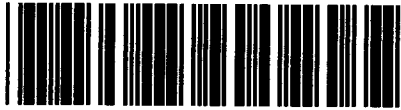




Control Number: 43990



Item Number: 25

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
Legislature, Regular Session, transferred the functions  
relating to the economic regulation of water and sewer  
utilities from the TCEQ to the PUC effective  
September 1, 2014

43990

SOAH DOCKET NO. 582-06-0425  
TCEQ DOCKET NO. 2005-1516-UCR  
2014 DEC 19 AM 8:16

APPLICATION OF TAPATIO  
SPRINGS SERVICE COMANY, INC.  
TO AMEND CERTIFICATES OF  
CONVENIENCE AND NECESSITY  
NOS. 12111 AND 20698 IN  
KENDALL COUNTY, TEXAS

§  
§  
§  
§  
§  
§  
§

RECEIVED  
PUBLIC UTILITY COMMISSION  
BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

Pre-Filed Testimony of  
Darrell W. Nichols  
April 27, 2006

Applicant's Exhibit 1

1 **Q. Please state your name for the record.**

2  
3 A. My name is Darrell Nichols.  
4  
5

6 **Q. By whom are you employed and in what capacity?**  
7

8 A. I am employed by B & D Environmental, Inc. as one of the Principals, and I am an  
9 Engineer.  
10  
11

12 **Q. What are your duties at B & D Environmental, Inc.?**  
13

14 A. For B & D Environmental, Inc., I provide consultant services to utilities. These  
15 services involve preparing Applications to Obtain or Amend Certificates of  
16 Convenience and Necessity, Rate/Tariff Change Applications, and Sale/Transfer  
17 Merger Applications. In addition, I work with utilities to evaluate facilities to determine  
18 necessary improvements, cost of operations, staffing plans, and anticipated operating  
19 cost.  
20  
21

22 **Q. Please describe your educational background and your past engineering  
23 experience.**  
24

25 A. I hold a Bachelor of Science Degree in Civil Engineering from the University of Texas.  
26 I specialized in Water Resources and took classes in Hydraulic Engineering,  
27 Wastewater Engineering, and Hydrology. From May 1990 until June 1991, I was  
28 employed with the Texas Water Commission. My primary duties at the Commission  
29 were reviewing Certificate of Convenience and Necessity (CCN) applications,  
30 assisting other Engineers with their CCN reviews, and performing cartography. From  
31 June 1992 until May 1993, I was employed as a Hydrologist Tech by the United  
32 States Geological Survey. My primary duties were developing a flood frequency  
33 model and gathering data for a bridge scour study. From May 1993 till February  
34 1997, I was employed by TNRCC in the Utility Rates and Services Section as an  
35 Engineer Assistant III.  
36  
37

38 **Q. Please describe any additional education relative to your employment with the  
39 TCEQ and its predecessors.**  
40

41 A. I have attended the 21st Annual Eastern Utility Rate Seminar sponsored by the  
42 Florida Public Service Commission and Florida State University Center for  
43 Professional Development & Public Service. I have also attended numerous utility  
44 related seminars in Texas.  
45  
46

1 **Q. What were your duties with the Texas Natural Resource Conservation**  
2 **Commission?**

3  
4 A. My duties included reviewing utility applications for CCNs, rate/tariff change  
5 applications, preparing recommendations for the Commission on behalf of the  
6 Executive Director, providing expert testimony and participating as an expert witness  
7 at formal hearings, investigating and resolving customer inquiries, and reviewing  
8 water utility improvement plans and specifications.  
9

10  
11 **Q. How many separate certification cases and rate cases were you assigned**  
12 **during your employment with the TNRCC?**

13  
14 A. I was assigned to approximately 60 separate rate cases and approximately 140  
15 certification cases during my tenure at the TNRCC and its predecessor agency.  
16

17  
18 **Q. Have you testified in public hearings before the Commission?**

19  
20 A. Yes. I have provided testimony for the following utility matters: the CCN Application of  
21 the City of Oak Point, Docket No. 582-05-3630; the CCN Application of West  
22 Houston Airport, Docket No. 30847-C and 30848-C; the rate change application of  
23 North Orange, LLC, Docket No. 582-03-3827; the rate change application of West  
24 Houston Airport, Docket No. 31192-R; the rate change application of Spring Valley  
25 Water CO-OP, Docket No. 30845-G; the rate change application of Vern Norman dba  
26 Somersetshire Estates, Docket No. 30385-G; the CCN application of Kerrville South  
27 Water Co., Inc., Docket No. 30443-C; the CCN application of O. J. Erlund, Jr. dba Hill  
28 Country Utility Corporation, Docket No. 30478-C; the CCN application of Dogwood  
29 Springs Water Supply Corporation, Docket No. 9993-C; the CCN application of  
30 Midnight Enterprises, Inc., Docket No. 31031-C; the appeal of the developer  
31 connection fee to be charged by Hill Country S.A., Ltd. dba Hill Country Water  
32 System, Docket No. 9954-X; the appeal of the developer connection fee of Dessau  
33 Utilities, Inc., Docket No. 30469-X; the appeal of the new connection fee to East  
34 Crawford Water Supply Corporation, Docket No. 30348-X; and the application of  
35 Cindy Day dba Medina Water Services to acquire Bandera Water Company, Docket  
36 No. 31022-S.  
37

38  
39 **Scope of Work**

40  
41 **Q. Please explain the scope of your participation in SOAH Docket No. 582-06-0425.**

42  
43 A. My participation regarding Docket No. 582-06-0425 can be summarized as follows:  
44 1. I prepared the CCN Amendment Application with information provided by the  
45 Tapatio Springs, CDS International, Inc. and Matkin-Hoover Engineering.  
46 2. I reviewed the responses to interrogatories filed by all parties in this

- proceeding.
3. I have made recommendation for approval of the proposed CCN.

**Q. Have you included any attachments with your testimony?**

- A. Yes, I have included the original application as filed with the TCEQ, which includes maps of the proposed area. I have also included Table 4-14 of the Regional Water Plan (January 2001), Section 4B.2.14 2006 Regional Water Plan, and a letter from Bank of America regarding CDS International, Inc.

**Q. What is the basis for this CCN Amendment Application?**

- A. CDS International, Inc. (CDS) owns land that is adjacent and contiguous to the existing CCN area of Tapatio Springs. CDS is seeking to develop this land and in such capacity requested Tapatio Springs to provide the utility services. Pursuant to Tapatio Springs' TCEQ approved Tariff, the applicant and the developer entered into a Non-Standard Service Agreement for Tapatio Springs to provide the utility services. The application is a result of that agreement.

**Q. If you were to prepare the application and attachments to the application today, would your answers remain the same?**

- A. Yes, except for the number of connections. That might be reduced based on final approval of the plat and Master Plan.

**Q. Are there any other utilities providing service to the proximate area?**

- A. The applicant and its affiliate, Kendall County Utility Company, are the only two entities providing service to the proximate area and are interconnected.

**Q. Did any neighboring utilities protest the application?**

- A. Yes. The City of Boerne initially protested the application. The City of Boerne discussed the application with the Developer and the applicant on several occasions in order to get more information. As a result the City withdrew its objection to the application and is not participating in this hearing.

**Q. Has any other utility provider protested this application or proposed to provide service to this area?**

1 A. No.

2  
3  
4 **Q. Does State Law encourage separate stand-alone systems for new**  
5 **developments?**

6  
7 A. Chapter 13.241(d) of the Texas Water Code requires new utilities to demonstrate that  
8 regionalization or consolidation with another retail public utility is not economically  
9 feasible. Before the Developer could construct, own, and operate its own utility and  
10 obtain its own CCN, the TCEQ would require the Developer to request service from  
11 all adjacent utilities and demonstrate why regionalization and consolidation is not  
12 feasible. Tapatio Springs and its affiliate KCUC are the only adjacent utilities.

13  
14  
15 **Q. Please describe the ability of Tapatio Springs to provided continuous and**  
16 **adequate water and sewer utility services to its existing customers?**

17  
18 A. Tapatio Springs operates existing wells that have been adequate to meet the service  
19 demands experienced to date. However, to ensure sufficient water resources for  
20 years to come, Tapatio Springs secured a supplemental source of treated surface  
21 water from the Guadalupe Blanco River Authority (GBRA). The 500 acre-feet of  
22 water per year is intended to meet normal demand while the existing groundwater  
23 supplies will still be required to meet peak demands. The 2006 Regional Water Plan  
24 also recommends that utilities in Kendall County purchase and implement surface  
25 water from the GBRA prior to year 2010. Tapatio Springs has demonstrated its  
26 commitment to providing service to its customers by securing sufficient water  
27 resources for years to come.

28  
29 According to the TCEQ Comprehensive Compliance Inspection Letter dated August  
30 10, 2004, the utility provided compliance documentation that corrective actions were  
31 taken for any alleged water system violations and that no other action or submittal  
32 was necessary.

33  
34 Tapatio Springs operates a TCEQ Permitted wastewater treatment facility that has  
35 adequately met the wastewater demands of its customers. All treated wastewater is  
36 irrigated on a golf course and not discharged. According to the TCEQ Compliance  
37 Inspection Letter dated January 12, 2004, the utility provided compliance  
38 documentation that corrective actions were taken for any alleged wastewater system  
39 violations and that no other action or submittal was necessary.

40  
41  
42 **Q. What is the "Regional Water Plan"?**

43  
44 A. The Regional Water Plan is a direct result of Senate Bill 1 to evaluate the water  
45 needs and strategies to meet those needs for every region in the state. In January of  
46 2001, the South Central Texas Regional Water Planning Group developed and

1 adopted the 2001 Regional Water Plan. The Texas Water Development Board  
2 approved the plan and incorporated it into the 2002 State Water Plan. This plan  
3 identified the water resources in the area, including Kendall County, and projected  
4 water shortages. The State Water Code requires the State Water Plan be updated  
5 every 5 years. Consequently, the South Central Texas Regional Water Planning  
6 Group developed and adopted the 2006 Regional Water Plan. In this plan, the water  
7 resources and needs are evaluated. Recommendations are also made that utilities  
8 implement surface water from the GBRA prior to year 2010 in Kendall County.  
9

10  
11 **Q. Please describe the ability of Tapatio Springs to provide continuous and**  
12 **adequate water and sewer utility services to the proposed area.**  
13

14 A. Tapatio Springs will be utilizing surface water to serve its existing customers as  
15 previously described and has required the Developer to obtain additional surface  
16 water capacity from the Guadalupe Blanco River Authority for the proposed area.  
17 The developer has paid and will continue to pay the costs of acquiring the additional  
18 250 acre-feet of water from the GBRA to serve the base demand within the proposed  
19 area. The developer is also responsible for providing the necessary infrastructure to  
20 service the area including developing wells to be used to meet peak demands.  
21

22  
23 **Q. Who is responsible for designing and constructing the utility infrastructure**  
24 **within the proposed development?**  
25

26 A. Pursuant to the Non-Standard Service Agreement, the developer is required to pay all  
27 costs associated with designing and constructing the infrastructure within the  
28 development including engineering and design, easements or right-of-ways  
29 acquisition, construction, inspection, government or regulatory approvals required to  
30 lawfully provide service, and procurement of water allotments from GBRA. This  
31 infrastructure includes wells, storage facilities, pressure maintenance facilities,  
32 disinfection equipment, distribution system, collection system, and wastewater  
33 treatment facilities. The applicant will not provide utility service until such time that  
34 the developer has properly completed the construction of the infrastructure with final  
35 inspection and testing by the applicant and all regulatory approvals obtained.  
36

37  
38 **Q. Is this type of an agreement standard practice in the utility industry?**  
39

40 A. Yes it is. In fact, an agreement such as this is encouraged by the TCEQ because the  
41 financial burden of constructing the infrastructure is born by the developer and not the  
42 utility.  
43

44  
45 **Q. Has the utility provided any information on its financial ability to meet the**  
46 **requirements of the Non-Standard Service Agreement?**

1  
2 A. Yes. Bank of America provided a letter indicating its long-standing relationship with  
3 CDS and that all accounts are satisfactory. The letter indicated that CDS has  
4 unrestricted funds available to be used to comply with the Non-Standard Service  
5 Agreement.  
6

7  
8 **Q. Could you please describe your prior and current work for Tapatio Springs and**  
9 **KCUC in addition to this CCN matter?**  
10

11 A. I have been assisting Tapatio Springs and KCUC since 2000. I was involved in the  
12 preparation of the Rate/Tariff Change that established the TCEQ approved rates that  
13 are currently in effect. I am also involved in preparing a new Rate/Tariff Change  
14 application for the utilities. I prepared the Tapatio Springs and KCUC Merger  
15 Application which is pending at the TCEQ. In addition, I have also provided  
16 assistance to Tapatio Springs on regulatory issues over the past 6 years.  
17

18  
19 **Q. Within this working relationship, have you been able to determine the**  
20 **managerial and technical ability of Tapatio Springs?**  
21

22 A. Yes.  
23

24  
25 **Q. Please describe the managerial and technical ability of Tapatio Springs to**  
26 **provide continuous and adequate water and sewer utility services to the**  
27 **proposed area?**  
28

29 A. Tapatio Springs is an experienced retail utility and has excellent history with the  
30 TCEQ of providing continuous and adequate water and sewer service to its  
31 customers for more than a decade. This history is well documented in the files  
32 maintained by and at the TCEQ for both the water and sewer systems. Tapatio  
33 Springs employs experienced licensed water and sewer operators to maintain the  
34 facilities.  
35

36 Tapatio Springs has demonstrated prudent planning and commitment to its  
37 customers by securing surface water capacity from the GBRA. This will ensure  
38 sufficient water resources for years to come and follows the recommendations set  
39 forth in the 2006 Regional Water Plan. Tapatio Springs has also secured an  
40 additional 250 acre-feet of surface water from the GBRA to serve the proposed  
41 area, which has and will continue to be paid by the Developer.  
42

43 The water facilities of Tapatio Springs and its affiliate KCUC are interconnected and  
44 operated as one water system. A Merger Application of these two entities is  
45 pending at the TCEQ. A SCADA system is utilized to monitor the water system and  
46 identify problems before it affects service to its customers. The water system within



1 the proposed area will also be interconnected to Tapatio Springs' existing facilities.  
2 Upon plat approval and approval of the Master Development Plan, a registered  
3 professional engineer will design the water facilities to be located within the  
4 proposed area. The Developer is responsible for the cost of designing these  
5 facilities pursuant to the Non-Standard Service Agreement.  
6

7 The initial phases of the development will utilize individual on-site facilities for waste  
8 disposal. When a development phase requires centralized sewer, the Developer  
9 will be responsible for the cost of permitting, designing, and constructing the  
10 necessary wastewater collection and treatment facilities.  
11

12  
13 **Q. Please describe the financial ability of Tapatio Springs to provide continuous**  
14 **and adequate utility services to the proposed area.**  
15

16 A. Tapatio Springs is not required to finance the improvements needed to provide  
17 service to the proposed area. All the improvements required to provide service to the  
18 proposed area are to be financed, designed, and constructed by the Developer  
19 pursuant to the Non-Standard Service Agreement previously described.  
20 Furthermore, the Developer is also obligated to pay the raw water component of the  
21 monthly charges paid by Tapatio Springs to the GBRA until such time as there are  
22 at least 500 active connections (homes occupied by the end-use) within the  
23 proposed area. Because the Developer is financially responsible for designing and  
24 installing the infrastructure, the Applicant will not have any debt related to that  
25 infrastructure within the proposed area that will need to be paid with revenues. The  
26 largest initial operational expense will be the reservation payment to the GBRA for  
27 the additional 250 acre-feet per year that will be paid by the Developer.  
28

29  
30 **Q. In your opinion, do you believe that Tapatio Springs has demonstrated the**  
31 **necessary financial, managerial, and technical capability to provide continuous**  
32 **and adequate service as provided in Texas Water Code 13.241(a)?**  
33

34 A. Yes.  
35

36  
37 **Q. Please describe the effects on the land to be included in the certificated area**  
38 **and the environmental integrity by the granting of the amendment?**  
39

40 A. The owner of the land, the Developer, would be receiving utility service from the  
41 Applicant, its provider of choice, to develop the land as it intends. CDS will not be  
42 forced to develop at low densities and large lots that enable homeowners to drill an  
43 individual well on each lot. The proliferation of individual wells increases the risk of  
44 contamination and depletion of the groundwater resources with little regulation.  
45 Approving the CCN Amendment will provided greater control and management of the  
46 groundwater resources in the area with greater regulation and monitoring. Not

1 approving the CCN Amendment will have a negative effect on the groundwater  
2 resources. Utilizing surface water from the GBRA follows the recommendations set  
3 forth in the 2006 Regional Water Plan and protects the groundwater resources.  
4

5 A properly designed and constructed centralized sanitary sewer system is superior to  
6 on-site facilities. However, on-site facilities are an effective and approved method for  
7 disposition of wastewater. In future more dense phases of the development, a  
8 wastewater collection and treatment system will be utilized.  
9

10  
11 **Q. Will granting the amendment improve service or lower cost to consumers in the**  
12 **area?**  
13

14 A. There is currently no service in the proposed service area so having a centralized  
15 utility will result in improvement in service. Tapatio Springs has no outstanding  
16 deficiencies in its most recent Compliance Inspection by the TCEQ. There are no  
17 current customers in the proposed area, but any new customers will pay the same  
18 TCEQ approved rates as all other customers of Tapatio Springs.  
19

20  
21 **Q. How do the existing customers of Tapatio Springs benefit from the CCN**  
22 **Amendment?**  
23

24 A. Tapatio Springs will be constructing a transmission main to bring the surface water  
25 from the GBRA near Cascade Caverns to the utility's water plant on John's Road.  
26 As part of the Non-Standard Service Agreement, the Developer will contribute up to  
27 \$1,500,000 towards the cost of that project. If the CCN Amendment is not granted,  
28 the existing customers will ultimately be responsible for the entire cost of constructing  
29 that surface water transmission main through their monthly rates.  
30

31  
32 **Q. What is your recommendation for granting the amendments?**  
33

34 A. The application should be approved and the amendments to CCN Nos. 12122 and  
35 20698 be granted.  
36

37  
38 **Q. Does this conclude your testimony?**  
39

40 A. Yes, it does.

## **EXHIBITS**

Exhibit 1: Application

Exhibit 2: Table 4-14 Regional Water Plan, January 2001

Exhibit 3: Section 4B.b.14 of the 2006 Regional Water Plan

Exhibit 4: Letter from Bank of America regarding CDS International, Inc.

**AFFIDAVIT OF DARRELL NICHOLS**

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

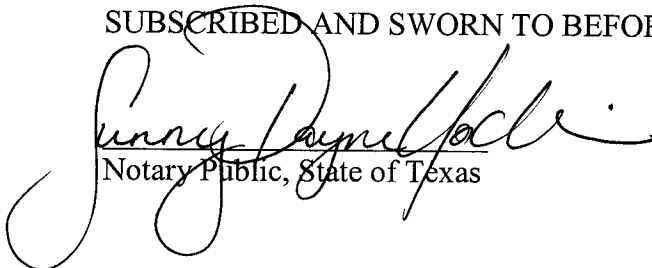
BEFORE ME, the undersigned authority, Darrell Nichols, being duly sworn, deposes and states:

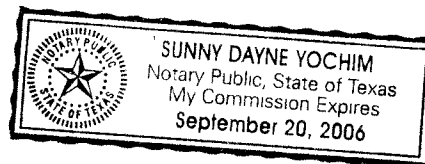
"My name is Darrell Nichols. I am employed as one of the principals for B& D Environmental, Inc., having it principal place of business in Austin, Texas. I am over the age of twenty-one and am competent to make the following affidavit:

The foregoing testimony offered by me is true and correct and the opinions stated therein are, in my judgment and based upon my professional experience, true and correct."

  
Darrell Nichols

SUBSCRIBED AND SWORN TO BEFORE ME this 24<sup>th</sup> day of April 2006.

  
Notary Public, State of Texas



**AN APPLICATION  
TO AMEND A WATER AND SEWER  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY FOR TAPATIO SPRINGS  
SERVICES COMPANY, INC.**

**Kendall County, Texas**

**Prepared for:**

Tapatio Springs Services Company, Inc.

**Prepared by:**

B & D Environmental, Inc.  
Austin, Texas

April 20, 2005

**EXHIBIT**

1