

Tapatio Springs Services Company, Inc.
Water Service Area
CCN No. 12122
Application No. 34932-C
Kendall County

Water CCN Service Areas
12122 - TAPATIO SPRINGS SERVICES CO INC
10676 - CITY OF BOERNE
11904 - KENDALL COUNTY UTILITY CO INC

TCEQ
Map by S. Jaster 4/27/2007
Data path: s:\udccn\ccn_working\ccn_ship
Project path: c:\gis\projects\applications\34932-c.apr

Tapatio Springs Services Company, Inc.
Sewer Service Area
CCN No. 20698
Application No. 34933-C
Kendall County

20698

Kendall County
Bandera County



1 inch = 1 mile

Sewer CCN Service Areas
20698 - TAPATIO SPRINGS SERVICES CO INC
20273 - CITY OF BOERNE



Map by S. Jaster 4/27/2007
Data path: s:\udccn\cn_working\ccn.shp
Project path: c:\gis\projects\applications\34933-c.apr

Law Office of Elizabeth R. Martin
Attorney at Law
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106 West Blanco, Suite 206
P.O. Box 1764
Boerne, Texas 78006
Ph: 830/816.8686
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†

April 25, 2007

CONFIDENTIAL
MAY 1 19 05
CHIEF CLERK'S OFFICE

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

Attention: Brent Gurley, Attorney
Fax No. 512 239.3311

RE: Notice of Vacation
TCEQ Docket No. 582-06-0425
SOAH Docket No. 2005-1516-URC

This letter will constitute formal notice that I will be on vacation during the following time:

June 1, 2007 through June 15, 2007

I would ask that the Court set no hearings, court appearances, items requiring a deadline or trials during these periods.

By copy of this letter I am providing all counsel of record with a copy of this communication with the court.

Thank you.

Sincerely yours,

Law Office of Elizabeth R. Martin


By Elizabeth R. Martin

FACSIMILE TRANSMITTAL SHEET

To:

Brent Gurley, Attorney

512/ 239-3311

CHIEF CLERK'S OFFICE

797 APR 25 11 05 54

TELEPHONE
COMMUNICATIONS
ON EMPLOYMENT

COMPANY

TCEQ

DATE:

APRIL 25, 2007

FAX NUMBER:

512 239.3311

TOTAL NO. OF PAGES INCLUDING COVER:

2

PHONE NUMBER

SENDER'S PHONE NUMBERS

830/ 816-8686 office

830/816-8282 fax

RE: SOAH DOCKET NO. 582-06-0425

TCEQ DOCKET NO. 2005-1516-URC

☐ FOR REVIEW ☐ PLEASE REPLY ☐ HARD COPY WILL FOLLOW ☒ HARD COPY WILL NOT FOLLOW

IF YOU HAVE ANY PROBLEMS WITH THIS FAX TRANSMISSION, PLEASE CONTACT: DIANNE WILTZ AT 830 816 8686

Please find following a second copy of the Notice of Vacation with the docket numbers.

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION AND IS TRANSMITTED FOR THE EXCLUSIVE INFORMATION AND USE OF THE ADDRESSEE. PERSONS RESPONSIBLE FOR DELIVERING THIS COMMUNICATION TO THE INTENDED RECIPIENT ARE ADMONISHED THAT THIS COMMUNICATION MAY NOT BE COPIED OR DISSEMINATED EXCEPT AS DIRECTED BY THE ADDRESSEE. IF YOU RECEIVE THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND DESTROY THE COMMUNICATION.

106 W. BLANCO STE. 206
BOERNE, TEXAS 78006

2005-1516-UCR

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April 13, 2006

Patrick W Lindner
Davidson & Troilo
7550 W. IH-10 Northwest Ctr., Ste 800
San Antonio, Texas 78229-5815

Via Fax Transmission: 210-349-0041

Dear Mr. Lindner,

Thank you for your responses to our discovery requests. In accordance with your production responses, I have traveled to your Austin Office to copy the documents there. However, due to the Applicant's 13 objections to the Ratepayers' 18 Production Requests, Applicant's 4 objections and 4 "Cannot admit or deny" answers as to the Ratepayers 12 Admission Requests; as well as our questions concerning verification and 3 Interrogatory responses, we determined writing you a letter would best address the issues and allow for a resolution of these discovery matters. My clients are interested in the information from the Tapatio Springs Service Company (Applicant) pertaining to its ability to comply with the TCEQ rules and regulations. These discovery requests merely seek the information supporting the Applicant's viability and capability to service the additional 5,000 acres without jeopardizing service to the current customers. In order to fully understand what the Ratepayers are seeking, we request that you review our following discussion of rule requirements, case holdings, and explanations provided below. We look forward to conferring with you and settling these matters without the necessity of court intervention.

INTERROGATORIES

VERIFICATION

The interrogatories were not verified as required by TEXAS RULE CIV. PRO. 197.1 no doubt you can supplement with verification.

INTERROGATORY #2

In response to your objection to Ratepayers' Interrogatory #2, we request that you specify what item you wish to exclude from discovery. See *In re Alford Chevrolet-Geo*

997 S.W.2d 173, 181 (Tex. 1999) (providing general allegations of undue burden and harassment are insufficient discovery objections); *G.M. Corp. v. Tanner*, 892 S.W.2d 862, 863 (Tex. 1994) (stating the party objecting to a written discovery request carries the burden of providing evidence supporting the objection). Additionally, we request that you specify why the request is unduly burdensome. See *In re Alford*, 997 S.W.2d at 181 (stating that to prove undue burden, a party cannot simply make conclusory allegations that the discovery is unduly burdensome). As to the objection that the request is overbroad, we consider the request to be sufficiently narrow as only the information about the individuals directly involved with the project is requested, however we would entertain your suggestion on limitation of the scope of this interrogatory to allow a complete response. The information sought in this interrogatory directly connects to the qualifications of the applicant and the correlating approval sought from the Texas Commission on Environmental Quality therefore the objection that this interrogatory is harassing is rejected and we request you remove this objection.

The identity of the persons involved in the development of the proposed expansion etc. is discoverable under the rules as relevant to the matter before the court in compliance with the requirements. We would argue that the information regarding individuals, "involved with or engaged in the planning and execution of the proposed expansion and their address, project responsibility, assigned task or objective, fees paid or to be paid, which entity pays their fees and estimated completion date of their project task" is directly related and perhaps determinative to the issue before the Court. This interrogatory is reasonable and within the parameters of the Rules of Civil Procedure thus we request the answer be supplemented to be complete.

INTERROGATORY #9

This request sought to identify the physical assets constituting the storage capacity for the area to be covered by the expanded CCN. The response identified instead the water sources. Please supplement the response to this interrogatory.

INTERROGATORY #11

Again we direct your attention to our response to your objections set forth previously in our discussion of Interrogatory #2. We are seeking the information such as the answers you submitted. Please provide all information requested by Interrogatory #11 related to the proposed expansion proposed by Tapatio Springs Service Company Applicant

PRODUCTION

PRODUCTION REQUEST #3

Again we direct your attention to our response to your objections set forth previously in our discussion of Interrogatory #2. The documents requested apply directly to the CCN expansion requested by the Applicant. The TCEQ rules require that an Applicant demonstrate its' financial and managerial capabilities in order to receive the requested CCN expansion. In order to aid in your client's identification of documents we request that the following documents be produced;

- a) Documents related to communication with the City of Boerne regarding wheeling GBRA water to the applicant or its water supplier.

- b) Documents related to communication with the Kendall County Development Manager, Kendall County Engineer, Kendall County Judge, and Kendall County Commissioners regarding the proposed CCN expansion.
- c) Documents submitted to or received from the Cow Creek Groundwater Conservation District and/or its representatives.
- d) Federal Income Tax returns for the past three years for the applicant.
- e) State Sales Tax reports for the past three years for the applicant.
- f) State Regulatory Assessment Fee returns paid to the TCEQ for the past three years

PRODUCTION REQUEST #4

Again we direct your attention to our response to your objections set forth previously in our discussion of Interrogatory #2. With regard to the documents and materials requested under Production Request #4, the applicant has informed the TCEQ that,

"As per the Non-Standard Service Agreement (a copy is included in Attachment B of the application), the developer is required to provide all the infrastructure necessary to serve the new development including storage, water distribution, pressure maintenance, wastewater collection, and wastewater treatment facilities."

B&D Environmental, Inc., signed by Darrell Nichols, dated October 7, 2005, TCEQ files

However in your client's response to Admission Number 6 this statement was denied

If the Admission was inadvertently denied please supplement Admission Number 6 answer

If Mr. Nichols was incorrect, please provide the following which provide the proof necessary to show financial capability.

- a) Current financial statements (income statement and balance sheet) for Tapatio Springs Service Company.
- b) Current budget for Tapatio Springs Service Company.
- c) Originating documents and current status of all outstanding loans, notes and other forms of indebtedness to any corporation or person directly or indirectly owing interest in Tapatio Springs Service Company for the past five years.
- d) Originating documents for all stock transfers, stock sales, stock exchanges, and stock used as collateral.

PRODUCTION REQUEST #5

Again we direct your attention to our response to your objections set forth previously in our discussion of Interrogatory #2. In order to aid in your client's identification of documents, we request that the following documents be produced;

- a) All documents related to TAPATIO SPRINGS SERVICE COMPANY, INC (applicant) or CDS International Holdings, Inc. (developer) affiliations with

- Kendall County Utility Company, Inc.,
- Tapatio Springs Development Company, Inc.,
- Tapatio Springs Golf Resort, Inc.,
- Tapatio Springs Real Estate Holdings, L.P.,
- Tapatio Springs Builders, Inc.,
- Kendall County Development Company, L.P.,
- Country Club Management Group, Inc., CDS Bandera Realty,
- CDS Texas Realty,
- Mountain View at Tapatio, L.P.,
- Lynzara-Austin Real Estate Management South,
- LLC, Lynzara-Austin Real Estate Management, LLC.,
- and any affiliate thereof, regarding applicant's current or future collection or distribution of water and/or their interest or involvement with the applicant's financial management or equity or debt structure of the applicant or CDS International Holdings, Inc. which is the financial guarantor under this application

PRODUCTION REQUEST #6

Again we direct your attention to our response to your objections set forth previously in our discussion of Interrogatory #2. The documents sought in this request provide the basis for evaluation of the Applicant's financial capability as to the maintenance of the existing water system and expansion of a water and sewer company to provide service to an additional 5,000 acres. In order to aid in your client's identification of documents, we request that the following documents be produced;

- a) All documents provided to George Mendez, CPA for review of TAPATIO SPRINGS SERVICE COMPANY, INC or CDS International Holdings, Inc.,
- b) All accounts, financial statements and communications from George Mendez, CPA or any other accountant or financial advisor, to TAPATIO SPRINGS SERVICE COMPANY, INC or CDS International Holdings, Inc.

PRODUCTION REQUEST #7

Again we direct your attention to our response to your objections set forth previously in our discussion of Interrogatory #2. Factors to consider in reviewing the Applicant's qualifications are the debt and cash flow characteristics of the entity. The documents requested will reveal these factors and are important to evaluation of the Applicant's capabilities. In order to aid in your client's identification of documents, we request that the following documents be produced;

- a) All documents related to draws or loans to or from TAPATIO SPRINGS SERVICE COMPANY, INC, or CDS International Holdings, Inc. by or to owners, stockholders, managers, directors, employees of TAPATIO SPRINGS SERVICE COMPANY, INC or CDS International Holdings, Inc. or between those entities.

PRODUCTION REQUEST #10

Again we direct your attention to our response to your objections set forth previously in our discussion of Interrogatory #2. Additionally, a party is entitled to

discovery of all books, documents or other tangible thing to be used at time of trial. As provided by TEXAS RULES OF CIV. PRO. 192, a party may obtain all documents etc. relevant to the subject matter of an action and specifically items to be used at trial are relevant. Therefore we request counsel communicate why items to be used at trial will not be produced or in the alternative supplement the response. In order to aid in your client's identification of documents, we request that the following documents be produced;

- a) Copies of any and all books, documents or other tangible things, which may be used at the time of trial of this protest.

PRODUCTION REQUEST #11

Again we direct your attention to our response to your objections set forth previously in our discussion of Interrogatory #2 and Production Request #10. The Ratepayers are entitled to review the requested documents. In order to aid in your client's identification of documents, we request that the following documents be produced;

- a) All documents from B&D Environmental, Inc. and/or Matkin-Hoover Engineering, Inc. associated or related to the application in this matter or related to water supply or sewer service for TAPATIO SPRINGS SERVICE COMPANY, INC. or CIS International Holdings, Inc. including but not limited to all source documents for the Water Supply Analysis for TAPATIO SPRINGS SERVICE COMPANY, INC. prepared by John-Mark Matkin

PRODUCTION REQUEST #13

Again we direct your attention to our response to your objections set forth previously in our discussion of Interrogatory #2 and Production Request #10. The proposed expansion seeks to service an additional 5,000 acres using 10 wells producing 75 gpm as established by the Applicant in Water Supply Analysis for TAPATIO SPRINGS SERVICE COMPANY, INC. prepared by John-Mark Matkin and submitted with the TCEQ CCN expansion application.

The Ratepayers also rely on the groundwater in the aquifer from which the additional water is to be drawn but as you know the governmental entity authorized to allocate the water is Cow Creek Ground Water District. The district's regulation over the new wells and groundwater to be pumped will be determinative as to whether in fact the Applicant can drill the wells and whether any groundwater is available for the expanded area. The Ratepayers are at risk of having all the current wells being depleted if the district is unable to allocate the proposed water resources to the Applicant.

In fact the expansion will not be possible without the additional wells and groundwater. Therefore, the Ratepayers and the TCEQ are entitled to review the requested documents from the Cow Creek Ground Water District.

In order to aid in your client's identification of documents, we request that the following documents be produced;

- a) All documents related to regulation by Cow Creek Ground Water District over TAPATIO SPRINGS SERVICE COMPANY, INC., including but not limited to operating permits for wells and reporting of well information.

PRODUCTION REQUEST #14

Again we direct your attention to our response to your objections set forth previously in our discussion of Interrogatory #2 and Production Request #10. In order to aid in your client's identification of documents, we request that the following documents be produced;

- a) All Documents related to the balance sheet dated December 31, 2004, included in the application, including but not limited to
- Accounts Payable - Kendall County Utility Company, Note 8 in the amount of \$35,000,
 - Inter-company Golf Resort in the amount of \$201,000,
 - Inter-company - T/S Dev in the amount of \$357,000,
 - I/C-KCDC Note 9 in the amount of \$23,000,
 - Inter-company - KCUC in the amount of \$42,000

PRODUCTION REQUEST #17

Again we direct your attention to our response to your objections set forth previously in our discussion of Interrogatory #2 and Production Request #10. These documents have a direct bearing on the financial and managerial expertise and capability of the Applicant. In order to aid in your client's identification of documents, we request that the following documents be produced;

- a) TAPATIO SPRINGS SERVICE COMPANY, INC., monthly billings and receipts for each account associated with the Tapatio Springs Golf Resort.

PRODUCTION REQUEST #18

Again we direct your attention to our response to your objections set forth previously in our discussion of Interrogatory #2 and Production Requests #10 and #11. In order to aid in your client's identification of documents, we request that the following documents be produced;

- a) All reporting documents required by TCEQ relating to loans, notes or other indebtedness to any corporation or person directly or indirectly owning interest in TAPATIO SPRINGS SERVICE COMPANY, INC.

ADMISSIONS

ADMISSIONS REQUEST # 4

The permits referred to in the request are those adopted and administrated by Stan Scott, Operations Manager for Applicant as identified in your response to Interrogatory #1. Mr. Scott is a board member on the Cow Creek Groundwater District (CCGW D).

which under their Rule 3.5 states that any well having capacity of producing 17.36 gallons per minute is required to have an operating permit. The 10 wells identified by John-Mark Matkin in Water Supply Analysis for TAPATIO SPRINGS SERVICE COMPANY, INC. submitted with the CCN expansion application will be producing 17.36 gpm and therefore fall under this requirement. Also CCGWD Rule 3.2 requires registration of a new well that operates as a drilling permit. Additionally, if the Applicant is seeking to change the pumping capacity of an existing well an operating permit is required as provided by CCGWD Rule 3.4. Therefore the question is in regards to these and the other relevant CCGWD permits.

If the permits have been applied for, then a denial is appropriate.

ADMISSIONS REQUEST # 5

The Ratepayers are directly addressing the Applicant's financially ability to develop the water and sewer services for the 5,000 acres. If you require amendment to clarify this question, we would gladly agree or if you would prefer a Rule 11 agreement as to the definition of "develop" we will further specify that develop pertains to the water and sewer services only as addressed under Applicant's proposed CCN expansion.

ADMISSIONS REQUEST # 6

In response to the TCEQ's request for financial information, the Applicant's representative wrote;

"As per the Non-Standard Service Agreement (a copy is included in Attachment B of the application), the developer is required to provide all the infrastructure necessary to serve the new development including storage, water distribution, pressure maintenance, wastewater collection, and wastewater treatment facilities." *B&D Environmental, Inc., signed by Darrell Nichols, dated October 7, 2005, TCEQ files.*

If the Admission was inadvertently denied please supplement Admission Number 6 answer.

ADMISSIONS REQUEST # 8

The Ratepayers are requesting verification of the agreement between the Applicant and CDS International Holdings, Inc., and of the fact of this agreement which is central to the expansion of the Applicant's proposed CCN. There is no request for a proposition of law or legal conclusion. This admission simply requests facts within the knowledge of the Applicant. The case cited as support to your objection to the Admission Request involves the appeal of a decision regarding withdrawn deemed admissions. We do not see the relevance in this instance. The Ratepayers are requesting clarification of fact. If the admission request agreement is factually correct admit or if it is incorrect, deny.

ADMISSIONS REQUEST # 9

Again the Ratepayers are requesting verification of a fact. Either Kendall County has approved or has not approved the subdivision plat for the 5,000 acres covered by Applicant's expanded CCN area.

ADMISSIONS REQUEST # 10

We direct your attention to our comments under Admissions Request #8. The Ratepayers are requesting verification of a fact.

ADMISSIONS REQUEST # 11

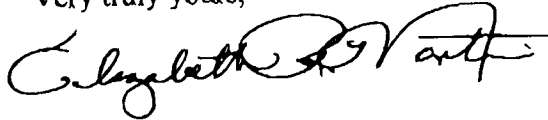
We direct your attention to our comments under Admissions Request #8. The Ratepayers are requesting verification of a fact.

ADMISSIONS REQUEST # 12

The principals of the Applicant and of the entities named in this request can directly admit or deny this Admissions Request. The Ratepayers are requesting verification of a fact.

We look forward to your responses. Please feel free to call to clarify any issue. Thank you in advance for your assistance in resolving these discovery issues.

Very truly yours,



Elizabeth R. Martin

Erm/dw

cc Mailing List

MAILING LIST
TAPATIO SPRINGS SERVICE COMPANY, INC.
SOAH DOCKET NO. 582-06-0425
TCEQ DOCKET NO. 2005-1515-URC

FOR THE APPLICANT:

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Attorney at Law
7550 IH-10 West, Northwest Center
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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
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512-239-3417
512-239-0606 FAX

FOR THE CHIEF CLERK:

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**FOR THE PUBLIC INTEREST
COUNSEL:**

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FOR RANGER CREEK HOA

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CHIEF CLERKS OFFICE

APR 13 PM 9:26

April 13, 2006

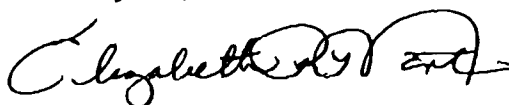
Patrick W. Lindner
Davidson & Troilo
7550 W. IH-10 Northwest Ctr., Ste 800
San Antonio, Texas 78229-5815

Via Fax Transmission: 210-349-0041

Dear Mr Lindner,

Please find following The Ratepayers' REQUEST FOR IDENTIFICATION OF
PRIVILEGED DOCUMENTS TO APPLICANT TAPATIO SPRINGS SERVICE
COMPANY, INC. Thank you for your attention to this matter.

Very truly yours,



Elizabeth R. Martin

Erm/dw

cc Mailing List

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

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

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§
§
§
§
§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

CHIEF CLERK'S OFFICE
APR 13 2006 9:26

RATEPAYERS', REPRESENTED BY MS. MARTIN,
REQUEST FOR IDENTIFICATION OF PRIVILEGED DOCUMENTS
TO APPLICANT TAPATIO SPRINGS SERVICE COMPANY, INC.

TO: TAPATIO SPRINGS SERVICE COMPANY, INC., Applicant, by and through
Applicant's attorney of record, PATRICK LINDNER.

Please take notice that request is hereby made by RATEPAYERS, pursuant to Rule 193 of the Texas Rules of Civil Procedure, demand, in accordance with Rule 193, that within 15 days after the service of these requests, Applicant, Tapatio Springs Service Company, Inc., specifically identify the information and material withheld as to PRODUCTION REQUEST #8 to which Applicant answered with an assertion of privilege.

Within 15 days after service of this Request for Identification, you must serve a written response to the undersigned attorney at P.O. Box 1764, Boerne, Texas 78006, in compliance with Rule 193 of the Texas Rules of Civil Procedure.

Respectfully submitted,

By: 
ELIZABETH R. MARTIN

Texas Bar No. 24027482

P.O. BOX 1764

106 W. BLANCO, STE. 206

BOERNE, TEXAS 78006

Tel. (830)816-8686
Fax. (830)816-8282
Attorney for RATEPAYERS

CERTIFICATE OF SERVICE

I certify that on April 13, 2006, a true and correct copy of REQUEST FOR IDENTIFICATION OF PRIVILEGED DOCUMENTS to Tapatio Springs Service Company was served via fax on the following counsel.


ELIZABETH R. MARTIN

PARTIES

CHIEF CLERK

REPRESENTATIVE / ADDRESS

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Office of the Chief Clerk, MC-105
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Austin, TX 78711-3087
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TCEQ PUBLIC INTEREST COUNCIL

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TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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TAPATIO SPRINGS SERVICE CO.

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LAW OFFICE OF ELIZABETH R. MARTIN

FACSIMILE TRANSMITTAL SHEET

To: Patrick Lindner 210 349.0041

ADDITIONAL MAILING LIST

Kathy Humphreys Brown 512 239.0606
LaDonna Castañuela 512 239 3311
Mary Alice Boehm-McKaughan 512 239.6377
Eric Sherer 210 696.9675

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APR 13 AM 9:26

COMPANY

DATE

APRIL 13, 2006

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RE SOAH DOCKET NO 582-06-0425
TCEQ DOCKET NO 2005-1516-URC

YOUR REFERENCE NUMBER

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NOTES/COMMENTS: IF YOU HAVE ANY PROBLEMS WITH THIS FAX TRANSMISSION, PLEASE CONTACT
DIANNE WITZ AT 830 816.8686

Notes/Comments

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION AND IS TRANSMITTED FOR THE EXCLUSIVE INFORMATION AND USE OF THE ADDRESSEE. PERSONS RESPONSIBLE FOR DELIVERY OF THIS COMMUNICATION TO THE INTENDED RECIPIENT ARE ADMONISHED THAT THIS COMMUNICATION MAY NOT BE COPIED OR DISSEMINATED EXCEPT AS DIRECTED BY THE ADDRESSEE. IF YOU RECEIVE THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND DESTROY THE COMMUNICATION.