (see **Exhibit "A"**). Namely, you will find (1) an original and three copies of a publisher's affidavit of the newspaper publication with tear sheets of the published notice attached; (2) four copies of each individual notice and map sent to neighboring utilities and affected parties; and (3) one copy of the landowner notice and map sent to landowners subject to notice requirements.¹

NOD 1: *The entire proposed area is inside the CCN boundaries of Northwest Grayson County WCID 1, CCN 12362. Please provide written documentation on how the overlap will be handled. There are several options to resolving this overlap. One is to amend your application by submitting revised maps and change the requested CCN area so as to no include the areas of overlap. The second option is for you to meet with Northwest Grayson County WCID 1 and work out an agreement whereby Northwest Grayson County WCID 1 agreeing (sic) to decertification of the areas of overlap. Written documentation from Northwest Grayson County WCID agreeing to decertification is required. If an agreement is not reached, you would have to provide compelling evidence that Northwest Grayson County WCID 1 could not provide acceptable service.*

¹ As no customers exist in the area that is the subject of this matter, no customer notices were submitted.

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Response: The subject service area consists of approximately 1,377 acres of land adjacent to Lake Texoma known as the Rock Creek Resort (the "Property"). The Property is in the water CCN of the District, but outside the District's corporate boundaries. The Property is owned by Double Diamond, Inc. ("DDI"). The landowner, DDI, desires to have Double Diamond Utilities Co. ("DDU") serve the Property. DDU is an existing retail public utility, holding Certificate of Convenience and Necessity No. 12087, and provides retail water service to over 800 customer connections located in Texas. DDU currently holds sewer CCN No. 20705 which includes the Property. The landowner's preference is for a single entity to provide water and sewer service to allow for single bills to be submitted to residential customers. Absent a single utility provider, it can be difficult for the sewer provider to collect for non-payment of service, given the inability to "cut-off" sewer service.

DDU filed an application to amend its water CCN to include the Property on November 26, 2007. The first option provided by the Executive Director is for DDU to change the requested CCN area so as to not include the areas that are included in the District's service area. As this option negates the intent of the landowner and the overall purpose of the amended application, DDU cannot pursue this option. The second proposed option, as suggested by the Executive Director, is for the parties to meet in order to determine whether the District would agree to the decertification of the service area within the Property. The parties have discussed the decertification of the Property from the District's CCN, but an agreement has yet to be reached. Under this scenario, you ask that we provide evidence that the District cannot provide acceptable service.

The District Does Not Provide Water Service to the Property: The District has never provided service to the Property, nor does it have any infrastructure in place to be able to provide the required level of water service to the Property at the present time. That factor alone could be a justification for decertification under Section 13.254, Texas Water Code.

The District Has Not Responded to the Service Request: In order to determine the District's capabilities in providing the requisite service to the subject service area, a request for service was submitted to the District by the landowner, DDI, on December 21, 2007. The service request (attached hereto as **Exhibit "B"**) sets forth the most recent development schedule along with water service needs during each phase of the development. The service request sought information related to the costs associated with serving the development; the capital improvements proposed by the District to serve the development; along with information related to the source of water to be used by the District to serve the development at the various phases. The District has not responded to this service request and we are unsure as to whether a response is forthcoming. Accordingly, there is no new information related to the District's capabilities, beyond that which has been obtained through requests under the Public Information Act and during the expedited release process.²

² As you are aware, DDI filed a petition on December 13, 2006 under section 13.254(a-1), Texas Water Code, for the expedited release of the Property from within the area covered by the District's CCN.

The District Has Insufficient Water Supply to Serve the Property: Based on the available information, DDU has concluded that the District does not have access to sufficient water supply to fully serve the development's needs. In fact, the available information indicates that the available water supply is barely sufficient to meet the demands of the District's existing customers. The District's current water supply comes from only two groundwater wells. When last pump tested, the two groundwater wells, combined, produced a maximum of 432 gallons per minute.³ See **Exhibit "C."** Given the minimum regulatory requirement of providing 0.6 gallons per minute per connection,⁴ the District has just enough capacity to satisfy its current customer base, yet alone meet the demands of Petitioner. In fact, the District appears to be in violation of the 85% rule,⁵ which would have been first violated when the customer count of the District exceeded 612 connections. Furthermore, given the tests were taken more than 15 years ago, it would not be surprising if the well productivity has since declined.

The District Does Not Have the Financial, Managerial and Technical Capability to Serve the Property: The District has modest facilities and equipment, has a limited operating and capital budget, lacks sufficient operating reserve accounts, and has limited technical and managerial capabilities based on information provided to the landowner by the District. The District is a small rural water system, and the available information indicates that it has no ability to pay for, or finance, the water system improvements required to serve the Property.

NOD 2: *Please submit a tariff for Double Diamond Utilities Co.*

Response: See **Exhibit "D"** attached hereto, which contains the proposed rates for the Rock Creek Resort. Separately, we will submit a copy of the current tariff of DDU which will need to be amended to add a reference to the tariff's applicability to the Rock Creek Resort.

Please call me should you have any questions or concerns.

Sincerely,



Leonard Dougal

cc: Randy Gracy, President, Double Diamond Utilities Co.

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³ This information was provided by the District in response to an Open Records Request. Well No. 1 was last tested in 1991 and produced 200 gpm; Well No. 2 was last tested in 1999 and produced 232 gpm.

⁴ 30 TEX. ADMIN. CODE §290.45(b).

⁵ *Id.* at §291.93(3).