



**APPLICATION TO OBTAIN OR AMEND A WATER OR SEWER  
CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)**



# APPLICATION TO OBTAIN OR AMEND A WATER/SEWER CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN)

\*RN #101403129

\*CN #600646038

\*If known (See instructions)

RN #101223048

## PURPOSE OF THIS APPLICATION

OBTAIN ☐ New Water CCN ☐ New Sewer CCN

AMEND ☐ Water CCN # 12122 ☐ Sewer CCN # 20698

## 1. APPLICANT INFORMATION

Utility Name: Tapatio Springs Services Company, Inc.

Utility Address (city/state/zip) P. O. Box 1335

Boerne, Texas 78006

Utility Phone and Fax Number (830) 537-5755 Phone (830) 537-5756 Fax

Contact Person: Please provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney, accountant, or other title related to the applicant.

Name: Darrell Nichols Title: Utility Consultant

Address: P. O. Box 90544 Telephone (512) 264-9124

City Austin St TX Zip 78709 Fax (512) 891-0740

County(ies) in which service is proposed Kendall County

### A. Provide the following information about the utility's certified operators

Name	Classes	License Number
Stan J. Scott	'C'-W, 'D'-WW	W- 456725324, WW0084873
Walter Hanna	'C'-W, 'C'-WW	WS0000295, WW0014554

- Attach additional sheet(s) if necessary -

### B. Check the appropriate box and provide information regarding the legal status of the applicant:

<input type="checkbox"/>	Investor owned utility
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Home or Property Owners Association
<input checked="" type="checkbox"/>	For-profit corporation
<input type="checkbox"/>	Non-profit, member-owned, member-controlled cooperative corporation (Water Code Chapter 67, Water Supply or Sewer Service Corporation)
<input type="checkbox"/>	Municipality
<input type="checkbox"/>	District
<input type="checkbox"/>	Other Please explain:

- C. List in the table below, the number of existing and/or proposed metered and non-metered connections (by size). The proposed numbers should reflect the information presented in the business plan and reflect the number of service requests identified in Question 2.b above.

Water System			Sewer System		
Connection	Existing	Proposed	Connection	Existing	Proposed
5/8" or 3/4" meter	129	1700	Residential	165	1700
1" meter or larger	64		Commercial	8	
New Construction	12		Industrial		
Other: Wholesale	2		Other:		
Total Water	207	1700	Total Sewer	173	1700

- D. If this application is for a water CCN only, please explain how sewer service is provided:  
**This application includes both water and sewer service.**
- E. If this application is for a sewer CCN only, please explain how water service is provided:  
**This application includes both water and sewer service.**
- F. What is the effect of the granting or amending a certificate on a recipient of the certificate and on any retail public utility of the same kind already serving the proximate area: **The applicant and its affiliate (Kendall County Utility Company, CCN No. 11904) are the only two entities providing utility service to the proximate area. Furthermore, the applicant and its affiliate are interconnected and have a contract with Guadalupe Blanco River Authority to purchase treated surface water. The additional customers will provide a greater economies of scale and the provision of surface water will help protect the groundwater resources.**
- G. Do you currently purchase or plan to purchase water or sewer treatment capacity from another source?
- i. No \_\_\_\_\_ (skip the rest of this question and go to #6)
- ii. Water  
 Yes   X    
 Purchased on a (X) regular - ( ) seasonal - ( X ) emergency basis?

Source	% of total supply
Kendall County Utility Company, Inc.	As needed in emergencies
Guadalupe Blanco River Authority	Surface water on a regular basis. See Attachment F.

- iii. Sewer treatment capacity  
 Yes \_\_\_\_\_  
 Purchased on a ( ) regular - ( ) seasonal - ( ) emergency basis

Source	% of total treatment

- iv. Provide a **certified** copy of the most current water or sewer treatment capacity purchase agreement or contract. **See Attachment F.**



## **Exhibit “G”**

# **ATTACHMENT B**

## NON-STANDARD SERVICE AGREEMENT

THE STATE OF TEXAS

COUNTY OF KENDALL

THIS AGREEMENT is made and entered into by and between CDS International Holdings, Inc., hereinafter referred to as the "Developer" and Tapatio Springs Service Company, Inc., hereinafter referred to as the "Utility Company".

WHEREAS, the Developer is engaged in developing that certain 5,000 acres of land (more or less) in Kendall County, Texas, a legal description of the land being attached as Exhibit 1 and a location map being attached as Exhibit 2, said land being hereinafter referred to as "Property"; and

WHEREAS, the Utility Company owns and operates a water system which supplies potable water for human consumption and other domestic uses to customers within its service area and owns and operates a wastewater collection and treatment system that serves customers located within its service area; and,

WHEREAS, the Developer has requested the Utility Company to provide water and wastewater service to no more than 1,700 future customers within the Property through an extension of the Utility Company's water system and wastewater system, such extension hereinafter referred to as "the Extension."

NOW THEREFORE KNOW ALL MEN BY THESE PRESENT:

THAT for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, the Developer and the Utility Company agree as follows:

1. Engineering and Design of the Extension.
  - a. Prior to preparing any detail design of any portion of the Extension, Developer shall cause a Texas Registered Professional Engineer to prepare an engineering report showing the proposed Extensions, considering both the cost of construction and operation of the various components, and such report shall be submitted to Utility Company for approval. Within thirty days after receipt of the report Utility Company shall either approve the report or describe in detail the changes that must be made to obtain the approval by the Utility Company. Absent objections, within the time allowed, the report will be deemed approved by the Utility Company.
  - b. The Extension shall be engineered and designed by a Texas Registered Professional Engineer in accordance with the applicable specifications of the

Utility Company and all governmental agencies having jurisdiction. Developer will retain the Utility Company's Consulting Engineer to perform all required work on the Extension. After completion of the plans and specifications by the Consulting Engineer, the plans, and specifications shall become part of this Agreement by reference and shall more particularly define the "Extension". Developer and Utility Company each consent to the employment of the Consulting Engineer and waive any conflict of interest inherent to the relationship.

- c. The Extension must be sized to provide continuous and adequate water service to the Property based on plans for the development of the Property provided to the Utility Company by the Developer. The Utility Company may require the Extension to be oversized in anticipation of the needs of other customers of the Utility Company, subject to the obligation to reimburse the Developer for any such over sizing as provided below.
- d. For a period of sixty (60) days following the date of completion of the plans and specifications of the Extension, the Developer may give notice of termination of this Agreement to the Utility Company. All costs of the preparation of those plans and specifications are to be borne by the Developer.

2. Required Sites, Easements or Right-of-Ways.

- a. Developer shall be responsible for dedicating or acquiring any sites on and easements across the Property, which are necessary for the construction of the Extension. Utility Company will be responsible for acquiring any easements or rights of way necessary for the Extension outside the Property and for obtaining any governmental approvals necessary to construct the Extension in public right-of-ways. Since acquisition of right-of-way, easements, and crossing permits is not subject to control by the Utility Company, the Utility Company's obligation to serve the Property, or any portion of the Property, is subject to Utility Company acquiring the right-of-way, easements, and permits required for the Extension.
- b. Any sites, easements, and rights of way acquired by the Developer shall be assigned to the Utility Company upon proper completion of the construction of the Extension. The validity of the legal instruments by which the Developer acquires any such easements and by which Developer assigns such easements to the Utility Company must be approved by the Utility Company's attorney.

3. Construction of the Extension.

- a. The Developer shall cause the Extension to be constructed by a contractor acceptable to the Utility Company in accordance with the approved plans and specifications. The Consulting Engineer shall also be responsible for



the inspection of all phases of the construction of the Extension. The Developer will be responsible for the payment of all costs related to the inspections. The Contractor shall warranty the work and material for a term of twelve months after substantial completion of the Extension.

- b. The contractor(s) constructing or installing the Extension shall execute performance and payment bonds for the total projected cost of the contractor(s)' portion of the work and the performance bond shall include the twelve month warranty on the work and material, and shall provide insurance for the typical coverage for the work being performed, such insurance naming the Developer and Utility Company as additional insured for the work performed by the contractor on the Extension.

4. Dedication of Extension to the Utility Company.

Upon proper completion of construction of the Extension and final inspection and testing thereof by the Utility Company, the Extension shall be dedicated to the Utility Company by an appropriate legal instrument approved by the Utility Company's attorney. The Extension shall thereafter be owned and maintained by the Utility Company, subject to the Contractor's warranty obligations.

5. Cost of the Extension.

- a. Developer shall pay all costs associated with the Extension as a contribution in aid of construction, including without limitation the cost of the following:
  - 1. engineering and design;
  - 2. easements or right-of-ways acquisition;
  - 3. construction;
  - 4. inspection;
  - 5. engineering and attorney's fees and expenses;
  - 6. governmental or regulatory approvals required to lawfully provide service;
  - 7. procurement of water allotments(increased reservation of GBRA water).
- b. Developer shall indemnify the Utility Company and hold the Utility Company harmless from all of the foregoing costs.

- c. Provided, however, nothing herein shall be construed as obligating the Developer to maintain the Extension subsequent to its dedication and acceptance for maintenance by the Utility Company.
- d. If the Utility Company has required the Extension to be oversized in anticipation of the needs of the other customers of the Utility Company, the Utility Company shall reimburse Developer for the additional costs of construction attributable to the over sizing, as determined by the Utility Company's Consulting Engineer.
- e. The Developer's cost including the total of its contributions in aid of construction and its direct expenditures for the portion of the Extension which is not located on the Developer's Property shall not exceed a total of \$1,500,000.00. All other costs of the Extension as approved by the Utility Company shall be borne by the Utility Company. The Consulting Engineer shall divide the estimated cost of the Extension between the portion on the Property and off the Property in all proposals, plans and specifications prepared for the Extension. If the costs of the Extension not located on Developer's Property exceed \$1,500,000 and Developer chooses not to fund the excess, the Utility Company is under no obligation to fund any portion of the Developer's share of the costs of the Extension and Utility Company is under no obligation to furnish water service to the Property or any portion of the Property.

6. Service From the Extension

- a. After proper completion and dedication of the Extension to the Utility Company and payment by the Developer of all costs in accordance with this Agreement, the Utility Company shall provide continuous and adequate water service to the Property, subject to all duly adopted rules and regulations of the Utility Company and the payment of all standard rates, fees, and charges as reflected in the Utility Company's approved tariff
- a. It is understood and agreed by the parties that the obligation of the Utility Company to provide water service in the manner contemplated by this Agreement is subject to:
  - 1. The issuance by the Texas Commission on Environmental Quality and all other governmental agencies having jurisdiction of all permits, certificates, or approvals required to lawfully provide such service.
  - 2. The approval by the GBRA of a contract to supply an additional 250 acre-feet of water per year to the Utility Company and approval by GBRA to Utility Company supplying water to the Property.

c. Unless the prior approval of the Utility Company is obtained, the Developer shall not:

1. Construct or install additional water lines or facilities to service areas outside the Property;
2. Add any additional water lines or facilities to service areas outside the Property.
3. Connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity.

d. Nothing in this Agreement is intended to grant, nor shall any provision be interpreted to grant, Developer or any Utility Company customer located within the Property any preferential right to service or preferential fees in relation to other similarly situated customers of the Utility Company. The Utility Company's tariff and policies for service shall apply to all service offered or provided by Utility Company within the Property.

7. Service Area Issues.

Developer and Utility Company acknowledge and agree that the Property is not located within Utility Company's service area under the certificates of convenience and necessity issued to the Utility Company. Developer shall pay all costs associated with Utility Company obtaining regulatory authority to provide service to all or any part of the Property if Utility Company is required by law or the rules of the applicable regulatory authorities to obtain such approval prior to providing retail service within the Property.

8. GBRA issues:

- a. Developer and Utility Company acknowledge and agree that Utility Company may not supply water under its contract with the Guadalupe Blanco River Authority ("GBRA") to the Property without the prior consent of the GBRA. Developer shall pay all costs associated with Utility Company obtaining GBRA consent to supply water to all or any part of the Property.
- b. Section 5.4 of the contract between Utility Company and GBRA states as follows:

Customer agrees that the supply of water to Customer under this Agreement for use on any lands within a CCN in Kendall County shall be conditioned, to the extent allowed by law, on compliance, in the design, construction and operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands or the treatment, disposal or reuse of wastewater generated on such lands, with all federal, state and local

laws, rules and regulations relating to (i) protection of the quality of groundwaters or surface waters; (ii) recharge of aquifers; or (iii) drainage and flood control. Customer further agrees that, to the extent allowed by law, it will not supply any water supplied to Customer under this Agreement for use on any lands if and for so long as there is any material non-compliance, in the design, construction or operation of any building, facility, development or other improvement on such lands or other use of or activities on such lands or the treatment, disposal or reuse of wastewater generated on such lands, with any such laws, rules or regulations. At GBRA's request from time to time, Customer shall demonstrate to GBRA its compliance with the requirements of this Section 5.4. If Customer fails to comply with the requirements of this Section 5.4 with respect to Customer's supply of water for use on any lands, GBRA shall have available all remedies allowed by law including, without limitation, termination of this Agreement, or suspension or reduction of the supply of treated water under this Agreement until Customer demonstrates that compliance has been achieved; provided, however, GBRA will notify Customer of the violation and provide Customer a reasonable time to cure the violation. Customer will not be obligated to implement any requirement that GBRA does not require all other Project customers or participants to implement.

Developer will not take any action that will cause Utility Company to violate this provision and will fully cooperate with Utility Company in performing its obligations under this section.

- c. Developer and Utility Company will fully cooperate with each other in the efforts by Utility Company to amend the GBRA contract to increase the amount of the raw water reservation by an additional 250 acre-feet of water and to relocate the point of delivery. If GBRA refuses to increase the amount of the raw water reservation by 250 acre-feet or lesser amount acceptable to Utility Company, Utility Company may cancel this Agreement upon thirty days notice to Developer. Based upon the information currently known to Utility Company, GBRA is willing to increase the amount of the reservation by 250 acre-feet and has submitted a contract to that effect to Utility Company.

9. Special Conditions.

Utility Company and Developer agree that the following special conditions shall apply and in the event of any inconsistency between these special conditions and the other parts of this Agreement, these special conditions shall apply:

- a. The Extension must include a means to receive water delivered by GBRA to Utility Company under the contract with GBRA, such delivery point being at

the City of Boerne's facilities on Cascade Caverns Road, and the means of storing and pumping the water from such point of delivery to existing Utility Company facilities, such as the ground storage tank on Johns Road, and/or new facilities constructed as part of the Extension. Developer and Utility Customer will cooperate with each other and GBRA to change the point of delivery and to install the necessary facilities at the point of delivery to receive and pump the water. Developer will pay all costs of connecting the Utility Company system to the GBRA system in accordance with section 3.2 of the GBRA contract, provided, however, if the facilities are oversized to allow Utility Company to serve territory located outside of the Property, Developer and Utility Company will pay the GBRA connection costs proportionately based upon the capacity of such connection facilities.

- b. The Extension will include all facilities and improvements required to serve customers within the Property.
- c. The Extension must be sized to accommodate Developer's projected maximum demand equivalent to 1700 residential connections within the Property, but the actual demand will be determined later.
- d. The Extension will include two water wells and related facilities (including storage tank(s), pressure tank(s), and disinfection equipment on two different tracts of land located within the Property, together with the drilling, production, and sanitary control easements required by state and local regulatory authorities, and all easements and utilities to drill and operate the wells and unrestricted access easements. In the event that additional easements or rights of way are required outside of property, Utility Company agrees to cooperate in the acquisition of such rights, including facilitating the use of public rights of way outside the Property.
- e. Upon acknowledgment by GBRA of the reservation of the additional 250 acre feet of water, Developer will pay Utility Company on a monthly basis the raw water component of the monthly charges paid by Utility Company to GBRA for the 250 acre-feet of water, such monthly charge being determined in accordance with section 6.5 of the GBRA contract (such amount being estimated at approximately \$1,800 per month) (the "Reservation Payment") for so long as the Developer's planned project requires the acquisition of this additional water capacity. If Developer's planned project requires less than 250 acre-feet of water, then Utility Company may ask GBRA to amend the contract to reduce the reservation, but absent agreement by GBRA, Developer shall continue to pay such charge until Utility Company obtains GBRA's consent, or another person needs the water and is willing to take over Developer's obligation under this section of the agreement. Payment by Developer of the Reservation Payment will continue until there are at least 500 active connections (homes occupied by the end-user) within the

Property.

- f. In the event Developers plans are revised to decrease the required number of connections all contributions in aid of construction which are variable or no longer required will be proportionately reduced or terminated if such costs are not required to serve the Developer's property.
- g. In order for Utility Company to have required access to and for facilities, Developer will grant a right of way for a service road within the Property for Utility Company's use to all its service facilities and as an easement for installation of water and wastewater facilities, such service road right of way being at the general location shown on the map attached as Exhibit 3 and being at least 30 feet with a temporary easement during the original construction of an additional 30 feet in width. Developer and Utility Company will determine who will pay the cost of constructing the roadway.
- h. Developer desires to install a wastewater collection and treatment system, Utility Company will apply for the necessary permits and Developer will pay the costs of obtaining such permits. The treatment plant will be owned and operated by Utility Company once construction of the treatment plant is completed. The Extensions may include a lift station and force main to the Utility Company's existing plant if necessary to provide limited, temporary service while such permit is being obtained and the treatment plant is being constructed. Nothing in this Agreement prevents Developer, or the ultimate customer, from installing a septic tank on certain lots within the Property, subject to local laws that may require abandonment of septic tanks if a wastewater collection system is within a certain distance. Developer will be responsible for obtaining permits for the wastewater treatment facility and paying the costs of obtaining the permits. Once the permits are final and non-appealable, Developer will assign, transfer, or amend the permits so that Utility Company will be the permittee.
- i. No funds paid by the Developer to the Utility Company will be used to defray any costs other than those directly related to providing services to the Property or the acquisition of water necessary to provide service to the Property or obtaining the consents and approvals required to serve the area. Any funds paid to the Utility Company in anticipation of service to a greater number or capacity of connections than finally constructed will be reimbursed to the Developer; provided, however, if Utility Company does not have a means to recover the costs of such excess capacity from other users (not including its retail customers) Developer will continue to pay the costs until another such user agrees to assume the costs.
- j. If a portion of the Extension is oversized, Utility Company and Developer will cooperate with each other regarding the time of construction and funding of same, but if either needs the portion of the Extension before the other party

desires to fund same, the oversized portion of the Extension will be funded within sixty days after either party gives written notice to the other stating that the party desires to proceed with the construction of the oversized portion of the Extension.

- k. Beginning the first month following GBRA approval of the reservation of 250 acre-feet of water, or a lesser or greater amount acceptable to Utility Company, Developer will pay Utility Company on a monthly basis an amount equal to the Utility Company's monthly payment to GBRA, less the customer's raw water component, such payment being calculated in accordance with article VI of the GBRA contract. The amount of the monthly payment paid by Developer will be calculated as follows:

Monthly GBRA charge (minus Raw water component for 250 acre-feet) multiplied by a factor equal to 0.333 (250/750), unless GBRA contract is amended to reserve more or less than the 250 acre-feet currently anticipated to be reserved).

The payment by Developer will continue until there are at least 500 active connections within the Property (an active connection meaning a home occupied by the end-user.)

- l. Under no circumstances is Utility Company obligated to use any portion of the 500 acre-feet currently reserved under the GBRA contract to provide water service to the Property or any portion of the Property. Under no circumstances is Utility Company obligated to use the groundwater supply facilities that it owns and operates on the effective date of this Agreement to supply water to the Property or any portion of the Property, or to use capacity in its wastewater treatment facilities that it owns on the effective date of this Agreement to supply the Property or any portion of the Property. If Utility Company determines that it may have capacity in either its groundwater supply facilities or wastewater treatment facilities in excess of the requirements for Utility Company's then-existing actual and projected demand within its service area as of the date of this Agreement and Utility Company chooses to use such excess capacity to provide service within the Property for the temporary period of time required to construct the Extension described in this Agreement, then Utility Company will notify Developer of that determination and the two parties will cooperate on developing a plan for the temporary use of such capacity.

However, to the extent of any conflict between the terms of this Agreement (including the special conditions) and the Utility Company's tariff in effect on the date this agreement is approved by the Utility Company, the Utility Company's tariff shall apply, but Utility Company will grant exceptions or variances to the tariff, to conform to this agreement and, if necessary, obtain regulatory

approval or any required changes to the tariff.

10. General Provisions.

i.

Effect of Force Majeure. In the event either party is rendered unable by force majeure to carry out any of its obligations under this Agreement (other than Developer's obligations to pay costs as described in this Agreement), in whole or in part, then the obligations of that party, to the extent affected by the force majeure shall be suspended during the continuance of the inability, provided however that due diligence is exercised to resume performance at the earliest practical time. As soon as reasonably possible after the occurrence of the force majeure relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice and full particulars of the force majeure to the other party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbance, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority. Insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbance, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failures of water supply, and any other incapacities of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty.

ii.

Notices. Any notice to be given hereunder by either party to the other party shall be in writing and may be effected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed. Any notice mailed to the Utility Company shall be addressed:

Any notice mailed to the Utility Company shall be addressed:

Tapatio Springs Service Company, Inc.  
P.O. Box 550  
Boerne, Texas 78006



Any notice mailed to the Developer shall be addressed:

CDS International Holdings, Inc.  
95 Northeast 4<sup>th</sup> Ave.  
Delray Beach, Florida 33483

with copy to:

Grady B. Jolley  
Nunley, Davis, Jolley & Hill, L.L.P.  
1580 S. Main Street, Suite 200  
Boerne, Texas 78006

Either party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

- iii. Severability. The provisions of this agreement are severable, and if any work, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstance shall not be affected thereby and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.
- iv. Entire Agreement. This Agreement, including any exhibits attached hereto and made a part hereof, constitutes the entire agreement between the parties relative to the subject matter of this Agreement. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein; provided, however, Developer's request for service and the Utility Company's tariff in effect on the date this Agreement is approved are incorporated by reference into this agreement for all intents and purposes.
- v. Amendments. No amendments of this Agreement shall be effective unless and until it is duly approved by each party and reduced to a writing signed by the authorized representatives of the Utility Company and the Developer, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.
- vi. Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties are expressly deemed performable in Kendall County, Texas.

- vii. Venue. Venue for any suit arising hereunder shall be in Kendall County, Texas.
  - viii. Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the heirs, successors and assigns of the parties.
  - ix. Assignability. The rights and obligations of the Developer hereunder may be assigned without the prior written consent of the Utility Company, however, no such assignment shall relieve the Developer, its successors or assigns of any obligation under this Agreement.
11. Effective Date and term.

This Agreement shall be effective from and after the date of the execution by all parties. This agreement shall expire and be null and void if work on the Extension does not begin within twenty-four months after approval of this Agreement and shall be in effect for a term ending four years and one day after Developer fully performs the obligations under this Agreement; provided, however, if any claim or suit is filed relating to this Agreement or the Extension prior to the termination of this Agreement, this Agreement shall continue in effect until such claim or suit is finally resolved.

IN WITNESS WHEREOF each of the parties has caused this Agreement to be executed by its duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

UTILITY COMPANY

By: [Signature]

Title: Vice President

Date: 8-31-04

DEVELOPER

BY:

*W. H. Milnor*

Name:

*W. H. Milnor*

Title:

*Treasurer*

Date:

*9/9/04*



## **Exhibit “H”**

# **ATTACHMENT G**

TAPATIO SPRINGS SERVICE CO  
Balance Sheet  
December 31, 2004

## ASSETS

## Current Assets

Bank of America - Operating	\$	7,917.13
A/R - Trade		5,557.45
A/R - TSGR		10,000.00

Total Current Assets 23,474.58

## Property and Equipment

Cable System	56,824.53
Sewer System	1,287,164.52
Chlorine Injection - Lake	4,589.80
HH - Lift Station	22,006.50
Tapatio West #2 - Lift Station	11,074.44
Water System	1,098,237.17
Underground Utilities	72,496.63
GBRA - Conn/Resv Fees	38,368.75
Accumulated Depreciation	(2,369,427.70)

Total Property and Equipment 221,334.64

## Other Assets

Total Other Assets 0.00

Total Assets \$ 244,809.22



TAPATIO SPRINGS SERVICE CO.  
Balance Sheet  
December 31, 2004

LIABILITIES AND CAPITAL

Current Liabilities	\$	35,000.00	
MP - KCUC - Note 8		201,406.81	
Intercompany - Golf Resort		(357,153.05)	
Intercompany - TS Dev		23,000.00	
I/C-KCDC NOTE 9		42,000.00	
Intercompany - KCUC		4,500.00	
Property Taxes Payable		7,360.80	
Regulatory Assessment Fee			
			(43,885.44)
Total Current Liabilities			
Long-Term Liabilities		905,146.35	
Clyde B. Smith - (TSSC)		48.60	
Allowance For Discount			
			905,194.95
Total Long-Term Liabilities			
			861,309.51
Total Liabilities			
Capital		1,000.00	
Capital Stock		634,104.75	
Additional Paid-in Capital		(1,293,378.10)	
Beginning Retained Earnings		41,773.06	
Net Income			
			(616,500.29)
Total Capital			
	\$		244,809.22
Total Liabilities & Capital			

TAPATIO SPRINGS SERVICE CO.  
Income Statement  
the Twelve Months Ending December 31, 2000

	Current Month		Year to Date	
<b>Revenues</b>				
Sewer	(26,852.43)	(174.31)	13,630.32	5.98
Water	42,242.12	274.22	206,368.55	90.52
Transfer Fees	15.00	0.10	375.00	0.16
Tap Fees - Sewer	0.00	0.00	4,000.00	1.75
Tap Fees - Water	0.00	0.00	3,600.00	1.58
<b>Total Revenues</b>	<b>15,404.69</b>	<b>100.00</b>	<b>227,973.87</b>	<b>100.00</b>
<b>Cost of Sales</b>				
<b>Total Cost of Sales</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b>Gross Profit</b>	<b>15,404.69</b>	<b>100.00</b>	<b>227,973.87</b>	<b>100.00</b>
<b>Expenses</b>				
Sewer - Chemicals	20.70	0.13	2,226.21	0.98
Sewer - Electric	993.37	6.45	10,473.13	4.59
Sewer - M & R - Lift Stations	365.92	2.38	1,440.45	0.63
Sewer - M & R - Lines	0.00	0.00	29,206.91	12.81
Sewer - M & R - Plant	1,958.07	12.71	11,664.78	5.12
Sewer - Testing	71.00	0.46	871.00	0.38
Sewer - Water Use	0.00	0.00	466.37	0.20
Water - Chemicals	69.06	0.45	2,259.12	0.99
Water - Electric	2,104.11	13.66	26,427.83	11.59
Water - M & R - Distribution	0.00	0.00	2,699.94	1.18
Water - M & R - Fire Hydrants	0.00	0.00	1,090.79	0.48
Water - M & R - Meters	63.75	0.41	733.75	0.32
Water - M & R - Tanks	391.58	2.54	824.08	0.36
Water - M & R - P/S - Gardens	0.00	0.00	874.13	0.38
Water - M & R - P/S - Ridge	0.00	0.00	3,862.92	1.69
Water - M & R - Well 2	0.00	0.00	583.38	0.26
Water - M & R - Well 6	0.00	0.00	4,638.66	2.03
Water - Meter Reading	195.00	1.27	932.00	0.41
Water - Testing Fees	15.00	0.10	2,986.00	1.31
Assessment Fees	0.00	0.00	2,422.53	1.06
CCGCD Fees	1,230.44	7.99	2,060.66	0.90
Auto Expense	2,499.01	16.22	7,281.73	3.19
Bank Charges	0.00	0.00	13.00	0.01
Fees / Permits / Publications	0.00	0.00	2,060.43	0.90
Interest Expense	4,538.86	29.46	55,314.14	24.26
Office Expense	0.00	0.00	153.43	0.07
Postage	90.25	0.59	571.37	0.25
Taxes - Property	0.00	0.00	6,914.82	3.03
Telephone - Office	136.13	0.88	1,360.14	0.60
Telephone - Mobile	0.00	0.00	320.84	0.14
Telephone - Wells	57.86	0.38	716.27	0.31
Tx Water Comm Assessment	2,750.00	17.85	2,750.00	1.21
<b>Total Expenses</b>	<b>17,550.11</b>	<b>113.93</b>	<b>186,200.81</b>	<b>81.68</b>
<b>Net Income</b>	<b>\$ (2,145.42)</b>	<b>(13.93)</b>	<b>\$ 41,773.06</b>	<b>18.32</b>

## **Exhibit “I”**

Bank of America



August 12, 2005

B&D Environmental  
P.O. Box 90544  
Austin, Texas 78709-0544  
Attn: Mr. Nichols

Bank of America  
Private Bank  
P.O. Box 15100  
1001 E. Atlantic Avenue  
Orlando, FL 32816

Tel: (407) 279-7638  
Fax: (407) 279-1294

Re: Application to amend Certificate of Convenience and Necessity  
Nos. 12122 and 20698 filed with the Texas Commission on  
Environmental Quality to provide water and sewer utility service  
to approximately 5,000 acres in Kendall County, Texas.

Dear Mr. Nichols:

Please be advised that CDS International Holdings, Inc. ("CDS") and CDS  
Texas Realty LTD (an affiliate of CDS) are long standing customers of Bank  
of America with all accounts handled in a satisfactory manner.

CDS currently has unrestricted funds available in the low seven figure  
amount which can be provided for construction and infrastructure  
improvements pursuant to the certain Non-Standard Service Agreement by  
and between CDS and Tapatio Springs Service Company, Inc.

Should a letter of credit or a specific loan be required to accomplish these  
improvements, the Bank would most likely consider such a request.

Please contact me at (561) 279-7638 if you require any additional  
information.

Sincerely,

Joseph Silk  
Senior Vice President

EXHIBIT

4

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 23, 2006

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087

Re: Executive Director's Reply to Ratepayers' Objections to the Prefiled Testimony  
of Kamal Adhikari and Daniel K. Smith  
TCEQ Docket No. 2005-1516-UCR  
SOAH Docket No. 582-06-0425

Dear Ms. Castañuela:

Enclosed for filing is the original "Executive Director's Reply to Ratepayers' Objections to the Prefiled Testimony of Daniel K. Smith and Kamal Adhikari" (the "Reply"). Please also find one copy of this letter to you and one copy of the Reply. Please file stamp these documents and return them to Kathy Humphreys Brown, Attorney, Environmental Law Division, MC 173. If you have any questions or comments, please call me at (512) 239-3417.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathy Humphreys Brown".

Kathy Humphreys Brown  
Attorney  
Environmental Law Division

Enclosures

cc: Mailing List

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 23, 2006

The Honorable Mike Rogan  
State Office of Administrative Hearings  
300 West 15<sup>th</sup> Street, Suite 504  
Austin, Texas 78701-1649

Re: Executive Director's Reply to Ratepayer' Objection to the Prefiled Testimony of  
Kamal Adhikari and Daniel K. Smith  
SOAH Docket No. 582-06-0425  
TCEQ Docket No. 2005-1516-UCR

Dear Judge Rogan:

Enclosed is a true and correct copy of the Executive Director's Reply to Ratepayers' Objections to the Prefiled Testimony of Kamal Adhikari and Daniel K. Smith in the above referenced matter. The original was filed with the Office of the Chief Clerk of the Texas Commission on Environmental Quality on this day.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathy Humphreys-Brown".

X Kathy Humphreys-Brown  
Attorney  
Environmental Law Division

Enclosure

cc: LaDonna Castañuela, Chief Clerk, TCEQ, MC 105 (original)  
Mailing List

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 IN KENDALL	§	ADMINISTRATIVE HEARINGS
COUNTY, TEXAS	§	

---

**EXECUTIVE DIRECTOR'S REPLY TO RATEPAYERS' OBJECTIONS TO  
THE PREFILED TESTIMONY OF KAMAL ADHIKARI AND DANIEL K. SMITH**

---

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:**

**NOW COMES THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY** and submits this response to the Ratepayers' objections to the pre-filed testimony of Kamal Adhikari and Daniel K. Smith.

**I. Ratepayers' Objections Were Not Timely Filed**

The ratepayers' filed their objections to the pre-filed testimony of Kamal Adhikari and Daniel K. Smith late, thus all objections are waived. According to the Administrative Law Judge's (ALJ) Order No. 1, the deadline for submitting objections to pre-filed testimony was June 16, 2006. The attorney representing the ratepayers certified 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." Additionally, the postmark on the envelope containing the Ratepayers' Motions was June 16, 2006.<sup>1</sup> The Executive Director did not receive the Motions until June 20, 2006.<sup>2</sup> According to TCEQ's rules, service by mail is complete three

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<sup>1</sup> Attachment A.

<sup>2</sup> *Id.* Note the Date Received by the Environmental Law Division Stamp on the envelope.

days after mailing the document.<sup>3</sup> Moreover, according to the rules of the State Office of Administrative Hearings, disputes regarding computation of time for periods not specified the rules or by the judge's order will be resolved by reference to applicable law.<sup>4</sup>

Because the Ratepayers' objections were mailed three days late, the Executive Director (ED) respectfully recommends that all of the Ratepayers' Objections to the pre-filed testimony of Kamal Adhikari and Daniel K. Smith be overruled.

## **II. ED's Response To Ratepayers' Objections To The Pre-Filed Testimony Of Kamal Adhikari And Daniel K. Smith**

If the Administrative Law Judge does not overrule the Ratepayers' objections as untimely, the ED replies that the Ratepayers' objections are without merit. The Ratepayers' object to the testimony of both Kamal Adhikari and Daniel K. Smith on a variety of grounds: their answers are conclusory, their answers are not supported with evidence in the record, their answers are not relevant, their answers are not admissible, their answers are hearsay and neither Kamal nor Daniel have personal knowledge.

The ED responds that all of the Ratepayers' objections are vague because the ED cannot determine exactly what portion of the witnesses' testimony the Ratepayers' object to. The ED also responds that the Ratepayers' objections are without merit. The ED respectfully recommends the ALJ overrule all of the Ratepayers' objections.

### *A. The Testimony of Kamal Adhikari and Daniel K. Smith is Not Conclusory.*

The testimony of Kamal Adhikari and Daniel K. Smith is not conclusory. The ED is offering both Kamal Adhikari and Daniel K. Smith as expert witnesses. Because they are being offered as experts, their testimony is in the form of their opinion, which is entirely within the

---

<sup>3</sup> 30 Texas Administrative Code (TAC) §1.11(d).

<sup>4</sup> 1 TAC § 155.19(b).



scope of the Rules of Evidence.<sup>5</sup> As recently as June 16, 2006, the Texas Supreme Court held that “[E]xpert testimony is admissible if (1) the expert is qualified, and (2) the testimony is relevant and based on a reliable foundation.”<sup>6</sup> In their pre-filed testimony both witnesses described their backgrounds sufficiently for the ALJ to determine they qualify as experts.<sup>7</sup>

Conclusory is defined as “expressing a factual inference without expressing the fundamental facts on which the inference is based. The word often describes evidence that is not specific enough to be competent to prove what it addresses.”<sup>8</sup> Both Kamal and Daniel testified that they reviewed three classes of documents before forming their opinions.<sup>9</sup> Additionally both witnesses testified that they reviewed the Certificate of Convenience and Necessity (CCN) applications using the criteria found in Chapter 13 of the Texas Water Code and Chapter 291 of TCEQ’s rules.<sup>10</sup> Both witnesses provided sufficient factual basis for their conclusions, thus their opinions are not conclusory.

*B. The Testimony of Kamal Adhidari and Daniel K Smith is Supported by the Record, but not Underlying Facts and Information is Required to be Admissible.*

The ED was not required to submit all (or any) of the documents used by Kamal Adhidari and Daniel K. Smith as evidence. According to the Rules of Evidence, expert witnesses are not required to disclose the underlying facts or data used to form their opinion.<sup>11</sup> The opposing party may conduct *voir dire* regarding the underlying facts or data that the expert used to arrive at his opinion.<sup>12</sup> The opposing party may also cross examine the expert on the underlying facts or

<sup>5</sup> TEX. R. EVID. 702 provides that “If ...specialized knowledge will assist the trier of fact to understand the evidence...a witness qualified as an expert...may testify thereto in the form of an opinion or otherwise.”

<sup>6</sup> Cooper Tire & Rubber Company v. Oscar Mendez, 2006 LEXIS 555.

<sup>7</sup> ED-5, resume of Daniel K. Smith and ED-7, resume of Kamal Adhikari.

<sup>8</sup> A DICTIONARY OF MODERN LEGAL USAGE (SECOND) BRYAN A. GARNER (1987).

<sup>9</sup> Pre-filed testimony of Kamal Adhikari, Page 2, lines 15-23, and Daniel K. Smith, Page 2, lines 22-29.

<sup>10</sup> Pre-filed testimony of Kamal Adhikari, Page 3, lines 4-5, and Daniel K. Smith, Page 3, lines 3-4.

<sup>11</sup> TEX. R. EVID 705(a).

<sup>12</sup> TEX. R. EVID 705(b).

data.<sup>13</sup> Finally, the facts or data that an expert uses do not have to be admissible in evidence.<sup>14</sup>

Both witnesses testified that they reviewed Tapatio Springs' application, the information obtained during discovery and Tapatio Springs' prefiled testimony.<sup>15</sup> The Ratepayer's will have ample opportunity to take the witnesses on *voir dire* and or cross examine them on the facts and data they used to form their opinions.

*C. The Testimony of Kamal Adhikari and Daniel K. Smith is not Hearsay.*

The testimony of Kamal Adhikari or Daniel K. Smith is not hearsay. Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."<sup>16</sup> Both Kamal and Daniel testified to their opinions regarding if Tapatio Springs' application for an amendment to its CCN should be granted. As discussed above, the facts or data used by experts to form their opinions do not have to be admissible in evidence; therefore assuming, for the sake of argument that the information relied on by Kamal and Daniel is hearsay, their opinions based on that information is still admissible.

*D. Kamal Adhikari and Daniel K. Smith have Sufficient Personal Knowledge to Provide Expert Testimony in this Matter.*

The testimony provided by Kamal Adhikari and Daniel K. Smith indicates they are both thoroughly familiar with Tapatio Springs' application, the information obtained via discovery and TCEQ's rules. As demonstrated by their resumes, Kamal has been employed by the TCEQ for more than five years and Daniel has been in his current position for eight years.<sup>17</sup> Therefore both witness have sufficient personal knowledge to testify regarding Tapatio Springs' CCN

---

<sup>13</sup> TEX. R. EVID 705(a).

<sup>14</sup> TEX. R. EVID 703.

<sup>15</sup> Pre-filed testimony of Kamal Adhikari, Page 2, lines 15-23, and Daniel K. Smith, Page 2, lines 22-29.

<sup>16</sup> TEX. R. EVID 801(d).

<sup>17</sup> ED-5, resume of Daniel K. Smith and ED-7, resume of Kamal Adhikari.

application.

*E. Relevancy.*

The ED is not clear on what particular testimony of either witness the Ratepayers objects to as not relevant, however, the ED asserts that all the testimony of both witnesses is directly relevant to the amendment of the CCNs.<sup>18</sup> In essence Daniel K. Smith testified that in his opinion, based on his review of the information provided in the application and through the hearing process; the applicant is currently providing continuous and adequate service to its customers and has the financial ability to construct the necessary system improvements.<sup>19</sup> In essence Kamal Adhikari testified that no other utility is provided water or sewer utility service in the proposed area, that there is a need for service in the area, that the applicant has the ability to provide water and sewer service in the area and that it is not feasible for the applicant to obtain water and sewer utility service from another utility.<sup>20</sup> The testimony of both witnesses is relevant to the decision to amend Tapatio Spring's CCN.

**WHEREFORE, PREMISES CONSIDERED,** the ED respectfully requests that the ALJ find the Ratepayer's objections were untimely and without merit.

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Glenn Shankle, Executive Director

Robert Martinez, Acting Director  
Environmental Law Division

---

<sup>18</sup> TEX. R. EVID 401. "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

<sup>19</sup> Prefiled testimony of Daniel K. Smith, Page 3, lines 1-25.

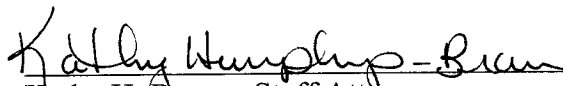
<sup>20</sup> Prefiled testimony of Kamal Adhikari, Pages 4-6.

By: Kathy H. Brown  
Kathy H. Brown, Staff Attorney  
State Bar No. 24037667  
P.O. Box 13087, MC-173  
Austin, Texas 78711-3087  
(512) 239-3417  
(512) 239-0606 (Fax)

ATTORNEY FOR  
THE EXECUTIVE DIRECTOR

**CERTIFICATE OF SERVICE**

I certify that on June 23, 2006, the "**Executive Director's Reply To Ratepayers' Objections To The Prefiled Testimony Of Kamal Adhikari And Daniel K. Smith**" was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk and was sent via U.S. Postal Service (first-class), and Facsimile or Hand Delivered to everyone on the attached mailing list.

  
Kathy H. Brown, Staff Attorney  
Environmental Law Division  
State Bar No. 24006911

OFFICE OF THE  
CHIEF CLERK  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY  
1500 NORTH GILBERT  
FREETOWN, TEXAS 77841  
TEL: 281-241-2000  
FAX: 281-241-2001  
WWW.TCEQ.TX.GOV

# Attachment A

CERTIFIED MAIL™



7005 3110 0004 5877 0112



U.S. POSTAGE  
PAID  
BOERNE, TX  
78006  
JUN 16, 06  
AMOUNT

9262

78711

**\$8.30**  
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RECEIVED

JUN 19 2006

TCEQ MAIL CENTER  
MM

**Law Office of Elizabeth R. Martin**

106 West Blanco, Suite 206  
PO Box 1764, Boerne, TX 78006

TO:

Kathy Humphreys Brown  
Staff Attorney  
Environmental Law Division, MC-173  
Texas Commission on Environmental Quality  
PO Box 13087  
Austin, TX 78711-3087

OFFICE OF LEGAL SERVICES

JUN 20 2006

RECEIVED

**MAILING LIST**  
**TAPATIO SPRINGS SERVICE COMPANY, INC.**  
**SOAH DOCKET NO. 582-06-0425**  
**TCEQ DOCKET NO. 2005-1516-UCR**

FOR THE STATE OFFICE  
OF ADMINISTRATIVE  
HEARINGS

Mike Rogan  
Administrative Law Judge  
State Office of Administrative Hearings  
300 West Fifteenth Street  
Austin, Texas 78701  
(512) 475-4993  
(512) 475-4994 Fax

FOR THE APPLICANT

Patrick Lindner  
Attorney at Law  
7550 IH-10 West, Northwest Center  
Suite 800  
San Antonio, Texas 78229  
(210) 349-6484  
(210) 349-0041 Fax

FOR THE EXECUTIVE DIRECTOR:

Kathy Humphreys-Brown  
Staff Attorney  
Environmental Law Division, MC 173  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-3417  
(512) 239-0606 Fax

FOR THE CHIEF CLERK:

LaDonna Castañuela  
Office of the Chief Clerk, MC 105  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-3300  
(512) 239-3311 Fax



FOR THE PUBLIC INTEREST  
COUNSEL:

Mary Alice Boehm-McKaughan  
Assistant Public Interest Counsel, MC 103  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087  
(512) 239-6361  
(512) 239-6377 Fax

FOR THE RATEPAYERS:

Elizabeth R. Martin  
Attorney at Law  
P. O. Box 1764  
106 W. Blanco, Suite 206  
Boerne, Texas 78006  
(830) 816-8686  
(830) 816-8282 Fax

JOHN W. DAVIDSON  
ARTHUR TROILO  
TERRY TOPHAM  
CHERE TULL KINZIE  
R. GAINES GRIFFIN  
RICHARD E. HETTINGER  
PATRICK W. LINDNER  
IRWIN D. ZUCKER  
RICHARD D. O'NEIL  
J. MARK CRAUN

LAW OFFICES OF  
**DAVIDSON & TROILO**  
A PROFESSIONAL CORPORATION

SAN ANTONIO  
7550 W IH-10, SUITE 800, 78229-5815  
210/349-6484 • FAX: 210/349-0041

LEA A. REAM  
FRANK J. GARZA  
JAMES C. WOO  
RICHARD L. CROZIER  
R. JO RESER  
MARIA S. SANCHEZ  
DALBY FLEMING  
LISA M. GONZALES  
RENEE R. HOLLANDER

AUSTIN OFFICE  
919 CONGRESS, SUITE 810, 78701  
512/469-6006 • FAX 512/473-2159

June 16, 2006

**VIA FIRST CLASS MAIL**

Ms. LaDonna Castanuela, Chief Clerk  
Office of the Chief Clerk, MC-105  
P.O. Box 13087  
Austin, TX 78711-3087

Re: 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 Numbers 12122 and 20698 in  
Kendall County, Texas.

Dear Ms. Castanuela:

Enclosed for filing is Applicant Tapatio Springs Service Company, Inc.'s Motion for  
Summary Disposition.

Sincerely,



Patrick Lindner  
For the Firm

cc: Mailing List (fax to counsel for all parties)

TEXAS  
COMMISSION  
ON  
ENVIRONMENTAL  
QUALITY  
FEB 11 PM 2:14  
CHIEF CLERK'S OFFICE

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

**APPLICATION OF TAPATIO SPRINGS § BEFORE THE STATE OFFICE<sup>4</sup>**  
**SERVICE COMPANY, INC., TO AMEND §**  
**CERTIFICATES OF CONVENIENCE § OF**  
**AND NECESSITY NOS. 12122 AND §**  
**20698 IN KENDALL COUNTY, TEXAS § ADMINISTRATIVE HEARINGS**

**APPLICANT'S MOTION FOR SUMMARY DISPOSITION**

NOW COMES, TAPATIO SPRINGS SERVICE COMPANY, INC. ("Applicant") and submits this Motion for Summary Disposition pursuant to section 80.137 of the TCEQ rules and in support thereof would show the following:

**I.**

Order no. 1 requires that all testimony be prefiled. The ratepayers did not prefile any testimony despite conducting extensive discovery, including depositions. Absent this prefiled testimony, the record is silent as to facts (as contrasted to argument of council) supporting the ratepayers' standing to oppose the application.

**II.**

Applicant incorporates by reference the prefiled testimony filed by the Applicant and the Executive Director into this motion. The Executive Director recommends granting of the application.

**III.**

The prefiled testimony supports the granting of the application, based in part on at least the following uncontroverted facts:

1. The owner of the tract of land requested to be added to Applicant's CCNs:
  - a. requires utility service,
  - b. requests Applicant to provide the service, and
  - c. signed a contract with Applicant setting forth the terms and conditions relating to such service.
2. The contract between the owner of the tract and the Applicant:
  - a. requires the owner of the tract to pay substantially all, if not all, of the costs of extending service,
  - b. reduces, by at least \$1.5 million, the Applicant's (and eventually Applicant's ratepayers) costs for an off-site water transmission main, and
  - c. recognizes Applicant's right to refuse to use its existing water wells, its existing wastewater treatment plant, or its original 500 acre-feet

of water supply from GBRA to satisfy the service requirements of the tract of land to be added to the CCNs.

3. Applicant, under its existing management, has been providing retail water and wastewater service to several hundred connections pursuant to its existing CCNs for more than fifteen years;
4. In accordance with the service contract, Applicant acquired the rights to an additional 250 acre-feet of treated surface water from the Guadalupe-Blanco River Authority to provide service within the tract of land requested to be added to its CCNs; and
5. No other utility seeks to provide the requested and required service.

#### IV.

The evidence showing the need for service and the ability to provide service is literally black on white in the form of signed contracts. The ratepayers cannot controvert this evidence. How can the ratepayers show by a preponderance of evidence that the owner of the territory to be added does not want or need service from the Applicant? How can the ratepayers show that the Applicant does not have water to supply the added territory when the Applicant amended its existing water supply contract to add an additional 250 acre-feet of supply? How can the ratepayers show that utility service should be provided by some other utility when no other utility opposes the application?

**WHEREFORE, PREMISES CONSIDERED,** Applicant requests that the ALJ grant this Motion for Summary Disposition and grant such other relief to which Applicant may show itself to be justly entitled.

Respectfully submitted,

Davidson Troilo, P.C.  
7550 West IH-10, Suite 800  
San Antonio, Texas 78229  
Telephone: (210) 349-6484  
Facsimile: (210) 349-0041

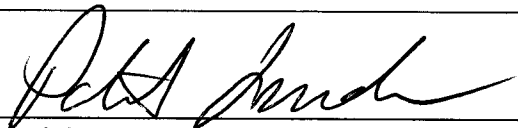
By: 

Patrick Lindner  
State Bar No. 12367850

### CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of June 2006, a true and correct copy of the foregoing document were forwarded to each of the parties listed below via first-class mail.

Elizabeth R. Martin Attorney at Law P. O. Box 1764 Boerne, TX 78006 830/816-8282 facsimile Representing Ratepayers	Ms. LaDonna Castanuela, Chief Clerk Office of the Chief Clerk MC-105 P.O. Box 13087 Austin, TX 78711-3087
Garrett Arthur Office of Public Interest Counsel PO Box 13087 MC-175 Austin, Texas 78711-3087 512/239-6377 – facsimile Representing TCEQ Public Interest Council	Judge Mike Rogan Administrative Law State Office of Administrative Hearings William P. Clements Building 300 West Fifteenth Street Austin, TX 78701
Kathy H. Brown Staff Attorney TCEQ Environmental Law Division PO Box 13087 MC-173 Austin, TX 78711-3087 512/239-0606 – facsimile Representing Texas Commission on Environmental Quality	

  
Patrick Lindner

Kathleen Hartnett White, *Chairman*  
R. B. "Ralph" Marquez, *Commissioner*  
Larry R. Soward, *Commissioner*  
Glenn Shankle, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 2, 2006

LaDonna Castañuela, Chief Clerk  
Texas commission on Environmental Quality  
P.O. Box 13087, MC 105  
Austin, Texas 78711-3087

Re: Executive Director's Direct Testimony of Daniel K. Smith and Kamal Adhikari  
Tapatio Springs Service Company  
TCEQ Docket No. 2005-1516-UCR  
SOAH Docket No. 582-06-0425

Dear Ms. Castañuela:

Enclosed for filing is the original "Executive Director's Direct Testimony of Daniel K. Smith and Kamal Adhikari" (the "Testimony"). Please also find one copy of this letter to you and one copy of the Testimony. Please file stamp these documents and return them to Kathy Humphreys Brown, Attorney, Environmental Law Division, MC 173. If you have any questions or comments, please call me at (512) 239-3417.

Sincerely,

A handwritten signature in cursive script that reads "Kathy Humphreys Brown".

Kathy Humphreys Brown  
Attorney  
Environmental Law Division

Enclosures

cc: Mailing List

# EXHIBIT

# 4

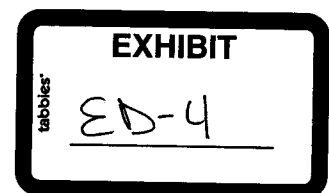
**SOAH DOCKET NO. 582-06-0425  
TCEQ DOCKET NO. 2005-1516-UCR**

<b>APPLICATIONS BY TAPATIO SPRINGS</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>SERVICE COMPANY TO AMEND</b>	<b>§</b>	
<b>WATER AND SEWER CERTIFICATES</b>	<b>§</b>	<b>OF</b>
<b>OF CONVENIENCE AND NECESSITY</b>	<b>§</b>	
<b>(CCN) NOS. 12122 AND 20698</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>IN KENDALL COUNTY, TEXAS</b>	<b>§</b>	

**THE EXECUTIVE DIRECTOR'S DIRECT TESTIMONY OF  
DANIEL K. SMITH  
UTILITIES & DISTRICTS SECTION  
WATER SUPPLY DIVISION**

**COMES NOW**, the Executive Director of the Texas Commission on Environmental Quality (the "Executive Director"), by and through a representative of the Commission's Environmental Law Division, and files this Direct Testimony of Daniel K. Smith, Utilities & Districts Section, Water Supply Division, as follows:

- 1   **Q.   Please state your name and business address.**
- 2   A.   Daniel K. Smith, 12100 Park 35 Circle, Building F, Austin, Texas 78753.
- 3   **Q.   By whom are you currently employed and how long have you been employed there?**
- 4   A.   I have been employed by the Texas Commission on Environmental Quality (TCEQ or
- 5       Commission) since May, 1998 as a program specialist.
- 6   **Q.   Please describe your educational background and past work experience.**
- 7   A.   I have a bachelor's degree in business and speech. I worked as a vice president and
- 8       senior account officer with CoBank, formerly known as the Texas Bank for Cooperatives,
- 9       for 14 years, and for the Texas Department of Agriculture's Ag Finance Authority for
- 10      four years performing financial and risk analysis that the Texas Bank of Cooperatives and
- 11      the Texas Department of Agriculture used to base substantial lending commitment
- 12      decisions.
- 13   **Q.   Please refer to what is marked as Exhibit ED-5. Is it a true and accurate reflection**
- 14      **of your education and work history?**
- 15   A.   Yes.





1 **Q. Please describe your work responsibilities.**

2 A. My responsibilities include reviewing the business plans and/or the financial and  
3 managerial information provided in applications to obtain, amend or transfer certificates  
4 of convenience and necessity (CCNs). This may include interviewing applicants and  
5 securing additional information as necessary to support a final written opinion on the  
6 financial and managerial capability of the applicant to provide continuous and adequate  
7 service as required.

8 **Q. How many business plans and/or financial and managerial analyses have you**  
9 **performed while at TCEQ?**

10 A. I have completed over 900 analyses of business plans and/or financial and managerial  
11 capability.

12 **Q. In connection with SOAH Docket No. 582-06-0425, have you reviewed the**  
13 **applications of the Tapatio Springs Service Company to amend its water and sewer**  
14 **CCN Numbers 12122 and 20698 filed with the TCEQ?**

15 A. Yes.

16 **Q. What is the purpose of your testimony?**

17 A. I will present the Executive Director's position concerning the analysis of the financial  
18 and managerial capability of the applicant.

19 **Q. Please explain the scope of your participation in the present proceeding.**

20 A. My participation regarding SOAH Docket No. 582-06-0425 may be summarized as  
21 follows:

- 22 1. I reviewed the financial and managerial information provided in the applications  
23 with respect to the criteria necessary to amend a CCN, as found in Section 13.246  
24 of the Texas Water Code and the Commission's rules at 30 TAC Section 291.102.
- 25 2. I reviewed the information provided during formal discovery.
- 26 3. I reviewed the information provided in prefiled testimony.
- 27 4. I am presenting the present status of deliberations on the financial and managerial  
28 capability of the applicant for the amendment of water and sewer CCN Nos.  
29 12122 and 20698, respectively.

1 **CCN APPLICATION**

2 **Q. During your review of the applications submitted, what standards did you consider?**

3 A. I reviewed the applications based on the criteria in Texas Water Code Chapter 13, and  
4 TCEQ Rules Chapter 291.

5 **Q. Is there evidence that the applicant is presently providing continuous and adequate**  
6 **service to its customers?**

7 A. Yes.

8 **Q. Is there evidence that the applicant has, or has arranged for, the capital investment**  
9 **necessary to construct system improvements to provide service to the requested**  
10 **area?**

11 A. Yes, the applicant's developer has acknowledged financial responsibility, and provided  
12 evidence of lender support.  
13

14 **CONCLUSIONS AND RECOMMENDATION**

15 **Q. Have you drawn any conclusions based on your review of the application,**  
16 **information presented to you during discovery, and prefiled testimonies with**  
17 **respect to Tapatio Springs Service Company's request to amend its water and sewer**  
18 **CCN?**

19 A. I have not prepared a final written opinion on the financial and managerial capability of  
20 the applicant, in the event new information is revealed from these proceedings. However,  
21 it is my opinion thus far, that the applicant has demonstrated financial and managerial  
22 capability to warrant approval of the CCN amendment.

23 **Q. Does this conclude your direct, prefiled testimony?**

24 A. Yes, but I wish to reserve the opportunity to supplement this testimony based on any  
25 additional evidence that may be presented.