

Control Number: 43990



Item Number: 48

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

2011 DEC 19 AM 8:21

APPLICATION OF TAPATIO SPRINGS §  
SERVICE COMPANY, INC., §  
TO AMEND CERTIFICATES §  
OF CONVENIENCE AND NECESSITY §  
NOS. 12122 AND 20698 IN KENDALL §  
COUNTY, TEXAS §

BEFORE THE STATE OFFICE  
PUBLIC UTILITY COMMISSION  
OF FILING CLERK

ADMINISTRATIVE HEARINGS

**RATEPAYERS MOTION FOR FINAL SUMMARY JUDGMENT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Ratepayers asks the Court to issue a final summary judgment on Tapatio Springs Service Company, Inc.'s Application to Amend a Water and Sewer Certificate of Convenience and Necessity for Tapatio Springs Services Company, Inc. (herein referred to as "Application") denying said Application.

**Introduction**

"Applicant" is Tapatio Springs Services Company, Inc., "TCEQ" is the Texas Commission of Environmental Quality issued the governmental authority over the granting of Certificates of Convenience and Necessity (herein referred to as "CCN") by the State of Texas; "Ratepayers" are designated in this Court's Order No. 1.

Applicant is seeking to amend its' CCN before the TCEQ.

Ratepayers challenged the amendment.

Discovery in this suit is governed by a Level 3 discovery control plan. The discovery period ended on June 12, 2006.

Ratepayers move for summary judgment as the Application submitted by the Applicant is legally insufficient.

Argument & Authorities

Ratepayers moves for summary judgment as the Application submitted by the Applicant is legally insufficient.

Summary judgment is proper when a party proves all essential elements of its claim as a matter of law. *MMP, Ltd. v. Jones*, 710 S.W.2d 59, 60 (Tex. 1986). The party must show there are no genuine issues of material fact. Tex. R. Civ. P. 166a(c); *Lear Siegler, Inc. v. Perez*, 819 S.W.2d 470, 471 (Tex. 1991).

Ratepayers are entitled to summary judgment because they can prove the Applicant failed to present a legally sufficient Application as a matter of law thus establishing there are no genuine issues of material fact. To carry their burden, Ratepayers must prove that the Applicant fails to meet the statutory requirements for the Application which are addressed as follows. Ratepayers are entitled to summary judgment because their summary judgment evidence proves they are entitled to judgment as a matter of law.

FINANCIAL ABILITY

Under the TEXAS WATER CODE § 13.241, the Applicant must show financial ability to pay for the facilities.<sup>1</sup> The Applicant's own financial statements fail to provide

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<sup>1</sup> TEXAS WATER CODE § 13.241 (a) In determining whether to grant or amend a certificate of public convenience and necessity, the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service. The Texas Administrative Code also requires the TCEQ to consider this factor.

evidence of financial stability. Then consideration of the letter from the Developer's Bank shows the preliminary costs cannot be satisfied. The Applicant even with the help of the Developer will not be able to install a system sufficient to service the proposed area.

#### APPLICANT'S FINANCIAL STATEMENTS

The Applicant submitted financial statements with their Application.<sup>2</sup> Reviewing the Balance Sheet of the Applicant reveals that the debt to equity ratio is 1.4 which indicates a significant negative equity position and a lack of financial ability to service the proposed expansion area.<sup>3</sup> Also, the Balance Sheet shows the Applicant's current Assets to be \$23,474.58 with the largest account receivable owed by an affiliated company Tapatio Springs Golf Resort.<sup>4</sup> As further evidence that the Applicant's financial ability is insufficient to develop the proposed expansion, the Income Statement shows that the interest expense for the company is 24.26% of expenses paid.<sup>5</sup> As submitted, the Applicant's financial statement clearly show its' inability to develop a 1700 unit widely spaced across 5,000 acres of land.

#### DEVELOPER'S BANK LETTER

The only evidence submitted to prove financial ability has been a letter from the Developer's Bank.<sup>6</sup> This letter is not certified or verified. Additionally the letter is

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(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio.

<sup>2</sup> Summary Judgment Motion Exhibit H (pre-filed Testimony of Darrell W. Nichols, Attachment G in Exh. 1).

<sup>3</sup> Id. (showing 861,309.51 Total Liabilities and 616,500.29 Capital).

<sup>4</sup> Id. pg. 1 of Balance Sheet.

<sup>5</sup> Id. pg. 1 of Income Statement.

<sup>6</sup> Summary Judgment Motion Exhibit I (pre-filed Testimony of Darrell W. Nichols, Exh. 4).

allegedly written on the behalf of the Developer not the Applicant.<sup>7</sup> The statute specifically requires that the “Applicant” show the financial ability not a third party. Any financial guarantee given on the behalf of the Applicant by the Developer may be revoked. In the Non-Standard Service Agreement, the Developer has the right to unilaterally give “notice of termination of this Agreement” after reviewing the plans for the extension.<sup>8</sup> In such a case the Developer has no obligation to fund the expansion but the Applicant would still have the duty to serve the area as it developed. The letter provided as evidence of financial ability is insufficient as it is not significantly tied to the Applicant which will receive the CCN.

Even if this letter had been issued for the Applicant, the amount dedicated to developing the water and sewer systems would be insufficient. The letter states the Developer has “unrestricted funds in the low seven figure amount.”<sup>9</sup> This indicates an approximate range of \$5,000,000 or less for the construction and infrastructure improvements. However the costs for the proposed expansion will far exceed that amount. Mr. Matkin the consulting engineer has estimated that the extension to receive the GBRA water will cost \$2,154,983.<sup>10</sup> Also Mr. Matkin has developed preliminary cost estimates for the water supply system ranging from \$7,000,000 to \$8,000,000.<sup>11</sup> Additionally Mr. Matkin has estimated that the costs for the sewer system will be \$1,500,000 for the lift stations and force mains, as well as \$3,000,000 for the gravity mains.<sup>12</sup> Therefore the engineer’s current total for the cost estimates ranges from at least

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<sup>7</sup> Id.

<sup>8</sup> Summary Judgment Exhibit G, pg. 2 (Pre-filed Testimony of Darrell W. Nichols, Attachment F, in Exh. 1, Non-Standard Service Agreement).

<sup>9</sup> Summary Judgment Motion Exhibit I (pre-filed Testimony of Darrell W. Nichols, Exh. 4).

<sup>10</sup> Summary Judgment Motion Exhibit B (John-Mark Matkin, pre-filed testimony pg. 3, l. 40-44).

<sup>11</sup> Summary Judgment Motion Exhibit B (John-Mark Matkin, deposition pg. 14, ll. 4-15).

<sup>12</sup> Id. at 14, ll. 16-22.

\$13,654,983 to \$14,654,983. These costs are in the low to mid eight figure amount and nearly 3 times the mid seven figure amount of \$5,000,000. Therefore the letter submitted to show the financial ability of the Developer is insufficient to install the necessary water and sewer systems.

## CERTIFICATE OF CONVENIENCE AND NECESSITY APPLICATIONS

### STATUTORY REQUIREMENTS

TEXAS WATER CODE § 13.244(d) provides that an application for an amendment to a CCN “must” contain “a capital improvements plan with a budget and an estimated timeline for construction of all facilities necessary.” The Applicant failed to provide this mandatory information, therefore the Application should fail as a matter of law.

Additionally, TEXAS WATER CODE § 13.244(d) provides that an application for an amendment to a CCN “must” contain a description of the proposed service area by either a metes and bounds survey, Texas State Plane Coordinate System, verifiable landmarks or by lot and block.<sup>13</sup> The only description provided by the Applicant fails to satisfy this requirement of the Water Code and is insufficient as a matter of law.

Not only does the Application fail to comply with the statutory requirements for an amendment but the document provided by the Applicant to assure a request of service

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<sup>13</sup> TEXAS WATER CODE § 13.244

(d) An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain:

(1) a description of the proposed service area by:

(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;

(B) the Texas State Plane Coordinate System;

(C) verifiable landmarks, including a road, creek, or railroad line; or

(D) if a recorded plat of the area exists, lot and block number;

and that the Applicant will not be financially responsible for this project violates the Statute of Frauds.

#### AREA REQUESTED TO BE SERVICED

TCEQ asks whether there has been a request for service over the proposed area at 2.B. of the Applicant's Application.<sup>14</sup> The response to the inquiry is See Attachment B which is the Non-Standard Service Agreement.<sup>15</sup> On page 1 of the agreement the land covered by this agreement is allegedly legally described by Exhibit 1 with an Exhibit 2 providing a map of the area.<sup>16</sup> However there is no Exhibit 1 or Exhibit 2 attached or submitted with this agreement.<sup>17</sup> Furthermore, the Applicant has not submitted any copy of the Non-Standard Service Agreement in discovery or to the TCEQ which contains a legal description or map as designated.

The Statute of Frauds requires that a contract concerning real estate to have a legal description sufficient to describe the land. This contract is in violation of the Statute of Frauds. Texas Courts have found that a general description of a property, even if it is the only property held by a party in a county, is not sufficient to satisfy the Statute of Frauds.<sup>18</sup> Considering that there is no legal description and no reference to any other instrument describing said land, this response to inquiry 2.B. of the Application is therefore legally insufficient.

#### PURCHASED WATER

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<sup>14</sup> Summary Judgment Motion Exhibit F (Pre-filed Testimony of Darrell W. Nichols, Exh. 1, pg. 3 of Application).

<sup>15</sup> Id.

<sup>16</sup> Summary Judgment Motion Exhibit G ( pg.1, para. 2).

<sup>17</sup> Id. (reviewing the complete exhibit no Exhibit 1 or 2 exists).

<sup>18</sup> See *Smith v. Jones*, 638 S.W.2d 17, 20(Tex. App. Houston 1<sup>st</sup>, 1982)(*aff'd in part, rev'd in part on other grounds*, *Jones v. Smith*, 649 S.W.2d 29 (Tex. Apr 06, 1983))(citing *Wilson v. Fisher*, 188 S.W.2d 150 (Tex. 1950); *Kmiec v. Reagan*, 556 S.W.2d 567 (Tex. 1977)).

At 5.G. of the Application, TCEQ asks for a certified copy of the most recent water capacity purchase.<sup>19</sup> Applicant responded with the indication that Attachment F answered this request.<sup>20</sup> However the contract at Attachment F between GBRA and the Applicant is not even relevant to this Application as established by Mr. Nichols in his deposition and in the Non-Standard Service Agreement.<sup>21</sup> Thus there is no certified copy of the water capacity purchase to be used for the development of the proposed expansion area and the Application is therefore legally insufficient.

#### AFFILIATED INTERESTS

TEXAS ADMINISTRATIVE CODE §291.105 provides for specific items to be in a CCN Application and the application form promulgated by TCEQ. One of the items of information to be submitted is the affiliated interests as described by TEXAS ADMINISTRATIVE CODE §291.3.<sup>22</sup> As evidenced by the Application no affiliated interests were submitted by the Applicant in violation of this rule. Therefore the Application is legally insufficient.

#### CONTINUOUS AND ADEQUATE SUPPLY OF WATER

##### ADEQUATE SUPPLY OF WATER

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<sup>19</sup> Summary Judgment Motion Exhibit F ( pg. 7)(source: Exh. 1, Pre-filed Testimony of Darrell W. Nichols).

<sup>20</sup> Id.

<sup>21</sup> Summary Judgment Motion Exhibit E, Darrell W. Nichols deposition pg. 46-49, (revealing that the contract submitted as Attachment F is not relevant to the application); Summary Judgment Motion Exhibit G (Non-Standard Service Agreement, pg. 9, item 1)(source: Attachment F, in Exh. 1, Pre-filed Testimony of Darrell W. Nichols).

<sup>22</sup> TEXAS ADMINISTRATIVE CODE §291.105

a ) Application. To obtain a certificate of public convenience and necessity (CCN) or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the commission an application for a certificate or for an amendment as provided by this section. Applications for CCNs or for an amendment to a certificate must contain an original and three copies of the following materials, unless otherwise specified in the application:

(9) disclosure of all affiliated interests as defined by §291.3 of this title (relating to Definitions of Terms).



The TEXAS WATER CODE §13.241<sup>23</sup> and TEXAS ADMINISTRATIVE CODE §291.102(a)<sup>24</sup> provide that the TCEQ shall ensure an applicant has access to an adequate supply of water before amending a CCN. The TEXAS ADMINISTRATIVE CODE §291.102(d)(4)<sup>25</sup> further refines this provision to state that adequate service “includ[es] meeting the standards of the commission, taking into consideration the current and projected density and land use of the area.”

The Application and all of the submitted documents including the development plat for the expansion area, prove that the Applicant is requesting expansion to serve 5,000 acres with 1,700 water and sewer customers.<sup>26</sup> In determining an adequate supply of water for this expansion the TCEQ rules require that a water supply company have peaking capacity of 0.6 gpm or 0.97 acre ft capability for each unit, thus for 1,700 customers the Applicant must show that it has 1,649 acre feet of water availability( $1,700 \times 0.97 = 1,649$ ) for the peak demand. For base demand the TCEQ rules require 0.50 acre feet per connection thus 850 acre feet of water would be required for the

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<sup>23</sup> TEXAS WATER CODE § 13.241 GRANTING CERTIFICATES. (a) In determining whether to grant or amend a certificate of public convenience and necessity, the commission SHALL ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(b) For water utility service, the commission shall ensure that the applicant:

(1) is capable of providing drinking water that meets the requirements of Chapter 341, Health and Safety Code, and requirements of this code; and

(2) has access to an *adequate supply of water*. Emphasis added.

<sup>24</sup> TEXAS ADMINISTRATIVE CODE §291.102

(a) In determining whether to grant or amend a certificate of public convenience and necessity, the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For water utility service, the commission shall ensure that the applicant is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and commission rules and has access to *adequate supply of water*. Emphasis added

<sup>25</sup> TEXAS ADMINISTRATIVE CODE §291.102

(d) In considering whether to grant or amend a certificate, the commission shall also consider:

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area.

<sup>26</sup> Summary Judgment Motion Exhibit F (pg. 7)( source: Pre-filed Testimony of Darrell W. Nichols, Exh. 1).

base demand (1,700\*0.50=850). The Applicant must offer evidence that it is able to supply 1,649 acre feet at peak demand and 850 acre feet for base demand.

In the Applicant's own Application, pre-filed testimony, pre-filed exhibits and deposition testimony, it has been established that Applicant will only supply the proposed expansion area of 5,000 acres with 250 acre feet of water from a supplemental contract with GBRA. This is less than 30% of the base demand for the number of connections submitted in their Application.

#### APPLICANT TO PROVIDE ONLY 250 ACRE FEET OF WATER

According to the Non-Standard Service Agreement provided by Applicant to Question 2.B. of the Application, the property owner requested Applicant to provide water service over 5,000 acres and 1,700 customers.<sup>27</sup>

In the pre-filed testimony of the Engineer on this project, Darrell Nichols, he verifies that only 250 acre feet of surface water from GBRA will be used as the base demand supply.<sup>28</sup> This is well short of the required 1,649 peaking requirement as well as the 850 acre feet required just for the base demand of the project. Mr. Nichols further states that the Developer will be responsible for developing wells to meet the peak demand.<sup>29</sup> Mr. Nichols testimony establishes that the Applicant will not supply or intend to supply the additional water required for the proposed expansion that will require 850 acre feet base demand and 1,649 peak demand.

Corroborating Mr. Nichol's testimony, the Applicant's President, John J. Parker, Jr., states in his pre-filed testimony, only 250 acre feet of surface water from GBRA will

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<sup>27</sup> Id; Summary Judgment Motion Exhibit G (pg. 1).

<sup>28</sup> Darrell Nichols pre-filed testimony page 5, line 10-20, attached to this motion as Exhibit A..

<sup>29</sup> Id.

be used for this expansion.<sup>30</sup> He specifically states that the 250 acre feet supply will be used for base and peaking if the Developer cannot drill wells to increase their supply.<sup>31</sup> The President clearly shows that the Developer is required to secure additional water not the Applicant. Thus the Applicant does not have adequate water to receive a grant of this amendment under the TEXAS WATER CODE and TEXAS ADMINISTRATIVE CODE requirements previously cited.

#### WATER SUPPLY ANALYSIS

After requests by the TCEQ representatives, the consulting engineer for this project, John-Mark Matkin, wrote a Water Supply Analysis for this project which was submitted by Mr. Darrell Nichols.<sup>32</sup> Despite the previously cited statements that the Applicant would only provide 250 acre feet to the expansion, this Water Supply Analysis used water production showing the use of Applicant's existing wells to provide water for the expansion.<sup>33</sup> This report represents that the total amount of 750 acre feet of purchased GBRA water and the existing wells could be used by the expansion.<sup>34</sup> However, according to Mr. Matkin's understanding, the Applicant will only supply 250 acre feet of water to the proposed expansion area.<sup>35</sup> He further stated that based on the TCEQ regulations total supply of water from the Applicant would only support the base requirements for 500 units.<sup>36</sup> Upon being questioned about the purpose of this Water Supply Analysis, Mr. Matkin responded that it was prepared to show the Applicant's

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<sup>30</sup> Summary Judgment Motion Exhibit D; John J. Parker, Jr. pre-filed testimony page 5, line 5-11.

<sup>31</sup> Id. at page 5, line 14-22.

<sup>32</sup> Summary Judgment Motion Exhibit B; John-Mark Matkin, pre-filed testimony pg. 4, l. 3-11.

<sup>33</sup> Id. at Exh. 1, 2<sup>nd</sup> pg. last line of 3<sup>rd</sup> para. (stating the existing well production "will allow 1020 Ac-ft/Year for water service by existing well Production.").

<sup>34</sup> Id. 2<sup>nd</sup> pg.

<sup>35</sup> Summary Judgment Motion Exhibit C; John-Mark Matkin, deposition pg. 22, ll. 2-9.

<sup>36</sup> Id. at pg. 22, ll. 10-12.

compliance with the TCEQ guidelines but not over the 5,000 acre expansion.<sup>37</sup> Therefore the Water Supply Analysis does not show any additional supply of water other than the 250 acre feet previously discussed.

#### LACK OF ADEQUATE WATER SUPPLY

All of Applicant's owners, employees and representative testify that the Applicant will only dedicate 250 acre feet of water to the proposed expansion area. This amount of water is insufficient to meet the needs of the expansion and fails to meet the requirements of TEXAS WATER CODE § 13.241 and TEXAS ADMINISTRATIVE CODE §291.102. The Applicant has failed to carry their burden of proof.

#### SUMMARY

Applicant's Application fails as matter of law. First, the Applicant attempts to substitute a third party's financial ability to prove their ability to install the required water and sewer systems. However the statute specifically requires the Applicant, not a third party, have the financial capability of installing a system sufficient to satisfy the needs of the proposed area. Furthermore, even the financial information submitted by the third party is insufficient to install the proposed systems. Second, the Application fails to comply with the statutory requirements for this amendment. The property covered is not described, the contract allegedly requesting service is legally unenforceable and the affiliated interests are not identified as required. Thirdly, the Applicant clearly does not have adequate water to service this extremely large area as the only water it plans to dedicate to the project is less than 30% of the required base amount. Additionally, the proposed service area is in a Priority Groundwater Management District with continuous drought problems. However, the Applicant indicates that new wells, not applied for at

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<sup>37</sup> Id. at pg. 22, ll. 13-19.

the controlling groundwater district nor approved, will have to supply the additional base demand and peak demand water for this project. Considering all of these factors, the Application is legally insufficient.

#### Summary Judgment Evidence

Ratepayers include the summary judgment evidence as the Exhibits attached and filed with this motion and incorporates the evidence into this motion by reference.

#### Conclusion

Ratepayers are entitled to final summary judgment for the reasons asserted in this motion. Applicant's Application fails as matter of law. First, the Applicant attempts to substitute a third party's financial ability to prove their ability to install the required water and sewer systems. However the statute specifically requires the Applicant, not a third party, have the financial capability of installing a system sufficient to satisfy the needs of the proposed area. Furthermore, even the financial information submitted by the third party is insufficient to install the proposed systems. Second, the Application fails to comply with the statutory requirements for this amendment. The property covered is not described, the contract allegedly requesting service is legally unenforceable and the affiliated interests are not identified as required. Thirdly, the Applicant clearly does not have adequate water to service this extremely large area as the only water it plans to dedicate to the project is less than 30% of the required base amount. Additionally, the proposed service area is in a Priority Groundwater Management District with continuous drought problems. However, the Applicant indicates that new wells, not applied for at the controlling groundwater district nor approved, will have to supply the additional base


demand and peak demand water for this project. Considering all of these factors, the Application is legally insufficient.

Ratepayers ask for summary judgment denying this Application.

Prayer

For these reasons, Ratepayers ask the Court to grant this motion and sign an order for final summary judgment denying the Application submitted by Applicant.

Respectfully submitted,  
LAW OFFICE OF ELIZABETH R. MARTIN

By   
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**CERTIFICATE OF SERVICE**

I certify that on June 16, 2006, a true and correct copy of Ratepayers Motion for Final Summary Judgment was served via Certified Mail to all parties on the following mailing list.

  
ELIZABETH R. MARTIN

**MAILING LIST**  
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**SOAH DOCKET NO. 582-06-0425**  
**TCEQ DOCKET NO. 2005-1515-URC**

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7005 3110 0004 5877 0099

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# **Exhibit “A”**

**SOAH DOCKET NO. 582-06-0425**  
**TCEQ DOCKET NO. 2005-1516-UCR**

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

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**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

**Pre-Filed Testimony of**

**Darrell W. Nichols**

**April 27, 2006**

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.

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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?**

## **Exhibit “B”**

**SOAH DOCKET NO. 582-06-0425  
TCEQ DOCKET NO. 2005-1516-UCR**

<b>APPLICATION OF TAPATIO</b>	<b>§</b>	
<b>SPRINGS SERVICE COMANY, INC.</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>TO AMEND CERTIFICATES OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY</b>	<b>§</b>	<b>OF</b>
<b>NOS. 12111 AND 20698 IN</b>	<b>§</b>	
<b>KENDALL COUNTY, TEXAS</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
	<b>§</b>	

**Pre-Filed Testimony of**

**John-Mark Matkin**

**April 27, 2006**

1  
2 **Q. Are you responsible for designing the utility improvements within the**  
3 **proposed development?**  
4  
5 **A. Yes.**  
6  
7  
8 **Q. Please describe the utility improvements that you will and/or have**  
9 **designed for the proposed development?**  
10  
11 **A. All on-site water distribution systems, booster stations, wells for peaking and**  
12 **groundwater storage tanks.**  
13  
14  
15 **Q. Who will be responsible for paying the costs associated with designing**  
16 **these improvements you just described?**  
17  
18 **A. CDS International.**  
19  
20  
21 **Q. Will you be responsible for designing off-site facilities? If so, describe**  
22 **these facilities.**  
23  
24 **A. Yes, off-site water transmission main and booster station.**  
25  
26  
27 **Q. What is the purpose of this transmission main?**  
28  
29 **A. To transport the GBRA water from the designated receiving point to the KCUC**  
30 **system.**  
31  
32  
33 **Q. What is the status of the route and/or design of this off-site transmission**  
34 **main?**  
35  
36 **A. The route has been determined, easement acquisition is on-going, and the**  
37 **preliminary design is complete.**  
38  
39  
40 **Q. Do you have an estimated cost for construction and design of the off-site**  
41 **facilities that are required to transport the surface water from GBRA to**  
42 **Tapatio Springs? If so, what is that estimate?**  
43  
44 **A. Yes. The estimate is \$2,154,983 for the 12" water main.**

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**Q. Did you provide an analysis of the existing water supply facilities of Tapatio Springs including the GBRA surface water?**

**A. Yes.**

**Q. Will you describe what has been marked as Tapatio Springs Exhibit 1?**

**A. It is the water supply analysis that I prepared.**

**Q. Based on this water supply analysis, does Tapatio Springs have sufficient water capacity to meet the standards, established by the TCEQ, to serve both the additional development and its existing CCN?**

**A. Yes.**

**Q. Please explain what is meant by peaking demands?**

**A. Peaking demands is the state mandated responsibility of a utility purveyor to provide for all connections maximum required production.**

**Q. In your opinion will the water purchased from GBRA meet the peaking demands? Please explain why it will or why not?**

**A. No. It will supply the base demand.**

**Q. In your opinion, will the GBRA surface water need to be supplemented with groundwater at times to meet the peaking demands?**

**A. Yes.**

**Q. You previously described that wells and storage facilities will be constructed within the proposed development. Will these wells be used to meet peaking demands?**

**A. Yes.**

# **Water Supply Analysis for Tapatio Springs Service Company**

**CCN Nos. 12122 and 20698**

**August 2005**

EXHIBIT 1



## **Executive Summary**

This report has been prepared in conjunction with the CCN Application of Tapatio Springs Service Company for the expansion into the 5000 acres that is bordered by Ranger Creek Road to the North. This property is known as The Broken "O" and is currently being platted through Kendall County as "Cielo Grande". A preliminary plat has been filed for the westernmost 2000 acres and a Master Development Plan has been filed for the entire 5000 acres.

Through the acquisition of GBRA water, Tapatio Springs Service Company has sufficient capacity by state regulations to serve this Property.

### **Existing Water Production**

The existing water production is based upon wells that have been produced in Kendall County by Kendall County Utility Company and Tapatio Springs Service Company. A summary of these wells is provided in the attachments. The current pumping rates of these wells are a combined 1360 Ac-ft/ Year. We have accounted for a 75% reduction in maximum pumping capability, which will allow 1020 Ac-ft/ Year for water service by existing well Production.

### **GBRA Water**

There is a current contract for the GBRA water signed July 14, 2005. This contract is for 750 AC-FT/ Year. This water will be available with the Western Canyon Regional Project. Matkin-Hoover Engineering, Inc. is currently designing the facilities and off-site infrastructure for this water to be delivered to the Tapatio Springs Service Company.

### **Storage**

Currently, Tapatio Springs Service Company has storage facilities in excess of 1.65 Million Gallons.

### **Existing Water Demand and Future Demand**

There is an existing customer base of 843 connections on Tapatio Springs Service Company. The 5000 acres that is currently being added to the CCN will result in additional 1700 connections to the system and future lots in Tapatio will yield 850 lots. The total ultimate connections for Tapatio Springs Service Company at this time are 3393. A total of 1697 Ac-ft/ Year will be required. Including the GBRA supply of water, the total production at this time will be 1770 Ac-ft/Year. This build out and ultimate demand will be phased in over the next ten years.

## **Peak Demand**

TCEQ requires .6 GPM/ Connection for Peak Demand. The total connections of 3393 is equivalent to 2036 GPM. Our existing Peak Production is currently 2110 AC-FT/ Year with a maximum of 1308 GPM by a combination of existing well production and GBRA supply. To accommodate for future demand and peaking, we are accounting for the drilling of 10 additional commercial wells with an estimated pumping capacity of 75 GPM/ Well. These wells will be phase in over the next ten years. The well production that is required for the peak demand is offset by the enormous amount of storage capacity and the constant flow of GBRA Water. We anticipate that the wells will not be utilited.

## **Conclusion**

Tapatio Springs Service Company has sufficient water to meet the demands of the additional requirements of the expansion of the CCN. The yearly requirement of production for water is met by the addition of the GBRA water and no new wells will have to be drilled to accommodate for this.

To meet Peaking demands, Tapatio Springs Service Company has allowed for the drilling of 10 additional commercial wells that will be drilled and phased in over the next 10 years. Tapatio Springs Service Company is also investigating the feasibility of creating surface water to mitigate the Peak Demands. It is by resolution of Tapatio Springs service company to use GBRA water to its maximum ability to service the needs of their customers.

The incorporation of the 5000 acres into the CCN of Tapatio Springs Service Company allows for the control of and monitoring of water usage in the county. The commercial wells that will be required for peaking will be much less damaging to the county than the allowed 850 individual domestic wells that would be required for a residential development without a central water system.

Existing Storage facilities meet all future demand at this time and mitigate the impact of peaking within the water system.

Kendall County Utility Company  
/ Tapatio Springs Utility Company

2005 Water Production and Usage

	AC-FT/ YR	EDU
Maximum Well Production	1360	
Existing Well Production 75% Reduction	1020	2040
Additional GBRA	750	1500
Total Production	1770	3540
Existing Customer Base		843
5000 acres		1700
Additional Tapatio		850
Net Customer Base		147

Notes :

- 1) 1700 homes committed to the 5000 acres for CDS
- 2) 850 Homes for future development of Tapatio

Prepared By:  
Matkin-Hoover Engineering, Inc.

John-Mark Matkin  
President, CEO



# **Exhibit “C”**

COPY

SOAH DOCKET NO. 582-06-0425  
TCEQ DOCKET NO. 2005-1516-UCR

APPLICATION OF TAPATIO ) BEFORE THE STATE OFFICE  
SPRINGS SERVICE COMPANY, )  
INC. TO AMEND CERTIFICATES )  
OF CONVENIENCE AND ) OF  
NECESSITY NOS. 12111 AND )  
20698 IN KENDALL COUNTY, )  
TEXAS ) ADMINISTRATIVE HEARINGS

---

ORAL DEPOSITION OF JOHN-MARK MATKIN

June 1, 2006

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ORAL DEPOSITION of JOHN-MARK MATKIN, produced as  
a witness at the instance of the Ratepayers, and duly  
sworn, was taken in the above-styled and numbered  
cause on the 1st day of June, 2006, from 9:55 a.m. to  
11:16 a.m., before Shirley J. Morrison, CSR in and  
for the State of Texas, reported by machine  
shorthand, at the Law Offices of David H. Brock, 301  
E. San Antonio Avenue, Boerne, Kendall County, Texas.

JOHN-MARK MATKIN,

having been first duly sworn, testified as follows:

EXAMINATION

BY MS. MARTIN:

Q. Mr. Matkin, today we're here to take your deposition in the application of Tapatio Springs Service Company to amend their CCN.

A. Okay.

Q. Would you please state your full name for the record.

A. John-Mark Matkin.

Q. And what is your business address?

A. 8 Spencer Road, Suite 100, Boerne, Texas 78006.

Q. And do you have a Texas driver's license?

A. Mm-hmm.

Q. Is it issued in the name that you stated?

A. Yes.

Q. Okay. And did you file testimony in this matter?

A. Yes.

Q. Concerning the application, what land does this application for CCN expansion cover?

A. The 5,000 acres known as the Broken O Ranch, northern boundary being Ranger Creek Road,

1 Q. Is it your understanding that CDS is going  
2 to donate the water system to Tapatio Springs?

3 A. Mm-hmm.

4 Q. Have you developed any cost estimates as  
5 far as the development of the water system on the  
6 5,000 acres?

7 A. General in nature at this time.

8 Q. So yes or no?

9 A. Yes.

10 Q. And what construction costs have you  
11 estimated?

12 A. Are you speaking water specifically?

13 Q. Yes.

14 A. I'd have to run through the file and check,  
15 but I'd say in the neighborhood of 7, \$8 million.

16 Q. Okay. Have you estimated any costs for the  
17 construction of the sewer services?

18 A. Yes.

19 Q. And what was that approximate cost?

20 A. Lift stations and force mains, in the  
21 neighborhood of a million five. And then on-site  
22 gravity mains, probably another three million.

23 Q. Okay. Now, these estimates, was that for  
24 the 1700-unit development, or is it for a portion?  
25 Because it's my understanding, as I've read your



1 as required by the TCEQ for system calculations.

2 Q. So it's your understanding that the water  
3 company is going to provide 250 acre-feet to the  
4 5,000 acres?

5 A. It's my understanding that the GBRA water  
6 that was contracted from CDS is 250 acre-feet.

7 Q. So the total supply of water to the 5,000  
8 acres is 250 acre-feet from Tapatio Springs?

9 A. That's my understanding.

10 Q. Based on the base TCEQ requirements, how  
11 many units will 250 acre-feet service?

12 A. Five hundred.

13 Q. So this water supply analysis -- so what  
14 was the purpose of this water supply analysis?

15 A. To show compliance with TCEQ guidelines.

16 Q. Over the 5,000 acres?

17 A. No. For Tapatio Springs Service Company.

18 Q. ...who is applying for the CCN expansion  
19 over the 5,000 acres?

20 A. Yes.

21 Q. Under the storage section of this report,  
22 which would be on the first full typewritten page,  
23 you indicate that Tapatio Springs Service Company had  
24 storage facilities in excess of 1.65 million gallons?

25 A. Mm-hmm.



## **Exhibit “D”**

SOAH DOCKET NO. 582-06-0425  
TCEQ DOCKET NO. 2005-1516-UCR

APPLICATION OF TAPATIO	§	BEFORE THE STATE OFFICE
SPRINGS SERVICE COMPANY,	§	
INC., TO AMEND CERTIFICATES	§	OF
OF CONVENIENCE AND	§	
NECESSITY NOS. 12122 AND 20698	§	ADMINISTRATIVE HEARINGS
IN KENDALL COUNTY, TEXAS	§	

Pre-Filed Testimony of

John J. Parker, Jr.

April 27, 2006

1 line, the ultimate consumers will save money because the costs of two separate  
2 lines would not be necessary.  
3  
4

5 **Q. Does the contract protect the existing customers of Tapatio Springs**  
6 **Service Company?**  
7

8 A. It does. For example, CDS had to get a contract amendment for 250 acre-feet of  
9 water from GBRA to provide a water supply for its project. The contract plainly  
10 states that Tapatio Springs Service Company has no obligation to use its existing  
11 wells to supply water to the CDS property.  
12

13  
14 **Q. How does this protect the existing customers?**  
15

16 A. Mr. Calvert and Mr. Haas raise concerns about the ability to get permits for  
17 additional wells. I disagree with their opinions, but if the worst-case scenario  
18 occurs, and no permits for additional wells can be obtained, then the 250 A.F.  
19 supply from GBRA would need to be used for both base supply and peaking  
20 purposes. CDS may be able to acquire a commitment from GBRA for additional  
21 water supply, and if the additional water supply could not be obtained from GBRA  
22 or other sources, the density of the CDS property may need to be reduced.  
23

24  
25 **Q. Are there other benefits?**  
26

27 A. Yes, CDS must finance and build the infrastructure and donate it to Tapatio  
28 Springs Service Company.  
29

30  
31 **Q. What are the other benefits to the contract?**  
32

33 A. Tapatio will have an opportunity to significantly increase the number of  
34 customers, which will help stabilize rates.  
35

36  
37 **Q. Does the contract with CDS obligate Tapatio Springs Service Company to**  
38 **amend the contract with GBRA to increase the supply of water from**  
39 **GBRA?**  
40

41 A. Yes.  
42

43  
44 **Q. Has that amendment to the GBRA contract been obtained?**  
45



# **Exhibit “E”**

SOAH DOCKET NO. 58206-0425  
TCEQ DOCKET NO. 2005-1516-UCR

APPLICATION OF TAPATIO ) BEFORE THE STATE OFFICE  
SPRINGS SERVICE COMPANY, )  
INC., TO AMEND )  
CERTIFICATES OF ) OF  
CONVENIENCE AND NECESSITY )  
NOS. 12122 AND 20698 IN )  
KENDALL COUNTY, TEXAS ) ADMINISTRATIVE HEARINGS

---

ORAL DEPOSITION OF

DARRELL W. NICHOLS

MAY 23, 2006

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COPY



A P P E A R A N C E S

**FOR THE RATEPAYERS:**

LAW OFFICE OF ELIZABETH R. MARTIN  
Ms. Elizabeth R. Martin  
P.O. Box 1764  
106 West Blanco, Suite 206  
Boerne, Texas 78006

**FOR THE APPLICANT:**

DAVIDSON & TROILO, P.C.  
Mr. Dalby Fleming  
7550 I.H. 10 West, Suite 800  
San Antonio, Texas 78229

**FOR THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
PUBLIC INTEREST COUNSEL  
Mr. Garrett Arthur (Appearing telephonically)  
P.O. 13087  
Austin, Texas 78711-3087

**ALSO PRESENT:**

RICHARD HAAS  
ANDREW CALVERT  
JOHN JAY PARKER, JR.

\*-\*-\*-\*-\*-\*-\*

ORAL DEPOSITION OF DARRELL W. NICHOLS, produced  
as a witness at the instance of the Ratepayers and  
duly sworn, was taken in the above-styled and  
numbered cause on May 23, 2006, from 10:00 a.m. to  
12:00 p.m., before Cathey Rimmer, CSR in and for the  
State of Texas, reported by machine shorthand, at the

1 law offices of David Brock, 301 East San Antonio  
 2 Street, Boerne, Texas, pursuant to the Texas Rules of  
 3 Civil Procedure and the provisions stated on the  
 4 record or attached hereto.

5  
 6 \* - \* - \* - \* - \* - \*

7 I N D E X

8 TESTIMONY PAGE

9 Examination by Ms. Martin. . . . . 4

10  
 11 DEPOSITION EXHIBITS

12 NO. DESCRIPTION

IDENTIFIED

12	1	Letter, Sanchez to Martin, 4-21-06 . . . . .	8
13	2	Letter, Sanchez to Martin, 3-17-06 . . . . .	9
14	3	Letter, TCEQ to Nichols, 6-2-05. . . . .	15
15	4	Water and Wastewater Utilities Annual Report, 12-31-04 . . . . .	61
16			
17	5	Letter, Nichols to TCEQ, 10-7-05 . . . . .	65
18	6	Letter, TCEQ to Nichols, 5-13-05 . . . . .	71
19	7	Letter, TCEQ to Nichols, 6-22-05 . . . . .	73
20	8	Letter, Nichols to TCEQ, 7-14-05 . . . . .	74
21	9	Fax, Matkin-Hoover to Nichols, 3-30-05 . . . . .	75
22	10	Fax, Nichols to TCEQ, 7-15-05. . . . .	79
23	11	Letter, Nichols to TCEQ, 1-20-06 . . . . .	80

24  
 25 \* - \* - \* - \* - \* - \*

DARRELL W. NICHOLS,

having been first duly sworn, testified as follows:

EXAMINATION

BY MS. MARTIN:

Q. Good morning, Mr. Nichols. This morning we're taking your deposition in connection with Tapatio Springs Service Company, Inc.'s application to expand their CCN. Would you please state your full name?

A. Darrell Wayne Nichols.

Q. And where are you -- where is your address? What is your address?

A. My mailing address?

Q. Your business address.

A. 6308 Steer Trail, Austin, Texas 78749.

Q. Do you have a Texas driver's license?

A. I do.

Q. Is it issued in the name that you previously stated?

A. It is.

Q. Could you tell us who you're employed by?

A. B&D Environmental, Inc.

Q. And B&D Environmental, Inc. does what kind of services?

A. Utility consulting services.

Q. So depending on the situation, it could have been required to be filed?

A. If they had a purchased-water agreement.

Q. And the Guadalupe Blanco River Authority, you identified that as a source that, I presume, was planned to be a source for this?

A. That is correct.

Q. And you identified the percentage of the total supply as surface water on a regular basis, and what attachment did you identify as answering that question?

A. A copy of the purchased-water contract with GBRA, between GBRA and the utility, that identifies how much water is to be delivered to the utility.

Q. And that's identified as what in this application?

A. Attachment F.

Q. Could we go to Attachment F, please? And on the first two are -- the first two pages are transmittal letters and different communications. The third page of Attachment F is in fact the cover of the agreement between Kendall County Utility Company and Tapatio Springs Service Company and Guadalupe Blanco River Authority, which I'll refer to as GBRA; is that correct?

1 A. That is correct.

2 Q. And looking at page three of this  
3 agreement, could you identify the two utility  
4 companies? Are they in fact Kendall County Utility  
5 Company and Tapatio Springs Service Company?

6 A. That's correct.

7 Q. And GBRA Authority is the provider of the  
8 water; is that correct?

9 A. That is correct.

10 Q. When -- on the third line of the first  
11 paragraph, when was this document executed?

12 A. 18th of March, 2002.

13 Q. Okay. Excuse me a minute. It takes me a  
14 while to go through all these contracts.

15 On page 13 of this agreement, Section  
16 4.3, it provides for a raw water reservation from  
17 GBRA that they will reserve for the customer, the  
18 customer being identified as Kendall County Utility  
19 Company and Tapatio Springs Utility Company. What --  
20 in the last sentence it states that the water -- the  
21 raw water reservation shall be what amount?

22 A. Five hundred acre-feet per year.

23 Q. And this 500 acre-feet per year, this was  
24 actually exempted from service to the 5,000 acres,  
25 wasn't it?

1 A. That is correct.

2 Q. So this water supply agreement between  
3 Kendall County and Tapatio Springs and GBRA will not  
4 be sold to -- it will not be provided to the 5,000  
5 acres; is that correct?

6 A. That is correct.

7 Q. Going back to the application, is there any  
8 other document in Attachment F that would identify  
9 the source of purchased water?

10 A. That is all that's included. That is all  
11 the sources that were included at the time that the  
12 application was filed.

13 Q. So this agreement with the GBRA is not to  
14 be used for the 5,000 acres; is that correct?

15 A. I believe an additional 250 acre-feet were  
16 secured after the application was filed.

17 Q. But it's not included in this application?

18 A. It could not have been since the  
19 application was filed prior to that being executed.

20 Q. So would it be a correct statement that  
21 there is no water shown -- there is no surface water  
22 purchased to be supplied for the 5,000 acres under  
23 this application?

24 A. Under this application, the developer is  
25 required to provide the wells to provide the surface

1 water. I mean, that's part of what the Non-Standard  
2 Service Agreement requires, and that burden is placed  
3 on the developer, and after the application was  
4 filed, that part of the additional 250 acre-feet was  
5 secured from GBRA.

6 Q. But the water agreement attached on this  
7 application is not relevant to the 5,000 acres?

8 A. That is correct.

9 Q. Okay. Going down to number six on the  
10 application, which is page eight of 15, it's your  
11 position that this is not a new stand-alone system?

12 A. That is correct.

13 Q. That this is an existing system?

14 A. That this will be connected to an existing  
15 system.

16 Q. So what's the distinction for it is an  
17 existing system or will be connected to an existing  
18 system?

19 A. If it was going to be a new stand-alone  
20 system, it would be given its own PWS number.  
21 Because it's going to be connected to an existing  
22 PWS, existing water system, it's not going to be a  
23 stand-alone system.

24 Q. But Tapatio Springs -- the only connection  
25 with Tapatio Springs will be a water supply line for





## **Exhibit “F”**

**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