

Control Number: 46245



Item Number: 644

Addendum StartPage: 0

SOAH DOCKET NO. 473-17-0119.WS
PUC DOCKET NO. 46245

RECEIVED

APPLICATION OF DOUBLE §
DIAMOND UTILITY COMPANY, §
INC. TO CHANGE WATER AND §
SEWER RATES PURSUANT TO §
TEXAS WATER CODE § 13.1871 IN §
PALO PINTO COUNTY §

BEFORE THE STATE OFFICE
OF PUBLIC UTILITY REGULATION
AND SAFETY
ADMINISTRATIVE HEARINGS

2017 NOV 22 10:47
PUBLIC UTILITY REGULATION
FILMS CLERK

TCUC'S INITIAL BRIEF

November 22, 2017

Byrom J. Smith, III
Director, Intervenor and Ratepayer
The Cliffs Utility Committee
200 Oyster Bay
Graford, Texas 76449
Telephone (940) 779-4325
Facsimile (940) 779-4327
juds@adventsupply.com

REPRESENTATIVE FOR
THE CLIFFS UTILITY COMMITTEE

644

Table of Contents

I. Introduction	2
II. Jurisdiction.....	3
III. Procedural History	3
IV. Overview of Proposed Rate Increase.....	3
V. Applicable Law.....	4
A. Original Cost/ Contributions in Aid of Construction.....	4
B. Return	4
C. Expense Adjustments	5
VI. Major Issues.....	5
A. Rate Base.....	5
1. “Original Cost” Pre-Acquisition Assets.....	5
2. Developer Contributions vs. Utility Contributions.....	8
3. Consideration of “Unaccounted For” Water	10
VII. Agreement with WBRG/Commission Staff.....	12

**SOAH DOCKET NO. 473-17-0119.WS
PUC DOCKET NO. 46245**

**APPLICATION OF DOUBLE § BEFORE THE STATE OFFICE
DIAMOND UTILITY COMPANY, §
INC. TO CHANGE WATER AND § OF
SEWER RATES PURSUANT TO §
TEXAS WATER CODE § 13.1871 IN § ADMINISTRATIVE HEARINGS
PALO PINTO COUNTY**

TCUC’S CLOSING ARGUMENTS

The Cliffs Utility Committee (“TCUC”) hereby files its Closing Argument and would show the following:

Executive Summary

Based on the evidence presented at the hearing and a proper interpretation of the applicable law, Double Diamond Utility Company, Inc. (DDU) is not entitled to an increase in revenue sought by DDU in its application. Based on documents presented by DDU, testimony from DDU employees, paid consultants and counsel, documentation and testimony provided by the TCUC and documents and testimony provide by PUC Staff, DDU has failed to prove a need for additional revenue or justify their requested return on investment. DDU has asked for a water and sewer rate increase that amounts to over 58 % which is unsupported by the conflicting, confusing and often erroneous evidence presented. Additionally, if the ALJ denies this application, the increase is less than a 51% increase over test-year revenues and DDU is not entitled to rate case expenses.

The bulk of the TCUC argument rests on four principal issues. First, DDU has not proven need based on claimed original cost for the utility, claimed total assets, claimed net book value (NBV) of assets, and the conflicting reported amounts for each of these presented by DDU. Second, DDU has neither presented evidence for their claimed split between developer invested capital and utility invested capital nor have they resolved the conflicts presented in different documents and testimony provided. Third, DDU is charging ratepayers with pumping and processing a vast amount of water, anywhere from 51.42 % to 76 % of which is not sold to the customers of the utility and remains “unaccounted for”. Fourth, the quality of the water and sewer infrastructure at The Cliffs is severely compromised, causing multiple line breaks greatly in excess of industry standards and even those of the two other DDU utilities of record. This

severely affects not only the reliability of service but, on occasion, prevents DDU from delivering potable water. Additionally, adjustments to operation and maintenance expense associated with corporate transfers and other unjustified expenses, identified by PUC Staff, further reduce DDU's revenue requirement. The following are some basic concepts to keep in mind when reviewing the evidence and the arguments presented in this case:

- Original purchase price of The Cliffs Resort, which included the existing utility, originally acquired by Double Diamond, Inc. (DDI) and transferred to DDU, is far lower than what is claimed in their rate application and represented in documents and testimony, which are conflicting and ambiguous at best.
- A trending study is just an estimate of original cost and is not a better estimate of original cost than audited financial records or purchase price paid for the property.
- The need for an asset adjustment is premised on the fact that DDU has no financial statements of their own and the original cost presented by DDU varies depending on the document provided; consequently, asset cost, accumulated depreciation and NBV has not been authoritatively determined.

Perhaps the most important thing for the ALJ to keep in mind is that DDU now wants to claim an investment in excess of \$ 2.6 million in utility assets, when in fact, DDU only paid \$1.8 million for those assets in 1993; including 839 acres of land, fully platted and plotted with roads, a fully-functioning, professionally-designed golf course, and other amenities. In exchange DDI negotiated a note with lien which has since been paid-in-full. By claiming a higher value for these assets, DDU is trying to collect from its ratepayer's money that they have already paid to others. DDU's ratepayers have already paid for all property that was contributed or donated to DDU or any predecessor. Some of these costs were paid directly by the ratepayers to the developer through lot purchase prices. Allowing DDU to include the inflated value of its invested capital will force the ratepayers to pay for the property a second time. Such a result should not be allowed unless it is clearly required by statute – in which case that result should be clearly identified so that the legislation can be changed to fix such a patently unfair result.

Closing Arguments

I. Introduction

On August 10, 2016, DDU filed a request with the Public Utility Commission of Texas (PUC) to increase its water and sewer rates in its service to ratepayers at The Cliffs Resort in Palo Pinto County. Through the application DDU sought two different changes in rates. First,

DDU sought a change to be effective on October 01, 2016. This change would increase the primary base rate for residential customers from \$36.14 for up to 3,000 gallons to \$40.00 (a 10.68% increase). The request sought to increase volumetric rates as well, increasing the 3,001-10,000 gallon rate from \$ 2.60 per 1,000 gallons to \$ 3.50 (a 34.6% increase) and 10,001 to 15,000 gallons from \$3.00 per 1000 gallons to \$ 4.00 (a 33.3 % increase). The second change was in sewer rates. For residential customers the base rate is proposed to go from \$ 49.37 to \$ 72.00 for up to 3,000 gallons (a 45.8 % increase). In addition a volumetric increase for 3,001 gallons or more takes the rate from \$ 8.25 per 1,000 gallons to \$ 12.00 (a 45.45 % increase). In total, DDU seeks an increase of more than 58 % in its rates when applied to the average summertime water usage for residents.

II. Jurisdiction

The PUC has jurisdiction over DDU's rate increase pursuant to Texas Water Code §13.181.

III. Procedural History

This is a matter of record so I won't waste time repeating it here except to remind the ALJ that DDU filed its original rate application on August 10, 2016 and withdrew that application due to "errors and miscalculations". DDU then filed a second application in 2017.

IV. Overview of Proposed Rate Increase

The underlying rate change application filed by DDU is the third rate change application filed by DDU since 2007. In the test year there were 258 water metered residential customers¹ with ¾" or less water lines (DDU-1 Page 95) and 220 sewer residential customers with ¾" or less water lines² (DDU-1 Page 143) [Note: Why those two numbers are different when every metered residence is required to have a grinder pump on the sewer line is unanswered]. There were 24,724,000 gallons sold to those customers. That would be an average usage on the supply side, if everyone lived at the Cliffs full time, of 7,986 gallons a month. Just using that average and calculating what a monthly bill for would be per ratepayer under the current rates, DDU would collect \$ 139.61. Under the proposed rates, that bill would rise to \$ 171.83 or + \$ 32.22,

¹ DDU-1 Page 95

² DDU-1 Page 143

³ TCUC Direct Testimony and Statement of Position -- Filed Sept. 1, 2017

which represents a + 23.08 % increase. Of course, these numbers assume average usage across all ratepayers. My personal bill in July of 2017, where we used 13,950 gallons would have gone from a total of \$149.13 to \$ 307.89 under the new rates, a + 106.5 % increase.³

V. Applicable Law

A. Original Cost/ Contributions in Aid of Construction

Texas Water Code §13.185(b)

Utility rates shall be based on the **original cost of property used by and useful to the utility** in providing service, including, if necessary to the financial integrity of the utility, construction work in progress at cost as recorded on the books of the utility. . . . **Original cost is the actual money cost or the actual money value of any consideration paid, other than money, of the property at the time it shall have been dedicated to public use, whether by the utility that is the present owner or by a predecessor, less depreciation. Utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in invested capital.**

Texas Water Code §13.185(j)

Depreciation expense included in the cost of service includes depreciation on all currently used, depreciable utility property owned by the utility except for property provided by explicit customer agreements or funded by customer contributions in aid of construction. **Depreciation on all currently used and useful developer or governmental entity contributed property shall be allowed in the cost of service.**

B. Return

Texas Water Code §13.183(a)

In fixing the rates for water and sewer services, the regulatory authority shall fix its overall revenues at a level that will:

(1) permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses; and

(2) preserve the financial integrity of the utility.

³ TCUC Direct Testimony and Statement of Position – Filed Sept. 1, 2017

Texas Water Code §13.184

(a) Unless the utility commission establishes alternate rate methodologies in accordance with Section 13.183(c), **the commission may not prescribe any rate that will yield more than a fair return on the invested capital used and useful in rendering service to the public. . . .**

(b) In fixing a reasonable return on invested capital, the regulatory authority shall consider, in addition to other applicable factors, **the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management.**

(c) In any proceeding involving any proposed change of rates, **the burden of proof shall be on the utility to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable.**

C. Expense Adjustments

Texas Water Code §13.183(a)

In fixing the rates for water and sewer services, the regulatory authority shall fix its overall revenues at a level that will:

(1) permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public **over and above its reasonable and necessary operating expenses**; and

(2) preserve the financial integrity of the utility.

VI. Major Issues

A. Rate Base

1. "Original Cost" Pre-Acquisition Assets

TCUC Position

The “original cost” of the property acquired by DDU from the RTC bank, namely, Franklin Federal Bancorp, is the purchase price paid by DDU for the property. The amount DDI paid for the entire Cliffs resort was \$ 1.8 million (see Exhibit # 19 submitted with this filing a certified copy from the Palo Pinto County court); consequently the claim of \$ 2.63 million as the original cost (DDU-1, Page 31 of 151) is not possible and does not tie out to other documents and testimony provided by DDU.

The most significant issue raised by the parties in this hearing is the original cost of the assets acquired by DDU. Original cost is important because Texas Water Code §13.185(b) mandates that IOU rates be “based on the original cost of property used by and useful to the utility in providing service.”⁴ No documentation, offered by DDU or vetted by PUC Staff show utility assets worth \$ 2.63 million that can be reliably verified. In fact, the original costs of assets with a depreciated value > \$ 0 shown on DDU16 – 015228-015231 shows only \$391,342.56. The value of depreciated assets > \$ 0 on that same document show a Net Book Value (NBV) of only \$129,370.40

TCUC is briefing the issue of “original cost” of the pre-acquisition property first (and out of the order set the briefing outline) because, if the statute is properly construed, many of the issues in the outline – particularly issues relating to the trending study and the use of an acquisition adjustment – become irrelevant to the proper determination of rate base.⁵

⁴ Tex. Water Code §13.185(b).

⁵ TCUC’s references to “rate base” and “invested capital” should be viewed as references to the same thing – the rate base used to determine the return on invested capital number. TCUC’s reference to rate base, unless otherwise noted will not refer to the total amount of plant or plant from which depreciation is determined.

Positions of Parties in Testimony

DDU - In its application and testimony, DDU argues that the original cost of the assets is \$ 2,630180⁶ (“post-acquisition assets”). DDU’s original cost number is, according to testimony, based two principal allegations – (1) the book value is based on the alleged fact that it is consistent with prior rate applications; and, (2) a trended cost study. Under DDU’s position, DDU is entitled to earn a return on the full value of these assets, as well as include annual depreciation (based on the full value) in its rates (despite the fact that it paid something less than \$1.8 million for the assets).

DDU argues that its approach is the appropriate way to determine original cost for these assets. For the first category of assets, DDU argues that the book value represents the “original cost” paid by the DDU for the assets.

TCUC - In its testimony, TCUC argued that the original cost of the assets acquired from the RTC by DDU should be the starting point and not some portion of assets taken from the parent company, DDI or Double Diamond, Delaware. DDU has no financial records apart from those belonging to Double Diamond, Delaware. The President of DDU testified that the utility has neither an income statement nor a balance sheet of its own. TCUC asserts that the net book value of the assets at the close of test year, per DDU16, was \$ 129,377.40 (see TCUC Exhibit # 15). TCUC advocates this approach based on (1) the unreliability of the trending analysis, (2) the discrepancy as to how DDU accounted for the amount of developer contributed capital and utility contributed capital, (3) DDU’s failure to account for developer and customer contributed assets and DDU’s arguments that such contributions could not be determined, and (4) the fact that DDU paid far less than net book value for the assets.

TCUC’s Closing Argument

Original Cost = Price Paid by DDU

TCUC asserts that the method for determining original cost to be used as the surrogate for invested capital in determining rates in Texas is set out in the Texas Water Code. The statute defines “original cost” as:

⁶ DDU-1 Page 31 of 151

Original cost is the *actual money cost* or the actual money value of any consideration *paid*, other than money, of the property *at the time it shall have been dedicated to public use*, whether *by the utility* that is the present owner or *by a predecessor*.

The issue then is whether to accept all or some fraction of the original purchase price, paid in 1993, for the entire Cliffs Resort at \$ 1.8 million as the “original cost” of the assets, or accept a figure that no one has or can reliably verify at \$ 2.63 million, or accept the “original cost” as presented by DDU in their last rate case application as documented in the TCEQ Order (TCEQ Docket No. 2007-1708- UCR entered here as TCUC Exhibit # 21) Page8 at \$ 898,290.00, or accept the NBV as summarized from DDU16 in TCUC Exhibit # 15 (page 3 of 3) at \$129,370.40. Given the complexity involved, the variety of sources (some with questionable reliability), the discrepancy between documents and testimony provide my DDU and others and the impact this all has in determining a fair and equitable ROI which impacts both the utility owner and the ratepayers, is sufficient grounds for denial of this application.

Alternative Argument – Preacquisition Assets=Book Value – Contributions

If the ALJ concludes that §13.185(b) does not require that original cost be set at the price paid by DDU for the assets, then TCUC asserts that the value of these assets must be set at the book value of the assets (not trended value) less developer and customer contributions. TCUC’s arguments on this alternative position are set out in the following sections of the brief. As will be shown in Section VI.A.4 (on page 10), however, the DDU’s invested capital would be less (approximately \$7 million less) than the purchase price if contributions are removed from rate base.

2. Developer Contributions vs. Utility Contributions

There was conflicting documentation and testimony as it related to developer invested capital and utility invested capital. This is obviously an important issue as it affects the amount of money that can be used in determining a fair and equitable ROR a critical factor in the rate base calculations.

DDU provided conflicting documents and testimony which were not resolved through cross-examination and rebuttal testimony. At one point DDU claimed an 80%-20 % split

between developer-paid capital investment and utility capital investment. In other documents and testimony there was no split and all capital investment was reported as 100 % utility paid. The issue is whether DDU's invested capital should be "adjusted" to reflect the fact that it paid less than the various estimates of original cost.

Positions of Parties in Testimony

DDU - DDU first argued that the assets were 100% utility paid and therefore all should be allowed in the rate base calculations. Later, it was admitted in testimony that probably that split should be 80 %- 20 %.

TCUC - TCUC's position is that DDU has not accurately accounted for which capital investments are developer and which are utility capital; therefore, until such time as that confusion is resolved, it is practically impossible for a determination to be made concerning the amounts associated with which assets should be included in the rate base calculations. If nothing else, DDU should be required to conform the list of 80%/20% assets to match the testimony of Randy Gracy. Particularly, DDU needs to identify the \$703,723.37 amount for "Total Pipe Installed" with an installation date of 1/1/1996⁷ as being 80% developer contributed.

TCUC Closing Argument

Without accurate accounting, no dedicated DDU financial statements, no justification for whatever split between developer invested capital and utility invested capital is being claimed, no consistently communicated or applied split, and a seemingly arbitrary manner in which DDU approaches this issue, no approval of this rate application can occur.

⁷ Exhibit DDU-6D, p. 71 (DDU16-011347).

3. Consideration of “Unaccounted For” Water

DDU documents and testimony about the amount of water removed from Possum Kingdom Lake, the amount of water processed by the water plant, the amount of water sold to its customers, the amount of water used for maintenance of the processing facility and water supply lines and the amount of “unaccounted for” water is problematic at best. Conflicting documentation, conflicting testimony and incomplete recordkeeping make determining the actual amount of processed water that is lost almost impossible to verify. However, one thing is clear. DDU’s operation at The Cliffs has “unaccounted for” water which grossly exceeds both industry standards and even its own sister utilities. Unfortunately, the ratepayers bear the burden of that expense.

DDU produced documentation in DDU-1 Page 58 of 151, showing water pumped and produced (processed) amounting to 104,068,000 gallons. Of that on 24,724,000 was sold to their customers or 23.76 %. The remaining water was listed as “unaccounted for water” which amounted to 79,345,000 gallons or 76 % of all processed water. Under cross-examination Mr. Randy Gracy testified that a lot of water was used in their RO system for “backwash and flushing of the system”. When asked how much of the “unaccounted for water” might be used for that purpose he testified 40 %, which would amount to 31,738,000 gallons. When PUC Staff member, Jolie Mathis, was asked if 40 % was normal for backwash, flushing and maintenance, she said she thought that might be high. Additionally, she said that normally the PUC allows for 15 % water use for maintenance. That would be 11,901,750 gallons or 19,836,250 gallons less than Mr. Gracy’s “estimate”. Ms. Mathis testified that 15 % was a good estimate for maintenance water use.

Every five years, the Texas Water Development Board requires water/sewer utilities across the state to complete a Water Audit Report. As it happens the last year that DDU at The Cliff conducted that audit was the test year, 2015 (see TCUC Exhibit # 17). In that report, completed by Buck Nunley, who was the on-site manager at the time for DDU The Cliffs, he identified some completely different numbers than were reported by DDU-1’s Schedule II-1(a). Mr. Nunley’s report showed total water pumped of 96,840,100 gallons and only 52,055,980 million gallons processed. This brought his total “unaccounted for water” down to 26,767,538, a huge discrepancy for DDU-1 numbers. The most surprising declaration was that the amount reported for “Authorized Consumption – Unbilled/Unmetered”, the water used for backwash, flushing and maintenance was only 650,700 gallons, a mere 2.43 % of water lost and only 1.25

% of processed water. A side-by-side comparison of the two sources of information provided by DDU can be found in TCUC Exhibit # 16 included with this document. If Mr. Nunley's figures reported in the State Audit are accurate, then there is still over 26 million gallons of water that is "unaccounted for". At DDU's sister facility at White Bluffs completed a Water Audit in 2011 (TCUC Exhibit # 18). Many totals are different because they are different systems, but the numbers that stands out are WB sells 87.45 % of their water and has real losses of only 11.42 %. So whether DDU-1 is correct or Exhibit # 17 is correct, somewhere between 51.42 % and 76 % of all water processed by DDU, the expense of which is included in cost structure, ends up ultimately being paid for by the ratepayers at The Cliffs.

Positions of the Parties

DDU - DDU takes the position that "unaccounted for" water is part of operating their RO system at The Cliffs. Even though Mr. Gracy's testimony did not square with Ms. Mathis or his own Utility Manager, he maintained his assertion that 40 % of all water losses related to maintenance, backwash and flushing of the system.

PUC Staff – Under cross Ms. Mathis said the PUC typically allows "line loss up to 15 %" but then went on to say that "I did not consider that in this case

TCUC - TCUC's position is that between half and three quarters of all processed water is "unaccounted for" and the cost of that lost water should not exceed 15 % of the cost to produce it.

TCUC's Closing Argument

The infrastructure of The Cliffs water delivery system, and to an extent the sewer system especially as it relates to grinder pumps, is in rapid decline and has been for years. Multiple line breaks occur every year, many of which have been documented with TCUC Exhibits # 1 and # 2 presented at hearing and direct testimony (see TCUC Exhibit # 20 with this filing). Line breaks and leaks are a huge expense, involving a large amount of labor, materials and equipment to effect needed repairs and it is all passed on to the ratepayer. DDU documents and testimony reveal that there is no long or short-term plan for system-wide improvements or replacements for the crumbling infrastructure. Mr. Gracy stated under cross that every year they budget for these items but the line item reported is -0-. Regardless of the health and inconvenience issues of dirty

and unsanitary water, low water pressure or no water pressure for hours, even days at a time, the issue here is money. There are the expenses incurred by individual homeowners, that involve minor amounts like the purchase of bottled water, but also major out-of-pocket expenses like having to prematurely replace whole house filter elements that can run into the hundreds of dollars (see TCUC Exhibit # 22). [BTW, that request for reimbursement has been on Mr. Gracy's desk for over a month with no recognition or response].

The fact is that according to the 2015 Water Audit (TCUC Exhibit # 17) the Cost of Real Losses (Page 3, Line 44) is \$ 180,186.76 and that cost is being passed on to ratepayers. Since Mr. Gracy testified that no processed water is used for irrigation of trees and flora and none is used for golf course maintenance, the only possible explanation is this water loss is directly related to line breaks and leaks. TCUC would like the above amount disallowed as an expense to be passed on to ratepayers and it should be removed for O&M allowances.

Further, this is another reason for denying approval of this rate application until DDU addresses the deplorable condition of this entire system's infrastructure.

VII. Agreement with WBRG/Commission Staff

TCUC fully supports the arguments presented by the White Bluff Ratepayers Group as those arguments apply to TCUC. In particular, TCUC supports WBRG's positions regarding: Depreciation (improper use of trending study); Developer-Contributed Assets (100% of invested capital); Used and Useful; Return on Equity (-2% for water losses); Cost of Debt (4.96%); and Capital Structure (100% debt).

TCUC also fully supports Commission Staff's adjustments to DDU's revenue requirements.

Conclusion

Based on the above, TCUC recommends that the ALJ deny this application for water and sewer rate increases until such time as DDU can prove need and return with an application it can support with clear, concise and non-contradictory evidence and information to secure a reasonable return on investment. At this point, they have done none of the above and it should be their responsibility to prove need and not the ratepayer's responsibility to disprove it.

Respectfully submitted,

THE CLIFFS UTILITY COMMITTEE

By: /s/ *Byrom J. Smith, III*

Director, Intervenor and Ratepayer

200 Oyster Bay

Graford, Texas 76449

Telephone (940) 779-4325

Facsimile (940) 779-4327

juds@adventsupply.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading was served on all parties of record in this proceeding on November 22, 2017, by hand-delivery, facsimile, electronic mail, and/or First Class Mail.

/s/ Byrom J. Smith, III

Byrom J. Smith, III

THE CLIFFS WATER/SEWER RATE ANALYSIS -

EXHIBIT # 15

Depreciated Assets (> \$ 0) per DDU16 - 015228-015231

<u>DDU Spreadsheet Page</u>	<u>Asset Numbers</u>	<u>Beginning Asset Value</u>	<u>Deprec. Value (NBV)</u>	<u>Notes:</u>
DDU16: 015228	WAT00000048	\$ 2,400.00	\$ 960.00	
	WAT00000050	\$ 761.18	\$ 304.47	
	WAT00000051	\$ 1,282.50	\$ 513.00	
	WAT00000055	\$ 18,343.80	\$ 7,337.52	
	WAT00000081	\$ 1,282.50	\$ 513.00	
	WAT00000082	\$ 5,239.26	\$ 2,095.70	
	WAT00000187	\$ 871.70	\$ 523.02	
Sub-Total		\$ 30,180.94	\$ 12,246.71	
DDU16: 015229	WAT00000092	\$ 1,017.55	\$ 407.02	
	WAT00000093	\$ 3,847.07	\$ 1,538.83	
	WAT00000094	\$ 842.14	\$ 336.86	
	WAT00000095	\$ 2,646.71	\$ 1,058.68	
	WAT00000096	\$ 13,971.66	\$ 5,588.66	
	WAT00000099	\$ 198,771.28	\$ 39,754.24	
	WAT00000101	\$ 1,892.29	\$ 804.22	
	WAT00000102	\$ 3,509.60	\$ 1,491.58	
	WAT00000106	\$ 8,771.97	\$ 3,508.79	
	WAT00000108	\$ 1,529.15	\$ 611.66	
	WAT00000109	\$ 810.00	\$ 324.00	
	WAT00000110	\$ 1,512.00	\$ 604.80	
	WAT00000111	\$ 1,012.50	\$ 405.00	
	WAT00000112	\$ 3,884.63	\$ 1,553.85	
	WAT00000113	\$ 775.40	\$ 310.16	
	WAT00000114	\$ 4,138.86	\$ 1,655.54	
	WAT00000115	\$ 1,397.99	\$ 559.20	
WAT00000116	\$ 1,391.49	\$ 556.60		
Sub-Total -015229 (partial)		\$ 251,722.29	\$ 61,069.69	

DDU Spreadsheet Page
DDU16: 015229 - Continued

<u>Asset Numbers</u>	<u>Beginning Asset Value</u>	<u>Deprec. Value (NBV)</u>
WAT00000117	\$ 6,248.59	\$ 2,499.44
WAT00000118	\$ 1,061.54	\$ 424.62
WAT00000119	\$ 2,764.83	\$ 1,105.93
WAT00000120	\$ 4,050.00	\$ 1,620.00
WAT00000122	\$ 831.31	\$ 353.31
WAT00000124	\$ 2,733.52	\$ 1,184.53
WAT00000125	\$ 1,560.11	\$ 689.05
WAT00000126	\$ 1,407.56	\$ 621.67
WAT00000127	\$ 826.44	\$ 365.01
WAT00000128	\$ 9,956.14	\$ 4,397.30
WAT00000129	\$ 549.63	\$ 247.33
WAT00000131	\$ 2,341.64	\$ 1,053.74
WAT00000133	\$ 372.16	\$ 167.47
WAT00000143	\$ 6.66	\$ 3.36
WAT00000144	\$ 196.99	\$ 93.57
WAT00000146	\$ 44.38	\$ 21.08
WAT00000209	\$ 3,768.47	\$ 2,229.68
WAT00000210	\$ 120.14	\$ 71.08
WAT00000213	\$ 2,120.58	\$ 1,272.35
WAT00000214	\$ 3,045.19	\$ 1,827.11
WAT00000215	\$ 2,908.45	\$ 1,745.06
WAT00000216	\$ 913.23	\$ 547.94
WAT00000217	\$ 956.58	\$ 573.95
WAT00000218	\$ 2,721.42	\$ 1,632.85
WAT00000219	\$ 1,382.00	\$ 829.20
WAT00000220	\$ 2,190.10	\$ 1,405.31
WAT00000221	\$ 8,065.71	\$ 5,175.50
WAT00000222	\$ 6,274.32	\$ 4,130.59
Sub-Total -015229 (partial)	\$ 69,417.69	\$ 36,288.03
SUB-TOTAL for 015229	\$ 321,139.98	\$ 97,357.72

Notes:

<u>DDU Spreadsheet Page</u>	<u>Asset Numbers</u>	<u>Beginning Asset Value</u>	<u>Depre. Value (NBV)</u>	<u>Notes:</u>
DDU16: 015230	WAT00000225	\$ 992.05	\$ 198.41	
	WAT00000226	\$ 1,194.73	\$ 736.75	
Unnumbered - 015230 (descriptions only)	TC Extension Risers	\$ 1,750.81	\$ 700.32	Unnumbered expenses appear to be Sewer related
	TC Panels	\$ 2,635.94	\$ 1,054.38	
	3Phase Pump Panel TC	\$ 1,666.84	\$ 723.30	
	Control Box & Install TC	\$ 2,927.15	\$ 1,268.43	
	GP Spyglass Pool #2 TC	\$ 4,286.30	\$ 1,857.40	Grinder Pumps are in Tap Fees should not be in Rate Base calcs.
	GP for lift station - TC	\$ 4,369.26	\$ 1,893.35	
	Work on Sewer Lift Sta.	\$ 1,284.28	\$ 567.22	
	Grinder Pump - TC	\$ 3,052.37	\$ 1,500.75	
	2" Sewage Air Valve	\$ 2,990.84	\$ 1,794.50	
	Check Valve TC	\$ 1,243.86	\$ 746.32	
	GP Float Marina Lift Sta.	\$ 3,383.17	\$ 2,114.48	Ratepayers should not pay for GP's & lift station pumps for Marina
	Lift Station Marina - Cliff	\$ 3,434.40	\$ 2,146.50	
	TC Repairs to SP blower	\$ 2,409.64	\$ 963.86	
	Reducers Motor - TC	\$ 2,400.00	\$ 1,500.00	
SUB-TOTAL for 015230		\$ 40,021.64	\$ 19,765.97	
TOTAL DEPRECIATED ASSETS:		\$ 391,342.56	\$ 129,370.40	

EXHIBIT # 16
Texas Water Development Board
2015 Water Audit Report vs. DDU-1 Exhibit

	(All figures in gallons)		
	DDU-1	Water Audit	Difference
B.12 – Volume of Water Intake (Water Pumped) Page 58	104,068,000	96,840,100	- 7,227,900
B.16. – Total System Input Volume (Total Water Produced)	104,068,000 100 %	52,055,980 53.75 %	- 52,012,020
C.21. – Total Authorized Consumption (Total Water Sold) – Metered	24,724,000	25,288,442	+ 564,442
F.31. – Total Water Losses (Total Unaccounted For Water)	79,345,000 76 %	26,767,538 51.42 %	- 52,577,462
C.20. – Authorized Consumption – Unbilled/Unmetered (Backwash and Flushing)		650,700 1.25 % of water produced & 2.43 % of water losses	

Under cross-examination Mr. Randy Gracy estimated that 40 % of the Unaccounted For water was used for backwash and flushing of lines or 31,738,000 of the 79,345,000 gallons reported in DDU-1, Page 58. DDU's own Water Audit from 2015 shows that amount to be significantly less at 650,700 gallons. Depending on which of DDU's numbers are used, that leaves Unaccounted For water between 78,694,300 and 26,116,838 gallons for the test year or approximately 75.62 % to 50.17 %. Further, under cross-examination, Mr. Gracy testified that no produced water was used for irrigation purposes and that only unprocessed lake water was used for irrigation. The only conclusion to be drawn is that the net Unaccounted For water is being lost through leaks and water line breaks. The cost of processing this lost water due to the faulty nature of DDU's water delivery infrastructure should not be charged to the ratepayers and those costs should be eliminated from the rate base.

EXHIBIT # 17

TEXAS WATER DEVELOPMENT BOARD
 P.O. BOX 13231, CAPITOL STATION
 AUSTIN, TX 78711-3231
2015 WATER AUDIT REPORT

A. Water Utility General Information

1. Water Utility Name	CLIFFS THE
1a. Regional Water Planning Area	G
1b. Address	5495 BELT LINE RD STE 200
	DALLAS, TX 75254-7658
2. Contact Information	
2a. Name	buck nunley
2b. Telephone Number	(940) 521-6268
2c. Email Address	bnunley@thecliffsresort.com
3. Reporting Period	
3a. Start Date	01/01/2015
3b. End Date	12/31/2015

4. Source Water Utilization			
4a. Surface Water	100.00	%	
4b. Ground Water	0.00	%	
5. Population Served			Assessment Scale
5a. Retail Population Served	64		
5b. Wholesale Population Served	0		
6. Utility's Length of Main Lines	22.00	miles	3.5
7. Total Retail Metered Connections - Active and Inactive	287		3
8. Number of Wholesale Connections Served	0		
9. Service Connection Density	13.05	connections per mile	
10. Average Yearly System Operating Pressure	40.00	psi	1
11. Volume Units of Measure	Gallons		

B. System Input Volume

12. Volume of Water Intake	96,840,100	gallons	
13. Produced Water	51,795,700	gallons	4.5
13a. Production Meter Accuracy	99.5	%	2
13b. Corrected Input Volume	52,055,980	gallons	
14. Total Treated Purchased Water	0	gallons	N/A
14a. Treated Purchased Water Meter Accuracy	0.0	%	N/A
14b. Corrected Treated Purchased Water Volume	0	gallons	

TEXAS WATER DEVELOPMENT BOARD

P.O. BOX 13231, CAPITOL STATION

AUSTIN, TX 78711-3231

2015 WATER AUDIT REPORT

15. Total Treated Wholesale Water Sales	<u>0</u>	gallons	<u>N/A</u>
15a. Treated Wholesale Water Meter Accuracy	<u>0.0</u>	%	<u>N/A</u>
15b. Corrected Treated Wholesale Water Sales Volume	<u>0</u>	gallons	
16. Total System Input Volume	<u>52,055,980</u>	gallons	
Line 13b + Line 14b - Line 15b			Assessment Scale
C. Authorized Consumption			
17. Billed Metered	<u>24,637,742</u>	gallons	<u>2.5</u>
18. Billed Unmetered	<u>0</u>	gallons	<u>3</u>
19. Unbilled Metered	<u>0</u>	gallons	<u>3</u>
20. Unbilled Unmetered	<u>650,700</u>	gallons	<u>3</u>
21. Total Authorized Consumption	<u>25,288,442</u>	gallons	
D. Water Losses			
22. Water Losses	<u>26,767,538</u>	gallons	
Line 16 - Line 21			
E. Apparent Losses			
23. Average Customer Meter Accuracy	<u>96.00</u>	%	<u>1.5</u>
24. Customer Meter Accuracy Loss	<u>1,026,573</u>	gallons	
25. Systematic Data Handling Discrepancy	<u>0</u>	gallons	<u>0.5</u>
26. Unauthorized Consumption	<u>0</u>	gallons	<u>1</u>
27. Total Apparent Losses	<u>1,026,573</u>	gallons	
F. Real Losses			
28. Reported Breaks and Leaks	<u>5,000,000</u>	gallons	<u>2.5</u>
29. Unreported Loss	<u>20,740,966</u>	gallons	<u>2</u>
30. Total Real Losses	<u>25,740,966</u>	gallons	
Line 28 + Line 29			
31. Total Water Losses	<u>26,767,538</u>	gallons	
Line 27 + Line 30			
32. Non-Revenue Water	<u>27,418,238</u>	gallons	
Line 31 + Line 19 + Line 20			
G. Technical Performance Indicator for Apparent Loss			
33. Apparent Losses Normalized	<u>9.80</u>	gallons lost per	
Line 27 / Line 7 / 365		connection per day	

TEXAS WATER DEVELOPMENT BOARD
P.O. BOX 13231, CAPITOL STATION
AUSTIN, TX 78711-3231
2015 WATER AUDIT REPORT

H. Technical Performance Indicators for Real Loss

34. Real Loss Volume Line 30	<u>25,740,966</u>	gallons
35. Unavoidable Annual Real Losses Volume (5.41 * Line 6 + (Line 7 * 0.15)) * 365 * Line 10	<u>0</u>	gallons
36. Infrastructure Leakage Index Line 34 / Line 35	<u>0.00</u>	I.L.I
37. Real Losses Normalized - Service Connections Line 34 / Line 7 / 365	<u>0.00</u>	gallons lost per connection per day
38. Real Losses Normalized - Main Lines Line 34 / Line 6 / 365	<u>3205.60</u>	gallons lost per mile per day

I. Financial Performance Indicators

39. Total Apparent Losses Line 27	<u>1,026,573</u>	gallons	
40. Retail Price of Water	<u>0.01400</u>	\$/gallons	<u>2</u>
41. Cost of Apparent Losses Line 39 x Line 40	<u>\$14,372.02</u>		
42. Total Real Losses Line 30	<u>25,740,966</u>	gallons	
43. Variable Production Cost of Water	<u>0.00700</u>	\$/gallons	<u>3</u>
44. Cost of Real Losses Line 42 x Line 43	<u>\$180,186.76</u>		
45. Total Cost Impact of Apparent and Real Losses Line 41 + Line 44	<u>\$194,558.78</u>		
46. Total Assessment Score	<u>58</u>		

J. System Losses and Gallons Per Capita per Day (GPCD)

47. Total Water Loss - Percentage	<u>51.42</u>	%
48. GPCD Input Line 16 / Line 5a / 365	<u>2,228</u>	
49. GPCD Loss Line 31 / Line 5a / 365	<u>1,146</u>	

K. Wholesale Factor Adjustments

50. Percent of Treated Wholesale Water Traveling through General Distribution System	<u>0.00</u>	%
--	-------------	---

TEXAS WATER DEVELOPMENT BOARD
P.O. BOX 13231, CAPITOL STATION
AUSTIN, TX 78711-3231
2015 WATER AUDIT REPORT

51. Volume of Treated Wholesale Water Traveling through General Distribution System (Line 50/100) * Line 15b	0	gallons
52. Wholesale Factor Line 15b / (Line 13b + Line 14b)	0.00	
53. Adjusted Real Loss Volume ((1 - Line 52) x (Line 30 * Line 50 / 100)) + (Line 30 - (Line 30 * Line 50/100))	25,740,966	gallons
54. Adjusted Cost of Real Losses ((1 - Line 52) x (Line 44 * Line 50 / 100)) + (Line 44 - (Line 44 * Line 50/100))	\$180,186.76	
55. Adjusted Total Water Loss Volume ((1 - Line 52) x (Line 31 * Line 50 / 100)) + (Line 31 - (Line 31 * Line 50/100))	26,767,538	gallons
56. Adjusted Total Cost Impact of Apparent and Real Losses ((1 - Line 52) x (Line 45 * Line 50 / 100)) + (Line 45 - (Line 45 * Line 50/100))	\$194,558.78	
57. Adjusted Real Loss Per Connection ((1 - Line 52) x (Line 37 * Line 50 / 100)) + (Line 37 - (Line 37 * Line 50/100))	0.00	gallons lost per connection per day
58. Adjusted Real Loss Per Mile ((1 - Line 52) x (Line 38 * Line 50 / 100)) + (Line 38 - (Line 38 * Line 50/100))	3205.60	gallons lost per mile per day
59. Adjusted Infrastructure Leakage Index ((1 - Line 52) x (Line 36 * Line 50 / 100)) + (Line 36 - (Line 36 * Line 50/100))	0.00	I.L.I
60. Adjusted Total Water Loss - Percentage ((1 - Line 52) x (Line 47 * Line 50 / 100)) + (Line 47 - (Line 47 * Line 50/100))	51.42	%
61. Adjusted GPCD Loss ((1 - Line 52) x (Line 49 * Line 50 / 100)) + (Line 49 - (Line 49 * Line 50/100))	1,146	

Comments

EXHIBIT # 18

TEXAS WATER DEVELOPMENT BOARD
P.O. BOX 13231, CAPITOL STATION
AUSTIN, TX 78711-3231

2011 Water Audit Report

A. Water Utility General Information

1. Water Utility Name: White Bluff Community Water System

2. Contact Information:

 2a. Name RICHARD ZINT

 2b. Telephone Number (254)-694-0371

 2c. Email Address utilities@whitebluffresort.com

3. Reporting Period: Start Date 1/1/2011 End Date 12/31/2011

4. Source Water Utilization, percentage: Surface Water 0.00 % Ground Water 100.00 %

5. Population Served:

 5a. Retail Population Served 1,875 Assessment Scale

 5b. Wholesale Population Served 0 1

6. Utility's Length of Main Lines, miles 60.00

7. Number of Wholesale Connections Served 0

8. Total Retail Metered Connections 629

9. Service Connection Density 10.48
(Number of retail service connections / miles of main lines)

10. Average Yearly System Operating Pressure (psi) 50.00 3

11. Volume Units of Measure: Gallons

B. System Input Volume

12. Produced Water 120,000,000 gallons 5

13. Production Meter Accuracy (enter percentage) 99.00 % 4

14. Corrected Input Volume 121,212,121 gallons

15. Total Water Purchased 0 gallons 0

16. Total Wholesale Water Sales 0 gallons 0

17. **Total System Input Volume** 121,212,121 gallons

 (Corrected input volume, plus imported water, minus exported water)

C. Authorized Consumption

18. Billed Metered 106,000,000 gallons Assessment Scale 2

19. Billed Unmetered 0 gallons 0

20. Unbilled Metered 0 gallons 0

21. Unbilled Unmetered 0 gallons 3

22. **Total Authorized Consumption** 106,000,000 gallons

TEXAS WATER DEVELOPMENT BOARD
P.O. BOX 13231, CAPITOL STATION
AUSTIN, TX 78711-3231

2011 Water Audit Report

D. Water Losses

23. Water Losses 15,212,121 gallons
(Line 17 minus Line 22)

E. Apparent Losses

24. Average Customer Meter Accuracy (Enter percentage)	<u>99.00</u> %	<u>2</u>
25. Customer Meter Accuracy Loss	<u>1,070,707</u> gallons	
26. Systematic Data Handling Discrepancy	<u>0</u> gallons	<u>0</u>
27. Unauthorized Consumption	<u>303,030</u> gallons	<u>2</u>
28. Total Apparent Losses	<u>1,373,737</u> gallons	

F. Real Losses

29. Reported Breaks and Leaks (Estimated volume of leaks & breaks repaired during the audit period)	<u>8,000,000</u> gallons	<u>2</u>
30. Unreported Loss (Includes all unknown water loss)	<u>5,838,384</u> gallons	<u>2</u>
31. Total Real Losses (Line 29, plus Line 30)	<u>13,838,384</u> gallons	
32. Total Water Losses (Apparent + Real) (Line 28 plus Line 31) = Line 23	<u>15,212,121</u> gallons	
33. Non-revenue Water (Water Losses + Unbilled Authorized Consumption) (Line 32, plus Line 20, plus Line 21)	<u>15,212,121</u> gallons	

G. Technical Performance Indicator for Apparent Loss

34. Apparent Losses Normalized 6 gallons
(Apparent Loss Volume / # of Retail Service Connections/365)

H. Technical Performance Indicators for Real Loss

35. Real Loss Volume (Line 31)	<u>13,838,384</u> gallons	
36. Unavoidable Annual Real Losses, volume (calculated)	<u>0</u> gallons	
37. Infrastructure Leakage Index (calculated) (Equals real loss volume divided by unavoidable annual real losses)	<u>0.00000</u>	
38. Real Losses Normalized (Real Loss Volume / # of Service Connections / 365) (This indicator applies if service connection density is greater than or equal to 32 / mile)	<u>0</u> gallons	

TEXAS WATER DEVELOPMENT BOARD
P.O. BOX 13231, CAPITOL STATION
AUSTIN, TX 78711-3231

2011 Water Audit Report

39. Real Losses Normalized (Real Loss Volume/Miles of Main Lines/365) (This indicator applies if service connection density is less than 32/mile)	<u>632</u> gallons	
I. Financial Performance Indicators		
40. Total Apparent Losses (Line 28)	<u>1,373,737</u> gallons	
41. Retail Price of Water	<u>\$0.00159</u>	<u>5</u>
42. Cost of Apparent Losses (Apparent loss volume multiplied by retail cost of water, Line 40 x Line 41)	<u>\$2,184.24</u>	
43. Total Real Losses (Line 31)	<u>13,838,383.84</u>	
44. Variable Production Cost of Water* (*Note: in case of water shortage, real losses might be valued at the retail price of water instead of the variable production cost.)	<u>\$0.00020</u>	<u>2</u>
45. Cost of Real Losses (Real Loss multiplied by variable production cost of water, Line 43 x Line 44)	<u>\$2,767.68</u>	
46. Total Assessment Score		<u>33</u>
47. Total Cost Impact of Apparent and Real Losses	<u>\$4,951.92</u>	
48. Comments		
49. Total Loss Percent	<u>12.55</u> %	
50. GPCD (Gallons Per Capita Per Day) Input	<u>177.11</u>	
51. GPCD (Gallons Per Capita Per Day) Loss	<u>22.23</u>	

AFTER RECORDING, PLEASE RETURN TO:
Double Diamond, Inc.
3500 Maple Avenue, Suite 200
Dallas, Texas 75219

SPECIAL WARRANTY DEED

5734

THE STATE OF TEXAS §
 § KNOW ALL BY THESE PRESENTS:
COUNTY OF PALO PINTO §

Franklin Federal Bancorp, A Federal Savings Bank ("Grantor"), for the consideration hereinafter stated paid and secured to be paid by Double Diamond, Inc., a Texas corporation ("Grantee"), has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY, unto Grantee the following described real property, together with all improvements thereon, to wit:

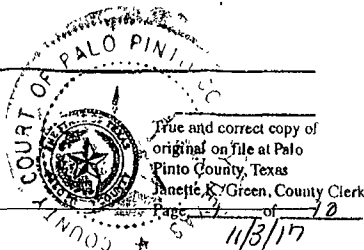
Being 839.083 acres of land lying in the A.J. Berry Survey, Abstract No. 1315, the W.J. Wesley Survey, Abstract No. 1086, the A.B.&M. Survey No. 1, Abstract No. 1, the A.B.&M. Survey No. 2, Abstract No. 1816, the A.B.&M. Survey No. 3, Abstract No. 19, the A.B.&M. Survey No. 4, Abstract No. 1814, and the Garcia, Montez & Duran Survey, Abstract No. 1540, Palo Pinto County, Texas, same being a part of a 1223.82 acre tract of land described by deed recorded in Volume 420, Pages 8-13, Deed Records of Palo Pinto County, Texas, same also being all of the two tracts of land described in Volume 686, Page 350, Deed Records of Palo Pinto County, Texas, and described more particularly in Exhibit "A" attached hereto ("Property").

TO HAVE AND TO HOLD the Property, together with the rights and appurtenances thereto belonging, unto Grantee and Grantee's successors and assigns, forever; and Grantor does hereby bind Grantor and Grantor's successors and assigns to WARRANT AND FOREVER DEFEND the Property unto Grantee and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

However, this conveyance is made subject to the liens securing payment of ad valorem taxes for 1993 and all subsequent years, as well as to the exceptions shown on Exhibit "B" attached hereto to the extent that they are in effect and apply to the Property (collectively, "Permitted Exceptions"). Grantee, by acceptance of delivery of this deed, assumes and agrees to perform all of Grantor's obligations under the Permitted Exceptions and to pay the ad valorem taxes for 1993 and all subsequent years.

The consideration for this conveyance is as follows: A full valuable cash consideration to Grantor in hand paid by Grantee, the receipt of which is hereby acknowledged, and for the payment of which no lien, express or implied, is retained; and the execution and delivery of that certain promissory note of even date herewith ("Note") in the stated principal sum of \$1,800,000.00, executed by Grantee and payable to the order of Grantor. The vendor's lien and superior title remaining in Grantor, as vendor (together, "Vendor's Lien"), are retained against the Property for the security of and until the full and final payment of the Note, whereupon this deed shall become absolute.

Payment of the Note is additionally secured by a deed of trust lien on the Property created in the deed of trust ("Deed of Trust") of even date herewith from Grantee to Ann Kirkby, Trustee. The Vendor's Lien and the lien created by the Deed of Trust shall be cumulative, and acceptance of one shall not constitute the waiver of the other.



GRANTOR HEREBY DISCLAIMS AND GRANTEE HEREBY WAIVES ANY AND ALL WARRANTIES OF ANY NATURE REGARDING THE PROPERTY. GRANTOR HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR COVENANTS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SQUARE FOOTAGE OF THE PROPERTY; THE QUALITY OR CONDITION OF THE PROPERTY CONVEYED TO GRANTEE; THE SUITABILITY OR SAFETY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON; COMPLIANCE BY GRANTOR AND/OR THE PROPERTY WITH ANY LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY; OR THE HABITABILITY, MERCHANTABILITY, OR FITNESS OF THE PROPERTY FOR A PARTICULAR PURPOSE. GRANTOR HAS NOT, DOES NOT AND WILL NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WITH REGARD TO COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING BUT NOT LIMITED TO THOSE PERTAINING TO THE USE, HANDLING, GENERATING, TREATING, STORING OR DISPOSING OF ANY HAZARDOUS WASTE, HAZARDOUS SUBSTANCES, PETROLEUM PRODUCT STORAGE TANKS OR ASBESTOS. THE PROVISIONS CONTAINED IN THIS PARAGRAPH SHALL SURVIVE DELIVERY OF THIS DEED. GRANTEE HEREBY ACCEPTS THE PROPERTY "AS IS", "WHERE IS", AND WITH ALL FAULTS. GRANTEE REPRESENTS THAT IT HAS MADE ITS OWN INDEPENDENT INSPECTION OF ALL ASPECTS OF THE PROPERTY AND SHALL HAVE NO RECOURSE WHATSOEVER AGAINST GRANTOR IN THE EVENT OF DISCOVERY OF ANY DEFECTS OF ANY KIND, LATENT OR PATENT.

Grantor hereby restricts the portion of the Property fronting Possum Kingdom Lake such that no structures or facilities (including stairs, lifts, elevators, exposed water lines or pumps), may be constructed within 40 feet of the cliff line ("Restricted Property"), nor may any such structures or facilities be constructed or permitted on the waters of Possum Kingdom Lake adjoining the Property. The Restricted Property is described on Exhibit "C" attached hereto and made a part hereof. This restriction is for the benefit of and pursuant to agreement with the Brazos River Authority dated March 15, 1988, of record in Volume 779, Page 849, Real Property Records of Palo Pinto County, Texas.

Grantee's address: 3500 Maple Avenue, Suite 200
Dallas, Texas 75219

Executed October 29, 1993, to be effective as of October 29, 1993.

FRANKLIN FEDERAL BANCORP, A
FEDERAL SAVINGS BANK

By: [Signature]
Name: TERESA TALLEY NASSOUR
Title: ASST. VICE PRESIDENT

ACCEPTED AND AGREED TO:

DOUBLE DIAMOND, INC.,
a Texas corporation

By: [Signature]
Name: PATRICK J. RAMSIER
Title: EXECUTIVE VICE PRESIDENT

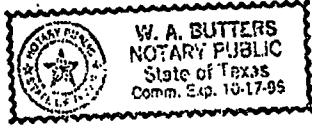


True and correct copy of original on file at Palo Pinto County, Texas
Japhette K. Green, County Clerk
Page 2 of 12

11/3/17

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 29 day of October, 1993 by Heri Alley Nassour, Asst. Vice President of Franklin Federal Bancorp, A Federal Savings Bank, on behalf of said bank.



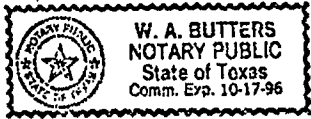
W. A. Butters
Notary Public, State of Texas

Name - Typed or Printed

Date Commission Expires

THE STATE OF TEXAS §
COUNTY OF Travis §

This instrument was acknowledged before me on the 29 day of October, 1993 by Patricia J. Ransier, Asst. Vice President of Double Diamond, Inc., a Texas corporation, on behalf of said corporation.

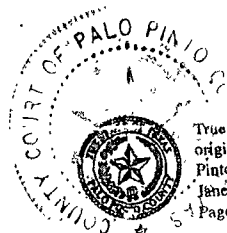


W. A. Butters
Notary Public, State of Texas

Name - Typed or Printed

Date Commission Expires

.ht\ps\osborn\142551.1
14310.66482



True and correct copy of original on file at Palo Pinto County, Texas
Janette K. Green, County Clerk
Page 3 of 18
11/3/17

Field Note No. 231
 Job No. 92082
 November 25, 1992

839.083 ACRES
 GARCIA, MONTEZ & DURAN SURVEY
 A.J. BERRY SURVEY
 W.J. WESLEY SURVEY
 A.B. & M. SURVEY NO. 1
 A.B. & M. SURVEY NO. 2
 A.B. & M. SURVEY NO. 3
 A.B. & M. SURVEY NO. 4
 PALO PINTO COUNTY, TEXAS

BEING 839.083 acres of land lying in the A.J. Berry Survey, Abstract No. 1315, the W.J. Wesley Survey, Abstract No. 1086, the A.B. & M. Survey No. 1, Abstract No. 10, the A.B. & M. Survey No. 2, Abstract 1816, the A.B. & M. Survey No. 3, Abstract No. 19, the A.B. & M Survey No. 4, Abstract No. 1814 and the Garcia, Montez & Duran Survey, Abstract No. 1540, Palo Pinto County Texas, same being a part of a 1223.82 acre tract of land described by deed recorded in volume 420, pages 8-13, Deed Records of Palo Pinto County, Texas, same also being all of the two tracts of land described in volume 686, page 350, Deed Records of Palo Pinto County, Texas, and described more particularly as follows:

BEGINNING at a nail set in a fence post in the west right-of-way line of State Highway 16 (120 foot wide right-of-way) for the most southerly corner, same being the most southerly corner of the aforementioned 1223.82 acres, same also being the most southerly corner of a 783.033 acre tract of land described by deed recorded in volume 686, page 350, Deed Records of Palo Pinto County, Texas;

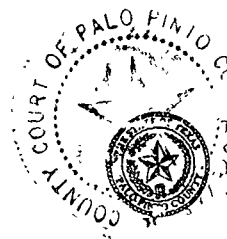
THENCE along the west boundary of the aforementioned 1223.82 acres and the west boundary of the aforementioned 783.033 acres, N09°23'24"W a distance of 846.09 feet to a ½" iron rod set with cap for an interior corner, same being an interior corner of the said 783.033 acres, same lying in the south line of a boundary line agreement recorded in volume 417, pages 339-342, Deed Records of Palo Pinto County, Texas;

THENCE along the south line of the aforementioned 1223.82 acres, the south line of the aforementioned 783.033 acres and the south line of the aforementioned Boundary Line Agreement, N89°45'18"W a distance of 3459.27 feet to an iron rod set for the most southerly southwest corner;

THENCE N08°31'29"E a distance of 721.04 feet to a ½" iron rod set, N07°25'50"W a distance of 250.00 feet to a ½" iron rod set and N14°30'13"W a distance of 1127.30 feet to a ½" iron rod set for an interior corner, same lying in a south line of the aforementioned 783.033 acres;

Page 1 of 6

EXHIBIT A



True and correct copy of
 original on file at Palo
 Pinto County, Texas
 Janette K. Green, County Clerk
 Page 4 of 12
 11/3/17

Field Note No. 231
 Job No. 92682
 November 25, 1992

THENCE along the south line of the aforementioned 783.033 acres N89°44'56"W a distance of 549.93 feet to a $\frac{1}{2}$ " iron rod set for the most westerly southwest corner, same being the most westerly southwest corner of the said 783.033 acres;

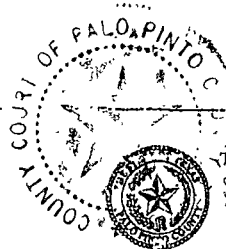
THENCE along the west line of the aforementioned 783.033 acres N07°25'50"W a distance of 721.78 feet to a $\frac{1}{2}$ " iron rod set for a northwest corner, same lying on the 1000 foot contour line of Possum Kingdom Lake;

THENCE along the aforementioned 1000 foot contour line as follows:

N64°24'36"E a distance of 97.42 feet to a $\frac{1}{2}$ " iron rod set,
 N69°46'19"E a distance of 97.64 feet to a $\frac{1}{2}$ " iron rod set,
 N47°51'10"E a distance of 99.97 feet to a $\frac{1}{2}$ " iron rod set,
 N31°32'46"E a distance of 71.74 feet to a $\frac{1}{2}$ " iron rod set,
 S52°31'31"W a distance of 56.21 feet to a $\frac{1}{2}$ " iron rod set,
 S57°19'41"W a distance of 113.23 feet to a $\frac{1}{2}$ " iron rod set,
 S70°27'46"W a distance of 52.58 feet to a $\frac{1}{2}$ " iron rod set,
 S79°13'59"W a distance of 114.69 feet to a $\frac{1}{2}$ " iron rod set,
 S89°35'21"W a distance of 84.67 feet to a $\frac{1}{2}$ " iron rod set,
 N73°22'58"W a distance of 55.41 feet to a $\frac{1}{2}$ " iron rod set,
 N51°55'09"W a distance of 49.40 feet to a $\frac{1}{2}$ " iron rod set,
 N12°01'23"W a distance of 181.44 feet to a $\frac{1}{2}$ " iron rod set,
 N01°04'08"W a distance of 151.49 feet to a $\frac{1}{2}$ " iron rod set,
 N14°48'58"W a distance of 100.12 feet to a $\frac{1}{2}$ " iron rod set,
 N32°15'36"W a distance of 240.90 feet to a $\frac{1}{2}$ " iron rod set,
 N54°39'49"W a distance of 104.01 feet to a $\frac{1}{2}$ " iron rod set,
 N62°56'49"W a distance of 330.14 feet to a $\frac{1}{2}$ " iron rod set,
 N51°59'59"W a distance of 120.98 feet to a $\frac{1}{2}$ " iron rod set,
 N27°36'17"W a distance of 100.15 feet to a $\frac{1}{2}$ " iron rod set,
 N25°30'20"E a distance of 30.97 feet to a $\frac{1}{2}$ " iron rod set,
 S83°57'50"E a distance of 83.62 feet to a $\frac{1}{2}$ " iron rod set,
 S86°43'16"E a distance of 99.47 feet to a $\frac{1}{2}$ " iron rod set,
 N54°10'41"E a distance of 99.17 feet to a $\frac{1}{2}$ " iron rod set,
 N50°30'27"E a distance of 83.85 feet to a $\frac{1}{2}$ " iron rod set,
 S69°22'25"W a distance of 140.85 feet to a $\frac{1}{2}$ " iron rod set,
 N85°43'05"W a distance of 48.22 feet to a $\frac{1}{2}$ " iron rod set,
 N49°00'33"W a distance of 104.08 feet to a $\frac{1}{2}$ " iron rod set,
 N75°14'34"W a distance of 200.50 feet to a $\frac{1}{2}$ " iron rod set,
 N59°25'38"W a distance of 53.33 feet to a $\frac{1}{2}$ " iron rod set,
 N45°00'35"W a distance of 96.92 feet to a $\frac{1}{2}$ " iron rod set,
 N34°37'59"W a distance of 120.12 feet to a $\frac{1}{2}$ " iron rod set,
 N35°37'39"W a distance of 89.14 feet to a $\frac{1}{2}$ " iron rod set,
 N47°44'09"W a distance of 228.25 feet to a $\frac{1}{2}$ " iron rod set,
 N41°57'05"W a distance of 189.71 feet to a $\frac{1}{2}$ " iron rod set,
 N51°47'11"W a distance of 85.63 feet to a $\frac{1}{2}$ " iron rod set,
 N53°39'37"W a distance of 157.10 feet to a $\frac{1}{2}$ " iron rod set,
 N48°07'20"W a distance of 71.76 feet to a $\frac{1}{2}$ " iron rod set,
 N37°11'08"W a distance of 45.14 feet to a $\frac{1}{2}$ " iron rod set.

Page 2 of 6

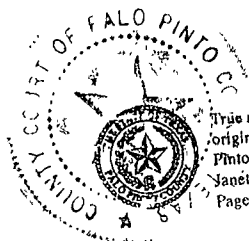
ANY PROVISION HEREIN WHICH
 RESTRICTS THE SALE, RENTAL,
 OR USE OF THE DESCRIBED
 REAL PROPERTY BECAUSE OF
 COLOR OR RACE IS INVALID
 AND UNENFORCEABLE UNDER
 FEDERAL LAW.



True and correct copy of
 original on file at Palo
 Pinto County, Texas
 Janette K. Green, County Clerk
 Page 5 of 10
 11/2/17

Field Note No. 231
Job No. 92082
November 25, 1992

N55°14'57"W a distance of 77.73 feet to a 1/2" iron rod set,
 N48°27'32"W a distance of 51.93 feet to a 1/2" iron rod set,
 N42°55'47"W a distance of 99.35 feet to a 1/2" iron rod set,
 N43°31'45"W a distance of 81.76 feet to a 1/2" iron rod set,
 N37°39'23"W a distance of 129.48 feet to a 1/2" iron rod set,
 N27°20'23"W a distance of 133.08 feet to a 1/2" iron rod set,
 N17°09'46"W a distance of 121.26 feet to a point,
 N04°20'06"W a distance of 57.21 feet to a point,
 N16°10'03"E a distance of 50.48 feet to a 1/2" iron rod set,
 N38°08'10"E a distance of 68.69 feet to a 1/2" iron rod set,
 N07°52'23"E a distance of 88.71 feet to a 1/2" iron rod set,
 N28°44'06"E a distance of 79.10 to a point,
 N46°13'01"E a distance of 128.98 feet to a 1/2" iron rod set,
 N12°02'56"E a distance of 57.45 to a point,
 N63°49'37"E a distance of 58.09 feet to a 1/2" iron rod set,
 N33°40'47"E a distance of 48.27 to a point,
 N40°09'37"E a distance of 69.36 feet to a 1/2" iron rod set,
 N29°11'22"E a distance of 111.98 feet to a 1/2" iron rod set,
 N17°30'56"E a distance of 75.75 feet to a 1/2" iron rod set,
 N33°40'32"E a distance of 69.16 feet to a 1/2" iron rod set,
 N50°58'12"E a distance of 64.35 feet to a 1/2" iron rod set,
 N82°16'13"E a distance of 139.04 feet to a 1/2" iron rod set,
 N73°16'35"E a distance of 73.66 feet to a 1/2" iron rod set,
 S86°55'09"E a distance of 76.15 feet to a 1/2" iron rod set,
 S54°24'03"E a distance of 196.77 feet to a 1/2" iron rod set,
 S43°19'59"E a distance of 88.84 feet to a 1/2" iron rod set,
 S40°51'13"E a distance of 116.91 feet to a 1/2" iron rod set,
 S60°20'24"E a distance of 84.72 feet to a 1/2" iron rod set,
 S43°38'24"E a distance of 133.57 feet to a 1/2" iron rod set,
 N18°40'41"W a distance of 93.58 feet to a 1/2" iron rod set,
 N27°12'19"W a distance of 30.64 feet to a 1/2" iron rod set,
 N41°56'02"W a distance of 123.56 feet to a 1/2" iron rod set,
 N18°27'35"W a distance of 127.22 feet to a 1/2" iron rod set,
 N01°23'24"E a distance of 25.13 feet to a 1/2" iron rod set,
 N36°36'54"E a distance of 49.59 feet to a 1/2" iron rod set,
 N09°15'17"E a distance of 34.02 feet to a 1/2" iron rod set,
 N63°29'36"E a distance of 55.86 feet to a 1/2" iron rod set,
 N62°13'03"E a distance of 75.55 feet to a 1/2" iron rod set,
 N63°35'16"E a distance of 226.94 feet to a 1/2" iron rod set,
 N55°57'53"E a distance of 313.63 feet to a 1/2" iron rod set,
 N87°08'39"E a distance of 113.03 feet to a 1/2" iron rod set,
 S37°38'59"E a distance of 420.82 feet to a 1/2" iron rod set,
 S33°05'50"E a distance of 112.43 feet to a 1/2" iron rod set,
 S57°16'23"E a distance of 383.86 feet to a 1/2" iron rod set,
 S81°49'00"E a distance of 97.55 feet to a 1/2" iron rod set,
 S55°12'02"E a distance of 88.47 feet to a 1/2" iron rod set,
 S49°10'39"E a distance of 216.79 feet to a 1/2" iron rod set,
 S52°24'40"E a distance of 376.12 feet to a 1/2" iron rod set,
 S42°17'31"E a distance of 232.93 feet to a 1/2" iron rod set,
 S33°26'11"E a distance of 154.96 feet to a 1/2" iron rod set,

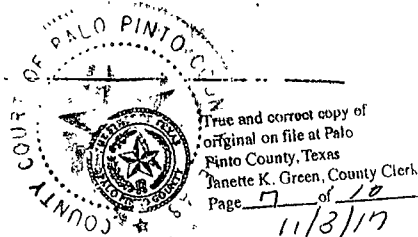


True and correct copy of
 original on file at Palo
 Pinto County, Texas
 Jagette K. Green, County Clerk
 Page 6 of 12
 11/3/17

Field Note No. 231
 Job No. 92082
 November 25, 1992

S59°39'41"E a distance of 268.56 feet to a ½" iron rod set,
 S52°16'49"E a distance of 167.50 feet to a ½" iron rod set,
 S71°16'53"E a distance of 180.84 feet to a ½" iron rod set,
 S48°26'53"E a distance of 53.54 feet to a ½" iron rod set,
 N07°35'51"W a distance of 111.54 feet to a ½" iron rod set,
 N29°34'54"E a distance of 33.68 feet to a ½" iron rod set,
 N68°48'10"E a distance of 35.86 feet to a ½" iron rod set,
 S87°28'41"E a distance of 39.58 feet to a ½" iron rod set,
 S86°31'23"E a distance of 171.29 feet to a ½" iron rod set,
 S84°07'32"E a distance of 473.93 feet to a ½" iron rod set,
 S89°51'04"E a distance of 346.00 feet to a ½" iron rod set,
 N66°40'26"E a distance of 41.10 feet to a ½" iron rod set,
 N78°50'06"E a distance of 238.24 feet to a ½" iron rod set,
 S86°38'19"E a distance of 180.64 feet to a ½" iron rod set,
 N54°49'54"E a distance of 66.86 feet to a ½" iron rod set,
 N72°19'30"E a distance of 280.73 feet to a ½" iron rod set,
 N79°48'33"E a distance of 196.82 feet to a ½" iron rod set,
 S52°52'10"E a distance of 91.97 feet to a ½" iron rod set,
 S30°03'47"E a distance of 82.94 feet to a ½" iron rod set,
 N13°41'46"E a distance of 46.17 feet to a ½" iron rod set,
 N36°58'59"E a distance of 114.14 feet to a ½" iron rod set,
 N08°36'41"E a distance of 101.18 feet to a ½" iron rod set,
 N50°24'03"E a distance of 265.34 feet to a ½" iron rod set,
 N73°15'33"E a distance of 48.36 feet to a ½" iron rod set,
 N54°13'51"E a distance of 160.39 feet to a ½" iron rod set,
 N44°50'11"E a distance of 611.20 feet to a ½" iron rod set,
 N27°53'40"E a distance of 354.65 feet to a ½" iron rod set,
 N05°43'15"W a distance of 43.27 feet to a ½" iron rod set,
 N38°09'08"E a distance of 155.19 feet to a ½" iron rod set,
 and N30°26'24"E a distance of 83.24 feet to a ½" iron rod set
 for a northwest corner, same being a northwest corner of the
 aforementioned 783.033 acres, same lying in the north line of
 the aforementioned 1223.82 acres, same also lying in the south
 line of a 423.43 acre tract of land described by deed recorded
 in Volume 172, Page 314, Deed Records of Palo Pinto County,
 Texas;

THENCE along the north line of the aforementioned 783.033 acres,
 the north line of the aforementioned 1223.82 acres and the south
 line of the aforementioned 423.43 acres, S88°50'23"E a distance of
 1150.81 feet to a steel post, N85°07'08"E a distance of 909.59 feet
 to a brass disc in concrete, and N71°03'24"E, passing a brass disc
 in concrete at 2194.45 feet, a total distance of 2758.56 feet to a
 ½" iron rod set for the most northerly corner, same being the most
 northerly corner of the said 783.033 acres, same lying on the west
 bank of the Brazos River;



Field Note No. 831
 Job No. 92082
 November 25, 1992

THENCE along the east line of the aforementioned 783.033 acres and the west bank of the aforementioned Brazos River, S29°12'25"E a distance of 248.68 feet to an iron rod set in the northwest right-of-way (120 foot wide right-of-way) of the aforementioned State Highway 16 for the most easterly corner, same being the most easterly corner of the said 783.033 acres;

THENCE along the east line of the aforementioned 783.033 acres and the west right-of-way of the aforementioned State Highway 16, S54°36'16"W a distance of 370.00 feet to a $\frac{1}{2}$ " iron rod set for the point of curvature of a curve to the right having a radius of 2804.93 feet, a central angle of 08°11'00" and a chord which bears S58°41'46"W a distance of 400.28 feet;

THENCE continuing an arc distance of 400.62 feet to a $\frac{1}{2}$ " iron rod set for a point of tangency;

THENCE S62°47'16"W a distance of 2049.00 feet to a $\frac{1}{2}$ " iron rod set for the point of curvature of a curve to the left having a radius of 2924.93 feet, a central angle of 08°11'00" and a chord which bears S58°41'46"W a distance of 417.40 feet;

THENCE continuing an arc distance of 417.76 feet to a $\frac{1}{2}$ " iron rod set for the point of tangency;

THENCE S54°36'16"W a distance of 854.90 feet to a $\frac{1}{2}$ " iron rod set for the point of curvature of a curve to the left having a radius of 1492.70 feet, a central angle of 27°19'00" and a chord which bears S40°56'46"W a distance of 704.95 feet;

THENCE continuing an arc distance of 711.67 feet to a $\frac{1}{2}$ " iron rod set for the point of tangency;

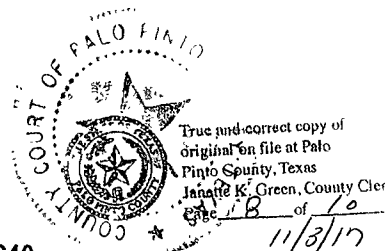
THENCE S27°17'16"W a distance of 978.20 feet to a $\frac{1}{2}$ " iron rod set for a point of curvature of a curve to the left, having a radius of 2352.00 feet, a central angle of 34°16'00" and a chord which bears S10°09'16"W a distance of 1385.78 feet;

THENCE continuing an arc distance of 1406.65 feet to a $\frac{1}{2}$ " iron rod set for a point of tangency;

THENCE S06°58'44"E a distance of 1241.60 feet to a $\frac{1}{2}$ " iron rod set for the point of curvature of a curve to the right having a radius of 2232.00 feet, a central angle of 44°11'00" and a chord which bears S15°06'46"W a distance of 1678.86 feet;

THENCE continuing an arc distance of 1721.19 feet to a $\frac{1}{2}$ " iron rod set for a point of tangency;

Page 5 of 6



Field Note No. 231
Job No. 92082
November 25, 1992

THENCE S37°12'16"W a distance of 668.93 feet to the PLACE OF BEGINNING containing 839.083 acres of land.

THE STATE OF TEXAS X
COUNTY OF BEJAR X
KNOW ALL MEN BY THESE PRESENTS:

I, Billy H. Ethridge, a Registered Professional Land Surveyor, do hereby certify that the above field notes were prepared using information obtained from an on the ground survey made under my direction and supervision in August 1990, August 1991, and November 1992.

Date 25th day of NOVEMBER, 1992, A.D.



Billy H. Ethridge
Billy H. Ethridge
Registered Professional Land Surveyor
No. 4302 - State of Texas

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.



True and correct copy of original on file at Palo Pinto County, Texas
Janette K. Green, County Clerk
Page 9 of 10
11/3/17

25
21

41
Commercial Title of Austin

FILED
APR 15 1993
NOV 4 1993
BY *Bobbie Smith*
Clerk of the County Court
Palo Pinto County, Texas
Deputy

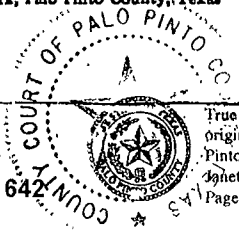
5734

Please forward
recording receipts
to Commercial Title
A.S.A.P.
Thanks,
Cynthia

THE STATE OF TEXAS
County of Palo Pinto
I, Bobbie Smith, Clerk of the County Court in and for said County do hereby
certify that the above instrument in writing, with its certificate of authentication, was filed for record in my office
on the 4 day of Nov A.D. 1993 at 2:15 o'clock P M. and recorded the 5 day
of Nov A.D. 1993 in the Wood Records of said County
Volume 799 Pages 633

Witness my hand and official seal in Palo Pinto, Texas, the day and year last above written.

Bobbie Smith
County Clerk, Palo Pinto County, Texas
By *Lila Ernst* Deputy



True and correct copy of
original on file at Palo
Pinto County, Texas
Johette K. Green, County Clerk
Page 10 of 10
11/5/17

STATE OF TEXAS
COUNTY OF PALO PINTO

I do hereby certify that the foregoing document is a true and correct copy of the original referred to in my legal custody and possession as the same that is filed / recorded in the records of my office as found in VO 199-19-1033

8-076 County Clerk, Palo Pinto County, Texas



By Yeremia Martinez DEPUTY

DATE November 3, 2017

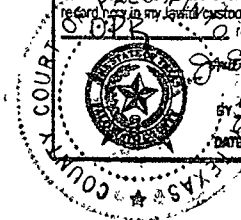


EXHIBIT # 20

Jud Smith

From: Burrell McKelvain <burrellmckelvain@gmail.com>
Sent: Tuesday, October 24, 2017 7:18 PM
To: Jud Smith; 'Don Gore'
Cc: tamccall@nsb-pklake.com; bobwood.tx@gmail.com
Subject: RE: FLYER ACE PIPE CLEANING LUNCH AND LEARN OCT. 27
Attachments: 20171021_200437.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

Jud, thanks for carrying the mail for the CUC. Sounds like a good start.

Attached, hopefully, is a pic from a cup of water I drew out of our kitchen faucet at 110 Colonial Dr on Saturday

About 5 p. We had been there about 45 min and run some water and had 2 flushes when I went for a drink. This is what came out. After running water for a couple of minutes, it did clear up. Water had been shut off for four and a half days.

After seeing the pics of some of the leak repairs people sent, I talked to our GM for the Ft. Griffen SUD for our repair policy standards. When repairing leaks in rocky ground, we require a minimum of 3" of sand or nonrocky soil below and above the pipe. Our engineer says that it can go up to as much as 6", depending on the pipe and soil structure. Didn't see much of anything other than cliche & rock in the pics although bedding material could have already been covered up.



EXHIBIT # 21

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER DENYING THE APPLICATION OF DOUBLE DIAMOND UTILITIES TO INCREASE ITS RATES; TCEQ DOCKET NO. 2007-1708-UCR; SOAH DOCKET NO. 582-08-0698

On October 7, 2009, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Double Diamond Utilities (DDU) to change its water rates and its tariff in Hill, Palo Pinto, and Johnson Counties, Texas, under Certificate of Convenience and Necessity No. 12087. A Proposal for Decision (PFD) was presented by Kerrie Jo Qualtrough, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

Procedural History and Jurisdiction

1. DDU provides retail water utility service under Certificate of Convenience and Necessity No. 12087, in Hill, Johnson, and Palo Pinto Counties, Texas.
2. DDU operates three water systems serving three separate developments: White Bluff water system (Hill County), the Retreat water system (Johnson County), and the Cliffs water system (Palo Pinto County).

39. Few of the amounts in DDU's exhibits match the corresponding entries in the application. DDU's accounting documents and invoices do not generally reconcile with its application.
40. DDU's witnesses did not have sufficient knowledge of the application to answer specific questions about how the entries in the application were determined.
41. DDU did not provide a sufficient explanation of its application and the proposed rates. Amounts in the application could not be verified through either DDU's exhibits or its witnesses.

One Combined Revenue Requirement for Three Water Systems

42. DDU grouped all three water systems together to develop one revenue requirement. For test year 2006, DDU's revenue requirement for all three systems combined was \$1,043,958 as shown in the December 2007 application. DDU did not demonstrate how just and reasonable rates for the three separate water systems could be derived from one revenue requirement.
43. The Cliffs, the Retreat, and the White Bluff water systems are different in terms of age, size, type of development served, cost of service, and sources of water.
44. DDU should have prepared three separate revenue requirements for the three separate water systems.

Return on Invested Capital

45. DDU listed the assets for each water system in its depreciation schedule in the December 2007 application. DDU then totaled the entries for all three systems and added in DDU's general items to obtain the total net book value. DDU's general items include backhoes and trucks that are used for both the water and wastewater systems. DDU did

not show that it allocated the cost of its general items between the water and wastewater systems.

46. Rounded to the nearest dollar, the following table summarizes DDU's depreciation schedule and annual depreciation expense:

	Total Original Cost	Total Annual Depreciation	Total Net Book Value
General Items	\$300,100	\$ 26,502	\$ 94,295
The Cliffs	898,290	63,504	305,309
The Retreat	603,709	18,591	552,969
White Bluff	1,167,269	35,965	813,434
Total	\$2,969,368	\$144,562	\$1,766,007

47. DDU did not provide sufficient evidence to prove the original cost of all of the assets it claimed in its depreciation schedule in the application.
48. There is no prior TCEQ order establishing a rate base for any of DDU's water systems.

Invested Capital, Rate of Return, and Return

49. To determine its invested capital for all three systems combined, DDU showed on its application a net book value of \$1,766,007, working cash allowance of \$72,855, and materials and supplies of \$1,500 for a total of \$1,840,362. DDU showed \$0 for developer contributions.
50. In calculating a utility's invested capital, developer contributions are subtracted from the utility's total of net book value, working cash allowance, and materials and supplies.
51. To calculate its rate of return (ROR), DDU used one worksheet for all three water systems combined.

52. The three DDU water systems combined do not constitute a small water system of 200 or less connections. The three DDU water systems combined do not constitute a stand alone sewer system. The three DDU water systems combined do not meet both the conditions of aging system and unstable population listed on the TCEQ's ROR worksheet.
53. DDU should have prepared the ROR worksheet for each individual water system and determined whether the water system met the conditions in the worksheet to determine the appropriate ROR.
54. Other than a general conclusion that it met the factors in the ROR worksheet, DDU did not present specific evidence demonstrating how it met the other factors in the ROR worksheet.
55. DDU erroneously calculated an ROR of 12 percent.
56. In determining the weighted average cost of debt that DDU has in the three water systems, DDU showed an unpaid balance of \$734,990 on a loan from Double Diamond Delaware, Inc. DDU claimed an interest rate of 10 percent on the loan from its parent company, Double Diamond Delaware, Inc. DDU used this 10 percent interest to calculate its weighted rate of return.
57. DDU is a Qualified S Corporation of Double Diamond Delaware, Inc. and is not treated as a separate company for federal tax purposes. DDU's assets, liabilities, and all items of income, deduction, and credit are treated as those of Double Diamond Delaware, Inc. Any income incurred by DDU belongs to the parent company, including any interest on the loan that DDU collects from its customers through its rates.
58. Double Diamond Delaware, Inc. and DDU are affiliated interests.

59. In calculating just and reasonable rates, 10 percent is not an appropriate interest rate for a loan from an affiliated interest because a loan between affiliated interests is not an arm's length transaction.
60. DDU did not demonstrate that the 10 percent interest rate paid to its affiliated interest was reasonable and necessary.
61. In determining the weighted average cost of investment/equity, DDU listed \$3,024,118 as its equity in the three water systems combined. DDU did not prove how it calculated that it had \$3,024,118 in equity in the water systems.
62. DDU used the erroneous calculation of 12 percent from the ROR worksheet to calculate its weighted average cost of investment/equity.
63. In its December 2007 application, DDU's revenue requirement in Table VI.A. claimed a return of \$216,054. This is a \$2,572 discrepancy from the amount of DDU's return of \$213,462 shown in DDU's application at Table IV.E, line [H].
64. Based on errors in calculating its ROR, its weighted average costs of debt and equity, and its failure to include developer contributions in its total invested capital calculations, DDU erroneously calculated its return.

Operation and Maintenance Expenses

65. For each expense category, DDU presented one amount for all three water systems combined.
66. DDU should have calculated the expenses for each water system separately.

Salary Expenses

67. In its application, DDU claimed that its salary expense was \$272,369 for all three water systems combined.

IV. ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

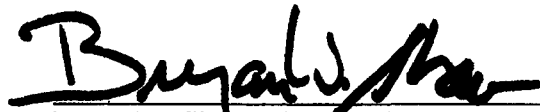
1. The application of Double Diamond Utilities to increase the rates that it charges for the retail water utility service that it provides under Certificate of Convenience and Necessity No. 12087 in Hill, Johnson, and Palo Pinto Counties, is denied. DDU's requested tariff charge increases for tap fee, returned check charge, customer deposit, and meter test fee are approved.
2. DDU shall immediately cease collecting the rates it proposed in this case.
3. Over a 15 month timeframe, DDU shall refund or credit to customers all sums collected between September 28, 2007 and December of 2008, that exceed the rates approved by the Commission in this case, plus 3.21% interest on the over-collection. DDU's Tariff shall continue to reflect its previously approved water rates.
4. DDU shall review any future construction and purchase costs closely and maintain its records by National Association of Regulatory Utility Commissioners property accounts.
5. DDU shall be assessed the full amount of the reporting and transcription costs.
6. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
7. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Texas Government Code § 2001.144.
8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be

invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

9. The Office of the Chief Clerk shall mail a copy of the Order to all parties.

ISSUED: **NOV 12 2009**

TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY



Bryan W. Shaw, PhD, Chairman
For the Commission

EXHIBIT # 22

ORIGINAL
SENT 10/11/17

Byrom J. Smith, III
200 Oyster Bay - Graford, Texas 76449
(940) 779-4325 home + (214) 679-8275 cell
juds@adventsupply.com

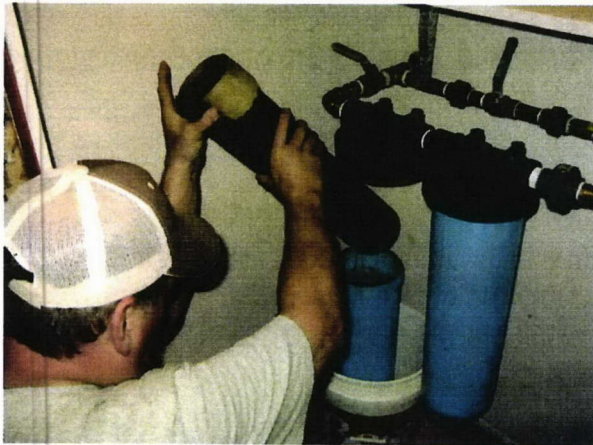
Double Diamond Utilities
% Double Diamond Companies
5495 Belt Line Rd.
Dallas, TX 75254

Attn: Water Dept. for The Cliffs Resort

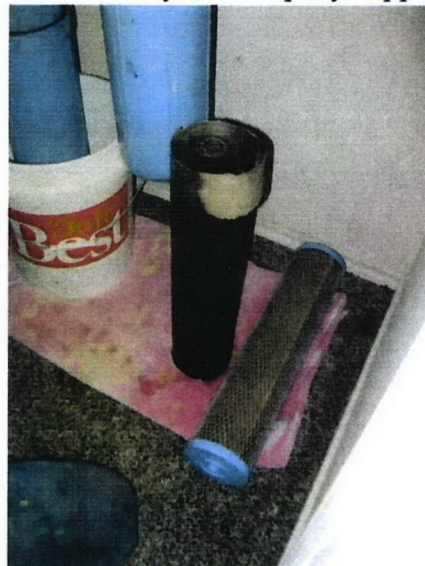
To Whom It May Concern:

I am sending you a copy of the invoice we just paid to have our whole house water filters replaced by Darren Rogers of Water RX. Even though dated Oct. 3, 2017 the work was completed yesterday, Oct. 8th. The work was for diagnosis of low water pressure wherein it was discovered that the main carbon filter and the secondary micron filter were both excessively clogged with dirt and refuse filtered from the water supplied by Double Diamond Utilities to our home here at The Cliffs. Replacement filters were ordered and were installed yesterday.

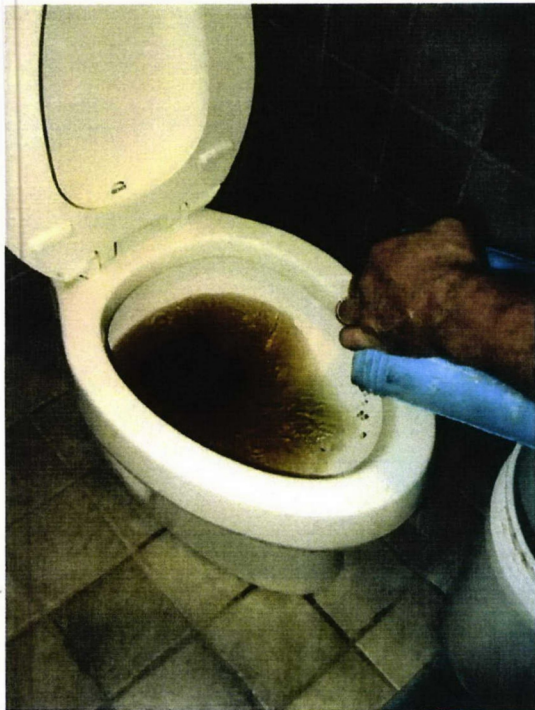
These filters are scheduled to be replaced biennially; once every two years. We last had them all replaced on March 1, 2017, a mere seven months ago. As you can see by the photos I took yesterday of the filter elements and effluent being dumped in the toilet from the filter canister, the filters were totally clogged with dirt and mud from the water your company supplies.



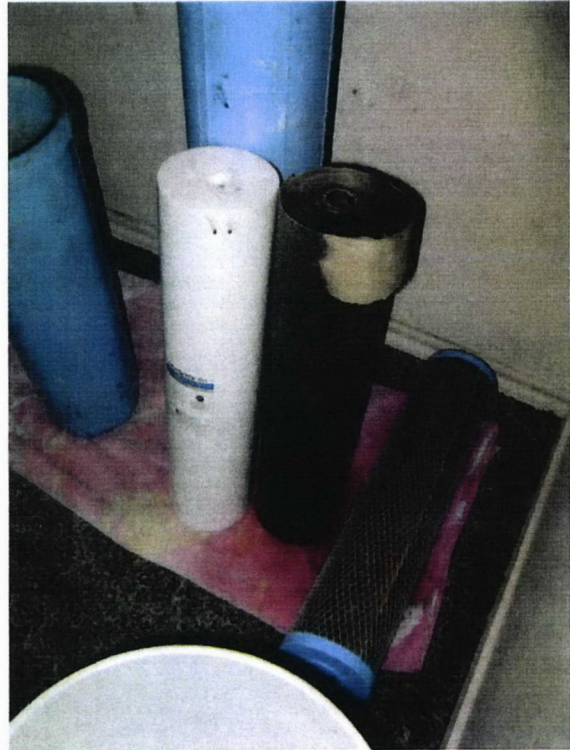
Clogged Micron Filter being removed



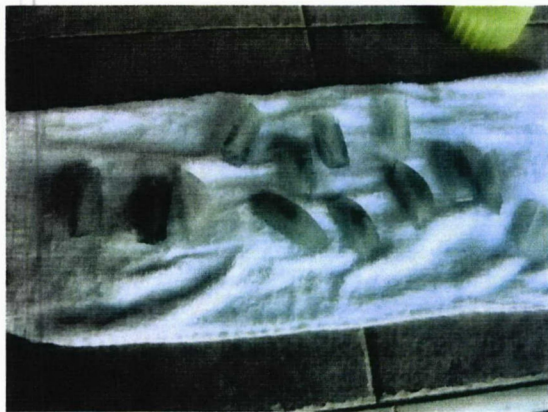
Clogged Micron and Carbon Filters



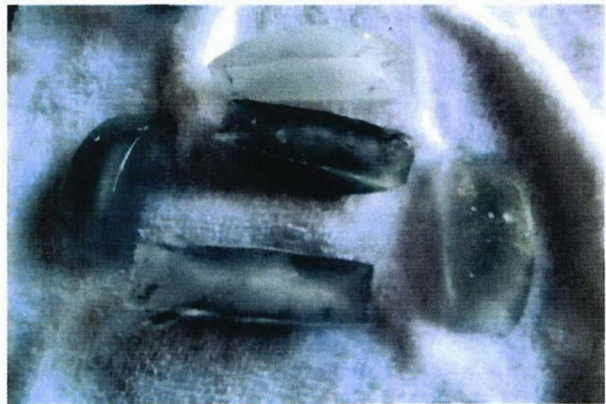
Effluent being dumped from Canister



New Replacement Filter beside Clogged Filters



Dirty Ice from Refrigerator/Freezer



Close-up of Dirty Ice

The dirty ice photos above were from ice produced by our refrigerator/freezer ice maker. It has a separate smaller filter that just could not keep up with the volume of dirt in the water line. We had to make and dump four loads of ice before it cleared the lines after we replaced the filter.

There have been multiple breaks in The Cliffs water supply lines this year. In Phase VII there have been eight (8) of which I am personally aware. One on Cliffs Drive, four on Melbourne Trail and three on our street, Oyster Bay. The last seven all occurred in a five week period of time between August and September. The last one on Oyster Bay is still under repair in the driveway of the

house at the corner of Oyster Bay and Riviera Drive, an open pit with standing water around the repair. It remains unresolved and has been open for over three weeks.

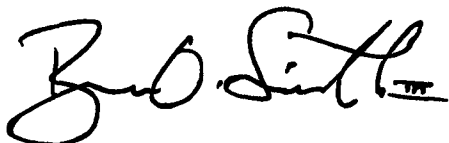
The leak that occurred prior to the one still under repair was on the northeast corner of Oyster Bay and Riviera. Our neighbors up and down Oyster Bay had dirty water coming from every faucet, shower head and toilet tank in their homes for two days or more. No notice was given of the break, no previous warning that there would be a water outage with zero water pressure that lasted several hours, and no Boil Notice was ever issued, as required by law.

This situation is egregious and Double Diamond's handling of these water leaks is totally unacceptable and, in many cases, violates both the letter and the spirit of TCEQ and P.U.C. regulations. It is not just inconvenient and costly but a hazard to public health.

In the seventeen years we have been living at The Cliffs we have suffered through literally dozens of water line breaks which have cause low to nonexistent water pressure (for sometimes up to a full twenty-four hours), the hassle of having to boil water (which obviously does not remove sediment), and considerable expense of dumping ice, replacing filters and other devices to protect ourselves from the tainted water your company delivers. Well, I, for one, have had enough.

I want reimbursement of my expenses to replace the water filters in my house per the attached invoice in the amount of \$ 457.00 and I want remittance prior to the water rate hearings in Austin currently scheduled to begin on October 24th.

If you have any questions, please call me at (940) 779-4325.

A handwritten signature in black ink, appearing to read "Byrom J. Smith, III". The signature is written in a cursive, flowing style with a prominent initial "B".

Byrom J. Smith, III