

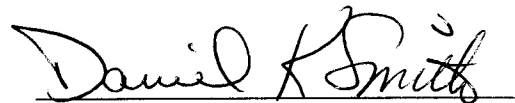
VERIFICATION

STATE OF TEXAS §

§

COUNTY OF TRAVIS §

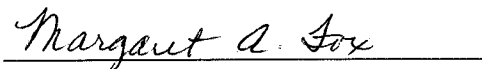
BEFORE ME, the undersigned authority, on this day personally appeared Daniel K. Smith, known to me to be the person whose name is subscribed below and after having bee duly sworn, on his oath stated the following: the testimony and the exhibits for SOAH Docket No. 582-06-0425 (Applications by Tapatio Springs Service Company to Amend Water and Sewer Certificates of Convenience and Necessity (CCN) Nos.12122 and 20698 in Kendall County, Texas) were prepared by me or under my direct supervision and control and the same is true to the best of my knowledge and belief that this information is true and correct.



Daniel K. Smith

SUBSCRIBED AND SOWRN TO BEFORE ME on June 2, 2006 to certify which, witness my hand and seal of office.





NOTARY PUBLIC

STATE OF TEXAS

EXHIBIT

5

Daniel K. Smith

Education:

December 1975 B.A., Business and Speech
Emporia State University, Kansas

Work Experience:

May 1998 - present Program Specialist and Financial Analyst, Texas Commission on
Environmental Quality, Austin, Texas

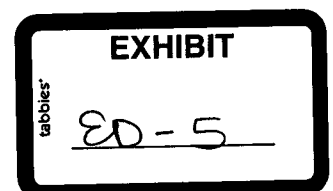
Review business plans generated by the applicants for new
water systems, and for amendments to Certificates of
Convenience and Necessity (CCN)

Analyze and verify the financial and managerial capability
of an applicant, as required by the Safe Drinking Water Act
and Senate Bill 1, to confirm that the applicant possesses
the capability to provide continuous and adequate service.

Jan. 1994 - May 1998 Financial Analyst, Texas Department of Agriculture

Dec. 1979 - Dec. 1993 Vice President and Senior Account Officer, Texas Bank for
Cooperatives, subsequently CoBank, The National Bank for
Cooperatives

Jun. 1976 - Dec. 1979 Cooperative Development Specialist, Farmland Industries



EXHIBIT

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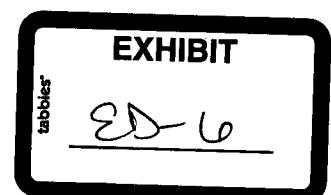
SOAH DOCKET NO. 582-06-0425
TCEQ DOCKET NO. 2005-1516-UCR

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

THE EXECUTIVE DIRECTOR'S DIRECT TESTIMONY OF
KAMAL ADHIKARI, E.I.T.
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 Kamal Adhikari, Utilities & Districts Section, Water Supply Division, as follows:

- 1 **Q. Please state your name and business address.**
- 2 A. Kamal Adhikari, E.I.T., 12015 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) and its predecessor agency since November 2001.
- 6 **Q. Please describe your educational background.**
- 7 A. I graduated with a Bachelor's Degree in Mechanical Engineering in 1998 from Kathmandu
- 8 University, Nepal.
- 9 **Q. Please turn to exhibit ED-7. Does this resume fully and accurately reflect your**
- 10 **educational and work background?**
- 11 A. Yes.
- 12 **Q. Please describe your work responsibilities.**
- 13 A. My responsibilities include reviewing and processing applications to obtain or amend a
- 14 Certificates of Convenience and Necessity (CCNs), reviewing rate increase applications,



1 assisting with settlement negotiations in rate and CCN hearings, preparing testimony and
2 exhibits for contested-case hearings, conducting rate-related inspections of water utility
3 systems, and reviewing water utility plans and specifications.

4 **Q. How many separate CCN cases have been assigned to you previously?**

5 A. I have been assigned approximately 90 separate CCN cases during my tenure at the
6 Commission.

7 **Q. In connection with SOAH Docket No. 582-06-0425, have you reviewed the application of**
8 **the Tapatio Springs Service Company to amend its water and sewer CCN Numbers**
9 **12122 and 20698 filed with the TCEQ?**

10 A. Yes, I have.

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

12 A. I will present the Executive Director's position as to the proposed amendment to water and
13 sewer CCN Nos. 12122 and 20698 in Kendall County, Texas.

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

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

16 a. I reviewed the CCN applications with respect to the criteria necessary to obtain and to
17 amend a CCN in Chapter 13 of the Texas Water Code and Chapter 291 of the Commission's
18 rules, Chapter 30 Texas Administrative Code (TAC), Section 291.102, as they existed prior to
19 the enactment of House Bill 2876 (79th Legislature).

20 b. I reviewed the information provided by all parties during formal discovery.

21 c. I reviewed the other parties' prefiled testimony.

22 d. I am presenting a position on the applications for the amendment of water and sewer CCN
23 Nos. 12122 and 20698.

24 **Q. What is your recommendation on Tapatio Springs Service Company's CCN**
25 **applications?**

26 A. I recommend approval of Tapatio Springs Service Company's applications to amend its water
27 and sewer CCNs.

1 **CCN APPLICATION**

2 **Q. During your review of the Tapatio Springs Service Company's applications, what**
3 **standards did you consider?**

4 A. I reviewed the submitted applications based on the criteria as set forth in Texas Water Code
5 Chapter 13, and Chapter 291 of the TCEQ's rules.

6 **Q. What are the specific criteria that you considered in your review?**

7 A. They are as follows:

- 8 (1) the adequacy of service currently provided to the requested area;
9 (2) the need for additional service in the requested area;
10 (3) the effect of the granting of a certificate on the recipient of the certificate and
11 on any retail public utility of the same kind already serving the proximate area;
12 (4) the ability of the applicant to provide adequate service;
13 (5) the feasibility of obtaining service from an adjacent retail public utility;
14 (6) the financial stability of the applicant, including, if applicable, the adequacy
15 of the applicant's debt-equity ratio;
16 (7) environmental integrity; and
17 (8) the probable improvement in service or lowering of cost to consumers in that
18 area.

19 **Q. What is the Tapatio Springs Service Company requesting to do through its**
20 **applications?**

21 A. The Tapatio Springs Service Company is requesting to amend its current water and sewer
22 CCN Nos. 12122 and 20698 in the area located approximately two miles west of downtown
23 Boerne, Texas, and is generally bounded on the east by Johns Road, on the west by Bear
24 Creek, on the north by Cibolo Creek, and on the south by Tapatio Springs, in Kendall
25 County, Texas. The Tapatio Springs Service Company is currently certificated to provide
26 water and sewer services in the area adjacent to the proposed area.

27 **Q. Did anyone protest these CCN applications?**

28 A. Yes. The City of Boerne and several individuals protested these applications. However, the

City of Boerne withdrew its protest and request for a public hearing.

Q. Is water service currently being provided to the requested area?

A. Currently, there are no customers in the proposed area.

Q. Is sewer service currently being provided to the requested area?

A. Currently, there are no customers in the proposed area.

Q. In your opinion, is there a need for additional water and sewer service in the requested area?

A. Yes. CDS International Holdings, Inc., a developer is developing the proposed area as residential subdivision. In addition, Exhibit B of the application is a signed Non Standard Service Agreement between Tapatio Springs Service Company and CDS International Holdings, Inc. The proposed area is owned and controlled by CDS International Holdings, Inc.

Q. Please explain what the Non Standard Service Agreement is and what its significance is.

A. Non Standard Service Agreement is the agreement between the Utility and the Developer to provide service to his property. The significance of this agreement is that the Developer may be required to provide contributions in aid of construction in amount sufficient to reimburse the utility for existing uncommitted facilities at their original cost if the utility has not previously been reimbursed. A utility shall not be reimbursed for facilities in excess of the amount the utility paid for the facilities. A utility is not required to allocate existing uncommitted facilities to a developer for projected development beyond a reasonable planning period; or additional facilities compliant with the Commission's minimum design criteria for facilities used in the production, transmission, pumping, or treatment of water or the Commission's minimum design criteria for wastewater collection and treatment facilities and to provide for reasonable local demand requirements. Income tax liabilities which may be incurred due to collection of contributions in aid of construction may be included in extension charges to developers. Additional tax liabilities due to collection of the original tax liability may not be collected unless they can be supported and are specifically noted in the approved extension policy.

Q. In your opinion, what is the effect of granting or amending the water certificate on the recipient of the certificate and on any retail public utility of the same kind already

1 **serving the proximate area?**

2 A. Currently no water utility service is provided in the proposed area. Granting the requested
3 amendment to Tapatio Springs Service Company's water CCN will increase the area that that
4 it is obligated to provide continuous and adequate water service and to respond to requests
5 for service in an appropriate time frame within the certificated area. No other retail public
6 utility will be affected by granting the amendment to the applicant.

7 **Q. In your opinion, what is the effect of granting or amending the sewer certificate on the**
8 **recipient of the certificate and on any retail public utility of the same kind already**
9 **serving the proximate area?**

10 A. Currently no sewer utility service is provided in the proposed area. Granting the requested
11 amendment to Tapatio Springs Service Company's sewer CCN will increase the area that it
12 is obligated to provide continuous and adequate sewer service and to respond to requests for
13 service in an appropriate time frame within the certificated area. No other retail public utility
14 will be affected by granting the amendment to the applicant.

15 **Q. In your opinion, does the Tapatio Springs Service Company have the ability to**
16 **adequately provide water service to the requested area?**

17 A. Yes. Tapatio Springs Service Company has an agreement with Guadalupe Blanco River
18 Authority (GBRA) for 250 acre-feet of water which will be used to serve the proposed area.
19 In addition, as indicated in the prefiled testimony of Mr. John-Mark Matkin, expert witness
20 of Tapatio Springs Service Company, Tapatio Springs may need additional wells to serve the
21 proposed area. In that situation, as per the Non Standard Service Contract between CDS
22 Holdings (Developer) and Tapatio Springs, Developer will be responsible to provide all the
23 necessary infrastructure to provide service in that area.

24 **Q. In your opinion, does the Tapatio Springs Service Company have the ability to**
25 **adequately provide sewer service to the requested area?**

26 A. The Tapatio Springs Service Company operating a wastewater treatment plant with the Texas
27 Land Application Permit Number 12404-001. The existing wastewater treatment plant has a
28 capacity of 0.15 million gallon per day (MGD). Also, as per the Non Standard Service
29 Agreement between CDS Holdings (Developer) and Tapatio Springs, Developer will be
30 required to put all the necessary infrastructures to provide service in the proposed area.

1 **Q. In your opinion, is it feasible to obtain water and sewer services from an adjacent retail**
2 **public utility?**

3 A. The City of Boerne is the only utility that is adjacent to the proposed area. The notice of the
4 application was provided to the City of Boerne. The City of Boerne initially protested these
5 applications but later withdrew its protest and request for public hearing. However, the City
6 of Boerne did not show any intention to provide the service in the proposed area.

7 **Q. In your opinion, will the environmental integrity be affected by the granting of these**
8 **CCN amendments?**

9 Without any specific development plans, the effect on environmental integrity cannot be
10 determined. However, it can be stated that the environmental integrity will be temporarily
11 disturbed due to the construction of water distribution lines, sewage collection lines and the
12 construction of additional pumping and storage facilities, treatment facilities by whomever
13 provide service to the area. However, a properly constructed and operated central sewer
14 collection system is better than individual on-site sewage facilities.

15 **Q. In your opinion, will granting a water CCN amendment improves service or lower costs**
16 **to consumers in the area?**

17 A. Regarding the improvement of service, there is no central service being provided in the
18 proposed area. Current customers of the Tapatio Springs Service Company will not be
19 affected by this application. Since the applicant already has a water CCN, its current water
20 rate/tariff will not be changed as a result of this application and should continue to charge the
21 existing rates to its customers in the proposed area.

22 **Q. In your opinion, will granting a sewer CCN amendment improves service or lower costs**
23 **to consumers in the area?**

24 A. Regarding the improvement of service, there is no central service being provided in the
25 proposed area. Current customers of the Tapatio Springs Service Company will not be
26 affected by this application. Since the applicant already has a sewer CCN, its current sewer
27 rate/tariff will not be changed as a result of this application and should continue to charge the
28 existing rates to its customers in the proposed area.

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

30 A. Yes, it does, but I reserve the right to supplement this testimony during the course of the

1 proceeding if additional evidence is presented.

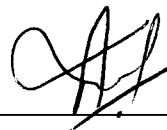
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STATE OF TEXAS §

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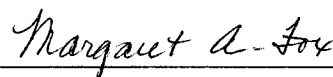
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Kamal Adhikari, known to me to be the person whose name is subscribed below and after having been duly sworn, on his oath stated the following: the testimony and the exhibits for SOAH Docket No. 582-06-0425 (Applications by Tapatio Springs Service Company to Amend Water and Sewer Certificates of Convenience and Necessity (CCN) Nos. 12122 and 20698 in Kendall County, Texas) were prepared by me or under my direct supervision and control and the same is true to the best of my knowledge and belief that this information is true and correct.



Kamal Adhikari

SUBSCRIBED AND SOWN TO BEFORE ME on June 2, 2006 to certify which, witness my hand and seal of office.



NOTARY PUBLIC

STATE OF TEXAS

EXHIBIT

7

Kamal Adhikari, E.I.T.
Utilities & Districts Section
Water Supply Division
Texas Commission on Environmental Quality

Education:

August 1998

B.S., Mechanical Engineering
Kathmandu University, Dhulikhel, Nepal

Work Experience:

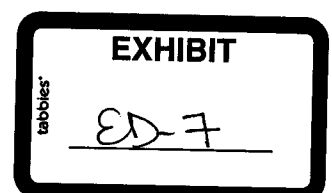
Nov. 1998 - Aug. 2001

Operation & Maintenance Engineer, Manakaman Darshan Pvt.
Ltd., (Cable Car Company), Nepal

Nov. 2001- present

Engineering Specialist, Texas Commission on Environmental
Quality, Austin, Texas

- Review plans and specifications regarding Public Water System projects
- Review applications and prepare Certificates of Convenience and Necessity (CCN)
- Verify the applicant meets the criteria set forth in the Texas Water Code and the rules in the Texas Administrative Code as promulgated by the TCEQ.
- Review applications and prepare rate designs for retail public utilities
- Attend and participate in resolution of contested cases concerning CCNs and Rates



CERTIFICATE OF SERVICE

I hereby certify that on this, the 2nd day of June, 2006, a true and correct copy of the foregoing document was provided by hand delivery, first class mail, or facsimile to the following:

Mike Rogan
Administrative Law Judge
State Office of Administrative Hearings
300 West Fifteenth Street
Austin, Texas 78701

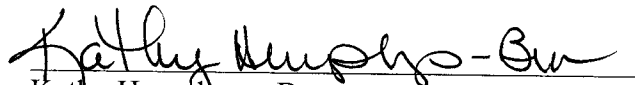
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7550 IH-10 West, Northwest Center
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San Antonio, Texas 78229

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Austin, Texas 78711-3087

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Texas Commission on Environmental Quality
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106 W. Blanco, Suite 206
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June 23, 2006

VIA FACSIMILE AND FIRST CLASS MAIL

Ms. LaDonna Castañuela, 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. Castañuela:

Enclosed for filing is Applicant's Response to Ratepayers' Motion for Summary
Disposition.

Sincerely,


Patrick Lindner
For the Firm

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