

88. At the end of 2004, Tapatio had too much debt and not enough invested capital, which is why its interest expense was out of proportion.
89. Even without considering the Requested Area, Tapatio needs a larger water supply for customers in its current service area. That means it needs additional capital and revenue to pay the cost of the pipeline to bring in GBRA water.
90. Based on the above Findings of Fact, Tapatio needs additional invested capital and revenue and is under intense pressure to dramatically raise the rates of customers in its existing service area.
91. Based on the above Findings of Fact, Tapatio is marginally financially stable.
92. Allowing Tapatio to serve the Requested Area will allow it to take advantage of CDS's offer, as laid out in the NSS Agreement, to pay for the infrastructure that will be required there and share the cost of the pipeline needed to bring GBRA water to the existing as well as the requested service areas.
93. The NSS Agreement requires CDS to pay all costs associated with designing and constructing the infrastructure within the Requested Area, including procurement of water allotments, *i.e.* increased reservation of GBRA water.
94. Additionally, CDS would also be obliged to pay up to \$1.5 million for the portion of the extension to serve the Requested Area that is not located on CDS's Property, which would mostly be the pipeline needed to obtain water from GBRA.
95. The NSS Agreement should give Tapatio access to additional customers in the Requested area with relatively little additional investment. That would increase Tapatio's revenue while

giving it significantly more customers from whom to recover its fixed costs, reducing the need for a rate increase and improving its financial stability.

96. TCEQ regularly grants CCN applications on the basis that developers are contractually bound to provide necessary infrastructure.
97. The ultimate cost for water and sewer infrastructure to serve the Requested Area includes \$2,154,913 to build the line to the GBRA delivery point; \$7,000,000 to \$8,000,000 for the water supply system; \$1.5 million for the lift station and forced mains; and \$3,000,000 for gravity mains.
98. CDS has maintained a long-standing relationship with Bank of America, kept all accounts satisfactory, and—as of August 12, 2005—had unrestricted funds available in a low seven figure amount, which could be provided for construction and infrastructure improvements pursuant to the NSS Agreement.
99. CDS has thus far fully complied with its contractual obligations to pay the costs of acquiring the 250-ac-ft. supplemental water supply from GBRA.
100. Based on the above Findings of Fact, CDS has a reasonable quantity of funds with which to begin construction of the necessary water and sewer utility infrastructure to serve the Requested Area.
101. The Requested Area will not be developed faster than CDS can afford to pay for the water and sewer infrastructure needed to serve that area because CDS owns the Requested Area and is obliged, under the NSS Agreement, to pay all of the costs to serve that area, aside from a portion of the cost of the line to the GBRA delivery point.

102. Development and property sales in successive phases should give CDS cash flow that will allow it to pay for the next phase of infrastructure and development.
103. CDS holds the unilateral right to terminate the service agreement for a period of 60 days after the completion of the plans and specifications for the extension of utility infrastructure into the Requested Area.
104. Tapatio's water tariff does not presently include a provision setting out a policy of requiring a developer to provide contribution in aid of construction for necessary water-service facilities.
105. The Commission could amend the tariff, on Tapatio's request, to add a requirement that a developer contribute to aid construction. TEX. WATER CODE ANN. (Water Code) § 13.183(b).
106. Tariffs typically contain contribution-to-aid-construction provisions, and the Commission routinely adds them upon a utility's request.
107. Tapatio could obtain a similar contribution in aid of construction from a subsequent developer if CDS no longer owned or developed the Requested Area.
108. Tapatio needs to obtain 500 ac-ft. of water from GBRA to serve customers in its current service area and would need to build the pipeline to obtain that water even if the Application is denied.
109. If the Application is approved, CDS would pay up to \$1.5 million, most of the estimated cost, to build that pipeline for GBRA water, enhancing Tapatio's financial stability and ability to serve its existing customers.

110. If CDS paid most of the cost of that pipeline, Tapatio's estimated remaining cost would be \$654,983, which would be less than Tapatio would otherwise have to pay to build a similar line to serve just its existing service area and would reduce pressure on Tapatio to raise the rates of customers in that existing service area.
111. The Applicant has sufficient stability to finance its \$654,983 share of the cost of the transmission main to carry surface water from GBRA's delivery point to the Applicant's water plant.
112. Once the infrastructure is in place in the Requested Area, the Applicant would be entitled to charge rates to recover its operation and maintenance expenses to serve customers there, as well as a return on and eventually of capital it invests to serve them. Water Code § 13.183(a)(1).

Feasibility of Obtaining Service from an Adjacent Utility

113. No other utility has proposed providing service to the Requested Area, though they were notified of Tapatio's Application.
114. The Applicant and its affiliate, Kendall County Utility Company, are the only utilities immediately adjacent to the Requested Area. They are interconnected and have an application pending to merge their companies.
115. The City of Boerne is the only other unaffiliated utility in proximity to the Requested Area and the only other possible utility provider for the CDS project.
116. The Requested Area's distance from the Boerne's system makes such service economically infeasible.

117. Boerne initially protested the Application but later withdrew its protest and request for hearing.

Impact on Environmental Integrity

118. The environment will be temporarily disrupted, as in any development, by the construction of water and sewer lines and other facilities to serve the Requested Area.
119. A properly constructed and operated central sewer collection system will have less long-term negative impact on the environment than individual on-site sewage facilities.

Improvement in Service or Lowering of Consumer Costs

120. Granting the Application likely will accelerate Tapatio's access to GBRA surface water and give it a more reliable overall water supply to serve its existing customers.
121. Under the NSS Agreement, CDS will contribute up to \$1.5 million toward the estimated \$2.2 million cost of constructing a transmission main to carry surface water from GBRA near Cascade Caverns to the Applicant's water plant on Johns Road.
122. If the Application is not granted, the existing customers probably will have to bear the entire cost of constructing that water main through their monthly rates.
123. Granting the Application would reduce the pressure on Tapatio to raise the rates of its existing customers because it would have a larger customer base from which to recover its fixed costs.

Regionalization

124. The Applicant's existing system and the proposed utility infrastructure for the Requested Area will be interconnected and will share the use of some facilities and equipment.

CONCLUSIONS OF LAW

1. Prior to recent amendments of Chapter 13 of the Water Code, no provision of that chapter gave the Commission explicit authority to amend a CCN, except under the rather limited circumstances enumerated in Water Code § 13.254. Acts 2005, 79th Leg., ch. 1145, eff. Sept. 1, 2005.
2. Those recent statutory changes apply only to an application for an amendment to a CCN submitted to the Commission on or after January 1, 2006. Acts 2005, 79th Leg., ch. 1145, § 15(1). Unless otherwise indicated, all citations in this Order to any provision of Chapter 13 of the Water Code are to those provisions as they existed prior to that recent statutory change.
3. Water Code § 13.244, as it existed prior to that recent statutory change, stated:

A public utility or water supply or sewer service corporation shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment of a certificate.

4. Accordingly, Water Code § 13.246(b), which authorized the Commission to grant CCN "applications," also authorized the Commission to grant amendments to CCNs.
5. The Commission has for many years granted CCN amendments, because it has interpreted Water Code § 13.246(b) to authorize that action.

6. That interpretation is demonstrated by the Commission's adoption of 30 TAC § 291.102, which is entitled "Criteria for Considering and Granting Certificates or Amendments" and repeatedly refers to the granting of CCN amendments.
7. The Commission has jurisdiction to amend a CCN, pursuant to Water Code § 13.246(b) in the form it had prior to the recent statutory change, which remains applicable to this Application.
8. The hearings on the Application were held under the authority of Chapter 13 of the Water Code and TEX. GOV'T CODE ANN. (Gov't Code) § 2003.47.
9. Proper notice of the Application and hearings was given as required by the Water Code, the Gov't Code, and the Commission's rules.
10. Under Water Code § 13.246(b), the Commission may grant an application to amend a CCN only if it finds that the amendment is necessary for the service, accommodation, convenience, or safety of the public.
11. Water Code § 13.246(c) sets out the following criteria that the Commission must consider in making that finding:
 - the adequacy of service currently provided to the requested area;
 - the need for additional service in the requested area;
 - the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;
 - the ability of the applicant to provide adequate service;
 - the feasibility of obtaining service from an adjacent retail public utility;
 - the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

- environmental integrity; and
 - the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate.
12. The same criteria are also enumerated in the TCEQ Rules at 30 TEX. ADMINISTRATIVE CODE (TAC) § 291.102(d).
13. Water Code § 13.241(a) and (b) require the Commission before issuing or amending a water CCN to find that an applicant:
- Has the financial, managerial, and technical capability to provide continuous and adequate service;
 - Is capable of providing drinking water that meets the requirements of Texas Health and Safety Code (Health and Safety Code) Chapter 341 and the Water Code; and
 - Has access to an adequate supply of water.
14. Water Code § 13.241(a) and (c) require the Commission before issuing or amending a sewer CCN to find that an applicant possesses the financial, managerial, and technical capability of providing continuous and adequate service and is capable of meeting the commission's design criteria for sewer treatment plants and the requirements of the Water Code.
15. A word or phrase used in any Texas code is to be read in context and construed according to the rules of grammar and common usage. Those that have acquired a technical or particular meaning are to be construed accordingly. Otherwise, they are given their ordinary meanings. Gov't Code §§ 311.011 (a) and (b) and 312.002 (a) and (b).
16. "Capability" means the quality or state of being capable, which is having the attributes or potential to perform or accomplish a task.
17. "Ability" is the quality or state of being able, which is having sufficient power, skill, or resources to accomplish an object.

18. "Access" is the freedom or ability to obtain or make use of something.
19. Water Code § 13.241 (a) and (b)(1) require an applicant for an amendment to a water CCN to have the capability, not necessarily the current ability, to provide adequate water service to the additional CCN area that it seeks.
20. Water Code § 13.241(a) and (b) (2) require an applicant for an amendment to a water CCN to have the technical, managerial and financial capability to obtain an adequate water supply to serve the CCN area that it seeks; it need not have such a supply before the CCN is granted.
21. Water Code § 13.241(a) and (c) require an applicant for an amendment to a sewer CCN to have the capability, not necessarily the current ability, of providing continuous and adequate service and meeting the Commission's design criteria for sewer treatment plants and the requirements of the Water Code.
22. Based on the above Findings of Fact, the Applicant has access to sufficient water supplies to serve both the Requested Area and Tapatio's existing CCN area.
23. Based on the above Findings of Fact, the Applicant has sufficient managerial and technical capability to provide continuous and adequate service.
24. Based on the above Findings of Fact, the Applicant is capable of meeting the Commission's design criteria for sewer treatment plants and the requirements of the Water Code.
25. Based on the above Conclusions of Law, the Commission must consider a CCN applicant's financial stability, but it is not required to deny an application if the applicant is not financially stable.

26. Based on the above Findings of Fact, the Applicant is marginally financially stable, but approving the Application will very likely increase its financial stability.
27. While the law does not necessarily require current financial *stability*, it does require the Commission to ensure that an applicant possesses the financial *capability* to provide service in the new area.
28. An applicant must have the financial capability to provide service, not the current ability, not cash in hand.
29. An applicant may rely on contractual obligations of third parties to show the capabilities required under Water Code § 13.241. *Bexar Metropolitan Water Dist. v. T.C.E.Q. (Bexar Met)*, 185 S.W.3d 546 (Tex. App. - Austin, 2006).
30. Based on the above Findings of Fact, Tapatio does not have the financial capability to serve the Requested Area based solely on its own finances; however, it has that capability when its NSS Agreement with CDS and its ability to amend its tariff to require a similar contribution in aid of construction from any subsequent developer of the Requested Area is taken into account.
31. Based on the above Findings of Fact, service to the Requested Area from other public utilities would not be as feasible as extending service from the Applicant's adjacent facilities.
32. Based on the above Findings of Fact, approving the Application would positively affect Tapatio and not adversely affect any other water or sewer utility.
33. Based on the above Findings of Fact, granting the Application would not discernibly undermine environmental integrity.

34. Based on the above Findings of Fact, approving the Application would likely result in incremental improvement of service to customers within the Applicant's existing service area and help to keep their rates stable.
35. Water Code § 13.241(d) seeks to restrain the proliferation of new, stand-alone utilities by requiring an applicant seeking to establish such a utility to demonstrate that delivering the proposed service would not be economically feasible through regionalization or consolidation with another existing utility.
36. Based on the above Findings of Fact, Tapatio has not proposed a stand alone utility.
37. Based on the above Findings of Fact, granting the Application would be consistent with the objectives of regionalization or consolidation expressed in Water Code § 13.241(d).
38. Based on the above Findings of Fact and Conclusions of Law, granting Tapatio's Application is necessary for the service, accommodation, and convenience of the public.
39. Based on the above Findings of Fact and Conclusions of Law, Tapatio's Application to amend its water and sewer CCNs should be approved and the Requested Area should be added to its service areas under those CCNs.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The pending Application of Tapatio Springs Service Company, Inc., to amend its Certificates of Convenience and Necessity Nos. 12122 and 20698 is granted.

2. The Executive Director of the Texas Commission on Environmental Quality shall amend the official CCN maps for Kendall County and issue amended CCNs to the Applicant to reflect this decision.
3. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to all parties.
4. If any provisions, sentence, clause or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.
5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and other requests for general or specific relief, if not expressly granted herein, are hereby denied for want of merit.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Kathleen Hartnett White, Chairman

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



STATE OF TEXAS §

COUNTY OF TRAVIS §

I, LaDonna Castañuela, Chief Clerk of the Texas Commission on Environmental Quality, do hereby certify that the attached mailing list provides the persons to whom the Order regarding Tapatio Springs Service Company, Inc., TCEQ Docket No. 2005-1516-UCR; SOAH Docket No. 582-06-0425 was mailed by first-class mail on April 30, 2007. Given under my hand and the seal of the Texas Commission on Environmental Quality, this the 1st day of May, 2007.

A handwritten signature in cursive script, reading "LaDonna Castañuela".

LaDonna Castañuela, Chief Clerk

Texas Commission on Environmental Quality

SEAL

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 30, 2007

TO: Persons on the attached mailing list.

RE: Tapatio Springs Service Company, Inc.
TCEQ Docket No. 2005-1516-UCR; SOAH Docket No. 582-06-0425
CCN Nos. 12122 and 20698

Decision of the Commission on Application.

The Texas Commission on Environmental Quality ("TCEQ" or "Commission") has made a decision to grant the above-referenced application. Enclosed with this letter is a copy of the Commission's order, draft copies of the Certificates of Convenience and Necessity (CCNs) and amended maps. Unless a Motion for Rehearing ("MFR" or "motion") is timely filed with the chief clerk, as described below, this action of the Commission will become final. A MFR is a request for the Commission to review its decision on the matter. Any motion must explain why the Commission should review the decision.

Deadline for Filing Motion for Rehearing.

A MFR must be received by the chief clerk's office no later than 20 days after the date a person is notified of the Commission's order on this application. A person is presumed to have been notified on the third day after the date that this order is mailed.

An original and 11 copies of the motion must be sent to the chief clerk at the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

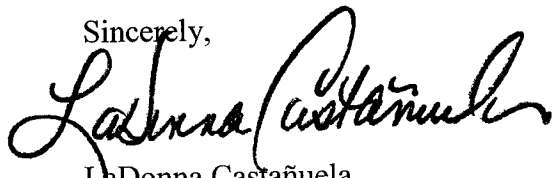
In addition, a copy of the motion must be sent on the same day to each of the individuals on the attached mailing list. A certificate of service stating that copies of the motion was sent to those on the mailing list must also be sent to the chief clerk.

The written motion must contain (1) the name and representative capacity of the person filing the motion; (2) the style and official docket number assigned by SOAH or official docket number assigned by the Commission; (3) the date of the order; and (4) a concise statement of each allegation of error.

Unless the time for the Commission to act on the motion is extended, the MFR is overruled by operation of law 45 days after a person is notified of the Commission's order on this application. If the Commission does not receive a motion for rehearing, the CCNs will be issued and forwarded to appropriate parties.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance toll free at 1-800-687-4040.

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/cz

Enclosures

Tapatio Springs Service Company, Inc.
TCEQ Docket No. 2005-1516-UCR; SOAH Docket No. 582-06-0425
CCN Nos. 12122 and 20698

FOR THE APPLICANT:

Darrell Nichols
B&D Environmental, Inc.
P.O. Box 90544
Austin, Texas 78709

Patrick Linder, Attorney
Law Offices of Davidson & Troilo
7550 West IH-10, Suite 800
San Antonio, Texas 78229-5815

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR:

Kathy Brown, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Kamal Adhikari, Technical Staff
Texas Commission on Environmental Quality
Water Supply Division MC-153
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Garrett Arthur, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

* The Honorable William Newchurch,
Administrative Law Judge
State Office of Administrative Hearings
P. O. Box 13025
Austin, Texas 78711-3025

* Courtesy Copy

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BOERNE TX 78006-6677

ELIZABETH MARTIN ATTORNEY
LAW OFFICE OF ELIZABETH MARTIN
PO BOX 1764
106 W BLANCO STE 206
BOERNE TX 78006

ERIC SHERER ATTORNEY
FOR RANGER CREEK HOA
STE 100
11124 WURZBACH RD
SAN ANTONIO TX 78230-2438

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER granting the application by Tapatio Springs Service Company, Inc., for an amendment to its Certificates of Convenience and Necessity Nos. 12122 and 20698; TCEQ Docket No. 2005-1516-UCR; SOAH Docket No. 582-06-0425

On March 28, 2007, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Tapatio Springs Service Company, Inc. (Tapatio or Applicant) for an amendment to its existing Certificates of Convenience and Necessity (CCN) Nos. 12122 and 20698, relating to the provision of water and sewer utility service within Kendall County, Texas.

Mike Rogan, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH) conducted a preliminary hearing on the Application on January 24, 2006, and a contested case hearing on the merits of the Application on July 6, 2006. After the record was closed, ALJ Rogan retired from SOAH. The case was reassigned to ALJ William G. Newchurch, who reviewed the entire record and the Parties' arguments and prepared a proposal for decision (PFD), which recommended that the Commission approve the Application.

The following are the Parties to the proceeding: the Applicant; the Executive Director of the Commission; the Public Interest Counsel (PIC) of the Commission; and ten ratepayers (represented

6. The Applicant's existing service area is adjacent to and south of the Requested Area.
7. The Requested Area currently contains no potential customers.
8. CDS International, Inc., (CDS or Developer) owns the land within the Requested Area and has requested the Applicant to provide the water and sewer utility service for planned development there.
9. The Applicant and the Developer entered into a Non-Standard Service Agreement (NSS Agreement) for such services, which prompted the filing of the Application in this case.
10. Under the NSS Agreement, CDS will be required to construct and finance all the necessary infrastructure to provide utility service in the Requested Area – including wells, storage facilities, pressure maintenance facilities, disinfection equipment, distribution system, collection system, and wastewater treatment facilities.
11. The Applicant will not provide service in the Requested Area until the Developer has completed the necessary infrastructure, with final inspection and testing by the Applicant and all regulatory approvals secured.
12. Agreements of this type are standard practice within the industry and are generally encouraged by TCEQ, as they relieve utilities of initial construction costs.

Jurisdiction

13. The Applicant mailed notice of its Application to neighboring utilities and affected parties on April 20, 2005.

22. Development planned for the Requested Area could ultimately add up to about 1,700 more residential connections.

Effect of Granting Certificate on Applicant and Other Utilities

23. The Applicant and its affiliate, Kendall County Utility Company, which are interconnected, are the only two entities providing water and sewer utility service to the immediate area.
24. A separate application is pending to merge Tapatio and Kendall County Utility Company.
25. No retail public utility other than Tapatio would be directly affected by the granting of the Application.
26. Granting the requested amendments would affect Tapatio by increasing the area in which the Applicant is obligated to provide continuous and adequate water and sewer service.
27. To ensure sufficient water resources for the future, the Applicant and Kendall County Utility Company in 2002 secured a commitment for a supply of 500 acre-feet (ac-ft.) of treated surface water per year from the Guadalupe-Blanco River Authority (GBRA).
28. In accordance with the NSS Agreement with CDS, the Applicant later amended its water contract with GBRA to increase its reserved capacity by an additional 250 ac-ft. per year.
29. CDS paid the initial cost of acquiring this 250 ac-ft. and under the NSS Agreement must continue to pay the costs of delivering it.
30. CDS is obligated to pay the raw water component of the monthly reservation charges accrued by Applicant for GBRA water until at least 500 active connections (homes occupied by the end-users) exist within the Requested Area.

39. CDS anticipates drilling 10 new wells within the Requested Area to provide peaking capacity for the development.
40. The Applicant's plan to use both surface water and groundwater (conjunctive use) is consistent with the applicable 2006 Regional Water Plan, which recommends that utilities in Kendall County purchase and implement the use of surface water from GBRA prior to year 2010.
41. If regulatory authorities restrict the number of wells that CDS can install, the Requested Area could still be developed with a reduced number of connections and the construction of additional water storage, which would allow GBRA water to be used for both normal and peak demands.
42. The NSS Agreement requires CDS to obtain all of the water needed to serve its property in the Requested Area, which is favorable to Tapatio and its current customers and will lead to a steadily growing water supply if CDS proceeds with development.
43. Tapatio could enforce that provision and deny service to further CDS development in the Requested Area, hence stopping the addition of new customers, until CDS arranged for the additional water.
44. Under the NSS Agreement, CDS must find the additional supplies. If it is unable to do so, the same contract specifies that it cannot demand additional service from the Applicant.
45. Since CDS is the only landowner in the Requested Area, the demand for and the provision of utility service there will remain in equilibrium.
46. The NSS Agreement would not require Tapatio to reserve any portion of its water supply for only certain of its customers, in the currently Requested Area or anywhere else.

55. The Applicant has satisfactorily addressed all issues raised in the latest Commission inspection of its water facilities. As of August 10, 2004, the utility has documented that corrective actions were taken for any alleged water system violations and that no other action or submittal was necessary.
56. The Applicant has satisfactorily addressed all issues raised in the latest Commission inspection of its sewer facilities. As of January 12, 2004, the utility has documented that corrective actions were taken for any alleged sewer system violations and that no other action or submittal was necessary.
57. The record of John J. Parker—the Applicant's vice president, secretary, treasurer, and principal manager over the past 15 years—reflects sufficient managerial capability for the proposed service-area expansion.
58. Mr. Parker has overseen significant expansions of the system in the past, including the interconnection of the Tapatio Springs and Ranger Creek systems and the initiation of service to new subdivisions within the existing service area.
59. Mr. Parker's managerial talent is evidenced by his negotiating a favorable contract with CDS, which requires CDS to finance most of the cost for a water main from GBRA, as well as all of the additional water supplies and infrastructure needed for water and sewer service within the Requested Area.
60. Although the Applicant has an impending need for water from GBRA, and CDS pays GBRA an annual reservation fee approaching \$20,000 for it, the Applicant has not yet acquired any of the easements needed for the pipeline's construction.
61. Under the GBRA contract, the Applicant was obligated to begin paying reservation fees long before GBRA had the means to deliver water in the area, and CDS has paid those fees.

71. Section 9(l) of the NSS Agreement provides that the Applicant *may* use excess capacity at the wastewater facility to serve the Requested Area, but “under no circumstances” is the utility *obligated* to use such capacity to serve the area. Rather, CDS is obligated to build any wastewater facilities it needs to serve its development in the Requested Area.
72. In September 2005 and May 2006, the Applicant imposed drought restrictions, limiting outside water sprinkling to once per week.
73. Large portions of Texas have been in an extended drought, and a Commission rule authorizes drought restrictions.
74. As of September 1, 2006, over 250 water systems have imposed watering restriction, including nine in Kendall County.
75. There is no evidence that the Applicants’ customers are not being subjected to drought restrictions more frequently than other utilities’ or in excess of TCEQ standards.
76. The Applicant has an acceptable record in providing water and sewer service within its certificated area over the past 15 years or more.

Financial stability and capability

77. Tapatio’s end-of-2004 balance sheet showed that the Applicant had only \$244,809.22 in assets but \$861,309.51 in liabilities, giving it a *negative* net worth of \$616,500.29.
78. In 2004, Tapatio had \$905,194.95 in debt, nearly all owed to Clyde Smith, and only \$635,104.75 in equity, giving it a very high 1.43 debt to equity ratio.

88. At the end of 2004, Tapatio had too much debt and not enough invested capital, which is why its interest expense was out of proportion.
89. Even without considering the Requested Area, Tapatio needs a larger water supply for customers in its current service area. That means it needs additional capital and revenue to pay the cost of the pipeline to bring in GBRA water.
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118. The environment will be temporarily disrupted, as in any development, by the construction of water and sewer lines and other facilities to serve the Requested Area.
119. A properly constructed and operated central sewer collection system will have less long-term negative impact on the environment than individual on-site sewage facilities.

Improvement in Service or Lowering of Consumer Costs

120. Granting the Application likely will accelerate Tapatio's access to GBRA surface water and give it a more reliable overall water supply to serve its existing customers.
121. Under the NSS Agreement, CDS will contribute up to \$1.5 million toward the estimated \$2.2 million cost of constructing a transmission main to carry surface water from GBRA near Cascade Caverns to the Applicant's water plant on Johns Road.
122. If the Application is not granted, the existing customers probably will have to bear the entire cost of constructing that water main through their monthly rates.
123. Granting the Application would reduce the pressure on Tapatio to raise the rates of its existing customers because it would have a larger customer base from which to recover its fixed costs.

6. That interpretation is demonstrated by the Commission's adoption of 30 TAC § 291.102, which is entitled "Criteria for Considering and Granting Certificates or Amendments" and repeatedly refers to the granting of CCN amendments.
7. The Commission has jurisdiction to amend a CCN, pursuant to Water Code § 13.246(b) in the form it had prior to the recent statutory change, which remains applicable to this Application.
8. The hearings on the Application were held under the authority of Chapter 13 of the Water Code and TEX. GOV'T CODE ANN. (Gov't Code) § 2003.47.
9. Proper notice of the Application and hearings was given as required by the Water Code, the Gov't Code, and the Commission's rules.
10. Under Water Code § 13.246(b), the Commission may grant an application to amend a CCN only if it finds that the amendment is necessary for the service, accommodation, convenience, or safety of the public.
11. Water Code § 13.246(c) sets out the following criteria that the Commission must consider in making that finding:
 - the adequacy of service currently provided to the requested area;
 - the need for additional service in the requested area;
 - the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;
 - the ability of the applicant to provide adequate service;
 - the feasibility of obtaining service from an adjacent retail public utility;
 - the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

18. "Access" is the freedom or ability to obtain or make use of something.
19. Water Code § 13.241 (a) and (b)(1) require an applicant for an amendment to a water CCN to have the capability, not necessarily the current ability, to provide adequate water service to the additional CCN area that it seeks.
20. Water Code § 13.241(a) and (b) (2) require an applicant for an amendment to a water CCN to have the technical, managerial and financial capability to obtain an adequate water supply to serve the CCN area that it seeks; it need not have such a supply before the CCN is granted.
21. Water Code § 13.241(a) and (c) require an applicant for an amendment to a sewer CCN to have the capability, not necessarily the current ability, of providing continuous and adequate service and meeting the Commission's design criteria for sewer treatment plants and the requirements of the Water Code.
22. Based on the above Findings of Fact, the Applicant has access to sufficient water supplies to serve both the Requested Area and Tapatio's existing CCN area.
23. Based on the above Findings of Fact, the Applicant has sufficient managerial and technical capability to provide continuous and adequate service.
24. Based on the above Findings of Fact, the Applicant is capable of meeting the Commission's design criteria for sewer treatment plants and the requirements of the Water Code.
25. Based on the above Conclusions of Law, the Commission must consider a CCN applicant's financial stability, but it is not required to deny an application if the applicant is not financially stable.

34. Based on the above Findings of Fact, approving the Application would likely result in incremental improvement of service to customers within the Applicant's existing service area and help to keep their rates stable.
35. Water Code § 13.241(d) seeks to restrain the proliferation of new, stand-alone utilities by requiring an applicant seeking to establish such a utility to demonstrate that delivering the proposed service would not be economically feasible through regionalization or consolidation with another existing utility.
36. Based on the above Findings of Fact, Tapatio has not proposed a stand alone utility.
37. Based on the above Findings of Fact, granting the Application would be consistent with the objectives of regionalization or consolidation expressed in Water Code § 13.241(d).
38. Based on the above Findings of Fact and Conclusions of Law, granting Tapatio's Application is necessary for the service, accommodation, and convenience of the public.
39. Based on the above Findings of Fact and Conclusions of Law, Tapatio's Application to amend its water and sewer CCNs should be approved and the Requested Area should be added to its service areas under those CCNs.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The pending Application of Tapatio Springs Service Company, Inc., to amend its Certificates of Convenience and Necessity Nos. 12122 and 20698 is granted.



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

Tapatio Springs Services Company, Inc.

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 12122

to provide continuous and adequate water utility service to that service area or those service areas in Kendall County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 34932-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Tapatio Springs Services Company, Inc. to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

Tapatio Springs Services Company, Inc.

having duly applied for certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 20698

to provide continuous and adequate sewer utility service to that service area or those service areas in Kendall County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 34933-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Tapatio Springs Services Company, Inc. to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



STATE OF TEXAS §

COUNTY OF TRAVIS §

I, LaDonna Castañuela, Chief Clerk of the Texas Commission on Environmental Quality, do hereby certify that the attached mailing list provides the persons to whom the Order regarding Tapatio Springs Service Company, Inc., TCEQ Docket No. 2005-1516-UCR; SOAH Docket No. 582-06-0425 was mailed by first-class mail on May 2, 2007. Given under my hand and the seal of the Texas Commission on Environmental Quality, this the 2nd day of May, 2007.

A handwritten signature in cursive script, reading "LaDonna Castañuela".

LaDonna Castañuela, Chief Clerk

Texas Commission on Environmental Quality

SEAL

Kathleen Hartnett White, *Chairman*
Larry R. Soward, *Commissioner*
H. S. Buddy Garcia, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 2, 2007

TO: Persons on the attached mailing list.

RE: Tapatio Springs Service Company, Inc.
TCEQ Docket No. 2005-1516-UCR; SOAH Docket No. 582-06-0425
CCN Nos. 12122 and 20698

On April 30, 2007, a copy of the order and draft Certificates of Convenience and Necessity (CCN) were forwarded to the attached mailing list. Inadvertently, the maps to the CCNs were not enclosed. At this time, a complete package is being forwarded to all parties. This letter supersedes the previous mailing.

Decision of the Commission on Application.

The Texas Commission on Environmental Quality ("TCEQ" or "Commission") has made a decision to grant the above-referenced application. Enclosed with this letter is a copy of the Commission's order, draft copies of the CCNs and amended maps. Unless a Motion for Rehearing ("MFR" or "motion") is timely filed with the chief clerk, as described below, this action of the Commission will become final. A MFR is a request for the Commission to review its decision on the matter. Any motion must explain why the Commission should review the decision.

Deadline for Filing Motion for Rehearing.

A MFR must be received by the chief clerk's office no later than 20 days after the date a person is notified of the Commission's order on this application. A person is presumed to have been notified on the third day after the date that this order is mailed.

An original and 11 copies of the motion must be sent to the chief clerk at the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

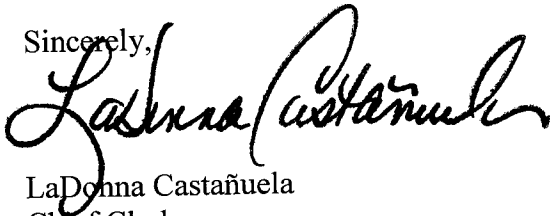
In addition, a copy of the motion must be sent on the same day to each of the individuals on the attached mailing list. A certificate of service stating that copies of the motion was sent to those on the mailing list must also be sent to the chief clerk.

The written motion must contain (1) the name and representative capacity of the person filing the motion; (2) the style and official docket number assigned by SOAH or official docket number assigned by the Commission; (3) the date of the order; and (4) a concise statement of each allegation of error.

Unless the time for the Commission to act on the motion is extended, the MFR is overruled by operation of law 45 days after a person is notified of the Commission's order on this application. If the Commission does not receive a motion for rehearing, the CCNs will be issued and forwarded to appropriate parties.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance toll free at 1-800-687-4040.

Sincerely,

A handwritten signature in black ink, appearing to read "LaDonna Castañuela", written in a cursive style.

LaDonna Castañuela
Chief Clerk

LDC/cz

Enclosures

Tapatio Springs Service Company, Inc.
TCEQ Docket No. 2005-1516-UCR; SOAH Docket No. 582-06-0425
CCN Nos. 12122 and 20698

FOR THE APPLICANT:

Darrell Nichols
B&D Environmental, Inc.
P.O. Box 90544
Austin, Texas 78709

Patrick Linder, Attorney
Law Offices of Davidson & Troilo
7550 West IH-10, Suite 800
San Antonio, Texas 78229-5815

INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR:

Kathy Brown, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Kamal Adhikari, Technical Staff
Texas Commission on Environmental Quality
Water Supply Division MC-153
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Garrett Arthur, Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

* The Honorable William Newchurch,
Administrative Law Judge
State Office of Administrative Hearings
P. O. Box 13025
Austin, Texas 78711-3025

* Courtesy Copy

ANDREW J CALVERT
108 JACKRABBIT CIR
BOERNE TX 78006-9416

RICHARD E HAAS
436 PARADISE POINT DR
BOERNE TX 78006-9402

AL & SANDRA HAMILTON
301 EAGLE DR
BOERNE TX 78006-9411

MICHAEL G MANN DIR OF PUBLIC WORKS
CITY OF BOERNE
PO BOX 1677
BOERNE TX 78006-6677

ELIZABETH MARTIN ATRORNEY
LAW OFFICE OF ELIZABETH MARTIN
PO BOX 1764
106 W BLANCO STE 206
BOERNE TX 78006

ERIC SHERER ATTORNEY
FOR RANGER CREEK HOA
STE 100
11124 WURZBACH RD
SAN ANTONIO TX 78230-2438

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER granting the application by Tapatio Springs Service Company, Inc., for an amendment to its Certificates of Convenience and Necessity Nos. 12122 and 20698; TCEQ Docket No. 2005-1516-UCR; SOAH Docket No. 582-06-0425

On March 28, 2007, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Tapatio Springs Service Company, Inc. (Tapatio or Applicant) for an amendment to its existing Certificates of Convenience and Necessity (CCN) Nos. 12122 and 20698, relating to the provision of water and sewer utility service within Kendall County, Texas.

Mike Rogan, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH) conducted a preliminary hearing on the Application on January 24, 2006, and a contested case hearing on the merits of the Application on July 6, 2006. After the record was closed, ALJ Rogan retired from SOAH. The case was reassigned to ALJ William G. Newchurch, who reviewed the entire record and the Parties' arguments and prepared a proposal for decision (PFD), which recommended that the Commission approve the Application.

The following are the Parties to the proceeding: the Applicant; the Executive Director of the Commission; the Public Interest Counsel (PIC) of the Commission; and ten ratepayers (represented

6. The Applicant's existing service area is adjacent to and south of the Requested Area.
7. The Requested Area currently contains no potential customers.
8. CDS International, Inc., (CDS or Developer) owns the land within the Requested Area and has requested the Applicant to provide the water and sewer utility service for planned development there.
9. The Applicant and the Developer entered into a Non-Standard Service Agreement (NSS Agreement) for such services, which prompted the filing of the Application in this case.
10. Under the NSS Agreement, CDS will be required to construct and finance all the necessary infrastructure to provide utility service in the Requested Area – including wells, storage facilities, pressure maintenance facilities, disinfection equipment, distribution system, collection system, and wastewater treatment facilities.
11. The Applicant will not provide service in the Requested Area until the Developer has completed the necessary infrastructure, with final inspection and testing by the Applicant and all regulatory approvals secured.
12. Agreements of this type are standard practice within the industry and are generally encouraged by TCEQ, as they relieve utilities of initial construction costs.

Jurisdiction

13. The Applicant mailed notice of its Application to neighboring utilities and affected parties on April 20, 2005.

22. Development planned for the Requested Area could ultimately add up to about 1,700 more residential connections.

Effect of Granting Certificate on Applicant and Other Utilities

23. The Applicant and its affiliate, Kendall County Utility Company, which are interconnected, are the only two entities providing water and sewer utility service to the immediate area.
24. A separate application is pending to merge Tapatio and Kendall County Utility Company.
25. No retail public utility other than Tapatio would be directly affected by the granting of the Application.
26. Granting the requested amendments would affect Tapatio by increasing the area in which the Applicant is obligated to provide continuous and adequate water and sewer service.
27. To ensure sufficient water resources for the future, the Applicant and Kendall County Utility Company in 2002 secured a commitment for a supply of 500 acre-feet (ac-ft.) of treated surface water per year from the Guadalupe-Blanco River Authority (GBRA).
28. In accordance with the NSS Agreement with CDS, the Applicant later amended its water contract with GBRA to increase its reserved capacity by an additional 250 ac-ft. per year.
29. CDS paid the initial cost of acquiring this 250 ac-ft. and under the NSS Agreement must continue to pay the costs of delivering it.
30. CDS is obligated to pay the raw water component of the monthly reservation charges accrued by Applicant for GBRA water until at least 500 active connections (homes occupied by the end-users) exist within the Requested Area.

39. CDS anticipates drilling 10 new wells within the Requested Area to provide peaking capacity for the development.
40. The Applicant's plan to use both surface water and groundwater (conjunctive use) is consistent with the applicable 2006 Regional Water Plan, which recommends that utilities in Kendall County purchase and implement the use of surface water from GBRA prior to year 2010.
41. If regulatory authorities restrict the number of wells that CDS can install, the Requested Area could still be developed with a reduced number of connections and the construction of additional water storage, which would allow GBRA water to be used for both normal and peak demands.
42. The NSS Agreement requires CDS to obtain all of the water needed to serve its property in the Requested Area, which is favorable to Tapatio and its current customers and will lead to a steadily growing water supply if CDS proceeds with development.
43. Tapatio could enforce that provision and deny service to further CDS development in the Requested Area, hence stopping the addition of new customers, until CDS arranged for the additional water.
44. Under the NSS Agreement, CDS must find the additional supplies. If it is unable to do so, the same contract specifies that it cannot demand additional service from the Applicant.
45. Since CDS is the only landowner in the Requested Area, the demand for and the provision of utility service there will remain in equilibrium.
46. The NSS Agreement would not require Tapatio to reserve any portion of its water supply for only certain of its customers, in the currently Requested Area or anywhere else.

55. The Applicant has satisfactorily addressed all issues raised in the latest Commission inspection of its water facilities. As of August 10, 2004, the utility has documented that corrective actions were taken for any alleged water system violations and that no other action or submittal was necessary.
56. The Applicant has satisfactorily addressed all issues raised in the latest Commission inspection of its sewer facilities. As of January 12, 2004, the utility has documented that corrective actions were taken for any alleged sewer system violations and that no other action or submittal was necessary.
57. The record of John J. Parker—the Applicant's vice president, secretary, treasurer, and principal manager over the past 15 years—reflects sufficient managerial capability for the proposed service-area expansion.
58. Mr. Parker has overseen significant expansions of the system in the past, including the interconnection of the Tapatio Springs and Ranger Creek systems and the initiation of service to new subdivisions within the existing service area.
59. Mr. Parker's managerial talent is evidenced by his negotiating a favorable contract with CDS, which requires CDS to finance most of the cost for a water main from GBRA, as well as all of the additional water supplies and infrastructure needed for water and sewer service within the Requested Area.
60. Although the Applicant has an impending need for water from GBRA, and CDS pays GBRA an annual reservation fee approaching \$20,000 for it, the Applicant has not yet acquired any of the easements needed for the pipeline's construction.
61. Under the GBRA contract, the Applicant was obligated to begin paying reservation fees long before GBRA had the means to deliver water in the area, and CDS has paid those fees.

71. Section 9(l) of the NSS Agreement provides that the Applicant *may* use excess capacity at the wastewater facility to serve the Requested Area, but “under no circumstances” is the utility *obligated* to use such capacity to serve the area. Rather, CDS is obligated to build any wastewater facilities it needs to serve its development in the Requested Area.
72. In September 2005 and May 2006, the Applicant imposed drought restrictions, limiting outside water sprinkling to once per week.
73. Large portions of Texas have been in an extended drought, and a Commission rule authorizes drought restrictions.
74. As of September 1, 2006, over 250 water systems have imposed watering restriction, including nine in Kendall County.
75. There is no evidence that the Applicants’ customers are not being subjected to drought restrictions more frequently than other utilities’ or in excess of TCEQ standards.
76. The Applicant has an acceptable record in providing water and sewer service within its certificated area over the past 15 years or more.

Financial stability and capability

77. Tapatio’s end-of-2004 balance sheet showed that the Applicant had only \$244,809.22 in assets but \$861,309.51 in liabilities, giving it a *negative* net worth of \$616,500.29.
78. In 2004, Tapatio had \$905,194.95 in debt, nearly all owed to Clyde Smith, and only \$635,104.75 in equity, giving it a very high 1.43 debt to equity ratio.

88. At the end of 2004, Tapatio had too much debt and not enough invested capital, which is why its interest expense was out of proportion.
89. Even without considering the Requested Area, Tapatio needs a larger water supply for customers in its current service area. That means it needs additional capital and revenue to pay the cost of the pipeline to bring in GBRA water.
90. Based on the above Findings of Fact, Tapatio needs additional invested capital and revenue and is under intense pressure to dramatically raise the rates of customers in its existing service area.
91. Based on the above Findings of Fact, Tapatio is marginally financially stable.
92. Allowing Tapatio to serve the Requested Area will allow it to take advantage of CDS's offer, as laid out in the NSS Agreement, to pay for the infrastructure that will be required there and share the cost of the pipeline needed to bring GBRA water to the existing as well as the requested service areas.
93. The NSS Agreement requires CDS to pay all costs associated with designing and constructing the infrastructure within the Requested Area, including procurement of water allotments, *i.e.* increased reservation of GBRA water.
94. Additionally, CDS would also be obliged to pay up to \$1.5 million for the portion of the extension to serve the Requested Area that is not located on CDS's Property, which would mostly be the pipeline needed to obtain water from GBRA.
95. The NSS Agreement should give Tapatio access to additional customers in the Requested area with relatively little additional investment. That would increase Tapatio's revenue while

102. Development and property sales in successive phases should give CDS cash flow that will allow it to pay for the next phase of infrastructure and development.
103. CDS holds the unilateral right to terminate the service agreement for a period of 60 days after the completion of the plans and specifications for the extension of utility infrastructure into the Requested Area.
104. Tapatio's water tariff does not presently include a provision setting out a policy of requiring a developer to provide contribution in aid of construction for necessary water-service facilities.
105. The Commission could amend the tariff, on Tapatio's request, to add a requirement that a developer contribute to aid construction. TEX. WATER CODE ANN. (Water Code) § 13.183(b).
106. Tariffs typically contain contribution-to-aid-construction provisions, and the Commission routinely adds them upon a utility's request.
107. Tapatio could obtain a similar contribution in aid of construction from a subsequent developer if CDS no longer owned or developed the Requested Area.
108. Tapatio needs to obtain 500 ac-ft. of water from GBRA to serve customers in its current service area and would need to build the pipeline to obtain that water even if the Application is denied.
109. If the Application is approved, CDS would pay up to \$1.5 million, most of the estimated cost, to build that pipeline for GBRA water, enhancing Tapatio's financial stability and ability to serve its existing customers.

117. Boerne initially protested the Application but later withdrew its protest and request for hearing.

Impact on Environmental Integrity

118. The environment will be temporarily disrupted, as in any development, by the construction of water and sewer lines and other facilities to serve the Requested Area.
119. A properly constructed and operated central sewer collection system will have less long-term negative impact on the environment than individual on-site sewage facilities.

Improvement in Service or Lowering of Consumer Costs

120. Granting the Application likely will accelerate Tapatio's access to GBRA surface water and give it a more reliable overall water supply to serve its existing customers.
121. Under the NSS Agreement, CDS will contribute up to \$1.5 million toward the estimated \$2.2 million cost of constructing a transmission main to carry surface water from GBRA near Cascade Caverns to the Applicant's water plant on Johns Road.
122. If the Application is not granted, the existing customers probably will have to bear the entire cost of constructing that water main through their monthly rates.
123. Granting the Application would reduce the pressure on Tapatio to raise the rates of its existing customers because it would have a larger customer base from which to recover its fixed costs.

6. That interpretation is demonstrated by the Commission's adoption of 30 TAC § 291.102, which is entitled "Criteria for Considering and Granting Certificates or Amendments" and repeatedly refers to the granting of CCN amendments.
7. The Commission has jurisdiction to amend a CCN, pursuant to Water Code § 13.246(b) in the form it had prior to the recent statutory change, which remains applicable to this Application.
8. The hearings on the Application were held under the authority of Chapter 13 of the Water Code and TEX. GOV'T CODE ANN. (Gov't Code) § 2003.47.
9. Proper notice of the Application and hearings was given as required by the Water Code, the Gov't Code, and the Commission's rules.
10. Under Water Code § 13.246(b), the Commission may grant an application to amend a CCN only if it finds that the amendment is necessary for the service, accommodation, convenience, or safety of the public.
11. Water Code § 13.246(c) sets out the following criteria that the Commission must consider in making that finding:
 - the adequacy of service currently provided to the requested area;
 - the need for additional service in the requested area;
 - the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;
 - the ability of the applicant to provide adequate service;
 - the feasibility of obtaining service from an adjacent retail public utility;
 - the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

18. "Access" is the freedom or ability to obtain or make use of something.
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20. Water Code § 13.241(a) and (b) (2) require an applicant for an amendment to a water CCN to have the technical, managerial and financial capability to obtain an adequate water supply to serve the CCN area that it seeks; it need not have such a supply before the CCN is granted.
21. Water Code § 13.241(a) and (c) require an applicant for an amendment to a sewer CCN to have the capability, not necessarily the current ability, of providing continuous and adequate service and meeting the Commission's design criteria for sewer treatment plants and the requirements of the Water Code.
22. Based on the above Findings of Fact, the Applicant has access to sufficient water supplies to serve both the Requested Area and Tapatio's existing CCN area.
23. Based on the above Findings of Fact, the Applicant has sufficient managerial and technical capability to provide continuous and adequate service.
24. Based on the above Findings of Fact, the Applicant is capable of meeting the Commission's design criteria for sewer treatment plants and the requirements of the Water Code.
25. Based on the above Conclusions of Law, the Commission must consider a CCN applicant's financial stability, but it is not required to deny an application if the applicant is not financially stable.

34. Based on the above Findings of Fact, approving the Application would likely result in incremental improvement of service to customers within the Applicant's existing service area and help to keep their rates stable.
35. Water Code § 13.241(d) seeks to restrain the proliferation of new, stand-alone utilities by requiring an applicant seeking to establish such a utility to demonstrate that delivering the proposed service would not be economically feasible through regionalization or consolidation with another existing utility.
36. Based on the above Findings of Fact, Tapatio has not proposed a stand alone utility.
37. Based on the above Findings of Fact, granting the Application would be consistent with the objectives of regionalization or consolidation expressed in Water Code § 13.241(d).
38. Based on the above Findings of Fact and Conclusions of Law, granting Tapatio's Application is necessary for the service, accommodation, and convenience of the public.
39. Based on the above Findings of Fact and Conclusions of Law, Tapatio's Application to amend its water and sewer CCNs should be approved and the Requested Area should be added to its service areas under those CCNs.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The pending Application of Tapatio Springs Service Company, Inc., to amend its Certificates of Convenience and Necessity Nos. 12122 and 20698 is granted.



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

Tapatio Springs Services Company, Inc.

having duly applied for certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 12122

to provide continuous and adequate water utility service to that service area or those service areas in Kendall County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 34932-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Tapatio Springs Services Company, Inc. to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission



Texas Commission On Environmental Quality

By These Presents Be It Known To All That

Tapatio Springs Services Company, Inc.

having duly applied for certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this commission that the public convenience and necessity would in fact be advanced by the provision of such service by this Applicant, is entitled to and is hereby granted this

Certificate of Convenience and Necessity No. 20698

to provide continuous and adequate sewer utility service to that service area or those service areas in Kendall County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 34933-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Tapatio Springs Services Company, Inc. to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____

For the Commission