

(b) Customer represents and covenants that all moneys required to be paid by Customer under this Agreement shall constitute an operating expense of Customer's System as authorized by the Constitution and laws of the State of Texas.

**Section 6.8 Customer's Covenant to Maintain Sufficient Income.**

Subject to any limitations imposed by TNRCC rules, Customer agrees to fix and maintain rates and collect charges for the facilities and services provided by Customer's System as will be adequate to permit Customer to make prompt payment of all expenses of operating and maintaining Customer's System, including payments under this Agreement and to make prompt payment of the interest on and principal of any obligations of Customer payable, in whole or in part, from the revenues of Customer's System. Customer further agrees to comply with all of the provisions of the obligations which are payable, in whole or in part, from the revenues of Customer's System.

**Section 6.9 Billing.**

GBRA will render bills to Customer once each month for the payments required by this Article. GBRA shall, until further notice, render such bills on or before the 10th day of each month and such bills shall be due and payable at GBRA's office indicated below by the 20th day of each month or fifteen (15) days after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Customer, whichever is later. GBRA may, however, by sixty (60) days written notice change the monthly date by which it shall render bills, and all bills shall thereafter be due and payable ten (10) days after such date or fifteen (15) days after such bill is deposited into the United States mail, properly stamped, addressed and postmarked to Customer, whichever is later. Customer shall make all payments in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall make payment to GBRA at its office in the City of Seguin, Texas, or at such other place as GBRA may from time to time designate by sixty (60) days written notice.

**Section 6.10 Delinquency in Payment.**

All amounts due and owing to GBRA by Customer shall, if not paid when due, bear interest at the maximum rate permitted by law, provided that such rate shall never be usurious. If any amount due and owing by Customer is placed with an attorney for collection by GBRA, Customer shall pay to GBRA, in addition to all other payments provided for by this Agreement, including interest, GBRA's collection expenses, including court costs and attorney's fees. Customer further agrees that GBRA may, at its option, discontinue delivering treated water to Customer until all amounts due and unpaid are paid in full with interest as herein specified. Any such discontinuation shall not, however, relieve Customer of its unconditional obligation to make the payments required hereunder, as provided by Section 6.6 of this Agreement.

## ARTICLE VII

### PROJECT REPRESENTATION

#### **Section 7.1    Project Management Committee.**

An advisory committee (the "Project Management Committee") will be established to provide advice to GBRA with respect to the Project and Project-related actions proposed to be taken by GBRA including, without limitation, advice to GBRA with respect to GBRA's preparation of any operating plans for the Project. Customer is entitled to have a representative on the Project Management Committee. GBRA's representative shall be designated by GBRA's General Manager and shall be the Chairman of the Project Management Committee. Customer's representative will be designated by Customer.

#### **Section 7.2    Budgets, Audits, Records.**

GBRA will provide the Project Management Committee with the first annual Project budget four months prior to Project start-up, and it will thereafter provide subsequent annual Project budgets. The Project budgets will include all Operation and Maintenance Expenses, debt service, and capital improvements. GBRA will also submit annual audited financial statements of GBRA to the Project Management Committee.

## ARTICLE VIII

### TERM OF AGREEMENT AND RIGHTS AFTER TERMINATION

#### **Section 8.1    Term.**

(a) This Agreement shall be effective as of the date first written above and, unless it is terminated earlier pursuant to Section 3.3, above or pursuant to any other provision, shall continue in effect until December 31, 2037, or as it may be extended pursuant to subsections (d) or (e) below, on which date this Agreement shall terminate unless extended pursuant to subsection (c) below (the "Termination Date").

(b) From and after the Termination Date, Customer shall have no right to be supplied any water, and GBRA shall have no obligation to supply any water to Customer.

(c) If all of the Project Debt Instruments (including principal and interest) for the Project will not be fully paid by the Termination Date, then GBRA shall have the right, at any time before such date, to extend the Termination Date to December 31 of the year in which the Project Debt Instruments are to be paid. Any extension by GBRA pursuant to this subsection shall be effective as of the date that GBRA gives Customer written notice of the extension.

(d) During the month of January 2037, GBRA shall give Participant written notice of the "Extension Raw Water Rate" to be utilized in calculating Participant's Raw Water Component to be paid by Participant if the Termination Date is extended beyond December 31, 2037. If GBRA fails to give Participant timely written notice of the Extension Raw Water Rate as set forth above in this subsection (d), then the Extension Raw Water Rate for each month beginning January 2038 shall be the District-Wide Raw Water Rate in effect that month. If Participant desires to extend the Termination Date, then it shall give GBRA, after January 31, 2037 and by not later than June 30, 2037, written notice of extension. If Participant gives GBRA timely written notice of extension, then the Termination Date shall be extended to December 31, 2057.

(e) If the Termination Date is extended to December 31, 2057, pursuant to subsection (d), above, then during the month of January 2057, GBRA shall give Participant written notice of the "Extension Raw Water Rate" to be utilized in calculating Participant's Raw Water Component to be paid by Participant if the Termination Date is extended beyond December 31, 2057. If GBRA fails to give Participant timely written notice of the Extension Raw Water Rate as set forth above in this subsection (e), then the Extension Raw Water Rate for each month beginning January 2058 shall be the District-Wide Raw Water Rate in effect that month. If Participant desires to extend the Termination Date, then it shall give GBRA, after January 31, 2057, and by not later than June 30, 2057, written notice of extension. If Participant gives GBRA timely written notice of extension, then the Termination Date shall be extended to December 31, 2077. Any extension thereafter shall be by mutual agreement of the parties.

#### **Section 8.2 Rights after Termination.**

Except as specifically provided otherwise in this Agreement, all of the rights and obligations of the parties under this Agreement shall terminate upon termination of this Agreement, except that such termination shall not affect any rights or liabilities accrued prior to such termination.

### **ARTICLE IX**

#### **OTHER PROVISIONS**

#### **Section 9.1 Waiver and Amendment.**

Failure to enforce or the waiver of any provision of this Agreement or any breach or nonperformance by Customer or GBRA shall not be deemed a waiver by GBRA or Customer of the right in the future to demand strict compliance and performance of any provision of this Agreement. No officer or agent of GBRA is authorized to waive or modify any provision of this Agreement. No modifications to or rescission of this Agreement may be made except by a written document signed by GBRA's and Customer's authorized representatives.

### **Section 9.2    Remedies.**

It is not intended hereby to specify (and this Agreement shall not be considered as specifying) an exclusive remedy for any default by Customer, but all such other remedies existing at law or in equity including, without limitation, termination or suspension of service, may be availed of by GBRA and shall be cumulative. In no event shall Customer be entitled to any monetary damages (including, without limitation, any consequential or indirect damages) or any other remedy other than specific performance for any default by GBRA under this Agreement or for any claim brought against GBRA under this Agreement or otherwise relating to the supply of water by GBRA, and in no event shall Customer be entitled to any attorneys fees, court costs or other expenses incurred by Customer in bringing any suit alleging such default or claim.

### **Section 9.3    Force Majeure.**

If for any reason of force majeure, either GBRA or Customer shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, other than the obligation of Customer to make the payments required under the terms of this Agreement, then if the party shall give notice of the reasons in writing to the other party within a reasonable time after the occurrence of the event, or cause relied on, the obligation of the party giving the notice, so far as it is affected by the force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period. The term "force majeure" as used in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders or actions of any kind of government of the United States or of the State of Texas, or any civil or military authority, insurrections, riots, epidemics, land slides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, canals, or other structures, partial or entire failure of water supply including pollution (accident or intentional), and any inability on the part of GBRA to deliver treated water on account of any other cause not reasonably within the control of GBRA.

### **Section 9.4    Non-Assignability.**

Customer may not assign this Agreement without first obtaining the written consent of GBRA; provided however, GBRA shall not unreasonably refuse. This prohibition on assignment does not apply to any transfer of stock of the Customer.

### **Section 9.5    Entire Agreement.**

This Agreement constitutes the entire agreement between GBRA and Customer and supersedes any prior understanding or oral or written agreements between GBRA and Customer respecting the subject matter of this Agreement.

**Section 9.6    Severability.**

The provisions of this Agreement are severable and if, for any reasons, any one or more of the provisions contained in the Agreement shall be held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of this Agreement and this Agreement shall remain in effect and be construed as if the invalid, illegal or unenforceable provision had never been contained in the Agreement.

**Section 9.7    Captions.**

The sections and captions contained herein are for convenience and reference only and are not intended to define, extend or limit any provision of this Agreement.

**Section 9.8    No Third Party Beneficiaries.**

This Agreement does not create any third party benefits to any person or entity other than the signatories hereto, and is solely for the consideration herein expressed.

**Section 9.9    Notices.**

All notices, payments and communications ("notices") required or allowed by this Agreement shall be in writing and be given by depositing the notice in the United States mail postpaid and registered or certified, with return receipt requested, and addressed to the party to be notified. Notice deposited in the mail in the previously described manner shall be conclusively deemed to be effective from and after the expiration of three (3) days after the notice is deposited in the mail. For purposes of notice, the addresses of and the designated representative for receipt of notice for each of the parties shall be as follows:

For GBRA:

Guadalupe-Blanco River Authority  
Attention: General Manager  
933 E. Court Street  
Seguin, Texas 78155

And for Customer:

Jay Parker  
Kendall County Utility Company, Inc.  
Tapatio Springs Service Company, Inc.  
P.O. Box 550  
Boerne, Texas 78006

Either party may change its address by giving written notice of the change to the other party at least fourteen (14) days before the change becomes effective.

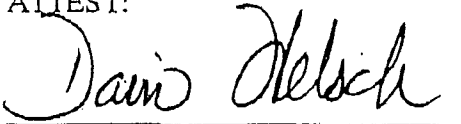
In witness whereof, the parties hereto, acting under the authority of the respective governing bodies, have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

**GUADALUPE-BLANCO RIVER AUTHORITY**

By: 

William E. West, Jr., General Manager

ATTEST:



**KENDALL COUNTY UTILITY COMPANY**

By: 

Name: John J. Parker

Title: President

**TAPATIO SPRINGS SERVICE COMPANY, INC.**

By: 

Name: John J. Parker

Title: President

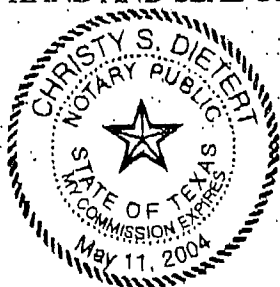
ATTEST:



THE STATE OF TEXAS           §  
   §  
COUNTY OF GUADALUPE       §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared William E. West, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the GUADALUPE-BLANCO RIVER AUTHORITY, a conservation district and political subdivision, and that he executed the same as the act of such conservation district and political subdivision, and that he executed the same as the act of such conservation district and political subdivision for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 21st day of March, 2002.



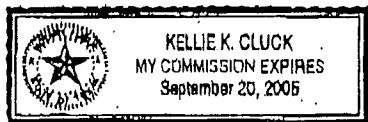
(Seal)

Christy S. Dietert  
Notary Public  
The State of Texas

THE STATE OF TEXAS           §  
   §  
COUNTY OF KENDALL       §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared John J. Parker, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 18 day of March, 2002.



(Seal)

Kellie Cluck  
Notary Public  
The State of Texas



REC'D SEP 13 2005



GENERAL OFFICE  
933 East Court Street  
Seguin, Texas 78155  
Phone: 830-379-5822  
800-413-5822  
Fax: 830-379-9718

BUDA WASTEWATER  
RECLAMATION  
PLANT  
575 County Road 236  
Buda, Texas 78610  
Phone: 512-312-0526  
Fax: 512-312-0526

COLETO CREEK PARK  
AND RESERVOIR  
P.O. Box 68  
Fannin, Texas 77900  
Phone: 361-575-6366  
Fax: 361-575-2267

LAKE WOOD  
RECREATION AREA  
167 FM 2091 South  
Gonzales, Texas 78629  
Phone: 830-672-2779  
Fax: 830-672-2779

LOCKHART WATER  
TREATMENT PLANT  
547 Old McMahon Road  
Lockhart, Texas 78644  
Phone: 512-398-3528

LOCKHART  
WASTEWATER  
RECLAMATION  
SYSTEM  
4435 FM 20 East  
Lockhart, Texas 78644  
Phone: 512-398-6391  
Fax: 512-398-2036

LULLING WATER  
TREATMENT PLANT  
350 Memorial Drive  
Luling, Texas 78648  
Phone: 830-875-2132  
Fax: 830-875-2132

PORT LAVACA  
OPERATIONS  
P.O. Box 146  
Port Lavaca, Texas 77979  
Phone: 361-552-9751  
Fax: 361-552-6529

SAN MARCOS WATER  
TREATMENT PLANT  
91 Old Bastrop Road  
San Marcos, Texas 78666  
Phone: 512-353-3888  
Fax: 512-353-3127

VICTORIA REGIONAL  
WASTEWATER  
RECLAMATION  
SYSTEM  
P.O. Box 2085  
Victoria, Texas 77902-2085  
Phone: 361-578-2878  
Fax: 361-578-9039

GBRA WEBSITE  
[www.gbra.org](http://www.gbra.org)

GUADALUPE-BLANCO RIVER AUTHORITY

August 31, 2005

20-041-004-0811

Kellye Rila  
Team Leader  
Water Rights Permitting Team  
P.O. Box 13087  
Austin, TX 78711-3087

Re: First Amendment to Agreement Between Kendall County Utility Company and  
Tapatio Springs Service Company, Inc. and Guadalupe-Blanco River Authority

Dear Ms. Rila:

In accordance with Rule 31 Texas Administrative Code, Sections 295.101 and 295.111, and Subchapter J of TAC Chapter 297, we hereby submit for your records the attached First Amendment to Agreement Between Kendall County Utility Company and Tapatio Springs Service Company, Inc. and Guadalupe-Blanco River Authority. This Amendment increases the commitment of raw water from Canyon Reservoir under Certificate of Adjudication 18-2074, as amended, from 500 acre-feet per year to 750 acre-feet to be used for municipal purposes. This contract expires on December 31, 2037.

Thank you for your attention to this matter. Please do not hesitate to contact me, if you have any questions.

Sincerely,

Fred M. Blumberg  
Deputy General Manager

Enc.

Cc: John J. Parker, Jr.  
Al Segovia, South Texas Watermaster  
Roger Nevola, Attorney at Law

EXHIBIT 3

First Amendment to Agreement Between Kendall County Utility Company  
and Tapatio Springs Service Company, Inc. and  
Guadalupe-Blanco River Authority

This First Amendment to the March 18, 2002 Agreement between Kendall County Utility Company and Tapatio Springs Service Company, Inc. and the Guadalupe-Blanco River Authority (this "First Amendment") is made and entered into as of this 14<sup>th</sup> day of ~~May~~ 2005, the "Effective Date" by and between Kendall County Utility Company and Tapatio Springs Service Company, Inc. ("Kendall County/Tapatio Springs") and the Guadalupe-Blanco River Authority (the "GBRA").

WHEREAS, on March 18, 2002, Kendall County/Tapatio Springs and GBRA entered into an agreement relating to the development, permitting, design, financing, construction and operation of a treated water supply project to serve Kendall County/Tapatio Springs and other parties; and

WHEREAS, within said agreement, the parties agreed that the raw water reservation amount was 500 acre-feet per year and an annual commitment of 150 acre-feet per year; and

WHEREAS, Kendall County/Tapatio Springs and GBRA both agree that it is desirable to amend the March 18, 2002 Agreement to increase the amount of raw water reserved by Kendall County/Tapatio Springs and to increase the annual commitment of treated water to Kendall County/Tapatio Springs.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual benefits and provisions hereinafter contained in this First Amendment, Kendall County/Tapatio Springs and GBRA agree that the March 18, 2002 Agreement between Kendall County/Tapatio Springs and GBRA is amended as follows:

Section 4.3 Raw Water Reservation is stricken and this new Section 4.3 Raw Water Reservation is substituted to read as follows:

"The Raw Water Reservation is the maximum amount of raw water that GBRA shall be obligated to reserve for diversion, treatment and delivery to Customer in any calendar year. The Raw Water Reservation shall be seven hundred fifty (750) acre-feet per year."

Section 4.4 Annual Commitment, subsection (a), is stricken and this new Section 4.4 Annual Commitment, subsection (a), is substituted to read as follows:

"(a) The Annual Commitment for any calendar year is the maximum amount of treated water that GBRA shall be obligated to deliver to Customer during that year. The Annual Commitment initially shall be

.179 million gallons per day (200 acre-feet per year), subject to increase as set forth in subsection (b), below."

New Section 9.10 Participation Criteria is added to read as follows:

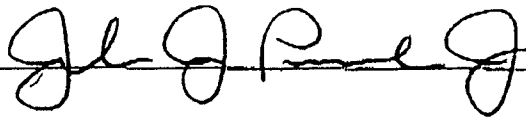
"This Agreement is subject to and the parties hereto agree to comply with the 'Participation Criteria for Treated Water Service from the Western Canyon Regional Treated Water Supply System (May 9, 2005)' approved by the GBRA Board of Directors on May 18, 2005."

IN WITNESS WHEREOF, this First Amendment to Agreement between Kendall County Utility Company and Tapatio Springs Service Company, Inc. and the Guadalupe-Blanco River Authority is executed as of the date first written above on behalf of Kendall County/Tapatio Springs and GBRA by their respective authorized officers, in multiple counterparts, each of which shall constitute an original.

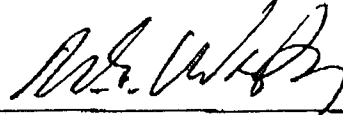
KENDALL COUNTY UTILITY COMPANY

By: 

TAPATIO SPRINGS SERVICE COMPANY, INC.

By: 

GUADALUPE-BLANCO RIVER AUTHORITY

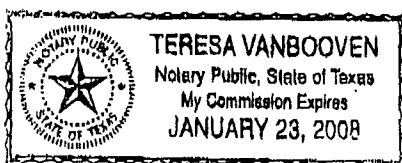
By:   
William E. West, Jr., General Manager

THE STATE OF TEXAS §

COUNTY OF GUADALUPE §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared William E. West, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the GUADALUPE-BLANCO RIVER AUTHORITY, a conservation district and political subdivision, and that he executed the same as the act of such conservation district and political subdivision for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 16<sup>th</sup> day of June, 2005.



Teresa VanBooven  
Notary Public  
The State of Texas

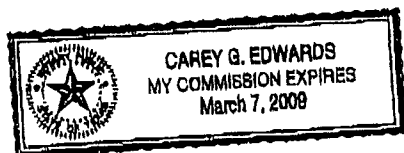
(Seal)

THE STATE OF TEXAS §

COUNTY OF KENDALL §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared John J. Parker, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 14 day of July, 2005.



Carey G. Edwards  
Notary Public  
The State of Texas

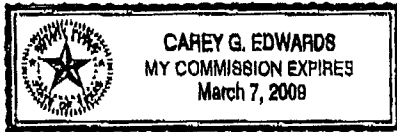
(Seal)

THE STATE OF TEXAS §

COUNTY OF KENDALL §

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared John S. Parker, Jr., known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 14<sup>th</sup> day of July, 2005.



Carey G. Edwards  
Notary Public  
The State of Texas

(Seal)

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

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

Pre-Filed Testimony of

John-Mark Matkin

April 27, 2006

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

27 APR 20 AM 9:53

CHIEF CLERKS OFFICE

1 **Q. Please state your full name and business address.**

2  
3 A. John-Mark Matkin  
4 8 Spencer Road, Ste. 100  
5 Boerne, Texas 78006  
6

7  
8 **Q. By whom are you employed and in what capacity?**

9  
10 A. Matkin-Hoover Engineering, Inc.  
11 President, CEO  
12

13  
14 **Q. What are your duties as President & CEO of Matkin-Hoover Engineering, Inc.?**

15  
16  
17 A. Manage all aspects of the company, both operational and financial, including  
18 project management, client relations, marketing, employee management, and  
19 budgets.  
20

21  
22 **Q. Please describe your educational background?**

23  
24 A. Texas A&M University- Bachelor of Science/Civil Engineering.  
25  
26

27 **Q. Please describe your past engineering experience?**

28  
29 A. Civil Engineering experience has included the following: Land Planning, Major  
30 Infrastructure Planning, Public Works & Utility System Analysis, all Civil Site  
31 Design (Streets, Drainage, Water, Sewer), and Flood Studies.  
32  
33

34 **Q. What licenses do you currently hold?**

35  
36 A. Professional Engineer-State of Texas.  
37  
38

39 **Q. How long have you served as CEO & President of Matkin-Hoover Engineering, Inc.?**

40  
41  
42 A. Four years and four months.  
43  
44

45 **Q. Explain the scope of your participation in SOAH Docket No. 582-06-0425?**

46

1 A. I am the consulting engineer for the developer of the 5000-acre tract and  
2 Consulting Engineer for Tapatio Springs Service Company.  
3  
4

5 **Q. Please describe the request for service from CDS International to Tapatio**  
6 **Springs Service Company.**  
7

8 A. The request is for 1700 residential water connections.  
9

10  
11 **Q. Please describe the need for additional service to the requested area.**  
12

13 A. There is a need for service in order to get the higher density under the county  
14 subdivision ordinance. The county by law will allow for a 6-acre density with on-  
15 site groundwater. The developer has asked to be at a 3.2-acre density, which is  
16 well within the county guidelines.  
17

18  
19 **Q. Are you preparing the master plan for the development?**  
20

21 A. Yes.  
22  
23

24 **Q. What is the current status of the plat?**  
25

26 A. The plat is administratively complete. The plat has been reviewed and  
27 approved by the staff and was tabled by the Commissioners Court.  
28  
29

30 **Q. Are you familiar with the pending lawsuit that affects the CDS property? If**  
31 **so, how will this lawsuit affect this development?**  
32

33 A. Yes. Only a portion of the CDS property is affected by the pending lawsuit. If  
34 the lawsuit results in the plaintiff's favor, the affected portion will be developed  
35 with wells and the unaffected portion will be developed at a higher density.  
36  
37

38 **Q. Based on your Professional Engineering experience, what is the feasibility**  
39 **of obtaining service from any other utility other than Tapatio Springs?**  
40

41 A. The City of Boerne would be the only possible utility purveyor, however, the  
42 location of the 5000 acres as compared to the City of Boerne does not make it  
43 economically feasible.  
44

1  
2 **Q. Are you responsible for designing the utility improvements within the**  
3 **proposed development?**

4  
5 A. Yes.  
6

7  
8 **Q. Please describe the utility improvements that you will and/or have**  
9 **designed for the proposed development?**

10  
11 A. All on-site water distribution systems, booster stations, wells for peaking and  
12 groundwater storage tanks.  
13

14  
15 **Q. Who will be responsible for paying the costs associated with designing**  
16 **these improvements you just described?**

17  
18 A. CDS International.  
19

20  
21 **Q. Will you be responsible for designing off-site facilities? If so, describe**  
22 **these facilities.**

23  
24 A. Yes, off-site water transmission main and booster station.  
25

26  
27 **Q. What is the purpose of this transmission main?**

28  
29 A. To transport the GBRA water from the designated receiving point to the KCUC  
30 system.  
31

32  
33 **Q. What is the status of the route and/or design of this off-site transmission**  
34 **main?**

35  
36 A. The route has been determined, easement acquisition is on-going, and the  
37 preliminary design is complete.  
38

39  
40 **Q. Do you have an estimated cost for construction and design of the off-site**  
41 **facilities that are required to transport the surface water from GBRA to**  
42 **Tapatio Springs? If so, what is that estimate?**

43  
44 A. Yes. The estimate is \$2,154,983 for the 12" water main.

1  
2  
3 **Q. Did you provide an analysis of the existing water supply facilities of**  
4 **Tapatio Springs including the GBRA surface water?**

5  
6 **A. Yes.**  
7

8  
9 **Q. Will you describe what has been marked as Tapatio Springs Exhibit 1?**

10  
11 **A. It is the water supply analysis that I prepared.**  
12

13  
14 **Q. Based on this water supply analysis, does Tapatio Springs have sufficient**  
15 **water capacity to meet the standards, established by the TCEQ, to serve**  
16 **both the additional development and its existing CCN?**

17  
18 **A. Yes.**  
19

20  
21 **Q. Please explain what is meant by peaking demands?**

22  
23 **A. Peaking demands is the state mandated responsibility of a utility purveyor to**  
24 **provide for all connections maximum required production.**  
25

26  
27 **Q. In your opinion will the water purchased from GBRA meet the peaking**  
28 **demands? Please explain why it will or why not?**

29  
30 **A. No. It will supply the base demand.**  
31

32  
33 **Q. In your opinion, will the GBRA surface water need to be supplemented**  
34 **with groundwater at times to meet the peaking demands?**

35  
36 **A. Yes.**  
37

38  
39 **Q. You previously described that wells and storage facilities will be**  
40 **constructed within the proposed development. Will these wells be used to**  
41 **meet peaking demands?**

42  
43 **A. Yes.**  
44

1  
2 **Q. How many wells are you anticipating will be necessary within the**  
3 **proposed development?**

4  
5 **A. 10.**  
6  
7

8 **Q. The ratepayers contend that the Cow Creek Groundwater District won't**  
9 **issue the permits for any or all of the 10 additional wells. If the ratepayers**  
10 **are correct, what effect does this have on the proposed development?**

11  
12 **A. If the ratepayers are correct, the density could be reduced and additional**  
13 **storage could be used so that GBRA water could be used for peaking or excess**  
14 **capacity and the existing wells could be used for peaking.**  
15

16  
17 **Q. Are you familiar with the TCEQ capacity standards?**  
18

19 **A. Yes.**  
20  
21

22 **Q. Will the storage facilities be designed to meet the TCEQ capacity**  
23 **standards for the number of connections with the development?**  
24

25 **A. The storage facilities will be designed to exceed the TCEQ capacity standards.**  
26  
27

28 **Q. Based on your professional engineering experience what is the effect on**  
29 **the environmental integrity and water resources of granting the CCN to**  
30 **Tapatio Springs?**  
31

32 **A. By granting the CCN, it allows for a proper use of the water resources that are**  
33 **available to Kendall County. By using GBRA water for base demand, it limits**  
34 **the burden of residential wells on the Cow Creek Aquifer. This will provide for**  
35 **fire protection, stages of water consumption, rationing and monitoring.**  
36  
37

38 **Q. Based on your professional engineering experience what is the effect on**  
39 **the environmental integrity and water resources of not granting the CCN**  
40 **to Tapatio Springs?**  
41

42 **A. By not granting the CCN, the property would be allowed to drill 850 residential**  
43 **connections with no regulation or control of water usage.**  
44

1  
2 **Q. Do you have any other exhibits that you would like to offer as part of your**  
3 **testimony? If so, please describe them.**

4  
5 A. Yes. I would like to provide maps prepared by Matkin-Hoover Engineering, Inc.  
6 that depict the proposed boundary for the development and the number of  
7 connections.  
8

9  
10 **Q. Does this conclude your testimony?**

11  
12 A. Yes.

Affidavit of John-Mark Matkin, P.E.

STATE OF TEXAS       §  
                                  §  
                                  §  
COUNTY OF KENDALL   §

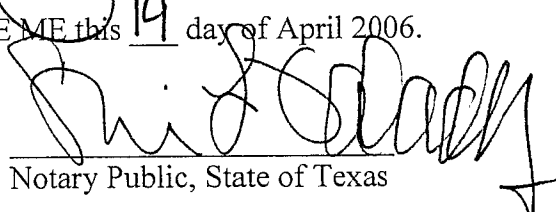
BEFORE ME, the undersigned authority, John-Mark Matkin, P.E. being duly sworn, deposes and states:

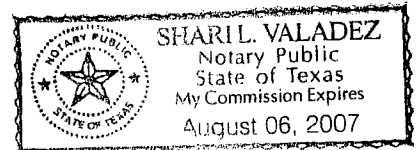
“My name is John-Mark Matkin. I am employed as the President of Matkin-Hoover Engineering, Inc., having its principal place of business in Boerne, Texas. I am over the age of twenty-one and am competent to make the following affidavit:

The foregoing testimony offered by me is true and correct and the opinions stated therein are, in my judgment and based upon my professional experience, true and correct.”

  
\_\_\_\_\_  
John-Mark Matkin

SUBSCRIBED AND SWORN TO BEFORE ME this 19 day of April 2006.

  
\_\_\_\_\_  
Notary Public, State of Texas





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

**CCN Nos. 12122 and 20698**

**August 2005**

EXHIBIT 1

## **Executive Summary**

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

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

## **Existing Water Production**

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

## **GBRA Water**

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

## **Storage**

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

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

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

# Kendall County Utility Company / Tapatio Springs Utility Company

## 2005 Water Production and Usage

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

### Notes :

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

Prepared By:  
Matkin-Hoover Engineering, Inc.

John-Mark Matkin  
President, CEO



UPDATED: AUG. 5, 2005

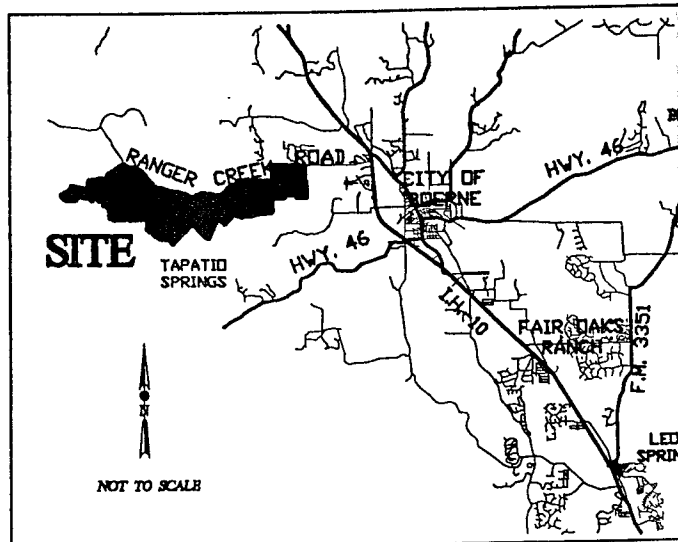
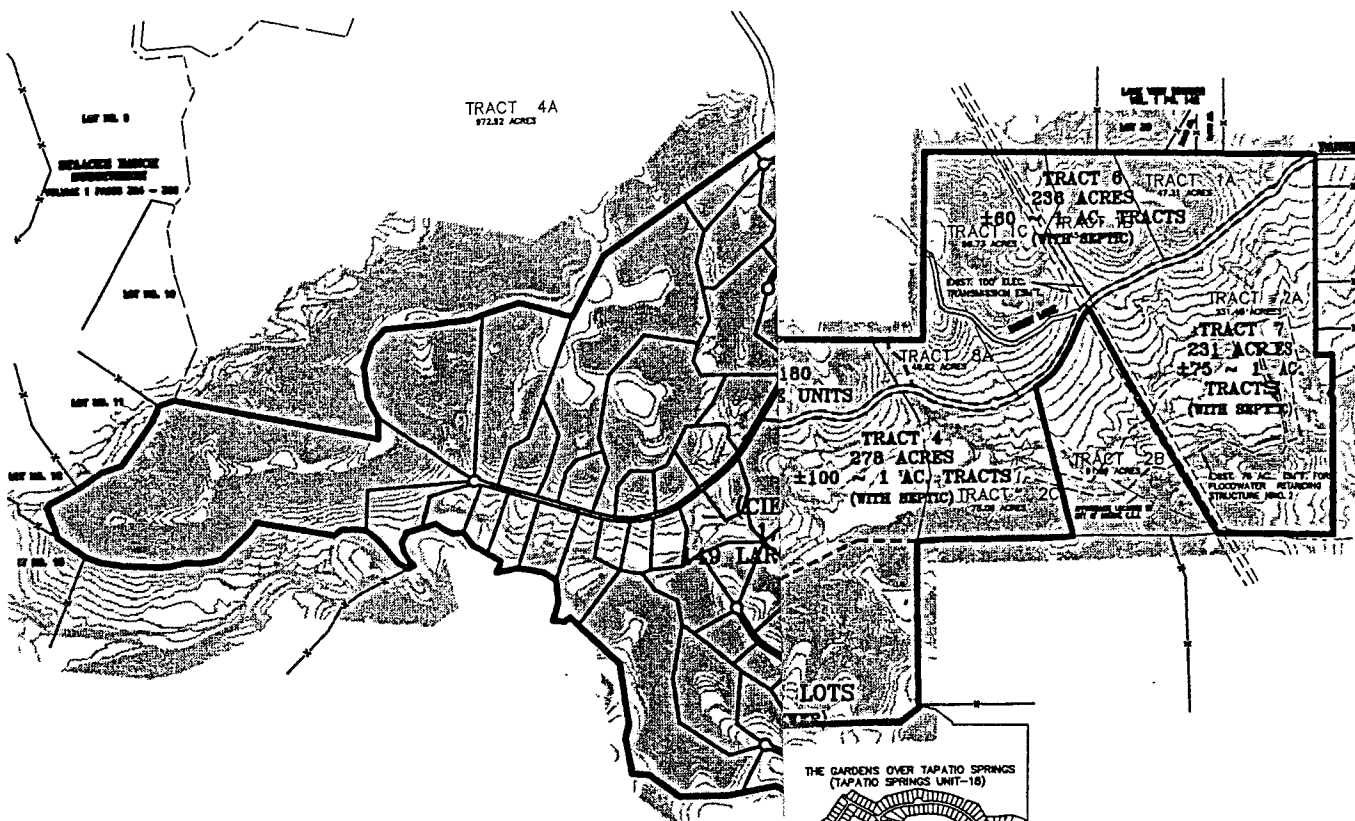
**MATKIN-HOOVER  
ENGINEERING, INC.**

CIVIL ENGINEERS  
LAND PLANNERS  
CONSULTANTS  
1409 S. MAIN  
ROCKFORD, TEXAS 76087

**MASTER DEVELOPMENT PLAN  
OF  
CEILO GRANDE  
FOR  
RUDNICK DEVELOPMENT**

KENDALL COUNTY, TEXAS

JOB NO. 2133.01  
DATE MAY 2005  
DESIGNED KBK  
CHECKED JMM  
SHEET 1 OF 1



LOCATION MAP

COMPRISED OF TRACTS 1A, 1B, 1C, 2A, 2C,  
DEPLAT OF CHAMPEE SPRINGS RANCHES AS  
PAGES 169-186 OF THE PLAT RECORDS  
AS.



149 NEW RESIDENTIAL LOTS  
38,110 L.F. OF NEW ROADS

PRELIMINARY PLAT OF  
LO GRANDE AT CHAMPEE SPRINGS

1875-8 ACRES, MORE OR LESS, TRACT OF LAND, PARTIALLY OUT OF THE S.W. & P.R. CO. SURVEY NO. 873  
TRACT NO. 214, BEALE & FORDWOOD SURVEY NO. 1 ABSTRACT NO. 76, BEALE & FORDWOOD SURVEY NO.  
TRACT NO. 1261, ADAM & DEEDER SURVEY NO. 872 ABSTRACT NO. 1087, SCOTT & BUCHANAN SURVEY NO. 290  
OF NO. 1114, THESE REGISTERS SURVEY NO. 1 ABSTRACT NO. 291, J.A. & C. COVINGTON'S ABSTRACT  
1, DAVIS & HARRIS SURVEY NO. 1133, M.C. WATKINS SURVEY NO. 1 ABSTRACT NO. 917, PETER  
ET AL SURVEY NO. 1570 ABSTRACT NO. 1136, C. RAMMEZ SURVEY NO. 3577 ABSTRACT NO. 916, AND BEING OUT  
OF AS RECORDED WITH THE MAPS OF CHAMPAGNE SPENCER RANCHES IN VOLUME 3, PAGES 106-106 OF THE PLAT  
OF KENDALL COUNTY, TEXAS.

UNPL

**OWNER:**

NEW YORK REALTY LLC  
A NEW YORK LIMITED LIABILITY CORPORATION  
35 NORTHEAST PLAZA, 14TH FLOOR  
NEW YORK, NEW YORK 10022

**MATKIN-HOOVER  
ENGINEERING, INC.**

CIVIL ENGINEERS  
LAND PLANNERS  
CONSULTANTS

REVISION: SEPT. 11, 2008  
 REVISION: SEPT. 1, 2008  
 DATE: JUNE 1, 2008  
 JOB NO. 273301  
 SHEET 1 of 1

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

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

Pre-Filed Testimony of

Darrell W. Nichols

April 27, 2006

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2006 APR 28 AM 9:59  
CHIEF CLERKS OFFICE

1 **Q. Please state your name for the record.**

2  
3 A. My name is Darrell Nichols.  
4  
5

6 **Q. By whom are you employed and in what capacity?**  
7

8 A. I am employed by B & D Environmental, Inc. as one of the Principals, and I am an  
9 Engineer.  
10  
11

12 **Q. What are your duties at B & D Environmental, Inc.?**  
13

14 A. For B & D Environmental, Inc., I provide consultant services to utilities. These  
15 services involve preparing Applications to Obtain or Amend Certificates of  
16 Convenience and Necessity, Rate/Tariff Change Applications, and Sale/Transfer  
17 Merger Applications. In addition, I work with utilities to evaluate facilities to determine  
18 necessary improvements, cost of operations, staffing plans, and anticipated operating  
19 cost.  
20  
21

22 **Q. Please describe your educational background and your past engineering  
23 experience.**  
24

25 A. I hold a Bachelor of Science Degree in Civil Engineering from the University of Texas.  
26 I specialized in Water Resources and took classes in Hydraulic Engineering,  
27 Wastewater Engineering, and Hydrology. From May 1990 until June 1991, I was  
28 employed with the Texas Water Commission. My primary duties at the Commission  
29 were reviewing Certificate of Convenience and Necessity (CCN) applications,  
30 assisting other Engineers with their CCN reviews, and performing cartography. From  
31 June 1992 until May 1993, I was employed as a Hydrologist Tech by the United  
32 States Geological Survey. My primary duties were developing a flood frequency  
33 model and gathering data for a bridge scour study. From May 1993 till February  
34 1997, I was employed by TNRCC in the Utility Rates and Services Section as an  
35 Engineer Assistant III.  
36  
37

38 **Q. Please describe any additional education relative to your employment with the  
39 TCEQ and its predecessors.**  
40

41 A. I have attended the 21st Annual Eastern Utility Rate Seminar sponsored by the  
42 Florida Public Service Commission and Florida State University Center for  
43 Professional Development & Public Service. I have also attended numerous utility  
44 related seminars in Texas.  
45  
46

1 **Q. What were your duties with the Texas Natural Resource Conservation**  
2 **Commission?**

3  
4 A. My duties included reviewing utility applications for CCNs, rate\tariff change  
5 applications, preparing recommendations for the Commission on behalf of the  
6 Executive Director, providing expert testimony and participating as an expert witness  
7 at formal hearings, investigating and resolving customer inquiries, and reviewing  
8 water utility improvement plans and specifications.  
9

10  
11 **Q. How many separate certification cases and rate cases were you assigned**  
12 **during your employment with the TNRCC?**

13  
14 A. I was assigned to approximately 60 separate rate cases and approximately 140  
15 certification cases during my tenure at the TNRCC and its predecessor agency.  
16

17  
18 **Q. Have you testified in public hearings before the Commission?**  
19

20 A. Yes. I have provided testimony for the following utility matters: the CCN Application of  
21 the City of Oak Point, Docket No. 582-05-3630; the CCN Application of West  
22 Houston Airport, Docket No. 30847-C and 30848-C; the rate change application of  
23 North Orange, LLC, Docket No. 582-03-3827; the rate change application of West  
24 Houston Airport, Docket No. 31192-R; the rate change application of Spring Valley  
25 Water CO-OP, Docket No. 30845-G; the rate change application of Vern Norman dba  
26 Somersetshire Estates, Docket No. 30385-G; the CCN application of Kerrville South  
27 Water Co., Inc., Docket No. 30443-C; the CCN application of O. J. Erlund, Jr. dba Hill  
28 Country Utility Corporation, Docket No. 30478-C; the CCN application of Dogwood  
29 Springs Water Supply Corporation, Docket No. 9993-C; the CCN application of  
30 Midnight Enterprises, Inc., Docket No. 31031-C; the appeal of the developer  
31 connection fee to be charged by Hill Country S.A., Ltd. dba Hill Country Water  
32 System, Docket No. 9954-X; the appeal of the developer connection fee of Dessau  
33 Utilities, Inc., Docket No. 30469-X; the appeal of the new connection fee to East  
34 Crawford Water Supply Corporation, Docket No. 30348-X; and the application of  
35 Cindy Day dba Medina Water Services to acquire Bandera Water Company, Docket  
36 No. 31022-S.  
37  
38

### 39 Scope of Work

40

41 **Q. Please explain the scope of your participation in SOAH Docket No. 582-06-0425.**  
42

43 A. My participation regarding Docket No. 582-06-0425 can be summarized as follows:  
44 1. I prepared the CCN Amendment Application with information provided by the  
45 Tapatio Springs, CDS International, Inc. and Matkin-Hoover Engineering.  
46 2. I reviewed the responses to interrogatories filed by all parties in this

proceeding.  
3. I have made recommendation for approval of the proposed CCN.

**Q. Have you included any attachments with your testimony?**

A. Yes, I have included the original application as filed with the TCEQ, which includes maps of the proposed area. I have also included Table 4-14 of the Regional Water Plan (January 2001), Section 4B.2.14 2006 Regional Water Plan, and a letter from Bank of America regarding CDS International, Inc.

**Q. What is the basis for this CCN Amendment Application?**

A. CDS International, Inc. (CDS) owns land that is adjacent and contiguous to the existing CCN area of Tapatio Springs. CDS is seeking to develop this land and in such capacity requested Tapatio Springs to provide the utility services. Pursuant to Tapatio Springs' TCEQ approved Tariff, the applicant and the developer entered into a Non-Standard Service Agreement for Tapatio Springs to provide the utility services. The application is a result of that agreement.

**Q. If you were to prepare the application and attachments to the application today, would your answers remain the same?**

A. Yes, except for the number of connections. That might be reduced based on final approval of the plat and Master Plan.

**Q. Are there any other utilities providing service to the proximate area?**

A. The applicant and its affiliate, Kendall County Utility Company, are the only two entities providing service to the proximate area and are interconnected.

**Q. Did any neighboring utilities protest the application?**

A. Yes. The City of Boerne initially protested the application. The City of Boerne discussed the application with the Developer and the applicant on several occasions in order to get more information. As a result the City withdrew its objection to the application and is not participating in this hearing.

**Q. Has any other utility provider protested this application or proposed to provide service to this area?**

1 A. No.

2  
3  
4 **Q. Does State Law encourage separate stand-alone systems for new**  
5 **developments?**

6  
7 A. Chapter 13.241(d) of the Texas Water Code requires new utilities to demonstrate that  
8 regionalization or consolidation with another retail public utility is not economically  
9 feasible. Before the Developer could construct, own, and operate its own utility and  
10 obtain its own CCN, the TCEQ would require the Developer to request service from  
11 all adjacent utilities and demonstrate why regionalization and consolidation is not  
12 feasible. Tapatio Springs and its affiliate KCUC are the only adjacent utilities.

13  
14  
15 **Q. Please describe the ability of Tapatio Springs to provided continuous and**  
16 **adequate water and sewer utility services to its existing customers?**

17  
18 A. Tapatio Springs operates existing wells that have been adequate to meet the service  
19 demands experienced to date. However, to ensure sufficient water resources for  
20 years to come, Tapatio Springs secured a supplemental source of treated surface  
21 water from the Guadalupe Blanco River Authority (GBRA). The 500 acre-feet of  
22 water per year is intended to meet normal demand while the existing groundwater  
23 supplies will still be required to meet peak demands. The 2006 Regional Water Plan  
24 also recommends that utilities in Kendall County purchase and implement surface  
25 water from the GBRA prior to year 2010. Tapatio Springs has demonstrated its  
26 commitment to providing service to its customers by securing sufficient water  
27 resources for years to come.

28  
29 According to the TCEQ Comprehensive Compliance Inspection Letter dated August  
30 10, 2004, the utility provided compliance documentation that corrective actions were  
31 taken for any alleged water system violations and that no other action or submittal  
32 was necessary.

33  
34 Tapatio Springs operates a TCEQ Permitted wastewater treatment facility that has  
35 adequately met the wastewater demands of its customers. All treated wastewater is  
36 irrigated on a golf course and not discharged. According to the TCEQ Compliance  
37 Inspection Letter dated January 12, 2004, the utility provided compliance  
38 documentation that corrective actions were taken for any alleged wastewater system  
39 violations and that no other action or submittal was necessary.

40  
41  
42 **Q. What is the "Regional Water Plan"?**

43  
44 A. The Regional Water Plan is a direct result of Senate Bill 1 to evaluate the water  
45 needs and strategies to meet those needs for every region in the state. In January of  
46 2001, the South Central Texas Regional Water Planning Group developed and

1 adopted the 2001 Regional Water Plan. The Texas Water Development Board  
2 approved the plan and incorporated it into the 2002 State Water Plan. This plan  
3 identified the water resources in the area, including Kendall County, and projected  
4 water shortages. The State Water Code requires the State Water Plan be updated  
5 every 5 years. Consequently, the South Central Texas Regional Water Planning  
6 Group developed and adopted the 2006 Regional Water Plan. In this plan, the water  
7 resources and needs are evaluated. Recommendations are also made that utilities  
8 implement surface water from the GBRA prior to year 2010 in Kendall County.  
9

10  
11 **Q. Please describe the ability of Tapatio Springs to provide continuous and**  
12 **adequate water and sewer utility services to the proposed area.**  
13

14 A. Tapatio Springs will be utilizing surface water to serve its existing customers as  
15 previously described and has required the Developer to obtain additional surface  
16 water capacity from the Guadalupe Blanco River Authority for the proposed area.  
17 The developer has paid and will continue to pay the costs of acquiring the additional  
18 250 acre-feet of water from the GBRA to serve the base demand within the proposed  
19 area. The developer is also responsible for providing the necessary infrastructure to  
20 service the area including developing wells to be used to meet peak demands.  
21

22  
23 **Q. Who is responsible for designing and constructing the utility infrastructure**  
24 **within the proposed development?**  
25

26 A. Pursuant to the Non-Standard Service Agreement, the developer is required to pay all  
27 costs associated with designing and constructing the infrastructure within the  
28 development including engineering and design, easements or right-of-ways  
29 acquisition, construction, inspection, government or regulatory approvals required to  
30 lawfully provide service, and procurement of water allotments from GBRA. This  
31 infrastructure includes wells, storage facilities, pressure maintenance facilities,  
32 disinfection equipment, distribution system, collection system, and wastewater  
33 treatment facilities. The applicant will not provide utility service until such time that  
34 the developer has properly completed the construction of the infrastructure with final  
35 inspection and testing by the applicant and all regulatory approvals obtained.  
36

37  
38 **Q. Is this type of an agreement standard practice in the utility industry?**  
39

40 A. Yes it is. In fact, an agreement such as this is encouraged by the TCEQ because the  
41 financial burden of constructing the infrastructure is born by the developer and not the  
42 utility.  
43

44  
45 **Q. Has the utility provided any information on its financial ability to meet the**  
46 **requirements of the Non-Standard Service Agreement?**

1  
2 A. Yes. Bank of America provided a letter indicating its long-standing relationship with  
3 CDS and that all accounts are satisfactory. The letter indicated that CDS has  
4 unrestricted funds available to be used to comply with the Non-Standard Service  
5 Agreement.  
6

7  
8 **Q. Could you please describe your prior and current work for Tapatio Springs and**  
9 **KCUC in addition to this CCN matter?**

10  
11 A. I have been assisting Tapatio Springs and KCUC since 2000. I was involved in the  
12 preparation of the Rate/Tariff Change that established the TCEQ approved rates that  
13 are currently in effect. I am also involved in preparing a new Rate/Tariff Change  
14 application for the utilities. I prepared the Tapatio Springs and KCUC Merger  
15 Application which is pending at the TCEQ. In addition, I have also provided  
16 assistance to Tapatio Springs on regulatory issues over the past 6 years.  
17

18  
19 **Q. Within this working relationship, have you been able to determine the**  
20 **managerial and technical ability of Tapatio Springs?**

21  
22 A. Yes.  
23

24  
25 **Q. Please describe the managerial and technical ability of Tapatio Springs to**  
26 **provide continuous and adequate water and sewer utility services to the**  
27 **proposed area?**

28  
29 A. Tapatio Springs is an experienced retail utility and has excellent history with the  
30 TCEQ of providing continuous and adequate water and sewer service to its  
31 customers for more than a decade. This history is well documented in the files  
32 maintained by and at the TCEQ for both the water and sewer systems. Tapatio  
33 Springs employs experienced licensed water and sewer operators to maintain the  
34 facilities.  
35

36 Tapatio Springs has demonstrated prudent planning and commitment to its  
37 customers by securing surface water capacity from the GBRA. This will ensure  
38 sufficient water resources for years to come and follows the recommendations set  
39 forth in the 2006 Regional Water Plan. Tapatio Springs has also secured an  
40 additional 250 acre-feet of surface water from the GBRA to serve the proposed  
41 area, which has and will continue to be paid by the Developer.  
42

43 The water facilities of Tapatio Springs and its affiliate KCUC are interconnected and  
44 operated as one water system. A Merger Application of these two entities is  
45 pending at the TCEQ. A SCADA system is utilized to monitor the water system and  
46 identify problems before it affects service to its customers. The water system within

1 the proposed area will also be interconnected to Tapatio Springs' existing facilities.  
2 Upon plat approval and approval of the Master Development Plan, a registered  
3 professional engineer will design the water facilities to be located within the  
4 proposed area. The Developer is responsible for the cost of designing these  
5 facilities pursuant to the Non-Standard Service Agreement.

6  
7 The initial phases of the development will utilize individual on-site facilities for waste  
8 disposal. When a development phase requires centralized sewer, the Developer  
9 will be responsible for the cost of permitting, designing, and constructing the  
10 necessary wastewater collection and treatment facilities.

11  
12  
13 **Q. Please describe the financial ability of Tapatio Springs to provide continuous**  
14 **and adequate utility services to the proposed area.**

15  
16 A. Tapatio Springs is not required to finance the improvements needed to provide  
17 service to the proposed area. All the improvements required to provide service to the  
18 proposed area are to be financed, designed, and constructed by the Developer  
19 pursuant to the Non-Standard Service Agreement previously described.  
20 Furthermore, the Developer is also obligated to pay the raw water component of the  
21 monthly charges paid by Tapatio Springs to the GBRA until such time as there are  
22 at least 500 active connections (homes occupied by the end-use) within the  
23 proposed area. Because the Developer is financially responsible for designing and  
24 installing the infrastructure, the Applicant will not have any debt related to that  
25 infrastructure within the proposed area that will need to be paid with revenues. The  
26 largest initial operational expense will be the reservation payment to the GBRA for  
27 the additional 250 acre-feet per year that will be paid by the Developer.

28  
29  
30 **Q. In your opinion, do you believe that Tapatio Springs has demonstrated the**  
31 **necessary financial, managerial, and technical capability to provide continuous**  
32 **and adequate service as provided in Texas Water Code 13.241(a)?**

33  
34 A. Yes.

35  
36  
37 **Q. Please describe the effects on the land to be included in the certificated area**  
38 **and the environmental integrity by the granting of the amendment?**

39  
40 A. The owner of the land, the Developer, would be receiving utility service from the  
41 Applicant, its provider of choice, to develop the land as it intends. CDS will not be  
42 forced to develop at low densities and large lots that enable homeowners to drill an  
43 individual well on each lot. The proliferation of individual wells increases the risk of  
44 contamination and depletion of the groundwater resources with little regulation.  
45 Approving the CCN Amendment will provided greater control and management of the  
46 groundwater resources in the area with greater regulation and monitoring. Not

1 approving the CCN Amendment will have a negative effect on the groundwater  
2 resources. Utilizing surface water from the GBRA follows the recommendations set  
3 forth in the 2006 Regional Water Plan and protects the groundwater resources.

4  
5 A properly designed and constructed centralized sanitary sewer system is superior to  
6 on-site facilities. However, on-site facilities are an effective and approved method for  
7 disposition of wastewater. In future more dense phases of the development, a  
8 wastewater collection and treatment system will be utilized.

9  
10  
11 **Q. Will granting the amendment improve service or lower cost to consumers in the**  
12 **area?**

13  
14 A. There is currently no service in the proposed service area so having a centralized  
15 utility will result in improvement in service. Tapatio Springs has no outstanding  
16 deficiencies in its most recent Compliance Inspection by the TCEQ. There are no  
17 current customers in the proposed area, but any new customers will pay the same  
18 TCEQ approved rates as all other customers of Tapatio Springs.

19  
20  
21 **Q. How do the existing customers of Tapatio Springs benefit from the CCN**  
22 **Amendment?**

23  
24 A. Tapatio Springs will be constructing a transmission main to bring the surface water  
25 from the GBRA near Cascade Caverns to the utility's water plant on John's Road.  
26 As part of the Non-Standard Service Agreement, the Developer will contribute up to  
27 \$1,500,000 towards the cost of that project. If the CCN Amendment is not granted,  
28 the existing customers will ultimately be responsible for the entire cost of constructing  
29 that surface water transmission main through their monthly rates.

30  
31  
32 **Q. What is your recommendation for granting the amendments?**

33  
34 A. The application should be approved and the amendments to CCN Nos. 12122 and  
35 20698 be granted.

36  
37  
38 **Q. Does this conclude your testimony?**

39  
40 A. Yes, it does.

## **EXHIBITS**

- Exhibit 1: Application
- Exhibit 2: Table 4-14 Regional Water Plan, January 2001
- Exhibit 3: Section 4B.b.14 of the 2006 Regional Water Plan
- Exhibit 4: Letter from Bank of America regarding CDS International, Inc.

**AFFIDAVIT OF DARRELL NICHOLS**

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

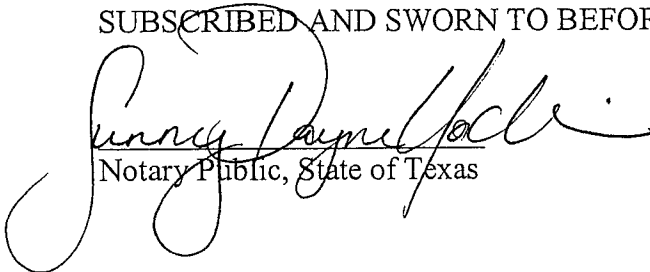
BEFORE ME, the undersigned authority, Darrell Nichols, being duly sworn, deposes and states:

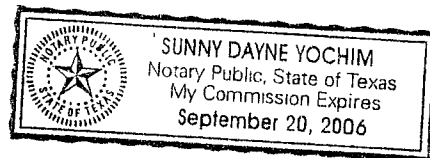
“My name is Darrell Nichols. I am employed as one of the principals for B& D Environmental, Inc., having it principal place of business in Austin, Texas. I am over the age of twenty-one and am competent to make the following affidavit:

The foregoing testimony offered by me is true and correct and the opinions stated therein are, in my judgment and based upon my professional experience, true and correct.”

  
\_\_\_\_\_  
Darrell Nichols

SUBSCRIBED AND SWORN TO BEFORE ME this 24<sup>th</sup> day of April 2006.

  
\_\_\_\_\_  
Notary Public, State of Texas





**AN APPLICATION  
TO AMEND A WATER AND SEWER  
CERTIFICATE OF CONVENIENCE AND  
NECESSITY FOR TAPATIO SPRINGS  
SERVICES COMPANY, INC.**

**Kendall County, Texas**

**Prepared for:**

Tapatio Springs Services Company, Inc.

**Prepared by:**

B & D Environmental, Inc.  
Austin, Texas

April 20, 2005

**EXHIBIT** 1



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



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

\*RN #101403129

\*CN #600646038

\*If known (See instructions)

RN #101223048

PURPOSE OF THIS APPLICATION

OBTAIN ☐ New Water CCN ☐ New Sewer CCN

AMEND ☐ Water CCN # 12122 ☐ Sewer CCN # 20698

1. APPLICANT INFORMATION

Utility Name: Tapatio Springs Services Company, Inc.  
Utility Address (city/state/zip) P. O. Box 1335  
Boerne, Texas 78006  
Utility Phone and Fax Number (830) 537-5755 Phone (830) 537-5756 Fax

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

Name: Darrell Nichols Title: Utility Consultant  
Address: P. O. Box 90544 Telephone (512) 264-9124  
City Austin St TX Zip 78709 Fax (512) 891-0740  
County(ies) in which service is proposed Kendall County

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

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

- Attach additional sheet(s) if necessary -

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

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

- C. If the applicant is a For-Profit Corporation:
- Please provide a copy of the corporation's "Certification of Account Status" from the Texas State Comptroller of Public Accounts. (See Note below). **See Attachment A**
  - Please provide the corporation's charter number as recorded with the Office of the Texas Secretary of State. 0062108500.
- D. If the applicant is a Water Code Chapter 67 water supply or sewer service corporation or other non-profit corporation:
- Please provide a copy of the Articles of Incorporation and By-Laws.
  - Please provide the corporation's charter number as recorded with the Office of the Texas Secretary of State

2. **LOCATION INFORMATION**

- A. Are there people already living in the proposed area?  
YES \_\_\_\_\_ NO X  
If YES, are any currently receiving utility service?  
YES \_\_\_\_\_ NO X, if YES, from Whom \_\_\_\_\_.
- B. Have you received any requests for service in the requested service area?  
YES X NO \_\_\_\_\_ **See Attachment B**  
If yes, please indicate the number of verbal and number of written requests and provide a clear explanation of the need for service in the requested area.  
WRITTEN X VERBAL \_\_\_\_\_ **See Attachment B**  
On a separate page, list the name, address, and phone number of persons requesting service. Include any letters of intent, service inquiries, and/or any other documentation demonstrating a need for service in the proposed area. Requests for service must be identified on the large scale map. See 2.E.i.a below.  
If no, please justify the need for service in the proposed area. **See Attachment B**
- C. Is any portion of the proposed service area inside an incorporated city?  
YES \_\_\_\_\_ NO X  
If YES, within the city limits of: \_\_\_\_\_  
Provide a copy of any franchise, permit, or consent granted by the city. If not available, please explain: \_\_\_\_\_  
\_\_\_\_\_
- D. Is any portion of the proposed service area inside another utility's CCN area?  
YES \_\_\_\_\_ NO X  
If YES, has the current CCN holder agreed to decertify the proposed area.  
YES \_\_\_\_\_ NO \_\_\_\_\_  
If NO, are you seeking dual or single certification of the area? Explain why decertification of the area is in the public interest.
- E. Attach the following maps with each copy of the application: *(All maps should include applicant's name, address, telephone number, and date of drawing or revision. All maps should be folded to 8½ x 11 inches).*  
**See Attachment C**
- Subdivision plat or engineering plans or other large scale map showing the following:
    - The exact proposed service area boundary showing locations of requests for service and locations of existing connections (if applicable).

★ NOTE: Applicant may send their facility line map showing current connections (if available), OR estimate the number of connections along each side of the street on the large scale map.

- r. The existing service area (if applicable).
  - C. Metes and bounds (if available).
  - D. Proposed and existing service area boundaries should be plotted on the map in relation to verifiable natural and man-made landmarks such as roads, creeks, rivers, railroads, etc.
  - E. *Service area boundaries should be shown with such exactness that they can be located on the ground.*
- ★ NOTE: *Applicant may use a USGS 7.5"-minute series map if no other large scale map is available.*

- ii. Small scale location map delineating the proposed service area. The proposed service area boundary should be delineated on a copy of the TCEQ official CCN map. This map will assist TCEQ staff in locating the proposed service area in relation to neighboring utility service areas. *A copy of the TCEQ official CCN map may be obtained by contacting the Utilities & Districts Section at 512/239-4691 or by mailing a written request to the following address:*

**See Attachment C**  
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
 Water Supply Division  
 Utilities & Districts Section  
 MC-153  
 P.O. Box 13087  
 Austin, TX 78711-3087

★ NOTE: If the proposed service areas shown on the large scale map and small scale map do not delineate the same area, the more detailed large scale map will be used to delineate the official CCN service area.

- iii. **Hard copy maps should include the following items:**
  - A. Map scale should be prominently displayed.
  - B. Color coding should be used to differentiate the applicants existing service areas from the proposed service area.
  - C. Attach a written description of the proposed service area.
  - D. Proposed service area should be the same on all maps.
  - E. Include map information in digital format (if available), *see Section 3, GIS Information.*

- iv. Each utility shall make available to the public at each of its business offices and designated sales offices within Texas the map of the proposed service area currently on file with the Commission. The applicant employees shall lend assistance to persons requesting to see a map of the proposed area upon request.

### 3. GIS INFORMATION

We are currently developing a state wide Geographic Information Systems (GIS) coverage of all CCN service areas. The mylar maps are being retired. In order to assist us in this move, we are requesting that a digital file of the proposed CCN service area boundary be submitted with the 3 hard copy maps. **This is not a requirement.** It is understood that not all utilities employ the services of an engineering company or use mapping software to produce a map of the proposed CCN service area boundary. However, by submitting the information digitally, the evaluation of your CCN will be faster and more accurate. Also, by receiving the information in digital form it is easier for us to update and maintain the CCN GIS coverage.

- A. **Digital Map Requirements** In order that your digital data can be properly used, the following information is necessary:
  - i. Submit digital data of the proposed CCN service area on a 3.25" diskette or CD. Only one

- ii. The digital data should include all items represented in the hard copy maps (see Section 2, items E.i and E.ii).
- iii. Please identify data file format, projection information, map units and base map used.

**Acceptable Data File Formats:**

ArcView shape file (preferred)

- 1. AutoCAD dwg file
- 2. Arc/Info E00 file
- 3. DXF file
- 4. Microstation dgn files

★ NOTE: If you use a format that is not listed, contact the Cartographer at the number listed below to see if we can use the data.

- a. **Projection, Datum, and Units Information** The data should be submitted in the Texas State Mapping System (TSMS) Projection. However, if it cannot be submitted in TSMS, list the Projection (e.g. State Plane Central Zone, NAD27) or coordinate system being used and Units (e.g. meters, feet, etc.)
- b. **Base Map Information**  
List the base map used (e.g. TxDOT county digital road maps, USGS maps, etc.) Base map information should be included only if it has been produced in-house and is not easily available at most data repositories.  
★ NOTE: TCEQ uses TxDOT county (urban) digital road maps as the official CCN base map. Copies of these files can be obtained from Texas Natural Resources Information Systems (TNRIS) at (512) 463-8337 or downloaded from the TNRIS website at <http://www.tnris.state.tx.us/DigitalData/TxDOT/txdot.htm>.
- c. **Read-me text file**  
Data file format, base map used, projection and units information, and other necessary information can be specified in a read-me text file.

**B. Important Information** For those applicants that submit digital data:

- i. Please make sure the proposed service area boundary shown on the hard copy map is identical to the digital data. If the proposed service area shown on the digital data does not delineate the same area shown on the hard copy map, the hard copy map will be used to delineate the official CCN service area.
- ii. Modifications may be made to submitted digital data in order to match the proposed service area boundary to features represented on the TxDOT base map, as opposed to the same features used in the applicants base map.
- iii. If an applicant proposes to amend a portion of their existing CCN service area, the existing service area shown on the digital data must match the official CCN service area that was previously certificated to the utility. If it does not, then only the proposed portion of the digital data will be used.

If you have any questions about sending the data or our GIS CCN coverage, please contact the Cartographer of the Utilities & Districts Section, Water Supply Division at (512) 239-4691.

**4. NEW SYSTEM INFORMATION OR UTILITIES REQUESTING A CCN FOR THE FIRST TIME**

- A. Please provide the following information:
  - i. A list of all public drinking water supply systems or sewer systems within a 2 mile radius of the proposed system.
  - ii. Copies of written requests seeking to obtain service from each of the public drinking water supply systems or sewer systems listed in #4.a.1 above or documentation that it is not economically feasible to obtain service from them.
  - iii. Copies of written responses from each system or evidence that they did not reply.

- B. Were you requests for service denied?
- If yes, continue.
  - If no, please provide a detailed analysis which justifies your reasons for not accepting service. A separate analysis must be prepared and submitted for each system that granted your request for service.
- C. Please summarize how the proposed utility system will be constructed and describe each projected construction phase, if any: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- D. Date of plat approval, if required: \_\_\_\_\_  
 Approved by: \_\_\_\_\_
- E. Date Plans & Specifications submitted for approval \_\_\_\_\_ Log No. \_\_\_\_\_  
 Attach copy of approval letter if available.
- F. Date construction is scheduled to commence \_\_\_\_\_
- G. Date service is scheduled to commence \_\_\_\_\_

## 5. EXISTING SYSTEM INFORMATION

- A. Please provide the following information for each water and/or sewer system:

i. Water system's TCEQ Public Water System identification number:

1	3	0	0	0	2	5	;								;								
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							;								;								
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ii. Sewer system's TCEQ Discharge Permit number: (for each system)

W	Q	1	2	4	0	4	-	0	0	1	;	W	Q							-			
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iii. Date of last inspection May 30, 2003 (W), September 16, 2003 (WW)

iv. Attach a copy of the most recent inspection report letter. **See Attachment D**

v. For each system deficiency listed in the inspection report letter, attach a brief explanation listing the actions taken or being taken by the utility to correct the listed deficiencies, including the proposed completion dates. **See Attachment E**

- B. Using the current number of customers, is any facility component in systems named in #5A above operating at 85% or greater of minimum standard capacity?

Yes \_\_\_\_\_ No X

Attach an explanation listing the actions to be taken to make system improvements including proposed completion dates (See 291.93(3)(A) of TCEQ Rules).

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

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

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

- i. No \_\_\_\_\_ (skip the rest of this question and go to #6)
- ii. Water  
 Yes **X**  
 Purchased on a (X) regular - ( ) seasonal - (X) emergency basis?

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

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

Source	% of total treatment

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

## 6. FINANCIAL INFORMATION

- A. For new systems and for applicants with existing CCNs who are constructing a new stand alone system:
- i. the applicant must provide an analysis of all necessary costs for constructing, operating, and maintaining the system for which the CCN is requested for at least the first five years. In addition, if service has been offered by an existing water service provider as stated in #4.A., but the applicant has determined that the cost of service as finally offered renders the project not economically feasible, the applicant must provide a comparison analysis of all necessary costs for acquiring and continuing to receive service from the existing system for the same period.
  - ii. Attach projected profit and loss statements, cash flow worksheets, and balance sheets (projected five year financial plan worksheet is attached) for each of the first five years of operation. Income from rates should correlate to the growth projections in #6.A above.
  - iii. Attach a proposed rate schedule or tariff. Describe the procedure for determining the rates and fees and indicate date of last change, if applicable. Attach copies of any cost of service studies or rate analysis worksheets.
- B. For existing systems: **See Attachment G**
- i. Attach a profit and loss statement and current balance sheet for existing businesses (end of last fiscal year is acceptable). Describe sources and terms for borrowed capital such as loans, bonds, or notes (profit and loss and balance sheet worksheets are attached, if needed).
  - ii. Attach a proposed rate schedule or tariff.
- ★ NOTE: An existing system may be required to provide the information in 6.A.i. above during the technical review phase if necessary for staff to completely evaluate the application.
- C. Identify any funds you are required to accumulate and restrict by lenders or capital providers.  
**No funds are restricted.**
- D. In lieu of the information in #6.A. thru #6.C., you may provide information concerning loan approvals within the last three (3) years from lending institutions or agencies including the most recent financial audit of the applicant.

## 7. NOTICE REQUIREMENTS

- A. All proposed notice forms must be completed and submitted with the application. However, do not mail or publish them until you receive written approval from the Commission to do so.
- B. The Commission cannot grant a CCN until proper notice of the application has been given. Commission rules do not allow a waiver of these notice requirements.
- C. It is the applicant's responsibility to ensure that proper notice is given to all entities that are required to receive notice.
- D. Recommended notice forms for publication, neighboring cities and systems, and customers are included with this application to use in preparing your proposed notices. (These notice forms are also available in Spanish upon request.)
- E. After reviewing and, if necessary, modifying the proposed notice, the Commission will send the notice to the applicant after the application is accepted for filing along with instructions for publication and/or mailing. Please review the notice carefully and note any additional neighboring utilities which may be included in the acceptance letter.
- F. Notice For Publication:  
The applicant shall publish the notice in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the notice is received from the Commission. Proof

of publication in the form of a publisher's affidavit shall be submitted to the Commission within 30 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

G. Notice To Neighboring Utilities:

- i. List all neighboring retail public utilities and cities providing the same utility service within the following vicinities of the applicant's proposed certificate area; and
- ii. any city whose extra-territorial jurisdiction (ETJ) overlaps the proposed service area.
- iii. For applications for the issuance of a **NEW** certificate of public convenience and necessity, the applicant must mail the notice with a copy of the location map (CCN map) to all cities and neighboring retail public utilities providing the same utility service within **five (5) miles** of the requested service area, and any city with an ETJ which overlaps the proposed service area.
- iv. For applications for the **AMENDMENT** of certificate of public convenience and necessity, the applicant must mail the notice with a copy of the location map (CCN map) to all cities and neighboring retail public utilities providing the same utility service within **two (2) miles** of the requested service area, and any city with an extra-territorial jurisdiction which overlaps the proposed service area.

H. Notice to Customers

Investor Owned Utilities (IOUs) that are currently providing service without a certificate must provide individual mailed notice to all current customers. The notice must contain the current rates, the date those rates were instituted, and any other information required in the application.

**No current customers in the proposed area**

- I. The Commission may require the applicant to deliver notice to other affected persons or agencies.

**Do not publish or send copies of the proposed notices to anyone at the time you submit the application to the Commission. Wait until you receive written authorization to do so. This will occur after the Commission has reviewed the notices for completeness, and your application has been accepted for filing.**