

at the Point of Delivery. GBRA shall give Customer notice of the date and time when any such calibration is to be made and, if a representative of Customer is not present at the time set, calibration and adjustment may proceed in the absence of any representative of Customer.

(d) If upon any test of the water meter(s), the percentage of inaccuracy of such metering equipment is found to be in excess of five percent (5%), registration thereof shall be corrected for a period extending back to the time when such inaccuracy began, if such time is ascertainable. If such time is not ascertainable, then registration thereof shall be corrected for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than period of six (6) months. If any meter(s) that record treated water taken by Customer at the Point of Delivery are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered through the period such meters(s) are out of service or out of repair shall be estimated and agreed upon by GBRA and Customer upon the basis of the best data available, and, upon written request and with reasonable advance notice, GBRA shall install new meters or repair existing meters and such cost shall be included as a Project cost. If GBRA and Customer fail to agree on the amount of water delivered during such period, the amount of water delivered may be estimated by:

- (1) correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or
- (2) estimating the quantity of delivery by deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

#### **Section 4.13 Title to Water.**

Title to and responsibility for all water supplied hereunder shall be in GBRA from the Point of Diversion to the Point of Delivery, at which point title to and responsibility for such water shall pass to Customer.

**Section 4.14. Other Sources.** Nothing in this Agreement is intended by the Parties to limit Customer's options to obtain water from other sources or to limit Customer's use of water from such other sources, nor shall this Agreement be deemed to have the effect of limiting Customer's options to obtain or use water from other sources.

## ARTICLE V

### PERMITTING AND OTHER REGULATORY REQUIREMENTS

#### **Section 5.1 Applicable Laws and Regulations.**

This Agreement is subject to all applicable federal, state, and local laws and any applicable ordinances, rules, orders, and regulations of any local, state, or federal governmental authority having jurisdiction. This Agreement is specifically subject to all applicable sections of the Texas Water Code and the rules of the TNRCC, or any successor agency.

#### **Section 5.2 Cooperation.**

Customer agrees to cooperate with GBRA in pursuing all permits and approvals that GBRA determines to be necessary or desirable for the Project, to complete and file all required reports, and to comply with all applicable laws, rules and regulations. Without limiting the generality of and in addition to the foregoing, Customer expressly agrees to support the granting, in whole, of that certain application filed by GBRA with the TNRCC on August 29, 1997, for various amendments to Certificate of Adjudication No. 18-2074C, as such application may be amended by GBRA ("GBRA's Application to Amend the Canyon Certificate").

#### **Section 5.3 Agreement Conditioned upon Permitting.**

(a) GBRA's obligations under this Agreement are expressly conditioned upon GBRA obtaining the necessary permits, amendments to permits, licenses and other governmental authorizations to allow GBRA to construct and operate the Initial Project and supply treated water to Customer for use within Customer's Service Area as provided herein.

(b) Without limiting the generality of the condition set forth in subsection (a), above, and in addition to that condition, GBRA's obligations under this Agreement are expressly conditioned upon:

- (1) the granting, in whole, of GBRA's Application to Amend the Canyon Certificate;
- (2) confirmation by the TNRCC in its order granting the amendment that neither the inflows authorized to be stored in Canyon Reservoir nor the total amount of water authorized to be used from Canyon Reservoir will be reduced in any way during any period of time, solely because water from Canyon Reservoir is being supplied from the Project for use in Bexar County; and
- (3) confirmation by the TNRCC in its order granting the amendment that the terms, conditions and guidelines for allocation during drought set forth in

(c) If the TNRCC does not enter an order granting, in whole, GBRA's Application to Amend the Canyon Certificate and containing the confirmation provisions required pursuant to subsection (b), above, before January 1, 2002, or if it enters such an order before January 1, 2002 but the order does not become final and not appealable before that date, then GBRA and Customer each shall have the right, on that date or at any time thereafter, but only for so long as no such final and not appealable order of the TNRCC exists, to terminate this Agreement by giving written notice of termination to the other party.

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

## ARTICLE VI

### CHARGES FOR WATER

#### Section 6.1 Charges.

(a) The amount to be paid by Customer to GBRA each month under this Agreement shall be the sum of the following four components:

- (1) Customer's Debt Service Component;
- (2) Customer's Operation and Maintenance Component;
- (3) Customer's Miscellaneous Bond Requirements Component; and
- (4) Customer's Raw Water Component.

(b) Customer's Required Monthly Treated Water Purchase for each month during any calendar year shall be 1/12th of the Annual Commitment for that year. Customer agrees to pay GBRA each month for Customer's Required Monthly Treated Water Purchase, in accordance with paragraphs (1) and (3) of subsection (a) of this Section, whether or not such amount, or any of it, is taken by Customer.

(c) Customer's Required Monthly Raw Water Purchase for each month during any calendar year shall be 1/12th of the Raw Water Reservation. Customer agrees to pay GBRA each month for Customer's Required Monthly Raw Water Purchase, in accordance with paragraph (4) of subsection (a) of this Section, whether or not such amount, or any of it, is taken by Customer.

(d) GBRA shall have the right to use all funds received by GBRA from Customer under this Agreement for any purpose or purposes desired by GBRA in GBRA's discretion.

(e) All funds received by GBRA from Participant's Debt Service Component which constitute payment of the debt service coverage factor as a component of the Annual Debt Service Requirement shall be deposited by GBRA into a separate account, or shall be accounted for separately by GBRA in support of its "Water Resources Division" (of which the Project is or will be a part) for any of the following purposes: (1) paying the cost of improvements, enlargements, extensions, additions, replacements, or other capital expenditures related to the Water Resource Division, (2) paying the costs of unexpected or extraordinary repairs or replacements in connection with the Water Resource Division, (3) paying any bonds, loans or other obligations of the Water Resource Division, or (4) any other lawful purpose related to the cost of operations of the Water Resource Division.

**Section 6.2 Customer's Debt Service Component.**

(a) Subject to the provisions of subsection (b), below, Customer's Debt Service Component for any month shall equal one-twelfth (1/12) of the product of the Annual Debt Service Requirement for that year multiplied by Customer's Debt Service Percentage for that month. For the purposes of determining Customer's Debt Service Percentage, the percentage will be the Customer's Daily Commitment as set forth in this Agreement as the numerator and the Plant Initial Daily Capacity as the denominator.

(b) If a debt service reserve fund is established by GBRA in the bond resolution to secure payment of debt service on the Bonds, the money on deposit in such debt service reserve fund will be used to pay the final debt service requirements on the Bonds when the remaining total outstanding debt service requirements on the Bonds equals the amount of money on deposit in such debt service reserve fund.

**Section 6.3 Customer's Operation and Maintenance Component.**

Customer's Operation and Maintenance Component for any month shall equal one-twelfth (1/12) of the product of the Annual Operation and Maintenance Requirement for that year multiplied by Customer's Operation and Maintenance Percentage for that month.

**Section 6.4 Customer's Miscellaneous Bond Requirements Component.**

Customer's Miscellaneous Bond Requirements Component for any month shall equal one-twelfth (1/12) of the product of the Annual Miscellaneous Bond Requirements for that year multiplied by Customer's Debt Service Percentage for that month. For the purposes of determining Customer's Debt Service Percentage, the percentage will be the Customer's Daily Commitment as set forth in this Agreement as the numerator and the Plant Initial Daily Capacity as the denominator.

**Section 6.5 Customer's Raw Water Component.**

(a) Customer's Required Monthly Raw Water Purchase for each month during any calendar year shall be 1/12th of the Raw Water Reservation. Customer agrees to pay GBRA each month for Customer's Required Monthly Raw Water Purchase, in accordance with the following provisions of this Section 6.5, whether or not such amount, or any of it, is taken by Customer.

(b) Customer's Raw Water Component for each month beginning the earlier of January 2002 or the month immediately following the month in which an order of the TNRCC granting, in

whole, GBRA's Application to Amend the Canyon Certificate becomes final and not appealable, through the Termination Date, shall equal the product of Customer's Required Monthly Raw Water Purchase for each month times the District-Wide Raw Water Rate in effect that month; provided, however, that if Customer's payments under this subsection (c) extend for more than 36 months before GBRA is first able to deliver treated water to the Point of Delivery, then Customer's Raw Water Component beginning the 37th month through the month immediately preceding the month in which GBRA is first able to deliver treated water to the Point of Delivery shall equal one-half of the product of Customer's Required Monthly Raw Water Purchase each month times the District-Wide Raw Water Rate in effect that month.

(c) The District-Wide Raw Water Rate may be changed by the GBRA Board of Directors at any time and from time to time. GBRA agrees to provide Customer with notice 60 days in advance of such changes, provided, however, GBRA's failure to provide Customer with such notice shall not in any manner effect Customer's obligation to pay such changed District-Wide Raw Water Rate in accordance with the terms of this Agreement.

#### **Section 6.6 Payments by Customer Unconditional.**

GBRA and Customer recognize that the Bonds will be payable from and secured by a pledge of the sums of money to be received by GBRA from Customer under this Agreement and from Other Customers under similar contracts. In order to make the Bonds marketable at the lowest available interest rate, it is to the mutual advantage of GBRA and Customer that Customer's obligation to make the payments required hereunder be, and the same is hereby, made unconditional. All sums payable hereunder to GBRA shall, so long as any part of the Bonds are outstanding and unpaid, be paid by Customer without set-off, counterclaim, abatement, suspension or diminution except as otherwise expressly provided herein; and so long as any part of the Bonds are outstanding and unpaid, Customer shall not have any right to terminate this Agreement nor be entitled to the abatement of any payment or any reduction thereof nor shall the obligations hereunder of Customer be otherwise affected for any reason, it being the intention of the parties that so long as any portion of the Bonds are outstanding and unpaid, all sums required to be paid by Customer to GBRA shall continue to be payable in all events and the obligations of Customer hereunder shall continue unaffected, unless the requirement to pay the same shall be reduced or terminated pursuant to an express provision of this Agreement or pursuant to express written notice of GBRA.

#### **Section 6.7 Source of Payments from Customer.**

(a) All payments required to be made by Customer to GBRA under this Agreement shall be payable from any and all sources available to Customer, including without limitation, the income of Customer's System or debt issued by the Customer secured by the pledge of only the income of Customer's System.

(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:

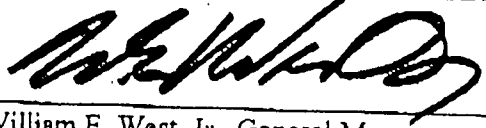
Jay Parker  
Kendall County Utility Company, Inc.  
Tapatio Springs Service Company, Inc.  
P.O. Box 550  
Boerne, Texas 78006

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: \_\_\_\_\_

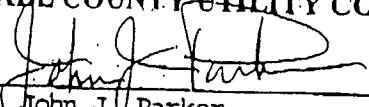
  
William E. West, Jr., General Manager

ATTEST:

  
\_\_\_\_\_

KENDALL COUNTY UTILITY COMPANY

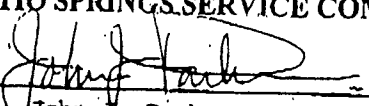
By: \_\_\_\_\_

  
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 26<sup>th</sup> day of March 2002.



Christy S. Dietert  
Notary Public  
The State of Texas

(Seal)

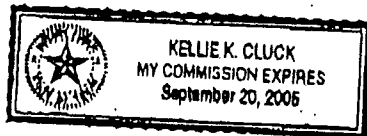
THE STATE OF TEXAS

COUNTY OF KENDALL

§  
§  
§

BEFORE ME, the undersigned, a Notary Public in and for said State, on this day personally appeared John J. Parker, 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.



Kellie Cluck  
Notary Public  
The State of Texas

(Seal)

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER** Approving the Application of the City of Bulverde for a CCN in Comal County; TCEQ Docket No. 2001-0951-UCR; SOAH Docket No. 582-01-3633

Denying the Application of Bexar Metropolitan Water District to Amend its CCN No. 10675 in Comal County; TNRCC Docket No. 2001-0697-UCR; SOAH Docket No. 582-02-0432

On February 5, 2003, the Texas Commission on Environmental Quality (Commission) considered an application of the City of Bulverde to obtain a certificate of convenience and necessity in Comal County, Texas, for authorization to provide water utility service and an application by Bexar Metropolitan Water District to amend its Certificate of Convenience and Necessity No. 10675 in Comal County to provide water utility service. The applications were consolidated for hearing. The applications were presented to the Commission with a Proposal for Decision by James W. Norman, an Administrative Law Judge with the State Office of Administrative Hearings, who conducted a contested case hearing concerning the applications.

## *Explanation of Changes to ALJ's Proposed Order*

After considering the Administrative Law Judge's Proposal for Decision and the evidence and arguments presented, the Texas Commission on Environmental Quality decided not to accept the recommendation of the ALJ that the BexarMet application should be approved in part and the Bulverde application should be denied. The Commission explained that the ALJ's initial,

2006/6/03

3. Additionally, that same notice was published in the BULVERDE COMMUNITY NEWS, a newspaper regularly published and generally circulated in Comal County, on October 19, 2000.
4. After requests for hearing were filed, the Chief Clerk referred Bulverde's application to the State Office of Administrative Hearings (SOAH) on July 12, 2001, for a hearing.
5. Administrative Law Judge (ALJ) James W. Norman held a preliminary hearing on the application on September 10, 2001. Notice of that preliminary hearing was mailed, on August 16, 2001, to all parties who had requested a hearing on the application.
6. At or soon after the preliminary hearing, the following were admitted as parties in the Bulverde case:
  - Bulverde (represented by attorney Mayo J. Galindo, subsequently also represented by attorneys Bruce Wasinger and Emily Rogers);
  - Executive Director (represented by attorney Fread Houston, subsequently represented by attorneys Todd Galiga and John Deering);
  - Bexar Metropolitan Water District (BexarMet) (represented by attorney Mark H. Zeppa);
  - The Public Interest Counsel of the Commission (did not participate);
  - Comal Water Company (Comal) (represented by Kathleen B. Cileske, subsequently represented by Mr. Zeppa);
  - Water Services, Inc. (WSI) (represented by David L. Wallace, subsequently represented by Mr. Zeppa);

13. Guadalupe Blanco River Authority (GBRA) (represented by Bruce Wasinger and Emily Rogers) was admitted as an additional party at the December 4, 2001, preliminary conference.
14. The two applications were consolidated for hearing at the December 4, 2001, preliminary conference.
15. On December 11, 2001, BSR Water Company requested party status. In an order dated December 20, 2001, the request was denied.
16. Comal initially opposed both applications, but withdrew its opposition to BexarMet after reaching a settlement before the hearing. It continued to oppose Bulverde's application.
17. Canyon Lake WSC withdrew its opposition to both applications during the hearing on the merits after reaching settlement agreements.
18. The hearing on the merits began on June 11, 2002, and concluded on June 13, 2002. The parties filed written closing arguments by August 9, 2002, and replies by September 11, 2002.
19. Both Bulverde and BexarMet requested that the record be reopened to receive additional documentation. The record was reopened on October 16, 2002, and on October 18, 2002, for the receipt of additional documents and arguments. The record closed on October 18, 2002.

#### BACKGROUND FACTS

##### ● Bulverde Application



27. The Operating Agreement obligates GBRA to design, construct, finance, operate, and maintain the water distribution system to provide treated water on behalf of Bulverde. It provides that GBRA will own the water distribution system and that Bulverde will have an exclusive option to purchase the portion of the system within the Bulverde service area on the later of 20 years after the effective date of the Operating Agreement or full payment of all debts issued to finance the Western Canyon Project.

● BexarMet Application

28. BexarMet's requested service area is in western Comal County roughly bounded by FM 3009 and Highway 281 to the east, Cabal Creek to the south, the Kendall County line on the west, and the Guadalupe River on the north. The area is bifurcated from east to west by Highway 46. BexarMet began providing water service to parts of the requested area in April 1998, when it purchased the assets of Bulverde Water Company, including the Bulverde Hills water system, the Oakland Estates water system, and the Spring Branch water system. BexarMet operates a fourth system serving the HEB Grocery chain, under a water CCN amendment, just south of Highway 46 immediately west of Highway 281. Presently, portions of BexarMet's requested service area receive water on an *ad hoc* basis, through small CCNs serving some subdivisions or businesses under CCNs, and small on-site wells.
29. BexarMet has contracted with Canyon Lake WSC to jointly construct a storage tank and transmission line to serve its existing service areas. The water is for emergency use. The construction will be completed in early 2003.
30. It is possible to drill additional wells in higher producing areas in the Trinity Aquifer and transport water to other parts of the requested service area to provide water service.
31. BexarMet will consider drilling stand-alone wells if necessary to provide water service.

in compliance with applicable customer service regulations, and with public drinking water supply system requirements under Texas Health and Safety Code, Chapter 341.

- 37. GBRA successfully operates 5 water treatment plants.
- 38. GBRA has over 30 years experience providing water to more than 70,000 persons (3,000 retail and industrial customers.)

● BexarMet Application

- 39. BexarMet is a general law water conservation district and municipal corporation with over 70,000 accounts and 250 employees.
- 40. BexarMet is an experienced and capable water supplier with 50 years of experience.

● Conclusion

- 41. The fact that Bulverde will not own or operate the facility does not impede its ability to control GBRA's management and operation of the utility through its contracts, nor does it impede the TCEQ's authority to require continuous and adequate service.
- 42. Bulverde and BexarMet each have the financial, managerial, and technical capability to provide continuous and adequate service.

ABILITY TO PROVIDE ADEQUATE SERVICE/ACCESS TO ADEQUATE SUPPLY OF WATER

● Bulverde's Application

- 43. Through the Western Canyon Project, GBRA is implementing a surface water supply system to meet the increasing needs of western Comal County, southeastern Kendall County, and portions of northern Bexar County. GBRA has sought customers such as Bulverde with large base water demands to fully utilize project facilities in the near term.
- 44. Through its contracts with GBRA, Bulverde will have adequate supply of water in the spring of 2004 when the Western Canyon Project is complete. Until that time, if necessary,

50. The 2002 South Texas Regional Water Plan (Region L) clearly identifies Comal County as an area in need of additional water from surface sources.

51. The area is a prime growth corridor for the San Antonio metropolis expanding to the north.

52. Bulverde has received requests for service throughout its requested area.

● BexarMet's Application

53. As to the service area requested by BexarMet which does not overlap Bulverde's service area, there is no documented need for service, except in BexarMet's previously certified areas.

● Conclusion

54. There is a need for service in the area requested by Bulverde.

SERVICE FROM AND IMPACT ON OTHER UTILITIES

55. Ten utilities have service areas adjacent to, within, or near BexarMet's requested service area: Comal, WSI, Diamond, Canyon Lake WSC, GBRA, Elm Ridge Water Company, Berry Oaks Water Company, Lomas Water Company, Fair Oaks Ranch Utilities, and BSR Water Company.

56. While granting the CCN amendment would make it more difficult for other utilities to serve the area within 1/4 mile of those utilities' service areas, those utilities may benefit from the proximity of a dependable supply of surface water.

57. There will be no significant adverse effect on other utilities already serving the area if Bulverde is granted the CCN.

EFFECT ON ENVIRONMENTAL INTEGRITY

58. If the CCN amendment is granted, the environment will be temporarily disrupted by the construction of water distribution systems, additional pumping, and storage facilities.

4. Bulverde has the financial, managerial, and technical capability to provide continuous and adequate service through its contracts with the Guadalupe Blanco River Authority.
5. Bulverde has met the requirements to receive a CCN to provide water service in Comal County, Texas. TEX. WATER CODE ANN. §§ 13.241, 13.244, 13.246.
6. Bulverde, through its contracts with the Guadalupe Blanco River Authority, is capable of providing drinking water that meets the requirements of Chapter 341, Health and Safety Code, and the requirements of the Water Code.
7. Based on the above Findings of Fact and Conclusions of Law, Bulverde's application for a CCN should be granted.
8. Based on the above Findings of Fact and Conclusions of Law, BexarMet's application to amend its CCN No. 10675 should be denied.

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

1. Application No. 33194 by the City of Bulverde for a CCN to provide water service in Comal County is granted.
2. Application No. 33309-C by Bexar Metropolitan Water District to amend its CCN No. 10675 in Comal County is denied.
3. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief not expressly granted herein, are hereby denied for want of merit.
4. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to all parties and, subject to the filing of motions for rehearing, issue a CCN to the City of Bulverde that conforms to this Order.



# **Texas Commission on Environmental Quality**

**By These Presents Be It Known To All That**

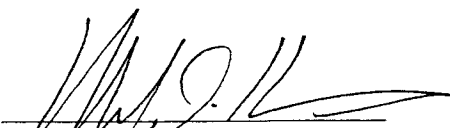
**City of Bulverde**

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

## **Certificate of Convenience and Necessity No. 12864**

to provide continuous and adequate water utility service to those service areas in Comal County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Application No. 33194-C are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Bulverde to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this JUN 16 2003

  
For the Commission

C 083104

## NON-STANDARD SERVICE AGREEMENT

THE STATE OF TEXAS

COUNTY OF KENDALL

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

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

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

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENT:

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

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

C 083104

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

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

15<sup>th</sup>  
12/1/11  
12/1/11

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

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

not  
1.5m  
costs

## 3 Construction of the Extension.

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

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

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

4 Dedication of Extension to the Utility Company.

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

5 Cost of the Extension.

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



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

6. Service From the Extension

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

- c. Unless the prior approval of the Utility Company is obtained, the Developer shall not:
  - 1. Construct or install additional water lines or facilities to service areas outside the Property;
  - 2. Add any additional water lines or facilities to service areas outside the Property.
  - 3. Connect or serve any person or entity who, in turn, sells water service directly or indirectly to another person or entity.
- d. Nothing in this Agreement is intended to grant, nor shall any provision be interpreted to grant, Developer or any Utility Company customer located within the Property any preferential right to service or preferential fees in relation to other similarly situated customers of the Utility Company. The Utility Company's tariff and policies for service shall apply to all service offered or provided by Utility Company within the Property.

7 Service Area Issues.

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

8 GBRA issues:

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

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

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

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

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

## 9 Special Conditions.

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

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

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

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

Property.

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

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

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

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

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

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

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

approval or any required changes to the tariff.

10 General Provisions.

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

Any notice mailed to the Utility Company shall be addressed:

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

Any notice mailed to the Developer shall be addressed:

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

with copy to:

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

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

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



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

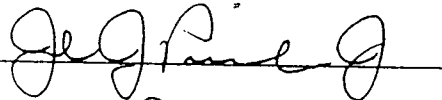
11 Effective Date and term.

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

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

UTILITY COMPANY

By:



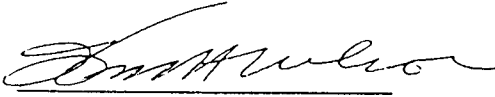
Title:

Vice President

Date:

8-31-04

DEVELOPER

BY 

Name. W. H. Milmore

Title Treasurer

Date 9/9/01

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

<b>A. NAME &amp; PHONE OF CONTACT AT FILER [optional]</b> David H. Brock 830-816-9033	
<b>1. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>  David H. Brock 301 E. San Antonio Avenue Boerne, TX 78006 USA	

**FILING NUMBER:** 04-0087283618  
**FILING DATE:** 11/04/2004 11:36 AM  
**DOCUMENT NUMBER:** 74140470004  
**FILED:** Texas Secretary of State  
**IMAGE GENERATED ELECTRONICALLY FOR WEB FILING**  
**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

<b>1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names</b>									
OR	1a. ORGANIZATION'S NAME Tapatio Springs Holdings, Inc.								
	1b. INDIVIDUAL'S LAST NAME			FIRST NAME		MIDDLE NAME		SUFFIX	
1c. MAILING ADDRESS P.O. Box 550				CITY Boerne		STATE TX	POSTAL CODE 78006	COUNTRY USA	
1d TAX ID#: SSN OR EIN		ADD'L DEBTOR INFO	1e. TYPE OF ORGANIZATION Corporation		1f. ORG JURISDICTION Texas		1g. ORG. ID #, if any 1239241-11 <input type="checkbox"/> NONE		
<b>2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names</b>									
OR	2a. ORGANIZATION'S NAME								
	2b. INDIVIDUAL'S LAST NAME			FIRST NAME		MIDDLE NAME		SUFFIX	
2c. MAILING ADDRESS				CITY		STATE	POSTAL CODE	COUNTRY	
2d TAX ID#: SSN OR EIN		ADD'L DEBTOR INFO	2e. TYPE OF ORGANIZATION		2f. ORG JURISDICTION		2g. ORG. ID #, if any <input type="checkbox"/> NONE		
<b>3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)</b>									
OR	3a. ORGANIZATION'S NAME C.D. Financial LLC								
	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME			SUFFIX		
3c. MAILING ADDRESS 95 NE Fourth Avenue		CITY Delray Beach	STATE FL	POSTAL CODE 33483		COUNTRY USA			
<b>4. This FINANCING STATEMENT covers the following collateral:</b> All of Debtor's interest in the following personal property and all obligations and proceeds of such property: those certain 10,000 shares of Common Stock of Kendall County Utility Company, Inc. represented by Stock Certificate #4, certificated dated January 2, 1996, maintained in the name of the Debtor, and all after-acquired collateral of the same classification.									
<b>5. ALTERNATIVE DESIGNATION [if applicable]:</b> <input type="checkbox"/> LESSEE/LESSOR <input type="checkbox"/> CONSIGNEE/CONSIGNOR <input type="checkbox"/> BAILEE/BAILOR <input type="checkbox"/> SELLER/BUYER <input type="checkbox"/> <b>AG LIEN</b> <input type="checkbox"/> NON-UCC FILING									
<input type="checkbox"/> 6 This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS Attach Addendum [if applicable]					<b>7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)</b> <input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2 [ADDITIONAL FEE] [optional]				
<b>8. OPTIONAL FILER REFERENCE DATA</b> Kendall County, Texas									

FILING OFFICE COPY

e 110404

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

<b>A. NAME &amp; PHONE OF CONTACT AT FILER [optional]</b> David H. Brock 830-816-9033
<b>1. SEND ACKNOWLEDGMENT TO: (Name and Address)</b>  David H. Brock 301 E. San Antonio Avenue Boerne, TX 78006 USA

**FILING NUMBER:** 04-0081256248

**FILING DATE:** 09/09/2004 02:35 PM ✓

**DOCUMENT NUMBER:** 69465680002

**FILED:** Texas Secretary of State

**IMAGE GENERATED ELECTRONICALLY FOR WEB FILING**  
**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

<b>1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names</b>					
OR	<b>1a. ORGANIZATION'S NAME</b> Tapatio Springs Holdings, Inc.				
	<b>1b. INDIVIDUAL'S LAST NAME</b>	<b>FIRST NAME</b>	<b>MIDDLE NAME</b>	<b>SUFFIX</b>	
<b>1c. MAILING ADDRESS</b> P.O. Box 550		<b>CITY</b> Boerne	<b>STATE</b> TX	<b>POSTAL CODE</b> 78006	<b>COUNTRY</b> USA
<b>1d. TAX ID#: SSN OR EIN</b>	<b>ADD'L DEBTOR INFO</b>	<b>1e. TYPE OF ORGANIZATION</b> Incorporated	<b>1f. ORG JURISDICTION</b> TX	<b>1g. ORG. ID #, if any</b> <input checked="" type="checkbox"/> NONE	
<b>2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names</b>					
OR	<b>2a. ORGANIZATION'S NAME</b>				
	<b>2b. INDIVIDUAL'S LAST NAME</b>	<b>FIRST NAME</b>	<b>MIDDLE NAME</b>	<b>SUFFIX</b>	
<b>2c. MAILING ADDRESS</b>		<b>CITY</b>	<b>STATE</b>	<b>POSTAL CODE</b>	<b>COUNTRY</b>
<b>2d. TAX ID#: SSN OR EIN</b>	<b>ADD'L DEBTOR INFO</b>	<b>2e. TYPE OF ORGANIZATION</b>	<b>2f. ORG JURISDICTION</b>	<b>2g. ORG. ID #, if any</b> <input type="checkbox"/> NONE	
<b>3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)</b>					
R	<b>3a. ORGANIZATION'S NAME</b> C.D. Financial L.L.C.				
	<b>3b. INDIVIDUAL'S LAST NAME</b>	<b>FIRST NAME</b>	<b>MIDDLE NAME</b>	<b>SUFFIX</b>	
<b>3c. MAILING ADDRESS</b> 95 NE Fourth Avenue		<b>CITY</b> Delray Beach	<b>STATE</b> FL	<b>POSTAL CODE</b> 33483	<b>COUNTRY</b> USA
<b>4. This FINANCING STATEMENT covers the following collateral:</b> Ten Thousand (10,000) Shares of Common Stock of Kendall County Utility Company, Inc., a Texas corporation.					
<b>5. ALT DESIGNATION:</b> <input type="checkbox"/> LESSEE/LESSOR <input type="checkbox"/> CONSIGNEE/CONSIGNOR <input type="checkbox"/> BAILEE/BAILOR <input type="checkbox"/> SELLER/BUYER <input type="checkbox"/> AG. LIEN <input type="checkbox"/> NON-UCC FILING					
<b>6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS Attach Addendum [if applicable]</b>			<b>7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)</b> [ADDITIONAL FEE] [optional] <input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2		
<b>8. OPTIONAL FILER REFERENCE DATA</b>					

FILING OFFICE COPY

## UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**A. NAME & PHONE OF CONTACT AT FILER [optional]**

David H. Brock 830-816-9033

**SEND ACKNOWLEDGMENT TO: (Name and Address)**

David H. Brock  
 301 E. San Antonio Avenue  
 Boerne, TX 78006  
 USA

**FILING NUMBER:** 04-0087288491**FILING DATE:** 11/04/2004 11:47 AM**DOCUMENT NUMBER:** 74140470005**FILED:** Texas Secretary of State

**IMAGE GENERATED ELECTRONICALLY FOR WEB FILING**  
**THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY**

**1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names**

OR	1a. ORGANIZATION'S NAME Tapatio Springs Holdings, Inc				
	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS P.O. Box 550			CITY Boerne	STATE TX	POSTAL CODE 78006
1d. TAX ID#: SSN OR EIN		ADD'L DEBTOR INFO	1e. TYPE OF ORGANIZATION Corporation	1f. ORG JURISDICTION Texas	1g. ORG. ID #, if any 1239241-11 <input type="checkbox"/> NONE

**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names**

OR	2a. ORGANIZATION'S NAME				
	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE
2d. TAX ID#: SSN OR EIN		ADD'L DEBTOR INFO	2e. TYPE OF ORGANIZATION	2f. ORG JURISDICTION	2g. ORG. ID #, if any <input type="checkbox"/> NONE

**3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)**

OR	3a. ORGANIZATION'S NAME C.D. Financial LLC			
	3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 95 NE Fourth Avenue		CITY Delray Beach	STATE FL	POSTAL CODE 33483
		COUNTRY USA		

**4. This FINANCING STATEMENT covers the following collateral:**

All of Debtor's interest in the following personal property and all obligations and proceeds of such property; those certain 10,000 shares of Common Stock of Kendall County Utility Company, Inc. represented by Stock Certificate #4, certificate dated January 2, 1996, maintained in the name of the Debtor, and all after-acquired collateral of the same classification.

**5. ALTERNATIVE DESIGNATION [if applicable]:** ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐

**AG. LIEN** ☐ **NON-UCC FILING**

☐ **6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS** Attach Addendum [if applicable]

**7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)** ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2 [ADDITIONAL FEE] [optional]

**8. OPTIONAL FILER REFERENCE DATA**

Texas Secretary of State

FILING OFFICE COPY

# **Analysis of Annual Reports**

	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>
Revenues	132,602	148,156	145,399	114,977
Tap Fees	3,787	7,655	3,358	3,487
Contract Labor	466	215	-	-
Purchased Water	-	4,868	23,137	16,059
Chemicals for Treatment	259	1,923	1,273	1,007
Utilities(electricity)	26,428	20,975	20,543	26,552
Repairs/Maintenance/Supplies	20,939	28,346	52,075	37,447
Office Expenses	5,003	2,297	5,445	1,391
Professional Fees	-	770	2,486	5,473
Depreciation/Amortization	-	-	-	28,867
Miscellaneous	-	-	24,428	-
Property and Other Taxes	3,457	-	3,482	2,260
Regulatory Exp(Rate Case)		1,870	1,244	-
Interest Expense on Debt	55,314	57,095	7,164	-
Principal Payment On Debt	30,654	28,873	79,365	-
Profit/Loss	(6,131)	8,579	(71,885)	(592)
Princpal Balance on Debt	905,146	935,800	964,673	-
Total Water Produced(MG)	40,157,000	36,351,000	41,007,000	36,000,000
Total Water Billed(MG)	32,022,000	30,902,000	34,440,000	29,000,000
Total Water Lost	8,135,000	5,449,000	6,567,000	700,000
Water Lost Percent	20	15	16	19

Note: New Rates went into effect 1/1/2002

2012/10/2

**KENDALL COUNTY UTILITY COMPANY \* TAPATIO SPRINGS SERVICE COMPANY**

P.O. BOX 1335  
BOERNE, TX 78006-1335  
(830) 537-5755

March 1, 2005

## **ALTERNATE WATER SUPPLY FACTS**

### **BACKGROUND:**

The only potential project capable of providing an alternate source of potable water to this area of the state is the Western Canyon Regional Water Supply Project (WCRWSP). This program, under the management of the Guadalupe-Blanco River Authority (GBRA), is currently scheduled to begin producing and delivering treated water in January 2006. Entities under contract for this water are The City of Boerne, Bulverde, Cordillera Ranch, Fair Oaks Ranch, Kendall County Utility Company (KCUC), Tapatio Springs Service Company (TSSC), San Antonio Water System, and the San Antonio River Authority.

KCUC and TSSC consummated the WCRWSP contract in March 2002 with an initial commitment of 134,000 gallons per day (150 Acre-Feet annually) and the right to increase that delivery commitment to 446,000 gallons per day (500 Acre-Feet annually) as we require it. We have been paying water reservation fees since April 2002. GBRA completed their \$79,450,000 bond sale in April 2003 and is in the process of requesting and accepting bids for construction of the individual parts of the project.

### **WHY NOT DRILL NEW WELLS RATHER THAN BUY CANYON LAKE WATER ?**

Groundwater from the Trinity Aquifer, which supplies our wells, is becoming a threatened resource. Growth in the ten county area that is served by the Trinity is continuing at an accelerated pace. The Texas Water Development Board completed a study of the Trinity Aquifer in 1999, which lead to it being declared a Priority Groundwater Management Area (PGMA). By definition that indicates the area will have water shortages within 50 years? The Mace Study, as it is known, predicts that if a drought of record were experienced again, water levels in our area would drop 80 feet from normal levels. Additional wells drilled in the Trinity could make our existing wells less productive. Our existing wells experienced production declines during our last dry spell in 1999 and 2000 so this trend will increase as more developments and users surround us.

### **WHY CAN'T WE JUST PURCHASE WATER AS WE NEED IT ?**

The fixed costs with the WCRWSP include a water intake structure into the lake, a state-of-the-art membrane treatment facility, 43 miles of delivery pipelines and control systems. This investment cannot be supported when used on a part time basis. It needs to be distributed over full time production in order for the output costs to be viable.

2030105



**WILL OUR RATES INCREASE TO PAY FOR CANYON LAKE WATER ?**

Yes. An increase of both residential and commercial water rates will be in effect as of April 1, 2005, to cover the fixed costs of debt service and the Canyon Lake water. A "NOTICE OF PROPOSED PASS THROUGH RATE PROVISION" is on the next page.

*Darrell Nichols* out of Austin

## Tapatio Springs Water Rates Compared with Surrounding Communities

Note: Tapatio currently has 128 5/8" Meters and 68 1" Meters

Community	Base Rate per Month	Gallons in Base	Monthly fee for Gallons Consumed					
			5,000	15,000	25,000	50,000	75,000	100,000
Tapatio-Current (5/8" Meter)	24.50	-	35.75	58.25	80.75	143.25	212.00	280.75
Tapatio-Proposed (5/8" Meter)	34.28	-	47.53	68.03	90.53	153.06	221.80	290.53
Tapatio-Current (1" Meter)	40.92	-	52.17	58.25	74.67	159.67	225.42	297.17
Tapatio-Proposed (1" Meter)	65.37	-	71.98	92.48	114.98	177.51	246.25	314.98
Fair Oaks-Current	22.00	6,000.00	22.00	39.10	58.10	133.10	295.60	520.60
Fair Oaks Proposed	32.00	6,000.00	32.00	57.65	86.15	198.65	423.65	723.65
Boerne	10.37	-	22.89	62.46	111.00	235.53	359.15	462.78
Bulverde	24.00		33.00	53.25	85.75	192.00	298.25	404.50
Ranger Creek	30.00	3,000.00	36.50	69.00	102.75	190.25	290.25	390.25

49%

108%

44%

30%

**Based upon normal usage of 5,000 gallons per month, Tapatio's rates are much higher than surrounding communities**

Fair Oaks - 49% if you have a 5/8" Meter and 63% higher if you have a 1" Meter

Boerne - 108% higher if you have a 5/8" Meter and 128% higher if you have a 1" Meter

Bulverde - 44% higher for a 5/8" Meter and 58% higher if you have a 1"

Ranger Creek - 30% higher for a 5/8" Meter and 43% higher if you have a 1" Meter

N040165

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



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

June 2, 2005

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

Re: Purchase Water Pass Through Change Application of Kendall County Utility Company, Inc.  
in Kendall County; CCN No. 11904; Application No. 34872-G

CN: 600646038; RN: 101403129

Dear Mr. Nichols:

Your request to pass through fees for Kendall County Utility Company, Inc. and related documentation were received by the Texas Commission on Environmental Quality (TCEQ) on February 28, 2005. Per your letter, Kendall County Utility Company, Inc. has entered into an agreement with the Guadalupe-Blanco River Authority to purchase surface water from its Canyon Lake Project. Under this agreement, this utility is currently required to pay to reserve 500 acre-feet of surface water and a portion of the debt service for the line extension to supply surface water to the utility's service area.

The documentation you submitted was reviewed and a determination was made that the costs for the expenses cannot be recovered under the utility's current approved tariff. In addition we have received some protests on this application and it has been five years since the applicant submitted a rate/tariff change application. At this time, TCEQ would recommend that the applicant submit an Application for a Rate/Tariff Change to address this expense.

If you have any questions, please contact Ms. Sheresia Perryman by phone at 512/239-3654, by fax at 512/239-6972, by email at [sperryma@tceq.state.tx.us](mailto:sperryma@tceq.state.tx.us), or if by correspondence, include MC 153 in the letterhead address.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Abrams".

Michelle Abrams, Team Leader  
Utilities & Districts Section  
Water Supply Division

MA/SP/ac

7-060205

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

INTEROFFICE MEMORANDUM

CCN/ 11904 /CO

TO:  Amy Cortinas

DATE: May 27, 2005

FROM: Sheresia Perryman

SUBJECT: Purchase Water Pass Through Change Application of Kendall County Utility Company, Inc. in Kendall County; CCN No. 11904; Application No. 34872-G

The documentation submitted by the applicant was reviewed and a determination was made that the costs for the expenses incurred are too large to be recovered under a pass through provision application. In addition we have received some protests on this application and it has been five years since the applicant submitted a rate/tariff change application. Therefore, TCEQ would recommend that the applicant submit an Application for a Rate/Tariff Change at this time.

Please close out the above referenced file as of May 18, 2005

Case Status - D

RECEIVED  
JUN 21 2005  
TCEQ  
CENTRAL FILE ROOM

7R 070105

# TSSC WATER MONTHLY REPORT

2005

GALLONS  
(mid month)

CUSTOMERS  
(mid month)

GALLONS  
(month end)

CHORLINE  
(month end)

MONTH	RED/DAYS	PUMPED	SOLD	K/LOSS	U/LOSS	-/+ %	# CUST	GAL/CUS	PUMPED	AVE.	HIGH	LOW	CHL/MO	/DAY	GAL/#
JAN	10 / 35	2,300	2,228	9	-63	-2.7%	194	11.5	2,956	95.3	106	85	146.5	4.7	20.2
FEB	7 / 28	1,980	1,615	29	-336	-17.0%	194	8.3	660	82.5	102	38	35.0	4.3	18.9
MAR	10 / 31	2,453	1,825	12	-616	-25.1%	193	9.5	1,601	114.3	137	75	71.2	4.7	22.5
APR	9 / 30	3,265	2,397	12	-856	-26.2%	199	12.0	3,247	108.2	137	83	136.7	4.5	23.8
MAY	9 / 30	4,064	3,221	3	-840	-20.7%	200	16.1	2,889	93.1	145	32	136.2	4.4	21.2
JUN	04/26	2,874	2,623	31	-220	-7.7%	199	13.2	2,814	93.8	134	53	135.0	4.5	20.8
JUL					0	ERR		ERR							ERR
AUG					0	ERR		ERR							ERR
SEP					0	ERR		ERR							ERR
OCT					0	ERR		ERR							ERR
NOV					0	ERR		ERR							ERR
DEC					0	ERR		ERR							ERR
TOTAL		16,936	13,909	96	-2,931				14,167				660.6		
AVE		1,411	1,159	8	-244	-17.3%	98	11.8	1,181	49	63	31	55.0	2.3	21.4

T070105

# KENDALL COUNTY UTILITY & TAPATIO SPRINGS SERVICES

2005

WATER PRODUCTION & USAGE

md\kucw\pnrus04

WATER COMPANY		WELL #	GPM	DAY	MONTH	YEAR
<<<< IN THOUSANDS >>>>						
KENDALL COUNTY UTILITY :	2	25	36	1,095	13,140	
	4	240	346	10,512	126,144	
	5	18	26	788	9,461	
	7	235	338	10,293	123,516	
	87	235	338	10,293	123,516	
	PRODUCTION TOTAL / K.C.U.C.			GPM	753	
	PEAK USAGE ( 562 CUSTOMERS )			PEAK PUMPING HOURS		
	*** EXCESS WATER / K.C.U.C. ***					
	TAPATIO SPRINGS SERVICE :			2	28	40
				6	31	45
			7	31	45	
PRODUCTION TOTAL / T.S.S.C.			GPM	90		
PEAK USAGE ( 200 CUSTOMERS )			PEAK PUMPING HOURS			
*** EXCESS WATER / T.S.S.C. ***						
TOTAL WELL PRODUCTION :	GPM		843	1,214	36,923	443,081
	TOTAL / PEAK USAGE:		509		15,482	185,785
	TOTAL / PEAK PUMPING HOURS :		10		306	3,673
	ALTERNATE G.B.R.A. WATER:		AC/FT	750	670	20,366
	244,388		501,684		3,079	
	FUTURE CONNECTIONS AVAILBLE		/ Ave customer: 162,925 GPY 13,577 GPM			

# RATE CODE REPORT TYPE 1

RATE CODE	NUMBER OF METERS	Water USAGE	Water CHARGES	RATE NAME	R.A.F. CHARGES	Sewage CHARGES	Garbage CHARGES
1	134	2,371,000	8,768.75	5/8 * 3/4 IN METER	144.92	5,722.54	
2	120	0	30.21	* TSSC - TURNED OFF *	0.71	40.92	
3	39	1,042,000	4,030.38	1 IN METER	67.16	2,682.72	
4	1	114,000	376.34	1*1/2 IN METER	4.37	60.27	
5	2	14,000	292.68	2 IN METER	4.49	155.53	
6	3	67,000	888.25	3 IN METER	11.56	268.30	
7	2	118,000	1,106.84	4 IN METER	16.62	555.70	
8	18	398,000	956.25	1 IN SPK / NO MIN/SEW RATE	9.58		
9	8	33,000	270.25	3/4" NEW CONST / NO SEWER F	2.72		
10	3	273,000	750.69	2 IN SPK / NO SEWER	7.50		
11	2	6,000	13.50	4 IN WHOLESALE / NO FIXEDSI	0.14		
<b>Totals:</b>	<b>332</b>	<b>4,436,000</b>	<b>17,484.14</b>		<b>269.77</b>	<b>9,485.98</b>	<b>0.00</b>

Qualified By: Type 1 Report

KCUC\TSSC

2072005

Wednesday, July 20, 2005

Page 1 of 1

9:18:02AM

## CUSTOMER LIST

### APATIO SPRINGS SERVICE

ACCT #	ROUTE #	NAME	PHONE	ADDRESS	City	State	Zip
31	8	T/S GOLF RESORT	(830)537-4611	CONFERENCE CTR	BOERNE	TX	78006
58	8	T/S GOLF RESORT	(830)537-4611	CLUBHOUSE	BOERNE	TX	78006
80	8	T/S GOLF RESORT	(830)537-4611	MAINTENANCE	BOERNE	TX	78006
82	2	T/S GOLF RESORT	(830)537-4611	WILD TURKEY / GC-RR	BOERNE	TX	78006
83	8	T/S GOLF RESORT	(830)537-4611	HOTEL #8 SPRINKLERS	BOERNE	TX	78006
85	8	T/S GOLF RESORT	(830)537-4611	HOTEL / UNIT 1	BOERNE	TX	78006
86	8	T/S GOLF RESORT	(830)537-4611	HOTEL / UNIT 2	BOERNE	TX	78006
87	8	T/S GOLF RESORT	(830)537-4611	HOTEL / UNIT 3	BOERNE	TX	78006
88	8	T/S GOLF RESORT	(830)537-4611	HOTEL / UNIT 4	BOERNE	TX	78006
89	8	T/S GOLF RESORT	(830)537-4611	HOTEL / UNIT 6	BOERNE	TX	78006
90	8	T/S GOLF RESORT	(830)537-4611	HOTEL / UNIT 7	BOERNE	TX	78006
91	8	T/S GOLF RESORT	(830)537-4611	HOTEL / UNIT 8	BOERNE	TX	78006
92	8	T/S GOLF RESORT	(830)537-4611	LAUNDRY ROOM	BOERNE	TX	78006
93	8	T/S GOLF RESORT	(830)537-4611	HOTEL / UNIT 9	BOERNE	TX	78006
94	8	T/S GOLF RESORT	(830)537-4611	HOTEL / UNIT 5	BOERNE	TX	78006
133	8	T/S GOLF RESORT	(830)537-4611	HOTEL #3 SPK-B	BOERNE	TX	78006
139	8	T/S GOLF RESORT	(830)537-4611	EAGLE/GC-RR	BOERNE	TX	78006
195	8	T/S GOLF RESORT	(830)537-4611	HOTEL / SALES	BOERNE	TX	78006
236	8	T/S GOLF RESORT	(830)537-4611	TURN/CIBOLO	BOERNE	TX	78006

#### 19 Accounts listed

All Customers Bill Comment Number = 88

KCUC\TSSC

R072005-2



## TAPATIO SPRINGS SERVICE

## Customer Detail

T/S GOLF RESORT

Account Number

31

T/S GOLF RESORT  
CONFERENCE CTR  
PO BOX 550

BOERNE TX  
78006 +40 (830)537-4611  
Service Address: CONFERENCE CENTER  
Social Security #:

Date Turned On 4/15/1999  
Date Turned Off  
Meter Check Date 11/7/2000  
Rate Code 5  
Pump/Well Number 1  
Last Reading 790  
Previous Reading 776  
Usage 14,000

Months On System 67  
Total Usage 969,620  
Average Usage 14,472

280

Sequence Number 3050  
Meter Serial Number 56921087-2  
Route Number 8  
Last Read Date 7/3/2005

12 Month Average 25,250  
Last Year Average 18,000  
Previous Year Average 10,000

Last "Paid On Time" Date 7/13/2005  
Last Late Charge Date 12/7/2004  
Number Of Late Months 25  
Next Due Date 8/2/2005  
Year To Date Charges \$1,523.50

## Deposit Information

Deposit Amount	\$0.00	Deposit Date		Certificate Number	0
Deposit Amount 2	\$0.00	Deposit 2 Date			

	Usage	Charges	Read Date	Reading	Services	Current Balance
January	12,000	204.81	1/10/2005	659	Water	\$162.09
February	8,000	195.72	2/7/2005	667	Sewage	\$97.60
March	28,000	241.93	3/10/2005	695		
April	11,000	255.47	4/9/2005	706		
May	23,000	282.74	5/9/2005	729		
June	47,000	342.83	6/4/2005	776		
July	8,000	197.37	7/8/2004	48058		
August	20,000	223.26	8/5/2004	501		
September	20,000	223.66	9/8/2004	521		
October	24,000	232.08	10/6/2004	545		
November	83,000	389.13	11/4/2004	628	R.A.F.	\$2.60
December	19,000	220.72	12/6/2004	647	Previous Charges	\$1,101.85
					Paid This Month	\$1,385.26
Last Payment	7/13/2005	\$1,385.26	Check Number	37158	Account Balance	-21.12
Age 1	\$0.00	Age 2	\$0.00	Age 3	\$0.00	

## TAPATIO SPRINGS SERVICE

## Customer Detail

T/S GOLF RESORT

Account Number

58

T/S GOLF RESORT

CLUBHOUSE

PO BOX 550

BOERNE

TX

78006

+40

(830)537-4611

Service Address: CLUBHOUSE/MAIN

Social Security #:

Date Turned On

Date Turned Off

Meter Check Date

Rate Code

7

Pump/Well Number

1

Last Reading

7000

Previous Reading

6920

Usage

80,000

Months On System

67

Total Usage

5,011,600

Average Usage

74,800

COUNTRY CLUB

161

Sequence Number

3030

Meter Serial Number

111504-4

Route Number

8

Last Read Date

7/3/2005

12 Month Average

80,909

Last Year Average

85,000

Previous Year Average

53,000

Last 'Paid On Time' Date

7/13/2005

Last Late Charge Date

12/7/2004

Number Of Late Months

25

Next Due Date

8/2/2005

Year To Date Charges

\$5,003.17

## Deposit Information

Deposit Amount \$0.00

Deposit Date

Certificate Number

0

Deposit Amount 2 \$0.00

Deposit 2 Date

	Usage	Charges	Read Date	Reading	Services	Current Balance
January	50,000	745.32	1/10/2005	6570	Water	\$609.67
February	40,000	720.07	2/7/2005	6610	Sewage	\$293.60
March	75,000	814.76	3/10/2005	6685		
April	80,000	912.30	4/9/2005	6765		
May	85,000	926.19	5/9/2005	6850		
June	70,000	884.53	6/4/2005	6920		
July	90,000	856.42	7/8/2004	612000		
August	0	625.38	8/5/2004	6120		
September	170,000	1,078.62	9/8/2004	6290		
October	80,000	828.64	10/6/2004	6370		
November	70,000	800.87	11/4/2004	6440	R.A.F.	\$9.03
December	80,000	828.64	12/6/2004	6520	Previous Charges	\$3,549.57
					Paid This Month	\$4,450.08

Last Payment 7/13/2005 \$4,450.08 Check Number 37158

Age 1 \$0.00 Age 2 \$0.00 Age 3 \$0.00

**Account Balance** 11.79